(1980) 3 Supreme Court Cases 488 : 1980 Supreme Court Cases (Cri) 777 : 1979 SCC OnLine SC 456

(BEFORE V.R. KRISHNA IYER, R.S. PATHAK AND O. CHINNAPPA REDDY, JJ.)

SUNIL BATRA (II) . . Petitioner;;

Versus

DELHI ADMINISTRATION . . Respondent.

Writ Petition No. 1009 of 1979[†], decided on December 20, 1979.

Constitution of India — Articles 32 & 226 and 14, 19 & 21 — Habeas Corpus, writ of—Expanding nature of and scope of— Standing — Right of a prisoner to invoke habeas corpus against prison excesses against a co-prisoner — Court can regard a simple letter as the petition

Constitution of India — Articles 32 & 226 and 14, 19 & 21 — Habeas Corpus, writ of — Held would be available to any prisoner against any action of jail authorities which is not commensurate with his sentence or does not satisfy the test of Articles 14, 19 and 21 as further explained herein — Rights of detainee and necessary prison reforms in the present set-up detailed

Prisons — Prison reforms — Constitutional and administrative guidelines given — All action against and treatment of the prisoner must be commensurate with his sentence and satisfy the test of Articles 14, 19 and 21 — Prisons Act, 1894, Sections 29, 30, 27 and 61 — Prisoners Act, 1900, Sections 15 and 16 — Punjab Prison Manual, paras 41 to 44 — Penology

The present writ petition originated from a letter written to a Supreme Court Judge by Sunil Batra, a prisoner in Tihar Jail, Delhi complaining that a Jail Warder had pierced a baton into the anus of another prisoner serving life term in the same jail as a means to extract money from the victim through his visiting relations. In response, the court initiated proceedings in the nature of habeas corpus and issued notices to the State and the concerned officials appointed amicus curiae counsel and authorised them to visit the prison, meet the prisoner and see relevant documents and interview necessary witnesses so as to enable them to inform themselves about the surrounding circumstances. Consequently, it was found that the victim was placed in a punishment cell by the jail authorities. From the jail hospital register it appeared that the victim had developed tear of anus and as his

bleeding could not be stopped in the jail hospital, he had to be removed to the Irwin Hospital, Delhi. The prisoner's later narration to the doctor in the hospital corroborated the case.

Held :

Per Krishna Iyer and Chinnappa Reddy, JJ.

Protection of the prisoner within his rights is part of the office of Article 32 and Article 226. Prisoners are also persons and where the rights of a prisoner either under the Constitution or under other law are violated the writ power of the court can and should run to his rescue. Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods "right, just and fair". The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration.

(Paras 4, 27 and 30)

The framers of our Constitution have freed the powers under Article 32 from the rigid restraints of the traditional English writs. True technical and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found, though such proceedings are not strictly traditional but are clearly in the "nature of" habeas corpus writ.

(Paras 4, 25 and 50)

Beyond the conventional blinkers, courts have begun to examine the manner in which an inmate is held or treated during the currency of his sentence. Flexible directives, even affirmative action moulded to grant relief, may realistically be issued and fall within its fertile width. The court must not wait for a stray petition from some weeping inmate and give the little person a little relief in the little case but give the nation, its governments, prison establishments and correctional departments, needed guidance.

(Paras 20, 25 and 34)

The Supreme Court gave the following guidelines in respect of the constitutional and administrative aspects of the prison justice:

(1) It is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Fair procedure in dealing with the prisoners calls for another dimension of access to law-provision, within easy reach, of the law which limits liberty to persons who are prevented from moving out of prison gates.

(Paras 39 and 40)

Kharak Singh v. *State of U.P.*, (1964) 1 SCR 332, 357 : AIR 1963 SC 1295, *relied on*

(2) No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him — to read and write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.

(Para 42)

D. Bhuvan Mohan Patnaik v. *State of A.P.*, (1975) 3 SCC 185 : 1974 SCC (Cri) 803 : (1975) 2 SCR 24, 26, *relied on*

(3) Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infraction will be arbitrary, under Article 14 if it is dependent on unguided discretion; unreasonable, under Article 19 if it is irremediable and unappealable; and unfair, under Article 21 if it violates natural justice. The guidelines suggested in the previous Batra case provided for a hearing at some stages, a review by a superior, and early judicial consideration so that the proceedings may not hop from one official to another. The court therefore, directed strict compliance with those norms and institutional provisions for that purpose.

(Para 48)

Likewise, no personal harm, whether by way of punishment or otherwise, shall be suffered by a prisoner without affording a preventive, or in special cases, post facto remedy before an impartial, competent, available agency.

(Para 49)

(4) The prison authority has duty to give effect to the court sentence (Sections 15 and 16 of the Prisoners Act, 1900). To give effect to the sentence means that it is illegal to exceed it and so it follows that a prison official who goes beyond mere imprisonment or deprivation of locomotion and assaults or otherwise compels the doing of things not covered by the sentence acts in violation of Article 19. Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour. ‘Hard labour’ in Section 53, Prisons Act has to receive a humane meaning. So a vindictive officer victimising a prisoner by forcing on him particularly harsh and degrading jobs, violates the law's mandate. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs.

(Para 51)

(5) Violation of provisions of Section 27(2) and (3) regarding separation of prisoners must be visited with judicial correction and punishment of the jail staff. Sex excesses and exploitative labour are the vices adolescents are subjected to by adults. The young inmates must be separated and freed from exploitation by adults. Violation of these imperatives will attract Article 19.

(Para 51-A)

(6) Any harsh isolation from society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure. Provisions of Section 29 and connected rules in this regard enunciated in the previous Batra case must be complied with.

(Para 52)

(7) Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep.

(Para 53)

Sheldon Krantz: CORRECTIONS And PRISONERS' RIGHTS, *relied on*

(8) Parole system is also unsatisfactory and arbitrary though the court did not explore that constitutional area.

(Para 54)

(9) Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the visitatorial and supervisory judicial role.

(Para 78)

(10) Further, District Magistrates and Sessions Judges shall personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances; shall make expeditious enquiries there-into and take suitable remedial action. In appropriate cases reports shall be made to the High Court for the latter to initiate, if found necessary habeas action.

(Para 78)

(11) Within the next three months, Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrates and the Sessions Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes shall be accorded to all prisoners.

(Para 78)

(12) The State shall take early steps to prepare in Hindi, a prisoner's handbook and circulate copies to bring legal awareness home to inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into

the prison may create a fellowship which will ease tensions. A prisoners' wallpaper, which will freely ventilate grievances will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

(Paras 39, 43, 45 and 79)

(13) The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies.

(Para 79)

(14) The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.

(Paras 41 and 79)

(15) The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the court such as for example. Free Legal Aid (Supreme Court) Society. The District Bar shall keep a cell for prisoner relief.

(Paras 70 and 79)

The final panacea for prison injustice is, therefore, more dynamic, far more positive, strategies by going back to man, the inner man. For this, the court introduction of transcendental meditation courses is recommended.

(Paras 75, 76 and 82-A)

For the victim-prisoner in the present case the Superintendent is to ensure that no corporal punishment or personal violence on him shall be inflicted. However, on facts it is not proper to fix the primary guilt in this case as a criminal case is pending or in the offing.

(Para 78)

The guidelines in *Sunil Batra* v. *Delhi Administration* [(1978) 4 SCC 494 : 1979 SCC (Cri) 155], must be strictly followed.

[The court resented the Investigating Officer's attempts to hush up the crime committed by the jail warder and to do away with the primary incriminating evidence and suggested institution of a C.B.I, enquiry. The court also criticised the ‘hearsay’ affidavit filed by Under-Secretary (Home), Delhi Administration which shows the affiants indifferent and omnibus approval to every official's conduct.]

Coffin v. *Reichard*, 143 F 2d 443, 445 : 325 US 887 (1945); *Johnson* v. *Avery*, 21

L Ed 2d 719; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 : (1978) 2 SCR 621; *M.H. Hoskot* v. *State of Maharashtra*, (1978) 3 SCC 544 : 1978 SCC (Cri) 468 : (1979) 1 SCR 192; *Dwarkanath* v. *ITO*, (1965) 3 SCR 536, 540-541; *Kharak Singh* v. *State of U.P.*, (1964) 1 SCR 332, 357 : AIR 1963 SC 1295 and *D. Bhuvan Mohan Patnaik* v. *State of A.P.*, (1975) 3 SCC 185, 186 : 1974 SCC (Cri) 803 : (1975) 2 SCR 24, 26, *relied on*

Procunier v. *Martiney*, 40 L Ed 2d 224; *Hamilton* v. *Schiro*, 388 F Supp 1016 (ED La 1970); *Jackson* v. *Hendrick*, 321 A 2d 603 (Pa 1974) and *Morales* v. *Turman*, 364 F Supp 166 (ED Tex 1973), *cited*

Per Pathak, J. (concurring)

I am in general agreement with my learned Brother on the pressing need for prison reform and the expeditious provision for adequate facilities enabling the prisoners, not only to be acquainted with their legal rights, but also to enable them to record their complaints and grievances, and to have confidential interviews periodically with lawyers nominated for the purpose by the District Magistrate or the court having jurisdiction subject, of course, to considerations of prison discipline and security.

(Para 87)

Constitution of India — Articles 21 and 32 — Human rights — Constitutional recognition of — Role of habeas corpus in safeguarding human rights

Held :

Per Krishna Iyer and Chinnappa Ready, JJ.

Today human rights jurisprudence in India has a constitutional status and sweep by virtue of Article 21 so that this magna carta may well toll the knell of human bondage beyond civilised limits. In our era of human rights consciousness, the habeas writ has functional plurality and the constitutional regard for human decency and dignity is tested by this capability. Homage to human rights, if it springs from the heart, calls for action. Where therefore,

injustice, verging on inhumanity, emerges from hacking human rights guaranteed in Part III and the victim beseeches the court to intervene and relieve, the Supreme Court will be a functional futility as a constitutional instrumentality if its guns do not go into action until the wrong is righted. The court is not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope. The court can issue writs to meet the new challenges.

(Paras 4, 21, 26 and 27)

Maneka Gandhi v. *Union of India*, (1978) 1 SCC 248 : (1978) 2 SCR 621; *M.H. Hoskot* v. *State of Maharashtra*, (1978) 3 SCC 544 : 1978 SCC (Cri) 468 :

(1979) 1 SCR 192 and *Dwarkanath* v. *ITO*, (1965) 3 SCR 536, 540-541, *relied on*

Petition allowed R-M/4684/CR

Advocates who appeared in this case :

Dr Y.S. Chitale, Senior Advocate (amicus curiae) (Mukul Mudgal, Advocate, with him), for the Petitioner;.

Soli J. Sorabjee, Solicitor-General (R.N. Sachthey, Advocate, with him), for the Respondent.

