

Supreme Court of India

Shri Rama Murthy vs State Of Karnataka on 23 December, 1996

Author: Hansaria

Bench: Kuldip Singh, B.L. Hansaria, S.B. Majmudar

PETITIONER:

SHRI RAMA MURTHY

Vs.

RESPONDENT:

STATE OF KARNATAKA

DATE OF JUDGMENT: 23/12/1996

BENCH:

KULDIP SINGH, B.L. HANSARIA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T HANSARIA J.

This writ petition has its origin in a letter dated 12.4.1984 by a prisoner of Central Jail, Bangalore (one Rama Murthy) to the Hon'ble Chief Justice of this Court making grievance about some jail matters. The letter was ordered to be treated as a writ petition and court proceedings followed which are being wound up by delivering this judgment.

2. The epistolary power had been invoked earlier also in a similar matter when Sunil Batra had written a letter to a Hon'ble Judge of this Court from Tihar Jail, Delhi. The judgments in his cases and that of Charles Sobraj are such which can be said to be beacon lights insofar as management of jails and rights of prisoners are concerned. This Court in these judgments [(1) Charles Sobraj v. Superintendent Central Jail, Tihar, AIR 1978 SC 1514 (# 1979 (1) SCR 512): (2) Sunil Batra (1) v. Delhi Administration and Ors., AIR 1978 SC 1675 (#1979 (1) SCR 392); and (3) Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579 (#1980 (2) SCR

557)], on being approached either through formal writ petitions or by addressing letters, which was treated as a writ petitions, had laid bare the constitutional dimension and rights available to a person behind stone walls and iron bars.

3. These are not the only decisions on the question of rights of prisoners and approach to be adopted while dealing with them as there are many other renderings of this Court which deal with some other aspects of prison justice. A brief resume of earlier decisions would be helpful to tread the path further. The resume reveals this :- (1) In State of Maharashtra v. Prabhakar, AIR 1966 SC 424 (#1966 (1) SCR 702) aid of Article 21 was made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books while in jail.

(2) Suresh Chandra vs. State of Gujarat, 1976 (1) SCC 654; and Krishan Lal v. State of Bihar 1976 (1) SCC 655 saw this court stating about penological innovation in the shape of parole to check recidivism because of which liberal use of the same was recommended.

(3) A challenge was made to the segregation of prisoners in Bhuvan Mohan Pattnaik v. State of Andhra Pradesh, AIR 1974 SC 2092 (#1975-2 SCR 24) and a three Judge bench stated that resort to oppressive measures to curb political beliefs (the prisoner was a Naxalite because of which he was put in a 'guarantine' and subjected to inhuman treatment) could not be permitted. The Court, however, opined that a prisoner could not complain of installation of high-volt live wire mechanism on the jail walls to prevent escape from prisons, as no prisoner had fundamental right to escape from lawful custody.

(4) In Charles Sobraj it was stated that this Court would intervene even in prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of a prisoner. In that case the complaint was against incarceratory torture.

(5) Sunil Batra (I) dealt with the question whether prisoners are entitled to all constitutional rights, apart from fundamental rights. In that case this Court was called upon to decide as to when solitary confinement could be imposed on a prisoner. In Kishor Singh v. State of Rajasthan, AIR 1981 SC 2625 (#1981 (1) SCC 503) also the Court dealt with the parameters of solitary confinement. (6) Prem Shankar v. Delhi Administration, AIR 1980 SC 1535 (#1980 (3) SCR 855); and Kadra Pahadiya v. State of Bihar, AIR 1981 SC 959 (#1981-3 SCC 671) prohibited putting of undertrial prisoners in leg-irons.

(7) In Sunil Batra (II) the Court was called upon to deal with prison vices and the judgment protected the prisoners from these vices with the shield of Article 21, Krishna Iyer, J. Stated that "prisons are built with the stones of law".

