

POLITICAL PRISONERS IN INDIA, 1920-1977

Ujjwal Kumar Singh

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ABSTRACT

This is a study of the politics of 'political prisonerhood' in colonial and independent India. Prison going and the struggles inside the prison had, with the nationalist culture of jail going in the early part of the twentieth century become an integral part of the protest against the colonial state. Imprisonment in its multifarious forms also became the major bulwark of the colonial state's strategy for harnessing recalcitrant subjects. The purpose of this thesis is to examine the process by which the notion of 'political' became a festering issue in the contest between the colonial state and the subject population and later between the state in independent India and the various 'rebel' groups, and also the manner in which the ruling classes assumed the sole responsibility of defining the 'political'. We have confined our study to the peaks of nationalist resistance against the colonial state and popular struggles against the dominant classes in independent India. Through this exploration of the notion of political prisonerhood we also attempt to understand the permanence and ruptures in the forms of repression and the nature of penal sanctions which the state deployed against its political opponents in colonial and independent India. In order to understand what constitutes 'political crime', and who were or were not recognized as 'political prisoners' at a particular historical moment, we have examined the role of the ideological discourses which informed penal regimes in colonial and independent India.

The theoretical premises and conceptual tools in this study bear the influence of the Marxist studies on Indian politics and the Subaltern school's understanding of Indian history. The material for research has been drawn from various official and unofficial sources viz., archival records of the colonial government and the government of independent India, reports on prisons by various governmental committees, jail manuals, rules, regulations, laws, autobiographies, biographies, prison memoirs, prison diaries and interviews with erstwhile political prisoners.

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ABBREVIATIONS

AIR	All India Reporter.
BSA	Bihar State Archives, Patna.
CP	Central Provinces.
CPI	Communist Party of India.
CSP	Congress Socialist Party.
CWMG	Collected Works of Mahatma Gandhi.
DIB	Director of Intelligence Bureau.
DIR	Defence of India Rules.
FC	Federal Court, Delhi.
GoI	Government of India.
H(J)	Home Department, Jail Branch of the Government of India.
H(Jud)	Home Department, Judicial Branch of the Government of India.
H(P)	Home Department, Political Branch of the Government of India.
H[P(I)]	Home Department, Political (Internal) Branch, of the Government of India.
HSRA	Hindustan Socialist Republican Association.
IG	Inspector General.
IOL	India Office Library, London.
ILR	Indian Law Reports.
INA	Indian National Army.
KW	'Keep with', an appendage to a government file.
LCC	Lahore Conspiracy Case.
MISA	Maintenance of Internal Security Act, 1971.
MLA	Member Legislative Assembly.
MP	Madhya Pradesh.
NAI	National Archives of India, New Delhi.
NMML	Nehru Memorial Museum and Library, New Delhi.
NSA	National Security Act, 1980.
NWFP	North West Frontier Province.

OHP Oral History Project.
PSV Private Secretary to the Viceroy.
PC Privy Council, London.
SC Supreme Court of India.
UP The United Provinces of Agra and Awadh - the present Uttar Pradesh.
UPSA Uttar Pradesh State Archives, Lucknow.
WB West Bengal.

GLOSSARY

<i>aatta</i>	wheat flour
<i>ahimsa</i>	non-violence
<i>bhadralok</i>	generally refers to western educated Bengali middle class; literally gentlefolk
<i>daroga</i>	local level police official, in-charge of a police station
<i>didi</i>	elder sister; a term of endearment for a woman
<i>firenghee</i>	foreigner
<i>ghee</i>	clarified butter used for eating, cooking or religious rituals
<i>godam babu</i>	subordinate officer in charge of ration godown
<i>hooka</i>	water tobacco-pipe
<i>kalapani</i>	black-waters; term given to transportation across the sea
<i>khaddar</i>	hand spun cloth
<i>kisan</i>	peasant
<i>kumkum</i>	religious-cultural mark worn by hindu woman
<i>langota</i>	loin cloth
<i>maharaj</i>	an address showing reverence; a prince or ruler of state
<i>majdur</i>	labourer
<i>mangalsutra</i>	necklace of black pearls worn by married hindu women
<i>niwar</i>	cotton tape used for weaving across the frame of sleeping cots and chairs
<i>rajchhatra</i>	ornamental umbrella on the king's throne or royal mount - a symbol of power and authority
<i>raj kaidi</i>	state prisoner
<i>sabha</i>	assembly
<i>sarkar</i>	government; address of reverence to anyone higher in social hierarchy
<i>sarkari</i>	pertaining to government

<i>satyagraha</i>	truth force; soul force; In Gandhian terminology passive resistance to unjust rule propelled by the force of truth; in modern usage any non-violent protest
<i>satyagrahi</i>	one who offers satyagraha
<i>sindur</i>	vermillion, a religious-cultural mark worn by married hindu women
<i>swaraj</i>	freedom; self-rule; political independence
<i>tikram</i>	trick
<i>zamindar</i>	landowner, individually or jointly engaged to pay land revenue and receive rent

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CHAPTER ONE

THE POLITICS OF 'POLITICAL' PRISONERHOOD IN COLONIAL AND INDEPENDENT INDIA

In an open letter to the Chief Minister of Andhra Pradesh, the 'political prisoners' of CPI [Marxist-Leninist (People's War Group)] demanded among other things that "activists of all revolutionary parties, who are in jails as undertrial prisoners and convicts, should be recognized as political prisoners".¹ This self perception as 'political', distinguished from 'criminal', has a legacy which can be traced to colonial India. On the other hand the state's 'criminalization' of 'political' and its denial of the rights of political prisoners has also survived the transition from subjecthood to citizenship.²

In a subtle demonstration of this, the government has sought to honour and privilege those it recognises as *swatantrata senanis*.³ This apotheosis of the freedom fighter in independent India serves the purpose of affording legitimacy to the ruling classes as the deliverers of India from colonial rule. It marks the appropriation of the multilayered contest between the Indian peoples and the colonial state by the dominant nationalist paradigm. This appropriation also serves to obfuscate the fact that many of popular struggles during colonial rule were directed against the immediate oppressive structures. Protests by *dalits*, peasants, tribals, women and workers, to name a few,

¹ These 'political' demands were reminiscent of those made by political prisoners during colonial rule. They included among others, the lifting of the ban on CPI [ML (PWG)] and Maoist Communist Centre (MCC-Bihar), the withdrawal of conspiracy cases against them and other issues relating to their imprisonment, including imprisonment in a separate block in jail, lifting of censorship and surveillance by intelligence officers and other demands pertaining to their daily needs. *An Open Letter To The Chief Minister Of Andhra Pradesh About the Political Demands And The Problems Of The Prisoners* from Political Prisoners of CPI (ML) People's War, Various Jails, Andhra Pradesh to The Chief Minister of Andhra Pradesh, Hyderabad, dated 23 December 1994.

² Kiran Bedi, former Inspector General (henceforth IG) of Prisons and recipient of the Magsaysay Award for her 'reforms' in prison, while denouncing interference by the "functionaries of the Central and the State Governments for the special treatment to *VIP prisoners*", asserted "that there was no separate set of rules for *political prisoners*". 'Kiran was told to "take care" of Jains', *Hindustan Times*, New Delhi, 24 January 1996, p.3 (emphasis in the original).

³ Literally freedom fighters. Considering that jail going was a major plank of nationalist strategy, a stint in colonial jails was a primary consideration for qualifying as a freedom fighter.

were often directed against the exploitative capitalist, feudal, brahmanical and patriarchal orders. The achievement of independence has neither satisfied those aspirations nor eliminated the repressive structures which produced them.

While there are political prisoners in independent India, they do not fall in the same category as 'freedom fighters'. The latter category, so astutely floated by the Indian state, has enabled it to depict alternative political aspirations after the proclamation of the Indian republic, as a threat to 'national' security.⁴ Subsequently, armed actions, protests, resistance and struggles in different parts of the country mainly, North East, Andhra Pradesh (henceforth AP), Bihar, Kashmir and Punjab, have been lumped together as 'terrorist'. The distinctiveness of each in terms of cause, future vision, characteristics, grievances and nature of challenge is conflated in an essentialized representation as terrorist activity, depriving them of temporality and historical specificity. This depoliticised image of the movements is placed by the state against equally abstract images of 'non-violence', 'democratic politics', 'the rule of law' and an almost mythical 'national mainstream'.⁵

The purpose of this thesis is to examine the process by which the definition of 'political' became a festering issue in the contest between the colonial state and the subject population and later between the state in independent India and the various 'rebel' groups, and the manner in which the ruling classes assumed the sole responsibility of defining the 'political' and the 'criminal'. We shall focus on the dominant trends within the nationalist movement in a political culture of jail going and study the continuities and discontinuities in this ethos till the 1975-77 Emergency in independent India. Through

⁴ These so called anti-national movements have been dealt under various ordinary and extraordinary laws e.g., Preventive Detention Act, 1950; Maintenance of Internal Security Act (MISA), 1971; National Security Act (NSA), 1980 and the recently lapsed Terrorist And Disruptive Activities (Prevention) Act (TADA), 1985. In a study of TADA, Balagopal points out that India "has two parallel, self contained and very nearly mutually exclusive structures to deal with 'problems of law and order', one for non political disorders and one for political disorders, the latter being many times more inhuman and anti-democratic than the former". A large category of political activists, of the oppressed nationalities and minority communities, of revolutionary groups, of militant trade unions, tribal activists, and even the office bearers of the police association of Gujarat were brought through TADA in the ambit of new legal and extra-legal structures - a new hierarchy of courts, procedures, restrictions on rights, treatment in jails and weapons to the police. K.Balagopal, 'We Shall Have Our Own Mandelas, Birth of the 'Political Prisoner' in India', *Economic and Political Weekly* (henceforth *EPW*), Vol.XXIII, No.40, 1 October 1988, pp.2039-2042.

⁵ For an insightful analysis of this process see Randhir Singh, 'Terrorism, State Terrorism and Democratic Rights' in *Five Lectures in Marxist Mode*, Delhi, 1993, pp.60-90.

this exploration of the notion of political prisonerhood we will try and locate the permanence and ruptures in the nature of penal sanctions imposed by the state against its political opponents in colonial and independent India. To bring our study to manageable limits, we have confined it to the peaks of nationalist resistance and popular struggles till the mid nineteen seventies. In order to understand what constitutes 'political crime' and who were or were not recognized as 'political prisoners' at various historical moments, we shall examine the ideological discourses and the institutional matrix (law, judicial processes and prison) which informed official perspectives in late colonial and independent India.

The role played by the state in independent India has received detailed attention. Various studies have focussed on its developmental, welfare and ideological roles.⁶ Historians and social scientists have also made valuable contributions to the understanding of the ideological role of the colonial state.⁷ A relatively ignored area of

⁶ Most studies on the nature of the state in India have been within the Marxist paradigm where the focus has been on its class character. See Hamza Alavi, 'The State in Postcolonial Societies', *New Left Review*, No.74, 1972; Bharat Patankar and Gail Omvedt, 'The Bourgeois State in Post-Colonial Social Formations', *EPW*, 31 December 1977; Anupam Sen, *The State, Industrialization and Class Formation in India*, London, 1982; Pranab Bardhan, *The Political Economy of Development in India*, Delhi, 1984; Manoranjan Mohanty, 'Duality of the State processes in India: A Hypothesis', *Bharatiya Samajik Chintan*, Vol.XII, No.1-2, March-June 1989. For a historical study of the bureaucracy in colonial and independent India within the broad structure of state and class power see David C.Potter, *India's Political Administrators 1919-1983*, Oxford, 1986. Among the works concerned with the Indian state during and after the Nehru years are, Sudipta Kaviraj, 'Indira Gandhi and Indian Politics', *EPW*, Vol.XXI, Nos.38 & 39, 20-27 September 1986; *ibid.*, 'A Critique of the Passive Revolution', *EPW*, Special Number, November 1988; *ibid.*, 'On State, Society and Discourse in India' in James Manor (ed.), *Rethinking Third World Politics*, London, 1991; Upendra Baxi, 'The Recovery of Fire: Nehru and Legitimation of Power in India', *EPW*, Vol.XXV, No.2, 13 January 1990. Other collections on various aspects of state and politics in independent India are, Rajni Kothari, *State Against Democracy: In Search of Human Governance*, Delhi, 1987; C.P.Bhambhri, *Politics in India*, Delhi, 1987. Zoya Hasan, S.N.Jha and Rasheeduddin Khan (eds.), *The State, Political Process and Identity: Reflections on Modern India*, New Delhi, 1989; Subrata Kumar Mitra (ed.), *The Post Colonial State in Asia*, London, 1990; Ghanshyam Shah (ed.), *Capitalist Development, Critical Essays*, Bombay, 1990; *Seminar*, No.367, March, 1990, devoted to 'Politics of State' in India; T.V. Satyamurthy (ed.), *State and Nation in the Context of Social Change*, Vol.I, Delhi, 1994.

⁷ Notable among the earlier works are Bipan Chandra, 'Colonialism, Stages of Colonialism and the Colonial State', *Journal of Contemporary Asia*, Vol.10, No.3; Alan Smalley, 'The Colonial State and Agrarian Structure in Bengal', *Journal of Contemporary Asia*, Vol.13, No.2. Among the more recent works are Gyanendra Pandey, *The Construction of Communalism in Colonial North India*, Delhi, 1992; Sudipta Kaviraj, 'On the Construction of Colonial Power: Structure, Discourse, Hegemony', pp.19-54; Partha Chatterjee, 'Was there a hegemonic project of the colonial state?', pp.79-84 and Tapan Raychaudhuri, 'Dominance, Hegemony and the Colonial State: The Indian and African Experiences', pp.267-276, all in Dagmar Engels and Shula Marks (eds.), *Contesting Colonial Hegemony*, London, 1994;

academic research, however, has been the "burning" character of the Indian state,⁸ the "other side" of the state - its ruthlessness, lawlessness and brutality.⁹ While the Indian state has time and again justified these acts as counter-violence, there appears within academia itself a specialization of labour, where a study of state violence is construed to fall more in the genre of reportage rather than erudite work.¹⁰

The study of penal strategies leads us to the institution which is situated at the very heart of the state's coercive apparatus, the prison.¹¹ The coercive properties of the prison were, however, camouflaged by the legitimizing discourses of 'correction' and 'reform'. There is little evidence, however, at least not until the Indian Jails Committee 1919-1920, of official subscription to the ideas of reform and rehabilitation. The recommendations of the Prison Discipline Committee, 1838, which remained the basis

Partha Chatterjee, *The Nation and its Fragments: Colonial and Postcolonial Histories*, Delhi, 1995.

⁸ This expression is borrowed from K.Balagopal who uses the image to explain the institutionalized violence of the law and order machinery of the state. K.Balagopal, *Probings in the Political Economy of Agrarian Classes and Conflicts*, Hyderabad, 1988.

⁹ A.R.Desai's work on democratic rights violations in India is a notable exception. See *Assault on Democratic Rights in Contemporary India*, Bombay, 1985 and his edited works *Violation of Democratic Rights in India*, Bombay, 1986; *Repression and Resistance in India*, Bombay, 1990; *Expanding Governmental Lawlessness and Organized Struggles in India*, Bombay, 1991. In the same genre is David Arnold's study of the police in Madras Presidency (1859-1947), in which he warns us against an uncritical historiography which represents India as traversing a path from imperial autocracy through the stages of constitutional reforms to independence. He discerns instead 'a deeper trend' of "the creation, evolution and consolidation of a powerful state apparatus with the police as one of its primary agencies." David Arnold, *Police Power and Colonial Rule*, Delhi, 1986, p.4.

¹⁰ Referring to the Mode of Production debate in Indian agriculture which figured in the pages of *Economic and Political Weekly*, G.Hargopal has drawn attention to the 'interesting division of labour' in the articles. The section called 'Special Articles' carried academia's research output, where Utsa Patnaik, Ashok Rudra, Pradhan Prasad and others generated and dominated the debate. Hargopal contrasts this with what he calls 'field level data' or reports on struggles and turbulences. Although reflecting the nature of the Indian state and the transitions taking place in social relations, these writings, he points out, never became an issue in the special articles section. See Hargopal's introduction to K.Balagopal's *Probings in the Political Economy*, p.xiii.

¹¹ Reflecting on the coercive aspects of prison and its social basis, Ranajit Guha writes, "The prison is of course a major instrument of coercion used by the ruling classes everywhere. Even when the liberal bourgeois regimes of Europe used to govern in conformity with their own laws, the 'carceral network' (...Michel Foucault's term for the institutions, techniques and disciplines of detention taken together...) depended on 'extrajudicial determinations, sites and effects' to make the prisons work. No wonder then that in India where the dominant culture, that is the big business and big landlord classes, is authoritarian and anti-democratic, the rule of law tends to stop outside the prison walls even at the best of times". Ranajit Guha, 'Knowing India by its Prisons', *Frontier*, Vol.11, No.37, 15-29 October, 1977, p.14.

of much of prison administration till the 1920s, show a preference for increased rigour of punishment.¹² Imprisonment as the chief form of punishment was directed to be implemented in such a way as to be "a terror to wrong doers".¹³ Under such a scheme the measure of punishment was set by deterrence rather than reform.¹⁴ Our study of political prisoners in the twentieth century shows that the prison was inextricably linked with the colonial framework of disciplining and strategies of power and designed also to serve the important function of demonstrating the superiority and inviolability of imperial power. We shall see in the course of this work that despite some desultory attempts at reforming a section of nationalist prisoners, deterrence remained the core of colonial policy towards political opponents.

It would, however, be a mistake to see colonial prisons as purely enclosed institutions and prisoners as passive subjects to be deterred from further wrongdoings or to be reformed and reclaimed. The colonial prisons were no Panopticons.¹⁵ In his study of the colonial prison, David Arnold confronts Foucault's paradigmatic view of prison discipline and institutional surveillance with instances of resistance by prisoners. These

¹² In his study of nineteenth century Bengal jails, Ranjan Chakrabarti concludes that "there had been a fundamental incompatibility between the propagandist idea of reforming the convict and the practical necessity to maximize the deterring influence of the jails. The policy makers were quick to grasp this incompatibility and shifted to the latter". See Ranjan Chakrabarti, 'Prison as a Lever of Social Control: Bengal 1800-1860', *Bengal: Past and Present*, Vol.CVIII, Nos. 206-207, 1989, p.125.

¹³ Macaulay, Minute of 14 December 1835 in C.D.Dharker, *Lord Macaulays's Legislative Minutes*, Madras, 1946, p.278.

¹⁴ The Prison Discipline Committee of 1838 rejected 'reformatory influences' in its endorsement of rigorous imprisonment emphasizing 'dull' and 'monotonous' labour and economic efficiency of jail administration. The Committee of 1864, constituted due to continued high death rates in prisons, failed to come up with a fresh perspective to replace the general principles of the 1838 report. A conference of experts at Calcutta in January 1877 did nothing more than producing a long report on jail conditions. Another Committee in 1888-89 concerned itself with bringing uniformity in jail administration. The Indian Jails Committee of 1919-20 stressed the need for reform without actually giving up the primacy of deterrence.

¹⁵ There is probably no building that has evoked more philosophical controversy than Bentham's Panopticon. The architectural design of the Panopticon was envisaged by Bentham as an annular building circumscribing a centre tower which overlooked the cells in the building. The location of the tower in relation to the peripheral cells made the occupant of the cell visible from the tower at all times. Foucault describes the cell as 'so many cages, so many small theaters, in which each actor is alone, perfectly individualized and constantly visible'. Michel Foucault, *Discipline and Punish*, Harmondsworth, 1985, p.200. For a collection of Bentham's Letters, Postscript I and Fragments on Ontology, where he develops and elaborates on the Panopticon scheme, see Miran Bozovic (ed.), *The Panopticon Writings*, London, 1995.

'revolts against the gaze', he contends, suggest that prisoners were not the 'docile bodies' Foucault described.¹⁶ Prison protests were quite frequent in the nineteenth century and had a definite impact on the evolution of colonial penology. Jails in Bengal and the North-Western Provinces were shaken by widespread violent protests in the 1840s.¹⁷ The rebels of 1857 targeted the jails and liberated prisoners on a large scale. The imprisonment of Surendranath Banerjee and Bal Gangadhar Tilak in the late nineteenth century evoked outrage from the middle classes. Thus, by the beginning of the twentieth century, when Gandhian mass movements ushered in a political culture of jail going, prisons were already a highly politicized space. They were also a conspicuous symbol of the colonial state, having wide ranging effects on the sensibilities of the subject peoples and implications for the legitimization of colonial rule.

The intensification of nationalist agitations in the early part of twentieth century and popular struggles for self determination expressed in the idiom of non cooperation resulted in mass incarcerations. Imprisonment became the major bulwark of the colonial state's strategy for harnessing recalcitrant subjects.¹⁸ At the confluence of the two, prisons, became the site for the theatrical representation of the power of the colonial

¹⁶ Arnold, however, closely follows Foucault in viewing jail as a site for the production of knowledge and the exercise of state power. He demonstrates in his study that prisons were the sites where Indian bodies were accessible for pioneering research on medical, dietary and demographic statistics of India. David Arnold, 'The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India', in David Arnold and David Hardiman (eds.), *Subaltern Studies*, Vol.VIII, Delhi, 1994.

¹⁷ In one such study of prison protest over the introduction of a common messing system in the jails of Bihar, Anand Yang states that by deploying 'overwhelming coercive power' the colonial state succeeded in establishing 'discipline' among prisoners. Anand Yang, 'Disciplining "Natives": Prisons And Prisoners In Early Nineteenth Century India', *South Asia*, Vol.10, No.2, 1987, pp.29-45. Arnold, however, citing an illustration of prolonged resistance to messing in the neighbouring North-Western Provinces, contests Yang's account and suggests that "the outcome was more equivocal". David Arnold, 'The Colonial Prison', pp.151-152.

¹⁸ Although imprisonment had emerged as the major form of punishment by the early twentieth century, other legal and extra-legal modes of punishment were/were widely practiced. Apart from imprisonment, the Indian Penal Code (henceforth IPC) authorized hanging, transportation, individual and collective fines, confiscation of land and other property as punishment. The practice of whipping and flogging of prisoners continued right till the end of the colonial rule. During voluntary mass incarcerations of the nationalists, the lack of space in the jails, conjured up a situation where the government released *satyagrahis* after a few lashes or had them carried in a lorry out of town to be unloaded at a distance of fifteen to twenty miles.

state,¹⁹ as well as the arena where the colonized lost and found their freedom and traversed the precarious and ambiguous terrain between subjecthood and citizenship. The act of jail going and the individual or collective acts of resistance within jails combined the elements of both a public language of equality as well as of private suffering. The demands for political prisonerhood in the case of either the Congress *satyagrahis*, the revolutionary terrorists or the communists, opened up an arena in which political prisoners entered into a negotiation with the colonial government. The prisons, however, also demarcated the arena where political prisoners amidst multifarious controls and restrictions over their freedoms, considered themselves unfettered. This is manifested remarkably well in the acts of resistance by political prisoners particularly in the extreme cases of such resistance - the hunger strikes - whereby the prisoners attempted to exercise complete control over their bodies. In the case of *satyagrahi* prisoners such freedom was displayed in their 'choosing' - as per Gandhi's dictates - to obey the rules of the prison or alternatively, by 'inviting' physical punishment for resisting rules which infringed upon their self respect.

The memoirs of political prisoners as well as official records illustrate numerous instances where inversion of power took place by acts of resistance by political prisoners. The importance of political imprisonment in this period lies precisely in the fact that the 'gaze' of the colonial officers over the prisoners was not merely inverted or 'turned back' but was also widened in such a way that the prison not only became the focus of public

¹⁹ Yashpal presents a vivid description of this in the functioning of the prisons in India. It is evident from his account that jail rules specified some ritual display of obeisance to the Superintendent which contributed to his sense of power. To quote Yashpal, "When the Superintendent took his rounds, his two body guards walked a few paces ahead of him. Before he entered any particular ward he would send word of his arrival. In preparation for this the prisoners were expected to sit in a line on their haunches with their knees together. Their hands were spread outside with the palms facing upwards so that they could not hide any potentially dangerous weapon. The European or B class prisoners did not have to crouch for inspection. They could stand in front of him - but very still like statues with their history tickets in both their hands. These rituals were extremely humiliating and the revolutionary terrorists on numerous occasions refused to fall in line and got into trouble with the jail authorities. The Superintendent never came alone. He was accompanied by the head jailor and flanked by several sepoy. The Assistant Jailor, the Jail Doctor, the *daroga* and the *godam babu* followed him. When it rained a prison warder held a huge umbrella, like a *rajchhatra*, (a symbol of authority), on the Superintendent's head". The installation of Congress rule in some provinces did not, according to Yashpal, make any difference to this expectation of deference from the prisoners or the theatrical display of power. Yashpal, *Sinhalokan*, Lucknow, 1961, pp.156-157. For a similar description see Sher Jung, *Prison Days: Recollections and Reflections*, Delhi, 1981, p.75.

scrutiny but also an integral part of the popular protest against colonial rule.²⁰ Imprisonment at the intersection of colonial state's strategy for restraint and the nationalist strategy of protest was to have in this period important implications for the definition of what was to constitute 'political'. It is here that the relevance of prisons as the site of protests and the significance of prisons in the wider popular struggle is clearly accentuated.

The idea of 'jail-going' in the nationalist dictum and the attendant notion of political prisonerhood combined the language of equality/modernity with the notion of sacrifice. The idea of sacrifice or renunciation inheres in the Indian tradition as a supreme act of morality. The association of sacrifice with suffering and a concomitant notion of purging - one's own self and humanity - has traditionally given to the renouncer tremendous popular respect and allegiance. This path in the nationalist idiom, of which perhaps the greatest protagonist was Gandhi, did not, however, call for an escape from the vices of this world but an effort to remodel it.²¹ Although the path of sacrifice was supposedly open for all, unbounded by social hierarchy, it did have its inegalitarian moments. Dipesh Chakrabarty locates this in the relationship between sacrifice and power:

the idea of sacrifice was really an appeal to the power that flowed from inequality. In order to be able to make sacrifices, one needed to possess; he who did not possess could not sacrifice. The glory of the renouncer belonged to the possessor. To talk of sacrifice was thus to talk of possessions, and hence of power.²²

Chakrabarty shows remarkably well the manner in which the notion of sacrifice, measured on the scale of possession, becomes entangled in the politics of representation. How else could a *babu* become the 'real' representative of the *coolie*, than by erasing the

²⁰ The most conspicuous example is Gandhi who meticulously and deliberately inverted the constant scrutiny of his actions. The continuous speculation among officials driven by the imperative to anticipate his future moves, created a situation where Gandhi was able to control and set the terms of the struggle.

²¹ See Sumit Sarkar 'The Conditions and Nature of Subaltern Militancy', in Ranajit Guha (ed.), *Subaltern Studies*, Vol.III, Delhi, 1989, pp.314-315.

²² Dipesh Chakrabarty, *Rethinking Working Class History: Bengal 1890-1940*, Delhi, 1989, p.152.

signs of his *bhadralok* existence.²³

The exhortation to sacrifice has permeated the rhetoric of Indian politics, irrespective of political ideology and assumed mythical proportions in the nationalist idiom. Courting imprisonment, fasting, hunger strike and courting death are actions steeped with the idea of enduring suffering for some common good. It is not surprising therefore that the popular adulation which such spectacular acts of suffering evoked became transformed into mass followings. Sacrifice and suffering have continued to be the yardsticks against which the credibility of political leaders is judged today. The exalted portrayals of political prisoners are counterpointed by images of the *sarkari* prisoner, who can influence the working of the prison staff because of powerful 'connections'.²⁴ While both the idealized political prisoner and its 'corrupted' form are popular constructions, governments have persistently refused to acknowledge the validity of the category.

As mentioned before, prison going and the struggles inside the prison had, with the popularization of a culture of jail going in the early twentieth century, become an integral part of the resistance against the colonial state. The struggles of the prisoners and the colonial state's attempts at bridling them involved the active participation of an audience outside the prison. This audience or the 'public' was not an undifferentiated entity and its diverse strands were engaged in the contest in varying measures and were significant for its outcome in varying degrees. In this work the 'public' can be seen as composed of at least three distinct constituents differentially situated and differentially catered for by the major actors in the tussle. The public in England, itself far from undifferentiated, was important for the colonial state. The anxieties of the colonial government frequently arose from making their initiatives intelligible to the metropolitan

²³ Chakrabarty illustrates this with the election campaign of Sibnath Banerjee, a socialist *bhadralok*, who persuaded the Jute Mill labourers to vote for him in the 1937 elections for the Bengal Legislative Assembly. His claim to their vote, as the leaflets published on his behalf emphasised, were the numerous 'sacrifices' he had made in the interest of the labourers. An 'educated man', who had 'been to Europe' and 'left many high posts', suffered 'imprisonments and fines' - all in the interest of the workers. The magnitude of his sacrifices legitimized his claims - as another leaflet posed the question - "I have been prepared to suffer this for your sake, am I not the man for you?". *ibid.*, p.151.

²⁴ Mary Tyler, who was imprisoned for alleged naxalite activity, encountered several such *sarkari* prisoners who could elicit enormous privileges from the jail staff due to their proximity to positions of power. Mary Tyler, *My Years in an Indian Prison*, London, 1977, pp.46-48.

public. Perhaps the greatest dilemma was how to justify the differences in the practices at 'home' and in the colony. The 'native' middle class, itself a product of colonial rule, was strategically situated in this contest in so far as it spoke the same language as that of the colonizers. The peasants and other subaltern classes - the mass bases of popular struggle against the colonizers - were distant as well as distanced from this contest. They were distanced from the dominant levels of discourse owing to their subalternity. The subtle nuances of the postures of the elites engaged in an intricate war of positions, made the contest distant from their immediate struggles. By the 1940s, the British had to contend with a burgeoning global public opinion dominated by American antipathy towards British claims in India brought about by the 'media savvy of nationalist sympathizers'.²⁵ Situated at an intersection of multiple 'publics', the legitimation task of the colonial state was difficult.

According to Partha Chatterjee, the colonial state adopted two strategies of legitimation.²⁶ One of these involved invoking the consent of the traditional authority by forming contingent alliances with the indigenous elite. This was combined with a more direct appropriation of traditional 'signs' of authority.²⁷ As an extended arm of the British metropolitan state and serving the interests of the metropolitan bourgeoisie the colonial state was deeply tied to the language of British politics. The colonial state had therefore to present a 'rational justification of colonial rule'. This exercise, however, as Partha Chatterjee so succinctly puts it was complex:

It could not, of course, be a simple transference of the norms and practices of the modern state and economy from Britain to the colony, since the differences in the 'conditions' which prevailed in the two regions were seen as being both fundamental and self-evident. What made the two commensurable was a discursive strategy that sought in every case to

²⁵ Significant effort was made to inquire into the causes of 'American disfavour', among which was a widely circulated first-hand report by Stafford Cripps' personal assistant Graham Spry and a 1943 mission by Alec Joyce and Frederick Puckle to Washington and New York to evaluate the government's publicity apparatus and the field of public opinion. See Joselyn Amy Zivin, 'The Projection of India: Imperial Propaganda, The British State and Nationalist India, 1930-47', unpublished Ph.D dissertation, Duke University, 1994, p.237.

²⁶ Partha Chatterjee, 'Was there a hegemonic project?', pp.79-84.

²⁷ Bernard Cohn illustrates the appropriation of the ceremonial signs of the imperial authority of the Mughals by the colonial rulers. See B.S.Cohn, 'Representing Authority in Victorian India' in *An Anthropologist Among the Historians and Other Essays*, Delhi, 1987, pp.632-682.

classify colonial conditions and slot them within universal framework in which differences could be mapped as deviations from the norm... This 'rationalized' the differences between metropolis and colony as differences on a scale of 'social conditions', with the implication that an advance along the scale would justify practices closer to the norm.²⁸

The rational justification of the colonial state also required the internalization of the rational bureaucratic norms by the colonized, as indicators of 'advance along the scale'. This agency (English educated middle class) created outside the colonial state to "transform the indigenous tradition into universal forms of rational and scientifically ordered social life" resulted in what Chatterjee calls the "fundamental paradox".²⁹ In our study we show that this paradox manifested itself in the struggle between the nationalist elite and the colonial state over the definition of the category 'political'.

The efforts by the colonial state to stand outside as well as above the ruled, as 'different' from them and yet as the final 'repository of justice and the guarantee of order', was threatened within the prison. Penalized for challenging 'alien' rule, the nationalists invoked the language of the colonizer. By demanding a 'political' status the nationalists presented themselves as equal to and 'same' as the colonial masters. The nationalist language of equality confronted the notion of colonial difference which validated the exceptional nature of colonial rule. One of the significant struggles between the nationalist and the colonial state focussed on the most manifest symptom of this difference - race. The nationalists protested against racial discrimination in prisons, forcing the colonial government to introduce a system which removed 'European class' as a conspicuous superior category. Ironically, the new system of classification of prisoners, based on class differentia, substituted one disparity for another.³⁰ What needs to be examined further is whether the indigenous/nationalist elite who had emerged at this time as the 'mediating agency' between the colonial state and their fellow countrymen,

²⁸ Chatterjee, 'Was there a hegemonic project?', p.82.

²⁹ Ibid., p.83.

³⁰ It is interesting to note that mass incarcerations from 1920s onwards saw a continuing contest between the nationalists and the colonial government over issues of diet, clothing, and sleeping arrangements. These issues pertaining to prison treatment contributed in important ways to the congealing of a specific notion of class, viz., standard of living, and class based treatment in prison. Thus, prisons were significant sites where the colonial authorities set in motion certain modern notions of class.

and who according to Chatterjee gave rise to a 'fundamental paradox' within the colonial discourse, were prepared to recognize equality as a universal principle to be shared with other classes.

As mentioned earlier, the rational justification of colonial rule involved the assertion of differences in social conditions between the colony and the metropole with the implication that colonial rule would efface these differences. The achievement of sameness, by this logic of legitimation, would bring about an end of colonial rule which depended paradoxically on a continued preservation of the alienness of the ruling group, their difference and racial superiority. The end of colonial rule eliminated the latter but did not mark the surrender of the universal rationality of the modern state. The national state continued the modernization ideology of the colonial state, but authenticated itself by drawing upon anti colonial nationalism which became the ideology of the national state. The state in independent India premised its legitimacy on constitutionalism and legality, which was at the very heart of Nehru's critique of the colonial state; on planning and developmentalism, which as a bureaucratic function of the state in the national interest and therefore outside the domain of politics sought to ensure legitimacy cutting across class divide; and on representative democracy and republican citizenship as distinct from alien rule and subjecthood. The unfolding of events after independence demonstrated the ambivalence of the national government on issues of legality and constitutionalism. Moreover, the disparity in popular and official perceptions of national interest and social change, revealed the fragility of the legitimizing discourses of development and citizenship. Increased popular mobilization saw the government take recourse to legal and extra-legal measures of repression. This obsessive display of agency by the national state was a further manifestation of the deepening crisis of the legitimacy and creditworthiness of the national state.

Penal measures imposed by the government against certain section of the political opposition were frequently sanctioned by a discursive strategy portraying them as criminals. Foucault has aptly observed that 'those in power', have projected rebels as 'criminals' in order to discredit them:

social conflicts, class struggles and political confrontations, armed revolts
-from machine-smashers of the beginning of the century to the anarchists
of the last few years of the century, including the violent strikes, the

revolutions of 1848 and the Commune of 1870 - prompted those in power to treat political misdemeanors in the same way as ordinary crimes in order to discredit them. Little by little an image was built up of an enemy of society who can equally well be a revolutionary or a murderer, since after all revolutionaries do sometimes kill.³¹

The strategy of projecting and presenting political opponents as 'criminals' and consequently as 'enemies of society' was/is practiced with vigour by ruling forces in colonial and independent India. Although the nationalists were not the first subjects to be brought within the ambit of the 'criminalization' process,³² political resistance and social crime were seen as part of the continuum of criminality. David Arnold maintains that for the colonial regime, "serious crime was an implicit defiance of state authority and a possible prelude to rebellion; political resistance was either a 'crime' or the likely occasion for it".³³ Thus, the strategies, resources and skills developed to combat 'deviant' and 'criminal' groups could be 'reasonably' used against political opponents.

The terrain which a category such as 'political prisoner' represents could as well be conceived as a zone in which 'those in power' are locked in a war of nerves with the resisters. The acceptance or rejection of the demand by prisoners to be treated as 'political' becomes a test of the strength or the erosion of authority. The success and the

³¹ Michel Foucault, 'The Dangerous Individual', in Lawrence D.Kritzman (ed.), *Michel Foucault, Politics, Philosophy, Culture: Interviews and Other Writings 1977-1984*, (translated by Alan Sheridan et al.), New York, 1990, p.142.

³² The association of crime with a certain set of subjects viz., lower class, tribals; the belief that geographical contiguity and blood relationship spawn it; and that specific behavioural traits made a criminal discernible were intrinsic to the colonial construction of criminality. Shail Mayaram and Sanjay Nigam's studies point to the processes through which 'criminalization' was effected. In a study of the criminalization of the *Mev* population, Mayaram mentions the "systematic construction of a mythology of criminality" of the *Mevs* based on their regional contiguity with an 'acknowledged' 'criminal tribe'. Apart from regional association, the mythical narrative, *Darya Khan*, was taken as proof of blood relationship between the two populations, and criminality was confirmed through heredity. Shail Mayaram, 'Criminality or Community? Alternative Constructions of the *Mev* Narrative of *Darya Khan*', *Contributions to Indian Sociology* (n.s.), Vol.25, No.1, 1991. In a study of a colonial stereotype - 'criminal tribes and castes' - Sanjay Nigam undertakes a historical exploration of the Criminal Tribes Act XXVII of 1871 emphasizing that the knowledge of criminal tribes was discursively produced, signifying not only attributes rooted in an unchanging past but also a set of 'abnormal' native people who had to be disciplined and controlled by the colonial state. Sanjay Nigam, 'A Social History of a Colonial Stereotype: the Criminal Tribes and Castes of Uttar Pradesh 1871-1930', unpublished Ph.D thesis, University of London, 1987 and 'Disciplining and Policing the 'Criminals by Birth', Part I: The Making of a Colonial Stereotype - The Criminal Tribes and Castes of North India', *Indian Economic and Social History Review*, Vol.27, No.2, 1990.

³³ Arnold, *Police Power*, p.3.

failure of this task is then crucially tied to the legitimacy or creditworthiness of those in power and the forces opposed to them. The extent to which the state in colonial and independent India was able to generate legitimacy and consolidate it hegemonically has been a matter of dispute among historians and political scientists. The nationalist left school of Indian history, best represented by Bipan Chandra, has characterized the colonial state as 'semi-hegemonic or legal authoritarian'. The colonial state according to Chandra "functioned through the rule of law, a rule bound bureaucracy and a relatively independent judiciary, while simultaneously enacting and enforcing extremely repressive laws (it) extended a certain amount of civil liberties in normal times and curtailed them in periods of mass struggle".³⁴ The Indian National Congress' claims to inherit the 'nation' derived from its ability to forge a broad unity among various sections and wage a counter hegemonic movement against the colonial state.³⁵ The subaltern school of historiography, however, contests Chandra's claims and views colonial rule as marked by 'dominance without hegemony' and the 'nation making' process a contested terrain in independent India. Articulating the position taken by the subaltern historians, Ranajit Guha observes,

Dominance in colonial India was doubly articulated. It stood, on the one hand, for Britain's power to rule over its South Asian subjects and, on the other, for the power exercised by the indigenous elite over the subaltern amongst the subject population itself. The alien movement of colonialist dominance was matched thus by an indigenous movement within the general configuration of power. Common to both was the lack of hegemony.³⁶

Hegemony presupposes a dialogic relationship between classes. The colonial state's relationship with the middle classes might be construed as such, albeit in a limited way since it failed to generate continuing conformity. Both the colonial state and the national state, were stopped short of achieving a hegemonic relationship with the subaltern classes owing to the barriers to dialogic relationship put up by the latter. This inability to break

³⁴ Bipan Chandra, Mridula Mukherjee, K.N.Panikkar and Sucheta Mahajan, *India's Struggle for Independence*, New Delhi, 1993, pp.24-26.

³⁵ Ibid.

³⁶ Ranajit Guha, 'Discipline and Mobilize', in P.Chatterjee and G.Pandey (eds.), *Subaltern Studies*, Vol.VII, Delhi, 1993, p.69.

the frontiers established by what have been described variously as 'techniques of confidentiality', 'defensive use of illiteracy' and 'strategic incomprehension' creates what we know as dominance without hegemony.³⁷

Gramsci's conceptual framework of 'passive revolution' helps us to understand the relationship between capitalism and nationalism in India.³⁸ Chatterjee argues that in the Indian case the process of 'passive revolution' involved a 'political-ideological program' by which the largest possible alliance was built against the colonial power to form a sovereign nation-state.³⁹ The compromise and alliance between the bourgeoisie and other dominant classes facilitated the creation of a 'national popular' bloc which mobilized the subordinate classes against colonial rule. The reorganization of the political order in independent India, according to Chatterjee, was 'moderated in two important ways'. Political independence did not result in a radical break with the institutional structures of 'rational' authority set up during colonial rule. Secondly, unable to launch a vigorous assault on the precapitalist dominant classes, the bourgeoisie accepts the latter as 'subsidiary allies within a reformed state structure'. The result is that in the final phase of the passive revolution, 'the moment of arrival' as Chatterjee puts it, in the absence of a revolutionary bourgeoisie, the national state is assigned a 'central, autonomous and directing role in the further development of capital'. The

³⁷ Kaviraj, 'On the Construction of Colonial Power', pp.53-54. Tapan Raychaudhuri maintains that the only dialogue that the subaltern classes was involved in was one of force. They could use their illiteracy to 'look at you blankly', thus rendering the 'confidentiality of the masses' a barrier to the universality of colonial hegemony. Tapan Raychaudhuri, 'Dominance, Hegemony', p.270.

³⁸ In his 'Notes on Italian History' Gramsci contrasts the history of the formation of the Italian state in the period of the Risorgimento with the political revolution that took place in France in 1789. Unlike the French case, the bourgeoisie in Italy lacked the social strength to forcefully challenge the feudal classes. The outcome was that the demands of the new society were to be "satisfied by small doses, legally, in a reformist manner - in such a way that it was possible to preserve the political and economic position of the old feudal classes, to avoid agrarian reforms and especially, to avoid the popular masses going through a period of political experience such as occurred in France in the years of Jacobinism". Antonio Gramsci, *Selections From the Prison Notebooks*, (trans. Q.Hoare and G.N.Smith), New York, 1971, pp.44-120. Some Marxist scholars have attempted to explain the Indian situation within a Gramscian framework of passive revolution. See Asok Sen, 'Bureaucracy and Social Hegemony' in *In Essays Presented to Professor H.C.Sarkar*, New Delhi, 1976, pp.667-88; Sudipta Kaviraj, 'On the Crisis of Political Institutions in India', *Contributions to Indian Sociology*, Vol.18, No.2, July-December 1984; Partha Chatterjee, *The Nation and its Fragments*, pp.211-14 and *Nationalist Thought and the Colonial World*, London, 1986.

³⁹ This paragraph is based on Chatterjee's discussion of passive revolution in *The Nation and its Fragments*, pp.211-14.

Nehruvian etatist phase of passive revolution was, "a discourse of order, of the rational organization of power...glossing over all earlier contradictions, divergences...a unified discourse".⁴⁰

Coercion was itself part of the rational mechanisms of the state for the achievement of 'progress' by the nation, so much so that state violence in many colonialist and ruling class narratives has not been seen as violence at all. Legitimizing designations like 'war', 'policing', 'counter-insurgency operations' have sought to present state violence as 'a class apart'.⁴¹ The frequent use of coercive measures against political opponents in both colonial and independent India should rather be seen as indicative of the failure of the political order to operate hegemonically. With an extremely narrow social base and increasing nationalist resistance the colonial state tempered the exercise of its coercive powers and experimented with varied modes of punishment in order to generate legitimacy in the eyes of various 'publics'. As we shall see in the course of this work, the state's response to its political opponents, though broadly deterrent (as in deportation, transportation and incarceration), also gave some scope to alternative strategies of reformation and reclamation. The state in independent India evinces what Mohanty terms as a 'duality of state processes' expressed in the coexistence of a 'liberal democracy' and 'authoritarian trends'.⁴² A constitution which assures to the citizens political and social freedoms, a reasonably active judiciary, a competitive party system, free press, and more or less free elections impart a measure of authenticity to Indian democracy. The armour of coercion, nevertheless, has been a crucial element in the sustenance of the political order. State coercion unfolds itself in the form of 'routine' and 'conjunctural violence'.⁴³ While routine violence permeates

⁴⁰ Chatterjee, *Nationalist Thought*, p.51.

⁴¹ Gyanendra Pandey observes that "in a great deal of history-writing - which follows nineteenth century colonialist and ruling class narratives in this respect - state violence does not count as violence at all". Gyanendra Pandey, 'The Prose of Otherness', *Subaltern Studies*, Vol.VIII, p.191.

⁴² Manoranjan Mohanty, 'Duality of the State Process in India: A Hypothesis', *Bharatiya Samajik Chintan*, Vol.XII, No.1-2, March-June 1989.

⁴³ Arun Patnaik uses the expression "the everyday forms of coercion", which he argues are organically built into the institutions of police, bureaucracy, army and prison. Arun Patnaik, 'Relative Autonomy', *Seminar*, No.367, March 1990, p.27.

the daily lives of marginal people, the latter, which the state itself would rather call 'counter violence', is unleashed towards organised, anti-systemic challenges.⁴⁴

As stated earlier, the contest over the definition of 'political' remains central to this work. From the 1920s to the 1940s, the colonial government excluded the revolutionary terrorists and the communists from this 'hallowed' category by branding their activities as 'conspiratorial' and 'dangerous'. The Congress, dominant even in struggle, was emerging as an alternative locus of power. The Congress ministries in several provinces in 1937, and its Interim government in 1946 resorted to a similar sifting of the political from the non political. For the nationalist elite, 'political' was coterminous with 'national'. The transfer of power and the emergence of the national state in 1947 were projected by the nationalist elite as a resolution of both the 'national' and 'political' questions. In subsequent years the state in independent India depicted both leftist (communists in late 1940s and the naxalites in the late 1960s and early 1970s) and rightist political activities (RSS and the Hindu Mahasabha in the late 1940s and the mid 1970s) as 'anti-national'. In general, however, issue of political prisonerhood which had been the focus of public debate during the nationalist struggle receded into obscurity with the formation of the nation state. There occurs a silence on political prisoners and prisons in the history of the nation after independence. The prison, which was the focus of public attention in colonial India, could not, even at the peak of some very virulent movements, capture public attention or censure. This silence persisted until the Emergency of 1975, when mass imprisonments irrespective of political ideology alerted both mainstream and leftist parties to the 'bourgeois-democratic' ideal of liberty. It is not surprising therefore that the civil liberty and democratic rights movement in India emerged as a significant force after the Emergency. In both colonial and independent India the demarcation of political was synchronous with a process of 'criminalization'. The parameters of the 'political' were drawn by the dominant classes who applied a principle of exclusion based on a specific construction of 'national' as distinct from 'anti-national' and 'criminal'.

⁴⁴ Repression during the Emergency (1975-77) and earlier against the naxalites in independent India and the state's response towards organized political opposition in the various phases of the nationalist movement are instances of conjunctural violence.

The other theme which informs this work is the bureaucratic rational response of the colonial government to the nationalist demands for political prisoner status. It is generally accepted that in order to maintain order and discipline in prisons the colonial government retained the social hierarchies of caste and religion.⁴⁵ Our study, however, focuses on the British attempt to set in motion certain modern notions of class. Orderly management of the prison population required that prisoners be fitted into categories and slots on the basis of certain indices. The classification of prisoners required that they be measured, quantified and circumscribed into categories. The entry of middle class nationalists inside prisons accentuated the negotiation and construction of class in colonial prisons. This is exemplified in the early 1920s by the creation of a 'superior' class and from the early 1930s by a tripartite system of classification of prisoners. The criteria of class based classification of prisoners have continued after independence.⁴⁶

Political prisoners invoked the principle of difference in the act of constituting themselves as a distinct category. Frequent allusions were made by them to the difference in the nature of their acts from ordinary crimes, i.e. the difference between acts which were motivated by 'sacrifice of the self in the interest of the nation' and those committed with selfish, individual concerns. The nationalists also distanced themselves

⁴⁵ Caste and religious identities and symbols associated with them were also used by prisoners to assert their rights. In our study we come across instances where prisoners went on hunger strike to retain the right to sacred thread or possess the portraits of their deities. For a discussion on the role of caste and religion in colonial prisons see David Arnold, 'The Colonial Prison', pp.170-176; Radhika Singha, "No Needless Pains or Unintended Pleasures": Penal "Reform" in the Colony, 1825-45', *Studies in History*, Vol.11, No.1 (n.s.), 1995, pp.66-72.

⁴⁶ In spite of some guidelines laid down in 1957 by the All-India Jail Manuals Committee, most Prison Manuals remain antiquated and colonial in approach, leading to some rather anachronistic situations. In some state manuals for example, wearing a Gandhi cap by any prisoner is considered an offence. Rule 666 A of West Bengal Jail Code similarly harks back to colonial times: "no one who has taken a prominent part in any political agitation in which the prisoner was concerned or whose object is suspected to be to obtain an opportunity of publishing distorted accounts of grievances in the press will be allowed to interview a prisoner". Rule 671 A prohibits "discussion of political matters during interviews". These rules as in the colonial period, enable jail authorities to prevent the percolation outside of news of conditions in prisons. Many of these Manuals still provide for classification of prisoners based on their social and economic status prior to incarceration. The Supreme Court has on several occasions ordered the states to reform the Prison Manuals, and to incorporate recent case law regarding prisoner's rights. See *Sunil Batra (II) v Delhi Administration*, *All India Reporter* (henceforth *AIR*) 1980, SC p.1579; *Kishore Singh Ravindra Dev v State of Rajasthan*, *AIR* 1981, SC, p.652. For a study of the continuing colonial legacy in prisons see Upendra Baxi, 'The British Raj Prisons: An Unfought Battle for Human Dignity' in his *The Crisis of the Indian Legal System*, Delhi, 1982, pp.155-157.

from the ordinary prisoners by invoking their superior position in social hierarchy. By not opposing the norms of standardisation in prison, i.e., 'social and economic' status, 'character' and 'education', the nationalists affirmed the principles of inequality which were enforced by the colonial government. Often, the nationalist prisoners' demand for better treatment in prison revolved around bedding, diet, clothes, books, newspapers, games and other amenities commensurate with their social status outside. The prisoners' perception of themselves as political frequently provoked them to resist prison labour perceived by a majority as demeaning to their status. Resistance made itself manifest either as individual defiance of prison rules including shirking work and subterfuge or as collective acts of resistance in the form of concerted hunger strikes or even jail breaks.

These themes run through this historical study of political prisoners. The second chapter focuses on revolutionary terrorists as political prisoners in the early decades of this century and the nature of penal sanctions against them, ranging from incarceration to transportation. The third chapter deals with the early responses of the colonial government towards the growing ethos of voluntary jail-going as a politico-moral act during the non cooperation movement in the early 1920s. The fourth chapter concerns itself with the late 1920s and 1930s focusing on several interrelated issues, viz., the impact on official policies as well as prison conditions of the civil disobedience movement; the concretisation of an official medical discourse on hunger strikes; and the establishment of Congress ministries and the resurfacing of the question of political prisoners. Against the background of the Quit India movement and the formation of the Interim government, the fifth chapter explores the further entrenchment of distinctions among political prisoners on the basis of class and political ideology. The last chapter takes the saga of political prisoners forward to the period after independence concentrating on the increasing symbiosis of 'political' and 'national'. The duality of the state process is very much in evidence in this period. The democratisation of the polity is accompanied by a spiralling recourse to extra-ordinary laws and extra-judicial means to eliminate political opposition.

It is imperative to clarify the categories used in this work. In common parlance

the term 'political prisoner' is used to denote a person who has been deprived of his/her liberty by the state for 'offences' perceived to be 'political' in nature. This, however, raises more questions which call for further inquiry. How is an act or a belief system defined or accepted as political? Who defines or sets the limits to 'political'? Under what circumstances are such positions accepted as political? The contentious nature of the category is nowhere so clearly reflected than in its frequent rejection by the state or its reluctant acceptance in the face of severe pressure from challenging forces. On the other hand individuals or groups who contest state authority, once detained or convicted, often demand and struggle for a recognition and treatment as distinct from criminals. While the state attempts to depict challenges to its power as criminal acts, the contesting groups characterize their activity as legitimate political action. In the institutional sense the contours of the category of political prisoner are constructed in a multilayered process in which judicial and penal institutions play an important role.⁴⁷ These institutions and their ideology are in turn shaped and conditioned by the dynamics of the social forces. Thus, the category of political prisoner is historically constructed and is dependent on the nature of democratic values a society enjoys as well as the balance of social forces which define 'political'. Historically therefore political prisoners have been either rival contenders for seats of power or those who voiced views in opposition to or as an alternative to the dominant configuration of power.⁴⁸

⁴⁷ The colonial government used diverse expressions for political prisoners. While in the late nineteenth century and early twentieth century expressions like 'seditionist', 'conspiracy case prisoners', *raj kaidi*, 'state prisoner' and 'political prisoner' were used, from the 1920s a more depoliticised vocabulary viz., 'detenu' or 'security prisoner', 'superior class' or 'Class A/B/C' came to be used. Our purpose here is to go beyond such euphemisms and analyse the historical roots of specific categories.

⁴⁸ Since 1961, Amnesty International has brought the term 'prisoners of conscience' into currency to denote those persons who "are imprisoned, detained or otherwise physically restricted by reasons of their political, religious or other consciously held belief or by reason of their ethnic origin, sex, colour or language provided that they have not used or advocated violence". Article 1 of the Statute of Amnesty International, *Annual Report*, 1982, p.357. For a historical study of the debates within the movement on the scope and limitations of the term 'prisoners of conscience' see Edy Kaufman, 'Prisoners of Conscience: The Shaping of A New Human Rights Concept', *Human Rights Quarterly*, Vol.13, No.3, August 1991. While Amnesty International makes a distinction among political prisoners on the basis of the use or advocacy of violence, it has persistently campaigned for fair trial of all political prisoners and for the cessation of torture and 'disappearances'. In Amnesty's usage 'political prisoners' is a broad term inclusive of prisoners of conscience and refers to cases which "have a significant political element: whether the motivation of the prisoner's acts, the acts in themselves, or the motivation of the authorities." See *Amnesty International Handbook*, Amnesty International Publication, n.d. It is only the prisoners of conscience, however, who are adopted by it for a concerted campaign for immediate release.

The prison in this study includes not merely a fortified structure designated as such but a whole assortment of methods of confinement including 'shadow' prisons.⁴⁹ The latter category covers camp jails, home domicile, village domicile and confinement in special camp sites like Deoli, each of these differing from the other with respect to the degree of severity of confinement. The question as to what constituted a prison and what should be the mode of confinement of political prisoners remained a source of perennial concern for officials. The tussle with political prisoners over the sites and modes of confinement made prisons in colonial and independent India a contested category.

While the vast corpus of literature on the history and politics of colonial and independent India does refer to the crucial role of political prisoners, the history of the struggle for recognition as 'political' by prisoners of various political shades and the official responses to it has not received due attention. This work is an attempt to fill that gap.

⁴⁹ The term used by Richard Hula who states in his study that there is a major gap in our knowledge of 'shadow' prisons which were much used during the twentieth century for political prisoners and detenus. Richard Hula, 'Calcutta: The Politics of Crime and Conflict, 1800 to 1970s' in Ted Robert Gurr, Peter N. Grabosky and Richard C. Hula et al, *The Politics of Crime and Conflict*, Beverly Hills, 1977, p.608.

CHAPTER TWO

SEDITION, 'DANGEROUSNESS' AND PENAL POLICIES: NATIONALISM, TERRORISM AND THE COLONIAL STATE

British penal strategies towards political prisoners in the early twentieth century have to be seen against the background of major trends in the political struggle and burgeoning modern notions of nationalism. The growing size of literate classes, proliferation of professionals, emergence of political associations (e.g. Congress) and a stringent economic and political critique of colonialism in the expanding Indian and English-language press marked a new phase in the politics of protest. The Congress was at this time still an elite organization, no more than an annual forum, which engaged in petition politics and campaigns.¹ Revolutionary terrorism, on the other hand, with its extremely lofty ideals of self-sacrifice, offered a more stringent alternative. The idiom of equality and sameness with the colonial rulers was, however, integral to both. This is borne out clearly in a petition of V.D.Savarkar, a staunch nationalist, for a 'general release' of all political prisoners in the 'changed circumstances' of the first world war. The war, he said, offered an opportunity to the Indian youth to "fight side by side with other citizens of the Empire" against 'a common foe' and to "share the glories and responsibilities of the Empire with perfect equality with other citizens of it".²

While the early nationalists were confined to the elite strata, there appears to have been an implicit belief that they, more than any other group, were the embodiment of Indian nationalism. A petition from a revolutionary deportee to the Andamans contests the official notion that they were mere 'bomb throwers' or 'anarchists' and not 'political'

¹ Sumit Sarkar, *Modern India*, pp.96-97.

² Petition by Savarkar, dated 3 October 1914, to the Chief Commissioner, Andaman and Nicobar Islands. File no. 245, H(P), Part B, November 1914, NAI, pp.3-5. V.D.Savarkar was sentenced to transportation for life on two counts by the Bombay High Court (in the first Nasik conspiracy case in December 1910 and in the second Nasik conspiracy case in January 1911) for waging war against the King Emperor (sec 121 Indian Penal Code). In Savarkar's case the sentences were to run consecutively (normally in such cases the sentences ran concurrently), which meant transportation for 50 years. V.D.Savarkar, like his elder brother earlier, was sent to the Andamans in 1911 where he remained for the next ten years.

in the way the Manipur Case detenus were considered to be: "They (the Manipuris) represent only a part of India, while the whole of India spoke through us. Theirs was a voice of an individual fighting for his own interest, while ours was the voice of the People, voice of God".³ The revolutionary terrorists' attempts to exclude other strands of nationalism and project themselves as the 'voice of people' were early signs of the contest that ensued among various political movements to claim a monopoly over the emerging Indian nation. The colonial government, however, put to an end this claim of the revolutionary terrorists. The narrow social base of the revolutionary terrorists and their recourse to political violence enabled the government to use various modes of repression.

Perhaps the pivotal event which brought a spate in popular resistance was the British decision to partition Bengal. Protests ranging from the *swadeshi* movement to revolutionary terrorism ensued. The first world war offered the opportunity for the strengthening of the revolutionary terrorist movement by forming crucial alliances with the wartime enemies of Britain, especially Germany and Turkey. Indian revolutionaries operating from foreign soil invigorated themselves and the *Ghadr* movement posed strong challenges to the colonial government in India from its bases in North America. The Home Rule movement gave political expression to the more moderate sentiments.

The colonial state met the nationalist challenge by taking recourse to a number of existing penal and preventive laws and promulgating additional ones. Large number of 'suspects' were held in prison without trial for years, and in cases where they were prosecuted, exceptionally severe sentences were handed down. The law of sedition was applied to prosecute the editors of *Bengalee* (Surendranath Banerjee), *Kesari* (Tilak)⁴ and *Swarajya* under section 124 A (sedition) of the Indian Penal Code for their criticism of

³ Petition dated 16 September 1912 to the Viceroy from Hrishikesh Kanjilal, prisoner in the Andaman and Nicobar Islands convicted in the Alipur Sedition case. File no. 11-31, H(P), Part B, December 1912, NAI, pp.45-47. The Manipur Case detenus were sent to the Andamans in 1891 and interned in a bungalow on Mount Harriet. They were mostly members of the royal family of Senapati Tikendrajit, who led a revolt against the British in Manipur in 1890.

⁴ Surendranath Banerjee underwent imprisonment in Bengal. Tilak was deported to Mandalay in Burma.

the colonial government.⁵ Transportation, the most dreadful sentence to be meted out to political prisoners but which had been in abeyance for some time, became a favoured option once again. Some desultory attempts at reform of detenus were also made. By and large, however, reform was considered a cumbersome and not altogether plausible option. The more important consideration appeared to have been to sever the social influences nourishing the turbulent elements.

It is quite apparent from the various measures the colonial government adopted or speculated upon at its different layers, that Congress was perceived as a relatively lesser threat than the revolutionary terrorists. The latter's emphasis on armed struggle, on building and conserving resources in concert with their associates abroad to strike at the colonial government at an opportune time was driven by a highly motivating ideology of political change which had great attraction for the middle class educated youth. In all its deliberations pertaining to revolutionary terrorists, the colonial state appears keen not merely to mete out punishment for their various acts of violence, murder and dacoities, but to insulate and crush the 'dangerous' ideas which they disseminated.

In this chapter we shall attempt to analyse the legal and penal responses of the colonial government to revolutionary terrorists in the early part of the twentieth century viz., enactment of laws, detention, incarceration and deportation. In each case we shall try to bring out the overriding official concern with disciplining and normalizing these manifestations of 'irregularity' in the subject population. An attempt will also be made to bring out the implications of the largely middle class component of the revolutionary terrorist movement and their perception of the nature and legitimacy of punishment.

'POLITICAL CRIME' AND PENAL LAWS

Macaulay, as the president of the first Law Commission, produced a draft of the

⁵ In its brief life-span of two and a half years (1907- 1910) all the editors of *Swarajya*, an Urdu weekly published from Allahabad, were prosecuted and sentenced to long terms of imprisonment. Hoti Lal Varma, Ram Hari, Nand Gopal and Ladha Ram were sentenced to long terms of transportation. Interestingly, when efforts were made to revive *Swarajya* after independence the Indian government expressed their inability to permit publication of a newspaper with this name. For an account of the contribution of *Swarajya* to the nationalist movement see Bishambhar Nath Pande, 'Swarajya: The Newspaper that Inspired Freedom Movements in U.P.', in *Mukti Tirtha Andamans*, Ex Andamans Political Prisoners Fraternity Circle, revised edition - June 1982. An official report on the transportation of the *Swarajya* editors to the Andamans can be found in File no. 79-80, H(P), Part B, September 1910, NAI.

penal code in 1837, although this was enacted into law only in 1860 after the assumption of direct rule by the Crown in 1858. Curiously enough, for reasons unexplained, section 113 of the Macaulay draft dealing with sedition was not included in the Indian Penal Code, 1860 (hereafter IPC) and was added ten years later as section 124 A by a special Act (XXVII of 1870)⁶ under the chapter 'Offences against the state'. The members of the Law Commission had believed that political criminals ought to be seen as an exception to the general law laid down in the chapter on abetment. To quote the draft:

for state crimes, especially the most heinous and formidable state crimes, have this peculiarity, that if they are successfully committed, the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is despatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the Government. As the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginnings of rebellion, against treasonable designs which have been carried no further than plots and preparations.⁷

Despite the fact that even under the ordinary penal law the 'political criminal' was to be treated as an 'exceptional' case, there was a growing tendency to bypass the ordinary law and several extraordinary measures existed to enable the detention without trial of political offenders.⁸

The most prominent measures for detention without trial in the armoury of the

⁶ For a detailed discussion regarding this episode see chapter one in W.R.Donogh, *The History and Law of Sedition*, Calcutta, 1911. The Tilak and Gandhi trials were held under section 124 A (sedition).

⁷ Appendix, Note C in C.H.Cameron and D.Eliot, *The Indian Penal Code as Originally framed in 1837*, Madras, 1888, p.117.

⁸ The history of preventive detention in colonial India can be traced back to the late eighteenth century. The 'East India Company Act, 1793' empowered the Governor General to secure and detain any person or persons suspected of carrying on 'illicit correspondence or activities prejudicial to the interests of British Settlements and possessions in India'. While effectively blocking recourse to habeas corpus, the Act allowed a detainee the right of knowing the charge against him, and allowed him to make representations against the order of his detention to the Governor-General and produce evidence in his defence. The significant feature of the Act was that it provided no time limit for bringing the detainee to trial. Thus the period of detention could be indefinite at the will of the Governor-General. See for further details Faqir Hussain, *Personal Liberty and Preventive Detention*, Peshawar, 1989, p.83.

colonial government were the Regulations relating to the confinement of state prisoners.⁹ Originating in the first quarter of the nineteenth century these Regulations had been designed to meet the needs of the expanding company rule.¹⁰ State Prisoner Regulations not only survived the transition from company to Crown rule, but were in fact increasingly used against important political prisoners till the demise of the British Empire.¹¹ The working of these Regulations also indicate that though they were primarily an instrument of repression in the hands of the colonial government, on numerous occasions the state prisoners were able to use the right of representation provided under them to embarrass the government.

We examine Regulation III of 1818¹² which was gradually extended to other parts of British India¹³ and was widely used to suppress the revolutionary terrorist activities in Bengal in the first two decades of the twentieth century. The Regulation allowed, for reasons of 'preservation of tranquillity in the territories of native princes entitled to its protection', and 'the security of British dominions from foreign hostility and from internal commotion', the placing of individuals under 'personal restraint'

⁹ These were the 'Bengal State Prisoners Regulation III of 1818', 'Madras State Prisoners Regulation II of 1819' and 'Bombay State Prisoners Regulation XXV of 1827'. Later 'The State Prisoners Act, 1850', was passed so as to specify the places where prisoners could be detained. Accordingly places like fortresses, jails and other places within the area circumscribed by the jurisdiction of the Supreme Court of Calcutta could be used as places of confinement.

¹⁰ These Regulations were enacted against the background of British expansion during the early nineteenth century, particularly the Anglo-Nepalese war of 1814 and the Anglo-Maratha War of 1817.

¹¹ On 22 October 1919, Edwin Montagu, Secretary of State for India, in response to a question in the House of Commons, summarized the number of those interned and restricted during the war period in India. He reported that 149 persons had been interned under Bengal Regulation III of 1818, of whom 35 had been released before the armistice and 25 afterwards. Of the 12 interned under Madras Regulation II of 1819, 10 had been released before the armistice and 1 afterwards. Under Bombay Regulation XXV of 1827, 6 had been interned, of whom 4 had been released. Cited in William Roy Smith, *Nationalism and Reform in India*, New Haven, 1938, p.80.

¹² A short title, 'Regulation III of 1818' was given by the 'Repealing and Amending Act, 1897' (5 of 1897), Sch III, Acts, Vol.IV. For the text of the Regulation see file no. L/P&I/7/335, IOL.

¹³ This Regulation was extended to Ajmer-Merwara (Ajmer Laws Regulation, 1877), Burma (Arakan Hill District Laws Regulation, 1874; Burma Laws Act, 1898), Central Provinces (Central Provinces Laws Act, 1875), Coorg (Scheduled Districts Acts, 1874), Eastern Bengal and Assam including its scheduled districts (Laws Local Extent Act, 1874) and Scheduled Districts Act, 1874), North - West Frontier Province (North - West Frontier Province Law and Justice Regulation, 1901), Punjab (Punjab Laws Act, 1872), United Provinces (Laws Local Extent Act, 1874) and Oudh (Oudh Law Act, 1876) by the enactment of respective local laws. *ibid.*

against whom there might not be sufficient ground to institute any judicial proceedings.¹⁴ Unlike the 'East India Company Act of 1793', the Regulation did not require that the detenu be provided with the grounds of detention. Like the former, however, it did not provide any specific period of detention. The redeeming features of the Regulation were that, the detenu could make representations to the Governor-General;¹⁵ twice a year an executive review of the conduct of detainee was undertaken with a view to review the detention orders;¹⁶ the officer in charge was responsible for the health of the detenu and also to ensure he got proper treatment; and in 'appropriate' cases a maintenance allowance was paid to the family.¹⁷ The State Prisoner Regulations, however, were beyond the purview of the courts¹⁸ and the detenu was also not entitled to the habeas corpus relief.¹⁹

Officials also emphasized the extraordinariness and peculiarity of the conditions under which the Regulations were used.²⁰ The binary images presented in an official note by H.A.Stuart in 1909 make interesting reading. It was argued that the government used the Regulation against the Moplahs in 1897 in order to curb 'fanaticism

¹⁴ Section 1 of Regulation III of 1818.

¹⁵ Section 5 of Regulation III of 1818 stipulated that the officer in charge of the detenu was obliged to forward the representations which the detenu made from time to time, with his own observations if necessary, to the Governor-General.

¹⁶ Section 3 of Regulation III of 1818.

¹⁷ Sections 6 and 7 of Regulation III of 1818.

¹⁸ Section 491 (3) of the 'Code of Criminal Procedure, 1898'.

¹⁹ Delivering judgement in the *Ameer Khan* case Justice Norman observed "The Regulation differs from Acts passed for the suspension of the *Habeas Corpus* Act in this, that it is not a temporary Act; but if the danger to be apprehended from the conspiracies of people of such character as those I have mentioned, is not temporary, but from the condition of the country, must be permanent, it seems to me that the principles which justify the temporary suspension of the Habeas Corpus Acts in England justify the Indian Legislature in entrusting to the Governor General in Council an exceptional power of placing individuals under personal restraint when, for the security of the British dominions from foreign hostility, and from internal commotion, such a course might appear necessary..." *Bengal Law Report*, Vol.VI, 1870, pp.454-455. The 'conspirators' referred in this case were the members of the Wahabi sect who had declared rebellion against the British rule. See for further details 'The Great Wahabi Case' in A.G.Noorani, *Indian Political Trials*, New Delhi, 1976, pp.73-95.

²⁰ See memorandum dated 14 July 1909 by H.A.Stuart on 'the forms and ceremonies connected with the application of Regulation III of 1818', submitted for the information of the Secretary of State for India. File no. 27, H(J), Deposit, July 1909, NAI, pp.2-3.

accompanied with murder' and to ensure 'public peace'. The use of the Regulation in the case of revolutionary terrorists in Bengal, we are made to believe, was necessary in order to curb 'violence and the flames of political incendiarism'. It was also claimed that the choice for the government was between 'impotence' and 'abandoning the task of government' or a 'necessary recourse to Regulation'. The use of coercion by the government is presented as 'inevitable' and 'just' for upholding 'public peace' against the 'fanatic' and violent forces of opposition.²¹

The use of the Regulation as a strong and effective measure was justified through an essentialist construction of Indian society. The 'situation' and the 'people' in India warranted a government with 'sterner powers'. Stuart quotes Mill in order to convey his argument:

A people must be considered unfit for more than a limited and qualified freedom, who will not co-operate actively with the law and the public authorities, in the repression of the evil-doers. A people who are more disposed to shelter a criminal than to apprehend him; who, like the Hindus, will perjure themselves to screen the man who has robbed them, rather than take trouble or expose themselves to vindictiveness by giving evidence against him;... require that the public authorities should be armed with much sterner powers of repression than elsewhere,... a people so disposed cannot be governed with as little power exercised over them, as a people whose sympathies are on the side of the law, and who are willing to give assistance in its enforcement.²²

This enabled Stuart to assert that the deportation of Lajpat Rai, Ajit Singh and later of the revolutionary terrorists in Bengal had to be based on "evidence of general repute... a kind of evidence which in India is more satisfactory than the direct evidence".²³ In much of the official justification for recourse to Regulation, the inability of the colonial government to elicit popular support was projected as an inherent inadequacy in the subject population. The self definition of the colonial officials as custodians of law and

²¹ Ibid., pp.2-3.

²² J.S.Mill, *Representative Government*, cited in *ibid.*, p.3.

²³ Ibid., p.2. Curiously enough the 'evidence of general repute' which Stuart argues formed the basis of the application of Regulations does not have a basis in the Indian Evidence Act ('The Evidence Act, Act I of 1872'). To quote section 54: "In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant". See Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Law of Evidence*, Bombay, 1932 (sixth edition), p.144.

order and preservers of the 'peace' which they had 'introduced' into India, rested on certain essentialist and oppositional constructions of Indians. The Indians were construed in the likeness of a certain interpretation of a Hindu, whose reluctance to cooperate 'actively' with the law made him unfit for 'normal' methods of 'suppressing crime', which rested on the assumption that 'people are on the side of law and order'. Popular resistance was similarly depicted as 'forces of disorder', 'flames of incendiarism' and 'conflagration', in other words disruptive of the 'peace and order' which was the task of governance. This 'inadequacy' on the part of Indians to be amenable to 'normal' methods of governance was seen to necessitate the recourse to Regulation.

Fears that war conditions might provoke the 'enemies within' to plot armed insurrection in concert with those outside led the government to promulgate the 'Ingress into India Ordinance, 1914' and 'The Defence of India (Criminal Law Amendment) Act, IV of 1915'. The Ingress Ordinance authorized the government to seclude 'foreigners' from the local population and to restrict returning Indians to certain areas. It was directed towards restraining the influx of Indian revolutionaries from abroad, particularly those supporting the *Ghadr* movement which began in San Francisco in 1913 and acquired a mass base among large numbers of Sikhs in British Columbia and the Pacific coast states of USA. Thousands of Sikhs returning to Punjab from abroad were brought under surveillance under this measure. Michael O'Dwyer, the Lt. Governor of Punjab, provides an account of the manner in which control was accomplished. A returning Sikh was 'watched' from his port of landing and 'warned' to report to the Central Enquiry Office in Ludhiana. At the office his 'antecedents' were investigated and all information pertaining to 'his movements abroad, his character, and his relatives in the Punjab, and his general attitude' were 'collected in a dossier'. The degree of his 'dangerousness' was determined on the basis of the enquiry, and he was either interned in jail or if 'less dangerous', restricted to his native village or discharged 'with a warning'.²⁴ O'Dwyer

²⁴ O'Dwyer's account informs us that out of the eight thousand who returned in the first two years of the War, four hundred were interned in jail, two thousand five hundred restricted to their villages, and the remaining five thousand discharged. Michael O'Dwyer, *India As I Knew It, 1885-1925*, London, 1925, p.196. Consolidating the figures for the war period, Edwin Montagu, Secretary of State for India, informed the House of Commons on 22 October 1919 that under the Ingress into India Ordinance, 1914, 942 had been restricted in domicile and 2154 placed under minor restrictions, of whom 2296 had been released before the armistice and 466 afterwards. Three of the 942 were subsequently interned under Bengal Regulation III of 1918. William Roy Smith, *Nationalism and Reform*, p.233.

notes in his account that during the early part of the war, of the 175 persons tried before the special tribunals on general conspiracy charges, 20 were hanged, 58 were transported for life and 58 were transported or imprisoned for shorter period.²⁵

The Defence of India Act, 1915 was passed for the period of the war and 'six months thereafter' to secure 'public safety' and the 'defence of British India'. The main object of the Act was ostensibly to prevent persons communicating with the 'enemy' or obtaining information or spreading false reports or jeopardizing the safety of public property or such activities which the government saw as prejudicial to British interests during the War. Under the Act the Governor-General was empowered to enact rules for these purposes and to detain persons without warrant, for a period not exceeding one month, and to restrict the movement of persons to a specified area. There was no right of representation against detention under this Act. Unlike Britain, the subordinate officers in India had the power to detain persons under the Act. The Act also provided for certain offences to be tried by special tribunals. These tribunals were required to follow the procedures laid down by the ordinary criminal law and could pass any sentence under the law including death sentence. Their decision was final.²⁶ By the end of war the colonial government, armed with repressive measures, was able to crush the revolutionary terrorist movement in Bengal and Punjab.

The officials in India, however, attempted to make war time restrictions on civil rights permanent by passing the Anarchical and Revolutionaries Crimes Act in 1919. The Act followed the recommendations of the 'Sedition Committee' or the 'Rowlatt Committee', which was set up to seek measures for the suppression of revolutionary activities in India.²⁷ The 'Rowlatt Act' provided for the setting up of special courts or

²⁵ Michael O'Dwyer, *India As I Knew*, p.107. According to another estimate 46 Ghadr revolutionaries were executed during the same period. See Sumit Sarkar, *Modern India*, p.149.

²⁶ Montagu, Secretary of State for India, informed the House of Commons that under the Defence of India Act, 1915, 1490 persons had been restricted in domicile and 310 had been subjected to minor restrictions of whom 601 had been released before the armistice and 357 afterwards. Cited in William Roy Smith, *Nationalism and Reform*, p.233.

²⁷ The Sedition Committee of 1918 was established by a Resolution dated 10 December 1917, to investigate and report on the nature and extent of 'criminal conspiracies' connected with the revolutionary movement in India, to examine the difficulties which were encountered in dealing with such conspiracies and to advise as to the possibility of dealing with them effectively by means of a legislation. The six member Committee was presided by Justice S.A.T.Rowlatt. It submitted its report on 15 April 1918.

an 'investigating authority' to hear cases *in camera*, and allowed detention for a period of two years.²⁸ The countrywide protest against the Rowlatt Act and subsequent firing by troops at Jalianwala Bagh resulted in severe unrest in Punjab. Government responded by promulgating the Martial Law Ordinances (I to VI) of 1919 between April 14, 1919 and May 27, 1919. The provisions of the Rowlatt Act were not implemented and there were widespread protests against this anti civil liberties Act before it was repealed in 1922. Indian nationalism underwent a qualitative shift in the years that followed, the consequences of which and the British penal response to them, form part of the next chapter. We turn our attention now to the specific penal measures undertaken by the colonial authorities against their political opponents in the early decades of this century.

REVOLUTIONARIES BEHIND BARS: DETENUS IN PRISONS.²⁹

Among those who were detained under the extraordinary laws many were sent to prisons. State prisoners detained under the Bengal Regulation III of 1818 and corresponding Regulations were subject to differential treatment and such rules were incorporated in the provincial jail Codes.³⁰ In a revised set of rules drawn up in 1918

²⁸ The acceptance of the Rowlatt Committee recommendations and the passing of Revolutionary and Anarchical Crimes Act led to an intense debate between a section of bureaucracy in India and those directly responsible to the British Parliament over the possible status of the Regulations. The Secretary of State was of the opinion that it was very "difficult to get an English audience to endorse proposals which substitute executive action and punishment for public trial in a court of law" and it will be "difficult for an English audience not to sympathize with those who are threatened with something like a renewal of machinery comparable to that which was tolerated in England during the war". He proposed that Regulation should henceforth be reserved for "political detenus in the strict sense, e.g., Afghans and ex-King Theebaw and not applied to the revolutionary suspects covered by the new Act". The Viceroy and the Bengal government strongly disfavoured any assurances to the English audience which would have tied their hands. The Governor of Bengal in a telegram to the Secretary of State stated - "We strongly deprecate assurance which may tie our hands. Justification of Rowlatt Act rests on demonstrated conditions; it need not be sought at the price of Regulation III". File no. 48, H(P), May 1919, NAI.

²⁹ Most the detenus discussed under this section were those who were detained under Regulation III of 1818 or the corresponding Regulations in Madras and Bombay. The colonial government frequently resorted to Regulations as it provided for an indefinite period of detention. Rule 12 A of the rules under the Defence of India Act did provide for the internment of a person in jail but it was limited for a maximum period of one month. File no. 260, H(P), Part B, July 1916, NAI.

³⁰ Most of the Jail Codes had a section dealing with state prisoners, framed according to the rules laid down in the respective Regulations i.e., Bengal Regulation III of 1818, Madras Regulation II of 1819 and Bombay Regulation XXV of 1827. It is worth noting that the distinction between the criminal and political prisoners was scrupulously followed. In Chapter XXXI of the Bengal Jail Code which deals with the state prisoners, clause 1007 specifically stated that the state prisoners were to be confined "in the civil ward

for the treatment of detenus the Bengal government included as 'political prisoners' the "State prisoners under Regulation III of 1818, (and) the detenus under the Ingress and Foreigners Ordinances and the Defence of India Rules".³¹

The rules which distinguished political prisoners from other prisoners also defined the manner of their treatment. They were classified into the 'dangerous' (X) and 'less dangerous' (Y) classes. The rules of treatment were the same for both but were more strictly interpreted for prisoners belonging to class X rather than class Y, the latter being allowed minor concessions. All political prisoners were 'confined separately in cells' and not allowed to associate or communicate with 'criminal' prisoners. Association among political prisoners was also denied except under surveillance from the jail staff.³² The distinction between the ordinary and political prisoners was further brought out in the 'nature of discipline' which was to be exacted from the detenus.³³ As the main purpose of the incarceration of political prisoners was their seclusion from society, there were stringent rules concerning interviews and letters. All interviews had to take place in the presence of an officer deputed by the state for the purpose. Even among police officers only a few of the most senior officers had permission to interview political prisoners without the presence of any jail officer and only when a written request to that effect had

of jail" and "in no circumstances be allowed to hold communication, or be associated, with criminal prisoners". *Rules for the Superintendence and Management of Jails and Subsidiary Jails in Bengal*, 5th edition, Calcutta, 1910, p.233.

³¹ Confidential document titled *Revised Rules for the Treatment of Political Prisoners in Jails, other than Convicts, except where specially stated*. File no. 266, Poll (Special), 1918, BSA, p.1.

³² Section 15 of the rules states that "all political prisoners should be allowed to take exercise outside their cells for a period of at least one hour each morning and evening. During this period they shall be allowed to associate under the supervision of the jail staff, provided that ordinarily not more than 5 'X' class and 10 'Y' class shall be allowed to associate at one time; ... Subject to the requirements of jail routine as regards bathing, latrine, parade, meals, etc., political prisoners shall also be allowed to associate as above outside their cells except for a period in the middle of the day, when they shall be locked in their cells". *ibid.*, p 2.

³³ Section 20 of the Rules specified that political prisoners like civil prisoners were governed under Rule 900 of the Jail Code for a breach of discipline. The minor punishments included formal warning, solitary confinement for not more than forty-eight hours, cellular confinement for not more than seven days and separate confinement for not more than fourteen days. The only form of major punishment which could be imposed was separate confinement for a period exceeding fourteen days. *Rules for the Superintendence and Management of Jails and Subsidiary Jails in Bengal*, pp.162-63.

been made.³⁴

While every effort was made to isolate the prisoner from the outer world the facilities within the jail premises were purportedly designed to suit the social class to which the prisoners belonged. A chair, a table, a hurricane lantern, a bed and bedding, a mosquito curtain and mats were furnished by the jail authorities. Each prisoner had the right to wear his own clothes and at the discretion of the Superintendent he could procure extra clothing and bedding. If a political prisoner was transferred from one jail to another, clothing and other articles such as *dhotis*, coats, warm coats, wrappers, sweaters, comforters, shirts, vests, slippers, bed sheets, towels, handkerchiefs or socks, purchased and supplied to him, accompanied him to his new destination. As far as food was concerned, each prisoner was to receive at jail expense the food and comforts to which 'he was accustomed in his life outside the prison'.³⁵ Accordingly, the *bhadralok* prisoners were to receive the same quality of rice as that supplied in the jail hospitals. Cigarettes and tobacco were to be provided if requested. Further, political prisoners were allowed games such as chess, cards and badminton.

These rules would lead us to believe that the detenus had a problem free jail life. But a careful study of a cross section of official and unofficial literature on detention conditions presents a rather mixed, if not a contradictory picture. A Calcutta newspaper published a statement on 20 May 1909 describing the hardships suffered by state prisoner Krishna Kumar Mitra in a 'cage-like cell' in Agra Central jail which compelled the Lt. Governor to call on the IG of Prisons to furnish facts as to the size, ventilation and lighting of the rooms assigned to the four state prisoners in United Provinces (henceforth UP).³⁶ The reports which were subsequently sent by the Superintendents of Central Jails at Lucknow, Fatehgarh, Bareilly, Agra and Almora (where the state prisoner from Bareilly was transferred owing to ill health) make interesting reading.

³⁴ Section 10 of the *Revised Rules for the Treatment of Political Prisoners in Jails, Other Than Convicts, Except Where Specially Stated*. File no. 266, Poll (Special), 1918, BSA, p.2.

³⁵ *Ibid.*, p.1.

³⁶ *Sanjivani*, a Bengali newspaper reported on 20 May 1909 the assertion by the state prisoner Krishna Kumar Mitra's son, Sukumar Mitra that his father was being held in a badly ventilated cell. According to the latter he was refused permission to carry fruits for his father. File no. 41, H(P), Deposit, July 1909, NAI, p.2.

In all these jails the prisoners were staying in secluded barracks and alterations were made in the existing structure of the buildings to make the segregation effective. The reports took pains to emphasize the fact that the quarters were spacious and in most cases larger than the prisoner could actually use. The aggregate picture presented was normally that of 'splendid' isolation of which the former was more emphasized. One of the reports described the living conditions of state prisoner *Babu Aswini Kumar Datta* as follows, "The building consists of a fairly *lofty row of quarters* with a verandah running down the front and back...two rooms only are occupied by the deportee though *he could use all five if he so wished*".³⁷

In another report, concerning the state prisoner incarcerated at Agra, we are told that the prisoner occupied the European Barrack, "situated at a distance of 120 to 160 feet from any other building", and that "the State prisoner has the complete European Barrack to himself, all other rooms being empty".³⁸ One of the prisoners housed in the Central prison in Bareilly reportedly enjoyed the additional privilege of being allowed an umbrella to enable him to take his exercise 'in spite of rain'. State prisoner S.C.Mullick was to have a fireplace in his bedroom which came in handy in the winter months when a fire was reportedly kept alight night and day. He did not have much luck, however, regarding his daily exercises when he was shifted to the District Jail, Almora, due to bad health. Almora District Jail was rather small and when he was removed there the government was aware that "accommodation in this jail for a State prisoner (was) not as good as elsewhere".³⁹ Obviously the reports intended to stress that the state prisoners were being treated with consideration and the fact of their confinement in commodious quarters, sometimes those fit for European prisoners, were proof of their well being.

