Supreme Court of India
State Of Gujarat And Anr vs Hon'Ble High Court Of Gujarat on 24 September, 1998
Author: Thomas
Bench: D.P. Wadhwa, K.T.Thomas

PETITIONER:
STATE OF GUJARAT AND ANR.

Vs.

RESPONDENT:
HON'BLE HIGH COURT OF GUJARAT

DATE OF JUDGMENT: 24/09/1998

BENCH:
D.P. WADHWA, K.T.THOMAS,

ACT:

HEADNOTE:

JUDGMENT:

O R D E R While concluding his opinion my learned brother K.T. Thomas, J. has made certain directions to the respective governments to which conclusion my learned bother D.P. Wadhwa, J. in his separate opinion has accorded assent. I too would accord approval to those directions and order disposal of these appeals and writ petitions. Thomas J.

A delicate issue requiring very circumspective approach is mooted before us: Whether prisoners, who are required to do labour as part of their punishment should necessarily be paid wages for such work at the rates prescribed under Minimum Wages law. We have before us appeals filed by some State Governments challenging the judgments rendered by the respective High Courts which in principle upheld the contention that denial of wages at such rates would fringe on infringement of the constitutional protection against execution of forced labour. Shri Rajeev Dhawan, senior counsel put before us the view points of National Human Rights Commission (NHRC) which feverous the principle that prisoners should be paid wages at the rates prescribed under the Minimum Wages law. On the request of this Court Shri Kapil Sibal, senior counsel addressed arrguments as Amicus Curiae.During the course of hearing we felt the need to hear the Attorney General for India on this important question. Shri Soli J. Sorabji, Attorney General, in response to our request addressed arguments substantially in tune with the approach made by the other two senior counsel. We are grateful to all the learned counsel who assisted us with their valuable contributions.

The State Governments which preferred the appeals are generally in agreement with the view that prisoners should be paid wages and that the present rates of wages paid to them are too meargre and hence they must be onhanced. To what extent is the plank on which the State Government contested these causes by challenging the judgements under appeals.

A Division Bench of the High Court of Kerala (Subramonian Poti CJ and Chandrasekhara Menon, J) in the decision entitled as "in the matter of prison reform enchancement of wages of prisoners" (1983 KLT 512), seems to have taken the land in this area and suggested that the wages ggiven to prisoners must be as per with the wages fixed under the Minimum Wages Act (for short MW Act) and the request to deduct the cost for providing food and clothes to the prisoner from such wages was spurned down. The Division Bench directed the State Government to desigtn a just and reasonable wage structure for the inmates of the prisons who are employed to do lablor, and in the meanwhile to pay the prisoners at the rate of Rs. 8 per day until Government is able to decide the appropriate wages to be paid to such prisoners. Learned counsel for the State submitted before us that the challenge is limited to the question whether deduction of cost of food and clothes is permissible. Gujarat High Court adopted the same stand as the Division Bench of Kerala had taken in the decision cited supra (1983 KLT 512). The judgment was rendered by a Division Bench headed by P Subramaniam Poti, CJ and the reasons adverted in the decision of the kerala High Court were reiterated.

A Singh Judge of Rajasthan High Court suggested that the State Government shall appoint a Commission to go into the entire wage Structure for the convicted prisoners, and tto lay down rules, and in the meanwhile directed the State to pay to the prisoners at the rates tentatively fixed by tthe learned Judge. A Division Bench confirmed the said judgement which is now challenged by the State of Rajasthan. A Division Bench of the High Court of Himachal Pradesh (Bhawani Singh and Devendra Gupta, JJ) vide Gurdev Singh Vs. State (AIR 1976 HP 76) directed the State Government to undertake comprehensive jail reforms and appoint a high powered committee within a year to look into the various aspects including payment of reasonable minimum wages to the prisoners. At the same time the Division Bench directed that "the provisions permitting realisation of maintenance charges from the prisoners bne dispensod with forthwith and no future recovery be made in this behalf." State of Himachal Pradesh has now challenged the said judgment before us.

