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MADHAV HAYAWADANRAO HOSKOT

v.

STATE OF MAHARASHTRA

August 17, 1978

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

Right to free copy of the judgment by the accused under S. 363 *read with S.* 387, 388 *of the Code of Criminal Procedure* 1973 (*Act* 2 *of* 1974), *scope of—Duties of the Court to furnish the copy and duty of the jail authorities to obtain the signature of the accused when the copy is delivered through the jail authorities—Constitution of India,* 1950 *Art.* 19(1)(*d*) *read with sub-Art.* (5) *and Art.* 21.

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Right to counsel by the accused—Constitution of India 1950, *Articles* 21, 22, 39A and 142 *read with S.* 304 *of the Criminal Procedure Code,* 1973, *explained.*

Words and Phrases "procedure established by law" in Art. 21 *of the Constitution, explained—"Fair Procedure" ingredients of.*

Punishment and sentence—Correctional approach by Courts to prison treatment and nominal punishment verging on decriminalisation of serious social offence, explained.

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Special leave petition, grant of, Art. 136 *of the Constitution is subject to the fundamental rules laid down by this Court.*

Under s. 363(1) of the Criminal Procedure Code, 1973, "when the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost". Under s. 363(2), "on the application of the accused, a certified copy of the judgment or when he so desires a translation in his own language if practicable or in the language of the Court, shall be given to him without delay and such copy shall in, every case where the judgment is appealable by the accused be given free of cost : Provided that where the sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same". By. s. 387 of the Code, these provisions contained in Chapter XXVII are applicable so far as may be practicable to the judgment in appeal by a Court of Sessions or Chief Judicial Magistrate. S. 388, however, requires that the order of the High Court on appeal should be certified to lower court and the court to which the High Court certifies its judgment shall make such orders as are conformable to the judgment of the High Court.

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The petitioner was tried for the various offences under s.417 read with s.511 I.P.C., s. 467 I.P.C. s. 468 I.P.C. and 471 read with s. 467 I.P.C. by the Sessions Court and found guilty of the said offences but sentenced to a soft sentence of simple imprisonment till the rising of the Court and some fine. Two appeals were filed one by the petitioner and the other by the State. The High Court dismissed the petitioner's appeal and accepting the State's appeal enhanced the sentence to three years on 22-11-73. On 26-11-73, in conformity with the judgment of the High Court, the Sessions Court passed necessary orders to the Central Prison Authority Bombay to take him into custody. He was later on transferred to Yeravada Jail, Pune. The petitioner under went the full period of im-

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prisonment and filed the special leave petition with a petition for condonation of delay contending that on 10-12-73 he had applied under s. 363(2) read with s. 387 of the Code for a certified copy of the judgment dated 22-11-73 through the jail authorities and that though the copy was received by the jail authorities in March 1974 from the High Court it was never delivered to him, with the result he not only lost his right to appeal by special leave but was forced to come up with a condonation petition after obtaining another certified copy from the High Court. A B

Condoning the delay and dismissing the petition the Court

HELD : 1. Freedom is what freedom does. In Art. 21 of the Constitution the guarantee of the personal liberty is phrased with superb amplitude with the words, "No person shall be deprived of his life or personal liberty except according to procedure established by law". "Procedure established by law" are words of deep meaning for all lovers of liberty and judicial sentinels. Amplified activist fashion, 'procedure' means 'fair and reasonable procedure' which comports with civilised norms like natural justice rooted firm in community consciousness not primitive processual barbarity nor legislated normative mockery. [201C-E] C

2. One component of 'fair procedure' is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Art. 21. Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional (In a sense, even Art. 19 may join hands with Art. 21, as the *Maneka Gandhi* reasoning discloses). *Maneka Gandhi's* case has laid down that personal liberty cannot be cut out or down down without *fair* legal procedure. [197F, 203D-E, F 208E] D E

Pertinent to the point in the case are two requirements : (i) service of a copy of the judgment to the prisoner in time to file an appeal and (ii) provision of free legal servics to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Art. 21 and apply where procedural law provides. for further appeals as well. [203F-G] F