The accounts by state prisoners and other detenus give an entirely different picture, however. The *Bengalee*, dated 19 June 1909 published a letter by Sachindra Prasad Bose, another state prisoner, written to his sister from internment:

³⁷ Jail Superintendent's report regarding the ventilation, site and lighting of the rooms set apart for the state prisoner from Bengal, Aswini Kumar Datta, in the Lucknow Central Prison. *ibid.*, p.5 (emphasis added).

³⁸ Report of the Superintendent, Central Jail Agra to the IG of Prisons, UP concerning the living conditions of the state prisoner K.K Mitra. *ibid.*, p.14.

³⁹ *Ibid.*, p.3.

The atmosphere is dry as dust and the heat is almost intolerable...; when the stone walls of my prison are heated it seems like a living furnace... All this time I am locked up in my prison and am taken out at about 5 p.m. to have a little walk in my narrow compound... sometimes I pass the night without getting even a wink of sleep... I don't know how long I shall be able to keep my health in this sore trial... besides I have got to live in the female ward of the prison and like all Mohamedan harems it is walled round on all sides, so that there is absolutely no air in my room.⁴⁰

The publication of a state prisoner's agonizing experiences from internment outraged the public which had been led to believe that detenus were being treated with all possible consideration. The official response to such publications in the 'native press' was to condemn them as 'highly exaggerated' and warn the state prisoners that they risked the restriction of their privileges by this misuse of their communications.⁴¹ It is significant also that the detention of political prisoners whose opinions were received in public as enlightened and authoritative were by their sufferings able to shed light on the sufferings in general within jail. In the above cited case, the state prisoner's suffering drew attention to the pathetic conditions in which the ordinary women prisoners were kept. Surendra Mohan Ghose, a state prisoner under Regulation III in Midnapore jail, narrated his prison experience in the following words,

There (Midnapore Jail) we were kept in separate cells, locked up practically day and night. In the morning, for one hour, in batches, they opened the cells, and we used to go and finish our morning wash, etc. At lunch time we all used to come out and sit in the central corridor for our lunch. But we were not allowed to talk to one another. In the evening again, we were taken out in batches for a walk and exercise for about fifteen or twenty minutes. It was an awful prison, dark, even during the day. There were fifty cells on one side and fifty on the other facing them, and then there was a central corridor. Light could come only through a few ventilators.⁴²

⁴⁰ Extract of Sachindra Prasad Bose's letter to his sister dated 30 May 1909, reproduced in the *Bengalee* of 19 June 1909. File no.26, H(P), Deposit, July 1909, NAI, pp.26-27.

⁴¹ Letter dated 8 July 1909, from the Secretary to the GoI to the Under Secretary of State for India. *ibid.*, p.19.

⁴² Surendra Mohan Ghose was arrested in Calcutta in 1916 while underground on charges of planning a revolutionary uprising in India with German help. He was first interned in Maheshkhali, an island in Chittagong district where he was detained for more than a month. He was taken from there as a state prisoner under Bengal Regulation III to Midnapore district jail 'with its hundred notorious cells'. After some time he was sent to Hooghly district jail because of ill health. From there he was taken to

The experience of Surendra Mohan Ghose was not an exception. Some officials, as we shall see later, conceded the harshness of penal regime and the ill effects of solitary imprisonment on the prisoners.

We come across instances of concerted individual resistance by the detenus themselves. Nanibala Devi, who was probably the first woman state prisoner held under Regulation III of 1818, provides us with an example of the forms individual resistance could take and eventually succeed.⁴³ Nanibala was arrested at Peshawar in 1917 for giving shelter to the leaders of the Indo-German plot. As an under trial she was kept in Benaras jail where she was subjected to cruel interrogation by the police.⁴⁴ She was then transferred to Presidency Jail in Calcutta as a state prisoner. Meanwhile Nanibala went on hunger strike because of the torture and insults she faced at the hands of interrogating authorities. She relented after a lot of persuasion from the jail authorities on condition that she be given food cooked by a Brahmin girl. Nanibala was aware that another political convict Dukaribala Devi (a Brahmin) had been sentenced to rigorous imprisonment in the same prison on charges of keeping firearms. By this manoeuvre, Nanibala Devi was able to save Dukaribala Devi from rigorous labour and at the same time defy the regime of isolation which was the cornerstone of the penal policy towards detenus. We observe here an interesting use of the traditional caste idiom to further prisoner solidarity and the nationalist cause.⁴⁵

Hazaribagh Central Jail which was re-modelled to accommodate state prisoners from Bengal. Surendra Mohan Ghose interviewed by H.D.Sharma and K.P.Rangachari on 27 February 1968, OHP, NMML, pp.21-22.

⁴³ See Sandip Bandyopadhyay, 'Women in the Bengal Revolutionary Movement (1902 - 1935), *Manushi*, No.65, July-Aug, 1991, p.31. This paragraph is based upon Teertha Mandal, *The Women Revolutionaries of Bengal, 1905-1939*, Delhi, pp.119-120.

⁴⁴ In her study of women revolutionaries of Bengal, based largely on Bengali sources, Teertha Mandal suggests that Nanibala Devi was taken to a cell by two wardresses where her clothes were removed and crushed chillies put in her private parts. Later she was put in a 'punishment cell' having a door but no windows for half an hour on two consecutive days. Her confinement in the punishment cell on the third day left her unconscious. *ibid.*

⁴⁵ Caste categories found a prominent place in jail manuals. Rule 784 of the Bengal Jail Code states that "Any A class Brahmin or sufficiently high caste Hindu prisoner is eligible for appointment as a cook". *Rules for the Superintendence and Management of Jails and Subsidiary Jails in Bengal*, p.250. We also come across contrary evidence. Prohibition of the wearing of the sacred thread, a Brahman religious symbol, by prison authorities in the Andamans contributed to dissatisfaction among prisoners. Ramrakshya, a political convict in the Andamans, died after three months of fasting for permission to wear

A strategic use of another 'traditional' idiom, that of 'Indian wifehood' is seen in a petition by L.Mitra, wife of a state prisoner K.K.Mitra, who requested the government for permission to live with her husband in jail.⁴⁶ Earlier her two daughters, both with University degrees, had offered to live with their father in prison.⁴⁷ These petitions consciously placed the government at a moral disadvantage on two counts: for preventing a wife from discharging her 'traditional duties' and daughters from taking care of their old father, secondly, for the colonial government's failure to abide by their 'own duty' to rule by law. L.Mitra implores persuasively in her petition -

I have waited patiently for so long, bearing the separation from my husband as long as I could, but it is now almost a year and there seems no immediate prospect of his release. Under such circumstances the place of an Indian wife is at her husband's side, her duty to minister to him and alleviate his lot with the consolation her companionship can give.⁴⁸

Reminding the colonial authorities that 'the heavy punishment of enforced solitude' was not in keeping with her husband's 'status as a state prisoner' and contravened the government's declaration regarding the nature of his confinement, she appears in no doubt about her appeal being granted -

I do not think the government will refuse my husband or myself this favour which is not inconsistent with the status or manner of confinement of State prisoner...I have read that the government has declared that the deportation is meant not to punish, but to prevent, and that no charge is preferred against or imputed to my husband.⁴⁹

The officials, taken by surprise by this unprecedented request, accepted that Regulation III did not forbid the concession but they nevertheless refused the family permission to reside in jail with the state prisoner. Recent works on the nationalist

the thread. Political prisoners in the Andamans petitioned the Indian Jail Committee 1919-1920, to be allowed to wear sacred thread and other religious signs, permission to write letters every three months, abolition of hanging, and arrangements for education. See Trailokya Nath Chakraborty, *Thirty Years in Prison*, Calcutta, 1963, p.145.

⁴⁶ Petition made by L.Mitra on 7 October 1909 to the Secretary, Home Department, GoI. File no. 254/258, Part B, H(P), October 1909, NAI.

⁴⁷ Petition dated 24 September 1909 from Kumudini Mitra, B.A., and Basanti Mitra, B.A., to the Secretary, Home Department, GoI. *ibid.*

⁴⁸ *Ibid.*

⁴⁹ Petition by L.Mitra. *ibid.*

construction of the 'home' and 'family' have reflected on the tenuous relationship between the middle class Indian woman's pristine role as the 'repository of a reformed Indian tradition' and the question of her agency during the nationalist movement.⁵⁰ While the nationalist movement has been seen as either liberatory or constraining on women's agency, there has been little reflection on the ways in which the boundaries of the family were being redefined by her participation.⁵¹ With the legitimization among the middle classes of the jails as the site where the nationalist struggle for freedom was to be waged, the issue of women's agency and the nationalist construct of family becomes complicated. The large scale participation by middle class women in the Gandhian mass movements in later years, would show that the nationalist movement also provided scope for redefining the familial space. The nationalist construct of the 'home' was thus challenged by the same ideology, making it possible for large numbers of women to enter jails and redefine the physical and ideological boundaries of the family. The idiom of an essentialized nationalist construct of 'Indian woman' is seen in this instance as enabling L.Mitra to move outside the confines of 'home' and transfer the familial space to the jail, making the family not outside the scope of the nationalist struggle but a part of it. Her recourse to the legal / political language of petitioning to point out the inconsistencies in the government's execution of its own laws, marks also the resort to a language beyond the ideological space of the depoliticised family.

The government strategy regarding the treatment of political prisoners, as we have seen above, was to circumvent complaints of ill treatment by means of official statements and reports claiming otherwise. An account by a jail official claiming to have been in charge of Calcutta jails since the 'beginning of the anarchical movement' and having 'dealt with more political prisoners than any other jail officer in India' is especially

⁵⁰ Anti colonial nationalism is seen as creating its domain of sovereignty in the inner spiritual space bearing the 'essential' marks of cultural identity. The home, with the woman as its representative, was to uphold the sanctity of the cultural superiority of the nation against the profanities of the outside. See Partha Chatterjee, 'Colonialism, Nationalism and the Colonized Women: The Contest In India', *American Ethnologist*, Vol.XVI, No.4, November 1989, pp.623-633; *Nation and its Fragments*, pp.116-157.

⁵¹ The nationalist construction of women's femininity constrained her by binding her to a socially approved code of conduct. It did on the other hand make possible, once her 'essential' femininity was defined and fixed, to move out of the confines of the inner space of the home while still upholding her difference - the external markers of her femininity - in her dress and behaviour.

revealing. He describes the nature of confinement as 'positively inhuman' and confirms also that "misleading reports were deliberately submitted to Government".⁵² His outrage at the cruelty of treatment he was expected to mete out, prompted him to take recourse to the option which the law itself gave him. He submitted a report under Section 6, Regulation III of 1818 concerning two state prisoners expressing the opinion that,

...the degree of confinement to which they (the state prisoners) were subjected were so severe as to be liable to injure their health; that the confinement was more stringently solitary than any solitary confinement imposed under the Prisons Act or under Jail regulations, both of which were limited strictly to seven days.⁵³

The letter was reportedly returned to him for reconsideration with the suggestion that to prevent arousing 'the Olympian wrath' in Simla, he 'might so far report that the prisoners were in solitary confinement'.⁵⁴

The hazards of solitary confinement were not altogether lost on the jail authorities.⁵⁵ While not ruling out the likelihood of mental trouble among the prisoners due to solitude, they exonerated themselves of any responsibility by claiming that there was full "care taken to soften the rigours of confinement".⁵⁶

The 'extra-ordinariness' which the government had bestowed on detenus generated problems for the jail authorities. The officers sincerely believed that the mentality of these men was 'abnormal, that they were 'dangerous' and 'irreconcilable' and that their liberty was perilous for the state. The threat to the detenus' health in jail, however, was

⁵² *Report of the Indian Jails Committee 1919-20*, Vol.III, Simla, 1920, *Minutes of Evidence taken in Burma, Bengal and Assam*, p.37.

⁵³ The report was submitted in September 1915. *ibid.*

⁵⁴ *Ibid.*

⁵⁵ The IG of Prisons and the Superintendents of two Calcutta jails in 1918 warned of this impending trouble. The Additional Secretary to the Bengal government in a communique to the Secretary to the Government of India informed him of the outcome of the periodic review of the case of state prisoners in Bengal, the difficulties faced by the Bengal government in accommodating them and the proposal that these persons should be confined in one settlement. File no. 1, H(P), Part A, September 1918, NAI.

⁵⁶ In reply to a query the Government of India tabled before the Imperial Council, on 30 March 1918, the details of the health of persons detained under the Defence of India Act. There had been till date three cases of suicide, one in Bombay and two in Bengal; six cases of insanity, all from Bengal; nine cases of breakdowns of health in Bengal of which five succumbed; two cases of death in Punjab due to bad health and ten cases of breakdown of health in Burma of which five died. File no. 189, H(P), Part B, August 1918, NAI, pp.1-4.

attributed to the fact that they were by their 'very nature' not amenable to jail discipline or restraint in jail for an indefinite period. The prisoners according to this strand of opinion, did not engage themselves usefully in physical labour though there were opportunities to do so. This 'idleness', asserted the authorities, "tells on their bodily health, for although on the whole they have kept wonderfully well, they have, most of them, suffered at one time or another from dyspepsia".⁵⁷

While the policy of periodic reconsideration of cases of state prisoners was being followed and some of the prisoners had 'graduated' to being interned outside jail, a great number remained in prisons, particularly in Bengal. This, coupled with their 'unsuitability' for confinement inside jails for long periods, discussed above, persuaded the officers to think of alternative arrangements. Although the Bihar and Orissa government took a considerable number in the Hazaribagh jail to ease the pressure on Bengal, the problem of confinement in jail remained. A scheme for interning the detenus in a camp or a fort in the Central Provinces (henceforth CP) or any other suitable place was considered as an alternative, where the prisoners could live in association but could not escape. Evidently, the rigour of solitary confinement was being covertly admitted in this arrangement. There ensued a complex exchange between the Central government and the Bengal government and between the former and other provincial governments as to what the nature of confinement of the detenus should be.

The Rowlatt Committee had made certain suggestions as regards the administration of the laws to be enacted along the guidelines it suggested.⁵⁸ In the process the Committee had also, though on more general grounds, come up with the vision of an alternative mode of internment. It recommended that care should be taken to distinguish among revolutionary terrorists while administering the law for their detention. There were, believed the Committee, some among them who were not totally wedded to the cause of revolutionary change and could be weaned to 'normal' life. At the other extreme were those who were 'irrational' and therefore 'irreconcilable'.

⁵⁷ Ibid., pp.16-17.

⁵⁸ As per paragraphs 187-195 of the recommendations concerning emergency measures (preventive), of the Rowlatt Committee's Report of 1918. *Sedition Committee Report*, 1918, New Delhi, 1973 (reprint), pp.205-109.



Keeping in mind this difference, it suggested that the legal measures should be 'elastic', ranging from mere restriction of liberty for some to temporary loss of liberty for others. In the former case it was suggested that care should be exercised to see what livelihood the detenu had and what associations he was likely to form. For the latter, the Rowlatt Committee recommended the setting up of "...an asylum... of a different order from a jail", an institution for reformation as well as confinement.⁵⁹

While the Rowlatt recommendations seem to be based more on the optimism that most of these prisoners could be brought back to the 'straight path', the proposal of the Bengal government for setting up a settlement for state prisoners derived more from the difficulties arising from the compulsions of solitary confinement for indefinite periods in jails. The Bengal government apparently due to the more 'chronic' and 'pernicious' nature of the movement in the province, was focussing on a group which had so far proved to be far from being malleable. The reform which the Rowlatt Committee recommended for this group did not appear to Bengal to be a top priority.

Those state prisoners who were defiant were thus more likely to remain in confinement indefinitely unless they 'sincerely repented with full confession of their guilt' or 'broke down in health with a consequent loss of power for evil' or when the 'conspiracy' they were involved in petered out.⁶⁰ The majority of the state prisoners according to official accounts belonged to this category and presented the gravest problems for the authorities. The most testing issue, as is obvious from the above discussion, was what should be the nature of their confinement. Although there appeared to be a certain degree of unanimity on seeking an alternative to indefinite confinement, which in the present case happened to be separate confinement in cells, there were some grave misgivings as far as total association in a separate settlement was concerned.⁶¹ There was, however, a great deal of 'sentimental objection' to confinement in cells among the public outside. Incidentally cells were the only means of effecting isolation

⁵⁹ Ibid., p.209.

⁶⁰ Bengal government's proposal dated 4 May 1918. File no. 1, H(P), September 1918, NAI, p.1.

⁶¹ The state prisoners in question were not being held in 'solitary confinement' in the strict sense of the term. They were actually being allowed to associate among themselves at certain prescribed times under strict surveillance. Refer to footnote 32 for details of restricted association.

in Bengal.⁶²

The setting up of a single asylum on this principle, and that contemplated by the Bengal government, with free association, however, was considered by some officials to be quite inadequate in promoting repentance and reform. It was thought that a foolproof distinction would be impossible, and in case a 'dangerous' prisoner passed through as relatively innocent the results could be disastrous for the entire scheme. If at all an asylum was set up, then this shade of opinion preferred that the more 'repentant' detenus be housed there. But this again could not in their opinion rule out the possibility of 'impostors' passing through the filtering system.

A 'SEPTIC TANK' FOR 'INCORRIGIBLES': PROPOSAL FOR DETENTION CAMPS

Those agreeing to association of state prisoners alluded to the principle of the 'septic tank' which had been propounded earlier by Reginald Craddock in relation to the confinement of convicts. The idea of the septic tank envisaged association among prisoners, provided adequate measures were taken to, "keep the poisonous gas within the tank and ensure the safe custody of those emitting it".⁶³ Those opposed to the scheme denounced the very idea of having a septic tank principle applied to state prisoners. If the rationale behind setting up an asylum was reform, then the septic tank principle, which evinced a sentiment of dumping more than anything else, did not serve the purpose:

...the main objection to it is that it abandons absolutely all hope of reform, with the result that unless conditions in India change so completely that revolution and anarchy become only memories, the men condemned to the tank must remain there till they die or become so old as to be harmless.⁶⁴

Those who agreed to sending the incorrigibles away to a separate camp, following the principle of the septic tank, debated the most appropriate location. They proposed that the place be as isolated as possible. The limits of isolation were set by accessibility to

⁶² File no. 1, H(P), September 1918, NAI, p.1.

⁶³ Ibid., p.4.

⁶⁴ Ibid., p.8.

probable non-official visitors. The authorities on their own admission could not risk being accused of "having left (the detenus) to rot and die in the wilderness". The main consideration in choosing the location had to be the 'safe custody' of prisoners, which meant ensuring the impossibility of escape. The locations proposed were Ceylon, the Andamans and Upper Burma. Ceylon was ruled out because the government there was not expected to take a 'lively interest' in the prisoners. The Andamans were thought unsuitable by the government because of the 'odium' attached to a penal settlement for unconvicted prisoners. Upper Burma remained a feasible option. Burma, however, appeared quite reluctant to take these prisoners. Craddock, the original protagonist of the septic tank principle and by now the Lt. Governor of Burma, was averse to the idea of applying the principle to state prisoners and even more emphatically opposed to locating the septic tank in Burma. He favoured the principle only for convicted seditionists and not state prisoners, who were to be treated as 'civil prisoners' for the purposes of the Prisons Act and could not be subjected to the jail discipline and punishment provided for the former.⁶⁵ Craddock appeared to be against setting up a camp in a remote area at all, fearing that it would cause more political ferment than the prisoners' present plight did.⁶⁶

After this series of discussions the Government of India despatched its proposals for the opinion of the provinces. Their theme was doing away with the discipline imposed in jail by separation. The idea of establishing settlements on the lines of a Prisoners of War Camp was proposed. The suggestion was to establish two camps so as to segregate the less from the more dangerous detenus and thus avoid the "corruptive influence which the stronger spirits would have upon the weaker".⁶⁷

At the risk of being blamed for attempting to proselytize, the option to have the missionaries involve themselves in the task of managing the settlement, was proposed

⁶⁵ Ibid., pp.6-7.

⁶⁶ Craddock also felt that isolated camp far away from any outside supervision would be costly and inconvenient. See demi-official letter dated 26 January 1918 from Reginald Craddock, Lt. Governor of Burma to William Vincent, Member in charge, Home Department, GoI. *ibid.*, p.6.

⁶⁷ Letter from William Vincent, Member in charge, Home Department, GoI to provincial governments, *ibid.*, p.14.

prominently for consideration.⁶⁸ Ronaldshay, the Governor of Bengal, in a letter to the Viceroy made an elaborate case for the involvement of missionaries in tackling the threat emanating from the revolutionary terrorists.⁶⁹ The cause of trouble in Bengal according to Ronaldshay lay in the 'ignorance' of the revolutionary terrorists. His experience with revolutionary terrorists in Bengal made him believe that most of them had virtually no 'personal contact with Europeans' before they were interned. In his opinion the revolutionary terrorists were surprised to find the police officers with whom they came into contact after internment to be 'men of character and kindly feelings'. Apart from the lack of 'European outlook' another reason for the 'extraordinary narrowness of vision' of the revolutionary terrorists was the 'hard mechanical lines' on which higher education was imparted in India. Ronaldshay suggested opening up a 'sort of settlement' on the 'lines of prisoner of war camp' where an industrial discipline combined with the 'civilizing' capacity of European values would act on both the 'body' and the 'mind' of the revolutionary terrorists. Since most of the revolutionary terrorists interned were young men who had disrupted their education, he proposed that:

regular instruction in manual work - say carpentry- might be given and regular series of lectures in subjects which would take their minds off revolution, or even bring home to them not only the evils, but also the fatuity of revolutionary methods.⁷⁰

The best possible type of person to undertake this kind of task in his opinion was "the educational missionary, for the Bengali temperament is particularly susceptible to personal influence".⁷¹ The Bihar and Orissa government examined the feasibility of the scheme in cooperation with missionaries. The outcome indicated that the possibility of setting up a camp under missionary management seemed difficult. The Bishop of Chota Nagpur did not seem enthusiastic to have anything to do with 'political or police thing'. Although on occasion he could spare one of his staff, he could not promise full time

⁶⁸ Demi-official letter from William Vincent, Member in charge, Home Department, GoI to the Lt.Governor of B&O, Lt.Governor of the UP and Chief Commissioner of Central Provinces (henceforth CP), dated 5 September, 1918. *ibid.*, p.14.

⁶⁹ Letter dated 23 July 1918 from Ronaldshay, Governor of Bengal, to the Viceroy. *ibid.*, p.9.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

managerial responsibility. If at all the idea of "missionary influence (was) to be brought in to bear on the prisoners", the Bishop suggested that it would be essential to acquire the services of a missionary who not only knew the language but was also familiar with the mentality of the Bengali. The Bihar and Orissa government was more inclined to think that an effort should be made to find suitable sites within Bengal itself. Alternatively it was suggested that a fort such as that which existed at Chunar and Ahmednagar and which could provide ample enclosure and safe custody would be suitable for the purpose.⁷² Asirgarh Fort in the CP was considered for accommodating convicted seditionists. This fort, which was dismantled in 1905, had earlier been used to accommodate a British garrison and also had arrangements to house 60 state prisoners.⁷³ Various other forts in Bombay and Poona especially the Fort of Purandar were also considered.⁷⁴ The factors which decided against forts like Asirgarh and Purandar were the impossibility of safe custody, dilapidated conditions and inaccessibility in some cases. The colonial officials, however, never quite overcame their fascination for forts as places of incarceration and internment. Time and again they embarked on this exercise, as if studiously and consciously carrying out a legacy from the pre-colonial period. In the meantime, the nature of the 'septic tank' and its location continued to be debated upon. The Hazaribagh jail for political prisoners, to which we turn our attention now, perhaps most closely approximated to the idea.

THE BIRTH OF A 'POLITICAL PRISON'

The Bihar and Orissa government had, as mentioned earlier, agreed to house some of the Bengal state prisoners and seditionist convicts from Punjab in Hazaribagh Jail by converting it into a 'political prison'.⁷⁵ Structural alterations were made in the

⁷² Reply from Edward Gait, Lt. Governor of B&O, dated, 27 September 1918, to the proposal by the GoI, for the establishment of a settlement in Bihar and Orissa for detenus held under Regulation III of 1818. File no. 365, Poll (Special), 1918, BSA, pp.1-3.

⁷³ File no. 490-509, H(P), Part A, July 1917, NAI, p.4.

⁷⁴ Ibid.

⁷⁵ Letter dated 26 February 1917 from Financial Secretary to the Government of B&O to the Secretary to the GoI, Home Department, on the proposed expenses for the structural alterations envisaged for converting a portion of the Hazaribagh Central Jail, temporarily into a 'political prison'. File no. 365, Poll

Hazaribagh Jail to provide cellular accommodation for 200 or more seditionist prisoners, and a few state prisoners from Bengal.⁷⁶ In the case of the latter some guidelines were set as to furniture and space to suit the requirements of the *bhadralok* classes to which these prisoners belonged.⁷⁷ A number of cells were built to confine the Lahore Conspiracy Case prisoners from Punjab. Even years later these cells continued to be called as 'punjabi' cells.⁷⁸ The exclusiveness of the seditionist and state prisoners was also emphasized by the Central government as they explored the possibility of providing special European warders, failing which Gurkha warders were to be employed.

The arrival of political prisoners in the Hazaribagh jail introduced changes in the status of the prison itself with the appointment of a full time jail Superintendent. Before this new-found status, the Superintendent of the Reformatory School held collateral charge of the jail for an extra allowance. An additional jailor was also sought to be appointed to assist the Superintendent with prisoners' correspondence and the library. Special attention was focussed on the setting up of a library with staff to meet the requirements of state prisoners, many of whom were assiduous readers.⁷⁹

This was probably the first instance in the history of the modern prison system in India that a jail had been converted into a 'political prison'. The incarceration of seditionist and state prisoners as we have seen necessitated modifications in the architectural lay out as well as in the nature of jail management, changing the very nature of Hazaribagh prison from an ordinary jail to an extraordinary one, reflecting as it were the nature of its inmates. In 1920, at a time when the jail had 400 political prisoners, there were 203 guards, including 121 warders and the rest Gurkha reserve guards deployed from the military police. The latter were specially called in to guard the forty

(Special), 1918, BSA, p.25.

⁷⁶ A number of letters passed between the GoI and the Government of B&O between 29 August, 1916 and 27 July 1917, to discuss the structural and financial aspects of using the Hazaribagh jail for seditionist prisoners. File no. 490-509, H(P), Part A, July 1917, NAI.

⁷⁷ *Ibid.*, p.27.

⁷⁸ See Rahul Sankrityayan, *Meri Jeevan Yatra*, Vol.I, Calcutta, 1951 (second edition), p.386.

⁷⁹ See *Rules for the Treatment of State Prisoners Confined in the Central Jail at Hazaribagh* in file no. 490-509, H(P), Part A, July 1917, NAI, pp.10-13.

Sikh prisoners of the Lahore Conspiracy Case.⁸⁰ The Superintendent of the jail submitted to the Indian Jails Committee, 1919-20, that the presence of a large number of warders was entirely "on account of the method of guarding the jail. During the night there are two rounds inside and the warders have to change four times in the day. Then there is the reserve guard. A number of Gurkhas guard the turrets at night".⁸¹

The prison at Hazaribagh had its share of trouble with political prisoners. Among the seditionist incarcerated here were the Sikh prisoners of the Lahore Conspiracy Case. The difference in the treatment of state prisoners and the seditionists was too evident to be overlooked.⁸² The state prisoners had complete association during the day. They could play badminton and tennis and their food was prepared by their own cooks. The conditions of incarceration of the seditionist Sikh prisoners were so appalling that the Superintendent himself commented that the conditions in which they were living "would drive anybody mad and would drive me mad".⁸³ These prisoners were confined in cells in strict isolation from each other, so much so that one of them developed insanity and attacked the doctor *babu*. Incidentally the major problem in confining these men was to find work for them which could be done in isolation in their cells. The majority of them were employed in *dal* picking and the 'difficult' ones were put to work on *chakkis*.

Hira Singh, a Lahore Conspiracy Case prisoner recalled with bitterness his confinement in Hazaribagh Jail. For six years in the jail he said he never saw the sun. He "was working, grinding corn, eating, sleeping, and doing everything else in a solitary

⁸⁰ In March 1917, 33 convicts in the Lahore Conspiracy Case were transferred from Punjab to Hazaribagh jail. A batch of 47 Regulation III state prisoners from Bengal was sent in October 1917. A further batch of 12 political prisoners from Punjab were transferred in November 1917. File no. 639-661, H(P), Part A, November 1917, NAI.

⁸¹ Evidence given on 25 February 1920 by Colonel B.Chatterson, Superintendent, Hazaribagh Central Jail, before the Indian Jails Committee. See *Indian Jails Committee, 1919-20, Vol.IV., Minutes of Evidence taken in Bihar and Orissa, the Central Provinces and the Bombay Presidency*, p.870.

⁸² Although the seditionist convicts were treated with far greater severity than the ordinary convicts, it should be noted here that both the seditionist prisoners and Bengal detenues were referred to as 'special' prisoners by the members of the *Indian Jails Committee, 1919-20* in an interview with the jail Superintendent on account of the political offences committed by them. *ibid.*, p.872.

⁸³ *Ibid.*

cell till his brain got almost affected".⁸⁴ The food was bad and the punishment for 'indiscipline' inhuman -

flogging, handcuffs, and chaining to the wall in cells in standing position the whole day, for a week during nights also, handcuffed sometimes arms behind and sometimes in front, chained to the wall on the tower to serve as an example to all prisoners...⁸⁵

Some of these prisoners resorted to a hunger strike to protest against the nature of their incarceration.⁸⁶ This led to a discussion among the officials as to whether convicts could be force fed in the event of a hunger strike. Eventually an amendment was effected in the Bengal Jail Code, 1910, whereby a prisoner could be fed "in such manner as the circumstances appear to the medical officer to warrant".⁸⁷ The legality of forceful feeding in the case of convict prisoners was established after this incident. Hunger strike was used as a viable mode of resistance by political prisoners, convicts and detenus alike. In fact the jail authorities particularly in the case of detenus were torn between treating it as a breach of discipline and hesitating in taking strong action. At about the same time as the Sikh convicts went on strike there were hunger strikes in Bengal and in Bihar among detenus for fulfillment of minor demands. In one instance an internee in Bankipur Jail went on hunger strike in order to acquire a picture of *Kali* and a copy of the *Gita*.⁸⁸ His demands were conceded after three days. Soon

⁸⁴ Hira Singh was sent to Vellore Jail when the Bihar and Orissa government transferred the Lahore Conspiracy Case prisoners to various prisons in Madras province. His experiences in Hazaribagh Jail are recounted by Rajagopalachari who met Hira Singh in Vellore Prison. C.Rajagopalachari, *Jail Diary*, Bombay, 1991, p.18.

⁸⁵ *Ibid.*, p.19.

⁸⁶ In a letter to the IG of Prisons, B&O, dated 9 April 1918, the Superintendent, Central Jail, Hazaribagh gave the following reasons for their resorting to a hunger strike: (1) the demand for the removal of bar fetters, (2) to be allowed out of their cells and yards for exercise, (3) to be allowed out of their cells in a general ward in the day and be placed in the cells only at night, (4) demand for cotton clothing in the night, (5) that 'transportation', food, clothing and other privileges be restored to them, (6) that *maha prasad* and *kara prasad* be given twice per week. The IG of prisons responded saying that most of the measures had been taken for secure custody of the prisoners and demands ought not to be conceded. File no. JI 90 of 1918, Municipal Department (Jail), BSA, pp.4-5.

⁸⁷ The amendment was made by the Lt.Governor in Council under the powers conferred on him by section 60 of the Prisons Act, 1894, by the insertion of Rule 100-A in the Bengal Jail Code whereby force feeding was made legal.

⁸⁸ From a report of the Commissioner of Patna Division regarding a hunger strike by Sudhir Chandra Roy detained in Bankipur Jail. File no. 136, Poll (Special), 1918, BSA.

afterwards, however, three more internees in the same jail went on hunger strike demanding shoes. They were transferred to another prison before matters actually came to a head. What followed from the communications among the colonial officers on the matter was a resolve that the use of hunger strike as a technique of insubordination should be discouraged by not granting any concessions.⁸⁹ While it was agreed in principle that the political prisoners were a class in themselves with special needs, it was considered that firmness was required while dealing with such situations.

The setting up of a jail for political prisoners at Hazaribagh was an attempt to confine revolutionary terrorists from provinces where the nationalist movement was particularly strong, in an isolated place, and truncate their association with the outside world. It may be argued that the small numbers and elite background of such prisoners, compared to the periods of mass incarceration which were to follow, made such an attempt feasible. It is quite apparent also that the main predicament of the colonial government in dealing with such prisoners came not from their numbers, which was always small compared to the later phases. It was the containment of their ideas which made the issue of their confinement intricate. It is not surprising therefore, that concurrent with the above discussed measures the colonial government was transporting its most 'dangerous' seditious prisoners to the Andamans whose insularity, it was hoped, would make their isolation complete.

POLITICAL PRISONERS AND TRANSPORTATION POLICY

Perhaps the greatest merit of transportation in the eyes of the colonial government was the magnification of the 'peculiar fear' and the 'great terror' it inspired. Much of the fear it produced owed to the 'mystery which overhung' the fate of the transported convict.⁹⁰ The purpose of this section is not to delve into the history of transportation

⁸⁹ Ibid., pp.13-14.

⁹⁰ When originally framed, throughout the IPC, any offence punishable by transportation provided that this punishment shall be for life. The framers believed that transportation was regarded "by the natives of India...with peculiar fear. This feeling, we believe, arises chiefly from the mystery which overhangs the fate of the transported convict. The criminal is taken for ever from the society of all who are acquainted with him, and conveyed by means of which the natives have but an indistinct notion, over an element which they regard with extreme awe, to a distant country of which they know nothing, and from which he is never to return". See Appendix, Note A in C.H.Cameron and D.Eliot, *The Indian Penal*

as a form of punishment, its underlying philosophy and its rigours, all of which have been studied in considerable detail.⁹¹ The attempt here is rather to show how this mode was employed in the case of political prisoners. It is important to point out at the outset that unlike the transported convicts who were kept in the cellular jail for a short term, political prisoners at Andamans in the early decades of the twentieth century suffered the dual punishment of transportation and harsh imprisonment in the cellular jail for the entire term of their sentence.⁹²

Among the major group of political prisoners sent to Andamans in the nineteenth century were the mutineers of 1857,⁹³ followed by the Wahabis.⁹⁴ While these prisoners were sentenced under specific provisions of the IPC, others like those of the Manipur Case were detained under Regulation III of 1818.⁹⁵ Burgeoning nationalism in the twentieth century threw up a situation where the colonial authorities seemed apprehensive of confining the nationalists on the mainland where they could spread their

Code, p.94.

⁹¹ Memoirs of political prisoners transported to Andamans provide an insight into their life and struggles. Some of these are, Bhai Parmanand, *The Story of My Life*, New Delhi, 1982; V.D.Savarkar, *The Story of My Transportation for Life*, Bombay, 1950; Trailokya Nath Chakraborty, *Thirty Years in Prison*, pp.117-147; Bejoy Kumar Sinha, *In Andamans, The Indian Bastille*, Kanpur, 1939. Other works have focussed on writing the history of the penal settlement viz., R.C.Majumdar, *Penal Settlement in Andamans*, New Delhi, 1975; N.Iqbal Singh, *The Andaman Story*, New Delhi, 1978; L.P.Mathur, *Kala Pani, History of the Andaman and Nicobar Islands With a Study of India's Freedom Struggle*, Delhi, 1985; *Mukti-Tiritha Andaman*, Ex-Andaman Political Prisoners' Fraternity Circle, 1982 (revised Edition).

⁹² Ordinary convicts were confined in jail for three months to two years after which they were sent to different islands or camps where they lived in relative freedom as labourers under government bondage. See Trailokya Nath Chakraborty, *Thirty Years in Prison*, p.120.

⁹³ Some historians have stressed that the revolt of 1857 was primarily responsible for the reopening of the penal settlement in the Andamans. Kulkarnee cites the Government of India communique announcing the decision to reoccupy the Andamans in 1858, "to establish a penal settlement...for the reception in the first instance of convicts sentenced to imprisonment, and to the transportation for the crimes of mutiny and rebellion and for other offenses connected therewith", to make the point. Narayan H.Kulkarnee, 'Andamans and 1857' in *Mukti-Tiritha*, p.1. Others like L.P.Mathur and R.C.Majumdar have seen the Revolt as one of many factors and not necessarily the primary one. L.P.Mathur, *History of the Andamans and Nicobar Islands*, Delhi, 1968, p.73 and R.C.Majumdar, *Penal Settlement*, p.143.

⁹⁴ The Wahabi or the *Tariqah-i-Muhammediyah* movement with strong Islamic overtones and anti-British sentiments, began in India in the early part of the nineteenth century and took root in much of UP, Bihar and Bengal. Wahabis participated in the 1857 mutiny and continued their struggle well into the 1860s.

⁹⁵ For details regarding the Manipur detenus see footnote 3.

'dangerous' ideas. Making an exception to its general policy of limiting transportation to life convicts, the colonial government in 1910 decided to send term prisoners i.e., those sentenced to various terms of imprisonment, in a virtual replication of the septic tank principle we explicated earlier.⁹⁶ Thus, Hoti Lal and Babu Hari Ram, editors of the Urdu weekly *Swarajya* accused of sedition and several others charged in various conspiracy cases, e.g., the Alipur Conspiracy Case, Khulna Conspiracy Case and Nasik Conspiracy Case, were transported to the Andamans.

In 1910 the judges in the Khulna Conspiracy Case sentenced eleven men to varying terms of transportation for 'waging war against the King', stressing the importance of 'removing' them from 'the scene of their criminal activity for a considerable period'. The sentence of transportation doubtless assuaged the IG of Police's anxieties regarding the men's 'safekeeping'. His report on the case had expressed concern that these men be prevented from "mixing with the prisoners in other jails in India and inflaming the minds of ordinary prisoners with their revolutionary doctrines".⁹⁷ It is interesting that a 'statement of facts' and 'reasons for transportation' had to be submitted by provincial governments to the Governor General to elicit his sanction for transportation. In their submissions the provincial governments had to satisfy the Central government that the "men were dangerous, that it was desirable to remove them from the scene of their criminal activities or that it was undesirable that they should be allowed to mix with other prisoners in the jail".⁹⁸ Insinuations of dangerousness echoed in the letter from the UP government recommending the deportation from Bareilly Central Jail of Ladha Ram, editor of the *Swarajya*, sentenced

⁹⁶ In 1906 the central government ordered the suspension of the deportation of term convicts to Port Blair. Subsequently, the central government in January 1909 turned down a request of the UP government for transportation of Hoti Lal Varma and Ram Hari, editors of *Swarajya*, who were convicted and sentenced to seven years of transportation under section 124 A of IPC. Minto, the then Governor General, refused permission finding it "difficult to defend exceptional treatment being accorded to persons sentenced to transportation for the offence punishable under section 124 A". File no.51-52, H(P), Part B, February 1909, NAI. The government reopened the transportation of political prisoners sentenced for various terms after the Alipore Bomb case judgement. It was proved in this case that there was a conspiracy to overthrow the British government in India and a large number of bombs and other explosive materials were discovered in the Maniktolla Garden. File no. 84-87, H(P), December 1909, NAI.

⁹⁷ For the administrative response to the High Court judgement see file no. 81-82, H(P), September 1910, NAI.

⁹⁸ File no.11-12, H(P), Part B, April 1911, NAI.

to transportation for ten years for publishing articles of 'a highly seditious character'. Ladha Ram was reported to be 'very insubordinate' and 'doing all in his power to spread sedition among the prisoners'.⁹⁹ It is worth mentioning here that Ladha Ram's transportation to the Andamans was postponed twice because of poor health. The persistent reiteration of the provincial government that Ladha Ram's 'character' made him 'most undesirable', persuaded the Central government to waive the fitness requirement and sanction his transportation to the Andamans as a 'special case'.¹⁰⁰ On the other hand, the inability of the Punjab government to present an adequate case to transport Munshi Ram urged the Central government to describe him as 'a little worm' of 'no importance'.¹⁰¹ Clearly the Andamans was not a place for him, designated as it was 'for the brainy anarchist and intriguers'.¹⁰²

Accommodating the 'brainy anarchist and intriguer' was, however, no pleasure for Andaman officials. The Superintendent of Port Blair was to repeat from time to time his reservation towards the government's steady siphoning of this 'different' kind of prisoner to the Andamans - "a settlement of this kind, where we have 14,000 of the worst criminals in India at large, is not a suitable place for this collection of men of the seditious type".¹⁰³ One would think that the Superintendent's words of caution were roused by a concern for the welfare of the relatively small numbers of seditious prisoners in the company of a large number of 'worst criminals' professedly 'at large' in the settlement, but in fact they emanated from a concern to prevent the 'contamination' of the latter in the proximity of seditious. The 'insolence and recalcitrant demeanour'

⁹⁹ Letter dated 31 August 1910 from the Government of UP to the Secretary, GoI, seeking sanction for Ladha Ram's deportation. File no. 79-80, H(P), Part B, September 1910, NAI.

¹⁰⁰ See File no. 105-106, H(P), April 1911, NAI.

¹⁰¹ Note dated 24 March 1911 from the Secretary, Home Department, GoI to the Revenue Secretary, Punjab Government in response to the latter's request for sanction to transport Munshi Ram. File no. 11-12, H(P), Part B, April 1911, NAI.

¹⁰² Ibid.

¹⁰³ Demi-official letter dated 18 February 1918 from Lt.Col. M.W.Douglas, Superintendent of Port Blair, to S.R.Hignell, Officiating Secretary, Home Department, GoI. The officials from Port Blair had on numerous occasions in the past made representations to the central government stressing the necessity for transferring the seditious convicts from the Andamans to jails in India. File no. 207-216, H(P), Part B, NAI, pp.1-2.

of the seditionists manifested in 'food strike' and 'defiance of authority', the officer feared, "was bound to have a bad effect on the remainder who, comprised the most dangerous convicts in the Settlement".¹⁰⁴

It is apparent from the prisoners' accounts and official reports that the prisoners' self definition as political was constantly tested and eroded by the colonial government's conscious attempts not to give them any 'spurious importance' by distinguishing them from ordinary convicts.¹⁰⁵ Prisoners' accounts, however, take pains to show that they were in fact being distinguished from the ordinary in the severity of treatment. Political prisoners, unlike the ordinary, were not allowed to live or work together. Singled out in cellular accommodation, any conversation among them at work could be judged suspicious and punished by measures which exceeded the standards set for the ordinary prisoners. The Government of India, moved by its concerns to contain the spread of 'dangerous' ideas to other convicts and preventing the 'anarchist' prisoners from conspiring against the government or organizing a mutiny among the convicts, instructed that they be treated as 'specially dangerous prisoners' and 'not be allowed to work in the same group with each other or with other Bengali convicts'.¹⁰⁶ Prisoners' accounts as well as the information that might be gleaned from official documents show some of the repercussions that the nature of confinement had on the health of prisoners. The former present details of the struggles of their fellow prisoners and the unfortunate ends met by some like Ullaskar Dutt, who became insane and Indu Bhushan Roy who committed suicide, and also of the steady deterioration of the health of prisoners by chronic conditions of tuberculosis and dysentery. Official records, however, portray the prisoners' misfortunes as a consequence of their own conduct. A letter from the Superintendent of Port Blair draws a rather peculiar causal relationship between the prisoners' health and their misconduct. We learn that their 'misconduct' made it necessary that the seditionist prisoners be kept in 'close confinement' which in turn

¹⁰⁴ Ibid.

¹⁰⁵ Letter dated 22 August 1910 from the GoI to the Chief Commissioner, Andaman and Nicobar Islands with instructions not to treat the prisoners as political. File no. 2, Port Blair, Deposit, September 1910, NAI.

¹⁰⁶ These instructions from GoI accompanied the first batch of seditionist prisoners. File no. 68-160, H(P), February 1915, NAI.

'affected their health' resulting in tuberculosis in some of them.¹⁰⁷

That political prisoners in the cellular jail were indeed 'marked men', as an officer inadvertently described them, is apparent from proposals among jail authorities to distinguish them by special marks on their clothing e.g., a large 'S' sewn in coloured cloth on the front and back denoting seditious, or a 'C' indicating them as conspiracy case prisoners. Distinctive clothing, it was thought, would make the prisoners conspicuous and easier to control. The purpose was, as the jail authorities admit, to "prevent them, so far as possible, from mixing with each other at food and exercise time as well as during the hours of work".¹⁰⁸ Some officials while accepting the need to make the prisoners easily distinguishable, were apprehensive of the agitation such an attempt might cause in the press. Still others preferred the measure to be limited for the 'unprincipled scoundrels' or conspiracy case prisoners 'who committed crimes of violence under the cloak of politics', while excluding the seditious from any markings.¹⁰⁹ Savarkar has recounted in his memoirs that political prisoners wore badges with the letter 'D' inscribed on them, which, he recalls, stood for 'dangerous'.¹¹⁰

For the political prisoners, their confinement in Andamans marked long years of demeaning existence and affront to their middle class sensibilities. Prison memoirs recount with hurt pride the ignominies they suffered at the hands of prison warders and petty officers, mostly seasoned convicts. Barindra Ghose narrates the intricacies of the daily ritual of obeisance to one of these 'lesser Gods',

The first order was *khara ho jao* (stand up), the next was *sidha ek line se khara ho jao* (stand up in a straight line), then *kapra utaro* (remove clothes), then *hath me rakho* (hold them in your hands), then *kadam uthao* (hold one leg up) and finally *rakh deo* (place them on the ground). At the first order we stood up. At the second we approached each other and formed a line. At the third we took off our *kurtas* and caps. At the

¹⁰⁷ Demi-official letter dated 18 February 1918 from Lt.Col. M.W.Douglas, Superintendent of Port Blair to Secretary, Home Department, GoI. File no. 207-216, H(P), January 1919, NAI, p.1.

¹⁰⁸ Letter dated the 21 September 1916, from Major J.H.Murray, Medical Superintendent, Jail District, Port Blair, to the Chief Commissioner and Superintendent, Port Blair. File no. 1, H(P), Deposit, November 1916, NAI, p.5.

¹⁰⁹ See Confidential D.O. dated 31 October 1916 from J.H.DuBoulay, Home Department, GoI to J.Hope-Simpson, Superintendent of Port Blair. *ibid.*, pp.9-10.

¹¹⁰ V.D.Savarkar, *The Story of My Transportation*, p.110.

fourth we held out our hands. At the fifth we stood on one leg, as if about to dance. And at the sixth we put the other leg forward and placed the clothes on the ground. If the whole thing was gone through with perfect order then the khan sahib beamed with delight - his whole forest of whiskers radiant with the glow of his row of crooked teeth - and cried out in joy "Bravo, heroes". We, too, on our side, out of the dire necessity of self-protection, parted our lips, and grinned smilingly in thankfulness, hoping by that to secure his favour.¹¹¹

Perhaps the greatest outrage to the *bhadralok* sensitivities of the revolutionary prisoners in Andamans was their 'scanty clothing and practical nudity at the time of taking bath'. Barindra Ghose recalls that except for a *langoti*, which failed to cover their nudity, the prisoners were not provided a change of clothing for bathing. Such was the humiliation of this unaccustomed exposure and improper publicness of bathing that 'they hung their heads low and somehow finished the bathing affair'. Ghose's personal reaction, undoubtedly shared by others of his class, was to 'pray to Goddess Earth to open and take him into her bosom'. That the prisoners felt utterly dehumanized and emasculated by these regular ceremonial displays of authority is apparent in the following words of Ghose, "...I understood that here there was no such thing as gentleman, nor such thing as man, here there were just convicts".¹¹²

The frequent reference in petitions to the authorities by political prisoners to their social status, education and the nature of their offence, could not alleviate their ordeal of prison labour. In a rejection of the petitions of Hrishikesh Kanjilal and G.D.Savarkar, the government stated that the prisoners were "not to be considered as 'political prisoners' exempt from prison labour and treated as first class misdemeanants".¹¹³ The rigours of prison labour and the control it allowed the jail authorities to wield on prisoners by setting the limits of work and imposing punishment for falling short, made prison labour a contentious issue between the prisoners and jail authorities.¹¹⁴ Working

¹¹¹ Barindra Kumar Ghose, *The Tale of My Exile*, Pondicherry, 1922, p.71.

¹¹² Ibid, p.53.

¹¹³ Letter dated 30 November 1912 from the GoI to the Superintendent, Port Blair. File no. 11-31, H(P), Part B, December 1912, NAI.

¹¹⁴ A letter from the Chief Commissioner of Andamans to the Home Secretary, GoI informs that the 'seditionist' prisoners were employed on coconut and mustard oil mill, husking and opening coconuts, making *hooka* shells, coir pounding, rope making, weaving towels, gardening, hill cutting and swamp

at the oil mill caused the highest degree of trepidation among prisoners and it is no wonder that it became the site for events which led to the first strike in the Cellular jail by the political prisoners. Savarkar describes the harshness of work at the mill as follows:

We were to be yoked like animals to the handle that turned the wheel...Twenty turns of the wheel were enough to drain away the strength of the strongest *cooly* (labourer) and the worst brawny *badmash* (bad character). No dacoit past twenty was put on that work but the poor political prisoner was fit to do it at any age.¹¹⁵

The refusal by Nandgopal, one of the editors of *Swarajya*, to work more than the stipulated hours to produce the required quota of oil, resulted in a series of episodes of attrition between the editor and jail authorities, leading to the former's solitary confinement in fetters. A general strike by prisoners ensued, followed by disciplinary actions against them by the jail authorities.¹¹⁶ At the other extreme to Nandgopal's passive resistance was Nanigopal who refused to work at the *kolhu* (oil mill), refused to wash his clothes, refused to answer questions and eventually refused to wear clothes.¹¹⁷ The isolation of the Andamans was, however, not complete. Newspapers on the mainland and in London drew attention to the treatment of political prisoners in the settlement. A London based newspaper, referring to the general strike and subsequent punishments with "handcuffs and chains, cross-bar fetters and 'gunny' clothing, penal diet and separate confinement" called for an 'open enquiry' into the grievances of the prisoners. The paper proceeded to describe the travails of Nanigopal, "who refused food and drink and was kept alive by forcible feeding through the nose for seventy two days.

filling. File no.1, H(P), July 1912, NAI.

¹¹⁵ Savarkar, *The Story of My Transportation*, p.112.

¹¹⁶ Barindra Ghose, *The Tale of My Exile*, p.88-98.

¹¹⁷ V.D.Savarkar recounts Nanigopal's resistance in *Story of My transportation*, p.238-242. The report of the Medical Superintendent's corroborates Savarkar's account of Nanigopal. The Prison authorities tried him under the Prisons Act after jail punishments proved ineffective. Accused of 'persistent breach of prison rules', Nanigopal was charged with refusing to work, refusing food so that he had to be fed by tube for nearly three months, refusing to wear clothing, breaking his wooden neck ticket persistently until it had to be replaced by an iron one, refusing to walk when sent for so that he had to be carried to the office and refusing to be weighed so that he had to be tied up to keep him on the scale". See file no. 12, H(P), Deposit, January 1914, NAI.

Nor was this the only punishment inflicted. He was kept in standing handcuffs and deprived of the ordinary jail dress: and as a final penalty for his contumacy his sentence was increased by one year".¹¹⁸ The Central government, we have noted elsewhere, were ever vigilant to the opinion in the metropole. In this instance the government seems to have been taken by surprise with the information on the 'final penalty' on Nanigopal - "...I think this should have been reported by the Superintendent. We should not be placed in the position of learning such information about 'seditionist' prisoners from an English newspaper".¹¹⁹ This was not the first time that agitation in the press had caused discomfort to the authorities on the mainland. More than a year before the *India* report, two Indian papers, *Bengalee* and *Tribune*, published reports on the maltreatment of political prisoners in the Andamans. The report in *Tribune* was more perturbing for the central government since the latter was 'regularly read by India Office critics in London' and was 'very likely to attract attention in the House of Commons'.¹²⁰

The severity of transportation and imprisonment of political prisoners in the Andamans confirms the suggestion made at the beginning that transportation more than any other form of punishment was associated with coercion. The purpose of such stringent measures were aimed evidently at breaking the resolve of the detenus. The crumbling of their fortitude was judged by the jail authorities on their show of regret. A list of seditionist prisoners who could 'safely be transferred to Indian jails', emphasized thus the change or 'reform' in the conduct of the prisoners since their arrival. Barindra Kumar Ghose who arrived in December 1909 charged in the Alipur Conspiracy Case was recommended for transfer with the following note on his conduct: "Conduct exemplary...believed to have completely reformed and might be released". The endorsement for transfer of others stressed that they appeared 'harmless' or 'not particularly dangerous' or 'turbulent'.¹²¹ While confinement in the Andamans aimed at eliciting reform and remorse in deterrent conditions, an experiment carried out at

¹¹⁸ Clipping dated 25 September 1913, from *India*, published from London. *ibid.*

¹¹⁹ Note dated 30 September 1913 by C.W.E.Cotton, Deputy Secretary, Home Department, GoI. *ibid.*

¹²⁰ Notes dated 1 May 1912 by H.Wheeler, Secretary, Home Department, GoI. *ibid.*

¹²¹ List dated 6 June 1918 prepared by J.H.Murray, Jail District Officer, Port Blair. File no. 207-216, H(P), January 1919, NAI, pp.10-11.

Mahilong in Bihar and Orissa aimed at reform through education. Through this experiment the colonial government attempted to filter the 'unconfirmed' from their revolutionary folds and reclaim them as its moral subjects.

SEGREGATING 'BOYS' FROM 'MEN': 'REPENTANCE' AND RECLAMATION THROUGH SCHOOLING

Of the various penal measures applied by the colonial government against its political opponents in this period, perhaps the least known is an experiment conducted in Bihar and Orissa aiming at reclamation of young revolutionaries.¹²² The emphasis on reclamation professedly aiming at the restoration of 'deviant' middle class youth, reflected the extension of the self-image of the colonial state as a benign, paternalistic authority. Conducted within a broad policy of internment, the Mahilong experiment involved the segregation of revolutionary terrorists to prevent the 'infection' spreading. It combined, as we shall see, the modern strategies of disciplinary regime based on surveillance with the inquisitorial justice of the past.

There were primarily two forms of internment policies practiced towards revolutionary terrorists in this period. Internment at home or with friends and relatives, was termed 'home' domicile.¹²³ The other form, 'foreign' domicile, as the expression suggests, involved internment of the detenu away from home. The Bengal government interned the more 'dangerous' revolutionaries in four settlements, three of which were in the islands of Chittagong (Kutubdia, Mohoskhal and Char Laurence) and the fourth in the Sunderbans. The rest were detained individually at various places.¹²⁴ Those targeted for foreign domicile included revolutionary terrorists labelled variously depending on their specific task in revolutionary activity as 'organizers', 'recruiters',

¹²² In 1918 the Bihar and Orissa government set up a school for detenus at Mahilong, near Ranchi in Bihar. The provincial government strove to contain the spread of revolutionary terrorism from neighbouring Bengal by isolating young revolutionaries in a secluded environment and reforming them through moral training.

¹²³ Interpretation of 'Home Domicile' given by E.C.Ryland, DIG of Police, Crime and Railways, B&O, in a letter dated 12 March 1918, to the Chief Secretary to the Government of B&O. File no. 174, Poll (Special), 1918, BSA, p.10.

¹²⁴ See Report of W.Sealy on the system of internments in Bengal, *ibid.*, pp.13-14.

'messengers', 'harbourers', 'keepers of society's funds' and 'post boxes'.¹²⁵

There appears to have been a process of rethinking among a section of officials in Bihar and Orissa regarding the handling of revolutionary terrorists in the province. The officials expressed disapproval on there being "little or no machinery for watching these cases" which were "dealt mainly on the receipt of petitions from relatives and in an uncorrelated manner".¹²⁶ A revised scheme of internment of detenus under the DIR was proposed by E.C.Ryland, DIG of Police in Bihar and Orissa, purporting to reclaim the 'less dangerous' revolutionaries by segregating them and 'educating' them under a 'watchful' staff.¹²⁷ While directed towards checking the flaws of the prevailing system of internment, Ryland's scheme was driven by the perception of revolutionary violence as manifest signs of a deeper 'malady' and 'pestilence' which could be rectified under a reclamatory schema. A revolutionary, observed Ryland, was a young man 'of good character', who 'came of respectable, middle class families'. The young men had, however, been 'mis'led to

a life of strict morality, to have no thought of self and to eschew worldliness, material prosperity and domestic happiness. He is in no sense a criminal, though he may attempt to justify crime committed with altruistic motives.¹²⁸

According to Ryland the roots of the youths' perversion lay in their "ill digested and perverted ideas on democracy, patriotism and revolution".¹²⁹ Repressive measures, he argued were inadequate as a revolutionary was "an idealist, foolish and ill-balanced

¹²⁵ Government used the term 'post boxes' for persons who received and relayed messages and they were specially chosen for foreign domicile as it was found absolutely necessary by the officials that they should be removed from their known addresses for a few months in order to break the chain.

¹²⁶ The government believed that some of those interned at home were in communication with their revolutionary associates. Note dated 14 March 1918 by W.B.Brett. File no. 174, Poll (Special), 1918, BSA, p.2.

¹²⁷ Notes submitted by E.C.Ryland, DIG of Police, Crime and Railways, B&O, to The Chief Secretary of B&O, (through IG of Police). *ibid.*, pp.10-12. A more detailed note follows on page 15-17 in the same file.

¹²⁸ *Ibid.*, p.16.

¹²⁹ *Ibid.*

no doubt, but still quite prepared to suffer hardships and punishment for his ideals".¹³⁰ Foreclosing 'curative or preventive' options, Ryland suggested, might have the 'undesirable consequence' of moving the revolutionaries beyond 'any hope of redemption' and at the same time embittering the public at large. In any scheme to be adopted in Bihar and Orissa it was considered important to secure the support of the 'older generation' who were considered 'less corrupted' by the revolutionary zeal in Bihar and Orissa than in Bengal. The provincial government agreed with Ryland's recommendation that the bridling of 'religious and patriotic ferment' among 'misguided' youths required preventive and curative measures as well.

What has been described above is yet another form of typification of the revolutionary terrorist, a process which was to continue in later years and also an essentialization of a social class by the colonial rulers. The essential attributes of middle class youths makes an interesting contrast with the government's perception of the 'criminality' of deprived classes and marginal communities such as tribals. While the latter were attributed with criminality on the basis of 'heredity' and 'association', the 'youths of respectable middle class' escaped such characterization. The colonial government's understanding of 'criminality' was no doubt informed by the social background of the concerned groups. The policy of 'reclamation' was a mechanism through which government tried to bring the 'deviant' elements back into 'worldliness, material prosperity and domestic happiness', into what they considered as 'just and correct' behaviour of the middle classes. The inability of the government to recognize revolutionary terrorism as a political challenge led them to psychologize the movement.

The Bihar and Orissa government accepted Ryland's proposal and worked out a comprehensive strategy to tackle the revolutionary movement in the province.¹³¹ A new inducement scheme based on a threefold division of internment was proposed. Class I consisted of two categories of foreign domicile. School boys considered to be 'less dangerous' were to be interned in a school to be established at Mahilong in Ranchi

¹³⁰ Ibid.

¹³¹ Demi-official letter from H.McPherson, Chief Secretary to the Government of B&O to J.H.DuBoulay, Secretary to the GoI, Home Department, dated 30 January 1919. File no. 15, H(P), Deposit, March 1919, NAI, p.3.

district. Class I (b) consisted of those detenus who were considered 'too old or too dangerous' for the school. These were to be interned at far off and secluded areas in Angul, Sambalpur, Singhbhum and Palamau districts. Detenus who were not considered dangerous enough to be included in Class I, or whose conduct while in Class I justified milder treatment, were to be interned in their homes or homes of their relatives. In all such cases they were supposed to furnish security. A new category of detenus, Class III, was meant for those who were released on security without restrictions. The case of each detenu was considered every six months and he was transferred from one class to another on the basis of his conduct.

It is to the Class I (a) detenus and the scheme of reclamation that we turn. This class was created on the assumption that none of these boys was totally 'irreclaimable', and that although not 'dangerous' they had the potential to become so. To nip the 'contagion' the officers thought it essential to segregate them from their revolutionary associates and also from other unaffected sections of society. Their segregation was to be based on a system which offered "opportunity and inducement to reforms", and which while "acting as an effective prevention and deterrent", did not "create popular prejudice in the subject's favour". Segregation had therefore to be combined with "educational facilities ... under a specially selected staff" as 'idleness' in their homes could make them 'readily irreconcilable'.¹³² The government's efforts to involve the missionaries to exert a 'wholesome influence' on the revolutionaries by their personal examples of 'marked ability and strong personal character',¹³³ proved futile as missionaries working in Ranchi and Hazaribagh areas were short of staff and time.¹³⁴

In November 1918, a settlement was established in the form of a school with

¹³² File no. 174, Poll (Special), 1918, BSA, p.8.

¹³³ Note dated 17 March 1918 by H.McPherson. *ibid.*, p.3.

¹³⁴ An officer of the Provincial Educational Service was placed as the Headmaster of the institution. He was assisted by a second master. Both, according to a newspaper report, were especially selected for the purpose by the Director of Public Instruction, Bihar and Orissa. File no. 15, H(P), Deposit, March 1919, NAI, p.2. The Head Master, Babu Siddeshwar Sarkar, was praised as an 'excellent disciplinarian' by DIG in his first report submitted to the Bihar and Orissa government. See demi-official letter dated 30 January 1919 from H.McPherson, Secretary to the Government of B&O to J.H.DuBoulay, Secretary to the GoI, Home Department, *ibid.*, p.3. The rest of the staff at school consisted of an accountant, assistant surgeon (part time), drill instructor (part time), two sweepers, gardeners, waterman, washerman and two *coolies* (labourer). A pundit was later added to the staff to teach Sanskrit.

Indian teachers at Mahilong, a tea estate near Ranchi which was no longer in use. Arrangements were made to accommodate twenty-five students, though initially ten detenus who had so far been in home domicile were sent there.¹³⁵ *Pioneer* described the Mahilong scheme as a "...humane method of applying the provisions of the Defence of India (Consolidation) Rules..."¹³⁶ and sketched an idyllic picture of the school:

The boys are provided with excellent quarters, receive free education and medical attendance, and a drill instructor trains them in physical exercises twice a week. Each boy is provided with a cot, table and chair, mat, hurricane lantern, cooking utensils and two blankets, as also a suit of school uniform. Each gets an allowance for food. The boys can cook separately or form a mess. A certain number of menial servants are retained by Government and the boys are permitted to retain private cooks, subject to the latter conforming to the rules of the school of the school relating to menial servants. There is a good playground attached to the school and equipments for games are provided. The disciplinary rules of the school are necessarily strict, in view of the nature of the establishment, but a certain amount of leave within certain fixed bounds is permitted to enable the boys to obtain their supplies.¹³⁷

The rules which governed the lives of the detenus exhibited a strong tendency towards supervision, surveillance and control. Upon their arrival in Ranchi the detenus were instructed to report to the Superintendent of Police where they were photographed and their fingerprints, specimens of handwriting and signature taken. There was strict censorship, and the Principal was entitled to check all letters and parcels which were received or left the school. A conduct book was maintained in which any misdemeanour on the part of the detenu was recorded. The detenus could not leave the school premises without a card pass which was to be returned to the Principal at the time of the roll call. While outside school premises, the detenu had to wear a school uniform comprising a

¹³⁵ On 1 April 1919, the total number of detenus against whom action had been taken under Defence of India Act in B&O numbered 55. Out of these 5 were interned in foreign domicile, 24 in home domicile, 13 were detained at Mahilong school and 13 were released on security. Thus, Mahilong detenus constituted 23% of the total number of detenus which was not an insignificant figure. File no. 389, Poll (Special), 1919, BSA, p.8.

¹³⁶ *Pioneer*, dated 10 November 1918. File no. 15, H(P), March 1919, NAI, p.3.

¹³⁷ The students received a monthly allowance of Rs.12, raised later to Rs.15 on account of a general rise in prices of basic eatables. Letter dated 11 June 1919 from E.C.Ryland, DIG of Police, Crime and Railways, B&O, to G.Rainy, Chief Secretary to the Government of B&O. File no. 215, Poll (Special), 1919, BSA.

shirt with badge, a cap or *pagri* and a pair of shoes.¹³⁸

The reports sent to the Central government appear almost euphoric in describing the success of the Mahilong experiment. Reports emanating from the school suggested a mental and physical transformation of detenus. We learn that the 'boys' "looked extremely well and seemed happy and contented" and that "there was none of that sulky, half defiant attitude so commonly found among young men imbued with ideas of the Dacca Anushilan Samiti and all were most respectful and well behaved".¹³⁹

To reach its logical fruition, the Mahilong scheme required not only reclamation but also rehabilitation. It was feared by the government that failure of repentant detenus to get jobs after release might result in their reverting to the path from which they were weaned away and also discourage others from repentance, manifesting thus the failure of the entire scheme and the thinking which underlay it. To secure this end the Bihar and Orissa government considered giving certificates to detenus¹⁴⁰ under full publicity.¹⁴¹ The granting of certificates was indeed a public ritual to demonstrate that the disciplining of the detenus was complete. The colonial government by issuing such certificates could make a public display of paternal indulgence towards wayward sheep who had returned to their protector and guardian.

The significant feature of the reclamatory project at Mahilong was the emphasis on 'confession' and 'penitence'. The recommendation for release or further internment was based on two considerations, viz., previous activity of the detenu and his conduct while in internment. Expressions like 'full statement' implying a confession and unwillingness to go back to the old ways and 'penitence' recur in the official reports and

¹³⁸ See *Rules of the School for the Detenus Under the Defence of India Act at Mahilong, Ranchi* in file no. 15, H(P), March 1919, NAI, p.4.

¹³⁹ Demi-official letter dated 26 February 1919 from H.McPherson, Chief Secretary to the Government of B&O to J.H.DuBoulay, Secretary to the GoI, Home Dept. *ibid.*, p.10.

¹⁴⁰ The certificate specified that the detenu "interned for disloyal conduct has been released as Government is now satisfied that further restraint is unnecessary. This certificate is given with the permission of Government to inform prospective employers that there is no objection to his being given work". Draft of the certificate forwarded by E.C.Ryland, DIG of Police, Crime and Railways, B&O to H.McPherson, Chief Secretary to the Government of B&O. File no. 100, Poll (Special), 1919, BSA, p.6.

¹⁴¹ In order to ensure publicity for the certificate issuing ceremony the government informed the Associated Press about the event. Letter dated 27 April 1919, from the B&O Secretariat to E.C.Ryland. *ibid.*, p.7.

appeared to be the ideal attitude to merit a detenu's release from school. This is evident in the cases of Muralidhar Chaudhari, Brhmadeo Pathak and Panchkauri Basu who were released on security after the authorities were satisfied that they were repentant. These three, however, had little active role as revolutionaries before they were interned. When the school was closed in September 1919¹⁴² out of fourteen detenus who were sent there twelve had made 'statement' or 'full statement'. A 'full statement' it appears had to be substantial, in other words, significantly implicatory and self accusatory to satisfy the authorities. The police report on Chotan Singh, named as one of the participants in a 'political dacoity' in Gaya district describes him as having "made satisfactorily full statements from time to time" and appearing "quite penitent and likely to be harmless in the future...".¹⁴³ Purna Chandra Rai who like Singh had 'from time to time made statements' appeared 'completely penitent' having assured the Principal that he was 'ashamed of his past conduct'.¹⁴⁴ Kamta Prasad and Banwari Lal Khetri, two detenus described in the official reports as active and important members, refused to give 'statement' and were dubbed as 'defiant', 'irreconcilable', 'dangerous', 'worst characters' and having 'bad influence in the school'. Both were placed in 'foreign' internment for failing to repent.

The Mahilong experiment as stated at the outset was a combination of both colonial (modern) forms of disciplining and medieval inquisitorial justice.¹⁴⁵ The 'civilizing' and 'disciplining' mission of colonialism was at work once again and the subjects were the 'deviant' middle class 'boys'. Segregated in a disused tea estate, under various forms of control, school going boys gave 'statements' about their past and

¹⁴² Reporting on the closure of Mahilong school a government document reported that "the school during its brief existence amply established the reformatory value of such institutions". *Report on the Administration of the Police in the Province of Bihar and Orissa for the Year 1919*. IOL, P/10961.

¹⁴³ File no. 215, Poll (Special), 1919, BSA.

¹⁴⁴ Ibid.

¹⁴⁵ In his recent work Shahid Amin has talked of the way in which the approver's testimony in the Chauri Chaura case was different from medieval inquisitorial confession. While the latter required the accused to participate in the ritual production of penal truth to uphold the justness of the punishment, in colonial India suggests Amin, the "more Shikari-as-Approver implicated himself in the crime of Chauri Chaura the better the chances became of his being pardoned". Our study of Mahilong scheme, however, shows that detenus' confessions like medieval inquisitions upheld the justness of punishment as well. See Shahid Amin, *Event, Metaphor, Memory: Chauri Chaura 1922-1992*, Delhi, 1995, p.85.

'repented' their wrongdoings. It is indeed remarkable that the whole experiment was conducted on pupils who were only 'suspected' to be involved in revolutionary activities. Their confessions or the full statements they made as evidence of their repentance, did secure their release. But the very act of confessing, making statements about their past wrongs and expressing penitence was an affirmation of the merits of the punishment they had already undergone on mere suspicion. The confession which implicated the detenu to the 'crime', like medieval inquisition made him a participant not only in proving his 'crime' but also 'in the ritual of producing penal truth'¹⁴⁶ upholding thereby the justness of the punishment.

Bengal, the neighbouring province, was, however, sceptical of the idea of implementing a similar scheme.¹⁴⁷ It is obvious from the response of Bengal government that the class of students being placed in Mahilong school in Bihar and Orissa were not detained at all in Bengal.¹⁴⁸ The Bengal government claimed that owing to the advanced stage of revolutionary activity in the province, there were in Bengal, unlike Bihar and Orissa which still had 'uncontaminated' schools, 'some hundreds' of such students in ordinary schools.¹⁴⁹ The scheme of internment in a school appeared to the government to have added hazards: "as soon as it were known that revolutionary activity was a passport to free education, the overflow of the high schools might set about to qualify themselves for admission into the new school".¹⁵⁰ While the tone of the government towards the revolutionary terrorists is condescending, the reluctance to try a reformatory scheme, is indicative of its faith in repressive measures.

¹⁴⁶ M.Foucault, *Discipline and Punish*, Harmondsworth, 1985, p.38.

¹⁴⁷ In a demi-official letter dated 11 February 1919 from J.H. DuBoulay, Secretary to the GoI, Home Department suggested to the Additional Secretary to the Government of Bengal in the Political Department, that the progress and development of the school opened at Mahilong for detenus under the Defence of India Act may contain solution for similar difficulties in Bengal. File no. 15, H(P), March 1919, NAI, p.9.

¹⁴⁸ Even in home domicile, there were only 7 men out of 120 who were there as part of their original detention. All others were those who had graduated to lighter treatment from a higher class of internment. *ibid.*, pp.9-10.

¹⁴⁹ Demi-official letter dated 20 February 1919 from C.Tindall, Additional Secretary to the Government of Bengal in the Political Department to J.H.DuBoulay, Secretary to the GoI, Home Department, Delhi. *ibid.*, p.9.

¹⁵⁰ *Ibid.*, p.10.

CONCLUSION

In this chapter we have explored colonial penal strategies in the early twentieth century against the background of heightened nationalist activity among the middle class educated youth. Much of the colonial penal responses to the latter emulated the mid nineteenth century sentiments on state crime enshrined in the draft Penal Code. Alerting the colonial government to the 'impotence' of penal law against a successful rebel, the draft counselled to make it 'strong and sharp against the first beginnings of rebellion, against treasonable designs which have been carried no further than plots and preparations'. Following this line of thinking the colonial government took exception to the revolutionary terrorist movement, singling it out for containment and eventual elimination. The use of repressive measures by the colonial government was accompanied by a discourse of law and order, justifying coercion as 'inevitable' and 'just' for upholding 'public peace'. By endowing itself with the role of guarantor of 'peace' and 'order' the colonial state could simultaneously claim to stand above society and at the same time justify its coercive interventions.

Detention during this period had taken the form of punishment. Extraordinary measures like Regulation III of 1818 were used extensively to detain revolutionary terrorists without trial. The conditions of detention in prison were subjected to a long drawn out debate, with official opinion divided over the merits of association and cellular (isolated) confinement of political prisoners. The burgeoning nationalist movement was construed in terms of 'dangerous' and 'contagious' ideas which needed to be extracted. The idea of a 'septic tank' was conceived to hold all these 'dangerous' elements at a secluded place till the time they showed viable signs of reformation. While the materialization of this principle got lost in the maze of official deliberations, we do see the unprecedented emergence of a political prison at Hazaribagh. The transportation to Andamans represented the working of the principle in more extreme forms.

The motive behind long term detention of political prisoners remained deterrent. It is to be noted that detention and conviction of political prisoners was accompanied by a penal discourse describing the revolutionaries as 'wayward', 'dangerous', and 'seditious'. It is not surprising therefore, that eight editors of the Urdu weekly, *Swarajya*, were sentenced for transportation to the Andamans, within a span of two and

a half years, not for violent political 'crimes', but for spreading seditious ideas through their writings. The official pronouncements of their 'dangerousness' and the thrust on 'repentance' and 'confession' of guilt indicated that the severity of punishment was directed towards breaking the spirit of the revolutionary terrorist. The grounds of release of detenus and the transference of transported convicts to the mainland emphasized 'reformed appearance' and 'attitude' as a precondition. While in all the above instances 'reformation' and 'penitence' of the revolutionary terrorist was effected through severeness of confinement, a small but significant experiment was conducted aiming at 'reformation' through schooling. The Mahilong school for the 'reform' and 'reclamation' of revolutionaries reveals attempts by a paternal state to enhance its consensual base among broad sections of the rapidly alienating middle classes and affirming the moral grounds for its rule.

Specific to this period, something which we do not encounter in the later periods, is that no attempt is made to obliterate the difference in official usage between the political and ordinary prisoners. Correspondence between the Central government and various provinces, confidential and otherwise, and the prison manuals refer to the fact that these prisoners were 'different' from the ordinary and therefore amenable to differential treatment. In most case their treatment was severer than ordinarily meted out to prisoners.

The personal accounts of political prisoners reveal that their class background and their particular constructions of 'national' played a constitutive role in the formation of their identity as 'political prisoners'. A political convict Bhai Parmanand writes of 'a party of convicts' in the Andamans, who were aggrieved because 'as political prisoners' they were shown no special consideration i.e different from that meted out to ordinary convicts, in matters of food and clothing. A distancing from the ordinary prisoners was at the basis of their self perception and projection as political, "...these *others* were more or less accustomed to such food and work while free..., moved in more or less the same society as that of the men now in jail with them".¹⁵¹ That some state prisoners in Alipore Jail refused to accept that they were prisoners at all reflects on the determining role of their class identity in the construction of 'political' as distinct from ordinary or

¹⁵¹ Bhai Parmanand, *The Story of My Life*, p.105, (emphasis added).

so called criminal prisoners.¹⁵²

That the colonial discourse on criminality was shared by the middle class nationalists of this phase is quite apparent from V.D.Savarkar's memoirs particularly his views on the continuation of the penal settlement in Andamans for criminals. His stress on the need for 'taming' the 'fierce qualities' of the criminal 'by proper discipline and control' echoes the frequently expressed colonial concerns not just for 'criminals' but also for revolutionaries like Savarkar. The desire he evinces 'from the national point of view' to transform the 'very qualities that stink in our nostrils as criminals' into 'useful and honest citizens' parallels the colonial discourse on reclaiming the recalcitrant subjects, criminal or otherwise. It is interesting that Savarkar while expressing this 'national' objective, also suggests the idea of maintaining a colonial relationship with Andamans similar to England's relationship with Canada and Australia.¹⁵³

The political identity of the prisoners was also being constituted in this period by the construction of a predominant 'Indian national' voice and will as represented by them. The dismissal of the Manipur revolt in Kanjilal's petition as unrepresentative of the voice of the people of India is just a glimpse into the complex ways in which assertions of 'representing the nation' was made in the nationalist politics of later years, having an important bearing on the manner in which 'political' was defined as a concept and as a privilege. Most political prisoners of this phase had to wait till the royal amnesty was granted to them on the day the Montagu-Chelmsford reforms became law in colonial India. The 1920s which is the concern of the next chapter saw the emergence of mass movements and consequently mass incarceration. The demolition of class barriers in such a scenario was inevitable. It is to be seen how a pan Indian phenomenon of peaceful non-cooperation, so close on the heels of localized revolutionary activity, was met by the colonial state. It remains to be seen whether these prisoners were recognized as 'political prisoners', and what strategy of differential treatment, if any, existed.

¹⁵² Five state prisoners in Alipore jail complained to the visiting Magistrate that they were "severely hurt in feelings and self respect" because "the Superintendent made some insulting remarks about hoarding of clothes etc". Consequently four of the five prisoners returned all government clothes and bedding and wore coarse *dhoties* supplied by the *Bangiya Jana Sabha*. Upon being told by the Magistrate that they should "have a kit parade once a week" the prisoners declined saying that "*they were not prisoners*". File no. 27, H(P), Part B, July 1920, NAI, p.3 (emphasis added).

¹⁵³ V.D.Savarkar, *The Story of My Transportation*, pp.511-513.

CHAPTER THREE

THE CRIME OF 'CONSCIENCE': SATYAGRAHA AND COLONIAL PENAL POLICY IN THE EARLY 1920'S

The Non-cooperation movement (hereafter NCM), 1920-22, has been regarded as a turning point in the history of the nationalist movement in India. The organisational vehicle to carry the NCM was the Indian National Congress (INC) and the leadership was provided by Gandhi. *Ahimsa* and *satyagraha* were the key principles in Gandhi's framework of political action. The emphasis on non violence considerably lowered the stakes for political participation. The Gandhian call of 'sacrifice' and 'suffering' for the 'motherland', took the form of voluntary imprisonment which was markedly different from the martyrdom and individual heroism of revolutionary terrorists. The political environment produced by a combination of these principles enabled the nationalists to confront the colonial government in conditions where it could dominate moves. It also enabled the nationalist elites to control the masses by determining the environment of the public-political - the programmes of action and the language of protest. By steering a movement of the scale and intensity of the NCM, the nationalist leaders strove to wrest moral authority from the colonial rulers. By envisaging and imposing a disciplinary regimen on the masses, they attempted to reinforce its dominance.

The colonial state had hitherto responded to the nationalist challenge by invoking repressive measures (incarceration, deportation and transportation) or conjuring moral authority (reclamation through reformation). Underlying the various penal strategies was the principle of differential treatment of political prisoners and their segregation from the ordinary inmates. In the pre NCM phase the colonial government encountered political prisoners of militant persuasion who were either involved or suspected to be involved in violent protests. Further, the scale of imprisonment for political offences was relatively small compared to what followed in the course of NCM and later nationalist activities. NCM posed a very different kind of problem for the government. Apart from the large numbers, it was faced with a new genre of political prisoners who were not forced inside the prisons, but 'volunteered' to 'suffer' imprisonment. The nationalists hoped by this

voluntary action, to confront a prison regime which operated on the principle of 'fear', with prisoners who had wilfully 'entered' prison professing to 'overcome fear'.

Under the changed circumstances of mass action the colonial state was brought under unprecedented pressure to reconsider past penal practices. Pressures emanating from public opinion in colonial India as well as compulsions of answerability to the British public, the absence of any uniformity of action and the imperatives of colonial rule made the issue highly sensitive. The interplay of these factors left a lasting impact on prison administration and set off a process of discussion which was to form the basis of future manoeuvring of the colonial state as well as the strategies of the nationalists to use the site of prison as an effective stage for protest.

A major debate on the issue was triggered off by the Secretary of State's proposal in September 1919, that persons convicted of political offences in India should be given treatment analogous to that undergone by the first class misdemeanant in England.¹ There was, however, a strand of opinion in the government which was not favourably disposed to the application of British practices in colonial India. This strand of opinion was represented by the Indian Jails Committee, 1919-20, which refused to accept 'political crime' as a separate category but recommended the creation of an intermediate form of imprisonment to accommodate prisoners who were likely to be adversely affected by the rigours of jail discipline.² The most immediate dimension of the debate concerned directly with the responses of the various provincial governments which had to cope with the influx of political prisoners in their jails and control the mass euphoria and effervescence which had been generated with this mode of defiance. The liberal imperialist initiative of Mantagu was a serious effort to further the hegemonic objectives of the colonial state by accommodating the Congress nationalists and providing them the same facility which in his opinion were accorded to political prisoners in England. His failure signaled yet another example of what Partha Chatterjee terms as "the inherent

¹ In September 1919 the Secretary of State addressed the Government of India regarding the possibility of differentiating the prison treatment of persons convicted of political offences; he suggested the advisability of the institution in India of a "form of prison treatment, for such offenders analogous to that undergone by first class misdemeanant in England". File no. 322-40, H(P), Part A, 1919, NAI, p.1.

² These proposals are outlined in 'Classification and Separation of Prisoners', Chapter VII of the Report. *Report of the Indian Jails Committee, 1919-20, Vol.I, Report and Appendices*, Simla, 1920, pp.85-91.

impossibility of completing the project of the modern state without superseding the conditions of colonial rule".³ The deliberations between the various governmental agencies on the issue, culminated with the creation of a category of 'special division' in jail. The colonial state was clearly inclined to take advantage of the class divide and exploit the differences between the aspirations of the nationalist elite and the oppressed classes. The colonial prisons, however, remained a site where both the ruling colonial forces and the aspiring nationalist leadership failed to enforce their 'disciplinary' principles on the enthusiastic masses.

In this chapter we examine issues pertaining to mass nationalist incarcerations during the NCM and its implications for official penal policies focussing in particular on their colonial specificity. We shall also explore the Gandhian recipe for harnessing the mass movement and its ramification for jail 'discipline'. Further, we explore the meanings attached to 'political prisonerhood' by the nationalists.

JAIL GOING FROM 'DISGRACE' TO 'HONOUR': COLONIAL PRISONS AS SWARAJ ASHRAM⁴

Much of Gandhi's contribution to the nationalist movement was concerned with the creation and representation of new codes of conduct based on a radically different theory of authority. The first NCM of 1920-21 is generally construed as marking the installation of a definitive structure and course of the nationalist movement with Gandhi as a crucial figure in the organization and leadership of the mass movement. The NCM launched by Gandhi on 1 August 1920 against the backdrop of Rowlatt *satyagraha*, Jallianwala Bagh massacre and the *Khilafat* agitation, was a remarkable manifestation of the rejection of British authority in India.⁵ At the same it symbolized a demonstration

³ Partha Chatterjee, *The Nation and its Fragments*, p.21.

⁴ The expression was used by an Assamese leader Tarun Ram Phookan to describe the jail where he was confined. See Gandhi's notes dated 26 January 1922, *Collected Works of Mahatma Gandhi* (henceforth *CWMG*), Vol.XXII, p.243.

⁵ The Congress joined the NCM in December 1920 after a resolution to this effect was passed in the Nagpur Congress. The government responded by declaring the Volunteer Corps illegal and arrested and prosecuted its members under the Criminal Law Amendment Act, sections 107 (committing a breach of peace or disturbing public tranquility) and 108 (intentionally disseminating or attempting to disseminate seditious matter) of the CrPC., and sections 124 A (sedition) and 153 A (promoting enmity between

of the organization and control of mass mobilisation based on the idiom of non-cooperation. On the other hand, by this extraordinary exhibition of sway over large and diverse sections of people, the Gandhian nationalists challenged the moral authority of the colonial government to rule.⁶

Jail going was implicit in the nationalist idiom of non-cooperation and passive resistance. Gandhi's programme of non-cooperation included an elaborate code of conduct for the NCM prisoners. Imprisonment formed also the major bulwark of the colonial state's strategy of bridling NCM. At the confluence of the two strategies, prisons became a site for the representation of the power of the colonial state, as well as the realm where following Gandhi's dictates of prison behaviour, the colonized transcended subjecthood by voluntarily obeying jail laws. We shall in the following pages present the criticality of prisons in Gandhi's scheme of national struggle.

It may be pointed out here that the subtleties and skills of jail going were tried out and perfected by Gandhi in South Africa. The strategic importance of jail going in Gandhi's contest with the colonial state was presented poignantly in an interesting tug of wits narrated by Gandhi in one of his writings. When the Registration Act of Transvaal was passed, a cartoon was published in the *Star* showing the white knight, in order to pre-empt the black king from mounting an attack on the (Transvaal) rook, as having moved into the Ordinance square, after which he was in a dominant position. The analogy here was obviously to the passage of the Act. Gandhi reproduced the cartoon in *Indian Opinion* along with another cartoon in reply. With a clear reference to the passage of the jail going resolution a black pawn was shown guarding the Ordinance square in the second cartoon. The purpose in this second cartoon was to show that as long as the black pawn was in the jail going square the white Knight could not move into

classes) of the IPC.

