Before Hemant Gupta & Raj Rahul Garg, JJ.

VAKIL RAJ—*Petitioner*

versus

STATE OF HARYANA AND OTHER—*Respondents*

CRWP No.1840 of 2014

November 28, 2015

A) ***Haryana Good Conduct Prisoners (Temporary Release) Act, 1988–S. 2(aa)–Legality and validity of definition of 'Hardcore Prisoner' challenged – Held, Entry 4 of List II of 7th Schedule empowers State Legislature to enact laws in relation to prisoners/convicts–Offences of various kinds clubbed within the definition of hardcore prisoner–State Legislature competent to define hardcore prisoner to mean different category of convicts–Category of different convicts as hardcore prisoner not arbitrary or discriminatory–Petition dismissed.***

B) ***Haryana Good Conduct Prisoners (Temporary Release) Act, 1988–Parole is not a right but a concession for good conduct–Convict possessing prohibited article in jail liable for punishment under the Prisons Act, 1894–Convict cannot be said to have maintained good conduct– Held, convict who does not maintain jail discipline not entitled to parole as one of theconditions for grant of parole is good behaviour in custody–Punishment awarded is penalty imposed for misconduct whereas parole is granted for maintaining good conduct in prison.***

C) ***Haryana Good Conduct Prisoners (Temporary Release) Act, 1988–S.2(aa)–Argument that the petitioners stood convicted prior to insertion of Clause (aa) in Section 2 and it would not be applicable– Rejected– Held, that it would be applicable as grant of parole is to be considered as per law applicable on the date of consideration of parole and not on date of conviction.***

D) ***Haryana Good Conduct Prisoners (Temporary Release) Act, 1988–Parole and furlough – Distinction–Parole is granted for "good behavior" on the condition that parolee regularly reports to a supervising officer for a specified period–On the other hand, furlough is granted as a good conduct remission.***

Held that a Division Bench of Delhi High Court in Dinesh Kumar's case (supra), was considering Clause 26.4 of the

Parole/Furlough Guidelines, 2010 for release of convicts on furlough. The argument before the Bench was that good conduct in the prison should be the only relevant criteria and not the offence for which he has been convicted. The Bench noticed the distinction between the parole and furlough. It was found that parole is granted for "good behavior" on the condition that parolee regularly reports to a supervising officer for a specified period. On the other hand, the Furlough is granted as a good conduct remission. It has been held to the following effect:

> "15. Guidelines relate to parole as well as furlough. There is a subtle distinction between the two which has been explained by the Courts from time to time. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Under the aforesaid guidelines, such a release of the prisoner is temporarily on some basic grounds. It is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies.
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> 18. Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission. A convict literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for atleast some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation

of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

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24. Not all people in prison are appropriate for grant of furlough. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, furlough program should be used as a tool to shape such adjustments.

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31. Insofar as those convicts whose conduct had not been found to be satisfactory and who had in the past escaped or attempted to escape from lawful custody or who have defaulted in any way in surrendering themselves were as rightly excluded from the benefit of grant of furlough.

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32. To this extent namely exclusion of the aforesaid categories may not pose a problem. Even in the Guidelines, 2010 same kind of provisions are made in Clause 26 which *inter alia* lay down that in order to obtain the furlough, the petitioner should not be a habitual offender; the release of the prisoner should not be considered dangerous or deleterious to the interest of national security or involvement in a pending investigation; in a case involving serious crime; he should not be a person whose presence is considered highly dangerous or prejudicial to the public peace and tranquility by the District Magistrate by his home district etc."

(Para 13)

Further held that Entry 4 of List II of 7th Schedule empowers the legislature to legislate in respect of prisoners and the persons lodged therein. Therefore, the State Legislature has power to enact laws in relation to the prisoners/convicts. Such plenary legislative jurisdiction of the State Legislature is not rightly disputed by the counsel for the petitioners as well. The parole is not a right. It is a concession, which is

extended on good conduct. A convict, who keeps mobile in custody even though it is prohibited, is not maintaining discipline in the jail. He is also liable to be proceeded for a punishment for possessing a prohibited article in jail and is liable to punishment as contained in Section 46 of the Prison Act, 1894. But after the punishment, the convict cannot be said to have maintained the good conduct, which alone entitles him for consideration for grant of parole. The punishment awarded is a penalty imposed for the misconduct, whereas parole is declined for not maintaining good conduct in the prison. Both have different cause and effect and thus, it cannot be said that on completion of punishment, the convict cannot be denied release on parole for the reason that he was found to be in possession of a mobile or a SIM card.

