

(1983) 04 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No's. 6566 and 7472 of 1982-S

In Re: Prison Reforms Enhancement of Wages of Prisoners etc.

Date of Decision : 13-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 23(1), 23(2), 39, 43
Kerala Prisons Rules, 1958 — Rule 384

Citation : AIR 1983 Ker 261 : (1983) 2 ILR (Ker) 505

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : K.A. Abdul Salam, General, M.P. Krishnan Nair and S. Sivaraman and P. Balagangadhara Menon, Amicus curiae, for the Appellant;

Judgement

Subramonian Poti, Ag. C.J.

1. This Court has been receiving petitions from prisoners in the various jails of the State either directly or through the grievance deposit boxes maintained in the jails. Such of those matters as call for attention of the Government are brought to the notice of the Government by the High Court, expecting that action would be taken thereon and if no action is taken then the court is called upon to look into the matter on the judicial side and pass necessary orders.

2. The High Court forwarded a request of 19 prisoners from the Central Prison at Cannanore to the Government for necessary action along with the letter of the Registrar dated 18-6-1982. One of the prayers made in the representation by the prisoners was that the wages of the prisoners may be enhanced. The Government's attention was drawn to this prayer. In fact the question of enhancement of wages of prisoners was pending with the Government on a recommendation made by the High Court earlier. That has been so pending for a fairly long time, for more than three years now. In the meantime representations in that matter are being received from the prisoners. Therefore the High Court decided to take cognizance of the complaint of the 19 prisoners concerning the propriety of non-payment of adequate wages. By then the High Court also received a similar petition from another prisoner, one P. V. Sandappan who also

raised the question of inadequacy of wages. Thus the matter has been taken up in these two petitions so that we could consider the question of justification for direction as to wages to be paid to the prisoners in the jails in the State.

3. Though the prisoners were not as such represented in this court we had the assistance of eminent counsel who acted as *amicus curiae* in this case. We place on record our thanks to Sri P. Balagangadhara Menon, Advocate, who from the very commencement of this matter has been of great assistance to us. So is the case with Sri S. Sivaraman, Advocate. We had also the benefit of hearing the arguments of Advocates Sri K. A. Abdul Salam and Sri M.P. Krishnan Nair representing the Law Society of India. We also heard Mr. Vincent Panikulangara, the Secretary of the Public Interest Law Service Society (PILSS). The learned Advocate General fairly placed before us the Government's point of view and furnished us material that we wanted in the case. We are thankful to all of them.

4. The question for decision is by no means easy. It is complicated, more so because of attitudes. The approach to a criminal, the purpose of punishment, the object to be achieved by keeping the prisoner behind bars, the need for a harsh or soft treatment towards the criminal are all matters on which there has been and there continues to be keen controversy. Civilised opinion recognises the role played by society in the preparation of crimes. Society prepares the crime, the criminal commits it said Henry Thomas Buckle. The criminal is, according to one school of thought, to be dealt with as a victim, but equally powerful is the other school which considers him in a different light and which considers that unrelenting misery should be decreed for the criminal, deterrence being, according to that school, the very purpose and object to be achieved by the punishment. Though reference to the righteousness of these attitudes may perhaps be not irrelevant here the question that we are called upon to decide must necessarily be approached from an entirely different angle. The morality of inadequate wages paid to a prisoner is a matter essentially for the Legislature to consider and the executive to feel about. Whatever may be the sentiments of the court on this question it is not for this court to lay down any policy. All the same the court will activate itself in the cause if by denying adequate wages for the labour extracted from a prisoner, extracted at an illusory cost, the constitutional rights of a prisoner is being infringed and the prisoner is exploited. So the issue before us is whether in law the claim of the prisoners in the various jails of the State for proper remuneration for the work they are compelled to do not on their own volition, but because of the compulsions of the prison rules is enforceable by this Court's mandate.