The Judgments of the Court were delivered by

V.R. KRISHNA IYER, J.— (*for himself and Chinnappa Reddy, J.*)— This writ petition originated, epistolary fashion, in a letter by a prisoner, Batra, to a Judge of this Court (one of us), complaining of a brutal assault by a Head Warder on another prisoner, Prem Chand. Forms were forsaken since freedom was at stake and the letter was posted on the Bench to be metamorphosed into a habeas proceeding and was judicially navigated with eclectic creativity, thanks to the humanist scholarship of Dr Y.S. Chitale as amicus curiae, and the erudite passion for affirmative court action of Shri Soli Sorabjee, the learned Solicitor-General. Where the prison process is dehumanised, forensic help, undeflected by the negative crudities of the adversary system, makes us dare where we might have daunted. The finest hour of justice comes when court and counsel constructively collaborate to fashion a relief in the individual case and fathom deeper to cure the institutional pathology which breeds wrongs and defies rights. Here, the individual is a prisoner whose anus was allegedly pierced with a warder's baton and the institution is the Tihar Prison, right in the capital of the country and under the nose of the Home Ministry.

The Perspective

2. This case is revelatory of several sins in this Central Penitentiary. 'Something is rotten in the State of Denmark". The constitutional imperative which informs our perspective in this habeas corpus proceeding must first be set out. The rule of law meets with its Waterloo when the State's minions become law-breakers and so the court, as the sentinel of the nation and the voice of the Constitution, runs down the violators with its writ and secures compliance with human rights even behind iron bars and by prison warders. This case is at once a symptom, a symbol and a signpost vis-à-vis human rights in prison situations. When prison trauma prevails, prison justice must invigilate and hence we broaden our "habeas" jurisdiction. Jurisprudence cannot slumber when the very campuses of punitive justice witness torture.

3. The petitioner does not seek the release of the prisoner because a life sentence keeps him in confinement. But the dynamic role of judicial

remedies, after *Batra case*[1], imparts to the habeas corpus writ a versatile vitality and operational utility that makes the healing presence of the law live up to its reputation as bastion of liberty even within the secrecy of the hidden cell. Blackstone called it 'the great and efficacious writ in all manner of illegal confinement' and Lord Denman proclaimed in 1839 that it had been "for ages effectual to an extent never known in any other country". So long as *Batra*[1] remains good law, judicial policing of Bastille practices will broaden to embrace the wider range of prison vices. Dr Chitale drew our attention to American legal literature disclosing the trend while Shri Soli Sorabjee for the Union of India, cited Corwin. Corwin's remarks on American constitutional law, referred to with approval in *Batra*[1], has our[2] assent: (SCC p. 505, para 4)

> "Federal courts have intensified their oversight of State penal facilities, reflecting a heightened concern with the extent to which the ills that plague so-called correctional institution — overcrowding, under-staffing, unsanitary facilities, brutality, constant fear of violence, lack of adequate medical and mental health care, poor food service, intrusive correspondence restrictions, inhumane isolation, segregation, inadequate or non-existent rehabilitative and/or educational programs, deficient recreational opportunities — violate the Eighth Amendment ban on 'cruel and unusual punishment'."

4. The essence of the matter is that in our era of human rights consciousness the habeas writ has functional plurality and the constitutional regard for human decency and dignity is tested by this capability. We ideologically accept the words of Will Durant:[3] (SCC p. 514, para 42)

> "It is time for all good men to come to the aid of their party, whose name is civilization."

Likewise, we endorse, as part of our constitutional thought, what the British Government's White Paper[4], titled "*People in Prison*", stated with telling effect: (SCC p. 514, para 42)

> "A society that believes in the worth of individual beings can have the quality of its belief judged, at least in part, by the quality of its prison and probation services and of the resources made available to them."

The learned Solicitor-General brought this keynote thought to our notice in the matchless diction of Sir Winston Churchill and briefly referred to in *Batra*[1] in a speech seventy years ago: (SCC p. 514, para

42)

> "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused, and even of the convicted criminal, against the State — a constant heart-searching by all charged with the duty of punishment — a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment: tireless efforts towards the discovery of curative and regenerative processes: unfailing faith that there is a treasure, if you can only find it, in the

heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.[5]"

Truly, this is a perspective-setter and this is also the import of the Preamble and Article 21 as we will presently see. We are satisfied that protection of the prisoner within his rights is part of the office of Article 32.

5. "Prisons are built with stones of law" and so it behoves the court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant 'guardians' of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials "dressed in a little, brief authority", when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the court takes cognizance of such violence and violation, it does, like the Hound of Heaven, "But with unhurrying chase, and unperturbed pace, Deliberate speed and Majestic instancy" follow the official offender and frown down the outlaw adventure.

The Facts

6. What are the facts which have triggered off this judicial action?

7. The resume of facts, foul on its face, reveals the legal issues raised, brings into focus the basics of prisoners' rights and helps the court forge remedial directives so as to harmonize the expanding, habeas jurisprudence with dawning horizons of human rights and enlightened measures of prison discipline. Batra, a convict under death sentence lodged in the Tihar Central Jail, came to know of a crime of

torture practised upon another prisoner, Prem Chand, allegedly by a jail warder, Maggar Singh, as a means to extract money, from the victim through his visiting relations. Batra braved the consequences of jail indignation and brought the incident to the ken of the court, resulting in these proceedings which, though not strictly traditional, are clearly in the nature of habeas corpus writs and, therefore, within the wider sweep of Article 32. The court issued notice to the State and the concerned officials, appointed Dr Y.S. Chitale and Shri Mukul Mudgal as amicus, authorised them to visit the prison, meet the prisoner and see relevant documents and interview necessary witnesses so as to enable them to inform themselves about the surrounding circumstances and the cruel scenario of events. Counsel on both sides have sensitized the issue of prison justice admirably and catalysed the cause of jail reforms effectively. The democratic hope of the profession is its people's orientation, not its lucrative potential nor its intellectual intricacies. And service in the field of the handicapped human sectors, like prisoners, is a social justice contribution. The enthusiastic work done in the case by the young lawyer, Shri Mudgal, assisting Dr Chitale, deserves our commendation, even as the unreserved support rendered to the court by Shri Sachthey is in the good tradition of the Bar.

8. Back to the facts. One central episode round which the skein of further facts is wound is beyond doubt, viz. that Prem Chand, the prisoner, sustained serious anal injury on or about August 26, 1979, because a rod

was driven into that sore aperture to inflict inhuman torture. The contemporaneous entry in the Jail Hospital register reads:

One prisoner Prem Chand s/o Prahlad has developed tear of anus due to forced insertion of stick by someone. He requires surgical repair and his bleeding has not stopped. He is to go to Irwin Hospital casualty immediately.	Remarks of Supreintendent. Noted 27-8-79 (Sd.) D.S.I.2.35 p.m.

(Sd.) Dr KAPOOR

2.00 p.m.

The prisoner's later narration to the doctor in the Irwin Hospital

corroborates the case. The unsuccessful and unworthy attempts, presumably by overawing the prisoner and even the doctor, and other dubious devices, which we do not now scan, to do away with this primary incriminating factor by offering incredible alternatives like rupture of the anus by a fall or self-infliction or due to piles and sillier stories, only show how the subtle torture of the officials could extract falsehoods from the victim and even medical officers, exculpatory of the official criminal whoever he be. There are some traces of attempts to hush up the crime where the higher officers have not been *that* innocent. We are taken aback that the tardy police investigation, with its lethargic pace and collusive ways, has hardly done credit to the police department's integrity, a fact that the government will take note of, without institutional sheltering of police delinquents. Imagine a police investigator, hunting for contradictions obviously to absolve the head warder by interrogating Dr Kapoor who had made an entry in the hospital register and told Dr Chitale that the prisoner had an anal rupture which could not be self-inflicted or caused by a fall and was so serious as to require immediate removal to Irwin Hospital, and making him say, long afterwards on October 2, 1979 by delaying the laying of the charge-sheet thus:

> "A prisoner named Prem Chand s/o Prahlad was produced before me for treatment on the afternoon of Sunday, August 26, 1979. He was brought by some warder.
>
> He was complaining of bleeding from boils on the buttocks. This was also told by the warder who brought him.
>
> He was given the required treatment as he was kept under observation on his request.
>
> Next day during the ward rounds when I examined him, he was having tears of anus and bleeding. On inquiring he told that this has happened due to forced insertion of a stick into his anus.
>
> Then he was referred to Irwin Hospital for further treatment."

V. K. KAPOOR

October 2, 1979

9. Can human nature be such rubber? More than the probity of the investigation and the veracity of the doctor are at stake — hope in human integrity without which human dignity will be the first casualty.

10. These observations are not impressionistic but we leave it at that

since our primary purpose is to protect the person of the prisoner, not to prosecute the offender. We do not wish to prejudice that process. Regrettably, the "hearsay" affidavit of the Under-Secretary (Home), Delhi Administration, Shri Nathu Ram, blinks at the jail vices and merely dresses up the official version without so much as an inquisitorial audit of the lurid happenings in a premier correctional institution of the nation. We deplore the indifferent affiant's omnibus approval of every official's conduct, whereas we should, instead, have expected government, which sincerely swears by human rights and whose political echelons in succession, over the decades, are not strangers to the actualities in these detention campuses, to have put aside the tendency to whitewash every action with an official flavour. Where human rights are at stake prestige has no place.

11. After the prisoner was subjected to brutal hurt he was removed to the jail hospital and later to the Irwin Hospital but on his re-transfer he was neglected; but we do not pursue the identity of the culprit or the crime or the treatment since a police investigation is under way. Nevertheless, we cannot but remark that whatever damage might have been done up to now, a second investigation by a C.B.I. officer is justified, if truth has been suppressed. Dr Chitale pointed out certain poignant facts such as the prisoner himself having been pressured into statements contrary to the case of anal infliction. We do not make comments on them although we are unhappy at the way the business of investigation has been done. Indeed, the potential for oblique mutual help between the police and the prison staff makes jail offences by jail officials undetectable; and so, to obviate this possibility, the C.B.I. may well be entrusted, as a regular practice, with such cases. The prisoner being a *person*, we cannot write him off.

12. The alleged offender. Warder Maggar Singh, may be left aside for a while. There are other aspects of the torture which demand deeper probe and panacea. The prisoner's explanation for the anal rupture is stated to be an unfulfilled demand for money, allegedly a general practice. This shows, if true, that bribery, at the point of barbarity, is a flourishing trade within the house of punishment itself. How stern should the sentence be for such official criminals and how diligent should the State be to stamp out this wicked temptation ! If you want to end prison delinquencies you must abolish the motivations and opportunities.

