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**A Study on Prison Reform to Identify an Alternative  
Reformatory Policy in Nepal**

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# TABLE OF CONTENTS

- ABSTRACT ..... 3
- 1. Background ..... 4
  - Statement of Intent** ..... 4
  - Research Question** ..... 4
  - Methodological Limitations** ..... 4
  - Research Methodology** ..... 5
- 2. Introduction ..... 8
  - The Framework**..... 8
  - Human Rights from the Inmates' Perspective**..... 10
  - Pressing need for prison reforms**..... 12
  - Factors inducing current scenario**..... 17
- 3. Alternative Reformatory Policies for Amendment ..... 19
  - Alternative 1: Reforming the current penal system** ..... 20
  - Alternative 2: Implementing the open prison policy (NORDIC PRISON MODEL)**..... 22
  - Alternative 3: Operating prisons under public private partnership** ..... 26
- 4. Recommendations and Conclusion ..... 30
  - Conclusion** ..... 30
  - Recommendations for Implementation** ..... 33
- 5. Bibliography ..... 34

## **ABSTRACT**

The paper examines the existing prison policy of Nepal to diagnose critical problems emerging by neglecting the need of prison reform, despite several attempts and efforts. The punitive prison policy implemented back in 1963 has dilapidated triggering some of the most unanticipated problems possessing threat to an individual, community and country as a whole. The study focuses on the current situation of the prisons in Nepal and the problem associated with it, identifies the alternatives that can be implemented to mitigate the problems and recommends the most suitable alternative that would help to alleviate those problems. The study highlights overcrowding, accommodation, education, health, employment and discrimination as the critical problems. Subsequently, it scrutinizes these problems from sociological, economical and human rights perspective. Based on these arguments, the study emphasizes on either reforming the existing prison policy, implementing open prison policy or public private partnership policy. Case studies of prison policies practiced in different countries are taken in account to support the argument. In summation, the research takes into account the policy problem associated with the prison reform and makes a recommendation to fulfill the policy gap for reforming the prison sector of Nepal.

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# 1. Background

## Statement of Intent

Nepal's Penal System fails to abide by the guidelines set forth by the UN for the treatment of the prisoners and the Nepal Prisons Act 1962, requires transformation because of its punitive focus and lack of reformatory policies. This implication challenges the fundamental principle of universal declaration of human rights demanding the urgent need for prison reform in Nepal. In the absence of suitable reformatory policies in the act, the Penal system needs to revise and search for an alternative that would best address this issue from both human rights and sociological perspectives and consider the well being of prisoners.

## Research Question

*What is the most suitable reformatory policy for prison reform in Nepal?*

## Methodological Limitations

*Lack of availability of data:* During the course of the study, publications and reading materials issued by the ministries were difficult to access. Certain studies on prison reform submitted to the government could have provided more concrete findings and reasons to support the pressing need for prison reform, however, they were unavailable. Similarly, books published on this issue are rare and have a limited print run. Had those books been available, the research would have had strong factual evidence to support the argument.

*Lack of prior research on the topic:* Although studies have been done on prison reform, none of those published articles provide an alternative reformatory policy. The studies demand the need for prison reform and propose alternatives but fail to provide evidence and enough supporting argument for the proposed alternatives.

*Measures used to collect data:* The data collected are all from secondary sources with the exception of one verbal interview. The secondary data has its own interpretation and has been conducted for a specific field of study. The data samples collected are goal oriented so the findings are at times inapplicable to this research.

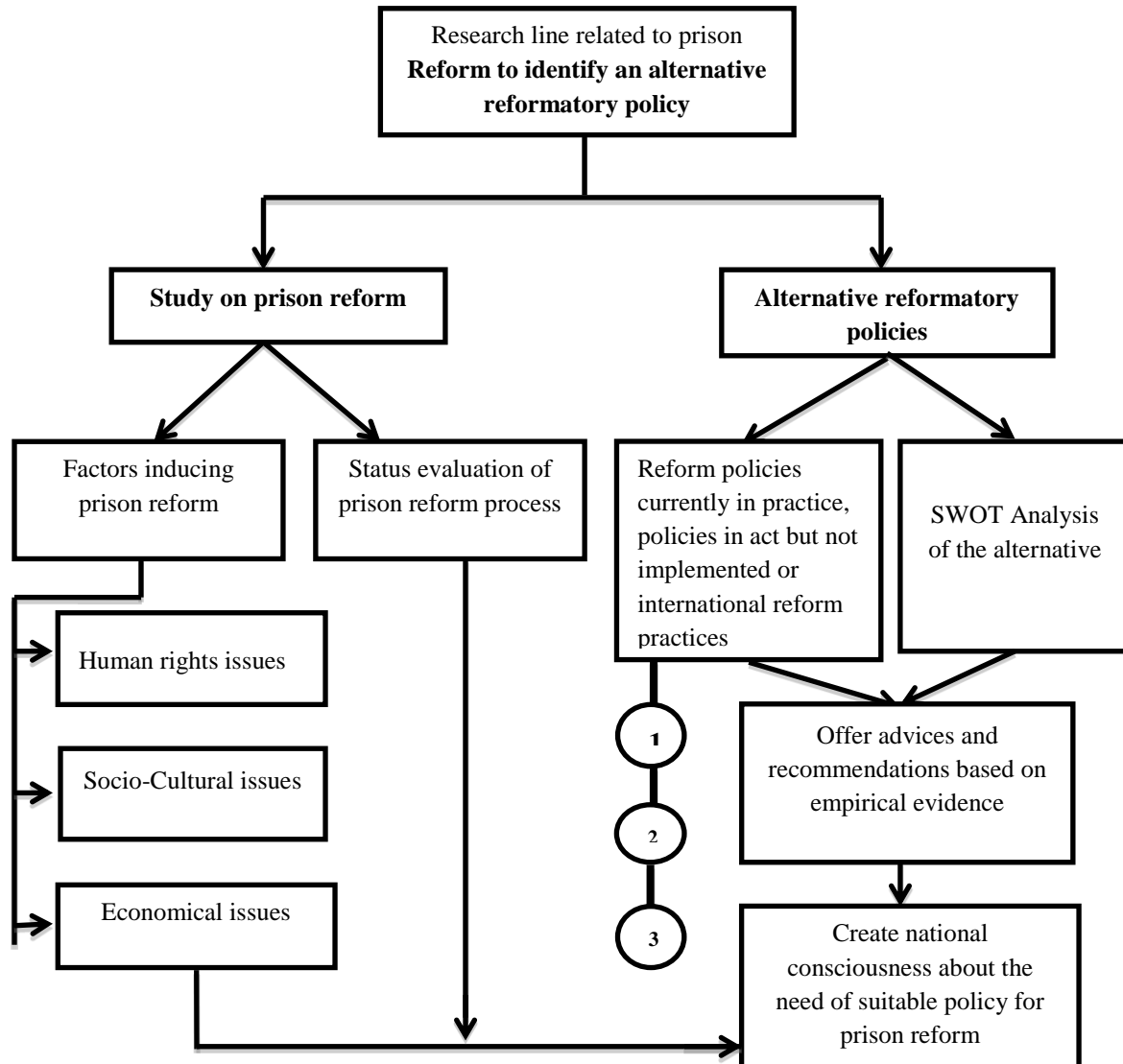
*Self reported data:* Self reported data collected through personal interviews or focus groups have high chances of information manipulation, memory shortcomings, exaggeration and can lead to delivering vague and ambiguous information which might hinder the findings of the research.

*Access:* This research requires access to information from Ministries, Governmental agencies, Correction centers, Inmates, Prison Officials, NGOs and INGOs working for human rights. However one cannot have easy access to these sources without prior appointments. This may be due to the lack of their interest in analyzing the information available, mismanagement of reports and negligence.

## Research Methodology

### Conceptual framework

In this research a ‘tree chart’ conceptual framework is used to illustrate the major variables/ factors or institutions involved in prison policy making, along with the gap in implementing open prison policy.



### Research Paradigm

The paradigm selected, guides the researcher in philosophical assumptions about the research and in the selection of tools, instrument, participants, and methods used in study.<sup>1</sup> The research is guided by the **constructivism-interpretivism** philosophy which assumes multiple, constructed and equally valid realities. Under constructivism, the reality is subjective and highly influenced

<sup>1</sup> Denizen & Lincoln 2005

by context like the individual's experience, perception, the social environment, and the interaction between the individual and the researcher.

The constructivism-interpretivism philosophy assumes that meanings are constructed by human beings as they engage with the world they are interpreting. This meaning is based on their historical and social perspectives.<sup>2</sup> The researcher shall make personal visits to collect information using open ended interviews with the participants. Similarly, the interpretation of the information gathered through case study and text analysis is also shaped by the researcher's own experiences and background.

### *Research Design*

The research will be based on a **qualitative method** for collecting, analyzing and interpreting the data. Qualitative research helps in the exploration and easy understanding of the meaning of an individual or group towards a social or human problem. It involves research of emerging questions and procedures, collection of data under participant's setting, inductive analysis of data built from particulars to general themes and finally interpretation of the data.<sup>3</sup>

### *Data Collection*

The data will be collected from both primary and secondary sources. The primary data will be collected using the qualitative method. The tools and techniques to be used for collecting the primary data would be:

#### **In-Depth Interviews**

In depth interviews, with the relevant authorities of the Home Ministry, Department of Prison Management, Nepal Law Commission, Centre for the Victims of Torture, Prison officials, ex-prisoners and current prisoners will be conducted to collect more precise, accurate and valid information. The researcher will perform one-to-one interviews with the respondents to generate a more clear understanding of the research.

