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CRR 463 of 2012
With
CRR 1312 of 2012
With
CRR 4000 of 2011

Mr. Subhasish Roy.
... for the petitioners.
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... for the State.

What are political offences? Who are political prisoners? What is the role of political violence for achieving the political goal professed by its believers? What is the treatment which State should administer to those who use political violence/activities to terrorize others for achievement of their objective? Should means defeat the end? What is the state of affairs in prison? and How the prisoners should be dealt within socio-economic realities of our nation? are a few questions which, being unpalatable, have been thrown as dice on the board of this Court.

These questions also test the ability of the believer of liberty and democracy to keep his prejudices and bias at bay to strictly confine to the provisions of the statute believing in the maxim "*those who believe in the system, it is their duty to ensure fairness to those who question the system*".

Before a humble effort is made to answer these questions, it will be appropriate to divide this judgment into five parts, (a) Facts, (b) Broad background, (c) Provisions of the West Bengal Correctional Services Act, 1992 (hereinafter referred to as, 'the Correctional Services Act'); its classification of political prisoners; their rights and the conveniences extended to them, (d) Remedial measures which this Court propose as recommendations, and (e) Conclusions and the prayer clause.

(a) Facts

By this common judgment, three petitions, viz. (1) Criminal Revision No.4000 of 2011, (2) Criminal Revision No.463 of 2012 and (3) Criminal Revision No.1312 of 2012 shall be decided together.

The petitioners herein, at one point of time, claimed themselves to be Maoists and are dubbed by the State as Naxalites. Maoists or Naxalites, being interchangeable words, are to be broadly understood in reference to those persons who take up arms to dislodge the existing system being aggrieved of socio-economic disparities prevailing in the State.

The petitioners in all the three revisions petitions have assailed the orders passed by the Courts

below, whereby their prayer to be declared as political prisoners has been declined. They have approached this Court with a prayer that they be treated as political prisoners within the meaning of Section 24 of the Correctional Services Act and a few conveniences which the Correctional Services Act ensures to the political prisoners be granted to them over and above the ordinary prisoners.

Criminal Revision No.4000 of 2011

Gaur Narayan Chakraborty, petitioner to Criminal Revision No.4000 of 2011 was named as an accused in Shakespeare Sarani Police Station case No.286 of 2009 dated 23rd June, 2009 under Section 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as, 'the Unlawful Activities Act') and is being tried by the NDPS City Sessions Court, Calcutta at Bichar Bhavan in Sessions Case No.111 of 2009. As per the averments made in this revision petition, he is aged 67 years. In the report lodged by Debashis Dutta, Sub-Inspector of Police posted at Shakespeare Sarani Police Station, it is alleged that on 23rd June, 2009 at around 19:05/10 hours, the petitioner was giving an interview to a local TV Channel named "Channel 10". In the interview, the petitioner is

alleged to have introduced himself as an official spokesperson of Communist Party of India (Maoist). This organization was banned by the Central Government on 22nd June, 2009. While the petitioner was leaving the office of the TV Channel, he was intercepted by the police officials and during interrogation he admitted that he had been in close contact with the top leaders of CPI (Maoist). Some leaflets were also found in his possession which contained seditious material.

Criminal Revision No.463 of 2012

V. Venketeswara Reddy, a resident of Andhra Pradesh, petitioner to Criminal Revision No.463 of 2012, was arrested by the police in Thakurpukur Police Station case No.98 of 2010 dated 3rd March, 2010 registered for an offence punishable under Section 20 of the Unlawful Activities Act. In the complaint, which was lodged by Ardhendu Sekhar Pahari, Inspector of Police, CID, West Bengal on 2nd March, 2010, it was alleged that the petitioner was carrying material propagating the ideology of the banned organization and furthermore was a State Committee member of the Communist Party of India (Maoist). Several papers including various magazines, leaflets and cassettes were recovered from the possession

of the petitioner, which contained propaganda of the banned organization.

