

**(2017) 10 Supreme Court Cases 658 : (2018) 1 Supreme Court Cases (Cri) 90 :
2017 SCC OnLine SC 1109**

In the Supreme Court of India

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

RE-INHUMAN CONDITIONS IN 1382 PRISONS

Writ Petition (C) No. 406 of 2013[±] with IA No. 68248 of 2017, decided on September 15, 2017

A. Prisons, Prisoners and Probation of Offenders – Prison/Jail Reforms – Unnatural deaths in prisons – Implementation of Modern Prison Manual, 2016 and other guidelines and rules of Central Government and International Bodies – Directions issued for measures to be taken to prevent unnatural deaths in prisons, as far as possible

– Enforcing reforms as per Model Prison Manual – State and Central Government directed to conduct training and sensitisation programmes for senior police officials of all prisons on their functions, duties and responsibilities as also to educate prisoners about their rights and duties – All Governments, directed to constitute appropriate Boards of Visitors for initiating reforms in prisons in terms of Ch. 19 of Model Prison Manual – All Governments must also experiment in establishment of “open jails” or “open prisons” which was successful in Shimla (Himachal Pradesh) (See paras 27 to 31, 58.4, 58.9 and 58.10)


– Handling suicides – All Governments directed to follow NHRC Monograph which discusses causes and suggests remedies to prevent and reduce suicidal tendencies amongst prisoners – An important remedy is contact with outside world to reduce feeling of isolation, which method is also prescribed by Nelson Mandela Rules – Therefore, prison authorities also directed to consider extending time or frequency of meeting with family and legal counsel and explore possibilities of using phones and videoconferencing – Prison counsellors and support staff should be appointed to handle crisis situation and to reduce suicide rates – Clarified that success in reducing suicide can be achieved only by willingness and cooperation of prison authorities (See paras 10 to 16, 24, 58.5 and 58.6)

– Every unnatural **death** should be recorded and properly inquired into as per procedure – In this regard communications of NHRC and Nelson Mandela Rules should be followed (See paras 17 to 23, 25, 37 and 38) – Nelson Mandela Standard Minimum Rules for the Treatment of Prisoners, 2005 – Rr. 58 to 63 and 71 – Model Prison Manual 2016 – Ch. XIII Paras 13.38, 13.41, 13.42, 13.44, 13.62, 13.63 and Chs. XXII, XVI and XXI – Constitution of India – Arts. 21, 32 and 226 – Criminal Procedure Code, 1973, S. 176(1-A)

Held :

Sensitisation of prison authorities

The Central Government will ensure circulation within one month and in any event by 31-10-2017 of (i) the Model Prison Manual, (ii) the monograph prepared

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by NHRC entitled “Suicide in Prison – Prevention Strategy and Implication from Human Rights and Legal Points of View”, (iii) the communications sent by NHRC referred to above, (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson Mandela Rules, and (vi) the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross to the Director General or Inspector General of Police (as the case may be) in charge of prisons in every State and Union Territory. All efforts should be made, as suggested by NHRC and others, to reduce and possibly eliminate unnatural deaths in prisons and to document each and every **death** in prisons – both natural and unnatural.

(Paras 58.2, 9, 16)

The Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC), referred to

“Suicide in Prison — Prevention Strategy and Implication from Human Rights and Legal Points of View”, (NHRC Monograph, 2014), referred to

Model Prison Manual 2016

Chapter VII particularly Para 7.95.1 of the Model Prison Manual 2016 provides that in the event of a **custodial death**, the procedure laid down in CrPC and the guidelines issued by NHRC should be followed. It was submitted that the guidelines issued by NHRC are treated more or less as binding and are scrupulously followed.

(Para 27)

[Ed.: See paras 28 to 31 for guidelines in the Manual on accidents and suicide, epidemics and precautions, rehabilitation programmes for prisoners, grievance redressal system and complain box and rights and duties of prisoners, etc.]

The “Perspective” section of the Manual containing a section on the rights and duties of prisoners which includes the right to human dignity, the right to basic minimum needs, the right to communication, the right to access to law, the right against arbitrary prison punishment, the right to meaningful and gainful employment and finally, the right to be released on the due date. It is not at all clear whether this information is effectively passed on to the prisoners. It is not clear whether it is made available to all the prisoners and even if it is made available, whether it is in a local language that the prisoner understands or whether the contents of the handbook are explained to the prisoner in the event the prisoner is found to be illiterate. In the absence of a prisoner having any knowledge about his or her rights, a grievance redressal mechanism is quite meaningless.

(Para 31)


Prisoners Rights and Obligations, prepared by the Bureau of Police Research and Development, referred to

The State Governments should, in conjunction with the State Legal Services Authority (SLSA), the National and State Police Academy and the Bureau of Police Research and Development conduct training and sensitisation programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners. A copy of this order be sent to each SLSA to follow up and ensure compliance.

(Para 58.4)

Boards of Visitors for initiating reforms and open prisons/jails

The constitution of a Board of Visitors which includes non-official visitors is of considerable importance so that eminent members of society can participate in initiating reforms in prisons and in the rehabilitation of prisoners. Merely changing the nomenclature of prisons to “Correction Homes” will not resolve the problem.

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Some proactive steps are required to be taken by eminent members of society who should be included in the Board of Visitors. The State Governments are directed to constitute an appropriate Board of Visitors in terms of Chapter XXIX of the Model Prison Manual indicating their duties and responsibilities. This exercise should be completed by 30-11-2017.

(Para 58.9)

The suggestion of encouraging the establishment of “open jails” or “open prisons” is certainly worth considering. It was brought to our notice that the experiment in Shimla (Himachal Pradesh) and the semi-open prison in Delhi are extremely successful and need to be carefully studied. Perhaps there might be equally successful experiments carried out in other States as well and, if so, they require to be documented, studied and emulated.

(Para 58.10)

Handling suicides

As per NHRC monograph, the average suicide rate in prisons is over 50% more than in normal conditions. And that there are two primary causes for all jail suicides— the first is the environment in the jail, which is apparently “conducive” to suicidal behaviour, and the second is the crisis situation faced by an inmate.

(Paras 10 and 11)

“Suicide in Prison — Prevention Strategy and Implication from Human Rights and Legal Points of View”,

(NHRC Monograph, 2014), *referred to*

NHRC has suggested various protective measures that could be employed to reduce the number of suicides in prisons. Among them are visits and contact that the prisoner could have with the family, constructive occupation in prison, instilling hopes and plans for the future and support from staff.

(Para 14)

The General Assembly of the United Nations adopted the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) on 17-12-2015. As per said Rules, the prisoner should be allowed to communicate with his family and friends at regular intervals and should also be permitted to communicate and consult with a legal adviser of his or her choice. This by itself could have a soothing effect on the prisoner. Prisoners should be informed of important items of news through newspapers, periodicals or special institutional publications so that contact with the outside world is maintained. This, would substantially reduce the feeling of isolation that a prisoner has and would have an impact on his or her mental stability thereby reducing the possibility of any harmful activity by the prisoner.

(Para 24)

Nelson Mandela Standard Minimum Rules for the Treatment of Prisoners, 2005, *referred to*

While visits to prison by the family of a prisoner should be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also explore the possibility of using phones and videoconferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise.


(Para 58.6)

The success of efforts to prevent suicides in prisons depends on the ability and willingness to identify the vulnerability of each prisoner, provide necessary supervision and support and offer alternative ways of coping and reducing emotional distress. It is noted that any proposed piecemeal solution to the problem of suicides in prisons will not result in any long-term improvement.

(Para 15)

National Seminar on Prison Reforms on 15-4-2011 conducted by NHRC, *referred to*

The service of counsellors and support persons can be utilised to handle crisis situation and suicidal tendencies in prisoners. The State Governments are directed

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to appoint counsellors and support persons for counselling prisoners, particularly first-time offenders. In this regard, the services of recognised NGOs can be taken and encouraged.

(Para 58.5)

Custodial deaths — Need of proper reporting and proper inquiry

There are various communications sent by NHRC to the Chief Secretaries of all the States and the Union Territories. Said communications deal with and clarify the following: the subject of reporting of **custodial** deaths/rapes within 24 hours; that not only deaths in police custody but also deaths in judicial custody ought to be reported. That there is the necessity of video-recording of post-mortem examinations in cases of **custodial** deaths. That though the process of video-recording of the post-mortem examination would involve extra cost, human life is more valuable than the cost of video-recording and in any case, occasions necessitating video-recording should ideally be very limited. NHRC requested all the States and Union Territories to adopt the Model Autopsy Form and the additional procedure for inquest. The Model Autopsy Form was prepared after ascertaining the views of the States and discussing with experts in the field the necessity of having such a document. The Form was modelled on the United Nations Model Autopsy Protocol but was not adopted as it is. Some incidental improvements were made, particularly with regard to the conduct of inquests.

