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OPEN PRISONS: RESERIALISING PRISONERS' RIGHTS WITH FREEDOM

Ms. Ritika Kanwar*

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ABSTRACT

Modern Criminology seeks prison as an institution which tilts the balances slightly more towards correctional angle against penal approach. Such practices have made ideological differences in perception of justice delivery system being reformative and rehabilitative instead of being retributive and deterrent. Nevertheless, the conventional penitentiary edifice, being gripped with abusive, archaic and impervious sense of justice, demands removal of ill-suited decadence among prisoners. Among all laudable prison reforms for safeguarding human rights and constitutional right of dignity of the prisoners, open prisons have emerged as the most quintessential imperative ensuring dual objectives of socio-penal sentencing and efficacious reintegration of prisoners in the society. The administration of open prison postulates an alternative for social adjustment of convicts strongly provoking a sense of responsibility and improved behavioural conduct towards society. Resocialisation of prisoners through open prisons has proved to be an antidote to prisonisation of convicts. The present article aims at a structural study of open prisons while looking at a series of live illustrations in India. It delves into the upcoming challenges and loopholes in the administration aspects of such correctional reforms, thereby, listing succinct model suggestions over the same. With respect to research methodology, doctrinal study has been employed and secondary data has been used that is available on the topic. The thoughtful literature review of this paper is inclusive of various books, commentaries, research papers and articles relating to the relevant research area. The scope of the study is analytical, critical, explanatory and comparative in nature. No on-field empirical study has been conducted for this research.

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Keywords: *Open Prisons, Reformative Justice, Rehabilitation and Reintegration, Resocialisation of prisoners, Socio-penal sentencing.*

I. INTRODUCTION: SEEDS OF 'OPEN PRISONS'

The custodial notion of prisons continuing since ages has immensely witnessed recent influences from transformative socio-legal factors and pragmatic eco-cultural conditions of the society. The variable solution for resocialisation of prisoners and their rights commences from reforming the structure of prisons from being deterrent and retributive institutions to such promoting reintegration of prisoners.[1] Earlier the imprisonment of the offender was considered as the ultimate punishment, i.e., the end. However, the trend has shifted to punishment inflexed with concept of reformation as means to the end. The philosophy of rehabilitation was to strike down repressive penal agency of convicted offenders along with underlying torment-punitive regime in the prison administration.

Initially. the western idea of punishment was to confine the offenders till administration of corporal punishment. The practices of beating, whipping and execution while imprisoning the wrong doer were seen as the only methods of punishment. However, with introduction of prison reforms, the emphasis shifted from coercive to correctional. [2]In present scenario, respect for liberty, dignity and inherent human rights of inmates in prisons are being constantly monitored by the courts of law and associated authorities to ensure arrangement of safe custody along with transforming detainees into law abiding citizens on their way back to society. As opposed to humanity, the controlling ambience of prisons results in inmate socialisation, deprivation, corruption and over-punishment.

Later in the 1940s, a bold and tangible vision of open prisons developed with the philosophy of minimum security. The underlying idea of such open-air prisons, prevalently known as "prison farms" in the US, was that the imposition of confines of prison is a punishment in itself and, therefore, inmates are to be trained in the light of freedom as trustworthy and law-abiding citizens of the society.[3] It was believed that punishment in itself is incompetent for the reformation of offenders and their readjustment in society, therefore, community contact

1 R.G. Singh, "Reformation and Rehabilitation of Surrendered Dacoits - A Case Study of Open Prisons of Madhya Pradesh," 40(1) Indian Journal of Social Work 41 (1979).
Bindu Bansal, "Concept of Open Prisons, their main characteristics and Indian Scenario: A Review," 5 Universal Research Reports 1 (2018).

2 Ilango Ponnuswami & Beulah Emmanuel, The Status and Scope of Professional Social Work in Indian Correctional Setting, 14 International Journal of Criminal Justice Sciences 55 (2019).

3 Gary Hill, "Value of Open Prisons in India," 33(3) Corrections Compendium 29, 34 (2008).

while completing sentence paves the way for effective resocialisation of wrongdoers.[4] The process of moulding is bound to be coupled with sensitisation of inmates and motivating them to inculcate humane virtues and kind behavioural faculties.

