

## **Fundamentals of Privatization of the Criminal Justice System: Focusing on the Execution of Punishments**

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### ***Abstract***

In recent years, the private sector has a significant role in advancing government programs. The reasons for privatization are the reduction of administrative bureaucracy, reduction of government costs and downsizing government. The criminal justice system is aware of using the capacities of the private sector in managing crime and criminals. On the one hand, governments use the capacity of the private sector to technically prevent and reduce crime. On the other hand, the extension of population of prisoners and the inability of governments to manage them led the private sector to aid governments. This article explains the scope of private sector's intervention in the criminal justice system with a focus on the execution of punishments. In addition, it should investigate the use of capacities of the Iranian criminal justice system in applying the private sector in the execution of punishment.

**Keywords:**Privatization, Punishment Costs, Fear of Crime, Discrimination, Punishment Privatization

### **1. Introduction**

In general, there are several definitions of privatization; some define it as the reduction of the role of government as an economic factor in a way that leads to the activity of substituting the private sector for the government [1]. Some define it as the change of control or ownership from the government system to the private system, and some consider privatization to be the performance of economic activities by the private sector and the transfer of ownership of assets to them [2]. However, privatization in the true sense refers to the cultural dissemination at all levels of society that the legislature, judiciary, executive and all members of a country believe that the work of the people should be assigned to the people [3]. In the meantime, the goals stated for privatization are to accelerate administrative affairs, reduce administrative bureaucracy, reduce costs and downsize government, increase the quality of service delivery, coping with monopolies, etc. [4].

Outsourcing government authority to the private sector has a long history. The private sector has been active in matters such as waste management, water, electricity, hospital, transportation, education, industry, oil and gas, and so on for many years. However, the entry of the private sector into the criminal justice system has little history. For the first time, in the early 1980s, the private sector was allowed to manage prisons and rehabilitate prisoners in the United States. This issue later became a point of conflict between the proponents and the

opponents. The proponents of privatization justify the legitimacy of government action in outsourcing the criminal justice system to the private sector and examine issues such as efficiency and agility of the private sector, reducing government costs, especially the cost of reform policies, reducing fear in society and injecting new human and financial resources into the criminal justice system [5]. Meanwhile, the opponents of privatization state the reasons for their opposition including the lack of adherence of private law persons to laws and regulations, the increase in discrimination, the failure to achieve criminal justice, and becoming transactional of the criminal justice system. In addition, the opponents have concerns such as violating the privacy of individuals, especially convicts, the lack of accountability of private law persons and the lack of transparency of assigning contracts and the lack of criteria for measuring the quality of services provided [6]. Iran's economic system has long been state-owned in its various dimensions and the private sector was less involved. By the approval of the First Development Plan Law in 1993-1989, the principle of minimizing government intervention in economic affairs and private sector participation in it entered the Iranian legal system as a goal and then was emphasized in the second, third, fourth and fifth development plans. Following the mentioned policy and in order to accelerate the privatization process of the 20-year vision document of the country, the announcement of general policies of Article 44, the law of executing general policies of Article 44 of the Constitution and the approvals of the Supreme Council of Article 44 of the Constitution and the approvals of the Cabinet were approved [7].

Most of these laws and regulations focus on the privatization of government economic activities. For the first time, Article 122 of the Fourth Development Law, approved on September 2, 2004, the outsourcing of law enforcement affairs was predicted in order to ensure security in society and expedite the provision of services to the private sector. Also, paragraph 5 of the general policies of the judiciary announced by the Supreme Leader on October 20, 2002 implicitly accepted the outsourcing of the judiciary's tenure to the private sector by emphasizing the judiciary's focus on activities merely with judicial nature. In this regard, the Code of Criminal Procedure authorized the judiciary to establish electronic service offices. Section 5 (c) of Article 113 of the Law on the Sixth Five-Year Development Plan approved in 2016 authorized the Organization of Prisons and Security and Educational Measures of the country to use the participation and investment of the non-governmental and public sector in exploitation or development of necessary infrastructure in vocational training, employment during imprisonment and after his release, education, health and treatment, plans to support prisoners' families and help prisoners' self-supporting through various types of formal contracts. The instruction of assigning the technical department of electronic care of prisoners to the private sector was announced by the Judiciary on June 23, 2019. Also, Note 3 to the Law on the Reduction of Imprisonment allowed the judiciary to use the capacity of the private sector where the accused or convicted person is under electronic surveillance.