(8) A challenge was made to a prison rule which permitted only one interview in a month with the members of the family or legal advisor in Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746(+1981 (8) SCR 516) and the rule was held violative, inter alia, of Article 21. (9) In series of cases, to wit, Veena Sethi v. State of Bihar, AIR 1983 SC 339 (=1982 (2) SCR 583); (ii) Sant Bir v. State of Bihar, AIR 1982 SC 1470 (= 1982 (3) SCC (31); and

(ii) Sheela Barse v. Union Territory, 1993 (4) SCC 204, this Court was called upon to decide as to when an insane person can be detained in a prison. In Sheela Barse it was held that jailing of non-criminal mentally Pradesh, AIR 1977 SC 1926 (=1978 (1) SCR 153), because in that case

reformative aspect was emphasised by stating that the State has to rehabilitate rather than avenge. Krishna Iyer, J., speaking for a two-Judge bench, pointed out that the "sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalisation". (11) On top of all, there is the undoubted right of speedy trial of undertrial prisoners, as held in a catena of cases of this Court, reference to which is not deemed necessary. Mention may only be made of the further leaves added to this right. These consist of ordering for release on bail where trial is protracted. The first decision in this regard is by a two-Judge bench in Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India, 1994 (6) SCC 731, wherein the bench was concerned with the detention of large number of persons in jail in connection with various offences under Narcotic Drugs and Psychotropic Substances Act, 1985. The Court, after noting the stringent provisions relating to bail as incorporated in that Act, directed for release of those undertrial prisoners who were languishing in jail for a period exceeding half of the punishment provided in the Act. This decision was cited with approval by another two-Judge bench in Shaheen Welfare Association v. Union of India, 1994 (6) SCC 731, wherein the bench was concerned with the detention of such persons. It would be of some interest to point that in Sheela Barse, an order was passed to acquaint the Chief Secretaries of every State with the decision and he was directed to furnish some information to the Standing Counsel of his State. On being found that State of Assam had not complied with the order, this Court appointed Sr. Advocate Shri Gopal Subramaniam as its Commissioner by its order dated 13.5.1994 to have discussion with the Chief Secretary of that State and to ensure immediate obedience of the orders passed in that case. Shri Subramaniam's voluminous report dated 15.9.1994 running into 532 pages tells a story too wet for tears. All concerned were found ignorant of the decision in Sheela Barse which was rendered in August, 1993; and what is more, a disturbing nexus between the judiciary, the police and the administration came to light. This was said to have led to a most shocking state of affairs negating the very basis of the existence of human life.

We do hope that by now all the States of the Country must have acted as per the directions in Sheela Barse. (10) The judicial work done by this Court on the subject at hand would not be complete without mentioning what was held in Mohammad Giasuddin v. State of Andhra Pradesh, 1996 (2) SSC 616 in which harsh provisions of TADA were borne in mind and the bench felt that a pragmatic and just approach was required to be adopted to release TADA detainees on bail because of delay in conclusions of trials. The Bench classified these undertrials in four categories and passed different orders relating to their release on bail.

More comprehensive view was adopted in two later decisions - these being (1) RD Upadhyay v. State of Andhra Pradesh, 1996 (3) SCC 422; and (ii) "Common Cause" v. Union of India, 1996 (4) SCC 33. The first of these cases dealt with undertrial prisoners lodged in Tihar jail and directions were given to release them on bail depending upon the type of offences alleged against them on the completion of period mentioned in the judgment. The second case is more general inasmuch as it dealt with undertrial prisoners lodged in various jails of the country. The bench directed for their release on conditions laid down in the order. It was stated that directions shall be valid in all the States in Union Territories and would apply not only to pending cases but also to future cases. The directions were, however, not made applicable to certain classes of cases mentioned in the order.

4. The journey which commenced in 1966 has thus, during the last 30 years, planted many milestones. But it seems there are yet promises to keep and miles to go before one can sleep. And how can one sleep with wailings of prisoners getting louder and louder which requires a sentinel on the qui-vive, as this Court is so far as fundamental rights are concerned, to take note of agony and to lay down what is required to be done to make prisons match the expectations of society?

5. Let it be seen how to protect various rights of the prisoners and how the object of rehabilitation of a prisoner does not remain will-of-the-wisp. We have to be pragmatic also. Constitutional rights of the prisoners shall have to be interpreted in such a way that larger public interest does not suffer while trying to be soft and considerate towards the prisoners. For this, it has to be seen that more injury than is necessary is not caused to a prisoner. At the same time efforts have to be made to reform him so that when he comes out of prison he is a better citizen and not a hardened criminal.

