

CHRI 2020

RIGHTS BEHIND BARS

Landmark Judicial Pronouncements 2010-2019



CHRI

Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the countries of the Commonwealth

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit organisation headquartered in New Delhi, with offices in London, United Kingdom, and Accra, Ghana. Since 1987, it has worked for the practical realization of human rights through strategic advocacy and engagement as well as mobilization around these issues in Commonwealth countries. CHRI's specialisation in the areas of Access to Justice (ATJ) and Access to Information (ATI) are widely known. The ATJ programme has focussed on Police and Prison Reforms, to reduce arbitrariness and ensure transparency while holding duty bearers to account. CHRI looks at policy interventions, including legal remedies, building civil society coalitions and engaging with stakeholders. The ATI looks at Right to Information (RTI) and Freedom of Information laws across geographies, provides specialised advice, sheds light on challenging issues, processes for widespread use of transparency laws and develops capacity. CHRI reviews pressures on freedom of expression and media rights while a focus on Small States seeks to bring civil society voices to bear on the UN Human Rights Council and the Commonwealth Secretariat. A growing area of work is SDG 8.7 where advocacy, research and mobilization is built on tackling Contemporary Forms of Slavery and human trafficking through the Commonwealth 8.7 Network.

CHRI has special consultative status with the UN Economic and Social Council and is accredited to the Commonwealth Secretariat. Recognised for its expertise by governments, oversight bodies and civil society, it is registered as a society in India, a limited charity in London and an NGO in Ghana.

Although the Commonwealth, an association of 54 nations, provided member countries the basis of shared common laws, there was little specific focus on human rights issues in member countries. Thus, in 1987, several Commonwealth professional associations founded CHRI.

Through its research, reports, advocacy, engagement, mobilisation and periodic investigations, CHRI draws attention to the progress and setbacks on rights issues. It addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

CHRI's seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights.

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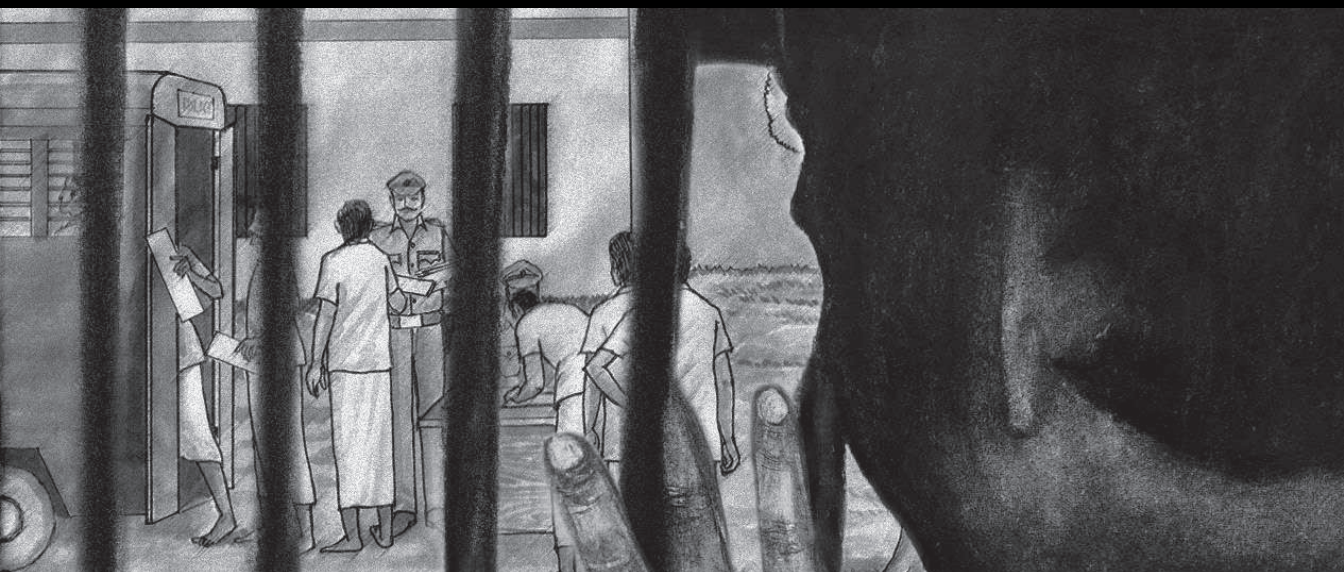
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Landmark Judicial Pronouncements 2010-2019



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“Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner’s prejudice, this Court’s writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law.”

- Charles Sobraj v. Superintendent Central Jail, Tihar, New Delhi,
AIR 1978 SC 1514.

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INTRODUCTION

Prisons are often placed at the extreme end of the criminal justice system. They inevitably become forgotten institutions that confine persons either facing trial or convicted of crimes. The role of justice is commonly believed to have ended when the accused is convicted and sent to prison to undergo punishment¹. Yet, time and again, the Courts have intervened to reiterate the obvious: a prisoner does not cease to remain a human being even after punishment. The restriction on liberty imposed by law does not take away one's right to dignity enshrined under the Constitution of India. She/he is entitled to basic human rights behind bars.

In India, prisons are governed by State laws² framed under a century old parent legislation, the Prisons Act of 1894. Very few States/Union Territories such as Andaman & Nicobar Islands, Arunachal Pradesh, Bihar, Daman & Diu, Delhi, Goa, Sikkim, and West Bengal have acts/rules/manuals which were formulated in the 21st century. The changes brought in these state legislations have contributed little in the development of a legal framework which, inter alia, provides for rights of prisoners. This lacking of a rights based approach in the statutory law on prisons is remedied by the Courts through recognition of rights of prisoners in their judicial pronouncements. CHRI's Rights Behind Bars series aims to document and present to the reader, the progress made by the Courts in developing a rights based jurisprudence on prison administration. Merely changing the nomenclature of prisons to 'Correction Homes', as the Supreme Court of India has said, "will not resolve the problem."³

The past decade has witnessed considerable discussion, debate and work on developing the objectives of incarceration. Today, it includes the concepts of reformation and rehabilitation. However, prisons conditions in general are far from being conducive to serve these objectives. Modern day independent India has inherited its prison system from the colonial rule wherein the objectives were largely limited to deterrence and retribution. However, Indian judiciary has made

¹ The convict thereafter has the right to appeal against his conviction and sentence to superior courts.

² 'Prisons' fall under State List in the Seventh Schedule to the Constitution of India. The management and administration of Prisons is in the exclusive domain of State Government. Prisons in each State are categorised as Central Prison, District Prison, Sub-jail (also known as Revenue Prisons in some states), Women Prison and Special Prison.

³ Order Dated 15.09.2017 in *In Re-Inhuman Conditions in 1382 Prisons v. State of Assam and Ors.*, WP(C) 406 / 2013.

considerable attempts to challenge these conservative theories of incarceration. For instance, in 2017 the Supreme Court stated “what is practised in our prisons is the theory of retribution and deterrence and the ground situation emphasises this, while our criminal justice system believes in reformation and rehabilitation...”⁴

The Courts have an indispensable role in ensuring that those behind bars are afforded all rights and protections that are enshrined under the Constitution, statutes and in the international human rights framework. As custodians the State has a duty to protect and uphold rights of those confined. This duty is to be carried out by the Court in the event of the State’s failure to do so. The functions of the judiciary to uphold rule of law extend to prisons too, including prisoners as well those who manage prisons. As the Supreme Court has noted, “The management, conditions of living and future responsibilities of the inmates inside the jails etc., cannot be left to the sole desire or discretion of the executive.”⁵

Bridging the gap between an evolving criminal justice system and text of prison laws thus becomes a significant role that the Court serves, in addition to ensuring that constitutional rights are not abrogated in a prison setting. Judicial pronouncements of the constitutional courts, the High Courts and the Supreme Court constitute ‘law of the land’⁶ in India and the executive agencies governing the prisons are duty bound to follow them. As the Supreme Court has said in a famous case⁷ on inhuman treatment to a prisoner, “Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner’s prejudice, this Court’s writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law.”

The present publication contains summaries of several important judicial pronouncements on prisons and prisoners’ rights. This is the second edition of *Rights Behind Bars*, and it builds on the first edition to include important judicial pronouncements of the Supreme Court of India and various High Courts from 2010 to 2019. The first edition of *Rights Behind Bars* 2009 contained landmark judicial pronouncements and National Human Rights Guidelines till 2009.

⁴ *Ibid.*

⁵ *Jasvir Singh v. State of Punjab* 2014 SCC OnLine P&H 22479.

⁶ Article 141 of the Constitution of India. The law declared by the Supreme Court is binding throughout the country whereas pronouncements of the High Courts are binding within their respective jurisdictions and have persuasive value as far as other High Courts are concerned.

⁷ *Charles Sobraj v. Superintendent Central Jail, Tihar, New Delhi*, AIR 1978 SC 1514.

This publication is a compilation of judicial pronouncements on themes of *prison conditions and treatment of prisoners; arrest and detention; access to legal representation; custodial deaths and compensation; release of prisoners on bail, parole furlough & remission; wages & prison labour; vulnerable prisoners including death row prisoners, foreign nationals, women prisoners; and other rights of prisoners*. The judgments have been arranged thematically with the Supreme Court pronouncements preceding judgments of the High Courts, for each theme. It aims to provide the reader, including prisoners, functionaries within the criminal justice system and members of the civil society, easily accessible information on pertinent case laws in a simplified form.

Disclaimer:

1. While due care has been taken to accurately summarise the Court judgments and orders, this document should not be used as a substitute for the original. Readers are advised to see the original judgments/guidelines for further details and official use.
2. An attempt has been made to include all important judicial pronouncements touching on the rights of prisoners. CHRI does not claim the indexing of cases to be exhaustive in this regard.

PRISON CONDITIONS AND TREATMENT OF PRISONERS



RE-INHUMAN CONDITIONS IN 1382 PRISONS V. STATE OF ASSAM AND ORS.

SUPREME COURT OF INDIA - WP(C) 406 / 2013

FACTS

Former Chief Justice of the Supreme Court of India R.C. Lahoti wrote a letter to the Supreme Court highlighting overcrowding in prisons, unnatural deaths of prisoners, gross inadequacy of staff and the available staff being untrained or inadequately trained. The letter was instituted *suo motu* as a public interest litigation by the Supreme Court in 2013. Over the years, the Court has passed a series of directions and in September 2018 it formed a three member Committee headed by Justice Amitava Roy to look into various issues of prison reforms across the country and make recommendations. The Committee had submitted a preliminary report in February 2020 to the Court based on which response was sought from States. The matter is ongoing in the Supreme Court.

SUPREME COURT'S OBSERVATIONS

GROUND REALITY OF PRISON REFORMS

- The Court observed that though it appears on record that steps are being taken by the Central Government as well as State Governments to ameliorate prison conditions and thereby reduce the number of unnatural deaths in prisons however, the ground reality as reflected in the NCRB's statistics is far from reform. The Court added "it is time for the State to go beyond projections through circulars and advisories and actually come to grips with reality as it exists in a very large number of prisons. What is practised in our prisons is the theory of retribution and deterrence and the ground situation emphasises this, while our criminal justice system believes in reformation and rehabilitation and that is why handcuffing and solitary confinement are prohibited. It is this "rejection" of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths." (Order dated: 15.09.2017)

USE OF RETRIBUTION AND DETERRENCE FOR OFFENDERS OF 'ONE-TIME ABERRATION'

- Laying emphasis on the need to guarantee the right to life of dignity to prisoners to the extent possible, the Court stated "it must be appreciated by the State that the common person does not violate the law for no reason at all. It is the circumstances that lead to a situation where there is a violation of law. On many occasions, such a violation may be of a trivial nature or may be a one-time aberration and, in such circumstances, the offender has to be treated with some degree of humanity. At least in such cases, retribution and deterrence cannot be an answer to the offence and the offender. Unless the State changes this mindset and takes steps to give meaning to life and liberty of every prisoner, prison reforms can never be effective or long lasting." (Order dated: 15.09.2017)

BOARD OF VISITORS

- The Court observed "the appointment of Board of Visitors that regularly visits jails is an absolute necessity and it is also provided for in the Model

Prison Manual prepared by the Ministry of Home Affairs, Government of India.” (Order dated: 02.08.2018)

OPEN PRISONS

- The Court observed “We expect the State Governments concerned to not only try and utilize the existing capacity of these open prisons and if necessary increase the existing capacity of these open prisons in due course of time. The State Governments and Union Territory Administrations should also seriously consider the feasibility of establishing open prisons in as many locations as possible.” (Order dated: 08.05.2018)

HEALTH OF PRISONERS

- The Court stated, “Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners” (Order dated: 15.09.2017)

CUSTODIAL VIOLENCE

- The Court while dealing with the issue of custodial violence noted that the police include third degree methods to extract information which may not be just limited to physical violence but could be in form of psychological violence and sexual violence. It further noted “right sounding noises critical of custodial violence (in any form) cannot achieve any useful purpose unless persons in authority hear the voices of the victims or the silence of the dead and act on them by taking remedial steps. There must be a greater degree of sensitivity among those in authority with regard to persons in custody and it has been the endeavour of the constitutional Courts in our country, over several decades, to consistently flag this issue. The results have been somewhat mixed but the effort will continue as long as Article 21 remains in our Constitution. This message goes out loud and clear, as also the message that the dignity of the individual is not a plaything for those in authority.” (Order dated: 15.09.2017)

DIFFERENCE BETWEEN NATURAL AND UNNATURAL DEATHS

- The Court observed that the distinction made by the National Crime Records Bureau is not clear as to a death caused due to lack of proper medical attention or delayed medical attention would be a natural or an unnatural death. Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC) state that “Death is “natural” when it is caused solely by disease and/or the aging process. It is “unnatural” when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident).” The Court suggested the Central government and all the State governments to consider these guidelines. (Order dated:15.09.2017)

PREVENTION OF SUICIDES IN PRISONS

- The Court noted that the National Human Rights Commission (NHRC) has suggested contact and visits with family, constructive occupation in prison, instilling hopes and plans for future and support from staff as some of the protective measures to reduce the number of suicides in prisons. The Court further noted that the role of NHRC in cases of unnatural deaths in prisons is paramount. (Order dated: 15.09.2017)

COMPENSATION FOR UNNATURAL DEATHS

- The Court stated that the next of kin of the deceased prisoners whose death has occurred due to unnatural reasons must be compensated as it is an established right of a victim of crime to be compensated. It further added that prisoners irrespective of the crime committed by them are entitled to human rights as human rights are universal and not based on the status of any person. (Order dated: 15.09.2017)

SUPREME COURT’S DIRECTIONS

COUNSELLORS IN PRISON

- The State Governments were directed to appoint counsellors and support persons for counselling prisoners, particularly first-time offenders in order to counsel and advice prisoners who might be facing some crisis

situation or might have some violent or suicidal tendencies. (Order dated: 15.09.2017)

VISITATION RIGHTS & OPEN JAILS

- Visits to prison by the family of a prisoner should be encouraged, However, the time or frequency of meetings can be extended and the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise can be explored. (Order dated: 15.09.2017)

BOARD OF VISITORS

- “The Board of Visitors for jails has not been appointed in several States. The State Governments should take immediate steps to appoint a Board of Visitor who can visit jails and suggest remedial measures to improve the conditions of the prisoners-convicts as well as under trial prisoners.” (Order dated: 02.05.2017)
- “The State Governments are directed to constitute an appropriate Board of Visitors in terms of Chapter XXIX of the Model Prison Manual indicating their duties and responsibilities.” (Order dated: 15.09.2017)

DIRECTIONS FOR UNDER TRIAL REVIEW COMMITTEES

- The Court directed the constitution of an Under Trial Review Committee comprising the District Judge, as Chairperson; the District Magistrate and the District Superintendent of Police as members, in every district. (Order dated: 24.04.2015) Subsequently, the court included the Secretary, District Legal Services Authority (Order dated: 05.02.2016) and Superintendent/ Prison In-charge (Order dated: 31.10.2017) of all prisons in the district as members of the committee.
- The Under Trial Review Committee in every district should meet every quarter. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners

and convicts who have undergone their sentence or are entitled to release because of remission granted to them. (Order dated: 05.02.2016)

- The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the CrPC and Section 436A of the CrPC so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society. (Order dated: 05.02.2016)
- Subsequently, the Court expanded the category of cases to be reviewed by the UTRC as below:
 - a) Become eligible to be released on bail under Section 167(2)(a) (i)&(ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;
 - b) Are imprisoned for offences which carry a maximum punishment of 2 years;
 - c) Are detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 107, 108, 109 and 151 of CrPC;
 - d) Become sick or infirm and require specialized medical treatment (S.437 of the Code);
 - e) Women offenders (S.437 of the Code);
 - f) Are first time male offenders between the ages 19 and 21 who are in under trial custody for offences punishable with less than 7 years of imprisonment and have suffered atleast 1/4th of the maximum sentence possible;
 - g) Are of unsound mind and must be dealt under Chapter XXV of the Code;
 - h) Are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case; (Order dated: 06.05.2016)

- The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual. (Order dated: 05.02.2016)
- The Court further stated that “it will be appropriate if in a case of multiple offences, a review is conducted after half the sentence of the lesser offence is completed by the under trial prisoner. It is not necessary or compulsory that an under trial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.” (Order dated: 24.04.2015)
- “The Member Secretary of NALSA should issue directions to the State Legal Services Authorities to urgently take up cases of prisoners who are unable to furnish bail and are still in custody for that reason. The State Legal Services Authorities should instruct the panel lawyers to urgently meet such prisoners, discuss the case with them and move appropriate applications before the appropriate Court for release of such persons unless they are required in custody for some other purposes.” (Order dated: 24.04.2015)
- “The State Legal Services Authorities are directed, through the Member Secretary of NALSA to urgently take up the issue with the panel lawyers so that wherever the offences can be compounded, immediate steps should be taken and wherever the offences cannot be compounded, efforts should be made to expedite the disposal of those cases or at least efforts should be made to have the persons in custody released therefrom at the earliest.” (Order dated: 24.04.2015)

DIRECTIONS FOR LEGAL SERVICES INSTITUTIONS

- The Member Secretary of the State Legal Services Authority (SLSA) of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid. (Order dated: 05.02.2016)
- The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding

offences rather than requiring a trial to take place. (Order dated: 05.02.2016)

- The Court stated “The SLSAs should assess the effect and impact of various schemes framed by NALSA relating to prisoners”. (15.09.2017)

DIRECTIONS FOR THE MINISTRY OF HOME AFFAIRS

- The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners. (Order dated: 05.02.2016)
- The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein. (Order dated: 05.02.2016)
- In view of the high discrepancies between the States in per prisoner expenses the Court directed the Ministry of Home Affairs to come up with a scheme for auditing these accounts with the assistance of the Comptroller and Auditor General of India. (Order dated: 17.02.2017)

DIRECTIONS FOR THE DIRECTOR GENERAL/ INSPECTOR GENERAL OF PRISONS

- The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilisation of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc. (Order dated: 05.02.2016)

DIRECTIONS FOR EDUCATING & TRAINING PRISON OFFICIALS

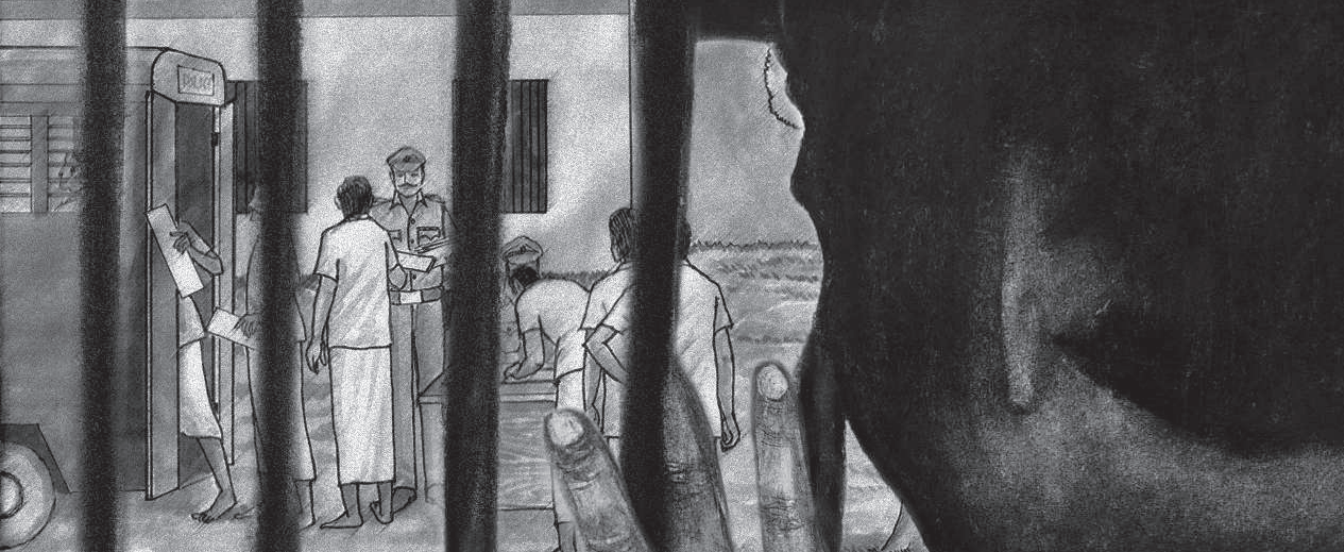
- The Ministry of Home Affairs was directed to take urgent steps towards

preparing training manuals for various categories of staff and officers in prisons. (Order dated 17.02.2017)

- The Ministry of Home Affairs should circulate, by 31st October, 2017, the (i) the Model Prison Manual, (ii) the monograph prepared by the NHRC titled “Suicide in Prison - prevention strategy and implication from human rights and legal points of view”, (iii) the communications sent by the NHRC, (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson Mandela Rules and (vi) the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross to the Director General or Inspector General of Police (as the case may be) in charge of prisons in every State and Union Territory. (Order dated: 15.09.2017)
- The State Governments should, in conjunction with the State Legal Services Authority (SLSA), the National and State Police Academy and the Bureau of Police Research and Development conduct training and sensitisation programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners. (Order dated: 15.09.2017)
- Training Manuals should be circulated to the Director General of Prisons and Secretaries of Prison Department in each State Government/ UT and also to three training institutes i.e. Institute of Corrections Administration, Chandigarh; Regional Institute of Correctional Administration, Kolkatta and Academy of Prison and Correctional Administration, Vellore. (Order dated: 08.08.2018)

DIRECTIONS TO FILL VACANCIES

- The Court directed the State governments and Union Territories to take concrete steps to fill up existing staff vacancies. (Order dated: 17.02.2017)



G. SARALA V. GOVT. OF TAMIL NADU

Madras High Court - 2014 SCC OnLine Mad 1374

FACTS

The petitioner alleged that her husband was taken into custody and brutally beaten by certain policemen at the police station and later by the jail warden as well in judicial custody. Her husband later died in the government hospital. The petitioner also alleged that her husband was handcuffed. The petitioner prayed for compensation for the unnatural death of her husband in custody.

HIGH COURT'S OBSERVATIONS

Noting that no orders were taken from the concerned Magistrate for handcuffing of the prisoner, the Court observed that “Immobilisation by handcuffing or chaining is a violation of human rights and violation of Article 21 of the Constitution of India.” There can be other measures to physically restrict the detained person without inflicting cruelty and the implicit attack on dignity by handcuffing. The Court observed that binding together of hands or legs is not merely preventive but it is punitive and hurtful. “Manacles are mayhem on the human person and inflict humiliation on the bearer.”

The Court further stated, “The three components of ‘irons’ forced on the human person must be distinctly understood. Firstly, to handcuff is to hoop harshly. Further, to handcuff is to punish humiliatingly and to vulgarise the viewers also. Iron straps are insult and pain writ large, animalising victim and keeper.”

The Court remarked that numerous judgements have made it clear that handcuffing without due procedure is illegal and arbitrary, violates the fundamental rights of the detained person. Observing that there cannot be any distinction between class of prisoners for handcuffing, the Court stated, “Once we make it a constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort-and we declare that to be the law-the distinction between classes of prisoners becomes constitutionally obsolete.”

Handcuffs have to be the last refuge and an extreme step to be consistent with Article 14 and 19 of the Constitution. Judicial approval before handcuffing a prisoner will only satisfy the requirement under Article 21 of the constitution. It added, “If a close watch by armed policemen will do, then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm.” The Court clarified that in this regard even orders of superiors won't be any excuse as constitutional rights cannot be suspended by ‘superior orders’.

HIGH COURT'S DIRECTIONS

TO POLICE

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.

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 guide-lines given by us in para 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 as already indicated by us.

TO PRISONS

The Court directed the Inspector General of Police and Inspector General of Prisons to ensure that the rule regarding a prisoner in transit between prison house and Court house is without hand-cuffs and the exception, under conditions of judicial supervision will be restraints with irons, to be justified before or after. It stated, "The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back."

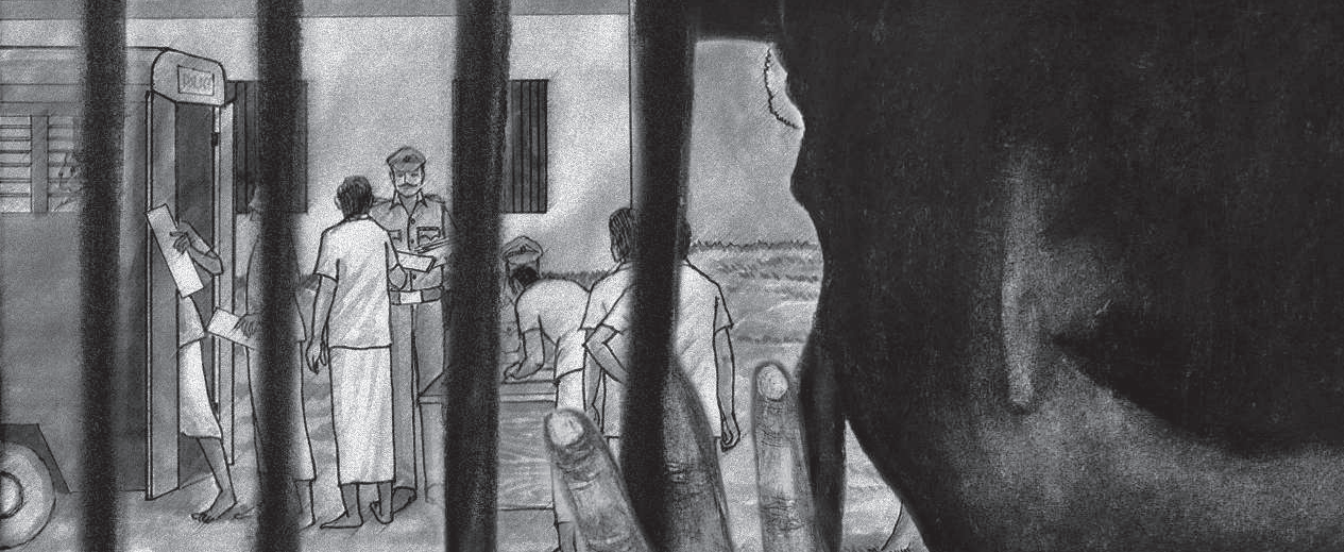
TO JUDICIAL OFFICERS

The Court directed the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other "irons" treatment and, if he has been, the official concerned shall be asked to explain the action forthwith.

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 forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

HIGH COURT'S DECISION

The Court stated that death might have occurred due to encephalopathy but, on the facts and circumstances of the case, this Court is of the view that there is a violation of human rights. Further, considering the violation of law laid down by the Court in previous cases and violation of fundamental rights, the Court granted a compensation of Rs. 2,50,000/- to the petitioner.



ATUL V. STATE OF MAHARASHTRA

Bombay High Court - 2018 SCC OnLine Bom 109

FACTS

The petitioner approached the Court for directions to appropriate authorities for investigation with regards to custodial torture and atrocities by the Jail authorities and inmates at Ahmednagar prison.

HIGH COURT'S OBSERVATIONS

The Court observed that it is the duty of the Jail Superintendent to see that inmates are not assaulted by either jail guards or other inmates. If there is a case of assault, immediate preventive actions have to be taken and the inmate has to be facilitated medical treatment based on which a report has to be submitted to the Magistrate.

HIGH COURT'S DIRECTIONS

The Court observed that the Jail Superintendent was negligent in the present case therefore a disciplinary action has already been taken against him. However with a view to avoid negligence in future, the Court passed following directions to all the Jail Superintendents:

“(i) The jail inmates are in the physical custody of Jail Superintendent and under-trial prisoners are in the constructive custody of Judicial Magistrate/ Sessions Judge. It is their responsibility that except restriction on the liberties, their other fundamental rights should not be violated. There should not be any ill-treatment or harassment to them and there should not be any assault on them either by the jail authorities or by the other inmates which may threaten their life or limb. All precautions shall be taken by Superintendent of Jail to prevent such incidents of assault even in cases where the victim may be arrogant or of quarrelsome nature.

(ii) In case, any accused person is arrogant or indulges in abusing or assault, the Jail Superintendent may report about the same to concerned Judge and may also take appropriate action as per jail manual but he cannot be subjected to physical assault by the jail authorities.

(iii) In spite of taking all precautions, if any jail inmate is subjected to assault by jail guard or other inmates, he should be immediately provided medical aid in Jail Hospital. If the injuries are serious, he should be taken to Civil Hospital or any other hospital for proper treatment. The report about the said assault should be submitted to the Judges before whom the cases of victim as well as the assailants are pending. If necessary, the victim should be immediately produced before the concerned Judicial Magistrate who can

record his FIR and direct investigation. Care should be taken to see that the victim and other witnesses are not subjected to any pressure so as to refrain them from disclosing the truth.

(iv) The Jail Superintendent shall immediately take steps to see that the members of assailant group and the members of victim group are not kept in the same barrack. In case there is complaint of assault by jail guards, the Jail Superintendent shall report the fact to his superior and shall also see that the same Jail Guard is not given duty in the barrack where the victim and other witnesses are kept.

(v) The Judicial Magistrate while recording the complaint of the victim and statement of witnesses should take utmost precaution to see that they are not under fear. They should be assured that they would be kept away from the assailants and they should be free to disclose the true facts. The inquiry in such matters should be conducted expeditiously within a very short time and as far as possible the cases of such assaults on jail inmates should be expeditiously decided on priority basis.”



NERIA BENDAVID V. STATE OF GOA

Bombay High Court - 2017 SCC OnLine Bom 370

FACTS

The petitioners approached the Court to seek remedy for alleged assault and other misconduct/mistreatment by prison officers against prisoners in a particular prison. The petitioners prayed for certain reliefs to regulate the conditions of the lawfully detained inmates, for compensation to the inmates who had suffered injuries both physical and mental and to issue directions to the prison department to furnish a plan of action to prevent such incidents in future.

