



Scientific Article

The Privatization of Prison and the Crisis of the Brazilian Prison System

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Abstract

The Brazilian prison system has been bankrupt for decades, faced with this fact has been seeking alternatives to solve the ineffectiveness of the penalty of deprivation of liberty. The mismanagement carried out by the State has as a consequence a low index of resocialization, which causes rebellions, Deaths, fugues and images of unhealthy conditions in prisons, situations that were notorious in 2006, with waves of violent attacks by criminal organizations inside prisons, and in 2017, with the massacres of prisoners in the states of Amazonas, Roraima, Alagoas and Rio Grande do Norte. The present research will be based on the premise that the privatization of the prison units can provide improvements in the quality of the services offered, by investing in new technologies and new management practices, aiming to increase the resocialization rate of people submitted to the Deprivation of liberty. The deductive method will be used, searching, based on bibliographical research, to demonstrate the importance of the privatization of prisons as an alternative solution to the prison crisis installed in Brazil. In conclusion, we point to the unconstitutionality of privatization and the constitutionality of the outsourcing of prisons, the latter being understood as an efficient means to solve the inefficiency and inefficiency of the State, aiming to provide greater dignity to the victims with a possible reduction costs to the public coffers.

Keywords: Deprivation of liberty; Quality of services; Resocialization

Introduction

The prison public system has been showing signs of inefficiency and ineffectiveness given the high cost per capita for maintaining prisoners in such a system, coupled with the low security and dignity of the human person, due to the mismanagement performed by the

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Government, resulting in a low resocialization rate of those entering the Brazilian prison system, as well as the deaths of hundreds of them. Privatization of the prison system may prove to be a solution to state inefficiency, as private enterprise could, through investment in new technologies, reduce personnel costs and implement work and study in all prisons, to prisoners, the remission of the penalty through literacy, technical education and the exercise of decent human work, to fulfill, also, one of the foundations of the Brazilian economic order. Privatization of the prison system may also prove to be a solution to state ineffectiveness, as private management may incorporate quality management practices into the prison system to continually improve the process of resocialization of the prisoner. through the prior planning, monitoring and checking of continuous results and feedback of the management system with practices capable of solving eventual problems that arose during the evaluated period, to meet an old demand of the Brazilian society, namely the expansion percentage of prisoners' resocialization.

The resocialization of prisoners contained in the Brazilian prison system is an old demand from Brazilian society. The events occurred in 2006, in the state of São Paulo, with the so-called "Mega rebellion of the São Paulo prison system", and in 2017 in the states of Amazonas, Roraima, Alagoas and Rio Grande do Norte, with the deaths of hundreds of prisoners, killed. with refinement of cruelty by other prisoners, demonstrates the failure of the Brazilian prison system and the need for more efficient and effective alternatives in the search for control of the prison system and the re-socialization of prisoners, through investment in new technologies and new management practices, which could be done by private initiative, through the privatization of the Brazilian prison system. The justification for the research on this subject is the lack of doctrinal and jurisprudential discussion about the privatization of the Brazilian prison system as a possible opportunity to solve the existing problems. As for the objective to be achieved, it is an attempt to clarify whether the privatization of the Brazilian prison system can prove to be a solution to the inefficiency and ineffectiveness of the current state model.

Despite the importance of the subject matter, the subject still lacks in-depth research from the point of view that it is intended to focus on, a gap that, when filled, will certainly bring doctrinal assistance to the interpreter and the applicator of law, contributing to the norms infraconstitutional legal issues related to the subject can be applied more effectively and in line with constitutional norms.

To obtain the results sought by the research, the method of approach to be followed will be the empirical-dialectic [1], using bibliographic, legislative and jurisprudential research, having as a background a reference system based on a combination of the linguistic turn, represented through Paulo de Barros Carvalho's Logic-Semantic Constructivism [2] Edgar Morin's Complexity Theory and Richard A. Posner's Law and Economics [3].