Maneka Gandhi v. *Union of India*, [1978] 1 SCR 621, referred to. G

3. Judicial Justice with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our Judicature and Judicial Process, engineered by kindred legal technology, compel the colloboration of lawyer-power for steering the wheels of equal justice under the law. [204C-D]

If a prisoner who is sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal for want of legal assistance, there is implicit in the Court under Art. 142 H

read with Articles 21 and 39A of the Constitution power to assign counsel for such imprisoned individual "for doing complete justice". This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The accused has a right to counsel not in the permissive sense of Art. 22(1) and its wider amplitude but in the peremptory sense of Art. 21 confined to prison situations. [28F-G, 209C]

4. Where the prisoner seeks to file an appeal or revision every facility for exercise of that right shall be made available by the jail administration. [209E]

(a) Courts shall forthwith furnish free transcript copy of the judgment when sentencing a person to prison term. In the event of any such copy being sent to the jail authorities for delivery to the prisoner by the appellate, revisional or other Court, the official concerned shall with quick despatch, get it delivered to the sentence and obtain written acknowledgment thereof from him. Any jailor who by indifference or vendetta, withholds the copy thwarts the Court process and violates Art. 21 and may pave the way for holding the further imprisonment illegal. These obligations are necessarily implied in the right of appeal conferred by the Code read with the commitment to procedural fairness in Art. 21. S. 363 of the Cr. P.C. is an activist expression of this import of Art. 21 and is inviolable. [204A-B & 209DE]

John Richard Argersinger v. *Raymond Hamlin*, 407 U.S. 25 32 LEd. 2d. 530 at 535-36 and 554, quoted with approval.

Art. 8 of the Universal Declaration On Human Rights and Art. 14(3) of the International Covenant on Civil and Political Rights, referred to.

(b) The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to the assigned counsel such sum as the Court may equitably fix. The Court may judge the situation and consider from all angles whether it is necessary in the ends of justice to make available legal aid in the particular case. That discretion resides in the Court. [209A-B, & G]

(c) These benign prescriptions operate by force of Art. 21 "strengthened by Art. 19(1)(d) read with sub-article (5) from the lowest to the highest Court where deprivation of life and personal liberty is in substantial peril. [209H]

5. Since the Supreme Court is the last in Indian pyramid of justice every party in person elicits from the Court extra solicitude so that he may not suffer from a sense of handicap due to the absence of professional legal service. In the present petition, the party though proffered legal aid by the Court preferred to argue himself. [197H, 198A, 209B]

6. (a) The Supreme Court has laid down certain fundamental principles governing its jurisdiction when special leave is sought under Art. 136 of the Constitution. The Court cannot depart from this criteria lest the endless chase for justice by every defeated litigant, civil and criminal should flood it into dysfunction. [198A-B]

Ujjagar Singh & Anr. v. *State (Delhi Admn.)*, Order in S.L.P. (Crl.) No. 1319 etc. of 1977 dt. 31-7-78 (unreported case). A

(b) The soft justice syndrome vis-a-vis white collar offenders scandalizes the Court. It stultifies social justice and camouflages needed severity with naive leniency. [196G]

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(c) Social defence is the criminological foundation of punishment. In the instant case, the trial judge has confused between correctional approach to prison treatment and nominal punishment verging on decriminalisation of serious social offences. The first is basic and the second pathetic. That Court which ignores the grave injury to society implicit in economic crimes by the upper-berth 'mafia' ill serves social justice. Soft sentencing justice is gross injustice where many innocents are the potential victims. It is altogether a different thing C to insist on therapeutic treatment, hospital setting and correctional goals inside the prison "even punctuated by parole, opportunities for welfare work, meditational normalisation and healthy self-expression" so that the convict may be humanised and on release rehabilitated as a safe citizen. Coddling is not correctional any more than torture is deterrent. While iatrogenic prison terms are bad because they dehumanize, it is functional failure and judicial pathology to hold out a benignly self defeating non-sentence to deviants who endanger the D morals and morale, the health and wealth of society. [199E-H, 200A]

Mohammad Giasuddin v. *State of Andhra Pradesh* [1978] 1 SCR 153, applied.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 408 of 1978.

