CHAPTER IV
LEGAL PROVISIONS AND JUDICIAL APPROACH
EMPATHISING WITH UNDERTRIALS

The Constitution of India guarantees fundamental human rights to every individual. It further pledges that the State will safeguard these human rights and protect citizens from any arbitrary infringement upon their liberty, security and privacy. Over the years, the Supreme Court has on many occasions emphasized the role of the judiciary as a “guardian of their sentences.” To support this, the court has laid down a number of guidelines and directives for the States to follow.

“Prison as a subject of legislation has been placed under Entry 4 in List-II (State list), of the Seventh Schedule of the Constitution of India. Hence, prisons in different States vary in their organization, rules and models. All the States have their own manuals based upon the Prisons Act 1894, which is a Central legislation”.1 “Given the lack of political will to legislate on prisons in independent India, it is the judicial pronouncements that have realized the constitutional rights of those held in prisons. ‘Imprisonment does not spell farewell to fundamental rights’.”2

“Never before in its history, was prison administration in India subjected to such a critical review by the Highest Court in the country, as in the last few decades. Discarding its erstwhile “hands off” doctrine towards prisons, the Supreme Court of India came strongly in favour of judicial scrutiny and intervention whenever the rights of prisoners in detention or custody were found to have been infringed upon. In Sunil Batra v. Delhi Administration and Others (1978), Mr Justice V.R. Krishna Iyer pronounced”3:

   Prisoners have enforceable liberties, devalued may be but not demonetised; and under our basic scheme, Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy’. Again in Sunil Batra v. Delhi

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2 Charles Sobraj vs Superintendent Central Jail, Tihar, New Delhi, AIR 1978 SC 1514.
3 Sunil Batra v. Delhi Administration and Others, AIR 1978 SC 1675.
Administration (1979), the Court asked and affirmed: “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 recognizes rights of prisoners in the International Covenant on Prisoners’ Rights to which our country has signed assent”. These and several other judicial pronouncements have set into motion a series of prison reforms all over the country.

The judgments of the Supreme Court are binding on all state agencies across the country and bring some kind of uniformity on prisoners’ rights in India. An officer who willfully or inadvertently ignores the Supreme Court directives can be subject to disciplinary action, as well as tried under the relevant provisions of the Indian Penal Code, 1860 or under the Contempt of Courts Act, 1971.

A large number of recommendations have been made to reduce delays. The various Reports of the Law Commissions’, various Committees and Enactments have discussed this matter a number of times, as enumerated earlier in the Chapter III of the present study. Numerous seminars have also been held. But the desired results have not been seen till date. “Even though the provisions to avoid unnecessary detention of undertrial prisoners have been in existence for years⁴, they are not implemented, resulting in a large number of undertrials’ population within prisons”. The present Chapter IV brings together important judicial pronouncements on important aspects of prison life including rights of specific categories of prisoners including under-trials, women, and children who stay in prison with their mothers, general living conditions of prisoners, grievance redressal mechanisms, legal aid, release on bail, speedy trial, communication with family and friends and parole procedures etc.

4.1 Judicial Pronouncements Relating Undertrials

“Some landmark judicial pronouncements⁵ have been construed below”;

“For thousands who lived, and continue to live behind the prison walls, failed by the justice system.....”

⁴ Except changes introduced by the Code of Criminal Procedure (Amendment) Bill (2006).
4.1.1 “Sentencing, Rehabilitation and Reformation- in *Mohd Giasuddin vs State of Andhra Pradesh*”

“The accused was sentenced to 3 years rigorous imprisonment for an offence of cheating. The appeal raised basic issues regarding the prescription of punishment and prayed for an appellate review to tailor the sentence to fit the gravity of the offence and redemption of the deviant. In the present case, considering the personal factors of the accused such as age, social conditions etc., the Court stated that a just reduction in the sentence was justified and reduced his sentence to 18 months”.

**Supreme Court Observations**

Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals……is the key to the pathology of delinquency and the therapeutic role of punishment.

“The current criminal justice system is weakest at the post-conviction stage, thus the Court’s approach must be socially informed and personalized. The Court criticized the approach of the existing *Code of Criminal Procedure, 1973 (Cr.P.C.*)* in as much as it does not afford any importance to the meaningful collection and presentation of the penological facts bearing on the background of the individual, the dimension of damage, the social milieu etc. Modern penology regards crime and criminal as equally material when appropriate sentence is to be imposed. It turns the focus not only on the crime, but also on the criminal and seeks to personalize the punishment so that the reformist component is as much operative as the deterrent element The Court also emphasized on *Sections 235(2) and 248(2) of the Cr.P.C.* which give an opportunity to both parties to bring to the notice of the court, facts and circumstances which will help personalize a sentence from a reformative angle”.  

“A judge must exercise his discretionary power while imposing a sentence, drawing inspiration from the humanitarian spirit of the law to consider the importance of the personality of the offender as well as the features of the crime.

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6 AIR 1977 SC 1926.
7 AIR 1977 SC 1926.
The prison system leaves much to be desired in the sense of humanizing and reforming the man we call a criminal. Sentencing is an important stage in the process of administration of justice and thus imposition of appropriate punishment should receive serious attention of the Court”.  

** Supreme Court Directives  

“The emphasis while sentencing should be as much on the crime as on the criminal. The proper sentence is a composite of many factors, (As per the 47th report of the Law Commission of India) including the:

1) nature of the offence,
2) circumstances - extenuating or aggravating - of the offence,
3) prior criminal record, if any, of the offender,
4) age of the offender,
5) professional and social record of the offender,
6) background of the offender with reference to education, home life, sobriety and social adjustment,
7) emotional and mental condition of the offender,
8) prospect for the rehabilitation of the offender,
9) possibility of a return of the offender to normal life in the community,
10) possibility of treatment or training of the offender, and
11) possibility that the sentence may serve as a deterrent to crime by this offender, or by others and the present community need, if any, for such a deterrent in respect to the particular type of offence involved”.  

“Hearing as contemplated under Section 235(2) of the Cr.P.C. is not confined merely to hearing oral submissions. It is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors

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8 AIR 1977 SC 1926.
9 AIR 1977 SC 1926.
bearing on the question of sentence, and if they are contested by other side, to produce evidence for the purpose of establishing the same. In white collar offences, emphasis must be placed on the reparation of the victims as well to commiserate them. Consideration should also be given to achieve the ends of just deserts, deterrence and rehabilitation within the prison campus which leads to reform and reintegration of the prisoner back into the society”.10

4.1.2 “Judicial Intervention in Prisons- Charles Sobraj vs Superintendent Central Jail, Tihar, New Delhi11

Charles Sobraj, an inmate at Tihar Jail, complained of barbaric and inhuman treatment meted out to him whilst in custody. These allegations led the Supreme Court to examine the limits and purpose of judicial intervention into prisons”.

Supreme Court Observations

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

“The criminal judiciary has thus a duty to guardian their sentences and visit prisons when necessary.”

“Judicial policing of prison practices is implied in the sentencing power, thus the ‘hands off’ theory is rebuffed and the Court must intervene when the constitutional rights and statutory prescriptions are transgressed to the injury of the prisoner. The right to life of a person is more than mere animal existence, or vegetable subsistence. Therefore, the worth of the human person and dignity and divinity of every individual inform Articles 19 and 21 of the Constitution even in a prison setting. There must be some correlation between deprivation of freedom and the legitimate functions of a correctional system.

Imprisonment does not spell farewell to fundamental rights laid down under part III of the constitution. Prisoners’ retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Therefore, it is a court’s ‘continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified’.

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11 AIR 1978 SC 1514
Supreme Court Directives

Although in its final pronouncement the Court dismissed the petition, however the principles that were laid down are still considered as ‘having laid bare the constitutional dimension and rights available to a person behind stone walls and iron bars’.

4.1.3 “Right against Solitary Confinement & Fetters – Sunil Batra vs Delhi Administration & Others

Two petitioners, Sunil Batra and Charles Sobraj, filed writ petitions in the Supreme Court against their traumatic treatment by jail authorities. Batra, facing death sentence, challenged his being subject to solitary confinement without judicial sanction. Sobraj complained against the distressing disablement of prisoners by bar fetters for unlimited durations.

Supreme Court Observations

“The court has a distinctive duty to reform prison practices and to inject constitutional consciousness into the system.” “It must not adopt a ‘hands off’ attitude with regard to the problem of prison administration because a convict is in prison under the order and direction of the court.

The Court reiterated the constitutional mandate that no prison law can deny any fundamental right of the prisoner. Disciplinary autonomy in the hands of the jail staff violates human rights and prevents prisoners’ grievances from reaching the judiciary.

The rule of law disallows infliction of supplementary sentences under disguises which defeat the primary purpose of imprisonment. Therefore, infliction of additional torture by forced cellular solitude or iron fetters can be struck down as unreasonable, arbitrary and unconstitutional.

