RE- INHUMAN CONDITIONS IN 1382 PRISONS A

WITH

I.A. No. 68248 of 2017

(Writ Petition (Civil) No. 406 of 2013)

SEPTEMBER 15, 2017 B

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Human Rights – Custodial death – Unnatural deaths in prisons – Remedial steps – Letter by (Retd.)Chief Justice R.C. Lahoti highlighting unnatural deaths in prisons – Letter treated as a public interest litigation – Held: Death is 'unnatural' when its causes are external, such as intentional injury (homicide, suicide) – Steps are being taken in some form or the other by Central Government and State Governments to ameliorate the conditions of prisoners across the country and thereby reduce the number of unnatural deaths – However, 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 – Guidelines on Investigating Deaths in Custody issued by International Committee of the Red Cross (ICRC), to be circulated and considered by Central Government and all the State Governments - Further, in relation to suicides in prisons, the monograph published by National Human Rights Commission (NHRC) containing actionable points for suicide prevention programmes, also referring to certain communications issued by NHRC from time to time on the aspect of custodial deaths, to be freely distributed amongst the staff and prisons all over the country being a document of immense utility insofar as suicide prevention in prisons is concerned – Directions issued – Public Interest Litigation – Constitution of India – Art.21 and VIIth Schedule, Entry 4, List II – Nelson Mandela Rules – rr. 58-63 and 71 – Model Prison Manual 2016 – Chapter VII, XIII, XXI, XXII and XVI – Code of Criminal Procedure, 1973 – s.176(1A) – Juvenile Justice (Care and Protection of Children) Act, 2000 – Juvenile Justice (Care and Protection of Children) Act, 2015. C D E F G

Human Rights – Prison Reforms – Management of Prisons – 'Performance Audit' by Comptroller and Auditor General (CAG) – Discussed. H

A *Public law remedy – Human Rights – Unnatural deaths in custody – Compensation for – Discussed.*

Human Rights – Need for Prison reforms –Criminal Justice System – Theory of retribution and deterrence vis-a-vis *Reformation and Rehabilitation – Discussed.*

B *Human Rights – Nature of – Held: Human rights are not dependent on the status of a person but are universal in nature.*

Human Rights – Custodial deaths of children in Child Care Institutions – Discussed – Child and Family Welfare.

Issuing directions, the Court

C **HELD: 1.1 On the issue of defining natural and unnatural deaths, attention was drawn to the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). According to the 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). The guidelines provided by the ICRC deserve consideration and circulation by the Central Government and all the State Governments. [Para 9] [530-A-C]**

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E **National Human Rights Commission (NHRC) and suicide prevention**

1.2 A disproportionately large number of unnatural deaths are attributable to suicides. In relation to suicides in prisons, the 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. 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 the NHRC from time to time on the aspect of custodial deaths. The study conducted by the NHRC as reflected in the

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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. [Paras 10, 11] [530-C-G]

1.3 The NHRC has suggested various protective factors or measures that could be employed to reduce the number of suicides in prisons. In its conclusion, the 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. The monograph prepared by the NHRC 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. [Paras 13-15] [531-E-F, G-H; 532-B]

The need to reform

1.4 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 the National Crime Records Bureau (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 emphasizes 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. This Court has time and again emphasized 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.

A It must be appreciated by the State that the common person does not violate the law for no reason at all. It is 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, B 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. [Paras 49, 50] [547-E-H; 548-A-D]

C The need to compensate

1.5 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 D delivering judgment after judgment on this issue and award compensation, but unless the State realizes 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 E humanitarian nuance. 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 F Government and the State Governments to realize 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 G 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 H to compensate the next of kin.[Paras 53, 54] [548-G-H; 549-A-D]

Custodial death of Children A

2. 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 is no documentation on the number of unnatural B 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. It is time that unnatural deaths of children in child care institutions are seriously looked into by all concerned if the C children of our country are to be provided with a better future. [Para 57] [549-E-F, G-H; 550-A]

Directions

3.1 The Secretary General of the Supreme Court will transmit a copy of this decision to the Registrar General of every D High Court within one week with a request to the Registrar General to place it before the Chief Justice of the High Court. The Chief Justice of the High Court is requested 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 E death as revealed by the NCRB during the period between 2012 and 2015 and even thereafter, and award suitable compensation, unless adequate compensation has already been awarded. [Para 57] [550-C-D]