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From the Judgment and Order dated 22-11-1973 of the Bombay High Court in Criminal Appeal No. 747/72 with Criminal Review Application No. 685/72.

In person for the Petitioner

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H. R. Khanna and *M. N. Shroff* for the Respondent.

The Order of the Court was delivered by

KRISHNA IYER, J.—A short paragraph might perhaps have been G sufficient as obituary note on this Special Leave Petition but two basic issues—one of prison justice and the other of sentencing caprice—challenge our attention and deserve more elaboration.

The facts, more flabbergasting than fantasy, present themselves in this Special Leave Petition. The appeal is against a conviction con- H currently rendered for a novel and daring set of crimes and follow-up sentence of three year prison term. The offence is bizarre, the

A offender perplexing, the sentence incredibly indiscreet at the Sessions Court stage but reasonably just at the High Court level and, to cap it all, the delay in seeking leave from this Court is doubly shocking because it is inordinate and implicates the prison administration.

B A miniaturised version of the prosecution, which has culminated in the conviction, is all that is necessary in view of the ultimate order we propose to make. The petitioner, a Reader in the Saurashtra University, claims to be a Ph. D. of Karnataka University, although there is a controversy as to this high academic qualification being a fabrication. In the present case we are not concerned with it directly. C His moot academic proficiency apart, his abortive enterprise in another field has landed him in the present criminal case. According to the prosecution, Dr. Hoskot, the petitioner, approached Dabholkar, a block-maker of Bombay, placed an order to prepare an embossing seal in the name of the Karnataka University, Dharwar, and forged a letter of authority purporting to have been signed by the Per- D sonal Assistant to the Vice-Chancellor of the said University authorising him to get the seals made. This Project Counterfeit Degrees, if we may so call it, had, perhaps, as its object the concoction of certificates of degrees by the Karnataka University. A degree-hungry community like ours offers a happy hunting ground for professionals in the fine art of fabricating academic distinctions. If the expertise is E perfect and its exercise undetected there is more money in it than in an honest doctorate. Anyway, the petitioner's mis-adventure was intercepted before it could fulfil itself because Dabholkar, the Bombay block-maker, was too clever a customer. He gave pre-emptive information to the police leading to the unearthing in time of the criminal F scheme. The Sessions court tried the petitioner and held as proved beyond reasonable doubt that the petitioner was guilty of the grave offences charged, namely, under ss. 417 read with 511 I.P.C., s. 467 I.P.C., s. 468 I.P.C. and ss. 471 read with 467 I.P.C. After having rendered this draconian verdict against a person who was a Reader in a University and claimed to be M.Sc., Ph. D., around 30 years old G and coming from a middle-class family beyond economic compulsions to make a living by criminal means, the court swerved towards a soft sentence of simple imprisonment till the rising of the court and some fine. We are scandalized by this soft justice syndrome vis-a-vis white collar offenders. It stultifies social justice and camouflages needed severity with naive leniency. However, two appeals were carried to H the High Court, one by the petitioner against his conviction and the other by the State against the naive sentence. The High Court dismissed the appeal against the conviction and, in allowance of the State's

prayer for enhancement, imposed rigorous imprisonment for three years. The present petition for special leave to appeal is against this heavy sentence. A

The High Court's judgment was pronounced in November 1973 but the Special Leave Petition has been made well over four years later. This hiatus may appear horrendous, all the more so because the petitioner has undergone his full term of imprisonment during this lengthy interregnum. The explanation offered by him for condonation of the delay, if true, discloses a disturbing episode of prison injustice. To start with the petitioner complained that the High Court granted a copy of the judgment of 1973 only in 1978, a further probe disclosed that a free copy had been sent promptly by the High Court, meant for the applicant, to the Superintendent. Yeravada Central Prison, Pune. The petitioner denies having been served that copy and there is nothing on record which bears his signature in token of receipt of the High Court's judgment. The Prison Superintendent, on the other hand, would have us believe that a clerk of his office did deliver it to the prisoner but took it back for the purpose of enclosing it with a mercy petition to the Governor for remission of sentence. This exonerative story may be imaginary or true, but there is no writing to which the petitioner is a party to validate this plea. The fact remains that prisoners are situationally at the mercy of the prison 'brass' but their right to appeal, which is part of the constitutional process to resist illegal deprivation of liberty, is in peril, if district jail officials' *ipse dixit* that copies have been served is to pass muster without a title of prisoner's acknowledgment. What is more, there is no statutory provision for free legal serives to a prisoner, in absence of which, a right of appeal for the legal illiterates is nugatory and, therefore, a negation of that fair legal procedure which is implicit in Art. 21 of the Constitution, as made explicit by this Court in *Maneka Gandhi*(1). B C D E F

