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Beyond Public and Private: The Limits of Prison Reform in Bangladesh

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Abstract

Bangladesh's prison system is marked by chronic overcrowding, prolonged pre-trial detention, inadequate healthcare, and persistent custodial deaths, raising serious concerns under both constitutional law and international human rights obligations. Despite repeated reform initiatives, these conditions have proven structurally resistant to incremental public-sector intervention. Against this backdrop, prison privatization has occasionally been invoked as a possible alternative, yet it remains largely absent from sustained legal scholarship in the Bangladeshi context and is often dismissed or endorsed on ideological grounds rather than constitutional analysis. This article examines whether, and under what conditions, prison privatization could be constitutionally permissible in Bangladesh. Drawing on domestic constitutional principles, international human rights law, and comparative experiences from jurisdictions including the United States, the United Kingdom, Australia, and South Africa, it argues that privatization is neither inherently unconstitutional nor inherently corrective. Rather, its permissibility depends on the preservation of non-delegable state duties relating to liberty, dignity, and due process, alongside robust regulatory and oversight mechanisms. Rejecting both wholesale privatization and categorical rejection, the article advances a conditional, context-specific model of limited private involvement, focused on non-coercive functions and non-violent or remand populations. It situates privatization as a harm-reduction strategy within a demonstrably failing public system, while emphasizing that no institutional rearrangement can substitute for broader criminal justice reform.

Key Words: Prison Privatization, Constitutional Law (Bangladesh), Non-Delegable State Duties, Human Rights and Detention, Carceral Reform

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Introduction: Crisis, Confinement, and the Limits of Penal Reform in Bangladesh

Across much of the Global South, prisons have become sites where structural failure, legal inertia, and human rights violations converge. In Bangladesh, this convergence has reached a critical juncture. Despite repeated reform commitments and intermittent administrative interventions, the prison system remains governed largely by colonial-era legislation and punitive logics ill-suited to contemporary realities (Yesmen 2022). Chronic overcrowding, prolonged pre-trial detention, inadequate healthcare, custodial deaths, and entrenched corruption are no longer exceptional, but constitute the ordinary conditions of carceral life (Ain o Salish Kendra 2019; Odhikar 2014; United States Department of State 2020).

By 2021, Bangladesh's prisons were operating at nearly twice their official capacity, with pre-trial detainees comprising more than 80 percent of the incarcerated population (Institute for Crime and Justice Policy Research 2021; Ministry of Home Affairs 2020). Such conditions raise concerns that extend beyond administrative inefficiency into the constitutional domain. The prolonged confinement of legally innocent individuals under degrading conditions sits uneasily with Articles 31, 32, 33, and 35 of the Constitution of the People's Republic of Bangladesh (1972), which guarantee protection of law, personal liberty, safeguards against arbitrary detention, and freedom from cruel, inhuman, or degrading treatment. Bangladesh's obligations under the International Covenant on Civil and Political Rights (United Nations 1966) and the Convention against Torture (United Nations 1984) further underscore the gravity of this crisis and the state's binding duty to prevent abuse.

The persistence of these conditions suggests that the problem is not merely one of weak implementation, but of structural limitation. Despite the recommendations of the Munim Prison Reform Commission (Government of Bangladesh 1980) and subsequent ministerial initiatives, meaningful transformation has remained elusive. Incremental reforms, including parole schemes, limited vocational programming, and NGO-led legal aid interventions (Bangladesh Legal Aid and Services Trust 2019; Amnesty International 2017), have alleviated individual harms, but failed to address systemic collapse. In this context, continued reliance on an exclusively public prison model warrants critical re-examination.

Globally, states confronting similar pressures have experimented with alternative carceral arrangements, most notably partial prison privatization. Facilities operated by private entities under state oversight now exist in jurisdictions including the United States, the United Kingdom, Australia, and South Africa (Harding 1997; Eisen 2017; Brown and Wilkie 2002; Sloth-Nielsen 2013). While proponents cite cost efficiency, administrative flexibility, and capacity relief, critics warn of profit-driven abuses, weakened accountability, and the commodification of incarceration (Davis 2003; Wacquant 2009).

Empirical scholarship demonstrates that the outcomes of prison privatization are highly contingent on regulatory design, political oversight, and constitutional safeguards (Kim 2019; Mukherjee 2019). Comparative research documents modest efficiencies in some contexts alongside serious failures where oversight mechanisms are weak or contractual incentives misaligned (Schultz 2015). These findings caution against both uncritical adoption and categorical rejection of privatization as a policy instrument.

In Bangladesh, however, prison privatization has received little sustained academic scrutiny. Existing discourse often oscillates between fiscal instrumentalism and normative dismissal grounded in generalized human rights concerns, often without rigorous constitutional analysis. What remains largely absent is a context-specific inquiry into whether, and under what conditions, privatization might operate within Bangladesh's constitutional framework and international legal obligations.

This article intervenes in that gap. Rather than advocating wholesale privatization, it examines whether a limited and carefully regulated model of prison privatization could function as a pragmatic supplement to Bangladesh's failing public prison system, particularly for non-violent offenders. Proceeding from the premise that existing deficiencies are structural rather than accidental, the analysis argues that continued refusal to explore alternative institutional arrangements risks entrenching conditions that already amount to systemic rights violations.

Drawing on constitutional doctrine, international human rights law, and comparative experience, the article contends that prison privatization is not inherently unconstitutional under Bangladeshi law. Its permissibility, however, depends on strict limitations: core coercive and rights-sensitive functions must remain non-delegable; state oversight must be continuous and enforceable; and privatization must be framed as a corrective mechanism aimed at harm reduction, decarceration, and rehabilitation rather than expansion of punitive capacity.

By situating prison privatization within Bangladesh's broader crisis of confinement, this article reframes the debate away from ideological binaries of public versus private and toward a more urgent inquiry: how to prevent a collapsing prison system from continuing to violate constitutional guarantees and human dignity in the name of administrative continuity. In doing so, it contributes to emerging Global South scholarship on carceral reform that foregrounds legal accountability, human rights compliance, and institutional realism over doctrinal absolutism.

Punishment, Imprisonment, and the Limits of Carceral Theory

Modern prison systems are often portrayed as neutral, technical responses to criminal conduct. Historical and theoretical inquiry, however, reveals imprisonment to be a contingent institution shaped by shifting conceptions of punishment, state authority, and social control. Any meaningful analysis of Bangladesh's prison crisis must therefore be situated within broader

jurisprudential and criminological debates concerning why societies punish, how incarceration became the dominant penal form, and where its normative and empirical limits reside (Garland 1985; Garland 2001).

Classical justifications for imprisonment—deterrence, retribution, rehabilitation, and incapacitation—continue to inform penal policy. Deterrence theory, rooted in utilitarian philosophy, posits that punishment reduces offending by increasing its expected costs and thereby influencing rational calculation (Bentham 1988; Nagin 2013). Retributive theory frames punishment as moral desert, emphasizing proportionality rather than social utility (Kant 1999). Rehabilitation emerged as a reformist alternative, envisioning prisons as sites of moral correction and reintegration (Cullen 2011). Incapacitation, by contrast, prioritizes public safety through confinement, often with limited concern for reform (Zimring and Hawkins 1995).

