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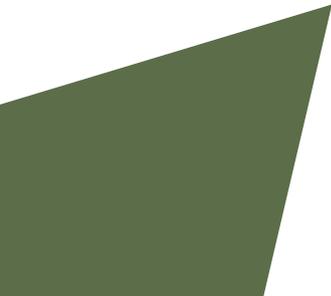
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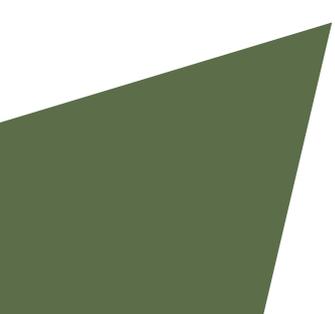
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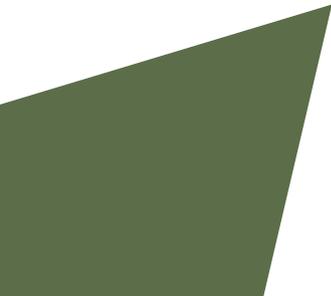
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**Feasibility of Prison Privatization in India**

**H Arun Jaganathan**

## **ABSTRACT**

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Prisons are an integral part of our country's criminal justice system. A prison is also known as a correctional facility in which the accused or the convicted person is forced to be confined due to which a variety of rights which are guaranteed to them as a citizen are taken away by authority vested in the state.

Prisons existed in ancient and medieval India. The modern prisons which exist now are a part of legacy of the British colonial government. Earlier, the prisons were known for its inhumane condition, cruelty and torture of inmates. When the country achieved its independence from the British and adopted its own Constitution, it laid emphasis on liberty, equality and fraternity which would be attained through fundamental rights and Directive Principles of State Policies. By which prisons are subject matter of item 4 of the State List under Seventh Schedule of the Indian Constitution. Hence, the administration and management of prisons falls exclusively under the state government. The Prisons Act, 1894 and The Prisoners Act, 1900 are certain legislations which deal with prison system and prisoners in India.

The concept of prison privatization started way back in the 16th Century, a trend which was started in the United Kingdom. The idea got rejuvenated in the United States during the 1980s. many countries experimented with this model. But, India never considered the private prisons as an option. The merits and demerits of this model were never compared to the existing model. In this paper, an attempt has been made to discuss the advantages and disadvantages of private prison, compare the existing prison system with the private prison systems and feasibility of private prison in India. Additionally it also covers the aspect of how public – private partnership in the prison system could improve the current system.

Keywords: prisons, private prisons, inmates, administration and management of prisons, feasibility, public – private partnership.

## **INTRODUCTION**

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"The degree of civilization in a society can be judged by entering its prisons."

- Dostoevsky

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

- Nelson Mandela

Michelman stated that privatization makes government an “empty shell” However, as Elaine Genders and others have noted, in the prison context, privatization does not automatically negate the idea of core governmental functions since it does not automatically remove the state altogether from the process. Setting up contractual terms, standards, monitoring procedures, accountability, and conditions for rescission may all remain with the state<sup>1</sup>.

The idea of privatisation is a revolutionary concept which had its impacts on global level. Almost every country in the world has used this idea to improve their nation in every way. India was open to this idea only by the year of 1991. The 1991 budget paved way to the Indian sub-continent to use privatisation as an efficient tool to increase the status of the country on the global level. The concept of privatisation is where the power bestowed upon the state is transferred to private members through auction and leasing. The mere handling and management of assets is taken care by the private entities and still the ownership over the said asset is vested upon the government. But the idea of privatisation of prisons of our nation was never in the cards.

The prison system of India is subject matter of item 4 of the State List under Seventh Schedule of the Indian Constitution<sup>2</sup>. Hence, the administration and management of prisons falls exclusively under the state government. The administration and management of prison is governed by legislation such as The Prisons Act 1894, The Prisoners Act, 1990 and the prisons manuals of the respective State government. The Indian government has taken many steps to humanize the prison set up in India. In 1957, the All India Jail Manual Committee was set up the Government of India to analyse and provide suggestion to the Government to improvement of the prison system. The committee submitted its report on 1960 with scientific guidelines to corrective methods for prisoners and efficient administrative management. The total number of prisons in

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<sup>1</sup> Alexander Volokh, A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons, 115 Harv. L Rev. 1868, 1870 (2002)

<sup>2</sup> The Constitution of India, 1949, Schedule VII.