Having narrated the necessary facts which project the two profound but neglected problems of criminal jurisprudence we should have proceeded to discuss the merits of the evidence to decide whether leave should be granted to this petitioner. Indeed, although the court had assigned a lawyer to render free legal service to the petitioner and argue the case on his behalf, Dr. Hoskot decided to dispense with legal assistance and argued on his own. Of course, he has presented his case capably and with analytical precision in his endeavour to controvert the correctness of the findings of the courts below. We have listened to him at some length since this Court is the last in the G H

(1) [1978 2 S.C.R. 621.

A Indian pyramid of justice and a party in person elicits from us extra solicitude so that he may not suffer from a sense of handicap due to the absence of professional legal service. Nevertheless, this Court has laid down certain fundamental principles governing its jurisdiction when special leave is sought. We cannot depart from these criteria lest the endless chase for justice by every defeated litigant, civil and B criminal, should flood this Court into dysfunction by a docket flood. It is dangerous to be too good. The recent pronouncement of a Bench of this Court, through the learned Chief Justice, settles with clarity the decisive jurisdictional guideline. We quote :

> "In view of the concurrent findings of the Sessions Court C and the High Court on the principal issues arising in the case we see no justification for granting special leave for a reconsideration of the question as regards the guilt of the petitioners..... There is hardly a case, civil or criminal, which does not raise some question of law or the other. But no question of law of general public importance is involved D in these petitions. It is time that it was realised that the jurisdiction of this Court to grant special leave to appeal can be invoked only in very exceptional circumstances. A question of law of general public importance or a decision which shocks the conscience of the court are some of the E prime requisites for the grant of special leave.(1)
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> [*Ujagar Singh & Anr.* v. *State (Delhi Admn.)*]

Bearing this policy in mind, coupled with the efficacy of concurrent findings of fact, we decline the request for leave even assuming there are some improbabilities in the prosecution case or errors in the concurrent holdings. In this view, we do not examine the merits further F but insist on clarifying the two larger questions lying half-hidden. No observations made by us should be understood as affecting the petitioner's plea in any other criminal case he may be facing.

The Sessions Court, having found a university professor guilty of organising (abortively, though) a scheme of making bogus degrees G suddenly slumped at the sentencing stage and, awarded a single day's simple imprisonment. The reasons given are symptomatic of chaotic sentencing and confusion about the correctional orientation of punishment. The court observed :

> "Accused is a young man. He has no previous convic- H tion. He has a *good family background. His father was a Deputy Collector* and Magistrate in the Mysore State. He

(1) Order in SLP (Crl. No. 1319 etc. of 1977 dt. 31-7-1978 (unreported case)

struck me as having *intelligence above the average.* He is *not a person with a criminal tendency. It is suggested by the learned P.P.* that *possibly accused did this in a fit of desparation* as he was given notice of discharge by the Saurashtra University regarding his Readership in Mathematics.

The *modern emphasis on the corrective aspect of punishment cannot be ignored in this case while* determining the adequacy of sentence, having regard to the nature of the offence and the background of the accused, I think that I should give one chance for the accused to improve. Hence I do not think it desirable to send him to jail as he might return as a confirmed criminal, which may be a liability to the society. If, on the other hand, mercy is shown to him at this stage of his first impact with justice, then it is probable that he may be reclaimed as a good citizen who can harness his talent for desirable activities. In view of this I propose to pass the following order to *which the learned Spl. Public Prosecutor has no objection*..... Substantive sentences of one day S.I. to run concurrently.

