

RAMESH KAUSHIK

v.

B. L. VIG, SUPERINTENDENT AND ANR.

April 30, 1980

[V. R. KRISHNA IYER, O. CHINNAPPA REDDY AND A. P. SEN, JJ.]

Jail Jurisprudence—Prison torture and Constitutional Jurisdiction of the Court—Treatment for 'B' class and 'C' class in Tihar Jail whether offends Article 14 of the Constitution—Constitution of India Articles 21, 19 and 14.

Kaushik, a lifer lodged in Tihar Jail moved a *quasi habeas corpus* petition bitterly complaining with facts and figures, of the terror and horror, physical and psychic, let loose on him and other jail mates by a crypto criminal combination of senior officials and superior prisoners, thereby making the prison life within that walled world such a trauma and torment the law never meant under the sentence suffered at the hands of the Court. Briefly, the petitioner alleged that his life in jail is subjected to intimidation by overbearing 'toughs' inside, that he is forced to be party to misappropriation of jail funds by and bribery of officers, that homosexual and sexual indulgence with the connivance of officials are going on, that smuggling in and out is frequent and drug racket common, that alcoholic and violent misconduct by gangs like those involved in Bank Robbery and other notorious cases are a menace to quieter prisoners and the whole goal of reformation of sentences is defeated by this supercrime syndrome. On this the Court appointed *Sri Subodh Markendeya* as *amicus curiae* to inquire into the allegations and submit a report. The respondent Delhi Administration transversed the grounds in the petition.

Allowing the petitions, the Court

HELD: 1. Prison torture is not beyond the reach of the Supreme Court in its constitutional jurisdiction. [931 F]

Were there a modicum of truth in the disclosures made of vice and violence, overt and covert, in the goings on in Tihar such an institutional outrage would make our constitutional culture blush and our judicial punishment 'guilty' procedure. And on the materials placed before the Court there is ground enough to exercise our exceptional but undoubted jurisdiction to ensure some minimum of social hygiene and banishment of licentious excesses lest the sentence of court be frustrated in its dual ends of deterrence and rehabilitation by prison pathology. [932 B-C]

2. When police and prison torture is escalating in our human rights era, courts owe a duty to society not to ignore such a dangerous reality. Under our Constitution, deprivation of personal liberty as penal policy is purposive and the Penal Code itself is valid because the imprisonment of the criminal is reasonable, not arbitrary, and is sanctioned as a measure of social defence and individual rehabilitation. A court sentence does not deprive the prisoner of his fundamental rights. To reform and deter the criminal and to work out that process geared to social defence, the convict is cast into prison—not to make him more hardened, more brutal, more cunning and dangerous to society. This

A *raison d'être* of penological institutions in our Gandhian country, with humanism as basic to the constitutional scheme, cannot be written off without peril. A Prison term in Tihar Jail is not a post graduate training in tough crime. No sentencing judge, high and low should hang his helpless head in frustration and humiliation because institutional alternations and personnel perversions have sullied and stultified the justice of his sentence. [932 F-H, 933 A, B, C]

B *Sunil Batra v. State (Delhi Administration)*, [1980] 2 SCR, 557; referred to.

3. The human rights of common prisoners are at a discount and, in our Socialist Republic moneyed 'B' class convicts operate to oppress the humbler inmates. There cannot be inequality in prison too on the score of social and financial status. Bank robbers in 'B' class because they are rich by robbery and nameless little men in 'C' class because they are only common Indians! Article 14 is suffocated if this classification is permitted, and yet that, according to rule itself, is prevalent. Therefore, the Supreme Court must act, will act, to restore the rule of the law and respect of the residual fundamental rights of any harassed petitioner. [933 D-F].

