

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL SIDE JURISDICTION
CRIMINAL PUBLIC INTEREST LITIGATION ST. NO.46 OF 2015

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|----|--|-----|-------------|
| 1. | Jan Adalat, |) | |
| | Centre of Para-Legal Services and Legal Aid, |) | |
| | A Society, registered under the provisions |) | |
| | of the Societies Registration Act |) | |
| | bearing Registration No.MAHARASHTRA/ |) | |
| | 893/2006/Pune, having office at 629/2B, |) | |
| | Dipali Apartment, Bharat Joshi, |) | |
| | Bibwewadi – 411 037. |) | |
| | Through its - |) | |
| | Janadalat Vakil Aghadi Adhakshya, |) | |
| | Mr. Shaikh Ibrahim Abdul, |) | |
| 2. | Mr. Ganesh Shankar Pawar, |) | |
| | Age : 24 years, U.T. No.696, |) | |
| | At present detained behind bars |) | |
| | at Yerwada Central Prison, Pune. |).. | Petitioners |

Vs

- | | | | |
|----|-------------------------------------|-----|-------------|
| 1. | The State of Maharashtra, |) | |
| | Through Secretary, Home Development |) | |
| | Department, Mantralaya, Mumbai. |) | |
| 2. | Yervada Central Prison, |) | |
| | Pune through its Superintendent, |) | |
| | Pune. |).. | Respondents |

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Shri Uday P Warunjikar for the Petitioners.
Dr.F.R.Shaikh, APP for the Respondents State.

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CORAM : A.S. OKA & A.A. SAYED, JJ

DATE ON WHICH SUBMISSIONS WERE	)	
LASTLY HEARD	)	23RD JANUARY 2017
DATE ON WHICH JUDGMENT IS PRONOUNCED	)	1ST MARCH 2017

JUDGMENT (PER A.S. OKA, J)

1. The first Petitioner is a Society registered under the Societies Registration Act, 1860. It is stated in the Petition that most of the members of the first Petitioner are members of the Pune Bar Association. The second Petitioner was at the relevant time an under-trial prisoner in the Yervada Central Prison, Pune. Essentially, the Petition is filed for challenging the communication dated 24th August 2015 issued by the Jail Superintendent of Yervada Central Prison to the President of the Pune Bar Association. It is stated that the members of the Bar will be permitted to meet their clients in Yervada Central Prison between 9.00 a.m. to 10.a.m and 3.00 p.m to 4.00 p.m. It is further stated that out of 15 windows for interviews, five will be available for the members of the Bar to meet their respective clients. The said communication records that a member of the Bar will be permitted to meet his client in Yervada Prison on the following conditions. :

- (a) He must make an Application in writing seeking permission to meet the Prisoner;
- (b) He must produce a photocopy of the Vakalatnama signed by the Prisoner;

- (c) Vakalatnama should contain C.R. Number and the name of the Police Station. A photocopy of the Identity Card issued by the Bar Council should accompany the Vakalatnama;
- (d) The original Identity Card shall be carried by the members of the Bar while coming for interviews;
- (e) The members of the Bar must be in Court Dress.

2. The challenge in the Petition is to the aforesaid conditions imposed by the Superintendent of Yervada Central Prison by contending that the same are contrary to the provisions of the Maharashtra Prisons (Facilities to the Prisoners) Rules, 1962 (for short “the said Rules of 1962”). Various issues are raised in the Public Interest Litigation especially in relation to the lack of facilities in Yervada Central Prison including the issue of the lack of proper facilities provided to the Prisoners to meet their relatives and Advocates.

3. From the orders passed by this Court from time to time, it is apparent that this Court enlarged the scope of the present PIL. By an order dated 1st October 2015, a Division Bench of this Court directed

the learned Principal District Judge, Pune to depute a Judicial Officer to visit and take inspection of the Yervada Central Prison and to submit a report after taking inspection. The Paragraph 2 of the said order reads thus:

“2. The Principal District Judge, Pune is directed to depute a Judicial Officer, who shall visit the Yervada Jail and take inspection and submit the report. The said report to state - (i) the condition of the toilet and bathrooms; (ii) the number of prisoners; (iii) nature and quality of food, which is provided to the prisoners; (iv) the number of under trial prisoners; (v) the security and other features of the said prison; (vi) whether additional space can be made available for the purpose of increasing number of windows for interviewing the prisoners. This exercise to be completed within 2 weeks. S. O. 15.10.2015.”

4. Accordingly, Shri R.S.Tiwari, the learned District Judge-7 and Additional Sessions Judge, Pune, was deputed to visit Yervada Central Prison, who submitted his report on 13th October 2015. The order dated 15th October 2015 takes a note of the contents of the said report. Various directions were issued under the said order as regards the Yervada Central Prison. By the said order, the Division Bench issued a direction to the learned Principal Judge of the City Civil and Sessions Court, Mumbai, to depute an Additional Sessions Judge to take inspection of the Arthur Road Jail and Womens' Prison at Byculla and to submit a report in terms of the order dated 1st October 2015. Accordingly, the reports have been submitted by the learned Sessions Judges after inspecting the Arthur Road Jail as well as the Jail at

Byculla. In the order dated 3rd March 2016, the Division Bench referred to the said reports and issued certain directions. There is a reply filed by Shri Jaysing Lakadya Pawara, the Deputy Secretary of the Home Department which is dated 30th May 2016 dealing with various aspects of the facilities in the prisons.

5. The learned counsel appearing for the Petitioners has invited our attention to the orders passed by this Court from time to time in relation to the aforesaid three Jails and submitted that the State Government has not filed proper compliance affidavits. He also pointed out from the reports submitted by the Judicial Officer that the present condition of the windows provided for the interviews with the prisoners is such that the face of the Prisoner is hardly visible to the visitors. He submitted that the members of the Bar find it very inconvenient to visit the Yervada Jail between 3.00 p.m to 4.00 p.m as the said time conflicts with the Court working hours. He also referred to the several issues such as security concerns about the inmates, improving quality of the food provided to the prisoners, installation of the Closed Circuit T.V. Cameras and inadequacy of the staff of the Jail. He also invited our attention to the serious issues concerning the female under-trial or convicted prisoners staying with their children in prisons. He also relied upon several decisions of this Court and the Apex Court. He invited our attention to the Standard Minimum Rules for the

Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in the year 1955 (for short “the Minimum Standard Rules”). He also referred to the Resolution adopted by the General Assembly of the United Nations on 17th December 2015 which is known as “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”. He invited our attention to the Rule 58 which deals with the contact of the Prisoners with the outside world. He also invited our attention to the Rules 106 and 107 of the Nelson Mandela Rules.