(emphasis added)

It is surprising that the Public Prosecutor has consented, on behalf of the State, to this unsocial softness to an anti-social offender on conviction for grave charges. Does the Administration sternly view white-collar offenders, or abet them by agreeing to award of token punishment, making elaborate trials mere tremendous trifles?

Social defence is the criminological foundation of punishment. The trial judge has confused between correctional approach to prison treatment and nominal punishment verging on decriminalisation of serious social offences. The first is basic, the second pathetic. That Court which ignores the grave injury to society implicit in economic crimes by the upper-berth 'mafia' ill serves social justice. Soft sentencing justice is gross injustice where many innocents are the potential victims. It is altogether a different thing to insist on therapeutic treatment, hospital setting and correctional goals inside the prison (even punctuated by parole, opportunities for welfare work, meditational normalisation and healthy self-expression), so that the convict may be humanised and, on release, rehabilitated as a safe citizen. This Court has explained the correctional strategy of punishment in *Giasuddin's* case(1). Coddling is not correctional, any more than torture is deterrent. While iatrogenic prison terms are bad because they dehumanize,

(1) *Mohammad Giasuddin* v. *State of Andhra Pradesh*, [1978] 1 S.C.R. 153.

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it is functional failure and judicial pathology to hold out a benignly self-defeating non-sentence to deviants who endanger the morals and morale, the health and wealth of society.

The 47th Report of the Law Commission of India noticed this *weakness for economic offenders* in the judicial personnel (of course, also in the administrative and legislative actors) and recommended :

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> "18.2. Suggestions are often made that in order that the lower Magistracy may realise the seriousness of some of the social and economic offences, some method should be evolved of making the judiciary conscious of the grave damage caused to the country's economy and health by such anti-social crimes. The frequency and emphasis with which these suggestions have been made, and the support which they have received from very high officers has caused some anxiety to us. But we hope that the higher courts are fully alive to the harm, and we have no doubt that on appropriate occasions, such as, judicial conferences, the subject will receive attention. It is of utmost importance that all State instrumentalities involved in the investigation, prosecution and trial of these offences must be oriented to the philosophy which treats these economic offences as a source of grave challenge to the material wealth of the nation.
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> 18.3. We hope we shall not be misunderstood if we suggest that even the holding of periodical meetings on sentencing may be beneficial, not in the context of economic offences only, but in the evolution of a rational and consistent policy of sentencing. Experience of England is, by now, familiar to those interested in the subject.
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> A meeting of over 100 judges was held in the Royal Courts of Justice in London on January 7-8, 1965 to take part in exercises designed to increase the uniformity of sentencing. The Lord Chief Justice expressed the hope that the meeting would be a model for similar ones throughout the country.
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> Conferences between judges, magistrates and penal administrators are, in England, organised with increasing frequency in many parts of the country with an annual conference in London for judges of the Supreme Courts.
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> 18.4. Besides holding councils on sentencing, it may be worthwhile to hold "workshops' which would be less formal

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but equally useful and likely to give concrete results. Such workshops could, for example, be attended by all Special Judges or other officers concerned with economic offences.

National courses on sentencing strategies *vis-a-vis* social justice is a neglected cause and the Administration is, as yet, 'innocent' of this imperative need.

The second profound issue, thrown up accidentally by Dr. Hoskot's sojourn in the Yeravada jail, disturbs us more because less capable men—most prisoners in this country belong to the lower, illiterate bracket—suffer silent deprivation of liberty caused by unreasonableness, arbitrariness and unfair procedures behind the 'stone walls' and 'iron bars'.

Freedom is what freedom does, and here we go straight to Art. 21 of the Constitution, where the guarantee of personal liberty is phrased with superb amplitude :

Art. 21 : *Protection of life and personal liberty* :—

No person shall be deprived of his life or personal liberty *except according to procedure established by law.* (emphasis added).

