
OPEN PRISON - AN OPTION FOR REFORMATION OF PRISONERS

Dr. Syed Faraz Akhtar, Assistant Professor, Faculty of Law, ICFAI University, Tripura

Mr. Pankaj Singh, Research Scholar, Sambalpur University, Odisha & Assistant Professor,
Faculty of Law, ICFAI University, Tripura

ABSTRACT

M. K. Gandhi did not believe in deterrent punishment to a prisoner rather than a human treatment one. Under the constitution of India every individual has right to life and freedom which is known as a fundamental right. Prisoners are habitually understood offensive by all backgrounds crime that just happen in exceptional cases like hardcore criminals; but the remains offenders commit offence by provocation or sudden action result of provocation by victim.

The crime/ wrongs are measured as a disorder and the criminal/ wrong doer kept behind the bars for treatment with proper meditation like reformatory measures. Open prison system is one among the reformatory principle concerned by criminal justice delivery system, trying prisoners to transform themselves as a law-abiding citizen of the society. It was perceived that putting behind the bars may only be appropriate for particular kinds of offenders as it has harsh effect on some criminals who instead of becoming lawful citizens become offenders and hardcore criminals with rather enhanced competence and will to commit crimes. Thus, Semi-open prison and open prison has proved far more appropriate for such offenders. The main objectives of open prison are to reduce overcrowding in jails, providing opportunity for re-socialisation and self-improvement of prisoners, reformation, rehabilitation, training facilities in agriculture or industrial area and financial support to the prisoners and their family. Therefore, the author here trying to highlight upon how open prison play an important role in the reformation and rehabilitation of the prisoners and what are the lacunas of the open prison system prevailing in India, followed by recommendation and suggestion for its better functioning and development of the prisoners.

Keywords: Open Prison System, Reformation and Rehabilitation, Criminal Justice Delivery, Prisoner Re-socialisation, Deterrence vs Reformatory Justice

INTRODUCTION

The Open Jail, also known as a prison without bars, has been a late development within the prison system, in spite of almost two hundred years of penological speculation and reform dating back to Beccarius and John Haward. This is because prisons have always been places where criminals could be securely contained, and this containment function has remained the same. Containment in this context refers not only to the necessity of keeping prisoners out of circulation but also to ensuring that their behaviours, even while incarcerated, do not reach a level that would disrupt the tranquillity of the general public. The open prison consequently appears to embody a contradiction in terms, representing a denial of the fundamental nature of the institution, of which it seems to be merely a variation.

The aim of formation of Open Prison in India is based upon the question why a criminal is imprisoned and what are the objectives of imprisonment and thereby of Prison. The criminal is a person against whom the crime is proved. Crime constitutes a breach of legal statutes occurring at a specific location and moment. From a purely sociological perspective, devoid of any considerations of sin, immorality, or the severity of the offense, crime can be understood as the inability of the individual to conform to the social environment in which they exist. The objective of prisons in India are based on the theory of (1) Retribution (2) Retaliation (3) Penitence, (4) Neutralisation (5) Vindication, (6) Deterrence (7) General Deterrence (8) Special Deterrence (9) Removal from Society (10) Rehabilitation (11) Re- socialisation (12) Protection of Criminal from Society.¹

The Mandate given to the Prison system is to isolate its members who have been defined as refractory and threatening to the social order. Hence custodial function becomes the Prime function of Prison in India. The recent years have seen a growing emphasis in the Community's prison mandate on the necessity for the treatment and rehabilitation of inmates, utilizing contemporary psychiatric and social work methodologies. The objectives are added to, but not expected to replace, the Prison's custodial aim. In fact, structure of Prisons system is an uneasy balance between different functions it is designed to meet.

