

CWP-3474-2021 (O&amp;M)

-1- 2023:PHHC:139790



**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

227

**CWP-3474-2021 (O&M).  
Date of Decision: 02.11.2023.**

**JOGINDER SINGH****...Petitioner****Versus****STATE OF PUNJAB AND OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

\*\*\*\*\*

Present: Ms. Komal Preet Kaur, Advocate, for the petitioner.

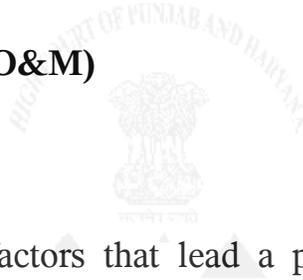
Ms. Niharika Sharma, AAG, Punjab.

**VINOD S. BHARDWAJ. J (ORAL)**

*“It is said that no one truly knows a nation until one has  
been inside its jails. A nation should not be judged by how it  
treats its highest citizens, but its lowest ones.”*

— Nelson Rolihlahla Mandela

The Constitution of India mandates equality before the law and equal protection of laws for every individual within the nation, a principle that extends to prisoners as well, who possesses certain guaranteed rights and must be treated with respect. The judiciary in India, including the esteemed Supreme Court, has time and again acknowledged and underscored the essential rights of prisoners. The Apex Court in **Re- Inhumane Conditions in 1382 Prisoners dated 05.02.2016, W.P. (C) No. 406 of 2013** has explicitly stated that, "there



could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy."

Justice Krishna Iyer in the case of **Sunil Batra (II) vs. Delhi Administration, 1980 (3) SCC 488**, hereinafter referred to as "**Sunil Batra (II)**" has eloquently expressed the similar view by following the excerpt from Sir Winston Churchill's speech, it was astutely observed:

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

Under comparable and regrettable circumstances, the present case has been brought before this Court challenging the order dated 23.12.2020 passed by the office of Additional Director General of Police (Jails), Punjab, Chandigarh, to the extent that the prisoners lodged in high security zone has been ordered to be released in the open atmosphere only for two hours i.e. for one hour in the morning and for one hour in the evening.

In the reply filed by the respondents, a reference has been made to the antecedents of the petitioner stating that the petitioner is categorized as a notorious/dangerous prisoner and that after the escape of high risk prisoners from High Security Jail, Nabha in 2016, specific



orders have been made for the safety and security of said prisoners as per Section 329 (1) of the Punjab Jail Manual, 1996.

Learned counsel for respondent-State has been confronted with the fact that the order in question has not been passed against a specific prisoner and in relation to the threat extended to such prisoner, rather, the same has been passed for general application against all inmates lodged in High Security Zone.

State counsel also could not respond as to under what circumstances the Additional Director General of Police (Jails), Punjab, Chandigarh, could confine the inmates and to allow them excess to open sky only for two hours in a day by passing such an order. The mere apprehensions cannot be construed as laying down foundation for denial of the basic right and amenities included the light and air.

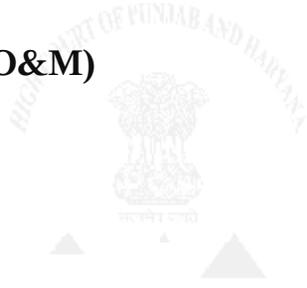
I have heard the respective parties and have gone through the documents appended along with the present petition with the help of their able assistance.

Before proceeding further, it is imperative to extract the pertinent legislative provisions that relates to the matter in hand.

***The Prisons Act, 1894***

*“The Prisons Act, of 1894 is the first legislation regarding prison regulation in India. The provisions of the Prisons Act, 1894 contain the provisions for the welfare and protection of prisoners.*

*Under this Act, the prisoners (both convicts and under trials) have various rights.*



## **Chapter V**

### **Discipline of Prisoners**

#### **Section 27. Separation of prisoners -**

*The requisitions of this Act with respect to the separation of prisoners are as follows:-*