HIGH COURT'S DIRECTIONS

The Court observed that granting compensation would not be adequate as an enquiry has already been set up by the State government against the erring officers responsible for the alleged acts of mistreatment and assault. However, with a view to prevent further such untoward incidents the Court issued following directions:

- i. We hereby direct the Board of Visitors manned by the District & Sessions Judges in both the districts shall visit the jails preferably every month to hear the grievances of the prisoners alongwith the Members of the Board and resolve the issues relating to the under-trial prisoners;
- ii. CCTV cameras be installed at vantage points to monitor the conduct inside the Jail to serve as a system of checks and balances on the conduct of the Jail Officials and the inmates and backup be maintained for necessary course of action;
- iii. A Resident Medical Officer be appointed at the Jail to provide due medical attention to the inmates and in emergent cases to refer the inmates to the Government Hospitals for further evaluation and management;
- iv. Proper training be imparted to the Jail Officials for handling the inmates particularly when they get violent or do not observe prison discipline but without resorting to any sort of violence to bring them under control;
- v. Visits of the NGOs be encouraged to the Jails for interacting with the inmates to hear about their grievances, if any, and to ventilate their grievances generally;
- vi. Installation of the Complaint Box and the regular processing of the contents thereof by the Principal District and Sessions Judge; and
- vii. Sensitisation of the Jail Administration Officials that subjecting the inmates to inhuman treatment would entail action in terms of the Central Civil Service and CCS (CCA) Rules.

HIGH COURT'S DECISION

The Court held that since the Petitioner has not rebutted the State's claim of issuing charge sheets to erring prison officials and institution of an inquiry, their grievance have been addressed. The issue of compensation while the inquiry is pending was considered "premature" by the Court.



JAN ADALAT V. STATE OF MAHARASHTRA

Bombay High Court - 2017 SCC OnLine Bom 239

FACTS

The petition challenged the communication issued by the Superintendent of Yervada Central Prison to the President of the Pune Bar Association wherein certain conditions were fixed for meeting between the advocate and prisoners. It also raised several issues in prisons for meeting of prisoners with their family and relatives.

HIGH COURT'S OBSERVATIONS

Relying on Rule 58, Nelson Mandela Rules, the Court observed that subject to reasonable restrictions meeting with the family members is the right of the prisoner. All categories of prisoners are entitled to this right. Further, for an effective realisation of this right it is important that there are proper arrangements to ensure that the prisoner can properly see and hear their relatives. It added, "The barriers provided should be ideally of a clean glass. Necessary audio system should be provided to ensure that the Prisoner and his family members/relatives are clearly audible to each other."

The Court also stated that there should be adequate facilities for children staying with their mothers in prisons. It said, "an arrangement will have to be made by establishing creche, Nursery Schools, Kindergarten Schools and, if necessary, Primary Schools near the precincts of the Jails so that the children can get proper facilities of education." If such arrangements cannot be made, the State government must make arrangements for their admissions in nearby facilities and provide for their fee and other requirements such as books, school uniforms, etc. Play areas must be provided in prisons. Necessary arrangements for vaccination of children upto the age of 5 years should also be made.

The court also noted that there is an element of deterrence in the criminal jurisprudence but the main objective of imprisonment should be reformation of the criminal.

With regards to the issue of prisoners' interviews with the advocates, the court observed that the time of interviews with advocates should not clash with court's working hours.

HIGH COURT'S DIRECTIONS

The Court passed a slew of directions to the State for addressing the issues of overcrowding and other prison conditions in the concerned prisons including construction of additional jails, maintenance and renovation of prison infrastructure and construction of additional toilets, bathrooms, etc. Additionally, it issued the following directions:

- State government shall issue a circular laying down uniform procedures for allowing the interviews with the Advocates.
- State government shall make arrangements for separate bathrooms for women prisoners in particular prisoners. It added, “The State Government shall maintain the dignity of women prisoners by providing privacy to individual women prisoners”.
- Instead of fixing a metal grill for separating the prisoners and the persons interviewing the prisoners, glass windows or transparent acrylic windows shall be provided to ensure that the prisoner and visitor are clearly visible to each other. It State government shall provide modern audio system so that interviews are smooth. Additional windows must be provided, consistent with the number of prisoners, for interviews.
- The State Government shall appoint a district level permanent Committee of Social Workers and Dietitians to make surprise visits to all Jails for testing the quality and quantity of food served to the prisoners as well as the cleanliness and hygiene in the kitchens in the Jails. The Committees shall make surprise visits (without prior intimation to the Jail Officers) at least once in a month and regularly and punctually submit a report to the Inspector General of Prisons or to any Senior Officer appointed by him. Immediate remedial measures shall be taken on the basis of the reports including action against erring Jail staff.
- The State Government shall evolve a Scheme for ensuring that the women prisoners are able to meet their minor children (who are not staying with them) at frequent intervals.

ARREST AND DETENTION



ARNESH KUMAR V. STATE OF BIHAR

Supreme Court of India - 2014 (8) SCALE 250 SC

FACTS

The petitioner and the respondent solemnized a marriage on 1st July, 2007. Thereafter, the respondent-wife alleged that the respondent-husband made a demand of dowry along with her in-laws. She also alleged that the petitioner not only supported such a demand but also threatened to marry another woman. It was alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry. Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

The petitioner apprehended his arrest in a case under Section 498-A of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961, and thus filed a petition before the Supreme Court.

SUPREME COURT'S OBSERVATION

If the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are followed properly, the wrong committed by the police officers would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. The practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest should be discouraged and discontinued. It must be ensured that police officers do not arrest persons unnecessarily and magistrates do not authorise detention casually and mechanically.

SUPREME COURT'S DIRECTIONS

- a. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, CrPC;
- b. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii). The filled checklist to be forwarded along with reasons to the Magistrate at the time of first production for further detention;
- c. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
- d. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
- e. Notice of appearance in terms of Section 41A of CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
- f. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before

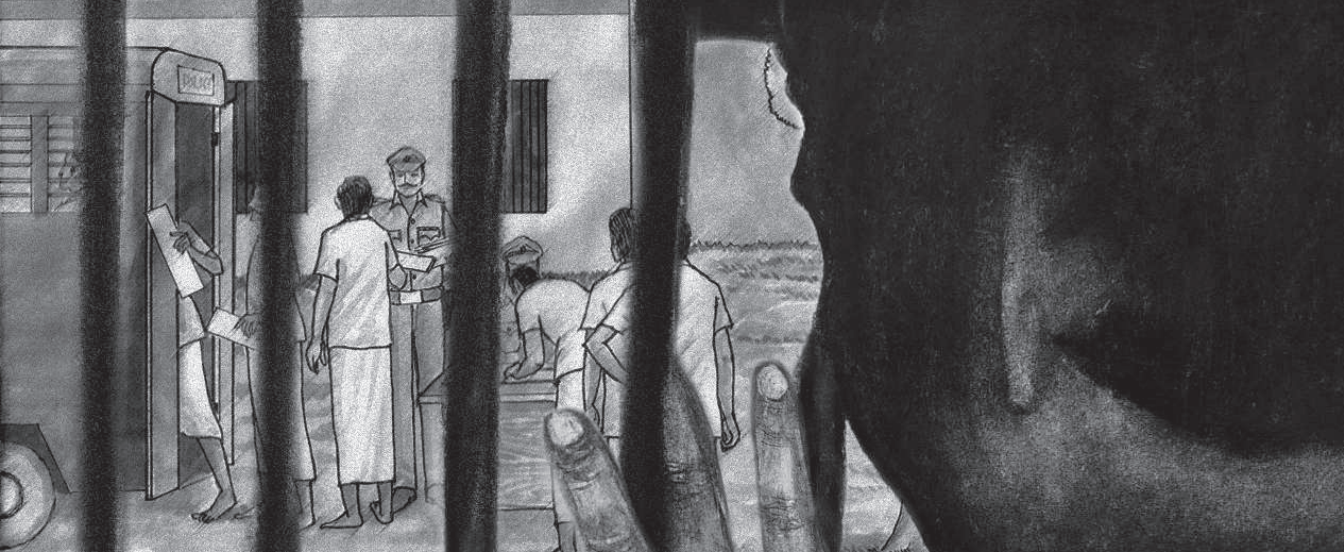
High Court having territorial jurisdiction;

- g. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The Court also held that the directions aforesaid shall not only apply to the cases under Section 498-A of the IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

SUPREME COURT'S DECISION

The court granted provisional bail to the petitioner.



HUIDROM KONUNGJAO SINGH V. STATE OF MANIPUR & ORS.

Supreme Court of India - (2012) 7 SCC 181

FACTS

The son of the appellant was arrested by the Imphal Police on charges of murder. The District Magistrate passed the detention order under the National Security Act on grounds that it is apprehended that if released on bail, the detinue will indulge in activities prejudicial to the security of the State and maintenance of public order.

The appellant made representations to the Central as well as the Manipur State Government challenging the grounds of detention, which was rejected. The appellant filed a petition in the Gauhati High Court⁸ which was dismissed and thus the appellant approached the Supreme Court.

⁸ The Guwahati High Court was the common High Court for Manipur, till 23.03.2013, the date of functioning of separate High Court of Manipur.

SUPREME COURT'S OBSERVATIONS

While placing emphasis on personal liberty vis-à-vis preventive detention, the Court held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. The detaining authority has to satisfy the Court the following facts, in case such an order is passed:

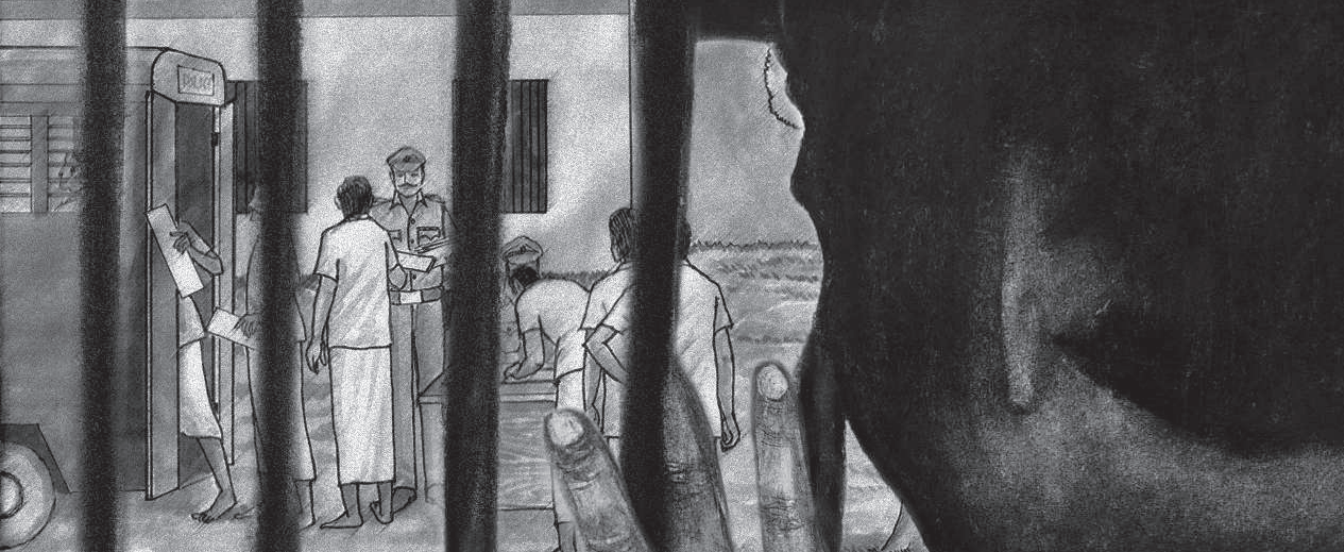
- a. "The authority was fully aware of the fact that the detenu was actually in custody.
- b. There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.
- c. The authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary."

The Court also mentioned that in case either of these facts does not exist the detention order would stand vitiated.

SUPREME COURT'S DECISION

The Supreme Court held that merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail, he could have been released on bail.

Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere *ipse dixit* statement on the grounds of detention and cannot be sustained in the eyes of law.



ALDANISH REIN V. STATE OF NCR OF DELHI & ANR.

Delhi High Court - 2018 SCC OnLine Del 12207

FACTS

The Petitioner, an advocate, filed the petition in public interest, highlighting a serious issue concerning the working of the provisions under the CrPC relating to preventive detention. The petitioner prayed for the issuance of a writ of habeas corpus to produce a person named Narender who had been detained by the Special Executive Magistrate as an alleged misuse of power.

HIGH COURT'S OBSERVATION

The Court observed that there is a palpable bias in the exercise of powers by the executive magistrate because a significant percentage of those so incarcerated belong to the minority community. It is also apparent that many of them belong to the economically weaker sections of society and are unable to provide the sureties required. Time and again, this Court has had to intervene to order their release on personal bonds. It is, therefore, a rampant and indiscriminate use of the aforementioned powers notwithstanding the standing orders issued from time to time and notwithstanding the numerous Court precedents.

The Court also observed that from the records of the said detenu's remand hearings it was evident that no legal aid lawyer was present to represent the detenu in such hearings. The Court noted that the aspect of lack of legal aid to a person arrested under preventive detention provisions is not adequately addressed.

HIGH COURT'S DIRECTIONS

The Court issued the following directions to ensure that the provisions are not abused or misused by the Special Executive Magistrates (SEMs) as under:

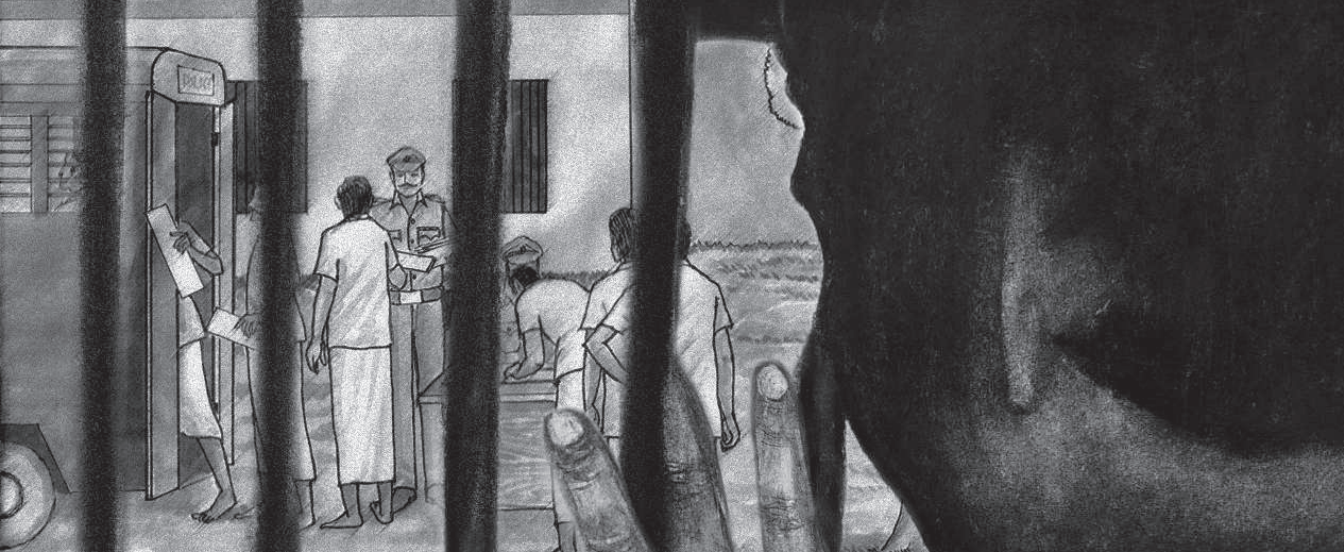
- i. As far as the NCT of Delhi is concerned, the SEM Governor ('LG') will consider setting up an oversight mechanism to periodically review the exercise of powers by the SEMs for preventive detention laws. Since the arrest is only 'preventive', the LG will consider issuing instructions to the prison authorities to create separate spaces within the jail so that the persons who are arrested are not mixed up with the other persons arrested for actual commission of offences.
- ii. The period of judicial custody for preventive detention at any one given point in time, will never exceed more than seven (7) days. There must be a weekly review by the SEMs exercising the powers concerned, of the need to continue detention.
- iii. If within two days of the order of release, a person has not come out of the jail, the SEM should inquire into the situation and pass further orders to ensure the release of such persons by either accepting a personal bond of such person and/or surety of a lesser sum, if at all, that can be afforded by such person.

- iv. An order of remanding a person to a judicial custody can be passed by the SEM only when:
- a. An arrested person has been informed of his constitutional rights by the SEM himself or by someone else in his presence in a language understood by that person. The SEM must ask the person arrested whether he has been informed, in the language understood by him, of the grounds of his arrest and this record this in the order that he is going to pass.
 - b. The arrested person should be asked by the SEM whether he wishes to engage a lawyer of his choice and also inform him that he can avail the services of a remand advocate who will remain present when these proceedings are being conducted.
 - c. The remand advocate will be allowed to interact with the person arrested outside the hearing distance of the police officers who have got the person arrested in order to enable the remand advocate to obtain the necessary instructions.
 - d. When a person is detained under preventive detention laws and asked to furnish surety bonds, the person arrested should be released on his personal bond without verification of the surety instead of sending him to judicial custody.
 - e. A board should be placed outside the office of the SEM not only in English and Hindi but also in other languages spoken by a sizeable population in the area concerned which would display the requirements under law. It will caution the person arrested to beware of touts. The board will also display the name of the remand advocate along with his/her contacts and details. The board will inform the person arrested that the amount to be filled in a bail bond is not to be given in cash to anyone and that the SEM is not a Judicial Magistrate.

HIGH COURT'S DECISION

The Court held that the arrest of Narender and his judicial remand orders were illegally passed by the SEM. The said orders were declared illegal. The Government of NCT of Delhi was directed to pay Narender compensation of Rs. 25,000.

ACCESS TO LEGAL REPRESENTATION



MOHD. AJMAL AMIR KASAB V. STATE OF MAHARASHTRA

Supreme Court of India - (2012) 9 SCC 1

FACTS

The appellant was found guilty of multiple charges including conspiracy to wage war against the Government of India, commission of terrorist acts, criminal conspiracy to murder, murder, causing grievous injury, etc. The Supreme Court upheld the sentence of death on five counts, life sentence on several counts and other lighter sentences.

The appellant was arrested on 27.11.2008. He told the arresting agency that he was a Pakistani national and did not have any friend or relative in India. He was offered legal aid by the authorities but he denied the offer for the want of a Pakistani lawyer to represent him. He then wrote a letter to the Pakistani Consulate/High Commission requesting for a Pakistani lawyer among other things. In another letter handed over to the ACMM he stated that he does not want an Indian lawyer.

Later when Pakistan denied the nationality claim of the appellant, he requested for a lawyer from the Court. However, before the trial Court appointed a lawyer to represent him, he had already made a confession to the Magistrate.

One of the issues addressed by the Supreme Court was whether absence of legal representation at the pre-trial stage vitiates the trial. The sentence of death was also challenged on the ground that death penalty cannot be given where there is doubt regarding complete fairness of trial.

SUPREME COURT'S OBSERVATIONS

- The right to legal aid arises when the person arrested in connection with a cognizable offence is first produced before a Magistrate.
- The right to legal aid is an essential ingredient of due process, which is implicit in the right to life available to every person under Article 21 of the Constitution of India.
- Even if the accused does not ask or remains silent, it is the constitutional duty of the Court to provide him with a lawyer before commencing the trial.
- The obligation to provide a lawyer to the accused at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused.
- However, failure to provide a lawyer to the accused at the pre-trial stage would not have the same effect of vitiating the trial. But it may have other consequences which may include disciplinary proceedings against the delinquent Magistrate and or giving the accused a right to claim compensation against the State for failing to provide him legal aid.
- Absence of legal assistance or representation at the pre-trial stage would not vitiate the trial unless it is shown that the absence of the lawyer at the pre-trial stage had resulted in some material prejudice to the accused in the course of the trial which would be judged on case to case basis.
- Nevertheless, the Court observed that legal assistance is important at the pre-trial stage -
 - To resist the remand to police or judicial custody
 - To explain the accused legal consequences of making a confession
 - To represent him when the Court examines the charge sheet and at the time of framing of charges

SUPREME COURT'S DIRECTIONS

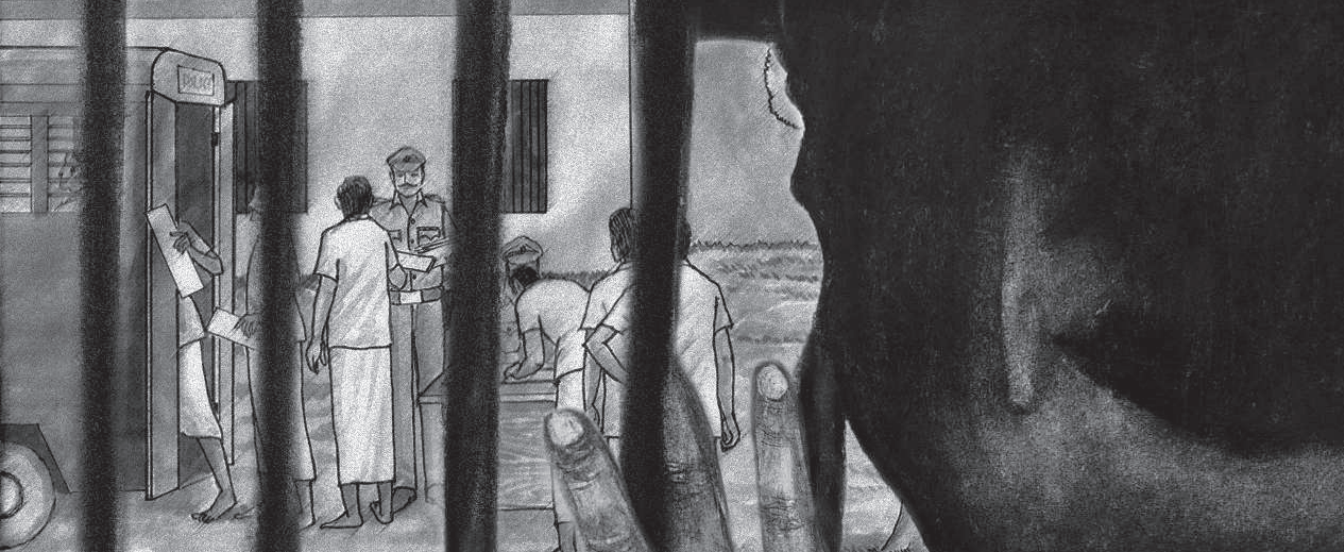
The Court directed all the Magistrates in the country to inform the accused about their right to free legal aid. It stated that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer

of his choice, one would be provided legal aid at the expense of the State.

The failure to discharge such duty would mean dereliction in duty and would make the Magistrate concerned liable for departmental proceedings.

SUPREME COURT'S DECISION

The Court confirmed the sentence of death penalty and rejected the contention that there was a doubt on the complete fairness of the trial. The Court held that there was no lowering of standards of fairness and reasonableness in the appellant's trial.



RAJOO V. THE STATE OF MADHYA PRADESH

Supreme Court of India - AIR 2012 SC 3034

FACTS

Seven persons including the appellant were convicted for 'gang rape' and sentenced to 10 years of rigorous imprisonment. Appeals were filed before the High Court by all the convicts. The High Court set aside the conviction of five persons and upheld the conviction of the appellant along with another convict.

After hearing the arguments in the case, the court had reserved judgment. However, while the judgment was being prepared it was noticed that the appellant was not represented by a counsel in the High Court. The court then decided on whether the appellant was entitled, as a matter of right, to legal representation in the High Court.

SUPREME COURT'S OBSERVATIONS

The law makes no distinction between 'trial stage' and 'appellant stage' for providing free legal services. Therefore an eligible person is entitled to free legal aid as a matter of right during all proceedings, trial or appellate.

The Court also observed that there should not be any distinction on the basis of crime/offence alleged or proved to have been committed by the person, for enabling the right to free legal aid.

The Court stated, the High Court was under an obligation to enquire from the appellant whether he required legal assistance and if he expressed so, it should have been provided at the State's cost.

SUPREME COURT'S DECISION

The Court set aside the High Court judgement confirming the conviction of the appellant and ordered re-hearing of the case by the High Court after providing the opportunity of legal representation to the appellant.



MOHD. HUSSAIN V. STATE (GOVT. OF NCT OF DELHI)

Supreme Court of India - (2012) 2 SCC 584

FACTS

The appellant was an illiterate foreign national charged and convicted for causing a bomb blast in a public bus and a sentence of death was awarded. The High Court confirmed the death sentence. An appeal against confirmation was filed in the Supreme Court. The primary contentions raised by the appellant, apart from the merits, was that the appellant was denied due process of law and that the conduct of the trial was contrary to procedure prescribed under the provisions of CrPC. It was further contended that the appellant was not given a fair and impartial trial and was denied the right of a counsel.

SUPREME COURT'S OBSERVATIONS

The court observed that during the course of trial, several defence lawyers, including state appointed lawyers and a private lawyer represented the appellant. It further stated that as per the trial court record 56 out of 65 witnesses were examined while the appellant-accused did not have any legal representation and none of whom were cross examined by the appellant-accused himself. It was further observed that “the appearance of counsel during the last stages of the trial was rather proforma than active”. The Court after going through the records observed, “In this casual manner, the trial, in a capital punishment case, was concluded by the trial Court.”

- The Court stated, “Every person has a right to fair trial by a competent Court in the spirit of the right to life and personal liberty”.
- The Court said, “The object and purpose of providing competent legal aid to the undefended and unrepresented accused persons are to see that the accused gets free and fair, just and reasonable trial of the charge in a criminal case.”
- In the endeavour of encouraging ‘prompt disposition’ of criminal cases the valuable right of a fair and impartial trial must not be compromised.
- The right to legal aid in a criminal trial is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice.
- The failure of trial Court to make an effective appointment of a counsel was a denial of due process of law. Failure of minimum safeguards such as effective absence of legal representation is itself a ‘prejudice’ to an accused.
- Legal assistance to a poor person facing trial whose life and personal liberty is in jeopardy, is mandated not only by the Constitution and the Code of Criminal Procedure but also by international covenants and human rights declarations.
- The right to legal representation is implicit in the right to be heard during the trial.
- The trial judge should not limit its role to be a “spectator and a recording machine” but should be actively interested in eliciting the relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality.

SUPREME COURT'S DECISION

The Court unanimously held that the conviction and sentence had been vitiated not on merits but on the ground that the trial was not fair and just. However, the bench was divided on the question of re-trial. Whereas, Justice H.L. Dattu directed a re-trial, Justice Prasad observed that because of large time gap it would be difficult to hold a time bound fresh trial and therefore directed that the appellant should be sent back to the country of his nationality and be kept in prison in the interim.

Note: The decision was referred to a larger bench⁹ to consider “whether the matter requires to be remanded for a de novo trial in accordance with law or not”. The Court decided that the matter requires to be remanded for a de-novo trial, and that trial should be concluded as “expeditiously as may be possible and in no case later than three months from the date of communication of the order.”

⁹ *Mohd. Hussain v. State (Govt. of NCT of Delhi)*, (2012) 9 SCC 408.



IMTIYAZ RAMZAM KHAN V. STATE OF MAHARASHTRA

Supreme Court of India - 2018 SCC OnLine SC 960

FACTS

Special leave petitions were filed by the petitioners to appeal against the High Court judgement that upheld the convictions of the two petitioners. The Supreme Court upheld the High Court judgements, however dealt with the issue of videoconferencing between the client and advocate as it came up in the hearing.

SUPREME COURT'S OBSERVATIONS

The Court observed that often the advocates appointed by the Supreme Court Legal Services Committee do not have the advantage of having a dialogue with either the accused or other relevant persons having details about the case of the accused. The Court remarked “This at times seriously hampers the efforts on part of the learned advocates. All such attempts to facilitate dialogue between the counsel and his client would further the cause of justice and make legal aid meaningful.”

SUPREME COURT'S DIRECTIONS

The Court directed all legal services authorities/committees in every State to extend a similar facility of communication through video conferencing between the accused prisoners or any other person who has the details of the case and the legal aid advocates appearing in every criminal case, so that justice is well served.



GOBARDHAN SINGH AND ORS. V. STATE OF U.P.

Allahabad High Court - 2013 (83) ACC 756

FACTS

On 28th June, 2005, the appellant and his mother (husband and mother-in-law of the victim) were convicted for dowry death committed in 1991. They filed an appeal in July 2005, but their counsel did not appear in Court in any subsequent hearings. In 2013, the Court summoned the Counsel, who conveyed to the Court that due to non-payment of fees, he had refrained from appearing in Court all these years. The Court noted that the appellants, the mother-in-law and husband of the victim, had already served 8 years 4 months and 12 years respectively.

HIGH COURT'S OBSERVATIONS

There are large numbers of Undertrial Prisoners (UTPs) languishing in jails for prolonged period of time and convicts whose appeals are pending interminably and many of whom are old or ailing from incurable diseases. The Court observed that such cases of forgotten 'nameless' prisoners who have become 'ticket numbers' may have even lost the capacity to commit a crime in future. The Court highlighted the social and financial impact of prolonged incarceration on the entire family especially the dependants whose lives are often virtually destroyed and added that "Keeping such prisoners in jail any further, in the already overcrowded jails, serves no useful purpose and is an unnecessary burden on the State and the tax payer."

The law is clear that no procedure that denies legal assistance or an equal opportunity to contest or which keeps a prisoner unaware about their legal rights can be considered just, reasonable and fair. The Court further noted, "The right to free legal service is to be made available to prisoners at all stages, including the pre-trial stage, and thereafter for contesting the trial and the appeal and also for moving applications for bail". The Courts are mandated to proactively inform the prisoner about their entitlement to free legal aid. State's financial constraints or the nature of offence of the prisoner cannot be a ground to deny legal aid.

HIGH COURT'S DIRECTIONS ON LEGAL AID

- The District Judge must ensure that the Jail Visiting Lawyers (JVL) visit the District and/or Central Jail in the district at least twice a month for identifying prisoners in want of legal aid and those who have spent more than 5 years in jail.
- Women lawyers should be there in the panel of JVLs so that neglected women prisoners are provided legal aid.
- Legal aid must also be provided to those undertrial prisoners who have engaged a lawyer but is either not appearing or moving bail applications or the prisoner is now not able to afford the engaged private lawyer.
- The concerned Courts may consider releasing or reducing the bail amount for prisoners who are unable to obtain bail for want of securities or lack

of verification, after three months of the bail order. If the release of a prisoner is held up for lack of local sureties, it may be done away with.

- Priority for legal aid services shall be given by the legal aid lawyer to -
 - Older prisoners
 - Incarcerated for long periods
 - UTs who are in jail for more than 5 years for less serious offences (optional sentence is not a minimum life sentence or a death sentence)
 - Ailing prisoners
 - Women prisoners
 - Indigent prisoners
 - Schedule castes and schedule tribes
 - First time offenders, engaged in unpremeditated crimes
- The JVL must interview the beneficiary prisoner about complete details of the case, their social and economic background, reasons for non-appointment or non-appearance of the counsel, health status and conduct of jail authorities.
- Those prisoners whose bail applications are not at the district Court level such as UTs who have spent more than 5 years in prison or a convict whose appeal is either pending or has to be filed at the High Court, must be referred to the High Court Legal Services Authority.
- Chairperson District Legal Services Authority shall monitor the JVLs and legal aid lawyers for -
 - Regularity of jail visits
 - Enthusiasm and ability of tackling cases
 - Unlawful practices such as demanding money or benefits from legal aid beneficiaries
- Action must be taken against those failing on these parameters which may include removing and blacklisting. Also a 'certificate of excellence' may also be awarded to regular, enthusiastic, able and honest lawyers.
- U.P. State Legal Services Authority (UPSLSA) shall also earmark a budget for prosecuting bails and incurring other expenditures for indigent or otherwise eligible accused in jail who seek legal aid.

