

THE PROBLEM OF OVERCROWDING IN PRISONS

Introduction

Overcrowding of prisons is a global phenomenon and a cause of major concern for prison administration the world over. The comparable rate of imprisonment (prisoners per 100,000 population) during the year 2002 for some of the major countries is given below:-

Per One Hundred Thousand Of Population

▪ United States	- 700 Prisoners
▪ Russia	- 650 Prisoners
▪ Belarus	- 500 Prisoners
▪ South Africa	- 400 Prisoners
▪ Thailand	- 300 Prisoners
▪ United Kingdom	- 132 Prisoners
▪ Canada	- 102 Prisoners
▪ France	- 85 Prisoners
▪ Japan	- 48 Prisoners
▪ India	- 28 Prisoners

SOURCE: International Centre for Prison Studies, Kings College, London (The Economist, August 10, 2002).

Indian Scenario

As will be seen from the above, the rate of imprisonment in India per one hundred thousand of population is one of the lowest in the world.

Overcrowding in Indian prisons is not primarily due to the higher rate of imprisonment but because of high number of under-trial prisoners. An analysis of prison population in the prisons during the last three years shows that undertrial population in Indian prisons is around 69% of the total population of prisoners as visible in the figures given below:-

Table. 1

Year	Total Prison Population	Undertrial (unsentenced)	% age
2001	3,13,635	2,20,817	70.5%
2002	3,22,357	2,230,38	69.2%
2003	3,26,519	2,17,658	66.66%

This is despite the fact that Indian courts have been very liberal in granting bail to accused persons. The number of prisoners released on bail before trial is very high as compared to those arrested.

Extent of Overcrowding

Following table shows the authorized capacity in prisons and extent of overcrowding:-

Table. 2

Year	Total No. of Prisons	Authorised Capacity	Prison Population	Percentage of Overcrowding
2001	1119	2,29,713	3,13,635	36.5%
2002	1135	2,29,874	3,22,357	40.2%
2003	1140	2,33,543	3,26,519	39.80%

Overcrowding is not uniform in different state prisons. The most affected States in terms of overcrowding are Delhi (224%); Jharkhand (185%); Sikkim (122.7%); Chhattisgarh (95.4%); Tripura (87.4%); Gujarat

(86.5%); Haryana (86.3%); Orissa (79.9%); Bihar (73.5%); Madhya Pradesh (64.6%); Goa (57.1%); and Uttar Pradesh (49.4%). Inadequate increase in capacity, a large number of under trial prisoners, varying jail policies and procedures, delay in disposal of cases, non-availability of effective mechanism for premature release and lack of a system of offering alternative to imprisonment are some of the factors contributing to over crowding in prisons.

Concerted efforts by various governments for reforms have resulted in a marginal decline of over crowding rate in prisons since year 2000, as is evident from above figures. The key lies in continuing the momentum of reforms for a long lasting effect.

Convict Vs Under Trial prisoners

The overcrowding problem has received serious attention of the Government in our country with a view to initiating concrete measures to decongest prisons. Analysis of prison population housed in the prisons during the last three years shows that undertrial (unsentenced) population in Indian prisons is around 68% of the total population as visible in the figures given in table-1 above.

There is another significant factor connected to the problem of abnormal proportion of unsentenced prisoners in prisons in as much as it relates to conviction (sentenced) rate recorded by the courts. As per the Crime in India, 2003, National Crime Records Bureau, the average rate of conviction in our country is around 40%. It means that out of the unsentenced population in our prisons a major proportion spend time in prisons without being finally sentenced to punishment of imprisonment.

Therefore, there is an urgent need to expedite the disposal of cases of undertrial (unsentenced) prisoners in courts.

Measures to Reduce Overcrowding in Indian Prisons

Following notable measures have since been taken to tackle the problem of overcrowding.