Rehabilitation is a necessary component of incarceration and this philosophy is often forgotten when justifying harsh treatment of prisoners. Consequently, the disciplinary need of keeping apart a prisoner must not involve inclusion of harsh elements of punishment. The Court opined that “liberal paroles, open jails, frequency of familial

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12 See Ramamurthy vs State of Karnataka, AIR 1997 SC 1739.
13 AIR 1978 SC 1675.
meetings, location of convicts in jails nearest to their homes tend to release stress, relieve distress and insure security better than flagellation and fetters.”

❖ **Supreme Court Directives**

1) “Solitary confinement is the seclusion of a prisoner, from the sight of and communication with other prisoners. It is a severe and separate punishment which can be imposed only by the court.

2) Prisoners sentenced to death cannot be kept under solitary confinement. However, their segregation from other prisoners during the normal hours of lockup is legal.

3) Such prisoners shall not be denied any of the community amenities including games, newspapers, books, moving around and meeting prisoners and visitors, subject to reasonable regulation of prison management.

4) A prisoner shall be considered to be ‘under sentence of death’ only when his appeals to the High Court and the Supreme Court, and mercy petitions to the Governor and the President have been rejected.

5) Under-trial prisoners shall be deemed to be in custody but not undergoing punitive imprisonment. They shall be accorded relaxed conditions than convicts”.

6) “Bar fetters shall be shunned as violative of human dignity, within and without prisons. Indiscriminate resort to handcuffs when accused is produced before the court and forcing iron on prison inmates is illegal. It shall be stopped forthwith, save a few exceptions.

7) A prisoner shall be restrained only if there is clear and present danger of violence or likely violation of custody.

8) The following preconditions should be observed while imposing fetters:

   i. There is an absolute necessity to use fetters,

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14 AIR 1978 SC 1675.

15 AIR 1978 SC 1675.
ii. There exist special reasons as to why no other alternative but fetters can ensure a secure custody,

iii. These special reasons must be recorded in detail simultaneously,

iv. This record must be documented in both the journal of the superintendent and the history ticket of the prisoner,

v. Before the imposition of fetters, natural justice in its minimal form shall be complied with,

vi. No fetters shall be kept beyond day time,

vii. The fetters shall be removed at the earliest opportunity,

viii. There should be a daily review of the absolute need for the fetters, and

ix. Any continuance of the fetters beyond a day shall be illegal unless an outside agency like the district magistrate or sessions judge, on materials placed, directs its continuance.

9) The discretion of imposing fetters or other iron restraints is subject to quasi judicial oversight, even if imposed for security.

10) Legal aid shall be given to prisoners to seek justice from prison authorities and to challenge the decision in court where they are too poor to secure a lawyer on their own.”


The petitioner, a reader at Saurasthra University, convicted for offences of cheating and forgery, filed a special leave petition in the Supreme Court challenging the High Court order enhancing his punishment from one day simple imprisonment to 3 years rigorous imprisonment. In his petition, he also complained of the actions of the jail authorities denying him a copy of the judgment (which he obtained in 1978 i.e. 5 years after the pronouncement of the judgment against him)”.

17 AIR 1978 3 SSC 544.
Supreme Court Observations

When only the rich can enjoy the law...and the poor...cannot have it, because its expense puts it beyond their reach, the threat to...free democracy is not imaginary but very real, because, democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.

“Emphasizing upon the importance of rendering legal aid, the Court observed that our laws have laid great emphasis on the procedural and substantive safeguards designed to assure fair trials in which every defendant stands equal before the law. An important ingredient of fair procedure to a prisoner, who has to seek his liberation through the Court process, is lawyer’s services. The Court further observed that the right of appeal for the legal illiterates is nugatory in the absence of any statutory provision for free legal service to a prisoner. This negates the ‘fair legal procedure’ which is implicit in Article 21 of the constitution”.18

Supreme Court Directives

“The Court considered two main aspects of the criminal justice delivery system in India, namely, service of a copy of the judgment to the prisoner in time to file an appeal and the provision of free legal services to a prisoner. The Court issued the following directions:

1) Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to prison term.

2) In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, revisional or other court, the official concerned shall, with quick dispatch, get it delivered to the sentenced and obtain written acknowledgment thereof from him.

3) A jailor who withholds the copy of the judgment hinders the court process thus violating Article 21 of the constitution.

4) Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the jail administration.

18 AIR 1978 3 SSC 544.
5) Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner’s defence, provided the party does not object to that lawyer.\textsuperscript{19}

6) The state - which prosecuted the prisoner and set in motion the process which deprived him of his liberty - shall pay to assigned counsel, such sum as the court may equitably fix”.\textsuperscript{20}

4.1.5 “Bail, Bonds & Sureties- Motiram & Others vs State of Madhya Pradesh\textsuperscript{21}

Motiram, a mason appealed to the Supreme Court that despite being granted bail by the Court, he was unable to secure his release because the Chief Judicial Magistrate fixed an exorbitant sum of Rs 10,000, as the surety amount. Motiram said that the magistrate rejected the surety ship offered by his brother simply because his brother resided in another district and his assets were located there. Motiram wanted the Supreme Court to either reduce the surety amount or order his release on a personal bond. The Court had to decide:

1) Whether a person can be released on bail under the Cr.P.C., 1973 on a personal bond
2) Without having to get other people to stand as surety for him?
3) The criteria for fixing the bail amount and
4) Whether a surety offered by a person can be rejected because he resides in a different district or state or because his property is situated in a different district or state?”\textsuperscript{22}

\begin{itemize}
  \item **Supreme Court Observations**
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The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail

\textsuperscript{19} The Legal Services Authorities Act (1987) imbibes the directions of the court. In fact, it entitles all persons in custody to avail free legal services at state cost.
\textsuperscript{21} AIR 1978 SC 1594.
\textsuperscript{22} AIR 1978 SC 1594
life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.

“The Court acknowledged that many poor persons are forced into cellular servitude for petty offences because trials never conclude, and bail amounts are fixed beyond their meager means. The poor are being priced out of their liberty in the justice market. Whenever excessive amounts are fixed as surety for bail, the victims invariably happen to be from disadvantaged sections of society; belonging to linguistic or other minorities; or are from far corners of the country.

There is no sanction in any law to make geographical discriminations such as not accepting sureties from another part of the country or not accepting an affirmation in a language other than the one spoken in the region. India is one and not a conglomeration of districts untouchably apart. A person accused of a crime in a place distant from his native residence cannot be expected to produce sureties who own property in the same district as the trial court. The Supreme Court asserted that provincial or linguistic divergence cannot be allowed to obstruct the course of justice.

The Court further observed that bail provisions contained in the Cr.P.C. must be liberally interpreted in the interest of social justice, individual freedom and indigent persons. It shocks one’s conscience to ask a mason to furnish a sum as high as Rs 10,000 for release on bail”.  

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Supreme Court Directives

1) “An accused person should not be required to produce a surety from the same district especially when he is a native of some other place.

2) Bail covers release on one’s own bond, with or without sureties.

3) Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied.

4) The bail amount should be fixed keeping in mind the financial condition of the accused.

AIR 1978 SC 1594.
5) When dealing with cases of persons belonging to the weak categories in monetary terms - indigent young persons, infirm individuals or women - courts should be liberal in releasing them on their own recognizance.

4.1.6 “Right to Speedy Trial & Release on Personal Bonds- Husainara Khatoon & Others vs Home Secretary, Bihar, Patna”

“In January 1979, the Indian Express listed the names of numerous under-trial prisoners who had been languishing in prison for 5, 7 or 9 years without their trial having even begun. Majority of such under-trial prisoners were accused of offences trivial in nature warranting punishment of only a few years or less.

On a petition, the Supreme Court directed that these under-trial prisoners be released forthwith on personal bonds. Owing to the peculiar facts and circumstances of the case, the personal bonds so made were not to be based on any monetary obligations.

A counter affidavit was also filed by the government bringing to light the plight of many innocent women who were in prison on the premise of ‘protective custody’ i.e. they were either victims or witnesses, required for the purpose of giving evidence.”

Supreme Court Observations

It is high time that the public conscience is awakened and the government as well as the judiciary begins to realise that in the dark cells of our prisons there are large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice - a commodity which is tragically beyond their reach and grasp.

“Bail System: Criticizing the discriminatory nature of the bail system, the Court observed that it is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meager means. The deprivation of liberty for the reason of financial poverty only was held to be an incongruous element in a society aspiring to fulfill the constitutional promises of social equality and social justice to all its citizens.

25 AIR 1979 SC 1360
26 AIR 1979 SC 1360
The Court questioned the property-oriented approach of the existent bail system, stating that such a system of bails operates very harshly against the poor. The Court asked the Parliament to consider whether instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organizations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation.