Furthermore, ancient Indian jurisprudence covers much literature on prison administration. Kautilya, while highlighting the punitive treatment of detainees in his writings, calls for separate accommodation for male and female inmates. In the medieval era, undertrials were incarcerated in fortresses where quazis visit to assess the behaviour of detainees and prison conditions and release them, or else on special events. During British colonialism, Lord Macaulay, through the Prison Discipline Committee, balanced imprisonment between petrifying the offender and not terrifying to conscience of humanity. Although, 6 committees were constituted for recommending prison reforms between 1835-1919, but many of the freedom fighters, who were frequently sent to jails, were critical and resentful about the perilous sufferings of the inmates and barbaric prison conditions during the colonial period.[5]

Legal Framework

International legal instruments at various instances have indirectly been reflective of rehabilitation of detainees while discussing about norms of prison justice and humanitarian prison administration. Consecutively, an organic human rights document of 1948, i.e., *UDHR*[6] has explicitly inculcated respect for life, freedom and security of a person and, therefore, prohibited any kind of torture, inhumane treatment or arbitrary arrest/detention of any person. Similar provisions have been explicated in the *Torture Convention*[7],

4 Mitali Agarwal, "Beyond the Prison Bars: Contemplating Community Sentencing in India," 12 NUJS L. Rev. 119 (2019).
B.S. Shree, "Open Prisons and its Potential for Rehabilitation," 3(1) National Journal of Criminal Law 91 (2020).

5 Paridhi Poddar & Winnu Das, "Establishing Linkages Between Imprisonment and Impoverishment: Reinstilling Punitive Sensibilities in the Carceral State," 7 GJLDP 85 (2017).
Nrupthanga Patel and Dr. G.S. Venumadhava, "Resocialisation of Prisoners- A Concept of Open Prison," 6 Indian Journal of Applied Research 576 (2016).

6 "Universal Declaration of Human Rights," 1948, art. 1, 3, 9, 11, *available at*: https://www.un.org/en/about-us/universal-declaration-of-human-rights.

7 "The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment," 1984, art. 2, 3, 4, 11, 14, *available at*: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

Torture Declaration[8] and *ECHR*[9]. Moreover, *Article 10(3)* of *ICCPR*[10] stresses on the social readaptation of prisoners as 'essential aim' of the penitentiary system in order to ensure recognition of inherent human dignity while treating prisoners. Furthermore, the 1995 *United Nation Congress on the Prevention of Crime and the Treatment of Offenders in Geneva*[11] extensively promoted and recognised the significance of open correctional establishments.

Other authoritative obligations fleshing out of fundamental liberties of individuals are inclusive of comprehensive guidelines evaluating prisoners' rights and prison conditions, namely, *UN Standard Minimum Rules for Treatment of Prisoners, 1955*[12] by Amnesty International, *Basic Principles for Treatment of Prisoners, 1990*[13], *UN Standard Minimum Rules for Administration of Juvenile Justice, 1985*[14] and *Body of Principles for protection of all persons under any form of Detention or Imprisonment, 1988*[15]. These instruments reaffirm dignity and liberty of individuals as fundamental and universally applicable rule, thereby, casting positive obligations on State Parties to protect rights of deprived and vulnerable persons.

Furthermore, the post-independence national framework on prison administration respecting fundamental freedoms and liberal rights of prisoners has been drafted in Constitutional provisions, namely, Article 14, 20, 21 and 22 along with related rules and legislations. For instance, *Prison Act of 1894*[16] regulated shelter, sanitation, safe custody, accommodation, quality medical examination and mental health of prisoners with special emphasis on women

8 "The Declaration on Protection from Torture," 1975, art. 2, 3, *available at*: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-being-subjected-torture-and#:~:text=Any%20act%20of%20torture%20or,Universal%20Declaration%20of%20Human%20Rights.

9 The European Convention on Human Rights, 1950, art. 2, 3,4,5 *available at:* https://www.echr.coe.int/european-convention-on-human-rights.

10 The International Covenant on Civil and Political Rights, 1966, art. 10, cl.3 *available at:* https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

11 *Ibid*.

12 "Standard Minimum Rules for the Treatment of Prisoners," A/RES/70/175 (1955), *available at:* https://www.un.org/en/events/mandeladay/mandela_rules.shtml.

13 "Basic Principles for Treatment of Prisoners," A/RES/45/111 (1990), *available at*: https://digitallibrary.un.org/record/105348?ln=en.

14 "UN Standard Minimum Rules for Administration of Juvenile Justice," A/RES/40/33 (1985), *available at*: https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile.

15 "Body of Principles for Protection of All Persons under Any Form of Detention or Imprisonment," A/RES/43/173 (1988), *available at:* https://digitallibrary.un.org/record/53865?ln=en.

16 The Prisons Act, 1894, No. 9, Acts of Parliament, 1950 (India), §. 4, 7, 14, 24(2), 27, 31, 35.

detainees and undertrials. Moreover, other such statutes such as *Transfer of Prisoners Act, 1950*[17] and *Prisoners (Attendance in Courts) Act, 1955*[18] addresses the issue of overcrowding and vocational training among prisoners.

