

Overcrowding of Prisons and Non-Institutional Treatment of Offenders.

SRI LANKA.

Overcrowding of Prisons is a common phenomenon experienced in many countries of the world today. According to some observers overcrowding is more than a problem in some countries as it has reached crisis level and interfering with the effective administration of Criminal Justice. Sri Lanka is one such country. India, Thailand, the Philippines, Malaysia, Brunei Darussalam and Fiji are some countries suffering under the weight of prison congestion. Even countries like Australia and New Zealand are concerned about a “dramatic increase” of Prison population. The National Report on Contemporary Issues in Australia presented at the Asian and Pacific Conference of Correctional Administrators in Kuala Lumpur in the year 1997 had this to say. ““The growth of prison population throughout most of Australia has impacted on available prison accommodation and resulted in the problem of overcrowding “ Doubling up” of Prisoners in cells designed for one person has been the immediate response with attendant strains on infrastructure, services, staffing and support systems”. As reported at the same conference one of the few countries which does not face an overcrowding situation is Japan which was having an average occupancy rate of around 74.7 per cent in their penal institutions in 1996.

The developed countries may have a different interpretation to prison overcrowding from what it means to developing countries. The developed countries use such criteria as minimum floor space, cubic content of air ventilation and other basic amenities to measure overcrowding. To the developing countries, however, the single cell accommodation with specifications considered as minimum by the developed countries with the other facilities would be a luxury. In such countries overcrowding necessarily accompanys with gross inadequacy of essential facilities such as sleeping accommodation, sanitary and bathing installations, medical and recreational facilities. Hence, there does not appear to have a common criteria on the required accommodation or floor area or other conditions per prisoner.

Rule 10 of the United Nations Minimum Rules for Prisoners, provides an important guideline for all countries to follow. This rule says “ All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet

all requirements of health, due regard be paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation". In keeping with this requirement many countries have included in their Prison Legislation, rules regarding accommodation for prisoners. In Sri Lanka, the Prison Rule 179 stipulates that "No cell shall be certified which contains less than 54 superficial feet of floor space and 540 cubic feet of space and is not properly ventilated". In Vietnam, minimum sleeping space for each prisoner is 02 square metres in a collective house.

[02] **Causes for Overcrowding in Prisons.**

- **Remand or Under Trial Population.** The overcrowding of Prisons in some countries is caused by having to accommodate a large number of remand or under trial prisoners. In Sri Lanka, the ratio of remand population compared with convicted has been 4:1 or 5:1 for the last 10 years and the percentage is about 80.

In most of the States in India under trial population in prison ranges from 80% to 90%. In the Republic of Korea, the percentage of unconvicted prisoners is 41%. In 1997, Thai prisons were holding 46,667 remandees which accounted for 40.03% of the total prison population. Most of the reasons for overcrowding of remand prisoners in Sri Lanka have been the same as in many countries of our Region. The Delay in bringing the offenders to trial or Laws Delay as is commonly known is the main reason which leads to overcrowding in our prisons. The delay in their trial along with excessive bail or inadequate use of bail provisions compels these persons to remain in prison custody for long periods of time. Our figures show that about 13% of our remandees have to wait, periods more than 01 year until their cases are heard and of this about 3% have to wait for periods over 02 years for their trial. In many developing countries remanding is resorted to as a punitive measure by the Police. There is also unnecessary and excessive remanding observed in these countries, thus abusing the remand provisions. In Sri Lanka, we have seen ticketless travellers, petty theaves, vagrants, drunkards, persons of unsound minds, prostitutes and drug addicts lingering in prisons on being remanded.

