Supreme Court of India
State Of Gujarat And Another vs Hon'Ble High Court Of Gujarat on 24 September, 1998
Author: D Wadhwa
Bench: D.P. Wadhwa, J.

PETITIONER:
STATE OF GUJARAT AND ANOTHER

Vs.

RESPONDENT:
HON'BLE HIGH COURT OF GUJARAT

DATE OF JUDGMENT: 24/09/1998

BENCH:
D.P. WADHWA, J.

ACT:

HEADNOTE:

JUDGMENT:

CIVIL APPEAL Nos. 8443-44/83, W.P.(Crl.) Nos. 1113-1122/83 W.P.(C) No. 14150/84, W.P.(Crl.) 19/93, 494/92 C.A. No. 6125/95 AND W.P.(C) No. 12223/84 JUDGMENT D.P.WADHWA, J.

I agree with the directions issued by my learned brother K.T. Thomas, J. I, however, find myself unable to subscribe to the view that putting prisoner to hard labour and not paying wages to him would be violative of clause (1) of Article 23 of the Constitution and this violation is saved only under clause (2) thereof which provides that nothing in Article 23 shall prevent the State from imposing compulsory service for public purposes. This is yet another decision in string of decisions of this Court dealing with prison reforms and prison administration, last one being Rama Murthy Vs. State of Karnataka (1997 (2) SCC 642) - judgment delivered on December 23, 1996. In the case of Rama Murthy this Court while considering various earlier decisions dealt with the problems of overcrowding, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, deficiency in communication, streamlining of jail visits, management of open air prisons and delar in trials of inmates in the prisons. After listing all these causs, this Court issued directions to the States, the Union Territories and to the Central Government as to why they should not act on the causes detailed in the jument. Notices were issued to show cause within th months and the matter hs been kept for further proceedings. The case of Rama Muthy hs been tagged with the cases now before us, which deal with the question of wages pable to th prisoners sentenced to h

labour.

State of Kerala aggrieved by judgment dated April 13, 1983 of Divisioin Bench of the Kerala High COurt, sought special leave to appeal, which was granted by order dated May 27, 1983, and tghe judgment stayed. By the impugned judgment the Kerala High Court gave the following directions:-

"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 Judgement and we hope the Government will look into it forthwith." Kerala High Court was considering the question of justification for giving direction as to wages to be paid to the prisoners in the jails in the State of kerala. The issue, in fact, was whether in law the claim of the prisoners in jails for proper remuneration for the work they are compelled to do not on their own volition, but because of the compulsion of the prison rules is enforceable by the Court's mandate. High Court examined the provisions of Indian Penal Code (IPC) - Sections 53 and 55 providing for rigorous imprisonment, which is imprisonment with hard labour. It also examined the Travancore-Cochin Prisons Act, 1950, Prisons Act (9 of 1894) and the Kerala Prison Rules. These Rules, it would appear, provide for payment of wages to the prisoners, Under rule 384, which deals with utilization of wages, one third of the wages earned by the prisoner is meant for his personal needs in the jail, one third is sent to the family for its need and remaining one third for being paid to the prisoner on his release. One third to be utilized by the prisoner in jail, is given to him in thee form of coupons for making purchases from the jail canteen. He could also purchase remission for the wages so paid to him. Prisoners centenced to simple imprisonment are given work only on the basis of their request and subject to their physical fitness.

On the pleas raised in the writ petition the Kerala High Court framed the following question to be answered by it which it said it was called upon to consider in this case:-

"It 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 out turn of work? Is he entitled to insist that the wages paid should not be illusory but reasonable? Can be 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?" After detailed discussion on various aspects including the object of punishment, the reformatory theory and other such aspects including the advantages of giving fair wages to prisoners the High Court gave the directions as aforesaid. The court also examined the provisions of Article 23 of the Constitution with reference to decision of this court in People's Union for Democratic Right and others Vs. Union of India and others (AIR 1982 SC 1473 = 1982 (3) SCC

235) and held that it was the mandate of the Constitution that the prisoners are to be paid wages for the work done by them. Then the court examined the question of what would be the reasonable wages and came to the conclusion that it would be Rs. 8/- per day, which would be on adhoc basis subject to any alteration later when as a result of further study, research and assessment the

Government was able to decide upon appropriate wages of the prisoners. This Court, after having issued notice in the special leave petition, also directed that the State of kerala undertook that in the event of its failure in the appeal, the amount due to various prisoners could be paid to them including those, who had been released since the date of the impugned judgment of the High Court.

Judgment of the Kerala High COurt was delivered by subramonian Poti, Ag.C.J. When Subramonian Poti.J. was transferred to Gujarat High Court as C.J. similar question was also raised in that High Court. Full Bench of Gujarat High Court gave judgment dated January 31, 1985 on similar lines as that of the Kerala High Court judgement and that judgment was also delivered by Subramonian Poti, C.J. Aggrieved by that judgment State of Gujarat also came to this COurt. Judgement of Gujarat High Court quotes various passages from the Judgment of Kerala High COurt. Similar question was posed in Gujarat High COurt and it was:- "What should be the quantum of wages that has to be paid to prisoners who are asked to do labour in jails and what should be the approach to payment of wages to such prisoners?"