6. After the judgment was reserved, this Court listed for further hearing on 5th January 2017 and 23rd January 2017. The learned APP placed on record a decision of the State Government showing willingness to constitute a Committee for making recommendations for the modernization of the Jails. The State Government stated that the Committee will be headed by a Retired Judge of this Court. On that day, the learned counsel appearing for the Petitioners placed on record several reports. The learned APP pointed out the steps taken by the State Government to improve the situation and facilities in the Jail.

7. The prisons have been established under the Prisons Act, 1894 (for short “the Prisons Act”). As far as the facilities to the prisoners are concerned, in the State of Maharashtra, the same are governed by the the said Rules of 1962. In the landmark judgment in the case of *Sunil Batra (II) v. Delhi Administration*¹, the Apex Court categorically pronounced that life or liberty as implicit under Article 21 of the Constitution of India cannot be kept in suspended animation. A fair procedure is required to be adopted for dealing with the prisoners.

In Paragraph 48 of the said decision, the Apex Court held thus:-

“48. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infraction will be arbitrary, under Article 14 if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and unappealable, and unfair, under Article 21 if it violates natural justice. The string of guidelines in *Batra* [*Sunil Batra v. Delhi Admn.*, (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1979 SCC (Cri) 155.] set out in the first judgment, which we adopt, provides for a hearing at some stages, a review by a superior, and early judicial consideration so that the proceedings may not hop from Caesar to Caesar. We direct strict compliance with those norms and institutional provisions for that purpose.”

1 (1980)3 SCC 488

In Paragraph 53 of the said decision, the Apex Court held thus:

“53. Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory! Sheldon Krantz rightly remarks : [Sheldon Krantz : CORRECTIONS AND PRISONERS RIGHTS, pp. 129-130]

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

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

(emphasis added)

8. Thus, right to meet family members is held as a right of a prisoner. It is subject to reasonable restrictions. The Apex Court, thereafter, adverted to the situation in Tihar Jail at Delhi. The Apex Court placed reliance on the Standard Minimum Rules for the Treatment for the Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (for short “Standard Minimum Rules”) held at Geneva in the year 1955.

9. At this stage, it will be necessary to make a reference to the Standard Minimum Rules. Rules 37 to 39 are relevant which read thus:

“37. Contact with the outside world 37. **Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.**

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of

newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.”
(emphasis added)

10. There are separate Rules in the Standard Minimum Rules for under-trial Prisoners. Rules 84 to 93 thereof read thus:-

“84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) **Untried prisoners shall be kept separate from convicted prisoners.**

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. **Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or**

through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied

with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.”

(emphasis added)

11. A Resolution was adopted by the General Assembly of the United Nations on 17th December 2015 which approved the Rules known as “Nelson Mandela Rules”. Rule 58 of the said Nelson Mandela Rules reads thus:-

“1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

(a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and

(b) By receiving visits.

2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. **Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.”**

(emphasis added)

Even Rules 106 and 107 are relevant which read thus:

“106. **Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.**

107. From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.”

(emphasis added)

12. There are number of decisions of the Apex Court dealing with the rights of the Prisoners and Prison Reforms. It will be necessary to make a reference to the said decisions. In the case of ***Rama Murthy v. State of Karnataka***², the Apex Court considered the issue of Prison Reforms and Rights of the Prisoners. In Paragraph 3 of the said decision, the Apex Court took a brief resume of its earlier decisions on the subject. Paragraph 3 of the said decision reads thus:

“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 Pandurang Sanzgiri* [AIR 1966 SC 424 : (1966) 1 SCR 702 : 68 Bom LR 481] 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 v. State of Gujarat* [(1976) 1 SCC 654 : 1976 SCC (Cri) 145] and *Krishan Lal v. State of Delhi* [(1976) 1 SCC 655 : 1976 SCC (Cri) 146] saw this Court stating about penological

² (1997)2 SCC 642

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 *D. Bhuvan Mohan Patnaik v. State of A.P.* [(1975) 3 SCC 185 : 1974 SCC (Cri) 803 : 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 “quarantine” 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 has a fundamental right to escape from lawful custody.
- (4) In *Charles Sobraj* [(1978) 4 SCC 104 : 1978 SCC (Cri) 542 : AIR 1978 SC 1514 : (1979) 1 SCR 512] 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)* [(1978) 4 SCC 494 : 1979 SCC (Cri) 155 : AIR 1978 SC 1675 : (1979) 1 SCR 392] 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 *Kishore Singh Ravinder Dev v. State of Rajasthan* [(1981) 1 SCC 503 : 1981 SCC (Cri) 191 : AIR 1981 SC 625] also the Court dealt with the parameters of solitary confinement.
- (6) *Prem Shankar Shukla v. Delhi Admn.* [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : AIR 1980 SC 1535 : (1980) 3 SCR 855] and *Kadra Pehadiya v. State of Bihar* [(1981) 3 SCC 671 : 1981 SCC (Cri) 791 : AIR 1981 SC 939] prohibited putting of undertrial prisoners in leg-irons.
- (7) In *Sunil Batra (II)* [(1980) 3 SCC 488 : 1980 SCC (Cri) 777 : AIR 1980 SC 1579 : (1980) 2 SCR 557] 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 Mullin v. Administrator, Union Territory of Delhi* [(1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746 : (1981) 2 SCR 516] and the rule was held violative, inter alia, of Article 21.
- (9) In series of cases, to wit, (i) *Veena Sethi v. State of Bihar* [(1982) 2 SCC 583 : 1982 SCC (Cri) 511 : AIR 1983 SC 339] ; (ii) *Sant Bir v. State of Bihar* [(1982) 3 SCC 131 : 1982 SCC (Cri) 635 : AIR 1982 SC 1470] ; and (iii) *Sheela Barse v. Union of India* [(1993) 4 SCC 204 : 1993 SCC (Cri) 1142] this Court was called upon to decide as to when an insane person can be detained in a prison. In *Sheela Barse* [(1993) 4 SCC 204 : 1993 SCC (Cri) 1142] it was held that jailing of non-criminal mentally ill persons is unconstitutional and directions were given to stop confinement of such persons.