Beside substantive legislations, the policy framework include National Expert Committee on Women Prisoners in 1986 headed by Justice Krishna Iyer dealt with restoration, rehabilitation, employment training and related correctional modalities of women prisoners.[19] Similarly, *All India Committee on Jail Reforms* in 1951 under the chairmanship of Justice AN Mulla, popularly known as *Mulla Committee Report* (1980-83) along with *Indian Prisons Bill, 1955* drafted as a consequence of consensus on drafting prison law at the *National Conference on Human Rights of Prisoners, 1995*. Other such committees constituted for recommending prison reforms were LCI Report 78[20] and 152[21], *Justice Leila Seth Commission of Inquiry* in 1997, *Duggal Committee Report on Classification of Prisoners* in 1998, *Kapoor Committee on Jail Reforms* in 1986, *Central Bureau of Correction Services* in 1961 and *Conference of Chief Secretaries* in 1979.

Available Instances in India

The peno-correctional institutions in India have transformed the deterrent and custodial notion of confinement to concrete training on social behaviour, skill development, pragmatic education and aftercare facilities[22], thereby, shifting from retributive to rehabilitative approach. The first independent India open camps were established in 1949 in collaboration with Lucknow Model Prison and in 1963 in Sanganer, Rajasthan, predominantly known as "*Sampurnanand Open-Air Camps*".[23] These initial instances of reformative confinements offered vocational training of the offenders with respect to the promotion of cottage industries, forestry, fishery, agriculture or as paid labourers in public utility developments.

17 Transfer of Prisoners Act, 1950, No 29, Acts of Parliament, 1950 (India).

18 Prisoners (Attendance in Courts) Act, 1955, No 32, Acts of Parliament, 1955 (India).

19 Suryansh Tiwari, "Concept of Open Prison System as a Correctional System: A Study in Light of Present Context," 3(4) International Journal of Legal Science and Innovation 1025 (2021).
Narender Kumar, "Role of Open Prison in India: A Socio-Legal Study," 9 Mukt Shabd Journal 1821 (2020).

20 Law Commission of India, Congestion of undertrial Prisoners in Jails, Report no. 18 (1979).

21 Law Commission of India, Custodial Crimes, Report no. 152 (1994).

22 R. Deb, "Aftercare Organisation," 13 JILI 517 (1971).
Hollis Moore, "The Mata Escura Penal Compound: An Analysis of the Prison-Neighbourhood Nexus in Northeast Brazil," in Sacha Darke, Chris Garces, Luis Duno-Gottberg and Andrés Antillano (eds.), "Carceral Communities in Latin America" (Cham: Springer Nature 2021).

23 Anupma Kaushik & Neetu Sharma, Human Rights of Prisoners: A Case Study of Sampurnanad Open Prison, Sanganer, Rajasthan, 3:1 The International Journal of Political Science (2017).

The legacy of the correctional mode of treating the wrongdoers further extended to other parts of India. At present open prison establishments are spread over 17 states, chiefly, in Rajasthan, Kerala, Maharashtra, Tamil Nadu, West Bengal and Gujarat. However, the prisons without fences or supervisory towers have not been stretched to Union Territories yet.

Name of the Open Jail	Place	Structure and Functioning
Atpadi Open Jail[24]	Pune	Unique technique to restore the dignity of inmates and rehabilitee them was employed in jails unfolded over 61 acres of land. The community contact allowed detainees to live with their families and avenues for earning and availing basic facilities. Adoption of such practices enabled inmates to become more determined, responsible, accountable and trustworthy, thereby, providing new meaning and angle to their lives.
Anantapur Open Prison[25]	Andhra Pradesh	Diffused over 1427 acres of land on the outskirts of the city without chains and fences. The prisoners fulfilling the eligibility criteria of showcasing good behavioral conduct and completing 2/3rd of the sentence are admitted to open prisons. They are equipped with hands-on vocational training and experience in agriculture for being fit for earning basic livelihood in the outer society once released. For instance, as a part of corporate social responsibility, a Himalayan Pharmaceutical Corporation initiated growth, packaging and transportation of dried perennial herb. This medicinal herb is being supplied in exchange of adequate prices that enable the inmates to earn sufficient livelihood.

24 Priya Rao, Indian Prison System: Structure, Problem and Reforms, 10:1 Res. J. Humanities and Social Sciences 189 (2019).