Full Bench of Gujarat High Court noted that a Division Bench of that High COurt by an earlier judgment dated September 19, 1983 had determined that the prisoners are to be paid wages at the minimum wage rates fixed for workers in similar industrial organizations, but with certain deductions to be made therefrom. Full Bench said that there was only one item of deduction which was relevant and that was the monetary equivalent of the food, clothing and other facilities provided to prisoners at State expense. In fact, this was the controversy which caused reference to the Full Bench. After discussing various aspects on the matter Full Bench of Gujarat High Court gave the following direction:-

"Hence we hold on the question referred to us that the prisoner is entitled to reasonable wages for the work done. Such reasonable wages is determined wwith reference to wages paid in similar industry elsewhere. Such payment must be made without any deduction for the food and clothing supplied to such prisoner. The question referred is answered accordingly. This will not go back to the Division Bench."

The appeal filed by the State of Gujarat was directed to be heard along with the earlier appeal filed by the State of Kerala.

State of Rajasthan similarly felt aggrieved from the judgment of the Division Bench of Rajasthan High COurt dated April 27, 1994 and has come uop to this Court in appeal. By the impugned judgement High Court upheld the decision of the learned single judge directing the State Government to pay wages to the prisoners as under:-

"Rs. 14 per day to skilled convict labour Rs. 12/- per day to semi-skilled convict labour, and Rs. 9/- per day to non skilled convict labour from the date of this order. This amount will be subject to modification of course on higher side, after the aforesaid exercise is done by the State Government and Rules are suitably amended."

In the meantime various writ petitions came to be filed in this Court on the issues involved in the appeals filed by the States of Kerala, Gujarat and Rajasthan. All these were directed to be heard together. By order dated November 14, 1991 this Court noticed that the question involved in these matters was very imported and substantial question of law arose. It, therefore, directed notices to be issued to Union Territories. Notice was also directed to be served on the Attorney General for India. By order dated April 8, 1997 notice was also directed to be issued to National Human Rights Commission. On our request Mr. Kapil Sibal, Senior Advocate, appeared as amicus curies. We may also note two decisions one of Himachal Pradesh High Court and the other of the Andhra Pradesh High Court. In Gurdev Singh and other Vs. State of Himachal Pradesh and others (1992 Crl. L.J. 2542) the Division Bench of the Himachal Pradesh High Court held that prisoners were entitled to minimum wages as prescribed under the Minimum Wages Act, 1948 and no deduction is permissible from the wages on account of maintenance of the prisoners in jails. It is not clear if State of Himachal Pradesh filed any appeal against the judgment but the State has certainly opposed grant of minimum wages to prisoners in the affidavit filed in pursuance to notices issued by this Court in the present case.

Andhra Pradesh High Court, however, took a different view. In Poola Bhaskara Vijayakumar Vs. State of Andhra Pradesh & Anr. (AIR 1988 AP 295) a direction was sought to the authorities to pay prisoners wages for their work. It was submitted that extraction of work by the State from the prisoners convicted of rigorous imprisonment without paying for such work was contrary to the mandate of Article 23 of the Constitution. It was, thus, submitted that there was violation of Article 23 of the Constitution. High COurt disagreed with the Kerala High Court but then said that wages could be justified under Article 21 of the Constitution. The Court said that Article 23 should be held to be more a prohibition directed against the social practices of one member of society against another rather than a prohibition against the State. A prisoner in serving out his sentence and performing hard labour attached to his sentence of rigorous imprisonment cannot be said to be doing any service for any public purpose. The Court considered in detail the scope of Article 23 of the Constitution Court gave the answer in negative and said that in the case of rigorous imprisonment with hard labour attached to it did not amount to extracting forced labour from the prisoners and was not contrary to Article 23.

Three cases of this Court have been relied on by the High COurts of Kerala, Gujarat, Rajasthan and Himachal Pradesh giving interpretation to Article 23 of the Constitution. These are People's Union for Democratic Rights and others (PUDR) vs. Union of India and others (1982 (3) SCC 235), Sanjit Roy Vs. State of Rajasthan (1983 (1) SCC 525) and Olga Tellis and others vs. Bombay Municipal COrporation and others (1985 (3) scc 545). None of these cases, however, dealt with the right of the prisoners undergoing imprisonment with hard labour. The first two cases considered the question of payment of wages at a rate lower than minimum wages fixed under the Minimum Wages Act, 1948 to workers employed in various projects and said that was violative of Article 23 of the Constitution. The third case considered the right of payement, basti and slum dwellers of Bombay city on the touch one of Article 21 of the Constitution.

1.Pleas of the State Government State have strongly opposed the right of the prisoners to claim minimum wages under the Minimum Wages Act. They say the prisoners have no right to claim