'Procedure established by law' are words of deep meaning for all lovers of liberty and judicial sentinels. Amplified, activist fashion, 'procedure' means 'fair and reasonable procedure' which comports with civilised norms like natural justice rooted firm in community consciousness,—not primitive processual barbarity nor legislated normative mockery. In a land-mark case, *Maneka Gandhi*(1), Bhagwati, J. (on this point the Court was unanimous) explained :

"Does Article 21 merely require that there must be some semblance of procedure, howsoever arbitrary or fanciful. prescribed by law before a person can be deprived of his personal liberty or that the procedure must satisfy certain requisites in the sense that it must be fair and reasonable ? Article 21 occurs in Part III of the Constitution which confers certain fundamental rights".

"Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements ? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General who with his usual candour frankly

(1) [1978] 1 SCC 248 at 277, 281 and 284.

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stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law."

"The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21".

One of us in his separate opinion there observed(1) :

"Procedure established by law", with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not *ex necessitate* import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with 'do or die' patriotism, was launched be sapped by formalistic and pharisaic prescriptions, regardless of essential standards ? An enacted apparition is a constitutional illusion. Processual justice is writ patently on Article 21.

Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus understood, 'procedure' must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised process.... What is fundamental is life and liberty. What is procedural is the manner

(1) Per Krishna Iyer, J. at 337, 338.

of its exercise. This quality of fairness in the process is emphasised by the strong word 'established' which means 'settled firmly' not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes 'established' procedure. And 'law' leaves little doubt that it is normae regarded as just since law is the means and justice is the end.

Procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics.

To sum up, 'procedure' in Article 21 means fair, not formal procedure. 'Law' is reasonable law, not any enacted piece."

One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty is basic to civilised jurisprudence. It is integral to *fair* procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Art. 21.

What follows from the appellate imperative? Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional (In a sense, even Art. 19 may join hands with Art. 21, as the *Maneka Gandhi* reasoning discloses). Pertinent to the point before us are two requirements : (1) service of a copy of the judgment to the prisoner in time to file an appeal and (ii) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Art. 21. Where the procedural law provides for further appeals what we have said regarding first appeals will similarly apply.

In the present case there is something dubious about the delivery of the copy of the judgment by the Jailor to the prisoner. A simple proof of such delivery is the latter's written acknowledgment. Any

A jailor who, by indifference or vendetta, withholds the copy thwarts the court process and violates Art. 21, and may pave the way for holding the further imprisonment illegal. We hope that Jail Manuals will be updated to include the mandate, if there be any omission, and deviant jail officials punished. And courts, when prison sentence is imposed, will make available a copy of the judgment if he is straight marched B into the prison. All the obligations we have specificated are necessarily implied in the right of appeal conferred by the Code read with the commitment to procedural fairness in Art. 21. Section 363 of the Cr. P. Code is an activist expression of this import of Art. 21 and is inviolable. We say no more because we have condoned the delay C in the present case although it is pathetic that for want of a copy of judgment the leave is sought after the sentence has been served out.

The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a D failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system. And E the American jurist, Prof. Vance of Yale, sounded sense for India too when he said(1) :

> "What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is ? Or that the courts are F open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee ?"

Gideon's trumpet has been heard across the Atlantic. Black, J. there observed(2) :

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> "Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal, quite

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(1) Justice and Reform, Earl Johnson , Jr. p. 11.
(2) Processual Justice to the People (May, 1973) p. 69.

properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him".

The philosophy of legal aid as an inalienable element of fair procedure is evident from Mr. Justice Brennan's(1) well-known words :

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness".

More recently, the U.S. Supreme Court, in *Raymond Hamlin* has extended this processual facet of Poverty Jurisprudence. Douglas, J. there explicated(2) :

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If

(1) Legal aid and Legal Education p. 94.
(2) United States Supreme Court Reports, Vol. 32, p. 530.

A charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evi-
B dence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know
C how to establish his innocence. *If that be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect."*

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some
D countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid *great emphasis on procedural and substantive safeguards designed to assure fair trials* before impartial tribunals in which every defendant stands equal before the law. *This noble ideal cannot be realized if the poor man charged with crime has*
E *to face his accusers without a lawyer to assist him.* 372 US at 344. 9 L Ed 2d at 805, 93, ALR 2d 733.

