

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.406/2013

RE - INHUMAN CONDITIONS IN 1382 PRISONS

ORDER

Madan B. Lokur, J.

1. Prison reforms have been the subject matter of discussion and decisions rendered by this Court from time to time over the last 35 years. Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform.

2. As far back as in 1980, this Court had occasion to deal with the rights of prisoners in Sunil Batra (II) v. Administration.¹ In that decision, this Court gave a very obvious answer to the question whether prisoners are persons and whether they are entitled to fundamental rights while in custody, although

Delhi

Signature Not Verified

Digitally signed by
Sanjay Kumar
Date: 2016.02.05
14:35:47 IST

there may be a shrinkage in the fundamental rights. This is what

Reason:

¹
(1980) 3 SCC 488

W.P. (C) No. 406 of 2013
this Court had to say in this regard:

Page 1

"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,² 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.

3. A little later in the aforesaid decision, this Court pointed out the double handicap that prisoners face; the first being that most prisoners belong to the weaker sections of society and the second being that since they are confined in a walled-off world their voices are inaudible. This is what this Court had to say in this regard:

"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."

4. In Rama Murthy v. State of Karnataka³ this Court identified as many as nine issues facing prisons and needing reforms. They are:

(i) over-crowding;

2

(1978) 4 SCC 494

3

(1997) 2 SCC 642

W.P. (C) No. 406 of 2013

Page 2

(ii) Delay in trial;

(iii) Torture and ill-treatment;

(iv) Neglect of health and hygiene;

(v) Insubstantial food and inadequate clothing;

(vi) Prison vices;

(vii) Deficiency in communication;

(viii) Streamlining of jail visits;

(ix) Management of open air prisons.

This Court expressed the view that these major problems need immediate attention. Unfortunately, we are still struggling with a resolution of at least some of these problems.

5. In T. K. Gopal v. State of Karnataka⁴ this Court advocated a therapeutic approach in dealing with the criminal tendencies of prisoners.

It was pointed out that there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being

entitled to all the basic human rights, human dignity and human sympathy. It was pointed out that it is this philosophy that has persuaded this Court in a series of decisions to project the need for prison reforms. This is what this Court had to say:

"The therapeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including

4

(2000) 6 SCC 168

W.P. (C) No. 406 of 2013

Page 3

family problems. We are not concerned with those factors as therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, maybe a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that this Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy."

6. In this background, a letter on 13 th June, 2013 addressed by Justice R.C. Lahoti, a former Chief Justice of India to Hon'ble the Chief Justice of India relating to conditions in prisons is rather disturbing. Justice R.C. Lahoti invited attention to the inhuman conditions prevailing in 1382 prisons in India as reflected in a Graphic Story appearing in Dainik Bhaskar (National Edition) on 24th March, 2013. A photocopy of the Graphic Story was attached to the letter.

Justice R.C. Lahoti pointed out that the story highlights:

- (i) Overcrowding of prisons;
- (ii) Unnatural death of prisoners;
- (iii) Gross inadequacy of staff and
- (iv) Available staff being untrained or inadequately trained.

W.P. (C) No. 406 of 2013

Page 4

7. Justice R.C. Lahoti also pointed out that the State cannot disown its liability to the life and safety of a prisoner once in custody and that there were hardly any schemes for reformation for

first time offenders and prisoners in their youth and to save them from coming into contact with hardened prisoners.

8. Justice R.C. Lahoti ended the letter by submitting that the Graphic Story raised an issue that needed to be taken note of and dealt with in public interest by this Court and that he was inviting the attention of this Court in his capacity as a citizen of the country. We may say that Justice R.C. Lahoti has brought an important issue to the forefront, dispelling the view:

"Judges rarely express concern for the inhumane treatment that the person being sentenced is likely to face from fellow prisoners and prison officials, or that time in prison provides poor preparation for a productive life afterwards. Courts rarely consider tragic personal pasts that may be partly responsible for criminal behavior, or how the communities and families of a defendant will suffer during and long after his imprisonment."⁵

9. By an order dated 5th July, 2013 the letter was registered as a public interest writ petition and the Registry of this Court was directed to take steps to issue notice to the appropriate authorities after obtaining a list from the office of the learned Attorney General.

10. In reply to the notice issued by this Court, several States and Union Territories gave their response either in the form of

⁵ Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Discourse by Eva S. Nilsen, Boston University School of Law Working Paper Series, Public Law & Legal Theory Working Paper No. 07-33

W.P. (C) No. 406 of 2013

Page 5

communications addressed to the Registry of this Court or in the

form of affidavits. It is not necessary for us to detail each of the responses. Suffice it to say that on the four issues raised by

Justice R.C. Lahoti there is general consensus that the prisons

(both Central and District) are over-crowded, some unnatural

deaths have taken place in some prisons, there is generally a

shortage of staff and it is not as if all of them are adequately and

suitably trained to handle issues relating to the management of

prisons and prisoners and finally that steps have been taken for

the reformation and rehabilitation of prisoners. However, a closer

scrutiny of the responses received indicates that by and large the

steps taken are facile and lack adequate sincerity in implementation.