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

"The situation in the prisons visited was varied and complex. Many, such as Tihar Jail in Delhi were over-crowded; yet others, like that open jail in Hyderabad were under-utilized. Often, within a single State, conditions varied from one jail to another in this respect, pointing to the need for a more rational State-wide use of facilities. The Commission saw a few jails which were notably clean and where the diet was reasonable such as the Central Jail in Vellore. Unfortunately, it saw many others which are squalid, such as the newly constructed Central Jail in Patna. In yet others, the diet was inferior, and the management was denounced by the inmates as brutal and corrupt. In some, care was being taken to separate juveniles from others, petty offenders from hardened criminals.

In others, no such care was being taken and the atmosphere appeared to nurture violence and criminality. In a few, major efforts were being made to reform conditions, to generate employment in a worthwhile and remunerative way, to encourage education and restore dignity. In others, callousness prevailed, prisoners were seen in shackles, mentally disturbed inmates - regardless of whether they were criminal or otherwise - were incarcerated with others, with no real effort being made to rise above the very minimum required for the meanest survival. Where prisoners worked, their remuneration was often a pittance, offering scant hope of savings being generated for future rehabilitation in society. By and large, the positive experiences were the exceptions rather than the rule, dependant more upon the energy and commitment of individual officials rather than upon the capacity of the system to function appropriately on its own."

## Facts

7. As alluded, this petition has its origin in a letter from one Rama Murthy, a prisoner in Central Jail, Bangalore, addressed to the Hon'ble Chief Justice of this Court. In the letter the main grievance was about denial of rightful wages to the prisoners despite doing hardwork by them in different sections of the prison. Mention was also made about "non- eatable food" and "mental and physical torture". On the matter being taken up judicially, a need was felt, in view of the denial of the allegations in the objection filed on behalf of the respondent, that the District Judge, Bangalore, should visit the Central Jail and should find out the pattern of payment of wages and also the general conditions of the prisoners such as residence, sanitation, food, medicine etc. This order was passed on 26.11.1992 and the District Judge, after seeking time for submitting report from this Court, did so on 28.4.1993. His report runs into more than 300 pages (alongwith voluminous annexures), which shows the earnestness and pains which the District Judge evinced and took in submitting the report.

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

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

1. The general condition of the prisoners is satisfactory. Their treatment by the Jail Authorities is also satisfactory.
2. The quality, quantity and timely supply of food to the prisoners are satisfactory.
3. The pattern of payment of wages is as per Annexure -F and it is being followed properly. The wages are correctly recorded and paid to the prisoners as per rules.
4. The residence (the accommodation) to the prisoners in the jail are adequate and satisfactory. But the maintenance of buildings by the P.W.D. authorities is hopelessly bad for want of funds from the Government according to them.
5. The sanitation is not satisfactory due to accute scarcity of water. The jail premises is normally maintained clean and tidy with great efforts. But it is improving since about a month after opening 3 or 4 borewells.
6. The medical facilities in the Jail Hospital and supply of medicines to the prisoners are satisfactory. Due to overt population in the jail the two Doctors and their staff at present in the jail Hospital are unable to cope up with the demands but still there is no slackness or negligence in their work. for want of Lady Doctor and women staff in the hospital the Medical attendance to women prisoners is not proper or satisfactory.
7. Visit of prisoners to their homes or their places is not prompt or regular as per rules due to want of Police Escorts. This has caused lot of dissatisfaction and

depression among the prisoners.

8. The production of prisoners in Courts on the dates of hearing in their cases is not regular or prompt due to want of Police Escorts and vehicles. This has affected the expeditious disposal of custody cases in Courts. The prisoners are very much agitated over this.

9. The production of prisoners in the Hospitals outside the jail for examination or treatment by the experts is not prompt or regular due to want of Police Escorts.

10. Mental patients in the jail and the prisoners with serious diseases requiring treatment outside the jail are compelled to remain in jail for want of accommodation in such hospitals.

11. The place and procedure followed for interviews between the prisoners their kith and kin, friends and visitors is not satisfactory.

12. Canteen facilities should improve. The sale of articles in the Canteen at the price above market prices to make profit is causing great hardship to the prisoners."