3.2 The Union of India through the Ministry of Home Affairs will ensure circulation within one month and in any event by 31st F October, 2017 of (i) the Model Prison Manual, (ii) the monograph prepared by the NHRC entitled "Suicide in Prison - prevention strategy and implication from human rights and legal points of view", (iii) the communications sent by the NHRC (iv) the compendium of advisories issued by the Ministry of Home Affairs G 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

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A should be made, as suggested by the 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. [Para 57] [550-E-G]

3.3 The Union of India through the Ministry of Home Affairs B will direct the NCRB to explain and clarify the distinction between unnatural and natural deaths in prisons as indicated on the website of the NCRB and in its Annual Reports and also explain the sub-categorization 'others' within the category of unnatural deaths. The NCRB should also be required to sub- categorize natural deaths.The sub-categorization and clarification should be C complied with by 31st October, 2017. [Para 57] [550-G; 551-A]

3.4 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 sensitization programmes for D 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. [Para 57] 551-B-C]

E 3.5 The State Governments are directed to appoint counselors and support persons for counselling prisoners, particularly first-time offenders. In this regard, the services of recognized NGOs can be taken and encouraged. [Para 57] [551-D-E]

3.6 While visits to prison by the family of a prisoner should F be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also explore the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through G the State Legal Services Authority or otherwise. [Para 57] [551-E-F]

3.7 The Chief Justice of every High Court is requested, 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 H

the State Legal Services Authority to implement the directions given above. [Para 57] [551-H; 552-A] A

3.8 The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary. [Para 57] [552-C-D]

3.9 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 30th November, 2017. [Para 57] [552-E-F] B

3.10 The suggestion of encouraging the establishment of 'open jails' or 'open prisons' is certainly worth considering. [Para 57] [552-F] C

3.11 The Ministry of Women & Child Development of the Government of India which is concerned with the implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 is directed to discuss with the concerned officers 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 31st December, 2017. [Para 57] [552-A-B] D E

Rudul Sah v. State of Bihar **(1983) 4 SCC 141 : [1983] 3 SCR 508;** Sebastian M. Hongray v. Union of India **(1984) 3 SCC 82 : [1984] 3 SCR 544;** *Nilabati Behera v. State of Orissa* **(1993) 2 SCC 746 : [1993] 2 SCR 581;** *Kewal Pati v. State of Bihar* **(1995) 3 SCC 600 : [1995] 3 SCR 207;** *D.K.Basu v. State of West Benga* **(1997) 1 SCC 416 : [1996] 10 Suppl. SCR 284 – relied on.** F

Nina Rajan Pillai & Ors. v. Union of India **180 (2011) DLT 104;** *Kewalbai v. The State of Maharashtra.* **2013 (3) Bom CR (Cri) 601;** *Bheduki Buragohain v. State of Assam.* **2013 (2) GLT 370;** *Madhuben Adesara v. State of Gujarat* (Decision of Gujarat High Court **in R/ SCR.A./536/2010 (unreported));** *Banalata Dash v. State of Orissa & Ors.* **AIR 2012 Ori 97;** *Amandeep v.* G

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A *State of Punjab & Anr.* **(2013) 169 PLR 191;** *Tmt. Rohini Lingam v. State* **(2008) 5 MLJ 822;** *Sabu & Anr. v. State of Kerala & Ors.* **(Decision of Kerala High Court in CRP No. 1170/2015);** *Ravindra Nath Awasthi v. State of U.P.* **2009 2 AWC 2090 (All);** *Mst. Madina v. State of Rajasthan & Ors.* **2000 Cri LJ 4484;** *Dukhuram v. State of Chhattisgarh & Ors.* **2011 (3) MPHT 81;** *Santosh Kumari v. State of H.P. & Ors.* **2008 ACJ 1684;** *State of Jammu & Kashmir v. Sajad Ahmad Dar* **(Decision of J&K High Court in LPAHC No. 36/2015);** *Mrs. Meena Singh v. State of Bihar* **2001 Cri LJ 3573;** *Lawyers for Justice (Non-Government Organization) v. State of M.P.* **AIR 2015 MP 212– approved.**

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Ajab Singh v. State of U.P. **(2000) 3 SCC 521;** *Murti Devi v. State of Delhi* **(1998) 9 SCC 604;** *Rohtash Kumar v. State of Haryana* **(2013) 14 SCC 290 – referred to.**