In a writ petition submitted to the Supreme Court, the esteemed judges recommended to the honourable Court that the issue of overcrowding in prisons should be addressed, as this may

¹ Research paper by Sengupta and Shobhit "Efficacy of open prison system as corrective means a socio-legal study with special reference to West Bengal" available on www.sodhganga.inflibnet.ac.in last visited on 12/01/2025

potentially decrease the likelihood of suicides among inmates. The idea of promoting open jails should be supported for similar reasons. The Supreme Court noted that the proposal put forth by the esteemed amicus regarding the establishment of 'open jails' or 'open prisons' merits serious consideration. Open prisons serve a dual function: they not only remove offenders from society but also facilitate the rehabilitation of individuals through structured treatment, addressing the underlying factors that led them to commit crimes in the first place. It has certainly unlocked a new outlook in the jurisdiction of correctional treatment, promising an offender better freedom, natural environment and less tension which conclude in creating atmosphere more advantageous to reform himself and to accomplish social, moral and economic rehabilitation in the society. The primary advantage of open prisons lies in their ability to counteract the phenomenon known as "prisonization" experienced by inmates. In essence, the negative impacts of institutionalization, which encompass two key aspects of prisonization, are mitigated. The unique environment and the freedom of movement within these facilities allow inmates to experience a sense of relaxation and reduced stress, which is essential for fostering a change in attitude and promoting receptiveness to rehabilitative methods. Society's treatment of offenders is aimed at ensuring public safety; however, this approach should prioritize the moral regeneration of the individual rather than merely addressing the crime itself. Consequently, the focus of correctional efforts should be on the reformation of offenders rather than inflicting punitive suffering. It is evident that overcrowding in traditional prisons leads to a scarcity of resources for inmates and fosters corruption within the prison system. This situation also negatively impacts the psychological well-being of inmates and complicates the maintenance of law and order within these facilities. Furthermore, the prolonged delays in criminal trials contribute to a significant number of individuals being held as under trials, resulting in their continued detention in closed prisons. To enhance the protection of prisoners' rights and dignity, as well as to support their reformation and rehabilitation, it is imperative to establish more open prisons. The success of open air camps in Rajasthan serves as a compelling example, and it is crucial that similar initiatives be implemented across all states with the active involvement of civil society.²

1. INCEPTION OF OPEN PRISON SYSTEM

In 1952, the Hague conference proposed the establishment of open camps. It recommended that prisoners who had completed a specified portion of their sentences should be transferred

² Ibid

to open-air facilities, where they could experience a community-like environment. These work-oriented prisons would maintain a low inmate population and implement minimal security measures. Additionally, the inmates would engage in work and receive wages for their efforts³. The United Nations Standard Minimum Rules for the Treatment of Prisoners, established in 1955, while not legally enforceable, outlines guidelines for the treatment of prisoners and individuals in custody, applicable under both international and domestic law are as follows:

1. There shall be no biasness on grounds of faith, race, colour, sex, and language, political and different opinion.
2. Male and female detained in separate cells.
3. Due attention should be given to the separation of different categories of prisoners.
4. Separate dwelling should be provided for the young and juvenile prisoners from adult prisoners.

In addition to civil and political rights, the International Covenant on Economic, Social and Cultural Rights establishes economic and social human rights, which affirm that prisoners are entitled to the highest attainable standard of physical and mental health.⁴

The United Nations Standard Minimum Rules for the Treatment of Prisoners were initially established by the United Nations Congress for the Prevention of Crime and the Treatment of Offenders in 1955 and subsequently endorsed by the UN Economic and Social Council in 1957. On December 17, 2015, these rules were updated and formally adopted by the United Nations General Assembly under the title "**The Nelson Mandela Rules.**" As a signatory to this document, India recognizes the importance of these Standard Minimum Rules in enhancing the prison system and promoting reform and rehabilitation within the country.⁵

The origins of the Open Prison system in India can be traced back to 1836, when the first All India Jail Committee was established. Despite this early initiative, the results were not encouraging, leading to the formation of several subsequent committees. Notably, the All-India Committee on Jail Reforms in 1956 was a key development in this area. However, the Mulla⁶ Committee emerged as the most influential body in advancing the open prison system in India.