⁶ The programme of non-cooperation included the surrender of titles and honours, boycott of government schools and colleges, law courts and foreign cloth. The movement began with Gandhi's exhortation to the Indians to return all honours and emblems granted by the imperial government questioning thereby the capacity of the government to make meaningful and binding its authority through the creation of honours. The Indian-ness of the movement was to be represented in a series of markings. Indians were to give up wearing Western clothes and the 'native' costumes decreed by their imperial rulers for home-spun simple peasant dress. Gandhi explicated his messages in communal prayer meetings, not the durbar-like atmosphere of the political rallies. The motif of the Indian pilgrimage was adopted to politics in the form of Gandhi's march or *padyatra* which is still part of the political rituals in India.

the Ordinance square. Jail going obviously was the crucial move in the game, wresting the advantage away from the white knight.⁷

Jail going was critical in this positional warfare with the colonial government. Gandhi, however, assiduously reiterated the moral and religious contents of jail going. Writing from Sabarmati jail, he refers to his 'forthcoming imprisonment' as 'more a religious than a political advantage' and as the 'purest sacrifice'. Renunciation was at the basis of the 'religious value of jail discipline', which could be enhanced by 'renouncing privileges' and 'cutting off entirely from all connections with the outside world'.⁸ More than a decade before, Gandhi used similar words to assure the Indians in South Africa to "consider themselves fortunate to be in gaol in the cause of the motherland, in defence of one's honour and one's religion".⁹ Thinking about the hardships of jail life, of the 'life among the *kaffirs*' of 'obeying a warder who is only good enough to be our servant', made one weak and afraid of imprisonment. Gandhi, however, tried to convince his readers that it is only,

the body (which) is held in bondage, but the soul grows more free...one might, perhaps, be in difficulties, be manhandled by a wicked warder, but then one learns to be patient. One feels glad to have an opportunity of dissuading (him) from such behaviour. It is up to us to adopt such an attitude and think of jail as a holy place and to make it such.¹⁰

For Gandhi, not everybody had the capacity to envisage the jail as a holy place and to use it to enhance one's capacity to do good. Not everyone therefore, could be a *satyagrahi*. Only 'the purest minded' were fit to go to jail as civil resisters. He urged,

⁷ 'Game of Chess', 18 May 1907, *CWMMG*, Vol. VI, p.483. The Government of South Africa enacted legislation in 1906 making it compulsory for Indians to take out certificates of registration which held their finger prints. In a public meeting on 11 September 1906 held at Johannesburg, the Indians resolved not to submit to this law and passed the jail going resolution. Resolution IV, as it came to be called, declared that "every Indian present at this meeting solemnly and sincerely resolves that, rather than submit to this tyrannical law and abide by its un-British provisions, he will prefer to go to gaol and will continue to do so until it pleases His Majesty the King Emperor to grant relief". 'Johannesburg Letter', 11 September 1906, *CWMMG*, Vol. V, p.426.

⁸ Gandhi's letter dated 17 March 1922 to C.F. Andrews, during his first ever jail term in India. *CWMMG*, Vol. XXIII, p.99.

⁹ In his note of titled 'My Second Experience In Gaol-V' Gandhi elaborated on his jail experiences and persuaded his readers to resolve that their happiness lies in voluntary imprisonment. 'Indian Opinion', January 1909, *CWMMG*, Vol. IX, p.182.

¹⁰ *Ibid.*

"Let the purest minded become volunteers and be imprisoned...If we have been lax hitherto, let us be rigorously strict in our selection".¹¹ Entering the jail by offering *satyagraha* was different from being sent to jail as a punishment for an 'offence'. Distancing the imprisonment of a *satyagrahi* from that of a 'criminal', Gandhi tried to dispel the fear and aversion of jail going among the people. In this context he regards jail going as an 'art', to learn which, one was required to enter jail as a pilgrimage and stay unrestrained in spirit:

One needs to be an artist even to go to jail. Thieves and imposters go to jail, no doubt, but they do not secure freedom by doing so. They merely suffer their punishment by doing so...whereas one who goes to jail with a calm mind...does the highest service....¹²

Gandhian *satyagraha* as an exercise in 'self disciplining' required that the prisoner obey jail rules. Gandhi's disciplinary code for non-cooperators required that those who courted imprisonment or arrest offer no defence when prosecuted. Imprisonment is courted, declared Gandhi "as we consider it to be wrong to be free under a Government we hold to be wholly bad".¹³ The 'object' of voluntary imprisonment was to inculcate "discipline and suffering"¹⁴ because "so long as we do not learn how to endure jail sufferings we do not understand the real meaning of *satyagraha*".¹⁵ Once inside the jail, Gandhi expected a *satyagrahi* prisoner to conduct himself in 'strictly correct', 'dignified' and 'submissive' manner. His guidelines for correct behaviour inside the prison permitted no disregard of jail discipline except under special circumstances of 'gross

¹¹ Gandhi's reiteration of the characteristics of passive resisters came in the context of the arrest of Professor Kripalani and fifteen of his pupils, all members of Kripalani's Ashram at Benaras. While commending the devotion of Professor Kripalani and his pupils for the cause of *swadeshi*, Gandhi emphasised in particular the austere life of the *ashram* and their devotion to non-violence. This 'sacrifice of the innocents' was for Gandhi the true meaning of *satyagraha*. 'Kripalani & Co.', 15 December 1921, *CWMG*, Vol.XXII, p.17.

¹² 'My Disappointment', 5 March 1922, *CWMG*, Vol.XXIII, p.6.

¹³ Gandhi's notes explicating on the meanings of imprisonment. 'Why Suffer?', 3 November 1911, *CWMG*, Vol.XXI, p.377.

¹⁴ *Ibid.*

¹⁵ In a speech urging peasants at Nadiad to offer *satyagraha*, Gandhi expressed enthusiasm at the imprisonment of six peasants from Kaira for offering *satyagraha*. Gandhi's speech of 8 June 1918, *CWMG*, Vol.XIV, p.420.

inhumanity' and 'indignity':

Jail discipline must be submitted to until jail Government itself becomes or is felt to be corrupt and immoral. But deprivation of comfort, imposition of restriction and such other inconveniences do not make jail government corrupt. It becomes that when prisoners are humiliated and treated with inhumanity as when they are kept in filthy dens or are given food unfit for human consumption. Indeed, I hope that the conduct of non-cooperators in the jails will be strictly correct, dignified and yet submissive.¹⁶

While suffering all other inconveniences was at the crux of the instructions, there was ample scope for a subjective interpretation of what constituted indignity. There was, therefore, no dearth of reasons on the part of political prisoners to cross the Gandhian 'limits' of discipline. His code of conduct for the *satyagrahi* prisoner emerge as a code of prisoner's rights and duties where a prisoner is a votary of non-violence and truth which not only demand of him the duty to abide by the rules of prison but also to disobey such rules which infringe upon his self-respect and dignity:

... discipline must not take the form of humiliation. Discomfort must not be torture, and respect must not take the form of crawling on one's belly. And therefore on pains of being put in irons, in solitary confinement or of being shot, non-co-operating prisoners must decline even in the name of discipline to stand naked before the jailor, must decline in the name of discomfort to wear stinking clothes or to eat food that is unclean or indigestible and must similarly decline even in the name of respect to open out their palms and to sit in a crouching position or to shout "Sarkar Ek Hai" or "Sarkar Salam" when a jail official is passing.¹⁷

He asserted, "...rightly or wrongly, I believe that even as a prisoner I have certain rights".¹⁸ At the crux of Gandhi's prescription for prison conduct was an

¹⁶ Asked by a friend if passive resisters should refuse to do any work in prison, Gandhi insisted that this would be a 'misapprehension' of his moral position on jail going. Civil resisters were obliged to guard against 'universal indiscipline' and submit to jail discipline, except under conditions specified by him. 'Work in Jails', 15 December 1921, *CWVG*, Vol.XXII, p.19.

¹⁷ A telegram from Karachi jail described the humiliating physical search to which Maulana Shaukat Ali, Doctor Kitchlew, Maulvi Nisar Ahmed and Pir Gulam Majid were forcefully subjected in prison. Physical search, common in the case of convicts, involved making the prisoner almost naked and required them in this state to raise their hands and open their mouths to reveal any contraband. The four were later put in solitary confinement for a month for not submitting voluntarily to search. 'The Ali Brothers', 9 February, *CWVG*, Vol.XXII, p.356.

¹⁸ While a prisoner in Yervada Jail, Gandhi expressed dissatisfaction at the violation of his rights as a prisoner. The withholding by prison authorities of his letter to Ajmal Khan and the refusal to allow the journals and periodicals of his choice, were regarded by him as punishment in addition to that awarded by

intricate view of *satyagraha* as a means for passage from subjecthood to citizenship. He saw prisons "as the gateway to freedom under a tyrannical rule".¹⁹ A *satyagrahi* was not a subject because he was not compelled to obey unjust laws. Going to the prison was therefore part of the exercise of the rights of citizenship:

The moment I became a *satyagrahi*, from that moment I ceased to be a subject, but never ceased to be a citizen. A citizen obeys laws voluntarily and never under compulsion or for fear of the punishment prescribed for their breach. He breaks them when he considers it necessary and welcomes the punishment.²⁰

The disobedience of unjust laws was itself bound by the laws of civil disobedience. This implied that the sanctions for the breach of the laws, the punishment which was to follow the breach, had to be courted voluntarily. Inside the prison therefore, the prisoner was expected by Gandhi to obey the laws. If the person on breaking the rule voluntarily involved himself also with breaking the sanction for its breach he ceased to be civil (a citizen) and became anarchic. As mentioned earlier, Gandhi also expected that the prisoner would not suffer erosions of his dignity as a human being and exercise his right to protest while in prison. It was not the case that Gandhi was not aware of the 'Dyerism' being practiced in jails or did not realize the need for exposing it. But if in the process there was a violation of the rules the consequences had to be borne by the prisoner. In an earlier instance when Mahadev Desai posted a letter making public some instances of despotism in jail, Gandhi while praising Desai for taking the risk, was also stoic in the knowledge that Desai might have to suffer for this breach of jail discipline and "flogged till he (got) sores on his back".²¹

Rather than an experience of degradation and shame, jail going became in Gandhi's delineations the symbol of national integrity and solidarity. In the Gandhian

the convicting judge. Gandhi's letter dated 25 March 1925 to the Superintendent of Yervada Central Prison, *CWVG*, Vol.XXIII, p.162.

¹⁹ 'My Disappointment', 5 March 1922, *CWVG*, Vol.XXIII, p.6.

²⁰ Letter to Additional Secretary, Home Department, GoI, 15 May 1943, *CWVG*, Vol.LXXVII, p.93.

²¹ In a note dated 15 January 1922 Gandhi reproduced Desai's letter which described the maltreatment of political prisoners, including flogging, particularly of two volunteers, Kailash Nath and Lakshminarayan. In this instance Mahadev Desai had broken jail rules which barred prisoners from discussing political matters. *CWVG*, Vol.XXII, p.193.

scheme, once the notion of imprisonment as deprivation of freedom was overcome, prison was transformed into a realm of freedom, a school or training ground for its inmates for the realization of ideal citizens. On the other hand, the training for ideal citizenship through the appropriation of the masses in the national movement involved elements of restraint which, while keeping the mass upsurge in bounds served also to keep them subservient to the domination of the bourgeois nationalists. The usefulness of jails in Gandhi's disciplinary framework was to outlive the achievement of independence. Gandhi emphatically stated that:

...we are not seeking to destroy jails as such. I fear that we shall have to maintain jails even under swaraj. It will go hard with us, if we let the real criminals understand that they will be set free or be very much better treated when swaraj is established. Even in reformatories by which I would like to replace every jail under swaraj, discipline will be exacted.²²

Evident in Gandhi's observation is that jails as a penal apparatus of the state for the management of 'real criminals' was to continue 'under swaraj'. While the 'art' of jail going was accorded 'respectability' in the nationalist framework, Gandhi seems insensitive to the role of prisons as institutions of dominance. He was, however, prepared to replace these structures by 'corrective' institutions of the reformatory type.²³

Gandhi's concern with discipline matched with the colonial government's quest for law and order. A variety of official reports and unofficial accounts of the period, however, suggest that NCM prisoners had made a mockery of prison 'discipline'. Elements of criticism can be detected in both - the former emanating from apprehensions of order, the latter evincing disapproval at the deviation from Gandhian norms - at the crux of both, however, was a concern with affirmation of authority. We present here a short account of the state of 'prison discipline' in the course of NCM and try to glean from the 'chaotic' picture, the diverse meanings attached to 'political prisonerhood' by thousands who flocked into prisons at Gandhi's call.

²² *CWMG*, Vol.XXII, p.109.

²³ Gandhi was aware of work by penal reformers elsewhere. See Gandhi's essay 'Elizabeth Fry' dated 19 August 1905. *CWMG*, Vol.V, pp.29-30.

SATYAGRAHIS OR 'FREEBOOTERS': POLITICAL PRISONERS DURING NON COOPERATION MOVEMENT

It appears from official accounts that NCM prisoners were seen as responsible for a persistent breach of prison discipline. The Superintendent of Hazaribagh jail complained to higher authorities that "since the incarceration of prisoners as first class misdemeanant the whole atmosphere of the jail has changed. Contamination within and without is the order of the day."²⁴ The state of indiscipline was reported to have reached a new low in the Muzaffarpur jail when two Assistant Jailers resigned due to their sympathy with the NCM. The Bihar and Orissa government, however, was of the opinion that a political prisoner Dr. Mahmud was instrumental in weaning away the loyalty of these officers.²⁵

The following extract from a memorandum by the Criminal Investigation Department, draws attention of the government to declarations by recently freed prisoners, characterizing their imprisonment as an exhilarating experiencing:

A large batch of volunteers who were convicted during the Christmas week under section 143 and who were sentenced to six weeks' imprisonment were released during the week. As evidence of the utter lack of discipline hitherto maintainable in the District Jail I may mention that these people were permitted to march out of jail in procession carrying two banners. One of the so-called banners proved to have been a copy of the printed jail rules which had obviously been purloined from the jail. On the back, caricatures were drawn representing *Hanuman* and King George and there were objectionable passages in Hindi to the effect that *Hanuman* would eat up the British. There were also other passages such as 'We have obtained *Swaraj* in the jail and on Sundays the jail is a place of pilgrimage.' There was also a Turkish crescent with an inscription in Hindi to the effect that 'we are victorious.'

The Kotwal had a conversation with one Brahmachari Ramanand, a volunteer who was recently released from jail. This individual said that ...Government was afraid of them and was shivering with fear (*Sircar kanpta hai*). ... He then proceeded to say that they had obtained *Swaraj* in the jail where they had lived in absolute freedom and extreme comfort. Akharas have been built in the jail and they got whatever food they liked. Everybody was free to do what he liked. They spent their time in singing

²⁴ File no. 201\VI\22, H(P), Part B, NAI, p.125.

²⁵ File no. 80 of 1922, July 1922, Local Self Government (Jails), BSA, pp.12-17.

songs and generally enjoying themselves.²⁶

Brahmachari Ramanand's portrayal of *swaraj* in prison as unbridled freedom was clearly at variance with Gandhi's notion of *swaraj*. Jails had become place of 'pilgrimage' but the pilgrims were clearly not trained in the Gandhian mould of discipline. Unofficial sources confirm parts of the above cited description. Narrating his experiences of confinement in the Benares district jail Manmathnath Gupta described his routine in the following words -

In the morning we took some exercise. Then we went to the *Gita* class. Then we ate and roamed about, because I had not to do any labour, and those who had been sentenced to hard labour, did not do jail labour. So we were without any work, and we loafed about. Then during the night we were in Kripalani's class.²⁷

Instances of 'obdurate' behaviour emanating from various concerns of the daily lives of the prisoners were reported from other jails. In Motihari jail political prisoners threatened a hunger strike unless their ration was increased. In Sitamarhi Sub-Jail, the undertrial prisoners protesting against overcrowding refused to obey any rules or orders. The Superintendent of the Bhagalpur Central Jail reported that political prisoners celebrated *Holi* and attempted to get other prisoners to join their celebrations and defy the jail authorities, with the result that for a short time the prisoners of the same ward were completely out of hand.²⁸

Some descriptions by nationalist prisoners seem to suggest that the dissatisfaction and unrest among prisoners flowed in part from the confusion, vacillation and indeterminateness in government policies. Instances where the same offence was met with different treatment inside the jail have been related by some accounts. In his jail memoirs, Raghubir Sahai writes of cases under section 108 of the Criminal Procedure Code (pertaining to prevention of breach of peace) in which prisoners of the same status and convicted of the same offence were treated differently. His accounts further reveal

²⁶ Memo by the Criminal Investigation Department, UP, extracted from Diary No 5, dated 4 February 1922, of the Superintendent of Police, Benaras. File no. 201\VI\22, H(P), NAI, p.80.

²⁷ Manmathnath Gupta interviewed by Haridev Sharma on 22 November 1969, OHP, NMML, p.24.

²⁸ A report to the effect was sent by the Superintendent of the Bhagalpur Central Jail to the IG of Prisons, Bihar and Orissa on 16 March 1922, regarding the incident. File no. 80 of 1922, July 1922, Local Self Government (Jails), BSA, pp.12-17.

that special treatment also varied from time to time.²⁹ There appeared resentment among prisoners on account of the uneven and discriminatory treatment meted to various section of political activists giving rise to ill feeling among the political prisoners themselves. Naradeva Shastri, a *satyagrahi*, confined in Dehradun jail blamed the government for deliberately creating differences among the political prisoners by creating a hierarchy among them. He also alleged that the Magistrates with a motive of revenge placed a number of political prisoners into the 'non political' category. It was not surprising that the discontent among the second class prisoners made itself manifest in *hartals*.³⁰

The lack of uniformity in treatment notwithstanding, the accounts of political prisoners reveal that very few among the NCM prisoners refused the privileges accorded to them. *Swami Sahajanand Saraswati's* memoirs provide us a detailed account of what he called 'un Gandhian' practices of political prisoners. Describing the state of affairs in Lucknow Jail, UP, where first class misdemeanant were kept, he mentions that the prisoners had become habituated to privileges of the enhanced daily rations so that its discontinuance later troubled them. He also mentions that in breach of prison discipline, the prisoners procured by fraud newspapers from outside. letters were also sent beyond the permitted quota by subterfuge. Political prisoners were also charged with practicing untouchability.³¹ Rajgopalachari criticised what he calls "deceiving ourselves by such phrases as self-respect, indignities, etc".³² The context of this comment was the refusal by prisoners undergoing rigorous imprisonment in Vellore Jail, Madras to carry their night pots every morning to an opposite corner of the jail grounds. Incidentally, the penal regime in Madras was among the severest and the jail in the incident was meant for dangerous convicts, where a number of political prisoners were kept under harsh conditions. Rajagopalachari criticized the act of these prisoners on staunch Gandhian premises,

It is to suffer unjust punishment without protest or complaint that we have

²⁹ Raghur Sahai, *Life In an Indian Jail*, Allahabad, 1937.

³⁰ Naradev Shastri, *Karavas Ki Kahani: 1921-22 Ki Dhakkampel*, Dehradun, 1923, p.39.

³¹ Sahajananda Saraswati, *Mera Jeevan Sangharsha*, Delhi, 1985, pp.142-152.

³² C.Rajgopalachari, *Jail Diary*, Bombay, 1991 (3rd edition), p.61.

come here, and we would be destroying our own foundations if we attempt, when inside jail, to agitate, protest, or offer satyagraha against the hardships imposed on us.³³

The NCM prisoners' demeanour in the prison derived largely from the particular conditions of jail life - the structures of power within the prison and the impact of their proximity with the ordinary prisoners. Various prison accounts show that the relationship between the ordinary and political prisoners did not follow a single or persistent pattern. Abid Ali, an NCM prisoner in Bombay jail did not think that the NCM prisoners made any profound impression on the ordinary in the beginning. He attributes the initial hostility of some long term prisoners towards them to the relatively restricted nature of the movement in its initial stages, so that the reasons for their coming to jail and expressions like *swaraj*, Gandhi and Congress, could not be comprehended by the prisoners. Ali suggests that the failure by the politicals to explain to the ordinary criminals the reasons for their coming to jail, resulted in some cases in the thrashing of some politicals by *Upari* prisoners.³⁴ Gradually, however, says Ali when the ordinary prisoners understood the peculiar nature of their imprisonment, they became extremely sympathetic to the NCM prisoners.³⁵ Other jail accounts have seen the nationalist prisoners as having a stimulating effect on the ordinary and undertrial prisoners. In some accounts, nationalist prisoners present themselves almost predictably in altruistic roles, as redressers of the appalling conditions in which the ordinary prisoners spent their confinement. Ramchandra Mussaddi who had earned the title of *Jailyatri* because of his extensive sojourns in prison in all major periods of mass disobedience, describes incidents in his jail life where he fought for the rights of ordinary prisoners and at one stage relinquished the privilege of remission because of the concern that with his departure things may revert to the earlier despicable conditions.³⁶

³³ Ibid.

³⁴ In jail parlance, *Upari* or *pucca* prisoners were those long term convicts who after finishing a third of their terms of sentence were employed within prisons as watchmen or warders.

³⁵ Abid Ali, *Mazdoor Se Minister*, Delhi, 1968, p.174.

³⁶ As a NCM prisoner in Lucknow Central Jail, Ramchandra Mussaddi was recruited by the hospital doctor to work as a compounder in his dispensary. His duties as compounder also entailed the distribution of the daily bread. The 'rotis' being distributed by the jail staff weighed less than what was stipulated in the jail rules. On the complaint of the prisoners Mussaddi weighed them himself and found the allegations

Manmathnath Gupta's jail narratives provide us with a glimpse into another aspect of the relation between political and non political prisoners and its effect on the evolution of the policies for the treatment of political prisoners.³⁷ Contrary to what has been suggested in the preceding paragraph, which also represents the popular belief that political prisoners were always in leadership roles, Gupta suggests that it was often a case of a mutual learning experience in adverse jail circumstances. This is brought out in an incident on the first night of Gupta's arrival in prison. The excitement and uncertainty of the situation had banished sleep from the eyes of political prisoners who huddled together prepared to spend the night talking rather than disperse to their allotted spaces. When warned by the convict overseer that it was against the rules, an ordinary undertrial commented that the rules of prison did not apply to the *khilafatis*.³⁸ Gupta regards this incident as having remarkably changed his perception of what prison life should mean to him as a political prisoner.

...this casual remark, opened up a new line of thinking before my eyes. Really, had we come here to kowtow to all that passed in the name of law, order and rule, however unreasonable it might be, or should we obey only those rules that were really worth-while. This line of thinking invaded my mind and it was to have far reaching consequences in my life. I was to be a fighter outside prison and inside it when locked up.³⁹

Political prisoners resorted also, to the networks created by ordinary prisoners as part of their survival strategies. In jail parlance *tikram* was the term used for all mechanisms whereby prisoners hoodwinked jail authorities to procure letters, tobacco and money from outside the prison. Political prisoners found *tikram* useful to get newspapers and convey messages. Sampooranand, a nationalist prisoner mentions that probably only one in a thousand political prisoners opposed or did not resort to *tikram*. Most political prisoners at some time or the other made use of it to avail the amenities

to be true. Mussaddi carried the complaint to the higher authorities and after this incident efforts were taken to correct the practice. Ramchandra Mussaddi, interviewed on 30 January 1989 by Shyam Lal Manchanda, OHP, NMML, pp.11-12.

³⁷ From his first incarceration in 1921 to the last one which ended in 1946, Manmathnath Gupta spent a total of 20 years in prison. He narrates his experiences in *They Lived Dangerously*, Delhi, 1971.

³⁸ Rajagopalachari's accounts tell us that the term *swadeshi* was used in a similar vein by ordinary prisoners for non cooperators in Madras. C. Rajagopalachari, *Jail Diary*, p.50.

³⁹ Manmathnath Gupta, *They lived Dangerously*, p.29.

precluded by jail discipline.⁴⁰

Most jail accounts by nationalist prisoners of the period, present themselves as the champions of the rights of ordinary prisoners. Their writings give the impression that the ordinary prisoners too regarded them as their leaders in their fight against the squalor in the prison.⁴¹ It might have been possible that the large numbers of political prisoners enthused by a spirit of the public legitimacy to disobedience and wilful breaking of laws, inspired the ordinary prisoners with a similar spirit. Gupta mentions that the influence they could exercise over the ordinary prisoners gave them a leverage in their negotiations with the jail authorities so much so that it was no longer considered desirable by the jail authorities to lodge the political with ordinary. He suggests that "... (their) overwhelming numbers and power to incite the ordinary prisoners to any pitch of mutiny decided things in our favour".⁴² We know from official prison reports that the concern with 'discipline' emanating from the above equation between the political and ordinary prisoners reverberated in other provinces. The Superintendent of Chapra Jail made the following observations -

...it is and will be impossible to maintain law and order with these non co-operating propagandists in the jail who are treated with great consideration by order of Government. It is impossible to keep the non co-operators out of communication with other prisoners and unless this is done, I feel certain that the non-cooperation will infect the other prisoners who were usually quiet and well behaved, with mischievous ideas, and

⁴⁰ *Tikram* also provided unique opportunities of defiance. Sampooranand relates an incident in 1922 in Lucknow jail when Ranga Iyer, another political prisoner failed to acknowledge the presence of the jail superintendent in the barrack because he was supposedly sitting in meditation before the picture of Lord Krishna. Clemants, the Jail Superintendent ordered that the picture of Krishna be removed from the barrack. By the miraculous powers of 'tikram', the prisoners acquired several pictures of Krishna and the next day when the Superintendent took his rounds he found all hindu prisoners sitting in meditation. 'The Jail Reminiscences of Dr. Sampoorananda', *Rashtriya Abhyudaya*, dated, 9 January 1995. The reference to *tikram* is also made by Manmathnath Gupta in his jail account. *They Lived Dangerously*, p.28.

⁴¹ Such impressions are conveyed in the jail accounts of political prisoners including that of Manmathnath Gupta, *ibid.*, p.29; Naradeva Shastri recounts that the ordinary prisoners looked up on the political prisoners as deities: *Karavas Ki Kahani*, p.35.

⁴² Manmathnath Gupta, *They Lived Dangerously*, p.31. Of the several described by Gupta one of the most interesting pertains to the necklace which the convicts, political as well as ordinary were supposed to wear round their necks with a wooden board showing the convict's registration number, the section under which he was convicted, his period of punishment and the date of his release. Political prisoners refused to wear this and the ordinary prisoners followed suit. According to Gupta this system was abolished after some time. *ibid.*, p.40.

trouble will ensue.⁴³

Separation of political from other prisoners was considered expedient for prison discipline by prison authorities. On the other hand the nationalist prisoners viewed their segregation from the ordinary as an ideological victory, a battle won in this positional warfare with the colonial government. This act of segregation, says Gupta, was seen by the non-cooperators as their virtual recognition as a separate class of prisoners.⁴⁴ Ordinary prisoners occupied only a marginal place in the nationalist narratives. In order to carve out their political identity, the nationalists distanced themselves from the ordinary inmates of the prison. This quest for separation often involved the middle class nationalist prisoners agitating for preferential treatment in jail. Gandhi, troubled by the scramble among nationalist prisoners for privileges, lamented the departure from the creed of suffering in prison, "...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".⁴⁵ A large number of non-cooperators, the 'freebooters' as Gandhi called them, obviously viewed 'political prisonerhood' in a way which did not fit Gandhi's disciplinary scheme.

We turn now to the initial responses of various provincial governments towards the confinement and treatment of NCM prisoners.

DEFINING BOUNDARIES: PROVINCIAL RULES FOR THE TREATMENT OF POLITICAL PRISONERS

The Congress voluntary imprisonment programme caught the provincial governments unprepared for the enormous influx of prisoners. The governments issued instructions and responded by framing ad hoc rules.⁴⁶ Official accounts convey the

⁴³ File no. 201\VI\1922, NAI, p.126.

⁴⁴ Gupta, *They Lived Dangerously*, p.31.

⁴⁵ 'Misery in Happiness' 22 January 1922, *CWMG*, Vol.XXII, p.236.

⁴⁶ Under section 60 of the Prisons Act 1894, local governments could make rules as regards food, bedding, clothing, employment and forms of labour, general custody, diet and treatment of prisoners. Such rules were subject to the control of the Governor General in Council, however, as jails were part of the provincial subject hence the Central government did not interfere with the discretion of the local government.

impression that the complexity of the situation was compounded for them by the existing prison structures which were apparently not built with the 'new' kind of prisoners in mind. Nowhere was this more manifest than in the 'latrines and washing arrangement' which perhaps more than any other, is the most conspicuous indicator of class difference. It is not surprising therefore, that an official of the Bihar and Orissa government should claim that these arrangements could not be made suitable for political prisoners unless large alterations were made in the jails "which were constructed on the assumption that all prisoners were ordinary criminals."⁴⁷ Obviously, in the official perception nationalist prisoners were understood as belonging to a higher social class than ordinary prisoners. There are several occasions in official discussions where the 'distinctiveness' of a 'political' prisoner is marked out with expressions such as 'educated' and 'respected'. Although the accommodation of these prisoners of a different class appears to have been a perplexing problem for the officers, the preservation of prison discipline, complicated by the arrival of NCM prisoners, remained their primary concern.⁴⁸

Assam, Bihar and Orissa, Bengal, Central Provinces (henceforth CP), Delhi, Punjab and UP decided in favour of a differential treatment of political prisoners. Political prisoners were segregated from the ordinary and some concessions were given to them. On the other hand, Bombay, Madras and North Western Frontier Province (henceforth NWFP) accorded no special treatment to political prisoners. We shall see, however, that the assurance for prison order and discipline lay under both patterns of confinement and treatment of political prisoners.

In Assam, a province which favoured special treatment for political prisoners, the selection was done by Magistrates on the bases of 'antecedents' of prisoners and 'motive'

⁴⁷ The communication was in response to Maulavi Khurshaid Husnain's letter dated 12 January 1922 in the newspaper *Motherland*, complaining against the general condition of jails and treatment meted to political prisoners. File no. JI 16, Local Self Government (Jails Branch), March 1922, BSA, p.3.

⁴⁸ This section is mostly based on the response of the provincial governments to a telegram from the Government of India seeking information regarding the treatment of political prisoners in their province. The Indian Government's definition of political prisoner was purely legal - "Term *political prisoners* comprises offences under sections 124 A (sedition), 153 A (promoting enmity between classes), and cognate sections of the Penal Code and also offences falling under such special Acts as the Seditious Meetings Act and the Indian Criminal Law Amendment Act, 1908". Telegram dated 22 December, 1921, from the Secretary, GoI, Home Department, to the Governments of Madras, Bihar and Orissa, CP, Assam, and Burma. File no. 201\VI\1922, NAI, p.92.

of their offence.⁴⁹ Concessions were extended so as to assure the prisoners a 'kindly' treatment which did not erode their dignity and at the same time did not compromise prison discipline.⁵⁰ In Bihar and Orissa, an early initiative was taken by the IG of Prisons, to treat nationalist prisoners sentenced to rigorous imprisonment as simple imprisonment prisoners. These prisoners were to be treated as "offenders of the first division as in England" which, according to the government, corresponded "more or less to persons sentenced to simple imprisonment in India".⁵¹ A notable concession that the provincial government granted to the nationalists was the facility of 'jail servants'.⁵² The provision of services of this nature, as we shall see, was later incorporated in the general rules for the treatment of NCM prisoners framed at a conference of government representatives. The facility reflects also on the social class of NCM prisoners and the middle class character of the nationalist movement in this period.

The Bengal government created a 'special class' for the accommodation of those political prisoners whose 'social position' and 'mode of living' distinguished them from 'ordinary convicts'.⁵³ It should be noted here that under the Bengal Jail Code, those

⁴⁹ Letter dated 14 January 1922 from the Chief Secretary to the Government of Assam to the Commissioners of Divisions. *ibid.*, p.98.

⁵⁰ Concessions included permission to wear own clothes at the time of transfer and not being fettered. Other facilities pertaining to food and cooking, bedding, books, letters and interviews were also given. Letter dated 17 January 1922, from the Chief Secretary of the Government of Assam to the Secretary, GoI, in response to the latter's request for information on the treatment of political prisoners in the province. *ibid.*, p.97.

⁵¹ Political prisoners were identified in legal terms as those who were prosecuted under the "Criminal Law Amendment Act or sections 124 A (sedition) or 153 A (promoting enmity between classes) of the Indian Penal Code or the relevant sections of the Criminal Procedure Code". Letter dated 21 December 1921, from the IG of Prisons to Superintendents of all Central, District, and Sub-Jails on the subject of treatment of political prisoners pending orders from the Government. *ibid.*, p.95.

⁵² Jail administration charged a rate of annas eight per head for cleaning of wards or cells and the same charges for cleaning cooking vessels or dinner plates or cups by the jail servants. Political prisoners were allowed to have their own clothes, bedding and get food from outside. 'Indulgences' such as betel leaves, nuts and smoking were permitted if they received it from outside. A weekly visit from a friend or relative was permitted and they were also allowed to receive and send a letter once a week. Letter dated 2 January 1922, from the IG of Prisons, Bihar and Orissa to Superintendent of all Central, District and Subsidiary Jails, Bihar and Orissa regarding discipline in jails and the treatment of political prisoners. *ibid.*, p.97.

⁵³ The Bengal government framed special rules under section 60 of the Prisons Act 1894, for the treatment of what it termed as 'special class' prisoners. The special class prisoners were provided with certain facilities viz., 'special' clothing, 'separately' cooked food, permission to use own bedding, separate latrine accommodation, light in their cells or ward till 10 p.m., monthly interview and permission to write

Indian prisoners whose mode of living approximated the European, were classed as European and given the privileges associated with that class in prison.⁵⁴ Mass incarcerations in this period introduced a situation where a number of higher class prisoners could not be given such facilities owing to their non European way of life. The creation of a special class enabled the government to accommodate them. The government, however, was pressurised by members of the Bengal Legislative Council to modify the existing laws to "accord the same treatment to political prisoners as to first class misdemeanant in England" and pending such modification, place "all Indian political prisoners on the same footing as European prisoners..."⁵⁵ The government expressed its inability to implement Council resolution on grounds of 'lack of resources' and the large numbers of political prisoners.⁵⁶ The Punjab government decided to provide differential treatment and extend 'concessional' facilities to what it termed as 'A' class prisoners. Those who had higher 'status in life' and 'education' were eligible for allotment to it. Apart from being kept separate from ordinary prisoners, the prisoners of this class were allowed to 'sleep in the open' in summer and given 'separate latrine facilities' for convenience and privacy.⁵⁷

In June 1920, the UP government interned two persons of 'some standing', convicted under section 108 of the Criminal Procedure Code, in the civil ward. They were allowed their own clothing and bedding, no labour was exacted, and concessions

and receive letters once a month. Letter dated 7 January 1922 from the Officiating Secretary to the Government of Bengal to the Home Secretary, GoI. *ibid.*, pp.99-100.

⁵⁴ The facilities of this class, considerably higher than any other, were provided under chapter XXXIV of the Bengal Jail code.

⁵⁵ A resolution to this effect was passed by the Bengal Legislative Council on 7 February 1922. Letter dated 14 February 1922 from Secretary to the Bengal Legislative Council to the Secretary to the Government of Bengal, Revenue (Jails) Department. *ibid.*, pp.102-103.

⁵⁶ Letter dated 28 March 1922 from Officiating Secretary to the Government of Bengal, Revenue Department to The Secretary to the Bengal Legislative Council concerning resolutions regarding the treatment of persons convicted of offences commonly described as political. *ibid.*, p.104.

⁵⁷ 'A' class prisoners were accorded differential treatment as regards food, clothing, cooking, utensils and interviews. Letter dated 28 December 1921 from the Chief Commissioner, Delhi to the Superintendent of Jail, Delhi. *ibid.*, p.92. Three prisoners singled out for special treatment in Delhi refused to avail of them. Telegram dated 28 December 1921, from Chief Commissioner, Delhi to the Secretary, GoI, Home Department, on the subject of differential treatment for political prisoners in the Delhi Jail. *ibid.*

were allowed with regard to shaving, interviews, reading and jail discipline generally. As the number of nationalist prisoners swelled, the government decided that all cases of conviction under special Act or the ordinary law, sentenced to prison for simple or rigorous imprisonment, were to be considered for 'special treatment'. It did, however, decide to weed out what it called "bazar riff-raff, hired demonstrators or disorderly elements from the villages". The reason for this selective grant of privilege was explained by the government as a matter of experience in the latter cases where "special treatment or simple imprisonment is no deterrent".⁵⁸ These prisoners were subsequently labelled as 'non-political' and sent to ordinary jails. Fearing that the award of simple imprisonment "in the case of yokels from the bazar will encourage defiance of law",⁵⁹ the government issued an order to the Commissioners of all divisions that the award of simple imprisonment should be 'the exception and not the rule'.⁶⁰ Those prisoners recognized as 'political' were sent to special jails with certain concessions in jail discipline. Among those who were identified as 'politicals' a further sub division was made into 'first' and 'second class misdemeanant'. While the former were placed at Lucknow jail the latter were sent to the Fyzabad District jail.⁶¹

The Bombay government objected to the use of the term 'political prisoner' in official documents on the grounds that it was 'inaccurate' and 'misleading'. It suggested that the term, "be restricted to its proper application, denoting persons confined without

⁵⁸ Press Communique, dated 12 February 1922 cited in a letter dated 17 March 1922, from the Chief Secretary, Government of UP to the Secretary, GoI, Home Department. *ibid.*, p.101. The provincial government also instructed that the "The warranty of all others should be clearly endorsed in the same way 'not political prisoner' and they will be sent to the ordinary jail to serve out their sentences of rigorous imprisonment in the usual ordinary way".

⁵⁹ Departmental order dated 11 January 1922 from the Chief Secretary, Government of UP to all Commissioners of Divisions, UP. File no. 1578\1922, Box no. 139, Judicial - Criminal, UPSA, pp.16-17.

⁶⁰ *Ibid.*, p.16.

⁶¹ Political prisoners qualifying for special treatment were not to be punished by solitary confinement, penal diet or flogging. They were also excused from any labour in jail. Political prisoners were also exempt from some of the humiliating signs such as neck rings and ankle rings. Other privileges included diet similar to European prisoners or option to purchase own food and facilities for cooking, weekly interview, send and receive one letter a fortnight. Books and newspapers which were not considered objectionable were allowed. They were also allowed to put 'caste-marks' if they desired. *Rules for the treatment of First Class Misdemeanants Classified as such by Government*. File no. 201\VI\1922, NAI, pp.84-85.

trial and conviction under the criminal law, as an act of state or under extraordinary powers, such as the recently repealed Defence of India Act".⁶² Political prisoners were in all respects treated as ordinary prisoners, but not put on hard labour.⁶³ Madras did not give its political prisoners any concessions.⁶⁴ We learn of this from nationalist accounts as well. C.Rajagopalachari entered the following in his jail diary on 22 December 1921,

Government seem either indifferent or determined deliberately to treat us like common criminals in every way. Our food is the same as that of ordinary criminals, we are locked in and out at the same hours, we have to eat on the filthy ground, standing, or sitting on our toes, and hurrying it off the plate, like beggars being fed.⁶⁵

He further wrote on 31 January 1922 that "the political character of the prisoner is recognized only as an additional sin and not as marking out the absence of moral depravity".⁶⁶

In NWFP all persons convicted of offences connected with political movements were sentenced to rigorous imprisonment. The official justification for a "strongly deterrent" policy towards political prisoners, rested on the twin principles of 'strategic location' of the province and the 'nature of the inhabitants'.⁶⁷ The government suggested that frontier districts were full of 'excitable' people and a lenient policy towards the political offenders might be viewed as 'weakening of authority', which might result in

⁶² Undated confidential letter from Secretary, Government of Bombay, Home Department to the Secretary, GoI, Home Department. *ibid.*, p.129.

⁶³ As stated in telegram, dated 18 December 1921, from the Secretary, GoI, Home Department to the Viceroy. *ibid.*, p.4.

⁶⁴ Telegram from the Chief Secretary, Government of Madras to the Secretary, GoI, Home Department, dated 10 January 1922. *ibid.*, p.97.

⁶⁵ C.Rajagopalachari, *Jail Diary*, p.4.

⁶⁶ *Ibid.*, p.52.

⁶⁷ The Central government was informed that 41 persons were undergoing prison sentence in the province for offences connected with political movements. Of these, 23 were imprisoned for having failed to provide security demanded under section 40, Frontier Crimes Regulation and 18 were sentenced under Part II of the Criminal Law Amendment Act. A conspicuous exclusion from this category of offenders were 10 persons convicted of participation in Bolshevik conspiracy. Telegram dated, 8 July 1922, from the Chief Commissioner, NWFP to the Secretary, Home Department, GoI. File no. 201/VI/1922, H(P), NAI, p.114.

a further spread of trouble among the transborder tribes.⁶⁸ It was also argued that effects of political movements such as the *Khilafat* agitation reverberated across the border into Afghanistan conveying wrong signals of weakening authority. Harsh treatment of political offenders ostensibly projected an image of strong authority discouraging any threat from across the border and within.

The official directives in the CP related not to the treatment of political prisoners but to regulating the conduct of the jail staff with respect to those prisoners. There were explicit instructions to the jailers and the subordinate staff not to discuss the affairs of the prisoners with other people in the bazar or with their friends, as the "very existence" of "these semi-political prisoners" depended "on the amount of notoriety they are able to obtain".⁶⁹ To guard against the prisoners' attempts "to tamper with the loyalty of the jail Staff" the Superintendents and Jailers were expected to pay surprise visits and keep close watch over their warders and other subordinate staff.⁷⁰

The unprecedented influx of NCM prisoners forced the prison authorities to initiate fresh measures to maintain order and discipline in prison. The initiatives of various provincial governments took the form of, either separate confinement with special concessions, or as in the case of Bombay, Madras and NWFP, rigorous treatment. The large numbers of NCM prisoners, particularly the presence among them of a significant number of middle class prisoners, proved critical in forcing the authorities to review the conditions of imprisonment. We gather from the initial official responses that they regarded the existing prison arrangements and rules as inadequate to meet the requirements of the 'different' class of nationalist prisoners. Some provincial governments like Bihar and Orissa preferred to give the nationalists what they considered to be the treatment accorded to political prisoners in Britain. This amounted to treatment as 'first class misdemeanant' in prison. Nationalist discourse on equality in prisons focused on treatment appropriate to their middle class status. The Bengal Legislative Council passed a resolution to the effect that nationalist prisoners should be accorded

⁶⁸ Ibid.

⁶⁹ Letter from the Chief Secretary, Government of CP to the Secretary, GoI, Home Department. *ibid.*, p.94.

⁷⁰ Ibid.

treatment analogous to 'first class misdemeanant' in Britain. There seems to have been an assumption in both official and nationalist positions that political prisoners in Britain were deemed as 'first class misdemeanant' and given a preferential treatment. We shall in the next section present briefly the contest which took place in Britain over the question of treatment of political prisoners, the diverse ideological traditions, shifts in policies and postures in public pronouncements and actual practice at the beginning of the twentieth century. This will enable us to understand the derivative nature of nationalist discourse on political prisonerhood and also the colonial government's attempts to impede the nationalist endeavours for equality.

POLITICAL PRISONERS IN BRITAIN

British political tradition is replete with diverse ideological movements which have challenged the prevailing social and political order. Throughout large scale movements of political discontent in the period between 1840 and 1914, the Chartists, the Fenians and the Suffragettes raised the question of the status and treatment of those convicted of political offences. In the war years the conscientious objectors and communists tested the tolerance of English liberalism towards political opposition. It is interesting to note, however, that authoritative accounts of English penal system have been remarkably silent on the subject of 'political crime'.⁷¹

In their study of English criminal law Radzinowicz and Hood suggest that the

⁷¹ Among the authoritative works which fail to acknowledge political prisoners are Edmond Du Cane, *An Account of the Manner in which Sentences of Penal Servitude are carried out in England*, 1882; and *The Punishment and Prevention of Crime*, 1885; Evelyn Ruggles-Bryce, *The English Prison System*, 1921; Lionel Fox, *The Modern English Prison*, 1932 and *The English Prison and Borstal System*, 1952. Sydney Webb and Beatrice Webb refer to political prisoners only in a foot note *English Prisons under Local Government*, 1922, p.200. B.L.Ingraham, L.Radzinowicz and R.Hood are among the notable exceptions, who have analysed the development of the notion of 'political crime' in Britain and other European nations over a period of time. Ingraham has examined penal developments with respect to political offences in the context of comparable developments in Britain, France and Germany. He traces the rise and ebb of what he terms the 'policy of leniency' in the responses of the states to the various periods of political unrest between 1770 and 1970. Barton L.Ingraham, *Political Crime in Europe: A Comparative Study of France, Germany, and England*, California, 1979. Radzinowicz and Hood have traced the emergence of British penal laws regarding political offenders to the nature of the popular movements, especially those of the Chartists, the Fenians and the Suffragettes. Leon Radzinowicz and Roger Hood, *A History of English Criminal Law and its Administration from 1750*, Vol.5, London, 1986. The subject of political offenders is examined in the fifth volume of their work. Our historical survey of treatment of political prisoners in Britain is based largely on works of Ingraham and Radzinowicz and Hood.

definition of political offender remained an 'obdurate' and 'stubborn' problem in English penal history. The official line adhered to the principle that no one could claim exemptions from the criminal law on grounds of his/her act having been politically motivated. In practice, however, relaxations were given on certain humanitarian grounds of health; superior social background, since prison regimes were believed to have been made for men and women of labouring classes; and sometimes for reasons of political expediency.⁷²

The politicisation of prison occurred in Britain in a major way in the eighteenth century with the upsurge of Jacobin radicalism in England after 1792 and the popular movements for parliamentary reforms, resulting in a large number of Jacobin political prisoners.⁷³ The contest between the state and the Jacobin radicals, brought into focus the issue of imprisonment, questioning the very basis of the reformist aspirations behind the penitentiary. The radical prisoners succeeded in making the new prisons a political issue. The influx of prisoners belonging to a different class from the 'eighteenth century gentlemen' put the government's attitude towards its political dissidents to test. The British government did not give the artisanal radicals the privileges granted earlier to political dissidents belonging to the gentry. Ignatieff encapsulates the official dilemma as follows,

...though this was usually left unstated, most political offenders in the eighteenth century had been gentlemen. Arguments about civil liberties neatly dovetailed with feelings of class to reinforce the practice of isolating political offenders from the "low ruffians" in the rest of the prison.⁷⁴

⁷² Leon Radzinowicz and Roger Hood, *A History of English Criminal Law*, p.461.

⁷³ The artisans and journeymen of London met under the leadership of Thomas Hardy, a shoe maker, in January 1792 and established the London Corresponding Society (LCS) to initiate popular agitation for parliamentary reform. Branches of the London LCS spread soon to Sheffield, Derby, Birmingham and Manchester, setting up the first working men's political organization with a national base. Their ideology derived from the seventeenth century radical sects, from the tradition of 'rights of free-born Englishmen', and partly from the Jacobin tradition in France as enunciated in Tom Paine's *Rights of Man*. Michael Ignatieff, *A Just Measure of Pain*, 1978, p.120-21.

⁷⁴ Thomas Hardy, a shoemaker by profession and also the Secretary of the London Correspondence Society was not allowed the 'luxuries' enjoyed by Lord George Gordon, the instigator of what came to be known as the 'Gordon riots' of 1780 in which a large crowd broke into the London jails and freed arrested rioters. Both Gordon and John Wilkes, the radical member of Parliament and a popular leader in the 1760s, were allotted special 'apartments', furniture, and personal wardrobe, had access to books and a

The contentious question of the treatment and status of 'political' prisoners came into sharp focus again during the period 1839-40 when several leaders of the Chartist movement were convicted and imprisoned.⁷⁵ In this 'springtime of the policy of leniency', to use Ingraham's expression,⁷⁶ controversy over the status of 'political' prisoners was prompted by the discontent expressed by Lovett and Collins, leaders of the Chartist movement, over the 'common' treatment meted out to them.⁷⁷ At the different levels of government, there seems to have been an absence of concurrence on the question of the 'special' status of political (Chartist) prisoners at this juncture. At the level of the prison itself, the regime of each local prison was regulated by the local justices of peace, who made rules for the governance of the prison under the Gaol Act of 1823. The inconsistencies in the treatment of Chartist prisoners in the various local prisons were sought to be corrected by the Prison Bill of 1840. This Bill divided the prison population into two divisions, the first and the second. Those allotted to the first division were not subjected to the uniform prison regulation and were given certain privileges. No attempt, however, was made to define the nature of the prisoners who were to constitute the first division. The law thus stopped short of admitting that there was a separate class of political offenders who were entitled to differential or privileged

servant and also enjoyed unrestricted visiting privileges. *ibid.*, p.123.

⁷⁵ The Chartist movement was a working class movement in the nineteenth century aspiring for universal manhood suffrage, equal electoral districts, the secret ballot, removal of property qualifications for membership in the House of Commons and compensation of members of the House of Commons so that working men could sit in the House without losing their jobs. The movement started on a moderate temper but gradually developed more direct modes of resistance, engaging in what was tantamount to a general strike. In a statistical summary Ingraham states that between January 1839 and June 1840, 544 commitments for political crimes were made in Britain. Among these prisoners, 13 were committed for high treason and sedition, 6 for seditious libel, 1 for blasphemous libel, 6 for sedition, 19 for seditious words, 69 for seditious conspiracies, 93 for unlawful assemblies and 125 for riots. Of these, 467 persons were tried for offences connected with Chartism. Ingraham, *Political Crime in Europe*, pp.150-151.

⁷⁶ Ingraham suggests that there was no 'hasty recourse' to special emergency laws, or the use of those already on the statute books, for banning meetings or suppressing the press. Although the death penalty was not eliminated for the offences of treason, there was no attempt to confer death sentences for political crimes. Special statutes were passed which gave the government the option of inflicting alternative penalties for certain activities which were regarded treasonable by law. *ibid.*, 119.

⁷⁷ Several instances of privileged treatment were cited by the Chartists in support of their demands particularly, the example of Richard Carlile who was imprisoned in 1830s. Carlisle was alleged to have had a room to himself in prison and allowed visits from his friends who brought him food and other necessities. Radzinowicz and Hood, *A History of English Criminal Law*, Vol.V, p.407.

treatment inside the prison. The matter was left at the discretion of the judges to be decided on the merit of specific cases.⁷⁸

In 1848, the Treason-Felony Act was passed to deal with political opponents, primarily the Fenians making possible their conviction and confinement under harsh conditions.⁷⁹ Nowhere is the intention of the Act more clear than in the sentiments expressed by Robert Peel, "I think that men who have not the dignity of traitors should not be allowed to cover themselves with the illusion that they are traitors. I wish to see them reduced to the position of felons".⁸⁰ The leaders of the Fenian movement, regarded themselves not as traitors but as prisoners of war and expected to be treated differently.⁸¹ The issue of ill treatment of Fenian prisoners was made complex by the government's stance that enquiries into such allegations could not be made within the broader question of the treatment of political prisoners.⁸² The common official feeling was that the complaints were not more than what were encountered in the "ordinary incidents of convict life".⁸³ The election of a Liberal government, did result in the show

⁷⁸ Ibid., p.414.

⁷⁹ The Treason-Felony Act, 1848 converted certain actions construed under the existing Treasonable and Seditious Practices Act, 1795 (made permanent in 1817), as treason, into a new category of felony known as 'treason-felony'. The Act provided alternatives to the penalty of death which some of the acts of treason, now termed treason-felonies were given. The Act, however, included in its scope those actions which were earlier counted as a lesser offence of sedition, classed only as a misdemeanour and bailable. The provisions of the treason statutes so far did not apply to Ireland. The treason-felony Act was also extended to Ireland.

⁸⁰ Radzinowicz and Hood, *A History of English Criminal Law*, p.419.

⁸¹ All Fenians were, however, sent like ordinary convicts to Pentonville for a period of separate confinement and then transferred to the public works at Portland, Woking or Dartmoor. They then proceeded to Millbank and then to Chatham. Thomas Clarke Luby, John O'Leary, John Devoy, Jeremiah O'Donovan Rossa and Charles Kickham, all associated with the publication of 'The Irish People', were convicted of treason-felony for "conspiring to subvert the Government of the country, to deprive Her Majesty of her style and title of Queen of Great Britain and Ireland, to separate this country from England and to establish a republican form of Government". All except O'Donovan Rossa, who was sentenced to penal servitude for life, were sentenced for 15 to 20 years. They along with a number of other Fenian prisoners were transferred to English convict prisons. *ibid.*, pp.420-421.

⁸² Ibid., p.424.

⁸³ Ibid., p.425.

of some respect for the Fenian prisoners.⁸⁴ There did not, however, emerge any uniform principle or general rule for the treatment of political prisoners. The new Home Secretary stressed that politically motivated offenders differed so markedly from each other that there did not seem any possibility of laying down general rules of their treatment.⁸⁵

A commission of investigation, presided by the Earl of Devon, set up by the Liberal government, came up with the finding that there was no truth in the allegations of ill treatment of Irish prisoners. The terms of reference of the commission were, however, restricted to the inquiry of whether the prisoners suffered any difficulties beyond those suffered by any prisoner sentenced to penal servitude. The question of political status was effectively circumvented. The Commission blamed the perceived 'political status' of political prisoners for being at the root of disruption of uniform discipline of the prison. The Commission recommended, however, that "the difficulties attendant upon the location and treatment of political offenders may perhaps be most readily and effectively overcome by setting apart from time to time a detached portion of some convict prison for prisoners of this class".⁸⁶ This proposal met opposition from some members of the Commission itself and censure in sections of the Press for attributing to such prisoners a political status. Towards the end of their confinement in England, however, the Fenian prisoners were released as political prisoners, as is evident from Gladstone's decision on their conditional release,

upon the principle which every truly civilized country in the 19th century has never hesitated to act upon - and that is, that a political crime, when it has ceased to be dangerous, and when suffering has been undergone, should be treated with utmost leniency.⁸⁷

In spite of Devon Commission's report, towards the end of the 1870s, the driving sentiment was still not to acknowledge the separate 'political' status of Fenian prisoners. It was, however, felt feasible, and perhaps the only way separate treatment could be

⁸⁴ 49 prisoners were released in 1869, most of them Irish. Of the leaders arrested in 1865, only Charles Kickham was released due to bad health. *ibid.*

⁸⁵ *Ibid.*, p.426.

⁸⁶ *Ibid.*, p.429.

⁸⁷ *Ibid.*, p.430.

given to them without acknowledging their difference, to put them into a separate prison.⁸⁸

As far as the handling of persons convicted of lesser crimes was concerned, Section 67 of the Prison Act of 1865, created two divisions of misdemeanant and provided that prisoners of the first division - those offenders whose 'crime did not evidence any great moral depravity but rather a temporary deviation from the paths of honesty' - should not be deemed 'criminal prisoners' and could enjoy special privileges not enjoyed by others, including wearing their own clothes and being able to read books and newspapers.

The Prison Act of 1877, provided for the first time that any prisoners under sentence for sedition or seditious libel should be treated as a misdemeanant of the first division within the meaning of section 67 of the Prison Act 1865. A growing demand of the Liberal and Irish members of Parliament for special treatment of political prisoners led to the insertion of Section 40 in the Bill. This section provided that any prisoner sentenced for sedition or seditious libel should be treated as a misdemeanant of the first division. The Prison Act of 1898 further removed the conditions imposed for misdemeanant for admission to the first division. It created another division of convict prisoners who could enjoy some but not all privileges enjoyed by the first division. There were thus three divisions of convict prisoners and the courts had the discretion to allocate offenders sentenced to imprisonment without hard labour, to one of three depending on the nature of offence and the offender's social antecedents.⁸⁹ While the difference in treatment between the second and third divisions was almost insignificant,

⁸⁸ The mixing of Fenian prisoners with ordinary prisoners was the source of great misgiving now on the part of those responsible for prison discipline. Du Cane, now the Chairman of the Convict Directors felt that the constant public gaze under which the convict prisons were due to the Fenian prisoners made prison discipline fragile and 'rendered less disgraceful the punishment' inflicted on the ordinary criminals. *ibid.*, p.434.

⁸⁹ Accordingly the first and the second divisions were to be available where there was "evidence of good character over a considerable period of time, and when it was clear that exceptional temptation or special provocation had led to a merely temporary deviation from the paths of honesty, or to an act of violence in consonance with the normal disposition of the defendant". The second division was intended to "meet the case of persons guilty of offences not implying great moral depravity, and to a large extent the cases of persons committed to prison in default of paying a fine where the antecedents were respectable". S.H.Hobhouse and A.F. Brockway, *English Prisons Today: Report of the Prison System Enquiry Committee*, 1922, Pp. 214-215.

the distinction between the first and second was quite vast and tied to the social status of the prisoner.⁹⁰ These changes in the Prison Acts, however, pertained to a limited class of political offenders - those convicted of sedition or seditious libel - and did not bring in its scope those convicted of treason felony, who were mostly the Fenians. It appears also that the English Judges made very little use of the Act to assign special divisions of offenders.⁹¹ This abstention as we shall see, became an embarrassment for the government after 1909 with the rise of the suffragette movement.

The suffragette movement made 'prison going' a strategic part of their expression of defiance. They broke the ordinary law to court arrest and carried their campaign inside the prison demanding first division treatment befitting their political status. While the Prison Act of 1898 provided for a first division and many women suffragettes would have qualified for allotment to it owing to their affluent and 'respectable' background, the courts were reluctant to allot an entire class of prisoners to a privileged category. Consequently most women suffragettes were assigned to the second and increasingly to the third division meant for 'common' criminals.⁹² The English and Irish Suffragettes protested to be placed in the first division as a recognition of their political status.⁹³ The

⁹⁰ Discussion of the classification and allotment of prisoners is based on the works of Ingraham, *Political Crime in Europe*, pp.210-212 and Radzinowicz and Hood, *A History of English Criminal Law*, pp.421-442.

⁹¹ S.H.Hobhouse and A.F.Brockway, *English Prisons Today: Report of the Prison System Enquiry Committee*, 1922, p.222.

⁹² Pressures from outside and resistance by the prisoners themselves led to gradual relaxation of privileges. The stipulated first month of separate confinement was moderated on medical grounds by allowing two periods of exercise. Later the women were also allowed to work in association. There was also a relaxation of rules for all second division women prisoners. A chair was provided instead of a stool, better washing facilities were provided, visits were to take place in a room specially chosen for the purpose, work in association, provision of reading material and permission to read till 8 p.m. Last but not the least the undignified strip searches in front of the wardress were given up. Radzinowicz and Hood, *A History of English Criminal Law*, p.446.

⁹³ Both the English and Irish suffragettes claimed that privileges of the first division had been granted to Chartist and Irish prisoners convicted of seditious conspiracy and seditious libel respectively. In order to press their demands the Suffragettes started a concerted campaign of disobedience. In the prison at Holloway, the women refused searches or to wear prison clothes, covering themselves with just a blanket. The acts of disobedience by the women in the first month of separate confinement were described by prison authorities as 'neurotic' and 'highly strung'. Women suffragettes in Irish prisons suffered similar personality typing at the hands of prison doctors. Cleona Murphy, *The Suffrage Movement and Irish Society in the Early Twentieth Century*, 1989, pp.96-98.

form of resistance which elicited major public attention and tormented the authorities was the recourse by them to hunger strikes. The government's recourse to forcible feeding of the suffragettes caused great public indignation.⁹⁴

Winston Churchill, who was then the Home Secretary, in charge of the English prison system sought to redeem the situation by redefining the guiding principles of prison treatment of political offenders. A political prisoner should, he stressed be defined as a person who had committed an offence with a distinct political object involving no moral turpitude. He gave to the Secretary of State the power to classify any prisoner as political, a discretion which till then under the various Prison Acts lay solely with the courts. He further lay down that the object of confinement of political prisoners was to restrain their liberty and not to enforce conditions designed to erode the prisoner's dignity or self respect.⁹⁵ To bring this principle into effect he enacted a new Prison Rule (Rule 243 A) which allowed privileges of the first division to be extended to those prisoners in the second and third divisions who were convicted of offences not involving dishonesty, cruelty, indecency or serious violence.⁹⁶ This Rule was devised especially

⁹⁴ Forcible feeding was, however, not resorted to in all cases. Upper class hunger striking women were released rather than force fed, on grounds of poor health. Public outcry over forcible feeding of women persuaded the government to enact the 'Prisoners (Temporary Discharge for Ill Health) Act', commonly known as the 'Cat and Mouse Act, 1913', to let the Suffragette prisoners out of the prison without losing political ground. Section 1(1) of the Prisoners (Temporary Discharge for Ill Health) Act, 1913, provided that if the condition of a prisoner's health made it undesirable to detain him or her in prison and such condition of health was wholly or partly due to the prisoner's own conduct in prison, the Secretary of State could, without remitting the sentence, authorize the temporary discharge of the prisoner for such period and subject to such conditions as might be stated in that order. Section 1(2) laid down that the discharged prisoner would comply with the conditions and return to prison at the expiration of the period stated in that order, or of such extended period as might be fixed by any subsequent order of the Secretary of State. If the prisoner failed to do so, he could be arrested without warrant and taken to prison. For the text of Act, see file no. L&P&J\8\492, IOL. For a detailed analysis of hunger strikes and forcible feeding in colonial India see the next chapter.

⁹⁵ For details see R.S. Churchill, *Winston Churchill*, Vol.II, 1969, p.387 and Vol.II, Companion, Pt.2, pp.1154-1155.

⁹⁶ The Churchill Rule, by which name Rule 243A came to be known came into effect in July 1910. The Rule lay down that, "In the case of any offender of the second or third division whose previous character is good, and who has been convicted of, or committed to prison for, an offence not involving dishonesty, cruelty, indecency, or serious violence, the Prison Commissioners may allow such amelioration of the conditions prescribed in the foregoing rule as the Secretary of State may approve in respect of the wearing of prison clothing, bathing, hair-cutting, cleaning of cells, employment, exercise, books and otherwise. Provided that no such amelioration shall be greater than that granted under the rules for offenders of the first division". Quoted in Hobhouse and Brockway, *English Prisons Today*, p.222.

to suit the special case of women suffragettes and other passive resisters.

Passive resisters and conscientious objectors resisted conscription during the two world wars and were subjected to penal sanctions leading to new debates on the issue of political prisoners.⁹⁷ No new major development, however, took place regarding their treatment in prisons and the application of the 'Cat and Mouse' procedure continued.⁹⁸ After the First World War there appears a restoration of the death penalty for crimes which were clearly political in nature, such as treason, espionage, and insurrection. Special prison divisions were abolished in the Criminal Justice Act 1948, and special treatment of prisoners convicted of sedition, seditious conspiracy, or seditious libel in the Criminal Justice Act, 1967.⁹⁹ The British Communists who were often arrested for seditious offences in the years 1920-21 and 1925-26, were prevented from enjoying the privileges of the first division under section 40. They were often charged with the violation of an emergency regulation or with a criminal conspiracy to publish and utter

⁹⁷ From the time of the passage of the Conscription Act 1916 until the Armistice, approximately 16,000 men refused military service, and some 1,300 refused all forms of alternative service and were imprisoned. At first their sentences were served in the third division with common criminals and they were put on hard labour, it was only towards the end of 1917 that a few privileges were extended under the Churchill Rule (Rule 243 A) to those among them who had already served twelve months in the third division. This situation lasted until 1919 when most of them were released from prison. For a study of conscientious objectors during the first world war see David Boulton, *Objection Overruled*, London, 1967. A study of conscientious objection during the second World War is, Rachel Barker, *Conscience, Government and War: Conscientious Objection in Great Britain 1939-45*, London, 1982. For a history of the use of detention for reasons of 'national security' during the second World War under regulation 18B of the Defence Regulations see A.W.Brian Simpson, *In the Highest Degree Odious, Detention Without Trial in Wartime Britain*, Oxford, 1992.

⁹⁸ The application of 'cat and mouse' procedure on conscientious objectors, became a means of making them serve long and harsh sentences. The end of each sentence became only a beginning of a new one, as the released prisoner was rearrested as an army deserter, court martialled and sent eventually to the civil prison to serve a 'new' sentence. In this manner some objectors served as many as six consecutive sentences. That each sentence was considered new, was significant, since the first month of each confinement was particularly harsh. Under the 'cat and mouse' procedure, thus conscientious objectors went through a 'first month' intermittently, for what was in reality a long and continuous sentence. David Boulton, *Objection Overruled*, p.220. For an account of the application of the 'Cat and Mouse' procedure on conscientious objectors during the second World War, see Rachel Barker, *Conscience, Government and War*, pp.85-89.

⁹⁹ In 1948 a criminal justice Act was enacted to reform and bring up to date many old laws concerning the administration of punishments and the trials of criminal proceedings. Section 1 of the Act abolished sentence of penal servitude, hard labour, and the prison divisions. Section 40 of the Prison Act of 1877 was repealed. After the passage of the Act, special treatment could be extended to persons convicted of seditious offenses, but they could no longer be assigned to a special prison division. Lionel Fox, *The English Prison and Borstal Systems*, London, 1952, p.292.

sedition libels and words, to avoid the application of section 40. As a result of these legal manoeuvres, the British communists were ordinarily confined in the second or the third divisions.

It is proposed in the above discussion that despite official resistance to recognizing political offenders as a separate category in penal law, concessions were given to them in prison on certain grounds. By and large, however, the objective of deterrence conditioned prison treatment of political prisoners of all ideological currents from Jacobins, through Fenians and Suffragettes to the Communists. Social class, however, emerged as a decisive factor determining the preferential treatment accorded in prisons to a section of political offenders. Ingraham explains this reluctance to recognize political crime as a category apart, in terms of declining social reverence to political crime. He suggests that the popular perception of political crime as offence against authority motivated by 'moral' considerations of either national self determination or for the rights of the poor, underwent a change in the twentieth century. He sees the roots for this change in popular perception, in the strong sentiments of nationalism and broadening social base (albeit with major exclusions viz., women and the working class) of the representative institutions. Under these circumstances political crime came to be seen not as offence against authority but against the people and a threat to national integrity.¹⁰⁰

In the colonies, however, the social basis of the colonial state being narrow, nationalist activities enjoyed a great deal of credence and popularity. This, however, did not imply that the latter could escape repression by the state. While the repression of political offenders in Britain was rationalized by a discursive strategy pronouncing them as undemocratic, the repression of the latter was justified by an essentialist construction of the subject population as unfit for unqualified freedom and democracy.

We noted earlier that a strand of opinion among the colonial officials favoured differential treatment of political prisoners in India, more in line with the first class misdemeanant in Britain. It is to this strand, represented by the Secretary of State for India, that we turn our attention now. We shall examine in particular, who these prisoners were who could, in the Secretary of State's opinion, be regarded as political;

¹⁰⁰ Ingraham, *Political Crime in Europe*, pp.219-220.

how were they to be recognized in law as political; what kind of prison treatment he envisaged for them and to what purpose. We shall see thereafter, the impact of, and reactions to, these proposals on the official opinion in India, both at the levels of Central and provincial governments, and the projection of alternate official opinions in India epitomized by the dominant thinking in the Jail Reforms Committee of 1919-20. The differences in opinion culminated in a conference among the representatives of governments to move to a consensus. We shall in the following section analyse these governmental manoeuvres, asking the same questions as we did with respect to the Secretary of State's proposals.

POLITICAL INITIATIVE AND BUREAUCRATIC RESOLUTION: POLICY REGARDING TREATMENT OF NATIONALIST PRISONERS

In September 1919, the Secretary of State addressed to the Governor General the possibility of differentiating the prison treatment of persons convicted of political offences and suggested the institution in India of a form of prison treatment for such offences analogous to that undergone by first class misdemeanant in England. The government of India, after more than a year of deliberations, rejected the Secretary of State's proposals and informed him in April 1921 that recommendations of the Jail Committee to divide simple imprisonment into two classes - one with and the other without the liability to labour - with special treatment for persons likely to be adversely affected by ordinary jail treatment and discipline, was being considered suitable for the Indian conditions. The government hoped by adopting the recommendation of the Jail Reforms Committee to be able to secure some degree of leniency in the treatment of "purely political offenders".¹⁰¹ By rejecting the Secretary of State's proposals and considering the Jail Committee's recommendations the colonial government consciously steered itself clear of making any commitment to give differential treatment to political offenders as a class.

The Secretary of State, however, pressed the issue in his response to the

¹⁰¹ File no. 201\VI\1922, H(P), NAI, p.1.

Government of India.¹⁰² In building a case for differential treatment for political prisoners he proposed a change in the Indian penal law itself so that alternative punishments could be laid down for purely political offences. He recommended for political prisoners imprisonment of a 'special kind', which fell outside the existing categories of 'rigorous' and 'simple', and corresponded broadly with imprisonment in the first division in England,

...involving, in the main to the loss of liberty (but not necessarily to being housed in a prison), avoid any imposition or obligations which are humiliating or degrading, admit of greater facilities to obtain books, food etc. but at the same time provide for a prisoner's greater isolation...¹⁰³

In a candid opposition to the recommendation of the Jails Committee, the Secretary of State expressed his view that he did not see that "the problem of providing in India a type of punishment most suitable for offenders who would rightly be the subjects of preferential treatment would be solved by the mere establishment of two classes of "simple' imprisonment".¹⁰⁴

The purpose of imprisonment under this formulation appears not in the nature of punishment for an offence, as much as it provided the means to confine persons belonging to 'respectable' sections of society convicted of political offences, in 'restricted liberty', 'freedom from labour' and 'greater isolation'. In doing this the Secretary of State hoped to remove political prisoners from the scene of their 'offence' without creating an affront to public feelings.

The Indian Jails Committee, whose recommendations supplanted the Secretary of State's proposals had started its term with the mandate to suggest 'improvements' in

¹²⁰ Notes dated 30 December 1921 by W.M.Hailey, Member, Executive Council. *ibid.*, pp.9-10.

¹²¹ *Ibid.*

Indian jail administration "in the light of the experience of the West".¹⁰⁵ One might assume that following this directive, there ought to have been a great deal of affinity in the recommendations of the Committee and the proposals of the Secretary of State. The resolution of the Committee, however, truncated the mandate even at the outset by claiming that experiments in the West would only selectively apply to India because there were,

differences in prison practice in England and India, and they did not desire in any way to imply that all the experiments of the West are necessarily suitable for the introduction in the East.¹⁰⁶

The issue of political prisoners was touched only sparingly by the Committee. While discussing penal developments in Britain it failed to acknowledge the subject of political prisoners there.¹⁰⁷ We noted in the preceding section, that it was early in the same decade that the suffragettes had waged a stiff resistance against the British government and jail officials to secure a differential treatment in prisons. To be treated as first division misdemeanant was perhaps uppermost in the agenda of political prisoners and the Churchill clause was a compromise attempted by the British government. This 'western' experience was not reflected in the Committee's report which was submitted in 1920. Even where the report discussed the system of classification and separation in Britain, there was no reference to the contest over the politicisation of the first division. In its recommendations, the Committee ruled out the possibility of having anything analogous to the first division in India, because in its opinion the offences for which first

¹⁰⁵ The resolution to appoint a Committee to investigate the subject of jail administration was adopted by the Imperial Legislative Council at Delhi in the winter of 1913-14. The Committee was eventually set up only in April 1919 after the War. The seven member committee was chaired by Alexander G. Cardew (Member of the Executive Council, Madras). Other members included James H. DuBoulay (Secretary to the GoI, Home Department), Colonel James Jackson (Ex IG of Prisons, Bombay), Lt. Col. Walter J. Buchanan (IG of Prisons, Bengal), Khan Bahadur Khalifa Syed Hamid Husain, D.M. Dorai Rajah, of Pudukottah and Norman G. Mitchell-Innes (Inspector of Prisons, Home Office, London). Government of India: Home Department (Jails) Resolution, No. 63, dated 28 April 1919. *Appendix I to the Report of The Indian Jails Committee, 1919-20, Vol. I, p. 397.*

¹⁰⁶ *Ibid.*, p. 398.

¹⁰⁷ In this voluminous and comprehensive document (three hundred and ninety pages excluding appendix) there exist just two pages dealing with proposals regarding the treatment of political offenders in Indian jails. In contrast to the nineteenth century reports which were completely silent on the issue of political prisoners, this report, however, referred to 'proposals regarding special treatment of political prisoners', if only to reject them.

division was allotted in Britain were mostly civil in nature and beyond the scope of the IPC.¹⁰⁸

The Committee rejected the idea of any separate category of political prisoners based on the notion that political crime could be construed as a distinct category of crime based on the consideration of motive. It drew on the work of the Italian positivist, R.Garofalo to sustain its point:

In political crimes...it is of little moment what the political object may be, if the sentiment of the humanity is wounded. ...in such cases the crime exists independently of the passion which has provoked it. It exists because of the wilful intent to destroy human lives.¹⁰⁹

While motive could play a decisive role in deciding individual cases, it could not, asserted the Committee, by a legislative or executive measure, be made the basis of differential treatment for an entire class of prisoners. Apart from this, its members felt that distinguishing between crimes on this basis and giving political offence a more lenient treatment would become tantamount to encouraging crimes of that nature. Moreover, it envisaged practical difficulties in ascertaining a purely political crime. Lastly, the view that theft, dacoity or murder became less heinous if committed with a political motive or for the furtherance of a political movement, was rejected as detrimental to public safety.¹¹⁰ In its disregard of motive as a distinguishing factor in defining crime, the committee expressed strong positivist tendencies. Positivism had in fact become a strong influence in the legislation of European countries in the twentieth

¹⁰⁸ Some proposals were put forth before the Jail Committee for consideration in line with the thinking propounded by the Secretary of State was the creation of a separate division in prison for the confinement of political offenders. The suggestion was that persons committing certain 'political offences', such as those punishable under section 124 A (sedition) or 153 A (promoting enmity between classes) of the IPC, who were not inspired by the same motives as those which stimulated ordinary criminals should deserve special consideration and leniency.

¹⁰⁹ The Report quotes Raffaele Garofalo an early positivist, who distinguished between 'natural crimes' and 'artificial crimes'. 'Natural crimes' according to Garofalo are those which are considered in all societies as criminal and deserving of punishment because they violate two fundamental sentiments in people, those of honor and pity. 'Artificial crimes', on the other hand, were criminal because they attacked the political organization of society. 'Artificial crime' could become 'natural' if it threatened the collective existence of society (vis-a-vis a foreign power) or if it assumed the character of natural crime by indulging in murder or arson as in terrorist activities. When artificial crime changed its nature it deserved capital punishment. Garofalo, *Criminology*, (trans. Robert Wyness Millar), Boston, 1914, pp.37-42.

¹¹⁰ *Indian Jails Committee, 1919-20*, p.91.

century, especially after the first world war, so as to counter the liberal sentiment of affording leniency to political crime.¹¹¹

The Committee recommended the creation of two kinds of simple imprisonment: (a) without labour and (b) with light labour. As in the case of second division prisoners in England, it considered it desirable to engage all prisoners in labour. Where enforcement of labour involved difficulties, it recommended simple imprisonment of the (a) kind, but only sparingly.¹¹² As far as the imprisonment condition of 'well-to-do criminals' and the 'leisured classes' was concerned, it advocated that as long as the discomfort of imprisonment did not affect the prisoner's health, it must be regarded as an appropriate penalty which was due to those who, in spite of their advantages of stations commit crime.¹¹³ To mitigate the undesirable effects of these consequences, however, the committee considered allowing the medical officer to recommend special dietary, clothing or bedding and forms of labour thus 'safeguarding the undue hardship

¹¹¹ Positivism as enunciated by David Hume advocates a non essentialist notion of morality and law. It adopts a deterministic view as to the causes of human conduct, the determinants coming either from the organism himself or from the environment outside. Repudiating the idea of moral responsibility in criminal law, it sees criminal law as a measure of social defence or a social reaction to the criminal. Unlike the liberals who were interested in the moral gravity of the act, were more inclined to think that political crime lacked in immorality and were therefore disposed to treating it with benevolence, the positivist rejected the claim that moral quality of the act was at all a relevant consideration in criminal legislation, emphasizing instead the 'social dangerousness' of the criminal. Political criminal was one of the most dangerous criminals from the point of view of the state and was the legitimate focus of 'social defence measure'. However, Garofalo quoted by the Jail Committee in its report, along with Enrico Ferri and Cesare Lambroso, two other early positivists distinguished between crimes as the liberals before them. But political offences like assassinations and assassination attempts against Heads of State and other kinds of terrorist activities did not according to them deserve favourable attention.

¹¹² In paragraph 130 the Committee recommended that all simple imprisonment was to be of the (b) class, i.e. with light labour, unless a court, not lower than that of a magistrate of the first class, directed otherwise. As in the case of second division prisoners in England the Committee thought it desirable to engage all prisoners in labour. This proposal stemmed from the Committee's criticism of the existing conditions of simple imprisonment. Though section 36 of the Prison Act 1894 directed Superintendents of Jails to make provisions for employment, no prisoner sentenced to simple imprisonment could be forced to work. This thought the Committee resulted in idleness, not conducive to jail discipline. The adverse effects of the operation of simple imprisonment under the present rules persuaded an Indian witness to recommend that such sentences of simple imprisonment should be restricted to a minimum. *Indian Jails Committee*, p.89.

¹¹³ Paragraph 131 of the report was concerned with the alleviation of the condition of affluent prisoners, for whom, in the Committee's opinion, a sentence of imprisonment involved much greater disgrace and discomfort than in the case of a manual labour accustomed to hard work. *ibid.*

in the case of a prisoner of good social status.'¹¹⁴

Briefly, the main proposals of the Jails Committee were, that law should not expressly recognize political motive as an ingredient of crime; rejection of the idea of special treatment for political prisoners; that special treatment be provided for persons who were likely to be injuriously affected physically or mentally by ordinary jail discipline and treatment; simple imprisonment should be divided into two classes, one with and one without liability to light labour; additional amenities should be granted to persons sentenced to simple imprisonment.

The recommendations of the Jails Committee and the intervention by the Secretary of State were debated by the provincial governments and the Governor General's Council culminating in a Conference in Shimla to frame the rules of instructions to be followed by the provincial governments. The discussion focussed on the definition of 'political', on delineating the set of people who could by the character of their crime or their status be classed as prisoners requiring differential treatment, and on the means by which this differential treatment could be brought about.

As seen earlier, the need for the Central government to frame general instruction for the treatment of political prisoners arose because of the exponential increase in the numbers of political prisoners whose treatment was fast becoming a public issue and also from a desire for uniformity in treatment. The Jails Committee had shown a way whereby differential treatment could be achieved without any compromise on the government's position of not accepting political prisoners as a class in itself for differential treatment. One of the possible courses of action discussed was, as recommended by the Committee, to introduce early legislation to divide simple imprisonment into two classes. An alternative proposal was suggested by the Central government by which either they or the local governments would frame uniform rules for the treatment of political prisoners under the Act of 1894. The merits of the former

¹¹⁴ This provision, which already existed in the Bombay Jail Manual, was recommended for inclusion in the jail manuals of all provinces. Rule 254 of the Bombay Jail Manual provided that "whenever the medical officer shall have reason to believe that either the mind or the body of the prisoner was likely to be injuriously affected by the discipline or treatment observed in the prison, he shall after careful scrutiny (as convicts are prone to feign insanity), report the case in writing to the Superintendent, accompanied by such suggestions as he thinks the case requires. The Superintendent shall thereupon in regard to such prisoners alter or suspend the discipline, regulate the prisoner's work accordingly". *ibid.*, 91.

proposal were seen in the fact that it did not require all political offences and political offenders to be placed in a single category and gave room for differentiation of cases. Both the proposals were seen as enabling courts to exercise suitable discretion and the government to correct such discretion whenever the sentence imposed was seen as being too severe.¹¹⁵

The Secretary of State's suggestions were welcomed by Executive Council member B.N.Sarma on the ground that grouping of such offences and specifying definite penalties could prevent discrepancies in the exercise of discretion and also ensure that courts and executive were not brought into constant conflict.¹¹⁶ For others who were opposed to the suggestions, the legislation option was considered impracticable because it involved not merely the amendment of the IPC but other special laws which covered offences of political nature, like the Seditious Meeting Act and the Criminal Law Amendment Act of 1908.¹¹⁷ Other strands of opinion resisted any legislation purely for political offenders.¹¹⁸ The Bombay government in a strongly worded letter pointed at some practical problems with making political crime an ingredient of administrative policy or jurisprudence. Framing a statutory definition of such offences consistent with general principles of criminal jurisprudence would in its opinion be difficult. It further saw a judicial determination of the presence or absence of a political motive as invidious and impracticable for the judge and the magistrate.¹¹⁹

A major problem related to the difficulty in defining what constituted 'political'. The Secretary of State's attempts at a legal resolution of the problem by listing those sections of the IPC which related to political offences 120 B (criminal conspiracy), 124 A (sedition), 131 (abetting mutiny), 153 A (promoting enmity between classes), were

¹¹⁵ Telegram dated 18 December 1921, from the Secretary, GoI, Home Department to the Governor General on the proposals for the treatment of political offenders. File no. 201\VI\1922, H(P), NAI, p.5.

¹¹⁶ Notes dated 31 December 1921 by B.N.Sarma, Member, Executive Council. *ibid.*, p.10.

¹¹⁷ Notes dated 22 December 1921 by H.D.Craik, Home Department, GoI. *ibid.*, p.6.

¹¹⁸ Notes dated 5 January 1922 by C.A.Innes. *ibid.*, p.11.

¹¹⁹ Undated confidential letter year marked 1922, from J.Cerar, Secretary, Home Department, Government of Bombay to the Secretary, Home Department, GoI, in pursuance of the earlier correspondence with the Government on the issue of differential treatment of persons convicted of political offences. *ibid.*, p.130.

considered flawed,

The attempt to arrive at a classification on this basis breaks down at once. A political 'picketeer' would certainly be deemed a political offence in this country but if he were convicted of intimidation or obstruction he would not come within any classification we could frame on the Secretary of State's system...for we certainly could not classify as 'political' all offences of this nature. We apply the provisions of the Police Act quite as often to prevent religious as political disturbances.¹²⁰

There was a general agreement with the Secretary of State that there were offences where men suffered 'for conscience sake' and should not be treated as ordinary criminals. There was, however, disagreement on the point of 'widespread discrimination' in their favour. The lack of sympathy for differential treatment emanated from the feeling in some bureaucratic circles that the 'political' offender was the direct cause of acts of extreme violence. A member of the Executive Council observed:

The 'political' offender in this country is often (whether consciously or unconsciously) the direct cause of acts of extreme violence; a British jury admitted the connection between the writings of Tilak (surely a 'political' offender if any) and the Poona murders, and the young men who ran the Yugantar were the direct and immediate cause of more than one anarchist outrage in Bengal.¹²¹

Political offence in the colony was thus seen as particularly dangerous and provocative of violence. This distinction in the effects of political offences in the colony and the metropole was used as a ground to reject the assumption of comparability between practices in the Secretary of State's proposals. The latter was criticised for overlooking the 'exceptional' nature of political offence in the colony and for assuming that political offenders were prosecuted and imprisoned merely to prevent 'them' from carrying out activities against the state. The colonial government emphasised that like ordinary crime, punishment of political offences was based on deterring others from indulging in similar activities.¹²²

Earlier a sub-committee of the Executive Council tried to evolve a negative rule

¹²⁰ Notes dated 30 December 1921 by W.M.Hailey, Member, Executive Council. *ibid.*, pp.9-10.

¹²¹ *Ibid.*

¹²² Telegram dated 22 December 1921 from the Secretary, Home Department, GoI, to certain Local Governments. *ibid.*, p.7.

based on the Irish practice. It suggested that the following offences should not be deemed as political even though the motive behind them was political: (a) murder, culpable homicide or murder, hurt, wrongful restraint, wrongful confinement, assault, or similar offences against the person; (b) theft, extortion, robbery, dacoity, mischief, or similar offences against property; (c) riot, carrying, keeping or having fire-arms, ammunition or explosive substances; (d) unlawful assembly (as defined by the law, but not an assembly rendered unlawful merely because it is a meeting of a political or a suppressed association); (e) speaking or writing words inciting or encouraging person or persons to commit any of the offences set out in (a), (b) or (c).¹²³

The recommendations of the sub committee that political prisoners should not be confined in jails or places where ordinary criminals were detained was criticised for overlooking the already existing paucity of accommodation and the prospects of a large jail filled with political prisoners as a 'hot-bed of sedition' and 'indiscipline':

One of the main difficulties in our jails has been to maintain any discipline at all with these political prisoners who, in fact, spend their day shouting and singing and promoting insubordination and a spirit of indiscipline when they are not insulting warders and jail authorities, and to afford additional facilities for such insubordinate behaviour is to my mind very undesirable.¹²⁴

The Executive Council opposed the idea of prescribing in law lesser penalties for political offences. An acceptance of lesser penalties could, they felt, transmit the impression in 'popular estimation' that offences committed for political motives are in a class by themselves, entitled to differential treatment. It did, however, feel that there were among those convicted of offences in connection with recent political movements, some who deserved different treatment from that extended to ordinary criminals.¹²⁵

Central government convened a conference of provincial governments to decide

¹²³ A sub committee of the Executive Council, consisting of Muhammad Shafi, B.N.Sarma and T.B.Sapru was appointed by the Order in Council of 31 January 1922 to enquire and recommend measures regarding the treatment of political prisoners. In their deliberations the members studied in detail the rules which were promulgated by the Irish Government on 20 April 1920, defining the status of and the treatment accorded to the Sinn Fein prisoners. *ibid.*, pp.16-19.

¹²⁴ Notes dated 2 March 1922 by W.H.Vincent, Secretary, Home Department, GoI, on the recommendations of the Executive Council's sub committee. *ibid.*, p.21.

