



HARD LABOUR AND THE PRISONER'S RIGHT TO RECEIVE MINIMUM WAGES - NEED FOR A SPECIAL ATTENTION IN THE INDIAN PRISONS

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*Crime is the outcome of a diseased mind and
Jail must have an environment of hospital for treatment and care.*

- Mahatma Gandhi

Abstract--Theories of punishments include Capital punishment, Retributive, Preventive and Rehabilitative. Among all four, Reformatory (Rehabilitative) has been well established globally as a correctional measure and brought back the prisoners to normal life. To achieve this goal, it is imperative that the prison administration all over the country should ensure application of all constitutional schemes condemning forced labour. The nonpayment of appropriate wage for the prisoners for the work done inside the prison amounts to forced labour. The back drop of the penal policy mandating hard labour to a prisoner sentenced to rigorous imprisonment is evident from various cases of imprisonment Part III of the constitution of India captioned Fundamental Rights guarantees a set rights and accords them the constitutional supremacy by prohibiting the state from making a law that either takes away or abridges these rights. Therefore the criminal law and criminal process contrary to the fundamental rights would obviously, be ultra vires to the constitution. The object of the paper is to highlight the present status of the prisoners whose rights are violated in the prison, in the matter of wage payment and to suggest the measures for ensuring the payment as committed in various laws pertaining wages.

Key Words: Wages, Reformation, Public Private Partnership, Corporate Social Responsibility, Decisions, Inmate, Employee and Employer, Constitution of India, Correctional Officers.

INTRODUCTION

Captivity is the worst stage of subservience; it is a curse. When the state is the captor, the captive loses all control over his personal life except those guaranteed under the constitution. Mostly the captive as a prisoner becomes a pawn in the hands of administrators. Often instead of getting corrected, a good number of prisoners get locked due to close acquaintance with hard core criminals in the jail. This seems to be true from the evidences accumulated over the years. There is a logical contradiction at the heart of the idea (imprisonment) which is, that the offending people are taken away from the society, away from the law abiding world, and away from all the influences of people who keep the norm, and are put in a place where they are likely to get mixed with people who have broken the norm and then expect that some good will come out of it would not give a positive answer. Hence a rethinking on the policy and method in dealing with, based on the outcome of the studies made on the prison reforms is required.

No one is born as a criminal in the world. It is the social circumstances and certain other factor makes one as criminal. Even if one is branded as a criminal, no one wants to remain as criminal in their whole life time. But without the intervention of some internal and external agencies, no one can return to mainstream of life from the clutches of crime. Unless the period of imprisonment is properly used to change the antisocial outlook of the offender and to bring him in to a healthier frame of mind he will on leaving the prison gates again become a danger or a nuisance to the society. Thus the function of the prison unless becomes educative and reformatory no purpose will be served.

Punishing the offender is the primary function of all civil society¹. It was believed that rigorous isolation and custodial measures would reform the offenders. Experience, however belied this expectation and often imprisonment had the opposite effect. With the development behavioral sciences it began to feudalize that reformation of offenders was not possible by detention alone.

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¹ Prison reforms in India by Harpreet Kaur



There were about 2.75 lakhs under-trials and 1.35 lakhs convicts in 1401 prisons of the country on 31st December 2016. The inmates mostly convicts performs all non-statutory functions such as agriculture, horticulture, preparation of food and distributions, Cleanness of premises, barbers, managing various offices like telephones duties, tapals, assisting warders in running vocational courses/ trainings etc. Prison managers utilize services of the convicts for these works. In some of the cases Courts passes orders for rigorous imprisonments or simple imprisonment etc. In cases of RI, hard labor can be taken from the inmates subject to his physical capacity as decided by Jail authorities. In lieu of work these inmates are paid money (wages). It varies from state to State as Prison is subject matter of State and comes under State List under constitution of India. Under trials, can also be given jobs, if they desire. There are maximum numbers of UT prisoners and among themselves a sizable number of inmates are involved into serious crimes where punishments are beyond 7 years till capital. Thus on and average about 2 lakhs inmates requires job or can be utilized for work purposes. This is very large work force in the age group of 20 to 40 years. Thus Prison management has various challenges to achieve its goal of reformation and rehabilitation which has developed concept of wages to the inmates in its various forms.

OBJECT

An Inmate should be paid reasonable labour charges at par with Wage Act for achieving rehabilitation goals.