- **Speedy Trial**: Remarking on the undue delay in commencement of trials, the Court stated that speedy trial was the essence of criminal justice and thus delay in trial by itself constitutes denial of justice. A reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty.

**Supreme Court Directives**

1) The state government should realize its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases.

2) The state government should appoint competent judges for the newly established courts.

3) In cases where the police investigation has been delayed by over two years, the final report or charge-sheet must be submitted by the police within a further period of three months. Upon failure to do so, the state government should withdraw such cases.

4) All women and children who are in the jails in Bihar under ‘protective custody’, or who are in jail because their presence is required for giving evidence, or who are victims of offence should be released.

5) All women and children so released shall be taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after”.  

**4.1.7 “Right to Legal Aid & Speedy Trial - Hussainara Kkatoon & Others (II) vs Home Secretary, Bihar, Patna”**

“In January 1979 a habeas corpus was filed in the Supreme Court seeking directions to release a large number of under-trial prisoners languishing in the prisons of Bihar. A

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28 AIR 1979 SC 1369
number of directions were issued in the matter and this present case came up pursuant to those directions issued by the Court.

In this case, the Court stressed the state’s constitutional obligations to assure speedy trial and providing of free legal aid to the accused”.

Դ  Supreme Court Observations

“The Court held that the right to free legal aid is an unalienable element of ‘reasonable, fair and just’ procedure. Without it, a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

The Court also observed that ‘speedy trial’ is an essential ingredient of ‘reasonable, fair and just’ procedure guaranteed by Article 21 of the Constitution. It is the constitutional obligation of the state to devise such procedures as would ensure speedy trial to the accused. The state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that it does not have adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus”.

Դ  Supreme Court Directives

1) “The state government should provide under-trial prisoners a lawyer at its own cost for the purpose of making an application for bail.

2) The state is under a constitutional mandate to ensure speedy trial.

3) The state must take positive action to enforce the fundamental rights of the accused to speedy trial. Such action may include augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial”.

4.1.8 “Right against Handcuffing- in Prem Shankar Shukla vs Delhi Administration”

Prem Shankar Shukla- an under-trial prisoner at Tihar Jail, sent a telegram to the Supreme Court that he and some other prisoners were being forcibly handcuffed when

29 AIR 1979 SC 1369
31 AIR 1980 SC 1535
they were escorted from prison to the courts”. “It was contended that routine handcuffing and chaining of prisoners was continuing despite the Supreme Court directive in Sunil Batra’s case\textsuperscript{32} that fetters/handcuffs should only be used if a person exhibits a credible tendency for violence or escape”.

\textbf{Supreme Court Observations}

“Using handcuffs and fetters [chains] on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture. This practice does not stand the test of Articles 14-Equality before law, Article 19-Fundamental Freedoms and Article 21-Right to Life and Personal Liberty of the constitution. To bind a man, hand and foot; fetter his limbs with hoops of steel; and shuffle him along in the streets. To stand him for hours in the courts is to torture him; defile his dignity; vulgarize society; and foul the soul of our constitutional culture.

Strongly denouncing routine handcuffing of prisoners, the Supreme Court stated that to manacle a man is more than to mortify him; it is to dehumanize him; and therefore to violate his very personhood. The Court rejected the argument of the state that handcuffs are necessary to prevent prisoners from escaping. Insurance against escape does not compulsorily require handcuffing. There are other methods whereby an escort can keep safe custody of a detenue [detained person] without the indignity and cruelty implicit in handcuffs and other iron contraptions.

The Supreme Court asserted that even orders from superiors are not a valid justification for handcuffing a person. Constitutional rights cannot be suspended under the garb of following orders issued by a superior officer. There must be reasonable grounds to believe that the prisoner is so dangerous and desperate, that he cannot be kept in control except by handcuffing”\textsuperscript{33}

\textbf{Supreme Court Directives}

1) “Handcuffs are to be used only if a person is:

   i. involved in serious non-bailable offences, and/or
   
   ii. previously convicted of a crime, and/or

\textsuperscript{32} Sunil Batra vs Delhi Administration, AIR 1978 SC 1675, Bar against handcuffing & fetters.

\textsuperscript{33} AIR 1980 SC 1535
iii. of desperate character—violent, disorderly or obstructive, and/or
iv. likely to commit suicide, and/or
v. likely to attempt escape.

2) The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.

3) Once an arrested person is produced before the court, the escorting officer must take the court’s permission before handcuffing him from the court to the place of custody.

4) The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

4.1.9 “Grievance Redressal, Judicial Supervision of Additive Punishments, Access to Jail Manual, Interview Facilities etc. —Sunil Batra (II) Delhi Administration

This petition originated from a letter by a prisoner, Sunil Batra, complaining of the brutal assault meted out to another prisoner Prem Chand by the head warder of Tihar Jail. The victim had attained serious anal injury due to forced insertion of a stick by the warder on the premise of an unfulfilled demand for money”.

-bed Court Observations

“No iron curtain can be drawn between the prisoner and the constitution.”

“The Court reaffirmed the importance of judicial oversight of prisons. Quoting from its earlier judgments, it observed that, ‘The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by prison administration’.

It also noted that there was widespread prevalence of legal illiteracy even among lawyers about the rights of prisoners. The Court suggested that in order to make the law

34 Non-bailable offences are laid out in the first Schedule of the Cr.P.C.
36 AIR 1980 SC 1579.
accessible to prisoners, large notice boards displaying the rights and responsibilities of prisoners, in the local language, maybe hung up in prominent places within the prison.

Discussing the importance of the institution of the Board of Visitors, the Court stated that judicial members of the Board have special responsibilities and must act as independent overseers of the prison system. The Court quoted the duties and functions of visitors from the relevant manual including “37:

1. Inspection of barracks, cells, wards, worksheds and other buildings of the jail,

2. Inspection of the cooked food, Ascertain compliance of set standards for health, hygiene and sanitation,

3. Inquire whether any prisoner is illegally detained or detained for an undue length of time while awaiting trial, and

4. Examine jail registers and records.

❖  Supreme Court Directives

“The Court issued the following directives to the state and the prison staff:

1) Grievance deposit boxes shall be maintained by or under the orders of the district magistrate and the session judges, within 3 months of this judgment.

2) These shall be opened as frequently as required and suitable action will be taken on the complaints made.

3) District magistrates and sessions judge shall visit prisons in their jurisdiction, give opportunities for ventilating legal grievances, make expeditious enquiries and take suitable remedial action.

4) The prison authorities shall not in any manner obstruct or non-cooperate with reception of or enquiry into the complaints by the judicial officers, and if they do, prompt punitive action must follow.

5) Judicial appraisal by the sessions judge shall be required to impose any additive punishment including”38:

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37 AIR 1980 SC 1579.
38 AIR 1980 SC 1579.
1. solitary or punitive cell,
2. hard labour,
3. dietary change,
4. denial of privileges and amenities, and
5. transfer to other prisons with penal consequences.

6) “In the case of emergency to take such action, information shall be given to the session judge within two days of the action.

7) Lawyers will be nominated by the district magistrate, sessions judge, High Court and Supreme Court to make periodical visits and record and report to the concerned court, results which have relevance to legal grievances.

8) These lawyers will be given all facilities for interviews, visits and confidential communication with prisoners. This is subject to discipline and security considerations.

9) The concerned state shall take steps to prepare and circulate the Prisoners’ Handbook in the regional language.

10) The state shall take steps to conform with the Standard Minimum Rules for the Treatment of Prisoners 1955 as recommended by the United Nations.

11) There is need for reviewing the Prisons Act and overhauling the prison manuals as well as the model manual. The changes must include constitutional values, therapeutic approaches and tension free management.

12) Prisoners’ rights shall be protected by the court by its writ jurisdiction and contempt power.

13) Free legal services to the prisoners shall be promoted by professional organizations, recognized by the court.

14) The District Bar shall keep a cell for prisoner relief”.  

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4.1.10 “Communication with Family, Lawyers & Friends- Francis Mulin vs Union Territory of Delhi & Others"\textsuperscript{40}

The petitioner, a British national, filed a petition in the Court challenging the constitutional validity of certain provisions restraining her from having interviews with her lawyer and members of her family.