(Paras 17 to 22)

It is clear from the above that the role of NHRC is extremely important whenever there is an **unnatural death** in a prison. Although NHRC has issued detailed instructions from time to time, it does appear, however, that these instructions are not being taken seriously but are being followed more in the breach.

(Para 23)

Rule 71 of the Nelson Mandela Rules require that that any **custodial death**, disappearance or serious injury shall be reported without delay to a judicial or other competent authority that is independent of the

prison administration. The Mandela Rules require the prison administration to treat the body of a deceased prisoner with respect and dignity.

(Para 25)

Nelson Mandela Standard Minimum Rules for the Treatment of Prisoners, 2005, *referred to*

There was discrepancy of data between deaths reported in prisons as per NCRB and deaths reported in prisons as derived from the data available with NHRC. This discrepancy needs to be reconciled and adequate reasons must be provided for every **death** that takes place in a prison.

(Para 38)

In view of Section 176(1-A), CrPC, it is obligatory on the part of the State to ensure that an inquiry is conducted in respect of every **death** that takes place in custody.

(Para 37)

B. Prisons, Prisoners and Probation of Offenders – Prison/Jail Reforms – Unnatural deaths in prisons – Meaning of unnatural **death, requires clarification – National Crime Records Bureau or (NCRB) directed to: (a) clarify distinction between unnatural and natural deaths, and (b) explain sub-categorisation “others” within category of unnatural deaths – Constitution of India – Arts. 21, 32 and 226 – Preventive Detention – Words and Phrases – “Unnatural **death**”**



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Held :

National Crime Records Bureau or (NCRB) should explain and clarify the distinction between unnatural and natural deaths in prisons as indicated on the website of NCRB and in its annual reports and also explain the sub-categorisation “others” within the category of unnatural deaths. NCRB should also be required to sub-categorise natural deaths. The sub-categorisation and clarification should be complied with by 31-10-2017.

(Paras 58.3 and 5 to 9)

Inhuman Conditions in 1382 Prisons, In re, (2016) 3 SCC 700 : (2016) 2 SCC (Cri) 170, *referred to*

Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC), *referred to*

C. Constitution of India – Art. 21 and Sch. VII List II Entry 4 – Prisoners and undertrials – Better prison facilities and proper medical assistance or alternatively stoppage of overcrowding in prisons – Repeated Central Government advisories to State Governments regarding proper prison facilities not having any remedial effect – Directions issued

– Central Government directed to be more proactive and conduct sensitisation programmes for prison authorities – All Governments directed to conduct a study and performance audit of overall condition in prisons and take remedial steps whenever necessary – Medical assistance to all is a human right to which prisoners are also entitled – Experiences in Karnataka, W.B. and Delhi is an indication that human right to health is not given adequate importance in prisons

– Clarified that better prison facilities is a right of prisoner and duty of Government under Art. 21 – If a Government fails to provide same, it should accept reality and not oppose every bail application and should rethink before arresting and detaining persons particularly undertrials – Prisons, Prisoners and Probation of Offenders – Rights of Prisoners – Medical treatment – Human and Civil Rights – Prisoners/Convicts/Undertrials Rights

(Paras 32 to 36, 58.7 and 58.8)


Held :

Since “prisons” is a State subject as per Schedule VII List II Entry 4 of the Constitution, the Central Government has been issuing advisories to the State Governments. But said advisories look good on paper and do not seem to have any remedial effect. Therefore, Central Government should be more proactive and conduct sensitisation programmes for prison authorities. Even if Central Government has some constitutional limitations, it cannot be said that the Central Government need not share its expertise or give any guidance to the State Governments.

(Paras 32 and 33)

Compendium of Advisories on Prison Administration 2016 issued by the Government of India, *referred to*

Even prisoners are entitled to live a life of dignity. It is the duty and responsibility of all Governments to provide better facilities to prisoners. If a Government is unable to do so, it should be far more circumspect in arresting and detaining persons, particularly undertrial prisoners who constitute the vast majority

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of those in judicial custody. It should not oppose every bail application. It must accept the reality and not proceed on the basis that prisoners can be treated as chattel.

(Para 34)

Mandela Rules, *referred to*

As per the report of the Comptroller and Auditor General of India (CAG), 2014, Tihar Jail neither had adequate doctors, nor medical staff nor essential medicines. If these are the conditions in what is perhaps the “best prison” in the country, one wonders what is the position in other prisons across the country.

(Para 36)

The State Legal Services Authorities (SLSAs) should urgently conduct a study on the lines conducted by the Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan in respect of the overall conditions in prisons in the State and the facilities available. The study should also include a performance audit of the prisons, as has been done by CAG. SLSAs should also assess the effect and impact of various schemes framed by NALSA relating to prisoners. The Chief Justices of every High Court in the capacity of Patron-in-Chief of the SLSAs are directed to take up this initiative and, if necessary, set up a committee headed preferably by the Executive Chairperson of the State Legal Services Authority to implement the directions in present judgment.

(Para 58.7)

Providing medical assistance and facilities to inmates in prisons is a human right. The experiences in Karnataka, West Bengal and Delhi is an indication that the human right to health is not given adequate importance in prisons and that may also be one of the causes of unnatural deaths in prisons. The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary.


(Para 58.8)

D. Constitution of India — Arts. 21, 32 and 226 — Custodial deaths — Compensation — Identification of next kin of deceased — High Courts directed to institute suo motu writ petitions to identify next kin of victims of custodial deaths — It is a wholesome development that schemes for victim compensation have been framed by almost every State — Such Bench should also hear matters relating to difficulty in implementing directions issued in present judgment — Constitution of India — Arts. 21, 32 and 226 — Prisons, Prisoners and Probation of Offenders — Rights of Prisoners

Held :

Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realise that persons who suffer an unnatural death in a prison are also victims— sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence, the need to compensate the next of kin.

(Para 55)

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The Chief Justices of every High Court are directed to register a suo motu public interest petition with a view to identifying the next of kin of the prisoners who have admittedly died an unnatural death as revealed by NCRB during the period between 2012 and 2015 and even thereafter, and award suitable

compensation, unless adequate **compensation** has already been awarded.

(Para 58.1)

The directions issued in present judgment should be faithfully implemented by Union of India and State Governments. In the event of any difficulty in the implementation of the directions, the Bench hearing the suo motu public interest litigation in the High Court is at liberty to consider those difficulties and pass necessary orders and directions.

(Para 59)

E. Constitution of India — Arts. 21, 32 and 226 — Unlawful arrest, detention or **custodial harm/deaths — Remedies — Remedy of **compensation** — Basis, quantum and comparison with other remedies**

— (a) **Basis: **compensation** for **custodial death** not expressly provided in Constitution, though can be inferred from Art. 21, but is established by judicial precedents; and is based on principle of strict liability to which defence of sovereign immunity is not available — (b) Quantum depends upon facts of each case — (c) It is in addition to traditional remedies and not in derogation of them, though in a given case writ court can adjust damages received in a civil suit — International Law — International Conventions — International Covenant on Civil and Political Rights, 1966 — Art. 9(5) — **Compensation** for unlawful arrest — Tort Law — Public Law Torts**

(Paras 41 to 46)

F. Constitution of India — Art. 21 — **Compensation for invasion of right to life and personal liberty — When may be claimed and juristic basis for, explained**


Held :

A person is entitled to **compensation** if he is subject to illegal detention even after acquittal in a full dress trial. In case of disappearance of a person while in custody, the court can direct payment of **compensation** to the next of kin. A public law remedy is certainly available to claim **compensation** for the contravention of human rights and fundamental rights which are protected as a guarantee by our Constitution. As per Article 9(5) of the International Covenant on Civil and Political Rights, 1966 anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to **compensation**. Even when a prisoner is killed by a co-prisoner while in prison, it results in a deprivation of his life contrary to the law, for which the next of kin are entitled to **compensation**.

(Paras 41 to 45)

Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : 1983 SCC (Cri) 798; *Sebastian M. Hongray v. Union of India*, (1984) 3 SCC 82 : 1984 SCC (Cri) 407; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527; *Kewal Pati v. State of U.P.*, (1995) 3 SCC 600 : 1995 SCC (Cri) 556, *relied on*

While there is no express provision in the Constitution for grant of **compensation**, this right has been judicially evolved in cases of established unconstitutional deprivation of personal liberty or life. Monetary or pecuniary **compensation** is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is

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vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of **compensation** from the State, which shall have the right to be indemnified by the wrongdoer. The quantum of **compensation** will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the *established* invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of **compensation** as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

(Para 46)

D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92, *relied on*

G. Constitution of India — Arts. 21, 32 and 226 — **Custodial deaths — Need of reform and sensitisation of prison authorities — Directed accordingly — Clarified, unless authorities realise that **custodial death** is a crime, it would not stop — All forms of **custodial** violence make it abhorrent and invite disparagement from all sections of civilised society — Dignity of individual is**

not a plaything for those in authority

— Philosophical basis of punishment — Prison authorities must realise that our criminal justice system believes in reformation and rehabilitation and not retribution and deterrence — Unless State changes this mindset, prison reforms can never be effective and long lasting and unnatural deaths would continue unabated

(Paras 1, 2, 49, 50, 51 and 54)

Held :

There are several such cases—documented and undocumented—all over the country where the court awarded compensation for custodial deaths, but in spite of this there seems to be no let up in custodial deaths. This is not a sad but a tragic state of affairs indicating the apparent disdain of the State to the life and liberty of individuals, particularly those in custody. The time to remedy the situation is long past and yet, there seems to be no will and therefore no solution in sight.

