

A Prison Without Bars, Chains, or Locks:

Should India Adopt Finland's Open Prisons Model?

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ABSTRACT

Krishna Iyer, J. in his judgments has always supported humanitarian over punitive treatment of inmates. The Indian Constitution guarantees the fundamental right to life and personal liberty to all people, including prisoners. Previously, prisons were thought to be small rooms where convicted criminals were kept away from luxury and public life to allow them to reflect on their crimes and repent. Since ancient times, prisons have been used both domestically and abroad as punitive and correctional facilities. One of the concepts employed by the criminal justice system to help prisoners become law-abiding citizens is the open prison.

This article begins with a brief study of the concept of open prisons and a comparative discussion of open prisons in Finland and India. This article tries to bring out the contrast between the Indian and Finnish Open Prisons as Finland is the perfect example to study the implementation of reformatory justice in prison administration. The researcher has also critically discussed the conditions of the open prison system in India and tried to suggest measures to augment conditions just like the Finnish Open Prisons. In the

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end, the researcher has concluded the paper with some suggestions that can be implemented to improve the conditions of the open prison system in India.

Keywords: *Open Prison System, Reformatory Justice, India, Finland, Fundamental Rights, New Model Prison Act 2023.*

Introduction to Finland's Open Prison

The world's happiest nation is Finland. Finland and its neighboring Nordic countries are regularly included in the top 10 of the United Nations' annual World Happiness Report. Finland has held the top spot for the past seven years.¹

Since many people would likely identify a happy nation with pleasant weather, beautiful locations and prodigious natural resources with pleasure, happiness, and joy, it would seem that the happiest nation would have beautiful geographical conditions. The long, dark winters of Finland, albeit beautiful and reminiscent of a forest wonderland, have nothing in common with pleasant geographical conditions. The researchers from the Nordic region have examined previous research, theories, and data to delve deeper into the idea of happiness. The two most popular theories that came up are a democracy that runs smoothly and low levels of corruption. The secret to happiness in Finland is trust in institutions. However, in contrast, India as per the World Happiness Report 2024 out of 143 countries surveyed, is

¹ 'Finland Is World's Happiest Country For 7th Time Straight, India Stands At 126' (2024) NDTV <<https://www.ndtv.com/world-news/finland-is-worlds-happiest-country-for-7th-time-straight-india-stands-at-5278059>> accessed 29 July 2024.

ranked 126th, the same as last year, while the neighboring countries, like China is ranked 60th, Nepal is at 93 and Pakistan is at 108.²

According to a survey, "Nordic citizens experience high levels of social trust towards each other, as well as a high sense of autonomy and freedom, which play an important role in determining life satisfaction."³ There are numerous factors leading Finland to the top of the happiness index and one significantly contributing factor is their prison system. Every tool available to a prisoner to alter the course of their life and their view of themselves is applied as soon as they are imprisoned in Finland. There is an extreme emphasis on rehabilitation programs rather than punishment, and the care is incredibly humane. This signifies the focus of the government lies in the reformation of the prisoners rather than just sentencing them.⁴ When combined, all of these elements drive this country to the top of the global happiness index.

India, as can be inferred from the World Happiness Report⁵ lies at the bottom of the list due to various factors. It is high time that the focus of Indian government and other State agencies be brought to increase the happiness index of the country and for this apart from other factors one leading factor

²World Happiness Report 2024 <https://worldhappiness.report/ed/2024/> accessed 7 July 2024

³'Finland: The So-Called Happiest Country on Earth - But Not for Everyone' (Pulitzer Center) <https://pulitzercenter.org/stories/finland-so-called-happiest-country-earth-not-everyone> accessed 29 May 2024.

⁴ Kirsti Kuivajarvi, 'Prison Life in Finland: The Importance of Rehabilitation and Reintegration' (2020) 22(4) Punishment & Society <<https://doi.org/10.1177/1462474520964939>> accessed 29 July 2024.

⁵Supra n 1.

is the increasing incarceration rate in the country. There is an immediate need to shift our attention towards rehabilitation and reintegration of prisoners into society and the best way is by focusing more on the open prison model of incarceration. The researcher was once going through a news article that mentioned Finland is closing its prisons due to lack of prisoners.⁶ The inquisitive mind made the researcher delve deeper into this aspect, which led to knowledge about the fact that it is only partially true as Finland was focusing majorly on converting its prison system into an open prison model. This further intrigued the researcher that there is a criminal justice system that allows inmates to leave daily for work or school. This led to further study about the open prisons in India and their comparison to the Finnish open prison model.