- **Convicted Prisoners.**

The legal system of many countries overemphasises imprisonment as the most powerful weapon against crime and carry imprisonment for far too many offences. As a

result, courts resort to imprisonment as the first option [and in many cases the only option] instead of it being treated as the last resort. This tendency on the part of the courts may sometimes be seen as reflecting the attitude of the General Public who may be demanding the offenders be severely punished as a warning to the would be criminals. Among the convicted prisoners admitted to Sri Lanka Prisons, the highest number is with sentences less than 01 year. In the year 1997, these short termers made up 83.8% of the convicted prison population. From the very fact that they were given short term imprisonment, it is clear that most of them could not have been found guilty of serious offences for which alternative punishments to imprisonment could not have been given. Admission of large numbers of offenders to prison for non-payment of fine is also contributing largely to the problem of overcrowding. Out of a total of 20,800 convicted prisoners admitted to prisons in Sri Lanka in the year 1998, 16,603 or 79.8% had been fine defaulters, whom the courts initially thought, did not deserve a prison sentence. Thailand is another country facing the problem of fine defaulters, whom they call “Confined persons”. According to the law of that country these confined persons have to be kept in separate institutions isolated from the other convicts. There are only two houses of confinement with the capacity for 720 prisoners and to accommodate 3733 such persons in the year 1996 would have been quite a problem for the Thai Prison System.

Admission of persons both as remandees and convicted prisoners for drug related offences has turned out to be another major factor which is aggravating the problem of prison overcrowding in our region. The percentage of drug offenders [Convicted] in Sri Lanka prisons in 1984, which was 13.7 has rapidly risen to a height of 40% during the last decade. The courts due to lack of alternatives to imprisonment, sentence them to prison where these offenders seldom get an effective rehabilitation. The range of sentencing options available to courts in Sri Lanka is limited. The courts are seen sometimes, reluctant to make use of even the few options available to them. Probation is one such under used option in Sri Lanka.

It is also seen that there are instances of long sentences which are clearly unrealistic, pass by courts for violent offenders reflecting public attitude towards

gruesome crimes. Criminologists are doubtful whether such sentences which contribute to the prison overcrowding, serves any meaningful purpose.

Another major reason for prison overcrowding, common to most countries is the inability to expand accommodation in proportion to the rapid growth of prison population. Only few countries in our region could either build new prisons or expand the existing facilities.

Use of modern technology and better and widespread policing facilities have increased the rate of detection of crime by police resulting in more convictions and large numbers being admitted to prisons. Though this is a commendable step towards crime control, it is yet another reason for prison overcrowding.

[03] **Effects of Overcrowding.**

Prison overcrowding brings in its wake a host of serious problems to Prison Administration. It causes severe strain on the essential services, results in serious health hazards and disrupts penal reformation and rehabilitation programmes. It creates security problems and encourages subversive activities among prisoners. In an overcrowded prison, segregation of harden criminals and their separation from mild offenders become impossible. Prison overcrowding contributes to additional pressure and strain on staff. It strains the staff – prisoner relationship and undermines discipline. It also affects staff morale. Prison overcrowding compells prisoners to be kept under conditions unacceptable to the United Nations Standard Minimum Rules for the treatment of prisoners.

[04] **Measures to Reduce Prison Overcrowding.**

In Sri Lanka we have been grappling with this problem for the last three decades or so. During this period a number of measures was adopted with a view to finding a solution. However, solutions to this problem cannot be found within the penal administration alone. It is a problem that has its roots in government policy, public attitude, courts, police, prosecutors and prisons. Therefore solutions have to be found through an integrated approach with the cooperation of all the agencies concerned. Construction of New Prisons and expansion of the existing ones to accommodate more prisoners may appear to be one obvious solution. Considering the heavy expenses

involved in constructing a prison, and the low priority position it occupies in the National Development Programme, not many countries will rush to put up prisons. In Sri Lanka only 01 new prison was built during the last 50 years. We resorted to a less expensive method of finding accommodation by opening a number of Prison Work Camps and Open Prison Camps, in sparsely populated areas where land could be found. We have established during this period, 08 such prison camps. The large short term population was shifted to these camps making room for remandees and hard-cores in prisons. Some countries in our region, however, built new prisons and expanded the existing ones to cope with the problem of overcrowding. Since 1992, Thailand built 02 new Maximum Security Prisons, 13 new District Prisons and expanded accommodation capacity of 02 existing Maximum Security Prisons. Malaysia re-located its 600 prisoner capacity Pudu prison at newly built Sungai Buloh Prison with the capacity for 2,000 prisoners. Between July 1993 and December 1995 new buildings worth over \$ 90 million were funded in New Zealand and was expecting to spend another 32.4 million U.S. Dollars in 1997 to construct a further 428 cells.