(Para 49)

Ajab Singh v. State of U.P., (2000) 3 SCC 521 : 2000 SCC (Cri) 718; *Murti Devi v. State (NCT of Delhi)*, (1998) 9 SCC 604 : 1998 SCC (Cri) 1330; *Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 290 : (2014) 4 SCC (Cri) 205; *Nina Rajan Pillai v. Union of India*, 2011 SCC OnLine Del 2252 : (2011) 180 DLT 104; *Kewalbai v. State of Maharashtra*, 2013 SCC OnLine Bom 773 : (2013) 3 Bom CR (Cri) 601; *Bheduki Buragohain v. State of Assam*, 2013 SCC OnLine Gau 429 : (2013) 6 Gau LR 517; *Madhuben Adesara v. State of Gujarat*, 2016 SCC OnLine Guj 1956; *Banalata Dash v. State of Orissa*, AIR 2012 Ori 97; *Amandeep v. State of Punjab*, 2012 SCC OnLine P&H 19844 : (2013) 169 PLR 191; *Tmt. Rohini Lingam v. State*, 2008 SCC OnLine Mad 1249 : (2008) 5 MLJ 822; *Sabu E.K. v. State of Kerala*, 2016 SCC OnLine Ker 22210 : (2016) 4 KLJ 105; *Ravindra Nath Awasthi v. State of U.P.*, 2009 SCC OnLine All 337 : (2009) 2 AWC 2090; *Madina v. State of Rajasthan*, 2000 SCC OnLine Raj 203 : 2000 Cri LJ 4484; *Dukhuram v. State of Chhattisgarh*, (2011) 3 MPHT 81; *Santosh Kumari v. State of H.P.*, 2007 SCC OnLine HP 45 : 2008 ACJ 1684; *State of J&K v. Sajad Ahmad Dar*, 2015 SCC OnLine J&K 160; *Meena Singh v. State of Bihar*, 2001 SCC OnLine Jhar 74 : 2001 Cri LJ 3573; *Lawyers for Justice v. State of M.P.*, 2015 SCC OnLine MP 7488 : AIR 2015 MP 212, *relied on*

The constitutional courts can go on delivering judgment after judgment on this issue and award compensation, but unless the State realises that custodial death is itself a crime and monetary compensation is not necessarily the only appropriate relief that can be granted to the next of kin of the deceased, such unnatural deaths



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will continue unabated. Therefore, what is needed is a review of all prisons with a humanitarian nuance.

(Para 54)

Custodial violence has always been a matter of great concern for all civilised societies. All forms of custodial violence make it abhorrent and invite disparagement from all sections of civilised society.

(Para 1)

Tukaram v. State of Maharashtra, (1979) 2 SCC 143 : 1979 SCC (Cri) 381, *referred to*

There must be a greater degree of sensitivity among those in authority with regard to persons in custody and it has been the endeavour of the constitutional courts to consistently flag this issue. The results have been somewhat mixed but the effort will continue as long as Article 21 remains in our Constitution. This message goes out loud and clear, as also the message that the dignity of the individual is not a plaything for those in authority.

(Para 2)

Steps are being taken in some form or the other by the Central Government and hopefully by the State Governments to ameliorate the conditions of prisoners across the country and thereby reduce the number of unnatural deaths. These steps give an impression that there is nothing to be seriously worried about. However, the statistics provided by NCRB reflect the ground reality and dispel that impression. It is time for the State to go beyond projections through circulars and advisories and actually come to grips with reality as it exists in a very large number of prisons. What is practised in our prisons is the theory of retribution and deterrence and the ground situation emphasises this, while our criminal justice system believes in reformation and rehabilitation and that is why handcuffing and solitary confinement are prohibited. It is this "rejection" of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths.

(Para 50)

It must be appreciated by the State that the common person does not violate the law for no reason at all. It is the circumstances that lead to a situation where there is a violation of law. On many occasions, such a violation may be of a trivial nature or may be a one-time aberration and, in such circumstances, the offender has to be treated with some degree of humanity. At least in such cases, retribution and deterrence cannot be an answer to the offence and the offender. Unless the State changes this mindset and takes steps to give meaning to life and liberty of every prisoner, prison reforms can never be effective or long lasting.


(Para 51)

H. Juvenile Justice and Children's Acts – Child Care Institutions and Borstal Schools and Institutions – Custodial death of children in child care institutions – Surprise expressed that Governments were not carrying out any study and that no data was available in this regard – Directions, thus issued for tabulation of children who suffered an unnatural death in child care institutions – Necessary steps should be taken in this regard by 31-12-2017 – Crimes Against Women and Children – Custodial deaths – Custodial death of children in child care institutions – Tabulation of data, directed

(Paras 56, 57 and 58.11)

Held :

One of the issues not touched upon relates to the custodial death of children in child care institutions under the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as the Juvenile Justice (Care and Protection of Children) Act, 2015. There does not appear to be any study carried out in this regard and it is rather

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unfortunate that the Central Government and the State Governments are oblivious to the possibility of death of children in custody in child care institutions. This is distressing. The pain and anguish of the next of kin of children who pass away in custody is not less, but more than the pain and anguish of the next of kin of any prisoner who suffers an unnatural death in custody. It seems that apart from being "voiceless", such children are also dispensable.

(Para 56)

There is no documentation on the number of unnatural deaths (if any) of children in child care institutions and this should now be on the agenda of the Central Government and the State Governments (particularly the Department concerned with the welfare of children) with far greater concern than has been shown so far. The unnatural death of any child in need of care and protection or in conflict with law and in a child care institution needs attention since it is these voiceless children who need to be heard. It is time that unnatural deaths of children in child care institutions are seriously looked into by all concerned if we are to provide the children of our country with a better future.

(Para 57)

The Ministry of Women and Child Development of the Government of India which is concerned with the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 is directed to discuss with the officers concerned of the State Governments and formulate procedures for tabulating the number of children (if any) who suffer an unnatural death in child care institutions where they are kept in custody either because they are in conflict with law or because they need care and protection. Necessary steps should be taken in this regard by 31-12-2017.

(Para 58.11)

SS-D/59111/CR

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4. 2015 SCC OnLine MP 7488 : AIR 2015 MP 212, *Lawyers for Justice v. State of M.P.* 683f
5. 2015 SCC OnLine J&K 160, *State of J&K v. Sajad Ahmad Dar* 683a
6. (2013) 14 SCC 290 : (2014) 4 SCC (Cri) 205, *Rohtash Kumar v. State of Haryana* 68
7. 2013 SCC OnLine Bom 773 : (2013) 3 Bom CR (Cri) 601, *Kewalbai v. State of Maharashtra* 68
8. 2013 SCC OnLine Gau 429 : (2013) 6 Gau LR 517, *Bheduki Buragohain v. State of Assam* 68:
9. 2012 SCC OnLine P&H 19844 : (2013) 169 PLR 191, *Amandeep v. State of Punjab* 68:

10. AIR 2012 Ori 97, <i>Banalata Dash v. State of Orissa</i>	68:
11. 2011 SCC OnLine Del 2252 : (2011) 180 DLT 104, <i>Nina Rajan Pillai v. Union of India</i>	681e
12. (2011) 3 MPHT 81, <i>Dukhuram v. State of Chhattisgarh</i>	68:
13. 2009 SCC OnLine All 337 : (2009) 2 AWC 2090, <i>Ravindra Nath Awasthi v. State of U.P.</i>	682f
14. 2008 SCC OnLine Mad 1249 : (2008) 5 MLJ 822, <i>Tmt. Rohini Lingam v. State</i>	682a
15. 2007 SCC OnLine HP 45 : 2008 ACJ 1684, <i>Santosh Kumari v. State of H.P.</i>	683c
16. 2001 SCC OnLine Jhar 74 : 2001 Cri LJ 3573, <i>Meena Singh v. State of Bihar</i>	683e
17. (2000) 3 SCC 521 : 2000 SCC (Cri) 718, <i>Ajab Singh v. State of U.P.</i>	68:
18. 2000 SCC OnLine Raj 203 : 2000 Cri LJ 4484, <i>Madina v. State of Rajasthan</i>	68:
19. (1998) 9 SCC 604 : 1998 SCC (Cri) 1330, <i>Murti Devi v. State (NCT of Delhi)</i>	68:
20. (1997) 1 SCC 416 : 1997 SCC (Cri) 92, <i>D.K. Basu v. State of W.B.</i>	68f
21. (1995) 3 SCC 600 : 1995 SCC (Cri) 556, <i>Kewal Pati v. State of U.P.</i>	680c
22. (1993) 2 SCC 746 : 1993 SCC (Cri) 527, <i>Nilabati Behera v. State of Orissa</i>	68f
23. (1984) 3 SCC 82 : 1984 SCC (Cri) 407, <i>Sebastian M. Hongray v. Union of India</i>	67:
24. (1983) 4 SCC 141 : 1983 SCC (Cri) 798, <i>Rudul Sah v. State of Bihar</i>	679a

25. (1979) 2 SCC 143 : 1979 SCC (Cri) 381, *Tukaram v. State of Maharashtra*

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— **Custodial** violence has always been a matter of great concern for all civilised societies. **Custodial** violence could take the form of third degree methods to extract information—the method used need not result in any physical violence but could be in the form of psychological violence. **Custodial** violence could also include a violation of bodily integrity through sexual violence—it could be to satisfy the lust of a person in authority or for some other reason. The “Mathura rape case¹” is one such incident that most are familiar with. **Custodial** violence could, sometimes, lead to the **death** of its victim who is in a terribly disadvantaged and vulnerable condition. All these forms of **custodial** violence make it abhorrent and invite disparagement from all sections of civilised society.



