

11.39.46 Adequate and proper buildings and equipment should be provided for each poultry unit.

11.39.47 In Jail Training Schools and Regional Training Institutions, Prison personnel should be imparted training in various aspects of agriculture, dairy, poultry and other allied activities. The executive and supervisory personnel should also be given thorough training in management of these activities.

11.39.48 Bio-gas plants, windmills, solar-cooking ranges, etc. should be introduced in open institutions.

11.39.49 Vocational training projects in agriculture, dairy, poultry, agro-based industries, improved methods of agriculture, maintenance and repair of farm equipment and every allied activity should be started.

11.39.50 Extension services for agriculture and allied activities have been established all over India. The benefit of these services should be availed of by the Department of Prisons and Correctional Services for every institution in regard to the development of agriculture and allied activities. The department should establish close liaison with agricultural universities, forest department and other government and non-governmental agencies for the development of agriculture, dairy, poultry, agro-based industries, forest farming, social forestry and similar other activities.

Reference :

1. Model Prison Manual, 1960; page 138.

CHAPTER XII

UNDERTRIAL AND OTHER UNCONVICTED PRISONERS

12.1 Preliminary examination of the available data on undertrial prisoners in India has revealed the appalling nature of the many inter-linked problems. There are problems posed by the pressure of a large unconvicted population in the jails in terms of congestion, idleness, and wastage of human resources. The energies of the prison personnel are spent not on providing creative and corrective treatment to prisoners but on routine clerical and custodial functions. The important function of prisons in offering corrective treatment to offenders is therefore being perpetually frustrated by the presence of this disproportionately large population of undertrial and unconvicted inmates.

12.2 The magnitude of the problem is evident from the fact that as on January 1, 1975 for every 100 convicted prisoners (who could possibly be given some kind of corrective treatment in prisons) there were 136 inmates awaiting trial or were on remand. While the total prison population in India has shown a declining trend over the past few years, the ratio of unconvicted prisoners per hundred of convicted prisoners went upto 149 as on December 31, 1980, and to 160 as on June 30, 1981 (Annexure attached to this chapter). The Seventh Finance Commission taking stock of the situation of overcrowding in prisons looked into the proportion of undertrials to the total jail population in various States and found this proportion to be very high in several States, as for instance in Assam, Bihar, Orissa, Uttar Pradesh and West Bengal. In some cases this proportion rose to as much as 80 per cent of the total inmate population.¹

12.3 The presence of an excessive number of undertrial, remand and other unconvicted prisoners in jails has created, and not wrongly, an increasing public and professional concern about the non-observance of human rights in these institutions. This is particularly so due to their protracted detention during pendency of investigation and trial which take a long time. It may be noted that the number of undertrial and remand prisoners had reached alarming and disproportionate dimensions in recent years. The entire criminal justice system was rocked by certain revelations made through public spirited litigation about the palpable lack of human conditions for the undertrials. Indeed the undesirability and constitutional invalidity of protracted detentions during pendency of investigation and trial were brought to the notice of the Supreme Court of India in a number of cases. In one such case, the Supreme Court observed that :

“An alarmingly large number of men and women, children including, are behind prison bars for years awaiting trial in courts of law. The offences with which some of them are charged are trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced.

“It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial. We are shouting from house-tops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But, are we not denying human rights to these nameless persons who are languishing in jails for years

for offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedom from these neglected and helpless human beings who have been condemned to a life of imprisonment and degradation for years on end? Are expeditious trial and freedom from detention not part of human rights and basic freedoms?

"It is high time that public conscience is awakened and the government as well as the judiciary begin to realise that in the dark cells of our prisons there are large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice—a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system"²

12.4 It is noticed that a large number of remand and undertrial prisoners are languishing in prisons because of their poverty. They are there because they are not able to furnish the bail, whereas the affluent can afford to do so. In this connection the Supreme Court has made the following observations :

"... Some of the undertrial prisoners have been in jail for as many as 5, 7 or 9 years and a few of them, even more than 10 years, without their trial having begun. What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them. It is a travesty of justice that many poor accused, 'little Indians, are forced into long cellular servitude for little offences' because the bail procedure is beyond their meagre means and trials don't commence and even if they do, they never conclude... A procedure which keeps such large number of people behind bars without trials so long cannot possibly be regarded as 'reasonable, just or fair' so as to be in conformity with the requirement of that article (Article 21 of the Constitution of India) One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre-trial detention is our highly unsatisfactory bail system..... being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences, namely (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family"³

It will be relevant to mention here that on June 30, 1979 in the State of Uttar Pradesh alone as many as 5281 remand and undertrial prisoners, out of a total of 17,280 of such inmate population, were confined in prisons for more than six months because they were not able to fulfil the conditions of bail set forth by courts, although bail in their cases had been granted (Annexure B to this chapter).

12.5 Apart from other aspects of the situation, the problem of undertrials has posed a great challenge to prison administration. Firstly due to the increasing number of unconvicted prisoners the problem of overcrowding in prisons has reached unmanageable proportions. The year 1978 witnessed acute overcrowding in Indian prisons. There were 2,11,963 inmates in all the prisons in the country as on January 1, 1978 out of which as many as 1,13,777 (54%) were undertrials, while the total available capacity in the entire country for

the prison population was 1,79,567. However, at the close of the year, while the total prison population came down to 1,85,655 the number of undertrial prisoners rose to 1,19,336 constituting 64 percent of the total inmate population (Annexure A). This large number of undertrial prisoners not only contributes to serious problems of congestion in jails owing to insufficient space, but also produces sub-human conditions of living. Tour Note No.15 (December 1978) of the National Police Commission dealing with "Under-trials of India" speaks of some of the prisons as "true exponents of a system which is slowly grinding thousands of people into dust".

".....The undertrials consist of large variety of persons. Hundreds of them are dumb, simple persons, caught in the web of the law, unable to comprehend as to what has happened, what the charge against them is, or why they have been sent to jail. These are the people without a calendar or a clock, only a date in a court diary, extended from hearing to hearing..... there are girls sent to jail because the Ashram had to be closed down after some sort of scandal and several girls ran away, and they are now kept in the jail in "protective custody", tearful, unwilling, and positively wanting no protection at all. Then there are more of them charged with ticketless travel, possession of weapons, or illicit liquor or some minor infraction of the law..... A cause of concern for any student of law is the fact that several of them have been undertrials for more than five years".⁴

12.6 In most of the States and Union Territories there are no separate buildings for keeping undertrial prisoners. They are confined for long periods in the same buildings with the convicted inmates. The segregation of undertrial prisoners in separate wards in the same buildings is also not an effective method. It has been observed that the lodging of undertrial prisoners with convicted offenders leads to contamination of crime. Many inexperienced young men come into contact with hardened criminals who have had the experience of prisons on several occasions. Gangsters are known to recruit members for their criminal gangs from out of the borderline, yet redeemable, offenders admitted to jails as undertrials.

12.7 Since the undertrial prisons constitute a floating population in prisons, their frequent admission, release and transit to and from courts create lot of administrative problems for the prison personnel. Much of the sneaking of contraband articles inside the prisons and the contagion of diseases amongst inmates are due to this perpetual movement of undertrials in and out of prisons.

12.8 During our visits to various jails in different States and Union Territories we found that a large number of undertrial prisoners, who were confined for long periods in prisons, were only involved in petty offences. We received complaints from undertrial prisoners that they were not produced before the concerned magistrates on the dates of hearing. This is a serious matter and is tantamount to non-observance of the essential judicial process. The two main reasons given by prison administration for this state of affairs were lack of transport facility and overload of work with magistrates. Complaints were also received about indiscriminate arrests by police. This has been referred to by the Bihar Jail Reforms Committee in its report, as well.

12.9 The number of non-criminal lunatics and lunatic undertrials was astoundingly large in some of the prisons. Instances of some lunatic undertrials, apprehended for petty offences like ticketless travel and theft, and languishing in prisons for more than 20 years, have been brought to the notice of the Supreme Court of India through public interest litigation during the year 1981-82.⁵

12.10 Problems relating to 'Delay and Arrears in Trial Courts' and 'Congestion of Undertrial Prisoners in Jails' have been dealt with at length by the Law Commission of India in its Seventy-seventh Report and Seventy-eighth Report respectively. The

Commission has done some extremely commendable work in analysing the causes of delay in criminal trials and crowding of undertrials in prisons. Its recommendations with regard to suitable amendments in the present law, the disposal of cases, expansion of the category of bailable offences, determination of the amount of bond, release of accused persons on bond without sureties and arrangements for detention of undertrial persons, deserve immediate attention and implementation by the Government. A summary of the recommendations of the Law Commission as contained in its Seventy-eighth Report which is directly relevant to the problem of undertrials in jails is appended to this chapter at Annexure C. The Commission has suggested enlargement of the scope of bailable offences by appropriate amendments in the existing law. We, however, feel that bail should be granted to the accused as a matter of right unless proved by prosecution, by due process of law, that his being at large might endanger the security of the society. This will not only protect the spirit of the Constitution enshrined in the Fundamental Right to Equality but will also save public exchequer from the cost of feeding and supervising inmates during their unduly extended pre-trial detention.

12.11 Before we proceed to record our recommendations with regard to the unconvicted prison population we would like to clarify that though undertrials constitute an overwhelmingly large portion of this population, they do not exhaust this category. Other inmates included in the category of unconvicted prisoners are:

- (a) Remand prisoners: accused persons apprehended and remanded to judicial custody but not served with a charge sheet to enable commencement of trial.
- (b) Non-criminal lunatics: lodged in prisons for observation under provisions of the Indian Lunacy Act.
- (c) Persons under protective custody such as stray-children and victims of rape lodged in prisons in violation of or circumventing the provisions of special enactments to deal with them.
- (d) Persons confined under preventive sections of the Code of Criminal Procedure (sections 107, 109 and 110); and
- (e) Prisoners detained under executive orders under provisions of special legislations.

12.12 Non-criminal lunatics, as recommended by us in Chapter IV on 'Legislation' and in Chapter VII on 'Medical and Psychiatric Services', should not be lodged in prisons under any circumstances. Similarly children below 16 years of age in case of boys and below 18 years in case of girls should under no circumstances be kept in prisons as categorically stated by us in Chapter IV on 'Legislation' and Chapter XIV on 'Children in Prisons'; and rules framed or notifications issued to circumvent the provisions of Children Act should be withdrawn. Women needing protective custody should also not be confined in prisons. We reiterate with emphasis, here again, that non-criminal lunatics, children and persons needing protective custody should be kept out of the purview of prisons.