India as of 31<sup>st</sup> December 2016 was 1,412 with a capacity of 3, 80,876 but the inmate population was 4, 33,003, thus the occupancy rate is 113.7%<sup>3</sup>.

The concept of private prisons is not considered by the Indian government in the past. These prisons are managed by the corporate entities based on the contract entered between them and the respective Government. The government outsources contracts with respect to prisons in numerous ways. Mainly 3 models are followed worldwide. First is the hybrid model of private prisons, where the private companies finances for construction and improvising of the prisons and operating functions like catering, maintenance, healthcare etc. The second is where the respective government enters into a contract with a private entity to built and run the prison in its entirety. The third one is that only certain functions of the prisons are contracted out to the private entities. Here, in these prisons, construction, security and custodial functions are the responsibility of the state. This model has been evidenced in various European countries<sup>4</sup>.

PPPs mean public –private partnerships. PPPs are in trend for the last few decades. Private prisons are also a form of PPPs. This system has been adopted by many nations such as United States of America, India, Canada, United Kingdom and Australia etc. the idea of this concept is to increase the efficiency of the service provided by them.

Public Private Partnership according to the Government of India is, "a partnership between a Public sector entity (sponsoring authority) and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s) for the creation and/or management of Infrastructure for public purpose for a specified period of time (concession period) on commercial terms and in which the private partner has been procured through a transparent and open procurement system."<sup>5</sup> The major sectors that have been privatized are roads, ports, power, irrigation, telecommunication, water supply, and airports<sup>6</sup>.

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<sup>3</sup> Government of India, Prison Statistics India (Ministry of Home Affairs ,2016)

<sup>4</sup> Penal Reform International, *Resource*, available at <http://www.penalreform.org/resource/global-prison-trends-2015/>, (last visited on February 8, 2020).

<sup>5</sup> Public Private Partnerships IN INDIA, *Defining PPP*, available at <http://www.pppinindia.com/Defining-PPP.php>, (last visited on February 8 ,2020).

<sup>6</sup> Public Private Partnerships IN INDIA, *Overview*, available at <http://www.pppinindia.com/overview.php>, (last visited on February 8, 2020).

## HISTORY OF PRIVATE PRISONS IN UNITED KINGDOM AND UNITED STATES OF AMERICA

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The role of prisons administration went through rapid modification in the late 1970s and early 1980s in the western nations. From the management point of view, the economic efficiency of prison with respect to cost was considered to a large extent. The prison administration laid its emphasis on the optimal delivery cost. In the period of 1990s rapid increase in the number of private prison in the nations like United Kingdom, United States Of America and Australia. The optimum utilization of resources in a cost effective manner can be achieved partly through privatization and with certain parameters.

The United Kingdom has the highest amount of imprisoned people per 100,000 people in Western Europe. As of 27th May 2016, the prison population in England is at 85,422<sup>7</sup>. It has both public and private sector prisons. In 2016, there were 123 prisons in England and Wales. Prisons can be owned by public and run, publicly owned but privately run or, in a few instances, both privately built and managed. Public sector prisons in the United Kingdom, England and Wales are run by an executive agency, funded by the Ministry of Justice that goes by the name of Her Majesty's Prison Service. Out of 123 prisons, 14 are run privately and are known as contracted-out/ private prisons<sup>8</sup>.

United Kingdom was the first nation in the Europe to start the usage of private prisons. The first private prison in the United Kingdom was started in the year 1992. HMP Wolds, the United Kingdom's first privately run prison was opened in May 1992. Margaret Thatcher, the Prime Minister of England during the 1980s, had a strong desire to extend the free market in public services based on the contested assumption that private sector provision would be more cost effective, efficient and catalyze system-wide improvement.<sup>9</sup> HMP Altcourse designed,

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<sup>7</sup> GOV.UK, *Statistics*, available at <https://www.gov.uk/government/statistics/prison-population-figures-2016>, (last visited on February 8, 2020)

<sup>8</sup> GOV.UK, *Departments*, available at <https://www.gov.uk/government/organisations/hm-prison-service>, (last visited on February 8, 2020).

