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# Criminal Policy of Iran and USA about Private Sector's Involvement in Prisons

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## Abstract

This article uses a descriptive-analytical research method to investigate prison privatization models and their shortcomings, to explore the positions of the United States and Iran on the matter and thus find answers to the following questions: Is the participation of the private sector in prison advisable? Is management possible under the laws of Iran and the United States? Is this participation consistent with the fundamental objectives of criminal law? In which of these two countries, can the participation of the private sector in prison management be optimally enforced? Despite the absence of legal regulations in Iran on the participation of the private sector in prison administration, the private sector entered the prison administration system since 1994. It is concluded that the studies carried out show that the participation of the private sector in prison management occurs qualitatively and quantitatively at a higher level in the United States than in Iran, due to the promulgation of legal provisions that create the conditions for this purpose in that country, among other political factors, cultural and legal.

**Keywords:** privatization of prisons; prison; execution of punishments; prison management; private prison.

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## Política criminal de Irán y Estados Unidos sobre la participación del sector privado en las cárceles

### Resumen

El presente artículo utiliza un método de investigación descriptivo-analítico para investigar los modelos de privatización carcelaria y sus deficiencias, con el fin de explorar las posturas de Estados Unidos e Irán al respecto y así encontrar respuestas a las siguientes preguntas: ¿La participación del sector privado en la prisión es recomendable? ¿La gestión es posible según lo dispuesto en las leyes de Irán y Estados Unidos? ¿Es esta participación coherente con los objetivos fundamentales del derecho penal? ¿En cuál de estos dos países, la participación del sector privado en la gestión penitenciaria se puede hacer cumplir de manera óptima? A pesar de la ausencia de regulaciones legales en Irán sobre la participación del sector privado en la administración penitenciaria, el sector privado ingresó al sistema de administración penitenciaria desde 1994. Se concluye que los estudios realizados demuestran que la participación del sector privado en la gestión penitenciaria se da cualitativa y cuantitativamente en un nivel más alto en los Estados Unidos que en Irán, debido a la promulgación de disposiciones legales que crean las condiciones para tal fin es ese país, entre otros factores políticos, culturales y jurídicos.

**Palabras clave:** privatización de las prisiones; prisión; ejecución de castigos; gestión penitenciaria; prisión privada.

### Introduction

Criminal justice is the process within which the government reacts to the criminal behaviors for supporting the society, enhancing the quality and level of justice and punishing the criminals. This process has numerous stages such as crime discovery, indictment and pursuit, investigation, trial and verdict issuance, punishment determination, appeal and sentence enforcement.

Privatization means delegation of affairs to the private sector. The private sector's involvement in its apparent form is a process in the course of which the public sector's duties and installations are transferred at every level to the private sector but privatization, in its real sense, refers to the cultural promulgation in all society levels by which the executive, judicature and legislature branches and all individuals of the country believe that the people should be assigned to their own tasks (Rahimi Borujerdi, 2006).

Criminal justice trend can be investigated and researched in two temporal cross-sections of serving justice amongst the tribes and serving justice

amongst the territories in macro-level in primitive communities in which such concepts as the public expedencies, government and the other public institutions were absent and such other concepts as crime, punishment and justice enforcement were envisioned as completely private. In these epochs of history, all of the stages of penal sentence enforcement were carried out by the private sector for the fact that there were no governments. At present, tribes (nongovernmental sector) administrate criminal justice in some of the countries like Myanmar and even punishments like death penalty are executed by the private sector (Sane'ei, 1983).

It was with the formation of the governments that the government proctored the provision of security and, in fact, the provision of security, was transformed to manifestation of the governments' enforcement of their rule of law and, due to the same reason, criminal justice became associated with public order and national governance.

However, in the recent decades, the new attitude to the national governance is interested in people's participation in the administration of the society more than before because elevation of the people's participation enables winning of their trust and brings credibility and legitimacy for a government and eases the serving of justice and the today's attitudes towards such concepts as the people and the people-driven organizations, on the one hand, and the government's inability in dealing with various kinds of delinquencies, especially from the executive perspectives, on the other hand, have accentuated the role of the coherent people-driven institutions more than ever before (Añez Castillo, 2017).

This is why the inclinations have been increased to the semi-formal or private institutions parallel to overcoming of the shortfalls existent in the formal systems of many of the countries as well as towards the corroboration and organization of procedures outside the formal institutions for suppressing crimes and/or enforcing the penal sentences.

## **1. Materials and Methods**

Our method in conducting this research is descriptive-analytical. The method of collecting the required information was taking notes from library resources as well as Internet resources.

## 2. Discussion

### 2.1. Private Sector's Involvement in Prison Management: In Iran's Law

Real privatization comes about when the legislature, judicature and executive branch and all of the society members come to the belief that the people should be assigned to their own tasks (Rahimi Borujerdi, 2006). With regard to the background of privatization in Iran before the victory of Islamic Revolution, numerous ideas have been expressed. Some believe that:

Privatization process has been commenced in Iran before the revolution during the years from 1951 to 1971 and the number of the private companies has been increasing during these years and that many of the activities that were being performed by the government during the past decades, have been delegated to the private sector (Kalanfarmia'ei, 2017: 26).

Some others are of the belief that “enforcement of the privatization programs has been initiated in Iran before the Islamic Revolution since 1961. The delegation of shares to the workers and sharing of the factories' interests with them have been amongst the steps taken during that period of time as a social correction. In this stage, the government's economic activities that had been expanded in the light of the first Pahlavi government's programs, underwent severe reduction and the private sector's share of economy was intensively increased (Nobakht, 1999).