³Section 24, Implementation of the Recommendation of All-India Committee on Jail Reforms (1980-83)

⁴ Research paper by DR GS Venumadhava, " Re-socialisation of Prisoners- A concept of Open Prison" available on www.worldwidejournal.in last visited on 11/01/2025

⁵ Ibid

⁶All India committee on jail Reforms, 1983

The Committee addresses the matter of open establishments as outlined in Chapter XIX of its report. The All-India Jail Committee of 1919-20 reaffirmed the necessity for the humane treatment of offenders. Sir Alexander Cardew, the chairman of the Committee, determined that the most pivotal moment in a convict's life occurs not at the time of their incarceration but when he comes out of it. Due to loss of his character and social reputation, for him it is tough to find a finely tuned normal life in the society.⁷

The Committee expressed the opinion that engaging in outdoor activities and labour was not incompatible with reformatory efforts. The construction of prison facilities was deemed a suitable type of work for inmates. While the Committee believed that employing prisoners on agricultural farms represented the most fitting and natural form of labour, particularly for those with a strong agricultural background, this approach complicated the distribution of labour across a vast area, thereby making supervision and management challenging. Consequently, this proposal was rejected.⁸

Between 1920 and 1927, numerous provincial governments established Committees to evaluate the management of prisons and proposed significant reforms. However, the issue of prisoner employment remained limited to the expansion of cottage industries within the prison system.

The period following India's independence witnessed a significant transformation in the policies and practices related to incarceration and the management of offenders. The previous approach of confining individuals within heavily secured prisons was deemed ineffective for the rehabilitation of criminals upon their release. Advances in the understanding of human behaviour highlighted the importance of the psycho-social environment in the rehabilitation process. It became evident that inmates should be afforded ample opportunities to reintegrate into society, thereby minimizing the disparity between life within prison walls and that outside. The establishment of open prisons has played a commendable role in achieving this objective.

The initial scientific initiative aimed at modernizing the prison system in India was spearheaded by Sir Walter Reckless, a United Nations Technical Expert who visited the country in 1952. He produced an insightful report on the administration of prisons in India. Consequently, the All - India Jail Committee was formed in 1956-57, which operated for three years and proposed

⁷ Article by Pragati josh, "Essay on origin and development of open prison system in India" available on www.shareyouressay.com last accessed on 13/1/01/2025

⁸ Ibid.

valuable recommendations for prison reform. It is important to note that the underlying philosophy of open prisons revolves around the use of prison labour in open environments. Although the practice of employing inmates in such conditions has been in existence for over a century, the objectives behind it have evolved significantly. Employment have massively changed in the sense that initially it was meant to take hard work from prisoners under conditions which were humiliating and dehumanising whereas today, it is aimed at providing them with useful work under conditions which help them in reinstating their self-esteem and self-confidence.⁹

Pointing to the role of judicial system, the landmark case of *Sunil Batra v. Delhi Administration*¹⁰ set the constitutional extents of an individual behind the prison. The cases like “*Charles Shobhraj*” and “*Sheela Barse*”¹¹ further moulded the path to constitutional rights of a prisoner, more likely to, Article 21 of the Constitution. Going with Article 21 of The Constitution, the concept of open prisons is worth a discussion. *Ramamurthy v. State of Karnataka*¹² is one of the earliest cases argues the concern of open prisons.

2. CONCEPT OF OPEN PRISON SYSTEM IN INDIA

The term "Prison" is articulated in section 3 of the Prisons Act of 1894. A prison serves as a facility where individuals convicted of crimes and sentenced to a specific duration of imprisonment are confined. Historically, the notion of prison was limited to a physical structure designed to isolate offenders from societal interactions and comforts, compelling them to reflect on their transgressions. However, over time, both society and governing bodies have come to understand the importance of affording prisoners a life of dignity. Previously, there was a notable insensitivity towards the human rights of incarcerated individuals. It has since been acknowledged that a truly civilized and well-ordered society must recognize and uphold the fundamental rights of all individuals, regardless of their status as law-abiding citizens or those serving time behind bars..¹³

An open prison, also referred to as an open jail, is designed with minimal security measures to prevent escape, focusing instead on rehabilitative and reformatory approaches rather than punitive ones. In comparison to a traditional prison, the regulations governing an open prison