(Para 15)

Further held that a convict, who does not maintain jail discipline, is not entitled to parole as one of the conditions of grant of parole is good behavior in custody. Though mobile is a facility for use of citizens, but such right is not with the prisoner. The personal rights of a convict stand suspended including the right of free movement. Therefore, imposing a condition that use of mobile, which has the potential of misuse, will disentitle a convict for grant of parole, cannot be said to be unjustified, as it is a requirement introduced for maintaining discipline and a good behavior in jail.

(Para 17)

Further held that the offences of various kinds have been clubbed within the definition of 'hardcore prisoner', but Legislature is competent to define a particular word, which is not necessarily in tune with dictionary or common use meaning. The deeming definition is given to meet out a particular situation and, therefore, such definition cannot be challenged on the ground that each class of the convict does not form a homogenous group. In fact, the different classes of convicts are separate and distinct classes, which for the purpose of parole have been clubbed. The objective of the Act to grant parole on maintaining of a good conduct by the prisoners, therefore, the State Legislature is competent to define hardcore prisoner to mean different category of convicts, which advances the object of the Statute that is good conduct in prison.

(Para 18)

Further held that the State Legislature can define different categories of offenders while defining the expression "hardcore prisoners", which fall within the legislative competence of the State

Legislature. Consequently, we do not find that category of different convicts as a hardcore prisoner suffers from any vice and/or is arbitrary or discriminatory.

(Para 22)

Further held that the amended definition would be applicable to all convicts, who were convicted prior to amendment and insertion of Clause (aa) in Section 2 of the Act. The grant of parole is to be considered as per law applicable on the date of consideration of parole.

(Para 23)

Arjun Sheoran, Advocate,
for the petitioner(s).

Rajesh Gaur, Addl. AG, Haryana,
for the respondents.

HEMANT GUPTA, J.

(1) This order shall dispose of aforementioned two criminal writ petitions challenging the legality and validity of definition of "Hardcore prisoner" as inserted in the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act'). The Act was enacted to regulate the right of the convicts for release on parole or furlough.

(2) Initially Clause (aa) was inserted in Section 2 by Haryana Good Conduct Prisoners (Temporary Release) Amendment Act 2012. The definition as inserted reads as under:

> "(aa) 'hardcore prisoner' means a person, who –
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> (i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or;
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> (ii) during any continuous period of five years has been convicted and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on

different occasions not constituting part of same transaction and as a result of such convictions has undergone improvement at least for a period of twelve months;

Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded.

Explanation – A conviction which has been set aside in appeal or revision and any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) has been sentenced to death penalty; or

(iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or

(v) failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act."

(3) The said definition was subsequently amended vide Haryana Act No.21 of 2013 and later by Haryana Act No.16 of 2015, but it is the definition of "hardcore prisoner", as is at present in Section 2(aa), which is subject matter of challenge in both the petitions, which reads as under:

"(aa) 'hardcore prisoner' means a person –

(i) who has been convicted of –

(1) robbery under section 392 or 394 IPC;

(2) dacoity under section 395, 396 or 397 IPC;

(3) kidnapping for ransom under section 364-A IPC;

(4) murder or attempt to murder for ransom or extortion under section 387 read with 302 or section 387 read with 307 IPC;

(5) rape with murder under section 376 read with 302 IPC;

(6) rape with a woman blow sixteen years of age;

(7) rape as covered under section 376-A, 3376-D or

376-E IPC;

(8) serial killing i.e. murder under section 302 IPC in two or more cases in different First Information Reports;

(9) murder under section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case;

(10) lurking house trespass or house breaking where death or grievous hut is caused under section 459 or 460 IPC;

(11) either or offence under sections 121 to 124-A IPC;

(12) immoral trafficking under section 3, 4 or 5 of the Immoral Traffic (Prevention) Act, 1956 involving minors or under section 366-A, 366-B, 372 or 373 IPC;

(13) offence under section 17(c) or 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985; or

(14) offence under section 14 of the Protection of Children from Sexual Offences Act, 2012

(i) who during a period of five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII or XVII of IPC, except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months;

Provided that while counting the period of five years, the period of actual imprisonment or detention shall be excluded;

Provided further that if a conviction has been set- aside in appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(ii) who has been sentenced to death penalty; or

(iii) who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or

(iv) who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act.