*(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;*

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

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

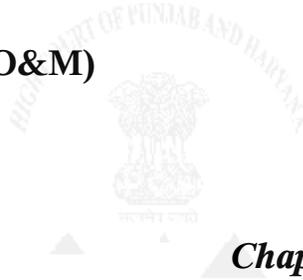
*(4) civil prisoners shall be kept apart from criminal prisoners.*

#### **Section 28. Association and segregation of prisoners -**

*Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.*

#### **Section 29. Solitary confinement -**

*No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.*



## **Chapter IX**

### **Visits to Prisoners**

#### **Section 40. Visits to civil and unconvicted criminal prisoners.-**

*Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.*

## **Chapter XII**

### **Miscellaneous**

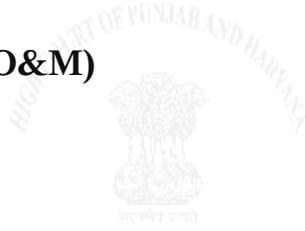
#### **Section 56. Confinement in irons-**

*Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine them.*

#### **Section 57. Confinement of prisoner under sentence of transportation in irons.-**

*(1) Prisoners under sentence of transportation may, subject to any rules made under section [59], be confined in fetters for the first three months after admission to prison.*

*(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector General for sanction to their retention for the period for*



which he considers their retention necessary, and the Inspector General may sanction such retention accordingly.

**Section 58. Prisoners not to be ironed by Jailer except under necessity -**

No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the superintendent.

**Section 59. Power to make rules -**

[The State Government may] make rules consistent with this Act-

xxx xxx xxx

(8) for the classification of prisons, and description and construction of wards, cells and other places of detention;

xxx xxx xxx

(17) for the classification and the separation of prisoners;

xxx xxx xxx

(18) for regulating the confinement of convicted criminal prisoners under section 28;

\*\*\* \*\*

**PUNJAB JAIL MANUAL, 1996**

**329. Special precaution for dangerous prisoners. – (1)** Special precautions should be taken for the safe custody of dangerous prisoners whether they are awaiting trial or have been convicted.

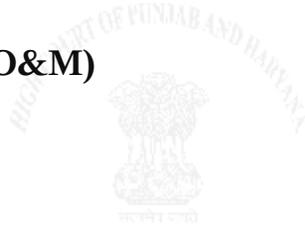
On being admitted to jail they should be

(a) placed in charge of trustworthy warders,

(b) confined in the most secure building available,

(c) as far as practicable confined in different barracks or cells each night,

(d) thoroughly searched at least twice daily and occasionally at uncertain hours (the Deputy Superintendent must search them at least once daily and he must satisfy himself that they are properly searched by a trustworthy



*subordinate at other times). They should not be employed on any industry affording facilities for escape and should not be entrusted with implements that can be used as weapons. Warders on taking over charge of such prisoners must search them and the iron bars or the gratings of the barracks/cells in which they are confined are secure and all locks, bolts etc. are in proper order. They should during their turns of duty frequently satisfy themselves that all such prisoners are in their places, and should acquaint themselves with their appearances.*

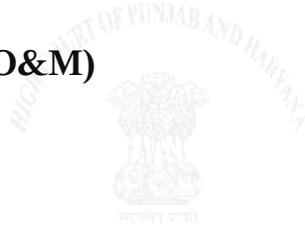
*Light to be kept burning at night. - (2) From sunset to sunrise a good light shall at the discretion of the Superintendent be kept burning in front of the grated door of every cell in which a dangerous prisoner is confined, so that he may at all times remain under observation.*

xxx xxx xxx

**495. The classification of prisoners for purposes of separation.-** *The different categories of prisoners for the time being confined in every jail should be kept in separate institutions, part of institutions; annexes; units taking into account of their sex, age, condition of health, criminal record, the legal reason for their detention and necessities of their treatment.*

**496. Separation of prisoners.-** *Prisoners for purposes of separation, as far as possible may be classified and kept separate as follows:*

- i) Men and women shall be kept in separate institutions or separate part of an institution/ annexes.*
- ii) Better class prisoners should be kept separate from ordinary prisoners.*
- iii) Condemned prisoners, prisoners convicted to rigorous or simple imprisonment, civil prisoners, undertrial*