Criminal Revision No.1312 of 2012

This revision petition has been filed by five persons, namely (1) Sambhu Soren, (2) Sagun Murmu, (3) Chatradhar Mahato (4) Suksanti Baskey, all residents of Lalgarh and (5) Prasun Chatterjee, a resident of Jadavpur, Kolkata. They have been named as accused in Lalgarh Police Station Case No.161 of 2009 dated 26th September, 2009 registered for offences under Sections 120B/121/121A/307 IPC, Sections 3 and 4 of the Explosive Substances Act, Sections 25/27 of the Arms Act and Sections 16(B)/17/18/20/38/39/40 of the Unlawful Activities Act. In the written complaint lodged by Sub Inspector of Police, Police Station Lalgarh, it was alleged that the police party headed by one Prasanta Kumar Pathak was on its way to Dalilpur village and at about 13:35 hours, there was an explosion on the side of the road. All members of the police party escaped. Nobody received any injury in the occurrence. However, four persons including petitioners No.1 and 2 were apprehended while they had taken refuge behind the bushes. A personal search of the accused was carried and on the basis of disclosure statement made, petitioner

No.3 was apprehended with some books. Other persons are said to have fled from the spot. It was alleged that the petitioners were members of the banned organization and responsible for the explosion which was to deter the police party from performing its duty and instill terrorism in the minds of the people.

All the petitioners in the above said three revision petitions filed separate applications before the respective trial Courts praying that they be classified as political prisoners as per Section 24 of the Correctional Services Act. Their applications were dismissed by three different trial Courts by assigning reasons which, to some extent, are identical.

In the impugned order dated 4th July, 2011, assailed in Criminal Revision No.4000 of 2011, the Judge, Special Court, Bichar Bhavan concluded that "*at this stage it is not possible to arrive at any conclusion whether the act or acts allegedly done by the accused, was/were done with an exclusive political objective or not*". It was further held that "*if any member of any recognized political party commits any offence without any political objective he can not be treated as political prisoner*". It was also held that since Section 15 of the Unlawful Activities Act defines terrorist acts and

organisations mentioned in the schedule of Terrorists Organisations, the petitioner is believed to have committed terrorist acts and hence, he is not entitled to the benefit which accrues to the political prisoners under the provisions of the Correctional Services Act.

In Criminal Revision No.463 of 2012, the Additional Sessions Judge, Fast Track Court – II at Alipore in the impugned order dated 4th January, 2012 held that the petitioner had resorted to create unrest in the prevailing situation in the society and the activities of the petitioner are not for the common good of the people but for the revolution with arms and he being a member of the terrorist organization can not be granted the benefit claimed by him.

In Criminal Revision No.1312 of 2012, the relief was denied to the petitioners therein on the ground that on earlier occasion i.e. 20th September, 2010 a similar prayer was not entertained by the Court and that order was not challenged in the higher Court.

The above said facts contain a common thread that the petitioners in these three revision petitions were members of an organization, which was banned under the Unlawful Activities Act and they are engaged in terrorist activities and have also canvassed to the people

at large to take up arms to destabilize the prevailing order.

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(b) Broad background

'What is a political offence' was defined by Hon'ble the Supreme Court in **'Rajender Kumar Jain v. State through Spl. Police Establishment and others'** 1980(3) SCC 435 as under:

> *"18. … … … It is true that the Indian Penal Code and the Code of Criminal Procedure do not recognize offences of a political nature, as a category of offences. They cannot, in the ordinary course of things. That does not mean that offences of a political character are unknown to jurisprudence or that judges must exhibit such a naivete as to feign ignorance about them. Offences of a political character are well-known in International Law and the Law of Extradition. The Indian Extradition Act refers to 'offences of a political character'. For our present purpose it is really unnecessary to enter into a discussion as to what are political offences except in a Sketchy way. It is sufficient to say that politics are about Government and therefore, a political offence is one committed with the object of changing the Government of a State or inducing it to change its policy… … …"*

A necessary corollary of the above definition is that those who commit political offences are political prisoners. To further elaborate the definition of 'political prisoner', it will be necessary to have a look at the Advanced Law Lexicon 3rd Edition Reprint 2007 published by Wadhwa Nagpur. This Lexicon considered political offence from two points of view, Municipal and International. It will be apposite here to notice both the views contained in the Lexicon and the same read as under:

