Prisnor Rights

PRISONERS RIGHTS

Smt. Kewal Pati, Petitioner V. State Of U.P. And Others, Respondents.
DATE OF DECISION: 06-04-1995
CITATION(S) : 1995-(101)-CRLJ -2920 -SC
JUDGE(S) :R M Sahai S B Majmudar

ORDER

This petition was entertained on a letter sent by the wife of the deceased Ramjit Upadhaya who was killed by a co-accused while serving out his sentence under Section 302 IPC in Central Jail, Varanasi. The petitioner and her children have claimed compensation both in law and on compassionate grounds, Reports were obtained from the Inspector General of Prisons, U.P. and the Superintendent, Central Jail, Varanasi. They confirm that Ramjit Upadhaya was killed by a co-accused. A counter-affidavit was also filed by Deputy Jailor, Central Jail, Varanasi, admitting that Ramjit Upadhaya was killed by co-accused, Happu, against whom case under Section 303 has been registered. Affidavit was filed on behalf of the Government as well stating that there was no provisions in the U.P. Jail Manual for grant of compensation to the family of the deceased convict.

2. Ramjit Upadhaya was a convict and was working as a Nambardar in the jail. He was strict in maintaining discipline amongst the co-accused. It was due to this strictness in his behaviour as Nambardar that he was attacked and killed by Happu a co-accused. Even though Ramjit Upadhaya was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law (see Francis Coralie Mullin v. Administrator, Union Territory of Delhi and A. K. Roy v. Union of India). Therefore, he was entitled to protection. Since the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of opinion that they are entitled to be compensated.

3. In the result this petition is allowed by directing that the State of U.P. shall deposit a sum of Rs. 1,00,000 within three months from today, with the Registrar of this Court. A sum of Rs. 50,000 out of this amount shall be deposited in fixed deposit in any nationalised bank and the interest of it shall be paid to the wife and the children. The remaining amount shall be paid to the wife by the Registrar after being satisfied about the identification of the petitioner. The amount in deposit shall be paid to the wife on her option after all the children become major. In case of petitioner’s death prior to the children becoming major, the amount shall be divided equally between the surviving children.

Gurdev Singh And Others Etc., Petitioners V. State Of Himachal Pradesh And Others, Respondents.
DATE OF DECISION: 14-03-1991
CITATION(S) : 1992-(098)-CRLJ -2542 -HP
JUDGE(S) :

Bhawani Singh
Devinder Gupta
HIMACHAL PRADESH HIGH COURT
JUDGMENT
BHAWANI SINGH, J. :- These criminal writ petitions, being common in nature, scope and effect are being decided by a common judgment and the learned counsel for the parties also agree that they should be so decided.
2. The petitioners, in both these petitions, are undergoing imprisonment in the jails of the State. They submitted the petitions to this Court which were placed on Judicial side for examination and decision by Chief Justice P. D. Desai, as he then was. In Criminal Writ Petition 6 of 1985 (Gurdev Singh & 6 others v. State of H.P. and 2 others) the petitioners complain that they are employed for work but are being paid Rs. 1.50 per day for the labour. They also say that no wages are paid for the first three months of labour. In Criminal Writ Petition No. 49 of 1985 (Bhag Singh Chauhan v. State of H.P.), in addition to the allegation of the improper management of wage amounts by the Superintendent of Jail and Store Keeper, they also say that they are forced to work with contractors either at less wages or no wages at all. The allegation as to mis-utilization of wage amounts were inquired into by the District & Sessions Judge, Shimla on the directions by this Court. However, the report discloses that the allegation of Bhag Singh, convict regarding the mis-utilization of the wage amounts against the jail officials has no substance. We have, therefore, no material before us to arrive at a conclusion favourable to the petitioner and against the jail officials. However, there is something to be said on the engagement, rate of wages, their receipt and management by the jail authorities which aspect, we will turn to, at an appropriate place in the succeeding part of this judgment.
3. In his reply, the Inspector General of Prisons stated that the payment of wages to prisoners for rendering services in the jail factory/garden/kitchen etc. is regulated by the provisions of the Wage Earning Scheme applicable in respect of Model Central Jail, Nahan and District Jail, Dharamshala. Prisoners are paid wages @ Rs. 3/- (skilled), Rs. 2.25 (semi-skilled) and Rs. 1.50 (un-skilled) for full task. The wages are paid to the workers of various categories in the following manner :-
“(a) A worker who performs the prescribed task of standard quality is entitled to the payment of wages prescribed for the trade or work in which he is employed.
(b) A worker who performs task of standard quality in excess of the prescribed task is entitled to payment of additional wages in proportion to the additional work at the rate prescribed i.e. Rs. 3/- Rs. 2/25 and Rs. 1/50 respectively for skilled, semi-skilled and unskilled labour.
(c) No prisoner who does not accomplish the prescribed task of the standard quality is entitled to any payment of wages provided that 50 percent of the wages prescribed in Rs. 3/-, Rs. 2/25 and Rs. 1/50 respectively for skilled semi-skilled and unskilled work, are payable in the following cases