LEGAL POSITIONS AND INTERNATIONAL PRACTICES

The Supreme Court observed that the State should make a law for setting apart a portion of wages earned by prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in another feasible mode². The Supreme Court issued notice to Centre and state governments on a PIL seeking its direction to fix wage for prison workers on par with minimum wages and to provide eight hours work to all prisoners and under-trials who volunteer for such work³. Thus legal position has not yet settled where in inmates to get a uniform wages or equitable wages ie after deduction of foods and clothing etc. from Minimum wages under Minimum wages Act 1948. Matter is left upon State Govt. to make a Board and decide. There were remained divergent views on the implementation of Wage Act on Inmates also. Government of India, Labour Ministry by order dated 1.4.2017 on wages has mentioned about minimum wages approximately 300 Rs. per day for unskilled. Since Prisoners are governed under Prisoners Act 1894 and rules under. The States have opposed Minimum Wages Act where their respective High courts such as MP, Kerala and Gujarat etc. have favored Minimum Wages Act. The main objection was brought by State Governments stating that Prisoners Act 1894 does not deal with employee and employer relation. Government is neither employer nor prisoners are employee.

ENGLAND

The International practice in developed countries are also more so over remained similar like ours country. British government has proposed that inmates hand over part of their wages to victims of their crimes. All prisoners who participate in purposeful activity must be paid as said by the Prison

² State Of Gujarat And Anr vs Hon'ble High Court Of Gujarat on 24 September, 1998

³ " (17.1.2015 Times of India.)The Hon'ble Court had already directed in 1998 to fix the wages of the prisoners according to the Minimum Wages Act, 1948. In spite of the directions of this Court, the prisoners' wages continue to be much below than the average minimum wage thus violating the constitutional rights of a prisoner. It further said prisoner's rights are further exploited with arbitrary deductions in the prisoners' wages that leaves them with a meager amount that they receive in hand which is not reasonable enough to support the family of the prisoners. The prison wage for skilled workers is Rs 121 per day in Bihar. From this amount Rs 72 is deducted which amounts to approximately 60%. The prisoner gets in hand only Rs 59 per day. "



Service Order 4460. That means any inmates employed in work, induction, education, training, or offending behavior programs receives a weekly rate. That rate is not subject to the national minimum wage⁴. In England a recent enactment has been made called the Prisoners Earnings Act, 1996. It empowers the prison administration to make deduction from the earnings of the prisoner of an amount not exceeding the prescribed limit. This deduction does not include certain statutory deductions like income tax and payments required to be made by an order of a court⁵.

UNITED STATES OF AMERICA

There's not really a legal way for prisoners to ask for better wages or work conditions. Though prisoners aren't necessarily excluded from laws such as the Fair Labour Standards Act, which establishes the country's minimum wage, they're not necessarily covered by it either. That's because courts generally do not consider prisoners to be employees. As a result, previous cases where prisoners have sued for minimum wage have failed. And as an investigation by the American Prospect notes, labour unions are reluctant to represent prison workers, because prison labour produces goods that competes with other industries. In USA in few prisons Prisoners' low wages are subject to taxes and deductions. In the PIE program, inmates are supposed to be paid prevailing wages. But up to 80 percent of inmates' wages may go to taxes and deductions, including deductions for victim's compensation funds, restitution to victims, and child support. Additionally, if an inmate wants to take part in a work-release program, some states deduct a percentage of his wages to cover the cost of the program and other incidentals. And while prison labour helps prisons and their states save money⁶, prisoners may have to pay additional fines and fees. A 2010 study by the Brennan Center for Justice found that states and counties are increasingly imposing "per diem" fees on prisoners, resulting in some inmates going into debt by the time they are released⁷.

UNODC

United Nations on the Standard of treatment of Prisoner has mentioned in its rules 96 to 103 about the work to the sentenced prisoners⁸. It has been mentioned that they should be paid an equitable wages as per their work .UNODC has only mentioned that there should be equitable wages / payment in lieu of their laborers⁹.