*prisoners. Committed to Sessions, undertrial prisoners not confined to Sessions may be kept separate from each other.*

*iv) Adult prisoners from adolescents.*

*v) Habitual prisoners from non-habitual prisoners.*

*vi) Prisoners under TADA and COFEPOSA be kept separate from other prisoners.*

*vii) Inmates suspected to be suffering from mental disorders.*

*viii) Homosexuals.*

*ix) Sex perverts.*

*x) Drug addicts and traffickers in narcotics.*

*xi) Inmates having suicidal tendencies.*

*xii) Inmates exhibiting violent and aggressive tendencies.*

*xiii) Inmates having escape or discipline risks.*

*xiv) Known bad characters.*

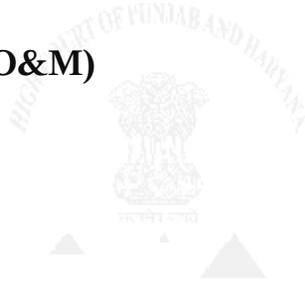
*Note 1: Female prisoners will be classified to the same manner as is provided in the case of male prisoners.*

*Note 2: Unconvicted criminal prisoners and civil prisoners respectively will be sub divided according to sex and age.*

*Note 3: A Committee of Superintendent Deputy/ Superintendent, Medical Officer and Welfare Officer of the jail will determine classification of each prisoner.*

xxx xxx xxx

**499. Separation required by rule made under Prisons Act of 1894.-** *In addition to the provisions, as to the separation of prisoners, under Section 27 of the Prisons Act, 1894, and subject to the provisions, of the rule next following, the further provisions, as to the separation of prisoners, hereinafter specified shall, to the extent to which they can, in each jail, be carried into effect, namely-*



*(a) unconvicted criminal prisoners who have been committed for trial by the Court of Sessions shall be kept separate from unconvicted criminal prisoners who have not been so committed and those who have been previously convicted shall be kept separate from those who have not been previously convicted,*

*(b) convicts of the casual class shall be kept separate from convicts of the habitual class,*

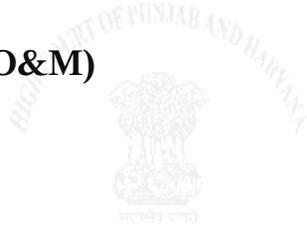
*(c) convicts who have been sentenced to simple imprisonment only shall be kept separate from convicts who have been sentenced to rigorous imprisonment;*

*(d) convicts who are under twenty-one years of age shall be kept separate from convicts who are more than twenty-one years of age;*

*(e) civil prisoners who are confined under the orders of any authority other than a judicial tribunal shall be kept separate from prisoners who are confined under process of a Civil or Revenue Court or authority.*

*Note: Every habitual criminal shall as far as possible be confined in a special jail in which no prisoner other than habitual criminals shall be kept.*

*Provided that the Inspector-General of Prisons may transfer to this special jail any prisoner, not being a habitual criminal, whom for reasons to be recorded in writing, he believes to be of so vicious or depraved a character and to exercise, or likely to exercise so evil an influence on his fellow prisoners that he ought not to be*



*confined with other non-habitual prisoners, but a prisoner so transferred shall not otherwise be subject to the special rules affecting habitual criminal.*

xxx xxx xxx

*510. Under-trial prisoners will also be of two classes only. One class will correspond to 'Better Class' of convicted prisoners and the other to 'Ordinary Class'. Till an under-trial prisoner is brought before a competent court, it will be within the discretion of the officer incharge of the Police Station to place him in Better Class'. After he is brought before the Court, he will be classified by the court, subject to the revisional orders of the District Magistrate or the Sessions Judge as the case may be. While classifying an undertrial prisoner as better class, the officer incharge of Police Station and Courts concerned will be guided by the instructions laid down by the State Government for classification of convicted prisoners from time to time.*

xxx xxx xxx

**513. Removal from wards, lock-ups; strict discipline by day and night.** – (1) Prisoners, other than those who may any time be lawfully confined in cells by day and night, shall be removed from their sleeping wards, cells and other compartments, as soon after day-break as possible, and shall be placed in their proper sleeping wards and locked up for the night before sunset.