5. The attention of the Government of Kerala has been drawn by the High Court by communication dated 15-2-1980 to the need for looking into the question of revision of wages paid to the prisoners in the Jails of the State. This communication was based on the information furnished to the High Court by one of us the Acting Chief Justice, who happened to receive complaints about, the nominal wages being paid to the prisoners working in the Central Prison. In a

subsequent communication sent to the Government by the High Court alone with a report of 12-6-1980 of the Committee appointed by the High Court the Government was told that no response had been received by the High Court from the Government on, the recommendation to revise the wages of prisoners. The Government, brought to the High Court's notice a Government order dated 31-5-1980 by which the minimum rate of wages for a prisoner was fixed by revision as 50 paise and the maximum as Rs. 1.60. No doubt, the Government had taken action on the communication from the High Court calling attention to the need for revision of the wages. This gesture by the Government in increasing such wages marginally was still considered by the High Court as inadequate. A committee of three Judges of this Court was constituted to go into this question among other matters and report thereon. A copy of the report dated 16-3-1981 was thereafter sent to the Government. This report particularly drew the attention of the Government to the various provisions relating to payment of wages, the statutory and constitutional obligation of the Government to pay adequate wages and finally advised the Government to adopt the principle of Paying reasonable wages, the reasonableness being determined on the basis of what is fixed as minimum wage in the industry or trade similar to that in which the prisoners are engaged. More than two years have passed since then and evidently no action has been taken as seen from the statement filed on behalf of the State in this case. This statement has been filed in the two Original petitions by the Joint Secretary to Government. Home Department. In the statement reference is seen made to the minimum and maximum rates of wages in the prisons at 50 Paise and Rs. 1.60 respectively. Reference is also seen made to the reports of the Committee of the Judges and it is stated that the Government is giving very anxious and urgent consideration to the recommendations made by the Committee. It is further stated that the Government proposes to enhance the wages of the prisoners in the jails in Kerala and a decision to that, effect will be taken shortly. Mention is made of the fact that the Government had constituted a Prison Reforms Commission to go into various aspects relating to the prison reforms.

6. We are not persuaded to put off our decision in this case or to drop consideration of the issue raised herein as to the wages to be paid to the prisoners on the basis of the statement that the matter is engaging the attention of the Government or of the statement that this is one of the matters referred to the Prison Reforms Commission. Though the matter has been brought to the notice of the Government early in 1980 and three years have passed and the specific recommendation on the matter by the High Court has been sent two years ago apparently no decision seems to have been attempted, so much so there is no justification in declining to decide this question here. The Prison Reforms Commission whose term of office was one year, has outlived that term and its second term is understood to expire by the end of September, 1983. Due to various reasons the functioning of the prison Reforms Commission does not appear to have commenced. In this background we think that we will be

abdicated our functions if we decline to decide this question for reasons urged. In fact, though the statement refers to these reasons we do not understand the stand of the Government as reflected in the arguments of the learned Advocate General as one wanting us to put off decision on this issue.

7. Section 53 of the Indian Penal Code categorises imprisonment provided under the Indian Penal Code. Rigorous imprisonment is imprisonment with hard labour. Imprisonment may be rigorous or simple or may be for life. Section 55 provides that in every case where imprisonment for life is the sentence imposed, the appropriate Government may, without the consent of the offender, commute the Punishment for imprisonment of either description for a term not exceeding 14 years. Therefore life imprisonment is capable of being commuted into simple or rigorous imprisonment. The Jails of the State house convicts who have to undergo rigorous imprisonment as well as those who have to undergo simple imprisonment, the former class being bound to do hard labour.

8. The Travancore-Cochin Prisons Act 1950 extends to the area of the whole of the erstwhile State of Travancore-Cochin. Central Act 9 of 1894 applies to the Malabar District of the erstwhile State of Madras. The Kerala Prison Rules 1958 extends to the whole of Kerala. Section 37 of the Travancore-Cochin Prisons Act envisages employment of criminals sentenced even to simple imprisonment and if they neglect work penalty can be imposed on them by altering the scale of their diet. Exhaustive provisions are made in Chapter XXII of the Kerala Prisons Rules concerning convict labour. Rule 377 envisages three main classes of labour, hard, medium and light and the scale of tasks is arranged according to these classes. Reference may also be made to Rule 384 which deals with utilisation of wages. That rule envisages utilisation of one-third of the wages earned by a convict for his personal needs in jail. One-third could be sent to the family for its needs and the remaining one-third is to be reserved for being paid to the prisoner on his release. One-third to be utilised by the prisoner in jails is given to the prisoner in the form of coupons for making purchase from the jail canteen. He could even purchase remission from the wages so paid to him.