11. In view of the above, the Social Justice Bench of this Court

passed an order on 13th March, 2015 requiring the Union of India to furnish certain information primarily relating to the more serious issue of over-crowding in prisons and improving the living conditions of prisoners. The order passed by the Social Justice Bench on 13th March, 2015 reads as follows:-

"We have heard learned Additional Solicitor General and would like information on the following issues:

(i) The utilization of the grant of Rs.609 crores under the 13th Finance Commission for the improvement of

W.P. (C) No. 406 of 2013

Page 6

- conditions in prisons.
- (ii) The grant to the States in respect of the prisons under the 14th Finance Commission.
- (iii) Steps taken and being taken by the Central Government as well as by the State Governments for effective implementation of Section 436A of the Code of Criminal Procedure, 1973.
- (iv) Steps taken and being taken by the Central Government and the State Governments for effective implementation of the Explanation to Section 436 of the Code of Criminal Procedure, 1973 and the number of persons in custody due to their inability to provide adequate security/surety for their release on bail.
- (v) The number of persons in custody who have committed compoundable offences and are languishing in custody.
- (vi) Steps taken for the effective implementation of the Repatriation of Prisoners Act, 2003.

We expect all the State Governments to fully cooperate with the Central Government in this regard since the matter involves Article 21 of the Constitution and to furnish necessary information within three weeks.

List the matter on 24th April, 2015."

12. In compliance with the aforesaid order, the Union of India through the Ministry of Home Affairs filed a detailed affidavit dated 23rd April, 2015. It was stated in the affidavit that all States and Union Territories were asked to provide the information as required by this Court but in spite of reminders and meetings, the information had not been received from the State of Uttarakhand and the Union Territories of Dadra & Nagar Haveli, Daman & Diu and Lakshadweep.

13. It was stated that one of the problems faced in aggregating the information that had been received was that management

W.P. (C) No. 406 of 2013

Page 7

information systems were not in place in a comprehensive manner.

To remedy this situation an e-prisons application was being

designed so that all essential data could be centrally aggregated. It was stated in the affidavit that a draft project report was being prepared through a project management consultancy so that an e-prisons application could be rolled out with integrated information in all States and Union Territories comprehensively for better monitoring of the status of prisoners, particularly undertrial prisoners.

14. In response to the first issue, it was pointed out in the affidavit in the form of a tabular statement that funds were made available under the 13th Finance Commission for the improvement of conditions in prisons in respect of several States. We are surprised that no grant was allotted in as many as 19 States and in the States where grants were allotted, the utilization was less than 100%, except in the State of Tripura.

15. With regard to the grant under the 14 th Finance Commission, it was stated that the 14th Finance Commission had reported that the States have the appropriate fiscal space to provide for the additional expenditure needs as per their requirements. The 14 th Finance Commission did not make any specific fund allocation in favour of the Central Government but the States had projected

W.P. (C) No. 406 of 2013

Page 8

their demands individually and the tabular statement in that regard is annexed to the affidavit. As far as the Union Territories are concerned, apart from Delhi and Puducherry none of the Union Territories had projected any demand.

16. With regard to the third issue regarding effective implementation of Section 436A of the Code of Criminal Procedure, (for short the Cr.P.C.), the affidavit stated that an advisory had been issued by the Ministry of Home Affairs of the Government of India on 17th January, 2013 to all the States and Union Territories to implement the provisions of Section 436A of the Cr.P.C. to reduce overcrowding in prisons. Among the measures suggested in this regard by the Ministry of Home Affairs was the constitution of a Review Committee in every district with the District Judge in the

Chair with the District Magistrate and the Superintendent of Police as Members to meet every three months and review the cases of undertrial prisoners. The Jail Superintendents were also required to conduct a survey of all cases where undertrial prisoners have completed more than one fourth of the maximum sentence and send a report in this regard to the District Legal Services Committee constituted under The Legal Services Authorities Act, 1987 as well as to the Review Committee. It was also suggested that the prison authorities should educate undertrials of their right

W.P. (C) No. 406 of 2013

Page 9

to bail and the District Legal Services Committee should provide legal aid through empanelled lawyers to the undertrial prisoners for their release on bail or for the reduction of the bail amount. The Home Department of the States was also requested to develop a management information system to ascertain the jail-wise progress in this regard.

