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Alternatives To Imprisonment

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ABSTRACT

The problems in the prisons are many. One among the problems and a serious one is over crowding of prisons which can be reduced by way of taking steps for alternatives to imprisonment. There are 3 stages of criminal justice system which can send an individual to prison viz., 1) pre-trial stage, 2) trial stage, 3) after sentence stage. Various alternatives are available in the place of imprisonment such as giving bail to the accused instead of remand, serving of notice u/s 41 Cr.P.C. Imposing time limits on pre-trial detention, plea bargaining, compounding of offences u/s 320 Cr.P.C./LokAdalath, making de-criminalisation of offences, imposing fines on petty offences etc. Further at the stage of sentence, community service as a punishment, admonition, conditional discharge, parole, furlough, remission of sentence, sending the accused to open jails will be few alternatives.

KEYWORDS: Imprisonment, plea bargaining, parole, furlough.

Introduction

After Independence of the country, lot of prison reforms were advocated by sociologists, criminologists and other elite of the society. The problems in the prison administration are that overcrowding of prisons. Radicalisation of prisoners casual offenders becoming habitual, financial implications on the exchequer, violation of human rights in the prisons, increase of suspicious deaths of prisoners in jails / correctional homes etc.

As the saying 'prevention is better than cure' goes every accused should not be sent to jail but an alternative for the jail to be thought of, to avoid the above problems in prisons.

The Apex Court in the Mohammed Giasuddin v. State of Andhra Pradesh[1] observed that the judges should be offered a wide range of options for sentencing offenders so that the purpose of punishments can be achieved. Such observations of the Court have resulted in the development of various alternatives to punishments, which are available in each of the three stages of the criminal justice system.

Alternatives of imprisonment:

There are 3 stages in the criminal justice system which the accused faces viz., pre trial stage, trial stage and sentencing stage. At all these stages the alternatives of imprisonments can be devised so that without going into the prison the accused / convict will face the conviction by living in the society itself.

I) Pre trial stage

A) The Supreme Court of India while dealing with a case of Arnesh Kumar[2] who is a resident of Bhiar (in a case of 498-A IPC and Dowry Prohibition Act) gave certain guidelines in which the Supreme Court directed that arrests should be an exception, in cases where the punishment is less than seven years of imprisonment. In cases where the punishment is less than 7 years the Apex Court suggested issuance of Section. 41 Cr.P.C. notices to the accused. By this the cases of imprisonment is reduced a lot in pre-trial stage.

B) When the investigation is not completed within 24 hours of the arrest of the accused,[3]the accused has to be produced before the jurisdictional court and to be remanded to judicial custody. In offences where the punishment is less than 7 years, in such cases also if the Investigating Officer feels that it is not possible for the prosecution to produce the accused before the court at the time of trial, he can request the court by giving sufficient reasons and can seek the judicial custody of the accused. In such circumstances when the accused is in the jail he has a right to get the bail.

C) Chapter XXXIII of the Criminal Procedure Code, 1973 deals with Sections 436 to 450 which speaks about bail. Section

[1] the Mohammed Giasuddin v. State of Andhra Pradesh 1977 (3) SCC 287

[2] *Arnesh Kumar v. State of Bihar AIR 2014 SC 2756*

[3]Section 167 Cr.PC of 1973

436 Cr.P.C[4]. elucidates in what cases bail to be taken, Section 436- A Cr.P.C[5]. speaks about the maximum period for which an Under Trial prisoner can be detained. Section 437 Cr.P.C.[6] speaks about when bail may be taken in case of non-bailable offence. Section 437-A Cr.P.C.[7] deals with (trial stage/ appeal stage). Section 438 Cr.P.C.[8] deals with anticipatory bail. Section 439 Cr.P.C.[9] deals with special powers of High Court or court of Sessions regarding bail. The other sections deals with bail bond, sureties etc. The Supreme Court of India has laid the rule of "bail not jail".