12.13 The Committee found a large number of persons including children and women detained in prisons under section 109 of the Code of Criminal Procedure (either pending trial of their case or for failure to furnish requisite security for keeping good behaviour). They bore evidence to K. F. Rustamji's reference to:

".....the case of about 500 others languishing in jail under section 109 Cr. P. C. Some of them looked as if they have been youngsters wandering over the country, drop-outs from school, and the law had picked them up because the number of cases had to be brought up to the specified figure".⁶

12.14 We feel that the preventive sections of the Code of Criminal Procedure, specially section 109, should be reviewed and amended suitably to restrict their use only in very genuine cases and the practice of using these sections as a matter of routine to swell figures of apprehension by police stations should be effectively checked.

12.15 Persons detained under orders made under provisions of special legislations such as National Security Act, Conservation of Foreign Exchange and Prevention of Smuggling Act and the like, should as far as possible be kept away from convicted and undertrial prisoners.

12.16 As we all know, an apprehended person has his first encounter with the criminal justice system in a police lock-up where he is temporarily confined before being produced before a magistrate or on remand to police custody. The conditions of these police lock-ups in our country are generally very unsatisfactory. Most of these lock-ups have insufficient accommodation and are without even such basic facilities as lavatories, light, water and ventilation. Sanitary conditions in these lock-ups are also utterly unsatisfactory. There seems to be no rules or scales prescribed for the diet or bedding for those detained in police lock-ups. There are no Visiting Committees which could inspect or report about the conditions prevailing in these lock-ups. The essential requirements of law with regard to the time limit for keeping in custody persons arrested without warrant are often flouted. The very first encounter of a person with the criminal justice system, thus, invokes in him reaction of abhorrence for and distrust in the criminal justice system. Conditions of police lock-ups need to be urgently improved.

12.17 Our recommendations with regard to undertrial, remand and other unconvicted prisoners are as follows:

12.17.1 A review of all the police lock-ups should be taken up in each State and Union Territory and the living conditions in them should be improved. Proper provision of bedding, sanitary arrangements, diet, drinking water and medical attention should be immediately made to meet the basic requirements of human beings.

12.17.2 A Board of Visitors should be appointed in each district to visit regularly all police lock-ups in the district and report on their conditions.

12.17.3 Undertrial prisoners should be lodged in separate institutions away from the convicted prisoners. We have recorded our recommendations in this regard in Chapter V on 'Prison Buildings' also.

12.17.4 Institutions meant for lodging undertrial prisoners should be as close to the courts as possible. Undertrial prisoners should not be taken to and from courts on foot or roped with each other. There should be proper arrangement for their transportation at each jail.

12.17.5 The recommendations of the Law Commission with regard to speedy trials and simplification of bail procedures made in its 77th and 78th Reports should be accepted and implemented. In addition, bail should be granted to the accused as a matter of right unless proved by the prosecution that his being at large might endanger the security of the society.

12.17.6 The feasibility of launching bail hostels on the lines of those sponsored and financed by Xenia Field Foundation (U.K.) should be examined under Indian conditions. A brief note on such hostels is appended to this chapter (Annexure D). To begin with a few experimental projects could be sponsored by the proposed National Commission on Prisons.

12.17.7 Release of accused persons on personal recognizance should be encouraged. A large number of accused undertrial prisoners who have a settled social life and a permanent abode would stick to their obligation to appear before and surrender to the court. As recommended by the Law Commission, violation of this obligation can be made an offence. Accused persons released on personal recognizance may be placed under the supervision of probation officers or Gram Panchayats or non-official voluntary organisations recognized by the Government for the purpose.

12.17.8 The provisions of section 167 of the Code of Criminal Procedure with regard to the time limit for police investigation in case of accused undertrial prisoners, should be strictly followed both by the police and the courts.

12.17.9 The classification of undertrial prisoners into Class I, II and III or A, B and C on the basis of their socio-economic status should be abolished.

12.17.10 The time spent by inmates in jail, awaiting investigation and trial, should be put to use for the benefit of both the prisoner and the community. Following are some of the measures which could be adopted in this regard :

- (a) Undertrial prisoners volunteering to work may be employed on prison work programmes with proper and sufficient incentives. The work programmes should take into consideration floating nature of the undertrial prison population. Best suited work programmes for such inmates would be those in which learning period is small and wages can be earned on piece-work basis.
- (b) Undertrial prisoners who offer to work in prison maintenance services and are so employed by prison authorities having considered their security risk should be paid wages for such work at a reasonable rate.

12.17.11 In Chapter IV on 'Legislation' we have discussed the rights of all prisoners including undertrials. For undertrial prisoners we specifically reiterate that they should be given all facilities of access to legal material, legal counsel and legal aid. In Chapter XXIII on 'Organisational Structure' we have suggested that law officers should be posted in all central and district prisons for this purpose.

12.17.12 All undertrial prisoners should be effectively produced before the presiding magistrates on the dates of hearing. Local officers of the prison, the police, the prosecution and the judiciary should evolve set procedures to ensure observance of this essential aspect of judicial process.

12.17.13 Undertrial prisoners should be allowed to obtain cooked food from their families. A proper check should, however, be kept on the food contents through the medical section of the prison so that nothing contraband or injurious passes to the undertrial prisoners.

12.17.14 Those undertrial prisoners who do not have sufficient clothes should be supplied clothes at Government cost. These clothes should be of a type different from those given to convicts.

12.17.15 There should be no restriction on the number of letters which undertrial prisoners may send at their own cost. However, at Government cost they should be allowed to write two letters per week.

12.17.16 There should be no restriction on the number of interviews sought by undertrial prisoners for the sake of legal assistance. Interviews with family members and friends should, however, be restricted to two per week.

12.17.17 Undertrial prisoners should be allowed the facility of canteen available to other prisoners in the prison.

12.17.18 The daily routine of undertrial prisoners should, wherever possible, include programmes for diversified education such as adult education, social education, etc. and recreational activities to enable them to utilise their time in constructive pursuits.

12.17.19 Habitual undertrial prisoners should be segregated from other undertrial prisoners.

12.17.20 The management and discipline of undertrial prisoners should be the responsibility of only the paid staff of the prison department and in no circumstances should they be put under the charge of convicted prisoners.

12.17.21 (a) An effective mechanism to review the cases of undertrial prisoners regularly both at the district level and the State level should be evolved.

(b) At the district level a Review Committee consisting of the following should be constituted :

1. District Judge	Chairman
2. District Magistrate	Member
3. District Superintendent of Police	Member
4. Public Prosecutor	Member
5. Prison Superintendent	Member-Secretary

This Committee should be a statutory committee. It should visit the district/central prison in the district at least once a month and meet every undertrial prisoner present on the day. It should, thereafter, hold a meeting to review the cases of all undertrial prisoners in the district/central prison and see that no undertrial prisoner is un-necessarily detained in the prison.

(c) The Code of Criminal Procedure should be suitably amended to provide that as soon as an undertrial prisoner completes the period of detention equal to half of the maximum sentence awardable to him on conviction, he should be released immediately and unconditionally. This should be a statutory function of the District Review Committee. Such undertrials should for all purposes in law be treated as having been discharged by the court of law.

(d) A Committee for the review of undertrial prisoners should also be constituted at the State level with the following composition :

1. A Judge of the High Court	Chairman
2. Home Secretary/Secretary dealing with prisons in the secretariat.	Member
3. Inspector General of Police	Member
4. Director of Prosecution	Member
5. Inspector General of Prisons	Member-Secretary

This Committee should also be a statutory committee and should meet at least once every three months to review the position of undertrial prisoners in the State as a whole.

It should also sort out problems of coordination among various departments resulting into delay in trials.

(e) Procedure for the review of undertrial prisoners in Sub-jails has been recommended by us in Chapter XVIII on 'Sub-jails'.

12.17.22 Broad guidelines about the arrest of persons, specially those involved in minor violations of law, should be laid down.

12.17.23 Non-criminal lunatics, persons needing protective custody and children should not be sent to prisons at all.

12.17.24 Preventive sections of the Code of Criminal Procedure, specially section 109, should be reviewed and amended suitably to restrict their use only in very genuine cases.

12.17.25 Persons detained under executive orders made under provisions of special legislations should be kept away from convicted and undertrial prisoners.

References:

1. Seventh Finance Commission Report 1978, page 103—Chapter 10, para 39.
2. (1980) Supreme Court cases 81, Writ Petition No. 57 of 1979 : Hussainara Khatoon and others *versus* Home Secretary, State of Bihar.
3. *Ibid.*
4. National Police Commission : Tour Note No. 15, December, 1978 : The Undertrials of India—by Shri K.F. Rustamji, Member.
5. Writ Petition No. 73/82 through Miss Veena Sethi, Secretary, Free Legal Aid Society, Hazaribagh.
6. National Police Commission - Tour Note No. 15 December, 1978 : The Undertrials of India—by Shri K.F. Rustamji, Member.

STATEMENT OF INMATE POPULATION LOCKED UP IN JAILS IN INDIA
ON VARIOUS DATES

Date	Total inmates	Convicts	Under-trials	Ratio of convicts to under-trials	Source of information
1-1-1975	2,20,146	93,374 (42.4)**	1,26,772 (57.6)	100:136	Ministry of Home Affairs
1-4-1977	1,84,169	83,086 (45.1)	1,01,083 (54.9)	100:122	Do.
1-1-1978	2,11,963	98,186 (46.3)	1,13,777 (53.7)	100:116	Do.
31-12-1978	1,85,655	66,319 (35.7)	1,19,336 (64.3)	100:180	Do.
31-12-1979	1,57,824	62,023 (39.3)	95,901 (60.7)	100:154	Do.
31-12-1980	1,59,692	64,090 (40.1)	95,602 (59.9)	100:149	Statistical data collected by this Committee.
30-6-1981	1,41,761	54,617 (38.5)	87,144 (61.5)	100:160	Ministry of Home Affairs

**Figures given in brackets are percentage to total prison population.

**BAIL CASES OF UNDERTRIALS CONFINED IN PRISONS
FOR OVER 6 MONTHS AS ON 30-6-1979**

Sl. No.	Name of State/Union Territory	Who did not apply for bail	Who applied but were refused bail	Who could not fulfil conditions of bail	Total
1.	Gujarat	38	24	5	67
2.	Haryana	40	124	11	175
3.	Himachal Pradesh	8	2	5	15
4.	Maharashtra	151	126	80	357
5.	Punjab	29	119	58	206
6.	Rajasthan	202	291	40	533
7.	Tamil Nadu	154	136	7	297
8.	Tripura	5	..	2	7
9.	Uttar Pradesh	5758	6241	5281	17280
10.	Arunachal Pradesh	3	..	..	3
11.	Chandigarh	45	4	11	60
12.	Mizoram	19	22	6	47

Note:—Information from other States and Union Territories was not available.