In practice, contemporary prison systems rarely conform to any single theory. Instead, they operate as unstable hybrids, combining punitive severity with rhetorical commitments to rehabilitation that are rarely realized in material conditions (Garland 2001).). Empirical research complicates the deterrence claim by demonstrating that marginal increases in severity have limited marginal deterrent effect, particularly among economically marginalized populations for whom structural constraints outweigh rational cost–benefit calculation (Nagin 2013). Similarly, rehabilitative ideals frequently collapse under overcrowding, underfunding, and institutional violence, transforming prisons into environments that reproduce rather than mitigate social harm (Davis 2003).

These failures are especially pronounced in postcolonial and Global South contexts, where prison institutions are often direct inheritances of colonial governance. In South Asia, including Bangladesh, prisons were historically designed as instruments of discipline and extraction rather than social reintegration (Arnold 1994). The continued operation of the Prisons Act of 1894 in Bangladesh illustrates this institutional continuity, privileging order, obedience, and labor over dignity, due process, and reintegrative programming. Despite constitutional reforms and international human rights commitments, the institutional logic of imprisonment has remained largely unchanged.

Critical criminology further interrogates the taken-for-granted centrality of imprisonment. Foucault's analysis of the prison's emergence situates it within the broader diffusion of disciplinary power, challenging narratives of linear humanitarian progress (Foucault 1995). Subsequent scholarship has demonstrated how carceral expansion functions to regulate social marginality and manage surplus populations in contexts of economic inequality and retrenched welfare provision (Wacquant 2009).). In such accounts, prisons serve not merely as responses to crime but as mechanisms of governance embedded within broader political economies.

In Bangladesh, these structural dynamics are intensified by poverty, prolonged pre-trial detention, and limited access to legal representation (Amnesty International 2017; Yesmen 2022). The predominance of remand prisoners suggests that incarceration often functions less as punishment following conviction than as a default mechanism for managing administrative delay. Under such conditions, confinement becomes procedural punishment rather than moral accountability.

Human rights scholarship further underscores the normative incompatibility between mass incarceration and the preservation of human dignity. International standards, including the Nelson Mandela Rules (United Nations Office on Drugs and Crime 2015), emphasize that imprisonment should restrict liberty alone. Yet overcrowded and poorly monitored prisons routinely extend deprivation to health, bodily integrity, and psychological well-being, risking treatment that is cruel, inhuman, or degrading (Rodley and Pollard 2009). The gap between formal rights commitments and lived carceral realities thus becomes a central site of critique.

These theoretical and empirical critiques have prompted abolitionist and decarceral perspectives that question the structural capacity of prisons to deliver justice or public safety, particularly in relation to non-violent offending (Davis 2003). While politically contested, such arguments underscore the conceptual fragility of incarceration as a default penal strategy and invite reconsideration of its scope and necessity.

It is against this backdrop, between acknowledged failure and continued institutional persistence, that debates on prison privatization emerge. Privatization does not fundamentally challenge incarceration itself, but reframes it as a service subject to alternative management. Proponents emphasize efficiency and flexibility, while critics warn of commodification and weakened accountability (Eisen 2017; Harding 2001). Both positions, however, often presuppose the inevitability of imprisonment, thereby diverting attention from its deeper theoretical limits.

For Bangladesh, this theoretical context is indispensable. The crisis of imprisonment cannot be reduced to administrative failure alone, but reflects entrenched penal philosophies that privilege confinement and control over care. Any meaningful reform agenda—whether public, private, or hybrid—must therefore confront not only questions of institutional management but also the normative boundaries and structural constraints of imprisonment itself.

Bangladesh's Prison System: Law, Administration, and Lived Reality

Bangladesh's prison system operates within a legal and administrative framework that is both historically entrenched and institutionally strained. While constitutional guarantees and international obligations formally recognize prisoners' rights, everyday practices reveal a persistent gap between law and reality (Yesmen 2022). This section interrogates that gap through

an examination of the governing legal framework, administrative structure, and lived conditions of incarceration.

The primary statute governing prisons remains the Prisons Act of 1894, enacted under British colonial rule and originally designed to enforce discipline and labor rather than rehabilitation or rights protection (Arnold 1994). Supplementary instruments such as the Jail Code of Bangladesh reinforce this custodial orientation, providing detailed rules on discipline while offering few enforceable standards on healthcare, sanitation, or protection from abuse. Scholars have noted that reliance on these instruments has produced a system that is formally lawful yet substantively incompatible with contemporary human rights norms (Yesmen 2022; Rodley and Pollard 2009).

Constitutionally, prisoners retain fundamental rights. The Supreme Court of Bangladesh has affirmed that incarceration entails deprivation of liberty alone, not extinguishment of constitutional protections (Bangladesh Legal Aid and Services Trust v Bangladesh 1999). Articles 31 and 32 of the Constitution of the People's Republic of Bangladesh (1972) guarantee protection of law and personal liberty, while Article 35 prohibits cruel, inhuman, or degrading punishment. These principles align with Article 10 of the International Covenant on Civil and Political Rights (United Nations 1966), which mandates humane treatment of detainees. In practice, however, judicial interventions have been episodic rather than systemic, limiting constitutional law's transformative impact within prisons (United States Department of State 2020).

Administratively, prisons are managed by the Department of Prisons under the Ministry of Home Affairs. Despite an extensive network of facilities, capacity has failed to keep pace with incarceration rates. Overcrowding remains endemic, with facilities operating at nearly double capacity and some exceeding 300 percent occupancy (Institute for Crime and Justice Policy Research 2021; Ministry of Home Affairs 2020). Such density undermines compliance with minimum standards of hygiene, ventilation, and medical care, rendering even baseline regulatory requirements practically unattainable.

Staffing shortages compound these pressures. Officers supervise inmate populations far beyond recommended ratios, increasing risks of violence, neglect, and corruption (Transparency International Bangladesh 2018). Training regimes emphasizes custodial control rather than human rights or rehabilitation, thereby reinforcing a culture of containment (Yesmen 2022).

Healthcare deficiencies exemplify these structural constraints. Prison medical facilities suffer chronic shortages of personnel, medicines, and equipment, with numerous deaths linked to untreated illness (Ain o Salish Kendra 2019; Odhikar 2014). These failures raise serious concerns regarding the state's constitutional duty to protect life under Articles 31 and 32 of the Constitution (1972).

Pre-trial detention constitutes the most significant driver of overcrowding. More than four-fifths of prisoners are awaiting trial rather than serving sentences (Institute for Crime and Justice Policy Research 2021). Procedural delays, limited access to legal representation, and restrictive bail practices routinely transform remand into prolonged punishment without conviction (Amnesty International 2017; Yesmen 2022). Remand prisoners are often housed with convicted inmates under identical conditions, undermining the presumption of innocence.