I. Capacity Addition in Indian Prisons

The existing capacity of various types of Indian Prisons is given below:-

Table. 3

Sl No	Types of Prisons	Number of Prisons during the year			Authorised Capacity during the year			Prisons Population during the year		
		2001	2002	2003	2001	2002	2003	2001	2002	2003
1	Central Prisons	98	105	107	103830	105449	107484	130122	141063	148074
2	District Prisons	266	269	268	76440	75470	76663	122150	120252	118078
3	Sub Prisons	671	677	678	34536	34700	34851	52194	50975	49815
4	Women Prisons	13	13	14	1985	1985	2085	2060	2567	2796
5	Borstal School	12	12	12	2266	2266	2266	1239	1135	1099
6	Open Prisons	25	25	26	4323	4323	4353	1592	1648	1736
7	Special Prisons	25	25	25	4891	4272	4406	3598	4064	4043
8	Other Prisons	9	9	10	1442	1409	1435	680	653	878
	Total	1119	1135	1140	229713	229874	233543	313635	322357	326519

This capacity of prisons, as indicated above, is nearly 40% short of actual prison population. Government of India has taken a major initiative to take up a five year Modernization of Prisons Scheme w.e.f. 2002-2003 in partnership with the State Governments. A sum of Rs. **1796.5** crores has been earmarked for following activities related to capacity addition and improvement in quality thereof:-

ITEMS	(In CRORES)	(In %)
(i) Construction of New Jails	Rs. 1034.6	57.6
(ii) Expansion & Renovation of existing jails	Rs. 248.6	13.8
(iii) Construction of Staff Quarters	Rs. 465.1	25.9
(iv) Sanitation & Water Supply	Rs. 48.2	2.7
Total	RS. 1796.5	

Under this scheme, up to 2006-07, besides repair and upgradation of existing prisons, it is proposed to construct a total of 257 new prisons. This will lead to creation of additional capacity for 1,06,700 prisoners. This scheme will have a major impact on de-congesting prisons.

2. Increase in number of Courts

Another method to reduce overcrowding is to expedite disposal of undertrial cases because about 60% of the undertrial category prisoners get acquitted in the courts. An expeditious disposal of undertrial cases shall reduce the undertrial prisoner population corresponding to at least the acquittal rate. Government of India has, therefore, taken quite a few important steps for this purpose. Some of these are described below:-

- (i) In the year 2000, the Government of India established 1562 Fast Track Courts all over the country to expedite the disposal of 15,28,744 pending cases in Session Courts. Union Government also released a sum Rs. 42,613.27 lakhs to the State Governments for this purpose as on 18th July, 2005. The Fast Track Courts had since disposed of as many as 7,91,344 cases till 18th July, 2005. The Government has now extended this scheme for another five years.
- (ii) Presently, the sessions trial cases are being referred to the existing Fast Track Courts for disposal. It may be noticed that pendency in Judicial Magistrate Courts is higher than in the Courts of Sessions. However, to make further impact on pendency of undertrial cases it is suggested that the cases from Magisterial Courts should also be referred to the Fast Track Courts for their disposal to minimize the pendency of such cases.

3. Legislative Measures

(i) Mandatory Release of Undertrial Prisoners in Case of Inordinate Delay in Trial.

An important legislative intervention has been made by passing the Code of Criminal Procedure (Amendment) Bill, 2005 by the Parliament which will reduce the number of under trial prisoners.

Under this legislation, Section 436A has been inserted in the Cr.P.C. as under:-

“Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law

Explanation.—In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceedings caused by the accused shall be excluded.”

(ii) **Plea Bargaining**

In addition to the above, in pursuance to the recommendations made by the Law Commission of India in its 154th Report on the **Code of Criminal Procedure, 1973**, the Union Parliament has recently enacted the **Criminal**

Law (Amendment) Act, 2005 notified on 11th January, 2006 under which a new chapter **XXIA** has been inserted on **Plea Bargaining** which is given as under:-

265(A).(1) This chapter shall apply in respect of an accused against whom—

- (a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or
- (b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B(1) A person accused of an offence may file an application for plea bargaining in the court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding

the nature and extent of punishment provided under the law for the offence the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section(3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under sub-section (1).