Provided that the State Government may, by notification include any offence in the list of offfences mentioned above."

(4) The petitioner in CRWP No.1840 of 2014 is a convict undergoing life imprisonment for the offences under Sections 302/148/149 IPC in case FIR No.51 dated 11.04.2002 as well as under Sections 302/307/34 IPC in case FIR No.84 dated 25.07.2003. In the reply filed, the stand of the Superintendent, District Jail, Karnal is that the petitioner is a hardcore prisoner in terms of Section 2(aa)(i)(8) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013, therefore, he is not entitled to parole.

(5) The petitioner in CRWP No.832 of 2014 is also undergoing life imprisonment awarded under Sections 302/34 IPC in case FIR No.934 dated 01.11.2006. While undergoing such sentence, the petitioner was also convicted in case FIR No.511 of 2007 for possessing a mobile phone when he was in custody and was sentenced to undergo rigorous imprisonment from 19.03.2009 to 06.11.2009. The claim of the petitioner for parole has been declined for the reason that a mobile phone was recovered from the petitioner and major punishment was awarded to him for stoppage of interview for one month in terms of provisions of the Prison Act 1894. Such punishment was judicially appraised and approved by the District & Sessions Judge, Gurgaon. Therefore, the petitioner is a 'hardcore prisoner' in terms of Section 2(aa)(iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012. It is also pointed out that the petitioner was granted parole for two weeks after completion of 5 years of conviction.

(6) Learned counsel for the petitioners also submitted that the definition of 'hardcore prisoner' is unreasonable and has no nexus with the objective to be achieved inasmuch as it categorizes wide categories of convicts into one, which is not justified. Learned counsel for the petitioners submitted that the Section 2(aa) would not be applicable in respect of convicts convicted prior to introduction of such clause. Reliance is placed upon a Division Bench judgment of this Court in CRWP No.427 of 2015 titled ***Jagpreet Singh @ Preet Vs. State of Haryana & others*** decided on 14.07.2015.

(7) The argument of learned counsel for the petitioners is that the inclusive definition is arbitrary and fanciful, as several of the crimes, which have been included there-under cannot be said to be hardcore or dangerous offences. Several other offences, if not more dangerous and violent have been left out. Therefore, such inclusive definition is not sustainable. It is also argued that amendments suffer from vice of over-classification inasmuch as various diverse offences/acts/omissions etc. which may otherwise have no inter-se relation and diverse category of convicts which cannot be related to a hardcore/habitual criminal or criminal committing heinous offences have been made part of the definition of hardcore prisoner. It is also argued that absolute prohibition on consideration of request for parole is wholly unjustified. Reference was made to a judgment of Delhi High Court reported as ***Dinesh Kumar*** *versus* ***State***[1], wherein it was held that good conduct in prison and not the crime committed is the paramount/relevant criteria for getting furlough and parole. Learned counsel for the petitioners also refers to the Comptroller and Auditor General's Report that the State needs to increase coordination, ensure registration of FIRs, forfeit bonds of sureties of such convicts jumping parole, instead of unnecessarily and arbitrarily covering up for their mistakes by barring several convicts from getting parole. It is also argued that the amendments have led to absurd and harsh consequences, when a convict punished for major jail offences has been denied release on temporary basis. Learned counsel for the petitioners also relied upon a Hon'ble Supreme Court judgment reported as ***State of Maharashtra & another*** *versus* ***Indian Hotel & Restaurants Association & others***[2] (Dance Bars' case). In the said judgment, reliance was placed on the following para:

> "106. Before we embark upon the exercise to determine as to whether the impugned amendment Act is ultra vires Article 14 and 19(1)(g), it would be apposite to notice the well established principles for testing any legislation before it can be declared as ultra vires. It is not necessary for us to make a complete survey of the judgments in which the various tests have been formulated and re-affirmed. We may, however, make a reference to the judgment of this Court in Budhan Choudhry Vs. State of Bihar AIR 1955 SC 191, wherein a Constitution Bench of seven Judges of

[1] 2012 (4) RCR (Criminal) 83
[2] (2013) 8 SCC 519

this Court explained the true meaning and scope of Article 14 as follows:-

> "It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure"."