C 4. The writ jurisdiction of the Supreme Court must be equal to the needs of human rights and human wrongs. In *Sunil Batra (I) v. Delhi Administration*, [1979] 1 S.C.R. 393, this Court held that fundamental rights did not forsake prisoners and that the penological purpose of sentence was importantly, reformatory even though deterrent too. In the *second Sunil Batra's case* after a long discussion covering American Rulings U.N. specifications of the Standard Minimum Rules for prisons and the implications of Articles 21, 19 and 14 read in the light of *Maneka Gandhi's case*, [1978] 1 S.C.C. 248, this Court accented on the habilitative value contained in Rule 58 of the International Standard Minimum Rules. Jural justice thus set made the Court an activist instrument of jail Justice. [934 A-B, 935 A-B, 938 G]

D 5. In the instant case, even after making a liberal allowance for adulteration and distortion, the miasmatic process and restore basic humanism inside this penal institution where sentences, punitively sent by court, are subjected to unbearable tensions and torments on their physical and moral fibre, thanks to the prison milieu being what it is. [938 G-H, 939 A]

E 'B' class status for prisoners is, going by averments in the petition, a pampering process much abused by officials and, in a 'class' culture, obnoxious to the Constitution. Equality before the law cannot co-exist with affluent blackguards being looked after with luxury and solicitude and lawly indigents being treated as *pariahs* inside the prison. There is reference in the petition to the three dangerous criminals involved in a big Bank Van Robbery Case being lodged in Ward 14 as 'B' Class VIPs, who have, on top of other advantages, certain facilities. It is fairly clear that many vices, including drug rackets, occasional violence, smuggling and trafficking in many other impermissible things, have hospitable home in this penitentiary. The Administration has conscientious responsibility for the decency and dignity, for correctional obligations and social hygiene inside prison houses and the time is long overdue for a thorough overhaul of the prison management in Tihar. [940 C-E, 941 E-F].

F 6. The crisis in our prisons, the collapse of values in these campuses, the inner tension 'red in tooth and class' the corruption that makes for sensual indul-

gences, the barbarities that harden the convicts and never heal them—all these processes can be reviewed and humanization resorted to, only if, our philosophy towards crime and punishment change. If vengeance is the spirit of punishment violence will be the prison way of life. [944 C-D]

[The Court, keeping in view the principle of natural justice and the limitation of Court time directed a judicial enquiry by the District and Sessions Judge of Delhi who is a member of the Board of Visitors stressing the points to be covered in particular.]

[ORIGINAL JURISDICTION: Writ Petition Nos. 393 & 549 of 1980.

(Under Article 32 of the Constitution)

S. Markendaya (Amicus Curiae) for the Petitioner.

M. N. Abdul Khader and *Miss A. Subhashini* for the Respondents.

The Judgment of the Court was delivered by.

KRISHNA IYER J. Is a prison term in Tihar Jail a post-graduate course in crime? Such is the poignant issue that emerges from the facts of this case.

'The fundamental human right is not to a legal system that is infallible but to one that is fair'—these great words of Lord Diplock in *Maharaj v. Attorney General of Trinidad and Tobago (No.2)* (1) trigger our jurisdiction to ensure a fair legal deal to the prisoner whose petition to this Court makes frightening exposures about the insiders of Delhi's Central Jail.

Kaushik, a 'lifer' (to use jail jargon), now lodged in the Tihar Central Jail, has moved this *quasi-habeas corpus* petition wherein he bitterly complains with facts and figures, of the terror and horror, physical and psychic, let loose on him and other jail-mates by a crypto-criminal combination of senior officials and superior prisoners, thereby making the prison life within that walled world such a trauma and torment the law never meant under the sentence suffered at the hands of the court. Prison torture is not beyond the reach of this Court in its constitutional jurisdiction and so we appointed Shri Subodh Markandeya as *amicus curiae* and directed the Superintendent of the Jail to make available for him facilities to meet the prisoner Kaushik and to present, after a brief fact-finding enquiry, the facts necessary for taking further action, if any. Shri Markandeya has, with a gush of gusto, executed his work of assisting this Court and made a report, and we record our appreciation therefor. What makes law a force is a lawyer with a cause.

(1) [1978] 1 WLR 902, 911.

A The Delhi Administration has responded through counsel and traversed the grounds in the petition but Shri Abdul Khader, appearing for the State, has fairly agreed that the Superintendent of the Central jail, far from fighting shy of a probe into the prison management and the shocking aspersions cast on it would welcome a judicial investigation where he could prove his innocence of the foul charges levelled.

