

OVERCROWDING OF PRISON POPULATIONS: THE NEPALESE PERSPECTIVE

*Mahendra Nath Upadhyaya**

I. INTRODUCTION

Overcrowding of prisons is a common problem of so many countries, developing and developed. It is not just the problem of correctional authorities; it is now a serious challenge and threat to criminal justice systems. With the increasing use of imprisonment as punishment, prison administrations are facing varieties of problems due to overcrowding of prisoners.

More than 9.25 million people are held in penal institutions throughout the world. In Tihar Jail, Delhi, India, alone, 8,500 prisoners are in custody against a capacity of 2,500 persons. In Nepal more than 9,000 prisoners are in custody. In some prisons, the population is more than twice the capacity of the institution. Overcrowding of prisons is the root cause of many problems experienced in correctional institutions, such as deterioration of the living and working conditions of both inmates and staff.

It is evident that prison overcrowding causes a wide variety of problems in terms of both prison management and the treatment of offenders, which often lead to problems with finance, human rights and effective reintegration of offenders. When a prison environment become unduly painful, it also becomes harmful, and prisoners carry the effects or consequences of that harm back into the free world once they have been released. The use of imprisonment as a form of punishment and incapacitation is increasing in most countries and overcrowding in many places is becoming a significant problem.

Article 5 of the Universal Declaration of Human Rights, 1948 says “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which was adopted by UN General Assembly on 9 December 1988, has some provisions which are relevant here:

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions, to ensure security and good order in the place of detention or imprisonment.

* Under Secretary, Parsa District Court, Birgunj, Nepal.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Article 10 of International Covenant on Civil and Political Rights says “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. The same article also says “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”.

Rule 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners says, “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”

Overcrowding itself is more than just a shortage of bed space; it has implications for the levels of programme activity, hygiene, violence, etc. It can be an obstacle to the realization of many of the objectives of a modern correctional system.

II. CURRENT SITUATION OF NEPALESE PRISONS

A. Brief History of Nepalese Prisons

Nepal's first prison was established in 1914 in Kathmandu, the capital city. It was called the Central Jail. The jail administration was under “Mukhtiyar” and the chief was Rana General. After the people's revolution of 1950, prison administration came under Ministry of Home Affairs. In 1963, the Prison Act came into force and the Prison Rules were enacted in 1964. Before 1993, the management of prisons was administered by the Ministry of Home Affairs. In 1994, the Department of Prison Management was established under the Ministry of Home Affairs.

Now, the management and administration of prisons is governed by the Department at central level and the Chief District Officer is responsible for local levels. We have 75 administrative districts. There are 73 prisons in 71 districts. Four districts have no prison and two districts have two prisons. Only one remand home, which is located in Kathmandu, is allocated for detainees. Usually, detainees are accommodated in prison with convicted prisoners.

There are two child correction centres for juveniles. They are located in Kathmandu valley. All the prisons are managed by the government and the child correction centres are established and operated by NGOs with funding from the government. Another jail has just been completed but is yet to receive transfer red prisoners from other prisons.

We do not have separate prisons for females. Generally, male and female inmates are housed in separate blocks within the same prison. However, in Central Prison in Kathmandu, there is a fully separated compound for females.

All Nepalese prisons were established many years ago.

In Nepal, except for the one mentioned above, there are no remand homes especially for those on trial and detainees. During the investigating period, after arresting the accused, the investigating authority has to bring him or her to court within 24 hours. If the court gives an order to detain the accused he or she will be housed in police custody. The Public Prosecutor will prosecute the accused and refer him or her to the court with the charge sheet. Then court decides whether the accused will have to stay at prison for the trial period or get bail.

Due to over pressure of detainees and convicted persons both are accommodated in the same prison in Nepal. All the prisons are closed prisons. We have statutory provision for open jails but thus far it has not come into force. The government is prioritizing infrastructure i.e. suitable land in appropriate areas.

B. Prison Population

The prison population, as of 13 March 2009, is 8,491. There are 86 dependents also. The two child correctional centres accommodate 156 juveniles. Among the prisoners, there are 7,916 males and 575 females. Among them, 501 are foreigners. There are 5,003 detainees and 3,488 convicted prisoners. 59% of the prison population are under-trial whereas only 41% are convicted.

Under Trial			Convicted			Total		
Male	Female	Total	Male	Female	Total	Male	Female	Total
4711	292	5003	3205	283	3488	7916	575	8491

The official accommodating capacities of the 73 prisons is 7,233, but there are 8,491 inmates. The prisons were established many years ago, and the infrastructure and other physical facilities are same as when they were built. Besides this, it is better not to use some buildings in the prison premises.

