In Re : Inhuman Conditions In 1382 Prisons
(2016) 3 SCC 700

Bench : Madan B. Lokur, R.K. Agrawal
The Judgment was delivered by : Madan B. Lokur, J.

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

2. As far back as in 1980, this Court had occasion to deal with the rights of prisoners in Sunil Batra (II) v. Delhi Administration (1980) 3 SCC 488. In that decision, this Court gave a very obvious answer to the question whether prisoners are persons and whether they are entitled to fundamental rights while in custody, although there may be a shrinkage in the fundamental rights. This is what this Court had to say in this regard:

"Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution *of dehumanization and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners' Rights to which our country has signed assent. In Batra case, (1978) 4 SCC 494* 1978 Indlaw SC 289 *this Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration."*

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

"Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure."

4. In Rama Murthy v. State of Karnataka (1997) 2 SCC 642 this Court identified as many as nine issues facing prisons and needing reforms. They are:

(i) over-crowding;
(ii) Delay in trial;
(iii) Torture and ill-treatment;
(iv) Neglect of health and hygiene;
(v) Insubstantial food and inadequate clothing;
(vi) Prison vices;
(vii) Deficiency in communication;
(viii) Streamlining of jail visits;
(ix) Management of open air prisons.

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

5. In T. K. Gopal v. State of Karnataka (2000) 6 SCC 168 this Court advocated a therapeutic approach in dealing with the criminal tendencies of prisoners. It was pointed out that there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was pointed out that it is this philosophy that has persuaded this Court in a series of decisions to project the need for prison reforms. This is what this Court had to say:

"The therapeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including family problems. We are not concerned with those factors

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

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

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

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

7. Justice R.C. Lahoti also pointed out that the State cannot disown its liability to the life and safety of a prisoner once in custody and that there were hardly any schemes for reformation for first time offenders and prisoners in their youth and to save them from coming into contact with hardened prisoners.

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

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

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

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

10. In reply to the notice issued by this Court, several States and Union Territories gave their response either in the form of communications addressed to the Registry of this Court or in the form of affidavits. It is not necessary for us to detail each of the responses. Suffice it to say that on the four issues raised by Justice R.C. Lahoti there is general consensus that the prisons (both Central and District) are over-crowded, some unnatural deaths have taken place in some prisons, there is generally a shortage of staff and it is not as if all of them are adequately and suitably trained to handle issues relating to the management of prisons and prisoners and finally that steps have been taken for the reformation and rehabilitation of prisoners. However, a closer scrutiny of the responses received indicates that by and large the steps taken are facile and lack adequate sincerity in implementation.

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

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

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

(ii) The grant to the States in respect of the prisons under the 14th Finance Commission.

(iii) Steps taken and being taken by the Central Government as well as by the State Governments for effective implementation of Section 436A of the Code of Criminal Procedure, 1973.

(iv) Steps taken and being taken by the Central Government and the State Governments for effective implementation of the Explanation to Section 436 of the Code of Criminal Procedure, 1973 *and the number of persons in custody due to their inability to provide adequate security/surety for their release on bail.*

(v) The number of persons in custody who have committed compoundable offences and are languishing in custody.

(vi) Steps taken for the effective implementation of the Repatriation of Prisoners Act, 2003.

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

List the matter on 24th April, 2015."

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

13. It was stated that one of the problems faced in aggregating the information that had been received was that management information systems were not in place in a comprehensive manner. To remedy this situation an e-prisons application was being designed so that all essential data could be centrally aggregated. It was stated in the affidavit that a draft project report was being prepared through a project management consultancy so that an e-prisons application could be rolled out with integrated information in all States and Union Territories comprehensively for better monitoring of the status of prisoners, particularly undertrial prisoners.

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

15. With regard to the grant under the 14th Finance Commission, it was stated that the 14th Finance Commission had reported that the States have the appropriate fiscal space to provide for the additional expenditure needs as per their requirements. The 14th Finance Commission did not make any specific fund allocation in favour of the Central Government but the States had projected their demands individually and the tabular statement in that regard is annexed to the affidavit. As far as the Union Territories are concerned, apart from Delhi and Puducherry none of the Union Territories had projected any demand.

16. With regard to the third issue regarding effective implementation of Section 436A of the Code of Criminal Procedure, (for short the Cr.P.C.), the affidavit stated that an advisory had been issued by the Ministry of Home Affairs of the Government of India on 17th January, 2013 to all the States and Union Territories to implement the provisions of Section 436A of the Cr.P.C. to reduce overcrowding in prisons. Among the measures suggested in this regard by the Ministry of Home Affairs was the Constitution of a Review Committee in every district with the District Judge in the Chair with the District Magistrate and the Superintendent of Police as Members to meet every three months and review the cases of undertrial prisoners. The Jail Superintendents were also required to conduct a survey of all cases where undertrial prisoners have completed more than one fourth of the maximum sentence and send a report in this regard to the District Legal Services Committee constituted under The Legal Services Authorities Act, 1987 as well as

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

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

18. Yet another letter was sent to the Director General of Prisons of all States/Union Territories on 22nd September, 2014 by the Ministry of Home Affairs drawing attention to the directions of this Court in Bhim Singh v. Union of India dated 5th September, 2014 relating to Section 436A of the Cr.P.C. and to take necessary steps to comply with the orders passed by this Court.

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

20. With regard to the fourth issue concerning the effective implementation of Section 436 of the Cr.P.C., the affidavit stated that an advisory was issued way back on 9th May, 2011 in which it was pointed out, inter alia, that prison overcrowding compels prisoners to be kept under conditions that are unacceptable in light of the United Nations Standard Minimum Rules for Treatment of Offenders to which India is the signatory. It was pointed that as per the statistics prepared by the NCRB as on 31st December, 2008 prisons in India are overcrowded to the extent of 129%. The advisory highlighted some measures taken by some of the States to reduce the number of undertrial prisoners, including their release under the provisions of the Probation of Offenders Act, 1958 and encouraging NGOs in association with District Legal Services Committees to arrange legal aid for unrepresented undertrial prisoners as well as to implement the guidelines issued by the Bombay High Court in Rajendra Bidkar v. State of Maharashtra, CWP No. 386 of 2004 (unreported decision).

21. With regard to the fifth issue relating to the number of persons who have been languishing in jails in compoundable offences, a chart was annexed to the affidavit which indicated, by and large, that quite a few States had taken no effective steps in this regard particularly Andhra Pradesh, Assam, Chhattisgarh, Haryana, Kerala, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Telangana, Tripura and Uttar Pradesh. The reason why many undertrial prisoners had not been released was their inability to provide security and surety for their release. The steps taken to have these prisoners released from custody were not indicated in the affidavit.

22. With regard to the effective implementation of the Repatriation of Prisoners Act, 2003 it was stated that agreements on transfer of sentenced persons have been bilaterally signed with 25 countries but the agreements are operational after ratification by both sides only with respect to 18 countries. In addition, transfer arrangements have been made with 19 countries under the Inter-American Convention on Serving Criminal Sentences Abroad thereby making the total number of countries with which transfer arrangements have been made for prisoners to 37 countries.

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

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

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

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

1. A Prisoners Management System (a sort of Management Information System) has been in use in Tihar Jail for quite some time, as stated in the affidavit. The Ministry of Home Affairs should carefully study this application software and get back to us on the next date of hearing with any suggestions or modifications in this regard, so that the software can be improved and then deployed in other jails all over the country, if necessary.

2. We would like the assistance of the National Legal Services Authority (NALSA) in this matter of crucial importance concerning prisoners in the country. We direct the Member Secretary of NALSA to appoint a senior judicial officer as the nodal officer to assist us and deal with the issues that have arisen in this case.

3. For the purpose of implementation of Section 436A of the Code of Criminal Procedure, 1973 (for short "the Code"), the Ministry of Home Affairs has issued an Advisory on 17th January, 2013. One of the requirements of the Advisory is that an Under Trial Review Committee should be set up in every district. The composition of the Under Trial Review Committee is the District Judge, as Chairperson, the District Magistrate and the District Superintendent of Police as members.