13. The counter-case, if we may so call it, of the Warder as disclosed in the Superintendent's report, is equally disturbing, if true:

> "On August 25, 1979 evening life prisoner Prem Chand s/o Sh. Prahlad was produced before the Deputy Superintendent for taking mandrax tablets. As he was in state of intoxication because of taking

> mandrax tablets which he admitted before the Deputy Superintendent, he was kept in a cell pending orders of the Superintendent, Central Jail. He was taken to the jail hospital the next day i.e. on August 26, 1979 on a report from the above said prisoner as he had pain in his anus and was bleeding. The prisoner remained admitted into the jail hospital up to August 27, 1979, 2 p.m. when Dr V.K. Kapoor, Medical Officer, recommended for the shifting of this prisoner to the Irwin Hospital with the report mentioned in the petition. The prisoner Prem Chand was shifted accordingly by Shri Bachan Singh, Assistant Superintendent on duty on August 27, 1979. The undersigned was informed that a case under Section 385, IPC had been registered against Warder Maggar Singh

in-charge of the ward No. 11 i.e. 40 cells with the Police Station, Janakpuri and investigation had started in this case. The result of the investigation is still awaited. The prisoner was, however, received back in the jail on August 29, 1979 on being discharged from the Irwin Hospital."

14. The prisoner, Prem Chand, was kept in a "punishment cell" which, according to counsel for the Administration, was not as bad as a solitary cell, although Dr Chitale says that this was similar to the type of insulated confinement condemned as unconstitutional by this Court in *Sunil Batra case*[1]. Coming to the competing version put forward by the prison official through the counter-affidavit of the Under-Secretary, the story, even if true, is strongly suggestive of a mafia-culture pervasive in the Tihar prison. A background of the ethos of the campus may be gleaned from portions of the report of the Superintendent, Central Jail, Tihar, made by him with reference to the alleged torture which is the subject-matter of this case.

> "*A number of prisoners* in the Tihar Jail are *habitual offenders*, *professional criminals* who have been inmates of the jail from time to time. A number of the said prisoners are rarely visited by their relatives due to the fact that they do not want to associate with such persons. It has been seen that such prisoners are mainly visited by other professionals or habitual offenders in the field with whom they have had former associations.... It has been noticed that these types of *prisoners have been able to develop a certain rapport with some of the lower staff in the jail namely Head Warders*, *Warders etc. and obtain certain facilities illegally including smuggling of number of*

items, *e.g. drugs etc*. for their use. It may also be submitted that to check smuggling of narcotic drugs against prisoners who indulge in such activities *30 cases of narcotic offences* were got registered against the prisoners with the Janakpuri Police Station during this year ... That *95 prisoners* were transferred from the Jail to Haryana *due to* administrative *reasons which* include *indiscipline and violation of jail regulations* by them and otherwise derogatory behaviour during the last year.... This year also about 22 cases have been recommended by Superintendent, Jail for transfer.... In para 568(*b*) and the note thereunder of the Jail Manual, the *habituals* are required to be kept separate from the *casual* prisoners but due to non-availability of any other jail in Delhi they are *being kept* in Tihar Jail, which requires a lot of vigilance on the part of the jail officers. (*b*) It may also be mentioned that due to paucity of accommodation, the said *jail is occupied by double the number of prisoners* than it is otherwise authorised.

15. To aggravate the malady, we have the fact that a substantial number of the prisoners are under trials who have to face their case in court and are presumably innocent until convicted. By being sent to Tihar Jail they are, by contamination, made criminals — a custodial perversity which violates the test of reasonableness in Article 19 and of fairness in Article 21. How cruel would it be if one went to a hospital for a cheek-up and by being kept along with contagious cases came home with a new disease! We sound the tocsin that prison reform is now a constitutional compulsion and its neglect may lead to drastic court action.

16. It would appear that around 300 persons are taken in and out daily between the prison and the courts. And when there are political agitations and consequent police arrests and remand to custody, the under trial strength

swells in numbers. Since many officers busy themselves with production of prisoners in court, the case of the Superintendent is that the other prisoners "*try to do mischief*, *make thefts of other prisoners who go on work*, *smuggle things and even resort to assaults*".

17. To sum up, the Tihar prison is an arena of tension, trauma, tantrums and crimes of violence, vulgarity and corruption. And to cap it all, there occurs the contamination of pre-trial accused with habituals and "injurious prisoners of international gang". The crowning piece is that the jail officials themselves are allegedly in league with the

criminals in the cells. That is, there is a large network of criminals, officials and non-officials in the house of correction. Drug racket, alcoholism, smuggling, violence, theft, unconstitutional punishment by way of solitary cellular life and transfers to other jails are not uncommon. The Administration, if it does not immediately have the horrendous situation examined by an impartial, authoritative body, and sanitize the campus, complacent affidavits of Under-Secretaries and glittering entries from dignitaries on their casual visits, cannot help.

18. While the Establishment sought to produce before the court extracts from the Visitors' Book to show that many impartial and distinguished persons had complimented the jail authorities on the way they managed the prison, Dr Chitale placed before us some internal evidence from the materials on record, supplemented strongly by personal observations recorded while he was an internee in this very prison by Shri Kuldip Nayar, a responsible journalist with no apparent motive for mendacity nor inclination for subjectivity, in his book *in jail.* There was nothing in the author's view which money could not buy within the recesses of the prison campus. Giving a factual narrative, Shri Nayar wrote:

> "... one could get as much money as one wanted from outside — again at a price. There was a money order and mail service that perhaps was more dependable than what the postal department could offer.
>
> For instance, when a prisoner in my ward wanted two hundred rupees, he sent a note through a warder to his people in Old Delhi and in less than twenty-four hours he had the money. He paid sixty-six rupees as collecting charges — thirty-three per cent was the prescribed "money order charge".... Dharma Teja, the shipping magnate who served his sentence in Tihar, for instance, had thousands of rupees delivered to him, we were told. And if one could pay the jail functionaries one could have all the comforts one sought. Teja had all the comforts — he had an air cooler in his cell, a radio-cum-record player set and even the facility of using the phone.... Haridas Mundhra, a businessman who was convicted of fraud, was another rich man who spent some time in Tihar. Not only did he have all the facilities, but he could also go out of the jail whenever he liked; at times he would be out for several days and travel even up to Calcutta. All this, of course, cost a lot of money. An even richer prisoner was Ram Kishan Dalmia; he spent most of his jail term in hospital. He was known for his generosity to jail authorities, and one doctor received a car as a gift.
>
> But more than businessmen it was the smugglers jailed in Tihar who were lavish spenders. Their food came from Moti Mahal and their whisky from Connaught Place. They had not only wine but also

women. 'Babuji, not tarts but real society girls,' one warder said.

The women would be brought in when 'the Sahiblog' went home for lunch, and their empty offices became 'recreation rooms'. . . .

> Corruption in jail was so well organised and so systematic that everything went like clockwork once the price had been paid. Jail employees at almost all levels were involved, and everyone's share was fixed. There was never a dispute; there has to be the proverbial honour among thieves."

One wonders whether such an indictment made by an established writer had inclined the government at least to appoint an Inquiry Commission to acquaint itself with the criminal life-style of correctional institutions. The higher officials also have their finger in the pie, if Nayar were veracious:

> "Perhaps the way almost everyone had his cut was most evident in our milk supply. It came in bulk to the main gate (*phatak*); there, enough milk for the top officials was taken out of the cans, which were then topped up with water. And as the cans moved to the wards, all those who handled them appropriated their share, again topping up with water. . . .
>
> Even more shocking than the corruption was the ingenious 'slave system' we found in the jail. The slaves were boys between ten and eighteen employed as 'helpers', and there were scores of them. They cooked, washed utensils, cleaned rooms, fetched water and did much back-breaking labour to 'help' the men who were paid to do these chores. They would be woken up before 6 a.m. to prepare the morning tea and would be allowed to sleep around 10 p.m. after scrubbing the pots and pans — they were herded into a ward which had no fan and no proper sanitary facilities, but was always well lit, with many bulbs on all night, to enable a sleepy warder to check at a glance that they were all there.
>
> These boys were under trial prisoners; many had been there for eight months and at least one had been there for two years. They were taken from one court to another to be tried under one charge or another and kept in jail all the while. The aim was to keep them in as long as possible, for without them the people employed to do the menial duties would have no time to relax.
>
> One morning I was woken up by the sobbing of a boy, and found some other "helpers" trying to console him, while a warder stood by quite unmoved. I went up to him; his curly hair reminded me of

> Raju, my younger son. The boy had been picked up the previous evening from Defence Colony in New Delhi, kept in a police lock-up for the night and brought to jail *in* the morning...."

The crime of punishment is a new crime which the rule of law must reach at, but what is touching beyond tears, even if there be but a tittle of truth in the statement IN JAIL, is about children being lapped up and locked up for use as bonded labour in punitive houses of justice. The modus operandi is sensitively set down by Kuldip Nayar:

> "The warder explained that whenever the number of prisoners in jail went up, the police were asked to bring in boys to help with the chores. For the past several days, the warder said, jail authorities had been pestering the police to get more helpers as the number of detenus had gone up. The evening before, when the boy was buying *paan*

(betel-leaf) from a Defence Colony shop, the police had hauled him up as a vagabond; they were responding to the jail authorities' appeal to book more helpers.

> "This is nothing new, it has always been like this," the warder explained. Several under trial boys later related to me their tales of woe, how they were arrested on trumped-up charges and how they were being held in detention on one pretext or another.[6]"

19. We may, at this stage, go in greater detail into the functional expansion of habeas corpus writs in the current milieu especially because counsel on both sides have compellingly contended for an authoritative pronouncement by this Court in favour of a broader jurisdiction.

20. We have earlier noticed that this valuable writ is capable of multiple uses as developed in the American Jurisdiction. Such is the view expressed by many legal writers. In *Harvard Civil Rights and Civil Liberties Law Review*[7], the view has been expressed that beyond the conventional blinkers, courts have begun to examine the manner in which an inmate is held or treated during the currency of his sentence. Similar is the thinking expressed by other writers, R.J. Sharpe in THE LAW OF HABEAS CORPUS (1976) Edn.; Juvenal, Satires in 72 Yale Law Journal 506 (1963). In AMERICAN JURISPRUDENCE there is a pregnant observation :[8]

> "The writ is not and never has been a static, narrow formalistic remedy. Its scope has grown to achieve its purpose — the protection

of individuals against erosion of the right to be free from wrongful restraints on their liberty."

CORPUS JURIS, 2nd, Vol. 39, p. 274, para 7 strikes a similar note, away from the traditional strain. The courts in America have, through the decisional process, brought the rule of law into the prison system pushing back, *pro tanto*, the hands-off doctrine. In the leading case of *Coffin* v. *Reichard*[9] the Court of appeal observed, delineating the ambit and uses of the writ of habeas corpus :

"The government has the absolute right to hold prisoners for offences against it but it also has the correlative duty to protect them against assault or injury from any quarter while so held. A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits.

When a man possesses a substantial right, the court will be diligent in finding a way to protect it. The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights. . . . The Judge is not limited to a simple remand or discharge of the prisoner's civil rights be respected …."