(2) Prisoners shall be kept and shall remain under strict order, discipline and control both by day and night.

**514. Movement how to be conducted.** – All movements of prisoners shall be conducted in an orderly and regular manner, under strict control.”

*(Emphasis Supplied)*



Prisons/Correctional facilities being a crucial part of the Criminal Justice System, plays a significant role. It is paramount that the rehabilitation and reformation of offenders represent the ultimate aspiration of jail administration.

The fundamental principle of humanity is that every person, regardless of their legal status, deserves to be treated with respect and dignity. Inmates are not to be unnecessarily subjected to cruel or degrading treatment, thus upholding their basic human rights provided by The Constitution of India itself under Article 21. It is imperative that the rights inherent to their humanity be upheld, thus precluding inhumane or degrading treatment.

This may also involves offering psychological support to help inmates. Noteworthy among these considerations is the imperative of allowing inmate's access to adequate outdoor exposure, as the absence of such provisions may exacerbate tension, precipitate incidents of violence, and pose risks to the inmates' well-being.

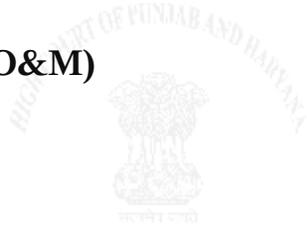
Earlier also bunch of petitions have been filed before this court, main case bearing **CWP No. 7882 of 2021 tilted as " Rajaia versus State of Punjab and others" decided on 01.07.2021** challenging the similar order regarding custody of dangerous prisoners in separate high security zones and classification of prisoners as such is provided based upon the offences of which they are accused, being security threats, having history of escape, recommended by the local police for lodging in high security zone, habitual offenders and other



sufficient reasons found by the competent authority. Relevant extract is reproduced as under:

*“Security measures can be imposed only up to a limit and this limit is placed by Fundamental Rights guaranteed under Articles 14, 19 and 21 of the Constitution of India, which are available even to prisoners. Simultaneously, strict measures need to be adopted against jail personnel so that those, guilty of aiding the criminals are punished in an exemplary manner. Such steps, based on available information, appear to be lacking in their quest for improving jail discipline and making prisons crime free. Instead, the authorities have gone overboard and have violated valuable Fundamental Rights of the prisoners. Intention behind the act is immaterial as the act fails the test of reasonableness. It is now well settled that prisoners are human beings despite their liberty having been curtailed. They may not enjoy all rights and freedoms guaranteed by the Constitution of India, yet, basic rights and liberties are available to them which are the rights guaranteed by Articles 14, 19 and 21 of the Constitution of India. Court process restricts the liberty of prisoners but the same courts also have the duty to monitor that the liberty is not restricted beyond the bounds of law. While doing so, the Courts do not become administrators of prisons, but act as the guardians of fundamental rights to which even a prisoner is entitled. In **Sunil Batra vs. Delhi Administration, 1978 (4) SCC 494** (hereinafter referred to as *Sunil Batra (I)*), the Supreme Court of India in the words of Krishna Iyer, J. observed:*

*“Necessary sequitur is that even a person under death sentence has human rights which are non-negotiable and*



even a dangerous prisoner, standing trial, has basic liberties which cannot be battered away.”

The above was elaborated upon in '**Charles Sobraj vs. Supdt. Central Jail, Tihar, 1978 (4) SCC 104**': "It is now well-settled, as a stream of rulings of Courts proves, that deterrence, both specific and general, rehabilitation and institutional security are vital considerations. Compassion wherever possible and cruelty only where inevitable, is the art of correctional confinement. When prison policy advances such a valid goal, the Court will not intervene officiously."

A middle ground has been found between the 'hands off' doctrine and the 'take over' theory.