B Were there a modicum of truth in the disclosures made of vice and violence, overt and covert, in the goings-on in Tihar such an institutional outrage would make our constitutional culture blush and our judicial punishment 'guilty' procedure. And on the materials placed before us there is ground enough to exercise our exceptional but undoubted jurisdiction to ensure some minimum of social hygiene and banishment of licentious excesses lest the sentence of court be frustrated in its dual ends of deterrence and rehabilitation by prison pathology.

C Briefly, the petitioner alleges that his life in jail is subjected to intimidation by overbearing 'toughs' inside, that he is forced to be party to misappropriation of jail funds by and bribery of officers, that homosexual and sexual indulgence with the connivance of officials are going on, that smuggling in and out is frequent and drug racket common, that alcoholic and violent misconduct by gangs like those involved in Bank Robbery and other notorious cases are a menace to quieter prisoners and the whole goal of reformation of sentencees is defeated by this supercrime syndrome. Maybe, like Oscar Wilde, the petitioner, in flinging allegations, considers that "moderation is a fatal thing. Nothing succeeds like excess". Making a large margin for unveracious dilution, still if a fragment of truth survives, something is rotten in the state of Denmark'. This Courts' writ must remove from Tihar face such indelible stain and incurable wound.

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F When police and prison torture is escalating in our human rights era, courts owe a duty to society not to ignore such a dangerous reality. "At this time the lack of law and order is especially of prime concern. Our courts must bear their share of blame and shame for this condition".(1)

G Under our Constitution, deprivation of personal liberty as penal policy is purposive and the Penal Code itself is valid because the imprisonment of the criminal is reasonable, not arbitrary, and is sanctioned as a measure of social defence and individual rehabilitation. A court sentence does not deprive the prisoner of his fundamental rights as a Constitution Bench., in *Sunit Batra's case*(2) recently expounded.

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(1) From the dissent of Montgomery, J. in *Workmen and Pipes v. Kentucky* (376) (see also *United States Prison Law Edn. 1975, Vol. I, p. 624.*

(2) *Sunit Batra v. Delhi Administration* [1980] 2 S.C.R. 557.

To reform and deter the criminal and to work out that process geared to social defence, the convict is cast into prison—not to make him more hardened, more brutal, more cunning and dangerous to society. This *raison d'être* of penological institutions in our Gandhian country, with humanism as basic to the constitutional scheme, cannot be written off without peril. And so it is that, after reading the fearful circumstances revealed in this case we focussed sharply, right at the outset, the grave issue: Is a prison term in Tihar Jail a post-graduate training in tough crime? Is an invisible 'carser' mafia in *defacto* management of this penal institution? Should every sentencing judge, high and low, hang his helpless head in frustration and humiliation because institutional aberrations and personnel perversions have sullied and stultified the justice of his sentence?

We have been told by counsel for the State that several hundreds of VIPs have (ceremonially) visited and, of course, complimented the jail management. These conducted tours cannot, in themselves, contradict the contention that this campus of correction has degenerated into a human zoo. We keep an open mind and examine the facts but must confess that the Tihar Jail has come up for unhappy judicial notice too often in the past. We must also stress that the human rights of common prisoners are at a discount and, in our Socialist Republic, moneyed 'B' class convicts operate to oppress the humbler inmates. Can there be inequality in prison too on the score of social and financial status? Bank robbers in 'B' class because they are rich by robbery and nameless little man in 'C' class because they are only common Indians! Article 14 is suffocated if this classification is permitted, and yet that according to rule itself, is prevalent as this Court has even in earlier cases pointed out. This Court must act, will act, to restore the rule of law and respect the residual fundamental rights of any harassed petitioner.

We are aware that general charges and sweeping complaints may tarnish innocent officers. We do not intend to find fault with any until proof is forthcoming. We are conscious that correctional orientation and cautious humanization have changed the attitudes of many jail officials. To blame them is beyond our purpose or power but to protect the caged humans from torture, gross or subtle, beyond what the law permits is our function, indeed, our duty. From this perspective we may rapidly survey the circumstances and mould the reliefs.

