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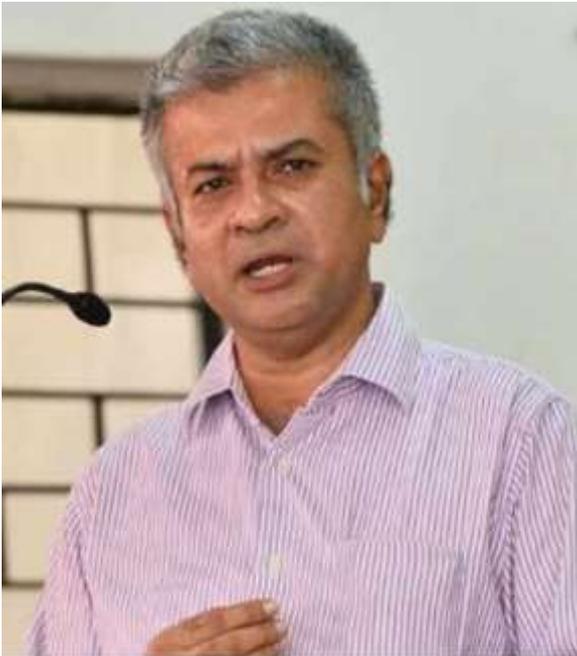
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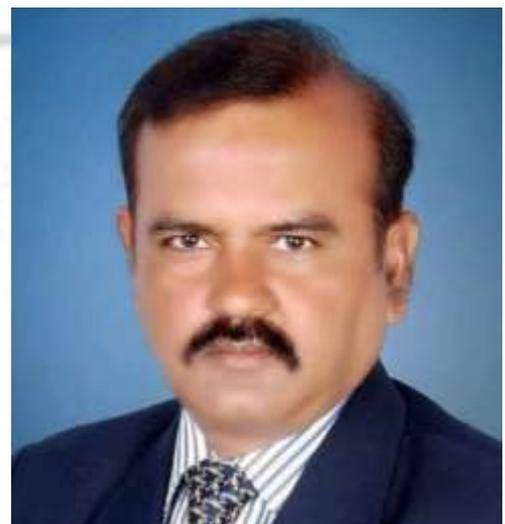


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PRISON LABOUR IN THE INDIAN PRISON SYSTEM: A BROAD APPRAISAL OF THIS REFORMATIVE MICROSOME DURING PRE COVID TIMES

AUTHORED BY - KARAN GOYAL

The colonial traditions of the Indian Prison System have been carried forward to the present times. Such traditions have led to a conflict which rages between the reformative and deterrence notions with respect to a prisoner. While the Indian Judicial System has been playing an active role in ensuring rights to the prisoners are available, there still exists a gap on ensuring the wellbeing of the prisoners during the duration of their incarceration in the prison. In such a scenario, it becomes imperative to provide a critical appraisal of one of the facets of prisoner engagement, namely prison labour.

Historical Background

The historical background / genesis of prison labour emanated along with the early origin of modern prison system with the initiative of Lord Macaulay. The Modern Prison System begins with the British in India, especially in 1835 when Lord Macaulay came to India as a member of the Indian Law Commission.¹ He ingrained the deterrent value of a prison system, with respect to management of crimes in colonial and even modern India. His minute of 1835 on prisons led to the appointment of the first ever prison committee namely the Prison Discipline Committee in 1836 which submitted its report in 1838.² It focused on various aspects with respect to prisoners such as housing, labour, discipline, health, diet. The Committee rejected any form of rehabilitation with respect to the prisoners and recommended that the convicts should be *engaged in dull, monotonous, wearisome and uninteresting work.*³ It dealt with the

¹Pg. 56, Prison as a Social System, R.N. Datir, Popular Prakashan Limited, 1978.

² Members' Reference Service, Prisons Reforms In India, Available at http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Prison_reforms_in_India.pdf

³ Pg. 105, Report of the Committee on Prison-Discipline to the Governor General of India: In Council Dated the Eight of January 1838 : to which are Added a Few Tables Extracted from the Appendix, Council of India, Baptist Mission Press, Available at <https://books.google.co.in/books?id=4BQPAQAAMAAJ&pg=PA105&lpg=PA105&dq=convicts+should+be+engaged+in+dull,+monotonous,+wearisome+and+uninteresting+work&source=bl&ots=ahPGaMDzRB&sig=ACfU3U080hskp8ZvkjK0jCEsGSqfAJWE0w&hl=en&sa=X&ved=2ahUKEwiU0qrzjeDmAhXEV30KHYKHCmwQ6AEwCnoEAcQAQ#v=onepage&q=convicts%20should%20be%20engaged%20in%20dull%2C%20monotonous%2C%20wearisome%20and%20uninteresting%20work&f=false>

mechanism of regulating prison inmates through prison labour within the premises of the prison, albeit from a deterrence point of view. While several prisons were established based on its recommendations, the recommendations themselves were highly difficult to implement due to factors of cost and a general apathy towards the native prisoners. ⁴Therefore, the first Committee recommended prisoner's *work as a form of punishment*.

