

# Parole System Reducing the Overcrowding Situation of Prisoners in Kathmandu Valley

Mukesh Dhungana\* & Samjhana Phuyal \*\*

## Abstract

*The Parole system is one of the alternative models of reforming the prison system under the criminal justice system. It has been found that prisoners in the prison of Kathmandu valley are overcrowded and even the prison is not properly managed. Prisoners are facing multiple impacts from such situations of prison being overcrowded. Therefore, this article aims to explore the situation of prison being overcrowded, the reasons behind and its effects. It also aims to explore the implementation status and re-define the role and responsibilities of concerned authorities including the Home Ministry, Prison Management Department, and prisons in Kathmandu valley. The parole system has recently been introduced in Nepal as an alternative mechanism to imprisonment. The Criminal offences (Sentencing and Executing) Act 2074 has elaborated on the prison system and such alternatives.*

**Key words:** Prison, overcrowding, Parole, Parole board, parole officer, National legal instruments, sentencing policy

## 1. Introduction

It is an established phenomenon of human life that nobody wants to be a criminal<sup>1</sup>; they commit crimes owing to reasons ranging from social environments, family backgrounds to economic conditions. Humans, as intellectual beings, always retain a possibility to be reformed by means of training, opportunity, counselling, or threat of punishment. Thus, prisoners too, must be encouraged to reform themselves with the help of the state.<sup>2</sup> In any crime, there is a certain level of punishment as per the degree of crime. But Punishment does not only mean pain and suffering imposed on the offender. In the modern context, the purpose of punishment is to reform the offender. Based on the gravity of offence and degree of punishment, different offenders should be

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<sup>1</sup> Nomita Aggarwal, *Jurisprudence Legal Theory*, Central Law Publication, India, 6<sup>th</sup> edition, 2007, p.75.

<sup>2</sup> Madhav Prasad Acharya & Ganesh Bahadur Bhattarai, *Criminology and Penology*, Lumbini Prakashan Pvt. Ltd., Nepal, 1<sup>st</sup> edition, 2011, p. 62.

treated differently. However, the very objective of the law is to reform and reintegrate such offenders into the society. One of the important pillars of the administration of criminal justice system is the prison. Prisons are no longer considered only detention centers and there has been a considerable change in social perception about prison and its inmate. They are now being considered as places of reformation. The main objective of the Department of Prison Management of Nepal is to make Prisons a "correction center".<sup>3</sup> The ultimate purpose of the prison is to socially reintegrate the prisoner so that they can be re socialized into the society.<sup>4</sup> A total of 74 prisons have been established in Nepal. Among those prisons, most of them are overcrowded. Prisons around Nepal do not have the same capacity to hold prisoners. Thus, the overcrowding of prisons is a serious problem for prisoners and the State, especially during the COVID-19 pandemic.

Overcrowding of prisons has now become a serious challenge and threat to the criminal justice system. With the increasing use of imprisonment as punishment, prison administrations are facing varieties of problems.<sup>5</sup> So, while the prisoners have the right to live with dignity, the infrastructure and the prison management is still improper.

The provisions relating to prisoners in the existing Sentencing Act, 2074 B.S seems progressive in nature. Muluki Criminal Code 2074 B.S has increased the punishment in several offences, however, the code has enshrined the provision for mitigating and aggravating factors of punishment. If we see the context of the judiciary, judges have discretionary power so as to determine punishment based on the gravity of offence. Therefore, if the court decides high punishment in those cases, the prisoners stay in prisons for a long time. As a result, the numbers of prisoners are increased and that causes overcrowding in the prison. On the one hand, prisons are overcrowded day by day whereas on the other, building of infrastructures inside the prison that are sufficient and well equipped with basic minimum facilities is required for the prisoners. Parole refers to criminal offenders who are conditionally released from prison to serve the remaining portion of their sentence in the community.<sup>6</sup> It can be considered as a privilege for such offenders to complete their sentence with alternative modes of punishment. The main objective behind this parole system is to rehabilitate offenders and guide them back into society and restrict them from committing any other new offense.<sup>7</sup> So, it is considered as a scheme designed to release the prisoner before the expired duration of their punishment under the supervision of their Parole Officer.<sup>8</sup> The very objective of this system is to prepare the prisoner to adjust prisoners to their normal social life outside the prison.<sup>9</sup> It aims at a correctional approach of the punishment system which promotes reformation rehabilitation and re integration in

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<sup>3</sup> Department of Prison Management, Long Term Vision, <http://dopm.gov.np/en/pages/143/Long-term-Vision/20818367/> <https://www.dopm.gov.np/en/content.php?id=127> , Accessed on 19 march 2021.

<sup>4</sup> S.M. Afzal Qadri, *Criminology, Penology and Victimology*, Eastern Book Company, 7<sup>th</sup> edition, 2016, p. 305.

<sup>5</sup> Mahendra Nath Upadhyaya, 'Overcrowding of Prison Populations: The Nepalese Perspective', *Resource Material No. 80*, available at [https://www.unafei.or.jp/publications/pdf/RS\\_No80/No80\\_13PA\\_Upadhyaya.pdf](https://www.unafei.or.jp/publications/pdf/RS_No80/No80_13PA_Upadhyaya.pdf), accessed on 19 March 2021.

<sup>6</sup> Bureau of Justice Statistics, <https://www.bjs.gov/index.cfm?ty=qa&iid=324>, accessed on 19 March 2021.

<sup>7</sup> Criminal Law, *Parole and Probation*, Justia, 2021, available at <https://www.justia.com/criminal/parole-and-probation/>, accessed on 19 March 2021.

<sup>8</sup> Acharya & Bhattarai (n 2), p. 93.

<sup>9</sup> S.M. Afzal Qadri, *Criminology, Penology and Victimology*, Eastern Book Company, 7<sup>th</sup> edition, 2016, p. 369.

the society. The mode of alternative to prison system includes community service, suspended sentence, open prisons, probation, and parole.

However, this paper seeks to explore the concept, situation, and implementation status of the parole system and its relation to reducing the overcrowding problem of prisons in Kathmandu valley. Most of the prisons in Kathmandu valley are overcrowded and the condition of prisons is congested in nature. But the number of prisoners is increasing day by day as a result of prison becomes overcrowded. The overcrowding situation of prisons directly violates the constitutional and legal rights of the prisoner. It has been a serious problem during the Covid 19 pandemic where the spread of the corona virus threatens both Right to Life and the health of prisoners. In this context, the study of the implementation of parole system to reduce the problem of overcrowding of prisoners in Kathmandu valley is essential to identify policies, legal provision, gaps and implementation status of the parole system in the context of Nepal. Further the report has been prepared in consultation and personal interview with the authorities of the Home Ministry, Prison Management Department including jailors and prisoners within Kathmandu valley.