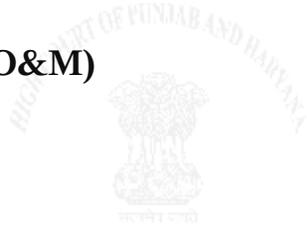
xxx xxx xxx

Section 59 of the Prisons Act empowers the State Government to make rules consistent with the Act. In exercise of such powers, the Jail Manual has been framed, this being the updated version. Para 3 (q) defines dangerous prisoner. The same is extracted below:

(q) "Dangerous prisoner" means, any prisoner declared to be such by the Superintendent with reference to the character of such prisoner in pursuance of the provisions of Section 56 of the Prisons Act, 1894."

Its plain reading makes it clear that the Jail Superintendent may declare any prisoner as such, however, in pursuance of Section 56 of the Prisons Act. Section 56 is regarding confinement in irons and is reproduced hereunder:

"56. Confinement in irons -- Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be



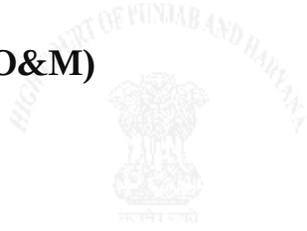
*laid down the Inspector General with the sanction of the State Government, so confine them.”*

*xxx xxx xxx*

*The final issue is regarding alleged solitary confinement. There is no dispute that each of the petitioners is being confined in a separate cell for 22 hours in a day. They are released from their respective cells for one hour in the forenoon and one hour in the evening. Is this solitary confinement?*

*xxx xxx xxx*

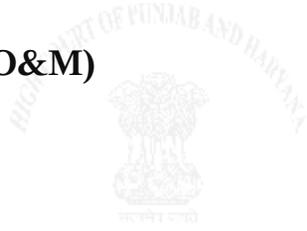
*Except for one hour in the morning and one hour in the evening, the inmate is all by himself with his solitude and there is no limit on the period for which he will be so confined. Such confinement is not strictly solitary confinement but can be called quasi-solitary because the inmate is deprived of human company for extended lengths of time and such confinement has been held to be extremely harsh and violative of basic human rights which remain the entitlement of every prisoner according to Sunil Batra (II).* It can thus not be justified even on grounds of maintenance of discipline and order and curtailment of crime. A prisoner remains a person and cannot be reduced to animal existence [these words have been taken from **Sunil Batra (II)**]. Such treatment completely discards the rehabilitative aspect of punishment, which is a major component in the philosophy of sentencing in every developed society. It is evident that the letter of law laid down in the path breaking judgments of **Sunil Batra (I) and (II)** is still to be fully assimilated and implemented. Hope expressed of replacing outdated prison law with more enlightened prescriptions, still remains a hope. The ground situation in this case is a little peculiar. On one hand, lies the danger of continuing crime and jail violence and on the other hand, lies the demand of human rights and constitutional rights. **The**



**action of confinement of individual prisoners in individual cells for most part of the day and for limitless periods is impermissible and has been held so. However, the result of such a direction would be the immediate release of notorious/hardened/dangerous criminals into ordinary prison life which may be a recipe for disaster. The threat held out by the actions of such desperate persons is real and cannot be ignored.** The prison administration has already taken steps to make the areas of confinement communication dead zones and has beefed up security. Electronic means of surveillance and of suppressing communication of any sort have also been employed. Therefore, I see no reason to fear the petitioner and other similar prisoners to the extent of depriving them of their basic rights. The prison administration can surely come up with suggestions which would make the custody conform to the law of the land while meeting the security concerns.”

In the matter of “**Jasvir Singh and Another versus State of Punjab and Others**” bearing CWP No. 5429 of 2010 decided on **29.05.2014** this court also has discussed at length the basic human rights of the prisoners and ruled as under:-

*(18) A prison in civil society is the place for enforceability of law. All governmental systems provide incarceration through a judicial order only. The prison or the protectees living there are thus instruments and subjects of justice delivery system. The Judiciary as the principal executor and promoter of the rule of law has to have major stakes in respect of the conditions prevailing in the prisons. The duty of the Courts towards jail reforms has become heavier than before after the enforcement of our Constitution as Article*



