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Liberalization and Privatization of Prisons in India

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ABSTRACT

According to List-II of the Indian Constitution's seventh schedule, prison is a state subject. The state government is solely responsible for the management and administration of prisons. India's prison system is still governed by the outdated Prisons Act of 1894 and the Indian Penal Code. The Prisoners Act of 1900 establishes the use of corporal punishment for inmates who violate the law. However, following that, the Pakwasa Committee added certain permissive rules to the Jail Manual after independence. Inmates who were well-behaved were rewarded with a reduction in their sentence in 1949.

A society cannot be considered civilized unless the convicts are treated with pity or affection, and the jail system is liberalized. Only if basic human rights are maintained can a prison atmosphere, convicts' living conditions, health care and medical facilities, educational and vocational training, and so on be considered civilized. Only when the process of probation and parole, open-prison selection, jail visitation, communication with family and relatives, leave and pre-mature release, incentive for prison labour, legal aid in prison, and after-care are made easier can the prison system be liberalized.

The criminal justice system in our country is not complete without prisons. A prison, also known as a correctional facility, is a place where the accused or convicted individual is forced to be confined, and the state takes away a range of rights that are promised to them as citizens. In ancient and mediaeval India, there were prisons. The contemporary jails that exist today are a result of the British colonial government's legacy. Previously, the jails were infamous for their harsh conditions, cruelty, and inmate torture. When the country gained independence from the British and created its own Constitution, it placed a strong focus on liberty, equality, and fraternity, which were to be realized through fundamental rights and State Policy Directive Principles.

The purpose of this article is to explore the benefits and drawbacks of private jail, compare the existing prison system to private prison systems, and assess the feasibility of private prison in India. It also discusses Indian prison legislation as well as our current prison system.

Keywords: *prisons, private prisons, inmates, administration and management of prisons,*

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prison laws, current criminal justice system.

I. INTRODUCTION

Liberalization and privatisation are revolutionary ideas that are sweeping the globe right now. India is no different. These ideas have been recognised and used in India since 1991. The New Economic Policy is a foregone conclusion that is nearly irreversible. Even when the United Front Government, which was backed by Communist parties, came to power in the Centre, it pursued liberalisation and privatisation programmes.³

Privatization is a nebulous term. It encompasses a wide range of concepts, policies, and programmes. Privatization, in its broadest definition, is a retreat of the state from citizens' lives and activities in favour of a stronger role for markets. Privatization is defined as the transfer of ownership from the public to the private sector, or the transfer of control over assets or activities from the public to the private sector, as in the case of privatisation through leasing, where ownership is retained but asset and activity management is left to private parties. It should be underlined that privatisation alters the function of the state rather than reducing it. Monitoring and regulating the privatised system is a challenging and time-consuming task. The state also bears the burden of ensuring that meaningful competition prevails in the privatised sector of the economy, and that the most vulnerable members of society are not harmed excessively.⁴

The concept of privatisation is a revolutionary one that has had a global impact. Almost every country in the world has applied this concept to better their country in some way. Only by 1991 had India been receptive to this concept. The Indian subcontinent was given permission by the 1991 budget to embrace privatisation as an effective instrument for raising the country's global status. The concept of privatisation refers to the transfer of authority from the state to private individuals via auction and lease. The mere handling and management of assets is handled by private firms, but the government retains ownership of the asset. However, the concept of privatisation of our country's prisons was never in the cards.

Prisons are an essential and important part of any country's criminal justice system. A prison, also known as a correctional facility, jail, gaol, penitentiary, detention centre, or remand centre, is a facility where inmates are forcibly imprisoned and denied a variety of liberties by the government. Since the beginning of organised society, there have been prisons. Historians

³ Sirohi, J.P.S. (2004). "Criminology & Penology", 6th Edn. ALA Publication, Faridabad (Haryana), p.173

⁴ Immanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World Economy in the sixteenth century* (New York: Academic Press, 1974) As cited in R.J. Holton, *Globalization and the National-State* (London: Macmillan Press, 1998) P. 11.

claim that the Romans were among the first to utilise jails for punishment rather than just confinement.

People charged with crimes may be imprisoned until they are brought to trial, and those pleading or being found guilty of crimes at trial may be sentenced to a period of imprisonment. The usage of prisons dates back to the emergence of the state as a social institution. The emergence of written language coincided with the establishment of the state, allowing for the construction of structured legal codes as official instructions for society.

