

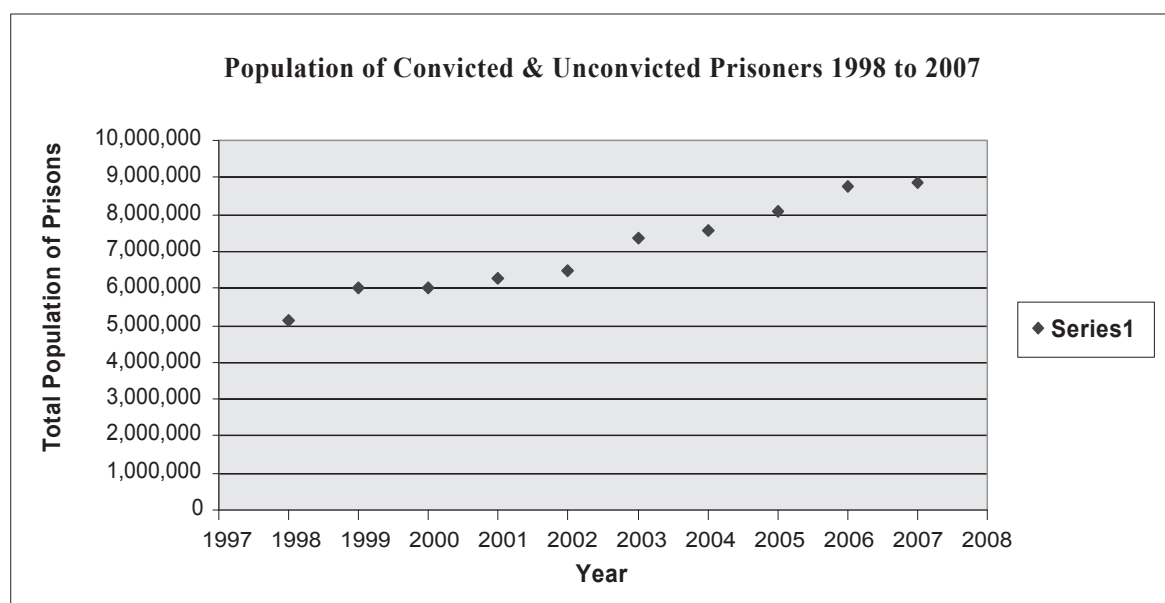
OVERCROWDED PRISONS AND PRESENT PRACTICES AND EXPERIENCE IN RELATION TO COMMUNITY-BASED ALTERNATIVES TO INCARCERATION

*Jagath Abeysirigunawardana**

I. BACKGROUND

A. Overcrowding of Prisons and Non-Institutional Treatment of Offenders

Overcrowding of prisons is a common phenomenon experienced in many countries of the world today. Sri Lanka is one such country. The prison population throughout Sri Lanka is growing rapidly. Facilities such as sleeping accommodation, sanitary and bathing installations, medical and recreational facilities differ between developed and developing countries. Hence, there does not appear to be common criteria on the required accommodation or floor area or other conditions per prisoner.



Source – Department of Prisons in Sri Lanka

B. Causes of Overcrowding in Prisons

There is a close relationship between the population growth of the country and number of crimes committed in the country. Hence, there is a close relationship with overcrowding of prisons and population growth.

The overcrowding of prisons in Sri Lanka is caused by having to accommodate a large number of remand or on-trial prisoners. In Sri Lanka, the ratio of remand to convicted prisoners has been 4:1 or 5:1 for the last 10 years and about 80 percent of prisoners are on remand.

Most of the reasons for overcrowding of remand prisoners in Sri Lanka are the same as in many countries of our region, and are classified below.

* Deputy Director General, Southern Range, Sri Lanka Police.

