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# **PRIVATISATION OF PRISONS: AN EXAMINATION AND AN ANALYSIS TO UNDERSTAND IT'S APPLICABILITY IN INDIA**

AUHORED BY - K. SAI KARTHIKEYAN

## **ABSTRACT**

The start of the 21st century has given rise to new ideologies, with liberalization and globalization being prime examples. These concepts have led to the idea of privatization in many fields, including healthcare, education, and even military operations. One important development has been the increasing distinction between business and state intervention, with governments avoiding direct control over businesses for various reasons. One such area is crime management and law enforcement, which includes prisons as a vital component. Prisons are a significant expense for governments, draining valuable resources without generating any returns. This has sparked interest in the concept of private prisons.

The use of private prisons dates back to the 18th century in England and Wales. The United States followed suit and opened its first private prison in 1984. Since then, other countries such as Australia, New Zealand, and South Africa have also adopted this model. However, private prisons have faced criticism for prioritizing profit over rehabilitation and safety, resulting in allegations of human rights abuses and corruption. Consequently, some countries have started phasing out private prisons in recent years.

In the United States, the use of private prisons has been a divisive issue, with several states and the federal government either completely or partially phasing out their use due to concerns over safety, accountability, and cost-effectiveness. The COVID-19 pandemic has further highlighted issues with private prisons, with reports of inadequate healthcare and safety measures leading to outbreaks in several facilities. Despite this, the private prison industry continues to operate in several countries, with some arguing that it provides a cost-effective solution to the problem of prison overcrowding.

This work of research aims at the understanding of the concept and feasibility of private prisons in India given the large amounts of overcrowding possessed by the same.

# SYNOPSIS

## **Introduction:**

One important development has been the increasing distinction between business and state intervention, with governments avoiding direct control over businesses for various reasons. One such area is crime management and law enforcement, which includes prisons as a vital component. Prisons are a significant expense for governments, draining valuable resources without generating any returns. This work of research wishes to understand the emergence of the trend of private prisons

## **Literature review:**

There has been a thorough reference made to various studies related to the effectiveness of incarceration and the case studies of various countries has been done and the data of the respective countries' official records has been taken and has also been duly cited. There also have been various studies which have looked at the feasibility of private prisons but they have not looked at the application from an Indian requirement. Those which have referred to India, did not look at the situation with the view of the combatting the issues faced by Indian prisons but with the view limited to the lack of possibility of engaging a private manager to resolve the same due to the lack of faith on execution.

- Turgumbayev, Y and others, "Examining the Nexus between Involvement in Crime and Delinquency and Being Processed through the Criminal Justice System" [2021] Journal of Crime and Justice. Excerpt "The criminal justice system is designed to detect, apprehend, punish, and rehabilitate criminal offenders. Precisely how effective the criminal justice system is at achieving these goals is not entirely known. The current study sought to add to this gap in the knowledge base by examining the connection between self-reported crime and delinquency and the probability of being arrested, convicted, sentenced to probation, and incarcerated." The abovementioned work of research does focus only on the delinquency and criminal justice system internationally. The researcher has used this excerpt for the understanding of the components of a criminal justice system and in understanding the effects of incarceration.
- Harding DJ and others "A Natural Experiment Study of the Effects of Imprisonment on Violence in the Community". It was published in 2019 in the journal of "Nature Human Behaviour"

Excerpt: “This study’s objective was to examine the effect of imprisonment on violent crime in the community among individuals on the policy margin between prison and probation sentences. Drawing on data from a population-based cohort of individuals convicted of a felony in Michigan between 2003 and 2006 ( $n = 111,110$ ) and followed through June 2015, we compared the rates of commission of violent crime committed by individuals sentenced to prison with those of individuals sentenced to probation using a natural experiment based on the random assignment of judges to criminal cases. Being sentenced to prison had no significant effects on arrests or convictions for violent crimes after release from prison, but imprisonment modestly reduced the probability of violence if comparisons included the effects of incapacitation during imprisonment.” This work of research has been used for the understanding of the demographics and the utility of imprisonment on crime in which it was found that there was not much significant difference in the punishment induced. The work of research was inferred to by the researcher to understand the effectiveness of the form of punishment and has been used in the formulation of recommendations.