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

"24. In view of the above conclusions the following recommendation are made for consideration and implementation:

1. P.W.D. Authorities in charge of the maintenance of the buildings and the premises of the jail are to be directed to maintain the buildings properly as per the requirement in the jail by getting necessary funds from the Government on priority basis. Necessary instructions may be issued to the Government in this regard to provide funds and to accord permission.

2. Sanitation in the jail premises requires lot of improvement. P.W.D. Authorities are to be directed to repair the existing pipe lines and the sewerage lines in addition to providing Electric pumps to the bore-wells in the jail premises.

3. The staff in the jail hospital has to be increased by providing at least 2 more Doctors preferably who have specialised in the particular field where the prisoners may require their services in special cases. One Lade Medical Officer, a Lady Nurse and two lady attendants for the purpose of attending the women prisoners. The location of their office may be provided in the separate block meant for women prisoners. If regular posting of Doctors cannot be made for the purposes stated above, the services of the Doctors from other Government Hospitals in Bangalore may be secured as a routine periodically or in case of emergencies by providing them

some conveyance. It is suggested that doctors incharged of the Hospital may visit each barrack at least once in a week and meet the inmates to know their health problems and to treat them in jail Hospital. In case of emergency as agreed by them, they may visit the prisoners whenever their services are required.

4. The Jail Authorities may be directed to arrange for the regular visit of the prisoners to their homes or their places periodically as per the rules without insisting any deposit or security or police report unless it is inevitable and in case of emergency like death, serious illness and other important festivals, functions arrangements should be made for their visit relaxing all the required formalities. By way of follow up action, the Jail Authorities may be instructed to submit the report of the returns to the prl. City Civil & Sessions Judge, Bangalore once in a month in this regard in addition to special reports as and then it is necessary or as per the directions of the prl. City Civil and Session Judge, Bangalore. For this purpose the Home Department has to be requested to spare sufficient number of police Escorts and the vehicles as and when it is required by the Jail Authorities.

If possible as suggested by the Superintendent of Jail, some fixed number of escorts may be permanently posted to work in the jail to assist the Jail Authorities in cases of visits due to emergencies.

5. The Superintendent of the jail may be instructed to produce the UTPs before the Courts in which their cases are pending on the dates of hearing fixed by the Courts regularly and promptly. For this purpose, the Home Department of the Government may be requested to spare sufficient number of police Escorts and the vehicles as and when it is required by the Jail Authorities. The Superintendent of the Jail has to be instructed to submit a report in this regard at least once in a month to the prl. City Civil & Sessions Judge, Bangalore compliance of such instructions.

6. The Superintendent of the jail should take all the steps to produce the prisoners to the Hospitals outside the jail for the purpose of examination and treatment whenever necessary as per the opinion of the Jail Doctors and for this purpose also, the same procedure may be followed regarding police Escort as stated above.

7. All the hospitals under the control of the Government who are expected to treat the prisoners either in the normal cases or in special cases may be strictly instructed to treat the prisoners either as in-patients or otherwise as per the recommendation of the jail Doctors and the Superintendent of the Jail without referring them back to the jail for treatment, particularly in case of mental patients, the NIMHANS authorities may be requested to treat them as in-patients till they become normal without referring them back to the jail.

8. It is absolutely necessary to provide proper accommodation with sufficient space of the interviews between the prisoners with their kith and kin, friends and visitors. The

procedure which is being followed at present also required to be modified as suggested in the discussions stated above in para-

20. If possible separate portions may be made in the accommodation for the purpose of interviews. The Superintendent of the jail may be instructed to submit the report in this regard at least once in 3 months to the prl. City Civil & Sessions Judge, Bangalore who may review the same issue instructions as and when it is necessary.

9. Canteen facilities in the jail require improvements. Some more articles for day to day use of the inmates may be sold in the Canteen. The Superintendent of the Jail may in consultation of the prisoners submit a report in this regard to the prl. City Civil & Sessions Judge, Bangalore mentioning the articles which may be sold in the Canteen. The Jail Authorities should be strictly instructed not to sell any of the articles to the prisoners at a rate more than the market price or for profit. For this purpose, they may adopt any procedure whereby the articles can be held on the Principle 'no loss no profit' basis.