It would be of some interest to point out that in *Sheela Barse* [(1993) 4 SCC 204 : 1993 SCC (Cri) 1142] 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 Senior 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* [(1993) 4 SCC 204 : 1993 SCC (Cri) 1142] 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* [(1993) 4 SCC 204 : 1993 SCC (Cri) 1142] .

- (10) The judicial work done by this Court on the subject at hand would not be complete without mentioning what was held in *Mohd. Giasuddin v. State of A.P.* [(1977) 3 SCC 287 : 1977 SCC (Cri) 496 : AIR 1977 SC 1926 : (1978) 1 SCR 153] because in that case reformatory 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 : 1995 SCC (Cri) 39] , wherein the Bench was concerned with the detention of a 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 Assn. v. Union of India* [(1996) 2 SCC 616 : 1996 SCC (Cri) 366] 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 detenus 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.”

The Petition before the Apex Court was founded on a letter received from one Shri Rama Murthy, a Prisoner of Central Jail, Bangalore addressed to the Hon'ble the Chief Justice of the High Court. The Apex Court dealt with the issues of overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open-air prisons. The Apex Court also dealt with the management of open-air prisons with which we are not concerned.

13. In the year 2007, in the case of *R.D. Upadhyay v. State of Andra Pradesh and Others*³, the Apex Court again dealt with several aspects of the prisons and prison management. The first issue dealt with by the Apex Court was as regards the children staying with their mothers. In Paragraph 23.18, the Apex Court dealt with the issue arising in the State of Maharashtra, which reads thus:-

“23.18. In Maharashtra, children are allowed to live with their mothers up to the age of 4 years. They are to be weaned away from their mothers between the ages of 3 to 4 years. A special diet is prescribed under the Maharashtra Prison Rules. Changes can be recommended by the Medical Officer. Specific amounts

3 (2007)15 SCC 337

of jail-made carbolic soap and coconut oil are to be provided by the authorities. Garments are to be provided as per the Maharashtra Prison Rules. Two coloured cotton frocks, undergarments and chaddies per child have been prescribed per year. A nursery school is conducted by “Sathi”, an NGO in the female jail on a regular basis. Primary education is provided for by “Prayas”, a voluntary organisation in Mumbai Central prisons. A small nursery with cradles and other reasonable equipments is provided in each women's ward. Toys are also provided for by the authorities. On leaving the jail, children are handed over to the nearest relative, in whose absence to the officer in charge of the nearest government remand home, or institution set up for the care of the destitute children under the Bombay Children Act, 1948.”

14. Thereafter, the Apex Court considered a Field Action Project prepared by the Tata Institute of Social Sciences on situation of children of Prisoners. Paragraph 27 of the said decision summarizes the contentions of the said report, which reads thus:-

“27. The report puts forward five grounds that form the basis for the suggestion to provide facilities for minors accompanying their mothers in the prison:

- (a) **the prison environment is not conducive to the normal growth and development of children;**
- (b) **many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four to five years);**
- (c) **socialisation patterns get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of a home, as we know it. Boys may**

sometimes be found talking in the female gender, having grown up only among women confined in the female ward. Unusual sights, like animals on the road (seen on the way to court with the mother) are frightening;

- (d) children get transferred with their mothers from one prison to another frequently (due to overcrowding), thus unsettling them; and
- (e) such children sometimes display violent and aggressive, or alternatively, withdrawn behaviour in prison.”

(emphasis added)

15. In Paragraph 45, the Apex Court issued detailed guidelines dealing with the issue of children in prison with their mothers.

Paragraph 45 of the said decision reads thus:

“45. In light of various reports referred to above, affidavits of various State Governments, Union Territories, the Union of India and submissions made, we issue the following guidelines:

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:

- (a) Before sending a woman who is pregnant to a jail, the authorities concerned must ensure that the jail in question has the basic minimum facilities for child delivery as well as for providing prenatal and post-natal care for both, the mother and the child.
- (b) When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the Superintendent. As soon as possible, arrangement shall be made to get such

prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

- (c) Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper prenatal and post-natal care shall be provided to the prisoner as per medical advice.

3. Childbirth in prison:

- (a) As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.
- (b) Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.
- (c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

- (a) **Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.**
- (b) **No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a**

suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to physical distance.

- (c) Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.
- (d) Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet their mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.
- (e) When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the relative(s) concerned be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter:

- (a) Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/UT Government shall lay down the scales.
- (b) State/UT Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
- (c) A permanent arrangement needs to be evolved in all jails, to provide separate food

with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

- (d) Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
- (e) Clean drinking water must be provided to the children. This water must be periodically checked.
- (f) Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.
- (g) In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.
- (h) Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
- (i) **Children of prisoners shall have the right of visitation.**
- (j) The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

- (a) **The children of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.**

- (b) **There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.**
7. In many States, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.
8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

9. Diet:

Dietary scale for institutionalised infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasised that “dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark, over dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will

lead to growth retardation and developmental delay, both physically and mentally”. It is noted that since an average Indian mother produces approximately 600-800 ml milk per day (depending on her own nutritional state), the child should be provided at least 600 ml of undiluted fresh milk over 24 hours if the breast milk is not available.

