



# SKILL TRAINING OR FORCED LABOUR: JURISPRUDENTIAL ANALYSIS OF PRISON INDUSTRY

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**Abstract:** Punishments in Penal Codes are guided by various theories and jurisprudential hybrids. Theories of retribution and deterrence are being used occasionally under the guided principles of human rights. The preference is the shift towards the reformatory and rehabilitative theories in the sentencing process. Reformation and the correctional programmes for rehabilitation are the principles laid down in “1955 UNSMRP<sup>1</sup> for the prisoners”. The utilization of prison labour is a contentious issue globally, raising questions about the rights of inmates, particularly in terms of wage fixation. This article explores the complex intersection of prison labour, wage codes, and the legal status of hard labour in different countries. By examining case laws and international practices, the researcher aims to shed light on the rights and challenges faced by prisoners engaged in labour. The study of this jurisprudential development of punishments forms the basis of the correctional systems adopted in prisons across the world. The study under this article with the use of doctrinal research methodology is to analyse that if the hard labour, prison industries and production and manufacturing unit in a prison are to be considered on par with Industry as defined in labour codes. If so, whether the prisoners also have the same labour rights as ordinary workers in any industrial sector. Analysing the existing permutation and combination between punishment and analysing the concept of their rights as labour or to be considered slaves of the State this article is entitled, “**Skill Training or Forced Labour: Jurisprudential Analysis of Prison Industry**”.

**Index Terms:** Theories of Punishment, Prison Labour, Hard Labour, Wages Theories, Human Rights, Skill Training, Rehabilitation and Forced Labour

## I. INTRODUCTION

Article 23 (2) of the Constitution empowers the States in India to avail service for public purposes compulsorily. ‘Punishment’ is in the form of inflicting harm to a person intentionally with the authority and reasoning upon a breach of law<sup>2</sup>. In a prison nature of work in which the prison inmates are involved relates to its maintenance. It equips the inmates with the skill training along with maintaining work habit routines. There are allied programmes for training the prisoners to work by establishing small manufacturing and farming units within the prison. A credit for the modern form of codified institution of prison in India goes to the colonialism by British Ruler s. The deterrence factor on the basis of punitive isolation and restrictive custodial measures was the concept developed under the deterrence theory. Subsequently, hard punitive labour with imprisonment was the main basis of prison.

## NEED FOR THE STUDY

Under the Constitution of India, Jails or Prisons are essentially State subjects thus; the regulation, management and administration of the prison are within the jurisdiction of each State. The inhuman handlings of the prisoners lead to need for prison reforms. In 1920, the Indian Jail Committee declared that, “reformation and rehabilitation” of the prisoners are the ultimate objectives of the Prisons which was later substituted by the modern concept of social defence. Social defence concepts of the prisons were shift form deterrence to reformatory concept. The result of such shift was on the factors of confinement of convicts along with custodial care to the under-trials. This identified gap in justifies the need for the study on prison wages.

## RESEARCH METHODOLOGY

This research is purely doctrinal in nature. The study is explorative in nature. Historical evolution of the research problem is done through the analyses of the reports and judicial decisions to study the evolutionary aspect of wages for the convicts who have to work as part of their punishment on conviction. The available primary in the form of Legislation, Rules, Regulations, Orders etc., in India along with international conventions, resolutions for the global views and secondary data from various commission and committee report forms the bases of the future perspective analyses and sources of this legal research paper.

<sup>1</sup> UNSMRP acronym -United Nation Standard Minimum Rules for the Prisoners 1955.

<sup>2</sup> H.A.Bedau, Retribution and the theory of punishment, Journal Of Philosophy, Volume: 75 Issue: 11 Dated: (NOVEMBER 1978) Pages: 601-620

## II. PRISON LABOUR: HISTORICAL CONTEXT AND MODERN PRACTICES

The historical roots of prison labour often trace back to rehabilitation efforts, but concerns about exploitation and fair treatment have emerged over time. Historical evolution of prison labour, highlighting changes in perception and the current landscape of inmate employment. It addresses the dual objectives of rehabilitation and punishment that influence the use of prison labour.

### 2.1 Prison Labour

As the objectives of imprisonment has changed from mere “deterrence” to “deterrence and reformation”, with a few exceptions, convicted prisoners work in almost every prison. The concern of ILO for the prison labour was needed for the proper supervision of the “political prisoners” work, but subsequently the focus shifted on the consequences of privatized prison labour. The relinquishment of some of the barbaric punishments of ungratified non- remunerative hard labour and gave way for acknowledgement of work and conduct through remission or review of sentences, wages fixation, open jails facilities of parole, recreation leave canteen etc. Revision of the basic quality of food, treatments under medical care for the satisfaction of basic human wants along with service, training and education for skill development under the concept of reformation cum rehabilitation.