Beyond structural indicators, lived experience reveals pervasive violence and corruption. Human rights organisations document physical abuse, extortion, and discriminatory treatment of vulnerable groups, including women and juveniles (United States Department of State 2020; Odhikar 2014). Corruption governs access to food, bedding, and visitation, entrenching inequality within prisons (Transparency International Bangladesh 2018). Women prisoners face additional challenges, including inadequate healthcare and separation from children (Amnesty International 2017).

Reforms have failed not due to conceptual weakness, but because they remain embedded in an institutional framework unable to absorb incremental change (Government of Bangladesh 1980; Law Commission of Bangladesh 2002). While this diagnosis does not, in itself, mandate privatization, it unsettles the assumption that the public sector, operating within its current legal and bureaucratic configuration, can independently deliver constitutionally compliant incarceration

Constitutional and Human Rights Obligations of the State in the Context of Imprisonment

Any evaluation of prison reform in Bangladesh, whether public, private, or hybrid, must be grounded in the constitutional and human rights obligations of the state. Imprisonment is among the most intrusive exercises of state power, directly implicating constitutional guarantees of liberty, dignity, and equality. This section examines Bangladesh's constitutional framework governing the treatment of prisoners, alongside its international human rights commitments, to delineate the legal boundaries within which any reform initiative must operate.

Prisoners as Rights-Bearing Subjects under the Constitution

The Supreme Court of Bangladesh has repeatedly affirmed that prisoners retain fundamental rights subject only to lawful restriction. In *Bangladesh Legal Aid and Services Trust v Bangladesh* (1999), the High Court Division held that imprisonment entails deprivation of liberty alone and does not authorize treatment incompatible with human dignity. Subsequent Judicial observations in cases concerning custodial violence and prison deaths further underscore the state's non-delegable duty to protect the life and bodily integrity of persons in its custody (Yesmen 2022).

Article 35 of the Constitution of the People's Republic of Bangladesh (1972), prohibiting torture and cruel, inhuman, or degrading punishment, extends beyond the formal imposition of sentence to encompass the conditions under which detention is executed. Prolonged detention in overcrowded, unsanitary, and violent environments may cumulatively amount to degrading treatment even absent overt physical abuse (Rodley and Pollard 2009). Constitutional protection thus encompasses systemic conditions that undermine dignity, not merely discrete acts of brutality. Where confinement conditions predictably produce physical or psychological harm, the constitutional violation lies in the structure itself rather than in isolated misconduct.

Equality before the law, guaranteed under Article 27 of the Constitution (1972), is likewise implicated. Empirical evidence shows that incarceration in Bangladesh disproportionately affects economically marginalized populations, particularly through extended pre-trial detention for minor offences (Amnesty International 2017; Yesmen 2022). Where access to bail, healthcare, or basic amenities depends on informal payments or social influence, the constitutional promise of equality becomes largely illusory within prisons (Transparency International Bangladesh 2018).

Due Process, Pre-Trial Detention, and Constitutional Delay

The constitutional implications of pre-trial detention are especially acute. Article 33 of the Constitution (1972) guarantees safeguards against arbitrary arrest and detention, including the right to be informed of grounds of arrest and to consult legal counsel. In practice, however, systemic delays in investigation and trial have transformed remand detention into a routine feature of criminal justice administration rather than an exceptional measure (Amnesty International 2017).

Prolonged remand raises serious constitutional concerns. Individuals who remain legally presumed innocent are confined under the same restrictive and frequently degrading conditions as convicted prisoners, often without meaningful differentiation in housing, access to services, or institutional treatment (Yesmen 2022). In effect, incarceration assumes the character of anticipatory or preventive punishment, thereby eroding the presumption of innocence and diluting the substantive content of due process.

Although judicial pronouncements have acknowledged these concerns, structural remedies remain limited. Bail jurisprudence continues to prioritize procedural formality over substantive liberty, while alternatives such as supervised release or electronic monitoring remain underdeveloped (Amnesty International 2017). This constitutional bottleneck exacerbates overcrowding and compounds rights violations within prisons (Institute for Crime and Justice Policy Research 2021).

International Human Rights Obligations and Domestic Incorporation

Bangladesh's constitutional duties are reinforced by international human rights law. As a State Party to the International Covenant on Civil and Political Rights (United Nations 1966), Bangladesh is obliged to ensure humane treatment and respect for dignity for all persons deprived of liberty. The Convention against Torture (United Nations 1984) imposes an absolute prohibition on torture and ill-treatment, including acts or omissions causing severe physical or mental suffering.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (United Nations Office on Drugs and Crime 2015) further articulate these obligations by emphasizing adequate accommodation, healthcare, discipline, and independent oversight. Although not legally binding in a strict treaty sense, they constitute authoritative interpretive benchmarks and are routinely invoked in international and comparative jurisprudence to evaluate the legality and legitimacy of prison conditions (Rodley and Pollard 2009).

While international norms are not self-executing in Bangladesh, they inform constitutional interpretation (Islam 2025). Article 25 of the Constitution (1972) encourages respect for international law, and the Supreme Court has relied on international instruments to expand the scope of fundamental rights relating to dignity and liberty. Persistent non-compliance with international prison standards therefore exposes the state to both domestic constitutional scrutiny and international accountability.

State Responsibility and the Non-Delegability of Core Duties

A central constitutional question in debates on prison privatization concerns the extent to which custodial functions may be delegated. While administrative tasks may be outsourced, the state's responsibility for safeguarding the life and dignity of prisoners remains non-delegable. Under both constitutional and international human rights doctrine, states retain responsibility for violations committed by private actors exercising public functions (United Nations Human Rights Committee 2004).

Accordingly, even where private entities participate in prison management, the Bangladeshi state remains constitutionally accountable for conditions of confinement and protection from abuse. Privatization cannot operate as a legal shield against liability or dilute constitutional obligations. Comparative jurisprudence reinforces this principle, holding that coercive and rights-sensitive functions, such as discipline, use of force, and segregation, must remain under strict state control even where operational tasks are contracted out (Sloth-Nielsen 2013; Harding 1997).

Constitutional Failure as a Catalyst for Reform

The cumulative effects of overcrowding, prolonged pre-trial detention, inadequate healthcare, and systemic neglect indicate that Bangladesh's prison system is failing to meet its constitutional and human rights obligations (Ain o Salish Kendra 2019; Institute for Crime and Justice Policy Research 2021). This failure is structural rather than episodic, rooted in legal frameworks and institutional practices resistant to incremental reform. Where constitutional guarantees exist largely on paper, the legitimacy of the carceral system itself is called into question.

This conclusion does not render privatization constitutionally mandatory or normatively desirable. It does, however, underscore the urgency of reassessing institutional arrangements that have repeatedly failed to safeguard fundamental rights. Any reform, public or private, must therefore be evaluated against the constitutional baseline established here: the protection of life, dignity, equality, and due process.