The petitioner, accused under the \textit{Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974}, was detained in the Central Jail, Tihar. Whilst under detention, the petitioner had difficulty having interviews with her 5 year old daughter and lawyers. The order of detention under the Act permitted only one interview per month whereas under-trial prisoners are granted the facility of interview with friends and relatives twice a week. The petitioner challenged this discriminatory provision as violative of her rights under the constitution of India”.

\begin{itemize}
  \item \textbf{Supreme Court Observations}
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    \item “Whilst considering the question of ‘conditions of detention’ the Court stated that it was necessary to make a distinction between ‘preventive’ and ‘punitive’ detention. ‘Punitive detention’ is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while ‘preventive detention’ is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society.
    \item The Court observed that a person’s liberty must be curtailed with caution and must be proportional to necessity. It noted that a prison rule may regulate the right of a detenue to have interview with a legal adviser in a manner which is reasonable, fair and just. However, it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview as that would be violative of \textit{Articles 14 and 21 of the Constitution}”.\textsuperscript{41}
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\begin{itemize}
  \item \textbf{Supreme Court Directives}
  \begin{itemize}
    \item 1) “A detenue must be permitted to have at least two interviews in a week with relatives and friends.
  \end{itemize}
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\textsuperscript{40} AIR 1981 SC 746 (a).
\textsuperscript{41} AIR 1981 SC 746 (a).
2) It should be possible for a relative or friend to have interviews with the detenue at any reasonable hour on obtaining permission from the superintendent of the jail.

3) It should not be necessary to seek the permission of the District Magistrate, Delhi, as the latter procedure would be cumbersome and unnecessary from the point of view of security and hence unreasonable.

4) No arbitrary or unreasonable rule can be prescribed for regulating interviews of detenues. Therefore the clauses of the detention order regulating the right of the detenues to have interviews with a legal advisor of their choice are unconstitutional and void’’.42

4.1.11 “Visitorial Role of Judiciary -Rakesh Kaushik vs BL Vig, Superintendent Central Jail, New Delhi43

The petitioner complained with facts and figures, that his life in the prison was subjected to intimidation by overbearing ‘toughs’ inside, and he was forced to be party to misappropriation of jail funds, homosexual and sexual indulgence with the connivance of officials. He also reported of a drug racket being run, and alcoholic and violent misconduct by gangs, and that the whole goal of reformation of sentences was being defeated by this combination of criminal activities”.

❖ Supreme Court Observations

“The Court expressed concern over the deterioration of conditions in Tihar Jail despite the numerous guidelines on prison reforms issued by it. It noted that such indifference could not deter the writ of the court running into prisons and compelling compliance, however tough the resistance, however high the officials.

The Court directed the state to comply with the action-oriented conclusions given in Sunil Batra’s case. Some important ones were reiterated including:

1. The nomination of lawyers by the judiciary to visit prisons as part of the visitorial and supervisory judicial role,

43 AIR 1981 SC 1767.
2. Provision of grievance deposit boxes in every prison,
3. Periodical prison visits by district magistrates and sessions judges,
4. No solitary or punitive cell, no other punishment or denial of privileges without a judicial appraisal by the sessions judge, and
5. Preparation of Prisoners’ Handbook in hindi and circulation of copies among prisoners to create awareness.

It emphasized that there can be human rights conscious reform in the prison only when there is transformation in the awareness of the top-brass, introduction of new techniques instilling dignity and mutual respect among prisoners, and curative techniques pervade the staff and inmates”.

Supreme Court Directives

“The Court directed the district and sessions judge to hold an open enquiry within the jail premises to enquire into the allegations contained in the petition. Certain relevant instructions include:

1) He shall ascertain whether the directions given in Sunil Batra’s case are substantially complied with and where there is default, enquire into the reasons thereof.
2) Being a visitor of jail, it is part of his visitorial functions to acquaint himself with the condition of tension, vice and violence and prisoners’ grievances.
3) The focus of the Session judge should not be solely upon the warden and warders of the jail but also on the medical officers.
4) He will enquire into the above mentioned aspects and suggest remedial action”.

4.1.12 “Legal aid & production of accused- Khatri & Others vs State of Bihar & Others”

This case is in-famous as the Bhagalpur blinding case. A number of under-trial prisoners filed a writ in the Supreme Court complaining that after their arrest, they were blinded by police officials whilst under police custody.

44 AIR 1981 SC 1767.
46 AIR 1981 SC 928.
The Supreme Court also found during the proceedings of the case that no legal representation was provided to the blinded prisoners because none of them asked for it. The judicial magistrates also did not enquire from the blinded prisoners produced before them whether they wanted legal representation at state cost”.

❖ Supreme Court Observations

“The Court reiterated its stance in Hussainara Khatoon’s case, wherein it was held that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the constitution.

The Court further observed that legal aid would become merely a paper promise and would fail its purpose if it were left to a poor ignorant and illiterate accused to ask for free legal services. The magistrate or the to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state.

The Court also voiced serious concern over the irregularities in the production of accused before the magistrates. Perusal of the records clearly showed that the prisoners had continued to remain in jail without any remand orders being passed by the judicial magistrates. It observed that the provision inhibiting detention without remand was a very healthy provision and it is necessary that the magistrates try to enforce this requirement. The Court asked the state government to inquire into the irregularities and ensure that in future, the administrators of law are not permitted to commit such violations of the law.

The Court also expressed its unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the judicial magistrates and thereafter from time to time for the purpose of remand to how they had received injuries in the eyes. It directed the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future”.47

47 AIR 1981 SC 928.
Supreme Court Directives

1) “The state is under a constitutional mandate to provide free legal aid to an accused who is unable to secure legal services on account of poverty.

2) This obligation to provide free legal services to the indigent accused arises not only on or after the commencement of trial but also when the accused is for the first time produced before the magistrate and when he is remanded from time to time.

3) All magistrates and session judges in the country shall inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence, that he is entitled to free legal services at the cost of the state”. 48

4.1.13 “Women Prisoners & Legal Aid- Sheela Barse vs State of Maharashtra” 49

Supreme Court Observations

“Failure to provide legal assistance to the poor and impoverished persons violates constitutional guarantees. Article 39A of the constitution casts a duty on the state to secure the operation of a legal system that promotes justice on the basis of equal opportunity. The right to legal aid is also a fundamental right under Articles 14 and 21 of the Constitution. The Court expressed serious concern about the plight of prisoners who are unable to afford legal counsel to defend themselves. It observed that the lack of access to a lawyer was responsible for individual rights against harassment and torture not being enforced. Stressing the urgent need to provide legal aid not only to women prisoners but to all prisoners whether they were under-trials or were serving sentences, the Court said that an essential requirement of justice is that every accused person should be defended by a lawyer. Denial of adequate legal representation is likely to result in injustice, and every act of injustice corrodes the foundations of democracy and rule of law.

49 AIR 1983 SC 378.
Expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced”.50

**Supreme Court Directives**

1) “Female suspects must be kept in separate lock-ups under the supervision of female constables.

2) Interrogation of females must be carried out in the presence of female police officers.

3) A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.

4) As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom she would like to be informed about the arrest. The relative or friend must then be informed by the police.

5) The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.

6) The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at state cost, provided such

7) Person is willing to accept legal assistance.

8) The magistrate before whom an arrested person is produced shall inquire from the arrested person whether she has any complaint regarding torture or maltreatment in police custody. The magistrate shall also inform such person of her right to be medically examined.

The Court in the instant petition considered the issue of development of children who are in jail with their mothers”.51

“The substance of the petition comprised the following issues52:

50 AIR 1983 SC 378.
52 The Court took these from a field action project prepared by the Tata Institute of Social Sciences.
1. The prison environment is not conducive to the normal growth and development of children,

2. Many children are born in prison and have never experienced a normal family life,

3. Socialization patterns get severely affected due to their stay in prison. Children are unaware of the concept of home and their only image of male authority is that of police and prison officials,

4. Children get transferred with their mothers from one prison to another, frequently (due to overcrowding), thus unsettling them, and

5. Such children sometimes display violent, aggressive, or alternatively, withdrawn behaviour in prison”.

4.1.14 “Grievance Redressal Mechanisms- Madhukar B Jambhale vs State of Maharashtra & Others”

The petitioner sent a letter to the Bombay High Court complaining about the ill-treatment meted out to him by the prison staff. The Court treated this as an application under Article 226 of the Constitution, thus what was initiated as an individual complaint assumed the character of a class action on behalf of all convicts undergoing sentence”.

“The petition had raised many vital issues regarding the validity of rules framed under the Prisons Act, namely:

1. The classification of prisoners on the basis of education, higher status, standard of living as violative of Article 14 of the constitution,

2. Undue censorship and restrictions on the rights of prisoners to correspond as violative of Articles 19 and 21 of the Constitution,

3. The double lock up system in some cells of jail amounted to solitary confinement, which is impermissible in law, and

4. The grievance procedure prescribed under the various rules is grossly inadequate and does not conform to the guidelines set by the Supreme Court in Sunil Batra’s case”.

53 1987 Mah LJ 68.
54 1987 Mah LJ 68.
High Court Observations

“The Court did not deal with the first grievance of the prisoner i.e. discriminatory classification of prisoners, as it had already been abolished.

On the questions of censorship and restrictions on communication of prisoners, the Court observed:

We fail to see why the prisoner should not give vent to his grievances against the prison administration to the outside world through his letter when the prisoner is not prevented from making these grievances in the interviews which are permitted under the rules.