25 Adv. Sanjay Sarraf, Beyond the Walls: A Comprehensive Look at the History and Future of Open Prisons (2023).

Sampurnanand Khula Bandi Shivir[26]	Sanganer, Rajasthan	Clothed over 4 hectares of land area and situated approximately 25 kms away from capital city Jaipur. It is noteworthy that this peno-correctional institution does not use the word 'prison' or 'jail.' Surrounded by low boundary walls, the camp holds strength of 150 convicts which are inclusive of 10 women and all of them being supervised by merely 2 guards without guns. The inmates are permitted to live with their families, children are allowed to attend schools, construct their separate houses, use paid facilities of electricity, water, and other recreational avenues along with working as daily wage labourers. It is pertinent to note that they are conceded to earn outside within the radius of 10kms from camp between 6am-7pm, for instance, in nearby schools. However, rigid screening restricts the eligibility of inmates to those completing 1/3rd of their sentences with remission in regular prisons, thereby, excluding habitual offenders, drug peddlers, human trafficking and smuggling, convicts of serious offences such as crimes against state and those involved in heinous and acute offences.
Nettukaltheri Open-Air Prison[27]	Kerala	Spread over 300 acres of land in the valleys of Western Ghats having relaxed and peaceful ambience without guns and bars. Follows similar eligibility criteria of inmates reflecting good behaviour before transferring to open jails. In order to generate revenues over expenditure and submitting the balance amount to respective state government, the inmates work on 200 acres of associated rubber plantation and paddy fields on daily wages. For ensuring continuous engagement with society and encouraging community contact, they are authorized to spend 1 out of 6 months with their families along with exclusive 5 day leave on relevant occasions. This also helps in healing wounds of offence committed by them and subsequent trial procedures.

Table 1: Relevant Instances of Open Prisons in India[28]

It is imperative to ensure to develop relevant structures, engage trained personnel and process implementation of vital laws to facilitate feasible and smooth functioning of open

26 Id at 23.

27 Saraswathy Nagarajan, 'Harvest of Hope at Open Jail, Nettukaltheri' *The Hindu* (14 April 2018) *available at:* <https://www.thehindu.com/society/harvest-of-hope-and-optimism-at-nettukaltheri-open-jail/article23536344.ece> (last visit on September 13, 2023).

28 Reference from Smita Chakraburtty, The Open Prisons of Rajasthan, Rajasthan State Legal Services Authority (2017).

prisons. The nature of accommodation varies from prefabricated constructions, perpetual barracks, and dormitories with asbestos ceiling. The conditions for eligibility revolve around ability, fitness (both physical and mental) and willingness of prisoners to work and abide by certain (even so lenient) regulations imposed, awarded up to one year or more sentence, completion of at least 1/4th of the term of such sentence, between 21 to 50 years of age, good behavioural conduct, reformatory potential, not undertrials or convicted or serious offences and, most importantly, not being habitual and class one offenders.[29] Hence, open air institutions contrast with regular prisons in various aspects such as administrative functioning, structural construction, interactive roles, degree of community contact, availment of vocational training and social experiences, opportunity to work and earn, normative restrictions and expected behaviour, consensus among inmates, guiding values and family orientations.

II. OPEN AND CENTRAL JAILS: IMPACT OF COVID-19 AND OTHERS

Open Prisons are tacit penal institutions which envisage an ideology of minimal supervision and effective security manageable within perimeters of jail where restraints are considerably relaxed. According to various surveys and studies, there has been no escape in open-air jails which work on the virtues of trust, self-discipline and human reformation.[30] However, as opposed to captive prisons, prisoners in open prisons are not acquainted with routine transfers. The Covid-19 outbreak has invited hovering challenges throughout the globe. The black clouds of pandemic have also soared over poverty trodden, unemployed, vulnerable, marginalised and neglected section of society.[31] This has particularly poisoned the societal stigma engrossing undertrials and convicted prisoners. The fear of infection was exacerbated by scarcity of resources and absence of effective support system.

The lack of beneficial legislation mandating rehabilitation and subsequent implementation has worsened the situation, leaving detainees to suffer in silence. The prisoners are devoid of any efficient relief by the government or any kind of employment avenues post release

29 Trishna Senapaty, The Closed and the Open Prison: Contested Imaginaries and the Limits of Openness, Legal Pluralism and Critical Social Analysis (2023) DOI: 10.1080/27706869.2022.2163603.; M. Martí, Prisoners in the community: the open prison model in Catalonia 106(2) Nordisk Tidsskrift for Kriminalvidenskab 211 (2021).

30 Mohanty et. al., A Comparative Study on the Attitudes of Prisoners Towards Special Jail and Open-Air Jail Systems, 27 Social Science International 27 (2011).

31 Stern et. al., Willingness to Receive a COVID-19 Vaccination Among Incarcerated or Detained Persons in Correctional and Detention Facilities — Four States, 70:13 US Department of Health and Human Services/ Centers for Disease Control and Prevention 473 (2020).

owing to their criminal history, thereby, neglecting certain basic needs and fundamental requirements of such individuals.[32] The socio-economic disadvantaged section of society, including prisons, are more prone to malnutrition and communicable infections. Moreover, the ethical conundrum of the target group amidst the constant chaos of increase in death rate due to spread of infection on account of overcrowding of jails has left indelible mark on their future prospects.

With Covid-19 declared as global pandemic by WHO, the focus of health concern instantaneously diverted towards detainees and prison authorities. The concern was mainly relating to extreme immediacy among inmates in overcrowded arena of prisons which has been exaggerated many folds by existing deteriorated health issues affecting masses in custody along with degrading infrastructure and administration in most prisons, thereby, posing severe threat of dispersing infection in prison community.[33] In such an alarming state, various social reformists, peno-correctional activists, human rights institutions and NGOs worldwide were called in to put in place deliberate measures addressing the problem of overcrowding and spread of infection.