2. Like most societies, we are not strangers to **custodial** violence and unnatural deaths but our vibrant democracy permits us to debate and discuss these issues with rational arguments. However, right sounding noises critical of **custodial** violence (in any form) cannot achieve any useful purpose unless persons in authority hear the voices of the victims or the silence of the dead and act on them by taking remedial steps. There must be a greater degree of sensitivity among those in authority with regard to persons in custody and it has been the endeavour of the constitutional courts in our country, over several decades, to consistently flag this issue. The results have been somewhat mixed but the effort will continue as long as Article 21 remains in our Constitution. This message goes out loud and clear, as also the message that the dignity of the individual is not a plaything for those in authority.

3. Chief Justice R.C. Lahoti highlighted one aspect of **custodial** deaths, namely, unnatural deaths in prisons. This was through a letter addressed to this Court which has been treated as a public interest litigation. We have been very ably assisted in understanding the concern raised and in appreciating different perspectives on the issue by the learned Amicus Curiae Mr Gaurav Agrawal who has spent considerable time and effort in placing all relevant material before us and for this he deserves our gratitude.

4. In our judgment and order of 5-2-2016², we had drawn attention to four issues regarding prisons raised in the letter addressed by former Chief Justice Lahoti. The four issues are:

- (i) Overcrowding in prisons;
- (ii) Unnatural **death** of prisoners;
- (iii) Gross inadequacy of staff, and
- (iv) Available staff being untrained or inadequately trained.

5. In the order of 5-2-2016², we had dealt with the issue of overcrowding in prisons and had issued certain directions. In the present decision, we consider unnatural deaths in prisons. On this issue of unnatural deaths in prisons, the only reliable information available is from the National Crime Records Bureau or NCRB. The website of NCRB³ indicates that deaths in judicial custody, both natural and unnatural, are as under:

Year	Natural deaths	Unnatural deaths
2012	1345	126
2013	1482	115
2014	1507	195

2015	1469	115
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6. The distinction made by NCRB between natural and unnatural deaths is unclear. For example, if a prisoner dies due to lack of proper medical attention or timely medical attention, would that be classified as a natural **death** or an



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unnatural **death**? This needs to be explained as submitted by the learned Amicus Curiae.

7. Be that as it may, the break-up of unnatural deaths given by NCRB on its website is as under:

Year	Suicide	Murder by inmates	Death due to firing	Assault by outside elements	Negligence by jail staff	Others
2012	87	4	10	4	0	22
2013	70	8	1	12	0	23
2014	94	12	2	4	1	82
2015	77	11	0	7	0	19

8. Again, there is a lack of clarity in the classification of unnatural deaths in the category of "others". What does this category encompass? We have not been provided any information in this regard by the Union of India and it is submitted by the learned Amicus Curiae, that NCRB should be directed to explain the difference not only between a natural **death** and an unnatural **death** but also to clarify the sub-categorisation of "others" unnatural deaths.

9. On the issue of defining natural and unnatural deaths, the learned Amicus Curiae drew our attention to the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). According to ICRC, "**death**" is the irreversible cessation of all vital functions, including brain activity. **Death** is "natural" when it is caused solely by disease and/or the aging process. It is "unnatural" when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (**death** by accident). We have perused the guidelines provided by ICRC and are of the view that these guidelines deserve consideration and circulation by the Central Government and all the State Governments.

NHRC and suicide prevention

10. It has been pointed out by the learned Amicus Curiae that a disproportionately large number of unnatural deaths are attributable to suicides. In this regard, it has been brought to our notice by the learned Amicus Curiae that in relation to suicides in prisons, the National Human Rights Commission or NHRC has published a monograph sometime in December 2014 entitled "Suicide in Prison — Prevention Strategy and Implication from Human Rights and Legal Points of View". This monograph records that during the period 2007-2011, deaths in prisons on account of suicide formed 71% of the total number of unnatural deaths. It was also pointed out that the average suicide rate among the general public for this period is 11 (per 100,000) whereas the average suicide rate in prison is 16.9 (per 100,000). In other words, the average suicide rate in prisons is over 50% more than in normal conditions. The monograph refers to certain communications issued by NHRC from time to time on the aspect of **custodial** deaths, but we will refer to them in somewhat greater detail a little later.



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11. The study conducted by NHRC as reflected in the monograph suggests that there are two primary causes for all jail suicides—the first is the environment in the jail, which is apparently “conducive” to suicidal behaviour, and the second is the crisis situation faced by an inmate.

12. Detailing the characteristics of a prison environment that make suicides in prisons more likely, NHRC monograph mentions the following:

1. Authoritarian environment
2. No apparent control over the future
3. Isolation from family, friends and community
4. The shame of incarceration
5. Dehumanising aspects of incarceration
6. Fears
7. Staff insensitivity to the arrest and incarceration phenomenon
8. Hostility and bullying by other inmates
9. Lack of adequate medical and psychological counselling and treatment facility
10. Delay in deciding the parole.

13. Similarly, the characteristics of a crisis situation are mentioned and they are as follows:

1. Recent excessive drinking and/or use of drugs
2. Recent loss of stabilising resources
3. Severe guilt or shame over the offence
4. Same-sex rape
5. Current mental illness
6. Poor health or terminal illness
7. Approaching an emotional breaking point.

14. NHRC has suggested various protective factors or measures that could be employed to reduce the number of suicides in prisons. Among them are visits and contact that the prisoner could have with the family, constructive occupation in prison, instilling hopes and plans for the future and support from staff.

15. NHRC also conducted a National Seminar on Prison Reforms on 15-4-2011. The recommendations made in the National Seminar have also been indicated in the monograph as also some actionable points for suicide prevention programmes. In its conclusion, NHRC has recorded that the success of efforts to prevent suicides in prisons depends on the ability and willingness to identify the vulnerability of each prisoner, provide necessary supervision and support and offer alternative ways of coping and reducing emotional distress. It is noted that any proposed piecemeal solution to the problem of suicides in prisons will not result in any long-term improvement.



16. What we have mentioned above is only a brief indication of the extent to which NHRC has put in an effort to bring about a composite monograph and a detailed study on suicides in prisons. In our view, this would certainly be useful to prison officials and staff in reducing, if not eliminating suicides in prisons. The monograph prepared by NHRC, in our opinion, deserves to be freely distributed amongst the staff and prisons all over the country since it is a document of immense utility insofar as suicide prevention in prisons is concerned.

Relevant communications issued by NHRC

17. Apart from the above efforts of NHRC, our attention has been drawn by the learned

Amicus Curiae to various communications sent by NHRC to the Chief Secretaries of all the States and the Union Territories. The first such communication is dated 14-12-1993 on the subject of reporting of **custodial** deaths/rapes within 24 hours. A request was made in the communication that District Magistrates and Superintendents of Police may be given suitable instructions to report to the Secretary General of NHRC any **custodial death** or **custodial** rape within 24 hours of occurrence or of these officers coming to know of such an incident.

18. Another communication dated 21-6-1995 was sent by NHRC to all the Chief Secretaries of States and the Union Territories clarifying that not only deaths in police custody but also deaths in judicial custody ought to be reported. This clarified the communication of 14-12-1993 which was perhaps misunderstood by the Chief Secretaries and their subordinates to mean that the intention of NHRC was to obtain information only with regard to deaths in police custody and not deaths in judicial custody.

19. On 10-8-1995, NHRC addressed a communication to the Chief Ministers of all the States on the necessity of video-recording of post-mortem examinations in cases of **custodial** deaths. The reason behind this communication was that a post-mortem report is a very valuable record and has considerable importance in assisting in drawing conclusions on the cause of **death** of a person, particularly in a police lock-up or in a jail. NHRC noted that though the process of video-recording of the post-mortem examination would involve extra cost, human life is more valuable than the cost of video-recording and in any case, occasions necessitating video-recording should ideally be very limited.

