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CHARLES SOBRAJ

v.

THE SUPTD., CENTRAL JAIL, TIHAR, NEW DELHI

August 31, 1978

[V. R. KRISHNA IYER, D. A. DESAI AND O. CHINNAPPA REDDY, JJ.]

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Powers of the Supreme Court to interfere to right the wrong and restore the rule of law—Constitution of India 1950, *Art.* 136.

Fundamental Rights—Whether the prisoners can invoke their constitutional rights under Part III of the Constitution—Prison justice and Art. 21 *of the Constitution—Prison justice is a sort of solemn covenant running with the power of the Court to sentence the accused—Judicial discretion* vis-a-vis *prison administration and prisoners' rights, explained—Correctional confinement and Court's jurisdiction.*

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The petitioner a convict having to serve two sentences of long imprisonment, plus record of one escape and one attempt of suicide and interpol reports of many crimes abroad in addition to several cases pending in India against him, through this writ petition contended that barbarity and inhuman treatment have been hurled at him and that intentional discrimination has been his lot throughout and, therefore, sought the assistance of this Court for directing the jail authorities to give him finer foreigners as companions, and to remove him from a high security ward like Ward-I to a more relaxed ward. by invoking the provisions of Articles 14, 19 and 21 of the Constitution.

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Dismissing the Writ Petition the Court,

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HELD : (1) Imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to recognise the full panoply of Part III of the Constitution enjoyed by a free citizen. Whenever fundamental rights are flouted or legislative protection ignored to any prisoner's prejudice, this Court's writ will run breaking through stone walls and iron bars, to right the wrong and restore the rule of law. Then the parrot-cry of discipline will not deter, of security will not scare, of discretion will not dissuade, the judicial process. For if courts 'cave in' when great rights are gouged within the sound-proof, sight-proof precincts of prison houses, where often dissenters and minorities are caged, Bastilles will be re-enacted. When law ends tyranny begins; and history whispers, iron has never been the answer to the rights of men. [514 H, 515 A-B]

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(2) Art. 21 of the Constitution read with Art. 19(1)(d) and (5) is capable of wider application than the imperial mischief which gave its birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of a mature society. Fair procedure is the soul of Art. 21, reasonableness of the restriction is the essence of Art. 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Art. 14. Constitutional *Karuna* is thus injected into incarceratory strategy to produce prison justice. [515 C-D]

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Sunil Batra v. *Delhi Admn. & Ors. and Charles Gurumukh Sobraj* v. *State of Delhi* [1979] 1 SCR 392 referred to.

Kharak Singh v. *State of U.P.*, [1964] 1 SCR 357; applied. A

(3) Prison justice implies Court's continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified. It is a sort of solemn covenant running with the power to sentence. Where a prison practice or internal instruction places harsh restrictions on jail life, breaching guaranteed rights, the Court directly comes in. Every prison sentence is a conditioned deprivation of life and liberty, B with civilized norms built in and unlimited trauma interdicted. In this sense judicial policy of prison practices is implied in the sentencing power. The Criminal judiciary have thus a duty to guardian their sentencees and visit prisons when necessary. The penological goals which may be regarded as reasonable justification for restricting the right to move freely within the confines of a penitentiary are now well settled. And if prisoners have title to Articles 19, 21 and 14 rights, subject to the limitations, there must be some correlation between C depriviation of comfort and legitimate function of a correctional system. [515 G, 516-E, F-G]

(4) Deterrence, both specific and general rehabilitation, and institutional security are vital considerations. Compassion wherever possible and cruelty only where inevitable is the art of correctional confinement. When prison policy advances such a valid goal, the Court will not intervene officiously. But when an inmate is cruelly restricted in a manner which supports no such relevant D purpose, the restriction becomes unreasonable and arbitrary, and unconstitutionality is the consequence. Traumatic futility is obnoxious to pragmatic legality. Social defence is the *raison d'etre* of the penal code and bears upon judicial control over prison administration. If a whole atmosphere of constant fear of violence, frequent torture and denial of opportunity to improve oneself is created or if medical facilities and basic elements of care and comfort necessary to sustain life are refused, then also the humane jurisdiction of the Court E will become operational based on Art. 19. [516 G-H, 517 D-E]

(5) Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Rights enjoyed by prisoners under Arts 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise. [518 A-B]

R. C. Cooper v. *Union of India*, [1971] 1 SCR 512; *Maneka Gandhi* v. F *Union of India & Anr.*, [1978] 1 SCR 248, *Mohammad Giasuddin* v. *State of Andhra Pradesh*, [1978] 1 SCR 153; referred to.