In the wake of Covid-19 outbreak, various countries, including India, have implemented stringent measures to manage population in prisons by increasing release rate from custody through various schemes and absolutions and reducing entry into custody at the stage of remand, pre-trial, sentencing or violating terms of release. Such population management measures coupled with other factors have resulted in augmented waning in quantum of prisoners.[34] Alongside, such trend has complexed the prison policy as the state of lockdown has drastically condensed numbers/cycles of offences and prosecutions. On the lines of infection controlling measures, the executive policies have suspended prison visits by family members, advocates, inspection authorities, staff providing services in prisons on contract basis or others such as NGOs. Likewise, restrictions were also imposed on temporary visits of prisoners for work or home.

32 Sarthaka Kumar Rath & Abhinab Kumar Swain, Liberalization and Privatization of Prisons in India, 4 Int'l J.L. Mgmt. & Human 1554 (2021).; K. Borah, Privatisation of Prisons in India: Possibilities and Challenges, 69(1) Indian Journal of Public Administration 221 (2023).

33 Fair et. al., Keeping COVID out of prisons: approaches in ten countries, Project Report ICPR London (2021).
Praveen Kumar & Shubhendu Shekhar, Working with silenced undertrial prisoners in India during the COVID-19 pandemic, 44:2 Social Work with Groups 174 (2021).

34 M. Balasubramanian and S. Balakrishnan, Reflections on COVID-19 in India: A Survey, 12(4) International Journal of Pharmaceutical Research 137 (2020).; M.Z.M. Nomani and Zafar Hussain, Health Care in Prisons and Detention Homes During COVID-19 Pandemic in India, 8(1) European Journal of Molecular and Clinical Medicine (2021).

The menace of epidemic in prisons have also been underestimated owing to inadequate statistics on figures of infections and deaths caused by Covid-19 virus in prisons. [35]However, plausible measures of managing overcrowded prisons and controlling spread of infection have saved the prisons from facing the most feared devastating impact of pandemic. The most evident apprehension conceived by the thinkers is accelerated condition of overcrowding on urgency of pandemic threats being retroceded. Even though difficult but devising and implementing effective public health measures to shield prison settings from Covid-19 pandemic have contributed to proportionate safeguarding of well-being and human rights of inmates.

III. HUMAN DIGNITY: FREEDOM BEHIND BARS OR BEYOND BARS

Apart from overcrowding and consequent understaffing, the prison system, as notified in several inspection reports, has constantly encountered the challenges of obsolete and scattered regulations, outdated rules, organisational lacunas, procedural loopholes, dilapidated infrastructure, inadequate resources, vaguely remunerated prison staff, lack of proper security and medical treatment, cruel and degrading conditions of physical and mental torture[36], unchecked exercise of discretionary powers by prion officers, dearth of aftercare facilities and post release programme, increased incarceration of UTPs, delayed and affluent judicial process, forced labour for lengthy hours, rampant prison violence[37] and sexual/drug abuse, absence of self-discipline and professionalism, amplified corruption, constrained opportunities of employment or legal-aid, restricted access to basic amenities, miniscule hygiene and food facilities, full-fledged ignorance of deaths, suicides and custodial crimes, blotted public standing and minimal awareness about societal opinions, fundamental freedoms and intrinsic human rights of prisoners.

35 Sivakumar, Prison Research: Challenges in Securing Permission and Data Collection, 50 Sociological Methods & Research 348 (2021).; M. Bandyopadhyay, *Prison Escapes, Everyday Life and the State: Narratives of Contiguity and Disruption* in Martin, Tomas Max, and Gilles Chantraine, (eds.) Prison Breaks: Towards a Sociology of Escape (2018 Cham: Springer International Publishing).

36 Paras Diwan, Torture and the Right of Human Dignity, 4 SCC J-31 (1981).; Mullick et. al., The Hollowness of Torture Prevention Law Lacking Institutional Transparency, Special Issue IJLIA 25 (2019).; Roma Chatterji and Deepak Mehta, *Living with Violence: An Anthropology of Events and Everyday Life* Critical Asian Studies (2007 New Delhi: Routledge).

37 Khatri v. State of Bihar, [1981] 1 SCC 627.; Sunil Batra v. Delhi Administration, [1978] AIR 1548.; Sheela Barse v. Union of India, [1983] AIR 378.

All these factors have cumulatively affected psychological health of prisoners[38] and resulted in enhanced contamination of young and destitute offenders owing to frequent interactions with hardened offenders, thereby, affecting delinquent circumstances among prisoners and extended families. [39]This inexorable cycle of stigmatization has propelled social haplessness beyond bars and extensive human right exploitations behind bars. In order to preserve human dignity and fundamental liberties of prisoners, open prisons, being rehabilitative and reformational centres, are adequately designed to pursue social life enabling community participation and well-equipped with recreational activities (including sports, yoga and meditation), educational resources and employment facilities along with efficient legal-aid clinics which the help of government and various NGOs.

