

## **(E) ALTERNATIVES TO IMPRISONMENT**

The increasing use of imprisonment has failed to decrease the crime rate. The relationship between incarceration rate and crime rate is indeed complex. Dissatisfaction with the present system is widespread. Imprisonment as a punishment often fails offenders, victims of crime and wider community. The practice of locking up human beings in conditions of captivity challenges some of the basic principles of humanity.

The main problem of prison administration has been related to prison overcrowding. Prisons in most countries, including India, face dearth of resources to provide for proper accommodation, health care and constructive activities for prisoners, leading to overcrowding and neglect of schemes for reformation and offender rehabilitation. Prison overcrowding adversely affects the justice system and has repercussions on the safety and health of society.

Even construction of new prisons to accommodate the increasing prison population is an unsustainable solution, as there is a limit to provision of public funds for this purpose. However, imprisonment is costly in terms of not just financial expenditure, it also has social costs. It damages people socially and psychologically making the process of reintegration difficult and challenging.

A parsimonious and proportionate use of imprisonment is in accordance with the Human Rights approach to Criminal Justice System. Hence, an important challenge today is in creating and

exploring new terrains of justice where prison no longer serves as our major anchor. The need for penal reforms has never been greater. The introduction of concerns for human rights concerns in the field of *non custodial sanctions* and crime prevention area is of a more recent date. The use of *non-institutional* methods must ensure that peace, good order and security are maintained in society.

### Maintenance of Law and Order and Prevention of Crime in the Indian system

There are special provisions in the Indian penal laws and the Criminal Procedure Code to maintain law and order. Chapter VIII of the Code of Criminal Procedure, 1973 provides for various sections for the maintenance of peace and good behaviour for specified period. Judicious use of these legal measures can reduce the possibility of use of imprisonment.

Reducing the high levels of imprisonment requires a multifaceted strategy. Criminal Justice System is a complex system with the police, prosecution, judiciary, prison authorities and social welfare agencies all affecting and impinging each other. Some of the actions that have been taken around the world to reduce the use of imprisonment have been related to reforming of the criminal justice leading to *decriminalization* of some acts and reducing the use of detention for those awaiting trials. There is a growing wave of introducing *new alternatives to imprisonment*.

There is an increasing realization that reforms in the prison system, have not got to be confined to just surface level focusing at strengthening the prison system, but to gradually diminish the powers and functioning of prison system. This requires a radical shift in our perception. Many countries in the developed and developing world are now engaged in coming up with different alternatives to imprisonment. There is a realization in India that there is a strong need for introducing changes in the use of imprisonment.

In India, *alternatives to imprisonment* are available at all the three stages: *pre-trial*, *sentencing* and *post sentencing* stage with varying degrees of success in different states.

## **PRE-TRIAL STAGE:**

### **Bail**

A frequently used measure of an alternative to pre-trial detention is bail. In the Indian Penal Code, 1860 classifies different offences along with punishment and this Code is nearly one and a half century old and needs revision at the earliest. The right to bail is an important right given to an accused person. The Supreme Court of India has laid the rule of *bail not jail*. Amount of bail sureties is set by the court which gets forfeited if the defendant does not appear for the trial. The average period of detention of undertrials is around 1 to 2 years.

### **Imposing time limits on Pre-Trial Detention**

Under the constitution, **Right to speedy trial** is a fundamental right of a prisoner implicit in **Article 21 of the Constitution of India**, whereby the **right to life** and personal liberty is guaranteed. Supreme Court of India has repeatedly emphasized this constitutional guarantee of speedy trial and laid down various guidelines in this regard. The right to speedy trial flowing from **Article 21** encompasses all the stages, like investigation, inquiry, trial, appeal, revision and retrial. The Criminal Courts have been given power under sections 309, 311 and 258 of the Code of Criminal Procedure, 1973, to effectuate the right to speedy trial. However, it has been seen that sometimes people end up serving a long time on remand than they would have served even if convicted by the Court for the offence.

At present, Section 167 Cr.P.C. provides outer limit of 90 or 60 days for keeping the arrested person in custody (both police and judicial custody put together) before filing chargesheet against him in the court depending upon the length of imprisonment with which the offence is punishable. However, there is no outer limit laid down for detaining a person in custody after filing of chargesheet against the accused in judicial custody.

To remove this travesty of justice, an amendment has been made in the Criminal Procedure Code **in year 2006** by way of adding **Section 436-A in Criminal Procedure Code, 1973**

Section 436A provides that where an undertrial prisoner other than the one accused of an offence for which **death** has

been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment, provided for the alleged offence, should be released on a personal bond with or without sureties. It also provides that in no case will an undertrial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted. Section 436(1) has also been amended to provide that if a person is accused of a bailable offence and cannot furnish surety, the Court shall release him on a personal bond without sureties.

This will result in faster release of some categories of undertrials from the prisons. However, its exact impact will be seen after some time once its implementation picks up momentum.