Prison Reform Failures and the Structural Limits of the Public Model

The persistence of unconstitutional and inhumane prison conditions in Bangladesh cannot be explained solely by administrative negligence or episodic policy failure. Rather, it reflects deeper structural limits inherent in the public prison model as it operates within an overburdened criminal justice system and a constrained governance environment (Yesmen 2022; Amnesty International 2017). This section examines why successive reform initiatives have failed and why the public sector, as currently configured, has been unable to halt systemic decline.

Historical Reform Efforts and Their Limited Impact

Since independence, Bangladesh has repeatedly acknowledged persistent deficiencies within its prison system. The Munim Prison Reform Commission (Government of Bangladesh 1980) documented chronic overcrowding, custodial abuse, and the absence of rehabilitative programming, recommending infrastructural modernization, separation of remand and convicted prisoners, vocational training, and improved healthcare. Subsequent policy initiatives reiterated similar proposals, including alternatives to incarceration and administrative decentralization (Law Commission of Bangladesh 2002).

Despite their clarity, these recommendations were implemented only partially and inconsistently. Reform efforts tended to emphasize procedural adjustments rather than structural transformation, leaving the foundational architecture of the prison system intact (Yesmen 2022). Consequently, interventions have functioned primarily as short-term responses to crisis conditions rather than mechanisms for sustainable institutional change.

Political economy considerations help explain this persistent pattern of under-implementation. Prison reform generates little electoral incentive, particularly where incarcerated populations are socially marginalized and politically disenfranchised (Wacquant 2009). As a result, reform initiatives have frequently lacked sustained political backing, rendering them vulnerable to bureaucratic inertia, budgetary neglect, and incremental dilution of their original objectives (Amnesty International 2017).

Overcrowding as a Structural Condition

Overcrowding remains the most visible manifestation of systemic failure (Institute for Crime and Justice Policy Research 2021; Ministry of Home Affairs 2020). Despite periodic expansion of facilities, prison populations have continued to grow, driven primarily by pre-trial detention rather than sentencing trends (Institute for Crime and Justice Policy Research 2021; Amnesty International 2017). This pattern reflects broader constraints within the criminal justice system, yet the resulting pressure has been absorbed almost exclusively by carceral institutions.

Public-sector prisons, constrained by fixed hierarchies and limited budgets, lack the flexibility to respond to fluctuating population levels. Unlike most other public services, prisons cannot refuse admission once individuals are legally remanded or sentenced. The consequence is persistent overcrowding, which simultaneously undermines sanitation, healthcare, security, and rehabilitative programming (Yesmen 2022).

Overcrowding is not merely an administrative or logistical problem; it is inherently juridical. When capacity exceeds design limits, compliance with constitutional guarantees and international human rights standards becomes structurally unattainable, regardless of administrative intent (Rodley and Pollard 2009). In this respect, overcrowding functions both as a symptom of systemic failure and as a structural driver of rights violations, embedding harm into the everyday conditions of confinement.

Fiscal Constraints and Resource Allocation

Bangladesh's prisons operate under persistent fiscal scarcity. Budgetary allocations remain disproportionately low relative to inmate population and infrastructural demand (Ministry of Finance 2021). Consequently, prisons struggle to maintain facilities, procure medical supplies, and recruit or train personnel.

These constraints generate cascading effects throughout the system. Underpaid and overstretched staff are more vulnerable to corruption, while inadequate medical infrastructure increases preventable deaths (Transparency International Bangladesh 2018; Ain o Salish Kendra 2019). Rehabilitation programs remain largely rhetorical, inaccessible to most inmates (Yesmen 2022).

Fiscal scarcity reflects broader governance priorities. Within a policy framework that emphasizes policing, border control, and general security expenditure, prisons are treated as residual institutions—recognized as necessary but relegated to the margins of state attention and resource allocation (Wacquant 2009). This structural marginalization entrenches a cycle of neglect that incremental reform initiatives alone are ill-equipped to disrupt.

Bureaucratic Inertia and Institutional Culture

Beyond material constraints, bureaucratic culture shapes prison governance. Administration remains highly centralized and hierarchical, limiting innovation and responsiveness (Yesmen 2022). Decision-making authority is concentrated at senior levels, while frontline officers operate within rigid disciplinary frameworks prioritizing control over discretion (Transparency International Bangladesh 2018).

This entrenched culture inhibits experimentation with alternatives such as community-based sanctions or restorative justice. Pilot initiatives, often donor-driven, struggle to scale within existing administrative structures (Law Commission of Bangladesh 2002). Reform thus remains episodic rather than institutionalized. Limited transparency further compounds these problems. Oversight mechanisms are infrequent and reactive, reducing incentives for compliance with human rights standards (Transparency International Bangladesh 2018).

The Limits of Legalism and Incremental Reform

Prison reform discourse in Bangladesh frequently relies on legalistic solutions, procedural amendments, judicial directives on bail, or administrative circulars (Amnesty International 2017). While necessary, such measures presuppose institutional capacity and political will that are often absent. Judicial encouragement of bail, for example, has had limited impact where courts remain overburdened or risk-averse (Yesmen 2022).

This persistent gap between law and implementation underscores the structural limits of the public prison model. When reform depends on institutions already operating at or beyond capacity, its transformative potential is inherently constrained.

Structural Failure and the Search for Alternatives

Taken together, overcrowding, fiscal scarcity, bureaucratic inertia, and weak accountability indicate that Bangladesh's public prison system has reached the limits of its functional capacity (Institute for Crime and Justice Policy Research 2021; Ain o Salish Kendra 2019). This assessment does not suggest that public management is inherently flawed, but rather that existing institutional design is misaligned with contemporary demands.

Recognizing these limits does not, in itself, mandate privatization. It does, however, call into question the assumption that continued reliance on the current public model, supplemented only by incremental reform, can achieve constitutionally compliant incarceration. In this context, examining alternative institutional arrangements becomes a matter of practical necessity, grounded in functional and rights-based considerations, rather than an expression of ideological preference

Private Prisons: Models, Operations, and Global Evidence

Private prisons have emerged globally as a contested response to fiscal, administrative, and political pressures confronting public correctional systems. Often framed in ideological terms, privatization in practice encompasses diverse institutional arrangements whose outcomes depend heavily on regulatory design and political context (Harding 1997; Eisen 2017). This section examines prevailing models of prison privatization and evaluates comparative evidence from multiple jurisdictions.

Models of Prison Privatization

Prison privatization exists along a spectrum. At one end are fully privatized facilities where private entities finance, construct, and operate prisons under long-term state contracts. At the other are partial models in which private actors provide discrete services, such as food, healthcare, or maintenance, while the state retains control over security and coercive functions (Harding 2001).

Further distinctions arise between management-only contracts, where infrastructure remains publicly owned, and design–build–operate models integrating construction and operation (Brown and Wilkie 2002). These variations complicate generalized evaluations, as outcomes depend on contract terms, oversight mechanisms, and local governance conditions.

