

**MAX PLANCK INSTITUTE  
FOR FOREIGN AND INTERNATIONAL  
CRIMINAL LAW**

**OPEN PENO-CORRECTIONAL INSTITUTIONS IN INDIA**

A REVIEW OF FIFTY-FIVE YEARS

Experiences and Expectations

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The author solicited relevant information from almost all the Inspector General of Prisons (IGPs) and Superintendents of Prisons (SPs) in India but response, unfortunately, was not encouraging. Only a few Prison Authorities have supplied the solicited information, which in most of the respects was incomplete and not up to date. The author, with high appreciation, would like to express his sincere thanks to the Prison Authorities who have furnished the information.

## Foreword

Research on the prison system is of paramount importance to prison reform and the assessment of implementation of international standards of imprisonment. Professor Dr. Vibhute has contributed to the international body of knowledge on the situation of prison systems by providing a carefully designed and extremely interesting study of open prisons in India. The study presented by Prof. Vibhute gives not only an impressive insight into the normative framework of the correctional system in India but also provides a detailed account of the development of the use of imprisonment and the various forms of execution of prison sentences. His particular focus is on open prisons, a most important sector of the correctional system.

The process of criminal corrections can be roughly divided into three segments beginning with the initial sentencing decision involving a choice between a fine, intermediate sanction and/or imprisonment, followed by the ensuing prison regimes or enforcement of the ordered sanction and finally ending in release from the correctional system. Normally constituting the last step of the criminal correction process, correctional institutions have been assigned an important role in modifying sentences of imprisonment through parole and significant differentiation between various types of imprisonment. It is essentially prison differentiation that has led to various forms of imprisonment which vary the degree of restrictions placed on prisoners within prisons as well as the degree of prison leave allowed regarding the admittance to furlough programmes. The roots of prison differentiation are found essentially in the correctional system itself as well as in the search for alternatives to imprisonment. The introduction of open forms of imprisonment certainly represents a significant change in modern systems of criminal corrections. Such change is based on crime control policies strongly inspired by criminological knowledge. At the onset of establishing modern prison facilities and correctional systems, an influential penitentiary philosophy classified prisoners into various categories. These categories reflected prison regimes differing in the types of security measures imposed and privileges granted to prisoners. These regimes were designed to reflect the progress prisoners made during imprisonment. However, today's standards go beyond these types of classification, adopting flexible decision-making in the assignment of individual prisoners to varying prison regimes. In general, the decision of the type of prison sentence to be served (in which type of facility and under what regime) is made when the sentenced prisoner is admitted to the correctional system. Such individual treatment requires a variety of regimes (which in principle

can also be established within a single prison facility) ranging from maximum security down to open prison facilities. Flexible and individualized treatment is appropriate as any implementation of prison sentences should first and foremost avoid negative side effects of imprisonment which are well-known and not considered to be part of criminal punishment. So for example, offenders sentenced to imprisonment (with relatively short sentences of imprisonment) who are still employed at the time of conviction and sentence are at risk of falling out of employment as a consequence of imprisonment. Accordingly an assignment scheme could be considered for such category of prisoners which would admit eligible prisoners to an open facility where they would be entitled to continue with their job held outside and would be required to spend time in prison during evenings and nights as well as weekends. Imprisonment also carries the risk of prisoners becoming integrated into the prison subculture and adjusting to a way of (subculturally determined) life which creates obstacles to proper rehabilitation. Insofar, prison regimes should recognize the need to avoid such side effects and offer opportunities for prisoners to reduce the risk of “prisonization” not only for their own sake but for the sake of society which will consequently suffer most from “hardened“ criminals, the likely output of closed, security oriented and undifferentiated correctional regimes.

Most research on criminal corrections originates from North America and Europe which leaves wide areas of this world – and some of them like India will be among the leading countries in the near future - outside the focus of criminology, policy makers and practitioners. The international community of criminologists and practitioners working in the fields of criminal justice and criminal corrections will therefore profit significantly from the valuable information provided by Prof. Dr. K.I. Vibhute.

## 1. Introductory Remarks

Penal law of a country, in pursuance of its criminal policy, prohibits a set of perilous human conduct and stipulates, in consonance with its penal policy, 'punishment' for violation thereof. A deviant, against his will, becomes a recipient of physical pain and/or of deprivation of something that he desires (such as liberty and freedom).

Among a variety of punitive sanctions, over the last 200 years or so, imprisonment has emerged as a dominant form of punishment. When crime was perceived as a willful wrong against the society, the prison sentence used to be very harsh, inhuman and vindictive. However, modern penologists, placing their reliance on the behavioral scientists and criminologists who assert that criminals, in a majority of cases, do not commit crimes 'willfully' but because of some 'socio-eco-psycho-pathological aberrations' and 'circumstances favorable' for violations of criminal law, insist for change in 'penal policy'. Modern criminologists and penologists, perceiving 'criminal' as 'sick' deserving 'treatment' and not 'inflictive punishment', plead for 'reformation' and 'rehabilitation' of a criminal rather than subjecting him to 'inflictive' punishment. A modern prison accordingly strives for his re-assimilation in the social mainstream. However, prison administration in vogue, though loaded with reformatory and re-assimilative philosophy and policy, is, among other ills, encountered with overcrowding and contamination of prisoners with hardened criminals.<sup>1</sup>

Open peno-correctional institutions, open prisons and open colonies for prisoners,<sup>2</sup> in the recent past, have emerged as effective institutional reformatory and correctional measures. These institutions, which ostensibly eliminate the 'tensions' and 'barriers' created by the restrictions and physical restraints placed on inmates of a 'closed' jail - a prison with walls - and provide them better opportunity for re-interaction and re-assimilating with 'free community' and 'family' strive to bridge the gulf between the traditional 'closed prison' and 'free community'. They in fact furnish a 'half-way-home' to their inmates for their smooth and effective socio-psychological rehabilitation and re-integration into the social mainstream. By providing maximum opportunity to their inmates to re-mould

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<sup>1</sup> See generally P. J. Fitzgerald, *Criminal Law and Punishment* (Oxford, 1962); H.L.A. Hart, *Punishment and Responsibility* (Oxford, 1968), Rani Dhavan Shankardass (ed), *Punishment and the Prison* (Sage, 1999), and *Seminar* (No. 439: 1996), Special Issue on 'Prisons & Punishment'.

<sup>2</sup> For details see, '2.3 Forms of Open peno-correctional institutions in India: 'Semi-open prison', 'open prison' & 'open colony' - Operational differences and institutional inter-nexus', *infra*.

their 'attitudes' and to bring positive changes in their 'behavioral patterns', these institutions, it is believed, make prisoners 'fit' to lead a law-abiding and self-supporting life after their release.

Open peno-correctional institution, for the first time, was discussed in the Twelfth Penal and Penitentiary Congress held in 1950 at The Hague. It, deliberating upon the possibility of replacing the traditional prisons by open prisons, designed some major broad premises for setting up open penal institutions. And the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955 (hereinafter the First UN Congress) deliberated upon the formal and operational structure of the open penal and correctional institutions.<sup>3</sup> The First UN Congress was convinced that minimum security and self-discipline of inmates of open institution be accepted as the fundamentals of open peno-correctional institutions. Believing that open peno-correctional institutions, by eliminating the 'tensions' and 'barriers' created by the restrictions and physical restraints placed on inmates of 'closed' jails and by providing them better opportunity for interaction with free community, have better potentials in achieving the goal of reformation & rehabilitation of offenders more effectively, the First UN Congress appealed all the Nations, to the extent possible, to set up open peno-correctional institutions.<sup>4</sup> It also formulated a set of broad guiding principles for the administration of open penal institutions. These principles are still considered highly relevant in the administration of open peno-correctional institutions.

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<sup>3</sup> 'An open institution', according to the First UN Congress, 'is characterized by the absence of material and physical precautions against escape (such as walls, locks, bars, armed or other special security guards), and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives.' See, Recommendation I, *United Nations, Resolution and Recommendations adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders* (August 29, 1955).

An 'open prison', in ultimate analysis, differs from a 'closed prison' in its philosophy and administration. The former is based on trust, self-help, constructive work, social usefulness, sense of dignity, and positive attitude of the prisoners towards the free community. The basic justification of open prison as put forward by Sir Alexander Paterson is: 'You cannot train a man for freedom under conditions of captivity'. An open prison, unlike a closed prison, gives prime importance to reformation and social rehabilitation & re-assimilation of its inmates and relieves its inmates from the constant head-counts, inspections, and discipline. A traditional 'closed prison', on the other hand, is dominated by the 'lock psychosis' and 'suspicious attitude' towards its inmates.

<sup>4</sup> Recommendations IX (c), *ibid.*

During the last fifty five years several Anglo-American, European and Asian countries have not only introduced in their respective prison system 'minimum security' penal institutions, that are akin to, or replica of, the open institutions visualized by the First UN Congress but also accepted open institutions as a viable alternative to imprisonment and an effective institutional device to reform and rehabilitate offenders.

Since the last five and a half decades India has also been exhibiting her keen interest in open peno-correctional institutions. The instant paper, with scanty information on the subject available to its author,<sup>5</sup> endeavors to take a review of working of the open of the open peno-correctional institutions in India<sup>6</sup> and of her experiences gained during the last fifty-five years.

## **2. Open Peno-correctional Institutions in India: History and Mission**

### *2.1 Historical background*

Genesis of open peno-correctional institution at home be traced in the eighteenth century's prison administration when prisoners, though for different reasons and purposes,<sup>7</sup> were used to be employed, under guard, outside the jail for construc-

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<sup>5</sup> Central Bureau of Correctional Services, *Open Prisons in India* (Government of India, 1973), Upendra Baxi, *Open Prisons, Closed Minds*, in Upendra Baxi, *the Crisis of the Indian Legal System* (Vikas, New Delhi, 1982), B. N. Chattoraj, *Open Prisons in India-A Review*, *Social Defence*, and N. V. Paranjape, *Criminology and Penology* (Central Law Publications, 11<sup>th</sup> edn., 2001). The author, who approached almost all the Prison Departments in India requesting them to share with him the solicited information about open institutions operating in their jurisdictions, has unfortunately not been able to receive all the requisite information from all the States. A only consoling factor for him is that the then Central Bureau of Correctional Services (hereinafter Bureau), while preparing its brochure on *Open Prisons in India*, was greeted by States with the similar indifference.

<sup>6</sup> Prison administration in India is basically governed by: the Prisons Act, 1894, the Reformatory Schools Act, 1897, the Prisoners Act, 1900, the Identification of Prisoners Act, 1920, the Prisoners (Attendance in Courts) Act, 1952, and the Transfer of Prisoners Act, 1950. 'Prison' being a state-subject under the Constitution of India, prison administration is left to the individual state, which drawing vast powers of delegated legislation under the 1894 Act and governed by the State Jail Manual manages prisons within its jurisdiction.

<sup>7</sup> The deployment of prison labour outside jails, in those days, was loaded with the idea of extracting hard labour from them under dehumanising and humiliating conditions. While modern open penal institutions endeavour to inculcate in their inmates the value of self-help, constructive work of social utility and thereby to generate a sense of dignity and positive behavioural attitude in them.

tion of roads, cleaning of drains, digging of canals, laying of railway lines and similar occupations requiring hard labour. The basic idea was mainly to produce deterrent effect by compelling a prisoner to carry out an inhuman & hard work in unhealthy conditions with insufficient food and clothing.

However, the All India Jails Committee (1836-38) condemned this practice of inhuman prison labour. The 'out-side jail' hard labour disappeared from the Indian prison system till 1877, when it was re-introduced as a part of the prison administration. But the All India Jails Committee (1919-20), realizing difficulties in proper classification of prisoners and maintaining discipline, did not, in principle, favour the employment of convicts even for carrying out works of public utility. The post-1920 and pre-1947 prison administration era, however, did not witness any major reforms in the prison labour.

After independence, however, the thitherto policy of repression, vengeance, and deterrence, to a great extent, was replaced by the policy of reformation and resocialisation through corrective prison labour, including the employment of prisoners in open conditions, and therapeutic measures aiming at effective rehabilitation of offenders and their re-assimilation in the social mainstream. Dr. Walter Reckless, a UN Expert on Correctional Work, who visited India during 1951-52 to study prison administration in India and to suggest ways and means of improving it, made commendable efforts to modernize prison system in India. On his recommendation the Government of India in 1957 appointed the All India Jails Manual Committee (1957-59) to, *inter alia*, suggest prison reforms in India and to prepare a Model Prison Manual. The Committee, while laying down the guiding principle for prison management in India, emphasized:

The institution should be a centre for correctional treatment, where major emphasis shall be given on the reduction and reformation of the offender. The impact of institutional environment and treatment, shall aim at producing constructive changes in the offender, as would be having profound and lasting effects on his habits, attitudes, approaches and on his total value schemes of life.<sup>8</sup>

The Committee, charged with this spirit, also recommended setting up of open prisons-penal institutions characterized by the absence of material & physical

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<sup>8</sup> Cited in, Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, (Ministry of Home Affairs, New Delhi, 1984), vol. I, para. 2.14.1, at p. 12.

precautions against escapes and insulated by the idea of self-help & self-discipline- for the effective rehabilitation of prisoners.

The then Central Bureau of Correctional Services (hereinafter Bureau), by the Ministry of Home Affairs, Government of India, in 1961 in pursuance of recommendations of Dr. Walter Reckless and of the All India Jails Manual Committee constituted in 1968 a Study Group on Open Prisons in India, commenting upon the post-1947 philosophy of prison administration in India, observed that ‘the post independence period brought in its wake a growing realization of the need for a change of attitude towards the treatment of offenders.’ ‘The policy of repression, vengeance, deterrence and inhuman attitude’, it felt, ‘was replaced by a policy of protection through corrective and preventive measures aiming at constructive rehabilitation of offenders’ and ‘of all the measures’ (undertaken by the Government of India in the area of prison reform), ‘employment of prison labour in open conditions has proved to be most successful from every point of view.’ ‘The objectives of such employment’ according to the Bureau, ‘have changed in that originally it was meant to take hard work from prisoners under conditions which were humiliating and de-humanizing while it now aims at providing them with useful and meaningful work under conditions which help in restoring their self-respect and giving them a sense of pride and achievement.’<sup>9</sup>

Similarly, the All India Committee on Jail Reforms (1980-83), headed by Justice Anand Narain Mulla, (hereinafter the Justice Mulla Committee), which, *inter alia*, was asked by the Government of India ‘to review the working of open-air prisons and to suggest measures for improvement’, highlighting the paradigm shift in punitive policy and prison administration in the post-1947 India and echoing the view point of the Study Group, observed:

In the post Independence period there was growing realization of the need for change of attitude towards the treatment of offenders and attention began to be given to the introduction of humanising influences in prisons. Many experimental schemes for the reformation and rehabilitation of prisoners were introduced. Of all such experiments, the employment of prison labour in open conditions under minimum security in the early fifties proved every (*sic*) successful from every point of view. Even though the practice of employing prisoners in open conditions is more than a century old, the objective of this practice has vastly changed over the years, specially in the post Independence era. Whereas, originally it

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<sup>9</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, pp. 4-5.



aimed at extracting hard labour from the prisoners under conditions which were humiliating and dehumanising, now it aims at providing them with useful work under conditions which help in restoring their self-respect and giving them a sense of pride and achievement.<sup>10</sup>

## 2.2 'Open Prison' - Meaning and Mission: Conceptual ambiguity

However, a glance at State Prison Rules and Manuals governing open institutions that are operative in different States in India reveals not only different 'perceptions' of the so-called 'open prison' but also discloses varied 'objectives' and 'purposes' for the establishment of 'open prisons' in their respective jurisdictions.<sup>11</sup>

'Open prison', for example, in Maharashtra and Tamil Nadu Prison Manuals is perceived as 'any place so used permanently (or temporarily) under any order of the State Government for the detention of prisoners [under clause (1) of section 3 of the Prisons Act, 1894]'.<sup>12</sup> The West Bengal Notification of 1986,<sup>13</sup> on the other hand, offers a more elaborate definition of open prison. 'An open prison', according to it, means 'a Prison House not surrounded by walls or fencing of any kind'. The West Bengal Correctional Services Act, 1992, amending and consolidating the law relating to prisons and prisoners detained therein in West Bengal and providing, *inter alia*, for the establishment of 'open correctional home', is more explicit. It mandates that 'an open correctional home' should not be surrounded by any boundary wall and be used for confinement of [such] long-term prisoners [and on such conditions as may be prescribed] for giving such prisoners more opportunity of association with the social life outside a correctional home and facilitating their after-release rehabilitation.<sup>14</sup> The Government of Karnataka

<sup>10</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.2, at p. 229.