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

4. In the meeting to be held on or about 30th June, 2015, the Under Trial Review Committee should consider the cases of all under trial prisoners who are entitled to the benefit of Section 436A of the Code. The Ministry of Home Affairs has indicated that in case of multiple offences having different periods of incarceration, a prisoner should be released after half the period of incarceration is undergone for the offence with the greater punishment. In our opinion, while this may be the requirement of Section 436A of the Code, it will be appropriate if in a case of multiple offences, a review is conducted after half the sentence of the lesser offence is completed by the under trial prisoner. It is not necessary or compulsory that an under trial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.

5. The Bureau of Police Research and Development had circulated a Model Prison Manual in 2003, as stated in the affidavit. About 12 years have gone by and since then there has been a huge change in circumstances and availability of technology. We direct the Ministry of Home Affairs to ensure that the Bureau of Police Research and Development undertakes a review of the Model Prison Manual within a period of three months. We are told that a review has already commenced. We expect it to be completed within three months.

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

7. There are a large number of compoundable offences for which persons are in custody. No attempt seems to have been made to compound those offences and instead the alleged offender has been incarcerated. The State Legal Services Authorities are directed, through the Member Secretary of NALSA to urgently take up the issue with the panel lawyers so that wherever the offences can be compounded, immediate steps should

be taken and wherever the offences cannot be compounded, efforts should be made to expedite the disposal of those cases or at least efforts should be made to have the persons in custody released therefrom at the earliest.

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

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

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

24. The order dated 24th April, 2015 made a pointed reference to the extremely high percentage of undertrial prisoners and the total number of prisoners as on 31st December, 2013.

25. Reference was also made to the fact that the Bureau of Police Research and Development had circulated a Model Prison Manual in 2003 but since about 12 years had gone by, the Ministry of Home Affairs was directed to ensure that the Bureau of Police Research and Development undertakes a review of the Model Prison Manual within a period of three months.

26. Directions were also issued for the assistance of the National Legal Services Authority (NALSA) to assist the Social Justice Bench and deal with the issues that had arisen in the case.

27. A direction was also issued to ensure that the Under Trial Review Committee is established within one month in all districts and the next meeting of that Committee in each district should be held on or about 30th June, 2015. NALSA was required to take up the issue of undertrial prisoners particularly in the State of Uttar Pradesh where as many as 530 persons were in custody only because of their poverty.

28. Pursuant to the aforesaid order and directions, NALSA filed a compliance report on 4th August, 2015 in which it was stated that steps have been taken to ensure that Under Trial Review Committees are set up in every district and the State Legal Services Authorities had also been asked to take up the cases of prisoners who were unable to furnish bail bonds and to move appropriate applications on their behalf.

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

30. The compliance report also indicated a break-up of the meetings of the Under Trial Review Committees that had been set up in the various States and that reports of the meeting that were directed to be held on or about 30th June, 2015 were still awaited from a few States and Union Territories. As regards the Model Prison Manual it was submitted that a draft had been prepared and was circulated for comments and a further meeting was scheduled to be held in August, 2015 to finalize the draft.

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

33. Keeping in view the compliance report as well as some of the gaps that appeared necessary to be filled up, the Social Justice Bench passed an order dated 7th August, 2015 requiring, inter alia, the Under Trial Review Committee to include the Secretary of the District Legal Services Committee as one of the members of the Review Committee. The Ministry of Home Affairs was directed to issue an appropriate order in this regard. With regard to the Model Prison Manual, it was suggested to the learned Additional Solicitor General appearing on behalf of the Union of India that the composition of the Committee looking into the Model Prison Manual should be a multi-disciplinary body involving members from civil society and NGOs

as well as other experts. It was also directed that the Model Prison Manual should look into providing a creche for the children of prisoners.

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

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

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

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

We are told that the Under Trial Review Committee consists of the District Judge, the Superintendent of Police and the District Magistrate. Since the issues pertaining to under trial prisoners are also of great concern of the District Legal Services Authorities, we direct that the Under Trial Review committee should also have the Secretary of the District Legal Services Authority as one of the members of the Committee. The Ministry of Home Affairs will issue a necessary order in this regard to the Superintendent of Police to associate the Secretary of the District Legal Services Authority in such meetings.

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

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

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

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

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

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

We find that the number of under trial prisoners in the State of Maharashtra is extremely large and we also think that there are not adequate number of legal aid lawyers to look into the grievances of under trial prisoner. Mr. Rajesh Kumar Goel, Director, NALSA says on behalf of NALSA that necessary steps will be taken to appoint adequate number of legal aid lawyers so that necessary steps can be taken with regard to the release of under trial prisoners in accordance with law including those who have been granted bail but are unable to furnish the bail bond.

36. When the matter was taken up by the Social Justice Bench on 18th September, 2015, Mr. Gaurav Agrawal, Advocate was appointed as Amicus Curiae to assist the Social Justice Bench.

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

38. It was pointed out on behalf of NALSA by Mr. Rajesh Kumar Goel that some clarity was required with respect to paragraph 4 of the order dated 24th April, 2015. In view of this request, it was clarified that there

is no mandate that a person who has completed half the period of sentence, in the case of multiple offences, should be released. This was entirely for the Under Trial Review Committee to decide and there was no direction given for release in this regard.

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

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

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

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

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

It is not yet clear whether the Under Trial Review Committee has been set up in every District. Learned Additional Solicitor General and Mr. Rajesh Kumar Goel, Director, NALSA will look into this and let us know the progress on the next date of hearing.

As far as the software for Prison Management is concerned, it is stated by the learned Additional Solicitor General that all the Directors General of Police have been asked to intimate which of the four available software is acceptable to them. He further states that the software will be integrated on the cloud so that all information can be made available regardless of which software is being utilized. He expects the needful to be done within a period of about two months.

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

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

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

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

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

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

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

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

offences are pending in these States.

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

42. It was also stated that the State Legal Services Authority had been requested to appoint an adequate number of panel lawyers and to instruct them to take steps for the early release of undertrial prisoners.

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

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

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

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

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

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

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

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

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

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

46. It was stated in the affidavit that a provision for funds had been made for the application software from the Crime and Criminal Tracking Network & System (CCTNS) project and an amount of Rs.227.01 crores had been approved for the implementation of the e-Prisons Project. It was stated that the e-Prisons proposals had been received from seven States and other States/Union Territories had been asked to expedite their proposal for evaluation by the Ministry of Home Affairs.

47. With regard to the Model Prison Manual, it was stated that the revised Model Prison Manual had been approved by the competent authority and it was circulated to all States and Union Territories. The revised

manual also included a provision for a suitable creche for the children of women inmates in the prison.

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

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

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

51. Has anything changed on the ground? The prison statistics available as on 31st December, 2014 from the website of the NCRB http://ncrb.nic.in indicate that as far as overcrowding is concerned, there is no perceptible change and in fact the problem of overcrowding has perhaps been accentuated with the passage of time. The figures in this regard are as follows:

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

52. The maximum overcrowding is in the jail in the Union Territory of Dadra & Nagar Haveli (331.7%) followed by Chhattisgarh (258.9%) and then Delhi (221.6%).

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

54. We cannot forget that the International Covenant on Civil and Political Rights, to which India is a signatory, provides in Article 10 that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Similarly, Article 5 of the Universal Declaration of Human Rights (UDHR) provides: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." With reference to the UDHR and the necessity of treating prisoners with dignity and as human beings, Vivien Stern (now Baroness Stern) says in A Sin Against the Future: Imprisonment in the World as follows:

"Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human

rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a state treats people, whoever they are. No one should fall below it."

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

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

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

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

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

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

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

3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.

4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.

5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.

6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.

7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.

8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

We direct accordingly.

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

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

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

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

…….

Dharam Pal v State of Haryana

2016 (1) SCALE 635

Bench : Dipak Misra, Prafulla C. Pant
The Judgment was delivered by : Dipak Misra, J.

