

15.8.9 The investigation of cases of young offenders must be expeditiously done.

15.8.10 Bail should be liberally granted in cases of young offenders.

15.8.11 When it is not possible to release a young offender on bail, he should be kept in a Reception Centre/Kishore Sadan/Yuva Sadan during the pendency of his trial.

15.8.12 In case it becomes necessary to keep young offenders in a sub-jail during investigation and trial, it should be ensured that they do not come in contact with adult criminals there.

15.8.13 When any young offender is found guilty and is likely to be punished with imprisonment not exceeding one year, the court should take recourse to any of the following non-institutional measures :

- (i) Release on admission.
- (ii) Release on taking a bond of good conduct with or without conditions from the young offenders and from parents/guardians/approved voluntary agency.
- (iii) Release on probation under supervision under the Probation of Offenders Act on any of the following amongst other suitable and necessary conditions:—
  - (a) continuation of education/vocational training/employment ;
  - (b) obtaining guidance from probation officer/teacher/counsellor ;
  - (c) getting work experience in work camps during week-ends and on holidays; and
  - (d) doing useful work in work centres (agricultural farms, forestry, housing, road projects, apprenticeship in work-shops, etc.)

Suitable cases of young offenders likely to be sentenced to periods above one year should also, as far as possible, be processed through the above-mentioned non-institutional approach. Young offenders should be sent to institutions only as a last resort.

15.8.14 The existing Borstal schools and juvenile jails should be converted into a system of diversified Kishore/Yuva Sadans and Reception Centres. Besides this, additional institutions (Kishore/Yuva Sadans) as worked out in Chapter V on 'Prison Buildings' may be set up. These Kishore/Yuva Sadans should be developed as centres of scientific study and correctional treatment for young offenders.

15.8.15 There should be separate institutions for young offenders, to be called Reception Centres and Kishore/Yuva Sadans.

15.8.16 There should be separate institutions for girl young offenders.

15.8.17 Reception Centres should be organised at district or regional level as per the requirements of each State/Union Territory :

- (i) to provide safe custody for young offenders, who cannot be released on bail or who cannot be given the benefit of non-institutional measures ;
- (ii) to do initial classification; and
- (iii) to place young offenders in appropriate Kishore/Yuva Sadans after initial classification.

The period of detention in a Reception Centre should not normally exceed eight weeks.

15.8.18 Kishore/Yuva Sadans should be diversified on the following lines:—

- (i) An institution recognised as an approved Kishore/Yuva Sadan by the State Government (hostel run by Government; hostel run by a voluntary agency; hostel of an Industrial Training Institute or of agricultural school, etc.)
- (ii) Open Kishore/Yuva Sadan.
- (iii) Semi-open Kishore/Yuva Sadan.
- (iv) Special Kishore/Yuva Sadan (medium security institution).

15.8.19 The following basic operations should be adopted in a Kishore/Yuva Sadan:

- (i) Initial admission.
- (ii) A system of proper custody and positive, constructive and firm discipline.
- (iii) Care and welfare of inmates.
- (iv) Basic segregation according to requirements.
- (v) Attending to immediate and urgent needs and problems of inmates.
- (vi) Orientation to institutional life.
- (vii) Study of the individual offender. (History taking and case recording, tests and observation, etc.)
- (viii) Scientific classification.
- (ix) Attending to long term needs of inmates like education, vocational training, etc.
- (x) Use of agencies and resources in the community.
- (xi) Reprocessing of the inmate from admission till release; social implantation of proper habits, attitudes and approaches; preparation for social living; psychotherapy where necessary.
- (xii) Guidance, counselling and support.
- (xiii) Positive impact of personnel.
- (xiv) Release planning.
- (xv) After-care.
- (xvi) Follow-up.

15.8.20 Initially all hopeful cases of young offenders offering good prognosis may be kept in institutions recognised as approved Kishore/Yuva Sadans or in semi-open Kishore/Yuva Sadans. Later on, on the basis of their responses to training and treatment, suitable young offenders should be transferred to Open Kishore/Yuva Sadans. Difficult, discipline and problem cases and escape risks should be sent to special Kishore/Yuva Sadans. In due course after observing their responses to institutional programme, these young offender may be transferred to semi-open Kishore/Yuva Sadans and later to open Kishore/Yuvas Sadans. Through this approach useful cases can be saved from the bad experience of closed institutions. So also escape risk of difficult and problem cases will be minimised.

15.8.21 Decisions about placement of young offenders in the diversified Kishore/Yuva Sadans should be taken by the classification committee which may comprise trained and experienced correctional administrators. In this regard reference to Chapter IX on 'System of classification' of this Report may be made.

15.8.22 Gradation in custody should be one of the criteria for diversification of institutions into open, semi-open and special Kishore/Yuva Sadans. In addition, the diversity in these institutions has to emerge mainly through the content of educational, vocational training and other correctional programmes that may be developed in these institutions.

15.8.23 As recommended in paragraph 15.8.13, young offenders should be sent to Kishore/Yuva Sadans as a last resort. This will substantially reduce overcrowding in prisons/sadans. This would also result in considerable economy. The savings so effected should be fruitfully diverted for the development of non-institutional programmes and other services for young offenders.

15.8.24 Scientific classification, which includes not only initial classification but also continuous study of individual cases, their review and reclassification, should be adopted for young offenders. This will help in their individualised treatment and training.

15.8.25 At each institution there should be a Review Board consisting of the following :

- |  |                  |
|--|------------------|
| (i) District Judge   | Chairman         |
| (ii) Two members of the State Legislature  |                  |
| (iii) District Magistrate  |                  |
| (iv) Superintendent of Police  |                  |
| (v) District Medical Officer/Civil Surgeon/Medical Superintendent of the Government hospital |                  |
| (vi) Additional/Joint Director of Correctional Services (Young Offenders)                    |                  |
| (vii) Two social workers interested in the welfare of young offenders                        |                  |
| (viii) District Education Officer  |                  |
| (ix) Principal of the Kishore/Yuva Sadan   | Member-secretary |

15.8.26 At the end of every six months the Review Board should examine the case of every young offender. This Review Board should review cases from the point of view of the progress and response of young offenders. The Review Board must decide the case of every young offender as to whether it is necessary to continue him under institutional treatment. In suitable cases, the question of his release on licence should also be examined. The members of the Review Board should visit the Kishore/Yuva Sadan to see that the care and welfare of inmates are properly attended to.

15.8.27 Young offenders offering good prognosis may be kept in Kishore/Yuva Sadan till they attain the age of 25 years.

15.8.28 The problem of young offenders who are sentenced to imprisonment for periods above 5 years will have to be considered in a different perspective. If a young offender requires institutionalisation for more than 5 years, such a case can be continued in a Kishore/Yuva Sadan through the review procedure. In deserving cases, even such young offenders should be released on licence on certain conditions. Through such an approach, the existing practice of transferring young offenders to prisons from Borstal schools can be avoided. However, a young offender, in whose case prognosis is not favourable, should be transferred to a suitable prison; only such young offenders as are intractable, violent, criminal psychopaths, hardened or dangerous, should be transferred to prisons.

15.8.29 Specially selected and adequately trained personnel should be made available for implementing various programmes for young offenders.

15.8.30 The following staff should be provided at institutions for young offenders :

- (i) Principal.
- (ii) Senior Vice-Principal.
- (iii) Vice-Principal.
- (iv) House Master Grade I.
- (v) House Master Grade II.
- (vi) Chief Supervisor.
- (vii) Senior Supervisor.
- (viii) Supervisor.
- (ix) Psychologist.
- (x) Psychiatric social workers/case workers.
- (xi) Staff for education, physical training, vocational training, industries, agriculture, medical and psychiatric care.
- (xii) Ministerial, accounts and other staff.

*Note 1:* The equivalence of posts at (i) to (x) above with posts in the prisons and the mode of recruitment, promotion, training, etc. for these posts have been discussed in Chapter XXIV on 'Development of Prison Personnel'.

*Note 2:* Staff for education, physical training, vocational training, agriculture, industries, medical and psychiatric care should be taken on deputation from the related departments of the State Governments.

15.8.31 Adequate funds for all programmes connected with young offenders should be provided.

15.9 Non-institutional approach should be the main thrust of the programmes for the treatment of young offenders so that they are saved from unhealthy institutional experience. Where institutionalisation is imperative, young offenders should be exposed for reasonable lengths of time to programmes of re-education, vocational training, social adjustment and positive yet firm discipline through a diversified system of Kishore/Yuva Sadans. Problem cases should be kept in special Kishore/Yuva Sadans and difficult and intractable, hardened and dangerous young offenders may be dealt with differently as indicated above. The oft-repeated argument of paucity of funds for correctional programmes should not hamper the adoption of a bold new approach for handling the problems of young offenders.

## CHAPTER XVI

### PRISONERS SENTENCED TO LIFE IMPRISONMENT

16.1 The Committee met a large number of life convicts during its visits to various prisons. These prisoners bitterly complained about the effect of section 433A of the Code of Criminal Procedure on their release from prison. They complained that remission had ceased to act as an incentive to them. Life convicts in closed prisons stated that they did not want to go to open prisons as remission would not be of any use to them in obtaining an early release. Those in open prisons requested to be transferred back to closed prisons saying that under the provisions of section 433A of the Code of Criminal Procedure they would not be getting any benefit of remission and further that they would not be released earlier than 14 years of actual imprisonment. In some States, life convicts were extremely bitter as they were not released on home leave or furlough even though under the rules they had become eligible for such temporary release for the purpose of visiting their families.

16.2 Another serious grievance of life convicts was that their cases were not put up in time before the advisory committee for review for premature release by prison administration. They made a number of other complaints, such as, the police authorities always opposed their premature release; the advisory committees did not even study their cases in detail; when their cases were submitted to Government for orders, it took months and sometimes years for Government to pass orders on their cases; and that Government orders were usually to the effect that their cases should be resubmitted after a specific period. Our general impression was that life convicts have little faith in the efficacy of the advisory committees as they are operating at present.

16.3 When we discussed these aspects with prison personnel, the complaints made by the life convicts were corroborated as true. At present the advisory committees review the cases of life convicts for premature release alongwith cases of convicts sentenced to medium and long terms of imprisonment. It is also understood that advisory committees do not meet as per fixed schedule. The procedures adopted at present for review of sentences by the advisory committees are not only perfunctory but extremely unsatisfactory. In fact, scores of cases are reviewed in about a couple of hours. Hardly a few minutes are devoted by the advisory committee for reviewing each case. Obviously, the discussions on merits of each case are very cursory. The members of the committee do not study cases in detail. Decision on such an important issue as premature release cannot be taken in a few minutes without studying all the relevant facts and the background of each case. We would like to state that the working of the advisory committees in regard to review for premature release is most unsatisfactory and it is not serving any useful purpose at all.

16.4 It is understood that in some States some life convicts were released after only 3 to 5 years of actual imprisonment. This clearly indicated arbitrary use of discretionary powers. In the amended Code of Criminal Procedure section 433A has now been included. The proposed amendment to the Indian Penal Code in this context has not been passed. In view of these circumstances life convicts sentenced after December 18, 1978 cannot now be released before they undergo actual imprisonment of 14 years.

We have discussed this question in detail in paragraphs 4.25, 4.26 and 4.27 of Chapter IV on 'Legislation' of our Report. We reiterate that if the present approach of our law as embodied in section 433A of the Code of Criminal Procedure is continued, there is no point in thinking in terms of reformation and rehabilitation of the life convicts.