> *"MUNICIPAL – where an offence has been committed, not from motives of private spite or interest, but in order to change the legislative or executive Government in the country, it is frequently contended that the offence is political, and that persons convicted of it should not be treated as ordinary offenders, and should be pardoned or amnestied on the earliest opportunity. The offences to which this contention applies are those described as against public order, namely, treason, sedition, or interference with the executive or legislature by unlawful assemblies intended to defy or overawe either, or riotous protests against the law; and, in fact, all acts directed to obtain by unlawful means a change in the law or general Government of the realm. There is no statutory recognition in England of any of these offences as political, unless it be sedition and seditious*

liable; as to which the law directs that persons convicted thereof shall be treated as first class misdemeanants (40 & 41 Vict. c. 21, Ss. 40, 41) and the controversy may be described as of a parliamentary rather than of a legal character.

INTERNATIONAL – It is usual, if not invariable to except from treaties of extradition "offences of a political character". What should be taken as excluded in this description has been much discussed by continental jurists. In England the subject seems to have been dealt with only by Sir James Stephen (Hist. Crim. Law, vol. ii, p. 70) and by the judges on application for habeas corpus under the Extradition Act. (See Ency. of the Laws of England).

To constitute an offence as one of a "political character", there must be, at least, two distinct political parties, each striving to impose its form of Government on the country. "The offences of anarchists, consist, in the main, of attacks on private citizens generally rather than on Governments or members of any particular government, as such. In such cases they cannot be called 'political' offences." (per CAVE, J., Re Meunier, (1894) 2 QB 415; 63 LJMC 198).

The idea that lies behind the phrase 'An offence of a political character' is that the fugitive is at odds with the State that applies for his extradition on some issue connected with the political control or government of the

country. Schtraks v. Government of Israel, (1962) 3 All ER 529 (HL).”

Broadly speaking, this definition in no way excludes those persons who have taken recourse to the violence for achieving their political goal. The settled distinction which is required to be highlighted is that the offence should not be committed for a personal gain, revenge, greed or fulfillment of lust. The rather broad contours of the definition suggest that the person accused of a political offence being a member of an unlawful organization, is not excluded. Political offences and political prisoners are not new to the history of this nation. Therefore, the views of stalwarts of the nation regarding political offenders, the political prisoners, conditions of the jail, human rights of prisoners and what is an ideal state of affairs, are required to be noticed to find out answers to the questions posed in the earlier part of this judgment.

‘Rights of Accused’, a book authored by Dr.Ashutosh published by Universal Law Publishing Company noticed the view of Pt. Jawahar Lal Nehru from his book ‘Prison Land’ as under:

“High walls and iron gates cut-off the little world of prison from the wise world outside. Here in this prison world everything is different;

there are no colours, no changes, no movement, no hope, no joy for the long term prisoner, the "lifer". Life runs its dull round with a terrible monotony; it is all flat desert land with no high points and no oasis to quench one's thirst or shelter one from the burning heat. Days run into weeks, and weeks into months and year till the sands of life run out.

All the might of the State is against him and none of the ordinary checks are available. Even the voice of pain is hushed, the cry or agony cannot be heard beyond the high walls. In theory there are some checks and visitors and officials from outside go to inspect. But it is rare for a prisoner to dare to complain to them, and those who dare have to suffer for their daring. The visitor goes, the petty goal officials remain and it is with them that he has to pass his days. It is not surprising that he prefers to put up with his troubles rather than risk an addition to them."