265C.In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265 B, the Court shall follow the following procedure, namely:-

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated

the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case;

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting;

Provided further that the accused may, if he so desired, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case;

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting;

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

265E. Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:-

- (a) The Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;
- (b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;
- (c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;
- (d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. The judgement delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgement.

265H. A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

265I. The provision of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.—For the purposes of this Chapter, the expression “Public Prosecutor” has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

265K. Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000”.

4. Probation

The Probation of Offenders Act, 1958 institutionalizes probation services in India as one of the alternatives to the imprisonment. As a methods of non-institutional treatment ,probation is a sentence not involving confinement in prisons. When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep to the peace and be of good behaviour.

5. Release on Parole

As per the UN Prison Manual, prisoners in India are allowed to maintain their contacts with the outside world through writing letters, periodical visits by their family members, relatives, friends and legal advisors and also their release on parole with a view to providing them an opportunity to maintain their personal bonds with their family members. During the year 2003 a total of 15,894 prisoners were released on parole and 1426 convicted (sentenced) prisoners were rehabilitated after their release.

Administrative Measures:-

(i) Use of Technology to expedite trial

Presently, we have started point to point video-conferencing system only for remand prisoners in certain States on experimental basis, which has proved quite fruitful and cost effective. Going by the success of this scheme, it is felt that there is need to start multi-point video-conferencing system, connected with all the Central and District Prisons and the concerned Courts for speeding up the trial proceedings in a more expeditious and cost-effective manner. Towards this, it is suggested that this component may be added in the existing Centrally sponsored Modernization Scheme of Prison Administration for providing financial assistance to the States to establish multi-point Video-Conferencing System in all District Prisons as well as Courts.

(ii) Periodical Review of cases of under trial prisoners

Cases of under trial prisoners are reviewed regularly by judicial officers and district officers visiting prisons with a view to taking all feasible measure to expedite disposal of undertrial cases.

Some Suggestions to Reduce overcrowding in the Prisons: -

Indian prisons remain overcrowded in spite of one of the lowest imprisonment rate in the world (28 prisoners per lakh population). It has been noticed that delay in disposal of cases pending trial is one of the main reasons for this undesirable phenomenon. Therefore, some effective measures are necessary to expedite disposal of cases pending trial to make a long term and lasting impact on this problem. These measures have to touch

upon both administrative and legal aspects. Some of the suggestions for this purpose are given below: -

(i) Increase in the number of Prosecutors

It is seen that adequate attention has not been given to the acute shortage of Public Prosecutors to conduct prosecution of cases in criminal courts up to the level of Chief Judicial Magistrates. It has been noticed that States have been sanctioning new Courts from time to time without sanctioning of the post of Public Prosecutors and his supporting staff. This has created an anomalous situation where a large number of Courts do not have dedicated Assistant Public Prosecutors and Public Prosecutors to facilitate expeditious disposal of cases leading to unwarranted increase in the number of undertrial prisoners. The ban on filling the existing vacancies as an economy measure has also aggravated the problem-leading to a situation where one Public Prosecutor is left to attend two or more Courts. This is neither practical nor an efficient and effective way of conducting prosecution of cases. This is highly detrimental to the success of prosecution cases as well. Therefore, adequate number of Public Prosecutor have to be assured to compliment the efforts of the Courts to expeditiously dispose of cases of undertrial prisoners .

(ii) Delegation of powers for compounding of petty offences

As on 21.12.2004 the total pendency of criminal cases filed in the Subordinate Courts for trial including those brought forwarded from previous year was 1,62,07,116. It is seen that out of this total pendency Special and Local Laws (SLL) cases numbering 43,70,955 constitute a very significant portion i.e. 54.1% out of the total number

80,72,165 SLL cases filed in courts for trial during the year 2004 including those carried forward from 2003. It is felt that a number of minor offences under Motor Vehicles Act, Police Act and the like can easily be converted into compoundable offences with the powers of compounding delegated to the Police Officers responsible for its enforcement. This will go a long way in expediting disposal, reducing the pendency and avoiding huge paper work which is required to prepare chargesheets/challans against the accused.