<sup>11</sup> The Bureau observed that some of the States that supplied information to it, owing to confusion, have classified 'parole camps' as 'open prisons'. See Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n.5, p. 7.

<sup>12</sup> See, sec. 2 (b), the Maharashtra Open Prison Rules, 1971 and Government of Tamil Nadu, *the Tamil Nadu Prison Manual*, vol. II, chap. XXXVI: Open Air Prisons, vol. II, p. 149.

<sup>13</sup> Government of West [Home (Jails) Dept.], Notification No. 1819-HJ dated August 2, 1986, amending the West Bengal Jail Code. See, Government of West Bengal, *the West Bengal Jail Code*, chap. XXXIX: Open Prisons, sec. 635.

<sup>14</sup> Sec. 3 (4), the West Bengal Correctional Services Act, 1992 (West Bengal Act XXXII of 1992).

also defined open prison 'as a place without walls or physical barriers where prisoners are employed under minimum security on nation building works with a view to prepare them for an honest living after release'. The Assam Government perceived 'places where convicts can be given greater freedom and responsibility with normal conditions of the society so that they can improve and become fit to live in society after release' as open prisons.

Similarly, some of these legislative instruments are either expressive or vague in stipulating 'objectives' of open prisons. For example, in Uttar Pradesh open prisons were established with the purpose of 'rehabilitation of offenders by employing them on works of public utility'. The purpose of establishing the open prison attached to Model Prison at Lucknow was 'to make prisoners financially self-sufficient and emotionally stable by employing them under conditions and environment as close to the outside world as possible and by granting them increasing freedom with progressive reduction in the watch over them, depending on their progress'. In Andhra Pradesh, Karnataka and Punjab the 'objective' of open prisons is 'to give extensive training in modern methods of agriculture and horticulture to the inmates having rural background so that on release they might become progressive agriculturists in their respective villages'. The Governments of West Bengal,<sup>15</sup> Andhra Pradesh, Karnataka and Punjab, have set up open prisons 'to grant the prisoners more and more freedom so that, on their (inmates) release, they may easily adjust themselves to community life of the outside world.' Rajasthan, on the other hand, intends to achieve 'social readjustment and rehabilitation of prisoners' through open prisons.<sup>16</sup> Some of the States, like Tamil Nadu and West Bengal, for example, are more elaborate in specifying 'objectives' and/or 'purposes' of open prisons. The Tamil Nadu Prison Manual has identified the following 'objects' of open prison. They are to: (i) relieve congestion in walled prison, (ii) train prisoners in proper methods of agriculture for their future rehabilitation, (iii) make prison self sufficient in agricultural production, (iv) give a certain amount of freedom on trust to well behaved prisoners, and (v) further the principles of minimum custody and treatment.<sup>17</sup> While the West Bengal Correctional Services Act, 1992, which, *inter alia*, renaming the thitherto ex-

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<sup>15</sup> See, Government of West Bengal [Home (Jails) Dept.], Notification, *supra* n. 13. Also see sec. 88(1), the West Bengal Correctional Services Act, 1992.

<sup>16</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.5, at p. 230.

<sup>17</sup> Sec. 795, *the Tamil Nadu Prison Manual*, *supra* n. 12.

isting 'open prisons' in West Bengal as 'open correctional homes', assigns a set of 'rehabilitative' as well as 'corrective' -mental, moral and social-'functions' to these 'open homes'. A few prominent among them are to: (i) give correctional treatment to the prisoners in custody so as to efface from their mind the evil influence of anti-social ways of life and rehabilitate them in the society as good and useful citizens, (ii) adopt measures whereby, a prisoner confined therein may not fall prey to the depriving mental attitude which may make him believe that he is lost to the society and it is his fate to pass the rest of his life as a social outcast, (iii) adopt measures calculated to rouse in the mind of a prisoner a healthy social sense and a sense of abhorrence against the anti-social ways of life and an impulse for returning to normal social life as a good and useful citizen, (iv) adopt measures to- (a) put the prisoner sentenced to rigorous imprisonment to labour, (b) put the prisoners to vocation-oriented labour so that after release they may find themselves equipped with bread-earning vocations, and (c) provide for usual maintenance services such as cooking of food, washing of clothings, and sanitary services on roaster basis enabling the maximum number of prisoners to get an opportunity of learning bread-earning avocation, (v) take measures for mental and moral uplift of the prisoners and to provide them with educational and other facilities for upgrading their qualities, character and mental attitude, and (vi) take measures for security of the prisoners with due safeguard to ensure that it does not become a place of horror instead of being an institution for correction.<sup>18</sup>

A reading of State Prison Rules and a peep into the background of the emergence of open peno-correctional institutions in India, thus, reveals that open institutions, among other things, strive to: (i) offer a sort of informal but institutional living in small groups with minimum measure of custody and security, (ii) offer better opportunities to inmates to freely 'interact' and 'communicate' with the free community, other inmates of the institution, family members, and prison authorities, (iii) create an atmosphere that is more conducive for speedier social re-adjustment & re-orientation of the prisoners as well as to improve their physical and mental health, (iv) do away with the tensions of the traditional prison life and to relieve prisoners from the physical restraints and thereby to instill in them a sense of self-discipline & responsibility and to reassure them their dignity & self-respect, (v) offer opportunities to inmates for self-improvement and resocialisation, and (vi) reduce overcrowding in closed jails.

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<sup>18</sup> Sec. 4, the West Bengal Correctional Services Act, 1992.

In 1973 the Bureau, referring to different 'perceptions' and 'objectives' of 'open prison' in India, opined that the 'creation' and 'working' of open prisons in India are dominated by 'confusion in thinking about the purpose, nature and scope of the so-called open prisons'. Emphasizing the need to remove such 'confusion', it, in principle, accepted the definition of an open institution given by the First UN Congress that gives emphasis on 'the absence of material and physical precautions against escape (such as walls, locks, bars, armed or other special security guards), and 'a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives'. However, perceiving that the Prison Department 'cannot absolve itself of the legal responsibility for the custody of the prisoners in the larger interests of the community' and feeling that 'a reasonable security measures are required', it felt that not the 'complete absence of any watch over the prisoners' but 'the degree of watch and ward' characterises an open prison. Recalling the prime objectives of an open prison, namely, attitudinal & behavioral changes of its inmates & their social, moral and economic rehabilitation, and restoring their self-esteem, the Bureau opined that an open prison should resemble the patterns of life and living in small Indian rural communities. The characteristic features of a good open prison, according to it, are: (i) the informal and the intimate living in small groups in a minimum custodial centre; (ii) the experience of a regular routine of work on payment of regular wages under supervision as a means of treatment; (iii) payment of maintenance cost of the prisoner from his wages; (iv) the free and intimate contacts between the staff and the inmates and within the inmates themselves; (v) the impact of group dynamics on the individual; (vi) the influence of religious, moral and cultural activities in association with neighboring free community, and (vii) avoidance of unnecessary long detention entailing superfluous expenditure on the public exchequer and thwarting the personality of the prisoner.<sup>19</sup>

However, even after a decade of the Bureau's reflections on 'open prison', the Justice Mulla Committee, with a view to avoiding confusion in the working of open prisons in India, had to reiterate the need to have a clear 'definition' and more clarity in the 'objectives' of open prisons at the national level.<sup>20</sup> Similarly, a scholar had to observe that 'the concept of open prisons in India is not a matter of

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<sup>19</sup> See, Central Bureau of Correctional Services, *Open Prisons in India*, *supra*, n. 5, p. 44 & 45.

<sup>20</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.6, at p. 230.

serious concern among criminologists and penologists or among jail administration and correctional authorities in India'.<sup>21</sup>

In spite of these different 'definitions' and 'perceptions' of open prisons, it seems that the system of open institutions, charged with the idea of assuring dignity and respect to prisoners and providing them maximum opportunity for adjusting themselves with the free society and thereby to bring in them positive behavioural and attitudinal changes for their effective reformation and rehabilitation after release, has become a part of prison administration in India. Open peno-correctional institutions in India, in ultimate analysis, do premise on, and strive for, optimum informal and institutional living in small groups with minimum security, and greater opportunities for inmates to 'interact' with their co-inmates, relatives, friends, the outside 'free community' and the prison staff and thereby to promote and boost their confidence & ability to re-assimilate in the social mainstream after their release. These institutions accord a higher priority to social rehabilitation & reintegration of their inmates, rather than to their security & confinement.

### *2.3 Forms of Open peno-correctional institutions in India:*

#### *'Semi-open prison', 'open prison' & 'open colony'- Operational differences and institutional inter-nexus*

A look at the Table 1 (below) as well as a glance at the titles of the open institutions listed therein reveal the existence in India of three forms, primarily characterized by the varied degree of 'freedom from physical restraints' to, and 'guard' on, their inmates, of open peno-correctional institutions. They are: 'semi-open prison', 'open prison' & 'open colony'. It would, for better understanding of the experiences and expectations of open peno-correctional institutions in India, the theme of the instant paper, be appropriate to, in brief, note a few conceptual and operational facets of these forms, even though they have a common agenda to pursue and a goal to achieve, namely, resocialisation of prisoners and their re-assimilation into the social mainstream. However, these institutions, in spite of dissimilarities, are generally referred to in India as 'open prisons' to, plausibly, distinguish them from conventional 'closed prisons'-prisons with high walls.

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<sup>21</sup> Upendra Baxi, Open Prisons, Closed Minds, in Upendra Baxi, *the Crisis of the Indian Legal System*, *supra* n. 5, at 194.

The prisons that allow a certain category of prisoners, such as prisoners working on small farms, public undertakings, and self-employment schemes, to go out, with or without watch, of the prison walls during the day time for various work programmes outside the prisons are termed as 'semi-open prisons'. Prisoners, however, are required to return to the prisons in the evenings. In some cases housing facility for such prisoners is provided outside the main wall of the prisons, but in case they are kept inside the prison they are effectively segregated from the rest of the inmates and the security arrangements for them are kept at the minimum.

'Open prisons', on the other hand, indicate the penal institutions that are characterized by the absence of walls, fencing, locks or any other physical precautions against escape of their inmates. These prisons give maximum opportunity to their inmates to re-mould their attitudes and to bring positive changes in their behavioral patterns. Inmates of such prisons are therefore given comparatively more 'freedom' for interaction with the prison personnel, other inmates and 'outside' free community. They are also offered better amenities and incentives in the form of furlough; leave period, and remission. Operations of such penal institutions are loaded heavily with the idea of self-discipline, self-confidence, and social responsibility of their inmates.

'Open colonies' or 'open camps' are those open institutions where prisoners, whose sentences are suspended by Government and are, generally, conditionally released on suspension of their sentences, are allowed to live with their families in temporary huts, invariably constructed at their own cost on the specified Government land or the accommodation provided in the camp. They are allowed to, with their families, cultivate Government land and/or to undertake works sponsored by Government, Semi-Government, local bodies or private parties. They, along with their family members staying with them, are allowed to augment their income by pursuing cottage industries such as dairy, poultry farming, horticulture, etc. They are also permitted to carry on their own business and/or work on daily wages for outside establishment or organisations. Inmates of an open colony as well their family members are entitled to receive and appropriate the entire amount of remuneration received from their employer(s). An open camp resembles to a small village. The prisoners themselves manage the camp, for all practical purposes, through an elected Panchayat. However, a Liaison Officer assisted by adequate staff, generally, is appointed as officer in charge of an open colony. An open colony, obviously, gives the prisoners an effective exercise in self-reliance, co-operation and community living in a family atmosphere. It not only accords maximum freedom and opportunity to its inmates to shape their lives in their own way and thereby facilitates their smooth and effective re-

assimilation in the social mainstream after their release but also ultimately operates as a 'half-way-home' for its inmates. Convicts also get better facilities including remission, home leave and pre-mature release benefits.

Such a categorisation of open institutions, semi-open prisons, open prisons & open camps, is explicitly provided under the Prison Manuals of West Bengal and of Maharashtra. The former labels them respectively as 'A' type, 'B' type and 'C' type open prisons while the latter, recognising only the last two forms of open institution, namely open prisons and open colonies, designate them as 'open prisons' and 'open colonies for temporarily released prisoners' respectively.

These three forms of open institution have a very interesting institutional link in 'correcting' and 'rehabilitating' a prisoner. Ideally, convicts to be transferred to 'open prisons' should initially be tried in 'semi-open prisons'. And transfer to an 'open colony' should advisably be made only after ensuring that inmate of an open prison has satisfactorily responded to impacts in the semi-open and open prisons. Initial transfer of a prisoner to a semi-open and subsequent transfer to an open prison or to an open colony is done on a highly selective basis after carefully screening the case of every prisoner. However, such a link, though all the three forms of open institutions figure in the Indian prison system, seems to be absent in, except in Andhra Pradesh, Maharashtra, Rajasthan, and Uttar Pradesh, most of the States' operational processes of 'open peno-correctional institutions' in India.

### **3. Open Peno-correctional Institutional Regime in India**

#### *3.1 Open peno-correctional institution movement in India*

Th Uttar Pradesh, as a beginner of the experiment of treating offenders in the 'open', created a small annexe, though not as an open prison but as a last pre-release custodial sentence, at the Model Prison, Lucknow, to house a very small number of convicts (about 12), who, with greater freedom and under minimum security, were allowed to work in the outside jail farm, both day and night, without watch and ward but under the overall supervision of the Jail Superintendent. Transfer of convicts to it was predominantly based on the philosophy of 'trust' in, and 'freedom' with minimum restrictions to, its inmates. Its effort was to develop a living environment, to the extent possible, similar to the world outside

the prison.<sup>22</sup> Dr. Sampurnanand, the then Chief Minister of Uttar Pradesh, with a view to giving convicts an opportunity to remove themselves from the 'prison atmosphere' and to go 'closer' to the free community and thereby facilitating their rehabilitation and reintegration into society, in 1952 designed a scheme for the employment, under conditions similar to normal life of free workers, of prisoners in works of public utility, such as construction of canals and dams. A camp of prisoners was organised on Chandraprabha Dam in 1952-53. It was a sort of 'wall-less' prison, in which 4,228 prisoners were confined. Similar experiments of treating prisoners in the 'open' were carried out in Naugarh (October 1953-January 1955); Shahgarh (January 1955-November 1956), and Varanasi (February 1956- November 1956). In the first two camps 3,905 and 2,303 prisoners respectively were employed in construction work of public utility, while in the later camp prisoners in shifts of 400 each day in and day out worked 24 hours with free laborers including women on construction of Varun Bridge.<sup>23</sup>

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<sup>22</sup> With this spirit, subsequently in 1966, a sort of an open village called the 'Prisoners' Farm Colony' with 50 acres of land for co-operative farming was set up. See, Farzand Ahmed, *Wind Beneath Their Wings*, *India Today*, April 19, 1999 (10).

<sup>23</sup> For further details see, Ishwar Chandra Vatsa, *Open Peno Correctional Institutions in the State of Uttar Pradesh and Uttaranchal*, in K. D. Gaur (ed.), *Criminal Law and Criminology* (Deep & Deep, 2002) 829.



The following tabular information (Table 1) furnishes State-wise details of open peno-correctional institutions set up in India between 1949 and 2004.