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Case Law Reference

[1983] 3 SCR 508	**relied on**	**Para 41**
[1984] 3 SCR 544	**relied on**	**Para 42**
[1993] 2 SCR 581	**relied on**	**Para 43**
[1995] 3 SCR 207	**relied on**	**Para 44**
[1996] 10 Suppl. SCR 284	**relied on**	**Para 45**
(2000) 3 SCC 521	**referred to**	**Para 46**
(1998) 9 SCC 604	**referred to**	**Para 46**
(2013) 14 SCC 290	**referred to**	**Para 46**
180 (2011) DLT 104	**approved**	**Para 47**
2013 (3) Bom CR (Cri) 601	**approved**	**Para 47**
2013 (2) GLT 370	**approved**	**Para 47**
AIR 2012 Ori 97	**approved**	**Para 47**
(2013) 169 PLR 191	**approved**	**Para 47**
(2008) 5 MLJ 822	**approved**	**Para 47**
2009 2 AWC 2090 (All)	**approved**	**Para 47**
2000 Cri LJ 4484	**approved**	**Para 47**
2011 (3) MPHT 81	**approved**	**Para 47**

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2008 ACJ 1684	**approved**	**Para 47**	A
2001 Cri LJ 3573	**approved**	**Para 47**	
AIR 2015 MP 212	**approved**	**Para 47**	

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 406 of 2013.

Under Article 32 of the Constitution of India. B

WITH

I. A. No. 68248 of 2017.

Gaurav Agrawal, Adv. (AC).

K.K. Venugopal, AG, C. D. Singh, D.K. Thakur, D. K. Singh, C AAGs, Colin Gonsalves, Sr. Adv., R.M. Bajaj, Ms. Binu Tamta, Ms. Sushma Suri, B.K. Prasad, Ms. Sushma Manchanda, M.K. Maroria, Guntur Prabhakar, Ms. Prerna Singh, Shuvodeep Roy, Sayooj Mohandas M., M. Shoeb Alam, Ms. Fauzia Shakil, Ujjwal Singh, Mojahid Karim Khan, Apoorv Kurup, Ms. Sakshi Kakkar, A.C. Boxi Patro, Anshuman Srivastava, Apoorva Bhumesh, Ms. Hemantika Wahi, Ms. Jesal Wahi, D Ms. Puja Singh, Ms. Mamta Singh, Ms. Seema Sharma, Varinder Kumar Sharma, Shariq Ahmed, B.K. Satija, Tapesh Kumar Singh, Mohd. Waquas, Aditya Pratap Singh, V. N. Raghupathy, Lagnesh Mishra, Parikshit P. Angadi, Mishra Saurabh, Ankit Kr. Lal, Ms. Vanshaja Shukla, Mahaling Pandarge, Nishant R. Katneshwarkar, Sapam Biswajit Meitei, E Ashok Kumar Singh, Ranjan Mukherjee, T. G. Narayanan Nair, Mrs. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, K. Luikang Michael, Z. H. Isaac Haiding, Ms. Anindita Pujari, Ashok Panigrahi, Ms. Uttara Babbar, Ms. Akanksha Choudhary, S. S. Shamshery, Amit Sharma, Ankit Raj, Ms. Ruchi Kohli, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Amit Arora, Ms. Simran Jeet (for F M/s Arputham Aruna & Co.), Gopal Singh, Rituraj Biswas, M. Yogesh Kanna, Ms. Mahalakshmi, Ms. Sujatha Bagadhi, S. Udaya Kumar Sagar, Mrityunjai Singh, Adarsh Kumar Upadhyay, Saurabh Agrawal, Ms. Komal Mundhra, Ms. Rachana Srivastava, Ms. Monika, Sukrit R. Kapoor, Raja Chatterjee, Ms. Runa Bhuyan, Chanchal Kr. Ganguly, G K.V. Jagdishvaran, Mrs. G. Indira, M.S.Doabia, S.S. Rawat, V.G. Pragasam, Prabu Ramasubramanian, Manu Sundaram, T.N. Rama Rao, Hitesh Kumar Sharma, Ms. T. Veera Reddy, D. Mahesh Babu, Ms. Ritu Kumar, Satya Mitra, Kamal Mohan Gupta, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Custodial violence has always been a matter of great concern for all civilized 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 B 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 Case' 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 C custodial violence make it abhorrent and invite disparagement from all sections of civilized 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 D 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 E 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.

F 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 G time and effort in placing all relevant material before us and for this he deserves our gratitude.