16.5 The procedure of reviewing the sentence of a prisoner sentenced to life imprisonment varies from State to State. As a consequence of the introduction of section 433A in the Code of Criminal Procedure remission has now no meaning for a life convict from the point of view of his release. These convicts are kept in central prisons and large district prisons. They do not receive any individual attention in the mass approach which is currently in vogue in our prisons. A life convict is virtually lost in the large mass of prison population. No attention is paid to his immediate and long term needs, requirements of his training and treatment, etc. The plight of a life convict in such circumstances becomes very tragic.

16.6 In Chapter VI we have discussed, in detail, how the conditions of living in prisons have deteriorated and how prisoners of all categories have to undergo very dehumanizing experiences. Taking into consideration the present apathy towards improving the conditions of living in prisons, it would not be unrealistic to expect that these life convicts will continue to live under very demoralizing conditions in prisons for long periods. They will have to live in prisons for 14 long years bereft of any hope of premature release; they will have no incentive for self-discipline and self improvement; and during their stay of 14 long years under very depressing conditions they will get prisonized and imbibe the criminal culture of prisons.

16.7 We found that very deep discontent was simmering among the life convicts in all the States and Union Territories. We have earlier stated that if this acute discontent is not relieved in some measure in the near future, it may burst into prison riots, and further that, the future of open prisons in India will become very dark as life convicts will refuse to be transferred to open prisons which have ceased to offer them any incentive at all. We are of the view that the entire approach of Government towards the problems of life convicts needs a new orientation so that it becomes conducive to their reformation and rehabilitation in society.

16.8 It would not be out of place to attempt to visualise here as to what might happen to life convicts during their stay of 14 years under dehumanizing conditions. First, they will lose all contacts with their families and the community. This will have such a harmful effect on them that when they get released from the prison after 14 years, it will be very difficult for them to adjust themselves with their families and the community outside. The hope of their re-assimilation in society as useful citizens will, thus, become futile. Secondly, life convicts will get prisonized during their incarceration for 14 years. Institutionalization of a life convict will completely cut him off from the main stream of life in the free community. He is bound to feel that he belongs to the criminal world. He will identify himself as one from the groups of criminals inside the prison. His total outlook towards life, his value schemes, his sense of right and wrong, and his quality of life will change. He will speak in prison language. He will become one with the customs, traditions and practices which are in vogue in prisons. His conjugal life will be cut off for 14 years. It would be realistic to expect that under these circumstances he will try to find alternatives to normal sex life. He may take recourse to autoerotic practices or homosexual habits. After his release from the prison he may even find it extremely difficult to adjust himself with hetero-sexual experience. His conjugal life will thus be completely wrecked. During his long stay in a prison a life convict will lose his initiative and self-confidence. He may also lose his habit of taking decisions about the problems of his day to day life. In fact, he will feel more secure in the artificial atmosphere of a prison rather than in the free community. Needless to mention that this would be disastrous from the point of view of his ultimate resettlement in society.

16.9 Some of the important aspects on which prison personnel will have to pay special attention with regard to a life convict, can be identified as follows:

- (i) Saving the life convict from the damaging impacts of the criminal sub-culture of a prison and preventing him from getting prisonized;
- (ii) His conjugal life and finding solution to his sex problems;
- (iii) Giving him optimum benefit of institutional training and treatment;
- (iv) Assessment of peak points of the benefits which he derives from his training and treatment in the institution;
- (v) Maintaining these peak points through supportive therapy; maintaining his interest and optimism in life during incarceration;
- (vi) His after-care, follow-up, re-integration with his family and the free world, and his ultimate resettlement in society.

16.10 A thorough social and psychological study of life convicts should be undertaken so that the clues and sequences of their criminal behaviour can be identified and it may be determined whether a life convict is an individual criminal or a socially processed criminal. Social scientists, experts and trained and experienced prison administrators can identify through history taking and case-recording as to who are the individual criminals and who are the socially conditioned criminals. This will help in understanding the criminal behaviour of life convicts in its full perspective.

16.11 In the light of the discussions above our recommendations regarding prisoners sentenced to life imprisonment are as follows:

16.11.1 Section 433A of the Code of Criminal Procedure should be suitably amended (See chapter IV, para 4.34.20).

16.11.2 During the period of trial a comprehensive, social and psychological study should be made of such offenders as are likely to be sentenced to life imprisonment on conviction. After conviction but before sentencing this report should be placed before the judge so that the judge can make use of this material while passing the sentence and also for making recommendations, if any, to the State Government regarding early release of a person sentenced to life imprisonment. This procedure should be incorporated in the Code of Criminal Procedure as a statutory provision.

16.11.3 On admission of a life convict in a prison a comprehensive, social and psychological study should be made for the purpose of designing a suitable diversified programme of training and treatment during his stay in the prison. Based on such a detailed study, a balanced and diversified treatment programme should be designed for the newly admitted life convicts.

16.11.4 Work should be allotted to a life convict taking into account his aptitude and potentialities for acquiring skills. A life convict should be trained in at least two or three vocations or trades during his stay in the prison. Such multiple skills will help him in finding a suitable job after his release.

16.11.5 Life convicts coming from rural areas should be given training in trades like carpentry; smithy; repairs and maintenance of tractors, oil engines and electrical pumps; laying of irrigation pipes; improved methods of agriculture, etc. Such training will be helpful to them in their re-settlement in the rural areas.

16.11.6 Special attention should be paid to diversified educational programmes for life convicts. If a life convict advances his education during the period of his stay in the prison his total outlook towards life will change. Moreover advancement of education will give him great support in undergoing the period of imprisonment.

16.11.7 The classification committee of the prison should review the case of every life convict every three months. Such a review will be helpful in solving the urgent and long range problems of the life convict.

16.11.8 In the planning and research units at the headquarters of the Department of Prisons and Correctional Services, studies of case histories of life convicts should be continuously undertaken by experts and social scientists. Through such studies the pattern of murders committed by individual offenders and by socially conditioned criminals can emerge in greater detail. The policy of release of life should be reviewed every five years on the basis of the conclusions of such studies and the response of individual inmates to institutional treatment.

16.11.9 We feel that the punishment clause under section 302 of the Indian Penal Code is too draconian in its character, and keeping in mind the innumerable circumstances and conditions of life that precipitate or prompt an offence under section 302 of the Indian Penal Code, the legislature should leave the amount of punishment to the judicial authority and not fix a minimum; for it is bound to be harsh and unjust. The legislature itself by enacting section 235 (2) of the Code of Criminal Procedure recently, has, by and large, accepted the principle that punishing a criminal should be a judicial act and this should also apply in the case of those who are convicted under section 302 of the Indian Penal Code. We also have doubts about the necessity of enacting section 428 of the Code of Criminal Procedure which, on a recent interpretation of the Supreme Court, denies the inclusion of that period as part of punishment which a convict undergoes in custody during investigation, inquiry or trial. We hope that section 428 of the Code of Criminal Procedure, even if it is retained, will be suitably clarified in the near future so that life convicts are not deprived of this benefit.

16.11.10 We have come to the conclusion that it is essential to differentiate among the persons convicted under section 302 of the Indian Penal Code and a broad typology of murderers should be kept in mind. Certain types of criminals such as professional murderers, habitual murderers, persons who commit murder in an organised manner or on a large scale, persons who commit murder connected with crimes like rape or dacoity, persons whose crime indicates revolting brutality and bestiality, persons who commit crime on account of religious or caste prejudice, and persons who commit crime against the security of the State perhaps need to be kept out of circulation for a longer period in order to provide security to the community, for their chance of reformation is extremely poor. Then comes the bigger class of life convicts who are individual criminals and who have not accepted crime as a way of life, but who have committed the crime probably suffering from a momentary lapse, or due to the conditions of life which make them lose their balance and restraint. It is against this background that we lay down below some broad guidelines for the Review Boards/Advisory Boards/Review Committees and also for the concerned senior administrators in the government dealing with cases of life convicts. It is our opinion that these guidelines should be revised from time to time on the basis of new knowledge that might be gathered about persons sentenced to life imprisonment.

- (i) Each case of life convict is different and the causes of criminal conduct are also completely different. An ad hoc and uniform approach for life convicts is



not desirable and will not at all be conducive to their rehabilitation in society. It will also not be in keeping with the actual gravity of their crime. The present interpretation of law which means that life convicts can be released only after 14 years of actual imprisonment plus the period of their custody during investigation, inquiry or trial is totally unscientific and unjustifiable and completely destroys the chance of their being reassimilated in society. With the amendment of section 433A of the Code of Criminal Procedure and that of section 302 of the Indian Penal Code and by making imprisonment for life an imprisonment not for the whole of life but for a reasonable period, this hurdle should be removed.

- (ii) Remission must operate as incentive for self-discipline and reformation of life convicts. Remission should be made effective for the purpose of review of sentence and actual release of prisoners sentenced to life imprisonment.
- (iii) The following types of socially conditioned criminals who are sentenced to imprisonment for life should be detained for longer periods as compared to other life convicts;
  - (a) Professional murderers, i.e. those who are hired for committing murder.
  - (b) Organised criminals, i.e. persons who commit murder in a pre-planned, premeditated and in an organised manner.
  - (c) Persons committing murder for religious, communal or caste reasons, and persons sentenced to life imprisonment for offences against security of the State.
  - (d) Persons who commit murder while involved in smuggling operations.
  - (e) Persons committing murder of members of prison staff, prison visitors and government functionaries on official duty.
- (iv) Some persons get involved in the commission of murder in a fit of anger, passion or momentary emotion. The behaviour of such offenders is extemporaneous or momentary. In such cases the persons who commit murder and the victims of crime both get involved in a sort of whirlwind of emotion, anger and passion and the outcome is the act of crime. The victims who get killed might have also killed the persons who extinguished their life. The pattern of such murders is not indicative of an outcome of processing of the offender in anti-social behaviour as a way of life but it is a sort of stormy eruptive behaviour. Such persons are individual criminals and not socially processed criminals. We recommend that persons who are committed to life imprisonment for such patterns of crime should be released earlier than those mentioned at item (iii) above.
- (v) Cases of offenders of the age group of 16/18—23 years sentenced to imprisonment for life should also be considered on a different basis. Cases of young offenders who are not violent, who do not show signs of psychopathic personality, who have not gone deep into a life of vice and crime and in whose case prognosis is good, should be considered on a lenient basis and should be released early.

- (vi) Women life convicts who are individual criminals; i.e. those who are not processed for anti-social behaviour should be released early.
- (vii) Women who are convicted of infanticide and similar other crimes committed under social and cultural pressures should not remain in prisons. Cases of such women offenders should be reviewed immediately on admission and these offenders should be released on the condition that they stay under the care and protection of voluntary women's organizations of good repute. Such practice is in vogue in Maharashtra and in some other States, and this policy should be adopted by all the States and Union Territories.
- (viii) Life convicts having psychopathic or psychotic pattern of behaviour should be considered for premature release on the basis of the opinion of psychiatrists and the medical board.
- (ix) The question of release of persons above the age of 65 years undergoing life imprisonment should be considered on grounds of mercy for early release.
- (x) Life convicts suffering from incurable and serious diseases such as cancer, etc. and who are on the verge of death should be released on the basis of opinion of the medical board. We are of the view that such prisoners should be released early so that they can have the satisfaction of dying outside a prison and in the presence of their family.
- (xi) Life convicts who suffer from leprosy should be released to the care of leprosy centres run by voluntary organisations or they should be kept in hospitals on the condition that they stay in the leprosy centre/hospital for a stated period for their treatment and rehabilitative training. Such an experiment is being carried out at the Jagadamba Kushtha Niwas at Amravati in Maharashtra and this experiment has proved successful.