5. The minor daughter of the appellant who was raped by the accused persons was threatened with dire consequences in case she disclosed the incident. The incident, as alleged, occurred on 06.08.2012. Despite the threat, the daughter disclosed the incident to her parents. Keeping in view the future of the girl and the social repercussions, they chose to suffer in silence rather than set the criminal law in motion. On 02.09.2012, Kamlesh Devi, wife of the appellant, had gone to village Nilikhen but did not return home on that day. The appellant searched for his wife along with his relatives and eventually a bag containing vegetables and medicines and some other articles belonging to the wife was found underneath the bridge. The appellant suspected that Kusum, wife of Sukh Ram, had abducted his wife or had thrown her into the river. In such a situation, the appellant lodged an FIR, on 05.09.2012 at P.S. Butana. The investigating agency registered the FIR No. 354 for the offences under Section 363, 366-A, 506, 365 and 34 of the Indian Penal Code (for short "IPC"). During the investigation, on 05.09.2012, the dead body of Kamlesh Devi was found near the Sarsa Branch canal bridge. Thereafter, the appellant and his daughter were examined and on that basis, offence under Section 376 IPC was added. Eventually, the allegations were segregated and FIR No. 394 dated 20.09.2012 under Sections 363, 365, 376(2)G, 506, 201 and 120-B IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered and after the investigation. Accused persons in FIR No. 394 dated 20.09.2012 have been acquitted by the judgment dated 12.03.2014 by the learned Sessions Judge. Against the judgment of acquittal, the appellant has filed a criminal appeal which is pending before the High Court of Punjab and Haryana. Therefore, we shall refrain from referring to the facts of the said case.

6. Coming to the subject matter of FIR No. 354 which relates to the murder of the wife of the appellant, as is evident, the report would show that the cause of death was due to strangulation coupled with head injury which is ante mortem in nature and sufficient to cause death in ordinary course. It is a matter of record that the appellant was provided security personnel as threats were received by the appellant for entering into a compromise in the rape case, and for change of his version in the murder case of his wife.

8. The issue that arises for consideration is whether such a situation calls for issuance of direction for transfer of the investigation to the CBI. The High Court has declined to do so as trial has commenced and

some witnesses have been examined. The High Court has gone by the principle of "stage". When the matter was listed on 18.09.2015, this Court had directed a copy of the petition to be served on Mr. P.K. Dey, learned counsel who ordinarily appears for the CBI. The stand of the CBI is that the case does not fall within the guidelines laid down by this Court in State of West Bengal & others v. Committee for Protection of Democratic Rights, West Bengal and others (2010) 3 SCC.

12. In the said case, a contention was raised that a detailed charge-sheet had been filed and subsequent to the filing of the said detailed charge-sheet, a supplementary charge-sheet had also been filed to complete the evidence, both oral and documentary, to bring home the guilt of the accused before the competent court and in accordance with the direction given by the Court further investigation had been carried out in accordance with Section 173(8) of the Code of Criminal Procedure and, therefore, the jurisdiction of this Court under Article 32 of the Constitution had come to an end. In essence, the submission was that when a charge-sheet was filed after conducting the investigation under the supervision and monitoring of the Court, there was no need to transfer the case to another agency. Repelling the said submission, the larger Bench opined, regard being had to the nature of the crime and the persons involved, the investigation could not be said to be satisfactorily held. That apart, the Constitution Bench also ruled that in the circumstances it was not sufficient to instill confidence in the minds of the victims as well as the public at large that State should be allowed to continue the investigation when the alleged offences were against its officials. Under these circumstances, the Court directed the CBI to take up the investigation and submit a report.

13. On a perusal of the said authority, we really do not find any aspect which would support the stand put forth by the learned counsel for the CBI. On the contrary, as we perceive, the Constitution Bench has laid great emphasis on instilling of faith of the victim and the public at large in the investigating agency. True it is, the facts in the said case were different and related to alleged crimes committed by certain State officials, but the base of confidence in investigation has been significantly highlighted.

16. As the facts would reveal there was a request by the Additional Chief Secretary for handing over the investigation to the CBI; that departmental action was taken against the investigating authorities for negligent investigation; that the concerned ASI has been reverted to the post of Head Constable; and that apart, certain material witnesses have not been examined by the investigating agency without any rhyme or reason. The reasoning of the High Court is as the trial has commenced, there cannot be a transfer of the case to another investigating agency.

20. Be it noted here that the Constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

21. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "'id'ee fixe" but in our view the imperium of

the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law".

22. In view of the aforesaid analysis, the appeal is allowed, the order of the High Court is set aside, and it is directed that the CBI shall conduct the investigation and file the report before the learned trial judge. The said investigation report shall be considered by the trial judge as per law. Till the report by the CBI is filed, the learned trial judge shall not proceed with the trial. A copy of the order be handed over to Mr. P.K. Dey, learned counsel for the CBI to do the needful. Appeal allowed.

Alsia Pardhi v. State of M.P.

2013 (14) SCALE 617

Hon'ble Judges/Coram:
P. Sathasivam, C.J.I., Ranjana Prakash Desai and Ranjan Gogoi, JJ.

JUDGMENT

Justice P. Sathasivam, C.J.I.

2. This appeal is directed against the final judgment and order dated 09.04.2012 passed by the High Court of Madhya Pradesh in Writ Petition No. 3803 of 2011 whereby the Division Bench of the High Court dismissed the petition filed by the Appellant herein.

3. **Brief facts:**

(a) On 10.02.2011, at about 4 p.m., a posse of forest officials of the Betul Range, District Betul, forcibly took away one Kusum, W/o Taarbabu Pardhi and Rajnandani, D/o Ankit Pardhi, aged about 14 years, from the fish market in their jeep. When the persons present at the site tried to resist the force of the forest officials, Kusum somehow managed to jump from the jeep but the minor girl Rajnandani was whisked away by them.

(b) Alsia Pardhi-the Appellant herein, being the uncle of the kidnapped minor girl, on 13.02.2011, made a complaint to the SHO, Kotwali Betul, alleging that the minor girl is in the custody of the officials of the Forest Department and requesting to register a case of kidnapping against them.

(c) On 14.02.2011, the Appellant and his community members made a complaint to the Chief Conservator of Forests, Forest Range, Betul-Respondent No. 3 herein, requesting him to take punitive action against the forest officials and to get the minor girl released.

(d) When all the efforts in tracing the girl failed, the Appellant, on 24.02.2011, approached the High Court by filing a writ of *habeas corpus* praying that Rajnandani be directed to be produced before the Court and the Superintendent of Police-Respondent No. 2 herein be directed to register an FIR against the forest officials involved in kidnapping and illegal detention of the minor girl as well as against those who have been instrumental in shielding and protecting the accused.

(e) On 01.03.2011, the High Court directed Respondent No. 2 herein to either produce the corpus of the missing girl or to submit the progress report. On 19.04.2011, the High Court, considering the seriousness of the matter, directed the Appellant to produce Kusum before the CJM, Betul, on 02.05.2011, on which date, the CJM, Betul shall record her statement and send it to the Court.

(f) On 02.05.2011, the statement of Kusum was recorded. Vide order dated 13.07.2011, the High Court, taking note of the fact that Kusum also alleged against the forest officials who caught Rajnandani along with her, held that the matter deserves to be investigated fairly and effective steps need to be taken by the State for production of Rajnandani before the Court and also directed Respondent No. 2 to take effective steps to produce the minor girl on the next date of hearing.

