

VIABILITY OF PRISON PRIVATIZATION: EXPLORING PUBLIC-PRIVATE PARTNERSHIP AND CORPORATE SOCIAL RESPONSIBILITY IN THE PRISON SECTOR IN INDIA

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The concept of for-profit prison privatization dates back to almost as early as the 16th Century. A trend started by the United Kingdom, it enjoyed a modern comeback in the United States during the 1980s. Following them, numerous countries experimented with prison privatization. India has not yet considered the merits and demerits of complete privatization of the prison sector. However, it has started incorporating elements of privatization in it by accepting and developing on the Public-Private Partnership model. In this paper, an attempt has been made to trace out the history of private prisons in different countries in the world along with the advantages and disadvantages of privatization of prisons. A further attempt has been made to establish the viability of the rising concept of Public - Private Partnership Model in the prison sector in India and how the PPP model could lead to a backdoor entry for Corporate Social Responsibility to enter the arena of prisons in the country.

I. INTRODUCTION

“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

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

-Dostoevsky

Prisons all over the world was solely a State subject till the mid-twentieth century. From the 1970s onwards some countries started delegating whole or part of their state function involving prisons to the private sector. In this paper, an attempt has been made to trace out the history of private prisons in different countries in the world along with the advantages and disadvantages of privatization of prisons. A further attempt has been made to establish the viability of the rising concept of Public - Private Partnership Model in the prison sector in India and how the PPP model could lead to a backdoor entry for Corporate Social Responsibility to enter the arena of prisons in the country.

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The prison system in India is under the administration and management of the government. Covered by item 4 under the State List¹, the State governments in particular are bestowed with the primary responsibility and authority to change the current rules, regulations and prison laws. The Prisons Act 1894 and the Prison manuals of the respective state governments also play a role in governing prisons. There are in total 1387 prisons in India, which operate at three levels: Central, District and sub-jails.

It is only during the times of poor performance and emergencies that prison administration is brought to light. However, many good practices are also emerging to meet international standards.

Countries like UK and Australia have been using Key Performance Indicators to measure performance in prisons. Broadly, typical Performance indicators include: Escapes, Serious assaults, drug testing, purposeful activity, overcrowding, self inflicted deaths/suicides, offending behaviour, staff sickness, race equality, education and resettlement etc. 'How efficient a prison is' is manifested by these measures. These indicators are used to measure performance in both privately managed for-profit prisons as well as state managed prisons.

The concept of privatisation of prisons has not yet swept India. Private prisons are corporation-run for-profit prisons. Corporate entities run these prisons based on a contract between them and the government of the respective country (or state). The government can device outsourcing in numerous ways. In some cases, the government gets into a contract with a private entity to build and run prisons in their entirety. This type can be found in US and UK. France, Latin America and Japan, see private companies financing the building of a new prison and operating functions like maintenance, catering, healthcare or rehabilitative provisions. This can be called the hybrid model of private prisons. Contracting out certain limited functions, within an existing prison, to a private company is what the third model endorses. For example, catering, maintenance, rehabilitation activities etc. This is the third type and the contracts in this case are shorter. Here, in these prisons, construction, security and custodial functions are the responsibility of the state. This model has been evidenced in various European countries.²

Privatisation of prisons is a form of public-private partnership. PPPs have been a trend since the last few decades. The major sectors, which have been privatised, include water and health. Privatisation mainly fosters the purpose raising more finances for improvising public infrastructure. It has been adopted by multiple nations like the United States, India, UK, Canada, Australia, China, Japan etc. The private sector is affluent in resources and hence is being made to club with the government. This kind of partnership has also been legally recognised by international agencies.

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

¹The Constitution of India, 1949, Schedule VII.

²Penal Reform International, *Resource*, available at <http://www.penalreform.org/resource/global-prison-trends-2015/>, (last visited on June 19, 2016).

and open procurement system." ³ The major sectors that have been privatised are roads, ports, power, irrigation, telecommunication, water supply, and airports. ⁴

II. HISTORY

The role of state prison administration saw a modification in the period of late 1970's and early 1980s, in the western countries. From the point of view of management, an emphasis on optimal delivery cost in prison administration was looked forward to. During the 1990s, privatisation of prison activities became a rage in countries like USA, UK and Australia. This led to contestability in delivery of prison services, which was earlier, just a government monopoly. The optimal utilization of money in a cost effective manner can be achieved to a certain extent through the entry of privatisation and formal managerial parameters into corrections. The state sought to imbibe principles followed by the private sector into the public sector, thereby making managerialism the new order of the day. ⁵

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 a whopping 85,422. ⁶ It has both public sectors as well as private sector prisons. At present, there are 123 prisons in England and Wales. Prisons can be either publicly owned 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 in totality, 14 are run privately and are known as contracted-out/ private prisons. ⁷

The United Kingdom was the first country in all of Europe to use prisons run by the private sector to hold its prisoners. Privately managed prisons were introduced to the United Kingdom in the 1990s and since then, British Governments have issued contracts to private firms for both the construction and the day-to-day running of prisons. In May 1992, HMP Wolds, the United Kingdom's first privately run prison was opened. The momentum for privatisation began in the late 1980s. 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 catalyse system-wide improvement. ⁸

HMP Altcourse was the first designed, 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),

³Public Private Partnerships IN INDIA, *Defining PPP*, available at <http://www.pppinindia.com/Defining-PPP.php>, (last visited on June 19, 2016).