¹²⁵ Secret letter dated 31 August 1922 from W.H.Vincent, Muhammad Shafi, B.N.Sarma, C.A.Innes and E.M.Cook, Members, Executive Council, to the Secretary of State for India. *ibid.*, p.145.

upon the 'general principles' of treatment of political prisoners.¹²⁶ The conference started with the assumption that there were some prisoners who should be given special treatment. Excluded from this category were all prisoners who were convicted of any offences which directly involved violence or an offence against property; persons who had incited others to crimes of this character; persons hired to commit offences in connection with political movements; those who had committed such offences in the hope that in the resulting disorder opportunities of looting might occur; persons who had been guilty of attempting to seduce soldiers or police from their allegiance; persons convicted of offences directly involving criminal intimidation, or when violence had been used for the purpose of intimidating.

The selection for differential treatment from among those not excluded, was to be based on the 'status', 'character' and 'education' of the prisoner. A case for preferential treatment of persons of high status, character and education was built on the ground that a lenient punishment in such cases was 'sufficiently effective'. Apprehensions were also expressed that 'unnecessary harsh treatment' of prisoners of this class might have reactions on the public and 'undo or impair the punitive action of the law'.¹²⁷

The members at the Conference reached a consensus to give concessions in the following matters: prisoners of this class were to be kept separate from the ordinary prisoners; they were allowed to supplement their diet at their own expense, wear their own clothing, apart from political symbols, e.g. the Gandhi cap; beds were to be

¹²⁶ A conference was held between 15-17 July 1922 among the Central and provincial government representatives to draw a set of rules to be followed by all provincial governments for uniformity in jail administration and associated with this the legislative and administrative changes which were to be introduced to make the rules operable. The discussions focussed on the criterion for selection; the principles of inclusion and exclusion; the agency responsible for selecting the persons whether the trying court, District Magistrate or the local Government; the feasibility of recourse to legislation for the provision of imprisonment; the concessions to be given to special prisoners; the form of punishment in the case of breach of discipline; the authority which was to decide on punishment; the question whether religious activities like the 'azan' should be allowed in prison and whether special class should be given only to persons 'convicted of offences in connection with political movements'.

¹²⁷ Ibid. p.58. It was also agreed that prisoners other than those convicted of an offence in connection with political movements were also eligible for inclusion in the special division, if they fulfilled the above criteria.

supplied to prisoners at their own expense;¹²⁸ reading material like books and magazines were permitted; newspapers were, however, not permitted;¹²⁹ they were allowed to write and receive letters every month;¹³⁰ visits were permitted once a month though conversation was to be limited to private and domestic matters only¹³¹ and prisoners were not to be asked to perform menial duties.

It is pertinent to point out here that in cases of indiscipline, withdrawal of concessions served as punishment. Nowhere is this more apparent than in the emphasis placed on laying down a rigid rule, making association a privilege which a prisoner was entitled to claim as a right subject to restriction in the case of indiscipline.¹³² As for other forms of more manifest punishments like whipping, the general sentiment was that it could not be allowed except by an order of the provincial government.¹³³

While setting the limits to the category 'political prisoner' for the purposes of special treatment, the Conference rejected the consideration of motive as a criterion and reiterated that the primary aim of punishment of political offenders was deterrence. The elimination of motive appears to have been part of the persistent effort by the colonial government not to recognise acts committed with a political motive as a different category of crime calling for differential treatment. Acting on this principle, government representatives at the conference, steered clear of recognising persons convicted of

¹²⁸ There was reservation on allowing beds to all as a precaution against their being used as weapons.

¹²⁹ Concern was expressed in the conference that newspapers could be used for communicating with the outside world by means of code language and also for propaganda purposes to trigger of disturbance in prison. The Bombay Government felt that withholding newspapers from special class prisoners might be justified on grounds of being a reasonable punishment.

¹³⁰ Limiting the frequency of letters to one a month was seen as in the case of newspapers, as providing the necessary degree of deterrence.

¹³¹ In case the events of the visit were published the concession was likely to be withdrawn.

¹³² It was agreed in principle that some kind of association was essential. Cellular accommodation was not considered as a possibility except in cases where the prisoner proved to be especially troublesome and a bad influence on other prisoners. Even in that case it was to be effected without making the confinement solitary. *ibid.*, p.60.

¹³³ It was, however, felt that the imposition of such a punishment would offend public opinion in India and prove to be politically inexpedient. As regards other penal measures like penal diet or solitary confinement, except the government of United Provinces, all other provincial governments were content to delegate the power to impose them on the Superintendent.

offences in connection with NCM as a special class entitled to preferential treatment. As a vindication of this position the representatives of the governments agreed that concessions discussed in the course of the Conference should not be made to appear as applying only to NCM prisoners. It was decided also to replace the term political prisoner with some other less conspicuous term:

the terms 'political prisoners' and 'political offenders' which are sometimes employed, are open to objection in that they seem to imply a recognition of the claim, which the Government of India have never admitted, that prisoners of this kind form a separate class, and are entitled as such to differential treatment. The Government of India would prefer that some such term as special (or separate) division prisoner should be adopted.¹³⁴

By distinguishing one class, identified in terms of education and status for preferential treatment, the government attempted to preserve the overall deterrent impact of punishment, while at the same time taking care of public sensibilities on the matter of treatment of 'respectable' prisoners.¹³⁵ The final instructions to the provincial governments maintained,

... that in the case of such prisoners the object to be aimed at is merely confinement; but if it is admitted as I think it should be, that the punishment to be imposed should not only have the effect of terminating the criminal activities of the prisoners, but also of deterring others from the commission of similar offences, then there would appear to be no adequate justification for awarding in any case a punishment which is more lenient than that of simple imprisonment, because a lesser penalty would have no deterrent effect. This does not mean that no or only a few concessions can be allowed, because many concessions can be justified on the ground that in the case of persons of the status and character, which our proposals have in view, simple imprisonment even with these concessions is in effect as severe a sentence as simple imprisonment in the case of ordinary prisoners.¹³⁶

¹³⁴ A secret letter dated 23 August 1922, from the Secretary, GoI, to All Local Governments and Administrators on the subject of treatment of political prisoners. *ibid.*, p.143.

¹³⁵ The Bengal government proposed that the balance of punishment awarded should be as severe as that awarded to ordinary prisoners and that concessions for physical comfort should be counterbalanced by rigours affecting the mental side. The debate on the desirability of allowing newspapers to prisoners selected for special treatment focussed largely on this aspect of mental deprivation and rigour of treatment.

¹³⁶ Notes in the Home Department, GoI, dated 25 August 1922 by S.P.O'Donnell summing up the results of the conference and the final instructions to be issued to provincial governments. *ibid.*, pp.58-59.

While marking out a class of prisoners who could be given concessions, care was taken to show that the balance of the punishment suffered was still deterrent. There was an overriding determination to avoid giving a public appearance that political prisoners formed a distinct group entitled to differential treatment. The recognition of motive in defining crime was therefore rejected. Preferential treatment was reserved for a special class and care was taken to give the impression that this class was not entirely constituted of political prisoners. The expression 'special division prisoners' was therefore used to denote this class of prisoners. By the inclusion of non political offenders in this special division, the government attempted to evade the issue of special treatment of political prisoners as a class.

CONCLUSION

In this chapter we have tried to show the critical location of prisons in the widening nationalist public sphere of this phase of mass politics. With the NCM, prisons not only became the focus of public scrutiny but also an integral part of popular movement against colonial rule. For the colonial government the prisons signified the space where their authority could be buttressed by a display of power. For the passive resisters, the prisons specified the arena where they asserted their freedom from 'unjust' rule. At the junction of these two contesting ideologies of power and protest, the colonial prisons became highly politicised spaces.

Whereas in the pre-NCM phase, the colonial government had to deal with a relatively smaller number of nationalist prisoners who were involved in revolutionary terrorist activities, with NCM their large numbers became a critical factor. The government dealt with revolutionary terrorists by either pursuing the policy of 'septic tank', transportation to Andamans or isolating them in jails like Hazaribagh identified for the confinement of political prisoners. The policy of isolation and seclusion, however, could not be applied to *satyagrahis* who entered the prisons of their own volition, and could not owing to their large numbers be tucked away 'safely' in some remote corner of the country. The dilemma before the government was to either deal with Gandhian mobilisation politically or handle it as a law and order problem and treat *satyagrahis* as ordinary violators of the law. The initial response of the various provincial governments

varied from the severity of rigorous confinement as in NWFP, to the creation of a distinct class of 'political prisoners' replete with privileges as in the jails of Bihar and Orissa and UP. The underlying purpose of both preferential and stringent treatment appears to have been to maintain order and discipline in jail and to 'protect' the ordinary prisoners from the 'undesirable' influences of the politicals.

In their engagement with the colonial government over political prisonerhood the nationalists demanded the same treatment as given to political prisoners in the metropole. This objective was also shared by some sections of officials. What was common to both was the assumption that political prisoners in Britain were uniformly treated as 'first class misdemeanant'. In our study of British policies on the prison treatment of 'political offenders', we have seen the official response vary according to the ideology (Jacobins, Chartists, Fenians and Suffragettes) and social background of the prisoners. The association of political prisonerhood with privileges of the first class was accepted by various sections of political prisoners in Britain and by the nationalists in the colony.

The diverse nature of penal responses by provinces was perceived as a problem by the Central government which was already seized with a request from the Secretary of State that passive resisters should be treated as 'first class misdemeanant', analogous with the practice in England. The rejection of the Secretary of State's proposals was based on the ground that conditions in the two countries were different. Political philosophy of men like Tilak were seen as more likely to result in an 'anarchist outrage' in India, something the colonial officials did not think could happen in England. The colonial bureaucracy, opted for the position taken by the Jail Committee and concentrated on containing the opposition by altering the classification system in prisons.

The colonial government preferred to follow the positivist principle and reject the idea of motive as a distinguishing element of crime. Based on this, the government repulsed also all attempts to treat political crime as a distinct category of crime as well as proposals seeing prisoners confined as a result of their participation in the NCM as a separate category of prisoners, deserving differential treatment. At the same time as it rejected political prisonerhood as being the necessary criterion for preferential treatment in prison, the colonial government ushered in a new category of prisoners who were granted preferential treatment based on the twin principles of inclusion and

exclusion. This 'special division' was to consist of 'better class' prisoners 'excluding' those who were involved in 'violent' crimes and posed the most serious threat to the state. By this acknowledgment of a 'respectable' class of prisoners for special treatment, the colonial government effectively avoided recognition in public policy of political prisoners as a distinct class. It crafted on the other hand, a division among the political prisoners by recognising status as a criterion of preferential treatment, the implication of which were to reverberate in all subsequent policies of classification and also on the self perception of prisoners as political. Notwithstanding the creation of a special division, the espousal of deterrence as the aim of punishment was reiterated.

For the nationalist movement, this phase marked the stage where a new idiom of mass protest was unleashed on the colonial state. Large sections of the population were incorporated in the NCM. As passive resisters they were bound by the disciplinary matrix of the Gandhian code of conduct, outside and within the prisons. On numerous occasions, however, the passive resisters in prison transgressed Gandhian dictates, giving to political prisonerhood their own interpretations. In the next chapter we shall cover a period generally described as that of Congress ascendancy and marked also by a resurgence of the revolutionary terrorist movement. The definition of 'political' in such circumstances became entwined in the contesting claims by the Congress and the colonial state over representing and ruling the people of India - a contest which had important implications for delineating political prisonerhood.

CHAPTER FOUR

POLITICAL PRISONERS UNDER COLONIAL AND CONGRESS REGIMES DURING 1920'S AND 1930'S

In nationalist historiography the 1920s and 30s are marked by the 'ascendancy of the Congress', the birth of the communist movement in India and after a brief and violent upsurge, the demise of the revolutionary terrorist movement. Here we shall examine whether or not the colonial government pursued a policy of differential treatment towards prisoners from these various ideological strands of nationalism. It is the contest over the 'political' which gives thematic unity to this chapter which deals with several seemingly diverse issues.

The government's general response in this contest was to subject its political adversaries to the disciplinary regime of the prisons. Prisons were, however, not merely a site of colonial domination, they were transformed frequently into arenas of nationalist resistance. The hunger strike by Hindustan Socialist Republican Association (hereafter HSRA) prisoners forced the colonial government to respond to the charge of racial discrimination in prison and to the demand for differential treatment of political prisoners. The government's response to this concerted protest will be interrogated in the context of the evolution of a procedure of forcible feeding and a revised scheme of classification of prisoners. We shall analyse the ramifications of the government's policy of classification of prisoners and the nationalist response to it in the course of the civil disobedience movement (henceforth CDM). We shall also see how women political prisoners not only struggled for their own rights but also brought the plight of other women prisoners under wider public scrutiny.

Gandhi's symbolic march to break the salt law and launch the CDM marked the unharnessing of sentiments which had long been kept in abeyance and had surfaced only intermittently in the form of popular movements in Bardoli and elsewhere. The CDM reinforced the credentials of Congress as the most authoritative body articulating the nature and course of the Indian nationalism and set it on a path which culminated in 1937 with the installation of Congress ministries in several provinces. It will also be our

concern in this chapter to see how the Congress, in its official capacity approached the question of 'political' and 'national'.

The 1920s and 30s saw a spate in revolutionary terrorist activities. A number of youth organizations came up inspired by revolutionary zeal and with strong faith in conspicuous acts of self sacrifice. One of these groups in Northern India was the HSRA, and its more 'public' youth wing the Naujawan Bharat Sabha. The HSRA activities were manifestly terrorist but it was distinguishable from other such groups because of its Marxian Socialist leanings and vision of socio-economic change.¹ The period 1930 to 1934 is considered the most intense phase of revolutionary terrorism in India and probably also evoked the most intense repressive measures from the government. We shall attempt to see in the course of this chapter whether the concerns of the paternal colonial state to reclaim its recalcitrant subjects were sustained in this period.

The communists were the other group which heightened its activities in this period, especially among the trade union and the labour organizations, and was perceived as a grave threat by the colonial government. One recurrent way of tackling this 'Bolshevik' menace in colonial India, a trend which recurred after independence, was the institution of so called conspiracy cases. These included the Peshawar Conspiracy Cases (1922 to 1927), the Kanpur Bolshevik Conspiracy Case (May 1924) and, the most famous, the Meerut Conspiracy Case (March 1929)² which involved 31 prominent communist and other trade union leaders.³

¹ Sumit Sarkar, *Modern India*, p.252.

² The Meerut Conspiracy Case was one of the most long drawn out trials in colonial India, involving almost the entire leadership of the communist and trade unionist movement of the country and lasting for three and a half years. The accused were refused bail and were denied trial by jury. The conspiracy case signified British attempts to crush any organized communist activity in India and in this they partially succeeded. This was counter balanced by the strategy of the communists to turn the trial into a political one. The trial received wide public attention in the country and outside, as a result of which most of the sentences had to be drastically truncated. For an in-depth study of the Meerut trial, especially its historical significance in the development of the left-wing in India, see Pramita Ghosh, *Meerut Conspiracy Case and the Left Wing in India*, Calcutta, 1978. For a study of the British accused in the trial see Jean Jones, *Ben Bradley, Fighter for India's Freedom*, London, No.1.

³ For an official account of communist activity in India see *Communism in India, 1924-1927*, Calcutta, 1927. This confidential document was prepared under the supervision of David Petrie, Director, Intelligence Bureau, Government of India. It includes a summary of an earlier document entitled *Communism in India* prepared in 1925 by Cecil B. Kaye, a former director of Intelligence. Kaye provides an account of communist activities in India from 1920 to the end of 1924. The present report brings the

We turn our attention first to the government's response to the resurgence of revolutionary terrorism in the early 1920s.

OF 'GOATS' AND 'SHEEP': PUNITIVE AND REFORMATORY POLICIES FOR REVOLUTIONARIES

An intense phase of revolutionary activities during the first world war was followed by a lull which ended with the cessation of the non co-operation movement. The sudden withdrawal of the non co-operation movement created an atmosphere of disenchantment with the Congress leadership. It was under these circumstances that a section of educated youths in Bengal, UP and Punjab were attracted to revolutionary terrorism. The government's response to the revival of terrorism in Bengal (1923-24) was to arm itself with extensive powers curbing civil liberties. Revolutionary terrorism for Lytton, the Governor of Bengal, was "no case of mere political opposition or seditious propaganda. It is a conspiracy of dangerous, fanatical criminals, amongst whom violence is an acknowledged creed...",⁴ and he favoured emergency powers to "stamp out this disease".⁵ The Bengal government initially resorted to Regulation III of 1818 to intern terrorists.⁶ Later, an emergency measure, the Bengal Criminal Law Amendment (BCLA) Ordinance was promulgated on 25 October 1924.⁷ Valid for six months, the Ordinance allowed the government to try cases involving terrorists before a tribunal without a jury and without right to appeal, and to arrest and detain suspects without trial. Armed with these extraordinary powers the Bengal government was able

account forward to September, 1927.

⁴ The Earl of Lytton, *Pundits and Elephants, Being the Experiences of Five Years as Governor of an Indian Province*, London, 1942, p.60.

⁵ Ibid.

⁶ For an exchange of views between the GoI and the Bengal government over the appropriate legal and penal response to terrorist activity in Bengal in this period see file no. 1\27, H(P), NAI.

⁷ The Bengal government, unable to receive sanction for the extension of the emergency measure from the elected provincial assembly, used certification power of the Governor General to get BCLA enacted in 1925.

to contain terrorist activities.⁸

Government success, however, was shortlived and revolutionary terrorism resurged for the last time in colonial India between 1930-1934 in what has been seen as its most fervent phase. The period was marked by daring acts such as the capture of the police armoury in Chittagong and the subsequent issuing of an Independence proclamation on 18 April 1930 by the Chittagong group led by Surya Sen. There was also increased participation of women in terrorist activities. The government responded to this upsurge by taking recourse to police action and to repressive Acts.

Under the Emergency powers the government promulgated Bengal Ordinances IX and XI of 1931. Besides providing for *in camera* and *in absentia* trial of revolutionaries by special tribunals and special magistrates, it also empowered the tribunals to take cognizance of offences for which an accused was not formally indicted. This ordinance also provided for confessional statements made before magistrates to be treated as substantive evidence.⁹ The following description by an 'experienced official' perhaps best illustrates the 'effectiveness' of laws of detention - "Next to shooting a terrorist dead, nothing can be comparable in importance as an instrument for paralyzing him to one by which one can lock him up".¹⁰

The policies regarding the treatment of revolutionary terrorists were formulated against the backdrop of the CDM which the government felt had ushered in a 'general spirit of disregard for law and order'. Under such conditions 'home domicile' was no longer seen as a 'safe' mode of confinement. On the other hand jail officials in Bengal opposed the detention of terrorists in jail "as they (had) a very detrimental effect on the

⁸ According to an official communication by March 1927 out of 171 detentions under the BCLA Act, 1925, 75 had been placed in village domicile, 13 in home domicile, 54 remained imprisoned and 26 had been released. Notes in the Home department by H.G.Haig, dated 18 March 1927. File no. 1\27, H(P), NAI, p.12.

⁹ Ordinance XI of 1931 replaced law and procedures provided in statutory enactments, whereby, offences under thirty six sections of the IPC, and under the Indian Arms Act, 1878, Explosives Act, 1908 were to be treated as under the Ordinance. Further, section 27, chapter II of the Ordinance, provided that a person accused of attempted murder shall be subject to the death penalty and this sentence may be carried out without any appeal to a higher court. For a critical analysis regarding the Emergency Ordinances used in this period see, *Condition of India*, a report prepared by The India League, London, 1932, pp.34-71.

¹⁰ Percival Griffiths, *Vignettes of India*, 1985, p.54.

discipline in the jails both as regards the staff and the other prisoners".¹¹ Underlying this concern was the official perception of the revolutionary terrorists as 'dangerous' and 'conspiratorial' and having a 'contaminating' effect on the CDM and other prisoners.

By the middle of 1930, the Bengal government started contemplating alternative accommodation for detenus. There seems to have been an emphasis on isolating them, but the government was also aware of their popularity. The officials considered it appropriate, therefore, to confine the detenus in camps where they could be segregated from outside contacts, without at the same time provoking any public distrust. The government sought to achieve these dual ends by endeavouring to compare the proposed camps with the arrangements that were made for "prisoners of war whose camps were located in places selected for their suitability and safety rather than with regard to their accessibility to visitors".¹² It is ironic that the officials wanted to compare the camps with those for 'prisoners of war', a category which some political groups equate with 'political' status - a status denied to revolutionary terrorists.¹³

In 1932 the Bengal government under a provision of the BCLA (Supplementary) Act, 1932 removed nearly five hundred detenus over a period of time to a special detention camp at Deoli in Ajmer-Merwar.¹⁴ At the same time, after a gap of nearly ten years the transportation of prisoners accused of 'violent crimes' to the Andamans penal

¹¹ Confidential letter dated 1 July 1930 from Bengal Government to the Home Secretary, GoI. File no. 327\30, H(P), NAI, p.1.

¹² Ibid, p.3.

¹³ The foreign 'Prisoner of War' (POW) status is accepted by the international community and their treatment is regulated under Geneva Convention. Incidentally, the Irish Republican Army (IRA) prisoners have always claimed POW status.

¹⁴ The Camp at Deoli was set up in April 1932 and was declared a jail under section 3(1) of the Prisons Act, 1894. The first two batches (40 detenus) arrived in May 1932 and by June 1934, 493 detenus had been transferred to Deoli. For a detailed account of the development of the Deoli Camp Jail see File no. 43\41\34, H(P), NAI, pp.2-29. After lengthy discussions separate confidential instructions were issued for dealing with the detenus in Deoli. See *Instructions regarding the Treatment of Prisoners detained in the Deoli Camp Jail, In the District of Ajmer, Ajmer-Merwara, under the Bengal Criminal Law Amendment Act, 1930, read with the Bengal Criminal Law Amendment (Supplementary) Act, 1932*, issued by the Chief Commissioner, Ajmer-Merwara. File no. 31\83\32, H[(P) & unprinted KW], NAI, pp.30-35.

settlement was resumed in 1932.¹⁵ A large number of such prisoners were transported between 1932 and 1935, and of 228 prisoners in the Andamans in April 1935, all but 28 were from Bengal.¹⁶

Other components of the official strategy concerning revolutionary terrorists were concerned with reformation and reclamation. In June 1932 William Prentice, the Home Member of Bengal, declared that the "government attached great importance to the principle that the object of detention should be reformatory as well as preventive".¹⁷ Not all detenus, could, however, be reformed. The degree of success in the application of reformatory procedures depended as in physical illness on the degree to which the detenus were infected by the 'revolutionary virus'. The new recruits or the 'sheep' were the hopeful cases. These were separated from the irretrievable 'goats', the veterans of the movement 'infected' irremediably who were sent to the Deoli and Buxa camps.

The 'sheep' who were more likely to respond to 'good influences' were sent to the Berhampore Camp for purging through 'educative' and 'reformatory' work. This amounted to 'occupying their time' with training in something useful so that on release they might be 'better fitted' to earn their livelihood.¹⁸ The first attempt in vocational training, undertaken in July 1932, involved classes in first aid and hygiene in the Berhampore Camp. Whether the detenus were conscious of these attempts at reforming them and resisted them is not immediately evident, but we do come across official accounts lamenting the failure of such attempts due to the lack of cooperation from the detenus. The hygiene classes for example, had to be stopped due to poor attendance. Subsequent arrangements in September 1932 for a member of the staff of the Krishnath

¹⁵ The revolutionary terrorists were transported to the Andamans as government was determined to isolate terrorists and sever their connections with their supporters. The transportation also had a strong deterrent value. See file no. 27\32, H(J), NAI. For details see *Bengal Administrative Report, 1932-33*, p.23 and *Bengal Administrative Report, 1933-34*, p.19.

¹⁶ Letter dated 1 April 1935, from W.A.Cosgrave, Chief Commissioner, Andaman and Nicobar Islands, to the Secretary to the GoI, Home Department. File no. 17\7\34, H(J), NAI, p.61. The revolutionary terrorists were segregated in wings 2, 3, 5 and 6 of the Cellular Jail. Further B and C class convicts were kept apart and wing 3 was reserved for B class prisoners. See *Rules for the Classification and Treatment of the Permanently Incarcerated Prisoners in the Cellular Jail, Port Blair*, (Reprinted with amendments up to 1 July 1937) in file no. 31\7\37, H(J), NAI, pp.9-17.

¹⁷ File no. 43\34\34, H(P), NAI, p.11.

¹⁸ Ibid.

College, Berhampore, to deliver lectures in English had to be abandoned due to the alleged "indiscipline of the detenus who refused to stand up when the Commandant entered the classroom".¹⁹

Another initiative for the reclamation of detenus came by the end of 1933 in the form of vocational training in shorthand, book-keeping and typewriting.²⁰ Successful 'students' were to be awarded diplomas which could assist them in securing employment on their release. The government viewed the scheme as a success because as many as 160 detenus applied for training.²¹ Here again, however, resistance brewed when the Bengal government, buoyed by this success, decided to obtain written undertakings from the trainees to abide by a set of rules for discipline.²² The detenus were apprehensive of this rule and the government withdrew the scheme, blaming the 'diseased mentality of the detenus' and their 'innate lack of a sense of discipline'. The belief in the possibility of reclaiming the detenus, however, remained, and these failures were therefore seen not as arising from any flaw in the ideology of reclamation, but in the initial sifting of the 'goats' from the 'sheep'. Some goats had evidently escaped detection and "were instrumental in setting the detenus against the scheme".²³

The most ambitious project of the Bengal government for the reclamation of detenus was launched in 1935 under the garb of amelioration - the 'Detenu Relief Scheme'. The new scheme provided for training in agriculture and small industrial pursuits and was basically an adaptation of the probation system which existed in Punjab and other places for the reclamation of ordinary prisoners.²⁴ This scheme was envisaged as the 'nucleus' of a much bigger project for "fighting unemployment in the province and

¹⁹ Ibid., p.12.

²⁰ The scheme involved an expenditure of about Rs.11,000, an annual recurring cost of Rs.7,464 and provided for 3 classes of 40 students each under two lecturers and an instructor. *ibid.*

²¹ Ibid., p.13.

²² See for details *Berhampore Camp Training Classes Rules* in *ibid.*, pp. 16-19.

²³ Ibid., p.14.

²⁴ Home Department notes dated 1 November 1935. File no. 43\20\35, H(P), NAI, p.24.

rehabilitating its economic life".²⁵ Fourteen industrial centres of 15 detenus each and three agricultural centres of 25 detenus each were contemplated. Industrial training was given priority as it was thought that it would make a greater 'appeal to young Bengal' and was also 'easier to organise'.²⁶ As "the main object of these centres (was) reformatory"²⁷ the restrictions were made light. The detenus lived under conditions of 'home domicile' and worked under the supervision of a 'tactful' but firm officer with an Intelligence background. The guard staff consisted of only 1 watcher Assistant Sub-Inspector and 2 constables. The scheme was operational from early 1936 and by mid 1937 nearly 362 detenus had used the facility. The number of detenus in training camps, however, remained marginal (3.2% on 31.3.36, 6.04% on 31.3.37 and 6.82% on 12.7.37).²⁸ Following the setting up of the first four industrial and agricultural training camps, the camp at Buxa was closed down, although the men for training were not

²⁵ Preface of *Outline of a Scheme of Training for Agricultural and Industrial Occupations*, *ibid.*, pp.44-51.

²⁶ Out of 14 such camps 3 were meant for training in brass works, 4 for cutlery, 3 for pottery and 4 for umbrella. During the first year the expenses including working capital were to be borne by the government itself. The agricultural colonies started with market gardening and fruit farming in the first instance and would diversify later to crops like sugarcane, tobacco and oilseeds. Elaborate arrangements were made for marketing and a special marketing officer with necessary staff were to be appointed for the purpose. *ibid.*, p.48.

²⁷ Confidential letter from S.N.Roy, Additional Secretary to the Government of Bengal to H.G.Hallett, Secretary, Home Department, GoI. *ibid.*, p.34-35.

²⁸ The Governor of Bengal in a communication to the Governor-General apprised him of the overall position of detenus in Bengal.

	31.3.36.	31.3.37.	12.7.37.
Number in jails and camps	1,416	1,048	842
Number in village domicile	869	853	861
Number in home domicile	213	182	248
Number in training camps	85	134	143

Anderson to Linlithgow on Detenus in Bengal, Linlithgow Papers, 27 July 1937, in P.N.Chopra (ed.) *Towards Freedom 1937-47*, New Delhi, 1985, p.787.

necessarily all recruited from the large detention camps.²⁹

The experiments with reclamation always faced serious obstacles owing to the numbers of detenus, which were always large, and the apparent difficulty in a foolproof segregation of the so called 'confirmed' revolutionaries from the 'naive'. All such efforts had to be discreet as the detenus could turn hostile to the idea of being 'reformed'. It was admitted in a government document that "the reformatory side of the instruction has to be made not too obvious otherwise the detenus, who do not admit that they need reforming, will fight shy of and refuse to cooperate in the experiment".³⁰ Many detenus felt that such measures were only meant to soothe public opinion and were purely an exercise in the legitimation of the state.³¹

By mid 1937 two strands of opinion on the etiology of revolutionary terrorism and its possible remedies were noticeable among the colonial bureaucracy. One of these was sceptical of the overwhelming reliance on vocational training for the reclamation of the detenus. The basis of this scepticism lay in what had become almost a ubiquitous assumption among British officers regarding the mentality of the Bengali youth. Tegart, one of the major protagonists of this approach, considered the 'enervating climate' of Bengal responsible for the 'inferior physique and stamina' of the Bengali youth. These 'intensely sensitive' and 'emotional' young men were regarded as amenable to "anything that ministered to his personal vanity". Tegart considered the 'lack of friendly association with the right type of European' responsible for the development of an 'inferiority complex' in the youth.³²

²⁹ The first four camps were set up at Maslandpur, Clive House, Gouripur and Sukchar with capacities of 40, 45, 30 and 30 detenus each. Anderson to Linlithgow dated 27 March 1937 on detenus in Bengal and their reclamation. *ibid.*, p.280.

³⁰ File no. 31\90\32, H(P), NAI, p.45.

³¹ Reformatory measures were clearly seen as a 'facade' by a section of detenus and the government was aware of this. Sixteen detenus of Deoli Camp jail, in a petition submitted to the government demanded 1000 acres of land for agricultural colonization. This was rejected by the officials as they believed the proposal was '*meant as a leg-pull*'. The plan titled as 'Outlines of a Scheme for an Agricultural Colonization using Mechanical Power' envisaged a cost of Rs.24,000 as initial (non-recurring) grant and Rs.400 (recurring) spendings. See for details file no. 43\24\34, H(P), NAI, (emphasis added).

³² In a speech delivered before the Royal Empire Society, Tegart discussed the 'psychology of the Bengali student' to whom the revolutionary terrorist propaganda was addressed. Charles Tegart, *Terrorism in India*, London, 1932, pp.7-8.

Targeting the 'psychological aspect' was therefore deemed more important in solving the problem.³³ The 'susceptibility' of the 'Bengali nature' could be used by the state to "controvert the teaching of the detenus' previous mentors regarding the enslavement of his Motherland and the opening of her economic veins for his own benefit by the *firenghee*".³⁴ In order to 'cleanse' the terrorist of all previous indoctrination Tegart recommended personal contact with the terrorists. This could be achieved by the setting up of several small camps which would facilitate closer relation between the detenu and officers who 'had a particular aptitude for the task' of talking him out of his convictions and 'learning the truth'. Again smaller camps would make it less possible for the 'goats' among the 'sheep' to escape detection.

Anderson, the Bengal Governor, was not impressed with Tegart's proposals. In his opinion the bitterness of anti-British propaganda and its effect on the *bhadralok* class which was the major fishing ground for the new revolutionary recruits was too overwhelming to be countered by any psychological manipulation in small camps. The source of this 'deviance' was seen in structural conditions, notably the absence of useful employment. He was entirely in agreement with the opinion of his Home Member who observed that -

...the root cause of terrorism in Bengal is to be found in the change in the past thirty years in the social, economic and political prospects of the Hindu community, more particularly in respect of those belonging to the middle and lower middle classes. The steady deterioration of their position in respect of every thing that was worth having, emphasised by the 'uplift' of the other sections of the community, led to that feeling of despair...which prepared the ground for the ready acceptance of the dogma of 'exploitation' in the sinister sense of that term...³⁵

The Bengal government also noted with concern the drift of the revolutionary terrorists to another 'hostile' ideology - Marxism. Anderson's remarks in this context

³³ See Charles Tegart's note on terrorists sent to Laithwaite by S.F. Stewart in early 1937, in P.N.Chopra (ed), *Towards Freedom*, pp.1320-1327. Similar comments on targeting the psychological aspects in reclamation of detenus were expressed earlier, in connection with reformation of detenus in Bihar and Orissa. See chapter two for details.

³⁴ *Ibid.*, p.1324.

³⁵ Anderson quoting his Home Member in his note to Linlithgow dated 27 March 1937 on detenus in Bengal and their reclamation. *ibid.*, p.283.

are revealing:

I am afraid that these features make it practically certain that there would be no 'change of heart' among detenus housed in small camps and instructed on the lines which Sir Charles suggests. I think that even in the smallest practicable groups, detenus from the existing camps who had nothing to do but attend social study classes would rapidly convert these into meetings for the intensive study of Marxian economics.³⁶

Anderson advocated a strategy of isolating the movement from the public so as to dry up its sources of recruitment. A sustained effort was undertaken to propagate the idea that government was alive to the requirements of the province and that the 'dogma' of imperial exploitation was a myth. The 'detenu training schemes' were also seen by the government as having changed public feeling and contributed to a gradual decline of 'terrorist mentality' in the public.

While these reflections on tackling the revolutionary upsurge at socio-economic and psychological levels continued, working quietly, the government was progressively making detention conditions more stringent. This was most clearly manifest in the curtailment of the privileges and allowances of detenus. The BCLA Act, 1925, provided certain safeguards for the detenus. Detenus in jail were to be treated as state prisoners, which meant that for purpose of jail discipline they were subject to the rules relating to civil prisoners.³⁷ Further, detenus were entitled to allowances on the pattern of the Regulation III of 1818. Government was empowered to provide an individual allowance for the detenu, and family allowance for maintenance of a 'near relative' or his 'dependents' based on their 'rank in life'.³⁸ Allowances given to the individual detenu included the daily dietary allowance, monthly personal allowance and a yearly allowance for clothing, bedding and miscellaneous articles. The government also paid insurance

³⁶ Ibid., p.281.

³⁷ For rules relating to the treatment of State prisoners see Chapter XXXI of The Bengal Jail Code. *Rules for the Superintendence and Management of Jails and Subsidiary Jails in Bengal*, Calcutta, 1910, pp.223-224. For supplementary instructions regarding the treatment of detenus see *Instructions for the Treatment of those confined in Jails in Bengal under the Bengal Criminal Law Amendment Act, 1925, and Regulation III of 1818*, Calcutta, 1926 and for an updated version of the rules see *The Bengal State Prisoners Manual*, Calcutta, 1936.

³⁸ Section 21 of BCLA, 1925.

premia in certain cases so as to prevent damage to a prisoner's estate.³⁹

Decisions on disbursement of personal and family allowances based on individual cases soon came to be seen as administratively cumbersome. The allowances were therefore 'standardised' in April 1925 for both the state prisoners detained under the Regulations and BCLA detenus, on the ground that 'all were middle *bhadralok* class' and specific monetary provisions were made for various heads.⁴⁰ These 'common standards' were further pushed down by the government when it decided to lower the allowances to which detenus were entitled to under the law. The Bengal government rationalized its economy drive under the plea of modifying an unsound system which provoked 'idleness' among detenus by making "disloyalty to Government a pecuniary advantage instead of being punitive".⁴¹ Thus, at a time of heightened revolutionary terrorist activity in the early 1930s, a section of opinion in the colonial government viewed the existing system of detention as 'nourishing' instead of restraining terrorism. The provision of allowances 'greater than they could possibly earn in the open market' was regarded as the reason why the movement was able to get new recruits easily. The system was also criticised for 'stiffening' the attitude of the detenu from the time of his arrest, when the detenu was perceived to be 'in very poor circumstances'.⁴² It was generally agreed among the officials that the system of allowance was 'too liberal' and a reduced scale was introduced from 1 December 1931.⁴³ In a space of six months (December 1931 - May 1932) the monthly allowance was reduced by 50% and the daily dietary allowance by nearly 40%.

Apart from the reduction in allowances, another aspect of detention conditions

³⁹ Telegram dated 29 May 1932 from Home Department, GoI to the Secretary of State. File no. L\P&J\7\335, IOL.

⁴⁰ File no. 159\25, H(P), NAI, pp.30-34. In 'special' cases, however, allowances varied e.g., Sen Gupta on account of his social background and estimated income was sanctioned a personal allowance of Rs.167/- a month; a sum of Rs.294/- for the purchase of clothes, furniture and other necessaries and a monthly family allowance of Rs.1000. File no. L\P&J\7\335. See Appendix I for the details of standard allowances given to detenus.

⁴¹ Notes dated 7 December 1931 by R. Williamson, DIB. File no. 32\12\32, H(P), NAI, p.1.

⁴² Ibid.

⁴³ See Appendix I for the details of the reduction of allowances for detenus.

which was considered for curtailment was the scale of services and amenities provided to the detenus. The government had adopted the principle of maintaining the detenus at what, it perceived to be the scale enjoyed by the middle class Bengali *bhadralok*. The officials were, however, suspicious that this provision was encouraging 'indolence' among detenus. The detenu was seen as not performing in detention even the minimum duties which the ordinary *bhadralok* normally performed. A 'reasonable standard' of attendance and allowance in conformity with the standard of *bhadralok* lifestyle outside was therefore drawn up to ensure that the detenus' lifestyle did not exceed the requirements of his station in life.⁴⁴ The 'standardisation' policy of the colonial government emanated from an impulse driving modern states to rationalize governance. In this instance the impetus for rationality, urged the government to reduce the lifestyle of the *bhadralok* to certain measurable 'common' standards against which the detenus' scale of allowances and attendance could be evaluated.

Detenus were, however, provided facilities for sports and games. They could also obtain books from the Imperial Library and appear in the University and other examinations. It was noted by an official that the University education scheme "was very popular with the detenus and a large number of them took advantage of it".⁴⁵ Taken aback by the enthusiasm and the expenditure incurred on the 'study allowance', the Commandant of the Berhampore Detention Camp suggested that "in order to reduce the number of examinees... 1/2 of examination fees for more than one examination should not be paid by Government to a detenu within the same academic year".⁴⁶ The University syllabi, however, presented the problem of the 'proper' literature which the detenus could be allowed to read. In one instance detenus in Deoli Camp Jail were not allowed certain books, prescribed in the Calcutta University syllabus. Books on

⁴⁴ Confidential letter dated 26 November 1931, from the Deputy Secretary to the Government of Bengal to the IG of Prisons and Commandants of Detention Camps at Buxa, Hijli and Berhampur. File no. 32\12\32, H(P), NAI, p.23.

⁴⁵ Confidential letter dated 22 August 1932 from A.McD.Clark, Deputy Secretary to the Government of Bengal to The Jt.Secretary to the GoI, Home Department. File no. 31\90\32, H(P), NAI, p.45.

⁴⁶ It was reported by the Commandant of the Berhampore Detention Camp that out of 500 more than 300 detenus were candidates for various examinations in 1935. His suggestion for curb on study allowance was accepted by the government. Letter dated 17 February 1935 from Lt. Col., W.Leith Ross, Commandant, to the Government of Bengal. File no. 43\18\35, H(P), NAI, pp.11-13.

Socialism, Communism, Leninism, though not proscribed, were by a general order issued by the Bengal government, disallowed to detenus. In this instance, however, the Bengal government took the view that the order tended to exclude not only objectionable material but also unwisely material which by "a balanced presentation of these theories and their operation in practice, help to correct false notions on the subject and create a healthy perspective".⁴⁷ The educational facilities did enable a large number of revolutionary terrorists to study Marxism and on their release a large number of them joined the various left parties.⁴⁸

The colonial government thus adopted a two pronged policy for dealing with revolutionary terrorists. By detaining them without trial and making detention conditions more stringent the state pursued a policy of 'criminalization'. On the other hand through the subsequent adoption of 'reformatory' policies it purported to 'reclaim' subjects who it believed had been led 'astray' by a perverted idealism' on to a 'wrong' path.⁴⁹ We get here a glimpse of the paternalistic colonial state which sought to reclaim its 'moral subjects' who in the present instance happened to be its most ferocious political opponents - the revolutionary terrorists. The reclamation methods laid emphasis on the socio-economic dimensions. The cause of revolutionary terrorism was seen to lie in 'unemployment' and lack of proper vocations. The remedy was vocational training, guarantee of employment after release and a more effective control over 'youth organizations'. The problem was thus displaced from the 'political' to the 'social' and 'economic'.

So far we have discussed the government's response to the revolutionary terrorist movement in Bengal. An equally strong challenge was posed by the HSRA terrorists in Punjab and UP who raised fundamental questions regarding racial inequality and the treatment of political prisoners in colonial prisons. We shall examine the government's

⁴⁷ As per letter from the Additional Secretary, Government of Bengal to the Joint Secretary, GOI. *ibid.*

⁴⁸ For a study dealing with the Marxist influence on the Bengal revolutionary terrorists see David M. Laushey, *Bengal Terrorism & The Marxist Left*, Calcutta, 1975.

⁴⁹ The Governor in his address to the Bengal Legislative Council on 28 August 1935 declared that it was incumbent on the state to do what it could to give a large number of detenus who in the Governor's opinion had been 'led astray by a perverted idealism', the chance to turn their energies and abilities into useful channels. File no. 43\20\35, H(P), NAI, p.45.

response to these issues in the sections which follow. But before that we examine the implication of the hunger strike by the HSRA revolutionaries for official policy towards such modes of protest.

ON RESISTANCE AND THE SCIENCE OF TORTURE: HUNGER STRIKE AND FORCIBLE FEEDING

The recourse to hunger strike by the HSRA under trials in the Lahore conspiracy case, culminating in the death of Jatin Das on the 64th day, made them the focus of mass adulation.⁵⁰ Their demands were grounded in their self perception as political prisoners, focussing on some basic requirements of diet, labour, reading and association. The death of Jatin Das brought intense pressure on the government. The LCC prisoners resolved to 'follow in the footsteps of comrade Das'.⁵¹ The Indian members of the Central Legislative Assembly held the government responsible for his death and initiated a successful adjournment motion to mourn his death.⁵² The Meerut Conspiracy Case prisoners also went on strike on 27 September 1929 in sympathy with the LCC prisoners and reinforced the latter's demands in their public statements.⁵³

The effect of the protest by hunger striking prisoners appear to have been two fold. It prompted the government to standardize a procedure by which such hunger strikes could be dealt with. On the other hand it contributed towards building a public opinion which compelled the government to reassess the conditions of imprisonment of political prisoners.

⁵⁰ The hunger strike was undertaken by the HSRA prisoners, notably Bhagat Singh and B.K.Dutt who were sentenced to transportation for life in the Delhi Assembly Bomb case and Jatin Das, their co-accused in the Lahore Conspiracy Case (henceforth LCC). The colonial government brought the Lahore Conspiracy Case after the police discovered a bomb factory in Lahore and later in Saharanpur. The Delhi Conspiracy case was about the bomb throwing incident in the Central Legislative Assembly by Bhagat Singh and Batukeshwar Dutt on 8 April 1929 on the occasion of the discussion on the anti-labour Trade Disputes Bill and the Public Safety Bill.

⁵¹ This resolve was stated in a letter dated 6 September 1929 from the LCC hunger strikers to the Chairman, Punjab Jail Enquiry Committee and members of the Hunger-strike subcommittee. File no. 244\30 & KW, H(P), NAI, p.29.

⁵² D.P.Das, 'Historic Fast Unto Death', *Mainstream*, Annual number, 1970, p.104.

⁵³ Telegram dated 27 September 1929 from the Viceroy to the Secretary of State, informing him of the various hunger strikes in prison. File no. 11\17\30, H(P), NAI, p.18.

The colonial government's policy towards hunger strike was in essence a selective adaptation of the policies followed in Britain. The form of resistance which evinced major public attention in Britain and tormented the authorities was the recourse by the suffragette prisoners to hunger strikes. While initially the government released them on health grounds, the subsequent decision to forcibly feed them caused great public indignation. Further public criticism arose from the apprehension that forcible feeding was being implemented without proper medical check up and some of women became seriously ill after it was administered.⁵⁴

The government sought to escape from the situation by taking recourse to the 'Cat and Mouse' Act, allowing the temporary discharge of hunger striking women temporarily without remitting their sentences.⁵⁵ It hoped by this measure to dispense with forcible feeding, prevent death by starvation in prison and also redeem its image.⁵⁶ In the case of the suffragettes, gradually the temporarily released women did not return to prison and the authorities gave up pursuing them.⁵⁷ The 'Cat and Mouse' Act was thus found useful by the government as a method of suspending imprisonment in politically motivated cases without appearing to lose face.

By the end of the 1920s, three patterns of state response to hunger strike had emerged in Britain : (a) forcible feeding, (b) temporary release when the prisoner's

⁵⁴ One of the earliest writings which recreates 'the atmosphere of prisons and its effect upon a prisoner who is forcibly fed' is by Helen Gordon, *The Prisoner: A Sketch, An Experience of Forcible Feeding by a Suffragette*, Letchworth, 1911. Emmeline Pankhurst, a major leader of the militant suffragette movement gives a description of forcible feeding in her autobiography, *My Own Story*, New York, 1971 (reprint), pp.156-158.

⁵⁵ For a discussion of 'Prisoners (Temporary Discharge for Ill Health) Act', 1913, commonly known as 'Cat and Mouse' Act see chapter three.

⁵⁶ The Act faced criticism from those sympathetic to the cause of the Suffragettes. Medical opinion on the ill effects of the application of the provisions on the health of women presented a rather dreary picture. Suffragist doctor Kathleen Lynn wrote of the toll the persistent application of the terms had in cases where women resorted to hunger strike, were discharged when weak, and then returned to confinement when they had regained some measure of health to start the process yet again. Cliona Murphy, *The Women's Suffrage Movement and Irish Society in the Early Twentieth Century*, London, 1989, p.107-108.

⁵⁷ The power of arrest of the police was limited to the public space and they had no right to enter private premises for effecting arrest. The number of persons imprisoned for militant suffragist offences from the date of passing of the Act (25 April 1913) till January 1914 was 87. Of these 48 were dealt with under the Act only 8 of these either completed full imprisonment, or paid fine or were discharged. File no. L&P&J\8\492, IOL.

health was severely impaired, and (c) 'letting the prisoner take his own course'.⁵⁸ The first two options were utilized in the cases of the suffragettes and a few conscientious objectors. The third alternative was used against Irish Republican prisoners some of whom died in the course of hunger strikes.⁵⁹

In the course of formulating a policy on hunger strike the colonial government did not even consider the 'cat & mouse' option. The government preferred a more coercive option which was used against the Irish Republicans in Britain. The response to hunger striking prisoners was accordingly based on the following three principles - (1) the grant of any concession to hunger strikers should be resisted; (2) if necessary to keep them alive, the prisoners must be forcibly fed, (3) If, however, the actual process of forcible feeding was likely to endanger life, then the risk of death from 'inanition' was preferable.⁶⁰ Prisoners on hunger strike were also liable to disciplinary action, including isolation from other prisoners; a mass hunger strike amounted to mutiny and prisoners could be punished by whipping and other penalties.

The method evolved had the sanction of the legal system, which made it the 'duty' of the state to 'protect' those in its custody.⁶¹ The Superintendents of Jails were bound by 'duty' and 'humanitarian' concerns to 'save' the prisoners. The government thus felt entitled to issue instructions to the Superintendents to feed forcibly 'whenever necessary to save life': "...there is a legal right to employ forcible feeding, and the

⁵⁸ Confidential note dated 18 April 1922 from India Office, London to the Home Department, GoI. File no. 201\XX\22, Part B, H(P) & KW, NAI, p.1.

⁵⁹ The most noted instance was that of Terence MacSwiney, Lord Mayor of Cork, who despite attempts at forcible feeding died on 25 October 1920 after seventy-four days of hunger strike. The tradition of hunger strike in the Irish Republican movement predated MacSwiney's death and has continued afterwards. In 1981 eleven Irish Republican prisoners died after a prolonged hunger strike in British jails. For a study of hunger strike in the Irish Republican movement see George Sweeny, 'Irish Hunger Strikes and the Cult of Self-Sacrifice', *Journal of Contemporary History*, Vol.28, No.3, 1993, pp.421-437.

⁶⁰ Confidential letter dated 23 October 1922 from S.P.O'Donnell, Secretary to the GoI, Home Department, to All Local Governments and Administrations. File no. 201\XX\22, Part B, H(P) & KW, NAI, pp.13-14.

⁶¹ The judicial sanction for the policy of forcible feeding in England was based on the decision of CJ Lord Alverstone in the case of *Leigh versus Gladstone* in 1909. The plaintiff, Marie Leigh, was convicted in connection with the women's suffragette movement and was subjected to forcible feeding. In the case which followed the Lord Chief Justice laid down that "It was the duty, both under the rules and apart from the rules, of the officials to preserve the health and lives of the prisoners, who were in the custody of the Crown". *ibid.*, p.3.

Government of India consider that on grounds both of *humanity* and of *policy* this right should be exercised by Jail Superintendents".⁶²

The principle of 'safe custody' became a much used term in the deliberations of the colonial officers. The pursuance of this principle as a legitimizing force resulted in the production of a body of knowledge to control a hunger striking prisoner. A scientific method of torture, to be implemented in the garb of altruism with the coercive backing of a self proclaimed benevolent state, was perfected to resist the political will of people. The purpose of the discussion in this section is to point out the salient features of this process, concentrating specially on its dehumanizing effects.

The discussions and speculations among the colonial officers focussed on the issue of how best to keep *live* the body of the hunger striking prisoner. At the end of these consultations, and after several trial and error procedures, there emerged what the colonial bureaucracy perceived as the most 'rational' way of saving the prisoner. Thus, by the end of 1929, during the course of the hunger strike by the LCC prisoners, the death of Jatin Das notwithstanding, the jail officers had accomplished a 'scientific' method of feeding hunger striking prisoners which covered all details including what they called the 'mental' aspects of the prisoners. This more or less standardized procedure was shared among those Jail Superintendents troubled by hunger strikes.

The legal position on forcible feeding gave the whole act an aura of beneficence. The Medical Officer in charge was supposed to take recourse to it "only when and if he considers that it will be beneficial to the patient".⁶³ Any act of forcible feeding under such rules became not an act of torture but that of life saving and therefore an essential effort "necessary for the preservation of the patient's life, i.e., preventing his getting into a dangerous or dying condition".⁶⁴ It is significant that this order, particularly the

⁶² Directions to all local Governments and Administrations, from the Secretary, Home Department, GoI, dated 23 October 1922. *ibid.*, p.14 (emphasis added).

⁶³ It is significant that most jail officers at this time belonged to the Indian Medical Service (IMS). A conference held at the Lahore Central Jail to discuss the 'medical aspects' of the LCC prisoners' hunger strike was attended by nine members of the IMS, including the IG of Prisons, his deputy and two Superintendents of Jails. The discussion focussed on the 'mental' aspects of hunger strike, drug and dietary treatment of strikers and the practical details of artificial feeding. File no. 44\80\33, H(P), NAI, p.6.

⁶⁴ *Ibid.*, p.6.

crucial time at which forcible feeding was to be resorted to, was subjected to interpretations which did not evince any of these 'noble' concerns. The government remained concerned with the devising of 'drastic measures' that could stop this act of defiance.⁶⁵

Obviously the remedy to a hunger strike was not seen in alleviating the conditions which provoked the act of resistance. The panacea for a political problem was sought in medical science. Accordingly the term 'forcible feeding' was objected to for its political implications and also to obliterate the torturous aspects of the act. It was substituted by 'artificial feeding', suggesting amelioration and restoration. An exchange of notes between doctors engaged in this 'humane work' is revealing:

I notice you use the term 'forcible feeding': I myself always refuse to recognise it, and am gradually inducing Government and others to use the correct one, which is 'artificial feeding'. When doing fevers in hospital I saw children fed through the nose without waking them up, and no 'force' need or should be used if the patient does not resist.⁶⁶

What the doctors overlooked was that they were not dealing with children or patients and the hunger strikers in most cases put up stiff resistance to any 'artificial' feeding. A similar attempt at camouflaging the inhumanity of the process, by using an analogy with the clinical treatment of patients was seen during the suffragette movement in Britain. Helen Gordon, who was forcibly fed in Strangeways Prison in 1909, retorted to such claims,

It has been said that feeding by tube, either by nasal or abdominal tube, is merely unpleasant, but not in any way cruel; but these statements are either made by patients who willingly submit and whose lives depend upon the treatment, or by doctors who are in the habit of feeding insane

⁶⁵ These concerns resurfaced in the context of the CDM and revolutionary terrorism and again during the Quit India campaign. In 1934 the All India IG of Prisons Conference recommended starting artificial feeding early 'while the stimulus of hunger is effective'. *Proceedings of the Fifth All-India Jail Conference of IG of Prisons*, New Delhi, 15-19 January, Simla, 1934, p.9. This strategy of an early breakthrough was obviously not echoed by all. Almost a decade later a much harried Jail Superintendent felt that "... unless a 'striker' is allowed to get into such a state of weakness that there is a risk of his dying, the strikers can continue for an almost indefinite time...". Memorandum dated 7 August 1944 from the Superintendent, Central India Agency Jail, Indore to the IG of Prisons in Central India. File no. 3\32\44, H[P(I)], NAI, p.2. The Central government favoured postponing forcible feeding till the prisoners' health deteriorated and made them more susceptible to temptation to consume food voluntarily. Notes dated 14 September 1944 by Tottenham, Secretary, GoI. *ibid.*, p.3.

⁶⁶ File no. 44\80\33, H(P), NAI, p.4.

persons...it is a waste of argument to accept the fact that both sane and insane persons will submit with ease to the unpleasant process of *artificial* feeding as a proof that there is no cruelty in *forcible* feeding. It is only we suffragettes who can answer these arguments with an experience of the cruelty.⁶⁷

The doctors considered upon several aspects of 'artificial' feeding in order to arrive at a course of least resistance. Accordingly, feeding through nasal passage was considered a better option than administering drugs or food through the rectum, intravenously or subcutaneously. As to the posture of feeding, the method of placing the prisoner on a mattress with his head supported in position by someone kneeling behind and others restraining the limbs was preferred. The nasal tube was inserted after lubricating with boiled olive oil or warm saline. The basis of the feed was milk augmented by beaten eggs, mutton broth, glucose and sometimes brandy. In cases where the resistance of the prisoner was too strong to overcome subterfuge was used. The jail officers admitted to adding albumen to the prisoners' water without their knowledge. In cases where prisoners were willing to take a lemon drink voluntarily, glucose was added unobserved.⁶⁸

In the opinion of the jail officials the stubborn resistance of the hunger strikers to artificial feeding could be lessened if all possible publicity in connection with their cases was avoided, all interviews stopped, and the Superintendents concerned prevented any news of the prisoners leaking out.⁶⁹

Each feeding operation prisoners took several hours and involved a large number of men to overcome the prisoners physically. F.A.Barker, whose experience with the hunger striking prisoners at Lahore Central Jail had made him an authority on these matters, recommended a reduction in the number of feeds to the political prisoners. But the reasons again were not purely medical or administrative. Barker clearly admitted to attempting to break the resolve of the political prisoners. This emerges quite vividly in the following excerpts from Barker's report -

⁶⁷ See Helen Gordon, *The Prisoner*, p.ix (emphasis in original).

⁶⁸ Letter dated 30 September 1929 to Lt. Colonel M.A.Rahman, IMS, Civil Surgeon, Meerut. File no. 44\80\33, H(P), NAI, p.4.

⁶⁹ *Ibid.*, p.5.

As the resistance put up by the strikers was, in most cases, purely nominal, it was evident that the small and temporary discomfort of the passage of a tube was no inducement in itself to the prisoners to give up their strike. It was therefore decided not only to reduce the number of feeds a day but try the effect, in selected cases, of omitting to feed a resisting prisoner on any one morning or evening. In other cases, prisoners were informed that they would not be artificially fed that day and their food was merely placed in their cells. A third batch had all water removed from their cells and it was replaced by milk. Thirst always causes a more urgent desire than hunger, and these could only relieve the former by drinking the milk; thus ingesting nourishment as well as liquid.⁷⁰

This report of Barker is a confirmation of the complete dehumanization of the prisoners. An attempt was being made by experimentation on prisoners to produce controlled conditions where their actions could not only be regulated but also predicted. On the basis of his many studies of prisoners in conditions artificially produced, making the unsuspecting prisoners dependent on the stimuli which the experimenter thought fit to impart, Barker proposed a comprehensive strategy for tackling the hunger strikers. In his report to the government he delineated three systematic stages in which the contagion of hunger striking could be treated as a physical and mental condition. The first stage was to separate the striker immediately from the other prisoners. Evidently this step arose from the intention of 'preventing a spread of the strike' and through isolation to break the prisoner's morale.⁷¹ Having preempted the contagion by isolating the 'infected' specimen, the next two steps focussed on working upon him according to a systematic plan of action. The prisoner was in his isolated existence regularly and persistently tempted with food and his water was replaced by milk. The final stage was that of nasal feeding following the same procedure as has been discussed earlier in the

⁷⁰ Letter dated 22 June 1933 from F.A.Barker, IG Prisons (Punjab), to the Secretary, Home Department, GoI, reporting on the the hunger strike of political prisoners in the Cellular Jail at Port Blair. *ibid.*, p.9.

⁷¹ This strategy of separation, however, was not always successful as news of strikes did spread. The success of hunger strikes depended a lot on propaganda and often the prisoners consciously planned it in a manner which gave maximum publicity. Bhagat Singh and his companions on hunger strike in Lahore Central Jail dissuaded Ramchandra, a Congressman confined in the same jail, from joining the strike. More publicity could be gained if he went on strike in some other jail. Ramchandra went on strike with some other prisoners when he was shifted to District Jail, Mianwali. There were several such instances of strikes spreading to other jails which was strategically more advantageous for the strikers. Comrade Ramchandra, interviewed by Shyam Lal Manchanda on 20 January 1978, OHP, NMML, pp.28-29.

section. Artificial feeding was stopped immediately if any signs of inflammation of the throat or the involvement of the lungs appeared.⁷² This systematized procedure evolved by Barker became a standard to be followed in other cases of hunger strikes.

Resistance through hunger striking and the application by the state of various standardized methods of controlling such outbursts is brought out in the two hunger strikes which the revolutionary terrorist prisoners undertook in the Andamans. What is significant in the series of episodes which marked these hunger strikes is the staunch resistance of the prisoners, some of them veterans of several such strikes, towards forcible feeding and the equally strong resolve among the officers to overcome the hunger strikers by successfully feeding them. In the Andamans the doctors employed the ordinary prisoners to physically overpower the strikers. Forced feeding became a major moment of confrontation for the hunger striking prisoner and the jail officials.⁷³ The second hunger strike in 1937 involved a huge number of revolutionary terrorists and triggered off hunger strikes in sympathy in other parts of India.⁷⁴ In preparing for the second strike a major focus of the prisoners was to train the inexperienced in the art of resisting forcible feeding. There appear in Bejoy Kumar Sinha's memoirs hints of the desire among the hunger strikers to 'court death' in this struggle. In the first hunger strike the Senior Medical Officer, much to the 'advantage' of the prisoners, had been a novice in the application of the standard methods. This had resulted in three deaths. The SMO in the second strike executed to precision the procedures, making deaths improbable. On the other hand the hunger strikers were provided with comforts to check the pace of deterioration.⁷⁵ Forcible feeding was no doubt torturous for hunger strikers.

⁷² Barker's report to the Secretary, Home Department, GoI. File no. 44\80\33, H(P), NAI, p.10.

⁷³ Bejoy Kumar Sinha, a revolutionary terrorist and an accused in the Lahore Conspiracy Case, transported to the Andamans in 1933, narrated the incidents which marked the first hunger strike. Resistance to forcible feeding resulted in the fluid entering in the lungs of some strikers, three of whom died in the course of the strike, causing considerable embarrassment to the Jail administration and the GoI. Bejoy Kumar Sinha, *In Andamans*, pp.17-37.

⁷⁴ Detenus in Alipore, Berhampur, Deoli and other jails went on hunger strike. L.P. Mathur, *Kala Pani*, p.121.

⁷⁵ Sinha opines that since courting death was becoming a remote possibility due to the 'great care and precaution' taken by the jail medical staff, the revolutionaries who had not been included in the strike due to their chronic bad health decided to join the fray as they had a greater chance of dying as a result of starvation and physical abuse during forceful feeding. Bejoy Kumar Sinha, *In Andamans*, pp.143-155.

The procedure itself was a violation of the person of the hunger striker. These sentiments have been expressed in several prisoners' accounts. It is interesting therefore to learn from a prisoner's account that while the procedure was abhorred the feed did energize the body for further fasting. The strikers gradually started looking forward to being fed. A new strategy therefore was devised by the Superintendent to break the strikers' resolve. He ordered all the paraphernalia for forcible feeding to be arranged for a hunger striker. After having effectively raised expectations, the Superintendent would examine the pulse of the prisoner and decide that the prisoner did not need any artificial feeding.⁷⁶

The colonial government under pressure from the hunger strikers and from public anxiety regarding forcible feeding deliberated upon an exit option similar to the 'Cat and Mouse' procedure in Britain. It was argued by some officers that such a procedure would effectively reduce the appeal of the hunger strike to public opinion. The release of prisoners, it was hoped, would convert the whole gesture of hunger strike 'from the sublime to the ridiculous' and dissuade prisoners from taking such a step in the quest for a martyr's halo.⁷⁷ On the other hand a section of the bureaucracy argued that there was the risk of hunger strikes taking place to secure publicity for a particular group. There was also the added administrative 'responsibility' of deciding the critical moment of release and monitoring the released prisoners. While the application of the procedure to detenus was not complicated by legal hassles, it did involve the 'danger' of their going underground on release. The government further feared that it might have to extend the measure to CDM prisoners, which could involve legal complications.⁷⁸ The government, however, after lengthy deliberations rejected the idea of pursuing a 'Cat and

⁷⁶ From the memoirs of Yashpal, a revolutionary terrorist. Yashpal, *Sinhalokan*, Vol III, Lucknow, 1961, p.161.

⁷⁷ Secret letter dated 2 December 1941 from the Additional Secretary to the GoI to the Chief Secretaries of all Provincial Governments. File no. 94\25\41, Home [P(I)], NAI, p.14.

⁷⁸ The use of Section 401 (Power to suspend or remit sentences) of the Criminal Procedure Code to obtain temporary release presented the problem of inducing the prisoner to accept the conditions of the suspension of sentence. The Madras government had adopted a procedure under a loose interpretation of Section 39A of the Prisons Act 1894 under which the security of a relative or friend could be accepted even if the prisoner refused to give any. The Madras government, however, was not in favour of adopting the measure as a general policy. *ibid.*, p.14.

Mouse' policy for the colony. In its rejection the government exhibited a distrust of the motives of hunger strikers, as it felt that such a policy would make hunger striking easy. Similar deprecating sentiments were expressed regarding public opinion in India:

The chance that the application of the 'Cat and Mouse' procedure in India would involve him (hunger striker) in public ridicule seems remote since there is very little responsible public opinion in this country accustomed to thinking for itself.⁷⁹

It is significant that the Congress Working Committee in their resolution of 1939 summed up their impression of hunger strikes as follows: "If prisoners can secure their discharge by hunger strikes, orderly Government will become impossible."⁸⁰ The Congress ministries were, in their concern for 'orderly government', not averse to continuing the established policy regarding hunger strikes. The Congress government therefore did not entertain hunger striking prisoners' grievances, nor was the jail administration inimical to forcible feeding if the hunger strike persisted.⁸¹ The option of a political response to deal with hunger strikes was thus given up by the colonial and Congress government. The government's strategy of forcible feeding was fraught with impediments, as in most cases it fostered a hostile public opinion and raised political discontent.

The hunger strike of HSRA prisoners did, however, bring the racial basis of the colonial state to public scrutiny. In the martyrdom of the hunger striking prisoners, the two languages of nationalism, that of sacrifice and of equality, became entwined to question in the political domain the most significant mark of colonial difference - race. In the following section we analyse the government's response to the question of racial discrimination and status of political prisoners in jail.

⁷⁹ Secret letter from the government of UP, dated 20 January 1942 to the Secretary to the GoI. *ibid.*, p.29.

⁸⁰ *Ibid.*, p.3.

⁸¹ Rahul Sankrityayan narrates the incidents of the hunger strike by him and his two friends while in Hazaribagh Jail in June 1939. While Sankrityayan was spared, his friends were forcibly fed. Sankrityayan himself was careful not to take medicines while on strike for the fear that the jail staff would mix it with invigorating medicines. The jail Superintendent reminded him that the government would not give him a hearing unless he gave up his strike. Rahul Sankrityayan, *Meri Jeevan Yatra*, Vol II, Allahabad, 1950, pp.532-533.

SOCIAL ORDER AND PRISON 'CLASS'IFICATION

Pressures emanating from a variety of channels led to a reassessment of the existing system of classification in which apart from the 'special class' prisoners, there existed broadly two classes of prisoners - the 'Europeans' and the ordinary.⁸² The first class included the Europeans and those prisoners, whose mode of life approximated more closely to the 'western' than the 'eastern' manner of living.⁸³ This class was allowed a relatively higher degree of comfort, professedly for reasons of 'health'.

This differential treatment between Europeans and Indians had evoked a spate of allegations of racial discrimination in the Press and in the debates in the legislative assembly, especially during the adjournment debate following the death of Jatin Das, leading the government to believe that the existing system was 'a cause of deep offence to the Indian opinion'.⁸⁴ The memorandum of B.K.Dutt, Bhagat Singh's co-accused in the Assembly Bomb Case, also pointed to the discrepancy in the treatment of European and Indian prisoners.⁸⁵ The government was well aware of the damaging effect of charges based on racial discrimination, as is clear from the following observation of Malcolm Hailey, the Governor of UP,

...Whatever the feelings expressed regarding the preferential treatment of political prisoners, it is certain that the whole atmosphere of discussion will be vitiated by references to the differential treatment between Europeans and Indians. The questions will not be - "Why should political prisoners not be given better terms?" but "Why should not the political prisoners be treated as well as European prisoners?"⁸⁶

The Governor also suggested that the government should, while jail was still a reserved subject, make sure that the rules regarding the treatment of European prisoners were

⁸² For a detailed discussion on the creation of 'special class' see chapter three.

⁸³ Provincial Jail Manuals contained a special chapter concerning 'European prisoners'. Special provisions in matters of diet, clothing and accommodation were made for them. For rules relating to European prisoners in the Indian jails see file no. 230\26, H(J), NAI.

⁸⁴ Letter dated 5 October 1929 from H.W.Emerson, Secretary to GoI, Home Department to all Local Governments and Administrations. File no. 80\30, H(P), NAI, p.68.

⁸⁵ B K Dutt's letter dated 10 July 1929 to the Superintendent of Central Jail, Lahore, regarding the treatment of political prisoners. File no. 244\30 & KW, H(P), NAI, p.6.

⁸⁶ The Governor, UP, in a letter dated 2 September 1929 to the Home Member of Council. File no. 58\29, H(J), NAI, pp.1-2.

settled in a way which did not jeopardize the chances of 'genuine' European convicts when the jails came under ministerial control.⁸⁷ The government, however, astutely perceived the roots of the dissatisfaction in the anomalies of eligibility for 'superior class' treatment. Strictly interpreted, it excluded those Indians whose social standing and way of living was high but who had not adopted a European lifestyle.

The government believed that the 'peculiarities' of Indian conditions were such that all prisoners could not be treated the same, and called for a division which unlike in England was 'justified' because there existed a wide difference in the standard of living of the 'average' and the 'exceptional' Indians of the middle and the upper classes.⁸⁸ Accordingly, an 'intermediate stage' was proposed between the ordinary class and that allowed to Europeans and those Indians whose way of life approximated that of the Europeans.⁸⁹

It is interesting that the solution to the complaints of racial discrimination involved some measure of class distinction. In its resolve not to base a criterion of eligibility on the motive of the offence, which would lead it into the trap of acknowledging the rights of political prisoners, the government resorted to a criterion which was not exactly contrary to the suggestions of some prominent nationalist leaders. Madan Mohan Malaviya's recipe for the alleviation of complaints of racial discrimination in prison involved the introduction of social class as an additional criterion of classification. Making a distinction among prisoners on the basis of lifestyle and nature of offence, Malaviya proposed setting up three divisions with the uppermost including European and high class prisoners not convicted of offences involving moral turpitude. The second division under his scheme contained European and high class prisoners whose offences involved moral turpitude and all middle class prisoners irrespective of the nature of their

⁸⁷ The Governor recounted in his letter, the instance of a 'European' prisoner, a soldier of the Royal Fusiliers at Ambala, confined in Lahore Central Jail for a few months for a civil offence. The soldier wrote to his friends 'strongly' advising them to follow his example i.e. commit civil crimes, go to the prison and get their discharge, "...for he was once in his life really clever. They got up when they liked, played cards till 1 a.m., had a swimming bath and excellent food". *ibid.*, p.5.

⁸⁸ Letter dated 5 October 1929 from H.W.Emerson, Secretary to GoI, Home Department to all Local Governments and Administrators. File no. 80\30, H(P), NAI, p.67.

⁸⁹ Notes by H.W.Emerson, Secretary to the GoI, Home Department, dated 19 September 1929. *ibid.*, p.41.

offence. The third division was for prisoners whose standard of living was below that of the middle class.⁹⁰ Malaviya, however, favoured that all political prisoners irrespective of their social status should be placed in Class A.⁹¹ The government while steering clear of considering motive of crime as a criterion for classification, declared after some painstaking consultations with the provincial governments, that "the status of life and antecedents of the prisoner and the nature of the offence committed are the factors which should be taken into account".⁹² A formula for classification was ultimately set forward.

The special class was redesignated as class A and included 'non habitual' prisoners of 'good' character.⁹³ The innovation of the new scheme was the creation of class B as an 'intermediate class' to accommodate European, Anglo-Indian and Indian prisoners whose standard of living was higher than the ordinary jail population. Class B notably did not exclude 'habitual prisoners', which again was an important strategy to accommodate European prisoners. Class C, the lowest, included those prisoners who failed to qualify as A or B class prisoners. The distinction of class among the under-trial prisoners was manifested by dividing them into two, the lower division corresponding to C class convicts.⁹⁴ Apart from this, the existing rules relating to under-trial prisoners were not modified in any real terms, except for the directive that they be interpreted in a liberal spirit.

This scheme of classification, as remarked earlier, was the product of the colonial

⁹⁰ Pandit Madan Mohan Malaviya, a member of the Nationalist Party, made these proposals in a discussion with the Home Member and other representatives of the Assembly on 24 September 1929. *ibid.*, p.3.

⁹¹ Demi-Official letter dated 14 February 1930 on the revision of jail rules. *ibid.*, 31.

⁹² Confidential letter dated 19 February 1930 from C.W.Gwynne, Joint Secretary to the GoI to all Local Governments and Administrations. *ibid.*, p.158.

⁹³ Prisoners were eligible for class A if (1) they were non-habitual prisoners of good character; (2) they by social status, education and habit of life were accustomed to a superior mode of living; and (3) they had not been convicted of- (a) offences involving elements of cruelty, moral degeneration or personal greed; (b) serious or premeditated violence; (c) serious offences against property; (d) offences relating to the possession of explosives, fire-arms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed; (e) abetment or incitement of offences falling within these sub-clauses. The privileges of 'special' class accrued to this class. *ibid.*, p.160

⁹⁴ *Ibid.*, p.163.

officers' sagacity in catering to the class of prisoners who in their opinion were most likely to feel offended by a difference in treatment based on race and would at the same time feel threatened by any moves towards equalizing. The scheme, as also mentioned earlier, fell short of recognizing a separate class of political prisoners for the purposes of differential treatment and attempted to camouflage this by appeasing one section of the prisoners at the expense of others. A little over a year after the adoption of the new scheme of classification by all the provincial governments, some provinces started seeing practical problems with the principles of classification. It is interesting that the suggestions for modifications were based on diametrically opposed grounds. The Bengal government, for example, proposed that the criteria of eligibility be based entirely on social class. The nature of the offence, which unjustly squeezed out prisoners from superior classification, was in its perception, 'logically inconsistent and in contravention of the penological (sic) principles'.⁹⁵ On the other hand, there was speculation in some quarters of the provincial bureaucracy in UP that the existing rules of classification should be modified so as to make the nature of the offence the sole criterion of eligibility.⁹⁶ These proposals apparently canceled each other out, as no action seems to have been taken on either.

The classification procedure assumed that the categories - 'education', 'status' and 'mode of living' - were in fact precise, objective and quantifiable. The fuzziness of these categories is revealed in the official deliberations:

It is very difficult to define 'educated' and 'uneducated', or to give the minimum educational qualification, as Secretary wishes to give. Suppose there is a man who knows Arabic and Persian very well, although he has not passed any examination. I would call him 'educated', although according to the degrees bestowed by our Universities, he will come under no class.⁹⁷

Examples of this nature abound in both official and unofficial accounts, which only goes

⁹⁵ Letter dated, 3 March 1931 from the Government of Bengal to the Secretary, GoI. File no. 33\2\31, H(J), NAI, p.3.

⁹⁶ The police officers were exercised on account of claims put forward by revolutionary terrorists in UP for better facilities and B class treatment. The police personnel viewed them as criminals and expected them to be treated as ordinary or C class prisoners. Letter dated 16 September 1932, from the IG of Police, UP, to the Chief Secretary, UP Government. File no. 101\X\30, Judicial-Criminal, UPSA, p.1.

⁹⁷ Notes and Orders in the Judicial-Criminal Department, dated, 25 March 1930. *ibid.*, pp.5-6.

to show the element of subjectivity involved in the procedure of classification.

The civil disobedience prisoners were the first to experience the impact of the new scheme of classification. Their memoirs provide us with an insight into the different aspects of a system which was unanimously agreed to be the result of Jatin Das' martyrdom. The revised classification scheme, however, never actually adhered to any of his aspirations and was later condemned by his anguished comrades:

Is this the way of removing the causes of dissatisfaction or rather intensifying them?...are the reforms that are demanded of a nature of luxury? Are they not the bare necessities of life according to the most moderate standard of living? ...Nobody commits offences simply to come to jail...To say that motive cannot be ascertained in political cases is a hypocritical assertion.⁹⁸

The government's manoeuvrings on the treatment of politicals in jails and the bureaucratic response in terms of a revised classification scheme enabled it to accommodate racial inequality and reinforce the principle of class based division of prisoners. The new classification scheme was put to the test in the course of the Salt *satyagraha* and CDM.

OBEDIENCE AND CIVIL DISOBEDIENCE IN COLONIAL PRISON

The two phases of the CDM (1930-1931 and 1932-34) once again saw a massive rise in the number of prisoners. The movement started almost simultaneously with the introduction of the new scheme of classification in prisons. In these circumstances of civil disobedience, the bureaucratic rationalism manifested in classification was subjected to conflicting interpretation by the officials, Congress nationalists and the mass of political prisoners, and became enmeshed in the wider debate on jail discipline. In this section we shall examine the broad contours of prisoners' responses to classification and the regimen of discipline it sought to impose. We shall also attempt to interrogate the implication of these reactions for Gandhian dictates on prison behaviour.

The colonial bureaucracy perceived the social distribution of the civil disobedience

⁹⁸ Petition dated 28 January 1930 by the under trials of the LCC in protest against the criterion of 'status'. File no. 137\30, H(P), NAI, p.23.

agitators to be such that the majority could not be given superior treatment in jail.⁹⁹ A large proportion of the prisoners were therefore placed in the lowest category.¹⁰⁰ Separate confinement for different classes under the new scheme saw massive overcrowding in C class and the need for a large staff remained persistent throughout the period.¹⁰¹ Some provinces decided to confine Congress prisoners in separate jails.¹⁰² The C class prisoners soon overflowed the stipulated prison accommodations and alternative arrangements had to be made.¹⁰³ These additional or temporary Jails in the form of camp jails, huts etc., offered extremely frugal facilities.¹⁰⁴

The reactions of CDM prisoners towards classification ranged from suspicion to concurrence with the underlying principles of classification. Some political prisoners saw the system as a vindication of their self perception as political prisoners. For others it was symptomatic of some ulterior motive of the government to divide the movement. Prisoners' memoirs suggest that while there was broad agreement on the principle of class differential treatment, there was disagreement as to its implementation in the case

⁹⁹ The Superintendent of Nagpur Central Jail, for example, noted that of the 361 persons admitted, 50% were unemployed at the time of the commission of the offence. *Report on the Jails of the CP and Berar for the Year 1930*, Nagpur, 1931, p.2.

¹⁰⁰ Home Department figures for the number of persons convicted in connection with the CDM at the end of November 1930 show that of a total of 31239 people imprisoned, 2.52% were put in A class, 8.00% in B class and 89.46% in C class. Appendix to Notes dated 3 March 1931, in the Home Department concerning the rules governing the classification of prisoners. File no. 33\2\31, H(J), NAI, p.5.

¹⁰¹ Rajendra Prasad pointed out that of the 12,000 to 14,000 people convicted in the course of 1930 CDM, only 20 were allotted A class, 300-400 got B class and the rest got C class. A large proportion of the latter were kept in atrocious conditions in camp jails due to scarcity of space. One such jail was in Patna. Rajendra Prasad, *Atmakatha*, Delhi, 1965, p.420.

¹⁰² In NWFP for example the new Central Jail at Haripur was chosen for confining the Red Shirt agitators. *Administrative Report of the Jails of the NWFP for the year 1932*, Peshawar, 1933, p.15. In Bihar and Orissa the Hazaribagh Central Jail was marked out for accommodating A and B class prisoners and the C class prisoners were housed in Patna Camp Jail and other jails and sub jails. *Administration Report on the Jails of Bihar and Orissa for the Year 1930*, Patna, 1931, p.7.

¹⁰³ The Amaravati jail in CP, allotted for C class prisoners from Nagpur and Wardha, housed more than its capacity as early as a month after the second CDM started in January 1932. *Report on the Jails of the CP and Berar for the year ending 31 December 1932*, Nagpur, 1933, p.1.

¹⁰⁴ Bhuvaneshwaranath Mishra 'Madhav' himself a member of the 'janata class' confined in Phulwari Camp jail near the Phulwari Sharif Station in Bihar recalls the poor conditions there. Bhuvaneshwaranath Mishra 'Madhav', *Jeevan Ke Char Adhyaya*, Allahabad (n.d.), p.72. A Congress Bulletin of the period also narrates the difficult life in Jail for the *satyagrahis* in the lowest category. *Congress Bulletin, Jail Ank*, MIC 11599/16, No.671, IOL.

of political prisoners. Rajendra Prasad saw in the new scheme an attempt by the government to circumvent the issue of treating political prisoners as a class by themselves.¹⁰⁵ Some other Congress leaders were apprehensive that the scheme could be used as a tool for the repression of political prisoners, by allocating classes arbitrarily or withholding class privileges.¹⁰⁶

In the initial stages of the introduction of the new scheme, there were some protests against the discrimination inherent in classification and a resolve to counter the British move to 'divide' the movement. In the early stages of CDM for example, Sardar Vallabhbhai Patel persuaded his fellow *satyagrahis* to opt for the minimum conveniences and privileges of C class.¹⁰⁷ This resolve, however, proved difficult for most prisoners and the majority of them either reverted to their superior class facilities or resorted to *tikram* (trick) to smuggle in the necessities, after Patel left jail.¹⁰⁸

Some prison reminiscences reveal prisoners of the superior class partaking of their privileges as a natural entitlement. Even while condemning the ill treatment of the ordinary prisoners, Rama Devi, an A class prisoner in Bhagalpur Jail, cannot escape expressing a proprietorial attitude towards them. The ordinary prisoners as well as the female jail staff including the *jamadarni* and the warden appear in her comments as having been there to serve her.¹⁰⁹ It is doubtful whether the nationalist elites had the

¹⁰⁵ Rajendra Prasad, *Atmakatha*, p.421.

¹⁰⁶ It was alleged that prisoners were sometimes allotted classes vindictively with members of the same family being placed in different classes. Rajendra Prasad cites the case of *Seth Jamnalal Bajaj's* son who was placed in class C. *ibid.*, p.421. Urmila Shastri points out in her jail memoirs that the facilities of the superior class were not always easily available and depended entirely on the whims of the jail officers. Urmila Shastri, *Karagar*, Delhi, 1980 (1st published 1930), p.101.

¹⁰⁷ Dev Datt Atal testifies in his memoirs that some leaders like Dr. Satpal, an A class prisoner, made it a point to have one meal a day in C class. Dev Datt Atal interviewed by H.D.Sharma on 14 January 1975, OHP, NMML, p.27.

¹⁰⁸ Morarji Desai was among the *satyagrahis* in Sabarmati Jail where Patel initiated the equalizing effort. He points out that although *tikram* violated Gandhi's dictates regulating the behaviour of a *satyagrahi* in jail, it appears to have been prevalent in almost all jails, cutting across classes. In the initial stages of the CDM, recourse to *tikram* gave rise to frequent debates among *satyagrahis* and some moralizing by Gandhi's staunch supporters, leading to much bitterness and acrimony. Morarji Desai, *The Story of My Life*, Vol.1, Delhi, p.10.

¹⁰⁹ Rama Devi was an avid Congress worker who was arrested in 1932 during her massive recruitment campaign among the village women for volunteers on the charge of 'kidnapping' two girls who voluntarily came with her. Rama Devi Choudhary interviewed by H.D.Sharma on 18 July 1973, OHP, NMML,

capacity to withstand the hardships of C class or were even disposed to any equalizing. Raghur Sahai, for all his tirade against 'defective classification' could not overcome the temptation to divide the political prisoners into two classes for the sake of convenience: "Those who are accustomed to a superior class of living and are by status, education and habits of life entitled to better consideration, may be placed in A...".¹¹⁰ He lamented also that "some of the most highly educated and intellectual persons...were made to work on 'twisting the ban' and 'preparing *tilies*' for *chiks*...supposed to be light forms of labour but which nevertheless were very degrading forms".¹¹¹

A.K.Gopalan doubts whether the leaders of the national movement were at all ready to suffer any real hardship in jail for the purpose of improving overall conditions. As an A class prisoner in Vellore Jail he came in close contact with the prominent leaders of the region and admits having gradually become "sceptical of the ability of this class to lead the struggle at its critical moments, when the enemy's onslaught became fierce".¹¹²

Life in the superior classes appears in stark contrast to the C class. A.S.R.Chari, a B class prisoner, recalled that:

...life in Nasik Jail in 1930 was like a grand picnic. Traders and merchants used to deliver tins of *ghee* and *atta* galore at the jail gate for us all. We were permitted to cook our own food, and young fellows like myself used to gorge ourselves with the fine food we had.¹¹³

A.K.Gopalan found jail life to be more akin to hostel life, where he got the opportunity to meet almost all the leaders of Kerala, Andhra and Tamil Nadu. He remembered most other prisoners in the superior class to have been doctors, lawyers, landlords, capitalists and educated unemployed.¹¹⁴ Namboodiripad's reminiscences of his jail life in

pp.71-72.

¹¹⁰ Raghur Sahai, *Life in an Indian Jail*, p.63.

¹¹¹ *Ibid.*, p.65.

¹¹² A.K.Gopalan, *In the Cause of the People*, Delhi, 1973, p.18.

¹¹³ A.S.R.Chari, *Memoirs of an Unrepentant Communist*, Delhi, 1975, p.40.

¹¹⁴ A.K.Gopalan, *In the Cause*, p.18.

Cannanore and Vellore as a superior class prisoner are similar.¹¹⁵ Ramavriksha Benipuri's pithy satire on superior class life in jail is eye opening:

The comforts of Hazaribagh were amazing - bed, mattress, pillow, mosquito net, table, chair, shelf, milk, bread, basmati rice, *kheer*, meat, fish, and what have you - eat and feast with your friends, *swaraj* can come later but first get a taste of it in prison.¹¹⁶

It is not surprising, therefore, that those deprived of dignified conditions in jail were bitter at the discrimination, and the superior class prisoners were often the target of this resentment. Urmila Shastri seems to suggest that the jail officers contributed a fair share in creating this resentment by reminding the C class prisoners that their leaders were enjoying themselves in prison.¹¹⁷

These developments contributed to the distancing of the 'superior' from 'ordinary' class political activists. A useful insight into how this chasm was further deepened comes from numerous expressions of dissatisfaction with the dictates of Gandhi regarding the conduct of a *satyagrahi* prisoner. A *satyagrahi* under Gandhi's dictum was expected to obey all the rules of the jail unless it violated the dignity of his person. For the prisoners of C class the bondage of these rules was an added torture. Chari, who was demoted to C class from B in an economy drive by the Bombay government, remembers having organized 'a revolt against Gandhi's ideas'. The alleged revolt took place on the weekly inspection day when all the politicals had to stand in their jail uniform -

a kurta shirt and shorts, both shapeless and striped, a cap and a tin label with the number of the prisoner hanging from a cloth button stitched on the left chest front and stand with the history ticket resting on their upturned palms. As soon as I saw this my whole spirit revolted. I asked some of my co-prisoners why they agreed to humiliate themselves like this. They replied that some of the leaders of the C class yard had read out to them the message that Gandhiji had sent through Kaka Kalelkar that he alone was a 'true' *satyagrahi* who obeyed jail discipline implicitly. I tore off the labels from some of my co prisoners, took off my own cap, ruffled my hair and stood there defiantly waiting for the Superintendent ... Fortunately no clash took place... But never again did we stand on the

¹¹⁵ E.M.S. Namboodiripad, *How I became a Communist*, Trivandrum, 1976, p.128.