### **Plea Bargaining:**

Plea bargaining system has been introduced by way of **Code of Criminal Procedure (Amendment) Act, 2005**, passed by the Parliament and it has come into the effect from July, 2006. Sections 265A to 265L of the Criminal Procedure Code, 1973, to allow plea-bargaining under specified conditions. **Plea bargaining** is applicable only in criminal cases where maximum punishment is up to **seven years**. It is not applicable in criminal cases against women and children. It is expected that this legal amendment will benefit about existing 50,000 undertrials in addition to being used in fresh cases. The Government of India has introduced this system primarily to reduce the pendency of cases in trial courts and to contain overcrowding in prisons.

## **Free Legal Aid**

All persons arrested or alleged to have committed an offence have a right to a fair trial. The Supreme Court of India in various judgments has interpreted this right of a fair trial to include the right to speedy trial and also the right to free legal aid.

**The Legal Services Authorities Act, 1987** provides for free legal aid and competent legal services to the weaker sections ensuring that opportunities for securing justice are not denied to any citizen on account of economic disability. There is a need to have free **legal aid cells** in every prison. A data base of all undertrials with their offence category and period of detention recorded so as to monitor their period of detention. **Lok Adalats (Camp Courts)** should also be held regularly in prisons to dispose of minor cases of undertrials.

## **Compounding of Offences**

Under Section 320 of the Code of Criminal Procedure, 1973, some minor offences punishable under Indian Penal Code, (e.g. small theft, house trespass, cheating, voluntarily causing hurt) can be compounded with the permission of the court before which the prosecution for such an offence is pending. It is suggested that there should be a review of these offences and to enlarge the offences under this category, e.g. the theft committed, the amount may be raised to Rs. 1000/-. A committee of professionals drawn

from cross sections of stakeholders should be appointed to examine this issue and to submit recommendations.

### **Decriminalization of Offences**

At present, there are 511 offences defined in the Indian Penal Code, 1860, out of 403 offences punishable under Indian Penal Code, 217 are bailable and 186 are non-bailable. Out of 445 offences in the Indian Penal Code, 1860, 292 are cognizable and 131 are non-cognizable while 22 offences are both cognizable and non-cognizable according to the circumstances of these offences committed. Similarly, there are many offences constituted under Special and Local Laws. Imprisonment is generally provided in these offences as punishment. Time has come to have a close look at the continuation of punishment of imprisonment in many of them owing to over stretched capacity of enforcement agencies and the need to pay focused attention in more serious offences. Therefore, the Committee suggested for the appointment of eminent professionals for identification of compoundable offences who should also be given the task of examining all existing offences with a view to substituting the existing provisions of imprisonment with some other punishment like, monetary fine, community services etc.

### **Diversion:**

Diversion involves removal from criminal justice process and redirection to community support service. These practices serve to avoid negative effects like stigma in subsequent proceedings in

criminal justice administration. One such diversion scheme for disposing of minor criminal cases at the local level outside the court is available in India in the form of village Panchayat which has been delegated certain powers in matters relating to peace and tranquility in the village. Minor charges may be dropped and police caution may be given.

In some states, the villages Panchayats have been given the powers to impose fines. One state i.e. Madhya Pradesh has framed **Village Courts Act, 2000** under which powers have been given at the village level for disposal of petty offences. Even at the National level, strengthening of the grassroot democracy by giving more judicial powers to village panchayats to deal with petty offences at the local level is being considered.

### **Administrative fines / non penal fines:**

In most of the countries, including India, the traffic law and other special laws allow the law enforcing agencies to impose administrative fines in certain cases for easing the burden on prosecution. Judicious use of these provisions shall certainly impact overall size of prison population in the country.

### **Juvenile Justice**

The Government of India has ratified the Convention on Rights of the Child in 1992 and reenacted the existing law relating to juveniles, keeping in mind the standards of the Convention and the Beijing Rules. The Juvenile Justice (Care and Protection of

Children) Act, 2000 adopts a child-friendly approach in the adjudication relating to juveniles in conflict with law. The object of the Act is to reform and rehabilitate the juvenile offender as useful citizens in the society.

This Act ruled out the imprisonment of the juvenile in conflict with law. Under Section 10 of this Act, if any such juvenile apprehended by the police, he shall be placed under the charge of *Special Juvenile Police Unit* or the designated police officer who shall immediately report the matter to the member of *Juvenile Justice Board* constituted under Section 4 of this Act. He may be kept in *Observation Homes* and *Special Homes* constituted under Section 8 and 9 of this Act during the pendency of any inquiry against him. Section 12 of this Act provides when any juvenile accused of a bailable or non-bailable offence is arrested or detained or appears or is brought before a Board, such juvenile shall, notwithstanding anything contained in the Cr.P.C., 1973 or in any other law for time being in force, be released on bail with or without surety by the Board.