All the above appeals and two writ petitions filed by some prisoners (or on their behalf), for directing the State Government concerned to enchance the wages payable to the prisoners have been heard by us in ..... Indian prisons are now crammed with prisoners. In many jails theyt are so over-crowded that the amentities designed for a far less number of inmates are now being shared by disproportionately large number of internees therein, e.g. In Bihar jails, as against a prison capacity of 26,300 the actual number of internees during first half of 1996 was 36,700. In Madhya Pradesh the figure is 27,300 as against a prison capacity of 17,720. Even in Delhi it has crossed 8,300 as against a prison capacity of 2,400. There are principally two categories: (1) under-trial prisoners and (2) convicted prisoners (Besides them there are those detained as preventive measure, and those undergoing detention for default of payment of fine). Those in the first category cannot be required to do any labour while they remain in jail, but they far outnumber all the remaining categories put together. Statistics show that in most of the States the under-trial prisoners have overwhelming

majority when compared with the number of convicted prisoners, e.g. Under-trial prisoners in Bihar jails are 84.04% of the total inmates of the jails. In U.P. the percentage is 85.17. In Madhya Pradesh it is 64.22% and in most other States the percentage of under-trial prisoners is above 50.

Jail authorities are enjoined by law to impose hard labour on a particular section of the convicted prisoners who were sentenced to rigorous imprisonment. Section 53 of the Indian Penal Code which falls under the Chapter entitled "Of Punishments" vivisects punishments into five categories, of which the category "imprisonment" has been further sub divided into two sub categories as "rigorous" and "simple". Rigorous imprisonment is explained as "imprisonment with hard labour". Section 60 of the Indian Penal Code confers power on a sentencing court of direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple". or that any part of such imprisonment shall be rigorous and the rest simple". The sentence of "imprisonment for life" tagged along with a number of offences delineated in the Indian Penal Code is interpreted as "rigorous imprisonment for life" and not simple imprisonment. (Vide the decisions of COnstitution Bench in G.V. Godse Vs. State - AIR 1961 SC 600, and Naib Singh Vs. State of Punjab - AIR 1983 SC

855).

A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. Section 374 of the IPC makes imposition of work on an unwilling person as an offence. The section reads thus: Whoever unlawfully compels any person to labour labour against the will of that person shall be punished with imprisonment of either descriptions, for a term which may extend to one year or with fine or with both."

But the jail officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the court. No. prisoner sentenced to rigorour imprisonment can conceivably complain that the jail authorities committed the offence under Section 374 of IPC by compelling him to do work during the term of his imprisonment. So the task to do labour can be imposed on a prisoner only if he has been sentionced to rigorous imprisonment Neither the under-trial internees nor the detainees with simple imprisonment non even detenus who are kept in jails as preventive measres can be asked to do manual work during their prison term. It is a diferent matter that he is allowed to do it at his request. Two profiles emerge from the above discussion. First is a vast majority of prisoners are not concerned about the wages for the labour in jails. It is only for a small section of the detainees that this exercise would benefit. Second is that hard labour is enforced on those sentenced to rigorous imprisonment by the sanction of law and jail authorities cannot disobey the directions of the court which passed the sentence.

The first contention before us was that when hard labour is made a part of punishment as lawfully imposed, can it be equated with the normal employer - employee phenomenon so as to entitle the prisoner to the social and legislative benefits which a free employee gets outside the walls of the prison. The picture endeavoured to be portrayed before us, in support of the contention, is that in a country like ours where unemployment among youth is so rampant and acute, a life assuring reasonably good living and a minimum income at the rates fixed for employees of industrial and

commercial establishments would provide great incentive to the unemployed youth to resort to crimes for carving out a route to the jails, albeit under conditions of incarceration. This would gallop the crime rates upward as many among the unemployed may feel tempted to avail themselves of such advantages despite the disadvantages, apprehends the aforesaid school of thought.