9. It is evident that despite Section 37 of the Travancore-Cochin Prisons Act 1950 no prisoner who is sentenced to simple imprisonment could be compelled to contribute labour. The stand taken in the statement by the Joint Secretary to the Government. Home Department is that in the case of those sentenced to simple imprisonment, work is given only on the basis of their written request and subject to the physical fitness certified by the Medical Officer. Evidently therefore the stand taken is that they are voluntarily rendering their services which they have no obligation to render. It is further stated that the prisoner sentenced to rigorous imprisonment, are generally put to labour. It is said that they are so Put to labour in the jails subject to the terms of rigorous imprisonment defined by the penal laws, for serving the purpose of inculcating a sense of reliance. It is also said that this is intended to give them proper orientation and training in different kinds of trades and industries.

10. Is a prisoner who has to undergo his term of sentence in Jail entitled, as of right, to claim that he should be paid wages for his outturn of work? Is he entitled to insist that the wages paid should not be illusory but reasonable? Can he complain to this Court that his personal liberty is infringed and his rights eroded by compulsion to do hard labour practically free? Is a Court, called upon to grant relief in such a case? If so, what should be the approach of the Court in the circumstances? These are the questions we are called upon to consider in this case.

11. We heard different points of view including the one that the court should also consider the ethics of soft treatment to prisoners. There is a fairly prominent school of thought which believes that deterrence should be the main object of punishment and if those outside the prisons get an impression that jail life is soft and remunerative potential offenders may not fear about the consequences of their acts and in fact, may be induced to commit crimes as life inside the jail may seem to be better than that outside it. It is true that there could be two opinions on better treatment to the prisoners. All along the proponents of the deterrent theory have been as vociferous as those of the rehabilitative and reformatory theories. Those of the former class feel that the sentence of imprisonment should operate necessarily as a disincentive and the potential criminals of tomorrow must be deterred from their activities by harshness and perhaps by the inhumanness in the punishment of the offenders. The retributive school of thought seeks an eye for an eye and considers that alone will assuage the sentiments of the victim as well satisfy the society.

12. If the object of punishment is to make an example of the offender by decreeing him to such suffering as will put fear into the minds of those who watch it, any softness in the treatment of the prisoner in the matter of sentence as well as in the matter of humane approach in the jails would defeat the objective of punishment. Necessarily that should mean that the prisoner should be ill-fed and ill-housed, treated with as much barbarity as is possible in the circumstances so that, he feels that the prison is a hell to which he has been decreed for a term of years by the Judgment, of the court. The proponents of this theory do not take note of the cause of the commission of the crime, the impact of the inhuman treatment on society and the effect such treatment will have on the sentiments of the near and close relations of the prisoner who suffer emotionally and otherwise by such a situation. A barbarous approach unsuited to the civilised notions of human dignity may not generally receive public approval today.

13. We do not think that better treatment, in jails would be incentive to commission of crimes. Though perhaps fear of punishment may deter a few criminals from otherwise continuing their life of crime, most offences are committed on account of social and economic pressures. Serious offences like murder and grievous hurt are quite often committed by emotional imbalance caused by situations in which the decision taken by the offender may not be

rational, decision which perhaps in a cooler or relaxed atmosphere he may not have taken. The comparative comfort or discomfort in the jails, may not have relevance in those cases.

14. 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 term feeling aggrieved about a mistake of a few days in computing set off of their period of remand custody, against the 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 is 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.

15. "Man is not an island unto himself. He is dependent on others as a child, and he acquires sexual partners with the onset of puberty. Group memberships provide him with identity, and organizations supply him with a role. He must exchange goods and services with others or lead a life devoid of amenities." (Living in Prison The Ecology of Survival by Hans Toch at page 51). The Reverend Dr. W.D. Morrison Chaplain of the Wandsworth Prison writing in the Fortnightly Review for April 1894 observed thus:

"A prison system which has no effect whatever in removing the conditions which produce the criminal a prison system which aggravates these conditions is bound to fail as a deterrent agency, it is certain to swell the ranks of the habitual criminal population. And this is what is happening in our midst today."

