



## OPEN PRISON: VIEW OF THE PEOPLE AND AN ANALYSIS

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*“Hate the crime, not the criminal.”  
– Mahatma Gandhi*

### Abstract

Open prisons have gained significant attention in criminal justice systems as an alternative approach to incarceration. This abstract examines the views of the public and provides a critical analysis of open prisons, considering their effectiveness, impact on recidivism rates, and potential benefits and drawbacks.

The public perception of open prisons varies widely. Supporters argue that open prisons promote rehabilitation by providing inmates with increased autonomy, opportunities for employment, and reintegration into society. They believe that such an environment fosters responsibility and reduces the chances of reoffending. Moreover, open prisons are seen as a cost-effective measure that eases prison overcrowding and reduces strain on resources.

However, critics express concerns about the potential risks associated with open prisons. Some argue that offenders may abuse the privileges and opportunities provided, leading to increased criminal activity outside the prison walls. Skeptics also question the ability of open prisons to ensure public safety, arguing that dangerous offenders could exploit the system.

Analyzing the available research and evidence, this abstract explores the impact of open prisons on recidivism rates. It discusses studies that suggest a correlation between participation in open prison programs and reduced reoffending, highlighting the potential for positive outcomes in terms of rehabilitation.

Overall, this abstract provides a comprehensive overview of public perspectives on open prisons, assessing both the potential advantages and disadvantages of this alternative form of incarceration. By understanding the public perception and analyzing the available evidence, policymakers and criminal justice professionals can make informed decisions regarding the implementation and efficacy of open prisons within their jurisdictions.

### INTRODUCTION

The concept of open prison is based on reformatory theory of punishment. Open prison means the prison with minimal supervision and restriction. So, that they can easily cop-up with society after completion punishment duration. Open prison gives the liberty to the people to live with their family member, to search the employment, and do their work the whole day expected to return into the campus after completion of the working hours of the employment. Various jurist, philosopher, lawmakers, thinkers accepted that the punishment has failed to reform the criminal. So, its time to adopt something alternative of punishment towards reduce of crime.

Traditionally if we think about the prison firstly, the image comes in our mind that prisoners are behind the cell and covered with



three walls. Inhuman treatment like – insufficient food, no health care facility, no proper hygiene, no way for light and air in the cell.

Offenders of less serious crimes, joins the company of serious offender. The prisoners grow up with serious criminal and inculcates the more serious criminal activity because of their company, e.g – idea of crime, consumption of drugs, become mentally strong for commission of any offence. It is now to as a correctional or improvement facility, implying that the focus is on reforming offender rather than punishing them.<sup>1</sup>

According to the Rajasthan Prisoners Open Air Camp Rules of 1972, open prisons are, “prisons without walls, bars and locks”.<sup>2</sup> Nelson Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners), states about open prison that these prisons are created with the objective of providing most favourable condition for rehabilitation of some selected prisoners as there is no physical security provided against escape and inmates are required to maintain some self-discipline.

Further these rules envisage for the certain rights of the prisoners such as right to employment under article 23<sup>3</sup> and right to contact with the outside world.

### Literature review

The concept of open prisons in India can be traced back to the Gandhian philosophy of reforming offenders through moral and

ethical transformation. The first open prison in India, the 'Model Prison' in Yerwada, Maharashtra, was established in 1926, which marked the beginning of a paradigm shift in the Indian criminal justice system. Over the years, open prisons have gained recognition for their potential to provide a conducive environment for rehabilitation and reintegration.

Open prisons in India are governed by various legal provisions. The Prisons Act of 1894 and the Model Prison Manual of 2016 provide a framework for the establishment and functioning of open prisons. The legal provisions emphasize the principles of rehabilitation, reformation, and social reintegration. They also address aspects such as eligibility criteria for open prisons, procedures for classification and selection of inmates, and safeguards to ensure public safety.

The implementation of open prisons for young age accused individuals in India has gained significance. Studies highlight the importance of age-appropriate interventions, focusing on the unique needs and vulnerabilities of young offenders. Open prisons provide an environment conducive to their reformation, skill development, and successful reintegration into society. Research indicates that young offenders in open prisons have lower recidivism rates compared to those in traditional prisons, emphasizing the positive impact of this approach. Understanding the existing literature provides valuable insights for policymakers and stakeholders to refine and improve open prison systems in India,

<sup>1</sup> Report of “Prison Statics India, 2019, published by National Crime Report Bureau Ministry of home affairs.

<sup>2</sup> The Rajasthan Prisoners Open Air Camp Rules, 1972.

<sup>3</sup> Nelson Mandela rules.



ensuring effective rehabilitation and contributing to a safer society.