The word “Rehabilitation” is from a Latin term ‘rehabilitare’ means ‘re-enabling’ or ‘making fit’ again. The first SMRTP were published by the League of Nations in 1930, this was updated in 1957.<sup>3</sup> Though it is not binding, they do provide guidance, in dealing with the sentenced prisoners. The Rules there under recognizes that compulsory labour, nature of productive activity in the prison with the ultimate aim of rehabilitation of prisoner into the society after undergoing the sentence.<sup>4</sup> The Rules also provide for a wage for the work of prisoners. In these rules prisoners can spend some earnings for themselves and a part for their family. The remaining earning is set aside as a savings bond of prisoner upon release<sup>5</sup>.

The Slavery Convention of the League of Nations in 1926 followed by the ILO’s Forced Labour Convention, No. 29 of 1930, provided for the development of the labour-related aspects of the Slavery Convention. It prohibits forced or compulsory labour, but excludes,

*‘...any of the work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations...’<sup>6</sup>*

Convention 105<sup>7</sup> was adopted to restrict further the use of compulsory labour after World War II. It defined conduct which could not be punished by forced or compulsory labour, even if the person concerned was convicted in by a Court of law.

*‘(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination’<sup>8</sup>.*

Regulation and accounting of the intensity of assigning work to inmates in the prisons as correctional institutions is a debatable issue. The justification of remuneration to convicts for their work as prison labour, the policy cannot be framed on the bases of general principles of labour law. Remuneration not to cater the interest of the factors of the prison industrial setup such as employer and employees for the maintenance of good Industrial relations. Rather the legality and the jurisprudential understanding in support of wages for their labour that, the convicts in the prison through their earnings from their work can proportionately contribute for the expenditure incurred by the government for their maintenance. This justifiably creates a source of revenue for the State as well as the convicts though very nominal. This can to some extent reduce the burden State and the public as Tax payers. The tax payer’s hard earned money can be in turn used for better productive purpose, rather than spending on the offenders for their maintenance and in some cases catering to their different luxurious needs. Hence, there is no such insight that wage policy for the prison labour has concept additional incentives for higher and better production and thus looking forward for good Industrial.

## III. COMPULSORY HARD LABOUR IN INDIAN PENAL CODE

Indian penal Code (IPC) 1860 provides for different forms of punishment such as death, imprisonment: simple and rigorous, imprisonment for life, forfeiture of property and fine. The duration of imprisonment and its nature is left to the judicial discretion, exercised on the bases of facts under the adjudication. The prison labour related to the rigorous imprisonment, is punishment of hard labour. Sentencing court can award for any combination of imprisonment either wholly or partly with hard labour<sup>9</sup>. As far as the ‘imprisonment for life’ is concerned is considered to be ‘rigorous imprisonment’<sup>10</sup>. In the Simple imprisonment the convicted individual has a choice to work or not. As

<sup>3</sup> Series League of Nations Publications IV, Social, 1930, IV, 10.

<sup>4</sup> Rule 71(1) contrast the requirement of *International Labour Organisation’s Convention* No. 105 that prisoners convicted of political offenses should not be required to work as part of their punishment.

<sup>5</sup> Rules 74 and 75.

<sup>6</sup> Article 2, paragraph 2(c), of the *International Labour Organisation’s (ILO) Forced Labour Convention*, 1930 (No. 29). This convention is ratified by 178 countries till date. India ratified it on 30 November 1954

<sup>7</sup> Article 1, para1 of the *International Labour Organisation’s (ILO) Abolition of Forced Labour Convention*, 1957 (No. 105)

<sup>8</sup> Article 1, para1 (No. 105) of *ILO Abolition of Forced Labour Convention* 1957 as ratified by 175 countries and India ratified it on 18 May 2000

<sup>9</sup> Section 60 of IPC (Section 60 of the Bharatiya Nyaya Sanhita (BNS) of 2023)

<sup>10</sup> G.V.Godse v. State, AIR 1961 SC 600 ; Naib Singh v. State of Punjab, AIR 1961 SC 855; Nanavati v. State of Maharashtra, AIR 1962 SC 605.

per Sec 374 of Indian Penal Code / Sec 146 of BNS (Bharatiya Nyaya Samhita), compulsory labour is a punishable offence<sup>11</sup> but the jail authority who requires a convict to undergo rigorous imprisonment and hard labour cannot be prosecuted under Section 374 of Indian Penal Code.

