

REFORMING NEPAL'S PRISON SYSTEM: PROMOTING EFFECTIVE REHABILITATION FOR OFFENDERS

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I. INTRODUCTION

The philosophy of prison systems has changed over the course of time from a punitive to a therapeutic approach. In the beginning prisons were conceived and developed as a place to keep the person isolated from the society. Restricting offenders of their right to liberty was taken as a punishment in itself. But, in recent times, an increasing body of research and evidence suggests the effectiveness of offender treatment programmes. These treatment programmes have demonstrated the potential to reduce recidivism rates through effective interventions, thereby steering away from the ineffectiveness associated with punishment-oriented approaches in preventing reoffending.¹

Rehabilitation has been defined as “the process of striving to enhance a criminal’s character and perspective, enabling them to reintegrate into society without engaging in further criminal activities.”² The foundation of the rehabilitation concept is rooted in the theory that various factors influence an individual’s criminal behaviour. Both external and internal elements contribute to criminal conduct, encompassing aspects such as a deficit in parental affection, a distressing childhood, feelings of insecurity, adoption of antisocial values, inadequate supervision, impulsive temper and other related factors.³ Within contemporary penology, the primary objective of incarcerating offenders is to foster their transformation into upright and law-abiding citizens. This transformation is achieved by instilling in them a strong aversion to crime and criminal behaviour.⁴

II. LEGAL FRAMEWORK OF THE PRISON SYSTEM AND REHABILITATION OF OFFENDERS IN NEPAL

A. The Prison System in Nepal

There are 74 prisons in 72 districts in Nepal. Also, there are eight child reform homes for juveniles across the country. The housing capacity of Nepalese prisons is about 16,000 detainees but currently there are about 27,000 inmates who are facing trials or facing sentences from the court.⁵ The management, supervision and oversight of prison facilities is governed by the Department of Prison Management at the federal level, and the Chief District Officer is responsible for management, supervision and oversight of prisons in each district of Nepal.

1. Rehabilitation of Offenders: Constitutional and Legal Provisions

The Constitution of Nepal does not explicitly mention rehabilitation of offenders. It has guaranteed the

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¹ Francis T. Cullen, “It’s Time to Reaffirm Rehabilitation,” *Criminology and Public Policy*, Vol. 5, No.4 (November 2006), p. 668.

² Sonja Meijer, “Rehabilitation as a Positive Obligation,” *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 25 (2017), p. 146.

³ Ibid.

⁴ Paranjape, N. V. (1996) *Criminology and Penology*, Allahabad: Central Law Publications.

⁵ A Concept Paper on Improvement of Prisons in Nepal, Department of Prison Management, Home Ministry, 2021.

right to live with dignity,⁶ equality,⁷ rights relating to justice⁸ and right against torture,⁹ right against discrimination,¹⁰ right against exploitation,¹¹ right relating to education,¹² right to employment,¹³ right to health,¹⁴ under fundamental rights. These rights are not only guaranteed to the citizens of Nepal but to everyone residing inside the territory of Nepal.

The Prison Act, 2022, is the main law which governs the establishment, operation and management of prisons in Nepal. According to the Act, women, men, transgender inmates, inmates with communicable disease, insane and serious offenders must be kept in separate prisons as much as possible, and if that is not possible, they should be kept in different parts of the prison.¹⁵ For medical purposes a hospital must be established where inmates are more than 500 in number and a health post must be established,¹⁶ and the prison administration must conduct routine health checkups of inmates once in two months.¹⁷ The act has also guaranteed reproductive rights¹⁸ to inmates along with the right related to health.

One of the major components of rehabilitation of offenders is education. The act states that prison administration must make arrangements for reading and education inside prison. Inmates who can read and write must be guaranteed basic education, secondary education along with vocational and technical education as well as trainings to ensure successful reintegration of inmates into the society.¹⁹ Besides vocational trainings, skilled inmates can be employed by the prison administration if any small-scale industry is in operation within the prison.²⁰

There is also a provision in the Sentencing Act²¹ of Nepal which provides that when an inmate has reformed his conduct while in prison, the prison management may make remission in his/her sentence. But the section has provided some negative lists of offences which cannot be granted remissions.²² The Sentencing Act has also made some provisions of alternatives to prison systems with the aim of reform and rehabilitation of inmates, such as, community service,²³ reform home,²⁴ sending the inmates of narcotic drugs to rehabilitation centres,²⁵ imprisonment during weekends and nights,²⁶ open prison,²⁷ sending inmates on parole²⁸ and socialization of offenders.²⁹

2. Supreme Court Decisions Regarding Rehabilitation of Offenders

i. *Jung Bahadur Singh et.al. v. Office of the Prime Minister and Council of Ministers* (2011)

A person commits an offence because of some circumstances and can reintegrate into the society if given proper opportunity to improve their behaviours. Inmates must be given opportunity to study, vocational trainings and other correctional opportunities. Inmates also must be given the right to

⁶ Constitution of Nepal, Art. 16.