The report also refers to the “Dietary Guidelines for Indians—A Manual”, published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children in the ages of 6-12 months, 1-3 years and 4-6 years, respectively: cereals and millets—45, 60-120 and 150-210 gm respectively; pulses—15, 30 and 45 gm respectively; milk—500 ml (unless breastfed, in which case 200 ml); roots and tubers—50, 50 and 100 gm respectively; green leafy vegetables—25, 50 and 50 gm respectively; other vegetables—25, 50 and 50 gm respectively; fruits—100 gm; sugar—25, 25 and 30 gm respectively; and fats/oils (visible)—10, 20 and 25 gm respectively. One portion of pulses may be exchanged with one portion (50 gm) of egg/meat/chicken/fish. It is essential that the above food groups be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant rules, regulations, instructions, etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.
11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. The State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.
12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to

monitor that the directions regarding children and mothers are complied with in letter and spirit.

13. The courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.
14. Copy of the judgment shall be sent to the Union of India, all State Governments/Union Territories and the High Courts.
15. Compliance report stating the steps taken by the Union of India, the State Governments, the Union Territories and the State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.”

(emphasis added)

16. We find that the said guidelines continue to operate even as of today with full force. It is necessary to invite the attention of the State Legal Services Authority to Sub-clause (12) of Paragraph 45 of the said decision in the case of *R.D.Upadhyay*.

17. In a recent decision in the case of *Inhuman Conditions in 1382 Prisons, In Re*⁴, the Apex Court dealt with the issue of implementation of Section 436-A of the Code of Criminal Procedure, 1973 as well as the Prison Reforms. In the Paragraph 1 of the said decision, the Apex Court expressed an anguish that it was again required to deal with the issues relating to prisons. It refers to the several orders passed earlier by the Apex Court. In Paragraph 56, the Apex Court issued various directions which reads thus:

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“56. **The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity.** To give effect to this, some positive directions need to be issued by this Court and these are as follows:

- 56.1. The Undertrial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31-3-2016. The Secretary of the District Legal Services Committee should attend each meeting of the Undertrial 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.
- 56.2. The Undertrial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 CrPC and Section 436-A CrPC so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Undertrial 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.
- 56.3. 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.
- 56.4. 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.

- 56.5. The Director General of Police/Inspector General of Police in charge of prisons should ensure that there is proper and effective utilisation of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation, etc.
- 56.6. **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.**
- 56.7. 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.
- 56.8. The Undertrial 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.
- 56.9. We direct accordingly.”

(emphasis added)

18. Paragraphs 57 to 59 of the said decision in the case of *Inhuman Conditions In 1382 Prisons, In Re* are relevant. A direction was issued for preparing a similar manual on the lines of Model Prison

Manual in respect of Juveniles who are in custody either in Observation Homes or in Special Homes or places of safety.

19. The Prisons Act , 1894 creates three categories of Prisoners which are defined in Sub-sections (2) to (4) of Section 3 thereof, which read thus:

- “(2) “criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial:
- (3) “convicted criminal prisoner” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882, (10 of 1882) or under the Prisoners Act, 1871 (5 of 1871):
- (4) “civil prisoner” means any prisoner who is not a criminal prisoner.”

20. The Chapter VI contains a provision regarding Food, Clothing and Bedding of Civil and Unconvicted Criminal Prisoners. Sections 31 to 33 forming part of the said Chapter read thus:

- “31. Maintenance of certain prisoners from private sources.—
A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other

necessaries, but subject to examination and to such rules as may be approved by the Inspector General.

32. Restriction on transfer of food and clothing between certain prisoners.— No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.
33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.—(1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.
 - (2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.”

21. Sections 40 and 41 of the said Act of 1894 deal with the visits to civil and unconvicted criminal prisoners. The said Sections read thus:

- “40. Visits to civil and unconvicted criminal prisoners.—**Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of**

persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

41. Search of visitors.—(1) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched but the search shall not be made in the presence of any prisoner or of another visitor.
- (2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the State Government may direct.”

(emphasis added)

22. It is in the light of the statutory provisions as well as the law laid down by the Apex Court that the issues arising in this Petition need to be addressed.

23. The first issue is of providing adequate number of Jails having adequate space and amenities. There are no set norms brought on record on this aspect. It is not laid down as a matter of policy as to how much living area each Prisoner of different classes needs. There are no set of Rules or Policy decisions governing the area of barracks or cells in which the Prisoners of different classes are jailed. There is

nothing placed on record about any policy laying as regards number of toilets and bathrooms to be provided. There is no scientific study made on this aspect. There is no policy decision arrived at after a scientific analysis as regards the size of the Cells where Prisoners are kept in a solitary confinement. After a policy decision is taken on the aspect of size of Jails, an exercise of determining the number of Jails which are necessary in the context of estimation of number of prisoners will have to be undertaken. Considering the data of the crime rates in different parts of the State for last ten years or so, the present crime rate, the number of prisoners of all the categories in various Jails as of today and the present pendency of criminal cases, the current requirement of the capacity of Jails as well as the requirement for fifty years in future will have to be determined. This determination will require collection and analysis of data in scientific manner. Only a Committee of experts can undertake such exercise. The same Committee can decide the issues such as standard sizes of various categories of prison cells/barracks. The same Committee can lay down standards of amenities which are required to be provided in the light of the Model Prison Manual, the directions of this Court as well as the Apex Court and the Resolution of the United Nations and International Convention to which India is a party. Considering the fact that our State is considered to be a very progressive State, the facilities and amenities provided in the Jails should be ideal and very modern. Overall study is required to be made

as regards facilities to be provided to the prisoners apart from the adequate space, such as recreation, sports, medical treatment, Library etc. Adequate provision will have to be made of a well equipped hospital inside the prison. In fact, the prison hospitals in central prisons should have all the modern amenities and availability of specialized doctors so that the Prisoners are not required to be admitted to a public or private hospitals for undergoing treatment or for undergoing surgeries, etc. About the children staying with their mothers who are Prisoners, it is necessary that a policy decision should be taken as regards the age of the children who can be stay with their mothers. It goes without saying that an arrangement will have to be made by establishing creche, Nursery Schools, Kindergarten Schools and, if necessary, Primary Schools near the precincts of the Jails so that the children can get proper facilities of education. If such facilities cannot be provided, the State Government must ensure that they are admitted to nearby Nurseries/Schools. As the mothers will not be in a position to pay regular fees when the children are required to be admitted in private institutions, the State Government will have to make an arrangement for payment of fees. The State Government will have also to make an arrangement for making available school uniforms, school books and other material to the children. It is also necessary that in case of children up to the age of five years, necessary arrangement should be made for vaccination. Play area with necessary equipment

will have to be provided in the Jails for the children staying with the mothers. It will be ideal if separate Cells/Wards are created for the mothers staying with their children.