The premature release of life convicts should be determined on the basis of their response to treatment in prisons.

16.11.11 Life convicts should be more frequently released on leave and special leave so that their contacts with their families and the community are maintained. Interviews and facilities regarding letters should also be granted to them on a more liberal basis for this purpose.

16.11.12 Life convicts who offer good prognosis and who do not pose any danger to society should be transferred to semi-open and open prisons as early as possible to save them from the danger of prisonization and contamination with criminal sub-culture of prisons. Ordinarily every life convict should be eligible to be transferred to a semi-open or open institution on completion of two years of imprisonment in a closed prison. During this period it should be possible for experienced and adequately trained prison administrators to make a prognosis about the future behaviour of the life convict. We strongly urge that life convicts should be kept in semi-open and open prisons so that their interest in life can be adequately maintained.

16.11.13 Life convicts transferred to semi-open and open prisons should be granted remission at the rate of one day remission for each day's stay at such institution. This has reference to the recommendation made in paragraph 19.33.18 of Chapter XIX on 'Open Institutions'.

16.11.14 During the stay of a life convict in a semi-open or open institution, he should be allowed to live with his family members for one week once in every six months. As recommended by the All India Jail Manual Committee 1957-59, "Arrangements for such a stay should be made outside the semi-open and open institution in family hutments erected

in a suitable place. These huts should be so erected that the inmate and his family members get the required privacy and at the same time the needs of discipline and security are also satisfied. Such a periodical stay with his family will be helpful in keeping the inmate close to his family group." This also has reference to the recommendations made in paragraph 19.33.22 of Chapter XIX on 'Open Institutions'.

16.11.15 Provisions made in Chapter XII of the Model Prison Manual (pages 312 to 316) regarding life convicts should be adopted by all the States/Union Territories.

16.11.16 It should be appreciated that there are limitations of institutional training and treatment and a lifer will not need treatment for 14 years. After five or six years a life convict will reach peak points in terms of deriving benefits from his diversified training and treatment programmes. The problems which correctional administration has to face are: how to maintain these peak points; how to maintain the interest of a life convict in institutional activities and how to maintain his optimism in life during 14 years of incarceration. Techniques of supportive therapy are useful in this respect. Transfer to a semi-open or open institution or to a Sanganer type open camp at the appropriate time is another solution to this problem. Frequent release on leave and releasing the life convict prematurely at the appropriate time will also offer some practical solution to this situation. All these possibilities should be kept in view by prison administrators so that life convicts do not lose hope about their future.

16.11.17 Pre-release preparation and planning for after-care and follow-up need special attention in case of life convicts. Prison administration and the after-care services should devote special attention to these aspects. Police administration should take a positive outlook towards all aspects of rehabilitation of life convicts released on conditions or without conditions. Many life convicts complained that the police harass them when they are released on leave, etc. Such harassment should be seriously viewed by senior police administrators.

16.11.18 The advisory committee should hold a separate meeting for the purpose of reviewing the cases of life convicts only, so that the review of each case can be done properly and adequate time may be devoted to each such case. It should be ensured that the cases of life convicts are put up before the advisory committee in time and, further, that Government orders are also passed in time.

16.12 In the end we would like to re-state that life convicts all over India have become very bitter and restless because of the inclusion of section 433A in the Code of Criminal Procedure. Very severe discontent is prevailing amongst them in all the States and Union Territories that we visited. If immediate action is not taken to remove the genuine grievances of life convicts, it would be rational to predict that there might occur riots in Indian prisons. Government of India should, therefore, take immediate steps and issue clear guidelines to the State Governments and Union Territory Administrations in regard to various problems faced by life convicts. Government of India should also ensure, through an effective follow-up, that the guidelines issued by them are properly and effectively implemented for improving the plight of life convicts. It is our considered view that the problem of life convicts is one of the most pressing problems which is being faced by prison administration all over India and urgent action needs to be taken in this regard.

## CHAPTER XVII

### PRISONERS SENTENCED TO DEATH

17.1 Security measures, as prescribed in section 30 of the Prisons Act, 1894, for prisoners under sentence of death are based on the presumption that such prisoners are dangerous not only to themselves but to others also. According to this provision condemned prisoners are required to be thoroughly searched on their admission to jail and to be confined in cells under constant watch round the clock. The rules framed by State Governments and contained in their jail manuals are also based mainly on similar presumptions. Prisoners of this category are not given trousers with tying cord; they are given felt beddings and earthen utensils and are searched several times during the day. Their cells have to be changed every day and when taken out of their cells, one by one, for exercise, they have to be handcuffed.

17.2 The period which intervenes between the prisoners being sentenced to death and their execution generally extends to several years as their appeals and mercy petitions are more time consuming now than in the past. During this long period, they are subjected to conditions almost akin to solitary confinement. They are also without occupation of any kind and have nothing to do except to brood over their misfortune and the dark future ahead. Obviously, the pending death sentence involves extreme mental anguish. We cannot overlook the fact that such conditions of confinement are degrading and dehumanising and in certain ways amount to denial of human rights.

17.3 In *Sunil Batra V/s. Delhi Administration*,<sup>1</sup> the Supreme Court held that section 30(2) of the Prisons Act, 1894, a pre-Constitution statute, did not satisfy the test of Articles 14, 19 and 21 of the Constitution of India. They, however, instead of taking the view that this section was ultra vires of the Constitution, decided to interpret it in a manner that it might conform to the humanist requirements of the Constitution and yet not offend the important consideration of security of prisoners. They restricted the use of this section by defining 'prisoners under sentence of death' as those in whose cases the sentence of death finally becomes executable after the rejection of appeals by the High Court and the Supreme Court and of mercy petitions by the Governor and the President. In effect, this will reduce the period of application of section 30(2) to a few days only.

17.4 It is instructive to note in this connection that the experience of prison officers is that prisoners sentenced to death are generally not dangerous either to themselves or to others. Murder is generally a crime committed due to an overpowering impulse or emotion beyond the control of the individual. We believe that in many ways a murderer is like any other criminal. In this respect, we are strengthened in our belief by the following observations of the British Royal Commission on Capital Punishment made in its report (1949-53) on pages 216 and 217 :

".....the evidence given to us in the countries we visited, and the information we received from others, were uniformly to the effect that murderers are no more likely than any other prisoner to commit acts of violence against officers or fellow prisoners or to attempt escape; on the contrary it would appear that in all countries murderers are on the whole better behaved than most prisoners."

17.5 Capital punishment is now seldom given. In fact, a recent ruling of the Supreme Court has restricted the award of death penalty only in the 'rarest of rare cases'. In actual practice also, only a small number of persons initially sentenced to death are finally executed.

17.6 The factual position regarding mercy petitions to the President during the period from 1965 to 1981 with regard to commutation of death sentence is given in the table below:

Year	Total number of persons, who approached the President for mercy.	Death sentence commuted.	Mercy petition rejected.
1965	188	97	91
1966	142	97	45
1967	100	16	84
1968	225	154	71
1969	7	7	..
1970	33	7	26
1971	58	9	49
1972	119	80	39
1973	69	49	20
1974	93	27	66
1975	49	23	26
1976	42	15	27
1977	13	4	9
1978	22	..	22
1979	18	4	14
1980	7*	..	..
1981	23 (upto Nov.)	7	16
<b>Total</b>	<b>1208</b>	<b>596</b>	<b>605</b>

\*These cases were not decided as constitutionality of section 302 of the Indian Penal Code and section 354(2) of the Code of Criminal Procedure 1973 was challenged in the Supreme Court.

It is evident from the table that in a large number of cases death sentence is commuted to life imprisonment.

17.7 Many of the prisoners initially sentenced to death are ultimately awarded life imprisonment or their death sentence is commuted to life imprisonment and the intervening period is treated as a part of sentence undergone. It will, therefore, be appropriate that for this period, treatment programmes are so devised for such prisoners as to enhance their prospects of rehabilitation. In this context, we make the following recommendations :

17.7.1 Section 30 of the Prisons Act, 1894 should be replaced by a fresh legislation providing for a more humane and dignified treatment to prisoners under sentence of death.

17.7.2 Immediately, after admission or soon after conviction of an undertrial, the superintendent should explain to the prisoner sentenced to death the rules regarding appeal and mercy petitions. Those who require legal assistance should be extended facilities available for free legal aid.

17.7.3 Every State should have one or more specified jails where prisoner under sentence of death should be confined. Arrangement should be available for execution in such jails. These jails should have a separate enclosure with a few cells and a barrack for 10 to 20 prisoners. A prisoner under sentence of death should be quickly transferred to the nearest earmarked jail where he should be kept in the association barrack during the day and in a cell at night for about a week. During this period he should be examined by the medical officer and observed and studied by the staff engaged in the classification of prisoners. In case, he is found to suffer from any communicable disease or to have violent proclivities or is escape-prone, he should be treated like other similar prisoners in the jail; otherwise he may be kept in the association barrack both during the day and the night.

17.7.4 Security arrangements in the enclosure where prisoners under sentence of death are kept should be on twenty-four hour basis and required staff for this purpose should be provided.

17.7.5 Prisoners under sentence of death should be provided with the same diet, clothings and beddings, feeding utensils, etc. as are given to other prisoners.

17.7.6 Such prisoners are at present not required to work. We are of the view that they should not only be given necessary facilities to work, if they so desire, but should actually be encouraged to employ themselves on some useful work. They should also be allowed to earn wages like other prisoners. Facilities for work should be provided in their own enclosures.

17.7.7 Those who have some healthy hobby should be given facilities to pursue it subject to rules.

17.7.8 Necessary arrangements should be made in their enclosures for suitable outdoor and indoor games as well as for listening to radio. They should, as far as possible, be allowed to enjoy other recreational facilities available in the jail.

17.7.9 Those who are interested in education may be extended necessary facilities. Books, newspapers and magazines should also be provided to them.

17.7.10 They should be allowed to follow their own religion and belief subject to rules and requirements of discipline, and to retain religious and other books.

17.7.11 They should be given liberal facilities for interviews with and letters to and from relatives and legal counsels.

17.7.12 Canteen facilities, as available to other prisoners, should also be provided to prisoners under sentence of death.

17.7.13 Special attention should be paid to their personal and domestic problems.

17.7.14 When the death sentence becomes finally executable the prisoner should immediately be transferred to a separate enclosure where arrangements should be made to keep him in a cell under constant watch. During the day he may be allowed to associate with other such prisoners.

17.7.15 Before execution, arrangements should be made for the prisoner to meet his near and dear ones even at State cost, if necessary.

17.7.16 We agree with the provisions of paragraphs 10 to 20 of Chapter XLVI of the Model Prison Manual and recommend that they may be incorporated in the State jail Manuals. They are at Appendix XIX.

#### References:

1. Sunil Batra V/s. Delhi Administration and Others (1978) : 4 Supreme Court Cases 494.
2. Bachan Singh Vs. State of Punjab A.I.R. 1980 SC 898.

## CHAPTER XVIII

### SUB-JAILS

18.1 Of the 1220 institution run by the prison departments of various States and Union Territories in India as many as 822 (67.4%) are sub-jails with a daily average population of 19900 inmates.