It is significant that the United States Supreme Court has even considered as suitable for habeas relief, censorship of prisoners' mail and the ban on the use of law students to conduct interviews with prison inmates in matters of

legal relief. In *Procunier* v. *Martiney*[9a] these two questions fell for decision and the court exercised jurisdiction even in such an internal matter. In *Johnson* v. *Avery*[10], a disciplinary action was challenged by a prisoner through a writ of habeas corpus. This indicates the extension of the nature of the writ in the American jurisdiction. Incidentally and interestingly, there is reference to some States in the United States experimenting with programmes of allowing senior law students to service the penitentiaries. At a later stage, when we concretise definite directives, we may have occasion to refer to the use of senior law students for rendering legal aid to prisoners; and so it is worthwhile extracting a passage from *Johnson* v. *Avery*[10] with reference to the Kansas Law School Programme in Prisons at Leavenworth :

"The experience at Leavenworth has shown that there have been

> very few attacks upon the (prison) administration; that prospective frivolous litigation has been screened out and that where the law school felt the prisoner had a good cause of action relief was granted in a great percentage of cases. A large part of the activity was disposing of long outstanding detainers lodged against the inmates. In addition, the programme handles civil matters such as domestic relations problems and compensation claims. Even where there has been no tangible success, the fact that the inmate had someone on the outside listen to him and analyse his problems had a most beneficial effect …. We think that these programs have been beneficial not only to the inmates but to the students, the staff and the courts."

Incidentally, the presence of law students at the elbow of the prisoner has a preventive effect on ward and warden.

21. The content of our constitutional liberties being no less, the dynamics of habeas writs there developed help the judicial process here. Indeed, the full potential of Articles 21, 19 and 14, after *Maneka Gandhi*[11], has been unfolded by this Court in *M.H. Hoskot*[12] and *Batra*[1]. Today, human rights jurisprudence in India has a constitutional status and sweep, thanks to Article 21 so that this magna carta may well toll the knell of human bondage beyond civilised limits.

22. The supplementary statement of the Superintendent of the Central Jail (partly quoted earlier) is hair-raising when we find that far from rehabilitation, intensification of criminality is happening there and the officials are part of this sub-culture. We, certainly do not wish to generalise but do mean to highlight the facts of life behind the high walls as demanding constitutional and administrative attention. Homage to human rights, if it springs from the heart, calls for action. Prisons, prison staff and prisoners — all three are in need of reformation. And this milieu apparently is not unique to Tihar but common to many penal institutions.

23. It is refreshing and heartening that the learned Solicitor General widened our vista and argued that this Court, having been seised of the problem of prisoners' fundamental freedoms and their traumatic abridgement, should give guidelines in this uncharted area, design procedures and device mechanisms which will go into effective action when the restricted yet real

rights of prisoners are overtly or covertly invaded. The jurisdiction of this Court to remedy the violations of prisoners' residuary rights was

discussed at the Bar, as also the package of plausible measures which may appropriately be issued to ensure the functional success of justice when rights are infringed by officials or fellow-prisoners. Both sides appreciated the gravity of the jail situation, the sensitivity of security considerations, the virginity of this field of law and the necessity for normative rules and operative monitoring within the framework of judicial remedies. This constructive stance of counsel, unusual in litigative negativity facilitated our resolution of the problems of jail justice, despite the touch of jurisprudential novelty and call to judicial creativity.

24. We must formulate the points argued before we proceed to state our reasoning and record our conclusions :

(1) Has the court jurisdiction to consider prisoner's grievance, not demanding release but, within the incarceratory circumstances, complaining of ill-treatment and curtailment short of illegal detention? Yes, we have answered it.

(2) What are the broad contours of the fundamental rights, especially Articles 14, 19 and 21 which belong to a detainee sentenced by court? Here too, the ground has been covered.

(3) What judicial remedies can be granted to prevent and punish their breach and to provide access to prison justice?

(4) What practicable prescriptions and proscriptions bearing on prison practices can be drawn up by the court consistently with the existing provisions of the Prisons Act and Rules bent to shape to conform to Part III?

(5) What prison reform perspectives and strategies should be adopted to strengthen, in the long run, the constitutional mandates and human rights imperatives?

25. The canvas was spread wide by counsel and court and we deal with the arguments within the larger spread-out of the case. Rulings of this Court have highlighted the fact that the framers of our Constitution have freed the powers under Article 32 from the rigid restraints of the traditional English writs. Flexible directives, even affirmative action moulded to grant relief, may realistically be issued and fall within its fertile width. The jurisdictional dimension is lucently laid down by Subba Rao, J., in *Dwarkanath case*[13] :

"This Article is couched in comprehensive phraseology and it ex facie confers a wide-power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the prison or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of

> the expression 'nature' for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under

Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself."

26. Where injustice, verging on inhumanity, emerges from hacking human rights guaranteed in Part III and the victim beseeches the court to intervene and relieve, this Court will be a functional futility as a constitutional instrumentality if its guns do not go into action until the wrong is righted. The court is not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope. We hold that the court can issue writs to meet the new challenges. Lord Scarman's similar admonition, in his ENGLISH LAW — THE NEW DIMENSIONS, is an encouraging omen. The objection, if any, is obsolete because in a prison situation, a Constitution Bench of this Court (*Batra*[1] and *Sobraj*[1]) did imprison the powers of prison officials, to put an under trial under iron fetters or confine in solitary cells convicts with death sentences under appeal.

27. Once jurisdiction is granted — and we affirm in unmistakable terms that the court has, under Article 32 and so too under Article 226, a clear power and, therefore, a public duty to give relief to sentences in prison settings — the next question is the jurisprudential backing for the play of that jurisdiction. Here again, *Batra*[1] has blazed a trail, and it binds.

28. Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners' Rights to which our country has signed assent. In *Batra case*[1], this Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do

not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Our constitutional culture has now crystallised in favour of prison justice and judicial jurisdiction : (SCC p. 504, para 4)

> "The jurisdictional reach and range of this Court's writ to hold prison caprice and cruelty in constitutional leash is incontestable, but teasing intrusion into administrative discretion is legal anathema, absent breaches of constitutional rights or prescribed procedures."

29. The U.S. Supreme Court, in like situations, has spoken firmly and humanistically, and these observations have the tacit approval of our Court in *Batra case*[1]. Justice Douglas put it thus : (SCC p. 506, para 11)

> "Prisoners are still 'persons' entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of due process."

Justice Marshall strongly seconded the view : (SCC p. 506, para 13)

> "I have previously stated my view that a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the court's holding that the interest of inmates in freedom from imposition of serious discipline is a 'liberty' entitled to due process protection."

30. We, therefore, affirm that where the rights of a prisoner, either

under the Constitution or under other law, are violated the writ power of the court can and should run to his rescue. There is a warrant for this vigil. The court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a belighted institutionalisation geared to a social good. The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. In a few cases, this validation of judicial invigilation of prisoners' condition has been voiced by this Court and finally reinforced by the Constitution Bench in *Batra*[1] *:* (SCC p. 569, para 213-A)

> "The court need not adopt a 'hands off' attitude . . . in regard to the problem of prison administration. It is all the more so because a convict is in prison under the order and direction of the court."

Under the caption "*Retention of Authority over Prisoner by Sentencing Judge*" Krantz[14] notes :

> As noted by Judge Lay in a Judicial Mandate, Trial Magazine

(November-December 1971) at p. 15 :

> "It should be the responsibility of the court in imposing the sentence to set forth as it would in any equitable decree, the end to be achieved and the specifics necessary to achieve that purpose. If then, we are to have accountability in the execution of the sentence, courts must make clear what is intended in the imposition of the sentence. Every sentence should be couched in terms similar to a mandatory injunction. In this manner, the penology system is to be held to account if the government does not faithfully execute the order."

In other words, the sentencing court should be required to retain jurisdiction to ensure that the prison system responds to the purposes of the sentence. If it does not, the sentencing court could arguably have the authority to demand compliance with the sentence or even order the prisoner released for non-compliance.

Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods "right, just and fair". Bhagwati, J., in *Maneka Gandhi*[11] observed : (SCC p. 284, para 7)

> "The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right, just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

31. *Hoskot*[12] applied the rule in *Maneka Gandhi*[11] to a prison setting and held that "one component of fair procedure is natural justice". Thus it is now clear law that a prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will respond to his distress signals through "writ" aid. The Indian human has a constant companion — the Court armed with the Constitution. The weapon

is "habeas", the power is Part III and the projectile is *Batra*[1] : (SCC p. 568, para 213)

> No iron curtain can be drawn between the prisoner and the Constitution.

It is, therefore, the court's concern, implicit in the power to deprive the

sentences of his personal liberty, to ensure that no more and no less than is warranted by the sentence happens. If the prisoner breaks down because of mental torture, psychic pressure or physical infliction beyond the licit limits of lawful imprisonment the Prison Administration shall be liable for the excess. On the contrary, if an influential convict is able to buy advantages and liberties to avoid or water down the deprivation implied in the sentence the Prison Establishment will be called to order for such adulteration or dilution of court sentences by executive palliation, if unwarranted by law. One of us, in *Batra*[1] observed : (SCC p. 511, para 33)

> "Suffice it to say that, so long as judges are invigilators and enforcers of constitutionality and performance auditors of legality, and convicts serve terms in that grim microcosm called prison by the mandate of the court, a continuing institutional responsibility vests in the system to monitor the incarceratory process and prevent security 'excesses'. Jailors are bound by the rule or law and cannot inflict supplementary sentences under disguises or defeat the primary purposes of imprisonment."

32. The upshot of this discussion is but this. The court has power and responsibility to intervene and protect the prisoner against mayhem, crude or subtle, and may use habeas corpus for inforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries. We hold these propositions to be self-evident in our constitutional order and are supported by authority, if need be. Therefore, we issue the writ to the Lt. Governor and the Superintendent of the Central Jail that the prisoner, Prem Chand, shall not be subjected to physical manhandling by any jail official, that the shameful and painful torture to which he has been subjected — a blot on government's claim to protect human rights — shall be ended and the wound on his person given proper medical care and treatment. The Central Government will, we are sure, direct its jail staff not to show too pachydermic a disposition for a democratic government. For example, specific guidelines before punishing a prisoner had been given in *Batra case*[1] and yet the prisoner Prem Chand has been lodged in the punishment cell, which is almost the same as a solitary cell, with cavalier disregard for procedural safeguards. Merely to plead that many prisoners are "habituals" is no ground for habitual violation of law by officials. We direct that Prem Chand be released from the punishment cell and he shall not be subjected to such severity until fair procedure is complied with.