### **Sentencing Stage**

Under the Indian Penal Code, 1860, different punishments are prescribed for different offences. **Section 53 of the Indian Penal Code** provides the Punishments to which offenders are liable which are –

- a) Death;

- b) Imprisonment for life;
- c) Imprisonment–
  - (i) Rigorous involving hard labour; and
  - (ii) Simple imprisonment,
- d) Forfeiture of property; and
- e) Fine.

Imprisonment is more widely used as a punishment mode. The courts have held that sentencing an accused person is sensitive exercise of discretion and not a routine or a mechanical prescription. The social background and the personal factors of the crime – doer are very relevant factors.

#### **1. Fine and other monetary penalties:**

Fine and other monetary penalties are imposed for various minor offences on the offenders at the pre trial stage. It is expected this measure will lead to reduction of the large percentage of pre trial detention of undertrials. Fines are economical in terms of both money and man power and are also humane alternative as it inflicts minimum damage to the offender. However, fines cannot be used for poor offenders who cannot pay. Many times, prisoners are committed to prison in default of payment of fine. It is for such cases that community service will be a better option than simple imprisonment.

#### **2. Admonition / Absolute discharge / Conditional discharge:**

Under Sections 360 and 361 of the Cr.P.C, 1973, an admonition is available for juvenile cases involving juvenile offenders. Admonition is used for first time offenders who commit an offence punishable with imprisonment for less than 2 years. Courts are empowered to release an offender after admonition in respect of certain specified offences. A conditional discharge means that the offender is subject to the condition of not committing any further offences during the period fixed by the Courts. Judicious use of this provision by the courts in appropriate cases shall obviate the need for imprisonment in many more cases that is being done today.

### **3. Compensation:**

Under Sections 357 to 359 of the Cr.P.C, 1973, the Courts may order offenders to *pay such compensation* as the court thinks reasonable for loss or injury caused to any person by the commission of the offences. The courts order compensation along with any other addition sentence. *It is not an independent sentence alternative to short term imprisonment.*

### **4. Probation:**

Probation is one of the outstanding non custodial measures which is designed to work for early reformation and re-socialization of criminals while they remain in the communities as ordinary citizens by subjecting them to certain conditions with which they must comply.

Under the provisions of Probation of offenders Act, 1958, these measures can be applied to offenders who have committed minor crimes for the first time. They can be released on probation with the supervision of probation officers. Offenders may be released on probation without the supervision of probation officers on condition that they promise to conduct themselves well. There is also a restriction on imprisonment of offenders *under 21 years of age*, if they have not committed an offence punishable with life imprisonment. Such an offender must be released either on admonition or probation unless there are reasons to be recorded having regard to the nature of offence and character of offender. In some states of India, probation is under the Department of Prisons while in other States, it is looked after by the Department of Social Welfare. There is a need to strengthen the probation system in India and see that it is more effectively used. Coordination with the judiciary is essential in this regard.

##### **5. New forms of community-based sentence:**

Community-based sentences have yet to emerge as alternatives to imprisonment in the legal framework of our country. The Indian Penal Code (1860) has still not been revised. However, there have been certain new changes and developments in some specific laws for instance, the State of Gujarat, has introduced an amendment in the Prohibition Act, whereby Community Service Scheme has been introduced as an alternative to imprisonment. Gujarat Government had made amendment in the Community Services of Offenders Act, 1949. Similarly, Andhra Pradesh has

come up with a draft of The Andhra Pradesh Community Service of Offenders Act, 2003. The Andhra Pradesh Legislation will apply to persons convicted for minor offences punishable with imprisonment of either description for a term not exceeding *two years* or with fine, or with both.

The kind of community services are – to undertake work in a welfare institutions involved in care of old or disabled persons, environmental improvements e.g. tree plantation, maintenance, construction and renovation of buildings like that of schools, hospital, etc. This legislation is at present pending with the Government of India for its concurrence.

The key objective of the community service is to promote among offenders a sense of responsibility towards society. It is recommended that community service should be added as one of the methods of punishment in the Indian Penal Code, 1860.

## **POST SENTENCING STAGE**

In India, different alternatives are available in variable spells. In order to avoid institutionalization and to assist offender in their early reintegration into society, measures include various forms of parole, furlough, remission, pardon, work camps and open prisons are available as alternatives to imprisonment.

### **Parole**

Parole as a non institutional treatment results in conditional release of the offender from the prison before termination of his sentence. It is a *conditional suspension of sentence* for a short duration in order to enable the prisoners to attend to their personal problems at home like agricultural, harvesting, etc. or to attend family related emergent needs.

## **Pardon**

Since offences are committed against the State, the Indian law does not permit the victim to grant pardon. The power to grant pardon or executive clemency is vested to the Head of the State i.e. the President of India or Governor of the State (Articles 72 and 161 of Constitution). In addition to this, State Governments also commute the sentence for all categories of prisoners in commemoration of certain special events. This has the effect of shortening the period of imprisonment of convicted prisoners, thereby reducing the prison population. The Supreme Court is also looking at the issue of granting pardon by the Heads of the State Governments with a view to rationalizing the grounds of pardon.