The Second Prisons Commission titled the Indian Jails Committee was commissioned in 1864 due to a high rate of death within the prisons. The Committee addressed/ considered issues as overcrowding, bad ventilation, bad conservancy, drainage as well as aspects of prison labour. Prison labour was considered as an important parameter for ensuring order and discipline. Prison labour was to not to be remunerative.⁵ This committee for the first-time classified prison labour into 3 categories; hard, medium and light labour, aiming to make prison labour punitive and a mechanism for engaging the prisoners themselves.

The Fourth Jail Commission appointed in 1888 submitted its report in 1889 under the aegis of Lord Dufferin, wherein the focus was on prison discipline and management in a broad and holistic manner. The committee recommended the separation of Undertrial prisoners and the classification of prisoners into habitual and casual and accordingly prescribed prison labour.⁶ The provisions of this commission was incorporated in various state prison manuals.

All these committee reports culminated into the Prisons Act of 1894 (which presently governs the Prisons in India). The Act included a specific chapter (VII) on prison labour which talked of employment of civil⁷ and criminal prisoners. It differentiated the nature of prison labour in which prisoners were to be employed along with the separation of Undertrial and Convict Prisoners⁸. Some of the relevant extracts may be briefly discussed as under:

- civil prisoners to be allowed to work only with the permission of the superintendent.⁹
- Work to be limited to nine hours a day for both civil and criminal prisoners.¹⁰

⁴Pg. 57, Prison as a Social System, R.N. Datir, Popular Prakashan Limited 1978.

⁵This is because the government believed that the labour has to be punitive and if during the said labour, it allows the prisoner to develop a skill which can be helpful, then that it fine. But the primary aim should be that it is punitive.

⁶Fourth Indian Jails Committee, 1888, Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/95339/8/08_chapter%203.pdf

⁷ Employment of civil prisoners Section 34, The Prisons Act, 1894.

⁸ Separation of prisoners Section 27, The Prisons Act, 1894.

⁹*Id.*

¹⁰ Employment of Criminal Prisoners Section 35, The Prisons Act, 1894.

- A Medical Officer is required to conduct a medical inspection of a prisoner who is to be engaged in labour to ensure that the health of the inmate does not deteriorate and if it does, to replace him.¹¹

The broad and vague nature of the act was to be contextualized taking into account the fact that it was passed by a colonial administration solely for the purposes of managing prisoners. Also, the discourse during that time with respect to prisoners was not one which was concerned with reforming an inmate but rather one which simply focused on draconian deterrence measures. It appears that the prison labour evolved during the colonial era wherein it was viewed as a tool to regulate and control the activities of prisoners.

The principle of prison labour began to evolve during the latter half of the nineteenth century wherein reformation began to be viewed as a function which was to be incorporated. A consequent impact of this thought was that prison labour being given to the prisoners was to be based on what “*will excite his interest and lead him to exert his powers willingly.*”¹² This led to the labour with respect to the prisoner being changed to one which could yield some profit and be “*interesting*”.

Another important change in the prison system came with the appointment of the Indian Jails Committee (Fifth) in 1919 which recommended the transference of prisons from the control of the central to the state governments.¹³ It mentioned that reformation of prison labour would be the main object with respect to prison labour.¹⁴

The Departmental Committee on Employment of Prisoners (1933) stated that while reformation should be the aim of prison labour, the practice of “hard punitive labour” as a form of deterrent should not be completely ignored, merely because it would be “irksome”.¹⁵

The abovementioned committees showcase that prior to the appointment of the Bombay Jail Reforms Committee of 1948, prison labour was seen within the ambit of the theory of deterrence and discipline.¹⁶

¹¹*Id.*

¹²Pg. 290, Supra note 3.

¹³Indian Jails Committee 1919-20, Available at <http://pcs.mp.gov.in/sites/default/files/Report%20of%20the%20%20Indian%20Jail%20Committee%2C%201919-1920.pdf>

¹⁴Pg. 291, Supra note 3.

¹⁵*Id.*

¹⁶A controversial example of this theory and its consequent implementation was the dreaded “oil mill” of the Cellular Jail in the Andaman and Nicobar Islands.