Legal luminary Justice V.R. Krishna Iyer, in his article 'A Case for National Prison Policy', while advocating a reformative philosophy, rehabilitative strategy and therapeutic prison treatment, expressed that "*To be honest, the Raj had a prison programme at the services of its imperial policy, but the Republic, with all its boasts and all its hopes, has no penal policy, no prison, no humanism, no jail justice.*"

In the context of above, the author elucidated his views by saying as follows:

> *"Among the three alternatives, the retributive, the deterrent and the rehabilitative, modern penologists opt for the last with a sprinkling of the second. To be retributive is to claim an eye for an eye and, logically, a murder for a murder, a rape for a rape, a reprisal barbarity for brutal burglary and so on. Soothing for the sadist, heartening to the little Hitler lingering in many bosoms, this form of blood-thirsty justice, which still is prevalent in a few countries, has become obsolete, what with the dignity and worth of the human person receiving better recognition in civilized societies responsive to the new international legal order. Not quite dead is lex talionis, as is evident from the lively controversy about death penalty.*
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> *Don C. Gibbons in his recent edition of "Society, Crime and Criminal Careers" writes: 'What purpose does the infliction of suffering on law-breakers serve? Tappan has offered an incisive summary of the purposes of punishment. He notes that punishment is designed to achieve the goal of retribution or social retaliation against the offender. Punishment also involves incapacitation, which prevents the violator from misbehaving during the time he is being punished. Additionally, punishment is supposed to have a deterrent effect, both on the law-breaker and on potential misbehaviours. Individual or specific deterrence*

> *may be achieved by intimidation of the person, frightening him against further misbehaviour, or it may be effected through reformation in which the law-breaker changes his deviant sentiments. General deterrence results from the warning offered to potential criminals by the example of punishment directed at a specific wrongdoer'."*

In **'Phul Singh v State of Haryana'** 1979(4) SCC 413, Hon'ble the Supreme Court commanded that "*In-prison treatment must, therefore, be geared to psychic healing, release of stresses, restoration of self-respect and cultural normalization, apart from training to adapt oneself to the life outside.*"

The views propounded by the Courts and above named personalities made the Government of India to establish All India Committee on Jail Reforms headed by Justice A.N. Mulla. The Committee indeed made an effort to lay guiding principles for an ideal prison and observed as under:

> *"The purpose and justification of a sentence of imprisonment is to protect society against crime. The punishment inherent in imprisonment primarily consists in deprivation of liberty involving compulsory confinement and consequent segregation from normal society. In carrying out that punishment, the Prison Administration should aim at ensuring the*

return of an offender in society not only willing but also able to lead a well adjusted and self supporting life.

Imprisonment and other measures which results in cutting-off an offender from the outside world are afflictive by the very fact of taking away from him the right of self-determination. Therefore, the prison system should not, except incidental to justifiable segregation or maintenance of discipline, aggravate the suffering inherent in such a situation."

To make Indian prisons an ideal prison, various recommendations were made by the Committee.

Chandrachud, J. (as His Lordship then was) speaking in **'D.B.M. Patnaik v. State of A.P.'** (1975) 3 SCC 185, stated as under:

"Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to 'practice' a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold

and dispose of property for the exercise of which incarceration can be no impediment."

A similar view was reiterated in **'State of A.P. v. Challa Ramkrishna Reddy'** (2000) 5 SCC 712, wherein it was observed as under:

"A prisoner, be he a convict or undertrial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights."

In the context of the views noticed above, one will have to find out whether the persons called as Naxalites or Maoists are entitled to dignified prisonisation or because they practice violence, they are to be treated differently?

To answer this, we have to understand as to who is a Naxalite and what is a Maoist movement. The answers to these questions have been given by Hon'ble the Supreme Court in a celebrated case known as **"Salwa Judam"** titled as **'Nandini Sundar v. State of Chhattisgarh'** AIR 2011 SC 2839. Relying upon the

thorough research, after understanding the causes of the movement, Hon'ble the Apex Court observed as under:

> *"52. Many of these tribal youngsters, on account of the violence perpetrated against them, or their kith and kin and others in the society in which they live, have already been dehumanized. To have feelings of deep rage, and hatred, and to suffer from the same is a continuation of the condition of dehumanization. The role of a responsible society, and those who claim to be concerned of their welfare, which the State is expected to under our Constitution, ought to be one of creating circumstances in which they could come back or at least tread the path towards normalcy, and a mitigation of their rage, hurt, and desires for vengeance. To use such feelings, and to direct them into counter-insurgency activities, in which those youngsters are placed in grave danger of their lives, runs contrary to the norms of a nurturing society. That some misguided policy makers strenuously advocate this as an opportunity to use such dehumanised sensibilities in the fight against Maoists ought to be a matter of gravest constitutional concerns and deserving of the severest constitutional opprobrium."*
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> *XXXX XXXX XXXX*
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> *"71. As we remarked earlier, the fight against Maoist/Naxalite violence cannot be conducted purely as a mere law and order*

