

Supreme Court and High Court

Rulings on Prisons

PRISONS AND THE JUDICIAL PROCESS

INTRODUCTORY NOTE

Prisons, as a formal agency of the criminal justice administration has a unique role in a democratic society. They are deployed, both for incarceration of convicts, as well as for providing custodial care to the undertrials. Thus the Prisons give, legal effect to the labours of the investigative and adjudicatory functions performed by the, Police and, the Courts respectively. However, today the Prison agency is said to be in a state of crisis. They are marked by sub-human material conditions, over crowding, lack of sensitivity, weak motivation and rampant corruption amongst the prison functionaries. The main reasons for such a state of affairs are; First, too much priority accorded to Prisons at political and social levels, Second, lack of transparency and visibility of the Prison system in public eyes and Third, inadequate training and orientation of the Prison officials.

In a Rule of Law society the Prisons, like the other criminal justice agencies, function within the legal framework of the Constitutional and Municipal laws that comprise mainly of the Constitution of India, 1950, the Prison Act, 1894, the State Prison Manuals, the code of Criminal Procedure, 1973, the Protection of Human Rights Act, 1993 etc. Though the wide range of statutory laws constitute the normative basis for the Prison functions, but at the actual functional level often doubts and controversies arise regarding the ambit and interpretations of the statutory rules, thereby calling for frequent adjudications by the Courts. In the tradition of the Theory of Precedent the judgements of the appellate courts have a binding or persuasive value for the later decisions on the point. Particularly, the judgments of the Supreme Court of India which are accorded the highest precedential value in terms of the Article 141 of the Constitution which reads: "The law declared by the Supreme Court shall be binding on all courts within the territory of India". Thus, for all the courts as well as other state agencies the Supreme Court rulings constitute, the binding law violation of which can entail contempt proceedings. Similarly; for the concerned state the judgments of the relevant High Courts constitute the binding law.

All this accords to the large number of Supreme Court and High Court.

rulings relating to various aspects of Prison functioning immense significance not only for lawyers and legal activists, but also for the rank and file of the Prison officials. The present endeavour attempts a corroboration of the significant Supreme Court and High Court rulings of the past decade. Effort has been made to present the rulings in a systematic and simplified manner by briefly analysing the facts, main arguments and the ruling of the Court. For the benefit of the non-technical reader each individual case is classified subject-wise and preceded by an issue-wise head-note. The general case-index also provides an issue-wise analysis of each case. The compilation is mainly based on the Supreme Court and High Court decisions reported in the Supreme Court Cases (SCC) and *Criminal Law Journal* (Cr: LJ.).

PRISONS AND THE JUDICIAL PROCESS

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1.1. Political and Administrative Control Over Prisons

State, through Supdt. Central Jail, Delhi

vs

Charulata Joshi*

Held

Where the trial of the accused was pending before the Additional Sessions Judge it cannot be, said that he had no authority to issue permission 'to the Press to interview the under-trial inside the jail. However, there cannot be any dispute with the proposition that the order granting permission to the press to interview an undertrial cannot be passed mechanically without application of mind. Inasmuch as the Court granting permission will have to weigh the competing interest between the right of a Press and the right of the Authorities prohibiting such interview in the interest of administration of justice. The Court therefore before disposing of an application seeking permission to interview an under-trial 'in jail must notice the jail authorities and find out whether there can be any justifiable and weighty reasons denying such interviews. The Court also should try to find out whether any restrictions or prohibitions are contained in the Jail Manual. The so called permission granted by the Court would be subject to the relevant Rules and Regulations contained in the Jail Manual dealing with the rights and liabilities of the under-trial prisoners. No Court would pass such a blanket order mechanically' without applying its mind to the relevant factors, as the Press does not have an unfettered right to interview an undertrial prisoner in jail.

**1999 Cr.L. J. 2273*

1.1 Political and Administrative Control and Classification of Prisoners

1.4

**State of Maharashtra
vs
Sayyed Noor Hasan Gulam Hussain***

Held

Classification of the prisoners and their placement in different prisons is a relevant policy decision with which Courts must be slow to interfere. The gangwise classification of the prisoners under the Circumstances was perfectly just and legal and prudence demanded no deviation from the said policy decision. The discretion and power to interfere no doubt exist but-it has to be very sparingly exercised.

**1995 Cr.L. J. 765*

1.2. Conditions of Prisonization

T.N. Mathur vs State of U.P.*

Facts

The petition raises .the immediate problems of the conditions of the lock-up at a place called Unnao in the State of Uttar Pradesh. It is alleged that the lock-up is wholly unhygienic insanitary and unfit for human habitation. We have a report of the District Magistrate, which confirms that the lock-up is of the size of 11.5 x 8 feet, and that a small latrine of 6" x 11" attached to it is separated only by a dwarf-wall. There are no other basic facilities such as platform for sleeping, chairs or fan etc. The petitioner who has brought this public interest litigation, states that at times 30 to 35 persons are huddled into this cell. This is disputed. But it is virtually undisputed that on occasions 7 persons were housed in it. The minimal civilised conditions required to be maintained for such detentions are not satisfied as the facts disclosed indicate that the conditions are wholly unsatisfactory.

Held

We, therefore, issue an interim direction to the State of U.P. that wherever such detentions are resorted to the persons detained must be housed in a lock-up which will provide at least 40 sq. ft. per person with minimal facilities of some furniture such as a cot for each of the detained persons and supply of potable water. Having regard to the climatic conditions of the place the lock-up should provide for an electric fan. There must be hygienic arrangements for toilet. The State of U.P. shall ensure the satisfaction of these conditions wherever such arrests and detentions are resorted to. ..

*(1993) Supp 1 SCC 722

**I. 2, I. 6. and III. 4 Conditions of Prisonization, Disciplinary and Security,
Measures and Right to Judicial Remedy**

Kewal Pati (Smt.) vs State of U.P.*

Facts

This petition was entertained on a letter sent by the wife of the deceased Ramjit Upadhyaya who was, killed by a co-accused while serving put his sentence under Section 302 IPC in Central Jail, Varanasi. The petitioner and her children have claimed compensation both in law and on compassionate grounds. Reports were obtained from the Inspector General of Prisons UP. and the Superintendent, Central Jail, Varanasi. They confirm that Ramjit Upadhyaya was killed by a co-accused. A counter-affidavit was also filed, by Deputy Jailor, Central Jail, Varanasi admitting that Ramjit Upadhyaya was killed by co-accused, Happu, against whom case under Section 303 has been registered. Affidavit was filed on behalf of the Government as well stating that there was no provision in the U.P. Jail Manual for grant of compensation to the family of the deceased convict.

Ramjit Upadhyaya was a convict and was working as a Nambardar in the jail. He was strict in maintaining discipline amongst the co-accused. It was due to this strictness in his behaviour as Nambardar that he was attacked and killed by Happu – a co-accused.

Held

A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law (See *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* and *A. K. Roy v. Union of India*). Therefore, he was entitled to protection. Since the killing took place 'when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived, the petitioner and, her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of opinion that they are entitled to be compensated.

In the result this petition is allowed by directing that the State of U.P. shall deposit a sum of Rs. 1,00,000 within three months from today with the Registrar of this Court. A sum of Rs. 50,000 out of this amount shall be deposited in fixed deposit in any nationalised bank and the interest of it shall be paid to the wife and the children. The remaining amount shall be paid to the wife by the Registrar after being satisfied about the identification of the petitioner. The amount in deposit shall be paid to the wife on her option after all the children become major. In case of petitioner's death prior to the children becoming major, the amount shall be divided equally between the surviving children.

*(1995) 3 SCC 660

**1.2,1.3,1,.4,1.5, Conditions of Prisonization, Medical Treatment,
Classification of Prisoners,
1,6,1.7, 1.8 Prison Labour, Discipline and Security, Complaint
Procedure, Prison Visiting System.**

Rama Murthy vs State of Karnataka*

Facts

This petition has its origin in a letter from one Rama Murthy, a prisoner in Central Jail, Bangalore, addressed to the Hon'ble Chief Justice of this Court, In the letter the main grievance was about denial of rightful wages to the prisoners despite their doing hard work in different sections of the prison. Mention was also made about "non-eatable food" and "mental and physical torture". On the matter being taken judicially, a need was felt in view of the denial of the allegations in the objection filed on behalf of the respondent that the District Judge, Bangalore, should visit the Central Jail and should find out the pattern of payment of wages and also the general conditions of the prisoners such as residence sanitation food medicine etc. This, order, was passed on 26-11-1992 and the District Judge after seeking time for submitting report from this Court, did so on 28-4-1993. His report runs into more than 300 pages (along with voluminous annexures), which shows the earnestness and pains which the District Judge evinced and took in submitting the report.

It would be enough for our purpose to note the various conclusions arrived at by the District Judge, which have been incorporated in para 23 of the report reading as below :

"23. Therefore on the basis of a thorough and proper enquiry by me in the Central Prison, Bangalore as directed by the Hon'ble Supreme Court, I have reached the following conclusions:

1. The general condition of the prisoners is satisfactory. Their treatment by the Jail authorities is also satisfactory.
2. The quality, quantity and timely supply of food to the prisoners are satisfactory.
3. The pattern of payment of wages is as per Annexure F and it is being followed properly. The wages are correctly recorded and paid to the prisoners as per rules.
4. The residence (the accommodation) to the prisoners in the jail are adequate and satisfactory. But the maintenance of buildings by the PWD Authorities is hopelessly bad for 'want' of funds from the Government according to them.

*(1997) 2SCC 642

5. The sanitation is not satisfactory due to acute scarcity of the water. The jail premises is normally maintained clean and tidy with great efforts. But it is improving since about a month after opening 3 or 4 borewells.
6. The medical facilities in the Jail Hospital and supply of medicines to the prisoners are satisfactory. Due to overpopulation in the jail the two doctors and their staff at present in the Jail Hospital are unable to cope with the demands but still there is no slackness or negligence in their work. For want of a lady doctor and women staff in the hospital the medical attendance to women prisoners is not proper or satisfactory.
7. Visit of prisoners to their homes or their places is not prompt or regular as per rules due to want of police escorts. This has caused lot of dissatisfaction and depression among the prisoners.
8. The production of prisoners in courts on the dates of hearing in their cases is not regular or prompt due to want of police escorts and vehicles. This has affected the expeditious disposal of custody cases in courts. The prisoners are very much agitated over this.
9. The production of in the hospital outside the jail for examination or treatment by the experts is not prompt or regular due to want of police escorts.
10. Mental patients in the jail and the prisoners with serious diseases requiring treatment outside the jail are compelled to remain in jail for want of accommodation in such hospitals.
11. The place and procedure followed for interviews between the Prisoners and their kith and kin friends and visitors is not satisfactory.
12. Canteen facilities should improve. The sale of articles in the canteen at a price above the market price to make profit is causing great hardship to the prisoners.

In view of the above conclusions the District Judge made certain recommendations which are contained in para 24 of the report reading as below.

"In view of the above conclusions the following recommendations are made for consideration and implementation.

1. PWD Authorities in charge of the maintenance of the buildings and the premises of the jail are to be directed to maintain the buildings properly as per the requirement in the jail by getting necessary funds from the Government on priority basis. Necessary instructions may be issued to the Government in this regard to provide funds and to accord permission.
2. Sanitation in the jail premises requires lot of improvement. PWD Authorities are to be directed to repair the existing pipelines and the

sewerage lines in addition to providing electric pumps to the borewells in the jail premises.

3. The staff in the Jail Hospital has to be increased by providing at least 2 more doctors preferably who have specialised in the particular field where the prisoners may require their services in special cases. One lady medical officer a lady nurse and two lady attendants for the purposes of attending the women prisoners. The location of their office may be provided in the separate block meant for women prisoners. If regular posting of doctors cannot be made for the purpose stated above the services of the doctors from other Government Hospitals in Bangalore may be secured as a routine periodically or in case of emergencies by providing them some conveyance. It is suggested that doctors in charge of the Hospital may visit each barrack at least once in a week and meet the inmates to know their health problems and to treat them in Jail Hospital. In case of emergency as agreed by them they may visit the prisoners whenever their service are required.
4. The Jail Authorities may be directed to arrange for the regular visit of the prisoners to their homes or their places periodically as per the rules without insisting on any deposit or security or police report unless it is inevitable and in case of emergency like death, serious illness and other important festivals or functions, arrangements should be made for their visit relaxing all the required formalities. By way of follow-up action, the Jail Authorities may be instructed to submit the report of the returns to the Prl. City Civil and Sessions Judge, Bangalore one in a month in this regard in addition to special reports as and when it is necessary or as per the directions of the Prl. City Civil and Sessions Judge, Bangalore. For this purpose the Home Department has to be requested to spare sufficient number of police escorts and the vehicles as and when it is required by the Jail Authorities. If possible as suggested by the Superintendent of Jail, some fixed number of escorts may be permanently posted to work in the jail to assist the Jail Authorities in cases of visits due to emergencies.
5. The Superintendent of the Jail may be instructed to produce the UTPs before the courts in which their cases are pending on the dates of hearing fixed by the courts regularly and promptly. For this purpose the Home Department of the Government may be requested to spare sufficient number of police escorts and the vehicles as and when it is required by the Jail Authorities. The Superintendent of the Jail has to be instructed to submit a report in this regard at least once in a month to the Prl. City Civil and Sessions Judge, Bangalore in compliance of such instructions.
6. The Superintendent of the Jail should take all the steps to produce the prisoners to the Hospitals outside the jail for the purpose of examination and treatment wherever necessary as per the opinion of the jail doctors and for this purpose also the same procedure may be followed regarding police escort as stated above.