Numerous "open prisons" exist in Finland. The facilities don't have gates, locks, or uniforms; prisoners apply to be there. Inmates can go out and earn money. Alternatively, they can decide to forgo employment in favor of pursuing a university degree. Since it hasn't increased crime, the model is regarded as successful⁷. The guiding principle is rehabilitation. Finland discovered that the solution to societal issues is not incarceration. The Nordic nation had a high rate of incarceration until its criminal justice

⁶The Countries Closing Their Prisons' (RNZ National) <https://www.rnz.co.nz/national/programmes/sunday/audio/2018633586/the-countries-closing-their-prisons> accessed 29 May 2024

⁷ Emmanuel Y. A. Ekunwe, 'Prisoner Rehabilitation in Finland: The Views of Former Inmates' (2012) <http://www.antoniocasella.eu/nume/Ekunwe_2012.pdf> accessed 29 July 2024.

system was reexamined and new legislation was established under the guidance of research.⁸

Finland in the 1800s believed that solitary confinement, combined with a combination of religious observance and penance, would control inmates. Hard living conditions and overcrowding persisted until the end of World War II. Decades of efforts have gone into the attempt to humanize the Finnish prison system, beginning with worker colonies.

Taking a "tough on crime" stance helped Indian policymakers win electoral points. They firmly established a system of disproportionate punishment that has wreaked havoc on communities through mass incarceration. The prisoners are paid the regular minimum pay for their labor while they are behind bars. Once a week, the public is allowed to shop for their preferred items at the local food market for a specified number of hours. Apart from repeat offenders and major crimes against humanity, the maximum sentence is reportedly 21 years in prison, with very few exceptions. Their general belief is that you have lost everything and experienced shame and embarrassment after being excluded from the community for a year or three, which should be enough to motivate you to alter your behavior. Decades of incarceration neither prove a point nor increase society's safety.

Understanding the concept of Open Prison

⁸Finland's Open Prisons' (Pulitzer Center) <https://pulitzercenter.org/projects/finlands-open-prisons#:~:text=Finland%20realized%20incarceration%20is%20not.was%20drafted%2C%20guided%20by%20research.> accessed 1 June 2024

The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading, or inhuman manner.⁹ Quite the contrary, it is argued that any penalty that can be considered cruel, inhuman, or degrading ought to be considered an offense in and of itself. It is in order to respect the basic Human Rights of the prisoners the system of open prison was adopted in India. To understand what is an open prison we first need to understand what is a prison?

A comprehensive definition of the term "prison" is provided by the Prisons Act of 1894¹⁰.

“prison means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

⁹UNGA 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1, para 1

UNGA 'Universal Declaration of Human Rights' (adopted 10 December 1948) UNGA Res 217 A(III), art 5

UNGA 'International Covenant on Civil and Political Rights' (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7

¹⁰ The Prisons Act 1894, s 3(1)

(b)any place specially appointed by the State Government under section 541 of the [Code of Criminal Procedure, 1882 (10 of 1882)] [Now see the Code of Criminal Procedure, 1973 (2 of 1974).]; or
(c)any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;”

Since prisons are established by government ruling, prisons can exist anywhere. Therefore, in accordance with this definition, even a jail will fall under the category of prisons.

Now, open jails are special Jails that exclusively confine only convicted prisoners. Convict Prisoners with good behaviour, satisfying certain norms prescribed in the respective prison rules are lodged in open prisons. Minimum security is kept in such prisons and prisoners are engaged in agricultural and such other activities.¹¹ These are special kind of jails that provides opportunities for employment and living a life in the open to convicted prisoners.¹²

The 1972 Rajasthan Prisoners Open Air Camp Rules define an open jail as "prisons without walls, bars, and locks."¹³

The definition of "open prison" according to the prison manuals for Tamil Nadu and Maharashtra is "any place so used permanently (or temporarily)

¹¹National Crime Records Bureau, 'Prison Statistics India 2022' (NCRB 2023) <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyarwise2022/1701613297PSI2022ason01122023.pdf> accessed 1 June 2024

¹²Model Prison Manual-2016 (Ministry of Home Affairs, 2016).