### 3. General Overview of the Parole System

Generally, the early release of offenders who have shown signs of reformation is the starting point of this system. The British Captain Alexander is considered to be the founder of the concept of the parole system.<sup>10</sup> He started the practice in 1840 AD in Norfolk Island, Britain. He initiated the system of a ticket of leave for those who had shown good behavior on the condition that they would continue the same behavior even after their release. In 1876, America started the concept of indeterminate imprisonment along with the attraction of release if the prisoners proved themselves to be of law abiding nature, diligent and unproblematic to the society<sup>11</sup>, as a result, the modern parole system is based on conditional release of prisoners along with the supervision of the parole officer.

Parole has emerged as one of the most acceptable forms of correctional device in modern penology. It has also been universally recognized as one of the most appropriate methods for offenders in the process of their reformation and rehabilitation into the normal society after the final release and considerably helps in reducing overcrowding in prisons.

According to Donald Taft, "Parole is a release method which retains some control over prisoners, yet permits them more normal social relationships in the community and provides constructive aid at the time they most need it." He elucidates that parole is a release from prison after part of the sentence has been served, the prisoner still remains in custody and under stated conditions until discharged and liable to return to the institution for violation of any of these conditions.<sup>12</sup>

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<sup>10</sup> Dahal (n 4), p.336.

<sup>11</sup> Acharya & Bhattarai (n 2), p. 94.

<sup>12</sup> N.V. Paranjape, *Criminology and Penology including Victimology*, Central Law Publication, India, 18<sup>th</sup> edition, 2018, p.595.

The ultimate significance of parole lies in the fact that it enables the prisoner a free social life yet retains some effective control over them. Every prisoner is carefully watched and one who shows potential for correction and responds favorably to the disciplined life inside the prison is allowed considerable liberty and is finally released to join the society conditionally. Thus, parole is essentially an individualized method of treatment of offenders and envisages a final stage of adjustment of the incarcerated prisoner to the community.

The object of the parole system is to adjudge the adjustability of responsive inmates to normal society by offering suitable opportunities to associate themselves with the outside world. A prisoner released on parole is considered in custody and still undergoes punishment as well as receiving assistance while under the threat of more severe punishment that is, to return to the prison from which they were released. Thus, parole involves both punishment and rehabilitation at the same time.

The parole system is based upon the *reverse U* formula. A prisoner who is able to reach the optimum level of the reformation process, then can be released on parole. It helps to strike a balance between reformation and punishment. The decision to grant parole is based on 3 principles: Optimum Point, Re-socialization, and Prison Space.<sup>13</sup>

#### 4. Reasons behind Overcrowding of Prisons in Nepal

Overcrowding of prisons refers to the situation where the number of prisoners exceeds the official prison capacity. The capacity of prisons varies from prison to prison. Prisons located in urban areas have greater capacity than those in rural areas. Some of the reasons behind the overcrowding of prisons are as follows:

##### a. Socio-economic and political factors<sup>14</sup> :

The majority of prisoners worldwide come from economically and socially disadvantaged backgrounds. Most of them live in poverty, are illiterate, or have limited education, and have experienced unemployment and lack of housing, which in turn may have contributed to the breaking up of their families, drug and alcohol abuse, among other destructive consequences of their socio-economic marginalization. Such circumstances and dependencies can contribute to individuals' confrontation with the criminal justice system, unless sufficient support systems are in place. These may include social welfare assistance, support for housing, employment and treatment for substance dependencies and mental healthcare needs, among others, to help people to overcome such challenges and live positive, self-supporting lives.<sup>15</sup>

##### a. Delayed criminal justice process

<sup>13</sup> John Randolph Fuller, *Criminal Justice Mainstream and Cross Currents*, Oxford University Press, available at <https://global.oup.com/us/companion.websites/9780199997961/stud/chapter013/keyconcepts/>, accessed on 16 August 2021.

<sup>14</sup> Handbook on strategies to reduce overcrowding in prisons available at [https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding\\_in\\_prisons\\_Ebook](https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook), Accessed on 8 July 2021.

<sup>15</sup> Ibid.

Delays encountered in the processing of cases before a final sentence passed, have a significant impact on the size of the pre-trial prison population in many countries. One of the causes of overcrowding of prison is the increasing number of detainees on trial. In Nepal there are more than 45.18% of detainees on trial.<sup>16</sup> The delay in bringing offenders to trial is commonly accepted as the main cause of prison overcrowding. In the Nepalese criminal justice system, there are procedures that courts must follow. They are time-consuming, and because of these procedures, the final hearing of detainees can take a long time. There are many cases pending in our courts. Backlogs are very high. This is the cause of overcrowded prisons.

### c. Tougher sentencing

The legal system of many countries emphasizes imprisonment as an effective and a powerful weapon against crime.<sup>17</sup> The general public always demands that the offender be punished severely and imprisonment is the last resort. Thus, punitive criminal justice policies have had an impact on the growth of the prison population and overcrowding in prisons.<sup>18</sup> Courts in many countries today are more likely to sentence offenders to imprisonment and impose longer sentences.<sup>19</sup> As a result, the prison population is increased and the prison becomes overcrowded.

### d. 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 additionally lead to young people towards criminal activities. The increase in imprisonment rates and overcrowding in prisons are direct consequences of increasing criminal activity.<sup>20</sup>

### e. Increase of punishment in most offences

The *Muluki Criminal Code 2074* has increased the punishment for most of the offenses. Because of this provision, the prisoners have to remain more time in the prison executing the sentence imposed upon them. For example, the *Muluki Criminal Code, 2074*, as mentioned in section 42, has increased the duration of life imprisonment (imprisonment till death) from 20 (previously in *Muluki Ain*) to 25 years. Similarly, the Criminal Code has provisions for life imprisonment in six offences<sup>21</sup>. So, the punishment in different offences needs to be revised. The simple principle that, the more we punish the prisoners in any offence, the more time they have to spend in prisons. So, increasing punishment for any offence may not fulfill the requirements of an alternative punishment system like parole.

<sup>16</sup> Department of Prison Management <https://www.dopm.gov.np/uploads/files/jestha%20maskebari%202078.pdf>, accessed on 10 August 2021.

<sup>17</sup> Upadhyaya (n 5).

<sup>18</sup> 'Strategies and Best Practices Against Overcrowding in Correctional Facilities', *UNAFEI*, 2011, Japan, available at [https://www.unafei.or.jp/publications/pdf/12th\\_Congress/00All.pdf](https://www.unafei.or.jp/publications/pdf/12th_Congress/00All.pdf), accessed on 8 July 2021.