HIGH COURT'S DECISION

The Court held that in view of the poverty of appellants, the concerned Court should release them on moderate bail bonds with sureties or on a personal bond. The appellants must not be denied release for failure to arrange bail bonds or sureties. It added that if required, legal aid has to be provided for completing the formalities of release on bail.



MALATI SARDAR V. STATE OF WEST BENGAL

Calcutta High Court - 2017 SCC OnLine Cal 9536

FACTS

An appeal petition was forwarded from the Correctional Home to the Court challenging the order of conviction of the trial Court dated 03.07.2010. The matter got listed in June 2011 when the Court requested the Public Prosecutor to appoint a lawyer from the State panel for the convict prisoner. The Court noted that thereafter no steps were taken and the matter was listed again before the current Court on 13.07.2017 when the Court requested an empanelled lawyer to appear in the matter. The lawyer informed the Court that in all probability the convict appellant would have served the sentence. The Court asked the State to submit a report on the status of appellant's sentence and passed certain directions.

HIGH COURT'S OBSERVATIONS

While observing that no prompt action of appointing a legal aid lawyer was taken either from the defence panel of the State or the legal services authority, the Court stated “Right to prefer an appeal is not only a statutory right but a basic human right of every convict in terms of Article 14(5) of International Covenant of Civil and Political Rights to which the country is a signatory. Right to free legal aid/assistance to an accused is a fundamental right implicit in the requirement of fair, just and reasonable procedure enshrined under Article 21 read with Article 39A of the Constitution of India. Such right is also statutorily expressed in section 304 CrPC and the provisions of the Legal Services Authorities Act, 1987.”

The Court further noted that it is well settled legal position that the Magistrate/Judge is duty bound to inform the accused of his right to free legal aid from the stage of his first production before the Court. It added, “Failure to do so, would tantamount to dereliction of duty on the part of the judicial officer exposing him to departmental proceeding and would even vitiate the trial if such breach occurred in the course of trial”.

Right to legal aid is a species of ‘fair trial rights’ which extends to the appellant stage and therefore even the appellant Court has a duty to inform the accused of such right. It added “the trial Judge while pronouncing an order of conviction and sentence should be saddled with a corresponding duty to inform the convict of his right to avail legal aid to prefer an appeal against the conviction if he is unable to do so with his own resources. Such duty of the trial Court is mandated to ensure that the accused is made aware that his right to legal aid is not co-terminus with his conviction but continues even at the appellate stage.”

HIGH COURT'S DIRECTIONS

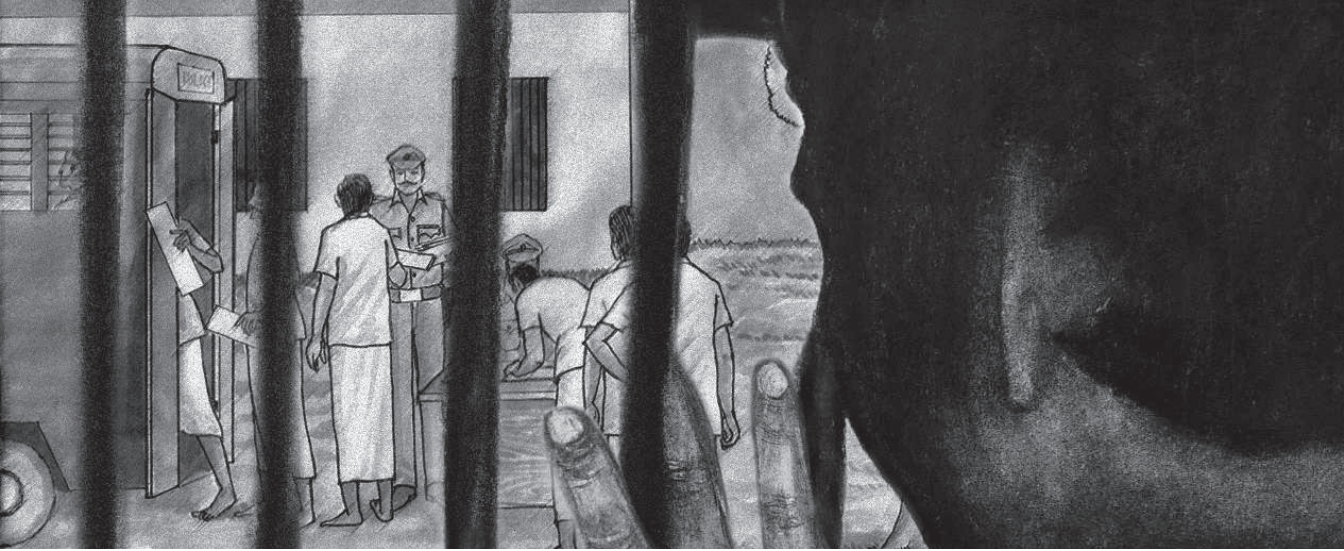
The Court noted that a procedure is required to be laid down so that the right to legal aid to all convicts who prefer an appeal against sentence and conviction is promptly informed to her at the time of delivery of the sentence itself so “that the fundamental right to legal aid/assistance may be effectively availed of as a

vibrant reality and does not become a distant mirage in the inert letters of legal classics.” Therefore, the Court directed as follows:

- a) Every Judge while pronouncing a judgment of conviction and sentence shall inform the convict in a language which is understandable to him, his right to prefer appeal against such judgment including his right to avail of legal aid in that regard from the appropriate legal services authority under the Act of 1987. In the event, the appellant expresses his desire to prefer appeal with legal aid, the Judge shall send a free copy of the judgment to the Secretary of the concerned legal services authority attached to the appellate Court for necessary steps in the matter.
- b) The aforesaid fact shall be endorsed at the foot of every judgment stating clearly that the right to prefer appeal with legal aid has been duly communicated to the understanding of the convict. Response thereto of the convict shall also be indicated in the body of the judgment.
- c) Necessary amendments may be made to Chapter X of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 so that such duty is imposed on the trial Judge at the time of delivery of judgment.
- d) In addition thereto, Superintendent of the Correctional Home where the convict is received upon conviction shall also communicate to him such right and record his willingness, if any, to prefer appeal with legal aid in the records of the Correctional Home. In the event, the convict desires to prefer appeal with legal aid, the Superintendent of the concerned Correctional Home shall forth remit necessary papers not only to the registry of the appellate Court but also to the Secretary of the concerned legal services authority attached to the said Court for necessary steps in the matter.
- e) Secretary of the concerned legal services authority attached to the appellate Court on receipt of the papers from the trial Judge or the Correctional Home authorities, as the case may be, shall immediately but not later than seven days appoint a lawyer from its panel, who has sufficient knowledge and expertise to deal with such cases, to prefer and prosecute the appeal on behalf of the appellant.
- f) The lawyer so appointed shall, if necessary, interview the convict in

the correctional home, file necessary pleadings in Court and prosecute the appeal in accordance with law. He shall submit quarterly reports to the Secretary of the concerned legal services authority as to steps taken by him and the status of the appeal till its disposal.

**COMPENSATION IN CASES OF CUSTODIAL
VIOLENCE, DEATHS AND VIOLATION OF
RIGHTS**



MEHMOOD NAYYAR AZAM V. STATE OF CHHATTISGARH

Supreme Court of India - (2012) 8 SCC 1

FACTS

The appellant, a doctor, approached the Supreme Court for grant of compensation. The appellant was arrested for an alleged offence under IPC and the Electricity Act, 2003 in 1992. Despite being given judicial custody, he was taken to the police station wherein he was abused and assaulted. He was also photographed with placards having derogatory words written on them. These photographs were shared in public domain and were even used in a Revenue Court proceeding. Aggrieved, the appellant submitted a complaint to the National Human Rights Commission who, in turn, asked the Superintendent of Police to submit a report. When no action was taken by the police, the appellant approached the High Court. The High Court held that the appellant was entitled to compensation and asked the State government to determine the compensation amount. The State subsequently refused to

grant compensation and consequently the appellant was denied compensation for 19 years. Thereafter, the matter came before the Supreme Court.

SUPREME COURT'S OBSERVATION

The Court stated that “any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise.” The Court further observed that the right to life under Article 21 cannot be denied to convicts, undertrial, detenues or any other person in custody in any manner other than the “procedure established by law by placing such reasonable restrictions as are permitted by law.”

The Court also observed that the term ‘torture’ also includes the concept of torment which can also be mental or psychological harassment. Inhuman treatment may cover such acts which are caused with an intention to cause physical suffering or severe mental pain. Further the Court stated that any treatment meted out to the person in custody which causes humiliation and mental trauma corrodes the concept of human dignity and the same is a violation of right to life of the prisoner.

It further said that “it is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution.”

SUPREME COURT'S DECISION

Rejecting the State’s argument that the appellant should seek compensation under the civil law for defamation, the Court held that the appellant was tortured in custody which is a violation of his fundamental right to life under Article 21 and hence he is entitled to remedy under public law. The Court stated that it is clear from the admitted facts that the appellant has been humiliated which is an inhuman act and causes mental trauma and granted a monetary compensation of Rs. 5 lakh to be paid by the State.



K. ELANGO V. STATE OF TAMIL NADU

Madras High Court - 2013 SCC OnLine Mad 1439

FACTS

The petitioner was returning home from his office along with his other friends and due to an ongoing protest they were not able to proceed further. The protest was to demand police officers to furnish the FIR on the mysterious death of a school student, who allegedly died after scuffle with another student. The police officers attempted to read the FIR, but could not do so properly. The petitioner and his friends, being advocates, were called upon by police officers to read out the contents of a FIR before the group of protesters. Before the petitioner could finish reading the contents, the crowd started shouting. Eventually, the police officials indulged in lathi charge to disperse the crowd. The policemen then called the petitioner to accompany them to cremate the body of the deceased, but they refused.

Being provoked over the conduct of the advocates, the Inspector of Police along with the other police officials

entered into the house of the petitioner while he was sleeping and dragged him out and thereafter, took him to the Karumalaikudal Police Station. The petitioner was beaten with lathis indiscriminately, kicked with boots and tortured physically. Apart from the said custodial torture, a false case was also registered against the other advocates.

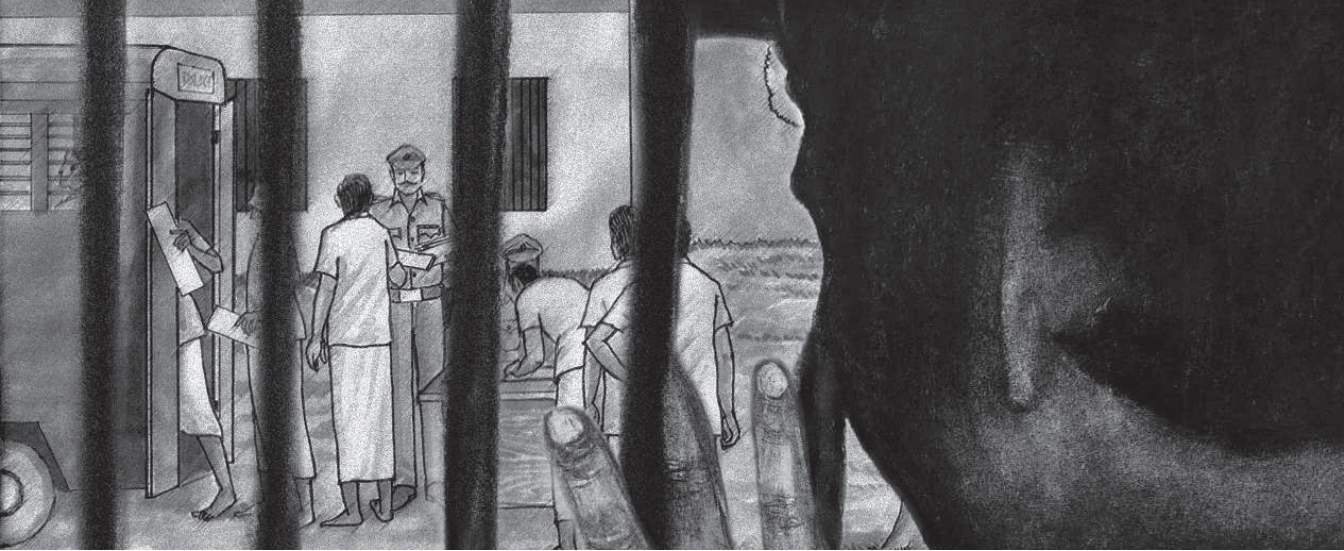
On seeing the bruises on the petitioner and another advocate, the learned Judicial Magistrate, Mettur, directed them to be sent to the hospital for treatment. The Inspector of Police visited the hospital every day, where the advocates were admitted and threatened them with dire consequences. The said advocate were prevented from filing a complaint, which prompted them to file the present petition.

HIGH COURT'S OBSERVATIONS

The relief of monetary compensation for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law. The award of compensation against State is the appropriate and effective remedy for redress of an established infringement of fundamental rights guaranteed under Article 21 of the Constitution of India by a public servant and the said award of compensation is a remedy available in public law.

HIGH COURT'S DECISION

On an appreciation of the facts of the case, the Court directed the State to grant compensation of Rs. 3,00,000 to the petitioner . Thereafter, the Court disposed of the writ petition.



SAROJ RANI V. GOVT. OF NCT OF DELHI

Delhi High Court - 2010 SCC OnLine Del 2215

FACTS

The petitioner's husband was arrested by the Delhi Police on 9th June 2007 for offences under Section 107/151 (preventive arrest) of the CrPC and sent to judicial custody in Tihar Jail on 10th June 2007, where he died two days later on 12th June 2007. The petitioner approached the Court seeking compensation for the death of her husband in Tihar Jail against the jail authorities and Delhi Police.

HIGH COURT'S OBSERVATIONS

The Court while observing that the post mortem report found that the death was due to assault, stated that the criminal liability for the death of the deceased is different from the liability of the State for death caused of an undertrial prisoner. The Court also observed that Delhi Police acted against the guidelines (as laid down on *D.K. Basu v. State of West Bengal*¹⁰) as the deceased could have been released on a personal bond. Further the Court stated that the fact that the deceased died of injuries sustained while in the judicial custody is enough to show that the deceased's right to life under Article 21 of the Constitution has been violated. Therefore it held that for the custodial death of the petitioner's deceased husband in the judicial custody, the jail authority is liable to compensate the victim's family.

COMPUTATION OF COMPENSATION

- Relying on several precedents the Court observed, "...standard compensation for non-pecuniary losses and compensation for pecuniary loss of dependency be calculated separately and added up to arrive at the total amount of compensation payable. The age, income and the number of dependents of the deceased are considered as relevant indicators."
- Further the Court stated that the standard compensation is computed by adjusting the amount based on the Consumer Price Index for Industrial Workers (CPI-IW), published by Labour Bureau, Government of India. Further it stated that for incidents post 2005, the base year of 2001 is to be taken and therefore the standard compensation would be Rs. 1,00,000. Now adjusting this with the CPI-IW, the standard compensation for non-pecuniary loss would be Rs. 1,31,000.
- Further the Court stated that "To calculate the compensation for pecuniary loss of dependency, the multiplier method (multiplier value given in the Second Schedule of the Motor Vehicles Act, 1988. Yearly income of the deceased less the amount spent on himself or herself) is used."

¹⁰ *D.K. Basu v. State of W.B.*, 1997 1 SCC 416.

HIGH COURT'S DECISION

The Court held as follows:

“In the present case, the Petitioner has two minor children. The value of each unit thus works out to 7,272/- (43,632/6). Therefore, the multiplicand would be 29,088/- (Gross annual income - the value of two units = 43,632 - 14,544). Multiplying this by 18 as per the Second Schedule to the MVA 1988, a figure of Rs. 5,23,584/- is obtained, which constitutes the pecuniary compensation payable by the Respondents.

Consequently, adding the standard compensation for non-pecuniary losses and the compensation for pecuniary loss of dependency, the total compensation payable by the Respondents is computed at Rs. 6,54,584/-, the break-up of which is as under:”

Standard compensation for non-pecuniary losses	Rs. 1,31,000/-
Compensation for pecuniary loss of dependency	Rs. 5,23,584/-
Total compensation payable	Rs. 6,54,584/-

With further directions towards the distribution and payment of compensation and costs to be paid by the respondent to the petitioner, the petition was disposed of.



JAWAHARLAL RAMTIRTH SHARMA V. THE STATE OF MAHARASHTRA AND ORS.

Bombay High Court - 2017 SCC OnLine Bom 7453

FACTS

In 1996 the petitioner was arrested for an alleged murder and later was given bail. Thereafter, it was found that the person for whose murder the petitioner was charged with, was alive but untraceable. The petitioner suffered the prospects of a criminal prosecution for 10 years till 2005 and therefore had approached the Court for damages arising out of grave lapses in the investigation.

HIGH COURT'S OBSERVATIONS

The Court found that the investigating officers in the case from 1996 to 2006 “have shown utter disregard to the cause of justice”.

The Court further observed, “The petitioner was based in Ludhiana, Punjab and had his small scale industry there. He had to attend the trial Court on many occasions and had to file different petitions before this Court including the present petition. This, in our opinion, is sheer mental as well as physical torture and agony. The right to life and personal liberty is certainly very much available to a person who is facing a criminal prosecution and in this case we find that this fundamental right guaranteed under Article 21 of Constitution of India was seriously infringed because of callous attitude and inaction on the part of investigating agency.”

HIGH COURT'S DECISION

The Court held that the petitioner be granted a compensation of Rs. 5,00,000 and Rs. 1,00,000 to cover litigation expenses for pursuing the case from a distant location and gave further directions to the State in this regard.



MR. SATISH BANWARILAL SHARMA V. UNION TERRITORY OF DIU, DAMAN AND DADRA & NAGAR HAVELI AND OTHERS

Bombay High Court -2016 SCC OnLine Bom 10033

FACTS

The petitioner was remanded to police custody for alleged offences under IPC. He was handcuffed and then paraded by the police in a crowded market area. The petitioner thus approached the Court for grant of compensation and directions to the State to initiate departmental proceedings against the police personnel for their misconduct.

HIGH COURT'S OBSERVATION

The High Court observed that the act of police to handcuff the petitioner without express permission of the concerned Magistrate in this regard is illegal and contrary to the existing directions of the Supreme Court in numerous cases. The Court noted that “this amounts to gross violation of the fundamental rights of the Petitioner.” The Court also observed that the act of parading the petitioner has caused humiliation and enormous embarrassment to him.

Relying on Supreme Court precedents the Court stated that the petitioner is entitled to compensation under public law for the violation of his fundamental rights in custody.

HIGH COURT'S DECISION

The Court held that “this is a case of gross violation of the fundamental rights of the Petitioner guaranteed under Article 21 of the Constitution of India as well as gross breach of the directions of the Apex Court” and considering the fact that the petitioner is a journalist who had published news items exposing ill-deeds of Government officers, a compensation of Rs. 4,00,000 would be just. Additionally, the Court directed the State to hold inquiry against the erring officers and granted liberty to recover the compensation amount from the erring officers. The petitioner was also granted costs of Rs. 25,000.



LAWYERS FOR JUSTICE V. STATE OF M.P.

Madhya Pradesh High Court - 2015 SCC OnLine MP 7488

FACTS

This was a public interest litigation arising from the death of an undertrial prisoner who was murdered by unknown persons. The deceased undertrial prisoner was admitted to a hospital for some treatment wherein he was shot dead. As the deceased was murdered in the custody of state due to gross negligence of officers of the Government who failed to protect the life and fundamental rights of the person in their custody, this writ was filed to ensure accountability of the erring officers of the State and grant of compensation to the deceased's family.

HIGH COURT'S OBSERVATION

The Court observed that because of security lapses and failure to abide by the jail manual and failure of police guards to do their duty the deceased was murdered and hence the State is responsible for the victim's violation of fundamental right to life under Article 21. It further noted, the "Supreme Court has taken the view that the defence of sovereign immunity is not available to the State for the tortuous act of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India."

The Court stated that the remedy of compensation under the public law for an established violation of fundamental right to life because of a public wrong attributable to the State which is under the public duty to protect the fundamental rights of the citizens is well established and additional to any other remedy under the law.

The Court also observed that the compensation of Rs. 2,00,000 as an interim relief recommended by the National Human Rights Commission in case where the person has lost his life in the custody of the State is inadequate.

HIGH COURT'S DECISION

The Court increased the compensation amount to Rs. 5,00,000 considering the fact that the deceased was a poor labourer, about 25 years of age and was survived by his father, wife and two children who were dependent on him. Inter alia the Court also directed the Jail Authorities to take departmental action after enquiry against the erring jail officials.



ASHA V. STATE OF MAHARASHTRA

Bombay High Court - 2015 SCC OnLine Bom 6174

FACTS

The husband of the petitioner died an unnatural death in a state prison. He died allegedly because of a head injury due to beating by the jail staff. The petition was filed by the wife of the deceased undertrial prisoner along with her three minor children to seek compensation for the custodial death.

HIGH COURT'S OBSERVATION

The Court while observing that there are numerous rival claims including that an appeal is pending against the session's Court order which held the Superintendent of the prison guilty under IPC, stated that "There is no reason why the State should not have cameras including night vision cameras, to cover all portions of the prison other than the changing room and toilets. There is no reason why, when such incident takes place, the State is unable to show from scientific evidence of video recordings as to what exactly happened when the victim is alleged to have slept in the cell along with other prisoners."

The Court added that every prisoner in the State's custody is the responsibility of the State and has to be protected against any harm which may be apprehended from other inmates, the jails staff or self-harm in frustrating circumstances.

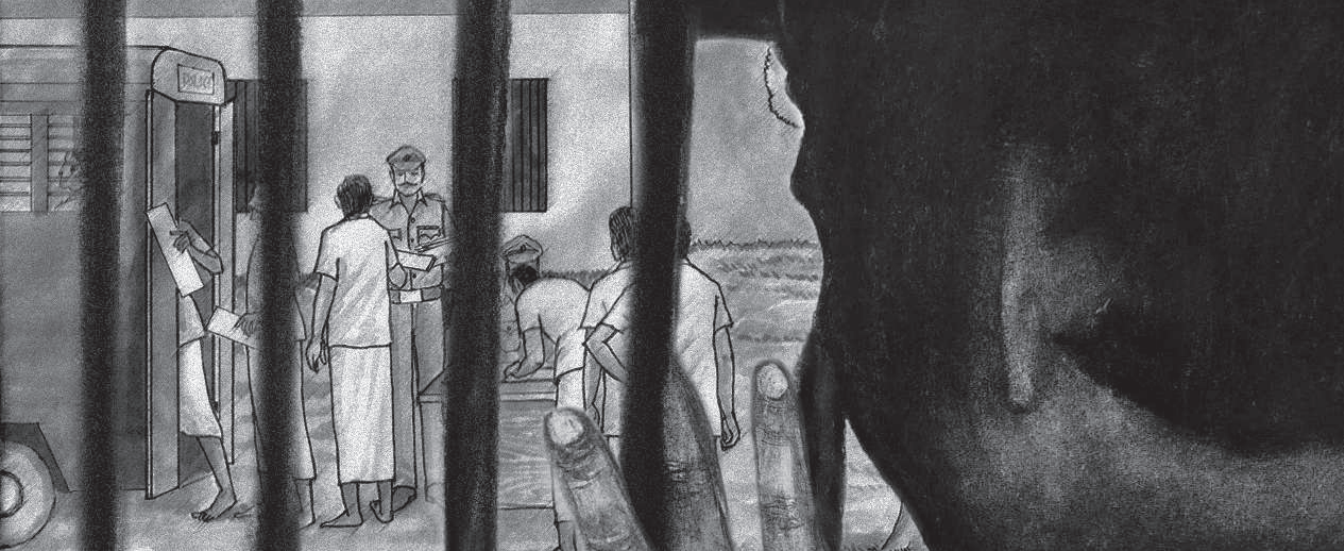
The Court also remarked that there is a tendency among jail staff to protect each other and the other prisoners may be silenced because of intimidation and other reasons. It stated "If the State fails to make provision to make such scientific evidence available, the State cannot escape the liability whenever such death occurs while the person is in the custody or in the prison."

The Court also observed "the State is duty bound to take action against its employees who perpetuated atrocities on the victim causing his death and also employees who tried to cover up the incident to suppress truth. The officials who used criminal force against the prisoner are responsible. Similarly, officials who may have been present when criminal force is used but who do not take preventive action to protect the prisoner or who do not report the incident must all be said to be liable and responsible for the criminal acts perpetuated against the prisoner."

HIGH COURT'S DECISION

The Court held that the petitioners are entitled to the remedy of monetary compensation under public law for the unnatural custodial death of their deceased family member. The Court, considering the age and income of the deceased, fixed the compensation amount at Rs. 5,00,000. Further, it stated that

since there are Government Resolutions regarding payment of compensation to the victims in matters like the present one where the victim suffered homicidal death for which the employees of the jail have been even prosecuted and still the government failed to pay the compensation, the petitioner are entitled to the interest on the abovementioned compensation amount from the date of death of the victim.



SHAIKH SHARMA V. STATE OF MAHARASHTRA

Bombay High Court - 2018 SCC OnLine Bom 2179

FACTS

The case of the petitioners was that their (now deceased) family member had left the home for daily labour. During noon they received information that the deceased was admitted to hospital by some policemen. On reaching there they found that the policemen were shifting the deceased to another hospital. They boarded the ambulance, the deceased was bleeding from his ear, nose and mouth. The hospital declared the deceased brought dead.

On enquiry, the policemen told them that the deceased was arrested for an alleged theft and during transportation he tried to run away and jumped from the police vehicle and sustained the injuries. Since there was no case registered against the deceased they disbelieved the police story and demanded registration of an FIR, which was blatantly denied.

Thereafter, the case was handed over to the Crime Investigation Department (CID) for further investigation to find out if there is a case for registration of FIR against the police officers. The post mortem report found that the cause of death was 'unnatural'. Since even after two months of the death of the victim no FIR was registered, the petitioners approached the Court for shifting the case to CBI and registration of FIR.

HIGH COURT'S OBSERVATION

The Court observed that there is a great responsibility on the police and prison authorities to protect the right to life of the persons in their custody. It further remarked that in certain observed instances “without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc.”

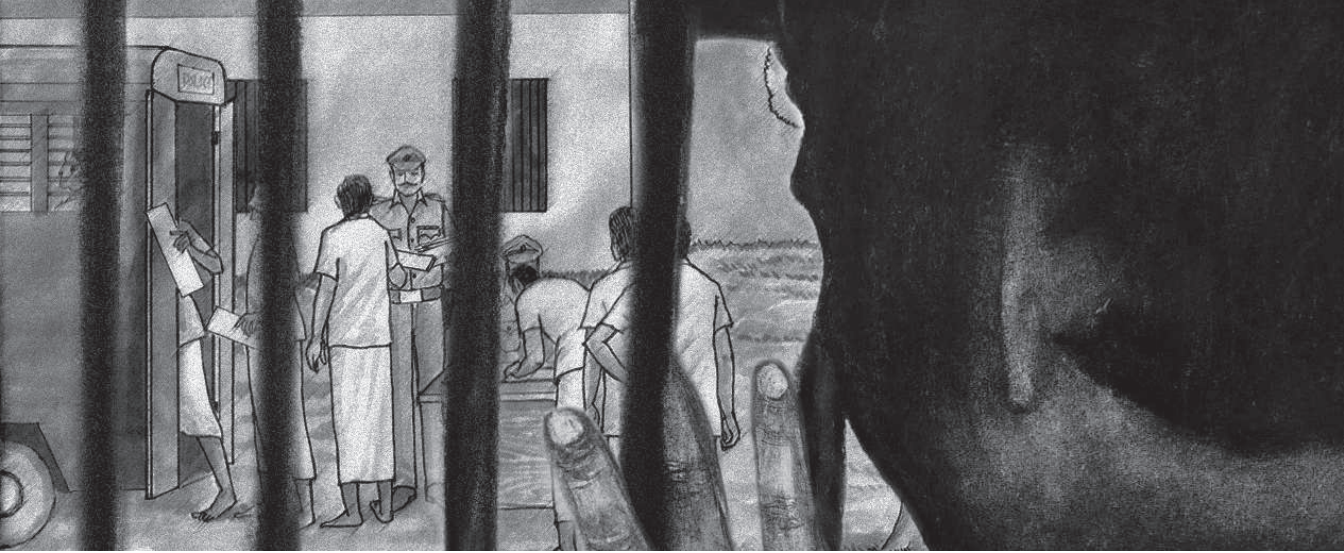
Observing that the intra department officials often ignore the complaints against torture in custody, it further noted that “Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death as the police lock-up where generally torture or injury caused is away from the public gaze and the witnesses are either police men or co-prisoners who are highly reluctant to appear as prosecution witness due to fear of retaliation by the superior officers of the police.” The Court then added that the present case is the classic example of aforesaid observations.

HIGH COURT'S DECISION

After considering the relevant facts and counter arguments the Court directed registration of the crime against the accused policemen and entrusted the investigation to the ADG of Police, CID to monitor it and appoint an investigating officer not below the rank of Superintendent of Police for the investigation.

Further, considering the fact there is a prima facie case of custodial violence and that the deceased was bread earner of the family, a compensation of Rs. 5,00,000 was awarded by the Court.

**RELEASE OF PRISONERS ON BAIL, PAROLE,
FURLOUGH & REMISSION**



UNION OF INDIA VERSUS V. SRIHARAN

Supreme Court of India - (2016) 7 SCC 1

FACTS

The petitioner challenged the letter issued by the Chief Secretary, Government of Tamil Nadu to the Secretary, Government of India wherein the State of Tamil Nadu proposed to remit the sentence of life imprisonment and to release the convicts in the Rajiv Gandhi assassination case. Three of the seven convicts, were originally imposed with the sentence of death. In an earlier 2014 judgement, the sentence of death was commuted by this Court. Immediately thereafter, the State of Tamil Nadu issued the letter in question, against which a writ petition was filed. While dealing with the petition, the 3-judge bench of the Supreme Court referred the case to the constitution bench for consideration of 7 questions of law.

SUPREME COURT'S OBSERVATIONS

- Life Imprisonment in terms of the relevant sections of the IPC means the entire life of the prisoner until it is curtailed by remissions validly granted under the provisions of CrPC and the Indian Constitution. The law on the point of life imprisonment is clear that life imprisonment means till the end of one's life and that by very nature the sentence is indeterminable. Any fixed term sentence characterized as minimum which must be undergone before any remission could be considered, cannot affect the character of life imprisonment but such direction goes and restricts the exercise of power of remission before the expiry of such stipulated period.
- As far as remissions are concerned, it consists of two types:
 - What is earned by a prisoner under the Prison Rules or other relevant Rules based on his/her good behaviour or other stipulations.
 - The grant of remission by the appropriate government in exercise of its power under the CrPC.
- Therefore, in the latter case when remission of the substantive sentence is granted under Section 432, then and then only giving credit to the earned remission can take place and not otherwise. Similarly, in the case of life imprisonment, meaning thereby the entirety of one's life, unless there is a commutation of such sentence for any specific period, there would be no scope to count the earned remission.