*Table 1: Open Peno-correctional Institutions in India*<sup>24</sup>

[Established between 1949 and 2004]

<i>State</i>	<i>Name</i>	<i>Author- ised Capac- ity</i>	<i>Year of Est.</i>
1	2	3	4
Andhra Pradesh	1. Prisoners' Agricultural Colony, Maula Ali, (now Cherlapalli), Hyderabad.	150	1954
	2. Central Jail – cum – Prisoners' Agricultural Colony, Anantapur.	250	1965
	3. A Semi-open Prison, Rajahmundry.	100	1998
	4. Open Prisoners' Farm, Gachibowli, Hyderabad.	285	2000
Assam	1. Mahendra Nagar Open Air Agricultural-cum-Industrial Colony, Bagbhetta, Jorhat.	100	1964
Bihar	1. Open Prison, Mahner.	NA	NA
	2. Open Prison, Forbesganj.	NA	NA

<sup>24</sup> Information collected by the author is also supplemented by: Central Bureau of Correctional Services, *Open Prisons in India*, supra n. 5, National Crime Records Bureau, *Prison Statistics India: 1999* (Ministry of Home Affairs, Government of India, 2001); National Crime Records Bureau, *Prison Statistics India: 2000* (Ministry of Home Affairs, Government of India, 2002), and National Crime Records Bureau, *Prison Statistics India: 2001* (Ministry of Home Affairs, Government of India, 2004).

However, it is interesting to note that the information about the number of open prisons as well as their intake capacity supplied in *Prison Statistics*, surprisingly, does not tally. For example the *2000 Report* (published in 2002) indicates that only 11 States have reported of having 21 open prisons (accounting for 2041 total intake capacity) while the *2001 Report* (published in 2004) makes mention that 25 open prisons (having total intake capacity of 4323 inmates) are functional in 14 States. Similarly, the information gathered by the Bureau and the information supplied to the Justice Mulla Committee also does not tally. The former in 1973 recorded that 20 open prisons (located in 10 states) existed in India while the latter was informed that 27 open prisons were in existence as on December 31, 1980. The Justice Mulla Committee, unlike the Bureau, has not given state-wise details of open penal institutions in India. It may also be noted that the *Prison Statistics* make no mention at all of the open prisons in Bihar and Orissa, though they were indicated by the Bureau.

	3. Open Prison, Harde.	NA	NA
Chhattisgarh	1. Open Prison	200	2000
Gujarat	1. Open Prison, Amreli.	40	1968
	2. Open Air Prison, Ahmedabad.	20	1972
Himachal Pradesh	1. Open Air Jail, Bilaspur.	80	1960
Karnataka	1. Open Air Jail, Soundatti.	NA	1968
	2. Open Air Jail, Koramangala, Bangalore.	150	1971
Kerala	1. Open Prison, Nettukaltheri.	250	1962
	2. Open Prison, Thevancode.	50	1990
	3. Open Prison, Cheemeni (Kasargod District)	NA	2000
Madhya Pradesh	1. Nav Jiwan Shivir, (Open Jail), Mungaoli (Guna District).	150	1973
	2. Nav Jiwan Shivir, Lakhimpur (Panna District).	50	1975
Maharashtra	1. Open Prison, Yeravada, Pune. (Attached to the Yervada Central Prison, Pune.)	150	1956
	2. Open Prison, Paithan (Aurangabad District).	300	1968
	3. Swatantrapur Open Colony for Temporary Released Prisoners, Atpadi (Sangli District).	21	1972
	4. Open Colony for Temporary Released Prisoners, Kanhergaon (Chandrapur District).	NA	1972
	5. Open Colony for Temporary Released Prisoners, Tondel (Chandrapur District).	NA	1980
Orissa	1. Open Air Jail.	NA	NA
Punjab	1. Open Air Jail-cum-Agricultural Prison, Nabha.	200	1970
	2. Open Air Jail, Kapurthala.	NA	NA
Rajasthan	1. Prisoners' Open Air Camp, Agriculture Research Farm, Durgapura (Jaipur).	15	1955
	2. Semi-Open Prison, Bharatpur (Bharatpur).	50	1962
	3. Sri Sampurnanand Khula Bandi Shivir, (Open Camp), Sanganer (Jaipur).	50	1963

	4. Prisoners' Open Air Camp, Central Mechanised Farm, Suratgarh (Hanumangarh). 5. Open Camp, Mandore (Jodhpur). 6. Open Camp, Jaitsar (Sri Ganganagar). 7. Open Prison, Bichawal (Bikaner).	150 20 100 NA	1964 1974 1977 1996
Tamil Nadu	1. Open Air Prison, Singanallur, (Coimbatore District). 2. Open Prison Salem (attached to the Farm Jail in the Central Prison, Salem).	100 12	1956 1966
Uttar Pradesh	1. Open Prison (attached to the Model Prison), Lucknow. 2. Sampurnanand Camp, Ghurma, Markundi, (Mirzapur District).	24 1130	1949 1956
Utteranchal	1. Sampurnanand Agricultural – cum- Industrial Camp, Sitarganj, (Nainital District). (Transferred from Uttar Pradesh after the creation of Utteranchal as a separate state).	1000	1960
West Bengal	1. Open Air Jail, Lalgola (Murshidabad District).	70	1987
<i>Total number of States: 17</i>	<i>Total number of: Open Institutions reported so far in India: 40</i>	<i>Total: capacity: 5267</i>	<i>1949 to 2004</i>

*NA: Information not available.*

A glance at the above Table discloses a couple of significant facts pertaining to the open peno-correctional institutional regime in India.

*First*, the open prison movement in India, as mentioned earlier, was initiated in 1949 in Uttar Pradesh in the form a small annexe set up at the Model Prison, Lucknow. And Andhra Pradesh, following the suit, has the credit of starting the first permanent open prison, the Prisoners' Agricultural Colony, at Maula Ali (now Cherlapalli) on the outskirts of Hyderabad in 1954. A year later, in 1955, Rajasthan has set up an open prison at Durgapur as a part of its correctional programme. And a year later, in 1956, the Governments of Maharashtra, Uttar Pradesh and Tamil Nadu set up an open prison in their respective jurisdiction.

More than a dozen states, in due course of time, probably inspired by the success of open prisons and charged by the feeling that 'treating' prisoners in 'open' is a necessary adjunct to 'correctional' and 'rehabilitative' spirit of prison administration, have set-up open peno-correctional institutions.

*Secondly*, so far only 17 states in India have, at one or the other point of time, established open peno-correctional institution(s) in their jurisdictions. And a couple of states<sup>25</sup> and none of the Union Territories (UTs)<sup>26</sup> have, for reasons known best to them, not so far at all experimented with open penal institutions in their jurisdictions.

*Thirdly*, Uttar Pradesh [having 3 open penal institutions prior to transferring one of its open prisons situated at Sitarganj in Nainital District to the newly carved Uttaranchal] has the capacity to accommodate the highest number (2,130) of prisoners. It is followed by Andhra Pradesh (545), Maharashtra (471) and Rajasthan (385). And Gujarat, through its two open prisons, endeavors to treat 60 prisoners in the 'open'. However, Rajasthan stands first among the states in India that have set up open penal institutions in their jurisdiction as it has the highest number (7) of open prisons to its credit. Maharashtra (5), Andhra Pradesh (4), and Uttar Pradesh (3) stand next in the order.

*Fourthly*, the following decade-wise development of the open prison system in India (Table 2),<sup>27</sup> however, indicates that the maximum number of open institutions (11) were set up between 1961 and 1970. While 7 open prisons were established during the previous (1950-1960) decade. However, the post-1970 period, for reasons unknown to the present author, witnessed the emergence of a comparatively lesser number of new open institutions in India.<sup>28</sup> While after the year 2000 not a single State has shown any interest in setting up an open prison.<sup>29</sup>

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<sup>25</sup> Arunachal Pradesh; Goa; Haryana; Jammu & Kashmir; Jharkhand; Manipur; Meghalaya; Mizoram; Nagaland; Sikkim, and Tripura.

<sup>26</sup> Andaman & Nicobar Islands; Chandigarh; Dadara & Nagar Haveli; Daman & Diu; Delhi; Lakshadweep, and Pondicherry.

<sup>27</sup> Open Prisons, whose the years of establishment are not traced [such as in Bihar and Orissa], among others, are not mentioned in the instant table.

<sup>28</sup> In 1974, the Madhya Pradesh Jail Committee had recommended the setting up of a third *Nav Jivan Shivir for women prisoners* in Bastar District. But the proposal, due to financial implications and non-utilisation of the existing two open jails to their full capacity, did not materialise.

<sup>29</sup> However, it is reported that the Government of National Capital Territory of Delhi proposes to construct an open prison near Baprole village over a plot of land measuring 125 hectares. See [www.htopenprisons.nic.in](http://www.htopenprisons.nic.in), updated on 30. 9. 2003.

*Table 2: A Decade-wise Breakdown of Open Peno-correctional Institution in India [1949-2004]*

<i>Period</i>	<i>Number of open institutions instituted</i>	<i>STATE/PLACE</i>
1949	1	: Uttar Pradesh [Lucknow]
1950-1960	7	: Andhra Pradesh [Hyderabad] : Himachal Pradesh [Bilaspur] : Maharashtra [Pune] : Rajasthan [Durgapura] : Tamil Nadu [Singanallur] : Uttar Pradesh [Mirzapur] : Uttaranchal [Sitarganj]
1961-1970	11	: Andhra Pradesh [Anantapur] : Assam [Jorhat] : Gujarat [Amreli] : Karnataka [Soundatti] : Kerala [Nettukeltheri] : Maharashtra [Paithan] : Punjab [Nabha] : Rajasthan [Bharatpur] : Rajasthan [Sanganer] : Rajasthan [Suratgarh] : Tamil Nadu [Salem]
1971-1980	9	: Gujarat [Ahmedabad] : Karnataka [Koramangala] : Madhya Pradesh [Lakhimpur] : Madhya Pradesh [Mungaoli] : Maharashtra [Atpadi] : Maharashtra [Kanhergaon] : Maharashtra [Tondel] : Rajasthan [Jaitsar] : Rajasthan [Mandore]
1981-1990	2	: Kerala [Thevancode] : West Bengal [Lalgola]
1991-2000	5	: Andhra Pradesh [Gachibowli] : Andhra Pradesh [Rajahmundry]

		: Chhattisgarh : Rajasthan [Bichawal] : Kerala [Cheemeni]
2001- 2004	0	: NA

*Fifthly*, the above-tabulated information also discloses the declining interest of states in the open peno-correctional institutions. The open prisons (7) set up during 1950-60 in different states in India have reported that their total intake capacity is 2,625 while the open penal institutions (11) established in the following decade (1961-70) have made a provision for 1,402 prisoners only. And the authorised capacity of the open prisons (9) instituted in the subsequent decade (1971-80) is 370.

### 3.2 Open peno-correctional institutions in India: Present scenario

However, it is significant to note that the latest information relating to authorised capacity & population of open peno-correctional institutions supplied by States (13, 13, 11 and 14 respectively in 1998, 1999, 2000 & 2001) to the National Crime Records Bureau (NCRB) of the Central Ministry of Home Affairs and its comparison with the official statistics pertaining to authorised intake capacity and population of closed (Central Prisons) jails during the corresponding period (which is presented in a tabular form in Table 3)<sup>30</sup> and with the thitherto available information (Table 1) not only discloses a declining interest of States in, and concern & enthusiasm for, setting up new open peno-correctional institutions in their jurisdictions but also their lack of will in utilizing fully the existing open institutions.

A closer look at the statistics clustered in the Table 3 also reveals a set of interesting operational facets of open peno-correctional institutions in India. Prominent amongst them are: *First*, only twenty five open penal institutions - less by fifteen that reported during the pre-1998 period- (as reported in the latest *Prison Statistics*) are operative in fourteen states (against twenty seven existing prior to 1998) having reported total intake capacity of 4323 (against 5267 that reported in the pre-1998 era). *Secondly*, amongst the states that have informed about the functioning of open institutions in their jurisdictions, Rajasthan re-

<sup>30</sup> Information is borrowed from: National Crime Records Bureau, *Prison Statistics India: 1998, 1999, 2000 & 2001* published by the Ministry of Home Affairs, Government of India, respectively in 2000, 2001, 2002 & 2004).

ported the highest number of (7) open jails, while the highest intake capacity of inmates (1050) in open peno-correctional institutions is reported from Uttaranchal, a newly carved state from Uttar Pradesh to which one of the open prisons situated in Uttar Pradesh was transferred. *Thirdly*, the three open prisons in Bihar indicated by the then Central Bureau of Correctional Services in its *Open Prisons in India* (1970) do not figure at all in the official information supplied between 1998-2001 to the NCRB by the Bihar Government. Similar is the case of Orissa. *Fourthly*, the highest occupancy rate of inmates in open institutions (90) is reported from West Bengal in 1998 (which, however, in 2000 was declined to 40), which is followed by Rajasthan (84.17), Kerala (80.5), and Maharashtra (79.33). *Fifthly*, the highest share (percentage) of convicts in open prisons is, however, reported from Himachal Pradesh (18.62), which is followed by Uttar Pradesh (11.32), Rajasthan (11.30), and Kerala (10.46). *Sixthly*, the total occupancy rate in open prisons in India, during 1998-2001, has not crossed 56.49, and the share of convicts transferred to, and housed in, open prisons during the same period oscillated between 2.71 and 4.38.

Such a low occupancy rate of inmates in, and the comparatively low share of convicts transferred to, the existing open institutions, in ultimate analysis, can be attributed to either lack of will on part of the prison administrators or (and) their inability, plausibly due to a series of prescribed subjective & stricter eligibility criteria based on the legal categories of crime and sentence served in a closed prison, for transferring convicts from closed prisons, which are ostensibly overcrowded with innumerable prisoners 'qualified' to be transferred to open prisons.

### *3.3 Transfer of convicts from 'closed prisons' to 'open prisons':*

#### *Eligibility criteria and procedure*

Generally, lifers and long-term prisoners confined in 'closed prisons' of State, who, in the opinion of the prescribed deciding authority, satisfy the eligibility criteria indicated in, and fulfill the conditions, if any, stipulated under, Prison Rules/Manual of the State concerned, are transferred to open jails. The following Table 4 offers a sketch, at a glance, of (in) eligibility criteria & conditions for admission of convicts to open prisons stipulated by, and the selection procedure prescribed under, State Prison Rules and/or Manuals in vogue in different States. Rules governing eligibility of prisoners for transfer to open prisons and the procedure stipulated therefore, however, vary from State to State.