Accordingly, reducing the costs of the judiciary, reducing the number of prisoners and individualizing the punishments are the goals that the Iranian policymaker pursues in using the capacities of the private sector in the execution of punishment. In the meantime, the question arises as to what is the extent of private sector intervention in the criminal justice system. In answer to this question, it should pay attention to the type of privatization of the criminal justice system; because in the ideal form of privatization, all the actions of the

criminal justice system, including sovereignty and tenure, are assigned to the private sector, and the government has only the duty of supervision. Nevertheless, in another form of privatization, the government does the things that are purely judicial nature and assigns the actions with tenure nature to the private sector.

This article with an analytical-critical approach and with a criminological approach explains the importance of using the capacities of the private sector in the development of the criminal justice system and analyzes the position of the private sector in the criminal justice system. For this purpose, the first part of the article explains the theoretical foundations of privatization of the criminal justice system, the challenges of privatization and the requirements of privatization. Then, in the second part, some examples of privatization of execution of punishment are examined.

## **2. Theoretical literature**

### **2-1 Requirements for privatization of the criminal justice system**

When we talk about the privatization of the criminal justice system, we do not mean the elimination of the governmental criminal justice system, but rather the provision of the opportunity to use the capacities of the private sector to resolve disputes and lawsuits for the victim and the perpetrator. In fact, it is always possible to refer to the governmental criminal justice system where the accused or the victim is unwilling to use the services of the private sector or the private sector is unable to resolve the dispute [8].

The United States, Britain and South Africa are among the countries pursuing the privatization of criminal justice. The South African government has accepted the government's lack of monopoly in providing judicial services. Many activities of the judiciary have been outsourced to the private sector. For example, the government has assigned the prosecution of certain economic crimes to the private sector. Kotoma Private Prison is the largest private prison established near the town of Louis Trichardt [9].

#### **2-1-1 Faster and cheaper capacity**

The criminal justice system has been unable to meet security in society. Although, the criminal justice system has focused most of its material and spiritual capital on the correction and education of criminals, the number of crimes and criminals is increasing every year [10]. Extreme criminality on the one hand, has increased the entrances to the criminal justice system, on the other hand, have reduced the likelihood of detecting and identifying criminals.

Minor and interpersonal crimes have replaced to organized and macro crimes, while the implementation of programs to reform and rehabilitate the criminal justice system is not compatible with new crimes [11]. The criminal justice system focuses most of its activities on potential and dangerous criminals. This issue caused the criminal justice system to have a harsh and repressive form. Thus, we are witnessing the violation of the citizenship rights of individuals, including those suspected of committing crimes and convicts in the governmental criminal justice system with excuse of providing security [11]. In addition, the criminal justice system has been unable to meet the needs of crime victims. Victims are reluctant to refer to the criminal justice system according to its bureaucracy; and in many cases, their material and spiritual damages remain without compensation [8].

Hence, it can be stated that the criminal justice system has been inefficient in dealing with crime and delinquency. The failure of the criminal justice system is not limited to Western countries. Rather, taking a look at the performance statistics of the Iranian criminal justice system in recent years shows an increase in the number of crimes and prisoners, so that the number of prisoners has increased from 217 thousand to 224 thousand in 2016 and to 251 thousand in 2017 and 2018<sup>1</sup>. According to the critics of the criminal justice system, being governmental of the criminal justice system is the reason of failure of programs and policies generally. In their view, the privatization of the criminal justice system<sup>2</sup> is a strategy to exit the leading problems. The private sector is far better than the government at securing its customers; because the private sector does not have the limitations of the government's financial and human resources.

For instance, Corrections Corporation of America completed the project of building a 350-bed care center during two years and half. The study by the Colombian Prison Organization found that this project would take between 3 and 4 years if it was done by the government [12]. Also, the private sector follows the rules of competition in the market and always strives to improve the quality of services to not to lag behind competitors. Standards of conduct governing the private sector and regulatory bodies prevent them from engaging in corruption. In the field of crime prevention, the private sector can play a better role compared to the government due to access to information and cooperation with other sectors [13]. On this basis, the United Nations Strategic Principles on the Prevention approved in 2002 of Socio-Economic Council emphasizes the interaction and cooperation of private companies in crime prevention. [14].