20. NHRC addressed a communication on 27-3-1997 to the Chief Ministers/Administrators of all the States/Union Territories requesting adoption of the Model Autopsy Form and the additional procedure for inquest. The Model Autopsy Form was prepared after ascertaining the views of the States and discussing with experts in the field the necessity of having such a document. The Form was modelled on the United Nations Model Autopsy Protocol but was not adopted as it is. Some incidental improvements were made, particularly with regard to the conduct of inquests. The communication enclosed therewith the Model Autopsy Form and the additional procedure for inquest as annexures to the said letter.



21. NHRC sent a communication dated 3-1-2001 to all the Home Secretaries regarding the revised instructions to be followed while sending post-mortem reports in cases of **custodial death**. In order to streamline the procedure, NHRC issued certain instructions and among them were the following:

1. The post-mortem report along with the videograph and the magisterial enquiry report must be sent to NHRC within two months of the incident.

2. The post-mortem report should be sent in the pro forma attached to the letter dated 27-3-1997.

3. The magisterial enquiry into a **custodial death** should be completed as soon as possible but within a period of two months.

4. In some cases of **custodial death**, the viscera are sent for examination after the post-mortem examination and a report is called for. Since this may take some time, it was instructed that the post-mortem report and other documents should be sent to NHRC without waiting for the viscera report, which could be sent later on.

22. On 21-12-2001, NHRC addressed a communication to all Chief Ministers and Administrators of all the States and Union Territories giving modified instructions regarding videography of post-mortem examinations in respect of deaths in judicial custody. It was clarified that the requirement of videographing of post-mortem

examinations in respect of deaths in jail would be applicable only where the preliminary inquest by the Magistrate had raised suspicion of foul play or where any complaint alleging foul play was made to the authorities concerned or there was any other reason to suspect foul play.

23. It is clear from the above that the role of NHRC is extremely important whenever there is an unnatural death in a prison. Although NHRC has issued detailed instructions from time to time, it does appear, however, that these instructions are not being taken seriously but are being followed more in the breach.

Nelson Mandela Rules

24. The learned Amicus Curiae submitted that the General Assembly of the United Nations adopted the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) on 17-12-2015. These Rules provide useful internationally accepted guidelines for implementation by prison administrations across the country. He drew our particular attention to Rules 58 to 63 which deal with prisoner contact with the outside world. It was submitted that merely because a person is in prison, it does not mean that he or she should be cut off from the outside world. In fact, the prisoner should be allowed to communicate with his family and friends at regular intervals and should also be permitted to communicate and consult with a legal adviser of his or her choice. This by itself could have a soothing effect on the prisoner. He submitted that prisoners should be informed of important items of news through newspapers, periodicals or special institutional publications so that contact with the outside world is maintained. This, according to the learned Amicus Curiae, would substantially reduce the feeling of isolation that a prisoner has and would have



an impact on his or her mental stability thereby reducing the possibility of any harmful activity by the prisoner.

25. On the specific issue of custodial deaths, the learned Amicus Curiae drew our attention to Rule 71 of the Nelson Mandela Rules to submit that any custodial death, disappearance or serious injury shall be reported without delay to a judicial or other competent authority that is independent of the prison administration. The learned Amicus Curiae also pointed out that the Mandela Rules require the prison administration to treat the body of a deceased prisoner with respect and dignity.

Model Prison Manual

26. The learned Attorney General responded to the submissions of the Amicus Curiae by making a preliminary submission before adverting to the issue of unnatural deaths in prisons. He submitted that the subject of prisons was a State subject in Schedule VII List II Entry 4 of the Constitution and as such the Central Government could not legislate on the subject or pass any binding directions but could only issue advisories to the State Governments. Really therefore, the burden of improving prison conditions was on the State Governments but the Central Government would be more than willing to render assistance to this Court and to the States in improving prison conditions, within constitutional limits. With this caveat, the learned Attorney General adverted primarily to the Model Prison Manual 2016 issued by the Government of India through the Ministry of Home Affairs.

27. It was submitted that Chapter VII of the Manual and particularly Para 7.95.1 thereof, provides that in the event of a custodial death, the procedure laid down in the Code of Criminal Procedure, 1973 and the guidelines issued by NHRC should be followed. On this basis, it was submitted that the guidelines issued by NHRC are treated more or less as binding and are scrupulously followed.

28. Reference was also made to Chapter XIII of the Manual and the section therein on

“Accidents and Suicides”. Particular reference was made to Para 13.38 which is to the effect that when a sudden or violent **death** or suicide takes place in a prison, immediate notice shall be sent to the Superintendent and the Medical Officer concerned. Para 13.41 relates to custody of articles that could be used to commit suicide such as knives and tools used in workshops and barber's or tailor's equipment as well as ropes for wells. It is provided that care should be taken that no such object is left about in the prison that may be used for committing suicide. In fact in Para 13.42 it is stated that prisoners with apparently suicidal tendencies should be carefully watched and not left alone in a cell. Such prisoners should also be referred to counsellors and psychiatrists and should be supervised closely. Chapter XIII of the Manual also provides that reasonable caution should be taken to guard against accidents when convicts are employed on dangerous work such as blasting, excavation or other works of a dangerous character. It is also provided in Para 13.44 that poisonous drugs, surgical instruments and other similar items should not be left within the reach of prisoners.

29. The said Chapter XIII of the Manual contains a section devoted to the issue of prevention of fires and yet another section is devoted to epidemics and



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precautions to be taken when an epidemic occurs such as cholera, enteric fevers, gastroenteritis, etc. It is provided that infected prisoners should be segregated and kept under medical observation and appropriately treated. Para 13.62 provides that whenever an epidemic occurs, the Medical Officer shall at once arrange for vaccination or inoculation as the case may be of all prisoners, prison personnel and members of their families. Para 13.63 provides that overcrowding must be strictly avoided both in the hospital as well as in every cell and ward. This Chapter also contains a section devoted to hunger strikes and the procedure to be followed in cases of hunger strikes and forcible feeding of prisoners on a hunger strike.

30. The learned Attorney General brought to our notice that NGOs also have a role to play in rehabilitation programmes of prisoners as mentioned in Chapter XXII of the Manual. He also submitted that legal aid is provided to prisoners and in fact Chapter XVI of the Manual is devoted entirely to legal aid and the right of a prisoner to free legal representation or legal aid. There is also a reference in the Manual to the Under Trial Review Committee adverted to in our order dated 5-2-2016².

31. The learned Attorney General submitted that there exists a grievance redressal system as mentioned in Chapter XXI of the Manual. Consequently, if any prisoner has any grievance, he or she can bring it to the notice of the authorities through a complaint box installed in the prison at an easily accessible place. In this context, he drew our attention to the “Perspective” section of the Manual containing a section on the rights and duties of prisoners which includes the right to human dignity, the right to basic minimum needs, the right to communication, the right to access to law, the right against arbitrary prison punishment, the right to meaningful and gainful employment and finally, the right to be released on the due date. It is not at all clear whether this information is effectively passed on to the prisoners. Our attention was also drawn to a handbook for prisoners captioned *Prisoners Rights and Obligations* prepared by the Bureau of Police Research and Development. While we have no comment to make on the contents of the handbook, it is again not clear whether it is made available to all the prisoners and even if it is made available, whether it is in a local language that the prisoner understands or whether the contents of the handbook are explained to the prisoner in the event the prisoner is found to be illiterate. In the absence of a prisoner having any knowledge about his or her rights, a grievance redressal mechanism is quite meaningless.

Compendium of advisories issued by the Government

32. The learned Attorney General then placed before us a Compendium of Advisories on

Prison Administration 2016 issued by the Government of India. This was in the context of his submission that since "prisons" is a State subject as per Schedule VII List II Entry 4 of the Constitution, all that the Central Government can do is to issue advisories to the State Governments on the subject of prisons. The learned Attorney General submitted that advisories had been issued from time to time to the State Governments on a variety of issues, including on the issue of prison administration as well as stress relieving



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programmes such as yoga and meditation courses, Art of Living courses, Pranik courses and Vipassana.

33. All that we can say in this regard is that while the Central Government may have noble intentions and is perhaps taking steps to improve prison administration and to bring about reforms in prisons, the fact remains that conditions in prisons leave a lot to be desired and there are quite a few unnatural deaths in prisons. Suggestions and recommendations made by the Central Government do look good on paper but they do not seem to have any remedial effect. Perhaps it is time that the Ministry of Home Affairs takes a more proactive interest in prisons and prison reforms by having sensitisation programmes for those at the helm of affairs in prisons so that there is a positive impact on the ground. After all, even if it is assumed that the Central Government has certain constitutional limitations with regard to prison management, surely, it cannot be said that the Central Government need not share its expertise or give any guidance to the State Governments.