18.2 The applications of the concept of daily average population to this large number of small institutions having a total sanctioned capacity of 26057 is apparently deceptive in view of the fact that the sub-jails cater mainly for undertrial prisoners whose population is constantly changing and their annual turnover is considerably larger than what the average daily population suggests. As a result these institutions suffer from periodic but acute problem of overcrowding. It is worth mentioning that the sanctioned capacity of these institutions is not calculated by State prison departments according to the standards of per-prisoner space laid down in jail manuals ; it has relevance only to the number of inmates traditionally locked up in them. Even at that, the sub-jails of Bihar and West Bengal, as well as Nagaland and Tamil Nadu suffer from constant and serious overcrowding, as may be seen from the table given below :—

State	No. of sub-jails	Sanctioned capacity	Daily average popula- tion	Variation
1	2	3	4	5
Bihar . . . . .	28	2506	3562	+1056
Nagaland . . . . .	5	120	150	+30
Tamil Nadu . . . . .	119	3662	3754	+92
West Bengal . . . . .	31	1572	2645	+1073

18.3 There is wide diversity in the management and administrative pattern of the sub-jails in various States and Union Territories. While in some States sub-jails are under the administrative control of the Prison department, in others they are under the immediate control of officers belonging to Judicial, Revenue, Police or Medical Departments. While in Rajasthan the sub-jails are under the charge of Sub-Divisional Officers, in Orissa they are under local Medical Officers. In Tamil Nadu sub-jails are manned by officials belonging to three departments, viz., the Revenue, the Police and the Prisons and in many cases by all the three of them simultaneously. Of the 119 sub-jails in the State of Tamil Nadu, only 10 are under the direct control of the Prisons Department while the rest are under the control of the Revenue Department. In Punjab the supervisory charge of sub-jails is either with part-time G.As. or with SDMs. In Andhra Pradesh the sub-jails in Tehsils, Talukas and Sub-divisions of the District are under the control of the judicial department



while security and guarding arrangements are done by the police department. Sub-jails differ not only in their administrative control and level of supervision, but also in their staffing pattern, location, buildings and the types of inmates kept in them. Even in States where sub-jails are directly under the control of the Prisons Department the staffing pattern differs not only from State to State but also from one sub-jail to another in the same State.

18.4 Problems have crept into the administration and management of sub-jails chiefly because of laxity in supervision resulting from the remoteness of the supervisory bodies in the hierarchical set-up of the department as also because of the diversity in management and dilution of responsibility. There is total lack of decision making authority with the departmental officers manning the sub-jails at present.

18.5 In most cases sub-jails are housed in improvised buildings modified more to suit security needs than to suit human habitat. These buildings are generally 'closed type' with no open space for the movement of inmates. Since in this type of buildings, the main wall of the jail is contiguous/continuous with the walls of living barracks, there is no place left for movement of inmates, for games, collective exercise, kitchen gardening and similar other activities. The living barracks of inmates in such buildings cannot be provided with cross-ventilation because three walls of these barracks forming main prison wall cannot be given any opening due to security reasons. In some States sub-jails are only a row of cells/dormitories which are kept locked throughout the day and night. The condition of some sub-jails is so insecure that prisoners are chained and put under mechanical/iron devices of human restraint. In many places sub-jails are located in the heart of busy public places where passers-by can have an easy peep into dingy barracks with idle and hapless inmates cramped into them.

18.6 The conditions of living in sub-jails are worse than in many bigger jails mainly because the buildings are old, improvised and badly maintained; there is acute paucity of funds and facilities; and the management is left to the care of ill-paid low level staff with remote or indifferent supervision. There are no adequate arrangements for preparing food for prisoners within the sub-jail premises and sub-standard cooked food is supplied through contract system.

18.7 There are generally no facilities in the existing sub-jail buildings for an effective segregation of women, youth and children from adult male inmates. The cells of women inmates are within close visibility from men's section and it is difficult for women inmates to maintain any privacy. There is acute shortage of bath-rooms and toilet facilities in most of them.

18.8 The worst affliction of sub-jails at present is the total idleness with which the inmates suffer for long periods of their confinement. One can easily imagine the repercussions of such a situation on a group of men huddled-up together in overcrowded cells/dormitories without any purposeful engagement for days, weeks and months. The Committee feels that conditions in sub-jails are dehumanizing to a large extent. This problem deserves to be met effectively.

18.9 Our recommendations with regard to sub-jails in the country aim generally at smoothing out diversities in their administration and forging at least some kind of uniformity in the matter of their location, construction, control, supervision and management. We have also recommended some useful engagements for prisoners confined in sub-jails. Our recommendations on sub-jails are as follows :—

18.9.1 A sub-jail should be located at each place where a criminal court functions.

18.9.2 A daily average number of 10 inmates/undertrial prisoners detained during the past one year should justify the construction of a new sub-jail at an administrative unit where a criminal court functions.

18.9.3 The necessity of construction of new sub-jails should not be brushed aside only for financial consideration, by calculating the comparative cost of building and establishment in relation to the cost of transport of inmates for production before criminal courts from nearest jails or sub-jails.

18.9.4 The undesirable practice of linking up sub-jails with police and excise lock-ups prevalent in some States should be discontinued forthwith.

18.9.5 Sub-jails should be located away from police lock-ups and persons in police custody should not be kept in sub-jails.

18.9.6 As an immediate measure all sub-jails housed in improvised insecure buildings, consequentially involving imposition of mechanical/iron devices for restraint on inmates, should be abolished. Pending construction of approved regular buildings all the inmates should be transferred to the nearest district jail or sub-jail.

18.9.7 All new sub-jail buildings should have living barracks and dormitories at a reasonable distance from the main wall.

18.9.8 Each sub-jail building should have a separate annexe for women under-trial prisoners with sufficient security measures. This annexe should invariably be provided with double lock system—one lock outside and the other inside, the keys of the latter remaining always with the woman guard inside the annexe.

18.9.9 There should be two types of sub-jails in each State: (i) Class-II sub-jails for an average daily population upto 50 inmates and (ii) Class-I sub-jails for an average daily population exceeding 50 but upto 100 inmates. When the number of inmates exceeds 100 in any Class-I sub-jail, excess inmates should be transferred to the nearest sub-jail or district jail. While constructing a new Class-II sub-jail, provision should be made for its future conversion into Class I sub-jail.

18.9.10 A time-bound programme for the construction of new sub-jails on the principles laid down in these recommendations should be drawn up and implemented by each State Government/Union Territory Administration. Old sub-jails should be renovated with necessary additions/alterations to suit building requirements laid down in Chapter V on 'Prison Buildings' of this Report.

18.9.11 All sub-jails should immediately be brought under the administrative control of the respective Inspector-General of Prisons and only an officer of the Prison Department should be appointed as officer in-charge of the sub-jail.

18.9.12 The staff of Class-II sub-jail should consist of:

- (i) Assistant Superintendent Gr. II (1)
- (ii) Head Warders (4)
- (iii) Warders (15)
- (iv) Upper Division Clerk with knowledge of maintaining accounts (1)

18.9.13 The staff of Class-I sub-jail should consist of :

- (i) Assistant Superintendent Gr. I (1)
- (ii) Assistant Superintendent Gr. II (1)

- (iii) Chief Head Warden (1)
- (iv) Head Warders (4)
- (v) Warders (21)
- (vi) Upper Division Clerk with knowledge of maintaining accounts (1)
- (vii) Lower Division Clerk (1)

18.9.14 Guarding of sub-jails should be done exclusively by prison staff. Only in times of emergency the prison guarding staff may be supplemented by police reinforcements. However, the overall responsibility of the security of the prison should continue to rest with an officer of the Prison Department posted at the sub-jail. In emergent situations the officer-in-charge may contact the superintendent of the central/district prison of the district in which the sub-jail is located and seek his help and guidance.

18.9.15 No woman prisoner in a sub-jail should be kept under the charge of a male guard. Whenever women prisoners are admitted in a sub-jail, the Assistant Superintendent should make arrangements for appointing women guard/guards on purely temporary basis from the panel prepared in advance in consultation with the appropriate authority.

18.9.16 Sub-jails should have suitable residential accommodation for all the staff members posted there with an independent guard room attached to the sub-jail building.

18.9.17 Each sub-jail should have proper lighting arrangements, proper and sufficient drinking water supply through public taps, over-head tanks for supply of water for latrines, for bathing and for washing clothes etc., sufficient number of latrines, cubicles for bathing and platforms for washing clothes in accordance with the recommendations of this Committee made in Chapter VI on 'Living Condition in Prisons', a separate kitchen with proper ovens and smoke-exits, covered drainage system, interview sheds for prisoners and waiting sheds for visitors.

18.9.18 The common practice of providing sub-jails with old, used beddings and serving utensils should be stopped and a stand-by reserve stock of these articles should be kept there in view of the remoteness of these institutions from the headquarters.

18.9.19 An effective system of regular/periodic disposal of unserviceable articles should be evolved and strictly followed.

18.9.20 A regular stock of clothings should be kept both for men and women for issuing them to needy inmates.

18.9.21 Prisoners should be transported from sub-jails to courts and back in vehicles and not on foot and, on transfer from sub-jails to any other jail, they should be taken to railway stations either in police transport or in hired transport.

18.9.22 The system of supplying cooked food to prisoners in sub-jails on contract basis should be discontinued and proper cooking facilities should be provided to the prisoners as per scales prescribed in the jail manuals.

18.9.23 The scale of diet for inmates of sub-jails should be the same as that for inmates of district or central prisons. Wherever this is not so, such parity should be brought about by suitably amending the rules.

18.9.24 There should be a dispensing unit attached to each sub-jail with a pharmacist attending in the morning and in the evening every day. One of the local medical officers should be appointed as part-time medical officer for the sub-jail. He should visit the sub-jail at least once a day. Each sub-jail should be inspected by a senior medical officer of the area at least once a month. Duties of medical officers connected with prisons are given in Chapter VII on 'Medical and Psychiatric Services' of this Report.

18.9.25 Facilities like newspapers, radio, games, etc., should be provided to under-trial prisoners. Wherever possible under-trial prisoners may be employed on some useful work programmes if they so desire.

18.9.26 Arrangements should be made for imparting adult education/non-formal education to prisoners in each sub-jail on regular basis. The inmates should be provided with basic material for such education.

18.9.27 The District Magistrate should constitute a Visiting Committee for each sub-jail under his jurisdiction. This Committee should comprise both official and non-official members, the tenure of non-Official members being two years. Each member of the Committee should on his appointment be supplied with a copy of instructions relating to his rights and duties as a visitor of the sub-jail. The Committee should visit the sub-jail at least once in three months and should record its observations to be sent to the District Magistrate with a copy to the Inspector General of Prisons. The office of the Inspector General of Prisons in each State should follow up the suggestions and observations of the Visiting Committees.

18.9.28 The District Magistrate should constitute a committee to review the position of under-trial prisoners in each sub-jail under his jurisdiction. The members on this Committee should represent local police, judiciary, prosecution, district administration and the prison department at a fairly high level. The Committee should visit the sub-jail once a month to ascertain that no person is being detained unnecessarily in the sub-jail. If the Committee comes across any case of unnecessary or prolonged detention, it should suggest measures for dealing with the case. Officer of the prison department in-charge of the sub-jail, should be the Member-Secretary of this Committee and he should send the list of all under-trial prisoners present on the day of Committee's visit together with the proceedings of the deliberations of the Committee to the District Judge. He should endorse copies also to the Inspector General of Prisons, the District Magistrate and the Superintendent of Police. The Inspector General of Prisons should review the situation with the State Home Secretary once in every three months.

18.9.29 State prison rules should be made applicable to sub-jails in all respects.

18.9.30 The lodging of known habitual offenders in sub-jails should be prohibited by making suitable provision in State prison rules. Such offenders should be transferred to the nearest district jail with the concurrence of the concerned court.