The Court further stated that by reason of conviction and being lodged in jail, the prisoner does not lose his political right or rights to express the views on political matters….

The grievance of the petitioner of the double lock up system was held incorrect, therefore no directions were issued. Similarly no directions were issued on the allegations of the petitioner regarding food, ill treatment and torture owing to the inconsistencies present in the statements of the petitioner”.

High Court Directives

The Court struck down the rules, which resulted in undue censorship on prisoners’ correspondence with the outside world and prohibited the inmates to correspond with inmates of other prisons, as unwarranted, unjust and unreasonable thus violative of the constitution.

“On the question of grievance redressal procedures, the Court issued several directions after perusing the draft submitted on behalf of the government for the implementation of directives issued by the Supreme Court in this regard:

1) Grievance Deposit Box: A sealed grievance deposit box shall be kept at a conspicuous place inside the prison under lock and key, and the key will remain exclusively with the district judge. The Box shall be opened at regular intervals and a detailed record of the complaints shall be maintained by the concerned sessions judge who will investigate such cases and take all appropriate action.

55 1987 Mah LJ 68.
2) Complaint Register: The district and sessions judge shall maintain a complaint register in prison office which shall contain the complaints found in the grievance deposit box and action taken in respect of such complaints.

3) Visits by District and Sessions Judge/District Magistrate: They shall personally visit prisons in their jurisdiction and offer effective opportunities for ventilating the legal grievance of the prisoners and shall make expeditious enquiries and take suitable remedial action. They shall also ascertain that the conditions prevailing in prisons conform to the state rules.

4) Visits by Lawyers: The session judge shall nominate lawyers to make separate visits to jails. The lawyers so appointed shall be given access by the prison administration to inspect the prison premises and the record relating to complaints. They will also be permitted to interview and receive confidential communications from the inmates of the prison subject to disciplinary and security conditions. The lawyers shall report to the court, results which have relevance to legal grievances”.56

5) “A prisoner shall also be able to send letters or address a petition containing grievances, through the superintendent, to the following authorities:

   i. Regional Deputy Inspector General of Prisons,

   ii. The Inspector General of Prisons, Pune,

   iii. The Secretary, Home Department, Bombay,

   iv. The Home Minister/Chief Minister, Bombay,

   v. The District Judge, High Court Judge or Supreme Court Judge,

   vi. Lawyers nominated by the District Judge or Prison Visitors, Lokpal, Lokayukta, and

   vii. Secretary, District Legal Committee/Secretary, State Legal Aid Committee”.57

4.1.15 “Parole & Furlough- Sharad Keshav Mehta vs State of Maharashtra & Others”

The petitioner, Sharad Mehta, was sentenced to life imprisonment for murder in October 1983. In October 1985 he made an application for release on furlough, however the application was rejected. He re-applied for release in March 1986 and April 1986 but was again denied. He challenged the denial of furlough in the Bombay High Court arguing that the denial was in contravention of the rules framed under the Maharashtra Prison Manual”.

❖ High Court Observations

“Disagreeing with the contentions made by the state government, the Court observed that, “It is not open to the Home Department of the state government to prescribe rules giving facility of release of the prisoner on furlough by one hand and then providing that the prisoner has no legal right to be released on furlough.”

The Court also highlighted the difference between parole and furlough. Parole is granted for certain emergency and the release on parole is a discretionary right. However, release on furlough is a substantial right and accrues to a prisoner on compliance with certain requirements. The idea of granting furlough to a prisoner is that the prisoner should have an opportunity to come out and mix with the society and the prisoner should not be continuously kept in jail for a considerable long period”.

❖ High Court Directives

1) “The right to be released on furlough is a substantial and legal right conferred on the prisoner.

2) A prisoner can claim as of right to be released on furlough after having complied with the requirements of the rules framed for release of prisoner on furlough.

3) The Commissioner of Police must apply his mind to the facts of each case and should not as a formality submit a report denying the substantial and legal right of the prisoner.

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4) Unless the Commissioner of Police has material from which a reasonable inference can be drawn, the right to release on furlough cannot be deprived by resort to any exceptions to the rule”.

4.1.16 “Classification of Prisoners, Prison Conditions & Facilities etc.- A Convict Prisoner in the Central Prison vs State of Kerala

This petition was filed in the High Court of Kerala by a convict lodged in Hiruvananthapuram Central Jail complaining against the sub-human conditions prevailing in the prison. He further complained about the:

i. Connivance of jail officials with certain prisoners due to which some convicts enjoyed liberty to do what they like, making others feel indignant and ignored,

ii. Association of first time offenders with habitual offenders which was converting them into hard core criminals,

iii. Presence of homosexuality and other forms of physical assault in prison, and


❖ High Court Observations

With imprisonment, a radical transformation comes over a prisoner, which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life.

“The Court observed that while one does not expect life in prison to be the same in the free world, yet the human dignity of the prisoner must be maintained under all circumstances. Imprisonment may strip a person of certain facets of life, but he does not become a non-person and rights that human dignity requires and circumstances justify, must be granted to him.

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61 1993 Cri LJ 3242.
High Court Directives

1) The state shall build sufficient number of prisons to accommodate prisoners. It should also consider the construction of open jails within the state.

2) High security prisons shall be built to house the category of prisoners who are considered dangerous.

3) The state shall effectively implement segregation, keeping habitual offenders away from freshers, to avoid the possibility of hard core criminals turning jails into schools of crime.

4) The state will ensure that short-term appointments of prison staff are not made, and that adequate trained staff is provided in jails, keeping in view needs of security.

5) The state will take appropriate action to pay reasonable wages to prisoners, so that, motivation for work is generated.

6) The state will consider the possibility of registering societies for managing economic activities in jails on a profitable basis.

7) The state may consider the advisability of avoiding short term imprisonment and simple imprisonment, wherever possible. Necessary statutory amendments could be thought of, substituting short term sentences with free work or work with regulated wages.” 62

8) “The registry shall make appropriate arrangements for providing a meeting place in the premises of the High Courts where prisoners can meet their counsel and give instructions by prior appointment. For this purpose a desk in the Criminal Section can be considered.

9) Sufficient provision will be made to segregate civil prisoners and military prisoners, from prisoners convicted of criminal charges.

10) Proper arrangements will be made for escort of prisoners from jails to courts and back.

62 1993 Cri LJ 3242.
11) A rational parole policy must be evolved by the state.

12) Blades for shaving, sterilized needles in dispensaries and sufficient fans should be provided. Sanitary napkins which are not included in the clothing supplied to female prisoners, should also be supplied.

13) Necessary facilities for the jail staff must be provided as a congenial working environment alone can ensure a contented service.

14) Reservation of a nominal percentage of jobs for convict prisoners of good behaviour can be an incentive and it would be consistent with the concept of rehabilitation.

15) Educational and recreational facilities, within reasonable limits may be provided in prisons”.

4.1.17 “Delay in Trial - Directions for Release on Bail- Supreme Court Legal Aid Committee vs Union of India & Others”

The Supreme Court Legal Aid Committee filed a writ petition complaining against the excessive delay in the disposal of cases registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It prayed that all under-trial prisoners who were in jail for the commission of any offence under the Act for a period exceeding 2 years on account of the delay in the disposal of their case should be released from jail declaring their further detention to be illegal and void”.

* Supreme Court Observations

“To refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to…the Act…the Code and…the Constitution.”

“The Court observed that in cases under the NDPS Act, a certain amount of deprivation of liberty could not be avoided. However, if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 receives a jolt. Therefore, for all accused persons who have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation would be violative of the right to liberty enshrined in the constitution”.

64 1994(3) Crimes 644 (SC).
Supreme Court Directives

“The Court issued the following direction pertaining to the release of under-trial prisoners accused under the Act:

Table 4.1
Directions for Release of Undertrials

<table>
<thead>
<tr>
<th>Sr. no.</th>
<th>Terms of Punishment</th>
<th>Period undergone</th>
<th>Action to be taken</th>
</tr>
</thead>
</table>
| 1.      | 5 years/less than five years and fine | Not less than half the punishment | • Shall be released on bail
• Where the maximum fine is prescribed, the bail amount shall be 50 per cent of the said amount with two sureties for the said amount
• Where the maximum fine is not prescribed, the bail amount shall be to the satisfaction of the judge with two sureties for like amount. |
| 2.      | Exceeding five years and fine | Not less than half the punishment | • Shall be released on bail on the term set out above, but in no case shall the bail amount be less than Rs. 50,000 with two sureties for like amount. |
| 3.      | Min. 10 yrs of imprisonment and a fine of Rs. 1 lakh | Not less than 5 years | • Shall be released on bail, provided he furnishes bail in the sum of Rs. 1,00,000 with two sureties for like amount. |

1) Any accused charged of an offence under Sections 31 and 31A of the Act shall not be entitled to bail under this order.

