

**PRISON PRIVATIZATION: EXPLORING POSSIBILITIES IN INDIA (2017). By Prakash Sharma. Mohan Law House, S#2 Subway, Supreme Court of India, Bhagwan Das Road, New Delhi-110001. Pp. xxix + 335. Price Rs. 795/-.**

Prisons are an indispensable and integral component of criminal justice system of any country. A prison, also known as a correctional facility, jail, gaol, penitentiary, detention center, or remand center, is a facility in which inmates are forcibly confined and denied a variety of freedoms under the authority of the state. Prisons have been in existence since the advent of organized society. According to historians, the Romans were among the first to use prisons as a form of punishment, rather than simply for detention.<sup>1</sup> Prisons are most commonly used within a criminal justice system: people charged with crimes may be imprisoned until they are brought to trial; those pleading or being found guilty of crimes at trial may be sentenced to a specified period of imprisonment. The use of prisons can be traced back to the rise of the state as a form of social organization. Corresponding with the advent of the state was the development of written language, which enabled the creation of formalized legal codes as official guidelines for society.

Prisons in their embryonic form existed in ancient as well as medieval India. But the modern prisons which stand today are the legacy of the British colonial government. Unfortunately, prisons during the British period were dens of torture, cruelty and were known for inhuman or degrading condition of their inmates. Therefore, when the country became independent and adopted its own constitution which laid emphasis on justice, liberty and fraternity as goal values to be realized by the state through the arms of Fundamental Rights and Directive Principles of State Policy, prison reforms became a categorical imperative for the Indian Republic. In consequence, many attempts were made to humanize the prison set up by paying attention to the basic human rights of the under trial as well as convicted prisoners. The pioneering effort in this direction took place in 1951 when the government of India invited Dr. W. C. Reckless, a technical expert of the United Nations on Crime prevention and treatment of offenders, to suggest recommendations on prison reforms.<sup>2</sup> On his recommendation a committee was appointed to prepare an All India Jail Manual in 1957. The All India Jail Manual Committee (1957-59) prepared a model prison manual.<sup>3</sup> The committee was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the India. The report was presented in 1960 which, enunciated principles for an efficient management of prisons, and lays down scientific guidelines for corrective treatment of prisoners. Later, All India Committee on Jail Reforms (1980-83) under the chairmanship of Justice Anand Narain Mulla was constituted which, suggested setting up of a National Prison Commission as a continuing body to bring about

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<sup>1</sup> Michel Foucault, *Discipline and Punish: The Birth of Prison*, 282 (Alan Sheridan (tr.), Vintage Book, New York, 1995).

<sup>2</sup> Bureau of Police Research and Development, *National Policy on Police Reforms and Correctional Administration* (Ministry of Home Affairs, New Delhi, 2007), available at: <http://www.bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf>.

<sup>3</sup> Government of India, *Report of the All-Indian Jail Manual Committee* 129 (Ministry of Home Affairs, New Delhi, 1957-59).

modernization of prisons in India.<sup>4</sup> Also in 1997, the Supreme Court identified major problems that need immediate attention for implementing prison reforms.<sup>5</sup> Following the judgment a Committee was set up in the Bureau of Police Research and Development (BPRD) to prepare draft model prison manual, which was accepted by Central Government and circulated amongst State government in later part of 2003. Despite many prison reforms made since independence, Indian prisons still face problems like overcrowding, drug abuse inside the prison premises, custodial violence and inadequate security. The state can handle these problems by making huge financial investments and a large-scale employment of human resources. But this in turn will place enormous burden on the economy and human resources. One possible way to decrease this burden on the economy is to embrace the idea of prison privatization as has already been done in many countries.

Penned by a young scholar, who already has some good articles published in Indian as well as in foreign journals, the book<sup>6</sup> attempts to provide a well-documented and well-researched study on prison privatization from a comparative perspective. It explores the possibility of adoption of the private prison model in India by having a dispassionate and objective consideration of prison privatization against the major problems plaguing the prison system in this country. The book consists of seven chapters including introduction and conclusion.

*Chapter I*, which is essentially introductory in nature, seeks to explain the idea of prison-privatization and identifies critical issues which this model of prison administration gives rise to.<sup>7</sup> The author submits that performance of prisons, state owned as well as private ones, should be evaluated in terms of common standards and to adopt double standards for this purpose does not hold any sound and sensible justification.