<sup>19</sup> Handbook on strategies to reduce overcrowding in prisons (n 18).

<sup>20</sup> Ibid.

<sup>21</sup> *Muluki Aparadh (Sambita) Ain 2074*, (The Penal (Code) Act 2017), Nepal, s. 41.

**f. Effectiveness of investigation**

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

**g. Lack of alternative measures to imprisonment**

We have very few alternative measures to imprisonment. In our penal system, an accused, if convicted, will be imprisoned or charged a fine. The Nepalese legal system has provisions of alternatives to prison system like the parole system but this provision of parole is suspended by law.<sup>22</sup> In petty offences, the courts can impose a fine on the accused, but in other cases, they will be imprisoned as prescribed by law.

**h. Inadequate bail system**

In Nepal, there is a statutory provision that directs courts to place an accused on remand and send them to prison if they are charged with an offence punishable with more than three years' imprisonment if convicted.<sup>23</sup> Bail is applied only for offences that are punishable with less than three years' imprisonment or only a fine. In some specific cases, if there is a 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.<sup>24</sup>

**i. Fine defaulters**

In Nepal, there are many laws under which an accused will be fined if found guilty. Due to the socioeconomic condition of our country, some who are really unable to pay the fine are liable to bear the imprisonment for nonpayment of the fine. The maximum term of imprisonment for nonpayment of fine is 10 years.<sup>25</sup>

**j. Nonpayment of the compensation:**

In most the offenses, the victim has the right to get compensated. If the one guilty cannot pay the compensation, they have to bear imprisonment by calculating rupees 300 as one day of imprisonment up to 4 years.<sup>26</sup>

**5. Impact caused to prisoners due to overcrowding situation of prison**

Overcrowding of prisons is not the only problem of inmates but also of concerned authorities. It affects the criminal justice system and correctional program of prisoners. The effect of the overcrowding problem of prisons are as follows.

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<sup>22</sup> *Faujdari Kasur (Sajaya Nirdharan tatha Karyanwoyan) Ain, 2074* (Criminal Offences (Sentencing and Execution) Act 2017), Nepal, s. 1(2).

<sup>23</sup> *Muluki Faujdari Karyabidhi (Sambhita) Ain 2074*, (National Criminal Procedure Code 2017), Nepal, s. 67.

<sup>24</sup> Upadhyaya (n 5).

<sup>25</sup> *Muluki Faujdari Sambhita* (n 22), s. 46.

<sup>26</sup> *Faujdari Kasur (Sajaya Nirdharan Tatha Karyanwoyan)* (n 22), s. 45 (2) & (3).

**a. Lack of space and facilities to accommodate inmates<sup>27</sup>**

Among several problems related to the overcrowding situation of prisoners in different prisons of Kathmandu valley, the inadequate space and improper surroundings are some one of the major causes among several issues. The lack of adequate space causes overcrowding in prisons. Every prison has its own capacity and facilities but, it is found that the prisons are beyond their capacities. There is a gap in between the capacity of the prisons and the number of prisoners in such prisons.

For example, a prison in *Jagannathdebel* in Kathmandu has 2920<sup>28</sup> inmates. But the capacity of that prison is only 1500<sup>29</sup>. This is just an instance, there are still many prisons where the number of inmates is beyond its capacity.

**b. Stress on staff**

Overcrowding always has an adverse effect on the administration. The staff cannot provide all the basic facilities. They don't have sufficient space, logistics, and medical facilities for the inmates. They have to work overtime. The staffs of overcrowded prisons are stressed, which affects them both physically and mentally.<sup>30</sup>

**c. Tension and stress among prisoners and subsequent impacts on health**

Overcrowding also increases tension and stress among inmates. There are few facilities for many people. Space, logistics, and medical facilities are insufficient. It leads to competition for resources, less co-operation and more social withdrawal. It will increase disruptive behavior.<sup>31</sup> It may have physical and psychological effects on inmates. Overcrowding also impacts on the quality of nutrition, sanitation, prisoner activities, and health services which automatically effects the health of the prisoner.

**d. Effect on prisoner rehabilitation**

Correctional facilities are for the correction of prisoners, but nobody can be corrected in an overcrowded situation. They have insufficient facilities to feel secure and at comfort. If somebody is not feeling at comfort, how can they go on positively? They will face many problems throughout the day. The management cannot run correctional programs and other facilities smoothly in a correctional facility because of lack of facilities.<sup>32</sup> They cannot provide work opportunities and other facilities to prisoners which directly affects prisoner rehabilitation.

**e. Separation and classification**

Classifying and separating prisoners according to their age, gender, and the risk they pose to others becomes difficult due to the overcrowding problems in prisons.

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<sup>27</sup> Upadhyaya (n 5).

<sup>28</sup> <https://www.dopm.gov.np/uploads/files/jestha%20maskebari%202078.pdf> accessed on 10 August 2021.

<sup>29</sup> Report on Detention and Prison Monitoring, 2076, Office of Attorney General, p.103. available at [https://ag.gov.np/publication?pub\\_type=38](https://ag.gov.np/publication?pub_type=38), accessed on 10<sup>th</sup> August 2021.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

#### f. Safety and security

Overcrowding has a major impact on the safety and security of prisoners and staff, where the prisoner to staff ratio increases, tensions can be high as the prisoners can be angry and frustrated about the conditions in which they are held. Experiences in many countries has shown that the risk of violence, prisoner protests and other disturbances in overcrowded prisons are acute.<sup>33</sup>

#### g. Effect on contact with the outside world

Contact with the outside world, especially with families, is recognized as being one of the key factors that contribute to the chances of successful resettlement of prisoners. As the number of prisoners increases, additional infrastructure and opportunities, such as more visiting rooms, extended visiting times, and more telephones, must be provided if prisoners are to maintain communication with their families. At times of financial constraint associated with overcrowded prisons, such investments are unlikely to be forthcoming.<sup>34</sup>

#### h. Violation of human rights of prisoners

Overcrowded prison conditions violate prisoners' basic rights, undermines the safety of prison staff and that of the general public, and weakens the ability of the prison system to meet prisoners' basic healthcare, food and accommodation needs and to provide rehabilitation programs, education, training, and recreational activities.<sup>35</sup>

### 6. Existing legal provisions regarding the parole system

In the Nepalese legal system, there are some countermeasures that can be applied against the overcrowding of prisons. They are community service, open prisons, parole, probation etc. The Parole system is recently introduced in Nepal as an alternative mechanism to imprisonment. The Criminal Offences (Sentencing and Executing) Act, 2074 has the provisions in relation to the parole system. According to the Criminal Offences (Sentencing and Executing) Act, 2074 parole means permission for a prisoner who has served two-thirds of the term of the sentence of imprisonment imposed on them to serve the remaining term by spending life in the society, subject to the compliance with the specified terms and conditions, under the supervision of the parole officer.<sup>36</sup> The judge of the District Court may, on the recommendation of the concerned District Probation and Parole Board, make an order to place an offender on parole who, upon being sentenced to imprisonment for more than one year, has served two-thirds of the sentence and has good conduct.<sup>37</sup> In making an order, the court may specify the terms and conditions determined by the Probation and Parole Board as to be complied with by such offenders during the period of parole.<sup>38</sup> The

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<sup>33</sup> Handbook on strategies to reduce overcrowding in prisons (n 18).

