Concept of Open Prison System as a Correctional System: 
A Study in Light of Present Context

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ABSTRACT
No Society can be completely devoid of Crime and Punishment for every Crime is indispensable. Modern Criminologists, however, prefer to perceive criminals as ‘sick’ person who deserve ‘treatment’ in form of rehabilitation and reformation, instead of being inflicted with retributive punishment. With the growing impact of Reformatory theory of punishment accompanied with demand to protect certain rights of prisoners ensuring fundamental human dignity, Open Prison System has come to light. Open Prisons have emerged as a correctional system for reformation of prisoners by providing them with recreational facilities, family-visits, remissions, wage-labour which instils them with self-confidence and helps them to re-socialise with community after their release. However, though the aims and objectives to be achieved by the Open Prison Systems are laudable, there still remains a room for improvement and reforms. This paper, thus, attempts to trace the history of open prisons, discuss the utility of open prisons as a correctional system, especially in India, in the current scenario and suggest some measures for improvement.

Keywords: Open Prisons, Self-discipline, Overcrowding of Prisons, Eligibility Criteria for Open Prisons, Correctional System

I. INTRODUCTION
Earlier the concept of punishment was limited to deterrence of commission of crime and prevention of crime. Similarly, Prisons were considered merely as detention houses to keep the criminals in custody. Offenders were exposed to cruelties and torture by the police in the prisons. But as the society progressed, the concept of punishment underwent a change. Now, punishment has an objective of reformation of the criminal and thus the concept of open prisons has emerged. Open prisons generally involve minimum security and are based on the self-discipline of the inmates. The rules in an open prison are far less stringent and for this

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reason they are also called as minimum-security prisons or prisons without bars. The concept of open prisons has started a new phase in the history of the prison system. Open prisons provide an opportunity to the inmates to bring changes in their attitude and bring a positive change in their behavioural patterns. Inmates are given more freedom of interaction, better amenities and are provided work instead of being idle in cells. Some Criminologists prefer to call it as ‘Open-Prisons’ or ‘Open-Jails’

**Characteristics of Open Prisons**

Following are the certain basic characteristics of Open Prisons:

(i). An open is a prison which is open in four respects\(^2\):

(a). It is open to prisoners as they can go to market during the day but must come back by the evening.

(b). There are no guards in an open prison. Also, there are no locks, bars and walls.

(c). Open prisons are open to public as people can visit the prison and meet the prisoners. This enables the prisoners to meet their relatives and friends and the problems of their family can be solved by mutual discussion.

(d). Open prisons are open in organisation as the working in such prisons is based upon the prisoners’ sense of self-discipline, self-confidence, self-responsibility.

(ii). There are adequate facilities for training inmates in agriculture and other related occupations.

(iii). Effective mechanism is devised in open prisons for the health and recreation of prisoners.

(iv). Significant efforts are made to generate consciousness among the prisoners about their social responsibilities.

(v). Proper care is taken of the diet of the inmates.

(vi). Payment of wages in part to the inmates and sending part of it to his family\(^3\)

**Advantages of Open Prisons**

(i). Open Prisons play a very vital role in the reformation of prisoners which is now considered as one of the most important aims of prison system.

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(ii). Open prisons aid in avoiding overcrowding in jails.

(iii). The cost of construction is quite less than closed prisons.

(iv). Introduction of wage system helps the government provide employment.

(v). Open prisons allow the inmates to be visited by people and family and thus helps them realise their social responsibility.

(vi). Since the inmates are engaged in productive work in forests, construction sites, they remain mentally and physically fit.

**Definition of Open Prison**

They are also referred as Open Jails in India. The United Nations Congress on prevention of Crime and Treatment of offenders held in Geneva in 1955 define an open prison as follows “An Open institution is characterized by the absence of material and physical precautions against escape such as walls locks bars and armed-guards etc., and by a system based on self-discipline and innate sense of responsibility towards the group in which he lives”.