Chaos in Brazilian Prison System

The state has the primary function of exercising social control, which is accomplished through laws and their sanctions. Crime, when committed, causes the criminal to suffer the penalty imposed on him, in most cases the penalty is imprisonment. The function of this penalty, which restricts freedom, is to correct the offender, aiming at rehabilitation for socializing in society. The crisis facing the Brazilian prison system is not current, a possible solution has been debated for a long time. The problem of the prison system begins with prison overcrowding, which triggers numerous other problems. According to data collected by Ministério da Justiça [4], in Brazil there are 607,371 incarcerated people, and there are only 376,669 vacancies. Other worrying information is the 41% rate of prisoners without conviction, with approximately four out of ten prisoners. The recurrence and the increase in criminality contribute to the overcrowding of the Brazilian jails, Provisional Detention Centers and prisons [5]. The reality of Brazilian prisons is described in the reasons for the creation of the Parliamentary Commission of Inquiry - CPI of the Prison System:

Rebellions, frequent riots with destruction of prisons; violence between incarcerated, mutilated bodies and media scenes; unexplained deaths within establishments; reports of torture and ill-treatment; prey victims of sexual abuse; imprisoned children; corruption of public agents; over crowded; high recurrence; criminal organizations controlling the prison mass, infusing civil society and cornering governments; high prison maintenance costs; lack of legal assistance and non-compliance with the Criminal Execution Law, motivated Deputy Domingos Dutra to request the creation of the CPI on the Brazilian prison system [6]. The problem faced in the prison system is not attributed to the absence of laws, because, as regards criminal execution, specifically the Law of Criminal Execution - Law No. 7,210/1984, the legal system is considered satisfactory, but the State fails to put in practice what is required by law. The misconception of Brazilian society that imprisonment decreases crime reinforces the lack of interest on the part of the state to invest in public policies related to the execution of the penalty, resulting in total abandonment of prisons. That's what Silva [7] points out: It is the false belief of the Brazilian people that only criminality is reduced by the issuing of new laws, that is, the definition of new criminal types, the worsening of penalties, the suppression of guarantees by the defendant during the process and the increased severity of the enforcement of sanctions.

The abandonment of prisons was portrayed in the book published by the National Council of Justice, resulting from the project "Mutirão Carcerário", which aims to ensure due process of law reviewing the arrests of permanent and provisional prisoners, as well as inspecting prisons. This publication highlighted the precarious infrastructure of prisons in several states, because, as Judge Douglas Melo reported, when describing the conditions of one of the prisons in the state of Amazonas, "the bars are loose, walls are shaking, there are infiltrations in all parts of the state penitentiary. There is a serious risk that the slab will collapse on prisoners at any time" [8]. There is a double penalty of the person of the convict, because, besides suffering the penalty imposed, he also goes through the situation of overcrowding of cells, poor diet and poor hygiene, being subject to the spread of diseases. In this sense, Assis [9] claims that: It turns out to be a double penalty in the person of the convict: The prison sentence itself and the unfortunate state of health that he acquires during his stay in jail. Non-compliance with the provisions of the Criminal

Execution Law, which provides in item VII of article 41 for the prisoner's right to health, as an obligation of the State, can also be noted. The individual arrested must have their fundamental rights guaranteed, however, this is not the reality in the Brazilian prison system. Prison facilities have become human depots, contrary to the provisions of the Federal Constitution on fundamental guarantees, as well as the Law on Criminal Execution, in its articles 40 and 41. In the same line of reasoning, Milanez [10] concludes: In the Brazilian prison system, there is a widespread violation of the fundamental rights of prisoners regarding dignity, physical health and mental integrity. Prison overcrowding and the precariousness of police and prison facilities, rather than the State's failure to comply with the corresponding legal order, constitute degrading, outrageous and unworthy treatment of persons in custody. The custodial sentences imposed on our prisons become cruel and inhuman punishments. Prisoners become 'junk worthy of the worst possible treatment' and are denied any right to a minimally safe and healthy existence. Hence the correctness of the Minister of Justice, José Eduardo Cardozo, in comparison with the 'medieval dungeons'.

Evidence of the crisis in the prison system also occurs with the occurrence of rebellions, among them the ones that occurred in 2006, when waves of violent attacks occurred by orders of criminal factions inside prisons; and in 2017, with the massacre that occurred among the prisoners in the states of Amazonas, Roraima, Alagoas and Rio Grande do Norte. In drawing a parallel between the rebellions that have taken place and the situation in which prisoners find themselves in the Brazilian prison system, Assis states that the rebellions "are nothing more than a cry of claim of their rights and a way of drawing the authorities attention to the subhuman situation in which they are subjected within prisons". The resocializing function of the prison sentence has been trivialized, because in the eyes of society the punishment has only as its function the punishment, which differs from the objective of our legal system, which is focused on the recovery of the convicted and the egress of the prison. As stated in the CPI of the Prison System, the recidivism rate in Brazil is high, which confirms the idea of inefficiency and inefficiency of the prison system: There are no official statistics on the recurrence rate. According to Mr. Mauricio Kuehne, director of DEPEN, while observing a recidivism rate of 60% to 65% in the First World countries, the criminal relapse rate in Brazil ranges from 70% to 85%. In dealing with the high recidivism rate, Assis states that: This reality is a direct reflection of the treatment and conditions to which the convict was subjected in the prison environment during his imprisonment, allied to the feeling of rejection and indifference under which he is treated by society and the state itself when regaining his freedom. The stigma of ex-detainee and utter helplessness by the authorities means that the egress of the prison system becomes marginalized in the social environment, which eventually leads him back to the criminal world, because he has no better options.