### 3.1 Prisoner's Right

Health is an indispensable Human Right as given International Covenant on Economic, Social and Cultural Rights. This United Nations Committee keeps an eye on the compliance by the signatory States. In the context of the prisoner the obligations upon the State is to take action to safeguard the health of the prisoners. Civil and political rights mechanisms of the UN and Regional Human Rights mechanism also ensures the protections of the right to prisoners health is universal and non-discriminatory in application<sup>12</sup>. Supreme Court in Bhuvan Mohan Patnaik v. State of AP<sup>13</sup> and Sunil Batra v. Delhi Administration,<sup>14</sup> held that a convict, is not denuded of all the Fundamental Rights as provided by the Constitution of India. The conviction and imprisonment the prisoner is not deprived of all the guaranteed fundamental rights. By imprisonment he is deprived of right to move freely in the territory of India or freedom like right to 'practice' any profession.

Article 23 guarantees right against any form of exploitation. It specifically absolutely prohibits 'human trafficking and forced labour'. Article 21 guarantees the 'right to life and personal liberty' to the individuals which can be deprived to a person only in accordance to the procedure established by law. Article 21 has got the widest possible judicial interpretation under the significant humanitarian contours. In Inderjeet v. State of U.P.<sup>15</sup> the Supreme Court held that a convict is entitled to the right under Article 21 and as such cannot be subjected to unwarranted physical torture, mental restraint, to a cruelty and torturous punishments. Further Article 23 (2) State go for 'compulsory service for the public purpose'. However, the Penal Code empowers a competent court to order rigorous imprisonment with compulsory hard labour. Justice P.Subramonian Poti in Kerala High Court in the matter of 'Prison Reforms Enhancement of Wages of Prisoners'<sup>16</sup> opines that hard labour is a contravention of the mandate of Article 23(1) if reasonable wages are not paid. Justice further disallowed the State Governments to deduct the expenses incurred for food, and clothing based on the reasoning that it is duty of the State to maintain prisoners. In Gurudev Singh v. Himachal Pradesh<sup>17</sup> case Justice Bhawani Singh interpreted that Sec 53 of IPC allows hard Labour and not free Labour and if without wages, violates Article 23.

However in P.Bhaskara Vijay Kumar v. Andhra Pradesh<sup>18</sup> denied the contention that Article 23 forms the basis that a prisoner has right to be paid wages. Further wages to the prisoner does not and cannot alter the punitive labour on prisoners. Such authorization as provided under IPC Sec 53, or any such Statute, labour without fair wages violates Art 21.

### 3.2. Prison Wages

There are complexities of wage fixation for doing work inside the jail as part of conviction. The work done by them can be either voluntarily or as punishment. The wages are skill based classification such as skilled, semi-skilled and unskilled and as such the wages are revised periodically. State of Gujarat v. High Court of Gujarat<sup>19</sup> observed that;

*"...Reformation and rehabilitation is basic policy of criminal law hence compulsory manual labour from the prisoner is protected under Article 23 of the Constitution. Minimum wages must be paid to prisoners for their labour after deducting the expenses incurred on them..."*

Wages as the subject is under State list of the 7<sup>th</sup> Schedule of Constitution. As per 2018 prison statistics released by the NCRB<sup>20</sup> in 2019, Delhi provided the highest wages of Rs 361, Rs 328 and Rs 297 per day to skilled convicts, semi-skilled convicts and unskilled convicts respectively. This was followed by Tamil Nadu which gives Rs 200, Rs 180 and Rs 160 to skilled convicts, semi-skilled convicts and unskilled convicts respectively. Followed by the prisons in Puducherry have fixed the wages at the rate of Rs. 180, Rs. 160 and Rs. 150. The lowest rate of wages being paid to prison labour in 2018 is Manipur with per day Rs. 12, Rs. 10 and Rs. 8 to skilled convicts, semi-skilled convicts and unskilled convicts respectively<sup>21</sup>.

NHRC in the Indian Prisons Bill 1996<sup>22</sup>, provided that, while fixing wages average per capita cost on an inmate should be deducted. As reported in The Indian Express dated 10<sup>th</sup> January 2020<sup>23</sup>, in State of Gujarat v. High Court of Gujarat<sup>24</sup> case Justice D.P. Wadhwa of Supreme Court on 24<sup>th</sup> September 1998 was reluctant to justify wages under Art 23. He further justified that, payment of wages in prison is as

<sup>11</sup> Section 374 IPC/BNS, "Whoever unlawfully compels any person to 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 both."