- Wermink H and others, “The Incapacitation Effect of First-Time Imprisonment: A Matched Samples Comparison” (2012) 29 Journal of Quantitative Criminology 579. Excerpt: “A growing literature has become attentive to the societal consequences of prevailing imprisonment policies, and cautions that the social costs of prison growth might outweigh the crime-control benefits. Two pieces of evidence support this contention. One prominent line of research observes that confinement worsens an individual's capacity to adopt a law-abiding lifestyle upon returning to the community (Hagan and Dinovitzer 1999; Uggen et al. 2006; Western 2006). Such "collateral consequences" of incarceration include labor market stigma (Pager 2003), slowed wage growth (Western 2002), and marital disruption (Apel et al. 2010), which have the potential to exacerbate long-term criminal offending (Nagin et al. 2009; Wermink et al. 2010). A second line of research observes that prison growth leads to the confinement of individuals who pose steadily lower risk to society, on the margin and all else equal (Donohue 2009; Donohue and Siegelman 1998). Consistent with the "law of diminishing returns," recent studies of prison expansion show substantial erosion in crime control over the last three decades as the scale of incarceration has grown (Johnson and Raphael 2009; Liedka et al. 2010). The inference is made for the understanding of the history of private prisons and the understanding that in recent times there has been more than enough income sources to private jails or there is a scope for the same for the jails. The inferences are also reflected in the recommendations which have been formulated

- Cabral S and Saussier S, “Organizing Prisons through Public-Private Partnerships: A Cross-Country Investigation” (2015) 10 BAR - Brazilian Administration Review 100. Excerpt: “Hence, in comparison to the two other cases, the Brazilian case suggests that private participation in this sector might lead to lower costs and superior quality performance indicators. In the Brazilian case, there are two possible situations that can increase the profit margins of the private operator: (a) a reduced number of inmates under its responsibility; and, (b) the implementation of optimization efforts. Naturally, the price-cap contract mode would potentially stimulate efforts towards cost reduction at the expense of quality (Hart et al., 1997).” The following excerpt has been used for the understanding of the shortcomings of the privatization of the prisons whereby this work of research does not elaborate on the tentative method to overcome the same, this work of research attempts on overcoming the same.
- The NCRB Annual report of 2019-20 and the Annual Prisons Statistics of 2021 published by the NCRB have been used to draw the inferences to the overcrowding of jails.

**Research Questions:**

- 1) Whether private prisons in India are feasible?
- 2) Whether there should be eligibility criteria if private prisons can be used in India?

**Objective:**

To understand the concept and issues posed by private prisons with the application in India with a thorough analysis of international cases

**Scope of the study:**

The scope of the study is limited to the concepts understood and the recommendations given regarding the application of private prisons in India

**Research Methodology:**

The research work undertaken has been doctrinal in nature. Various cases studies and data have been referred and duly cited.

**Citation:**

The OSCOLA form of citation has been used for the project.

**Hypothesis:**

There is a feasibility of private prisons to bridge the issues faced by the Indian jails for the collective benefit of undertrial prisoners and other parties who are involved and hold a stake in the system. There also have their fair share of the drawbacks which should be looked at with caution before application

**Chapterisation:**

**Chapter 1: Introduction:**

This chapter deals with the understanding of prisons and criminal justice system with a brief introduction of the concept of private prisons

**Chapter 2: International Cases:**

This chapter examines the application of the private prisons in the countries of Brazil, United States of America and the United Kingdom

**Chapter 3: Application In India:**

This chapter deals with the application of private prisons with the examining of the benefits as well as issues and an analysis of the same

**Conclusion:**

The recommendations have been analysed with the overall summary of the work of research

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## CHAPTER 1: INTRODUCTION

The criminal justice system is a vital aspect of any society, as it ensures that law and order are maintained, and justice is served. It is a combination of different agencies and processes that work together to protect individuals from harm, provide deterrence for criminal activities, and ensure that individuals who commit crimes are held accountable for their actions. The components of a criminal justice system can be broadly categorized into three main parts: law enforcement, the courts, and corrections.<sup>1</sup>

Law enforcement agencies are the first line of defense in the criminal justice system. They are responsible for detecting and preventing crime, as well as apprehending those who have committed crimes. Police officers, sheriffs, and other law enforcement officials are part of this component. They are responsible for investigating crimes, gathering evidence, making arrests, and ensuring public safety. Law enforcement agencies also work in partnership with other agencies to prevent and respond to emergencies, such as natural disasters or terrorist attacks.