17. The aforesaid advisory dated 17th January, 2013 was followed up through a letter of the Union Home Minister to the Chief Ministers/Lieutenant Governors on 3 rd September, 2014. It was pointed out in the letter that as per the statistics provided by the National Crime Records Bureau (NCRB) as on 31 st December, 2013 the number of undertrial prisoners was 67.6% of the entire prison population and that the percentage was unacceptably high. In this context it was suggested that the provisions of Section 436 of the Cr.P.C. as well as Section 436A of the Cr.P.C. had to be made use of. It was also suggested that steps be taken to utilize the provisions of plea bargaining, the establishment of fast track courts, holding of Lok Adalats and ensuring adequate means for the production of the accused before the Court directly or through video conferencing.

18. Yet another letter was sent to the Director General of Prisons of all States/Union Territories on 22 nd September, 2014 by the

W.P. (C) No. 406 of 2013

Page 10

Ministry of Home Affairs drawing attention to the directions of this Court in Bhim Singh v. Union of India dated 5th September, 2014 relating to Section 436A of the Cr.P.C. and to take necessary steps to comply with the orders passed by this Court.

19. In a similar vein, yet another advisory was issued by the Government of India on 27th September, 2014. It was averred in the affidavit that as a result of these advisories and communications, some undertrial prisoners have been released in implementation of the provisions of Section 436A of the Cr.P.C.

20. With regard to the fourth issue concerning the effective implementation of Section 436 of the Cr.P.C., the affidavit stated that an advisory was issued way back on 9 th May, 2011 in which it was pointed out, inter alia, that prison overcrowding compels prisoners to be kept under conditions that are unacceptable in light of the United Nations Standard Minimum Rules for Treatment of Offenders to which India is the signatory. It was pointed that as per the statistics prepared by the NCRB as on 31 st December, 2008 prisons in India are overcrowded to the extent of 129%. The advisory highlighted some measures taken by some of the States to reduce the number of undertrial prisoners, including their release under the provisions of the Probation of Offenders Act, 1958 and encouraging NGOs in association with District Legal Services

6

MANU/SC/0786/2014

W.P. (C) No. 406 of 2013

Page 11

Committees to arrange legal aid for unrepresented undertrial

prisoners as well as to implement the guidelines issued by the

Bombay High Court in Rajendra Bidkar v. State of

Maharashtra, CWP No. 386 of 2004 (unreported decision).

21. With regard to the fifth issue relating to the number of persons who have been languishing in jails in compoundable offences, a chart was annexed to the affidavit which indicated, by and large, that quite a few States had taken no effective steps in this regard particularly Andhra Pradesh, Assam, Chhattisgarh, Haryana, Kerala, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Telangana, Tripura and Uttar Pradesh.

The reason why many

undertrial prisoners had not been released was their inability to provide security and surety for their release. The steps taken to have these prisoners released from custody were not indicated in the affidavit.

22. With regard to the effective implementation of the Repatriation of Prisoners Act, 2003 it was stated that agreements on transfer of sentenced persons have been bilaterally signed with 25 countries but the agreements are operational after ratification by both sides only with respect to 18 countries. In addition, transfer arrangements have been made with 19 countries under the Inter-American Convention on Serving Criminal Sentences Abroad

W.P. (C) No. 406 of 2013 Page 12
thereby making the total number of countries with which transfer arrangements have been made for prisoners to 37 countries.

23. Keeping in view the affidavit dated 23 rd April, 2015 filed by the Ministry of Home Affairs and the somewhat lukewarm response of the States and Union Territories, the Social Justice Bench passed the following directions on 24th April, 2015:

"We have perused the affidavit filed by the Ministry of Home Affairs on 23rd April, 2015 and have heard learned counsel.

The admitted position is 67% of all the prisoners in jails are under trial prisoners. This is an extremely high percentage and the number of such prisoners is said to be about 2,78,000 as on 31st December, 2013.

Keeping this in mind and the various suggestions that have been made in the affidavit, we are of the view that the following directions need to be issued:

1. A Prisoners Management System (a sort of Management Information System) has been in use in Tihar Jail for quite some time, as stated in the affidavit. The Ministry of Home Affairs should carefully study this application software and get back to us on the next date of hearing with any suggestions or modifications in this regard, so that the software can be improved and then deployed in other jails all over the country, if necessary.
2. We would like the assistance of the National Legal Services Authority (NALSA) in this matter of crucial importance concerning prisoners in the country. We direct the Member Secretary of NALSA to appoint a senior judicial officer as the nodal officer to assist us and deal with the issues that have arisen in this case.
3. For the purpose of implementation of Section 436A of the Code of Criminal Procedure, 1973 (for short "the Code"), the Ministry of Home Affairs has issued an

requirements of the Advisory is that an Under Trial Review Committee should be set up in every district. The composition of the Under Trial Review Committee is the District Judge, as Chairperson, the District Magistrate and the District Superintendent of Police as members.