24. We may note here that the learned APP has placed on record a decision of the State Government by which the State Government has agreed to appoint a Committee headed by a Retired Judge of this Court, Additional Director General of Police and Inspector General of Prisons Shri S.N. Chavan, Retired Deputy Inspector of Prisons and Dr. Vijay Raghwan, an eminent Social Scientist attached to TATA Institute of Social Sciences. It will be ideal if an eminent Architect and an eminent person working in the field of Public Health are included in the said Committee as the scope of recommendations of the Committee will be very wide. The Committee should be empowered to take help of experts in the other fields such as eminent jurists, dietitians, statisticians etc.

25. As is clear from the reports of the Judicial Officers on inspection of Yervada Central Prison, Byculla and Arthur Road Jail, the persons detained in these three Jails are much in excess of the present capacity of the Jails. In the City of Mumbai, both the Jails are hardly adequate to satisfy the need. The population of the City is ever growing. Though in ideal situation, the more and more Jails should not

be required. But we do not live in the ideal world. In a City like Mumbai, rapid growth of population and various other factors result into rise in the crime rate. The same is the situation in the cities like Pune. In fact, crime rate may have direct nexus with rapid growth of our cities like Pune, Nashik, etc. The recommendations of the Committee may not be received in near future. Therefore, in case of cities of Mumbai and Pune and other bigger cities in the state, the State Government will have to take immediate measures for increasing the capacity of the Jails.

26. Another issue which is specifically canvassed is as regards the improving quality of foods provided to the prisoners. In our criminal jurisprudence, there is an element of deterrent theory. At the same time, the main object of detaining a criminal in Jail should be to reform him. The Committee which the State Government proposes to constitute can always take help of experts in the field for laying down the standards of good hygienic food which should be provided to the prisoners. The Committee will have to suggest standards of quality and quantity of food to be served to the prisoners.

27. Now the issue is about allowing the prisoners to meet members of their families and their Advocates. As far as the facilities to the prisoners in Jails in Maharashtra are concerned, the Rules 2 to 9 of

the Maharashtra Prisons (Facilities to Prisoners) Rules, 1962 (for short “the said Rules of 1962”) are relevant, which read thus:

- “2. Intimation to relatives of prisoners:- A printed post card in Form I shall be sent at Government cost to the relatives of a prisoner admitted to the prison.
3. List of relatives:-
 - (i) Every prisoner on admission shall submit a list of persons who are likely to seek interviews with him. This list shall be kept on record with the Jailor detailed for conducting interviews, for scrutiny as and when required.
 - (ii) Interviews shall be granted only to near relatives, friends and legal adviser of the prisoner.
 - (iii) Interviews between prisoners (including those released on parole or furlough) shall not be allowed unless they are members of their families, that is to say, spouse, children, father, mother, brother, and sister.
 - (iv) Interview between the prisoners and the persons other than blood relatives shall not be granted unless such persons bring clearance letter duly affixed with photo from the police officer not below the rank of police sub-Inspector of the nearest police station.
4. Interviews and communications of prisoners:-
 - (i) An unconvicted criminal prisoner (undertrial prisoners) shall be entitled to reasonable facilities, for interviewing or otherwise communicating either orally or in writing with his relatives,

friends and legal adviser during the hours prescribed by the Superintendent in each case.

- (ii) Subject to the provisions of sub-rule (3), and the following rules, every newly convicted prisoner (including a prisoner committed under Chapter VIII of the Code of Criminal Procedure, 1973 shall, during the period of appeal, be entitled to see his relatives or friends and communicate with them once a week for the purpose of enabling the prisoner to prepare or file an appeal or to arrange for procuring bail or security, or to arrange for payment of fine or to manage his property or other family affairs.
 - (iii) A prisoner under sentence of death shall be allowed such interviews and other communications with his relatives or friends and legal advisers as the Superintendent thinks reasonable.
 - (iv) Civil prisoners may see their friends and relatives between the hours fixed for interviews for the particular prison under such conditions as may be adjudged suitable by the Superintendent.
 - (v) Interview between the unconvicted prisoners (undertrial prisoner) and the persons other than blood relatives shall not be granted unless such person having clearance letter duly affixed with photo from the police officer not below the rank of Police Sub-Inspector of the nearest Police Station.
5. Scale of Interviews:- A convicted criminal prisoner shall be entitled to have one interview within a period of one month.

6. Special interviews in discretion of Superintendent:-
The Superintendent may, notwithstanding the misconduct, if any, grant the prisoner interviews or allow him dispatch of letters at shorter intervals than those provided for in these rules, regard being had to special or urgent grounds such as, the serious illness of the prisoner, the occurrence of death of his near relative, the arrival of his friends or relatives from a distance to see the prisoner and undue hardship that may be cause to them if interview is refused, the fact that the prisoner is nearing release and wishes to secure employment or to make any other arrangement for his rehabilitation in society after release or any other sufficient cause.
7. Interviews:-
 - (i) Unless the persons desiring interviews are illiterate, applications for interviews shall be in writing. All applications for interviews shall be entered in order of their receipt in a register in Form II.
 - (ii) Where a legal adviser desires an interview with an unconvicted criminal prisoner (undertrial), he shall apply in writing to the Superintendent stating his name, address, profession and the name of the prisoner and satisfy the Superintendent or any other Officer of the prison specially empowered by the Superintendent in this behalf, that he is the bonafide legal adviser of the prisoner with whom he seeks an interview, and that he has legitimate business with him.
 - (iii) When a prisoner is not entitled to an interview, the applicant shall be informed accordingly.
 - (iv) When an interview or letter is permissible, but the same is refused by the relevant authority, the reasons for such refusal shall be recorded in the Interview Register.