## **Remission of Sentence:**

As an incentive for good work and for keeping good behaviour and contributing to prison discipline, remission can be granted to prisoners by the State Government and Head of the prison Department or Head of the Jail. There are three kinds of remission i.e. ordinary remission, special remission and state Government remission. Remission can be earned by inmates through getting formal education in the prison in some states. It is suggested that acquiring formal education should also be a criteria for earning remission. The system of earned privileges should be uniformly set out.

## Temporary Release Mechanisms

The temporarily released prisoners serve their sentence outside the prison for a given period of time and then return back to serve the remaining sentence. These include work release and furlough or leave. In India, furlough is granted as a leave to a prisoner to visit his family for a short period which counts towards his sentence, after he undergoes certain period of sentence. The difference between *parole* and *furlough* is that *parole* is a suspension of sentence while *furlough* is treated as part of sentence. Different states give furlough for good conduct to prisoners not involved in heinous offences.

## Open Prisons

All prisoners are not dangerous criminals and not even some of those who have committed serious offences. Open prisons in one form or another have been in existence in India for a long time. In India, there are **26** open prisons having **capacity of a 4353**. Open prisons have developed better in some states of India than in others for a variety of reasons. Prisoners serving life sentence on the basis of their good conduct are shifted to the open prisons.

In some states of India, different initiatives for open prisons have been taken. The Open Prisons restore the dignity of the individual and give a sense of self-confidence and self reliance by

instilling a sense of responsibility in the individual. Several States in India have such open prisons.

The positive effects of open prisons are -

- It lessens the damage to offenders and society
- It reduces the overcrowding in prisons
- It costs far less for the State to have people living in open prison than to pay for their upkeep in the jails and finally
- It inculcates a sense of social responsibility towards family and society

However, the concept of open prisons needs to be given more publicity in our country to bring the focus of society to reformed offenders. Apart from agricultural based open prisons it is suggested that there should be open prisons with an industrial / manufacturing base as well. Open Prisons for women should also be encouraged.

### **Public Awareness and Synergetic Interface**

A synergetic interface between community, judiciary, prisons, police and NGOs to bring about penal reforms and make any change in the penal system is needed. Building-up public opinion to usher reforms in the penal system is essential.

To a large extent the success of alternatives to imprisonment depends on the mutual cooperation amongst the Criminal Justice

System Agencies and on public opinion and active participation of the community.

From the foregoing it may be seen that at present Alternatives to imprisonment are largely absent in our country. Whatever provisions are there in some of the statutes are not being used fully owing to lack of awareness among different wings of the criminal justice system. Therefore, there is need not only to introduce various alternatives to imprisonment in the statute but also to sensitize judiciary and prosecution about the need to their application in all deserving cases.

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**(F). Modernization of Prisons**

It has been brought out in the reports of various Committees that the conditions in an average Indian Prison are awful. The conditions in an average Indian prison present a very depressing picture. As overcrowded, unhygienic and hopeless, these prisons far are from being any kind of correctional centers. They often breed hardened criminals who truly become a menace to society. A mindless adherence to centuries old jail manuals leave very little scope for any innovative approach in the matter of dealing with people who end up in prisons for various reasons and under various circumstances. The enlightened sections of society have often demanded jail reforms, having been moved by the horrifying conditions of prison life. Attempts have also been made to improve conditions by amending rules, issuing new regulations or appointing Committees. But no significant change has taken place in the general conditions within jails or in the attitude of the jail authorities.

Attention to the need for modernization of prisons has not been commensurate with the gravity of the problem from the Central Government because the subject of '**Prisons**' has been included in the **State List** firstly under the Government of India Act, 1935 and then under the Constitution of India **Entry-4** (*Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other States for the use of prisons and other institutions.*), has been included in the **State List (List-II)** of the **Seventh Schedule** of the Constitution. Therefore,

it is, primarily, the responsibility of the State Government to take necessary action for modernizing the soft and hard infrastructure of prisons with a view to bring the prison management in consonance with the philosophy of reformation and rehabilitation in place of deterrence and retribution. However, Central Government has taken some concrete steps during the past two decades on the basis of recommendations made by the various committees appointed by the Government on Prison Reforms.

The **Seventh Finance Commission** laid down the requirements of modernization of prisons and correctional services for the first time. Thereafter, the Government of India has constituted a **All India Group on Prison Administration: Security and Discipline** in July, 1986 under the chairmanship of Sh. R. K. Kapoor. The committee emphasized the need to upgrade the infrastructure of prisons all over the country. Consequently, the Ministry of Home Affairs has started a scheme for the Modernization of Prisons from 1987 onwards to provide central assistance to the States for modernization of their prisons. In addition to it, adequate provisions have also been in the subsequent Finance Commissions for the upgradation of infrastructure of prisons.

The impact of aforesaid step was at best marginal on the overall pitiable conditions of prisons. MHA had entrusted the work relating to correctional administration to the BPR&D by identifying it as a nodal agency in this field in 1995.