The Member Secretary of NALSA will, in coordination with the State Legal Services Authority and the Ministry of Home Affairs, urgently ensure that such an Under Trial Review Committee is established in every District, within one month. The next meeting of each such Committee should be held on or about 30th June, 2015.

4. In the meeting to be held on or about 30th June, 2015, the Under Trial Review Committee should consider the cases of all under trial prisoners who are entitled to the benefit of Section 436A of the Code. The Ministry of Home Affairs has indicated that in case of multiple offences having different periods of incarceration, a prisoner should be released after half the period of incarceration is undergone for the offence with the greater punishment. In our opinion, while this may be the requirement of Section 436A of the Code, it will be appropriate if in a case of multiple offences, a review is conducted after half the sentence of the lesser offence is completed by the under trial prisoner. It is not necessary or compulsory that an under trial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.
5. The Bureau of Police Research and Development had circulated a Model Prison Manual in 2003, as stated in the affidavit. About 12 years have gone by and since then there has been a huge change in circumstances and availability of technology. We direct the Ministry of Home Affairs to ensure that the Bureau of Police Research and Development undertakes a review of the Model Prison Manual within a period of three months. We are told that a review has already commenced. We expect it to be completed within three months.

6. The Member Secretary of NALSA should issue directions to the State Legal Services Authorities to urgently take up cases of prisoners who are unable to furnish bail and are still in custody for that reason. From the figures that have been annexed to the affidavit filed by the Ministry, we find that there are a large number of such prisoners who are continuing in custody only because of their poverty. This is certainly not the spirit of the law and poverty cannot be a ground for incarcerating a person. As per the figures provided by the Ministry of Home Affairs, in the State of Uttar Pradesh, there are as many as 530 such persons. The State Legal Services Authorities should instruct the panel lawyers to urgently meet such prisoners, discuss the case with them and move appropriate applications before the appropriate court for release of such persons unless they are required in custody for some other purposes.

7. There are a large number of compoundable offences for which persons are in custody. No attempt seems to have been made to compound those offences and instead the alleged offender has been incarcerated. The State Legal Services Authorities are directed, through the Member Secretary of NALSA to urgently take up the issue with the panel lawyers so that wherever the offences can be compounded, immediate steps should be taken and wherever the offences cannot be compounded, efforts should be made to expedite the disposal of those cases or at least efforts should be made to have the persons in custody released therefrom at the earliest.

A copy of this order be given immediately to the Member Secretary, NALSA for compliance.

List the matter on 7th August, 2015 for further directions and updating the progress made.

For the present, the presence of learned counsel for the States and Union Territories is not necessary. Accordingly, their presence is dispensed with."

24. The order dated 24th April, 2015 made a pointed reference to

W.P. (C) No. 406 of 2013

Page 15

the extremely high percentage of undertrial prisoners and the total

number of prisoners as on 31st December, 2013.

25. Reference was also made to the fact that the Bureau of Police

Research and Development had circulated a Model Prison Manual

in 2003 but since about 12 years had gone by, the Ministry of

Home Affairs was directed to ensure that the Bureau of Police

Research and Development undertakes a review of the Model Prison

Manual within a period of three months.

26. Directions were also issued for the assistance of the National

Legal Services Authority (NALSA) to assist the Social Justice Bench

and deal with the issues that had arisen in the case.

27. A direction was also issued to ensure that the Under Trial

Review Committee is established within one month in all districts

and the next meeting of that Committee in each district should be

held on or about 30th June, 2015. NALSA was required to take up

the issue of undertrial prisoners particularly in the State of Uttar

Pradesh where as many as 530 persons were in custody only

because of their poverty.

28. Pursuant to the aforesaid order and directions, NALSA filed a

compliance report on 4th August, 2015 in which it was stated that

steps have been taken to ensure that Under Trial Review

Committees are set up in every district and the State Legal Services

W.P. (C) No. 406 of 2013

Page 16

Authorities had also been asked to take up the cases of prisoners

who were unable to furnish bail bonds and to move appropriate

applications on their behalf.

29. The compliance report stated that with regard to the Prisoners Management System, the Ministry of Home Affairs had already appointed a project management consultant to prepare a detailed project report for the e-Prisons project. It was stated that there were four prison software applications that had been developed by (i) National Informatics Centre (ii) Goa Electronic Ltd. (iii) Gujarat Government through TCS and (iv) Phoenix for Prison Management System in Haryana. The various applications would be evaluated and discussed in a conference of the Director General (Prisons)/Inspector General (Prisons) to be held on 20 th August, 2015.

30. The compliance report also indicated a break-up of the meetings of the Under Trial Review Committees that had been set up in the various States and that reports of the meeting that were directed to be held on or about 30th June, 2015 were still awaited from a few States and Union Territories.