Source:—Ministry of Home Affairs, Government of India;

**SEVENTY-EIGHTH REPORT OF LAW COMMISSION
ON
CONGESTION OF UNDERTRIAL PRISONERS IN JAILS**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

We give below a summary of the conclusions reached and recommendations made in this Report.

1. *Introductory*

(1) The problem of undertrial prisoners in jails has assumed magnitude, as is evident from figures collected from various sources. The problem is not confined to India, nor is it new. Several recommendations made in the past in various studies and reports have placed emphasis on various aspects of the problem. A high percentage of jail population comprises persons undertrial. This is not a satisfactory situation.

In dealing with the problem, three types of prisoners have to be considered :

(a) Persons being tried for non-bailable offences, in respect of whom the courts have declined to pass an order for their release on bail.

(b) Persons being tried for non-bailable offences in respect of whom courts have passed order for bail but who, because of the difficulty of finding appropriate surety or because of some other reason, do not furnish the bail bond.

(c) Persons who are being tried for bailable offences but who, because of the difficulty of finding appropriate surety or some other reasons, do not furnish the bail bond.

For reducing the burden of undertrial prisoners on jail, all the above three categories should be dealt with.

(2) The various measures recommended in the 77th Report of the Law Commission to reduce delay and arrears in trial courts should be implemented in order to deal effectively with the problem of large number of undertrial prisoners. Other remedies suggested in this Report should also be adopted.

2. *Present law, comparative position and question for consideration*

(3) An examination of the concept of bail, the present law as to bail, the various statutory time limits connected with the investigation or trial of offences and the issues that fall to be considered, shows that in formulating legislative policy in relation to release on bail, several conflicting considerations have to be balanced. It also shows that the problem of undertrial prisoners has to be dealt with on several fronts.

(4) In England, there is now a presumption in favour of the right to bail for all offences. Further, a discretion is given to the Courts to release a person without surety. There

is no personal recognizance. A duty to surrender to custody is created, and its violation is made an offence. On release on bail, certain conditions can be imposed.

3. *Disposal of cases*

(5) For dealing with the problem of large number of undertrial prisoners implementation of recommendations made in the 77th Report of the Law Commission (delay and arrears in trial courts) is a measure of the first importance.

(6) Cases in which the accused persons are in Jail should be given preference and the target for their disposal should be four months instead of six months recommended in the 77th Report.

(7) In order to prevent interested parties from prolonging pendency of cases a certain amount of strictness is necessary to ensure prompt disposal.

(8) Trial Magistrates should furnish periodical statements of cases in which the accused are in custody and which are not concluded within the prescribed time.

(9) In time of some agitation numerous persons defy law and court arrest, causing a sudden spurt in the number of undertrial prisoners. Most of them would not offer bail. Such persons should be put up for trial soon after their arrest in order to avoid congestion in Jails.

(10) Quite a substantial number of persons who are being proceeded against in security proceedings for keeping peace and for good behaviour are detained in jail as undertrial prisoners because of their inability to furnish the requisite bond. The cases against those persons should be heard with due promptness and despatch. Efforts should be made to conclude these proceedings within 5 months.

(11) Inordinate delay in the investigation of cases should be avoided. The diversion of police officials concerned with investigation to other duties relating to law and order should be avoided. It causes delay in investigation as pointed out in 77th Report.

(12) Investigation of cases should be completed as soon as possible. The law provides that if an investigation is not completed within the specified period, the accused should be released on bail, thus highlighting the need for prompt investigation.

(13) Where the accused is in Jail, adjournments of cases should not be granted unless absolutely necessary.

4. *Expansion of the category of bailable offences*

(14) Certain offences under the Indian Penal Code, as listed in the Report, which are at present non-bailable should be made bailable. The Code of Criminal Procedure, First Schedule, Part I, should be amended accordingly.

(15) Offences under the Law other than the Indian Penal Code punishable with 3 years' imprisonment should be made bailable with the exception of offences under the Official Secrets Act 1923. The Code of Criminal Procedure, 1973, First Schedule, Part II, should be amended accordingly.

5. *Amount of bond*

(16) The statutory requirement that the amount of bond shall not be excessive, should be observed.

(17) There is, however, no need to impose a statutory ceiling on the amount of bail.

6. *Release on bond without sureties*

(18) In regard to bailable offences, section 436(1), Code of Criminal Procedure, 1973 which empowers the officer or court to "discharge" a person on bond without sureties, should be amended by adding an Explanation to the effect that where a period of one month expires after arrest without the accused furnishing sureties, that shall (in the absence of reasons to the contrary as recorded) be a fit ground for release on bond without sureties. The word 'discharge' should be replaced by the word 'release'.

(19) In regard to non-bailable offences, a discretion should be given to the officer or court to release a person on bond without sureties. Section 437(1), Code of Criminal Procedure, 1973 should be amended for the purpose.

(20) A definition of "bail" should be inserted as section 2(aa) in the Code of Criminal Procedure, 1973 to make it clear that references to "bail" include references to a person released on bond without sureties, where such release is permitted by the Code.

(21) Further, in sections 395(3) and 439(1) (c) of the Code, power to release on bond without sureties should be expressly provided for.

7. *Obligation to appear and surrender—violation to be an offence*

(22) A provision should be inserted in the Code of Criminal Procedure, 1973 to the effect that a person released on bail shall be bound to appear and to surrender to custody.

(23) There should be inserted in the Indian Penal Code a provision creating a new offence punishing violation of the obligation so undertaken with imprisonment upto 2 years or fine or both.

(24) The new offence to be created as above should be :

- (a) Cognizable;
- (b) Non-bailable ;
- (c) Triable by any Magistrate.

The Code of Criminal Procedure, 1973, First Schedule, Part I, should be appropriately amended for the purpose.

8. *Arrangements for detention*

(25) There should be separate institutions for the detention of undertrial prisoners, the induction of a large population of undertrial prisoners in a building essentially meant for convicts being undesirable. However, the creation of such institution is a matter of long-term planning and of financial implications. Other steps to reduce the number of undertrial prisoners may therefore have to be taken.

(26) The question of providing for bail hostels for persons who, though ordered to be released on bail, cannot offer bail has not been considered in the Report as apart from its financial implications and need for long-term planning, its prospects in the present conditions are rather remote.

(27) A lot needs to be done to improve the conditions of detention in prisons. The Report, however, refrains from going into this matter being outside the scope of the reference.

A NOTE ON FIELD WING BAIL HOSTELS : LONDON

(Sponsored and financed by the Xenia Field Foundation)

The Establishment of Field Wing :

Field Wing was opened by the then Home Secretary, Mr. Reginald Maudling, on November 8, 1971. It is a wing of Booth House, a modern hostel for men run by the Salvation Army in White-chapel, London, and is reserved for men sent there on bail by the courts. The establishment of Field Wing resulted from the coming together of several people and organisations, each with a particular interest in the setting up of bail hostels as an alternative to remands in custody.

The project is sponsored and financed by the Xenia Field Foundation, whose chief trustee, Mrs. Xenia Field, gave the money needed for the scheme to help defendants who might otherwise be denied bail because they had nowhere to go. The Salvation Army, in providing premises and administration for a bail hostel, saw it as a social welfare experiment in which they could work with official agencies (the courts and the probation service) to meet a human need.

The Inner London Probation and Aftercare Service welcomed the plan, hoping that defendants sent to the hostel would make more positive use of the remand period than they could have done in custody, and that these more favourable circumstances would help probation officers in preparing social enquiry reports.

The Home Office, U.K., concerned to keep the use of remand in custody to a minimum, both in the interests of the defendants themselves and on account of overcrowding in the prisons, welcomed a proposal which might show one way of reducing the number of people in custody, and were grateful to Mrs. Field for her offer to finance Field Wing. Besides coordinating the arrangements, the Home Office agreed that the Research Unit should study the working of the scheme. It was understood that the Xenia Field Foundation would pay for the wing for an initial period, probably 3 years.

Sir Frank Milton, Chief Metropolitan Magistrate, gave enthusiastic support. He saw a particular need for a bail hostel for young men who drifted into London, got into trouble of a not very serious kind, and had to be remanded in custody because there was nowhere else for them to go. He arranged that his own court, Bow Street, and its neighbour, Marlborough Street magistrates' court, should supply Field Wing with its first residents. Later, the scheme was extended to other London courts.

The Aims of the Field Wing Project :

The chief aims of the scheme were :

1. to enable the courts to release on bail men charged with comparatively minor offences who would otherwise have to be remanded in custody simply, or mainly, because they had no fixed abode;
2. to enable and help the men to make constructive use of the remand period in Field Wing. In particular it was hoped that if an offender could show the court that he had used the time to obtain work and accommodation, this would increase his chances of avoiding a custodial sentence.

While agreeing generally on these aims, the various parties to the scheme differed in their emphasis on them and on related objectives. The main interest of the courts and the Home Office in a bail hostel was as an alternative to remands in custody; the trustees of the Xenia Field Foundation and the Salvation Army had expectations beyond this. They wanted the Field Wing to cater for a highly select group of men who would be likely to respond to the individual treatment it was hoped the hostel would offer.

The Xenia Field Foundation were particularly concerned to protect criminally inexperienced young men from the experience of imprisonment and from contact with men who had been in prison. The Foundation intended Field Wing to take only unconvicted men (as distinct from convicted men on remand for reports before sentence), and only men without experience of custody whether on sentence or remand. These criteria were somewhat modified later on.

The Salvation Army thought the men selected should be those who were likely to respond to the high standard of accommodation, and to the individual encouragement, and support in sorting out personal problems, that the staff could give. The Army were also concerned that the men should fit in with the residents in the main part of Booth House, and therefore preferred those who were not criminally sophisticated, and those having no special problems such as alcoholism and drug use.

The Probation Service hoped that the Field Wing would enable remanded men to improve their immediate social circumstances in a way not possible if they had been kept in custody; for example, they could keep or find a job, and look for accommodation, they could sort out personal affairs, and renew or keep family contacts, more easily than in prison. During remand a man might be especially open to offers of help in such ways; with this in mind the Inner London Probation and Aftercare Service arranged to attach to Field Wing a parttime liaison probation officer to do 'social crisis' casework with the men. He would not normally prepare social enquiry reports, this being the task of the court probation officer.

It was not one of the direct aims of the Field Wing scheme to prevent men from re-offending, however welcome this outcome might be.

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CHAPTER XIII

WOMEN PRISONERS

13.1 The number of women prisoners in the country is not very large. As on Decemer 31, 1980, the total number of women prisoners was 4073, forming 2.6 per cent of the total prison population of the country. Out of these, 21 per cent were convicted, the rest falling under various categories of unconvicted inmates, mostly undertrials. About 17 per cent of the unconvicted women pisoners were non-criminal lunatics. The statement at Annexure A to this Chapter gives these details. The Committee during its visits to various States and Union Territories found that some destitute women, and women and girls rescued from moral danger and needing protective custody were also lodged in prisons.