The investigation of our country's penal regulations before the Islamic Revolution, including the law on the general punishment passed in 1955, the law on the principles of forming justice department passed in 1950, the law on the principles of penal courts passed in 1951, the law on conditional releasing of the prisoners passed in 1958, the law on the security and instructive interventions passed in 1960, the law on the suspension of the punishment enforcement passed in 1967, the law on the general punishment passed in 1973 and others, indicate that the issue of the private sector's management of the prisons and enforcement of the imprisonment sentences has not been predicted in the rules and regulations before the Islamic Revolution.

In the years after the victory of the Islamic Revolution, the country's conditions went on so that<sup>3</sup> the government was incumbently obliged to shoulder the ownership and management of a major part of the country's industry and economy. Corresponding to the Act 44 of the constitution, as

3 It means conditions stemming from the occurrence of Iraq's imposed war on Iran that was commenced since 1980.

well, the government was once again compelled to play the essential and pivotal role in this area. In the years after the imposed war and in line with development programs, privatization was again taken into account since 1989 in the budget program's verdicts and regulations.

The approval of the law on the first economic, social and cultural plan of Islamic Republic of Iran at 02/11/1989 and the law on the method of delegating the governmental shares belonging to the war devotees and laborers at 08/12/1994 signify the government's will for enforcing the privatization programs.

After the enactment of the third and the fourth development plans, privatization program was more seriously pursued<sup>4</sup>. In the next stage, it was with the enactment and announcement of the general policies of the Act 44 of the constitution that privatization was recognized as one of the most important economic programs of the government. The law on the enforcement of the general policies of Act 44 of the constitution that was approved at 02/08/2008 can be realized as a comprehensive and perpetual law about the privatization that classified and authorized all the previous scattered regulations.

In the area of the penal law, the executive by-law of the organization of prisons and the security and instructive interventions, passed in 2005, constituted the first text that explicitly pointed to the possibility of the private sector's involvement in some of the jail guarding services. Articles 13 and 15 of the aforementioned procedures pointed to the private sector's involvement in the employment and/or apprenticeship of the individuals sentenced to imprisonment.

Although the private sector's involvement in prison management during the years after the Islamic Revolution has not been explicitly pointed out, it has been implemented in practice. As the proctor of the administration of the prison affairs, the judicature has issued the order for privatization about two prisons and it has also signed contracts in this regard. At first, it was in 1974 that the order was issued for involvement in the management of the private sector in Vakil Abad Prison in Mashhad. After that and within nearly three years, administration of the following sections was delegated to the private sector but the general management of the prisons was still tenured by the government.

Prison's hospital, prisons' penal sentence enforcement office, statistics and computer information registration and recording, cultural services, instruction and counseling of the prisoners and unarmed guarding in the interior affairs of the prison were amongst the sections the administration

4 In the fourth development plant, emphasis has been made on the idea that the government is allowed in line with empowering the nongovernmental sector and facilitation of the privatization process to make use of all the possible methods.

of which was delegated to the private sector (Shams, 2002). In the early years of the privatization of Vakil Abad Prison, much opposition were posited. But, the statistics signify the optimum performance of the private sector in this area in such a way that despite the considerable reduction in the administrative personnel and reduction in the costs, the speed and accuracy in performing the prison affairs were increased and the statistics of the prisoners' violations were reduced at the same time.

The second experience of our country's penal law was management of the prison in Adel Abad, Shiraz, by the private sector. The contract that had been signed for management of Adel Abad Prison was in such a way that the major current and managerial duties of the prison's management had to be delegated to the private sector within a year and it had been stipulated in the meantime that certain mechanisms were to be taken into consideration for the government's supervision and assessment of the private sector's performance (Vanaki *et al.*, 2021).

In this contract, the computer affairs, enforcement of the penal sentences, all of the issues related to the inmates' rights and protection of the prisoners inside the wards had been given to the private sector. In case of the private sector's success in Adel Abad Prison, the delegation of jailing system of the whole country to the private sector was deemed likely but the privatization plan of Adel Abad Prison was a failure and caused creation of ambiguities and doubts regarding the successful presence of the private sector in the jailing system.

In spite of the fact that there is no limitation for the private sector's management of the prisons as specified in the current rules and regulations, it is necessary considering the benefits of enforcing privatization regulations in incarceration enforcement (including the reduction in the government's costs, improvement of efficiency and control and reduction of the crime perpetration statistics) for our country's legislator to perceive this necessity like many of the advanced countries and take serious measures in this regard via enacting a comprehensive and specialized law so as to set the ground for the better involvement of the private sector in the enforcement of the penal sentences.

As an example, our country's legislator stipulates in article 176 of the law on the criminal trial procedures, passed in 2013, that "the judicature can delegate the delivery of the judicial writs to the private sectors". But, such explicitness is not seen regarding the private sector's involvement in prison management. Furthermore, the imprisonment alternatives (subject of article 64 and its subsequent articles in the Islamic Penal Code of Law) are somehow indicative of hiring of the private sector in the jailing system.

## **2.2. In the Law of the US**

The subject of the private sector's involvement in the management of prisons in the USA has been more outstanding than any other topic. Thus, the issue is investigated in two separate paragraphs. The first paragraph deals with pre-Punitiveness period and the second paragraph is pertinent to post-Punitiveness period.

