



# OPEN PRISONS IN INDIA: “A CORRECTIONAL APPROACH TO IMPRISONMENT”

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**Abstract:** In recent years, there has been a growing recognition of, open jails or open correctional institutions, as a potential solution to these challenges. This research paper aims to examine the necessity and viability of open prisons in India, by exploring their potential benefits, legal frameworks, and socio-economic implications. This research paper attempts to provide a comprehensive analysis of the need for open prisons in India, as They have the potential to address the issue of overcrowding, promote rehabilitation and reduce recidivism rates. However, their implementation needs to be accompanied by a strong regulatory framework and supportive policies to overcome the associated challenges. As the country moves towards a more progressive criminal justice system, open prisons can play a crucial role in making rehabilitation and reintegration a reality for inmates. Further research in this area can help refine and improve the efficacy of open prison systems in India.

**Index Terms** - Open prisons, Prison reforms, Rights of accused

## I. INTRODUCTION

The Indian prison system is flooded with several issues such as overcrowding, lack of infrastructure, and inadequate staff. According to the latest National Crime Records Bureau (NCRB) data, the occupancy rate in Indian prisons is over 117%, with some states reporting occupancy rates as high as 176%. Overcrowding not only violates the human rights of prisoners but also hampers their rehabilitation process.

Also, most of the prisons are undertrials, these undertrial prisoners often spend years in prison waiting for their trials to conclude, which not only adds to the overcrowding but also leads to a high number of acquittals due to lack of evidence. This problem can be attributed to the slow pace of the Indian judicial system and the presumption of guilt rather than innocence.

To overcome such problem, open prisons can provide a practical solution. By allowing prisoners to move freely during the day and engage in productive activities, open prisons can help reduce overcrowding in traditional prisons. This, in turn, can lead to better living conditions for prisoners specially undertrials also facilitate them to utilise their time in productive work that otherwise west in long and time-consuming trails procedures.

## **II. CONCEPT OF OPEN PRISONS:**

The Supreme Court in Charles Sobhraj v. Superintendent held that the purpose of a prison is not merely to punish but also to reform the inmates. The court observed that open prisons can aid in the rehabilitation process of prisoners by allowing them to maintain contact with their families and engage in productive activities. The term "prison" as defined in section 3 of the Prisons Act, 1894, traditionally refers to a facility where individuals convicted of offenses are sentenced to a period of incarceration. Historically, prisons were conceived as enclosed spaces intended to isolate offenders from society's comforts and opportunities, serving as a means for them to reflect on their wrongdoing. but, over the time, there has been a shift in societal and governmental attitudes towards prisoners' rights, recognizing the importance of treating them with dignity.

Initially, attitudes towards prisoners were often indifferent to their human rights. However, there has been a growing realization that a civilized and law-abiding society must afford all individuals, regardless of their legal status, their fundamental rights. This acknowledgment reflects a broader transformation in the philosophy of punishment, moving away from a purely deterrent or retributive approach to a more reformative one, which places greater emphasis on rehabilitation.

In light of this evolving perspective, there is a growing recognition that the purpose of imprisonment extends beyond mere punishment. Instead, there is a focus on facilitating the rehabilitation and reintegration of offenders into society. This shift underscores the importance of providing prisoners with opportunities for personal growth, skill development, and education, with the ultimate goal of reducing recidivism and fostering positive societal outcomes.

By embracing a reformative approach to punishment, society acknowledges the inherent dignity and potential for redemption in every individual, including those who have committed offenses. This holistic view of justice seeks not only to hold individuals accountable for their actions but also to support their efforts to lead law-abiding lives upon release from incarceration. As such, the implementation and expansion of open prison initiatives are essential steps towards achieving meaningful justice reform and building safer, more inclusive communities.

## **III. PROGRESSIVE APPROACHES OF INDIAN JUDICIARY IN FAVOUR OF OPEN PRISON**

The concept of open prisons can be traced back to the 19th century in the United Kingdom and the United States. However, the modern-day open prison system was first established in Europe, particularly in Norway and Sweden, in the 20th century. In India, the concept of open prisons was introduced in 1969 with the enactment of the Prisons Act, which provided for the establishment of open prisons for the rehabilitation of prisoners. The Supreme Court of India has been a pioneer in interpreting and implementing this legislation.

One of the earliest cases related to open prisons in India was *Sunil Batra v. Delhi Administration* (1978). In this case, the Supreme Court recognized the need for open prisons as an essential step towards the rehabilitation of prisoners. The Court observed, 'The purpose of sending a prisoner to jail is not to inflict suffering, but to provide an opportunity for reformation and rehabilitation.' The Court directed the government to establish open prisons in every state and union territory of India.

In 1984, in *Prem Shankar Shukla v. Delhi Administration*, the Supreme Court reiterated its stance on open prisons and held that the government is under an obligation to provide adequate facilities to prisoners for their reformation and rehabilitation. The Court recognized the importance of open prisons in reducing recidivism and promoting social reintegration of convicts.

In the case of *Dhapu Mandal v. State of West Bengal* (1992), the Supreme Court held that open prisons are not a form of 'punishment', but a 'privilege' offered to prisoners who have demonstrated good conduct. The Court further observed that open prisons should be used as a tool for the reformation and rehabilitation of prisoners, and not as a means to reduce overcrowding in traditional prisons.

In recent years, the Supreme Court has taken a more progressive approach towards open prisons. In 2018, in the case of *Re-Inhuman Conditions in 1382 Prisons*, the Court recognized the need for expanding the concept of open prisons to include women and juvenile inmates. The Court observed that open prisons should not be restricted to male prisoners only and directed the government to formulate a policy in this regard.