In pursuance to the charter of duties, Correctional Administration Division of the BPR&D studied level of deficiencies in the major area of infrastructure of prisons during 2000. It was decided that in recognition of the need for improving the conditions of prisons, prison staff and the prisoners, and in order to bring the prisons up to certain minimum standards, an action plan may be formulated which should have the following components:

- (a) Construction of such number of additional jails as are necessary not only to reduce overcrowding but to permit lodging of inmates as per their classification on the basis of sex, age, gravity of crime, undertrial/convict status etc.;
- (b) Repair and renovation of existing jails to bring them up to the minimum standards;
- (c) Improvement in sanitation and water supply; and
- (d) Adequate living accommodation for prison staff.
- (e) Use of modern technology for a more efficient management of prisons.
- (f) Creating infrastructure for such correctional services in the prisons as shall facilitate rehabilitation of prisoners after release.

The Hon'ble Supreme Court of India has also shown its deep concern in regard to the plight of children who are lodged in jails with their prisoner mothers and has articulated the need for framing some guidelines in this respect.

There is an urgent need to have a plan for the construction of a separate women prison having the authorized accommodation of 500 prisoners in each state.

Due care is required to be taken to provide infrastructural facilities for women prisoners and their children (accompanying them) in terms of their special needs like hygienic living conditions, provision of separate kitchen, and construction of crèches and other recreational and educational facilities for them.

Presently kitchens in prisons are in a shabby condition. When we talk of modernization it is imperative that more emphasis is given to improve the health and hygiene of prisoners and the upgradation of kitchen is an important aspect of improving hygienic conditions in prisons.

It is also time that the states plan the construction of multi-storied living accommodation (with enough scope for further expansion with minimum costs as and when required). While planning different type of prisons, due regard should also be given to projections of prison population in the coming five to ten years (to be calculated on the basis of the trend of prison population of States in last five/ten years).

The all India trend shows that from 1999 to 2004 the prison population has grown as under:-

Years	Authorized Capacity	Total prison population	Under trial and their % to total	Convicts and their % to total	Detenus, Lunatics, etc.	% age of overcro
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					<b>and their % to total</b>	<b>wding</b>
<b>1999</b>	2,19,844	2,81,262 (100%)	2,04,456 (72.7%)	70,318 (25.0%)	6,488 (2.3%)	27.94
<b>2000</b>	2,11,720	2,72,079 (100%)	1,92,440 (70.72%)	64,960 (23.87%)	14,679 (5.41%)	22.18
<b>2001</b>	2,29,713	3,13,635 (100%)	2,20,817 (70.41%)	75,663 (24.12%)	17,155 (5.47%)	36.5
<b>2002</b>	2,29,874	3,22,357 (100%)	2,23,038 (69.19%)	82,121 (25.49%)	17,198 (5.32%)	40.2
<b>2003</b>	2,33,543	3,26,519 (100%)	2,17,658 (66.7%)	91,766 (28.10%)	17,095 (5.2 %)	39.8
<b>2004</b>	2,35,012	3,31,391 (100%)	2,17,130 (65.5%)	98,527 (29.7%)	15,734 (4.8%)	41.0
<b>% age change in 2004 over 1999</b>	<b>6.90%</b>	<b>17.82%</b>	<b>6.19%</b>	<b>40.12%</b>	<b>142.50%</b>	
<b>%age changes per year</b>	<b>1.15%</b>	<b>2.97%</b>	<b>1.03%</b>	<b>6.69%</b>	<b>23.75%</b>	

The above trend shows that the overall prison population has shown 17.82% cumulative increase during these 5 years. It is 6.19% in the undertrial population while it is 40.12% in the case of population of convicts. So our strategy should plan for an annual capacity of 21 district prisons having the capacity of 500 prisoners in each, commensurate with the annual average increase of 10,514 prison population. It should be a parallel effort to the introduction of alternative devices to imprisonment because the current rate of imprisonment in India is one of the lowest and it is likely to go up with improvement in the efficiency of criminal justice system for which all out efforts are being made by the stakeholders.

The Advisory Committee on Prison Reforms of the BPR&D unanimously felt that there is an immediate need to provide financial assistance from the Government of India for the

construction of new prisons and repair and renovation of existing prisons to provide adequate accommodation for the prisoners and to meet the challenge posed by the perennial problem of overcrowding in prisons. In addition to it, it was also decided by the committee to provide sanitation and water supply on 100% level of satisfaction to all prisoners as their basic minimum needs necessary for maintaining their human dignity.

