

Understanding the Concept of Community Correction and Its Risk Factors in Nepal

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Abstract

This article examines the concept, development, and implementation of community corrections in Nepal. It traces the historical evolution of community-based alternatives to incarceration, from early forms of leniency to modern probation and parole systems. The legal framework for community corrections in Nepal is analyzed, focusing on recent legislation like the Criminal Offences (Sentencing and Execution) Act of 2017, which introduced provisions for community service, open prisons, and rehabilitation programs. The article highlights the potential benefits of community corrections, including reduced prison overcrowding, cost savings, and improved offender rehabilitation. However, it also identifies significant challenges in implementing these programs in Nepal, such as lack of infrastructure, limited resources, and insufficient training for correctional officers. The authors argue that while community corrections offer promising alternatives to traditional imprisonment, their effective implementation in Nepal requires further policy development, increased funding, and capacity building within the criminal justice system. Overall, the article provides a comprehensive overview of community corrections in Nepal, examining both the progress made and the obstacles that remain in reforming the country's approach to criminal justice and offender rehabilitation.

Keyword: Community Correction, Probation, Parole, Rehabilitation and Restorative Justice

1. Introduction:

1.1 General Concept of Community Correction

Community correction refers to any program that supervises offenders outside of the prison system, including probation, parole, and community services. In other words, Community correction involves the management and supervision of offenders in the community. These offenders are serving court-imposed orders either as an alternative to imprisonment or as a condition of their release on parole from prison. This means they must report regularly to their community correction officer and may have to participate in unpaid community work and rehabilitation programs. Community correction plays a vital role in ensuring the safety of the community by rehabilitating offenders and diverting low-risk offenders from prison which helps to break the cycle of recidivism.

There are other punishments in the past that were appropriate and acceptable for that time: for example, hanging people, stoning, and impalement etc. Modern society considers crime control as one of the chief objectives of punishment. For this purpose, imprisonment as a means of punishment is used to attain two aims of reforming and treating criminals so that they will commit no further crime after their release. On the other hand, as a society, we no longer accept the firm physically painful punishment in prison; therefore, we have modern forms of correction systems such as probation, parole and community services.

There are three assumptions that rest behind the idea of community correction.

- i. Most people who break the law are not dangerous or violent.
- ii. Treatment programs are more numerous and accessible in the community than in jail and prison.
- iii. People who have been incarcerated in jail and prison transition better when they are released with some supervision than without any supervision.²

1.2 Goals of Community Correction

Community correction programs attempt to accomplish many goals. These goals include easing institutional crowding and cost; preventing future criminal behavior through surveillance, rehabilitation, and community reintegration; and addressing victims' needs through restorative justice.³ Each of these goals is discussed below.

a) Easing Institutional Crowding and Cost

¹ Deputy Registrar, Supreme Court of Nepal, Kathmandu, Nepal

² J Petersilia, *Reforming probation and parole in the 21st century: American Correctional Association.* (2001) Lanham, MD.

³ Retrived on 4th September 2024 from <https://criminal-justice.iresearchnet.com/system/community-corrections/2/>

- b) Surveillance
- c) Addressing Problems Related to Criminal Behavior
- d) Community Reentry
- e) Restorative Justice

1.3 Methods of Community Correction

Different scholars have presented different methods of community corrections even though these following three methods are accepted worldwide. So, they are discussed as follows:

- I. Parole:- Historically, parole is a concept known to military law and denotes release of a prisoner of war on promise to return. Present day parole has become an integral part of the Anglo-American criminal justice system. It is the release from a penal or reformatory institution, of an offender who remains under the control of correctional authorities, in an attempt to find out whether he is fit to live in the free society without supervision.⁴ It is the last stage of correctional scheme of which the probation may probably be the first. It is an individualized method of treatment of the offenders and envisages a final stage of the adjustment of the incarcerated prisoners to the community.
- II. Probation Order: - This is one of the oldest forms of community sentence practicing by different societies of the world differently in their own. In this kind of community sentence the offender is placed under the supervision of a probation officer for a specified period of between six months and three years. The order may include various requirements such as that the offender reside at an approved probation hostel or that he attend a specified probation center, or that he undertake psychiatric treatment and so on. Before the court gives the probation order the offender must express his willingness to comply and the court must be satisfied that the order is desirable either in the interests of the rehabilitation of protection the public from him or preventing the commission by him of further offences.⁵
- III. Community Services:- Community service involves unpaid labor to the community performed by offenders for up to 360 hours. Such community service is imposed for crimes punishable by up to one year in prison. Community service punishment may also involve fines.⁶