## HISTORICAL BACKGROUND OF OPEN PRISON:

### Research Question

- 1) What is the legal framework of open prison in India.
- 2) Advantages of open prisons in India, specifically focusing on their implementation for young age accused individuals and the works involved within the open prison system.

### Hypothesis:

1. Open prisons in India will reveal a progressive shift in the criminal justice system, aiming to promote rehabilitation and reintegration of offenders into society.
2. Open prisons for young age accused individuals in India is likely to contribute positively to their rehabilitation, reducing recidivism rates, and facilitating their successful reintegration into society.
3. Engagement of inmates in productive works within the open prison system in India is expected to enhance their skills, provide vocational training, and contribute to their overall personal development, thereby increasing their chances of successful reintegration.
4. Establishment of open prisons in India can be attributed to factors such as overcrowding in traditional prisons, the need for cost-effective alternatives to incarceration, and the belief in the rehabilitative potential of open prison environments.
5. Legal provisions related to open prisons in India, including guidelines, regulations, and safeguards, are likely to emphasize the importance of ensuring public safety while focusing on the principles of rehabilitation and reintegration

In 18<sup>th</sup> Century two important prison reformers, namely John Howard and Jeremy Bentham denied the traditional punishment and the conviction. So that the institution will more focus on to rehabilitate prisoners and reduce crime. After the denial on traditional punishment and conviction later of 18<sup>th</sup> century many institutions tried to inculcate the idea of John Howard and Jeremy Bentham. Unfortunately, they failed to alter the convicts. After a great attempt and effort, Switzerland built the first open prison in 1891, United States in 1916, United Kingdom in 1930 and the Netherlands in 1950 as followed.

Once upon a time in 1936, a practice had been done to see the result of open prison. Mr. J.E. Henderson, then Deputy Governor of Wakefield Prison, were given a task of creating the unique type of prison, for adults, without bolts or bars of any kind. The premises allotted to the D.G. of Wakefield was almost 200 acres of woodland with staffs, twenty men and four officers and called New Hall Camp. It resulted in successful experiment. The concept of Open prisons was first developed in U.K in the 1930s and was based on the idea of ‘carrots’ rather than ‘sticks’.

In 1955, the United Nations Congress on the Prevention of Crime and Treatment of Offenders in Geneva illustrated an open jail with the words: *“An open jail is portrayed by the shortfall of material or actual safeguards against escape (dividers, locks, bars, equipped or skewered safety officers) and by framework dependent on self-control and the*



*detainees' feeling of obligation towards the gathering in which he lives*"<sup>4</sup>

The Hague Conference in 1952 sought attention on establishment of the outside camps. It stated that the criminals who had completed their term of imprisonment satisfactorily, they should be transferred to outdoor camps and allowed to live in a close – local society. These work-based camps would house a set number of inmates and provide the bare minimum in terms of insurance. Furthermore, the detainees would be required to work and be compensated accordingly.<sup>5</sup> The international Covenant on Civil and Political Rights is the most important international charter to protect the rights of prisoners. India has ratified the Covenant in 1979 and is also required to incorporate its provisions into domestic law and constitutional practice. Article 21 of our Indian constitution also states that “No person shall be deprived of his life or personal liberty except according to a procedure established by law”.<sup>6</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR) grants protection of economic, social and cultural rights in addition to basic inheritance and political rights.<sup>7</sup>

#### **Open Prison in India:**

In India, the first open prison was started in 1905 in Bombay Presidency. The prisoners were selected from the special class prisoners of Thane Central Jail, Bombay.

<sup>4</sup> Ishwar Chandra Vatsa, open peno correctional services, 42 (Vedams book from India, 1997).

<sup>5</sup> Ishwar Chandra Vatsa, open peno correctional services, 42 (Vedams book from India, 1997).

<sup>6</sup> Art. – 21, of Constitution of India, 1950.

However, this open prison was closed in 1910.

At the first time All India Jail Committee was created in 1836, later on the idea of open prison in India was established. Unfortunately, there was no satisfactory result came. There were various committee formed, at last the most notable committee which was the All- India Committee on Jail Reforms, established in 1959. Further, the Mulla Committee was established and it became the most influential committee in India's open prison system. Later on in 1953, the state of Uttar Pradesh established the first open prison camp near Varanasi, UP, for the construction of a dam over the Chandraprabha River.

In present there are total 69 open prisons in India. Only 17 states reportedly having open prison in their own jurisdiction. Rajasthan have the highest number having 29 open prisons, Maharashtra has 13, followed by Kerala and Tamil Nadu have 3 each, Gujarat and West Bengal have 2 each and the rest 11 states have one each (Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Madhya Pradesh, Karnataka, Telangana, Uttarakhand, Punjab, Orissa. Maharashtra's open prison has the highest capacity of 1522 inmates.<sup>8</sup>

#### **Open Prison to young age accused:**

Our criminal justice system is accused right oriented, talks more about the accused rights.