There are several different types of law enforcement agencies, including local, state, and federal agencies. Each agency has its own jurisdiction, and they work together to maintain law and order in society. Law enforcement agencies also use different strategies and tactics to prevent crime, such as community policing, intelligence gathering, and crime mapping.<sup>2</sup>

The courts are responsible for interpreting the law and determining whether an individual is guilty or innocent of a crime. This is the second component of the criminal justice system. The court system is responsible for ensuring that due process is followed, and that the rights of the accused are protected. The judiciary is also responsible for sentencing and punishing those who are found guilty of crimes.

The court system or the judiciary is an essential part of the criminal justice system, as it ensures that individuals are held accountable for their actions. However, the court system can also be complex and time-consuming, with cases taking months or even years to resolve. The judiciary also faces challenges such as overcrowding, delays in processing cases, and lack of resources.

The third component of the criminal justice system is corrections. Corrections implement the sentences handed down by the courts. This includes prisons, jails, probation, and parole. The

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1 Turgumbayev, Y and others, “ Examining the Nexus between Involvement in Crime and Delinquency and Being Processed through the Criminal Justice System” [2021] Journal of Crime and Justice

2 [ibid]

objective of the correctional system is to rehabilitate offenders and prepare them for re-entry into society. This is achieved through educational and vocational programs, as well as mental health and substance abuse treatment programs. Corrections also supervise offenders who have been released back into the community to ensure public safety.

The correctional system is an essential component of the criminal justice system, as it aims to reduce recidivism rates and ensure that offenders do not re-offend. However, the correctional system also faces challenges such as lack of resources, overcrowding, and high costs. There is also ongoing debate about the effectiveness of the correctional system in achieving its objectives.

India has one of the largest prison populations worldwide, with an astonishing number of undertrial prisoners awaiting trial for prolonged periods. The situation is further compounded by the overcrowding in Indian prisons, which has reached alarming levels. According to the National Crime Records Bureau, as of December 2019, there were over 4.78 lakh prisoners in Indian jails, of which almost 68% were undertrial prisoners. This implies that over two-thirds of the prison population in India is awaiting trial and has not been convicted of any crime.<sup>3</sup>

The main reason for this alarming trend is the slow pace of the Indian judicial system. The backlog of cases in Indian courts has reached mammoth proportions, with over three crore pending cases as of December 2020.<sup>4</sup> Consequently, many undertrial prisoners are confined in jail for years, awaiting their cases to be heard. This delay is often due to a lack of resources, insufficient number of judges, and other administrative issues.

The issue of undertrial prisoners and overcrowding in Indian prisons is a matter of concern for the government and the judiciary. The overcrowding in Indian prisons exacerbates the problem of undertrial prisoners. The occupancy rate in Indian prisons is over 118%, with some jails being filled to 150-200% of their capacity.<sup>5</sup> Overcrowding not only violates the rights of prisoners but also creates unhygienic and inhumane conditions, making it challenging for authorities to provide adequate food, healthcare, and other essential facilities to inmates.

Moreover, the problem of undertrial prisoners is not limited to the violation of the rights of the

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3 “Crime in India – 2019”

<<https://ncrb.gov.in/sites/default/files/CII%202019%20SNAPSHOTS%20STATES.pdf>> accessed March 16, 2023

4 “Supreme Court of India” (Statistics | SUPREME COURT OF INDIA)

<<https://main.sci.gov.in/statistics>> accessed March 20, 2023

5 “MHA” <[https://www.mha.gov.in/sites/default/files/ISII\\_ComprehensiveGuidelines\\_17122019.pdf](https://www.mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines_17122019.pdf)> accessed March 20, 2023

prisoners alone. The prolonged detention of undertrials violates the fundamental principles of justice and the presumption of innocence until proven guilty. It also leads to the loss of productive years of the undertrial prisoners, affects their livelihoods and families, and creates a sense of injustice and disillusionment in society.