<sup>34</sup> Ibid.

<sup>35</sup> 'Strategies and Best Practices Against Overcrowding In Correctional Facilities (n 18).

<sup>36</sup> *Faujdari Kasur (Sajaya Nirdharan tatha Karyamvayan)* (n 22), s. 29(1).

<sup>37</sup> Ibid, s. 29(1).

<sup>38</sup> Ibid, s.29 (2).



parole officer is designated to monitor whether or not the offender has complied with the terms and conditions.<sup>39</sup> If the offender complies with the terms and conditions, the imprisonment imposed on them is deemed to have been served.<sup>40</sup> However, if the offender fails to comply with the terms and conditions or commits any offence punishable by imprisonment during that period, they must serve the remaining period of imprisonment imposed on them in prison.<sup>41</sup> The offender who has committed the following types of offense is not eligible to get the facility of Parole.<sup>42</sup>

- I. Sentenced to life imprisonment,
- ii. Corruption,
- iii. Rape,
- iv. Human trafficking and transportation,
- v. Organized crime,
- vi. Money laundering,
- vii. Offence related to torture, cruel, inhumane or degrading treatment,
- viii. Crime against humanity,
- ix. Crime against the state.

There is a provision in relation to the formation of a Federal Probation and Parole Board to render assistance in the social rehabilitation and integration of the offenders into the society.<sup>43</sup> The Probation and Parole Board determines on its own, the rules of procedures required for the performance of its functions. Similarly, the Probation and Parole Board may, as required, form a sub-committee to render assistance in its functions.<sup>44</sup> The terms of reference, rules of procedures and other necessary matters of a sub-committee would be as specified by the Probation and Parole Board.<sup>45</sup> The functions, duties and powers of the State Probation and Parole Board would be as prescribed by the Federal Parole Board.<sup>46</sup> There is also the provision in relation to the formation of State Probation and Parole Board in each State, which is under the direct guidance, control and supervision of the Probation and Parole Board:<sup>47</sup>

## 7. Case laws regarding parole system

Gopal Siwakoti and Others v. Prime Minister and Council of Ministers Office, Singhadurbar, Kathmandu and others<sup>48</sup>

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<sup>39</sup> Ibid, s.29 (3).

<sup>40</sup> Ibid, s.29 (4).

<sup>41</sup> Ibid, s. 29 (5).

<sup>42</sup> Ibid, s. 29 (1).

<sup>43</sup> Ibid, s. 38(1).

<sup>44</sup> Ibid, s. 39(3).

<sup>45</sup> Ibid, s. 39(4).

<sup>46</sup> Ibid, s. 39(5).

<sup>47</sup> Ibid, s. 38(2)

<sup>48</sup> *Gopal Siwakoti and Others v. Prime Minister and Council of Ministers Office and others*, NKP 2077 (2020), volume 5, Decision no. 10509.

In this case, The Supreme Court of Nepal emphasized that "the fundamental rights to a dignified life, access to basic health services, and access to sanitation and clean drinking water should be ensured to the prisoners without any discrimination". Therefore, it ordered authorities to "look for alternative ways of penalizing like probation and parole for those in prisons based upon the Criminal Offences (Sentencing and Executing) Act, 2074. The Court also ordered the Prison Management Department and Ministry of Home Affairs to take necessary measures to ensure protection of health and sanitation in prisons, including making provision for isolation/medical facilities.

In this case, it is stated that even if the prisoners cannot make choices of medical assistance or medical treatment in the prisons; state shall have the duty to provide such facilities in line with the prescribed standards to safeguard life, privacy, and access to health facilities without discrimination.

In the context of prisons being overcrowded and at the risk of epidemic (transmitting) infectious diseases, the state shall adopt immediate preventive measures to prevent such transmission other than improving the capacity of prisons and physical infrastructure.

Reformative Justice emphasizes remedy to crime victim and also on progressive penal based system on reformative principles reforming the offender and socializing them. It also emphasizes on giving chances for offenders to reform themselves as alternative mode of punishment system.

## 8. Situational Analysis

### 8.1. Finding

#### a. Nature of crime and prisoner

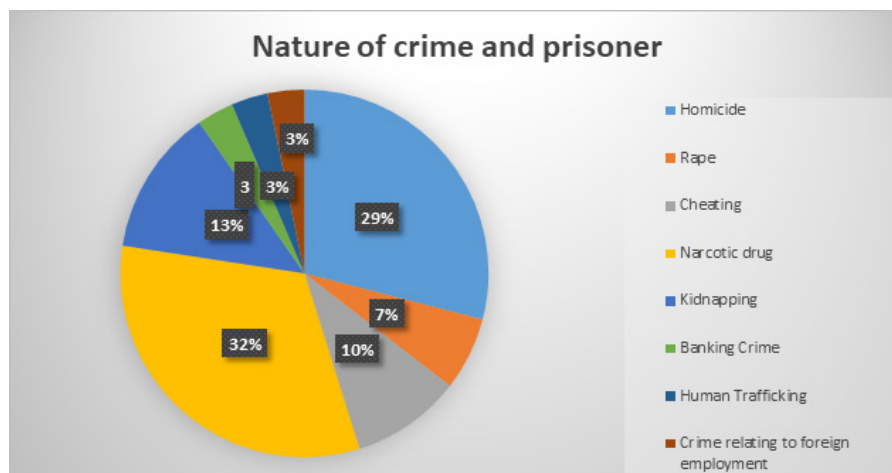
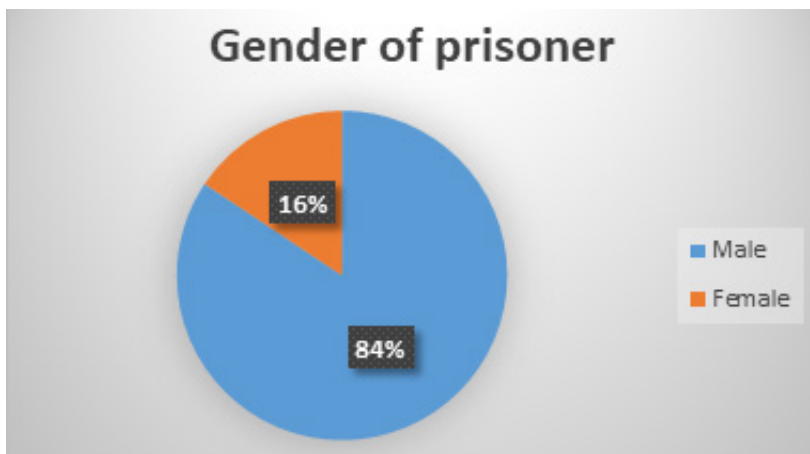