(6) However, a prison system may make rational distinctions in making assignments to inmates of vocational, educational and work opportunities available, but it is constitutionally impermissible to do so without a functional classification system. Courts cannot be critical of the administration if it makes a G classification between dangerous prisoners and ordinary prisoners. A distinction between the under trials and convicts is reasonable. In fact lazy relaxation on security is a professional risk inside a prison. [517 F, G, 519 B, C]

The petitioner being a foreigner cannot claim rights under Art. 19. Moreover he is now a convict and is not in solitary confinement. [519 D]

OBSERVATION : H

[The Court must not rush in where the jailor fears to tread. While the country may not make the prison boss the sole sadistic arbiter of incarcerated

A humans, the community may be in no mood to handover central prisons to be run by Courts. Each instrumentality must function within its province.]

ORIGINAL JURISDICTION : Writ Petition No. 4305 of 1978.

Under Article 32 of the Constitution.

B *N. M. Ghatate* and *S. V. Deshpande*. for the Petitioner

Soli J. Sorabjee, Addl. Sol. General and *Girish Chandra* for the Respondent.

The Order of the Court was delivered by

KRISHNA IYER, J. A litigation with a social dimension, even C in a blinkered adversary system, serves a larger cause than the limited *lis* before the court. This petition, with non-specific reliefs, is one such.

Sobraj, the petitioner, by the frequency of his forensic complaints against incarceratory torture and Dr. Ghatate, his counsel, D by the piquancy of his hortative advocacy of freedom behind bars, have sought to convert the judicial process from a constitutional sentinel of prison justice—which, emphatically, it is—into a meticulous auditor-general of jail cells—which, pejoratively, it is not—although, on occasions, 'thin partition do their bounds divide'. Often, as here, the fountain of confusion in penitentiary jurisprudence is E forgetfulness of fundamentals. Once the legal basics are stated, Sobraj, with his disingenuous, finical grievances, will be out of court.

What are the governing principles, decisionally set down by this court in *Batra* and *Sobraj*? Has the court jurisdiction to decide prisoners' charges of violation of rights? If it has, can it meddle with the prison administration and its problems of security and discipline F from an 'innocent' distance? Put tersely, both the 'hands off' doctrine and the 'take over' theory have been rebuffed as untenable extremes and a middle ground has been found of intervening when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner and declining where lesser matters of institutional order and man management, though irksome to some, are alone G involved.

Contemporary profusion of prison torture reports makes it necessary to drive home the obvious, to shake prison top brass from the callous complacency of unaccountable autonomy within that walled-off world of human held incommunicado. Whenever fundamental H rights are flouted or legislative protection ignored, to any prisoner's prejudice, this Court's writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law. Then the

parrot-cry of discipline will not deter, of security will not scare, of discretion will not dissuade, the judicial process. For if courts 'cave in' when great rights are gouged within the sound-proof, sight-proof precincts of prison houses, where, often, dissenters and minorities are caged, Bastilles will be re-enacted. When law ends tyranny begins; and history whispers, iron has never been the answer to the rights of men. Therefore we affirm that imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen.

This proposition was not contested by the learned Additional Solicitor General Sri Soli Sorabjee. Nor does its soundness depend, for us, upon the Eighth Amendment to the U.S. Constitution. Art. 21, read with Art. 19(1)(d) and (5), is capable of wider application than the imperial mischief which gave its birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of a mature society, as *Batra* and *Sobraj* have underscored and the American Judges have highlighted. Fair procedure is the soul of Art. 21, reasonableness of the restriction is the essence of Art. 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Art. 14. Constitutional *karuna* is thus injected into incarceratory strategy to produce prison justice. And as an annotation of Art. 21, this Court has adopted, in *Kharak Singh's case*(1) that expanded connotation of 'life' given by Field, J. which we quote as reminder :

> "Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world".