<sup>9</sup> JUSTICE, *Contracted-out prisons*, available at <https://www.justice.gov.uk/about/hmps/contracted-out>, (last visited on February 8, 2020)

constructed, managed and financed private prison in the United Kingdom, opening its doors to prisoners on 1st December 1997.

At present there are 14 private prisons contractually managed by private companies such as Sodexo Justice Services, Serco and G4S Justice Services. Altcourse (G4S), Ashfield(Serco), Birmingham (G4S), Bronzefield (Sodexo), Doncaster (Serco), Dovegate (Serco), Forest Bank (Sodexo), Lowdham Grange (Serco), Oakwood (G4S) Parc (G4S), Peterborough (Sodexo), Rye Hill (G4S), Thameside (Serco) and Wolds (G4S)<sup>10</sup> are the private prisons in United Kingdom.

In United States of America the exercise of governmental power by the private entities was briefly discussed in the case of *Pischke v. Litscher*.<sup>11</sup> In this case, the court held that “We cannot think of any...provision in Constitution that might be violated by the decision of a state to confine a convicted prisoner in a prison owned by a private firm rather than by a government...private exercises of government power are largely immune from constitutional scrutiny....expanding privatization poses a serious threat to the principle of constitutionally accountable government.”<sup>12</sup>

Prisons, in US are now called correctional institutions, resonating the expanding philosophy of corrections and its increasingly important role within the community and society as a whole.<sup>13</sup> The incarceration rate in the US, according to the World Prison Brief 2018, is 655 per 100000 Persons; making US the first country in the list of countries with the most incarceration rates. The total prison population currently amounts to 2121600.<sup>14</sup>

The management of correctional institutions in the United States of America is bestowed upon the Federal Bureau of Prisons which was created by a statute in 1930. The federal bureau of prisons is imposed with authority to maintain and manage all the prisons or correctional

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<sup>10</sup> JUSTICE, *Contracted-out prisons*, available at <https://www.justice.gov.uk/about/hmps/contracted-out>, (last visited on February 8, 2020)

<sup>11</sup> 178 F.3d 497, 500 (7th Cir. 1999).

<sup>12</sup> *Pischke v. Litscher* 178 F.3d 497, 500 (7th Cir. 1999).

<sup>13</sup> American Correctional Association, *About us*, available at [http://www.aca.org/ACA\\_Prod\\_IMIS/ACA\\_Member/About\\_Us/Our\\_History/ACA\\_Member/AboutUs/AboutU\\_s\\_Home.aspx?hkey=0c9cb058-e3d5-4bb0-ba7c-be29f9b34380](http://www.aca.org/ACA_Prod_IMIS/ACA_Member/About_Us/Our_History/ACA_Member/AboutUs/AboutU_s_Home.aspx?hkey=0c9cb058-e3d5-4bb0-ba7c-be29f9b34380), (last visited on 8 February, 2020).

<sup>14</sup> World Prison Brief, *United States of America*, available at <http://www.prisonstudies.org/country/united-statesamerica>, (last visited on February 8, 2020).

institution in the country. These correctional facilities are divided by the level of securities: High, Medium and Low. Currently there are 122 federal prisons in the United States. On support of this system each state in United States has its own correctional system. They are vested with combination functions like parole, probation and prison. Municipal and county governments operate the jails within their jurisdiction. Coming to community corrections, probation and parole are managed by courts and/or parole board/parole commissions respectively<sup>15</sup>.

The report of the President's Commission on privatization, Government of the U.S.A., March, 1988 has affirmed the policy of privatization of firms and more specifically recommendation 17, at 155, which reads thus: "The Department of justice should continue to give high priority to research on private sector involvement in corrections."<sup>16</sup> The people of the all the nation always think that prisoners are a vulnerable population, and they rely upon the government to ensure provision of their needs and welfare.<sup>17</sup> So the state takes drastic methods to decrease the crime rate. The decrease in the crime rate leads to increase in the population of prison. This lead to large prison expansion approach increasing the debt of the public, so the public rejected these initiatives to collect fund for the expansion. The private institutions and entrepreneurs argued that they can build these facilities with their capital and charge the government a little fee and maintain it cheaper than the state- run institution. The private entrepreneurs also argued that by this system the can regain the capital and the operating cost incurred by the parties. A Built and operate model of contract entered by private institutions with the government. The government promises certain number of inmates per day to institutions for its management of them, in return the government pays certain amount paid to the company set out in the contract. In certain contracts between the parties the government has the option to buy the prison after a certain amount of time or when the contract ends for a amount fixed previously by the parties during the time of entering into the contract.