⁹ Id

¹⁰ AIR 1978, SC 1548

¹¹ *Sheela Barse vs state of Maharashtra* AIR 1983 SC 378

¹² MANU/SC/04021997

¹³ Author Sharika Sristi, “The concept of open Prison system in India” available on www.wisdomcrux.lawtimesjournal.in

are less stringent. It is essential to undertake the necessary actions prior to the completion of the sentence to ensure compliance. The objective is to facilitate the gradual reintegration of the prisoner into society. This goal can be accomplished, depending on the individual circumstances, through a pre-release program implemented within the same correctional facility or in an alternative appropriate institution. Additionally, it may involve conditional release under a form of supervision that should not be assigned to law enforcement but rather integrated with effective social support services. The establishment of open prisons plays a significant role in this context, particularly considering that imprisonment profoundly impacts the offender's family dynamics. The consequences of incarceration inflict considerable hardship not only on the offender but also on family members who rely on the offender's financial support. Open prisons have comparatively less strict rules as compared to the controlled jails. They are going by several names like minimum-security prison, open air camps or prison without bars. The fundamental rule of an open prison is that it has minimum security and functions on the self-discipline of the inmates.

Open prisons refer to the prisons that comprise minimum security and is solely dependent on the self-discipline of the inmates. The guidelines of these prisons are less harsh as compared to the rules of the other prisons. Because of this reason, they are also known as open air prison, prisons without bars or minimum-security prison. These encourage one of the major principles of punishment known as the '**Reformative Theory**' where instead of harshly punishing the convict, an opportunity is provided to reform oneself and get into the mainstream life. The open prison is a place expanded in few acres and situated usually in the remote area of the town or the city. It lodges 100 to 1000 prisoners depending upon the area. It varies from traditional prison in regard of the fact that here the prisoners are not kept within the domain of four walls and are not deprived of the liberty to move around and socialise. It is basically an open camp wherein the prisoners are allowed to work for a particular time and earn their livelihood, intermingle with people i.e., jail authorities as well as the prisoners and enjoy certain personal liberty within the grounds and in accordance with the law. These are the minimum-security prisons. A particular lump of prisoners is selected among the whole lot to be admitted to the open prisons. The inmates have to satisfy certain standards which include good behaviour inside the jail area, to get admitted in the open prison. There are several works allotted to the inmates, most common amongst them is related to agriculture, mining quarries and construction sites, animal husbandry, manufacturing work etc.

Eligibility criteria for admission to open prisons may vary from state to state. The main criteria are:

- (1) The rules and regulation of open prisons should be followed by the prisoners;
- (2) They ought to be fit, physically and mentally, to work;
- (3) They should have been sentenced and imprisoned for the period of one year or more and must have spent at least 1/4 of the total term of sentence in jail;
- (4) They should have record of good behaviour in prisons;
- (5) They should not be under 21 years or more than 50 years as prescribed by the state;
- (6) They should not have been convicted for certain types of crimes (like dacoity, forgery, counterfeiting, etc.);
- (7) No case should be pending in any courts;
- (8) They should not be hardcore or habitual criminals; and
- (9) They should not be class I prisoners or women prisoners.

The procedure for selecting inmates for open prisons is straightforward. Prison superintendents compile lists of eligible prisoners based on the aforementioned criteria. These lists are then forwarded to selection committees, which review each individual case history and finalize the selection.

3. RELEVANCE OF LAWS

- **Constitution of India [Article 21]:**

As such, there is no specific right ensured under any provision of the Constitution of India for jail inmates. But certainly, the essence of human rights for prisoners is enshrined in Article 21 of the Constitution of India. According to article 21, *“no person shall be deprived of his life or personal liberty except according to the procedure established by law.”* And, through various judgements it quite clears today that we cannot exclude prisoners under the meaning of the word ‘person’ under this article. So, they cannot be deprived of their basic rights enshrined under the article. If a prisoner meets specific criteria established by applicable laws and regulations, they are entitled to be transferred to open prisons. Over time, the judiciary has expanded the interpretation of Article 21 through various rulings, acknowledging that prisoners possess rights that include the right to live with dignity, the right to earn a livelihood, the right

to humane treatment and a healthy environment, as well as the right to personal liberty. In light of this broader interpretation of Article 21 of the Constitution of India, the establishment of open prisons can be deemed justifiable.