¹³Rajasthan Prisoners Open Air Camp Rules 1972 (Rajasthan, 1972).

under any order of the State Government for the detention of prisoners [under clause (1) of section 3 of the Prisons Act, 1894]."¹⁴

A more thorough definition of open jail is offered by the West Bengal Notification of 1986,¹⁵ in contrast, "A Prison House not surrounded by walls or fencing of any kind" is what it refers to.

Open jail was described as "a framework dependent on self-control and the detainees' feeling of obligation towards the gathering in which he lives" and "a lack of material or actual safeguards against escape (dividers, locks, bars, equipped or skewered safety officers)" in the UN Congress on the Prevention of Crime and the Treatment of Offenders at Geneva, 1955.¹⁶

In furtherance to this, Judges have also shaped the contemporary concept of incarceration through their decision-making process. Even the idea of "open jails" has changed over time. The reputation of prisons as a place where negative experiences are had is now history.

The Supreme Court stated in *Ramamurthy v. State of Karnataka*,¹⁷ stated that "open air-prisons play an important role in the scheme of reformation of a prisoner which has to be one of the desideratum of prison management. They

¹⁴Maharashtra Open Prison Rules 1971, sec. 2(b).

Government of Tamil Nadu, *Tamil Nadu Prison Manual*, vol. II, chap. XXXVI: Open Air Prisons, vol. II, p. 149.

¹⁵Government of West Bengal, Home (Jails) Dept., *Notification No. 1819-HJ*, dated 2 August 1986, amending the *West Bengal Jail Code*. See *West Bengal Jail Code*, chap. XXXIX: Open Prisons, sec. 635.

¹⁶Ishwar Chandra Vatsa, *Open Peno Correctional Services* (Vedams: Book from India 1997) 42.

¹⁷(1997) 2 SCC 642 (659)

represent one of the most successful application of the principle of individualism of penalties with a view to social readjustment. Though open-air prisons, create their own problems which are basically of the management, we are sure that these problems are not such which cannot be sorted out. For the greater good of the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, not managerial problem is insurmountable. So let more and more open-air prisons be opened. To start with, this may be done at all the district headquarters of the country.”

The Supreme Court of India also observed in *Dharmbir vs State of Uttar Pradesh*¹⁸ that “open prisons had certain advantages in the context of young offenders who could be protected from some of the well-known vices to which young inmates are subjected in conventional jails.”

Open Prison in India

In 1949, the Model Prison in Lucknow housed the first-ever open-air camp in the history of independent India. In 1953, the state of Uttar Pradesh also set up an open prison camp in order to build a dam over the Chandraprabha River close to Varanasi. Open prison camps were established in the 1950s in several locations, including Chakiya, Naugarh, and Shahgarh. The first open jail camp in Rajasthan was established in Sanganer in 1963. The reformist politician Sampurnanand, who actively supported the notion as chief

¹⁸(1979) 3 SCC 645

minister of Uttar Pradesh in the 1950s and as governor of Rajasthan in the 1960s, is credited with giving these camps their common name.¹⁹

These were the first instances of the open model, which let inmates to work in forestry, agriculture, cottage industries, and public utility-related fields. In exchange for their labor, they received compensation. Rather than prisoners, the inmates were referred to as "mazdoor."

Do Aankhen Barah Haath,²⁰ a 1957 Hindi feature film, is a prime example of the open prisons philosophy in India, which is fundamentally grounded in humanistic psychology. In the movie, a youthful jail warden transforms six deadly killers into virtuous people after releasing them on parole. On a run-down country farm, he forces them to labor alongside him to rehabilitate them with diligence and thoughtful supervision.

According to the latest NCRB, Prison Statistics of India Report,²¹ only 17 States have reported about the functioning of open jails in their jurisdiction. Total number of open prisons in India is currently 91. Amongst these States, Rajasthan has reported the highest number of 41 open jails followed by Maharashtra (19), Madhya Pradesh (7), Gujarat and West Bengal (4 each) and Kerala, Tamil Nadu (3 each). The remaining 10 States – Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Karnataka, Odisha, Punjab, Telangana and Uttarakhand have one open jail each. The States Arunachal

¹⁹N V Paranjape, *Criminology and Penology* (11th edn, Central Law Publications 2001).

²⁰The film is inspired by the story of an "open prison" experiment at Swatantrapur in the then princely state of Aundh near Satara (Now in Sangli district of Maharashtra).

²¹National Crime Records Bureau, *Ministry of Home Affairs, Government of India, Annual Report 2022* (2023).