#### **Secondary Data:**

#### **Text Analysis**

The secondary source involves reviewing of different laws and acts, regulations and reports, books and articles published in the newspaper relevant to this theme. Various journals, publication and documents relevant to this research will be properly studied and analyzed.

### **Advocacy and Dissemination**

This research paper would be a key instrument to make institutions linked to correction homes aware of the current issues and to also offer them a solution to existing problems in the prison

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<sup>2</sup> Crotty 1998

<sup>3</sup> Creswell 2009

system through proposed reforms. The study has identified some key organizations that are actively responsible for the functioning and monitoring of the correction homes. Few listed are:

1. The Home Ministry
2. The Department of Prison Management
3. The Law Commission
4. Nepal Police
5. United Nations Commission for Human Rights

Similarly, some international and national organizations have also been identified working rigorously towards improving the condition of the correction homes. Listed are:

1. Prisoner's Assistance Nepal
2. Centre for Victims of Torture
3. International Centre for Prison Studies
4. Centre for Legal Research and Resource Development
5. Prison Fellowship International
6. Penal Reform International
7. Advocacy Forum

The other non-participants that are likely to be affected by this research are:

1. Inmates
2. Civil society

The most effective tool that can be used for advocating and disseminating this research paper is through audio-visual and verbal presentations of the findings. The verbal and aural expression of the findings has the capacity to leave a deeper impression on the desired audience. Since the agencies listed in the first category are state authorities responsible for the monitoring and functioning of correction homes, a formal paper presentation and discussion would be appropriate. In order to communicate the findings and recommendations of the paper to the second category, policy briefings, presentations and one-to-one discussions would be more suitable. Since these organizations have a vested interest in improving the conditions of correction homes, they would likely be willing to give more time to listen and read the arguments presented.

Finally for the third category, an article on the findings of the research can be published and discussion on the findings with the inmates, civil society and personal briefings can be used as an effective communicative tool. Moreover, in this technologically driven era, use of networking sites like creating page for the support of the inmates on a social media network like Facebook, online portals for publishing policy brief or articles in this particular issue can make the findings of the paper accessible to the wider audience around the world.

## 2. Introduction

### The Framework

Equality and liberty can't be justified until it is fully exercised to the level where each individual can reap the benefits. The cognitive interpretation of the meaning of equality and liberty differs from one individual to the other. This self-constructed understanding is however confined by a broader spectrum whereby each nation has its own articulation of equality and liberty to bind its citizens under one directive.

The Human Rights Declaration of 1948, drawn by the UN following the devastation of the Second World War, became an instrument that advocated and imprinted the guidelines for preserving peace and human dignity.<sup>4</sup> This became a mandatory guideline to be followed by each country to preserve the rights and freedom of its citizens, with the flexibility of modifying some articles in compliance with the country's code of law.

This highlights the paradigm shift that occurred in the early 1950's regarding the treatment of an individual irrespective of any social construction. Further theorists, scholars, professionals, law makers, diplomats and analysts viewed this declaration as an accepted human rights perspective that could guide and govern any model, laws or theories that would influence the life of an individual.

The United Nations Human Rights (UNHR), which is constantly evolving with time, provides universally accepted claims and components that drive an individual to a state of well being by protecting and preserving his or her dignity. These standard functions reject the status quo and promote people's welfare by promoting equity and justice, encouraging participation in decision making, abolishing discrimination and exclusion and exercising basic civil and political rights.

The UNHR's definition of human rights comprehensively explains that human rights are rights inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, religion, language, or any other status. This principle of the universality of human rights is based on the notion that human rights are inalienable and as all humans are individuals, it applies to everyone. The principle of non-discrimination in accordance with the principle of equality of the Universal Declaration of Human Rights states, "*All human beings are born free and equal in dignity and rights.*"<sup>5</sup>

At a universal level, it abides all citizens under a global understanding by promulgating common and parity laws recognizing each individual's existence. This perspective of human rights includes even those proven guilty by the court of law, but exceptions in exercising the degree of freedom i.e., the right to liberty, maybe restrained. Other than that, the inmates are entitled to be treated the same as innocents

The United Nations Office on Drugs and Crime (UNODC) in 2012 conducted a study to view the influence and relevance of the human rights perspective on UNODC. This study defines human rights as below:

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<sup>4</sup> Coyle 2009

<sup>5</sup> OHCHR 1948



*“A set of rights and duties necessary for the protection of human dignity, inherent to all human benefits, irrespective of nationality, place of residence, sex, national or ethnics’ origin, color, religion, language, or any other status. Everyone is equally entitled to human rights without discrimination. As such, human rights are universal, interrelated, interdependent and individual and constitute the basis of the concepts of peace, security and development.”<sup>6</sup>*

The UNODC works for criminals prosecuted under the Drugs and Crime Act to protect their rights in accordance with some of the human rights standards to ensure that those detained or arrested are not deprived of the universal human rights.

### **Institutional standard definition of fundamental human rights**

**International Covenant on Civil and Political Rights, Article 10:**

*All persons deprived of their liberty shall be treated with humanity and with respect of the inherent dignity of the human person.*

**The African Charter on Human and Peoples’ Rights, Article 5:**

*Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.*

**American Convention on Human Rights, Article 5 (2):**

*All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*

Source: Coyle, 2009

The practice of human rights for accessing freedom for an individual has further been supported in Amartya Sen’s writing, where he advocates for five distinct types of freedom from an instrumental perspective: Political freedom, Economical facilities, Social opportunities, Transparency guarantees and Protective securities that contribute to the general capability of a person to live more freely.<sup>7</sup> Sen’s writing is greatly influenced by Rawl’s principles of justice for equal liberty which defines that, “Each person has an equal right to the most extensive liberties compatible with similar liberties for all.”<sup>8</sup> This ideology of Rawl’s also articulates that every individual is eligible to access the basic rights and liberties without any discrimination.

The safeguarding of an individual's human rights does not only concern the formulating of theories and laws but also addresses their implications and effectiveness. The principles of these laws and theories must be vividly applied to an individual of any social construction to extract the essence of the Universal Human Rights Declaration. The question that ultimately puts this declaration and theories on trial is whether these can be applied to all citizens in practice and not just restricted to rhetoric.

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<sup>6</sup> UNDOC 2012

<sup>7</sup> Sen 2000

<sup>8</sup> Rawls cited in Ladenson 1975, pp 49-54

## Human Rights from the Inmates' Perspective

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Aforementioned declarations at no point state that inmates are an exception to these laws. The use of notions “all persons, every individual, all citizens” emphasizes the fact that these declarations are universally applicable to each and every individual living in a state. This concludes that every individual living in a country can access these rights and liberties and it is the responsibility of the state to ensure that they can do so.

The interim constitution of Nepal, 2007 discusses the fundamentals of Human Rights from *Article 12-32* stating that,

*“Every Person shall have the right to live with a dignity, and no law shall be made which provides for the death penalty” – Article 12, Right to Freedom*

*“No individual is subject to torture or any other cruel, inhuman or disregarding treatment or punishment” – Article 12, Right to Freedom*

*“All citizens shall be equal before the law. No person shall be denied the equal protection of the laws” – Article 13, Right to Equality*

Source: Nepal Law Commission 2007

However, the applications of the above constitutional laws are found severely lacking when it comes to inmates. Generally speaking those incarcerated by the Nepalese penal system face years of confinement displaying the weak criminal justice system.<sup>9</sup> The Department of Prison Management reported that as of August, 2013, 15,009 inmates have been incarcerated of which 12,003 are men, 1020 women, 73 dependent children of imprisoned parents and 913 foreign nationals. This number represents only 0.05% of the total population of Nepal.

Therefore the underpinning question is, has the government of Nepal successfully adhered to the International Human Rights Standard or the Standard Minimum Rules for the treatment of Prisoners set by the UN whilst dealing with this tiny section of the population?

The fact sheet based on a study of 7 prisons of Nepal by CVICT reflected that 74% of the detainees in those prisons were found to have been tortured during interrogation and most of them were found living in inhumane conditions.<sup>10</sup> Similarly, a study on the condition of detainees and juveniles conducted by the Nepal Advocacy Forum published by the Asian Human Rights Commission 2011, shows an increasing trend of torture and ill treatment of detainees including juveniles.

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<sup>9</sup> CellRD 1999

<sup>10</sup> Asian Human Rights Commission 2011

**Table 1: Percentage change in ill treatment of detainees including juveniles**

Year	Percentage change
2009	20.1
2010	24.8
2011	27.9

Source: Asian Human Rights Commission 2011

This clearly is a violation of Article 5 of the *Universal Declaration of Human Rights 1948 and Article 5 of Interim Constitution, 2007* which says that “No one shall be subjected to torture or to cruel, inhuman or disregarding treatment or punishment”

Further evidence to support this argument is reflected in the center monitoring report by the Office of the Attorney General (OAG) indicating that 15% of the detainees reported receiving treatment that amounted to torture such as beating a detainee’s soles with the guard’s hands, fists or a bamboo stick, or being kicked with police boots. The report also presented cases of verbal abuse and 10% detainees reported physical abuse for not following orders.<sup>11</sup>

The Article 10(1) of the ICCPR states that, ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’ Following this, the Human Rights Committee clarifies the meaning of ‘humanity and respect in article 10.’ In their general comment No.21 they state that detainees must not be ‘subjected to any hardship or constraint other than resulting from the deprivation of their liberty...persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.’<sup>12</sup>

Despite the implementation of human rights and acts that exist in favor of preserving an individual’s dignity, in Nepal the picture appears fallacious. The claims and evidence portraying the treatment of inmates are sufficient to create urgency in addressing the serious need for prison reform in Nepal. Some actions of the officials reflect the failure of the implementation of the human rights standards and moreover show the lack of monitoring and regulation of reformatory laws institutionalized for demarking the humanitarian treatment of the inmates.