Prison Jurisprudence, developed through case-law and derived from constitutional law, already exists. As a jurisdictional matter and background-setter we may briefly refer to some of these aspects

A before we discuss the controversial questions. In the *Sunil Batra Case*⁽¹⁾ the Constitution Bench brushed aside the 'hands off prisons' doctrine, upheld the fundamental rights of prisoners, though circumscribed severely by the reality of lawful custody. Desai, J., speaking for three of his colleagues and broadly concurring with the fourth clarified two positions (a) that fundamental rights did not forsake prisoners, and (b) that the penological purpose of sentence was, importantly, reformatory, even though deterrent too. In a later case, *Sunil Batra v. Delhi Administration* (supra) another bench explained:

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C *The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. In a few cases, this validation of judicial invigilation of prisoners' condition has been voiced by this Court and finally reinforced by the Constitution Bench in Batra (supra) (2).*

D The Court need not adopt a "hands off" attitude . . . in regard to the problem of prison administration. It is all the more so because a convict is in prison under the order and direction of the Court.

E Under the caption "Retention of Authority over Prisoner by Sentencing Judge" (Krantz notes) (3).

As noted by Judge Lay in a Judicial Mandate, Trial Magazine (Nov.-Dec. 1971) at p. 15

F It should be the responsibility of the court in imposing the sentence to set forth as it would in any equitable decree, the end to be achieved and the specifics necessary to achieve that purpose. If then, we are to have accountability in the execution of the sentence, courts must make clear what is intended in the imposition of the sentence. Every sentence should be couched in terms similar to a mandatory injunction. In this manner, the penology system is to be held to account if the government does not faithfully execute the order.

G In other words, the sentencing court should be required to retain jurisdiction to ensure that the prison system responds to the purposes of the sentence. If it does not, the sentencing court could arguably have the authority to demand compliance with

H (1) *Sunil Batra v. Delhi Administration* [1979] 1 S.C.R. 393.

(2) [1980] 2 S.C.R. 557.

(3) Sheldon Krantz : Corrections and Prisoners' Rights p. 274-75.

the sentence or even order the prisoner released for non-compliance. A

Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods, 'right, just and fair'.

A long discussion covering American rulings, U.N. specifications of the Standard Minimum Rules for Prisons and the implications of Arts. 21, 19 and 14 read in the light of *Maneka Gandhi's case*(¹) led this Court in *Sunil Batra* (²) (supra) to accent on the habilitative value contained in Rule 58 of the B

International Standard Minimum Rules :

The purpose and justification of sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life. C

The action-oriented conclusion in that judgment, which bind the State, need re-emphasis since die-hard, practices persist. We repeat some of them here : (²) D

Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the visitorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visits and records and report to the concerned court results which have relevance to legal grievances. E

Within the next three months, Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrate and the Sessions Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes shall be afforded to all prisoners. F

District Magistrates and Sessions Judges shall, personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances, shall make expeditious enquiries there into and take suitable remedial action. In appropriate cases reports shall be made G

(1) [1978] 1 S.C.C. 248

(2) *Sunil Batra v. Delhi Administration* [1980] 2 S.C.R. 557 H

A to the High Court for the latter to initiate, it found necessary, *habeas* action.

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B No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days of the action.

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D The State shall take early steps to prepare in Hindi a Prisoner's Handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and rehabilitative programmes are brought into the prison may create a fellow-ship which will ease tensions. A prisoners' wall paper, which will freely ventilate grievances will also reduce stress. All these are implementary of s.61 of the Prisons Act.

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E The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the Court such as for *e.g.* Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief.

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How far have these directives been implemented, especially to the extent they affect the present petitioner? We will examine it presently, but before that, some materials about this jail and its way of life is needed to appreciate where the truth lies, as between assertions and denials.