The offender who has committed an impressionable offence may be ordered to perform unpaid work such as decorating, working with disadvantaged group in society.

2. Inception and Development of Community corrections

2.1 The Early History of Community Corrections

While talking about the development of community corrections, there are several historical antecedents that are important to understand. One of the earliest forms of leniency was known as sanctuary. Sanctuary came in two forms, one that was largely secular in nature and the other that had its roots in Christian religion. The secular form of sanctuary existed through the identification of various cities or regions (most often cities) that were set aside as a form of neutral ground, safe havens from criminal prosecution. Accused criminals could escape prosecution by fleeing to these cities and maintaining their residence there. Naturally, this was an alternative to the use of prison and provided the accused with options that they were able to formulate on their own.⁷

The second type of sanctuary began during the 4th century and was grounded in European Christian beliefs that appealed to the kind mercy of the church. This type of sanctuary consisted of a place—usually a church—where the king's soldiers were forbidden to enter for purposes of taking an accused criminal into custody. In such cases, sanctuary was provided until some form of negotiation could be arranged or until the accused was ultimately smuggled out of the area.⁸

Benefit of clergy was initially a form of exemption from criminal punishment that was provided for clergy in Europe during the 12th century. This benefit was originally implemented for members of various churches, including clerics, monks, and nuns, who might be accused of crimes. This alternative to typical punishment required church

⁴Rewati RajTripathi, *A Critical Analysis of the Sentencing Act, 2017*, *Prosecution Journal*, Vol. 41. Office of the Attorney General, Nepal.(2018)

⁵ibid

⁶ibid

⁷Retrieved on September 9, 2020 from <https://us.sagepub.com/sites/default/files/upm-binaries/86776Chapter1Definitions%2CHistory%2CandDevelopmentofCommunityCorrections.pdf>

⁸L. Falarid, P. FCromwell, & R. del Carmen, *Community-based corrections*. Belmont, CA: Wadsworth/Cengage. 7th ed(2008).

representatives to be delivered to church authorities for punishment, avoiding criminal processing through the secular court system.

Later, during the last part of the 1700s, it became increasingly common for judges in England to utilize an alternative method of punishment known as judicial reprieve. These were used at the full discretion of judges, in cases where they did not believe that incarceration was proportionate to the crime or where no productive benefit was expected. The judicial reprieve simply suspended sentences of incarceration as an act of mercy or leniency. Naturally, as might be expected, this option was reserved for offenders who had committed minor infractions of the law and who did not have prior records.

Recognizance in the United States is often traced to the case of *Commonwealth v. Chase* (1830) in which Judge Thacher of Boston found a woman named Jerusha Chase guilty of stealing from inside a home.⁹ Ms. Chase pleaded her guilt but did have numerous friends who also pleaded for mercy from the court.

While many of the traditions and means of addressing issues associated with crime and punishment originated in England, the United States did have its own novel inventions. Probation is one such invention, being an alternative to incarceration that is unique to the United States. John Augustus, a cobbler and philanthropist of Boston, is often recognized as the father of modern probation. During the time that John Augustus provided his innovative contribution to the field of community corrections, the temperance movement against alcohol consumption was in full swing. Augustus, being aware of many of the issues associated with alcoholism, made an active effort to rehabilitate prior alcoholics who were processed through the police court in Boston. While acting as a volunteer of the court, Augustus observed a man being charged for drunkenness who would have, in all likelihood, ended up in the Boston House of Corrections if it were not for Augustus's intervention. Augustus posted bail for the man, personally guaranteeing the man's return to court at the prescribed time. Augustus helped the man to find a job and provided him with the guidance and support necessary so that the defendant was able to become a functioning and productive member within the community.¹⁰

Alexander Maconochie is a key figure in much of early community corrections history. He was the primary person to develop a program of early release for inmates who were in custody on Norfolk Island.¹¹ This concept is known as parole.