Figure no. 1: Nature of crime and prisoners

This chart shows the data relating to prisoner as per the nature of crime. Among the 32 prisoners, 3% of prisoners were related to banking crime, 3% to kidnapping, 3% to crime related to foreign employment, 29% to homicide, 7% for rape, 10% to cheating, 32% for narcotic drugs, and 13% to human

trafficking. This data clearly indicates that most of the prisoners are related to crimes related to narcotic drugs.

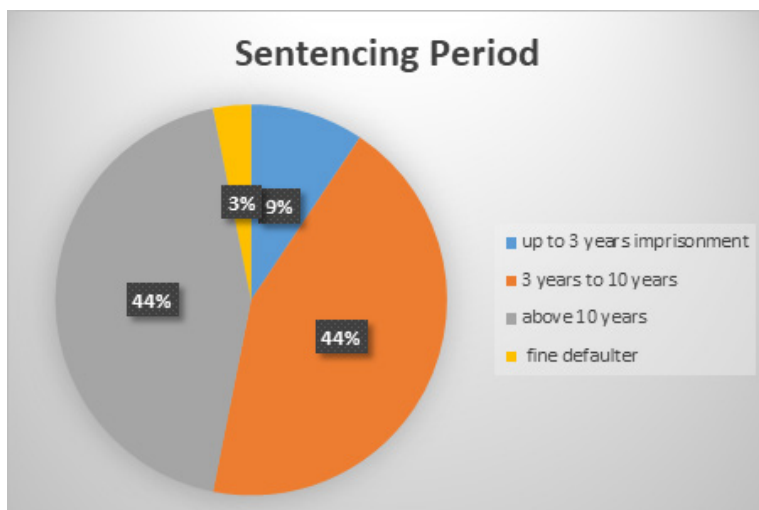
**b. Gender of prisoners**



*Figure no 2 Gender of prisoners*

This data shows that gender-based division of respondents (prisoners). Among the 32 prisoners, 84 % of respondents were male and the remaining 16% of respondents were female . This data shows that the greatest number of the prisoners are male.

**c. Sentencing period**



*Figure no 3 Sentencing period*

This figure is related to the sentencing period imposed upon the prisoner by

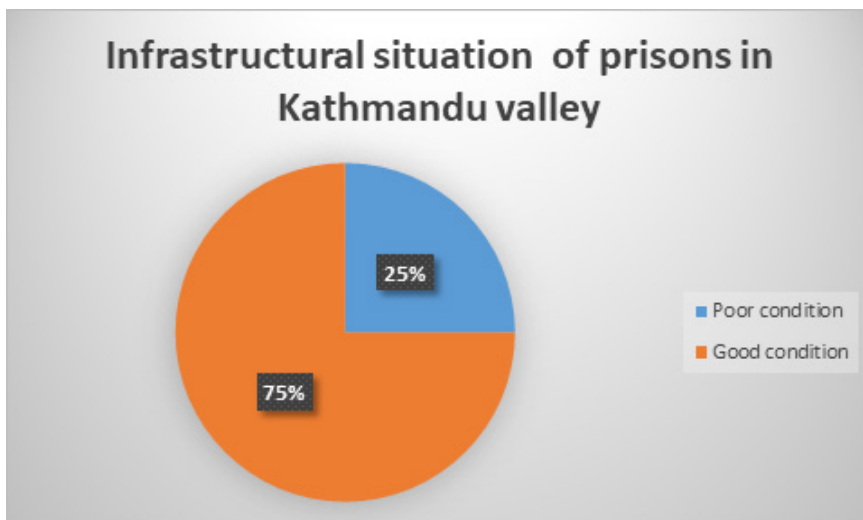
court. Among the 32 prisoners, 9% of prisoners were liable for up to 3 years of imprisonment, 44% of prisoners liable for 3 to 10 years of imprisonment. Additionally, 44% of prisoners were liable for above 10 years of imprisonment and 3% were fine defaulters. This data shows that most of the prisoners kept in prison are for above 3 years of imprisonment.

d. **Classification of prisoner as per the types of punishment in Kathmandu valley**

There are many prisoners kept in prison as per the punishment imposed upon them within Kathmandu valley. According to authorities of prison and prison management department, the prisoners are kept in prison in Kathmandu valley for the following sentence:

- a. Life imprisonment
- b. Imprisonment
- c. Imprisonment and fine
- d. Fine defaulter

e. **Infrastructural situation of prisons in Kathmandu valley**



*Figure no. 4 Infrastructural situation of prisons in Kathmandu valley*

This figure shows that the infrastructural situation of prison within Kathmandu valley. According to the officers of prison and prison management department, in prisons within the Kathmandu valley, 75% of prisons are in better condition while 25% of prisons are in poor conditions.. This shows that the infrastructural situation of prison is not good. The available infrastructure till now is not sufficient for the protection of human rights of the prisoners within Kathmandu valley.

f. Situation of overcrowding of prisoners in Nepal <sup>49</sup>

Total prison capacity	Total prison population	Overcrowding number	Increased %
16,556	24,265	7,709	46.56%

*Table no. 1: Situation of overcrowding of prisoner in Nepal*

This table talks about the overcrowding situation of prisons in the context of Nepal. The capacity of prison throughout Nepal is 16,556.<sup>50</sup> But, there are 74 prisons throughout Nepal which holds a total of 24,265 inmates. Out of which 13,464 are prisoners and the remaining 10,965 are detainees.<sup>51</sup> It clearly shows that the prisoners kept in prisons exceeding the prison capacity is a total of 7,709. It indicates that 46.56% of prisoners are kept in prisons exceeding its capacity in Nepal. It clearly shows that overcrowding of prisons exists in Nepal.

g. Situation of overcrowding problem of prisoner in Kathmandu valley <sup>52</sup>

S. N	Name of prison	Capacity of prison <sup>53</sup>	Number of prisoners in prison	Over populated number	Increased %
1.	Prison Office, Jagannath Dewal, Kathmandu	1500	2920	1420	94.66%
2.	Prison Office, Dillibazar, Kathmandu	400	478	78	19.5%
3.	Prison Office, Nakkhu,	700	1400	700	100%

*Table no 2: Situation of overcrowding problem of prisoner in Kathmandu valley*

This table is related to the situation of overcrowding of prisoners in Kathmandu valley. Among the 3 prisons inside Kathmandu valley, the capacity of prison, Jagannath Dewal, is 1,500 but it holds 2,920 prison inmates. It clearly shows that the overcrowding number of prison inmates are 1,420.<sup>54</sup> It seems that 94.66% of prison inmate are being kept in a prison beyond its capacity of .