31. As regards the Model Prison Manual it was submitted that a draft had been prepared and was circulated for comments and a further meeting was scheduled to be held in August, 2015 to

W.P. (C) No. 406 of 2013

Page 17

finalize the draft.

32. With regard to the cases of undertrial prisoners who were unable to furnish bail bonds it was stated that as many as 3470 such persons were in custody due to their inability to furnish bail bonds and a maximum number of such undertrial prisoners were in the State of Maharashtra, that is, 797 undertrial prisoners. It was stated that as many as 3278 undertrial prisoners were those who were involved in compoundable offences and efforts were being

made to expedite the disposal of their cases.

33. Keeping in view the compliance report as well as some of the gaps that appeared necessary to be filled up, the Social Justice Bench passed an order dated 7th August, 2015 requiring, inter alia, the Under Trial Review Committee to include the Secretary of the District Legal Services Committee as one of the members of the Review Committee. The Ministry of Home Affairs was directed to issue an appropriate order in this regard.

34. With regard to the Model Prison Manual, it was suggested to the learned Additional Solicitor General appearing on behalf of the Union of India that the composition of the Committee looking into the Model Prison Manual should be a multi-disciplinary body involving members from civil society and NGOs as well as other experts. It was also directed that the Model Prison Manual should

W.P. (C) No. 406 of 2013

Page 18

look into providing a crèche for the children of prisoners.

35. With regard to the large number of undertrial prisoners in the State of Maharashtra, it was directed that the matter should be reviewed and an adequate number of legal aid lawyers may be appointed so that necessary steps could be taken with regard to the release of undertrial prisoners in accordance with law, particularly those who had been granted bail but were unable to furnish the bail bond due to their poverty.

The order dated 7th August, 2015 reads as follows:-

"We have gone through the compliance report filed on behalf of NALSA and we appreciate the work done by NALSA within the time frame prescribed.

We find from the report that the Under Trial Review Committees have been established in large number of districts but they have not been established in all the districts across the country. Mr. Rajesh Kumar Goel, Director, NALSA - the nodal officer will look into the matter and ensure that, wherever necessary, the Under Trial Review Committee should be established and should meet regularly.

We are told that the Under Trial Review Committee consists of the District Judge, the Superintendent of Police and the District Magistrate. Since the issues pertaining to under trial prisoners are also of great concern of the District Legal Services Authorities, we direct that the Under Trial

Review committee should also have the Secretary of the District Legal Services Authority as one of the members of the Committee. The Ministry of Home Affairs will issue a necessary order in this regard to the Superintendent of Police to associate the Secretary of the District Legal Services Authority in such meetings.

W.P. (C) No. 406 of 2013

Page 19

It is stated that so far as a software for the prisoners is concerned, the Ministry of Home Affairs has appointed a Project Management Consultant and at present there are four kinds of software in existence in the country with regard to prison management. It is stated that a meeting will be held on 20th August, 2015 with the Director General (Prisons)/Inspector General (Prisons) to evaluate the existing application software.

We expect an early decision in the matter and early implementation of the decision that is taken.

It is stated that a Model Prison Manual is being looked into since the earlier Manual was of considerable vintage. We are told that a meeting is likely to be held towards the end of this month to finalize the Model Prison Manual.

Learned ASG is unable to inform us about the composition of the Committee that is looking into the Model Prison Manual. We have suggested to him (and this suggestion has been accepted) that a multi-disciplinary body including members from Civil Society, NGOs concerned with under trial prisoners as also experts from some other disciplines, including academia and whose assistance would be necessary, should also be associated in drafting the comprehensive Model Prison Manual.

To the extent possible, the Model Prison Manual should be finalized at the earliest and preferably within a month or two, but after having extensive and intensive consultations with a multi-disciplinary body as above.

In the Model Prison Manual, the Ministry of Home Affairs should also look into the possibility of having a creche for the children of prisoners, particularly women prisoners as it exists in Tihar Jail.

We find that the number of under trial prisoners in the State of Maharashtra is extremely large and we also think that there are not adequate number of legal aid lawyers to look into the grievances of under trial prisoner. Mr. Rajesh Kumar Goel, Director, NALSA says on behalf of NALSA that necessary steps will be taken to appoint adequate number

W.P. (C) No. 406 of 2013

Page 20

of legal aid lawyers so that necessary steps can be taken with regard to the release of under trial prisoners in accordance with law including those who have been granted bail but are unable to furnish the bail bond.

List the matter on 18th September, 2015."

36. When the matter was taken up by the Social Justice Bench

on 18th September, 2015, Mr. Gaurav Agrawal, Advocate was

appointed as Amicus Curiae to assist the Social Justice Bench.

37. On that date, the learned Additional Solicitor General

informed the Social Justice Bench that the Ministry of Home Affairs had duly written to the Directors General of all the States and Union Territories to ensure that the Secretary of the District Legal Services Committee is included as a member in the Under Trial Review Committee. The learned Additional Solicitor General also informed that the Model Prison Manual was likely to be made available sometime in the middle of December, 2015.