2.2 Contemporary Community Correction

During the last several decades, sentencing practices in most states have undergone transformation. There is disagreement, however, about the number and types of sentencing systems currently used by the states. Furthermore, new sentencing schemes continue to be proposed. The following types of sentencing schemes are used in most jurisdictions:

- 1) Indeterminate sentencing,
- 2) Determinate sentencing,
- 3) Presumptive sentencing, and
- 4) Mandatory sentencing.

Beyond those four categories, other hybrid sentencing schemes have been devised.¹²

Obviously, a lot has changed since the end of the 19th century. What hasn't changed is that as much as the justice system seeks retribution for the wronged, it also seeks rehabilitation for wrongdoers. Now, the United States has the largest incarcerated population in the world, though 95 percent of offenders can expect to be released from prison and reintegrated into society through some form of community corrections.¹³

During the 1970s, community corrections diverted from a clinical model focusing on rehabilitation, towards a managerial model emphasizing the management of offenders.¹⁴ Policy reforms surrounding issues of social control and organizations must be understood as reflecting changes in the political and social environment. The shift in

⁹ Frank W. Grinnell, *The Common Law History of Probation: An Illustration of the "Equitable" Growth of Criminal Law*, 32 *J. CRIMINAL LAW. & CRIMINOLOGY*, 1941.Pg. 24–25

¹⁰Robert d Hanser, *Essentials of Community Corrections*. Sage publication, New York. 2018

¹¹*ibid*

¹² Andrew Ashworth, *Sentencing and Criminal Justice*, Cambridge University Press, Cambridge, 4th ed., 2005p.22.

¹³Retrieved on September 9, 2020, from

pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2008/policy20frameworkpdf.pdf

¹⁴ Robinson, G. (2001). *Power, Knowledge and "What Works" in Probation*. *The Howard Journal*, pg40(3), 235-254.

probation practices and its orientating philosophy began in earnest in the 1970's, because rehabilitation, and more broadly, the practice of reforming criminals came under scrutiny.

3. Inception and Development of Community Corrections in Nepal

The systematic attempt to unify and codify Nepalese society took place during late fourteenth century. ManabNayaSastra (Legal Rules for Human Justice) was introduced by King Jayasthiti Malla putting an end to the era of indefiniteness and ambiguity caused by reliance upon the numerous Hindu religious scriptures for regulating the human behaviors.¹⁵ Ram shah and Prithvi Narayan Shah has drastically change the legal system of Nepal even though their legal system especially guided by Hindu religion.

After the successful revolution in 2007 B.C., a new political system based on the democratic norms and values was recognized in Nepal. Since then, modernization process of the Nepalese legal system has been taking place at various levels and fields. Nepalese legal system has started to introduce new concept through different sub-systems and it became a hybrid legal system in the last fifty years.

After the change in 2007 B.C., the concepts of rule of law, fundamental rights of people, independent judiciary, etc., were introduced into the legal system. These concepts were the voluntary incorporation of foreign laws by the Nepalese natives. In 2017 B.C., the Government Cases Act introduced new concepts in the process of criminal justice. Likewise, MulukiAin 2020 B.C. brought changes in the penal system and introduced the concept of equality before law, which was adopted by the previous Constitutions of Nepal. However, it was not fully enforced in practice.