In January, the Nepal Police arrested a 15 year old minor from Syangja district for allegedly stealing a bicycle. The boy reported that the police beat him with one inch thick plastic pipe on the soles of both feet and kicked him twice on the left thigh. He was held in detention with adult detainees and the Nepal Police repeatedly ordered him to carry water and clean the police premises.<sup>13</sup>

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<sup>11</sup> U.S Department of State 2012

<sup>12</sup> OHCHR 2008

<sup>13</sup> U.S Department of State 2012

## Pressing need for prison reforms

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The comprehensive study of Nepalese prisons at present has provided enough facts and evidence to support how and why prisons in Nepal are failing and why they are in need of urgent reforms. For example, overcrowding is a major problem which exists in prisons in Nepal. Walmsley indicates that overcrowding in prisons has three major effects. Firstly, overcrowding leads not only to restricted living space but also puts restriction on the usage of all the available resources within the premises. Secondly, self-improvement, capacity building and rehabilitative programs, such as academic, employment and vocational training, are always curtailed. Thirdly, the writer claims that overcrowding leads to scarcity of work opportunities, which might lead to idleness leading to aggression and mental disturbances.<sup>14</sup>

The trickle-down effect of overcrowding has triggered several problems which not only remain closed within the four walls of correction homes but also affect others living outside. Overcrowding has an adverse effect on administration too. The staff is unable to provide basic facilities due to inadequate supplies. The principles of span of control and chain of command get violated resulting in quality degradation and inefficient management. The staff has to work overtime and under immense pressure which affects them mentally and physically.

Below listed are the problems that are prevalent in the prisons of Nepal and demand serious attention based on the evidence based arguments.

### ***Infrastructure & Accommodation***

The prison system of Nepal continues to deteriorate by incarcerating inmates beyond its capacity in the prisons built during the Rana regime. Since these prisons have not been maintained and modernized, over time, the state of these prisons have become deplorable.<sup>15</sup> The prisoners living in Nepal face disgrace as they are not provided with enough allowances, cooking utensils, adequate supply of food, medical facilities, sound and peaceful environment, recreational activities and are restricted from communicating with relatives and obtaining legal counsel.<sup>16</sup>

The Prison Rules 2020, amended in 2005, provides for medical facilities for the detainees under articles 38, 39 and 40. Also, the rules make provisions for education (article 31), libraries (article 33), training in small industries and other facilities as well.<sup>17</sup> The Nepal Prisons Act 1962, though doesn't provide any specification on the infrastructure of a correction home; it mentions how inmates should be positioned inside the boundaries.

When prisons around the world are going through continuous transformation, it is ironic that Nepal still follows an act promulgated a decade ago and still fails to implement the reform policies mentioned in it. Upadhyaya<sup>18</sup> states that of the 75 districts only 73 districts have prisons. In case of detainees, only one remand home is located in Kathmandu and the detainees are often kept in prison with convicts. There are only two child correction centers for juveniles operating

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<sup>14</sup> Walmsley 2000

<sup>15</sup> CeLRD 1999

<sup>16</sup> CeLRD 2006

<sup>17</sup> UNICEF 2006

<sup>18</sup> UNAFEI 2010

in Nepal (Bhaktapur and Pokhara). There isn't a separate prison for males and females and they are housed in separate blocks within one prison.

This shows that Nepal seriously lacks effective implementation and monitoring of the Standard Minimum Rules for the Treatment of Prisoners by the UN and the Nepal Prison Act, 1964. This International standard for the treatment of prisoners under section (8), **Separation of categories** defines that,

*The different categories of prisoners shall be kept in separate institutions or part of institutions taking into account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.*

Nepal's Prison Act, 1962 in Article (46), section (6), **Arrangements for Keeping Detainees or prisoners** advocates the same. It is evident that the prison management system in Nepal is in a crisis. This malfunction has led to a serious outbreak of overcrowded prisons. The prisons in 73 districts including Kathmandu have been accommodating 14,000 prisoners while the total capacity of all the prisons combined, is only 7,000.<sup>19</sup>

There are only three prisons positioned in Kathmandu: *the Central Prison, the Dillibazar Prison and Nakkhu Prison* and the number of inmates in these outnumber the prison capacity. The *Central Prison* which has a capacity for 1,200 inmates currently houses around 2,300, while *Dillibazar* and *Nakkhu* prisons constructed for accommodating 180 and 150 inmates respectively, houses 521 and more than 600 inmates.<sup>20</sup> This problem is apparent not only in Kathmandu valley but also outside the valley with Parsa district prison holding 1,021 prisoners when it has the capacity to house only 700.<sup>21</sup>

Katie Holzman has further explained in her writing about the condition of the prisons in Nepal. "Nepal's prisons are in pathetic conditions. Due to inadequate bedding facilities, the inmates are forced to sleep on the floor."<sup>22</sup> Following an interview with an ex-prisoner she suggested that prison management needs to release prisoners who have completed 50% of their sentences and someone who is over 65-years-old and has served 25% of his or her sentence.

The problem of overcrowding seems overwhelming in the prisons of Nepal. The adverse effects of this are not limited to within the prison walls, but have an impact in the community at large. This is due to the government's inability to address the flaws in prison policy. The problem of overcrowding in prison is possibly a threat to the community in regards to the transmission of communicable diseases, in particular HIV as reported by Dolan & Larney in their findings about the HIV problem in prisons of Nepal<sup>23</sup>.

The extreme overcrowding in Nepalese prisons violate the basic human rights principles by failing to meet the UN minimum standard for the treatment of prisoners under section (9):

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<sup>19</sup> Pokharel 2012

<sup>20</sup> Department of prison management 2013

<sup>21</sup> Bureau of Democracy 2013

<sup>22</sup> Holzman 2013

<sup>23</sup> Dolan and Larney 2009

## **Accommodation,**

*Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reason, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.*

Analyzing these findings it is evident that overcrowding in prison is a serious problem and it requires an immediate solution. It is necessary to curtail certain freedoms of criminals to prevent them from committing crime in the future but denying them the basic right of privacy and the right to live a healthy life is not just counterproductive but inhumane.

## ***Health & Education***

Recent report shows that the likelihood of the spreading of HIV infections among prisoners is significantly higher than that in the general population. This is because prisoners are often involved in getting tattoos or in drug offences involving needles. The sharing of needles in an unhygienic way leads to the spreading of HIV/AIDS<sup>24</sup>. A review of HIV in prisons in Nepal reflected in the findings that prisoners in Nepal were not exposed to HIV education and some were reported to be practicing unsafe sex between the inmates transmitting HIV at large<sup>25</sup>. Hence, prison population is likely to get affected along with an increasing threat of spreading HIV after their release.

The health issues are not just related to the transmitting of HIV but also to other communicable diseases. The Kaski Prison has just five toilets, three for male and two for female prisoners which is used by 360 male and 47 female prisoners. There is a shortage of clean drinking water in every prison which forces them to drink impure water, making them vulnerable to endemic diseases like cholera, dysentery and other water borne diseases<sup>26</sup>.

The other major problem is psychological distress and some prisoners have even expressed mental trauma due to the miserable and depressing conditions in prisons. CVICT, during its mobile health clinic campaign in seven prisons of Nepal, encountered 83% of the prisoners suffering from psychological as well as physical disabilities<sup>27</sup>. The report further highlights that prisoners are routinely tortured and treated inhumanely. Despite the Supreme Court's strict order to government authorities to hospitalize mentally disabled detainees and ensure proper treatment, no corrective action has taken place as of 26 November 2008<sup>28</sup> violating the principle of right to health for the prisoners.

Such ill-treatment and negligence might hamper their rational cognitive behavior. Lack of sound sleep due to inadequate space and bedding facilities, lack of logistics, medical facilities, unhealthy diet and lack of exercise, harsh treatment and unfriendly environment can lead to psychological and physiological dysfunctions.

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<sup>24</sup> Jurgens, Nowak and Day 2011

<sup>25</sup> *ibid.*

<sup>26</sup> Pokharel 2012

<sup>27</sup> Inmate Service Centre 2013

<sup>28</sup> OHCHR 2008

The basic principle of UN for prisoners' further states under section 6 that "*all prisoners have the right to take part in cultural activities and education aimed at the full development of the human personality.*" However, according to Poudel, of the 73 prisons, reportedly only the Central Jail facilitates education until SLC level but no further provision is provided to the inmates to continue further studies.<sup>29</sup> Poudel further emphasizes the importance of education in reducing criminal activities. His findings reflect that most inmates who study inside prisons give up criminal activities and are not convicted again after being released. This demands for an immediate education plan to be put forth to educate inmates and give them the right to knowledge and information which can help them become competent and independent.

### ***Freedom of Expression and Participation***

In an interview conducted with Raju Acharya (ex-prisoner), he said that the inmates do not have the right to express or opine. None of the inmates are allowed to express their opinions and ideas regarding any issues by publishing articles or newsletters. Any inmate found to have given a comment on the current condition and functioning of the prison management, gets transferred to unknown and remote correction homes. His experience reveals that allowing inmates to publish newspaper articles and journals could take the voice of inmates to the public and institutions which would help the correction centers of Nepal to reform.<sup>30</sup>

Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR) states: *Everyone shall have the right to freedom of expressions; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontier, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Similarly, Article 19 (2) defines "Everyone" as citizens, prisoners, young children and non-citizens. Article 12 (3) of the 2007 Interim Constitution of Nepal states: Every citizen shall have the freedom of opinion and expression.