:-
(1) to convicted criminal prisoners in skilled trades for duration of the period of training in excess of three months provided the prisoners accomplished a task of the standard quality exceeding 50 percent.
(2) Undertrails and simple imprisonment prisoners after three months of admission of the wage earning scheme/system provided they accomplish the task of the standard quality exceeding 50 percent.
(3) The unskilled workers recommended hard, medium and light work by the Medical Officer concerned get wages @ Rs. 1/50, Rs. 1/25 and Rs. 1/- respectively per day.
For the purpose of payment of wages prison labour is classified into three categories as defined below :-
(I) “Skilled workers those employed on work which involve either physical or mental or both kinds of skill in its execution and which cannot be accomplished by ordinary labour with proficiency without sufficient skill”.
(II) “Semi-skilled Worker” means worker engaged on a task which cannot be performed by untrained hands but which can be executed with some training and practice but does not require any strict standard of precision.
(III) “Unskilled worker” means worker engaged on a task which does not require any skill or training.
Classification of each prisoner eligible for employment on various industries and trades allocated to each jail are made in accordance with the above categories by the Superintendent Jail concerned for the purpose of payment of wages in accordance with the nature of work on which the prisoner is employed with the approval of the Inspector General of Prisons.
Out of the wages earned by the prisoners they are allowed to spend Rs. 25/- per month to purchase items such as Ghee, bidies, cigarettes etc. The balance is deposited in their personal account. If they so desire amount is also remitted to their families. But no such payment is made to the prisoners.
The following categories of prisoners are eligible for employment under the scheme :-
(i) All prisoners sentenced to rigorous imprisonment.
(ii) Criminal prisoners sentenced to simple imprisonment as long as they so desire provided that no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work.
(iii) All convicted criminal prisoners with their consent.
(iv) Civil prisoners subject to provisions of Paras 797 and 798 of Punjab Jail Manual.
Provided that women prisoners during prenatal and postnatal period and convalescent prisoners shall be exempted from work on the recommendations of the Medical Officer.
While allotting work to the prisoners the following factors are taken into consideration :-
i) Physical and mental health;
ii) Age;
iii) Length of sentence;
iv) Requirements of security and discipline;
v) Previous occupation, training and experience;
vi) Result of vocational aptitude tests, where given;

vii) Area (Urban and rural) where the inmate is likely to resettle after released and possibilities of employment;
viii) Level of work-skills and abilities;
ix) Rehabilitation needs;
x) Possibilities of imparting multiple skills;
xi) Vocational training needs;
xii) Inmate's occupational performance so far as they are compatible with institutional conditions and available facilities for work and training.
Note :- Prisoners are assigned work carefully on the basis of their interests, abilities, training needs and trust-worthiness. But questionable and superficial interests are not considered.
The allotment of work in the above manner is subject to the following conditions :-
i) Requirements of the institution for essential services and maintenance jobs are considered on priority basis;
ii) Only volunteers are employed in conservancy work.
Under the Scheme there is no provision for payment of compensation to prisoner who may sustain injury while on work."
4. The State has also placed its case through various affidavits, filed at various stages of this case. In the affidavit of 5-8-1985 of Special Secretary (Home) to the Government by Himachal Pradesh, it has been stated that the State Government is profoundly concerned over the welfare of prisoners and the need for jail reforms which it would like to do within its resource limits. It has been admitted that the present conditions of jails are not as ideal as the Govt. would like it to be and in order to ameliorate the conditions in the jails, the necessary steps in that behalf are under consideration.
5. It has further been stated that payment of minimum wages to all prisoners including those undergoing rigorous imprisonment would amount to abolition of rigorous imprisonment which has remained so far an accepted principle of jurisprudence and as long as the statute recognizes the concept of rigorous imprisonment, providing of minimum wages to all prisoners would, in essence, oboliterate the difference between rigorous imprisonment and simple imprisonment.
6. According to the Government, manual work by prisoners sentenced to labour is recognized part of Jail Administration and discipline as envisaged by Prisons Act, 1894 and the Punjab Jail Manual, as applicable to Himachal Pradesh. To prescribe minimum wages for such labour of the prisoners inside the prison the benefit of which goes mostly to the prisoners themselves would adversely affect Jail Administration, discipline and morale. Moreover, the stipulation of minimum or reasonable wages combined with the concept of rigorous imprisonment denotes some kind of assured employment to the prisoners in preference to the law-abiding unemployed citizens outside the prison wall, and since the Government has not been able to provide employment to all such unemployed citizens, it does not consider it proper to do so in the case of prisoners. It has further been stated that the Government also feels that the stipulation of minimum wages for manual work done by the prisoners in the jail will restrict the discretion of the Government to introduce different kinds of jail reforms in future, because any such step would bind it to inflexible quantums of wages which the Government may not always be able to provide for. The jail reforms, in the forms of education and technical training, would prove immensely useful for postrelease rehabilitation and the claim for minimum or reasonable wages is thus not acceptable.

7. Then, it has been stated that in pursuance of this Court's directions of 16-9-1985, the Government has deleted from clause 12 of the Wage Earning Scheme sub-clauses (iii) & (iv) vide order dated 28-9-1985 to remove the disability clause against prisoners sentenced imprisonment for three months or less and the prisoners for the first three months of their imprisonment. By affidavit of September 30, 1985, it has been stated by the Inspector General of Prisons that no prisoner, whose services were utilized in the jail factory/garden/kitchen and/or at any other place during the last five years, has/had received any injury by accident arising out of and in the course of his employment for such work.
8. While giving reply in Criminal Writ Petition 49/85, Deputy Inspector General of Prisons, Himachal Pradesh has filed the relevant extract relating to "labour and wages" from out of the scheme of the Government applicable to "Open Air Jail" (Annexure R. 2/A). Further, it has been stated that after the construction work of the work for the prisoners of the Open Air Jail with the Public Works Department of the Government. In such a situation, the work for the prisoners was procured from other Government or semi-Government agencies like H.P. Housing Board, State Electricity Board, Irrigation Wing of Public Works Department, Himachal Pradesh Mines Industrial Development Corporation and M/s. Piters India Limited Bilaspur, where the work is got done by the Company through private contractors. This was necessary in the interest of the inmates of the Open Air Jail, Bilaspur, to keep them busy on the one hand and to give them an opportunity to earn money on the other hand. The prisoners are engaged where ever the work is available for them. The employers are asked to place their demands for prison labour in writing to the Superintendent of the Jail, stating therein the number of prisoners required by them, the rate of daily wages and the probable period for which the prison labour is required. When ever, there is any increase in the wages of the free market and the Government rates, the prison labour also gets the same wages. The prisoners are sent to work sites in prison van with one warder, in charge of each gang. In order to improve the counting system of prisoners' wages, the employers are requested to remit the amount of wages preferably through crossed cheques in the recorded showing the deposit of wages received on the jail office.
9. The prisoners are allowed Rs. 20/- per month as pocket money to purchase cigarettes, beedis, Ghee, butter etc. This amount of pocket money is allowed to be withdrawn from their pass books on their written request by a Chit in the name of Post Master of the Post office concerned. The prisoners are given their pass books to withdraw the money from the Post Office by presenting refund voucher under their own signatures to the extent authorised by the Superintendent of Jail. By this way, they get a chance to examine their balance amount in their pass books and in case they come across any discrepancy, they are at liberty to bring the same to the notice of the Superintendent, Jail, Jail Visitors and the Prison Inspectorate.
10. In pursuance of the directions, the second respondent evolved and issued exhaustive wage accounting scheme to the Superintendent, Open Air Jail, Bilaspur on 22-2-1986 for immediate adoption. This fact finds mention in the affidavit of Deputy Inspector General of Prisons dated 7-4-1986 with which the copy of the scheme has also been filed.
11. Finally, there is the order of Government dated 20th October, 1986 whereby the wages of prisoners under the Wage Earning Scheme have been enhanced with immediate effect to the following extent :-