7. All the hospitals under the control of the Government who are expected to treat the prisoners either in the normal cases or in special cases may be strictly instructed to treat the prisoners either as in-patients or otherwise as per the recommendation of the jail doctors and the Superintendent of the Jail without referring them back. to the jail for treatment, particulalry incase of mental patients the NIMHANS Authorities may be requested to treat them as in-patients till they become normal without referring them back to the jail.
8. It is absolutely necessary to provide proper accommodation with sufficient space for the interviews between the prisoners and their kith and kin friends and visitors. The procedlirewhich is being followed at present is also required to be modified as suggestedin the discussions stated above in para 20. If possible separate portions may be made in the accommodation for the purpose of interviews. The Superintendent of the Jail may be instructed to submit the report in this regard at least once in 3 months to the Prl. City Civil and Sessions Judge, Bangalore who may review the same and issue instruction as and when it is necessary. .
9. Canteen facilities in the jail requires improvements. Some more articles for day-to-day use of the inmates. may be sold in the canteen. The Superintendent of the Jail may in consultation of the prisoners submit a report in this regard to the Prt. City Civil and Session Judge, Bangalore mentioning the articles which may be sold in the cantee. The Jail Authorities should be strictly it instructed not to sen any of the articles to the prisoners at a rate more than the market price or for profit. For this purpose, they may adopt any procedure whereby the articles can be held on the principle of 'no loss no profit'.
10. It may be necessary to instruct foilow-up action by all the authorities concerned in regard to the implementation of the items stated above.

Before proceeding to lay down the do's and don'ts it would be useful to note what is the general position of prisons in the country presently. To bring home this it would be enough to note what has been mentioned in the 1994-95 Annual Report of National Human Rights Commissibn in this regard at p.13 in para 4.17. The same is as below:

"The situation in the prisons visited was varied and complex. Many, such as Tihar Jail in Delhi were overcrowded yet others, like the open jail in Hyderabad were under utilised. Often, within a single State, conditions varied from one jail to another in this respect, pointing to the need for a more rational State-wide use of facilities. The Commission saw a few jails which were notably clean and where the diet was reasonable such as the Central Jail in Vellore. Unfortunately it saw many others which are squalid, such as the newly constructed Central Jail in Patna. In yet others. the diet was inferior, and the management was denounced by the inmates as brutal and corrupt. In some, care was being taken to separate juveniles from others, petty offenders from hardened criminals. In others no such care

was being taken and the atmosphere appeared to nurture violence and criminality. In a few major efforts were being made to reform conditions, to generate employment in a worthwhile and remunerative way to encourage education and restore dignity. In others callousness prevailed, prisoners were seen in shackles, mentally disturbed inmates - regardless of whether they were criminal or otherwise - were incarcerated with others, with no real attention. These are: (1) overcrowding; (2) delay in trial (3) torture and ill-treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7), deficiency in communication; (8) streamlining of jail visits; and (9) management of open-air prisons.

Held

Even if overcrowding be not constitutionally impermissible there is no doubt that the same does affect the health of prisoners for the reasons noted above. The same also very adversely affect hygienic conditions. It is, therefore, to be taken care of.

The recent decision of this Court requiring release on bail of certain categories of undertrial prisoners, who constitute the bulk of prison population has to result in lessening the over capacity. It would be useful to refer here to the Seventy-Eighth Report of the Law Commission of India on "Congestion of Undertrial Prisoners in Jails". The Commission has in Chapter 9 of the Report made some recommendations, acceptance of which would relieve congestion in jails. These suggestions include liberalisation of conditions of release on bail. It may be pointed out that it has already been held by this Court in *Babu Singh v. State of U.P.* and *Gurbaksh Singh Sibbia v. State of Punjab*, that imposing of unjust or harsh conditions, while granting bail are violative of Article 21.

We require the authorities, concerned to take appropriate decision on the recommendations of the Law Commission within six months from today.

Overcrowding may also be taken care of by taking recourse to alternatives to incarceration. These being: (1) fine; (2) civil commitment; and (3) probation. There is an enlightened discussion on these judicial choices in Chapter IV of *Justice, Punishment, Treatment* by Leonard Orland. In that Chapter (of 1983 Edn.) the learned author has referred to many cases on this subject and has pointed out the difference between "civil" and "penal" institution from the perspective of the inmate. As to release on probation, it may be stated that it really results in suspension of sentence, as the person released on probation is required to execute bond under the provisions of the Probation of Offender Act, 1958, requiring maintenance of good conduct during the probationary period the failure to do which finds the person concerned in prison again. That Act has provision of varying conditions of probation

and has also set down the procedure to be followed in case of the offenders failing to observe those conditions.

Overcrowding is reduced by release on parole, as well, which is a conditional release of an individual from prison after he has served part of the sentence imposed upon him. Various aspects, of parole have been dealt, in Chapter 11 of Professor Orland's aforesaid book. In *Suresh Chandra and Krishan Lal* liberal use of parole was recommended by this Court.

22 (1983) 4 SCC 645 : 1983 SCC (Cri) 879 : AIR 1983 SC 1155 : (1984) 1 SCR 1

23 (1978) 1 SCC 579 : 1978 SCC (Cri) 133 : AIR 1978 SC, 527 : (1978) 2 SCR 777

24 (1980) 2 SCC 565 : 1980 SCC (Cri) 465 : AIR 1980 SC 1632 : (1980) 3 SCR 383

Reference also made in this connection to Chapter 20 of the Report of All India Committee on Jail forms (headed by Justice A.N.Mulla) 1980-83) Vol I. That chapter deals with the system of remission leave and premature release. The Committee has mentioned about various types of remission and has made some recommendations to streamline the remission system. As to premature release which is the effect of parole the Committee has stated that this is an accepted mode of incentive to a prisoner as it saves him from the extra period of incarceration it also helps in reformation and rehabilitation. The Committee has made certain suggestions in this regard too. We direct the authorities concerned to take appropriate decision on the suggestions within a period of six months from today. It may be pointed out that there is really a grievance about allowing the recommendations to remain in cold storage. [See article of T. Ananthachari "*Human Rights Behind Prison Walls*" Published at pp. 35-47 of the 1995 Report by Commonwealth Human Rights Initiative (an NGO) titled "*Behind Prison Walls – Police, Prisons and Human Rights*"] While taking appropriate decision, the authorities may apprise themselves of what has been in chapter 6 (headed "Parole") of the British White Paper on "*Crime, Justice and Protecting the Public*" (1990).

The recent judgements of this Court (noted above) requiring release of UTP on bail where the trial gets protracted would hopefully take care to a great extent to the hardship caused in this regard. We desire to see full implementation of the directions given in the aforesaid cases.

Another aspect to which we propose to advert is the grievance very often made about non-production of UTPs in courts on remand dates. The District Judge in his report has also found this as a fact. The

reason generally advanced for such none production is want of police escorts. It has to be remembered that production before the court en remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is far this reason that actual production of the prisoner is required to be insured by the trial court before ordering for further remand, as pointed out in a number of decisions by this Court.

We are also conscious of the fact that police force in the country is rather overworked. It has manifold duties to perform. In such a situation it is a matter for consideration whether the duty of producing UTP on remand dates should not be entrusted to the prison staff. To enable the prison staff to do so, it would however need escort vehicles.

May we say that the ideal prison and the advance prison system which the enlightened segment of the society visualises would not permit to future and ill-treatment of prisoners. Of course, if for violating prison discipline some punishment is required to be given, that would be a different matter.

The recommendations of the Committee in this regard are to be found in Chapter 29. We have nothing useful to add except pointing out that society has an obligation towards prisoners health for two reasons. First the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no. physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap.

There is not much to doubt that the rules contained in jail manual concerned dealing with food and clothing etc. to be given to prisoners are not fully complied with always. All that can usefully be said on this aspect is the person who. are entitled to inspect jails should do so after giving shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar Jail during some period needs to be adopted in other jails also. The complaint received must be fairly inquired into and appropriate actions against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.

We have travelled a long path. Before we end our journey, it would be useful to recapitulate the directions we have given on the way to various authorities. These are :

- (1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the effect of "*Congestion of undertrial prisoners in jail*" as contained in Chapter 9.
- (2) To apply mind to the suggestions of the Mulla Committee as contained in Chapter 20 of Vol. I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful..
- (3) To consider the question of entrusting the duty of producing UTPs on remand dates to the prison staff.
- (4) To deliberate about enacting of new Prison Act to replace the century-old Indian Prison act, 1894 (para 33). We understand that the National Human Rights Commission has prepared an outline of an all-India. statute, which may replace the old Act; and some discussions at a national level conference also took place in 1995. We are of the view that all the States must try to amend their own enactments, if any, in harmony with the all-India thinking in this regard.
- (5) To examine the question of framing of a model new All India Jail Manual as indicated in para 33.
- (6) To reflect on the recommendations of the Mulla Committee made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps.
- (7) To ponder about the need of complaint box in all the jails.
- (8) To think about introduction of liberalisation of communication facilities.
- (9) To take needful steps for streamlining of jail visits as indicated in para 44.
- (10) To ruminate on the question of introduction of open-air prisons at least in the District Headquarters of the country.

I. 2. Conditions of Prisonization :

1.5. Prisoner Labour :

111.2. Prisoner's Right to Personal Liberty :

Gurdev Singh and Others
vs
State of Himachal Pradesh.

Held

We, proceed to reject the submission that the State can put the prisoners, sentenced to rigorous imprisonment, to hard labour without payment of any wages in view of the nature of the sentence they serve. Equally untenable is the plea that living of better facilities and payment of wages to them would mean creating an impression that committing of crime and going to the prison is a better mode of living and earning wages. This kind of understanding of the matter is completely misconceived. "It is difficult to comprehend the matter in this' way. No one, would like to commit crime, suffer indignity and undergo obligatory hard labour by losing all benefits which a free man can otherwise avail in the society. While examining this kind, of argument, the learned Judges of the Kerala High Court in AIR ,1983 Kerala 6 (In the matter of : Prison Reforms Enhancement of Wages of Prisoners) said in para 14 of the judgement that:

"It appears to us that it would be unreasonable to assume that merely because a person is moderately well-fed and looked after under humane conditions in the jail he is unconcerned with the sentence or feels happy in the jail. To a person under restraint the most valuable right the absence of which he feels deeply, is his personal freedom, the freedom to move about freely in society the freedom to associate with his kith and kin and the freedom to work as he likes to earn and maintain his dependants. The absence of access to the affection of the members of his family makes him emotionally upset and he waits for the day when he will be able to go back to his home for a reunion with his close relations and friends. Everyday of his sentence is of court to him materially. Quite often we have come across prisoners sentenced to imprisonment for a fairly long terms feeling, aggrieved about a mistake of a few days in computing set off of their term of imprisonment they have to undergo. It may appear that it matters little to a prisoner who is to be released 7 years later that there has been a failure to deduct 5 days by way of set off. But it is not so. We have seen that really it matters to him much. He is keenly alive to the mistake and seeks to get the mistake corrected at the earliest., He is always and at all times certain of how many years, days and months he had spent in jail.

**1992 Cr.L.J. 2542*

All these indicate how valuable to him the prospect of freedom after the period of sentence is. Many accelerate their release by purchasing remission parting with the few paise that they earn by way of wages and by donating blood in the hope that this process takes them nearer to the day when they can be back 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".

We feel the State Government should undertake comprehensive jail reforms within a year by appointing a high power committee comprising of members from jail administration, social activists and criminologists to advise the State Government in this field. In addition to various other important aspects, the Committee will also look into matters like: (1) opening of more Open Air institutions with sufficient agriculture land attached to it so that prisoners hailing from rural areas with agricultural background may continue to work in the same atmosphere and rehabilitate suitably in their villages; (2) provision for adequate food for inside and outside jails; (3) provision for different jails correctional institutes for young prisoners, juvenile offenders, hardened criminals and other prisoners who suffer from mental aberrations; (4) opening of more Open Air Jails in the State and one exclusively for women; (5) provisions for education and vocational training; (6) liberal remission and regular paroles; (7) greater opportunities to meet friends and near relatives and facilities to follow them to discuss their problems away from the policemen's gaze; (8) proper attention for health and entertainment facilities for prisoners; (9) comprehensive scheme for procurement of work for them and payment of reasonable living wages therefore (10) provision for better dieting facilities etc.; (11) comprehensive management of their wage funds and (12) provision for after release guidance and help.