(iii) Fast Track Courts for Cases Pending in Magistrate Courts

Presently, the sessions trial cases are being referred to the existing Fast Track Courts for their disposal. It is an undisputed fact that the pendency in the Magistrate Courts (up to CJM/CMM) is far higher than that in the Sessions Courts. Therefore, it is suggested that the cases of Magisterial Courts should also be referred to the Fast Track Courts for disposal to minimize the pendency of such cases and more Fast Track Courts established for the purpose.

(iv) Community Service Order Scheme

There is need to consider some alternatives to imprisonment to reduce overcrowding in prisons and to achieve the desired goal of modern correctional philosophy. In some State (like Andhra Pradesh), efforts are being made to institute a community service order scheme. Under this scheme, a convicted offender involved in petty offences is offered an opportunity to compensate society for his/her wrong doings by getting an option to perform work for the

benefit of the community. It is a method of dealing with the offenders who would otherwise be sentenced to imprisonment. This method is punitive in the sense that it imposes restrictions on personal liberty but its principal objective is to provide a valuable opportunity to the offender to reform himself. Such schemes are in vogue in quite a few countries in the world including United Kingdom, Newzeland, Srilanka, Hongkong, Fiji, Zimbabwe, Canada, France, Czechoslovakia, Kenya and Uganda.

CONCLUSION:-

The initiatives taken by the Government of India and the States through allocation of funds for modernization of prison administration (having an outlay of 1800 Crores for the five year period 2002-03 to 2006-07) has started a making positive impact in reducing overcrowding and maintaining improved hygienic conditions in prisons. It is expected to accelerate prison reforms to meet the desired goals of the modern correctional philosophy.

The detailed discussion on various aspects of prisons in the preceding paragraphs is summarized as follows:-

1. There is a serious problem of congestion in Indian prisons despite the fact that rate of imprisonment in India is one of the lowest in the world.
2. Prisons in India have poor physical conditions and poor infrastructure in terms of proper buildings, hygiene and sanitation, housing for prison staff etc.
3. Overcrowding in prisons is not a problem unique to India only. It is equally, if not more, severe in many other countries.

4. Realising the fund constraints with the States for Modernization of Prisons, the Central Government has started a very ambitious five years scheme of modernization of prisons w.e.f. 2002-2003 with an outlay of Rs. 1800 crores jointly with the States. Government of India contributes 75% of this outlay while States are required to contribute the remaining 25%.
5. The scheme covers following major components:-
 - (i) Construction of New Prisons;
 - (ii) Repair and Renovation of Existing Prisons;
 - (iii) Construction of Staff Quarters; and
 - (iv) Sanitation and Water Supply.
6. The execution of the scheme by the States as per their approved plans will make a very positive impact in improving the prison infrastructure and other facilities required for efficient management of Prisons.
7. Legislative changes made in the Criminal Procedure Code through amending acts restricting custody in prisons to 50% of the maximum punishment provided for the offence (except those punishable with life imprisonment/death) and introduction of plea bargaining should help to reduce overcrowding in prisons.
8. Increase in number of Fast Track Courts for long pending cases in the Magistrate Courts and creation of adequate number of Public Prosecutors corresponding to the actual number of Criminal Courts shall be of help in a big way to reduce congestion in prisons.
9. Measures like alternative to imprisonment (for example, Community Service Order Scheme) and liberalisation of probation and parole mechanism shall further help to decongest prisons.

10. Use of modern technology like, video-conferencing system coupled with close monitoring of cases and periodical review of long serving undertrial prisoners at district level by a committee headed by District and Sessions Judge will also address this issue significantly.