Privatization is frequently justified as a response to overcrowding and fiscal pressure, enabling rapid capacity expansion without immediate capital outlay (Eisen 2017). However, this expediency risks prioritizing capacity over accountability where contracts lack enforceable human rights standards (Rodley and Pollard 2009).

The United States: Expansion and Its Discontents

The United States offers the most extensive experience with prison privatization, closely linked to the rise of mass incarceration (Alexander 2010; Eisen 2017). Private corporations have operated federal, state, and immigration detention facilities, often housing non-violent or low-security populations.

Empirical findings are mixed. Some studies report modest cost reductions, primarily through lower labor costs (Mukherjee 2019). Others find no significant savings once monitoring,

contract administration, and litigation costs are included (Schultz 2015). Quality assessments similarly yield inconsistent results (Kim 2019).

More critically, scholars document how private prison firms have lobbied for policies that expand incarceration, including harsher sentencing and immigration detention regimes (Alexander 2010; Wacquant 2009). This alignment of profit incentives with deprivation of liberty has raised profound ethical concerns, particularly in a system marked by racial and economic inequality (Davis 2003).

Comparative Experiences Beyond the United States

Outside the United States, privatization has generally been more limited and regulated. In the United Kingdom, private prisons operate under detailed contractual frameworks and independent inspection regimes (Harding 1997). While controversies persist, privatization has not driven incarceration expansion comparable to the U.S. experience (Eisen 2017).

Australia presents a similarly ambivalent record. Some private facilities demonstrate operational efficiencies and innovative programming, while others have been implicated in serious human rights violations (Brown and Wilkie 2002). Importantly, Australian courts have consistently affirmed that the state retains ultimate constitutional responsibility for the protection of prisoners' rights, irrespective of private managerial arrangements (Harding 2001).

South Africa further illustrates the importance of constitutional oversight. There, private prisons function under an explicit recognition that deprivation of liberty implicates non-delegable state obligations, with judicial oversight playing a significant role in addressing and curbing abuses (Sloth-Nielsen 2013).

Collectively, these comparative experiences indicate that privatization does not inherently yield efficiency or abuse; its effects depend on governance structures, legal constraints, and political will.

Cost, Efficiency, and Accountability

Claims of automatic cost savings through privatization are not supported consistently by empirical evidence (Kim 2019; Mukherjee 2019). Comparative cost analyses are methodologically complex, given variations in inmate classifications, facility age, security levels, and the scope of contracted services. Reported savings frequently stem from reductions in labor expenditures, a strategy that may adversely affect staff training, morale, retention, and institutional safety (Schultz 2015).

Long-term contracts may also reduce flexibility, locking governments into inefficient arrangements and privileging private bargaining power (Harding 2001).

Accountability poses the most significant concern. Prisons are inherently opaque institutions, and privatization may further restrict transparency through claims of commercial confidentiality (Eisen 2017). International human rights bodies emphasize that states remain responsible for violations committed by private operators exercising public functions (United Nations Human Rights Committee 2004).

Lessons for Bangladesh

For Bangladesh, comparative evidence offers both cautionary lessons and constructive guidance. The U.S. experience demonstrates the dangers of unregulated privatization within a punitive system (Alexander 2010; Davis 2003), while experiences from the United Kingdom, Australia, and South Africa suggest that tightly regulated, limited privatization may operate without systemic rights violations (Harding 1997; Sloth-Nielsen 2013).

Crucially, no jurisdiction demonstrates that privatization alone resolves structural drivers such as excessive pre-trial detention or punitive sentencing (Wacquant 2009). At most, privatization may alleviate short-term capacity pressures; it cannot substitute for comprehensive criminal justice reform aimed at reducing reliance on incarceration.

This section argues that prison privatization is neither inherently beneficial nor inherently abusive. Its outcomes depend on context, regulation, and constitutional constraint. The following section therefore turns to the specific constitutional implications of privatization in Bangladesh, evaluating whether private participation in prison management can be reconciled with domestic legal doctrine.

Constitutionality of Prison Privatization in Bangladesh: A Comparative Legal Analysis

The constitutional permissibility of prison privatization in Bangladesh turns not on ideological preference, but on concrete questions of delegation, accountability, and state responsibility. Incarceration is an exercise of sovereign power, yet constitutional systems across jurisdictions recognize that not all sovereign functions are equally non-delegable. This section examines whether, and to what extent, prison privatization can be reconciled with Bangladesh's constitutional framework, drawing on domestic constitutional principles and comparative jurisprudence.

Delegation of State Power and Constitutional Limits

At the core of the constitutional inquiry lies the doctrine of delegation. The Constitution of the People's Republic of Bangladesh (1972) does not expressly prohibit the delegation of administrative functions to private actors. Modern governance routinely relies on public–private arrangements across sectors such as healthcare, infrastructure, and utilities. The constitutional

issue is therefore not whether delegation is permissible per se, but whether certain functions are so closely tied to sovereignty and fundamental rights that they must remain exclusively within state control.

This distinction is critical in the prison context. Imprisonment involves the lawful deprivation of liberty, one of the most intrusive exercises of state power. Comparative constitutional practice nevertheless suggests that while the authority to deprive liberty is non-delegable, aspects of the administration of confinement may, under strict conditions, be subject to contractual delegation (Harding 1997; Sloth-Nielsen 2013).

Bangladesh's constitutional jurisprudence aligns with this functional approach. Courts have emphasized substance over form, focusing on whether state responsibility is preserved rather than on the identity of the service provider (Bangladesh Legal Aid and Services Trust v Bangladesh 1999). From this perspective, privatization would be constitutionally impermissible only where it results in an abdication—explicit or implicit—of the state's continuing duty to ensure humane treatment, equality, and protection from abuse.

Non-Delegable Duties: Life, Dignity, and Due Process

Certain obligations remain constitutionally non-delegable. Articles 31 and 32 of the Constitution (1972) impose positive duties on the state to protect life and personal liberty, while Article 35 prohibits cruel, inhuman, or degrading punishment. These guarantees bind the state irrespective of whether prisons are administered directly by public authorities or operated through private management arrangements.

International human rights law reinforces this principle. The United Nations Human Rights Committee has made clear that states cannot avoid responsibility for rights violations by outsourcing public functions to private entities (United Nations Human Rights Committee 2004). Incarceration, as a coercive public function, falls squarely within this doctrine (Rodley and Pollard 2009).

Accordingly, privatization models that allow private actors to exercise unchecked disciplinary authority, determine conditions of confinement, or restrict access to legal remedies would likely violate constitutional norms. This does not preclude all forms of privatization but necessitates a regulatory architecture ensuring state control over coercive and rights-sensitive decisions.

Comparative Constitutional Approaches

Comparative jurisprudence provides instructive guidance. Courts across jurisdictions have addressed the constitutional implications of private prisons with nuanced reasoning.

In India, the Supreme Court has affirmed that prisoners retain fundamental rights subject to reasonable restrictions and that the state bears ultimate responsibility for prison conditions (Sunil Batra v Delhi Administration 1978). Although India has not adopted full prison privatization, it permits private participation in services such as food, healthcare, and vocational training under state oversight (Chandra 2016). This reflects a constitutional preference for limited, function-specific delegation.