Various measures have been taken to address the issue, including the use of technology to expedite trials, the establishment of fast-track courts, and the release of undertrial prisoners on bail or personal bonds. However, more work is required to tackle the systemic issues that underlie the problem. The pace of the Indian judicial system and the shortage of resources require immediate attention. The government must also provide adequate funding and resources to the judiciary to address the issue of undertrial prisoners and overcrowding in Indian prisons.

This work of research shall focus only on the prisons aspect of the larger issue with the examination of the feasibility of privatisation of prisons for the Indian context. But what roles should a prison be able to play in the criminal justice system at an outline to set a baseline as for the requirements needed. Imprisonment is a common form of punishment used in every country across the world. It is often considered the most severe penalty that courts can impose. Since the Second World War, levels of imprisonment around the world have increased dramatically, though the rate of increase varies by region.

While proponents of imprisonment argue that the sanction of incarceration can be justified by incorporating many of the differing aims of punishment highlighted above, namely through its incapacitative and deterrent effect, as well as through its ability to change and rehabilitate, critics point out that the reality of incarceration often falls short of these goals. Many individuals who are imprisoned face poor living conditions, limited access to education and job training, and other barriers to successful re-entry into society. Moreover, the use of imprisonment as a punishment has come under scrutiny for its disproportionate impact on marginalized communities, including people of color and those with low incomes.<sup>6</sup>

Despite these criticisms, the purposes of a sentence of imprisonment or similar measures that restrict a person's liberty are primarily to protect society from crime and to reduce recidivism. However, achieving these objectives requires more than simply confining individuals to a cell. Instead, it demands a holistic approach that takes into account the individual's needs and

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<sup>6</sup> Harding DJ and others, "A Natural Experiment Study of the Effects of Imprisonment on Violence in the Community" (2019) 3 Nature Human Behaviour 671

circumstances, and that seeks to address the root causes of criminal behavior.

In this context, efforts to promote alternatives to imprisonment, such as community service, restorative justice, and diversion programs, have gained momentum in recent years. These approaches recognize that punishment alone is not enough to address the underlying issues that lead to crime, and that a more comprehensive response is needed to achieve long-term public safety.

While there is newer research which is guiding us in the direction that imprisonment over long terms has not yielded any huge tangible results for the society. One of the primary goals of incarceration is to reduce violence. However, despite a significant rise in the number of individuals being incarcerated since the 1970s, the impact of incarceration on future violent crime is not yet fully understood.

The study referred draws on data from a population-based cohort of individuals convicted of a felony in Michigan between 2003 and 2006 (n = 111,110) and followed through June 2015. By comparing the rates of violent crime committed by individuals sentenced to prison versus those sentenced to probation using a natural experiment based on the random assignment of judges to criminal cases, the study sought to determine the effect of incarceration on violent crime.<sup>7</sup>

The results demonstrated that being sentenced to prison did not have significant effects on arrests or convictions for violent crimes after release. However, the study found that imprisonment did modestly reduce the probability of violence if incapacitation during imprisonment was taken into account.

These findings suggest that, for individuals who are at the current policy margin between prison and probation, incarceration is not an effective long-term intervention for preventing violence, as it has, on balance, no rehabilitative or deterrent effects after release.

But this does not at the fundamental level devalue the need for prisons. But what if the said prison system in any country is not effective and efficient? Can the respite be found in the method using which most governments bring about profits to their loss making enterprises? Is privatisation the answer to the woes of the incapacity of the prison system for bringing about metamorphosis in recidivist behaviour? But how can or rather why should prisons be privatised? What net result would it yield in the first place for a mismatch of calculation can be proven to be disastrous for a

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7 [ibid]

society and this disaster would take a considerable amount of time to recover from as this will singlehandedly cause irreparable damage to the moral fabric and material safety of the individuals who live in a said state. To understand the affects, it should first be understood if such attempts have taken place prior and if they have, what result did they yield at the end of the day? Which countries are in use of this system?