Dr C P Tandon, the then Inspector-General of prisons Uttar Pradesh defined open Prison in 1959 observing that: “it is characterized by (a) the degree of freedom from physical precautions such as walls locks bars and special Guards; and (b) the extent to which design is based on self-discipline and the inmate’s responsibility towards the group. The objective of an open peno-correctional institution is to aim at the development of self-respect and sense of responsibility as well as useful preparation for freedom…discipline is easier to maintain and punishment seldom required, tensions of a normal prison life are relaxed and conditions of imprisonment can approximately be more close to the pattern of normal life.”

Rajasthan Prison Rules define Open Jails as: “Prison without walls, bars and locks”. The jail does not confine them completely but requires them to earn their living to support their families, living with them inside the jail”.

**II. ORIGIN OF OPEN PRISONS**

John Howard and Jeremy Bentham were the two principal reformers who had the belief that such institutions and establishments could be developed which would rehabilitate criminals and thus prevent crime. The pioneering effort in the direction of open prisons was made in the end of 19th century, that is, in 1891 in form of Witzwill establishment in Switzerland.

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4 N.V. Paranjape, *Criminology, Penology and Victimology* 548 (Central Law Publications, Allahabad, 17th edn.)
Similar efforts were made in this direction by the US and UK and other countries. In the modern sense, first open prisons were established in UK, in 1936 called as New Hall Camp.\(^7\) The idea of open prison took concrete form in US in around 1940s. In the UK, Sir Alexander Paterson, a member of prison commission, from 1922 to 1947, played a major role in development of open prisons.

The philosophy on which these ‘minimum-security’ prisons were based derived its strength through following assumptions\(^8\):

(i). An offender is sent to prison ‘as’ punishment and not ‘for’ punishment.

(ii). Unless the conditions of captivity are relaxed, a person can’t be trained for freedom.

(iii). The gap between the institutional life and free life has to be bridged to ensure the return of inmate as a law-abiding member of the society.

(iii). The dictum ‘trust begets trust’ is true for prisoners as well, meaning thereby that if the inmates are kept in open prisons and trust is reposed in them, they shall not betray the trust.

In USA, the idea of open-air prisons was in existence in the name of ‘prison-farms’. However, the prisoners transferred here were made to work under the watch of the guards. Later on, it was realised that these prisoners did not escape when they were engaged in some work even without armed-guards. Slowly, this practice became prevalent in the US.

By 1975, England had 13 Open Prisons, US had 25, Australia and Srilanka had 4 each and Newzealand, China, Japan, Philippines, Thailand had 2 each.\(^9\)

In the open prisons, the free movement of prisoners and visits from relatives accompanied with the engagement of inmates in constructive works makes the rehabilitation of inmates a lot easier. A sense of responsibility is also induced in the inmates as observed: “The open fields, the absence of gun guards, not regimentation men, allowed to go to meals and to go unescorted, challenge each individual to begin again to stand on his own feet. He is constantly faced with the ease of escape. The fact that he rejects this possibility... indicates he has taken a great moral and social step. By accepting this responsibility, he has admitted to himself that he wishes to be a social rather than asocial animal”\(^10\).

The Hague Conference in 1952 suggested the establishment of open-air camps. It suggested that the prisoners who have spent the substantial portion of their term should be allowed to

\(^8\) Supra note 3.
\(^9\) Supra note 1.
\(^10\) Ahmad Siddique, Criminology, Penology and Victimology 339 (Eastern Book Company, Lucknow, 7th edn.)
lead a near community-life by transferring them to open air camps, having minimum security arrangements. The first United Nations Congress on Prevention of Crime and treatment of offenders held in Geneva in 1955, adopted the UN Standard Minimum Rules for the treatment of prisoners. It was unanimously decided that self-discipline and absence of prison-walls, bars fence, armed guards shall form the guiding factors for working of the open institutions.