Subjecting prisoners, sentenced to rigorous imprisonment, to hard work and providing work to others is not at all bad. However the same has to be done keeping in view their will physical strength and the uppermost obligation to make payment for the work got done from them. There has to be no distinction between the work inside the prison and outside it. Similarly there has to be no distinction between open prisons and closed prisons.

Remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the State. The payment has to be equivalent to the services rendered, otherwise it would be 'forced labour' within the meaning of Art. 23 of the Constitution. There is no difference between a prisoner serving

sentence inside the prison walls and a free man in the society. Although on account of incarceration, a prisoner may lose enjoyment of some of the rights, but there is no total extinction by reason of the jail sentence. Section 53 of the Indian Penal Code may provide for assignment of work in cases of rigorous imprisonment, however; it does not say that the labour provided by such a prisoner has to be free. Again, it does not envisage subjecting the prisoner(s) to obnoxious, harsh and unclled for duties which are ex-facie condemnable.

"15. Now the next question that arises for consideration is whether there is any breach of Art. 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another. against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Art. 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'.

There is no reason why, the word 'forced' should be read in a narrow and restricted manner as to be confined only to physical or legal

'force' particularly when the national character, its fundamental document has promised to build a new socialist republic where there will be socio- economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not un often that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wages. Of course, if a person provides labour or service to another against receipt of the minimum wage it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Art. 23. Such a person would be entitled to come to the Court for enforcement of his fundamental. right under Art, 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour and the breach of Art. 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint really in effect and substance a complaint against violation of the fundamental right of the workmen under Art. 23."

1. 4. Classification of Prisoners

Satish Kumar vs State of Haryana*

Facts

The conviction of the appellant for the offender under Sections 302/201 Indian Penal Code and the sentence of rigorous imprisonment for life and one year respectively for the said offences as imposed by the trial court was upheld by this Court reversing the order of acquittal made by the High Court. It is not denied that the appellant who is a graduate had been given 'B' Class facilities in the jail, both during the period of trial and subsequently after conviction also.

By government instructions issued on 21-1-1985, 'B' class facilities were sought to be withdrawn from the convicts who are convicted for committing murder of the bride for dowry.

Held

.In the instant case, on facts, it deserves to be noticed that no finding was recorded either by the trial court or by this Court that the appellant had committed the murder of his wife, Smt. Shashi Bala, on account of non receipt of dowry. It is conceded that there is no finding that it was a case of dowry death. On facts, therefore, the government instructions issued on 21.1.1985 would not be applicable to the case of the appellant. Even otherwise, we have doubts whether Para 576-A of the Punjab Jail Manual could be amended by mere executive instructions, as has been done on 21.1.1985, and the effect of the instructions being extended even to cases where convictions stood already recorded, but we express no opinion on that issue and leave that question open to be decided in an appropriate case.

The appeal succeeds, on facts, and the respondents are directed to give the benefits of 'B' class facilities to the appellant while undergoing the sentence in jail.

**(1995) Supp 3SCC 661*

1.5 Prison Labour

State of Gujarat vs Hon'ble High Court of Gujarat*

Held

Per Thomas, J.

There are principally two categories of prisoners: (1) under trial prisoners and (2) convicted prisoners. (Besides them, there are those detained as a 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 out number all the remaining categories put together. Jail authorities are enjoined by a law to impose hard labour on a particular section of the convicted prisoners who have been sentenced to rigorous imprisonment. 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. A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. Thus 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. ..

Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600 : (1961) 3 SCR 440; Naib Singh v. State of Punjab, (1983) 2 SCC 454 : 1983 (Cri) 536 : AIR 1983 SC 855 relied on.

Section 374 IPC makes imposition of work on an unwilling person on offence. 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 and the jail authorities cannot disobey the directions of the court which passed the sentence. No prisoner sentenced to rigorous imprisonment can conceivably complain that the jail authorities committed the offence under Section 374 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 sentenced to rigorous imprisonment. Neither the undertrial internees nor the detainees with simple imprisonment nor even detenus. Who are kept in jails as a preventive measure can be asked to do manual work during their prison term. It is a different matter that he is allowed to do it at his request.

. In Article 23(1) three unsocial practices are prohibited : (1) traffic in

*(1998) 7SCC 392

human beings. (2) begar and (3) similar forms of forced labour. Traffic in human beings means trade in human beings. The expression "forced labour" seems to be collected with the word "begar". The word "begar" is of Indian origin and has in the 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 receiving any remuneration for it. When the Constitution qualified "forced labour" by associating it with other words "begar and other similar forms" it was not for shrinking the scope of the prohibition to some types of forced labour. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as force.

S. Vasudevan v. S.D. Mital, AIR 1962 Bom 53: 63 Bom LR 774; People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473, relied on.

The ban against traffic in human beings is absolute while prohibition against "forced labour" is made subject to one exception under Article 23(2), i.e., the States is permitted to impose compulsory service if such services necessary for a public purpose. Otherwise the ban against forced labour is also absolute. So the question arises, whether such compulsory labour can be justified by testing it on the touchstone of "public purpose". What public purpose can possibly be served by exacting such labour work from convicted prisoners?

This brings into consideration whether deterrence is the main objective for punishment. Among the conflicting theories for punishment modern criminologists are highlighting the reformatory effect on the punished criminal as the most germane aspect. 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. Forces which condemn a prisoner and consign him to the cell as a case of irredeemable character belong to the pessimistic reformation through punishment as grounded on the sublime philosophy that every man is born good but circumstances transform him into a criminal. 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 for 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. A reformatory approach is not very much intertwined with a rehabilitative aspect. to a convicted prisoner.

Mohd. Giasuddin v. State of A.P., (1977)3 SCC 287 : 1977 SCC (Cri) 496; relied on

Therefore, a directive from the court under the authority of law to subject a convicted person who has been sentenced to rigorous imprisonment to compulsory manual labour gets legal protection under the exemption provided in Article 23(2) because it serves a public purpose.

There is no substance in the argument that in a country like ours where unemployment among youth is so rampant and acute, a life assuring a reasonably 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. That argument will not and should not deter the Court from incarceration in jails whatever comfort and monetary benefit it may provide to him. 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 only reminiscent of the period of slavery and the system of begar. Also paying a pittance to them is virtually payment nothing. Even in the amount paid to them is a little more than a nominal sum, the resultant position would remain the same.

D. Bhuvan Mohan Patnaik v. State of A.P. (1975)3 SCC 185: 1974 SCC (Cri) 803, relied on

While considering the quantum of wages to the prisoners, the contemporary legislative exercise have to be taken into account. The Minimum Wages Act has now come to stay. 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 something more than subsistence wage which may be sufficient to cover the bare physical needs of the worker and his family including education, medical needs, amenities adequate for preservation of his efficiency. Several guidelines have been provided by the legislature for fixing the rates of minimum wages and the need to make periodical revisions.

Express Newspaper (P) Ltd. v. Union of India, AIR 1958 SC 578 : 1959 SCR 12: (1961).1LLJ 339, relied on

Prison Reforms Enhancement of Wages of Prisoners. In re, 1983 KL T 512 Jail Reforms Committee v. State of Gujarat, (1985) Cri. Ref. No. 2 of 1984, dt. 31-1-1985 (Guj) (FB), approved

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 or unsocial in it. But the Government cannot deduct any substantial portion from the wages on that account. The Government can arrive at the

reasonable percentage to be deducted from the minimum wages taking into account the average amount which the Government is spending per prisoner for providing food, clothes and other amenities to him.

Gurdev Singh v. State, AIR 1992 HP 76 : 1992 ,Cri LJ 2542 (HP), over ruled.

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 dependents of the prisoner himself and the balance, after deducting the amount expended by him for his extra expenses, is preserved to be disbursed 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 the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eye towards the suffering victims. The 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 the second type comprises of indirect victims who are dependents 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.

Section 357 has not proved to be of much effectiveness. Many persons who are sentenced to long-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 case 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 the Court is constrained 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 300-A of the Constitution. Hence it is suggested 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 prisoners 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 Governments to 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.

Bhagwan Anna Arbune vs State of Maharashtra*

Held

The breaches of conditions for suspension of sentence or parole or furlough are declared as prison offence under S. 48A of the Prison Act, in case of any such breach, the Superintendent is empowered to punish such offence by imposing various punishments mentioned in the said section. One of the punishments is loss of privilege admissible under the remission or furlough or parole system. The State government has framed Rules provides a maximum cut out of 5 days remission for each day of over-stay.

The discretion conferred upon the Superintendent is not arbitrary and unguided. The Superintendent is required to follow principles of natural justice before imposing the punishment. He is also obliged to state reasons for the imposing of the punishment. If the punishment is forfeiture of ordinary or special remission for more than 60 days or for removing the prisoner from the remission system for a period exceeding one year, previous approval of the Inspector General is necessary. There is no arbitrariness in the scheme laid down by the provisions of the Act and the Rules framed by the State Government. It is, therefore, not possible to accept the submission that the punishment imposed upon the petitioner for over-stay of 449 days after the parole period was illegal or violative of Art. 14 of the Constitution.

**1994 Cr.L.J. 1477*

1.6 Disciplinary and Security Measures

Watchdogs .International vs Union of India*

Held

This case reveals a sorry state of affairs within Tihar Jail. It appears that some criminals termed as "Munshi Kedis" stated to be authorised to supervise the movements of prisoners in the jail, severely assaulted the deceased inside Tihar Jail resulting in his death. The counsel for the Union of India has failed to produce before us any legal sanction for appointment of such Munshi Kedis. After the death of Raj Kumar within Tihar Jail inquest under Section 176 CrPC was conducted by the Sub-Divisional Magistrate, Punjabi Bagh. It has been indicated in the said report that the said Raj Kumar had died due to the injuries sustained by him during the course of beating in Jail No. 4, and there was delay and apparent Carelessness in giving prompt medical attention to be deceased Raj. Kumar. Raj Kumar was shuttled from one hospital to another and considerable time was taken by such process. The Magistrate has suggested that the matter should be inquired into and remedial action should be taken. In the report, the Magistrate has also indicated that Raj Kumar had died in jail custody on account of criminal misuse of the position by the convicts termed as "Munshi Kedis" Therefore the system of "Munshi Kedis" should be reviewed. In the affidavit, it has been mentioned that the recommendations of the Magistrate have been accepted by the Government and appropriate direction has been issued to the IG (Prisons), Secretary (Medical) and Commissioner of Police to take follow-up action. The full text of the report has not been produced before this Court and the directions given pursuant to such report have also (sic not) been filed before the Court. The Inspector General (Prisons) at Tihar Jail is directed to file an affidavit personally indicating the full details under what authority the "Munshi Kedis" are working or had been working in the jail and what steps have been taken to prevent the misuse of power or authority given to Kedis and cases of assault by the convicts known as "Munshi Ked is" let such affidavit be filed within a fortnight from today. The question of granting suitable compensation to the heirs of deceased Raj Kumar will be considered at a later stage. List the matter after two weeks.

*(1998) 8SCC 338

1.2, 1.6 and III. 2. Conditions of Prisonization, Prison Disciplines and Prisoner's Right to Personal ,Liberty'

S. Balamuragan vs LG. Prisons, Madras*

Facts

The facts of the case are that the petitioners in these habeas corpus petition, have filed these petitions under Article 226 of the Constitution of India, praying for a declaration that their detention in the Central Prison, Cuddalore is illegal and to direct their retransfer to Central Prison, Palayamkottai.

The brief facts are as follows: The petitioners are life convicts'serving their term of sentence, after their appeals before the High Court were dismissed. The petitioners were originaly, lodged in the Central Prison Palayamkottai. The petitioner in and then, transferred to Central Prison, Cuddalore.

The further common allegations of the petitioners are, that their oral representations to the jail authorities, to send them back to Central prison. Palayamkottai were of no avail, that the Central Prison at Guddalore is 550 K.Ms.away from their native place, that it is very difficult for their family members and close friends to spend for such travel to meet the petitioners at Cuddalore as wherein the Supreme Court has held that where the rights of a prisoner either under the Constitution or under other law are violated, the writ power of the Court can and should run to his rescue. There is a warrant for this vigil. Inflictions may take many protean forms apart from physical assaults. Pushing the prisoner into a solitary cell denial or a necessary amenity and more dreadful sometimes, transfer to a distant prison, where visits or society of friends or relations may be snapped etc. may be punitive in effect and every such affliction or abridgement is an infraction of liberty or life its wider sense and cannot be sustained unless Article 21 is satisfied. Visits to prisoners by family members and friends are a solace in insultation, and only a demumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject; of course, to search and discipline and other security criteria, the right to society of fellamen parents, and other family members cannot be denied in the light of Art. 19 and its. sweep. Moreover the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted. by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory. There is no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. Subject to considerations of security and discipline liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected.