## **2.3. Pre-Punitiveness Period**

The term "Punitiveness" means tendencies towards the punishment and penalty. Literally, it means the criminal policy's inclination towards the revitalization of punishing and enforcement of punishment. Some of the jurists believe that: "Punitiveness has become prevalent in some of the countries including USA since 1960s and 1970s" (Mahmoudi Janaki & Moradi Hasan, 2011).

The severe and serious increase in the crimes and atrocities in the 1960s and 1970s drew the attention of the US government towards crime and its control (Wollan, 1986). Due to the same reason, it has to be stated that the US government has concentrated on the Punitiveness policy and exercising strictness towards crime perpetration since 1980 (Ronald Reagan's presidency period in the USA).

The present paragraph aims at investigating the evolutions in the private sector's involvement in prison management in the US in the period before Punitiveness, i.e. until before 1980. Earning income via enforcing punishment in the US is not a newly emergent phenomenon in such a way that the vast presence of the private sector in the enforcement of imprisonment punishment can be witnessed in the 18<sup>th</sup> and 19<sup>th</sup> centuries.

The major reasons of privatization in that period pertain to the insufficient capacity of the public prisons and, more importantly, the commercial interests of the private sector for using the workforce of the inmates. As an example, amongst the southern states, Texas delegated the administration of all its prisons to the private sector based on the convicts' employment system since mid-1800s till early 1900s. At the same time, prisoners were given on rent to the private camps for extraction of coal and phosphorus in Florida. In 1884, the coal and iron company of Tennessee State recruited all the prisoners of this state as miners (Thomas, 2006).

These contracts that had been predominantly signed within the format of the convicts' employment were cancelled in 1923 and the endorsement of contract with private sector for the use of their workforce lost its commercial potential due to the violation of the prisoners' rights and, eventually, it was completely eradicated in 1940. But, the presence of the private sector in the area of offering services parallel to the correction and treatment of the adolescents continued its activities (Yijia, 2010).



The most major activities by the private sector in the US's prisons in the pre-Punitiveness era pertained to the adolescent wards of the prisons. In 1976, a contract was signed in Pennsylvania for private sector's administrating of a safe treatment unit for violent crimes by the juvenile delinquents. (Thomas, 2006).

#### **2.4. Post-Punitiveness Period**

One of the major challenges with which the US' criminal justice system faced during the recent decades, particularly after 1980, is the subject of the excessive increase in the number of prisoners (criminals' inflation) in the state prisons. The doubled increase in the number of the adult criminals who had been sentenced to imprisonment by the state courts was per se a testimony to this issue. Safeguarding the security and accommodation of the large number of the prisoners caused an increase in the costs and responsibilities of federal, state and local authorities.

Since 1980s, USA witnessed the frustration of the public thoughts due to the failure of the criminal justice system in the implementation of the criminals' rehabilitation. In the meanwhile, the government's reluctance for supplying more budgets to the corrective institutions and the increase in the need for prison space intensified the crisis. It was under such conditions that the prisons' privatization and endorsement of overall or partial contracts with private sector for administrating the prison affairs were posited as solutions for overcoming the crisis and it was welcomed in practice (Austin & Coventry, 2001).

The major part of the contracts between the government and the private sector for administrating the affairs of the US' prisons since 1980 on was endorsed subject to the effect of two powerful factors: the first one is president Reagan's announcement in the first speech after election that the government has encountered a problem and that the solution is concentration on the private sector; the second one is that the USA had placed very strict confrontation with the criminals atop of its agenda with its emphasis on Punitiveness policy and this had caused this country to have the highest rate of the prisons worldwide (Selman & Leighton, 2010).

The contracts signed between the government and the private sector gradually became popular and the major part of the services inside the prison was delegated to the private sector within several years after the onset of privatization (Yijia, 2010).

During the years from 1980 to 1990, the prisons in the USA underwent a large increase. At the same time with these changes, this general belief was formed that if the private sector's contractors can perform their duties appropriately, the government's cost in the jailing system would be intensively reduced and, in the meanwhile, the service-offering quality

would not suffer. It was after this that many of the states publicized their tendencies for getting the private sector involved in the enforcement of the imprisonment punishments (Dolovich, 2005).

One of the most important reasons for agreement to the private sector's involvement in the enforcement of incarceration sentences pertains to the reduction of the government costs. However, the preliminary privatization business in 1980 did not affirm such a claim. In 1990, Charles H. Logan, a jurist and the author of the book "the penal law in the US", asserted that the prisons administrated by the private sector are not necessarily less costly than the state-managed prisons. But, the results of the polls in 1990s signified that the government's costs have been reduced on average by about 20% after the enforcement of the incarceration punishment (Thomas, 2006).

In 1987, the number of the state and federal prisoners reached 581.609 persons and this number was increased by about 76% in contrast to 1980; however, the capacity of the prisons had not undergone any increase in comparison to 1980. This caused the state and federal prisons to admit prisoners between 105% and 120% and between 37% and 73% above their maximum capacities in 1987 and 120000 state inmates were kept in local custodies due to the shortage of detention places. The reason for this issue was the lack of prison construction on the right time and the newness of the private sector's intervention in the enforcement of prison punishment (Logan, 1990).

The presence and the intervention of the private sector in the US' prisons were increased on a daily basis in such a way that 158 private prisons were working in this country until 1998 according to the statistics. Out of the foresaid number, 30 prisons were in Puerto Rico and the District of Columbia, 43 prisons were in Texas, 24 prisons were in California, 10 prisons were in Florida and 9 prisons were in Colorado. The majority of the private prisons were concentrated in the southern and western states (Austin & Coventry, 2001). Based on the declared statistics, Texas and California were amongst the pioneering states in the area of jailing system's privatization.