"Wage Earing Scheme Revised Rates. (Existing) ————————————————————- 1) Skilled Rs. 3.0 6.85. 2) Semi-skilled Rs. 2.25 Rs. 5.15. 3) Un-skilled Rs. 1.50 Rs. 3.45."

12. Since the petitions were preferred by the prisoners directly to this Court and looking to the importance of the matter involved, Shri K. D. Sood and Shri D. D. Sood, Advocates, were requested to appear amicus curiae. We record our appreciation for the help they rendered in these cases.

13. Principally, four questions arise for determination in this case. The first question is whether a prisoner is entitled to claim wages in return for his work and, if so, what should be the wages payable to him. The second question relates to the reasonableness of the provision debarring prisoners from claiming wages for a period of three months from the say of their incarceration. The third is about the compulsory deduction of some part of the wages towards maintenance and the fourth relates to the initiation of reforms in various jails in the State.

14. The stand taken by the State, through various replies and affidavits in these two cases has been extracted and during the course of the hearing of these cases, the learned counsel for the State, referred to them in order to oppose the claim of the petitioners. However, it was pointed out that during the pendency of these petitions, the Government has increased the wages by an order of 20-10-1986 and the prohibition against payment to prisoners till completion of three months has also been dispensed with. It was also stated that the implementation of Para 702 and Explanation to paragraph 703 of Punjab Jail Manual, as applicable to the State, has been cancelled. We are not impressed by the stand taken by the State relating to the main demand of the petitioners in these cases for reasons being recorded in this judgment.

15. The Constitution of India is the supreme law of the nation and all other laws have to be enacted within the parameters laid down by it. The same test has to be passed by all laws which were in force on the commencement of the Constitution (Art. 13). The Preamble sets the human tone and tamper of the Constitution and envisages, among other things, justice, equality and the dignity of the individuals. Art. 21 is the repository of human values, prescribes fair procedure and forbids arbitrariness, barbarities, punitive or processual. Art. 23 prohibits forced labour when it says :

"23. Prohibition of traffic in human beings and forced labour.

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

16. The apex Court had occasion to interpret the meaning of this provision in large variety of cases, however, for the purpose of this case, it would be necessary to refer to two important decisions. First case is AIR 1982 SC 1473 (People's Union for Democratic Rights v. Union of India. In paras 14, 15 and 16, the Court said :

"14. When the Constitution makers enacted Art. 23 they had before them Art. 4 of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Art. 23 much wider than that of Art. 4 of the Universal Declaration of Human Rights. They banned "traffic in human beings which is an expression of

much larger amplitude than ‘slave trade’ and they also interdicted “begar and other similar forms of forced labour.”

The question is what is the scope and ambit of the expression ‘begar and other similar forms of forced labour’ ? Is this expression wide enough to include every conceivable form of forced labour and what is the true scope, and meaning of the word “forced labour ?” The word ‘begar’ in this Article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word ‘begar’, but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration. Molesworth describes ‘begar’ as “labour or service exacted by a government or person in power without giving remuneration for it.” Wilson’s glossary of Judicial and Revenue Terms gives the following meaning of the word ‘begar’ :

“a forced labourer, one pressed to carry burthens for individuals or the public. Under the old system, when pressed for public service, no pay was given. The Begari, through still liable to be pressed for public objects, now receives pay. Forced labour for private service is prohibited.”

“Begar” may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for it. That was the meaning of the word ‘begar’ accepted by a Division Bench of the Bombay High Court in S. Vasudevan v. S. D. Mital, AIR 1962 Bombay 53. ‘Begar’ is thus clearly a film of forced labour. Now it is not merely ‘begar’ which is unconstitutionally prohibited by Art. 23 but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. It is interesting to find that as far back as 1930 long before the Universal Declaration of Human Rights came into being. International Labour Organisation adopted Convention No. 29 laying down that every member of the International Labour Organisation which ratifies this convention shall “suppress the use of forced or compulsory labour in all its forms” and this prohibition was elaborated in Convention No. 105 adopted by the International Labour Organisation in 1957. The words “forced or compulsory labour” in Convention No. 29 had of course a limited meaning but that was so on account of the restricted definition of these words given in Art. 2 of the Convention. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit force or compulsory labour. Art. 23 is in the same strain and it enacts a prohibition against forced labour in whatever form it may be found. The learned counsel appearing on behalf of the respondent laid some emphasis on the word ‘similar’ and contended that it is not every form of forced labour which is prohibited by Art. 23 but only such form of forced labour as is similar to ‘begar’ and since ‘begar’ means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Art. 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words ‘other similar forms of forced labour’. This contention seeks to unduly restrict the emplitude of the prohibition against forced labour enacted in Art. 23 and is in our opinion not well founded. It does not accord with the principle enunciated by this Court in Meneka Gandhi v. Union of India (1978) 2