(g) On 10.08.2011, i.e., on the next date of hearing, the Deputy Advocate General for the State filed a report in the matter and submitted that as per the report of the Police, Rajnandani was not detained by the Forest Officials. The High Court, after perusing the record and considering the report to be doubtful, granted further opportunity to the police to produce *corpus* of Rajnandani and also directed that in case Respondent No. 2 fails to produce her on the next date of hearing, it would be compelled to direct the Central Bureau of Investigation (CBI) to take up the investigation into its hands. On 27.08.2011, Respondent No. 2 again submitted a progress report. The High Court, being not satisfied with the report, directed the Superintendent of Police, Betul to appear in person on the next date of hearing. On 12.09.2011, when the Superintendent of Police, Betul explained the circumstances in which the investigation was being conducted, the High Court observed that no proper investigation had been done by the police with the forest officials against whom the allegations had been made and gave one more chance to the Respondent No. 2 to produce Rajnandani before the Court. On 17.10.2011, Respondent No. 2 again filed a progress report before the Court in which it was stated that Rajnandani had tried to contact her father thrice from different mobile numbers but still the police officials were not able to trace her.

(h) On 07.04.2012, Respondent No. 2 filed an affidavit accepting the statements of forest officials and did not give any weightage to the statement of the eye-witness Kusum. It was also stated that the police accepted the version of the forest officials verbatim.

(i) On 09.04.2012, the High Court, by accepting the progress report dated 07.04.2012, without taking note of the statement of the eye-witness Kusum, dismissed the writ petition. The High Court also held that the present case is not of illegal and forceful confinement warranting issue of a writ of *habeas corpus* but is a case of missing person. It was also held that there is no allegation in the petition to the effect that Rajnandani has been subjected to wrongful confinement either by the forest authorities or the police.

(j) Being aggrieved, the Appellant herein has filed this appeal by way of special leave.

5. The only point for consideration in this appeal is whether there is any lapse on the part of the State agency in carrying out the investigation and the facts and materials mandate for entrusting the investigation to the CBI?

6. Before going into the merits of the claim of both the sides, it is useful to refer the decision of the Constitution Bench of this Court in ***State of West Bengal and Ors.*** v. ***Committee for Protection of Democratic Rights West Bengal*** (2010) 3 SCC 571 in respect of entrusting the investigation to the CBI in respect of a cognizable offence when the State has already initiated enquiry through its agency. The Constitution Bench has outlined paragraph 70 which reads thus:

... This extraordinary power must be exercised sparingly, cautiously and in exception situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. ....

8. In the light of the principles enunciated by the Constitution Bench, let us consider whether the Appellant has made out a case for interference by this Court.

11. It is seen from the materials placed that on 10.02.2011, at around 4.00 p.m., forest officials of the Betul Range, District Betul, came to the fish market and forcibly took away Kusum and Rajnandani. It is also the claim of the Appellant that when the people present there tried to resist the force of the forest officials, Kusum jumped from the jeep but Rajnandani was whisked away by the forest officials. It is also the assertion of the Appellant that Rajnandani-the kidnapped minor girl is his niece (sister's daughter).

12. On behalf of the State, it is claimed that on 10.02.2011, the forest officials got a tip off that some of the members of the Pardhi community are illegally indulging in the sale of prohibited species of animals in the fish market at Betul. When the forest officials reached the spot, they found 2-3 women selling the prohibited species, consequently, they were arrested and the prohibited species were seized. However, before taking any action by the forest officers, about 100-150 members of the Pardhi community had suddenly assembled and resisted their detention and managed to free all of them except one Sangeeta Pardhi who was able to slip

away after causing injury to the lady Forest Guard Sunanda Tekam. The said claim of the Forest officials has strongly been disputed by the Appellant and their community people.

13. It is useful to refer the letter dated 13.02.2011 by Alsia Pardhi, President of the Pardhi Rehabilitation Sangh, Betul addressed to the SHO, Kotwali Betul, which reads as under:

Pardhi Rehabilitation Sangh, Betul
Utkrisht School Maidan, Pardhi Camp Betul (M.P.)

To

The SHO
Kotwali Betul

Subject: Regarding kidnapping of Pardhi girl By Forest Officials.

Sir,

On Thursday, 10.2.2011 at 4 p.m. from near the Fish Market, Kusum W/o Tar Babu and Rajnandani D/o Ankit Pardhi, aged 14 years sitting in the Fish Market were being forcibly taken away by the Forest Officials of Betul Range in their jeep. After resistance by Pardhi community, they released Kusum but Forest Officials succeeded in forcibly kidnapping Rajnandani. On our reaching Range Office and in spite of repeatedly asking, the officials of Forest Department are not ready to tell anything. The parents of victim have been very upset and shocked after strenuous efforts to locate their daughter. We have come to know that the girl is in the custody of Forest Department.

You are, therefore, requested that the case of kidnapping may be registered against officials of Forest Department and Rajnandani may be got freed.

Dated: 13.2.2011

Applicant,
Sd/- Alasia
(Alasia Pardhi)
President
Pardhi Rehabilitation Sangh
Betul (M.P.)

Witnesses:

1. Sangita W/o Alasia
2. Saudagar S/o Sadashiv
3. Param Singh S/o Balwant
4. Guni Bai W/o Nandu Dhimar Mohila Mission School, Patel Ward
5. Gudiya W/o Kamal

Bhagrati Bai W/o Savne Dhimar, Mohila Mission School, Patel Ward Saudagir, Suddi, Kapurri, Lalita, Rajesh, Salim, Babu, Alagwanti Laxmi, Latia, Gajra, Kusandi, Langad, Vatia, Kusandi, Langad, Vatia, Guddi, Anita, Rukhmani, Lagde, Manji, Bharat Singh, Kishori, Nana Saheb, Durgesh, Sanju, Ritu, Kesho, Bugda, Indura, Rahul

14. Again, on 14.02.2011, i.e., on the next day, similar letter was sent by the Appellant to the Chief Conservator of Forests, Forest Range, Betul regarding kidnapping of minor Pardhi girl by forest officials.

15. An analysis of the above letters shows that there is a specific reference about the picking up of two persons, viz., Kusum and Rajnandani.

16. After filing of the Writ Petition before the High Court, pursuant to the request made, the High Court directed the Petitioner therein to produce Kusum before the Chief Judicial Magistrate, Betul on 02.05.2011 for recording of her statement. Her statement before the Magistrate is also relevant, which reads as under:

As per Order of the Hon'ble High Court in Writ Petition No. 3803/11

Witness No. 1 for...Deposition taken on 02.05.2011.

Witness apparent age 25 years.

States on affirmation that my name is Kusum wife of Tar Babu, Occupation-Labour, address Utkrisht School Ground, Betul, Distt. Betul.

The incident is about two three months old. I had gone to Betul to buy fish. There woman named Nandini was selling partridges when vehicle of Forest Department came there, the staff in the Forest Department vehicle apprehended Nandini, when I went for her rescue, the Forest Staff apprehended me too and put me in the vehicle, then after some time, I got down from the vehicle and went to my Dera and I shouted in the Dera that Forest staff are taking away Nandini, Forest staff has taken away Nandini and since then whereabouts of Nandini is not known.

RO& AC
Sd/-
K.C. Yadav
Chief Judicial Magistrate, Betul.

Sd/-
K.C. Yadav
Chief Judicial Magistrate
Betul

17. In her statement, Kusum stated that the forest officials picked up both of them viz., herself and Rajnandani, and after some time she somehow managed to jump from the vehicle. However, the forest staff took Rajnandani and her whereabouts is not known to her. As rightly pointed out, her statement under Section 164 of the Code before a Magistrate has not been properly looked into by the High Court.

18. It is the grievance of learned Counsel for the Appellant that the police authorities have inquired only the forest officials and in spite of the fact that many local people were also present in the fish market, they were not inquired and their statements were not recorded.

19. In the light of the above allegation, we perused the statements recorded by the police. It is clear that one Durgesh Kushram, Forest Guard, Office of Forest Range Betul, in his statement, mentioned that two women were found selling Titar and Bater and they were apprehended by the lady Forest Guard Sunanda Tekam. He also stated that the people of Pardhi community resisted the action being taken and got freed both women by manhandling the Forest Guard Sunanda Tekam and started stone pelting at their party. In the same way, one Sanjay Dhote, another Forest Guard, has also made a similar statement about taking of two women and how both were got freed by manhandling the Forest Guard. Yogesh Chaudhary, Chandra Shekhar Singh and Pandhri Nath, Forest Guards, also made similar statements. One Laxmi Prasad Gautam, Forest Range Officer, in his statement, also reiterated the same. Similarly, all other officials of the forest department made similar statements.