Exercising political freedom means that every individual has the right to cast vote and elect their representatives. The idea is to make the leaders feel more responsible towards the citizens who have elected them. Hananuntasuk<sup>31</sup> argues that inmates should have the right to cast their vote simply because they are citizens of Nepal and allowing them this provision would make them feel more responsible. This opportunity would allow them to choose leaders who they feel would help in improving their living conditions and become their voice. Furthermore, this serves to remind politicians of the existence of this group of people as an integral part of the society.

### ***Employment and Independence***

The transition of traditional prisons to modern in Nepal was not just limited to the changing framework of a defined set of standards and rules but also to their identity. Prisons started being referred to as "correction homes" and prisoners as "inmates". This paradigm shift resulted in thinking of inmates as labor:

*'All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer'-Rule 7, section (1) following section (3) and (4)*

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<sup>29</sup> Poudel 2013

<sup>30</sup> Raju Sharma, interview by Hindu Sanskriti Karki, Department of prison management, August 20, 2013

<sup>31</sup> Somsari 2008

*which requires every prisoner to be provided with sufficient amount of work to keep them actively employed and increase their ability to earn an honest living after release<sup>32</sup>.*'

This new ideology of introducing employment in prisons was amiably accepted by the Government of Nepal as evident in Prison Act, 1962, section 10, provided that; *'If Government of Nepal considers it necessary for the health, economic progress or improvement of the detainees and prisoners, arrangement may be made to engage any detainee or prisoner in a work through the provision of Section 10 A, power to send to Community service or 10 B. power to hold in Open Prison.'*

However when it comes to practical changes the prisons of Nepal lag behind by failing to engage the inmates in work that can help them be socially acceptable, competent and independent. With minimal training and programs to enhance the skills and capacity of the inmates, the prisons of Nepal so far, haven't been able to inject or create professional competencies similar to an employment market. The assessment by CellRD organization on the condition of prisoners and prisons in Morang, Banke and Kathmandu showed that the prisons in Banke and Morang did not practice any economic activities to support the financial condition of the inmates. However corrections homes in Kathmandu have introduced some cottage industry based trainings and teaching programs to make the inmates independent.<sup>33</sup>

One can still question whether a handful of cottage industry based trainings to a few inmates can be sufficient for all, to fight against poverty, sustain families and avoid recidivism? These problems, if ignored, can trigger the rise of re-offending rates increasing the risk among the prisoners, civil society, and the state as a whole. Making the inmates and the prison self sustainable, contributes to the development of stronger financial attributes, opening opportunities for the inmates to tackle poor economic condition; one of the important factors enhancing crime. Hence, this calls for an urgent need to address the employment issue as early as possible to stabilize and facilitate the smooth functioning of the prison system and access to universal human rights by the prisoners, as defined by the Universal Declaration of Human Rights.

The analysis so far depicts that the Prison Act of 1962, requires a serious transformation because of its punitive focus and lack of suitable reformatory provisions. The practice in the correction homes do not comply either with the Minimum Standard set forth by the UN for the treatment of the prisoners or to the basic and fundamental human rights set out by the Interim Constitution of Nepal, 2007. The chaotic situation of the prisons in terms of accommodation, infrastructure, employment, education, health and participation can be considered as human torture and indicators of inequality. The voices of the inmates require serious attention which can be addressed by amending either the reformatory policies adopted by the Nepal Prisons Act, 1962 or by introducing a new policy which would address all the issues mentioned above relating to prisoners.

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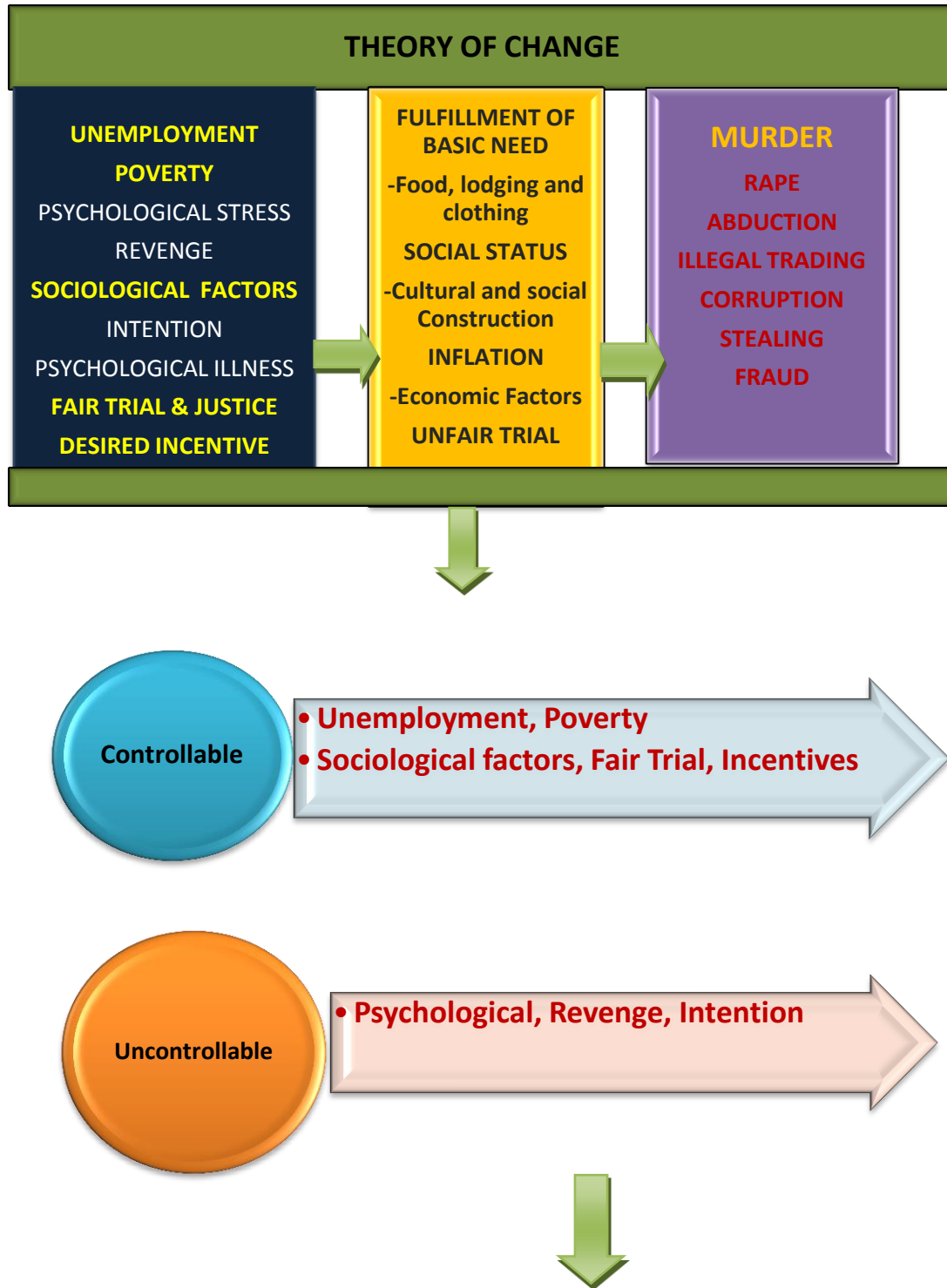
<sup>32</sup> Nepal Law commission 1962

<sup>33</sup> CellRRD 2006

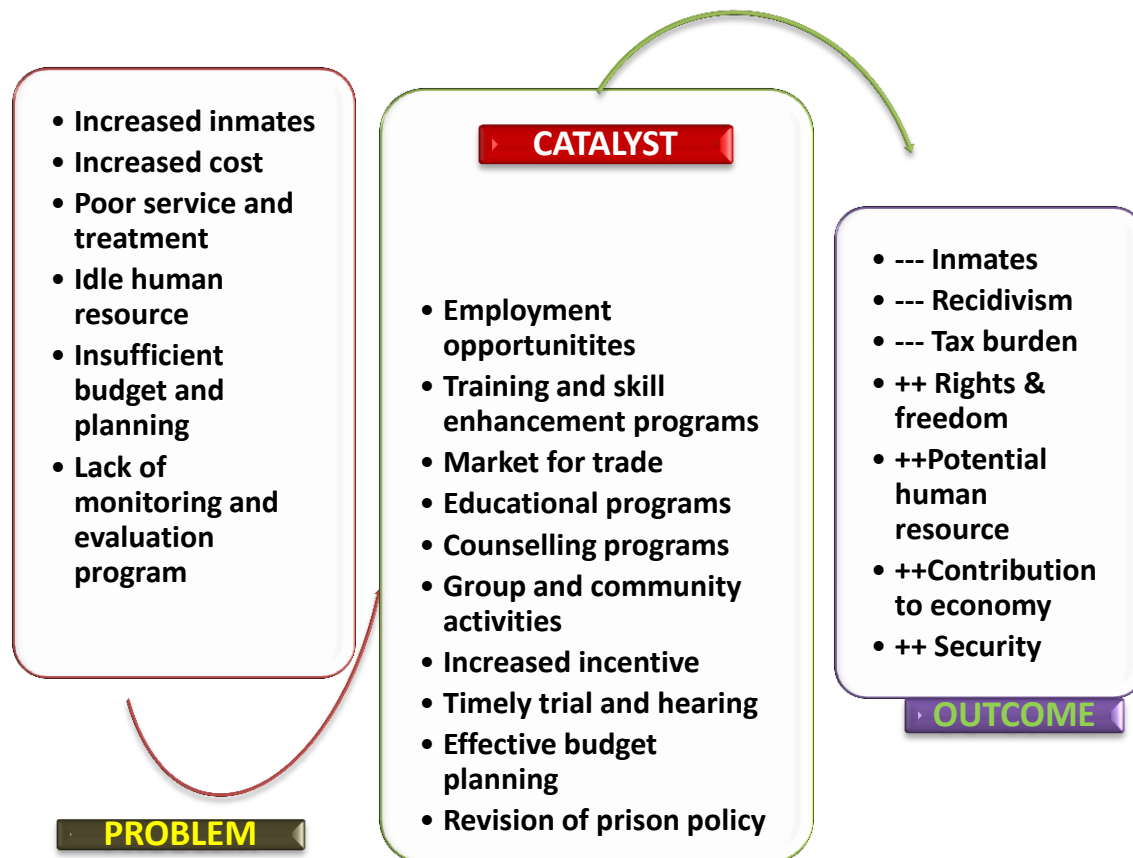


## Factors inducing current scenario

The diagrammatic presentation below, highlights various factors inducing criminal activities in Nepal along with the factors that can prevent recidivism.