(8) On the other hand, learned State counsel vehemently argued that the State Legislature is competent to enact legislation in respect of prisoners and the persons detained in the jails in terms of Entry 4 of List II of the 7th Schedule. The State in its plenary legislative jurisdiction has defined the 'hardcore prisoner' to classify various categories of convicts, as falling under the said category. Such classification cannot be interfered with in exercise of power of judicial review, as the classification has a reasonable nexus with the objective to be achieved i.e. to grant parole to the convicts, who maintain good conduct while in custody and on the other hand to deny such benefit to the convicts, who misconduct themselves while in custody. Learned State counsel also relied upon a Division Bench judgment of this Court in CRWP No.2104 of 2012 titled '***Ajay Jadeja @ Janak Vs. State of Haryana & others***' decided on 14.12.2012, wherein it has been held that right of convict to get himself release on parole is not substantive. It is a concession given to the convict during his imprisonment, therefore, the amending Act or the Rules are applicable to all convicts, whether convicted before or after amendment of the Act.

(9) Earlier, a Division Bench of this Court in CWP No.15333 of 2013 titled '***People's Union for Civil Liberties, Punjab & Chandigarh***

Chapter Vs. State of Haryana & another' ordered on 27.03.2014, as under:

> "We have perused the affidavit filed by the State of Haryana, though we are not still fully satisfied with the explanation given including orally by learned Additional Advocate General that the reformatory measures start only post-conviction and, thus, the under-trial period is sought to be excluded, we would not like to interfere with this considered policy decision. At the same time, we expect the State of Haryana to observe the matter for some period of time and thereafter re-examine whether given its experience such a clause putting a blanket ban on under-trial period being considered for purposes of furlough in heinous crimes ought to be continued or not. The view in this behalf can be had after a period of six months.
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> We are conscious of the fact that there are contrary interests including of the individual who is convicted vis-à-vis the society, the convict and the sufferer etc and those aspects undoubtedly have to be kept in mind.
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> No further directions are required."

(10) It is, thereafter, Haryana Act No.16 of 2015 has been enacted on 18.09.2015 substituting sub-section (2) of Section 5A of the Act permitting a convict, who has not been awarded death penalty, if he has completed 5 years of imprisonment and has not been awarded any major punishment by the Superintendent of Jail to be considered for grant of parole. However, the period of 5 years imprisonment shall not include imprisonment during trial for more than 2 years, while counting 5 years of imprisonment.

(11) We have heard learned counsel for the parties. Firstly, we do not find that the said judgment in ***Dance Bars'*** case (Supra) has any application in the present case. In the said case, the legality of Section 33-A and Section 33- B of the Bombay Police Act, 1951, came up for consideration. Though there was prohibition for Dance Bars throughout the State, but dance performance in a drama theatre, cinema theatre and auditorium; or sports club or gymkhana, where entry is restricted to its members only, or a three starred or above hotel or in any other establishment or class of establishments, which having regard to (a) the tourism policy of the Central or State Government for promoting the tourism activities in the State; or (b) cultural activities, the State

Government may, by special or general order, specify in this behalf, was not barred. The Hon'ble Supreme Court in the said case found that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. The Court held to the following effect:

> "109. We have no hesitation in accepting the aforesaid proposition for testing the reasonableness of the classification. However, such classification has to be evaluated by taking into account the objects and reasons of the impugned legislation; (See: Ram Krishna Dalmia Vs. S.R.Tendolkar AIR 1958 SC 538). In the present case, judging the distinction between the two sections upon the aforesaid criteria cannot be justified.
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> 112. ……We also agree with the submission of the learned senior counsel for the respondents that there is no justification that a dance permitted in exempted institutions under Section 33B, if permitted in the banned establishment, would be derogatory, exploitative or corrupting of public morality. We are of the firm opinion that a distinction, the foundation of which is classes of the establishments and classes/kind of persons, who frequent the establishment and those who own the establishments can not be supported under the constitutional philosophy so clearly stated in the Preamble of the Constitution of India and the individual Articles prohibiting discrimination on the basis of caste, colour, creed, religion or gender.
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> 121. We are of the opinion that the State has failed to justify the classification between the exempted establishments and prohibited establishments on the basis of surrounding circumstances; or vulnerability. Undoubtedly, the legislature is the best judge to measure the degree of harm and make reasonable classification but when such a classification is challenged the State is duty bound to disclose the reasons