<sup>7</sup> Adapted by the General Assembly on 16<sup>th</sup> December 1966 and entered into force on 3<sup>rd</sup> January, 1976.

<sup>8</sup> The Concept of Open Prison System in India, available at: <http://www.wisdomcrux.lawtimesjournal.in> (last visited on May 24, 2023).



It is tried to give freedom of any offender as matter of right.

In case of *Dharambir and another v. State of Uttar Pradesh*<sup>9</sup>, hon'ble Allahabad High Court held that young age accused awarded by life imprisonment may become the hardened criminal. So, the court has directed to the authorities to place them in open prison, and give them opportunity to work within or without the prison compass with small wages, also allow them to and their family members to visit once a year and permit them to go on parole for two weeks every year.

#### Works involved in open prison:

Works involved in open prison are farming, animal husbandry, and any work where convicted person can work as laborer. They were given employment on minimum wages<sup>10</sup>.

#### REASON BEHIND THE OPEN PRISON:

The main reason behind the open prison is to rehabilitate the prisoners and they could be able to re-socialize as normal people.

In case of *Rama Murthy v. State of Karnataka*<sup>11</sup> hon'ble Supreme Court observed that open prison plays a great role to reform the prisoners because of their special features such as release of offenders on probation, home leave to prisoners, introduction of wage system, release on

parole, educational, vocational, moral training. Most importantly the open prison is cost effective as they are very less costly in compare to closed prison.

#### VARIOUS LEGAL PROVISION RELATED TO OPEN PRISON IN INDIA:

##### Eligible convicts for open prison: In Maharashtra Open Prison rules 1971 -

Not all prisoners are transferred for open prison but some of them who are eligible according to the rules given by provisions.

Following Convicted criminal prisoners may be selected for open prison<sup>12</sup> who—

- (a) are found to be of good behaviour, and who are physically and mentally fit
- (b) are willing to do hard work and abide by the rules and regulations of the open prison.
- (c) are sentenced to terms of imprisonment of one year or more and have undergone one-fourth of their sentence excluding remissions; or
- (d) are sentenced to imprisonment for life or more than 14 years in the aggregate and who have undergone five years of the sentence excluding remission.

##### Person not allowed to be sent for confinement in an open prison:

- (a) habitual classified as such by courts
- (b) known habitual
- (c) prisoners who are awarded three or more major punishments for prison offences during

<sup>9</sup> 1979 Supreme Court Cases (Cri) 862.

<sup>10</sup> Lowest amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, that cannot be reduced by collective agreement or an individual contract. Around

90 member states of the ILO follow the provision of minimum wage. – International labour organisation.

<sup>11</sup> 1997 Supreme Court Cases (Cri) 386.

<sup>12</sup> Rule 4 of the Open Prison Rule, 1971.



the last two years, prior to the date of selection.

- (d) prisoners having any case pending in a court,
- (e) prisoners suffering from mental disease or any other serious disease,
- (f) prisoners having previous history of serious mental illness,
- (g) prisoners convicted and sentenced for offences under sections 121, 121-A, 122, 123, 124, 124-A, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 376, 392 to 402 of the Indian Penal Code, 1860<sup>13</sup> or for offences under the Bombay Prevention of Gambling Act, 1887<sup>14</sup>, or for offences under the Sea Customs Act
- (h) escapees and escape risks
- (i) hired and professional murderers
- (j) prisoners convicted of offences connected with narcotics
- (k) prisoners, who have been transferred from an open prison to a closed prison
- (l) Class I prisoners
- (m) women prisoners
- (n) any other prisoner or category of prisoners whom the Inspector General of Prisons considers unfit for being sent to an open prison.

#### **Rajasthan Prisoners open-air camp rules, 1972:**

The Rajasthan Prisoners Open -air camp rules' aims is to encourage for good behaviour so that the convicted person can get opportunity to social adjustment and economic independence.

<sup>13</sup> Indian Penal Code, 1860 (Act 45 of 1860)

<sup>14</sup> Bombay prevention of gambling Act, 1887 (Act 4 of 1887)

The decision is taken by committee for the selection of convict for open prison on the basis of list sent by the Jail superintendent of deserving prisoners to the Air camp advisory committee.

The eligibility criteria are similar to the Maharashtra open prison rule<sup>15</sup>, at the same time convicted person must be spend 1/3<sup>rd</sup> of the sentence in a closed prison.

#### **Himachal Pradesh open prison rule –**

The Himachal Pradesh open prison rule has similar provision as to Rajasthan open -air prisoner rule. Convicted person for heinous crime such as rape are eligible for the open prison.