MINORITY JUDGEMENT OBSERVATIONS

- “Clemency jurisdiction would normally be exercised in the exigencies of the case and fact situation as obtaining when the occasion to exercise the power arises. Any order putting the punishment beyond remission will prohibit exercise of statutory power designed to achieve same purpose under Section 432/433 CrPC. In our view Courts cannot and ought not to deny to a prisoner the benefit to be considered for remission of sentence. By doing so, the prisoner would be condemned to live in the prison till the last breath without there being even a ray of hope to come out. This stark reality will not be conducive to reformation of the person and will in fact push him into a dark hole without there being semblance of the light at the end of the tunnel.”

- “An exercise of power of grant of pardon may certainly have taken into account the gravity of the offence, the effect of such offence on the society in general and the victims in particular, the age, capacity and conduct of the offenders and the possibility of any retribution. Such assessment would naturally have been as on the day it was made. It is possible that with the passage of time the very same assessment could be of a different nature. It will therefore be incorrect and unjust to rule out even an assessment on the subsequent occasion.”

SUPREME COURT’S DECISION

A summary of the seven questions considered and answered by the Court are given below:-

Q 1: Whether imprisonment for life meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

Ans. Imprisonment for life only means imprisonment for the rest of life of the convict. The right to claim remission, commutation, reprieve etc. as provided under Article 72 or Article 161 of the Constitution will always be available being Constitutional Remedies untouchable by the Court. The court held by a 3:2 majority that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well-founded. The dissenting judgments held that it would not be open to the Court to make any special category of sentence in substitution of death penalty and put that category beyond application of remission, nor would it be permissible to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed under Section 433A of CrPC.

Q 2: Whether the appropriate government is permitted to exercise the power of remission under Sections 432/433 CrPC after the parallel power has been

exercised by the President under Article 72 or the Governor under Article 161 or by the Supreme Court in its Constitutional power under Article 32?

Ans. The exercise of power under Sections 432 and 433 of CrPC will be available to the appropriate government even if such consideration was made earlier and exercised under Article 72 by the President or under Article 161 by the Governor. As far as the application of Article 32 of the Constitution by the Supreme Court is concerned, it is held that the powers under Sections 432 and 433 are to be exercised by the appropriate government statutorily and it is not for this Court to exercise the said power and it is always left to be decided by the appropriate government.

Q 3: Whether Section 432(7) of the CrPC gives primacy to the Executive Power of the Union and excludes the Executive Power of the State where the power of the Union is coextensive?,

Q 4: Whether the Union or the State has primacy over the subject-matter enlisted in List III of the Seventh Schedule to the Constitution of India for exercise of power of remission?, and

Q 5: Whether there can be two appropriate governments in a given case under Section 432(7) of the Code?

Ans. The status of appropriate government whether union government or the state government will depend upon the order of sentence passed by the criminal court as has been stipulated in Section 432(6) CrPC and in the event of specific executive power conferred on the centre under a law made by the parliament or under the Constitution itself then in the event of the conviction and sentence covered by the said law of the parliament or the provisions of the Constitution even if the legislature of the state is also empowered to make a law on the same subject and coextensive, the appropriate government will be the union government having regard to the prescription contained in the proviso to Article 73(1)(a) of the Constitution. Barring cases falling under Section 432(7)(a), in all other cases where the offender is sentenced or the sentence order is passed within the territorial jurisdiction of the concerned state, the state government would be the appropriate government.

Q 6: Whether *suo motu* exercise of power of remission under Section 432(1) CrPC is permissible in the scheme of the section, if yes, whether the procedure prescribed is mandatory or not?

Ans. No *suo motu* power of remission is exercisable under Section 432(1) of Code of Criminal Procedure. It can only be initiated based on an application of the person convicted as provided under Section 432 (2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the presiding officer of the concerned Court.

Q 7: Whether the term “Consultation” stipulated in Section 435(1) of the Code implies “Concurrence”?

Ans. Having regard to the principles discussed the court stated that it is always safe and appropriate to hold that in situations covered by sub-clauses (a) to (c) of Section 435(1) CrPC falling within the jurisdiction of the Central Government, the process of “Consultation” in reality be held as the requirement of “Concurrence”.



HUSSAIN AND ANOTHER V. UNION OF INDIA

Supreme Court of India - (2017) 5 SCC 702

FACTS

The appellants approached the Court against the rejection of their bail application by the High Court. First appellant's bail was rejected pending trial and the second appellant's bail was rejected pending appeal. The appellants contended that speedy trial is their right under Article 21 of the Constitution and having regards to delay in decision in their cases they are entitled to bail.

SUPREME COURT'S OBSERVATIONS

The Court reiterated that unduly long deprivation of liberty without ensuring speedy trial is a violation of the right to life of the prisoner. If the person who is in custody for a grave offence cannot be released then either the trial has to be expedited or bail must be granted to the accused.

The Court stated that timely delivery of justice is part of human rights. Decision in cases of undertrial prisoners in custody should be prioritised. It further observed that, delay in disposal of bail applications and cases where trials were stayed were priority areas for monitoring. The Court referred to the decision taken in the Joint Conference of Chief Ministers of States and Chief Justices of High Courts held in April, 2015, to establish Arrears Committees. These committees, to be setup by the High Courts, were to be entrusted the task to prepare a plan to clear backlog of cases pending for more than 5 years. Thereafter it referred to the resolution passed in the Chief Justices' Conference held in April, 2016 by the 'Delay and Arrears Committee' that,

- i. "all High Courts shall assign top most priority for disposal of cases which are pending for more than five years;
- ii. High Courts where arrears of cases pending for more than five years are concentrated shall facilitate their disposal in mission mode;
- iii. High Courts shall progressively thereafter set a target of disposing of cases pending for more than four years;
- iv. while prioritizing the disposal of cases pending in the district courts for more than five years, additional incentives for the Judges of the district judiciary be considered where feasible; and
- v. efforts be made for strengthening case-flow management rules."

The court also stated that, "Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas."

SUPREME COURT'S DIRECTIONS

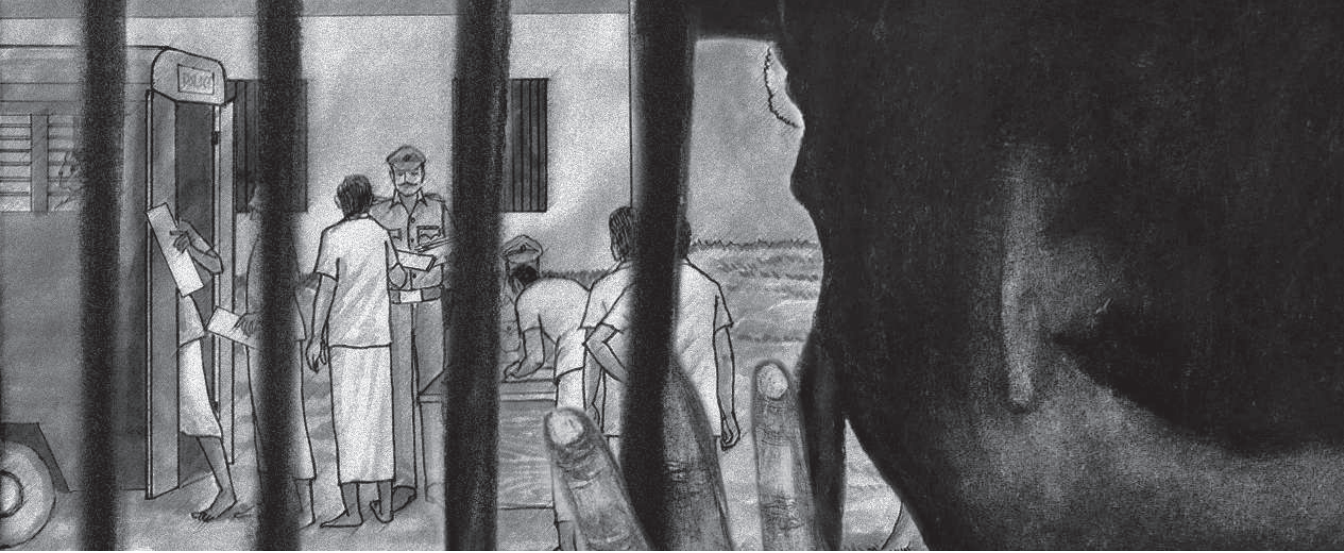
The Court directed that High Courts may issue the following directions to their subordinate Courts:-

- Bail applications be disposed of normally within one week,
- Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years,
- Efforts be made to dispose of all cases which are pending for more than five years, by the end of the year,
- As a supplement to Section 436-A CrPC, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the trial Court from time to time.
- The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

The Court further requested the High Courts that bail application filed before them are decided within one month, if possible and criminal appeals of accused for more than five months are prioritised.

SUPREME COURT'S DECISION

The Court directed the concerned Trial Court in case of first Appellant and the concerned appellate Court in the case of the second Appellant to dispose of the respective matters within six months.



ASFAQ V. STATE OF RAJASTHAN AND OTHERS

Supreme Court of India -2017 SCC OnLine SC 1092

FACTS

The appellant was convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987 and awarded life imprisonment. The conviction and sentence were upheld by the Supreme Court. The appellant applied for parole to the District Parole Advisory Committee in 2014 which was rejected on the ground of lack of jurisdiction to decide on TADA prisoners. The appellant approached the High Court which directed fresh consideration by the Committee.

The Committee again rejected the application stating that TADA convicts cannot be considered under Rajasthan Prisoners Release on Parole Rules, 1958. Subsequently, post another petition before the High Court the appellant was granted liberty to file a fresh application before the concerned authority under the rules framed by the Government of India vide notification dated 9.11.1955.

Therefore, the appellant filed simultaneous applications before the State government and the Ministry of Home Affairs, both of which were rejected. A third petition was made to the High Court for release on parole for 20 days wherein the High Court ruled that since “it is a case of serious and heinous crime where parole cannot be claimed as a matter of right” and that “...appeal has been decided by the Hon’ble Supreme Court...” it is not appropriate to exercise discretion for grant of parole. The High Court stated that the appellant may approach the Supreme Court. Finally, an appeal was made to challenge the correctness of the impugned order.

SUPREME COURT'S OBSERVATIONS

The Court declared the impugned High Court order to be bad in law and held that “the conviction in a serious and heinous crime cannot be reason for denying parole per se”. The Court added that the High Court had abdicated from its duty in observing that since the Supreme Court had decided on the appeal of conviction, the High Court could not exercise its discretion in grant of parole. The Court further held conviction and parole to be two unconnected subject matters.

While dealing with the distinction between parole and furlough, the Court observed -

- A parole is conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be considered as a conditional pardon by which a convict is released before expiration of sentence.
- A parole can also be temporary on some basic grounds which can be considered as mere suspension of the sentence, keeping the quantum of sentence intact.
- Release on parole is designated to afford some relief to the prisoners in certain specified exigencies, in given situations -
 - A member of the prisoner's family has died or is seriously, ill or the prisoner himself is seriously ill; or
 - The marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister. Sister's son or daughter is to be celebrated; or
 - The temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or
 - It is desirable to do so for any other sufficient cause;
 - Parole can be granted only after a portion of sentence is already served;
 - If conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and

- Parole may also be granted on the basis of aspects related to health of convict himself.
- The Court further observed that many state guidelines on parole stipulate two kinds of parole, custody parole and regular parole. It added, “Custody parole is generally granted in emergent circumstances like:
 - Death of a family member;
 - Marriage of a family member;
 - Serious illness of a family member; or
 - Any other emergent circumstances.

As far as regular parole is concerned, it may be given in the following cases:

- Serious illness of a family member;
- Critical conditions in the family on account of accident or death of a family member;
- Marriage of any member of the family of the convict;
- Delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home;
- Serious damage to life or property of the family of the convict including damage caused by natural calamities;
- To maintain family and social ties;
- To pursue the filing of a special leave petition before this Court against a judgement delivered by the High Court convicting or upholding the conviction, as the case may be.”
- Furlough is a brief conditional release from the prison given in case of long-term imprisonment.
- The period undergone on furlough need not be undergone by him like in the case of parole as furlough is a good conduct remission.
- The Court stated that “his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.”
- The Court then observed the following differences between parole and

furlough:

- “Both parole and furlough are conditional release.
- Parole can be granted in case of short term imprisonment whereas in furlough it is granted in case of long term imprisonment.
- Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.
- Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.
- For parole, specific reason is required, whereas furlough is meant to for breaking the monotony of imprisonment.
- The term of imprisonment is not included in the computation of the terms of parole, whereas it is vice versa in furlough.
- Parole can be granted number of times while there is limitation in the case of furlough.
- Since furlough is not granted for any particular reason, it can be denied in the interest of the society.”

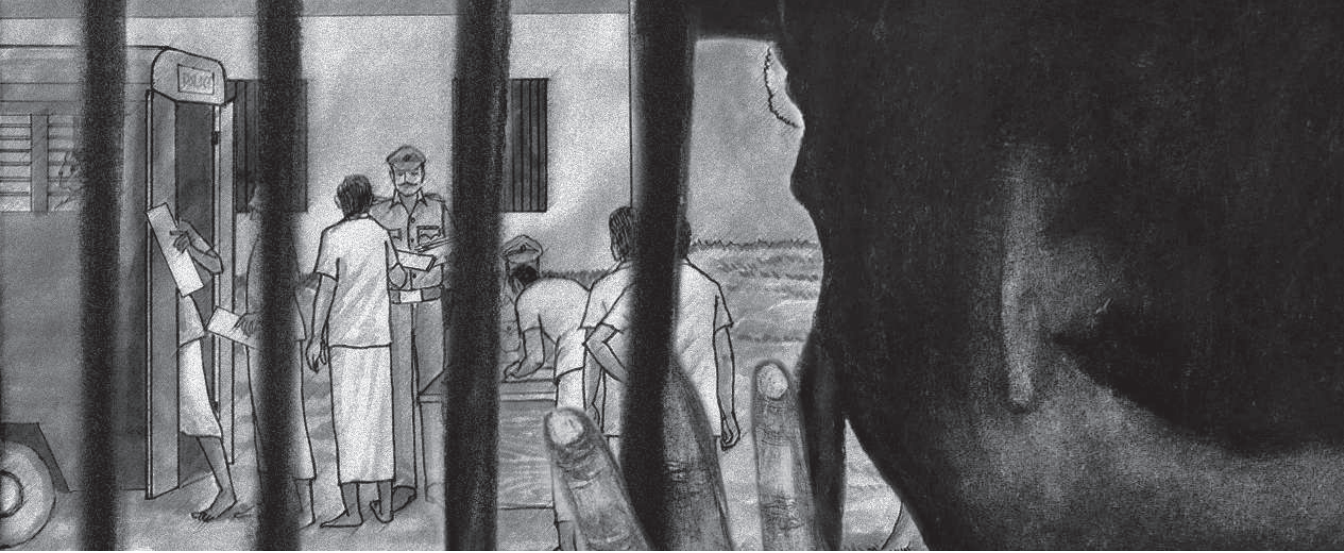
The Court observed that one of the four objectives of imprisonment, reformation justifies short period of release of the prisoners to solve personal and family issues, maintain links with society and ultimately a step towards redemption and rehabilitation of the prisoner. It added, “They are ultimately aimed for the good of the society and, therefore, are in public interest....Every citizen of this country has a vested interest in preparing offenders for successful re-entry into society.” The Court observed that failure to merge back with the society may lead the prisoners to “revert to criminal activity upon release”.

The Court also stated that while granting parole the other competing public interest has also to be kept in mind and therefore “the authorities are supposed to address the question as to whether the convict is such as person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.”

It also added that “mere nature of offence committed by him should not be a factor to deny the parole outrightly.”

SUPREME COURT'S DECISION

The Court did not grant parole to appellant after considering and observing that the authorities took into account relevant considerations such as threat to witnesses and safety hazard to the life of the appellant himself because of the nature of crime committed by him. The Court stated that he may make another request for parole after some time, not in immediate future as his conduct in prison is satisfactory.



STATE OF HARYANA AND ORS V. JAGDISH

Supreme Court of India - (2010) 4 SCC 216

FACTS

The respondent prisoner was convicted and sentenced to life imprisonment dated 20.05.1999. The dispute arose with regards to the applicability of remission policy in his case as at the time of conviction a policy dated 4.02.1993 was in place and at the time of consideration of his application for premature release another policy dated 13.08.2008 was in place. The 2008 policy was issued in exercise of the powers conferred under relevant sections of the Criminal Procedure Code whereas the 1993 policy referred to Article 161 of the Constitution.

The difference between the two policies in question, as far as relevant to the case of premature release of the respondent prisoner was that the 2008 policy stated that convicts under heinous crimes (as defined identically in both policies) may be considered for pre-mature release “after completion of 20 years of actual sentence and 25 years total sentence with remission” and the 1993 policy stated it may be considered “after completion of 14 years

of actual sentence including undertrial period and after earning at least 6 years' remission.”

The respondent had earlier approached the High Court of Punjab and Haryana at Chandigarh which ruled in his favour stating that the policy at the time of his conviction shall be applicable. The High Court's decision was appealed by the State at the Supreme Court wherein conflicting precedent were found and hence the matter was referred to a larger bench of the Supreme Court.

SUPREME COURT'S OBSERVATION

Under the residuary sovereign powers of clemency under Article 71 and Article 161 the authority may exercise the power of clemency in exceptional cases, if warranted by changed circumstances, even after rejection of one clemency petition. Such authority has to abide by the requirements of rule of law but it cannot be restricted by the provisions of Criminal Procedure Code. Therefore the incarceration period mentioned in the 'short-sentencing policy' cannot debar the authority from using its powers under the constitution even before expiry of such period.

The Court observed "The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, it should relate to a policy which, in the instant case was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof."

While declaring that the policy as on date of the conviction and the one which is more liberal shall be applicable, the Court stated, "The expectancy of period of incarceration is determined soon after the conviction on the basis of applicable laws and the established practice of the State."

The Court also observed that "objectives of punishment are wholly or predominantly reformatory and preventive." The punishment should not become brutal and that reformation of a life convict has 'paramount importance' in a 'welfare state'. In this regard, the relevancy of the circumstances of the offence and the state of mind of the convict at the time of offence must be factored into. The Court stated that the case of consideration of premature release of a life convict must take into account -

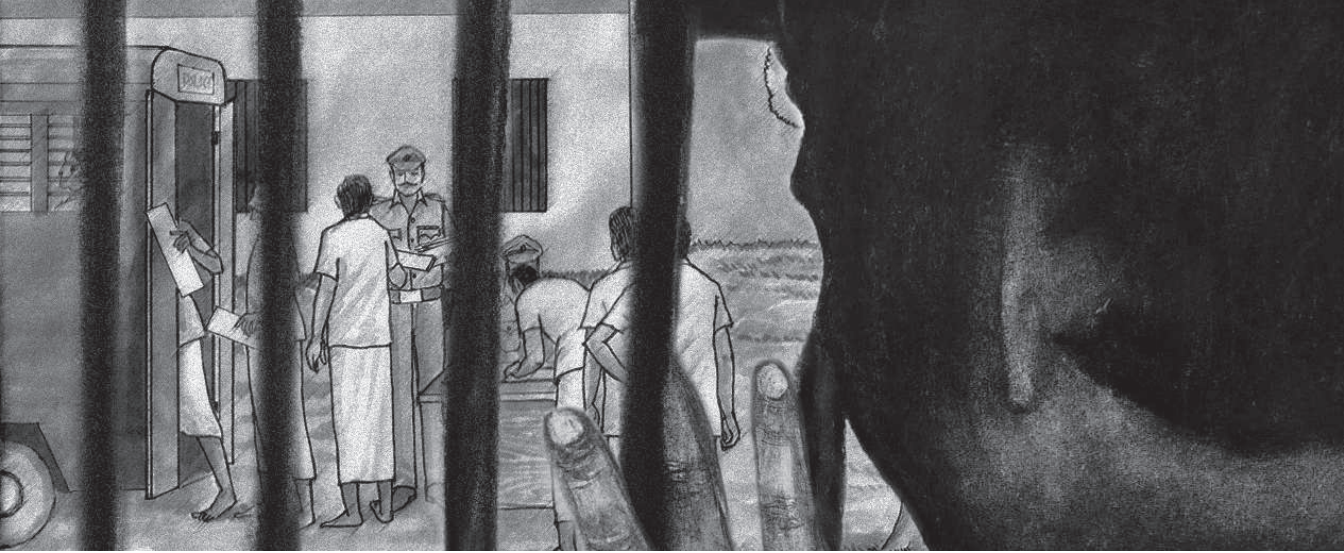
- "Whether the offence was an individual act of crime without affecting the society at large
- Whether there was any chance of future recurrence of committing a crime
- Whether the convict had lost his potentiality in committing the crime

- Whether there was any fruitful purpose of confining the convict any more
- The socio-economic condition of the convict's family and other similar circumstances”

With regards to clemency, it further added that “exceptional circumstances e.g. suffering of a convict from an incurable disease at the last stage, may warrant his release even at a much early stage”.

SUPREME COURT'S DECISION

The Court upheld the High Court's decision that the policy of 1993 which was in place at the time of conviction will be applicable to the respondent's case and therefore directed the authorities to consider his case under the said policy.



SANJAY CHANDRA V. CENTRAL BUREAU OF INVESTIGATION

Supreme Court of India - (2012) 1 SCC 40

FACTS

The appellant, accused of criminal conspiracy under IPC, applied for bail at the CBI Court and upon rejection of his bail application, approached the High Court under Section 439 of the CrPC. Both the Courts rejected the bail application on the grounds that first, the alleged offence was very serious involving deep-rooted planning and secondly, there was a possibility of witness tampering. The petition in this case was filed against the impugned order of the High Court.

SUPREME COURT'S OBSERVATIONS

The Court made the following observations with respect to the grant of bail and custody of undertrial prisoners:

- The objective of the bail is to ensure the presence of the undertrial at the trial through the bail amount. It is neither punitive nor preventative.
- The Courts while dealing with bail applications must bear in mind the principle that punishment begin after conviction. “Deprivation of liberty must be considered a punishment” unless necessary to ensure that the accused stands trial when required.
- An accused may be required to be put in custody during trial from time to time but in such cases ‘necessity’ is the operative test.
- Except in extraordinary circumstances, depriving any under-trial, who has not yet been convicted, of his liberty or punishing her in any manner would be contrary to the principle of personal liberty enshrined in the constitution.
- Seriousness of offence cannot be the only ground to refuse bail. While noting that in the present case the allegation is of a grave economic offence but the maximum punishment under the same is only of 7 years, the Court stated “In determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.”
- The discretion given to the Courts under the Criminal Procedure Code for grant bail to accused pending trial must be “exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general.”
- The discretion to grant or refuse bail must be regulated by facts and circumstances of each case. It reiterated, “bail is the rule and committal to jail an exception”.
- When there is a delay in trial and the conclusion of trial is not in near sight, bail must be granted to the accused.
- Indefinite detention of the accused in prison is a violation of Article 21 of the Constitution.

The Court noted that though the prosecution had made an allegation that the accused might tamper witnesses if set out on liberty, no material was produced in support of such an allegation.

SUPREME COURT'S DECISION

The Court stated that the conclusion of trial was not in near sight in the present case as there were seventeen accused persons and voluminous witness statements and material put on record by the prosecution. Further, the Court stated that “Every person, detained or arrested, is entitled to speedy trial” but since the same was not foreseeable in the said case and the investigation was complete and chargesheet been filed, there was no reason to keep the accused in custody. The Court granted bail with certain stringent conditions imposed upon the appellant.



AJAY VERMA V. GOVERNMENT (NCT OF DELHI)

Delhi High Court - 2018 SCC OnLine Del 7960

FACTS

The petitioner, in public interest, had approached the Court in respect of prisoners who were unable to furnish bail bonds despite getting favourable bail orders and consequently continued to be behind bars. In the same matter, the Court had passed other directions with regards to release of such prisoners to concerned authorities including prison department and Judicial Magistrates and towards developing a system of information sharing among the concerned authorities. In this order the Court passed further directions as noted below.

HIGH COURT'S DIRECTIONS

The prison authorities are responsible to inform the trial court and the District Legal Services Authority about the inability of the prisoner in furnishing bail bonds after getting favourable bail order.

The trial Courts passing the bails orders shall record -

- i. date of the order and conditions imposed therein,
- ii. date on which the conditions were satisfied,
- iii. date of release of the prisoner from the jail,
- iv. if conditions not satisfied, the date on which the review and risk assessment were taken upon an interview of the prisoner concerned,
- v. date and terms of the order passed upon the review, and
- vi. date of ultimate release of the prisoner.

The trial Courts will send a monthly statement to the District Judge who would conduct verification of information furnished by the trial courts. The same information shall be sent to the Director General for quarterly verification.

The Director General and the District Judge shall send a report on the orders of bail and release of prisoners to the Registrar General of the Delhi High Court on a quarterly basis.

Further directions were issued by the Court for ensuring that bail conditions are met:

- i. The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.
- ii. When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, alongwith the date of the order of bail.
- iii. In case of inability of a prisoner to seek release despite an order of bail, it is the judicial duty of all trial courts to undertake a review for the reasons thereof.
- iv. Every bail order shall be marked on the file.
- v. It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.

- vi. In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.
- vii. It shall be the responsibility of prison authorities to promptly bring any instance of a prisoner being unable to secure release from prison despite an order of bail having been passed in his favour to the notice of the trial Courts as well as the concerned Secretary of the District Legal Services Authority.
- viii. All trial Courts passing order of bail shall maintain a record of the following:
 - a. date of the order and conditions imposed therein,
 - b. date on which the conditions were satisfied,
 - c. date of release of the prisoner from the jail,
 - d. if conditions not satisfied, the date on which the review and risk assessment were taken upon an interview of the prisoner concerned,
 - e. date and terms of the order passed upon the review, and
 - f. date of ultimate release of the prisoner.
- ix. A monthly statement on these aspects shall be sent to the concerned District Judges, who would undertake an exercise of verification of the information furnished by the Court concerned.
- x. This information shall also be sent to the District Judge as well as Director General (Prisons) who would undertake an exercise of verification on a quarterly basis.
- xi. A report regarding the orders of bail and the release of prisoners shall be sent on quarterly basis by the District Judge as well as Director General (Prisons) to the Registrar General of this Court.
- xii. The panel advocates deputed by the legal services authority in the respective criminal courts would be responsible to keep themselves updated, inter alia, on the basis of above-mentioned record and report and move appropriate application in concerned case qua concerned accused respecting whose release further orders are required to be passed to secure release from custody pursuant to the bail order.
- xiii. The training and sensitisation of judges on these aspects shall be taken expeditiously by the District Judges in conjunction with the Delhi Judicial Academy.

The Court also directed the Director (Academics) of the Delhi Judicial Academy to design a training module and schedule of trainings on the matters of bail and release of prisoners for the trial Court judges. These trainings shall be organised by the District Judges under the supervision of Delhi Judicial Academy.



HIGH COURT ON ITS OWN MOTION V. STATE & ORS.

Delhi High Court - W.P. (Cri.) 1352/2015 (Order dated: 12.12.2017)

FACTS

The Court was petitioned to take cognizance of the working of Section 436A CrPC and appraised that several undertrial prisoners were languishing in prisons for long durations against the mandate of Section 436A. The Court asked two academicians to report on their observations on the working of Section 436A of CrPC in trial Courts. The report along with recommendations was placed before a committee formed by the Court. The committee reviewed the report and suggestions by District Judges and then placed a consolidated report suggesting guidelines before the Court. Pursuant to this, the Court issued certain guidelines in this order.

HIGH COURT'S DIRECTIONS

The Court issued the following guidelines for trial courts, jail authorities and District Legal Services Authorities “in the best interest of the prisoners”:

i. Updation of custody warrants by trial courts:

While preparing the custody warrants of an under trial prisoner (UTP), the courts should ensure that in addition to the details/information already mentioned in the custody warrant, it should also contain the following details/information -

- a) At the time of the first remand, the section(s)/offence(s) under which the UTP is being sent to judicial custody.
- b) Any change(s) in the section(s)/offence(s) during the course of investigation.
- c) Section(s)/offence(s) under which the final report (charge-sheet) has been filed.
- d) Section(s)/offence(s) of which the court is taking cognizance.
- e) On the date of cognizance is taken, the court shall indicate the date on which the right under Section 436A CrPC will accrue for the UTP. [While mentioning this date, in case of multiple offences, the court should also separately write the date on which half of the maximum sentence of graver offence will expire and the date on which half of maximum sentence of lesser offence will expire].
- f) Section(s)/offence(s) under which the UTP has been charged by the court.
- g) If on a later date there is an amendment in the charge, then the same should be updated in the custody warrant.
- h) The date on which the UTP is granted bail by the trial court or the superior court. The said order should be conveyed on each date of hearing when the UTP is produced for remand.
- i) The aforementioned details/information will have to be updated at following stages of a case, i.e. from the stage of first remand to filing of chargesheet to taking of cognizance to framing of charge. The court must ensure that the custody warrant is updated/modified in the manner stated above.

ii. Role of jail authorities:

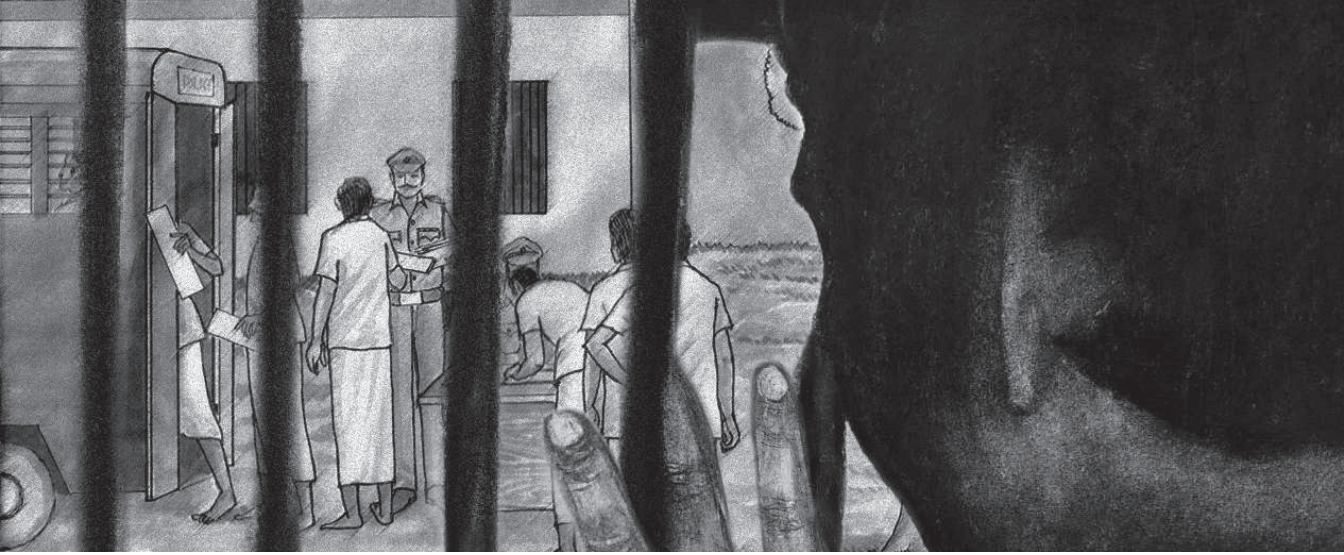
In addition to the duty cast on the courts to maintain and update the custody warrants of UTPs, the jail authorities will also have to play an active role in the effective implementation of the aforesaid suggestions.