## CHAPTER 2: INTERNATIONAL APPLICATION

As on the given date, countries such as New Zealand, USA, UK, Japan, Peru, Mexico and Brazil are in practice of this system. Richard Burgon, the spokesperson for the Labour Party in the United Kingdom, described the use of human incarceration for profit as immoral. Although criminal justice is generally regarded as a function of the state, private corporations have significant influence in the carceral system. The process of prison privatization is straightforward: companies make contracts with their respective governments to manage correctional facilities in return for payment from the state. They profit by charging more than the cost of running the facility but less than it would cost the government to run its own public facilities. The story of prison privatization in the United States dates back to before the end of slavery. One example of early prison privatization occurred in 1844, when Louisiana turned over the operations of its penitentiary to a private company that used the facility as a factory where prison laborers were forced to manufacture clothing. Today, prison labor is not the only way that businesses profit off the carceral system. They also make money by operating the prisons themselves.<sup>8</sup>

With the increasingly punitive sentencing policies passed during the 1980s as part of the War on Drugs in the United States of America, the incarcerated population grew, and so did the demand for prisons. By 2015, the incarcerated population had grown from 500,000 in 1980 to over two million. Rates of imprisonment continue to diverge along racial lines, with African Americans imprisoned at a rate over five times that of whites. In response to the rapidly expanding number of prisoners, the government turned to the private prison industry, which argued that it could house more people at a lower cost. Thus, in 1984, CoreCivic opened the first private prison in Tennessee, with sixty-six more private prisons opening in the following six years alone.

The story of modern prison privatization in the United Kingdom began in the 1980s, when the ruling Conservative Party saw privatization as a solution to rising incarceration rates, prison expenses, and the overall decline in the quality of public prisons. They believed that private prisons would be more cost-effective and provide higher-quality services.

Before constructing the first private prison in Britain, a parliamentary committee researched prisons in England, Wales, and the United States, compiling their findings in a 1987 report that endorsed prison privatization. Their recommendations came to fruition in the early 1990s, as

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<sup>8</sup> Wermink H and others, "The Incapacitation Effect of First-Time Imprisonment: A Matched Samples Comparison" (2012) 29 Journal of Quantitative Criminology 579

sentencing policies grew increasingly strict under Conservative Prime Minister John Major, who argued that "society needs to condemn a little more and understand a little less."<sup>9</sup>

In this era, the first private prison in the United Kingdom, known as Her Majesty's Prison Wolds, finally opened in May 1992. Following additional legislation, private companies were eventually allowed to sign contracts with the government that permitted them to construct and operate prisons in the United Kingdom. Prison privatization continued to expand even after the Labour Party came to power in 1997 under Prime Minister Tony Blair. During his campaign, Blair pledged to be "tough on crime and tough on the causes of crime." Being "tough on the causes of crime" meant implementing social programs that would prevent crime from occurring in the first place. Meanwhile, the "tough on crime" stance involved a more punitive approach, such as strengthening policing.

But what about the effectiveness of the said method of deterrence and reform? Well, the prisons in Brazil which have been privatised have. Different story to tell altogether. Brazil is a country with high crime rates, crime growth rates and crime per 100 people. It has so happened in Brazil that there have been massacres reported from the private prisons of Brazil also. The 2014 report published by the Prison Ministry is based on visits to eight privatized prisons in six different Brazilian states, managed by five different companies. According to the report, the privatization of prisons has not benefited public administration. The allocation of resources to privatized units reduces the amount transferred to publicly-run prisons. The study also suggests that the lack of alternative criminal policies has resulted in the privatization of prisons, which is less favorable for those in conflict with the law. The report further highlights the negative effects of privatization on the staff of privatized prisons, such as high turnover, low wages, and minimal qualifications required for work in prisoners' custody service. This leads to a lack of experienced staff, which can negatively impact the safety of both staff and prisoners.<sup>10</sup>

Moreover, the report considers the lack of transparency in the process of privatization of prisons, which can result in a lack of accountability for the companies managing the privatized prisons. Additionally, the report notes that the rigid discipline observed in all privatized units has led to restrictions on the rights of prisoners under the Law on Sentence Enforcement. The report suggests that this kind of discipline is not conducive to rehabilitation and can lead to increased recidivism

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9 [ibid]

10 Cabral S and Saussier S, "Organizing Prisons through Public-Private Partnerships: A Cross-Country Investigation" (2015) 10 BAR - Brazilian Administration Review 100

rates.