D) **Imposing time limits on pre-trial detention**

Under Article 21 of the constitution speedy trial is a fundamental right. The Apex court has laid down various guidelines in this regard. Protection of Article 21 extends to all stages like investigation[10], inquiry[11], trial[12], appeal[13], revision[14] and retrial. The Criminal Courts have been giving power under Sections 258, 309 and 311 of the Code of Criminal Procedure, 1973 to effectuate the right to speedy trial. In summary cases[15]an accused can be detained for a period of 60 days and in session's cases[16] for a period of 90 days without completion of the investigation and filing charge sheet (Section 167 Cr.P.C.). When the charge sheet is filed, there is no time limit to detain a person in custody. To remove this travesty of justice, an amendment to Criminal Procedure Code in the form of 436-A is introduced which says that an under-trial prisoner other than the one accused of an offence for which death has been the punishment, in all other cases an accused who serves half of the punishment for the offence charged and it under

[4]In what cases bail to be taken (436 Cr.P.C.)
[5] Maximum period for which an under trial prison can be detained. (436-A Cr.P.C.)
[6]When bail may be taken in case of non-bailable offence (437 Cr.P.C.)
[7]Bail to require accused to appear before next appellate court (437-A Cr.P.C.)
[8]Anticipatory Bail (438 Cr.P.C.)
[9]Special powers of High Court or Court of Session regarding bail (439 Cr.P.C.)
[10]154 Cr.P.C. to 176 Cr.P.C. (Chapter XXII) of Cr.P.C. 1973.
[11]Chapter XXIII of Cr.P.C. 1973 (272 – 299 Cr.P.C.).
[12]Chapters XVIII, XIX, XX, XXI, and XXII of Cr.P.C. 1973.
[13]Chapters XXIX of Cr.P.C. 1973 (372 – 394 Cr.P.C.).
[14]Chapters XXX of Cr.P.C. 1973 (395 – 405 Cr.P.C.).
[15]Chapters XXI of Cr.P.C. 1973 (260 – 265 Cr.P.C.).
[16]Chapters XVIII of Cr.P.C. 1973 (225 – 237 Cr.P.C.).

detention should be released on personal bold with or without sureties.

Plea Bargaining[17]:

This system is existing in European countries and it was brought to India by way of an amendment to Cr.P.C. in 2005 and brought into effect from July, 2006. It is applicable only in cases where the maximum punishment is upto 7 years excluding the cases against women and children. By way of amendment Section 265-A to 265-L were brought into Cr.P.C. to allow plea bargaining in specific circumstances. To reduce the pendency of cases and to contain overcrowding in the prisons these amendments were made and it may benefit 50,000 Under Trial prisoners.

The practise of plea bargaining has its roots in the American criminal law where it has been followed for more than a century. The Supreme Court of USA in Brady v United States[18] upheld the constitutional validity and recognised the role that plea-bargaining plays in effective disposal of cases. One of the most important argument in favour of plea bargaining is that it leads to speedy disposal of backlog of cases and therefore, expedited the delivery of justice. In India, the concept of plea bargaining was upheld for the first time in the case of State of Gujarat V. Natwar Harchanji Thakor[19], wherein a division bench of the Gujarat High Court ruled that the very object of law is to provide easy, cheap and expeditious justice and therefore fundamental reforms like plea bargaining are inevitable and necessary.

Free Legal Aid

In the year 1987 the Legal Services Authorities Act[20] came into existence to provide free legal aid to the weaker sections who cannot afford to present their cases due to lack of financial resources. In every district[21], District Legal Service Authorities under the chairmanship of a Sessions Judge islooking after these legal aid cases. The prisoners are also being provided with legal aid. The Supreme Court of India also stressing the need of free legal aid, and time and again giving suitable directions to the courts.

Compounding of Offences

[17]Chapters XXI A of Cr.P.C. 1973 (265A – 265L Cr.P.C.).
[18] *Brady v United States*, 397 U.S. 742, (1970).
[19] *State of Gujarat v Natwar Harchanji Thakor*, 2005 CriLJ 2957.
[20]Legal Services Authorities Act, 1987.
[21]G.O.Ms.No.67 Law (L.A & J- Courts-A) Dt.25.05.1996 The constitution of District Legal Services Authorities in AP.

Under Section 320[22] 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 when both parties agrees for a compromise and also 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 offenders under this category, e.g. for 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.

LokAdalat

LokAdalats[23] are being promoted by the Supreme Court of India which is taking up of national LokAdalat. LokAdalat have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the LokAdalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law.

Supreme Court declares in New Okhla Industrial Development Authority (Noida) v. Yunus & Ors.[24] that an application under Section 28A of the Act cannot be maintained on the basis of an award passed by the Lok Adalat under Section 20 of 1987 Act.

During the investigation of the case stage also cases falls under Sec. 320 Cr.P.C. can be compounded by the courts which reduces the overcrowding of prisons.