1. The delay in bringing offenders to trial or legal delays.
2. Trial, along with excessive bail or inadequate use of bail provisions.
3. The legal system of many countries over emphasizes imprisonment as the most powerful weapon against crime and carries imprisonment for far too many offences. As a result, courts resort to imprisonment as the first option (and 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 demand severe punishment as a warning to would-be criminals.
4. Among the convicted prisoners admitted to Sri Lanka prisons, the highest number are sentenced to less than one year. In 2007, these short-timers made up 63% 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.
5. Admission of a large number of offenders to prison for non-payments of fines is also contributing to the problem of overcrowding. Out of a total of 31,306 convicted prisoners admitted to prisons in Sri Lanka in 2007, 15,408 or 49.2% were fine defaulters, whom the courts initially thought did not deserve a prison sentence.
6. Admission of persons both as remandees and convicted prisoners for drug-related offences. The percentage of drug offenders (convicted) in Sri Lanka prisons in 1996, which was 41.4, has slightly decreased to 36.7 during the past decade.
7. 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.

Prison overcrowding leads to serious problems for prison authorities. It is related to serious health hazards and disturbs penal rehabilitation and reformation programmes. As a result, security problems, terrorism and subversive actions may occur. If prison is overcrowded hard and soft criminals interact with each other, which may lead to connect mild offenders to hardcore criminals. Overcrowded prisons cause stress for prison officials and further strain prisoners as they live in unacceptable conditions which fail to adhere to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

In Sri Lanka we have very few non-institutional treatment methods, and those methods have not been effective due to administration problems and provisions. Therefore it is time to improve the treatment of offenders through enhancement of community-based alternatives to incarceration.

II. TRADITIONAL ALTERNATIVES TO IMPRISONMENT

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.

A. 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 or her 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 or her full sentence so that he or she may serve the balance of the sentence at large in society. The offender is also subject to the condition that he or she will be returned to prison if he or she fails to comply with the conditions governing his or her release.

This scheme gained momentum over the years and remains at present one of the very successful non-institutional measures in our country. From 1997 to date 1,199 prisoners have been released. An average of 110 prisoners are released every year. We have had only 89 violations during that period.

1. Practices in Sri Lanka of Treatment of Offenders

(i) Remission

All prisoners are now allowed a normal remission of one third of their sentence for good conduct and industry. Prisoners who have completed one year at an Open Prison Camp are eligible for a special remission of one month of their sentence for each year they serve.

(ii) Special Amnesty

While convicted prisoners who were serving long term sentenced were given special reductions of sentences, some prisoners who were serving short term sentences were released on account of special occasions like Independence Day, Wesak Full Moon Poya Day, etc.

B. Release of Prisoners on Licence Scheme (Social Integration)

The "Licence Scheme", introduced in Order 1969, may be considered a progressive step in dealing with offenders. The system of release of prisoners on licence under para 11 of the Crime Prevention Ordinance was based on a decision by the then Minister of Justice. The members of the first Licence Board were Asst. Secretary, Ministry of Justice, the Senior Prison Medical Officer and the Commissioner of Prisons appointed by the Minister of Justice. The first meeting of the Board was held on 4 October 1969. At the inception, the mode of selection for release under licence scheme depended on the term of imprisonment under which prisoners sentenced to eight or more years of imprisonment who have served half that term were eligible for the scheme sustained by good conduct, character, prison records and rehabilitation susceptibilities. In the first batch they selected seven prisoners who were released on 15 November 1969.

The Licence Scheme underwent several modifications from time to time and now functions under the Commissioner of Prisons Circular no 35/92W/08 of 1 September 1992.

1. Prisoners serving a sentence of two or more years but less than five years and who have completed a term of one year.
2. Prisoners serving a sentence of five or more years but less than ten years and who have completed a term of two years.
3. Prisoners serving a sentence of ten or more years but less than 15 years and who have completed a term of three years.
4. Prisoners serving a sentence of 15 or more years but less than 20 years and who have completed a term of four years.
5. Prisoners serving a sentence of 20 years or more but less than 25 and who have completed a term of five years.
6. Prisoners serving a sentence of 25 years or more and who have completed a term of six years.

