# THE PRISON SYSTEM AND HUMAN RIGHTS IN AN ERA OF LIBERALIZATION AND PRIVATIZATION

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**Abstract:**

Prison is a state subject under List-II of the seventh schedule of the Indian Constitution. The management and administration of Prisons fall exclusively in the domain of the state government. The prison system in India is still governed by the archaic Prisons Act, 1894 and the Prisoners Act, 1900, which provide for corporal punishment for prison offences. However, after independence some liberal provisions were introduced in the Jail Manual by Pakwasa Committee, 1949, by which well-behaved inmates were rewarded with remission in their sentence.

A society cannot be recognized as a civilized society unless it treats the prisoners with sympathy or affection and liberalizes the prison system. A prison atmosphere, living condition of the prisoners, health care and medical facilities, educational and vocational training, etc. can be accepted as civilized only if the basic human rights are protected. Liberalization of prison system can occur only when release on probation and parole, selection procedure of open-prison, visiting system in prison, communication with family and relative, leave and pre-mature release, incentive for prison labour, legal aid in prison, after-care, etc are made easier.

The paper examines the necessity of liberalization of prison system in India for effective Criminal Justice Administration and for reformation, rehabilitation and re-socialization of prisoners and making them good citizens after release from prison. Several countries have experimented with privatization of prison. India has not yet considered the privatization of the prison sector. An attempt has been made to describe the history, development, advantages and disadvantages of privatization of prisons in different countries and their feasibility in India.

**Introduction:**

Liberalization and privatization are revolutionary concepts, presently sweeping the world. India is no exception. Since 1991, these concepts have been accepted and applied in India. The New Economic Policy is a fait accompli and almost irreversible. Even when the United Front

Government came to power at the Centre, supported by the Communist parties, it followed the policies of liberalization and privatization.[1]

Privatization is a fuzzy concept. It covers a wide range of ideas, programmes and policies. In the broad sense of the terms, privatization is a roll-back of the state from the lives and activities of citizen and strengthening the roll of markets. In the narrow sense, privatization is transfer of ownership from the public to the private sector, or transfer of control over assets or activities as in the case of privatization through leasing, where ownership is retained, leaving management of assets and activity to private parties. It may be noted that privatization changes the role of the state, and not necessarily reduces it. The monitoring and regulation of the privatized system is a complex and difficult job. The state also has the onerous responsibility of ensuring that a meaningful competition prevails in the privatized sector of the economy, and the vulnerable sections of the society are not unduly adversely affected.[2]

**Privatization of Prisons in USA:**

Prison Privatization advocates and critics alike, in the United States and elsewhere-prisons represent a bellwether for broader questions about the scope of government.[3] As John Donohue writes, "Few roles in our American society seem more inherently 'public' than those of the police, the judges and the jailers."[4] Given the tradition of association prisons with core governmental functions,.[5] Prison privatization is strategically key to privatization proponents, as a test of the very notion of core government.[6] Core government –implying a non-delegable "duty to govern"-is itself an issuing debate.[7]

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

2. 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.

3. Judith Hachett Et Al., the Council of State Govt's & the Urban Institute, issues in contraction for the private operation of Prisons and Jails (1987). For comprehensive histories of prison privatization and critical accounts of current debates, see generally capitalist punishment: Prison Privatization & Human Rights (Andrew Coyle et al. eds., 2003); Michael A. Hallett, Private Prosons in America: A Critical Race Perspective (2006); Privatization in Criminal Justice: Past, Present and Future (David Shichor & Michael J. Gilbert eds., 2001); Bert Useem & Anne Morrison Piehl, Prison State: The challenge mass incarceration (2008).

4. John D. Donahue, Prisons for Profit: Public Justice, Private Interests 3 (Econ. Policy Inst. ed. 1988).

5. Judith Resnik, Globalization(s), Privatization(s), Constitutionalization, and Statization: Icons and Experiences of Sovereignty in the 21st Century, 11 INT'L J. CONST. L. 162, (2013).
6. Charlesh H. Logan, Private Prison: Cons & Pros 4 (1990).
7. Laura A. Dickinson, Public Values/Private Contract, in Government by Contract Outsourcing and Democracy, 335 Jody Freeman& Martha Minow eds., 2009.