- a) The jail authorities will have to constantly update their records and in line with any change in the details mentioned in the custody warrant of a UTP.
- b) The jail authorities should also inform the UTP and the concerned court when the UTP becomes entitled to receive benefit of Section 436A CrPC.
- c) The jail authorities must inform the UTP of any changes in the section(s) he/she is charged with by the Court.

iii. Role of Delhi State Legal Services Authority (DSLISA):

- a) Legal literacy Camps should be organised by DSLISA regularly in jails to make the UTPs aware about their rights under Section 436A CrPC and they should also apprised about the period by which half of the sentence for the common offences is going to be completed.
- b) The remand advocates/legal aid counsels appointed in the criminal courts by the concerned DLSA may be asked to give a monthly report in respect of the UTPs for whom an application under Section 436A CrPC may be moved. The remand advocate/appointed legal aid counsel may be directed to move these applications promptly in the concerned court.
- c) The legal aid counsels may be instructed that in those cases which are dealt with by them, they should themselves remain alert as to when a person becomes eligible for the benefit under Section 436A CrPC and take appropriate steps.

Apart from the above, the Court also directed that the prison management system be connected and work in cooperation with the courts as well as the police and to ensure expeditious communication of information in the digitalised format.



DILIP SOMA SHETYE V. IG PRISONS AND ANR.

Bombay High Court (Goa) - 2019 SCC OnLine Bom 856

FACTS

The petitioner's application for furlough was rejected by the Inspector General of Prisons, Goa in two consecutive orders after which he challenged the orders before the High Court.

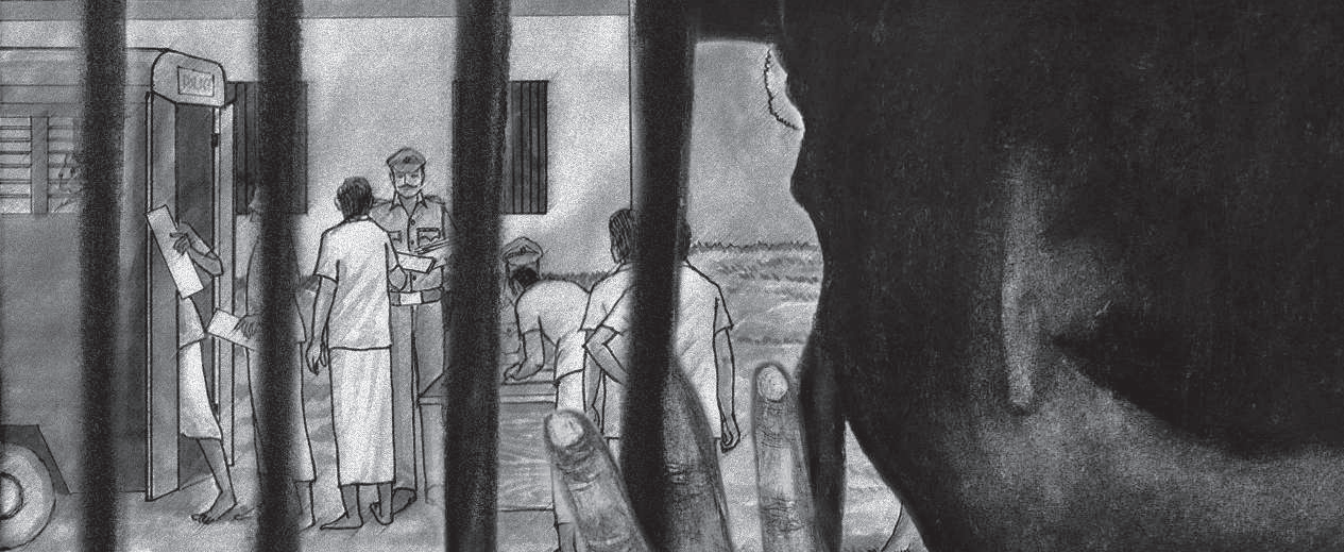
HIGH COURT'S OBSERVATIONS

Brief release of a convict from prison is not only to allow him to address personal and family affairs but also to sustain his links with the society. “Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoner for good of societies must receive due weightage while they are undergoing sentence of imprisonment.”

The Court held that while a specific reason is required for grant of parole but furlough is “meant for breaking the monotony of imprisonment”. However, it added that since furlough is granted for a particular reason, it may be denied in the “interest of society”.

HIGH COURT'S DECISION

The Court directed the IG prisons to release the petitioner setting aside the order of the IG rejecting the application for furlough on the ground of concerned Police Station's report that the petitioner may not surrender before the jail authority. The Court stated that while the report from the local Police Station is a relevant consideration, the fact that the petitioner has been released on parole or furlough 20 times previously and that has a satisfactory conduct in prison for more than 18 years of his confinement cannot be overlooked.



SURAJ GIRI V. STATE OF RAJASTHAN AND ORS.

Rajasthan High Court - 2010 SCC OnLine Raj 3604

FACTS

The issue before the Court was whether a life term convict who has not availed the benefits of first, second and third parole under the Rajasthan Prisoners Release on Parole Rules, 1958 (“1958 Rules”) can be considered for release on permanent parole under Rule 9 of the said rules after completion of the requisite period of sentence.

HIGH COURT'S OBSERVATIONS

The Court, relying on a number of judgements of the Supreme Court on the object of parole, observed that though parole cannot be claimed as a matter of right, the reformatory notion of punishment and rehabilitative and humanitarian approach of criminal law justifies the concept of parole for all prisoners including life term convicts. The Court also observed that the 1958 Rules which allow permanent parole for life convicts and convicts whose sentence of death has not been yet commuted show the intention of the framers of the law that the penal law must be clear with the object of punishment to reform the offender so that he may adjust and settle in the society and therefore interaction with family and the society must be accorded.

The Court observed that for grant of permanent parole “the prisoner’s character and conduct within jail will be relevant.” Further, while remarking on the aim and object of the 1958 rules the Court observed “...after the (right to) life, the (right to) liberty is most important right of a person and if one is entitled to or can be given liberty even for short period, then such liberty cannot depend upon procedural formalities of moving application and seeking liberty, particularly when liberty has been taken away of such person (though, in accordance with law) or is under control of some authority who has lawful right to restrict the liberty of a person as in the case, after conviction of a person.”

The Court observed that despite the presence of parole provisions in the law for more than half a century the non-availing of parole benefits by the prisoners and the fact that many prisoners are still lodged in prison after serving the requisite 14 years of sentence show that they are not aware of their rights. Such prisoners must be provided legal aid.

HIGH COURT'S DIRECTIONS

The Court stated that it is the duty of the jail authorities to maintain the complete record of the prisoners including the appropriate entries in the record of making the prisoners aware of the benefits of parole and premature release. The prison authorities must ensure that suo motu proceedings may be initiated even if the prisoner fails to make application for extending the benefits of first, second, third and finally the permanent parole or premature release as per the

applicable laws. It added that “it is duty of the jail authorities to obtain the application of the prisoners for their release on parole”.

The Court also directed the State to ensure that the prisoners are made aware of their right to be considered for release on parole.

HIGH COURT’S DECISION

The Court held that not availing the benefits of first, second and third or any of the parole cannot be a ground for refusal of permanent parole.



MEHBOOB ALI V. STATE OF RAJASTHAN

Rajasthan High Court - 2012 SCC OnLine Raj 1813

FACTS

The petition was registered on the petitioner's letter to the Rajasthan High Court stating the grievance against the denial of first 20 days parole after serving five years of sentence. The petitioner was denied parole by the District Parole Committee relying on the 'adverse' report by the concerned local police. The High Court in an earlier order observed dissatisfaction over the manner of considering parole prayers by the said committee and therefore allowed an opportunity to "act in accordance with law and to correct their approach." However, to the Court's dissatisfaction it observed that the committee continues to "ignore the law".

HIGH COURT'S OBSERVATIONS

The Court while observing that the parole committee should not take the approach of pronouncing the prisoner guilty of the offences as it has already been done by the appropriate Court, stated that “the need at the given stage, while considering grant of parole, has been to look ahead; and to, at least, peep into the principles of rehabilitation and reformation, rather than being stuck only with the theories of retribution and deterrence.”

The Court further observed:

- Onerous conditions such as high amount of personal bonds or surety bonds are not justified for emergent release of prisoners. The Court said while giving reference to Section 440 of the CrPC, “it is always permissible to impose reasonable conditions for releasing a prisoner from incarceration but, so far the amount of personal bond and sureties is concerned, the same has to be reasonable and cannot be excessive.” The individual circumstances have to be considered to determine the amount of bonds.
- The Court reiterated the reformatory objective of the parole and stated “A balanced approach is, therefore, required and merely the background of prisoner-convict cannot be taken as the reason sufficient to deny him parole if he is otherwise entitled thereto. It cannot be assumed that there would never be any chance of a convict taking the path of reformation.”
- Under the Rajasthan Parole Rules of 1958, if a prisoner has served the requisite part of sentence with good jail conduct, “his eligibility and entitlement...is otherwise beyond doubt.”

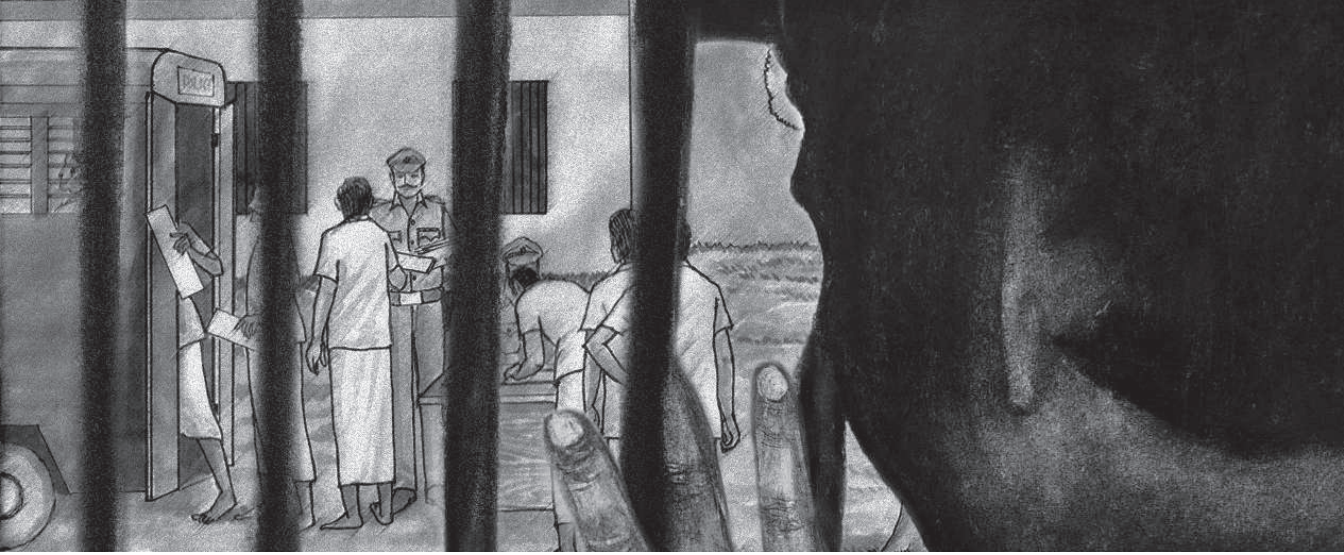
The Court also observed that the said committee did not consider the aspect of conduct of the prisoner at all while considering the parole prayer which cannot be approved under the law.

- The apprehensions of disturbance to public tranquillity as a reason for denying parole should not be ‘generalised inferences without specification’. The authorities are responsible to maintain peace and tranquillity during the parole term of the prisoner and even otherwise. This apprehension can also be addressed through reasonable terms and conditions of the parole.

- Every individual parole prayer has to be examined in its own merits while keeping in view the meaning and purport of the Rules and the observations made by the Courts.

HIGH COURT'S DECISION

The Court allowed the parole petition while setting aside the order of the District Parole Committee on furnishing a personal bond of Rs. 50,000 and two sureties of Rs. 25,000 each to the satisfaction of the Jail Superintendent who may impose additional terms and conditions under the rules of 1958.



JOHNY @ ABDUL RAHIM KHALIL SHAIKH V. STATE OF MAHARASHTRA

Bombay High Court - 2011 SCC OnLine Bom 1320

FACTS

The petitioner who was serving a sentence of life imprisonment had applied for parole to take care of his ailing mother. The Divisional Commissioner rejected the parole request stating, two daughters and son-in-laws of the petitioner's mother are competent to look after her during her ailment and petitioner's surety is not willing to furnish surety bond. The petition was registered on a letter petition sent by the petitioner along with the police report and the affidavit of the said surety.

HIGH COURT'S OBSERVATIONS

On perusal of previous records of the petitioner the Court observed that he had been previously released on parole or furlough a total of six times wherein he reported back on the scheduled time without any adverse report of his behaviour during the time of release on each occasion. In this context, the Court observed that there can be no reason for the surety to not execute the bond and hence, prima facie, it looks that the higher authorities in police and the District Magistrate endorse the police report of subordinate personnel of the rank of a constable as “ultimate truth”. The Court further observed that, “While sitting on the Division Bench on Criminal Jurisdiction, at least one petition appears on board, in each week, when such situation surfaces. Adverse reports which are adverse due to refusal or failure of relatives to pay the gratification or (are) false due to indolence or negligence or due to fear of responsibility or accountability is a very common scene.” It added, “...there is a systemic fault in the manner of scrutiny of the applications of Prisoners.”

HIGH COURT'S DIRECTIONS

The Court suggested that the Divisional Commissioner or the D.I.G. Prisons “should adopt a methodology of having a file “Previous correspondence and the Docket of the case of every prisoner.” This shall consist of the entire precious record of the releases of the petitioner which would be a permanent record maintained till the final release of the prisoner.

The jail superintendent must send the requisition for the report with the following entries:

- i. Date since in custody.
- ii. Date since in particular jail.
- iii. Date and case in which convicted.
- iv. Details of conviction.
- v. Earlier applications for parole furlough and the summary of Police Report, on each occasion viz:-
 - a) Date when applied,
 - b) Category - Parole/Furlough,
 - c) Nature of Police Report, and if adverse, facts or grounds,
 - d) Whether released and date,
 - e) Date of report including in time or late and days of delay,

- f) Jail Punishment,
- g) Other remarks.

In addition to the abovementioned list the prison and relevant authorities may devise their own format to ensure that the decision-making process is fair, transparent and objective. The Court also stated that use of modern technology such as calling of the reports on email etc. should be adopted.

HIGH COURT'S DECISION

The Court set aside the impugned order of the Divisional Commissioner and allowed parole to the petitioner for a period of two weeks and further directed the Inspector General of Prison to finalise the dockets as suggested above and implement the same all across the State.



KISHAN BHAHDUR V. STATE OF RAJASTHAN & ORS.

Rajasthan High Court - 2013 SCC OnLine Raj 3910

FACTS

The petitioner, a resident of Nepal applied for permanent parole after serving the actual sentence of 14 years under the Rajasthan Prisoners Release on Parole Rules, 1958. The Inspector General Prisons, Government of Rajasthan rejected his application for the grant of permanent parole stating that under Rule 14(a) of the Rules of 1958 a convict prisoner, who is ordinarily not a resident of Rajasthan, should not be released on permanent parole. The petition in this case was instituted on a letter addressed to the Rajasthan High Court.

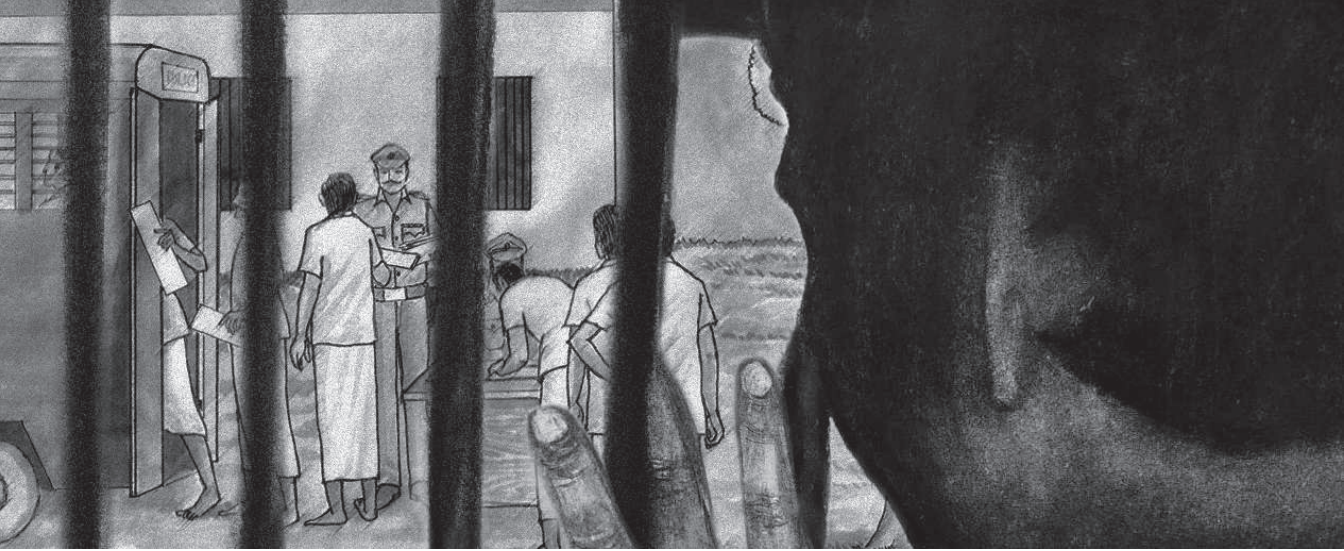
HIGH COURT'S OBSERVATIONS

The Court observed that since the petitioner has served the actual sentence of 14 years, he is eligible for release on permanent parole. The Court also noted that the Rule 14(a) of the said rules is “a directory one” and therefore it can be deviated from in special circumstances.

The Court further observed that residents of Nepal in relation of foreign nationals have a special status in India in light of the ‘Treaty of Peace and Friendship’ between the two countries. Under Article 7 of this treaty, “Nepal citizens have all the rights of an Indian citizen”. Further the Court observed that “The Government of India and the Government of Nepal also signed a Treaty of Extradition and Article III clause (17) of that provides for grant of extradition of a person escaping from custody while undergoing punishment after conviction for certain offences including murder.” Therefore the case of Nepal’s nationals in India for grant of parole has to be treated differently than other foreign nationals in India.

HIGH COURT'S DECISION

The Court held that the petitioner deserves to be considered at par with Indian citizens and that there was no impediment in granting permanent parole to him. The Court directed the State government to grant permanent parole to the petitioner provided he furnishes one surety of Rs. 25,000 and personal bond of the same amount to the satisfaction of the concerned prison Superintendent.



VAGA RAM V. STATE OF RAJASTHAN

Rajasthan High Court - 2012 SCC OnLine Raj 20

FACTS

The petition registered on a letter addressed to the High Court challenged the rejection of first parole request of the petitioner who was convicted under Section 304B and 498A IPC and sentenced to 10 years RI for first offence and three years of RI for the second offence. The parole prayer was rejected on ground of adverse report from the police stating that the petitioner is ‘an alcoholic’ and therefore is likely to ‘engage in fights and assaults’. However, the report of the Superintendent of the concerned prison was in his favour.

HIGH COURT'S OBSERVATIONS

The Court stated that although incarceration necessarily implies deprivation of fundamental rights of the prisoner but the “twin rights of life and personal liberty” are not taken away through incarceration. The Court added that it in this aspect that the “Parole Rules were created as a piece of social beneficial legislation for the benefit of the large number of convicted prisoners.” Even convicts serving life imprisonment have a substantive right to be objectively considered for release on parole.

The Court stated that “Repeatedly, the Hon’ble Supreme Court and this Court¹¹ have held that parole serves three purposes; firstly, it re-establishes the link between the prisoner and his family; secondly, it permits the prisoner to move freely in the mainstream of society; thirdly, it is a motivational method to encourage the prisoner to reform himself during the period of incarceration.” It added that both Supreme Court and the Rajasthan High Court has repeatedly held that parole should be granted as liberally as possible and the advisory committee must adhere to the underlining ‘philosophy’ of the parole rules. The advisory committee should not *ipsi dixit* accept the adverse police report in absence of supporting evidence.

It also stated that the report of the prison superintendent is more important as the prisoner is in his custody and under observation for behavioural changes. The Court went ahead to state that “in case, the Superintendent were to give a favourable report, the same should be accepted on its face value, until and unless, there is some evidence to the contrary.”

HIGH COURT'S DECISION

The Court set aside the committee’s order as it had erred in accepting the adverse report of the police and in ignoring the favourable report of the prison superintendent for refusing the petitioner’s parole request. It directed the State government to release the petitioner on his first parole of twenty days.

¹² Rajasthan High Court.



DINESH KUMAR & ORS. V. GOVT. OF NCT OF DELHI

Delhi High Court - 2012 SCC OnLine Del 2507

FACTS

The petitions clubbed in this case challenged the constitutional validity of Clause 26.4 of the Delhi Parole/ Furlough Guidelines of 2010 which rendered prisoners convicted for an offence of robbery, dacoity, arson, kidnapping, abduction, rape and extortion ineligible for grant of furlough. All the petitioners were affected by the said clause and hence denied furlough. The petitioners challenged the same for being arbitrary and not based on any intelligible differentia therefore violative of their right to equality under Article 14 and right to life under Article 21 of the Constitution.

HIGH COURT'S OBSERVATIONS

The Court observed that making the offenders falling under the offences specified in the said clause per se ineligible for grant of furlough is a presumption that such convicts have a tendency to commit the offence again. The Court stated that such generalisation solely based on the nature of offence is not valid and the propensity to commit further crime has to be examined on a case to case basis. The Court added that there are enough restrictions present in the said guidelines apart from this blanket restriction based on the type of offence, such as conduct and behaviour of the prisoner in the prison, whether the prisoner is a habitual offender or is the prisoner involved in a pending investigation in a case of serious crime, or the presence of the prisoners in the society would be dangerous or prejudicial to public tranquillity, etc.

The Court observed that the presumption of convicts who have committed crimes of certain nature as 'habitual offenders' is illogical and farfetched. It added, "There have been numerous instances of reformation of those prisoners convicted of the offences of dacoity and robbery." Further, the Court stated that the application of furlough is made after the prisoner has spent certain time in prison under the correctional administration and therefore the adjudication of whether the correctional therapy has not worked has to be done on merit from a case to case basis.

HIGH COURT'S DECISION

The Court declared that the said clause in its present form does not stand judicial scrutiny which makes persons ineligible for furlough merely on the basis of the nature of crime committed by them. It added, "It would amount to snatching their right to at least consider their cases for grant of furlough. We thus, strike down this provision as unconstitutional and infringing the Article 14 as well as Article 21 of the Constitution."



MS. DIVYA IYER V. TIHAR JAIL

Central Information Commission - 2015 SCC OnLine CIC 7164

FACTS

Appellant by her RTI application had sought information regarding steps taken by the Home Department, Government of India towards the implementation of the Central Directive No. V-13013/70/2012-IS (VI) dated 17.01.2013 issued by Government of India Ministry of Home Affairs to the Home Secretaries to all States for 'Use of Section 436A of the CrPC to reduce overcrowding of prisons'. She stated to have received only part information, and there was no information from Central Jails of Tihar and District Jail of Rohini. She filed first appeal and thereafter, approached the Commission.

COMMISSION'S OBSERVATIONS

Observing the gravity of the issue, the Commission remarked that only poor and indigent persons who are unable to provide surety languish for long periods in prisons as undertrials. Further, inadequate legal aid and lack of awareness about the rights of arrestee are primary reasons for continued detention of accused of bailable offences, where “bail is a right and order of detention is supposed to be an aberration.” It also stated “a disproportionate amount of our prison-space and resources for prison maintenance are being invested on UTPs which is not sustainable.”

The Commission suggested the following measures in this regard:

1. “Constitute a Review Committee in every district with the District Judge as Chairman, and the District Magistrate and District SP as members to meet every three months and review the cases.
2. Jail Superintendent should conduct a survey of all cases where the UTPs have completed more than one-fourth of the maximum sentence. He should prepare a survey list and send the same to the District Legal Service Authority (DLSA) as well as the UT Review Committee.
3. Prison authorities may educate under-trial prisoners on their rights to bail.
4. Provide legal aid - may be provided through empanelled lawyers of DLSA to cases presented for release on bail and reduction of bail amount.
5. The list should be made available to the non-official visitors as well as District Magistrates/Judges who conduct periodic inspections of the jails.
6. Home Department may also develop management information system to ascertain the progress made jail-wise in this regard. Action taken to implement the suggestions in all the jails may kindly be intimated within one month.”

The commission observed that every single day's delay in release of undertrial prisoners otherwise eligible to be released under Section 436A is a violation of Article 21 of the Constitution.

COMMISSION'S DIRECTION

The commission also observed that “it is the constitutional responsibility and statutory obligation of the Governments to review each case of under-trial prisoner and take appropriate action including release of the prisoners and inform the prisoners concerned and the concerned authorities.” It will facilitate the release, or enable prisoner or any other person to demand release based on this information. It also stated that it is necessary for the Undertrial Review Committees to provide release related information to the concerned authorities from time to time.

The commission directed:

- The jail authorities which had provided incomplete information to the appellant, to provide, a) latest status on the implementation of the Central directive dated 17-1-2015, and b) proposed list of prisoners to be released and other possible consequences like review committee meetings, etc.
- It said that the same shall also be proactively disclosed under Section 4(1)(b) of RTI Act on their respective websites.
- The Home Department to issue directives to all Jail authorities to prepare the list of under-trials supposed to be released from time to time at least for every quarter informing the fact of their release. Any such release of under-trial prisoner cannot be delayed for the sake of report or publication of information.
- Bihar jail authority to prepare FAQs on this issue and upload on the website to facilitate the undertrial prisoners to seek release on bail as per relevant provisions and judicial pronouncements.

WAGES & PRISON LABOUR



PHOOL KUMARI V. OFFICE OF SUPERINTENDENT, CENTRAL JAIL, NEW DELHI

Supreme Court of India - Criminal Appeal No. 1186 of 2012

FACTS

The appellant was convicted by the trial Court under the IPC and sentenced to rigorous imprisonment (RI) for 10 years which was reduced by the High Court to five years. Appellant remained in prison for a period of 3 years and 10 months during which she served as 'sewadar' (assistant) in the OPD of the prison and also took care of cleanliness of the said room till her release. Post release, the appellant through her husband, filed an application to the Superintendent of the Prison for payment of work done in prison which was rejected. Consequently, her complaint with the same prayer was also rejected by the concerned judge. The appellant challenged this order at the High Court which rejected the appellant's prayer. Therefore, the appellant had approached the Supreme Court.

SUPREME COURT'S OBSERVATION

The Court while observing the difference between Simple Imprisonment (SI) and Rigorous Imprisonment (RI) stated that RI is one which is required by law to be completed with hard labour whereas SI convicts can only be voluntarily given work. The Court referred to Section 36 of the Delhi Prisons Act, 2000 which prescribes that the convicts sentenced to simple imprisonment shall be employed only so long as they desire but cannot be punished for neglect of work. The jail officers who require an RI convict to do hard labour do so under the authority of the law while the SI convicts have the liberty to choose to work or not. The Court further affirmed that the undertrial prisoners are not required to do any work in prison.

SUPREME COURT'S DECISION

Noting that there were conflicting assertions with regards to payment of wages for hard labour, the Court allowed the appellant to make a fresh representation to the visiting Judge giving all the details about the work done during the period of custody within a period of 4 weeks from the order. It further directed that on receipt of the representation, the visiting Judge should inspect and peruse the ledgers/documents with the assistance of the jail authorities in the presence of the appellant duly assisted by Supreme Court Legal Services Committee and pass an order within a period of 3 months thereafter. The said decision has to be communicated to the appellant and the respondent-jail authorities. In the ultimate inquiry, if it was found that the appellant was entitled to any amount in addition to the amount already settled as wages, the same was directed to be paid within a period of 4 weeks thereafter.



MAHESH KUMAR AND OTHERS V. STATE OF H.P AND OTHERS

Himachal Pradesh High Court - 2013 SCC OnLine HP 2482

FACTS

41 prisoners of Open Air Jail, Bilaspur moved the Supreme Court with this petition. The petitioners alleged that a 2007 notification, amending the Himachal Pradesh Jail Manual by the State Government violates the fundamental rights granted by the Constitution. The major contention arose out of the paragraph in the notification dealing with the payable wages. The petitioners alleged that as an effect of the notification, the facility of double remission (i.e., one day remission for one day work) was wrongly taken away. Furthermore, the petitioners pleaded that the State must be directed to decide the parole cases of the convicts within fortnight as per a previous decision of the Court.

HIGH COURT'S OBSERVATIONS:

- a. **Double Remission:** It does not emerge from the earlier notification that facility of double remission was available to the Open Air Jail prisoners. At the time of hearing of the petition also, nothing was brought to the Court's notice to substantiate the case of the petitioners in support of their relief of restoration of double remission to the prisoners of Open Air Jail, Bilaspur. The petitioners failed to make out any case in support of their contention, therefore, the prayer of restoration of double remission to the prisoners of Open Air Jail, Bilaspur was rejected.
- b. **Victims Welfare Fund:** The Court observed that the request of the Government permitting deduction of the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. However, the Court also noted that 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.

Therefore, the Court permitted the State Government to deduct the expenditure incurred for food, clothes and other amenities for the prisoners, but not any substantial portion from the wages on that account.

- c. **Decision on parole:** The Court directed the State Government to take decision on grant of parole within 15 days of the receipt of the writ. It clarified that the direction to decide the case of the petitioner to the State Government in 15 days in this case was not applicable to all cases of parole. However, the competent authority is expected to decide the parole case of prisoner expeditiously.

Therefore, the prayer of the petitioners for a direction to the respondents to decide the parole cases of the petitioners within a fortnight was rejected.

HIGH COURT'S DECISION

In view of above, the Court allowed the petition to be partly allowed to the following effect:

- a. 35% deductions from the wages of prisoners for 'Victim Welfare Fund' vide the 2007 notification was held wrong, illegal, arbitrary, without authority of law and unconstitutional and therefore, sub para dealing with 35% deduction for 'Victim Welfare Fund' is quashed.
- b. The Court directed the State to refund entire amount to respective prisoner deducted from his wages for 'Victim Welfare Fund' vide the 2007 notification within a period of three months, failing which State shall pay interest at the rate of 9% per annum after three months from the date of the judgement on such amount to such prisoner.