C. Staff

There are 621 staff for 73 prisons. Among them, 600 are administrative and 21 are medical personnel. We have a hospital for prisoners in Kathmandu. There are 13 staff; among them, five are medical staff. The staff-to-inmate ratio is 1:14. The medical staff-to-inmate ratio is 1:404.

Administrative	Medical	Total
600	21	621

D. Medical Facilities

There is a prison hospital in Kathmandu. In other prisons, health workers and assistant health workers oversee the medical section. Inmates will get medical treatment in other hospitals near the prison.

E. Situation of Overcrowding

As explained, the capacity of 73 prisons is 7,233 but there are 8,491 inmates now. It clearly shows that overcrowding of prisons exists in Nepal. The capacity of prisons varies from prison to prison. Prisons located in urban areas have greater capacity than those in rural areas.

Kathmandu prison can accommodate 1,500 inmates whereas the prison in Manang district only has capacity for six. Of the 73 prisons, 41 are overcrowded. In 12 prisons, inmate numbers are more than double the capacity. One prison is overcrowded by 400 percent and another by 300 percent. The prison in Chitwan has capacity of 55 but now there are 246 inmates.

Sample of comparative data of four prisons is given below.

Prison	Prisoners		Staffs	Ratio
	Capacity	Inmates		
Kathmandu	1500	1505	26	58:1
Jhapa	200	328	17	19:1
Chitwan	55	246	13	19:1
Rukum	15	21	10	2.1:1

III. CAUSES OF OVERCROWDING

There are so many causes of overcrowding of prisons. They vary from nation to nation. Rising crime rates, socio-economic conditions, and the effectiveness of criminal justice systems affect overcrowding.

A. Delayed Criminal Justice System

One of the causes of overcrowding of prison is the increasing number of detainees on trial. Like Nepal, in most countries, where this problem exists, more than 50% of inmates are on trial. In Nepal, the ratio of

detainees to convicted prisoners is 1.43:1. The delay in bringing offenders to trial is commonly accepted as a main cause of prison overcrowding.

In our criminal justice system, there are procedures which courts must follow. They are time-consuming, and because of these procedures, the final hearing of detainees can take a long time. There are so many cases pending in our courts. Backlogs are so high. This is a cause of overcrowded prisons.

B. Tougher Sentencing

In some countries, like Nepal, imprisonment is considered an effective punishment. The legal system of many countries emphasizes imprisonment as an effective and powerful weapon against crime. The general public always demands that the offender be punished severely and imprisonment is the last resort. Like other countries, the legal system supports tougher sentencing.

C. Increase in Crime Rate

One of the major causes of the increasing prison population is the increasing crime rate worldwide. Socio-economic conditions are responsible. Unemployment and poverty lead young people towards criminal activities. Exposure to electronic media is also a factor in the increasing crime rate.

D. Effectiveness in Police and Prosecution Operations

An effective criminal justice system is also a component of overcrowding of prisons. Effective and proper investigation and appropriate prosecution lead to conviction and that affects the prison population.

E. Lack of Alternative Measures to Imprisonment

We have few alternative measures to imprisonment except fine. In our penal system, an accused, if convicted, will get imprisonment or a fine. Alternative measures such as probation and parole have been not accommodated in our legal system so far. In petty offences, the courts can impose a fine on the accused, but in other cases, he or she will be imprisoned as prescribed by law.

F. Inadequate Bail System

In Nepal, there is a statutory provision that directs courts to place an accused on remand and send him or her to prison if he or she is charged with an offence punishable with more than three years' imprisonment if convicted. Bail is applied only for offences which are punishable with less than three years' imprisonment or only a fine. In some specific cases, if there is a probable cause or reasonable ground for the court to suspect the accused is guilty at the first hearing, the court can issue an order to remand the accused to prison.

G. Fine Defaulters

In Nepal, there are many laws under which an accused will be fined if found guilty. Due to the socio-economic condition of our country, some are really unable to pay that fine and others don't want to pay and are prepared to go to prison for a certain period of time. The maximum term of imprisonment for non-payment of a fine is four years. After four years' imprisonment, he or she will be released whatever the unpaid sum is. In our country, there is another special statutory provision of imprisonment in civil matters. If the defendant is unable to or unwilling to pay the sum ordered by court to the plaintiff, the plaintiff can apply to the court to keep the defendant in jail. The cost of keeping the defendant in prison will be paid by the plaintiff.

IV. EFFECTS OF OVERCROWDING OF PRISONS

Overcrowding of prisons is not only the problem of inmates but also of concerned authorities. It affects the criminal justice system and correctional programmes of the countries concerned.