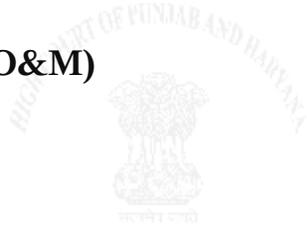
*21 guarantees dignified life to one and all including the prison-inmates.*

*(19) The Hon'ble Supreme Court in D. Bhuvan Mohan Patnaik & Ors. vs. State of Andhra Pradesh & Ors., (1975) 3 SCC 185 declared that convicts cannot be denied the protection of fundamental rights which they otherwise possess, merely because of their conviction. A convict whom the law bids to live in confinement though stands denuded of some of the fundamental rights, like the right to move freely or the right to practice a profession, nonetheless, such convict shall continue to enjoy other constitutional guarantees including the precious right guaranteed by Article 21 of the Constitution.*

xxx xxx xxx

*(21) In his one of the many salutary and historical decision [Sunil Batra vs. Delhi Administration & Ors., (1978) 4 SCC 494 (popularly known as Sunil Batra-I)], Krishna Iyer, J considered the core issue, whether a prison ipso facto outlaw the rule of law, lock out the judicial process from the jail gates and declare a long holiday for human rights of convicts in confinement or the prison total eclipses judicial justice for those incarcerated under the orders of a judicial Court? The dictum very emphatically espoused the cause of jail-inmates holding that "Prisons are built with stones of Law' (sang William Blake) and so, when human rights are hashed behind bars, constitutional justice impeaches such law. In this sense, courts which sign citizens into prisons have an onerous duty to ensure that, during detention and subject to the Constitution, freedom from torture belongs to the detenu."*

*(22) Sunil Batra-I, amongst other things, ruled that the condemned prisoner (like Batra) shall be merely kept in*

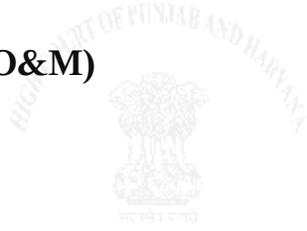


*custody and shall not be put to work like those sentenced to rigorous imprisonment. Such like convicts shall be entitled to amenities of ordinary inmates in the prison like games, books, newspapers, reasonably good food, the right to expression, artistic and other, and normal clothing and bedding. It was further held that condemned prisoners cannot be denied their right to eat, sleep, work or live together except on specific grounds warranting such a course etc. etc.*

*(23) Sunil Batra-I marched far ahead of its times in emphasising re-humanisation of the prisoners. It stated that “positive experiments in re-humanization-meditation, music, arts of self-expression, games, useful work with wages, prison festivals, sramdan and service-oriented activities, visits by and to families, even participative prison projects and controlled community life, are among the re-humanization strategies which need consideration. Social justice, in the prison context, has a functional versatility hardly explored.”*

*(24) The reforms in prison administration also caught attention in Sunil Batra-I which not only emphasized the need of legislative intervention for replacement of obsolete prison laws but also for the re-orientation and re-visitation of prison house and practices, for “no longer can the Constitution be curtailed off from the incarcerated community since pervasive social justice is a fighting faith with Indian humanity.” Thus, in the context of Section 30(2) of the Prison Act it was held that such prisoner is not to be completely segregated except in extreme cases of necessity which must be specifically made out.*

*(25) Sunil Batra vs. Delhi Administration, (1980) 3 SCC 488 (known as Sunil Batra-II), phenomenally liberated the jail inmates from the atrocities inflicted through mental*



*torture, psychic or physical pressure and it brought a catenation of radical changes in prison conditions like*

- (i) Separation of under-trials from convicts in jails;*
- (ii) Their right to invoke Article 21 of the Constitution;*
- (iii) Separation of young inmates from adults;*
- (iv) Liberal visits by family and friends of prisoners;*
- (v) Ban on confinement in irons;*
- (vi) The duties and obligations of the Courts with respect to rights of prisoners; and*
- (vii) Re-defining the duties of District Magistrate etc.*

*(26) Sunil Batra-II delved deeper into the petrifying effects of loneliness of jail-inmates as is evident from the following passage:-*