## LEARNING THEORY OF CHANGE FOR PRISONS



The study on the current prison system of Nepal points to several factors that hinder the improvement of the prison system and its management. These factors are not only purposive but also socially, economically and culturally influenced. Is it only an individual's choice to commit crime or is it circumstantial and are these circumstances created by the individual himself/herself or by the society or the community we live in? It would be truly unjust to blame an individual based only on the ground of ethics of what is right and wrong. The responsibility lies with the government and the prison officials to make a rigid dichotomy between these factors and take preventative and corrective measures.

The formulation and amendment of policies should not just focus on corrective measures but also on reducing external factors that trigger an individual to commit an act of crime. For example, the practice of killing women in the name of dowry and witchcraft in Nepal goes to show how socio-culture factors drive an individual or a community to commit murder. Similarly, the failure of government to provide subsidies on basic goods or create employment opportunities for the impoverished depicts some economical factors that provoke criminal activities. If these catalysts of change had not been ignored would the number of incarcerated or reoffending individuals remain the same or would it be lower?

### 3. Alternative Reformatory Policies for Amendment

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The current Prison Act and Regulation is still highly influenced by the amended Prison Act of 1962, which is archaic because of its punitive focus and lack of reformatory provisions. A modern penal reform began only in the 1960s with the state introducing penal institutions to regulate crime and punishment. The failure of these institutions to effectively integrate and make the policy implementation process more participative and transparent forced the government to draft a new penal code adhering to international standards in 1970s however it was never introduced.<sup>34</sup>

The 1990s movement introduced a new standard to the criminal justice system of Nepal by introducing new rights for the prisoners and signing all the international instruments of penal reform. However, even this failed to amend the *open prison policy* introduced in the Prison Act 1962, for prison reform. Since then, many advocacy programs and reports have been presented by concerned authorities and agencies for the implementation of this policy, yet the outcome is insignificant.

The establishment of the Department of Prison Management in 2050 BS functioning under the purview of the Ministry of Home Affairs, to manage prisons and inmates proved to be a stepping stone to regulating all prisons under one institution. Thus, even though the government of Nepal took rectification measures to improve the status quo, not much changed on the ground. In 2057 and 2064 BS the government formed two committees to study and observe the conditions of the prisons in Nepal under the leadership of Hom Nath Dahal and Devi Khadka respectively. The reports submitted by both committees with descriptive problem and solutions have still not been put into practice yet. The reasons are still unknown.

It appears that the problem lies within the prison policy formulation process that ignores the three most important agendas of a democratic policy making process: representation, implementation and accountability.<sup>35</sup> To overcome such policy gaps of the current penal system, it is important to create a demand to press forward with the implementation of important policies for prison reform.

The fact sheet showing an increasing trend in the number of inmates shows the cause for urgent prison reforms. The International Centre for Prison Studies' report on the World Prison brief shows that the number of inmates has increased compared to previous years.<sup>36</sup> It is therefore time for the government to show serious concern towards this matter, if it desires to serve the safety and security of its citizens, curtail its expenses and make inmates more responsible and productive.

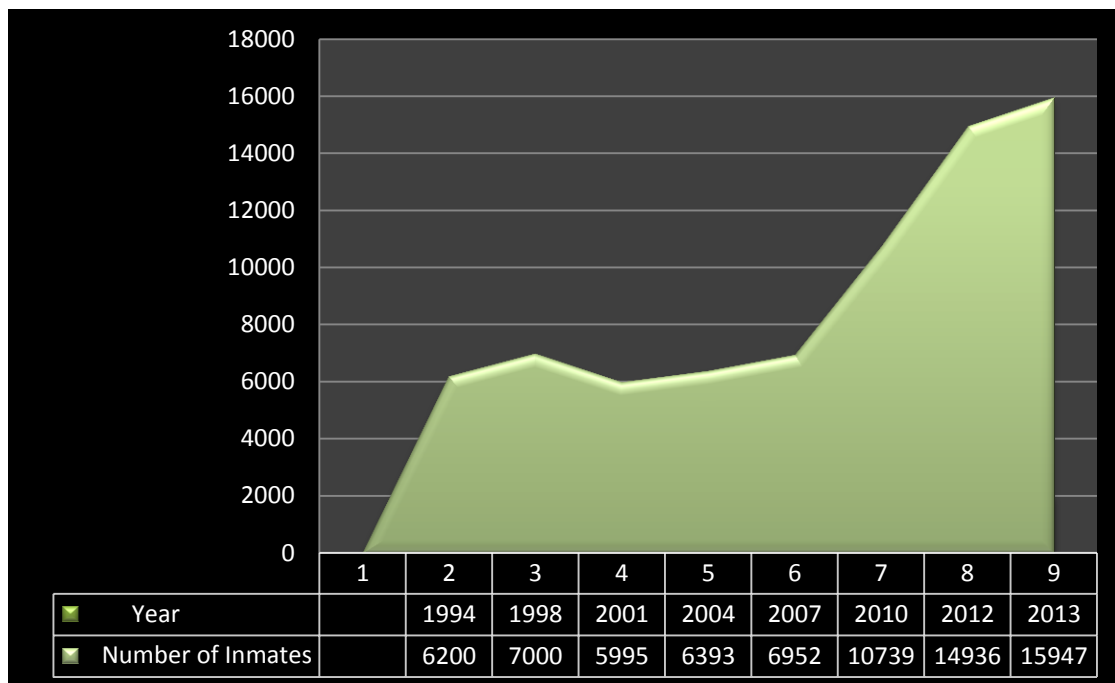
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<sup>34</sup> CVICT 2001

<sup>35</sup> Niti Foundation 2012

<sup>36</sup> ICPS, n.d.

**Figure: Number of Inmates in following years**



Source : ICPS, n.d.

The above graph presents the number of inmates in the given year. This representation shows an upward trend in the number of inmates. Beginning from 6,200 in 1994 the number of inmates pushed up to 7,000 in 1998. However in a short span of time the number of inmates reduced to 5,995 with government’s introduction of new reforms in prison system in 2001. There are slight increases until 2007 however, the sharp increase in 2010 from 6,952 to 10,739 is alarming and should be a concern for the state. The number has been slowly rising at an increasing rate than before, and today the number accounts to 15,947.

If such a trend continues, the rising number of inmates followed by its trickledown effects on prisons and on society might result into a catastrophe, if timely preventive actions are not taken. Therefore it is the responsibility of the government to understand the importance of rectifying the current policy and institutionalize those policies which can contribute to prison reform in Nepal. Considering the current scenario, the Government of Nepal can be presented with three rational and feasible alternative reformatory policies to improve the current practice.

- (1) Reforming the existing prison policy
- (2) Implementation of Open prison policy (NORDIC PRISON MODEL)
- (3) Introduction of private public prison policy

### **Alternative 1: Reforming the current penal system**

The current penal system can be revised to distribute equal justice to all the inmates incarcerated inside correction homes. The correction homes can be reformed by adhering to the guidelines as presented by UNDOC; by building new infrastructure to minimize the problem of overcrowding, introduction of psycho-social counseling, regular routine checkup facilities, changing

penitentiary measures from punishment and isolation, availability of educational and recreational facilities for physical and mental well-being, introduction and implementation of non-custodial sanctions and revising the sentencing policies by the criminal justice institutions responsible to do so.<sup>37</sup>

Had the existing prison policy been effective, the current condition of Nepal's prisons and its inmates would not have been so worrying. The punitive policy requires a serious reform. It should emphasize on upgrading the present infrastructure at prisons across the country and guarantee prisoners their basic human rights like sanitation, room space, quality food and regular health checkups.

The report on Prisons, Infrastructure and Management Reform prepared under the leadership of Devi Khadka in 2068 BS, states that many prison buildings have become old and fragile. The walls of the prisons have become weak and are likely to cause accidents. Some of the buildings have been damaged during the period of insurgency and many are overcrowded. Hence the government needs to invest more on building infrastructure to overcome the problem of overcrowding and its multiplying effects.<sup>38</sup>

The right to health and the right to education are the fundamental rights of the inmates. The current penal policy fails to safeguard these rights for the inmates. A collaborative research by The Graduate Center of the City University of New York and Women in Prison at the Bedford Hills Correctional Facilities in September 2001, shows that women who attended college while in prison were significantly less likely to be re-incarcerated than those who did not attend college while in prison.<sup>39</sup> Education, especially catered for juveniles, would be more effective to prevent them from re-offending and would also allow them to be intellectually competent and develop cognitive thinking behavior.