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In the *2nd Sunil Batra case*(1)--- the Superintendent of the Tihar Jail testified :

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A number of prisoners in the Tihar Jail are habitual offenders, professional criminals who have been inmates of the Jail from time to time.... It has been noticed that these types of prisoners have been able to develop a certain rapport with some

(1) [1980] 2 S.C.R. 557

of the lower staff in the jail namely Head Warders, Warders etc. and obtain certain facilities illegally including smuggling of number of items e.g. drugs etc. for their use. It may also be submitted that to check smuggling of narcotic drugs against prisoners who indulge in such activities 30 cases of narcotic offences were got registered against the prisoners with the Janakpuri Police Station during this year.....It may also be mentioned that due to paucity of accommodation, the said jail is occupied by double the number of prisoners than it is otherwise authorised.

In that very case, the Court had occasion to observe, on the materials present there :

“Since many officers busy themselves with production of prisoners in court, the case of the Superintendent is that the other prisoners *“try to do mischief, make thefts of other prisoners who go to work, smuggle things and even resort to assaults.”*

The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cells. That is, there is a large network of criminals, officials and non-officials in the house of corrections Drug racket, alcoholism, smuggling, violence, theft, unconstitutional punishment by way of solitary cellular life and transfer to other jails are not uncommon.”

In that case, Dr. Chitale, who appeared for the prisoner, brought to our notice a literary work written by Shri Kuldip Nayar “In Jail” where the author has recorded : (1)

“.....one could get as much money as one wanted from outside against a price. There was a money order and mail service that perhaps was more dependable than what the postal department could offer.

For instance, when a prisoner in my ward wanted two hundred rupees, he sent a note through a warden to his people in old Delhi and in less than twenty-four hours he had the money. He paid sixty-six rupees as collecting charges—thirty-three per cent was the prescribed “money-order charges.”.....Dharma Teja, the shipping magnate who served his sentence in Tihar, for instance, had thousands of rupees delivered to him, we were told. And if one could pay the jail functionaries one could have all the comforts one sought. Teja had all the comforts—he had an air cooler in his cell, a radio-cum-record player set and even the facility of using the

(1) pp. 30—34.

A phone.....Haridas Mundhra, a business man who was convicted of fraud, was another rich man who spent some time in Tihar. Not only did he have all the facilities, but he could also go out of the jail whenever he liked, at times he would be out for several days and travel even up to Calcutta. All this, of course, cost a lot of money. An even richer prisoner was Ram Kishan Dalmia; he spent most of his jail term in hospital. He was known for his generosity to jail authorities, and one doctor received a car as a gift.

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C But more than businessmen it was the smugglers jailed in Tihar who were lavish spenders. Their food came from Moti Mahal and their whisky from Connaught Place. They had not only wine but also women. "Babu ji, not tarts but real society girls," one warder said. The women would be brought in when "the sahiblog" went home for lunch, and their empty offices became "recreation rooms".

D Corruption in jail was so well organised and so systematic that everything went like clockwork once the price had been paid. Jail employees at almost all levels were involved, and everyone's share was fixed. There was never a dispute; there has to be the proverbial honour among thieves."

E This backdrop to the Tihar lifestyle is disturbing enough. (Have other States their Tihars?) The writ jurisdiction of this Court must be equal to the needs of human rights and human wrongs. Relying upon legal literature in the American jurisdiction especially the crystallised statement in American jurisprudence, this Court has laid down : (1)

F The writ is not and never has been a static, narrow formalistic remedy. Its scope has grown to achieve its purpose—the production of individuals against erosion of the right to be free from wrongful restraints on their liberty.

G Jural perspectives, thus set, make the Court an activist instrument of Jail Justice. We proceed on this basis to a consideration of the issues raised before us. But to clothe these issues with flesh and blood and to make abstract poignancies into concrete problems, we may excerpt at random some of the allegations made by the petitioner, perhaps, by mixing fiction with fact. Even after making a liberal allowance for adulteration and distortion, the miasmatic residue presses upon our judicial conscience to use the court processes and restore basic humanism inside this penal institution where sentencees, punitively

(1) 143 F. 2d. 443 at 445 quoted in [1980] 2 S.C.R. 557

sent by court, are subjects to unbearable tensions and torments on their physical and moral fibre, thanks to the prison milieu being what it is. The petitioner states that he had sent to one of the Judges of this Court* complaints about "atrociously unwholesome" treatment in the jail, on September 21, 22 and 24, 1979. He alleges that he had lodged a complaint against the Superintendent with the vigilance Department of the Delhi State. His further version is better projected by quoting a few paragraphs from his own petition :

That the Superintendent and Deputy Superintendent, under a severe threat of dire consequences and infliction of punitive torture, pressured the petitioner into signing an affidavit, denying having lodged any such complaints in the Supreme Court, the Delhi Administration and the Vigilance Department.