⁴Public Private Partnerships IN INDIA, *Overview*, available at <http://www.pppinindia.com/overview.php>, (last visited on June 19, 2016).

⁵DR. UPNEET LALLI, *IDENTIFICATION OF BEST PRISON PRACTICES* (2011).

⁶GOV.UK, *Statistics*, available at <https://www.gov.uk/government/statistics/prison-population-figures-2016>, (last visited on June 19, 2016).

⁷GOV.UK, *Departments*, available at <https://www.gov.uk/government/organisations/hm-prison-service>, (last visited on June 19, 2016).

⁸JUSTICE, *Contracted-out prisons*, available at <https://www.justice.gov.uk/about/hmps/contracted-out>, (last visited on June 19, 2016).

Forest Bank (Sodexo), Lowdham Grange (Serco), Oakwood (G4S) Parc (G4S), Peterborough (Sodexo), Rye Hill (G4S), Thameside (Serco) and Wolds (G4S).

Currently, with regard to prison services, David Cameron has set out his plans for a "truly 21st Century" prisons system by vowing to make prison reform one of "great progressive causes" that will mean prisoners are not simply regarded as "liabilities to be managed, but instead as potential assets to be harnessed".⁹

The incarceration rate in the US, according to the World Prison Brief 2016, is 693 per 100000 persons; making US the second country in the list of countries with the most incarceration rates. The total prison population, currently amounts to 2217947.¹⁰ 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.¹¹

In the United States, for the correctional population, the mode of correction may be institutional (includes prisons, jails etc..) or community corrections (includes probation and parole). The structural arrangement for management of prisons or correctional institutions is not concentrated at the national level only. The Federal Bureau of Prisons, born out of a statute in 1930, is bestowed with the responsibility of managing and regulating all Federal Penal and Correctional Institutions in the Country. Presently there are 122 Federal institutions, which operate at different security levels: High, medium, low, complex and administrative. In these federal prisons, the convicts of federal crimes are retained. Apart from the Federal Prisons, Each U.S. state has its own correctional system. Some carry out a combination of various operations of parole, probation, and prisons where as others only function to operate as prisons. Municipal and county governments throughout the nation operate the jails. Coming to community corrections, probation and parole are managed by courts and/or parole board/parole commissions respectively.¹²

However, no matter where they are being held, prisoners are a vulnerable population, and they rely upon the government to ensure provision of their needs and welfare.¹³ As crime rates decrease and crime-control strategy gradually moves towards attaining triumph, the prison population increases. Given the major costs of this prison expansion approach, as the community debt for prisons and jails increased, the public began to reject initiatives for increased funding. Private Entrepreneurs came to rescue argued that they can build the requisite facilities using their own capital, and then charge the government a fee, supposedly cheaper than for the state-run institutions, that would recoup both the capital investment and on- going operating cost. A 'build-and-manage' contract allows a state to sign up for new prison construction. In turn, the state promises the company a certain number of inmates per day with the consequent per diem cost set by contract and paid to the company. There may be provisions stipulated in the contract where in the state can purchase the prison when the

⁹ GOV.UK, *Announcements*, available at <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>, (last visited on June 19, 2016).

¹⁰ World Prison Brief, *United States of America*, available at <http://www.prisonstudies.org/country/united-states-america>, (last visited on June 19, 2016).

¹¹ American Correctional Association, *About us*, available at http://www.aca.org/ACA_Prod_IMIS/ACA_Member/About_Us/Our_History/ACA_Member/AboutUs/AboutUs_Home.aspx?hkey=0c9cb058-e3d5-4bb0-ba7c-be29f9b34380, (last visited on June 19, 2016).

¹² Federal Bureau of Prisons, *Facilities*, available at https://www.bop.gov/about/facilities/federal_prisons.jsp, (last visited on June 19, 2016).