The high recidivism rate is also attributed to the fact that the vast majority of prisoners do not work, according to a survey by Infopen, only 16% of the country's prison population works, which is a right and duty of the prisoner, provided for in article 28 of the Criminal Execution Law, which aims to re-educate the prisoner through the development of a labor activity, aiming to achieve their resocialization. Given the circumstances, it is undeniable that the Brazilian prison scenario is chaotic, requiring effective and emergency measures, as it is on the verge of collapse.

The Privatization of Penitentiaries: A Study in Comparative Law

It is always very important to use foreign experience, but when using comparative law some care should be taken as these are different realities in different national legal systems. The law project No. 3,123/2012, which provides for the privatization of prisons, presents the experiences of other countries, as justification for the privatization of Brazilian prisons: Following the example of several countries, the privatization measure will help to unburden the state machine and relieve the public coffers, making the execution of penalties more humanitarian, under more dignified conditions and thus achieving a higher level of resocialization and reintegration. convicted, as demonstrated in the current proceedings [11].

Thus, the legislative initiative seeking the privatization of Brazilian prisons has as its mainstay the international experiences on this subject, which is why it is necessary to study such international experiences to then verify the legal possibility of the privatization of prisons, given of the Brazilian legal system. Due to the methodological cut, the American and French models of privatization of the prison system will be studied.

American model

The United States began the wave of prison privatization, which began in the 1980s during the Ronald Reagan administration, with the justification of solving the prison problem by reducing public spending [12]. The prison problem intensified with mass incarceration, carried out as a form of policy to remove discomfort from the social environment, which became known as “the transition from the welfare state to the penal state” [13]. Speaking about rising imprisonment in the United States, Wacquant [14] claims that “the policy of mass incarceration has also stimulated the resurgence and exponential expansion of jails and prisons built and/or run by private operators”, having, as justification, the insufficient resources of the State.

Privatized prisons are not unanimous in the country because, due to their federative model, only a few states have adopted such a measure. The privatization model of US penitentiaries is divided into three species, the first being the lease of prisons, a type in which the private company builds the prison and then leases it to the Government for a time stipulated in a lease, after the which property becomes the property of the state. The second species is the private administration of prisons, in which private enterprise both builds and administers the prison.

The third type is hiring private companies to perform specific services, such as food, clothing, etc., and in return the inmate provides his work. At this point, it is interesting to explain that the work of the inmate in the United States, different from what is foreseen in Brazil, is considered as a duty and not only as a right of the inmate. Large American corporations use this workforce because the inmates enjoy no labor rights, and when they refuse to work they lose the few privileges that are granted to them. Also, hourly wages for skilled labor in private prisons range from \$0.13 to \$0.50. Because of all this, the exploitation of the labor of the convicts in the United States suffers harsh criticism [15]. In this latter kind of privatization, despite the positive aspects, such as the reduction of state spending, the US government is much criticized due to the exploitation of prisoner’s work by privatized prison managers.

Three factors favored the growth of private interference in the US prison system: the first was prison overcrowding; the second was the need to make a large investment in the prison system, and obtaining such money would only be possible through plebiscite, but the refusal of the American society to fund this made the Government seek the alternative of contracting companies to administer correctional facilities [16]; and the third was the adoption of zero tolerance legislation, with the tightening of criminal laws and the worsening of penalties, as a result of the increase in violence, causing the incarceration rate to increase.

Although it was considered a solution when it was implemented, in 2016 the US Department of Justice decided that it would stop using private prisons. “Do not offer the same level of corrective services, programs and features, do not significantly reduce costs and do not maintain the same level of security and protection” [17].