18.9.31 Provisions in State Jail manuals permitting hand-cuffing or fettering of inmates lodged in sub-jails should be re-examined in the light of our recommendations made in Chapter VIII on "Security and Discipline".

18.9.32 The Inspector General of Prisons should inspect each sub-jail at least once in 4 years. The range Deputy Inspector General of Prisons should inspect each sub-jail in his jurisdiction at least twice a year. In the States where there are no range Deputy Inspectors General of Prisons each sub-jail should be inspected at least twice a year by an officer nominated for the purpose by the Inspector General of Prisons. Wherever necessary some mechanism may be created at the district level also for the inspection of sub-jails. Surprise visits by senior officers may also be paid to sub-jails as often as possible.

18.9.33 Accounts of each sub-jails should be audited annually. Releases of convict prisoners in sub-jails should also be audited annually.

## CHAPTER XIX

### OPEN INSTITUTIONS

19.1 During the early nineteenth century it was a common practice to employ prisoners outside the jail walls on construction of roads or cleaning of drains under strict security arrangements. When the first Prison Discipline Committee (1836-38) reviewed the system it condemned the system and the inhuman living conditions in which prisoners were made to work in the open. It seems that this practice gradually disappeared thereafter. The Prison Conference of 1877, however, re-opened the question of employing prisoners on large public works such as digging of canals and considered such employment as very valuable. The Indian Jails Committee 1919-20 later found that the employment of prisoners on public works was no longer in vogue except in Assam and the Andamans. That committee did not consider such a form of employment proper as it made maintenance of proper discipline and segregation of prisoners difficult. It also found that this system exposed prisoners to epidemic diseases and, therefore recommended that such employment should be permitted only when the location and climatic conditions were satisfactory and arrangements for good water supply could be ensured. It did not favour employment of prisoners on canal digging or in laying of railway lines as this required frequent shifting of gangs resulting in unhealthy living conditions. The committee opposed the use of belchans at night as a means of security and recommended construction of barracks with suitable security arrangements. The committee was of the opinion that "the open air life and the employment in forms of labour not dissimilar from that in which large numbers of prisoners engage in freedom are not antagonistic to reformatory influences." During the period 1920-50, no significant progress was made in this direction.

19.2 In the post Independence period there was growing realisation of the need for change of attitude towards the treatment of offenders and attention began to be given to the introduction of humanising influences in prisons. Many experimental schemes for the reformation and rehabilitation of prisoners were introduced. Of all such experiments, the employment of prison labour in open conditions under minimum security in the early fifties proved every successful from every point of view. Even though the practice of employing prisoners in open conditions is more than a century old, the objective of this practice has vastly changed over the years, specially in the post Independence era. Whereas originally it aimed at extracting hard labour from the prisoners under conditions which were humiliating and dehumanising, now it aims at providing them with useful work under conditions which help in restoring their self-respect and giving them a sense of pride and achievement.

19.3 According to the information received from various States and Union Territories, there were 27 open prisons as on December 31, 1980 in the country. The States of Bihar, Haryana, Jammu and Kashmir, Manipur, Meghalaya, Nagaland, Orissa, Sikkim, Tripura and west Bengal and the Union Territories did not have any such prison.

19.4 During our visit to one of the open prisons we found that a high barbed-wire fencing had been raised around the barracks of inmates as a measure for safety. At another open prison we noticed that an armed guard was posted at a prominent place. It was said that this was only for ceremonial purposes and for keeping watch over the cash chest.

however, at these very open prisons as also at other such prisons, prisoners were working both by day and by night under minimum supervision over a vast agricultural area which showed that apprehensions about security of prisoners were not well founded. In some State prisoners in open prisons were allowed to keep with them their families including children of both sexes. There is, thus, wide diversity in the nature and scope of functioning of open institutions in various States. There is need for bringing about some basic uniformity in this area keeping in view the objectives of open institutions.

19.5 Some States which have framed rules for the running of open institutions have defined an open institutions as a place used as such under the orders of the State Government for the detention of prisoners. Such a definition does not serve the purpose in view. In some States, governments have indicated the purpose behind the establishment of open institutions. For example in Uttar Pradesh open prisons were established with the purpose of rehabilitation of offenders by employing them on works of public utility. The purpose of establishing the Model Prison, Lucknow was to make prisoners self-sufficient by employing them under conditions and environment as close to the outside world as possible and by granting them increasing freedom with progressive reduction in the watch over them depending on their progress. In Andhra Pradesh, Karnataka and Punjab the objective of open institutions is to give extensive training in modern methods of agriculture and horticulture to the inmates having rural background so that on release they might become progressive agriculturists in their respective villages. According to Rajasthan Government, the purpose of such institutions was social readjustment and rehabilitation of prisoners. Thus, though some elements in the thinking of State Government regarding the purpose and objectives of the open institutions were good and clear, others were somewhat vague. With the success achieved in running open institutions, it can be said that they have now become permanent feature of the correctional system. To avoid confusion in their working, it has, in our opinion, become very necessary to clearly define the objectives of such institutions at the national level.

19.6 The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in 1955 at Geneva recommended a frame-work for the working of such prisons, which we find was already being followed in most of our existing open prisons. We therefore, think that the internationally accepted definition of open prisons given by this Congress may be broadly accepted as a working basis.

19.7 The rules governing eligibility of prisoners for transfer to open prisons vary widely from State to State. In some States these conditions have been liberalised from time to time. The experience of the last 30 years has completely falsified the fear about escape from open prisons. During the last 5 years there were only 70 escapes from 12 open prisons. In fact there were fewer escapes from open prisons than from closed prisons. This is particularly interesting when we analyse the inmate population of open prisons. 75% of the prisoners in open prisons were those who had been sentenced to imprisonment for ten years or above including life term. Also, 70% were convicted of offences against person and 6% were there for even such grave offences as dacoity. It will not be out of place to mention here that in a country like Sweden where prison population is very low as compared to that in India and where all facilities for the examination and observation of prisoners for scientific classification are available, there were 1143 escapes from open prisons in 1978. This shows that the facility of open institutions in India extended to prisoners of various categories has not generally been misused. A stage has, therefore, now come when some broad principles for the selection of prisoners for open institutions should be laid down.

19.8 In view of what has been said above it would not be proper to debar offenders convicted of particular offences or those sentenced to long or short periods of imprison-

ment from being sent to open prisons. The most important guiding factors should, in our opinion, be the offender's suitability for admission to an open institution and the fact that his social re-adjustment is more likely to be achieved by such a system than by detention in a closed prison.

19.9 The total accommodation available in open prisons in India as on December 31, 1980 was for 4626 prisoners whereas the total number of convicted prisoners in the country was 64090. The daily average population of inmates in these institutions during the year 1980 was, however, only 2842. It is interesting to observe that in 1967, 10 States had reported that the capacity of their open prisons was about 4000. The fall in the inmate capacity and occupancy of open prisons during the last 13 years has been attributed to the general fall in the daily average population of convicted prisoners in the country. This may be partly correct but in actual practice we found that the requirements of labour for prison maintenance services and running of agricultural and industrial activities in closed prisons were given priority over the prospects of correction and rehabilitation of prisoners by treatment in open prisons.

19.10 The system of open institutions has now been in operation for the last about three decades. During this period it has been clearly established that it is not only far cheaper to control and run open institutions than the closed prisons, but that the system of open institutions has also a definite rehabilitative value; it restores dignity of the individual and gives him self-reliance and self-confidence besides instilling in him a sense of social responsibility which is necessary for an effective and useful community living. In this perspective it is disheartening to note that the prison authorities are reluctant to transfer prisoners to open institutions and are not putting to full use even the existing capacity of open institutions. Greater attention, therefore, needs to be paid to the transfer of prisoners to open institutions so that more and more convicted prisoners may avail of the benefits of these progressive institutions. This will require not only liberalization of the conditions of eligibility for admission to open institutions as discussed above but also better control and supervision from the headquarters of the prison department. If action is taken on these lines, more open and semi-open prisons will have to be established in various States and Union Territories.

19.11 We were impressed by the Sampurnanand Shivir Sanganer, an open prison near Jaipur in Rajasthan, where prisoners are allowed to live with their families in temporary huts constructed at their own cost on Government land. Here, the prisoners and their family members work and live on their own, and are not a burden to the State exchequer. The prisoners carry on their independent business or work on daily wages for outside establishments or organisations. For all practical purposes the camp is managed by the prisoners themselves through an elected panchayat. A few warders are, however, posted there to run errands and to take the count of prisoners in the mornings and evenings. The Superintendent, Central Prison, Jaipur exercises general supervision and control over the Shivir and pays an occasional visit to it. The camp inmates are given usual remissions and are released on completion of their sentences or under the premature release system. An important advantage of this scheme is that it gives the prisoners an effective exercise in self-reliance, co-operation and community living in a family atmosphere. Such an institution represents a further step within the progressive stage system of the open camp movement, where prisoners have maximum freedom and opportunity to shape their lives in their own way. We strongly feel that institutions on the pattern of Sampurnanand Shivir, Sanganer should be developed in other States and Union Territories.

19.12 There are many closed prisons which have agricultural land outside the prison wall. We are of the view that wherever such land is available, it should be converted in semi-open or open institution as an annexe of the closed prison. Prisoners eligible for transfer to open institutions may be allowed to work on such land. Suitable huts and cottages may be constructed outside the jail wall to provide living accommodation for such

prisoners. Even short-term prisoners, if otherwise suitable, could be placed in these semi-open or open institutions which could be developed into modern agricultural and horticultural farms.

19.13 Short-term prisoners, placed with long termers in a closed prison, are exposed to contamination by hardened criminals. A large number of them can be usefully placed in open institutions for community treatment. After proper screening at the local level, as soon after admission as possible, they may be transferred to camps to be run as semi-open or open prisons and employed on public projects involving unskilled labour such as digging canals, construction of roads, buildings and dams, reclamation of land for agricultural purposes, afforestation, etc. Ticketless travellers sent to prisons on conviction should be employed on railway projects in camps to be financed by the Railways. Such employment will inculcate in the short termers a habit of hard work. In the camps, living barracks of tubular structures may be provided, as they can easily be shifted whenever necessary

19.14 Agricultural work or employment on unskilled work is provided in most of the existing open institutions. In our opinion the prisoners in such institutions should also be employed in industries which may be set up for the purpose. Agro-based industries should also be encouraged. Animal husbandry, dairy projects, poultry, sheep rearing, piggery, etc., may also be introduced, wherever possible. Skills and expertise, which inmates might acquire in open institutions, will help them in finding remunerative employment on release and facilitate their economic and social rehabilitation.

19.15 It was generally observed during our visit to open institutions that no systematic vocational training was imparted to the inmates in agriculture, animal husbandry, dairy farming and other allied fields. The rules governing management of open institutions in Punjab, however, provide for facilities for training according to a syllabus prescribed under the rules. It is our considered view that proper vocational training in agriculture and industrial and other trades should be imparted to inmates of open institutions by trained instructors through lectures, visual aids, etc. In this connection reference to Chapter XI on 'Work Programmes and Vocational Training' of this Report should be made.

19.16 Where facilities are available for employment of prisoners outside the jail, the 'day release system' should be introduced. It has the additional advantage of letting prisoners work in community along with free citizens. Under this system suitable long or short term prisoners could be released during the day on licence for employment in government establishments or public undertakings. In the evening the licencees should return to the jail where they can be accommodated in huts or cottages which may be constructed outside the jail or may even be kept in a separate barrack in the closed prison under minimum watch.