In the case of prisoners who qualify under the above requirements, social reports are compiled by the Welfare Officers and along with recommendations of the Superintendent of Prison(SP) are submitted to the Secretary, Licence Board. The SP (Welfare) is the secretary *ex officio*. Licence Board meetings are held twice

a month at the prisons headquarters and the prisoners according to their qualifications as above are produced to the License Board together with social report files and only those eligible prisoners are recommended to the Hon. Minister by the Licence Board for release on licence. The rest are withheld for reconsideration.

A prisoner released on the licence scheme is conditionally allowed to serve the balance of his or her sentence under the supervision of a Welfare Officer and is reintroduced to society to lead a normal life with his or her spouse and children and parents. A prisoner so released will be guided by the Welfare Officer to live a decent life and he or she will be known as a “Licensee”. The Welfare Officer provides a curative target programme pertaining to the Licensee at the inception which is result-oriented during the licence period. During the licence period the Welfare Officer submits his or her quarterly progress returns, accompanied by the Senior Welfare Officer’s observations, to the Licence Board where they will be discussed and the necessary guidance offered.

If a Licensee transgresses the contracted conditions, attempts are made to admonish him or her through advice and warning by a Welfare Officer and if such attempts fail the Licence Board is consulted for instructions. If that measure too is ineffective the licence granted to him or her will be rescinded and the balance full term of imprisonment from the date of release is reemployed. The case may be referred to a magistrate if necessary and a further term of six months of imprisonment may be imposed. However, transgressions so far have been minimal. This manner of relief is not a right of a prisoner but a privilege.

The member released on license scheme since 1997 to 2007 and the number of licenses revoked for violation of conditions are as follows.

Year	Work Release	Home Leave	License Scheme
1997	200	315	152
1998	199	330	99
1999	212	373	116
2000	171	322	112
2001	249	21	18
2002	230	174	47
2003	210	267	108
2004	559	528	104
2005	320	364	153
2006	553	496	124
2007	1,068	547	208

Source - Department of Prison – Sri Lanka

C. Work Release Scheme

Characterized by the motive of facilitating the penal stage of a prisoner to be spent more fruitfully and with flexibility, the work release scheme was introduced in 1974. The project was approved by the Minister of Justice in terms of Clause 11 of the Crime Prevention Ordinance. The selection of prisoners for the scheme is confined to those serving a sentence of two or more years and those due to serve less than two years of the sentence. The objective of the scheme is to accustom the prisoner to conditions and challenges of the society he or she re-enters once set at liberty from jail. The plentiful bestowal the scheme extends to the inmate after release is the employment opportunity.

The prisoners are engaged in such activities as gardening or clearing under the scheme at state institutions on weekdays from 7.30 AM to 4.00 PM (except public holidays). A retired prison officer is in charge of their security for which service he or she is paid by the institution concerned.

The prisoners so engaged are provided with the midday meal and an allowance of Rest 185/- per day by the institution. The income so earned is credited to their account at the People’s Bank and is gainfully invested after release. This project originated at the one prison has now expanded to the three main prisons.

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The project has benefited nearly 25 state institutions in 2007, the number of prisoners engaged was 230 and their total earnings amounted to Rs.4, 957,205/-.

The current statistics on prisoners engaged in work release from 1997 to 2007 are shown below.

Prisoners Engaged in Work Release scheme 1997 to 2007

Year	No of Prisoners Engaged on Work Release	No Found Unsuitable	Total Amount Earned for the year (Rs)
1997	200	8	1,149,653
1998	199	15	1,365,836
1999	212	12	2,047,301
2000	171	8	1,976,186
2001	249	10	3,387,876
2002	230	15	3,459,993
2003	210	22	2,625,641
2004	559	45	3,280,110
2005	320	44	3,276,166
2006	553	33	3,659,026
2007	1,068	29	4,957,205

Source – Department of Prisons – Sri Lanka

This salutary and successful scheme has served as a catalyst for the reintroduction of inmates to society as useful and reformed citizens.