II. THE PRIVATIZATION PROPOSAL OF JEREMY BENTHAM

The importance of Jeremy Bentham's privatisation concept is highlighted in this setting. Jeremy Bentham was the first to advocate for contracting for corrections. He felt that punishment should be kept to a minimum. Excessive violence directed at inmates would not only be useless, but it would also be unscientific in the correction process. It would be akin to a legal authority committing a counter-crime. Bentham, like his forefather Beccaria, believed that man had failed to appreciate the harmony of moral bodies.⁵

III. PRISONS AND PRISON LAWS IN INDIA

Prison is a state subject under List-II of the Seventh Schedule in the constitution. The management and administration of Prisons fall exclusively in the domain of the State Government, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and power to change the current prison laws, rules and regulations. Important statutes which have a bearing on the regulation and management of prisons in the country are: (i) The Indian Penal Code, 1860. (ii) The Prisons Act, 1894. (iii) The Prisoners Act, 1900. (iv) The Identification of Prisoners Act, 1920. (v) Constitution of India, 1950. (vi) The Transfer of Prisoners Act, 1950. (vii) The Representation of People Act, 1955. (viii) The Prisoners (Attendance in Courts) Act, 1955. (ix) The Probation of Offenders Act, 1958. (x) The Code of Criminal Procedure, 1973. (xi) The Mental Health Act, 1987. (xii) The Juvenile Justice (Care & Protection) Act, 2000. (xiii) The Human Rights Protection Act, 1993.⁶

IV. OUR CURRENT CRIMINAL JUSTICE SYSTEM

The British colonial authority is responsible for the current prison system. Various committees have been formed to overhaul our system, but these laws and studies have not resulted in an

⁵ Refer Bentham, "An Introduction to the Principles of Morals and Legislation, (1970).

⁶ Reference Note No. 23/RN/Ref/July/2017, Lok Sabha Secretariat, New Delhi.

efficient system. The court in the case of *Shri Rama Murthy v. State of Karnataka*⁷ recognised nine flaws in our system:

1. overcrowding
2. delay in trial;
3. torture and ill treatment;
4. neglect of health and hygiene;
5. insubstantial food and inadequate clothing;
6. prison vices;
7. deficiency in communication;
8. streamlining of jail visits; and
9. management of open air prisons.

The Supreme Court in *Sunil Batra v. Delhi Administration*⁸ identified the gross violation of prisoners' human rights in jails and established three basic ground rules: a person does not cease to be a human when placed behind bars, he is entitled to all human rights within the confines of imprisonment, and there is no justification for exacerbating the suffering already present in the process of incarceration.

Liberalization of prison conditions: Overcrowding is one of India's most serious challenges. Overcrowding has the consequence of preventing segregation between convicts who have been sentenced for serious and minor offences. As a result, hard criminals may be able to transmit their influence to other criminals.⁹

In its 78th Report, the Law Commission provided some recommendations for reducing jail overcrowding. Liberalization of bail conditions, particularly the release of certain types of undertrials on bond, is one of these recommendations. Other options for lowering jail overpopulation include the widespread use of fines as an alternative to imprisonment, civil commitment, and probation.

At the end of 2015, there were 4, 19,623 inmates in various jails across India. Overcrowding can also be minimised by releasing a prisoner on parole after serving a portion of his term. It refers to a person's conditional release from prison. As of December 31, 2015, there were 1, 35,634 (48.1%) under trail inmates in the age category of 18-30 years, 1, 15, 181 (40.8%) in

⁷ (1997) 2 SCC 642

⁸ (1978) 4 SCC 494

⁹ Paranjape, N. V., (2005). "Criminology Penology", 14th End. CLP, P.398.

the age group of 30-50 years, and 31, 229 (11.1%) in the age group of 50 years or more. The Supreme Court considered the issue of people who were imprisoned while awaiting trial, sometimes for many years, and who were denied bail due to their inability to afford it or their ignorance that such an option existed at all in the seven cases involving Hussainara Khatoon V. Home Secretary, State of Bihar.¹⁰ The court began by stating that a bail system was "Highly Unsatisfactory" if it presumed that the primary deterrent against escaping from justice was the threat of financial loss, and that this system resulted in disproportionate incarceration of the poor. These cases are especially noteworthy because the Supreme Court upheld Article 39A of the Constitution, which requires the state to offer legal assistance to qualified individuals.

Although the Juvenile Justice (Care and Protection) Act, 2000 (as amended in 2006) was a positive step in the right direction by the Indian legislature in protecting the rights of juveniles in police or investigation authority custody, the Act's attributes have failed to provide complete protection to juvenile offenders. Juvenile offenders are those who have been convicted of crimes while under the age of 18¹¹. The majority of Indian states have implemented specific legislation to liberalise the statutes in order to ensure that the institutions where juveniles are detained are reformatory and educational.

V. ADDITIONAL ADVANTAGES OF PRIVATE PRISONS

1. For-profit jails provide opportunities for employment.

The privatisation of prisons generates job prospects for a community on a variety of levels. In the penitentiary, there are direct employment opportunities. To support that population, service industry employment are required. Consumable products must be brought in by transportation professionals. The private prison economy in the United States has an annual economic impact of approximately \$80 billion.

2. It has the potential to minimise the number of people incarcerated.

The number of prisoners kept in publicly operated federal and state prisons is rapidly outnumbering the beds and population levels the facility was designed to hold. Many prisons are at or near maximum capacity. In California, some prisons are overcrowded to the point of overcrowding. It can be difficult to control the environment when this is combined with low staffing numbers. Per-facility population numbers can be reduced by opening for-profit prisons, allowing convicts to have a higher quality of life.