> for the ostensible conclusions. In our opinion, in the present case, the legislation is based on an unacceptable presumption that the so called elite i.e. rich and the famous would have higher standards of decency, morality or strength of character than their counter parts who have to content themselves with lesser facilities of inferior quality in the dance bars. Such a presumption is abhorrent to the resolve in the Preamble of the Constitution to secure the citizens of India. "Equality of status and opportunity and dignity of the individual". The State Government presumed that the performance of an identical dance item in the establishments having facilities less than 3 stars would be derogative to the dignity of women and would be likely to deprave, corrupt or injure public morality or morals; but would not be so in the exempted establishments. These are misconceived motions of a bygone era which ought not to be resurrected."

(12) Thus, we find that in ***Dance Bars'*** case (supra) the Court found the classification as unreasonable as to prohibition for dancers was in certain areas only.

(13) A Division Bench of Delhi High Court in ***Dinesh Kumar's*** case (supra), was considering Clause 26.4 of the Parole/Furlough Guidelines, 2010 for release of convicts on furlough. The argument before the Bench was that good conduct in the prison should be the only relevant criteria and not the offence for which he has been convicted. The Bench noticed the distinction between the parole and furlough. It was found that parole is granted for "good behavior" on the condition that parolee regularly reports to a supervising officer for a specified period. On the other hand, the Furlough is granted as a good conduct remission. It has been held to the following effect:

> "15. Guidelines relate to parole as well as furlough. There is a subtle distinction between the two which has been explained by the Courts from time to time. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising

officer for a specified period. Under the aforesaid guidelines, such a release of the prisoner is temporarily on some basic grounds. It is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies.

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18. Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission. A convict literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for atleast some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

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24. Not all people in prison are appropriate for grant of furlough. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, furlough program should be used as a tool to shape such adjustments.

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31. Insofar as those convicts whose conduct had not been found to be satisfactory and who had in the past escaped or attempted to escape from lawful custody or who have defaulted in any way in surrendering themselves were as

rightly excluded from the benefit of grant of furlough.

32. To this extent namely exclusion of the aforesaid categories may not pose a problem. Even in the Guidelines, 2010 same kind of provisions are made in Clause 26 which *inter alia* lay down that in order to obtain the furlough, the petitioner should not be a habitual offender; the release of the prisoner should not be considered dangerous or deleterious to the interest of national security or involvement in a pending investigation; in a case involving serious crime; he should not be a person whose presence is considered highly dangerous or prejudicial to the public peace and tranquility by the District Magistrate by his home district etc."

(14) After observing so, the Court found that the offences specified in Clause 26.4 are not to be treated per se ineligible for the grant of furlough. The said judgment was exclusively regarding release of a convict on furlough, which as noticed by the Bench stands on a different footing than parole. The parole is granted for good behavior.

(15) Entry 4 of List II of 7th Schedule empowers the legislature to legislate in respect of prisoners and the persons lodged therein. Therefore, the State Legislature has power to enact laws in relation to the prisoners/convicts. Such plenary legislative jurisdiction of the State Legislature is not rightly disputed by the counsel for the petitioners as well. The parole is not a right. It is a concession, which is extended on good conduct. A convict, who keeps mobile in custody even though it is prohibited, is not maintaining discipline in the jail. He is also liable to be proceeded for a punishment for possessing a prohibited article in jail and is liable to punishment as contained in Section 46 of the Prison Act, 1894. But after the punishment, the convict cannot be said to have maintained the good conduct, which alone entitles him for consideration for grant of parole. The punishment awarded is a penalty imposed for the misconduct, whereas parole is declined for not maintaining good conduct in the prison. Both have different cause and effect and thus, it cannot be said that on completion of punishment, the convict cannot be denied release on parole for the reason that he was found to be in possession of a mobile or a SIM card.