13.2 The information collected by the Committee from various States and Union Territories reveals that, in the entire country, there are only six separate institutions for women prisoners. These institutions cater mainly to the training and treatment needs of convicted prisoners in their respective States. Undertrial female prisoners continue to be confined in separate enclosures in the common jails of the respective districts or sub-divisions.

13.3 The Indian Jails Committee 1919-20 had recommended that structurally separate jails or at least separate enclosures for women prisoners should be so constructed that the "female prisoners or lady visitors entering the jail should be able to reach the female yard without coming under the observation of the male prisoners"¹. But the conditions in this regard have not changed ever since. Women prisoners, whether in sub-jails, district prisons or central prisons in most of the States, have still to walk through men's sections and sometimes have to go through experiences which are humiliating.

13.4 The Indian Jails Committee 1919-20 had argued in favour of creating one or two institutions for convicted women prisoners in each State and to concentrate women offenders there from all over the State. They were of the opinion that if the choice was between two evils, the removal of women offenders from their home towns was a lesser evil than their rotting under in-human conditions of incarceration in some neglected corners of common prisons in their own districts. It is a matter of regret that in most States these recommendations have either been neglected or ignored. The result is that only a small section of the men's jail is generally provided for the confinement of women prisoners and all categories of them are huddled up together in the same wards and barracks. Pointing to the inadequacies of such arrangements the Indian Jails Committee 1919-20 had emphasised the desirability of separating not only the convicted from the unconvicted women prisoner, but also "female adolescents away from older prisoners, habituals from non-habituals, and prostitutes and procuresses from women who have lived hitherto a respectable life"². These recommendations have, however, received very little attention in various States and Union Territories.

13.5 It hardly needs to be argued that the principles underlying the training and treatment of male prisoners, and the conditions of their confinement, should apply to their

female counter-parts also, with necessary adjustment of details issuing from sex differences. The fact, however, is that while living conditions, treatment and training for male prisoners are nowhere near the desired level, the lot of women prisoners is much worse. Women in prisons as we have witnessed during our visits to various jails in different States and Union Territories suffer from unhealthy living conditions, exploitation, and necessarily prolonged severance from their families and lack of gainful and purposeful employment. However, the conditions of confinement of women offenders seemed somewhat satisfactory in those States which have totally separate institutions for women prisoners.

13.6 Women continue to be in jails for long periods, sometimes for very minor violation of law, unable to defend themselves, and totally ignorant of ways and means of securing legal aid or help even to write a petition for quick disposal of their cases. They are not aware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have understanding of their problems. The kind of shy, inhibited village women that usually land in jails have no courage to communicate their needs to the male staff posted to their jails, and they maintain a 'purdah' as such on their sufferings as on their faces. They have no means of communicating their needs to higher officials as there is hardly any woman officer at the headquarters of the prison department who would appreciate their needs and requirements.

13.7 Women prisoners confined in enclosures, the keys of which are held by male staff, are far from safe from moral danger—they are exploited and given little opportunity to express their grievances. They cannot express their grievances to visitors. Surprise visits by higher authorities to women sections of prisons have their own limitations. This imparts to these sections a kind of oblivion in which a senseless fear prevails. Whenever visitors appear on the scene a show of cleanliness, good hygienic conditions of food and kitchen, and general well being of inmates is put up for display. Women often do not complain of the realities because of the fear of the consequences which they may have to face. Thus, visitors never get to know the truth. We are of the view that if there is a senior lady officer in any wing of the headquarters organisation of the Department of Prisons and Correctional Services, she should look after the problems of women prisoners.

13.8 It is the small number of women in prisons, which in our view, is responsible for their needs being neglected. The position of these women, scattered in small clusters in jails, is highly vulnerable. Establishing separate institutions at every district or sub-divisional headquarters for 2 to 5 women offenders is financially prohibitive and administratively difficult. On the other hand any attempt to concentrate women offenders of a given State at any one place, so as to give them systematic and sustained correctional treatment, would be open to criticism on the ground that women are being removed from their home districts and placed far away from their kith and kin. A balance has to be struck between these two alternatives.

13.9 Women offenders in India face peculiar problems of rehabilitation during their post release period. Indian social customs make women ex-offenders more vulnerable to suspicion and rejection. The stigma of having been in a prison has much more adverse consequences for women than for men. The social system imposes many limitations on them and considers them outcasts. They are suppressed and forced to make compromises. The Committee was informed that in some parts of the country women ex-prisoners have to undertake an expensive pilgrimage, followed by a holy bath and a community feast before they are permitted to come back to their village to lead a normal life. Much thought should, therefore, be given to the problem of rehabilitation of women offenders both economically and socially.

13.10 Woman in India has through the ages been given a great deal of importance as the nucleus of traditional family life, and, therefore, of the society in general. She has played a key role as wife or mother to bind the family together and to stand by it in adverse circumstances. She has been identified as the supporting post of the edifice of the family in sickness, in death and in financial adversities. Taking cognizance of the position of women in family life, society should consider ways and means of not removing them from their homes and community as far as possible. This special status of women in Indian society also justifies provision of special work programmes during their incarceration suiting their needs and more lenient conditions of review of their cases for premature release, so as to enable them to unite with their families as early as possible.

13.11 In view of the status of women in the family and the society, their special needs and problems and their vulnerability while in prisons, special consideration has to be given to the segregation, protection, care, treatment, training and rehabilitation of women offenders. It is in this context that we make the following recommendations:—

13.11.1 All police investigations involving women must, as far as possible, be carried out in the presence of a relative of the accused or her lawyer and of a lady staff member. Women should not be called to the police station for investigation.

13.11.2 Police personnel should treat women with due courtesy and dignity during investigation and while they are in police custody.

13.11.3 Women kept in police lock up should invariably be under the charge of a women police official and while in transit they should always be accompanied by women escorts.

13.11.4 We reiterate that instructions of the Ministry of Home Affairs for the guidance of the police on the subject of handling women offenders should be followed in letter and spirit.

13.11.5 A separate place with proper toilet facilities should be provided on court premises for women prisoners awaiting production before presiding magistrates.

13.11.6 Bail should be liberally granted to women undertrial prisoners, and those not able to furnish surety may be released on personal recognizance.

13.11.7 The Probation of Offenders Act should be extensively used for the benefit of women offenders in order to keep them away from prisons as far as possible.

13.11.8 Women prisoners should be lodged in separate institutions/annexes meant exclusively for them as recommended by us in Chapter IX on 'System of Classification' and in Chapter V on 'Prison Buildings' of this Report.

13.11.9 Till arrangements as recommended in the above para are made enclosures for women in common prisons should be so renovated as to ensure that women prisoners do not come in view of male prisoners during their passage to and from these enclosures. The enclosures should have a 'double lock system'—one lock outside and the other inside, the keys of the latter remaining always with a woman guard inside. This would prevent entry of male staff into these enclosures without proper authority.

13.11.10 All prisons/annexes for women must be staffed by women personnel only. No male staff should enter the women's jail, unless accompanied by a female staff member.

13.11.11 All general duties such as search, photographing, fingerprinting, escorting to hospitals, etc., with regard to women offenders should be performed by women staff only. The work of conservancy and sweeping should also be done by women.

13.11.12 As recommended in para 18.9.15 of Chapter XVIII on 'sub-jails', it should be the duty of the officer-in-charge of the sub-jail to arrange for women guards to look after women prisoners confined there.

13.11.13 The staff posted at institutions for women should be properly trained and their service conditions should be on par with those of the male staff.

13.11.14 As recommended in Chapter XXIII on 'Organisational structure', if there is a senior lady officer in any wing of the headquarters organisation of the Department of Prisons and Correctional Services she should be entrusted with the job of looking after the problems of women prisoners in addition to her own duties. If such a lady officer is not available, the Additional/Joint Director of Correctional Services (young offenders) may be entrusted with this job.

13.11.15 Immediately after admission to a prison every woman prisoner should be medically examined so as to ascertain if she is pregnant; the result of such examination should be recorded in the relevant register and in her history ticket. Pregnant women prisoners should be transferred to local maternity hospital for purposes of delivery.

13.11.16 While registering the birth of a child to a woman prisoner, the place of birth should not be mentioned as 'prison', if such a birth takes place there; instead the name of locality should be mentioned.

13.11.17 Pregnant and nursing women prisoners may be prescribed special diet and be exempted from unsuitable types of work. They should be regularly checked and advised by medical officer.

13.11.18 There should be proper arrangement for the segregation of various categories of women inmates such as convicts, undertrials, habituals, prostitutes, procuresses, etc.

13.11.19 Women needing protective custody should in no case be sent to prisons and those already there should be removed to special institutions run for that purpose by the social welfare departments. If no such special institution exists, the State Government/Union Territory Administration should take immediate steps to set up such institutions.

13.11.20 There should be a separate ward for women in prison hospitals. If there is no such hospital ward they should be treated in their own barrack by a lady doctor and attended to by female staff. Adequate precaution should be taken to isolate inmates suffering from infectious and contagious diseases.

13.11.21 Lady Assistant Superintendent Grade II should be responsible for the care, discipline and welfare of women prisoners. In case of annexes or separate wards of common jails where the number of women prisoners is too small to justify the appointment of an Assistant Superintendent, voluntary social workers should be inducted on part-time basis to look after their care and welfare.

13.11.22 All valuable ornaments should be removed from women in custody and should be safely deposited. They should be permitted to retain their 'mangal sutra', glass or plastic bangles, etc.

13.11.23 Clothing and linen provided to women should include underlinen, upper and other garments, towels, sanitary towels, and socks in cold climates. Adequate quantity of toilet and washing soap should also be provided to them. In order that they may retain their interest in life they should be given all possible facilities for their personal maintenance such as use of 'kum kum' according to their custom. Mirrors at appropriate places, with sufficient quantity of oil, combs, etc., should also be provided to them.

13.11.24 Convicted women must have adequate work programmes in jails. In organising such programmes due consideration should be given to their occupational background and to the prospects of their rehabilitation on discharge from the jail. An illustrative list of the type of work programmes in which women offenders may be engaged is enclosed as Annexure B to this chapter. Wherever feasible such work programmes should include training in shorthand and typewriting for the educated inmates. Women in prisons should also be given training in (a) mother craft and child welfare, (b) first aid, (c) nutrition and (d) health care. Staff of the local nursing school or general hospital should be involved in such training. Diversified educational programmes should also be organised for women prisoners. While formulating the policies regarding treatment of women offenders, the Director of Women and Child Welfare in the concerned State/ Union Territory should be consulted.