That, judging from the incidents of corruption, torture and drug-distribution, there can be no two opinions about the Superintendent and Deputy Superintendent, brought from the adjoining province of Haryana, performing only in a manner of predators. Torture and drug-distribution are merely the means to corruption to achieve their ultimate end.

That there is a foreign convict confined in the Tihar Jail, along with a woman, who he claims to be his wife. They are both wanted by the Interpol. This man's criminal biography has been published in two books, written by foreign authors, wherein the criminal exploits of this criminal are admitted facts. He performs in the Tihar Jail as though he is the virtual administrator thereof. He retains a portable tape recorder, strapped of his calf, wherein he has filled incriminating evidence against the Superintendent and the Deputy Superintendent. By virtue of this black-mailing hold upon them he enjoys the following privileges :

(a) Free movements all over the jail compound from his own place of confinement in Ward 2.

(b) At least a dozen visits are made by him daily to the B class Ward 14. Here he holds periodic conferences to plan his furtive strategy in company with three intimate associates—all co-accused in the six-lacs Bank Van Robbery Case.

(c) The petitioner has himself seen the tape recorder kept hidden by him and his B Class criminal associates.

**Krishna Iyer, J.*

A (d) This foreigner is especially encouraged and protected by the Superintendent and Deputy Superintendent. He can be seen visiting these officers and holding private conferences in the private retiring rooms at the back of their offices almost daily.

B (e) So much so, that the Deputy Superintendent even allows this foreign-convict to consummate sexual intercourse in his private back-room from time to time—the Deputy Superintendent performing as though he were this foreign-convict's pimp.

C (f) Naturally, for conceding such and many more extra facilities, both the Superintendent and Deputy Superintendent charge heavy amounts from his foreign convict, who has now struck rich after the publication of his two books.

D 'B' Class status for prisoners is, going by averments in the petition, a pampering process much abused by officials and, in a 'class' culture, obnoxious to the Constitution. Equality before the law cannot co-exist with affluent black-guards being looked after with luxury and solicitude and lawly indigents being treated as *pariahs* inside the prison. There is reference in the petition to the three dangerous criminals involved in a big Bank Van Robbery Case being lodged in-Ward 14 as 'B' Class VIPs, who have, on top of other advantages,
E certain facilities like being.

"Specially allowed the privilege of having two young and handsome habitual drug-addicts locked in his cell at night, to serve him as passive agents for the appeasement of his homosexual lust, (e) has been provided with a TV set in his cell exclusively for his and his associates' entertainment, (f) smuggled-in alcohol is being regularly consumed by the so-locked-together several prisoners in his cell, being rich, it is these so-locked-together associates who finance the drug-and-alcohol racket.

G Another shocking allegation of corruption is that even from sentences undergoing rigorous imprisonment money is collected by high officials

"for allotting hard labour (of soft types?) in the course of serving rigorous imprisonment and placing the convicts in the general barracks or private cells."

H The petitioner further complains of having been physically assaulted and the averments relating to it run thus :

That the agents appointed by the Superintendent and Dy. Superintendent to sell narcotics in the Tihar Jail, (written complaint to this effect lodged with the Superintendent, who passed the matter on for enquiry to the Dy. Superintendent, who in turn took no disciplinary action) physically assaulted the petitioner on December 25, 1979 and January 6 and February 7, 1980. However, no action has so far been taken and the culprits, being the agents of the Superintendent and Dy. Superintendent were skilfully shielded. In fact, the matter was deliberately suppressed because of the involved personal financial interests of the officers.