But that argument will not and should not deter us from considering minimum wages for the average individual would abhor incarceration in jails, whatever comfort and monetary benefit it may provide to them. The reality is that even those inside the jails, by and large, are looking forward to the day of their release so as to get their personal freedom restored so that they can move about freely in societty, live with their beloveds and to enjoy the free atmosphere of life. Most of them are in certitude of the precise number of months, weeks and days they had already spent in jails as well as the number of days they secured by way of remissions and also the remaining period they have to continue in jails before attaining the cherished exit from the iron gates of the bastions.

Learned Chief Justic P. Subramanion Poti, speaking for the Division Bench of the Kerala High Court, in the decision cited above (1983 Kerala Law Times 512) has frescoed a picture of reality that "many accelerate their release by purchasing remission parting with the few paise that they earn by way of wages and by donating blood in the hope that this process takes them nearer to the day when they can be back in the affectionate atmosphere at home. The most deterrent factor in imprisonment is really the fact of curtailment of personal freedom. It may not be necessary to make it harsh and inhuman in order to render the sentence of imprisonment a deterrent."

Article 23 of the Constitution prohibits "forced Labour" and mandated that any contravention of such prohibition shall be an offence punishable in accordance with law. That Article reads thus:

"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 any 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 of grounds only of religion. race. caste or class or any of them." Articles 23 and 24 are the only two provisions subsumed under the heading "Right against exploitation." The latter provision prohibits children being employed in factory or mine or other hazardous employments. In the former three unsocial practices are prohibited: (1) Traffic in human beings, (2) Begar and (3) similar forms of forced labour. Traffic in human beinghs is absolute while prohibition aghainst "forced labour" is made subject to one exception, i.e., State is permitted to impose compulsory service if such service is necessary for public purpose. Otherwise the ban against forced labour is also absolute. The expression "forced labour" seems to be collocted with the word "begar". the work "begar" was of Indian origin and has, in due course of time gained entry into the English vocabulary. That word is understood to be the labour or service which a person is forced to give without reeceiving any remuneration for it. It was so held by a Division Bench of the Bombay High Court in Vasudevan vs. Mittal (AIR 1962 Bombay 53) and that was approved by this Court in People's Union for Democratic Rights vs. Union of India [1982 (3) SCC 235].

When the Constitution qualified "forced labour" by associating it with other works "begar and other similar forms" it was not for shrinking the scope of the prohibition to some types of forced labour. Learned Judges in People's Union for Democratic Rights have observed that forced labour may arise in several ways, it may be physical fore, it may be force exerted through a legal provision such as the 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 adept one particular course of action may properly be regarded as force. The Bench observed thus:

"We are, therefore, of the view that where a person provided labour or service to another or remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23."

We are in respectful agreement with the aforesaid view.

Would the Constitution-makers have thought that imposition of hard labour on the convicted prisoners is not included within the concept of "forced labour" envisaged in Article 23. In many other Republican COnstitutions protection aginst forced labour is subjected to the exception that hard labour imposed on convicted persons would not be "forced labour."

In the Constitution of United State of America Section 1 of the Thirteenth amendment 1865 contains the following provision:

"(i) Nither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United State, or any place subject to their jurisdiction."

Same exception is seen incorporated in the analogous provision of the Constitution of a large number of other Republics. For example, Burma, Japan, Cyprus, republic of Korea, Malaysia, Nepal, Pakistan etc. to cite one example, Article 19 of the Constitution of Burma, 1948 reads thus: i. Traffic in human beings, and ii. Forced labour in any form and involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall be prohibited.

Explanation:- Nothing in this section shall prevent the State from imposing compulsory service for public purpose without any discrimination on grounds of birth, race, religion or class.