The reformatory theory of punishment is as old as Plato:

"The soul of criminal justice is the art of recovering the soul of the man

smeared by crime. This must be achieved by the sentencing process and prison treatment. This constructive objective of punishment is central to penal policy. Punishment is a sort of medicine, said Aristotle. But some medicines are iatrogenic and induce new diseases." (Vide V. R. Krishna Iyer in his address on a National Policy).

Speaking on the philosophy of rehabilitation Sri V. K. Krishna Iyer mentions in the same speech:

"Every saint has a past and every sinner as a future. And the technology of rehabilitation is the key to the manifestation of the divinity already in man."

15-A. The main or dominant purpose of the punishment, if not the sole purpose is reforming the criminal and redirecting him into society as an honest citizen. Reformative and rehabilitative approaches must have predominant influence in framing any prison policy. To some degree this is reflected in the Prison Rules. The provision in Rule 384 of the Kerala Prison Rules 1958 enables any prisoner to send to his family one-third of the wages which he earns and to use for his personal needs one-third in jail. That is a provision which shows concern for the family of the prisoner despite the fact that he is one who is to suffer a punishment. Similarly the provision for conserving one-third of the wages earned by him to be paid to him on his release is indicative of the need of rehabilitation. The prisoner out in the street after his term should not find himself without means to look after himself. How far the paltry sum that he could accumulate from the present nominal wages of 50 paise or a rupee per day is a different matter. But we are only pointing out that a rehabilitative approach with the intention to bring the prisoner back to the mainstream of society is not foreign to the policy of our Prison Rules..

16. Of course if there is some compelling reason why a prisoner should not be paid reasonable wages that would require consideration. If not, the advantage that a prisoner may derive and the good that may accrue to the society must persuade us to view any measure for payment of reasonable wages to the prisoner as an appropriate socially oriented measure. 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 dependents, 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 that will go a long way to keep them from utter starvation and misery.

17. The advantage of giving fair wages to a prisoner may be:

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 prisoner 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.
9. 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.

18. There can be no two opinions that our civilised thoughts are reflected in documents such as the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly resolution of 10th December, 1948. The Preamble to this declaration mentions that the foundation of freedom, justice and peace in the world is the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. The General Assembly proclaims the Universal Declaration of Human Rights as a common standard of achievement for all people and all nations. Article 4 declares that no one shall be held in slavery or servitude. Article 23 Clause (1) of the Declaration envisages that everyone has the right to work to the free choice of employment, to just and favourable conditions of work and to protection against unemployment. Clause (3) of this Article, which is particularly relevant for our purpose provides that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented if necessary, by other means of social protection. The International Covenant on civil and Political Rights provides in Article 10(1) that all persons deprived, of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person Article 10(3) which reflects

modern enlightened and civilised opinion on our penological approach is of importance and may be quoted here:

"10 (3). The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

We have adverted to these provisions with a definite purpose. Whatever might have been the opinions held once upon a time on the right to exploit human labour, even the labour of prisoners undergoing sentences of imprisonment, the modern approach to punishment to labour and to wages reflected in documents adverted to is unequivocal. Reformation and social rehabilitation ought to be the avowed objectives of the penological system.

19. Though we law in same detail dealt with the question of attitude to punishment we must make it clear beyond doubt that the case before us rests entirely on our understanding of our constitution in relation to the rights of the prisoner for fair wages as return for his labour. Our exercise so far was only to show that the approach we propose to adopt would not only be fair and equitable, but one consistent with civilised notions of human rights. We are not going to decide this case on the basis of ethics of giving more humane treatment to a prisoner in jail. That is for the executive and Legislature to concern themselves with on the basis of a policy approach they may choose to adopt. We confine our attention in these cases to the question of the legality and constitutionality of denying reasonable wages to a prisoner when, against his will, he has been compelled to work.

20. Now we will go into the main question in these cases, namely, whether the prisoners should be paid wages and if so should the wages be reasonable?