III. OPEN PRISONS IN INDIA

Before India got her independence, the Englishmen used to torture the Indian prisoners in the Jail. The same concept was carried after independence and custodial torture is quite prevalent in our country. The father of the nation, Mahatma Gandhi emphasised on the need of humane treatment of prisoners. Ancient Jurist Manu was also of the view that the punishing of offenders indiscriminately shall make them even more dangerous and thus measures should be sought to reform the criminals and make them realise their mistake so as to make them law-abiding citizens.

The concept of open prisons in India can be traced back to 1836 when the first All India Jail Reforms Committee was setup to review that status of prison administration in India. However, the report wasn’t favourable and after that a number of committees were appointed but the idea of open prison could not materialise. It was in in 1952, when Sir Walter Reckless, technical expert in the United Nations, visited India and submitted a report on status of prison administration in India\(^\text{11}\) as result of which All India Committee on Jail reforms 1956 was setup, which in its one of the recommendations suggested the establishment of open jails as device of reformation of prisoners. These prisons were to have no armed guards or security against escape of inmates and were to be based on the idea of ‘self-discipline’. Later, Mulla Committee\(^\text{12}\) was formed which played a significant role in the development of Open prisons.

The State of Uttar Pradesh was the first to establish open prison camp (Pen camp) in 1953 for the construction of dam over Chandraprabha river near Varanasi.\(^\text{13}\) The prisoners were stopped being called as prisoners and they were also paid wages for their labour. Very few numbers of inmates escaped despite no physical obstruction to escape. However, an attempt was made in 1905 in Bombay Presidency but the open prison so established was closed in

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\(^{11}\) Supra note 3 at 556.
\(^{12}\) All India Committee on Jail Reforms, 1983.
\(^{13}\) A prison without bars or walls, available at: https://cjp.org.in/a-prison-without-bars-or-walls (last visited on July 26, 2021)
1910. Once the dam was established, the inmates of the camp were shifted to construct dam over the Karamnasa river and a third camp was also organised for digging a canal at Shahbad.\textsuperscript{14} Andhra Pradesh and Maharashtra were the next two states in line which started open air prisons and gradually, seeing the success of these open prisons many other states established open prisons for the rehabilitation and reformation of offenders.

IV. A GLANCE AT THE PRESENT SCENARIO

Currently, there are only 17 states reportedly having open jails in their jurisdiction. The highest number of open jails are in Rajasthan (29), then in Maharashtra (13), Kerala and Tamil Nadu have 3 each, Gujarat and West Bengal have 2 each and the remaining 11 states have one each (Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Madhya Pradesh, Karnataka, Telangana, Uttarakhnad, Punjab, Odisha). As far as the holding capacity of open jails is concerned, Maharashtra has leads with the highest capacity of 1522 inmates.\textsuperscript{15} However, unfortunately none of the Union Territories have even tried to experiment with the idea of open prisons.

The open prison in Kerala is based on “equality of religions” and does not recognize the hierarchy of caste structure. It encourages an expression of religious faith in the temple, church or the mosque. Despite the fact that there are no fences or supervisory towers, there have been just one escape in 35 years.\textsuperscript{16}

\textbf{Justification of open prisons in the light of constitutional provisions}

It is known-fact that all prisoners are not hardened-criminals and some of them are capable of reformation. The open prisons in India are generally for the offenders who are not a menace to the society and are charged with petty offences. Article 21 of the Constitution of India provides “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. The Supreme Court in various cases has derived the required jurisprudence from article 21 to protect the rights of prisoners, in so far as the humane treatment of prisoners is concerned. The Judiciary has widened the scope of article 21 to include within it the rights of prisoners as they also have the right to live with dignity and humane treatment, more so when they are capable of reformation.