The *Second chapter* discusses and examines the theories of punishment and throws light on the functions of modern prisons and effects of globalization on crime.<sup>8</sup> Here the author also asks a debatable question that—whether imprisonment represents an area of government failure today?

The *Third chapter* discusses the prison set up in India in a historical perspective, highlights the post independence development in respect of administration of prisons. As rightly pointed out by the author, the science of prison administration has made significant advances in the

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<sup>4</sup> The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with hardened criminals in prisons. To constitute an All India Service called the Indian Prisons and Correctional Service for the recruitment of Prison Officials. After-care, rehabilitation and probation should constitute an integral part of prison service. See Jaytilak Guha Roy, *Prisons and Society: A Study of the Indian Jail System*, 21 (Gyan Publishing House, New Delhi, 1989).

<sup>5</sup> See *Ramamurthy v. State of Karnataka* (1997) 2 SCC 642. The court observed that the present prison system is affected with major problems of: (a) Overcrowding; (b) Delay in trial; (c) Torture and ill treatment; (d) Neglect of health and hygiene; (e) Insufficient food and inadequate clothing; (f) Prison vices; (g) Deficiency in communication; (h) Streamlining of jail visits; and (i) Management of open air prisons.

<sup>6</sup> Prakash Sharma, *Prison Privatization: Exploring possibilities in India* (Moham Law House, New Delhi, 2017).

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 17.

West and accordingly there is need to adopt modern techniques of prison administration in this country too.<sup>9</sup> As is well known, overcrowding of prisons and lack of sufficient budgetary allocations for prison administration are main reasons responsible for prison mismanagement in this country.

In the *Fourth Chapter*, the author addresses the problems of prisons and prisoners from a human rights perspective and highlights the reasons for inhuman treatment of prisoners and poor facilities for them in prisons, which in turn are the main cause for violation of basic human rights of prisoners.<sup>10</sup> Until 1970s-80s, prisons in all countries were government or state owned. It is therefore, quite natural that Constitution makers in this country had no idea of prison privatization at the time of the adoption and promulgation of the Constitution.

*Chapter Five* deals with the constitutional aspects of prison privatization and convincingly argues that as against complete prison privatization delegation of part of the state functions to the private sector is not incompatible with the prisons of the Indian Constitution.<sup>11</sup>

In the *Sixth chapter*, the author has provided a comparative study of private-prison structure in the United State, the United Kingdom and Australia. Pointing out the six factors that led these countries to adopt the private prison structure also exist in India as well.<sup>12</sup> These are exponential rights in prison population, lack of proper tools to tackle overcrowding and shortage of funds etc.

In the *Concluding chapter*, the author underlines the need to maintain prisons and protect and preserve the correctional values associated with them. Finally, the author proposes a private-public partnership mode to tackle the problems related to administration and management of prisons in this country. Interestingly, the author's argument is not for a complete privatization in the sense of divestiture.<sup>13</sup>

While the idea of prison privatization seems to be very attractive, one may ask if public prisons are not functioning well, what is the guarantee that private prisons will be more efficient in the optimum utilization of funds allocated to them? Maintenance of prison discipline and improvement in condition of inmates will be there. The very fact that incarcerated mafias and gangsters continue to involve in extortion and killings outside the prison through their proteges brings to the fore the problems of prison security. Further, the maintenance of peace and tranquility in the society may be an inhibiting factor in the adoption of the prison privatization model, especially, in a highly populous country like India.

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<sup>9</sup>*Id.* at 92.

<sup>10</sup>*Id.* at 95.

<sup>11</sup>*Id.* at 153.

<sup>12</sup>*Id.* at 204.

<sup>13</sup>*Id.* at 263.

On the whole, the book at hand is a useful addition to the existing literature on prison administration in India. However, a more detailed discussion of leading cases would have added to the merit of the work. Also reviewer finds his inability to understand how if government is inefficient at producing the output of prisons, why should one expect it to be any more efficient at producing prison-contracts? Non-inclusion of discussion on public views on privatization of human services marks its shortcomings. Further, this review draws attention to a crucial normative concern: what is the appropriate role of government? Perhaps this is left untouched for some future research in this field. Nevertheless, the work is on a subject, which is yet to be fully explored by lawyers. For this reason it should be welcomed by lawyers, penologists, social scientists and policy makers. The language and style of presentation in the book are by and large impressive. Despite the use of high quality paper and printing, it is moderately priced.

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