Above mentioned discussion is especially focuses on early Nepalese legal system. These rulers introduced fine for some minor cases even though there were no any concept of community correction. We have incorporated some features of community correction on prison act, 2019 in its second amendment on 2064 after the successful completion of people's second revolution of 2062/63. The concept of community correction especially came into law when Nepal has adapted new national criminal code in 2074. The Criminal Offences (Sentencing and Execution) Act, 2017 (2074) has introduced this concept of community corrections. The act proposes for reformation of prisoners, conducting reformatory programs including skill, education and employment oriented and disciplinary programs before their release from prison. This is considered to be a first initiation of this kind. Provisions in the Act such Section 22 provides that prisoners may conduct acts of social service while Section 25 states offenders may be sent to correction facilities or correction homes for the reduction in their term of imprisonment. Similar principles can also be seen in Section 26 which states that offenders with record of drug abuse or offenders with weak mental or physical health may be sent to recreation centers whereas Section 28, 29 and 30 provide for an open jail system, parole system for prisoners and a process of socialization of the prisoners respectively, all of which aim at integrating the offenders or prisoners back into the society. The Act also seeks for correction and improvement in the prisoners before such an integration process. Section 31 states that prisoners may be allowed to leave the prison for specific amount of period in certain cases, or provided moral, work oriented, ethical and even spiritual education for improving their morality and behavior. There exists however, certain factors for providing such amenities which the prisoners will only be provided as per the provisions of the Act.

4. Legal Framework Regarding Community Corrections

There are three major models of sentencing throughout the world namely legislative, judicial and administrative models. In legislative model the legislature sets out the sentence and the judges have no discretion to determine the sentence. In judicial model the judges exercise the discretion in determining the sentence within the range set out by the legislature. In administrative model legislature establishes a wide range of imprisonment for a particular crime, the judge imposes the sentence which is generally indeterminate and the decision to release the inmate is later determined by the administrative agency generally by a parole board.¹⁶

Recently the new law has made some changes in the forms of punishment for different offenses on the bases of principle of proportionality that is the punishment should be based on gravity of offense and offender's culpability. Life imprisonment, fixed term of imprisonment, fine, imprisonment and fine, compensation, compensation or

¹⁵Retrieved on September 5, 2020,

https://childhub.org/en/system/tdf/library/attachments/celrrd_analysis_and_reform_of_the_criminal_justice_system_in_nepal_5.pdf?file=1&type=node&id=17262

¹⁶Prof. Dr. Rajit Bhakta Pradhananga and ShreepakashUpreti, "An Overview of Concept and Principles of Sentencing Process", Pokhara Law Review, 2010, Year 1, Vol. 1, p. 9.

imprisonment in failure to pay compensation, and community service instead of imprisonment are included as the forms of punishment. Criminal Offences.¹⁷

The Sentencing Act, 2017 has regarded the punishment of imprisonment as the last resort. The Act has proposed not to send for imprisonment if there exists other appropriate alternative sentence. Based on the nature of offense, the age and conduct of the offender, circumstances existing at the time of commission of offence and modus operandi of offence the court may order to carry out a public work for an offender liable to sentence of up to six months of imprisonment. The offender who has been punished for imprisonment of up to one year, to serve imprisonment at the weekend or only in the night of each day; for an offender, except offender of grave offence, having served two third of the sentence of imprisonment and having good conduct, to be kept in an open prison or be released on parole. Likewise, an offender of first time of an offence punished with imprisonment of one year or less can be released from imprisonment upon payment of money for imprisonment period. Apart from the reform in the punishment the Act proposes, for reformation of prisoner, conducting reformatory programs including skill, education and employment oriented, disciplinary, spiritual programs and socialization program before release from prison.

The prison act, 2019 has also provided some basis for the implementation of community corrections programs. Some key features of community corrections incorporated in The Criminal Offences (Sentencing and Execution) Act, 2017 (2074) are as follows:

Section 22: Shall give an order for community service¹⁸:

Community service is one of the most effective countermeasures in The Criminal Offences (Sentencing and Execution) Act, 2017 and Prison act. According to that provision, the court can send an offender who is liable to less than three years' imprisonment to complete community service. Where an offender has committed an offence and the punishment for such offence is up to six months, the court while determining the punishment shall take into consideration the offence committed, age of the offender, conduct, conditions at the time of committing the offence and the methods applied to commit the offence and provided, the court deems it inappropriate to keep the offender in prison or where the offender has consumed some prison sentence as deemed appropriate by the court, the court shall issue an order wherein the offender shall serve the community for the remaining period of the sentence. The following work shall be considered as a community service:

- a) doing a public work for free,
- b) serving at a hospital, elderly home, orphanage for free,
- c) doing environment protection related work for free,
- d) teaching or serving at a public or community school for free,
- e) providing or causing to be provided sports training for free,
- f) doing work at a benevolent organization for free,
- g) appearing before such rehabilitation or reform organization as designated by the court and doing such work as specified by such organization

Section 24: Sentence of imprisonment may be suspended¹⁹:

In cases where an offender on whom a sentence of imprisonment for less than one year has been imposed has committed the offence for the first time and, having regard to the offence committed by the offender, the age, conduct of the offender, the circumstances and the manner of the commission of the offence, it appears to the court that it is not appropriate to imprison the offender, the court may, without implementing the sentence of imprisonment imposed on such offender, suspend such imprisonment.

Notwithstanding anything contained in above, no sentence of imprisonment imposed on an offender other than a child held guilty of any of the following offences may be suspended:

- a) murder
- b) rape,
- c) human trafficking and transportation,
- d) arms, ammunition and explosive,
- e) corruption,
- f) taking of hostage and kidnapping,
- g) robbery,
- h) counterfeiting of currency or government stamps,
- i) foreign exchange,

¹⁷section 40(1) Muluki Criminal Code

¹⁸ The Criminal Offences (Sentencing and Execution) Act, 2017, section 22.

¹⁹ Ibid. section 24

- j) offence relating to narcotic drug trafficking and transaction,
- k) relating to ancient monument,
- l) relating to forest and wildlife,
- m) organized crime,
- n) money laundering,
- o) offence relating to torture or cruel, inhumane or degrading treatment,
- p) crime against humanity

In making an order of suspension of the sentence of imprisonment pursuant, the order shall be so made that the offender is required to do the following during the period of suspension:

- a) To do public work for free,
- b) To assist in any work of the victim of the offence,
- c) To refrain from doing any act or conduct set forth in such order,
- d) To refrain from moving outside of his or her residence or any particular place,
- e) To refrain from committing any offence during the period of sentence or within three years of the service of such sentence,
- f) To remain within any place specified by the court,
- g) To remain in a treatment and rehabilitation center,
- h) To refrain from meeting a particular person.

Section 25: Power to make order to send offender to reform home²⁰:

If, in relation of an offender who is sentenced to imprisonment for a term of two years or less, having regard also to the offence committed by the offender, the age, conduct of the offender, the circumstances and the manner of the commission of the offence, it appears to the court that it is appropriate to hold him or her in a reform home instead of sending him or her to prison, the court may, on recommendation of a probation officer, send such offender to the reform home.

Section 26: Power to make order to send offender to rehabilitation center²¹:

If, in relation of an offender who is convicted of using narcotic drug or who is suffering from physical or mental infirmity or similar other offender, having regard to the offence committed by the offender, the age, conduct of the offender and the circumstances of the commission of the offence, it appears to the court that it is appropriate to send him or her to a rehabilitation center instead of sending him or her to prison, the court may, on recommendation of a probation officer, send such offender to the rehabilitation center.

Section 27: Service of imprisonment in prison on the weekend or during the night only²²:

If, in relation of an offender sentenced to imprisonment for a term not exceeding one year, having regard to, inter alia, the offence committed by the offender, his or her age, conduct, the gravity of the offence and the manner of the commission of the offence, it appears to the court that it is not appropriate to hold him or her regularly in prison, the court may, for reasons to be recorded, so determine the sentence of imprisonment that such offender is required to remain in prison only on the weekend or only during the night on daily basis.

Section 28: Power to make order to hold offender in open prison²³:

The judge of the concerned District Court may, on recommendation of the chief of Prison Office, make an order to hold in open prison an offender who has served two-thirds of the term of imprisonment and has good conduct.

For the purpose of this Section, "open prison" means any place specified by the Government of Nepal in a manner that a prisoner may work during the specified time even outside of the place where he or she is held.