problem to be confronted by whatever means the State can muster. The primordial problem lies deep within the socio-economic policies pursued by the State on a society that was already endemically, and horrifically, suffering from gross inequalities. Consequently, the fight against Maoists/Naxalites is no less a fight for moral, constitutional and legal authority over the minds and hearts of our people. Our Constitution provides the gridlines within which the State is to act, both to assert such authority, and also to initiate, nurture and sustain such authority. To transgress those gridlines is to act unlawfully, imperiling the moral and legal authority of the State and the Constitution. We, in this Court, are not unaware of the gravity that extremist activities pose to the citizens, and to the State. However, our Constitution, encoding eons of human wisdom, also warns us that ends do not justify all means, and that an essential and integral part of the ends to which the collective power of the people may be used to achieve has to necessarily keep the means of exercise of State power within check and constitutional bounds. To act otherwise is to act unlawfully, and as Philip Bobbitt warns, in "Terror and Consent – The Wars for the Twenty First Century", "if we act lawlessly, we throw away the gains of effective action." Laws cannot remain silent when the canon's roar."

To understand the nuances of the movement as a prelude, in **"Salwa Judam"** judgment, their Lordships of Hon'ble the Supreme Court observed as under:

> *"4. People do not take up arms, in an organized fashion, against the might of the State, or against fellow human beings without rhyme or reason. Guided by an instinct for survival, and according to Thomas Hobbes, a fear of lawlessness that is encoded in our collective conscience, we seek an order. However, when that order comes with the price of dehumanization, of manifest injustices of all forms perpetrated against the weak, the poor and the deprived people revolt... ... ..."*

Thus, in view of the authoritative views expressed by Hon'ble the Apex Court, it is apparent that Naxalism or Maoism is a political movement wedded to violence and the participants thereof are political offenders.

Should the State administer a different treatment to those offenders who take recourse to violence by subscribing to retributive or deterrence penology? This is a question, which is neither new nor raised for the first time.

In Colonial India, the rulers thought that there is a need to segregate ordinary prisoner from the

political prisoner so that such segregation, seclusion or isolation of the political prisoner may save ordinary prisoners from the infectious ideas which were not acceptable to the Government of the day.

A Britisher theorized need of the septic tanks where political offenders should be kept in isolation.

Nazi camps and poisonous gas chambers to curb the opponents are part of the history. Cellular Jail at Andaman and Nicobar, called *Kalapani*, incarceration of Sikh prisoners of Lahore Conspiracy Case, bear testimony to the struggle of the prisoners to ensure and secure human rights. Therefore, in the above background there can be no denying the fact that the basic human rights can not be denied to the Naxalites or Maoists.

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(c) Provisions of the West Bengal Correctional Services Act, 1992; its classification of political prisoners; their rights and the conveniences extended to them

Having held that the basic human rights can not be denied to those who propagate Naxalite or Maoist ideology, another terse question which arises for consideration of this Court is whether the participants of such movement can be classified as political prisoners under the Correctional Services Act or not?

The West Bengal Correctional Services Act, 1992 (West Bengal Act XXXII of 1992) received the assent of the President of India on 13th June, 1997 and came into force with effect from 3rd April, 2000. This Act terms the undertrials, convicts and detenus as prisoners lodged in jails (now called Correctional Homes). Section 24 of the Correctional Services Act classifies the prisoners as civil prisoners, criminal prisoners, undertrial prisoners, convicted prisoners, habitual offenders, non-habitual offenders, political prisoners, detenus and lunatics – criminal and non-criminal.