Pradesh, Chhattisgarh, Goa, Haryana, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura & Uttar Pradesh and all the UTs do not have any Open Jail in their State/UT. Only two states, Maharashtra and Kerala, have built capacity in open jails for female detainees.

A total of 4,473 inmates population consisting of 4,341 males and 132 females were lodged in various Open jails of the country against the total Capacity of 6,043 inmates consisting of 5,913 males and 130 females.²² The highest number of inmates were lodged in the jails of Maharashtra (1,725), followed by Rajasthan (1,367), Kerala (437), and West Bengal (261). The Occupancy rate of Open Jails at the National level was 74.0% and Maharashtra (107.0%) has reported the highest crowding in open jails. However, overcrowding may differ on a day-to-day and jail-to-jail basis. The number of jails, capacity, the population of inmates, and their occupancy rate in Open Jails as of 31st December, 2022 in respect of States/UTs as published by NCRB are presented in Table 1²³ below:

Sl. No.	Type	Number of Jails	Capacity	Population of Inmates	Occupancy Rate
(1)	(2)	(3)	(4)	(5)	(6)
1	CENTRAL JAIL	148	197052	246155	124.9
2	DISTRICT JAIL	428	168981	264534	156.5
3	SUB-JAIL	574	47270	45679	96.6
4	SPECIAL JAIL	42	7573	7171	94.7
5	OPEN JAIL	91	6043	4473	74.0
6	WOMEN JAIL	34	7080	4258	60.1
7	BORSTAL SCHOOL	10	1204	489	40.6
8	OTHERS	3	1063	461	43.4
9	TOTAL	1330	436266	573220	131.4

Table 1

²²National Crime Records Bureau, *Report as on 31 December 2022* (2023).

²³ *Ibid.*

Lessons to learn from Finland

Since crime hasn't increased, Finland's prison model is regarded as successful. The theory is rehabilitation. This does not imply that they are lenient toward offenders; rather, it indicates that they sincerely try to help out of debt to society by providing them with enough financial support and healthcare. It is not allowed for prospective employers to inquire into an individual's background or to refuse them employment because of it.²⁴

Suomenlinna Open Prison on Suomenlinna island, Finland, a sea fortress is a well-liked tourist destination and a UNESCO World Heritage Site.²⁵ The majority of tourists are unaware that the men who are sentenced there contribute to the upkeep of the open prison. The stark, concrete, and boring prisons seen in India are not at all like the prison structures in Suomenlinna. We can develop our prison structures in such a way that they attract the masses. This will not only spread awareness about open prisons but will also contribute financially to the national income.

One of the main proponents of orienting inmates toward reformatory treatment was Krishna Iyer, J. His attempts to instill reforming principles in the jail administration were evident in every decision he made.

²⁴Commentary: What I Learned Visiting Finland's Open Prisons' (Pulitzer Center) <https://pulitzercenter.org/stories/commentary-what-i-learned-visiting-finlands-open-prisons> accessed 1 June 2024.

²⁵'Suomenlinna (Sveaborg)' (UNESCO World Heritage Centre) [https://whc.unesco.org/en/list/583/#:~:text=Suomenlinna%20\(Sveaborg\)%20is%20a%20sea,geographical%20features%20of%20the%20region](https://whc.unesco.org/en/list/583/#:~:text=Suomenlinna%20(Sveaborg)%20is%20a%20sea,geographical%20features%20of%20the%20region). accessed 1 June 2024.

Krishna Iyer, J opined open prison as:

“A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner’s personality through the technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner’s rights is the hopeful note of national prison policy struck by the constitution and the court.”²⁶

As a result, prisoners can now enjoy their full human dignity while incarcerated. The conventional definition and understanding of a prison are out of date. The impact of penal reforms in India was greatly influenced by human rights jurisprudence. India is also impacted by the global criminal justice changes.

As a result of adopting open prisons, Finland observed a sharp decline in the number of inmates.

After working with prisoners for over ten years, Smita Chakraborty, a social reformist created Prison Aid and Action Research (PAAR) in 2018 with the goal of reforming prisons.²⁷ She is credited with promoting the concept of

²⁶‘Reformatory Theory of Punishment’ (Lawctopus) <https://www.lawctopus.com/academike/reformatory-theory-of-punishment/> accessed 3 June 2024.