#### **ADVANTAGES OF OPEN PRISON:**

1. **Reduce the overcrowding of jail** - As we know that overcrowding is one of the major problems for the prison system. Because of overcrowding prisoners infected by lots of communicable diseases and also suffers from the mental health. The latest data shows that 22 national prison systems hold more than double their capacity, with a further 27 countries operating at 150-200%.<sup>16</sup> Thus, open prison keeps the space between the co-prisoner.
2. **Good Mental health**- In closed prison there is no interaction of convicted person with society. Person who are mentally healthy before their arrest develop mental health

<sup>15</sup> Maharashtra open prison rule, 1971.

<sup>16</sup> Penal Reform International (2018)



symptoms once when they are in prison. New diseases often develop, and pre-existing conditions may worsen.<sup>17</sup>

On the other hand, Open prison helps the convicts for being socialise. As said by the Aristotle “man is a social animal”, means a man cannot be live in isolation. For the development of mind society is very importance.

3. **Better health-** In traditional prison prisoners developed so many diseases because of infected by co-prisoners, lack of treatment, lack of proper hygiene, and etc. In open prison convicted person are supposed to be maintained at least basic hygiene. They wear clean cloth, may go for better treatment, low chance for communicable diseases. They have choice to get food according to their health.
4. **Utilization of human resource** – Prisoners in open jail contribute to the society as human resource. They are provided some employment on the minimum wage like-farming, tea-stall, shoe making shop, animal husbandry, to build bridge, government buildings etc.
5. **Easily re-socialization** - They are kept on open prison and allowed to go in society rather than confinement. They become used too to cooperate with the society. So, after the completion of punishment, there is no need for rehabilitation of convict person, and they get easily access in the society.

#### CRITICISM OF OPEN PRISON:

There is one main criticism of open prison is the unnecessary and arbitrary provision for the ineligibility to select the deserving convicts.

Prisoners in various states are selected by authorised committee, who have not any accountability and also not bound to give reason for selection of convicts. There is a chance of partiality and corruption to select the convict person for open prison. Open prison covers only few numbers of convict person. There is need to rehabilitate a large number of convict person. So that the custodial death, suicide, torture, bad mental health, overcrowding in jail could be reduced.

Open prison concept is only applicable on convict person, and it does not provide to the under-trial prisoners.

Actions are not taken for the fresh conviction, even there is no provision for the semi-open prison.

There is no adequate number of open prisons in state. It differs from state to state. Further, there is no open prison in Union territory. It leads to the inequality in different territory of India.

#### PUBLIC VIEW ON OPEN PRISONER:

The concept of the open prison is generally criticized by the members of public and politicians instead its success towards rehabilitation compared to older, more draconian methods. Convicted prisoner in open jails do not have complete freedom and they are only allowed to go for an employment. There is an apprehension to commit the crime again, apprehension to be threaten by the victim’s party as well. Generally, we see the incident regarding

<sup>17</sup> American Psychological Association. Incarceration nation. Monitor on Psychology. 2014;45(9): 56



repeating of offences, such as prisoners released on parole has committed the crime again, or there may be chance for escape.

### CONCLUSION:

Our Indian criminal justice system is accused oriented because every saint has past, and every sinner has future. There are several rights conferred to the accused. There are five theory of punishment such as – retributive, deterrent, rehabilitative, and reformatory theory. The reformatory theory of punishment is considered as best theory in all of them and the concept of open prison is based on the reformatory theory. The criminal justice system more focuses on to rehabilitate the prisoners. The open prison deals with prison system, where convicted prisoners complete their punishment outside the jail, without strict restriction and supervision of jail superintendent. Open prison has been brought with aim to make prisoners socialize and economic independent. So that the prisoners can cooperate in society without any difficulty. Article 21 of Indian Constitution guarantees the right to life and personal liberty and sufficient livelihood as well. Art 23 of Nelson Mandela rules also deals with the favourable condition for the rehabilitation of the prisoners and right to employment as well. The concept of open prison is not new, different countries has adapted this time to time. In India, the first open prison was started in 1905 in Bombay Presidency. The prisoners were selected from the special class prisoners of Thane Central Jail, Bombay. However, this open prison was closed in 1910. Later on in 1953, the state of Uttar Pradesh established the first open prison camp near Varanasi, UP, for the construction of a dam over the Chandraprabha River. Indian open prison

rule is governed by the Maharashtra open prison rule 1971, Rajasthan open-air prison rules 1972 and Himachal Pradesh open prison rule.

There is need in all the open prison rules, because a large number of the convict are in need to be rehabilitated. According to Open Prison rules, only few convicts who has completed their 1/3<sup>rd</sup> duration in prison are allowed to go for open prison. It must be implemented equally in all state because it is less costly in compare to the closed prison.

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