19.17 There is no uniform policy regarding payment of wages to the inmates of open institutions. While at some open institutions, where prisoners were employed by some other department, wages were paid at market rates, at others either nominal or no wages were paid. Where wages were paid at market rate, maintenance charges were recovered from prisoners but it was found that the rate of recovery was arbitrary and generally very low which was not proper. There should be a system of payment of fair and equitable remuneration for the work done by the prisoners. This will restore their self-esteem and will also give them a sense of dignity of labour. Our recommendations for the wage structure are contained in Chapter XI on 'Work Programmes and Vocational Training'.

19.18 During our visit to a particular open prison where prisoners were employed by a University on farming operations, we were surprised to find that they had not been paid wages amounting to about Rs. 15.50 lakhs for about two years. As a result, these prisoners could not pay their maintenance charges to the State which amounted to Rs.



8.30 lakhs. The University had also failed to employ all the prisoners available for agricultural work with the result that 46% of the inmate population remained idle at the open camp. This resulted in a tendency to employ more than the requisite number of prisoners on prison maintenance services. Thus, a large number of prisoners were either unemployed or under employed. From every point of view the state of affairs was unsatisfactory. The Committee is of the view that agriculture and similar other operations in open institutions should be carried out by the prisoners themselves under the management and care of the prison department. The farms run in open institutions of Andhra Pradesh, Karnataka, Kerala and Punjab are giving good results and there is no reason why similar results cannot be obtained elsewhere, if the farms are efficiently managed.

19.19 Except in a few open institutions, educational, cultural and recreational facilities left much to be desired. This correctional content of open camp programmes needs to be given due importance. Social education and functional literacy should form an important ingredient of such an approach. Trained teachers should be posted in all open institutions for educational programmes. Library and reading room facilities with books, newspapers and magazines should also be provided. Sports and regular recreational and cultural activities should be organised as they will improve the physical and mental health of prisoners. Efforts should be made to discover talent and special interest of individual prisoner and to plan educational and recreational activities at least a month in advance.

19.20 The people in the neighbourhood should be invited now and then to witness sports and cultural events in the open institutions. This will foster a sense of security among the people in the neighbourhood and will also considerably help in educating public opinion regarding the reformatory objectives of such institutions. Suitable prisoners should also be given passes to visit neighbouring towns for marketing, recreational purposes, etc.

19.21 The scale of remission for inmates of open institutions varies widely from State to State. This is not desirable. There should be a uniform scale of remission in the open institutions in all the States and Union Territories. We think it would be reasonable if remission is granted to an inmate at the rate of one day for each day's stay in the open prison subject to a maximum of half of the substantive sentence awarded to him.

19.22 In open institutions, social readjustment of prisoners is quicker and as such their long detention is not only unnecessary but may also be counter-productive. As such in the case of inmates of open institutions a liberal policy should be adopted in the matter of their premature release. Section 433A of the Code of Criminal Procedure, which debar the release of certain categories of life convicts unless they have undergone 14 years of actual imprisonment, has a damaging effect on the morale of inmates in the open institutions. The recommendation made by us in Chapter IV on 'Legislation' to amend this section has a special relevance to the open camp movement.

19.23 The Committee was shocked to learn at one of the open institutions that cases of prisoners for premature release were pending for over two years. This was rightly a source of great dissatisfaction and frustration among a large number of prisoners. This situation was being exploited by some lawyers who extracted large sums of money from prisoners giving them hope of early release. There is, thus, an urgent need for streamlining procedures for deciding cases of premature release to avoid unnecessary delay and harassment.

19.24 Rules for grant of leave to prisoners of open institutions also vary from State to State. In some States the procedure was very cumbersome as leave was granted by the Government. This generally frustrated the object of granting leave. The scale

for grant of leave and the procedure for such grant should be liberalized in case of inmates of open institutions keeping in view our recommendations made in Chapter XX on the subject of Remission, Leave and Premature Release.

19.25 There should not be any restriction on the number of visitors, prisoners in the open institution can send or receive. Similarly, the visits need not be restricted in view of the trust placed in the prisoners selected for open institutions. It is not necessary to censor incoming and outgoing letters. Interviews, too, need not be supervised and should be allowed to be held in a relaxed atmosphere.

19.26 Continuity of contacts of a prisoner with his family is essential for his social reintegration with the community on release. One of the effective ways of achieving this is to allow the inmates of open institutions on selective basis to stay for short periods with their families in separate huts which could be constructed near or on the premises of such institutions.

19.27 When a prisoner is selected for being transferred to an open institution, he should be oriented about the requirements and responsibilities of living in such an institution. On admission to the institution, he should be kept in the reception ward for a period of two weeks for orientation.

19.28 In an open prison reliance should be placed not on punishment but on persuasion and personal example of staff in ensuring a quick and willing response to authority and observance of rules. An atmosphere of freedom and responsibility will infuse in the inmates a sense of self-discipline. Prison offences and punishments in open prisons should not be the same as those in closed prisons, and they therefore need to be separately defined. For an open prison going out of the defined boundaries without proper authority will be a serious offence. Similarly, return to a closed prison with forfeiture of remission should be considered a severe major punishment. Warning, forfeiture of wages for offences relating to work and stoppage of privileges could be other punishments. Those prisoners who fail to co-operate with an administration based on trust and sense of responsibility or whose conduct affects adversely the behaviour of other prisoners should be transferred to a closed prison and the remission earned by them should be forfeited.

19.29 An individual unit of open institution should not have more than 200 prisoners. If the number is large, it will not be possible to give individualised attention to prisoners. As such where an open prison has more than 200 inmates, it should be divided into small units of not more than 200 prisoners each. Each such unit should be an independent open prison with a separate full-time superintendent, a deputy superintendent, two assistant superintendents with adequate supporting staff should also be provided at each open prison. The strength of custodial staff should not generally be more than a quarter of the capacity of the open institution subject to a minimum of 100. Special care should be taken in selecting staff for open prisons. On the basis of their good work, proper attitude, trustworthiness and known dedication to duty. They should be trained and should have the ability to develop healthy and constructive relationship with the prisoners. They should be able to exercise correctional influence by their personal example and leadership qualities. Regular staff meetings should be held where the principles and policies of open prison systems should be frankly and freely discussed. Wherever possible inspecting officers should also participate in such discussions. The staff at the closed prisons is generally casted in a mould where the emphasis is on discipline and informal relationship with the prisoners. We were distressed to find at some of the open institutions that even the higher executive staff did not know the basic philosophy and principles on which these institutions were supposed to run. In one of these prisons, prisoners selected for and awaiting their transfer to an open institution were

sent out to work in the jail garden in fetters. The ideal position will be to have separate staff for open institutions but this is not practicable in view of the small number of open institutions. We are, therefore, firmly of the opinion that the staff at the open institutions as well as at the reception centres for such institutions should not only be carefully selected but should also be given special training from time to time regarding the philosophy and management of open institutions.

19.31 Some of the common complaints brought to our notice by the staff of the open institutions were non-payment of compensatory allowance or special pay in view of the hard and special nature of duties in such institutions, the absence or utter inadequacy of housing facility and difficulties experienced due to the absence of transport facilities for school going children and for the staff for visiting neighbouring towns for marketing, recreational purposes, etc. Contented staff is very necessary for open institutions and, therefore, working conditions of staff posted in open institutions should be commensurate with the special and arduous nature of their duties.

19.32 Open prisons are special institutions and it is necessary to frame separate detailed rules for their functioning. Model rules laying down minimum standards for open and semi-open institutions should be framed on the lines suggested in the foregoing paragraphs and keeping in view the provisions of Chapter LII of the Model Prison Manual in so far as they are not inconsistent with our recommendations.

19.33 Our recommendations with regard to open institutions are as follows :

19.33.1 Open camp movement should be given a fillip as a major step in the progressive stage system of corrections in India. It should be developed as a positive measure for the resocialization of convicted offenders as opposed to its regressive and repressive nature in the older times.

19.33.2 The scope, purpose and objectives of open institutions should be clearly defined in the statute. An open institution should be characterised by the absence of material or physical precautions against escape (such as walls, locks, bars, armed or other special security guards); and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives.

19.33.3 There should be three types of open facilities available to convicted prisoners:

1. Semi-open prisons.
2. Open prisons
3. Open camps (Sanganer type)

This has reference to our recommendations contained in Chapter VIII on 'Security and Discipline' and in Chapter IX on 'System of Classification'.

19.33.4 Conditions of eligibility of prisoners for admission to open institutions should be liberalised. The most important factor while selecting prisoners for open institutions should be their suitability for such institutions and not the nature of the crime committed or the length of sentence.

19.33.5 The inmate capacity of existing open institutions should be fully utilized.

19.33.6 More open institutions should be set up to give at least 20 percent of the convicted prisoners, sentenced to a term of imprisonment of one year or above, a chance to improve themselves for better resocialization through this community based correctional programme.

19.33.7 All additional institutions for accommodating any future increase in convict population should be of open type.

19.33.8 Open camps (Sanganer type) should be developed in each State/Union Territory as the final stage in the open camp movement.

19.33.9 Closed prisons which have agricultural land attached to them should convert these open areas into small semi-open or open institutions annexed to such prisons.

19.33.10 Open camps, mobile and permanent, should be set up at public projects to provide employment to prisoners sentenced to a term of imprisonment less than one year. Ticketless travellers should be employed on railway projects in camps to be financed by the Railways. Suitable arrangements should be made for the temporary stay of such convicts at mobile camps and for their shifting from one place to another according to need.

19.33.11 Work in open institutions should be diversified to suit prisoners of various socio-economic background. At present most of the open prisons provide only agricultural and allied work. Industries may also be set up at such institutions. Vocational training on a systematic basis should also be imparted to inmates of open institutions.

19.33.12 As a measure of semi-open facility to inmates confined in prisons 'day release system' should be introduced to allow suitable prisoners to work in government establishments and public undertakings during day time.

19.33.13 The system of wages in open institutions should be rationalized. Our general recommendations in this regard are contained in Chapter XI on 'Work Programmes and Vocational Training'.

19.33.14 All work programmes including agriculture in open institutions should be carried out by prisoners themselves under the supervision and management of the prison department.

19.33.15 Social education and functional literacy programmes, library and reading room facilities with books, newspapers and magazines and well planned and regular recreational and cultural activities should be organised in open institutions to enrich the correctional content of open camp movement.

19.33.16 Free community should be liberally involved in all correctional programmes of open institutions.

19.33.17 Deserving inmates of open institutions should be given passes to visit neighbouring towns for marketing and recreational purposes, etc.

19.33.18 An inmate of open institution should be eligible to get remission of one day for each day's stay in such institution subject to a maximum of half of the substantive sentence awarded to him.

19.33.19 The rules for premature release should be liberalised in case of inmates of open institutions and the procedure for such release should be streamlined to avoid unnecessary delay and harassment.

19.33.20 The procedure for grant of leave should be liberalized in case of inmates of open institutions.

## CHAPTER XX

### SYSTEM OF REMISSION, LEAVE AND PREMATURE RELEASE

20.1. The system governing remission, leave and premature release has been an integral part of our prison administration for over a century now. It has been functioning as a positive incentive to prisoners for good behaviour and work. The system came as a transitional step from mere custodial confinement to reformatory treatment of offenders in which good behaviour and constructive work were considered essential pre-requisites for reducing the term of imprisonment on an individualised basis. In course of time, the concept was further enlarged and reinforced by introducing within the system certain new forms of special and State remissions.