Prison Labour trends in Post-Colonial India: A Critical Perspective

Overview

In post-colonial India, the concept of prison labour has transformed from merely behavioral disciplining and regulating mechanism to be replaced with reformation and self-empowerment of prison inmates. The other major transformation is renewed classification or categorization of prison labour into skill; skilled, semi-skilled and unskilled, based on the dexterity or calibre of inmates¹⁷ whereas under the precolonial times the classification was based on the quantum of labour assigned. Thus it may be noted that the shift/ focus or emphasis has shifted from the labour to the individual inmate. However there is a common underlying belief that prisoners are liability on state exchequer which in effect adversely impacts prisoner rights¹⁸. This has to be replaced with a more progressive view that the state is the custodian of vulnerable sections including the prison inmates while they are in correctional institution. Therefore, it is the duty of the state to ensure due rights of a prisoner. A major development in the post-colonial times is the ushering of fundamental rights to prisoners. This commenced with the recognition of fundamental human rights under Article 21 to prison inmates under in the case of *State of Maharashtra v. Prabhakar Pandurang* in 1966¹⁹ and consequently several landmark cases have specifically provided for the establishment and protection of the rights of prisoners.²⁰

These judgments acted as an eye opener for the legislature which consequently appointed the Mulla Committee in 1980 and the Justice V.K. Krishna Iyer Committee in 1987, both of which were seen as landmark with respect to recognition of prisoner rights. Furthermore, these rights of prison inmates have been enriched by judgments such as *R.D. Upadhyay vs State of A.P. & Ors*²¹ and the more recent PIL, namely *Re - Inhuman Conditions in 1382 Prisons*²², both of which have been expanding the scope of prisoner rights. These cases have ensured an active judicial participation for ensuring prisoner justice and prison reform in India. It is within this context of established human rights that the concept of Prison Labour needs to be examined. In simple words, the concept of prison labor should be viewed as ***a tool for reform of inmates and also the manner and conduct of prison labour.***

¹⁷Inflibnet, Shodhganga, East Punjab Reforms Committee, 1948-49, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/105703/11/11_chapter%206.pdf (last visited on 05 07 2020)

¹⁸*Id.*

¹⁹1966 AIR 424

²⁰ *Hussainara Khatoon & Ors vs Home Secretary, State of Bihar*, 1979 AIR 1369.

²¹ W.P. (Civil) 559 of 1994

²² W.P (Civil) No. 406 of 2013]

In view of this, it is pertinent to reiterate the landmark judicial pronouncements which have not only carried forward the human or fundamental rights of inmates but have also developed or evolved the concept of prison labor and wages for inmates on the same lines. These are briefly discussed as below:

Significant judicial developments on the Conceptualisation of Prison Labour

The significance of prison labour discourse can be gauged through the judicial pronouncement in *A Convict Prisoner v. State & Ors.*²³, wherein the High Court of Kerala laid emphasis on importance of work culture in prison life. The Court opined that a work culture within the prison helps in, “Alleviation of tedium of prison life, Repression of crimes, Production of economic commodities (which can decrease cost of support), Reformation and Prison discipline.”²⁴

The cases of *Rama Murthy v. State of Karnataka*²⁵ and *State of Gujarat v. Hon’ble High Court of Gujarat*²⁶, have held that remuneration is to be given for the work in which the prisoner is engaged in, thereby reinforcing the concept of prison labour towards reformation, as compared to the earlier one based on deterrence. The judgment in the case of *State of Gujarat v. Hon’ble High Court of Gujarat*²⁷, stated that a prisoner has a right to equitable wages. The classification of labour into 3 categories of Unskilled, Semi-Skilled and Skilled is important in this regard since wages are set forth by the government based on what the wage rates are in these categories. The 3 categories have been defined in the High Court judgment of *Gurdev Singh And Ors. Etc. v. State of Himachal Pradesh and Ors, 1992*²⁸ as –

- “*Skilled workers are those employed on work which involves either physical or mental or both kinds of skill in its execution and which cannot be accomplished by ordinary labour with proficiency without sufficient skill.*
- *Semi-skilled Worker” means workers engaged on a task which cannot be performed by untrained hands, but which can be executed with some training and practice but does not require any strict standard of precision.*
- *Unskilled Worker” means workers engaged on a task which does not require any skill or training.*

²³1993 CriLJ 3242

²⁴*Id.*

²⁵ (1997) 2 SCC 642

²⁶ (1998) 7 SCC 392

²⁷ (1998) 7 SCC 392

²⁸ AIR 1992 HP 70

However, despite these judicial directives, there does not exist any uniform or comprehensive definition of the term prison labour. The courts have interpreted the same from time to time and given meaning to the concept. Furthermore, the term has not been defined in the Prison Act of 1894. There is thus a legal ambiguity in judicial decisions on the concept of prison labour. Further the categorization of prison labour as skilled or otherwise is unclear, vague and subjective. Such a lacuna is extremely problematic since what is considered to be skilled or semi-skilled becomes extremely arbitrary and can be detrimental to the prisoner with respect to paid prison labour. This lacuna has been reported as a major problem with respect to prison labour by the Commonwealth Human Rights Initiative²⁹ in its Study Titled “*Inside Haryana Prisons*”.³⁰

In the above context, a comprehensive definition of the term prison labour is necessary keeping in with the progressive judicial decisions. It is pertinent to establish a standard or uniform parameter that underlies the concept of prison labour including but not only limited to meaningful and gainful employment but to prisoner reformation in the present context. The prison manuals of 2003 and 2016 describe the concept of prison labour *being meaningful and gainful* employment to the prisoner³¹, but are short of referring it as a tool for reformation with an emphasis on skill training and empowerment. Therefore, a uniform legal framework on prison labour and related aspects needs to be set out.