In pursuance to the recommendations made by the Advisory Committee on Prison Reforms, BPR&D made sincere efforts to get a Centrally Sponsored Modernization Scheme for Prison Administration instituted from the Government of India. While doing so an attempt was made to identify the deficiencies in terms of construction of prisons; repair and renovation of existing prisons; sanitation and water supply; and also for the construction of staff quarters by collecting data from the State Governments in respect of the existing facilities and their requirements as indicated in the Statements given below:-

**REQUIREMENT OF NEW PRISONS AND ITS ADDITIONAL CAPACITY IDENTIFIED BY THE BPR&D FOR MODERNIZATION OF PRISON ADMINISTRATION.**

<b>TYPES OF PRISONS</b>	<b>CENTRAL PRISONS</b>	<b>DISTRICT PRISONS</b>	<b>SUB-PRISONS</b>	<b>SPECIAL PRISONS</b>	<b>WOMEN PRISONS</b>	<b>BORSTAL INSTITUTIONS ( LUNATIC/ JUVENILE AMP)PRISONS</b>	<b>TOTAL</b>
NUMBER OF PRISONS	23	52	164	6	7	4	256
ADDITIONAL CAPACITY FOR EACH PRISONS	1000	500	300	1000	500	300	3600
ADDITIONAL CAPACITY FOR ALL PRISONS	23000	26000	49200	6000	3500	1200	108900
COST Rs. IN CRORES FOR EACH PRISON	9.24	4.78	2.99	9.24	4.78	2.99	34.02

COST Rs. IN CRORES FOR ALL PRISONS	212.52	248.56	490.36	55.44	33.46	11.96	1052.30
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As would be seen from the above statement that there is a need to construct 256 different kind of prisons to have additional capacity of 1,08,900 prisoners for which an amount of Rs. 1052.30 crores was proposed.

**EQUIREMENT OF REPAIR AND RENOVATION OF EXSISTING PRISONS IDENTIFIED BY THE BPR&D FOR MODERNIZATION OF PRISON ADMINISTRATION.**

<b>TYPES OF PRISONS</b>	<b>CENTRAL PRISONS</b>	<b>DISTRICT PRISONS</b>	<b>SUB-PRISONS</b>	<b>SPECIAL PRISONS</b>	<b>WOMEN PRISONS</b>	<b>BORSTAL INSTITUTIONS (LUNATIC/JUVENILE CAMP) PRISONS</b>	<b>TOTAL</b>
NUMBER OF PRISONS	86	257	844	28	18	20	1253
COST Rs. IN CRORES FOR EACH PRISON	0.462	0.239	0.149	0.462	0.239	0.149	1.7
COST Rs. IN CRORES FOR ALL PRISONS	39.732	61.423	125.756	12.936	4.302	2.980	247.13

It was found that we have to repair and renovate 1253 prisons of different kind to meet the requirement for which an amount of Rs. 247.3 crores was proposed

**REQUIREMENT OF HOUSING FOR PRISONERS STAFF IDENTIFIED BY THE BPR&D FOR MODERNIZATION OF PRISON ADMINISTRATION.**

<b>TYPES OF HOUSING</b>	<b>NUMBER OF HOUSING AVAILABLE</b>	<b>NUMBER OF HOUSING REQUIRED</b>	<b>AREA PER UNIT IN SQUARE FT.</b>	<b>COST FOR PER SQUARE FT.(in Rs.)</b>	<b>TOTAL COST FOR 100 % SATISFICATION OF HOUSING (in Rs.)</b>	<b>TOTAL COST FOR 100 % SATISFICATION OF HOUSING ( Rs. in Crores)</b>
LOWER SUBORDINATE	14044	16311	430	500	3506865000	350.6865
UPPER SUBORDINATE	2771	2386	860	500	1025980000	102.60
SENIOR UPPER SUBORDINATE	306	195	1290	500	125775000	12.5775
<b>TOTAL</b>	<b>17121</b>	<b>18892</b>			<b>4658620000</b>	<b>465.864</b>

It was felt that 18892 staff quarters are required to be constructed for the prison officers of different ranks for which Rs. 465.864 crores was proposed to meet the requirement.

**REQUIREMENT OF TOILETS, HAND PUMPS AND OVER HEAD TANKS IDENTIFIED BY THE BPR&D FOR MODERNIZATION OF PRISON ADMINISTRATION.**

<b>SANITATION &amp; WATER SUPPLY</b>	<b>TOILETS</b>	<b>HAND PUMPS</b>	<b>OVER HEAD TANKS OF 5000 LITERS</b>	<b>TOTAL COST REQUIRED (Rs. in LAKHS)</b>	<b>TOTAL COST REQUIRED (CRORES) Rs.in</b>
<b>NUMBER OF UNITS REQUIREMENT</b>	7481	1716	3322		48.3665
<b>COST Rs. IN LAKHS PER ITEM</b>	0.50	0.30	0.175		
<b>COST Rs. IN LAKHS FOR ALL ITEMS</b>	3740.50	514.80	581.35	4836.65	

It was realized that there is a deficiency of 7481 toilets; 1716 hand pumps; and 3322 overhead tanks in different kind of prisons to provide sanitation and water supply to the prisoners on 100% level of satisfaction for which an amount of Rs. 48.366 crores was proposed.