20. A perusal of the above shows that based on the complaint of the Appellant, the I.O. has only recorded the statements of the officials of the Forest Department. It is not clear as to why the police authorities did not inquire about the same from the persons present at the spot when both the women were picked up from a busy fish market and also in the light of the statement of Kusum before the Magistrate under Section 164 of the Code specifically alleging that she alone managed to escape and Rajnandani was taken in a vehicle by the forest officials.

21. It is relevant to note that the statements of Forest Range Officers, Betul, viz., Dhanraj Singh, Pandari Nath, L.P. Gautam as well as the lady Forest Guard Sunanda Tekam have been recorded and as per their

statements, on interrogation, only one lady, viz., Sangeeta Pardhi was to be taken into custody against the offence under the Wildlife (Protection) Act, 1972 being committed by her on 10.02.2011, but she escaped and no other lady or person had been taken into custody by them. Though they stated that one person was taken in the jeep but even that person got released by their community people. In the light of the conflicting statements by the officers mentioning that initially two persons were taken into their jeep and they were released by the Pardhi community, it was proper on the part of the I.O. concerned to obtain statement from the public who assembled in the fish market at the relevant time. Admittedly, for the reasons best known to the police, they had not examined anyone or obtained statements from the local people available within the area in question. In the light of the said infirmity and in view of the categorical statement of Kusum under Section 164 of the Code before the Magistrate, we are *prima facie* satisfied that proper and sincere efforts were not made by the State police in tracing/producing the girl before the High Court in a *habeas corpus* petition.

22. In addition to the above relevant aspect and of the assertion that the kidnapped girl-Rajnandani belongs to Pardhi community, being a denotified tribe and also of the assertion that the Pardhi community people are being constantly harassed by the police and forest officials, we feel that the Appellant has made out a case for fresh investigation by other agency, viz., Central Bureau of Investigation. Though in the writ petition before the High Court, a prayer was made for production of the abducted girl Rajnandani, in view of our discussion and *prima facie* conclusion, we mould the relief and appoint the CBI to investigate and proceed further according to law.

23. The analysis of the materials placed before us clearly brings the case within the principles laid down by the Constitution Bench of this Court in ***Committee for Protection of Democratic Rights (supra).*** We hereby direct the Respondents to hand over all the documents to the CBI within a period of two weeks from the date of receipt of copy of this order. The CBI is directed to investigate the case in question, viz., whereabouts of Rajnandani who is alleged to have been taken by the forest officials on 10.02.2011 and submit its report before the court concerned, within a period of six months thereafter. It is further made clear that the above discussion is only for entrusting the investigation to the CBI and we have not expressed anything on the merits of the case. With the above observations, the appeal is allowed.

……..

Public Union for Civil Liberties v State of Tamil Nadu and others

(2013) 1 SCC 585

Bench : K.S. Panicker Radhakrishnan, Dipak Misra

The Judgment was delivered by: K. S. Radhakrishnan, J.

1. Through this Public Litigation, the petitioner has brought to the notice of this Court tell-tale miseries of bonded labourers in our country and their exploitation and the necessity of identifying and checking the practice of bonded labour in this country and to rehabilitate those who are victims of this practice.

2. This Court, while interpreting the provision of the Bonded Labour System (Abolition) Act, 1976, (for short 'the BLS (A) Act) in the light of the Constitutional provision like Article 23, The Minimum Wages Act, 1948, Contract Labour (Regulation and Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Mines Act 1952 gave various directions including the setting up of Vigilance Committees, District Magistrates, etc. for the purpose of identifying and freeing bonded labourers and to draw up a scheme or programme for a better and more meaningful rehabilitation of the freed bonded labourers and to ensure implementation of the BLS (A), Act, 1976.

3. This Court, dealing while dealing with this case, passed an interim order dated 13th May, 1994, (reported in (1994) 5 SCC 116) and gave various directions which are as under:

> *"(1) To identify the bonded labourers and update the existing list of such bonded labourers as well as to identify the villages where this practice is prevalent.*

(2) To identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers.

(3) To extinguish/discharge any existing debt and or bonded liability and to ensure them an alternative means of livelihood.

(4) To appoint an independent body such as a local nonpolitical social action group to collect independent information and details of-

(a) the prevalence of the exploitative practice of bonded labour and

(b) employers or their agents perpetrating the wilful violation of the law by encouraging and abetting the practice of bonded labour.

(5) To provide employment to such bonded labourers as agricultural workers at the prescribed minimum wage rate and/or provide the landless bonded labourers with agricultural land, with a view to ensure an alternative means of livelihood.

(6) To provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package.

(7) To ensure-

(a) regular inspection by the Labour Commissioner concerned to keep the contractors who have in the past employed bonded labourers under watch,

(b) setting up of Vigilance Committees in each district,

(c) the District Magistrates concerned to send quarterly reports to the Supreme Court Legal Aid Committee or to any Commissioner appointed by the court for this purpose,

(d) the setting up of rural credit facilities such as grameen banks, cooperatives etc. from which short-term interest free loans can be availed without security, since the root cause of bonded labour seems to be the lack of availability of funds (credit through an institutional network).

(8) To initiate criminal prosecution against the contractors/employers or their agents who engage bonded labour and employ children below the age of 14 without adequate monetary compensation by paying wages below the minimum wage rate, as prescribed under the Minimum Wages Act.

(9) To initiate criminal prosecution against those employers, contractors or their agents who make part payment of wages by way of Khesri dal which is known to cause permanent disability lathyrites. 2. With specific reference to the State of Madhya Pradesh, this Hon'ble Court gave the following additional directions:

(i) To provide data to this Hon'ble Court in respect of prosecutions launched against various employers already identified in proceedings before this Hon'ble Court as having employed bonded labourers in the context of Harwaha System.

(ii) To investigate and provide data to this Hon'ble Court in respect of the fate of those bonded labourers identified and allegedly freed from the Harwaha System.

(iii) To report the present extent of cultivation of Khesri dal within Rewa and Satna districts as well as such other districts in which it may also be cultivated.

(iv) To report the steps taken by the State Government to prohibit the cultivation and consumption of Khesri dal.

(v) To report the fate of persons already identified as suffering from lathyrites and the steps taken by the State Government to provide free medical aid and facilities to such persons.

(vi) To provide the steps taken, if any, for the rehabilitation of bonded labourers freed from the Harwaha System and the rehabilitation of persons suffering from lathyrites within the State of Madhya Pradesh."

4. All the State Governments should issue directions forthwith to the Collector and District Magistrate of each district for making the necessary compliance. We also direct that all the State Governments would file a detailed report supported by an affidavit of a Senior Officer indicating the manner and the extent to which these directions have been complied with and also indicating there in the programme drawn up for full implementation of these directions. The report of the State Governments should also contain the detailed

information required to be furnished in accordance with these directions. These reports be filed by each State Government by the end of August 1994. The matter be listed in the first week of September 1994.

6. The National Human Rights Commission (for short the 'NHRC') has been entrusted with the responsibility of monitoring and overseeing the implementation of its directions as well as provisions of the BLS (A) Act in all the States and Union Territories vide this Court's order dated 11.05.1997. The Expert Group constituted by the NHRC submitted its Action Taken Report (ATR) on 6.6.2001 and this Court vide order dated 5.5.2004 reported in Public Union for Civil Liberties v. State of Tamil Nadu & Ors. (2004) 12 SCC 381 gave the following directions:

"1. All States and Union Territories must submit their status report in the form prescribed by NHRC every six months.

2. All the State Governments and Union Territories shall constitute Vigilance Committees at the district and subdivisional levels in accordance with S. 13 of the Act, within a period of six months from today.