D. Home Leave

Prisoners who become eligible for release on license and prisoners who have served at least six months at an open prison camp become entitled to visit their homes unescorted for a maximum period of seven days at a time once in six months.

Prisoners Sent on the Home Leave Scheme, 1997 to 2007

Year	No. Sent on Home Leave			No. Violated Law		
	Male	Female	Total	Male	Female	Total
1997	302	13	315	1	-	1
1998	307	23	330	8	-	8
1999	366	7	373	16	-	16
2000	315	7	322	5	-	5
2001	21	-	21	-	-	-
2002	171	3	174	3	-	3
2003	265	2	267	3	-	3
2004	523	5	528	3	-	3
2005	361	3	364	9	-	9
2006	490	6	496	9	-	9
2007	537	10	547	14	-	14

Source - Department of Prison – Sri Lanka

Five hundred and forty seven prisoners were sent on Home Leave during the year bringing the total to 3,584 since the introduction of the scheme in 1974. There were 16 violations of the trust placed in those prisoners.

III. PROBATION SYSTEM

The probation system in Sri Lanka commenced on 12 March 1945, under the Department of Prisons. It was inaugurated with ten Probation Officers who were paid salaries by the Government. However, after 1919 the probation system had been tried in Sri Lanka from time to time through Voluntary Probation Officers. In 1944 the Probation Ordinance was enacted to keep offenders under Probation. Accordingly, by 1960 the probation system had been extended throughout the island by appointing Probation Officers to all Judicial Districts in the Island. Since the probation system was functioning under the Department of Prisons, it was known as the Department of Prisons and Probation with the extension of the probation systems. The Children and Young Persons Ordinance No. 48 of 1952 was enacted and enforced in Sri Lanka. A separate Department, titled the Department of Probation and Child Care Services, was established on 1 October 1956, bringing the probation functions too under its purview. The objectives of the Department as envisaged by the Government are as follows.

With the establishment of Provincial Council system in Sri Lanka, some administrative powers were vested with the Provincial Councils. Hence some of the functions of the Department have been assigned to Provincial Commissioners of Probation.

A. The Objectives of Probation Child Care Services as Envisaged by the Government

1. Limiting the imprisonment of offenders by rehabilitating them using probation strategies with a view to re-integrating them into society as good citizens.
2. Taking very lenient and mitigated judicial actions in respect of children and young persons.
3. Provision of requisite service to needy children and young persons.
4. Offering such children as far as possible the opportunity to live with their parents and provision of due protection.

The following chart shows the number of offenders rehabilitating under the Department of Probation and Child Care.

Probation Offenders - 2005 (Year)

Province	Theft, Looting & Burglaries	Straying	Sale & use of Liquor & Drugs	Sexual Abuse/ Tape/Brothels	Others	Below 15 Years	Between 15 - 19	Between 20 - 24	Over 24 Years
Western Province	142	2	46	4	31	40	122	36	27
Southern Province	35		20	2	9	28	22	4	12
Central Province	45		7	1	9	24	29	3	6
North Western Province	19		1	1	2	19	4		
Sabaragamu Province	63	3	4	8	21	51	41	4	3
Uva Province	17				1	15	1	2	
North Central Province	33		3	4		19	19	2	
North East Province	16		1	14	11	26	16		
Total	370	5	82	34	84	222	254	51	48

Source - Department of Probation & Child Care – Sri Lanka

B. Main Functions of the Probation and Child Care Department

1. Moulding the character and rehabilitation of adults, young persons and juvenile delinquents referred to the Department.
2. Directing children not obedient to their parents, cutting school, stubborn and engaged in anti-social activities even though they have not committed any offence considered a crime under the Penal Code.

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3. Giving protection to and looking after the orphaned, abandoned, destitute and those subject to cruelty and faced with various disasters and subject to abuse.
4. Investigation supervising and providing aids to voluntary organizations and institutions engaged in children's welfare services.
5. Taking resources to lessen and prevent the number of children likely to break down in life due to poverty or other social requirements.
6. Implementation of the Convention of the Rights the Child adopted by the United Nations and taking necessary steps to protect the Rights of the Child.