¹³ 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 June 19, 2016).

contract ends for a predetermined sum of money. In US, the privatisation of prisons started in the mid 1980s.¹⁴

In 27 of the states of US, about 1000 prisoners are in custody of 18 private corporations. Private companies look after approximately, 16 percent of federal prisoners and 6% of state prisoners and inmates in various local jails. 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.¹⁵

One of the first countries to resort to the usage of private prisons was Australia. Privatisation commenced in Australia at Borallon, Queensland, which had been built as a maximum/medium security prison but which mostly housed minimum-security prisoners. Australia's first private prison¹⁶ was operated by Correctional Corporation of Australia, an international venture of Corrections Corporation of America. The Queensland facility began operations in 1990, and soon stoked interest in privatization in several other states.³³ By 2011, five of Australia's eight states had some level of privatization, with Victoria having the highest rate (33 percent), as well as the largest privately held population (1,530).¹⁷

The first private prison in New Zealand was the Auckland Central Remand Prison, which opened in 2000.¹⁸ The GEO Group operated the facility until early 2005, when the centre-left New Zealand Parliament repealed the law permitting private prisons. Parliament's decision was reversed by a new conservative coalition in 2009, and the British company, Serco took over operations of the Auckland Central Remand Prison in May 2011. In September 2012, construction began on a new 960-bed prison that would be operated largely by Serco. It is scheduled to open in mid-2015, and would, if filled to capacity, effectively double the privately held prison population of New Zealand.¹⁹

III. AN APPRAISAL OF PRIVATE PRISONS

According to the NCRB Statistic on Prison Budget, the budgetary allocation for prisons for the year 2014-15 was Rs 4,27,881.2 lakhs. It has seen an increase of 14.3% in comparison to the last financial year.²⁰ In majority of the States it was reported that the budget for prisons has increased substantially, however, in some states there has been a decrease in the amount allocated. India is still a developing country characterised by abject discriminating poverty, inferior infrastructure, corruption tainted politics and a parochial thought-process. In order to

¹⁴ GlobalResearch, *Justice*, available at <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>, (last visited on June 19, 2016).

¹⁵ *Id.*

¹⁶ Grassrootsleadership, *Blog*, available at <http://grassrootsleadership.org/sites/default/files/uploads/CCAAnniversaryReport.pdf>, (last visited on June 19, 2016).

¹⁷ THE SENTENCING PROJECT, *Incarceration*, available at <http://www.sentencingproject.org/issues/incarceration/>, (last visited on June 19, 2016).

¹⁹ *Id.*

²⁰ NATIONAL CRIME RECORDS BUREAU, *Prison Statistics India- 2014*, available at <http://ncrb.nic.in/>, (last visited on June 19, 2016).

usher progress, India needs to use its financial resources more judiciously. The government has been spending an enormous amount of money behind the upkeep of prisons. However, such expenditure becomes necessary to cope with international standards of prison management and ensuring rights of prisoners.

As early as the 1980s²¹, the concept of privatisation of prisons gained momentum in the United Kingdom²² and the United States. Despite a critical appraisal of the concept, it has been observed, after its practical application in the UK and US, that it is functional and relaxes the monetary burden on the government to a considerable extent. Countries like Australia, New Zealand, South Africa, Canada etc. also have adopted the path towards privatisation of the prison system. In a country like India, delegation of power for privatization of a sensitive area such as prisons might be questioned on the grounds of violation of democratic ethics. However, privatization has proved its mettle in various other areas such as health, education etc.

A detailed evaluation of the mechanism of private prisons yields a lot of positives and negatives. Stringent policies of crimes and constraints in budget coalesce to create a problem in the domain of jails and prisons. Modern day prison system is representative of overcrowding due to high incarceration rates, increasing number of lawsuits, a plethora of court orders, in numerous under-trial detainees etc. imposing a great burden on taxpayers to supplement the government with finances required to cope with prison management. Hence, the aim should be to reduce the burden on the government, which consequentially leads to taxpayers paying less money.

The taxpayers put the government in a dilemma by demanding more crime control on one hand and less expenditure on the other. This dilemma has led the government to conceive the idea of the involvement of the private sector in state-run correctional facilities without busting the budget.

From almost a decade, a massive problem plaguing the prison system is the problem of overcrowding. With the spread of awareness, more and more dark crimes are being reported and making its way to representation in the form of statistical records. Hence, the incarceration rates are plummeting upwards. This calls for more number of prison complexes. Overcrowded prisons also require large amounts of basic necessities like water, food, electricity, as well as a number of skilled personnel, making their maintenance expensive.²³ The government burdened with numerous other nation-building concerns, can ease off its responsibilities by sharing it with the private sector. Private prisons can greatly help public prisons from getting overcrowded and ensure decent living standards for them, however, it is critiqued that it may lead to higher incarceration rates keeping in view the profit motives of the private companies. Also, prison companies usually don't focus on the actual treatment of prisoners. The temptation to cut corners is greater. On the contrary as state bureaucracy does not burden these private prisons, excellence can be ensured with less expense. With private companies being able to invest more money cost effectively towards building, they can create innovative designs of prisons to house prisoners in more humane conditions.