This Court has to concentrate on the classification of political prisoners and the amenities provided to them by the Correctional Services Act. Section 24(3)(vi) of the Act along with explanations define political prisoners and the same is reproduced below:

> *"(vi) Any person arrested or convicted on a charge of having committed or attempting to commit or aiding or abetting the commission of any political offence, whether or not the act constituting such offence comes within the preview of any offence punishable under the Indian Penal Code or any other law for the time being in force, and any person believed to have been prosecuted out of political animosity or grudge, shall be classified as political prisoner.*
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> *Explanation. – For the purposes of this clause –*

(a) any offence committed or alleged to have been committed in furtherance of any political or democratic movement or any offence arising out of an act done by an Individual with an exclusive political objective free from personal greed or motive shall be a political offence.

Explanation. – (1) An offence coming within the preview of chapter VI of the Indian Penal Code (45 of 1860) shall always be deemed to be a political offence.

(2) The provision of a law under which an offender is charged shall not be material. A person charged under Section 302 or Section 379 or Section 395 or Section 411 of the Indian Penal Code may be classified as a political prisoner if his case satisfies the requirement of this clause;

(b) any movement or public agitation sponsored or carried on by any political party or any group or association of persons for furtherance of any political ideology or for securing or safeguarding any political right, objective or relief with a view to obtaining common good for the people in general or any section thereof or for the remedy of any injustice of political nature done to any

individual shall be interpreted as a political movement.

(c) any movement or public agitation sponsored or carried on by any political party or any group or association of persons for securing common good for the people in general or any section thereof or for securing and safeguarding any well -recognized human right, or for undertaking activities in the field of social reform or for ameliorating the living condition of the afflicted or poorer section of the community or for securing reforms or for safeguarding public interest in social, economic, educational and cultural matters, or for securing remedy of any injustice done to any individual or body of individuals in those matters, shall be interpreted as a democratic movement;

(d) for the removal of doubts it is hereby declared that trade union activities and collective activities sponsored or carried on for securing justice and well being of the working class and collective activities for safeguarding the interest of tillers of land or for betterment of conditions of their labour and living shall be deemed to be a democratic movement:

Provided that a movement or public agitation by any communal, regional, linguistic, religious, racial,

sectional or caste group sponsored or carried on against any other like group shall not be deemed to be a political or democratic movement:

Provided further that any movement based on religious, regional, communal, racial or caste consideration or any movement for promoting any interest, other than social or economic interest, by any religious, regional, communal or racial or caste people or any movement for placing impediments or obstruction in the matter of advancement of any section or sections of the people, shall not be treated as a political or democratic movement."

The above Section is very comprehensive and the 'or' has been used multiple times to include any kind of offence which has a political bearing to be a political offence and the offender as a political prisoner. What is to be highlighted is that anyone who has committed an offence pertaining to Chapter VI of IPC shall be deemed to be a political offender. Chapter VI contains offences from Section 121 to Section 130, which include offences of waging or attempting to wage war against the Government of India, collecting arms etc. with an intention to wage war against the Government and sedition. Inclusion of persons, who commit offences

pertaining to Chapter VI of the IPC expresses intention of the legislature that those who practice violence against the State are not to be excluded.

Furthermore, those persons who have committed offence of murder or dacoity are not to be excluded if they have committed the offence free from personal greed or motive. This also shows that the use of violence was not to be construed to deny the status of a political prisoner. Therefore, the argument raised by counsel for the State that those who take recourse to violence cannot be termed as political prisoners, is to be rejected while interpreting Section 24 of the Correctional Services Act.

What is to be noticed with concern is that Section 24 of the Correctional Services Act uses the word political or democratic movement. The intention of the legislature not to use the word political and democratic movement makes it explicitly clear that belief in the democracy is not a condition precedent for declaring the prisoner a political prisoner. This is also sufficient to reject the second contention of the State counsel that since petitioners are not believers of the democracy, they cannot be treated as political prisoners.

The sweep of this Section is so encompassing that the believers of any kind of political movement are to be acknowledged as political prisoners and thus, it cannot be held that those who participate in unlawful activities cannot be recognized as political prisoners.