Table 3: Authorised Capacity and Population of Open Peno-correctional Institutions and of the Central Prisons\*  
 - A Comparative Glance [1998-2001]

	Authorised capacity and population of the existing open institutions [As Reported by States to the NCRB during 1998-2001]								Authorised & Existing Capacity and Population of Central Prisons** in India								
	Number  [Pre-1998- Total 40]				Authorised Capacity at the end of:  [Pre-1998-Total intake capacity of 5027]				Existing population and *# oc- cupancy rate at the end of:				Author- ised in- take ca- pacity and *# number of cen- tral jails at the end of: 2001		Existing population of male convicts in central prisons and *# population (percentage share) of inmates of the existing open penal insti- tutions at the end of:		
STATE/Y R	1 9 9 8	1 9 9 9	2 0 0 0	2 0 0 1	1998	1999	2000	2001	1998	1999	2000	2001		1998	1999	2000	2001
Andhra Pradesh	2	2	2	2	385	385	385	385	173 *# 44.93	232 *# 60.2 5	184 *# 47.79	248 *# 64.41	5522 *# 6	3221 *# 5.37	3256 *# 7.12	3336 *# 5.51	3375 *# 7.34



Assam	1	1	1	1	100	100	100	100	29 *# 29	35 *# 35	30 *# 30	36 *# 36	0 *# 0	0 *# 0	0 *# -	0 *# 0	0 *# 0
Bihar	0	0	0	0	0	0	0	0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	10017 *# 6	NA *# -	0 *# 0	3616 *# 0	3733 *# 0
Chhatti- sgarh	-	-	-	1	-	-	-	200	- *# -	- *# -	- *# -	29 *# 14.5	2345 *# 4	- *# -	- *# -	- *# -	4392 *# 0.66
Guja- rat*\$	2	2	2	2	60	60	60	100	85 *# 141.66	72 *# 120	79 *# 131.66	82 *# 82	2370 *# 2	2028 *# 4.19	2102 *# 3.42	2229 *# 3.54	2371 *# 3.45
Hi- machal Pradesh	1	1	1	1	80	80	80	80	27 *# 33.75	29 *# 36.2	47 *# 58.75	41 *# 51.25	453 *# 2	145 *# 18.62	232 *# 12.5	238 *# 19.74	294 *# 13.9 4
Karnat- aka	1	1	1	1	80	80	80	80	29 *# 36.25	56 *# 70	58 *# 72.5	44 *# 55	4981 *# 6	1203 *# 2.41	1259 *# 4.44	1364 *# 4.25	1713 *# 2.56
Kerala	1	1	1	2	200	200	200	400	161 *# 80.5	113 *# 56.5	119 *# 59.5	125 *# 31.25	2854 *# 3	1538 *# 10.46	1516 *# 7.45	1690 *# 7.04	1549 *# 8.06

Madhya Pradesh	1	1	0	0	200	200	0	0	50 *# 25	60 *# 30	0 *# 0	0 *# 0	6651 *# 8	10763 *# 0.46	14021 *# 0.42	10280 *# 0	1010 3 *# 0
Maharashtra	2	2	2	2	450	450	450	450	336 *# 74.6	335 *# 74.4 4	306 *# 68	357 *# 79.33	10539 *# 8	5054 *# 6.64	5089 *# 6.58	5207 *# 5.87	5644 *# 6.32
Orissa	0	0	0	0	0	0	0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	0 *# 0	0 *# 0
Punjab	2	2	2	2	200	200	200	200	39 *# 19.5	51 *# 25.5	24 *# 12	22 *# 11	6587 *# 7	2038 *# 1.91	2315 *# 2.20	2513 *# 0.95	3017 *# 0.72
Rajasthan	7	7	7	7	316	316	316	370	266 *# 84.17	257 *# 81.3 2	264 *# 83.54	304 *# 82.16	6085 *# 7	2353 *# 11.30	2750 *# 9.34	2827 *# 9.33	3328 *# 9.13
Tamil Nadu	1	1	1	1	100	100	100	100	10 *# 10	14 *# 14	14 *# 14	11 *# 11	13522 *# 9	4011 *# 0.24	4083 *# 0.34	4325 *# 0.32	4663 *# 0.23
Uttar Pradesh	2	2	0	1	1768	1030	0	738	366 *# 20.70	333 *# 32.33	0 *# 0	0 *# 0	7001 *# 5	3233 *# 11.32	3654 *# 9.11	2982 *# 0	3353 *# 0

Uttaran- chal	-	-	-	1	-	-	-	1050	-	-	-	258	0	-	-	-	0
									*#	*#	*#	*#	*#	*#	*#	*#	*#
									-	-		24.57	0	-	-	-	0
West Bengal	1	1	1	1	70	70	70	70	63	52	28	35	10652	1671	1881	1849	2033
									*#	*#	*#	*#	*#	*#	*#	*#	*#
									90	74.2	40	50	6	3.77	2.76	1.51	1.72
										8							
<i>TOTAL</i> States: 17	2	2	2	2	4009	3271	2041	4323	1634	1639	1153	1592	89579	37258	42158	42456	4956
	4	4	1	5	-	-	-	-	*#	*#	*#	*#	*#	*#	*#	*#	8
									40.75	50.1	56.49	36.82	79	4.38	3.88	2.71	*#
										0							3.21

Source: *Prison Statistics: India: 1998, 1999, 2000 and 2001.*

\* The criteria for jail to be termed as Central Jail differs from State to State. However, the common feature observed in all States is that the prisoners sentenced to life imprisonment and imprisonment for longer period, who are generally eligible for transfer to open penal institutions in India, are confined in the Central Jails. Hence, statistical information is restricted to Central Prisons in the States only having open penal institutions.

\*\* Only population - authorised and existing - of male convicts is considered, as they only are eligible for transfer to open peno-correctional institutions.

\*\$ Figures seem to be unrealistic and misleading.

Table 4: Criteria for Admission to Open Institutions in Different States\*

State **	Criteria for admission to open institutions					Who are authorised to decide?
	Age limit for admission (in years)	Minimum Period of Sentence to be Served in Closed Prison	When due for Sending to Open Prisons	Prisoners ineligible for Open Prisons	Prisoners eligible for Open Prisons	
Andhra Pradesh	21-55 Years	More than 5 years	After undergoing 1/3 of the sentence in a closed prison, and having normally more than 5 years to serve.	<ol style="list-style-type: none"> <li>i. Habitual, notorious and dangerous offenders.</li> <li>ii. Political agitators.</li> <li>iii. Superior class prisoners.</li> <li>iv. Escapees and returnees from open prison.</li> <li>v. Convicted of offences showing depravity of mind, rape and robbery.</li> <li>vi. Against whom any other cases are pending.</li> <li>vii. Unwilling workers.</li> <li>viii. Women prisoners.</li> <li>ix. Prisoners with history of disease that may be aggravated in open conditions.</li> </ol>	<ol style="list-style-type: none"> <li>i. Prisoners' with good conduct, emotional stability, and good family ties.</li> <li>ii. Prisoners with agricultural background or training.</li> <li>iii. Good physical and mental health.</li> <li>iv. Casual and Star Class of prisoners.</li> <li>v. Home leave or furlough without adverse behaviour in the past.</li> <li>vi. Willing to work.</li> <li>vii. Prisoners need to be residents of Andhra Pradesh.</li> </ol>	Prisoners need to be screened by a Selection Committee consisting of: Deputy Inspector General of Prisons, Superintendent, Medical Officer, Jailor and Welfare Officer of the concerned closed prison. Subsequent approval of the Inspector General. Superintendent of the receiving open prison, in his discretion, may interview the selected prisoners before their admission to the open prison.
Assam	20-60 Years	5 years or more	Served 1/3 of sentence (including remission) and have at least 1 year unexpired portion.	<ol style="list-style-type: none"> <li>i. Convicted under secs. 109 &amp; 110 of CrPC.</li> <li>ii. Superior ('A' &amp; 'B') Class prisoners.</li> <li>iii. Female convicts.</li> <li>iv. Prisoners convicted for dacoity, poisoning, sex offences and counterfeiting coins.</li> </ol>	<ol style="list-style-type: none"> <li>i. Prisoners with agricultural background are given preference over others.</li> <li>ii. Prisoners with good physical and mental health.</li> <li>iii. Prisoners need to be residents of Assam.</li> </ol>	Prisoners approved by the Inspector General of Prisons are sent to a receiving open prison. Superintendent of the open prison may interview prisoners for their selection. No further classification of prisoners in open prison.
Gujarat	Not fixed	More than 2 years	Served 5 years in closed prison and have at least 2 years unexpired portion to serve (for prisoners sentenced to life imprisonment).	<ol style="list-style-type: none"> <li>i. Escapees.</li> <li>ii. Habitual offenders.</li> <li>iii. Convicted for offences relating to sex, dacoity and moral turpitude.</li> <li>iv. Women prisoners.</li> </ol>	<ol style="list-style-type: none"> <li>i. Prisoners availing furlough at least once are only considered.</li> <li>ii. Prisoners with agricultural background are given preference over others.</li> <li>iii. Prisoners having good record and having good family ties.</li> </ol>	Superintendents of closed prisons prepare a list of suitable convicts and submit it to the Inspector General of Prisons for approval. Final Selection by the Inspector General of Prisons.
Himachal Pradesh	21-50	NA	<ol style="list-style-type: none"> <li>i. For prisoners convicted for homicide: served ½ of</li> </ol>	<ol style="list-style-type: none"> <li>i. Escapees.</li> <li>ii. Political agitators.</li> </ol>	<ol style="list-style-type: none"> <li>i. Prisoners with good conduct and health.</li> <li>ii. Prisoners free from physical, infectious</li> </ol>	Selection is made the Inspector General of Prisons with the system of

-al Pradesh	years		ii. For prisoners convicted of forgery or poisoning: served ¼ of sentences and 4 months left to serve.	iii. Convicted for dacoity and rape. iv. Women prisoners. v. Prisoners returned to closed prison from open prison either on disciplinary or medical or other grounds. vi. Prisoners with 'boyish look'.	iii. Prisoners willing to join open prisons.	classification of prisoners.
Karnataka	Below 50 years	5 years or more	i. For prisoners sentenced to life imprisonment served 5 years in closed prison. ii. For others: served ¼ of sentence in closed prison and 6 months left to serve.	i. Habitual and known criminals. ii. Prisoners with pending cases. iii. Prisoners suffering from mental diseases. iv. Superior class and women prisoners. v. Political agitators. vi. Women prisoners. vii. Escapees. viii. Sex offenders. ix. Prisoners convicted for dacoity.	i. Prisoners with sound health and mind. ii. Prisoners with good jail record. iii. Prisoners having strong agricultural background and suitable for learning modern methods of farming.	Superintendents of jails prepare a list of prisoners to be transferred to open prisons and submit it to the Inspector General of Prisons for approval and final selection. No further classification is done.
Kerala	Not fixed	3 years or more	i. For prisoners sentenced for less than 3 years: served 1 year in closed prison. ii. For prisoners sentenced for more than 3 years: served 3 years in closed prison.	i. Offences against state and armed forces. ii. Offences relating to rape, counterfeiting of currency. iii. Unnatural offence or offences like robbery, dacoity etc. iv. Women prisoners. v. Prisoners against whom any other cases are pending. vi. Convicts of dacoity and robbery.	i. Well-behaved long-term 'C' class prisoners. ii. Physically and mentally sound prisoners who are willing to undertake labour. iii. Convicts having cordial relationship with friends and relatives.	Prisoners are selected by a Board consisting of: Deputy Inspector General of Prisons, Superintendent, Medical Officer, Senior Welfare Officer of the concerned closed prison and Superintendent of the concerned open prison. The Board is required to conduct interviews of convicts willing to be transferred to open prisons.
Madhya Pradesh	Details are not available	NA	NA	i. Women prisoners.	i. Lifers - surrendered dacoits.	Details are not available.
Maharashtra	Not fixed	1 year or more	i. Prisoners sentenced for more than 1 year: served ¼ of sentence (excluding remission) in closed prison. ii. Lifers and prisoners sentenced for more than 14 years: served 5 years (excluding remission) in closed prisons.	i. Habituals and known criminals. ii. Prisoners having any case pending. iii. Escapees and escape risks. iv. Class I and women prisoners. v. Prisoners punished for 3 or more major prison offences within 2 years prior to selection for open prison. vi. Prisoners convicted of offences against State, rape, robbery, and dacoity. vii. Convicts under the Bombay Gambling Act; Sea Customs Act, and prisoners convicted of offences connected with narcotics. viii. Prisoners suffering from mental disease,	i. Physically and mentally sound with good behaviour. ii. Convicts willing to do hard work.	Selection of prisoners for confinement in open prison is done by a Selection Committee consisting of: Inspector General of Prisons, Deputy Inspector General of Prisons, Superintendent of the closed prison, and Superintendent of open prison.

				<p>having previous history of serious mental illness or any other serious disease.</p> <p>ix. Hired and professional murderers.</p> <p>x. Prisoners transferred to closed prison.</p>		
Punjab	21-50 Years	1 year or more	<p>i. For prisoners sentenced for less than 7 years: served 1/4 of sentence.</p> <p>ii. For prisoners sentenced for more than 7 years or life imprisonment: served 1/3 of sentence.</p>	<p>i. Medically unfit.</p> <p>ii. Escapees.</p> <p>iii. Women prisoners.</p> <p>iv. Prisoners convicted for offences against State, poisoning, kidnapping, rape, theft, extortion, dacoity, habituals dealing with stolen property, house lurking and forgery.</p>	<p>i. Prisoners having aptitude for agricultural work and are likely to resettle on land after release.</p> <p>ii. Prisoners willing to hard work.</p> <p>iii. Resident of &amp; convicted in Punjab.</p>	Selected by a Committee consisting of: Inspector General of Prisons, Superintendent of District Jail and Superintendent of open prison.
Rajasthan	30-46 Years	1 year	<p>i. For prisoners sentenced for 1 to 5 years: served ¼ (including remission) in closed prison.</p> <p>ii. For prisoners sentenced for longer period: served 1/3 (including remission) in closed prison and having not less than 9 months to serve.</p>	<p>i. Bachelor and those convicted under secs. 109 &amp; 110 of CrPC.</p> <p>ii. Prisoners with 'boyish look'.</p> <p>iii. Prisoners convicted for: criminal conspiracy, offences against State, harboring offenders, obstructing apprehension of self or others, counterfeiting coins, poisoning, sexual offences, theft, robbery and dacoity.</p> <p>iv. Drug smugglers.</p>	<p>i. Casual offenders and resident of Rajasthan.</p> <p>ii. Prisoners free from mental deficiency or body infirmity and with good conduct.</p>	Inspector General of Prisons is required to prepare a list of prisoners to be transferred to open prisons and to submit it with his recommendation to the State Government. Final selection is made by the Government.
Tamil Nadu	21-55 Years	1 year or more	<p>i. Life prisoners' served 3 years of sentence (excluding remission) in a close prison and not having more than 5 years to serve.</p>	<p>i. Escapees and prisoners having escaping tendencies.</p> <p>ii. Prisoners having any case pending.</p> <p>iii. Prisoners transferred from open prison to closed prison.</p> <p>iv. Known habituals.</p> <p>v. Convicts punished for 3 or more prison offences or prison indiscipline within 2 years prior to selection for open prison.</p> <p>vi. Convicts of serious mental illness or disease.</p> <p>vii. Prisoners convicted for offences against state.</p> <p>viii. Hired and professional murderers.</p> <p>ix. Women and political prisoners.</p> <p>x. 'A' class prisoner and prisoners of dangerous character.</p> <p>xi. Prisoners convicted of an offence showing depravity of mind.</p>	<p>i. Prisoners' between 21 and 55 years of age with good physical &amp; mental fitness and having good family ties and emotional stability.</p> <p>ii. Prisoners having aptitude for agricultural work and willing to work in open prison.</p> <p>iii. Prisoners need to be residents of Tamil Nadu.</p> <p>iv. Prisoners served 1 year of sentence (excluding remission) but not having more than 5 years to serve (excluding remission).</p> <p>v. A 'lifer' served 3 years of sentence (excluding remission) but not having more than 5 years to serve (excluding remission).</p> <p>vi. Casual and Star Class prisoners.</p>	<p>A nominal roll of suitable prisoners is to be submitted by Superintend of closed prison with his recommendation to the Inspector General of Prisons.</p> <p>The list, before submitting it to the Inspector General of Prisons is required to be screened, in the backdrop of the stipulated criteria, by the Classification Committee of the transferring prison.</p> <p>The Inspector General of Prisons makes final selection.</p>

Uttar Pradesh	21-50 Years	More than 1 year	<p><i>For Sampurnand Camps:</i></p> <ol style="list-style-type: none"> <li>For casual and habituals (with one conviction) sentenced from 1 to 10 years: served 1/8 of sentence (including remission).</li> <li>For dacoits sentenced up to 5 years: 1/8 of sentence (without remission).</li> <li>For dacoits sentenced for 5 to 10 years: have 4 years to serve.</li> <li>For dacoits served 1/8 of sentence and sentenced for more than 10 years including lifers: served 2/3 of sentence (including remission) in closed prisons.</li> </ol>	<p><i>For Sampurnanand Camps:</i></p> <ol style="list-style-type: none"> <li>Physically unfit with unsatisfactory behaviour.</li> <li>Habitual offenders with more than one previous conviction.</li> <li>Escapees and escape risks.</li> <li>Political agitators.</li> <li>Prisoners punished for more than once (per year of their detention in closed prison) for prison indiscipline.</li> <li>Prisoners convicted for promoting communal enmity; harboring robbers or dacoits; counterfeiting coins; insulting or offending religions and religious feelings; attempting suicides; kidnapping or abducting with intent to commit murder, extortions, and cheating.</li> <li>Women prisoners.</li> <li>Prisoners with 'boyish look'.</li> <li>Hired and professional murderers.</li> </ol> <p><i>For Model Prison Open Annex:</i></p> <ol style="list-style-type: none"> <li>Self sufficient dacoits watched for 3 months: 1/6 of the sentence or 5 years or 1/2 sentence (including remission) whichever is earlier.</li> </ol>	<ol style="list-style-type: none"> <li>Prisoners need to be residents of Uttar Pradesh.</li> <li>Physically and mentally sound convicts.</li> <li>Prisoners free from any physical deformity and infectious disease.</li> </ol>	<p>A transfer roll of inmates who fulfill the stipulated criteria has to be submitted by closed jails to the Selection Board consisting of Inspector General of Prisons-Chairman- and Superintendent of open prison-convener. The Board is authorised to grant approval and sanction transfer of convicts to different receiving open jails. Superintends of open institutions screen the convicts before finally sending them to open camps.</p>
West Bengal	26-60 Years	Served 2/3 of the sentence	<ol style="list-style-type: none"> <li>Non-lifer served 3/4 of sentence.</li> <li>Lifer served 3/4 of 14 years' sentence.</li> </ol>	<ol style="list-style-type: none"> <li>Confirmed criminals through Court Martial.</li> <li>Prisoners convicted under the Explosive Substances Act, and the Arms Act.</li> <li>Insane or mentally retarded or physically handicapped convicts.</li> <li>Hired and professional murderers.</li> <li>Escapees.</li> <li>Unmarried and women convicts.</li> <li>Prisoners convicted for outraging modesty of woman, rape, sodomy, black-marketing, smuggling &amp; food and drug adulteration.</li> <li>Class I prisoners.</li> <li>Prisoners transferred from open prison to closed prison.</li> <li>Political prisoners.</li> </ol>	<ol style="list-style-type: none"> <li>Prisoners need to be residents of West Bengal with good prison records.</li> <li>Prisoners sentenced to 7 years or more and served 2/3 of the sentence (including remission).</li> <li>Prisoners' medically fit and willing to undertake work in open prison.</li> </ol>	<p>Selection is made by a Board consisting of: Inspector General of Prisons (or Additional Inspector General of Prisons), Representatives of the District Magistrate, Superintendents of Central Jails, Superintendent of Police, and Deputy Inspector General of Prisons. The Board is expected to thoroughly screen and personally interview all the suitable convicts before transferring them to open prisons.</p>

Source: Central Bureau of Correctional Services, State Prison Rules & information personally obtained by the author from different states.