The centrality of prison privatization to wider debates about privatization gives us the starting point in this article. We agree with Frank Michelmam's assessment that privatization raises constitutional questions in a way that globalization does not, at least not automatically.[8] Taken to an extreme, or in its most ideological form, one might imagine- with Michelman- 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.[9] What, then, is the problem with prison privatization? In what follows, rather than discuss this question in traditional binary term- public versus, or more efficient versus less efficient-we read the private prison debate as a test of the government's ability to mediate the public's responsibility for the human conditions of citizenship. This enables us to take a broader perspective on what is at stake in these debates, especially for the prisoners involved, when the state decides to privatize.[10]

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."[11]

In other countries the privatization has embraced o wide gamut of services and functions-ranging from core industries, to health, education to corrections which were until recently cordoned off from private entrepreneurship as being essentially functions of the welfare State. India also the debate has been stirred off by the suggestion of Ms. Kiran Bedi, the former Inspector-General of Prison, Delhi that prisons in India could also be privatized for effective and efficient prison administration. The nation's prisons and prison populations are under increasing strain.

8. Frank I. Michelman, W(h)ither the Constitution?, 21 Cardozo L. Rev. 1063, 1073 (2000).
9. Alexander Volokh, A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons, 115 Harv. L Rev. 1868, 1870 (2002).

10. (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 (2016) PP.357-358.
11. Ibid. at p.175

**Prison Establishments in India:**

Prison establishments in India comprise eight categories of jails. The most common and standard jail institutions are Central jails, District Jail and Sub Jail. The other types of jail establishments are Women Jails, Borstal Schools, Open Jails and Special Jails.

Table-I

| Types | Number | Total capacity |
|---|---|---|
| Central Jails | 134 | 159,158 |
| District Jails | 379 | 137,972 |
| Sub Jails | 741 | 46,368 |
| Women Jails | 18 | 4,784 |
| Open Jails | 63 | 5,370 |
| Borstal Schools | 20 | 1,830 |
| Special Jails | 43 | 10,915 |
| Other Jails | 3 | 420 |
| Total | 1387 | 366,781 |

*Source: National Crime Records Bureau*

The above table has mentioned the types of Jails and their total capacity as the end of 31st December 2015.[12] Inmates lodged in India jails are categorized as convicts, under-trails, and detenues. A convict is "a person found guilty of a crime and sentenced by a court.[13] An under trail is a person who is currently on trail in a court of law.[14] A detenue is any person held in custody.[15]

12. Indian Crime Records Bureau- Prison Statistics (http://ncrb.nic.in/State Publication/PSI/Prison2015/Snapshots-2015.pdf).
13."(1978). "Webster's New World Dictionary of the American Language", (2d Coll Ed.) P.311.
14. Definition of under-trail in Oxford Dictionaries British & World English (http//oxfordditionaries.com/definition/English/undertrail) Oxfordditionaries.com.29 may 2013 Retrieved 4 June 2013.

15. "Detenue-Definition and more from the Merriam-Webster Dictionary" (http://wwwmerriam-webstercom/dictionary/d%c3%A9tenu) Marriam-webstercom.Retrieved4 june2013.

Prison inmates lodged in Indian jails in relation to non-Indian Penal Code (IPC) crimes are classified as civil prisoners. They consist of convicts and under-trails.

Table-II

| Year | No, of Inmates | | | Occupancy Rate |
|---|---|---|---|---|
| | Male | Female | Total | |
| 2011 | 356,902 | 16,024 | 372,926 | 112.1% |
| 2012 | 3,68,184 | 16,951 | 3,85,135 | 112.2% |
| 2013 | 3,93,804 | 18,188 | 4,11,992 | 118.4% |
| 2014 | 4,00,855 | 17,681 | 4,18,536 | 117.4% |
| 2015 | 4,01,789 | 17,834 | 4,19,632 | 114.4% |