### **2-1-2 Increasing fear of crime in society**

Although, increasing security in society is one of the main justifications for punishing criminals. However, we are witnessing an increase in fear of crime in society with the new-emerging crimes in recent years. In fact, security should become a public good that people are willing to pay to provide. This issue caused security to be unequally distributed among different sections of society. Wealthy people are more secure than the poor by spending costs for security. Also, the fear of crime has a direct effect on economic activities in society and leads to a decrease in investment [15]. At the individual level, fear of crime deprives people from the mobility and movement and reduces the level of participation of individuals in social activities [16]. It should be noted that the transfer of public police rights to the private sector in order to attract public participation is a very sensitive project and it should take care not to provide grounds for abuse or violation of privacy [17].

### **2-1-3 Reduced operational costs**

Governments allocate extensive material and human resources to control crime and consider the increase in crime as a legitimate reason for developing the scope of police criminal mechanisms and increasing the budget of criminal justice agencies [11]. The criminal justice system has taken a security face, so that the cost of monitoring and caring for dangerous criminals, the construction of specific prisons for prisoners of terrorist crimes, and the increase in their duration of imprisonment led to huge cost to be imposed on governments. In the meantime, one of the main criticisms of the overall criminal justice

system is its high cost. Critics believe that the criminal justice system has not been successful in achieving justice and solving the mystery of crime while making large financial and human investments in the field of crime. Perhaps one of the reasons for this failure can be considered the large amount of cases that deprives the opportunity for any practical initiative from criminal and judicial system [18].

In the meantime, the costs to the victims are higher than others; because they may lose their jobs and endure emotional, psychological and medical costs. However, the private sector can reduce the costs of the criminal justice system by undertaking part of the activities of the criminal justice system and accelerating the detection and identification of the accused, as well as paying more attention to the needs of the victims [13]. The most important argument for privatizing prisons in the United States is related to the efficient and effective management of the private sector; since the private companies, unlike state and federal governments, are largely free of cumbersome bureaucracies and costly contracts. Private contractors are accountable only to their investors and they are more motivated to meet their financial obligations and the company's profitability, therefore their actions are more cost-effective. Although studies show a 5 to 15 percent difference of cost reduction in the private sector, these figures are not sufficient to justify privatization actions [12], especially where this difference shows the cost in reducing the provision of services to prisoners such as providing health services, food, clothing, etc. to their prisoners.

## **2-2 Requirements and cases of privatization of the criminal justice system**

### **2-2-1 Privatization requirements**

In order for the privatization program of the criminal justice system to be successfully executed, some mechanisms must be considered in it. One of these mechanisms is the design of a monitoring system on the performance of the private sector. As mentioned, one of the concerns of privatization of the criminal justice system is the abuse of power. When the government executes justice regarding the accused and the convict, it acts within the framework of the constitution and domestic law, so that the violation of these laws and regulations makes the government responsible. However, the private sector is not bound by executing these laws and there is no guarantee that the convicted person will not be deprived of his or her fundamental rights during tolerating the sentence. Therefore, it is necessary to design and implement a monitoring system to monitor the performance of the private sector according to the use of private sector's capacities. In fact, it must be acknowledged that the transfer of judicial affairs to the private sector does not negate the government's monitoring competence to their performance. Utilizing the capacities of NGOs is another way of monitoring the performance of the private sector.