4. In our judgment and order of 5th February, 2016[1] we had drawn attention to four issues regarding prisons raised in the letter addressed

H [1] Re- Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700

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 A

5. In the order of 5th February, 2016 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 the NCRB. The website of the NCRB[2] indicates that deaths in judicial custody, both natural and unnatural, are as under: B

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 the NCRB between natural and unnatural deaths is unclear. For example, if a prisoner dies due to a lack of proper medical attention or timely medical attention, would that be classified as a natural death or an unnatural death? This needs to be explained as submitted by the learned *Amicus*. D

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

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

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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*, that the NCRB should be directed to explain the difference not only between a natural death and an unnatural death but also to clarify the sub-categorization of 'others' unnatural deaths. G

[2] ncrb.gov.in H

A 9. On the issue of defining natural and unnatural deaths, the learned *Amicus* drew our attention to the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). According to the 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 B its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident). We have perused the guidelines provided by the ICRC and are of the view that these guidelines deserve consideration and circulation by the Central Government and all the State Governments.

C **NHRC and suicide prevention**

10. It has been pointed out by the learned *Amicus* 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* that in relation to suicides in prisons, the National Human Rights D Commission or the 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 E 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 the NHRC from time to time on the aspect of custodial deaths, but we will refer to them in somewhat F greater detail a little later.

11. The study conducted by the 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 G inmate.

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

1. Authoritarian environment.

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

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 stabilizing resources. D
3. Severe guilt or shame over the offence.
4. Same-sex rape.
5. Current mental illness.
6. Poor health or terminal illness. E
7. Approaching an emotional breaking point.

13. The 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. F

14. The NHRC also conducted a National Seminar on Prison Reforms on 15th April, 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, the 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. G H

A 15. What we have mentioned above is only a brief indication of the extent to which the 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 the NHRC, in our opinion, deserves to be freely distributed amongst the B 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 the NHRC

16. Apart from the above efforts of the NHRC, our attention has C been drawn by the learned *Amicus* to various communications sent by the NHRC to the Chief Secretaries of all the States and the Union Territories. The first such communication is dated 14th December, 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 D the Secretary General of the NHRC any custodial death or custodial rape within 24 hours of occurrence or of these officers coming to know of such an incident.

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

18. On 10th August, 1995 the 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 G 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. The 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 H limited.

19. The NHRC addressed a communication on 27th March, 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 modeled 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.

20. The NHRC sent a communication dated 3rd January, 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, the 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 the NHRC within two months of the incident.
2. The post-mortem report should be sent in the proforma attached to the letter dated 27th March, 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 the NHRC without waiting for the viscera report, which could be sent later on.

21. On 21st December, 2001 the 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 concerned authorities or there was any other reason to suspect foul play.

A 22. It is clear from the above that the role of the NHRC is extremely important whenever there is an unnatural death in a prison. Although the 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.

B **Nelson Mandela Rules**

23. The learned *Amicus* submitted that the General Assembly of the United Nations adopted the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted on 17th December, 2015. These Rules provide useful internationally accepted guidelines for implementation by prison administrations across the country. C 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 D 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*, would substantially reduce the feeling of isolation E 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.

24. On the specific issue of custodial deaths, the learned *Amicus* drew our attention to Rule 71 of the Nelson Mandela Rules to submit that any custodial death, disappearance or serious injury shall be reported F without delay to a judicial or other competent authority that is independent of the prison administration. The learned *Amicus* 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

G 25. The learned Attorney General responded to the submissions of the *Amicus* 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 Entry 4 of List II of the Seventh Schedule to the Constitution and as such the Central Government could not legislate H 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.

26. It was submitted that Chapter VII of the Manual and particularly paragraph 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 the NHRC should be followed. On this basis, it was submitted that the guidelines issued by the NHRC are treated more or less as binding and are scrupulously followed.

27. Reference was also made to Chapter XIII of the Manual and the section therein on 'Accidents and Suicides'. Particular reference was made to paragraph 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 concerned Superintendent and the Medical Officer. Paragraph 13.41 relates to custody of articles that could be used to commit suicide such as knives and tools used in worksheds 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 paragraph 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 counselors 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 paragraph 13.44 that poisonous drugs, surgical instruments and other similar items should not be left within the reach of prisoners.

28. 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 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. Paragraph 13.62 provides that whenever an

A 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. Paragraph 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 B feeding of prisoners on a hunger strike.

29. 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 C 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 5th February, 2016.