Focussing of dignified public life of prisoners, open prisons have positively constructed psyche of prisoners towards societal integration and resocialisation.[40] Despite of recognising freedom and dignity of inmates, the only problem with open-air prisons is stringent and subjective eligibility criteria resulting in underutilisation and less occupancy as compared to inbuilt capacity of open jails. The filters comprising of security risk, sentencing period, nature of crime, behavioural conduct and reformative potential of convict has many a times excluded women in unreasonable and arbitrary manner. [41]The trend has been observed as contradicting reformative tenets of open-air institutions for authorities being disinclined towards admission of inmates based on their suitability instead of judging on the basis of aforesaid filters.

The non-availment of progressive benefits of such institutions to the fullest possible extent can be seen as another probable consequence of undermining transfer of inmates to open jails. Even after several recommendatory reforms through numerous committees and regulations, lack of political will and strict legislative backing along with bureaucratic corruption has limited such reforms to see the light of the day. Furthermore, the constructive infrastructure and structural management of such correctional institutions has blatantly suffered from societal indifference to predicament of offenders and non-uniformity among

38 Tripathy et. al., Burden of depression and its predictors among prisoners in a central jail of Odisha, India, 64 Indian J. Psychiatry 295 (2022).

39 Bayer et. al., Building criminal capital behind bars: Peer effects in juvenile corrections, 124:1 The Quarterly Journal of Economics 105 (2009).

40 K.I. Vibhute, Right to Human Dignity of Convict under Shadow of Death and Freedoms Behind the Bars in India: A Reflective Perception, 58 JILI 15 (2016).; Edwards AR, Inmate Adaptations and Socialization in the Prison, 4:2 Sociology 213 (1970).

41 Muktikanta Mohanty, Behavioural Syndrome of Women Prisoners in India, 74:4 The Indian Journal of Political Science 639 (2013).; Reena Patel, Woman prisoners - custody or malady?, 1 Student Adv. 25 (1989).

states to establish and administer such institutions. The incapability of union government to legislate and initiate uniformity can reasonable be attributed to domain of prisons being state subject under the Constitution of India. Moreover, the much-believed social stigma attached to convicts disable their likelihoods of sincere reformation and convincing rehabilitation in society.[42]

Critics of open correctional institutions, primarily opposing reformative approach being devoid of harsh aspects of punishment, contend that staying with families, financial independence, free shelter and other socio-economic conveniences have made inmates habitual to such places and, therefore, in later stages or on completion of their sentence they are reluctant to move out. This has been coupled with increased land scarcity. Notwithstanding the aforesaid voids, the positives of open jails surpass and possibly, in long run, rectify the inherent loopholes. The journey of the correctional prison system instils confidence and self-reliance among inmates, thereby successfully morally reforming and reserialising prisoners.

Model Suggestions for Peno-Correctional Institutions in India

Model open prisons are desired to be well equipped with recreational, medical, employment and educational facilities along with professional and vocational training for inmates. [43]There must be separate constructions for undertrials, juvenile and female inmates. Despite of land scarcity, external encroachment on land where open prisons are situated is strictly non-negotiable. The inmates must be adequately informed about their rights and have awareness about prison rules and suggestion box. The reintegrative approach of criminal justice system has recognised and duly protected the intrinsic worth of human dignity and justice for not only the offenders but also for the society as a whole.

Improved attention to liberalised and advanced approach towards inclusion of prisoners, especially considering female convicts and undertrials, through flexible eligibility conditions is quintessential to achieve the goal of social reintegration and reformation of offenders best possible manner. Along with relaxation in eligibility criteria, the old outdated management

42 Gnaneshwar Rajan & Hema Varsshini, Prison Law in India - Need for Reformation with a View towards Rehabilitation, 13 Supremo Amicus 91 (2019).; Anupma Kaushik & Kavita Sharma, Human Rights of Women Prisoners in India: A Case Study of Jaipur Central Prison for Women, 16(2) Indian Journal of Gender Studies 253 (2009).

43 C. Paramasivan, A Study on the Performance of Vocational Training to Prisoners in Prisons in India, 3 International Journal of Advanced Scientific Research & Development 57 (2016).; Sohail Nazim and Kulsoom Haider, Historical Analysis of the Development of Prisons in India: Human Rights in Retrospect, 17(2) History and Sociology of South Asia 190 (2023).

procedures and regulations must be amended in consonance with transformative society.[44] Besides, the scope of open prisons must be expanded to Union Territories and the peril of corruption need to be curtailed. Concurrently, engagement in productive functions, vocational training and activities involving societal intercourse have immensely contributed towards bridging the trust between inmates and state authorities.