wages at all except those provided under the provisions of the prisons Act, 1894 and the rules made thereunder and non-payment of wages to prosoners undergoing sentence of imprisonment with hard labour could not be violative of Article 23 of the Constitution. In support of the submission States have referred to the Constitutions of various countries and to the Universal Declaration of Human Rights and Convenants on Civil and political rights. States are, however, agreed that the prisoners are entitled to certain wages as prescribed but only by way of incentive/bonus/honorarium/gratuity/reward/stipend or the like. The amount so paid and by whatever name called has to bear some reasonable nexus to the work performed by the prisoners and wages cannot be arbitrary to be paid as a dole or as a pittance. But then the States also say that they are considering upward revision of wages to the prisoners to bring then to a reasonable level for the work done by them subject to deductions for food, clothing and other facilities provided to the prosoners. Central Government in itts affidavit submitted that the All india Committee on Jail reforms under the Chairmanship of Justice A.N. Mulla (which functioned during 1980-83) had expressed its view that linking the rates of wages payable to the prisoners with the prevailing commercial wage rattes impractical and had further recommended that the prisoners should be paid fair, adequate and equitable wages in proportion to the skill required for the product/job/service and the satisfactory per-ormance of the prescribed tasks. In the appeal filed by the State of kerala it questioned the very order of the High Court in fixing flat rate for a prisoner doing hard labour. It said that High Court was not correct in assuming that wages of prisoners should be fixed on the basis of employer employee relationship. State is providing work to the prisoners only under statutory liability. The amount of Rs. 8/- per day fixed by the High Court is an enhancement of 500% over the prevailing rates involving record expenditure of Rs.20 to 25 lakhs affecting the development programme in the State. It was submitted that prevailing rates should be allowed to be continued and opportunity be given to the State to fix appropriate rates as early as possible. In the additional affidavit filed by the Director General of Polic (Intelligence), Kerala it was stated that the State Government had constituted the Jail Reforms Committee which had recommended that local minimum wages available for similar outside labour may be paid to the prisoners after deducting the average per capita maintenance cost of the inmates and that the State was considering the recommendations so made. It was submitted that the State Government was not against enhanging the wages given to the prisoners but there were financial constraints and that any decision to enhance the wages paid to the prisoners of a scale analogous to the minimum wages payable outside would result in serious financial commitment to the Government which are already spending substantial funds for the maintenance of the prisoners. It was submitted that the Government had no hesitation to sanction a reasonable increase in the wages paid to the prisoners. It is not necessary to detail various contentions raised by the State Governments to justify their stand. Broadly, they say wages are given to the prisoner for the purpose of :

1.(a) Offering incentive and stimulus for effect, work and industry;

(b) making prison work purposive and meaningful;

(c) developing a sense of self-responsibility and self respect amongst the inmates;

(d) enabling prisoners to purchase their sundry daily extra requirements from the prison canteen; and

(e) helping inmates to effect saving for their post release rehabilitation and also for extending economic help to their families.

(f) payment effected should not be compared to the kind of wages paid outside but it should be seen as payment for learning skills and therefore only as stipend.

We are not holding that prisoners doing hard labour are entitled to minimum wages under the Minimum Wages Act and in view of our directions to the States to fix equitable wages for the prisoners, the States would certainly be considering all the relevant circumstances while fixing equitable wages. II. STAND OF NATIONAL HUMAN RIGHTS COMMISSION EUROPEAN CONVENTIOIN ON HUMAN RIGHTS UNITED NATIONS ON PRISON LABOUR

While States are concerned with the revenue and payment of wages to the prisoners is rather a secondary consideration for them, we have to look to the National Human Rights Commission (NHRC) for its views as the Commission has studied the problem of prisons in the country in depth.

Basing its study on the recommendations of Mulla Committee aforesaid National Human Rights Commission (NHRC) circulated Indian Prisons Bill 1996. Clause 11.21 of the Bill is relevant for our purpose and it is as follows:- "11.21 The question of fixing rates wages in prisons is no doubt, a complex job. For obvious reasons, prisoners cannot be given the same rates of wages as are given in the private sector or in a public undertaking. Linking rates of wages of prisoners with commercial wage rates presents many practical difficulties. We are of the view that prisoners should be paid fair, adequate and equitable wages in proportion to the skills required for the product or job or service and the satisfactory performance of the prescribed tasks. While fixing such fair, adequate and equitable wage rate, the minimum wage rate for agriculture, industry, etc., as may be prevalent in each State and Union Territory should be taken into account. Units of work prescrib ed for such minimum wages should also be taken into consideration. The average per capita cost of food and clothing on an inmate should be deducted from the minimum wage and remainder should be paid to the prisoner. We consider that this would be a fair and equitable basis for fixing wage rates in prisons." NHRC is of the view that while fixing fair, adequate and equitable wage rate for the prisoner the minimum wage rate for agriculture, industry, etc. as may be applicable in the State and the Union Territory be taken into account and from this average per capita cost of food and clothing on an inmate should be deducted from the minimum wage and remainder should be paid to him. According to NHRC this would be a fair and equitable basis for fixing wage rates for prisoners. Mr. Rajiv Dhawan, Senior Advocate, who appeared for NHRC proposed that

(a) a wage fixation body be created to fix the equitable recompense of prisoners.

(b) a body may be created to determine the distriction of equitable recompense between sums for dependents and sums for future use, and invested accordingly.

(c) a grievance committee be established which will examine complaints in respect of prisoners in respect of wages, wage determination, deductions and working conditions.

This is consistent with the jurisprudence enunciated earlier that procedurl provisions should strengthen substantive entitlements.

I may, however, notice that lower wage for inmates of prisons is admissible under the European Convention on Human Rights. Article 4 of this Convention provides as under:-

1.No one shall be held in slavery or servitude

2.No one shall be required to perform forced or compulsory labour.

3.For the purposes of this Article the term forced or compulsory labour' shall not include :

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Acticle 5 of this Convention or during conditional release from such detention.

(b) any service of a military character or, in the case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory militar service;

(c) any service exacted in case an emergency or calamity thre ning the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Article 5 guaranteed liberty of the person, and in particular provided guarantees against arbitrary arrest or detention. It seeks to achieve this object by excluding any form of arrest or detention without lawful authority and proper judicial control. Article 4(2) provides that no one shall be required to perform forced or compulsory labour but Article 4(3) excludes from the term "forced or compulsory labour" any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of the Convention or during conditional release from such detention.