33. The chronic callousness of the Prison System to the humane demands of the Constitution, despite the fact that many ministers over many decades in many States have known the unbroken tradition of

prison subculture and despite prison diaries of national figures from Jawaharlal Nehru to Jay Prakash Narain, has made court and counsel benignly turn the judicial focus on the future so that further mischief may not be suffered in incarceration. There is little doubt that barbarities like bar fetters and handcuffs are recklessly being practised either on account of ignorant unconscionableness or wilful viciousness in several detention camps. Many of the victims are poor, mute, illiterate, desperate and destitute and too distant

from the law to be aware of their rights or ask for access to justice, especially when the running tension of the prison and the grisly potential for zoological reprisals stare them in the face. So it is for the court to harken when humanity calls, without waiting for particular petitions. Like class actions, class remedies have pro bono value.

34. The court — the learned Solicitor General underscored this constructive approach — must not wait for a stray petition from some weeping inmate and give the little person a little relief in the little case but give the nation; its governments, prison establishments and correctional departments, needed guidance and also fill with hope the hearts of those who cherish human rights that the courts are, after all, sentinels on the qui vive. Law *is* what law *does* and courts, if anything, are constitutional in action. Dr Chitale, naturally, joined this moving demand. We do think that there are many, drawn from the class of penury, who suffer more privations than their sentences justify. Ralph Ellison's picture of the American Black has relevance for the prisoner here :[1]

> "I am an invisible man. . . . I am a man of substance, of flesh and bone, fiber and liquids — and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me.... When they approach me they see only my surroundings, themselves, or figments of their imagination — indeed, everything and anything except me.
>
> The invisibility to which I refer occurs because of a peculiar disposition of the eyes of those with whom I come in contact. A matter of construction of their *inner* eyes, those eyes with which they look through their physical eyes upon reality. . . . You wonder whether you are not simply a phantom in other people's minds. . . you ache with the need to convince yourself that you do exist in the real world, that you're a part of all the sound and anguish, and you strike out with your fists, you curse and you swear to make them

recognise you. And, alas, it is seldom successful."

35. In a culture of *Antyodaya*, the court must rescue the weakest by pre-emptive guidance without driving parties to post facto litigation. In law as in medicine, prevention is better than cure, a rule jurisprudents have not sufficiently developed, and so we accede to the request of counsel and proceed to discuss the normative side of prison justice.

36. Before we begin this chapter we might as well set down what the learned Solicitor General stressed viz. that the detailed guidelines set out in the separate opinion in *Batra case*[1] (pp. 488 to 493), (SCC pp. 562-566), are the same as are implicit in the judgment of Desai, J. speaking for the other judges and this position should be re-emphasised by this Court here so as to avoid misconception. Desai, J. has stated : [1] (SCC p. 580, para 245)

> "Justice Krishna Iyer has delivered an elaborate judgment which deals with the important issues raised before us at great length and with great care and concern. We have given a separate opinion, not because we differ with him on fundamentals, but because we thought it necessary to express our views on certain aspects of the questions canvassed before us."

37. Likewise, in the separate judgment, a similar statement is made : (SCC p. 567, para 209)

> "I am aware that a splendid condensation of the answers to the core questions has been presented by my learned Brother Desai, J., and I endorse the conclusion."

38. A close perusal shows that both the judgments in *Batra case*[1] lay down the same rule and the elaborate guide lines in the first opinion are a necessary proliferation of the law expounded in the second judgment in the case. We hold, agreeing with both counsel, that the detailed prescriptions in the separate opinion in *Sunil Batra*[1] (pp. 488 to 495) (SCC pp. 562-566) is correct law and binds the penal institutions in the country. We agree with these guidelines and express ourselves to that effect since the core question raised in the present case and the cardinal principles we have accepted lead to the same conclusions.

39. At the outset, we notice the widespread prevalence of legal illiteracy even among lawyers about the rights of prisoners. Access to law postulates awareness of law and activist awareness of legal rights is

the condition for seeking court justice. So the first need in the juristic twilight is for the State to produce and update a handbook on Prison Justice, lucid, legible for the lay, accurate, comprehensive and, above all, practical in meeting the felt necessities and daily problems of prison life. The Indian Bar has, as part of its judicare tryst special responsibility to assist the State in this behalf. A useful handbook prepared by the American Civil Liberties Union was handed on to us by Dr Chitale titled THE RIGHTS OF PRISONERS. Law in the books and in the courts is of no help unless it reaches the prisoner in understandable language and available form. We, therefore, draw the attention of the State to the need to get ready a prisoners' handbook in the regional language and make them freely available to the inmates. To know the law is the first step to be free from fear of unlaw.

40. Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. The meaning of 'life' given by Field, J., approved in *Kharak Singh*[15] and *Maneka Gandhi*[16] bears excerption :

> "Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

Therefore, inside prisons are *persons* and their personhood, if crippled by law-keepers turning law-breakers, shall be forbidden by the writ of this Court from such wrongdoing. Fair procedure, in dealing with prisoners,

therefore, calls for another dimension of access to law-provision, within easy reach, of the law which limits liberty to persons who are prevented from moving out of prison gates.

41. A handbook meets the logistics of the law in the field. Of course, the prison staff also suffers from the pathology of misinformation or non

-education about rights and limitations and this ignoratia juris situation leads to insensitivity to human rights and a test in the handbook of prison law must be a minimum for recruitment. The peril to prison rights is from the uninstructed personnel, apart from the anti-cultural ethos which permeates. It behoves government to insist on the professional requirement, for warders and wardens, of a hearty familiarity with the basics of Prison Law.

42. Rights jurisprudence is important but becomes an abstraction in the absence of remedial jurisprudence. Law is not an omnipotence in the sky but a loaded gun which, when triggered by trained men with ballistic skill, strikes the offending bull's eye. We have made it clear that no prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him — to read and write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.

42a. Chandrachud, J., long ago, spelt out the position and we affirm it :[17] (SCC p. 186, para 6)

> "Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to 'practise' a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

43. We think it proper to suggest that in our country of past colonial subjection and consequent trepidation in life, publicity officially is necessary for rights to be appreciated even by the beneficiaries. Therefore, large notice boards displaying the rights and responsibilities of prisoners may be hung up in prominent places within the prison in the language of the people. We are dealing with the mechanics of bringing the law within the wakeful ken of the affected persons.

44. Section 61 of the Prisons Act, simplified imaginatively leads to

the same result. That section reads :

> "Copies of rules, under Sections 59 and 60 so far as they affect the government of prisons, shall be exhibited, both in English and in the vernacular, in some place to which all persons employed within a prison have access."

45. We think it right to hold that copies of the Prison Manual shall be kept within ready reach of prisoners. Darkness never does anyone any good and light never any harm.

46. Perhaps, the most important right of a prisoner is to the integrity of his physical person and mental personality. This Court in *Batra case*[1] has referred to the international wave of torture of prisoners found in an article entitled "*Minds Behind Bars*". That heightens our anxiety to solve the issue of prisoners' protection.

47. The problem of law, when it is called upon to defend persons hidden by the law, is to evolve a positive culture and higher consciousness and preventive mechanisms, sensitized strategies and humanist agencies which will bring healing balm to bleeding hearts. Indeed, counsel on both sides carefully endeavoured to help the court to evolve remedial processes and personnel within the framework of the Prisons Act and the parameters of the Constitution.

48. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infraction will be arbitrary, under Article 14 if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and unappealable, and unfair, under Article 21 if it violates natural justice. The string of guidelines in *Batra*[1] set out in the first judgment, which we adopt, provides for a hearing at some stages, a review by a superior, and early judicial consideration so that the proceedings may not hop from Caesar to Caesar. We direct strict compliance with those norms and institutional provisions for that purpose.

49. Likewise, no personal harm, whether by way of punishment or otherwise, shall be suffered by a prisoner without affording a preventive, or in special cases, *post facto* remedy before an impartial, competent, available agency.

50. The court is always ready to correct injustice but it is no practical proposition to drive every victim to move the court for a writ, knowing the actual hurdles and the prison realities. True technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found; still, the awe and distance of courts, the legalese and mystique, keep the institution unapproachable. More realistic is to devise a method of taking the healing law to the injured victim. That system is best where the remedy will rush to the injury on the slightest summons. So, within the existing, dated legislation, new

meanings must be read. Of course, new legislation is the best solution, but when lawmakers take far too long for social patience to suffer, as in this very case of prison reform, courts have to make do with interpretation and carve on wood and sculpt on stone ready at hand and not wait for far-away marble architecture. Counsel rivetted their attention on this pragmatic engineering and jointly helped the court to constitutionalise the Prison Act prescriptions. By this legal energetics they desired the court to read into vintage provisions legal remedies.

51. Primarily, the prison authority has the duty to give effect to the court sentence (see for e.g. Sections 15 and 16 of the Prisoners Act, 1900). To give effect to the sentence means that it is illegal to exceed it and so it follows that a prison official who goes beyond mere imprisonment or deprivation of locomotion and assaults or otherwise compels the doing of things not covered by the sentence acts in violation of Article 19. Punishment of rigorous imprisonment oblige the inmates to do *hard* labour, not *harsh* labour and so a vindictive officer victimising a prisoner by forcing on him particularly harsh and degrading jobs, violates the law's mandate. For example, a prisoner, if forced to carry night-soil, may seek a habeas writ. "Hard labour" in Section 53 has to receive a humane meaning. A girl student or a male weakling sentenced to rigorous imprisonment may not be forced to break stones for nine hours a day. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs. Sense and sympathy are not enemies of penal asylums.

"**51-A.** Section 27(2) and (3) of the Prisons Act states :

"27. The requisitions of this Act with respect to the separations of prisoner are as follows :

(2) in a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not.

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and"

The materials we have referred to earlier indicate slurring over this rule and its violation must be visited with judicial correction and punishment of the jail staff. Sex excesses and exploitative labour are the vices adolescents are subjected to by adults. The young inmates must be separated and freed from exploitations by adults. If Kuldip Nayar is right this rule is in cold storage. It is inhuman and unreasonable to throw young boys to the sex-starved adult prisoners or to run menial jobs for the affluent or tough prisoners. Article 19 then intervenes and shields.

52. Section 29 and connected rules relating to solitary confinement have been covered by *Batra case*[1]. But Prem Chand, in this very case, has been sent to a "solitary" or 'punishment' cell without heeding the rule in *Batra case*[1] regarding impost of punitive solitary confinement. We cannot agree that the cell is not 'solitary' and wonder what sadistic delight is derived by the warders and wardens by such cruelty. Any harsh isolation from society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure. The learned Solicitor General mentioned that some prisoners, for their own safety, may desire segregation. In

such cases, written consent and immediate report to higher authority are the least, if abuse is to be tabooed.

53. Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory! Sheldon

Krantz rightly remarks : [18]

> "In 1973, the National Advisory Commission argued that prisoners should have a 'right' to visitation [Task Force Report, Corrections (1973) at 66]. It also argued that correctional officials should not merely tolerate visiting but should encourage it, particularly by families. Although the Commission recognised that regulations were necessary to contend with space problems and with security concerns, it proposed that priority be given to making visiting areas pleasant and unobtrusive. It also urged that corrections officials should not eavesdrop on conversations or otherwise interfere with the participants' privacy. Thus, although there may be current limitations on the possible use of the Constitution on visitations by family and friends, public policy should dictate substantial improvements in this area, in any event."