⁷ Ibid, Art. 18.

⁸ Ibid, Art. 20.

⁹ Ibid, Art. 22.

¹⁰ Ibid, Art. 24.

¹¹ Ibid, Art. 29.

¹² Ibid, Art. 31.

¹³ Ibid, Art. 33.

¹⁴ Ibid, Art. 35.

¹⁵ Prison Act, 2022. Sec 15.

¹⁶ Ibid, Sec. 16.

¹⁷ Ibid, Sec. 22.

¹⁸ Ibid, Sec. 23.

¹⁹ Ibid, Sec. 24, 25.

²⁰ Ibid, Sec. 26.

²¹ The Criminal Offences (Sentencing and Execution) Act, 2017, Section 37.

²² Ibid.

²³ Ibid, Sec. 22.

²⁴ Ibid, Sec. 25.

²⁵ Ibid, Sec. 26.

²⁶ Ibid, Sec. 27.

²⁷ Ibid, Sec. 28.

²⁸ Ibid, Sec. 29.

²⁹ Ibid, Sec. 30.

reproduction.

ii. *Gopal Siwakoti v. Office of the Prime Minister and Council of Ministers* (2021)

Inmates should be guaranteed appropriate and suitable health care facilities. Access to health must be guaranteed without any discrimination along with maintaining privacy of the patients. It is the duty of the state to provide special medical care for long term patients, women, senior citizens and pregnant women. Sentencing should follow the principle of rehabilitation and transform offenders into law abiding citizens. In the criminal justice system, offenders should also be given an opportunity to transform and promote alternatives to the prison system.

III. THE ATTORNEY GENERAL'S OFFICE AS A DEFENDER OF PRISONERS' RIGHTS IN NEPAL

The Office of the Attorney General as a constitutional body of Nepal assumes a crucial role within the legal landscape of the country. Its principal function is to advocate on behalf of the government in legal affairs and offer legal counsel to various government entities. Although the Attorney General's responsibilities do not directly pertain to the administration of prison facilities and the rehabilitation of offenders, the office exerts a significant, albeit indirect, role on shaping the legal framework and policies associated with criminal justice and corrections.

A. Constitution of Nepal

Article 158, Sub-article (6) (iii): -

To give necessary directions to the concerned authority if any complaint or information is received whether any prisoner in custody is being treated inhumanely and not allowed to consult lawyer or meet with his/her relatives.

B. The Criminal Offences (Sentencing and Execution) Act, 2017 (2074)

The Attorney General is mandated as the *ex officio* Chair of the Federal Probation and Parole Board,³⁰ which formulates the policy and standards relating to parole and probation, and the Sentence Recommendation Committee³¹ who's major function is to develop standards for the determination of appropriate range of sentences.

C. Prison Act, 2022

1. Section 42: The Attorney General shall personally monitor or cause any officer subordinate to him/her to monitor the prison at least once a year.
2. Section 45: While monitoring the prison if it is found that a person has been kept in prison for more time than his/her sentence, the monitoring officer can direct the prison administrator to release the person immediately. Also, the monitoring officer can write to the concerned authority to take action against the officer or security in charge of prison administration.
3. Section 47: The Attorney General shall present the report or cause to present a monitoring report to Home ministry, State government and Department of prison management with suggestions and recommendations on improvements in prison management.

D. Government Attorney Rules, 2020

Rule 11: Rights and Duties of Attorney General

Monitor whether the rights of the prisoners and detainees are upheld by the prison or not and give directives if necessary.

To make the Chief Attorney of the concerned state to monitor or cause to monitor prisons and detention centers which come under state management.

³⁰ The Criminal Offences (Sentencing and Execution) Act, 2017, Section 38(1).

³¹ Ibid. Section 46.

IV. THE STATE OF PRISONS IN NEPAL

According to reports,³² prisons in Nepal face several challenges, including overcrowding, understaffing and inadequate infrastructure. While there are arrangements of education and employment in prisons, they are inadequate to totally transform a person and reintegrate him/her back into the society.