13.11.25 Suitable recreational programmes should be organised for women prisoners which may include simple outdoor games, bhajans, music, folk dances and drama. Those who have talent in any of these fields should be encouraged to develop and continue it. Sufficient funds should be allotted from prisoners welfare fund or contingency funds for carrying out such recreational programmes.

13.11.26 Facilities like radio, film projectors, cassette players etc., should be provided to women institutions in view of the special restrictions on the movement of women inmates out of the prison.

13.11.27 Some State Jail Reforms committees have recommended construction of self-contained units for group of 8 to 10 woman prisoners to provide them a kind of family living. Such living accommodation will have its own facilities like kitchen, common room, space for kitchen garden, common bathrooms and toilets so that women prisoners living there may function as a family unit doing their own cooking, cleaning and laundry. We recommend that some units of this kind should be provided in the institutions for women offenders so that some selected long term prisoners can be given this facility as a part of their training in family or group living.

13.11.28 Women prisoners are deprived of the facility of open institutions for reasons of the possibility of their abuse. This should, however, be compensated by allowing them frequent visits to religious and historical places under proper escort in prison vans as part of their social education.

13.11.29 Women prisoners must be given the facility of maintaining contacts with their families through (a) letters, (b) visits from relatives, and (c) leave. If the relatives by reason of their poverty cannot afford to visit the prison, Government may assist them financially for the purpose.

13.11.30 Children (upto the age of five years) accompanying women prisoners may be allowed to be kept with them. Creches should be organised for these children outside the main prison building.

13.11.31 Prisons and annexes for women offenders in common prisons should be open for frequent visits by lady visitors, lady lawyers, lady doctors, lady social workers and accredited lady journalists. Voluntary workers from these fields should be actively

associated with treatment programmes and other social activities for women prisoners. This will not only help improve the subdued atmosphere of such institutions but will also keep the staff on the alert against neglect and maltreatment.

13.11.32 Special consideration should be given to women prisoners in the matter of their premature release. Our recommendations in this regard are contained in chapter XVI on 'Prisoners Sentenced to Life Imprisonment', and chapter XX on 'System of Remission, Leave and Premature Release' of this Report.

13.11.33 Prior to the release of women convicts proper pre-release preparations as recommended in chapter XXII on 'After-care, Rehabilitation and Follow-up' of this Report should be made by Lady Assistant Superintendent of the prison with the help of voluntary agencies, if any, and the Department of Social Welfare/Directorate of Women Welfare. Avenues for the settlement of marriage of women prisoners willing to get married after their release may also be explored. Assistance of the social welfare agencies in the government sector and voluntary sector may be sought. Released women prisoners, whose family members do not come to receive them and who have no place to go to, may be transferred to social Welfare Institutions run by the Department of Social Welfare. They should as far as possible be escorted by women guards in plain clothes.

13.11.34 Voluntary women organisations should be encouraged to work in collaboration with the government agencies to organise release on bail, bail projects, Rescue Homes and After-care Homes for women offenders and ex-prisoners. State Government should support such schemes financially. (Reference chapter XXII on 'After-care, Rehabilitation and Follow-up' this Report.)

13.11.35 There should be a women's non-official organisation at the national level to attend to the following:—

- (a) Revision of legislation in respect of women prisoners ;
- (b) Establishment of homes for released women prisoners ;
- (c) Action against atrocities committed against women in prisons ;
- (d) Reintegration of ex-women prisoners into the family and community ;
- (e) Supply of free legal aid to women prisoners ; and
- (f) Welfare of prisoner's family.

This organisation should be given financial assistance by the Central Government through the National Commission on Prisons.

References:

1. Report of the Indian Jails Committee 1919-20; page 252.
2. Ibid ; page 252.

**STATEMENT SHOWING THE FEMALE INMATE POPULATION IN PRIONS
IN THE COUNTRY AS ON 31-12-80.**

Sex	No	Percentage
Male	155619	97.4
Female	4073	2.6
Total	159692	100.0

Distribution of Women Prisoners as on 31-12-80.

Category	No.	Percentage to total women prisoners
1. Convicted	855	21.0
2. Unconvicted	3218	79.0
Total	4073	100.00

Distribution of Unconvicted Women Prisoners as on 31-12-80.

Category	No.	Percentage to total Unconvicted Prisoners
1. Undertrials	2637	81.9
2. Detenus	15	0.5
3. Lunatics		0.6
(i) Criminal	21	16.6
(ii) Non-criminal	534	0.1
4. Civil Prisoners	2	0.3
5. Others	9	
Total	3218	100.0

WORK PROGRAMMES FOR WOMEN PRISONERS

1. Toy making
2. Doll making ;
3. Tailoring and garment manufacture ;
4. Stitch craft ;
5. Knitting ;
6. Spinning ;
7. Weaving ;
8. Cotton tape and tag making for offices ; stationery and paper-binding ;
9. Basket and mat making ;
10. Cooking , bakery, fruit preservation, etc ;
11. Hand and machine embroidery ;
12. Noodles, pickles, papad making, etc. ;
13. Painting ;
14. Fine arts, singing, dancing, etc. ;
15. Gardening and flower arrangement ;
16. Hosiery ;
17. Match Box industry ;
18. Pottery ;
19. Village and khadi industries ;
20. Carpet weaving ;
21. Cannery ;
22. Wax industry, candle and incence making ;
23. Bangle making ;
24. House management ;
25. Leather Products ;
26. Watch repair ;
27. Laundry ;
28. Flour and masala grinding ;
29. Ambar charkha ;
30. Bidi making ;
31. Soap making ;
32. Nursing and mid-wifery ;
33. Telephone wiring, telephone operation and secretarial practice ;
34. Electronics ; and
35. Beautification course,

CHAPTER XIV

CHILDREN IN PRISONS

14.1 One of the important tests of the civilization of a nation is its anxiety for the care, welfare and development of children. Our country had ancient traditions in this regard. Till a few decades ago the joint family, the kinship organisation and the community used to provide a sense of security for children in need. These social institutions provided an inherent social system for the care and welfare of children in distress. However, during the last few decades the pattern of family ties has been changing very fast. In the process of modernization, kinship organisation as a measure of security for the younger generation has grown weak and the plight of children in distress has become increasingly critical. This has been one of the major factors contributing to the incidence of children coming into conflict with the established social and legal norms.

14.2 It was shocking for the Committee to see children of tender age confined in prisons for various reasons in some of the States and Union Territories. According to the age-wise classification of under-trials and convicts as on December 31, 1980 there were 2158 children (below 16 years in case of boys and 18 years in case of girls) in different prisons in India. This figure pertains to the number of children imprisoned only on a single day, i.e. on December 31, 1980. The total number of children admitted in prisons during the whole year must obviously be much larger. We were given to understand during our discussions with prison staff that in many cases the age of children was purposely shown to be on the higher side by the police so as to bring these children under the category of young offenders i.e. between 16/18 and 23 years. If the number of these children is added to the total annual turn-over of children in prisons it will be observed that the problem of incarcerated children is much more serious than what is apparently seen from official statistics.

14.3 Lodging of children in prisons for delinquency or destitution was discouraged even during the nineteenth century under the British rule. The Reformatory Schools Act of 1876 stands witness to the contemporary thinking on the subject. In the twentieth century the Indian Jails Committee 1919-20 very specifically recommended the necessity of separating children from adult prisoners both in matters of custody and treatment. In line with this thinking the governments in the provinces of Madras, Bengal and Bombay enacted Children Acts, a progressive legislation in the years 1920, 1922 and 1924 respectively. The All India Jail Manual Committee 1957-59 further emphasised the need for the enactment and application of Children Act on a uniform pattern throughout the country. During the two decades following this recommendation several States came up with this legislation while the Government of India enacted the Children Act in 1960 for the Union Territories. As for girls, the Suppression of Immoral Traffic in Women and Girls Act extending to the whole of India was passed in 1956 and modified and amended in 1980. This legislation provides among other things for the care, protection and rehabilitation of girls in moral danger.

14.4 Annexure A to this chapter gives details about the enactment and actual enforcement of Children Acts in various States and Union Territories in India. It gives the number of districts covered under these Acts, institutions set up, total inmate capacity

of these institutions and sanctioned budget. Under the provisions of these Acts it was obligatory on the part of State Governments and Union Territory Administrations to create an infrastructure of Children's Courts, Children's Homes, Observation/Remand Homes, Special Approved/Certified Schools, After-care organisations, etc., to implement the provisions of the Act. The Annexure will show that the Children Act has not been enacted in Nagaland and though enacted in Assam, it has not been enforced there. Even other States and Union Territories have either not enforced it in their entire jurisdiction or have not created an appropriate and adequate infrastructure for implementing it. It is only in Andhra Pradesh, Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and Delhi, that the Children Acts have been made applicable on a fairly wide scale and a proportionately larger number of institutions for children have been established. We are given to understand that in Bihar, the Children Act has been passed but children's courts and children's institutions have not been set up as yet. As a result, hundreds of children are still sent to prisons in this State. We were also given to understand that in West Bengal prisons have been declared as homes for children. In this State the Department of Prisons runs an institute of Correctional Services for children. Destitute, vagrant as well as delinquent children are sent to this institute and are kept there together. Children being processed under Children Act are kept in ordinary prisons in separate barracks. Thus it is only in some States and Union Territories that the care and welfare of children has been taken up somewhat seriously. In other States and Union Territories the Children Act has been adopted only for name's sake and the required infrastructure of personnel and institutions has not been set up. A look at the sanctioned budget as given in Annexure A would indicate as to how this work has remained neglected in large parts of our country.

14.5 In the Directive Principles of State Policy enshrined in part IV of the Constitution of India a special reference has been made to the care of children. Article 39 of the Constitution says:

"The State shall, in particular, direct its policy towards securing—

* * * * *

- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

In our National Policy for Children adopted in 1974, provision has been made for the education, training and rehabilitation of the socially handicapped children. Priority has been given in this National Policy to the maintenance, education and training of orphaned and destitute children. During the International Year of the Child, 1979, a National Plan of Action was also drawn for adopting various welfare measures for children. It is worth recalling that in recognition of the importance of development of children in a free and wholesome atmosphere the United Nations Organisation had adopted the Declaration of Rights of Children. But despite all these steps, it is indeed a shocking state of affairs that the work of protection, care, welfare and rehabilitation of children in distress has remained virtually neglected in most of the States and even in some Union Territories.