SCR 621 : AIR 1978 SC 597 (supra) that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content. It is difficult to imagine that the Constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as a pernicious practice sufficient to attract the condemnation of Art. 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article ? If this were the true interpretation, Art. 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus ascape the rigour of Art. 23. We do not think it would be right to place on the language of Art. 23 on interpretation which would emasculate its beneficient provisions and defeat the very purpose of enacting them. We are clear of the view that Art. 23 is intended to abolish every form of forced labour. The words “other similar forms of forced labour” are used in Art. 23 not with a view importing the particular characteristic of ‘begar’ that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since ‘bagar’ is one form of forced labour, the Constitution makers used the words “other similar forms of forced labour”. If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they would straightway come within the meaning of the word ‘begar’ and in that event there would be no need have the additional words “other similar forms of forced labour”. These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which has the effect of rendering any words used by the legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Art. 23 by including in addition to ‘begar’, other forms of forced labour within the prohibition of that Article. Every form of forced labour, ‘begar’ or otherwise, is within the inhibition of Art. 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void and offending Art. 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Art. 23. This was precisely the view taken by the Supreme Court

of United State in Bailey v. Alabama, (1910) 219 US 219 : 55 Law Ed. 191 while dealing with a similar provision in the Thirteenth Amendment. There, a legislation enacted by the Alabama State Providing that when a person with intent to injure or defraud his employer enters into a contract in writing for the purpose of any service and obtains money or other property from the employer and without refunding the money or the property refuses or fails to perform such service, he will be punished with a fine. The constitutional validity of this legislation was challenged on the ground that it violated the Thirteenth Amendment which inter alia voluntary servitude ….. shall exist within the United States or any place subject to their jurisdiction. “This challenge was upheld by a majority of the Court and Mr. Justice Hughes delivering the majority opinion said :

‘We cannot escape the conclusion that although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse top perform contracts for personal service in liquidation of debt, and judging its purpose by its effect that it seeks in this way to provide the means of compulsion though which performance of such service may be secured. The question is whether such a statute is constitutional. “The learned Judge proceeded to explain the scope and ambit of the expression ‘involuntary servitude’ in the following words :

‘The plain intention was to abolish slavery of whatever name and form and all its badges and incidents, to render impossible any state of bondage; to make labour free by prohibiting that control by which the personal service of one man is disposed of or coerced for another’s benefit, which is the essence of involuntary servitude.’

Then, dealing with the contention that the employee in that case had voluntarily contracted to perform the service which was sought to be compelled and there was therefore no violation of the provisions of the Thirteenth Amendment, the learned Judge observed :

‘The fact that the debtor contracted to perform the labour which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute. The full intent of the constitutional provision could be defeated with obvious facility if through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the statute inhibits, for when that occurs the condition of servitude is created which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labour.’

‘Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of original, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage however created is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise, the service is enforced. A clear distinction exists between peonage and the voluntary performance of labour or rendering of services in payment of a debt. In the latter case the debtor though contracting to pay his indebtedness by labour or service, and subject like any other contractor to an action for damages for breach of that contract can elect at any time to break it, and no law or force compels performance or a continuance of the service.’

It is therefore clear that even if a person has contracted with another to perform service and there

is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced, by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Art. 23. This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service vide Pollock v. Williams, (1943) 322 US 4 : 88 Law Ed. 1095. The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee by reason of his economically helpless condition may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Art. 23 therefore says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service."

"15. Now the next question that arises for consideration is whether there is any breach of Art. 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Art. 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to right disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing

so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'. There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national character, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of likelihood. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Art. 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art. 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Art. 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Art. 23."

"16. Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Art. 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an

obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners vindicating the cause of the workmen are entitled to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition ……"

17. The second case is AIR 1983 SC 328 (Sanjit Roy v. State of Rajasthan) where the Supreme Court reiterated what it had said in the People's Union case (AIR 1982 SC 1473) (supra). In this case also, similar kind of question arose for consideration and determination. In a drought hit area, the State Government undertook the relief work evidently with the object of providing those affected with some form of work, but the wages paid were unremunerative, much less than the minimum wages. The view taken in the People's Union case (supra) was reiterated again when the Court said (at p. 333) (of AIR 1983 SC 328).

"I must, therefore, hold consistently with this decision that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words 'forced labour' and attracts the condemnation of Art. 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Art. 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

Article 10 of the International Covenant on Civil and Political Rights also envisages under :-

"Article 10 :- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

And in the words of Justice Felix Frank Furter, "the history of liberty has largely been the history of observance of procedural safeguard" and, in Maneka Gandhi's case AIR 1978 SC 597 it has been stated :

"The ambit of personal liberty protected by Art. 21 is wide and comprehensive. It emphasises both substantive rights to personal liberty and the procedure provided for their deprivation."

18. In Sunil Batra's case (AIR 1978 SC 1675) : (1978 Cri LJ 1741), the Constitution Bench of the Court held that imprisonment does not, ipso facto, mean that fundamental rights desert the detainee.

19. In para 6 of the Supreme Court decision reported in AIR 1974 SC 2092 : (1975 Cri LJ 556) (D. B. M. Patnaik v. State of A.P.) Chief Justice Chandrachud, J., as the learned Chief Justice then was, stated thus :

"Convicts are not by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the rights to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

20. A similar view was expressed by the United States Supreme Court in a motion made by an

inmate of the Nebraska State prison, on behalf of himself and other inmates. His complaint was that prison disciplinary proceedings did not comply with the due process clause of the Federal Constitution. Justice White speaking for the Court said in that case. Charles Wolff v. Mc. Donnel. (1974) 41 Law Ed 2d 935 at p. 950 :

“Petitioners assert that the procedure for disciplining prison inmates for serious misconduct is a matter of policy raising no constitutional issue. If the position implies that prisoners in State institutions are wholly without the protections of the Constitution and the Due Process Clause, it is plainly untenable. Lawful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a “retraction justified by the considerations underlying our penal system”. Price v. Johnston (1948) 334 US 266, 285 : 92 Law Ed 1356 : 68 S ct. 1049. But though his rights may be diminished by the needs and exigencies of the institutional environment a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country.”