In the case of Twenty-one Detained Persons against The Federal Republic of Germany decided on April 6, 1968 by the European Convention on Human Rights the main grievance of the applicants was that they were refused adequate remuneration for the work which they had to perform during the detention and that no contributins under the social security system were made for them in this respect by the prison authorities. The Commission noted a particular complaint which said that "the prisoners where compelled to work at ridiculous salaries which enabled the public Treasury to extract fortunes from the detainees, namely, profiting from the difference between the salaries and

the market value of their work". The Commission examined the provisions of Article 4 and held that in the present applications detention concerned was imposed by the competent courts in a lawful manner and work performed during this detention was therefore covered by Article 4(3)(a), taken in conjunction with Article 5. The Commission further observed that Article 4 did not contain any provision concerning the remuneration of prisoners for their work and, consequently, it said that it had in its constant jurisprudence rejected as being admissible any applications of prisoners claiming higher payment for their work. The Commission also observed that there was a study made by the United Nations which was published in the basic documents of 1955 on Prison Labour. The study revealed that the amounts paid to the working persons were, with very few exeptions, extremely small, and that normally prisoners had no legal right to remuneration which is only paid as a "reward" or "gratuity" subject to regulations governing the disposition of the money and which may, in certain circumstances, be withdrawn as a disciplinary measure. Commenting on this study the Commission found that "the form of prison labour of which the applicants complain, whatever its merits or demerits from a penological point of view, clearly appears to fall within the framework of work "normally" required from prisoners within the meaning of Article 4, paragraph (3)(a), of the European Convention".

In the study conducted by the United National on Prison Labour, published in 1955, there is a chapter on "Remuneration of Prisoners, Rugulations governing the Expenditure of Income and Aid to Dependants". The study referred to various practices prevailing in 22 countries which had submitted information on the amounts of remuneration paid to prisoners including that by India. Para 240 refers to the system prevailing in India, which is as under:-

"240.No. uniform system or regulations for remuneration have yet been instituted in India. In some States payments are made at a fixed percentage of wages earned for comparable work by free employees, in others only gratuities are paid. At an experimental extra-mural rehabilitation project in the State of Uttar Pradesh, prisoners from serveral jails are employed for periods up to eight months in constructing an irrigation dm on the Chandraprabha River. Living under conditions closely approximating those of free workers, the prisoners earn an average of Rs. 1/8/- per day, part of which may be spent on minor purchases and part of which may be sent to dependents. Only the costs of may be sent to dependents. Only the costs of three meals daily are deducted by the State."

The study noticed that virtually all countries with systems of remuneration made regulations governing the disposition of payments to prisoners. Aside from the special rules for those earning the equivalent of free wages, prisons in majority of non-English speaking States required the division of remuneration in specified proportions of at least two, three or four shares. It said that five main purposes were served by such policies of allocation of remuneration and these were -

(a) Provision for spending money.
(b) Saving for release;
(c) Aid to dependents;
(d) Board and room or other institutional expenses; and
(e) Indemnities and/or court fees.

Para 181 of the study on Prison Labour is a under:- "181. That prisoners should be remunerated for their work is a principle accepted by most contemporary penologists. Differences of opinion on legal and ethical considerations and on procedural problems do not obscure the fact that definite benefits are felt to accure from carefully planned prisoner remuneration schemes. In addition to stimulating the offender's industry and interest, money can be earned, at the very least for the purchase of approved articles and for the accumulation of a savings fund aginst the day of release. If payments are more than minimal, some possibility exists for making at least token contributions to the needs of dependents, for paying indemnities and other legal obligations, an for reimbursing the State for the expense of incarceration. If inmates can earn wages approximating those of free workers, not only can they make adequate payments for their moral and legal obligations, but they will be more nearly sharing in the normal economic functions of the society to which the majority will eventually return.

After the study was made by the United Nations on prison Labour Standard Minimal rules for the treatment of the prisoners were adopted. These Rules provide for the prisoners (1) proper accommodation, (2) medical facilities, (3) clothing and bedding, (4) books etc. These rules also stated that:

"58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the emedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available and should seek to apply them according to the individual treatment needs of the prisoners.

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self supporting lives after their release and to fid them to do sq. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility." For the work to be taken from the prisoners and remuneration to be paid, paras 71, 72, 73 and 76 may be referred to, which are as under:-

"71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release. (5)Vocational training in useful trades shall be provided

for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors. (2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unles the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articdles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release, Education and recreation."

It is not disputed that wages are being provided to the prisoners in all the States in the country except the State of Bihar. There is, however, no opposition from any quarter that certain amount of wages are to be given to the prisoners doing work in the prison. If we examine the rates of wages presently fixed in various States these vary from Rs. 1.50 to Rs. 6.00 per day for an unskilled worker and Rs. 2.50 to Rs. 8.00 per day for skilled worker. The amount of wages so paid shocks the conscience. In Pondicherry is in terms of few paise a day and it could be said that in fact no payment is being made. The amounts so paid these days would appear to be rather a pittance and certainly need upward revision.

It is not, therefore, that prisoner is entitled to minimum wage fixed under the Minimum Wages Act. But then there has to be some rational basis on which wages are to be paid to the prisoners.

Since the claim of the prisoners for payment of wages and also at the rates fixed under the Minimum Wages Act is based on Article 23 of the Constitution and that of the States on the Prisons Act we may as well consider these provisions.

III The Prisons Act, 1894 Under Seventh Schedule list II (State List) of the Constitution 'prisons' is a State subject. Entry 4 deals with 'prisons' and it reads as under:-

> "4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions."