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<sup>15</sup> Federal Bureau of Prisons, *Facilities*, available at [https://www.bop.gov/about/facilities/federal\\_prisons.jsp](https://www.bop.gov/about/facilities/federal_prisons.jsp), (last visited on February 8, 2020)

<sup>16</sup> (Alfred C. Aman Jr.& Carol J. Greenhouse," Prison Privatization and Inmate Labor in the Global Economy: Reframing the Debate Over Private Prisons" *Fordham Urban Law Journal*, Vol. 42, Number-2, 175 (2016)

<sup>17</sup> U.S. DEPARTMENT OF STATE, *Bureau of Democracy, Human Rights and Labor*, available at <http://www.state.gov/documents/organization/210347.pdf>, (last visited on 8 February 2020).

The Correctional Corporation of America (CCA) and Wackelnut are the largest private establishments, which together control 75% of the total private prison population. There has also been legalization of contracting of prison labour by private entities in about 37 states, through which the private enterprises emplace their operations inside the state prisons<sup>18</sup>.

## **REASONS TO PRIVATIZE PRISONS THROUGH CONTRACTS**

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There are number of reasons for a government to privatize by way of contracts, each reasoning has varying applicability to privatization of prison<sup>19</sup>. The main reasons are:

1. No usage of skill and technology at the public capacity. The private entities always try to improve by using skill and technology. But this reason has only limited applicability to private prisons.
2. Reduction in cost to the government in maintaining the establishments by contracting out it to the private entities. This reason has high applicability to private prisons.
3. Privatization increases competition in the markets. Private monopoly is not better than a public monopoly in terms of efficiency and it is not preferable. It may cause good to the public only when it is implemented with an intention to increase the number of players in the market. This reason has only limited applicability to private prisons.
4. With private players in the market, there will be an increase in the efficiency of the service provided in less cost. But the argument is the applicability of it to the private sector. This reason is highly applicable to private prisons.
  - a. Efficiency is very important for companies to earn profits for the shareholders. The company's activities are kept in check by the shareholders by the way of balance

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<sup>18</sup> 16 Grassrootsleadership, *Blog*, available at <http://grassrootsleadership.org/sites/default/files/uploads/CCAAnniversaryReport.pdf>, (last visited on 8 February, 2020)

<sup>19</sup> Martin E. Gold, "The Privatization of Prisons", *The Urban Lawyer*, Vol. 28, No. 3 pp. 359-399 (Summer 1996)

sheets and income sheets. Costs of the company is monitored and minimized in all possible manners without affecting the service provided.

- b. In private sector the culture of flexible hiring, firings and promotions increase the efficiency to a large extent. Incentives in manner of pay scales to increase the efficiency are used. The private entities ability to increase the movement of staffs depending upon the needs and must around the facilities is very prevalent in this sector, compared to the public sector.

### **REASONS NOT PRIVATIZE PRISONS THROUGH CONTRACT**

There are many good reasons to the government not want to contract out. Each reason has certain applicability to the privatization of prisons and collectively provides the reasons why public services like prisons are not privatized often through contract.

1. The government of a nation or state is vested with certain responsibilities which are very basic in nature, that public sector must provide it to its citizens such as national security, protection etc. The police and prison management are categorized under this.
2. The stability and experience of the private companies determines the result of privatization. If the said private party is inexperienced in the sector or became financial unstable and for other reasons, the result would yield no good to any parties
3. The selected private party might get itself locked through the contract by usage of influence along with political reasons and became a private monopoly in the sector.
4. Drafting of the contracts including the negotiation, monitoring, enforcing of the contract adds expenses both in monetary and time. The development of the contract in such manner that it should not be too rigid and too flexible at the same time. If not either party may end up suffering.

5. The profit motive of the private parties may prevent them providing service in proper fashion to the inmates. Instead of disqualifying the private parties based on motive, it should be used as an incentive to private parties to provide more satisfactory service subject to the supervision of government.
6. The process of privatization is difficult and may be biased due to conflicts of interest, lobbying and corruption. The best way to avoid this using people of character who have expertise in this field.