**1996 CrLJ. 1779*

In the counter-affidavit, it is also stated that there are executive instructions to consider the cases of such prisoners, who show improvement in their behaviour and conduct in a period of three years for re-transfer to their parent prisons. In the circumstances, we are of the view that this is not a fit case wherein the ratio laid down by the Supreme Court in Sunil Batra's case (AIR 1980 SC 1579) can be applied.

Held

The petitioners, who are undergoing their sentences, indulged in jail offences, like misbehaving with the jail authorities and their family and instigating other prisoners to revolt, etc. Only with a view to correct such prisoners, there is a correctional Institute at the Central Prison, Cuddalore and on the recommendations of the Superintendent of the Central Prison, Palayamkottai, the Inspector General of Prisons, transferred the petitioners, they were very poor, that their detention at Cuddalore Prison is against law and the spirit and direction of the Supreme Court in the case of Sunil Batra v. Delhi Admn. (1980) SCC (Cri) 777 (1980) (Cri LJ 1099)

1.8 Prison Visiting System

Zoii Nath Sarmah vs State of Assam.

Facts

The facts of the case may briefly be stated. The petitioner-1 Shri Zoii Nath Sarmah is an Advocate of this Court and is one of the political leaders in Assam. He was also a Minister. He along with the petitioner-2 Shri Imran Shah, who is also a politician, went to the District Jail at Mangaldoi on 19.3.91 to meet his clients who were undertrial prisoners. The petitioner-1 Shri Zoii Nath Sarmah made an application on 19.3.91 to the Superintendent of District Jail Magaldoi for allowing him in his capacity as an advocate to interview his clients named in his application. But the Superintendent refused him permission in view of a circular issued by the Inspector General of Prisons Assam on 19.2.91.

Relevant Provisions

Cl. (1) of R. 472 of the Assam Jail Manual provides:

"Unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing of otherwise communicating either orally or in writing with their relatives, friends and legal advisers." (Emphasis added)

Political leader is not expressly referred to in Cl. (1) of R. 472. Be that as it may, in *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579, the Supreme Court has held:

"We see no reason why the right to be visited under reasonable restrictions; should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers are part of prisoner's kit of rights and shall be respected." (Emphasis added)

Rule 467 of the jail Manual provides:

"A Superintendent may refuse to allow any interview to which a prisoner would ordinarily be entitled under these rules but in every such cases, if in his opinion it is inexpedient in the public interests to allow any particular person to interview a prisoner or if other sufficient cause exists, he shall record his reasons for such refusal in his minute book." (Emphasis supplied)

*1992 Cr.LJ. 2072

Held

Under Rule 467, the Superintendent is the authority directly entrusted with statutory discretion to consider whether an individual will be allowed to interview a particular prisoner. The Superintendent has to exercise his independent judgment in individual cases taking into consideration the public interest or otherwise. Therefore, the Superintendent being an authority entrusted with statutory discretion he must not while exercising his discretion act under the dictation of any other body or person. If he exercises his discretion under the dictation of a superior officer it would amount to non-exercise of his power or non-application of his mind, and it will be bad. In other words, where the power to act belongs to an authority which ought to act independently, the action taken by him is invalid if he exercises his discretion under external dictation.

In the present case, the circular dated 19.2.91 indicates that the Inspector General of Prisons dictated the Superintendent in the matter of interviewing "Extremist Prisoners" by the political leaders, and, under the dictation of the Inspector General of Prisons, the Superintendent refused to petitioners to meet the prisoners. Therefore, the refusal of the Superintendent to allow the petitioners to meet the prisoners was invalid. In the corollary, the circular-dated 19.2.91 is also invalid because the Inspector General of Prisons has no power to lay down such direction because there is no explicit statutory provision to the effect that such an instruction by a superior shall be binding on the Superintendent and, therefore, it is a clear-cut case of unlawful dictation interfering with the exercise of statutory discretion of the Superintendent.

1.8 Prison Visiting System

Dr. M. Karunanidhi vs State of Tamil Nadu*

Held

Rule 541(1) is to the effect that unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing, with their relatives, friends and legal advisors. The State Government introduced a provision to the said rule, which is in the following terms:-

Provided that in respect of accused and undertrial prisoners under the Terrorists and Disruptive Activities (Prevention) Act, 1987 (Central Act 28 of 1987), only legal adviser and close family relatives, namely, father, mother, husband, wife brother, sister, son and daughter of such prisoner, shall alone be allowed for interviewing such prisoners the prisoner does not have any such close relative then distant relatives alone shall be allowed to have interview, after obtaining orders of the Government in the Home Department. Under no circumstances, friends shall be allowed to interview the prisoner.”

The contention of the Government is that at the time when the prisoners is taken into custody a list of relatives is obtained from him and the Government verifies whether the particulars of such relatives are true. Their antecedents are said to have been checked up by the Government. It is contended that if any other person is to interview the prisoner the upper intendent of Prison will not have sufficient machinery or time to verify the antecedents and permit them to have interview and that is the reason why such distant relations are made to apply to the Home Department and get orders. If the object of introducing the provision is for security reason, then sufficient safeguards can be made otherwise than by the provision not introduced. In fact, Rule 530 provides that screens or wiremesh partition shall be put up, if necessary, between the prisoners shall be put up, if necessary, between the prisoners and the persons interviewing them to prevent the passage or introduction of any prohibited articles between them. The Government introduced R. 530A providing for a partition with fibre glass.

The validity of that Rule was challenged in this Court in *Nalini v. State of Tamil Nadu*, 1993 LW (CrL.) 606. The Division Bench which considered the question has referred to the relevant judgments of the Supreme Court and upheld the validity of the said rule. Ultimately, the Division Bench said thus :-

*1994, Cr.L.J. 2599

"Keeping in view, the Courts will have to strike a just balance between the right of the prisoner and the preservation of internal order, discipline and maintenance of institutional security against threat to lives and escape attempts by prisoners, in the background of community as well, the final picture which emerges out, can be formulated as follows:-

- (1) The State Government has power under Ss. 40 and 50 of the Prisons Act, to introduce Rule 530A in the Tamil Nadu Prison Manual and the said Rule cannot be struck down as ultra vires of the constitution or null and void on any reasonable basis.
- (2) A distinction will have to be made regarding interviews between defending counsel and prisoners and prisoners and other visitors.
- (3) Visitors can have interviews with prisoners in the interview room only with the existence of fibre glass partition. They will have to be frisked, checked and monitored before interviews, and if need arises after interviews as well. Visitors will not be permitted to touch the prisoners. Obviously, such touching is not feasible due to existence of fibre glass partition.
- (4) Defending counsel normally shall interview prisoners one at a time, on either side, through fibre glass partition, conversation between them being through intercom facilities, which shall be maintained without any defect any effectively, by prison authorities at all times.
- (5) In the event of an emergent need for communication between counsel and prisoner on non-court hearing date, a single prisoner and a counsel can engage themselves in interview, on the basis of documents, which need manual reading, through an opening in the fibre glass partition, or sliding of the fibre glass partition to the extent necessary and sufficient for the said purpose. A prisoner will be searched before and after the interview and similarly the counsel will have to undergo the process of frisking, checking before and after conclusion of such special interviews.
- (6) Counsel shall continue to have interviews with prisoners in Court Hall, with the permission of the Designated Judge, on hearing date, either individually or collectively, with the prisoners subject of course, to security arrangements, which are now in existence, and admittedly not causing any hindrance, for effective communication between counsel and client, for the security men are stationed within vision of interviewer and the interviewed, but at non-hearing distance. In the event of a dire need, with the permission of the Designated Judge, Court sitting, time can be modulated to facilitate interview in Court Hall, between client and defending counsel.

7. Interviews between visitors and prisoners can be mentioned through a third intercom instrument kept in the prisoner's side of the interview room, as is being done now, but such monitoring shall not be done, when defending counsel interview prisoners, the only exception being, when specific intelligence material is available, needing such monitoring, in which event, counsel shall be apprised of such monitoring, in advance.
8. Neither the visitor nor the counsel, will be allowed to touch the prisoner under any circumstances, at least so far as the present exigencies, exist.
9. Whenever circumstances so demand, documentary communication, if any, between counsel and prisoner can be censored, for the need to detect passing of incriminating material would certainly outweigh the prisoner's right to unmonitored communication with counsel"

There are sufficient safeguards in the Rules and introduction of the provision to Rs. 541 (1) may be wholly unnecessary. If a visitor the prisoner or to have direct contact with him, or to have an interview with him in the absence of an official, there is not question of any risk of the security by allowing him to have the interview.

1.9. Remissions and Parole

State of Punjab vs JoginderSingh*

Facts

The appeals involve the interpretation of paragraphs 516-B and 631 of the Manual for the Superintendence and Management of Jails in the Punjab. The preface to the Manual shows that those paragraphs of the Manual against which a black line appears are, in substance, either quotations from the law, or, from the rules having the force of law, the authority having been indicated on the upper right and margin of each paragraphs whereas the paragraphs which have not been blacklined are executive instructions issued from time to time by the Government of India, or the local government or the Inspector-General with the sanction and approval of the local government. It may at once be mentioned that paragraph 516-B contained in Chapter XV entitled 'Release of Prisoners' is not blacklined while paragraph 631 contained in Chapter XX entitled 'Remission System' is blacklined.

Held

Remission schemes are introduced to ensure prison discipline and good behaviour and not to upset sentences; if the sentence is of imprisonment for life, ordinarily the convict has to pass the remainder of his life in prison but remissions and commutations are granted in exercise of power under Sections 432 and 433, CrPC carving out an exception in the category of those convicts who have already enjoyed the generosity of executive power on the commutation of death sentence to one of life imprisonment. Even in such cases Section 433-A of the Code or the executive instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insist that he shall have served time for at least 14 years. In the case of other 'lifters' the insistence under the 1971 amendment is that he should have a period of at least 8½ years of incarceration before release. The 1976 amendments.

Gopal Vinayak Godse v: State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440: (1961) 1 CriLJ 736: *Maru Ram v. Union of India*, (1981) 1 SCC 107: (1981) 1 SCR 1196: 1981 SCC (Cri) 112, referred to

The Note at the foot of Para 631 is neither an integral part of paragraph 631 nor does it have statutory favour. The Note at the foot of paragraph 631 merely reproduces paragraph 516-B, the marginal note thereto say so in no uncertain terms and therefore, the note can't be ascribed a statutory character. According to the preface only those paragraphs which are blacklined have statutory character. The Note in question is

*(1990) 2SCC 661

not so blacklined. Where the Note is intended to be given statutory character it is blacklined. Secondly, the source of paragraph 516-B and the note is the very same. Resolution Nos. 159-167 of the Government of India dated September 6, 1905. The same resolution cannot be said to have been intended to be a mere executive instruction in one part of the Manual and was intended to be conferred a statutory character in another part of the same Manual. Thirdly the marginal note to the Note in question in terms refers to paragraph 516-B which means it was merely a reproduction of the latter paragraph 'was not intended to confer a statutory character. Lastly, paragraph 631 classifies prisoners and fixes the duration of their sentences. The Note at the foot of the paragraph is by way of a reminder that notwithstanding the duration fixed under the said rule Paragraph 516-B requires that cases of such prisoners should be submitted on the expiry of the duration fixed under paragraph 516-B. It is therefore not possible to accept the view that the Note below Para 631 was also statutory in character like the main provision and therefore, in case of conflict between the Note and the amended Para-516-B the Note would prevail. However paragraph 516-B in so far as it stands amended or modified by the 1971 and 1976 executive orders is prospective in character.

1.9 and III. 1 Remission and Parole and Prisoner's Right to Equality

State of M.P vs Mohan Singh*

Facts

These appeals by special leave impugn the judgements and orders of Division Benches of the High Court of Madhya Pradesh. The High Court allowed several writ petitioners and directed the respondent State to give to the writ petitioners the benefit of a special remission which the State had restricted to prisoners belonging to the Scheduled Castes and Scheduled Tribes and to female prisoners.