Prisons Act, 1894 regulates 'jail'. There are various State amendments to this Act though those amendments are not of any significance for our purpose. The Act defines a cirminal prisoner, a convicted criminal prisoner and a civil prisoner. The Act provides as to how the prisons are to be maintained; the duties of the officers manning the prisons; discipline of prisoners; food, clothing and bedding of civil and unconvicted criminal prisoners; health of prisoners; prisoners - offences and punishment of such offences; etc. Chapter VII of the Act deals with employment of the prisoners. There is no provisin in the Act for payment of wages to criminal prisoners sentenced to hard labour. Only the civil prisoners are entitled to receive whole of the earnings except where the implements used by them are supplied by the prison authorities a certain amount is deducted from their earnings. Section 59 gives power to the State Government to make rules. Clauses (11) and (12) of Section 59 empower the State Government to make rules for the provisions of food and employment etc. of the prisoners. It would, therefore, appear that when wages are paid to the prisoners doing hard labour it is because of rules or other Government orders.

IV. Constitution (Article 23) How Articles 23 and 24 took the present shape we may refer to the Study by B. Shiva Rao is his book "The Framing of India's Constitution". The subject was first considered in the Sub-Committee on Fundamental Rights and the provisions against exploitation as finally approved by the sub-committee were reproduced as clause 15 in the draft report as follows:-
"15. (1) (a) Slavery.

(b) traffic in human beings.

(c) the form of forced labour knows as begar.

(d) any form of involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted.

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation: Compulsory service under any general scheme of education does not fall within the mischief of this clause.

(2) Conscription for military service or training, or for any work in aid of military operation, is hereby prohibited.

(3) No person shall engage any child below the age of 14 years to work in any mine or factory or any hazardous employment."

This Clause 15 was then considered by the Advisory Committee and the drafted provisions as adopted by the Advisory Committee were reproduced as Clauses 11 and 12 in its interim report which were as follows:-

11. (a) Traffic in human beings and

(b) forced labour in any form including begar, and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation : Nothing in this sub-clause shall prevant the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation : Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour."

These clauses were then discussed in the Constituent Assembly and finally came up for discussion as Articles 17 and 18 as prepared by the Drafting Committee in the Draft Constitution and as follows :-

"17. (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. In imposing such service the State shall not make any discrimination on the ground of race, religion, caste or class.

18. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Now, when Article 17 was taken up for discussion certain amendments were moved by the Members. Relevant for our purposes are - (1) "That in clause (2) of article 17, after the works "caste or class" the works "and shall pay adequate compensation for it" be inserted." (2) "That in clause (2) of article 17, for the word 'public" the words "social or national" be substituted." (3) "That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added." In reply Dr. B R Ambedkar said:-

> "Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afriad, I cannot accept. Of the amendment which I am prepared to accept is the amendment by Prof. K.T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K.T. Shah introducing the word "devadasis". Now I understand that his arguments for including 'devadasis' have been replied to by other members of the House who have taken part

in this debate, and I do not think that any useful propose will be served by my adding anything to the arguments that have already been urged.

With regard to the amendment of my honourable Friend, Mr. H.V. Kamath, he wants the words 'social and national' in place of the word 'public'. I should have thought that the word 'public' was wide enough to cover both 'national' as well as 'social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that that is the correct attitude to take.

With regard to the amendment of my honourable Friend Shri Damodar Swarup Seth, it seems to be unnecessary and I, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory serrvice demanded by the State may be restricted to such hours that it may not debar thee citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called 'hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.

In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundameental proposition enunciated in sub-clause (2) is this : that whenever compulsorry labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands."

Articles 23 and 24 in the Constitution are now as under:-

"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.

24. prohibition of employment of children in factories, etc. -- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." The word 'begar' is of Indian origin and is well understood in ordinary parlance. it is compulsory or involuntary labour with or without payment. This Court has approved the meaning of begar as accepted by the Bombay high Court in S Vasudevan & Ors. Vs. S.D. Mital & Ors. [AIR 1962 Bom. 53]. In S. Vasudevan's case there was challenge to the constitutional validity of the essential

Services Maintenance Ordinance, 1960 prohibiting bank strikes, and one of the contentions raised was that the Ordinance made the petitioners work against their will at the threat of penal consequences and that amounted to a form of forced labour which clause (1) or Article 23 of the Constitution prohibited and that thus the Ordinance was bad in law as it contravened the provisions of Article 23(1). High Court did not agree and said: "This contention is also without any force. It omits to notice the force of the word 'similar' occurring in the clause. That clause prohibits (i) traffic in human beings (ii) begar and (iii) other similar forms of forced labour. It would be seen that every form of forced labour is not prohibited by the clause. In fact, clause (2) of Article 23 permits the State to impose on the citizens compulsory service for public purposes. What is prohibited by the first clause is imposing on the citizens forced labour which is similar in form to begar. It is true that is not defined but it is a well understood term which means making a person work against his will and without paying any remuneration therefor. Molesworth at page 580 gives the meaning of begar as 'Labour or service exacted by a Government or a person in power without giving remuneration for it'. In wilsons Glossary the meaning of the word is given as "Forced labour, one pressed to carry burden for individuals or to public, under old system when passed for public service, no pay was given." In our opinion, therefore,to bring the case within the mischief which clause (1) of Article 23 provides against, it must be established that a person is forced to work against his will and without payment. Such is not the case here. Even assuming tthat the threat of penal consequences provided in the Ordinance would have the effect of making the petitioners work against their will, it is beyond doubt that it was not intendedto make them work without any payment; on the other hand, they would be getting their full remuneration for the work they would be doing." This dictum was approved by this Court in the case of People's Union for Democratic Rights & Ors. Vs. Union of India & Ors. [(1982) 3 SCC 235].