\* Format, with some appropriate additions, omissions and modifications, is extensively borrowed from Upendra Baxi, Open Prisons, Closed Minds, in Upendra Baxi, *the Crisis of the Indian Legal System*, supra n.5 and B. N. Chattoraj, Open Prisons in India-A Review, *Social Defence*, cited in supra n. 5.

\*\* Information is not available from: Bihar, Chattisgarh, Orissa, and Uttaranchal.

A look at the table discloses that the initial age limit of prisoners varies from 20 to 30 years and the upper age limit prescribed is between 46 and 60 years. Assam makes prisoners above 20 years, but below 60 years of age, eligible for entry into open prisons. While Himachal Pradesh, Karnataka, Punjab, and Uttar Pradesh insist that prisoners must be above 21 years but below 50 years of age at the time of their transfer to open jails. Prison Rules of Andhra Pradesh and of Tamil Nadu set 55 years as upper limit. Rajasthan and West Bengal treat prisoners between 30 & 46 and 26 & 60 years respectively eligible for transfer to open prisons. Similarly, the quantum of minimum period of sentence to be served by prisoners in closed prisons before their entry into open jails becomes possible, varies between one-fourth & one-third of their awarded sentence.

However, almost all the State Prison Rules insist for: sound physical & mental health, emotional stability & strong family ties, good jail record, ability & aptitude for hard work, preferably agricultural one, and residents of the state concerned, as eligibility criteria for transferring convicts from closed prisons to open prisons. However, Himachal Pradesh, Rajasthan, and Uttar Pradesh exclude prisoners, otherwise eligible for transfer to open prisons, if they exhibit 'boyish look'.

Similarly, one also notices a set of identical criteria in almost all the States for making a large number of convicts ineligible for open prisons. Habitual & known offenders, escapees & convicts having escaping tendencies, sex offenders, prisoners convicted for committing serious offences against property, prisoners convicted for offences against State, prisoners suffering from mental diseases, hired & professional murderers, prisoners having cases pending against them, prisoners punished for prison indiscipline, and returnees from open prison, are made ineligible for transfer to open prisons. Female convicts and political offenders are also completely excluded from the purview of open jails.

A careful look at the information clustered in the last column of Table 4 also reveals that composition of the decision-making authority and the procedure for selection of prisoners are far from uniformity.<sup>31</sup> In some States (Andhra Pradesh, Assam, Gujarat, Himachal Pradesh, Karnataka, and Tamil Nadu) the Inspector General of Prisons is authorized to select prisoners for open prisons, while other States (Kerala, Maharashtra, Punjab, Uttar Pradesh, West Bengal) authorize a duly constituted Selection Committee/Screening Committee/Board to select pris-

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<sup>31</sup> The Bureau recommended that an initial selection of prisoners be made by a Selection Committee consisting of the Superintendent, Medical Officer, Senior Jailor and Welfare Officer. See, Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, p. 48.



oners. In some States (Rajasthan) the Government retains with it the final authority. In States (Tamil Nadu & Maharashtra) where prisoners' eligibility is decided by a Selection Committee, it is expected of the Classification Committee, before recommending to the Selection Committee transfer of prisoners to open jails, to give due regard to: mental and physical health of the prisoners to withstand confinement in open prison; behaviour and conduct in (closed) prison and sense of responsibility displayed; progress in work, vocational training, education in closed prison; group adjustability; character and self-discipline; extent of institutional impacts (i.e., whether the prisoner has reached peak point of training and treatment), and his fitness for being trusted for confinement in an open prison.<sup>32</sup>

It is important to note that most of these eligibility criteria are identical to that suggested by the Bureau. The prisoners satisfying the following conditions, according to the Bureau, be given preference for open prisons. They are: (i) casual or star class, (ii) residents of the State, (iii) good mental and physical health preferably between 21 to 50 years of age, and without any history of disease which may be aggravated in open conditions, (iv) good conduct and emotional stability, (v) good family ties, (vi) should have undergone some period in a closed prison and should not have ordinarily more than 5 years to serve or to become eligible for premature release, and (vii) should not be a political agitator, superior class prisoner, previous returnee from open prisons, escapees, notorious and dangerous or convicted of offences showing depravity of mind.<sup>33</sup>

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<sup>32</sup> Almost all the State Prison Rules/Manuals invariably mandate the deciding authority, while transferring prisoners from closed to open jail, to give due regard to: 'length' of imprisonment undergone by a prisoner in 'closed prison'; his physio-psycho-mental health; 'behaviour and conduct' displayed by him in closed prison; 'group adjustability' & 'sense of responsibility' displayed, and ability to adjust in the 'open' & will to do hard work.

<sup>33</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, p. 48. The *Model Prison Manual* also recommended that prisoners who are dangerous to society, professional and organised criminals, habitual offenders, prisoners suffering from mental unsoundness or physical disease and prisoners who are escape or discipline risks should not be transferred to open institutions. The *Model Prison Manual* also expects the Classification Committee to thoroughly screen the case of each individual inmate, before recommending his transfer to an open institution, on: (i) health (physical and mental) fitness for requirements of living in open institutions, (ii) behaviour and conduct in the (closed) institution, (iii) progress in work, vocational training, education, (iv) group adjustability, (v) character and self-discipline, (vi) extent of institutional impacts-whether the inmate has reached peak points of impacts of training and treatment, (vii) whether the inmate can be further helped in the institution-whether he will benefit by training and treatment in open institutions, (viii) whether the inmate is getting institutionalized, (ix) sense of responsibility, and (x) fitness for being trusted under open conditions. 'Only such prisoners whose behaviour and progress in the institution have been good and who are fit for a regime based on trust, responsibility and self-discipline', according to the *Model Prison Manual*,

Decision making authority, requiring to rely upon the eligibility criteria in vogue, has to seriously ponder upon a set of questions including: (i) was the crime committed by a prisoner was violent and of serious nature?, (ii) is he blessed with sound physical and mental health?, (iii) has he demonstrated 'good' conduct, emotional 'stability and 'strong' affectionate and emotional ties with his family members during his detention in a closed prison, wherein he has undergone a substantial portion of his sentence?, (iv) does he have an inner urge to 'reform' and 'rehabilitate'?, (v) has he responded positively to 'reformatory & therapeutic' measures employed in the closed prison?, (vi) will his transfer to an open institution pose a threat to the free community and create a problem for the prison personnel?, and, (vii) will his social re-orientation and re-entry into the social mainstream be achieved effectively through his detention in an open rather than in a closed penal institution? Though responses of the decision making authority to most of these questions are bound to be subjective and uncertain, it is certain that the application of these eligibility criteria bound to deprive a substantial number of convicts from their transfer to open penal institutions.

Against this backdrop, it is, however, very interesting to note that the Government of Madhya Pradesh instituted two open prisons [*viz.* Nav Jiwan Shivir, Mungaoli and Nav Jiwan Shivir, Lakhimpur] to primarily rehabilitate and re-orient surrendered notorious dacoits and hardened offenders of Chambal Valley and Bundelkhand region.

Open institutions, thus, are essentially reserved for comparatively 'low security-risk prisoners' who are 'thoroughly screened' on a set of highly subjective criteria predominantly premised on the nature of crime, the length of sentence undergone and (track) prison record, character, and security risk. Ostensibly these institutions are not meant for 'dangerously notorious' and 'high-escape-risk' offenders. Such an exclusion, as reflected in Table 3 outlined above, has not only resulted in 'low occupancy rate' (about 56.5), and a very low share of convicts transferred to, and housed in, open prisons (ranging between 2.71 and 4.38) in India but also undermined the basic tenet and role, namely resocialisation and rehabilitation of prisoners, of open institutions. It is pertinent to recall here that two decades back the Justice Mulla Committee, pleading for liberalization of the conditions of eligibility of prisoners for admission to open institutions, opined that the offender's suitability for admission to an open institution be treated as

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'be considered for being transferred to open institutions'. However, it, unlike the Bureau, has not laid down the minimum period which an inmate is required to spend in a closed prison prior to his transfer to an open institution. See Government of India, *Model Prison Manual* (1970), chapt. LII: Open Institutions, p. 375 & 376.

the most important guiding factor and not either the nature of the crime committed or the length of sentence.<sup>34</sup> It observed:

[I]t is disheartening to note that the prison authorities are reluctant to transfer prisoners to open institutions and are not putting to full use even the existing capacity of open institutions. Greater attention, therefore, needs to be paid to the transfer of prisoners to open institutions so that more and more convicted prisoners may avail of the benefits of these progressive institutions. This will require not only liberalization of the conditions of eligibility for admission to open institutions.<sup>35</sup>

However, no major positive steps are taken so far to positively respond to the Justice Mulla Committee's recommendation. If reformation of more convicts is to be achieved, then it is necessary to relax the rules governing selection of the prisoners and to reduce the list of excluded categories of crime and sentences to accommodate more offenders in the open institutions. The First UN Congress has rightly suggested that eligibility of a prisoner for transfer to an open institution should neither be based on pre-confinement in a particular penal or correctional institution, nor on the length of the sentence, but it should, as far as possible, be based on his suitability for admission to an open institution judged on the basis of his 'medico-psychological examination' and 'social investigation'.<sup>36</sup> Such a suggestion is also sounded in the *Model Prison Manual* and the Justice Mulla Committee Report. Undoubtedly, the replacement of the eligibility criteria premised on the 'observance of prison rules' and 'detention for a stipulated period in the closed prison' by the recommended criteria based on 'medico-psychological examination' and 'social investigation' will not only maximize the entry of convicts in open correctional institutions but will also automatically reduce over-crowding in closed prisons- leaving some space for physical as well as therapeutic treatment of the prisoners who are ineligible for confinement in open institutions.

Further, the age-limit (minimum and maximum) prescribed for admission to open institutions and the requirement of undergoing in a closed prison a substantial portion of his sentence as one of the stipulated eligibility criteria, among others, for transfer of convicts to open institutions have undeniably reduced the period of stay of inmates in open institutions and thereby curtailing exposure to,

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<sup>34</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.33.4, p. 235.

<sup>35</sup> *Ibid.*, para. 19.10, p. 231.

<sup>36</sup> See, Recommendation IV, *supra*, n. 3 at 76.

and the impact of, the so-called rehabilitative, re-assimilative and corrective measures employed in open institutions:

### *3.4 Working of Open peno-correctional institutions in India: Some operational and pragmatic facets*

Most of the States in India, except West Bengal, have framed exhaustive statutory Rules and Manuals for operating open penal institutions set up in their jurisdictions. These Rules/Manuals invariably deal with eligibility criteria for transferring prisoners from closed to open prisons, living conditions, incentives in terms of remission, wages, code of conduct and discipline in the institutions. West Bengal, as mentioned earlier, however, has enacted a comprehensive statute, namely the West Bengal Correctional Services Act, 1992, to govern the open institutions.

#### *3.4.1 Prison labour & vocational training:*

Work and vocational training are the most important components of 'correctional' and 'therapeutic' motto of a prison. The main objective of these programmes is to inculcate in prisoner skills and to develop attitudes that facilitate his resettlement in society after his release.

Vocational training provided in open institutions in India not only varies from one *form* of open institution to the other but also from state to state. Training facilities made available in an open jail obviously depend upon the vocational background of its inmates, facilities and resources kept at its disposal, and local conditions & market needs of the locality.

In a semi-open institution [such as open institutions set up at: Rajahmundry (Andhra Pradesh) and at Bharatpur (Rajasthan)] prisoners are employed generally for agricultural and construction work. While inmates of other two forms of open institutions, namely, open prisons [such as open institutions located at: Anantapur & Gachibowl (Andhra Pradesh), Koramangala (Karnataka), Lakhimpur (Madhya Pradesh), Yeravada, Pune (Maharashtra), Nabha (Punjab), Nettukaltheri, Thevancode & Cheemeni (Tamil Nadu), and Lucknow (Uttar Pradesh)], and open colonies [such as open camps located at: Cherlapalli (Andhra Pradesh), Atpadi (Maharashtra), Sanganer, Mandore, Durgapur, & Jaitsar (Rajasthan)] are mainly engaged in agricultural and agri-related works [such as horticulture, floriculture, poultry, dairy, mango orchard, vegetable farm, oil palm etc.] as most of

these institutions have cultivable land in their possession.<sup>37</sup> In addition to agricultural work, inmates of open prisons in Assam, Gujarat and West Bengal are engaged in spinning, bamboo & cane work. In West Bengal, the prisoners from their wages earned purchase the raw material required for different products of bamboo, cane and wood. They are allowed to sell these articles to outsiders and also retain the sale proceeds.

In Maharashtra, Karnataka, and Rajasthan, prisoners transferred to open prisons are also engaged in digging of canals, and construction of public utility buildings and parks. It will be of interest to note that inmates of open prison at Paithan in Maharashtra were deployed as construction labors to the Irrigation and Power Department works related to *Dnyaneshwar Udhyan* and *Jaikweadi Dam* on Godavari river. Inmates of *Sampurnand Camp* in Uttar Pradesh and in Uttaranchal, as mentioned earlier, were also deployed to, and engaged in, the construction work of different dams, bridges, and roads. While prisoners transferred to open prisons in Himachal Pradesh are given to Government Departments on daily wages for employment on a variety of public works. In one of the open institutions in Rajasthan, some cottage industries, like durrie and newar weaving have been introduced to provide additional income to its inmates. In Kerala, rubber plantation has been taken up besides agriculture and vegetable farming. While in Punjab, cattle & sheep breeding and piggery farm projects are developed by prisoners. Agriculture industries such as oil extraction, sugarcane juice extraction for making *gur* and hulling paddy, milling of grains by power have also been established in open prisons in Uttar Pradesh and Uttaranchal. They are also provided training and work in the maintenance of mechanized equipment for the farm, making of bricks, carpentry, and blacksmithy. Inmates of one of the open prisons in Uttar Pradesh are mainly employed on the quarrying of stones for a Government Cement Factory. Some prisoners are also given training in mechanical jobs in a factory. In addition to agricultural work, earthworm fertilizer, power loom, textile, carpentry, tailoring, leather, bakery, smithy, laundry are undertaken by the inmates of open prison in Maharashtra.