¹¹⁶ Ramavriksha Benipuri, *Mujhe Yaad Hai*, Allahabad, 1979, p.108 (own translation).

¹¹⁷ Urmila Shastri, *Karagar*, p.100.

old way as if we were numbered, nameless and spineless animals.¹¹⁸

Chari's resistance was based on a claim to a status of 'political prisoner' which questioned both the colonial and Gandhian disciplinary frameworks. Namboodiripad also recalled instances where others broke the jail rules as a part of political protest, and "occasionally denounced the Gandhian doctrines and adherence to it".¹¹⁹

The official reports also testify to acts of protest by C class prisoners. The UP jail administration report for example mentions a 'serious mutiny' in Meerut Jail where 450 C class political prisoners tried to break out.¹²⁰ The jail staff's difficulties are portrayed in the reports as caused by C class prisoners who resented their exclusion from the superior class.¹²¹ The superior class prisoners were, however, not absolved of their share of blame. The officials believed that the incitement to rebellion came from the superior classes.¹²² In fact the *satyagrahis* in prison were as a whole regarded as a menace to the accepted norms of jail discipline. One prison officer asserted that the *satyagrahis* 'as a class, were ill-balanced, neurotic individuals'.¹²³ The Conference of the IGs of Prisons suggested that they were habituated to disorderly behaviour:

These prisoners habitually offer every kind of difficulty which they can devise to set at naught the authority of the jail officers and to interfere with discipline. Amongst others, hunger strikes, refusal to wear prison clothing or take jail food, finding fault with everything connected with the jail, inciting others to give trouble, refusal to work, interfering with matters not connected with them and making common cause with fellow prisoners, the collection of large crowds of sympathisers outside jails have frequently caused acute embarrassment to jail administration.¹²⁴

¹¹⁸ A.S.R.Chari, *Memoirs*, pp.40-41.

¹¹⁹ E.M.S.Namboodiripad, *How I became*, p.131.

¹²⁰ *Report on the Administration of United Provinces of Agra and Oudh for 1930-31*, Lucknow, 1932, p.21.

¹²¹ The Commissioner, Nagpur District in his forwarding note on the annual report. *Report of the Administration of Jails of the Central Provinces and Berar for the year 1930*, Nagpur, 1931, p.1.

¹²² As per the extract from a private letter dated 19 January 1931 from the Viceroy to the Secretary of State for India. File no. 120\31, H(P), NAI, p.12.

¹²³ *Report on the Administration of the Jails of the Madras Presidency for the Year 1930*, Madras, 1931, p.7.

¹²⁴ *Proceedings of the Fifth All India Conference of Inspector General of Prisons*, p.7

An administration jail report complained that there was much "nervousness on the part of officers and warders in enforcing disciplining due to constant attacks in the yellow press of the Province".¹²⁵

Apart from the effect on jail discipline, the jail officers appear to complain of yet another matter - "the fall in average net profit per prisoner sentenced to labour".¹²⁶ This fall, in spite of the large number of prisoners employed on manufacture, was blamed on the political prisoners' indolence. In official perception they were 'drones', who were "either incapable of doing a full daily task or for other reasons, did not earn what the average ordinary prisoner did by his labour".¹²⁷ Prisoner's accounts have, however, with a degree of self glorification recounted their recourse to subterfuge to do less than their apportioned task. As a B class prisoner in Thane Jail, S.M.Joshi was allotted the task of knitting 60 feet of *niwar* daily. An ordinary prisoner who was responsible for the scavenging work, taught him how to forge the measurements.¹²⁸ These weapons of the weak undoubtedly had an effective impact on jail administration.

A considerable number of prisoners considered classification to be immoral and wrong in the sense that it sought to discriminate on a class basis. The Congress itself was envisaging a *swaraj* where there would be no difference between the rich and the poor.¹²⁹ Prisoners' memoirs, as also official reports, however, reveal that the vociferous condemnation of the motives of the government behind the new scheme was not commensurate with any manifest concerted action by the Congress.¹³⁰ There occur in the prisoners' accounts instances suggesting that there was no unanimous initiative or even a directive by the leaders not to accept class privileges in jail. This more or less

¹²⁵ *Report on the Jails of CP and Berar for the Year ending 31 December 1932*, p.3.

¹²⁶ *Administrative Report of the Bombay Jail Department for the Year 1930*, Bombay 1931, p.19.

¹²⁷ The reports showed that profits fell particularly in Visapur Temporary Prison and Camp Extension at Yervada occupied exclusively by the CDM prisoners and the Central Jails occupied largely by them. *ibid.*, p.19.

¹²⁸ S.M. Joshi, *Yadon ki Jugali*, New Delhi, pp.53-54.

¹²⁹ Urmila Shastri, *Karagar*, p.104

¹³⁰ It is quite significant that when the Congress ministries were installed in some provinces, they took no effective initiative to alter or remove the system of classification. Further discussion follows later in the chapter where we examine the role of Congress ministries.

willing acceptance by the Congress nationalists of the system of classification, one may suggest, precluded an overall improvement in jail conditions.¹³¹

The association of A class with leadership status and the atrocious conditions in C class, had made the allocation of class critical for the prisoners. Jainendra Kumar lamented that the system eroded the self respect of the people. He recounted an incident in 1932, where a Congress leader tried immediately before him told the magistrate that his monthly expenditure was the same as an ICS officer's salary. Others who were given C class reportedly showed income tax certificates in court to show that they had higher incomes.¹³²

These incidents bring home more forcibly than before the contradictions inherent in the nationalist myth of sacrifice underlying jail going. Jail going became with the coming provincial elections a stepping stone for a political career. Prison experience was fast assuming an electoral advantage and was counted as a major qualification for becoming a Congress candidate in the elections in 1936-7 and after.¹³³ Imprisonment which had earlier come to epitomize renunciation lost its moral fervour. With the gradual entrenchment of the Congress into a position of decision making, the issue of jail going and political imprisonment, as we shall see in the various sections of this chapter, became largely a matter of political contest.

GENDERING PRISONS

The decade of the thirties has been marked out by historians as the period when the image of a tough, determined 'woman activist' emerged distinct from upper class politicized women.¹³⁴ The Salt *satyagraha* of 1930 has come to be regarded as the

¹³¹ Rajendra Prasad, *Atankatha*, p.421; Urmila Shastri, *Karagar*, p.104.

¹³² Jainendra Kumar interviewed by H.D.Sharma on 13 May 1967, OHP, NMML, pp.54-55.

¹³³ In his study of development of Indian politics in relation to the Government of India Act of 1935 and the elections of 1936-1937, D.D.Taylor focusses also on the socio-economic and political background of the successful candidates in provincial election of 1937. His findings suggest that about 62.8% of the Congress members of the Bombay Assembly had been to the prison for their political activity, 38.6% of the Congress MLAs had been imprisoned during the CDM in CP, 63.2% of the NWFP Assembly had been in jail in the course of the Red Shirt Movement. D.D.Taylor, 'Indian Politics and the Election of 1937', unpublished PhD thesis, University of London, 1971, pp.322-323.

¹³⁴ Radha Kumar, *The History of Doing*, Delhi, 1993, p.81.

moment when for the first time large masses of Indian women became involved in the struggle for independence and entered the jails in huge numbers.¹³⁵ Between 1930-31 nearly twenty thousand women *satyagrahis* were convicted or detained.¹³⁶ The following report from Bengal reveals that the movement had spilled beyond the confines of the 'respectable' to include the socially marginalised sections -

While a number of the females convicted of political offences come of decent families, it has been found, in the Midnapur District at least, that the Congress have not scrupled to enlist the services of prostitutes and many village widows are found to be the material on which Congress agitators work.¹³⁷

This large-scale participation of women from diverse strata of society in the CDM forced the government to think of ways in which this unprecedented onslaught could be tackled without conceding any ground to the Congress. The major concern of the government was to exercise restraint so that the Congress might not be able to evoke public sympathy or outrage over any act of brutality or indecency towards the women agitators.¹³⁸ The UP government proposed the use of Regulation III of 1818 to detain the more prominent and 'respectable' women to avoid any public affront.¹³⁹ The Bengal government suggested another way out of the unusual predicament:

Apart from the undesirable effects politically of imprisoning women picketers or boycotters there will be difficulty in providing jail accommodation if their number is large. It is, therefore, in every way desirable that women participants in the movement should be fined and that the fines should be recoverable from their husbands, parents or

¹³⁵ In Bombay, for example, the Civil Jail adjoining the Arthur Road Prison was vacated to be used as a Special Female Prison for accommodating the overflow of women prisoners from Arthur Road Prison. *Administrative Report of the Bombay Jail Department for the year 1932*, Bombay, 1933, p.1.

¹³⁶ Radha Kumar, *The History of Doing*, p.80.

¹³⁷ Express letter from the Government of Bengal dated 26 November 1932 to the Home Department, GoI regarding the prisoners convicted in connection with the CDM. File no. 23\66, H(P), NAI, p.38.

¹³⁸ Telegram dated 9 January 1932 from the Home Department, GoI to all local Governments and Administrators. File no. 14\4\32, H(P), NAI, p.21.

¹³⁹ Secret letter dated 15 January 1932 from the UP Government to the Home Department, GoI. *ibid.*, p.8. It is interesting that the Government of India did not think it wise to use the Regulation in this case for fear of giving the women agitators undue importance. It felt that differential treatment within the prison by placing them in class A, should be sufficient.

guardians.¹⁴⁰

The Central government, while agreeing that such a step might have a deterrent effect, rejected it for fear of offending Indian public opinion.¹⁴¹ The treatment of women prisoners, respectable or otherwise, was ultimately determined by certain structural constraints which we shall be discussing in the course of this section.

The published memoirs, autobiographies and interviews of women political prisoners shed interesting light on their perceptions regarding their captivity, their notions of freedom and the survival strategies they devised to face the drudgery of prison life. Their writings reveal the conditions of ordinary prisoners much more than the men. Unlike the male political prisoners, women politicals were more often not separated from the ordinary due to paucity of space - a fact which had important implication for the prison experiences of women politicals.¹⁴² Although the segregation of female from male prisoners was historically a significant step in prison reform, a major repercussion of this separation was even greater distancing of women prisoners from the public eye. This is reflected in most women prisoner's writings where women's jails seemed practically to be prisons within prisons, so much so, that the women appeared to be doubly confined. The women's ward in Meerut District Jail is described by Urmila Shastri as a smaller jail within the structure of the larger jail:

The women's ward is situated in the corner of the Meerut District Jail surrounded by a boundary wall. The ward has a single door made of a thick iron plank which was locked all the time from outside and from inside by the lady warder. The keys to the outer lock were kept in the

¹⁴⁰ Confidential letter dated 30 December 1931 from the Bengal Secretariat to the Home Department, GoI. *ibid.*, p.2.

¹⁴¹ Section 386 of Cr.PC provided for recovery of fine in the case of the offender or defaulter but there was no provision for recovering a woman's fine from her husband or guardian. The Government of India's opinion was that in the absence of any statutory provision the fine should be regarded as personal to the woman to be recovered on her own separate property. *ibid.*, pp.14-18.

¹⁴² Scarcity of space implied that despite classification of women political prisoners, most of them could not avail of the facilities to which classification as A or B class entitled them. The India League delegation was told by the District Magistrate of Vellore and the Superintendent of Vellore Jail that all educated women prisoners were given either Class A or B. But the League delegation found this to be untrue after hearing evidence from ex-prisoners. *Condition of India*, Report of the Delegation sent to India by The India League in 1932, London, 1932, p.253.

office and those of the inner lock were in the custody of the lady warder.¹⁴³

As the only woman political prisoner in the ward she described her agonizing experiences in the 'restricted confines' of the female ward which became more pronounced when she heard the echoes of the patriotic songs sung by the male political prisoners in the wards outside.¹⁴⁴ A further consequence was the partial or complete curtailment of women's access to certain spaces within prison like the hospital or the playground. The separation of women from the 'main' structure of the prison was responsible also for effectively blocking out any flow of information to and from this secluded section. The isolation of the women prisoners was responsible also for the ease with which they could be kept in conditions of mental and physical suffering.¹⁴⁵ The women political prisoners through their writings and campaign were able to open the female ward to public scrutiny.

The enforced proximity between the political and the ordinary prisoners evoked sentiments ranging from affinity to disdain. In some cases women political prisoners distanced themselves from their ordinary counterparts because of the differences in their social and class backgrounds. Urmila Shastri recalled in her memoirs her sense of utter loneliness despite sharing her barrack with two other women prisoners, not the kind whose company she could relish.¹⁴⁶ Kamaladevi Chattopadhyay described how in 1932, while in Arthur Road Jail, the political prisoners objected to "being kept with the ordinary prisoners and being locked with them, particularly the prostitutes on *health grounds*".¹⁴⁷ Margaret Cousins on the other hand recounts that there did not always

¹⁴³ Urmila Shastri was sentenced to six months simple imprisonment in July 1930 for addressing students in the Town Hall of Meerut exhorting them to picket liquor shops. Urmila Shastri, *Karagar*, p.14.

¹⁴⁴ Ibid, p.52.

¹⁴⁵ Teertha Mandal presents a distressing account of the sufferings of women political prisoners particularly the revolutionary terrorists in Bengal. Tirtha Mandal, *The Women Revolutionaries of Bengal*, pp.119-133. A Congress Bulletin of the time draws a similarly disquieting picture of women *satyagrahis* in solitary cellular confinement in Gonda Jail and of C class women *satyagrahis* in Fatehgarh Jail. *Asahayog Andolan Sambandhi Kashi Ki Patra Patrikayen, Congress Bulletin*, 15 July 1932, p.7.

¹⁴⁶ Urmila Shastri, *Karagar*, p.40.

¹⁴⁷ Kamaladevi Chattopadhyay, interviewed by K.P.Rangachari and H.D.Sharma on 6 December 1967, OHP, NMML, Delhi.

exist among the political prisoners any such derision for prostitutes. She recounted the warmth with which women satyagrahis welcomed a Devadasi who "...heard the call of Mahatmaji and left her vocation braving the treatment she might be given by her "respectable" fellow prisoners; but I saw the most orthodox of Brahmin women mingling socially, even eating with her...".¹⁴⁸

Prison experience appears to have played a role in the 'education' of politicals about the lives of millions of women deprived of a life of dignity. Most of the 'respectable' women political prisoners probably had their first personal encounter with poverty in prison. Kamaladevi Chattopadhyay recounts her confrontation with poverty in Hindalaga Jail when she came in contact with women involved in a no tax campaign from 'the remote corners of Karnataka':

Their description of life made my hair stand on end. A full meal was a rare luxury, they simply had to make do with what they could get. They covered their bodies with pieces of cloth. On a rare occasion like a marriage they got a full sari. Their horizon seemed non-existent. Did they ever dream of a different life?...Their life was a far cry from what I had been familiar with.¹⁴⁹

Ashalata Sen wrote in a similar vein of the 'nefarious characters' she encountered during her imprisonment in 1932 in Dacca, Barisal and Berhampur Jails. "Most of these women", she wrote, "had been forced into committing crimes because of intolerable social conditions".¹⁵⁰ She also felt that the "political prisoners came as a gust of fresh air among the ordinary convicts and were highly respected by them."¹⁵¹

We should not assume that the political prisoners were automatically venerated by the ordinary prisoners. Krishna Hatheesing described the reception of the political prisoners in Lucknow Jail by the ordinary prisoners as a mixed one, ranging from friendly smiles to curious sizing up or even scorn. This ambiguity of emotions arising from unfamiliarity dissipated as the two groups of prisoners got better acquainted with

¹⁴⁸ Margaret Cousins, *Indian Womanhood Today*, Allahabad, 1941, p.65.

¹⁴⁹ Kamaladevi Chattopadhyay, *Inner Recesses Outer Spaces*, Delhi, 1986, p.175.

¹⁵⁰ Ashalata Sen, *Autobiographical Sketch*, OHP, NMML, Delhi, 1979, p.16.

¹⁵¹ *Ibid.*

each other.¹⁵²

The association of the political prisoners with the Gandhian movement was responsible for the impartation of certain myths to their capabilities. These aspects are brought out in an interesting conversation reported by Urmila Shastri between herself and her companions who refused to be impressed with her stubborn unwillingness to make an appeal against her sentence.

Jamadarani to the other prisoners: *Sahib* (Superintendent of the Jail) asked her if she wanted to appeal, but she refused. If she had appealed she would have been released.

Ordinary prisoner: Why are you worrying for her? She can be free whenever she wants. After all she is under the protection of Gandhi *maharaj* - he'll free her.

Urmila: But he is himself in jail.

Ordinary prisoner: That is only a fabrication. Who can keep him in jail. We have heard it with our own ears - he was once kept behind seven locks, the locks remained intact but Gandhi *maharaj* escaped from the prison by his *shakti*.

Urmila: Really! Who told you this?

Ordinary prisoner: Why are you trying to act innocent as if you don't know this. Everybody knows - the whole village knows.¹⁵³

While the women prisoners resisted the atrocities meted out to them in jail by directly confronting the authorities, they strove also to make the torturous confines of the prison hospitable. The prison was turned into a domestic space - where the women prisoners irrespective of difference in class, linguistic and caste and ideological backgrounds recreated familial relations. The companionship among women manifested itself in various forms including the sharing of scarce amenities, collective celebration of festivals or empathising in each other's difficulties. There appears in the writing of Shanti Das an extraordinary sense of optimism and hope in the strength of the collective: "Whatever the confines of our lives, we would make it beautiful. Then alone would we take leave. That leave taking too would be just as beautiful, just as sweet".¹⁵⁴

¹⁵² Krishna Hatheesing, *With No Regrets*, Bombay, 1946, p.92.

¹⁵³ Urmila Shastri, *Karagar*, pp.33-34.

¹⁵⁴ Shanti Das recounts her experiences as a revolutionary terrorist prisoner in the chapter 'Making a nest in prison'. Shanti Das, *Arun Bonhi*, Basumati Sahitya Mandir, BS 1374, cited in Indrani Chatterjee, 'The Bengali Bhadramahila', *Manushi*, No.45, 1988, p.34.

Bina Das narrated the incidents of the day she was being taken out to court from the Presidency Jail. Her fellow prisoners dressed her up meticulously in a *khaddar* sari, bangles and *kumkum*, as if preparing her for the occasion with whatever resources they could muster.¹⁵⁵ Other more ceremonial ways in which this togetherness was played out was 'the ritual satisfaction of pregnancy cravings' called the *shad*, a domain of married women with children - "a clear expression of sisterhood whereby the mother-to-be is comforted by those who have already experienced the pain of childbirth".¹⁵⁶ The terms of endearment given to the fellow prisoners such as *didi* (elder sister), *boudi* (elder brother's wife), *mashima* (mother's sister), *thakurma* (grandmother) demonstrated the process whereby the fellow prisoners were brought together in bonds of affection and responsibility for each other. These women prisoners had broken many taboos circumscribing their roles in the home by participating in the mass movements. The ceremonial performance of rituals and episodes of collective merriment ushered in a togetherness and also achieved in a way not seen in the cases of male prisoners a unification of the political and personal in the prison. They were also a manifestation of prisons as a 'microsociety' where women adapted to the deprivations of imprisonment by assuming roles analogous to their roles in society.

The women prisoners like the men continued political discussions within the prison. Shanti Das saw her experience in the Hijli Camp Jail as a preparatory stage where through discussions and meetings with each other they were building themselves for 'the next chapter of the freedom struggle'.¹⁵⁷ Ideological differences were no barriers to the building of lasting friendships. Shanti Das, a revolutionary terrorist prisoner, wrote candidly of her friendships with *satyagrahi* prisoners. The friendship between her and some other *satyagrahi* prisoners were seen by her as the reason why the authorities shifted her from one jail to the other. Talking of her experience in Dacca jail where many *satyagrahi* women were imprisoned, she said -

...Among them there were three or four of my age. In no time I became friends with them. The authorities grew suspicious, fearing that amongst

¹⁵⁵ Bina Das, *Srinkal Jhankare*, Basudhara, 1945, cited in *ibid.*, p.35.

¹⁵⁶ *Ibid.*

¹⁵⁷ Shanti Das, *Arun Bonhi*, cited in Indrani Chatterjee, 'Bengali Bhadramahila', p.34.

them too I would sow the seeds of bloody revolution... That is why I could not stay at Dacca but was transferred to Rajshahi...¹⁵⁸

In some instances, however, the demonstration of tolerance was less forthcoming. Kamaladevi Chattopadhyay was less reticent in saying what she thought of the women terrorists - 'more emotional, impulsive than realistic'. She cited the confession of Bina Das regarding her trauma after Das tried to assassinate the Governor of Bengal as a case of 'naivety'. Incidentally Kamaladevi takes this as being typical of 'a terrorist engulfed only by emotion'. Kamaladevi wrote with marked condescension,

...she (Das) plaintively describes how she was enraged by the sight of her sister, a *University graduate* (this is a potent factor, she pointedly mentions) in prison clothes, eating prison food! Countless of us ate prison food, wore prison clothes, without feeling degraded.¹⁵⁹

Evidence of the wariness of the officers about any symbiosis between the Gandhian and terrorist women appears in other writings too. Kamala Dasgupta, a member of the Jugantar group gave evidence of the attempts by the authorities to segregate the two by banning any interaction between them. She also recounted the resistance to this by the women in Presidency Jail.¹⁶⁰

The companionship among women was conducive to stopping any inhuman or unfair treatment of the women prisoners by the authorities. In Midnapur jail the revolutionary terrorist prisoners refused to be separated during meal time and resorted in protest to a hunger strike in which the ordinary prisoners also participated to ensure that their comrade who was placed in a lower division was given fair treatment. The episode, however, ended with the hunger striking prisoners being dispersed to different jails.¹⁶¹

The women political prisoners resorted, with different degrees of success, to resistance and protest. Kamaladevi Chattopadhyay confined in Bombay Jail with other political prisoners in early 1932 submitted a representation to the Prison Advisory

¹⁵⁸ Ibid., p.34.

¹⁵⁹ Kamaladevi Chattopadhyay, *Inner Recesses*, p.165, (emphasis in original).

¹⁶⁰ Memoirs of Kamala Dasgupta are carried in her book, *Rakter Akkhare*, Nabhana, 1977. Cited in Indrani Chatterjee, 'Bengali Bhadramahila', p.34.

¹⁶¹ Ibid.

Committee against the prison rules which compelled them to wear only the prison uniform consisting of rough and heavy *saris*. This apparently was not a difficulty to those accustomed to wearing khadi saris, but the problem for them was that they were not allowed to wear underwear which apparently was not included in the prison uniform and the prison rules forbade the women from wearing any articles of their own clothing. Kamaladevi was separated from the rest of the women for organizing the protest.¹⁶²

Acts of assertion by women were usually focussed around their sense of personal esteem, femininity and religious values which came across as powerful political acts. The length of *saris*, as also the wearing of the traditional Hindu symbols of married women (bangles and *mangalsutra*) were similar points of contention.¹⁶³ There were also several instances of hunger strikes by widow prisoners to be allowed to cook their food separately, manifesting in their request to follow a traditional hindu custom a political expression of the self. Ashalata Sen recalled the hunger strike by Saraju Gupta, Kamini Basu and Prativa Sen, arrested in the course of the salt *satyagraha*, to be able to cook their own vegetarian food.¹⁶⁴

The torment and misery suffered by the women prisoners were immense. There were numerous instances of physical and mental sufferings at the hands of the jail authorities especially in the cases of revolutionary terrorist prisoners. The drudgery of prison life compounded by the suffering took its toll on the health of all women prisoners. Numerous revolutionary terrorist prisoners died in jail or developed illnesses which became chronic. Shovarani Datta wrote in her memoirs "the girls who had gone into jail had unbounded health, burning with enthusiasm and intelligence - one by one they emerged from prison, some moving towards death's door on a stretcher, some clutching at the *jamadarni*'s hands for support...".¹⁶⁵

¹⁶² Kamaladevi Chattopadhyay, *Inner Recess*, p.171.

¹⁶³ The CP government in early 1933, allowed the women prisoners long *saris* (7 yards). 'After carefully considering the question' of permitting glass bangles, it permitted the B class prisoners to wear one bangle on each arm but denied the facility to C class prisoners as a precautionary measure. Wearing of *mangalsutra* was also allowed to all women prisoners. *Central Provinces Jail Committee Report*, 1933. File no. V\26\170\4, IOL, p.6.

¹⁶⁴ Ashalata Sen, *Autobiographical Sketch*, p.12.

¹⁶⁵ Shovarani Datta cited in Indrani Chatterjee, 'Bengali Bhadramahila', p.36.

The majority of women involved in the revolutionary terrorist movement faced tremendous difficulties after their release. Their families had been in most cases reduced to penury due to official vengeance against them. Landlords refused to take them as tenants for the fear of official reprisals. The prisoners themselves faced problems of finding job opportunities, as the majority of them had curtailed their academic careers to enter the movement at very young ages. Kamala Mukhopadhyay, who described herself as an 'organizer of various movements', wrote that by the time the Indian government introduced a pension for freedom fighter "we had somehow managed to support our families and had become old. The struggle to earn a livelihood was no less painful than the detention or conviction period and led in some cases to premature deaths or disabilities".¹⁶⁶

The memoirs of women political prisoners reveal a great deal about the mass of women who went to prison in their struggle against colonial rule and found freedom in the breaking of taboos which confined them to the home. Imprisonment was in a way the culmination of their assertion of freedom. Their writings show a creation of surrogate familial bonds inside the prison negating the debilitating effects of captivity.

The contest over the definition of 'political' entered a new phase with the Congress assuming power under the Government of Act, 1935. We shall examine in the following section the efforts of the Congress ministries to release political prisoners while at the same time having to face political challenge from peasant and labour organizations.

THE CONGRESS MINISTRIES AND POLITICAL PRISONERS

In July 1937, Congress ministries were formed in Bihar, Bombay, CP, Madras, Orissa and UP and by September 1937, in NWFP and Assam. The election pledges of the release of political prisoners and restoration of civil liberties combined with promises for a radical restructuring of agricultural and industrial relations raised hopes among the people. The period, however, saw the Congress face enormous difficulties in redeeming its election promises. Several inherent contradictions in the working of the ministries in this period subsequently made its claims of 'representing' the aspirations of the 'nation'

¹⁶⁶ Kamala Mukhopadhyay, 'A Participant's View: Women in the Bengal Revolutionary Movement', *Manushi*, No.69, March-April, 1992, p.25.

rather suspect. The manner in which the Congress governments 'managed' the tensions between labour and capital and the kisans and zamindars demonstrated not only the ideological tensions within the Congress but the concretization of a perspective which was to have important ramifications on what was understood as 'political' as distinct from the merely 'social' and 'economic'.

We shall first turn our attention to the question of the release of political prisoners, which some scholars have lauded as a remarkable achievement of the Congress ministries.¹⁶⁷ The issue of release had no doubt attained importance at the time for the Congress in terms of exhibiting its determination and ability to roll back decisions taken in the past. It cannot be denied that the Congress ministries did raise the question of the release of political prisoners convicted in connection with 'offences of violence' at 'a very early stage' with their respective Governors.¹⁶⁸ The negotiations between the Congress ministries and the Governors exhibit differences but eventually as we shall see below, there appears to have been no major rupture on the principles underlying release. The nationalist project undoubtedly drove the Congress ministries to press for the release of political prisoners. On the other hand the Congress was also defining what it perceived as reasonable boundaries of political activity.

The Central government had chalked out some guidelines on the release of political prisoners for the Governors - the centre's men in the provinces who wielded considerable powers under the 1935 Constitution.¹⁶⁹ There appears in the official correspondence an appreciation of the position of the ministries:

...the point which they (the Ministers) stressed in particular and to which they gave an importance that had not emerged in our previous discussions, was that rightly or wrongly the release of these prisoners had been part of the Congress programme with which they had gone to the country, that expectations had been roused, and that it was hardly possible for them to

¹⁶⁷ See for example Bipan Chandra et al, *India's Struggle for Independence*, p.326.

¹⁶⁸ Letter dated 30 January 1938 from the Governor of UP to Linlithgow, the Secretary of State. File no. L&P&J\8\649, IOL, p.1.

¹⁶⁹ The legal position of the Governor in this context was that release, place of detention etc of prisoners was within the power of the ministers, subject to 'special responsibility of the Governor' if the Governor considered release, remission of sentence, change of place of imprisonment, would constitute a grave menace to the peace and tranquility of the province. Governor General to the Secretary of State for India, *ibid.*, p.419.

justify their position in postponing these expectations indefinitely.¹⁷⁰

There also appears to have been an awareness of the fact that the demand for release was supported by all sections of Congress opinion and also that hunger strike by political prisoners in the event of delay would be an embarrassment for the ministries. The Congress predicament obviously gave the colonial officers the advantage of planning from a position of strength. The consultations between the Governor General and the Secretary of State reveal that the colonial officers were in favour of carefully scrutinizing all cases of release even at the risk of 'difficulty with their ministers'.¹⁷¹ The Governors were urged to secure 'undertakings of good behavior' from the prisoners and to ask the ministers to discourage demonstrations on occasion of releases, which were to be spread out over a period of time.¹⁷² Popular expectations were kept in abeyance while the Governors of the various provinces sanctioned release in small groups. In the case of UP, for instance, the ministers pressed for and achieved the release of the Kakori prisoners on 20 August 1937.¹⁷³ Of the remaining twelve the Governor agreed to release five in October and declined to release six other prisoners before assessing the effect earlier releases had on the terrorist-communist movement in the province.¹⁷⁴

The inflexibility of the colonial officers in allowing speedy release brought matters to a head when several prisoners in Bihar, Bengal and Punjab went on hunger strike and Congress ministries in Bihar and UP resigned briefly in protest in February 1938. The ministers in UP were particularly apprehensive of a hunger strike among political prisoners, which could weaken their position in relation to the left wing in the province and also trigger popular agitations. Colonial policy so far had discouraged any concessions when threatened by hunger strikes. These conflicting trends would have created an impasse making it difficult for the ministries to remain in office. The

¹⁷⁰ Ibid., p.6.

¹⁷¹ Correspondence dated 1 August 1937 from the Governor General to the Secretary of State regarding the policy for the release of political prisoners. *ibid.*, p.424.

¹⁷² Letter dated 7 August 1937 from the Governor General to the Secretary of State. *ibid.*, p.421.

¹⁷³ Letter dated 30 January 1938, from the Governor of UP to Linlithgow. *ibid.*, p.1.

¹⁷⁴ Letter dated 30 January 1938 from the Governor of UP to the Governor General. *ibid.*, p.2.

resignation of the Congress ministries seems then to have been the only rational option for the ministries to silence the left on the eve of the Haripura Congress session. Sumit Sarkar points out that the resignations were withdrawn a few days after the session "with the Governors retaining the principle of individual rather than immediate and total release".¹⁷⁵

In this tussle between the Congress ministries and the colonial bureaucracy the latter had less at stake. There were few prisoners in question and their release would not have made an appreciable difference to the state of discipline in the provinces or even to the left movement. The Congress ministry's perplexity enabled the colonial officers to extract assurances which further delayed releases in specific cases. In UP for instance the Governor elicited the promise that the release of the six Chauri Chaura prisoners would not be pursued.

They (the Ministers) gave me (the Governor) to understand that these proposals would not in fact be pressed and that, the Chauri Chaura prisoners were not looked upon as political in the same way as those whose cases I have been discussing above.¹⁷⁶

The reasons for not effecting an earlier release were ostensibly the compulsions of law and order, especially in Gorakhpur where the 'law and order' situation and the rampant 'spirit of lawlessness' was not perceived as conducive to their release.¹⁷⁷ When the release of the prisoners was effected owing to persistent pressure from the prisoners and the public expectation generated by the release of other political prisoners, Pant issued instructions to ensure that they be released as quietly as possible. The releases were construed as taking place in the ordinary course with no special importance attached to them. Before their release, the prisoners gave an undertaking not to participate in demonstrations and receptions. Pant himself had no doubt that the prisoners would agree to the conditions because he perceived them as having 'no interest

¹⁷⁵ Sumit Sarkar, *Modern India*, p.352.

¹⁷⁶ Letter dated 30 January 1938 from the Governor of UP to the Governor General, reviewing the background to the release of political prisoners in UP. File no. L\P&J\8\649.

¹⁷⁷ Notes dated 5 July 1938, on the minutes dated 11 January 1938 of the Governor, Harry Haig on the peculiar conditions of the case. File no. 1483\1935, Criminal-Judicial, Box no. 12, UPSA, p.61.

in politics and matters political'.¹⁷⁸ Shahid Amin has compared this with the conditions of release of the 'educated' and 'sensitive youth' convicted of terrorist attacks on treasuries and armouries, where a similar undertaking was not demanded. He points out that the release of other (i.e. non Chauri Chaura prisoners) was considered by the UP government as 'a political gesture and they did not want it to be accompanied by any indication of mistrust' - which is what 'demanding assurance of good behaviour' would have looked like to the nationalist public.¹⁷⁹ While the British officers obviously took exception to the Chauri Chaura case for being particularly 'brutal' and 'heinous',¹⁸⁰ the Congress ministry on its part chose to disinherit the Chauri Chaura prisoners of their share of the CDM legacy.¹⁸¹

In the meantime, independent of the issue of the release of 'terrorist' prisoners, the Congress was carving out a narrow definition of the notion of 'political'. The 1930s have been seen as a period when Congress ascendancy was being challenged "by the kisan sabhas and the CSP (with its communist components), by the Muslim League and other communal organizations".¹⁸² The balancing act by the Congress at this time has been described by Sumit Sarkar as "a steady shift to the Right, occasionally veiled by 'Left' rhetoric".¹⁸³ Sarkar has pointed out that the Congress ministries began well by repealing the emergency powers inherited from 1932. There was also an initial

¹⁷⁸ Notes dated 12 July 1938 by G.B.Pant. *ibid.*, p.73.

¹⁷⁹ Shahid Amin, *Event, Metaphor, Memory*, p.218.

¹⁸⁰ Notes and Orders dated 27 September 1935, from the Home Member, UP. File no. 1483\1935, Judicial-Criminal, UPSA, p.13.

¹⁸¹ The anti-police riot at Chauri Chaura in February 1922 was seen differently at separate moments of the history of the 'nation'. In his work Shahid Amin points out that Chauri Chaura was first excluded from the 'calendar of nationalist events' by the 'disciplining prose' of Gandhi, epitomizing the mainstream nationalist, who condemned the 'evil doers' of Chauri Chaura for their 'political violence' and stressed the need for 'perfecting Congress organization'. In a different time frame, the Congress ministry in 1937 took care to distinguish the Chauri Chaura prisoners from the category of 'habitual offenders' while desisting from considering them political. Amin further states that a 'nationalization' of the riot took place, with local history records appropriating the event as 'political' in the aftermath of independence. Shahid Amin, *Event*, pp.49-60.

¹⁸² Gyanendra Pandey, 'Congress and the Nation, c.1917-1947', Occasional paper no.69, Centre for Studies In Social Sciences, Calcutta, 1984, p.14.

¹⁸³ Sumit Sarkar, *Modern India*, p.357.

expression of a pro labour stance in the formulation of welfare legislation and the recognition of the *Mazdur Sabha* which had led the strikes in the Kanpur textile mills during 1937 and 1938. The anxiety of some sections of the Congress over 'indiscipline', however, led the All India Congress Committee in September 1938 to support measures for "the defence of life and property" and to condemn "people, including Congressmen...found in the name of civil liberty to advocate murder, arson, looting and class war by violent means..."¹⁸⁴ Subsequently, labour was curbed by the Bombay Trades Dispute Act of November 1938. During the Digboi strike of 1939 against the British owned Assam Oil Company, the Congress ministry of N.C.Bardoloi allowed the use of the Defence of India Rules to break the strike. Rajagopalachari launched prosecutions for seditious speeches in Madras as early as October 1937 and repressive measures were increasingly used in all Congress ruled provinces against communal riots and left led labour and peasant movements alike.

The attempts by the Congress to consolidate its position thus involved a sifting of demands construed as 'political' or 'national' from those not perceived as such. Subsequently peasant and labour movements, as also communalism, were defined as 'economic' and 'social' problems to be solved after the primary 'political' objective of *swaraj* was achieved. Obviously, the 'growing fear of social revolution as the doors of political office gradually gave', as Gyanendra Pandey puts it so succinctly, increased the compulsions to define not only the course which the struggle for independence was to take but also the 'responsible' people who could 'represent' the masses in terms of disciplining and steering them to that threshold.¹⁸⁵

Those who fell under the purview of Congress 'disciplining' were the members and leaders of the *kisan sabha*, industrial labourers and also communal organizations like the Muslim League and the Hindu Mahasabha. At the level of governance, Congress as well as non Congress ministries resisted any full fledged reform in land tenure, while on a discursive level they described the peasants with extreme condescension as 'naked',

¹⁸⁴ Ibid., p.352.

¹⁸⁵ Gyanendra Pandey, 'The Congress and the Nation', p.15.

'bewildered', 'downtrodden', 'utterly miserable', 'crushed' and 'starving'.¹⁸⁶ These descriptions not only effaced the politicisation of the peasants but also obscured the vibrant struggle which the peasants had waged from the 1920s almost independent of any Congress leadership. The 'schooling' of the peasants obviously did not preclude the use of the cane. The government took recourse to police action, much as the previous regime had done, to intervene in favour of the landed classes and maintain 'law and order'.¹⁸⁷

Sahajanand Saraswati recalled his dejection with the Congress ministries' distorted perception of the Congress leaders towards the *kisans*' struggle. After mammoth *kisan* rallies in Patna, S.K.Sinha, the Prime (Chief) Minister of Bihar, cautioned Sahajanand against the *kisan* 'mobs'. The allusion to peasants in agitation against the Congress ministries as 'mobs' was to deprive them of any independent political will and reason. Sahajanand wrote:

...there was a time when these peasants were 'masses'. They have now become mobs. They were 'mobs' earlier too but for some reason were seen as 'masses'. These leaders do not need the peasants any longer and historically the term mob has been attributed to those who become redundant in the eyes of the leaders. The government had always addressed them as such and now our ministers too have become the government.¹⁸⁸

It is not surprising therefore that the Congress ministries refused to recognize peasant activists like Rahul Sankrityayan as political prisoners. Peasant leaders Pandit Karyanand Sharma, Anil Mishra, Jagannath Prasad and Bramhachari Ramvriksha went on hunger strike for recognition as political prisoners and were released by the Congress government 'on their death beds' with their demands unfulfilled.¹⁸⁹

Rahul Sankrityayan too twice resorted to long hunger strikes in jail in order to obtain political prisoner status for the jailed *kisan* activists. Each time he was released without any favourable decision by the ministry. Sankrityayan asserts that the Congress ministry in Bihar did not till its last days grant political prisoner status to the *kisan*

¹⁸⁶ These epithets were used by Rajendra Prasad and Jawaharlal Nehru in their writings on the peasants. *ibid*, pp.1-7.

¹⁸⁷ *Ibid.*, p.16.

¹⁸⁸ Sahajanand Saraswati, *Mera Jeevan Sangharsh*, Delhi, 1985, p.299.

¹⁸⁹ *Ibid.*, p.315.

prisoners. Although booked on criminal charges, the *kisans* refused to be categorised as criminals.¹⁹⁰ Having fought for their rights over the lands they tilled, they had courted imprisonment much as the Congress *satyagrahis* had done. The *kisans* in prison were asking for no more than the Congress prisoners had demanded - some special facilities in jail.¹⁹¹ The Congress obviously perceived the *kisan* struggle as an aberration from the Congress controlled and guided struggle for *swaraj*.

Nowhere is the tendency to marginalize 'awkward' or 'deviant' events and their perpetrators more manifest than in the treatment of cases of political dacoity. While spectacular dacoities like the Kakori Case earned a grudging acknowledgement by the nationalists as political albeit by 'other' means, other cases of dacoities executed professedly for political purposes failed to elicit any acceptance. The prolonged struggle for recognition as political prisoners by certain members of the HSRA accused in the Pipridih Train Robbery Case is a fitting illustration of this.¹⁹²

The claims of the accused in the Pipridih case for superior classification implying an acceptance as political, were eventually rejected on the grounds that their cases did not qualify as political and predominantly because they were, all except one, men of 'ordinary' means. Before turning down their appeals the officials asked the prisoners to give evidence of their past 'political' activities. The prisoners who had hitherto been confident in their offensive were almost lured onto unsure grounds by this demand. The initial belligerence against the government for refusing to treat them as political prisoners is reflected in Udai Narain Dube's memo to the Premier - a scathing indictment of the iniquitous system which the minister represented,

I regret that my humble prayer for a manly treatment in jail was rejected

¹⁹⁰ Sankrityayan was charged after the Amwari *satyagraha* under CrPC sections 143 (participating in an illegal assembly) and 379 (theft of sugar cane). See for details Sankrityayan, *Meri Jeevan Yatra*, Vol.II, Allahabad, 1950, p.520.

¹⁹¹ During his imprisonment after the Amwari *satyagraha*, Sankrityayan put forward on behalf of the peasant prisoners some demands pertaining to their general conditions of imprisonment including clothes, food, bedding, reading and writing material including newspapers and a personal radio. These demands were to him and his colleagues justifiable claims accruing from their status as political prisoners and no more than what the Congress prisoners had demanded earlier. *ibid.*, p.515.

¹⁹² The Pipridih train dacoity occurred on 9/10 April 1938. Zamin Ali, Jai Bahadur Singh, Virupax Angadi, Udai Narayan Dube, Kesho Ram and Suraj Bhuiyan were found guilty by the Sessions Judge on 18 December 1939.

on the iniquitous pretext that I have not been a big bug sucking thousands of my brother paupers white. I hold extreme radical views which require a complete overhauling of the existing system as a requisite to the genuine emancipation of the teeming millions...¹⁹³

This stance, however, underwent strain when the prisoners were asked to furnish evidence of their past 'political' activities. It is ironical that each of the accused tried to the best of their ability, to give evidence of some association with the Congress either as a participant in the CDM or as a supporter in the recent elections. The Congress, however, disowned them when inquiries for confirmation were made.

Angadi for instance recounted that he struck school after the fifth standard despite being a 'scholarship boy' to participate in the CDM, and was convicted and sent to jail in connection with it. 'Official' investigations into these claims confirmed that Angadi had indeed gone to jail as a *satyagrahi*. The notes of the Joint Magistrate reveal that his services in the Ankola and Sirai Salt *satyagraha* 'appeared to be well known to the people in Hubli and Bangalore'. His fate, however, was sealed by the Congress MLA of Haveri, where Angadi studied, who dismissed him saying that although Angadi was a "keen volunteer, his work as a Congressman was not of special importance".¹⁹⁴ The fact that he was not a man of property added to his ignominy.

The committing Magistrate's remark that there 'did exist people in the nationalist movement who were 'not necessarily following the politics of *ahimsa* can be seen as the only discordant note in this episode, where all the protagonists, including the accused, appear to have conflated nationalist/political activity with Congress activity. The Magistrate pointed out that the accused were members of the HSRA which had 'equally daring men amongst its members'. Ultimately, despite the approver's testimony that much of the money looted was allocated for buying revolutionary literature and for the purchase of a printing press, the Magistrate "found little to distinguish this dacoity from one committed by the ordinary run of criminals".¹⁹⁵ Here again we see the notion of

¹⁹³ Memo dated 27 April 1939 from Uday Narain Dubey to the Premier of UP. Memos from Virupax Angadi, Jai Bahadur Singh and Zamin Ali, the other accused in the case exhibited a similar criticism of the government. File no. 1538\1939, Judicial-Criminal, Box no.225, UPSA.

¹⁹⁴ Notes of the Joint Magistrate regarding the status of Virupax Angadhi. *ibid.*

¹⁹⁵ Remarks of the committing Magistrate referred to in the notes of the Joint Magistrate regarding the status of the Pipridih prisoners. *ibid.*

a Congress controlled mobilisation along the 'correct' channels, with the latter reserving the prerogative to discipline and disgrace those who deviated from the directed path.

The Congress governments did attempt to introduce some useful jail reforms in the areas of staff, clothing, dietary, education, industries and recreation. An innovation of the Congress government in UP was the recognition of a separate category of political prisoners.¹⁹⁶ What is again brought out starkly in this process is that in its new role the Congress was unwilling to extend the title and privileges of political prisoners to those who disagreed with its ministries' policies and actions. The UP Jail Reforms Committees set up by the Congress ministry, for example, while recognizing a separate class of political prisoners, proceeded to make it a narrowly defined category,

all persons convicted of offences committed with a political motive, but not with the idea of *personal gain*... exception being made in the cases of persons convicted of offences with a *communal or sectarian* bias.¹⁹⁷

The Committee considered communal offences to be "injurious to the progress of the country" and its "political advancement".¹⁹⁸ The two exclusionary provisions - the commission of an offence for 'personal gain' or with a 'communal or sectarian bias' - had wider political connotations. What constituted 'personal gain' was nowhere explained in the report. The persistent rejection by the government of the demands by the *kisan* activists to be treated as political prisoners might lead us to deduce that the Congress perceived them as acting for 'personal gain'. Here again it is evident that activities outside the Congress led movement were deemed acts of personal aggrandisement.

The Congress appears at this juncture to have been confident and vocal in its assumption of the responsibility of deciding the destiny of the 'nation'. There appears

¹⁹⁶ The UP ministry set up three consecutive Committees consisting of members of UP Legislature and experts to examine the jail conditions and suggest measures for reforms. All three Committees recommended a separate category of political prisoners with special facilities e.g. all political prisoners should be kept in one jail with freedom of association, their diet and clothing was to be the same as 'B' class prisoners supplemented by extra facilities pertaining to interviews, reading, writing and games. Women prisoners were to be allowed oil, comb, *sindur* and bangles. *Report of the United Provinces Jail Reform Committee*, 1938, pp.11-12. *Report of the Expert Committee on Jail Reforms*, 1938, pp.5-6; *Report of the Departmental Jail Committee*, January 1939, pp.24-25.

¹⁹⁷ *United Provinces Jails Reform Committee*, 1938, p.3, (emphasis added).

¹⁹⁸ *Ibid.*

to be have been vision of an 'ordered' and 'disciplined' road of 'progress' and 'political advancement' to which other political aspirations were seen as aberrations. Communal and sectarian violence were similarly considered irreconcilable with this language of progress. But here, as in the invective on personal gain we may look at some obvious political issues at stake. The nature of political mobilisation by the Congress in the late 1920s and early 1930s had alienated the Muslims from the Congress in UP.¹⁹⁹ A secular public stance can be seen as a politically expedient step, geared towards bringing the estranged Muslims back to the Congress fold.

It was only in CP and Berar, another Congress governed province, that the category of political prisoners was actually established by an amendment to the existing legislation in November 1939.²⁰⁰ Classification among political prisoners, however, remained a festering issue. There did not appear to have been any concerted effort from within the Congress to remove inequality of treatment among political prisoners. The Prime Minister of CP and Berar took refuge in the lack of 'unanimity' for such an initiative.²⁰¹ The failure to demonstrate the will or even the intention of bringing in a more equitable system of imprisonment has persisted.

The release of political prisoners was not a priority for the non Congress provincial governments. The issue, however, surfaced inevitably in Bengal, as the majority of political convicts in the Andamans were from the province and a large number of political prisoners were held in Bengal jails. The massive hunger strike by the terrorist prisoners pressing for their release, supported by the Congress in opposition, forced the provincial government to chalk out a system of phased release. By September 1938 all convicts sentenced for non violent offences with not more than eighteen months

¹⁹⁹ For a detailed analysis of this issue see Chapter Five 'The Alienation of the Muslims' in Gyanendra Pandey, *The Ascendancy of the Congress in Uttar Pradesh 1926-34: A Study in Imperfect Mobilization*, Delhi, 1978.

²⁰⁰ 'The CP and Berar Prisons (Amendment) Act, 1939', defined 'political' activity as that "undertaken with a political motive and which does not involve the use of any but technical force or violence to person or property". After the resignation of the Congress ministry the British Government passed 'The Central Provinces and Berar Prisons (Amendment) Repealing Act' of 28 November 1940, thus restoring the system of classification and reverting to ordinary status all prisoners who had come to be treated as political under the act. File no. 38\141, H[P(I)], NAI.

²⁰¹ Prime Minister N.B.Khare in reply to a question from Thakur Chhedilal, on 20 September 1937. *CP and Berar Legislative Assembly Proceedings, 1937, Vol.II, p.600.*

of their sentences left were released. An Advisory Committee was formed to consider the remaining cases.²⁰²

As the second World War approached, the release of political prisoners became part of the politics of supporting the war effort. The Home Member of Bengal revealed in a note to the Viceroy an extraordinary strategy where Bengal could successfully use the prisoners to make a political statement by releasing or withholding the release of the prisoners depending on the Congress' attitude towards the war.²⁰³ In case the Congress decided to oppose India's participation in the war, the Bengal government contemplated stopping all releases in order not to "swell the ranks of obscurantists" and those "in active propaganda against the Government".²⁰⁴ In the event of the Congress remaining neutral, Bengal envisaged adopting a liberal attitude towards the release - mixing conditional and unconditional releases. This step in the opinion of the Home Member could "go a long way to placate the Hindu sentiments" and also encourage some of the Hindus "who were neither Congress nor Moderate" to help the government's war effort.²⁰⁵ In case the Congress supported the War, the Home member saw Bengal making a 'generous gesture' by releasing all prisoners unconditionally. This action was to him necessary to show the "European countries and especially those who are at war with us" that "the whole of India had ranged itself on the side of Great Britain".²⁰⁶ The note, steeped in a pro British stance, shows how the physical control the government had over the prisoners in terms of holding or releasing them could be converted into a position of strength in real politics.

CONCLUSION

In the two tumultuous decades of 1920s and 30s the colonial state faced major

²⁰² R. Coupland, *The Constitutional Problem in India*, Madras, 1945, p.32.

²⁰³ Note dated 6 September 1939 by Home Member, Nazimuddin sent by Viceroy, Linlithgow in his letter dated 8 September 1939 to the Private Secretary to the Secretary of State. File no. L\&J\8\492.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

challenges from various strands of nationalism. The colonial government response towards them varied on the basis of prisoners' social background (class and gender) and political beliefs (revolutionary terrorism / Congress etc.). State coercion was displayed in its starkest form against the revolutionary terrorists. On the other hand a vast number of *satyagrahi* prisoners placed in the C class suffered not only because of their political beliefs but also on account of their class background.

The colonial state's treatment of political prisoners during this period reveal a variety of strategies including reformation, prevention and deterrence. Towards the revolutionary terrorists there was almost a predisposition towards containment and elimination marked by frequent use of detention without trial. The policy of reform for the 'unconfirmed' which had been tried on a small scale in Bihar and Orissa (Mahilong) discussed in an earlier chapter was introduced on a larger scale for the revolutionary terrorists in this period. The driving force behind the scheme in both the periods was a paternal state striving to reclaim those who had 'wandered' from its fold. The 'curative' measures could not be used against those terrorists who were perceived as having irremediably crossed the thresholds of 'normality'. The latter were therefore confined in places where they could not have any contact with the outside world. While the detention camps were a moderate expression of this, the revival of transportation of revolutionary terrorists to the Andamans manifested a more severe form of isolation.

Detention was no longer an 'extraordinary' procedure. Its extraordinariness was steadily normalized in a process marked by the attempts of the colonial government to absolve itself from any moral responsibility of having failed to bring the detenus to trial. The curtailment of personal and family allowances of the detenus was symptomatic of a process aiming to level out the difference which existed in law between a convict and a detenu and making detention in essence punitive rather than preventive. A discursive strategy describing revolutionary terrorism as 'conspiracy of dangerous, fanatical criminals, amongst whom violence was an acknowledged creed' enabled the colonial government to implement extraordinary measures towards them. By detaining them without trial and at the same time making detention conditions more stringent and punitive, the colonial government attempted to criminalize them. On the other hand, it purported to reclaim some of them by reforming them.

It is interesting that such policies of reform were never envisaged for Congress prisoners. The significant rise in the numbers of prisoners as a result of the CDM, coincided with the installation of a new system of classification. The drive for rationalizing prison administration evinced in the new scheme of classification allowed the colonial government to manage 'efficiently' the considerable inflation in prison population without escalating the cost of administration. While a scheme of classification based on some measurable indices is integral to modern system of governance, the new system enabled the colonial government to accommodate racial inequality while also bringing in a class differential treatment in prison. The provision of superior class treatment to prisoners of higher social background was a vindication of the self perception as political for some prisoners. For the large majority of CDM prisoners, however, the new scheme meant categorization in the lowest class. The system of classification got enmeshed in a wider debate on prison discipline for the CDM prisoners bringing them into conflict with the Gandhian dictates on prison behaviour.

We have shown in the chapter, as a prelude to the new classification scheme, the resolute resistance in the form of hunger strikes by revolutionary terrorist prisoners for political status in prisons. They demanded in the process an end to racial discrimination in prisons. The government responded to hunger strikes by taking recourse, under the garb of 'safe custody' and 'humanitarian concerns', to the expertise of medical science. The invocation of 'medical science', involved the evolution of a comprehensive scheme of complex 'medical' procedures, to reclaim from martyrdom, the body and soul of the hunger striking prisoner.

The 1930s was also the period when the dominant image of women political prisoners as upper class / educated / respectable gets replaced by the image of women 'activists' not necessarily evincing the above attributes. For the colonial government the changed 'character' of women political prisoners and their increased numbers brought the dilemma of separating in prison the 'respectable' from the 'common' women prisoners. Unlike the men, in most cases women political prisoners had to share the prison space with ordinary inmates. Their struggles in prisons focussing often on issues of femininity, led to extraction of concessions regarding dress and other cultural markers. Through their struggle the nationalist prisoners brought the women's wing or what has

been described by some as 'prisons within prisons' into public view.

The Congress appears steadily as an alternative *Raj*, a process culminating in the formation of Congress governments in several provinces. This lent another facet to the contest over 'political'. The manner in which the Congress governments managed the conflict between labour and capital and the *kisans* and *zamindars* revealed its determination to harness the national movement on its own terms. Subsequently, peasant and labour demands were represented as 'economic' problems to be solved after the primary political objective of national independence was achieved. The 'ordered' and 'disciplined' road to progress towards the completion of the political project was marked out by the Congress and other political aspirations were seen as impediments or aberrations. With the Congress conflating 'political' with 'national' and eventually with Congress activity, the dispute over the 'political' remained far from resolved for a large section of the population.

CHAPTER FIVE

THE PAINFUL TRANSITION: POLITICAL PRISONERS UNDER COLONIAL AND NATIONALIST REGIMES DURING 1940'S

In the 1940's the issue of political prisoners became entwined in the peculiar situation generated by the second world war. There was increasing discontent among the political groups in India over the deferral of their demands for self rule in the emergency situation of the war. The colonial government brought India into the war without the consent of the major political groups and in anticipation of protests, a whole range of extraordinary laws were enacted to prevent 'dangerous' elements from imperiling the 'defence of the country', 'public safety' or 'public order'; a large number of communists and revolutionary terrorists bore their initial brunt. The individual civil disobedience movement (henceforth ICDM) and the 'Quit India' movement, diametrically different in their nature and magnitude, engendered extensive problems for the government in the areas of sentencing and prison treatment. An informed public opinion, at home and abroad, tormented the colonial government over the prison treatment of the nationalists. The debate regarding the treatment of political prisoners was reopened following the accession of the Congress dominated Interim government in the post war phase. Against the background of these developments we shall attempt to understand how the category of 'political prisoners' began to be reconstituted.

In the previous chapter, we saw the colonial government take frequent recourse to detention of revolutionary terrorists interspersed with a rhetoric of reform and reclamation of the 'unconfirmed'. We shall attempt to see whether the 'normalization' of detention we noticed in the thirties endured in the forties in the same form. We shall also try and locate the continuities or ruptures in the treatment of *satyagrahis* and Quit India movement prisoners, from the previous years of civil disobedience. Against the background of our analysis of the location of the 'political' in the discourse of power of the Congress ministries, we shall examine its persistence in the subsequent years.

We start our analysis with a brief overview of the extraordinary laws used by the colonial and Interim governments during the 1940's to manage political challenges. We

shall explore the extent to which judicial interventions during the war period and later, were a significant check on arbitrary executive measures.

LAW AND POLITICAL PROCESS: EXTRAORDINARY LAWS AND JUDICIAL RESPONSES IN THE 1940'S.

The outbreak of the second world war saw the colonial government become increasingly conscientious about safeguarding British interests in the colony. With the majority of Indian opinion not in favour of India's involvement in the war, the colonial government feared that political mobilisation by the nationalists might jeopardize the war effort. The government declared an Emergency in order to protect, ironically, 'the security of India',¹ followed by the enactment of the Defence of India Act, 1939. Any nationalist activity was transformed by the Act into a threat to the 'security of the public and country', a criminal act therefore and liable to punishment.

The Defence of India Act gave extraordinary powers to the government "to ensure the public safety and interest and the defence of British India and for the trial of certain offences",² and empowered both the Central and the provincial governments to make rules for the purpose [Sec 2(1)]. The Defence of India Rules (hereafter DIR) framed under the Act inter alia made provisions for detention without trial.³ Rule 26 authorized the government to detain a person to prevent him from acting in a manner prejudicial to the 'defence of British India', 'public safety', the 'maintenance of public order', or the 'efficient prosecution of war'. Rule 129 (1) empowered a police officer or any other officer of the government authorised by the Central or provincial government to arrest without warrant any person 'reasonably suspected' of acting "in a manner prejudicial to the public safety or the efficient prosecution of war...".⁴ In practical operation, rule 129

¹ The Governor General using his discretionary powers proclaimed Emergency under sub-section (1) of section 102 of the Government of India Act, 1935.

² Declaration of Intent of Act No.XXXV of 1939. The Defence of India Ordinance, 1939 (dated 3rd September) stood repealed with the enactment of the Defence of India Act, 1939, (Section 21).

³ The rules for 'apprehension and detention' were framed under clause (x) of subsection 2 of Section 2 of the Defence of India Act, 1939.

⁴ Section 129(1) of DIR, 1939.

supplemented rule 26 so as to enable police officers or other officers of the government to detain persons immediately and without warrant and hold them in detention until a proper order of detention under rule 26 was issued.⁵

A tug of war ensued between the bureaucracy and the judiciary arising out of a provision of the Defence of India Act which placed the Act almost entirely outside the latter's jurisdiction. The Act provided for the setting up of special tribunals to try cases arising out of the proclamation of an Emergency and debarred the ordinary courts from exercising jurisdiction with the exception of a right of appeal to the High Court when the tribunals pronounced a sentence of death or transportation for life or imprisonment exceeding 7 years (Section 13).

The judiciary, however, did not think it could be excluded and in the course of their pronouncements they elucidated this position.⁶ Perhaps the most critical moment of this confrontation was a landmark judgement by the Federal Court in April 1943, in the case of *Keshav Talpade v Emperor*. The Court upheld the validity of the Defence of India Act while declaring rule 26 of the DIR invalid. The Court pointed to the divergence between rule 26 and clause X of Section 2(2) of the Act, which was intended to be the authority for making the rule. In his judgement CJ Gwyer declared -

The Act authorizes the making of a rule for the detention of persons reasonably suspected of certain things; the rule would enable the Central Government or any Provincial Government to detain a person about whom it need have no suspicions, reasonable or unreasonable, that he has acted, is acting or is about to act in any prejudicial manner at all... The Government may come to the conclusion that it would be wiser to take no risks, and may therefore subject a person to preventive detention against whom there is no evidence or reasonable suspicion of past or present

⁵ According to sub section 2 of rule 129 "(i) no person shall be detained in custody under this sub-rule for a period exceeding fifteen days without the order of the Provisional Government, and; (ii) that no person shall be detained in custody under this sub-rule for a period exceeding two months".

⁶ In the case of the *Secretary of State v. Mask and Company*, the Madras High Court stated that its jurisdiction was not excluded in cases where the provisions of the Defence of India Act were not complied with. *Indian Law Report* (henceforth ILR), 1940, Madras, p.599. The Calcutta High Court in *S.N.Mukerjee v. Sir G.Russel*, observed that it would interfere when the impugned order was made either without authority or through the improper exercise of such authority. *AIR*, 1942, Calcutta, p.51. Further, in the *Lahore Electric Supply Company Ltd. v. Province of Punjab* the Lahore High Court also expressed a similar view and maintained that the jurisdiction of a civil court was not barred, if an order under the act or rules was ultra vires, mala fide or made for collateral purposes. *AIR*, 1943, Lahore, p.41. Thus, nothing precluded the courts to determine the validity of a detention order.

prejudicial acts or of any actual intention of acting prejudicially; and Rule 26 gives it power to do so. We can find nothing in para (x) which justifies a rule in such terms.⁷

Rule 26 was ultra vires because it had gone beyond the permissible limits. The Court further ruled that while the Act imposed the conditions of 'reasonableness', the rule advocated mere 'satisfaction' of the executive and was therefore violative of the Act.

The government responded two days later by promulgating an Ordinance⁸ substituting clause X of section 2(2) of the Defence Act by a new provision which removed the grounds on which Rule 26 was declared ultra vires. The new clause empowered the government to make rules for the detention of persons "suspected (the words "reasonably" omitted)...". The Ordinance further revalidated retrospectively all actions taken under Rule 26.

Though the Defence of India Act and Rules issued thereunder did not abolish section 491 of the CrPC, awarding the right of *habeas corpus*⁹, the government asserted that the section lost its force "by implication".¹⁰ The Nagpur High Court rejected the government's contention, maintaining that "the rights conferred by section 491 subsist...until either the section is expressly or by necessary implication abrogated or the rights are expressly taken away".¹¹ The government subsequently issued an Ordinance in 1944 specifically taking away these rights.¹²

The Courts, however, insisted on a strict compliance with the substantive and procedural provisions of law, and struck down detention orders which failed to conform

⁷ *Keshav Talpade v. Emperor*, AIR, 1943, FC.1, p7.

⁸ Ordinance XIV of 1943 promulgated on February 28, 1943.

⁹ *Habeas corpus* was introduced in 1882 through Section 491 of the CrPC. It was under this section only that Courts could have issued the writ of habeas corpus in colonial India.

¹⁰ This understanding was based upon Section 16(1) of the Act which stated that "No order made in exercise of any power conferred by or under this Act shall be called in question in any Court".

¹¹ *P.K.Tare v. Emperor*, ILR, 1943, Nagpur, p.154.

¹² According to Section 10 of Ordinance No.III of 1944 "no order having effect by virtue of section 6 as if it had been made under this Ordinance, shall be called in question in any Court, and no Court shall have power to make any order under section 491 of the Code of the Criminal Procedure, 1898 (V of 1898) in respect of any order made under or having effect under this Ordinance, or in respect of any person the subject of such an order".

to them. The Nagpur High Court for example set aside a detention order on the grounds that it was passed to assist the police in the investigation of a criminal charge against the detenu; the Privy Council also confirmed this judgement on appeal.¹³ Similarly, the Lahore High Court in *Dilbar Singh v. Emperor*, quashed a detention order issued for a collateral or ulterior purpose.¹⁴ The Court also upheld the detenu's right to legal advice, emphasising that the government's failure to provide reasonable facilities would lead them to suspect the good faith of the detaining authority and would justify the immediate release of the detenu.¹⁵ In a similar ruling in another case, Justice Bose made the following observation -

Government has nowhere stated that the safety of the realm, or any one of the other matters referred to in Rule 26, will be imperilled if the applicants are permitted to interview their legal advisers. As I have said, this attempt to keep these applicants away from this Court under the guise of these rules is an abuse of power and warrants intervention by this Court.¹⁶

Public pressure and rigorous judicial scrutiny forced the administration to introduce some safeguards for detenus through Ordinance III of 1944. In certain cases a detenu was to be informed about the grounds of his detention and his right to make representations against the detention order.¹⁷ A further provision ensured that the detention orders were to be reviewed every six months.¹⁸

Apart from the DIR, the government also had in its armoury preventive laws, including the original Bengal, Bombay and Madras Regulations. The DIR was the most favoured option, however, on the ground that it was "drafted solely with regard to the

¹³ *Vimlabai Deshpande v. Crown*, *ILR*, 1945, Nagpur, p.6, and *Crown v. Vimlabai Deshpande*, *AIR*, 1946, PC, p.123.

¹⁴ *Dilbar Singh* was arrested under Rule 129 for 'acts prejudicial to the efficient prosecution of war'; but it turned out that he was actually required by the police for carrying out an investigation into a criminal charge against him. *AIR*, 1944, Lahore, p.373.

¹⁵ *Ibid.*

¹⁶ *Prabhakar v. Crown*, *ILR*, 1943, Nagpur, p.167.

¹⁷ Under section 7, concerned with 'Grounds of order of detention to be disclosed to person affected by the order'. An important proviso was attached here which gave the authorities the power to withhold information if they considered it prejudicial to the public interest.

¹⁸ Through section 9.

necessities of war...can more appropriately, be used at present; particularly as it is a power to which the Legislature has agreed".¹⁹ The Regulations, as we have seen earlier, allowed the authorities a great degree of flexibility in dealing with individual detenus as they did not provide for precise detention conditions, but critics insisted that they were obsolete.²⁰ Those officers in support of Regulations were concerned that by letting them fall into disuse, they were confirming the criticism. The Regulations were used sparingly during this period, a notable exception being Jayaprakash Narayan's detention under the Bengal Regulation.²¹

The end of the War paradoxically produced a fresh set of problems for the colonial government. The revocation in Britain of Defence Regulation 18B after VE day, prompted the Indian government to consider a similar step. The Central government asked the provinces to frame their own rules if required. The use of the emergency provisions, however, had become, it appears, almost indispensable for the provinces, who opposed the repeal of the Restriction and Detention Ordinance III of 1944 and DIR 26. The Bombay government which had used these 'powers' to 'break up the politico-criminal gangs' in Satara where rebels had established a parallel government,²² stressed

¹⁹ Note prepared by S.J.L.Oliver in the Home Department, GoI. File no. 22\6\44, H[P(I)], NAI, p.3.

²⁰ The Regulation allowed the colonial government a great deal of flexibility as detention under it did not require the framing of specific charges, precluded the possibility of trial and provided for making ad hoc rules for individual detenus. The consideration of the Regulation for the arrest and detention of Gandhi in this period, reflected on the political advantage it would accrue for the colonial government by giving him the status of a state prisoner. The Viceroy favoured the Regulation as it "gave him (Gandhi) the status of a state prisoner which he has I understand always possessed before, and which I am advised is generally accepted by the public opinion in this country as very appropriate to age and position". Linlithgow to Amery, 26 July 1942, in N.Mansergh (ed.), *Transfer of Power*, Vol.II, London, 1971, pp.461-62. Apart from this, the usefulness of the Regulation was seen also in the scope it gave to the government to adapt detention conditions to changing political circumstances. The latter was expected to be useful if at any stage the government thought it necessary to stop all interviews and communications to and from Gandhi, after he was detained. Eventually, however, the government resolved not to single out Gandhi as an exception and detained him like other Congress leaders under DIR.

²¹ The narrow political consideration which guided Jayaprakash Narayan's detention under Regulation III is amply reflected in the following comment made by an official in the Home Department - "The actual reason for changing the detention order of Jayaprakash Narayan to a warrant under Regulation III was, of course, to guard against the possibility of his release being ordered by the Lahore Court". File no. 94\19\40, H[P(I)], NAI, p.3.

²² The Satara movement was closely related to the peasant-based non-brahman tradition which had been very strong in this region. The parallel government developed here from mid 1943 and existed in some form till 1945-46. Its activities included the running of people's courts and constructive work along

that "...the history of the past 20 years has shown that Government cannot keep order without special powers, the essence of which is detention in cases where it cannot be obtained under the ordinary law".²³

Bengal and Punjab were apprehensive of the effect of the return of the Indian National Army (henceforth INA) personnel and strongly pleaded for retention of central detention laws. The Punjab government considered that it was "most unfair to Provincial ministries, which have co-operated loyally with the Government of India throughout the war, to saddle them with this unpopular responsibility on the eve of the elections".²⁴ UP was worried about the recrudescence of revolutionary terrorism. In the absence of Emergency measures Bihar and UP proposed to use Regulation III. The Central government, however, took the stand that

these Regulations should be used only on special occasions and in the case of persons of importance detained for high reasons of state of a political nature. They should not be used to detain comparatively large numbers of ordinary persons to prevent them from committing crime.²⁵

While accepting that Regulations should not be 'used to detain a large number of politico-criminals', UP stressed that the exclusiveness of Regulations was not affected as the "change from war to peace - combined as it is with the formation of a new constitution - is a special occasion".²⁶ The disadvantage that was apprehended by the administration with any provincial detention rule was that a popular ministry as soon as it came to power would repeal it either on its own or under pressure from its rank and file. The decision finally taken was that Regulations might be used but the grounds of detention

Gandhian lines apart from carrying on guerrilla war. Sumit Sarkar, *Modern India*, pp.402-403. For a study of the movement see Gail Omvedt, 'The Satara Prati Sarkar', in Gyanendra Pandey (ed.), *The Indian Nation in 1942*, New Delhi, 1988, pp.223-262.

²³ Top secret letter dated 23 October 1945, from G.G.Drewe, Secretary, Home Department, Government of Bombay, to the Secretary, Home Department, GoI. File no. 44\27\45, H[P(I)], NAI, pp.43-44.

²⁴ Secret letter dated 11 October 1945, from H.D.Bhanot, Chief Secretary, Government of Punjab to R.Tottenham, Additional Secretary, Home Department, GoI. *ibid.*, p.33.

²⁵ Secret letter dated 21 September 1945, from R.Tottenham, Additional Secretary, Home Department, GoI to All Provincial Governments and Chief Commissioners. *ibid.*, pp.2-3.

²⁶ Letter dated 5 October 1945, from the Governor, UP to Francis Mudie, Home Member of Council, GoI. *ibid.*, p.25.

should be subject to scrutiny by two judges.²⁷

Emergency measures such as the Defence of India Act and the rules framed thereunder lapsed on the 1 October 1946. After independence and partition both India and Pakistan decided to adopt the Government of India Act, 1935, as the provisional constitution, retaining also the power to frame laws for preventive detention.²⁸ The Indian government's decision to retain Regulation III after independence by an Adaptation order was challenged in court.²⁹ While CJ Wali Ullah, in his judgement upheld the validity of the Regulation on the grounds that "the Regulation has remained on the statute book for more than a century and has also been preserved on the statute book as an existing Indian law, both by the Government of India Act, 1935 and the Indian Independence Act, 1947",³⁰ he criticised the Regulation as 'highly drastic in nature' and "...certainly not in keeping with democratic notions of personal freedom and goes, to a certain extent, against the idea conveyed by the expression 'preventive detention' and mixes up ideas of preventive and punitive detention".³¹ The life of a law, in this case Regulation III of 1818, had outlived the interests of the British rulers and was now pressed into the service of the state in independent Indian.

The social and political situation of the country was seriously affected by the partition resulting in communal activities and riots. The Central government therefore promulgated the 'Public Safety Ordinance, 1948' which provided for preventive detention for reasons connected with public safety, public order, relations with foreign powers and

²⁷ In a secret letter dated 10 October 1945 the Home Department instructed all provincial governments that in those cases in which the Regulation was used, the evidence in support of the action should as soon as possible be laid before two Sessions Judges for opinion. This procedure was laid down in the light of an assurance given by Lord Reading to the Legislature on 31 January 1924 that this procedure would be followed when the State Prisoners Regulation was used against terrorists. *ibid.*, pp.10-11.

²⁸ According to Schedule VII, list I, entry 1 of the Government of India Act, 1935, the Indian legislature could make laws for "preventive detention in British India for reasons connected with defence, external affairs, or the discharge of the functions of the Crown in the relations with Indian States" and entry 1, list 2 of the same schedule gave the provincial legislatures the power to make laws for "preventive detention for reasons connected with the maintenance of public order".

²⁹ The Bengal State Prisoners Regulation (Adaptation) Order, 1947, dated 26 August 1947.

³⁰ *AIR*, 1950, Allahabad, p.18.

³¹ *Ibid.*, p.35.

the maintenance of peace in the tribal areas. It was a central statute and applied to the whole of the country. The provincial governments also enacted preventive detention statutes during the same period. A number of Acts dealing with 'public security', 'maintenance of public order', 'public safety' and 'maintenance of essential supplies and services' were passed by the respective provinces.³²

The striking feature of the whole decade was the dependence of the government on special laws to conduct its operations. Consequently, detention without trial became a norm and at one stage, on 9 August 1942, the entire Congress leadership was placed behind bars without trial. The judiciary, however, intervened on numerous occasions and censured the administration for its lapses. The Federal Court of India under CJ Maurice Gwyer was viewed as a nuisance by the colonial government. During Gwyer's tenure of office the courts maintained a stringent scrutiny of the bureaucracy's exercise of the emergency powers.³³ The recalcitrant judiciary, however, was the unintended legitimizing element of the colonial state. These political and legal developments had an inevitable impact upon prisons, to which we now turn our attention.

'A ROSE BY ANY OTHER NAME'- POLITICAL PRISONERS OR 'SECURITY PRISONERS'?³⁴

With the promulgation of the Defence of India Act and the rules framed thereunder, a new nomenclature was added to the list of descriptions to denote prisoners who were detained by the state for political reasons. Before deciding on the label 'security prisoner' for those arrested under the DIR the government considered other options only to give them up. The term 'state prisoner' was discarded as through past usage it so visibly reflected the political character of the prisoners. 'Detenus' was a term which was relatively free from such connotations but the government admitted not cherishing the idea of 'invoking the French language to supply deficiencies' in the

³² For a detailed study of issues concerning the Public Safety laws and the civil liberties during this period see Bharat Mishra, *Civil Liberty and the Indian National Congress*, Calcutta, 1969, pp.69-82.

³³ The same argument has been made by A.G.Noorani. See 'The Prime Minister and the Judiciary' in James Manor (ed.) *Nehru to the Nineties*, London, 1994, p.95

³⁴ The expression 'a rose by any other name' was used by a government official while discussing a suitable term for those arrested under DIR, Rule 26. File no. 43\1\40, H(P) & KW, NAI, p.8.

English language.³⁵ The term 'security prisoner' was considered appropriate as in the existing circumstances of the war, it suggested a concern for the 'security' of the country without hinting at the 'political' motive which underlay this decision. Irrespective of such glib euphemising, the detention of political adversaries was zealously undertaken.

The communists were considered by the government as actively engaged in "preparations for the overthrow of the existing government...(under) the conditions created by the war" and therefore to be "looked upon as 'traitors' whose activities (were) of direct assistance to the enemy".³⁶ The commencement of the war, until the German attack on the Soviet Union, was seen by the communists as the long awaited opportunity to launch an assault on British imperialism in India. The communists had consolidated their strength among industrial and agricultural workers, providing leadership in trade union activities and the anti-*zamindari* peasant movements. The left within the Congress got organized as the Congress Socialist Party (henceforth CSP) and subsequently provided the means through which the outlawed Communist Party of India (henceforth CPI) remained active.

The government, as we have seen in the preceding section, had prepared itself for any such offensive but after the Meerut Conspiracy case experience the government perceptibly balked at the prospect of bringing the communists to trial. By its own admission,

There is no doubt at all regarding the dangerous and subversive activities of the communist organisations and its members and sympathizers could undoubtedly have been convicted instead of being detained. This would, however, have involved the disclosure of secret information and the institution of a series of trials which would certainly have prolonged. Communists have an elaborate underground network the unveiling of which would have been a lengthy and difficult matter.³⁷

The DIR provided a safe measure by which any active mobilization could be repressed without awkward publicity. Initially the detenus arrested under Rule 26 of DIR belonged

³⁵ Ibid.

³⁶ 'Memorandum on the treatment of Security Prisoners'. File no. 159\40, H[P(I)], NAI, p.79.

³⁷ File no. 24\5\40, H[P(I)], NAI, p.4.

to several groups including the Anushilan, HSRA, Khaksars,³⁸ Kirti Kisan Party, the so called agents of 'enemy' countries, socialists and the communists.³⁹

The government redefined its policy of "*detention as something more than a precautionary measure*"⁴⁰ and proposed stringent detention conditions. In a candid expression the government presented the following rationale behind the 'secure' custody of the detenus:

It must be emphasized that the Government of India regard these security prisoners as no better than ordinary criminals and that the Government of India's concern is directed mainly to see that they are kept even more secure than ordinary criminals while they are in jail.⁴¹

While detenus in the past were legally entitled to certain facilities, the 'normalization' process, to which we alluded in the previous chapter, resulted in a distinct shift towards 'criminalization' of detenus and an accompanying withdrawal of facilities. We find a continuation of this trend and further evidence of worsening detention conditions in the 1940's. In framing the rules for the treatment of security prisoners the government was propelled by two major concerns, financial efficacy and 'secure' custody. Both concerns emanated from the likelihood of there being a large number of detenus implying a financial and custodial burden on the government. The officials considered the existing rules, particularly those relating to state prisoners as too generous and financially imprudent.⁴² The Central government under the powers conferred by the Defence of

³⁸ *Khaksar* literally meant 'servants of God'. Under the leadership of Allama Mashriqi, the *Khaksars* developed into a militant Islamic movement strongly opposed to British rule in India. The members in their glittering uniforms paraded through the streets with *belcha* (spade), which was the party symbol. The movement was suppressed by the British government in 1940's and many Khaksars were jailed or imprisoned. For a historical study see H.L.Seth, *The Khaksar Movement*, Delhi, 1985 (reprint).

³⁹ Later, a small number of Congress *satyagrahis* were also detained as security prisoners. J.B.Simms in his notes dated 6 February 1941 stated that on 1 January 1941 out of 582 persons detained under Rule 26 only 49 were *satyagrahis*. File no. 24\4\40, H[P(I)], NAI, p.18. A month later in another note dated 11 February 1941 Simms noted that "3\4 of them (security prisoners) were definite communists and that many others though known as *kisan* agitators or Congress Socialists were adherents of the communist programme of violent revolution". *ibid.*, p.25.

⁴⁰ File no. 159\40, H[P(I)], NAI, p.79 (emphasis added).

⁴¹ Notes in the Home Department dated 10 April 1940. File no. 43\1\40, H(P) & KW, NAI, p.14.

⁴² By not extending the facilities of state prisoners to security prisoners the Government of India wanted to avoid the expenditure for the additional staff required for the work pertaining to censorship, interviews, applications etc. *ibid.*

India Act prepared draft rules in order to regulate the conditions of custody of detenus and their discipline. The security prisoners according to the new rules were divided into two classes. Class I security prisoner was to receive the corresponding treatment to that of class B convicted prisoner and the treatment of class II was to approximate that of class C.⁴³ In yet another departure from the previous rules the security prisoners were to receive no allowances from the government and a restriction was placed on funds supplied from friends or relatives.⁴⁴ The dependents of the security prisoners would no longer receive allowances as a general rule and it was left to the discretion of the provincial governments to grant allowances. The discretion was to be exercised "in the most exceptional circumstances when it could be shown that such a course was necessary on the ground that the detention of the security prisoner in custody had deprived the family of its income and left it in such circumstances as to make assistance necessary".⁴⁵

The provincial governments had discretion to modify these rules to suit local conditions. There were, however, clear instructions from the Central government that these variations should not be so conspicuous as to make the Deoli Rules look strict in comparison and lead to an embarrassment for the government.⁴⁶ The Bengal government with immense past experience of detention without trial welcomed the central government's initiative to lay down definite guidelines. The Krishak Praja Party government in Bengal feared that in the absence of precise rules it might be compelled to follow the old practice of treating political detenus with 'all sort of privileges'.⁴⁷ It is interesting, however, that the Bengal government insisted on having only one class for security prisoners. The Central government agreed that the Bengal government had a special case on the grounds that:

⁴³ See Minutes of the meeting of provincial representatives held at Simla on 29 and 30 August 1940. File no. 159\40, H[P(I)], NAI, pp.77-78.

⁴⁴ Class I security prisoners could receive Rs 10 per month and Class II Rs 5 per month. *ibid.*, p.77.

⁴⁵ *Ibid.*, pp.77-78.

⁴⁶ 'Memorandum on Treatment of Security Prisoners'. *ibid.*, p.81.

⁴⁷ See for details of exchanges between the Central government and the provinces regarding the conditions of detention of persons detained under DIR, Rule 26. File no. 43\11\40, H[P(I)], NAI, p.16.

Bengal have (or think they have) a special reason for having only one class of security prisoners in that all these people are "bhadralog" and that whatever their means may have been distinctions are too invidious to be attempted. They are also, as we know, rather handicapped by the political or party intrigues in the province and are, in fact, disposed to treat their prisoners in a more differential manner than would be thought necessary in a Province under S.93....⁴⁸

The Bengal government thus managed to apply harsher rules of treatment for its security prisoners and at the same time eliminated any political arm twisting by the Congress by setting up a single class of security prisoners.

The first test of the new rules came at Deoli Camp Jail which was reopened by Central government in 1940 to confine "the more dangerous classes of security prisoners - particularly communists and other revolutionaries - for whom, in view of the possibility of a mass civil disobedience movement",⁴⁹ the provincial governments might have found it difficult to provide separate accommodation in their jail. The Deoli Camp jail was used earlier between 1932 and 1938 to isolate and confine terrorists from Bengal. The officials though aware of the dangers of confining prisoners of the same ideological persuasion together chose the lesser 'evil' rather than letting the 'virus' spread. The government accepted the fact that -

prolonged detention in custody provides unrivalled opportunities for revolutionaries to get together and mature plans against the time of their release ...but has been accepted as a lesser evil than distributing such persons among different jails where they would have an opportunity of corrupting prisoners who have not yet been infected with communist or revolutionary virus.⁵⁰

A large number of security prisoners were transferred to Deoli mostly from Punjab and UP.⁵¹ The Superintendent of the Camp, Major Craster, described the Camp

⁴⁸ Note dated 2 January 1941 by Home Member, GoI. *ibid.*, p.42.

⁴⁹ Secret letter dated 11 November 1941, from R.Tottenham, Additional Secretary, Home Department, GoI to Chief Secretaries of all Provincial Government and Chief Commissioner Delhi/Ajmer -Merwara. File no. 43\46\41, H[P(I)], NAI, p.5.

⁵⁰ *Ibid.*, pp.8-9.

⁵¹ For text of 'Deoli Detention Camp Order, 1940' see file no. 24\14\41, H[P(I)], NAI, pp.27-34. According to one estimate in July 1941, there were a total of 215 detenus at Deoli, of whom 107 belonged to Division I and 108 to Division II. Out of the total number, 103 belonged to Punjab, 81 to UP and the remaining 31 to other provinces including Bihar, NWFP and Delhi. N.M.Joshi, 'Deoli Detention Camp:

population as "the most dangerous communists and terrorists from all over India".⁵² According to the new rules detenus were divided into two classes and confined in separate barracks with no association permitted between the two. The government's opposition to any intermixing between the two classes of detenus stemmed from its perception of class differences among the detenus. A government document informs us that the detenus in Deoli ranged from intellectuals with University degrees, some from abroad, "through men of the well educated professional classes e.g, lawyers to professional agitators of a definitely lower order of intelligence with very little education beyond their narrow educational field".⁵³ Those subsumed in this last category were Sikh Kirti Kisan agitators from the Punjab, the main offshoot of the Ghadr party in India, described as being of "the very lowest status, without any landed property whatever, and who took to political agitation as a mode of earning their living".⁵⁴ The government considered it 'undesirable' that the two classes should be allowed to mix both "on account of pronounced differences in family and breeding on account of the likelihood that the intellectuals would take the opportunity of furthering the political education of these less sophisticated 'yokels' ".⁵⁵

The system of a two tier classification based on mode of living, status and education and entailing inequality of treatment was ideologically deplorable to the

Impressions and Suggestions'. *ibid.*, p.12.

⁵² Confidential letter, dated 4 January 1941, from Major Craster, Superintendent, Deoli Detention Camp to the Home Department. File no. 43\28\40, H[P(I)], NAI, p.12. Jayaprakash Narayan provided a detailed account of the party groupings in Deoli. He mentions that in Camp I there were at the time 104 detenus mostly from UP. The Communists consolidation (sic) numbered 66 and of the remaining 38, 8 belonged to the CSP, 11 to the Revolutionary Socialist Party (annihilation)(sic), 6 to HSRA and 14 unattached miscellaneous (Royists, Tagorists, Labour, Forward Block). In Camp II there were about 90 prisoners, with 72 belonging to the Communist Party Consolidation, 3 were from CSP and the rest were either independent or belonged to other groups like Forward Bloc, Congress, Babar-Akali, Akali, etc. All the detenus from Punjab were incidently sent to Camp II. *ibid.*

⁵³ *Ibid.*, p.4.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* The Home Department, however, later agreed (on 14 May 1941) to allow association between the two classes while playing games under supervision. This was done on the recommendation of the Superintendent of the Camp jail as a necessary measure to 'avoid proposed hunger strike'. The strike, however, did take place. File no. 43\44\41, H[P(I)], NAI, pp.1-2.

detenus.⁵⁶ They were also aggrieved because their detention outside their provinces virtually nullified their right to interview as it incurred undue financial and physical hardship to their family in visiting them.⁵⁷ There were also complaints about the frugal food allowance. The camp inmates were officially allowed to receive a restricted amount of personal allowance from outside sources defined as 'authorised persons'. The definition of 'authorised persons' as immediate family, however, eliminated help from other sources like the political party, bringing no relief to those detenus whose families were too poor to contribute. The provision for a family allowance for dependents was also difficult to obtain from the government. Another source of irritation was the rule disallowing correspondence between persons confined in different jails.⁵⁸ There was also no provision in the Deoli Order for official and non official visitors to the Camp, a deviation from the normal practice and also from the rules of the old Deoli Jail.⁵⁹

Detenus of both classes submitted petitions stating their grievances.⁶⁰ One class I security prisoner complained that "the allowances and amenities offered to class II security prisoners fall short of the minimum standard in civilized countries".⁶¹ Examples were also drawn from past practice in the Deoli Camp when food allowances for the Bengal detenus in 1932 had been much higher. Comparisons with the treatment of war internees were made in a similar vein by a class II security prisoner:

⁵⁶ The classification of the detenus was done by the respective provincial governments which applied different grounds for the allotment of classes to their security prisoners. UP had placed its detenus in class I. Some of these detenus in the opinion of the Central government were not qualified to be allotted even to class II. The report opined that some of the discontent over classification could be the result of this disparity in allocation. File no. 43\28\40, H[P(I)], NAI, p.11.