38. It was pointed out on behalf of NALSA by Mr. Rajesh Kumar Goel that some clarity was required with respect to paragraph 4 of the order dated 24th April, 2015. In view of this request, it was clarified that there is no mandate that a person who has completed half the period of sentence, in the case of multiple offences, should be released. This was entirely for the Under Trial Review Committee to decide and there was no direction given for release in this regard.

W.P. (C) No. 406 of 2013

Page 21

39. With regard to the large number of undertrial prisoners in Maharashtra who were entitled to bail, it was submitted that out of 797 such undertrial prisoners nearly 503 had been released and that steps were being taken with regard to the remaining undertrial prisoners.

40. The order passed by the Social Justice Bench on 18 th September, 2015 reads as follows:-

"This petition pertains to what has been described as inhuman conditions in 1382 prisons across the country.

On our request, Mr. Gaurav Agrawal, Advocate has agreed to assist us in the matter as Amicus Curiae since the complaint was received by Post. The Registry should give a copy each of all the documents in this matter to Mr. Gaurav Agrawal.

Learned Additional Solicitor General has drawn our attention to the order dated 7th August, 2015 and in compliance thereof he has stated that the Ministry of Home Affairs has written to the Directors General of all the States/Union Territories on 14th August, 2015 to ensure that the Secretary of the District Legal Services Committee is included as a member in the Under Trial Review Committee. A similar letter was written by NALSA on 11th August, 2015. NALSA should follow up on this and ensure that it is effectively represented in the Under Trial Review Committee.

It is not yet clear whether the Under Trial Review

Committee has been set up in every District. Learned Additional Solicitor General and Mr. Rajesh Kumar Goel, Director, NALSA will look into this and let us know the progress on the next date of hearing.

As far as the software for Prison Management is concerned, it is stated by the learned Additional Solicitor General that all the Directors General of Police have been asked to intimate

W.P. (C) No. 406 of 2013

Page 22

which of the four available software is acceptable to them. He further states that the software will be integrated on the cloud so that all information can be made available regardless of which software is being utilized. He expects the needful to be done within a period of about two months.

We expect the Directors General of Police in every State/Union Territory to respond expeditiously to any request made by the Ministry of Home Affairs in this regard.

With regard to the Model Prison Manual of 2003, it is stated by the learned Additional Solicitor General that meetings have been held in this regard and it is expected that the Model Prison Manual will be made available by sometime in the middle of December, 2015. He states that people from academia as well as NGOs are associated in the project. It is expected that the Prison Manual will also take care of establishing a creche in respect of women prisoners who have children.

With regard to the release of under trial prisoners, particularly in the States of Uttar Pradesh and Maharashtra, as mentioned in our order dated 24th April, 2015, learned Additional Solicitor General says that at the present moment he does not have any instructions in this regard, but the Ministry of Home Affairs will write to the State Governments/Union Territories to take urgent steps in terms of our orders.

Mr. Rajesh Kumar Goel, Director, NALSA says that legal aid lawyers have been instructed to take steps for the possible release of under trial prisoners in accordance with law.

Mr. Rajesh Kumar Goel has also drawn our attention to paragraph 4 of the order dated 24th April, 2015. We make it clear that there is no mandate that a person who has completed half the period of his sentence, in the case of multiple offences, should be released. This is entirely for the Under Trial Review Committee and the competent authority to decide and there is absolutely no direction given by this Court for release of such under trials. Their case will have to be considered by the Under Trial Review Committee and the competent authority in accordance with law.

W.P. (C) No. 406 of 2013

Page 23

Mr. Rajesh Kumar Goel, Director, NALSA says that steps are being taken to appoint an adequate number of panel lawyers.

With reference to the release of under trial prisoners, he says that in the State of Maharashtra, as per the information available, 797 under trial prisoners were entitled to bail and with the efforts of the State Legal Services Authority, nearly 503 have since been released. Steps are being taken with regard to the remaining under trial prisoners.

Mr. Rajesh Kumar Goel, Director, NALSA says that the Member Secretaries of the State Legal Services Authority will be advised to compile relevant information with regard to the cases of compoundable offences pending in the States so that they can also be disposed of at the earliest. We expect the States of Uttar Pradesh and Maharashtra to expeditiously respond to the letter written by NALSA since the maximum number of cases pertaining to compoundable offences are pending in these States.

List the matter on 16th October, 2015."

41. Pursuant to the aforesaid order, NALSA filed another compliance report dated 14th October, 2015 in which it was stated that an Under Trial Review Committee had been set up in every district. However, the annexure to the compliance report indicated that no information was available from the State of Jammu & Kashmir and in some States particularly Gujarat and Uttar Pradesh and the Union Territory of Andaman & Nicobar Islands, the Secretary of the District Legal Services Committee was not made a member of the Review Committee.