Another mechanism is the design and execution of appraisal program of private sector's performance. The efficiency of the criminal justice system is evaluated by criteria such as reducing crime, reducing the costs of criminal justice, reduction, recidivism, reducing the number of prisoners and reducing prisons, and so on. It should be considered whether these criteria should be used in evaluating the privatization efficiency of the criminal justice system. For answering to this question, it should be said that the use of these criteria in evaluating the performance of the private sector may not be correct due to the different functional and structural nature. In fact, these criteria can only represent a part of the

performance of the private sector, and other criteria should be used alongside it. Another requirement for monitoring private sector's activity is access to data and information. Before outsourcing tasks to the private sector, the information that provides proper monitoring and evaluation on private sector performance should be identified and the private sector outsourcing contract should be required to provide it. Access to entry of prisoners, leave statistics, prisoners' visit to families, use of welfare and educational facilities, vocational training, employment, income, etc. are some of the information. Another requirement for outsourcing judicial affairs to the private sector is the use of legal guarantees in the case of violation of laws and regulations. In this regard, according to the effects and consequences of violating the law or violating the terms of assigning, it can use the guarantee of executions such as termination of outsourcing contract, deprivation of activity in judicial affairs, confiscation of legal entity property, liquidation of legal entity and compensation to victims and relatives.

Accordingly, the privatization of the criminal justice system must be accompanied by accountability of the private sector for its actions and activities. In this regard, it is necessary to prepare a code of conduct to make private sector employees accountable.

Transparency is another issue that should be considered in privatization. In general, criminal transparency is one of the main components of democratic systems. There is little transparency about prisons and prisoners totally. This is double in the private sector; because the private sector does not consider itself obliged to disclose information about prisoners. There is limited information on the exact number of prisoners, rehabilitation centers, and other institutions of reform and education and other alternatives to prison. Hence, some suggest five components for measuring transparency in prisons, which are physical health, health, employment and education, internal order and recidivism [6]. Thus, if the information about the prisoners' physical health, health, employment and education is more, there will be more transparency in this field.

In addition, the recidivism statistics of prisoners held in the private sector show the success of privatization programs of criminal justice execution, and statistical transparency in this regard can suggest to the criminal policymaker whether or not to use the privatization programs of the criminal justice system. For example, a study by Florida Correctional Privatization Commission on the recurrence rate of prisoners released from private and public prisons demonstrated the success of privatization programs. A study by Virginia Department of Correction showed that assigning the health sector of prisons to the private sector has not been very successful for reasons such as creating medical record for patients, continuing to provide services to patients with certain diseases, conducting test and undesirable medical and health centers [12].

### **2-2-2 Identifying examples of public and private goods in the criminal justice system**

Goods and public services are goods that are offered in public and no one can be deprived of their benefits. For instance, it is the national security of public goods that all people living in a country have the right to enjoy it. In other words, public goods and services are produced by the government and paid for by taxes. Unlike public goods, private goods are goods that are only available to those who have paid for them. Some goods have a mixed appearance. For instance, although electricity is a public good, people pay depending on how much it is

used. Private and mixed goods and services have privatization capabilities more than public goods and services. In analyzing the privatization of the criminal justice system, two questions must be answered: First, who pays for the services and second, who provides it? The study indicated that the government can use the capacity of the private sector in three ways: First, the government provides the annual budget needed to provide security, but pursues its implementation from the outsourcing plan to the private sector. Second, the government is responsible for providing the budget and services, however, collects the cost from the consumers, in which case the goods become mixed goods. Third, budgeting and service delivery is generally assigned to the private sector, in which case the product or service is entirely private. Nevertheless, the government has full control over the observance of laws and regulations by the private sector [9].

There is a distinction between providing and managing services. Traditionally, the responsibility for providing criminal justice services is with the government. When the responsibility of providing services to the private sector is transferred through an outsourcing contract, the government retains the responsibility of monitoring and controlling the standard of services provided. In other words, the responsibility for providing outsourced services is with the institution that has concluded the outsourcing contract and pays for it [9].

### **2-3 Criticisms on the privatization of criminal justice system**

Outsourcing the judiciary to the private sector has always been one of the leading challenges of policymakers, legislators and academics. The question of whether the private sector can implement justice in society is one of the most important concerns of the privatization of the criminal justice system; because, the private sector follows the rules of the market, i.e competition, and seeks profit rather than being subject to rules and regulations. In fact, marketing justice is bad for society and causes the destruction of social capital in society. Also, the commodification of the guarantees of the criminal proceedings leads to the classification of the criminal justice system. Wealthy criminals who have high purchasing power can pay for the use of court guarantees, and poor people who do not have the purchasing power of these guarantees are deprived of their basic rights [19].