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

[22]Chapter XXIV of of Cr.P.C. 1973 (320 Cr.P.C.).
[23]The Permanent LokAdalat (Other terms and conditions of appointment of Chairman and other persons) Rules, 2003.
[24]
https://main.sci.gov.in/supremecourt/2020/16850/16850_2020_40_1501_33121_Judgement_03-Feb-2022.pdf

Special and Local Laws. Imprisonment is general provided in these offences as punishment.

On 11-08-2023 the Hon'ble Home Minister of Government of India introduced a bill in the name of The BharatiyaNyayaSanhita, 2023 to replace Indian Penal Code, 1860,in which Section 4 of Chapter II deals with punishments such as fine and introduced community service. If this bill gets the approval of the Parliament, then the number of accused going to the prisons will be reduced.

In some states, the villages Panchayats[25] have been given the powers to impose fines. 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 grass root democracy by giving more judicial powers to village panchayats to deal with petty offences at the local level is being considered.

Fines / non penal fines:

In this country violation of traffic law[26] and many other special local laws[27]are punished with fines. Imposing of fine for minor offences may lead to conviction on the accused but there shall not be any burden on the prison accommodation. Thus it lessens the overcrowding of prisons.

Juvenile Justice

The Government of India has ratified the Convention on Rights of the Child in 1992 and re-enacted the existing law relating to juveniles, keeping in mind the standards of the Convention and the Beijing Rules. The Juvenile Justice Act, 1986[28] object is to reform and rehabilitate the juvenile offender as useful citizen in the society. In the case of Gopinath Ghosh v. State of West Bengal,[29] contention with respect to the convict's age and applicability of juvenile justice legislation's benefits was raised for the first time in front of the Supreme Court instead of lower courts. Juvenile Justice (Care and Protection of Children) Act, 2000

[25]Article 40 of Constitution of India.

[26]MV Act, 1988.
[27]Town Nuisance Act 1889, Police Act 1861 etc.
[28]Juvenile Justice (Care and Protection of Children) Act, 2000, 2015 and 2021.

[29] *Gopinath Ghosh v. State of West Bengal* 1984 (Supp.) SCC 228.

adopts a child-friendly approach in the adjudication relating to juveniles in conflict with law.

Constituting juvenile justice boards and child welfare committees

While judgement in the Sheela Barse case was passed in 1986 and followed by two enactments-Act of 1986 and Act of 2000-the Supreme Court in 2011, acting on complaints about non-compliance with legislations regarding constituting juvenile justice boards and child welfare committees, had to direct state governments once again to set them up in each district[30].

Provided immediate legal aid

In the same matter, the court ordered, 'All the Juvenile Justice Boards should ensure that juveniles in conflict with law who are brought before them are provided immediate legal aid, and if there is any difficulty, to direct or instruct the respective District Legal Services Authority to provide such legal aid.'

II. 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, (i) Imprisonment, b) Rigorous involving hard labour; and b) Simple imprisonment, c) Forfeiture of property, and d) Fine.

On 11.08.2023 the Hon'ble Home Minister of Government of India introduced 3 bills in the existing IPC, CrPC and IEA which are became acts in between 1860 to 1872. The Bharatiya Nyaya Sanhita, 2023 is introduced to replace Indian Penal Code, 1860. Section 4 of the proposed The Bharatiya Nyaya Sanhita, 2023 a special feature is introduced i.e., 4 (f) Community service[31]. If this act comes into force, as there is a punishment of community service, this will also work as an alternative for the imprisonment of the accused.

Community-based sentence 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.

[30] *Sampurna Behura v. Union of India* (2011) 9 SCC 801.
[31]Section 4 of Bharatiya Nyaya Samhita, 2023 (proposed)

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 amendments 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 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, hospitals, etc. This legislation is at present pending with the Government of India for its concurrence.

Further the accused can be punished with the following ways

1. Admonition[32] / Absolute discharge / Conditional discharge:
For petty offences sending the accused to imprisonment will burden the prison capacity as well as burden on the exchequer. For Town Nuisance Act or under section 160 IPC Affray etc. cases, the court feels that the accused is guilty, it can admonish the accused to be careful in future and can record it's proceeding in the judgment. If there is benefit of doubt which favours the accused in Indian criminal justice system, the accused should be discharged. When there is a situation when the accused though committed an offence and the court wants to take lenience it can discharge the accused with certain conditions such as with a warning not to commit any offence for a certain period or not to come into adverse notice for a certain period of time.

2. Compensation[33]:
In bodily hurt offences when there is a minor simple injury the victim can be compensated by the accused. Example payment of hospital expenses, compensation for the period the victim became non earner etc.

