

# **OVERCROWDING IN PRISONS**

## **Introduction**

Overcrowding in prison is one of the most challenging problems faced by Criminal Justice System in India.

Overcrowding has adverse effects on basic needs of prisoners, such as healthcare, food, and accommodation. The basic rights of prisoners, including the right to have adequate standards of living and the right to the highest attainable standards of physical and mental health are affected by overcrowding.

**Reformation and rehabilitation programmes** can not be properly implemented due to overcrowding. In an overcrowded prison, segregation of hardened criminals and their separation from mild offenders becomes impossible.

### **Causes of overcrowding.**

1. Inadequate infrastructure,
2. Lengthy period of pre-trial detention,
3. Strict sentencing practices without the provision of fine and community service.

As per the statistics published by the National Crime Record Bureau, as on 31.12.2022, there were 573220 prisoners in various prisons of the country against its total authorized capacity of 436266 prisoners. Out of this, the number of undertrial prisoners was 434302 which constitute 75.8% of the total prison population. The prisons in India are overcrowded to the extent of 131.4%.

## **Administrative and legislative measures.**

### **(a) Fast Track Courts (FTCs)**

Establishment of **Fast Track Courts (FTCs)** for expeditious disposal of long pending cases in the Sessions Courts. The FTCs were established to expeditiously dispose of long pending cases in the Sessions Courts and long pending cases of under trial prisoners

### **(b) Plea-bargaining**

To reduce the delay in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trial prisoners, the concept of **Plea-bargaining** is introduced in BNSS.

BNSS 290.

(1) A person accused of an offence may file an application for plea bargaining within a period of thirty days from the date of framing of charge 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 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 and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case 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, not exceeding sixty days, to the Public Prosecutor or the complainant of the case 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 Sanhita from the stage such application has been filed under sub-section (1).

### **(C) Bail provision for undertrial**

The maximum period for which undertrial prisoner can be detained has been incorporated in the following sections of Bharatiya Nagarik Suraksha Sanhita, 2023

**BNSS 479. (1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being**

an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that 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 bail: Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, **if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:** Provided further 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 bond instead of his bond: Provided also 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 proceeding caused by the accused shall be excluded.

BNSS-479 (3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.

#### **(d) Investigation delay and provision of bail**

The undertrial prisoner is entitled to seek release on bail, if investigation is not completed within the stipulated period.

BNSS 187. (3) - The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

(i) **ninety days**, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more; (ii) **sixty days**, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

#### **(e) Community Service**

**Bharatiya Nyay Sanhita - 2023** introduces the reformatory approach in the punishment scheme which is aimed towards achieving 'nyaya' in the society.

For the first time **Community Service** has been introduced as one of the punishments in section 4 of the BNS, 2023. It has been specifically provided for 6 petty offences, like

BNS -202

a) Public servant unlawfully engaging in trade

BNS-209

Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023

BNS-226- Attempt to commit suicide to compel or restrain exercise of lawful power.

BNS-303 –Theft

BNS-355 -Misconduct in public by a drunken person.

BNS-356 - Defamation

**(f) Enhancement of infrastructure**

Creation of additional capacity of prisons through the Scheme of Modernisation of Prisons.

Provision of Open Jails can contribute to the decongestion of inmates.

**(g) Probation of Offenders Act.**

Release of undertrial under section 4(3) of Probation of Offenders Act. Probation officers contact families of the undertrial prisoners in cases where bail has been granted but not availed due to various reasons by arranging bailers to expedite release of undertrials.

Use of Probation of Offenders Act, 1958 by the judiciary, as a means to decongest prisons by releasing young, first time and less serious offenders on probation.

### **(h) Holding of Lok Adalats**

(i) Regular monthly coordination meetings between the District Judge, Superintendent of Police, Prosecution and Superintendent of Prisons wherein pending cases of undertrials are discussed for expediting disposal.

(j) Formation of **Undertrial Review Committee** in every District with the District Session Judge as the Chairman and Superintendent of Police and Superintendent of Prison as members to review the cases of under trial every three months, of those lodged for more than 3 months.

(k) Regular visits of High Court judges/ Secretary, District Legal Services Authority to district prisons

### **(l) Legal Aid**

Providing legal aid through the Legal Aid Cell and use of video conferencing facilities by which the advocates of different District and High Courts can have interaction with the prisoners in jails to facilitate provision of legal aid.

(m) Engaging competent legal counsels for indigent undertrial prisoners

With regard to the provision of legal aid for release on bail, reduction of bail amount etc, the State Legal Service Authority (SLSAs) should direct the (DSLAs) in the state to arrange for lawyers for the unrepresented undertrial prisoners through their legal aid panels.

(n) NGOs should be encouraged to do legal guidance work and link up with DLSAs to arrange legal aid for unrepresented undertrial prisoners. The SLSAs may organize para- legal training of such NGOs in the State in collaboration with academic institutions

(o) Taking up cases of seriously sick prisoners with the trial courts for their release on bail, as per law.

### **Use of Technology in trial**

BNSS Section 2 (1) (a)- "audio-video electronic means" shall include use of any communication device for the purposes of **video conferencing**, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide.

### **Summons and Warrants**

BNSS 227. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be— (a) a summons-case, he shall issue summons to the accused for his attendance; or (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction: **Provided that summons or warrants may also be issued through electronic means.**

### **Electronic evidence**

#### **Evidence of Witness and Public Servants**

BNSS 254. (1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution:



Provided that evidence of a witness under this sub-section may be recorded by audio-video electronic means. (2) The deposition of evidence of any public servant may be taken through audio-video electronic means.

BNSS 230.

**Supply of documents in electronic form shall be considered as duly furnished.**

BNSS 232.

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session: Provided that the proceedings under this section shall be completed within a period of **ninety days** from the date of taking cognizance, and such period may be extended by the Magistrate for a period not exceeding **one hundred and eighty days** for the reasons to be recorded in writing: Provided further that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case.

BNSS 308. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his advocate including through **audio-video electronic means** at the designated place to be notified by the State Government.