Since a great deal of reliance has been placed on the decision of this Court in People's Union for Democratic Rights & Ors. Vs. Union of India & Ors. [(1982) 3 SCC 235], I may refer to it in somewhat greater detail. In this case the Court said that many of the fundamental rights enacted in Part III of the Constitution operate as limitations on thee power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the COnstitution which are enforceable against the whole world and they are to be found inter alia in Articles 17, 23 and

24. Article 23 with which we are concerned is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human being and begar and other similar forms of forced labour" practised by anyone else and the Article strikes at such practices where they are found as its sweep is wide and unlimited. The Court said that the reason for enactment of this provision in the Chapter on fundamental rights is to be found in the socioeconomic conditions of the people at the time when the Constitution came to be enacted. The Court went into the question as to why the COnstitution makers thought it prudent to include a provision like Article 23 in the Chapter of Fundamental rights. There is good deal of discussion in paras 12, 13 and 14 of the judgment as to the true scope and meaning of the expression "traffic in human being and begar and other similar forms of forced labour". It is, thus, clear that this Court in unmistakable terms has said that every form of forced labour, begar or otherwise is within the inhibition of Article 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, i.e., labour supplied not willingly but as a result of force or compulsion. This Court was considering the argument on behalf of the Union of India which laid some emphasis on the word "similar" and contended that it was not every form of forced labour which was prohibited by Article 23 butr only such form of forced labour as was 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 Article 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 works 'other similar forms of forced labour'. The Court said that this contention sought to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and was, in its opinion, not well founded. Thus, this court has held that under Article 23 no one shall be forced to provide labour or service against his will even though it be under a contract or service. Payment of full wages when labour exacted is forced will attract the prohibition contained in Article 23. It will not, therefore, be correct to say that this judgment merely holds that where a person provides labour or service to another on remuneration which is less than the minimum wages, the labour or service provided by him falls within the scope and ambit of the words "forced labour" under Article 23. As a matter of fact, what the judgements holds is where labour is forced on a person then irrespective of the fact that he is paid minimum remuneration as may be fixed or even higher than that, Article 23 will nevertheless be violated. Any amount of remuneration paid to a person will be immaterial if labour is forced upon him. Can it, therefore, be said that sentence of rigorous imprisonment is unconstitutional being violative of clause (1) of Article 23 because prisoner is forced to do hard labour and is saved only because of clause (2) of this Article? Can it be said that when a prisoner is made to do hard labour being part of his sentence, it is in the nature of compulsory service imposed by the State for public purpose? My answer to both these questions is in negative. Article 23 has no role to play. Here, a prisoner is forced to do hard labour as part of his punishment for the crime committed by him and this punishment is imposed upon him by a court competent jurisdiction in accordance with law.

If we further analyse the discussions of constituent Assembly on Article 23, it is significant that it was aimed at prohibiting abuses from forced labour which ryots were compelled to render to big zamindars or to royalty of the erstwhile Indian States. In this connection, a part of speech of Shri Raj Bahadur in the Constituent Assembly may be of some relevance:

> "Mr. Vice-President, Sir, begar like slavery has dark and dismal history behind it. As a man coming from an Indian State, I know what this begar, this extortion of forced labour, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this begar is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the downtrodden labourrers and dumb ignorant people for the sake of their pleasure."

At this stage we may also note relevant provisions in thee constitutions of U.S.A., Japan and West Germany and also the universal Declaration of Human rights and Covenants on Civil and Political Rights.

U.S.A.

"(1) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

JAPAN Art. 18 of the Japanese Constitution, 1946, provides

-- "No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

WEST GERMANY

2. No one may be compelled to perform a particular kind of work except within the frame work of an established general compulsory public service equally applicable to everybody.

3. Forced labour shall be admissible only in the event of imprisonment ordered by court."

UNIVERSAL DECLARATION (A) Art. 4 of the Universal Declaration of Human Rights says

-- "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." COVENANT ON CIVIL & POLITICAL RIGHTS.

(B) Art. 8 of the Covenant on civil and political rights, 1966 says -- "1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. "2. No one shall be held in servitude."

"3. (a) No one shall be required to perfor forced or compulsory labour.

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this parapraph the term 'forced or compulsory labour' shall not include :

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional relese from such detention;

(ii) Any service of a military character and in countries where conscientious objection is recognized, any national service required by law of conscientious objections;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well being of the community;

(iv) Any work or service which forms part of normal civil obligations.

We have also noticed somewhat similar provisions in the constitutions of Burma, Cyprus, Jordan, Kenya, Korea, Malaysia, Mauritius, Nepal, Pakistan and Philippines where forced or compulsory labour is valid while undergoing imprisonment as a punishment for offences committed by the prisoners.