⁵⁷ Petition, dated 4 April 1941 by B.N.Brahmachari, a class I security prisoner at Deoli Detention Camp to the Home Secretary, GoI. KW to File no. 43\39\41, H[P(I)], NAI.

⁵⁸ Ibid., pp.12-19.

⁵⁹ Later the Assistant Commissioner, Ajmer-Merwara and the sub-Divisional Officer, Kikri were appointed official visitors 'to avert questions in the Legislative Assembly'. File no. 43\29\40, H[P(I)], NAI, p.1.

⁶⁰ Petitions were sent from 72 class I and 4 class II security prisoners at the Deoli Detention Camp concerning the conditions of their detention to the Home Secretary, GoI, during the end of March and beginning of April 1941. Each individual draft followed nearly the same format and appealed unanimously that all detenus be treated as state prisoners without distinction. KW to file no. 43\39\41, H[P(I)], NAI.

⁶¹ Ibid.

Even German and Italian detenus and prisoners are treated much better than we are and this appears very strange seeing that daily German bombers are destroying British homes and are throwing women and children in the streets, whereas, our only crime has been the holding of certain political views which are unpalatable to Government.⁶²

The allegations were not entirely misplaced. The state prisoners and detenus in Bengal drew higher allowances. With reference to the treatment of German and Italian detenus the government had agreed to treat them in accordance with the principles of the Geneva Convention of 1929, even though they were civilian internees and not prisoners of war.⁶³ Any comparison of detenus in India with German and Italian internees was unreasonable to the government "since foreign internees have nothing against them except that they owe allegiance to enemy countries, whereas security prisoners have been deprived of their liberty for plotting against their own country".⁶⁴ The government was dismissive of the demands of the Deoli inmates as they were in its opinion based on the contention that the detenus perceived themselves as "an altogether superior class of persons (to) be treated more like honoured state guests than as prisoners".⁶⁵

The political prisoners at Deoli went on hunger strike twice, in June and October 1941 respectively, to press their demands for repatriation, abolition of classification and payment of higher personal allowances. These strikes, the second one in particular, attained wide publicity in India.⁶⁶ The Central government under tremendous public pressure decided to close the camp and from 22 December 1941 the gradual repatriation of detenus to their respective provinces started. The petering out of the Camp Jail at Deoli evinced the failure of the official policy of establishing more or less a 'septic tank' of political prisoners in Rajputana. If the original intention of the officials had been to

⁶² Ibid.

⁶³ The British government made a statement to this effect in the House of Lords on 24 October 1939. The Government of India accepted the principles of the Convention and sent its approval on 29 May 1940. File no. 24\5\40, H[P(I)], NAI, p.21.

⁶⁴ Ibid., p.8.

⁶⁵ R.Tottenham's note in preparation of N.M.Joshi's adjournment motion in the Legislative Assembly in connection with the second hunger strike. File no. 24\14\41, H[P(I)], NAI, p.7.

⁶⁶ A great deal of pressure was mounted on the government both in the legislature and outside. Organizations like the Punjab Civil Liberties Union also raised concerns regarding detention without judicial trial. For details see file no. 43\57\41, H[P(I)], NAI.

avoid any publicity regarding the treatment of the detenus, they failed even at that. The orders for repatriation of detenus were followed by instructions for treatment which represented a climb down from the earlier guidelines. They included a more liberal interpretation of the principles of classification, personal allowances, external sources of funding, diet, censorship, letters etc.⁶⁷

The Deoli experiment from its very inception fell short of achieving its aims. The government was only partially able to restrict the association of the two classes of security prisoners, and they failed to contain their political education or other activities.⁶⁸ The accounts of Sankrityayan also testify that the political atmosphere in the Camp was characterized largely by camaraderie and vibrant political activity within each camp.⁶⁹ According to Comrade Ramchandra's testimony, the communists inside the camp were actively involved in political education. The CPI "at once began its propaganda amongst all detenus. It organized small cells for discussion of political and social theories of all parties. This had a tremendous effect upon the uninitiated and the Communist Party gained a very large number of recruits".⁷⁰

In the perception of the government the attitude towards the communists as belonging to a particular class, coupled with the opinion of their motives as 'treacherous', provided the justification for their harsh treatment in detention. This stands in sharp contrast with the policy pronouncements towards the Congress *satyagrahis* which we shall look at in some detail in the following section.

⁶⁷ For further details see Home Department notes on the recommendations made by N.M.Joshi regarding the treatment of security prisoners. KW to file no. 24\4\42, H[P(I)], NAI, pp.46-56.

⁶⁸ In a confidential telegram, dated 11 April 1941 the Chief Commissioner of Ajmer-Merwara requested the Home Department, GoI, following a request from the Superintendent of Deoli Camp, to transfer B.T.Ranadive, S.S.Batliwala and S.A.Dange, communist leaders in detention, to Delhi Jail as they were a bad influence over other prisoners urging them for a mass hunger strike. File no. 43\28\40, H[P(I)], NAI.

⁶⁹ For an interesting account of Deoli Camp Jail, particularly Camp II, from a communist perspective see Rahul Sankrityayan, *Meri Jeevan Yatra*, Vol II, pp.556-585.

⁷⁰ Comrade Ramchandra interviewed by Shyam Lal Manchanda on 20 January 1978, OHP, NMML, pp.70-71.

THE BRITISH PUBLIC, THE COLONIAL BUREAUCRACY AND THE DILEMMA OVER SATYAGRAHI PRISONERS

In the latter months of 1940, the courting of imprisonment by Gandhi's 'chosen' *satyagrahis* led to a tedious war of words between the colonial government and its counterparts in Britain, and a subsequent reappraisal by the Government of India of the existing system of imprisonment of 'political' (*satyagrahi*) prisoners. As mentioned earlier, the war had given the colonial officers the opportunity to enact measures to curtail civil liberties without arousing much public concern. By May 1940 the Central government had prepared a top-secret draft 'Revolutionary Movements Ordinance' aimed at 'a crippling pre-emptive strike at the Congress at the first opportunity'. The final draft, which was given the title of 'Emergency Powers Ordinance, 1940', was a comprehensive document which provided the government power to arrest, detain, and control suspected persons; to constitute special courts with special powers; to impose collective fines on inhabitants of turbulent areas and to control the use of post, telegraph, telephone, wireless telegraphy or broadcasting.⁷¹

In marked contrast to the government's scale of preparedness, Gandhi's protest against India's involvement in war without consent came in the form of ICDM. The *satyagrahi* was expected to raise publicly the following slogan - 'it was wrong to help British war effort with men or money. The only worthy effort is to resist all war with non-violent resistance'.⁷² The ICDM was launched in October 1940 and reached its peak in May 1941; by the end of the year when the movement petered out, an estimated 25,000 *satyagrahis* had been convicted.⁷³ Though the government did not take recourse to the Emergency Power Ordinance and used the ordinary laws and the DIR, the eagerness of the officials to use war time powers was evident when an unprecedented

⁷¹ Interestingly the title of the Ordinance was the product of some interesting discussions among the officials. The earlier title was opposed by some provincial governments. The Viceroy, Linlithgow, with a view to give a 'subversive' character to the Congress movement suggested the title - 'Subversive Movement Ordinance'. He later agreed that "the first (revolutionary) smacks of the Bastilles, the second (subversive) of Vine Street". File no. 6\13\40, H(P), NAI.

⁷² Bipan Chandra et al., *India's Struggle for Independence*, pp.453-454. Vinoba Bhave was chosen by Gandhi to be the first *satyagrahi* (offered *satyagraha* on 17 October 1940) followed by Nehru who offered *satyagraha* on 31 October 1940.

⁷³ Ibid.

four years' of rigorous imprisonment was imposed on Nehru.⁷⁴

The disproportionate response of the colonial government evoked reaction from an unexpected source. A strain of opinion in the British Parliament took the view that the treatment of the *satyagrahis* was unduly harsh.⁷⁵ The emergence of a critical public opinion in America referred to in correspondence between the colonial administrators appears to have been another predicament. The Viceroy, however, regarded the British insinuations as a 'misunderstanding' and a 'misrepresentation' arising from the use of the term 'rigorous imprisonment' in relation to political prisoners and suggested its replacement by something 'innocuous', like 'special category'.⁷⁶ The government took pains to clarify that the 'rigorous imprisonment' being undergone by Nehru and some other Congress leaders was of an extremely 'generous' nature with class A facilities.⁷⁷

A senior official accused the British Parliamentarians of misrepresenting the colonial penal system and 'misunderstanding' their own system.

...it is clear that there is nothing inherently wrong either with our system or our policy; and if there are people in England who place a wrong construction on the term 'rigorous imprisonment' as employed in this country, they must be equally guilty of a gross misunderstanding of their own penal law and regulations.⁷⁸

In defence of their position, the authorities in India highlighted the 'difference' between the prison system in the colony and that operating in England. In matters relating to the

⁷⁴ Nehru was charged of 'prejudicing recruitment, creating disaffection towards the government and undermining national confidence to hamper the war effort'. File no. 3\18\40, H(P), NAI.

⁷⁵ Allegations were made by Sorensen that "imprisonment of certain *satyagrahis* is rigorous" as referred in a telegram dated 21 December 1940, from PSV Viceroy's Camp to Asst. Secretary, PSVO. File no. 3\28\40, H[P(I)], NAI, p.1. The government policy towards Congress was criticised by several other groups and individuals. M.E.Cousins who had herself endured imprisonment in English and Irish prisons as a suffragist and later became the first woman to be nominated by the government to the Honorary Bench Magistrate in India considered it "unjustifiable that Congressmen and Congresswomen should be degraded to Class C standards". She made a plea that the 'precedent of both England and Ireland' should be practised in India and political offenders should be given simple terms of detention. 'Abolition of "C" Class', *Hindustan Times*, dated 18 February 1941, in file no. 143\41, H[P(I)], NAI.

⁷⁶ Telegram dated 20 December 1940, from Viceroy, Viceroy's Camp to Asst. Secretary, PSVO. File no. 3\28\40, H[P(I)], NAI, p.2.

⁷⁷ Ibid.

⁷⁸ Note dated 9 January 1941 by R.Tottenham, Additional Secretary in the Home Department, GoI. File no. 3\8\41, H[P(I)], NAI, p.6.

nature of imprisonment and classification of prisoners it was argued that there was "practically no such thing as simple imprisonment in England, that is to say imprisonment without labour ... only imprisonment in the 1st Division in any way corresponds to our simple imprisonment, and this is practically never awarded".⁷⁹ The authorities claimed that in India by comparison a considerable number of persons were sentenced to simple imprisonment. Though it was acknowledged that the general standard of living in Indian jails (i.e., that enjoyed by the ordinary C class prisoner) was lower than the corresponding standard in England, this was justified on the grounds that the general standard of living in India was lower. The colonial prison regime, however, it was claimed was less strict in the matter of 'association' and 'conversation' of prisoners.⁸⁰

With regards to the mitigation of the prison treatment of offenders whose crimes did not involve moral turpitude, it was argued that the rule introduced by Winston Churchill in 1910 for this purpose was applied "rather less generously to conscientious objectors...(and) the benefit of it was *not* usually given to offenders against the Defence of the Realm Act, nor was it extended to the Communists imprisoned during 1920-21". In India the authorities claimed "our simple imprisonment and our A, B and C classifications (both of which are freely used) do provide precisely the same "ameliorations" as these two English provisions".⁸¹ The colonial bureaucracy projected the prison system in England as 'strict' whereas the colonial system was represented as lenient and flexible. Interestingly, this 'leniency' precluded the necessity of 'special rules' (for those whose crimes did not involve 'moral turpitude') in the colony as the 'normal' system of 'classification' and 'simple imprisonment' was found to be sufficient. In this self defined benevolent role the colonial bureaucracy presented the Indian jails as more reasonable than those in Britain.⁸² The defence of the colonial prison system, we

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² The same sentiments were expressed by the Governor General in a confidential letter, dated 2 July 1941, to the Secretary of State for India, London. In response to a query by the latter referring to and seeking further information on the allegations made by Michael Carritt at a semi-private meeting organised

should not forget, was to justify the 'rigorous' imprisonment of some of the Congress agitators.

In order to justify the punishment of passive resisters colonial bureaucracy drew a distinction between the 'crime of dissuasion' from helping the war effort on 'conscientious grounds', as was understood in Britain, and for 'purely political reasons', as was the case in India.⁸³ The failure of the colonial government to elicit support for its war efforts also led to the condemnation of the CDM as "an *offence against society* (which is worse than an offence against the individual)...";⁸⁴ the protesters were blamed for 'helping the enemy' and 'prolonging the war' resulting in increase of human sufferings and material loss.

The construction of passive resistance as an 'offence' more serious than an 'ordinary' crime was followed by the 'object in prosecuting and convicting satyagrahis'. The essence of punishment as we see in the following statement emerges as 'deterrence':

Our object is clearly not reformatory - we make no attempt to convert our 'political' prisoners; nor is it preventive - if that were so we could detain all prospective satyagrahis without trial; nor again is it purely retributive - we are not punishing them simply for the sake of punishment. Clearly our object is deterrent; and punishment to be deterrent must involve some real hardship and must be varied to suit the circumstances of different classes of offenders ...⁸⁵

Within this broad framework government drew a distinction between symbolic offences (e.g., an anti war slogan without a large audience) and those which were more than symbolic (e.g., an anti war speech delivered to a considerable audience and containing violent or seditious language). A further distinction was made between persons of importance and influence and persons of little or none. The degree of punishment was tied to the effect the anti war speech would have had. Those 'influential persons' who addressed a large audience were targeted for rigorous imprisonment for longer terms,

by the India League, on the ill treatment of prisoners in India he observed that the Secretary of State was well aware that the jail system in India was in many respects less rigorous than in Britain. File no.1\7\41, H[P(I)], NAI, pp.6-7.

⁸³ File no. 3\8\41, H[P(I)], NAI, p.5.

⁸⁴ Ibid., (emphasis added).

⁸⁵ Ibid., p.5.

while 'the man who carried no weight' and whose utterance of an anti-war slogan was unlikely to produce any practical effect was to be handed simple imprisonment for shorter terms.⁸⁶

About a month after Vinoba Bhave offered the first individual *satyagraha*, the Government of India sent instructions to the provincial governments stating that the sentences imposed on the *satyagrahis* should be 'sufficient to have deterrent effect' but not sensational so as to invoke charges of vindictiveness.⁸⁷ The *satyagrahis* of consequence, primarily members of the Congress Working Committee, were to be awarded substantial sentences while the lesser *satyagrahis* were 'to be treated with contempt', which amounted to imposing mere fines or simple imprisonment. It is significant that this policy was not to be open but covert and the instructions to the trying magistrates were to be communicated confidentially.⁸⁸

The colonial bureaucracy was against any proposal to change the term 'rigorous' to appease 'uninformed criticism outside India'. It was feared that such a step could have a 'bad effect' in India itself. The Viceroy, however, felt that "battle of nerves in this business may well prove likely to be decided much more largely in the House of Commons than in India"⁸⁹and while he agreed that there was "no misunderstanding in this country, the really important thing is the unfortunate effect produced on members of Parliament by use of term *rigorous imprisonment*".⁹⁰ The general outcome of this contest between the colonial bureaucracy and the concerned Britain public opinion, however, was that the colonial government endeavoured to reassess its policy concerning the *satyagrahi* prisoners.

The official policy towards the ICDM was thus restated as the adoption of 'the

⁸⁶ Ibid.

⁸⁷ These instructions concerning the award of sentences under Rule 38 of DIR were issued to the provincial governments in an express letter dated 15 November 1940. File no. 3\24\40, H[P(I)], NAI.

⁸⁸ Ibid.

⁸⁹ Telegram from PSV, Viceroy's Camp, dated 20 December 1940. File no. 3\28\40, H[P(I)], NAI, p.1.

⁹⁰ Telegram dated 24 December 1940, from PSV, to the Home Department. *ibid.*, p.5 (emphasis in original).

most restrained form of action' which would be sufficient to prevent the ICDM from gaining ground and at the same time avoid any impression of severity. It consisted in punishing individual offenders as a matter of routine, avoiding action that might be perceived as vindictive or sensational but ensuring that the sentences imposed were sufficiently deterrent.⁹¹ As the first phase *satyagrahis* had already been convicted, the government strove to persuade the provinces to review their sentences in the light of the modified guidelines.⁹² The policy of deterrence was not given up altogether, however, and was applied in suitable cases which again depended on the status of the *satyagrahi* in relation to the movement and his social standing.

The Central government proceeded to assure greater uniformity among the practices followed in the various provinces. Accordingly, it presented three related proposals to the provinces as regards the classification and treatment of the *satyagrahis*. It first of all attempted to gauge the feelings of the provinces as to the amendment of section 53 (punishments) of the IPC to clarify that 'rigorous imprisonment' did not necessarily entail 'hard labour'. As was seen above, this concern emanated directly from pressures coming from Britain. Secondly, it endeavoured to define in more precise terms the circumstances in which an ICDM prisoner should be sentenced to simple imprisonment. Lastly, it ventured to clarify the nature of the classification to be followed, seeking in the process, to reinterpret the 'original intention' of the triple classification scheme laid down in 1930.⁹³ The provincial governments were also asked

⁹¹ Stated in paragraph 4 of letter dated 10 February, 1941, from the Central Government to the Chief Secretaries of all Provincial Governments (except Baluchistan and Andaman and Nicobar Island). KW to file no. 3\8\41, H[P(I)], NAI, p.17.

⁹² In the first phase of the ICDM in which the members of the CWC, AICC and the Congress legislatures took part 635 *satyagrahis* were imprisoned out of which 375 were sentenced to rigorous imprisonment and 260 to simple imprisonment. Of the 635, 159 were placed in class A, 276 in Class B and the rest (200) in class C. A Central government official expressed his surprise at the large numbers placed in class C "considering the classes from which the *satyagrahis* of the first stage were drawn." Letter dated 20 January 1941, from R.Tottenham, Additional Secretary, Home Department, GOI to J.G.Laithwaite, PS to Viceroy. File no. 3\28\40, H[P(I)], NAI, pp.34-35.

⁹³ R.Tottenham, Additional Secretary, Home Department, GOI, in his notes dated 9 January 1941 summarizing the discussion on classification pointed out that the existing three fold classification of prisoners replaced in 1930, the 'special division' which was introduced for certain classes of persons convicted in the civil disobedience campaign of 1921-22. There were thus in effect six classes of prisoners of which those in Classes A, B and C of simple imprisonment could wear their own clothes, were kept separate and could not be compelled to do any work. Similarly, there were three classes of rigorous

to review the cases of those which had already been convicted in the first phase of the movement in order to reclassify or commute sentences.⁹⁴

The award of simple imprisonment, it was suggested, be given for purely symbolic offences. This policy was amplified as follows:

Where the manner in which the offence is committed is purely symbolical, where the effect it is likely to produce is negligible, and where the circumstances of the person who commits the offence (including his age, health and status) are such as to render it likely that imprisonment without labour will have a sufficiently deterrent effect, simple imprisonment should invariably be awarded.⁹⁵

This proposal, while not entirely inconsistent with the policy statement of the government to award simple imprisonment liberally to ICDM prisoners except in 'aggravating circumstances' in order to secure 'political advantage', contravened the Government's objective of deterrence in prosecuting *satyagrahi* prisoners.⁹⁶ Several provinces objected to a show of indulgence to ICDM prisoners precisely on the ground that it interfered with the principle of deterrence. Other provinces rejected the guidelines for reasons ranging from the apprehension of having 'idle prisons' or conversely, having a large number of persons sentenced to rigorous imprisonment. Madras explained its discomfort as follows,

...this Government feel that the proposed formula ignores the fact that *satyagrahis* wish to do just enough to be sent to jail and that nothing will encourage them more than the certainty that they will be awarded simple imprisonment. Recent remands in sub-jails where conditions are unpleasant, are proving a deterrent; more so will rigorous imprisonment prove a deterrent - but simple imprisonment will not.⁹⁷

UP saw also an inherent contradiction in the Central government's instruction for a

imprisonment of which classes A and B involved labour commensurate to the individual's status and physical capacity, while in the lowest class C labour was purportedly regulated according to the prisoner's physique and state of health. File no. 3\8\41, H[P(I)], NAI, pp.4-5.

⁹⁴ Secret letter dated 14 May 1941, from the Additional Secretary, Home Department, GoI, to the Chief Secretaries to the Governments of Madras, Bombay, Bengal, Bihar, UP, Punjab, CP and Berar, Assam, the NWFP, Orissa and Sind on the subject of classification of *satyagrahi* prisoners. File no. 245\41, H[P(I)], NAI, p.2.

⁹⁵ File no. 3\8\41, H[P(I)], NAI, p.7.

⁹⁶ File no. 245\41, H[P(I)], p.4.

⁹⁷ Letter dated 1 March 1941, from the Chief Secretary, Government of Madras to the Central Government. KW to file no. 3\8\41, H[P(I)], p.18.

liberal award of simple imprisonment and the condition to limit it to cases where the offences were symbolic and less likely to have any permanent effect. The provincial government was convinced that the acts of the *satyagrahis* could not be symbolic as they were bound to have an 'inflammatory' and 'dangerous' influence on public opinion.⁹⁸

The Bombay government noted in its response that the principle of awarding simple imprisonment to *satyagrahis* for purely symbolical offences or mild anti war speeches was being followed in the province. It was, however, apprehensive of introducing the other qualifying criteria viz., age, health and status, which in its opinion could result in a large number of *satyagrahis* being sentenced to rigorous imprisonment.⁹⁹ This increase, the Bombay government felt, could inadvertently cause considerable embarrassment, in view of the 'extremely academic form that civil disobedience had taken' in the province.¹⁰⁰ The Punjab government stated its disagreement with the Central government over the 'assumption that simple imprisonment in the case of *satyagrahis* was deterrent'. It also considered it 'dangerous from the point of jail discipline' to have a large number of idle prisoners.¹⁰¹

The governments of Bengal and CP and Berar while concurring with the Central government's policy of leniency, advocated an alternative to deterrence in the form of ignoring at least some *satyagrahis*. Bengal proposed that symbolic offences and those which did not call for special treatment because of the position or the local influence of the *satyagrahi* should be ignored altogether.¹⁰² CP and Berar, it appears were already following a policy of ignoring unimportant *satyagrahis* and sentencing a large number

⁹⁸ Letter from the Chief Secretary to the Government of the United Provinces, dated the 31 March 1941. *ibid.*, p.31.

⁹⁹ The Bombay government moreover felt that 'the circumstances of age, health and status' mentioned in the Central government's formula would result in variable interpretations by Magistrates, resulting in 'greater disparity rather than uniformity of treatment'. Letter dated 7 March 1941, from the Joint Secretary, Home Department, Government of Bombay. *ibid.*, p.19.

¹⁰⁰ *Ibid.*

¹⁰¹ Letter dated 5 May 1941, from the Chief Secretary to the Government of the Punjab. *ibid.*, p.37.

¹⁰² Letter dated 28 February 1941, from the Additional Secretary to the Government of Bengal. *ibid.*, p.20.

to fines only, in order to stifle attempts by the *satyagrahis* to court imprisonment.¹⁰³

The major challenge, however, was the classification of prisoners into A, B and C classes sentenced under the two categories of imprisonment (simple and rigorous imprisonment). According to the Central government, classes A and B were intended for prisoners accustomed to a higher mode of living. The Central government now prescribed that any prisoner of higher status whose crime did not involve 'moral turpitude' would qualify for class A. In keeping with this principle it specified that all ICDM prisoners qualifying for admission to class B on account of their status should automatically be awarded class A.

The main purpose of classification as depicted in the official correspondence seemed to have been the concern to evolve a mode of punishment which would, despite differential treatment, 'equalize the effect of the sentence'. Unlike the thinking which seemed to dominate the principle of punishment in the 1920's, particularly at the time of the Jail Committee of 1919-20, the 'educated' and the 'elite' were to get a softer penalty than an ordinary person for a similar offence. In another departure from the spirit of the Jail Committee of 1919-20, the government distinguished between the so called 'real' criminal and the 'technical' criminal. The latter was defined as someone whose offence did not involve 'moral turpitude' and was used in official exchanges to avoid the term 'political'. The 'technical' criminal in the opinion of the government required concessions of a 'mental' character to alleviate the inhospitable physical conditions in jail.¹⁰⁴

Great discrepancies were perceived by the Central government in the award of punishment and the allotment of classes in the provinces. As we have seen earlier, the Central government took note of the fact that nearly a third of the *satyagrahis* of the first

¹⁰³ Letter dated 19 March 1941, from the Secretary to the Government of the CP and Berar. *ibid.*, p.27.

¹⁰⁴ Tottenham divided the conditions of life in jail in broadly two categories. "Those affecting the health and comfort of the prisoners' body (such as diet, accommodation, furniture and labour)" were described as 'physical' and "those affecting his dignity and intellectual processes (such as reading, writing, interviews, dress and exemption from certain requirements of the ordinary discipline e.g. in the matter of handcuffs, punishments etc.)" were part of 'mental' aspect of prisoners life. File no. 61\41, H(J), NAI.

phase were put in the lowest category.¹⁰⁵ This inconsistency was attributed to the failure of the provincial governments to understand the principle of classification and their tendency to regard the three classes 'as corresponding to three comparative degrees of social standing'. "Such variations of practice", emphasised Tottenham, "would lend themselves to exploitation by those whose object is to represent Government as treating the movement with undue severity, and thus to magnify it and arouse popular sympathy for it".¹⁰⁶

Most of the provincial governments, however, rejected the Central government's proposal and opposed the 'sudden' and 'radical' reinterpretation by the Centre of the rules of classification which they had for almost ten years understood differently. They drew the attention of the Central government to the practical difficulties involved in elevating the majority of ICDM prisoners to the highest class which had become associated for the last ten years with numerous facilities. NWFP for example refused to place its ICDM prisoners in the highest class for fear that it would be tantamount to a 'luxurious holiday'.¹⁰⁷ The problem with the new guidelines was a financial one for Coorg.¹⁰⁸ Bombay foresaw practical difficulties of administration in giving all prisoners the cellular accommodation which it provided to its A class prisoners, along with facilities pertaining to furniture, food, letters and interviews.¹⁰⁹ Class A had over the

¹⁰⁵ The Central government asserted that even those found guilty of the offence of dissuading persons from helping the war effort were, if their status assured them a class superior than class C, to be placed in class A, for the simple reason that their offence did not entitle them to allotment of class B. This principle would normally ensure that nearly all *satyagrahis* could be placed in class A. KW to file no. 3\8\41, H[P(I)], NAI, pp.17-18.

¹⁰⁶ Secret letter dated 14 May 1941. File no. 245\41, H[P(I)], NAI, p.2.

¹⁰⁷ Letter dated 25 February 1941, from the Chief Secretary to the NWFP Government. KW to file no. 3\8\41, H[P(I)], NAI, p.23.

¹⁰⁸ Letter dated 26 February 1941, from the Chief Commissioner of Coorg. *ibid.* Incidentally, a number of provinces expressed reservations against classifying a large number of *satyagrahis* in Class A because of the expenditure that would be incurred in maintaining them in that class. The Government of India, however, felt that the expenditure on diet in class A and B was approximately the same. In most provinces it was the provision of furniture which incurred substantial additional cost. Some provinces had apparently surmounted this problem by explaining to Class A prisoners that their status would suffer only in respect of availability of furniture which, however, they could supplement at their own cost. Secret letter dated 14 May 1941 from Home Department, GoI. File no. 245\41, H[P(I)], NAI, pp.6-7.

¹⁰⁹ Letter dated 13 March 1941, from the Secretary to the Government of Bombay, Home Department. KW to file no. 3\8\41, H[P(I)], NAI, p.25.

years in UP too come to be regarded as a special class into which only prisoners of 'high social status' and 'education' were admitted. UP emphasized the necessity for adhering to the principal objective of punishment, "...one reason why a large number of persons, some of them criminals and many of them without political interest, are coming forward as *satyagrahis* is that imprisonment has now no terrors in political cases".¹¹⁰ The Punjab government which had so far treated classes A, B and C as three different scales corresponding to social status, resisted changing the system of classification to concur with the interpretations made in 1930. Moreover, the administration of jails being a provincial subject, the Punjab government did not feel bound to observe the 1930 classification rules.¹¹¹ The Central government conceded eventually that the decisions would be made by the provinces concerned on the basis of their peculiar conditions and concerns. It considered it desirable, however, that the provinces applied the law 'dispassionately' if not a little leniently to avoid the impression of any vindictiveness.¹¹² The issue of the 'original' principle of classification of prisoners though argued in 'moral' terms was ultimately settled on grounds of 'practical' economics. R.Tottenham, who had initiated the debate by reinterpreting the classification scheme, observed -

I am sure that what has mainly influenced Provincial Governments in adopting what I have referred to as the 'less liberal' interpretation is far more the practical question of rupees, annas and pies, than any consideration of the 'moral' issues involved.¹¹³

To sum up the discussion which was triggered off by the inquiry emanating from the British Parliament - the Central government drew the attention of the provinces to three issues viz., the desirability of changing the legal definition of 'rigorous imprisonment', the precise definition of the circumstances in which simple imprisonment should be awarded coupled with suggestions of a more generous use of it, and the principles governing the classification of prisoners. These three points were in the

¹¹⁰ Letter dated 31 March 1941, from the Chief Secretary to the Government of UP. *ibid.*, p.32.

¹¹¹ Letter dated 5 May 1941 from the Chief Secretary, Government of Punjab. *ibid.*, p.37.

¹¹² Letter dated 14 May 1941, to the Chief Secretaries of all Provincial Governments and Chief Commissioner, Delhi/Coorg/Ajmer-Merwara. *ibid.*, pp.37-40.

¹¹³ Notes by R.Tottenham, Additional Secretary, Home Department, GoI. File no.61\41, H(J), NAI, p.4.

opinion of the government to supplement the general policy towards the *satyagraha* movement so as to give an impression of restraint and by this to prevent it from gaining ground by winning over public opinion at home and abroad.

Once more we find that the interference of critical public opinion in Britain was regarded as burdensome by the colonial bureaucracy. Parliament undoubtedly considered itself answerable for any atrocities which might be committed against a non-violent movement which had hitherto been a vocal critic of the fascist aggression in the war. Furthermore, public opinion in the West, particularly the United States, which took a lively interest in the national movement in India would be unnecessarily perturbed by any show of harshness.

The portrayal of *satyagrahis* as an undifferentiated category for the consumption of British public opinion was, however, not adhered to by various provincial governments and there was a conscious reinforcement of the principle that class difference was more important as a criterion of classification than the nature of the offence. The petering out of the ICDM during the autumn of 1941 and the failure of the Parliamentary criticism to materialize led to the temporary ending of deliberations on the treatment and classification of prisoners. The lid did not remain closed for too long, as both the colonial state and the Interim government in the years to come had to face demands for better treatment of political prisoners. Now we turn our attention to the world within prison where authorities were finding increasing difficulties with maintaining order and discipline.

ON PROTESTS AND DISORDER INSIDE PRISONS

The *satyagrahis* added to the huge numbers of prisoners in detention or conviction in prisons and camps since the commencement of the war. The augmentation of the prison population brought with it official concerns for the maintenance of order and discipline. The stringent detention conditions and the government policy of treating detenus with greater harshness than before resulted in a spate of protests by prisoners all over the country. The government received reports of open acts of defiance by prisoners in jails, including celebration of Jalianwala Bagh day, regular flag salutation ceremonies,

non-stop congregational spinning and the holding of communist study circles.¹¹⁴ The government accepted that order and discipline in UP jails had virtually crumbled, and "organisational work and the planning of action in all parties - Congress, Communist and revolutionary - was being carried out from jails".¹¹⁵ In Hazaribagh Jail in Bihar the CSP members were reported to have held daily political discussions and CPI members held secret classes under Swami Sahajanand.¹¹⁶ The reports from Madras indicated that a number of communist prisoners had managed to escape and that the communists "had full facilities to preach communism to other prisoners".¹¹⁷ The situation in Punjab was portrayed in official reports as chaotic, so much so that Gandhi had to send Rajkumari Amrit Kaur to persuade the *satyagrahis* to return to appropriate behaviour.¹¹⁸ Similar sentiments were evinced in the reports from Bengal, CP, Orissa and Sind.

Intelligence reports blamed the jail staff for the laxity in prison discipline. In a letter to the provinces in March 1942, the Central government pointed out that the proliferation in the press of leaked reports on prison conditions during the ICDM confirmed that rules regarding interviews and letters were not adhered to in jails.¹¹⁹ The Intelligence report from Bihar called the jail staff 'hopelessly unreliable' and asserted that "with its connivance or even approval the political prisoners could pass on any

¹¹⁴ File no. 3\9\42, H[P(I)], NAI, p.15.

¹¹⁵ Ibid. The government's loss of control over political prisoners at the Chunar Fort Camp Jail where more than eight hundred political prisoners had been shifted from fifty two district jails in UP has been recounted by Devi Prasad Awasthi. His accounts are full of episodes where the prisoners were able to intimidate the Superintendent of the Camp Jail. He also mentions the ease with which some of them were able to climb down the Fort walls and go by boat to shop in Benares. Devi Prasad Awasthi 'Muneesh', interview by Usha Prasad on 9 October 1991, OHP, NMML, Delhi.

¹¹⁶ File no. 3\9\42, H[P(I)], NAI, p.17.

¹¹⁷ The government reports mention that on 8 May 1941 four Communist prisoners escaped from Bellary Jail and five 'dangerous and prominent' communist detenu including A.K.Gopalan and K.Pattabhiramayya escaped from Vellore Jail on 25 September 1941. *ibid.*, p.14. A.K.Gopalan describes his escape from prison in his autobiography: *In the Cause of the People*, New Delhi, 1973, pp.147-148.

¹¹⁸ File no.3\9\42, H[P(I)], NAI, p.16.

¹¹⁹ *Ibid*, p.10.

information to their 'relations', without it becoming known to the police".¹²⁰ These sentiments were echoed in reports from almost all the provinces. The attitude of the jail staff was reported as 'unreliable', 'unhelpful' and 'unaccommodating'.¹²¹ The report from Bengal based on intercepted letters showed that 'important terrorist prisoners' were able to extract information regarding government policy etc., in conversation with the higher jail officers.¹²²

The reports indicated that the spell of the Congress rule had led to a remarkable change in the perception of the jail employees about power relations in the country.¹²³ The Central Intelligence Officer ascribed the 'chaotic state of affairs' in UP jails to the fact that the jail department had "severely suffered during the Congress regime and that a large proportion of the jail staff were convinced that Congress would soon return to power".¹²⁴ In Orissa the reports indicated that the jail discipline was lax particularly in respect of ex-Ministers and other leading Congressmen and most of the jail staff was "conducting itself with an eye to the possibility of Congress returning to power".¹²⁵ The slackness in the application of jail rules in the case of Congress prisoners, particularly the leaders and former ministers, was reported from almost all provinces.¹²⁶ Where complicity was not forthcoming spontaneously, there were threats of retaliation by Congress prisoners, as reported in the case of Trichinopoly Jail in

¹²⁰ Reports from the Central Intelligence Officers regarding arrangements in various provincial jails for interviews between political convicts and outsiders. *ibid.*, p.12. Rahul Sankrityayan's autobiography gives the impression that the subordinate jail staff and the police were friendly with the left activists. Within the Hazaribagh Jail for instance, the guard entrusted to keep watch on him frequently acted as the messenger between him and his comrades. Rahul Sankrityayan, *Meri Jeevan Yatra*, Vol.II, pp.551-556.

¹²¹ See for example reports concerning UP and Punjab. File no. 3\9\42, H[P(I)], NAI, pp.12-13.

¹²² *Ibid.*, p.14.

¹²³ Confidential letter dated 23 August 1941, from the UP Government to the IG of Prisons. File no. 43\63\41, H[P(I)], NAI, p.17.

¹²⁴ File no. 3\9\42, H[P(I)], NAI, p.16.

¹²⁵ *Ibid.*, p.17.

¹²⁶ According to Judith Brown by the end of 1940 thirty two former ministers, of whom seven had been provincial Premiers under the terms of the 1935 Act had courted imprisonment. Judith M. Brown, *Gandhi, Prisoner of Hope*, London, 1989, p.331.

Madras.¹²⁷

The discipline inside prisons was further undermined by the protests of political prisoners over the deterioration in detention conditions and the introduction of the scheme of classification among security prisoners on the basis of social class and status. The issue of classification raised by the detenus in Deoli proved a major rallying point and reverberated in other provinces. In Agra Central Jail, both the communist and the Congress prisoners expressed their solidarity with hunger striking Deoli detenus by going on hunger strike. Acharya Narendra Deo, a security prisoner at Agra Central Jail gave up the privilege of being treated as a Class I prisoner, stating that the policy of classification among political prisoners was contrary to his convictions.¹²⁸ In Vellore Central Jail seventy five security prisoners including twelve from Class A went on hunger strike on 8 April 1941 to press their demands against classification. Solidarity with the Deoli hunger striking prisoners was expressed in public meetings and telegrams were sent to the Government of India requesting immediate intervention.¹²⁹ As we saw earlier the Camp Jail at Deoli was dismantled under the sustained protests, but the government continued with the policy of division among detenus on grounds of social class and status.

Detenus also resisted the stringent detention conditions and particularly the government policy of treating them at par with and sometimes worse than convicts. Manmathnath Gupta resorted to a strike in Allahabad against what he perceived as unjust treatment of detenus:

My main ground was that as a detenu I could not be given treatment inferior to what I was getting as a convict. There was no justification for my classification as a second class detenu when I was getting B class

¹²⁷ The Intelligence department reported that ex-Congress ministers and other prominent Congressmen on their arrival at the Trichinopoly jail threatened the Superintendent, and the subordinate staff insisted that "unless they were leniently treated, there would be retaliation when the Congress returned to power". File no. 3\9\42, H[P(I)], NAI, p.14.

¹²⁸ The petitions of the detenus in Agra Jail reveal that as of 4 July 1941, about 150 detenus who had been given Class I status relinquished those privileges which had not been given to detenus of Class II. For details of the struggle in Agra Jail, the petitions submitted and the hunger strike resorted to see file no. 43\63\41, H[P(I)], NAI.

¹²⁹ For the details of the hunger-strike and the public support it evinced see file no. 43\37\41, H[P(I)], NAI.

convict treatment, which was similar in diet, money, etc. to class I detenu treatment.¹³⁰

It is noteworthy that never before had detenus been treated as ordinary convicts. It is also significant that distinctions of class among detenus were also an innovation of this period. Only the state prisoners were accorded special treatment on account of their perceived special status.

The accounts of the various convicts and detenus of this period corroborate the official reports of 'indiscipline' and 'disorder' inside prisons. The difference is that the prisoners' testimonies of defiance come across as accounts of self assertion and empowerment. The hunger strikes and other acts of defiance demonstrated the vulnerability of colonial prisons under sustained resistance from political prisoners. This pressure was to increase following the popular 'Quit India' movement of August 1942.

'QUIT INDIA' MOVEMENT AND POLITICAL PRISONERS

The 'Quit India' movement, 'India's most massive anti-imperialist struggle',¹³¹ turned out to be very different from the earlier Congress movements, not only in terms of the massive scale of participation, but also in the unprecedented show and espousal of violence which was exhibited both by the people and by the state. Unlike the earlier movements Gandhi did not call for a voluntary courting of arrest or non violent breaking of laws. In fact the colonial state's decapitation of the movement the morning after Gandhi's 8 August 1942 'Do or die' speech, by arresting almost all Congress leaders, did not hamper the movement. The remainder of the leadership including Ram Manohar Lohia, Aruna Asaf Ali and Jayaprakash Narayan, who had escaped from prison, went underground and guided the movement. There was open advocacy of violence by the younger and militant members of Congress who had not

¹³⁰ Manmathnath Gupta, *They Lived Dangerously*, p.150. Other accounts by former detenus express the same sentiments of resentment at being treated the same as convicts or even worse. A.K.Gopalan, a communist detenu in Vellore Jail writes that the decision to go on a fast was taken by the prisoners in protest against the government's policy to provide B class detenus the same food as the C class convicts. His accounts tell us that the strike was a unified and systematic effort of communist and 'non communist Congressmen'. A.K.Gopalan, *In the Cause of the People*, pp.144-146. For other instances of resentment against the government policy see G.D.Tapase, *From Mudhouse to Rajbhawan, Autobiography of a Governor*, New Delhi, p.58 and Jogesh Chandra Chatterji, *In Search of Freedom*, p.538.

¹³¹ Gyanendra Pandey (ed.), *The Indian Nation in 1942*, p.1.

been picked up in the first swoop. While the communist leaders had kept away, their cadres at the local and village levels could not remain aloof.¹³² The Congress Socialists, the Forward Bloc, the revolutionary terrorists were actively involved. Peasants, industrial workers, students, women and occasionally even government workers openly attacked government offices, burning post offices, blowing bridges, pulling up rail tracks. 'Parallel' governments were set up in Ballia in Eastern UP in August 1942 which released all the Congress prisoners; a *jatiya sarkar* was set up in Midnapur in Bengal (17 December 1942 - September 1944) and a *prati sarkar* was set up in Satara in Maharashtra (mid 1943 to 1945). The government response was equally determined and violent. By the end of 1942 over 60,000 persons had been arrested, 26,000 convicted and 18,000 detained under the DIR.¹³³

The official discussions of the principles of classification at this point refer to two kinds of prisoners, namely Congress and non-Congress. Central government asked the provinces to modify their rules for the treatment of persons detained in connection with the 1942 disturbances.¹³⁴ As far as the Congress security prisoners were concerned, they were segregated from other security prisoners and placed in a single class. The position of this class with respect to diet, scales of accommodation and other amenities was fixed midway between classes I and II. Congress security prisoners were not permitted any interview, and correspondence was limited to that with members of family on personal and domestic matters only. Family allowances to their dependents was to be granted only in cases of 'absolute and proved necessity'.¹³⁵

¹³² The German invasion of Russia triggered a debate within the CPI, which in January 1942, in line with the Communist movement worldwide, decided to support the anti-fascist 'people's war'. The demand for immediate national government was no longer an essential prerequisite for extending its support to the colonial government in the war. Subsequent to CPI's change of policy, the Indian government ordered the release of communist prisoners. Details of the release, particularly the report of the Dain Committee which reviewed the release of Communist prisoners can be found in file no. 44\32\42, H[P(I)], NAI.

¹³³ The figures are from Bipan Chandra et al., *India's Struggle*, pp.462-463.

¹³⁴ See for details file no. 44\6\42, H[P(I)], NAI.

¹³⁵ The Central government gradually relaxed these conditions and permitted certain facilities to Congress security prisoners. In an order dated 19 January 1944, the government permitted them to have one interview per month with family members and relatives. They also got permission to write two and receive four letters per week on matters 'purely personal' which were to be addressed to and received from members of their own family. The separate confinement of Congress security prisoners as a 'Q' class and

The initiative for the segregation of Congress security prisoners came from Punjab, which proposed that the ordinary classification system should not apply to civil disobedience prisoners. It was a preemptive move to tackle the threat of jail indiscipline which might have resulted due to the impending Congress movement of 1942. The rationale for segregation of Congress security prisoners was appreciated by the Central government as the following note suggests -

The Punjab Government's proposal to reserve special jails for civil disobedience prisoners is presumably based on the need to make special arrangements to ensure their complete segregation and to guard against smuggling of correspondences etc. In view of the probability that the threatened movement will include calculated indiscipline in jails and efforts to suborn the jail staff, the complete segregation of civil disobedience prisoners in this manner has clearly much to commend it and it might be worth passing the suggestion on to Provincial Governments.¹³⁶

Another proposal of the Punjab government to 'apply a uniform classification' for Congress security prisoners did not meet with enthusiasm and was dubbed as of 'doubtful value'. This was because it went against the public stand taken by the colonial government of not accepting a distinct class of political prisoners. As the Punjab government had already published their proposals, the Central government decided not to object, hoping that such an arrangement might have a deterrent effect "on comfortably placed Congressmen who, despite the statements of Nehru and other leaders that jail going is too soft and easy for the present campaign, may be expected to seek a quiet refuge in jail".¹³⁷ Later when the UP government also passed similar rules for separate treatment of Congress security prisoners the Central government recommended other

their treatment in matters of accommodation, clothing, diet, furniture and other matters as midway between Class I and II non Congress security prisoners was to continue. For 'Central Government's Rules for treatment of Congress Movement Security Prisoners' see file no. 44\91\43, H[P(I)], NAI. In comparison to the Congress security prisoners the rules for non Congress security prisoners was more relaxed. Class I non Congress security prisoners were permitted to write four and receive eight letters and Class II could write two and receive four letters per week. As far as interviews were concerned Class I non Congress security prisoners were permitted to have one interview per fortnight and Class II one every month. The non Congress security prisoners, moreover, had permission to hold interview with friends. File no. 44\31\45, H[P(I)], NAI, pp.55-80.

¹³⁶ Home Department notes dated 1 August 1942. File no. 43\12\42, H[P(I)], NAI, p.1.

¹³⁷ Ibid., pp.1-2.

provincial governments to follow suit with a view to ensure uniformity.¹³⁸ The main object of the modification of rules according to the Central government lay in securing "more rigorous seclusion" of Congress security prisoners.¹³⁹ We have seen, however, that the modifications apart from ensuring 'seclusion' also made the detention conditions more stringent.¹⁴⁰ We may argue that this disposition towards an undifferentiated class of Congress prisoners was provoked in part by the government's determination to cut Congress to size.

Unlike the earlier phases, there was no talk of privileges or concessions to the Quit India prisoners. The purpose of segregation therefore does not appear to have been geared towards that. The fear of contamination through contact with the communists was also not the major concern. The communists had changed their anti government stance on the war after the German attack on Soviet Union, and going by Manmathnath Gupta's testimony there were hardly any communist prisoners in jail at this time. Gupta talks of a Congress-socialist consolidation - a loose brotherhood - consisting of revolutionaries like himself or the RSP and the HSRA besides the Congress.¹⁴¹ The jail reminiscences of Ram Kishan, a convict in the Old Central Jail, Multan tell us of a specific category for Congress prisoners called the 'Civil Disobedience War Prisoners'.¹⁴²

Objections were raised by some provinces against placing all Congress security

¹³⁸ R.Tottenham observed that "we accepted the 'Q' class idea on the assumption that the numbers would not be very large and because we wanted to keep in line with the two major provinces that had started it viz Punjab and UP". Notes by R.Tottenham, Additional Secretary in the Home Department. File no. 47\37\43, H[P(I)], NAI, p.30.

¹³⁹ Ibid., p.7.

¹⁴⁰ Seclusion and stringent detention conditions were exercised not only against the rank and file but applied equally to the top leadership of Congress which was incarcerated at the Ahmadnagar Fort Prison Camp. It appears from Nehru's writings that the first three weeks of imprisonment were spent in total quarantine after which heavily censored newspapers and letters were allowed. No interviews were allowed during the entire twenty months of detention. It was ironical, posits Nehru that the prison conditions of the Italian prisoners of war kept in India was regulated by an international convention (Geneva conventions), whereas there was no such system to oversee what the colonial government was doing to its own prisoners. Jawaharlal Nehru, *The Discovery of India*, Delhi, 1995, (first edition, 1946) pp.15-16.

¹⁴¹ Manmathnath Gupta in his description of the relations between prisoners in the Fatehgarh Central Prison in UP during the Quit India movement. Manmathnath Gupta, *They Lived Dangerously*, pp. 157-158.

¹⁴² Comrade Ram Kishan, interviewed by Shyam Lal Manchanda on 17 September 1977, OHP, NMML, Delhi.

prisoners into a single class and urged the Central government to make it optional. The Bihar government argued that there was 'no clear distinction' of type between Congress security prisoners and others and that both groups contained persons of "all classes from goondas and dacoits to political leaders and persons of social position".¹⁴³ The Bihar government foresaw the effect of such an act to be punitive for the higher class prisoners by reducing their scale of diet and amenities while giving class II security prisoners more liberal treatment than would be necessary. This it thought would appear more starkly anomalous when compared to the upper class Congress convicts who got the full amenities of Division I prisoners. The Bihar government feared that this might be perceived as an act of vindictiveness towards upper class Congressmen.¹⁴⁴ It is noteworthy that while the treatment of Congress security prisoner was to be a little better than ordinary 'C' class convicts, in actual practice the treatment in some provinces particularly in UP corresponded closely with that of 'C' class convicts. This, however, was not true in all cases.

We also see the creation of a new grade of security prisoners during this phase whose treatment approximated to that of C class of convicts. The term used for them was 'criminal security prisoners' or *goonda* class. The nomenclature reflected the perception of the government where a class of people were already condemned as criminals though legally they were only security prisoners. This class was meant for the 'riff raff' who were detained in the course of the 1942 'disturbances'. *Goonda* class was denied some of the facilities which were provided to other security prisoners.¹⁴⁵ A Home Department letter issued instructions to the various provincial governments that their records of non-Congress detenus in jails should reflect their distribution over the

¹⁴³ For details of the Bihar government's reply to the Central government's proposal on segregation and classification, see letter dated 13 August 1943, from the Chief Secretary, the Government of Bihar to the Home Department, GoI. KW to file no. 44\37\43, H[P(I)], NAI, pp.30-32.

¹⁴⁴ Ibid.

¹⁴⁵ Bengal, UP and NWFP did not permit the *goonda* class security prisoners to have any correspondence. The Central government which was concerned with the uniform applicability of rules in various provinces decided not to raise "objection to the continuance of this practice as an exception to ...the general principle". File no. 44\31\45, H[P(I)], NAI, p.38.

categories of *goondas*, terrorists, pro-Japanese etc.¹⁴⁶

Coming on the heels of the tightly regulated individual *satyagraha* where Gandhi laid down a strict code of conduct in jail for the *satyagrahis*, the 'Do or Die' call of Gandhi presented no such directives. There were some who believed that Gandhi had made each person his own 'dictator' who could behave as he or she pleased. There were others who felt that violence was alien to Congress' nature and should give way to discipline outside and inside jails. This dilemma was faced by the Congress leaders too. Morarji Desai points out that of the several Congress leaders who were confined with him in Yervada Jail some like G.G.Mehta interpreting Gandhi's call for resistance as an instruction to disobey the government at all stages offered *satyagraha* all the time provoking the jail officers to use force on them.¹⁴⁷ Some Congress leaders and former ministers in their memoirs reveal that they were able to use their personal influence over the jail officers to soften the hardships of jail life.¹⁴⁸

OF MEDIAEVAL FORTS AND MODERN TORTURE

Hidden from the public were the horrendous experiences of persons detained under the Defence of India Act and kept in police custody in the Forts of Lahore, Delhi and Amritsar. The primary reason for detention in the Forts was interrogation. Throughout their confinement in the Forts, the detenus were in the charge of the police, mostly from the CID. The scenario was that of the War, the Congress movement, increased 'underground' activity against the government and the formation of the INA. The purpose of interrogation was to extract information regarding these political movements.¹⁴⁹

¹⁴⁶ Secret letter dated 1 April 1945 from the Home Department, GoI to the Chief Secretaries of all Provincial Governments and the Chief Commissioners of Delhi, Coorg, Ajmer-Merwara and Baluchistan regarding the monthly statements of convictions and detentions. File no. 18\13\45 & KW, H[P(I)], NAI.

¹⁴⁷ Morarji Desai, *The Story of My Life*, Vol.I, p.181.

¹⁴⁸ Ibid.

¹⁴⁹ Sardar Sardul Singh Caveeshar who was detained in the Lahore Fort and systematically interrogated has recorded his experiences as well as those of the other detenus in his book. Among those who were detained and interrogated in these Forts - the Lahore Fort being the most infamous - were his secretary R.S.Sharma, Subhash Chandra Bose's nephew Dwijindranath Bose, Pt. Sheelbhadra Yagee, Vice President of the All India Forward Bloc who was kept in the dungeons in the Red Fort in Delhi, S.Narinjan Singh

The detenus were subjected to both mental and physical torture such as beatings, being kept fettered and hand-cuffed in cells unprotected from the hazards of the elements and given unpalatable and dirty food. The narrations in the book reveal that psychological pressures were applied to weaken their resistance against interrogation by keeping them awake for weeks while the questioning took place. Appeals by the detenus against their torture were not forwarded to the higher authorities and habeas corpus petitions were withheld.¹⁵⁰ Jayaprakash Narayan made a forceful defence of the rights of the political prisoners and condemned the government for its policy of torture. He maintained that the -

Suppression of political opponents is the essence of Nazism and Fascism - torture of political prisoners is their most characteristic feature. I am conscious of the argument that those who believe in violence as a political method, as I do, must be prepared to be forcibly suppressed. I grant that, but there are lawful means even for such suppression. A political revolutionary may be executed for his offences when found guilty by the established law, but he may not be put to torture for the extraction of information.... A prisoner of war has certain rights and immunities which civilized society scrupulously respects.¹⁵¹

The Home Member answering a question in the Legislative Assembly denied any ill-treatment of detenus in Lahore Fort, ironically on the grounds that no responsible government would tolerate the ill-treatment of prisoners.¹⁵² To another question on 17 March 1943 from Sardar Sant Singh regarding the delegation to the police of powers under DIR 129 and the treatment of persons detained in police custody in Delhi including those detained in the Red Fort in Delhi, the government denied that 'educated' and

Talib, Sikh nationalist leader and colleague of Subhas Bose, the socialist leaders Ram Manohar Lohia, Jayaprakash Narayan, Ajit Singh Bhussa, Jathedar Gurudwara Shri Baba Atal, who was interrogated in a police lock up in Amritsar and Nirmal Singh who was arrested in Amritsar and placed in Gobindgarh Fort, Amritsar. S.S.S.Caveeshar, *The Lahore Fort Torture Camp*, Lahore, 1946.

¹⁵⁰ Caveeshar's book contains the detailed accounts of torture which detenus underwent during their detention in Lahore, Delhi and Amritsar. *ibid.*

¹⁵¹ Letter by Jayaprakash Narayan to the Home Secretary, Government of Punjab, cited in Lakshmi Narain Lal, *Jayaprakash Rebel Extraordinary*, New Delhi, 1975, pp.117-118.

¹⁵² Appendix III, Caveeshar, *The Lahore Fort*, p.132.

'respectable' persons were being detained in the underground cells in Red Fort.¹⁵³ In a private exchange of briefs, however, the government seemed inclined to think that

Even some forms of 'third degree' methods have to be tolerated: up to a point the state is justified in using psychological compulsions to get the truth out of those whom it suspects of being in league to subvert it: within limits it is entitled to induce weariness and mental anxiety as a means to getting at the truth, and the line at which a legitimate use of these means passes over into cruelty is hard to draw.¹⁵⁴

It is evident from government documents that the officials were anxious to avoid any public commitments as to an inquiry into allegations of torture during interrogation. The fluidity of the political situation itself, with an impending change in the Central and provincial governments, further contributed to dispense with the need for any investigation. This is evident in the following governmental note,

Either there will be a 'settlement' as a result of which we can hope that no further extensive preventive detention will be necessary (and if it is, the responsibility will be that of a Cabinet which will presumably know pretty well what it wants); or we shall have a situation in which we shall want the utmost freedom of action.¹⁵⁵

In the years to come, a 'settlement' did take place leading to the transfer of power resulting in the succession of the nationalists to the seats of governance. The Interim government and later the successive governments in independent India, however, retained 'utmost freedom of action' with respect to 'extensive preventive detention'.

THE END OF THE DEBATE: INTERIM GOVERNMENT AND THE QUESTION OF 'POLITICAL PRISONER'

The years after the war were a period of great effervescence in Indian politics. The Congress leaders were released from jail in June 1945. By the end of August 1945, the INA trials had become the focus of popular attention and the Congress led a successful unified campaign for leniency for the INA men on trial. Active support was given by the Muslim League, the CPI, Akalis, Ahrars, Rashtriya Swayamsevak Sangh

¹⁵³ For the details of the questions and answers in the legislative assembly see file no. 22\15\43, H[P(I)], NAI.

¹⁵⁴ Notes dated 4 March 1946 in the Home Department, GoI. File no. 44\37\45, H[P(I)], NAI.

¹⁵⁵ Ibid.

(henceforth RSS) and the Hindu Mahasabha. The colonial government was shaken by the uprising of men of the Royal Indian Navy (henceforth RIN). A vibrant labour movement and a strong and militant peasant resistance were also important features of the time. The communal unity witnessed at the time of the INA trial notwithstanding, there was unfortunate increase in communal disharmony and the intensification of militancy among communal extremists. A Congress dominated Interim government was formed on 2 September 1946 under the leadership of Nehru, but even before the government was formed, the question of the treatment of political prisoners was under discussion at various levels.

Whereas previously the term political prisoner had been camouflaged by using euphemistic substitutes like 'state' and 'security' prisoners and 'detenus', this period was marked by a concerted effort to define political prisoners as a special class with specific rules of treatment. Political prisoners, and by implication, political crime, appeared now as a 'given' category and official concerns were geared more towards defining what should constitute this category, viz, absence of 'moral turpitude', 'motive' of offence and the issue of 'violence'.

The earliest initiative in this direction came from the Congress government led by Khan Sahib in NWFP who promulgated new rules for the treatment of 'political' prisoners. Newspapers lauded the enunciation of these rules as a 'recognition of the rights of political prisoners'. A separate 'political prisoners class' was recognized consisting of

all persons detained in connection with or convicted for offences connected with political movements ...irrespective of the nature of proceedings taken against them or the provision of the law under which they are detained, prosecuted, or convicted, *provided that the offence does not involve violence.*¹⁵⁶

Political prisoners under the new rules were to be accommodated in association with each other but separate from non political prisoners. Special provisions regarding books, writing materials, bedding, clothing, diet, games, bathroom and toilet facilities were

¹⁵⁶ *Hindustan Times* of 23 December 1945 carried the news under the heading 'Political Prisoners' Rights Recognized in N.W.F.P.'. File no. 22\6\46, H[P(I)], NAI, p.2 (emphasis added).

made for political prisoners.¹⁵⁷

The decision of the NWFP government encouraged various political groups to pressurize the Central government for extension of the same facilities to the political prisoners in the rest of the country. The Central government entrusted the question of the desirability of a separate class of political prisoners and the criteria for demarcating it, as well as the treatment to be given to such prisoners, to the Standing Committee of the Home Department. Their deliberations, which lasted nearly two years, reflected the aspirations and anxieties of nationalists in their journey towards power. In its meeting held on 6 April 1946 the majority of the members favoured the creation of a 'special class of political prisoners'.¹⁵⁸ P.J.Griffiths, who had voted against, objected to the idea of 'adopting motive rather than intention as a criterion for deciding the nature of offence'. He also questioned the primacy accorded to the 'political motive', implying by this that there was no reason why 'other motives' should not be considered in the same way. Asaf Ali, who strongly argued for the creation of a special class, agreed that in 'normal' circumstances Griffith's arguments were valid but the 'present' period he contended was 'abnormal' and required 'tactful handling'. The matter he suggested should be handled on grounds of 'policy' rather than 'law'.¹⁵⁹

The Committee further deliberated upon the definition of the term 'political prisoner'. The definition given by the NWFP government was considered adequate but the members disagreed over the role of 'violence'. Gadgil pointed out that the principle of putting politicals in a special class regardless of whether their "offences were violent or non-violent, had already been accepted as in Bombay civil disobedience prisoners were kept in class of their own". The majority agreed that 'violence' should not be made a criteria for exclusion but Committee added a proviso to the definition "that the offence

¹⁵⁷ For details see *Hindustan Times* dated 23 December 1945. *ibid.*

¹⁵⁸ The meeting was chaired by John Thorne, Home Member and other members included Khurshid Ali Khan, Surput Singh, P.J.Griffiths, Asaf Ali, Sri Prakasa, Ananthasayanam Ayyangar, N.V.Gadgil, Haji Abdus Sattar Haji Ishaq Seth, Syed Ahmad Ali Khan Alvi, Himmat Sinhji. A.E.Porter, Secretary, Home Department and F.G.Cracknell, Deputy Secretary, Home Department represented the Secretariat. For details of the discussion see the minutes of the meeting of the Standing Committee held on 6 April 1946. File no. 36\1\46, H[P(I)], NAI.

¹⁵⁹ *Ibid.*

should not involve deliberate cruelty or personal greed".¹⁶⁰

Some officials, however, felt that the NWFP definition, which excluded all forms of violence, was more appropriate than the Standing Committee's definition which excluded some forms while including others.¹⁶¹ Taking note of the nature of political violence seen during the 'Quit India' movement, including cutting of telegraph wires, blowing of bridges, looting of shops etc., a government official suggested an amendment to the definition in order to exclude from the category of 'political' acts which "involved violence, or personal greed, or loss of or damage to property; or moral turpitude".¹⁶²

A note of warning came from the DIB who cautioned that the definition of political prisoners so far agreed upon was unworkable. A political prisoner for him was an exclusive category, ideally a member of 'a tolerably small class' dangerously antagonistic to the government in power.¹⁶³ The definition floated for consideration was in his opinion so inclusive that members of mass movements, 'so regrettably frequent in India' would all be treated as political prisoners, inviting in the process grave administrative chaos by promising to them a 'standard of living to which they never aspired'.¹⁶⁴ He further cautioned that the difficulty of the task would be realized by the 'incoming government' when their role of opposition was reversed.¹⁶⁵ His advice given only a few days before the Interim government came to office, assumed prophetic importance.

The formation of the Interim government on 2 September 1946 marked another step towards the consolidation of power by Congress. This shift also had its impact on the ongoing discussions concerning the recognition of a special class of political

¹⁶⁰ Ibid.

¹⁶¹ Notes dated 3 September 1946 in the Foreign Department, GoI. *ibid.*, p.37.

¹⁶² Notes dated 27 September 1946 by G.V.Bedekar, Deputy Secretary, Home Department, GoI on the definition of political prisoner. *ibid.*, pp.39-40.

¹⁶³ Notes dated 23 August 1946 by N.P.A.Smith, DIB, in his response to the Home Department on the construction of a class of political prisoners. *ibid.*, pp.35-36.

¹⁶⁴ Ibid.

¹⁶⁵ His advice was given a few days before the election of the Interim government on 2 September 1946. *ibid.*

prisoners. The following brief in the Home Department reflected the new mood -

In the context of the present political and administrative set-up it is doubtful whether there can be any 'political prisoners' who will in fact be such as to call for special treatment of the nature suggested and to justify their being made into a separate category and given special facilities. The facilities proposed by the Committee were of such a nature as largely to render them administratively impracticable in case of political movement of any appreciable dimension and that it is fundamentally prejudicial to jail discipline to have under the same roof a class of prisoners coming from the same strata of society, treated differently from another similar class but more privileged owing to the accident of the nature of offence.¹⁶⁶

The Home Member, Sardar Vallabhbhai Patel entirely agreed with his officials and advised the Standing Committee to 'reconsider their advice'.¹⁶⁷ The Standing Committee, however, in its meeting on 11 January 1947, reaffirmed its earlier suggestions.¹⁶⁸ Subsequently, officials suggested that the 'definition of political prisoners' should be made 'exclusive' in order to ensure that only 'genuine' cases were classified as political prisoners. Further amendment to the definition was suggested to exclude from this category persons "*connected with communal, religious or labour movement*".¹⁶⁹ Patel again agreed with the proposal forwarded by his subordinates.¹⁷⁰ In view of the impending constitutional changes and the refugee problems it was decided to leave the discussion pending till the situation returned to 'normal' or even let it rest '*sine die*'.¹⁷¹ Finally in January 1948, almost two years after it was first taken up for consideration, Patel, now the Home minister, remarked that the matter was 'hardly

¹⁶⁶ Brief for Home Member on the subject of treatment of political prisoners. *ibid.*, pp.49-51.

¹⁶⁷ Note for circulation among the members of the Home Department Standing Advisory Committee. *ibid.*, p.47.

¹⁶⁸ The Standing Committee was chaired by Home Member Sardar Vallabhbhai Patel; its other members were Haji Abdus Sattar Haji Ishaq Seth, Sri Prakasa, Hossain Imam, Mohammad Ismail Khan, N.V.Gadgil, Surput Singh, Himmat Singhji, Khurshid Ali Khan, while the Secretariat consisted of A.E.Porter, Secretary, Home Department; G.V.Bedekar, Deputy Secretary, Home Department and Syed Ahmad Ali, Deputy Secretary, Home Department.

¹⁶⁹ Note dated 3 February 1947 by G.V.Bedekar, Deputy Secretary, Home Department, GoI. *ibid.*, p.54 (emphasis in original).

¹⁷⁰ See note dated 6 February 1947 by V.Shankar, Private Secretary to Home Member. *ibid.*, p.55.

¹⁷¹ *Ibid.*, p.65.

worthwhile' to be pursued further and advised that 'it be dropped'.¹⁷²

The concerns of the Standing Committee were echoed in the discussions of the Jail Reforms Committees instituted by the various provincial governments. Although their primary purpose was to suggest ways of reforming the prison system, the issue of political prisoners was inevitably discussed as a concern persisting from the past. The UP Jail Reforms Committee recommended a separate class for political prisoners.¹⁷³ As to who should qualify as 'political', the Committee sought to modify the definition of political prisoners suggested by the various Jail Committees constituted during the earlier Congress ministry.¹⁷⁴ Under the earlier definition those involved in an offence which had been committed with a 'communal or sectarian bias' were excluded from the category of political prisoner while under the new definition exclusion was reserved for those who were involved in "*violence or incitement to violence* against another community or sect".¹⁷⁵ The Committee thus enlarged the domain of 'political', as now with the exception of those involved in 'violence' other communal offenders could be treated as political prisoners. It is interesting to note that while the boundaries of the 'political' were broadened, the Committee narrowed the frontiers of 'politics' by restricting the manner ('definite' objectives) and the medium ('organized political party') through which political activity was pursued. It observed:

While we feel that communal offences are highly detrimental to social welfare, we admit the principle that even if communal organisations with a political programme undertake to start any movement even for the redress of a restricted object, the offence should be considered to be

¹⁷² Notes in the Home Department, dated 9 January 1948. *ibid.*, p.66.

¹⁷³ The United Provinces Jail Reforms Committee was constituted under Home Department (Jails) G.O. dated 11 October 1946. The seven member Committee had Govind Sahai (Parliamentary Secretary to the Home Minister) as its Chairman and consisted of Gopi Nath Srivastava, Damodar Swarup Seth (MLA), Kamlapati Tripathi (MLA), Muhammad Shokat Ali (MLA), Lt.Col. M.A.Jafarey (IG Prisons) and Lt.Col. G.R.Oberai as member-secretary. File No. 1494\1946, Box No.33, H(J), UPSA, p.1.

¹⁷⁴ The construction of a special class of political prisoners was endorsed by the *Expert Committee on Jail Reforms, 1938* and the *United Province Jails Reform Committee, 1938*.

¹⁷⁵ The Committee recommended that the political prisoners should be awarded simple imprisonment only; should have freedom of association; should not be compelled to do any work; allowed release on parole in cases of illness or calamity in the family; and special diet, bedding and clothing should be allowed to them. *Report of the United Provinces Jail Reform Committee, 1946*, Allahabad, 1947, p.26, (emphasis added).

political. This elucidation has become necessary in order to clarify that movements with a restrictive motive started by different communities in a haphazard manner are not to be considered as political upheavals unless they have a definite political objective in view and are initiated by an organised political party.¹⁷⁶

We discern in the Committee's observations two levels of 'political' activity, the unorganised or 'haphazard' political activity of various communities and those political activities which were initiated by 'an organised political party'. The Committee accorded legitimacy to the domain of party political activities as under its recommendations only they were to be accorded 'political' status within prisons.

The Committee, however, proposed adherence to the principle of equality on other accounts and recommended the abolition of racial and class distinctions among prisoners.¹⁷⁷ Another Jail Reforms Committee, constituted this time by the Bombay government,¹⁷⁸ also suggested abolition of the three tier classification of prisoners and declared that "when India is moving towards democracy there should be at least no inequality shown in places where Government control is complete".¹⁷⁹ The transition 'towards democracy' in the opinion of the Bombay Committee would also ensure that there was no need for separate classification of political prisoners. Committee declared that "such a classification of prisoners was unnecessary in the view of the changed political situation".¹⁸⁰ Ironically, in the course of rejecting the idea of 'political crime' the Bombay Committee relied on the same arguments which the Jail Committee, 1919-20, had used nearly three decades back while rejecting the nationalist demand for the

¹⁷⁶ Ibid.

¹⁷⁷ See paragraphs 144 and 145 of the report. *ibid.*, p.28.

¹⁷⁸ The five member Bombay Jail Reforms Committee was set up "to examine the existing provisions of laws and rules relating to jail administration in the Province and suggest changes with a view to improve the methods of dealing with prisoners...". The five member Committee had Mangaldas M.Pakvasa as its Chairman and consisted of N.V.Gadgil (MLA), R.B.Ghorpade (MLA), Indumati Sheth (MLA) and Lt.Col. R.T.Advani (IG Prisons) as Secretary. The Committee had its first meeting on 5 December 1946 and submitted its report in 1948. *Report of the Bombay Jail Reforms Committee*, Bombay, 1948, p.16.

¹⁷⁹ The Committee, however, fell short of proposing a radical alternative and suggested that prisoners be classified into two classes based on (i) education; (ii) heinousness of the crime and the degree of moral turpitude involved and (iii) standard of living the prisoner was accustomed to outside. *ibid.*, p.17.

¹⁸⁰ *Ibid.*, p.16.

creation of a separate class for political prisoners.¹⁸¹ The Bombay Committee's recommendation on the issue was at variance with the opinion of several witnesses who appeared before it.¹⁸² Y.B.Chavan was among those who supported the idea that prisoners should be classified as political and non political. Chavan included among political prisoners those who might be involved in 'political dacoity' and 'destruction of property', and 'those who participate in communal riots'. He declared that if the rioters 'proclaim' that they were acting in "furtherance of the cause of the Muslim League. I will call them political prisoners".¹⁸³ The stand taken by Y.B.Chavan was an exception to the dominant thinking, however, where 'political' was narrowly defined and was merged with 'national'.

The foregoing discussion indicates that the initial enthusiasm with which the nationalist leadership embarked on accepting in principle a class of political prisoners faltered as independence brought with it the anxieties of consolidating power. The clamour of the political activists in the decade of the forties undoubtedly fuelled these noble intentions. Soon enough the question of who were to be the 'politicals' - the definition of the political prisoner - brought to the fore difficulties which were inextricably entwined with the compulsions of political expediency perceived as imparting stability to the nascent nation-state. The difficulties of sifting what was termed as the 'labour' and 'communal' motive from the 'political' was increasingly expressed. The activities of the militant left in parts of India further compounded governments' difficulties of what was 'acceptable' as political. The government was evasive on the resolutions passed on the policy to be adopted for security prisoners by the IGs of

¹⁸¹ The Bombay Committee like the Jail Committee, 1919-20, earlier suggested that it was difficult to define the term 'political prisoner'. The two committees also shared the same position on the role of 'motive' in crime. The Jail Committee 1919-20, position on political crime has been discussed in Chapter three. For Bombay Jail Reforms Committee observation on political crime see sections 40 and 41 of Chapter V. *ibid.*, pp.15-16.

¹⁸² In course of its investigation the Committee examined a number of witnesses which included politicians, social workers, criminologist and jail officials. For the summary of evidence given by the witnesses before the Committee see Appendix IV of the Report. *ibid.*

¹⁸³ Y.B.Chavan appeared before the Committee in his personal capacity though he was an elected MLA belonging to the Congress party and held the post of Parliamentary Secretary to the Home Minister. *ibid.*, pp.92-96.

Prisons, pleading that there were no security prisoners in the country.¹⁸⁴ This tendency to skirt the issue had wider repercussions on the treatment of political prisoners later on, when the Indian state was confronted by the communists in the fifties and sixties and by various shades of political opposition in the 1970's.

The Home minister was pestered in the legislative assembly to account for Indians still in jail on various charges imposed by the colonial government. These included contact with 'the enemy' during the war; or actual participation in or collaboration with the INA or the Independence League and similar organizations; or 'political', 'terroristic' or 'subversive' activities including those connected with the Quit India movement and other 'activities for the independence of the country'.¹⁸⁵

The Congressmen and women in their new found role as decision makers increasingly faced the problem of what constituted 'political' in the changed political circumstances. One of the questions which now arose was whether activities like the RIN mutiny or participation in terrorist activities or individual sacrifices like giving up their jobs by government servants under the colonial regime could be considered 'patriotic activity'.¹⁸⁶ On the question as to whether participation in the RIN mutiny could be counted, the government was inclined to believe that whereas the mutiny 'definitely had a political complexion', it was doubtful whether it was a 'national movement'.¹⁸⁷ Obviously the decision as to whether or not it was patriotic hinged on the question whether or not it was 'national'. It is ironical that to decide whether the mutiny was 'national' in its flavour the government resorted to what the British had said about it. The colonial note referred to on this occasion suggested that

in spite of slogans alleged to have been raised by the ratings, the R.I.N. mutiny of 1946 at Bombay cannot properly be described as a national

¹⁸⁴ The recommendations of the Seventh all-India Conference of the IGs of Prisons held at Nagpur in 1945 was taken up for discussion by the Central Legislative Assembly on 25 March 1947. *Legislative Assembly Debates*, Tuesday 25 March, 1947, Vol.IV, No.1, Delhi, 1947, p.2401.

¹⁸⁵ See for example the question raised by S.S.Sanyal in the Legislative Assembly in November 1946. File no. 22\73\46, H[P(I)], NAI.

¹⁸⁶ Such questions arose frequently after the transfer of power in the context of the grant of relief to those who had been penalized for their 'patriotic activities'.

¹⁸⁷ The question whether participation in the RIN mutiny could qualify as patriotic activity for grant of relief came up for discussion in August 1949. See file no. 58\10\49, H(Est), NAI, p.1.

movement. I think it is correct to say that the mutineers' main demands were connected with their service conditions, and political slogans were raised apparently in the expectation of securing support of certain political parties.¹⁸⁸

Incidentally while the CSP had supported the mutiny it had tried but failed to enlist the blessings of the Congress. The failure to get Congress support seemed to be ample reason for the government to reject the claims that the mutiny was a national movement or by implication patriotic. The other 'political' activity whose credentials were examined for qualification as patriotic was the membership of a terrorist party. In this case the government was inclined to hold the view that terrorist groups had worked for the independence of the country but as many of their members had joined 'objectionable' groups the cases had to be decided individually rather than as a group.¹⁸⁹

'TRYST WITH DESTINY'?

India's 'tryst with destiny' marked the end of one phase of the nationalist project towards nationhood. The hallmark of colonial rule - 'colonial difference', as Partha Chatterjee described it - was finally erased in the political domain and the nationalists under Congress leadership acceded to political power.¹⁹⁰ The stage was set for the nationalist regime to extend its disciplinary sway in the domain of the 'political', and the efforts of the Interim government to define 'political' prisoner narrowly by privileging the 'national' at the cost of 'communal' and 'labour', was an indicator of the developments which were to follow. The nationalists too like the erstwhile 'alien' rulers met with resistance from voices which had firm alternative conceptions of the political world. We shall examine the operations of the national state and the resistance it met in the next chapter. Here we review the developments which took place during the 1940's.

¹⁸⁸ This attitude was shared by some sections of the officials including the Special Branch of the Central Intelligence Department. See for details file no. 5\21\46, H[P(I)], NAI.

¹⁸⁹ The issue which came up for discussion in January 1949 by Ministry of Home Affairs, was whether in a particular case membership in terrorist activities would constitute 'patriotic activities' for the purposes of giving concessions in matters of employment for persons who took part in the 'national movement for independence'. File no. 58\16\49, H(Est), NAI.

¹⁹⁰ See chapter one for a fuller discussion of Partha Chatterjee's ideas stated here.

With the onset of the second World War the colonial state in India armed itself with considerable powers. Large number of arrests, detentions and convictions took place in the war period. The penal apparatus which was used for securing and furthering the colonial interest was, however, rendered susceptible to the onslaughts of the 'recalcitrant' subjects. A series of protests from the ICDM, through the 'Quit India' movement to the RIN mutiny resulted in erosion of authority on a wide scale. Though in the early 1940's the colonial state held staggering powers and was determined to crush any challenge, it was, ironically, during this phase that it failed with the ambitious Deoli experiment and later decided to create a separate category for Congress political prisoners. The strength of public opinion in India against the treatment of detenus at Deoli Camp and the concern of British public opinion regarding the handling of Congress *satyagrahi* prisoners acted to constrain the colonial government.

It is pertinent at this stage to reflect on the type of political prisoners who engaged the colonial state in the early 1940's. The majority of the detenus in the pre 'Quit India' phase belonged to the left and other revolutionary groups. The ranks of detenus were swelled by Congressmen and women in the course of the 1942 movement. This also marked a major break as for the first time Congress activists including all its prominent leaders were in jails not voluntarily but because of the government's repressive policy. Earlier in the course of individual *satyagraha* of 1940-41 a large number of selected Congress *satyagrahis* courted imprisonment. Later, during the Quit India movement, the political prisoners came from a variety of ideological tendencies with the notable absence of Muslim League and Hindu Mahasabha members. As we have seen earlier, the 1942 movement drew large scale popular participation as a result of which the number of prisoners swelled from ranks not owing allegiance to any particular political group. The government pursued a differential policy based both on ideological leanings and on the class position of the political prisoners.

The Quit India movement also marked a shift in the government policy as a new nomenclature - 'Congress' and 'non Congress political prisoners'- was adopted and emphasis was laid on segregation of Congress prisoners from the rest. Another notable development was that the criterion of 'violence' as a principle of exclusion and segregation of prisoners was overlooked. Government, however, enforced a tight prison

regime with strict censorship to isolate political prisoners from the outside world. Some provinces also created a *goonda* class in order to deal with what were dubbed as 'riff-raff' elements. This strictness was in marked contrast to the earlier policy of more liberal treatment towards the Congress *satyagrahis* prisoners of 1940-41. The worst treatment was reserved for different shades of revolutionaries and the leftist groups, who were totally isolated and at Deoli received harsher treatment than convicts of the same class.

It needs restatement here that by progressively reversing the facilities granted to the detenus, the state not only was evading its responsibility but in the process was also criminalizing them. This prompted strong defiance from political prisoners. At Deoli they resorted to mass hunger strike in order to claim privileges based on 'past practices'. Though hunger strike remained the most important mode of resistance, everyday form of defiance in prison parlance consisted of illegal communication with the outside world and deliberate insult of prison authorities by either not reporting for roll call or not paying expected respect (standing up while higher jail officials are on rounds etc.). In the course of the Quit India phase political prisoners including the Congress prisoners resorted to jail breaks. Apart from demanding privileges commensurate with their 'political' status, the most striking demand concerned the abolition of class differences among political prisoners. Never in the past was the demand so strongly put as during the 1940's. While there were concerted attempts to resist class based distinctions in prisons, particularly by those belonging to the Left, the responses from other quarters were more or less desultory.

The increasing recourse to deterrence interspersed with occasional leniency manifests an erosion of confidence which the colonial state had displayed in earlier periods. The policies of reformation and reclamation of political prisoners were not even considered in the 1940's. Undoubtedly, the initial signs of the waning of the colonial state were being observed in its prisons. The 'indiscipline' among prisoners and the complicity of the jail staff with political prisoners were reported since the anti war campaigns of Congress and became more pronounced with the 1942 movement. The pre-war interlude of Congress ministries in some provinces had doubtless affected the imagination of jail staff, and Congress was increasingly seen as an alternate locus of

power. The taste of power had started taking its toll among the 'warriors' of independence. Political prisonerhood which in the nationalist discourse stood for sacrifice gradually became associated with more pragmatic concerns for offices. A *satyagrahi* in a letter to his mother poignantly reflected on the changes that had taken place:

How narrow I find the general atmosphere here? ...if the attitude of individuals here is seen, one gets disappointed. What mean, narrow and individualistic view is seen here! Hardly any one can be said to have faith in *satyagraha*. How longingly all are waiting for the release from jail. ...So many have courted arrest and have come in this jail but honestly speaking no one seems to have any faith in the movement. They have come here because they want to have the right to get elected either in the assembly in the new elections or in the Corporation.¹⁹¹

The deploring of a departure from the Gandhian ideals of sacrifice and forbearance resonated in expressions by others. Calling the system of status based classification in jails 'insidious', a letter to the *Amrit Bazar Patrika* reminds the readers of the Gandhian exhortation: "Self-purification is the soul of the Congress and renunciation and service the plan of achievement". The author of the letter, pained by a movement away from Gandhian ideals, holds responsible those who 'scramble' for higher class facilities, for 'perpetuating' the 'dirty business', 'demoralising' public life and 'breeding bitterness against the leadership'. As "all politicals pay the same price, viz., personal freedom, for the noble cause of freedom of motherland", he enjoins the higher class politicals to give up their privileges, and by their act of renunciation restore the identity of the Congress with the masses.¹⁹² Irrespective of persuasions of the above nature, the system of unequal classification in prisons remained symptomatic of the failure of the nationalist elite to give up higher class privileges. The entrenched nationalist elite had clearly moved away from the ideals of struggle and 'sacrifice' to that of appropriation and consolidation of power. Their failure to address themselves to the unequal structures within the prison was to manifest in the perpetuation of such inequalities in prison and outside after independence.

¹⁹¹ Letter dated 7 August 1941 written by security prisoner K.N.Joglekar from Nasik Jail. File no. 43\80\41, H[P(I)], NAI.

¹⁹² Letter to the Editor titled 'Classification Must Go', from G.Rama Chandra, published in the *Amrit Bazar Patrika* dated 22 February 1941. KW to file no. 3\8\41, H[P(I)], pp.22-23.

During the post war transition phase a Congress dominated Interim government assumed control. Official deliberations at both the Central and provincial levels reflected a discursive continuity over the question of defining 'political' by emphasising the exclusion of those who did not fall in line with the dominant discourse. The conflation of 'political' with 'national' and the exclusion of those elements who challenged the emerging national state under the stewardship of Congress remained the main feature of this period. There does not appear to have been any perceptible change in the policy on political prisoners, accommodation for some and exclusion for others remained the focus. While one set of 'politicals' had achieved their goal and formed the government, the aspirations of the others remained outside the fabric of the new nation. The question of the recognition of political prisoners was lost somewhere in the administrative maze.

CHAPTER SIX

POLITICAL PRISONERS AND PENAL STRATEGIES IN INDEPENDENT INDIA

The formation of the twin nation states of India and Pakistan on 14/15 August 1947 has been represented in the histories of states as a passage from a period of 'struggle' to that of 'consolidation'. The movement against colonial rule had, however, invigorated large sections of the Indian people with a consciousness of their rights and aspirations, and the attempt by the ruling classes to institute a singular and homogeneous nationalism did not go uncontested. The assertion of other political, social and economic visions confronted the agenda of 'national consolidation'. Thus popular struggles which the notion of consolidation of the nation state seems to foreclose were very much prevalent in the years after independence. The history of political prisoners in independent India is history of the contest between popular and official perceptions of 'national consolidation'. In this chapter we shall focus from the vantage point of political prisoners and the penal regime on issues of legitimacy and authoritarianism in the nation state.

In the introductory chapter of this thesis we pointed at the paradoxical nature of the colonial state, manifested in the very principles which it invoked to justify and legitimize its rule. The legitimation of colonial rule lay in the reproduction of, and references to, both 'difference' and 'sameness'. The allusion to difference was the principal element in the civilizing mission, not just racial difference, but an otherness of life seen as 'backward' and 'barbaric'. The 'rational' justification of colonial rule involved the assertion of the 'differences' between the colony and the metropole on a scale of 'social conditions', with the implication that colonial rule would 'normalize' these differences, bringing in a 'sameness' between the colony and the metropole. On the other hand, the achievement of sameness would, by this logic of legitimation, bring about an end of colonial rule whose perpetuation depended ultimately on a continued preservation of the alienness of the ruling group, their difference and racial superiority. The English-educated Indian middle class, a manifestation of the 'advance' of an

indigenous tradition towards 'universal forms of rational and scientifically ordered social life', symbolised a contradiction in the logic of colonial rule. The constant emphasis by the latter on 'equality' and 'sameness' with the rulers, brought thus a 'logical' end to colonial rule.

The end of colonial rule did not bring with it the dismantling of the structures and institutions of the modern state which it had brought to India for its extractive purposes. The nationalists who took over the 'intact state' in 1947, had to start afresh the justification of its norms and practices.¹ The grounds of legitimation of the state in independent India were premised on constitutionalism and legality, planning and developmentalism, representative democracy and republican citizenship. We shall attempt to see how the above premises, drawn from the ideology of anti colonial nationalism, became the ideology of the national state.