(emphasis supplied) In this connection it is worthy of notice that during the making of our Constitution the same execption was thought of in the original draft. Clause 11 of the Chapter for Fundamental Rights as adopted by the Advisory Committee read like this:

"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."

After a full debate the Constituent Assembly adopted clause 11 by chiselling it down to the form in which Article 23 of the COnstitution is now shaped. (vide page 252 to 257 of "The Framing of India's COnstitution" - A Study by B.N. Ambedkar in his summing up remarks asid in the Constituent Assembly that the exception envisaged in sub-clause (2) regarding "public purposes" is very wide enough to contain all such exceptional conditions. Thus it is apparently clear that imposition of forced labour on a prisoner will get protection from the ban under Article 23 of the COnstitution only if it can be justified as a necessity to achieve some public purpose.

So the question now to be considered is, whether such compulsory labour can be justified by testing it on the touchstone of "public purpose". What public purpose possibly be served by exacting such labourr work from convicted prisoners? It is said that hard labour imposed on the proved offenders would have a deterrent effect against others from committing crimes and thus society would, to that extent, be protected from perpetration of criminal offences by others. This is the context to consider whether deterrence is the main objective for punishment. Among the conflicting the ories for punishment modern criminologists are highlighting the reformative effect on the punished criminal as the most germane aspect. Jereme Bentham who propounded the theory of deterrence is now considered as apostle of a conservative old school of thought. Retributive theory of punishment has waned into a relic of the primitivity because civilised society has realised that retribution cannot solve the problem of escalating criminal offences. Crime is now considered to be a problem of social hygiene. That modern diagnosis made by criminologists is now causing a sea change to the whole approach towards crime and punishment. The emphasis involved in punishment has now been transposed from retribution to cure and reform so that the original man, who was mentally healthy, can be recreated from the ailing criminal.

To Mother Teresa "the prisoner is Jesus to me". The world renowned philanthropist, as she was, would have been very much inspired by the scriptural words pronounced by Lord Jesus as quoted in the gospel according to Mathew (chapter 25 verse 36):

"Then the King will say to those on his right hand - 'Come ye, who are blessed by my Father in Heaven, for, I was ..... in prison and you came to see me you cursed ones, for, I was ..... in prison and you did not visit me".

It is a grand transformation recorded in the epics that the hunter Valmiki turned out to be a poet of enternal recognition. If the powers which brought about that transformation had remained inactive the world wwould have been poorer without the great epic "Ramayana." History is replete with instances of bad persons transforming into men of great usefulnedd to humanity. The causes which would have influenced such swing may be of various kinds. forces which condemn a prisoner and consign him to the cell as a case of irredeemable character belong to the pessimistic society which lacks the vision to see the innate good in man. Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good but circumstances transform him into a criminal. The aphorism that "If every saint has a past every sinner has a future" is a tested philosophy concerning human life. V.R. Krishna Iyer. J. has taken pains to ornately fresco the

reforrmative profile of the principles of senteencing in Mohammad Giasuddin vs. State of Andhra Pradesh [1977 (3) SCC 287]. The following passage deserves special mention in this context: "If the psychic perspective and the spiritual insight we have tried to project is valid, the police bully and the prison drill cannot 'minister to a mind diseased', nor tone down the tension, release the repression, unbend the prevention, each of which shows up as debased deviance, violent vice and behavioural turpitude. It is a truism, often forgotten in the hidden vendotta in human bosoms, that barbarity breeds barbarity, and injury recoils as injury, so that if healing the mentally or morally maimed or malformed man (found quilty) is the goal, awakening the inner being, more than torturing through exterior compulsions, holds out better curative hopes."