42. It was also stated that the State Legal Services Authority had been requested to appoint an adequate number of panel lawyers
W.P. (C) No. 406 of 2013 Page 24
and to instruct them to take steps for the early release of undertrial prisoners.

43. When the matter was taken up on 16th October, 2015 the Social Justice Bench expressed its distress that only three States had responded to the information sought by the Ministry of Home Affairs with regard to holding the quarterly meeting of the Under Trial Review Committee on or before 30 th September, 2015. Learned counsel appearing for the Union of India stated that the matter would be taken up with all the State Governments with due seriousness and it would be ensured that such meetings are held regularly. It was also stated that the latest status report would be filed in the second week of January, 2016.

44. Learned amicus curiae informed the Social Justice Bench that the Under Trial Review Committee had been set up in every district and a representative of the District Legal Services Committee was included in the said Committee.

The order dated 16th October, 2015 reads as follows:-

"It is very disconcerting to hear from learned counsel for the Union of India that there is no information available except from three States with regard to the release of under trial prisoners.

A meeting of the Under Trial Review Committee was supposed to be held on or before 30th September, 2015, but only three States have responded to the information sought by the Ministry of Home Affairs, Government of India.

W.P. (C) No. 406 of 2013

Page 25

Learned counsel for the Union of India says that the matter will now be taken up very seriously with all the State Governments and the Union Territories and it will be ensured that the meetings are regularly held in terms of the Advisories given by the Ministry of Home Affairs at least once in every three months.

Learned counsel for the Union of India also says that the latest status report will be filed in the second week of January, 2016.

In the meanwhile, learned amicus curiae informs us that the Under Trial Review Committee has been set up in every District and a representative of the District Legal Services Authority has been included in all the Under Trial Review Committees and, therefore, to this extent the order dated 18th September, 2015 has been complied with.

List the matter on 29th January, 2016. We make it clear that learned counsel for the Union of India should be fully briefed in all aspects of the case."

45. In compliance with the order passed on 16 th October, 2015 an affidavit dated 22nd January, 2016 was filed by the Ministry of Home Affairs in which it was stated that a detailed evaluation of the software for the e-Prisons Project had been completed and guidelines had also been circulated to all the States for their proposals and for exercising their option for selecting the appropriate software.

46. It was stated in the affidavit that a provision for funds had been made for the application software from the Crime and Criminal Tracking Network & System (CCTNS) project and an amount of Rs.227.01 crores had been approved for the

W.P. (C) No. 406 of 2013

Page 26

implementation of the e-Prisons Project. It was stated that the e-Prisons proposals had been received from seven States and other States/Union Territories had been asked to expedite their proposal for evaluation by the Ministry of Home Affairs.

47. With regard to the Model Prison Manual, it was stated that

the revised Model Prison Manual had been approved by the competent authority and it was circulated to all States and Union Territories. The revised manual also included a provision for a suitable crhche for the children of women inmates in the prison.

48. With regard to the quarterly meetings of the Under Trial Review Committee, the affidavit disclosed the dates on which such Committees had met but on a perusal of the chart annexed to the affidavit there is a clear indication that not every such Committee met on a quarterly basis. This is most unfortunate.

49. With regard to the undertrial prisoners who could be considered for release under the provisions of Section 436A of the Cr.P.C., some progress had been made except in the States of Assam, Bihar, Chhattisgarh, Goa, Karnataka, Meghalaya, West Bengal, and the Union Territories of Dadra & Nagar Haveli and Lakshadweep. It was stated in the affidavit that notwithstanding the lack of detailed information it did appear that due to the institutionalization of the exercise, the number of undertrial

W.P. (C) No. 406 of 2013 Page 27
prisoners eligible for release under Section 436A of the Cr.P.C. had been considerably reduced in some States.

50. In the hearing that took place on 29th January, 2016 it was pointed out that considerable progress had been made inasmuch as the Model Prison Manual had been finalized and perhaps circulated to all the States and Union Territories; Under Trial Review Committees had been set up in every district but unfortunately many of such Committees were not meeting on a regular basis every quarter; the application software for prison management had more or less been identified but a final decision was required to be taken in this regard; steps were required to be taken for the release of undertrial prisoners particularly in the State of Uttar Pradesh and the State of Maharashtra and wherever necessary, the number of panel lawyers associated with the State Legal Services Authority/District Legal Services Committee were required to be increased to meet the requirement of early release of

undertrial prisoners and prisoners who remain in custody due to their poverty and inability to furnish bail bonds. In addition, it was pointed out that steps should be taken to ensure that wherever persons are in custody under offences that are compoundable, steps should be taken to compound the offences so that overcrowding in jails is reduced.