3. All the State Governments and Union Territories shall make proper arrangements for rehabilitating released bonded labourers. Such rehabilitation could be on land-based basis or non-land basis or skilled/craft-based basis depending upon the choice of bonded labourer and his/her inclination and past experience. If the States are not in a position to make arrangements for such rehabilitation, then it shall identify two philanthropic organisations or NGOs with proven track record and good reputation, with basic facilities for rehabilitating released bonded labourers within a period of six months.

4. The State Governments and Union Territories shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of such organisations or NGOs within a period of six months.

5. The Union and State Governments shall submit a plan within a period of six months for sharing the money under the modified Centrally Sponsored Scheme, in the case where the States wish to involve such organisations or NGOs.

6. The State Governments and Union Territories shall make arrangements to sensitise the District Magistrate and other statutory authorities/committees in respect of their duties under the Act."

7. The NHRC later submitted yet another report on 10.8.2009 highlighting the remedial steps to be taken for eradication of bonded labour and child labour in the country. The NHRC in its report stated that its officials had been conducting detailed reviews on the status of the implementation of the Act in the various States/Union Territories (UTs). The report stated that these reviews were forwarded by the NHRC to the respective States/UTs for the necessary follow up action, and they were required to submit ATR to the NHRC.

8. A review noticed that the States/UTs were supposed to receive assistance to the tune of Rs.2 Lakh per district once every 3 years for conducting surveys. However surveys had been conducted only a few States, that too in respect of only a few selected areas. Further, it was also noted that in many instances bonded labourers were found and reported, the district administration had relented and dropped the cases. The NHRC in its report cited the instances of Tamil Nadu to the following effect:

"..... to illustrate, in Tamil Nadu, 25000 cases out of 38,886 (cases of) bonded labourers identified were dropped leaving only 13,886 bonded labourers; ..... in Malkangiri district (which falls in the KBK region) a survey was conducted in 2001-02 with the help of NGO's (where) 707 bonded labourers were identified but (the) district administration dropped 688 cases leaving only 19 bonded labourers to be release."

9. The NHRC further states that Investigation/inquiry into specific complaints about bonded labourers were generally left by the States/UTs to be undertaken by the field officers of very low ranks who lack both professionalism as well as sensitivity to conduct such inquires and even existence of bonded labourers were detected in the States/UTs, States/UTs permitted compromise or settlement though the Act itself does not contemplate such a measure. The NHRC noted with concern that though one of the modes of identifying and detecting existence of bonded labour was conducting raids on households and workplaces, this however, had not been taken recourse to by most States, except the State of Maharashtra.

10. The NHRC in its report stated that even though the guidelines on the methodology of identification of bonded labourers formulated by Shri S.R. Shankaran, Chairman of the Expert Group constituted in the year 2001-02 had been circulated to all the States/UTs but there was no evidence on the ground of them being adopted and implemented. The report further pointed out that according to the Ministry of Labour the

following features came out clearly in the reports received from the States:

"(a) No fresh surveys are being conducted in the States. Wherever surveys have been conducted in the last few years, no bonded labourers could be found.

(b) Whereabouts of about 20,000 bonded labourers are reported to be untraced. Registers about bonded labourers identified, released and rehabilitated are not being maintained as required under Rule 7 of the BLS (A) rules.

(c) Budget provisions are not being made on the ground that there are no bonded labourers.

(d) All the Union Territories have been reporting that they have no Bonded labourers."

11. The NHRC accordingly requested this Court to give the following directions to the States/UTs:

"(a) Periodical conduct of survey in the affected areas is one of the measures which would source eradication of bonded labour system in compliance with the BLS (A) Act. *S. 14(e) of the Act casts a statutory responsibility on the Vigilance Committees constituted in each district such surveys. It suggested that fresh survey be conducted by all States and repeated once in three years.*

(b) the Constitution of Vigilance Committees in all States at district and sub-divisional level was a necessary step in the process of property conducting surveys. Further these committees should be reconstituted once every 2 years.

(c) Since there was a need for a proper methodology for conducting such surveys it also suggests that the Guidelines issued by Shri S.R. Shanakaran, Chairman of the Expert Committee constituted by the NHRC be adopted with suitable modifications to suit local conditions.

(d) While disposing of cases under the BLS (A) Act *the trying Magistrate should have recourse to the summary procedure as laid down in S. 21(2) of the Act in all cases brought before him.*

(e) It was also suggested that to make the rehabilitation package under the Centrally Sponsored Scheme more meaningful, there was a need for it not to be confined to the limit of Rs.20,000, at which it stands at present."

12. This Court, vide its order dated 9.7.2010, directed all the States/UTs to file their response to the NHRC's report. The States/UTs were required to respond at least on the following aspects:

(a) When was the last bi-annual report by the concerned State/UT submitted to the NHRC?

(b) When was the last survey, as stipulated under the Act undertaken by the State/UT?

(c) Whether the Vigilance Committee for the implementation of the Act has been constituted in all the districts in the States/UTs?

13. This Court vide its order dated 1.10.2010, following the note submitted by the amicus curiae on 27.9.2010, directed the Union of India to submit the data as to the amount which the Centre is releasing to the States/UTs and whether they were, in fact, using the amount for the purpose for which they were released.

14. In pursuance to that order, the Union of India filed its affidavit on 16.12.1010. It was noticed that only five states had, till then, furnished utilization certificates to the Union of India indicating utilization of central funds for survey. This Court, then, passed an order on 16.12.2010 directing the Union of India to call for the utilization certificates from all the States. Union of India later in its affidavit on 25.4.2011 stated that the Ministry of Labour and Employment has provided Rs.494 lakhs as Central Assistance for conducting surveys to the various State Governments during the periods from 2001-2001 to 2009-2010. The Affidavit revealed that, in majority of the States, no surveys have been conducted after the year 2002-2003, namely, Punjab, Rajasthan, Karnataka, Orissa, Bihar, Jharkhand, Arunachal Pradesh, Chhattisgarh, Uttrakhand. It was stated that only a handful of States have conducted surveys in subsequent years, and that in many instances, the Survey Reports were still awaited.

15. This Court then passed an order dated 25.4.2011 directing the States of Haryana and Andhra Pradesh to explain what steps they have taken to implement the provisions of 1976 Act. Noticing that those States were not taking effective steps, this Court passed another order dated 26.8.2011 directing them to submit their Accounts to the Ministry of Labour, Government of India with regard to disbursement of amounts by Central Government for survey and rehabilitation of bonded labour. The responses from those States are far

from satisfactory.

16. The NHRC submitted its revised report dated 3.9.2011 before this Court. We notice that the response from the States to the said report is also not satisfactory. The revised report of the NHRC reiterated that the analysis of the half yearly report sent by the States/UTs reveals the following aspects:

"(i) The reports appear to have been prepared in a very casual and stereotype manner.

(ii) They contain mostly nil information as far as conducting fresh surveys for identification of bonded labourers is concerned.

(iii) In some States like UP nearly 700 released bonded labourers have been awaiting rehabilitation for years due to no provision of funds in the budget needed for rehabilitation.

(iv) The outcome of legal and penal action against the offending employers or bonded labour keepers is nil.

(v) Not a single case has been reported so far which goes to show that an offending employer had been convicted by way of imprisonment.

(vi) It is almost confirmed beyond doubt that (a) efforts at identification of bonded labourers through fresh surveys are lackadaisical and the outcome of such surveys is nil (b) there is inordinate delay in securing rehabilitation of released labourers and (c) the penalties awarded are not proportional to the judicial severity of the crime."

17. The NHRC further stated that while examining about 400 cases, only in one case, the Commission found that the ground level situation confirmed to fulfillment of all requirements under the Minimum Wages Act, that the employer paid wages according to the law and has not detained anyone. Report states that workmen are usually recruited to brick kilns by middlemen on payment of an advance or other allurements, but at the close of the brick kilns operations, the advances paid at the time of recruitment are adjusted with wages due to the workmen in an arbitrary manner, to the disadvantage of the worker. It is unnecessary to dilate the matter further. Suffice it to say that on 30.6.2011, in all 2780 cases involving about 1 lakh bonded labourers have been registered in the Commission and presently 841 cases are under consideration of the Commission.