While the government pushes forward to meet one of the Millennium Development Goals – ‘Education for All’ it should not ignore the inmates and promote primary, secondary and higher education in prison. The adult prison population should be introduced to health and sex education to avoid the transmission of HIV and other diseases that are increasingly rampant. In collaboration with the Ministry of Education, the Government can introduce policies that require individuals wanting to qualify as teachers to teach in prisons for at least a year. Similarly, the Ministry of Health can make arrangements for FCHVs (Female Community Health Volunteers) or Health Assistants to provide training in the Prisons. It can also employ doctors working for the government to conduct a monthly routine checkup of the prisoners free of cost. This would ensure safety of the inmates and help in identifying diseases early and prevent them from spreading.

From a rights perspective an inmate is entitled to basic needs such as food, shelter and clothes; however, with the increasing inflation rate the Government hasn't been able to increase the daily allowance of Rs.45 and 700gm of rice/ day since 2007.<sup>40</sup> As the government is unable to allocate sufficient budget for the prison population, it can employ the inmates and engage them in employment helping them to become economically independent and less reliant on the state. The introduction of skill enhancement programs and training can make the idle prison population

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<sup>37</sup> UNDOC, 2011

<sup>38</sup> Government of Nepal 2011

<sup>39</sup> The New York State Department of Correctional Services Year

<sup>40</sup> Khadka et al., 2011

productive whereby making them feel more responsible. If the government is unable to implement the open prison policy it can create employment opportunities within the prison and make prisons self-sustaining.

The inmates should also have the right to vote and choose their own leaders as they too are directly affected by government, its rules and policies. A separate voting booth should be placed in the prison under the supervision of the police and security so that the inmates can also take part in the voting process. The right to expression and freedom is duly suppressed in prisons. The inmates should be allowed to write articles for journals or newspapers and should be allowed to interact with the media so they can share their views, opinions and stories.

In the present context, overcrowding in prisons appears to be a serious concern so reformatory policies to tackle this problem should be introduced as soon as possible. There are some existing policies that just need to be implemented by the government. For instance, the policy which states that inmates with good behavior and character are eligible for 50% parole<sup>41</sup> or one that states that inmates who have reached age 70 can apply for 75% parole<sup>42</sup> has to be implemented.

The prison's primary goal should be to make an inmate capable of being socially reintegrated and avoid recidivism. The existing policy is not conducive to this goal as it holds no provisions for providing counseling to inmates, encouraging participation in local community activities or support services for prisoners after their release to help them resettle in society.<sup>43</sup> Counseling programs are very supportive in shaping the psychological and cognitive thinking and behavior of an inmate. Such programs can prove to provide relief from stress for inmates who are mentally disturbed and are under pressure or are in a state of duress. These programs can help the inmates relax, think and act rationally. Support services for inmates after their release can discourage inmates from re-offending. Such programs can assist inmates to resettle and find suitable jobs. As unemployment acts as a negative catalyst to criminal activities, it can be minimized if inmates are made competent and provided with work opportunities after their release.

It is evident that reforming current policy requires a huge investment. The government of Nepal at present doesn't have sufficient funds to allocate for the development of the prison system. However, failing to do so in the past, shows the ignorance and the lack of political will that strongly governs the penal system. The rising prison population and the problems associated with it can be minimized if corrective actions are taken on time. But, if ignored, the number of inmates in prisons can double in the following year making it costly for the government and the tax payer. The situation of American prisons explains how overcrowding of the prisons leads to early release of the offenders when they are not ready to reenter the society, becoming a potential threat to the communities.<sup>44</sup>

## **Alternative 2: Implementing the open prison policy (NORDIC PRISON MODEL)**

The Nepal Prison Act 1962 has a provision for open prisons but it has not come into practice yet. If this provision gets implemented it would be an effective counter-measure to existing problems. The provision states that if a prisoner is sentenced to more than three years imprisonment and

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<sup>41</sup> Nepal Prison act 2019 (1962)

<sup>42</sup> Nepal prison act 2019 (1962)

<sup>43</sup> CVICT 2001

<sup>44</sup> American Legislative Exchange Council 2014

serves one third of his/her sentence, then one is eligible to be sent to an open jail. Also those who are sentenced for less than three years can be sent to community service. However, heinous crimes like human or wildlife trafficking, narcotic drugs, espionage, rapes, murders are an exception.<sup>45</sup>

*Article 2 of the Prison Act defines an open prison as certain area to accommodate convicted prisoners, from where they can go outside and work. Article 10 of the Prison Act gives a rationale for sending prison to open prison. It clarifies that Government of Nepal have authority to send the detainees and convicted prisoners to other work if it feels it is necessary for health and financial betterment of the prisoners.*<sup>46</sup>

The government in its budget speech for the fiscal year 2011/12 had addressed the open jail policy and the relocation of worn-out prison houses in the capital city. The government had allocated Rs. 7.1 billion, an increase from Rs. 5.9 billion in the last fiscal year for Public order and Security. The concept of open prison is in a gradual process of implementation but persisting political upheaval and the current economic status<sup>47</sup> of the country has been a hindrance in the quick implementation of the proposed plan.

From an economic perspective, open prison serves to be the most effective and efficient measure in a country like Nepal where the government is unable to allocate sufficient budget and resources for building infrastructure and providing necessary supplies. At present, the government of Nepal has allocated Rs.5.6 billion for inmates (including food and clothes) and Rs. 2.4 billion for all the employees and staff working in various prison departments and in prisons. Poudel claims that despite government's efforts, the budget is insufficient to meet the demands of the prisoners with the rising inflation rate and the country's economic status.<sup>48</sup>

Similarly from the tax payers' perspective it is justifiable to question whether the taxes that go towards sustaining and maintaining the penal system are delivering the desired outcomes. With the Nepal taxation policy ranging from 10% to 25% depending on the level of income and with 25.16% percentage of the total population standing below the poverty line fixed at Rs. 19,621<sup>49</sup>, is it justifiable to pay tax for the purpose of incarcerating inmates and keeping prisons functioning, when the situation appears to be so dire?

Keeping in consideration these facts, the prisons in Nepal should opt for open prisons where inmates enter the employment market, work and earn an income. This income can then be used to make the prisons self-sustaining and to fulfill the demands and requirements of the inmates. This helps in reducing the tax burden of the tax payers and improving the living standard of their families. In the context of Nepal, the important factors inducing criminal activities are poverty and unemployment and if implementation of open prison policy can address these issues then it's likely to have positive effects. With the functioning of the open prisons the inmates shall not be deprived of their employment rights and other rights associated to it.

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<sup>45</sup> Upadhaya, 1988

<sup>46</sup> Nepal Law Commission 1962

<sup>47</sup> Himalayan News Service, 2011

<sup>48</sup> Poudel 2013

<sup>49</sup> Sapkota, 2013

## Case Study on Bastoy Prison, NORWAY

*Defined as one of the most humanitarian prisons of the world, this prison is located in a green island of Bastoy. It holds 120 inmates charged for all categories of crime including (rape, murder, abduction, shooting, drug trafficking) with 70 staff (35 of whom are guards) and is the largest, low-security prison in Norway. The prison extensively adheres to the guidelines of the human rights and thus protects individual's right to privacy leaving the prison with no cells, bars, guns, truncheons or CCTV cameras.*

*The inmates live happily walking down the pine forest, watching TV, using internet, fishing, swimming, playing tennis, football and recuperating later on sun beds and in a sauna, a cinema room, a band rehearsal room and expansive library. The inmates have spacious rooms with proper lighting and required facilities. The prison is self-sustaining and the inmates work hard to build such a prison an alternative to home.*

*The inmates are carried in a ferry to the town to work and after the working hour finishes they are brought back respectively. The prison governor believes that it is the responsibility of the inmates to bear their own tax burden and expenses. The prisons functions here with the objective of reducing recidivism and expenses of the state, whereby allowing an individual to choose work of his/her interest and earn freely. The job ranges from farming animals, crops, ferry working, fishing, DIY, laundry, mechanics and rubbish collection.*

*The prisoners have easy access to phone booths and to other tools like knives, axe and even chainsaws. It is renewed as world's first self-sustaining 'Ecological prison' where inmates grow organic vegetables, and maintain greenery. It is one of the cheapest prisons in the world as compared to closed prison.*

*There are set of cardinal rules that apply in this prison. Inmates should have spent 1/3 of their sentence in closed prison and violating rules such as: drinking alcohol, drug trafficking and fighting in this prison will be entitled to go back to closed prison. The prison is a combination of ecological, sociological, psychological and economical theories that makes an inmate prepared to reintegrate in the society and live a common life.*

Source: (Hernu 2011)



## Case Study on KERELA Open Prison, INDIA

*The Kerela open prison incarcerates 280 inmates charged for murder with no bars, fences, surveillances and no guards with guns or clubs. This open prison is located in a lush green, dense tropical forest with rubber jungle, edible plants and flowers and till date the prison records one escape and one repeat offender.*

*The convicts begin by spending some time of their sentence in closed prison and based on their behavior the inmates are transferred to open prison. Each inmate bears a responsibility for work either in rubber plantation, household chores or prison community. The inmates get to spend one month out of six with their family and participate in family's important occasions. This allows the family to share the burden with the community and also allows the inmates to become a part of the community.*

*The prison allows practicing any religious faith with an instilled mosque, church and temple within the prison premises, making it more like a village or a community. The inmates work in 200 acre of land introducing rubber plantation, rubber tapping, preparing rubber sheets and cultivating paddies and vegetables. The inmates work 4-6 hours a day and earn Rs.4/per day. The rubber plant they harvest and prepare for sale help them earn additional USD \$100,000 which is more than enough to cover the prison expenses and make prison self sustaining as well as the excess goes to Kerela government contributing to the economy as a whole.*

Source: (Merkel 1994)

On the contrary an ex-prisoner of Nepal shared his experiences, "In Nepal prisoners are treated like a herd of sheep and goat and no one cares that there are no proper beddings, water, medication, toilet, education or other facilities. We are treated like pariahs. We are not allowed to speak for our rights and the government turns a deaf ear to our concerns. People think we are just criminals and we deserve punishment. If only they could realize that we are humans and that we have emotions. Not everyone incarcerated is guilty, some are even innocent and some have realized their mistakes. Sometimes things are circumstantial and I believe everyone deserves a second chance and we are here to be corrected and if this prison fails to do so, then what is its use?"<sup>50</sup>

Nepal can implement the open prison policy to reform the conditions of prisons in Nepal. For many inmates, the introduction of work opportunities can be a gateway to live a new life with pride and dignity. This policy integrates the social, economical and psychological perspective to reform prisons in Nepal. Since the Government of Nepal lacks sufficient resources and budget to address the current problem, introduction of this policy with a one-time investment can help prisons to become self-sustaining and efficient by reducing the tax burden and the operating expenses of the prison.