Wolff’s case is referred to in Sunil Batra’s case AIR 1978 SC 1675 : (1978 Cri LJ 1741). Krishna Iyer, J., observed in that case (at p. 1691 (of AIR) : (at p. 1757 of Cri LJ), paragraph 57) thus :

“So the law is that for a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. The omens are hopeful for imprisoned humans because they can enchantingly invoke Meneka (1978) 1 SCC 248 : AIR 1978 SC 597 and, in its wake, Articles 14, 19 and even 21, to repel the deadening impact of unconscionable incarceratory inflictions based on some lurid legislative text or untested tradition. As the twin cases unfold the facts we have to test contentions of law on this broader basis”.

Desai, J., speaking for himself and on behalf of Chief Justice and two other Judges said in that case (para 212) :

“It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed (See Procunier v. Martineg (1974) 40 Law Ed 224 at p. 248). However, a prisoner’s liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards (see Charles Wolff v. Mc Donnel, (1974) 41 Law Ed 935 at p. 973). By the very fact of the incarceration prisoners are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed.”

21. From the aforesaid statement of law by the Supreme Court, it is plainly clear that remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the State. The payment has to be equivalent to the services rendered, otherwise it would be ‘forced labour’ within the meaning of Article 23 of the Constitution. Here, there is no difference between a prisoner serving sentence inside the prison walls and a free man in the society. Although on account of incarceration, a prisoner may lose enjoyment of some of the rights, but there is no total extinction by reason of the jail sentence. Section 53 of the Indian Penal

Code may provide for assignment of work in cases of rigorous imprisonment, however, it does not say that the labour provided by such a prisoner has to be free. Again, it does not envisage subjecting the prisoner(s) to obnoxious, harsh and uncalled for duties which are ex facie condemnable. Here, reference can be made to Nawal Kishore Thakur v. Brahmu Ram ILR (1984) Him Pra 381 : (1985 Cri LJ 244 at p. 245) :

“7. Provisions such as those made in paragraph 702 read with the Explanation to paragraph 703 of the Manual are, prima facie, violative of Article 21 of the Constitution because they could be regarded as an infraction of liberty or life in its wider sense without prescribing in respect thereof by law a procedure which is right, just, fair and reasonable. In fact, those provisions involve forced labour for a prisoner because no payment is contemplated to be made for such work, although, for other work within the jail, which could be classified as jail industry, payment at the usual rate is required to be made. Employment of a prisoner for such private work of menial nature against his will and without remuneration also offends human dignity which again is infraction of life and liberty as understood in its wider sense. Besides, such provisions also, prima facie, violative of Article 14 of the Constitution because they are arbitrary, irrational, unjust and unfair in their operation.”

“8. Under the circumstance, the operation of Paragraph 702 and the Explanation to Paragraph 703 of the Manual is suspended with immediate effect. The State Government is directed to issue instructions forthwith to all jail authorities in the State not to take from any prisoner the work of the nature contemplated by paragraph 702 and the Explanation to paragraph 703 of the Manual. The State Government will also immediately take up for consideration the question of the repeal of provisions of paragraph 702 read with Explanation to Paragraph 703 of the Manual and such or similar provisions of anachronistic nature in light of the observations made hereinabove and a report as regards the action taken in the matter will be placed on the record of this proceeding on or before July 30, 1984.”

22. As recorded in the preceding part of this judgment, the State Government has complied with this Court’s Directions by issuing notification of July 28, 1984.

23. We, therefore, proceed to reject the submission that the State can put the prisoners, sentenced to rigorous imprisonment, to hard labour without payment of any wages in view of the nature of the sentence they serve. Equally untenable is the plea that giving of better facilities and payment of wages to them would mean creating an impression that committing of crime and going to the prison is a better mode of living and earning wages. This kind of understanding of the matter is completely misconceived. It is difficult to comprehend the matter in this way. No one, would like to commit crime, suffer indignity and undergo obligatory hard labour by losing all benefits which a free man can otherwise a avail in the society. While examining this kind of argument, the learned Judges of the Kerala High Court in AIR 1983 Kerala 26 (In the matter of : Prison Reforms Enhancement of Wages of Prisoners) said in para 14 of the judgment that :

“It appears to us that it would be unreasonable to assume that merely because a person is moderately well-fed and looked after under humane conditions in the jail he is unconcerned with the sentence or feels happy in the jail. To a person under restraint the most valuable right the absence of which he feels deeply, is his personal freedom, the freedom to move about freely in society the freedom to associate with his kith and kin and the freedom to work as he likes to earn and maintain his dependants. The absence of access to the affection of the members of his family

makes him emotionally upset and he waits for the day when he will be able to go back to his home for a reunion with his close relations and friends. Everyday of his sentence is of count to him materially. Quite often we have come across prisoners sentenced to imprisonment for a fairly long terms feeling aggrieved about a mistake of a few days in computing set off of their term of imprisonment they have to undergo. It may appear that it matters little to a prisoner who is to be released 7 years later that there has been a failure to deduct 5 days by way of set off. But it is not so. We have seen that really it matters to him much. He is keenly alive to the mistake and seeks to get the mistake corrected at the earliest. He is always and at all times certain of how many years, days and months he had spent in jail. All these indicate how valuable to him the prospect of freedom after the period of sentence is. Many accelerate their release by purchasing remission parting with the few paise that they earn by way of wages and by donating blood in the hope that this process takes them nearer to the day when they can be back in the affectionate atmosphere at home. The most deterrent factor in imprisonment is really the fact of curtailment of personal freedom. It may not be necessary to make it harsh and inhuman in order to render the sentence of imprisonment a deterrent."