However, the said legal lacunae is further impacted by the lack of *essential parameters and crucial defining elements related to prison labour such as the quantum and dispensation of wages, mode and periodicity of payment, the nature of task, the permissible category of inmates for undertaking prison labour.*

Within these gaps exists a lack of information and awareness among inmates especially the women inmates.

The authors therefore consequently discuss on the prevalence of these issues as well.

Issues with Prison Labour and relevant suggestions

a. Failure to ensure mandated prisoner segregation between inmates on Prison labour conditions within prisons

²⁹ Commonwealth Human Right Initiative, <https://www.humanrightsinitiative.org/>

³⁰Commonwealth Human Rights Initiative, Inside Haryana Prisons, 2019, Available at <https://www.humanrightsinitiative.org/publication/inside-haryana-prison/>(last visited on 05 07 2020)

³¹Chapter XV, Model Prison Manual,2016.

- The concept of prison labour has to be differentiated between undertrials and convicts as a basic statutory minimum. This separation has been mentioned in several reports (namely the Mulla Committee Report) and various judgments, but this separation is not been implemented properly. Prisoner separation is required not only with respect to their barracks but also with respect to prison labour as well. This lack of separation between undertrials and convicts among prison labour has been observed in states such as Haryana and Maharashtra wherein not only do the prisoners live together but also work together, irrespective of whether they are under trials or convicts.³²

For instance, in one of the district women's prison in Maharashtra, kitchen work which is "both skilled as well as an unskilled" work, the jail authorities (such as the Jailors,) recruit both and assign them tasks and they are paid around, which is entered in the prison canteen register, which further serves as a written record with respect to wages. For cleaning bathrooms there is involvement of both convicts and under trials on a daily basis by prison authorities. This is a usual practice in the same district-prison in Maharashtra. It was found that the under trials and convicts were paid similar wages rates with respect to wage rates which are either 44 for the unskilled labour, 55 for semi-skilled and 61 for skilled.

b. Lack of awareness among prisoners on wages

Prison labour pursuant to judicial decisions and prison manuals is to be viewed within the notion of legal rights of a prison inmate. In the present context, it is neither supposed to be exploitative nor a mere regulatory instrument for his/her suppression and control. Rather, prison labour has to be conducted in manner which is reformatory and serves as a tool for empowerment, by providing for beneficial skill development of inmates so as to ensure a better resettlement and livelihood opportunity. But it has been found out through both doctrinal as well as field research that a majority of the inmates in a district prison in Maharashtra which includes a mixed group of a total of approx. 950 convict and undertrials are unaware of these provisions. Though it is mostly the undertrials aroundin number who are largely unawareas compared to convicts(as on Month year / Mumbai) There is general trend permeating the entire prison system wherein there is lack of awareness on the part of prisoners with respect to their rights, which is inclusive of a

³² Maharashtra's Abandoned Prison: A study of Sub Jails, Commonwealth Human Rights Initiative, 2010 available at https://www.humanrightsinitiative.org/publications/prisons/maharashtra's_abandoned_prisons_a_study_of_sub-jails.pdf. (last visited on 05 07 2020)

This is corroborated by a study conducted By TISS in Mumbai in 2019 wherein there was no proper separation of undertrials and convicts.

lack of knowledge on their entitlements when they engage in prison labour. This lack of awareness should be dealt with on an immediate basis. While this is an ongoing process, what is proposed that there should be “installation of a display board at a conspicuous part of the prison in every barracks which informs the prisoners including both convicts and under trials of their rights in order to ensure that they are well informed on what they are entitled to.” This can help the prisoners at least to be aware of the safeguards. It has been also observed that the State legal aid lawyers and/or the Jail superintendent do not inform them of the same.³³

On a policy level, functioning of a prison has to be made as transparent as possible. The transparency should especially include lesser addressed issues as prison labour and wages. The RTI act is highly important in this regard.³⁴ It may be used for collecting and assessing data on this issue as well as in pointing out prevalent limitations.

c. Labour differentiation & arbitrariness between convict and under trials on prison labour