The writ prisoners contended that the special remission granted to prisoners belonging to the Scheduled Castes and Scheduled Tribes and denied to other prisoners, such as the writ petitioners, violated their right to equality. He prayed that the State should be directed to allow the special remission to him. The contention of the State in its return was that prisoners belonging to the Scheduled Castes and Scheduled Tribes and denied to other prisoners, such as the writ petitioner, violated their right to equality. He prayed that the State should be directed to allow the special remission to him. The contention of the State in its return was that prisoners belonging to the Scheduled Castes and Scheduled Tribes constituted a class and the special remission could validity be given to them. The High Court came to the conclusion that the benefit of Article 15(4), which the State relied upon, was unavailable as a defence in as much as the provision for special remission could not be said to have been made for the advancement of the Scheduled Castes and Scheduled Tribes. The grant of special remission to prisoners belonging to the Scheduled Castes and Scheduled Tribes and denial of the same to other prisoners amounted to discrimination.

Held

Here we part company with the High Court. Having come to the conclusion that the grant of special remission to Scheduled Castes and Scheduled Tribes prisoners was unlawful, the proper course to adopt should have been to strike it down. It was beyond the High Court's power to expand the reach of the remission so as to give the benefit of it to the writ petitioner, who did not belong to the Scheduled Castes and Scheduled Tribes. The power to grant the remission lay with the State. If the power was improperly exercised, the High Court could quash the exercise. The High Court could not, in effect, grant a general remission where the State had intended it to be restricted.

This Court had made it clear that in the event that special leave was granted, the respondents would not be asked to go back to jail. We think that those who have obtained the benefit of the High Court's order must be permitted to retain it and they cannot now be required to serve out the terms in respect of which they got such benefit

*(1995) 6SCC 321

1.10. Premature Release

Peesa Jayalakshmi
vs
Secy. Home Dept. Govt. of A.P., Hyderabad*

Facts

One P. Narasimhulu is undergoing sentence of life imprisonment in the Central Jail, Rajahmundry pursuant to the judgment of the learned Additional Sessions Judge, Srikakulam in S.C. No. 2 of 1980 who imposed that sentence of life imprisonment having found him guilty of an offence punishable under Section 302, I. P.C. The said convict's wife is that petitioner in this writ petition. She says that under the orders issued by the Government in G.O. Ms. 195, Home (Prison-C) Department her husband is entitled to be released as he has completed 10 years of imprisonment as on January 14, 1995. She, therefore, prays that her husband be released from jail by issuing a writ of habeas corpus directing the respondents to produce him before this Court and to set him free.

The Superintendent Central Jail, Rajahmundry filed a counter affidavit, stating, inter alia, that the convict has not completed ten years of actual sentence for availing the benefit of G.O. Ms. No. 195, Home (Prisons C) Department dated 30.6.1995 as on January 14, 1995. In the circumstances, he prays for dismissal of the writ petition.

2. Heard the learned counsel for the petitioner as well as the learned Additional Advocate General.
3. The short question that arises for consideration is whether the convict is entitled to the benefit of G.O. Ms. No. 195, Home (Prison C) Department.

Held

He was on bail for a total period of nine years six months and 21 days. We have to exclude this period to find out the actual sentence undergone by the convict. Thus the actual sentence undergone by the convict is 4 years, 7 months and 24 days. The convict was on parole on various dates during different periods amounting to 11 and 4 days. That period also will have to be excluded. By excluding that period the actual period of sentence will come down to 3 years 8 months and 20 days.

Thus it is clear that the convict has not completed 10 years of imprisonment as on 14.1.1995. The writ petition is therefore, liable to be dismissed and it is accordingly dismissed.

**1997 Cr.L.J. 2025*

I. 9 Remissions and Parole

I. 10 Pre. mature Refease

Sarjerao Pole vs State of Maharashtra*

The court noted that the prisoner released on parole for the period of 10 days was and thereafter his period of parole was extended by 10 days. The circumstances do indicate that he had applied for extension of period of parole but further extension was not granted to him and ultimately he surrendered before the prison authorities in August, 1985. On his surrender, no action was taken against him for remaining outside jail without authority and no explanation was obtained from him as to why he remained outside jail without authority the affidavit filed by the State does not indicate that the concerned authorities had obtained any explanation of the prisoner before passing the order of punishment

The court said that if immediately or returning to jail, explanation had been sought from the prisoner and if after considering that explanation, the order of punishment had been passed it would have been proper and legal. Now nearly 11 years after that incident without obtaining any explanation from the prisoner, the order of punishment is passed.

The court further stated that the Rule 2 of the notification does indicate that discretion is vested in the Superintendent of Jail in according punishment for unauthorised absence and three condition are imposed before exercising such discretion: (1) due regard to the Circumstances of the case; (2) after obtaining prisoners explanation; and (3) prior approval of the Inspector General or Deputy Inspector General if required under clause (1); and the rule further makes it clear that if the Superintendent is satisfied that the contravention was for good or sufficient that the contravention was for good or sufficient reason, he may excuse the prisoner was prior approval of the Inspector General of Prison was obtained before imposing the punishment vide letter dated 12.3.1997, however, the explanation of the prisoner was not obtained, the principles of natural justice require that if the punishment is to be imposed on any person, he should be heard and then the punishment be imposed. Here the specific rule is framed that his explanation should be obtained and no such explanation was obtained and therefore the order of imposing punishment of deduction in remission of two years on account of unauthorised absence from jail for 183 days imposed on the prisoner- Ramrao Dattarao Pole is not legal and proper. It has to be quashed.

**1999 Cr.L.J. 1433*

I. 9 and III. 1 Rerrnssions and Parole and Prisoners Right to Equality

P.V. Bhaktavatchalam vs State of T.N.*

Held

Where prisoners, lifers not eligible for premature release having been convicted under S. 396, IPC were inadvertently released simply because they had undergone 14 years of actual sentence without verifying whether they were persons eligible the order arresting and subjecting them to confinement is valid; particularly when there was nothing to substantiate that order of arrest was malafide and arbitrary. Further the detention being legal, no question of payment of compensation arises.

Under S. 433, the prisoners are not entitled to be released prematurely as a matter of right. Either u/s 433 or under any other section it is entirely the discretion of the Government to release the prisoners prematurely. As a self-imposed restriction, accepting the recommendation of the All India committee of Prison Reforms, the Government had issued the Government Order to the effect that prisoners sentenced under certain sections of the Penal Code are not eligible for pre-mature release. This Government Order has nothing to do with the date conviction, and there is no question of retrospectively.

Government order not making eligible prisoners sentenced for offences which are heinous in character such as rape, forgery, dacoity, terrorist crimes and offences, against the State; and prisoners convicted of economic offences, black marketing, smuggling and misuse of power and authority; and prisoners sentenced under Prevention of Corruption Act, Suppression of Immoral Traffic in Women and Girls Act, Drugs Act and Prevention of Food Adulteration Act, for premature release, is not discriminatory. May be the Government thought that the prisoners who have committed the said offences should not be shown any mercy and that if they are released they may again be a menace to the society. Therefore the Government order is quite reasonable and does not offend Art. 14 or any other Articles of Constitution.

**1991 Cr.L.J. 1870*

1.6. and 1.9 Disciplinary and Security Measure and Remission and Parole

State of Haryana vs Ghaseeta Ram*

Held

In the instant case, the respondent was admittedly convicted and sentenced by the Additional Sessions Judge for committing various offences under the Indian Penal Code, while he was undergoing sentence for a previous conviction vide judgment dated 22.2.1986. An order of cancellation of remission under para 633-A of the Manual could, therefore, be made only after 22.2.1986. It could not precede his conviction. The punishment of forfeiture of remission as already noticed, was imposed by the Superintendent of Jail on the respondent on 17.2.1984, much before his conviction had been recorded by the trial court. This certainly was not permissible under para 633-A of the Manual. The order of punishment dated 17.9.1984, is, thus, not sustainable on the plain language of Para 633-A of the Manual. The respondent appears to have been punished by the Superintendent of Jail under para 613 of the Manual for commission of the prison offence and not under para 633-A of the Manual. The respondent has, therefore, been punished for the same offence twice - once by the Superintendent of the Jail and the second time by the trial court on his conviction for the same offence. It could not be done in view of the bar contained in Section 52 of the Prisons Act read with para 627 of the Manual. The High Court, therefore, committed no error in quashing the order of the Superintendent of Jail dated 17.9.1984.

*(1997) 3SCC 766

I. 10 Premature Release

Karni Dan vs State of Rajasthan*

Held

When the matter was directed to be considered under Rule 135 of the Rajasthan Prisons Rules, 1951 what is meant is that the procedure applicable to all such cases should be followed Rule 135 relates to release of prisoners under the 14 years rule. Section IV of the Rajasthan Prisons Rules, 1951 relates to advisory Boards. Rule 136 provides for constitution of Advisory Board, Rule 137 for the meeting of the Advisory Board, Rule 138 provides for scrutiny by the Advisory board and Rule 139 provides for eligibility criteria for consideration of cases by the Advisory Board. Rule 138 provides that before Advisory Board recommends shortening of sentence or premature release of the prisoners it shall examine the circumstances, in which the offence was committed and the punishment awarded by the Court, previous history had character in the district of his residence, prisoner's conduct in the prison and result of imprisonment already undergone by him, opinion of the Distt. Magistrate and the Supdt. of Police of the district in which the prisoners reside etc. Rule 139 (iii) provides that a prisoner sentenced to more than 14 year imprisonment or transportation for life or to transportation and imprisonment for terms exceeding in the aggregate 14 years and has to serve two third of his sentence including remission shall be entitled for consideration by the Advisory Board. Further provision of Section IV aforesaid provide for the procedure etc. of the Advisory Board Rule 150 provides for consideration by the Govt. of the recommendations of the Advisory board. If we interpret Rule 135 as a power given to the Govt. independent of consideration and recommendation of the Advisory Board it would lead to anormalous situation in which a person whose case is not recommended by the Advisory Board may even be released by the State Govt. without lookin into the recommendation of the Advisory Board. When these provisons are harmoniously constructed, the result is that compliance with Rule 136 to 152 relating to Advisory Board will have to be made before action under Rule 135 is taken. If we interpret the rules otherwise, then the very existence of Rule136 to Rule 152 so far as persons who have been sentenced for more than 14 years imprisonment will become meaningless. There would have been no necessity to include prisoners sentenced to more than 14 years imprisonment under the eligibility criteria provided by Rule. 139 of the rules because such cases could be referred to the Govt. directly without taking them to the Advisory Board under Rule 135, it has, therefore, to be interpreted that even for action under Rule 135 of the case has to go through the Advisory Board.

**1996 Cr.L.J. 1200*

1.10 Premature Release

Balwinder Singh vs State of Punjab*

Facts

Balwinder Singh, a life convict confined Central Jail, Amritsar, has filed this petition under Section 432 of the Code of Criminal Procedure (hereinafter referred to as the Code) read with Arts. 226/227 of the Constitution of India, seeking his pre-mature release.

The case for premature release of the petitioner was initiated but the same has been rejected by the respondents by order dated 4.6.1996 (Annexure R.I/T). It has been alleged in the present petition that the respondents have rejected the case of the petitioner for his premature release on irrelevant consideration, that any punishment imposed upon the petitioner during the suspension of his sentence or during the period of parole is not to be considered for the purpose of Section 432 of the Code read with para 516 of the Punjab Jail Manual, and that the respondents cannot discriminate the petitioner from his three co-accused who have already been released.

Held

It is not disputed that under the instructions dated 6.8.1971 issued by the State Government in exercise of its power conferred by Section 432 of the Code, the case of a life convict for his premature release is to be considered after he has actually undergone 8 years 6 months of actual sentence and 14 years of sentence including remission. It is also not disputed that this condition stands satisfied in the present case. In these Circumstances the competent authority was not justified in rejecting the case of the petitioner for his premature release merely on the ground that he was convicted and sentenced for 2 offences under the Exercise Act or for violation the terms of parole for which he was convicted and sentenced.

**1997 CrLJ. 2808*

II. I. Female Prisoners
I. 10. Premature Release

State of Haryana vs Ram Diya*

Fact

The State of Haryana has preferred these two appeals against the Judgment and Order of the Punjab and Haryana High Court.

The respondents were convicted under Section 302 of the Indian Penal Code and sentenced to death by the Additional Sessions Judge, Karnal which sentence inflicted on each of them was subsequently commuted to life imprisonment on mercy petitions.

The instructions contained in paragraph 516-B of Punjab Jail Manual which are in the nature of executive instructions by way of guidance may be referred to which instructions are based on a Government of India Resolution No. 159-167 dated 6th September, 1905. The aforesaid paragraph reads thus:

"516-8 (a) With the exception of females and who were under 20 years of age at the time of commission of offence, the cases of every convicted prisoner sentenced to :

(i) imprisonment for life

.....

(iv)

(a) who has undergone a period of detention in jail amounting together with remission earned to 14 years, shall be submitted through the Inspector-General of Prisons, Punjab for the orders of the State Government."