How is the American experience then? The prison-industrial complex (PIC) refers to the political and financial interests involved in the rapid expansion of the US inmate population, particularly in the context of private prison companies and businesses that supply goods and services to government prison agencies. According to this concept, not only the justice system benefits from incarceration, but also construction companies, surveillance and corrections technology vendors, companies that operate prison food services and medical facilities, corporations that contract cheap prison labor, correctional officers unions, private probation companies, lawyers, and the lobby groups that represent them.

Moreover, there are interest groups who prioritize financial gain over rehabilitating criminals in their interactions with the prison system. The issue of sexual assaults and violations of privacy in American private prisons is a growing concern, especially for female prisoners who are at a higher risk of experiencing sexual assaults or privacy violations by male prisoners. This is due to the lack of proper safety measures and inadequate training of staff in private prisons.<sup>11</sup>

Female prisoners are subjected to examinations and pat-down searches by male staff members, which can be a degrading and humiliating experience. These searches are often invasive and can leave female prisoners feeling violated. The absence of female staff members in female prisons further exacerbates the situation, violating the privacy of female prisoners and putting them at risk of physical and emotional harm.

The higher rate of sexual assaults and privacy violations is attributed to the lack of proper safety measures and training of staff in private prisons, which are often compromised due to the profit-driven nature of the business. As a result, corners are cut in terms of hiring qualified staff and implementing proper safety procedures.

So what is in for the application of India?

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11 Duwe G and Clark V, "The Effects of Private Prison Confinement on Offender Recidivism" (2013) 38 Criminal Justice Review 375

## CHAPTER 3: APPLICATION IN INDIA

To say that our prison systems which are run by the government are effective and efficient would be a long shot from reality as well as imagination as the prisons in India are imagined and are places of low sanitation, security and hygiene but high levels of corruptions and predators in prisons. The costs which the country spends on prisons stands at a meagre 2,106 Crore INR. This has facilitated the expenditure of the government billing down to about 106-108 INR per day on a prisoner which has become and is abysmal. The nutritional needs of prisoners are neglected to say the least, their housing conditions remain to be of that of cramped and even unhygienic in many places. The sanitation is not healthy by any means add women do not have access to quality sanitation needs for their menstruating periods. The Delhi Commission of Women in an outing to the Tihar jail had found the usage of open washrooms by the female inmates. There is also no dearth of corruption in Indian prisons for those privileged and with political and muscle power. There are multiple instances such as the whitewashing of the privileges given to Vivekananda Krishnaveni Sashikala popularly known as VK Sashikala by D. Roopa IPS<sup>12</sup> who served as the Deputy Inspector General of Prisons in Karnataka where VK Sashikala was incarcerated and another example could also be the Satyendra Jain, a politician who was found to have been enjoying the services of a masseur in the jail where he was housed. Also not to mention the high levels of over occupancy of Indian prisons and slow the high amounts of undertrial prisoners.

In many cases, the incomes sanctioned to the prisons are mostly spent on the inmates alone, leaving very little to no money for the betterment of jails. While “Prisons” fall under the category of State. Subjects, it is not clear as to if the state can privatise prisons or not as it is not a PSU or a public sector undertaking in any manner per se to say. But the state governments regularly engage in the issuance of tenders for the services of certain components like the supply chains to the state prisons. The work of research shall not look into the process of implementation of the decision but shall look into the feasibility and the examination of the idea. There is nowhere a mention in the Prisons Act regarding the status of the profit making ability of the state but given the provisions of labour engagement, and the fact that the prisons have generated a revenue of 200 Crore INR in 2019 give enough grounds for its transfer by the Home Ministry as a

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<sup>12</sup> Julie Mariappan / TNN / Updated: Jan 22 2019, “Preferential Treatment for Sasikala: 'I Feel Vindicated Now,' Says Whistleblower D Roopa: Chennai News - Times of India” (The Times of India) <<https://timesofindia.indiatimes.com/city/chennai/preferential-treatment-for-sasikala-i-feel-vindicated-now-says-whistleblower-d-roopa/articleshow/67632340.cms>> accessed March 20, 2023

Government company for its incorporation into the Company Act making it feasible for the conversion of the same. While the legal process of conversion in to a company might be a dynamic which should be managed by the Ministry of corporate affairs, there are also other key issues which have to be engaged with.