A. Major Challenges Faced by Nepalese Prisons

1. Overcrowding and Infrastructure Strain: Overcrowding remains a significant issue in Nepalese prisons. Many facilities are housing far more inmates than their intended capacity, resulting in cramped living conditions that can lead to increased tension, violence and the spread of diseases.
2. Prolonged Pretrial and Trial Detention: Nepal's criminal justice system struggles with lengthy trial processes and case backlogs. As a result, a considerable number of inmates end up spending extended periods in pretrial detention which is one of the major causes of overcrowding.
3. Lack of Rehabilitation Programmes: Nepal's prisons often lack comprehensive rehabilitation programmes that equip inmates with the skills and knowledge needed to successfully reintegrate into society upon release. Limited access to education, vocational training, and mental health support impedes inmates' prospects for a positive life after imprisonment.
4. Socioeconomic Disparities: The prison population in Nepal often includes individuals from marginalized and economically disadvantaged backgrounds. This raises concerns about the fairness of the criminal justice system, as poverty and lack of access to legal representation can contribute to wrongful convictions and unjust sentencing.
5. Stigmatization and Reintegration Challenges: Upon release, former prisoners in Nepal face social stigmatization that can make it exceedingly difficult for them to reintegrate into their communities. Lack of employment opportunities, housing and social support can push individuals back into a cycle of crime, perpetuating the challenges within the prison system.
6. Province Governments' Role in Prison Management: Although the constitution and legislations have mandated state governments to operate and manage prisons and correctional facilities, the absence of laws, procedures and guidelines hinders the operation and management of prisons by provincial governments.
7. Lack of After-Care Services: Aftercare services are essential for breaking the cycle of recidivism and promoting successful reintegration into society. However, there are no such services in Nepal. Prisoners are only provided education, health, and other facilities while they are incarcerated. There is no mechanism or organization to look after prisoners after they are released.

B. Towards a Brighter Future: Steps for Reforming Nepal's Prison System

Despite the challenges, there have been efforts to address the issues within Nepal's prisons. Some steps that could contribute to positive change include:

1. Addressing the Dual Challenge of Overcrowding and Infrastructure: As highlighted before overcrowding is a pressing issue in Nepal's prisons. To alleviate this problem, the government should allocate resources to build new correctional facilities and upgrade existing ones. In the budget statement of the FY 2078/079, the government has mentioned that prisons will be developed into correctional facilities and open prisons will be built in Nuwakot and Banke.³³ Although vocational trainings and employment generating activities are provided inside prisons, its scope is very narrow. Only a limited number of prisoners are getting its benefits. Prisons need to expand the facilities of education, vocational trainings and employment. Also, severe criminals, recidivists, minor offenders and others should be kept

³² Annual Report, Office of the Attorney General of Nepal, 2022. Annual report of National Human Rights Commission, 2022.

³³ <https://www.mof.gov.np/site/publication-detail/3263> (Accessed on 13 August 2023).

separately in prisons.

2. Improving the Efficiency of the Legal System and Judicial Processes: It is imminent to implement judicial reforms committed by the judiciary³⁴ to expedite trials and reduce case backlogs. By streamlining legal and judicial processes, investing in training for judges and legal professionals, and enhancing access to legal representation, the time spent in pretrial detention can be reduced and speedy trials can be ensured.
3. Prioritizing Educational and Employment Programmes: To enhance the chances of successful reintegration into society, prisons should offer a comprehensive range of educational and vocational programmes. These initiatives equip inmates with skills that can help them secure employment upon release and become productive members of society. Collaborations with vocational training institutions, non-governmental organizations, and private enterprises can provide valuable resources for developing effective rehabilitation programmes.
4. Trainings of Prison Staff: Prison staff in Nepal are generalists and not specialists in the management of the prison system. The line ministry should conduct regular training for prison staff on human rights, proper inmate treatment and prison management. These programmes should emphasize the importance of treating inmates with respect and dignity, understanding mental health issues, and adhering to international human rights standards. Regular evaluations and oversight mechanisms can help ensure that these principles are consistently upheld.
5. Coordination and Collaboration among Stakeholders: The challenges faced by former inmates upon reintegration into society can be mitigated through the establishment of support networks. These networks could include counselling services, job placement assistance and access to educational opportunities. Engaging local communities, non-profit organizations and government agencies can create a holistic support system that reduces recidivism and encourages successful reintegration.
6. Implementation of Parole and Probation: The introduction of parole and probation represents a valuable blueprint for assessing the efficacy of rehabilitation initiatives. Implementation of parole and probation can address the challenge of overcrowding of prisoners in Nepal. If parole is implemented properly, prisoners will be motivated to transform themselves into law abiding persons. Additionally, parole and probation contribute to offenders' self-awareness, prompting them to recognize their mistakes and appreciate the potential for a better life beyond confinement.
7. Therapy and Counselling: Within the rehabilitation framework, it is imperative for offenders to acknowledge their wrongdoing, facilitating a smoother process and increasing receptivity to change. Therapy and counselling play a crucial role in exploring the underlying reasons behind the commission of the crime. By delving into external and internal factors, including long-term aggression or any other contributing elements, the rehabilitation process aims to understand the root causes. This understanding then becomes the foundation for constructive efforts aimed at rectifying past behaviours and mistakes, ultimately preventing the recurrence of similar criminal activities.
8. Adequate Aftercare Services: Aftercare services play a crucial role in ensuring successful reintegration into society, reducing recidivism rates and improving the overall well-being of individuals who have been incarcerated. The Federal Government should create a mechanism where State Government, non-profit organizations, community-based organizations and other entities provide aftercare services to released inmates.
9. Family Visits and Socialization: The familial connection provides prisoners with a personal and supportive touch that contributes to their mental well-being and fosters positive thinking. This connection reflects a sense of belongingness and care, impacting both prisoners and their family members. The prisoners' family should be allowed to visit the prisons on a regular basis. Also, regular counselling must be given on socialization and behavioural transformations.