Section 29: Shall be kept in Parole²⁴:

Provided, where an offender has been awarded imprisonment for more than one year and provided such offender has already served two-third of the sentence and provided such offender shows good conduct, the offender shall be kept in parole: Provided, the following offenders shall not be kept in parole –

- Offenders receiving life sentence
- Offenders sentenced in corruption cases
- Offenders sentenced in rape cases
- Offenders sentenced in human trafficking and transportation cases

²⁰ *Ibid section 25*

²¹ *Ibid section 26*

²² *Ibid section 27*

²³ *Ibid section 28*

²⁴ *Ibid section 29*

- Offenders sentenced in organized crime cases
- Offenders sentenced in anti-money laundering cases
- Offenders sentenced in cases relating torture, inhuman treatment
- Offenders sentenced in cases relating to crimes against humanity
- Offenders sentenced in war crime cases

Section 30: Shall be socialized²⁵

Provided, where an offender has been awarded imprisonment for more than one year and provided such offender has been serving the sentence and shows good conduct, the offender shall six months prior to serving the remaining period of imprisonment shall be allowed leave the prison on a monthly or daily basis for the following works:

- Reunion with family
- Establishment of social, cultural relation
- Social integration and rehabilitation
- Work or employment
- To receive skill oriented or employment-oriented training

Section 31: Shall labor in lieu of imprisonment²⁶

Provided, an offender who has been sentenced for three years or more than three years and is more than 18 years of age and is physically in good health if so desires shall be allowed to labor in public work.

Offender, who has been subject to labor pursuant, shall in lieu of every three days of labor receive one additional day as rebate in the sentence.

Section 32: Prisoner may be allowed to leave prison²⁷

A prison may, in the following circumstance, permit a prisoner who, upon being sentenced to imprisonment, is serving the sentence of imprisonment in the prison to go out of the prison with necessary security:

- (a) in the event of a close relative having fallen ill, to visit such patient on condition that he or she shall return to the prison on the same day,
- (b) in the event of the death of a relative of whom crematory or obsequies rites have to be performed by the prisoner himself or herself, to perform such crematory or obsequies rites on condition that he or she shall return to the prison on the specified day.

Section 33: Shall operate reformatory programs²⁸

In order to reform the conduct of prisoners serving their sentence, the prison shall operate reformatory programs such as skill, educational and employment-oriented trainings, moral and meditational programs.

Section 37: Rebate in imprisonment²⁹

Provided an offender while serving sentence shows improvement in his/her conduct and provided such offender has already served three-fourth of the sentence, the offender shall receive rebate in the punishment. However, the following shall not receive any rebate: -

- Offenders receiving life sentence
- Offenders receiving punishment in rape cases
- Offenders receiving punishment in corruption cases
- Offenders sentenced in human trafficking and transportation cases
- Offenders sentenced in organized crime cases
- Offenders sentenced in anti-money laundering cases
- Offenders sentenced in cases relating torture, inhuman treatment
- Offenders sentenced in cases relating to crimes against humanity
- Offenders sentenced in war crime cases

Section 38: Provision of parole and probation Board³⁰

- 1) There shall be a Federal Probation and Parole Board, as follows, also to render assistance in the social rehabilitation and integration of the offenders sentenced to imprisonment:
 - a. Attorney General - Chairperson

²⁵ *Ibid section 30*

²⁶ *Ibid section 31*

²⁷ *Ibid section 32*

²⁸ *Ibid section 33*

²⁹ *Ibid section 37*

³⁰ *Ibid section 38*

- b. Secretary, Ministry of Law, Justice and Parliamentary Affairs - Member
 - c. Secretary, Ministry of Home Affairs - Member
 - d. Two psychologists, including one woman to the extent of availability, designated by the concerned Ministry - Member
 - e. Inspector General, Nepal Police – Member
 - f. Criminologist or penologist designated by the concerned Ministry - Member
 - g. Director General, Department of Prison Management - Member Secretary
2. There shall be a State Probation and Parole Board as follows in each State, which is under the direct guidance, control and supervision of the Probation and Parole Board:
- a. Chief Attorney - Chairman
 - b. Secretary, State Ministry of Law - Member
 - c. Secretary, State Ministry of Home Affairs - Member
 - d. Chief of Police, State Police -Member
 - e. Two psychologists, including one woman to the extent of availability, designated by the State Government - Member
 - f. Criminologist or penologist designated by the State Government - Member
 - g. Chief of the State body responsible for prison management - Member Secretary