There is also a huge scope of the income creation form the usage of inmates other than hard labour. We are presented with the fact that incarceration per say does not decrease the crime rates and other deviant behaviours seen. NCRB data brings about the proof that about 70% of all prisoners are illiterate or semi literate giving them a higher chance of thriving in poverty than in financial welfare.<sup>13</sup> There also has been a correlation drawn. While there exists enough criminological literature to prove in theory that crimes are not related to poverty than the situation in which an individual is present in, The study of the Pankhurst prisons add on to the same.<sup>14</sup> A research published in 2005 is of the opinion that the urban and poor classes of populations have higher chances of encountering crime.<sup>15</sup>

It is also important to look at jails as reformative structures also. If privatisation is to be brought in Indian jails, the manager now also has access to individual who potential has been untapped per say from a professional standpoint. Instead of harnessing the physical labour alone and also making them work in low income generating vocations and training them for the same, the private operator can as well train them according to the needs of the corporation representing there by enforcing a caveat that an amount of tangible performance might lead to the employment in the company making the individual a member of the formal economy. This move has the potential to not only generate profits are relatively lower expenditures from a salary standpoint but for the prisoner also this brings an opportunity to work and merge in the formal sector of employment thereby bringing about certain level of financial security. This will have a multi level effect from economy to the crime control and harnessing of Human Resources, this shall be influential. This fulfils the purpose of crime prevention and also the rehabilitation to the extent of social and financial security thereby they in itself acting as a deterrent as the exhibition of recidivist behaviour shall lead to the loss of employment and thereby the security as well.

But no scheme can be this perfect and cannot be implemented yet across the world. Privately owned prisons, such as New York's Auburn and Sing Prisons, have a troubling history of

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13 [ibid]

14 Janes D, 'Introduction: Victorian Reformation' [2009] Victorian Reformation 3

15 Azfar, O., & Gurgur, T. (2005). Government Effectiveness, Crime Rates and Crime Reporting. Experimental & Empirical Studies eJournal.

mistreatment and abuse of prisoners dating back to the 1800s. Consequently, many prisons were closed due to overcrowding, malnourishment, and frequent whippings. Unfortunately, these problems still exist today. Although there may not be frequent whippings, private prisons continue to provide limited services and lack proper security and inmate monitoring.

For-profit prisons, such as the GEO Group and Corrections Corporations of America (CCA), have shown patterns of abuse, especially against juveniles and the mentally ill. The GEO Group, one of the biggest for-profit prison operators in the world, has been accused of providing abysmal care to prisoners with serious medical and mental health needs. Corporate officials with conflicting motives run these prisons and sacrifice quality of care in their organizations in order to make a profit.

Problems arising in private prisons are due in part to lack of government oversight and limited accountability. For-profit prisons hope to generate the greatest possible profit and do so by any means necessary. Lack of transparency and governmental regulation encourages corruption in organizations and allows companies to cut corners in order to boost revenue. Reduced security and inmate monitoring has led to increased violence in private prisons. In one example in Mississippi, a group of inmates rioted while taking hostages and killing a correctional officer. It is important to recognize that private prisons are not the only solution to the government's inefficiency and inability to operate state prisons. In fact, evidence has shown that private prisons are not even producing cost-savings. Cost savings from privatizing prisons are not guaranteed and appear minimal. So why should we leave inmates at the mercy of corporate officials who seek huge profits?

Drawing back to the Indian scenario, there is also a high saturation of the undertrial prisoners followed by high pendency in the judiciary. This can be combatted with the introduction of private prisons. It would be profitable for the company to have a higher discharge of prisoners to their central work force provided they have the facility to do so. But how can this be useful in the decrease of undertrial prisoners? The said management or operator can also engage with lawyers on an employment or contract basis with the purpose of follow ups and conclusion/disposal of cases an optimal Time rate thereby also resulting in the access of legal advice and services. For the manager, the lower the overcrowding, the better the management. A fundamental hurdle which lies with the majority of the undertrial prisoners is the lack of quality legal aid and attention to their needs and this propels them into perpetuity with their cases and this arrangement of the private manager shall not only be beneficial for the business of his but also shall be beneficial to

the people who are not fortunate enough for timely legal attention to receive help.