In 2013, at least 11 countries of the world had accepted and were exercising the private sector's involvement in the enforcement of the imprisonment punishment. In this year, USA was keeping the largest number of inmates in its private jails (Jacovetti, 2016). In 2016, 128.063 individuals were being kept in the private prisons of the USA. This number was equivalent to 5.8% of the total number of state and federal prisoners in this country. In addition, the comparison of the statistics from 2000 to 2016 signifies a growth by 47% in the number of the prisoners in the private prisons of the USA (Fact sheet, 2018).

### **3. Prison Privatization Models and the Stances of Iran and the USA' Laws**

#### **3.1. American-English Model**

Privatization process refers to a contract within which the responsibilities and capital assets are generally or partially transferred from the public sector to the private sector (Jacovetti, 2016). American-English privatization model or the full privatization model points to the situation in which the government delegates all its authorities to the private sector. This occurs when the public sector has no advantage over the private sector; on the other hand, there is no way other than perfect delegation for improving the efficiency.

In the full privatization model, the criminal justice management is transferred in all of the stages from the initial investigations to the enforcement of the sentences thoroughly to the private sector and the government only reserves the right of supervising the private sector for itself (Yijia, 2010).

Prison privatization based on American-English Model means complete delegation of all the sentence enforcement authorities to the private sector. For example, in the discussion on the prison privatization, all of the government's authorities even those related to the management and security of the prisons are delegated to the private sector. Of course, this does not mean the deprivation of the government of its right for supervising the private sector rather the government still reserves the right to supervise the performance of the private sector.

USA, England, Australia and New Zealand are amongst the countries taking advantage of the full prison privatization method (Matheus & Francis, 2002). According to the fact that the government's right of supervising the private sector still persists in this model, some jurists believe that this privatization model cannot be considered as full privatization (Lippke, 1997). But, it has to be stated in response to this belief that the privatization model from which the government's supervision is completely removed does not essentially exist. full privatization or the American-English Model includes three methods in all of which management and security affairs are delegated to the private sector. These three methods are the followings: extensive prison privatization, prisoner export and special prisons.

In the extensive privatization method, as it is understood from the name, the private sector is granted the most and the highest authorities for managing the prisons. The prisoner export method or bed renting method is applied in states that are not permitted to enforce extensive privatization regulations and they can only send their prisoners to states wherein the

extensive privatization is being implemented based on this method. This type of privatization was declared forbidden after a while due to the double pain (deprivation of visitation right and being away from the living place) it imposes to the prisoners (McDonald & Patten, 2004).

In Spec private prison, the private sector seminally constructs prisons and they are owned by the private sector. Then, the management, security and generally all prison-related affairs' delegation contract is signed between the private sector and the government (Hording, 2001).

### **3.2. The French Model**

Unlike the American-English Model, the French privatization model does not mean perfect delegation of all the authorities to the private sector rather, in this model, prison management is still owned by the government but the logistics and non-managerial affairs, including the intra-prison services, can be delegated to the private sector.

The plan for creation of private prisons has been taken into account since 1986 in France. The law passed on 23<sup>rd</sup> of June, 1987, allows the government to assign the private sector to designing, map drawing and construction of the prisons. But, issues like convicts' punishment right and penalty enforcement are still exclusively in possession of the government.

The public thoughts also confirm the inherent nature of the government's right for determining and enforcing punishment and consider it consistent with the principles governing a political society. In fact, the government guarantees the establishment of justice to the name and on behalf of all the people from a country. Based on this mindset, there is a very strong and unbreakable relationship between the government and the punishment enforcement. Thus, the reactions to the criminal behavior that have been specified outside the predetermined framework by the government cannot be accepted as the punishment enforcement (Mehra & Yekrangi, 2012).

In the French privatization model, the managerial duties of the government cannot be delegated to the private sector. After the enactment and operationalization of the law that had been passed on 23<sup>rd</sup> of June, 1987, it was stipulated that 21 new prisons should be constructed in various geographical regions in France and that administration of some parts inside the prison should be given to the private sector.

The aforesaid law had issued the permission for delegation of only 40% of the jobs and positions in the prisons to the private sector. The jobs and positions that could be delegated were secretary, kitchen, cleaning and education duties. Considering the fact that the duty of safeguarding the security of prison and taking care of the inmates was still to be shouldered by the government, the prisons that were administrated in this style could be termed "semi-private prisons" (Bullock, 2012).

Corresponding to the paragraph 12 of the rule 54 in the minimum standard regulations of the European Council regarding the method of treating the prisoners, the prison's staff members should be regularly and permanently installed under the title of professional employees and they should be under the employment of the government.

The term "regularly" implies that the nongovernmental employees can be members of the prison staff only exceptionally. This exception can include delegation of the management of all the prisons to the private sector. But, hiring the private sector for the service area's affairs is devoid of fault. Thus, the French privatization model is in accordance to the human right regulations (Matheus & Francis, 2002).

### **3.3. Intermediate Model**

The intermediate prison privatization model is a combination of the two previously mentioned models, i.e. American-English Privatization Model and French Model. It was explained in the first and second paragraphs that the private sector is assigned to prison management or security and consequently all the intra-prison services in American-English or full privatization models.