2) Under-trial prisoners released under these directives are subject to a number of conditions including depositing their passport with the concerned judge, presenting themselves before the relevant police station once a month, and not leaving the area without the permission of the concerned judge etc.

3) The cases of those under-trial prisoners who are not entitled to be released will be accorded priority by the special court.”

4.1.18 “Delay in Trial - Directions for Release on Bail- Common Cause, A Registered Society Through Its Director vs Union of India & Others”

“Supreme Court Observations accepting the suggestions made in the petition, the Court stated that the pendency of criminal proceedings for long periods was operating as an

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66 AIR 1996 4 SCC 33.
67 AIR 1996 4 SCC 33.
engine of oppression. In majority of such cases, the accused who belong to the poorer sections of the society are languishing in prisons primarily because they are unable to afford competent legal advice. Furthermore, many under-trials are not brought to the court on every Date of hearing resulting in several adjournments and unnecessary delays. The Court issued directives to protect and effectuate the fundamental right to life and personal liberty of the citizens”.

Supreme Court Directives

“The Supreme Court issued the following directions to secure the release of a number of under-trial prisoners languishing in prisons on account of delay in the commencement, proceeding or completion of trial:

Table 4.2
Directions to Secure Release of Undertrials

<table>
<thead>
<tr>
<th>Offence punishable with imprisonment of (with or without fine)</th>
<th>Trial pending for</th>
<th>Accused not on bail and in jail</th>
<th>Directions</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 years or less</td>
<td>1 year or more</td>
<td>6 months or more</td>
<td>Release on bail or personal bond</td>
</tr>
<tr>
<td>5 years or less</td>
<td>2 year or more</td>
<td>6 months or more</td>
<td>Release on bail or personal bond</td>
</tr>
<tr>
<td>7 years or less</td>
<td>2 year or more</td>
<td>1 year or more</td>
<td>Release on bail or personal bond</td>
</tr>
<tr>
<td>Traffic offences</td>
<td>2 year or more due to non-serving of summons or any other reason</td>
<td>-</td>
<td>Discharge the accused and close the case</td>
</tr>
<tr>
<td>Offences Compoundable with the permission of court</td>
<td>Trial yet to commence</td>
<td>-</td>
<td>After hearing both parties discharge or acquit the accused and close the case</td>
</tr>
<tr>
<td>Non cognizable and bailable offences</td>
<td>2 year or more, trial yet to commence</td>
<td>-</td>
<td>Discharge or acquit the accused and close the case</td>
</tr>
<tr>
<td>Offences punished with fine and of recurring nature</td>
<td>1 year or more, trial yet to commence</td>
<td>-</td>
<td>Discharge or acquit the accused and close the case</td>
</tr>
</tbody>
</table>

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1) These directions shall not apply to a range of offences including those that involve corruption, cheating, smuggling, Food Adulteration Act, NDPS Act or for offences against the state or those relating to the armed forces, public servants etc.

2) These directions are applicable to both pending and newly instituted cases. Offences punishable with imprisonment (with or without fine).

A bench of the Patna High Court suo moto initiated public interest litigation for the efficient and effective enforcement and implementation of the amended provision of Section 436-A Cr.P.C. This Section proscribes detention of an under-trial beyond the maximum period of imprisonment prescribed for the offence with which he has been charged. It also entitles an under-trial to be released on bail once he undergoes half the period of prescribed punishment for that offence. 69

4.1.19 “General Living Conditions, Overcrowding, Communication, Open Prisons, Delay in Trial etc.- Ramamurthy vs State of Karnataka” 70

A prisoner in the Central Jail, Bangalore sent a letter to the Chief Justice of India complaining against the ‘non-eatable food’, ‘mental and physical torture’ in prisons, and the denial of rightful wages to the prisoners”.

Treating the letter as a writ petition, the Supreme Court passed an order to the District Judge to visit the Central Jail and find out the pattern of payment of wages and the general conditions of the prisoners such as residence, sanitation, food, medicine etc. The District Judge compiled and submitted a thorough report to the Court.

Supreme Court Observations

“A sound prison system is a crying need of our time,” the Supreme Court observed. “The Court emphasized that the cases of Charles Sobraj and Sunil Batra, should be considered as “beacon lights insofar as management of jails and rights of prisoners are concerned.”

Having reviewed the available literature on prisons, the Court observed that there were nine major problems which afflicted the prison system in India and required immediate

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69 See Section 436-A Cr.P.C. for further details.
70 AIR 1997 SC 1739
attention. These were: 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 Court noted that the production of under-trial prisoners before the court on remand dates is a statutory obligation. Such production gives an opportunity to the prisoner to bring to the notice of the court, if he has faced any ill-treatment or difficulty during the period of remand. Thus the actual production of the prisoner is required to be insured by the trial court before ordering for further remand”.

“The Court did not issue any directives on the issue of torture and ill-treatment in prisons. However, it stressed the strong need for a new all India jail manual that would serve as a model for the country. This new manual should acknowledge the previous directions and observations that the Court has given on the permissible limits of punishment within prisons.

Similarly, the Court did not issue any directions on the health and hygiene of prisoners, but it noted that prisoners suffer from a double handicap. First, they do not enjoy the same access to medical expertise that free citizens have. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens”.

❖ Supreme Court Directives

“The Supreme Court directed the concerned authorities to take appropriate steps, which included:

- General
  1) Enacting a new Prisons Act to replace the century old *Prisons Act, 1894*.
  2) Framing a new *All India Jail Manual*.

- Overcrowding
  3) Taking appropriate decision on the recommendations that the Law Commission of India made in its *78th Report* on the subject of ‘Congestion of under-trial prisoners in jail’ within 6 months of the date of judgment.

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72 AIR 1997 SC 1739.
4) Applying mind to the suggestions of the *Mulla Committee* relating to streamlining the remission system and premature release (parole), and doing the needful.

5) Taking recourse to alternatives to incarceration such as fine, community service and probation”.

- **Delay in Trial**

6) “Considering the feasibility of entrusting the duty of producing under trial prisoners on remand dates to the prison staff.

7) Implementing the directions given in recent judgments of the court requiring the release of under-trial prisoners on bail when a trial is protracted.

- **Living Conditions in Prisons – Health, Hygiene, Food and clothing**

8) Reflecting on the recommendations of the *Mulla Committee* on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions, and to take appropriate steps.

9) Pondering on the need of complaint box in all the jails.

10) Inspecting jails after giving a shortest notice so as to assure the compliance of rules laid down in the jail manual.

- **Deficiency in Communication and Jail Visits**

11) Thinking about liberalization of communication facilities as there is no reason to deny the facility of communication by post to inmates.

12) Taking needful steps for streamlining the jail visits.

- **Open Air Prisons**

The Committee seemed to be ruminating on the question of introduction of open prisons at least in all the district headquarters of the country”.

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73 AIR 1997 SC 1739.
4.1.20 “Prison Labour & Wages- State of Gujrat & Andhrapardesh vs Hon’ble High Court of Gujrat”

Several appeals were filed by some state governments challenging the judgments by their respective High Courts on the issue of prisoners’ wages. The state governments were in agreement with the view that the present rates of wages paid to prisoners are too meager and hence they must be enhanced.

The main question required to be addressed by the Supreme Court was, “whether prisoners, who were required to do labour as part of their punishment should be paid wages for such work at the rates prescribed under minimum wages law.”

Supreme Court Observations

“Observing that there are four categories of prisoners viz. under-trial prisoners, convicted prisoners, those detained as a preventive measure and those undergoing detention for default of payment of fine, the Court stated that only convicted prisoners can be required to do labour in prison. The Court further noted that persons sentenced to simple imprisonment cannot be required to work unless they themselves volunteer to work. Therefore, jail authorities can by law impose hard labour on only those convicted prisoners who are sentenced to rigorous imprisonment.

On the question of quantum of wages, the Court stated that it should be permissible for the government to deduct a reasonable percentage of wages from the minimum wages, for expenses that the state incurs for providing food, clothing and other amenities to prisoners”. On the fixation of wages, the Court discussed the Mulla Committee Report quoting that the “rates of wages should be fair and equitable and not merely nominal or paltry. These rates should be standardized so as to achieve a broad uniformity in wage system in all the prisons in each state and union territory.”

Supreme Court Directives

1) “It is lawful to employ prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.

75 AIR 1998 SC 3164
76 AIR 1998 SC 3164.
2) Jail officials may permit other prisoners to do any work which they choose to do, provide such prisoners make a request for that purpose.

3) The prisoners must be paid equitable wages for the work done by them.

4) To determine the quantum of equitable wages payable to prisoners, the state government shall constitute a wage fixation body for making recommendations.