Accordingly, the financial allocation were made in respect of all the above referred four components after a very minor fluctuation for the consideration of the Government of India which are given as under:-

## ALLOCATION OF FUNDS

	ITEMS	(Rs. in Crores)	(IN %)
(i)	CONSTRUCTION OF NEW JAILS	RS. 1034.6	57.6
(ii)	EXPANSION & RENOVATION OF JAILS	RS. 248.6	13.8
(iii)	STAFF QUARTERS	RS. 465.1	25.9
(iv)	SANITATION & WATER SUPPLY	RS. 48.2	2.7
	TOTAL	Rs. 1796.55 Crores	

The Government of India has approved this Scheme w.e.f. 2002-2003 for five years for providing Central Assistance to the States' Governments on 75:25 basis. The States Governments are required to contribute their 25% share to utilize the 75% of Central Assistance in respect of above referred four items.

The physical progress of the scheme under different components as on 31.3.2007 has been given as under:-

(i)	<i>Number of prisons to be constructed during the scheme</i>	-	<b>168</b>
(ii)	<i>Number of prisons constructed as on 31.3.2007</i>	-	<b>56</b>
(iii)	<i>Number of prisons expected to be constructed in 2007-08</i>	-	<b>60</b>
(iv)	<i>Number of prisons to be constructed during remaining period of the scheme</i>	-	<b>52</b>
(v)	<i>Number of additional barracks to be constructed during the scheme</i>	-	<b>1730</b>
(vi)	<i>Number of additional barracks constructed as on 31.3.2007</i>	-	<b>1092</b>
(vii)	<i>Number of additional barracks to be constructed in 2007-08</i>	-	<b>443</b>
(viii)	<i>Number of additional barracks to be constructed during remaining period of the scheme</i>	-	<b>195</b>
(ix)	<i>Number of staff quarters to be constructed during the scheme</i>		

		-	8965
(x)	<i>Number of staff quarters constructed as on 31.3.2007</i>	-	5156
(xi)	<i>Number of staff quarters expected to be constructed in 2007-08</i>	-	2976
(xii)	<i>Number of staff quarters to be constructed during remaining period of the scheme</i>	-	833

*Source\*- CS Division, MHA, Govt. of India, New Delhi.*

It is seen that it has not been possible to implement this scheme of Modernization of Prisons within the stipulated period of five years started from the financial year 2002-03 to 2006-07 due to various unanticipated difficulties. Therefore, Government of India has extended this scheme for the utilization of unspent allocation by 31<sup>st</sup> March, 2009. Implementation of this scheme is being monitored regularly by the Central Empowered Committee appointed by the Ministry of Home Affairs, Government of India, New Delhi.

### **Guidelines for the Implementation of Modernization Scheme of Prison Administration**

Following guidelines have been laid down for the preparation of action plan by the individual State and implementation thereof:-

- a. Construction of New Prisons
  - (i) All the states will have at least, one prison exclusively for women. The states who do not have prison exclusively for women, 'have to plan for the construction of at least one women prison with capacity depending upon the average

number of women prisoners in the respective state. (To be calculated on the basis of trends of last 5-10 years).

- (ii) The trend of present prison population and the daily average population will be given due weightage to work out deficiencies and the construction of different type of prisons.
- (iii) Due care is also required to be taken to provide infrastructural facilities like, creches for the accompanied children of women prisoners, hygienic living conditions and provision of separate kitchen for women prisoners, while preparing the action-plans by the State Governments.
- (iv) The State Governments are required to clearly indicate the details of locations and the projection of building activities to be done at each location in their action plan. It will be necessary to have sample checks of such activities in some of the locations.
- (v) At the same time, the State Governments should draw up specific Master Plans in each of these areas so that over a period of next four years, deficiencies in each of these activities could be completely removed.

b. Repair & Renovation of Existing Prisons:-

- (i) The expenditure should not be more than 5% of the total construction cost of a particular type of prison utilized for the repair and renovation of existing prisons.
- (ii) The State Governments are required to clearly indicate the details of location and the projection of building activities to be done at each location and their action plan. It will be

necessary to have sample checks of such activities in some of the locations.

**c. Staff Quarters for all Categories**

Sanctioned strength of the prison staff of all ranks may be given due weightage while identifying deficiencies in the housing. Major emphasis has been laid on the construction of quarters for the lower subordinates and upper subordinates within the larger campus of prisons or as near as possible to the prison. It will act as staff multiplier in case of emergency.

**d. Sanitation and Water Supply in Prisons**

In the existing prisons while working out the deficiency following parameters may be taken into account to meet the requirements of prisons in terms of sanitation and water supply in existing prisons:-

- (i) One toilet per 10 prisoners;
- (ii) Hand Pump/Tube Well/ Well etc. to ensure between 100 to 150 litre of water per prisoner per day; and
- (iii) Adequate arrangements for storage of water in each ward.