Held

The substance of the above paragraph is that the case of a male lifer who was above 20 years of age at the time of commission of offence sentenced to life imprisonment and who had undergone detention in jail amounting together with remission earned to 14 years, should be submitted to the State Government for consideration of his premature release. It further appears in the year 1971, the State Government after a considerable deliberation took a policy decision and issued instructions through its Memorandum No. 13311-6JJ-71/39656 dated 10 of November, 1971 providing that a period of actual sentence of 8-1/2 years in the case of adult life convicts and 6 years in the case of female convicts as well as those male convicts below 20 years of age at the time of commission of offence should be regarded as the qualifying period of consideration for premature release.

**1990 Cr.L.J. 1327*

11.2 Juvenile Prisoners

11.4 Prisoner's Right to Judicial Review

Sanjay Suri vs Delhi Admn., Delhi*

Held

Magistrate or trial Judge authorised to issue warrants for detention of prisoners should ensure that every warrant authorising detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age - not necessarily by trial - and every warrant must specify the age of the person to be detained. The Supreme Court called upon the authorities in the jails throughout India not to accept any warrant of detention as a valid one unless the age of detenu is shown therein. It shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to judicial custody is not indicated. It would be lawful for such officers to refer back the warrant to the issuing Court for rectifying the defect before it is honoured.

"AIR 1988 SG 414

II. 6. Foreign Presioners

David Patrick Ward and Another vs Union of India*

Facts

Petitioners are known to belong to a U.K. based organisation called "Naga Vigil". They have lived with Naga insurgents in their gang and participated in their activities for almost three months. If regard is had to the pretext on which the petitioners had entered India the non-disclosure by them of the real, purpose for which they were visiting India, and attempts made by them to evade arrest from the Indian security forces by opening fire against them, it would be difficult to think that their deportation from India will not make them return to India by some means or the other to carry on the prejudicial activities which were carried on by them before their detention, along with Naga insurgents and secessionists, against the established State Governments and the Central Government. If under these circumstances, the authorities are not in favour of deportation of the petitioners to their country, the Court cannot find fault with them.

Held

When the authorities have come forward to afford all facilities to the officers of the British High Commission who desire to visit the petitioners in Naini Jail at Allahabad, it cannot be said that they are acting contrary to the view expressed by the Court in A. K. Roy as to need of affording facilities to those who desire to meet detenus in Jail. However, the Court is not powerless to examine the conditions of preventive detention under Section 5 where a case warrants such examination. But in this case, having regard to its facts and a conscious decision taken by the respondents, in from the point of view of security, to detain the petitioners in Naini Jail, Allahabad, it is not possible to concede to their request to shift them to Tihar Jail at Delhi, more so, when the counter affidavit indicates that whenever visits are desired by officers of British High Commission, proper arrangements will be made in that behalf.

*(1990) 3SCC 119

111. 3. Prisoner's Right to Fair Treatment and Dignity

Sunil Gupta & Ors. vs State of M.P.*

Facts

Two important questions arising for consideration in the above matter are:

- (1) Whether the petitioners 1 and 2 have been illegally detained from May 21, 1989 to August, 1, 1989 without any order of remand?
- (2) Whether the petitioners 1 to 3 on being arrested were subjected to torture and treated in a degrading and inhuman manner by handcuffing and parading them through the public thoroughfare during transit to the court in utter disregard to the judicial mandates declared in a number of decisions of this Court and whether they are entitled for compensation?

Held

When a person is remanded by a judicial order by a competent court, that person comes within the judicial custody of the court and taking of that person from a prison to the court or back from court to the prison by the escort party is only under the judicial orders of the court. Even if extreme circumstances necessitate the escort party to bind the prisoners in fetters, the escort party should record the reasons for doing so in writing and intimate the court so that the court considering the circumstances either approves or disapproves the action of the escort party and issues necessary directions. In the present case the petitioners were educated persons and social workers. They staged a 'dharna' for a public cause and voluntarily submitted themselves for arrest. They even refused to come out on bail but chose to continue in prison for the public cause. They had thus no tendency to escape. Even assuming that they obstructed public servants in discharge of their public functions during the 'dharna' or raised any slogan inside or outside the court, that would be sufficient cause to handcuff them. Further, there was no reason for handcuffing them while taking them to court from jail. They had been subjected to humiliation by being handcuffed which act of the escort party is against all norms of decency and which is in utter violation of the principle underlying Article 21. So the conduct of the escort party is arbitrary and unreasonable by humiliating the citizens of the country with the obvious motive of pleasing 'someone' is strongly condemned. Since the escort party without any justification had handcuffed the petitioners on both occasions be when taking the petitioners from the prison to the court and then from the court to the prison, the State Government is directed

*(1990) 3SCC 119

to take appropriate action against the erring escort party for having unjustly and unreasonably handcuffing the petitioners.

As regards the petitioners claim of suitable and adequate compensation it is open to the petitioners to take appropriate action against the erring officials in accordance with law if they are so advised, and in that case, the court in which the claim is made can examine the claim not being influenced by any observation made in this judgment.

111.3 Prisoner's Right to Fair Treatment and Dignity

State of Maharashtra vs Ravikant S. Patil*

Facts

This appeal has been filed by the State of Maharashtra against an order of the High Court of Bombay directing Shri Prakash Chavan, Inspector of Police, Faujdar Chavadi Police Station, Sholapur, respondent 4 before the High Court, to pay an amount of Rs. 10,000 by way of compensation to the respondent herein a undertrial prisoner, on the ground that the said police officer was guilty of violation of fundamental right of an under trial prisoner under Article 21 of the Constitution of India. It further directed that an entry should be made in his service record. The facts that give rise to this appeal areas follows.

Held

We are unable to disagree with some of the findings of the High Court regarding the handcuffing and we do not propose, to interfere with the order directing the payment of compensation. But we think that Shri Prakash Chavan, Inspector of Pelice, appellant 2 herein, cannot be made personally liable. He has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking the undertrial prisoner handcuffed still we do not think that he can be made personally liable.

The compensation, of Rs. 10,000 as awarded by the High Court, shall be paid by the State of Maharashtra. The concerned authorities may, if they think it necessal) hold an enquiry and then decide whether any further action has to be taken against Shri Prakash Chavan, Inspector of Police. Subject to the above directions, this appeal is disposed of.

*(1991) 2SCC 373

111.4 Prisoner's Right to Judicial Remedy

Amir Shad Khan vs L. Hmingtiana*

Facts

The Secretary (Preventive Detention), Government of Maharashtra passed the impugned orders of detention against the appellants under Section 3 (1) of the COFEPOSA Act. There after grounds of detention were served on them informing that they had a right to make a representation to (i) the State Government; (ii) the Central Government and (iii) the Advisory Board against the detention orders, if they so desired and that the representation to the State Government should be addressed to the Minister of State for Home, Mantralaya, Bombay. The appellants preferred representations addressed to the detaining authority with the request that copies of the representations be sent to the State Government and Central Government for consideration and revocation of the detention orders. The representations were considered and rejected by the State Government but they were not forwarded to the Central Government and hence the Central Government had no occasion to consider the representation of the appellants for the revocation of the detention orders. As the detention orders were not revoked the appellants preferred separate habeas corpus writ petitions under Article 226. On the question whether the detention orders were vitiated as the Detaining Authority as well as the State Government had failed to forward their representations to the Central Government, the High Court answered in the negative for the reason that the detenus who had failed to follow the clear and specific instructions given in the grounds of detention regarding the manner and mode of address to various authorities could not be allowed to reap the benefit of their own default. Allowing the appeals the Supreme court.

Held

The Detaining Authority as well as the State Government were not justified in taking a hypertechnical stand that they were under no obligation to take out copies of the representations and forward them to the Central Government. This approach has robbed the appellants of their constitutional right under Article 22(5) read with Section 11 of the Act to have their representation considered by the Central Government. The request of the detenus was not unreasonable. On the contrary the action of the Detaining Authority and the State Government was unreasonable and resulted in a denial of the appellants' constitutional right. The impugned detention orders are, therefore, liable to be quashed.

Article 22(5) casts a dual obligation on the Detaining Authority, namely, (i) to communicate to the detenu the grounds on which the detention

*(1991) 4SCC 39

order has been made; and (ii) to afford to the detenu the earliest opportunity of making a representation against the detention order. The right to make a representation against the detention order thus flows from the constitutional guarantee enshrined in Article 22(5). The necessity of casting a dual obligation on the authority making the detention order is obviously to acquaint the detenu of what had weighed with the Detaining Authority for exercising the extraordinary powers of detention without trial conferred by Section 3(1) of the Act and to give the detenu an opportunity to point out any error in the exercise of that power so that the said authority gets an opportunity to undo the harm done by it, if at all, by correcting the error at the earliest point of time.

III. 2, III. 3. Prisoner's Right to Personal Liberty, Prisoner's Right to Fair and III. 4. Treatment and Dignity and Right to Judicial Remedy

Citizens for Democracy vs State of Assam* .

Facts

In the present case while lodged inside the ward of the hospital seven detenus were handcuffed and tied with a long rope to contain their movement. There was no material to show that the detenus were likely to jump jail break out of the custody. The antecedents of the detenus are not known. There is nothing on the record to show that they are prone to violence. General averments that the detenus are hardcore activists of ULFA and that they are accused of terrorist and disruptive activities, murder, extortion, holding and smuggling of arms and ammunition are not sufficient to place them under fetters and ropes while lodged in a closed ward of the hospital as patients. Security guards were posted outside the ward. It is not disputed that while in jail the detenus were not handcuffed. They cannot be in a worse condition while in hospital under treatment as patients. In any case to safeguard any attempt to escape extra armed guards can be deployed around the ward of the hospital where the detenus are lodged. The handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is in human and in utter violation of the human rights guaranteed to an individual under the international law and the law of the land.

Held

Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of preventing escape is available, the Magistrate may grant permission to handcuff the prisoner.

In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

*(1995) 3SCC 743

When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate.

111.4 Prisoner's Right to Judicial Remedy

Kamlesh Kumar Ishwardas Patel vs Union of India*

Facts

In both the appeals the orders of detention were made under Section 3 of the PIT NDPS Act by the officer specially empowered by the Central Government, to make such an order. In the grounds of detention the detenu was only informed that he can make a representation to the Central Government or the Advisory Board. The detenu was not informed that he can make a representation to the officer who had made the order of detention. As a result the detenu could not make a representation to the officer who made the order of detention. The Madras High Court, by the judgments under appeal dated 18-11-1994 and 17-1-1994 allowed the writ petitions filed by the detenus and has set aside the order of detention on the view that the failure on the part of the detaining authority to inform the detenu that he has a right to make a representation to the detaining authority himself has resulted in denial of the constitutional right guaranteed under Article 22(5) of the Constitution. In view of our answer to the common question posed the said decisions of the Madras High Court setting aside the order of detention of the detenus must be upheld and these appeals are liable to be dismissed.

Held

It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution being aware that preventive detention involves a serious encroachment on the right to personal liberty took care to incorporate in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "zealously watched and enforced by the Court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. We would in this context, reiterate what was said earlier by this Court while rejecting a similar submission : (SCC Para 4)

"May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and it is essential that at least those safeguards are not denied to the detenus".

(See : Rattan Singh v. State of Punjab (1981) 4 SCC 481 at 483

*(1995) 4SCC 51

111.5 Prisoner's Right to Basic Human Needs

A Convict Prisoner in the Central Prison, Thiruvananthapuram vs State of Kerala*

Held

In a petition by the convict prisoner against sub-human conditions in jails the High Court issued the following directions to the State Govt.

- (1) The State shall build sufficient number of prisons to accommodate prisoners. It is reported that no prisons have been built in recent times. Even jails should not be cages for human beings. Surroundings make their impact on human mind. Serenity elevates human perceptions; unlike depressing ghettos. Open jails in areas where land is easily available with necessary security must be thought of. This must be done as expeditiously as possible making a meaningful beginning within two years from today. High security prisons shall be built to house the category of prisoners who are considered dangerous, and whose numbers are certainly not on the decrease. Scientific classification of prisoners must be made.
- (2) State shall effectively implement segregation, keeping habitual offenders away from freshers to avoid the possibility of hard core criminals turning jails to schools of crime.
- (3) State will ensure that short-term appointments of prison staff are not made, and that adequate trained staff is provided in jails, keeping in view needs of security.
- (4) State will take appropriate action to pay reasonable wages to prisoners so that motivation for work is generated. Reasonable, wages need not be the equivalent of minimum wages. Cost of support of prisoners circumstances that lead to incarceration etc. can be reckoned in fixing such wages. Broadly stated, something in the neighbourhood of half the statutory minimum wages should be reasonable. State will also take appropriate measures for creation of fund, for victim care to which an appreciable part of prisoners' earnings could be diverted.
- (5) State will consider the possibility of registering societies for managing economic activities in jails on a profitable basis enabling the ploughing back of the profits to productive channels

**1993 Cr.L.J. 3242*

instead of treating the income from jails as another source of revenue. The pointer should be to innovation and not to be beaten track.