²⁷‘India’s Open Prisons: A Trust in Escape’ (Reasons to be Cheerful) <https://reasonstobecheerful.world/india-open-prisons-escape-trust/> accessed 1 June 2024.

open jails in India. She asserts, "If they can think of a parole system, then they can think of an open prison."²⁸

The World Prison Population List, like the World Female Imprisonment List²⁹ and the World Pre-trial/Remand Imprisonment List,³⁰ complements the information held on the World Prison Brief. This is an online database³¹ and updated monthly. The Institute for Crime & Justice Policy Research (ICPR) at Birkbeck, University of London, hosts and maintains the World Prison Brief database and publishes the Prison Lists.³² This thirteenth edition of the World Prison Population List gives details of the number of prisoners held in 223 prison systems in independent countries and dependent territories. It shows the differences in the levels of imprisonment across the world and makes possible an estimate of the world prison population total. The figures include both pretrial detainees/remand prisoners and those who have been convicted and sentenced.³³

The prison population trends since 2000 in Asia have varied greatly between the different parts of the continent: total prisoner numbers in south-eastern

²⁸Chakraborty, Smita (2020): "Unsafe Behind Bars," *The Telegraph*, 5 April, <<https://www.telegraphindia.com/opinion/coronavirus-pandemic-people-behind-bars-are-unsafe/cid/1762310>> accessed 01 June, 2024.

²⁹World Prison Population List (4th edn, Institute for Criminal Policy Research, November 2017).

³⁰ World Pre-trial/Remand Imprisonment List (4th edn, Institute for Criminal Policy Research, April 2020) <www.prisonstudies.org> accessed 29 July 2024.

³¹Ibid.

³²World Prison Population List (1st-5th edns, Research and Statistics Directorate, UK Home Office 1999-2004; 6th-10th edns, International Centre for Prison Studies 2005-2013).

³³International Centre for Prison Studies <https://www.prisonstudies.org/> accessed 1 June 2024.

Asia and in western Asia (Middle East) rose by 116% and 119% respectively while the total in central Asia fell by 44%. China and India, with their high national populations, strongly influence the overall Asian prison population level, but show contrasting trends: the total prison population in China rose by 18%, and in India by 76%. Excluding these two countries, the Asian prison population rose by 52%. Europe is the only continent that has seen a fall in its total prison population since 2000.³⁴ Thus we see that the rise in prison population in India is very alarming and it's high time that we should start focusing on rehabilitation, reformation and reintegration of prisoners in society and establish as many open prisons in the country as possible.

The New Model Prison Law

The current "Prisons Act, 1894" is about 130 years old and dates back to the time before independence. The primary goals of the Act are the detention of offenders and the upholding of law and order in prisons. The current Act makes no mention of prisoner reform or rehabilitation. Globally, during the past few decades, a completely new viewpoint on jails and prisoners has emerged. Prisons are now viewed as correctional and reformatory facilities where inmates undergo transformation and rehabilitation to become law-abiding members of society, rather than as sites of retributive deterrence.

³⁴Institute for Crime & Justice Policy Research, *World Prison Population List* (13th edn, 2021)

https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf accessed 1 June 2024.

The Ministry of Home Affairs (MHA) has been observing over the last few years that the current Prisons Act, which governs the management of prisons in every State and Union territory save for a few that have passed new Prisons Acts, has several gaps. It was felt that the Act needed to be updated and revised to better meet the demands of contemporary prison administration, in addition to the obvious absence of the correctional focus from the original legislation.

Following current demands and correctional ideology, the Indian government decided to study and amend the outmoded Prison Act of the colonial era. The Ministry of Home Affairs tasked the Bureau of Police Research and Development with updating the Prisons Act of 1894. Following extensive consultations with State Prison officials, correctional specialists, etc., the Bureau created a draft. The government has finalized a comprehensive "Model Prisons Act, 2023," which may serve as a guiding document for the States and for adoption in their jurisdiction. The Act's goals include comprehensively providing guidance and addressing the gaps in the current Prisons Act, including the use of technology in prison management, making provisions for grant of parole, furlough, remission to prisoners to encourage good conduct, special provision for women/transgender inmates, the physical and mental well-being of prisoners, and a focus on the reformation and rehabilitation of inmates, among other things.³⁵ However, it

³⁵Press Information Bureau <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1923682> accessed 1 June 2024.

still does not have detailed provisions regarding the operation of open prisons in India.