#### **2-3-1 Privatization and abuse of public power**

The criminal law system is based on a predefined framework that lack of attention to it can lead to disciplinary or criminal liability for the perpetrator. Meanwhile, critics of privatization have not defined the behavioral frameworks for the private sector. As a result, there is always the possibility of abuse of power by the private sector. People who are employed in the private sector are those who, for various reasons such as not having enough skills, not having mental balance, not having enough literacy, etc., have not acquired the necessary qualifications to enter the police force. Hence, there is always the fear of them being armed in society. In response to this criticism, it should be said that, firstly, people employed in the private sector do not commit violent behavior; since the private sector equips its forces less with weapons due to the high responsibility of carrying weapon. In many cases, the scope of their actions is limited, if they do not have the legal authority to detain, search and apply force. Second, private security companies must attract customer satisfaction in order to attract customers. Private security companies that abuse their customers can not last long in the

market. In a competitive market, the brand is significant to the company and institution, and these companies and institutions do not easily allow their brand to be damaged [20].

### **2-3-2 Privatization of the criminal justice system and public opinions**

By examining the history of criminal law and the transition of private justice to public justice, it can be acknowledged that private criminal law has lost its legal legitimacy in the general public [21]. Fear of procedural unfairness in the performance of the private sector in dealing with citizens and depriving them of their fundamental rights is one of the most important concerns; Structural violence in the private sector leads to arbitrary punishment of convicts, medical needs of convicts are not considered [6]. Lack of proportionality between crime and legal punishment distorts society's view towards criminal justice. In countries where the use of conditional and semi-conditional liberty systems, electronic surveillance, etc. is increasing sharply, this issue is crucial due to the imposition of costs on the offender. Execution of surveillance measures by the private sector during the implementation of conditional liberty or electronic surveillance requires payment by criminals. Hence, rich criminals can easily use these measures compared to poor criminals [6].

In fact, according to the society's point of view, the private sector seeks its material interests rather than the correction and rehabilitation of the offender. This issue prevents the poor people from using the legal capacities provided by law and creating a kind of discrimination in the application of punishment in society. In addition, the inadmissibility of the private criminal justice system minimizes public participation in the detection and identification of crimes; because the society refuses to report crimes due to lack of trust in the execution of justice. In general, the criminal justice system has undergone extensive changes throughout history, and its principles follow certain principles. The principles of criminal law are rooted in human life and are judged by public opinion. Principles that are rooted in the fundamental rights of nations and governments have a duty to guarantee them. Therefore, assigning the criminal justice system to the private sector with bad experience in the human mind throughout history will not have much public acceptance. Since, the people consider the public interest in the execution of justice by the government. Meanwhile, the policies of executing justice by the government are easier for individuals to accept it because it protects the interests of the whole society [22].

### **2-3-3 Sovereignty of the judiciary**

The sovereignty of the prosecution and punishment of criminals is one of the main criticisms of the privatization of the criminal justice system. In fact, the government, as the governing body, is the only source of grievances for individuals who deal with accusations without discrimination, without regarding to political, economic, social or cultural considerations, and by considering the principle of equality and impartiality [23].

The realization of criminal justice is the sovereign duties of governments and non-transferable to the private sector, in other words, criminal justice is inherently governmental. Although, some countries propose privatization of criminal justice for a variety of reasons, criminal justice is still a sovereignty matter [24]. Proponents of privatization, in response to this criticism, point to sovereignty issues such as education, health care, in which the private sector is currently active. In their view, the right to a trial, the right to health and the right to education are considered public goods that the government is responsible for securing. In

other words, the government has a responsibility to provide the minimum rights to members of society. But the question arises whether the free use of government services is for all segments of society or people who are able to pay for services received are also included [25].

While maintaining the state criminal justice system, the government allows individuals to use private dispute resolution systems if they are cheaper, faster, more flexible, and accountable to their needs. It is worth noting that the privatization of the criminal justice system does not mean assigning all judicial affairs to the private sector. In other words, as the government plays a role in the privatization of the economy, the government also plays a key role in the relative privatization of the criminal justice system [26]. Indeed, we seek to use a private alternative to the resolution of criminal claims in the privatization of the criminal justice system, in which the victim and the offender decide to use it instead of public proceedings [8].