10. It may be necessary to instruct follow up action by all the concerned Authorities in regard to the implementation of the items stated above."

10. We wish to place on record our appreciation for the admirable work done by the District Judge.

11. Being concerned with a problem which is not confined to the happenings in Central Jail, Bangalore, but which are faced more or less by all the persons confined in 1155 prisons of different kinds in India, we have thought it fit not to confine our attention and concern to what was found in the Central Jail by the District Judge. According to us, it would be more apposite to keep in view all the prisoners, whose population at the end of 1993 was 1,93,240, of whom 1,37,838 were unconvicted remandees or undertrials.

12. It may be pointed that the National Human Rights Commission is also of the view that the prison system as such is in need of reform, nation-wide. (See para 4.18 of these aforesaid Report).

13. The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are : (1) overcrowding; (2) delay in trial ; (3) torture and ill- treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing ; (6) prison vices; (7) deficiency in communication; (8) streamlining o jail visits; and (9) management of open air prisons.

14. We propose to take each of the problems separately and express our view as to what could reasonably be done and should be done to take care of the same.

#### Overcrowding



15. That our jails are overcrowded is a known fact. To illustrate, in Tihar Jail as against the housing capacity of 2,500 persons in 1994-95, there were 8,500 prisoners, as mentioned in Chapter 16 of '1 Dare', a biographical work on Ms. Kiran Bedi. Of course, the percentage of over-crowding varies from prison to prison.

16. Though the aforesaid fact is known, what is not known is the controversy as to whether overcrowding itself violates any constitutional right. This question arises because overcrowding contributes to a greater risk of disease, higher noise levels, surveillance difficulties, which increases the danger level. This apart, life is more difficult for inmates and work more onerous for staff when prisoners are in over capacity.

17. Though we have no decision of ours yet on the subject, the American Supreme Court in two major decisions had addressed itself on overcrowding problem. First of these is *Wolff v. Mc Donnell*, 418 US 539 (1974), involving pretrial detainees. The Court held that the principle of 'one man, one cell', cannot be read in the Due Process Clause of the Fifth Amendment. It was further held that the practice of placing two detainees in a cell meant for one person was not unconstitutional. Of course, this view was taken because of the facts of that case where it was found that the detainees in the federal Metropolitan Correctional Centre were not required to spend much time in their cells - only 7 or 8 hours per day. Further more, they were not exposed to the overcrowding for very long as average stay was 60 days. The second decision was in *Rhodes v. Chapman*, 452 US 337(1981). The Court there was concerned with a convicted prisoner and examined the question whether overcrowding constituted cruel and unusual punishment. It did not read any violation of the Eighth Amendment as there was no evidence that double- celling had inflicted "unnecessary or wanton pain or was grossly disproportionate to the severity of the crimes warranting imprisonment" (See, 'American Prison System' by Richard Hawkins ad Geoffery, p.420 of 1989 edition). The Court went on to conclude that "the Constitution does not mandate comfortable prison".\* \* Chapter 8 (Prisons : Cruel and Unusual Punishment Controversy) of 'Hard Judicial Decisions' by Phillip J. Cooper contains a criticism of these judgments.

18. Mention has been made of the aforesaid two decisions despite there being no exact parallel to the Due Process Clause of the Fifth Amendment of American Constitution or of guarantee against cruel and unusual punishments mentioned in their Eighth Amendment, in our Constitution, but Article 21 of our paramount parchment also does prohibit cruel punishments, which would be apparent from the decision of a three-Judge Bench on *Deena vs. Union of India*, AIR 1983 SC 1155 (= 1984 (1) SCR 1), in which execution of death sentence by hanging was challenged on the ground of being cruel and barbarous.

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

20. The recent decision of this Court requiring release on bail of certain categories of undertrial prisoners, who constitute the bulk of prison population, has to result in lessening the over capacity. It would be useful to refer here to the Seventy-Eighth Report of the Law commission of Indian on

`Congestion of Undertrial Prisoners in Jails'. The Commission has in Chapter 9 of the Report made some recommendations acceptance of which would relieve congestion in jails. These suggestions include liberalisation of conditions of release on bail. It may be pointed out that it has already been held by this Court in *Babu Singh vs. State of U.P.*, AIR 1978 SC 527 (# 1978 (2) SR 777); and *Gurbaksh Singh Sibbia vs. State of Punjab*, AIR 1980 SC 1632 (#1980 (3) SCR 383) that imposing of unjust or harsh conditions, while granting bail, are violative of Article 21. 20A. We require the concerned authorities to take appropriate decision on the recommendations of the Law Commission within six months from today.