The importance of an integrated approach involving all parts of the criminal justice system, in solving most of the problems of prison including overcrowding, has been accepted by many countries today. However, in practice, each agency works in water tight compartments isolated from each other. In Sri Lanka, Police, Prisons, and Probation comes under three separate Ministries. The Courts function independently under the Judicial Service Commission. There is very little or no coordination existing between the different agencies though they work to achieve interrelated objectives. Therefore the problem of over crowding of prisons become the exclusive problem of the correctional institutions. Having realized the roles the other agencies can play in reducing the prison population such as the Police expediting the investigations, and courts expediting the trial process and utilization of non-custodial methods in a greater measure, workshops, Seminars and Conferences have been conducted involving the different agencies through the initiative of the Department of Prisons and Ministry of Justice. It would be relevant to mention in this regard the two joint seminars conducted by UNAFEI in 1981 and 1987 on the topics of Integrated Approach to Criminal Justice

Administration and Towards an Effective Criminal Justice Administration. It is also relevant to mention the contribution the ACPF Sri Lanka is making in this regard by organizing Seminars and other Forums where the Officers of the Criminal Justice Agencies get together to discuss and resolve their problems. One such occasion was the ACPF Seminar entitled "Crime Prevention Strategies for the next Millennium" held on 05.12.1998, which was attended by 150 Senior Officers of Judiciary, Attorney General's Department, Police, Prisons, Excise Department, Law Students and Members of the Public.

In Sri Lanka, attempts also have been made to reduce the pressure of over crowding in the recent past by introducing new legislation. The introduction of The Release of Remandees Act No. 18 of 1991 was for the dual purpose of reducing the prison over-crowding, and granting relief to those persons held in custody for their inability to furnish bail. Certain bail regulations made under the Emergency Regulations empowered, a few years ago prison authorities to release some categories of remand prisoners who had failed to furnish bail though ordered by Courts, upon their signing a bond. The introduction of suspended prison sentences under the Code of Criminal Procedure Act No. 15 of 1979 for certain category of offenders helped reduce the admission of a considerable number of convicted prisoners.

Overcrowding of convicted prisoners could be reduced to a great extent by Courts resorting to alternatives to imprisonment including non-institutional treatment. Resolution 16 of the 7th United Nations Conference on the Prevention of Crime and Treatment of Offenders advocates the use of non-custodial sanctions and emphasises that imprisonment should be imposed only as a sanction of last resort. Some countries such as New Zealand, Australia, and Hong Kong have developed over the years a wide range of alternatives to imprisonment. Some of the common alternatives found in many countries are binding over, fine and suspended sentences. However, some countries have a wide range of alternatives such as forfeiture and confiscation, restitution and compensation orders, home detaintion and periodic detaintion, electronic monitoring and sentencing to drug rehabilitation centres.

Many countries have probation, parole and community service which are commonly known as traditional alternatives to imprisonment. These non-institutional treatment methods are widely used in many developed and developing countries.

The non-institutional measures are mostly community based corrections. The concept has evolved with the thinking that correction if linked to the community will be less costly, more humane and more effective than imprisonment in dealing with offenders convicted of minor offences. There is a need in the field of community corrections for a systematic and orderly development having due regard for local conditions and local needs. In developing such a system it is necessary to ensure that no individual who does not require incarceration for the protection of others is confined in an institution and that no individual is subjected to more supervision or control than required. On the other hand creation of community based programmes should ensure that they respond not only to the needs of the offenders but also the interest of the community. If they are not administered properly it will amount to the criminal justice system going soft on crimes and criminals.

In Sri Lanka, we have only a few non-institutional treatment methods and even these few have not been very effective due to lack of administrative provisions and disinclination on the part of the courts to pass such sentences.