In 2010 the apex court of Israel in the case of

*The Academic Centre for Law and Business v. Minister of Finance*<sup>20</sup>

struck down the legislation pertaining to privatization of prison administration.<sup>21</sup> Held that privatization of prisons of the nation is violative of the 11 basic laws of its constitution which were developed and drafted over some 45 years, which has the power to struck down any new legislation is against the any of the basic law. Chief Justice Aharon Barak of Israeli Apex court staged a *constitutional revolution*, declaring that basic laws would function as a Constitution and be supreme over ordinary legislation<sup>22</sup>. The court decision is equivalent to the famous United States case *Marbury v. Madison*<sup>23</sup> puts basic law above the new legislation and established the practice of judicial review of new legislations. The court struck down the legislation on mainly two grounds **Risk of Abuse of Power and Inmates Right of Liberty and Human Dignity**.

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### RISK OF ABUSE OF POWER

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The court held that usage of the unjustified force by private parties employed to the governmental powers poses a huge amount of risk. When the power is excused by an person, the holders of it should act with an aim to promote the social interest than private interest, the

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<sup>20</sup> HCJ 2605/05), The Human Rights Division

<sup>21</sup> *Academic Centre of law and Business, Human Rights Division v. Minister of Finance* 2009 HCJ 2605/05), The Human Rights Division

<sup>22</sup> *Academic Centre of law and Business, Human Rights Division v. Minister of Finance* 2009 HCJ 2605/05), The Human Rights Division

<sup>23</sup> 5 US 137 (1803).

legitimacy of the usage by the power by the private parties causes the violation of basic rights. Where such force is not exercised by the competent organs of the state, in accordance with the powers given to them and in order to further the general public interest rather than a private interest, this use of force would not have democratic legitimacy, and it would constitute an improper and arbitrary use of violence.<sup>24</sup> But the lacuna in the augment is the parameters on amount of use of force even by the State. If the usage of power is not within the parameters of the constitutional guidelines, it makes the whole power unconstitutional.

### **INMATES RIGHT TO LIBERTY AND HUMAN DIGNITY**

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In Israel privatization is supplemented by *quasi-public* entities doctrine, under which anybody authorized to employ governmental powers is subject to the norms of public laws, important among them are human rights laws and Israeli administrative courts, including the high Court of Justice.<sup>25</sup> The apex court of Israel commented that the very issue of usage of power by private parties to keep inmates in private prisons raises a ambiguity relating to rights of inmates under private control. This also raises issues with human rights perspective of the rights given to the inmates. The court stated that “Imprisoning persons in a privately managed prison leads to a situation in which the clearly public purposes of the imprisonment are blurred and diluted by irrelevant considerations that arise from a private economic purpose, namely the desire of the private corporation operating the prison to make a financial profit. There is therefore an inherent and natural concern that imprisoning inmates in a privately managed prison...turns the prisoners into a means whereby the corporation that manages and operates the prison makes a financial profit, it should be noted that the very existence of a prison that operates on a profit-making basis reflects a lack of respect for the status of the inmates as human beings, and this violation of the human dignity of the inmates does not depend on the extent of the violation of human rights that actually occurs behind the prison walls.”<sup>26</sup>

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<sup>24</sup> *Academic Centre of law and Business, Human Rights Division v. Minister of Finance* 2009 HCJ 2605/05), The Human Rights Division

<sup>25</sup> HCJ 294/91 *Jerusalem Burial Society v. Kastenbaum* [1991] Ist. S.C. 46(2) 464

<sup>26</sup> *Academic Centre of law and Business, Human Rights Division v. Minister of Finance* 2009 HCJ 2605/05), The Human Rights Division

The Israeli Apex court opposed the United Kingdom model of prison, where the private entities are held accountable to public laws. The court rejected the very idea privatization of prison by invalidating an entire act. This was first time in Israel is history, instead of a provision or provisions, an entire act was invalidated.

## **HISTORY AND CURRENT STATUS OF PRISONS IN INDIA**

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Prisons were used even from ancient India. The rapid improvement in the prison system achieved during the Mughal's and British India period. Especially in British India period were many prisons were built to keep and torture Indians. But after independence, in the year of 1949 the Pakwasa committee was formed to make guidelines regarding handling of prisoners. The committee suggest to utilization of prisoners as labourers without intensive supervision. The wage system was also introduced. They also suggested that well behaved prisoners to be awarded with reduction in sentence. In the year of 1951 the government of India invited Dr. W.C.Reckless, an United Nations Expert on correctional work, was asked submit a report and suggest policy reforms. He submitted a report named "Jail Administration in India" and also recommended to revision of outdated jail manuals.