- (v) Prior consent of the prisoner shall be obtained before granting an interview with him.
- (vi) No interview which is not permissible shall be allowed with the prior approval of the Superintendent.
- (vii) The Superintendent shall scrutinise every day the entries regarding interviews recorded in the Interview Register before he signs it.

8. Competent authorities to sanction interviews:-

(i) Interviews in respect of the following categories of prisoners shall be permitted only with the prior sanction of the Superintendent that is to say:-

- (a) ***** class I undertrials;
- (b) Prisoners and undertrials of political background, irrespective of the class in which they are placed;
- (c) notorious and dangerous convicts, irrespective of their term of sentence and class;
- (d) notorious and dangerous undertrials; and
- (e) Prisoners sentenced to death.

(ii) The interviews of the following categories of prisoners shall be permitted in prisons, where there is a Deputy Superintendent, with the prior sanction of the Senior Jailor, that is to say:-

- (a) Class II convicted prisoners whose unexpired sentence is more than 10 years.
- (b) Class II undertrials.

(iii) Interviews to prisoners not falling in any of the categories mentioned in sub-rule (1) or (2) shall be permitted with the prior sanction of the Senior Jailor.

(iv) In prisons, where the Jailor acts as a Superintendent also, interviews of all prisoners shall subject to the provisions of these rules, be arranged, with the prior sanction of the Jailor-cum-Superintendent.

9. Hours, procedure and place of holding interviews with prisoners:-

(i) Interviews shall ordinarily be granted on working days from 9.00 a.m to 12 noon and from 3.00 p.m to 5.00 p.m subject to such adjustment as the Superintendent may direct according to local conditions and requirements. The hours of interviews so adjusted shall be notified in front of the prison gate, the visitors' waiting room and the inquiry office if there is one.

(ii) Except with the permission of the Superintendent, no interviews shall be granted on Sunday and prison holidays. Such interviews shall be entered in the Interview Register, after recording the reasons in brief of the exceptional circumstances in which the interview was given in column No.10 of the register.

(iii) The duration of an interview shall normally not exceed twenty minutes, except with the permission of the Jailor who may, for adequate reasons to be recorded in the history tickets of the prisoner, and also in the Interview Register, extend this period by not more than another ten minutes.

(iv) Not more than two persons shall be permitted to be present at an interview; Provided that when a prisoner has an interview with father, mother, brother, sister, husband, wife and children or a joint interview with his friends

and relatives, the number of persons permitted to interview the prisoner shall not exceed five.

- (v) In the case of dangerous prisoners, or prisoners who present disciplinary or custody risks, interviews shall necessarily be granted in a room where appropriate precautionary barriers have been installed. Prison authorities shall decide in their discretion as to which prisoners should be granted interviews in such a room.
- (vi) Prisoners shall be thoroughly searched before they enter the interview area and also after the interview is over.
- (vii) During an interview, prisoners, may be allowed to discuss domestic and family welfare matters and to give instructions as to how the lawful business, which they were conducting prior to their conviction, should be transacted. The prisoners shall not be allowed to use these interviews for any other purpose. If objectionable matters start getting discussed, the Jailor in charge of the interview may discontinue the interview forthwith.
- (viii) Approved books and clothing articles brought by interviewers may be deposited in the prison office. Any other articles like money, food, eatables, fruits, toilet articles, cigarettes or bidies shall not be allowed to be received by prisoners at the time of the interview, and shall also not be received at the prison office.
- (ix) A prisoner on hunger strike shall not be granted interviews and other facilities.
- (x) Where a prisoner is admitted in the prison hospital as an indoor patient and the Medical Officer certifies that he is unable to go to the interview room, the interview shall be granted in the hospital
- (xi) Where a prisoner is admitted in a Civil Hospital as an indoor patient, every interview

shall be granted by the Officer in charge of the interviews of the prison, from which the prisoner is sent to the Civil Hospital but with the concurrence of the medical officer at the Hospital.

- (xii) Prisoners may not be granted interviews for reasons of security or discipline or during periods of emergencies. The decision of the Superintendent in such matters shall be final.
- (xiii) Every interview shall be granted at a place reserved for the purpose, which shall generally be at or near the main gate of the prison.
- (xiv) The interviews to women prisoners shall, as far as possible, be given at the Women's section of the prison. In a prison where there is no separate women's section, interview to women prisoners shall be given singly and shall not be given along with other men convicts.
- (xv) Notwithstanding anything contained in this rule, the Superintendent may for reasons to be recorded in writing refuse any interview to which a prisoner is entitled under these rules, if in his opinion, such an interview is likely to be against the public interests.”

28. We have referred to several decisions of the Apex Court and this Court which hold that it is necessary that the prisoners should be allowed to communicate with their families as a matter of right. This law applies to all three categories of prisoners. We have already quoted Rule 58 which is a part of the Resolution which is adopted by the General Assembly of United Nations on 17th December 2015. The object of Prisoners meeting their respective families can be achieved if

there are proper arrangements are made for interview. The interview has to be effective. Interview can be really effective if the prisoner can properly see and hear his relative. The barriers provided should be ideally of a clean glass. Necessary audio system should be provided to ensure that the Prisoner and his family members/relatives are clearly audible to each other.

29. Now we come to interviews with the Advocates. There is some merit in the submission of the Petitioners that visiting hours for the members of the Bar cannot conflict with the Court working hours. Therefore, the members of the Bar should be allowed to meet prisoners in the time slot of 9 am to 10.30 am which is a part of first time slot provided in Rule 9(1) of the said Rules of 1962. This will ensure that the members of the Bar are not required to attend Jail in Court working hours. Moreover, the Rules of professional ethics governing the Advocates require that the bands and gowns should be worn only in the Court premises. The Rule 8 of the Rules framed by the Bar Council of India reads thus:

“8. Not to wear bands or gowns in public places-

An advocate should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe.”