\textsuperscript{14} Supra note 1.
\textsuperscript{15} The Concept of Open Prison system in India, available at: http://www.wisdomcrux.lawtimesjournal.in (last visited on July 26, 2021).
\textsuperscript{16} Mr. Narender Kumar, “Role of Open Prison in India: A Socio-Legal Study” 9 Mukt Shabd Journal 1821 (2020).
In Dharambir v. State of U.P.\(^{17}\), the Apex Court supported the institutions of open prisons as such prisons, the court observed, had certain advantages in the context of young offenders who could be protected from some of the well-known vices to which young inmates were subjected to in ordinary jails. The Court, therefore, directed the State government to dispatch the two prisoners, in their early 19-20s to one of the open prisons in U.P. without going into the technical rules if they fulfilled the required conditions substantially\(^{18}\).

The Court, in this case, also made clear some of the obligations of prison administrators as\(^{19}\):

(i). Adolescents are subjected to the vice of exploitative labour by the adults therefore the young inmates must be separated and freed from exploitation by adults and any violation of these imperatives is a violation of article 19.

(ii). The facilities of interviews, visits and confidential communication with the inmates should be allowed to the lawyers nominated by District Magistrates, Session Judge, High Court and the Supreme Court, subject to the security considerations.

(iii). The state shall take measures to follow the Standard Minimum Rules for treatment of prisoners (which also provided for the need and objectives of open prisons) recommended by United Nations, especially those which relate to work and wages, treatment with dignity, community contact and correctional strategies.

The Supreme, commenting upon the importance of open prisons in Ramamurthy v. State of Karnataka\(^{20}\) observed that they play a vital role in the reformation of prisoners because of their features such as release of offenders on probation, home leave to prisoners, introduction of wage system, release on parole, educational, vocational, moral training. Also, they are cost efficient as they are far less costly then closed establishments and the government can employ the inmates to work for the benefit of public at large. The apex Court Further observed\(^{21}\): “though open-air prisons, create their own problems which are basically of management, we are sure that these problems are not such which cannot be sorted out. For the greater good of society, which consists in seeing that the inmates of jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable. So, let more and more open-prisons be opened. To start with, this may be done at all the district headquarters of the country”.

\(^{17}\) (1979) 3 SCC 645.
\(^{18}\) Supra note 8.
\(^{19}\) Supra note 8 at 341.
\(^{20}\) (1997) 2 SCC 642.
\(^{21}\) Supra note 3 at 558.
Thus, the above cases highlight that the Apex Court of India has been very vigilant in reacting to the human right violations and a number of rights for prisoners have been recognised by way of wide interpretation of articles 21, 37, 39A. Cases like ‘Sunil Batra vs. Delhi Administration’,\textsuperscript{22} ‘Sheela Barse vs. State of Maharashtra\textsuperscript{23}’ played a major role in recognition of prisoners’ rights. The Jail reforms Committee setup in 1980 also made recommendations regarding rights of the prisoners, including the use of open prisons.

\textbf{V. ELIGIBILITY CRITERIA FOR TRANSFER OF CONVICTS FROM CLOSED TO OPEN PRISONS}

Different States have different Prison Manuals which indicate the eligibility criteria for transfer of convicts from closed prisons to open prisons. Good conduct in prison and period of 5 years in a controlled jail spent by a convict are the rules followed by the Rajasthan Prison Rules.\textsuperscript{24}

Undertrial prisoners are not allowed to be transferred in open prisons in Rajasthan.

As per the Rajasthan open Prison Rules, 1972, Sampurnanad Open Prison can have prisoners:\textsuperscript{25}

(a). who had a good conduct and (b). who had completed one-third of their sentence and (c). whose names have been recommended by the Committee established for the said purpose.

In Andhra Pradesh the age limit for admission to open prison should be between 21 to 55 years. Convicts are eligible for transfer only after undergoing 1/3 of their sentence in a closed prison, and having normally more than 5 years to serve. The transfer of inmates to open prison in Anantpur, Andhra Pradesh is based upon good conduct and completion of two-third of their sentence. The inmates herein can learn new agricultural skills as they grow cucumber, brinjal mangoes etc.\textsuperscript{26}

In Andhra Pradesh, conditions of ineligibility are also provided such as prisoners who are habitual and dangerous offenders, political agitators, or having history of escape from open prisons, against whom any other cases are pending, having any disease which could worsen in open conditions. Arbitrarily enough, women prisoners are not transferred to open prisons in the State.