34. Adverting to the Nelson Mandela Rules, the learned Attorney General also expressed the view that the State Governments have several development priorities and while they will certainly look after the interests of prisoners, there are other issues that might require greater attention and greater financial commitment. While this may be so, we are clearly of the view that Article 21 of the Constitution cannot be put on the back-burner and as mentioned in the Mandela Rules even prisoners are entitled to live a life of dignity. Therefore, no State Government can shirk its duties and responsibilities for providing better facilities to prisoners. If a State Government is unable to do so, it should be far more circumspect in arresting and detaining persons, particularly undertrial prisoners who constitute the vast majority of those in judicial custody. The State Governments and the prosecution do not have to oppose every bail application nor do they have to ask for the remand of every suspect pending investigation. If the fundamental right to life and liberty postulated by Article 21 of the Constitution is to be given its true meaning, the Central Government and the State Governments must accept reality and not proceed on the basis that prisoners can be treated as chattel.

Challenges indicated by the Comptroller and Auditor General

35. The National Forum for Prison Reforms, an intervenor in the present petition, submitted that there should be a "performance audit" by the Comptroller and Auditor General in respect of prisons so that it is known whether all prisons are in fact adhering to the provisions of the Model Prison Manual or at least the rules and regulations framed by the State Government for the management of prisons.

36. Our attention was drawn to the report of the Comptroller and Auditor General of India (CAG) in respect of the Government of NCT of Delhi for the year ended 31-3-2014 in relation to social, general and economic sectors. The submission made by the learned counsel appearing for the National Forum was that as a result of what could be termed as a performance audit, CAG provided some very useful suggestions. In the particular audit referred to, it was pointed out that the hospital in Tihar Jail was not equipped to face any emergency situation as there was a shortage of doctors and other medical staff ranging



from 18% to 62%. A reference was also made in the report to the problem of substance abuse in prisons and the shortcomings noted in the Drug De-addiction Centre in Tihar Jail. One of the shortcomings was the non-availability of essential medicines for a period ranging from one to thirty-four months. If these are the conditions in what is perhaps the "best prison" in the country, we shudder to think what the position would be in other prisons across the country.

37. The learned counsel also made a reference to Section 176(1-A) of the Code of Criminal Procedure, 1973 which mandates that where there is a **death** or disappearance from the custody of the police or any other custody authorised by a Magistrate or a court, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.⁴ It was submitted that in view of the provisions of law, it was



obligatory on the part of the State to ensure that an inquiry is conducted in respect of every **death** that takes place in custody.

38. The need for an inquiry into every **death** in custody was also emphasised by the learned Amicus Curiae, who submitted that there was discrepancy of data between deaths reported in prisons as per NCRB and deaths reported in prisons as derived from the data available with NHRC. It was submitted by the learned Amicus Curiae that this discrepancy needs to be reconciled and adequate reasons must be provided for every **death** that takes place in a prison.

Suggestions of the learned Amicus Curiae

39. Taking all these submissions into consideration, the learned Amicus Curiae suggested that we issue, amongst others, the following directions:

39.1. The treatment of prisoners should be more humane and the dehumanising effect of imprisonment should be reduced.

39.2. The involvement of NGOs should be encouraged especially with first-time offenders.

39.3. Counselling should be encouraged and the State Governments should engage the services of psychologists or social counsellors who could visit the prisons on a daily basis to counsel prisoners, particularly first-time offenders. The learned Amicus Curiae acknowledged the contribution made by the Inspector General (Prisons), Karnataka for this suggestion.

39.4. A prisoner should be enabled to communicate with family members and to the extent possible, the meeting time available to a prisoner should be extended. If possible, a prisoner may also be allowed to speak to his family on telephone.

39.5. A prisoner should have access to legal services including legal aid. In this context, the learned Amicus Curiae referred to a report prepared under the auspices of the Bihar State Legal Services Authority by Ms Smita Chakraborty on her experiences in prisons in Bihar which suggests that many inmates do not voluntarily approach the legal aid clinics and so they must be encouraged to do so.

39.6. A status report prepared by the Commonwealth Human Rights Initiative on the implementation of the legal aid schemes in Rajasthan particularly the NALSA (Free and Competent Legal Services) Regulations, 2010 and the NALSA (Legal Aid Clinics) Regulations, 2011, suggests that the basic mechanism to ensure legal representation and

advice is absent in a majority of sub-jails.

39.7. There should be an independent mechanism for entertaining the grievances of inmates without putting the inmates into trouble with the prison staff or other inmates. A reference in this regard was made to Rule 56 and Rule 57 of the Mandela Rules.

39.8. Overcrowding in jails should be reduced and that might help in reducing the possibility of suicides by the prisoners. It is also suggested by the learned Amicus Curiae that the concept of open jails (of which there are 54 as mentioned in the statistics provided by NCRB) should be encouraged.



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39.9. The learned Amicus Curiae laid stress on providing basic medical facilities to the inmates which could even be in the form of a primary health centre. In this regard, the learned Amicus Curiae referred to the discussions that he had with the Director General of Police (Prisons), Karnataka, the Welfare Officer in Tihar, the former Inspector General of Police (Prisons), West Bengal and the report of Ms Smita Chakraborty which suggests that medical facilities in most prisons do not meet the minimum requirements of medical care.

39.10. The learned Amicus Curiae laid great stress on the constitution of a Board of Visitors comprising official and non-official visitors. The learned Amicus Curiae drew attention to an advisory issued on 18-2-2011 by the Central Government for the appointment and working of non-official visitors for prisons.

39.11. The learned Amicus Curiae endorsed the suggestion of conducting performance audits for prisons across the country.

40. According to the learned Amicus Curiae, if these (and other) directions are given to the State Governments, prison reforms will become far more meaningful and the level of unnatural deaths will decrease.

Compensation for unnatural deaths

41. The issue of **compensation** for unnatural deaths in custody is no longer res integra.

42. One of the earliest cases where this Court granted **compensation** in a petition under Article 32 of the Constitution is *Rudul Sah v. State of Bihar*⁵. That case was not one of a **custodial death** but was a case of illegal detention even after acquittal in a full dress trial. This Court held that the petitioner was entitled to **compensation** for the illegal detention and it rejected the stale and sterile objection of the State Government that the petitioner may, if so advised, file a suit to recover damages. This Court took the view that the refusal to pass an order of **compensation** would be doing mere lip service to the fundamental right of liberty of the petitioner under Article 21 of the Constitution which the State Government had so grossly violated. This Court observed that: (SCC p. 148, para 10)

"10. ... if civilisation is not to perish in this country as it has perished in some others, too well known to suffer mention, it is necessary to educate ourselves into accepting that respect for the rights of individuals is the true bastion of democracy."

43. A little later, this Court dealt with *Sebastian M. Hongray v. Union of India*⁶ which concerned itself with the disappearance of some persons while in custody. This Court was convinced that enabling the respondents to trace or locate the two missing persons at such a late stage would be to shut its eyes to reality and to pursue a mirage. It appeared to this Court that the two missing persons had actually met a tragic end in an encounter amounting to an unnatural



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death. This Court ordered the registration of an offence and an investigation and also directed payment of **compensation** to the next of kin.

44. Nilabati Behera v. State of Orissa² was a case where a person who was taken into police custody for investigation of a theft, was found dead near a railway track the next day. On the basis of injuries and handcuffs on his wrists, this Court concluded that it was a **custodial death** and **compensation** was awarded under Article 32 of the Constitution. It was held that a public law remedy was certainly available to claim **compensation** for the contravention of human rights and fundamental rights which are protected as a guarantee by our Constitution. A reference was also made to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which reads:

“9. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to **compensation.”**

45. An unnatural **death** in judicial custody where one person was killed by a co-prisoner was the subject-matter of discussion in *Kewal Pati v. State of U.P.*⁸. It was held that as a consequence of imprisonment, a prisoner does not cease to have constitutional rights, except to the extent he or she has been deprived of them in accordance with law. Therefore, even a prisoner is entitled to protection and if he is killed while in prison, it results in a deprivation of his life contrary to the law, for which the next of kin are entitled to **compensation**.

46. In *D.K. Basu v. State of W.B.*⁹ this Court recognised that at the time of ratification of the International Covenant on Civil and Political Rights, 1966 in 1979, the Government of India made a specific reservation to the effect that the Indian legal system does not recognise a right to **compensation** for victims of unlawful arrest or detention and only became a party to the covenant, subject to this reservation. It was noted, however, that the reservation has lost its relevance in view of the law laid down by this Court in several cases wherein **compensation** has been awarded for the infringement of a fundamental right of a citizen. It was also noted that while there is no express provision in the Constitution for grant of **compensation**, this right has been judicially evolved in cases of established unconstitutional deprivation of personal liberty or life. This Court summed up the law in the following words: (SCC p. 443, para 54)

“54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary **compensation** is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of **compensation** from the State, which shall have the right to be indemnified by the



wrongdoer. In the assessment of **compensation**, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of **compensation**) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty-bound to do. The award of **compensation** in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of **compensation** will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the *established* invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies

and not in derogation of them. The amount of **compensation** as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

(emphasis in original)

47. *Ajab Singh v. State of U.P.*¹⁰, *Murti Devi v. State (NCT of Delhi)*¹¹ and more recently *Rohtash Kumar v. State of Haryana*¹² illustrate that **custodial death** is a clear violation of the prisoner's rights under Article 21 of the Constitution and relief could be moulded by granting **compensation** to the next of kin of the deceased.