French privatization model recounted as partial prison privatization indicates a state wherein the affairs related to management are performed by the government but the intra-prison services can be delegated to the private sector. The intermediate model is a mixture of the two foresaid models in such a way that the management affairs are conducted by the private sector and the government shoulders safeguarding of the prison's security. In other words, in the intermediate or combined model, the entire prison affairs (except the preservation of security that is shouldered by the government and the governmental institutions) can be transferred to the private sector.

### **3.4. Prison Privatization Model in the Law of Iran and the USA**

This chapter explores the privatization model accepted in the law of Iran and the USA. As an undeniable truth, it has to be stated that establishment of prison and detention centers for keeping the culprits and convicts happened earlier than the specification of law in the US and it dates back to about a century ago.

But, regarding the private sector's intervention in the enforcement of the imprisonment sentences and jailing system, although Iran's judicature and legislature have not overlooked the issue, it has to be asserted that the privatization history in the US is reflective of the idea that this country has valuable and practical experiences about the private sector's participation in jailing system but Iran's legal system is in the beginning of the privatization

path. Thus, the study of the experiences by the US's legal system can be a good guide for our country's jurists in selecting the most appropriate model for allowing the private sector's involvement in the enforcement of the penal sentences, particularly prison punishment.

### **3.5. In the Law of the US**

In the US, the private sector began its activities from the juvenile wards. According to the census in 1974 in the USA, 41% of the adolescent population of this country, i.e. 37749 youths, was kept in 1300 private institutions as criminals. In the interval between 1975 and 1989, the private sector's intervention in keeping the juvenile delinquents underwent an increase by 70% (McDonald, 1992). The new round of the private sector's intervention in the jailing system of the adults was started from 1980.

Some American jurists believed that the USA has not implemented a full prison privatization model and that the government is involved in the control of jailing system. But, the fact of the matter is that like what has happened in the US' area of economy, the US' legal system has accepted the full privatization (American-English) pattern from the very beginning and delegated the management and security of its prisons to the private sector and it has only reserved the supervision right for itself (Lippke, 1997).

The first wave of privatization in the USA was started since 1825 in the form of the traditional privatization of the prisons (convicts' renting). In this system, the private sector exploited the prisoners but the government disagreed to the personal use of the convicts' workforce. Following the extensive protests by the general public and the political groups, the convicts' renting system was annulled in 1923.

The second wave of the prisons' privatization in the US began since 1980. In this period, the majority of the contractors in executing the prison privatization plan were non-for-profit companies. But, at the same time, various levels of the government, as well, attended this commercial market. In federal level, privatization was commenced with the opening of Huston's rehabilitation center by Corrections Corporation of America (CCA) (Yijia, 2010). Modern private prisons largely differ from their traditional samples.

In 1984, a contract was signed between the private sector and the government based on which the private sector was assigned to the intra-prison services (French or semi-private model) but the full administration of the prison's affairs was delegated later on to the private sector in the majority of the contrasts signed between it and the government (full privatization or American-English Model).

In 1990s, the private sector's intervention in the US's prison underwent a considerable increase. In the interval between 1995 and 2000, about

three fourth of the USA's prisons had become privatized. During these years, the private sector shouldered various duties, including supply of the financial resources and construction and exploitation of the prison (Spec Privatization model which is a subcategory of the full privatization pattern).

The privatization experience in the USA indicates that the private sector has been confronted with some problems in a few cases. In 2009, the prisoners instigated a riot in the private prison of Reeves District in Texas's center and destroyed parts of the prison; one person was killed and the prisoners announced their dissatisfaction about the healthcare status (Selman & Leighton, 2010).

Riot in a prison that was managed by private sector based on a full privatization contract convinced the USA's state officials that they should exert a higher and more exact supervision on the performance of the private sector.

### **3.6. In Iran's Law**

Private sector's involvement in the enforcement of imprisonment punishment in Iran can be found in a case-specific manner and for a few cases, as for the history and evolutions of prisons during the recent century in Iran, it has to be stated that: "The formation charter of the prisons and detention centers and the duties of their agents and employees" was enacted in 1928 by the board of ministers and Qasr Prison was established in 1929 as the first Iranian prison. This prison was the only prison existent in Tehran till 1960s (before the construction of Evin). Before the victory of Islamic Revolution in Iran, the prisons' administration was in the hands of the general police office.

After the victory of Islamic Revolution in 1979, the administration of the prisons was given to the ministry of justice. In 1985, the organization of prisons was substituted for the prisons' proctorship council. Finally, since 1993, the organization of prisons was transferred to the head of the judicature.

The study in the historical trend of delegating the prisons' administration between the aforementioned institutions is important in that it shows that the prisons' administration can be even delegated to the private sector in Iran. Two decades after the victory of Islamic Revolution, the increase in the number of prisons and reduction in the service levels, shortage of free space in the prisons and the number of the agents and the facilities' shortfalls made Iran's judicial officials become inclined towards the prison privatization.

The first privatization experience occurred in 1994 in Iran. In this year, parts of Mashhad's Vakil Abad prison were delegated to the private

sector for three years. The administration of the prison's hospital, judicial sentences' enforcement office, kitchen, recording of the statistics and computer information, cultural services, prisoners' instruction, psychological counseling services and healthcare and unarmed guarding services within the interior shells of the prison were amongst the affairs the tenures of which were delegated to the private sector in Vakil Abad Prison (Shams, 2002).

Considering the aforesaid explanations, Vakil Abad Prison was delegated based on semi-private (French) model. In the contract, the private sector was assigned to logistic services and the government reserved the management and safeguarding the security of the prison for itself. The privatization program of this prison was implemented successfully. Offering of the services in this prison was improved and the prisoners' welfare level was elevated. In addition, the number of the office workers was considerably reduced in the sentence enforcement section but simultaneously the speed and accuracy of the finished tasks were improved.