French Model

As in most countries, France also resorted to the privatization of prisons as a result of the crisis afflicting its prison system. In this sense, according to Maria Cristina de Souza Trulio [18]: The proposal for the privatization of prisons was born from the finding of prison overcrowding and due to the lack of resources for the state to implement, with its budget appropriations, a program for the construction of prisons that could meet the demand. Thus, several movements on the subject arose, until Law No. 87,432 of June 22, 1987 was approved, when the majority of Parliament, led by François Mitterrand, was a right wing in the country [19]. Unlike in the United States, in France private enterprise participates in prison management with the state through a co-management, where the state and the company act in partnership, signed by contract, managing and administering the prison establishment.

In the French model, the creation of a private penitentiary establishment requires public bidding. This model was criticized by two spheres of society, the first of which was made up of labor unions, which considered working in prisons as an unfair form of labor competition with the mass of unemployed people who were not in prison; and the second integrated by the population itself, which disagreed with the fact that the prison system was only concerned with the exploitation of the prisoner’s labor, to the detriment of his resocialization. Regarding the functions performed by each contracting party in the French privatization model, Cordeiro claims that:

The State is responsible for the external security of the prison, in addition to appointing the director general of the establishment. In addition to the responsibility for the internal security of the prison, the private initiative is responsible for organizing all tasks related to prisoners (work, education, food, medical and legal assistance, leisure, etc.). In the French model, there is shared management of the prison system, where the State, together with the private initiative, acts to execute the penalty more efficiently, both with regard to compliance with the laws related to criminal execution and with regard to reducing public costs for maintaining the prison system.

Scope of the Term Privatization and the Beginning of Privatization of the Brazilian Prison System

To analyze the legal possibility of privatization of prisons in Brazil, it is necessary to analyze the term “privatization”, which, according to the broad concept, refers to cases in which the State delegates

public service to a private individual, including privatization in the strict sense and outsourcing. Importantly, the doctrinal divergence about the privatization of Brazilian prisons lies in the differentiation between privatization in the strict sense and outsourcing. In short, privatization in the strict sense refers to the transfer of assets or shares of state-owned companies to the private sector, while outsourcing covers management, permit and concession contracts [20]. In this sense, Cordeiro explains that “the privatization of prisons keeps the state and, therefore, its public servants from the execution of the penalty, and it is up to the private to perform it, which may occur in a greater or lesser extent. lower intensity, with the latter hypothesis being outsourcing”. Thus, the transfer of functions relating to the prison system of the state to the private may occur through the outsourcing of certain services or the complete privatization.

The State has not been fulfilling its role in public policies related to the prison system for a long time, violating the fundamental rights inherent to the human person and contrary to the objectives of the penalty, provided for in the Law of Criminal Executions (Law No. 7.210/1984). This failed system means that the main purpose of the sentence is not fulfilled, such as the re-socialization of the inmate [21]. As occurred in several areas of State responsibility, due to its administrative inability, the Brazilian prison system has also been the focus of discussions about privatization. Due to the aforementioned disability, the idea of privatization in Brazil began to take shape in the nineties, as exclusive functions of the state were being given to private the initiative, with the objective of “reducing public debt and providing some kind of economic freedom”. In Brazil, the privatization of prisons began with the participation of private initiative in criminal execution, not by privatization in the strict sense, but by a partnership between state and private initiative, through outsourcing. However, in recent years, what has been termed as outsourcing of the Brazilian prison system, in fact has been revealed as privatization in the strict sense, given the transfer of services and attributions related to the execution of the penalty to private enterprise.

At the CPI of the Prison System, held by the Chamber of Deputies in 2009, Moreira expressed his understanding about this transfer of state attributions to private initiative, an opportunity in which he stated that he did not oppose privatization, but made it clear that it was against outsourcing the execution of the sentence. Government, as such attribution is exclusive to the Brazilian State and cannot therefore be transferred to private.

In this regard, the National Council of Criminal and Penitentiary Policy issued Resolution No. 8 of December 9, 2002, recommending the rejection of any proposals for the privatization of the Brazilian Penitentiary System, further stating that only “penitentiary services not related to the security, administration and management of units, as well as to discipline, effective monitoring and evaluation of the individualization of criminal execution” [22] could be exercised by private companies. Given all this problem, it is necessary to analyze the privatization experiences in Brazil, which will be done in the following item.