<sup>49</sup> Report on Detention and Prison Monitoring (n 29); <https://www.dopm.gov.np/uploads/files/jestha%20maskebari%202078.pdf>, accessed on 10 August 2021.

<sup>50</sup> Report on Detention and Prison Monitoring (n 29).

<sup>51</sup> Department of Prison Management, available at: <https://www.dopm.gov.np/uploads/files/jestha%20maskebari%202078.pdf>. Accessed on 10<sup>th</sup> august 2021

<sup>52</sup> Ibid.

<sup>53</sup> Report on Detention and Prison Monitoring (n 29).

<sup>54</sup> Department of Prison Management (n 51).

Similarly, the total capacity of the prison in Dillibazar is 400 but it holds 478 prison inmates. Among 478 prison inmates, the overcrowded prison population is 78. It seems that 19.5% prison inmates are kept in a prison beyond its.

The total capacity of the prison in Nakkhu, Lalitpur is 700 but it holds a total of 1,400 prison inmates. Among 1,400 prison inmate, the overcrowded prison population is 700. It seems that a complete of 100% of prison inmates are kept in a prison beyond its capacity.

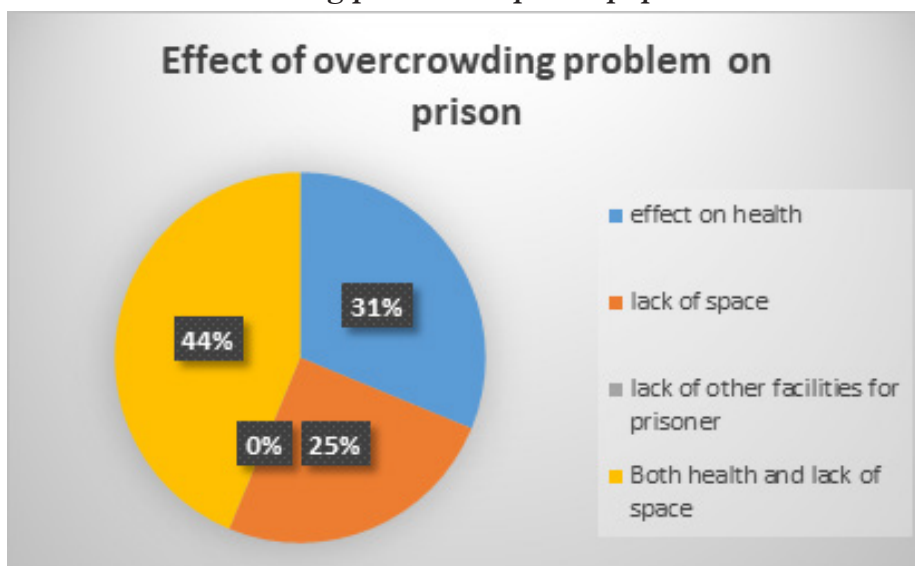
Thus, the above data clearly shows that the prison within Kathmandu valley are highly overcrowded.

#### **h. Cause behind increasing number of prisoners in Kathmandu valley**

According to the response of authorities of prison within Kathmandu valley as well as the prison management department, the cause behind the problem of overcrowding of prisons are as follows:

- i. Increased punishment in most of the offence by the Muluki Criminal Code 2074. Because of this provision, the prisoners live in prisons for long time as a part of fulfilling their sentence which is imposed upon them.
- ii. Lengthy criminal procedure:
- iii. Defaulter of fine and compensation
- iv. Prisoner and detainees kept together in prison
- v. Lack of alternatives in the prison system

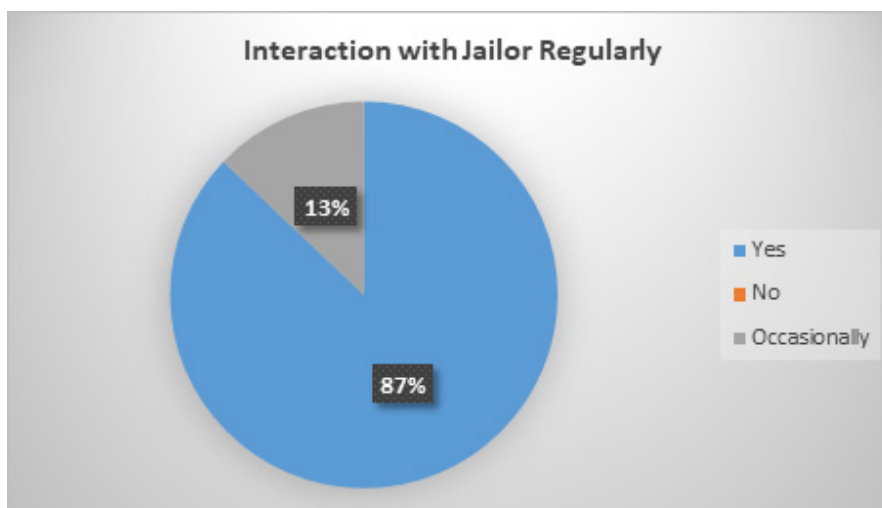
#### **i. Effect of overcrowding problem of prison population**



*Figure no 5 Effect of overcrowding problem on prison*

This figure indicates that the impact of the problem of overcrowding of prisoners in prison. Among the 32 prisoners, 31% of prisoners responded that the overcrowding problem effected the health of the prisoner, similarly, 25% of prisoners said the effect on space in prison, 44% of them said that overcrowding problem hampers both health and space in prison. It clearly shows that the major impact of overcrowding problem on prison is the lack of space which automatically hampers the right to health of the prisoner. There is no any impact on other facilities which is provided by the Nepal government.