It was stressed that Article 23, when it originally stood, contained the works 'except as a punishment for crime whereof the party shall have been duly convicted" but these words have since been omitted. On this arguments were based that a prisoner is entitled to wages for work done by him otherwise it will be violative of the Article. I do not think the matter is as simple as that. This is no way to interpret a provision when there is no ambiguity. Superfluous and unnecessary words are avoided in drafting a statute when otherwise language used gives full meaning to the provision. Article 23 contains prohibition. What it prohibits is, as is relevant for our purpose 'begar' and other similar forms of forced labour. Now it cannot be said that a prisoner sentenced to undergo imprisonment with hard labour would be doing 'begar' if prison authorities put him to hard labour. It cannot also be "other similar forms of forced labour". During the debates of the Constituent Assembly or of any of its Committees it was never suggested, even remotely, that sentence of rigorous imprisonment is akin to 'begar' or other similar kind of forced labour. This Court has rightly applied the meanings of all these words to cases where labourers are paid at a rate lower than that fixed under the Minimum Wages Act. In those cases labourers though entitled to minimum wages were forced to accept remuneration at a lower rate because of poverty, unemployment or other similar circumstances. Here the prison authorities are obliged to put the prisoners to hard work otherwise they will be disobeying the court mandate and may be liable for courts' wrath. Now if the prisoners are not paid, can the authorities be accused of violating Article 23 of the Constitution? Would they be committing any offence punishable in accordance with law? In this connection we may refer to section 374 IPC which prescribes that whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both. It ccannot be said that prrison authorities are unlawfully "compelling the prisoners to do the work" . the issue may be approached from different angle as well. Prison authorities are obliged to put the prrisoners to work under the orders of the court and at the same time bound to pay wages to the prisoner because of the prohibition of Article 23. It is really a paradoxical situation. Both work and payment must go together whether the authorities have funds to pay or not. If they have no funds and they are not putting the prisoner to work they would be violating the court's order. If, on the other hand, they put the prisoner to work and have no funds to make payment they are violating Article 23. Article 23 is to be given purposive interpretation. No one has questioned the constitutional validity of the Prisons Act or the rules framed thereunder or punishment of rigorous imprisonment which means hard

labour. Here, hard labour is a part of sentence and not of any contract. Nobody ever said that during pre-constitutional period, sentence of imprisonment with hard labour was 'begar' or other forms of forced labour'.

To me it appears, there will be no violation of Article 23 if prisoners doing hare labour when sentenced to rigorous imprisonment are not paid wages. Wages are payable only under the provisions of Prisons Act and rules made thereunder. though prison reforms are must and prisoners doing hard labour are now being paid wages but the message must be loud and clear and in unmistakable terms that crime does not pay. This the prisoners and the potential offenders must realise. We cannot make prison a place where object of punishment is wholly lost.

Next question is as to how wages payable to the prisoners are to be used by him and how these are to be fixed. Rules of certain States provide and this was also commended by Mr. Rajiv Dhawan that one-third of the wages should be paid to the prisoner for his personal needs while undergoing sentence, one-third to his family and one-third be credited to his account to be paid at the time of his release. That sounds quite good. But then fixing wages for the prisoners State has to show equal concern for the victim and victim's family. To this end subject of Victimology has gained ground these days. V. Victimology I do not think it is necessary for us to comment on various theories of sentence like deterrent, retributive and reformation or rehabilitative. reforrmative theory is certainly important but too much stress to my mind cannot be laid on it that basic tenets of punishments altogether vanish. In this connection a constitution Bench decision of this court in the case of Jagmohan Singh Vs. The State of U.P. (1973 (1) SCC 20) which considered the validity of death sentence may be of some relevance. The relevant part of the judgment is as under :-

"Reference was made by Mr. Garg to several studies made by Western scholars to show the ineffectiveness of capital punishment either as a deterrent or as appropriate retribution. There is large volume of evidence compiled in the West by kindly social reformers and research workers to confound those who want to retain the capital punishment. the controversy is not yet ended and experiments are made by suspending the death sentence where possible in order to see its effect. On the other hand most of these studies suffer from one grave defect namely that they consider all murders as stereotypes, the result of sudden passion or the like, disregarding motivation in each individual case. A large number of murders in undoubtedly of the common type. But some at least are diabolical in conception and cruel in execution. In some others where the victim is a person of high standing in the country society is liable to be rocked to its very foundation. Such murders cannot be simply wished away be finding alibis in the social maladjustment of the murderer. Prevalence of such crime speaks, in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval by the society.

14. We have grave doubts about the expendiency of transplanting Western experience in our country. Social conditions are different and so also the general intellectual level. In the context of our Criminal Law which punishes murder, one cannot ignore the fact that life imprisonment works out in most cases to a dozen years of imprisonment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the deatth penalty. We have not been referred to any large-scale studies of crime statistics compiled in this country with the object of estimating the

need of protection of the society against murders. The only authoritative study is that of the Law Commission of India published in 1967. It is its Thirty-fifth Report. After collecting as much available material as possible and assessing the views expressed in the West both by abolitionists and the retentionists the Law Commission has come to its conclusion at paras 262 to 264. These parapraphs are summarized by the Commission as follows at page 354 of the Report :

"The issue of abolition or retention has to be decided on a balancing of the various arguments for and against retention. No single argument for abolition or retention can decide the issue. In arriving at any conclusion on the subject, the need for protecting society in general and individual human beings must be borne in mind.

It is difficult to rule out the vaildity of or the strength behind, many of the arguments for abolition. Nor does the Commission treat lightly the argument based on thee irrevocability of the sentence of death, the need for a modern approach, the severity of capital punishment, and the strong feeling shown by certain sections of public opinion in stressing deeper questions of human values.

Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its poplulation and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment.

Arguments which would be valid in respect of one area of the world may not hold good in respect of another area, in this context. Similarly, even if abolition in some parts of India may not make a material difference, it may be fraught with serious consequences in other parts.

On a consideration of all the issues involved, the Commission is of the opinion, that capital punishment should be retained in the present state of the country".