24. We are told that there are various kinds of prisoners in the jail. However, compulsory work is necessary in the case of those who are sentenced to rigorous imprisonment while in other cases the prisoners are subjected to work after receiving their consent. Now, the question arises whether all kinds of prisoners should be put to work and paid accordingly. In our opinion, subjecting prisoners, sentenced to rigorous imprisonment, to hard work and providing work to others is not at all bad. However, the same has to be done keeping in view their will, physical strength and the upper-most obligation to make payment for the work got done from them. There has to be no distinction between the work inside the prison and outside it. Similarly there has to be no distinction between 'open prisons' and 'closed prisons'.

25. We have no information about other prisons in the State except the Open Air Jail at Bilaspur and we are happy to note that the in charge of the said jail makes all efforts to secure work for the engagement of the prisoners with various organisations near and around the jail premises thereby not only keeping the prisoners busy but also enabling them to have social contacts outside the jail and earn wages for themselves and their dependants. These efforts should not only increase in the Open Air Jail at Bilaspur but also in other jails in the State so that the prisoners are engaged in various kinds of works, obviously, subject to security, jail discipline, their physical capacities and other weighty reasons to be duly recorded relating to certain cases). This all will create sense of discipline and responsibility amongst them. It would educate the prisoners in various vocations and help them to rehabilitate themselves suitably as soon as they are out of the jails.

26. Now, the question arises about the quantum of wages payable to them. On the Court's insistence, the Government appears to have considered the matter and revised the wages, as already stated above, but this increase is woefully inadequate. They cannot be justified on any basis and we are not convinced by the submission that these are conventional. In case they have linkage with the past, its continuance cannot be sustained after the commencement of the Constitution of India. Moreover, it appears that it proceeds on the assumption that in every treatment towards the prisoner, there has to be some indication of retribution for the crime committed by the prisoner. As a matter of fact, the propounders of this kind of thought have lost

sight of the fact that as against the retributive theory of punishment, reformatory theory has been brought to the fore by the social scientists, scholars and law professors and they lay great emphasis on the rehabilitation of the prisoners and call for extensive, effective and rewarding reforms in this field. The information supplied to us by the learned counsel for the State discloses that the State Government is not paying even the minimum wages, fixed by the State Government under the Minimum Wages Act, 1948 and notified on 26-1-1990, to the prisoners. Payment of minimum wages, as already noticed above, is a mandatory requirement under the Minimum Wages Act, 1948. It has to be paid compulsorily since the non-payment thereof renders one liable to prosecution. Shri K. D. Sood referred to paras 16 and 17 of the Kerala judgment and submitted that the State Government has to pay reasonable wages/living wages which are decidedly higher than the minimum wages. We quote these paras of the judgment as under :

"….. Payment of reasonable wages to a prisoner would enable him to have sufficient funds to meet the minimum personal requirements in jail. It may help the prisoner in providing his dependants, may be an old mother, an invalid father or orphaned children with the minimum to keep them, not in comfort, but out of hunger. That may go a long way to remedy an evil which is necessarily attendant upon imprisonment. Quite often it is not merely the criminal who is punished. Of course, he undergoes the sentence. But the people who depend upon him, such as old parents may be unable to make a living for themselves. The wife and children of the prisoner may have no means to answer their primary needs. In these circumstances the dependants are severely punished in fact more than the criminal himself. That would be quite unfair. No civilised law can conceive of imposing a punishment, the impact of which is on the innocent dependants. To some extent this unfairness and injustice envisaged in our present penological approach could be mitigated by making a provision for minimum sustenance for dependants which would be the case if one third or even one-half of the reasonable wages is passed on to them. Though that by itself may not be sufficient to maintain them from utter starvation and misery.

1. The punishment would appear to be just and fair and not as an exhibition of vindictiveness.
2. There would be a possibility of the prisioner being rehabilitated on release.
3. The severity of the resultant punishment on the dependants of the prisoner may be softened by payment of a substantial part of the fair wages due to the prisoner to them.
4. Any provision for payment of wages to a prisoner is a recognition of his humanhood, his right as an individual. That may preserve his self respect.
5. Such a measure would take away reasons for nursing vengeance against the society.
6. A humane approach would make it easier for the prison authorities to enforce discipline.
7. The prisoner may be induced to dedicate himself to the work.
8. More than all these, the State can absolve itself of the charge that it is exploiting the prisoners by taking free labour, a charge which in the case of a civilised Government, is certainly not commendable."

27. Similar question came for consideration before the Full Bench of the Gujarat High Court in Reference on the report of Jail Reforms Committee v. The State of Gujarat (Criminal Reference No. 2/84 decided on 31-1-1985) where the relevant observations can be reproduced as under :

"We are happy to note that the State Government accepted the view expressed by this Court that minimum wages that is being paid in similar industries must be paid to the prisoners. It is a very