²¹ INSTITUTE FOR GOVERNMENT, *Publications*, available at <http://www.instituteforgovernment.org.uk/publications>, (last visited on June 19, 2016).

²² See *supra* note 8.

²³ ConnectUS, *Issues*, available at <http://connectusfund.org/category/pros-and-cons>, (last visited on June 19, 2016).

Experimentation abroad has escorted us into believing that, the companies which privately run prisons can facilitate services at a lower cost by reducing construction time and costs and/or limiting employee benefits²⁴ (overtime pay, medical and dental coverage, and holiday bonuses). Personnel costs can be reduced through efficient facility designs without compromising on requisite number of staff. This can be achieved mainly because the private companies have means to utilise human resources and technology. Suppose it costs the government Rs175 per day to house a prisoner (assuming full capacity, including all administration costs) and in comparison it costs Rs 125 per day for a private company for the same. The government may receive services of the private companies at Rs 150 per prisoner per day, keeping a savings margin of Rs25 per prisoner per day. This way the government ends up saving money and the private company's profit motive is also satisfied. Private operating firms tend to have fewer administrative personnel than the often bureaucratic structures of government correctional departments. One private prison administrator, with 14 years of experience in government corrections, says that private prisons use roughly one-third the administrative personnel government prisons use.

Nonetheless, private prisons necessarily may not be very inexpensive, but they benefit the economy by generating employment opportunities for the people in the locality where they are situated.

Jurisdiction does not pose an issue with private prisons. Inmates from different jurisdictions may be sent to the same private prison, if they meet the other criteria as set by the contract. At least, within the same state convicts may be put into a private run prison from different jurisdictions well within the state. The prison establishment is hence, fully utilised. Also, the private companies, due to the vacancy, may agree to take more inmates at a lower cost.

It is the sole duty and responsibility of the State to impose extreme sentences like death penalty and life imprisonment in extreme cases. So is the duty to maintain the prisoners after conviction and at the under trial stage. This duty ethically should not be delegated to private corporations or individuals. Laws are determined through the working of the Legislature and the Judiciary in consonance in order to further the ends of justice on the basis of the public outcry. Private prison companies, irrespective of their profit motive, do not have any say in matters relating to sentencing and punishment. Therefore, its not entirely correct to say that private prison companies look forward to higher incarceration rates and influence public policy.

In India, even today, the government exercises a monopoly in various services such as the railways, electricity, aeronautics etc. Prisons also fall under the same ambit. Monopoly discourages competition and hence, hinders healthy development.

Keeping in mind the nature of market, privatisation has been proved to spur competition. Competition is an antithesis to inefficiency. Private firms don't magically create and innovate, but it is competition that drives them to excel in efficiency. Driven by their chances of survival in the market, private competitors are compelled to provide services of superior quality. Competition also regulates prices offered by the individual firms in accordance with the market price.

As mentioned above, the government and private firms can make private prisons work by way of specific contracts. Hence, the terms and conditions of the contract need to be updated

²⁴*Id.*

with regard to prevailing competition trends to perpetuate efficiency. The public sector also gets a boost in terms of efficiency as a result of private sector competition.

In USA, the wardens of the Arizona State prisons, until they entered into a contract with a private firm supervising prison, never had defined measures, which constitute successful performance of prisons. This made them review their own policies and practices to be at par with the standards followed by the private firms.²⁵

The threat posed by the existence of private prisons effectively transforms the incentives to develop the public sector's standards.

Not only domestically, but also internationally, competition is persistently existent, when it comes to private firms. In case of the firm being multinational, along with focusing on the internal set up of the particular country it brings in developments as previously examined in other countries. For example, if a company like G4S wants to establish its business in another country, like India, then it is expected that it will try to incorporate policies and technologies which maybe to conducive to the Indian prison environment. Also, these multinational by virtue of facing international competition, try to maintain certain international standards. Therefore, ushering development. Private firms also can accelerate the adaptation of best prison practices from various prisons all over the world.

The state concentrates on reducing recidivism rates, thereby focussing on the successful rehabilitation, reformation and reintegration of the offender back into the society. It targets to make every individual prisoner capable of leading a sound life with regards to his health, psyche and earnings, altogether making the society a better place. Nevertheless, private institutions having greater flexibility in treatment along with monetary backing and other alternatives, aren't a bad option considering public institutions are always bound by a multitude of rules and regulations.

Private prisons have the requisite resources to engage staff, skilled in dealing with prisoners. This can create a positive atmosphere which catalyses the process of reformation through amicable relations between the staff and the prisoners. Considering various cases of custodial violence, public prisons are clearly lagging behind in this aspect.