Privacy Experiences in Brazil

As mentioned earlier, the idea of privatization arose as a result of the chaos in which the prison system lives and was inspired by international implementation models. As it did in several areas, the prison system was no different, so the state chose to delegate its public

policies to the private sector, adopting a posture of minimal intervention. In this sense, Ghader [23] claims that: The proven inability of the state to administer the prison system, ensuring that human rights are held in its custody, and in view of its total inability to provide the means for the penalty to meet its prevention, retribution and resocialization goals, is that some experiences emerged as to how prison management.

Regarding the outsourcing of prison services “Although 92% of the units are managed by the public, 58% have some type of outsourced service. Approximately six out of ten units in the country have some type of outsourced service”, according to data collected by the Penitentiary Information Survey on the topic. These services range from food, cleaning, health, administrative services, security, educational assistance, social assistance, legal assistance, labor assistance and/or laundry.

A little different from this outsourcing, the first experience of prison administration, which had a significant participation of the private initiative, was the Guarapuava Industrial Prison, in the state of Paraná, which was inaugurated on November 12, 1999 [24]. In this pioneering experience, according to Cabral [25] “the state government hired a company to build the unit and once the work was completed, it transferred its administration to a private company, Humanitas Prison Administration S/C Ltda”. In the co-management partnership, the company was responsible for the food, routine needs, medical, psychological and legal assistance of the prisoners, and the State was appointed by the director, the deputy director and the discipline director, who supervised the quality of work of the prisoners. contractor and enforced compliance with the Criminal Executions Act.

The registered recurrence of the egresses of this prison in 2005 was 6% [26], a reality quite different from the national average of the prisons under the full responsibility of the Government, which was estimated in 2009 between 70% and 85%. Importantly, most of the inmates worked in the prison, and those who did not work in the factory worked in the kitchen, cleaning or laundry, receiving compensation and being entitled to redemption.

Following the pioneering experience, others emerged in Brazil, such as the Cariri Regional Industrial Penitentiary in the state of Ceará and the Cascavel Industrial Penitentiary in the state of Paraná [27]. This practice has been expanded to other states, such as the State of Bahia, where such experience occurs in the Valencia Penal Set, Juazeiro Penal Set, Serrinha Penal Set, Itabuna Penal Set and Lauro Penal Set de Freitas; and in the state of Amazonas where such experience occurs in the Puraquequara Prison Unit, the Antonio Trindade Penal Institute and the Anísio Jobim Penitentiary Complex.

With the expansion of the practice, Law No. 11,079 of December 30, 2004 was published, establishing general rules for the bidding and contracting of Public-Private Partnerships - PPP within the scope of public administration. In this context, the first private prison in Brazil emerged, which occurred through the partnership of the State with the private initiative for construction and management of the Ribeirão das Neves Penitentiary Complex. Sacchetta [28] clarifies that the Ribeirão das Neves Penitentiary Complex: is a PPP (public-private partnership) since its bidding and project, while the others were public units that at some point passed into the hands of a private administration. The company that won the right to be a state partner in this project was GPA. About the operation of such PPP, the company

clarifies that: The State is responsible for: Access ways, facilities and utilities; Disciplinary and security issues (Police Power); Control of the execution of the sentence; External and wall security; Transport of prisoners (escorts); PPP contract supervision. GPA is responsible for: Construction, administration and physical maintenance of the Prison Complex; Architectural project; Operating and resocialization plans; Financing of the venture; Provision of assistance services (legal, educational, health, material, work, cultural and professional); Use of state of the art technology (electronic safety controls); Management of the entire prison complex; Delivery of the project to the State, at the end of the contract, in excellent condition; Bimonthly accountability to the State about the quality of service delivery [29]. One of the justifications used by the Government for the outsourcing and privatization of the prisons was “removing from the shoulders of society the heavy burden of keeping prisoners”, coupled with the reduced costs to the prison system and insufficient resources to afford investments in this area.

In the Cariri and Guarapuava penitentiaries, the state pays around \$1,200.00 per prisoner to the company that manages the penitentiary. Segundo Harumi Visconti [30], in the Ribeirão das Neves Complex, the private initiative receives \$2,700.00 per prisoner, and this amount may be discounted in case of violations of rights, escapes or rebellions within the penitentiary. At the 4th Meeting of the Interstate Public Security Integrating Pact and the 64th Meeting of the National College of Public Security Secretaries, Minister Carmen Lúcia of the Supreme Federal Court, making a clear criticism of the Brazilian model of penitentiary administration, said that something is wrong, because “a prisoner in Brazil costs \$2,400 a month and a high school student costs \$2,200 a year” [31].