(16) The argument that the possession of a mobile or a SIM card is not of much consequence as it is of daily routine and a necessity. The rights of a prisoner are governed by the Jail Manual and the Prison Act,

1894. Para 630 of the Punjab Jail Manual, as applicable in the State of Haryana, classifies the punishments imposable under Section 46 of the Act into minor and major punishments. A Division Bench of this Court in CRWP No.665 of 2014 titled '***Pardeep Kumar Vs. Narcotic Control Bureau, Chandigarh***' decided on 10.03.2015 has observed that it is open to the State Government or to the State Legislature to rationalize the jail punishments in more scientific and reasonable method keeping in view the current requirements. It has been observed to the following effect:

> "Para 562 of the Punjab Jail Manual classifies the punishments imposable under 46 of the Act into minor and major punishments. On the other hand, para 630 of the Punjab Jail Manual, as applicable in the State of Haryana, classifies the punishments imposable under Section 46 of the Act into minor and major punishments. The consequences of jail punishments are contained in Rule 9 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, which disentitles a convict awarded a minor jail punishment that his parole case shall be initiated after six months from the date of punishment, whereas in case of a convict, who has been awarded a major jail punishment, his parole case shall be initiated after one year from the date of punishment. The extent and nature of punishment awarded by the Jail Superintendent is subject to judicial appraisal, in the manner enumerated above. However, we feel that the minor and major punishments require rationalization and it will be open to the State Government or to the State Legislature to rationalize the jail punishments in more scientific and reasonable method keeping in view the current requirements."

(17) Thus, a convict, who does not maintain jail discipline, is not entitled to parole as one of the conditions of grant of parole is good behavior in custody. Though mobile is a facility for use of citizens, but such right is not with the prisoner. The personal rights of a convict stand suspended including the right of free movement. Therefore, imposing a condition that use of mobile, which has the potential of misuse, will disentitle a convict for grant of parole, cannot be said to be unjustified, as it is a requirement introduced for maintaining discipline and a good behavior in jail.

(18) Though the offences of various kinds have been clubbed

within the definition of 'hardcore prisoner', but Legislature is competent to define a particular word, which is not necessarily in tune with dictionary or common use meaning. The deeming definition is given to meet out a particular situation and, therefore, such definition cannot be challenged on the ground that each class of the convict does not form a homogenous group. In fact, the different classes of convicts are separate and distinct classes, which for the purpose of parole have been clubbed. The objective of the Act to grant parole on maintaining of a good conduct by the prisoners, therefore, the State Legislature is competent to define hardcore prisoner to mean different category of convicts, which advances the object of the Statute that is good conduct in prison.

(19) In a judgment reported as ***Karnataka Bank Ltd.*** *versus* ***State of Andhra Pradesh & others***[3], the expression 'person' defined in the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987, which was at variance with the definition of a 'person' appearing in the General Clauses Act, 1897 was considered. The Hon'ble Supreme Court held to the following effect:

> "43. The definition of 'person' in Section 3 (42) of the General Clauses Act is undoubtedly illustrative and not exhaustive. The well known rule of interpretation regarding such inclusive definitions has always been to treat the other entities, who would not otherwise have come strictly within the definition, to be a part thereof, because of illustrative enactment of such definitions. The legislature is competent in its wisdom to define 'person' separately for the purposes of each of the enactment and different from the one in the General Clauses Act and create an artificial unit. The definition of 'person' in the General Clauses Act would not operate as any fetter or restriction upon the powers of the State Legislature to define 'person' and adopt a meaning different from as defined in the General Clauses Act."