### **2-3-4 Increasing inequality in society**

Increasing the cost of the criminal justice system's audience is one of the criticisms to the privatization of the criminal justice system. It is an undeniable fact that private security is a luxury item that the poor people do not have access to it [27]. In the privatization of the criminal justice system, some judicial affairs are outsourced to private companies, and these companies are allowed to pay for their services by the people. As a result, people who do not have the necessary financial strength will not be able to use these services. While, in a society based on the rule of law and the principle of access to judicial services, every person has the right to access to judicial justice and the police, regardless of their financial ability [9].

## **3. Privatization of the execution of punishments**

### **3-1 Prison privatization**

Imprisonment is the most commonly used punishment due to its deterrent power. Execution of punishment requires the facilities and equipment such as prison building, prison guards, social workers, food and so on. Currently, the private sector operates in various forms in prison management. Such as participation in prison management through the provision of labor and guards, food, cleaning, health services, technical and vocational training, etc. where the prison is owned by the government [28] or all activities related to prisoners and prison and management and ownership of the prison are related to private sector. In the meantime, there is a distinction between the term prison privatization and the prison industry. The prison industry refers to the participation of the private sector in the production and distribution of goods made by prisoners, which is pursued as a policy in most countries. These types of prisons cannot be considered private prisons. According to studies in 2016, approximately 128,000 people were held in private prisons of US, including 8.5 percent of all state and federal prisoners. Statistics show a 47 percent increase of prisoners in private-sector prisons compared to 2000.

In 2016, According to the criticisms of the assigning prisons to the private sector, Obama government put its reform and gradual elimination on the agenda. By coming Trump, the use of private prisons as a program in the criminal justice system was again pursued [29]. Moreover, in Europe, only four European countries- the United Kingdom- Wales, France,

Germany and Spain- use private prisons. Margaret Thatcher, pioneer of the privatization, assigned many public services to private sector; because he believed that this issue is very efficient. In 2014, more than 16 private prisons were established in the UK, of which 2 were private prisons in Scotland [28]. On average, 14% of UK prisoners are held in private prisons. The Prisons Organization monitors the performance of private prisons in this country [29]. In France, a combined model of public and private prisons has been used for decades. In 2016, about 68 of 188 prisons were run by the private sector, and about 50 percent of the prisoners are held in these prisons. The French private-sector company Sodexo is responsible for running 34 private prisons in France. However, the privatization of prisons has been criticized. From the point of view of critics, punishment and execution of criminal sentences are in the inherent authorities of governments. In fact, prison policy is an integral part of a broader criminal policy that cannot be assigned to the third party by the government. In this view, outsourcing imprisonment to the private sector is a violation of government authority [29].

In the Iranian legal system in 1994, the privatization policy began with the privatization of Vakilabad prison in Mashhad and Adelabad prison in Shiraz. During 3 years, the General Administration of Khorasan Prisons, the administration of departments such as the prison hospital, administration of office of execution of judicial judgments of prison, cooking for prisoners, psychological counseling and assistance services and unarmed guard services in the inner part of the prison were assigned to the private sector. Studies indicate that the private sector in some areas was better than the government in administrating the government. Adelabad Prison in Shiraz was another prison that was assigned to the private sector for a year. The government decided to transfer all prisons to the private sector if the outsourcing of these two prisons was successful, but due to the failure of this plan, the outsourcing of prisons to the private sector was forgotten [30].

### **3.2 The use of the private sector in the execution of electronic monitoring**

The use of electronic monitoring program of prisoners is executing as a successful program in many countries, a program in which the private sector plays an active role. Different countries conclude various contracts with the private sector to execute electronic monitoring programs. In 2017, for instance, the Chilean Police Department and the Chilean Prisons Organization concluded a contract with a company in the United States for an approximate amount to provide electronic surveillance products of prisoners. The contract included the provision and installation of software of surveillance, the supply, installation, replacement and removal of surveillance devices and the training of Chilean police [29].