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

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

23. Reference may also be made in this connection to Chapter 20 of the Report of All India Committee on Jail Reforms (headed by Justice A.N. Mulla) (1980-83) Vol.I. That chapter deals with the system of remission, leave and premature release. The Committee has mentioned about various types of remission and has made some recommendations to streamline the remission system. As to premature release, which is the effect of parole, the Committee has stated that this is an accepted mode of incentive to a prisoner, as it saves him from the extra period of incarceration; it also helps in reformation and rehabilitation. The Committee has made certain suggestions in this regard too. We direct the concerned authorities to take appropriate decision on the suggestions within a period of six months from today. It may be pointed out that there is really a grievance about allowing the recommendations to remain in cold storage. (See article of T. Ananthachari "Human Rights Behind Prison Walls" published at pp. 35-47 of the 1995 report by Commonwealth Human Rights Initiative (a NGO) titled `Behind Prison Walls - Police, Prisons and Human Rights'). While taking appropriate decision, the authorities may apprise themselves of what has been in Chapter 6 (headed `Parole') of the British White Paper on `Crime, Justice and Protecting the Public' (1990).

24. There is yet another baneful effect of overcrowding. The same is that it does not permit segregation among convicts - Those punished for serious offences and for minor. The result may be that hardened criminals spread their influence over others. Then, juvenile offenders kept in jails (because of inadequacy of alternative places where they are required to be confined) get mixed up

with others and they are likely to get spoiled further. So, problem of overcrowding is required to be tackled in right earnest for a better future.

#### Delay in Trial

25. It is apparent that delay in trial finds an undertrial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. In the present proceeding, we are really not concerned regarding the causes of delay and how to remedy this problem. Much has been said in this regard elsewhere and we do not propose to burden this judgment with this aspect. We would rather confine ourselves as to how to take care of the hardship which is caused to a UTP because of the delay in disposal of this case. The recent judgments of this Court (noted above) requiring release of UTP on bail where the trial gets protracted would hopefully take care to a great extent the hardship caused in this regard. We desire to see full implementation of the directions given in the aforesaid cases.

26. Another aspect to which we propose to advert is the grievance very often made about non-production of UTPs in courts on remand dates. The District Judge in his report has also found this as a fact. The reason generally advanced for such non-production is want of police escorts. It has to be remembered that production before the court on remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial court before ordering for further remand, as pointed out in a number of decisions by this Court.

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

28. We would require the concerned authorities to take appropriate decision in this regard within a period of six months from today.

#### Torture and ill-treatment

29. There are horror stories in this regard. The cellular jail on Port Blair resounds with the cries of the prisoners who were subject to various forms of torture. This is now being brought home in the Light and Sound programme being organised in that jail, which after Independence has been declared as a national monument. Other jails would also tell similar stories.

30. Apart from torture, various other physical ill-treatment like putting of fetters, iron bars are generally taken recourse to in jails. Some of these are under the colour of provisions in Jail Manuals. The permissible limits of these methods has been spelt out well in many earlier decisions of this Court to which reference has been already made. We do not propose to repeat.

31. What we would rather state is that if what is being done to prisoners in the above regard is to enforce prison discipline mentioned in various Jail Manuals, there exists a strong need for a new All India Jail Manual to serve as a model for the country, which Manual would take note of what has been said about various punishments by this Court in its aforesaid decisions. Not only this, the century old Indian Prison Act, 1894, needs a through look and is required to be replaced by a new enactment which would take care of the thinking of the Independent India and of our constitutional morose and mandate. The National Human Rights commission has also felt that need for such exercise, mention about which has been made in para 4.18 and 4.21 of the aforesaid Report.