(emphasis added)

Moreover, the form of vakalatnama of an Advocate is prescribed by the Rules framed by this Court under Section 34(1) of the Advocates Act. The form does not contemplate mentioning of crime details such as FIR number and the name of Police Station. The Rules contemplate Advocates filing vakalatnama in Court. The Jail Authorities have no right to require members of the Bar to produce a copy of vakalatnama containing such details. However, there will be every justification for the Jail Authorities to insist on the Advocates seeking interview making an application in writing giving all the material particulars. The Advocates will have to produce an identity card issued by the Bar Council or local Bar Association. The Advocates can be always subjected to a security check while entering Jail as security cannot be compromised. The Superintendent of the Yervada Central Prison will have to take steps to modify the communication dated 24th August 2015 accordingly within a period of one month from today. In the light of what we have observed , the State Government shall issue a circular to the Jail Superintendents of all the Jails in the State laying down uniform procedure for allowing the interviews with the Advocates. The State Government should prescribe a form of application to be made by the Advocates

30. Now we turn to the reports submitted by a Judicial Officer after site visits to three Jails. First report is by Smt. A.S. Shende, a

Judge of the City Civil & Sessions Court submitted on her visit to the Prison at Byculla which is meant for women as well as the District Prison . Following are the important observations made by the learned Judge.

- (a) There are no separate bathrooms provided inside the barracks meant for females. There are 17 bathrooms provided only on the ground floor ;
- (b) There are no separate bathrooms provided for male prisoners and there is a common area for taking bath;
- (c) Against the capacity of 200 male prisoners, there are 303 male prisoners. The capacity for female prisoners is 262 against which there were 209 female prisoners and 26 children;
- (d) The prisoners are reluctant to eat cereals as the same give disagreeable smell;
- (e) Sufficient female staff is not available in Jail. In general, the prison is understaffed. It is very easy for any one to climb on the roof of the staff quarters and

jump inside the Jail. The Jail Superintendent was of the view that height of the wall should be at least 21 to 22 feet whereas it is 15 to 17 feet;

- (f) There is sufficient place to construct a new wall either inside the old wall outside the the old wall;
- (g) As regards the interviewing windows, the learned Judge has observed that number of windows available are sufficient. However, the face of the prisoners is not clearly visible to the visitors and vice versa;
- (h) There was no wall clock available in the interview room. Therefore, the members of the family who come for interview depend upon the guards who tell them the time;
- (i) In the Jail hospital, there is no bed for emergency services. There neither a facility of separate room nor space for medical isolation. There is no bathroom for the patients. If one patient is on the bed, another is required to sit. The learned Judge

has mentioned that there is enough space for additional construction in the hospital;

- (j) Lastly, the learned Judge has mentioned that many of the female prisoners informed her that they are not being allowed to meet their children.

31. As regards the Yervada Jail, Shri R.S.Tiwari, the learned District Judge-7 and Additional Sessions Judge, Pune visited the said Jail. His report contains following details:

- (a) As of 8th October 2015, there were 905 convicts and 2887 under-trial prisoners against the sanctioned capacity of 2323 prisoners. This figures are in respect of male prisoners;
- (b) As of 8th October 2015, against the sanctioned capacity of 125 to 150 female prisoners, there were 99 convicted female prisoners and 228 under-trial prisoners;
- (c) In the main Jail, there are no separate bathrooms. Some of the toilets meant for female prisoners are in

dilapidated condition. Even access to the toilets is not in good condition;

(d) For women prisoners, there were two common bathrooms where 10 to 15 prisoners can take bath simultaneously but there are no partitions and therefore, there is no privacy to the women prisoners. The roofs and flooring of the bathrooms are not in good condition;

(e) As regards Jail hospital, it is pointed out that for specialized treatment, the patients are taken to Sasoon General Hospital. This is the position as regards the main Jail;

(f) As regards the Jail for women, it is stated that there is no hospital and there is no female Medical Officer appointed to run the OPD. It is pointed out that six female prisoners were taking Anti-Retroviral Therapy (ART), 23 prisoners were suffering from high blood pressure, one prisoner was suffering from leprosy, 10 prisoners were suffering from chronic diabetics and one prisoner is detected with cancer. The adequate

security staff is not available and, therefore, there is a threat to the security;

- (g) Considering the number of prisoners, 15 windows earmarked for interviews are not at all sufficient. It is suggested that 6 to 7 windows can be additionally installed and in addition thereto, new windows can be created near the rear side gate of the main Jail. This is a situation in the main Jail;

- (h) In the female Jail, a special room was assigned for interviewing the prisoners where 10 prisoners can be interviewed at a time. However, it is pointed out that there is no privacy available.

32. As regards the Arthur Road Jail in Mumbai, Shri A.A. Khan, the learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai, has submitted a report after visiting the said Jail. The main features of the report are as under:

- (a) As against the sanctioned strength of 804 prisoners, there are 2466 prisoners;

- (b) The toilets are in unhygienic condition. There is no separate bathroom provided to the prisoners and they take bath in open;
- (c) There are only 112 guards available which are insufficient considering the number of prisoners housed in the said Jail;
- (d) There are only 13 interviewing windows available at the right side of the main gate of the Jail which are insufficient considering the number of prisoners. 10 more windows can be installed for the purpose of interviewing the prisoners.

33. Thus, the condition of the two Jails in Mumbai and Yervada Jail in Pune is far from satisfactory. The Jails are overcrowded. In the Arthur Road Jail in Mumbai, the prisoners equivalent to nearly triple the capacity of the Jail have been detained. The State Government will have to take immediate steps for establishing additional Jails in the City of Mumbai as well as Pune. Not providing separate bathrooms for protecting privacy especially in case of women prisoners offends the dignity of women. They are entitled to be treated with dignity.

Immediate corrective steps should be taken in that behalf in all prisons in the State.