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

54. Parole, again, is a subject which is as yet unsatisfactory and arbitrary but we are not called upon to explore that constitutional area and defer it. Likewise, to fetter prisoners in irons is an inhumanity unjustified save where safe custody is otherwise impossible. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice. And yet this unconstitutionality is heartlessly popular in many penitentiaries so much so a penitent law must prescribe its use in any but the gravest situation.[*]

55. These rights and safeguards need a machinery. The need for internal invigilation and independent oversight cannot be over-emphasised. Prisoners' rights and prison wrongs are a challenge to remedial creativity.

56. Krantz, in his book, notes :[18]

> "To respond to the need for effective grievance procedures will probably require both the creation of internal programs (formal complaint procedures) and programs involving 'outsiders' (ombudsmen, citizens investigative committees, mediators, etc.)."

So, apart from judicial review for prisoners' rights and conditions of confinement, we have to fabricate instant administrative grievance procedures.

57. Indeed, a new chapter of offences carrying severe punishments when prison officials become delinquents is an urgent item on the agenda of prison reform; and lodging of complaints of such offences together with investigation and trial by independent agencies must also find a place in such a scheme. We are dealing with a morbid world where sun and light are banished and crime has neurotic dimensions. Special situations need special solutions.

58. We reach the most critical phase of counsel's submissions viz., the legal fabrication and engineering of a remedial machinery within the fearless reach of the weakest of victims and worked with independence, accessibility and power to review and punish. Prison power, absent judicial watch tower, may tend towards torture.

59. The Prisons Act and Rules need revision if a constitutionally and culturally congruous code is to be fashioned. The model jail manual, we are unhappy to say and concur in this view with the learned Solicitor General, is far from a model and is, perhaps, a product of prison officials insufficiently instructed in the imperatives of the Constitution and unawakened to the new hues of human rights. We accept, for the nonce, the suggestion of the Solicitor General that within the existing statutory framework the requirements of constitutionalism may be read. He heavily relies on the need for a judicial agency whose presence, direct or by delegate, within the prison walls will deal with grievances. For this purpose, he relies on the Board of Visitors, their powers and duties, as a functional substitute for a Prison Ombudsman. A controllerate is the desideratum for in situ reception and redressal of grievances.

60. After all, the daily happenings, when they hurt harshly, have to be arrested forthwith, especially when it is the prison guards and the head warders who brush with the prison inmates. Their behaviour often causes friction and fear but when their doings are impeached, the institutional defence mechanism tends to protect them from top to bottom. So much so, injustice escapes punishment.

61. In this context it is apt to quote David Rudovsky : [19]

> "The present system puts absolute discretion and day-to-day power over every aspect of a prisoner's life in their hands. It is this part of prison life which causes the deepest resentment among prisoners for, to a large extent, the manner in which an inmate is treated by the guards determines the severity of conditions he will have to endure. It is a double irony that the lower the level of

> authority in prison (from warden on down to guard) the greater the discretion that is vested in the prison official and the less willing the courts are to review their decisions. Thus, whether it be a request for medical treatment, the right to go to the yard or prison library, or the potentially more serious matter of prison discipline and punishment, the guard on the block holds ultimate power over the prisoner. Complete discretion in the context of prison life where no remedies exist to correct it, can be catastrophic. Judge Sebeloff has put it bluntly :
>
> > "In fact, prison guards may be more vulnerable to the corrupting influence of unchecked authority than most people. It is well-known that prisons are operated on minimum budgets and that poor salaries

and working conditions make it difficult to attract high-calibre personnel. Moreover, the 'training' of .the officers in dealing with obstreperous prisoners is but a euphemism in most States."

George A. Ellis quotes a prisoner's letter : [20]

> "You cannot rehabilitate a man through brutality and disrespect. . . . If you treat a man like an animal, then you must expect him to act like one. For every action, there is a reaction. . . . And in order for an inmate, to act like a human being you must trust him as such. . . . You can't spit in his face and expect him to smile and say thank you."

The institution and composition of the Board of Visitors comes in handy and has statutory sanction. The visitatorial power is wide, the panel of visitors includes judicial officers and such a situation can be pressed into service legally to fulfil the constitutional needs. Para 47 read with para 53-A sets out the structure of the Board. Para 47(*b*) to (*d*) includes District and Sessions Judges, District Magistrates and Sub-Divisional Magistrates among the members. The functions of visitors are enumerated in paras 53 and 53-B and they include : (*a*) inspect the barracks, cells, wards, workshed and other buildings of the jail generally and the cooked food; (*b*) ascertain whether considerations of health, cleanliness, and security are attended to, whether proper management and discipline are maintained in every respect, and whether any prisoner is illegally detained, or is detained for an undue length of time, while awaiting trial; (*c*) examine jail registers and records; (*d*) hear, attend to all representations and petitions made, by or on behalf of prisoners; and (*e*) direct, if deemed advisable, that any

such representation or petitions be forwarded to government. In the sensitive area of prison justice, the judicial members have special responsibilities and they must act as wholly independent overseers and not as ceremonial panelists. The Judges are guardians of prisoners' rights because they have a duty to secure the execution of the sentences without excesses and to sustain the personal liberties of prisoners without violence on or violation of the inmates' personality. Moreover, when a wrong is done inside jail the judicial visitor is virtually a peripatetic tribunal and sentinel, at once intra-mural and extra-mural, — observer, receiver and adjudicator of grievances.

62. What, then, are prisoner Prem Chand's rights, in the specific setting of this case, where the complaint is that a jail warder, for pernicious purposes, inflicted physical torture?

63. The Punjab Prison Manual clearly lays down the duties of District Magistrates with reference to Central Jails. Para 41 (1) and (3) read thus :

> "41. (1) It shall be the duty of the Magistrate of the district from time to time to visit and inspect jails situate within the limits of his district and to satisfy himself that the provisions of the Prisons Act, 1894, and of all rules, regulations, directions and orders made or issued thereunder applicable to such jail, are duly observed and inforced.
>
> (3) A record of the result of each visit and inspection made, shall be entered in a register to be maintained by the Superintendent for the purpose."

Para 42 is also relevant :

> "In the absence of the Magistrate of the district from headquarters, or in the event of that officer being at any time unable from any cause to visit the jail in the manner in these rules prescribed in that behalf, he shall depute a Magistrate subordinate to him who is available for the duty, to visit and inspect the jail on his behalf. Any officer so deputed may, subject to the control of the Magistrate of the district, exercise all or any of the powers by the Prisons Act, 1894, or these rules, conferred upon the Magistrate of the district."

Para 44 clothes the District Magistrate with powers and makes his orders liable to be obeyed :

"44. (1) The orders passed under sub-section (2) of Section 11 of the, Prisons Act, 1894, should, except in emergent cases in which immediate action is, in the opinion of such Magistrate necessary, be so expressed that the Superintendent may have time to refer (if he thinks necessary) to the Inspector-General before taking action thereon.

(2) All orders issued by the Magistrate of the district shall, if expressed in terms requiring immediate compliance, be forthwith obeyed and a report made, as prescribed in the said sub-section, to the Inspector-General."

64. We understand these provisions to cover the ground of reception of grievance from prisoners and issuance of orders thereon after prompt enquiry. The District Magistrate must remember that in this capacity he is a judicial officer and not an executive head and must function as such independently of the prison executive. To make prisoners' rights in correctional institutions viable, we direct the District Magistrate concerned to inspect the jails in his district once every week, receive complaints from individual prisoners and enquire into them immediately. If he is too preoccupied with urgent work, para 42 enables him to depute a Magistrate subordinate to him to visit and inspect the jail. What is important is that he should meet the prisoners separately if they have grievances. The presence of warders or officials will be inhibitive and must be avoided. He must ensure that his enquiry is confidential although subject to natural justice and does not lead to reprisals by jail officials. The rule speaks of the record of the result of each visit and inspection. This empowers him to enquire and pass orders. All orders issued by him shall be immediately complied with since obedience is obligated by para 44(2). In the event of non-compliance he should immediately inform government about such disobedience and advise the prisoner to forward his complaint to the High Court under Article 226 together with a copy of his own report to help the High Court exercise its habeas corpus power. Indeed, it will be practical, as suggested by the learned Solicitor General, if the District Magistrate keeps a grievance box in each ward to which free access shall be afforded to every inmate. It should be kept locked and sealed by him and on his periodical visit, he alone, or his surrogate, should open the box, find out the grievances, investigate their merits and take remedial action, if justified.

65. Chapter v. of the Manual deals with visitors who are an important component of jail management. Para 47 specially mentions District and

Sessions Judges, District Magistrates, Sub-Divisional Magistrates and Superintendents of Police as members of the Board of Visitors. In fact, Sessions Judges are required to visit the jails periodically — the District Magistrates and Sub-Divisional Magistrates and Magistrates subordinate to them and others appointed by them in this behalf are to visit jails in their jurisdiction *once a week* under the existing rule. We direct, in implementation of the constitutional obligation we have already discussed at length to safeguard prisoners' fundamental rights, that the Sessions Judges and District Magistrates or other subordinates nominated by them shall visit jails once a week in their visitorial functions.

66. Para 49 has strategic significance and may be reproduced :

> 49. (1) Any official visitor may examine all or any of the books, papers and records of any department of, and may interview any prisoner confined in the jail.
>
> (2) It shall be the duty of every official visitor to satisfy himself that the provisions of the Prisons Act, 1894, and of the rules, regulations, orders and directions made or issued thereunder, are duly observed, and to hear and bring to notice any complaint or representation made to him by any prisoner."

67. We understand this provision to mean that the Sessions Judge, District Magistrate or their nominees shall hear complaints, examine all documents, take evidence, interview prisoners and check to see if there is deviance, disobedience, delinquency or the like which infringes upon the rights of prisoners. They have a duty "to hear and bring to notice any complaint or representation made to him by any prisoners". Nothing clearer is needed to empower these judicial officers to investigate and adjudicate upon grievances. We direct the Sessions Judges concerned, under his lock and seal, to keep a requisite number of grievance boxes in the prison and give necessary directions to the Superintendent to see that free access is afforded to put in complaints of encroachments, injuries or torture by any prisoner, where he needs remedial action. Such boxes shall not be tampered with by anyone and shall be opened only under the authority of the Sessions Judge. We need hardly emphasise the utmost vigilance and authority that the Sessions Judge must sensitively exercise in this situation since prisoner's personal liberty depends, in this undetectable campus upon his awareness, activism, adjudication and enforcement. Constitutional rights shall not be emasculated by the insouciance of judicial officers.