*“Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Art. 19 and its sweep.”*

*(27) It further noticed that even as per the 1973 report of National Advisory Commission “prisoners should have a ‘right’ to visitation” and that “correctional officials should not merely tolerate visiting but should encourage it, particularly by families...*

*‘...it also urged that corrections officials should not eavesdrop on conversations or otherwise interfere with the participants' privacy’. Sunil Batra-II very forcefully ruled that “we see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations*

*of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected.”*

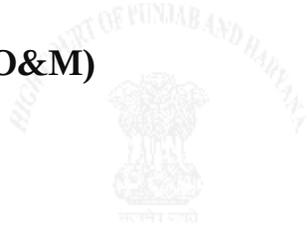
*(28) Several maladies within the jail precincts including the victimization of young inmates at the hands of adults drew attention in Sunil Batra-II, prompting the Court to say that:-*

*“In the package of benign changes needed in our prisons with a view to reduce tensions and raise the pace of rehabilitation, we have referred to acclimatization of the community life and elimination of sex vice vis a vis prisoner we have also referred to the unscientific mixing up in practice of under-trials, young offenders and longterm convicts. This point deserves serious attention.”*

*(29) The research conducted by a British author on the pitiable jail conditions in developed nations, depicting psycho stress and pressure on the prisoners sentenced for long terms, overcrowding in an area of limited size, unisexual agglomeration, the clash of personalities and the conflict of interests, physical violence for settlement of dispute in common and the impact of such conditions on the young inmates, was noticed with approval by the Hon'ble Supreme Court in Mithu vs. State of Punjab, (1983) 2 SCC 277.*

xxx xxx xxx

*(32) Francis Coralie Mulin vs. The Administrator, Union Territory of Delhi, (1981) 1 SCC 608 expanded the expression “personal liberty” embedded in Article 21 of the Constitution in the context of the rights of a detenue and it held that the prisoner or detenue has all the fundamental rights and other legal rights available to a free person, save*



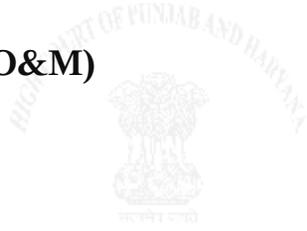
*those which are incapable of enjoyment by reason of incarceration. The Court held, in no uncertain terms, that no law which authorizes and no procedure which leads to cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness and thus would plainly be void and violative of Articles 14 & 21. (33) Several other landmarks giving wider connotation to prisoner's rights within the four walls of a jail including (i) State of Maharashtra v. Prabhakar Pandurant Sanzgiri AIR 1966 SC 424; (ii) Sheela Barse vs. State of Maharashtra (1983) 2 SCC 96; and (iii) Ramamurthy vs. State of Karnataka, (1997) 2 SCC 642, are not being elaborated here to avoid multiplicity.*

xxx xxx xxx

*(39) The United Nations' Basic Principles for the Treatment of Prisoners, 1990 states that "except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."*

xxx xxx xxx

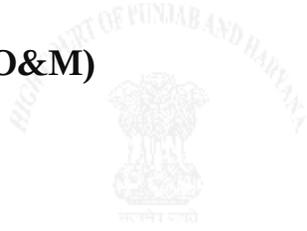
*(47) The US Supreme Court by majority upheld in principle the view of the District Court and ruled that "as a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the Law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and*



*unusual punishment”. It further said “to incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. A prison’s failure to provide sustenance for inmates ‘may actually produce physical torture or a lingering death’.” The Court deviated from its previous views in some of the cited cases and very emphatically ruled that “a prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society...” and that “...Courts may not allow Constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration”*