Section 39: Functions, duties and powers of Probation and Parole Board³¹

The functions, duties and powers of the Federal Probation and Parole Board shall be as follows:

- a. To formulate a probation and parole policy and recommend it to the Government of Nepal,
- b. To develop standards for placing prisoners on probation and parole,
- c. To develop terms and conditions to be abided by the offenders who are released on probation and parole,
- d. To supervise, control activities of, and give direction, as required, to the State Probation and Parole Board,
- e. To prepare a roster of persons who can be appointed or designated as the probation officer or parole officer, as required to make recommendation as to the execution of sentences and to assist in the rehabilitation of offenders pursuant to this Act,
- f. To carry out other necessary matters relating to probation and parole.

Phase of Application of legal provision of Community Corrections

It is one of the shifts of paradigm in the sentencing system that the sentencing law has apparently accepted the reformatory forms of punishments and such reformatory programs for the first time in Nepal. It can be tabulated as follows:

- Reformatory Punishments and Programs

s. n.	Section	Legal Provision	Phase of application	Remarks
1	22	Community service	Initial phase	
2	24	Suspension of sentence	Initial phase	
3	25	Send to reform home	Initial phase	
4	26	Send to rehabilitation	Initial phase	
5	27	Imprisonment may be served in prison on weekend or night basis	Initial phase	
6	28	May be kept in open prison	Initial phase	
7	29	May be paroled	Last phase	
8	30	To make socialization	Last phase	
9	31	Employment into labor for imprisonment	during the sentence	
10	32	May be allowed to go outside prison	during the sentence	
11	33	Reformatory program to be conducted	during the sentence	
12	37	Remission of imprisonment	Last phase	

Open Prison

The Prison Act of Nepal has a provision for open jail. It has not come into force yet. The government is busy locating a suitable area and infrastructure for that purpose. If this provision came into force, it would be another effective countermeasure. If the prisoner is sentenced to more than three years' imprisonment and serves one third of that

³¹ Ibid section 39

sentence, he or she can be sent to open jail. The prisoner has to apply to the Department of Prison Management for this purpose. We have exceptions: prisoners who are convicted of human trafficking, rape, narcotic drugs, corruption, espionage, trafficking in protected wild life etc. are ineligible and cannot be recommended for open jail.

The government is doing groundwork for making a legal provision to implement the concept of 'open prison'. An open prison is a penal establishment where prisoners, who have served at least half their jail term and have demonstrated good conduct, are trusted to do their time with minimal supervision. It aims to ease the pressure of jailbirds in the already crowded prisons of the country and to turn the prisons into correction centers.

Earlier, the government had acquired a plot of land, around 535 *ropanis*, in Banke for the construction of an open prison. A DoPM source said a building with the capacity of 300 prisoners was under construction at Ganapur of Banke in a manner to operate it by 2021.

Conversion of Imprisonment into Fine

There is a statutory provision that says the court can convert imprisonment to a fine. If the accused has no criminal record and if the offence is punishable with less than three years, the court can order him or her to pay a certain sum and go free. The sum will be fixed by court at Rs. 300 per day.

Child Correction Centre

The Government of Nepal ratified the United Nation Convention on the Rights of Child, 1989 in 14 Nov. 1990, and the Children's Act, 1991 was subsequently enacted in 1992. The Act provides a framework for implementation and monitoring children at risk as well as those in conflict with the law. It incorporated provision of Juvenile Courts or Benches to deal the accused or delinquent child. The Act established an institution for caring and protecting to children such as orphanage, centre for mentally retarded children, at child welfare home and child correction Home.