**VULNERABLE PRISONERS INCLUDING
DEATH ROW PRISONERS, FOREIGN
NATIONALS AND WOMEN PRISONERS**



SHATRUGHAN CHAUHAN AND ANOTHER V. UNION OF INDIA AND OTHERS

Supreme Court of India - (2014) 3 SCC 1

FACTS

A number of writ petitions were filed on behalf of several convicts who were awarded the death sentence. In all these cases, the death sentences had been confirmed by the Supreme Court, and mercy petitions rejected by the President. The Court was called upon to decide whether the execution of the death sentence on the accused notwithstanding the existence of supervening circumstances would be a violation of Article 21 and other provisions. The main prayer was for the issuance of a writ of declaration declaring that execution of sentence of death pursuant to the rejection of the mercy petitions by the President of India is unconstitutional and to set aside the death sentence imposed on the petitioners by commuting the same to imprisonment for life.

SUPREME COURT'S OBSERVATIONS

The Court reiterated from an earlier judgment that “Prolonged delay in execution of a sentence of death has a dehumanising effect and this has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend the fundamental rights under Article 21 of the constitution.”

The court opined that, “Undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is a violation of Article 21 of the Constitution and thereby entails as a ground of commutation of sentence. However, the nature of delay i.e. whether it is undue or unreasonable must be appreciated based on the facts of individual cases and no exhaustive guidelines can be framed in this regard.”

The Court observed that the convicts, in the present petitions, had approached the Court as victims of violation of their fundamental rights and not as accused/convicts of a grave crime, and that this distinction must be appreciated. It further observed that there can be no good reason to disqualify all TADA or non-IPC cases from relief on account of delay in execution of death sentence.

SUPREME COURT'S DIRECTIONS & GUIDELINES

The Court outlined delay, insanity, solitary confinement, judgements declared per incuriam and procedural lapses as the supervening circumstances highlighted in the petitions filed. It considered each of these in detail, and concluded whether each of the circumstance exclusively or together warranted the commutation of death sentence into life imprisonment.

Delay: The Court was of the view that unexplained delay is one of the grounds for commutation of sentence of death into life imprisonment and the said supervening circumstance is applicable to all types of cases including offences under the Terrorist and Disruptive Activities (Prevention) Act (TADA). The only aspects courts have to satisfy is that the delay must be unreasonable and unexplained or inordinate at the hands of the executive.

Insanity: The court held that ‘insanity’ is a relevant supervening factor that warrants for commutation of death sentence to life imprisonment. It stated that

‘after it is established that the death convict is insane and it is duly certified by the competent doctor, undoubtedly, Article 21 protects him and such person cannot be executed without further clarification from the competent authority about his mental problems.

Solitary confinement: Until the mercy petition of a death row convict has not been rejected, the prisoner is not ‘under the sentence of death’ as given in Section 30 of the Prisons Act that allows custodial segregation of such prisoner, and hence even a modified form of solitary confinement is illegal. To be ‘under sentence of death’ as specified under Section 30 means to ‘to be under a finally executable death sentence’,

Judgements declared per incuriam: Counsels for the petitioners had argued that either the trial court or the High Court relied on/adverted to certain earlier decisions which were either doubted or held per incuriam. This, the petitioners claimed should constitute a supervening circumstance that warrants commutation of sentence of death to life imprisonment. The court briefly discussed the decisions cited and observed that none of the decisions was found to be erroneous or wrongly decided, but due to various factual situations, were not applied to that particular case. Thus, it held that there was no need to give important to arguments under this context.

Procedural lapses: The petitioners claimed that prescribed procedure for disposal of mercy petitions was not followed in the cases, and that resulted in serious injustice to the petitioners and their family members. The Court discussed the procedure laid down by the Ministry of Home Affairs, Government of India, and various prison manuals. It affirmed that the elaborate procedure provided clearly shows that even death convicts have to be treated fairly in the light on Article 21 of the Indian Constitution. The court thereafter reviewed each case individually and decided on whether the procedural lapses in each case made a case for commutation of the sentence.

The Court gave the following guidelines for safeguarding the interests of death row prisoners:

- **Solitary Confinement:** The rules governing the confinement of death row convicts should not be interpreted to allow solitary or single cell

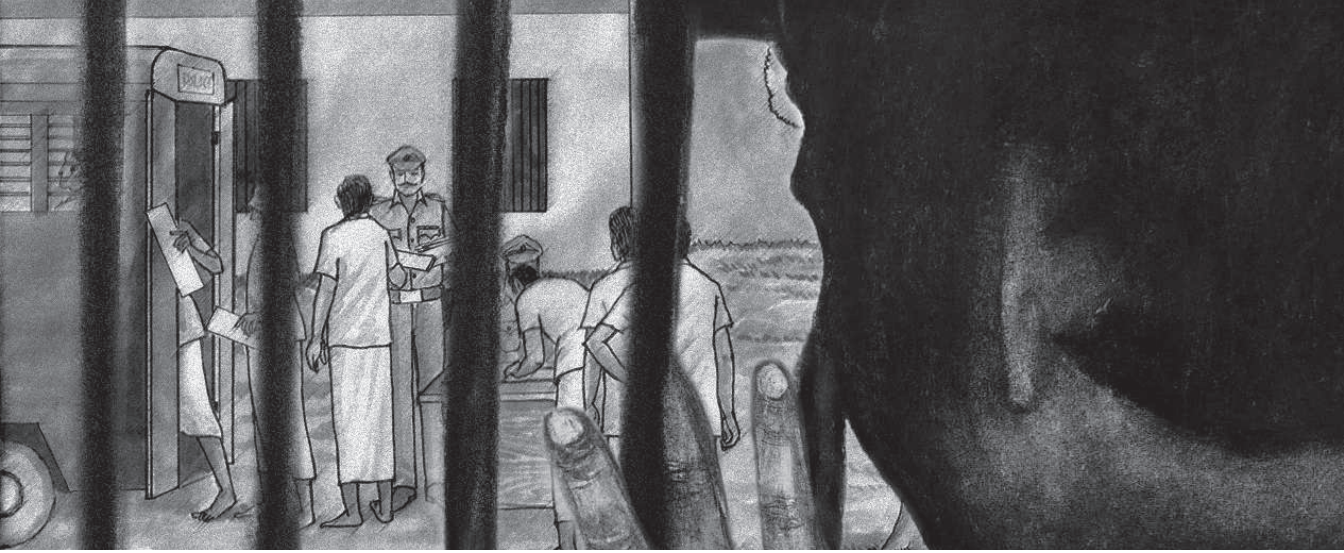
confinement of death convicts before the rejection of mercy petition by the President as it violates the right to life of the prisoner.

- **Legal Aid:**The death convict even after the rejection of mercy petition has a right to legal aid to challenge the rejection of mercy petition and for commutation of death sentence. The Superintendent of Jails are directed to intimate the rejection of mercy petitions to the nearest Legal Aid Centre apart from intimating the convicts. The Prison Authorities must furnish all the relevant documents to the death convict within a week to assist in making mercy petition and petitioning the Courts.
- **Procedure in placing the mercy petition before the President:**All the relevant documents such as police records, judgement of the trial Court, the High Court and the Supreme Court and other connected documents must be called at once as and when a mercy petition is received. There should be a time limit fixed for the concerned authorities to forward these materials to the Ministry of Home Affairs. It is the responsibility of ministry to send their recommendation and other required material to the office of the President in a reasonable and rational time and to send periodical reminder in case of no response from the office of the President.
- **Communication of rejection of mercy petition by the Governor or President:**The convict and her family is rightfully entitled to be informed about the rejection of the mercy petition by the Governor or the President. Death convicts are entitled as a right to receive a copy of the rejection of the mercy petition by the President and the Governor.
- **Furnishing documents to the convict:** It is necessary that all documents required for preparation of appeals, mercy petitions and accessing post-mercy judicial remedies are furnished to the prisoner within a week by the prison authorities.
- **Minimum 14 days notice for execution:**There must be a minimum period of 14 days between the date of receipt of communication of the rejection of mercy petition and the date of execution.
- **Final meeting between prisoner and his family:**The Prison authorities must facilitate and allow a final meeting between the prisoner and his family and friends prior to his execution as without sufficient notice of the date of execution to the family members the right of the prisoner to avail judicial remedies will be thwarted.

- **Mental health Evaluation:**There should be regular mental health evaluation of all death row convicts and appropriate medical care must be provided.
- **Physical and mental health reports:**After the mercy petition is rejected and the execution warrant is issued, the superintendent should seek reports from government psychiatrists and doctors to satisfy himself that the prisoner is in a fit physical and mental condition to be executed. If the superintendent finds the prisoner to be not fit, she must stop the execution forthwith, produce the prisoner in front of a Medical board for a comprehensive evaluation and shall forward the report to the State government for further action.
- **Post mortem reports:**It is obligatory to conduct post mortem of the prisoner's body post execution as this will ensure just and fair and reasonable procedure of execution.

SUPREME COURT'S DECISION

The Court commuted the death sentence of all 15 Convict prisoners to life sentence.



AJAY KUMAR PAL V. UNION OF INDIA AND ANOTHER

Supreme Court of India - (2015) 2 SCC 478

FACTS

The petitioner was awarded a sentence of death on 09.04.2007 which attained finality on 16.03.2010, pursuant to the dismissal of the appeal by the Supreme Court. A mercy petition was filed on 10.04.2010, the rejection of which was intimated to the petitioner on 27.01.2014 after 3 years and 10 months. Also, the petitioner claimed that he was kept in solitary confinement from the date of getting the sentence of death to the time of filing of this petition. The issue before the Court was that whether the time taken in disposing of the mercy petition of 3 years and 10 months comes under the expression 'inordinate delay' and therefore becomes a ground for commutation of the sentence.

SUPREME COURT'S OBSERVATION

The Court stated that after the convict has exhausted the judicial remedies and filed a mercy petition to the Governor or the President, it is incumbent on the authorities to dispose of the same expeditiously. The Court further observed that while there cannot be any fixed time limit for the Governor or the President to take a decision, “it is the duty of the executive to expedite the matter at every stage.”

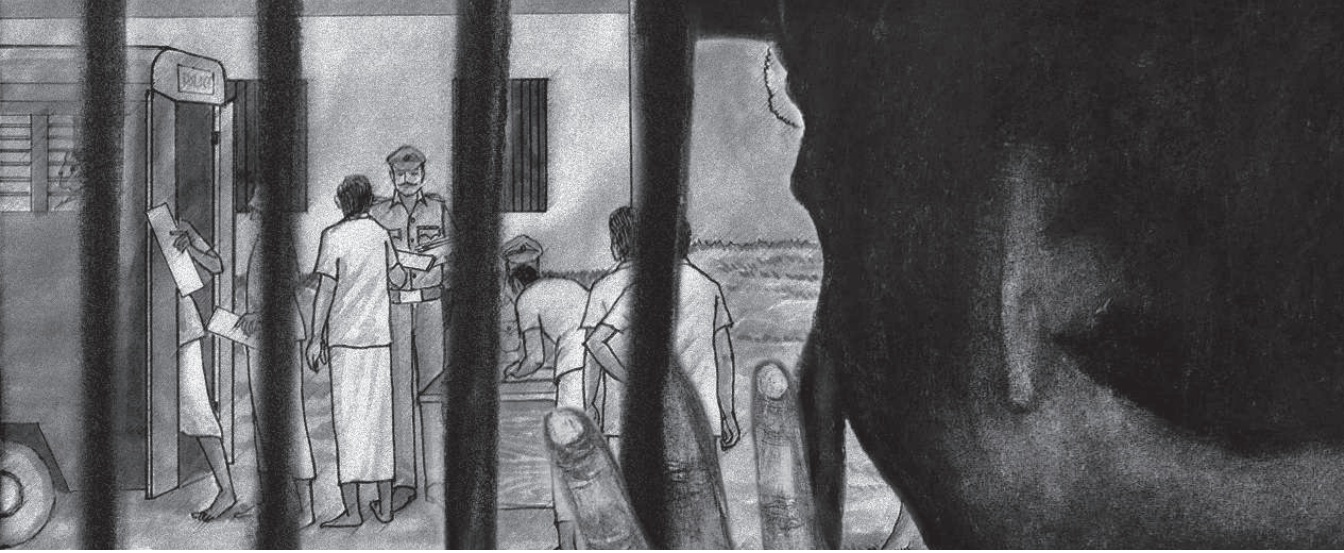
The Court was of the view that the time period of 3 years and 10 months taken by the concerned authorities in dealing with the mercy petition is ‘inordinate delay’ as the delay was not because of the petitioner through any proceedings or otherwise.

The Court reiterated that as the law enunciated by this Court, the petitioner could never have been ‘segregated’ until his mercy petition was disposed of. The death sentence is called a ‘finally executable death sentence’ only after the rejection of the mercy petition.

Solitary confinement of the petitioner before the rejection of the mercy petition is “complete transgression” of the right to life of the petitioner which has caused incurable harm.

SUPREME COURT'S DECISION

The death sentence was commuted into life imprisonment on the ground that the petitioner’s right to life was violated on the combined effect of inordinate delay in disposal of mercy petition and solitary confinement for a long period of time.



ACCUSED 'X' V. STATE OF MAHARASHTRA

Supreme Court of India - (2019) 7 SCC 1

FACTS

The petitioner was sentenced to death by the trial Court for rape and murder of two minor girls. The High Court and the Supreme Court subsequently confirmed the death sentence and declared the case to be a fit case under the rarest of rare category. During the review petition at the Supreme Court, the petitioner inter alia prayed for commutation of the death sentence. The petitioner did not argue on the merits of the case and rather raised the issue that the sentence was awarded by the trial Court on the same day of the conviction and that the petitioner is suffering from post-conviction mental illness.

SUPREME COURT'S OBSERVATIONS

The Court stated that the constitution {Article 20(1)} imbibes the idea that the accused must be aware about the crime and punishment. If the accused is not able to understand the “impact and purpose” of his execution then the reason behind the sentence becomes lost. The Court relying on a foreign judgement¹² noted “that hanging mentally disabled or retarded neither increases the deterrence effect of death penalty nor does the non-execution of the mentally disabled measurable impede the goal of deterrence.”

Considering that India vowed on an international forum to not punish mental patients with cruel and unusual punishments, it is imminent for the Court to provide a test for ensuring that extreme cases of mentally ill convicts are not executed. A test of severity can be a guiding factor for identifying the mental illnesses that qualify for an exemption. Severity here would mean that the medical professional would objectively consider the illness to be most serious so that he cannot understand or comprehend the nature and purpose behind the punishment. These illnesses may include schizophrenia and other related psychotic disorders.

The accused has a right to be heard in the pre-sentence hearing wherein generally he will argue on the mitigating factors and the State/complainant may argue on the aggravating factors. A meaningful pre-sentencing hearing is not conditional upon time or number of days granted for the same. “It is to be measured qualitatively and not quantitatively.”

If there is an irregularity by the trial Court by not providing an effective and meaningful pre-sentencing hearing, the accused must satisfy the appellate Court about the existence of the mitigating factors before further consideration.

SUPREME COURT'S DIRECTIONS

The Court directed that the appellate Courts in appropriate cases shall consider ‘post-conviction’ mental illness as a mitigating factor in death sentence cases. The burden of proof shall be on the accused to “demonstrate active, residual or prodromal symptoms” that the mental illness was manifesting and the Court must

¹² *Atkins v. Virginia*, 2002 SCC OnLine US SC 62.

establish a panel of qualified professionals (medical experts and criminologists) while the State may offer evidence to rebut the claim.

The Court allowed the petition to the extent that the sentence of death awarded to the Petitioner was commuted to imprisonment for the remainder of his life sans any right to remission. The Court further directed the State government to consider the case of the petitioner under the Mental Health Care Act, 2017 and ensure that the rights enumerated therein are fulfilled.



UNION OF INDIA AND OTHERS V. DHARAM PAL

Supreme Court of India - 2019 SCC OnLine SC 628

FACTS

The respondent was awarded a sentence of 10 years under Sections 376/452 of the Indian Penal Code, 1860 (IPC). While the appeal was pending with the High Court, the respondent's sentence was suspended and he was released on bail. Later the respondent and his brother were convicted for the murder of five members of the family of the prosecutrix of whose rape the respondent was earlier convicted. Thereafter, the respondent and his brother were convicted for the murders and sentenced to death by the trial Court. The respondent and his brother preferred an appeal to the Supreme Court for commutation of the death sentence wherein, the Supreme upheld the death sentence of the respondent but commuted the sentence of the respondent's brother by the judgement dated 18.03.1999. Thereafter, the respondent prayed for clemency to the Governor which got rejected and the mercy petition to the President was rejected after a delay

of 13 years and 5 months. Meanwhile, the respondent was acquitted by the High Court in the initial case of rape of the prosecutrix.

The respondent had thus prayed for commutation of death sentence to the High Court on the grounds of - i) delay of 13 years and 5 months, ii) acquittal from the rape case which was instrumental in confirming the death sentence of the respondent by the Supreme Court and iii) 18 years of solitary confinement of the respondent before the rejection of the mercy petition by the President.

The High Court allowed the appeal and commuted the death sentence to life imprisonment, inter alia on the grounds of violation of rights of the respondent. The State thus preferred an appeal against the High Court decision at the Supreme Court.

SUPREME COURT'S OBSERVATIONS

SOLITARY CONFINEMENT

Solitary confinement before the disposal of the mercy petition is palpably illegal and amounts to separate and additional punishment not authorised by law. A convict cannot be said to be “under sentence of death” till the mercy petition is rejected. Such a solitary confinement is a violation of Article 21 of the Respondent.

UNEXPLAINED AND INORDINATE DELAY

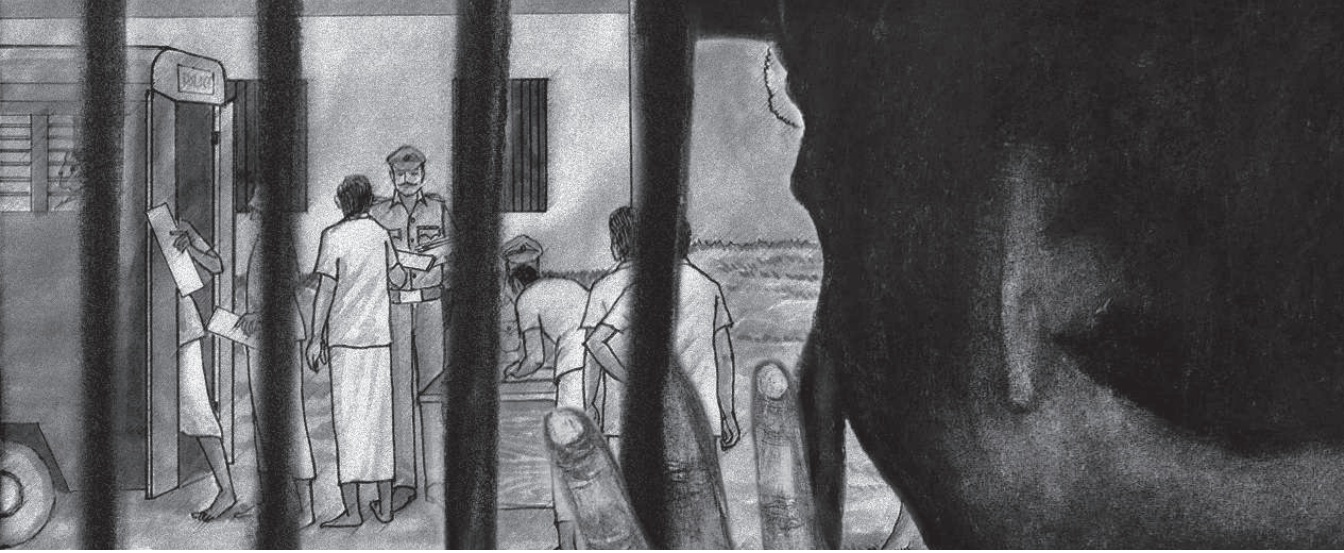
The Court observed that “the prolonged delay in execution of a sentence of death has a dehumanizing effect and this has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend the fundamental right under Article 21 of the Constitution.”

MERCY PETITION

The Court observed that post the receipt of a mercy petition when the same is placed before the President for his consideration, “it is incumbent on the part of the concerned authority to place all the materials such as judgments of the Courts, as well as any other relevant material connected with the conviction.” The fact that the respondent was acquitted of the rape charge in the High Court appeal was a crucial and instrumental fact and failure to place it before the President has caused “irreparable prejudice against the Respondent.”

SUPREME COURT'S DECISION

The Court upheld the order of the High Court commuting the death sentence of the Respondent to life imprisonment. However, it was directed that the respondent would be released from prison upon completion of 35 years of actual imprisonment.



SHABNAM V. UNION OF INDIA AND OTHERS

Supreme Court of India - (2015) 6 SCC 702

FACTS

The petitioner, along with a co-accused, were convicted for the murder of seven members of the family of the petitioner by a judgment and order dated 15.07.2010 and awarded death sentences. In 2013, the High Court confirmed the death sentence and in 2015, the Supreme Court dismissed the appeals by the petitioners thus confirming the death sentence of both the accused. The petitioner in the present appeal alleged that death warrants were issued by the Sessions Judge within six days of the dismissal of the appeal by the Supreme Court.

SUPREME COURT'S OBSERVATIONS

The Court observed that the death warrants issued by the Sessions Judge within six days of the dismissal of appeal by the Supreme Court are impermissible and unwarranted because -

- a) The convicts had not exhausted their legal and administrative remedies which are open to them even if the death sentence has been affirmed by the highest Court. The Court further observed, "...in case of convicts facing death penalty, the remedy of the review (under Article 137 with a limitation of 30 days) has been given high procedural sanctity". The Court also reiterated the law laid down in the *Mohd. Arif v. Supreme Court of India*¹³, that the review petition in the case of a death sentence shall be heard by a Bench consisting of minimum three judges in an open Court with an opportunity to the review petitioner to make oral submissions.
- b) The constitutional powers of the Governor and the President to grant mercy to the convict also remain intact post highest Court's affirmation of the death sentence. Under these powers the constitutional heads may call for fresh evidence and examine material facts to consider the grant of mercy. This is not an appellate power, rather is an act of grace, humanity in appropriate cases. Death sentence cannot be executed before giving the convicts a chance or opportunity to avail the same. The State must wait for a reasonable period even after the review petition if filed, has failed.

QUESTION OF HUMAN DIGNITY

The aspect of human dignity of the prisoner does not end with confirmation of the death sentence but continues till his death, to the extent which is reasonable and permissible in law. The Court observed that right of the accused to a fair trial as well as speedy trial, right of legal aid, are all part of human dignity. Even after conviction, allowing humane conditions to the prisoner is part of human dignity. Even if a death sentence has to awarded, it has to be in accord with due dignity.

¹³ *Mohd. Arif @ Ashfaq v. Registrar, Supreme Court of India*, (2014) 9 SCC 737.

The Court further observed that issuance of death warrants before the expiry of limitation period to file review petition and lapsing of reasonable period for filing mercy petition is abuse of the procedure established by law and hence violative of Article 21 of the prisoner.

SUPREME COURT'S DECISION

The Court held that “condemned prisoners also have a right to dignity and execution of death sentence cannot be carried out in an arbitrary, hurried and secret manner without allowing the convicts to exhaust all legal remedies.” The Court quashed and set aside the death warrants signed by the Sessions Judge which were issued before the convict had exhausted all legal remedies.



PUDR V. UNION OF INDIA WITH SURENDRA KOLI V. UNION OF INDIA & ORS.

Allahabad High Court - 2015 SCC OnLine All 143 (Division Bench)

FACTS

Two petitions were filed before the High Court challenging the death sentence awarded to the appellant on the charges of rape and murder of a minor girl. The challenge was made on the ground of inordinate delay of 3 years and 3 months in disposal of mercy petition, placing of the appellant in solitary confinement since the date of trial court judgement awarding him death sentence and illegalities in consideration of mercy petition by the Governor. The appellants also argued that there was a violation of guidelines laid down by the Supreme Court in *Shatrughan Chauhan v. Union of India*¹⁴ as there was no mental health evaluation of the appellant before issuance of death warrant.

¹⁴ *Shatrughan Chauhan & Anr. v. Union of India & Ors.*, (2014) 3 SCC 1.

HIGH COURT'S OBSERVATIONS

DELAY IN DECIDING MERCY PETITION

The test of delay as evolved in Indian jurisprudence in the case of considering commutation of death sentence is an objective test to determine whether the delay not attributable to the convict, was avoidable and unnecessary and hence prolonged.

POWER OF CLEMENCY OF THE PRESIDENT AND THE GOVERNOR

The President and the Governor, while considering a petition of clemency, have the power to call for evidence and examine the merits of the case and such a consideration will not be considered judicial and hence would not override the judicial powers of the Courts that have already decided on the merits of the case. The power of the President and the Governor under Articles 72 and 161 of the Constitution of India respectively is a pardoning power and does not have any effect on the conviction or the sentence passed by the Court in exercise of its judicial power, but has the impact on the execution of the punishment, responsibility of which lies with the executive.

SOLITARY CONFINEMENT

The State affidavit stated that the convict was placed in a barrack which has 10 cells, wherein 6 high sensitivity prisoners including the petitioner convict were lodged in 6 cells. There are adequate facilities such as lighting, air, water, toilet and bathroom, veranda, plantation and space for indoor games, etc. The State had further claimed that the petitioner was allowed to meet visitors and was also taken to the Court for production in other cases. The Court rejected state's arguments and held that such a detention was solitary confinement irrespective of the fact that the convict was allowed to meet visitors or taken to Court productions. The Court also emphasised that since the State did not put any fact to show that the convict's behaviour warranted such confinement, the solitary confinement of the petitioner until his death penalty had attained finality at the Supreme Court post rejection of the mercy petition is illegal as held by numerous Supreme Court precedents.

GRAVITY OF OFFENCE FOR CONSIDERING PLEA OF COMMUTATION OF DEATH SENTENCE

The Court reiterated that it is only the rarest of rare and most heinous of the offences for which a person is sentenced to death and therefore all the cases of commutation of death sentence to life imprisonment involves perpetrators of heinous crimes. The Court reaffirmed that the “considerations such as the gravity of the crime, the extraordinary cruelty involved or the horrible consequence for society caused by the crime would not be relevant” at the stage where commutation of death sentence is sought.

DEATH WARRANTS

Under the relevant law, Form 42 of the Second Schedule of the Code of Criminal Procedure, a warrant of execution of a death sentence must have a particular time and a place of execution. An open ended warrant with a range of dates for execution is not permitted under the law.

Natural justice mandates the Court initiating proceedings for execution of warrant of death to provide notice to the convict on death row and afford him an opportunity of hearing.

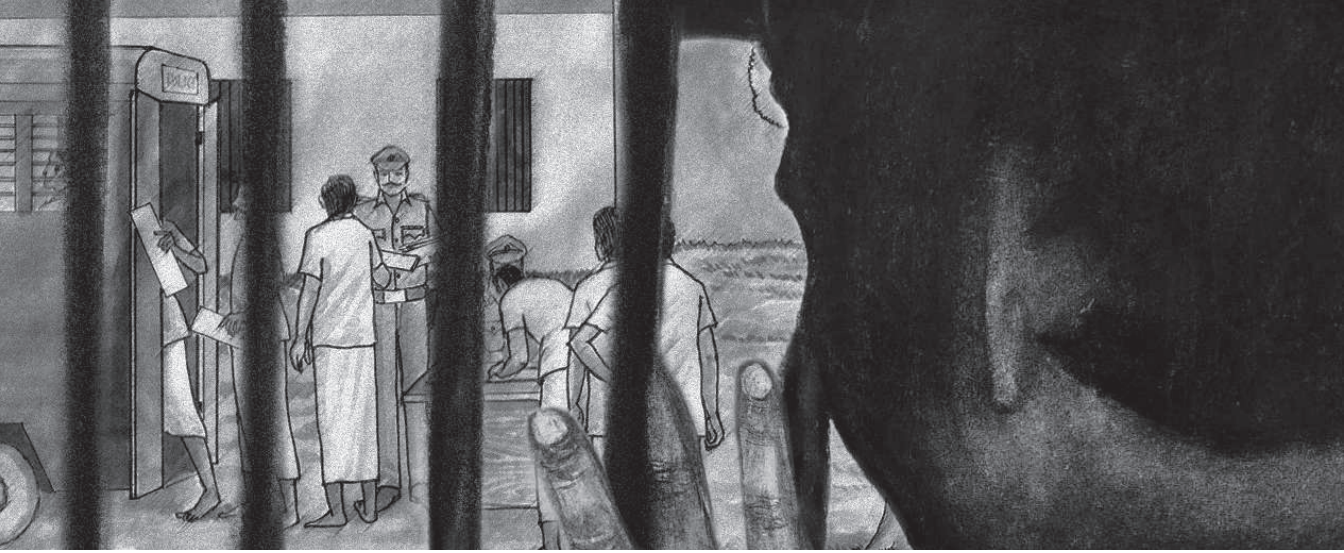
A copy of execution warrant must be provided to the convict immediately after the issuance.

There must be a time gap between the date of the order of the execution warrant and the date mentioned on the warrant for execution of death sentence to enable the prisoner to consider legal recourse against the issuance of the warrant and meet their family members. In case, the convict does not have a lawyer, legal aid must be provided.

HIGH COURT’S DECISION

The Court held that there was a delay of 3 year and 3 months which was avoidable, prolonged and unnecessary. The convict was held in solitary confinement against the clear position of the law. The various warrants of death issued by the Court were without following the due process of law and thus violated the right to

life of the petitioner convict. In light of these issues, the death sentence was commuted to life imprisonment by the Allahabad High Court.



SONU SARDAR V. UNION OF INDIA

Delhi High Court - 2017 SCC OnLine Del 8928

FACTS

The petitioner was convicted and awarded death penalty on the charge of murder by the trial court on 27.02.2008. In 2010, the High Court confirmed the death sentence of the petitioner which was later upheld by the Supreme Court by dismissing an appeal filed by the petitioner in 2012. The mercy petition was also rejected by the Governor and the President, respectively in 2013 and 2014.

Thereafter, the petitioner sent a letter to the President stating that his mercy petition was dismissed on the basis of his age being 23 years while his age at the time of crime was 18 years and 2 months. Subsequently, the review petition was dismissed by the Supreme Court. Ultimately, the Petitioner filed the present petition to the High Court praying for quashing of the rejection orders of the mercy petitions by the Governor and the President and to commute the death sentence to life imprisonment on the ground of delay in adjudication of mercy petitions, improper exercise of power in handing the mercy petitions and solitary confinement of the Petitioner.