In light of the unclear differentiation between convicts and undertrials for the purpose of prison labour and wages, it is inferred from the prison manual that it is the convicts who are allowed to work in prison but not the under trials (they may do so if they volunteer). Contrastingly, it has been observed that owing to large number of under trials in all prisons, it is the undertrials who are involved in the prison labour. However, even if an undertrial voluntarily wishes to work, his labour category has not defined categorically in the prison Manual and Statute. Therefore, it may be inferred that the manual neither categorically or specifically prohibits undertrials from prison labor. The undertrials may be engaged in work provided they volunteer of it, with wages to be dispensed based on the rate as determined by the concerned State government.³⁵ It has been seen through field observations that in a prison in Maharashtra, the undertrials employed in prison industries or with respect to agriculture are given the same remuneration as that of convicts. However, separate treatment of undertrial prison labour is based on the presumption that the undertrials are to kept separately from the convict³⁶, something which does not happen due to reasons of

³³Orientation of the prisoners is mentioned in Recommendation 47, Chapter 5, Model Prison Manual, 2016

³⁴Key to Transparency, Commonwealth Human Rights Initiative, available at <https://www.humanrightsinitiative.org/download/1543403936Key%20to%20Transparency%20-%20Your%20Guide%20to%20using%20the%20Right%20to%20Information%20Act.%202005.%20to%20collect%20data%20about%20Indian%20Prisons.pdf> (last visited on 05 07 2020)

³⁵Recommendations 43 &44, Chapter 24, Model Prison Manual 2016.

³⁶Recommendation 17, Chapter 15, Model Prison Manual 2016

overcrowding. Furthermore, it is found that equal prison remuneration is limited to prison industries and agriculture only but not in other categories of prison labour thereby creating issues in prisons where both these facilities are non-existent; in such scenarios the manner of wage differentiation and disbursement should be made as clear as possible, specifically to ensure that the under trials are paid proportionately as per their labour and on similar structured lines as convicts.

d. Prison Labour and women

There has been a systemic failure to ensure provision and guarantee of rights to women and children in the sphere of prisoner rights, which is despite the fact that there has been an increase in the number of women undertrials. The number of women inmates overall including convicts and undertrials has increased significantly, with the following 5 yearly increase from 2000 to 2015 showcasing the rate at which women prisoners (both undertrials and convicts) have increased in proportion to the total number of prisoners.³⁷

Year	2000	2005	2010	2015
Increase in women prisoners	3.3%	3.9%	4.1%	4.3%

Women prison inmates, due to their vulnerable position are largely found to be living below poverty line, they are deserted by their families and husbands, they have very limited or nil family visitors or support, they barely have (immovable) property in their own names, they are not in position to secure bail for themselves for these reasons.

In many prisons across India, there has been a violation of rights of women inmates. One of the worst apathies is in the state of Haryana where the checking of women inmates is usually done by Male Medical Officers despite the requirements of a female medical officer. The same disinterested attitude persists with respect to prison labour related matters as well. As it is, there do not exist proper labour categorizations with respect to women inmates in terms of skilled / unskilled or semi-skilled and on a convict-undertrial basis, critically hampering their eligibility to undertake prison labour and derive lawful wages.

This merits consideration as female prisoners have to be duly granted prisoner rights and accorded the right to undertake prison labour similar to their counterparts. Owing to these

³⁷ The data is based on a report by the Ministry of Women and Child Development, titled "Women in Prisons" published in June 2018. Available at <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

limitations on regulations, there appears a discrimination between male and female prison inmates in terms of prison labour.

There is a lack of clarity on undertrial and convict women inmates with respect to their eligibility conditions for undertaking prison labour and the corresponding wage differentiation which should ideally exist. (please check this fact) There is a lack of information on wages for prison labour with respect to women prisoners.³⁸ Furthermore, this lack of labour categorization is also accompanied by institutional failures on the part of correctional justice system structural-failures leading to a complete lack of on generating awareness on labour wages for the women prisoners.³⁹ While the Prison Manuals do state duration (please elaborate these provisions- add foot note - add section or the time duration) for which a women prisoner may be allowed to work, overall the prison mechanism (enumerate as instances they condition in prison which do not allow women to work) does not allow for women to be properly engaged in prison labour. There have been instances in Maharashtra wherein no women prisoners neither the convict nor the under trial (please check this fact **this is not possible**) have been given any work prisons especially where the women prison is co-terminus to the male prison for a variety of reasons.

The lack of support facilities becomes all the more evident for women prisoners who have their children living with them. As there are Bachha barrack especially in women prisoners who have children living with them below six years. There is a lack of crèche facilities in various prisons, both in Maharashtra and Haryana which prevents mothers from working and earning wages. Largely these women are engaged in taking care of their own children and their washing, feeding and meeting the care needs of children. The Supreme Court in the case of *R.D. Upadhyay vs State of A.P. & Ors.*⁴⁰ is clear that children of women prisoners are to be provided with a conducive environment, despite this order the prison system of India including District and Sub jails lacks the same. This is showcased by the drastic staff vacancy with respect to women staff, with there being just “9.6% women across all levels of prison administration.”⁴¹

Therefore, the existing prisons does not allow for reformation and rehabilitation of the prisoners themselves, especially when the children stay with the prisoners, since there does not exist a strong support mechanism to ensure rehabilitation of the prisoners and the

³⁸This is based on a field study conducted by Tata Institute of Social Sciences in 2019.