\textsuperscript{22} AIR 1978 SC 1548.
\textsuperscript{23} AIR 1983 SC 378.
\textsuperscript{24} Supra note 4
\textsuperscript{26} Understanding Open Prisons in India, available at: https://www.epw.in/engage/article/understanding-open-prisons-india (last visited on Aug 15, 2021)
Open Prison Rules in Maharashtra are governed by Maharashtra Open Prison Rules, 1971. A Selection Committee is to be formed which shall consist of Superintendent of prison, Inspector general, Deputy Inspector General and a Superintendent of Open Prison is appointed. The main criteria of selection include the period of imprisonment, the time already spent, physical and mental fitness and good conduct of the convict. In this State as well, ineligibility criteria is provided and prisoners who:

(a). have a history of mental illness,

(b). are convicted for narcotics,

(iii). are hardened-murderers, or

(iv). have been convicted for sedition or collection of arms are ineligible for transfer. Again, an arbitrary criterion is that the woman prisoners are not allowed to be transferred in open prisons.

In Rajasthan the open prisons are governed by the Rajasthan Prisoners open-air camp rules, 1972. According to the rules, the object of open jails is to reward good behaviour of the convicts and give them a shot at socialisation and improve their economic condition.

The Jail Superintendent prepares a list of convicts who are eligible for the transfer and the list is sent to the Open-air camp advisory Committee, with whom the decision rests.

The conditions of ineligibility include the prisoners who:

(a). are below the age of 25 or above 60.

(b). have a history of mental illness.

(c). Convicts of heinous crimes as, collection of arms or political offences etc.

However, in this State as well some of the conditions of ineligibility are purely arbitrary such as the convicts who don’t permanently reside in Rajasthan or have a residence outside Rajasthan, unmarried prisoners, civil prisoners are ineligible for transfer. One of the flaws which was present in the rules of the States discussed above is however not present in Rajasthan as women are given access to open jails. The daily management of open prisons is to be looked after by a Panchayat, having 5 to 7 members, selected by the inmates themselves.28

The prisoners have to attend a roll call each morning and evening at a fixed time and

28 Ibid.
prisoners who have served one third of their sentence including remission become eligible for transfer subject to good conduct and few other exceptions/disqualifications.29

VI. OPEN PRISONS IN INDIA: SUCCESS OR FAILURE? AN EVALUATION

To adjudge the success or failure of open prisons in India, the positive and the negative sides of the system have to be weighed. The data released by NCRB in 2015 highlights some of the grounds on which the system of open prisons can be criticised. The data recorded30 77 custodial suicides and 11 deaths due to custodial murders. Some of the grounds on which the system is criticised are:

(i). Under-Utilisation of Open Prisons: As already discussed, different States have different sets of rules for the eligibility of convicts for open prisons. The criteria of eligibility is highly subjective and is generally based on the good behaviour, nature of offence committed, length of the sentence and also the risk of security. The convicts which are considered dangerous are also not generally transferred and some States have arbitrarily excluded women as well. These regulations have led to low-occupancy rates and under-utilisation of open prisons, thereby undermining the fundamental tenets of open prison, that is, socialisation and reformation of convicts. The Justice Mulla Committee set up for open prisons in India observed that the principle guiding factor for sending a prisoner to open prison should be ‘suitability of his admission’ and not the nature of crime or length of sentence. It observed31: “It is disheartening to see that the prison authorities are reluctant to transfer prisoners to open institutions and are not putting to full use even the existing capacity of open institutions. Greater attention, therefore, needs to be paid to the transfer of prisoners to open institutions so that more and more convicted persons may avail the benefits of these progressive institutions. This will require liberalisation of conditions of eligibility for admission to open institutions.

However, by now, no major steps have been taken to implement the above recommendation of Mulla Committee. But to achieve the best possible results from open prisons rules regarding eligibility have to be relaxed.