Both Powell and Gideon involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty.

F *The court should consider the probable sentence that will follow if a conviction is obtained. The more serious the likely consequences, the greater is the probability that a lawyer should be appointed....* The court should consider the individual factors peculiar to each case. These, of course, would be the most difficult to anticipate. One rele-
G vant factor would be the competency of the individual defendant to present his own case.

(*Jon Richard Argersinger* v. *Raymond Hamlin* (407 US 25 32L Ed 2d 530 at 535-36 and 554. (Emphasis added)

The American Bar Association has upheld the fundamental pre-
H mise that counsel should be provided in the criminal proceedings for offences *punishable by loss of liberty,* except those types of offences for which such punishment is not likely to be imposed. Thus in

America, strengthened by the *Powell, Gideon* and *Hamlin* cases, counsel for the accused in the more serious class of cases which threaten a person with imprisonment is regarded as an essential component of the administration of criminal justice and as part of procedural fair-play. This is so without regard to the VIth amendment because lawyer participation is ordinarily an assurance that deprivation of liberty will not be in violation of procedure established by law. In short, it is the warp and woof of fair procedure in a sophisticated, legalistic system plus lay illiterate indigents aplenty. The Indian socio-legal milieu makes free legal service, at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance.

The widespread insistence on free legal assistance, where liberty is in jeopardy, is obvious from the Universal Declaration of Human Rights :

> Art. 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

Art. 14(3) of the International Covenant on Civil and Political Rights guarantees to everyone :

> "the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."

Many high-level Indian Committees and Commissions have emphasised the free legal service desideratum as integral to processual fair-play for prisoners. For example, one such committee has stated(1) :

> 93. Prisoners, men and women, regardless of means, are a peculiarly handicapped class. The morbid cell which confines them walls them off from the world outside. Legal remedies, civil and criminal, are often beyond their physical and even financial reach unless legal aid is available within the prison as is provided in some States in India and in other countries. Without legal aid, petitions of appeal, applications for commutation or parole, bail motions and claims

(1) Processual Justice to the People May, 1973, p. 34.

A for administrative benefits would be well-nigh impossible. There is a case for systematised and extensive assistance through legal aid lawyers to our prison population.

The Central Government is evolving a comprehensive programme while many States already have fragmentary schemes.

B It needs no argument to drive home this point, now that Art. 39A, a fundamental constitutional directive, states :

> 39A. *Equal Justice and free legal aid.*
>
> The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity,
> C and shall, in particular, provide free legal aid, by suitable legislation or schemes *or in any other way,* to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (emphasis added).

D This article is an interpretative tool for Art. 21.

Partial statutory implementation of the mandate is found in Sec. 304, Cr. P. Code, and in other situations courts cannot be inert in the face of Art. 21 and 39A.

We may follow up the import of *Maneka Gandhi* and crystallise
E the conclusion. *Maneka Gandhi's* case has laid down that personal liberty cannot be cut out or cut down without *fair* legal procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Art. 21 and as implied in his statutory right to appeal, the necessary concomitant of right to
F counsel to prepare and argue his appeal.

If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Consti-
G tution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself
H has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services,

especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court.

In the present petition, the party, though proferred legal aid by the court, preferred to argue himself. Even so we uphold the right to counsel not in the permissive sense of Art. 22(1) and its wider amplitude but in the peremptory sense of Art. 21 confined to prison situations.

While dismissing the Special Leave Petition we declare the legal position to put it beyond doubt :

1. Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to prison term;

2. In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, revisional or other court, the official concerned shall, with quick despatch, get it delivered to the sentence and obtain written acknowledgment thereof from him.

3. Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the Jail Administration.

4. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer;

5. The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix.

6. These benign prescriptions operate by force of Art. 21 [strengthened by Art. 19(1)(d)] read with sub-article (5) from the lowest to the highest court where deprivation of life and personal liberty is in substantial peril.

S.R. *Petition dismissed.*