The new Model Prisons Act, 2023 in Chapter XVII Sec 50 deals with “Open and semi-open Correctional Institutions”. It states ³⁶

“(1) The Government may establish and maintain as many open and semi-open correctional institutions for prisoners, as may be required.

(2) The Government may allow such facilities or concessions in such open or semi-open correctional institution which may assist the prisoner in his rehabilitation into the society, as may be prescribed under the rules.

(3) The rules for management of open or semi-open institutions, including the procedure and eligibility of prisoners who can be transferred to such correctional institutions, dealing with prisoners who violate any condition of transfer to an open or semi open correctional institution, etc. shall be such as may be prescribed by the Government.”

The Ministry of Home Affairs has also examined "The Prisons Act, 1894," "The Prisoners Act, 1900," and "The Transfer of Prisoners Act, 1950," and the pertinent provisions of these Acts have been incorporated into the "Model Prisons Act, 2023." Adopting the Model Prisons Act, 2023 in their jurisdictions will benefit State Governments and Union Territory Administrations.

³⁶Model Prisons Act 2023, s 50, ch XVII: Open and Semi-Open Correctional Institutions.

Here are a few noteworthy aspects of the recently passed Model Prisons Act:

1. Provisions for security evaluation, prisoner segregation, personalized sentence planning;
2. Redress of grievances; prison development board; and a shift in perspective regarding convicts.
3. Providing distinct housing for female inmates, transsexual people, etc.
4. Provisions for the use of technology in jail management to increase administrative transparency.
5. Offering tools for scientific and technological interventions in jails, video conferencing with judges, etc.
6. Guidelines for the construction and administration of open and semi-open jails, high-security jails, etc.
7. Offering parole, furlough, early release, and legal assistance to inmates, among other measures, to reward better behavior.
8. Emphasize the development of inmates' skills and vocational training to facilitate their reintegration into society.

Challenges of the Open Prison System in India:

Despite the importance of open prisons in India, the system faces significant obstacles with their execution due to the system's shortcomings. A few of them are mentioned as follows-

- The Open Prisons are underutilized. The occupancy rate is just 74%.³⁷This demonstrates that open penitentiaries are empty even though closed correctional facilities are overcrowded.
- In most states, an advisory body that selects inmates has little authority because it is not required of them to provide justifications for their selections. This leads to discrimination and depravity.
- There are inadequate open detention facilities in every state. There are multiple open prisons in some states, one in others, and none at all in any Union Territory in India. States differ from one another in this way because this is the subject matter of the State List hence, there is no parity among the States.
- According to the Indian Constitution, "prisons" and "persons detained therein" are regarded as "State" subjects. The only bodies that have the authority to pass legislation required to manage prisons and oversee prisoners are state governments. They are therefore solely accountable for carrying out their duties. However, given the critical role that efficient jail management plays in the criminal justice system, the Indian government focuses a great lot of emphasis on assisting the States and Union Territories in this area.

³⁷NCRB Data Report 2022, Table 1.1.

Suggestions

In order to address the lack of uniformity across states in the establishment and management of open prisons, it is open to the Centre to frame a law under Article 253 of the Constitution, which empowers the union to frame laws to give effect to the international agreements. India has already ratified the International Covenant on Civil and Political Rights, 1966.³⁸

'Prisons'/persons detained therein' is a "State-List" subject under Entry 4 of List II of the Seventh Schedule to the Constitution of India. Administration and management of prisons and prisoners is the responsibility of respective State Governments who are competent to take appropriate action in this regard. However, given the significance of prisons in the Criminal Justice System, the Ministry of Home Affairs has been providing regular guidance and support to the States and UTs on diverse issues relating to prison administration.³⁹ However, it is suggested that the prison administration should be moved to the concurrent list from the state list of Schedule VII of the Indian Constitution. This will help in the better administration of prisons at the national level. The states that are not actively working on the opening of open prisons will then have to follow the mandates of the Central Government, hence all the states will have to compulsorily make provisions

³⁸Bureau of Police Research and Development, *Model Prison Manual for the Superintendence and Management of Prisons in India* (Ch XXI, 2003) <http://bprd.nic.in/WriteReadData/userfiles/file/5230647148Model%20Prison%20Manual.pdf> accessed 1 June 2024.

³⁹Ministry of Home Affairs, *Prison Reforms* https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms accessed 1 June 2024.

for open prisons. For example, a state like Uttar Pradesh where the first open prison was established does not have a single open prison operational now.