Probation – Probation is considered as the most promising process of all non-institutional treatment methods. The fact that more than 50% of the offenders sentenced to correctional treatment in United States of America and Japan are placed on Probation will indicate the extent to which probation could be used in non-institutional treatment of offenders. In Sri Lanka, Probation has been in existence since 1944 but is heavily under-utilized. Of all offenders sentenced to correctional treatment, less than 10% only has been placed on probation.

Parole or Release on Licence.

The basic philosophy of parole is that a prisoner shall not be held any longer than necessary as it is detrimental to his reformation and also an unnecessary expense to the State. Parole is a procedure whereby a prisoner is released from an institution at a time considered appropriate by Parole Board, prior to the completion of his full sentence so

that he may serve the balance of the sentence at large in Society. The Offender is also subject to the condition that he will be returned to prison if he fails to comply with the conditions governing his release.

The equivalent to Parole in Sri Lanka is the Release of Prisoners on Licence which was introduced in 1970. This Scheme gained momentum over the years and remains at present as one of the very successful non-institutional measures in our country. Up to date 1775 prisoners have been released and an average of 100 prisoners are released every year. We have had only 112 violations.

There are certain essential requirements that must be met if parole or system of releasing on Licence is to be successful, most important one being a careful selection of the Parole/Licence Board. The Licence Board in Sri Lanka is appointed by the Ministry of Justice. The Board is headed by a retired Supreme Court Judge and two members are representatives of Ministry of Justice and Police Department. Commissioner General of Prisons, Chief Medical officer of the Prison and two members representing the Community are the other members. The Members of the Board should be free from political and administrative pressures. Any careless or wrong decision made by the Board can end up in disaster as in the well known Reader's Digest murder case of Nineteen Fifties which shocked New York. Of the four murder suspects in this case three were parole convicts and a book written on this murder trial had this to say. "But above anything else this murder illustrates the danger that lies in the abuse and the weakness of parole standards and parole administration". One of the Defence Attorneys declared that "The state of New York should have been indicted for ever turning my client loose on the community".

Community Service Orders.

As an alternative to a prison sentence courts may order an offender who has been convicted of an offence punishable with imprisonment to carry out a community task for a number of hours stipulated by the Court within a certain period of time. If the offender fails to carry out his work commitment, he will be dealt with, by the Court by imposing any other appropriate punishment. Community Service by order of the Court is currently practiced in several countries. The Community Service Orders law was

introduced in Sri Lanka by the Administration of Justice Law No. 44 of 1973. However, due to lack of rules regarding the implementation, the courts ceased to impose the sentence. Action has now been taken to establish a separate Department under the Ministry of Justice to supervise carrying out the sentence and legal provisions have been made under Community based Correction Act. It is therefore expected that Community Service Orders will be effective in Sri Lanka as a useful non-institutional mechanism in the near future.

Conclusion.

The problem of prison overcrowding which has direct links with the increase of population of a Country and increase of crime rate resulting from its socio-economic factors, will continue to worry the nations of the world unless some meaningful steps are taken to control it. No country can continue to expand prison capacity in proportion to the increasing rate of offenders. In this regard it is very important to create a public awareness that imprisonment is not the only effective penal sanction for all types of offences. In fact for certain offenders imprisonment will act contrary to one of the main objectives of imprisonment by making him a worse criminal when he leaves the prison. It is relevant to note that imprisonment as a punishment for criminal behaviour is a relatively recent invention that has become widely used through out the world only in the past one or two centuries. Before that most common forms of punishments were capital and corporal punishment and banishment. It has been estimated by certain quarters [APCCA] that there are now approximately six million prisoners in the world of which approximately 2.5 million are from the countries of Asia and Pacific Region. It is very likely that the number of prisoners will continue to increase. It is hard to imagine therefore, that the use of imprisonment will continue to increase in the future as the cost would be overwhelming and there is likely to be increasing questioning of the social benefit that is gained by locking up more and more people in prisons.

In the circumstances, non-institutional treatment methods are likely to gain serious consideration of the Criminal Justice policy makers of the world in the next Millennium.