Electronic surveillance to control defendants and convicts entered the Iranian criminal justice system with the approval of the Islamic Penal Code in 2013. Also, in 2014, Articles 551 to 558 of the Code of Criminal Procedure prescribed the use of electronic surveillance systems by considering the second chapter of the eighth section of the law on electronic proceedings. In general, electronic surveillance can be used in situations such as suspension of execution of sentences, postponement of sentencing, conditional liberty, semi-liberty and liberty system [31]. The main goal of this program is to reduce the prison population. In addition to this goal, reducing the costs of keeping criminals and maintaining their social relations and presence in the family center can also be considered as other goals of this

alternative of imprisonment [32]. Also, preventing the occurrence of the phenomenon of accepting prison culture, which can lead to the repetition of crime is another goal of electronic surveillance [33]. Therefore, in order to reduce the costs mentioned in the law on reducing the punishment of imprisonment, approved on May 28, 2020, the legislature allowed the judiciary to use the capacities of the private sector to implement electronic surveillance measures. Thus, by concluding a contract with the private sector, the judiciary can delegate the execution of electronic surveillance on convicts in whole or in part to the private sector.

### **3.3 The use of prison labor**

In recent years, Russia has strongly pursued the use of prison labor punishment (either free or salary). In 2012, statistics on the use of prison labor punishment were issued for 50,000 people. However, in 2016, increasing the country's prison population to 423,000 created a huge potential labor market capacity for governmental organizations and private companies. As a result, the number of convicts increased to 93,000 people. In the meantime, the use of labor punishment was widely welcomed by the private sector. Many convicts are employed free or occasionally by getting salary in the private sector. However, how to monitor and inspect the employment of convicts in the private sector has always been a major challenge [29]. Also, in Asia, in India and China, the use of prison labor punishment is followed. For example, Tihar Prison, one of the largest prisons in Asia, with more than 120,000 prisoners in India, signed an agreement with the private sector to use the labor capacity of prisoners. So that prisoners can be employed in auto parts manufacturing factory and furniture workshops. In China, the employment of prisoners in factories and workshops is as punishment. The main purpose of this punishment is to teach prisoners the skill of prison labor after returning to society [29].

### **4. Conclusion**

In recent years, the criminal justice system has been affected by privatization policies. Economic attitudes to the criminal phenomenon and the ways to respond to it have been effective in creating these developments. So that it can be boldly said that the economic effects of criminal decisions have overcome its punitive, social and moral effects. In particular, the lack of financial and human resources of governments is effective in the occurrence of this issue. This issue has created a new market for private sector investment in criminal justice. The difference is that there are predetermined rules in this market that violating them can lead to criminal or civil liability for market players, rules that are predicted in upstream laws and regulations and are part of the fundamental rights of nations. Principles such as the principle of legality of punishments that prevent the imposition of double punishment on convicts or respect for the privacy of convicts, the use of tools and facilities that prevent harm to the physical integrity and dignity of the convict, and so on. However, there are critics about the economic approach to privatization. Justifying public opinions to accept privatization where there is always a fear of discrimination in the execution of justice; violation of privacy in society, especially where the private sector uses new technologies to prevent crime and control criminals; and discriminating in access to justice between the poor and the rich are the most important criticisms.

In the Iranian criminal justice system, outsourcing of judicial affairs was pursued by assigning the management of Vakilabad prison in Mashhad and Adelabad prison in Shiraz to the private sector. However, the failure of this plan caused that the private sector not to be seen in the criminal justice system for a long time. Nevertheless, by the increase in crimes and punishments and prisoners, the government and the judiciary once again caused the private sector to be participated in crime management. The Code of Criminal Procedure of 2013 accepted mediation as a method of resolving lawsuits with the judiciary. Article 79 of the Islamic Penal Code has provided a broad capacity for the judiciary to use the capacity of the private sector. Although it is stated in the regulations of Article 79 of the institutions accepting convicts of most non-governmental and governmental public institutions, since these institutions invest and produce through companies that have private nature, this capacity can be used for convicts who are susceptible for free public services.

In addition, the government can amend the mentioned code in order to use the capacity of the private sector to provide more public services. Using the capacities of the private sector in electronic surveillance of defendants and convicts is another issue mentioned in the law on reducing the punishment of imprisonment. However, this interaction with the private sector should be done within the framework of principles such as respect for human dignity, defense of legitimate rights and freedoms, crime prevention, accountability, solidarity and social cohesion, confidentiality of judicial cases, as stipulated in the instructions on how to participate and interact with public institutions with the judiciary.

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