*Source: National Crime Records Bureau*

The above table shows the population and occupancy rate of prisons in India annually in the end of 31st December, 2015. Apart from the all-pervasive problems of over-crowding, prolonged detention of under-trails, unsatisfactory living conditions, staff shortage and poor training, corruption and extortion, inadequate social reintegration programs, poor spending on health-care and welfare, lack of legal aid, allegations of indifferent and even inhuman approach of prison staff among other, 62.2% (as on 31st December, 2015)of the inmates are under trails. And, prisons, instead of being correctional centre have, themselves, in practice, become crucibles of crime. This is compounded by lack of professionalization of the jail- administration officials. As has been aptly remarked. The winds of change must blow into our system and self-expression and self-respect and self-realization creatively substituted for the dehumanizing remedies and"wildlife" techniques still current in the jail armoury.[16]

In few decades' prison population have increased tremendously which create number of challenges before prison administration like security & safety in prison, hygienic issues, overcrowding etc. Hence comprehensive database on various aspects of prison institutions are required to understand and analyze issues and challenges before prison management. This report contains comprehensive information at the national level on majority of such aspects of these

16. Srinath ,Lalitha. (1996).”Privatization of Prison- Relevance of Bentham” Cr.L.J. P.120.

institutions hence has been found to be of immense use to the prison authorities in planning various activities relating to the prison administration. This report for the year 2015 is the twenty first issues in the series.[17]

**Jeremy Bentham’s Proposal for Privatization:**

It is in this context, that Jeremy Bentham’s proposal for privatization assumes importance. In fact, the first proponent of contracting for corrections was Jeremy Bentham. He believed that punishment should be as economical as possible. Violence of an excessive nature meted out to the prisoners, would not only be ineffective, but would also prove unscientific in the correction process. It would in fact amount to counter-crime committed by the authority of law. Following his predecessor, Beccaria, Bentham opined that while man had failed to comprehend the harmony of moral bodies.[18]

In the post –American-war England, the British Parliament confronted with the problems of deportation of prisoners, who were until then sent to American planters on bail, sought to deport them to Australia, instead. It was against this historical context that Bentham called for a new approach to imprisonment, organized around an architectural innovation in his 1791 book, Panopticon.

To reassure skeptics, Bentham proposed two mechanisms of accountability to limit costs and guarantee performance. First, was a short but strictest of specification on how the contractor could treat inmates. “In the first place, he shall not starve them…. In the next place, I don’t know that I should be for allowing him the power of beating his boarders, nor in short of punishing them in any shape.” Finally the contractor would be penalized if his charges died at an excessive rate: the contract “would make him pay so much for every one that died, without troubling whether any care of his could have kept the man alive”[19] The penalty would be set at a level that made it worth the contractors while to refrain from brutalizing inmates. Bentham reasoned that basing the penalty on all deaths, rather than on avoidable death, would save monitoring costs and eliminates disputes over fault. In Bentham’s world, both the public and the prison entrepreneur faced the simpler goals and constraints than their modern counterparts.

17. Report on Prison Statistics India, 2015, 21st Issues (2015) National Crime Records Bureau, Government of India, P.1.

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

19. Vide Jeremy Bentham, Panopticon, at 67-71, quoted in John D. Donahue, The Privatization Decision (1989) At 171.

But however, straight forward the contract, the problem of enforcement remained. How would the public know that prisoners were being fed and kept safe against abuse? Bentham's second device for holding contractors accountable was an extreme version of what would today be called "sunshine provisions". While the contracter would be free to manage the prison as he thought fit (Short of starving or beating inmates or piling up an inordinate body count) his operations, by explicit contract, would be subject to unlimited scrutiny. "I will require him to disclose, and even to print and publish his account….. I will make him examinable and cross- examinable viva voce upon oath at any time.[20]

Prisons could be organized around various industrial activities- creating real factories with fences instead of just warehouses with wall- to be managed by the major corporations interested in prison construction and operation. Under the present system, as it exists now, instead of the prisoners paying their "debts" to society, they increase the debt of the tax payers by consuming public resources without offsetting the expense of their incarceration. Under the new dispensation, the wages earned by the working prisoners could be divided three ways: (i) to contribute towards the cost of their confinement; (ii) to make restitution to the victims of their crimes; and (iii) to help support their own families during imprisonment, or accumulate funds for use on their release to lessen, any temptation for return to a life of crime.[21] Productive work behind bars would so reduce prisoner's idleness, which is a major cause of gang warfare and other violence in prisons. Of course, beggar and other forms of forced labour have been constitutionally prohibited.[22] The private sector will not have the luxury since the treat of fines and severance of the contract would hit them severely in their earning.[23]