20.2. Undoubtedly, the system of remission tends to bring in an element of flexibility in the determinateness of the sentence awarded to an offender so as to ensure, in consonance with his responsiveness to institutional treatment, his timely return to the community. The efficacy of the system has been reiterated by a number of expert bodies including the Indian Jails Committee 1919-26, the All India Jail Manual Committee 1957-59 and several state level Jail Reforms Committees/Commissions. It is fairly well established now that the remission system, if properly applied, encourages habits of industry and promotes good conduct among prisoners.

#### Remission System :

20.3. At present there are four types of remission of sentences, namely 1. ordinary remission; 2. annual good conduct remission; 3. special remission; and 4. State remission. Each type differs from the others in respect of the criteria for eligibility, procedure for award and the authority competent to grant it.

20.4. The system of grant of remission varies from State to State. There is no uniformity in the quantum of remission granted to inmates on various counts. Although the Model Prison Manual containing inter-alia guidelines in this respect was circulated to all States and Union Territories as long back as in 1960, there has not been any uniformity in the grant of remissions in the country. There is also a wide-spread feeling that remission system is generally operated upon in an arbitrary manner with little regard to the individual differences and merits of the case. There have been complaints by the prisoners about the manner and mode of granting remission in several places. It is alleged that the grant of remission is guided by the whims and fancies of the persons competent to grant it, and as such crafty prisoners manoeuvre the system to their advantage. The grant of remission constitutes an area highly prone to corrupt practices if the discretion in this regard is not exercised judiciously.

20.5. There is no uniformity of principles for grant of State remission as well. The Committee has been given to understand that State Governments have been granting remissions even on occasions which normally do not justify such awards. It has come to the notice of the Committee that remission was granted to the inmates of a particular institution on one occasion only to mark the visit of a VIP. Grant of such remission is not only unwarranted but also purposeless so far as reformation is concerned.

20.6 We also feel that the system of remission as an instrument of effecting change in the attitude of inmates towards work and behaviour should be liberalised and its ambit enlarged so as to encompass more categories of inmates within its scope.

20.7 In view of the above considerations we make the following recommendations with regard to the system of remission:

20.7.1 The following types of convicted prisoners should ordinarily be eligible for ordinary remission:

- (i) Prisoners having substantive sentences of not less than 2 months
- (ii) Prisoners sentenced to simple imprisonment for not less than 2 months who volunteer to work;
- (iii) Prisoners working in conservancy jobs irrespective of the length of their sentence and who have not committed any prison offence;
- (iv) Prisoners admitted for less than one month in hospital for treatment of or convalescence after an ailment or injury not caused wilfully. (Those admitted for such purpose for more than one month should be entitled to remission for good conduct only); and
- (v) Prisoners sent for court attendance. (They should be allowed remission admissible for good conduct only provided their conduct had been good).

Note: It is the responsibility of the prison administration to provide work to all eligible prisoners. If for any reason administration fails to do so the prisoners who are otherwise eligible for remission for work should be granted such remission as per normal entitlement under the orders of the Inspector General of Prisons.

20.7.2 The following types of prisoners should not be eligible for ordinary remission:

- (i) Prisoners having substantive sentence of less than 2 months
- (ii) Prisoners sentenced in default of payment of fine only
- (iii) Prisoners whose sentence is reduced to less than 2 months (If such cases remission already earned, if any, should stand forfeited)
- (iv) Prisoners transferred from one prison to another on disciplinary grounds during the period of their stay in the latter prison;
- (v) Prisoners removed from remission system as punishment;
- (vi) Prisoners specifically debarred from remission system under any law or rule;
- (vii) Prisoners on special leave for the duration of such leave.

20.7.3 The scale of remission for non-habitual convicted prisoners should be as follows:

(i) 8 days per calendar month for good behaviour, discipline and participation in institutional activities. The Inspector General of Prisons may grant special remission of 25 days per annum in exceptional cases. As long as simple imprisonment as a form of punishment continues to exist, remission within its powers shall not be granted for ordinary remission.

- (ii) 3 days per calendar month for due performance of work according to prescribed standards ;
- (iii) 7 days per calendar month for prisoners employed on conservancy work, or as cooks, or on prison maintenance services requiring them to work even on Sundays and holidays ;
- (iv) 8 days per calendar month for those working as night watchmen ;
- (v) 10 days per calendar month to convict overseers and convict warders (until these two categories are abolished as recommended by us elsewhere) ;
- (vi) One day for each day's stay to prisoners sentenced to imprisonment of one year or more and transferred to open institutions.

20.7.4 Any prisoner eligible for ordinary remission, who for a period of one year reckoned from the date of his sentence or the date on which he was last punished (except by way of warning) for a prison offence, has not committed any prison offence, should be awarded 30 days annual good conduct remission in addition to any other remission.

20.7.5 Habitual prisoners should be eligible for the following scale of remission :

- (i) 2 days per calendar month for good behaviour, discipline and participation in institutional activities ;
- (ii) 2 days per calendar month for due performance of work according to prescribed standards ;
- (iii) 5 days per calendar month for prisoners who are night watchman, or are engaged on conservancy work, or as cooks, or on prison maintenance services requiring them to work even on Sundays and holidays.

20.7.6 Meritorious work by inmates should be rewarded by grant of special remission in addition to the annual good conduct remission so as to create a spirit of healthy competition among prisoners. Such special remission may be granted on following considerations :

- (i) Saving the life of a Government employee or a prison visitor or an inmate ;
- (ii) Protecting Government employees or prison visitors or inmates from physical violence ;
- (iii) Preventing or assisting in prevention of escape of a prisoner or apprehending a prisoner attempting to escape or giving material information about any plan or attempt by a prisoner or a group of prisoners to escape ;
- (iv) Assisting prison officials in handling an emergency like fire, outbreak of riots, strike, etc.;
- (v) Reporting of or assisting in prevention of serious breach of prison regulations ;
- (vi) Outstanding contribution in cultural activities or in education ;
- (vii) Specially good work in industry, agriculture or any other work programme, or in vocational training.

20.7.7 Subject to the fulfilment of any one or more of the conditions aforementioned special remission not exceeding 45 days in a year may be granted to those prisoners who are eligible for ordinary remission by superintendent of the prison. The Inspector General of Prisons may grant special remission of 75 days per annum in exceptional cases. The Inspector General of Prisons may also grant in special circumstances special remission within his powers even to a prisoner who is not eligible for ordinary remission.

20.7.8 The Government of India should lay down uniform guidelines to be followed by State Governments/Union Territory Administrations for grant of State remission.

20.7.9 The practice of granting remission on occasions or for reasons not justifiable should be immediately stopped.

20.7.10 A committee consisting of the superintendent, a deputy superintendent/assistant superintendent and officer-in-charge of industries should be formed to consider cases of grant of remission to prisoners at institutional level and for recommending grant of special remission by Inspector General of Prisons.

20.7.11 Entries regarding remission should be made, under proper attestation of the superintendent, in the remission register and the history ticket of the prisoner concerned as soon as it is granted.

20.7.12 Prisoners with substantive sentences of 2 months and above but upto 5 years should be sanctioned remission each month while those sentenced to over 5 years (including life convicts) should be granted remission once in a quarter.

20.7.13 Ordinary remission should be calculated for full calendar months. It should not be granted for fraction of a calendar month.

20.7.14. For purposes of special remission any fraction of a year should be counted as one complete year.

20.7.15 Maximum limit of remission which a prisoner can earn should be half of the substantive sentence awarded to him.

20.7.16 Grant of remission to prisoners sentenced by Court Martial should be on the same principles as those applicable to other prisoners.

#### Leave :

20.8 Different concepts such as parole, furlough, ticket of leave, home leave, etc., are used in different states to denote grant of leave or emergency release to a prisoner from prison. The terminology used is not uniform and is thus confusing. There is also no uniformity with regard to either the grounds on which leave is sanctioned or the level of authority empowered to sanction it. There is also a lot of diversity in the procedure for grant of leave. The scales at which these leaves are granted also differ from State to State; for example, in some States parole is granted for a period extending upto 15 days while in other States it is restricted to 10 days only.

20.9 Leave and emergency release to inmates are undoubtedly progressive measures which must continue in our prison system. The release of a prisoner on leave not only saves him from evils of prisonisation but also enables him to maintain social relations with his family and the community. This also helps him maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope in life. During the course of our discussions with eminent persons it was strongly advocated by them that the provisions for grant of leave should be liberalised to help the prisoner in maintaining harmonious relationship with his family. The privilege of leave should, of course, be allowed to selected prisoners on the basis of set norms of eligibility and propriety.

20.10 The All India Jail Manual Committee 1957-59 had recommended that the concession of leave and emergency release should be continued to be made available



to prisoners on a selective basis and that a basic uniformity in these matters should be brought on an all India basis. The Working Group on Prisons 1972-73, in its report, also observed that the "administrative and procedural delays often defeat the very purpose for which jail manuals make provision for the release of prisoners on parole, furlough, leave etc.," and "it is necessary that the powers of the Government with regard to sanction of these facilities should be decentralised and delegated to the Inspector General, the Deputy Inspector General and the Superintendent of Prisons, as appropriate, to ensure timely and prompt decision".

20.11 Despite these recommendations, nothing concrete has been done to bring about uniformity of principles and procedures in matters of grant of leave to prisoners in various States and Union Territories. During the course of our discussions with prison officials and the convicts whom we met, it was often complained that prisoners faced lot of difficulty in furnishing security required for release on leave. Many prisoners who had nothing to fall back upon were not able to avail of the concession of leave only because no one cared to come forward to stand surety for them. It is, therefore, necessary to think of some alternatives so that all eligible convicts may avail of this concession.

20.12 We are of the view that the system of release for short durations would greatly help the prisoner. It is a step forward in the direction of his adjustment in the society and his final rehabilitation. We make the following recommendations in this regard.

20.12.1 Uniformity should be brought about in the terminology used in connection with a prisoner's temporary release from prison. In our view, there should be two types of leave, viz., (1) Leave, to be regularly granted to every eligible prisoner, and (2) Special Leave, to be granted to a prisoner in special situations.

20.12.2 All convicts except those falling in the categories enumerated below should be eligible for being released on leave and special leave :

- (i) Offenders classified as habituals, provided they have not earned a higher grade in the proposed progressive stage system ;
- (ii) Prisoners sentenced under sections 392 to 402 of the I.P.C. ;
- (iii) Prisoners who are considered dangerous and who are involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found instigating serious violation of prison discipline ;
- (iv) Prisoners committed for failure to give security to keep peace or good behaviour ;
- (v) Prisoners suffering from mental illness, if not certified by the medical officer to have recovered ;
- (vi) Prisoners whose work and conduct has not been good during the preceding 12 months ;
- (vii) Prisoners convicted of offence against any law relating to matters to which the executive power of the Union Government extends unless approved by the Union Government ;
- (viii) Prisoners whose release on leave is likely to have repercussion elsewhere in the country.

20.12.3 Prisoners sentenced to less than 5 years should be eligible for leave of 10 days twice a year on completion of one year of actual confinement.

20.12.4 Prisoners sentenced to 5 years or more should be eligible during the first 5 years of actual confinement for leave of 10 days twice a year on completion of one year of actual confinement and for the rest of their term, if any, for leave of 15 days twice a year.

20.12.5 Prisoners should be eligible for the grant of special leave for a period of not more than 30 days at a time. However, in special circumstances such leave can be extended upto a maximum period of 90 days; but this period should in no case be extended further. For all extension of such leave beyond 30 days, orders of the government should be obtained by the Inspector General of Prisons.

