

ALTERNATIVES TO IMPRISONMENT

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WHY DO WE NEED ALTERNATIVES TO IMPRISONMENT ?

- 1) Indiscriminate use of imprisonment. Juveniles, mentally ill persons drug addicts are sent to prison.
- 2) Non serious offenders kept in prisons in large numbers.
- 3) Overcrowding leading to abuse of human rights and pressure on prison administration.
- 4) High cost of maintenance of prisons.
- 5) Shortage of resources for proper accommodation, health care, food or to provide activities to prisoners.
- 6) Social damage due to stamping, loss of employment prospects of prisoners, reduction in chances of social integration and contamination due to association with criminals in prison.

ALTERNATIVES TO IMPRISONMENT

<u>Pretrial State</u>	<u>Sentencing Stage</u>	<u>Post Judicial stage</u>
1. Diversion	1. Admonition/absolute	1. Work release
2. Fines	discharge/ conditional	2. Home leave
3. Bail	discharge	3. Parole/
4. Release on personal	2. Restitution/compensation	release on leave
5. House arrest/ Electronic monitoring	3. Fine	4. Pardon or
	4. Suspended sentence	executive
	5. Probation	clemency
	6. Limitation of liberty	
	7. Community service order	
	8. Periodic detention	

WHAT IS A COMMUNITY BASED ALTERNATIVE

“It is a court – ordered sanction that occurs in the community, particularly where it provides an alternative to a custodial sanction.”

Such programmes often include supervision of convicted offenders, provision of various services to them, monitoring encouraging and enforcing compliance with sentencing conditions such as payment of fines, victim compensation, community service and restitution orders and provide for an element of punishment through increased control and accountability while in the community.

What are the purposes of Community based alternatives ?

1. To reduce overcrowding in prisons.
2. To prevent escalation of detention costs.
3. To prevent or reduce stigmatization of offenders.
4. To enhance rehabilitation and reintegration of offenders into community in order to strengthen their ability to live peacefully with others in the community setting.
5. To permit the offender to contribute towards his or her family in particular and to society by working instead of being confined in prison.

6. To avoid the risks of family break up due to separation during incarceration.
7. To avoid escalation of deviant behaviour when new offenders are mixed with hardened criminals (contamination)
8. To monitor and supervise offenders in order to ensure compliance with court ordered conditions.

PRE-TRIAL STAGE

DIVERSION:

Diversion is a process, which provides an alternative to criminal justice sanctions to facilitate rehabilitation of an individual through various dispositions and may include assessment, education, treatment developmental programmes and restitutions.

- Different diversion schemes to dispose minor criminal cases at the local level outside the court are vogue in many countries –
e.g., 1) Panchayat system in India
2) Conciliation Board in Srilanka
3) ‘Barangay’ in Philippines
- It is designed to take the interest of the victim, offender and the community into consideration.
- It helps in avoiding negative effects i.e. stigma of imprisonment.
- It helps in reducing court congestion
- It helps in decreasing overcrowding in prisons.

BAIL

Being used as a measure for the prevention of unnecessary detention at the investigation and trial stage by the police in most countries.

- One of the best measures to avoid harassment of the persons facing trial.
- Reduces overcrowding in jails until his guilt is established.
- Offences in India are divided into bailable and non bailable offences. In bailable offences, the bail must be granted as it is mandatory. In non bailable cases, the court has discretion to grant or not to grant.

Release on personal recognizance

A large number of accused persons who have a settled social life and a permanent abode would stick to their obligation to appear before and surrender to the court. Such persons can be released of personal recognizance.

- Such persons may be placed under the supervision of Probation Officers or gram panchayats or non official organizations recognized by Government for the purpose.

HOUSE ARREST

It is an alternative to imprisonment in different cases like political or journalistic offences.

- **Certain offenders like the elderly or those with dangerous diseases can be put on house arrest.**

Electronic monitoring

- Is a viable and economical tool for non custodial forms of supervision.
- It is in vogue in many developed countries.
- An anklet or a bracelet is worn by an offender, which is tied to a computer at home or at a central location which monitors the whereabouts of the an offender.