14.6 This neglect points squarely to the lack of sensitivity on the part of governments and the society in general about the presence of children in prisons. It is common knowledge that the life of inmates in prisons is infested with all kinds of vices including sex perversions. Children kept in prisons along with young offenders and adult criminals are exposed to these vices and to the risk of being homosexually exploited. In States and Union Territories where children are thrown in prisons, the Government s and the Department of Prisons, Social Welfare, Social Defence and Child Welfare are obviously callous to the cruel and traumatic experiences which children of tender age have to go through while in prisons. These Governments and Departments have not realized

the dangers of contamination of these children with the criminal culture of the prisons. People at the helm of affairs and senior administrators use literary jargon and rhetoric about the work done in the fields of social welfare and child welfare. But in several States and Union Territories, they have failed to take substantial and concrete steps for protecting children from disastrous experiences in prisons.

14.7 Problems of care and welfare of orphaned, neglected, abandoned, homeless, destitute and delinquent children are expected to be handled through two major approaches, namely, non-institutional services and institutional services. Foster homes, adoption, sponsorship, family assistance programmes, SOS Children's Villages and juvenile probation are non-institutional measures. Orphanages, Observation Homes, Children's Homes, Approved Institutions and Special Schools are expected to provide institutional care, welfare and rehabilitative services. The Government of India and some State Governments have designed various schemes for the welfare of children, but the work of implementation of these schemes is generally ineffective. In the local sector, that is, in the panchayats, zila parishads, municipalities and municipal corporations practically nothing is being done for children in distress.

14.8 During our visits to States and Union Territories, we attempted to find out the reasons for the poor implementation of Children Acts and other child welfare services. While discussing the problems of children in prisons with personnel working in the field of child welfare, we made several queries as to why the Children Act had not been made applicable to all the districts; why children's courts had not been set up; why the institutional infrastructure necessary for proper implementation of Children Act had not been built up; why juvenile probation was not used; and why the voluntary organizations were not involved in the work of child welfare. In some of the States we could not have the privilege of meeting the Directors of Social Welfare or the heads of departments dealing with the work of child welfare; only some junior officers of these departments happened to meet us and they could not give any plausible replies to our queries. However, it was generally understood that, inadequacy of funds was one of the principal reasons for the lack of development of non-institutional and institutional services for children. In some States various schemes for expansion of the work under the Children Acts and other schemes of child welfare were not approved by the planning departments of State Governments and as such they could not be included in the Five Year Plans. Financial allocations for child welfare in the non-plan sector were very meagre. Surprisingly enough, even the allocated funds were not fully spent by the Department of Social Welfare or the concerned department for developing various welfare services for children in some of the States. These facts show that there is no anxiety on the part of Governments and the concerned departments for the development and expansion of welfare services for children in distress and difficulty.

14.9 The argument of lack of funds in some States and Union Territories as a reason for not developing services for the welfare of children distressed us very much. Welfare of children has been the declared objective of our nation. With that aim in view we have passed social legislation for children. The importance of the development of children with freedom and dignity has been recognised nationally by our Constitution and internationally by the United Nations Organisation in its Declaration of Rights of Children. Obviously the problems of children must receive high priority in our national plans. A child of today is going to be an adolescent of tomorrow and in course of time he will be an adult. If for lack of funds the welfare of children is neglected, and if, as a consequence, children are thrown in prisons where conditions are most uncongenial and where they cannot be "protected from moral and material abandonment", the nation can hardly justify its claim of being a welfare State. It is unfortunate that while including various schemes of national development in the Five Year Plans, required allotment of funds for the expansion and development of child welfare services is not made. Adequate funds for these services are not provided even in the Centrally sponsored schemes. The real reason for all this is the lack of awareness in the State Governments and Union Territory

Administrations about the urgency of the problems of the unfortunate children in distress. If the concerned Governments were earnestly seized of the pressing problems of child welfare in general and of the problems of delinquent children in particular, the planning departments in the States and Union Territories would have made larger allocations for the expansion and development of child welfare services in the plan sector. If the concerned Governments were sensitive enough to the suffering caused by the presence of children in prisons, it should not have been difficult to convince the Planning Commission about the necessity of expanding the services for children on a priority basis through national plans. We are constrained to state that even in the Planning Commission the urgent necessity of setting up a wide network of services for children does not seem to have been fully appreciated as yet. A direct consequence of all this is the harsh fact that thousands of children are thrown in prisons under very dehumanizing conditions of living.

14.10 Child welfare work has to grow essentially as a joint sector of Government and voluntary organizations. Government should look after the funding of child welfare services and the management of these services should be looked after by voluntary organizations of good reputation, under proper guidance and supervision of the concerned department of the Government. As of today, a very small number of voluntary organisations or individuals are involved in this work. One of the main reasons for this is that the funds provided by Government to voluntary organisations for child welfare services are so inadequate that these organisations are not keen and are also not in a position to undertake child welfare activities on an extensive scale. Child welfare work has to be visualized as a complex network of various services : Protective, preventive, non-institutional, institutional and after-care services. These services represent different approaches to the problem of child welfare and have to be dovetailed so that the socially and economically handicapped children and children in conflict with law could be appropriately dealt with and properly helped to grow within socially accepted norms.

14.11 There is a growing tendency in our country to find solutions to most of our social and economic problems through prisons and even the solutions to the problem of the unfortunate children in distress are sought to be found through the imprisonment of children of tender ages in some States and Union Territories. We cannot imagine a more tragic and deplorable situation than this. While making recommendations in the succeeding paragraphs about children in prisons we have kept in view three aspects, namely, removal of children currently lodged in prisons ; checking the present inflow of children to prisons ; and development of child welfare services to curb the future inflow of children to prisons. Our recommendations are as follows :

14.11.1 In States where no separate legislation for children has as yet been passed, the Children Act of 1960 as amended in 1978 by the Government of India or the recently amended Maharashtra Children Act which embodies the latest trends in child welfare should be adopted by promulgating an ordinance followed by passing of the Act by the State legislature within the prescribed time. States and Union Territories, where the Children Act has already been passed, should make it applicable to every district/area within their territorial jurisdiction.

14.11.2 Necessary infrastructure such as Children's Courts/Juvenile Courts, Children Homes, Special Schools, required under the Children Act should be immediately set up in every district.

14.11.3 Cases of children kept in prisons should be brought before the Children's Courts. Orphaned, abandoned, neglected, destitute, victimised and similar other categories of children who are not involved in delinquent acts and children who have committed delinquent acts of minor nature should be placed under the care of voluntary probation officers or released on licence under the care of approved persons (fit persons), approved institutions (fit person institutions), orphanages and foster homes,

14.11.4 School teachers, doctors, professors, retired government servants and social workers who are actually working in the field of social work or who voluntarily offer to work in the field should be recognised as voluntary probation officers, fit persons and approved persons for the purposes of Children Acts. These persons should, however, be very carefully selected. Only such persons as are really interested in child welfare work should be selected for this purpose. They should be given a short basic training in child welfare. Good educational institutions having hostel facilities should be recognized as approved institutions. In every taluk and city at least fifty persons should be recognized as voluntary probation officers and approved persons, and at least 10 good educational centres and children's institutions run by voluntary organizations should be recognized as approved institutions. In large cities, industrial centres and metropolitan cities the number of such persons and voluntary organizations may be increased in accordance with local requirements. Thus without incurring any capital expenditure a network of voluntary social workers and organisations can be set up.

14.11.5 For supervising a child released on probation a voluntary probation officer should be paid an honorarium of Rs. 50/- per month to cover conveyance and postal expenses. The case load of such officer should not be more than three children at one time. For each child released on licence to the care of an approved institution or a children's institution run by a voluntary organization, Government should pay Rs. 150/- per month as maintenance allowance.

14.11.6 While providing funds to voluntary organisations and individuals for the proper care of children in need, the government should exercise effective supervision to ensure that such voluntary participation is selfless, secular and genuinely in the interest of the child.

14.11.7 Each State and Union Territory, where children's homes, approved schools or special schools have not been set up in adequate number, should take on rent some suitable houses for setting up such institutions. Children who cannot be released on probation or on licence and delinquent children not dealt with under non-institutional programmes should be kept in children's homes, approved schools or special schools. Voluntary organisations with good reputation should be helped to set up such institutions on the basis of grant-in-aid of 100% of approved expenditure.

14.11.8 The Director of Social Welfare or the head of the department of child welfare should be the Chief Authority under the Children Act. He should formulate schemes for non-institutional services such as adoption, foster care, family assistance programme for children and S.O.S. Children's Villages. As recommended in para 14.11.5 above for each child covered under such schemes the institution should be paid Rs. 150/- per month for his maintenance, health, and education. Such non-institutional measures will be much more economical than running children's institutions through Government department.

14.11.9 Till appropriate services are created for the care and welfare of children a monthly review of children confined in prisons should be taken by each prison superintendent and a report in a prescribed form should be sent to the District Judge for necessary action. A copy of this report should be sent to the Inspector General of Prisons and Director of Correctional Services and also to the head of the department dealing with child welfare for initiating appropriate action at their level.

14.11.10. The Ministry of Home Affairs, Government of India should ask every State Government and Union Territory Administration to take a review of the presence of children in prisons. The Chief Ministers of the States and Union Territories should be requested to take a personal interest in this problem and initiate action for removal of children from prisons. The Ministry of Home Affairs, Government of India, should also

request the Chief Justices of the High Court in States/Union Territories, where children are kept in prisons, to issue suitable orders to the subordinate courts for removal of children from prisons.

14.11.11 The Ministry of Social Welfare of Government of India which is incharge of child welfare should request the Ministers of Social Welfare/Child Welfare/Social Defence in the States and Union Territories to take immediate necessary action for the removal of children from prisons and also for making appropriate arrangements for care, welfare and rehabilitative services for children who are at present kept in prisons.

14.11.12 Officers of the Ministry of Home Affairs such as the Director of Prisons and Officers of the Ministry of Social Welfare should be jointly deputed to each State and Union Territory where children are kept in prisons to advise and help the concerned Governments/Administrations in regard to taking immediate action for removing children from prisons.

14.11.13 Juvenile probation is virtually non-existent in India. Releasing children on probation and treating them in the community under supervision through the probation organisation will be a practical solution to many problems of children welfare. Another practical alternative would be to give benefit of non-institutional services to children in need. (The pattern of non-institutional services for children in Maharashtra can initially be adopted by other States and then further developed according to local requirements).

14.11.14 A child should be sent to a children institution only as a last resort. As far as possible he should stay with the family and the requisite help extended through the State or local sector to the family itself for the proper development of the child.

14.11.15 There should be a statutory ban on keeping boys below the age of 16 years and girls below the age of 18 years in police custody or in a police lock-up. Abandoned, destitute, neglected and similar other categories of children should be kept with the family of approved persons or in approved institutions such as hostels of educational institutions or in children's homes. Statutory provisions in this regard should be incorporated in the Children Acts, the Code of Criminal Procedure and other relevant legislation.