j. **Regular interactions with jailor**



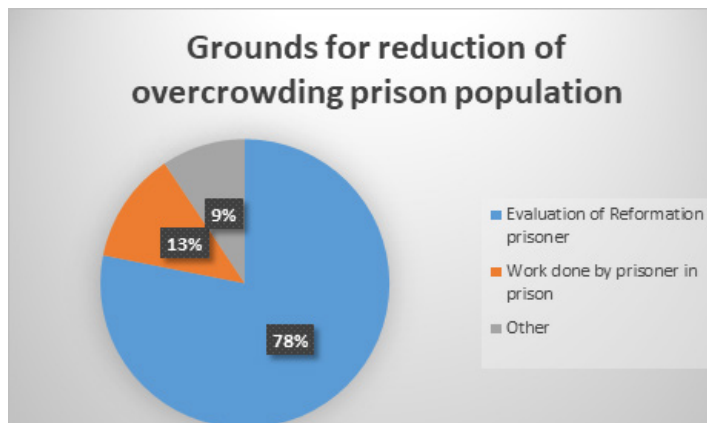
*Figure no 6 interactions with of jailor with prisoners*

This figure is related to the regularity of interactions between jailor and prison inmates. Among the 32 prisoners, 13% of prisoners respond that they interact with the jailors occasionally, 87% of prisoners interact with jailors regularly. It indicates that most of the prisoners meet or interact with the jailors regularly. Similarly, both good and bad characters of the prisoners are recorded properly. Every character of prisoners is evaluated on the basis of reformation process by the jailor for the purpose of release on remission.

k. **Methods applied by prison to reduce overcrowding in prison till now**

There are provisions relating to alternative prison system which helps to reduce the overcrowding problem in prison. But, this system has not been implemented. The provision of remission is applied only by the authorities of the prison management to reduce the prison population. The provision of remission is also insufficient to reduce this problem because prisoners are restricted to be released on remission who fall under the negative list as per the law. Thus, it is necessary to implement parole system to reduce the overcrowding problem of prison.

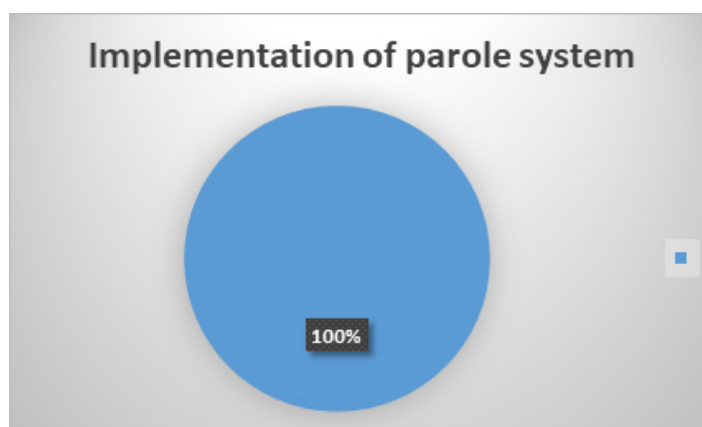
### 1. Grounds for reduction of overcrowding prison population till now



*Figure 7 Grounds for reduction of overcrowding prison population till now*

This figure is related to the grounds taken by the authorities for the reduction of overcrowding prison population like remission. Among the 32 prisoners, 78% of prisoners said that the good character of the prisoners is evaluated for the purpose of remission. Similarly, 13% of prisoners responded that the work of the prisoners which is done by themselves in prison is evaluated for remission and 9% of them said that other functions are also considered as a ground for reduction of prison population. It clearly shows that most of the good character of prisoners inside the prison is considered as grounds for the reduction of the prison population in Kathmandu valley.

### m. Implementation of parole system



*Figure 8 Implementation of parole system*

This figure indicates the implementation status of parole system. 100% of the respondents including prisoners, jailors within Kathmandu valley, prison and authorities of prison management responded that the provision of parole system is not implemented yet.



## n. Reasons behind not implementation of parole system

The reason behind the lack of implementation of the parole system in Nepal. All of the prison authorities like prisoners, jailors, and authorities of prison management have information about alternative prison systems like parole, probation, community service, open prisons and so on. But they said that the provision of parole is in law but not used because this provision is suspended by the law itself. The reason behind non implementation of parole system are as follows:

- i. The provision of parole system is in the Criminal Offences (Sentencing and Executing) Act, 2074 but this provision is suspended by the law itself. Similarly, no any amendment made on Criminal Offences (Sentencing and Executing) Act, 2074 to implement parole system has been made.
- ii. No initiation of the Nepal government to make necessary plan of action to implement parole system.
- iii. There are provision of parole and probation board as well as appointment of parole officer but this provision also not implemented yet.
- iv. No establishment of parole board and no appoint of parole officer to implement this system till now. The supreme court of Nepal which passed a directive in response to a case filed by Gopal Siwakoti Chintan,<sup>55</sup> had asked the government to appoint a parole and probation officers within a month, but that order also remains unimplemented.<sup>56</sup>
- v. Only the prison Management Department has prepared a draft of **Standards and Conditions related with parole and probation for prisoners, 2078 B.S** and handed it over to the Office of the attorney general.<sup>57</sup>

## o. Do you think the parole system helps to reduce overcrowding problem in prison

As per the response of authorities of prison management department of Nepal, Jailors and prisoners within Kathmandu valley, if the parole system is implemented then it automatically helps to reduce the overcrowding problem in prison.

## 8.2. Analysis from above findings

- i. In order to improve such pressure on the prisons, it seems necessary to activate the Alternative Prison System proposed by the Criminal Offences (Sentencing and Executing) Act, 2074 with immediate effect. At present,

<sup>55</sup> *Gopal Siwakoti and others v. Prime Minister and Council of Ministers Office and others* (n 53).

<sup>56</sup> Ram Kumar Kamat, 'SC order on corrective measures for prisoners remains unimplemented', *The Himalayan*, Kathmandu, 22 February 2021, available at <https://thehimalayantimes.com/nepal/sc-order-on-corrective-measures-for-prisoners-remains-unimplemented>, accessed on 12th August 2021

<sup>57</sup> Draft of Standards and Conditions Related with Parole and Probation for Prisoners, 2078.

all the options of alternative to prison system have been suspended with effect from the date of its publication in the Nepal Gazette, except for the suspended sentence. The alternatives to prison system including Section 22, 25, 26, 27, 28, 29, 30, 31, 49 of the Criminal Offences (Sentencing and Executing) Act, 2074 are not of immediate nature. However, the means and resources of the country can easily implement it. For these ends, the Criminal Offences (Sentencing and Executing) Act, 2074 needs to be amended.