21. The approach to the question of payment of wages in the different, countries of the world differs widely. From 1877 to 1913 some local English prisons used to pay wages or gratuity, however small, to the inmates. This practice was totally abolished in 1913 but re-introduced later in response to a fairly large body of public opinion. The wages paid in the United States of America is said to be meagre. Wages are paid in the shape of compensation in Belgium and Japan, premium" in Sweden, gratuity in China, bonus in Thailand and reserve in Portugal (Vide Bhattacharya on Prisons, at page 75). But the wages supplied in all these countries are meagre or inadequate and is not in recognition of the right of the prisoner to claim such wages. Hence to sustain a claim of the prisoner for reasonable wages, wages which a man outside the prison would obtain by negotiation supplemented by the labour and welfare laws of the country there is no precedent brought to our notice, perhaps the question is raised by the prisoners in this form for the first time. The approach in this case is therefore to be made in the light of our Constitution and the rights assured to the individual under our laws.

22. Does a prisoner lose all the rights on being sentenced to a prison or do his rights remain suspended during the period of imprisonment to be revived on his release? The answer to this, in the context of the Indian Constitution, is simple. A prisoner does not forfeit his citizenship nor does he lose his civil rights, except such rights as freedom of movement, which are necessarily lost because of the very fact of imprisonment. This position is now beyond doubt by reason of the authoritative pronouncements of the Supreme Court. Chandrachud J., as the learned Chief Justice then was, has summed up the scope of curtailment of freedom of the prisoners in *D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others*, thus (Para 6):

"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 right 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."

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. McDonnell*, (1974) 41 L 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 L 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 Vs. Delhi Administration and Others* etc., . Krishna Iyer J. observed in that case at p. 1691 (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 *Maneka Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and in its wake. Articles 14, 19 and even 21 to repel the deadening impact of unconscionable incarceration inflections based on some lurid legislative text or untested tradition. As the twin cases unfold the facts, we have to test the 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:

"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. Martinez* 1974 40 L ed 2d 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. McDonnell*, (1974) 41 L ed 2d 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."

23. We may therefore take it as well settled law in India that the fundamental rights of prisoners are restricted only to the extent called for in the nature of the sentence. They are not wholly denuded of fundamental rights. The object of the sentences against them cannot be to render them non-persons. They must continue to retain their dignity and self-respect as individuals.

24. Having found that the prisoners undergoing sentence of imprisonment in the jails of the State are entitled to the enjoyment of their fundamental rights and the guarantee of such fundamental rights is available to them except in so far as such rights may have to be curtailed or, restricted by reason of the fact of imprisonment we will proceed to examine how far their right to receive remuneration for their labour will be available to them as a Constitutional right. Article 23(1) of the Constitution of India prohibits forced labour. Our attempt here is to examine how far labour taken from the prisoners and not properly remunerated could be said to infringe Article 23(1) of the Constitution. To appreciate the scope of the right under Article 23(1) it may be necessary to refer to the other provisions of the Constitution. Article 39 lays down the rules of policy to be followed by the State and Clause (a) of this Article particularly refers to the principle that the citizens should have right to adequate means to livelihood. The State has an obligation under Article 41 of the Constitution to make effective provision for securing the right to work, of course, within the

limits of State's economic capacity. Just and humane conditions of work must be secured by the State. Article 42 provides for such an obligation. Article 43 envisages the duty of the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The securing of a living wage by way of remuneration is the essence or spirit of the message embodied in Article 43 which should inform and inspire the State in all its activities and should form the foundation for its actions.

25. Article 23(1) of the Constitution reads:

"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".

Though a restricted meaning was being given by some of the High Courts in India to the terms "forced labour" in this article treating that as something analogous to begar such an approach would not be warranted now. The scope and content of Article 23 has been well examined in the recent decision of the Supreme Court in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and this, view has been reiterated by the Supreme Court in *Writ Petition No. 6816 of 1981 : (Reported in Sanjit Roy Vs. State of Rajasthan, . Article 23(2) has application only to cases where the State thinks it necessary to impose compulsory service for public purpose such as conscription. That may have no relevance to the question now before us.*