- (6) The State shall consider the feasibility of creating a work force, which can be useful and economical to it. Open jails and a work force go together. Vast human resources can be gainfully utilised.
- (7) State may consider the advisability of avoiding short term imprisonment and simple imprisonment, wherever possible. Necessary statutory amendments could be thought of, substituting short term sentences with free work or work with regulated wages. Association with hard core criminals in jail can be avoided thus.
- (8) Considering the grievances voiced by some of the counsel appearing for prisoners, and considering the need to provide facilities to paroled prisoners to meet their counsel the Registry will make appropriate arrangements for providing a meeting place in the premises of the High Court, where prisoners can meet their counsel and give instructions by prior appointment. A desk in the Criminal Section for this purpose can be thought of.
- (9) Sufficient provision will be made to segregate civil prisoners and military prisoners, from prisoners convicted of criminal charges. . .
- (10) Proper arrangements will be made for escort of prisoners from jails to Courts and back; it has to be considered whether number of postings involving transport of prisoners can be reduced:
- (11) A rational parole policy must be evolved; parole is a salutary measure. But, a prisoner who invites incarceration by his conduct cannot expect the same freedom as free citizens. Yet such restricted freedom, as can be granted, could be granted on the basis of sound considerations. The policy is for the State to make.
- (12) Blades for shaving, sterilised needles in Dispensaries and sufficient fans should be provided. Sanitary napkins which are not included in the clothing supplied to female prisoners should also be supplied.
- (13) Necessary facilities for the jail staff must be provided. There are some jails without rest rooms and toilets and staff who take turns often have to sit on verandas. It must be remembered

that congenial working environment alone can ensure a contended service.

- (14) Reservation of a nominal percentage of jobs fo convict prisoners of good behaviour can be an incentive and it would be consistent with the concept of rehabilitation.
- (15) Educational and recreational facilities, within reasonable limits may be provided in prisons. Weekly or fortnightly discussions, availing of the good offices of religious or social organisatiosn or enlightened citizens, can go a long way in. reforming the convicts.

111.2 Right to Lift Personal Liberty

State of AP vs Challa Ramkrishna Reddy*

Facts

In the instant case, the deceased the father of the claimant and the claimant were involved in criminal case. They were arrested and on being remanded to Judicial custody they were lodged in a sub-jail, the deceased as also his son who apprehended danger to their lives, complained to the police & requested for adequate police guards being deployed at the jail, but their requests were not heeded to and true to their apprehension a bomb was hurled at them which caused the death of the father and injuries to his son.

Held

The Court held Right to life is one of the basic human rights. It is guaranteed to every person by Art. 21 and not even the State has the authority to violate that Right. A prisoner does not cease to be a human being. Even when lodged in jail he continues to enjoy all his fundamental rights including the Right to Life.

**A./R, 2000 S.G. 2083*

111.2, 111.3 and 3.6 Presour's Right to Personal liberty Fair Treatment and Ditgulty

Nallapreddy Prasanna K. Reddy vs State of A.P.*

Facts

A PIL seeking release of prisoners whose undertrial period has exceeded the maximum term for which they could be sentenced if convicted. This is a public interest litigation brought in by Sri N. Prasanna Kumar Reddy, a member of the A. P. Legislative Assembly seeking for issue of Habeas Corpus directing the State to for the with set at liberty the undertrial prisoners in the State of A. P. the particulars of which, are furnished in Annexures A-1 to A-4, the reports published in Uuayama telugu daily newspaper. The petitioner both as a citizen and as a public servant is concerned about the human tragedy and misery of undertunate persons who are languishing in prison for the past several years. They exceed more than 6000 unfortunate helpless innocent poor people. These undertrial prisoners have already undergone imprisonment which is more, than the maximum punishment that a law Court can inflict upon them and any further detention these people in prisons in utterly unconstitutional devoid of legality, totally unjustifiable, constitutionally immoral, statutorily indefencible and highly barbarous.

Held

When there is a clash between the constitutional protection under Article 21 on one side and the penal laws and procedura complexities on the other the former should prevail.

To examine this question a took at Article 21 of the Constitution of India is necessary which is in the following terms:

"21 Protection of life and personal liberty :- No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 21 guarantees personal liberty and nobody shall be deprived of the same except in accordance with the procedure established by law. Criminal Civil Proceadure Code is the main procedure Code for arrest and custody. The procedure prescribed by the Criminal. Procedure Code has to be tested on the bed rock of Constitution and as long as the said procedure is not unconstitutional, it has to be followed without exception. So it has to be seen whether the provisions of Criminal Procedure code with reference to arrest and custody are fair, just and reasonable. Section 57. Cr. P.C, contemplates that any perse in accused of an offence shall be

**1994 Cr.L.J. Jowrnal2016*

produced before the nearest Magistrate within 24 hours of his arrest. This procedure is prescribed in accordance with the mandate contained in article 22 of the Constitution of India. When the investigation could not be completed within the period of 24 hours as fixed by Section 57 Cr. P.C. the Magistrate may authorise the detention of the accused in such custody for a term not exceeding 15 days whether he has Section 167, Cr.P.C. He may authorise the detention of the accused beyond the period of 15 days, if he is satisfied that adequate grounds exist for doing so but he shall not authorise the detention of the accused for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years and 60 days where the investigation relates to any other offence. But explanation 1 to Section 167, Cr. P.C, is to the effect that not with standing expiry of the period specified therein, the accused shall be detained in custody so long as he does not furnish bail. Section 468. Cr. P.C. contemplates, bar of limitation for taking cognizance of the offences. Under this section the period of limitation shall be six months for taking cognizance of the offence if the offence is punishable with fine only, one year, if the offence is punishable with imprisonment for a term not exceeding one year and three years if the offence is punishable with imprisonment for a term not exceeding one year and not exceeding three years. The Criminal Procedure Code is silent as to the period within which the trial of a case or a particular class of cases should be closed or completed presumably it is not possible to fix up any time, frame for any case or class of cases as it would depend upon several circumstances.

"For a speedy trial, the prosecuting agencies must take a prompt step in completing their investigations and filing their final reports as contemplated under the Code as expeditiously as possible. In case the investigating officer fails to take speedy action in a case registered against any person arrested under Section 41(1). Section 15(1) or any other penal provision of the law, and keeps it in cold storage, forgetting his obligation to the society and in contravention of the principles of natural justice and allow; by his conduct, the arrested persons to be kept behind the bars. for months together and if the Courts without being conscious of the mandatory provisions of Section 167(2), mechanically authorise repeated detention and also do not show any diligence in completing the trial of the case speedily the result would be that prisoners, especially those coming from the society of have nots have to suffer unfold physical and mental agony and spend their lives in the jail without having any ray of hope of their release.

But the proposition advanced by the learned counsel for the petitioner that any infraction of this right must result in quashing of the F.I.R. or the

charge is too broad for meriting acceptance. Considering this question the Supreme Court in A.R. Anutlay's case (supra) observed thus.

"It cannot also be said that the only consequence flowing from an infringement of right to speedy trial was the quashing of charges and/or conviction."

The mere default on the part of the jail or police authorities in producing the accused before the Magistrate cannot be a valid reason to release the accused either on bailor without any conditions. Such a course of action, in our view, would amount to abdication of his judicial functions.

The Supreme Court laid down the principle that speedy trial is an essential part of Article 21 of the Constitution. In appropriate cases, the Court observed that the undertrial prisoners languishing in jails for long periods should be released on taking personal bonds.

Where the undertrial prisoners have been in jail for longer periods than the maximum term they would have been sentenced if convicted their detention in jail is violative of Article 21 and therefore they have to be released forthwith.

III. 3. Prisoner's Right to Fair Treatment and Dignity

Parmanand Katara vs Union of India*

Facts

This petition under Article 32 of the Constitution of India, in public interest, has been filed by Pandit Parmanand Katara, Advocate, Appdearing in person he has raised two contentions before us. According to him the method of execution of death sentence by hanging under the Punjab Jail Manual (the Manual) is inhuman and such is violative of Article 21 of the Constitution of India. The second contention raised by the petitioner is that under para 873 of the Manual, body of the condemned convict after it falls from the scaffold is required to remain suspended for a period of half an hour. According to him right to dignity and fair treatment continues in respect of the dead body of the condemned man.

The second contention of the petitioner is based on para 873 of the Manual which is as under:

"873. Body to remain suspended half an hour. Return of warrant—

- (1) The body shall remain suspended for half an hour and shall not be taken down till the medical officer declares life extinct.
- (2) The superintendent shall return the warrant of execution with an endorsement to the effect that the sentence has been carried out."

Held

We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. According to us the only requirement of the above quoted para of the Manual is that the body of the condemned prisoner shall, only remain suspended till the time the medical officer present on the spot, declares him dead. We make it clear and hold that the jail authorities in the country shall not keep the body of any condemned prisoner suspended after the medical officer has declared the person to be dead. The limitation of half an hour mentioned in para 873 is directory and is only a guideline. The only mandatory part of the above quoted para is that the condemned person has to be declared dead by the medical officer and as soon as it is done the body has to be released from the rope. The petition is disposed of in the above terms. No costs.

*(1995) 3SCC 248

111.2. Prisoner's Right to Personal Liberty

P .D. Gajbhiye vs State of Maharashtra*

Facts

The principal question raised in the present criminal writ petition is relating to the scope and ambit of Rule 3 of the Prisoners, (Bombay) Furlough and Parole) Rules, 1959. The question is whether the actual imprisonment undergone provided in the said provision includes the imprisonment undergone as an under-trial prisoner or only imprisonment after conviction.

Held

It is now well settled that furlough and parole have two different purpose. Furlough is a matter of right whereas parole cannot be claimed as a matter of right. Furlough is to be granted, periodically under Rule 3 of the (Furlough Rules) and the principal object of grant of furlough is to enable the prisoner to have family association and to avoid in effects of continuous prison life. While undergoing sentence according to the Furlough Rules, a prisoner is accorded social interaction man being a social animal social life is brought into existence periodically for a prisoner by providing furlough. Furlough is not provided or granted for any particular reason and if he is not ineligible under R. 4 of the Furlough Rules, furlough has to be granted and even if a disqualification is there under R 4, still it is not necessary that grant of furlough shall be refused. The scheme of grant of furlough is that after a convict has been sentenced, on completion of a particular period of imprisonment undergone he should be provided to have a social interaction with an intention that he forgets bitterness and sufferings for awhile. It is thus well settled that grant of furlough is a substantial legal right which a prisoner is entitled on fulfilment of the conditions provided in Furlough Rules.

The provisions of S 428, Cr. P.C. were inserted and enacted for the first time in the Code of 1973 and this new provision was made on the recommendation of the Joint Committee of Parliament which was of the view that in many cases an accused person is made to suffer jail , life for a period out of full proportion to the gravity of the offence or to the punishment provided by a statute, or imposed on him In some cases the sentence imposed is a fraction of the time spent by the accused as under-trial prisoner. This new provision, allowing setting off of the period of detention undergone as an under-trial prisoner against the sentence of imprisonment, is meant to mitigate the evils. The period of detention undergone by the accused as an under-trial

**1994 Cr.L.J. 2016*

prisoner is set off against the sentence of imprisonment awarded on conviction. The Legislative intent, thus, would be clear that for any period of imprisonment undergone as an under-trial prisoner, the prisoner must be awarded set-off against the sentence of imprisonment on conviction.

Furlough Rules were framed in the year 1959 i.e. much before the provision of Section 428 was enacted in the Code of Criminal Procedure, 1973. If a prisoner is entitled to set-off the imprisonment undergone as an under trial prisoner after he is convicted there is no reason, much less justification, 'for not computing the period of actual imprisonment undergone provided in rule 3 of the Furlough Rules including the period of imprisonment undergone as an undertrial prisoner. It is true that question of computing this period would only arise after a prisoner is sentenced to imprisonment for a period exceeding one year and not during the imprisonment as an under trial prisoner. After all punishment is not retributory but reformatory and a prisoner should be permitted grant of furlough after he has been sentenced to imprisonment by including the detention or imprisonment he has suffered as under trial prisoner. That advances the cause of justice objective of Furlough Rules and in conformity and in consonance with the right of liberty provided under Art. 21 of the Constitution of India.

111.3 and 111.4 Prisoner's Right to Fair Treatment and Dignity and Prisoner's Right to Judicial Remedies.