(20) In ***K.N.Farms Industries (P) Ltd.*** *versus* ***State of Bihar***[4], the question arose before the Hon'ble Supreme Court was, whether a 'submerged water tank' would be a 'land' within the meaning of Section 2(f) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 as

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[3] (2008) 2 SCC 254

[4] (2009) 15 SCC 275

applicable in the State of Jharkhand. The Court held as under:

> "12. To put it differently, if a word is defined as A and B and includes C, D, E and F, the word "includes" is used in order to enlarge the meaning of the words A and B; and when it is so used, those words must be construed as comprehending not only what they signify according to their natural import (that is A and B) but also those things which the interpretation clause declares that they shall include (that is C, D, E and F). [*See* generally the observations in *Justice G.P. Singh's Principles of Statutory Interpretation*, 11th (2008) Edn., pp. 174-81.]
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> 22. But general meanings and perceptions, or decisions rendered with reference to statutes containing different definitions will not be of any assistance in interpreting a word which is clearly, specially and exhaustively defined in the Act itself. We will have to find out the meaning of the word, with reference to its definition in the Act.
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> 23. While the object of the Act can be one of the indicators used in interpretation, clear and specific words used cannot be ignored. In fact the learned Single Judge keeping in view the object of the Act, has held that only *tanks used for agricultural purposes* will be "land" for the purposes of the Act and not all tanks in general. Let us now examine the provisions of the Act to find out whether a "tank" used for agricultural purposes is land, as held by the High Court, keeping the above principles in view.
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> 30. Having regard to the clear and specific words used in the definition of "land", it is not possible to exclude land perennially covered with water, which includes tanks, from the definition of land. We therefore agree that tanks meant to provide water for agricultural/horticultural purposes are "land" for purposes of the Act."

(21) In another recent judgment reported as ***Commissioner of Central Excise Vs. M/s Detergents India Ltd.***[5], the Hon'ble Supreme

[5] (2015) 7 SCC 198

Court held that 'means' 'and includes' is a legislative device by which the 'includes' part brings by way of extension various persons, categories, or things which would not otherwise have been included in the 'means' part. The relevant extract reads is as under:

> "24. We find it difficult to agree with some of the conclusions reached in the aforesaid paragraph in Raliwolf Vs. UOI, 59 ELT 220 Bombay (1992). As has been stated by us above, "means" "and includes" is a legislative device by which the "includes" part brings by way of extension various persons, categories, or things which would not otherwise have been included in the "means" part. If this is so, obviously both parts cannot be read conjunctively. What is in the "includes" part is relatable only to the subject that is to be defined and takes within its sweep persons, objects or things which are not included in the first part. We have already pointed out that the reason for including holding and subsidiary companies in the "includes" part is so that the authorities may look behind the corporate veil. To say that the holding and subsidiary companies must in addition have a mutual interest in the business of each other is wholly .incorrect. Further, the word "and" which joins the two parts of the definition is not rendered meaningless. It is necessary because it precedes the word "includes" and brings in to the definition clause persons, objects, or things that would not otherwise be included within the "means" part."

(22) Keeping in view the aforesaid principle, the State Legislature can define different categories of offenders while defining the expression "hardcore prisoners", which fall within the legislative competence of the State Legislature. Consequently, we do not find that category of different convicts as a hardcore prisoner suffers from any vice and/or is arbitrary or discriminatory.

(23) The argument that amending Act would not be applicable to the convicts, who stand convicted prior to the insertion of Clause (aa) in Section 2, is again not tenable. The Division Bench of this Court in ***Jagpreet Singh's*** case (supra) has referred to judgments of Hon'ble Supreme Court in ***Varinder Singh*** *versus* ***State of Punjab & another***[6] and ***Harjit Singh*** *versus* ***State of Punjab***[7]**.** However**,** ***Varinder***

[6] (2014) 3 SCC 151
[7] (2011) 4 SCC 441

Singh's case (supra) pertains to a conviction of a jail offence under Section 45 of the Prisons Act, 1894, whereas in ***Harjit Singh's*** case (supra), again the question was of enhancement of a sentence for an offence under Section 18 of Narcotic Drugs & Psychotropic Substances Act, 1985 by virtue of notification dated 18.11.2009. Thus, both the judgments have no applicability to the facts of the present case. The issue raised in the present case is not of conviction, but of grant of parole, which is a concession, as laid down in ***Ajay Jadeja's*** case (supra) relied upon by the learned State counsel. The amended definition would be applicable to all convicts, who were convicted prior to amendment and insertion of Clause (aa) in Section 2 of the Act. The grant of parole is to be considered as per law applicable on the date of consideration of parole.

(24) In view of the above discussion, we do not find any merit in both the petitions. The same are dismissed.

Angel Sharma