18. The NHRC also specifically brought to the knowledge of this Court, two specific complaints, which are pending for compliance before the Government of Andhra Pradesh and with the Governments of West Bengal, Jharkhand, Bihar and NCT of Delhi. The NHRC has sought proper directions from this Court so that the concerned States would take steps for reporting compliance to NHRC at the earliest.

20. After hearing the amicus curiae and other learned counsel appearing in these proceedings and also taking note of the previous orders passed by this Court, we are inclined to give the following directions, apart from the directions already issued:

"(1) Fresh surveys be conducted periodically once in three years in all the States/UTs in accordance with the provisions of the Act and the revised report, the findings of the survey should be made a part of a computerized data base available on the websites of all concerned.

(2) The responsibility of conducting the surveys is on the District Level Vigilance Committees and Sub Divisional Vigilance Committees of the States/UTs and such committees should submit their reports to the NHRC. This should be done in every three years and Committees also should be reconstituted in every three years.

(3) Bonded labour, it may be noticed, is rampant in brick kilns, stone quarries, crushing mines, beedi manufacturing, carpet weaving, construction industries, agriculture, in rural and urban unorganized and informal sector, power looms and cotton handlooms, fish processing etc. The Vigilance Committees are directed to give more attention to these areas and take prompt action in case violation is noticed.

(4) Large numbers of children are working as domestic help in the urban, town and rural areas with no chance to go to schools even though the education from standard I to VIII is compulsory under the Right of Children to Free and Compulsory Education Act, 2009. *Local Panchayats and local bodies should identify such children and ensure that they get proper education. We are not unmindful of the fact that in some households they treat the domestic help just like their children and give food, clothing and education but they are exception.*

(5) Many of the States/UTs reporting NIL status with respect to existence of Bonded labourers. This might be due to the faulty methodology adopted by them for conducting such surveys. Guidelines on the methodology of identification of bonded labourers formulated by Shri SR Shankaran, Chairman of the Expert Group constituted by the NHRC be

followed and implemented by all the States/UTs with suitable modifications to suit local conditions.

(6) All the States/UTs should calculate firm requirements of fund for rehabilitation of freed bonded labourers and steps be taken to enhance the rehabilitation package from the present limit of Rs.20,000.

(7) The District Magistrates are directed to effectively implement Sections 10, 11 and 12 of the Act and we expect them to discharge their functions with due diligence, with empathy and sensitivity, taking note of the fact that the Act is a welfare legislation.

(8) The District Magistrate and the State Government / UTs would see that the Minimum Wages Act*, the* Workmen Compensation Act*, the* Inter- State Migrant Workmen Act*,* Child Labour (Prohibition and Regulation) Act *are also properly and effectively implemented.*

(9) Directions are issued to all Gram Panchayats, local bodies to report, in case they come across any case of bonded labour, to the District Magistrate who will take appropriate follow up action under the Act.

(10) The States of Andhra Pradesh, West Bengal, Jharkhand, Bihar and the NCT of Delhi are directed to ensure compliance with orders passed by the NHRC as highlighted in its revised report."

(11) The States and the Union Territories should continue to submit 6 monthly reports to NHRC.

(12) All the States / UTs to constitute Vigilance Committee, if not already constituted within six months."

21. This Court has already given various directions in its order dated 5.5.2004 passed in Public Union for Civil Liberties v. State of Tamil Nadu and Others (2004) 12 SCC 381 2004 Indlaw SC 382, authorizing the NHRC to monitor the implementation of the provisions of the 1976 Act which we re-iterate and direct NHRC to effectively monitor and implement the provisions of the Act. The orders passed by this Court, time to time, in writ petitions are to be duly complied with the NHRC, Union of India, States and UTs.

22. The Writ Petition is accordingly disposed of so as to enable the NHRC to take appropriate steps and effectively supervise for carrying out the directions issued by this Court and the provision of BLS (A) Act. If the States/UTs are not implementing the directions given by this Court, NHRC is free to move this Court for further orders. We record our deep appreciation to the efforts made by learned senior counsel Shri A.K. Ganguli and for sparing his valuable time for a public cause. This Court is deeply indebted to him which we place on record.

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Delhi Jal Board v National Campaign For Dignity And Rights of Sewerage And Allied Workers & Others

(2011) 8 SCC 568

Bench : G.S. Singhvi, A.K. Ganguly
The Judgment was delivered by : G. S. Singhvi, J.

1. This appeal filed by Delhi Jal Board for setting aside an interlocutory order passed by the Division Bench of the Delhi High Court whereby it has been directed to deposit Rs.79,000/- with Delhi High Court Legal Services Committee in addition to Rs.1.71 lacs already paid to the families of the deceased worker, namely, Rajan is one of the several thousand cases filed by the State and/or its agencies/instrumentalities to challenge the orders passed by the High Courts for ensuring that the goal of justice set out in the preamble to the Constitution of India is fulfilled, at least in some measure, for the disadvantaged sections of the society who have been deprived of fundamental rights to equality, life and liberty for last more than 6 decades. The appeal is also illustrative of how the State apparatus is insensitive to the safety and wellbeing of those who are, on account of sheer poverty, compelled to work under most unfavorable conditions and regularly face the threat of being deprived of their life.

2. The laws enacted by Parliament and State legislatures provide for payment of compensation to the legal representatives of those killed in air, rail or motor accident. The legal representatives of a workman, who dies while on duty in a factory/industry/establishment get a certain amount of compensation. Even those who are killed in police action get compensation in the form of ex-gratia announced by the political apparatus of the State. However, neither the law makers nor those who have been entrusted with the duty of

implementing the laws enacted for welfare of the unorganized workers have put in place appropriate mechanism for protection of persons employed by or through the contractors to whom services meant to benefit the public at large are outsourced by the State and/or its agencies/instrumentalities like the appellant for doing works, which are inherently hazardous and dangerous to life nor made provision for payment of reasonable compensation in the event of death.

3. Since the legal representatives of the persons who work in the sewers laid or maintained by the State and/or its agencies/instrumentalities on their own or through the contractors and who get killed due to negligence of the employer do not have the means and resources for seeking intervention of the judicial apparatus of the State, the National Campaign for Dignity and Rights of Sewerage and Allied Workers, which is engaged in the welfare of sewage workers filed Writ Petition No.5232/2007 in the Delhi High Court to highlight the plight of sewage workers many of whom died on account of contemptuous apathy shown by the public authorities and contractors engaged by them and even private individuals/enterprises in the matter of providing safety equipments to those who are required to work under extremely odd conditions.

13. In the light of the arguments made by the learned counsel, the following three questions arise for our consideration:

"(1) Whether the High Court was justified in entertaining the writ petition filed by respondent No.1 by way of public interest litigation for compelling the respondents to take effective measures for safety of sewage workers and ordering payment of compensation to the families of the victims of accidents taking place during sewage operations,

(2) Whether the directions given by the High Court amount to usurpation of the legislative power of the State, and

(3) Whether the High Court was entitled to issue interim direction for payment of compensation to the families of deceased workers."

Re: Question No.1:

14. At the threshold, we deem it necessary to erase the impression and misgivings of some people that by entertaining petitions filed by social action groups/activists/workers and NGOs for espousing the cause of those who, on account of poverty, illiteracy and/or ignorance and similar other handicaps, cannot seek protection and vindication of their Constitutional and/or legal rights and silently suffer due to actions and/or omissions of the State apparatus and/or agencies/instrumentalities of the State or even private individuals, the superior Courts exceed the unwritten boundaries of their jurisdictions. When the Constitution of India was adopted, the people of this country resolved to constitute India into a Sovereign Democratic Republic. They also resolved to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation.