The principle of constitutionalism or legality formed the basis of both Nehru's critique of the colonial state, and the construction of an identity for the national state distinct from colonial. Nehru's articulation of a notion of legality and constitutionalism emerged forcefully during the nationalist struggle as a significant differentia between the colonial state and a constitutional, national state.² The 'notion of constitutions or of legality', wrote Nehru, "controls the making of laws, ... protects liberties,...checks the executive,...provides democratic methods of bringing about changes in the political and

¹ The term 'intact state' for the state over which the Congress gained control in 1947 has been borrowed from Sunil Khilnani, 'India's Democratic Career' in John Dunn (ed.) *Democracy: the Unfinished Journey, 508 BC to AD 1993*, Oxford, 1992, p.198. Khilnani in his study of Indian democracy has pointed out that despite the 'crisis of governability' that many have detected in India as elsewhere, the Indian exceptionalism lies in the persistence of the democratic nature of its political structures and 'the fierce attachment of its modern population to the ideals of democracy'.

² In an insightful article on Nehru's ideas on legitimate authority, Upendra Baxi locates some distinct functions of the notion of legality expounded by Nehru. Legality or constitutionalism provides (i) the framework of powers and limitation for the exercise of legislative competence, implying that (a) law is more than the will of the executive in a democratic society (b) the making of laws must have a time dimension (c) The title that law carries to legitimacy and obedience is structured by norms of legality; (ii) the protection of the liberties of citizens against domination by a few; (iii) a basis for orderly changes in political structure; (iv) frameworks for state and non state pursuit for economic activity and development. Nehru found the colonial state, where constitution was merely in support of the executive's more or less arbitrary actions wanting in all these aspects of legality. For an analysis of these themes, see Upendra Baxi, 'The Recovery of Fire: Nehru and Legitimation of Power in India', *EPW*, Vol.XXV, No.2, 13 January, 1990.

economic structure".³ Nehru found the colonial state, where 'constitution' was merely 'in support of the executive's more or less arbitrary actions',⁴ wanting in all these areas.

Planning and development formed another set of grounds for legitimation of the national state which have their origins in the anti colonial struggle. At about the same time as Nehru was explicating his thoughts on what constituted the functions of legality, the Congress was increasingly identifying itself not only with the nation but also with the state.⁵ The concerns with 'national reconstruction' and the setting up of a 'National Planning Committee' by the Congress leadership in October 1938 to chart out a 'comprehensive scheme' for socializing the "entire agricultural and industrial system in the sphere of both production and appropriation" have been seen by Chatterjee as signifying not simply 'the anticipation of power' by the Congress leadership but also "an anticipation of the concrete forms in which that power would be exercised in the national state".⁶ More importantly, by bestowing on the state the responsibility of determining the material allocation of the nation's productive resources through planning, the Congress was also assuming the responsibility of determining priorities on behalf of the nation.⁷ As a bureaucratic function, 'above the particular interests of civil society', in a domain 'outside the normal processes of representative politics' to be 'executed through a developmental administration',⁸ national planning became indispensable for the Congress leadership in its search for a legitimacy that transcended class division. While projecting Congress adherence to socialist principles of distributive and social justice, planning and development guaranteed on the other hand that distribution would take place

³ Jawaharlal Nehru, *Autobiography*, London, 1936, p.417.

⁴ *Ibid.*, p.423.

⁵ It must be noted here that the Congress had formed the government in six provinces after elections under the provisions of the Act of 1935.

⁶ Partha Chatterjee, *The Nation and its Fragments*, p.201.

⁷ *Ibid.*, pp.200-202.

⁸ *Ibid.*, p.205.

without class conflict.⁹

Before coming to the ways in which the contradictions in the above became manifest after 1947, it is important to understand the subtleties of Congress's representation politics. In the course of anti-colonial resistance, it had, as the dominant nationalist force, claimed the authority to define what constituted 'national' and therefore, which groups could claim their activities to be in the 'national' interest. As mentioned earlier, the legitimation principle of colonial rule had required that subjects be shown as inadequately prepared for self rule and citizenship. The educated elite which formed the dominant strand of the national movement and had steered the movement in the name of equality and liberty, paradoxically took up the colonial theme of 'inadequacy' to represent and 'guide' the people towards a republican citizenship. Under such a construction broad sections of the population (e.g. peasants, women) were represented in the discourse of the nationalists in essentialist and depoliticised terms. While women became the repositories of the national essence and as such, outside the domain of politics, other aspirations of nationalism epitomized by the peasants and tribals were delineated as incapable of rational political activity.

In the aftermath of independence the discourse of 'national' development along with the institution of republican citizenship and a constitutional state, as distinct from subjecthood under the colonial state, were to obtain legitimacy for a Congress regime in the national state. Events, however, were to make constitutionalism and legality appear increasingly tenuous. The brittleness of the homogenizing rhetoric of development and citizenship similarly revealed itself in the complex situation which obtained in the sixties and seventies. As broad sections of the population moved to political activity, the government took recourse to legal and extra-legal measures of repression, so much so

⁹ In the years after independence Nehru's socialism changed from the need for 'vast and revolutionary changes' to the insistence on the state playing a vital part in planning and development. The key to change was thus not socialism but science and technology, which Randhir Singh terms 'fetishism of science': 'Visions for the Future' in *Of Marxism and Indian Politics*, Delhi, 1990, p.74. The state within this framework was envisaged as a unity of the different interests of society, representing the 'national' interest. The state in the Nehruvian framework became the 'common' destination for input of the needs and demands from all sections of society. It could requisition technical expertise to process these demands and make allocations consistent with 'national progress'. Under such a construction, possibilities of a class struggle or class mobilisation for a radical reconstruction of society or a redefinition of 'national progress' was foreclosed. See Partha Chatterjee's discussion on Nehru and the passive revolution in *Nationalist Thought and the Colonial World*, London, 1986.

that the legality and constitutionalism which were integral to nationalist critique of the colonial state, seemed to dissipate in the face of an emerging crisis of legitimacy.

While the authoritarian trends which ensued in the period after independence were immediately related to the rise in popular political activity and the crisis of legitimacy, it is worth while to explore the authoritarian predisposition which pervaded the process of 'national consolidation' and the change which the achievement of independence brought to the broadly concerted nationalist struggle.

Sudipta Kaviraj has very aptly described the rise of the Congress before independence as 'a paradoxical mass wave'. The wave of the national movement, given, its 'ambiguous unity' under the 'the apparent hegemony'¹⁰ of the Congress, was very likely to splinter after the goal of independence which gave them an abstract unity of purpose was achieved.¹¹ The flimsy and ephemeral nature of this unity was not lost on the Congress itself and gradually but assuredly it was delimiting the boundaries of legitimate 'national' activity. In other words, going back to Kaviraj's analogy of the wave, the Congress was determined to harness the wave which if left 'uncontrolled' would lead to "the crystallisation of an early radical popular challenge to its new government".¹²

Thus in this complex conflation between 'national consolidation' and state controlled development can be seen the roots of efforts to neutralize challenges to the government. The state in the Nehruvian framework of developmental planning, as said earlier, was an aggregate of societal interests and the instrument of change. Under such a construction any violent class struggle was seen as dissipating rather than consolidating the nation's scarce resources and thus hampering the developmental process. It is here that the justification for a 'dispassionate' propensity to remove the 'obstructions' in the

¹⁰ Sudipta Kaviraj, 'A Critique of the Passive Revolution', *Economic and Political Weekly*, Special Number, November, 1988, p.2432.

¹¹ Kaviraj points out that the crisis of constitutionalism in the late 1960s was due to the change in the objectives of the political groups which had formed the broad movement for national independence. The earlier 'common' objective of the national movement to achieve sovereignty changed, with each political group within the broad national movement struggling to determine the structure and power of the independent state. Muslim separatism, intensification of communist struggles and ideological polarisation and crystallisation of political factions within the Congress were manifestations of this change. *ibid.*

¹² *Ibid.*

way of 'progress' can be found,

Everything that comes in the way will have to be removed, gently if possible, forcibly if necessary. And there seems to be little doubt that coercion will often be necessary. But ...if force is used it should not be in the spirit of hatred or cruelty, but with the dispassionate desire to remove an obstruction.¹³

The Nehru era, from the point of view of 'national consolidation' and the sanction for state coercion implicit in this consolidation, began with Telengana and ended with Naxalbari.¹⁴ Nehru's task of streamlining the Indian nation involved what Chatterjee calls the 'discourse of order and the rational organization of power'.¹⁵ The Nehruvian nationalist discourse, having projected itself as the exclusive legitimate voice of the nation, became also a discourse of order and "succeeded in glossing over all earlier contradictions, divergences and differences and incorporating within the body of a unified discourse every aspect and stage in the history of its formation".¹⁶ The ideological unity of nationalist thought sought its actualization in the rational life of the state which foreclosed the possibilities of any conflict in the drive towards progress. In this achievement of progress, irrational and irresponsible violence was not to be tolerated and the coercive apparatus of the state could be used for the removal of obstructions to the path of progress and development. What is particularly noteworthy in this context, as also pointed out by Chatterjee, is that political independence did not bring any fundamental break in the institutional structures of governmentality. The 'rational' institutional structures of authority, the techniques of power and the disciplined management of the population outlived colonial rule. That the state possessed the legitimate use of violence is very much apparent in Nehru. State violence was to him

preferable to *private violence* in many ways, for one major violence is better than numerous petty private violence. State violence is also likely to be a more or less ordered violence and thus *preferable to the disorderly violence of private groups and individuals, for even in violence order is*

¹³ Nehru quoted in Partha Chatterjee, *Nationalist Thought*, p.161.

¹⁴ I owe this periodization to D N, 'Political Economy of the Nehru Era', *EPW*, Special Number, November 1988, p.2459.

¹⁵ Partha Chatterjee, *Nationalist Thought*, p.51.

¹⁶ *Ibid.*

*better than disorder...*¹⁷

Several months before the Indian state actually confronted the Telengana movement, Nehru, speaking at a public meeting in Vishakhapatnam in the neighbouring Andhra Province, expressed his discontent with the Telengana method of confronting the violence of the Hyderabad state. "The way to meet it (the violence of Hyderabad state)", he suggested, "is by the *organized forces of the state*... But it is totally wrong for the people, that is to say *private people*, to organize gangs to meet the official or non-official violence from Hyderabad state".¹⁸ It is noteworthy that the armed struggle of the people of Telengana against an oppressive feudal regime was rendered non political by Nehru by labelling it as 'private violence', which could bring the nation to 'complete disorder, chaos and mischief'.¹⁹ It is again paradoxical that this designation did not deter Nehru's government from taking a political decision to ban the communist parties as a group for 'violent activities against the state'.²⁰

In this period of national consolidation Nehru favoured the strengthening of the coercive institutions. The army was seen as critical for safeguarding the interests of the nation. Entrusted with functioning on behalf of the state for the protection of the people of the nation, and sacrosanct as a visible symbol of the sovereignty of the nation, the army was construed as beyond 'narrow party politics'. This emerges quite clearly in Nehru's reluctance to concede the demands of the INA personnel for reinstatement in the army and their treatment as prisoners of war. Nehru's hesitation to reinstate them arose from the alleged 'entanglement' of some of them 'in narrow party politics' through their

¹⁷ Jawaharlal Nehru, 'The Mind of a Judge', September 1935, *Selected Works*, Vol 6, pp.487-488 (emphasis added).

¹⁸ 'Importance of Right Means', Jawaharlal Nehru's speech at a public meeting at Vishakhapatnam, 14 March 1948, *Selected Works of Jawaharlal Nehru*, Second Series, Vol.V, New Delhi, 1987, pp.281-282 (emphasis added).

¹⁹ *Ibid.*, p.278.

²⁰ In a press conference on 5 August 1949, Nehru justified the 'big round up' of communists before the Communist Party was actually banned in West Bengal for having threatened a railway strike despite the Railwaymen's Federation decision not to go on a general strike and for preaching sabotage. See S.L.Poplai (ed.) *India 1947-50, Select Documents on Asian Affairs*, Vol.I, (Internal Affairs), London, 1959, pp.565-566.

association with the 'groups like the Forward Bloc'.²¹ It is not surprising, therefore, that the army, associated thus with the 'nation' beyond the domain of the political process, could be used with a certain amount of impunity against several popular movements (Telengana being one) in the 'national interest'. In a similar vein Nehru recommended reliance on 'proper intelligence' to deal with "secret and underground people who have no scruples".²² In making this suggestion to the Premiers of various provinces after the assassination of Gandhi, Nehru was referring to 'communalism ... Muslim or Hindu or Sikh'.²³ Both the communists and members of Hindu and Muslim communal organizations were put in prison under the various Public Safety Ordinances and Maintenance of Public Order Ordinances.²⁴ In a public address, while making an assessment of the state of civil liberties in the country, Nehru justified the attempts at normalizing the situation:

...in the past year and a half in this country we have had to deal with various phases of intensive violence, whether it came in the early days of August, September and October in the Punjab or Delhi or whether it came subsequently from communal organizations or from certain labour bodies, and a good deal from certain sections of the Communist Party of India,

²¹ Jawaharlal Nehru, letter dated 23 February 1948 to the Premiers of provinces, *Selected Works*, Second Series, Vol.V, p.323.

²² In the period preceding partition and afterwards, communal activities of a violent nature had erupted in various parts of the country. The RSS, the Muslim League National Guards (MLNG) and the Khaksars were almost semi-military organizations pursuing an overt policy of communal hatred and violence. On 2 February 1948 the Government of India declared all three unlawful. Three days later in the letter quoted in the text he alerted the Premiers of various provinces to the dangers inherent in the "combination of political activity with a religious group". Letter dated 5 February 1948 to the premiers of provinces. *Selected Works*, Second Series, Vol.V, p.315.

²³ It is interesting that in November 1947, the Premiers and Home Ministers of provinces met in Delhi and agreed with the need to deal with the Sangh in its corporate capacity. The actual moment for such an action was not considered to have arrived then. The 'harmful' and 'objectionable' activities of the Sangh, however, continued claiming many lives. Gandhi's assassination on 31 January 1948 was described in a government communique, dated 8 February 1948, as the latest and most precious victim. The ban was subsequently imposed on the Sangh, along with the Mahasabha, MLNG and Khaksars on 2 February 1948. For the government communique referred here see S.L. Poptai (ed.) *India 1947-50, Select Documents on Asian Affairs*, Vol.I, pp.563-565.

²⁴ It is worth mentioning here that as an attempt at restoration of civil liberties the Defence of India Act and the rules thereunder had been allowed to expire on 30 September 1946. The 'Public Order' rules had similarly lapsed. In October 1946, the Interim government also passed orders for the release of fourteen persons serving sentences in Punjab, UP and Bengal under the Enemy Agents Ordinance, 1943. On the other hand a Press (Special Powers) Ordinance, 1943 was passed to curtail so called inflammatory writings likely to increase communal tensions. See for details file no. 24/6/47, Home [P(I)], NAI.

at first chiefly in and around Hyderabad - on both sides of the Hyderabad border - in West Bengal and elsewhere...²⁵

In the rest of this chapter we confine our focus to the penal response of the government towards movements which strove to pursue an alternative political agenda. We shall limit our study to two brief but volatile periods of communist led insurrections in India, the Telengana movement of the late 1940's and the naxalite movement from late 1960's to mid 1970's. We also briefly analyse the working of the penal system during the Emergency period between 1975-1977. The core of the study is concerned with analysing the treatment of political prisoners by various regimes. We also attempt to examine the policy of the Communist Party of India (henceforth CPI) and naxalites towards prisons, and the diverse meanings attached to political prisonerhood in independent India.

Unlike the colonial period when jail going was a manifestation of the dominant political culture of struggle against a colonial regime, in independent India it became the manifestation of the inability of the government to cultivate a democratic culture of deliberation and debate with political opposition of various hues. In so far as the purpose of the chapter is to dwell on the latter, it becomes imperative to study both the legal as well as extra legal ways of dealing with political dissent.

STATE RESPONSE: PREVENTIVE AND PUNITIVE MEASURES

The passage from subjecthood to citizenship involved, among other things, the people of India purportedly 'giving to themselves', a constitution guaranteeing them fundamental rights. The constitutional guarantees assuring these rights were, however, fraught with provisions which allowed the government to curtail these rights. Successive governments made extensive use of these provisions to curb political dissent. The constitutional provisions were, however, not the only means adopted for the purpose of containing political opposition. In its use of force against the 'naxalites' in the late sixties, the government crossed the boundaries of the 'legal' and deployed a variety of extra-constitutional measures. Two infamous forms of extra-legal repression involved

²⁵ Extracts from Nehru's address of 4 March 1949, in S.L.Poplai (ed.) *India 1947-50, Select Documents on Asian Affairs*, Vol.I, pp.563-565.

the elimination of political opponents by simply killing them in 'encounters', a euphemism for extrajudicial execution, and 'disappearances' - where persons picked up by the police and paramilitary forces vanished without trace.

The 'legal' measures for repressing political opposition existed against a backdrop of laws which were either enacted after independence or continued from the colonial period.²⁶ A unique feature of the Indian Constitution is that it contains provisions for preventive detention, paradoxically in the same section which provides citizens the fundamental right to freedom.²⁷ The provisions for preventive detention suggest the conditions under which these fundamental rights can be rendered virtually inoperative.

Before we move on to a detailed analysis of the preventive detention laws and the context in which they were enacted, we must keep in mind that the ordinary criminal law also provides for preventive measures.²⁸ The probable reason why successive governments preferred to promulgate preventive detention laws, each more severe than the preceding one, was because the ordinary law requires the detenu to be produced before the judicial magistrate within twenty four hours of arrest. Any further detention depends on the approval of the courts. As most cases of detention aimed at avoiding the scrutiny of the courts and to secure detention for as long as possible, the CrPC obviously did not serve effectively the political ends of detention.

²⁶ The essential form of the two main codes of law - the Code of Criminal Procedure of 1898 (amended in 1978) and the Indian Penal Code of 1860, - drawn up during colonial rule continue to operate in independent India. Other examples are the Official Secrets Act of 1923 (an amendment in 1967 enhanced most of the offences punishable under the Act with greater sentences of imprisonment) and the Dramatic Performances Act of 1876, which continued in independent India to suppress dissent. For a comprehensive study see Sumanta Banerjee, 'Colonial Laws - Continuity and Innovations' in A.R.Desai (ed.) *Expanding Governmental Lawlessness and Organized Struggles*, Bombay, 1991, pp.226-235.

²⁷ Articles 19, 20, 21 and 22 of the Constitution of India together form a distinct group of rights titled 'Right to Freedom' in Part III of the constitution dealing with fundamental rights. Article 19 concerns itself with the freedom of speech etc, and articles 20, 21 and 22 pertain to penal enactments or other laws prescribing or limiting the conditions under which a person's liberty could be curtailed. While article 20 provides protection in respect of conviction for offences, article 21 guarantees the right to life and personal liberty, prescribing safeguards whereby the personal liberty and right to life of an individual cannot be abrogated except according to the procedure laid down by law. Article 22 of the Constitution provides for protection against arrest and detention in certain cases.

²⁸ The Code of Criminal Procedure under sections 54 (Chapter V, Part B - 'Arrest without Warrant') and 151 (Chapter XIII, 'Preventive Action of the Police') authorizes the police to arrest a person either to prevent the commission of a cognisable offence or as soon as complaint of the commission of cognisable offence has been received, without order from a magistrate and without warrant.

The Preventive Detention Act, 1950 was the first preventive detention law to be passed after the Constitution came into force and was used against the communists in Telengana.²⁹ Specific features of the Act particularly those relating to the provisions for Advisory Board, the maximum period of detention and the right of the detenu to be informed of the grounds of arrest were modified by subsequent amendments.³⁰

The next phase in which preventive detention was used vigorously by the Indian government was during the Indo-China war of 1962. Incidentally, the war gave the government reason to impose an emergency under which certain fundamental rights were automatically suspended.³¹ The declaration of emergency enabled the government to promulgate the 'Defence of India Ordinance, 1962' and the rules framed under the Ordinance, replaced afterwards by the Defence of India Act, 1962.³² The Defence of India Act empowered the Central government to make rules, ostensibly for securing the defence of India, civil defence, public safety, maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the

²⁹ The Preventive Detention Law, 1950 was passed by a predominantly Congress Parliament only 30 days after the Constitution came into force. Home minister Vallabhbhai Patel in introducing the bill explained that labour trouble and the Telengana movement led by the Communist Party necessitated the introduction of the measure. See Niloufer Bhagwat, 'Institutionalising Detention Without Trial', *EPW*, Vol.XIII, No.11, 18 March, 1978.

³⁰ The features of the Act which distinguished themselves in the actual operation of the Act were, (a) The authority passing the detention order was not bound to disclose to the detenu facts pertaining to the arrest whose disclosure, according to the detaining authority, was against public interest; (b) the Act allowed the government to continue the detention for an indefinite period of time once it was confirmed by the Advisory Board; (c) in special cases a person could be detained for one year without obtaining the opinion of the Advisory Board; (d) the detention order was not to be disclosed to the court and any person who disclosed the order, including jail authorities, were punishable with imprisonment for a term which could extend to one year or with fine or both and (e) officials acting in good faith in pursuance of the Act were granted legal immunity from suits or prosecutions. *ibid.*, p.511.

³¹ As with preventive detention, the Constitution of India empowers the government to negate the fundamental rights by incorporating 'Emergency Provisions' in Part VIII. Articles 352-359 of the Emergency provisions empower the President of India to suspend the right to freedom and the right to constitutional remedies in situations of 'national emergency'.

³² The Supreme Court in the case of *Mohan Choudhary v. Chief Commissioner, Tripura* upheld the validity of the Rules, despite the contention that they should be ultra vires because they were issued prior to the Defence of India Act, 1962.

community.³³ The official state of emergency was allowed to persist for several years after this war was over and till the time of subsequent wars with Pakistan in 1965 and 1971, with the result that the government continued to detain people without trial under the Defence of India Act, 1962. The Act was used for example to crush the language riots in Tamil Nadu in 1965. In 1968 the government passed the 'Unlawful Activities Prevention Act' which made many of the emergency powers under the Defence of India Act statutory law. This new Act ensured that any organization could be declared illegal and any individual could be imprisoned for questioning India's sovereignty over any piece of India's territorial claims. Throughout this period, the Preventive Detention Act was used alongside the Defence of India Act to curb political and popular unrest.

The Defence of India Rules and Maintenance of Internal Security Act of 1971 (henceforth MISA) became the principal instruments for detaining political opponents between 1970 and 1975. The DIR were primarily used to detain political activists suspected of being involved in extreme left activities. In the early 1970s the majority of arrested persons belonged to the CPI(M) and CPI(ML) and were termed 'naxalites'. Some of those detained in early 1970s continued to be held throughout the emergency without being brought to trial.³⁴ The majority of 'naxalites' arrests were made in West Bengal (henceforth WB), Andhra Pradesh (henceforth AP), Kerala and Bihar.³⁵ Six months after the revocation of the state of emergency, the DIR were allowed to lapse in September 1977.

Alongside the wars with the neighbours, there set in within the country itself, what may be termed as a period of political instability. The economy of the country had entered a particularly depressing phase. The drought which gripped various parts of the

³³ Section 3(1), Defence of India Act, 1962. Section 30(I)(b) dealt with preventive detention. The Act and the rules were modelled on the lines of the 'Defence of India Act, 1935'. The Supreme Court in the case *Mohan Singh v. State of Punjab* on the question of the constitutional validity of the Act declared it *intra vires*. *All India Reporter* (henceforth AIR), 1964, SC 381.

³⁴ Amnesty International, *Short Report on Detention Conditions in West Bengal Jails*, London, 1974.

³⁵ According to official statistics, in West Bengal alone in March 1973 the number of naxalite prisoners was 17,787. Reports of non governmental organizations like Amnesty International put the figure much higher, between 15,000 and 20,000. Most prisoners detained under the DIR were kept under conditions which did not comply with the 'United Nations Standard Minimum Rules for the Treatment of Prisoners'. For details see Amnesty International, *Report of an Amnesty International Mission to India*, London, 1978.

country, the massive devaluation of the rupee and the unprecedented unemployment, ushered in a sense of discontent among the people. A spate of popular protests occurred resulting in what has been termed as the 'sudden passage' of broad elements of the masses, particularly the peasants and the petty bourgeoisie, from 'political passivity to a certain activity'.³⁶

While the 'apolitical' elements of the population were thus being politicized, the left parties assumed a role commensurate with the temper of the times. Some major ideological shifts with respect not only to the principles of mobilization but also to the path of change were becoming evident. The left movement at this time enjoyed tremendous success in managing peasant agitations around class divisions that coincided with the traditional divides of region, tribe, community and caste. It also became evident, particularly around the time of the general and state elections of 1967 that the parties in opposition to the centrist Congress party, including both left and right, were inclined toward presenting a broad united front by working out electoral adjustments and alliances. The 1967 election proved veritably debilitating for the Congress, with its support severely eroded at the national level and in the majority of states. In the meantime the Communist movement in India underwent yet another schism with a section of CPI(M) splitting to form the CPI(ML) on May Day 1969. With this schism a section of the Communists made official their distrust of the parliamentary road to socialism. The 'correct path' enunciated by the CPI(ML) was the Chinese path and the tactic of guerrilla warfare was conceived as the moving force along it.

The state on its part was unable to find democratic solutions to this growing discontent among the peasantry and broad sections of the urban population. It treated each outbreak as a law and order problem, arming itself with extraordinary powers, and making a massive use of law enforcement agencies including the police, paramilitary forces and the army. The Preventive Detention Act had already been renewed seven times and lapsed in 1969 when owing to a split in the Congress, Prime Minister Indira

³⁶ Ajit Roy, *Political Power in India: Nature and Trends*, Calcutta, 1981.

Gandhi could not muster enough support in Parliament to renew it.³⁷ For two years there was no central law of preventive detention. The States, however, continued operating and promulgating their own preventive detention laws.³⁸ In November 1970, the Prevention of Violent Activities Act which provided for detention without trial was promulgated in West Bengal. This Act was intended to detain members of the CPI(ML) and CPI(M) in order to debilitate their mass organization.

Meanwhile the midterm elections of 1969 in a few states reinforced the earlier trends. There seemed to have set in a political situation where no national party could be said to be a viable party capable of mustering the support of the people. The split in the Congress in 1969 further augmented the level of instability. The 1971 general elections, however, saw a resilient Indira Gandhi return to power, riding on the success of the populist slogan of 'garibi hatao'. This election gave her enough strength in Parliament to pass a mutant of the Preventive Detention law - the MISA.³⁹ The statement of the objects of the Act focussed on the need to deal 'effectively with the threats to the defence of India and to the security of India, especially from external sources'.

The next few years, however, saw the advantages of the elections slipping away from the Indira Government. The promise of radical social change based on the principles of economic growth and equitable redistribution proved elusive. The massive

³⁷ The most spectacular case of preventive detention was perhaps that of the Kashmiri leader Sheikh Abdullah. Abdullah, initially a strong supporter of Nehru and of the accession of Kashmir to India, began aspiring for an autonomous state of Kashmir. He was subsequently arrested in 1953, detained without trial until 1958, then released, arrested again three months later, released in 1964, rearrested in May 1965, released in December 1967, again arrested in 1968 and released in 1973. Dharendra Sharma, *The Janata (People's) Struggle*, Delhi, 1977, p.10.

³⁸ The WB government for example, declared, on 10 August 1970, that the provisions of the Bengal Suppression of Terrorist Outrages Act of 1936 - a law used by the British against the revolutionaries - would be applied again. Under the Act, the police was given the power to detain persons on suspicion for up to 24 hours and to take possession of arms, premises suspected of being used for terrorist activities as well as literature propagating such thoughts.

³⁹ On 7 May, 1971 the President promulgated the 'Maintenance of Internal Security Ordinance, 1971'. Two months later, the Parliament passed the 'Maintenance of Internal Security Act, 1971' which became effective from 2 July, 1971. The Act authorized the Central government to order the detention of a person, if satisfied, that such person is acting in a manner prejudicial to: (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the state or the maintenance of public order, or (3) the maintenance of supplies and services essential to the community. MISA, Section 3(I)(a).

student mobilization among students in Bihar under the leadership of Jayaprakash Narayan, a Gandhian Socialist, threatened to assume all India proportions. In Gujarat Morarji Desai was leading a movement against the Centre's imposition of President's rule in the State. In the meantime the judgement of the Allahabad High Court found the Prime Minister, Indira Gandhi, guilty of corrupt practices in her 1971 election from Rae Bareilly, augmenting the problems for the (erstwhile) government. An opposition party alliance - the Janata Front - demanded her resignation. The Supreme Court in the meantime denied her an absolute stay on the judgement, allowing her to continue as Prime Minister but denying her the right to vote in the Lok Sabha. Even as efforts were made to start a mass mobilization against her, Indira Gandhi advised the President to impose an 'internal' emergency under Article 352 of the Constitution, by which the government assumed extensive powers of arrest and censorship.

With the declaration of a National Emergency on 25 June 1975, under Articles 352(1) and 359(1) of the Constitution, the government suspended the right of access to the courts for the enforcement of Articles 14, 21 and 22 of the Constitution for the restoration of the fundamental freedoms of the people. Under such conditions of suspended fundamental rights, MISA assumed more formidable proportions. MISA had been modelled by and large on the Preventive Detention Act, 1950 containing provisions which gave broad application to Article 22 (4), and 22 (5) of the Constitution pertaining to the disclosure of the grounds of detention and the opportunities to make representation against the order. The Defence of India Act, 1971 had introduced some changes in MISA which made the conditions of detention more severe.⁴⁰ With the Emergency, the government introduced certain amendments to MISA which virtually rewrote the Act.⁴¹

⁴⁰ The changes brought about by the Defence of India Act made the existing provisions of MISA regarding reference to the Advisory Board and the maximum period of detention much harsher: (1) MISA required the detaining authority to make a reference to the Advisory Board within 30 days from the date of detention. This was increased to three months. (2) MISA fixed twelve months as the maximum period of detention. The defence act provided that such detention shall continue for three years or until the expiry of the defence act, whichever is later. (3) The defence act added a new section 17-A to MISA which authorized the Government to detain a person without obtaining the opinion of the Advisory Board for a period not exceeding 2 years on certain grounds specified therein.

⁴¹ Under the original section 3 (3) of the MISA, when a detention order was passed by an authorized officer, such officer was required to report the fact forthwith to the State Government for approval and unless approved earlier, such order was valid only for 12 days. The amendment increased the 12 day period to 20 days. Secondly, under the original section 14 (2), on the expiry or revocation of a detention

The Constitution (39th Amendment) Act, placed MISA in the ninth schedule of the Constitution thereby taking it beyond the scope of judicial review. The Supreme Court on 29 April 1976 upheld the validity of MISA as amended and refused writs of habeas corpus under Article 226 of the Constitution, which had withstood suspension by the declaration of a state of Emergency.⁴² The Constitution (42nd Amendment) Act 1976, further strengthened the powers of the Central government by providing that no law for the prevention or prohibition of anti-national activities could be declared invalid on grounds that it violated the fundamental rights in Part III of the Constitution.

In 1977 MISA was repealed by the Janata government which won a massive electoral victory in the face of raging anti Indira sentiments. A subsequent attempt made by the Janata government to bring in a mini MISA in the form of a Criminal Procedure (Amendment) Act proved futile.⁴³ Preventive detention laws were, however, enacted by the different political parties in power in the states of Madhya Pradesh (henceforth MP), Jammu and Kashmir, Bihar and Orissa. This rather broad sweep of events helps to put in perspective the emerging trend of 'extra ordinariness'. We shall now turn our attention to the manner in which legality ceased to be indispensable for the legitimation and continuation of governance. Beginning with Telengana and through the emergency of 1975, legality was dispensed with for the preservation of the 'national' interest.

order, no fresh order could be passed against the same person unless fresh facts had arisen against such person. Under the amendment, fresh order of detention could be passed against the same person (possibly on the same grounds) and such subsequent detention order could continue for up to 12 months from the date of earlier detention or until the expiry of the 'Defence of India Act, 1971', which ever was later. (Maintenance of Internal Security (Amendment) Act, 1976). Similarly the Maintenance of Internal Security (Amendment) Act, 1975 added two new sections, section 16-A and 18 to the Act. Section 16-A contained special provisions for dealing with Emergency. It provided that section 8 to 12 of MISA dealing with disclosure of the grounds of detention to the detenu and constitution, reference and procedure of Advisory Board, shall not apply to detentions ordered on or after 25 June 1975, depriving them of the right to receive the grounds of detention or have their cases reviewed by the Advisory Board. These cases would be reconsidered by the government at the interval of 4 months period. Section 18 deprived the detenu of any right to personal liberty by virtue of common law or natural law.

⁴² On 29 April, 1976, the Supreme Court, in a group of nine cases, headed by *Additional District Magistrate, Jabalpur Vs. Shekhavat Shukla* upheld the validity of the MISA as amended. *The AIR Manual*, 1979 (fourth ed.) SC 1207.

⁴³ The Bill introduced by the Janata Government in Parliament on 24 December, 1977 sought to make detention without trial an integral part of the ordinary law of the land by adding a 19 clause chapter in the Code of Criminal Procedure itself.

PRISON AS AN ARENA OF CLASS STRUGGLE (I): POLITICAL PRISONER AS THE VANGUARD

What happened on 15th August? Was it independence? What class or class coalition did the new state represent? These were the critical questions that confronted the CPI in the late 1940s. To understand the debates which took place inside the party concerning the role of political prisoners in the overall ideological programme and the mode of resistance to be followed in prison, it is necessary to look at the broader contest within the party on the above questions. Between the years 1947 and 1951 the CPI shifted its position at least four times. After a brief study of these various stances we shall analyse in some detail the communist positions on political prisonerhood and the government's response to them.

In June 1947 the Central Committee (henceforth CC) of the CPI under the leadership of Secretary-General P.C.Joshi passed a resolution, often referred to as the Mountbatten resolution,⁴⁴ recognizing that a genuine transfer of power was taking place to a new independent state. Viewing the new government as representing the interests of the national bourgeoisie, the CPI resolution nonetheless extended support to the new government.⁴⁵ Although not yet a stage of 'complete freedom', the CPI considered it as "an advance and a weapon in the hands of the people".⁴⁶ Within six months of passing the Mountbatten resolution the party leadership faced a strong opposition from the B.T.Ranadive faction which subscribed to a militant revolutionary strategy. On 28 February 1948, the second Congress of the CPI adopted a 'Political Thesis' which marked a dramatic shift from the previous resolution.⁴⁷ The Indian state was now characterised as a 'satellite state' dependent on imperialism in which the national bourgeoisie shared power with imperialism. The country under this thesis, was seen as

⁴⁴ The resolution derived its name from the agreement reached between the British government and the key Indian political parties to the partition and independence of the country under the Mountbatten Plan. The agreement was reached on 3 June 1947.

⁴⁵ G.Adhikari, *Communist Party and India's Path to National Regeneration and Socialism*, New Delhi, 1964, pp.88-89, 93.

⁴⁶ M.B.Rao (ed.), *Documents of the History of the Communist Party of India*, Vol.VII, 1948-1950, New Delhi, 1976, p.viii.

⁴⁷ For the text of 'Political thesis' see *ibid.*, pp.1-118.

having won 'not real but fake freedom' wherein, while the imperialists in a compromise with the bourgeoisie had transferred to the latter political power, economic bondage continued. The Indian bourgeoisie was thus a complicit 'junior partner' in the exploitation of the country. 'Sensing' that there existed a 'revolutionary upsurge' against the 'imperialist-bourgeois-feudal' combine, the party called upon all 'true' revolutionaries to launch a final struggle to win 'real freedom and democracy'. It decided on a strategy of proletarian revolution through an alliance from below of 'the working class, the peasantry and the progressive intelligentsia' under the hegemony of the working class. The underlying assumption was that the Indian situation corresponded to the Russian pattern, with Nehru standing for Kerensky and August 15 for the February revolution. Deriving from this analogy with Russia, it was assumed that an insurrection was already maturing in India and the next logical step was to push for a revolution in which the democratic and socialist stages would be intertwined. The party gave calls for strikes and confrontation with police and army but, as a party historian noted in retrospect, "there was nobody to hear them, and the working class just turned its back thinking that the leaders had gone delirious".⁴⁸ After this debacle Ranadive's leadership came under severe attack from the Andhra communists who advocated agrarian armed struggle. The CC, reconstituted in June 1950 under the leadership of Rajeshwar Rao, changed the Russian path of revolution to the Chinese path. In a document known as the 'Andhra thesis' the Indian situation was characterised as 'semi-colonial and semi-feudal'. Nehru now stood for Chiang Kai-shek and 15 August 1947 was China's 1927; the heart of the revolutionary struggle according to the party lay in the countryside, and therefore the new revolutionary strategy was to be a protracted guerrilla war based in rural areas bringing about liberation of cities and establishing a 'new democracy'. The communist strongholds of Andhra, Bengal, Malabar, Maharashtra and Telengana in Hyderabad were major areas where confrontation with police and army took place.

The government attacked communists with ferocious repression, indiscriminate arrests and firing. According to the party history, on 13 May 1949 there were 25,000 detenus and 50,000 undertials in jails and by 20 July 1951, government forces had resorted to firing on 1982 occasions, resulting in 3784 people killed and another 10,000

⁴⁸ Ibid., p.x.

wounded.⁴⁹ Under intense state repression and with dwindling support the CPI in October 1951 decided to call off the Telengana movement and the policy of armed struggle against the state. The party yet again censured its leadership and the Andhra group was blamed for bringing about the isolation of the working class, and for leading the party towards liquidation. The CPI later accepted the parliamentary path and emerged as the main opposition group in the Parliament after the first general elections (1952), having secured the highest number of seats among the opposition parties.

Against this backdrop we shall now analyse CPI policies regarding the role of prisons, modes of prison resistance and the meaning of political prisonerhood in the communist struggle. A major question throughout the debates was the relation between prison resistance and the struggle outside jail, particularly on the rancorous issue of whether the former should be dependent on the response from outside or should be carried out irrespective of the fortunes of the broader movement. As we shall see, the period of intense struggle (1947-51) witnessed a vigorous contest inside the party on these issues, and several propositions were debated.

We start our study of the CPI stance by examining the demands they placed before the government while in prison. In March 1947, 120 communists detained under the Madras Public Maintenance Order of 1947 went on hunger strike in Vellore jail demanding the "same facilities as were granted to the Congress detenus under the hated Adviser Regime".⁵⁰ In a memo of demands sent to the ministry the detenus complained that they were "being treated at present in this jail as ordinary B class convicted prisoners" and "in every respect, (food, clothing, lock-up and other facilities) even the rights which were granted to Congress detenus in 1940-45 by the then Advisory regime"⁵¹ were being denied to them. The demands of the Vellore detenus clearly evinced no ideological manifestations which would distinguish them from the nationalist demands. The Vellore struggle coincided with Joshi's leadership and the Mountbatten resolution, by which the CPI supported the Interim Congress government.

⁴⁹ Ibid., pp.x-xi.

⁵⁰ P.C.Joshi, *Inside Vellore Jail: Stop This Vindictiveness. A Memo to Congress Working Committee*, regarding communist detenus, Bombay, 1947, p.1.

⁵¹ Ibid., 'Memo of Jail Demands Sent by Vellore Comrades', p.8.

The shift in the party's position under the leadership of Ranadive and his 'Political thesis' was reflected in jail agitations which took place between 1948-50. The communist prisoners during this period adopted what came to be known as 'militant resistance' and went on hunger strike in various jails.⁵² Nearly 350 communist detenus in various jails of Bombay resorted to a hunger strike in April-May 1949 to compel the government to give them 'human and decent' treatment as political prisoners; this amounted to the abolition of 'vindictive class distinctions' and the award of 'family allowances for all'.⁵³ Incidentally, more than half of the three hundred and fifty detenus were workers and peasants who were the sole bread winners in their families.⁵⁴ The emphasis placed on the condition of working class and peasant detenus and demands for the abolition of classification among political prisoners indicated the communists' effort to break with the nationalist mould. There are indications, however, that the communists shared with the nationalist the citizen\criminal distinction. The demand for 'political' treatment was associated with citizenship rights. The party declared that the detenus

must be *treated as citizens and not as criminals*. They must be given decent food, decent living conditions; clothes and medical facilities, and allowances for their starving families. No amount of chatter about 'subversive activities' can absolve the *Government of the responsibility of treating as citizens* these 350 detenus against whom nothing has been proved.⁵⁵

The communists like the nationalists in the past, constructed the notion of 'political' on the exclusionary principle. They shared with the nationalists the concept

⁵² For the government response to the hunger strike of communist detenus in the sub-jail at Dinhat, Cooch Bihar, WB see file no. 15(68), P\49, Ministry of States (P), 1949, NAI. About a dozen communist detenus in the Central Jail, Bhopal went on hunger strike during March 1950 and later next month demanding that "all security prisoners should be kept together (including subsequent detenus)" and that they "should not be separated or transferred on any grounds." They also demanded "'A' class facilities without any distinction." The government refused to accept any of their demands. File no. 9(6) P\50, Ministry of States (P), 1950, NAI, pp.1-9.

⁵³ *Bombay Detenus Hunger-Strike Enters Third Week, Condition of Dange, Mirajkar and Others Serious*, Statement to the Press by the CPI, (undated).

⁵⁴ The party in particular highlighted the plight of 66 out of 85 detenus from the Nasik jail who were textile or railway workers at the time of arrest. These workers were the chief or only bread-winners of their respective families, consisting on an average of four or five members who were "facing literal starvation for the last three months". *ibid.*, p.4.

⁵⁵ *Ibid.*, p.5, (emphasis added).

of rights of prisoners - 'decent food, decent living conditions, clothes and medical facilities' - rights which were not extended to the 'criminals', who upon entering the prisons lost their rights of citizenship.

The attitude of the jail staff and the official policy towards the communists do not show any perceptible change from the previous years.⁵⁶ Harsh treatment in jail, particularly the tendency to repress forcefully any show of resistance or anti-government propaganda, continued as before. Interestingly, the obsession with labeling the communists as 'desperate' and 'incurable' persisted from the colonial time. The Home Ministry, which felt that the communist prisoners were as a matter of policy on a collision course with the jail authorities, instructed the jail officers not to allow any concessions.⁵⁷ The UP government, for example, authorized the Superintendents of Jails to allow to sleep in the open "such 'S' class detenus and such other security prisoners of first and second class as are not incurable and desperate type".⁵⁸ The condition laid down with regard to the facility of sleeping in the open led to an interesting intervention by those security prisoners. In one instance a communist detenu Jaideo Kapoor, confined in Hardoi District Jail, was treated as 'incurable' and 'desperate' because his charge-sheet described him as a 'confirmed revolutionary'. Kapoor reminded the government that in 1938-39 he was treated as a special class political prisoner by the Congress government in UP and was allowed to sleep in the open in Lucknow District Jail. Incidentally, Kapoor was given life imprisonment in the Lahore Conspiracy Case and was detained by the Punjab Government, from whom the Congress ministry secured his transfer to UP. He was released from prison only in 1946. "Even then I was a revolutionary", stated the prisoner in his appeal, "the Congress and the country were

⁵⁶ Yashpal, an erstwhile revolutionary terrorist and a sympathiser of the communist movement but not a party member believed that things might have got worse. Having been imprisoned in 1949 in apprehension of the railway strike he was chagrined to see that he could not consult in private with his lawyers. This facility was never declined to him under colonial rule. Incidentally when he complained to Lal Bahadur Shastri, the Police Minister of UP, after his release, the latter thought the precaution justified in the case of communist prisoners. Yashpal, *Sinhavalokan*, Lucknow, 1961, p.129.

⁵⁷ As per a confidential letter dated 9 April 1950 to Prime Minister Nehru from Govind Ballabh Pant, Chief Minister of Uttar Pradesh. File no. 682/50, Box no.80, H(J), 1950, UPSA, p.11.

⁵⁸ Telegram dated 15 April 1948, from the Home Department, U.P. Government to the Superintendents of District and Central Jails. File no. 1727/48, Box no.75, H(J), 1948, UPSA, p.33.

proud of me and I was proud of my part in the freedom movement".⁵⁹ The transition from what was then national struggle, to what became 'anti national' after independence is nowhere brought out more poignantly than here over the seemingly mundane issue of sleeping out in the open. A.K.Gopalan's experience depicts a similar irony. An erstwhile Congress man who contributed enormously to the strengthening of the Congress movement in Kerala, Gopalan turned to communism in the 1930s and spent the independence day eve in prison as a detenu under the Public Security Bill. After independence he was charged under section 124 A of IPC for preaching treason 'against His Majesty, the Emperor' and was not released until October 1947.⁶⁰

The fear that ordinary prisoners might be contaminated by contact with communist prisoners also lingered on. An official letter emphasized the importance of segregating the communist prisoners,

Owing to the poor mental equipment of criminals it is unlikely that on being impregnated with the virus of communism they would become communist leaders. It is, however, quite possible that they may be made tools of by the communists in doing acts of violence or to steal arms and ammunition on release from jail. These tactics have been adopted by the communists in the Madras Presidency.⁶¹

The government of UP subsequently marked out three jails for the confinement of communist detenus. Naini Central Jail was selected for the confinement of communist detenus from Eastern UP, and Agra and Bareilly Central Jails were chosen for those belonging to the Western districts.⁶²

Some incidents involving communist prisoners attracted wide public attention. The case of Benaras Central Jail where eight communist women detenus were beaten by the jail staff for 'indiscipline' and attempting to incite and educate other women convicts on the effects of the Trade Union Bill which was to render any trade union activity

⁵⁹ Letter dated 22 April 1948 from security prisoner Jaideo Kapoor from the District Jail, Hardoi to the Home Secretary, the Government of UP, *ibid.*, p.56.

⁶⁰ A.K.Gopalan, *In the Cause*, p.168.

⁶¹ Confidential letter dated 4 August 1948 from IG of Police, Criminal Investigation Department, UP, to the Home Secretary, Government of UP. File no. 1727/48, H(J), 1948, UPSA, p.83.

⁶² *Ibid.*, p.95.

illegal, prompted the Prime Minister to intervene.⁶³ In Aligarh force was used to disperse communist prisoners who hoisted a black flag on 15 August 1949 and confronted the jail staff. In Lucknow District Jail communist prisoners marched in protest on 26 January 1950 shouting anti-Republic slogans resulting in a violent clash between them and the jail staff. In Kanpur District Jail similar scenes erupted on 4 March 1950 when the communists tried to mix with the ordinary prisoners. In all these cases the officials were convinced that the crisis started because of the 'actions' of the 'political' prisoners. There was, however, an admission by the UP government of the tendency to treat prisoners 'as in the old days'. The government expressed the opinion that -

political prisoners deserve special treatment. They must be handled tactfully and as courteously as possible. Jail Superintendents may be asked to give lectures in this connection, say once a fortnight, to the subordinate jail staff. Warders and officials who behave properly and tactfully may be encouraged by promotion.⁶⁴

Nehru himself shared the opinion that communist prisoners should not be absolved of the responsibility for jail incidents. He expressed concern, however, over the way they were being treated in jail. Referring to the communist women detenus in Benaras Central Jail he said,

What I am worried about is that young girls, and usually high-strung and bright young girls, should arrive at such a pass. It is true that communists invite trouble and it is desirable not to allow them any concessions. But it is difficult to apply a rigid rule strictly to young and old, women and men alike. The human element tones down the best of rules and is likely to go some way in winning over a person.⁶⁵

The human touch, however, seemed to be elusive. As the events unfolding in the 50s, 60s and 70s would bear witness, the treatment of political prisoners lacked any element of humanity. This was perhaps a reflection of the lack of any political will to give heed to aspirations other than those envisaged as 'patriotic' or 'national' in the mould which had gained credence and dominance in the colonial times.

⁶³ Before the passing of the Preventive Detention Act 1950, communists in Uttar Pradesh were detained under the U.P. Maintenance of Public Order Act.

⁶⁴ See file no. 688/1950, Box no.80, H(J), UPSA, for details of jail disturbances particularly in the Benaras Central Jail by women communist detenus and official attitude towards them.

⁶⁵ Prime Minister Nehru in a confidential letter dated 10 April 1950 to Govind Ballabh Pant, Chief Minister of UP. File no. 682/50, H(J), 1950, UPSA, p.27.

The harshness of treatment was not just a result of governmental predisposition towards repression of communists. It may be argued that the communists' prison policy contributed also to a stiffening of government repression. A.K. Gopalan, a prominent party leader, stated in his reminiscences that clashes with jail officers and staff were forced on the communist prisoners 'by the excruciating misery of jail life'. But he does not clear the party altogether of the blame for the brutalities and deaths which resulted from such encounters and admits that the party's policy also contributed to their agony in jails.⁶⁶ We shall now examine the position of the party on struggle in prisons and particularly their views on political prisonerhood.

As stated earlier, between the years 1947-51, the position of the CPI shifted on several occasions. These shifts were mirrored in the party's position on the place of jail in the communist struggle and consequently the role allotted to the communist prisoners. The jail, it was emphasised, was 'not a rest camp', but like the factories, fields and law courts, another arena of struggle, a 'fighting front', albeit 'the most difficult one', where the communist carried on his fight against the 'oppressive ruling class' for the 'cause of the proletariat'.⁶⁷ Party activists were exhorted to lay down their lives for the sake of communist struggle. The following extracts from a party document capture the spirit of resistance which communists were expected to display in prison -

...jail is also a sector of the battle front. The government adopts the policy of class differentiation, inflicting physical and mental torture and hardships etc. precisely to fight its own class war, to frighten, break or wreak vengeance on the ever-growing number of class-war prisoners and thereby to weaken the movement outside as well. The class-war prisoners have to fight this policy from inside the jails tooth and nail - no matter how much may be the response outside... They fight mainly on their own strength, on their own capacity to hold out. The blue funk at the prospect of death or permanent injury is not worthy of communist cadres. Cadres outside and toiling men and women are laying down their lives every day. There is no reason why cadres inside jails should have to be preserved in a different manner.⁶⁸

⁶⁶ A.K.Gopalan, *In the Cause*, p.171.

⁶⁷ *Notes on the Bombay Hunger Strike*, dated 25 September 1949, in M.B.Rao (ed.), *Documents of the History*, Vol.VII, p.598.

⁶⁸ *Ibid.*, p.599.

The advocacy of 'militant resistance' inside jail was not favoured by all sections of the party. A section of the leadership involved in hunger strike while incarcerated in Bombay jails proposed a policy of 'defensive resistance' inside prisons. The two forms of protest which constituted 'defensive resistance' were hunger strike and 'demonstrations'.⁶⁹ The rationale for opposition to the policy of militant resistance was based on an assessment both of the government's response and of the limits imposed by the boundaries of the prison. It was claimed that the government had adopted a policy to "physically exterminate or permanently incapacitate as many of our comrades as possible".⁷⁰ The policy of militant resistance in such a situation, it was argued, could result in 'jail becoming virtual deathtraps' and not 'a means of defence or offence'.⁷¹

The party leadership in 1949, however, did not agree to the strategy of defensive resistance and condemned the supporters of the latter as 'opportunist' and 'reformist' and accused them of 'open desertion of class fight'. In a final reassessment of the party's policies of the late 1940's, the official party history contends that the strategy of militant resistance and insurrection in prisons endangered the prisoners, because there was 'no hope for any revolution outside' to support the militancy inside. The most vehement criticism of the party policy of resistance in prison during the Ranadive-Rao period comes perhaps from the party's own 'learning' from its past in the mid 1970s:

This was a revolution on paper. When there was no hope of any revolution outside, insurrection entered the walls of the jails. Instructions were sent to fight militantly for each and every footling demand. Prolonged hunger strikes were forced on the jailed comrades and they were incited to resist most militantly. They faced 11 firings and innumerable lathicharges - and according to *Crossroads* of 24 February

⁶⁹ The nature of demonstrations within jails was explained in the document in the following manner - "We would gather at one place, raise slogans and refuse to be separated or locked up. If they attacked us, we would defend ourselves with bare fists, snatch away their lathis if we could etc. But we would not collect stones and sticks, hurl them at police. Of course when a clash actually occurs and they behave with especial brutality it does become necessary to hit back with whatever you can lay hands on in sheer selfdefence... But the point is whether right from the beginning we should make a different plan, a plan of collecting stones etc., not allowing the police to come near our barrack by hurling stones at them, not waiting for them to attack us but seize the initiative ourselves...". *ibid.*, p.560.

⁷⁰ *Ibid.*, p.564.

⁷¹ *Ibid.*, p.566.

1950, 84 died in the firing in the prisons and a large number injured.⁷²

The CPI's position on prison, the mode of resistance to be followed inside and the differences within the party on these issues had close parallels with the developments which took place nearly two decades later - in the late 1960s - when the naxalites adopted a similar strategy of continuing class struggle within jail.

PRISON AS AN ARENA OF CLASS STRUGGLE (II): NAXALITE POLICY ON JAIL

'Naxalite' is almost a blanket term used to denote those on the left who subscribed to the Maoist path of agrarian revolution. CPI (M-L), the chief advocate of this line during the 1967-72 period, was established as a party in 1969. The formation of CPI (M-L) marked the culmination of a period of dissatisfaction of a number of its cadres over the latter's 'betrayal' of revolutionary Marxism. The formation by the CPI (M) of the state government in West Bengal following the Assembly election of 1967, and the repression by the state police of the peasant uprising against the *jotedars* in Naxalbari hastened the divide.⁷³

The CPI (M-L) characterized state power in India as being in the hands of "feudalism, compradore-bureaucrat capitalism, imperialism and social imperialism".⁷⁴ The 'national' struggle was seen as a diversion from the path of revolution and by a compromise between the Indian bourgeoisie and the British imperialist marked the surrender to U.S. and Soviet imperialism, feudalism and capitalism. While the state in

⁷² Ibid., pp.x-xi.

⁷³ Naxalbari, a village in Siliguri District in North Bengal, became the site in March 1967, under the leadership of the District Committees and Krishak Samitis of the CPI(M), where the peasants resorted to an armed uprising against the landlords and usurers of the area. The Naxalbari area had been the scene of persistent peasant agitation since 1959 and had produced indigenous leadership from among the tribal, low caste and muslim leadership subscribing to communist ideology. They eventually became allies of the CPI(M) and were absorbed in the District and Local Committees of the Darjeeling and Siliguri Districts. The Marxists withdrew support from the previously planned peasant uprising in March 1967. The Krishak Samitis, however, persisted with the agitation as planned.

⁷⁴ As per CPI (M-L) *Programme* of 1970, cited in Manoranjan Mohanty, 'Ideology and Strategy of the Communist Movement in India' in Thomas Pantham and Kenneth L.Deutsch (eds.), *Political Thought in Modern India*, 1986, p.253.

India was seen as a bourgeois-feudal coalition acting in the interest of the imperialists, the principal contradiction, it was maintained lay between the masses and feudalism. The path to social change therefore lay in the resolution of this primary contradiction. The programme of action was protracted guerrilla warfare by 'a four class united front' of working class, peasantry, petty bourgeoisie and small and middle bourgeoisie under the leadership of the working class. The naxalites, however, do not form one single group, nor do they conform to a single line of action. The Naxalbari episode was one event, albeit a major one, in a wider movement. It was emulated and even preceded by similar struggles in other parts of India particularly in AP and Bihar.

The tradition of peasant insurrection in AP as we saw earlier could be traced back to the Telengana movement of late 1940's which was crushed by the Indian Army. The local communists, however, retained a strong base and continued their efforts to organize the tribals in the Girijan tribal reserve. The CPI(ML) cadres sought to arouse the peasantry and tribals to participate in armed action for the 'annihilation of class enemies'.⁷⁵ By early 1968 the AP government virtually lost control of some areas to the Girijan Sanghams. Landlords and policemen were rapidly singled out for 'selective assassination' during 1968 and 1969 by CPI(ML) activists. These attacks led to severe reactions and reprisals from the police.

The roots of the CPI(ML) movement in Bihar can be traced to the activities of the Triveni Sangh in the Bhojpur area in the 1930s. The Triveni Sangh brought together three lower castes - the Ahirs, Kurmis and Koeris - to fight upper caste tyranny in the form of *begar* (forced labour), rape and social ostracism and to foster participation of the weaker sections in democratic politics. The Triveni Sangh was eventually absorbed in the Backward Classes Federation in 1948. In the late fifties the communists who had been active against the landlords joined the struggle against canal charges, leading to the arrest of over 300 of their members. The first signs of a violent movement emerged on 23 February 1971, when a landlord was found killed on the outskirts of Ekwari village. The leaders of the incipient naxalite movement in the area, Jagdish Mahto and Rameshwar Ahir absconded. Jagdish Mahto was killed in a skirmish but the movement

⁷⁵ It may be mentioned here that most factions of CPI(ML) abandoned the policy of armed struggle in the mid 1970's.

spread under the leadership of the latter.⁷⁶

The ideology and history of the naxalite movement has been an area of prolific research.⁷⁷ We focus our study on the penal measures used by the state against what it termed the 'naxalites menace'. We shall critically examine the government's policy towards the CPI(ML) prisoners and the way the latter responded to the prison regime. Before analysing the policy of the government we examine the policy adopted by the naxalites towards prison.

It is difficult to say whether naxalites had a well defined jail policy at the outset. At least one study points out that jail-breaking by naxalite prisoners started without any 'instruction from the party' and when the first clash occurred in Midnapore jail in December 1969, the naxals had 'no programme of struggle in jails'.⁷⁸ Almost a year later, a didactic letter from Saroj Dutta to addressed to 'comrades in jail' recommends a course of 'counter offensive' in prisons:

While in jail the main point of our party's principle is that we will have to remain Communists inside jails and we will have to fight for dignity and freedom. The jail authorities are representatives of our class enemies and their keeping us confined is offensive against us. We will always have to carry out counter-offensives.⁷⁹

The letter cautions the prisoners not to give in to tactics of coercion or conciliation of the prison authorities, whose aim was to 'break their morale'. This the authorities hoped to achieve by not only torturing them but also through 'numerous soft methods', like giving them better food and clothing than others and 'by smiling a bit when talking to

⁷⁶ This event saw the beginning of the era of 'encounters' in Bhojpur. For details see CPDR fact finding report *Peddi Shankar: Death by Encounter*, Bombay, 1981, p.66. For a detailed account of CPI(ML) activity in Bihar see Kalyan Mukerji and Rajinder Singh Yadav, *Bhojpur: Naxalism in the Plains of Bihar*, New Delhi, 1980.

⁷⁷ For an indepth and sympathetic study of the naxalite movement see Sumanta Banerjee, *In the Wake of Naxalbari*, Calcutta, 1980 and its revised version *India's Simmering Revolution*, London, 1982. A critical study by a one time sympathizer is Rabindra Ray's *The Naxalites and their Ideology*, Delhi, 1988. The early works include Shankar Ghosh, *The Naxalite Movement: a Maoist Experiment*, Calcutta, 1975 and Manoranjan Mohanty, *Revolutionary Violence: A Study of the Maoist Movement in India*, New Delhi, 1977. For a study dealing with role of Santals in naxal movement see Edward Duyker, *Tribal Guerrillas: The Santals of West Bengal and the Naxalite Movement*, Delhi, 1987.

⁷⁸ Sankar Ghosh, *The Naxalite*, p.163.

⁷⁹ These excerpts are from an undated letter in Bengali, probably written towards the end of 1970 as cited in Sumanta Banerjee, *In the Wake*, p.250.

us'. The granting of divisions in jails was criticised as 'part of the same method', and tantamount to not granting social dignity equally to all. It was therefore, up to the communists to 'force them to grant' it. Through this struggle for social dignity for all, suggested Dutta, they would 'remain Communists' in jails:

This is party's line and policy. It is up to you to decide how we will implement this line... Comrades outside jails are waiting for the time when the jail comrades will begin to come out - not on bail or acquittal by Magistrates, but through other methods, in other words, the methods by which revolutionaries come out from jails during a civil war...⁸⁰

This jail policy was in conformity with the naxalites' distrust of the state and its institutions. The agreed course of action, as outside the jails, was disrupting and wrecking institutions which represented the exploitative state structures, rather than complying with rules which aimed at maintaining the class divide among prisoners. By not demanding 'special' treatment or higher classification the naxals were breaking from past practice of nationalist groups in prison. The two guiding principles of naxal strategy inside the jail was refusal to accept any privileges and organizing jail breaks and prison escapes on their own or with the help of their comrades outside.

Jail breaks became a common feature and several successful escapes were made by prisoners. The most successful escapes took place when prisoners were being transported between prisons and courts. The most daring incident involved the escape of eleven naxalite prisoners including some leading cadres of the party from Siliguri Central Jail on 21 February 1971. In a planned operation the prisoners with outside help attacked the gateman, snatched the jail keys and escaped through the jail gates. Jail breaks were perceived by some naxalites as a confirmation of their conviction that the Indian state was not invincible. Charu Mazumdar, the pre-eminent leader of the naxalite movement endorsed the policy of jail breaks in the following words:

The revolutionaries who are today in the prisons of West Bengal have created a new history of struggle that none ever came across in the annals of prison life. These comrades realize and feel from the core of their hearts that revolutionaries remain revolutionaries even while in prison: they are quick to rise up and fight every humiliation. They have made jail breaking a commonplace affair. Two hundred year-old imperialist rule built up the prison as the strongest base within the administrative system:

⁸⁰ Ibid.

today that two hundred year old structure is crumbling down. This is proof of the fact that imperialism built up its structure on very shaky foundations. Today the prison is a centre of revolt: today the comrades in prison are repeatedly making a mockery of it by escaping from it. Though the reactionary government murders prisoners and pursues a policy of savage repression, it fails to and will ever fail to stop jail-breaking and to put down the revolt within prisons. That is why I offer red salute to the comrades in prison.⁸¹

This exhortation by the leaders of the naxalite movement was echoed in the following report which was submitted to the party by a group of naxalite prisoners who escaped from Siliguri Central Jail, reference to which has been made earlier,

After being thrown behind the bars, we were faced with the main question - should we fight with the help of the laws made by the reactionary Government? The struggle inside the jail began on the question of demanding division (Political prisoners are often entitled under the law to Division I classification which entails better amenities than those available to other prisoners) and taking the help of barristers ... through discussion we came to this conclusion: when outside the comrades are taking forward the struggle by giving their lives, how can we take to the path of saving our lives inside the jail? If we begin a struggle demanding division, it would mean forgetting sufferings of the Indian people and fighting for our own selves... From this standpoint, though waging an anti revisionist struggle we intensified the fight inside the jail. We began to write slogans - 'Long Live Mao Tsetung! Long Live Charu Mazumdar!' - on walls, utensils, all over the place. The jail authorities tried to oppose us but were forced to retreat in the face of our stiff resistance. We never encouraged any fight for our own amenities and privileges like food, and other things; on the other hand, we consciously organized fights against the prevailing regulations ...⁸²

The policy adopted by the CPI(ML) reflected an element of 'extreme puritanism' emphasizing the abandoning of the exalted status of 'political prisonerhood' in favour of solidarity with the 'suffering masses'. We have seen that in the past the status of a political prisoner had come to be associated with the privileges of what was known in jail parlance as Division I or Class A category, allotted to prisoners belonging to the higher

⁸¹ Article dated 23 February, 1971 by Charu Mazumdar titled 'Red Salute to the Comrades Behind Prison Bars' from '*Liberation*', January-March, 1971 as cited in Suniti Kumar Ghosh (ed.), *The Historic Turning Point: A Liberation Anthology*, Vol.II, Calcutta, 1993, p.120.

⁸² 'Naxalbari Shiksha' was brought out by the West Bengal State Committee of the CPI(ML). Sankar Ghosh discusses this booklet and states that it was written by Dipak Biswas, who was one of the escaped prisoners from Siliguri. Sankar Ghosh, *The Naxalite*, p.164. This translation from 'Naxalbari Shiksha' has been cited in Sumanta Banerjee, *In the Wake*, pp. 249-250.

social strata. By not demanding a political status the CPI(ML) prisoners were consciously projecting themselves as a 'revolutionary party' distinct from all earlier and existing political groups including other communist parties. In spite of the killings of the naxalite prisoners in the jails of Bengal on the pretext of preventing jail breaks, the idea of confronting state power and promoting class struggle within the precincts of prisons was not given up by Charu Mazumdar. On the contrary he turned to these outrageous acts to buttress his call for more militant action.⁸³

There were, however, critics of this jail policy within the CPI(ML) itself. The critics disagreed particularly with Charu Mazumdar's blanket rejection of recourse to institutional structures for bail and legal help to get out of the prison. Subsequently, when legal aid committees were set up in AP and WB to provide support to naxalite detenus the critics of Mazumdar's 'extreme' stand took recourse to them. Naxalite prisoners at later stages like their political predecessors also demanded 'political' treatment as distinct from the criminal treatment which they were receiving. We shall return to this issue later when we discuss the politics of the release of prisoners.

CRIMINALIZING POLITICAL PRISONERS: THE TREATMENT OF NAXALITES IN PRISON

The government struck back by confining a large but unconfirmed number of naxalite prisoners in AP⁸⁴ and Bihar.⁸⁵ WB had the largest number of political prisoners (20,000) in the years preceding the Emergency (1974-75). Some of these had been in detention since 1971 under MISA or DIR. Of the total arrested, almost 18,000 had not been charged in court.⁸⁶ The government decided to confine a large majority of naxalite

⁸³ Charu Mazumdar, 'Avenge the Massacre in Midnapore Jail', in Suniti Kumar Ghosh (ed.), *The Liberation*, Vol.II, pp.115-116.

⁸⁴ An unofficial report cited a figure of 738 naxalites prisoners imprisoned in the various jails of AP in April 1973. *AP Report to National Convention On Defence and Release of Naxalite Prisoners*, New Delhi, April 20-21, 1973.

⁸⁵ The interim report of the Bihar Jail Reforms Committee, released in 1980, put the number of undertrial naxalites in Bihar during 1978 at 139. Arun Srivastava, 'Political Prisoners in Bihar', *Frontier*, Vol.13, No.19, 23 August 1980, p.6.

⁸⁶ *Amnesty International Annual Report on India, 1972-73*, London, pp.73-74.

undertrials in the same wards as the ordinary prisoners. In order to understand the treatment of the naxalites prisoners we first turn our attention to the general prison conditions prevailing during the late 1960's and 1970's.

Seraikela Sub-Jail in Singhbhum district of Bihar could be cited as one of the worst cases of overcrowding where the jail accommodated over 450 prisoners against the officially permitted capacity of 85. It was not surprising therefore that 59 under trial prisoners died in 1974. Most of them were suffering from tuberculosis. A magisterial inquiry into the jail conditions confirmed that the deaths were due to malnutrition, overcrowding, insanitary conditions and lack of proper medical facilities.⁸⁷ A report on the Presidency Jail in WB based on the 'direct experience of about twenty-five prisoners' presents an appalling picture of conditions in 1971 when the prison population was at its peak because of the numbers of naxalite prisoners.⁸⁸ Prisoners were ordinarily accommodated in wards in a long two storey building. Each room which had a normal capacity for 50 to 100 prisoners, housed 250 in 1971. Among these wards was the notorious *Darihazat* or *Daria*, a huge hall normally inhabited by not more than 350 prisoners, which held about 800 prisoners in 1971. Presidency Jail itself was at that time housing 4000 prisoners, double its normal capacity for 2000. The general state of the wards was poor which was further compounded by the long lock up hours with little or no sanitary facilities inside. The prison had ten cells, situated over a 'huge filthy open drain', marked as punitive cells or the "tenth degree" cells. Prisoners suffering from contagions - physical or 'mental' - were confined in these cells. Prisoners suffering from leprosy and the so called 'dangerous' and 'obstinate' prisoners - often naxal leaders - were confined in these cells. The medical facilities in Presidency Jail, which was considered the best in this department, were quite meagre. The report suggests that a number of naxalite prisoners were debilitated due to torture in prison and subsequent

⁸⁷ Seraikela sub jail was not an exception. Chaibasa jail, in Singhbhum district, housed nearly 1,000 prisoners while it had the capacity to accommodate just 343. As a result of this overcrowding prisoners had to sleep in shifts. Suniti Kumar Ghosh, 'Indian 'Democracy' and State Terrorism' in *The Historic*, p.371. For a report on Bihar prisons see N.K.Singh, 'Massacre in Prison', *Frontier*, Vol.5, No.8, 3 June, 1972, pp.6-7.

⁸⁸ A series of reports appeared in *Frontier* on the conditions in Presidency jail, 'Study of A Jail-I', *Frontier*, Vol.6, No.35, 8 December, 1973; 'Study of A Jail-II', *Frontier*, Vol.6, No.36, 15 December 1973 and 'Study of A Jail-III', *Frontier*, Vol.6, No.37, 22 December, 1973.

medical neglect. It mentions specifically a practice termed *jan-khalas*, used to describe a special kind of release where prisoners ill due to conditions aggravated by police brutality were released only a few hours or days before their death.⁸⁹

The report also throws light on what appears to have been rampant slave labour in the form of unpaid work by convicts and undertrial prisoners both in jail and at the residences of the jail officers. The convicts were paid ridiculously low wages for their work in the prison workshop. Even these wages were disbursed only at the will of the '25th degree' prisoners - the veteran prisoners - who virtually ran the prison on behalf of the officers. Bar fetters were reportedly used on prisoners in all jails, sometimes for periods of up to two years. The 'dangerous' prisoners were kept in chains either with *danda-beri* or *shikli-beri* for long and often indefinite periods of time.⁹⁰

The treatment of naxalites matched the dreadful conditions in jails. Their sufferings compared to the ordinary prisoners differed only in the sense that on account of their political convictions the government took a tougher attitude towards them in ensuring discipline inside jails. Mary Tyler, a British citizen who was arrested on the Bihar-Bengal border along with her husband and others, for alleged naxalite activity and kept as an undertrial prisoner in the dreaded Hazaribagh jail, furnished the following description of the ward in which the male naxalites were kept:

The men are in dreadful conditions. Their yard is a dreary and desolate, as ugly a place as one could imagine - a cemented yard, a water tap and a row of dark little cells, in which they are locked, five or six to a cell, in fetters, twenty-four hours a day. Even in the daytime it is dark. Only if they squat in front of the barred door can they see to read. At night they do not even have a light inside their cells. And, to cap it all, one complete madman is locked up with them. Yet they laugh, joke, make light of it all. They are lively and full of spirits, but some of their faces tell a different story. Shadows under two young, bright eyes, a grey pallor beneath a brave nonchalant smile, the twitching of a facial muscle, the fidgeting of an arm or leg, show their true condition. Physically all

⁸⁹ An under trial prisoner Ramal Roy Choudhary was reportedly kept in prison for two years in critical health conditions and was released in April 1972. He died the same day of his release. 'Study of A Jail-II', *Frontier*, 15 December, 1973, p.9.

⁹⁰ 'Study of A Jail-I', *Frontier*, 8 December, 1973, p.7.

are affected.⁹¹

Another poignant description emerges from a letter written by the mothers and relatives of prisoners in Hazaribagh jail where, we are told the under trial prisoners had spent the preceding two years in bar fetters. The letter described the prisoners' condition as follows,

Imagine the condition of one whose ankles are tied with two bangles, both linked with two separate iron rods about 20 inches in length having a diameter of 3/4 inch, joined together with another iron ring. One cannot walk normally with the fetters on. The ring has to be kept suspended with one hand while walking, at the time of eating or taking a bath, sitting down to take food and when going to sleep at night...⁹²

The naxalites themselves, writing from Hazaribagh Jail, described their plight of being in a precarious condition of uncertainty for a long time. Describing themselves as the jail unit of CPI(ML), they complained of being in bar fetters, their isolation in cells 'except for a slight recess of two hours in the morning and an hour and a half in evening', lack of basic medical facilities and physical torture and beatings at the hands of the jail administration.⁹³

The story of Hazaribagh jail was not an exception, the condition of naxalite prisoners in other jails was no better. The prison regime for all purposes treated naxalites as criminals except in certain matters where extra restrictions were placed on them. The naxalite under trials suffered extra restrictions as far as interviews were concerned. All interviews for Grade II prisoners took place in the presence of officers of the Special Branch of the Calcutta Police.⁹⁴ Most of the under trial prisoners and those held under MISA had no access to the library, and reading material was restricted to a few officially allowed newspapers. In the Presidency Jail for instance no 'political' literature was allowed. Books deposited by the relatives of the prisoners did not reach

⁹¹ Mary Tyler stayed in Hazaribagh Central jail for five years from June 1970. M.Tyler, *My Years*, p.117.

⁹² Letter by the mothers and relatives of under trial prisoners at Hazaribagh Central Jail, 'Prisoners in Hazaribagh' *Frontier*, Vol.6, No.5, 12 May, 1973, pp.17-18.

⁹³ 'From Prison', letter to *Frontier* by the Jail Unit of CPI(ML) from Hazaribagh Central Jail, Bihar, *Frontier*, Vol.7, No.2, 4 May, 1974, pp.13-14.

⁹⁴ For details of the conditions under which the interviews were held see 'Study of A Jail-II', *Frontier*, 15 December, 1973, p.15.

them for quite some time. Decisions on the matter were usually taken by a Security Officer, who was often a Special Branch appointee.⁹⁵ The overcrowding in jails coupled with the meagre facilities often resulted in unpleasant scenes between the political and ordinary prisoners. An APDR report on the Alipur jail expressed dissatisfaction at putting the political prisoners in close proximity with the ordinary, complaining of the "day long vulgar swearings, *ganja* smoke (which is strictly prohibited within jails) and V.D.s".⁹⁶ Further, the scramble for the use of meagre facilities like water taps and bathrooms led to frequent clashes during the allotted usage time of two hours. The clashes among prisoners gave the jail warders the opportunity for indiscriminate beatings of political prisoners.⁹⁷ The conditions in which naxalite prisoners were kept in jails cannot be attributed entirely to their status as under trial prisoners. The condition of naxalite prisoners in Berhampur Special Jail which was set apart in 1972 for naxalite convicts and detenus under the MISA suggests as much. A report states that in November 1972, the warders launched an attack on the prisoners debilitating a number of them.⁹⁸

Unlike the practice in WB, the naxalite prisoners in AP were kept separate from ordinary Class C prisoners. In Vishakhapatnam and Rajamundhry jails naxalite prisoners were kept separately in one block. The conditions of confinement, however, including lockup from 6 a.m. to 6 p.m, quarantine and the poor conditions of the cells took a toll on the health of the prisoners.

It appears from the AP report that issues regarding food, clothing, interviews and letters provoked constant protests within the jail.⁹⁹ Demands were made on the

⁹⁵ 'Study of A Jail-III', *Frontier*, 22 December, 1973, p.8.

⁹⁶ APDR report on West Bengal Jails, p.2.

⁹⁷ In one such instance which took place in September 1972 recounted by the APDR report, political prisoners were beaten up mercilessly by the Warders, Chief Warder, the Deputy Jailor and some 'seasoned criminals'. When the Jail Doctors objected to the beatings the Jailor threatened to beat the political prisoners to death. *ibid.*, p.1.

⁹⁸ The jail was under special protection of two companies of Central Reserve Police Force (henceforth CRPF) and the government spent at least two lakh rupees in the upkeep of this prison. 'Report on a Jail', *Frontier*, Vol.7, No.26-28, 19 October, 1974.

⁹⁹ *AP Report to National Convention*, New Delhi, 1973.

government to supply the under trials with clothes which distinguished them from convicted prisoners and also for separate cooking facilities. Protest against the poor conditions and the autocratic prison regime ranged from symbolic to militant. The prison administration reacted sharply to any mode of protest and retribution quickly followed. On 22 April 1972, Lenin's birthday and the anniversary of the founding of the CPI(ML), the prisoners of Presidency Jail put up a red flag on one of the ward windows. The result was that within a short time the Head Warder or the *Bara Jamadar* came with the Protection Force and wounded eight prisoners.¹⁰⁰ In Vishakhapatnam prisoners celebrated May Day in 1973 by hoisting the Red Flag and raising slogans. Earlier on Lenin's birthday the prisoners also hoisted the Red Flag. Their letter writing facility was suspended by the Superintendent as a punishment.¹⁰¹

Hunger Strike was another popular mode of resistance. In sympathy with the prisoners of Vishakhapatnam Jail, where on 1 October 1971 two prisoners died in a lathi charge, eight political prisoners of Nellore District Jail, went on hunger strike.¹⁰² Prisoners in Tirupati also joined in the appeal for a more humane treatment of prisoners in Vishakhapatnam.¹⁰³ In Dum Dum Central Jail for example, some of the political prisoners who went on a hunger strike for seven days on 23 February 1973, against the illegally imposed twenty four hour lock up were beaten brutally by the warders.¹⁰⁴ In a similar instance in Presidency Jail, in early August 1972, prisoners, both political and ordinary, refused to get into their wards at closing time in protest against the beating up of another inmate. The jail administration reportedly responded by sending the *pagli* (mad) force (the Jail Protection Force, so called in jail parlance) which launched an attack on the prisoners.

¹⁰⁰ 'Study of A Jail-III', *Frontier*, 22 December, 1973, pp.8-12.

¹⁰¹ 'May Day in Jail', a letter in *Frontier*, Vol.5, No.5, 13 May, 1972, p.18.

¹⁰² 'Prisoners on Hunger-Strike', letter by M.Narasinha Rao, a prisoner in Nellore District Jail, Hyderabad, *Frontier*, Vol.4, No.32, 20 November, 1971, pp.16-17.

¹⁰³ Stated by R.Vishwanath Sastry, a well known revolutionary writer while commenting on the condition of naxalite prisoners in jails. 'Of Boys and Brutalities', *Frontier*, Vol.4, No.30, 6 November, 1971, pp.17-18.

¹⁰⁴ 'Routine Treatment', *Frontier*, Vol.5, No.45, 10 March, 1973, p.13.

There also occurred several incidents of official high handedness termed jail 'disturbances' in official pronouncements and attributed to provocation on the part of the naxalites themselves in attempted jail breaks.¹⁰⁵ There were as many as fifteen incidents in the four and a half years between December 1970 and May 1975 in WB in which 68 prisoners were killed, 310 wounded and 102 escaped.¹⁰⁶ In a single incident in Alipore Jail alone on 26 November 1971, eight prisoners were killed and 202 injured. In Dum Dum prison a few months earlier, 16 prisoners were killed and 50 injured. In almost all the killings which occurred including the two Midnapur incidents and the Behrampur incident, the attack on the naxalites was launched on the pretext of saving warders or as in the first Midnapur incident, an MLA. Only in the Presidency Jail does there appear to have been a real attempt at jail break. In this case too the response of the prison authorities was disproportionate to the act. As in other states the lack of facilities and inhuman treatment provoked 'incidents' in jails in Bihar which often culminated in physical repression, injuries and sometimes even death of prisoners.¹⁰⁷

The government responded by setting up executive inquiries or judicial probes into the cases. The reports of these inquiries blamed the deplorable prison conditions and the prison administration, emphasizing in particular their 'lack of human sensitiveness' and 'unjustified and excessive use of force'. The Justice Sharma Sarkar Commission of Enquiry set up to enquire into the Howrah killings on 3 May 1975 rejected the plea that the use of force had been justified by the attempted jail break, if there had been one.¹⁰⁸

It is interesting that the Jail minister of WB had earlier on 21 February 1974 announced the intentions of the state government to convert "Barasat Sub-Jail in 24

¹⁰⁵ See Table I in Appendix II which illustrates the number of jail incidents and the casualties in these so called jail incidents in WB.

¹⁰⁶ Sivadas Banerjee, 'Bengal Jails', *Times of India*, April 9, 1977.

¹⁰⁷ Trilok Nath, IG of Police in Bihar corroborates the unofficial accounts of the 'inefficient', 'corrupt' and 'appalling' condition of jails which brought 'disgrace' to the administration. He also mentions 'the large scale pointless firing resorted to by the jail warders'. Trilok Nath, *Forty Years of Indian Police*, New Delhi, 1981, p.177. See also Table II in Appendix II for the figures relating to death of naxals in Bihar prisons.

¹⁰⁸ For details of the incident at Howrah District Jail, the recommendation and finding of the Sharma Sarkar Committee and the depositions by the Prison Directorate and the Bandi Mukti Parishad and the West Bengal Association of Democratic Lawyers, see Kalyan Chaudhari, 'The Howrah Prison Killings: Story of a 'Jail Break'', *EPW*, Vol.XII, No.17, 23 April, 1977, pp.673-679.

Parganas District into a correctional institution to bring about a psychological change in the behaviour of the 'misguided youths', mainly Naxalite prisoners".¹⁰⁹ Evidently, the naxalites were considered in need of therapy to get rid of their 'extremity of mind'. The inquiry reports or even this preconditioning of some among the officials did not bring any remarkable change in prison conditions. The state government attempted to deal with the problems pointed out by the various inquiries not by making the administration more humane but by drawing up schemes to increase the accommodation in the various jails and tighten their security.¹¹⁰ In the meantime more arrests were made and many more followed during the Emergency.

The protests against the insensitive prison regime, reflected on some occasions a solidarity between the ordinary and political prisoners. An incident of this kind occurred in Bhagalpur Jail, which had attained notoriety for housing the 'worst offenders' and for a prison regime commensurate with the nature of the offenders. Encouraged by the success of some agitating students in prison for better treatment, the ordinary prisoners of the jail also launched an agitation to press for demands centered around food, clothing, bedding, interviews, medicines etc. The administration resorted to the services of the CRPF which resulted, according to official figures, in the death of ten prisoners and injury to a hundred and sixty. What is notable in this instance is that the entire agitation was launched by the ordinary prisoners who during the course of the protest, in which they virtually took over the prison, freed the thirty five naxalite prisoners from their isolated cells. The brunt of the repression, however was borne by the latter.¹¹¹

¹⁰⁹ *Indian Express*, 22 February 1974, quoted by Amnesty International, *A Short Report on Detention Conditions in West Bengal Jails*, p.242.

¹¹⁰ The boundary wall of the Dum Dum Central Jail was raised by three feet. Eleven feet high iron railings were constructed around the compound of the Howrah District Jail and a sentry box was built in front of the jail gate at an extra expenditure of fifty thousand rupees. The security watch and ward system in the Siliguri Special Jail was strengthened and a double-storey guard barrack was constructed to accommodate an increased number of warders. The Midnapur Jail was extended to accommodate 250 more prisoners at the cost of three lakhs of rupees. Extension work was proposed along similar lines for the Tamluk Sub-Jail, the Burdwan District Jail and the Contai Sub-Jail. The building of the Borstal Institute was taken over to enhance the capacity of the Bankura District Jail. In the 1975-76 budget, Rs. 1.2 lakhs was allotted for renovation of the buildings. Kalyan Chaudhary, 'Women Prisoners in Presidency Jail', *Economic and Political Weekly*, Vol.XII, No.20, 7 May, 1977, p.755.

¹¹¹ N.K.Singh, 'Massacre in Prison', *Frontier*, Vol.5, No.8, 3 June, 1972, pp.6-7.

Meanwhile the naxalite movement had split into various groups in the early 1970's. Most of the groups reformulated their strategies in the light of their failure to generate popular support for their movement. The naxalite prisoners too, by the early 1970's had modified their initial opposition to any kind of defence so as to claim the status of 'political prisoners', which would ensure them some privileges (reading material, visitors, medical care etc.). Those in Midnapur Jail went on an indefinite hunger strike from 16 November 1973 demanding political status.¹¹² The prisoners also demanded expeditious settlement of all cases pending against them. On 17 May 1974 all naxalite prisoners in West Bengal jails went on an indefinite hunger strike for recognition of their status as political prisoners as well as for human rights inside jail. Political prisoners belonging to CPI and nine other left parties also went on a day's hunger strike in their support.¹¹³

From an undated memorandum possibly written before 1972 by a naxal prisoner in AP, we get an insight into the perceptions of a naxalite prisoner as to what constituted 'political' status.¹¹⁴ Some definite demands were marked out in the memorandum under the headings, 'cultural', 'amenities', 'diet', 'clothing' and 'letters and interviews'. The demands under the heading 'clothing' asked that under-trial prisoners be given non-prison clothing at government expense. The section on 'amenities' demanded some very basic provisions like footwear, proper toilet facilities, electricity in the night, mirror, safety razor and soaps. The 'diet' regulations in the Andhra jails as apparent from the memorandum were quite frugal and the demand in this area called for conditions at par with the jails in Bengal and Orissa.¹¹⁵ The 'cultural' demands were extensive and ranged from the provision of books and periodicals not otherwise banned to transistor

¹¹² 'Midnapore Prisoners', *Frontier*, Vol.6, No.34, 1 December, 1973, p.12.

¹¹³ For the position taken by CPI on the naxalite political prisoners see, *CPI's Defence of Naxalite Prisoners*, New Delhi, 1978.

¹¹⁴ Among the naxalite prisoners in Vishakhapatnam jail were Chowdhary Tejeshwar Rao, Kolla Venkiah, Hasnar, Appalasuri and two doctors. C. Tejeshwar Rao an accused in the Parvatipuram conspiracy Case arrested on 28 November 1969, was convicted for life in two cases and had at least three pending cases against him in court. The memorandum was among the appended material in the *A.P. Report to the National Convention for the Defence and Release of Naxalite Prisoners*, 1973.