The Bastoy prison sets an example of the true application of the Minimum Standard for The Treatment of The Prisoners set by the UN. The prison model in Norway also rejects death penalty and limits life imprisonment to only 21 years, like in Nepal but it functions more

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<sup>50</sup> Raju Sharma, interview by Hindu Sanskriti Karki, Department of prison management, August 20, 2013

smoothly. This model allows an inmate to exercise his/her rights and earn a choice of living with dignity. It truly believes that inmates are part of the society and it is the responsibility of the prison to make them acceptable in the society and reduce the expenses of the state and tax payers by avoiding recidivism. This prison holds one of the lowest reoffending rates accounting to 20% compared to all the prisons in Europe which has an average reoffending rate of 70%-75%.<sup>51</sup>

Furthermore, the successful implementation of the open prison policy in Kerela is another example of how the lives of inmates can be improved and how they can be socially reintegrated. This policy utilizes human resources to create benefits for not only the inmates, but for the nation as a whole. Such an economically viable policy that can help cut costs and stimulate the economy should be readily implemented in Nepal, where most of the issues can be attributed to lack of resources.

This policy naturally addresses the concerns of human rights by allowing an individual to become a part of a society and exercise their right to live with dignity without being treated inhumanely and unjustly. With the implementation of this policy; reformation of education, health, accommodation, and expression of opinion is likely to follow. Hence this policy serves the needs of both an inmate and the nation as the most efficient and viable policy.

According to the Sentences Enforcement Act in Finland, "Punishment is a mere loss of liberty. The enforcement of sentence must be organized so that the sentence is only loss of liberty. Punishment shall be enforced so that it does not unnecessarily impede but, if possible, promotes a prisoner's placement in a society. Harms caused by imprisonment must be prevented, if possible. The circumstances in a penal institution must be organized so that they correspond to those prevailing in the rest of society. Prisoners must be treated justly, respecting their human dignity."<sup>52</sup> Such a provision will allow prisoners to have closer contact with his or her family and work independently. It would also encourage the social mobilization process and make them feel more responsible. It is to be noted that a prison is not only for detention but is also a correction institution responsible to change certain cognitive and behavioral patterns. Thus advocating for open prisons would provide prisoners an opportunity to reintegrate and reform positively. The need of open prisons to promote social reintegration is one of the fundamental keys to prison reform. This policy is not something that has been introduced but has been in the Prison Act since long but has failed to take shape.

### **Alternative 3: Operating prisons under public private partnership**

The other alternative would be construction of new prisons under public private partnerships (PPP). This new approach of reforming prisons under Public Private Partnership began in the United States in the 80's and since then it has been spreading to other countries like the United Kingdom, Australia, France and Brazil.<sup>53</sup>

The underpinning reason for adopting the PPP prison reform policy is to cut down the operating expenses and management expenses depending on the level of privatization. Russian authorities are also seeking to implement the PPP prison reform policies by attracting private investors to improve the living standards of the inmates. Sources confirm that lack of finance and investment

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<sup>51</sup> Piers 2011

<sup>52</sup> Moran 2013

<sup>53</sup> Dufresne 2010

in prisons left Russia with only few newly built remand and prison centers.<sup>54</sup> It is because of this that the Russian government is looking to implement this policy with the objective of building new correctional homes with additional facilities to overcome the problem of overcrowding which led to a death of 4000 inmates in Russia in 2012.<sup>55</sup>

The international practice in the U.S. allows the prisons to be fully privatized. In Brazil and France the role of private companies are narrowed.<sup>56</sup> The practice and range of operation and management depends on the country's policy. The Californian government believes that soliciting and implementing PPPs would give policymakers an effective tool to reduce prison operating costs and deliver additional inmate beds to address the problem of severe overcrowding.<sup>57</sup> This policy study also reports that contracted privately run prisons were 28% lower in cost than state run facilities. It also highlights areas where Californian government reaps benefits from contracting prison construction and management to the private sector. The areas where the government is likely to cut down cost is in its direct cost of construction, operating expenses, expenses per inmate, cost of staff and security in prison.

### **Case Study on SOUTH BAY correctional facility, USA**

*In February 1997, South Bay Correctional Facility opened under a contract with the state of Florida and Wackenhut Corrections Corporation (now the GEO Group). The state required that any private correctional facility meet a cost-savings requirement of 7% as compared to the state's public counterparts. The results, however, were much more striking. South Bay was built around the same time as Okeechobee Prison, but was constructed at a significantly lower price. Okeechobee was completed for \$85.7 million, while South Bay cost \$69.9 million, a 24% savings in design and construction costs. The South Bay facility was nonetheless able to include 4.2% more square footage than Okeechobee. Although Okeechobee was designed to house a similar number of inmates, the state has never authorized the full use of that capacity. As a result, the construction costs at the public prison were 60% higher per inmate than at South Bay. Operating costs are also considerably lower at South Bay. In 1997, South Bay saved Florida 3.5% per inmate, while it was able to save 10.6% in 1998.*

*The use of a private contractor for the South Bay facility not only allowed Florida to save money; it also offered more flexibility in meeting performance goals. The private facility was able to become fully operational within six months (much more quickly than its public counterpart), has received more positive reviews from the Correctional Medical Authority than Okeechobee and has implemented an innovative method for management of high-security inmates. Three months after opening, the prison was operating at capacity, and offered programs to its inmates. These included academic and vocational training, and substance abuse treatment. Okeechobee, on the other hand, took 17 months to fully open, phasing inmates in slowly. It was unable to offer academic programs until three years after its opening.*

*The facility at South Bay garnered a substantially more favorable review by the CMA than did the Okeechobee prison. In one review, CMA's health reviewer found 9 level-one (high-risk) and*

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<sup>54</sup> Shuvalova 2013

<sup>55</sup> *ibid.*

<sup>56</sup> Cabral and Saussier 2012

<sup>57</sup> Gilroy et al., 2010

*19 level-two (low-risk) problems. South Bay, meanwhile, had only 3 level-one and 2 level-two issues. It is important to note that South Bay maintained these considerably lower numbers, despite having a significantly higher inmate population. Finally, South Bay has successfully implemented innovative security techniques by utilizing annual assessments to continually refine its inmate management. These techniques have allowed South Bay staff to offer educational and other programs even to the facility's most violent and closely watched inmates*

Source: Gilroy, et al. 2010

The private companies have the potential to build prisons of higher quality and in a timely manner because unlike the state, the private enterprises are not bound to any state procurement practices. The state can enjoy an economic advantage with a private prison since the state will start incurring costs only after the prisoners are housed there. In case of public prisons the state starts incurring expenses as soon as the construction begins.

The other advantage of such partnerships would be creating a source of revenue for the government. The private prisons would be liable to pay property tax while the public prisons are not required to do so. As private prisons are economically attractive, this would create more employment opportunities. If the PPP is put into practice then the private enterprises can hire in-house employees and pay them wages which are comparatively lower to any other organization in the private sector. This would be cost effective for both private and public enterprises. As the private firms can hire inmates as labor, at a lower wage rate than the labor available in the market and the government will not have to seek other job opportunities for inmates.

### **Case Study on Bahia PPP prison, BRAZIL**

*A comparative study by Cabral & Azevedo in 2008, between a publicly managed and an outsourced private company prison both located in Bahia, designed with similar facilities to hold 268 inmates. In terms of cost, the publicly managed prison when compared to the outsourced prison employs 20% more, reports higher (thrice) absenteeism rates and pays 60% more in salaries to correctional staff. Since the number of employees is higher it spends three times more on water and electricity than the private prison.*

*The outsourced prison provides 10 times more medical care and 20 times more access to legal advisors than the public prison. The security system were more effective in private prison reporting no escape or escape attempts and public prison reporting 8 and 25 respectively. In public prison the rate of assault against inmates, employees and the visitors were reported 15 times higher than outsourced prison.*

*A study from 2001 to 2006 showed that the operating cost of private prisons was 10% lower than the state run prisons and had maintained higher quality ( indicators: fewer escapes, deaths and greater number of medical appointments). The private prison provided all the facilities including internal security, food, medical aid, legal assistance, dental care, leisure, education, facilities management and provision of vehicles better than the state govern prisons.*

Source: (Cabral & Saussier 2012)

One of the fundamental responsibilities of the government is to ensure public safety. Important debates in that regard can be raised regarding the implementation of this policy. However, a tactful strategy whereby, the private sector endures the management and the public governs the security department could develop a more rational and efficient implementation of this policy. This policy best suits when a government is unable to make investments in prisons.