³⁹This has been observed in prisons in Maharashtra based on a study carried out by TISS, Mumbai.

⁴⁰ W.P. (Civil) 559 of 1994

⁴¹ Tata Trusts, India Justice Report 2019, available at <https://www.tatatrusters.org/upload/pdf/overall-report-single.pdf> (last visited on 05 07 2020)

protection of their children. Rather it can be stated that prison labour with respect to women prisoners is a discourse which requires a lot of rethinking in order to ensure that these prisoners do not face dual discriminations based not only on their status as prisoners and gender.

e. Lack of clarity with respect any uniform “Fair and Equitable” notion of wages

The lack of uniformity with respect to the principle of giving workers *fair and equitable wages*⁴² is a major concern when one looks at the wage rates in India. These variations exist because prisons are a part of the State List under the Seventh Schedule of the Constitution and each state may formulate the rates accordingly. Such jurisdictional problems have led to drastic wage rates variations among states such as Maharashtra, Rajasthan and Tamil Nadu (to name a few). Therefore, despite the Supreme Court stating that prisoners have a right to reasonable wages⁴³, the manner in which the states interpret it is an unknown area with respect to prisons (based on wage rate variations).

Under the earlier concept, the meaning of wages did not mean that a prisoner would be entitled to minimum wages as per the Minimum Wages Act. The court in the case of *State of Gujarat And Anr vs Hon'ble High Court of Gujarat*⁴⁴ agreed that fair and equitable wages were to be paid to prison workers, with standardization among the rates across all states to be given due emphasis. While “equitable” wage rates for prisoners were to be considered keeping into view the Minimum Wages Act, deductions based on the expenditure which the state incurred on their food and clothing⁴⁵, as well as compensation to victims were to be taken into account as well.⁴⁶

The judgment has in effect allowed for there to be deductions from the wages of the prisoners. For e.g. in the state of Delhi, victim compensation via prisoner wage deductions was introduced with the help of the Delhi Prison Rules of 1988 (later the Delhi Prison Rules of 2018). It allowed for a deduction of 25% from the wages of the prisoners for the victim welfare fund which was consequently challenged in the Delhi High Court in the case of

⁴² State of Gujarat and Another v. The Hon'ble High Court of Gujarat, CrI. A. No. 308 of 1986

⁴³ Mohammad Giasuddin vs State of Andhra Pradesh, 1977 AIR 1926, Dharambir And Anr vs State Of U.P, 1979 AIR 1595

⁴⁴ AIR 1998 SC 3164

⁴⁵ The Apex Court stated, “There is nothing uncivilised nor unsociable percentage to be deducted from Minimum Wages taking into account the average amount which the government is spending per prisoner for providing food, clothes and other amenities to him.”

⁴⁶ KI Vibhute, COMPULSORY HARD PRISON LABOUR AND THE PRISONERS' RIGHT TO RECEIVE WAGES: CONSTITUTIONAL "VIRES" AND JUDICIAL VOICES, Journal of the Indian Law Institute, Vol 42, No 1.

Katyayini v. Government of NCT of Delhi, 2018. The DSLSA in an affidavit in the concerned case pointed out that-

- prison authorities were deducting wages with respect to both convicts and undertrials.⁴⁷
- Prison wages in Tihar Jail were “lower than the minimum wages fixed by the Delhi Government.”
- There was no need of such a measure due to the existence of Section 357A of the CRPC⁴⁸

While the court did initially order the deductions to stop, subsequent orders have correspondingly allowed for the same to continue if they are provided for under the statute (in this case the Delhi Prison Rules, 1988 & 2018) and not executive action.⁴⁹

Such a scenario becomes is further compounded by the fact that most of the states and Union territories in India (19) spend less than Rs 100/- a day prisoners, showcasing a clear neglect despite the objective being to rehabilitate the prisoners.⁵⁰

f. Wage dispensation

The discourse on prisoner wages should be inclusive of the system of dispensation of wages. Since wages are highly important for the prisoner as they help in a positive improvement in his living standards (they allow him/her to purchase items from the canteen for meeting his basic needs and allows for savings for the future), it becomes important to look into the system itself. For instance, in Haryana, there does exist a system of cashless transactions in canteens based on the money being deposited into the accounts of the inmates by their relatives. Therefore, at the very least there should be a common and transparent system to ensure monthly dispensation and utilization of wages.⁵¹ Consequently, it becomes important to analyze the manner in which wages are deposited so as to see whether they are accessible to everyone. With respect to canteens, there has to be clarity as to how it is linked to labour wages of a prisoner and how he/she is

⁴⁷ Times News Network, **HC stays 25% wage cut of convicts in Delhi**, Dec 4, 2018, available at http://timesofindia.indiatimes.com/articleshow/66927736.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst (last visited on 19.05.2020)

⁴⁸*Id.*

⁴⁹ https://www.business-standard.com/article/pti-stories/deduction-in-prisoners-wages-for-victim-fund-not-wrong-if-allowed-under-law-hc-119112101185_1.html

⁵⁰ Tata Trusts, India Justice Report 2019, Available at <https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>

⁵¹ <https://www.humanrightsinitiative.org/download/1565414272Inside%20Haryana%20Prison%20Report.pdf>

allowed to use the same. This can help in focusing upon women prisoners in order to ensure that important essentials are a pre requisite.