In the UK, it was seen that the overall average amount of time that prisoners spent in purposeful activity in private prisons (26.7 hours) was higher than the public sector Prison Service's performance. In 2003-2004, the Prison Service failed to meet its target for prisoners to spend an average of 24 hours each week in purposeful activity (HM Prison Service, 2004).²⁶ This examples serves as a reminder as to how private prisons function to do better.

One very pertinent cause of worry would be accountability issues with respect to private prisons. They might not show as much accountability and transparency as the public prisons by virtue of commercial confidentiality and as they are hidden from public oversight.²⁷ Despite answerability remaining questionable, privatisation draws less political interference. This can prove an advantage and help in the smooth functioning of prison establishments.

²⁵Reason Foundation, *Policy Studies*, available at <http://reason.org/studies/>, (last visited on June 19, 2016).

²⁶ PRISON REFORM TRUST, *Publications*, available at <http://www.prisonreformtrust.org.uk/portals/0/documents/private%20punishment%20who%20profits.pdf> (last visited on June 19, 2016).

²⁷*Id.*

There is a notion that privately run prisons are not as open to public oversight as public prisons, and that various contract infringements occur. However, to avoid such infringements a good contract needs to be established to ensure the right kind of services. The states should also ensure that regular inspections are conducted through the same.

Alison Liebling, a professor of Criminology at the University of Cambridge, made a comparative study on the private sector and the public sector with regards to prison administration, in which she concluded that, it was a curious paradox, in her view, that in England and Wales, in Australia, and in some American States, the private sector sometimes provided better and more constructive regimes than the public sector, largely because they had better control of their workforce and they had set out to outperform the public sector in areas where it was weak. Along with this, she pointed out the problems with safety and security in the private sector. Nevertheless, she championed the cause of privatisation and wrote, "There is a paradox the that whilst public sector is characterised by sound and declared values at the highest level in the organisation, it has difficulty translating these values into practice at ground level." "If we have learned anything from the so-called privatisation experiment, it is that there are serious failings in the delivery and control of punishment by public servants."²⁸

IV. PUBLIC PRIVATE PARTNERSHIP MODEL IN INDIAN PRISONS

Public private partnerships (PPPs) are "contractual arrangements between public sector organizations and private sector investors for joint, symbiotic and collaborative provision and financing of public projects and services."²⁹

The public sector often faces challenges in the sphere of finance, technical knowledge, institutional limitations in availing infrastructure projects, which begets the need of Public private partnerships. There is widespread proof of the emerging utilization of PPPs in the public sector services to meet the needs of the modern economy. These reflections have led to criminal justice academics and policymakers discuss the advantages and disadvantages of applying this model in prison management, correctional administration and criminal justice governance as a whole.³⁰

Numerous discussions and deliberations suggest PPPs bring about a creation of infrastructure assets, efficiency on the managerial front, cost effective technology, competency for the upkeep of created assets and their operation and the accountability of private parties to make sure there is timely and quality infrastructure service to the end users.³¹ PPPs also bring new and cost effective technology for creation of infrastructure assets, managerial efficiency, competency for operation and maintenance of the created assets and the contractual accountability on the private party to ensure timely and quality infrastructure service to the end users.

²⁸ Alison Liebling, *Prisons in Transition*, 29(5) International Journal of Law and Psychiatry, 429 (2006), available at http://www.crim.cam.ac.uk/people/academic_research/alison_liebling/PrisonsinTransition.pdf, (last visited on June 19, 2016).

²⁹ 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).

³⁰ Vijay Raghavan, *Guidelines for Public-Private Partnership in Prisons Management*, XLVL (4) Economic & Political Weekly 18 (2011) available at https://papers.ssrn.com/sol3/Data_Integrity_Notice.cfm?abid=2406796, (last visited on June 19, 2016).

³¹ See *supra* note 2.

It is the various Committees formed by the Government of India, post-independence, which laid down the foundation of the Indian prison system. There are numerous Reports that have discussed the Public-private partnership model in prisons, although, to a limited extent. The Mulla Committee (Report of the All India Committee on Jail Reforms 1980-83), included in its recommendations the involvement of the concept of public private interface and participation of the community (civil society as a whole) and by way of Non-Governmental Organisations. The next report was that of the National Expert Committee on Women Prisoners 1987 (Krishna Iyer Committee), which also reiterated what the Mulla Committee laid down.