¹⁰ AIR 1979 SC 1360.

¹¹ Colin Gonsalves, Vijay Hiremath, & Rebecca Gonsalvez, (2008). (Compiled & Edited) "Prisoner's Rights, Human Rights Law Network" Vol.II P.326

3. For-profit prison inmates are more likely to reoffend.

In some areas, the rate of offenders reoffending and returning to prison might be as high as 80%. A 50% success rate is regarded excellent in the industry. Re-offending rates in private prisons, on the other hand, might be as low as 20%. Although for-profit jail inmates may serve longer terms, they may spend less time in prison overall since they have more resources both inside and outside the institution.

4. Private prisons can be used for a variety of purposes other than housing inmates.

Immigration detention is one of the most popular uses for for-profit detention facilities. These facilities can be used or modified to meet a variety of community needs. Some of them have been converted into museums. They were repurposed into administrative offices. A disused 525-bed prison facility in Portland, Oregon, has been used to film television series and movies while also serving as a base for the local anti-prison movement.

5. It's a system with a track record of delivering outcomes.

Although the privatisation of prisons appears to be a recent topic of discussion, it is a long-standing practise. Since the first operational contracts were issued in 1984 in the United States, everything from food production to inmate transportation has been outsourced out to third companies.

VI. ADDITIONAL DISADVANTAGES OF PRIVATE PRISONS

1. Private prisons have the option of picking and choosing which inmates they accept.

Because they are required to accept all offenders, including those with severe security risks, public prisons are frequently more expensive. For-profit inmates have the option of selecting prisoners who will maximise their revenues. When a low-risk prisoner becomes a high-risk prisoner while under the supervision of a private prison, most corporations have a clause in their contracts that allows them to "replace" the prisoner. That is how they may operate at a lower cost than public prisons.

2. They have no obligation to the community where the prison is located.

Contracts are used in for-profit prisons. The majority of communities, not the private prison, are in charge of the physical facilities in use. That means the for-profit business may not be liable for any necessary repairs or modifications. It also means that if the prison isn't profitable enough, the inmates may elect to leave. If this occurs, a community will be left with a useless facility, no jobs, and an abundance of unpaid bills.

3. Employees in private prisons are more likely to engage in aggressive behaviour.

In comparison to public prisons, private prisons have 50 percent higher inmate violence directed towards personnel. Other convicts are subjected to even higher levels of violence. Many privatised prisons have staffing waivers, allowing them to operate with lower personnel levels than public prisons. Some prisons have a ratio of one officer to every 120 inmates. As another approach to conserve money, they frequently rely on inmates to self-govern and minimise violence levels on their own.

4. It generates a one-of-a-kind lobbying effort.

Because for-profit enterprises rely on convicts to make money, they pressure legislators to modify the way laws are enforced. They request that regular sentence parameters be extended. Some may even try to persuade local law police and prosecutors to charge people with higher-level offences in the hopes of receiving a longer sentence that may be served in their current prison.

5. Employees at private prisons earn less money.

The average correctional officer in a public prison in the United States earns around \$36 per hour. In many cases, they are still eligible for overtime at that rate and are recognised as public servants. As a result, they are frequently eligible for pensions, good leave benefits, adequate healthcare, and other government-sponsored perks. Employees in private prisons earn an average of \$14 per hour and may not be eligible for any other benefits. It could also be salaried to avoid paying overtime.

VII. CONCLUSION

A prison should also be a place of learning and earning, according to the reformative goal. To provide prisoners with adequate physical, material, and mental living circumstances, a jail must recreate a miniature world within its walls, which is challenging, if not impossible. As they recognise that more tools for integration of deviants are accessible in open society rather than behind closed walls, European governments are increasingly looking for alternatives to incarceration. This has not happened in India so far, because governments across the ideological spectrum are illiberal, and society is unsupportive of incarcerated people's rights. As a result of this, prison administration gives it the lowest priority.¹²

Contracting out the management and running of prisons and jails appears to be a viable option. The government simply delegated some of its executive or administrative functions by

¹² Karnam M, (2008). "Commonwealth Human Rights Initiative".

contracting. It does not cede its ultimate responsibility or relinquish its authority. Regardless of whether they are administered by government workers or by a private agency, prisons would be subject to government control and regulation, as well as the rule of law.

The government would not lose control over prisons and jails in India if private contractors and agencies were given contracts to run and manage them, because the rules and regulations and Acts would be framed by the government, and the government's and its officials' supervisory powers would remain in place. According to the findings of this study, based on the experiences of nations such as the United States and the United Kingdom in this area, and after careful analysis of all the disadvantages associated with private prisons, India may adopt privatisation of prisons on an experimental basis.

It also is fruitful of Bentham's process of privatization. Privatization of some of duties like catering; health care and medical services; campus placement to the prisoners (just before release from prison) by private companies; provide training (skill development and capacity building) to the prisoners through the public private participation model and escorting of prisoners may be considered to reduce the burden on prison administration as well as the overcrowding the prisons which is followed in other countries.