**Johan D. Donahue's Privatization Decision:**

Johan D. Donahue in his work, the privatization Decision "quoted from Bentham's Panopticon at 67-71. He observed that his treatment of the allocation of risk, the costs of monitoring behavior, and the merits of the contingent contracts based on deviations from actually determined terms, shows that he was much ahead of his times and with great foresight been able to foresee the future developments in contract law.

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20. Ibid. at page 172.
21. See Human Rights Newsletter, Vol. 3:4, April, 1996.

22.AIR 1982 SC 1443 and AIR 1983 SC 328.
23. Ibid. at page 173.

Under the scheme of privatization of prisons, the wages earned by the working prisoners could be divided the three ways: (i) to contribute towards the cost of their confinement (ii) to make restitution to the victims of their crimes (iii) to help support their own families during imprisonment or accumulate funds for use on their release to lessen any temptation for return to a life of crime.[24]

**Opposition to Correctional Contracting**:

Opposition to contracted prisons could come from several sources. Law enforcement essentially an inherently being a state function, there is a strong opinion that only public officials could be entrusted with prison administration and care of the prisoners. This would also mean loss of employment to the current jail administration and Government employees engaged in these activities and may consequently result in increased resentment among the affected employees. Although prison contracts would also provide some contingencies like disruptions due to strikes, riots, and bankruptcy, still apprehensions are entertained by some regarding the eventuality of the contracted prison-staff, themselves, resorting to strikes and other job actions. This would be more a paper-tiger then a real one, for private employment entails immediate termination, and unemployment, if the terms be violated by the Government and this would be a sufficient reason for efficient discharge of their functions.[25]

**International Obligations and Guidelines on Prisons:**

The International Covenant on Civil and Political Rights (ICCPR) remains core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate these provisions into its domestic laws and state practices. The International Covenant on Economic, Social, and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standards of physical and mental health. Apart from civil and political rights, the so called second generation economic, social and human rights as set down in the ICESR also to the prisoners. The UN Standard Minimum Rule also made it mandatory to provide a separate residence for young and juvenile delinquents away from adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations, 1990) and the Body of Principles for the protection of all persons under any form of detention or imprisonment. (United Nations, 1988)

24. Johan D. Donahue, (1989). "The Privatization Decision" at quoted from Bentham's Panopticon.1791.67-71.
25. See. Randall Fitzerrald. When Government Goes Private, 1988 at 116.

International covenants and instruments are become lights showing the path of justice and humanity to the nations. The urge to implement and uphold human rights should come from within a nation. The instrumental endeavours have not been in vain. It takes time to transform international good intentions into national norms In the meantime; these give the national judiciary an opportunity to interpret national law in the light of international obligations of the nation. The position has been admirably summed up by the Supreme Court of India in Varghese V. Bank of Cochin:[26] "The remedy for breaches of International law in general is not to be found in the law courts of the State because International law, per se or proprio vigor, has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken……. The Declaration of human rights merely sets a common standard of achievement for all peoples and all nations but cannot create a binding set of rules. Member-States may seek , through appropriate agencies, to initiate action when these basic rigts are violated, but individual citizens can not complain about their breach in the municipal courts even if the country concerned has adopted the covenants and ratified the optional protocol. The individual cannot come to court but may complain to the human rights committee, which, in turn, will set in other procedures. In short, the basic human rights enshrined in the International Covenants above referred to, may, at the4 best inform judicial institutions and inspire legislative action within member-States, but apart from such deep reverence, remedial action at the instance of an aggrieved individual is beyond the area of judicial authority."