Apart from these statements there are serious charges of mis-appropriation, corruption, bribery and the like and the artful stratagems adopted in that behalf. Shri Markandeya contended that there was truth in the allegation that mandrex, charas and opium are freely available, thereby trying to establish that the sub-culture in the Central Jail, far from being reformatory is de-formatory of the morals of the prisoners. Indeed, many more things are mentioned in support of the petition, including newspaper reports, of the vices of the jail. But we are/not concerned in these proceedings with a general enquiry into the jail affairs and, therefore, confine ourselves to what has bearing on the ill-treatment of the petitioner.

It is basic fairness that we should not come to any conclusion without remembering the fact that detailed counter-affidavits have been filed on behalf of the Superintendent and the Dy. Superintendent with supportive materials calculated to exonerate them. Even so it is fairly clear that many vices, including drug rackets, occasional violence, smuggling and trafficking in many other impermissible things, have a hospitable home in this penitentiary. The Administration has conscientious responsibility for the decency and dignity, for correctional obligations and social hygiene inside prison houses and the time is long overdue for a thorough overhaul of the prison management in Tihar. In an earlier judgment, late in 1979 (W.P. 1009 of 1979), the Supreme Court had, in the strongest terms, stressed the imperative and urgent need for carrying out certain reforms and added the imprimatur of the court's authority for certain directives contained in *Sunil Batra's* case. Shri Markandeya complained that the injunctions of this Court have not been carried out while a contrary version is given by the Superintendent. While we express our consternation at the deterioration of the conditions in Tihar Jail despite its being in the capital city of the country, we are disturbed that no major measure of reform has yet taken place in the prison order or,

A for that matter, in the prison manual. Such indifference cannot deter the writ of this court running into the prison and compelling compliance, however tough the resistance, however high the officials.

B Natural justice and the limitations of court time persuade us to avoid a detailed investigation into the charges and the defences, by us directly. We, therefore, adopt the alternative and more feasible method of directing a judicial enquiry by the District & Sessions Judge of Delhi who is a member of the Board of Visitors and whose responsibilities in this behalf have been outlined by us in both the *Sunil Batra cases*.

C The petition contains specific grievances of physical assault and psychic torture, of tense atmosphere and delinquent pressure for which some 'B' class prisoners and superior officers are responsible. This matter has to be investigated. Furthermore, in the *Sunil Batra* case (Supra), precisely to obviate the pernicious potential of prison torture, remedial mechanics had been worked out, formulated and translated into mandates. Whether these have been complied with, and if not, why not, require to be enquired into. When this Court issues a writ recusant parties will have to pay the penalty for non-compliance. This means, the violations and violators will have to be identified after due investigation. Having regard to all these instructions we make the following directions :

E (1) The District and Sessions Judge, Delhi, will, within three months from today, hold an open enquiry within the jail premises, into the allegations contained in the petition of the prisoner Kaushik and in the report submitted to this Court by Advocate, Shri Subodh Markandeya.

F (2) He will further enquire, with specific reference to the charges of personal assault and compulsion for collaboration in canteen swindle and other vices made by the prisoner against the Superintendent and the Dy. Superintendent.

G (3) He will go into the question of the directives issued in the concluding portion of *Sunil Batra's* case (supra) with a view to ascertain whether these directions have been substantially complied with and to the extent there is shortfall or default whether there is any reasonable explanation therefor.

H (4) Being a Visitor of the jail, it is part of his visitorial functions for the Sessions Judge to acquaint himself with the condition of tension, vice and violence and prisoners' grievances. He will take this opportunity to enquire into those aspects also with a view to suggest remedial action.

The result of this investigation will be crystallised in the shape of findings, followed by specific instructions with a view to see that the petitioner and others like him are not burdened by additional acerbities and harsher pressures than a legal sentence of rigorous imprisonment geared to reformation and intended for deterrence necessarily implied. The Sessions Judge will also give a specific time to the jail-authorities for carrying out his directives, and after the period for compliance is over, will make a fresh visit to verify whether those mandates have been fulfilled. In the event of non-fulfilment, a report will be made to this Court before *September 30, 1980* whereupon appropriate action to enforce compliance will be taken by this Court in its jurisdiction.