A. Lack of Space and Facilities to Accommodate Inmates

The major problem of overcrowding of prisons is lack of space for inmates. Every prison has its own specific capacity and facilities. If the prison is built for 100 persons, how can the authority provide space and facilities for 150 persons? For example, a prison in Jhapa, eastern Nepal, has 328 inmates. But the capacity of that prison is only 200. This is just an instance; there are so many prisons where the number of inmates is twice the capacity.

B. Strain on Staff

Overcrowding always has an adverse effect on administration. Staff cannot provide basic facilities. They don't have sufficient space, logistics, and medical facilities for inmates. They have to work overtime, and the quality of their work deteriorates. It also causes health problems because they are exposed to an unhealthy environment. The staff of overcrowded prisons are stressed, which affects them physically and mentally also.

C. Tension and Stress Among Inmates

Overcrowding also increases tension and stress among inmates. There are few facilities for many persons. Space, logistics, and medical facilities are insufficient. It leads to competition for resources, less co-operation and more social withdrawal. It will increase disruptive behaviour. It may have physical and psychological effects on inmates.

D. Effect on Correctional Programmes

We cannot expect a good outcome from overcrowded prisons. Correctional facilities are for correction of inmates but nobody can be corrected in an overcrowded situation. They have insufficient facilities to feel secure and at ease. If somebody is not feeling at ease, how can he or she go on in a positive way? He or she will face many problems throughout the day. The management cannot run correctional programmes smoothly in a correctional facility because of lack of facilities. They cannot provide work opportunities, books for the library or recreational materials effectively.

E. Violation of Human Rights and Dignities

As mentioned above, Principles 1, 8, 24 and 28 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/Res/43/173, adopted by UN General Assembly on 9 December 1988) and Rule 10 of the United Nations Standard Minimum Rules for Prisoners set some international standards.

In an overcrowded prison, no one can expect the above standards to be met, and that clearly violates human rights and human dignity also.

V. ALTERNATIVES TO IMPRISONMENT

We do not have so many alternatives to imprisonment in the Nepalese legal system. The following measures contribute as alternatives.

A. Use of Bail

If statutory provisions for bail are properly exercised, they can help in minimizing the prison population. In our legal system, there are so many provisions under which the accused will be liable to a fine or imprisonment for more than three years. Cases punishable with more than three years' imprisonment such as human trafficking and transportation and espionage, are unbailable.

B. Speedy Trial

In our prisons, there are more detainees than convicted criminals. This is because of delays in the administration of the criminal justice system. We have so many backlogs in our courts. The detainees have to a long time for their final hearing. To clear the backlog and for an effective justice system, the Judiciary of Nepal has adopted a strategic five year plan. This is the final year and the results are positive. The plan sets a timeframe for disposal of backlogs. The plan has fixed core functions and areas of strategic intervention for court management and speedy justice.

C. Early Release

This is a better solution to prison overcrowding. We have statutory provisions for remission or pardon. If a convict serves 50% of his or her imprisonment and is of good character, he or she may be released. The government releases convicted prisoners on various national occasions, giving a pardon for their remaining imprisonment. If the quantity of pardon increase, the prison population will surely decrease.

D. Resources

The prisons in Nepal were established and built many years ago. They have same the space and facilities now as at the time of their establishment. Old buildings, problems in sanitation, and little space for inmates are common phenomena. So we have to enhance prison infrastructure and resource allocation. The Government is constructing new buildings in various prisons and increasing budgets for other facilities.

E. Open Prison

The Prison Act of Nepal has a provision for open jail. It has not come into force yet. The government is busy locating a suitable area and infrastructure for that purpose. If this provision came into force, it would be another effective countermeasure. If the prisoner is sentenced to more than three years' imprisonment and serves one third of that sentence, he or she can be sent to open jail. The prisoner has to apply to the Department of Prison Management for this purpose. We have exceptions: prisoners who are convicted of human trafficking, rape, narcotic drugs, corruption, espionage, trafficking in protected wild life etc. are ineligible and cannot be recommended for open jail. This system is the main focus of this paper and is why it is discussed in detail in part VI below.

F. Community Service

We have another effective countermeasure in our jail law. According to that provision, the court can send an offender who is liable to less than three years' imprisonment to complete community service.

G. Conversion of Imprisonment into Fine

There is a statutory provision that says the court can convert imprisonment to a fine. If the accused has no criminal record and if the offence is punishable with less than three years, the court can order him or her to pay a certain sum and go free. The sum will be fixed by court at Rs. 25 per day.