There is also an issue of lack of adequate healthcare accessibility and the facilities of health equipment with request to the prisoners in prisons for women and other inmates also. Though there are government hospital with their separate partitions for the prisons, it is not adequate. The overcrowding and lack of management can be overcome with the expansion of the jail from a physical building perspective for a price which can be half borne by the state. But why should the corporate spend on the other half? It has an income derived from the jail and therein falls a responsibility of theirs to keep the premises clean and safe.

But what about the constitutional validity of the same? In the case of Israel, there is a judicial ruling against the implementation of the private prisons which was delivered in 2007. Why was it opposed? It was felt that it was the state's responsibility and that no other authority had the power to mete out violence against the citizens and this should also be kept in mind during the formulation of policy. The same jurisprudence is also applicable to India.

Keeping this in mind, it is important to understand to whom can the power to administrate the prisons be opened to? Keeping in mind the judicial ruling and the recommendations of profit making ability, the researcher is of the opinion that the facility to bid for the operation should be extended without prejudice to any operator with the rule that they also have a separate company or a wing for prison administration with lawyers, ex military servicemen or retired police personnel for the internal maintenance and a retired officer not under the rank of Lieutenant Colonel or equivalent in the tri services should be heading a prison fulfilling the roles similar to that of the jailer. There should be transparency of the happening of affairs in the jails to the government. The violation of the deal or the finding of lapses should result in the dissolution of the management of the private partner with the return of the funds of the government so used for their benefits.

## **CONCLUSION**

This work of research discusses the feasibility of prison privatization in the Indian context, examining the effectiveness and efficiency of government-run prisons and the potential benefits and drawbacks of privatization. The current state of Indian prisons is characterized by overcrowding, poor sanitation and hygiene, limited access to education and healthcare, and high levels of corruption. The lack of resources and funding allocated to prisons in India have resulted in a substandard system that fails to meet the needs of its inmates or society at large. Privatization

is seen as a potential solution to the issues plaguing the Indian prison system. Countries like the United States, the United Kingdom, Japan, New Zealand, Peru, Brazil, and Mexico have implemented prison privatization, with varying degrees of success. Proponents argue that privatization can lead to cost savings, improved conditions for inmates, and better access to rehabilitation programs. They also argue that private companies are more efficient and effective at managing prisons and that competition can lead to better outcomes. However, critics argue that privatization can lead to a lack of accountability and oversight, reduced quality of care, and increased violence and abuse. For-profit prisons have been accused of prioritizing profits over the well-being of inmates, and examples of mistreatment and abuse have been reported in privately owned prisons worldwide. Additionally, the potential for conflicts of interest arising from private companies managing prisons is a concern.

Despite these concerns, prison privatization may hold potential for India, as it has the potential to generate income, reduce the number of undertrial prisoners, improve access to healthcare, and provide employment opportunities for inmates. However, the process of implementation must be carefully considered, and the potential risks and benefits must be weighed before any decision is made.

While it has to be made clear that the Prisons Act as on May 30<sup>th</sup> 2023 does not have any provision for the privatisation of the prisons in India, it still does not rule out the applicability of the move for the benefit of the Indian populous.

The government must ensure that proper regulations and oversight are in place, and that the rights and well-being of inmates are protected. In conclusion, the issue of prison privatization is a complex one, with both potential benefits and drawbacks. While it may hold potential for India in addressing the issues with its current prison system, it is important to consider the risks and limitations of privatization. Ultimately, the goal of any prison system should be to promote public safety, reduce recidivism, and provide humane and rehabilitative care for its inmates. The policy or doctrine of *laissez faire* cannot be applied from a blunt perspective as it can then also have a disastrous result on the prisoners who can be subjected to abuse and unreasonable contract also.

The powers and the terms and conditions of management should be very strictly and closely be laid down without the scope of any arbitrary terms

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