Even after that many committees were constituted by the government of India to keep the system improving along with other nations. The All India Prison Reforms Committee (1980) under the Chairmanship of Justice A.N.Mulla (Retd.), R.K. Kapoor Committee (1986), and Justice Krishna Iyer Committee (1987), studied the conditions existed in that period. Keeping the conditions in mind all the committees made suggestions for improving the prison conditions. Accordingly it also made recommendations to improve the conditions prisoners, prison and prison personnel throughout the nation.

In the case of **Rama Murthy vs. State of Karnataka**<sup>27</sup> the apex court the nation has identified 9 main problems with prison system of India. Out of which living conditions, overcrowding, health care, food and sanitation are the five main problems faced by the prisoners. According to the National Crime Records Bureau (NCRB) the occupancy rates of the prisoners are 114%.

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<sup>27</sup> AIR 1996 SC 787.

Uttar Pradesh has the largest figure in prisoner's occupancy rate - 169%. The large number of these prisoners is still under trial stages of cases. Most of the inmates are inside the prison because of their inability to afford the bail cost set up by the courts or with the no knowledge of availability of bail system. In the cases involving *Hussainara Khatoon V. Home Secretary, State of Bihar*<sup>28</sup>, the apex court considered the problem of people who were prisoners who are awaiting trial, the court started with the notation that the bail system of the nation is highly unsatisfactory. In this case, the supreme court of India enforced Article 39A<sup>29</sup> of the Indian constitution, which bet owes the duty on the state to provide legal aid to deserved ones.

The prisoners' rights are often being neglected by the society. The judiciary plays a very significant role to provide justice to them. The judiciary by means of interpretation of Articles 21, 19,22,32,37 and 39A<sup>30</sup> of the constitution reaffirmed the right of the inmates through various judicial pronouncements. The rights are

- 1. Right to be lodged appropriate based on proper classification.**
- 2. Special Right of young prisoners to be segregated from adult prisoners.**
- 3. Rights of women prisoners.**
- 4. Right to healthy environment.**
- 5. Right to bail.**
- 6. Right to speed trial.**
- 7. Right to free legal services.**
- 8. Right to basic needs such as food, water and shelter.**
- 9. Right to have interviews with one's Lawyer.**
- 10. Right against being detained for more than the period of sentence imposed by the court.**
- 11. Right to protection against being forced into sexual activities.**
- 12. Right against arbitrary use of handcuffs and fetters.**
- 13. Right against torture, cruel and degrading punishment.**
- 14. Right not to be punished with solitary confinement for a prison offence.**
- 15. Right against arbitrary prison punishment.**

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<sup>28</sup> AIR 1979 SC 1360.

<sup>29</sup> The Constitution of India,1949

<sup>30</sup> The Constitution of India,1949

- 16. Right to air grievances and to effective remedy.**
- 17. Right to evoke the writ of habeas corpus against prison authorities for excesses.**
- 18. Right to be compensated for violation of human rights.**
- 19. Right to visits and access by family members of prisoners.**
- 20. Right to write letters to family and friends and to receive letters, magazines, etc.**
- 21. Right to rehabilitation and reformatory programs.**
- 22. Right in the context of employment of prisoners and to prison wages.**
- 23. Right to information about prison rules.**
- 24. Right to emergency and reasonable health care.**

The Indian courts have reaffirmed all the right of prisoners through various judicial pronouncements from Sunil Batra case<sup>31</sup> to Rama Murthy case<sup>32</sup> and R.D Upadhyay case.<sup>33</sup> the list above is not an exhaustive one as it is still evolving in nature.

#### **Public Private Partnership model in India:**

The prison system of the country is one of the core functions of the governments of the nation. Transfer of a core function to private parties entirely will lead to non-yielding results to both the parties. From the decision of the Israeli case, we can understand the main core problems of the privatization of prisons entirely. In India usage of force by governmental authorities occurs on a continuous basis. This occurrence would call for infringement of fundamental rights and action can be taken against the governmental authorities by ways of enforcements writs. If these functions are transferred to private entities, enforcements of writs are not available to against private parties under 13 of the Indian constitution.<sup>34</sup> Even if the civil and criminal petitions are available, the time taken by the courts will huge. So the idea privatizing the prison on its entirety is not feasible in Indian scenario.