The Supreme Court of India has referred often to the International Covenants while dealing with Human Rights violations. For Example, in the Prem Shankar Shukla v. Delhi Administration,[27] the Supreme Court, while dealing with handcuffs and other humiliations inflicted on persons in custody, observed, "After all, even while discussing the relevant statutory provisions and constitutional requirements, court and counsel must never forget the core principal found in Article 5 of the Universal Declaration of Human Rights, 1948:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

26. AIR 1980 SC 470.
27. AIR 1980 SC1535.

In Sunil Batra v. Delhi Administration,[28] the Supreme Court quoted extendively from international instruments on Human Rights.[29]

So, Courts to take due note of the International Instruments of Human Rights while dealing with cases of violation. Art. 51 of the Constitution of India make it obligatory for the State to foster respect for International Law and treaty obligation.

**Human Rights issues on Prisons:**

Human Rights issues and obligations are now an important feature of the day-to-day conduct of Government. Over the years since the proclamation of the Universal Declaration in 1948, states have development a considerable number of human rights instruments at the national, regional and international levels and have undertake obligations under international and domestic law both to promote and to protect a wide variety of human rights. [30]

All human Rights are derived from the dignity and worth inherent in the human person and that the central subject of Human Rights and Fundamental freedom. In simple term, whatever adds to the dignified and free existence of human being should be regarded as Human Right. Evolution and crystallization of the concept took a long time. Initially there was confusion between the Natural Rights propounded by political philosophers in the bygone ages and the concept of Human Rights. The latter is an all encompassing.

Human Rights means rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution as embodied in the fundamental rights and the International Covenants. The important fact, the freedom of movement itself curtailed to an extent by the judicial within the frame work of the rules applicable and to the constitutions itself, has got almost importance. Status of Human Rights in Prisons shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status. As such, Prison Institution should treat the prisoners with a view to re-socialization them by maintaining and improving all desirable relations of prisoners with him family and friends.

28. AIR 1980 SC 1578.

29. Subramanian, S. (1999). "Human Rights and Correctional Administration", Association for Advancement of Police and Security Sciences, P. 5.
30. Ibid at page 1.

The treatment shall be such as will encourage their self respect and develop their sense of responsibility, Religions care, education, vocational guidance and training, employment, counseling, physical development and strengthening of mental character are to be given in accordance with individual needs of each prisoners, taking into account of his social and criminal history, length of sentence and his prospects after release. Those will strengthen the reformative aspect at the administration and being a great changer in the functioning of jails and these can serve as real centers of reformation.[31]

Till recently Human Rights had spectral presence laws, but the increasing awareness of human rights issues, conventions and zeal of human rights activists, practitioner and judges have contributed a lot in expounding the law on Human Rights. In 1996, National Human Rights Commission suggested a prison reform Bill. The draft Bill was circulated to the stats in 1998, a few of which came out with new legislation. Rajasthan was one such state, which incorporated a chapter on the Rights and Duties of Prisoners in its Rajasthan Prisons Act, 2001.

**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 fail 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.[32]

31. Prison News, (2004). "Regional Institute of Correctional Administration", Vol. IV, No. 5, P.2.
32. Reference Note No. 23/RN/Ref/July/2017, Lok Sabha Secretariat, New Delhi.

**Indian Jail Committees:**

After independence various Committees have been constituted by the Government of India from time to time, such as 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), to study and made suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conductive to the reformation and rehabilitation of prisoners. These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country.

Basically, Just after independence the Pakwasa Committee in 1949 suggested the system of utilizing prisoners as labour for road work without any intensive supervision over them. It was from this time onwards that a system of wage also introduced. Subsequently, certain liberal provisions were also introduced in jails manuals by which well- behaved inmates were rewarded with remission in their sentence. In 1951, the Government of India invited the United Nation expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reforms. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals.

**Liberalization in conditions of Imprisonment:**

The overcrowding is the major problems of Indian prisons. The effect of overcrowding is that it does not permit to segregation among convicts those punished for serious offences and for minor offences. As a result of this, the hard criminals may spread their influence over other criminals.[33]

The Law Commission in its 78th Report made some recommendations for easing congestion in prisons. These suggestions include liberalization of conditions of release on bail, particularly release of certain categories of under trails on bail. Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation.