We may make it perfectly clear that the Sessions Judge will allow any person or official who wants to make any representations to him in the course of his enquiry to meet him publicly or in camera, but outsiders and strangers will not be allowed except Shri Subodh Markandeya or Government's Counsel. Of course, it will be open to the Judge if he considers that such a step will advance the interests of justice to allow any other public organisation or legal aid society.

The sessions judge, whom we have charged with the responsibility for enquiry, will make constructive suggestions to protect prisoners' rights and to promote prisoners' habilitation and thus disprove Oscar Wilde:

This two I know—and wise it were
If each could know the same—

That every prison that men build
is built with bricks of shame,

And bound with bars lest Christ should see
How men their brothers main.

* * * * *

The wildest deeds like poison weeds
Blowm well in prison air :

It is only what is good in Man'
That wastes and withers there.

(The Ballad of Reading Gaol)

In this context, the focus of the Sessions Judge should not be solely upon the warden and warders of the jail, but also on the medical officers, whose connivance may, perhaps, explain how drugs like mandrax are officially indented.

A Our immediate concern is to protect the petitioner and others of his ill—from physical assaults by fellow-prisoner or warders, from moral stress by being forced to assist in falsification and manipulation for canteen sales misappropriation, from discrimination in being subjected to hard labour of a harsh type if he does not oblige the 'B' class 'bosses' or senior officer's, from pressure against transmitting

B grievances to the Sessions Judge through the Grievance Box ordirectly to this Court by post. But remedial perspectives and procedures, to be successful, must be holistic, collective and not individualistic. So, the human canvas has to be spread wider, the diagnosis has to be deeper and the recipe must senitize the environ.

C The crisis in our prisons, the collapse of values in these campuses, the inner tension 'red in tooth and claw', the corruption that makes for sensual indulgences, the barbarities that harden the convicts and never heal them—all these processes can be reviewed and humanization resorted if only if, our philosophy towards crime and punishment change. If vengeance is the spirit

D of punishment, violence will be the prison way of life. That is why Karl Menninger in his "The Crime of Punishment" exposes this folly:

..... Punishment is in part an attitude, a philosophy. It is the deliberate infliction of pain in addition to or in lieu of penalty

E What is gained for anybody when a man who has forged a check for sixty dollars is sentenced to the penitentiary for thirty years.... The judge's rationalization was that the man had offended in this way twice before (!) and had served shorter sentence without reforming :

..... This is not penalization. This is not correction. This is not public protection. This is not reformation. It is sadistic

F persecution of the helpless at public expense, justified by the punishment principle.

From this new angle, the hospital-setting approach to prisons Gandhiji advocated, the therapeutic touch penologists argue for and the raising of the level of consciousness, institutional and individual,

G of officials and prisoners—all these woven into a composite strategy—may well be the highway to higher awarensss and socialisation of feeling inside correctional homes. This technology takes us to method like transcendental meditation, self-expression through work, facilities for studies and artistic development. The warden's drill the warder's billy or the VIP's 'good chit' cannot work magic.

H

Shri Markandeya's further report substantiates the thesis we have set out that prison violence and escalating criminality directly

flow from the anti-rehabilitative strategies and counter-productive life-style prevalent in the Tihar. The VIP criminals in league with other prison toughs are alleged to have organised the beating up of one prisoner. The part of the prison officials may or may not be direct, but is surely vicarious. Not until a transformation in the awareness of the top-brass, not until new techniques of instilling dignity and mutual respect among the prisoners, not until a hospital setting and curative techniques pervade the staff and the inmates, can there be any human right conscious reformation in the Tihar prison. All that we need say is that in the enquiry that we have directed the Sessions Judge to hold this perspective will inform his interrogations and investigations.

We have drawn the broad lines indicative] of the direction of correction and leave it at that. The fundamental fact of prison reforms comes from our constitutional recognition that every prisoner is a person and personhood holds the human potential which, if unfolded, makes a robber a Valmiki and a sinner a saint.

S.R.

Petition allowed.