Another legal option recommended is the incorporation of principles of management of prisons and treatment of offenders into the Directive Principles of State Policy under Part IV of the Constitution by way of a constitutional amendment under Article 368.⁴⁰

Conclusion

It is possible to make improvements to the Indian prison system by reducing punishments for non-violent offenses, eliminating the practice of detaining non-violent criminals with violent offenders, and refraining from overcrowding prisons with convicts in minor cases. We need to search for alternatives to jail, ideally, ones that don't involve a felony conviction that harms society more than the small-time, nonviolent offense that many of these men were originally found guilty of.

The pattern of recidivism keeps happening to people. A youthful, robust, and physically fit man finds himself in difficulties usually as a result of a desperate deed, is imprisoned, found guilty of a crime, and released into society with a criminal record. This man is now unable to find a respectable job and place in society. He finds himself back where he started—in a precarious situation.

⁴⁰A N J Mulla, *Report of the All-India Committee on Jail Reforms (1980–1983)*, Ministry of Home Affairs, Government of India <https://www.mha.gov.in/MHA1/PrisonReforms/report.html> accessed 1 June 2024.

We should save harsh sentencing for violent offenders; if we want to reform the prison system. We should stop expecting it to solve every social problem, stop seeing it as some sort of biblical punishing weapon, and strive to help otherwise capable individuals with honest rehabilitation and vocational training. In the case of non-habitual offenders, the reformatory theory can indeed be effective. It does not always work well, though, as a hardened criminal is not always able to change. Crimes will be committed by the same people again if we let it. Because of this, he ought to be punished rather than attempting to change his criminal thinking. The Reformatory approach will therefore be more successful if it is meant to enhance traditional punishment rather than to completely replace it.

The Indian jail system, which accounts for a large portion of the global prison population, is characterized by mass incarceration, racism, and punishment. Our system is determined to make jails ticking time bombs notwithstanding a sharp increase in the number of inmates. Comparatively speaking, Finland has one of the lowest rates of incarceration in the world, with about 3,000 inmates, and one-third of its jails are open-access. Since it hasn't increased crime, this methodology is regarded as successful. The guiding principle is restoration. Once they are released from jail, they possess the necessary life skills and a trade that allows them to work in a respectable job.

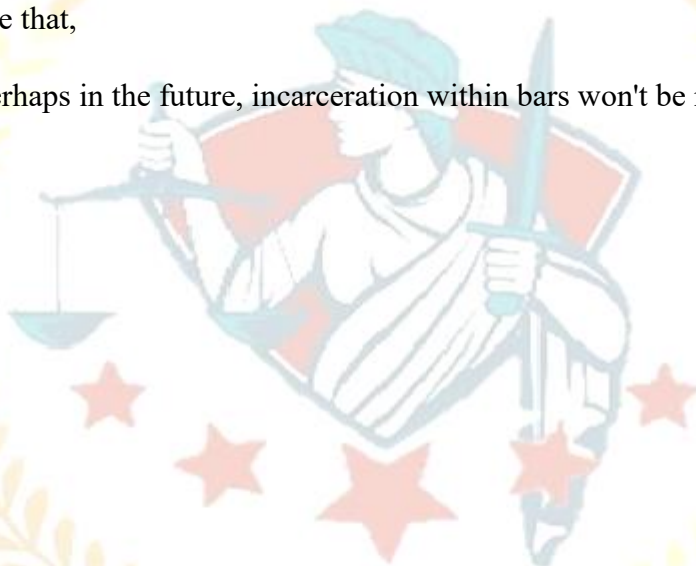
Justice V R Krishna Iyer rightly says,

“Every saint has a past and every sinner a future, never write off the man wearing the criminal attire but remove the dangerous degeneracy in him,

restore his retarded human potential by holistic healing of his fevered, fatigued or frustrated inside and by repairing the repressive, though hidden, injustice of the social order which is vicariously guilty of the criminal behaviour of many innocent convicts. Law must rise with life and jurisprudence responds to humanism.”⁴¹

If the ultimate goal of open prisons is achieved it wouldn't be wrong to conclude that,

“Perhaps in the future, incarceration within bars won't be needed.”



⁴¹J Iyer Krishna, 'Death Sentence on Death Sentence' (1978) 18 *The Indian Advocate* 28 (Jan–June).