Total number of 4, 19,623 jail inmates has various jails allover India at the end of 2015. Overcrowding may also be reduced by release on parole a prisoner after he has served part of the sentence imposed upon him. It is conditional release of an individual from prison.

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

The system of remission, leave and premature release may also be useful in tackling the problem of overcrowding in prison institutions. The All India Committee on Jail Reforms, headed by Justice A.N. Mulla has in its Report (1980-83) mentioned about various types of remission and made useful recommendations to streamline the remission system in India.[34]

A total of 1, 35,634 (48.1%) under trail inmates in the age group of (18-30) years, 1, 15, 181 (40.8) under trails were in the age-group of (30-50) years and 31, 229 (11.1%) under trails of 50 years or more as on 31.12.2015. In the seven cases involving Hussainara Khatoon V. Home Secretary, State of Bihar,[35] the Supreme Court considered the issue of people who were imprisoned while awaiting trail, sometimes for many years, and who were denied bail on account of their inability to afford it, or their ignorance of knowing that such an option even existed to them. The court began by noting that a bail system was "Highly Unsatisfactory" if it assumed that the only deterrent against fleeing from justice was the risk of monetary loss, and it continued by noting that this system led to disproportionate imprisonment of the poor. These cases are also significant because the Supreme Court enforced Article 39A of the constitution, which mandates the state to provide legal aid to deserving persons.

The Juvenile Justice (Care & Protection) Act, 2000 (It also amended in 2006) was although a positive step taken by the Indian legislature towards protecting the rights of juveniles in custody of the police or an investigation authority, yet the attributes of Act have failed to ensure total protection to juvenile offenders. Juvenile offenders are persons below the age of 18 and have been convicted for committing crimes.[36] Majority of the states in India have passed special legislations for liberalization the statutes to ensure that the Institutions where juveniles are held era of a reformative and educational nature.

In Ratan Lal V. State of Punjab case,[37] is a good example of liberal approach where Subba Rao J. gave retrospective application to the Probation of Offender Act which had been notified in a certain district a few months after the conviction of the appellant. The same concern in favour of probation is reflected in applying Section 360 and 361 of the Criminal Procedure Code.

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34. Ibid at page 399.
35. AIR 1979 SC 1360.
36. Colin Gonsalves, Vijay Hiremath, & Rebecca Gonsalvez, (2008). (Complied & Edited)"Prisoner's Rights, Human Rights Law Network" Vol.II P.326.
37. AIR 1965 SC 444.

While applying the provisions, the Supreme Court observed in Bishnu Deo v. State of West Bengal:[38] "In the context of Section 360, 'the special reasons' contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitee the offender after examining of the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed…." It seems, there would hardly be any case to hold that it is impossible to reform and rehabilitate a particular offender.

A total of 39,199 inmates were released on parole. However, 501 inmates were reported as parole absconders out of which 209 parole absconders were re-arrested during 2015.The term 'Parole' and 'Furlough' have not been defined by the Indian legislature. Although The Chapter XXII of Criminal Procedure Code, 1973 deals with the suspension and remission of sentences, the terms parole and furlough have not been defined in the Code. To understand their meaning and in what connotations are these terms used it is necessary to rely upon the judicial decisions of India. In the case of Sunil Fulchand shah V. Union of India & Others,[39] the Constitutional Bench of the supreme Court had observed that 'Parole" is a form of "temporary release" from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence. In Sharad Keshav Mehta,s case,[40] the Bombay High Court held the release on a furlough was a legal and substantial right of the prisoner and denial of the same must be based on material facts indicating that the same would disturb public peace and tranquility.

The total number of 3,789 inmates has in various open-jails allover India at the end of 2015. Minimum security is kept in such prisons and maximum are engaged in agricultural activities. The objective of an open-prison is to aim at development of self-respect and sense of responsibility as well as useful preparation for freedom, discipline is easier to maintain and punishment is seldom required, the tensions of normal prison life are relaxed, conditions of imprisonment can approximate more closely to the pattern of normal life. The advantages which make the open-prisons superior to the other types of prisons as: The flexibility inherent in the open system is expressed in the liberalization of the regulations, the tensions of prison life are relieved and discipline consequently improves.