It is a well settled legal position that, if the language of the a statute is plain and unambiguous, it has to be followed strictly and furthermore in case of a beneficial legislation, if any doubt exists, it should be given a liberal interpretation, to give the widest latitude which its language will permit. Thus, the scope and ambit of the Section leave no doubt that the petitioners to the three revision petitions are to be treated as political prisoners.

A person classified as a political prisoner is entitled to a few amenities, which include provision of chair, table, light, iron cot, mattress, cotton pillow with cover, blanket, mosquito net, mirror, comb and such other items and at such scales as may be prescribed. Furthermore, he is to be provided with tooth-brush, tooth-paste, toilet soap of standard size and good quality, coconut oil and utensils of good quality for cooking, services of a barber every alternate day, writing material and a newspaper. He is further permitted to receive

books and periodicals from his relations. He is also entitled to electric fan and table-lamp. Furthermore, he is entitled to receive food from his relatives or friends from outside. He is also permitted to undertake education courses.

The facilities noted above are a part of the basic human rights to which every prisoner ought to be entitled. These amenities should not be restricted to the political prisoners only. It is sad to note that in earlier times, political prisoners were condemned and now they are being treated as a class apart.

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(d) Remedial measures which this Court propose as recommendations

In these revision petitions, no issue has been raised that on the ground of equality or discrimination, classification of the political prisoners be quashed as it seeks to achieve no reasonable nexus with the objective. Therefore, till the validity of provisions of Act, which create the class of political prisoners is determined by the Court, this Court shall refrain itself from striking off the same, as to legislate is the sole prerogative of the legislature. However this Court shall propose to the Chief Secretary to the State of Paschim/West Bengal to consider that the classification of prisoners into divisions

or classes, on the basis social status, education and habits of life, or on the basis of committing a political offence, should be done away with, as the prison authorities must not perpetuate inequalities while distributing basic amenities which are necessary for a dignfied human life, albeit while in prison. Political prisoners or any other prisoners for that matter as a class cannot be put on a higher pedestal or be considered higher in the hierarchy between the prisoners. There can be no distinction of a rich or poor prisoner. Therefore, classification of Division-I prisoners is also required to be looked into by the State Government. To grade prisoners according to their status is alien to the Constitutional Scheme. Rich, poor, irrespective of class, colour, creed and race all are equal. What the Correctional Services Act proposes to give to the political prisoners are the common basic minimum amenities, which are necessary for dignified human living, to which all prisoners ought to be entitled. Therefore, all these amenities except a separate kitchen should be provided to all the prisoners. A common kitchen having proper hygiene and infrastructure run by the prisoners should be available to all the prisoners, irrespective of any class to which a prisoner belongs. For

distribution of food, the State cannot create classes. However, it may provide food considering the health condition of an inmate of a Correctional Home. A weak or sick may require healthier or special diet. Common reading room having newspapers, magazines and other books at fixed hours should be available to all prisoners. These are mere suggestions which are requried to be looked into by an expert body.

It is ironical that much ado has been raised regarding provision of bed, mosquito-net, table, chair, tooth-brush, tooth-paste, newspaper, writing material or use of toilets. A slight improvement in the living conditions in Correctional Homes in itself will erode the classification which the Correctional Services Act acknowledges. Therefore, in changing times, the Chief Secretary is called upon to look into the provisions of the Correctional Services Act with a new humanistic approach and explore the feasibility that the Correctional Homes guided by reformative and restorative policy provide basic amenities to all and there remains no need to assign nomenclature to the prisoners for providing better facilities or privileges to one class ousting the other.

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(e) Conclusions and the prayer clause

Bound by the strict interpretation of the statute, the impugned orders in the three revision petitions are quashed and the petitioners are declared as political prisoners within the meaning and ambit of Correctional Services Act. The State Government, if it so desires, may consider the recommendations made above to dispense with the classification of political prisoners or other classes, and strive to make Correctional Homes the Model Jails, as an example for other States to follow.

The following words of Nelson Mandela, who fought relentlessly against apartheid and remained confined for 27 years, should guide the vision of every stakeholder for betterment of jails:

> *"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones…"*
>
> - Nelson Mandela, *Long Walk To Freedom*

(KANWALJIT SINGH AHLUWALIA, J.)