¹¹⁵ The impression that the food in Bengal was any better was misconceived. Even the convicts and detenus classified for the purposes of diet did not receive what was legally due to them.

radios, which were apparently being provided in Orissa Jails. The memorandum stressed emphatically that the case against them was based on their political leanings. They considered it important, therefore, that they be provided Marxist-Leninist as well as other periodicals to enable them to prepare their defence. In a similar vein the demand was made to remove the notes and statements the prisoners prepared for their defence from the purview of subjective censorship.¹¹⁶

We turn now to a brief study of the experiences of women political prisoners. Based on memoirs of women prisoners, we shall attempt to show the attempts by the latter to cope with jail life, their relationship with the ordinary prisoners and the remarkable depiction of their experience of the 'official' political prisoner.

'SISTER, ARE YOU STILL HERE ?'¹¹⁷: WOMEN AND PRISONS IN INDEPENDENT INDIA

Akhtar Baluch, a 'city girl', belonging to the relatively privileged urban middle class was imprisoned for her crusade against the social, cultural and economic oppression of Sindhis in Pakistan. In jail she came in contact with women from classes she might otherwise have scarcely encountered. "Frightened at first by the proximity of 'criminals' and 'murderesses', as she believes them to be, she soon comes to understand that they are but the victims of injustice and tyranny far greater than that for which she has come to prison."¹¹⁸ Political independence had very little impact on social attitudes towards women prisoners. The narratives of women political prisoners are replete with images

¹¹⁶ C.Teleshwar Rao, the author of this memorandum suffered personally on this account. From the *AP Report to the National Convention for the Defence and Release of Political Prisoners* we come to know that his note book in which he was drawing up points of his defence was confiscated and not returned. p.15.

¹¹⁷ This expression is borrowed from the prison diary of Akhtar Baluch, a young Sindhi student who was arrested and imprisoned several times in 1970 for fighting against the economic, cultural and political oppression of Sindhis in Pakistan. Akhtar Baluch, "'Sister, are you still here ?': the diary of a Sindhi woman prisoner" (with Introduction and Notes by Mary Tyler), *Race and Class*, Vol.XVIII, No.3, Winter 1977, pp.219-245. Introducing Baluch's prison account Tyler writes that "apart from a few minor details, the prisons depicted by Akhtar Baluch could as well have been those in which I spent the years from 1970-5 in Bihar, India". *ibid.*, p.221. This reinforces the idea of underlying continuity of structures of oppression and dominance in the Indian subcontinent even though India and Pakistan have pursued divergent paths of political and economic development since independence.

¹¹⁸ *Ibid.*, p.220.

of ordinary inmates (some with their small children) whose plight is that of social outcasts. We observe in some of the narratives a process of 're-education' of middle class political prisoners. Through association with ordinary inmates a woman political prisoner realizes even more deeply the social and political structures of dominance and oppression which have led the former to behave in a manner which is deemed as 'criminal' both by the state and by a large section of society.¹¹⁹ Mary Tyler was convinced that "if life in jail was to have any meaning at all" then women must devote "...time and energy to helping our fellow prisoners in whatever way we could".¹²⁰ On the other hand political prisoners in their solitary confinement sought the helping hands of ordinary prisoners to break their isolation. It was this mutual bond of solidarity in suffering which enabled many women political prisoners to go beyond narrow social boundaries and project issues pertaining to women prisoners as 'political' demands.

Irrespective of the social class to which they belonged, women in prison were doubly deprived of their freedom. *Rajmata Gayatri Devi*, a MISA detenu in Tihar jail during the emergency states that she had permission to take walks only in the evening when the male prisoners were locked in their cells!¹²¹ Snehlata Reddy was forthright in pointing out the discrimination suffered by the women prisoners -

The women in the Bangalore Central jail are inhumanly treated. Preference is given to the men in Central jail. While the women are discriminated against... The women prisoners are not allowed out of this hell. There is nothing here - not a single tree or patch of grass. Why are they not allowed to walk in the compound and garden, if there is any ? Must women be treated worse than men even in the 20th century ? Are they not human beings also?¹²²

This double deprivation was acutely felt by women prisoners in Presidency Jail,

¹¹⁹ See for example Primila Lewis, *Reason Wounded: An Experience of India's Emergency*, New Delhi, 1978; Snehlata Reddy, *A Prison Diary*, Mysore, 1977 and Mary Tyler, *My Years in an Indian Prison*, 1977.

¹²⁰ Mary Tyler, *My Years*, p.51. The same concern and commitment is reflected in the Primila Lewis and Snehlata Reddy's prison accounts.

¹²¹ Gayatree Devi, *Meri Smritiyan*, Jaipur, p.224.

¹²² Snehlata Reddy, *A Prison Diary*, pp.15-16.

who described the space where they lived as 'a jail within a jail'.¹²³ Situated at an extreme corner, the entire female ward, including the warders on duty, was locked up by the *Bara Jamadar* from outside. The ward was divided into three main sections, the 'pagli bari', where about 175 to 200 women prisoners in different stages of insanity were kept, the Central Section, including the hospital, the *dal ghar* and the *Hajati ghar*, and the cell block with an open space in front for ordinary prisoners to venture out in non lock up hours. The CPI(ML) prisoners were kept separate from ordinary prisoners on the top floor of the cell building and had to endure long lock up hours. The reason for not keeping them together with other prisoners was probably because they often protested against the ill treatment of the ordinary prisoners at the hands of the warders.¹²⁴ The isolation of women political prisoners amounted to what could be described as a circle inside two outer circles of deprivation of liberty.

The prison conditions evoked among the political prisoners an urge for action and a sense of solidarity towards ordinary prisoners. In an attempt to identify herself with fellow prisoners, Mary Tyler not only decided to give up the right to preferential treatment which she could have received because of her European origin, she also adopted the 'moral code' of her fellow inmates.¹²⁵ Tyler enlisted herself 'on the side of those who would not submit without a fight' and organized an hunger strike inside the jail.¹²⁶ The struggle for the basic rights of women prisoners was taken up in many other jails. Snehalata Reddy made the following observations in her diary on 9 June 1976 -

At least I have achieved something here. I have stopped the horrible beatings the women-prisoners used to get. The food has slightly improved

¹²³ Kalyan Chaudhuri, 'Women Prisoners in Presidency Jail', *EPW*, Vol.XII, No.20, 7 May, 1977, p.755. Mary Tyler too described the female ward of the Hazaribagh jail as 'jail within a jail'. The wardresses too were locked with the prisoners and could not leave until a warder opened the gate from outside. Mary Tyler, *My Years*, p.34.

¹²⁴ Kalyan Chaudhuri, 'Women Prisoners', p.756.

¹²⁵ She writes "I found myself unconsciously adapting to my companions' code of morality...careful not to talk loudly or laugh in front of the warders or male prisoners so as not to be thought 'shameless'...avoiding the garden during the menstruation so that nobody could blame me if the vegetables were attacked by pests etc". Mary Tyler, *My Years*, p.73.

¹²⁶ *Ibid.*, pp.49-50.

for them...And most of all, *I have made them unafraid a little*. Now they clean rice and ragi only half the time. I have encouraged them to play - so in the afternoons they are free and play quite a lot. I went on a hunger-strike for 9 days till the food for the prisoners (women) improved slightly.¹²⁷

The solidarity among the ordinary and political prisoners and their common struggle for 'rights', however, does not obliterate the difference between the two set of prisoners. Primila Lewis aptly summed up this difference as follow -

We detenus, with our political consciousness and convictions, had resources which these prisoners did not have. Moreover, life for us was easy compared with theirs. We were treated with respect and we could exercise our right to be treated as human beings. We had the status of our class and education, and we had material facilities of accommodation and food commensurate with our status. These prisoners had nothing. They were subject to the mercy of the jail gods. They had no 'right' to their rights.¹²⁸

The identity of a 'political' prisoner was not based exclusively on her 'political consciousness' and 'convictions', social categories such as class background and education played a crucial role. A higher 'class' background and better 'education' enabled prisoners access to 'material facilities'. It was, however, the 'political consciousness' and 'convictions' which set apart the likes of Mary Tyler, Primila Lewis and Snehlata Reddy from 'other' kind of political prisoners who come across in many prison writings of the period as 'official' political prisoner.

There existed in the jails a species of prisoners who had the 'officially' recognized status of political prisoners. In Mary Tyler's writings we come across some impressions of an 'official political prisoner'. One such impression was as follows,

It was in November 1970 that we discovered what it really meant to be a 'political prisoner. ...we sat watching as male prisoners passed our bars bearing a bed, mattress, blankets, pillows, a table and chair, cooking utensils and other items indistinguishable in the darkness. Later that night a new inmate arrived to occupy the cell that had been mine... Gazing like curious children through the bars, we glimpsed the corner of an expensive blue sari under a mosquito net. We were intrigued to make the acquaintance of this new type of prisoner... She was the Secretary of a coal miners' union and had been arrested in connection with the murder

¹²⁷ Ibid, p.17 (emphasis added).

¹²⁸ Primila Lewis, *Reason Wounded*, p.160.

of a mine manager at the Kedla colliery, about twenty miles from Hazaribagh.¹²⁹

This 'political prisoner' had access to top officers of jail administration and enjoyed the privilege of drawing up a daily shopping list of items which were purchased from the market and delivered to her. Expensive Western and Indian foods, costly clothes and footwear were provided to her. After her three week sojourn in prison, when she was released on bail, she left with all her newly acquired possessions. Interestingly, this political prisoner, recounts Tyler, came from a wealthy family and became later a member of the Bihar Legislative Assembly having changed her party affiliations from Socialist to the Congress Party.¹³⁰ Tyler's image of the political prisoner persisted and strengthened with subsequent arrivals. She writes,

The political prisoner was the prototype of several I saw in the years that followed. They were treated with indulgence and deference by the jail staff, who were uncomfortably aware that, in the ebb and flow of the type of politics prevalent in India, those now in custody might one day be in power. Some warders even assured us that they would serve us too when we formed a government.¹³¹

She, however, narrates instances where the organized and bold protests of women political prisoners belonging to unions, for better facilities inside prison, encouraged the other ordinary women prisoners to voice their protests against bad food more forcefully.¹³²

The narratives of women political prisoners highlight the gender bias of the penal system in which women prisoners on the whole given unequal treatment. Some accounts also warn us against projecting and glorifying an undifferentiated category of political prisoner. The political prisoners were either deprived of privileges or were given access to them depending on their ideology, status and class background. The prison reproduced the power relations and inequalities in society and a political prisoner because of her belief system could either intervene on behalf of her 'ordinary' sisters ('Sister, are

¹²⁹ Mary Tyler, *My Years*, pp.46-47.

¹³⁰ *Ibid.*, p.48.

¹³¹ *Ibid.*, p.48.

¹³² *Ibid.*, p.98.

you still here ?') or become an instrument of domination as was the case with 'official political prisoners'.

FORMS OF LEGAL COERCION: 'CONSPIRACY' CASES AND LONG TERM DETENTIONS

The hanging of two naxalites, Bhoomaiah and Kista Gowd on 1 December 1975, was the first execution of political prisoners in independent India, since N.V.Godse, the assassin of Mahatma Gandhi, and Apte, his accomplice had been hanged more than a quarter of a century before.¹³³ The Supreme Court bench which handed down the final judgement acknowledged the class of political offences as one distinct from plain murder, but pointed out that "the penal code which, by oath of office we enforce, makes no such classification ...(and) we cannot rewrite the law, whatever our own views on urgent reforms".¹³⁴ The political judgement under the constitution lay with the President who could have granted mercy to the accused. The Home ministry apparently rejected their plea for mercy on the grounds that "they could not be considered under the category of political prisoners, since they were both uneducated and illiterate".¹³⁵ The execution of Bhoomaiah and Gowd was a striking example of the insensitivity of the government and its use of legal violence against political groups associated with oppressed classes. In order to crush the naxalite movement, the government booked them under the ordinary criminal sections as well as the political offences sections of IPC.

There were different kind of charges under which naxalites were normally booked. They were either implicated in criminal cases such as arson, loot and dacoity, or charged in what have been described as conspiracy and bomb cases. We get a

¹³³ Gowd (a farmer) and Bhoomaiah (the village tailor) were sentenced to death for killing of their local landlord, Lachchu Patel of Adilabad District in AP. In April 1970 nearly three hundred villagers marched to the landlord's house and the confrontation resulted in Patel's death. Police hauled up 28 peasants on murder charges. Eventually charges were dropped against all except Bhoomaiah and Gowd, who were convicted of murder and sentenced to death on January 5, 1972. Lawrence Lifschultz, 'For Whom the Bell Tolls', *Frontier*, Vol.8, No.5, 10 January, 1978, pp.2-4.

¹³⁴ *Ibid.*, p.3.

¹³⁵ *Ibid.*, p.4.

detailed account of these cases in a report by CPI(ML) sympathisers from AP.¹³⁶ The most peculiar part of this enduring engagement between the state and the naxalites was perhaps the 'conspiracy' cases. It is interesting that the conspiracy provisions of the IPC had been invoked almost fifty years earlier by the British against the nascent communist movement in India.

All the conspiracy cases in AP under study here invoked sections 121 (Waging or attempting to wage war or abetting waging war against the government) and 121 A (conspiracy to commit offences in connection with war against the government) of the IPC. The first of these cases brought against the naxalites was the Nagi Reddy conspiracy case against T.Nagi Reddi and others of the Andhra Pradesh Revolutionary Committee after their arrest in December 1969. The biggest was the Parvatipuram Conspiracy Case brought against 140 naxalites including leaders like Charu Mazumdar, Kanu Sanyal, Souren Bose, Choudhary Tejeswara Rao, Kolla Venkaiah and several others from WB, AP, Orissa and Kerala.¹³⁷ An entire theatre troupe - the *Jana Natya Mandli* - was accused of conspiracy and promoting class hatred in the Srikakulam Conspiracy Case.

There were common features in all these cases. The government first arrested the naxalites by drawing up some preliminary charge-sheets and then took a couple of years to file the final charge-sheets. In the Parvatipuram Case, for instance, by the time the trial began in November 1974, some of the accused had already been in jail for almost five years.¹³⁸ The government's predominant concern appears to have been to keep the naxalites under prolonged detention. Several of the accused in the Secunderabad Case for instance were indicted in other cases too, so that acquittal in one case would not

¹³⁶ *AP Report to National Convention*, New Delhi, 20-21 April, 1973, p.10.

¹³⁷ In a deposition before the National Convention on the Defence and Release of naxalite prisoners it was revealed that the FIR submitted to the SHO Parvatipuram Taluq Police Station on 16 January 1970, named 148 naxalites. Of these 8 were apprehended and shot dead before the charge-sheet was filed. Another accused died in jail due to lack of medical facilities. Ten more were shot by the police later and one died while underground. The prosecution presented a list of 892 witnesses, ensuring a long drawn out trial. The judgement was delivered on 30 August 1976, when 14 were sentenced to life imprisonment and various other terms, and 50 were acquitted. *AP Report*, pp.10-11.

¹³⁸ Mohan Ram, 'Where is the Political Approach?', *EPW*, Vol.XII, No.21, 21 May, 1977, p.828.

mean release from prison.¹³⁹ People were accused individually and also as a group in conspiracy cases. The charges of specific acts brought against individuals were made part of broad cases of conspiracy, so that those acquitted of specific individual charges remained accused in the conspiracy cases. While, in cases of specific, overt acts, the prosecution has to produce evidence admissible under the normal provisions of the Indian Evidence Act, in conspiracy cases inadmissible evidence becomes admissible under section 10.¹⁴⁰ The AP Report also refers to the bomb cases, which the government instituted against persons on the charge of conspiring to overthrow the government by preparing bombs and using them in attacks. Several such cases were filed against naxalites during the period 1969 to 1971 under sections 4 and 5 of the Explosives Act along with sections 120 B, 121 A of the IPC.¹⁴¹

Of those arrested for alleged naxalite activity only a few were convicted. Most were kept as under trial prisoners, a fact which had enormous implications for their conditions inside jail. Of the 738 naxalites in prison in AP by April 1973 only two were held under MISA, a few were convicts and the rest, undertrials. The AP administration was discouraged from using MISA by the High Court which released a number of detenues before the provisions were made more stringent during the Emergency.

EXTRA CONSTITUTIONAL WEAPONS OF STATE: ENCOUNTERS, DISAPPEARANCES AND TORTURE

While imprisonment under preventive detention and other extraordinary laws observes a procedure laid down by law, 'encounters' and 'disappearance' manifest the methods by which the state circumvents the veneer of legality. 'Encounters', as still practiced in various parts of the world, signify the process by which members or sympathizers of the political opposition particularly armed groups, ideologically or politically at variance with the ruling powers, are extra-judicially executed by state

¹³⁹ On the proclamation of the Emergency, the accused in the Secunderabad Conspiracy Case walked into the court shouting anti-Indira Gandhi slogans. For this misbehaviour they were promptly charged under the DIR. Those who were earlier released on bail were arrested under MISA or DIR. *ibid.*

¹⁴⁰ *Ibid.*, p.830.

¹⁴¹ *AP Report*, pp.70-71.

agencies; the killings are attributed by the police to armed encounters. What makes these claims by the police dubious is the fact that there are rarely survivors, either wounded or captured; despite the 'encounters' having taken place reportedly in public places there are seldom witnesses.

Such encounter deaths are akin to the previously established practice of police killings of suspected dacoits. Justice Meharchand Mahajan, a former Chief Justice and Chairman of the Punjab Police Commission established by the Government of India in 1961 to inquire into allegations that criminal suspects were being killed in staged encounters with the police, stated that: "considerable evidence has been led to the effect that police make out false encounters with criminals and shoot them because they cannot obtain sufficient evidence against them to bring them to justice before the courts of law...".¹⁴² The weapons perfected to eliminate 'unsocial' elements were used against political opponents. Beginning with the notorious campaign against the alleged naxalites in AP, instances of such killings increased in frequency. From AP to Punjab and Kashmir the encounter has come a long way and firmly entrenched itself as a routine practice when the state is faced with armed insurgency.

As with encounters, 'disappearances' have also become a method of containing political opposition. 'Disappearance' may technically be described as unacknowledged detention where the authorities not only deny having detained a person but also conceal his or her actual whereabouts and circumstances. Most such cases remain unresolved. As far as constitutional or legal safeguards are concerned, there have been practically none as far as encounters are concerned, except Part III of the Indian Constitution, article 23 of which incorporates as a fundamental justiciable right of the Indian citizen the right to life and personal liberty. There are also provisions in the legal codes as well as in the Constitution which under normal circumstances should be sufficient to check disappearances.¹⁴³ These constitutional safeguards and legal protection against

¹⁴² Amnesty International, *Report of An Amnesty International Mission to India*, 1 December 1977-18 January 1978, London, 1978, p.51.

¹⁴³ Article 22 of the Constitution for example provides that nobody should be detained in custody without being informed, as soon as possible, of the grounds of arrest, nor shall the right to consult and be defended by a legal practitioner of his or her choice be denied. Section 57 of the Code of Criminal Procedure stipulates that person should be brought before a magistrate within twenty four hours of arrest. Section 167 of the Code of Criminal Procedure provides that an arrested person can be kept in police

disappearances and encounter killings, however, have been found in practice either too meagre or inaccessible for the victims.

It is equally important to mention here that there are laws under which law enforcing agencies have greater discretion to use force. In AP, for example the police assumed overwhelming powers in the 'disturbed areas' to arrest and open fire under 'The Andhra Pradesh (Suppression of Disturbances) Act'. The Act was a revival of the Madras Suppression of Disturbances Act, 1948 under which the state government could declare the whole or a part of a state to be a 'disturbed area'. In the disturbed areas police were empowered under Section 5 of the Act, "if it was necessary to do so for restoring or maintaining law and order", to fire upon groups of more than five people without warning, if in their opinion the assembly was unlawful; or upon persons found carrying weapons or things capable of being used as weapons, provided the police can claim their action was taken in 'self defence'. Such actions by the police could not be challenged in any court, except with the previous sanction of the government concerned. Since 1948 parts of AP were declared 'disturbed areas' and the majority of instances of encounter occurred in these areas.¹⁴⁴

Since 1968 killings of left wing extremists in encounters with the police or 'while trying to escape' were reported from eight states: AP, WB, Orissa, Punjab, Bihar, Kerala, Tamil Nadu and Maharashtra.¹⁴⁵ Committee set up by a civil liberties body,

custody for up to 15 days without charge at the formal request of a senior police officer, if this is authorized by a judicial magistrate. After the 15 days period arrested persons must be remanded in judicial custody. The maximum period for which a prisoner may be placed on remand by a magistrate is 60 days. The magistrate cannot authorize remand of a person unless he or she is brought before him.

¹⁴⁴ A study dealing with encounter deaths points out that political killings in AP in the 1960's and 1970's were not a new phenomenon. During the Telengana peasant struggle police took out prisoners on the pretext of freeing them and shot them in the jungles of Telengana and the Circars, claiming that the individuals had been freed and what happened after they were freed was not the responsibility of the police. The nature of the killings in the successive years had turned only more brutal. The study also claimed that by comparison the WB government specialized in making encounter deaths look plausible by contriving what appeared as 'inter party' clashes among naxalites but actually involved plain-clothes policemen posing as naxalites. AP on the other hand resorted to systematic torture and death. The study claimed that "in West Bengal, the naxalites had a fighting chance in some cases, but in Andhra it was macabre killing, invariably after torture". 'Andhra Pradesh: Ominous Silence on Killings', *EPW*, Vol.XII, No.24, 11 June, 1977, p.943.

¹⁴⁵ On 17 December 1980 India's Minister of State for Home Affairs, Yogendra Makwana, was quoted as having stated in a written reply to the Lok Sabha that '216 naxalites had been killed in Andhra Pradesh in police firings' since 1968, adding that "these firings were a sequel to armed attacks launched by naxalites

the Organization for the Protection of Democratic Rights (OPDR), claimed in a report published in April 1978 that in all twenty-two cases of encounters it had investigated in the Srikakulam district, police officials had killed naxalites after arrest and not in the course of armed clashes. The OPDR submitted a memorandum to the President of India, listing 143 cases of alleged naxalites including men, women and children who were shot or tortured to death by the police and were then reported to have been killed in encounters with the police between 1969 and 1976. The list according to OPDR was not comprehensive because it did not have information on those who were disposed of clandestinely in hills and forests and subsequently reported as having disappeared.¹⁴⁶

As against official figures, the civil liberties organizations (the Peoples Union for Civil Liberties, the Andhra Pradesh Civil Liberties Committee) and members of the Civil Rights (Tarkunde) Committee alleged that between 300 and 500 people were killed by the police in staged encounters between 1968 and 1980. The Tarkunde Committee investigated the deaths of those 'officially' killed in encounters with the police during the Emergency in Giraipally forest, in Chilakalagutta forest and in Guntur district.¹⁴⁷ The Committee concluded in June 1977, after considering evidence from eyewitness accounts,

on Police". 'Political Killings by Governments', Amnesty International, London, 1983, p.63.

¹⁴⁶ See 'Andhra's Roll of Honour', *EPW*, Vol.XII, No.17, 23 April, 1977, p.677. The memorandum itself ran as follows, "The Government declared certain areas in Srikakulam as disturbed areas under the AP Suppression of Disturbances Act, 1948. By virtue of the powers vested under the said Act, the government opened several police camps at various places in AP and let loose large-scale repression against the people. Consequently several innocent people were roped in into conspiracy cases or in individual offences. More than this, several of the leaders were apprehended and shot dead at point blank range. Whenever such an incident took place, the government claimed that those who were shot dead were involved in encounters... We are disputing the claim of the government that they were shot dead in any encounter... If the claim of the government is successfully disputed by evidence, will it not be deemed that authorities had committed cold blooded murders... We request the government to appoint a judicial commission headed by a sitting judge of the Supreme Court to conduct judicial inquiry into these cases of 'encounters'". From a report on OPDR's memorandum to the President of India. 'Killed in Encounters', *EPW*, Vol.XII, No.16, 16 April, 1977, p.620.

¹⁴⁷ The Tarkunde Committee of Inquiry was formed in April 1977 by Jayaprakash Narayan in his capacity as President of the Citizens for Democracy, to collect evidence regarding the killings of seventy seven naxalites (a rough count based on government statements and statements made by the accused in various conspiracy cases in courts) in Andhra Pradesh. The committee was headed by Mr. V.M. Tarkunde, a senior lawyer and President of the Supreme Court Bar Association and included Nabakrishna Chowdhury (Angul), M.V. Ramamurti (Hyderabad), Kaloji Narayan Rao (Warangal), B.C. Verghese (Delhi), Balwanth Reddy (Hyderabad), K. Pratap Reddy (Hyderabad), K.G. Kannabiran (Hyderabad), Arun Shourie (Delhi).

that all the 19 persons had been shot in cold blood by the police, some of them after severe torture. The purpose of torture seems to have been to compel them to confess to crimes in which the police wanted to implicate them and others.¹⁴⁸ The Committee recommended that the central government order a judicial inquiry into all encounter deaths under the Commission of Inquiry Act,¹⁴⁹ and stressed that those responsible should be tried for murder. It asked for the suspension of police officers directly involved in the incidents for the duration of the investigation and demanded security for the witnesses. The Committee also recommended that the principle of ministerial and collective responsibility of the cabinet must be adhered to and the murders should not be buried by being attributed to a few 'over-zealous' officials. It is pertinent to point out here that the Chief Minister of Andhra Pradesh, Vengal Rao had reportedly made occasional claims that he had 'wiped out' the naxalites.¹⁵⁰

Public opinion was aroused by the findings of the Tarkunde Committee.¹⁵¹ The Committee's attempt to persuade the Central government to take the responsibility of instituting the inquiry was important because the state government was directly involved

¹⁴⁸ In the case of two alleged encounters - one in Giraipally forest in Medak district which was reported to have taken place on the night of 24-25 July 1976 and the other said to have taken place in Chilakalagutta forest near Pakala lake in November 1976 - the Committee received evidence from eyewitnesses who had either seen those who were later reported to have died in encounters, being taken amiably by the police from their homes or had been transported in police vehicles with them or in one case had actually seen the victim been shot at by police officers. See the texts of the two interim reports of the civil rights (Tarkunde) Committee published in *Peddi Shankar: Death by Encounter*, CPDR, Bombay, 1981. The interim report was also published in *EPW* in two parts, 'Encounters Are Murders: Interim Report of Civil Rights Committee' *Economic and Political Weekly*, Vol.XII, No.21, 21 May, 1977, and 'Killings in Guntur: Second Interim Report of Civil Rights Committee', *EPW*, Vol.XII, No.25, 18 June, 1977.

¹⁴⁹ The Commission of Inquiry Act 1952, authorizes the Central Government to institute inquiries into any of the items mentioned in lists 1, 2 or 3 of schedule 7 of the Constitution.

¹⁵⁰ Seminarist, 'Naxalite Trauma', *Seminar*, No.214.

¹⁵¹ The national press was united in demanding a probe into 'encounter' killings. In its editorial comment the *Hindustan Times* called for "vigorous steps to make the police personnel realize that one life is as good as another and that in the name of law and order, they cannot murder citizens in cold blood". *Hindustan Times*, 'Barbarous Sadism', New Delhi, 19 May 1977. *Economic Times* similarly recommended that apart from inquiries into individual cases of police and administrative violence, a comprehensive investigation was required to reorganize the entire system. *Economic Times*, 'Organized Torture', Bombay, 31 May 1977. The *Sunday Statesman* similarly urged the Union Home Ministry, "to investigate a situation in which murder is used as an instrument of policy ...". *Sunday Statesman*, 'Murder as Policy', New Delhi, 19 June, 1977. Cited in Amnesty International, *A Report on Amnesty International Mission to India*, 1978, p.53.

in the offence. The Central government, however, left the responsibility of setting an inquiry commission to the state government on the plea that law and order was a state issue.¹⁵² Subsequently, when the AP government in consultation with the central government set up on 20 June 1977 a one man commission headed by Justice Vashishta Bhargava the commission's credibility was already suspect. Its terms of reference were framed in a manner which was intended to "shift the focus of attention from the alleged murder of naxalites by the police to the naxalites' political philosophy and activities".¹⁵³ On 6 June 1978, the AP government requested the Commission to hold proceedings *in camera* "to ensure that the police department and administration (was) not discredited".¹⁵⁴ This concern of the state government appeared to observers to be misplaced. A further problem was the fact that the CM of AP, Vengala Rao, had been the Home Minister of the province at the time when the repression on naxalites was particularly intense. Organizations like OPDR and later the Tarkunde Committee expressed dissatisfaction and disillusionment with the way the Bhargava Commission was constituted and operated and subsequently withdrew their support from it.¹⁵⁵ The Bhargava Commission thus ceased to exist long before the actual expiry of its term on 31 June 1978.

Apart from AP, two other states in which a large number of encounter deaths took place were WB and Punjab. The *Bandimukti-o-ganadabi Prastuti* Committee released a list of those killed inside and outside the jails in the period between 1970 and

¹⁵² On 15 June 1977, members of Rajya Sabha and Lok Sabha in New Delhi, demanded a judicial inquiry into allegations of the killings of naxalites by police, but during the parliamentary debate the Home Minister stressed that, "the states themselves should initiate action". *Indian Express*, 16 June, 1977 cited in *ibid*.

¹⁵³ 'Political Murders - Farce of an Enquiry', *Economic and Political Weekly*, Vol.XIII, No.24, 17 June, 1978, pp.974-975.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid*. The Amnesty team which visited India in 1978 was informed by lawyers appearing before the Bhargava Commission that in several instances, witnesses who had earlier appeared before the Tarkunde Commission and given evidence were intimidated and arrested by the police in order to prevent them from giving evidence before the Bhargava Commission. At least 12 witnesses of the 21 connected with the killings in Giraipally forest were taken away by the police or prevented from appearing before the court. Lawyers who were appearing before the Commission withdrew as their attempts at producing evidence concerning the killings of naxalites were systematically frustrated. Amnesty International, *A Report of an Amnesty International Mission to India, 1978*.

1971 including the details of 167 cases of political activists killed by the police and paramilitary forces in various parts of WB between 8 November 1970 and 3 February 1971.¹⁵⁶ Similarly, a report in a Punjab monthly *Jafarname* (now *jaikara*) prepared by Amarjit Chandan, poet, journalist and activist of AFDR, listed 81 persons killed in encounters with the police after brutal torture. The list contained the details of killings both under the Akali and Congress governments. The allegations were not contradicted by the government.

Successive governments in India have used torture as a political weapon to silence their critics.¹⁵⁷ During the 1948-51 peasant uprising in Telangana, the Indian army reportedly used knives to carve the hammer and sickle symbol on the backs of arrested communists.¹⁵⁸ The torture of naxalite prisoners became a commonplace occurrence, facilitated to a large extent by the detention laws which made any recourse to the normal trial procedure difficult. Before the Emergency of 1975, there were widespread reports

¹⁵⁶ In one of the most brutal cases of mass murder, eleven young men were surrounded by a police party at the foot of Shahid Minar in Calcutta Maidan on November 19 at 4.00 p.m. and were loaded into two waiting cars at gun point. They were transported at mid-night from Lal Bazar lock up to Adriana Hospital where they were badly tortured. They were then taken to a place in Barasat and shot dead. Justice Tarapad Mukerji who headed the Committee of Inquiry was stabbed and subsequently refused to carry on the inquiry.

¹⁵⁷ The Indian Constitution does not provide any explicit safeguards against torture of political and ordinary prisoners or under trials. Article 20(3) of the Constitution, which lays down that no person accused of any offence should be compelled to be a witness against himself, comes closest. Section 57 of the CrPC lays down that an arrested person has to be brought before a magistrate within 24 hours of arrest and the magistrate has to ensure that the confession being made before him is being made voluntarily. In a similar vein the Indian Evidence Act in its sections 25 and 26 excludes confessions made to the police as valid evidence. Section 27 of the Act, however, allows certain statements, including confessions, to be regarded as evidence, if they concern a discovery made in consequence of information received from the accused. By using this section, the police have generally been able to extort 'confessions' and submit them before the courts. Sections 161 and 163 of the CrPC also make confessions in police custody inadmissible as evidence. Certain provisions in the IPC also provide safeguards against any extortion by the police. Section 300 and 331 of the IPC make it a criminal offence to 'voluntarily cause hurt' or 'grievous hurt to extort confession', punishable by 7 to 10 years imprisonment respectively. Section 346 of the IPC makes unacknowledged detention or wrongful confinement punishable by two years. The victim of police extortion can also bring a criminal complaint against the police before a magistrate under the procedures laid down in Sections 200 to 204 of the CrPC. These provisions, however, do not apply to the military and paramilitary. The various Special Powers Acts in operation in different parts of the country also make the military, the Border Security Force and the CRPF to a large extent free from any such accountability. For a recent study dealing with this subject see Gobind Mukhoty, 'Torture, Human Rights, Legal Rights', *EPW*, 21 May, 1994, pp.1259-1263.

¹⁵⁸ *India 1947-1979: Six Parliaments and Democratic Rights*, People's Union for Civil Liberties and Democratic Rights, Delhi, 1979, p.13.

of torture from states like AP, WB, Bihar and Kerala where there were a large number of naxalite prisoners. Throughout the Emergency there were numerous allegations of ill treatment and torture of political prisoners.¹⁵⁹ The majority of such allegations concerned alleged 'extremists' which included not only the naxalites but also members of the RSS, students and members of the Socialist Party, the Jana Sangh, the Bharatiya Lok Dal and other opposition parties arrested for participating in peaceful processions. The rise in the incidence of tortures during the Emergency was closely related to the enlargement of the powers of the forces of law and order.

From the reports of physical abuse sent to the Lok Sangharsh Samiti from the various states, the following pattern of police method emerged: A *satyagrahi* was first taken into custody by the police, without the latter registering any case against him. He was then kept in illegal confinement for a few days, during which time he was subjected to the following forms of physical torture: stamping on the bare body with heeled boots; beating with canes on the bare soles of the feet; rolling a heavy stick on the shins, with a policeman sitting on it; making the victim crouch for hours in a 'Z' position; beating on the spine; slapping with the cupped hands on both ears until the victim bleeds and loses consciousness; beating with rifle butt; inserting live electric wires into body crevices; forcibly laying nude on ice blocks; burning with lighted cigarettes and candle flames; denying food, water and sleep and then forcing the victim to drink his own urine; stripping the victim, blackening face and parading him in public; suspending the victim by his wrists; hauling him on 'aeroplane' - victim's hands tied behind the back with a long rope, the end hauled over a pulley, leaving the victim dangling in mid-air, swinging.¹⁶⁰

Torture had undoubtedly 'progressed' to produce more sophisticated, modern and efficient techniques. Writing on the culture of torture prevailing in the late 1960's and

¹⁵⁹ Socialist leader George Fernandes who was arrested for his involvement in the underground resistance movement during the Emergency was tortured for four days in the infamous investigation cell at Red Fort in Delhi. See Ch.4 'Lal Kile ki Yaatra', in Vijay Narayan, *George Fernandes : Jailon mein Beetey Din*, Varanasi, 1977. Vijay Narayan was a co accused with Fernandes and others in the 'Baroda Dynamite case'.

¹⁶⁰ This is an extract from 'Human Rights in India', Hearings before the Sub-Committee on Internal Organisation of the Committee on International Relations, U.S. House of Representatives, 1976, published in A.R.Desai (ed.) *Violation of Democratic Rights in India*, Vol.1, Bombay, 1986, pp 262-73.

early 1970's, Ranajit Guha points out that the torture practiced in zamindari *cutcherries* had as a repressive mode of the modern state got transformed from "a state of nature into the realm of art".¹⁶¹ This realm of art expanded and perfected itself in successive periods and as we shall see in the next section, torture was used with increasing finesse during the Emergency against a large cross-section of political opponents, not simply confined to the non parliamentary left.

EMERGENCY AND THE PRISON REGIME

The twenty month long Emergency (June 1975-March 1977) has been seen by some scholars as a plunge in the career graph of Indian democracy.¹⁶² Others have viewed it as symptomatic of persisting structural conditions of inequality which had withstood decolonization.¹⁶³ Ranajit Guha has cautioned us against constructing the

¹⁶¹ Guha cites an article written in 1850, in the *Tattvabodhini Patrika* which listed the methods of physical punishment inflicted on the peasants by landlords and darogas and their agents. The eighteen items listed were as follow. The peasant was beaten with cudgels and canes; beaten with shoes; was forced to lie on his back and then his chest was pounded by rolling a heavily weighted bamboo pole on it; his nose and ears were polished with fragments of broken earthenware; was forced to rub his nose on the ground; his arms were tied behind his back and was twisted by inserting a stick into the rope and turning it round; was applied itchy *bichhuti* herbs all over his body; his hands and feet were put in fetters; was made to run around with his hands holding on his ears; his hands were pressed in a *kara* - a pincer like instrument of torture made of two tough pieces of split bamboos tied together at one end; in summer he was made to stand astride in the sun with his legs set far apart on a brick platform and his hands loaded with heavy slags of bricks; in winter he was sprinkled with cold water or immersed in water; placed in a gunny bag and thrown into water; suspended by the branches of a tree; in the months of *Bhadra* and *Aswin* he was shut up in a granary full of paddy seeds with the grain steaming up in the seasonal heat and emitting a foul odour; was imprisoned in a room used for storing lime; was placed in a cell and starved altogether or at best fed once a day on rice mixed with unhusked paddy; kept captive in a room full of the fume of roasted red chillies. Ranajit Guha, 'On Torture and Culture', *Frontier*, Vol.3, Nos.41-42, 23 January, 1971, p.13.

¹⁶² A wide variety of journalistic works on the Emergency were churned out almost as soon as it was lifted. Most attempted to recapitulate the events which preceded its imposition and also what happened in the months after it (Kuldip Nayar; D.R. Mankekar & Kamala Mankekar; Promilla Kalhan, to name a few). While some like Nayar have expressed dismay and horror as to why no resistance was offered, while basing their work on the premise of a fear of authoritarianism, others like Kalhan and the Mankekars have seen it as flowing from the insecure and 'languishing' personality type of Indira Gandhi. C.S. Pandit, *End of an Era: The Rise and Fall of Indira Gandhi*, 1977, has seen the Emergency months as part of the gradual erosion of the democratic institutions of the country during Indira Gandhi's regime.

¹⁶³ Ranajit Guha has seen this continuity as embedded in the nature of the post colonial state, a product of legal transaction between the dominant elite groups of Britain and India and also essential for the consolidation of the authority of the ruling classes. See Ranajit Guha, 'Indian democracy: Long Dead, Now Buried', *Journal of Contemporary Asia*, Vol.6, No.1, 1976. Pranab Bardhan has pointed towards the economic roots of the 'political crisis', as emanating from the problems of effecting a government by a

Emergency either as a disruptive juncture in the life of Indian democracy or as an antinomy between a liberal father and an authoritarian daughter. Stressing that "nothing has been well with Indian democracy ever since its inception", he suggests that the Emergency was merely a climatic act "in a process going back to the very circumstances of the birth of the Indian republic".¹⁶⁴

In this section we shall limit our study of the Emergency to a study of the prison regime during this extraordinary period. As mentioned before, the Emergency saw the state include in its repressive web broad sections of the population while continuing its repression of naxalites. Mass imprisonment of political opposition was not unprecedented. The declaration of Emergency and subsequent mass arrests, however, added a new dimension to the political use of jails. It facilitated the nationwide jailing of people whose opposition to the regime, unlike that of the naxalites, was well within the bounds of the democratic constitution.

The large number of arrests placed heavy strains on the country's overcrowded jails, and their meagre accommodation facilities were put under severe pressure.¹⁶⁵ The prison administration in different states responded to this influx of political prisoners by either acquiring or converting new structures for detention purposes, while a few states let the overcrowding continue, leading to unbearable sufferings for both ordinary and political prisoners.¹⁶⁶

loose coalition of interest groups with significant conflicts of interests, viz., the big business houses, the rich farmers and the urban professionals. He sees the roots of authoritarianism in the attempts by the coalition to sustain itself against rivals and also against growing popular dissatisfaction. See Pranab Bardhan 'Authoritarianism and Democracy: First Anniversary of New Regime', *EPW*, Vol.XIII, No.11, 18 March, 1978. Both Guha and Bardhan point to the increased spending on the police and paramilitary forces indicating the intensity of disaffection and also the tenacity of the ruling oligarchy to hold on to power. Guha informs us that in the twenty-four years preceding the Emergency, the Central government's expenditure on police had increased fifty-two times from 30 million rupees spent in 1950-51 to 1,564 million budgeted for 1974-75. During the first year of Mrs Gandhi's government in 1966-67 central expenditure on police was 482.7 million rupees. This figure increased by 50% in two years to 726 million spent in 1968-69, by 146% in five years to 1,188.2 million spent in 1971-72 and by 224% in eight years to the 1,564 million budgeted for 1974-75.

¹⁶⁴ Ranajit Guha, 'Indian Democracy', 1976, p.40.

¹⁶⁵ See Table III in the Appendix II for the nature of overcrowding in Indian jails.

¹⁶⁶ The Rajasthan government made use of three bungalows in Jaipur and one in Alwar to accommodate important political prisoners. In Chandigarh some tents were pitched inside the jail for lodging ordinary prisoners. The Madhya Pradesh (henceforth MP) government set up a temporary jail at Panchmarhi to

Congestion in the jails, however, was only one of the numerous factors which conditioned the treatment of political prisoners. Even in those states where guest houses were requisitioned for the purposes of detaining political prisoners, it was only a select few who benefitted depending on the classification and rules of detention. It is to the issue of classification and segregation of prisoners that we now turn.¹⁶⁷ The principle of classification in most of the states almost always reflected a political culture in which privileged status was accorded to those who had at some stage held political office. In AP the MISA detenus were divided into three classes, with Class A consisting of MPs and MLAs and other prominent leaders not detained for economic offences. The Gujarat government in April 1976 also issued guidelines treating MPs, MLAs, Mayors, Deputy Mayors, Chairmen of Committees of Corporations \ Presidents and Vice Presidents \ Chairmen of Committees of District and Taluka Panchayats as Class I prisoners.¹⁶⁸ In HP, MPs and MLAs were kept in a 'special' class, and all other detenus were kept in 'ordinary' class. The MP government too categorised all MPs, MLAs and important political leaders as Class I prisoners. In Tripura, only members of 'registered' political parties were given the highest class. Most MISA detenus were placed in the 'superior' class in UP, but special arrangements were made for the diets of ex-Ministers and prominent political leaders. In Chandigarh, MISA detenus were given 'ordinary' class but MLAs were categorised as 'special' class. Thus among the many political prisoners a privileged class gradually entrenched itself with the determining criterion being access

accommodate political prisoners. In AP additional accommodation was provided for the detenus by converting portions of certain jail buildings into wards. In Assam workshops for vocational training in the jails had to be converted as residential premises for the detenus. The MP government converted some of the barracks allocated for female and juvenile prisoners into regular prison wards in order to accommodate the emergency prisoners. The worst condition prevailed in the jails of Bihar and UP where the administration did not augment the capacity in spite of the large number of arrests. Only in a few small States like Nagaland, HP, Goa, and Pondicherry were the emergency arrests not a burden, as the jails in these provinces had ample space for new inmates.

¹⁶⁷ Table IV in Appendix II provides us the pattern and principles of classification followed by various State governments.

¹⁶⁸ Later the Gujarat government in response to a petition filed by some of the detenus in the Gujarat High Court gave an assurance to the Court that it would examine the case of each detenu separately and further clarified on 26 October 1976 that engineers, doctors, lawyers and persons paying income-tax over a period of ten years of not less than Rs.5,000 a year, who had been detained for political activities, and Presidents of Municipalities, would be given Class I status. Businessmen paying income-tax of not less than Rs. 5,000 a year were also given Class I status.

to the seat of governance. The treatment of various classes of political prisoners differed in respect to interviews, letters, newspapers and periodicals, diet, accommodation, sleeping arrangements, medical, recreation and sports facilities and the right to take examinations.¹⁶⁹

As in colonial times some of these facilities were frequently withdrawn as a form of punishment for breach of discipline. The most favoured punishment was the withdrawal of interview facility. In AP interviews were refused to 27 detenus for a period of six months, because of their alleged naxalite activities. In WB restrictions were imposed on naxalite detenus, disallowing interviews with their friends. Similar complaints also came from prisons in Bihar, Haryana, Punjab and UP. Solitary confinement was yet another form of punishment which was resorted to by the jail authorities to 'discipline' political detenus. This punishment was accorded to 87 detenus in MP. In Haryana K.R.Malkani, Hari Ram, Ram Lal, Raj Narain and Jyotirmoy Bosu¹⁷⁰ were some of the important leaders who were placed in solitary confinement.

¹⁶⁹ The right of prisoners to take examination while they were in detention was achieved after prolonged struggle during colonial rule. After independence various state governments followed different practices regarding the facilities to be provided to student detenus for examination. In Assam student detenus intending to take their examinations were provided with attendants, tables, chairs, lights, fans, etc. Some state governments, however, modified the existing laws relating to examinations e.g. the Haryana Detenus (Conditions of Detention) Order, 1971, was brought in to prevent particular detenus taking examination which, however, resulted in hardship to all student detenus. The attitude of the Delhi Administration was particularly harsh when it came to student detenus. Though Section 16 of the Delhi Detenus (Conditions of Detention) Orders, 1976 provided that "student detenus may be allowed to appear in examination only with the permission of the Administrator", the discretion was always used against the applicants. The Shah Commission in its report stated that out of 17 student detenus who had applied for parole to appear in the examinations only one student could appear and that too not because of any leniency shown on the part of the Administration but because the Delhi High Court had issued specific directions to the administration to take him to Allahabad for his examination. He took his M.E. viva voce examination in jail.

¹⁷⁰ A letter dated 7 August 1975, written by Samar Mukherjee, Somnath Chatterjee and Salil Ganguli, all MPs, to Brahmanand Reddy, Home Minister, expressed dissatisfaction with the way Jyotirmoy Bosu, a member of Parliament was being kept in detention in Hissar Jail in Haryana. They claimed that Bosu was kept in an isolated cell and the jail authorities took special efforts to ensure that the isolation was complete and at the same time distressing. It was also brought out in the letter that in violation of the rules governing the detention conditions of MISA detenus under the 'Haryana (Conditions of Detention) Order 1971', whereby a detenu was to be kept in wards free to associate with other convicts (para 5), allowed to move around within the boundaries of the jail (para 6) and even proceed beyond with the Superintendent's permission (para 17), play games and work (para 21 & 22 respectively), J. Bosu was kept in an isolated cell. Isolation in cell was meant to be used only as a punitive measure. Bosu was kept in a small cell with no window or door except a small ventilator near the ceiling and a grilled iron gate. He had no protection from the weather. To make his isolation complete the authorities had secured two thick blankets on the courtyard gate to obstruct visibility. A kutcha brick and mud mortar buffer wall was also erected to further fortify the obstruction. There were no proper lighting facilities and there were a number

Special arrangements were made for the detention of Jayaprakash Narayan first at a guest house at Sohna in Haryana and later at the Post-graduate Institute of Medical Research and Education at Chandigarh because of his poor health. Despite the special arrangements, he was kept in what he perceived as a painful state of isolation. On 28 August 1976 he wrote:

My life under detention at Chandigarh (was) a long story. I would like to say only this much now that during the 130 odd days of detention, I remained completely isolated (solitary confinement). The total isolation was very painful to me. Of course, doctors, nurses and police officers used to see me but they would only inquire after my health. Beyond that there was no other communication between us. There was no one with whom I could converse freely. The loneliness caused a kind of mental torture. I urged the authorities to allow one of the many thousands arrested with me to stay with me so that I could have a congenial companion with whom to exchange ideas while in detention. But the government did not think it proper to let me have such a facility. In this respect, the behaviour of the Indira Government has been worse than that of foreign government. In 1943 when I was a prisoner in connection with the 1942 movement I was kept alone and separately in Lahore. When I asked for a companion in detention the foreign government ultimately acceded to my request and allowed Ram Manohar Lohia, my colleague to meet me for an hour daily. But the present government behaved differently and strangely.¹⁷¹

Solitary confinement as a punishment in jails is generally reserved for the most recalcitrant prisoners. The use of this form of punishment against detenus was punitive rather than geared towards prevention of any violation of prison discipline.

The report of the Shah Commission cited numerous cases of protest by political prisoners and the government's response to them. Political prisoners lodged in Hazaribagh jail filed a petition before the Superintendent on 4 October 1976 pressing for the redressal of their grievances and subsequently resorted to a hunger strike. Class II detenus in Gujarat clashed with the jail staff on 20 April 1976 demanding that they should not be locked up during the night, a facility granted to the Class I detenus. In

of open drains and latrines near his cell attracting flies and mosquitoes. His offer to work in jail to keep himself physically fit and break the monotony of isolation were rejected by the jail authorities. 'On Jyotirmoy Bosu in Hissar Jail', in Dharendra Sharma (ed.) *The Janata (People's) Struggle, Philosophy and Social Action Publication*, 1977, pp.42-44.

¹⁷¹ 'A Letter to Friends', 28 August 1976 in G.S.Bhargava (ed.), *J.P.'s Jail Life (A Collection of Personal Letters)*, 1977, pp.8-9.

Thana District Prison, political prisoners resorted to token hunger strike at least six times to press for their demand that they be shifted to jails near their home. In Moradabad District Jail a few political prisoners were put in fetters and solitary confinement when they threatened to go on hunger strike. Similarly in Varanasi Central Jail thirty-three detenus were put in fetters and solitary confinement when they refused to take food and raised slogans against the PM and the CM. In Assam the Chief Secretary instructed that "hunger strike in jail should be severely dealt with under the law... Discipline must be enforced. The Jail Superintendents should be cautioned."¹⁷² Disturbances and riots involving MISA detenus took place in various jails all over the country.¹⁷³ Mostly the protests were about jail conditions and the apathetic attitude of the authorities. Some protests from political prisoners related to demands suitable for their 'political' status. Most no doubt were about such basic facilities as clean food and clothes, interviews, newspapers and radio transistors.

The problems were compounded because of the fact that various state governments had their own Prison Manuals and Detention Rules which sometimes laid down different facilities for various categories of prisoners. The principle of uniformity of treatment of prisoners had bedeviled the colonial regime and it eluded the post independence regime after a quarter of century of independence.

THE POLITICS OF THE RELEASE OF POLITICAL PRISONERS

During the late 1960's and early 1970's a major impediment for those concerned with the cause of political prisoners was the CPI(ML) stance not to defend themselves in courts. Legal defence and a political prisoner status was rejected by the latter as a 'compromise with the system'. Nagabhusan Patnaik, a naxalite leader from Orrisa preferred to accept the death sentence rather than defend himself in court or plead for

¹⁷² *Shah Commission of Inquiry, Third and Final Report*, Delhi, 1978, p.56.

¹⁷³ Cases of clash involving MISA detenus and jail authorities were reported from Bellary Central Jail in Karnataka (29.1.76), Bhopal Jail (27.11.75), Rewa Jail (13.9.75), Chindwara Jail (21.7.75), Dhar Jail (19.3.76), Koraput Jail (4.5.76). See Ch.XX of *Third and Final Report* of Shah Commission of Inquiry. *ibid.*

mercy, rather he used his court appearances to condemn the Indian state.¹⁷⁴ The defence of Nagabhusan Patnaik and several other naxalite prisoners was nevertheless undertaken by their sympathisers as well as by liberal democrats in various parts of the country. The Legal Aid Committee formed in WB proclaimed its object as the defence of "all those who were being victimized for holding political beliefs dissimilar to those of the party in power... irrespective of the political ideology of the victims".¹⁷⁵ The Association for the Protection of Democratic Rights (henceforth APDR), formed on 25 June 1972 in Calcutta organized public conventions and mass meetings for the release of political prisoners. In his study of the democratic rights movement in WB, Nilanjan Dutta states that both the APDR and the Legal Aid Committee became very popular and evoked earnest responses from the public to their appeals for funds for legal defence of political prisoners. In the aftermath of the Emergency, the issue of defence and release of political prisoners assumed the proportions of a mass movement (*Bandimukti Andolan*). In WB *Bandimutti O Ganadabi (Prastuti)* Committee [Prisoner's Release and People's Demands (Preparatory) Committee] was formed at a convention held on 7 April 1977.¹⁷⁶ Other associations concerned themselves with providing legal aid for specific groups of accused. The District Association for the Protection of Democratic Rights and Defence Aid Committee was set up at Srikakulam to provide defence aid to 1,753 political workers, peasants, teachers, women and others implicated in 70 criminal cases registered in 1968-70.¹⁷⁷

¹⁷⁴ Ekalavya, 'Political Repression, Political Prisoners: Class War in India', *Race and Class*, Vol.XVI, No.4, 1975.

¹⁷⁵ Legal Aid Committee was formed in Calcutta in August 1972 with Bina Banerjee and Jayashree Rana as its President and Secretary respectively. See the appeal made by the committee for more fund and information concerning cases of political victimization. 'Defend Prisoners', *Frontier*, Vol.6, No.34, 1 December 1973.

¹⁷⁶ There were differences within the movement over whether or not they should defend those held for practicing violence or should insist that members of political groups adhering to a belief in political violence should change their position. Legal Aid, however, was provided to all prisoners who desired it. This was to a large extent due to the fact that the bulk of the activists and supporters at the grass roots was composed of students and youths who were sympathetic to the communist revolutionaries. Nilanjan Datta, 'Democratic Rights in West Bengal - Issues and Approaches' in A.R.Desai ed. *Expanding Governmental Lawlessness*, p.246.

¹⁷⁷ 'Srikakulam Committee', *Frontier*, Vol.6, No.5, 12 May 1973, p.17.

Although the appeal for support by these committees drew an enthusiastic response from the public, reservations were expressed over a legalistic approach for redeeming political wrongs. The slogan of the release of 'all political prisoners', it was felt could not be met within legal parameters, as most naxalites and a majority of the CPI(M) cadres held as under trial prisoners or detained under MISA were accused of criminal charges. They were therefore legally not 'political' prisoners.¹⁷⁸ The demand for release or trial of all those who were detained without trial was also not considered sufficient. The fulfillment of such demands (by their release or by bringing the detenus to trial) would be 'a victory strictly in a legal sense'.¹⁷⁹ According to one analyst the legal veneer concealed and even facilitated the operation of the state's coercive machinery against political opponents. Ashok Rudra depicted the following sequence of police harassment to which political opponents were subjected:

...if harassment is the intention, the police file one or more cases; this makes the family members arrange for legal defence; the police prolong the detention of the prisoner by asking for more time for preparing the case; usually not much of a case is made and the bail petition is granted. But no sooner is bail given than the Police file a few more cases and rearrest the released person. By this the police achieve three results, in addition to that of continued detention, namely (a) the pretence of legality is kept up; (b) the police get the chance of having the victim in the Thana once again so that further torture could be carried out; (c) by dragging on the court proceedings, economic pressure is exerted on the families of the accused. ...this could mean in many cases economic ruination of the family.¹⁸⁰

Rudra suggested that the task was rather to expose "the mask of legality that our kind of social order wears...."¹⁸¹ This view was vindicated as events unfolded in the next few years, particularly in the early months of Janata government.

It is pertinent to point out here that government attempts at controlling the naxalite movement had in the past relied on keeping them in prison for long and undetermined periods. This is evident from the fact that before the emergency, that is before MISA

¹⁷⁸ 'A Programme for Civil Liberties', *EPW*, Vol.XII, No.14, 2 April 1977, pp.570-572.

¹⁷⁹ Ashok Rudra, 'The Politics of Legal Defence', Vol.6, No.13, *Frontier*, 7 July 1973, pp.4-7.

¹⁸⁰ *Ibid.*, p.5.

¹⁸¹ *Ibid.*, p.7.

became stringent and guaranteed detention without the interference of the judiciary, it was not popular for use against the naxalites. There were several cases where MISA detenus had been let off by the courts. The strategy used therefore was to keep them in a chronic state of 'under trial'. The question of their release was similarly hampered by the state's reluctance to consider them as political.

The Janata government came to power at the centre having made a strong election pledge to release all political prisoners. Subsequently, a large number of MISA detenus were released and the Baroda Dynamite Case withdrawn. The naxalite detenus, under trials and convicts were, however, not released. A Government Order, professing to suggest a 'new approach' to bring the naxalites into the 'national democratic mainstream', divided them into several categories on the basis of their status as detenus, undertrials or convicts.¹⁸² Interestingly, the Order outlining this 'new approach' maintained that the government had hitherto erroneously "attempted to solve the problem of naxalites from a law and order angle", as "the problem (was) basically political". The 'political' character of the naxalite prisoners derived according to the Order from the 'distinguishable' nature of their offence from 'ordinary criminals': "They committed their crime not for any personal gain, but in pursuance of an ideology, albeit totally misdirected and unacceptable".¹⁸³ While the attribution of a 'political' motive, different from the ordinary, was indeed symptomatic of a new thinking, it did not translate into a political decision to release naxalite prisoners.¹⁸⁴ The Central government resorted to 'legal processing' of naxalite prisoners and sifting between them on legal grounds. Accordingly, detenus against whom no case was pending were to be released;¹⁸⁵ where charges had been made the legal proceedings were to be expedited; in the cases of those facing trial the respective state governments were asked to speed up the trial; those

¹⁸² Government Order dated 5 May 1977 to the state governments regarding the release of naxalite prisoners.

¹⁸³ Ibid.

¹⁸⁴ It is important to note here that the naxalite stance on violence had moderated from 1972 with some groups like the S.N.Sinha led United Communist Party (Marxist-Leninist) publicly announcing renunciation of revolutionary violence and exhibiting desire to participate in the electoral process.

¹⁸⁵ The Government Order stated explicitly that the process of release of this groups of naxalite prisoners should be expedited to enable them to participate in the forthcoming Assembly elections.

already convicted were expected to serve their sentence.¹⁸⁶

The Janata government's was criticised by some political analysts as displaying 'double standards' by withdrawing the Baroda Dynamite case but continuing the imprisonment of naxalites involved in similar 'conspiracy' cases.¹⁸⁷ By taking recourse to legalism, it displayed a lack of political will to release all naxalite prisoners. The Congress government in AP decided during this period to appeal against the sessions court judgement in the Parvatipuram Conspiracy Case, demanding, among other things, that the life sentence on Nagabhusan Patnaik to be enhanced to death sentence. There was a thin line between the policy of Janata government of not releasing naxalite conspiracy case convicts and Congress's attempt to use legal means to crush the naxalite movement.

The government also attempted to wean students away from the movement through measures drastically different from those mentioned above yet reminiscent of measures deployed by the colonial administrators towards some Bengal revolutionaries. There are frequent allusions to such methods:

Senior police officials have visited naxals of the first student generation in person and have spoken with fatherly solicitude : 'A brilliant student like you...We would hate to destroy your life... You can still save yourself... can you not get admission in some British or American University? We shall ourselves arrange for your passport, ticket, visa, everything'.¹⁸⁸

It is difficult to find evidence of this as an official strategy because it took place on a verbal level, but it was possible that such a strategy did exist.

The prison, as we have seen in our study, was integral to the struggle from subjecthood to citizenship. Gandhi's political prisoners - the *satyagrahis* - were trained

¹⁸⁶ The Government Order laid down that the pending cases against undertrial persons could be considered for withdrawal provided they agreed "to make a declaration or a statement on the lines of the press statement issued by their leaders" provided they were in continuous custody as detenus, convicts or undertrials for a period of five years or more and were not charged with serious offences like murder, dacoity etc.

¹⁸⁷ Mohan Ram, 'Naxalite Prisoners: Legalistic Approach', *EPW*, Vol.XII, No.16, 16 April 1977, pp.628-629. The government later expressed its readiness to withdraw cases against them provided they signed a declaration stating that they had given up the path of violence. See Mohan Ram, 'Where is the Political Approach', *EPW*, Vol.XII, No.21, 21 May 1977, pp. 829-830.

¹⁸⁸ Ashok Rudra, 'The Politics of Legal Defence', 1973, p.6.

in the mould of ideal citizens. As embodiments of rights and duties they entered prisons to assert their citizenship rights against 'unjust rule'. It remains to be seen whether the discourse of rights of citizenship - of equality and sameness - which the nationalist prisoners carried with them to the prison, materialized after independence in the form of prisoner's rights.

Till the late 1970s, the prisoner appears antithetical to a citizen - with no claims to fundamental rights. The "hands off" doctrine to prisoner's rights followed by the Indian courts after independence, exhibited the attitude that imprisonment deprived prisoners of all rights.¹⁸⁹ In the past two decades decisions by courts have, however, given prisoners some rights under the broad rubric of the right to live with human dignity.¹⁹⁰ It is significant that the initiative for the change in the manner in which the rights of prisoners were being perceived have come from the courts. In most instances one of the parties in the case have involved the so called 'criminals'.

CONCLUSION

The years after independence were to reveal the conflict between popular and official/state notions of national interest and social change. The increasing contradictions between the two made the legitimacy of the government suspect and greatly augmented popular movements. Under such conditions of erosion of trust in the beliefs and conditions sustaining the legitimacy of the ruling power, we notice an 'obsessive display of agency' by regimes, to generate a semblance of power.¹⁹¹ The display of agency in

¹⁸⁹ Following the 'hands off' doctrine the courts refused to interference in the area of prisoner's rights on the grounds that imprisonment deprived prisoners of rights of citizens. In *A.K.Gopalan vs State of Madras*, the Supreme Court held that prisoners in lawful detention could not claim any rights under Article 19 of the Constitution as such rights were only for free men. This decision of the Court in the case of a detenu was representative of the general legal attitude towards prisoners. *AIR*, 1950, SC 27.

¹⁹⁰ The Supreme Court in *Charles Sobraj vs. Superintendent, Central Jail, Tihar*, laid down that prisoners retained all "all rights enjoyed by free citizens except those lost as an incident of confinement". *AIR*, 1978, SC, 1514. The Courts have also decided that the prisoner continues to "wear the armour of basic freedom...No prisoner can be personally subjected to deprivations not necessitated by the fact of incarcerations and the sentence of the court. All other freedoms belong to him". *Sunil Batra (II) vs Delhi Administration*, *AIR*, 1980, SC, 1579.

¹⁹¹ In her analysis of deliberately inflicted pain, particularly in the case of torture, Elaine Scarry avers that 'obsessive display of agency' by regimes occurs in the absence of legitimate forms of authority. See Elaine Scarry, *The Body In Pain*, Oxford, 1985, p.27.

India in the years after independence involved a steadily increasing use of legal and extra-legal measures to subvert popular movements and to arm the state with extraordinary powers to do so with ease.¹⁹²

The prison regime during the Emergency and before that in the late sixties, comes out sharply as the institution where the state attempted to emphasize its authority. It is interesting how this necessitates an extraordinary display of 'legitimate' power through some extremely ruthless laws of detention, an extraordinary augmentation of the powers of the police and a contraction of the powers of the judiciary. As brought out in the course of the chapter, imprisonment formed a part of the penal web, where filing of charge sheets, institution of conspiracy cases, bringing to trial and convicting naxalites were all part of the political war against them. The entire legal process gave the state a way to manoeuvre against the naxalites and their supporters. Apart from 'legal' procedures the government resorted to extra-constitutional measures like killing political activists in encounters and effecting their disappearance in unacknowledged detentions. The latter, combined with the enormous custodial powers given to the police by extraordinary laws, created conditions conducive to torture of political prisoners in custody.

It is important to point out here that the government's policy of elimination of naxalism did not evince popular consternation. On the other hand, it did redeem the state in the eyes of a large section of the propertied classes who had started feeling increasingly insecure with the socialist proclamations of government. State repression during the Emergency was less discriminatory in the sense that it caught in its widening web not just the naxalites but a large number of those critical of the government, irrespective of their location at the left, right or centre of the political spectrum. The shared experience of repression during the emergency did achieve sympathetic perception of the naxalites by liberal opinion and at the same time alerted those on the left sceptical of constitutional values, to the worth and the need of a concerted commitment to liberty even within the framework of liberal democracy. The civil liberties movement, its

¹⁹² That the authoritarian dimensions of the state become more aggressive and sophisticated when its legitimacy becomes suspect has been stressed by Manoranjan Mohanty in 'Indian State: The Emerging Trends', *Social Action*, Vol.40, July-September 1990.

tenacity and vigour, in the years immediately after independence, owes a great deal to the experience of emergency.

It also needs to be reiterated here that the political strategy adopted by the CPI in the late 1940s and naxalites in the late 1960s and early 1970s to use jails as an arena of class struggle did not entirely succeed. The failure of the aggressive forms of protest in face of state aggression within closed confines of prisons forced communists in the late 1940's and the naxals later to 'defensive resistance' or peaceful mode of protest inside jails.

Jail going, however, lost its strategic location at the core of resistance in independent India. The situation of voluntary imprisonment and consequently the prisons as the locus of the nationalist strategy of resistance against colonial rule lost importance as a tactic of political engagement in subsequent periods. After independence imprisonment appears more as the outcome of resistance rather than the arena where the resister locked horns with the oppressor in a war of nerves. The Gandhian strategy valorized the moral content of jail going and laid stress on compliance with jail rules. The colonial state, upstaged to a large extent by the moral overtones of the Gandhian strategy of jail going, engrossed itself in meticulous calculations, its task made tougher by the non violent nature of the movement so that it could not take recourse to overt repression without losing further moral ground to the Gandhian nationalists. This moral edge of jail going as a method of offering civil disobedience seems to have dissipated as a viable strategy of resistance after independence.

In the communist framework, jail going or political prisonerhood did not enjoy the sanctity accorded to it under the Gandhian framework. The Gandhian *satyagrahi*, the 'ideal political prisoner', epitomized the inviolability of the 'national' spirit. Resisting arrest as distinct from courting it, was the preferred course for the communists. Despite this a large number of communists were imprisoned before independence and afterwards. It is not surprising, therefore, that a jail strategy commensurate with communist strategy was debated upon. In so far as the communists too perceived themselves as political prisoners, as distinct from 'criminals', their prison discourse appears to be no different from the nationalist. Like the latter they laid stress on the rights of prisoners while adhering to the political prisoner / ordinary prisoner (read as criminal) dichotomy. This

distancing from 'criminals', very much apparent in official communist pronouncements did not deter them from projecting themselves as 'class war' prisoners. Unlike the right wing prisoners of the RSS and Mahasabha in the 1940s and the RSS and Jan Sangh during the emergency, the communists made the abolition of classification among political prisoners and the end of class based treatment in prisons the major plank of engagement with prison administration. By not demanding 'political status' in jails the naxalites were probably the first group to dissociate political prisonerhood from any negotiated arrangements with the state. This meant that they did not demand privileges or higher class in jail. The torturous jail conditions and prolonged detention forced them, however, to negotiate and have legal and political dialogue with the state.

It should be noted, however, that with exceptions political prisonerhood no longer holds a sacrosanct position in popular imagery. The moral edge which a demand for political prisonerhood might have had was diluted with the appearance of the 'official political prisoner', a caricature of which appears vividly in Tyler's account. The appropriation of the political prisoner by the state in the person of the 'freedom fighter' also diluted its sanctity. Gandhi in some ways anticipated the fall of the political prisoner. The moral overtones and the subsequent potential for embarrassment which it possessed diminished even in the nineteen forties. Even before independence Gandhi had realized that his ideal prisoner was elusive:

I am the originator of jail going as part of *satyagraha*. My jail going was born out of *ahimsa* and *ahimsa* and privilege go ill together. I have fought the government from inside the jail. As it is today all sorts of people go to jail. Inside the jail they behave anyhow, even apologize and come out, jail going has become a farce.¹⁹³

We observe two registers operating in Indian politics. At the superstructural layer the parameters of political validity are provided by measurable indicators e.g., representation in political institutions, position in the governmental hierarchy etc. On the other hand, politics is also inextricably intertwined with the notion of public good e.g., service, sacrifice etc., which irrespective of numerical gains, attributes representative qualities to persons. Political prisonerhood conforms to the latter register. Cutting across ideological divides, the notion of sacrifice inhering in the notion of political

¹⁹³ 'Talk With a Friend', dated before 11 August 1946, *CWVG*, Vol.LXXXV, p.147.

prisonerhood, gave it its sanctity. Political prisonerhood in the colonial period symbolised the struggle of Indian people towards a democratic polity. Their continued presence after independence indicates that the journey towards democracy remains unfinished.

CONCLUSION

In this study we have shown the complex and multilayered contests which constituted the making and treatment of political prisoners in colonial and independent India. We have treated the category 'political' as historically constructed and manifesting the intricacies of power relationships at particular historical moments. Focussing on the peaks of nationalist resistance against the colonial state and the oppositional ideological challenges of the communists and naxalites to the state in independent India, we have shown, from the vantage point of political prisoners, the ruptures and continuities in the forms of repression, nature of penal sanctions, the legal-political processes and discourses of power, in colonial and independent India.

In the early part of the twentieth century jail going became the popular nationalist idiom of protest, ushered in by Gandhi's call for non-cooperation. At the intersection of the colonial state's strategy of control and the nationalist assertion of freedom, prisons became highly politicised and an integral part of the positional warfare between the colonial state and the nationalist elite. Jail going and the attendant notion of political prisonerhood combined the elements of sacrifice - a relinquishing of the material attachments to one's self - with the notion of equality and sameness with the colonial rulers. The element of sacrifice inherent in the suffering and renunciation which jail going came to symbolise, signified a voluntary act and an exercise of agency, to wilfully disobey laws. Jails under such a formulation became, as Gandhi puts it, 'gateways to freedom under tyrannical rule', and political prisonerhood, a state of freedom. The *satyagrahi* who entered the prison made (under Gandhi's code of conduct) the free choice to submit with others to jail rules, bridging thus the gap between subjecthood and citizenship. Inherent in the notion of political prisonerhood was also a quest for sameness. The struggle for sameness in prison manifested in negotiations with the colonial state for a political status, which in turn amounted to a treatment in prison similar to that given to first class misdemeanants in the metropole. The nationalist language of equality confronted the notion of colonial difference in prison by attacking its most manifest symptom - race. The struggles by the revolutionary terrorists in particular became instrumental in removing 'European class' as a conspicuous superior

class in prisons. Ironically, the new scheme of classification based itself on class differentia, substituting thus one form of inequality for another.

Jail going in independent India did not enjoy the same degree of sanctity accorded to it under the Gandhian framework. Resisting arrest rather than courting it was the preferred course for the communists. A large number of communists were imprisoned during the national struggle and afterwards. In so far as the communists too perceived themselves as 'political' and different from 'criminal', their prison discourse appears to be no different from Congress nationalists. This adherence to criminal/political dichotomy notwithstanding, the communists did not hesitate to present themselves as 'class war' prisoners, and dispute class based treatment in prison. The naxalites broke free from the nationalist discourse on political prisonerhood, steering clear from subscribing to the criminal/political dichotomy, or demanding a political status with the privileges which accrued from it.

In its policy towards political prisoners, the colonial state exhibited elements of both coercion and persuasion. The primary aim of punishment at all stages of the nationalist struggle was reiterated and affirmed as deterrence. Punishment was linked with the colonial framework of disciplining and strategies of power, where penal measures towards the political opposition were frequently sanctioned by a discursive strategy portraying them as criminals. The coercive properties of punishment were, however, interspersed with pronouncements of reform and reclamation of revolutionary terrorists. We have seen in this work that apart from some sporadic attempts at 'persuasion' - to reclaim as moral subjects, those who had wandered away from the fold - deterrence remained the basis of all penal sanctions. The 'extraordinariness' associated with detention was normalized in a process of a gradual phasing out of privileges which marked the distinction in law between a detenu and convict. At the crux of the prison treatment and penal policy towards the political prisoners was a reluctance to demonstrate in public policy that political prisoners were a distinct class. In practice, however, privileges were given on the basis of social status. The nationalist demand for political equality soon became contingent on this bureaucratic or instrumental rationality. The 'politicals' were distributed over a standardized scale of hierarchical treatment based on indices of social class. This standardized hierarchy of treatment of political prisoners in

a scheme of classification diluted the moral force behind what was conceived as political at least in the rhetoric of the nationalists.

The embryonic national state represented by the Congress ministries and the Interim government later, saw the Congress conflating 'political' with 'national'. The complex politics of 'representation' and 'discipline' which characterised the Congress led/guided struggle, rendered all 'other' struggles as anti national and 'criminal'. Under these circumstances, the category 'political prisoner' became more tenuous. In independent India, the national state projected itself as the antithesis of the colonial state, as the composite of national interest and agent of social change. Deriving its legitimacy from the 'legality' and 'representativeness' of the nation state, it was able to 'criminalize' ideological oppositions like the communists and naxalites with a degree of impunity. Professing to embody the unity of the nation, it essentialised all political opposition in terms which deprived popular movements of temporality and historical specificity. Expressions like 'terrorist' and 'anti-national' activity were pitted against abstract and equally ahistorical constructions of a 'nationalist mainstream'.

Apart from the measures of control provided by law, extra-constitutional measures were used towards them by the government. Although the underlying principles of detention in most cases remained the same as in colonial India the conditions of detention deteriorated progressively. While in the first quarter of the nineteenth century the Regulations made clear provisions for the protection of the detenus' property and the upkeep of their families, the scale of allowances had narrowed in direct proportion to the increase in the intensity of the nationalist movement. This trend intensified from the 1940s to the 70s when the working class detenus were denied privileges and various allowances. What this process also signifies is a 'criminalization' of detenus not only in their treatment in prison but also in the official discourses which justified it. Coercive strategies became more sophisticated in proportion to the increased gap between popular and official notions of national interest. In an 'obsessive display of agency' torture in custody, encounters and disappearances were carried out with remarkable frequency.

The appropriation of 'political' and 'national' by the state in independent India and a subsequent depoliticisation and criminalisation of political opponents was accompanied also by a dwindling importance of jail going as a tactic of political

engagement. Imprisonment became an avoidable consequence rather than an integral part of resistance. The images of *sarkari* prisoners supplanted the 'ideal-typical political prisoners' of the nationalist struggle. The virtuosity which had come to be associated with political prisonerhood and which had given it the moral edge over the colonial state in the early years of the nationalist mass politics, had started turning into a 'farce' even in the lifetime of its chief protagonist. The language of sacrifice and the language of equality inherent in the vocabulary of jail going in the early nationalist phase were tempered gradually with possibilities of political profit. The act of jail going became an indicator of one's political worthiness and a necessary credential for representing the people.

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APPENDIX I

The following scale of allowances were granted to the Bengal detenus under the provisions of Section 21 of BCLA, 1925 and Section 12 of BCLA, 1930.

JAIL AND DETENTION CAMPS -

ALLOWANCES	OLD SCALE	DECEMBER 1931 ONWARDS	MAY 1932 ONWARDS
Daily dietary allowance	Alipore and Dacca Central jail Rs.1\6\-	Hijli Camp Rs.1\4\-	Hijli Camp Rs.1\-\-
	Presidency jail Rs.1\6\-	Berhampore Camp Rs.1\4\-	Berhampore Camp - \14\-
	Darjeeling jail Rs.2\-\-	Buxa Camp Rs.1\10\-	Buxa Camp Rs.1\1\-
	Other jails Rs.1\10\-	Jails Rs.1\-\-	Jails Rs.-\14\-
Monthly personal allowance	Rs.32\-	Rs.20\-	Rs.15\-
Lumpsum allowance for the purchase of necessaries on first admission	Rs.60\-	Rs.35\- on admission (one time only). Rs.25\- for winter clothes between 15th Oct. and end Feb.	Rs.35\- on admission (one time only). Rs.25\- for winter clothes between 15th Oct. and end Feb.

VILLAGE DOMICILE - Every detenu domiciled in a village other than his home received an allowance ranging from Rs.25\- to Rs.40\- a month depending on the locality.

HOME INTERNEES - Home internees usually did not receive any allowance as they were mostly restrained within the extended family.

Sources: File no. 159/1925, H(P) NAI; File no. 31/38/32, H(P) NAI; File no.43/39/35, H[(P)I], NAI, and L/P&J/7/335, IOL.

APPENDIX II

TABLE - I*

NAME OF JAIL AND DATE.	NEWSPAPER SOURCE.	PRISONERS KILLED (OFFICIAL ESTIMATES)	PRISONERS INJURED (OFFICIAL ESTIMATES)
Midnapore Jail (16.12.70)	Statesman (17.12.70)	10	7
Presidency Jail (4.2.71)	Statesman (5.2.71)	-	24
Midnapore Central Jail (6.2.71)	Statesman (6.2.71)	1	-
Berhampur Jail (24.2.71)	Jugantar (25.2.71)	10	62
Dum Dum Central Jail (14.5.71)	Statesman (15.5.71)	16	88
Seuri Jail (7.6.71)	Jugantar (8.6.71)	-	5
Alipore Special Jail (12.7.71)	Times of India (12.7.71)	6	9
Alipore Central Jail (26.11.71)	Jugantar (27.11.71)	6	200
Asansol Special Jail (5.8.71)	Times of India (6.8.71)	9	-
Hooghly Jail (7.2.72)	Statesman (8.2.72)	1	24
Burdwan Jail (28.5.72)	Statesman (29.5.72)	2	26
Berhampur Special Jail (26.11.72)	Anandbazar (28.11.72)	-	65

TABLE - II*

NAME OF JAIL AND DATE	NEWSPAPER SOURCE AND DATE	PRISONERS KILLED (OFFICIAL ESTIMATES)	PRISONERS INJURED (OFFICIAL ESTIMATES)
Bankipur Jail (8.7.71)	Times of India (8.7.71)	2	-
Hazaribagh Jail (25.7.71)	Statesman (26.7.71)	16	-
Bhagalpur Jail (8.5.72)	Statesman (9.5.72)	9	160
Gaya Jail (2.9.72)	Statesman (4.9.72)	-	55
Bankipur Jail (9.9.72)	Basumati (11.9.72)	-	90

* Table I and II are based on Amnesty International's 'Short Report on Detention Conditions in West Bengal Jails', in A.R. Desai ed. *Violation of Democratic Rights in India*, Vol.I, Bombay, 1986; and the fact sheet of jail incidents provided by the Association of Protection of Democratic Rights, submitted to the National Convention on Defence and Release of Political Prisoners, New Delhi, April 20-21, 1973.

TABLE III**

STATES	AUTHORISED ACCOMMODATION AS ON 25.6.75.	NUMBER OF PRISONERS ON 25.6.75.	NUMBER OF PERSONS DETAINED / ARRESTED DURING THE EMERGENCY.
Andhra Pradesh	5,912	5,885	MISA 1,135 DIR 451 COFEPOSA 45
Assam	4930	7909	MISA 558 DIR 1,933 COFEPOSA 53
Bihar	21,140	38,407 prisoners on 1.9.75. (the maximum no. on any date during emergency)	Total number of arrested \ detained not known.
Gujarat	4972	3636	MISA 1762 DIR 2643 COFEPOSA 279
Haryana	2794	3003	MISA 200 DIR 1079 COFEPOSA 2 EC ACT-CUM DIR 99 EC ACT 869 151 CrPC 592
Himachal Pradesh	561	264	MISA 34 DIR 251 Various economic offences 403 Persons arrested u\s 151 of CrPC & other Preventive Laws 62
KARNATAKA	7,311	5,217	MISA 487 DIR 4,015 COFEPOSA 119 CrPC 1,232 KARNATAKA POLICE ACT 1,562
Kerala	5,213	3,478	MISA 790 DIR 6,894 COFEPOSA 96

Madhya Pradesh	12,388	16,166	MISA 5,620 (EXCLUDING 74 ABSCONDERS) DIR 2,521 COFEPOSA 11 151 Cr.Pc. 26,904
Maharashtra	14,801	19,786	MISA 5,473 DIR 490 COFEPOSA 9,799
Manipur	350	318	MISA 143 DIR 228 COFEPOSA 13
Meghalaya	335	521	MISA 39 DIR 20 COFEPOSA 6
Nagaland	700	450	MISA 92 DIR 4 (Later all detenus transferred outside State)
ORRISA	6668	10222	MISA 408 DIR 3 COFEPOSA 762
Punjab	6746	7312	MISA 440 DIR 2423 COFEPOSA 73 U\Ss 107\151-CrPC 3784 Economic offences (U\Ss 7 of the EC Act & 114 of the DIR) 714 U\S 188 IPC 596 Others 25
Rajashthan	7515	6158	MISA 952 DIR 1360 COFEPOSA 23 151 CrPC 2600
Sikkim	30	99	MISA 4 (Later sent to West Bengal)
Tamilnadu*	1,459	4,455	NOT AVAILABLE
Tripura	519	730	MISA 77 DIR 99 (8 Later detained under MISA) CFE & PS ACT 25

Uttar Pradesh	35339	33058	MISA 7185 DIR 24761 COFEPOSA 126
West Bengal	20237	25599	MISA 5,320 DIR 80 COFEPOSA 2,545
Andaman & Nicobar Islands	105	119	MISA 41 (Including 2 detained twice and 1 detained at Madras) DIR 89 COFEPOSA NIL
Arunanchal Pradesh	NO JAILS	-	-
Chandigarh	110	98	MISA 27 DIR 74 COFEPOSA 1
Dadar & Nagar Haveli	20	NIL	MISA NIL COFEPOSA 2 DIR 3
Delhi	1273	2669	MISA 1012 (COFEPOSA and DIR arrests also made but information not available)
Goa, Daman & Diu	445	147	MISA 113 COFEPOSA 68
Lakshadweep	Not available	Not available	No arrests during Emergency
Mizoram	192	381	MISA 70 DIR 136
Pondicherry	2,085	156	MISA 54 DIR 54 COFEPOSA 7

* as on 4 February 1976; information derived from Ismail Committee, 1978.

** Table based on Shah Commission of Inquiry Report. *Shah Commission of Inquiry, Third and Final Report, Delhi, 1978.*

TABLE IV*

STATE	WHETHER SEGREGATED FROM ORDINARY PRISONERS	LAWS UNDER WHICH PRISONER DETAINED \ ARRESTED	CLASSIFICATION
Andhra Pradesh	YES (some of the C class detenus, mostly economic offenders were kept with ordinary prisoners).	MISA	Divided into A, B & C class.
		DIR	C class.
		COFEPOSA	C class.
Assam	YES	N.A.	N.A.
Bihar	Not Available	N.A.	N.A.
Gujarat	YES (detenus only)	MISA & COFEPOSA	Class I and II.
Haryana	YES (detenus only)	MISA \ DIR \ COFEPOSA etc.	Not known.
Himachal Pradesh	YES (all prisoners arrested under different Emergency laws were kept in separate wards).	MISA	Divided into special and ordinary class.
		DIR	Divided into B & C class.
Karnataka	YES (DIR prisoners kept with the ordinary undertrials).	MISA	Divided into A & B class.
		DIR	Treated as ordinary undertrials.
		COFEPOSA	Treated as a separate class.
Kerala	YES (MISA detenus were accommodated in three Central jails and COFEPOSA detenus were kept in the Central jail at Trivandrum).	MISA	Treated as one class.
		COFEPOSA	Treated as ordinary prisoners.
		DIR	Treated as undertrials.
Madhya Pradesh	YES	MISA	Divided into class I and II.

		Others arrested during Emergency	Divided into Special and Ordinary class.
Maharashtra	YES	MISA	Divided into class I and II. (Political detenus generally given class I).
		COFEPOSA	Categorised as class II.
		DIR	Treated as ordinary undertrial prisoners while under trial and also after conviction.
Manipur	NO (kept with other prisoners but given better facilities).	MISA	Classified into A, B & C class.
		COFEPOSA	Kept as ordinary class.
Meghalaya	YES	MISA \ COFEPOSA	Divided into class I and II.
Nagaland	YES	MISA \ DIR	Not available.
Orissa	YES	MISA	Categorised as 'S' class (treated as class one).
		COFEPOSA	same facilities as those provided to MISA detenus.
		DIR	Treated as ordinary prisoners.
Punjab	YES	MISA \ COFEPOSA	MPs & MLAs treated as Special class and all other detenus treated as Ordinary class.
		DIR	B class (those awarded by Courts) and Ordinary class.
Rajasthan	YES (In some jails this was not maintained due to overcrowding).	MISA	Categorised as class I, II and III. (Most of the detenus were categorised as B class).
		COFEPOSA	Treated as C class detenus.
Sikkim	YES	MISA	Transferred to Behrampur Central Jail.

Tamilnadu	N.A.	N.A.	N.A.
Tripura	Only higher class detenus kept in separate wards.	MISA \ CFE & PS Act \ DIR.	Categorised into C, B & A class. (Only members of the registered political parties were given highest class i.e. class C.
Uttar Pradesh	YES	MISA	Generally given Superior class.
		COFEPOSA	Treated as Ordinary class.
West Bengal	YES	MISA	Categorised into A, B and C class.
Andaman & Nicobar Islands	YES (MISA detenus accommodated on a separate floor).	MISA	All the MISA detenus treated as class II prisoners.
Arunanchal Pradesh	No Jails	-	-
Chandigarh	Separate accommodation for MISA detenus.	MISA \ COFEPOSA \ DIR.	Only MLAs categorised as Special class; others placed in Ordinary class.
Dadar & Nagar Haveli	YES	COFEPOSA	Treated as class II prisoners.
Delhi	Not available	Not available	Not available
Goa, Daman & Diu	YES	MISA \ COFEPOSA	Categorised into class I and II.
Lakshadweep	No arrests under MISA, COFEPOSA or DIR	-	-
Mizoram	YES	MISA	Categorised into class I & II.
Pondicherry	YES (all MISA, COFEPOSA and DIR prisoners segregated).	MISA	Categorised into A, B & C class.
		COFEPOSA	Special category.
		DIR	Treated like other undertrial prisoners.

* Source: *Shah Commission of Inquiry, Third and Final Report*, Delhi, 1978.