The chart below describes the offenders investigated during the year under review.

Offenders Investigated During the Year Under Review (Juvenile/Youth/Adults) - 2005

Province	Theft, Looting & Burglaries		Physical Injuries		Seale and use of Drudge		Prostitution & Straying		Psale & Use of Liquor		Attempt to Commit suicide		Acts of terrorism		Others	
	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M
Western	9	391	9	18	6	91	41	189	2	50					62	96
Southern	5	44	1	15		9	9	2	7	6					3	18
Central	10	62	12	14	4	28				3		1		1	14	6
Nor/ West	8	33	2	1	2	3	14			2					1	2
Sabaragamu	5	60	4	4	10	45	11		1	22					16	17
Uva	2	34	1	5			2	6			2				16	8
North Central	3	68				3				4	1				1	3
North East	20	24	71	54	6	7	1	9	1	9	30	19	25	29	20	33
Total	62	716	100	111	28	186	78	206	11	96	33	20	25	30	133	183

Source - Department & Probation & Child Care – Sri Lanka

IV. 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 or her work commitments, he or she 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.

V. INTRODUCTION OF NEW LEGISLATION ON GRANTING OF BAIL

In Sri Lanka, attempts also have been made to reduce the pressure of overcrowding 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 prison overcrowding and granting relief to those persons held in custody for their inability to furnish bail. Certain bail regulations made under the Emergency Regulations empowered prison authorities to release some categories of remand prisoners who had failed to furnish bail though ordered by

Courts, upon their signing a bond.

VI. INTRODUCTION OF SUSPENDED SENTENCES

The introduction of suspended prison sentences under the Code of Criminal Procedure Act No. 15 of 1979 for certain categories of offenders helped reduce the admission of a considerable number of convicted prisoners. Presently most of the law level courts have passed this suspended sentences on offenders who committed minor crimes, where there is no grievous impact on society.

VII. REQUIREMENT OF INTEGRATION OF ALL AGENCIES WITHIN THE CRIMINAL JUSTICE SYSTEM

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 separated and isolated from each other. In Sri Lanka, police, prisons and probation come under three separate Ministries. The Courts function independently under the Judicial Service Commission. There is very little or no co-ordination existing between the different agencies though they work to achieve interrelated objectives. Therefore, the problems of overcrowding 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. Therefore, it is necessary to have a constant dialogue with all agencies within the criminal justice system. When making policies for the country at least policy makers need discuss the matter with each other to reach a consensus.

VIII. CONCLUSION

The problem of prison overcrowding, which has direct links with the increase of population of a country, and the increase of the 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 its 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 offence.

On the other hand where corruption within the criminal justice system exists, alternatives to imprisonment amount to additional mechanisms of control and abuses of power such as bribery and denial of justice. Non-custodial measures should be implemented in parallel with pre-trial diversion measures such as caution and mediation mechanisms to ensure that the over-use of arrest and imprisonment are addressed systematically and holistically.

Non-custodial measures include that of discharge (absolute and conditional), suspended sentences, fines, binding over, compensation orders in the mediation process, attendance centre orders, supervision orders (with or without requirements), probation orders, remission of sentences and grant of amnesties, parole of release on licence, work release, and community service orders, etc.

Community service is an order of the court whereby the offender is offered the opportunity of compensating society for the wrong he or she has done by performing work for the benefit of the community instead of going to prison.

In Sri Lanka, the daily average population of convicted and un-convicted prisoners was 24,255. According to Table 1 the number of prisoners will increase day by day according to the prevailing socio-economic situation in the country. As a result, the cost of prisons increases day by day. Hence, there is a social impact prevailing in the country due to a non-effective prison system.

In this circumstance, non-institutional treatment methods for prisoners are urgently required considering the economic and social factors of the country. Therefore, relevant authorities and policy makers should pay serious consideration to reviewing the criminal justice system, focusing on the improvement of the treatment of offenders in community-based alternatives to incarceration.