HIGH COURT'S OBSERVATIONS

DELAY

The Court held that “Delay ipso facto does not render death sentence inexecutable, warranting commutation of the penalty of the convict to one of life imprisonment. The principles followed by Courts can be summarized as under:

- (i) Delay must be unreasonable and unexplained or must be inordinate;
- (ii) Delay attributable to the convict himself should be factored out, as any suffering was called upon by the convict himself;
- (iii) The clock starts ticking from the confirmation of the death penalty by the Supreme Court and stops at rejection of mercy petition by the President;
- (iv) There cannot be any rule of thumb as to what amounts to inordinate delay in deciding mercy petition and the same depends upon the facts of each case;
- (v) It is not incumbent upon the convict to show scars, i.e. the suffering in such delay is inherent and the condemned need not show any actual torment or misery;
- (vi) The nature of the offence, gravity of crime and circumstances attendant thereto are irrelevant as all the cases have already been found and confirmed to be rarest of rare by numerous judicial forums and are bound to prick judicial mind; but the insertion of any new category, the rarest of the rarest of rare, if it may, is neither allowed by English language nor by law; and
- (vii) the Courts have frequently refused to judge delay in isolation, but with other supervening circumstances, looking into cumulative or combined effect.”

SOLITARY CONFINEMENT

The Court iterated that solitary confinement is a separate punishment and cannot be imposed without a judicial order its effect. The Court also stated, “The test to determine whether confinement was solitary or not, is that prisoner remains in seclusion from sight and communication from other prisoners. It is not necessary that such seclusion must be absolute, even quasi-solitary confinement is not allowed.”

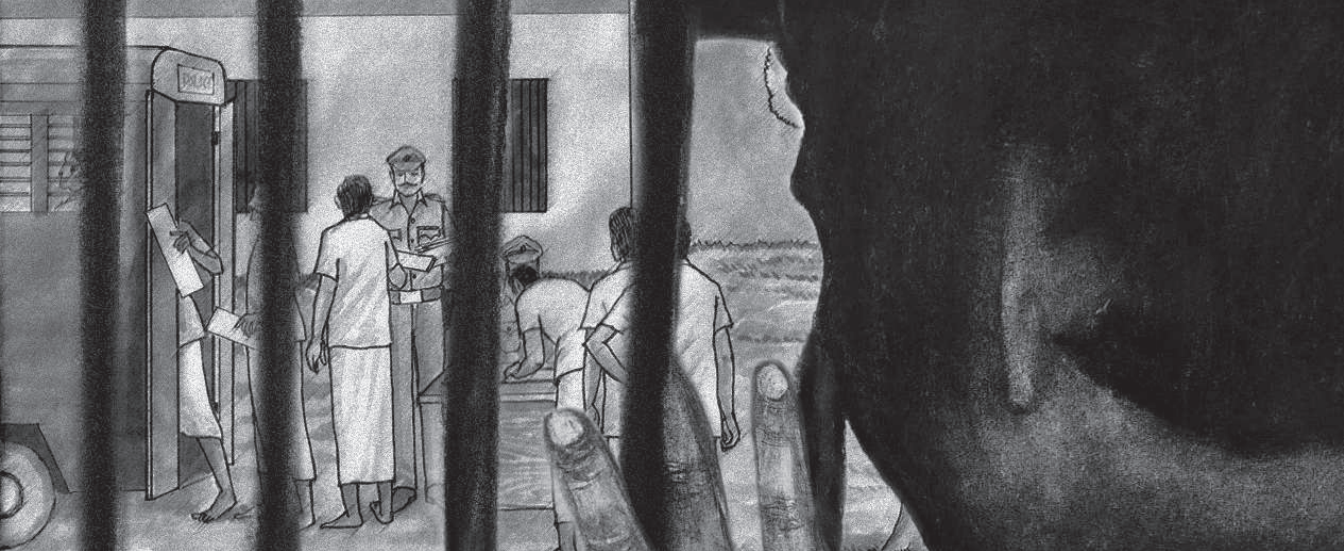
GOVERNOR'S DECISION TO REJECT THE MERCY PETITION

The non-placement of relevant mitigating circumstances such as recommendation of the jail superintendent and the young age of the petitioner has deprived the Governor from the opportunity to exercise his power in a fair and just manner. The fact that the Governor was informed that the petition is for pre-mature release and not commutation of sentence shows the casual manner with which the State Government has treated the mercy petition. The placing of extraneous considerations of the Superintendent of Police and the District Magistrate considering the mercy petition as a petition for pre-mature release, in the note for the Governor has vitiated the decision of the Governor.

The Court also stated that, what is a relevant consideration for exercising the powers of clemency are to be decided on a case to case basis. The considerations for deciding on a mercy petition can be categorised into two categories, “first, relevant consideration, ignoring of which shall vitiates the decision; and second, one which is not relevant having no bearing on the decision.” However, if the consideration has come to the mind of the President and he still deems it to be irrelevant, the Court does not have a jurisdiction to interfere with the decision of the President.

HIGH COURT'S DECISION

The Court held that solitary confinement coupled with non-placement of relevant considerations and considering of extraneous considerations has vitiated the decision of the Governor and the President. This could be remedied by sending back the petition to the President for reconsideration. However, the incarceration of the petitioner in solitary confinement without any judicial order has violated the fundamental rights of the convict and thus the death sentence was commuted to life imprisonment.



BHIM SINGH V. UNION OF INDIA

Supreme Court of India - (2012) 13 SCC 471

FACTS

The present order was passed in a public interest litigation filed to raise the issues of delay in repatriation of foreign prisoners after they have served their sentences; lack of timely consular access to Pakistani nationals which ought to have been provided within three months of arrest/detention as per the agreement between the two governments and; delay in nationality verification. The petition pressed upon the right to life enshrined under Article 21 of the Constitution of India which requires such prisoners after serving their sentences to be deported to their country without any delay.

SUPREME COURT'S OBSERVATIONS

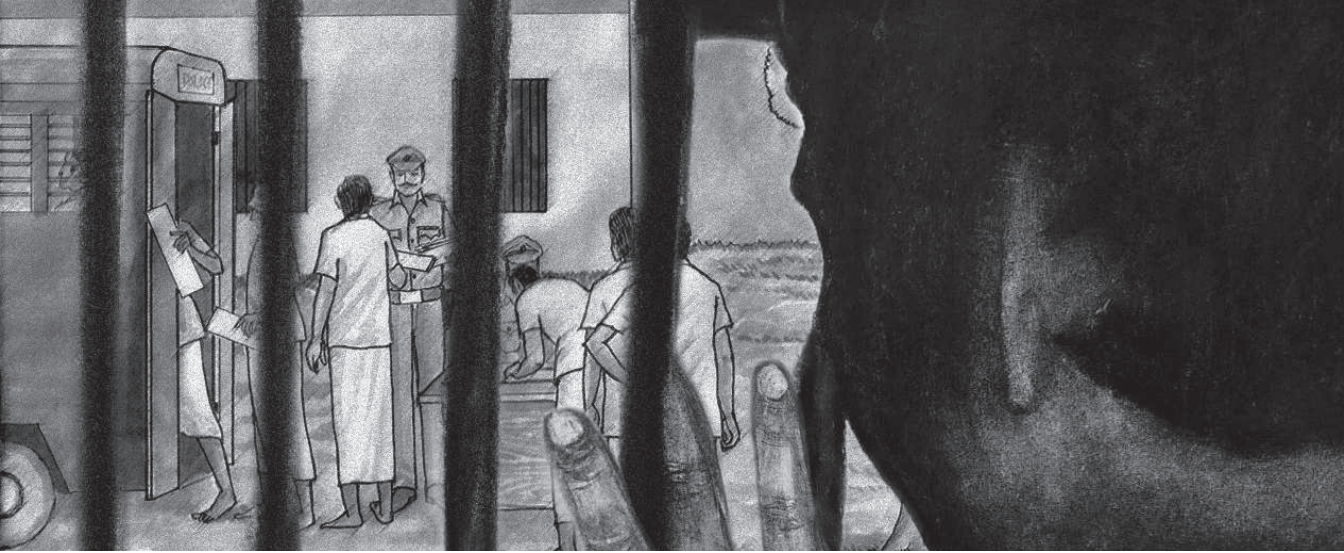
The Court observed that it is unfortunate that foreign nationals despite serving their sentences and not required under Indian laws continue to be imprisoned for the want of nationality verification. It noted “whatever may be the reason for delay in confirmation of their nationality, we have not even slightest doubt that their continued imprisonment is uncalled for.”

The Court stated that once the sentence has been served by a person, in no way he can be treated as a prisoner. It further noted that though such prisoners cannot be repatriated without confirmation of nationality and hence have to be kept in India but they cannot be confined in prisons and be deprived of their basic human rights and dignity.

SUPREME COURT'S DIRECTION

The Court directed the immediate release of the identified 37 Pakistani nationals but to be kept in such places with basic facilities of electricity, water and hygiene and restriction of their movement until they are deported or repatriated. It further directed that 21 of these 37 persons who are mentally ill, have to be given proper medical treatment in suitable government hospitals or clinics/hospitals run by NGOs.

The Court also directed that the 11 Pakistani nationals against whom there is no offence registered, shall be kept at such place with appropriate facilities until their nationality verification is pending.



HIGH COURT ON ITS OWN MOTION V. STATE OF MAHARASHTRA

Bombay High Court - 2016 SCC OnLine Bom 8426

FACTS

The instant public interest litigation arose from a subordinate Court's reference for urgent action on the application given by a woman prisoner seeking permission for termination of pregnancy. The prisoner was four month pregnant and according to her application she had a five month old baby who was suffering from certain ailments and her own health was not good.

Immediately, the Court passed necessary directions including the direction to produce the undertrial prisoner at the concerned hospital for giving immediate medical treatment including Medical Termination of Pregnancy (MTP) as per medical advice and as permissible under the law.

Thereafter, considering that there would be many such women prisoner who face this issue, *asuo moto* petition was registered for adequate directions.

HIGH COURT'S OBSERVATIONS

The Court observed that under the relevant provisions of the Medical Termination of Pregnancy Act, 1971, “A prisoner has to simply indicate that she wants to terminate her pregnancy as its continuance would cause grave injury to her physical and mental health. She would then be referred to the Government hospital and if her case was covered by Sections 3 or 5 of the Act, the pregnancy would be terminated.”

The Court further observed that since the legislation is wide enough to cover injury to mental health of the pregnant woman, it is a good and legal ground to terminate the pregnancy if it is not exceeding 20 weeks. Mental health may deteriorate if the pregnancy is unwanted and forced. “Women in different situations have to go for termination of pregnancy. She may be a working woman or homemaker or she may be a prisoner, however, they all form one common category that they are pregnant women. They all have the same rights in relation to termination of pregnancy.”

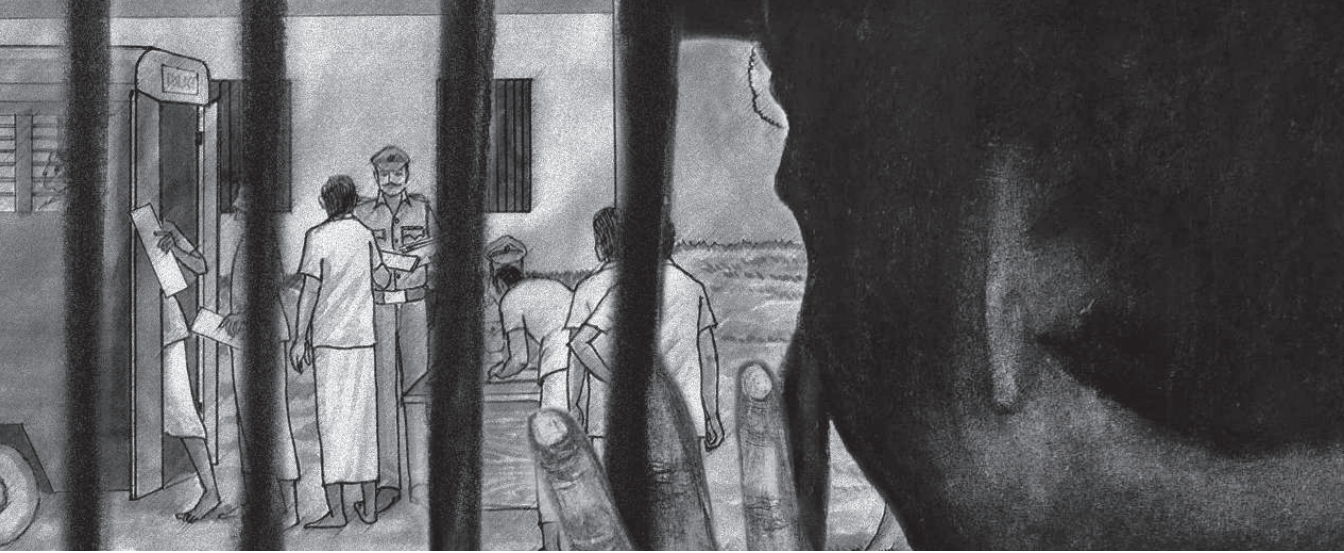
The Court noted that the Maharashtra Jail Manual does not contain any provision for termination of pregnancy of woman prisoner though it covers the situation of a pregnant prisoner and child birth. The Court stated that as the woman prisoner may herself be unaware about the fact of pregnancy sometimes or be unable to disclose it, mandatory “medical check up of all the women prisoners who are of reproductive age should be done at least once every month for two months from their admission in jail.”

The Court stated that “that Section 3 of Medical Termination of Pregnancy Act bestows a very precious right to a pregnant woman to say no to motherhood. It is the right of a woman to be a mother so also it is the right of a woman not be a mother and her wish has to be respected. This right emerges from her human right to live with dignity as a human being in the society and protected as a fundamental right under Article 21 of the Constitution of India with reasonable restrictions as contemplated under the Act”

HIGH COURT'S DIRECTIONS

The Court directed -

- “1. (i). Upon admission into a jail/prison, every woman prisoner of child bearing age shall undergo a Urine Pregnancy Test (UPT) within 5 days of being admitted to jail.
(ii) Every woman prisoner of child bearing age shall undergo a second UPT approximately 30 days after admission into jail/prison in case the UPT under 1(i) is not positive.
2. In case, the urine pregnancy test is positive, the Medical Officer shall inform the prisoner that she can get the pregnancy terminated if her case falls under Section 3 or 5 of The Medical Termination of Pregnancy Act.
3. If the prisoner indicates she wants to terminate the pregnancy, her statement should be recorded by the Jail Authority or Medical Officer to that effect and the record of the statement be maintained. A copy of that statement be forwarded with the prisoner when she is referred to the hospital.
4. If the prisoner indicates that she wants to terminate the pregnancy, the Medical Officer and Jail Superintendent shall ensure that woman prisoner is sent on urgent basis to the nearest Government Hospital to help her terminate the pregnancy. It is made clear that they shall not wait for any order of the Court if the case falls under Sections 3 or 5 of the Act.
5. Every prison shall maintain “Prison OPD Register” where details of every prisoner examined either by the prison medical officer/doctor or visiting doctor are entered. Such register shall contain in brief:
 - (i) the name of the prisoner;
 - (ii) convict or undertrial number,
 - (iii) the medical complaint of the prisoner;
 - (iv) the advice of the doctor (including referral of the patient to the nearest government Hospital) and
 - (v) the date for follow up when necessary. The Prison OPD Register be produced for inspection of the Sessions Judge/Magistrate deputed to visit the prison.
6. The Jail Superintendent and escort division to ensure that such prisoner as well as other prisoners needing medical treatment in a hospital are sent to the hospital as far as possible by 8:30 am i.e. when O.P.D opens.
7. After discharge from the said hospital, the prison authorities shall take due care of the woman prisoner until she fully recovers from the medical termination of her pregnancy.”



POONAM RANI V. STATE

Delhi High Court - 2017 SCC OnLine Del 7122

FACTS

The appellant was a woman prisoner who was arrested for an alleged murder and sentenced to life imprisonment by the trial Court. The appellant challenged the conviction and sentence of the trial Court order in the present appeal.

HIGH COURT'S OBSERVATION

The Court observed that “In several cases involving women prisoners, we are coming across the fact that, apart from the punishment awarded by law, they are suffering a fate worse than just their incarceration.” It further stated that the punishment is not only inflicted on the woman but her family including children and spouse also suffer.

Women prisoners are often abandoned by her own family members. To the Court's dismay it noted “in cases where the man of the family has been accused, or even stands convicted, of extremely gruesome and heinous offences, the entire family rallies around him.”

The Court also stated “society hardly gives a second chance to women prisoners and therefore, the responsibility to be shouldered by the authorities qua these prisoners is enhanced manifold to ensure that they are adequately equipped with the strength to face their emotional and physical isolation with fortitude, their self-confidence and self-esteem built up coupled with impartation of such livelihood skills as would enable them to create financially independent lives for themselves once they leave the prison precincts and are compelled to fend for themselves.”

HIGH COURT'S RECOMMENDATIONS

The Court stated

- It is high time that robust programs involving women, prisoners, especially those not educated and from economically weaker sections must be developed in the jail, that is those stretch, beyond the traditional and stereotyped activities of agarbati - jam - pickle - papad making skills for which consumption is scanty or hair dressing, tailoring, beauty care.
- There is need to be enhanced focus on development of linguistic skills and stenography which require hardly any financial or infrastructure investment.
- Similarly, another area which is neither capital intensive nor require infrastructure is training of geriatric caregivers and para-nursing. Training for toddler care may enable the prisoner to develop or assist in crèches and anganwadis, nursery schools etc.

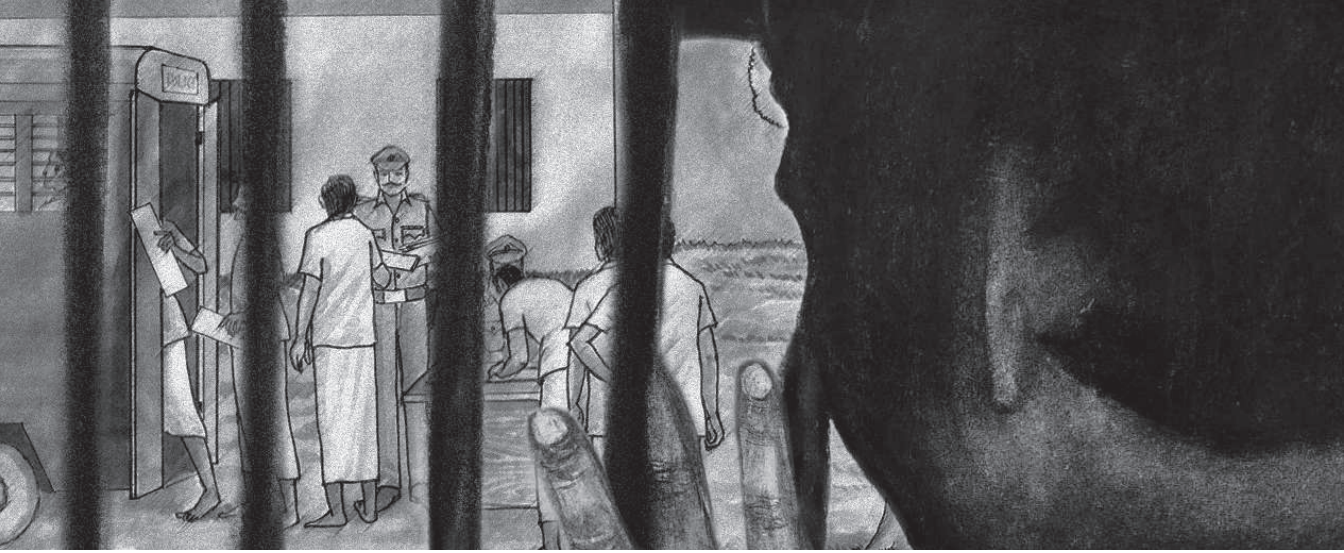
The Court stated that such programmes should keep in mind the economic fruitfulness of the programme and changes in technology and society to adequately equip the prisoners with profitable and sustainable options using modern technology and latest information.

Simultaneously, community sensitisation programs qua the way society views prisoners must be developed. It further stated “The jail, social scientists, NGOs, legal aid authorities and the governments must educate society on these aspects and ensure that this disproportionate impact of incarceration of women is minimized and even eradicated. It must be ensured that, having undergone (or while undergoing) their sentences, this group of completely marginalized women do not suffer at the hands of society.”

HIGH COURT’S DECISION

The Court acquitted the appellant of all charges and quashed the impugned judgement of conviction.

OTHER RIGHTS OF PRISONERS



BACCHE LAL V. STATE OF UP

Allahabad High Court - Criminal Writ-Public Interest Litigation No. 2357 of
1997

HIGH COURT'S OBSERVATIONS

- The success of the legal aid system cannot be measured simply by conferences or legal aid publicity and awareness campaigns, but ultimately it can only be measured by the number of persons applying for legal aid, which yields positive results, and in that sphere we still have long road to cover. (Order dated 08.07.2014)
- The Court observed that in order to reduce overcrowding “matters for remission/ release on license under the UP Probation of First Offenders Act, 1938 or under the Jail Manual and bail of short term sentenced or under trial prisoners and of old, ailing or women under trial or convicted prisoners (whose appeals have not been finally disposed of) be considered on a priority basis.”(Order dated 28.08.2014)
- The Court further observed that “Likewise, under paragraphs (233-250 especially 235) of the UP Jail Manual, the Revising Board consisting of the District Magistrate and the Sessions Judge in whose jurisdiction the central jail is situated and a non-official gentleman can consider the cases of all casual convicts with sentences of not less than three years and not more than four years when they have served two years of their sentences and all casual convicts with sentences of over four years when they have served half of their sentences. For habitual convicts, who have

served two-third of their sentences and have completed at least two and a half years of imprisonment and where the Superintendent is satisfied about the work and conduct of the convicts and their mental and physical condition, and considers them to be suitable for premature release.” (Order dated 28.08.2014)

- The Court also observed that “computerization and internet access, which results in many administrative and other benefits....which can facilitate constant updating of information about consideration of premature release matters of prisoners which can then be checked by the prisoner or public spirited persons or institutions to ensure transparency and non-discrimination.” (Order dated 08.10.2014)

HIGH COURT’S DIRECTIONS

LEGAL AID

- All District Judges and UPSLSA was directed that after conviction whilst one free copy of the judgment is handed over to the convict who usually hurriedly hands it over to his Counsel for filing the appeal in the High Court, another photocopy or true copy be directly sent to the jail authorities for their record. (Order dated 21.04.2014)
- The Court directed the U.P. State Legal Services Authority and District Legal Services Authorities to ensure that public notaries or oath commissioners and legal service lawyers are provided for preparing and swearing such bail applications and affidavits for prisoners in the jails on state expense (in case the prisoners are unable to afford the expenses) for presentation of their bail applications before the High Court (or even the Subordinate Courts where necessary) and that dates be fixed in each month for such exercises. The said papers shall then be forwarded by the jail superintendents and the jail visiting judicial officers to the Lower Courts or the High Court as the case may be. Honest, competent, hard working and regular Legal Aid Counsel be chosen for arguing the briefs of such prisoners before the High Court and Lower Courts, and the State, District and High Court Legal Services Authorities facilitate this exercise, including by enhancing and ensuring payments for their assistance. Good performing legal aid lawyers be honoured for their work, whereas the

dishonest or non-performers be removed. (Order dated 21.04.2014)

- The problems relating to jails, prisoners, and legal aid work be also taken up in the monthly meetings of the monitoring committees of the D.J.s, D.M.s, and S.S.P.s/S.P.s. (Order dated 21.04.2014)
- Further, for providing effective legal aid, the Court stated that the following measures are needed:
 - a) Good and successful criminal practitioners practising in the district Courts be approached pro-actively by the District Judges and the District Legal Services Authorities to provide legal aid at the district levels.
 - b) Some of these lawyers be motivated to visit the district/ central jails at least once or twice a month in co-ordination with the jail visiting Judicial Officers and to speak directly to the prisoners who desire legal aid and to learn about their problems and to acquaint them of their legal rights.
 - c) The cases where bails lie or are pending before subordinate Courts be argued by competent district level legal aid lawyers
 - d) Cases where bails are rejected at the district levels, the district judges or other authorised judicial officers contact the Registrar General/ Officer or the officer in-charge of legal aid in the Registry for providing competent Legal Aid counsel at the High Court level for getting the prisoners' bail application moved before the High Court.
 - e) The affidavits for the bail application for the prisoners who have no pairokars or whose pairokars are not coming forward to move their bails applications may be drafted by the visiting legal aid counsel, and sworn before a public notary whose expenses are to be meted out by the State/ district Legal Services Authority or they could be sworn free of cost before the Jail Officer who has been given powers of an Oath Commissioner by the Chief Justice, under the proviso to Rule 4, Chapter IV of the Allahabad High Court Rules, hereinabove.
 - f) As a starting point the jail authorities who constantly interact with the prisoners furnish a list of prisoners who are desirous or deserving of legal aid (looking to their old or young age, ailing, or being a woman whose children are uncared for, or the long period

of time spent in jail, or the unnecessary incarceration in spite of the minor nature of the offence), for filing or prosecuting their bail applications before the District Courts or the High Court.

- g) We also suggest that lawyers who provide good and honest legal aid services may be honoured by the District and High Court Judiciary, issued certificates of merit and given the status of senior lawyers wherever possible. The legal aid lawyers who engage in malpractices by demanding money from litigants, or who do not appear before the Courts on dates fixed or are ill-prepared may be black listed and removed from legal aid panels.
- h) Payments be increased for legal aid work which is very low at present and the Court be informed about the proposal of government and UPSLSA in this regard.
- i) Paralegals be given training on carrying out their work of legal literacy and liaison with the police and Courts. (Order dated 08.10.2014)

WOMEN INMATES

- Some programme for education, skill development and counselling be carried out for female inmates. (Order dated 21.04.2014)

INFRASTRUCTURE

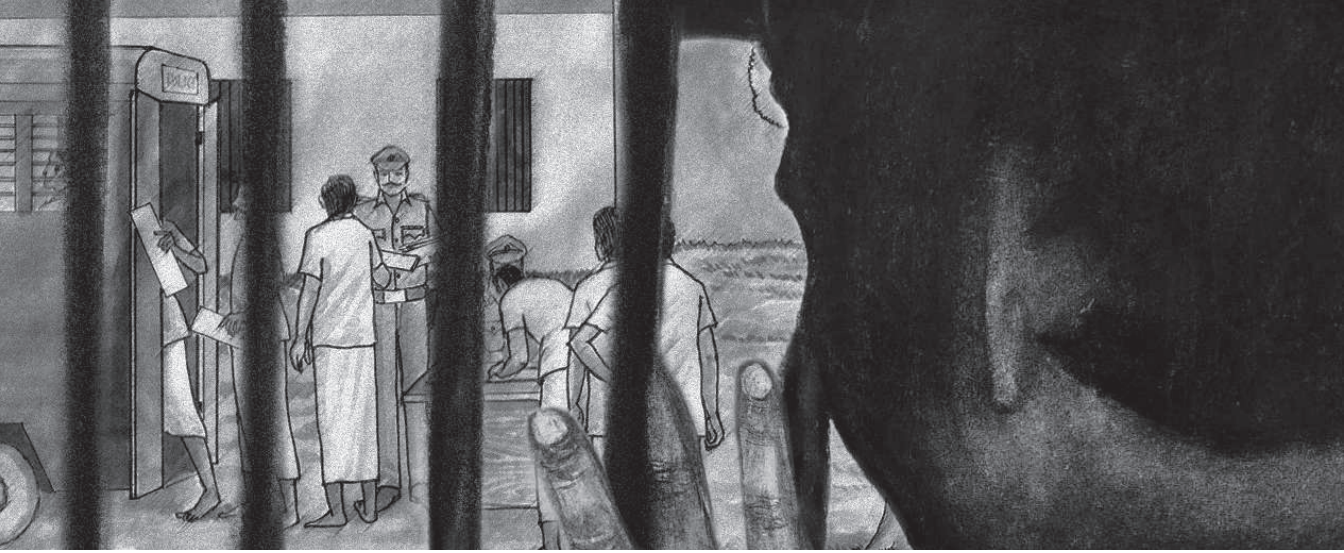
- To ensure fairness, non-harassment, transparency, monitoring, and speed in providing services and performing its tasks, as far as possible, the process of computerization of the prison administration be effectively put in place. (Order dated 21.04.2014)
- The prison administration may consider providing telephone facilities at fixed times and days to prisoners, for contact with approved persons or lawyers (especially women prisoners) as they desperately thirst for information about their homes and children and about the status of their cases. (Order dated 08.10.2014)
- While observing that x-rays can help in identifying age of offenders appearing to be below 18 years of age and for other medical diagnosis, the Court directed that “X-ray machines and X-ray plates, technicians and other necessary infrastructure be provided for conducting x-rays in all prisons”. (Order dated 08.10.2014)

UNDERTRIAL INMATES

- CJMs to take steps for release of prisoners, who are in jail for periods over 2 months after bail order. (Order dated 26.3.2014)
- Immediately after passage of the order of bail, the District Judges shall require each Court to maintain a record of the prisoner who has been granted bail, including the date of bail order. The record shall also enter details of date of release order on providing bonds and sureties, or without/or on reduced sureties, with or without conditions for periodical attendance before the Courts/police stations till some sureties are provided. Appropriate registers be maintained in the District Courts and the jails for this purpose. (Order dated 21.04.2014)
- Regarding the above 70 year old prisoners whose trials or appeals are pending and who are in jail for more than 5 or more years and who are desirous of legal aid, who have no counsel or their counsel are not appearing before the Subordinate Courts or the High Court, jail authorities as well as district legal services authorities and jail visitor Counsel are directed to identify such prisoners and to provide them legal aid by moving bail applications or getting their cases disposed of before the subordinate Courts or the High Court in case no pairokars are coming forward to assist such prisoners. (Order dated 21.04.2014)
- The Court also directed that separate tabular charts be prepared of under trial prisoners in different U.P. jails (with names of jails) who have undergone over 5 years, mentioning: names with father's name; Jail period in years (in numeric); additional period in months (in numeric from 1 to 12); dates of detention; age in years (in numeric); additional months (in numeric); Crime No., Case/S.T. No., Court designation, with district; date since when bail pending (if any); Court before which pending with bail application No.; reason for long detention in jail and delay in disposal of trial or bail; latest jail health report; jail conduct of the prisoner; whether the prisoner agrees to taking legal aid. (Order dated 21.04.2014)
- Likewise separate tables need to be prepared of convict prisoners having undergone 5 years who have been convicted by the trial court and whose appeals are pending before the High Court, mentioning: names with father's name; Jail period in years (in numeric); additional period in months (in numeric from 1 to 12); dates of detention; age in years (in

numeric); additional months (in numeric); Crime No. case/S.T. No./Court designation, with district; date of judgment of Trial Court; sentence awarded; date of filing of appeal before High Court or other Superior Court; date since which bail pending (if any); Court before which pending with bail application No.; reason for long detention in jail; latest jail health report; conduct of prisoner; whether prisoner agrees to taking legal aid. (Order dated 21.04.2014)

- The Court stated “The district Court or the High Court if they take the view that the prisoner has made out a case for bail on merit, or on the basis of the period spent in jail or on health grounds or on account of family issues or other such factors, could then consider the option of either releasing the prisoner on personal bonds on account of absence of pairokars or being an old person or ailing or a woman, with fixed abode unlikely to abscond, or on reduced bonds or conditionally on the prisoner periodically reporting before the police station or Court, which condition could be relaxed once he is able to furnish the required sureties after his release.” (Order dated 08.10.2014)



JASVIR SINGH V. STATE OF PUNJAB

Punjab & Haryana High Court - 2014 SCC OnLine P&H 22479

FACTS

The petitioners, being husband and wife, were tried for an offence of kidnapping and brutally murdering a minor for ransom. The trial court awarded them death sentence which was confirmed by the High Court. The Supreme Court dismissed their appeal but commuted the death sentence awarded to petitioner No. 2 (wife) into life imprisonment.