(ii). Under trial prisoners are excluded from the benefit of open prisons.

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30 Supra note 26.
(iii). The rules governing the management of Open prisons have been become dilapidated and should be amended to cater the needs of present and future.

(iv). No Union Territories in India have even experimented the concept of open prisons and the States have very few numbers of open prisons.

(v). Corruption have always been a menace to our country. Sometimes, due to corruption wealthy convicts, who are even charged with heinous crimes and are hardened-criminals, are transferred to open air prisons.

Moreover, Open air prisons are criticised by the believers of retributive or Deterrent theory as according to them punishment should be cruel so as to punish the offender for his wrong-doing and deter others from doing the same. It is also contended that due to cost-free shelter, economic independence and the stay with family, prisoners refuse to move out of the place.

Despite the above criticisms, the benefits of open prisons outweigh the demerits of it. As Blake Farenthold has observed: “The purpose of the criminal justice system is both to rehabilitate and to punish but if we can rehabilitate somebody, that is a huge, huge win”, all offenders, especially adolescents, don’t deserve to be in closed prisons with hardened-criminals where chances are that they shall become more attracted towards the crime-world. Open prisons provide them with a chance of reformation and returning them to the civilised society as a lawabiding citizen and also provides them with employment. It thus instils them with self-confidence and self-discipline and considering its positives, undoubtedly open prison system as a correctional system is a success.

VII. SUGGESTIONS

It is humbly submitted that following suggestions may be followed to improve the utility of open prisons:

(i). Open prisons should also be established in the Union Territories. Moreover, the States which don’t have open prison establishments yet should aim at establishing them. The States which already have open prisons should increase their numbers.

(ii). The recommendations of Mulla Committee (as already discussed in the project) should be followed to increase the occupancy-rates in open prisons and make full utilisation of them.

(iii). Attempts should be made at more open prisons in India for women. The first such attempt was made in Maharashtra, when the first open prison was established in Yerawada in 2010.

(iv). A common set of rules, to determine the eligibility criteria for transfer of convicts to open prisons, is required. Allowing different states to frame separate rules has led to arbitrary exclusion of certain classes of prisoners, for example certain States have made women ineligible for transfer to open prisons. This may also help in reducing corruption in the prison administration regarding transfer of prisoners to open prisons.

(v). Special Qualifications should be prescribed for the prison staff working in open prison institutions. In this regard, Central Bureau of Correctional Services in its report has suggested:\[34]\:

“Only trained and well-adjusted personnel who accept the importance of personal knowledge and understanding of prisoners in their charge and have the qualities of leadership, integrity and humanity should be posted to open prisons”.

(vi). Judiciary should have the power to send certain class of offenders directly to open prisons, especially in case of petty offences and young offenders so that they remain separate from hardened-criminals and the vices that practised in Indian Jails.

(vii). The inmates should be paid ‘equitable wages’ for their work, and scarcity of resources should not be an excuse, to instill self-reliance amongst them. Different States grant different wages, thus there is a need for a central legislation to distribute uniform wages in all the open institutions.

(viii). Suitable amendment in Section 433-A CrPC which provides for minimum imprisonment of 14 years for life convicts and thus undermines the incentive to earn remittance by employment in open prisons.

**VIII. CONCLUSION**

The above study clearly establishes the importance of open prisons as a rehabilitative and reformative mechanism. Despite certain loopholes, the basic philosophy of open prisons has made them an answer to the problem of overcrowding in closed prisons. With free movement, employment, family-visits, recreational facilities, open prisons inculcate a sense of self-discipline and social responsibility in the inmates. The conditions of the open prisons have made it feasible that the prisoners after the release do not relapse into crimes and the

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wage labour makes them economically independent. Open Prison still have a long way to go in India primarily due to exclusion of various class of prisoners by different states leading to underutilisation of open prisons. However, if suggested changes are made, Open Prisons shall contribute a lot as a correctional system, in the near future, by way of reformation and rehabilitation of prisoners, in the Welfare State.

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