15. For achieving the goals set out in the preamble, the framers of the Constitution identified and recognized certain basic rights of the citizens and individuals and pooled them in Part III, which has the title 'Fundamental Rights' and simultaneously incorporated Directive Principles of State Policy which, though not enforceable by any Court are fundamental in governance of the country and the State is under obligation to comply with the principles embodied in Part-IV in making laws. Article 38, which was renumbered as Cl. (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978 declares that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Cl. (2) of this Article, which was inserted by the same Amending Act declares that State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations. Art. 39(e) mandates that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39A which was inserted by the Constitution (Forty-second Amendment) Act, 1976 lays

down that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Art. 42 enjoins the State to make provision for securing just and humane conditions of work and for maternity relief.

16. In last 63 years, Parliament and State Legislatures have enacted several laws for achieving the goals set out in the preamble but their implementation has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yield the desired result. The most unfortunate part of the scenario is that whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher Courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.

22. What the High Court has done by entertaining the writ petition and issuing directions for protection of the persons employed to do work relating to sewage operations is part of its obligation to do justice to the disadvantaged and poor sections of the society. We may add that the superior Courts will be failing in their Constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity. Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the Courts are not only entitled but are under Constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life. It will be a tragic and sad day when the superior Courts will shut their doors for those, who without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and Constitutional rights of the poor, downtrodden and disadvantaged sections of the society. If the system can devote hours, days and months to hear the elitist class of eminent advocates who are engaged by those who are accused of evading payment of taxes and duties or otherwise causing loss to public exchequer or who are accused of committing heinous crimes like murder, rape, dowry death, kidnapping, abduction and even acts of terrorism or who come forward with the grievance that their fundamental right to equality has been violated by the State and/or its agencies/instrumentalities in contractual matters, some time can always be devoted for hearing the grievance of vast majority of silent sufferers whose cause is espoused by bodies like respondent No.1.

Re: Question No.2:

23. There have been instances in which this Court has exercised its power u/art. 32 read with Art. 142 and issued guidelines and directions to fill the vacuum. Vishaka v. State of Rajasthan (1997) 6 SCC 241 1997 Indlaw SC 2304, Vineet Narain v. Union of India (1998) 1 SCC 226 1997 Indlaw SC 1247 and Union of India v. Association for Democratic Reforms (2002) 5 SCC 294 2002 Indlaw SC 308 are illuminating examples of the exercise of this Court's power u/art. 32 for ensuring justice to the common man and effective exercise of fundamental rights by the citizens. In Vishaka v. State of Rajasthan 1997 Indlaw SC 2304 (supra), the Court entertained the petition filed by certain social activists and NGOs for effective

protection of fundamental rights of working women under Articles 14, 19 and 21. In paragraph 11 of the judgment, the Court made a note of its obligation u/art. 32 of the Constitution in the following words:

"11. The obligation of this Court u/art. 32 of the Constitution *for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:*

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

(a) to ensure that all persons are able to live securely under the rule of law;
(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
(c) to administer the law impartially among persons and between persons and the State."

In Vineet Narain v. Union of India 1997 Indlaw SC 1247 (supra), the Court observed:

"The powers conferred on this Court by the Constitution *are ample to remedy this defect and to ensure enforcement of the concept of equality.*

There are ample powers conferred by Art. 32 read with Art. 142 to make orders which have the effect of law by virtue of Art. 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Art. 144 of the Constitution*. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. "*

25. In view of the principles laid down in the aforesaid judgments, we do not have any slightest hesitation to reject the argument that by issuing the directions, the High Court has assumed the legislative power of the State. What the High Court has done is nothing except to ensure that those employed/engaged for doing work which is inherently hazardous and dangerous to life are provided with life saving equipments and the employer takes care of their safety and health. The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies/instrumentalities or the contractors engaged by them are under a Constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs. The argument of choice and contractual freedom is not available to the appellant and the like for contesting the issues raised by respondent No.1.

Re: Question No.3:

26. We shall now consider whether the High Court was justified in issuing interim directions for payment of compensation to the families of the victims. At the outset, we deprecate the attitude of a public authority like the appellant, who has used the judicial process for frustrating the effort made by respondent No.1 for getting compensation to the workers, who died due to negligence of the contractor to whom the work of maintaining sewage system was outsourced. We also express our dismay that the High Court has thought it proper to direct payment of a paltry amount of Rs.1.5 to 2.25 lakhs to the families of the victims. Rudul Sah v. State of Bihar (1983) 4 SCC 141 is the lead case in which the Court exercised its power u/art. 32 for compensating a person who was unlawfully detained for 14 years. Paragraphs 9 and 10 of the judgment, which contain the reasons for making a departure from the old and antiquated rule that a person, who has suffered due to the negligence of a public authority, can claim damages by filing suit, are extracted below:

"9. It is true that Art. 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its

jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right..... .....

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Art. 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art. 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy.

Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

33. As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 to one lakh in regard to the unfortunate deaths of the young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact situation of the matter before the court, than judicial precedents. As regards the quantum, no decision as such can be taken to be of binding precedent as such, since each case has to be dealt with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof, though however, the same can act as a guide: placement in the society, financial status differs from person to person and as such assessment would also differ. The whole issue is to be judged on the basis of the fact situation of the matter concerned though however, not on mathematical nicety."

35. In view of the law laid down in the afore-mentioned judgments, the appellant's challenge to the interim directions given by the High Court for payment of compensation to the families of the workers deserves to be rejected.

However, that is not the end of the matter. We feel that the High Court should have taken cue from the judgment in Chairman, Railway Board v. Chandrima Das 2000 Indlaw SC 600 (supra) and awarded compensation which could be treated as reasonable. Though, it is not possible to draw any parallel between the trauma suffered by a victim of rape and the family of a person who dies due to the negligence of others, but the High Court could have taken note of the fact that this Court had approved the award of compensation of Rs.10 lacs in 1998 to the victim of rape as also increase in the cost of living and done well to award compensation of atleast Rs.5 lacs to the families of those who died due to negligence of the public authority like the appellant who did not take effective measures for ensuring safety of the sewage workers. We may have remitted the case to the High Court for passing appropriate order for payment of enhanced compensation but keeping in view the fact that further delay would add to the miseries of the family of the victim, we deem it proper to exercise power under Art. 142 of the Constitution and direct the appellant to pay a sum of Rs.3.29 lakhs to the family of the victim through Delhi High Court State Legal Services Committee. This would be in addition to Rs.1.71 lakhs already paid by the contractor.

36. In the result, the appeal is dismissed subject to the aforesaid direction regarding the amount of compensation to be paid by the appellant. It is needless to say that the appellant shall be entitled to recover

the additional amount from the contractor. Respondent No.1 shall also be entitled to file appropriate application before the High Court for payment of enhanced compensation to the families of other victims and we have no doubt that the High Court will entertain such request.

37. With a view to obviate further delay in implementation of the directions contained in the first order passed by the High Court on 20.8.2008, we direct the appellant to ensure compliance of clauses (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) within a period of two months from today and submit a report to the High Court. The appellant shall also ensure that these directions are complied with by the contractors engaged by it for execution of work relating to laying and maintenance of sewer system within the area of its jurisdiction. A report to this effect be also submitted to the High Court within two months. Additionally, we direct that in future the appellant shall ensure that the directions already given by the High Court and which may be given hereafter are made part of all agreements which may be executed with contractors/private enterprises for doing work relating to sewage system.

38. The directions contained in the preceding paragraph do not imply that the appellant and other agencies/instrumentalities of the State like New Delhi Municipal Council, Municipal Corporation of Delhi, Delhi State Industrial Development Corporation are not required to comply with the directions given by the High Court. Rather, they too shall have to submit similar reports.

39. As regards the other clauses of paragraph 9 of order dated 20.8.2008, the High Court may give necessary directions so that they are complied with and implemented by the State and its agencies/instrumentalities without any delay.

40. The case be listed before the Division Bench of the High Court in the third week of September, 2011 for further orders. Appeal dismissed

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