The Model Prison Manual (2003) drafted by the Bureau of Police Research and Development, Ministry of Home Affairs, Government of India has not explicitly mentioned about the private sector being involved in the prisons. However, NGOs are enveloped under this manual to be involved in programmes in relation to education, vocational training, prisoner welfare, work, aftercare and rehabilitation of prisoners.³²

In 2003, a study on Implementation of Recommendations of the ALL-INDIA COMMITTEE ON JAIL REFORM (1980-83), was prepared by the Bureau of Police Research and Development, Ministry of Home Affairs, Government of India. It showed that there was an involvement of the private sector when it came to specialized hospital treatment for inmates of correctional institutes, in some states. Private contractors in few states were supplying food or raw materials. In relation to work programmes, some inmates are made over to private contractors. The study also emphasised on 'role of private contractors' to be an issue to be taken into consideration. It was seen that in eight states, efforts were made with private agencies and potential employers for giving employment to released offenders. In Bilaspur, Himachal Pradesh the labour of inmates of the open-air jail was being utilised by private contractors, according to this study.³³

Fast emerging labour workforces for the private sector are jail inmates. The Indian prison industry has entered the manufacturing sector of private industries. Outsourcing by the private sector, or rather 'in-sourcing' jobs to jails is a fine reflection of an symbiotic relationship between corporate opportunism and prison reform.

The Public-Private Partnership Model entered the Indian Prison industry through the most famous prison in India, the Tihar Jail as early as the 90s. Considered a pioneer in the economic rehabilitation program in India, it has nearly 12,000 inmates. It houses a large chunk of human resources. The Tihar Jail brand, TJ's is involved in various activities like Carpentry, Weaving, Tailoring & Baking School. Even products like bread and pickles are manufactured and sold in the market through the TJ outlets in and around Delhi. With a whopping approximate earning of Rs 10-15 crore, 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.³⁴ Tihar Jail also has India's first ever-manufacturing unit of automotive components inside a jail. *This initiative*

³²See *supra* note 29.

³³Ministry 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 June 19, 2016).

³⁴Pratibha Sharma, *State Jail Industry Board and Sustainable Economic Rehabilitation of prison inmates*, LX (2) Indian Police Journal 81 (2013).

was started to produce a sustainable collaborative social business model, to have dual benefits, for the convicts of Tihar Jail and their families.³⁵

Some giant companies like The Himalaya Drug Company is dependent on the Karnataka Open Air Jail, Bengaluru for its supply of alfalfa, a medicinal plant procured by the farming programme established. Even Andhra Pradesh and Goa got involved in the production of the same. Apart from the pharmaceutical aid, the Bangalore Central Jail also has production activities namely carpentry, weaving, tailoring, smithy (Almirahs & steel furniture), Printing Press & Bakery. Recently, the Central Jail at Parappana Agrahara has initiated a program to bake breads, cakes not only for internal consumption but also to market them in Bangalore city.

A BPO Centre established at Central Prison, Cherlapalli, Andhra Pradesh under PPP model with the assistance of M/s Radiant Info Systems Limited employs about 200 educated convicts who handle back office operations like data entry, and process and transmit information. Central prisons at Cherlapalli and Warangal have established Incense sticks and Ice Candy Stick manufacturing units under PPP model. A cashew nut peeling unit has also been established by Olam Agro Industries at Central Prison, Visakhapatnam.³⁶ Recently, the assembly of electric metre boxes for Hyderabad-based Linkwell Telesystems, and steel furniture for SS Industries are in-sourced to the central and open prisons in Cherlapalli.³⁷

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.³⁸

In Yamunanagar District Jail, two dozen inmates produce ceramic floor tiles for a local firm whereas Ambala Central Jail steel furnitures are produced.

Gujarat's Lajpore Jail has tied with local commerce bodies and corporate houses to train inmates in diamond polishing, artificial zari-making and sari weaving in order to further the PPP model. 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.³⁹

Uttar Pradesh's, Dasna Jail has been credited with developing a unique model for economic rehabilitation. It runs a co-operative society in the jail with inmates as members. This furthers the idea of collective cooperation of all the members of the society.

Sensing the opportunities for packaged food, Kerala jails have been producing Chapattis, traditional snacks like Chips, etc. for profit and to keep the inmates engaged in fruitful work.

All these instances are ruminative of empowerment, employment, skill development or entrepreneurship development and training in terms of facilitation. Creation of sustainable

³⁵The Better India, *Tihar Jail Giving Its Inmates A Second Chance Through An Automotive Manufacturing Unit In Jail*, October 16, 2014, available at <http://www.thebetterindia.com/14175/tihar-jail-giving-inmates-second-chance-first-kind-automotive-manufacturing-unit-jail/>, (last visited on June 19, 2016).

³⁶See *supra* note 33.

³⁷ 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 June 19, 2016).

³⁸*Id.*

³⁹See *supra* note 33.

businesses that provide inmates with the opportunities through training and on-the job learning, which create economic returns to make significant savings in the overall management of jails and prisoners, show us how these economic rehabilitation models can serve the goal of sustained intervention.