- **The Human Rights perspective of Prisoners:**

Human rights are traditionally categorized into two main groups: civil and political rights, often referred to as 'first generation rights,' which encompass the right to life, protection against arbitrary arrest and detention, and the right to freedom; and social, economic, and cultural rights, known as 'second generation rights,' which include the right to health and the right to social security. Initially, the focus was primarily on first-generation rights following the establishment of the constitution. However, over time, second-generation rights have gained recognition and are increasingly regarded as fundamental rights rather than merely directive principles. As a signatory to the International Covenant on Economic, Social and Cultural Rights, India is obligated to implement open prison systems within its borders, especially considering that many other signatory nations have successfully adopted such measures. This observation holds considerable importance within the framework of human rights jurisprudence.¹⁴

4. OPEN PRISON AS A MEANS OF REFORMATION

Open prisons can serve as an effective mechanism for the rehabilitation of certain inmates. This perspective has emerged following a public interest litigation that highlights the deplorable living conditions faced by prisoners in India. The facilities are underfunded, leading to inadequate maintenance, while security expenses remain excessively high. Ironically, despite significant investments in stringent security measures, some relatively harmless high-profile inmates, who could benefit from a more self-regulated environment, occasionally manage to escape. Consequently, the government could reduce unnecessary security expenditures for these individuals. By reallocating resources, it would be possible to enhance security in high-profile facilities while transferring well-behaved low-profile inmates to more cost-effective and manageable prisons.

Secondly, individuals incarcerated in open prisons engage in meaningful employment that significantly aids economic growth and mitigates unemployment. A distinction can be drawn between an open prison inmate who actively seeks work as a daily wage laborer and a prisoner

¹⁴ Adapted by general Assembly 1996

assigned to perform menial tasks for minimal or sometimes substandard wages. The latter scenario may not be classified as genuine employment and could be perceived as akin to begging, whereas the former exemplifies true employment. Numerous residents of open prisons also operate small businesses, such as shops, roadside eateries, or work for a fixed monthly salary. Consequently, they make substantial contributions to society. Therefore, prisoners with the capability to work can serve as valuable human resources for the nation, rather than squandering precious time due to bureaucratic inefficiencies. While the traditional prisons can promote delinquents if not treated properly by the administration, the latter have high chances of reformation.

Prisoners receive training in carpentry and fabric painting. Numerous correctional facilities have initiated programs aimed at empowering women through skills such as weaving, toy making, stitching, and embroidery. Additionally, wage earning opportunities, incentive schemes, and other benefits are implemented to alleviate the psychological stress experienced by inmates. Recently, the Government of Himachal Pradesh has removed the prohibition on wearing Gandhi caps within prisons. Jail authorities also conduct various seminars to educate inmates about their legal rights, health and sanitation issues, HIV/AIDS awareness, mental health concerns, juvenile matters, minority rights, and strategies to mitigate violence within correctional institutions. The open prison system has come as a very contemporary and effective alternative to the system of closed prison. The establishment of open prisons on a large scale as a substitute option for the closed prisons, the latter being reserved for hardcore criminals shall be one of the greatest prison reforms in the penal system.

Significant measures have been implemented to enhance prison conditions; however, further action is necessary. The Central Government, in collaboration with non-governmental organizations and prison authorities, should undertake comprehensive initiatives to centralize prison management effectively, and a standardized jail manual should be established nationwide. This uniformity in standards can be upheld across all states. Such initiatives will contribute to transforming the traditional and colonial perspective of the Indian Prison System, enabling prisoners to evolve into more responsible, creative, and capable citizens.

The primary objective is to assist prisoners in reintegrating into society and to facilitate their rehabilitation and reform, preparing them to adapt to the external environment once their incarceration concludes. Additionally, individuals sentenced to life imprisonment may be eligible for transfer to open prisons, contingent upon meeting specific conditions or regulations.

Open jails in India typically involve activities such as agriculture and animal husbandry.