Great stress in being laid these days on the rights of the victims or his family in case of victim's death. According to Mr. Dhavan sums granted to prisoners are de minimus and cannot support a rehabilitativee victimology. Reference was made to section 357 of code of Criminal Procedure which provides for payment of compenstion to victim or on his death to his family. NHRC does not seem to have collected any data as to how Section 357 of the code is being put to use. Presently we find there is fitful practice of making compensation orders under the Section. In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights. (see Annexure) In the United States of America stress has now been laid on victim impact evidence. In Payne Vs Tennessee (III S.ct. 2597) the Supreme COurt of United States by majority of 6:3 upheld the admission during capital sentencing of evidence relating to the victim's personal characteristics and the emotional impact of crime of the victim or his family or friends. Whether such an approach in correct or otherwise is not the question we are considering here. It merely shows that victim is an important factor in a criminal trial. In Palaniappa Gounder Vs. State of Tamil Nadu and others. (1977 (2) SCC 634) = (AIR 1977 SC 1323)

this COurt was considering the applicability of section 357 of the Code of Criminal Procedure. In this case the accused were sentenced to death. On appeal filed by the accused High Court reduced the death sentence to that of imprisonment for life. However, while reducing the sentence High Court imposed a fine of Rs. 20,000/- on the accused and directed that out of the fine, if realised, a sum of Rs. 15,000/- should be paid to the son and daughters of the deceased under Section 357(1) (C) of the code. This order came to be passed on an application filed by the son and daughters of thedeceased praying that the accused bo asked to pay them, as heirs of the deceased, compensation of a sum of Rs. 40,000/- for the death of their father. Though the application filed was one under Section 482 of the Code this COurt said that it could be treated that one under Section 357 of the Code which provisions specifically dealt with such a case. Though upholding the order of the High Court in imposing fine and directing payment of compensation to heirs of the deceased the Supreme Court reduced the sentence of fine to Rs. 15,000/- and directed that the fine so recovered shall be paid to the heirs of the deceased. The Court said that provisions of clauses (a), (b) and (d) of Section 357 were inapplicable and clause (c) of Section 357(1) was relevant. This COurt, however, said that though it was legitimacy is not to be confused with propriety and the fact that the COurt prosseses a certain power does not mean that it mustt always exercise it". It said that the power to combine sentence of death with sentence of fine is sparingly exercised because the sentence of death in an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated to serve any social purpose. The approach of this COurt in the present day context needs further thought. However I feel that observations of this COurt are to be confined to a case where accused has been sentenced to death. In Sarwan Singh and others Vs. State of Punjab (1978 (4) SCC 111) = (AIR 1978 SC 1525) this court said that in awarding compensation it was necessary for the court to decide whether the case was a fit one in which compensation has to be awarded. If it is found that compensattion should be paid then the capacity of the accused to pay a compensation has to bbe determined. The Court said that the purpose would not be served if the accused was not able to pay the fine orr compensation for imposing a default sentence for non-payment of fine would not achieve the object. The Court referred to its earlier decision in Palaniappa Gounder Vs. State of Tamil Nadu and others (1977 (2) SCC 634) and said that it was the duty of the court to take into account the nature of crime, injury suffered, the justness of the claim for compensation, the capacity of tthe accused to pay and other relevant circumstances in fixing the amount of fine or compensation.

In Hari Singh Vs. Sukhbir Singh and others (1988 (4) SCC 551) = (AIR 1988 SC 2127) this court took a different stance. It called upon all the courts to liberalise its power under Section 357 of the code. It said that power of the courts to award compensation to victims under Section 357, while passing judgment of conviction was not ancillary to other sentences but in addition thereto and that this power was intended to do something to reassure the victim that he or she was not forgotten in the criminal justice system. In this case accused was convicted under Sections 325, 148 and 149 IPC. Power of speech of the victim was imparied permanenttly. High COurt granted compensation of Rs. 2500/- which this court said would be payable by each of the accused having regard to the nature of injuries suffered by the victim. The Court found that accused had means and ability and were also unwilling to bear the additional financial burden. The award of compensation was enhanced to Rs. 50,000/-.

In our efforts to look after and protect the human rights of the convict we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguards of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. Subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforrms. A victim of crime cannot be a 'forgotten man' in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliattion, etc. An honourr which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. Black's Law Dictionary defines "reparation" as "payment for an injury or damage, redress for a wrong done. Several states have adopted the Uniform Crime Victims Reparation Act. Certain federal statutes also provide for reparation for violation of Act; e.g. persons suffering lossed because of violations of Commodity Futures Trading Act may seek reparation under the Act against violator; Payment made by one country to another for damages during was". Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the return of stolen property (restitution), these being types of reparation which might be described as practical or material. The term can also be used to describe more intangible outcomes, as where an offender makes an apology to a victim and provides some reassurance that the offence will not be repeatted, thus repairing the psychological harm suffered by the victim as a result of the crime.

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 court. The amount so deducted shall be applied for

(a)the making of paymeents (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 dependants 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.

The question then arises for consideration is if Article 330A bars payment of any compensation to the victim or his family out of the earnings of the prisoner. To bar any such objection to the validity of deduction rules can be framed under the Prisons Act or otherwise. When a body is set up to consider the amount of equitable wages for the prisoners a Prison Fund can be created in which a certain amount from the wages of the prisoners be credited and out of that an amount be paid to the

victim or for the upkeep of his family, as the rules may provide for the purpose. Creation of fund, to my mind, is necessary as any amount of compensation deducted from the wages of the prisoner and paid directly to the victim or his family may not be acceptable considering the psyche of the people in our country.

To conclude while agreeing with the directions issued by Thomas, J. I am of the view that putting a prisoner to hard labour while he is undergoing sentence of rigorous imprisonment awarded to him by a court of compentence jurisdiction cannot be equated with 'begar' or 'other similar forms of forced labour' and there is no violation of clause (1) of Article 23 of the constitution. Clause (2) of Article 23 has no application in such a case. Constitution, however, does not bar a State, by appropriate legislation, from granting wages (by whatever name called) to prisoners subject to hard labour under courrts' orders, for their beneficial purpose or otherwise.