34. The directions issued under the interim order dated 3rd March 2016 will have to be fully complied with by the State Government. Considering the aforesaid discussion, we pass the following order:

ORDER :

- (a) The State Government shall undertake immediate exercise of finding out Government lands where additional Prisons can be constructed in the Cities of Mumbai and Pune. Appropriate steps shall be taken by the State Government within a period of three months from today. Within the same time, the State Government shall also consider whether additional construction can be made within the precincts of the existing prisons. The State Government shall come out with a time-bound programme for completing construction of additional Jails or additional construction in existing Jails. While undertaking construction of additional Jails, the State

Government shall keep in mind the need in future for at least 25 to 30 years;

- (b) Till a Committee which the State Government is proposing to appoint submits its recommendations, the State Government shall take a decision on the issue of number of toilets and bathrooms required in each existing Jail. The State Government shall ensure that separate bathrooms are made available to the women prisoners for taking bath in privacy. The State Government shall maintain the dignity of women prisoners by providing privacy to individual women prisoners ;
- (c) Immediate arrangements shall be made for providing bathrooms in the aforesaid three Jails as well as in all Jails in the State. This exercise shall be completed within a period of six months from today;
- (d) The State Government shall construct sufficient number of additional toilets in the aforesaid three Jails as well as in all other Jails in the State within a period of six months from today;

- (e) The State Government shall undertake repairs and renovation of the toilets and bathrooms in all Jails in the State which exercise shall be completed within a period of six months from today;
- (f) The State Government shall provide modern facilities to enable family members/relatives to meet the prisoners in all the Jails in the State including the aforesaid three Jails. Instead of fixing a metal grill for separating the prisoners and the persons interviewing the prisoners, glass windows or transparent acrylic windows shall be provided to ensure that the prisoner and visitor are clearly visible to each other. Modern Audio System shall be provided so that the prisoners and the persons interviewing the prisoners are clearly audible to each other. An arrangement shall be also made to provide adequate number of windows in all the Jails in the State so that all inmates can get an opportunity to meet their family members and lawyers as provided in the Rules. The number of windows provided shall be consistent with the number of prisoners in each

prisoners. As regards the jails in Mumbai and Pune, compliance shall be made with the recommendations of the Judicial Officers on this aspect. The State Government shall provide electronic clock for the benefit of the visitors in the hall/room where interviews are conducted. Compliance with these directions shall be made within six months from today;

- (g) The State Government shall appoint a permanent Committee of Social Workers and Dietitians to make surprise visits to all Jails for testing the quality and quantity of food served to the prisoners as well as the cleanliness and hygiene in the kitchens in the Jails. The State Government shall appoint such Committees for every District. The Committees shall make surprise visits (without prior intimation to the Jail Officers) at least once in a month and regularly and punctually submit a report to the Inspector General of Prisons or to any Senior Officer appointed by him. Immediate remedial measures shall be taken on the basis of the reports including action against erring Jail staff ;

- (h) As regards the children staying with their respective mothers in Jail, necessary arrangement for their benefit shall be made in terms of the directions of the Apex Court and as observed in Paragraph No.23 of the Judgment within a period of six months from today;
- (i) The State Government shall evolve a Scheme for ensuring that the women prisoners are able to meet their minor children (who are not staying with them) at frequent intervals. Formulation of such Scheme will be necessary as the persons or the institutions having the custody of the children may not encourage them to meet their respective mothers. If necessary, amendment may be proposed to the Maharashtra Prisons (Facilities to the Prisoners) Rules, 1962;
- (j) As regards the Jails at Arthur Road and Byculla in Mumbai and Yervada at Pune, the learned Principal Judge of the City Civil & Sessions Court at Mumbai or the Principal District Judge at Pune, as the case

may be, shall nominate Judicial Officers to visit the said Jails and to inspect the Jails in the context of implementation of the directions issued under this Judgment and Order as well as interim orders. Their first visit to the said three Jails shall be in July 2017. Thereafter, the Officers shall visit the Jails once in every six months;

(k) The Judicial Officers so appointed shall submit reports to the Registrar (Judicial-I) in a sealed envelope which shall be placed before this Court for consideration;

(l) As stated by the learned Additional Public Prosecutor, the State Government shall constitute a Committee presided over by a Retired Judge of this Court. The members of the Committee shall be the Additional Director General of Police-cum-Inspector General of Prisons, Shri S.N.Chavan, a Retired Prison Officer and Dr.Vijay Raghvan. The State Government may consider of appointing two other members as suggested in Paragraph 24 above. Necessary Government Resolution shall be issued within a

period of one month from today. The Terms of Reference shall be fixed by the State Government in terms of the observations made in this Judgment and Order. The Committee shall be empowered to look into all the aspects of the Jails in the light of the decisions of this Court as well as the Apex Court, the Model Prison Manual, 2016 (and its further versions) and Resolutions of the United Nations. The Committee shall suggest all measures to be for creating modern Jails with all proper amenities and for modernization of existing Jails ;

- (m) The Committee shall be given time of six months to submit its report from the date on which entire infrastructure is provided. Needless to add that all infrastructures such as adequate office premises, meeting room, furniture, computers, printers, secretarial staff, etc. shall be made available to the members of the Committee. Necessary arrangements consistent with the status of the members shall be made by the State Government for travelling and stay of members of the Committee for facilitating their visits to Prisons. The members who are not

Government servants shall be paid proper remuneration consistent with their status and the important nature of their duty. Necessary allowances shall be paid to all the members ;

- (n) The State Government shall comply with all the directions contained in all the interim orders which are not inconsistent with Judgment within a period of three months;
- (o) The State Government shall modify the impugned communication dated 24th August 2015 issued by the Superintendent of Yervada Jail in the light of what is held in paragraph 30 above. The State Government shall lay down uniform procedure which will apply to all the Jails in the State in the light of what is held in paragraph 29 above. This exercise shall be completed within three months from today:
- (p) The Petition is disposed of on above terms.
- (q) For reporting compliance with the directions including the direction regarding the constitution of

Committee, the Petition shall be placed on 4th May 2017 under the caption of “Directions. Compliance affidavits shall be filed on or before 3rd May 2017;

- (r) For considering further compliance, the Petition shall be listed on under the caption of “Directions” on 31st July 2017 when reports submitted by the learned Judges nominated as per the directions of this Court will be considered;
- (s) It will be ideal if the matter is listed before the same Division Bench or a Bench to which one of us is a party. The Registrar Judicial -I shall seek necessary directions in that behalf from the Hon'ble the Chief Justice.

(A.A. SAYED, J)

(A.S. OKA, J)