In South Africa, where constitutional scrutiny of incarceration is particularly robust, courts have upheld private prison contracts while emphasizing the state's continuing obligations under the Bill of Rights, particularly regarding dignity and humane treatment (Sloth-Nielsen 2013).

In the United Kingdom, private prison operators are treated as public authorities for human rights purposes and are subject to the same standards as state-run facilities (Harding 1997). This doctrinal approach prevents privatization from becoming a mechanism for evading accountability.

These comparative approaches converge on a common principle: privatization is constitutionally permissible only insofar as state responsibility and effective oversight are preserved.

Applying Constitutional Principles to Bangladesh

Applied to Bangladesh, these principles suggest that prison privatization may not be constitutionally barred in principle. Indeed, there is evidence that the Supreme Court of Bangladesh has sometimes relied on the jurisprudence of other common law jurisdictions in developing constitutional doctrine (Islam 2020). Its desirability, however, depends on strict conditions.

First, the powers to sentence, detain, release, and discipline prisoners must remain vested in the state. Private operators cannot be granted discretionary coercive powers affecting liberty or bodily integrity.

Second, private prisons must be treated as constitutional extensions of the state. This requires explicit statutory recognition that private prison staff are subject to the same constitutional and legal obligations as public officials, including liability for rights violations.

Third, robust oversight mechanisms must be institutionalized. Independent inspections, judicial review, and transparent reporting are essential to prevent dilution of constitutional protections (Rodley and Pollard 2009).

Absent these safeguards, privatization risks creating zones of diluted accountability. With them, however, privatization may operate as a regulated administrative arrangement—subject to constitutional discipline—rather than as a rupture in the structure of state responsibility.

Addressing the Objection of Commodification

A frequent constitutional objection is that privatization commodifies punishment, transforming deprivation of liberty into a profit-generating enterprise. Comparative experience, particularly in the United States, demonstrates how profit incentives can distort penal policy and exacerbate over-incarceration (Alexander 2010; Davis 2003).

Yet commodification is not inevitable. Where incarceration levels are determined by judicial and prosecutorial decisions rather than contractual occupancy guarantees, and where profit is decoupled from inmate numbers, this risk is significantly reduced (Eisen 2017). In Bangladesh, where overcrowding is already endemic, the constitutional danger lies less in incentivizing incarceration than in perpetuating rights-violating conditions through institutional inertia.

Constitutional Failure and Conditional Permissibility

Ultimately, constitutional analysis must confront an uncomfortable reality: Bangladesh's existing prison system is already failing to meet constitutional standards (Institute for Crime and Justice Policy Research 2021; Ain o Salish Kendra 2019). Persistent overcrowding, prolonged pre-trial detention, and preventable deaths constitute ongoing constitutional violations.

In this context, refusing to consider alternative institutional arrangements may itself carry constitutional implications. This section does not claim that privatization is constitutionally required. Rather, it argues instead that conditional, tightly regulated privatization is not inherently incompatible with Bangladesh's constitutional order. The decisive inquiry is not the formal identity of the prison manager, but whether the state discharges its non-delegable obligation to safeguard life, dignity, equality before the law, and procedural fairness. Constitutional fidelity turns on outcomes and accountability, not labels.

Risks, Critiques, and Regulatory Safeguards

Any serious consideration of prison privatization must confront the extensive body of critical scholarship that views private involvement in incarceration as inherently risky (Davis 2003; Alexander 2010). Critics maintain that privatization risks subordinating human dignity to profit imperatives, diluting transparency, and entrenching systemic abuse. These concerns are not speculative; they are grounded in documented operational failures and regulatory gaps across several jurisdictions (Eisen 2017). This section examines the principal critiques of prison privatization and assesses whether, and under what conditions, these risks might be mitigated rather than reproduced in the Bangladeshi context.

Profit Motive and the Commodification of Punishment

The most persistent objection to prison privatization concerns the profit motive. Incarceration involves the deprivation of liberty, a power traditionally justified by public interest rather than private gain. When private entities profit from confinement, punishment risks becoming commodified, reducing prisoners to revenue-generating units rather than rights-bearing subjects (Davis 2003).

Empirical evidence from the United States substantiates this concern. Studies show that private prison corporations have lobbied for harsher sentencing laws, mandatory minimums, and expanded immigration detention regimes that increase incarceration demand (Alexander 2010; Wacquant 2009). Occupancy guarantees embedded in some contracts further incentivize governments to maintain high incarceration rates, creating a structural conflict between profit and decarceration (Eisen 2017).

In response to these concerns, several U.S. states and the federal government have sought to restrict or phase out private prison contracts, particularly in federal criminal detention, while increasing transparency requirements and limiting contractual occupancy guarantees (Eisen 2017).

In Bangladesh, however, the commodification risk must be understood contextually. The prison system already operates under extreme overcrowding driven primarily by pre-trial detention rather than sentencing policy (Institute for Crime and Justice Policy Research 2021). Here, the constitutional danger lies less in incentivizing new incarceration than in perpetuating rights-violating conditions through institutional inertia. Nonetheless, any privatization model that directly links profit to inmate numbers would be incompatible with constitutional and human rights obligations.

Cost-Cutting, Labor Conditions, and Quality of Care

A second major critique concerns cost-cutting practices. Private prison operators often reduce expenditure by lowering staff wages, limiting training, and minimizing service provision, particularly healthcare and rehabilitation (Schultz 2015; Kim 2019). While such strategies may generate short-term savings, they risk undermining safety and prisoner welfare.

Research across jurisdictions indicates that undertrained and underpaid staff are more likely to rely on force, neglect vulnerable inmates, and engage in corrupt practices (Mukherjee 2019). In Bangladesh, where prison staff already operate under difficult conditions, profit-driven cost minimization could exacerbate existing vulnerabilities unless strictly regulated (Yesmen 2022).

It is important, however, to avoid idealizing the public sector. Public prisons in Bangladesh already suffer from inadequate staffing and healthcare provision due to chronic fiscal constraints (Ministry of Home Affairs 2020). The relevant constitutional question is therefore not whether cost pressures exist, but whether regulatory mechanisms can prevent cost reduction—public or private—from translating into rights violations.

Transparency, Accountability, and Institutional Opacity

Transparency constitutes another central concern. Prisons are inherently closed institutions, and privatization may further obscure oversight through claims of commercial confidentiality (Eisen 2017). In jurisdictions with weak freedom-of-information regimes, this opacity has facilitated abuse and delayed accountability.

In Bangladesh, where independent monitoring and media access to prisons are already limited (Ain o Salish Kendra 2019), privatization could intensify opacity if not accompanied by explicit transparency obligations. International human rights bodies consistently emphasize that private prison operators must be subject to the same disclosure, inspection, and monitoring requirements as public institutions (United Nations Human Rights Committee 2004).