The standard model of open-air institutions constitutes open colonies, open work camps, semi-open and open training institutions which are arranged in descending order of freedom offered to inmates in demarcated perimeters along with reserialising potential.[45] Semi-open institutions are equipped with high surveillance and enhanced security measures in enclosed boundaries. Open institutions focus on vocational training and encourage employment on daily wages in prison factories, afforestation organisations, environment conservation, cultivated lands and government construction projects. Open colonies have minimum security standards where inmates live with their respective families and earn livelihood to maintain themselves.

The issue of non-uniformity among state laws can be resolved by the powers of central government to frame laws in accordance with ratified international conventions under Article 253 of the Constitution. However, it is strongly recommended to shift prison security and administration as a subject matter from state to concurrent list in the seventh schedule of the Constitution along with incorporating prison management and treatment of inmates as DPSP in Part IV of the Constitution. In terms of promoting trust between offenders and society, model open prisons ensure desirable confidence and instil self-respect among inmates. Beside gainful employment of available manpower and continuous monitoring of accelerated success of projects, open prisons have comprehensively reduced recidivism while encouraging rehabilitation and resocialisation of prisoners.[46]

It is hereby suggested to include at least two open prisons in every district so as to accommodate less violent and low risk inmates, including undertrials and women prisoners in the process of social reintegration. Moreover, easily adjusted and well-qualified prison staff extensively trained in correctional services, human behaviour, understanding inmates

44 Krishnan et. al., Grappling at the Grassroots: Access to Justice in India's Lower Tier 27 Harvard Human Rights Journal 166 (2014).; Tanmay Sharma, Open Air Prison: A Blessing to Prisoners? 2 Indian JL & Legal Rsch 1 (2021).

45 Ministry of Home Affairs, Model Prison Manual for the Superintendence and Management of Prisons in India, Bureau of Police research and Development (2003).

46 Drago, et. al., Prison conditions and recidivism, 13:1 American Law and Economics Review 103 (2011). M. Keith Chen & Jesse M. Shapiro, Do harsher prison conditions reduce recidivism? A discontinuity-based approach, American Law and Economics Review (2007).

on personal level and having quality of leadership and integrity must be employed in open-air institutions. The uniformity is also envisaged in terms of equitable wages across states through a central legislative mandate.[47] Judiciary must be empowered to direct administration effectively classify prisoners and sentence juvenile offenders in open prisons for their betterment in long run. Major focus must be on mentally ill prisoners and relaxing the selection criteria for transferring inmates to open jails.[48]

IV. PRISONERS' RIGHTS: JUXTAPOSING RECIDIVISM WITH REHABILITATION

With development of socio-legislative thinking about human rights, the concept of prisoners' rights slightly transformed as concrete and valuable norm in prison security and administration. Initially, in ancient, medieval or British era, the prisoners were heavily chained and kept in dark dungeons. The horrible condition of prisoners could be attributed to the so-called credible belief across the community about forfeiture of rights and liberty by those who have committed crimes. Later, with the awakening of human rights as an essential goal worldwide, the society learnt and followed socio-moral obligations towards prisoners on the pretext of improved values of rehabilitation and resocialisation of prisoners.[49] They were not to be physically injured, tortured psychologically or deprived of their basic human rights and fundamental liberties. Rather, they must be reserialised with freedom and reformed to be law abiding and informed citizen in the society.

Such entitlement of fundamental freedoms and prisoners' rights has been largely contributed by various UN conventions and legislative revolution in several countries across the globe. They outline respect for prisoners' right and dignity by drafting and ensuring subsequent implementation of the provisions of non-discrimination, humane treatment, not awarding corporal punishment, healthy reformation, hygienic ambience, educational and recreational facilities, employment opportunities and environment devoid of torture and cruel or degrading treatment. India, being signatory to such human rights instruments, have also incorporated provisions in its constitution and legislations in consonance with protecting and respecting prisoners' fundamental rights and freedom.

Moreover, Indian judiciary, through plethora of precedents, has affirmatively interpreted

47 K.I. Vibhute, Compulsory Hard Prison Labour and the Prisoners' Right to Receive Wages: Constitutional Vires and Judicial Voices, 42 JILI 1 (2000).

48 Jakar & Jain, Distressful life events between prisoners of open jail and central jail, 7:6 International Journal of Social Sciences, 1795, 1799 (2019).