The next axiom of prison justice is the court's continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified. It is a sort of solemn covenant running with the power to sentence.

The U.S. Courts have intensified their oversight of State penal facilities reflecting a heightened concern with the extent to which the ills that plague so-called correctional institutions violate basic rights, points out Edward S. Crowin.(2). Although, the learned author, and,

(1) [1964] 1 SCR 357.

(2) Supplement to Edward S. Corwin's 'The Constitution' and What it means Today; 1976 Edn. p. 245.

A indeed, the decisions show that reliance is placed on the Eighth Amendment, as we have earlier pointed out, the same sensitized attention and protective process emanate from the humane provisions of Part III of our Constitution.

B Viewed differently, supposing a court sentences a person to simple imprisonment or assigns him 'B' class treatment and the jail authorities unwittingly or vindictively put him under rigorous imprisonment or subject him to 'C' class treatment, does it not show contempt of the court's authority and deprivation of liberty beyond a degree validated by the court warrant? Likewise, where a prisoner is sub-C jected to brutality, exploiting the fact that he is helplessly within the custody of the Jail Administration, does it not deprive the prisoner of his life and liberty beyond the prescribed limits set by the court? Yet again, where conditions within a prison are such that inmates incarcerated therein will inevitably and necessarily become more sociapathic than they were prior to the sentence, is not the court's D punitive purpose, charged with healing hope, stultified by the prison authorities? Of course, where a prison practice or internal instruction places harsh restrictions on jail life, breaching guaranteed rights, the court directly comes in. Every prison sentence is a conditioned deprivation of life and liberty, with civilised norms built in and un-E limited trauma interdicted. In this sense, judicial policing of prison practices is implied in the sentencing power. The Criminal judiciary have thus a duty to guardian their sentences and visit prisons when necessary. Many of them do not know or exercise this obligation.

F Another jurisdictional facet may be touched upon in view of the widely worded relief sought to treat Sobraj 'in a human and dignified manner, keeping in view the adverse effect of his confinement upon his mental and physical conditions'. The penological goals which may be regarded as reasonable justification for restricting the right to move freely within the confines of a penitentiary are now well-settled. And G if prisoners have title to Article 19, 21 and 14 rights, subject to the limitation we have indicated, there must be some correlation between deprivation of freedom and the legitimate functions of a correctional system. It is now well-settled, as a stream of rulings of courts proves, that deterrence, both specific and general, rehabilitation and institutional security are vital considerations. Compassion wherever possi-H ble and cruelty only where inevitable is the art of correctional confinement. When prison policy advances such a valid goal, the court will not inervene officiously.

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This overall attitude was incorporated as a standard by the American National Advisory Commission on Crimine Justice Standards and Goals :—

> "...... A rehabilitative purpose is or ought to be implicit in every sentence of an offender unless ordered otherwise by the sentencing court".(1)

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The U.S. Supreme Court summed up :

> "In a series of decisions this court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose."(2)

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But when an inmate is cruelly restricted in a manner which supports no such relevant purpose, the restriction becomes unreasonable and arbitrary, and unconstitutionality is the consequence. Traumatic futility is obnoxious to pragmatic legality. Social defence is the *raison d'etre* of the penal code and bears upon judicial control over prison administration. If a whole atmosphere of constant fear of violence, frequent torture and denial of opportunity to improve oneself is created or if medical facilities and basic elements of care and comfort necessary to sustain life are refused then also the humane jurisdiction of the court will become operational based on Art. 19. Other forms of brutal unreasonableness and anti-rehabilitative attitude violative of constitutionality may be thought of in a penal system but we wish to lay down only a broad guideline that where policies, with a 'Zoological touch', which do not serve valid penal objectives are pursued in penitentiaries so as to inflict conditions so unreasonable as to frustrate the ability of inmates to engage in rehabilitation, the court is not helpless. However, a prison system may make rational distinctions in making assignments to inmates of vocational, educational and work opportunities available but it is constitutionally impermissible to do so without a functional classification system. The mere fact that a prisoner is poor or rich, high-born or ill bred, is certainly irrational as a differential in a 'secular socialist republic'. Since the petitioner charges the jail staff with barbaric and inhuman treatment in prison we are called upon to delineate the broad boundaries of judicial jurisdiction *vis-a-vis* prison administration and prisoner's rights.