The second privatization experience occurred in 2005 in our country. In this year, a major part of Adel Abad Prison in Shiraz was delegated to private sector. This prison's privatization was conducted based on full privatization (American-English) model.

Unlike the first privatization experience, the privatization contract of Adel Abad Prison encountered failure due to the study weaknesses and non-performance of comprehensive research. Of course, it has to be noted that the successful privatization experience based on French Model (Vakil Abad Prison in Mashhad) and/or unsuccessful experience of the privatization program based on American-English Model or even intermediate model (Adel Abad Prison in Shiraz) does not mean the inefficiency of the two aforementioned privatization model rather the experiences by the other countries bring testimony to the idea that even American-English or intermediate models can be successful and have positive outcomes. In other words, the success or failure of each of these three privatization model in any country depends on the expediencies of its domestic law.

Thus, it is necessary to perform precise studies regarding the structure of the domestic law and their expediencies before entering contract with the private sector so that trial and error and contingent unsuccessful experiences can be prevented in future.



#### **4. Shortcomings of the Prison Privatization in the Penal Sentences Enforcement**

##### **4.1. The Fundamental Goal Differences between the Private and State Prisons**

Amongst the objections put forth by the opponents of private sector's involvement in jailing system, the fundamental goal differences between the private and state prisons can be pointed out. The opponents of the privatization believe that the private sector is essentially seeking for profit and interest and the punishment enforcement is only a means of achieving such a goal as earning money.

The opponents of privatization state that the acquisition of profit is the most important priority of the private sector and this causes the negligence of the government's programs that are set with social and political goals (Ta'ati, 1992). Some others believe that privatization of incarceration enforcement is an ineffective strategy contradicting the public expediences and interests and opposite to the strategic principles of the penal law and against the essential rights of every member of the society (Najafi Abrand Abadi & Zare'e Mehrjerdi, 1992).

In other words, the private sector's goal is summarized in economic interests but the government's goal of enforcing punishment is a lot more different than that of the private sector for it incorporates issues like punishing, correcting and treating, restoration of the social order and so forth.

The opponents of the private sector's involvement in the incarceration enforcement believe that many of the private companies in the USA use the prisoners' workforce for acquiring economic profit. These companies claim that the use of the prisoners' workforce serves instructing occupations to them but the abundant financial interests that can be obtained from the use of prisoners' workforce in the private sector proves the opposite of this claim (Ntsobi, 2005). On the other hand, the evidence signifies that prisoners are forced to labor and receive no wage in some states, including Texas.

In the other states, as well, the wages are very trivial and less than the minimum work wage in the US. About 25% of the federal convicts are sent to factories that pay them a wage ranging between 23 cents and 1.5 dollars per hour. This wage is a lot lower than the minimum wage in the US (Rasuli, 2005).

Criticism to the fundamental goal differences between the private and state prisons has also caused concerns in Iran's penal code of law. It is evident that judicature is meant by government in the criminal justice section and crime trial process. According to the contents of Islamic

Republic of Iran's constitution, the judicature performs its actions through the justice department's courts that should be formed in adherence to the Islamic regulations and they are responsible for resolving the lawsuits and preserving the public's rights and expanding and enforcing justice and protecting the divine limits<sup>5</sup>.

They are also responsible for actualizing the following goals: trial and issuance of sentences about the lawsuits, abuses and complaints, revitalization of the public rights and expansion of justice and legitimate freedoms, supervision on the proper enforcement of regulations, crime discovery and pursuit and punishment and Ta'azir retribution of the criminals and protection of the limits and enforcement of the codified Islamic regulations and taking proper measures for preventing the crime perpetration by the criminals and correction of them<sup>6</sup>.

The nature of the judicial action regarding the correspondence of the general regulations and the overall law with the special case of a lawsuit requires the judge to issue a sentence in adherence to the law, judicial procedures, sentences by the law scholars and legal and interpretation principles willingly or unwillingly. So, the justice system's intervention features the value of an independent and special action and cannot be enumerated amongst the outcomes of the executive branch's measures or simple executive interventions. Additionally, it has to be stated that the result of the judgement is sometimes the headline of the executive actions (Qazi Shari'at Panahi, 2005: 39).

Based thereon, the opponents of punishment enforcement privatization, especially prison privatization, believe that the private sector's intervention in the incarceration enforcement is not justifiable. The opponents are of the belief that the private sector is more thinking about acquiring financial interests and profits from punishment enforcement than seeking for the actualization of the fundamental objectives stipulated in the constitution and the other domestic penal regulations.

#### **4.2. The Inherent Duty of the Government in Incarceration Enforcement**

Another objection posited by the opponents of the private sector's involvement in jailing system is the inherent nature of the government's duty of incarceration enforcement meaning that the government's role in enforcing punishment is an essential not accessory issue, i.e. no other person has the right to specify and enforce punishment.

In the USA, some of the organizations and institutions are of the belief that private sector is not permitted to enforce incarceration. They believe

5 Consult Act 61 of Islamic Republic of Iran's Constitution.

6 Consult Act 156 of Islamic Republic of Iran's Constitution.

that the enforcement of incarceration is the government's exclusive right for it is considered as an example of governance and cannot be delegated to others (private sector) (Van R, 1990). The opponents of incarceration enforcement privatization in the US believe that the delegation of the government's exclusive right of punishment enforcement to the private sector would cause reductions in the government's authority.