progressive approach by this State Government ……”
28. While dealing with the question of the extent of wages payable to the prisoners, the Kerala High Court AIR 1983 Kerala 261 said in paras 29 and 30 of the judgment that :
“29. We have therefore to decide the case before us on the basis of the approach made by the Supreme Court in the cases adverted to. In the case of those sentenced to simple imprisonment the stand taken by the Government is that the work taken from them is on the basis of their consent. If so necessarily they have to be paid fair or living wages. We have been in this judgment using the terms ‘fair wages’, ‘living wages’ and ‘reasonable wages’ not intending thereby a different content for each of these terms or giving them any technical meaning. By the employment of these terms we only mean wages that would be reasonable. What would be paid to an employee, who is free to negotiate and has the support of the welfare and labour legislations, should determine the standard of reasonable wages. There is no justification for the State to claim that it is free to take prison labour without payment that whatever it pays is ex gratia and is not as of right and therefore there can be no claim for proper wages. A prisoner who undergoes the sentence in jail must necessarily have his movement restricted. That is involved in the very concept of imprisonment. His communication with the rest of the world would also be necessarily restricted. His right to practise his profession, however fundamental it may be, will not be available to him while in the jail. But there are other valuable rights, any curtailment of which will have no relevance to the nature of the punishment. The right not to be exploited in contravention of Article 23(1) is a right guaranteed to a citizen and there is no reason why a prisoner should lose his right to receive wages for his labour. In other words there is no reason why a prisoner should be compelled to do forced labour, forced in the sense that such labour is unremunerative or not paid for. We have taken pains to explain by way of preface to the discussion on the material issue in the case that it would be quite consistent with a civilised approach that wages are paid to a prisoner for the work taken from him. We have enumerated the advantages of such payment. If on a proper understanding of Article 23(1) of the Constitution there is no justification to read that Article as excluding the case of a prisoner who is asked to do work on payment if illusory wages we see no compelling reason to do so. The consequence is that to deny a prisoner reasonable wages in return for his work will be to violate the mandate in Article 23(1) of the Constitution. Consequently the State could be directed not to deny such reasonable wages to the prisoners from whom the State takes work in its prisons.
30. That necessarily takes us to the final question, namely what should be the reasonable wages to be paid to the prisoners. Of course there could be no two opinions that the wages now paid cannot be taken seriously at all. It cannot be said to be even inadequate wages for 50 paise minimum and Rs. 1.60 maximum per day cannot at all be said to possess the character of remuneration for the work taken from the prisoners. The minimum wage laws of this country prescribe what minimum wage has to be paid in each industry. These minimum wages, it must be understood, are fixed at a much lower level than living wages. Irrespective of the capacity of the industry to pay, it has obligation to pay minimum wages and if it cannot pay even such minimum wage it does not deserve to exist. Reasonable wages would therefore always exceed minimum wages. Having said so we think we should leave it to the Government what reasonable wages should be paid to the inmates of the prisons. A unanimous wage structure would of course be desirable lest there be

charge of discrimination in assigning work. It is for the Government to consider all aspects of the question so that a just and reasonable wage structure is designed for the inmates of the prisons. We can appreciate that time must necessarily be taken by the Government in deciding upon such a wage structure. Until then it cannot be that the present situation is to continue. There must be an ad hoc measure, a measure which takes into account the current wages in several industries, the minimum wages fixed, the increase in cost of living in the recent days and such other matters of relevance. After considering all these matters and going through the minimum wages notifications in regard to various industries we think that as ad hoc measure we may safely fix Rs. 8/- per day as reasonable wages subject of course to alteration later, when as a result of further study, research and assessment the Government is able to decide upon appropriate wages to be paid to the prisoners."

29. After carefully considering the various aspects of the matter, we are of the considered opinion that all the prisoners of various categories in all the jails in the State are entitled to be paid reasonable wages for the work they are called upon to do in the jails and outside the jails. These wages are left to be decided by the State Government within a reasonable period, say, one year from the date of decision of these cases. However, the prisoners will be paid the minimum wages as notified by the State Government from time to time under the Minimum Wages Act, 1948 from the date of filing of these petitions in this Court. These wages will be worked out within a period of three months from today and deposited in the account of each prisoner.

30. The second question does not call for any decision since the State Government has dispensed with this practice, as already stated, by the learned counsel for the State and recorded in the preceding part of this judgment.

31. On the third question, it was contended that the deduction of Re. 1/- out of each day's earning from a prisoner put to work is towards his maintenance on which the State is otherwise spending much more than this deduction. No statutory provision has been shown to us in support of this deduction. We feel that this kind of deduction is indefensible. There is no acceptable rationale behind this kind of deduction especially from those prisoners who have been put to work. No maintenance charges are taken from other prisoners who may not like to do any work. When a prisoner is sent to prison, his maintenance is the primary concern of the State. Similar view on this aspect of the matter has been taken by the Gujarat High Court in the case (supra) when the Full Bench was directly concerned with this kind of deduction. It is necessary, therefore, to reproduce the view of the Full Bench in para 9 of the judgment when it said that :

"9. A prisoner is not a free agent. Extracting work from him is not a matter of contract wherein parties freely enter into agreement as to the work to be done and the payment to be made. The prisoner undergoes incarceration in the jail not because of his volitation. The right to be paid for work done is a right which any person who works has. It is not that the prisoner has any choice about his food or his clothing. Given the choice no prisoner may like to wear the cloth supplied to him in the jail. That could also be said of the food supplied to him. It is not as if in a case where a prisoner is not obliged to work he need not be fed or clothed by the State. There are prisoners who undergo a sentence of simple imprisonment. They have no obligation to do any labour. The Government which keeps such a prisoner in jail cannot contend that since he does not work no food will be given to him and no clothing will be supplied. Undertrials are in custody in Jails and sub-

jails. They are not to do any work and nevertheless they have to be fed and clothed. There are detenus under the laws of preventive detention who are also provided with food and clothing in jails without any return by way of work. There are prisoners sentenced to rigorous imprisonment who are sick and are unable to do work and they have necessarily to be fed. They cannot be told that since they do not work they will not be fed. Even those who are able to work and who could be compelled to do labour may not be given labour due to absence of work as the reply affidavit of the State Government shows. It mentions that at times the sales of produce manufactured in jails are poor and then many go without work. It cannot be said that they will not be fed when there is no work. These would illustrate beyond doubt that feeding of a prisoner is a responsibility of those who keep the prisoner in custody irrespective of any return from him. It is so not only human beings, but even to animals. When they are not allowed to be free they have to be fed. It will be uncivilised, if not cruel, to extract from such prisoners the return for the food and clothing supplied to them, not food and clothing of their choice, not food and clothing of excellence, but only a bare subsistence which any authority that keeps another in custody and retain must necessarily meet as a compulsory obligation. If the prisoners' wages is appropriated for the food naturally the prisoner must have a choice of saying no and making his own choice of the food. That cannot be the case."