Reformation should hence be the dominant objective of a punishment and during incarceration every effort should be made to recreate the good man out of a convicted prisoner. An assurance to him that his hard labour would eventually snowball into a handsome saving forr his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigours of hard labour during the period of his jail life. Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence they serve a public purpose. Reformative approach is now very much intertwined with rehabilitative aspect to a convicted prisoner. It is hence reasonable conclusion from the above discussion that a directive from the court under the authority of law to subject a convicted person (who was sentenced to rigorous imprisonment) to compulsory manual labour gets legal protection under the exemption provided in Clause (2) of Article 23 of the Constitution because it serves a public purpose.

All the learned counsel who argued before us are in unision in agreeing to the proposition that no prisoner can be asked to do labour free of wages. It is not only the legal right of a workman to have wages for the work, it is a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar. It is only appropriate in this context to remind ourselves of what Chandrachud J. (as the learned Chief Justice then was) has observed in Bhuvan Mohan Patnaik Vs. State of Andhra Pradesh [1975 (3) SCC 185] : "Convicts are not, by mere reason of the conviction, denduded of all the fundamental rights which they otherwwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prisonhouse 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 forr 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."

Having thus found that like any other workman a prisoner is also entitled to wages for his work the question next to be considered is - what is the rate at which the prisoner should be paid for their work? We have no doubt that payingg a pittance to them is virtually paying nothing. Even if the amount paid to them is a little mere than a nominal sum the resultant position would remain the same. Government of India had set up in 1980 a committee on jail reforms under the Chairmanship

of Mr. Justice AN Mulla, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as 'Mulla Committee Report." It contains a lot of very valuable suggestions, among which the following are contextually apposite. "All prisoners under sentence should be required to work subject to their physcial and mental fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners, their training for worrk, the forming of better work habits, and of preventing idleness and disorder..... Punitive, repressive and afflictivee work in any form should not be given to prisoners. Work should not become a drudgery and a meaningless prison activity. Work and trainig programmes should be treated as importantt avenues of imparting useful values to inmates for their vocational and social adjustment and also for their ultimate rehabilitation in the free community.....

Rates of Wages should be fair and equitable and not merely nominal or paltry. These rates should be standardised so as to achieve a broad uniformity in wage system in all the prisons in cash State and Union Territory."

While considering the quantum of wages payable to the prisonerrs we are persuaded to take into account the contemporary legislative exercises on wages. Minimum wages law has now come to stay. This COurt has held that minimum wage which is sufficient to meet the bare physical needs of a workman and his family irrespective of the paying capacity of the industry must be somethings more than subsistence wage which may be sufficient to cover the bare physical needs of the worker and its family including education, medical needs, amenities adequate for preservation is his efficiency. (Express Newspapers Ltd.,Vs. Union of India, 1959 SCR 12). Serval guidelines have been provided by the legislature for fixing the rates of minimum wages and the need to make periodical revisions. Section 3 of the MW Act enjoins a statutory duty on the approprite government to fix minimum rates of wages payable to employees employed in an employment and to review the rates of wages so fixed at such intervals as the government may think fit but not exceeding five years. Section 5 of the MW Act provides that in fixing minimum rates of wages in respect of the scheduled employment for the first time or in revising such rates the government shall appoint committees to hold enquiries and advise the government in respect of such fixation.

Alternatively, the government is obliged to publish its proposals. Fixation or revision of minimum wages can be made only in consideration of the advice of the committee and the representations received about it.

The State of kerala in the appeal has expressed objection to pay the prisoners at the rates fixed as per MW law. But during arguments learned counsel for the State submitted that Government is willing to pay the prisoners wages at the said rates after deducting a certain percentage therefrom which represents the amount needed for the food and clothes supplied to the prisoners. Such a plea for deduction was rejected by the High COurts, mainly on the premise that the obligation to provide food and clothes to the prisoners is the inherent obligation of the State on account of the very fact of their internment in prisons. The Division Bench of the High Court of Himachal Pradesh spurned down the aforesaid plea made on behalf of the State. Learned Judgges have quoted from the Full Bench decision of the Gujarat High Court in Jail Reforms Committee Vs. State of Gujarat as follows:

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

It is true that State Government has the obligattion to bear the expenses needed for providing food and clothes and other amenities to every prisoner, whether his detention is during post conviction period or pre-conviction period as under-trial prisoner or has been preventively detained or is interned as a consequence of defaulting payment of fine imposed as punishment. If that is the only angle through which this question has to be looked at there is, perhaps, a point to castigate deduction of the amount spent on food and clothes of a prisoner from the minimum wages rate. But the issue has to be looked at from three other angles also. First is this, if wages at the rates fixed under MW Act are paid to a prisoner without making any such deduction its not effect would be that he gets wages apparently more than the emoluments of a workman who does the same type of work outside the jail. This is because the latter has to meet his expenses for food and clothes from the minimum wages paid to him.

Second angle is, the Government which has to pay wages to the prisoner has the additional liability to supply clothes and food to him because government has the duty, willy nilly, to keep a convicted person in prison during such term as the Court sentences him to imprisonment. It is taxpayer's money which Government is expending for keeping the prisoners inside the jail by providing him food and clothes and other amenities. It is not because Government is happy to do it or is looking forward to do it. It is a legal compulsion on the Government. But its incidence is on the common man's coffer.

The third angle, and it is very important for this purpose, is that even MW Act permits the employer to make deductions of certain kinds from the wages of an employed person. Section 12 of the Act permits him to make such deductions as may be authorised and subject to such conditions as may be prescribed by rules. Minimum Wages (Central) rules contain the items of such deductions which are permissible. Among such items the following two are pertinent: (1) deductions for house accommodation supplied by the employer (2) deductions for such amenities and services supplied

by the employer as the government may authorise. Thus deduction of cost of clothes and food supplied to an employee from his wages is not inconsistent with legislative policy.

When all aspects are considered we are inclined to think that the request of the Government to permit them to deduct the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. There is nothing uncivilised nor unsociable percentage to be deducted from Minimum Wages taking into account the average amount which thee government is spending per prisoner for providing food, clothes and other amenities to him.

We wish to say something more is this connection. We are told that the practice followed in many States, either by virtue of the jail rules or by convention, is that a portion of the money earned by the prisoner is sent to the dependantts of the prisoner himself and the balance, after deducting the amount expended by him for his extra expenses, is preserved to be isbursed to him at the time of his release.

One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in sentencing policy to listen to the wailings of the victims. rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. First type consists of direct victims i.e. those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. Second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

Restorative and reparative theories have developed from the aforesaid thinking. In the "Oxfor Handbook of Criminology", Andrew Ashworth, Prof. of Oxford University Central for Criminological Research has contributed the following instructive passage.

"Restorative and Reparative theories These are not theories of punishment Rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centred (see e.g. Wright 1991). although in some versions they encompass the notion of reparation to the community for the effects of crime. They envisage less resort to custody, with onerous community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counselling for offenders to reintegrate them into the community. Such theories therefore tend to act on a behavioural premise similar to rehabilition, but their political premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the State.

Legal systems based or a restorative rationale are rare, but the increasing tendency to insert victim orientated measures such as compensation orders into sentencing systems structured to impose punishment provides a fine example of Garland's observation that institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups".

Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of comensation to any person for any loss or injury caused by the offence. But in practice the said provision has not proved to be of much effectiveness. Many persons who are sentenced to log term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims.

It is a constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoner when he is in jail to be paid to deserving victims. In the absence of any law for that purpose we are prevented from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims because of the interdict contained in Article 300A the Constitution. Hence we suggest that the State concerned may bring about a legislation for that purpose. The above discussion leads to the following conclusions: (1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.

(2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.

(3) It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.

(4) Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Government of fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.

(5) We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

The appeals and the writ petitions are disposed of in the above terms. registry will despatch a copy of this judgment to the Chief Secretary to every State Government.