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(1) "To solve the age-old Problem of Crime" Roger Lanphear, J. D. p-19.
(2) Ibid p. 21

A The court is reluctant to intervene in the day-to-day operation of the State penal system; but undue harshness and avoidable tantrums, under the guise of discipline and security, gain no immunity from court writs. The reason is, prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights enjoyed by prisoners under B Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise. *Cooper*(1) and *Maneka Gandhi*(2) have thus compulsive consequence benignant to prisoners.

The petitioner in the present case has contended that barbaric C and inhuman treatment have been hurled at him and that intentional discrimination has been his lot throughout. These allegations invited us to examine the limits and purpose of judicial jurisdiction but we have to apply the principles so laid down to the facts of the present case.

D Starry abstractions do not make sense except in the context of concrete facts. That is why we agree with the propositions of law urged by Dr. Ghatate but disagree with the distress and discrimination his client wails about.. True, confronted with cruel conditions of confinement, the court has an expanded role. True, the right to life is more than mere animal existence, or vegetable subsistence.(3) E True, the worth of the human person and dignity and divinity of every individual inform articles 19 and 21 even in a prison setting. True, constitutional provisions and municipal laws must be interpreted in the light of the normative laws of nations, wherever possible and a prisoner does not forfeit his Part III rights. But what are the facts here?

F Charles Sobraj is no longer an under-trial, having to serve two sentences of long imprisonment. He is given all the amenities of a 'B' class prisoner. He goes on hunger strike but medical men take care of him. Ward I, where he is lodged, gives him the facilities of wards XIII and XIV where he wants to be moved. He has G a record of one escape and one attempt at suicide and Interpol reports of many crimes abroad. There are several cases pending in India against him. Even so, the barbarity of bar fetters inflicted on him by a qualmless jail staff was abandoned under orders of this Court. Now. he seeks the other extreme of coddling as if a jail were a country club or good hotel. Give me finer foreigners as H companions, he demands. Don't keep convict cooks and warders as

(1) [1971] 1 SCR 512.
(2) [1978] 1 SCR 248
(3) *Mohammed Giasuddin* v. *State of Andhra Pradesh*, [1978] 1 SCR 153.

jailmates in my cell he rails. Remove me from a high security ward like Ward I to a more relaxed ward like Ward 14 or 13, he solicits. These delicate and genteel requests from a prisoner with his record and potential were turned down by the Superintendent and the reasons for such rejection, based on security, rules and allergy of other inmates to be his risky fellow-inmates have been stated on oath. We cannot be critical of the Administration if it makes a classification between dangerous prisoners and ordinary prisoners. In the present case, the Superintendent swears, and it is undisputed, that the petitioner is not under solitary confinement. We further aver that a distinction between under-trials and convicts is reasonable and the petitioner is now a convict. In fact, lazy relaxation on security is a professional risk inside a prison.

The court must not rush in where the jailor fears to tread. While the country may not make the prison boss the sole sadistic arbiter of incarcerated humans, the community may be in no mood to hand over central prisons to be run by courts. Each instrumentality must function within its province. We have no hesitation to hold that while Sobraj has done litigative service for prison reform, he has signally failed to substantiate any legal injury. We, therefore, dismiss the writ petition, making it clear that strictly speaking the petitioner being a foreigner cannot claim rights under Art. 19, but we have discussed at some length the import of Articles 14, 19 and 21 because they are interlaced and in any case apply to Indian citizens.

S.R. *Petition dismissed.*