14.11.16 In every district there should be a separate wing in the police organisation to be named as Juvenile Aid Bureau. This bureau should consist of carefully selected and trained persons who should attend to the multifarious problems of children from the point of view of social welfare and social work and not purely from the point of view of law and order. The human aspect involved in the work of child welfare must be appreciated by the personnel of this bureau.

14.11.17 There should be a statutory ban on committing children below the age of 16/18 years to prisons either as undertrials or convicted persons. Necessary provision in this regard should be included in the Children Acts, Suppression of Immoral Traffic in Women and Girls Act, Prisons Act and the Code of Criminal Procedure.

14.11.18 The High Court of each State and Union Territory should be moved to issue standing orders to every court under its jurisdiction that under no circumstances a child below 16/18 years should be committed to police custody or to judicial custody in prisons.

14.11.19 If, despite the banning provisions as mentioned above, any court commits a child to a prison the prison superintendent should be authorised to refuse his admission

to prison and to immediately return him to the concerned court pointing out the provisions banning commitment of a child to a prison. If the prison superintendent has any doubt about the age of a person committed to the prison and in his opinion such person appears to be a child he should refer the case to the nearest Government medical officer for ascertaining such person's age. If the medical officer certifies this person to be child, he should be produced before the court with this certificate for being sent to an appropriate institution for children.

14.11.20. Despite the ban on the admission of children in prisons, if any court insists on committing a child to a prison, the prison superintendent should immediately move the District Judge sending full details of the case. The child should also be produced before a prison visitor who should record his opinion about the child and forward the same to the District Judge for necessary action. The prison superintendent should send a telegram to the Inspector General of Prisons and Director of Correctional Services giving full details about the child. The Inspector General of Prisons should immediately write to the District Judge and then, if necessary, to the High Court for passing suitable orders in respect of the child under relevant legislation. The head of the department dealing with child welfare should also be informed by the superintendent about the admission of the child in the prisons so that he may take necessary remedial action. The Inspector General of Prison and Director of Correctional Services should immediately inform the concerned department in the secretariate so that the latter may also take suitable action in the matter.

14.11.21 Each State and Union Territory should prepare a master plan for setting up a network of non-institutional and institutional services for children right from the taluka level upwards upto the State level. Each taluka or a group of 2-3 talukas should have non-institutional and institutional services for children. At the district level there should be a sufficiently senior officer who should exclusively devote his attention to the setting up, development and expansion of protective, preventive, welfare and rehabilitative services for children. In every zila parishad, municipality and municipal corporation there should be a child welfare officer for this purpose. The National Institute of Social Defence and the National Institute of Public Cooperation and Child Development should extend technical assistance to each State and Union Territory in the preparation and execution of the master plan. This plan must be made fully operative at all levels and particularly in large industrial cities and metropolitan cities where this work has remained neglected so far. The master plan should encompass within its fold both non-institutional and institutional services like adoption, foster homes, SOS Children's Homes, child guidance clinics, juvenile guidance centres, multipurpose community centres, juvenile probation, children's courts, children's boards, observation homes, children's homes, approved persons, approved institutions, special schools, after-care services etc.

14.11.22 Each State and Union Territory should formulate a policy containing guidelines regarding handling of various problems relating to children in need or children in conflict with law. These guidelines should help in bringing about coordination between the police, the judiciary, the departments of social welfare, child welfare, social defence, prisons and other concerned departments. In these guidelines all available non-institutional services and institutional facilities should be clearly indicated so that the persons at the field level would know clearly as to which child has to be given the benefit of which service.

14.11.23 The Panchayat Acts, Zila Parishad Acts and Municipal Acts should be suitably amended to make it a statutory responsibility of these organizations to set up child welfare services in their respective areas. These organisations should set apart adequate funds in their budget for these services. They should be authorised to levy a child welfare cess for financing child welfare services. If any local body fails to provide requisite welfare services, Government should take firm action against it. Withholding financial

aid to such local bodies could be one of the actions. Only through such stern measures adequate services for children can be developed in the local sector.

14.11.24 Government of India should prepare a comprehensive model Bill for children embodying various aspects of child welfare services. While preparing this bill the procedure for children's courts should be simplified. Child welfare boards would in our opinion be more useful from the point of view of expeditious disposal of cases of certain categories of children. This comprehensive Model Bill should be circulated to the States so that the Children Acts of various States could be amended in the light of the Bill and a basic uniformity brought about in the country in developing welfare services for children. However, the development of child welfare services should not be postponed till the preparation of this Model Bill and its circulation to the States.

14.11.25 Orphanages and children's homes as they are being run in most of the States and Union Territories need a lot of improvement. The services in children's institutions have been suffering for want of adequate funds. Voluntary organisations of good reputation should be entrusted with the work of child welfare activities. The Government should provide adequate funds to and proper supervision over such voluntary organisations. The quality of services in children's institutions also needs to be improved. The Ministry of Social Welfare, Government of India, through the National Institute of Social Defence has prepared an operations manual about the procedure for running children's institutions. This operations manual should be adopted by all the States and Union Territories.

14.11.26 Lack of funds should not come in the way of developing child welfare services. Necessary financial provisions should be made in the non-plan sector, State-plans, centrally sponsored schemes and also in local sector. It should be ensured that allocations under these sectors are fully utilized during the financial year and are not surrendered as is happening in many States at present. Failure on the part of the departments to utilise the funds should be strictly dealt with.

14.11.27 Budget allocations for child welfare services should be adequate and should not be reduced for reasons for economy.

14.11.28 The National Children Fund should be utilized on a high priority basis for developing services for the socially and economically handicapped children, especially in such parts of the country where these services have not yet been developed.

14.11.29 Looking to the immensity of the problems of child welfare and the need for an extensive network of services to meet them, we are of the view that it is high time that in every State and Union Territory a separate department of child welfare is established so that this department can devote full attention to the development of child welfare services. The work pertaining to the multifarious aspects of child welfare in local and State sectors is so vast that setting up a separate department of child welfare in each State/Union Territory, whether large or small, is fully justified.

14.11.30 Children who have difficult behaviour pattern and who attain the age of 16/18 years while in an institution set up under the Children Act or the Suppression of Immoral Traffic in Women and Girls Act, should, if necessary, be sent to a Kishore/Yuva Sadan. Under no circumstances should such a child be sent to a prison.

14.11.31 Children, who are dependent on undertrial or convicted prisoners and who have no other shelter, are sometimes, required to be kept in prisons. This is a special category by itself. Such children should preferably be kept with the relatives or friends of the person. If this is not possible, they should be kept in an orphanage or in an approved institution under the Children Act or in a S.O.S. family home or as a last resort, in a Children's Home.

14.11.32 We have given our recommendations about children accompanying women prisoners in Chapter XIII at para 13.11.30

14.11.33 The following organisations in India are working in the field of child welfare :

- (i) The Central and State Social Welfare Boards;
- (ii) The Indian Council of Child Welfare with its branches in the States;
- (iii) The National Institute of Public Co-operation and Child Development;
- (iv) The National Children's Board with its branches in the States; and
- (v) The National Institute of Social Defence.

In addition, there are some national and state level voluntary organisations which are involved in the work of child welfare. A common platform of all these agencies should be set up so that child welfare services could be coordinated and developed in all parts of India, especially in those States and Union Territories where these services have not so far been properly developed.

14.11.34 A committee consisting of the following should be set up at each district headquarters:

- | | |
|---|-------------------|
| (i) District Judge | —Chairman |
| (ii) District Magistrate | |
| (iii) Superintendent of Police | |
| (iv) District Probation Officer | |
| (v) District Prosecutor | |
| (vi) Superintendent of a prison in the district | |
| (vii) District Child Welfare Officer | —Member-Secretary |

The functions of this Committee should be :

- (i) to ensure that all the provisions of legislation for children are being acted upon;
- (ii) to ensure that the existing facilities for children are fully utilized;
- (iii) to bring to the notice of the police, the judiciary, the department of prisons and correctional services and social welfare department, any violations of laws, norms and rules in respect of children;
- (iv) to advise Government about removal of children from prisons.

14.11.35 A State level committee should also be constituted to advise the Government on all matters pertaining to child welfare.

14.12 Investment for the welfare of children is investment in man. We are of the view that dynamic and experienced persons should be put in charge of developing child welfare services so that with their initiative and drive the work of child welfare may get the necessary impetus and the society may accept the movement of child welfare as people's movement.

STATEMENT SHOWING THE POSITION OF ENACTMENT AND ENFORCEMENT OF

No.	Name of the State/ Union Territory	Name of enactment	No. of Districts		Remand/ Observation Homes	Approved/ Certified Special School	Children Homes
			Total	Covered			
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	(i) Andhra Pradesh (Andhra Area) Children Act, 1920.	23	23	6	4	..
		(ii) Andhra Pradesh (Telangana Area) Children Act, 1951.					
2.	Assam	Assam Children Act, 1970.	10	..	Not yet enforced		
3.	Bihar	The Bihar Children Act, 1982.	31	31	14	1	1
4.	Gujarat	(i) Bombay Children Act, 1948.	19	19	22	6	..
		(ii) Saurashtra Children Act, 1956.					
5.	Haryana	Haryana Children Act, 1974.	12	12	..	1	..
6.	Himachal Pradesh	Himachal Pradesh Children Act, 1979.	12	12	..	..	1
7.	Jammu & Kashmir	Jammu & Kashmir Children Act, 1970.	14	1	1	..	1
8.	Karnataka	Karnataka Children Act, 1964.	19	19	22	16	..
9.	Kerala	Kerala Children Act, 1972.	12	11	9	5	1
10.	Madhya Pradesh	Madhya Pradesh Bal Adhiniyam, 1970.	45	45	24*	3	5(P)
11.	Maharashtra	Bombay Children Act, 1948.	26	26	38	22	..
12.	Manipur	Manipur Children Act, 1978.	6	6	..	..	..
13.	Meghalaya	Meghalaya Children Act, 1970.	5	2	..	..	..
14.	Nagaland	Not yet enacted	7	..	Not yet enacted		
15.	Orissa	The Orissa Children Act, 1982.	13	4	..	..	..

*Out of 24 Remand Homes 3 are recognised.

P Out of 5 Children Homes 4 are recognised.

XIV-A

CHILDREN ACT IN VARIOUS STATES AND UNION TERRITORIES TOGETHER WITH THE NUMBER OF INSTITUTIONS AND THEIR CAPACITY (AS ON 31-10-1982)

Fit persons Institute	After care Institute	Others (Specify)	Total	Total capacity of the institu- tion	Total sanctioned Budget (Rs. in lakhs)
9	10	11	12	13	14
..	1	..	11	1525	41.34
..
..	2	..	18	715	25.05
32	1	..	61	1705	73.53
..	1	..	2	N.A.	0.90
..	—	..	1	25	N.A.
..	..	..	2	80	0.40
2	3	..	43	2880	79.81
—	..	..	15	1200	N.A.
..	1	..	33	1275	17.97
100	3	2	165	15410	126.72
..	—	—
..	—
..