Prisoners who have served a significant portion of their sentence in closed facilities and have demonstrated good behavior during that time may qualify for transfer to open prisons. Those exhibiting commendable conduct, in accordance with established prison guidelines, are permitted entry into these open facilities, which maintain minimal security and engage inmates in agricultural pursuits.¹⁵

5. THE OPEN PRISONS IN INDIA CAN INCLUDE THE PRISONERS IN VARIOUS ACTIVITIES LIKE:

- Agriculture activity
- Animal husbandry etc.
- Convicts can be sent to Open jails for two purposes:
 - To gradually reduce the inmate's level of social interaction, it is advisable to avoid directly confining the prisoner in a closed facility; as such measures may have detrimental effects on the individual's mental well-being.
 - Secondly, to assist the prisoner to deliberately re-socialise with the outer world. While living in the closed jails, the prisoner is commonly to lose attachment with the outside world and therefore, wouldn't be able to re-establish him after the rid-off from the imprisonment.

However, only the second scenario is recognized, in India. Maharashtra, Rajasthan and Himachal Pradesh have the greatest number of full of life open prisons in India. Some of the most well-known Open Prisons are situated in:

- Sangamner
- Akola
- Kolhapur
- Paithan
- Yerwada
- Bikaner etc

¹⁵ NRCB report 2015

Prisoners are moved from closed to old-style prison. Solely selected prisoners are moved from closed or traditional prison to an open prison. Prisoners in Maharashtra typically engage in agricultural activities to support themselves, while those in Rajasthan are employed in factories, manufacturing sectors, and various other industries. The income generated by these inmates contributes to their livelihood is spent by them for their families and no amount except a little administration charge is to be paid to the prison.

Each morning at 6 a.m., a roll call is conducted, following which the prisoners are permitted to exit. A subsequent roll call is arranged for 7 p.m., by which time the prisoners are expected to return to the facility.¹⁶

6. MAIN FEATURES OF OPEN PRISON

- (a) Living in small groups in a manner that is both informal and institutional, while maintaining minimal levels of supervision.
- (b) Initiatives aimed at fostering awareness among inmates regarding their societal obligations.
- (c) Adequate resources for educating inmates in agricultural practices and other associated fields.
- (d) Greater chances for inmates to be in touch with their family, relatives and friends so that they can resolve their internal family glitches by mutual discussion.
- (e) Liberal remissions of up to fifteen days per month to meet their family members.
- (f) Proper devotion regarding to the health and recreational facilities for prisoners.
- (g) Management of Open Jail institution by especially qualified and well-trained personnel.
- (h) Proper food with arrangement for special diet for weak and to the sick prisoners.

¹⁶ Article by Anubhav Pandey, "Open Prison as a part of Jail Reform" available at www.ipleadersblog.com last visited on 13/02/2021

¹⁸ *ibid*

- (i) Payment of remuneration in part to the prisoners and sending part of it to their relatives and family.
- (j) Economical help to Inmates through substantial bank loan.
- (k) Unrestricted communication between staff and inmates, as well as among the inmates themselves.
- (l) Regular and paid for work to inmates in supervision of experts as a mechanism of reformation.
- (m) Ensuring the prevention of excessively prolonged detention.¹⁸

BENEFITS OF OPEN PRISON:

The implementation of Open Prisons in the post-independence period has been remarkable and has garnered significant attention from penologists. This interest stems from the understanding that a considerable number of incarcerated individuals do not require confinement within secure prison facilities. Those who are carefully chosen may be relocated to open-air prisons, agricultural colonies, or other external work environments, provided that adequate safety measures are in place. The main benefits of the open prisons as related with the traditional prisons are: -

- a) They control in reducing high tied crowding in bars.
- b) Reduce the construction cost of jail buildings.
- c) The operational expenses associated with open prisons are significantly lower than those of closed prisons.
- d) Involving inmates of open-air prisons in meaningful work minimizes idleness, thereby promoting both their physical and mental well-being.
- e) Open Prisons facilitates chances for self-improvement and re-socialisation to the prisoners.
- f) The transfer of inmates from a general prison to an open prison contributes to the conservation of natural resources and expands the opportunities for rehabilitation.