W.P. (C) No. 406 of 2013

Page 28

51. Has anything changed on the ground? The prison statistics

available as on 31st December, 2014 from the website of the NCRB 7

indicate that as far as overcrowding is concerned, there is no perceptible change and in fact the problem of overcrowding has perhaps been accentuated with the passage of time. The figures in this regard are as follows:

	Central Jails	District Jails
Capacity	1,52,312	1,35,439
Actual	1,84,386	1,79,695
%	121.1%	132.7%
Undertrials	95,519 (51.8%)	1,43,138 (79.7%)

52. The maximum overcrowding is in the jail in the Union

Territory of Dadra & Nagar Haveli (331.7%) followed by Chhattisgarh (258.9%) and then Delhi (221.6%).

53. It is clear that in spite of several orders passed by this Court from time to time in various petitions, for one reason or another, the issue of overcrowding in jails continues to persist and apart from anything else, appears to have persuaded Justice R.C Lahoti to address a letter of the Chief Justice of India on this specific issue of overcrowding in prisons.

54. We cannot forget that the International Covenant on Civil and Political Rights, to which India is a signatory, provides in Article 10 that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the

7

<http://ncrb.nic.in>

W.P. (C) No. 406 of 2013

Page 29

human person." Similarly, Article 5 of the Universal Declaration of

Human Rights (UDHR) provides: "No one shall be subjected to

torture or cruel, inhuman or degrading treatment or punishment."

With reference to the UDHR and the necessity of treating prisoners with dignity and as human beings, Vivien Stern (now Baroness Stern) says in A Sin Against the Future: Imprisonment in the World as follows:

"Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a state treats people, whoever they are. No one should fall below it." 8

55. In a similar vein, it has been said, with a view to transform prisons and prison culture:

"Treating prisoners not as objects, but as the human beings they are, no matter how despicable their prior actions, will demonstrate an unflagging commitment to human dignity. It is that commitment to human dignity that will, in the end, be the essential underpinning of any endeavor to transform prison cultures."9

56. The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity.

8

Vivien Stern, A Sin Against the Future: Imprisonment in the World 192 (1998).

9

The Mess We're In: Five Steps Towards the Transformation of Prison Cultures by Lynn S. Branham, Indiana Law Review, Vol. 44, p. 703, 2011

W.P. (C) No. 406 of 2013

Page 30

To give effect to this, some positive directions need to be issued by this Court and these are as follows:

1. The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
2. The Under Trial Review Committee should specifically look

into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.
4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of

the prison and prisoners.

7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.
8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

We direct accordingly.

57. A word about the Model Prison Manual is necessary. It is a detailed document consisting of as many as 32 chapters that deal with a variety of issues including custodial management, medical care, education of prisoners, vocational training and skill development programmes, legal aid, welfare of prisoners, after care and rehabilitation, Board of Visitors, prison computerization and so on and so forth. It is a composite document that needs to be implemented with due seriousness and dispatch.

58. Taking a cue from the efforts of the Ministry of Home Affairs in preparing the Model Prison Manual, it appears advisable and necessary to ensure that a similar manual is prepared in respect of juveniles who are in custody either in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.

59. Accordingly, we issue notice to the Secretary, Ministry of Women and Child Development, Government of India, returnable on 14th March, 2016. The purpose of issuance of notice to the said Ministry is to require a manual to be prepared by the said Ministry

that will take into consideration the living conditions and other issues pertaining to juveniles who are in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.

60. The remaining issues raised before us particularly those relating to unnatural deaths in jails, inadequacy of staff and training of staff will be considered on the next date of hearing.

.....J
(Madan B. Lokur)

New Delhi;
February 5, 2016

.....J
(R.K. Agrawal)

W.P. (C) No. 406 of 2013
ITEM NO.1B
(for orders)

Page 34
COURT NO.8

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

Date : 05/02/2016 This petition was called on for pronouncement of order today.

For Petitioner(s) By Post

Mr. Gaurav Agrawal, Adv. (A.C.)

For Respondent(s) Ms. Sushma Suri, AOR

Hon'ble Mr. Justice Madan B. Lokur pronounced the order of the Bench comprising His Lordship and Hon'ble Mr. Justice R.K. Agrawal with the following observations:

"59. Accordingly, we issue notice to the Secretary, Ministry of Women and Child Development, Government of India, returnable on 14th March, 2016. The purpose of issuance of notice to the said Ministry is to require a manual to be prepared by the said Ministry that will take into consideration the living conditions and other issues pertaining to juveniles who are in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.
60. The remaining issues raised before us particularly those relating to unnatural deaths in

will be considered on the next date of hearing."

(SANJAY KUMAR-I)

AR-CUM-PS

(Signed "Reportable" order is placed on the file)

(JASWINDER KAUR)

COURT MASTER