48. In addition to the above decisions and several others rendered by this Court, almost every High Court in the country has, at one time or another, also granted **compensation** for the unnatural **death** of a person in custody, whether an undertrial or a convict. A few such illustrations may be noted:

(a) *Nina Rajan Pillai v. Union of India*¹³

48.1. The husband of the petitioner died in judicial custody due to inadequate medical treatment given by the jail authorities. The Lt. Governor of Delhi even appointed a Commission of Inquiry headed by Justice Leila Seth, a former Chief Justice of the Himachal Pradesh High Court to inquire into the circumstances that led to the **death** of the petitioner's husband. The Delhi High Court awarded **compensation** for the unnatural **death** in custody.

(b) *Kewalbai v. State of Maharashtra*¹⁴

48.2. The victim was shot dead by a constable while in custody. The Bombay High Court awarded **compensation** for the unnatural **death** in custody.



(c) *Bheduki Buragohain v. State of Assam*¹⁵

48.3. The undertrial victim died in judicial custody under suspicious circumstances. The post-mortem report indicated that the cause of **death** was asphyxia as a result of strangulation and ante-mortem injuries by blunt weapons. The Gauhati High Court awarded **compensation** for the unnatural **death** in custody.

(d) *Madhuben Adesara v. State of Gujarat*¹⁶

48.4. The deceased was brutally tortured by police officers while in custody and succumbed to his injuries during treatment. The post-mortem report revealed that the victim had multiple injury marks which were ante-mortem in nature. The Gujarat High Court awarded **compensation** for the unnatural **death** in custody.

(e) *Banalata Dash v. State of Orissa*¹⁷

48.5. The deceased was found hanging from a tree with his hands behind his back, tied at the wrist with a towel. Since the victim was in the custody of the prison authorities, **compensation** was awarded by the Orissa High Court for the unnatural **death** in custody.

(f) *Amandeep v. State of Punjab*¹⁸

48.6. The deceased was assaulted by a co-prisoner and succumbed to injuries in the hospital. Due to the unnatural **death** in custody, the Punjab and Haryana High Court awarded **compensation** to the next of kin of the deceased.

(g) *Tmt. Rohini Lingam v. State*¹⁹

48.7. The victim was murdered by his enemies while in prison. Due to the unnatural **death** in custody, the Madras High Court awarded **compensation** to his next of kin.

(h) *Sabu E.K. v. State of Kerala*²⁰

48.8. The victim was tortured in a police station and succumbed to his injuries. In view of the unnatural **death** in custody the Kerala High Court awarded interim **compensation** to

the next of kin of the deceased until the criminal trial against the police officers concerned was concluded.

(i) *Ravindra Nath Awasthi v. State of U.P.*²¹

48.9. The victim was an advocate held guilty of contempt of court. While he was undergoing his sentence, he was severely beaten up by the prison authorities and succumbed to his injuries in hospital. Due to the unnatural **death**



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in custody, the Allahabad High Court directed payment of **compensation** to the next of kin of the deceased.

(j) *Madina v. State of Rajasthan*²²

48.10. The victim died in police custody on account of the use of third degree methods. Due to the unnatural **death** in custody, **compensation** was awarded by the Rajasthan High Court to the next of kin of the deceased.

(k) *Dukhuram v. State of Chhattisgarh*²³

48.11. The deceased was taken from the police station in order to recover stolen articles alleged to have been hidden by him at a secret place. He was brought to a pond and compelled to dive into the pond. At that time he was handcuffed and in chains. Subsequently, the dead body of the deceased was found floating in the pond. In view of the unnatural **death**, while the deceased was in the custody of police officers, the Chhattisgarh High Court awarded **compensation**.

(l) *Santosh Kumari v. State of H.P.*²⁴

48.12. The victim died while he was in police custody and it was found that he had injuries on his head, shoulders, eyes, knees and private parts. He died in hospital as he was not given medical assistance in time. In view of the unnatural **death** while in custody, the Himachal Pradesh High Court awarded **compensation** to the next of kin of the deceased.

(m) *State of J&K v. Sajad Ahmad Dar*²⁵

48.13. The victim died due to cardiopulmonary arrest while detained in the District Jail under the Jammu and Kashmir Public Safety Act, 1978. It was held that **death** was due to carelessness, non-seriousness and negligence in not extending medical treatment. In view of the unnatural **death** in custody, the Jammu and Kashmir High Court awarded the **compensation** to the next of kin of the deceased.

(n) *Meena Singh v. State of Bihar*²⁶

48.14. The victim was attacked and killed by co-prisoners by the use of chhura, iron rods and belts, etc. The next of kin of the deceased were awarded **compensation** by the Patna High Court for the unnatural **death** of the victim in custody.

(o) *Lawyers for Justice v. State of M.P.*²⁷

48.15. The victim was facing trial for offences under Section 302 of the Penal Code, 1860. While he was undergoing treatment in a hospital he was shot dead by an unknown person. In view of the unnatural **death** while in custody,



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the Madhya Pradesh High Court awarded **compensation** to the next of kin of the victim.

49. There are several such cases—documented and undocumented—all over the country but in spite of repeated decisions delivered by this Court and perhaps every High Court there seems to be no let up in **custodial** deaths. This is not a sad but a tragic state of

affairs indicating the apparent disdain of the State to the life and liberty of individuals, particularly those in custody. The time to remedy the situation is long past and yet, there seems to be no will and therefore no solution in sight.

The need to reform

50. The factual material referred to above is an indication that steps are being taken in some form or the other by the Central Government and hopefully by the State Governments to ameliorate the conditions of prisoners across the country and thereby reduce the number of unnatural deaths. These steps give an impression that there is nothing to be seriously worried about. However, the statistics provided by NCRB reflect the ground reality and dispel that impression. It is time for the State to go beyond projections through circulars and advisories and actually come to grips with reality as it exists in a very large number of prisons. What is practised in our prisons is the theory of retribution and deterrence and the ground situation emphasises this, while our criminal justice system believes in reformation and rehabilitation and that is why handcuffing and solitary confinement are prohibited. It is this "rejection" of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths.

51. This Court has time and again emphasised the importance of Article 21 of the Constitution and the right to a life of dignity. There must be a genuine desire to ensure that the guarantee to a life of dignity is provided to the extent possible even in prisons, otherwise Article 21 of the Constitution will remain a dead letter. It must be appreciated by the State that the common person does not violate the law for no reason at all. It is the circumstances that lead to a situation where there is a violation of law. On many occasions, such a violation may be of a trivial nature or may be a one-time aberration and, in such circumstances, the offender has to be treated with some degree of humanity. At least in such cases, retribution and deterrence cannot be an answer to the offence and the offender. Unless the State changes this mindset and takes steps to give meaning to life and liberty of every prisoner, prison reforms can never be effective or long lasting.

52. The issue of unnatural deaths in prisons was debated and discussed before us in great detail by the learned Amicus Curiae, the learned Attorney General and learned counsel for the National Forum. All of them have painstakingly taken us through a plethora of documents but, as mentioned above, the existence of volumes of documents relating to unnatural deaths in prisons does not necessarily resolve the problem that we are confronted with and which was brought to our notice by Chief Justice Lahoti.



53. However, we do hope that the highlighting of this issue will bring about awareness in the mind and heart of the powers that be and consequential reforms in prisons which may ultimately reduce, if not eliminate, the number of unnatural deaths in prisons and also improve the conditions of prisoners all over the country.

The need to compensate

54. The case law indicates that over the last several decades this Court and almost every High Court has relied on Article 21 of the Constitution and thought it appropriate to compensate the next of kin for an unnatural **custodial death**. The constitutional courts can go on delivering judgment after judgment on this issue and award **compensation**, but unless the State realises that **custodial death** is itself a crime and monetary **compensation** is not necessarily the only appropriate relief that can be granted to the next of kin of the deceased, such unnatural deaths will continue unabated. Therefore, what is needed is a review of all prisons with a humanitarian nuance.

55. Over the last several years, there have been discussions on the rights of victims and one of the rights of a victim of crime is to obtain **compensation**. Schemes for victim

compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realise that persons who suffer an unnatural **death** in a prison are also victims—sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving **compensation** only because the victim of an unnatural **death** is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural **death**. Hence, the need to compensate the next of kin.