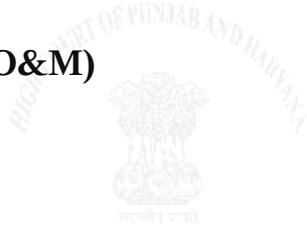
xxx xxx xxx

*(87) The legislative or executive, all policies, ought to remain vibrant and dynamic as the static or stale concepts cannot address all contemporary issues. Unfortunately, the in vogue executive policies on the rights of jail inmates are unevenly loaded with the pre-Independence mindset. The Punjab Jail Manual narrates the powers of jail staff and the obligations of convicts in such a tell-tale manner that the ‘prisons’ can be likened to the ‘chambers of torture’, as if Article 21 of the Constitution and dozens of human rights are still alien to prison-residents. (88) Jail reforms have been the priorities of none. A little improvement in guaranteeing basic human rights, though still far from satisfactory, has happened with the tireless efforts of the Indian judiciary and a constant monitoring through jail inspections by the District and High Courts with due help from the public spirited organizations and individuals from the civil society. None of the serious issues like overcrowding, lack of clean and sufficient toilets, requisite and healthy food, medical facilities, telecommunication*



*facilities or re-orientation have been addressed nor there appears to be any commitment of the executive in this direction. There are no comprehensive plans for rehabilitation and re-settlement of the convicts on their release and many of them step out of a dark hole to fall into a darker ditch. (89) There can be no quarrel and as rightly observed by AP High Court in Ms.G. Bhargava (supra) also that the issues like facilitation of conjugal visits of convicts for procreation essentially fall within the domain of policy makers and it has to be left to them to evolve an effective mechanism whether by way of legislation or through executive decision. However, what cannot be overlooked is that the convicts or other jail inmates are a class of persons who have been separated from society by the Courts in performance of their sovereign duties. Jails and other Correctional Centres are the extended limbs of justice delivery system as a measure for the enforcement of judicial verdicts. The management, conditions of living and future responsibilities of the inmates inside the jails etc., cannot be left to the sole desire or discretion of the executive. It is rather the responsibility of Courts to ensure that the rights of every resident of prison(s) or correctional home(s) are duly protected and irrespective of the financial constraints which is the oft-offered explanation by a State, the conditions of living, re-orientation or rehabilitation of the convicts is given effect under the direct supervision, command and control of the Courts.*

*(90) The directions for re-visiting the legislative or executive policy regime which are implicit in the observations made hereinabove are, however, subject to the caveat and conditions like - (i) the gravity of the offence committed by a convict and its likely effect on the society in the event of temporary release; (i) likelihood of absconding in the case of offenders of heinous crimes; (ii) good*



*behavior while in jail; (iii) duration of the actual sentence already undergone; (iv) the expected date of release on completion of a tenure sentence; (v) pre-conviction conduct of the convict; etc. etc.*

The Hon'ble Supreme Court in the case of **State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712**, held that a prisoner, whether a convict or under- trial, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution.

The Apex Court in the case of **T.V. Vatheeswaran v. State of Tamil Nadu (1983) 2 SCC 68**, held that fundamental rights under Articles 14, 19 and 21 of the Constitution of India are available to the prisoners as well as freemen.

In the case of **Upendra Baxi v. State of U.P., (1983) 2 SCC 308**, the Supreme Court gave various directions in order to ensure that the inmates of the protective Home at Agra did not continue to live in inhumane and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution was made real and meaningful for them.

While the Court is conscious of the need to put an effective security mechanism to avoid any untoward incident, however, the pretext of security cannot be projected to deprive a prisoner of his basic rights. State would be within its power to take effective measures to undo threat but such measures need to satisfy the legal tests of human

CWP-3474-2021 (O&amp;M)

-24- 2023:PHHC:139790



dignity and right to life. A balance which needs to be maintained has not been struck in the present case. The order fails to satisfy the said tests.

The order dated 23.12.2020 to the extent of para 2A passed by the authorities does not seem to be justified, as per the reply filed by them or satisfy the legal principles prescribed in law to protect the rights of the prisoners. The said order dated 23.12.2020 issued by the Additional Director General of Police (Jails) Punjab, is accordingly set aside at this stage to the effect of above para 2A thereof.

The setting aside of the above order shall, however, not operate as a bar against the State to implement such measures as it deems appropriate and satisfy the requirements of the basic fundamental rights to an inmate.

The petition stands disposed of accordingly.

November 02, 2023  
*raj arora*

(VINOD S. BHARDWAJ)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No