³⁴ 4th Strategic Plan.

V. PROSPECTS OF PRISON REFORM IN NEPAL

The prospect of prison reform in Nepal holds promise for a more just and rehabilitative criminal justice system. There is a strong legal foundation for the management of prisons in Nepal. Legal provisions such as the Prisons Act, 2022; the Criminal Offenses (Sentencing and Execution) Act, 2017; the Criminal Offense (Sentence Remission) Rules, 2018, which provide a strong basis for reformation and rehabilitation of offenders. The Office of the Attorney General has recently formulated and adopted Parole Standards. The Parole Policy, 2023, has been promulgated and forwarded to the government for consideration and approval. The government has allocated improved budget for prison reforms, and reforms have been mentioned in Annual Policies and Programs of the government for fiscal year 2023/24. The government must ensure that the laws and policies are implemented effectively.

VI. A GLIMPSE INTO THE CENTRAL JAIL OF NEPAL

The largest and oldest prison in Nepal is the Central Jail, located in Sundhara, Kathmandu. Although it has a 1,500-person capacity, there are now about 3,466 prisoners awaiting sentencing. A brief overview of the employment, health and education facilities in Central Jail is provided below³⁵:

- A. Employment:** Approximately 165 individuals are employed within the “Kendriya Karagar Karkhana” (Central Jail Factory), managed by the Ministry of Industry on its premises. Operating from 10 in the morning to 4 in the afternoon, these individuals receive a daily stipend for their work. The factory specializes in the production of fabric items such as bedsheets, towels, tablecloths, handkerchiefs and similar products, which are then supplied to various government institutions and hospitals. In addition to their daily wage, inmates working at the factory receive a 20 per cent reduction in their jail sentences for each year of employment. Prior to commencing their tasks, inmates selected by the central jail undergo training in textile production provided by the factory.
- B. Health:** There is a Central Jail Hospital which is equipped with 30 beds and is operated and managed by the prison administration. There are medical doctors along with psychologists to look after the patients.
- C. Education:** There is a school inside Central Jail known as Jagannath Madhyamik Bidhyalaya, which is operated by Kathmandu Municipality. In this school, inmates can receive up to higher-level education and appear in national exams. Teachers are chosen among the qualified inmates. There is also a library inside the prison for inmates.

VII. CONCLUSION

The heart of prison reform lies in the development and implementation of robust rehabilitation programmes. These programmes should focus on addressing criminogenic needs, providing inmates with skills and support necessary for successful reintegration into society. Addressing the issue of overcrowding requires a multifaceted approach, involving measures like alternative sentencing, improved pre-trial procedures, and the expansion of prison facilities. By investing in infrastructure and facilities, the prison environment can become more conducive to rehabilitation, offering inmates better living conditions and access to education, vocational training, and mental health services. Correctional programmes of this nature assist offenders in shaping their identity and offer them a sense of dignity and respect upon their successful reintegration into society.

Moreover, psychological interventions ought to be a fundamental component of correctional programmes. While current legislation and the judiciary have underscored progressive avenues for reform, there remains a need for further efforts to integrate essential reforms and ensure their effective implementation. Primarily,

³⁵ Interview with Head of Prison Administration, Mr. Lalit Kumar Basnet on 14 August 2023.

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prison reform should extend beyond mere enhancements of infrastructure and facilities; the paramount focus should be on humanizing and fostering sensibility among prisoners.