Disadvantages

- **It requires laying down of an efficient electronic network which entails large capital expenditure.**
- **System requires to be supervised with an alert police force on standby in anticipation of any breach.**

SENTENCING STAGE

1) Admonition/ Absolute discharge/ Conditional discharge:

- Admonition is available for Juvenile cases in India and other countries. Admonition is also used for first offender in India who commits an offence punishable for less than 2 years.
- Absolute discharge is really a complete let off.
- Conditional discharge means that the offender is subject to condition of not committing of any further offence during the period fixed by the courts.
- On violation of conditions the offender is liable to be sentenced for the original offence.

RESTITUTION/ COMPENSATION

- It is an order made by the court to restore the stolen goods to the aggrieved person. If the offender no longer has the stolen goods, the court may order him to pay money equivalent to stolen goods to the aggrieved person.
- The court may also require the offender to pay compensation for any personal injury, loss or damage resulting from an offence.
- These measures may be ordered by the court in addition to another sentence. In some countries these measures are also used as an independent sentence or alternative to short term imprisonment.

FINES AND MONETARY PENALTIES

- Fines are economical both in terms of money and manpower, practical in terms of management and administration and humane because they inflict minimum damage to the offender.
- In some Scandinavian countries and Austria, a system of ‘day fine’ is available where the amount to be paid is proportional to the offender’s net income, allowing for coverage of basic expenses.

SUSPENDED SENTENCE

- In some countries like Hong Kong, Japan, Srilanka, Thailand, Turkey etc., offenders are sentenced to a certain prison term varying from few months to five years but the execution of sentence is suspended for certain period.
- The suspended sentence will eventually be vacated if the offender does not commit a further crime in the operational period.
- In countries like India, Japan and Thailand, suspended sentence is some times accompanied by an order of probation.

COMMUNITY SERVICE

- Provides a method of dealing with non serious offender who would otherwise be sentenced to imprisonment.
- The principle objective is rehabilitation.
- It provides the offender opportunity to make reparation to community against which he has committed a crime by working for its benefit.
- Working for the community will have positive affect on the future attitudes and conduct of the offender.
- Community service order is less costly than custodial measure. It costs little to administer and is also inexpensive in terms of human and social cost. It avoids expenses of providing food, clothing, shelter, medical care and necessities in prisons.

- It releases pressure on prison system by reducing prison population.
- It enables the offender to live with their families thereby maintaining family ties.
- It saves the offender from the harmful affects of prisonization (contamination).
- * The offender will not face reentry crisis i.e. he will not suffer great changes in employment and family situation that go with imprisonment.
- The community will benefit through the work performed by the offender.
- Andhra Pradesh has proposed to enact “Andhra Pradesh Community Service for Offenders Act” in 2003. It is under consideration of Govt of India.

COMMUNITY ATTENDANCE CENTRES

- They are slightly different from community service order in terms of the content of the obligation. They are the variation of community service order in terms of purpose or function.
- In community service order sometimes offenders are ordered to attend the community attendance centers in leisure hours and do the work which the officer of the center decides.

PERIODIC DETENTION

- Periodic detention is adopted in some countries for the purpose of preserving the community life of the offender by full execution of short term imprisonment.
- Short term offenders who are sentenced to periodic detention may be required to undergo imprisonment during night times as decided by the court.
- It can also take the form of week end detention in some cases.

STATUS PENALTIES

- Status penalties are punishments imposed on an offender which deprives him of his civil rights, such as the right to seek public office or to vote, the right to drive a car etc.,
- They may be ordered by sentencing judge as a non custodial measure and can be combined with other measures like fine.
- It may be limited or unlimited in time.
- The main advantage lies in the offender keeping his job and looking after the family.
- Likewise it helps protect the community.