Judicial oversight offers one means of mitigating opacity. Courts in comparative jurisdictions have treated private prison operators as public authorities for constitutional and human rights purposes, thereby extending accountability obligations beyond formal state institutions (Harding 1997; Sloth-Nielsen 2013). Adopting similar doctrinal approaches in Bangladesh would be essential to preventing accountability gaps.

Corruption and Regulatory Capture

Critics further warn that privatization may exacerbate corruption, particularly in environments with weak regulatory capacity. Procurement processes may be vulnerable to favoritism, while ongoing oversight risks regulatory capture (Transparency International Bangladesh 2018). These risks are heightened in the prison context due to the sector's complexity and limited visibility.

Bangladesh's governance environment requires particular caution. Corruption already affects public prison administration, shaping access to food, healthcare, and basic amenities (Ain o Salish Kendra 2019). Privatization could deepen these dynamics or, if carefully designed, introduce clearer contractual benchmarks and audit mechanisms.

Comparative research suggests that corruption risks are reduced where contracts are transparent, performance indicators are rights-focused rather than cost-driven, and independent

oversight bodies possess genuine enforcement authority (Eisen 2017). Absent such safeguards, privatization risks adding another layer of opacity rather than functioning as a corrective measure.

Regulatory Safeguards: From Critique to Design

Addressing these critiques requires moving beyond categorical rejection toward regulatory design. The comparative literature identifies several safeguards as essential if privatization is to operate without undermining constitutional and human rights norms (Rodley and Pollard 2009; Eisen 2017).

First, profit must be decoupled from incarceration levels. Contracts should prohibit occupancy guarantees and ensure that remuneration is tied to measurable compliance with human rights standards, service quality benchmarks, and rehabilitation outcomes rather than to inmate volume.

Second, coercive and disciplinary powers must remain firmly under state control. Private operators may manage facilities and provide services, but decisions affecting liberty, discipline, and use of force must be exercised by public officials or subject to direct state authorization (Sloth-Nielsen 2013).

Third, robust oversight mechanisms must be institutionalized. Independent prison inspectorates, judicial access, and civil society monitoring are essential to preventing abuse (United Nations Human Rights Committee 2004). Oversight must be continuous, adequately resourced, and legally empowered to compel compliance.

Fourth, legal accountability must be explicit. Private prison staff should be treated as public officials for the purposes of constitutional liability and criminal accountability, ensuring that privatization does not dilute remedies for rights violations (Harding 1997).

This section has demonstrated that critiques of prison privatization are serious, empirically grounded, and indispensable to responsible analysis. At the same time, they do not amount to an absolute constitutional prohibition. Instead, they underscore the necessity of regulatory vigilance, institutional design, and political restraint.

For Bangladesh, the realistic choice is not between an ideal public system and a dangerous private alternative, but between continued constitutional failure and the cautious exploration of reform options. The next section therefore moves from critique to construction, proposing a conditional, Bangladesh-specific model of privatization designed to mitigate the identified risks while addressing the structural deficiencies documented earlier.

A Conditional and Context-Specific Model for Prison Privatization in Bangladesh

If prison privatization is to be considered in Bangladesh, it must be approached not as a market solution to incarceration, but as a constitutionally constrained administrative intervention within a failing public system. The preceding analysis have shown that Bangladesh's prisons are structurally incapable of meeting constitutional and human rights standards under existing arrangements (Institute for Crime and Justice Policy Research 2021; Ain o Salish Kendra 2019), while also establishing that privatization carries significant and well-documented risks (Davis 2003; Eisen 2017). This section advances a conditional model that seeks to navigate this tension by clarifying what may be privatized, what must remain under exclusive state control, and what regulatory architecture is required to prevent the reproduction of systemic harm.

Privatization as Supplement, Not Substitution

A foundational premise of this model is that privatization cannot and should not replace the public prison system. Comparative evidence demonstrates that wholesale privatization exacerbates accountability deficits and distorts penal policy, particularly in jurisdictions with weak oversight mechanisms (Alexander 2010; Eisen 2017). Bangladesh, where incarceration patterns are driven predominantly by procedural delay and prolonged pre-trial detention rather than by sentencing severity (Yesmen 2022), indiscriminate expansion of private prison capacity risks entrenching over-incarceration instead of mitigating it.

Accordingly, privatization is proposed only as a supplementary mechanism, targeted at specific populations and services. The objective is not to increase incarceration capacity indiscriminately, but to reduce constitutional harm within existing confinement practices by redistributing administrative burdens.

Scope of Permissible Privatization

Under a constitutionally compliant model, the permissible scope of privatization must be narrowly defined. Comparative constitutional practice indicates that non-coercive, service-oriented functions may be delegated without undermining state responsibility, provided oversight remains robust (Harding 1997; Sloth-Nielsen 2013).

In the Bangladeshi context, permissible private involvement could include management of low-security facilities housing non-violent offenders, provision of healthcare, food, sanitation, and maintenance, and delivery of vocational, educational, and rehabilitation programs aimed at reintegration. While essential to humane confinement, these functions do not entail the direct exercise of sovereign coercive power.

By contrast, functions directly implicating liberty, bodily integrity, or legal status must remain under exclusive state control. Decisions concerning admission, classification, discipline, segregation, use of force, and access to legal counsel are constitutionally non-delegable under Articles 31, 32, and 35 of the Constitution of the People's Republic of Bangladesh (1972) and international standards governing imprisonment (United Nations Human Rights Committee 2004; Rodley and Pollard 2009). Any model transferring such powers to private actors would likely violate constitutional doctrine and Bangladesh's international obligations.

Target Population: Non-Violent and Remand Prisoners

A second defining feature of the proposed model is its targeted focus on non-violent and remand prisoners. As documented earlier, more than four-fifths of Bangladesh's prison population consists of individuals awaiting trial, many charged with minor or non-violent offences (Institute for Crime and Justice Policy Research 2021; Yesmen 2022). Their prolonged detention reflects systemic delay rather than adjudicated guilt.

Placing such detainees to lower-security, privately managed facilities, subject to strict state oversight, could alleviate pressure on central jails while reducing exposure to the violence and deprivation endemic in high-security institutions (Ain o Salish Kendra 2019). Framed in this manner, privatization operates not as an expansion of punitive capacity but as a harm-reduction strategy within an overburdened system.

Contractual Design and Incentive Alignment

The comparative literature emphasizes that privatization outcomes depend less on ownership than on contractual design (Eisen 2017; Harding 2001). Contracts that link profit to incarceration levels or prioritize cost minimization over welfare have produced severe rights violations (Alexander 2010).

Under the proposed model, contracts must prohibit occupancy guarantees, decouple remuneration from inmate numbers, link performance metrics to human rights compliance, healthcare outcomes, and rehabilitation participation, and impose enforceable penalties, including termination for rights violations. Such mechanisms align private incentives with constitutional obligations rather than against them (Rodley and Pollard 2009).