- ii. Amendment of the law to immediately implement provisions of alternative measures of prison system made by the Criminal Offences (Sentencing and Executing) Act, 2074 BS.
  - The parole system should be amended with immediate effect and the provision of parole consideration only after two-thirds of the imprisonment should be repealed.<sup>58</sup>This provision of parole mentioned in the Act is not practical and does not conform to the principle of parole.
  - For some nature of offenses, parole has been banned according to Section 29 of the Criminal Offences (Sentencing and Executing) Act, 2074. This ban should be rejected.
  - Since the parole board will study the prisoner's progress and the social outrage associated with it and with the background of each case, there is no need to keep such restrictions in the law. Releasing on parole does not mean release from prison. The condition is to be released from captivity. The punishment is to live in society. If any person engages in an unwanted activity or breaks the parole condition, they can be returned to prison at any time.
  - While implementing the parole system, the prison management department has to make the following preparations:
  - Maintaining personal details of prisoners in all prisons.
  - This includes their name, surname, nationality, age, educational qualifications, family status, details of house and land, details of their past good deeds (such as being rewarded, doing social service, excelling in sports, etc.), details of bad deeds (running away from the school campus, being involved in equal beatings, family breakups, domestic violence, not caring for children) etc. Additionally, the prisoner's personal statement form should be prepared in such a way that the situation of the person who has been convicted for the crime is apparent including: the damage done to the victim, the situation where the one has worked alone or in an organized manner, the sentence that one has received and the period of payment.
  - There is a lack of land inside the prison to manage all the inmates. The government can make arrangements for the construction of tents on the government land outside the prison by constructing

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<sup>58</sup> *Faujdar Kasur (Sajaya Nirdharan tatha Karyamvayan)* (n 26), s. 29.

electric wire fences. Thus, if the wages received are less than the direct expenses of the inmates, only the amount deducted will be paid directly. If the wages received are more than the direct expenses, the direct expenses will not be paid.

- The provision of wages for the work of the prisoner inside the prison is not satisfactory. This is not double standard. The goal should be to make the prisoner eat inside the prison with their earnings. In this case, the prisoner will feel proud that they have eaten their own labor even while in prison. After their release from prison, they come out with a working spirit and full of life. This is what the reform prison system does. It can also cut government spending. Rules can be made so that a prisoner who does not work or cheats or avoids work by making any excuse will not be released from prison and will not be considered eligible for parole. The progress of such work should be recorded on a weekly or monthly basis in a statement form. Personal details of prisoner work progress details are something that the parole board can see during the board meeting. After evaluating these, the parole board will decide whether to release someone on parole or not. Without any such objective basis, reduction in the sentence by the recommendation of the jailor is not satisfactory. That must be improved.
- A parole arrangement is a conditional release from prison before the period of imprisonment can be waived. Now, violating parole's condition means that they will not be released later. In this sense, even if a criminal who commits a serious crime is released on parole in a short period of time, they are not likely to commit such a crime again immediately. Because they know exactly what will happen if they do it again. Therefore, they do not commit any crime for fear of going to a closed prison. A person released on parole is not completely independent as they are under the control of the parole officer. To be released on parole is not to be imprisoned but to be punished in society.
- Leaving on parole cuts off a large portion of the prison population. The specialty of this system is to prevent overcrowding in prisons. After being released on parole, the prisoners do not have to spend extra for the state to take care of them as they have to find work and stay with their families. Therefore, the direct expenditure of the state is deducted from this. The state does not have to bear any additional burden. With a maximum of 30 inmates under the control of a parole officer, state spending could be cut and reversed.
- As the parole officer has an important role to play in the parole system, a separate training of the parole officer should be arranged. People who have not studied criminology and penology should not be considered.
- What is the corrective penal system for the head and subordinate staff of the Department of Prison Management, the security

guards guarding the prison, the jailer in jail, and all the subordinate staff? All of them need training on how to prevent the abuse of imprisonment options, including parole, and how the state can benefit from it. Without training, there is no point in shouting slogans of the corrective penal system.

## 9. Conclusion

The rights of prisoners and prison management system has been recognized by the Constitution of Nepal 2072. The prison system of Nepal is based on preventive theory of punishment. Therefore, its main objective is to prevent crime and to reform the offenders in future. However, there must be effective correctional programs to assure improvement in the offenders' behaviors and to re-socialize them in the society. The effectiveness of the prison management system heavily relies on the socialization of the offenders.

Overcrowding of prisons is a common problem in many countries, be it developing or developed. It is not just the problem of correctional authorities; it is now a serious challenge and threat to the criminal justice system. With the increasing use of imprisonment as punishment, prison administrations are facing varieties of problems due to overcrowding of prisoners. Overcrowding is the major problem of today's prison and this emerging concept of modern human rights and prisoners' rights even prisoners have the life with dignity. The infrastructures of prison management is not so good and hampers and affects the life of many prisoners and has been the matter of concern in modern criminal justice system of Nepal. The new sentencing act of 2074 has introduced new provisions on alternative methods to prison system under reformatory approach. Most of the provision of sentencing act has tried to convert criminal justice system towards reformatory approach. The new legal system has also tried to convert prison houses into reform houses and also the system of parole to be protected by it. These provisions are new in the punishment system of Nepal and it can be implemented effectively only if it would be brought into practice by providing required training and skills to the concerned personnel.

From the above study it is found that our prison system still follows deterrence theory of punishment. The prison system has failed to provide rehabilitation and re-socialization of offenders. Record keeping system of prisoners is still not proper. It has been observed that the Prisons within Kathmandu valley are overcrowded which directly impact on the prison space which causes to hamper the right to health of the prisoner inside the prison. This can be seen as a serious problem of Nepal. This problem can be mitigated through the implementation of the alternative prison system like parole system. Parole is one of the systems where the prisoner are conditionally release from prison for the remaining portion of the imprisonment.

It is an established phenomenon that every criminal and crime are not serious in nature and equally threat to the society. Similarly, prisoners who have regretted their actions are not a threat to society also. Repentant is the symptom of reformation. Such prisoners deserve early release through parole system. If the government takes such initiation, there would be tripled benefit to the state such as minimization of prison expense, double reduction of prison population and the prisoner would be reintegration into the

society. The prisoner released on parole system reduces a large portion of the prison population. The specialty of this system is to prevent overcrowding in prisons. Thus, Parole system is one of the effective measures to reduce overcrowding problem of prisoner in Nepal, but it is found that Nepalese law has provisions about parole system but not implemented yet . This provision is suspended by the law itself.

We can conclude that the problem of overcrowding of prison exists in almost all countries, and is due to many factors 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, judiciary, correctional authorities, 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 instrument as well as principle of sentencing 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 parole system can reduce overcrowding of prison. There are so many effective counter measures which vary from nation to nation. We have to adopt measures which are appropriate for our legal system. In our context, parole system may be the most effective countermeasure against overcrowding of prisons.