Furthermore, the importance of prison wages and the usage of the canteen are to be looked into by acknowledging the importance of a canteen with respect to rehabilitation of prisoners, especially those who are without any source of income. It has to be recognized that prison wages might be a source of livelihood for the prisoner's dependents when the prisoner is the breadwinner of the family. Thus, issues with respect to wage dispensation (such as the system of payment of wages), wage utilization, and wage transfer (For e.g. via money order) should be given due importance since the state is required to ensure that the family of the prisoner is not unduly harassed due to the arrest itself.⁵² In order to address this, the National Legal Services Authority has initiated a scheme in 2019 to look into it (though the scheme looks at Undertrials only).⁵³ *This point has to be specifically stated because of the fact that the system of wage dispensation and money transfer is not known amongst the prisoners when a study was conducted by the students of TISS in the prisons in Maharashtra. There was a complete lack of knowledge on the manner in which the money earned could be transferred to the dependents outside, with the canteen register being the primary repository of prisoner account details. Furthermore, the nature of the account itself was not clear. Therefore, effective legal mechanisms are required which specifically deal with wage structure, wage dispensation and record keeping.*

g. Vague recruitment and discretion of the prison authorities

While there does exist some categorization with respect to prison labour (based on the state manuals), they do not provide for a definitive and clear framework, on account of which the categorization of a labour as being skilled/semi-skilled or unskilled may vary from state to state.

Furthermore, labour in prison is under the management of the jail superintendent who retains final authority and discretion. The allotment is usually done by the superintendent taking into account what the inmates used to do on the outside. This is a little skewed since it does not allow for the recruitment mechanism to properly function and might allow for biases to percolate in allotment of work. Therefore, someone who is engaged in manual

⁵²Prayas, Forced Separation: Children of Imprisoned Mothers, Tata Institute of Social Sciences, Available at <https://www.tiss.edu/uploads/files/Dharmadikari.pdf>

⁵³National Legal Services Authority, *Legal Assistance to the Family Members of the Prisoners: Report of the Pan India Campaign*, Available at <https://nalsa.gov.in/library/campaigns/a-campaign-for-legal-assistance-to-family-members-of-prisoners>

scavenging will continue to be engaged in the same and the same inmate may not be allowed to change his/her designation which will only impair their chances of improving their skill set but also their future livelihood opportunities (and will indirectly force them to stay in the profession). Consequently, conservancy labour in prison requires a critical analysis. Prisoners (convicts) are supposed to “manage” the prison “which includes doing labour which can include prison maintenance services, work Centres and work camps” (only those who have been sentenced to a punishment which is less than one year). However, conditions regarding conservancy work are still a grey area. This category of work is not elaborated properly in the Prison manuals. The work has not been treated with due consideration by the manuals which simply look at the work from a cleanliness perspective without taking into account the societal stigma associated with it, even within a prison.⁵⁴ Such labour allocation with respect to conservancy work was observed especially in one of the prisons in Maharashtra where the workers were from lower socio-economic strata and had been engaged in the same on the outside.

Thus, the manner of recruitment of workers, and the way the prison officials’ prisoners treat them needs to be analysed since there might exist a possibility of social exclusion and stigma, which subsequently transforms into prisoner apathy. In conservancy work, there is no mention of any safety equipment for the workers himself, showcasing the manner in which this work has been viewed by the Executive.⁵⁵ The question of who is cleaning them, how is she/he cleaning them, manner of recruitment, health, wage rate criteria, paid leaves, working hazards and safety measures as well as an inherent bias are areas which should be addressed so as to protect the rights of these inmates when they are engaged in prison labour by the authorities and the prisoners themselves.

h. Workings of the Kitchen

Prison kitchen is one area which where considerable prison labour is engaged in. Improvements been made to integrate the workings of the kitchen to the mainstream society.⁵⁶ The workings of a kitchen are to looked into based on the Model Manual, 2016 which explains the manner in which the same has to operate, especially with regards to the

⁵⁴Recommendation 71, Chapter VI, Model Prison Manual, 2016, Section 11, Chapter XXII, Maharashtra Prison Manual, 1979