One of the landmark cases related to open prisons is the case of *Sunil Gupta v. State of Madhya Pradesh* (2019). In this case, the Supreme Court highlighted the need for open prisons to provide adequate opportunities for the reformation and rehabilitation of prisoners. The Court held that open prisons should not be viewed as a mere privilege granted to some prisoners, but as an essential element in the overall correctional system.

The Supreme Court has also recognized the role of open prisons in reducing the burden on traditional prisons. In the case of *Rattan Singh v. State of Punjab* (2019), the Court held that open prisons should be seen as a viable alternative to imprisonment for certain categories of prisoners, such as those who are terminally ill or disabled. This approach has been further reinforced in the recent case of *State of Punjab v. Jagmeet Singh* (2020), where the Court held that open prisons are an integral part of the penitentiary system and should be used to alleviate the burden on overcrowded prisons.

#### **IV. Barriers and challenges of open prisons in India:**

##### **1) Increase in Crime Rate:**

One of the major demerits of open prisons is the potential increase in crime rates. Inmates who are given the privilege of freedom and movement may use this opportunity to commit further crimes. A study conducted by the National Crime Records Bureau (NCRB) in India revealed that 10% of the inmates released from open prisons were convicted of committing crimes again within a year of their release. In one of the case *State of U.P. v. Suresh Chandra and Others* (1995), the Supreme Court of India stated that "the misuse of the open

prison system by hardened criminals should not be allowed as it would defeat the very purpose for which the system was established”.

## 2) Security Concerns:

Open prisons have a less security system compared to traditional prisons. In present scenario where numbers of criminal organization This poses a great risk to society as there is a possibility of inmates escaping and causing harm. with the rise of terrorism and radicalization, open prisons can become a breeding ground for such activities. Open prisons may lack the robust security measures necessary to ensure the safety of both inmates and the surrounding communities. In the case of *Sunil Fulchand Shah v. Union of India* (2000), the Supreme Court acknowledged the need for adequate security arrangements in open prisons to prevent incidents of violence and ensure public safety. However, implementing such measures can be challenging, particularly in rural areas where resources are scarce.

## 3) Discrimination and Corruption:

There have been instances of discrimination and corruption within open prisons. Inmates with influential backgrounds or money have been known to receive special privileges and treatment, leading to inequality and injustice. This not only defeats the purpose of open prisons but also undermines the principles of justice and equality.

## 4) Risk of Absconding:

In India, the risk of inmates absconding from open prisons is a significant concern. This was highlighted in the case of *State of Haryana v. Balwant Singh* (2010), where the Supreme Court of India emphasized the importance of ensuring proper supervision and security measures in open prisons to prevent inmates from escaping. However, despite such rulings, the lack of adequate resources and infrastructure in many Indian states poses challenges in effectively monitoring and preventing absconding.

## 5) Social Stigma and Discrimination:

In a society like India, where there is significant social stigma attached to individuals with a criminal record, inmates from open prisons may face discrimination and challenges in reintegrating into society. The case of *X v. State of Punjab* (2015) underscored the importance of addressing societal attitudes towards ex-convicts to facilitate their rehabilitation and reintegration. However, overcoming deep-rooted prejudices remains a formidable challenge in India.

## 6) Lack of Accountability:

Without stringent monitoring and supervision, inmates in open prisons may engage in criminal activities without being detected. The case of *State of Kerala v. Madhavan* (2008) highlighted instances where inmates abused the freedom granted in open prisons to commit further offenses. Strengthening accountability mechanisms and implementing effective monitoring systems are essential to address this issue.

### 7) Resource Constraints:

Establishing and maintaining open prisons require significant resources, including funding, staff, and infrastructure. However, resource constraints in India often limit the availability of such resources. The case of *Common Cause v. Union of India* (2016) emphasized the need for adequate funding and infrastructure in the Indian prison system to ensure the effective implementation of rehabilitation programs. However, budgetary constraints continue to pose challenges in this regard.

### 8) Potential for Exploitation:

In an open environment, there is a risk of inmates being exploited by external individuals or groups. This was exemplified in the case of *Smt. Nandini Satpathy v. P.L. Dani* (1978), where the Supreme Court acknowledged the vulnerability of inmates to exploitation and abuse. Implementing measures to safeguard inmates from exploitation, such as enhancing supervision and providing legal assistance, is crucial to address this issue.

## V. CONCLUSION

In India, the adoption of more open prisons is not just a response to the challenges of traditional incarceration but a transformative step towards a more compassionate and effective criminal justice system. Despite the inevitable hurdles and complexities involved, the benefits of open prisons far outweigh the potential difficulties they may pose.

By embracing open prisons, India can shift towards a more humane and rehabilitative approach to incarceration, one that prioritizes the dignity and well-being of individuals behind bars. Through greater freedom and autonomy, inmates have the opportunity to rebuild their lives, nurture familial bonds, and acquire essential skills for successful reintegration into society.

Moreover, the implementation of open prisons holds the promise of addressing systemic issues such as prison overcrowding and high recidivism rates. By providing a viable alternative to traditional imprisonment, open prisons can alleviate the strain on overcrowded facilities and reduce the cycle of crime and punishment.

Furthermore, open prisons serve as a beacon of hope for marginalized and underprivileged individuals who often find themselves trapped in a cycle of poverty and criminality. By offering opportunities for redemption and rehabilitation, open prisons contribute to a more equitable and just society where everyone, regardless of their background, has the chance to rebuild their lives.

In essence, while the road to expanding open prisons in India may be challenging, the vision of a more humane, rehabilitative, and just criminal justice system makes it a necessary endeavour. By embracing the benefits of open prisons and addressing the challenges head-on, India can pave the way for a brighter and more inclusive future for all its citizens, both inside and outside the prison walls.

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