PROBATION

- **It is a method of treating suitably selected offenders in the community itself by releasing them on good behaviour after conviction before sentence upon conditions prescribed by the court and generally under the guidance and supervision of probation officer.**
- **Probation is designed to work for early reformation and resocialisation of offenders.**
- **Offenders must comply with conditions, violation of which may result in offender being sent to imprisonment.**
- **Probation can be a condition for non custodial measures such as using electronic monitoring or attending a rehabilitation center.**
- **In India probation offenders act, 1958 provides for probation for first offenders for minor offences and also others with or without supervision.**
- **Probation measures are seldom used in India.**

C) POST JUDICIAL STAGE/ **POST SENTENCING STAGE**

The measures can be classified under the early release methods and temporary release measures. Both are part of community based alternative to incarceration in the post sentencing stage.

1) Early Release Measures

(a) Parole:

- Parole is a method of non institutional treatment in which an offender is released from prison on conditions before the termination of his sentence. Also known as conditional release or release on licence.
- It is aimed at reduction of the period of incarceration in the post judicial stage. In India, parole is conditional suspension of sentence for short duration. Andhra Pradesh recently proposed enactment of release of convicts on probation act which is comparable to the parole system. Followed in Europe and United States.
- On conditions being violated the offender is returned to prison to undergo the sentence.

(2) **Pardon or executive clemency:** It has long been in existence as a device for tempering justice with mercy and for righting the wrongs done in the course of justice.

- Various forms of pardon include amnesty or collective pardon which nullifies convictions for specific groups of individual pardon which nullifies conviction of sentence of the individual prisoner. In India, all states implement the programme of giving extensive commutation of sentence for all categories of prisoners in commemoration of certain special events like Mahatma Gandhi's birthday.
- Power to grant pardon or executive clemency is available to the head of State such as President or Governor.
- Pardon has effect of shortening the term of imprisonment

(c) Remission or good time allowance

- Under this system, in the case of remission, prisoners are automatically released from prisons as they have served their term of sentence **minus** a specified period of time credited for good behaviour and working in prison. This measure provides prisoners with an incentive for keeping good behaviour and contributing to prison discipline.
- This form of release procedures exists in all states of India.

II) **Temporary release measures** :

- This measure permit the prisoners to serve their sentence outside the prison for a period of time and then return back to serve the remaining sentence. These include work release and furlough.

Work Release :

- Work release is a treatment or a rehabilitation programme for offenders to work outside the correctional institution for a certain period of time as a part of sentence.
- Under the system offenders are allowed to work outside the prison during the day and return to the institution for the night.
- Also known as day parole and work furlough. Work release programmes are in existence since a long time in Uttar Pradesh at Model Jail, Lucknow.

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- The aim of work release is to help a prisoner before his discharge to identify and prepare himself to face problems like difficulties in adjustment to community, difficulties to find a suitable employment and difficulties to conquer financial problems.
- Prisoners released on work release programme should be allowed to work with minimum supervision.
- A Variation of this programme could be education release programme where the prisoner is allowed to attend a college or institution outside the prison.

Furlough or leave :

- In India furlough is granted as a leave to prisoner to visit his family for a short period which counts towards the sentence after he undergoes certain period of sentence.
- In Andhra Pradesh, prisoners who are of good conduct and not involved in heinous offences are sanctioned furlough every 2 years for a period of 14 days by the Director General of Prisons.
- In Open Prisons furlough is sanctioned once in a year. The parole is suspension of sentence and does not count towards the sentence and furlough is a part of sentence.

Crime and punishment have been the accepted norm in society from times immemorial. Whilst some countries inflicted harsh punishment on offenders, others treated them more humanely. Prisons or what is referred to as institutional treatment exist in most countries of the world today. Since the international community accepted that more humane methods should be adopted in treating offenders a number of non institutional methods were adopted. Methods such as probation, suspended sentence, fines, community service orders, parole or release on licence etc., are practiced in most parts of the world. These measures are designed to secure rehabilitation of offenders enabling them to lead their normal lives with or without conditions.

Successful rehabilitation of offenders through non institutional methods depends, inter alia, on the following:

1. Active participation by the community.
2. Mutual cooperation among the main components of criminal justice system i.e Police, prosecutorial services, courts and the correctional departments.
3. Educating the public to influence public opinion through media and enlighten the members of society through seminars, workshops, symposia etc.,
4. Continuous review and evaluation by competent authorities like courts, case review committee etc.,