The petitioners sought enforcement of their perceived right to have conjugal life and procreate within the jail premises. The Court included issues such as hovering around the concept of 'reasonable restrictions; the extent of suspension of some of the fundamental rights during incarceration; radical jail reforms; the status of prisoners as protected citizen within the Constitutional framework as well as; the international perspective on the right to conjugal life in the precincts of jail, as further important aspects for discussion.

HIGH COURT'S OBSERVATIONS

- i. Whether the right to procreation survives incarceration, and if so, whether such a right is traceable within our Constitutional framework?

Yes, the right to procreation survives incarceration. Such a right is traceable and squarely falls within the ambit of Article 21 of our Constitution read with the Universal Declaration of Human Rights.

- ii. Whether penological interest of the State permits or ought to permit creation of facilities for the exercise of right to procreation during incarceration?

The penological interest of the State ought to permit the creation of facilities for the exercise of right to procreation during incarceration, may be in a phased manner, as there is no inherent conflict between the right to procreate and incarceration, however, the same is subject to reasonable restrictions, social order and security concerns;

- iii. Whether 'right to life' and 'personal liberty' guaranteed under Article 21 of the Constitution include the right of convicts or jail inmates to have conjugal visits or artificial insemination (in alternate)?

'Right to life' and 'personal liberty' guaranteed under Article 21 of the Constitution include the right of convicts or jail inmates to have conjugal visits or artificial insemination (in alternate). However, the exercise of these rights are to be regulated by procedure established by law, and are the sole prerogative of the State.

- iv. If question No. (iii) is answered in the affirmative, whether all categories of convicts are entitled to such right(s)?

Ordinarily, all convicts, unless reasonably classified, are entitled to the right to procreation while incarcerated. Such a right, however, is to be regulated as per the policy established by the State which may deny the same to a class or category of convicts as the aforesaid right is not an absolute right and is subject to the penological interests of the State.

Observing the role of judiciary in prisons the Court noted "The Judiciary as the principal executor and promoter of the rule of law has to have major stakes in respect of the conditions prevailing in the prisons." It further stated "The management, conditions of living and future responsibilities of the inmates inside the jails etc., cannot be left to the sole desire or discretion of the executive. It is rather the responsibility of Courts to ensure that the rights of every resident

of prison(s) or correctional home(s) are duly protected and irrespective of the financial constraints which is the oft-offered explanation by a State, the conditions of living, re-orientation or rehabilitation of the convicts is given effect under the direct supervision, command and control of the Courts.”

Relying on previous decisions the Court observed that “to law which authorises and no procedure which leads to cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness and thus would plainly be void and violative of Articles 14 & 21.”

The Court also stated that spaces for conjugal visits may be introduced on trial basis in Model Jails or Open Air-Free Jails in such a manner that the independent family units of the ‘convicts with good behaviour’ may live like in a small hamlet.

HIGH COURT’S DIRECTIONS

The Court passed the following directions:

- i. The State of Punjab is directed to constitute the Jail Reforms Committee to be headed by a former Judge of the High Court. The other Members shall include a Social Scientist, an Expert in Jail Reformation and Prison Management amongst others;
- ii. the Jail Reforms Committee shall formulate a scheme for creation of an environment for conjugal and family visits for jail inmates and shall identify the categories of inmates entitled to such visits, keeping in mind the beneficial nature and reformatory goals of such facilities;
- iii. the said Committee shall also evaluate options of expanding the scope and reach of ‘open prisons’, where certain categories of convicts and their families can stay together for long periods, and recommend necessary infrastructure for actualizing the same;
- iv. the Jail Reforms Committee shall also consider making recommendations to facilitate the process of visitations, by considering best practices in the area of prison reforms from across jurisdictions, with special emphasis on the goals of reformation and rehabilitation of convicts and needs of the families of the convicts;
- v. the Jail Reforms Committee shall suggest ways and means of enhancing the facilities for frequent linkage and connectivity between the convict and

- his/her family members;
- vi. the Jail Reforms Committee shall prepare a long-term plan for modernization of the jail infrastructure consistent with the reforms to be carried out in terms of this order coupled with other necessary reforms;
 - vii. the Jail Reforms Committee shall also recommend the desired amendments in the rules/policies to ensure the grant of parole, furlough for conjugal visits and the eligibility conditions for the grant of such relief;
 - viii. the Jail Reforms Committee shall also classify the convicts who shall not be entitled to conjugal visits and determine whether the husband and wife who both stand convicted should, as a matter of policy be included in such a list, keeping in view the risk and danger of law and security, adverse social impact and multiple disadvantages to their child;
 - ix. the Jail Reforms Committee shall make its recommendations within one year after visiting the major jail premises and it shall continue to monitor the infrastructural and other changes to be carried out in the existing jails and in the Prison Administration System as per its recommendations.
 - x. the Jail Reforms Committee shall be allowed to make use of the services of the employees and officers of the State of Punjab, who is further directed to provide the requisite funds and infrastructure including proper office facilities, secretarial services, travel allowances and all necessary amenities and facilities, as required by the Jail Reforms Committee.”

HIGH COURT’S DECISION

The Court did not allow the prayers of the petitioners for reasons of want of adequate infrastructure and lack of a policy framework to enable the prayer. The Court stated that “Since multiple inputs from the social scientists, criminologists, jail A=administration and judiciary along with budget allocation for the requisite infrastructures, will have a direct bearing on the policy formulation, it is not expedient or desirable for this Court to direct the actual implementation of its directions or observation(s) in a time-bound manner.”



SOMA SAHA SEN V. STATE OF WEST BENGAL

Calcutta High Court - 2017 SCC OnLine Cal 3747

FACTS

Petitioner approached the Court seeking directions to permit her husband, who is in incarceration, to execute and register sale deeds.

The State informed the Court that there is no embargo to permit the husband of the petitioner to execute the sale deeds under the law. However, the registration of the documents requires to be done on commission, which has to be done at the concerned authority's office in person.

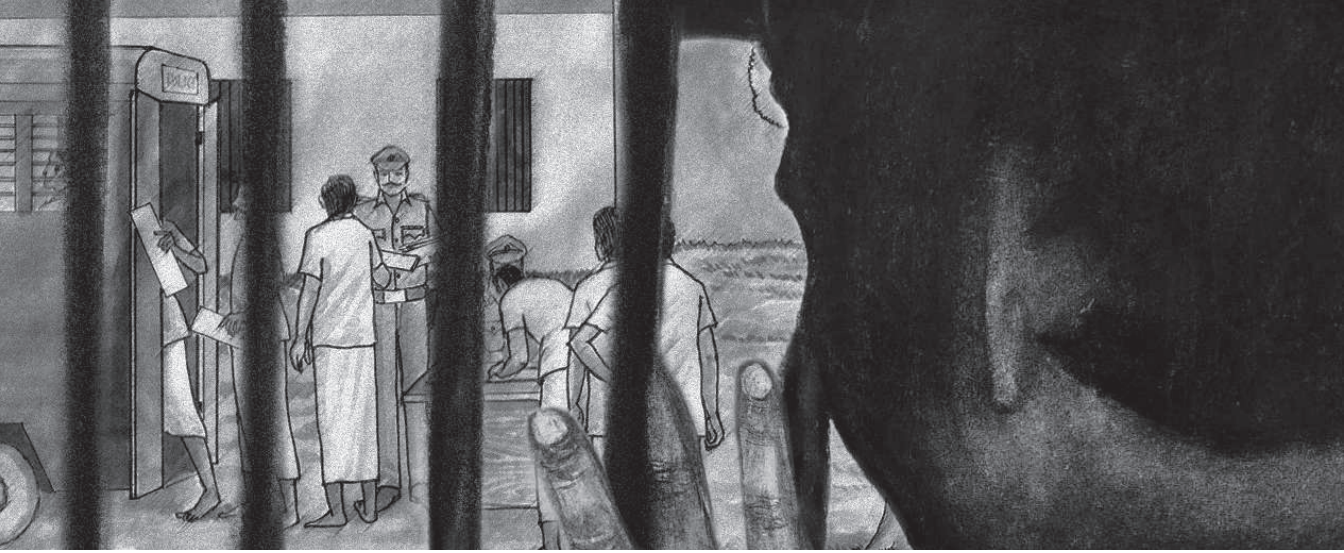
HIGH COURT'S OBSERVATIONS

The Court observed “Right to carry on trade and profession including right to convey property in course of such business is an essential fundamental right enshrined under Article 19(i)(g) of the Constitution of India and the same do not stand eclipsed by the continuing incarceration of a prisoner.”

Observing that the concerned authority which requires registration of documents on commission may visit the residence of the concerned person, stated that when “a prisoner is incarcerated in a correctional home, it is to be deemed that the prisoner is temporarily residing in the said correctional home.”

HIGH COURT'S DECISION

The Court held that incarceration of the husband of the petitioner shall not disentitle him from executing sale deeds.



RAMNATH NISHA V. ADDITIONAL DIRECTOR GENERAL OF PRISON AND ORS.

Madras High Court - 2019 SCC OnLine Mad 1693

FACTS

The petitioner's brother was confined in the Central Prison, Tirunelveli as a remand prisoner when his wife fell ill. He applied for permission to see his wife which was granted by the Sessions Court. However, he could not see his wife as when he reached home with the escorts, his wife was already admitted to the hospital. He couldn't be taken to the hospital as the permission was granted only for a visit to the home. Therefore the present petition was filed in urgency by his brother to seek 10 days leave.

HIGH COURT'S OBSERVATIONS

The Court reiterated the Supreme Court's repeated position that incarceration does not alienate a person from the purview of fundamental rights other than reasonable restrictions. Relying on the concerned prison rules which allow interviews and communications of the prisoners with their family members and relatives, the Court stated "the prisoner in question is certainly having a right to communicate with his wife. If his wife had not become immobile, she would certainly be entitled to visit him at the prison itself. She is now in the ICU ward. Merely because the wife of the prisoner is in hospital, his right to contact and communicate with her cannot be extinguished."

The Court clarified that it is the spousal right of the prisoner's wife to visit him and hence if the spouse is unable to visit the prisoner in prison, the authorities must facilitate a visit by the prisoner.

Further noting that the concerned prison rules do not allow interview of a convict prisoner in private, the Court observed that interview or communication between spouses will have to be an exception to it. It stated "I am of the view that the prison authorities will have to make an exception in the case of spousal meetings. When a prisoner meets his wife, he may like to hold her hands. His emotions are bound to find a physical expression. While private prison cottages may be a distant prospect, the privacy and dignity of the prisoners should be scrupulously protected. Conversations between prisoner and his spouse should be unmonitored...The prison authorities are obliged to facilitate the meetings between the prisoner and his wife in a reasonably private sitting."

HIGH COURT'S DECISION

The Court declined the request of leave however directed the concerned authorities to escort the prisoner to the hospital where his wife was admitted and facilitate his interview with his wife.



MEHARAJ V. STATE OF TAMIL NADU

Madras High Court - 2018 SCC OnLine Mad 278

FACTS

The appellant's husband was detained in the prison who was declined leave by the concerned authorities. Therefore, the appellant approached the Court to seek leave of 30 days for her husband to assist her in the infertility treatment. In an earlier order the Court directed the respondents to take a decision for consideration of leave, however the leave was declined for two reasons - "neither the Inspector of Police nor the Probation Officer recommended the leave; and the personal life of the detenu will be put to danger". This order was challenged in this appeal.

HIGH COURT'S OBSERVATIONS

The Court observed that of the four theories of punishment, India has accepted the accepted the theory of reformation also. The Court added “prisons have to be transformed as homes for the purpose of giving training morally as well as intellectually, so that the prisoners are denuded of the qualities of a criminal. The psychologists and psychiatrists believe that the frustration, tension, the ill-feelings and the heart burnings can be reduced and a human being can be better constructed if they are allowed conjugal relationship even rarely.”

The Court further observed that conjugal visit of the spouse is a right of the prisoner which is well recognised in various countries. It stated that the reason for conjugal visits or extended family visits is threefold: “to maintain the relationship between the prisoner and the members of his family, to reduce recidivism, and to motivate or to provide an incentive for the good behaviour.”

The Court observed that the International Covenant on Civil and Political Rights, 1966, Art. 10(3) mandated that the essential feature of correctional system should be reformation and rehabilitation of prisoners.

HIGH COURT'S DECISION

The Court allowed the appellant's husband conditional leave of two weeks.



AKASH RASHTRAPAL DESHPANDE AND ANR. V. STATE OF MAHARASHTRA

Bombay High Court - 2019 SCC OnLine Bom 283

FACTS

The petitioners were convicted under IPC for different cases and awarded sentences, which as a general rule are supposed to run consecutively. If the sentences were to run consecutively, petitioner would have to serve total imprisonment of 21 and 24 years respectively. The petitioners approached the High Court for direction to run their sentences concurrently.

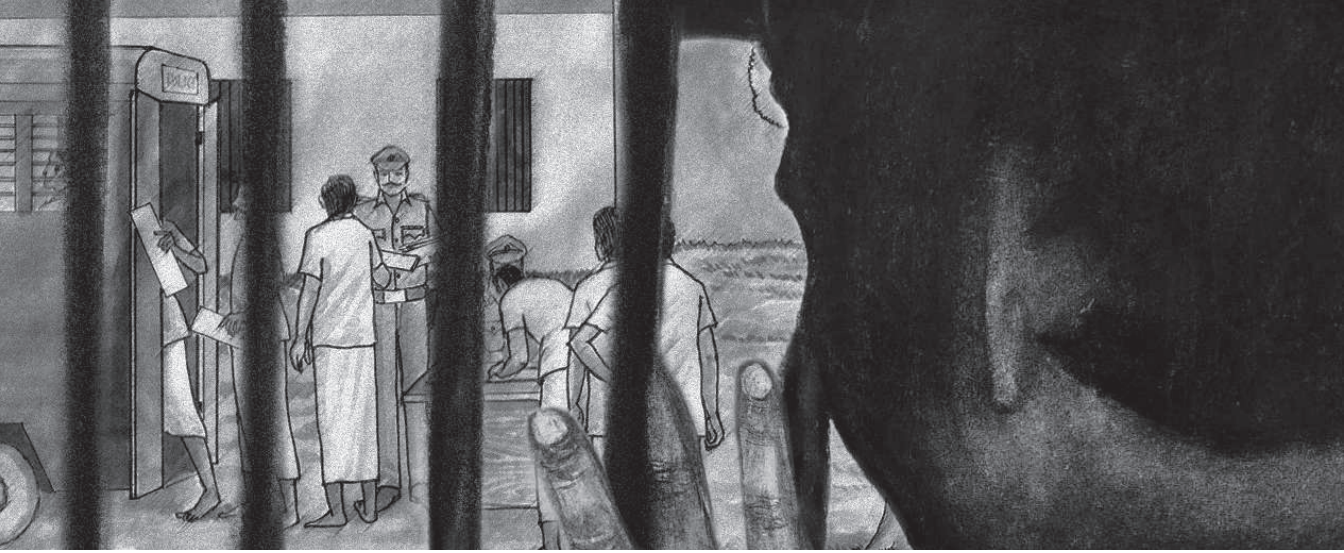
HIGH COURT'S OBSERVATION

The Court while quoting Oscar Wilde “every Saint has a past and every sinner has a future” observed that modernisation of the society has emphasised on the rehabilitation of prisoners convicted of criminal offences.

The observed that the factor of young age (21 years and 23 years) of the petitioners has probed the Court to take a lenient view. The Court noted that the theory of reformation plays a dominant role in the Constitutional Court's view on the rights of citizens pending trial and post-trial.

HIGH COURT'S DECISION

The Court modified the sentences to the extent of making them concurrent. The Court also directed the concerned prison authorities to make arrangements for occupation/vocation training of the petitioner prisoners so that it is “beneficial to them to earn livelihood after release from jail.”



THE J & K HIGH COURT BAR ASSOCIATION V. STATE OF J & K AND ORS.

J & K High Court - 2010 SCC OnLine J&K 15

FACTS

The petitioner, through this instant petition, raised the issues of prison conditions, lack of medical facilities to prisoners and issues of production of inmates to Courts that he had observed during his visits to prison before the High Court. Relevant directions were sought to address the same.

HIGH COURT'S OBSERVATIONS

The High Court observed the need of detention and the need to separate a person from the society, for the apprehension of damages to the public order and/or to security of the State. The Court discussed about two types of persons-one, detained for preventive reasons and other being accused, yet to face trial. It observed that these two types of persons when lodged in a prison are called "prisoners". These prisoners, though deprived of their liberty in accordance with mandate of law are still entitled to basic human rights.

Further, it observed that right to life has been granted to all persons by the provisions of the Constitution of India. In a democratic State, no person can be deprived of his life and personal liberty. In case, a person is deprived of his life and personal liberty of due to the authority of law, this would not mean that such an individual is denuded of his basic human rights. It is not only a detenu and/or under-trial but even a convict is entitled to certain basic human rights and it is State governed by rule of law which is under an obligation to respect those human rights.

A person who is sought to be deprived of his life and/or personal liberty, cannot be kept in confines of the jails, for arriving at a conclusion, for unnecessarily long period. The right to have expeditious trial has nexus with the personal liberty of an individual and to achieve this purpose the State is under constitutional obligation to ensure that the trial concludes against an individual at the earliest. The Court went on to observe the statutory mandate of producing the under-trial to be brought before the Court by the jail authorities. However, it remarked that some of the under-trial prisoners have not been produced before the Courts where the trial is pending against them on many consecutive dates of hearings.

The State argued that the under-trial prisoners are not produced before the Court for the following reasons

- a. Escort/transport facilities could not be made available at occasions for production of under-trials before Court(s) because of law and order problem,;
- b. VIP movement;

- c. Intelligence inputs advising against the movement of detenus.

However, the Court observed that apart from the third plea of intelligence inputs advising against the movement of detenu on the particular date for the safety of life and liberty of the under-trial prisoners, other two grounds projected cannot be countenanced in law.

Escort/transport facilities are to be provided by the respondent-State to the Jail authorities to ensure production of under-trials before the Court(s) of competent jurisdiction on every date of hearing. The delay which is caused in the trial of the under-trials is mainly attributable to non-availability of escort/transport facilities to the jail authorities.

HIGH COURT'S DIRECTION:

- a. A special force should be exclusively kept at the disposal of the jail officers for transportation and escorting the detenus and under-trials from jail to Court of law, from jail to outside hospital, and from jail to other institutions.
- b. The concerned SSP, immediately on receipt of date of hearing of an under-trial shall take steps and make advance arrangements of keeping available escort/transport facility to ensure that without any default the under-trial is produced before the Court on the appointed date of hearing.
- c. In case for any valid and just reason, it becomes difficult/impossible for the SSP to ensure the production of the under-trial before the trial Court, it shall be the duty of the said SSP to record reasons therefor, and forward the same to the concerned Court at least one week before the date under-trial is required to be produced.
- d. In case the trial Judge is satisfied about the cause and reason for proposed non production of the under-trial on the appointed date before the Court and same is found to be plausible and genuine, the trial judge shall convey his approval to the request made. The trial judge shall then and there fix another date in the case and requisite information thereof shall be conveyed to the concerned SSP for production of under-trial on that particular date before the trial Court
- e. The concerned SSP shall ensure that all necessary things are made

available to the jail authorities for production of under-trial before the Court of law on the date case is fixed.

- f. The trial judge shall ensure that where-ever charge is framed, the prosecution witnesses appear before the Court, and as far as practicable, their statements be recorded on day to day basis, which otherwise, is mandate of the Criminal Procedure Code.
- g. All the jails to have a Medical Officer and necessary sub-ordinate staff permanently posted in every jail of the State. Moreover, medicines which would be urgently required in all the jails of the State at the disposal of the Medical Officer of the Jail(s).
- h. An ambulance must be available in every jail of the State, with necessary things for keeping it in operational condition.
- i. The lodgement of the under-trials in the jail(s), as far as practicable, nearer to the Courts where their cases are pending.



V. VENKATASWARA REDDY V. STATE OF W.B.

Calcutta High Court - 2012 SCC OnLine Cal 8146

FACTS

The petitioners claiming themselves to be Maoists and being stated by the State as Naxalites, approached the Court with a prayer to be classified as political prisoners under the West Bengal Correctional Services Act 1992. They sought special 'conveniences' over and above ordinary prisoners under such classification as per the Act.

HIGH COURT'S OBSERVATION

Relying on previous judgements, the Court observed that those who commit political offences or offences with a political goal are political prisoners. It stated “The settled distinction which is required to be highlighted is that the offence should not be committed for a personal gain, revenge, greed or fulfillment of lust. The rather broad contours of the definition suggest that the person accused of a political offence being a member of an unlawful organization, is not excluded.”

However, the Court also observed the facilities as enumerated in the Act for political prisoners are nothing but part of basic human rights to which every prisoner ought to be entitled.

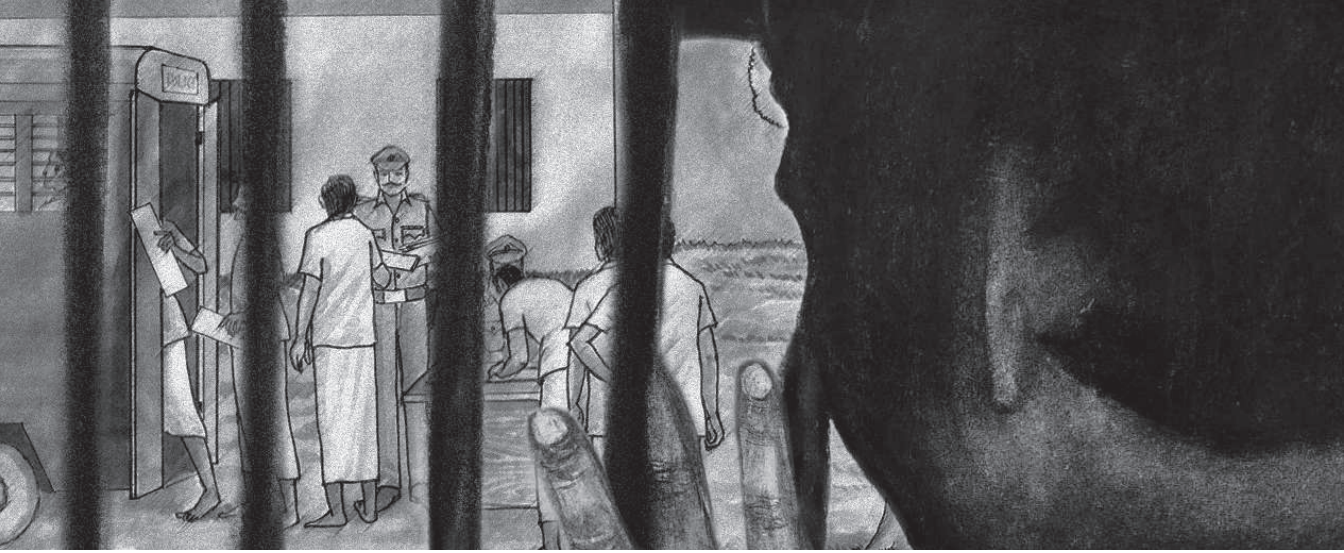
The Court also suggested to the Chief Secretary to the State of West Bengal “to consider that the classification of prisoners into divisions or classes, on the basis social status, education and habits of life, or on the basis of committing a political offence, should be done away with, as the prison authorities must not perpetuate inequalities while distributing basic amenities which are necessary for a dignified human life, albeit while in prison... To grade prisoners according to their status is alien to the Constitutional Scheme.” It stated that a slight improvement in the prison conditions itself would erode this classification provided in the legislation.

The Court also gave the following recommendations, to be looked into by an expert body:

- A common kitchen having proper hygiene and infrastructure run by the prisoners should be available to all the prisoners, irrespective of any class to which a prisoner belongs.
- For distribution of food, the State cannot create classes. However, it may provide food considering the health condition of an inmate of a Correctional Home.
- A weak or sick may require healthier or special diet.
- Common reading room having newspapers, magazines and other books at fixed hours should be available to all prisoners.

HIGH COURT'S DECISION

Following a strict interpretation of the statute, the Court declared the petitioners as political prisoners.



LAWYERS FOR HUMAN RIGHTS INTERNATIONAL (REGD) AND ANOTHER V. STATE OF HARYANA AND OTHERS

Punjab & Haryana High Court - 2011 SCC OnLine P&H 16312

FACTS

The petition alleged rampant corruption and violation of human rights in the prisons. Among others, the issues of complaint boxes was discussed and directions were passed in this regard.

HIGH COURT'S OBSERVATION

The Court observed that not a single complaint had been made in a particular prison for last five years. It stated that this fact itself shows that the purpose of complaint boxes in prisons not being served.

Therefore the Court suggested that “The box should be placed at such a place where a prisoner could conveniently and freely lodge his complaint for being dealt with by the District & Sessions Judge of the concerned District and should not be at a place where there is supervision of the jail authorities around the clock. The placing of box at such a place is nothing but violation of the right of the prisoner because of the deterrence in the mind of the prisoner that he may be seen by the jail officials while lodging a complaint.”

The Court also remarked that in all cases of surprise visits to prison by the Sessions Judges, there should not be any intimation of the same to the prison authorities as such an unwarranted intimation will defeat the purpose of surprise visit giving time to the authority to hide the deficiency.

HIGH COURT'S DIRECTIONS

The Court issued the following directions:

- “The Chief Secretaries of Punjab, Haryana and Advisor of the U.T. Chandigarh are directed to ensure that the complaint boxes installed in various jails are maintained properly and if there is any jail where such a complaint box has not been installed then to install the same within two months.
- They should ensure supply of paper to the jail inmates. It should also be ensured that complaint boxes are also installed in the condemned cell.
- A copy of this order be sent to each District Judge in the States of Punjab, Haryana and Chandigarh so that it should be ensured that the custody and keys of the complaint boxes are with them only.
- They are also required to go for inspection without any prior intimation to the jail authorities so as to ascertain the true and correct facts concerning facilities available to the jail inmates.”



SURENDRA SINGH SANDHU V. STATE OF UTTARAKHAND AND OTHERS

Uttarakhand High Court - 2017 SCC OnLine Utt 29

FACTS

The petitioner filed a public interest litigation to seek directions for restoring the Sampurnanand Shivar (Central Jail) situated in Sitarganj, District Udham Singh Nagar, Uttarakhand. The petitioner stated that the government has transferred large area of the prison to corporations and therefore sought directions to the State to preserve, protect, improve and restore the original form of Sampurnanand Shivar among other prayers.

HIGH COURT'S OBSERVATIONS

The Court observed that the International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners which India ratified in 1979. It stated that human rights of the prisoners cannot be taken away by reducing the area meant for open jail.

It observed that “The open air jail prepares convicts to face outside the world after their release.” It provides “better freedom, natural surroundings and lesser tension to the inmates.”

Remarking on the condition of inmates in prisons and the importance of open prisons, the Court observed “the prisoners are likely to suffer psychological debilitating. They also suffer mental deterioration and apathy. They are uncertain about their identities. They suffer from normal stress, psychiatric distress and paranoia. Decision making ability is also affected. They are emotionally less stable. There is acute psychological trauma and break down. Their problems are further aggravated by not getting adequate medical and health facilities. There is overcrowding in the prisons. The quality of food is not up to the mark. The open jail is last place before the prisoner is released into society.”

It further noted “Purpose of Open Air Jail is to keep inmates busy and to make them disciplined and to restore their dignity. State Government should also take necessary steps to give employment to the prisoners after their release. Prisoners have fundamental and human rights.”

HIGH COURT'S DECISION

The Court allowed the petition by restraining the State Government/respondents from transferring any land belonging to the Sampurnanand Shivir to any person except to the State or State instrumentalities that too only for public purposes such as school(s) and hospital(s).



COMMONWEALTH HUMAN RIGHTS INITIATIVE V. THE STATE OF WEST BENGAL & ORS.

Calcutta High Court - WP 56 of 2013 - (Order dated: 22.01.2013)

FACTS

A public interest litigation was filed to seek orders for ensuring physical production of all arrested or detained persons against the practice of 'on-paper' production for remand hearing and accessibility of legal aid to the accused at the time of such hearings.

HIGH COURT'S OBSERVATIONS

The Court observed that “Section 167(2) proviso (b) of the Code of Criminal Procedure makes a provision that accused has to be produced before the concerned Magistrate. Explanation II of Section 167 of the Code of Criminal Procedure also provides that the production of accused person may be proved by his signature on the order authorising detention or by the order which is certified by the Magistrate the production of the accused person through the electronic media linkage is also permitted. However, at the same time when accused is not produced through video linkage his physical presence is necessary, it cannot be made merely on the paper production. For that concerned Magistrate has to ensure that remand is made as per provisions contained in Section 167 CrPC Explanation II makes it clear when any question arises whether the accused has been produced before the Magistrate or not as required under Clause (b) of Sub section 2 of Section 167 the signature of the accused on the order authorising detention is sufficient proof”.

The Court also reiterated the safeguards provided in the case of *D.K. Basu versus State of West Bengal* (1997) 1 Supreme Court Cases 416 -

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of

arrest is himself such a friend or a relative of the arrestee.

- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the concerned Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

HIGH COURT'S DECISION

The Court stated that a failure to comply with the directions of the Supreme Court shall be liable for penal consequences. It held that the State also has to follow the provision in Section 167 of the Code of Criminal Procedure. It added “With respect to free legal aid at the time of remand obviously the Magistrate has to advise the accused persons of his/her right to be defended and in case he/ she has no means to engage a lawyer, a lawyer is to be made available at the expenses of the State through Legal Services Authority/Committee. It is bounden duty of the concerned Magistrate, while making remand, to carry out the aforesaid obligation also. It is also pertinent to mention that the availability of the panel of lawyers should also be ensured by the concerned bodies/committees.”

CHRI PROGRAMMES

CHRI seeks to hold the Commonwealth and its member countries to high of human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

1. Access to Justice (ATJ)*

* Police Reforms: In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

* Prison Reforms: CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstays, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

2. Access to Information

* Right to Information: CHRI's expertise on the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised the efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervene to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, enabling CHRI bring valuable insights into countries seeking to evolve new RTI laws.

*Freedom of Expression and Opinion -- South Asia Media Defenders Network (SAM-DEN): CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with RTI movements and activists.

3. International Advocacy and Programming

Through its flagship Report, *Easier Said Than Done*, CHRI monitors the compliance of Commonwealth member states with human rights obligations. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7 (see below), monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

4. SDG 8.7: Contemporary Forms of Slavery

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.' In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and to strengthen collective advocacy.



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