1	2	3	4	5	6	7	8
16.	Punjab . . .	East Punjab Children Act, 1949.	12	12	8	1	..
17.	Rajsthan . . .	Rajasthan Children Act, 1970.	26	26	7	1	3
18.	Sikkim . . .	The Sikkim Children Act, 1982.	4	4	..	..	..
19.	Tamil Nadu . . .	Tamil Nadu Children Act, 1920.	16	16	9	9	..
20.	Tripura . . .	The Tripura Children Act, 1982.	3	3	..	..	..
21.	Uttar Pradesh . . .	Uttar Pradesh Children Act, 1951.	57	48	48	11	..
22.	West Bengal . . .	West Bengal Children Act, 1959.	16	16	2	7	1
23.	Andaman & Nicobar .	Children Act, 1960.	2	2	..	..	2
24.	Arunachal Pradesh .	Do.	9	..	..	..	..
25.	Chandigarh . . .	Do.	1	..	..	..	..
26.	Dadra & Nagar Haveli	Do.	1	1	..	..	..
27.	Delhi . . .	Do.	6	6	3@	1	6
28.	Goa, Daman & Diu .	Do.	3	3	1(T)	..	..
29.	Lakshadweep . . .	Do.	1	..	..	..	..
30.	Mizoram . . .	Do.	3	..	..	..	..
31.	Pondicherry . . .	Do.	4	4	1(T)	..	..
			418	352	215	88	21

@Out of 3 obvservation homes 1 is also functioning as Children Home.

T Milti-purpose institution functioning as approved/special children home/remand home.

Figures in respect of Andhra Pradesh, Gujarat, Jammu & Kashmir, Karnatka, Madhya Pradesh Maharashtra and Meghalaya pertain to 1980-81 and in case of Punjab figures pertain to 1979-80.

9	10	11	12	13	14
4	13	N.A.	12.08
..	11	375	7.37
..
..	3	..	21	315 ¹	133.39
..
..	..	7	66	3240	48.51
2	12	989	30.87
..	2	75	NA
..
..
..	2	..	12	1490	39.21
..	1(T)	139	3.53
..
..
..	1(T)	100	3.89
140	17	9	490	34474	644.57

The following table shows the number of pupils in each school in the year 1900-1901, and the total number of pupils in the schools of the district for the same year. The total number of pupils in the schools of the district for the year 1900-1901 was 140. The total number of pupils in the schools of the district for the year 1901-1902 was 17. The total number of pupils in the schools of the district for the year 1902-1903 was 9. The total number of pupils in the schools of the district for the year 1903-1904 was 490. The total number of pupils in the schools of the district for the year 1904-1905 was 34474. The total number of pupils in the schools of the district for the year 1905-1906 was 644.57.

CHAPTER XV

YOUNG OFFENDERS

15.1 Several significant reports appertaining to the problems of young offenders have made important recommendations covering many aspects of this critical category of prisoners. The Indian Jails Committee 1919-20 had made a strong recommendation that children and young persons below the age of 21 years should not be kept inside a jail and separate arrangements for their custody and treatment should be made. In his report "Jail Administration in India", Dr. W.C. Reckless, the United Nations expert had emphasised the need to have separate arrangements for young offenders. The All India Jail Manual Committee 1957-59 had also stressed the need for a different correctional approach for young offenders. The Model Prison Manual envisages separate institutions for these offenders. Most of the recommendations contained in these reports, however, remained unimplemented and as of now the number of institutions for young offenders all over the country is totally inadequate.

15.2 In India there are 11 Borstal schools, two in Andhra Pradesh, one each in Bihar, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh. There are 8 Juvenile Jails, one each in Gujarat, Haryana, Karnataka, Maharashtra, Meghalaya, Orissa, Rajasthan and Uttar Pradesh where young offenders below the age of 21/23 years are kept. In West Bengal in the Institute of Correctional Services at Barasat children upto the age of 16 years are kept. The total capacity of all Borstal schools and juvenile jails is 3929 whereas there were 17,217 offenders below the age of 21 years in Indian prisons, out of a total prison population of 1,59,692 as on December 31, 1980. In some States there are separate sections for juveniles in district and central prisons, but these sections are not completely segregated from other parts of the prisons. As a result young offenders get mixed up with adult offenders. The entire question pertaining to their training, treatment, education and rehabilitation thus remains completely neglected. This is indeed a very distressing situation.

15.3 Detention of young offenders in prisons along with adult criminals is harmful in many ways. These young offenders at an impressionable age come in contact with hardened and habitual criminals. They are also exposed to a kind of concentrated criminal sub-culture of prisons. This virtually defeats the main objective of punishment, viz., reformation and rehabilitation of offenders. Under such circumstances prisons instead of being centres of correctional treatment become schools of crime for many a young offender. The inhuman and cruel aspect of keeping young offenders of ages between 16 to 23 years in prisons with sex starved adult prisoners needs no detailed elaboration.

15.4 The educational and training programmes in the few Borstal schools listed above are not adequate and effective. In U.K. (from where the concept of Borstal schools was originally taken) the programmes in these institutions have been considerably developed, and diversified in order to cater to a wide range of problems manifested by young offenders on the basis of their growth continuum. But in India Borstal schools are still run on almost the same pattern as was introduced decades back in the colonial period, and there has been no improvement in their functioning on progressive and scientific lines after independence.

15.5 In our view there are serious difficulties in the development of a uniform approach towards young offenders. Some of these may be enumerated :

- (i) Except the Borstal Schools Act there is no other approach adopted in our legal system for the institutional treatment of young offenders. The Borstal schools have a limited coverage in relation to young offenders of certain categories. The Prisons Act, 1894 contains provisions only for the separation of young offenders. Most of the young offenders continue to be incarcerated along with other offenders in prisons.
- (ii) In the existing Borstal Schools Acts there is no uniformity in terminology (for instance they are variously referred to as adolescent offenders, offenders and young offenders) .
- (iii) There is no uniformity about the age of young offenders (Assam Borstal Institution Act, 1968, 14—21 years; Bihar Borstal School Act 1961, 15—21 years; Mysore Borstal Schools Act, 16—21 years).
- (iv) There is no provision for compulsory committal of young offenders to Borstal schools.
- (v) The conditions governing admission in, and discharge from, Borstal schools vary from State to State.
- (vi) All Acts, except the Assam Act, provide for the application of the Prisons Act 1894 and Prisoners Act 1900.

15.6 There are other practical difficulties in the implementation of the Borstal Schools Acts. For example, the minimum period of detention in a Borstal school is two years and the maximum five years. Transfer to a jail of a Borstal school inmate after he completes his term in a Borstal school nullifies the impact of the Borstal programme. After closely examining this matter we are of the opinion that the Borstal Schools Acts have become outdated and are far behind the requirements of our contemporary times.

15.7 The following factors have further handicaped the development of suitable correctional programmes for young offenders :

- (i) chronic or periodical over-crowding in prisons;
- (ii) lack of satisfactory and adequate facilities for effective segregation of young offenders in the existing district and central prisons where all categories of prisoners are huddled together;
- (iii) absence of scientific classification system and the resultant absence of individualisation of training and treatment programmes for young offenders;
- (iv) insufficient, ineffective and unplanned educational, training and treatment programmes for young offenders in the juvenile sections of prisons and even in separate institutions for young offenders;
- (v) absence of an effective after-care programme and follow-up;
- (vi) absence of adequate and trained staff.

We are constrained to observe that the policy makers and prison administrators seem to have remained indifferent to the most sensitive question of the treatment and rehabilitation of young offenders.

15.8 The group of young offenders is a very impressionable group. A young offender of today can have all the potentials of being a hardened recidivist of tomorrow. We

are convinced that offenders in the age group of 16-23 years can be reclaimed as useful citizens. They have better prospects for being re-educated to a socially useful way of life. Investment in the re-education and rehabilitation of young offenders must, therefore, be treated as investment in national man-power. We are, therefore, of the view that a new scientific and progressive approach must be adopted if these offenders are to be saved from the damaging and traumatic experience which they are compelled to undergo in the existing deteriorating and degenerating system of prisons in our country. It is against this background that we make the following recommendations :

15.8.1 The subject of treatment of young offenders should be included in the Concurrent List of the Seventh Schedule of the Constitution.

15.8.2 A separate uniform Act for young offenders (to cover boys in the age group of 16-23 years and girls in the age group of 18-23 years) should be passed to replace the existing outdated and outmoded Borstal Schools Acts. The draft model Bill for young offenders prepared by the Central Bureau of Correctional Services, now the National Institute of Social Defence, in terms of the recommendations of the All India Jail Manual Committee has been studied by us. We are of the view that it needs to be enlarged. We have prepared a Chapter Scheme for the new legislation which is at Annexure IV-C attached to Chapter IV on 'Legislation' of this Report.

15.8.3 In case the subject of treatment of young offenders is not brought under the Concurrent List, the Government of India should prepare a model Bill on the lines recommended by us for being adopted by all the States and Union Territories.

15.8.4 A wing at the headquarters of the Department of Prisons and Correctional Services under a senior officer of the rank of Additional/Joint Director of Correctional Services should be created for dealing with the problems of young offenders. So far as the work of treatment and training of young offenders is concerned, he should work independently, but for purposes of coordination and integration with other wings of the Department he should be under the control of the Inspector General of Prisons and Director of Correctional Services.

15.8.5 Courts to be known as 'Courts for young offenders' exercising the powers and discharging the duties conferred on such courts in relation to the trial and commitment of young offenders between 16/18-23 years of age should be set up for specified areas according to requirements in each State/Union Territory. Before making any order, the court should take into account the pre-sentence investigation report of the probation officer. This report should be a statutory requirement for deciding the cases of young offenders.

15.8.6 Pre-sentence investigation report should include information about the social, economic and psychological background of the offender so as to identify the sequence of his criminal behaviour. It should also seek to determine the degree of the young offender's involvement in a life of vice and crime. This report should attempt a prognosis in regard to the young offender's resettlement in a socially useful way of life.

15.8.7 Young offenders involved in minor violations should not be kept in police custody. Instead, they should be kept with their families/guardians/approved voluntary agencies on the undertaking that they will be produced before the police as and when required for investigation.

15.8.8 Young offenders involved in serious offences while in police custody should be kept separate from adult criminals and the police custody should be only for a minimum period required for investigation.