30. The learned Attorney General submitted that there exists a grievance redressal system as mentioned in Chapter XXI of the Manual. D 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 E 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 F 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 G 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

31. The learned Attorney General then placed before us a H 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 Entry 4 of List II of the Seventh Schedule 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 programmes such as yoga and meditation courses, Art of Living courses, Pranic courses and Vipassana.

32. 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 sensitization 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.

33. Adverting to the Nelson Mandela Rules, the learned Attorney General also expressed the view that 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 under-trial 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

A 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

B 34. The National Forum for Prison Reforms, an intervener 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.

C 35. 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 31st March, 2014 in relation to social, general and economic sectors. The submission made by learned counsel appearing for the National Forum was that as a result of what could be D termed as a performance audit, the 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-E 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.

F 36. The learned counsel also made a reference to Section 176(1A) 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 authorized by a Magistrate or a Court, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the G Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.[3] It was submitted that in view of the provisions of law, it was obligatory on the

[3] **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 H cause of death either instead of, or in addition to, the investigation held by the police

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

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

Suggestions of the learned *Amicus*

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

1. The treatment of prisoners should be more humane and the dehumanizing effect of imprisonment should be reduced.

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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. D

(1A) 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. E

(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. F

(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 (1A) 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 man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing. G

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

A 2. The involvement of NGOs should be encouraged especially with first-time offenders.

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

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

5. A prisoner should have access to legal services including legal aid. In this context the learned *Amicus* referred to a report prepared under the auspices of the Bihar State Legal Services D Authority by Ms. Smita Chakraburtty 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.

6. A status report prepared by the Commonwealth Human Rights E 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.

F 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.

G 8. Over-crowding 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* that the concept of open jails (of which there are 54 as mentioned in the statistics provided by the NCRB) should be encouraged.

H

9. The learned *Amicus* 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* 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 Chakraburtty which suggests that medical facilities in most prisons do not meet the minimum requirements of medical care.

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

11. The learned *Amicus* endorsed the suggestion of conducting performance audits for prisons across the country.

39. According to the learned *Amicus*, 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

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

41. 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***.[4] 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 "if civilization 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

[4] (1983) 4 SCC 141

A ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy."

42. A little later, this Court dealt with ***Sebastian M. Hongray v. Union of India***[5] which concerned itself with the disappearance of some persons while in custody. This Court was convinced that enabling the B 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 death. This Court ordered the registration of an offence and an investigation and also directed payment of compensation to the next of kin.

C

43. ***Nilabati Behera v. State of Orissa***[6] 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. D 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: "Anyone who has been the victim of E unlawful arrest or detention shall have an enforceable right to compensation."

44. 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 Bihar***.[7] It was held that as a consequence of F 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.

G 45. In ***D.K.Basu v. State of West Bengal***[8] this Court recognized 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

[5] (1984) 3 SCC 82
[6] (1993) 2 SCC 746
[7] (1995) 3 SCC 600
H [8] (1997) 1 SCC 416

reservation to the effect that the Indian legal system does not recognize 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:-

> "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 strait-jacket 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

A any amount which may be awarded to the claimant by way of damages in a civil suit."

46. ***Ajab Singh v. State of U.P.***[9], ***Murti Devi v. State of Delhi***[10] and more recently ***Rohtash Kumar v. State of Haryana***[11] illustrate that custodial death is a clear violation of the prisoner's rights under B Article 21 of the Constitution and relief could be moulded by granting compensation to the next of kin of the deceased.

47. 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 C in custody, whether an undertrial or a convict. A few such illustrations may be noted:

a. ***Nina Rajan Pillai & Ors. v. Union of India.***[12]

The husband of the petitioner died in judicial custody due to inadequate medical treatment given by the jail authorities. The D 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.

E *b.* ***Kewalbai v. The State of Maharashtra.***[13]

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.***[14]

F 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.***[15]

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[9] (2000) 3 SCC 521
[10] (1998) 9 SCC 604
[11] (2013) 14 SCC 290
[12] 180 (2011) DLT 104
[13] 2013 (3) BomCR (Cri) 601
[14] 2013 (2) GLT 370
H [15] R/SCR.A./536/2010 (unreported)

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 & Ors.***[16]

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 & Anr.***[17]

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

g. ***Tmt. Rohini Lingam v. State.***[18]

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 & Anr. v. State of Kerala & Ors.***[19]

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 concerned police officers was concluded.

i. ***Ravindra Nath Awasthi v. State of U.P.***[20]

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

[16] AIR 2012 Ori 97
[17] (2013) 169 PLR 191
[18] (2008) 5 MLJ 822
[19] CRP No. 1170 /2015
[20] 2009 2 AWC 2090 (All)

A hospital. Due to the unnatural death in custody, the Allahabad High Court directed payment of compensation to the next of kin of the deceased.

j. ***Mst. Madina v. State of Rajasthan & Ors.***[21]

B 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 & Ors.***[22]

C 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 D was in the custody of police officers, the Chhattisgarh High Court awarded compensation.

l. ***Santosh Kumari v. State of H.P. & Ors.***[23]

The victim died while he was in police custody and it was found E 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.