5) The concerned state should consider making laws for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence for which the prisoner was convicted.\(^\text{77}\)

\textbf{4.1.21 “In the Matter of News Report Published in Times of India, Dated 26 June 2006 vs State of Bihar & Others”\(^\text{78}\)}

\begin{itemize}
  \item **High Court Observations**
  
  “Pursuant to the directions issued by the High Court, the government filed an affidavit stating that 247 under-trial prisoners were entitled to bail under \textit{Section 436A Cr.P.C}. In its interim order, the Court issued directions for the constitution of a jail cell for districts and sub-divisions which would have a free hand in evolving procedure to regularly monitor such cases of under-trial prisoners.

  The jail superintendent has been given the primary duty to inform the accused person of the availability of the benefit under \textit{Section 436-A} to him. The task of monitoring the process rests with the Inspector General of Prisons. The role of the Legal Services Authority has also been emphasized for providing requisite free legal aid to the under-trial prisoners.”\(^\text{79}\)

  \item **High Court Directives**
  
  1) “With regard to the 247 under-trial prisoners, the respective jail superintendents were directed to bring to the notice of each prisoner, by writing and orally, that he is entitled to the benefit of the provision of \textit{Section 436A Cr.P.C}. 

\end{itemize}

\(^{77}\) CWJC No 7363 of 2006, Implementation of Section 436-A, Cr.P.C.

\(^{78}\) CWJC No 7363 of 2006, Implementation of Section 436-A, Cr.P.C.

2) The notice should further mention that they are entitled to apply for bail and entitled for their production at the concerned court at the earliest.

3) The jail superintendent shall also furnish a statement of such persons, the follow up actions taken by him and the number of inmates of the jail who have availed the benefit and those who have not yet availed, by informing the Inspector General of Prisons”.

4) “The Inspector General of Prisons is directed to maintain such up-to-date records in his office, which is also to be made available on the website.

5) The Inspector General of Prisons is responsible for monitoring the actions taken and subsequent follow up actions to be taken for prisoners to avail the benefit of Section 436A regularly.

6) The jail superintendent must furnish such periodical statements and status reports in respect of each accused person who is qualified and entitled to avail the benefit of Section 436A of the Code with his affidavit before the registry of the High Court on every quarter beginning from January 2007.

7) The Member Secretary of the Bihar State Legal Services Authority is directed through the District Legal Services Authority and Sub Division

8) Legal Services Committee, to provide free legal aid to the qualified under-trial prisoners. He shall also monitor the progress under the guidance of the Hon’ble Executive Chairman.

9) A Committee shall be constituted to monitor the actions taken and which shall periodically report to the court. The Committee shall comprise of the:
   
   I. District Magistrate,
   
   II. Jail Superintendent, and
   
   III. Public Prosecutor”.

“A bench of the High Court of Delhi took notice of the problem of overcrowding in Central Jail, Tihar. An inquiry report was called for, which brought out many issues of

80 CWJC No 7363 of 2006, Implementation of Section 436-A, Cr.P.C.
81 CWJC No 7363 of 2006, Implementation of Section 436-A, Cr.P.C.
concern regarding prison conditions. Acting upon this report, the Court issued a number of directives\(^\text{82}\) for the reduction of number of inmates”.

4.1.22 “Situation of Children of Prisoners, Women Prisoners & Their Children-

*RD Upadhyay vs State of Andhra Pradesh & Others*\(^\text{83}\)

**Supreme Court Observations**

“The best interests of the child have been regarded as a primary consideration in the constitution, and thus specific provisions have been made for the care, welfare and development of the children. In addition to the wide range of existing laws on issues concerning children, the Court also emphasized the importance of the principles contained under the *National Charter for Children 2003*”\(^\text{84}\)

**Supreme Court Directives**

“The Court issued the following guidelines for the Union government, State governments, Union territories and State Legal Services Authority and directed them to submit a compliance report in 4 months:

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

2) Women prisoners with children should not be kept in sub-jails, which are not equipped to keep small children.

3) The stay of children in crowded barracks amidst women convicts, under-trials, 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.

4) Jail manual and/or other relevant rules, regulations, instructions etc. shall be suitably amended within three months so as to comply with the directions issued.

\(^\text{82}\) The Court issued directions to the concerned authorities vide orders dated 18 June 2007 and 22 August 2007.

\(^\text{83}\) AIR 2006 SC 1946

5) 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.

6) 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”.

- **Pregnancy**

7) “Before sending a pregnant woman to jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery, as well as for providing adequate pre-natal and postnatal care for both, the mother and the child.

8) 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.

9) As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government.

10) Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on.

11) 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.

12) Gynecological examination of female prisoners shall be performed in the District Government Hospital.

13) Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice”.

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85 AIR 2006 SC 1946.
Child Birth in Prison

14) “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.

15) 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.

16) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended”.

Female Prisoners and their Children

17) “Female prisoners shall be allowed to keep their children with them in jail till they attain the age of 6 years.

18) Upon reaching the age of 6 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 Department of Social Welfare.

19) 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 minimize undue hardships on both mother and child due to physical distance.

20) 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.

21) Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Department of Social Welfare, shall ensure that such children are brought to the prison for this purpose on the date fixed by the superintendent of prisons”.

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87 AIR 2006 SC 1946.
• **Food, Clothing, Medical Care and Shelter**

22) “Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the state/union territory government shall lay down the scales.

23) State/union territory governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

24) 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.

25) Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

26) Clean drinking water must be provided to the children. This water must be periodically checked.

27) 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.

28) Extra clothing, diet and so on may also be provided on the recommendation of the medical officer.

29) 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.

30) Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

31) Children of prisoners shall have the right of visitation.

32) 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”.

89 AIR 2006 SC 1946.
● **Education and Recreation for Children of Female Prisoners**

33) “Children of female prisoners living in the jails shall be given proper education and recreational opportunities.

34) There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. This facility will also be extended to children of warders and other female prison staff.

35) Children below 3 years of age shall be allowed in the crèche and those between 3 and 6 years shall be looked after in the nursery”.

● **Diet**

36) “The child should be provided at least 600 ml of undiluted fresh milk over 24 hours if the breast milk is not available.

37) The food groups given below should be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities”.

### Table 4.3

**Diet Chart of Children in Jails as per their Age Group**

<table>
<thead>
<tr>
<th>Age of Child</th>
<th>6-12 months</th>
<th>1-3 yrs</th>
<th>4-6 yrs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cereals and Millets</td>
<td>45 gm</td>
<td>60-120 gm</td>
<td>150-210 gm</td>
</tr>
<tr>
<td>Pulses</td>
<td>15 gm</td>
<td>30 gm</td>
<td>45 gm</td>
</tr>
<tr>
<td>Milk</td>
<td>500 ml</td>
<td>500 ml</td>
<td>500 ml</td>
</tr>
<tr>
<td>Roots and Tubers</td>
<td>50 gm</td>
<td>50 gm</td>
<td>100 gm</td>
</tr>
<tr>
<td>Green Leafy Vegetables</td>
<td>25 gm</td>
<td>50 gm</td>
<td>50 gm</td>
</tr>
<tr>
<td>Other Vegetables</td>
<td>25 gm</td>
<td>50 gm</td>
<td>50 gm</td>
</tr>
<tr>
<td>Fruits</td>
<td>100 gm</td>
<td>100 gm</td>
<td>100 gm</td>
</tr>
<tr>
<td>Sugar</td>
<td>25 gm</td>
<td>25 gm</td>
<td>30 gm</td>
</tr>
<tr>
<td>Fats/Oils (Visible)</td>
<td>10 gm</td>
<td>20 gm</td>
<td>25 gm</td>
</tr>
</tbody>
</table>

*Source: Department of Women and Child Development, Ministry of Human Resource Development, the Government of India, New Delhi.*

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90 AIR 2006 SC 1946.
4.1.23 “Separation of Police agency from Investigating Agency- Parkash Singh and Others vs Union of India and Others”

The need for ‘police reforms’ in India is long recognized. It was only a decade later in 2006 that the Court delivered its verdict. In what is popularly referred to as the Prakash Singh case, the Supreme Court ordered that reform must take place. The states and union territories were directed to comply with ‘seven binding directives’ that would ‘kick start’ police reform. The Court required immediate implementation of its orders either through executive orders or new police legislation. Initially, the Court itself monitored compliance of all States and Union Territories”.

In passing these directives the Court put on record the deep rooted problems of politicization, lack of accountability mechanisms and systemic weaknesses that have resulted in poor all round performance and fomented present public dissatisfaction with policing.