## 4. Recommendations and Conclusion

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### Conclusion

If the government continues to fail in the management and development of the prison system, the inmates could revolt in reaction to the sub-standard living conditions they have to endure. In adherence to agendas of international human rights convention and minimum standard for the treatment of the prisoners, Nepal formulated many policies to ensure the rights and freedom of the inmates. Despite several efforts, the government of Nepal has failed to meet the expectations of the 0.05% of the total population living behind bars.

The development of the rights based approach for treating inmates to meet the international standard includes access to basic, civil, political, employment, and freedom of expression rights. Despite clear descriptions of the prison reformatory policies in the prison act, 1962, the implementation of such policies and its outcome have been less than satisfactory. From the perspective of human rights, it is clear that the concepts of liberty, equity and equality for inmates in prisons is rarely realized and is thus subject to scrutiny. Such violations of human rights call for action to address the needs of the inmates.

Several studies and reports have identified overcrowding as the most significant problem in the present context. The inability of the prisons to accommodate 15, 947 inmates when the combined total capacity of all prisons is just 7,000, violates the UN minimum standard for the treatment of prisoners. Overcrowding of prisons has triggering effects on the country's economy and society. With the increasing population of the inmates, there is an increase in the demand for accessing basic rights and the government's inability to provide these rights makes the situation chaotic. Unavailability of adequate and hygienic food, clean drinking water and most importantly space and bedding for sleep and rest is an unimaginable plight. The inmates accommodate themselves under the bed, in the kitchen, corridors and other spaces available. Some reports have shown that even sick inmates are adjusted in the same cells with other prisoners ignoring the threat of contagious diseases. Similarly, the increase of transmittable diseases like HIV in the prison can increase the risk of the disease spreading beyond the confines of the prison. Health and hygiene should be the priority of the government because at some point the inmates will be released and become a part of the society, increasing the risk of spreading transmittable diseases.

Prison problems are not just limited to overcrowding. The availability of only one high school and libraries with very few reading materials in the prison makes the prison population unable to develop their cognitive and rational model of thinking through education. In the era of technology, the inmates have insufficient knowledge about the technical revolution and innovations leaving them ill-equipped to deal with the changes, once they are released. Restriction from writing for any publications, interacting with the journalists or media and casting votes, shows that prisoners are deprived from the right to expression and participation.

This entire problem stems from the negligence of the state towards the needed reform of the prison system, especially, when there was a potential for doing so during better economic times. With the economic downturn, the country is unable to allocate sufficient budget and resources for prison reform. To deal with these problems, the state must identify reasons or factors that are increasing the number of inmates in prisons. As discussed before, the government must address

the factors inducing crime to minimize the risk of crime and violations. Along with this, it is important for the institutions governing the prisons to act responsibly to ensure the protection of the rights of the inmates. Similarly, the government can reap benefits by introducing policies to reintegrate the inmates into the society and to reduce recidivism.

However, in the current situation when the government is failing to amend and reform the existing prison policy, it must seek an alternative that would help to overcome the shortcomings of the existing policy. It must find practical solutions to make prisons self-sustaining in order to minimize the expenses of the state and reduce the tax burden of the tax payers. The rising numbers of inmates demands more investment in infrastructure, food, clothing, safety, security, medication, working equipment and education. Hence it must seek an alternative that addresses the economical, social and human rights issues.

Whilst considering the three proposed alternatives, the most suitable in the context of Nepal would be implementing the open prison policy mentioned in the Nepal Prison Act 1962 under Article 2 and Article 10. With the government's repeated arguments citing insufficient budget, the reformation of the current penal system is doubtful and the prison system under private public is also unlikely when it comes to investment, quality control and the time frame.

From an economic perspective, reforming the current penal system demands huge investment in all areas, increasing the operating cost and burden of the tax payers. The similar applies to open prisons but in its case a one-time investment in infrastructure would suffice. This policy can make prisons self-sustaining by operating with the investment of the inmates. This supports a reduction of the tax burden of the tax payers and minimizes the states expenses. The only cost likely to be incurred by the state is the cost of staff and security. Even though under the PPP prison policy, the prison operating cost is solely incurred by the private companies and would therefore lessen the burden on tax payers and the state, it is a policy that would be difficult to implement in a short time frame.

From a social perspective, just reforming the current penal system would not allow any inmate to socially reintegrate as they will have no opportunity to interact with the outside community. It is very important to understand that the main objective of the correction home is to correct the inmates and make them capable of reintegrating with the community. Restricting inmates from participating in open prisons and working in the community can make them psychologically restless and socially inactive. It is important to implement the open prison policy which allows an inmate to interact with the community and work to earn and sustain their living and contribute to the economy, making them feel more responsible. The PPP prison policy also advocates for the same where the private companies hire the inmates to work for them and pay them on daily basis to make them independent and responsible. The inmates get an opportunity to interact and participate in community programs and activities, share their experiences and burden with the other employees. This helps in reducing mental stress and encourages participation of the inmates in society. However, it would be difficult to implement the PPP prison policy since it requires a prolonged legislative procedure for its formulation and execution.

From the perspective of rights, the reforming of current prison policy would allow inmates to exercise possible rights to the best. If they have freedom of expression and participation, the inmates can have a voice to fight for their other rights. If the government can make investments in infrastructure, introduce education and health plans, provide employment opportunities, the inmates can then enjoy their rights and freedom. In open prisons these rights will be exercised by

the inmates themselves as they will have the opportunity to work and earn a living and use their wages to make the prisons self-sustaining. They can add any facilities provided by the court of law to access their rights, if the government fails to provide them. In the PPP alternative, the limitations are restricted by the private companies depending on the condition of agreement made between the private and public sector.

From a security perspective, the reforming of current penal system would offer more security to society than the other two options. However, the evidence and facts show that open prison policy reports minimum reoffending rates and security threats. The same can't be guaranteed for PPP prisons since the security is fully owned by the private management. The private companies are profit oriented and their concern for the safety and security of the state and society is not a priority. Hence, PPP doesn't serve effectively in ensuring safety to the society and state.

Considering the feasibility of these alternatives, a feasibility test is very important to identify which alternative would best address the issues concerning prisons in Nepal. Reforming of current penal system would require government to completely reform the existing policy and incur huge costs to overcome the problems. One of the reasons for the failure of the current penal system is the lack of adequate funding followed by ineffective monitoring, lack of incentives for the staff and the lack of will and intent. To comply with the UN minimum standard for the treatment of the prisoners for a country like Nepal that is still unable to safeguard the human rights of innocent citizens, would be a Herculean task.

The hiring of private companies to operate the prisons is a very sensitive issue although the government can reap benefit from reduced costs. The concept of privatization has not fully developed in Nepal and people here are still unaware about the positive impacts of privatization. In such a scenario allowing prisons to be operated by the private sector might infuriate the society, causing a loss of trust and credibility in the government. As this policy has never been introduced in Nepal, it would take a long time for this to be implemented and work successfully. Despite all arguments against the PPP prison policy, it still stands as a better alternative to the existing prison policy, which seems stagnant due to the lack of funds. However, this would suit better as a long term alternative.

Considering all the factors, the most suitable option at present is the implementation of the open prison policy to improve the current penal system and safeguard the rights of the inmates. This policy is not only economically viable but is also socially applicable. Inmates get an opportunity to work and make prisons self-sustaining and introduce facilities they have been deprived of. This policy lessens the expenses of the state by cutting down the operating costs of the prison and inmates. Given the opportunity, the inmates can work in agriculture and grow crops to feed themselves. They can also develop skills to become competent in the employment market. Their earnings can make a contribution towards the economy as the government can hire them at a lower wage and when paid they can support their family and increase the disposable income that can contribute to increased spend.

Formulation of such a policy is just the beginning. However, to make it effective, attention has to be given to its implementation because had the government been successful at implementing prison reform policies listed in the Prison Act so far, it would not have been necessary for committees to provide recommendations and suggestions for prison reform.



## **Recommendations for Implementation**

1. The government should revise the Prison Act 1962, and implement the open prison policy mentioned under Article 10.
2. It is important to conduct a feasibility study before implementing the open prison policy. This would help the government to identify the suitable model of open prisons for Nepal.
3. Identification of appropriate location with a suitable landscape, conducive to employment in agriculture is important for implementing open prison policy. Since Nepal has an agricultural driven economy, the inmates can be employed for working in land that might be lying idle.
4. Employment and training in harvesting, planting, seeding, grafting and in using tools, kits, insecticides and pesticides should be emphasized to make them more involved in the agricultural sector. They can grow crops and trade in the market to generate revenue both for the state and for them.
5. Incentives should be introduced to encourage inmates to work towards being transferred to open prisons. If any inmate shows good behavior and has served certain years of his/her sentence then they should be made eligible for open prisons. Consequently, good conduct in open prisons can be rewarded with shortening of sentences and inmates being released on parole.
6. The government could allow private companies to hire inmates to work in their companies. The private companies can hire inmates at a cheaper rate and pay the inmates accordingly. This would help private companies to cut down its expenses and relieve the government from job seeking duty for the inmates.
7. The inmates should be allowed to interact with their family members and they should be allowed to spend a week with their families whilst in an open prison. This will help them reduce their mental stress and help them in reintegrating with the society.
8. The inmates should contribute an equal share of their earnings towards making the prison self-sustaining. They should be encouraged to save the remaining share of their wages in bank accounts so that they can use the savings after their release to invest in any economic endeavors.
9. The inmates in open prisons should be engaged in training the inmates in closed prisons. Such two way communication will help in encouraging the inmates in closed prisons to work towards being eligible for an open prison.
10. The open prisons should be environmentally friendly and suitable for living and earning. The objectives of the incarcerating inmates must be clear, which is to help them change their behavior and attitude and become socially responsible citizens and not a threat to the community. The inmates must have the freedom to choose among the works listed by the government for the inmates.

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