Moreover, the administration of the prisons' affairs and safeguarding of the prisoners' welfare and health are amongst the governments' duties that cannot be transferred to the private sector. The opponents of the privatization believe that the prerequisite for requiring the government to remain accountable about the issues related to the incarceration punishment is the protection of the government's responsibility and control over the administration of the prison affairs. When the government delegates its governance right (enforcement of incarceration) to the private sector, the question can be raised as to how the government can be made committed to the control over the prison's order and security.

The order preservation should be also naturally excluded from the government's area of duties in case that its governance power is decreased in administrating the prisons' affairs. Furthermore, the opponents of the privatization believe that the delegation of the government's exclusive right in enforcing incarceration to the private sector provides the managers, agents and staff members of the private sector with vast judicial authorities and enforce their own ideas regarding the length of incarceration and the method and quality of the prisoners' enjoyment of the legal privileges and advantages (Wecnt, 1987).

### **4.3. Ambiguity in Efficiency Elevation**

Another objection proposed by the opponents of the private sector's intervention in the enforcement of the incarceration is the ambiguity in efficiency elevation after the private sector's involvement in prison management. The opponents of the privatization believe that the enforcement of the privatization regulations in the process of penal sentences' enforcement, particularly incarceration, not only would lead to no increase in efficiency but it would also result in reduction in the quality of the services offered by the private sector due to its efforts in line with cost reduction.

The legislators of the countries, jurists and general public take into consideration the utilitarian and non-utilitarian issues altogether in regard of the private sector's involvement in the punishment enforcement and expect the private sector's involvement in these areas to lead to the elevation of efficiency through cost reduction and, in the meanwhile, quality enhancement. Undoubtedly, the increase in the efficiency and quality of

service offering after the private sector's intervention is one of the most important wants of the public wants. The governments have endorsed contracts with the private sector by making promises for actualizing this want (Carceral, 2006). But, the mere entering of a contract with the private sector for intervening in the process of incarceration enforcement cannot guarantee the efficiency elevation in the privatized section.

One of the goals of privatization is creation of competition. Naturally, this competition leads to the reduction in the costs. Assuming the nonexistence of competition and motivation for acquiring profit, the governmental services would be always constrained by bureaucratic actions and the general public's interests will not be supplied.

Unlike what has been proposed by the opponents of privatization, the proponents of privatization believe that the creation of governmental monopoly in offering public services would eventually cause the reduction in the efficiency and quality of service-providing due to the absence of effective motivation. On the contrary, the market's dynamicity brings about an increase in the efficiency and quality (Selman & Leighton, 2010).

The opponents of the privatization believe that even if it is accepted that the private sector's involvement in penal sentences enforcement causes reduction in the government's costs, these cost reductions would not be necessarily accompanied by efficiency increase. One of the concerns proposed in this regard is the reduction in the quantity and quality of the foodstuff provided to the detainees of the private prisons and offering of lower than standard services and instructions to them (Logan, 1990).

The opponents of the private sector's involvement in penal sentences enforcement process are of the belief that the governments are mostly concentrated on the cost reduction in their discussions on privatization and efficiency elevation has been always neglected. The opponents of privatization believe that the private sector reduces the number of social workers in the prisons for acquiring higher profit and this causes the occurrence of the following crises: increase in the number of escapes, riot, nervous weakness and cardiac attacks in the detainees (Ntsohi, 2005).

In response to this criticism and objection and considering all the reasoning by the opponents of privatization regarding the ambiguity in efficiency elevation after the private sector's involvement in incarceration enforcement, it can be asserted that the private sector's effort for reducing the costs would not always lead to the reduction in efficiency and increase in the quality of offered services.

Increase or reduction in efficiency following privatization has nothing to do with the privatization itself rather it is a function of the nature of the contract concluded between the government and the private sector as well as the government's management and supervision of the affairs.

If the governments solely seek cost reduction and go to extremes in this regard, no elevation of efficiency and decline in the quality of the services offered by the private sector would be likely. Thus, the governments should adopt the moderation and middle-way in signing contracts with the private sector in such a way that the efficiency and quality elevation of the offered services should not be sacrificed for the cost reductions.

In other words, although the reduction in the governmental costs is an important issue, it should not be accompanied by consequences and costs to the size of the efficiency and quality reduction. One of the strategies suggested in this regard is that the investigation of the private sector's contractors should be based on simultaneous consideration of both these items, i.e. cost and interests. It is evident that the contracts signed with the private sector solely based on the costs would not be deemed favorable.

On the other hand, the undeniable reality is that the state sector usually does not show much of a motility and motivation in creating changes for increasing the quality of services offered in the prisons. Conversely, the private sector is more motivated to bring about changes for increasing the quality and efficiency. Unlike the government, the private sector has higher output and efficiency because it does not need administrative formalities and formal agreements for putting its decisions into practice.

There are various solutions considered for guaranteeing the elevation of efficiency and qualitative development of the services offered by the private sector in the private prisons. The followings are but some of these solutions:

1. preservation of competition and possibility of substituting the service offering.
2. determination of clear-cut standards for ensuring the quality of service offering.
3. investigation of the activities by the private sector and the personnel busy cooperating with them through independent supervisors (Benedict *et al.*, 2009). "American Correctional Association (ACA)" has enacted guidelines that enable the supervision and evaluation of the quality indices for the private sector's performance in administrating the prisons.

One of the other important indices proposed in the USA for the investigation and evaluation of the private sector's performance in prison administration is inquiring suggestions and criticisms from the individuals detained in the private prisons (Yijia, 2010).