¹⁸ Id

The Scheme of Open Jails for Prisoners is primarily based on twin system of probation and parole, which have added enough admiration as correctional techniques of reformation in modern penology.¹⁹

7. RIGHTS OF INMATES IN OPEN PRISON

Prisoners are fundamentally human beings; therefore, they retain all rights except those legitimately revoked during the process of incarceration. These rights include those essential for safeguarding basic human dignity and facilitating the rehabilitation of the prisoner into a more constructive individual. Furthermore, as convicts rely on prison administration for nearly all aspects of their daily lives, and given that the State exerts control over their freedom and existence, the framework of rights exists to prevent the authorities from misusing their power.²⁰

The rights are as follows: -

1. RIGHT TO BE LODGED APPROPRIATELY BASED ON PROPER CLASSIFICATIONS-

Prisoners should be segregated based on their gender, age, criminal history, the legal grounds for their detention, and their treatment needs. In the case of **Rakesh Kaushik v. B.L., Superintendent, Central Jail Delhi**²¹, it was determined that discrimination and inequality based on the social and economic status of inmates is not permissible. Wealthy prisoners cannot be afforded luxury while those who are less fortunate are treated as outcasts.

2. RIGHT TO CLEAN ENVIRONMENT:

Incarcerated individuals are, at their core, human beings; thus, they maintain all rights except those that are lawfully suspended during their imprisonment. These rights are crucial for preserving fundamental human dignity and aiding in the rehabilitation of the individual into a more positive member of society. Additionally, since prisoners depend on the prison administration for nearly every facet of their daily existence, and considering that the State holds authority over their freedom and lives, the established framework of rights serves to protect against the potential abuse of power by the authorities.

¹⁹ Ibid

²⁰ ibid

²¹ AIR 1981 SUPREME COURT 1767,

3. RIGHT TO FOOD:

Every prisoner should facilitate at the routine hours with food of dietary value apt for health, physical and mental strength, of good quality and well prepared and served. Drinking water should be accessible to all convicts.

4. EXERCISE AND SPORTS:

All inmates not engaged in outdoor labour should be afforded a minimum of one hour of exercise in an open environment, contingent upon favourable weather conditions. Inmates who meet the necessary age and physical criteria should have undergone physical and recreational training during their exercise sessions.

5. RIGHT TO HAVE INTERVIEWS WITH ONE'S LAWYER:

Every inmate is entitled to consult with their attorney at any reasonable hour, provided that an appointment has been arranged with the relevant authorities. Such discussions may occur within the officer's line of sight but must remain outside their hearing range if an officer is assigned to be present, in accordance with the Prisons Act. In the case of **Sunil Batra v. Delhi Administration**²² The Supreme Court has held that advocate nominated by the District Magistrate, Sessions Judge, High court and the Supreme Court will be given all assistance for interviews, visits and confidential communication with prisoners, subject to discipline and other security consideration. In **Prabhu Dutta v. Union of India**²³, the Supreme Court supported fundamental freedom of press to interview inmates.

6. RIGHT AGAINST BEING DETAINED FOR MORE THAN THE PERIOD OF SENTENCE IMPOSED BY THE COURT:

In the case of **Veena Sethi v. State of Bihar**²⁴ it was held that all inmates possess the right to not be held for any period exceeding the duration specified by the trial court in the sentencing. Consequently, prison authorities are obligated to keep accurate records with numbered pages that indicate the scheduled release date for each prisoner and to notify them of their impending release well in advance.

²² (1980) 3 SCC 488,

²³ 1982 AIR, 6 1982 SCR (1)1184

²⁴ AIR 1983 SC 339

7. RIGHT TO PROTECTION AGAINST BEING FORCED INTO SEXUAL ACTIVITIES

The secluded and vulnerable circumstances faced by individuals, particularly prisoners, often lead to instances where they are coerced into sexual acts, including rape and sodomy, by other inmates. This not only results in physical harm and significant psychological distress for the victims but also poses a considerable risk of transmitting sexually transmitted infections, such as HIV/AIDS. In the case of **Munna v. State of Uttar Pradesh**²⁵ it was held that in such circumstances, inmates possess the right to report any acts of aggression to the Jailor, the Prison Doctor, and the Superintendent, who are obligated to take measures to prevent recurrence. Should the aggression persist despite these actions, the inmate is entitled to file a complaint with the District Magistrate or the Sessions Judge without delay.²⁶

8. RIGHT AGAINST ARBITRARY USE OF HANDCUFFS AND FETTERS:

In a case of **Citizens for Democracy v. State of Assam**²⁷, the Supreme Court has stated that No inmate shall be subjected to handcuffing or restraint as a matter of routine or solely for the convenience of the escorting personnel. In exceptional circumstances where it becomes necessary to apply handcuffs to a prisoner, the accompanying officer must document the justification for this action in writing and obtain the court's authorization either prior to or, if that is not feasible, promptly thereafter. Similar decision of supreme Court had been given by supreme court in **Prem Shankar Shukla v. Delhi Administration**²⁸.