However, implement status of Act is still great challenge due to organizational as well as resource constraints (both professional and financial resources). Despite of the sign in international instruments and passed the Children act, rule and regulations the Juvenile Justice system is not properly seen.

There are six child correction centers for juveniles. They are located in Kathmandu valley, Morang, Kaski, Makawanpur and Banke. All the prisons are managed by the government and the child correction centres are established and operated by NGOs with funding from the government.

5. The Practice, Problems, and Limitations of Community Corrections in Nepal

In general, we have not been able to practice the community practice as we are still in the initial stage for the implementation of the sentencing act. We do not have regulated law about the community correction and policies. Therefore the main problem is the law itself without it we cannot practice such programs for the improvement of community corrections. Also, the various kinds of problems within the implementation of community corrections that can be primarily attributed due to lack of enough planning, organization and resources on the part of the authorities, in both the design of the system and through its implementation. Implementing community corrections in Nepal certainly has some special difficulties because of economic disparity that exists. However, if community correction is properly designed, and the programs are sufficiently funded, these difficulties would not be the significant obstacles to effective implementation that they are now. The failure in effective implementation in many regions can be attributed to two untested expectations of community corrections which authorities had. There is no formal training in this regard to the officers about the concept of community correction. Due to lack of understanding about the role and purpose of community correction it cannot be implemented as effective as it may be thought.

Developing an effective way forward for community corrections in Nepal is very challenging. Although some techniques identified in this paper may help enhance the implementation to some degree without costing much more, it is still not likely to make the system function in a significantly more effective manner. Currently, there are no signs that the authorities are willing to significantly improve community corrections. The difficulty in making concrete suggestions for improving community corrections is all the more difficult due to the lack of data and empirical study. Provision of Parole and Probation shall be challenge itself. Our knowledge, skill, limited manpower and scattered responsibilities are divergent to proper functioning. Formulation of the guidelines and procedure of Parole and probation system and management of this without any disagreement is really a challenge.

- Community correction law and polices should be drafted and implemented fast.
- The authorities expected community corrections would be an extremely cost-saving device by reducing the number of inmates and expense on correctional facilities.
- The authorities expected community corrections to work as a positive force in the maintenance of stability and state propaganda during the shift in criminal justice policy.

6. Conclusion

Our criminal justice system is currently mismatched with the human development and social context of young adults. The phase of community correction has gone through long and complicated process but in Nepal it has not been implement and practiced because of lack of law and policies. We have practiced the sentencing principles in traditional way all those years however there are many alternatives that can be practiced as of now. We no longer required to be part of rigorous and unhuman practice of holding people in jail without proper management. As we have seen that there are many other alternatives that has been practiced in different countries around the world. It will help to mitigate the problems and recommends the most suitable alternative that will help to alleviate the problems of prison management. Through this the problem of overcrowding, accommodation, education, health of the jailbirds can also be solved. It scrutinizes the problems from sociological, economical and human rights perspective. Community correction practice will help to reform the existing prison policy. The practice of such community correction around the world have been a good example for the reformation of criminal behavior as it is seen throughout the world. From the viewpoint of economic perspective, it is also seen as cheap and reliable way of offloading the people who are not considered to be dangerous. There are several advantages to community correction programs. For example, community corrections are less costly and more humane, whereas prisons potentially socialize offenders into becoming better criminals, and the stigma and label associated with incarceration makes it harder for offenders to return to normal life.³² All these negative outcomes associated with incarceration encourage the development of community corrections as alternatives to traditional incarceration. Adopting community corrections has helped Nepal solve the problem of overcrowded prisons without investing more resources in building and maintaining new prison. On the other hand, the main problem lies in the formulation of the plan and policies, if we can make and implement the policies accordingly to the law. It will be more effective and government will be success at implementing a new philosophy of prison management in country like ours. It will be a next step for upcoming generation to deal with the new genres of prisoners rather than to waste their life in jail.



³²S Cohen. *The Punitive City: Notes on the Dispersal of Social Control, Contemporary Crises*, 1979 3(4), pg. 339-363.

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