**Supreme Court Directives**

1) “Constitute a State Security Commission (SSC) to:(i) Ensure that the state government does not exercise unwarranted influence or pressure on the police; (ii) Lay down broad policy guideline and; (iii) Evaluate the performance of the state police

2) Ensure that the DGP is appointed through merit based transparent process and secure a minimum tenure of two years

3) Ensure that other police officers on operational duties (including Superintendents of Police in-charge of a district and Station House Officers in-charge of a police station) are also provided a minimum tenure of two years

4) Separate the investigation and law and order functions of the police

5) Set up a Police Establishment Board (PEB) to decide transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of Deputy Superintendent of Police

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91 2006 8 SCC 1.
6) Set up a Police Complaints Authority (PCA) at state level to inquire into public complaints against police officers of and above the rank of Deputy Superintendent of Police in cases of serious misconduct, including custodial death, grievous hurt, or rape in police custody and at district levels to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct.

7) Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organizations”.

- Separation of Investigation and Police

“Investigations in India are poorly mounted, slow, done by inadequately trained and unspecialized staff and frequently subject to manpower deflection into other pressing law and order duties. Many prisoners are constrained to languish in prisons because the police do not finish investigation and file the charge-sheet in time. This is a very serious matter because such people remain in prisons without any inkling of a police case against them. Many prisoners remain in prisons for long period because of the delay in trial.

Both investigation and law and order are vital and specific police functions. In order to encourage specialization and upgrade overall performance, the Court has ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more. It is felt that this will streamline policing, ensure speedier and more expert investigation and improve rapport with the people. The Court has not said how this separation is to take place in practice but clearly indicates that there must be full coordination between the two wings of the police.

Several states- Assam, Arunachal Pradesh, Haryana, Himachal Pradesh, Karnataka, and Sikkim have complied with the Supreme Court’s directive to separate the law and order police with the investigation police. However a majority of states have not fully implemented this directive”.93

92 2006 8 SCC 1.
93 2006 8 SCC 1.
4.1.24 “Release of Undertrial Prisoners- Court on Its Own Motion In Re: Regarding Various Irregularities at Central Jail, Tihar”\textsuperscript{94}

\textbf{High Court Observations}

“The High Court expressed concern about the huge number of under-trials prisoners and the problem of overcrowding at Central Jail, Tihar. It observed that if the number of inmates is reduced, many of the problems at the jail would get rectified on their own as a consequential measure. The effect of excess number of inmates not only enhances the need for space, but necessities like water etc. get strained as well. Emphasizing the large under-trial population i.e. 65 per cent of the total prison population, the Court expressed concern over the incarceration of those who had been admitted to bail but were unable to furnish surety”\textsuperscript{95}

\textbf{High Court Directives- Dated 18 June 2007}

“The Court issued the following directions with regard to persons incarcerated due to proceedings initiated under Section 107 read with Section 151 Cr.P.C.:

1) All inmates lodged under these sections due to non-furnishing a surety bond would be released on furnishing a personal bond in sum of Rs.2000.

2) The bond would be furnished to the satisfaction of the Superintendent Central Jail, Tihar.

3) The personal bond should contain an undertaking in the terms given below.

4) The inmates so released should:

   i. Report to the local police station within the jurisdiction where proceedings were registered. This should be done daily, twice at 10.00 AM and 6.00 PM, and

   ii. Mark their attendance on a register maintained in each police station and available with the duty officer in-charge”\textsuperscript{96}

\textsuperscript{95} Crl. MA No 7030/2007 and Crl Ref 1/2007.
\textsuperscript{96} Crl. MA No 7030/2007 and Crl Ref 1/2007.
High Court Directives - Dated 22 August 2007

The Court issued the following directions with regard to release of undertrial prisoners from Central Jail, Tihar:

1) “Those under-trial prisoners, who have been admitted to bail but have been unable to furnish sureties for more than 2 months, shall be released on their furnishing personal bond to the satisfaction of the trial court.

2) As regards the 20 under-trials, who are reported terminally ill and suffering from ‘incurable disease’, the jail authority shall consider their case for early release on humanitarian grounds.

3) In case of under-trial prisoners who are from states other than Delhi, local surety shall not be insisted upon while granting bail. It shall be sufficient to verify the identities and actual places of residence outside Delhi of the under-trials and their sureties to release them on personal bonds, with or without sureties, as the case may be.

4) In case of under-trial prisoners who are senior citizens, the courts should take up their cases on day to day basis as far as possible, if they are not found fit to be admitted to bail.

5) Those cases where the maximum prescribed punishment for the offence committed is upto 7 years shall be put up by the jail authorities before the visiting judge every 3 months for review and release on bail.

6) The jail authorities shall sensitize and inform all jail inmates of the provision of ‘plea bargain’ and also benefits thereof.

7) The jail authorities shall also take special care to place these cases before the special court/judge who visits the jail every month.

8) Sheela Barse, a journalist and activist for prisoners’ rights, wrote to the Supreme Court saying that of the 15 women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up.

9) Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the
Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that excesses against women were taking place, pointed out that the arrangements for providing legal assistance to prisoners were inadequate.”

4.1.25 “Landmark Judgment: Bail is a Norm-Denial of bail for an indefinite period infringes fundamental rights in- Sanjay K Singh New Delhi”

The Supreme Court has asked courts to send accused persons to jail only after conviction. ‘Don’t punish before’, says apex conviction court. In a landmark judgment on bail which will have a major impact on the several thousands of undertrials languishing in various jails, the Supreme Court said denial of bail to an accused for an indefinite period impinged on the Fundamental Right to life and personal liberty.

❖ Supreme Court Observations

“The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty,” said a bench comprising Justice GS Singhvi and Justice HL Dattu, while granting bail to the five corporate executives accused in 2G case.

“When undertrial prisoners are detained in custody for an indefinite period, Article 21 of the Constitution is violated,” the bench said, adding, “every person, detained or arrested, is entitled to speedy trial.”

“The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand trial when called upon, the bench said.

It also acknowledged that “the lack of adequate legal aid and a general lack of awareness about rights of arrestedees are principal reasons for the continued detention of individuals accused of bailable offences, where bail is a matter of right and where an order of detention is supposed to be an aberration”.

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Supreme Court Directions

1) "Courts have to take into the account the necessity element for keeping the accused behind the bar like if freed how they could influence the witnesses and free trial in the case.

2) Any person should be punished in respect of any matter upon which he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

3) The denial of bail to the accused as a preventive measure to ensure free trial has to be balanced by the principle that such denial has also punitive aspect which under law begins only after the conviction.

4) Not to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson

5) While granting bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society".

4.1.26 “Fast Tracking All Types of Criminal Cases to Deliver Justice Timely and Expeditiously - Bhim Singh vs Union of India”

Supreme Court has directed recently on September 5, 2014 that positive steps are taken by the Central Government in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously. It has been observed in its fact that more than 50% of the prisoners in various jails are under-trial prisoners. Even many of them may have served maximum sentence prescribed under the law for the offences they have been charged with.

100 The Economic Times, Mumbai, Section-Political Theatre, Page 3, dated 24/11/2011.
101 2014 (4) RCR(Cri) 234.
The Court was of the opinion that such step was necessary in the interest of criminal justice as by identifying the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law, appropriate orders could be passed in jail itself for release of such under-trial prisoners who fulfill the requirement of Section 436A CrPC for their release immediately.

Section 436-A reads as follows:

Maximum period for which an under trial prisoner can be detained Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case, be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded’.

Supreme Court Observations

“Having given thoughtful consideration to the legislative policy engrafted in Section 436A and large number of under-trial prisoners housed in the prisons, the SC was of the considered view that some order deserves to be passed by the courts so that the under-trial prisoners do not continue to be detained in prison beyond the maximum period provided Under Section 436A”.

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102 Bhim Singh vs Union of India, 2014 (4) RCR(Cri) 234.
Supreme Court Directions

1) “Direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of 436A of the Code of Criminal Procedure.

2) During its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed Under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of Section 436A for their release immediately.

3) Such jurisdictional Magistrate/Chief Judicial Magistrate/ Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay.

4) To facilitate the compliance of the above order, the Jail Superintendent of each jail/prison has to provide all necessary facilities for holding the court sitting by the above judicial officers.

5) The court also directed Government of India to find out about the fate of 21 mentally challenged prisoners in Amritsar, five of them are deaf and dumb. They are languishing, in Amritsar jail without being attended.

The attorney general Mukul Rohatgi, upon being asked by the Court to submit a report upon the steps being taken by the Government of India for fast-tracking the criminal justice in India, submitted before the Court that process of consultation with the State Governments for fast-tracking criminal justice has already been commenced by the Central Government but the blueprint/road-map for fast-tracking of criminal cases shall take some time”.

103 Bhim Singh vs Union of India, 2014 (4) RCR(Cri) 234.
The Court was, hence, of the opinion that it is high time, positive steps are taken by the Central Government in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously.

It is been highly observed that though positive steps are taken by the Central Government in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously. Hence, it has been challenging to expect that the judicial system can be reformed adequately to shorten the long list of pending cases and cut short the number of undertrials in Jails. Yet some concrete steps can be taken immediately to mitigate their sufferings.