F m. ***State of Jammu & Kashmir v. Sajad Ahmad Dar.***[24]

The victim died due to cardio pulmonary 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 & Kashmir G High Court awarded the compensation to the next of kin of the deceased.

[21] 2000 Cri LJ 4484
[22] 2011 (3) MPHT 81
[23] 2008 ACJ 1684
H [24] LPAHC No. 36/2015

n. ***Mrs. Meena Singh v. State of Bihar.***[25] A

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 (Non-Government Organization) v. State of M.P.***[26] B

The victim was facing trial for offences under Section 302 of the Indian Penal Code. 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 the Madhya Pradesh High Court awarded compensation to the next of kin of the victim. C

48. 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. D

The need to reform E

49. 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 the 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 emphasizes 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' F G

[25] 2001 Cri LJ 3573
[26] AIR 2015 MP 212 H

A of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths.

50. This Court has time and again emphasized 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 B 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 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 C 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.

D 51. The issue of unnatural deaths in prisons was debated and discussed before us in great detail by the learned *Amicus*, the learned Attorney General and learned counsel for the National Forum. All of them have painstingly taken us through a plethora of documents but, as mentioned above, the existence of volumes of documents relating to E 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.

52. 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 F 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

53. The case law indicates that over the last several decades this G 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 realizes that custodial death is itself a crime and monetary compensation is not necessarily the only appropriate relief that can be H

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. A

54. 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 realize 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. B C D

Custodial death of Children

55. One of the issues not touched upon by the learned *Amicus* 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. E F

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 G H

A 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

B 57. We are of the view that on the facts and in the circumstances before us, the suggestions put forward by the learned *Amicus* and the learned counsel appearing for the National Forum deserve acceptance and, therefore, we issue the following directions:

C 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 the D NCRB during the period between 2012 and 2015 and even thereafter, and award suitable compensation, unless adequate compensation has already been awarded.

E 2. The Union of India through the Ministry of Home Affairs will ensure circulation within one month and in any event by 31st October, 2017 of (i) the Model Prison Manual, (ii) the monograph prepared by the NHRC entitled "Suicide in Prison - prevention strategy and implication from human rights and legal points of view", (iii) the communications sent by the NHRC referred to above, (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson F 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 the NHRC G and others, to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prisons – both natural and unnatural.

3. The Union of India through the Ministry of Home Affairs will direct the NCRB to explain and clarify the distinction between H unnatural and natural deaths in prisons as indicated on the website

of the NCRB and in its Annual Reports and also explain the sub-categorization 'others' within the category of unnatural deaths. The NCRB should also be required to sub-categorize natural deaths. The sub-categorization and clarification should be complied with by 31st October, 2017. A

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 sensitization 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. B C

5. The necessity of having counselors and support persons in prisons cannot be over-emphasized. Their services can be utilized to counsel and advice prisoners who might be facing some crisis situation or might have some violent or suicidal tendencies. The State Governments are directed to appoint counselors and support persons for counselling prisoners, particularly first-time offenders. In this regard, the services of recognized NGOs can be taken and encouraged. D

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 video conferencing 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. E F

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 the CAG. The 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 G H

A 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.

8. Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly B 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 C unnatural deaths in prisons. The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary.

9. The constitution of a Board of Visitors which includes non-official visitors is of considerable importance so that eminent D 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 E 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 30th November, 2017.

F 10. The suggestion given by the learned *Amicus* 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 G carried out in other States as well and, if so, they require to be documented, studied and emulated.

11. The Ministry of Women & Child Development of the Government of India which is concerned with the implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 H is directed to discuss with the concerned officers 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 31st December, 2017.

58. We expect the above directions to be faithfully implemented by the Union of India and 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 term of our first direction is at liberty to consider those difficulties and pass necessary orders and directions.

59. List for follow-up in December, 2017.

Divya Pandey Directions issued.