R.D. Upadhyay vs State of Andhra Pradesh &Ors*

Facts

The lunatic undertrial prisoner Ajoy Ghosh was languishing in jail since 1962. Even medical treatment was provided to him only after the High Court intervened. The A.C.M.M. as well as the Jail authorities had taken no action in that behalf. The Superintendent Presidency Jail, Calcutta even later on took no action to send medical reports of the physical and mental state of Ajoy Ghosh from 1964 to 1983 and thereafter till 1995. There may be many like Ajoy Ghosh from 1964 to 1983 and thereafter till 1995. There may be many like Ajoy Ghosh languishing in West Bengal. or other jails of the country. There has been a complete violation of the statutory provisions contained in the Prison Act, 1900; the Code of Criminal Procedure; and the Indian Lunacy Act, 1912 in dealing with the case of Ajoy Ghosh. Ajoy Ghosh, under the directions of this Court, has been accommodated in the Home maintained by Missionaries of Charity (Brothers) at Kancharapara.

Held

The authorities are required to act according to law. but the law has been unfortunately respected in its breach. There has been no fixing of accountability even after this Court pointed out the existence of the sad state of affairs concerning Ajoy Ghosh. We shall revert to this aspect while finally disposing of this application.

As an interim measure, we direct that a sum of Rs; two lakhs should be paid by the State of West Bengal to the Missionaries of Charity (Brothers), Howrah, by way of donation.

We could have directed some interim compensation to be paid to Ajoy Ghosh but considering his present state of mental and physical health that would not be of any avail. He has no known relatives. either. We are conscious of the fact that money award can be calculated only to make good financial loss. It is not an award for the sufferings already undergone which are incapable of calculation in terms of money. Money compensation may be awarded so that something tangible may be procured. to replace something of the like nature which has been destroyed or lost. Money award cannot, however renew a physical frame that has been battered and shattered due to callous attitude of others. All that the court can do in such cases is to award such sums of money which may appear to be giving of some reasonable compensation, assessed with moderation to express court's condemnation of the tortious act committed by the State.

*(1999) 4 SCC 437

111.2 Prisoners Right to Personal Liberty

State of.M. P. vs Shyam Sundar Trivedi*

Facts

The following pieces of circumstances evidence .apart from the .other evidence on record, viz. (i) that the deceased had been brought alive to the police station and was last seen alive there on. 13.10.1981 (ii) that the dead body of the deceased was taken out of the police station on 14.10.1981 at about 2 p.m, for being removed to the hospital; (iii) that the deceased, had died as a result of the receipt of extensive injuries while he was at the police station; (iv) that so, Trivedi, Respondent 1, Ram Naresh Shukla, Respondent 3, Rajaram, Respondent 4 and Ganniuddin, Respondent 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu Banjara; (v) that 5 Trivedi, Respondent 1 created false evidence. and fabricated false clues in the shape of documentary evidence with a view to screen the offence and for that matter, the offender; (vi) 81 Trivedi respondent in connivance with some of his subordinates, respondents herein had taken steps, to cremate the dead body in haste. describing, the deceased as a various (vii) Rajaram and Ganniuddin respondents, had brought the deceased to the police station from his village and (viii) that police record did not show that either Rajaram or Ganniuddin had left the police station, till the dead body was removed to the hospital in the jeep unerringly point towards the guilt of the accused.

Held

The *exaggerated* adherence, to and insistence upon the establishment of proof beyond every reasonable doubt; by the prosecution, ignoring the ground realities, the fact - situations and the peculiar circumstances of a given case, as in the present case often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody which of late are on the increase receive encouragement by, this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution. and is an affront to human dignity. Police excesses and the maltreatment.

*(1995) 4SCC 262

of detainees/undertrial prisoners or suspects tarnishes the image of "any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to; become law unto themselves. Unless stern measures are taken to check the malady, the foundation of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. the courts must therefore, deal with such cases in a realistic manner and 'with the sensitivity which they deserve otherwise the common man may loss faith in the judiciary :itself, which will be a sad day.

Respondent 1 Shyam Sunder Trivedi is convicted under Sections 304 Part 11/34 IPC and sentenced to suffer rigorous imprisonment for-two years and to pay a fine of Rs. 50,000 (Rupees Fifth thousand only) and in default of payment of fine to undergo further rigorous imprisonment for two years. The substantive sentence of 2 years RI under Sections 304 Part 11/34.1PC is in addition to the sentence which was imposed upon him by the High Court.

Respondents 3, 4 and 5 namely, Ram Naresh Shukla, Head Constable Rajaram Mishra, Head Constable and ,Ganniuddin, Constable are convicted under 'Section 304 Part 11/34, 201 and 342 IPC and sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs. 20,000: (twenty, thousand only) each and in default of payment of fine foundergo rigorous imprisonment for one year more for the offence under Sections 304 part 11/ 149 IPC. No separate sentence is however passed against them for the 'other convictions.

We, further direct that the entire amount of fine on realisation from Respondents 1, 3 to 5 shall be paid to the heirs of the deceased, Nathu aanjara by way of compensation. The trial court shall ensure in case the fine is deposited by the accused respondents, that the payment of the same is, made to the heirs of deceased, Nathu Banjara, and the court shall take all such pre Cautions as are necessary to see that the money is not allowed to fall into wrong hands and is utilised for the benefit of the members of the family of the deceased,

111.2, III.3 & III.4 Prisoner's Right to Personal liberty, right to fair treatment and right to Judicial Remedy

Nilabati Behera vs State of Orissa*

Facts

The deceased, aged about 22 years, was taken into police custody at about 8 a.m. on December 1, 1987 by ASI Police in connection with investigation of an offence of theft in the village. He was handcuffed, tied and kept in custody in the police station where the accused police constable, and some other persons were present that night. The dead body of the deceased with a handcuff and multiple injuries was found by some railwaymen lying on the railway track on the morning of December 2, 1987. The police reached the spot to take charge of the dead body much later in the day. Mother of the deceased sent a letter dated September 14, 1988 to the Supreme Court alleging custodial death of her son and claiming compensation on ground of violation of Art 21. The Court treated the letter as a writ petition under Art 32.

Held: Per Verma and Venkatchala, J.J.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is a remedy available in public law; based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. A claim in public law for compensation or contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution; is an acknowledged-remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct form and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers and enforcement of the fundamental right is claimed by resort to the

*(1993) 2SCC 746 .

remedy in public law under the Constitution by recourse to Articles 32 and 226, for contravention of fundamental rights. Certain further, observations in *Rahul Sah* which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is, how the decisions of the Supreme Court in *Rahul Sah* and, others is that line have to be understood and *Kasturilal* distinguished therefrom.

Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : (1983) 3 SCR 508 : 1983 see (Cri) 798 explained and applied

Sebastian M. Hongray v. Union of India, (1984) 1 SCC 339: 1984 SCC (Cri) 87: (1984) 1 SCR 904 (1); *Sebastian M. Hongray v. Union of India*, (1984) 3 SCC 82: (1984) 3 SCR 544(11): , 1984 SCC (Cri) 407; *Bhim, Singh v. State of J & K*, 1984 Supp SCG 504: 1985 sce (Cri) 60; *Shim Singh v. State of J & K*, (1985) 4 SCC 677 : 1986 SCC (Cri) 47 *Sabali : A Women's, Resources Centre v. Commissioner of Police, Delhi Police Headquarters*, (1990) 1 sec 422: 1990 SCC(Cri), 145; *State of Maharashtra v. Ravikant S. Patil*, (1991) 2 SCC 373: 1991 SCC (Cri) 656; *Maharaj v. Attorney. General Trinidad and Tobago* (No. 2) 2 All ER 670, relied on

Kasturilal Ralia Ram Jain V. State of UP., AIR 1965 SC 1039 : (1965) 1 SCR 375 : (1965) 2 Cri LJ144, distinguished.

The court is not helpless and, the wide powers given to the Supreme Court by Article 32; which itself is a fundamental right, imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution which enable the award of redress available. The power available to the Supreme Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage but may in certain situations be an incentive to extinguish life if for the extreme contravention the court is powerless to grant any relief against the State except by punishment of the wrongdoer for the resulting offences and recovery of damages under private laws by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real; the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots who are not possessed of the wherewithal for enforcement of the rights in private law, even though its exercise is to be tempered by judicial restraint to avoid.

Khatri (II) v. State of Bihar, (1981) 1 SCC 627 : 1981 SCC (Cri) 228; Khatri (IV) v. State of Bihar, (1981) 2 SCC 493: 1981 SCC (Cri) 503; Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584, relied on Union of India, (1991) 4 SCC

Per Anand, J (Concurring)

- (1) It was a case of custodial death. The case put up by the police of the alleged escape of the deceased from police custody and his sustaining the fatal injuries in-a train accident is not acceptable. A custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law.
- (2) Convicts, prisoners or undetials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as pre permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation on the State to ensure 'that there is no infringement of the indefeasible rights of a citizen' is in its custody, whether he be a suspect under trial or convict. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited 'liberty left him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedures established by law. The of "sovereign immunity" in such cases is not available to the State.

While granting relief to the heirs of a victim of custodial death for the infringement or invasion of his rights guaranteed under Article 21 it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The old doctrine of only relegating the aggrieved to the remedies available in Civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation of satisfy the social aspirations of the citizens because are courts and the law are for the people and expected to respond, to their aspirations. The citizen complaining of the infringement of the indefeasible right under Article 21 cannot be, told that for the established violation of the fundamental right to life he cannot get any relief under the public law by the Court exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writ and the courts have therefore to evolve 'new tools to give relief in public law by moulding it according to the situation' with a view to preserve and, protect the Rule of Law.

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts for established infringement of the indefeasible

right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making monetary amends under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damage awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort. through a suit instituted in a court of competent jurisdiction and to prosecute the offender under the penal law.

The Supreme Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in, exercise of its jurisdiction under Articles 32 and 226 to the victim or the heir of the victim whose fundamental rights under Article 21 are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. of course relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redress is by the court in the facts and circumstances of the case is possible. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law.

111.4 Prisoner's Right to Judicial Remedy

Murti Devi vs State of Delhi*

Facts

Because of the gross negligence on the part of the jail authorities; R. an undertrial prisoner, was subjected to serious injuries inside the jail which ultimately caused his death. It has been stated by the petitioner M; the mother of the said deceased, that R was the only bread - earner in the family and on that day she had become a helpless widow with three sons to be maintained.

Held

As it was the bounden duty of the jail authorities to protect the life of an undertrial prisoner lodged in the jail and as in the instant case such authorities had failed to ensure safety and security to the said unfortunate undertrial accused, the State is directed to pay a sum of Rs.2,50,000 to the petitioner within a period of six weeks. Out of the said amount rupees two lakhs should be kept in fixed deposit in the name of M in a nationalised bank for a period of five years so that she can maintain herself and members of the family out of the interest accruing on the said fixed deposit. The balance sum of Rs, 50,000 should be handed over to M within the period of six weeks against proper receipts. After the said period of five years the petitioner M or her legal heirs and successors as the case may be will be free to utilise the said sum of rupees two lakhs according to their desire.

*(1998) 9 SCC604

111.6. Compliance with the Principles of Natural Justice

Keemat Singh vs Inspector General Prisons, Chandigarh*

Held

"The Sessions Judge is required to apply his mind to the facts and circumstances of the case and pass a speaking order regarding the proposed punishment or the punishment awarded to a prisoner.

In the present case the petitioner was never summoned by the Sessions Judge to point out the illegalities committed during the enquiry by the Jail Superintendent nor he was asked whether he made a confession of his offence. The petitioner was punished for taking liquor and roaming at Tubewell No which was not the place fixed for hirri but no enquiry was made whether he was subjected to medical examination before giving finding that he was under the influence of some intoxicant. Simply stating that the punishment awarded to the prisoner is approved is, not a sufficient compliance to make the appraisal to be judicial. Since the petitioner was not heard nor the record was perused before the punishment was approved it cannot be said that there was judicial appraisal of the punishment.

**1994 Cr.L.J. 1884 (Punjab & Haryana)*

111.6. Compliance with the Principles of Natural Justice

Ch. Ramaswamy vs The Govt of Aridhra Pradesh*

Held

Giving of opportunity to prisoner under the A.P. Prison Rules (1979), R 973 can only mean giving notice in writing calling upon the prisoner to show cause with reference to the alleged violation of the condition which should be stated in the notice and it should also be stated what punishments mentioned in R 973 duly specifying the time within which the cause should be shown.

Also, the authority while imposing punishment under R. 973 should take into consideration the nature of the condition breached by the prisoner released on parole and its impact on the jail discipline. the reason given by the prisoner, his past conduct including violation of conditions if any in the past and the imposed reasonable and just punishment which should neither be too lenient nor disproportionate to the gravity of the breach. The cut of remission of five days for each day of overstay is the maximum penalty and the same need not be imposed in every case. Having regard to the nature of the breach the reason for the breach explained in the explanation, the cut of can be imposed which should not in any event exceed five days. It is always open to the Jail Superintendent to impose cut of less than five days having regard to the above said circumstances. No mathematical precision can be demanded in such cases, what all is required is a fair and reasonable consideration of all the facts and passing of Order in writing supported by reasons. The order should also be communicated to the concerned prisoner.