32. In view of what has been said above, we direct that the provision permitting the realisation of maintenance charges from the prisoners be dispensed with forthwith and no future recovery be made in this behalf.

33. The last question relates to the initiation of jail reforms in the State of Himachal Pradesh. We advert to this aspect now.

34. In India, prison system has existed from the earliest times, although their management had not been good. Prisoners used to be lodged in those prisons but no attention was ever paid towards their proper unkeep since the whole object had been to punish them for the crime they had once committed. During the period preceding the British Rule, the prisoners were ill treated, tortured and subjected to barbarous treatment. However, with the advent of the British Rule, some serious efforts to improve the condition of prisons and prisoners were initiated. Many Committees were appointed from time to time to look into the system of prison management and suggest measures to eradicate evils which were existing there. It was as a result of these recommendations by the Committees that better amenities to the various kind of jail inmates were extended and the number of prisoners which could be accommodated in each of the existing jails was also prescribed. Then came the Committee for Jail Reforms headed by Justice A. N. Mulla which gave suggestions on various aspects of jail administration including those relating to modernisation of jails and segregation of young prisoners from hardened criminals. The culture of transforming the criminals into good citizens and rehabilitating them suitably on completion of jail sentence became so prominent that various facilities were provided in the prisons for their training. They were engaged against works inside and outside the jails so that they could earn something and spend the same on themselves and their families. By keeping them busy, there was radical improvement in prison discipline and decline in jail crimes. The situation improved to such an extent that in many jails the prisoners were associated in the internal management of the jails. Prison labour was held as the best alternative to engage the prisoners to keep them physically and mentally alert. It created in them self confidence and by keeping in touch with various kinds of activities inside and outside the

jails, they could return back after serving the sentences with clear confidence to settle themselves suitably and effectively.

35. In this state, we are told, there are various kinds of jails, namely, Open Air Jail, Bilaspur, Model Central Jail, Nahan, District Jails and the Sub-Jails. The functioning of Open Air Jail is different from others. Different Schemes are in operation for the functioning of the jails. We understand that the management at the Open Air Jail, Bilaspur, is more democratic, advanced, liberal and reformative as compared to other closed jails; it is also apparent from the material placed before us by the State. At the suggestion of the Court, certain steps have been taken for the management of prisoners' wages so that there is no cause for complaint by any of them that his/their wages were not efficiently dealt with. It is undeniable that there are many reasons for the criminal to commit crimes. A prisoner who has committed an offence is not to be condemned outright. Crime is a kind of disease which has to be cured like other diseases by various methods so that the criminal is usefully cultivated for the society and in order to do so, successful results have been achieved. We may usefully refer to the establishment of Open Air Jail for rehabilitation of hardened and habitual criminals at Munjoli in Guna District of Madhya Pradesh of notorious dacoits of Chambal ravine like Mohar Singh and Madho Singh. The jail is spread over sufficient land looked after by the prisoners for which they are paid wages to enable them to support their families. They have been granted Bank loans for starting dairying, poultry farming, tailoring and agricultural farming. They have their own bank accounts, canteens run on co-operative basis, their own Panchayats to settle their mutual disputes. They are allowed 15 days parole in six months to meet their relatives and families. Similarly, there is Open Air Jail 'Navjiwan Shiver' at Lakhimpur for the rehabilitation of surrendered dacoits from Bundelkhand region spread over 124.75 acres of land with adequate housing and irrigation facilities. There is Open Air Jail at Durgapur in Rajasthan where the sole object is to render correctional and rehabilitational services to the prisoners. This is also a kind of agricultural colony spread over 160 acres of land. The unique feature is that the prisoners stay in the farm along with their families in the residential quarters provided for this purpose. They do work daily and receive wages for that. If we study the management pattern of Open Prisons in Andhra Pradesh, Assam, Gujarat, Maharashtra, Mysore, Rajasthan and Uttar Pradesh, we understand that State's Open Air Jail at Bilaspur, established in 1968, calls for fundamental improvements. When the position in this Open Air Jail is not very satisfactory, we can very easily conclude that in other closed jails in the State drastic changes and radical improvements are immediately called for. The necessity is of will to do and in case the same is there, reforms are not difficult. In his affidavit dated August 5, 1985, the Special Secretary (Home) states :

"The State Government is profoundly concerned over the welfare of the prisoners and the need for jail reforms and would like to introduce necessary jail reforms from time to time within the resource limits of the Government. The present conditions of the jails are not as ideal as the Government would like it to be. However, the Government is considering steps to ameliorate the conditions in the jail within its means."

36. But except for the good wishes for the prisoners, jail reforms have not been undertaken after the filing of this affidavit. We feel the State Government should undertake comprehensive jail reforms within a year by appointing a high power committee comprising of men from jail administration, social activists and criminologists to advise the State Government in this field. In

addition to various other important aspects, the Committee will also look into matters like : (1) opening of more Open Air institutions with sufficient agricultural land attached to it so that prisoners hailing from rural areas with agriculture background may continue to work in the same atmosphere and rehabilitate suitably in their villages; (2) provision for adequate work inside and outside jails; (3) provision for different jails/correctional institutes for young prisoners, juvenile offenders, hardened criminals and other prisoners who suffer from mental aberrations; (4) opening of more Open Air Jails in the State and one exclusively for women; (5) provision for education and vocational training; (6) liberal remissions and regular paroles; (7) greater opportunities to meet friends and near relatives and facilities to allow them to discuss their problems away from the policemen's gaze; (8) proper attention for health and entertainment facilities for prisoners; (9) comprehensive scheme for procurement of work for them and payment of reasonable/living wages therefor; (10) provision for better dieting facilities etc.; (11) comprehensive management of their wage funds and (12) provision for after release guidance and help.

37. The petitions are, therefore, allowed in the aforesaid terms. However, the parties are left to bear their own costs.