Custodial death of children

56. One of the issues not touched upon by the learned Amicus Curiae or by the National Forum relates to the **custodial death** of children in child care institutions under the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as the Juvenile Justice (Care and Protection of Children) Act, 2015. There does not appear to be any study carried out in this regard and it is rather unfortunate that the Central Government and the State Governments are oblivious to the possibility of **death** of children in custody in child care institutions. This is distressing. The pain and anguish of the next of kin of children who pass away in custody is not less, but more than the pain and anguish of the next of kin of any prisoner who suffers an unnatural **death** in custody. It seems that apart from being “voiceless”, such children are also dispensable.

57. There is no documentation on the number of unnatural deaths (if any) of children in child care institutions and this should now be on the agenda of the



Central Government and the State Governments (particularly the Department concerned with the welfare of children) with far greater concern than has been shown so far. The unnatural **death** of any child in need of care and protection or in conflict with law and in a child care institution needs attention since it is these voiceless children who need to be heard. It is time that unnatural deaths of children in child care institutions are seriously looked into by all concerned if we are to provide the children of our country with a better future.

Directions

58. We are of the view that on the facts and in the circumstances before us, the suggestions put forward by the learned Amicus Curiae and the learned counsel appearing for the National Forum deserve acceptance and, therefore, we issue the following directions:

58.1. The Secretary General of this Court will transmit a copy of this decision to the Registrar General of every High Court within one week with a request to the Registrar General to place it before the Chief Justice of the High Court. We request the Chief Justice of the High Court to register a suo motu public interest petition with a view to identifying the next of kin of the prisoners who have admittedly died an unnatural **death** as revealed by NCRB during the period between 2012 and 2015 and even thereafter, and award suitable **compensation**, unless adequate **compensation** has already been awarded.

58.2. The Union of India through the Ministry of Home Affairs will ensure circulation within one month and in any event by 31-10-2017 of (i) the Model Prison Manual, (ii) the monograph prepared by NHRC entitled “Suicide in Prison — Prevention Strategy and Implication from Human Rights and Legal Points of View”, (iii) the communications sent by NHRC referred to above, (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson Mandela Rules, and (vi) the Guidelines on Investigating Deaths in Custody issued by the International Committee of

the Red Cross to the Director General or Inspector General of Police (as the case may be) in charge of prisons in every State and Union Territory. All efforts should be made, as suggested by NHRC and others, to reduce and possibly eliminate unnatural deaths in prisons and to document each and every **death** in prisons—both natural and unnatural.

58.3. The Union of India through the Ministry of Home Affairs will direct NCRB to explain and clarify the distinction between unnatural and natural deaths in prisons as indicated on the website of NCRB and in its annual reports and also explain the sub-categorisation “others” within the category of unnatural deaths. NCRB should also be required to sub-categorise natural deaths. The sub-categorisation and clarification should be complied with by 31-10-2017.

58.4. The State Governments should, in conjunction with the State Legal Services Authority (SLSA), the National and State Police Academy and the Bureau of Police Research and Development conduct training and sensitisation programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners. A copy of this



order be sent by the Registry of this Court to the Member-Secretary of each SLSA to follow up and ensure compliance.

58.5. The necessity of having counsellors and support persons in prisons cannot be over-emphasised. Their services can be utilised to counsel and advise prisoners who might be facing some crisis situation or might have some violent or suicidal tendencies. The State Governments are directed to appoint counsellors and support persons for counselling prisoners, particularly first-time offenders. In this regard, the services of recognised NGOs can be taken and encouraged.

58.6. While visits to prison by the family of a prisoner should be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also explore the possibility of using phones and videoconferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise.

58.7. The State Legal Services Authorities (SLSAs) should urgently conduct a study on the lines conducted by the Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan in respect of the overall conditions in prisons in the State and the facilities available. The study should also include a performance audit of the prisons, as has been done by CAG. SLSAs should also assess the effect and impact of various schemes framed by NALSA relating to prisoners. We request the Chief Justice of every High Court, in the capacity of Patron-in-Chief of the State Legal Services Authority, to take up this initiative and, if necessary, set up a committee headed preferably by the Executive Chairperson of the State Legal Services Authority to implement the directions given above.

58.8. Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners. The experiences in Karnataka, West Bengal and Delhi to the effect that medical facilities in prisons do not meet minimum standards of care is an indication that the human right to health is not given adequate importance in prisons and that may also be one of the causes of unnatural deaths in prisons. The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary.

58.9. The constitution of a Board of Visitors which includes non-official visitors is of considerable importance so that eminent members of society can participate in initiating reforms in prisons and in the rehabilitation of prisoners. Merely changing the nomenclature

of prisons to "Correction Homes" will not resolve the problem. Some proactive steps are required to be taken by eminent members of society who should be included in the Board of Visitors. The State Governments are directed to constitute an appropriate Board of Visitors in terms of Chapter XXIX of the Model Prison Manual indicating their duties and responsibilities. This exercise should be completed by 30-11-2017.



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58.10. The suggestion given by the learned Amicus Curiae of encouraging the establishment of "open jails" or "open prisons" is certainly worth considering. It was brought to our notice that the experiment in Shimla (Himachal Pradesh) and the semi-open prison in Delhi are extremely successful and need to be carefully studied. Perhaps there might be equally successful experiments carried out in other States as well and, if so, they require to be documented, studied and emulated.

58.11. The Ministry of Women and Child Development of the Government of India which is concerned with the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 is directed to discuss with the officers concerned of the State Governments and formulate procedures for tabulating the number of children (if any) who suffer an unnatural death in child care institutions where they are kept in custody either because they are in conflict with law or because they need care and protection. Necessary steps should be taken in this regard by 31-12-2017.

59. We expect the above directions to be faithfully implemented by the Union of India and the State Governments. In the event of any difficulty in the implementation of the above directions, the Bench hearing the suo motu public interest litigation in the High Court in terms of our first direction is at liberty to consider those difficulties and pass necessary orders and directions.

60. List for follow-up in December 2017.

[†] Under Article 32 of the Constitution of India

¹ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 : 1979 SCC (Cri) 381

² *Inhuman Conditions in 1382 Prisons, In re*, (2016) 3 SCC 700 : (2016) 2 SCC (Cri) 170

³ <ncrb.gov.in>.

⁴ "**176. Inquiry by Magistrate into cause of death.**—(1) When the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of Section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of Section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(1-A) Where—

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman,

while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1-A) shall, within twenty-four hours of the **death** of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation.—In this section, the expression “relative” means parents, children, brothers, sisters and spouse.”

⁵ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 : 1983 SCC (Cri) 798

⁶ *Sebastian M. Hongray v. Union of India*, (1984) 3 SCC 82 : 1984 SCC (Cri) 407

⁷ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527

⁸ *Kewal Pati v. State of U.P.*, (1995) 3 SCC 600 : 1995 SCC (Cri) 556

⁹ *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 : 1997 SCC (Cri) 92

¹⁰ *Ajab Singh v. State of U.P.*, (2000) 3 SCC 521 : 2000 SCC (Cri) 718

¹¹ *Murti Devi v. State (NCT of Delhi)*, (1998) 9 SCC 604 : 1998 SCC (Cri) 1330

¹² *Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 290 : (2014) 4 SCC (Cri) 205

¹³ *Nina Rajan Pillai v. Union of India*, 2011 SCC OnLine Del 2252 : (2011) 180 DLT 104

¹⁴ *Kewalbai v. State of Maharashtra*, 2013 SCC OnLine Bom 773 : (2013) 3 Bom CR (Cri) 601

¹⁵ *Bheduki Buragohain v. State of Assam*, 2013 SCC OnLine Gau 429 : (2013) 6 Gau LR 517

¹⁶ *Madhuben Adesara v. State of Gujarat*, 2016 SCC OnLine Guj 1956

¹⁷ *Banalata Dash v. State of Orissa*, AIR 2012 Ori 97

¹⁸ *Amandeep v. State of Punjab*, 2012 SCC OnLine P&H 19844 : (2013) 169 PLR 191

¹⁹ *Tmt. Rohini Lingam v. State*, 2008 SCC OnLine Mad 1249 : (2008) 5 MLJ 822

²⁰ *Sabu E.K. v. State of Kerala*, 2016 SCC OnLine Ker 22210 : (2016) 4 KLJ 105

²¹ *Ravindra Nath Awasthi v. State of U.P.*, 2009 SCC OnLine All 337 : (2009) 2 AWC 2090

²² *Madina v. State of Rajasthan*, 2000 SCC OnLine Raj 203 : 2000 Cri LJ 4484

²³ *Dukhuram v. State of Chhattisgarh*, (2011) 3 MPHT 81

²⁴ *Santosh Kumari v. State of H.P.*, 2007 SCC OnLine HP 45 : 2008 ACJ 1684

²⁵ *State of J&K v. Sajad Ahmad Dar*, 2015 SCC OnLine J&K 160

²⁶ *Meena Singh v. State of Bihar*, 2001 SCC OnLine Jhar 74 : 2001 Cri LJ 3573

²⁷ *Lawyers for Justice v. State of M.P.*, 2015 SCC OnLine MP 7488 : AIR 2015 MP 212

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