26. Now let us proceed to examine Article 23(1) of the Constitution. It prohibits begar. It prohibits other similar forms of forced labour. The element of compulsion in forced labour need not necessarily be by reason of enforcement of contractual obligations. Social or economic compulsions may also be the basis of forced labour. Merely because remuneration is paid and that remuneration is adequate labour will not cease to be forced or compulsory. The labour should be offered voluntarily. Whether the provisions of a penal statute such as Section 53 of the Indian Penal Code which decrees labour as a content of the punishment would operate as a valid exception is an interesting question. In the *People's Union* case the court look the view that even if there be a contractual obligation on a workman to serve for a specified term if the workman is not willing to serve for the whole term, but is compelled to do so it would be forced labour. Evidently that is because even contracts need not always reflect the voluntary character of the consent. What would be the position of a statutory obligation arising by reason of a pre-constitution enactment to perform hard labour, not necessarily offered voluntarily is a matter that may call for examination as and when such a question is raised before us. We are not called upon to consider that, question here since before us no such case was suggested and therefore we had no occasion to examine it. We assume for the purpose of this case that because of

the statutory provision in Section 53 of the Indian Penal Code performance of labour by the prisoner could be enforced whether he consents to it or not but all the same another aspect of the case calls for close examination. The Indian Penal Code only decrees hard labour and not free labour. If there is a fundamental right available to a person to get remuneration for the work done by him and non-payment of such remuneration would also amount to "forced labour" within the meaning of that term in Article 23(1) of the Constitution of India should not the prisoners be entitled to claim that by extracting not only hard labour but also free labour from them the provision in Article 23(1) of the Constitution has been infringed? Could they not complain that Section 53 of the Indian Penal Code enables imposing hard labour on them, but does not envisage free labour and that in the light of Article 23(1) of the Constitution if such free labour is extracted from them that would amount to forced labour and consequently the court should come to their rescue?

27. We must frankly admit that it is the exposition of law in regard to the scope of Article 23(1) of the Constitution in the *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*,) that has persuaded us to take the view here that the prisoners are entitled to payment of fair or living wages. The complaint in that case was that the contractors were paying the workmen engaged in the construction work for Asiad 1982 much less than the minimum wage, that there was an obligation on the contractors to pay such minimum wage and though apparently the workmen had offered their services voluntarily for inadequate remuneration that was because of economic compulsions and that such labour too will fall within the scope of the term "forced labour" in Article 23(1) of the Constitution. We will now refer to the discussion on the question in the *People's Union* case. In paragraph 15 of the judgment Justice Bhagwati, speaking for the Bench, observed:

"15. Now the next question that arises for consideration is whether there is any breach of Article 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 Article 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 fight 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 charter, 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 livelihood. 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 uncommon 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 wages. 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 Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 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 Article 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 Article 23."

28. The Supreme Court reiterated what it said in the People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, in the case of Sanjit Roy v. State of Rajasthan (Writ Petition No. 6816 of 1981) : (Reported in Sanjit Roy Vs. State of Rajasthan,). There also a similar question arose. In a drought hit area the State Government undertook 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 was reiterated in that case. The Court said (at p. 333): --

"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 Article 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 Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

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 practice 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 of 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 opinion 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 an 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.

31. Before leaving the case we think it is necessary to advert to two matters. We have taken note of the financial impact our decision may have on the State exchequer, not that this should dissuade us in any way from coming to a correct decision. We have been told by the statement submitted by the Advocate General

that the number of employed prisoners in the prisons, in the State is 856 and even if all of them is paid reasonable wages at this rate of ad hoc wages now fixed, it cannot be said that there would be such a strain on the exchequer as would affect seriously the functioning of the Government. The annual payment to the prisoners as wages taking the number of working days as 300 would be only in the region of Rs. 20,00,000. The other aspect which we wish to notice here is the absence of rehabilitative programmes in the State. Prisoners who have been put to work in the jails will benefit by such work only if on being released they are able to rehabilitate themselves in such work. That no doubt requires a large and comprehensive scheme, but the good results that will accrue to the State by turning the prisoners into responsible self-respecting citizens would necessarily justify the time spent on and attention given to devising and implementing a proper rehabilitation programme. We had called the attention of the Government to this aspect of the matter in the report sent by the High Court in 1980 and we are afraid it has not been seriously taken note of yet.

We therefore direct that forthwith the Government make arrangements to pay to the inmates of the prisons, who are put to work, wages at Rs. 8 per day, part of which they may utilise for themselves, part of which they could arrange to remit to their dependents and part accumulated to be paid to them at the time of release. Rule 384 of the Kerala Prison Rules may need immediate attention in the light of this judgment and we hope the Government will look into it forthwith.