8. CRITICISM OF OPRN PRISON SYSTEM

Unnecessary and arbitrary provisions for ineligibility, which filter out many deserving convicts:

- The Open Prisons are currently underutilized, with the capacity to accommodate 25,776 inmates; however, as of 2015, only 3,786 prisoners are housed within these facilities. This situation highlights a significant disparity, as closed prisons are experiencing severe overcrowding while open prisons remain largely unoccupied.

²⁵ AIR 1982 SC 306

²⁶ Ibid

²⁷ AIR 1996 SC 2193

²⁸ AIR 1980 SC 1535

- In the majority of states, the selection of prisoners is conducted by a committee that bears no accountability for their decisions, as they are not required to justify their choices. This situation fosters an environment conducive to bias and corruption.
- Inadequate measures are implemented for convicts commencing their sentences. It is proposed that at a minimum, semi-open facilities should be transitioned to open settings for new offenders.
- No specific provision of Open Jails to under trial accused.
- Insufficient Open Prisons exist across all states. While certain states prioritize the establishment of Open Prisons, others may have only a single facility. Notably, no Union Territory in India currently operates an Open Prison. Due to the state list subject, this inequality presents among different states.
- Only, Open Prisons are the reformatory prisons in India, which also favour only a small number of prisoners. There is a need for more reformatory provisions for other convicts, in order to reduce the amounts of custodial deaths.
- The regulations and statutes that oversee the selection and management processes are considerably outdated and therefore unsuitable for contemporary circumstances.²⁹

9. CONCLUSION

All individuals are born with inherent equality and are granted fundamental rights by their creator. These rights primarily include the right to life and liberty; however, individuals who violate societal ethics may face deprivation of these rights through appropriate punitive measures. Numerous experts assert that the primary aim of correctional facilities is to reintegrate offenders into society. The State Government, in partnership with non-governmental organizations, has organized various workshops aimed at reforming the existing prison systems. Although the concept of open prisons has been present in India for nearly 70 to 80 years, many states still lack adequate open prison facilities. Given the current overcrowding in prisons, it is crucial to establish and effectively utilize open prisons. These facilities represent an optimal approach to rehabilitative justice, facilitating the reintegration of convicts into society prior to the completion of their sentences. While the existing open prisons are generally well-managed and have demonstrated a positive track record, there remains a

²⁹ Ibid

need for enhancements in legal frameworks and regulations. Proactive measures should be undertaken to amend these rules, ensuring equitable access to justice for all inmates. If effectively implemented, this system could also contribute to a reduction in custodial deaths.

10. RECOMMENDATION/SUGGESTIONS

- The quantity of Open Prisons should be increased, along with an improved utilization of the currently available facilities by implementing various amendments to the regulations and easing the strict eligibility requirements.
- It is essential to advocate for the inclusion of prisons in the union list. This change would facilitate uniform reforms, ensuring that all prisoners receive equal rights.
- To enhance accountability in the selection process, the state committee must be required to provide justifications to the Chief Minister regarding their selections. Furthermore, these documents should be accessible under the Right to Information Act, allowing the public to obtain this information.
- The establishment of semi-open jails should be promoted to aid in the rehabilitation of mentally ill prisoners. While these facilities do not offer complete freedom, they eliminate traditional prison cells and provide inmates with employment opportunities within the jail premises. A notable example of a semi-open jail in India is the Tihar Semi-Open Jail located in Delhi.
- The Supreme Court, along with the relevant High Courts, should be granted the authority to permit certain prisoners to transition directly to open prisons.
- It is imperative that all prisoners, regardless of whether they are in open or closed facilities, are made aware of their rights and informed about the selection process for open prisons. This knowledge will not only empower the inmates but also promote positive behaviour among them.