32. A reading of the Chapter IX on 'Prison Discipline' in RN Datir's book on 'Prison as a Social System', shows that in some Jail Manuals even flogging/whipping has been retained as a punishment, which would not be permissible in view of the right enshrined in Article 21 of the Constitution. We have mentioned about this only to highlight the need for a new model All India Jail Manual.

33. It would be apposite in this context to refer to the recent decision of the United States Supreme Court in *Hudson v. Mc Millian*, 403 US 1, in which that Court was required to decide whether the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even when the inmate does not suffer serious injury. This question was answered in affirmative by majority of 7 : 2. As already mentioned. Article 21 of our Constitution also does not permit cruel punishment.

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

35. The Mulla Committee has dealt with this aspect in Chapter 6 and 7 of its Report, a perusal of which shows the pathetic position in which most of the jails are placed insofar as hygienic conditions are concerned. Most of them also lack proper facilities for treatment of prisoners. The recommendations of the Committee in this regard are to be found in Chapter 29. We have nothing useful to add except pointing out that society has an obligation towards prisoners' health for two reasons. First, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap.

36. In 'American Prison System' (supra) there is a discussion at pages 411-13 as to whether a prisoner can seek any relief from the Court because of neglect of medical treatment on the ground of violation of their constitutional right. Policy makers may bear this also in mind while deciding about the recommendations of the Mulla Committee Report, which they would so do within six months from today. Insubstantial food and inadequate clothing

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

#### Prison vices

38. On this aspect nothing more is required to be said than what was pointed out in Sunil Batra (II). It may only be stated that some vices may be taken care of if what is being stated later on the subject of jail visits is given concrete shape. We have said so because many of the vices are related to sexual urge, which remains unsatisfied because of snapping of marital life of the prisoner. If something could be done to keep the thread of family life unbroken some vices many take care of themselves, as sexual frustration may become tolerable.

39. The aforesaid seems to us a more rational way to deal with prison vices rather than awarding hard punishment to them. We may not be, however, understood to say that the jail authorities need not take action against the prisoners indulging in vices; but in the situation in which they are placed, a sympathetic approach is also required. Deficiency in communication

40. While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma. A liberalised view relating to communication with kith and kin specially is desirable. It is hoped that the model All India Jail Manual, about the need of which we have already adverted, would make necessary provision in this regard. It may be pointed out that though there may be some rationale for restricting visits, to which aspect we shall presently address, but insofar as communication by post is concerned, there does not seem to be any plausible reason to deny easy facility to an inmate.

#### Streamlining of jail visits

41. Prison visits fall into three categories: (1) relatives and friends; (2) professionals; and (3) lay persons. In the first category comes the spouse. Visit by him/her has special significance because a research undertaken on Indian prisoners sometime back showed that majority of them were in the age group of 18 to 34, which shows that most of them were young and were perhaps having a married life before their imprisonment. For such persons, denial of conjugal life during the entire period of incarceration creates emotional problems also. Visits by a spouse is, therefore, of great importance.

42. It is, of course, correct that at times visit may become a difficult task for the visitors. This would be so where prisoners are geographically isolated. This apart, in many jails facilities available to the visitors are degrading. At many places even privacy is not maintained. If the offenders and visitors are screened, the same emphasises their separation rather than retaining common bonds and

interests. There is then urgent need to streamline these visits.

43. Dr. Mir Mehraj-ud-din in his book 'Crime and Criminal Justice System in India' has dealt with different aspects of prison visits in Chapter VI headed 'Resocialization : Search for Goals'. The learned author has said that frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment, which brings about a psychological communion between him and other members of the family.

44. As to visits by professionals, i.e. the lawyer, the same has to be guaranteed to the required extent. If the prisoner be a pre-trial detainee, in view of the right conferred by Article 22(1) of the Constitution.

#### Management of open air prisons

45. Open air prisons play an important role in the scheme of reformation of a prisoner which has to be one of the desideratum of prison management. They represent one of the most successful applications of the principle of individualization of penalties with a view to social readjustment as stated by B. Chandra in the Preface to his book titled "Open Air Prisons". It has been said so because release of offenders on probation, home leave to prisoners, introduction of wage system, release on parole, educational, moral and vocational training of prisoners are some of the features of the open air prison (camp) system. Chandra has stated in the concluding portion of Chapter 3 at page 150 (of 1984 edition) that in terms of finances, open institution is far less costly than a closed establishment and the scheme has further advantage that the Government is able to employ in work, for the benefit of the public at large, the jail population which would have otherwise remained unproductive. According to the author, the monetary returns are positive, and once put into operation, the camps pay for itself.