Water harvesting may be included as an essential component of all prison buildings which will go a long way to meet water needs of the prison both for drinking and use in various activities in the prisons.

## **GENERAL GUIDELINES**

- (i) The State Governments will constitute a Empowered Committee headed by the Chief Secretary with Finance Secretary, Secretary In-charge of prisons and DG/IG Prisons as members.
- (ii) The State Governments Empowered Committee will consider and approve Five Years Perspective Plan for the period 2002-2003 to 2006-2007 and annual action plans for the financial year 2002-2003 for submission to the Central Government.
- (iii) The Empowered Committee of the State Governments will ensure the necessary budget provision in the State's annual Budget to meet the 25% State Government's contribution under the scheme. The Committee will also ensure timely allocation of these funds for implementation of the scheme.

## **PRESENTATION OF THE ANNUAL ACTION-PLAN**

The requirements indicated by the State Governments in their annual action plan should be based on the trend of data in respect of prisons, prisoners and prison staff during the last five to ten years and be worked out according to their projections of requirements in coming five years to ten years in the proposal submitted by the State Government along with the action plan to justify their requirements in objective terms.

## **MONITORING OF THE SCHEME**

The Central Government will also closely monitor the implementation of this scheme periodically by sending a team of officers of the Ministry of Home Affairs and the BPR&D to the States for on the spot evaluation of the progress made under the scheme of Modernization of Prison Administration.

## **REVIEW OF THE SCHEME**

The Committee has reviewed the implementation of the centrally sponsored Modernization Scheme of Prison Administration. It has been noted that this scheme has provided for the first time a significant line of funding for all around infrastructure of prisons in all States. This has provided a major boost to the prison subject in the country even though the primary responsibility lies with the State Government owing to the inclusion of Prison subject in the State List of the Seventh Schedule of the Constitution. The scheme has met a long felt need which has been echoed by various committees, judicial and social activists besides prison departments themselves.

Recommendations for further Action in respect of Modernization Scheme:-

After a careful review of the scheme and its component part, the Committee makes following recommendations:-

### **(a) Scope of the Scheme**

The existing scope of the scheme limits action in respect of the construction of new prisons; repair and renovation of existing prisons; staff quarters; and sanitation & water supply. It does not include the funding of creation of infrastructure for setting up of correctional services in prisons in consistence with the goal of corrections. It may be seen that as per the Prison Statistics, 2004, Rs. 0.48/- is being

spent per prisoner per day on their education and welfare. It is too low to make any significant impact on correctional aspect of incarceration.

The scope of the scheme should therefore be expanded to include following items:-

- (i) Infrastructure for correctional services;
- (ii) Court room in the prison premises;
- (iii) Installation of video-conferencing facilities between the prison and court complex;
- (iv) Setting up of new medical unit or renovation of the existing in prisons to promote adequate coverage to the prisoners and the prison staff;
- (v) Acquisition of ambulances and prison vans;
- (vi) Application of modern technology in the management of prisons to ensure the desired level of security and safety;
- (vii) In-house garbage disposal on modern scientific lines etc.
- (viii) States should be asked to prepare action plan for creation of aforesaid facilities in prisons for the approval of the Central Empowered Committee constituted by the MHA.

**(b) Extension of the Scheme**

The Prison Modernization Scheme has started making significant impact on the prison infrastructure in the country. The momentum built up by the scheme shall reap rich dividend in pushing forward prison reforms in the country. Therefore, the scheme needs to be extended by another five years with adequate allocation to undertake unfinished activities already covered under this scheme and those suggested above for expanding the scope of this scheme.

### **(c) Additional Manpower for Prisons**

The Modernization of Prisons Scheme is resulting into the creation of number of new prisons and barracks which need additional manpower to operationalize them to the fullest extent. Similarly, starting correctional activities for reformation and rehabilitation of prison inmates also requires specialized staff. Therefore, following category of staff in adequate number should be sanctioned by the State Government to achieve the goal of the modernization of prison and prison reforms:-

**Executive:-**

Superintendent,  
Additional Superintendent;  
Deputy Superintendents;  
Assistant Superintendents.

**Guarding staff:-**

Chief Head Warders;  
Head Warders; Warders/ Matrons.

**Medical personnel:-**

Medical Officers; Psychiatrist; Nursing staff; Pharmacist.

**Welfare Units:-** Assistant Director, Correctional Services; Welfare Officer; Law Officer; Counselor; Probation Officer; Psychologist

**Educational Personnel:-** Teachers; Physical Training Instructors:

**Technical Personnel:-** Instructors; Foremen; Electricians; Plumbers ; Masons; Drivers; Motor Mechanics

**Agricultural:-** Supervisors; Agricultural Assistants

#### **(d)Funding**

Government of India should provide adequate funds for the extended period of this scheme to cover activities described above. The State Government should continue to contribute 25% share. However, the State can also generate their contribution by reallocating of existing prisons from the congested city area and putting the vacated premises to commercial use which will fetch them handsome revenue to sustain their modernization plan.

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