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<sup>37</sup> Agricultural land, based on information collected by the author, available to various open institutions is: Cherlapalli (140 acres), Anantapur (1428 acres), Koramangala (240 acres), Nettukaltheri (300 acres), Cheemeni (309 acres), Lakhimpur (112 acres), Yera-vada, Pune (475 acres), Paithan (330 acres), Atpadi (54 acres), Nabha (1004 acres), Durgapura (116 acres), Mandore (150 acres), Lucknow (50 acres), and Sitarganj (3769 acres).

The following table (Table 5) indicates, at a glance, different vocational training facilities provided in open institutions in India.

*Table 5: Vocational Training Available in Open Institutions in India: At a Glance*

<i>Type of vocational Training</i>	<i>Open Institutions /States where such facilities available</i>
Agriculture & agri-related works	Andhra Pradesh, Assam, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Utteranchal, and West Bengal.
Caning / Bamboo work	Assam, West Bengal and Gujarat.
Carpentry	Maharashtra.
Handloom & Textile	Maharashtra, Assam, Gujarat, and Uttar Pradesh.
Digging of canals	Maharashtra and Karnataka.
Public work-construction	Maharashtra, Rajasthan, and Uttar Pradesh.
Rubber plantation	Kerala.
Sheep breeding, pig-gery farm	Punjab.
Silk-worm rearing	Karnataka.
Industrial training	Uttar Pradesh and Utteranchal.
Supply of Prisoners as laborers	Himachal Pradesh.
Tailoring	Maharashtra and Madhya Pradesh.
Cottage industries	Rajasthan.
Other/Miscellaneous	Maharashtra and Andhra Pradesh.

Almost all the open jails in India, thus, probably after realizing that majority of their inmates come from rural agricultural community, give much stress on agricultural and farming activities. Prison Administration, it seems, believes that agricultural activities not only provide opportunities for the inmates open institution to engage themselves in fruitful pursuits during the term of their sentence but also make them learn skills that enable them to follow a vocation on release. Undeniably, the gainful work at the open jails not only keep their inmates mentally occupied and thereby desist them from turning out devils workshop but also gives them a sort of self-confidence & self-esteem. It also goes a long way in developing a responsive and respectable attitude in the inmates towards society.

However, it was noticed in 1983 by the Justice Mulla Committee that in most of the thitherto existing open institutions no systematic vocational training was imparted in agriculture, animal husbandry, dairy farming and other allied fields. The Committee desired that proper vocational training in agriculture and industrial & other trades be imparted to inmates of open jails by trained instructors through lectures and visual aids. The present scenario, even after almost twenty-five years of the Justice Mulla Committee's observation, the present author feels, has not changed materially. No sincere efforts, except in Punjab and Karnataka, are being made in India to acquaint inmates of open institutions with modern and scientific methods in agricultural and allied works. In Punjab, inmates of open institutions are sent to a nearby *Gram Sewak Training Centre* and are also exposed frequently to training sessions on modern methods of agriculture organised, in collaboration with the Punjab Agricultural University, in the open jails. While convicts transferred to open jails in Karnataka are closely instructed and supervised by a deputationist from the State's Agriculture Department.

#### 3.4.2 *Wage structure:*

It is an accepted principle that 'prison labour' is an essential part of the legal punishment, which in olden days had led to the conclusion that the produce of the work undertaken by the prisoners was entirely the property of the State and the inmates had 'no right to claim to be paid for their labour'. However, in due course of time, wages to prisoners became a rule rather than an exception. Various justifications, such as to increase efficiency of the prisoners; to offer incentive and stimulus for effort, work and industry; to make prison work purposive and meaningful; to develop a sense of self-responsibility and self-respect amongst the inmates; to enable prisoners to purchase their sundry daily (extra) requirements from prison canteen and to help inmates to effect their savings for

their post-release rehabilitation and also for extending economic help to their families, and labour without wages amounts to slavery, etc., are being offered for the payment of wages to prisoners.

There is, however, no uniform policy regarding the fixation and the payment of wages to inmates of open prisons in India. It varies from state to state. While at some open institutions (like in Uttaranchal), where prisoners are given to other departments for employment, wages are paid at the market rates, at others (like in Tamil Nadu) either nominal or no wages are paid. Where wages are paid at market rates, maintenance charges are recovered from the prisoners. Though the general principle advocated is that the prisoners should be paid wages at par with those prevailing in outside community, the actual wages paid to them after deducting cost of maintenance and supervision, vary considerably from state to state. In Himachal Pradesh, inmates are generally engaged in unskilled labour and paid accordingly. A specified amount is deducted from each prisoner as maintenance charge. In the states of Maharashtra, Karnataka, Andhra Pradesh, Kerala, Gujarat and Uttaranchal, maintenance charges of inmates are not deducted. But in these states the rate of remuneration is lower than the states where maintenance charges are deducted. In Maharashtra and Kerala, three types of wage rates are prescribed for the so-called unskilled, semi-skilled and skilled prisoners. Prisoners of the last category are entitled for higher rate of wages for their work. In Assam and West Bengal, prisoners get an annual reward on the ground of good conduct and excellent performance over and above the normal wages for each working day. In Uttaranchal, inmates of the open prison are paid (minimum) wages equivalent to those who work outside. In addition to the wages, the inmates working at the quarry of the Government Cement Factory are also paid 'incentive bonus'. In some states (like Andhra Pradesh) wage structure is same for both, open and closed prisons.

Generally, inmates of almost all the open prisons are encouraged to save their earnings in their saving accounts with either a post office or a bank, which are invariably operated through prison authorities. Prisoners are, subject to the respective prison rules, are allowed to spend a part of their wages for meeting their daily (extra) sundry requirements and to remit a part of it to their family. These savings are given to them at the time their release. Inmates of open prison in Uttaranchal are also allowed to send their earnings for maintenance of their families, subject to the condition that half of the earnings should remain in wages account at their credit.

Inmates of open camps, unlike that of open prisons, are allowed to earn their earnings through employment, in or outside the camp, to maintain themselves



and their families. They are also allowed to have their own small-scale trade or occupation in the free community.

Recalling the existing variance in the structure and the payment of wages to inmates of open prisons, the Justice Mulla Committee, with a view to restoring self-esteem and a sense of dignity of labour amongst the inmates of open institutions, recommended a 'fair and equitable' system of remuneration.<sup>38</sup> It will be of interest to note that the Supreme Court of India in *State of Gujarat v. Hon'ble High Court of Gujarat*,<sup>39</sup> delving into the constitutional propriety of the obligatory hard labour in prisons and claim of the prisoners to receive wages in return, ruled that the prisoners doing hard labour be paid 'equitable wages'. However, the present author is unaware of responses of different states to this judicial dictum.

### *3.4.3 Special privileges, facilities and incentives for the inmates of open prisons:*

In addition to greater freedom in movement and closer contact with the open community that undeniably help inmates of open institutions in regaining self-confidence and accelerating the process of resocialisation, they are given some incentives in the form of more remission, parole and home leave. However, these privileges and incentives vary from state to state.

#### *3.4.3(i) Remission*

Inmates of open institutions in Uttar Pradesh, Himachal Pradesh, Gujarat and Rajasthan are granted liberal remission at the rate of one day for each day's stay in the institution. While inmates of open institutions in Tamil Nadu earn one day's remission for a day's work and 2 days for good conduct per month. The scale of remission in Maharashtra is, however, linked with the period of sentence awarded to a prisoner. Prisoners sentenced to life imprisonment and sentenced to more than 14 years' imprisonment in aggregate get a remission of 30 days for a calendar month. And the prisoners sentenced to more than 5 years and up to 14 years are eligible for 20 days remission for a calendar month. While other prison-

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<sup>38</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.17, p. 232.

<sup>39</sup> AIR 1998 SC 3164. For analysis of, and comments on, different judicial tones and approaches of different High Courts and the Supreme Court to the prisoners' right to claim wages for hard labour, see K. I. Vibhute, *Compulsory Hard Prison Labour and the Prisoners' Right to Receive Wages: Constitutional vires and Judicial Voices*, 42 *JILI* 1 (2000).

ers are entitled for 15 days remission for a calendar month. Further, prisoners who spend two years satisfactorily in an open prison in Maharashtra are eligible for being selected to an 'open colony' where they are allowed to live with their family members. In Assam and Karnataka, sentence of inmates of open jails is remitted at the rate of 10 days for every month they spend in the open institution. They also enjoy an annual remission of 15 days for good conduct and 30 days by the Superintendent and 60 days by the Inspector General of Prisons. In Assam, prisoners, however, in addition to the regular remission rate, get 30 days special remission on the Republic Day in each year. One day's remission for three working days is available to prisoners in Punjab. Besides this, the Inspector General of Prisons is authorised to award 30 days' special remission in a year on the recommendation of the open jail Superintendent, subject to the condition that the total remission does not exceed one-half of the sentence. Remission rates in Kerala and Andhra Pradesh are slightly higher than prevalent in a closed prison of the state.

#### 3.4.3(ii) Parole

Believing that a continued contact between a convict and his family members helps him in gradual healing the community's wounds associated with his crime as well as his successful reintegration into the family and the society, inmates of most of the open jails in India are allowed to go home and stay with their family members. Similarly periodic visits of their family members in the open prisons are also allowed. Rules governing parole (home leave/furlough), however, vary from State to State.

Inmates of an open jail in Karnataka are allowed to go home on furlough of 10 days each year, during which they are permitted to wear civil clothing. In Kerala inmates are allowed to spend one month out of six with their families. In Uttar Pradesh convicts assigned to a *Shivir* (open institution) are, unaccompanied by cops, allowed, in addition to one to two months parole in a year, to go home for a fortnight once a year. Himachal Pradesh allows prisoners to avail 28 days parole and 21 days home leave in a year. While Andhra Pradesh and Maharashtra provide for 14 days home leave per annum. While in West Bengal a prisoner accommodated in an open correctional home, with the prior approval of the Inspector General of Correctional Services, can go on parole for a period not exceeding fifteen days at a time but not more than twice a year. In Punjab, ordinary parole/furlough rules are applicable to the prisoners confined in open air jails. Andhra Pradesh is liberal in granting parole to inmates of open jails while in Ma-

harashtra such inmates are permitted to visit their native places once a year for a period of 15 days.

The Bureau and the Justice Mulla Committee have expressed their displeasure about the existing different scales of remission. In the opinion of the former, the scale of remission should be more liberal in an open prison than in a closed prison. The scale of remission, according to the latter, should be at the rate of one day for each day's stay in an open prison. However, both of them have opined that the total remission granted to a prisoner should not be more than half of the substantive sentence awarded to him.<sup>40</sup>

### 3.4.3(iii) Educational and recreational facilities

With a view to accelerating social reintegration and resocialisation of inmates of open jails, most of the open institutions provide facilities for formal, social and moral education. Inmates are also allowed to undertake and participate in a variety of cultural programmes for offering them an opportunity to preserve their culture and to mingle & interact with the outside free community.

Most of the open jails in India have a moderate library in their premises equipped with books, newspapers & magazines. The prisoners themselves generally manage these libraries. Prisoners are also invariably allowed to borrow books from outside library. Discourses on moral and social values are also frequently organised in open jails.

Some of the open institutions (like that set up in Maharashtra, Uttar Pradesh, West Bengal, Kerala, and Assam) have play ground, wrestling ground, and recreation hall with interviewing rooms for the use of their inmates. The interviewers, relatives or family members of the inmates can, with the permission of the Superintendent, stay in these guest rooms for a few days, generally for a week or so.

A radio set (and a TV set in some of the open prisons, like in Maharashtra, Kerala, Tamil Nadu & West Bengal) is also provided in the common recreation hall of these institutions for the entertainment of the inmates during their leisure time. The prison authorities, preferably, once in a month also arrange cinema shows for the inmates. Inmates are also allowed to participate in important festivals such as *Raksha Bandhan*, *Diwali*, *Kali Puja*, *Rammzan* & *Christmas*. They

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<sup>40</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, p. 55 and Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.21, p. 233.

are also allowed to participate in village fairs, *Bhajan* and *Kirtan*. They are also allowed to occasionally stage dramas.

The West Bengal Correctional Services Act enacted in 1992 gives a sort of statutory recognition to, and true reflection of, recreational activities in vogue in different open institutions in India. Sec. 92 of the Act says:

- (1) In every open correctional home there shall be a library for lending books to the prisoners, and a reading room provided with newspapers and magazines. ---
- (2) Every open correctional home shall be provided with a radio with speakers installed in different barracks.
- (3) The prisoners in an open correctional home shall be permitted to participate in cultural activities such as song, drama, instrument-music and *kirtan*. In a well-organised cultural, dramatic or variety performance, local villagers may be invited.

Further, the Act contains elaborate provisions for educational, mental and physical recreation of inmates of correctional homes in the state. Sec. 49 of the Act runs as under:

- (1) Every prisoner shall be given facilities of having rest and recreation for such period as may be prescribed. The types of recreation shall be as follows:
  - (a) educative recreations, namely, reading of books, newspapers and periodicals, hearing of radio broadcasts, participation in or attending cultural performances, paintings and the like;
  - (b) recreation of mental exercise, namely, participation in or witnessing of indoor and outdoor games;
  - (c) recreation pertaining to physical health, namely, participation in outdoor games and different types of physical culture including yoga;
  - (d) recreation for entertainments, namely,
    - (i) community songs with musical instruments ---
    - (ii) folk dances and songs and other community entertainment on festival days and holidays,
    - (iii) play of simple musical instruments by individual prisoner without disturbing others,

- (iv) dramatic performances in the form of *jatra* and theatre and variety entertainment programmes by prisoners on festival days and holidays, and
- (v) display of educative and entertaining films on different occasions with the assistance of the Information and Cultural Affairs Department of the State Government.

(2) The State Government may appoint one or more physical instructors to look after the recreational facilities referred to in clause (c) of the subsection (1). The recreational facilities referred to in clauses (a), (b) and (d) shall be looked after by the Welfare Officer.

(3) In correctional home, there shall be a playground for outdoor games and a community hall for cultural programmes.---

Moderate medical and meditation facilities have also become an integral part of the administration of open prisons in India.

#### 3.4.3(iv) *Extra-diet*

In a majority of open prisons extra-diet facilities, compared to that of in closed prisons, are also provided. Some other incentives like additional soap, cloths, coconut oil etc are provided to some of inmates of open prisons.

#### 3.5 *After-release employment:*

A majority of the open prison authorities, at the institutional as well as personal level, take interest in providing employment to needy inmates of their open institution. The Uttar Pradesh Government seeks help of its Employment Exchange Bureau in finding suitable jobs for its ex-convicts. Inmates of the open institutions seeking employment on release can, a few months before the date of release, enrol their names with the State Employment Bureau. The Uttar Pradesh Government has also permitted its Jail Department to appoint ex-convicts of open prisons on lower posts. While in Maharashtra, Himachal Pradesh, and Kerala, non-governmental organisation (NGOs) as well as some religious organisations, that are active in welfare of ex-convicts, extend a helping hand to the pris-

oners released from open prisons in finding suitable employment. In Andhra Pradesh, petitions of the prisoners, about to be released from open prisons, for help after their release are transmitted to the District Collector and Welfare Officers. Loan facilities from nationalised banks are also made available in Uttar Pradesh, Rajasthan and Kerala to ex-inmates of open institutions for starting self-employment [such a barbershops, tailoring shops, waterman-shops, sugar cane juicer, milk-vending, etc.] and establishing their own industry or trade. Other states [like West Bengal and Andhra Pradesh], on the other hand, have informed that there are no after-release services launched either by the Prison Directorate, NGOs or the State for the inmates released from open institutions.

However, in the absence of information about the exact number of beneficiaries of the benevolent gestures of Government, NGOs or Banks and the extent of 'help' received by them, it is difficult, at least for the present author, to assess the 'contribution' of post-release employment in 'rehabilitation' of ex-inmates of open institutions in India. Nevertheless, such facilities and benevolent attitudes undeniably give the inmates of open institutions mental comfort and satisfying feeling that there are some people who are sincerely willing to extend a 'helping hand' when they are in distress.