VI. OPEN PRISON: AN EFFECTIVE COUNTERMEASURE AGAINST OVERCROWDING

In the Nepalese legal system, there are some countermeasures which can be applied against overcrowding of prisons. They are bail, fine, early release, community service and open prison. Bail can be applied at the trial stage and others at the stage of conviction. The Prison Act 2009 provides for open prison and community service. These provisions were introduced in August 2009 by amending that law. According to the Prison Act, prisoners who are sentenced to more than three years' imprisonment can be sent to open prison and those sentenced to not more than three years can be sent for community service.

Among the prison population, there are higher numbers of offenders who were sentenced to more than three years' imprisonment than those who were sentenced to less than three years. That is why open prisons will be the most effective countermeasure against overcrowding.

Article 2(j) of the Prison Act has defined an open prison as a certain area to accommodate convicted prisoners, from where they can go outside for work at a given time.

A. Rationale

Article 10 of the Prison Act gives a rationale for sending prisoners to open prison. It says that the Nepal Government can send detainees and convicted prisoners to other work if it feels it is necessary for the health and financial betterment of prisoners.

In open prison, the prisoner can live with his or her family. He or she can take any job. It helps him or her to socialize with other members of society. He or she feels his or her duties and responsibilities towards society and his or her family. When in a closed prison, there is no responsibility to bear. Prison is not only for detention, it is also for correction of certain thinking and behaviour patterns. The main purpose of correctional institutions is to change or reform positively. Open prison will help in achieving that purpose.

B. Eligibility

The basic requirement to be in open prison is that the prisoner should be sentenced to more than three years' imprisonment and already have served one third of that. Prisoners convicted of human trafficking, rape, narcotic drugs, corruption, espionage, trafficking in protected wild life or archeological goods,

absconding from prison and customs defaulting, are not eligible for open prison. Prisoners who are not of good character in prison or who are mentally abnormal are also ineligible.

Rule 16B of the Prison Rules lays down the process for recommending prisoners to open prison. Prisoners who are eligible according to Article 10C can apply to the Department of Prison Management. The Department will forward the application to the central committee for Community Service and Open Prison, the composition of which is described in chapter D. The committee will examine the following issues and decide whether or it should recommend open prison:

- (i) the circumstances in which the prisoner committed the crime,
- (ii) his or her character in prison;
- (iii) age; and
- (iv) nature of self-employment and benefit and conditions of employment fixed by the employer.

According to rule 16B, if the committee recommends that a prisoner be sent to open prison, the Department of Prison Management gives such permission. Before that, the prisoner has to sign a bond. The bond consists of certain conditions. If the prisoner is being employed as an employee, the Department will make a memorandum of understanding with the employer. If the prisoner wants to do something on his or her own, the Department will state that in the bond.

C. Conditions

The prisoner has to obey some rules while he or she is in open prison. The conditions are fixed by rule 16B (6). According to that rule, the prisoner has to go out and come in at a given time. They are supposed to reside within the area fixed in the bond. They are not allowed to keep persons other than his or her family members within the prison camp. If the inmate breaches these conditions, he or she will be sent back to closed prison and become ineligible for open prison after that.

D. Open Prison Management Committee

According to rule 16C(1), there will be a committee at the central level to give advice and recommendations on the operation and management of open prisons to the Department of Prison Management. It will be headed by the Director General of the Department of Prison Management and the members will be a Senior Superintendent of Police from Police Headquarters, a Legal Officer from the Ministry of Home Affairs, the Under Secretary from the Ministry of Law and Justice, and two representatives from NGOs working in the sector of prison reform and social service. The secretary will be the Director of the Department of Prison Management. At district level, there will be another committee for this purpose which is chaired by the Jailor and members will be representatives from the District Police Office, the District Administration Office, the Office of the District Government Attorney and one from an NGO.

VII. CONCLUSION

The problem of overcrowding of prisons exists in almost all countries, and is due to many factors, as discussed above. Establishment of more prisons is not the best solution.

Each stakeholder is responsible for these problems and each has to take them seriously. Police, public prosecutors, the judiciary, correctional authorities and the people in general, all have to pay attention to minimizing the prison population. We have to expand the use of non-custodial measures. What we have to bear in mind is that human rights instruments require that the use of imprisonment must be the last resort. Speedy trials, wider use of non-custodial measures, early release of prisoners, sending the person in question to open prison and community service can reduce overcrowding of prison. There are so many effective countermeasures which vary from nation to nation. We have to adopt the measures which are appropriate for our legal system. In our context, open prison may be the most effective countermeasure against overcrowding of prisons.