This criticism demonstrates that the outsourcing or privatization of prisons in Brazil proves to be a more lucrative economic activity than the education activity in high school. In this aspect, interesting the reasoning of Mariana Lins [32], for those who: The inmate is categorized as the product of a highly profitable business whose investment logic is simple: The more inmates, the more state funds will be passed on to companies. From its operability one realizes the real purpose: the profit of private companies from the expansion of mass incarceration. Given these experiences, discussions about the legal possibility of privatization or outsourcing of Brazilian prisons become increasingly frequent, as will be seen below.

Legal and Policy Obstacles the Privatizations or Outsources of Brazilian Penitentals

In the legal context, the constitutionality of outsourcing or privatization of the Brazilian prison system is questioned, because, although there is no express prohibition in the legislation, the State is not legally authorized to transfer its coercive power, which is exclusively its own, violates the fundamental right to freedom. In another turn, the Law of Penal Executions makes clear the jurisdictional nature of the activity of execution of the penalty, therefore, ineligible and should be exercised exclusively by the State. In this important point, it should be noted that, for some scholars, outsourcing does not affront the constitutional or infra constitutional text, because what happens is not the delegation of the judicial power of execution of the sentence, but only the outsourcing of the penitentiary administration. Thus understands D’urso, by stating that: The jurisdictional function of the State is not being transferred to the private entrepreneur, who

will take care exclusively of the material function of criminal execution, that is, the private administrator will be responsible for the food, cleaning, clothes, the hotel call, in short, for services that are indispensable in a prison. The jurisdictional function, ineligible, remains in the hands of the State, which, through its judge body, which is the only one entitled to the use of force, within the observance of the law.

Thus, it is clear the need to distinguish between the terms outsourcing and privatization, because in outsourcing the individual does not perform criminal enforcement activity, as occurs in privatization. The second obstacle is the political one, which can be analyzed in two aspects. The first refers to the fact that privatization has become a business for companies, and the concern is that “this profitable crime control market could provide an increasing incentive for crime as well as adoption. of incarceration policies”. The second aspect concerns the way the State hires and oversees such hiring, the massacre that occurred in February in Manaus, in the Anísio Jobim Penitentiary Complex drew attention for being an outsourced prison run by the company Umanizzare, which revealed the State’s inability to manage and enforce contracts with the private sector. Therefore, it is evident that the State, when transferring the administration of the penitentiaries to the private, should not do so through privatization, but through outsourcing, not exempting itself from its responsibilities under the 1988 Federal Constitution and Brazilian infra-constitutional legislation, must maintain the state monopoly of criminal execution and strict supervision of outsourcing contracts to private enterprise.

Conclusion

The situation in the Brazilian prison system is troubled, in a scenario of overcrowding, the proliferation of diseases and abuse, physical and mental, where the main function of punishment, which is the resocializing function, is not fulfilled. Given this factual scenario, one of the alternatives adopted as a solution in Brazil was the outsourcing or privatization of prisons. In this sense, most of the Brazilian experiments were performed based on the French model, known as mixed management or co-management. In the beginning, some outsourcing of basic prison services occurred, but over time, the practice expanded, so that in some cases the so-called privatization in the strict sense is recognized, which is unconstitutional, given the impossibility of delegating criminal execution to the individual, as this is a constitutional monopoly of the state. It is concluded, therefore, that the privatization of the prisons, with the transfer of the management of the criminal execution of the State to the private initiative, proves to be unconstitutional. and providing greater dignity to the inmates with a possible cost reduction to the public coffers is the model of prison outsourcing, in which the State transfers to the private initiative only the administration of the prison’s material and human resources, remaining in the exercise of its function. manager of the execution of the sentence, as recommended by the Federal Constitution and the Law of Penal Execution. However, caution must be exercised by the State, as it must ensure that contractual provisions are being enforced by the private initiative to ensure that the prisoner is serving his sentence without violating his fundamental rights, allowing for his resocialization, as despite In most cases, not delegating the activity of criminal execution to the private initiative, when absent, even partially, from its role as a Government, the State will be performing such delegation. The experiences that have already taken place have shown good results in terms of criminal enforcement, although there are some gaps to be fixed/filled. As the practice has already been

introduced on a large scale in Brazil, it is up to the state to make the prison system recover and the experiences to be successful.

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