MINIMUM WAGE ACT 1948 AND PRISONER

Section 3(a) of the M W Act 1948 defines 'wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were

⁴ <http://news.bbc.co.uk/1/hi/magazine/7275026.stm>

⁵ The amount so deducted shall be applied for

(a) The making of payments (directly or indirectly) to such voluntary organizations concerned with victim support or crime prevention or both as may be prescribed;

(b) The making of payments into the consolidated Fund with a view to contributing towards the cost of the prisoner's upkeep;

(c) The making of payments to or in respect of such persons (if any) as may be determined by the governor to the dependents of the prisoners in such proportions as may be so determined; and

(d) The making of payments into an investment account of a prescribed description with a view to capital and interest being held for the benefit of the prisoner on such terms as may be prescribed. "

⁶ prison workers reportedly helped Florida taxpayers save more than \$59 million in 2014

⁷ www.motherjones.com/politics/2016/09/prison-strike-inmate-labor-work/

⁸ Also called as Nelson Mandela Rules

⁹ <https://www.unodc.org/the-nelson-mandela-rules--an-updated-guide-for-prison-manual>



fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include the value of any house-accommodation, supply of light, water, medical attendance, any other amenity or any service excluded by general or special order of the appropriate Government; any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance; any travelling allowance or the value of any travelling concession; any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; any gratuity payable on discharge. The M W Act 1948 has been accepted and the courts have directed to follow Wages Act subject to reasonable deductions when prisoner takes work of a corporate through Prison, he should not be paid below Wage Act.

WAGES OF PRISON INMATES

As per the NCRB data among all the States and Union Territories, Puducherry has provided highest wages of 180, 160 and 150 per day to skilled convicts, semi-skilled convicts and unskilled convicts respectively during 2015 and was followed by Delhi Tihar. In this amount there remained a deduction of Victim's compensation fund (25%) and Prisoner's welfare fund (25%). Thus approximately 80 - 90 rupees was paid to the inmates, subject to the availability of work and budget with the prison. Since there is lack of both adequate budget and work, hence inmates are mostly working without payment or very low wages in other prisons. In some prisons there are further deductions also on their expenses made by Prison upon inmates. Thus meager amount is credited into their account.

ISSUES AND CHALLENGES IN THE PRESENT SCENARIO

Minimum Wages Act 1948 is not applicable and Prisoner's Act 1894 has no such provision for providing uniform wages to the inmates. People mindset to keep prisoners away from their sight leads to lack of awareness. Prison is in State List of the constitution, thus there is a lack of Budget and uniformity rules. Capacity building and employability: Resource crunch and leadership's non-priority are main factors in transforming inmates. Prison Act 1894 needs an amendment as per modern requirements. The NCRB data suggest that among all three wings of prison managements (administration, correctional and Medical) it has been found that correctional staff is very less, mostly without training. Thus lack of dedicated staff is main hindrance in reformation. These staff can add value in the inmates earning. Better utilization of welfare fund and inmate's earning can be ensured if probation officer visits houses of the inmates and makes proper recommendations. Majority of the prisons are not having this cadre. In few States this cadre is with social welfare department. Non-utilization of corporate social responsibility fund. It needs a presentation and persuasion before corporate to maintain peaceful society. About 2 lakhs able work force remained noncontributory in Nation's growth. Non-function of Prison courts against right of speedy trial. Few inmates do not know language and getting difficult to adjust culturally and food habits. Prison goals can be achieved once minimum comfort level for the inmate is provided. There is a lack of awareness about technology to provide national data base of inmates for inviting entrepreneurs. Few non statutory services inside prisons can be privatized like providing jobs, skill developments, placements, open jail forms etc.

SUGGESTIONS

- ❖ Minimum wages Act needs to be implemented.
- ❖ Equitable, fair payment of wages should be paid.



- ❖ Parliament needs to amend the 1894 Prison Act as to include prisoner's wages also.
- ❖ Besides amendment, the urgent need is proper implementation of the Act.
- ❖ Prisoners / inmates for the purpose of wages should be treated as an employee and Government as an employer.
- ❖ Corporate social responsibility fund can be utilized for making prison reforms which ultimately will make peaceful society.
- ❖ Capacity building of inmates should be for high earnings trades in the prison.
- ❖ Professional private bodies should be roped like IIMs and other NGOs in PPP (Public Private Partnership) mode for sustainable development.
- ❖ Increasing employability through private entrepreneurs so that victim's compensation, welfare of Prisoners and their families as well as life after released can be managed.
- ❖ Digital literacy is future of India and it should be utilized for increasing value of a prisoner.
- ❖ Open / semi open jails are better place of employment. It has to be developed as per need of society with competitive spirit as to beat the open market.

*The most important step is to demand for the prisoner
the right to work while in prison,
with some monetary recompense
that would enable him to lay aside a little for the day of his release,
the beginning of a new life.*

- EMMA GOLDMAN