Indian prison officials speak glowingly of the PPP model — also interpreted as the Private Prison Partnership — saying its income offsets costs. But the model also assists in rehabilitation by skilling prisoners for life beyond bars. And finally, as per prison wisdom, a 'busy convict is an easy convict'.

Even Kiran Bedi, former IG prisons, who has herself contributed largely towards prison reforms through her NGO India Vision Foundation has opined, "Today prison reform is a movement and big companies want their association with it to be visible; earlier they kept a low profile because it could have been construed as forced work."⁴⁰

The abovementioned instances and examples of the PPP model in action in Indian prisons has proved to be quite a success. However, privatisation if not supervised suitably, can prove to be a bane. Therefore, weighing the negatives and positives of privatisation, India should focus on the development of a strong PPP culture in all aspects of prison management. That, however does not mean it is without its drawbacks. Every system inevitably faces challenges and keeping in view the private element in the PPP model, implementation of it is bound to entail some adversities.

CORPORATE SOCIAL RESPONSIBILITY

A viable way, for the government, to tackle issues that may potentially crop up during the execution of the PPP model, is to not rely upon direct investment and interference of the private sector into the sensitive arena of 'prisons' but to garner their support financially by way of their Corporate Social Responsibility. The government bears also an obligation to ensure that the constitutional philosophies of social justice and equity are safeguarded. Curing the imbalances among the 'haves' and 'have nots' will procure greatest good for the greatest number.

United Nations Industrial Development Organisation (UNIDO) defines Corporate social responsibility as "a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives, while at the same time addressing the expectations of shareholders and stakeholders."⁴¹

Many companies all over the world, including companies in India, channelize their CSR policy towards the amelioration of prisons and life of prisoners. Given below are a few examples of CSR initiatives taken up by the companies:

⁴⁰See *supra* note 33.

⁴¹United Nations Industrial Development Organization, *What we do*, available at <http://www.unido.org/what-we-do/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/csr/what-is-csr.html>, (last visited on June 19, 2016).

Crewcare Inc. a company committed to provide qualified, certified and medically fit seafarers in Philippines collaborated with the Prison Ministry in celebration of Prison Awareness Month. Crewcare conducted a medical mission, donated items to the prisoners' families, and provided medical checkups and medicines as a part of their CSR policy.⁴²

Various African companies have contributed towards helping prisons in some or the other way as a part of their corporate social responsibility. The Dangote Industries Limited, based in Nigeria, has benefitted various prisons by making yearly product donations.⁴³ The Choppies group in Botswana makes monetary donations to Botswana Prison Services.⁴⁴ By its support of Mutende(an employee-driven association of CEC), which donated assorted items to inmates and facilitation of its visit to Kamfinsa Prison, CEC (Copperbelt Energy Corporation Plc) exhibited its commitment to Corporate Social Responsibility (CSR).⁴⁵

PT. Holcim Indonesia Tbk Cilacap plant is one business actor that concern with the surrounding environment through its company's CSR program. PT Holcim Indonesia Tbk Cilacap Plant, in 2010 has a program for empowerment of the prisoners in Nusakambangan island, through its CSR programme which is one form of partnership between government and the private actor.⁴⁶

In Srilanka, McLaren group supports Colombo Welikada Prisons, through the Friends of Prisoners Children charitable foundation, to provide scholarship to the children of prisoners, by building a library for prisoners, upgrading the women's ward etc.⁴⁷

These initiatives prove the entry of CSR into the domain of prisons.

In India, Section 135 of the Companies Act, 2013 introduces the concept of Corporate Social Responsibility.

"Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee..." This Committee ensures the formulation of a CSR policy, whereby it provides that the company should spend, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years.⁴⁸

⁴²Barista Uno, *Crewcare Inc takes csr to prison*, Marine-cafe, available at <http://marine-cafe.com/crewcare-takes-csr-to-prison/>, (last visited on June 19, 2016).

⁴³DANGOTE, *About us*, available at <http://dangote.com/aboutus/responsibility.aspx>, (last visited on June 19, 2016).

⁴⁴ CHOPPIES, *Corporate Social Responsibility*, available at <http://choppies.co.bw/corporate-social-responsibility/>, (last visited on June 19, 2016).

⁴⁵Copperbelt Energy Corporation Plc, *CSR*, available at <http://cecinvestor.com/mutende-donates-to-kamfinsa-state-prison-inmates/>, (last visited on June 19, 2016).

⁴⁶Rili Windiasih, Adi Sulistyono, Totok Mardikanto and RB. Soemanto, *Empowerment of the Prisoners (WBP) through a Partnership Model between Government and Private Actor (Case Study of Corporate Social Responsibility Program PT. Holcim Indonesia Tbk Cilacap Plant in Nusakambangan)*, 2 International Journal of Social Science Research 155 (2014).