So, the solution is Public Private partnerships (PPPs) are "contractual arrangements between public sector organizations and private sector investors for joint, symbiotic and collaborative

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<sup>31</sup> AIR 1980 SC 1579.

<sup>32</sup> AIR 1996 SC 787.

<sup>33</sup> 2003) (8) SCC546.

<sup>34</sup> Article 13, Constitution of India, 1949.

provision and financing of public projects and services."<sup>35</sup> according to the Government of India is, "a partnership between a Public sector entity (sponsoring authority) and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s) for the creation and/or management of Infrastructure for public purpose for a specified period of time (concession period) on commercial terms and in which the private partner has been procured through a transparent and open procurement system"<sup>36</sup>.

This model has already been success in Indian prison, but in the manner of prison labours. The Tihar Jail entered into this system as early as 1990s. Using the large number of inmates the prisons were earn a revenue between Rs 12-15 cores per year by weaving, carpentry, tailoring etc. the Tihar Jail entered into PPP agreements with DEIEM India and Century Pvt Ltd, which train inmates on the products manufactured by them and then absorb them into their respective organizations at the end of the term. Set up by Minda Furukawa Electric Pvt. Ltd (MFE), a joint venture company.<sup>37</sup> The old Surat Jail and Sabarmati Central Jail in Ahmedabad have pakora centres. The snacks centre of the Surat jail has a turnover of RS.60lakh a year.<sup>38</sup> Pune's Yerawada Central Jail inmates were also recruited by Spark Minda, which started an assembly unit of automotive wiring harnesses. Even automotive big shots like Maruti- Suzuki and Mahindra and Mahindra are approving of such initiatives<sup>39</sup>.

PPPs are huge success in this sector. By using of the very are model the inmates can be provided with improved living conditions , better food, good health care facilities and improvement in sanitation facilities for them. This process will make the prisoners to lead a good life along with increase their individual skills to an large extent.

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<sup>35</sup> Broadbent, J., Gill, J and Laughlin, R., *Evaluating the Private Finance Initiative in the National Health Service in the UK*, 16(3) Accounting, Auditing & Accountability Journal 445 (2003).

<sup>36</sup> Public Private Partnerships IN INDIA, *Defining PPP*, available at <http://www.pppinindia.com/Defining-PPP.php>, (last visited on February 8 ,2020).

<sup>37</sup> Pratibha Sharma, *State Jail Industry Board and Sustainable Economic Rehabilitation of prison inmates*, LX (2) Indian Police Journal 81 (2013).

<sup>38</sup> Ministry of Home Affairs, Government of India, *Implementation of the recommendations of All-India Committee on Jail Reform (1980-1983)*, available at <http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee-implementation%20of%20recommendations%20-Vol%202.pdf>, (last visited on 8 February, 2020).

<sup>39</sup> Times of India, *Private Sector goes to Prison*, April 24, 2016 , available at <http://timesofindia.indiatimes.com/home/sunday-times/deep-focus/Private-sector-goes-to-prison/articleshow/51960286.cms>, (last visited on 8February, 2020).

## CONCLUSION

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The prison is should be considered as a place were a person should reform into new person and this lies on the functioning and facilities provided by the governmental facilities. But present day scenario only makes life harder for prisoners both inside and outside the prisons. The blame is on the government to take necessary actions when its facing problems like substance abuse inside the premises of prison, overcrowding, violence in prison and financial cost etc. under these circumstances the task of maintaining prisons becomes huge on the shoulders of the government.

So the solution is the intervention of the private parties to a certain extent may help the government to run the prisons in an more efficient manners. The privatization of prison entirely is not on the cards as the idea being in its development stage in our nation. The private prison is driven by profits and shareholders keep hold on the company by many checks and balances. This idea of private prison will only make life hard inside the prison for inmates.

Considering the complete privatization of prison is not feasible in India. So the existing solution is the Public Private Partnership model. By which the duties bestowed upon the state like living conditions, heath care , medical services , sanitation, placement for prisoners on companies based on their skills will come under this model. Thus it may reduce burden on the government and increase the efficiency of the prison as whole by adopting this system.