38. (1989) 3 SCC 714.
39. (2000) (3) SCC 409.
40. 1989 Cri LJ 681.

Moreover, the absence of material and physical constraints and the relations of greater confidence in prisoners and staff tend to create in the prisoners a genuine for social re-adjustment. The eligibility criteria for selection of inmates to open-orisons vary from state to state in India. It should be liberalized and standardized on uniform basis.

**Judicial trend:**

Judiciary plays a very significant role to provide justice to victim. The judiciary and inspiring judgments has been bedrock of social justice. The Prisons Act, 1894, does not prescribe separate norms for privatization and liberalization of prison system in India. Moreover gross exploitation of prisoners, shortage of main powers, poor living conditions and medical facilities, overcrowding in prisons and corruption of prisons staff have been seen in various prisons in the country and these demands a very serious revision of the implementation policies. The following case laws are useful to understand the minimum needs, facilities and special rights entitled to the prisoners and it may be invite the liberalization and privatization of Indian Prisons. The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32,37 and 39 A of the Constitution in a positive and humane way. Given the Supreme Courts' overarching authority, these newly recognized rights are also binding on the State under Article 141 of the Constitution of India which provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Our apex courts have justified various rights of the prisoners through the constitutional and human rights provisions such as:

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 trail.**
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.**

**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 reformative 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.**

*Sources: Sreeekumar, 2003.*

In India, the courts have acknowledge and several judgments recognize a wide array of fundamental and other rights of prisoners, basically from Sunil Batra case[41] to Ram Murthy case[42] and R.D. Upadhyay case.[43] The above table- III enumerates the broad categories of rights, which are not exhaustive as this field is still developing and slowly evolving.

In Bhagirath V. Delhi Administration,[44] Section 428 of the Code of Criminal Procedure, 1973 was liberally construed. This section direct that period of pre-conviction undergone by an accused person during investigation, inquiry or trail of the same case shall be set off against term of imprisonment imposed on him on such conviction. It was held that the provision was beneficent provision and shall be applicable even to cases where sentence is imprisonment for life because such a sentence is also imprisonment "for a term" within the section.

41. AIR 1980 SC 1579.
42. AIR 1996 SC 787.
43. (2003) (8) SCC546.
44. AIR 1985 SC 1050.

The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoner's rights have become an important item in the agenda for prison reforms.

**Conclusion:**

The reformative objective expects that a prison should also be a place of learning and earning. In order to provide physical, material and mental conditions of decent living to prisoners, a prison requires recreating almost a miniature world inside the prisons, which is difficult if not impossible. European countries are increasingly searching for alternatives to confinement, as they realize more resources for assimilation of deviants are available in open society rather than inside the closed walls. This has not happened so far in India, as governments across the ideological spectrum are illiberal and society is unsympathetic to rights of the incarcerated. The result, therefore, is lowest priority to the prison management.[45]

Contracting appears to be an effective method for management and operation of prisons and jails. By contracting, the Government merely delegates some of its executive or administrative responsibilities. It does not relinquish its authority or abdicate its ultimate responsibility. Prisons would remain subject to the supervision and regulation of the Government, and most significantly, subject to the rule of law, wherther they be run by Government employees or by a private agency.[46]

In India, by giving contract to run and manage prisons by private contractors and agencies, the government would not lose its control over the prisons and jails, because the rules and regulations and Acts will be framed by the government and supervisory powers of the government and its officials concerned would remain in force. The present study reveals that, the experiences of countries like the USA and U.K. regarding this aspect and after thorough consideration of all the demerits involved in private prisons, India may be adapt on an experimental basis, privatizing the prisons.

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45. Karnam M, (2008). "Commonwealth Human Rights Initiative".
46. Vide Lindowes Report of the President's Commission on Privatization, Government of the USA, March,1988 which has reaffirmed the policy of privatization of firms and more specifically Recommendation 17, at 155, which runs thus: "The Department of Justice should continue to give high priority to research on private sector involvement in correction."

It also is fruitful of Benthanm'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.