68. The prison authorities shall not, in any manner, obstruct or non-cooperate with reception or enquiry into the complaints. Otherwise, prompt punitive action must follow the High Court or the Supreme

Court must be apprised of the grievance so that habeas corpus may issue after due hearing. Para 53 is important in this context and we reproduce it below :

> "All visitors shall be afforded every facility for observing the state of the jail, and the management thereof, and shall be allowed access under proper regulations, to all parts of the jail and to every prisoner confined therein.
>
> Every visitor should have the power to call for and inspect any book or other record in the jail unless the Superintendent, for reasons to be recorded in writing, declines on the ground that its production is undesirable. Similarly, every visitor should have the right to see any prisoner and to put any questions to him out of the hearing of any

jail officer. There should, be one visitor's book for both classes of visitors, their remarks should in both cases be forwarded to the Inspector General who should pass such orders as he thinks necessary, and a copy of the Inspector General's order should be sent to the visitor concerned."

Paras 53-B and 53-D are not only supplementary but procedurally vital, being protective provisions from the standpoint of prisoners. We excerpt them here for double emphasis although adverted to earlier :

> "53-B. All visitors, official and non-official, at every visit, shall —
>
> (*a*) inspect the barracks, cells, wards, workshed and other buildings of the jail generally and cooked food;
>
> (*b*) ascertain whether considerations of health, cleanliness, and security are attended to, whether proper management and discipline are maintained in every respect, and whether any prisoner is illegally detained, or is detained for an undue length of time, while awaiting trial;
>
> (*c*) examine jail registers and records;
>
> (*d*) hear, attend to all representations and petitions made, by or on behalf of prisoners; and
>
> (*e*) direct, if deemed advisable, that any such representations or petitions be forwarded to government.
>
> 53-D. No prisoner shall be punished for any statement made by him to a visitor unless an enquiry made by a Magistrate results in a finding that it is false."

We hope — indeed, we direct — the judicial and other official visitors to

live up to the expectations of these two rules and strictly implement their mandate. Para 54 is also part of this package of visitatorial provisions with invigilatory relevance. We expect compliance with these provisions and if the situation demands it, report to the High Court for action in the case of any violation of any fundamental right of a prisoner.

69. The long journey through jail law territory proves that a big void exists in legal remedies for prisoner injustices and so constitutional mandates can become living companions of banished humans only if non-traditional procedures, duly oriented personnel and realistic reliefs meet the functional challenge. Broadly speaking, habeas corpus powers and administrative measures are the pillars of prisoners' rights. The former is invaluable and inviolable, but for an illiterate, timorous, indigent inmate community judicial remedies remain frozen. Even so, this constitutional power must discard formalities, dispense with full particulars and demand of the detainer all facts to decide if humane and fair treatment prevails, constitutionally sufficient and comporting with the minimum international standards for treatment of prisoners. Publicity within the prison community of court rulings in this area will go a long way to restore the morale of inmates and, hopefully, of the warders. So we direct the Delhi Administration to reach, in *Hindi*, the essentials of this ruling to the ken of the jail people.

70. The stress that we lay is on the need of the court to be dynamic and diversified in meting out remedies to prisoners. Not merely the contempt power but also the power to create ad hoc, and use the services of,

officers of justice must be brought into play. In this very case, Dr Chitale, as amicus curiae, was so authorised, with satisfactory results. American juristic thought has considered similar action by courts using :

Masters — Primarily factfinders for the court;

Receivers — Primarily held, manage, or liquidate property;

"Special" Masters — Responsible for multiple functions such as fashioning a plan and assisting in its implementation;

Monitors — Responsible for observing the implementation process and reporting to the court;

and

Ombudsmen — Responsible for hearing inmate complaints and grievances, conducting investigations and making recommendations

to the court.

Courts which have utilised some of these special officers including : *Hamilton* v. *Schiro*[21]; *Jackson* v. *Hendrick*[22] (Special Masters); *Wayne County Bd. of Commrs*.[23] (Monitor) and *Morales* v. *Turman*[24] (Ombudsmen) : [18]

"The use of special judicial officers, like the use of the contempt power, holds considerable promise for assisting courts in enforcing judicial orders. Hopefully, their use will be expanded and refined over time."

These measures are needed since the condition is escalating.

71. The situation in Tihar Jail is a reflection of crime explosion, judicial slow motion and mechanical police action coupled with unscientific negativity and expensive futility of the Prison Administration. The Superintendent wails in court that the conditions are almost unmanageable :

"(*i*) Huge overcrowding in the jail. Normal population of the jail remains between 2300-2500 against 1273 sanctioned accommodation.

(*ii*) No accommodation for proper classification for under trials, females, habituals, casuals, juveniles, political prisoners etc., etc.

(*iii*) Untrained staff of the Assistant Superintendents. Assistant Superintendents are posted from other various departments of Delhi Admn. viz. Sales Tax, Employment, Revenue, Civil Supplies etc., etc.

(*iv*) Untrained mostly the warders guard and their being non-transferable.

(*v*) A long distance from the courts to the jail and production of a large number of under trial prisoners roughly between 250-300 daily and their receiving back into the jail in the evening.

(*vi*) The population of the jail having a large number of drug addicts, habitual pickpockets having regular gangs outside to look after their interests legal and illegal both from outside."

72. Other jails may compete with Tihar to bear the palm in bad treatment and so the problem is pan-Indian. That is why we have been persuaded by the learned Solicitor General to adventure into this undiscovered territory. The Indian Bar, and maybe, the Bar Council of India and the academic community, must aid the court and country in

this Operation Prison Justice. In a democracy, a wrong to someone is a wrong to everyone and an unpunished criminal makes society vicariously guilty. This larger perspective validates our decisional range.

73. Before we crystallise the directions we issue, one paramount thought must be expressed. The goal of imprisonment is not only punitive but restorative, to make an offender a non-offender. In *Batra case*[1] this desideratum was stated and it is our constitutional law, now implicit in Article 19 itself. Rehabilitation is a prized purpose of prison "hospitalization". A criminal must be cured and cruelty is not curative even as poking a bleeding wound is not healing. Social justice and social defence — the sanction behind prison deprivation — ask for enlightened habilitative procedures. A learned Writer has said :

> "The only way that we will ever have prisons that operate with a substantial degree of justice and fairness is when all concerned with that prison — staff and prisoners alike — share in a meaningful way the decision-making process, share the making of rules and their enforcement. This should not mean three 'snitches' appointed by the warden to be an 'inmate advisory committee'. However, if we are to instill in people a respect for the democratic process, which now the free world attempts to live, we are not achieving that by forcing people to live in the most totalitarian institution that we have in our society. Thus, ways must be developed to involve prisoners in the process of making decision that affect every aspect of their life in prison."

The Standard Minimum Rules, put out by United Nations Agencies also accent on socialisation of prisoners and social defence :

> "57. Imprisonment and other measures which result in cutting off an offender from the outside world are affective by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
>
> 58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.
>
> 59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners."

74. Prison-processed rehabilitation has been singularly unsuccessful

in the West and the recidivism rate in our country also bears similar testimony : To get tough, to create more tension, to inflict more cruel punishment,

is to promote more stress, more criminality, more desperate beastliness and is self-defeating though soothing to sadists. Hallock, a professor at the University of Wisconsin says : [25]

> "The stresses that lead to mental illness are often the same stresses that lead to crime. Mental illness always has a maladaptive quality, and criminality usually has a maladaptive quality."

75. The final panacea for prison injustice is, therefore, more dynamic, far more positive, strategies by going back to man, the inner man. The ward-warden relationship needs holistic repair if prisons are, in Gandhian terms, to become hospitals, if penology, as modern criminologists claim, is to turn therapeutic. The hope of society from investment in the penitentiary actualises only when the inner man within each man, doing the penance of prison life, transforms his outer values and harmonises the environmental realities with the infinite potential of his imprisoned being. Meditative experiments, follow-up researches and welcome results in many countries lend optimism to techniques of broadening awareness, deepening consciousness and quietening the psychic being.

76. It is of seminal importance to note that the Tamil Nadu Prison Reforms Commission (1978-79) headed by a retired Chief Justice of the High Court of Patna, working with a team of experts, has referred with approval to successful experiments in Transcendental Meditation in the Madurai Central Prison : [26]

> "Success has been claimed for this programme. It is reported that there is "reduction of anxiety and fear symptoms, greater flexibility in dealing with frustration, increased desire to care for others, and ability to interact in group situations via rational rather than purely aggressive means. Some inmates reported spontaneous reduction in clandestine use of alcohol and ganja; and even cigarette smoking was less. Prison authorities informed us that they noticed personality changes in some of these prisoners, and that they now had calm and pleasant exchanges with these inmates. Their behaviour towards others in the prison "and relationship with prison authorities also changed considerably". There is a proposal to extend this treatment to short-term prisoners also. This treatment may also be tried in other prisons where facilities exist. A copy of the report of the

Director of the Madurai Institute of Social Work is in Appendix XI."

77. The time for prison reform has come when Indian methodology on these lines is given a chance. We do no more than indicate the signpost to Freedom from Crime and Freedom behind Bars as a burgeoning branch of therapeutic jurisprudence. All this gains meaning where we recognise that mainstreaming prisoners into community life as willing members of a law-abiding society is the target. Rule 61 of the Standard Minimum Rules stresses this factor:[27]

"61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community

agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of *social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies*. Steps should be taken to safeguard, to the minimum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners."

It follows that social resources, helpful to humane treatment and mainstreaming, should be ploughed in, senior law students screened by the Dean of reputed law schools may usefully be deputed to interview prisoners, subject to security and discipline. The grievances so gathered can be fed back into the procedural mechanism viz. the District Magistrate or Sessions Judge. The Delhi Law School, we indicate, should be allowed to send selected students under the leadership of a teacher not only for their own clinical education but as prisoner-grievance-gathering agency. Other Service Organisations, with good credentials, should be encouraged, after due checking for security, to play a role in the same direction. The Prisons Act does provide for rule-making and issuance of instructions which can take care of this suggestion.

Omega

78. The omega of our judgment must take the shape of clear directives to the State and prison staff by epitomising the lengthy discussion. To clinch the issue and to spell out the precise directions is the next step :

1. We hold that Prem Chand, the prisoner, has been tortured illegally and the Superintendent cannot absolve himself from responsibility even

though he may not be directly a party. Lack of vigilance is limited guilt. We do not fix the primary guilt because a criminal case is pending or in the offing. The State shall take action against the investigating police for the apparently collusive dilatoriness and deviousness we have earlier indicated. Policing the police is becoming a new ombudsmanic task of the rule of law.

2. We direct the Superintendent to ensure that no corporal punishment or personal violence on Prem Chand shall be inflicted. No irons shall be forced on the person of Prem Chand in vindictive spirit. In those rare cases of "dangerousness" the rule of hearing and reasons set out by this Court in *Batra case*[1] and elaborated earlier shall be complied with.

3. Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the visitatorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned court results which have relevance to legal grievances.

4. Within the next three months, Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrate and the Sessions Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes shall be afforded to all prisoners.