Oversight, Accountability, and Legal Status

Robust oversight is indispensable to any constitutionally defensible privatization model. Private prison operators must be treated as public authorities for constitutional purposes, subject to judicial review, writ jurisdiction, and fundamental rights obligations (Harding 1997; Sloth-Nielsen 2013). This necessitates explicit statutory recognition that private prison personnel are

legally accountable in the same manner as public officials, including exposure to administrative sanction and criminal liability in cases of abuse, excessive force, or custodial neglect.

Independent inspection mechanisms must also be strengthened, with guaranteed access for courts, national human rights institutions, and civil society organizations (United Nations Human Rights Committee 2004). Transparency obligations must override claims of commercial confidentiality where deprivation of liberty is concerned (Eisen 2017).

Addressing Corruption and Regulatory Capacity

Concerns regarding corruption and regulatory capture are particularly salient in Bangladesh's governance context (Transparency International Bangladesh 2018). Without transparent procurement procedures and effective monitoring capacity, privatization could entrench patronage networks or weaken institutional accountability

At the same time, the existing public prison system already operates through informal and opaque practices that disproportionately disadvantage indigent prisoners (Ain o Salish Kendra 2019). A carefully designed contractual regime, subject to audit, judicial scrutiny, and public reporting, may render certain practices more visible and contestable than under the current framework. The relevant choice, thus, is not between corruption and institutional purity, but between unregulated informality and regulated delegation anchored in enforceable constitutional standards.

Privatization and the Limits of Reform

It bears emphasis that privatization, even under optimal conditions, cannot resolve the root causes of Bangladesh's prison crisis. Excessive pre-trial detention, restrictive bail practices, and prosecutorial delay remain central drivers of overcrowding (Yesmen 2022). Without parallel reforms in criminal procedure and judicial administration, institutional rearrangement risks becoming palliative rather than transformative. Administrative redesign alone cannot substitute for systemic decarceration.

Nevertheless, where the public system persistently violates fundamental rights (Institute for Crime and Justice Policy Research 2021; Ain o Salish Kendra 2019), cautiously exploring regulated alternatives may be more consistent with constitutional fidelity than rigid adherence to institutional orthodoxy.

This section has articulated a conditional, context-specific model of prison privatization tailored to Bangladesh's constitutional framework and institutional realities. It neither endorses privatization as an ideal nor dismisses its dangers. Instead, it situates privatization as a limited,

supervised, and rights-centered intervention aimed at mitigating systemic harm within a demonstrably failing system.

The conclusion draws these arguments together, reflecting on the broader implications of carceral reform in Bangladesh and the ethical stakes of continuing to tolerate unconstitutional confinement in the name of administrative continuity.

Conclusion

This article began from a deliberately uncomfortable premise: Bangladesh's prison system is failing in ways that are no longer exceptional, temporary, or administratively remediable. Chronic overcrowding, prolonged pre-trial detention, inadequate healthcare, and persistent custodial deaths constitute not merely policy deficiencies but ongoing violations of constitutional and human rights obligations (Institute for Crime and Justice Policy Research 2021; Ain o Salish Kendra 2019). Continued reliance on existing arrangements without serious institutional re-evaluation risks normalizing unconstitutional confinement as an acceptable byproduct of governance.

The central contribution of this article has been to reorient the debate on prison privatization in Bangladesh away from ideological binaries and toward constitutional realism. Rather than asking whether privatization is normatively desirable in the abstract, the analysis has examined whether the current public prison model is constitutionally defensible in practice, and whether alternative institutional configurations might reduce, rather than reproduce systemic harm. The evidence surveyed suggests that the public prison system, as presently constituted, has reached the limits of both its functional and constitutional capacity (Yesmen 2022).

Importantly, this article has not treated privatization as a panacea. Comparative experience demonstrates that private prisons can replicate or intensify the abuses of public systems when driven by profit incentives, weak oversight, and political indifference (Davis 2003; Eisen 2017). The trajectory of the United States experience, in particular, illustrates how privatization, when embedded within punitive sentencing regimes, can distort penal policy and undermine human dignity (Alexander 2010; Wacquant 2009).

At the same time, comparative constitutional analysis reveals that privatization is not inherently incompatible with constitutional governance. Jurisdictions such as the United Kingdom, Australia, and South Africa demonstrate that limited and tightly regulated forms of private involvement can operate without extinguishing state responsibility, provided that coercive powers remain non-delegable and oversight mechanisms are robust (Harding 1997; Sloth-Nielsen 2013). These experiences underscore a critical constitutional distinction between delegation of administration and abdication of responsibility—a distinction central to any assessment of permissibility.

Within Bangladesh, this distinction carries particular significance. The Constitution of the People's Republic of Bangladesh (1972) imposes positive obligations on the state to protect life, dignity, and equality before the law, including for those deprived of liberty. International human rights law reinforces these duties, making clear that states remain responsible for violations committed by private actors exercising public functions (United Nations Human Rights Committee 2004; Rodley and Pollard 2009).

Against this legal backdrop, the article advanced a conditional model of prison privatization tailored to Bangladesh's institutional realities. This model rejects wholesale privatization and instead proposes narrowly circumscribed private involvement, focused on non-coercive functions and non-violent or remand populations, subject to explicit constitutional, statutory, and regulatory constraints. Its purpose is neither to expand incarceration capacity nor to outsource punishment, but to mitigate ongoing rights violations within an overburdened system that has repeatedly struggled to reform itself (Institute for Crime and Justice Policy Research 2021; Yesmen 2022).

Crucially, the article has also emphasized the limits of institutional rearrangement. Privatization, however carefully designed, cannot resolve the deeper drivers of Bangladesh's prison crisis, particularly excessive pre-trial detention, restrictive bail practices, and systemic delay within the criminal justice process (Yesmen 2022). Without parallel reforms in criminal procedure, judicial administration, and legal aid provision, any structural intervention risks remaining palliative rather than transformative.

The ethical stakes of this debate are therefore substantial. Continued reliance on a demonstrably failing prison system raises a fundamental question: whether fidelity to institutional tradition should outweigh fidelity to constitutional principle. Where deprivation of liberty is accompanied by deprivation of dignity, health, and legal protection, the legitimacy of confinement itself comes into question (Rodley and Pollard 2009). In such circumstances, refusal to explore alternative arrangements may be as ethically consequential as embracing them uncritically.

This article does not advocate the normalization of private incarceration. It calls for constitutional honesty. Where existing public systems persistently violate fundamental rights, reform debates must move beyond symbolic commitments and engage seriously with institutional design, accountability, and harm reduction. Privatization, if considered at all, must be treated as an exceptional, provisional, and tightly constrained response to constitutional failure—not as a market solution to social disorder.

Ultimately, the question confronting Bangladesh is not whether prisons should be public or private in form, but whether they can continue to operate in ways that are legally defensible and morally intelligible. By situating prison privatization within constitutional doctrine, comparative experience, and human rights ethics, this article has sought to open space for a more grounded and

less ideological conversation about confinement, responsibility, and reform. The challenge ahead lies not in choosing between institutional models, but in refusing to accept unconstitutional suffering as an administrative inevitability.

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