III POST SENTENCING STAGE

[32]Section 360 of Criminal Procedure Code, 1973
[33]Sections 357 and 357-A of the Criminal Procedure Code, 1973

Parole[34]

Parole is a leave of absence to a prisoner who is a convict. During the period of sentence if the prisoner shows good behaviour as a token of encouragement, the prisoner will be released on parole before completion of his sentence. While undergoing the sentence, the prisoner loses connection with the family, village/town, society and all other house hold chores. To make him acclimatise to the society, if the convict is released on parole, there will be two benefits. One is the prison overcrowding will be lessened second the convict will enter into the society and revive all his relations and start living in the society as a normal citizen. The period spent under Parole will not count as a part of the sentence.[35]

In Epuru Sudhakar and Another v. Govt. of A.P. and Others[36] a Division Bench opined:"Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations."

Pardon

Under Section 307 Cr.P.C[37].an accused can be pardoned who can give evidence at the trial of the case where there is no possibility of getting evidence by any means i.e., documentary, oral, scientific evidence etc. Similarly death row convicts can put up appeals to the President of India who can pardon the convict basing on the circumstances on which the convict committed the offence. As a

[34]Section 432 Cr PC of 1973
[35]Rule 974 (1) of AP Prison rules 1979 Vol 1.
[36] Epuru Sudhakar and Another v. Govt. of A.P. and Others (2006) 8 SCC 161.
[37]The individual who got pardon is also one of the accused ,but assists the prosecution

pardon the death row punishment may be converted into imprisonment or release from jail.

Remission of Sentence

Section 432 Cr.P.C. give power to suspend or remission of sentence by the government with or without conditions. But before this the court will seek the opinion of the presiding judge. Similarly under section 433 Cr.P.C.-1973 the appropriate government may commute the sentence of a convict who is convicted to death into imprisonment for life or 14 years imprisonment which may be rigorous imprisonment or simple imprisonment etc.

It was observed in the Kehar Singh v. Union of India that Courts cannot deny to a prisoner the benefit to be considered for remission of sentence. By denying, the prisoner would have to live in the prison till his/her last breath without there being a ray of hope to be free again. This would not just be against the principles of reformation but will also push the convict into a dark hole without there being a semblance of light at the end of the tunnel.

The Supreme Court also in the case of State of Haryana v. Mahender Singh (2007) observed that: even though no convict has a fundamental right of remission, but the State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. Further, the Court was also of the view that a right to be considered for remission must be held to be legal one. This is by keeping in view the constitutional safeguards for a convict covered under Articles 20 and 21 of the Constitution. Special remission would be granted as part of the Azadi Ka Amrit Mahotsav celebrations, the special remission would be granted to a certain category of prisoners[38].

Temporary Release Mechanisms

Furlough[39]

A convict who is undergoing long imprisonment i.e. more than a year and upto 5 years will be released on Furlough which means a temporary leave of absence. It will be nothing but a remission for a prisoner who shows good character and obeys all the prison rules during his imprisonment. The period of furlough / leave shall not exceed 2 weeks at a time.[40] A prisoner may be released

[38] These prisoners would be released in three phases August 15, 2022, January 26, 2023 and August 15, 2023.
[39]Rule 967 (a) of AP Prison rules 1979 Vol 1.
[40]Rule 967 (d) of AP Prison rules 1979 Vol 1.

on furlough more than once during the term of his imprisonment[41]. The period of furlough may be sanctioned under the rule as ordinary remission.[42]

Court in Sharad Keshav Mehta v. State of Maharashtra[43] Once it is held that the furlough is a substantial and legal right granted to a prisoner under the rules, then the prisoner is entitled to exercise the said right in accordance with the rules and the appropriate authority has to consider furlough application in accordance with the rules for furlough notwithstanding the fact that criminal appeal is pending in a court of law.

Open Prisons[44]

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 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.[45]

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 efforts 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 prisons 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.

[41]Rule 968 of AP Prison rules 1979 Vol 1.
[42]Rule 970 of AP Prison rules 1979 Vol 1.
[43] Sharad Keshav Mehta v. State of Maharashtra 1989 Cri LJ 681
[44]Rule 1085 of AP Prison rules 1979 Vol 1.
[45]Rule 1090 of AP Prison rules 1979 Vol 1.

As suggested above all the alternation for imprisonment is considered then there will be no overcrowding in the jails and the budget for correctional services will be reduced. It will be advantageous to the prisoners / accused as well as to the society.