In Iran's penal law, as well, in order for guaranteeing the efficiency and bringing about quality elevation in the services offered by the private sector, the government should firstly concentrate on the endorsement of comprehensive contracts with the private sector and explicitly specify the

private sector's requirements in line with elevating efficiency and quality so as to block the road to any excuse and justification for the private sector and, secondly, it has to predict the required supervisory instruments for having full appraisal of the private sector's performance and prevent the contingent violations of the contract signed between it and the private sector.

#### **4.4. Negligence of the Employees' Rights**

Another objection posited by the opponents of the private sector's involvement in the prison management pertains to the negligence of the employees' rights by the private sector. The opponents of the privatization believe that the observance of the privatization regulations in the process of penal sentences' enforcement, especially incarceration, would cause reductions in the salaries and benefits of the private sector's employees even assuming the success in the performance of the assigned duties.

This may also be followed by other disadvantages, as well, because the lack of motivation in the private sector's workforce causes an increase in the rates of intentions to leave and the private sector would be incumbently forced to substitute its employees with new workforce that would accordingly need more time to get adapted to the workplace conditions and job descriptions of the assigned duties due to being naïve and this may bring about declines in the performance of the private sector in the long run.

In the USA, the results of the investigation of the private prisons are suggestive of the reality that the quality of the administration of such prisons has undergone a tangible decline. One of the most important reasons proposed for such a decrease is that the employees recruited by the private sector receive lower salaries and benefits as compared to the government-employed staff. The reception of lower salaries and benefits has caused the reduction in the motivation of the workforce working in the private sector and their refrainment from offering proper services.

The private sector has also become coerced to replace its unsatisfied workforce with the new staff members who are predominantly inexperienced and this intensifies the reduction in the quality of the offered services (Ntsobi, 2005). The low rate of the salaries and benefits of the private sector's employees in the USA is natural.

In 2000, the average income of employees from private sector was 17 thousand dollars a year whereas their counterparts received about 23 thousand dollars per year, on average, under similar conditions in the state sector.

By paying low salaries and benefits to the employees, the private sector was faced with another crisis called the increase in the rate of displacement

that caused reduction in the workforce's experience in the performance of the assigned duties.

The statistics are suggestive of the considerable difference in the displacement rates of the employees in the private sector in contrast to the state sector. The employees' displacement rates in the private and state sectors are 52% and 16%, respectively. It was declared in the course of the researches performed in 2005 that the private prisons' employees have less than one year of work experience on average. These statistics were indicative of work experiences below three months in the personnel responsible for the security of the prisons.

It is evident that the constant dislocation of the employees recruited by the private sector causes an increase in the coefficient of the employees' mistakes. This issue would be followed by the convicts' dissatisfaction of the punishment enforcement. For instance, this might result in riot and disobedience of the prisoners in the private prisons (Coyle & Campbell, 2003).

### **Conclusions**

The investigation of the evolutions in the private sector's involvement in prison management in the laws of US and Iran shows that the private sector's intervention in prison management is not so much old in the rules and regulations of Iran as well as in the statutory provisions before the Islamic Revolution. But, the possibility of the private sector's participation in some of the jailing services has been pointed out in the rules and regulations after the Islamic Revolution, in the rules of procedures of the prisons' organization and the regulations on the security and instructive measures passed in 2005.

Of course, years before the enactment of this procedure, the private sector has been practically allowed to take part in the administration of Vakil Abad Prison in Mashhad. Therefore, the intervention by the private sector in the enforcement of the incarceration punishment has not been prohibited in Iran's penal code of law or, better said, it has been actually undertaken. In the US law following Punitiveness, i.e. since 1980 on, the criminal inflation stemming from the extreme increase in the number of the inmates caused the permitting of the private sector to enter the state prisons of the USA.

In this period, the private sector obtained permission for constructing new prisons, as well, and the majority of the states passed regulations related to privatization. It was with the development in this trend that the private sector's involvement in the legal system of the USA is no longer restricted to the incarceration enforcement and post-jail cares are also covered.

By holding rehabilitation and socialization courses for the prisoners after being released from the prison as well as via providing them with the grounds of employment and acquiring income, the private sector plays an effective role in preventing recidivism and the reentry into the prison environment.

The investigations show that the private sector's involvement in the incarceration enforcement is not contradictory to the fundamental goals of penal law but it does not mean the unconditional and absolute delegation of the jailing affairs to the private sector rather the delegation should be carried out case-specifically and after exact and specialized studies.

In the USA's penal law, there is not much of a problem for delegating the prisons' affairs to the private sector because the Federal government and each of the states have approved special regulations for doing so and set the proper grounds for the appropriate enforcement of the privatization regulations. But, in Iran, due to the existence of the explicit legal orders indicating the prison delegation to the private sector, some ambiguities have come about in this regard.

Of course, the implementation of two cases of privatization in Vakil Abad Prison of Mashhad and Adel Abad Prison of Shiraz caused the ambiguities to be reduced a little and showed that the reasoning by the proponents of the privatization regarding the possibility of private sector's involvement in the enforcement of the penal sentences has been correct.

It should be stated in confirming this idea that unlike the affairs related to trial and discrepancy resolution are enumerated amongst the purely judicial matters (inherent judicial affairs or specifically judicial affairs) and cannot be delegated to the private sector; prison delegation to the private sector as an issue related to the organizations affiliated with the judicature and with the government and the judicature's participation and tenure of them not being necessary and essential seems to be devoid of any problem.

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