#### **4. 'Contended' Prison Staff: A Vital Instrumentality in 'Corrective' Mission of Open Institutions**

Merely a set of good prison rules and programmes aimed at correction, reformation and re-orientation of inmates of open institutions do not obviously carry any significance unless they are implemented with utmost sincerity by equally committed and competent prison authorities. Achievement of the mission and motto of open institutions undeniably depends on the professional suitability, capacity, ability & integrity of the prison personnel. Prison staff requiring to 'manage' open peno-correctional institutions has to have different 'orientation', 'mind set' and 'outlook' than that required to manage 'closed prisons'. The staff is also required to display its sincerity, willingness and ability to make use of open penal institutions for effective rehabilitation and re-integration of inmates of open peno-correctional institutions. Prison personnel 'qualified' and 'trained' in managing closed prisons, therefore, may not necessarily be equally efficient in 'handling' open institutions.

None of the states, except Andhra Pradesh, which have very elaborate rules, *inter alia*, governing the eligibility of prisoners for transfer to open institutions and their conduct in these institutions, has, for undisclosed reasons, prescribed

any 'special qualifications' for the prison staff to be posted in open institutions. Similarly, none of these states, again except Andhra Pradesh, either give prior training or orientation in correctional service to its prison staff to be deputed at open institutions or thereafter arrange training or orientation programmes for authorities of open peno-correctional institutions. The Andhra Pradesh Prison Rules of 1979 explicitly mandates that trained personnel who possess the qualities of leadership, integrity and humanity be selected for open prisons. And if trained officers are not available, the Rules make it obligatory for the Andhra Pradesh Government to make adequate arrangements for their training and orientation before they are sent to open prisons so that they can acquire adequate skills to run open institutions and to perform their specialized duties in open prisons with more efficiency and sincerity.

In a majority of the states (like Uttar Pradesh) prison personnel are selected on the grounds of 'good work, trustworthiness, and known dedication to duty'. Assam and Gujarat give preference to graduates trained in social work to head open institutions. While in other states (like Maharashtra and Andhra Pradesh) occasional staff meetings and suitable briefings are arranged to enable open prison staff to have deliberation and dialogue with senior prison authorities and thereby to understand, appreciate and achieve laudable objectives of the open peno-institutions and to design appropriate strategies for their achievement.

It will, against this backdrop, be interesting to recall the following advice tendered as early as in 1973 by the Bureau. It recommended:

Only trained and well adjusted personnel who accept the importance of personal knowledge and understanding of prisoners in their charge and have the qualities of leadership, integrity and humanity should be posted to open prisons. When trained staff is not available, arrangements should be made for proper orientation for running an open prison before they take up their duty. Literature with particular emphasis on the treatment of prisoners in open conditions should be developed and the Superintendent should also be given necessary talks to the newly posted staff. It would be preferable, if the newly posted staff is allowed to observe the programmes of an open prison for a fortnight before they actually take up their new duties. The custodial staff should also be given similar orientation and training for their specialized duties in an open prison. Staff meetings should be held as frequently as possible to discuss programmes and policies in open prisons.<sup>41</sup>

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<sup>41</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, p. 50.

Even after a decade, the Justice Mulla Committee, which visited some of the open prisons and observed their working, exhibited similar concern. It, in 1983, observed:

The staff at the closed prison is generally custody oriented and when it is posted to open institutions it values security and discipline more than welfare, rehabilitation and informal relationship with the prisoners. We were distressed to find at some of the open institutions that even the higher executive staff did not know the basic philosophy and principles on which these institutions were supposed to run. In one closed prison, prisoners selected for and awaiting their transfer to an open institution were sent out to work in the jail garden in fetters. The ideal position will be to have separate staff for open institutions but this is not practicable in view of the small number of open institutions. We are, therefore, firmly of the opinion that the staff at the open institution as well as at the reception centres for such institutions should not only be carefully selected but should also be given special training from time to time regarding the philosophy and management of open institutions.<sup>42</sup>

Either the Prison Administration or the state governments, it seems, have taken none of these advices and opinions, seriously. However, it is reported that a many a states from time to time have been sending prison authorities of different cadre to the Regional Institute of Correctional Administration, Vellore; the National Institute of Criminology and Forensic Science, New Delhi, and the National Institute of Social Defence, New Delhi, for 'sensitizing' them and giving them 'orientation' in the prison administration.<sup>43</sup> In the absence of information,

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<sup>42</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.30, pp. 234-35.

<sup>43</sup> Andhra Pradesh has established its own Institution of Correctional Administration to train its lower and middle level prison officers working in correctional services. Maharashtra in 1955 also established a Jail Officers Training School at Yervada (Pune) to train its prison officers and guarding staff. It, however, manily concentrates on the prison staff of closed prisons. The West Bengal Act of 1992 mandates the estblishment of the Institution for Training of Employees of Correctional Homes in West Bengal to train employees working in correctional homes.



however, it is difficult for the present author to know either the exact 'share' of the prison personnel from open peno-correctional institutions in the so-called 'trained' and 'oriented' prison authorities<sup>44</sup> or the number of 'trained' officers posted at the open institutions.

Further, it is noticed that the 'well trained' and 'qualified' prison staff in charge of open institutions is not too enthused either to give its best to the inmates of open institutions or to accomplish the laudable objectives of open peno-correctional institutions. The prison staff is 'generally averse to postings in open prison because of many difficulties such as housing, education of children, maintenance of separate establishments', reported the Bureau in 1973. With a view to providing 'adequate incentives' and creating 'conditions' that reduce the 'hardship' resulting 'from posting in an open prison', the Bureau recommended the following 'facilities by way of incentives'. They were: (i) family quarters, on the same scale as in a closed prison, be provided in open prisons, (ii) where family quarters are available, free transportation be provided to children for going to school in a neighboring town, (iii) no staff member, against his will, be allowed to stay for more than 2 years in an open prison without family accommodation, (iv) where family quarters are not provided in an open prison, house allowance at 10 per cent of basic pay be given, (v) casual leave up to 22 days in an year be made available to the staff working in open prisons which have no facilities for family quarters, (vi) actual railway fare for going to home town and back twice a year be paid to the staff working in open prisons where family quarters are not provided, (vii) special pay in consideration of peculiar hard conditions in an open prison at the rate of 25 per cent of the basic pay be given, and (viii) in agricultural and industrial prisons, bonus linked with profits and production in an open prison be given.<sup>45</sup>

Subsequently in 1983, the prison staff posted at open prisons, plausibly due to non-implementation of the Bureau's recommendations, approached the Justice Mulla Committee with the same complaints and has drawn its attention to the 'non-payment of compensatory allowance or special pay in view of the hard and

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<sup>44</sup> It is reported that during 2000 & 2001, 608 & 1062 jail officers and 2307 & 2439 staff members have completed training/reorientation courses respectively. See, *Prison Statistics : 2000* (142) and *Prison Statistics: 2001* (133). However, the Statistics reported in these official reports [as well as the information received by the author] do not reveal the number of prison officers/staff from open institutions that are trained.

<sup>45</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, p. 51.

special nature of duties in open institutions, the absence or utter inadequacy of housing facility and difficulties experienced due to the absence of transport facilities for school going children and for the staff for visiting neighboring towns for marketing and recreational purposes'. Referring to these complaints and realizing that 'contended staff is very essential for open institutions', the Committee stressed that 'working conditions of the staff posted in open institutions be commensurate with special and arduous nature of their duties'.<sup>46</sup> And it categorically recommended that: (i) all members of the staff should be provided with family accommodation at the camp site, (ii) transport facilities should be provided, to school-going children of the staff and also to the staff for visiting neighboring towns for marketing and recreational purposes, and (iii) the staff should be paid 20 percent of pay as special pay/allowance.<sup>47</sup>

However, most of the recent communications received by the present author from prison staff posted at different open prisons in India, except in Andhra Pradesh, Kerala and West Bengal, that emphatically repeat almost all of these 'hardships', indicate that the 'adequate incentives' and 'conditions' suggested by the Bureau and the plea for the 'improvement of working conditions in open institutions' of the Justice Mulla Committee are not taken sincerely by most of the Prison Administrators and State Governments even three and two decades after the Bureau's and the Committee's recommendations respectively. Andhra Pradesh and Kerala Prison Rules, it seems, influenced by recommendations of the Bureau and the Committee, provide for special pay and allowances to their prison staff deputed at open prisons. West Bengal, on the other hand, gives Compensatory Dearness Allowance (CDA) to its open prison staff. Kerala, in addition to special pay, also gives 'hill tract allowance' per month and 'warm clothing allowance' (Rs. 200) once in two years to its staff posted in open prisons.

### **5. The 'Success' of Open Institutions in India: An Assessment**

Not a single serious study of relative effectiveness of open institutions has been carried out in India. However, the then Central Bureau of Correctional Services, which in 1973 attempted 'to study' working of the thitherto established open prisons but was encountered with not only the half-hearted response of the States in supplying the information about open institutions functioning in their jurisdic-

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<sup>46</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, supra n. 8, para. 19.31, p. 235.

<sup>47</sup> *Ibid.*, para. 19.33.27, p. 237.

tions but also inadequacy of the supplied information exhibiting different facets of their operation, has endorsed:

[T]he general view is that 'the open prison programmes have proved successful as there was notable (*sic*) improvement in the health, work-habits and general conduct of the inmates. It is felt that the prisoners were generally able to adjust themselves to their surroundings. The success of open prisons can be judged from the incidence of escapes, recidivism among released prisoners and cost of operation.<sup>48</sup> From escapes, cost of operation of open prisons and recidivism among prisoners released from such prisons, it can safely be concluded that open prisons have been functioning very satisfactorily in India in spite of many handicaps such as the unscientific method of selection of prisoners, paucity of funds and trained personnel, etc.<sup>49</sup>

Subsequently, in 1983 the Justice Mulla Committee observed:

The system of open institutions has now been in operation for the last about three decades. During this period it has been clearly established that it is not only far cheaper to control and run open institutions than the closed prisons, but that the system of open institutions has also a definite rehabilitative value; it restores dignity of the individual and gives him self-reliance and self-confidence besides instilling in him a sense of social responsibility, which is necessary for an effective and useful community living.<sup>50</sup>

A careful glance at these observations reveals that the Bureau and the Justice Mulla Committee have applied different parameters for reaching to the same conclusion. The former, for assessing 'success' of open prisons in India, has placed its emphasis on the *incidence of escapes, recidivism and cost* (of operation of open prisons)' while the latter placed its reliance on the '*length and cost*'

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<sup>48</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, p. 39.

<sup>49</sup> *Ibid.*, at p. 42.

<sup>50</sup> Government of India, *Report of the All India Committee on Jail Reforms (1980-83)*, *supra* n. 8, para. 19.10, at p. 231.

of (in comparison with closed prisons) operation of the open institutions and the 'community living' restoring 'dignity' of, giving 'self-reliance and self-confidence' to, and instilling 'a sense of social responsibility' in, the inmates of open prisons. But a reading of the Bureau's *Open Prisons in India* and the Justice Mulla Committee Report, however, discloses that none of them (Bureau & Justice Mulla Committee) had either sufficient data in their armory nor did they scientifically processed the (inadequate) data available to them to endorse the 'success' of the open peno-correctional institutions in India. The Bureau, at least, had the (comparative) incidence of escapes from the closed and open prisons from the states that reported it the existence of open prison(s) in their jurisdiction that occurred, and the (average) operational cost of the open prisons (in comparison with the closed prisons) incurred, during 1965-1967, and the extent of recidivism (based on the fragmented information collected through District Magistrates) among the inmates released (during an unspecified period) from open prisons in Uttar Pradesh.<sup>51</sup> The Justice Mulla Committee did not have any data, primary or secondary, to rely upon while assessing the 'rehabilitative value' of open prisons.

'Escapes, recidivism, and costs', though undeniably help us in determining the open prisons' contribution in rehabilitating and re-socializing prisoners, cannot, in the present submission, be considered as 'the criteria' for ascertaining the 'success' of open prisons in India. Further, the reliance on, and the application of, these 'indices' of 'the success' of open prisons in India by the Bureau, need to be appreciated in the backdrop of some 'pragmatic factors' that associated with these 'indicators' of success.

Comparatively fewer escapes from open prisons, which are distinctly marked by the absence of gun guards, freedom to go for meals and to work unescorted, and contacts with the outside community & family, certainly indicate, as indicated by Kenyon Scudder, that inmates of open institutions, by rejecting the possibility of easy escape, have not only taken a 'great moral and social step' but also have admitted themselves that they wish to be 'social' rather than 'asocial' individuals. But, treating it as one of the criteria for ascertaining the 'success' of open prisons in India is not free from 'reservations'. It needs to remind oneself that: (i) almost all the States make 'escapees', 'escape risks' or 'prisoners having escaping tendencies' ineligible for transfer to open prisons, (ii) a careful & thorough 'screening', attitudinal as well as behavioral, of prisoners is done while deciding eligibility of prisoners for open institutions, (iii) 'escapees' and 'attempted

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<sup>51</sup> For data see, Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, pp. 39-42.

escapees', by virtue of rules governing of open prisons in vogue in almost all the states, are threatened to 'return' to 'closed prison', and (iv) such 'returnees' are not only stripped off the earned remission but also slapped with some 'additional punishment' for the 'prison offence'. Is it not like a school that enrolls only 'meritorious' students & 'rank holders' takes the 'sole credit' for the 'excellent result' of its students and thereby 'boasts' that it is one of the 'best school' in the country?

A lurking fear of 'consequences of' escape' and 'ambience' of an open institution, to some extent, also contribute to the 'fewer incidences of escapes' from open prisons. 'Running off would be foolish', says an inmate of Koramangala open prison in Karnataka, 'for what if I am caught? What if I am then tortured by the police? And how awful it would be to be locked up once again in the closed prison with an even longer sentence slapped on me'. 'Do we', another inmate from the same institution says, 'look like hardened criminals?' 'After all', he says, 'we are responsible to each other if not the jail itself: if I were to run away, the other would suffer and get a bad name unfairly'. 'The claustrophobic atmosphere of the closed prison' feels a third convict housed in the open institution, 'makes you want to escape, but the free and village-like ambience somehow takes away the urge to run away'.<sup>52</sup>

Similarly, the reliance of the Bureau on the 'post-release' behaviour of ex-inmates of open prison in Uttar Pradesh is not free from some major defects, substantive and procedural. Commenting on the (adequacy and source) of the 'data' pertaining to 'recidivism' and the way the Bureau 'used' and 'analyzed' it in assessing the 'success' of open prisons in India, Upendra Baxi, rightly observed:

The Bureau admits that the 'means adopted to collect --- information' on recidivism 'were crude'. Even so, it finds that 76 per cent of inmates of Uttar Pradesh open prisons did not become recidivists. They had 'settled down satisfactorily'. The Bureau finds this very 'reassuring' especially in view of the fact that in England 20 percent were reconvicted after release from open prisons'. The Bureau finds it interesting that 80 percent of the 7.8 per cent who were 'reported to be held up for crime again' were guilty only of 'petty thefts, possession of illicit arms' or were held for preventive reasons.

Uttar Pradesh is, all illusions notwithstanding, not India. Even if it were, the index of recidivism is drawn from measures admittedly too 'crude'.

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<sup>52</sup> See, *Indian Express*, Mumbai, October 25, 1987.