49 Rakesh Chandra, Human Rights of the Prisoners: An Indian Scenario, 3 Supremo Amicus 457 (2018).

prisoners' rights in the light of right to life and personal liberty, safeguarded from sexual abuse or arbitrary exercise of discretion by authorities, appropriate lodging and clothing, clean potable water and sanitation, healthy living conditions[50], timely medical examinations, hygienic and sufficient food, protection against exploitation (in the form of handcuffs etc.) or forced labour, legal aid, remission and parole, defined calculative sentences, speedy bail, proper security and safety, expedite trial process, effective grievance redressal and most importantly right to be properly classified for scheme of rehabilitative programme.[51] Additionally, their right to information about trial procedures and prison laws, carrying any trade, profession or employment for wages, give interview and talks and remedy against human rights violations must also be protected.[52]

The contours of rights entitled to prisoners as widely elaborated by the apex court can be succinctly defined as considering their human rights within confines of sentence awarded and not justifying aggravated sufferings beyond what are innate in incarceration process.[53] The concept of open prisons as a tool for individualised penalties and social reintegration has been successfully recognized as quintessential to prison administration in the case of *Ramamurthy v. State of Karnataka*[54]. The apex court emphasised the shared and cooperative living of inmates with the community paving path for inculcating respectable personalities, moral values, just virtues, responsive attitudes, self-esteem, human dignity and social

50 Kundu et. al., Health status of inmates in an open prison: A cross-sectional study in Eastern India, 13 J. Datta Meghe Inst Med. Sci. Univ. 150 (2018).

51 K.M. Ashok, 'SC Asks States, UTs To Seriously Consider Feasibility Of Establishing Open Prisons In As Many Locations As Possible [Read Order]' (*Live Law*, 10 May 2018), *available at:* https://www.livelaw.in/sc-asks-states-uts-to-seriously-consider-feasibility-of-establishing-open-prisons-in-as-many-locations-as-possible/ (last visit on August 05, 2023); 'SC Tells States to Consider Setting up an Open Prison in Each District' (*Hindustan Times*, 12 December 2017) *available at:* <https://www.hindustantimes.com/india-news/sc-tells-states-to-consider-setting-up-an-open-prison-in-each-district/story-tnLIiuOT6tAKlso8wKamUJ.html> (last visit on August 05, 2023).

52 'Open Prisons: SC Asks Centre To Hold Meeting With All States To Study Rajasthan Model And Adopt Uniform Guidelines [Read Order]' (*Live Law*, 12 December 2017), *available at:* https://www.livelaw.in/open-prisons-sc-asks-centre-hold-meeting-states-study-rajasthan-model-adopt-uniform-guidelines/ (last visit on August 05, 2023).

53 Arvind Tiwari, Human Rights, Ethics & Prison Administration in India: A Critical Overview, 2 RMLNLUJ 43 (2010).

54 Ramamurthy v. State of Karnataka, [1997] SCC (Cri) 386.; *See also* Krushna Prasad Sahoo v. State of Odisha and others (High Court of Orissa, 23 December 2021).; Surendra Singh Sandhu v. State of Uttarakhand and others (High Court of Uttaranchal, 10 January 2017).; Rajasthan State Legal Services v. Chief Secretary (High Court of Rajasthan, 15 October 2019).

confidence among them. Further, in *Dharambir v. State of UP*[55], the apex court supported the idea of open-air institutions for the protection of young offenders from vicious evils and forced exploitation suffered in ordinary jails. The court relaxed eligibility criteria substantially and obligated prison authorities to the imperatives of constitutional provisions.

V. CONCLUSION AND PATH AHEAD

It can be concluded that the open-air institutions and work camps have authoritatively reduced recidivism, custodial crimes and decadence in offenders, thereby achieving the real essence of freedom. Reforms of community sentencing and social contact in the recent penitentiary structure have holistically responded to wrongs inflicted on inmates in ordinary prisons and allowed them to start afresh. Being superior and more effective than other conventional modes of incarceration, Peno-correctional institutions restore humane behaviour through reformative healing of hidden frustrations towards social injustice repressed deep inside the psyche of the offender. Such fatigue created by an unjust order of society and slow administrative procedures is vicariously liable for the criminal guilt of innocent wrongdoers. Therefore, open prisons have emerged as a socio-legal reform to respond to societal taboos with humanism.

The criminal justice system and prison jurisprudence have cumulatively postulated reformative structures, rehabilitative administration and reintegrative management for protecting the inherent human rights and fundamental liberties of prisoners. For serialising prisoners' rights with freedom, the pillar organs, namely, legislative, executive and judiciary must take a constructive approach towards existing administrative mandates and actively carry out amendments in prison regulations and respective jail manuals. The harmonious and justiciable efforts for social readjustment of prisoners must involve not only the prison authorities but also the coherence of cultural, economic, social and educational institutions along with integrating values and socio-moral perspectives of society at large. The firm root of model peno-correctional institutions is dependent on the time and resources invested by the state to make it successful.

55 Dharambir v. State of UP, [1979] 3 SCC 645.; *See also* Sardar s/o Shahvali Khan (C-6608) v. State of Maharashtra (High Court of Bombay, 11 April 2023).; Pooran Singh s/o Shri Ramsingh v. State of Rajasthan (High Court of Rajasthan, 11 March 2022).; Deepak s/o Dattatraya Jawale v. State of Maharashtra (High Court of Bombay, 20 August 2021).