20.12.6 Inspector General of Prisons should be the authority competent for grant of release on leave or special leave. However, special leave may be granted by the superintendent of the prison concerned to a prisoner in the event of an emergent situation like death of a member of his family, after verifying the facts of the situation by contacting the concerned police authority by the quickest mode of communication available to him. Such special leave may extend from a minimum of 3 days to a maximum of 14 days excluding journey time. For purposes of grant of such special leave family should include parents, brother, sister, son, daughter, wife/husband of the prisoner.

20.12.7 The period spent on leave should count as sentence served while that spent on special leave should not count as such. The period spent on special leave should be treated as 'out days' or sentence suspended for all purposes.

20.12.8 To obviate the difficulty of securing surety we recommend the following alternatives :—

- (i) Prisoners may be released on leave on executing personal bond;
- (ii) The wages earned by the prisoners may be taken as cash security ;
- (iii) The probation officer may be asked to arrange necessary surety ;
- (iv) Panchayat of the home village of the prisoner may stand surety.

20.12.9 We have worked out a procedure (Annexure A to this chapter) for grant of leave to prisoners and have recommend that the same may be followed in the matter of grant of leave.

20.12.10 A proper record of the release of prisoners on leave should be kept both at the institutions and in the office of the Inspector General of Prisons. Appropriate entries in this regard should also be made in the history tickets of the inmates concerned.

#### Premature Release :

20.13 The system of review of sentences for the purpose of premature release of prisoners exists in all the States and Union Territories and the jail manuals provide for the procedure for such review. Section 432 of the Code of Criminal Procedure empowers the appropriate Government to suspend the execution of sentence of any prisoner or to remit the whole or any part of his sentence. In some States special legislations have been enacted to provide for release of prisoners prematurely on grounds of good conduct. The Madhya Pradesh Prisoners Release on Probation Act, 1954 is one such example. In some other States prisoners are released under Revisory Board Rules, Shortening of Sentence

Rules or Advisory Board Rules. However, all these provisions for review of sentences draw their legal strength from section 432 of the Code of Criminal Procedure.

20.14 Release of prisoners prematurely either on specified conditions or unconditionally is prevalent in almost all the countries and such premature release is generally termed as 'parole'. Premature release is an accepted mode of incentive to a prisoner as it saves him from the extra period of incarceration which, on the one hand, is not needed for his reformation and rehabilitation, and, on the other, may be counter-productive. It reinstates an offender in the society prior to the expiry of his sentence in recognition of his good conduct and responsiveness to correctional treatment. The purpose is to snap off incarceration as soon as institutional treatment is considered no longer necessary. This system of premature release drives the blind, mechanical aspect out of the execution of fixed sentences and renders them somewhat indeterminate and purposeful in relation to reformation and rehabilitation.

20.15 The procedure and practices in regard to review of sentences for premature release vary from State to State. Conditions of eligibility, constitution of recommendatory boards, processing of papers and the procedures of obtaining bonds differ from one State to another. There is also a lot of confusion about the terminology used to denote review of sentences for premature release. There is need for bringing about uniformity in all these aspects.

20.16 Before we record our recommendations with regard to premature release we would like to draw the attention of the Government to the adverse repercussions of the introduction of section 433A in the Code of Criminal procedure both on the administration of prisons and the responsiveness of life convicts to prison programmes. We have elaborately discussed this subject in this Report in Chapter IV on 'Legislation'. Here we would only like to reiterate that this section should be suitably amended to remove the unreasonable restriction imposed by it on the premature release of lifers.

20.17 The whole question of premature release of prisoners should be given a dispassionate thought and appropriate steps be taken to ameliorate the adverse psychological effects of the execution of fixed sentences. Keeping in view these considerations we make the following recommendations in the matter of premature release of prisoners :

20.17.1 Cases of the following categories of prisoners should be reviewed for consideration of premature release:

- (i) Women offenders sentenced for infanticide: their cases should be reviewed immediately on admission in prison and they should be sent to the care of voluntary organisations of good repute for a reasonable period of time.
- (ii) Women offenders who have committed crime under compulsion and/or under social and cultural pressures and who have been sentenced to imprisonment: their cases should also be reviewed immediately on admission in prison and they should be sent to the care of voluntary organisations of good repute for a reasonable period of time.
- (iii) Women offenders sentenced to life imprisonment on completion of 7 years of sentence including remission.
- (iv) Life convicts, men and young offenders, on completion of 10 years of sentence including remission.

- (v) Non-habitual men and young offenders other than those sentenced to imprisonment for life and sentenced to a term of imprisonment for more than one year, on undergoing half of their substantive sentence including remission subject to the condition that they shall not be actually released unless they have undergone at least one year sentence including remission.
- (vi) Non-habitual women offenders other than those sentenced to imprisonment for life and sentenced to a term of imprisonment more than one year, on undergoing half or seven years of their substantive sentence including remission, whichever, is less, subject to the condition that they shall not be actually released unless they have undergone at least one year sentence including remission.
- (vii) Habitual offenders, other than lifers, sentenced to 5 years and above on completion of 2/3 of their sentence including remission, subject to the condition that they shall not be released unless they have undergone at least five years of sentence including remission.
- (viii) Old (above 65 years of age) and infirm offenders other than lifers, sentenced to one year and above on completion of one third of the substantive sentence including remission, subject to the condition that they shall not be actually released unless they have undergone at least one year sentence including remission.
- (ix) Offenders, certified by a state level Medical Board, to be suffering from incurable diseases likely to prove fatal.

20.17.2 The following categories of prisoners should not be eligible for consideration of premature release:

- (i) Prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State, and prisoners sentenced under sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489A, 489B and 489D of the Indian Penal Code.
- (ii) Prisoners convicted of economic offences, blackmarketing, smuggling, and misuse of power and authority;
- (iii) Prisoners sentenced under Prevention of Corruption Act, Suppression of Immoral Traffic in Women and Girls Act, Drugs Act and Prevention of Food Adulteration Act.

20.17.3 The case of each prisoner eligible for review and premature release should initially be examined by the institutional classification committee. After scrutiny by the Committee, relevant papers should be submitted to the Review Board.

20.17.4 Review Boards should be constituted in each State and Union Territory. Whether such Review Board should be constituted at the district, regional or state level should be decided by each State taking into account the case-load, administrative convenience, the system prevailing and the need for expeditious desposal of cases ripe for review. The tenure of such a Review Board should be three years.

20.17.5 The case of every prisoner which is ripe for review should be decided within a maximum period of six months from the date of eligibility.

20.17.6 Each State/Union Territory should formulate a set of guidelines to be uniformly applied to govern the working of all Review Boards in the State/Union Territory. These guidelines should contain instructions for consideration of factors relating to prisoners' socio-economic background, circumstances in which the crime was committed, sequence of criminal behaviour, conduct in the prison, responsiveness to various

aspects of institutional treatment and the degree of change in their habits, overall behaviour, health, mental condition, possibility of resettlement after release, etc., to determine the propriety of premature release. As the system of premature release implies the condition of good behaviour, the guidelines should provide principles on which the Review Boards may determine whether premature release of a prisoner should be with or without supervision of a probation/welfare officer or of any other person appointed for the purpose.

20.17.7 Section 433A of the Code of Criminal Procedure should be amended suitably so that such lifers as offer good prognosis for reformation and rehabilitation can be released after 8 to 10 years of actual imprisonment. (This has reference to our recommendation in Chapter IV on 'Legislation').

20.17.8 The management of record relating to review of sentences and premature release should be streamlined on the lines indicated in Annexure B to this chapter.

## PROCEDURE FOR GRANT OF LEAVE AND SPECIAL LEAVE

1. A prisoner desiring to avail the concession of leave or special leave should submit his application in the prescribed form to the superintendent of the prison. The superintendent should examine each case carefully with regard to eligibility for leave with particular reference to conduct, work, attitude towards family and community, and the manner in which previous period of leave, if any, was utilized. He should then forward the application to the District Magistrate and the Superintendent of Police for report.

2. The Police should submit their report through the District Magistrate to the Inspector General of Prisons within 15 days of the receipt of papers. In case the police disagrees with the release of prisoner on leave, reasons for doing so should be specified.

Note:(i) The opinion of the district authorities should be obtained only for the first release on leave. For the second and subsequent release no such opinion would be necessary provided that the prisoner had surrendered in time and there had been no adverse report from the police about the behaviour of the prisoner during the earlier leave.

(ii) Prisoners whose conduct is found unsatisfactory should not be considered for this concession. However, the period after which such a case should be reviewed will be decided by the Inspector General of Prisons depending upon the nature of the case.

3. The Inspector General of Prisons may make an order for release of a prisoner on leave or special leave subject to the following conditions :

(i) That the prisoner shall give cash security for the amount ordered by the Inspector General of Prisons or execute a personal recognizance bond or execute a bond with one or more sureties according to the directions of the Inspector General of Prisons ;

(ii) That the said prisoner shall reside at the place designated by the Inspector General of Prisons and shall not go beyond the specified limits ;

(iii) That the said prisoner shall be of good behaviour and shall not commit any offence during leave ;

(iv) That the prisoner shall report to the Probation Officer, if any, of the area of his stay during leave ;

(v) That the prisoner shall neither associate with bad characters nor lead a dissolute life ;

(vi) That the prisoner shall be liable to be recalled immediately to prison in case he violates any of the conditions ;

(vii) That the prisoner shall surrender himself to the superintendent of the prison on expiry of the leave granted or on recall.

4. On receipt of the order from the Inspector General of Prisons, the prisoner should be released on leave/special leave after he has executed the necessary bond and has signed

the conditions of release. At the time of release the prisoner should be supplied with an identity card and certificate of release on leave. Release of prisoner on leave should be intimated to the following authorities :

- (i) District Magistrate and Superintendent of Police of the district in which the prisoner proposes to spend the leave ;
- (ii) District Magistrate and the District Superintendent of Police of the home district of the prisoner ;
- (iii) Probation Officer in whose jurisdiction the prisoner proposes to spend the leave.

5. The prisoner should himself meet all expenses including those on journeys to and from the place of his stay during leave.

**Annexure XX-B****RECORD RELATING TO REVIEW OF SENTENCES  
AND PREMATURE RELEASE**

Immediately on admission of a convict eligible for being considered for premature release, the superintendent of the institution should get a copy of the judgement in his case from the court and open a file. This file should contain :

- (i) Copies of the judgements of the original court and the appellate court ;
- (ii) A sheet containing information, viz., name of the convict, his number, age at the time of sentence, previous occupation, offences, sentences, date of sentence, sentencing court, sentence undergone, unexpired sentence, remission earned, opinion of the Superintendent, opinion of the Superintendent of Police, opinion of the District Magistrate, medical report, opinion of the institutional classification committee, opinion of the Review Board, opinion of the Inspector General of Prisons ;
- (iii) History containing information about family background, economic background, habits, attitudes, etc. ;
- (iv) Report of the superintendent giving particulars about the educational progress, performance on work and vocational training, interest in recreational and cultural activities, discipline, group adjustability, conduct, attitude towards society and family members, conduct during release on leave, need for after-care programme and the manner in which the convict proposes to resettle after premature release ;
- (v) Medical report about the physical/mental condition of the offender, serious illness, if any, and his fitness for premature release ;
- (vi) Opinion of the district authorities about suitability of the offender for premature release ;
- (vii) Report from the Probation Officer or any other officer or agency about the after-care programme for the convict ;
- (viii) Recommendation of the institutional classification committee ;
- (ix) Recommendation of the Review Board ;
- (x) Order of the Government ;
- (xi) Bond furnished by the prisoner ;
- (xii) Conditions of release duly signed by the prisoner.