5. District Magistrates and Sessions Judges shall, personally or through

surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances, shall make expeditious enquiries thereinto and take suitable remedial action. In appropriate cases reports shall be made to the High Court for the latter to initiate, if found necessary, habeas action.

It is significant to note the Tamil Nadu Prison Reforms Commission's observations :

> "38. 16. *Grievance Procedure* : — This is a very important right of a prisoner which does not appear to have been properly considered. The rules regulating the appointment and duties of non-official visitors and official visitors to the prisons have been in force for a long time and their primary function is 'to visit all parts of the jail and to see all prisoners and to hear and enquire into any complaint

that any prisoner may make'. In practice, these rules have not been very effective in providing a forum for the prisoners to redress their grievances. There are a few non-official visitors who take up their duties conscientiously and listen to the grievances of the prisoners. But most of them take this appointment solely as a post of honour and are somewhat reluctant to record in the visitors' book any grievance of a prisoner which might cause embarrassment to the prison staff. The judicial officers viz. the Sessions Judge and the Magistrates who are also ex-officio visitors do not discharge their duties effectively [28]."

We insist that the judicial officers referred to by us shall carry out their duties and responsibilities and serve as an effective grievance mechanism.

6. No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days of the action.

Conclusion

79. What we have stated and directed constitute the mandatory part of the judgment and shall be complied with by the State. But implicit in the discussion and conclusions are certain directives for which we do not fix any specific time-limit except to indicate the urgency of their implementation. We may spell out four such quasi-mandates.

1. The State shall take early steps to prepare in Hindi, a prisoner's handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may create a fellowship which will ease tensions. A prisoners' wallpaper, which will freely ventilate grievances will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

2. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies. In this latter aspect, the observations

we have made of holistic development of personality shall be kept in

view.

3. The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.

4. The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the court such as for example. Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief.

80. In this connection, it is heartening to note that the Delhi University, Faculty of Law, has a scheme of free legal assistance even to prisoners.

81. The Declaration of the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by U.N. General Assembly (Resolution 3452 of December 9, 1975) has relevance to our decision. In particular :

> "*Article 8.*—Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.
>
> *Article 9.*— Wherever there is reasonable ground to believe that an act of torture as defined in Article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint."

Dr Chitale has handed up to us an American Civil Liberties Union Hand-book on the Rights of Prisoners. It rightly sets the sights of prison justice thus;[29]

> "As an institution, our penal and 'correctional' system is an abject failure. The conditions in America's jails and prisons virtually ensure psychological impairment and physical deterioration for thousands of men and women each year. Reformation and rehabilitation is the rhetoric; systematic dehumanisation is the reality. Public attention is directed only sporadically toward the sub-human conditions that prevail in these institutions, and usually only because the prisoners themselves have risked many more years in confinement, and in some cases even their lives, to dramatize their situation by protest."

82. The "central evil" of prison life, according to this handbook, is

> the unreviewed administrative discretion granted to the poorly trained personnel who deal directly with prisoners. Moreover, even those rights which are now guaranteed by the courts are often illusory for many prisoners. Implementation and enforcement of these rights

rest primarily in the hands of prison officials. Litigation is costly and time-consuming, and few lawyers have volunteered their service in this area. Thus even those minimal rights which appear on paper are often in reality denied.

We conclude with the hope that the State, though preoccupied with many pressing problems, will discharge its constitutional obligation to the invisible mortals incarcerated by it and legislatively and administratively remake a Prison Code adhering to the high values of the preamble. Over a hundred years ago (1870) : [30]

> ". . . some American prison administrators assembled to discuss their common problems and founded what is now the American Correctional Association. At the very first meeting, these remarkable men set down a justly famous 'Statement of Twenty-two Principles'."

82-A. Among the twenty-two were these :

> Reformation, not vindictive suffering, should be the purpose of the penal treatment of prisoners. The prisoner should be made to realise that his destiny is in his own hands;
>
> Prison discipline should be such as to gain the will of the prisoner and conserve his self-respect;
>
> The aim of the prison should be to make industrious free men rather than orderly and obedient prisoners.

This quote from the well known work THE CRIME OF PUNISHMENT extracted by George Ellis in his book INSIDE FOLSOM PRISON : TRANSCENDENTAL MEDITATION AND TM-SIDHI PROGRAM[31] is notable as a practicable project which will reduce the number of prisoners by raising the *nature* of prisoners.

83. In the package of benign changes needed in our prisons with a view to reduce tensions and raise the pace of rehabilitation, we have referred to acclimatisation of the community life and elimination of sex vice vis-à-vis prisoners. We have also referred to the unscientific mixing up in practice of under trials, young offenders and long-term convicts. This point deserves serious attention. A recent book RAPE IN PRISON states : [32]

> "One of the most horrendous aspects of a jail sentence is the fact that not only are the young housed with the older offenders, but those awaiting trial share the same quarters as convicted inmates. The latter individuals have little to lose in seeking sexual gratification through assault, for they have to serve their time anyway. . . . As matters now stand, sex is unquestionably the most pertinent issue to the inmates' life behind bars. . . . There is a great need to utilize the furlough system in corrections. Men with record showing good behaviour should be released for weekends at home with their families and relatives."

84. Farewell to this case is not final so far as the jailor and the police investigator are concerned. The former will stand his trial and shall receive justice. We say no more here. The investigator invites our displeasure

and the Assistant Public Prosecutor, whom he consulted, makes us unhappy since we have had a perusal of the case diary. The crime alleged is simple, the material relied on is short and yet, despite repeated observations from the Bench the investigator has delayed dawdily the completion of the collection of evidence and the laying of the charge-sheet. The prisoner who is the victim has been repeatedly questioned under different surroundings and divergent statements are recorded. We do not wish to state what we consider to be the obvious inference, but we are taken aback when the Assistant Public Prosecutor has given an opinion which, if we make presumptions in his favour, shows indifference and, if we make contrary inferences, makes us suspect. When offences are alleged to have taken place within the prison, there should be no tinge or trace of departmental collusion or league between the police and the prison staff. We make these minimal observations so that the State may be alerted for appropriate action. Surely, the conduct of the prosecution cannot be entrusted to one who has condemned it in advance.

85. We allow the petition and direct a writ to issue, including the six mandates and further order that a copy of it be sent for suitable action to the Ministry of Home Affairs and to all the State Governments since Prison Justice has pervasive relevance.

PATHAK, J.— delivered the following Order :

86. I have read the judgment prepared by my learned Brother. For my part, I think it sufficient to endorse the following finding and direction detailed towards the end of the judgment :

1. The prisoner, Prem Chand, has been tortured while in custody in the Tihar Jail. As a criminal case is in the offing or may be pending, it is not necessary in this proceeding to decide who is the person responsible for inflicting the torture.

2. The Superintendent of the jail is directed to ensure that no punishment or personal violence is inflicted on Prem Chand by reason of the complaint made in regard to the torture visited on him.

87. Besides this, I am in general agreement with my learned Brother on the pressing need for prison reform and the expeditious provision for adequate facilities enabling the prisoners, not only to be acquainted with their legal rights, but also to enable them to record their complaints and grievances, and to have confidential interviews periodically with lawyers nominated for the purpose by the District Magistrate or the court having jurisdiction subject, of course, to considerations of prison discipline and security. It is imperative that District Magistrates and Sessions Judges should visit the prisons in their jurisdiction and afford effective opportunity to the prisoners for ventilating their grievances and, where the matter lies within their powers, to make expeditious enquiry therein and take suitable remedial action. It is also necessary that the Sessions Judge should be informed by the jail authorities of any punitive action taken against a prisoner within two days of such action. A statement by the Sessions Judge in regard to his visits, enquiries made and action taken thereon shall be submitted periodically to the High Court to acquaint it with the conditions prevailing in the prisons within the jurisdiction of the High Court.

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† Under Article 32 of the Constitution

[1] *Sunil Batra* v. *Delhi Admn.*, (1978) 4 SCC 494 : 1979 SCC (Cri) 155 : (1979) 1 SCR 392.

[2] Supplement to Edward S. Corwin : The Constitution, p. 245 quoted in 1 supra at p. 410 (SCR), 505 (SCC)

[3] Will Durant's Article, "What Life Has Taught Me" published in Bhavan's Journal, Vol. 24, No. 18, quoted in 1 supra at p. 422.

[4] Ibid., at p. 423.

[5] Winston Churchill when speaking, on July 25, 1910, as Home Secretary in the House of Commons.

[6] *Kuldip Nayar : In Jail*, pp. 30-34

[7] 1976 Vol. 9

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[8] 2d Vol. 39, p. 185, para 11

[9] 143 F 2d 443, 445 : 325 US 887 (1945)

[9a] 40 L Ed 2d 224

[10] 21 L Ed 2d 718

[11] *Maneka Gandhi* v. *Union of India* (1978) 1 SCC 248 : (1978) 2 SCR 621

[12] *M. H. Hoskot* v. *State of Maharashtra*, (1978) 3 SCC 544 : 1978 SCC (Cri) 468 : (1979) 1 SCR 192

[13] *warkanath* v. *ITO*, (1965) 3 SCR 536, 540-541 : AIR 1966 SC 81 : 57 ITR 349

[14] Sheldon Krantz : Corrections and Prisoners' Rights, pp. 274-75

[15] *Kharak Singh* v. *State of U. P.*, (1964) 1 SCR 332, 357 : AIR 1963 SC 1295

[16] (1978) 1 SCC 248

[17] *D. Bhuvan Mohan Patnaik* v. *State of A.P.*, (1975) 3 SCC 185, 186 : (1975) 2 SCR 24, 26 : 1974 SCC (Cri) 803

[18] Sheldon Krantz : CORRECTIONS AND PRISONERS RIGHTS, pp. 129-130

[*] Ed. : See later judgment in *Prem Shankar Shukla* v. *Delhi Admn.*, (1980) 3 SCC 526.

[19] THE RIGHTS of PRISONERS, p. 23

[20] Roger G. Lanphear, FREEDOM FROM CRIME, pp. 28-29

[21] 388 F Supp 1016 (ED La 1970)

[22] 321 A 2d 603 (Pa 1974)

[23] Civ. Action 173271 (Cir Ct. of Wayne City, Mich., 1972)

[24] 364 F Supp 166 (ED Tex 1973)

[25] Roger G. Lanphear : FREEDOM FROM CRIME, p. 5

[26] Vol. 1, p. 69-70. Also see Vol. III, Appendix XI, p. 26

[27] Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations—U.N. Dept. of Economics & Social Welfare, New York, 1958

[28] Vol. II, p. 76

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[29] David Rudovsky Alvin J. Bronstein Edward I. Koren, p. 11

[30] Karl Menninger, M. D. : THE CRIME OF PUNISHMENT (New York : The Viking Press, Inc. 1969); p. 219

[31] ETC Publications, Palm Springs California, p. xxi

[32] Anthony M. Scacco, Jr. : RAPE IN PRISON, pp. 18, 33, 113.