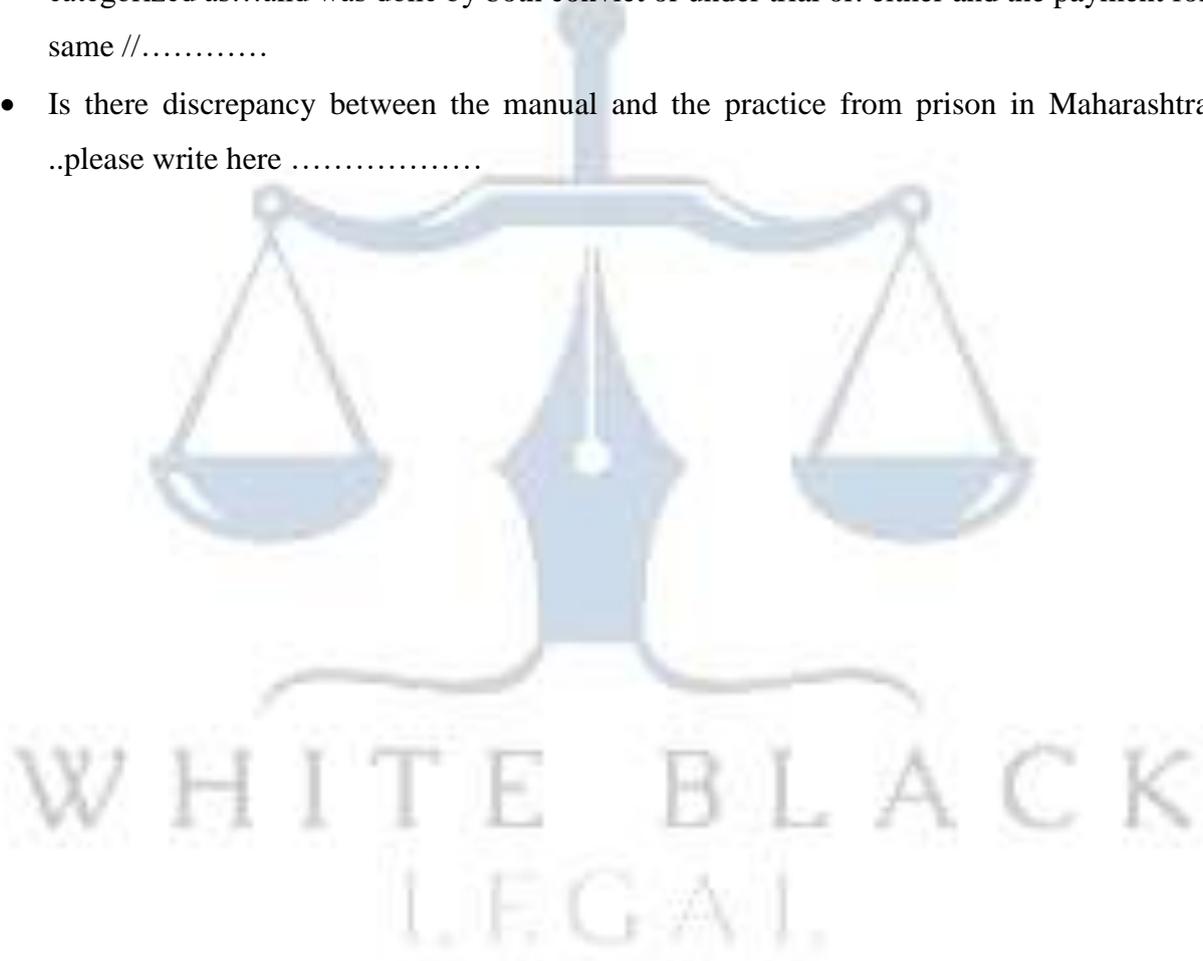
⁵⁵Such a practice can end up becoming an offence under the Prohibition of Employment as manual Scavengers and their Rehabilitation Act, 2013.

⁵⁶P S GopikrishnanUnnithan, Prison platter: Kerala jail ties up with Swiggy to deliver food, *Available at* <https://www.indiatoday.in/india/story/prison-platter-kerala-jail-ties-up-with-swiggy-to-deliver-food-1568058-2019-07-13>

category of prisoners who might be employed.⁵⁷ Where it does lack is that there has to be clear categorisation of work into skilled, semi-skilled and unskilled, so as to ensure a clear system with respect to such work and the corresponding payments.(need to look into my own research)

Please add description – as per the MHA Prison manualyear..⁵⁸states that the kitchen work may be taken up by ...semi skilled / unskilled? Please check and add

- Add reference/ illustration from prison in Maharashtrathe kitchen work was categorized as...and was done by both convict or under trial or. either and the payment for same //.....
- Is there discrepancy between the manual and the practice from prison in Maharashtra ..please write here



⁵⁷Recommendation 30-47, Model Prison Manual, 2016---- 15.17 to 15.25, 24.43-24.44
⁵⁸