46. Reference may also be made to what has been stated in Chapter 5 about the change in the human and social outlook, which activities and programmes of these camps bring about. The whole thrust is to see that after release the prisoners may not relapse into crimes, for which purpose they are given incentives to live normal life, as they are trained in the fields of agriculture, horticulture etc. Games, sports and other recreational facilities, which form part of the routine life at the open air camps, inculcate in the prisoners a sense of discipline and social responsibility. The prayers made regularly provide spiritual straight.

47. While on the subject of prayer, mention may be made about the experiment carried out even in the closed Tihar Jail sometime in 1993-94, when Vipassana meditation was introduced in a big way, which according to Tarsem Kumar, one of the Jail Superintendents of the Jail, brought about a radical change in the living and thinking of the prisoners, as narrated in his book titled "Freedom Behind Bars".

48. Open air prison, however, create their own problem which are basically of management. We are, however, sure that these problems are not such which cannot be sorted out. For the greater good of

the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable. So, let more and more open air prisons be opened. To start with, this may be done at all the District Headquarters of the country.

## Conclusion

49. We have travelled a long path. before we end our journey, it would be useful to recapitulate the directions we have given on the way to various authorities. These are: (1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the subject of 'Congestion of undertrial prisoners in jail' as contained in Chapter 9. (Para 20A).

(2) To apply mind to the suggestions of the Mulla Committee as contained in Chapter 20 of Volume I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful. (Para 23). (3) To consider the question of entrusting the duty of producing UTPs on remand dates to the prison staff. (Para P7).

(4) To deliberate about enacting of new Prison Act to replace century old Indian Prison Act, 1894. (Para 31). We understand that the National Human Rights Commission has prepared an outline of an All-India statute, which may replace the old act; and some discussions at a national level conference also took place in 1995. we are of the view that all the States must try to amend their own enactments, if any, in harmony with the all India thinking in this regard.

(5) To examine the question of framing of a model new All India Jail Manual as indicated in para 31.

(6) To reflect on the recommendations of Mulla Committee made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps. (Paras 35 and 36). (7) To ponder about the need of complaint box in all the jails. (Para 37).

(8) To think about introduction of liberalisation of communication facilities. (Para 40).

(9) To take needful steps for streamlining of jail visits as indicated in para 42.

(10) To ruminate on the question of introduction of open air prisons at least in the District Headquarters of the country. (Para 48).

50. The end of the journey is in sight. We conclude by saying that the cognizance of the letter written by Rama Murthy and the efforts made thereafter to find out what was really happening in the Central Jail of Bangalore, resulting in submission of a voluminous report by District Judge, would not prove to be an exercise in futility, if what we have stated above is taken in all seriousness and our prisons become reform houses as well, in which case the social and economic costs of incarceration would become more worth while. There seems to be no cause for disillusionment, despite what has been stated in this regard by Roy D. King and Rod Morgan in 'The Future of Prison System'. According to us, talk about treatment and training in prisons is not rhetoric; it can prove to be real, given the zeal and determination. And we cannot afford to fail in this sphere as a sound prison

system is a crying need of our time in the backdrop of great increase in the numbers of prisoners and that too of various types and from different strata of society.

51. Let us, therefore, resolve to improve our prison system by introducing new techniques of management and by educating the prison staff with our constitutional obligations towards prisoners. Rest would follow, as day follows the night. Let the dawning ray (of hope) see the end of gloom cast on the faces of majority of prisoners and let a new awakening percolate every prison wall. Let it be remembered that "where there is will, there is way". Will there is, way would be found.

52. We had desired to dispose of the writ petition accordingly. But as we could not hear all the States, because of constraint of time and as they have to be heard before giving directions as detailed above, let notices be issued on the Secretary to the Government of India, Ministry of Home and the Chief Secretaries of all the States and Union Territories, as to why they should not be asked to act for above. Let causes be shown within three months and let the case be planed for further hearing thereafter soon.