The respondents were district magistrates; there is no dynamic analysis of data as it is drawn at one (unspecified) point of time; and comparison with U.K. are unwarranted (as well as unspecified) as the situation as regards quality and quantity of open prisons, as well as systems of maintenance of statistics, is quite different. --- [A]ggregate data analysis usually misleads; it misleads even more when it is made in a binational context in a mechanical or random fashion.<sup>53</sup> --- Fewer escapes and statistically insignificant or modest recidivism may be appropriate indicators as aspects of such rehabilitation, but not in themselves.<sup>54</sup>

Finally, it is an open secret that open prisons, which, being low security-risk peno-custodial institutions, are operated basically on the premise of ‘trust’ deposed in the carefully ‘selected’ ‘well-behaved’ convicts, obviously require a minimal prison staff to ‘supervise’ their inmates. These institutions therefore obviously, compared to closed prisons, put lesser financial burden on the state exchequer. In fact, inmates of most of the open prisons, which are ultimately converted into centers of productive labour, are not only making the open prison system ‘self-supporting’ and meeting requirements of other closed prisons in the state but are also generating huge income for the state.<sup>55</sup>

It is also pertinent to remind ourselves that open peno-correctional institutions, as stressed earlier, also strive for ‘attitudinal and behavioral’ transformation amongst their inmates and also to develop in them ‘a sense of social responsibility’ and to reassure them their (lost) self-esteem’. ‘Measures’ employed in the open peno-correctional institutions in India to change the ‘attitudes’ and ‘behaviour’ of inmates of such open institutions and thereby ‘to effect’ their (inmates’) ‘social, moral and economic rehabilitation’ and to, as hinted by the Justice Mulla Committee, ‘enhance (their) self-esteem’ and ‘a sense of responsibility’ would also be relevant ‘indicators’ of the ‘success’ of open institutions. Howard Jones & Paul Cornes, who for the first time carried out a comprehensive empirical study of *open prisons* in the UK, also feel that ‘the degree of inmate solidarity,

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<sup>53</sup> Upendra Baxi, *Open Prisons, Closed Minds*, in Upendra Baxi, *the Crisis of the Indian Legal System supra*, n. 5 at p. 206.

<sup>54</sup> *Ibid.*, at p. 207.

<sup>55</sup> For example, the gross value of agricultural products of the Open Prison at Paithan in Maharashtra during 2000-01 was Rs. 31,35,496. See, Inspector General of Prisons, Maharashtra State, *Handbook of Prison Statistics (2000-2001)* (Pune, 2002), p. 47.

and the extent to which there is communication between the prison and society outside' are 'crucial determinants' of 'behaviour' in open prisons.<sup>56</sup> However, the Justice Mulla Committee did not delve deep into this aspect even though it on these 'indicators' endorsed the 'rehabilitative value' of open prisons in India.

Thus, to evaluate the 'success' of open peno-correctional institutions, we, in addition to the number of escapees (along with the attending circumstances & reasons) and the operational cost of, & the income generated by, open institutions, need to have a more articulated and up to date information about recidivism (preferably open prison/state-wise) and a more scientific analysis thereof. It also requires a systematic collection and analysis of 'information' pertaining to: (i) the intensity of personal relationships in an open prison between prisoners and among prisoners and the prison staff, (ii) the extent of 'autonomy' given to the prisoners, the 'environment' of an open prison in which the inmates are 'prepared' for re-induction in the social mainstream, and (iii) the outlook and perception of the prison staff, to measure and assess the 'success' of open peno-correctional institutions.<sup>57</sup>

Nevertheless, a closer look at the 'working' of some of the open institutions<sup>58</sup> operative in India and the social applause with which they are greeted during the last fifty-five years, not only reveal a noticeable 'success' of the open peno-correctional institutions but also their 'contribution' in 'correcting', 'rehabilitating' and 're-socializing' their inmates.

In this connection it is, by way of examples, of worth to note that the open institutions set up in Andhra Pradesh, Uttar Pradesh, Maharashtra and Rajasthan, the earliest experiments in India, have not only received high appreciation for their contribution in 'correcting' and 'rehabilitating' their inmates but also have been

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<sup>56</sup> See, Howard Jones & Paul Cornes, *Open Prisons* (Routledge & Kegan Paul, London, 1977), pp. 92-93.

<sup>57</sup> For related variables of these aspects see, *ibid.*, chapt. 4.

<sup>58</sup> For the hitherto published literature on working of a few open prisons in india, see K. I. Vibhute, Open Prison at Paithan - A Case Study, 8 *CULR* 367 (1984), Ishwar Chandra Vatsa, Open Peno Correctional Institutions in the State of Uttar Pradesh and Uttaranchal, in K. D. Gaur (ed.), *Criminal Law and Criminology*, *supra* n. 23, Nitai Roy Chowdhury, *Indian Prison Laws and Correction of Prisoners* (Deep & Deep, 2002), chap. 5, K.M.H. Rayappa, Prison Reforms with Reference to a Case Study on Open Air Prison, 16 *Lawyer* 14 (1984), Devendra Chandra, *Open Air Prisons - A Sociological Study* (Vohra, Allahabad, 1984), S. Sanyal, Sociop-psychological Study of Prisoners of Open Camps, U.P., (Mimio, 1986), S. Ghosh, *Open Prisons and the Inmates - A Socio-Psychological Study* (Mittal, New Delhi, 1992), Farzand Ahmed, Wind Beneath Their Wings, *supra* n. 22, and Penal Reform and Justice Association (PRAJA), *Open Prisons in India : How Open can Open Be* (Penal Reform International (PRI), 2002).

inspiring a number of other states to imitate them. The Maula Ali Camp in Andhra Pradesh, the Yeravada Open Prison at Pune in Maharashtra, and the Sampurnanand *Shivir* at Sitarganj in erstwhile Uttar Pradesh (now in Uttaranchal) represent a model of community based institutional treatment on a larger scale. While the Sri Sampurnanand *Khula Bandi Shivir* (open camp), at Sanganer in Rajasthan, where prisoners are allowed to live with their families in temporary huts constructed by them on Government land, indeed represents a 'community living in a family atmosphere'. Since last more than forty years, convicts and their family members, who work with free community, live here on their own. The prisoners carry on their independent business (such as selling building materials, transporting goods, running telephone booths) or work on daily wages for outside establishments and traders. Their children go to the local schools. For all practical purposes the prisoners themselves, through an elected Panchayat, manage the camp. Similar scenario also prevails at the Open Colony Open at Kanhergaon in Maharashtra. Open Air Prisons situated at Anantapur in Andhra Pradesh, at Nabha in Punjab, and at Nettukeltheri in Kerala also provide good examples of an effective use of prison manpower in turning barren lands into productive agricultural farms with definite welfare contents. While inmates of Open Prison at Paithan in Maharashtra, among other things, have turned a barren land into a beautiful public park.

Recently the Supreme Court of India in *Rama Murthy v. State of Karnataka*,<sup>59</sup> appreciating the rehabilitative role of open prisons in India, observed:

The whole thrust [of open prisons] is to see that after release the prisoners may not relapse into crimes, for which purpose they are given incentives to live normal life, as they are trained in the fields of agriculture, horticulture etc. Games, sports and other recreational facilities, which form part of the routine life at the open air camps, inculcate in the prisoners a sense of discipline and social responsibility. The prayers made regularly provide spiritual strength.<sup>60</sup>

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<sup>59</sup> AIR 1997 SC 1739.

<sup>60</sup> *Ibid.*, at 1749. (*obiter*).



## **6. Experience and Expectations of Open Institutions in India: A Few Concluding Remarks**

Recalling, in the backdrop of expectations of open peno-correctional institutions, the experiences gained from, and the contribution of, the open peno-correctional institutions set up in India during the last fifty-five years, one will, in spite of their some formal and operational weaknesses, have to appreciate the 'reformatory' and 'rehabilitative' role of open institutions. 'Community-like living', premised on 'self-discipline' and 'trust' of inmates of open institutions coupled with the institutional 'ambience' assuring them comparatively more 'free' movement and 'rapport' between themselves & with the free community living in vicinity of the open institution and offering them 'incentives' and 'rehabilitative' prison labour, indeed boosts their 're-orientation' and 're-assimilation' in the social mainstream.

However, the eligibility criteria in vogue, based primarily on good 'behaviour and conduct' of, 'sense of responsibility displayed' by, 'adjustability' of, and 'institutional impact' on, a convict, coupled with the exclusion of vast legal categories of crime and sentences for eligibility for entry in open prison, are keeping a large number of 'lifers' and 'long-term' prisoners 'away' from 'open prisons'. Application of these criteria, which not only involves a lot of subjective discretion of the deciding authorities but also ultimately leads to a 'thorough screening' of convicted prisoners for 'reformation' and 'rehabilitation' through open institutions, has resulted in 'underutilization' of these open institutions and thereby curtailing their 'rehabilitative role'. Such a scenario, in fact, doubts the institutional propriety and exigency for resocialisation and rehabilitation of the 'thoroughly screened' prisoners, who would have otherwise been reformed in closed prisons. If reintegration of more and more convicts is to be achieved through the system of open institutions, it becomes inevitable to liberalize the 'eligibility criteria' and to simultaneously reduce the 'ineligible' criteria to accommodate more convicts in open institutions for their 're-orientation' and 're-integration'. 'Suitability' of a convict and 'possibility' of his social re-adjustment, judged, as suggested by the First UN Congress and the Justice Mulla Committee, on 'socio-medico-psychological investigation' be given prime consideration while transferring a convict from closed to open prison. It is also desirable to have a proper classification of convicts at the time of admission and to seek assistance from criminologists, sociologists, psychologists, and correctional-oriented experts to evaluate the 'suitability' of these convicts for open institutions. Such a selection employing scientific and logical criteria and thereby dislodging the hitherto criteria based on the 'observance of prison rules' & 'detention for a stipulated period

in the closed prison', will not only maximize the entry of offenders in the open institutions but will also reduce over-crowding in closed prisons.

Most of the open institutions in India mainly provide agricultural and agro-related work to their inmates. While some other open prisons lend their inmates for employment to other departments. Keeping in view the agricultural background of majority of the inmates of open prisons, it seems that such a prison labour helps prisoners in their rehabilitation after their release. But two crucial questions, namely, does the present prison labour help in reformation rehabilitation of the inmates as majority of them were engaged in agricultural farming prior to their conviction and transfer to open institution and who would be returning after release to their old occupation?, and does the employment on dam, canal digging, carrying stones etc. have reformatory & rehabilitative value?, need serious consideration and deliberation. Further, employment on dam, canal digging etc. is against the well-established principle that prison labour should not increase unemployment and should not compete with honest labour. Again, in the opinion of the present writer, the deployment of prisoners as construction labours dilutes recommendation of the First UN Congress that the work should be a means of furthering the rehabilitation of the prisoner, his training for work and the forming of better work habits.<sup>61</sup> The present labour practice also overlooks an observation of the Bureau that an experience in open prison should help them (inmates) to change their attitudes and behaviour as to effect their social, moral and economic rehabilitation.<sup>62</sup> If the objective of rehabilitation is to be achieved meaningfully in the present circumstances, it is submitted that an open institution should make every possible effort to train its inmates in modern methods of agricultural farming and agro-industries. Periodic instructions and demonstrations by students and faculty of agricultural colleges would help inmates of open institutions to do better in their lands after their release. A special attention is required to be paid to vocational training.

Similarly, denial of adequate wages to inmates of an open prison in return of their hard labour, *inter alia*, on the ground that it has to maintain not only its inmates but also to render support to other prisons in the state, warrants a serious re-look and reconsideration. Such a practice, in the light of recent penological trends pregnant with 'reformatory' rather than 'retributive' idea and the fact that almost all open penal institutions are earning a lot of 'profit' from sale proceeds

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<sup>61</sup> Recommendation I, *supra*, n. 3 at p. 77.

<sup>62</sup> Central Bureau of Correctional Services, *Open Prisons in India*, *supra* n. 5, at p. 43.

of the agricultural yield produced by their inmates, seems to be uncivilized and inhuman. It is one of the established and accepted principles in modern penology that a prison 'ought to be' self-supporting on the condition that it does not sacrifice the broader ends of the prison sentence and the concerned authorities 'should under no circumstance insist' on profits.<sup>63</sup> The First UN Congress also resolved that 'the interests of the prisoners and of their vocational training must not be subordinated to the purpose of making a financial profit'.<sup>64</sup> However, recently the Supreme Court of India directed states to pay 'equitable wages' to prisoners. But the present author, in the absence of required information, is unaware of the response of States to the judicial dictum. Nevertheless, the question of equitable wages suggested by the apex court requires a careful consideration of inconsistent attitudes of the society, prisoners and prison reformers and different purposes and objects imprisonment before it is accepted. In no way the fact that the institution provides free shelter, food and clothes to its inmates be allowed to stall the payment of higher wages to prisoners. Why prisons, open and closed, which in modern penology are, like hospitals, meant for 'treatment' of offenders, not, like hospitals, be maintained by Government? It is rightly observed by Justice M. M. Ismail, that, 'so long as prisoners are expected to rejoin the mainstream of the society after their release, it is the duty of the State to spend for their rehabilitation'.<sup>65</sup> No open peno-correctional institution should, on any justification whatsoever, be allowed to earn profits from its inmates' labour.

The 'success' of open institution, like any other prison, depends on the caliber, dedication, commitment, and ability of its staff. The staff in charge of open institution, compared to that of a closed prison, obviously requires different mindset, aptitude, attitude, outlook and orientation to make the 'mission' of open institutions a reality. However, the Prison Administration of different States in India does either prescribe any special qualification for the staff to be recruited for the administration of open peno-correctional institutions or make any institutional efforts after their recruitment to inculcate and insulate the required qualities in the staff posted at most of the open penal institutions. The recommendation of the Bureau and the Justice Mulla Committee suggesting States to recruit 'separate staff for open institutions' and to, in the absence of such a separate staff,

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<sup>63</sup> Tannenbaum, *Crime and Community*, (Columbia, 1951), p. 381. Also see Government of Uttar Pradesh, *Report of the Uttar Pradesh Jail Industries Enquiry Committee*, (1956), p. 25.

<sup>64</sup> *Supra*, n. 3, at p. 77.

<sup>65</sup> Report of Justice M. M. Ismail Commission (1977), p. 194.

‘carefully select’ staff to be posted at open institutions and to give them ‘special training from time to time regarding the philosophy and management of open institution’ is not seriously taken by the states as yet. A few states have just given it a lip service. The prison staff in charge of open prisons, in most of the states, in fact is made to encounter with personal, familial and financial difficulties and inconveniences.

Despite numerous financial, administrative and organizational difficulties, nevertheless, the system of open peno-correctional institutions has been in operation since the last fifty-five years and it has come to stay. The open institution system, in spite of a set of formal as well as pragmatic weaknesses awaiting immediate attention and action of policy makers, has tremendous potentials for becoming a vital instrument of the treatment and rehabilitation of offenders. The present author, like the Supreme Court of India, is ‘hopeful’ that ‘these problems are not such which cannot be sorted out’ and ‘no managerial problem is insurmountable’ for the greater good of the society which consists in seeing that inmates of a jail come out not as a hardened criminal but as a reformed person.<sup>66</sup>

Nevertheless, in order to accelerate operational goals and tasks of the system of open peno-correctional institutions and thereby to derive maximum benefit from the system, it becomes imperative to collate all the requisite information from states that have set up open institutions pertaining to structural, operational and financial facets of open institutions and to undertake a systematic and scientific evaluative study of the system of open institutions to assess its ‘contribution’ in the reformation and resocialisation of convicts, identify its ‘pitfalls’ and to highlight its ‘success’. Such a study will certainly enable the policy makers not only to strengthen the system but also to ensure effective rehabilitation of its inmates. Meantime, however, sincere efforts be made to: (i) review and liberalize the existing eligibility criteria for transferring convicts to open institutions, (ii) review ‘utility’ and ‘therapeutic value’ of agricultural and agro-related work, along with other vocational activities, if any, provided in most of the open institutions in India, (iii) review the prevailing ununiform ‘wage structure’ and assess social and economic contours of the suggested ‘equitable wages’ to instill, in a better way, a sense of self-confidence, self-reliance and self-respect amongst the inmates of open institutions, (iv) review the rate of remission, parole and other facilities available to inmates of different open institutions and to suggest ways and means to make them more rational and uniform, (v) design, after evaluating

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<sup>66</sup> *Rama Murthy v. State of Karnataka*, *supra* n. 58 at 1749.

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contents & quality of the courses offered to open prison staff in different National and State Correctional Training Institutions, course modules for training and re-orienting prison staff, and (vi) prepare, in the light of, and referring to, the UN Rules for the Management of Open Penal & Correctional Institutions (1955), Bureau's *Open Prisons in India* (1973), the Model Prison Manual and Prison Manuals and Rules of different states in India, the Justice Mulla Committee Report (1983), a Draft Model Open Peno-correctional Institutions' Manual.