<sup>12</sup> Article 6 on right to life and Article 10 on the right to humane treatment of the *United Nations International Covenant on Civil and Political Rights*.

<sup>13</sup> AIR 1974 SC 2092

<sup>14</sup> AIR 1978 SC1675; People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235

<sup>15</sup> AIR 1979 SC 1867

<sup>16</sup> AIR 1983 Kerala 261; P.U.D.R v. Union of India, AIR 1982 SC 1473 had opined that, putting prisoners to hard labour while undergoing rigorous imprisonment cannot be equated with either 'Beggars' or other forms of forced labour

<sup>17</sup> AIR 1992 H.P.76

<sup>18</sup> AIR 1988 A.P.295

<sup>19</sup> AIR 1998SC 3164

<sup>20</sup> National Crime Records Bureau (NCRB)

<sup>21</sup> Prison Statistics India 2018; Table 10.4, Rehabilitation and other Support to prisoners during the year 2018 available at [www.ncrb.gov.in](http://www.ncrb.gov.in) (Accessed on 10 October 2024)

<sup>22</sup> Clause 11.21 of the *Indian Prisons Bill 1961*

<sup>23</sup> <https://indianexpress.com/article/explained/how-jails-pay-and-deduct-prisoners-wages-tihar-jail-delhi-high-court-5478731> (Accessed on 10<sup>th</sup> January 2020)

<sup>24</sup> AIR 1998 SC 3164



per Prisons Act and its Rules as 'crime never pays'<sup>25</sup>. Supreme Court further asked the States to devise a mechanism so that victims could be compensated through that earnings. In 2008, the CrPC Amendment Section, 357A, need to stipulated a scheme for compensating crime victims and their dependents<sup>26</sup>.

In Nawal Kishore Thakur v. Brahm Ram<sup>27</sup> case it was held that labour without remuneration offends dignity as per Art 21. Poola Bhaskara Vijayakumar v. State of Andhra Pradesh<sup>28</sup> no payment for work in prison was contrary to Art 23. But the Court held that, this Article is with reference to one person against another not against the State. In a prison the hard labour performed as part of rigorous imprisonment is not to be equated to providing service to the State and thus does not violate Article 23. Mulla Committee<sup>29</sup> during 1980-83 recommended that the wages must be adequate, equitable and fair. These wages need to be in proportion to the skill required for the satisfactory execution of a productive work. The judicial trend reflects the evolution of the concept of prisoners right blended with the human rights and dignity of labour of the inmates in the prison.

#### IV. CONCLUSION AND SUGGESTIONS

In prison labour wage fixation, is with the objectives of rehabilitation, punishment, and the protection of human rights. By examining international practices, legal frameworks, and case laws, the analyse is doctrinal study of ethical considerations surrounding prison labour to fair wages within the evolving context of global labour standards. From the above study it is found that the prison wages differ from one State to another in India. The various judicial decisions further unveil different judicial tones and approaches to the said issue under the pretext of hard but not free labour, compulsory hard labour and violate Article 23 (1) of the Constitution but it is saved under clause 2 of Article 23 and the Section 53 of IPC. The Court in the decision of Justice Thomas and Justice Wadhwa over ruled the High Court's orders and recommended for the equitable wages and not minimum wages to the prisoners. The study brings forth competing claims, and attitudes of the society towards the prison and prison labour. As the recommendation of various committees the fixation of wages of the prison labour need to be on equitable basis and not equal bases. It needs to be further understood that if reformatory theory is the basis of punishment and prison in India, then prison labour is training for the work or skill development of the prisoners for his rehabilitation in the society after serving the sentence and so it is to be maintained by the State<sup>30</sup>. Hence the expenses for food, clothing and shelter should be by the State while deciding the wage structure for the prison labour. In the process of determining equitable wages the challenge lies in bringing the balance between Prison Act and the Rules framed there under the touch stone of constitutional right applicable to the prisoners during their conviction and hard labour.

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<sup>25</sup> Justice Wadhwa recommended for the formation of a committee to quantify equitable wages in the interest of the victim and victims family thereby creating prison fund to facilitate the payment of compensation to them.

<sup>26</sup> 1998 order, *Delhi Prisons Rules* as amended in 2006 under Rule 39A enabled for 25% of prisoners' wages to be deducted and deposited in a Victim Welfare Fund.

<sup>27</sup> (1985) Cri LJ 244

<sup>28</sup> AIR 1988 AP 295

<sup>29</sup> Report by the All India Committee on Jail Reforms Volume- 1 (1980-1983) pp.49-52

<sup>30</sup> Justice *M.M.Ismail Commission Report* (1977) p.194