⁴⁷McLaren Group, *Corporate Social Responsibility-(CSR)*, available at <http://www.mclarengroup.lk/about-us/cs>, (last visited on June 19, 2016).

⁴⁸The Companies Act, 2013, § 135.

G4S, a world-renowned multinational security company that also oversees private prison management in various countries like UK and USA, has a branch in India, which significantly contributes to the prison sector in India through its CSR Policy.

The Tihar Creche formed and operated by India Vision Foundation, a leading NGO in this field is monetarily funded by G4S by sponsoring the children's education, uniforms, food, regular health checkups, outings, games, music, dance, story telling, cartoon/inspiration movie, paper cutting and folding, hand painting and nutritious food.⁴⁹ Apart from it also sponsors skill development program for women inmates⁵⁰. An E-library was also set up by India Vision Foundation for women inmates.

In Gurgaon prison, G4S India sponsors the Creche by sponsoring their education, uniforms, food, regular health checkups, outings, games, music & dance, storytelling, cartoon/inspiration movie, paper cutting and folding hand painting and nutritious food.

An automobile component manufacturing company Minda Furukawa Electric (MFE) set up its plant in Tihar Jail in the year 2014. This project is a part of their Corporate Social Responsibility programme and they promise to provide inmates with employable skills at the time of their release by way of job training. Minda Furukawa pays 15 per cent more than prison wages, or Rs 113.85 a day, for skilled workers. It contributes 10 per cent, or Rs 11.30 per worker, per day, to the prison welfare fund - a total cost of Rs 125.15 per worker, per day for skilled work therefore benefiting the prisoners. This corporation has also extended its programme to the Yerawada Jail at Pune.

Prateek Group, a realty company, as part of its CSR scheme funds India Vision Foundation and assists it in many projects like "Helping weave their lives" which will help them gain financial independence post their release and keep them engaged by filling out their long hours of imprisonment and by making donations from time to time.

Another company, SILVEX has joined hands with the Prison Ministry of India to support them in the activities carried out by their volunteers⁵¹ in various prisons in Maharashtra (Yerwada and Nagpur prisons).

These examples are demonstrative of how corporations can be involved in certain areas of prison management and correctional administration. Areas of work like attending to the welfare needs of prisoners, their education and training, providing family support and counselling services, liaison with prison authorities to access basic rights and facilities, and rehabilitation and developmental needs can be further strengthened by an effective partnership between the two. This is how CSR policies can greatly and positively further the end goals of a successful PPP model. Therefore, companies conducting businesses in India should look forward to contributing towards welfare of prisons in other states of the country.

⁴⁹ G4S India, *Tihar Creche*, available at <http://www.g4s.in/en-IN/Social%20Responsibility/Corporate%20Social%20Responsibility%20Policy/Tihar%20Creche/>, (last visited on June 19, 2016).

⁵⁰ *Id.*

⁵¹ Silvex Exports Private Ltd., *Corporate Social Responsibility*, available at <http://www.rocketbatteries.in/corporate-social-responsibility.html>, (last visited on June 19, 2016).

V. CONCLUSION

"Prison" has always been a square of oblivion in the minds of the civil population and actors who are not directly participating in any prison related ventures. This neglect proves a drawback for prison progress. With the philosophy of rehabilitation and reintegration being the present day guide for the criminal justice system in addressing prisons, the penultimate goal remains that the society in which they are to be finally rehabilitated and reintegrated accepts them as reformed individuals. To reach this 'goal' in the most efficient manner, one has to participate in the 'means'.

To tackle problems like overcrowding, drug abuse inside prison premises, custodial violence, inadequate security, the state requires enormous amount of financial as well as human resources. Considering the present economic conditions in India, and human resources flowing more towards the private sector, to maintain prisons becomes a burdensome task.

The civil society, therefore, needs to actively get involved in the domain of corrections. As elaborated in the above section dealing with the pros and cons there seems to be a scope for the private companies to support the government in managing prisons. In India, the stage of privatization in the prison sector is still nascent. Even though it is commonly believed that private prisons are ruthlessly profit driven, the shareholders of the company are expected to keep a check on the quality of services provided in order to maintain the company's goodwill and repute. Private companies can also, instead of directly investing money for profit, bring prisons within the fold of corporate social responsibility. However, the Companies Act 2013, which elaborates on CSR, doesn't mention prisons. Revising that aspect of corporate law could do a world of good to the criminal justice system and the social well being of the community.

Considering that complete privatization of prisons is not very feasible, keeping in view the problems encountered by the various developed countries it is suggested that instead of private prisons, the Government can adopt the PPP model in more number of prisons across the entire country.

