

**In the High Court of Madhya Pradesh
WP 20840/2017
Smt. Shakuntala vs. State of MP and Ors.**

Gwalior, dtd. 06/02/2019

Shri D. S. Chauhan, counsel for the petitioner.

Shri S. N. Seth, Government Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed, seeking the following reliefs:-

"7. It is therefore, most humbly prayed that this petition may kindly be allowed and the respondents be directed to make enquiry in the matter of under trial custody death of Shri Ramesh Jatav husband of the petitioner who died on 25.7.2015 in custody. The petitioner be allowed compensation and any other relief like service to her major son etc. Any other relief in the peculiar facts and circumstances of the case may kindly be granted."

The necessary facts for the disposal of the present petition in short are that husband of the petitioner, namely, Ramesh Jatav, was arrested on 30th March, 2015 by Police Station Bhagchini, District Morena in Crime No.45/2015 for offence under Sections 392, 120-B of IPC and Section 11/13 of the MPDVPK Act. While the husband of the petitioner was lodged in District Jail Morena, he expired on 25/07/2015. It is pleaded in writ petition that on 25/07/2015, the son of the petitioner had met with his father Ramesh Jatav in jail and at that time, the husband of the petitioner was hale and hearty and did not make any complaint of his chest pain. However, on 25/07/2015 itself, the husband of the petitioner died in suspicious circumstances and there were certain ante-mortem injuries on the body of the deceased. The petitioner was constantly requesting for conducting an enquiry, but no response was given to the request made by the petitioner. It is further

submitted that the husband of the petitioner was falsely implicated in criminal case concocted by complainant Ramkishan. It is further submitted that the police did not allow the petitioner to see the dead body of her husband and the dead body of her husband was handed over only after postmortem was done. However, because of ante-mortem injuries on the body of her husband, the respondents should have taken an action in the matter, but nothing was done against those persons who are responsible for causing injuries to the deceased. Accordingly, prayer for enquiry as well as compensation has been made.

Per contra, it is submitted by the Government Advocate for the State that a judicial enquiry was conducted by the Judicial Magistrate First Class, Morena. On 25/02/2015 in between 11:30- 12:00 pm, the husband of the petitioner had informed the Head Constable about pain in the chest and accordingly, he was sent to District Hospital by Jail Ambulance and an information was also given to the Police Station Kotwali, Morena. The pre-MLC report dated 25/07/2015 given by the Medical Officer, Morena has been filed as Annexure R1. (However, Annexure R1 is not pre-MLC report but it is an information sent by Medical Officer on duty to the police about the death of deceased Ramesh Jatav). It is further submitted that the postmortem was done by the Medical Board and certain ante-mortem injuries were found. However, in the opinion of doctor, the cause of death of the deceased was Cardio-respiratory Failure. Accordingly, the judicial enquiry was conducted and JMFC, Morena has given a finding that the death of the deceased was because of Cardio-respiratory Failure and not because of any injury caused to him. It is further submitted that the husband of the petitioner had a criminal history and apart from the case in which he

was arrested, one more offence in Crime No.71/2014 was registered by Police Station City Kotwali, Morena for offence under Sections 420, 467, 468, 471, 120-B of IPC.

The Jail Superintendent, Morena also adopted the return filed by other respondents. It is further submitted by the respondents that as the death of the husband of the petitioner was natural, therefore, the petitioner is not entitled for any compensation.

Considered the submissions made by the counsel for the parties.

I have gone through the enquiry report dated 24/08/2015 submitted by Judicial Magistrate First Class, Morena in Enquiry Case No.01/2015. In the enquiry report, paragraphs 1 to 5 are formal in nature. From paragraphs 6 to 16, the evidence recorded by the enquiry officer have been reproduced and paragraph 17 reads as under:-

17-दैनिक समाचार पत्र में प्रकाशित एवं उदघोषणा जारी कराये जाने के पश्चात् किसी भी साक्षी ने न्यायालय में उपस्थित होकर इस बात का कथन नहीं किया है कि मृतक बंदी रमेश के साथ किसी व्यक्ति द्वारा मारपीट या अन्य अपराध किया गया हो तथा जिन व्यक्तियों द्वारा अपराध किये जाने की शंका मृतक के घरवालों द्वारा बताई गई है उनका जेल के अंदर प्रवेश करके अपराध कारित किया जाना अस्वाभाविक होकर इस कारण भी असंभव प्रतीत होता है, क्योंकि ड्यूटी डॉक्टर राकेश शर्मा एवं मेडिकल बोर्ड के डॉ० एम०एल०गुप्ता एवं डॉ० अजय गोयल द्वारा मृतक बंदी रमेश की मृत्यु का कारण हृदय एवं श्वसनतंत्र फेल होने के कारण होना बताया गया है अतः इस न्यायालय के समक्ष जांच के दौरान जो साक्ष्य आई है उससे यह स्पष्ट हो चुका है कि बंदी रमेश की मृत्यु प्रकृति के सामान्य अनुक्रम में हृदय एवं श्वसनतंत्र फेल हो जाने के कारण हुई थी, उसकी मृत्यु का कारण उसके साथ किया गया कोई अपराध या उसे पहुँचाई गई चोट नहीं है।”

In the considered opinion of this Court, the enquiry report submitted by the enquiry officer cannot be said to be satisfactory. In the postmortem report, ante- mortem injuries were found on the body of the deceased. Undisputedly, the deceased was lodged in District Jail, Morena. It is not the case of the respondents that the deceased had

sustained any injury in a fight among the inmates nor it is the case of the respondents that the deceased was beaten by any jail officers/employees. Thus, presence of ante- mortem injuries on the body of the deceased had remained unexplained by the prosecution. Unfortunately, the enquiry officer has not cared to consider the matter from that angle. On the contrary, he has merely stated that it was not possible for any outsider to enter in the jail and to give beating to the deceased.

Further, according to the statement of Jiledar Singh, which is reproduced in paragraph 11 of the enquiry report, he was informed by Dharmendra that his father is having a chest pain and, therefore, he informed Jagdish, Head Constable. The deceased had also informed the Head Constable about his chest pain. The deceased was brought to the Jail Gate from where he was shifted to Hospital. It is really surprising that when there is a doctor in the District Hospital, then why the deceased was not taken to the Jail Dispensary and why no first aid was given to the deceased in the jail itself. Dr. Rakesh Sharma, who was posted in District Hospital, Morena at the relevant time, has stated that when the deceased was brought, his pulse and BP were not recordable and the deceased, by indicating, was complaining about chest pain, first aid was given. Dr. Yogesh Tiwari was summoned. ECG was done. BP was checked and thereafter, the deceased was declared dead. There are certain questions which have remained unanswered in the enquiry report. No one has stated that the ante- mortem injuries found on the body of the deceased were caused during the treatment. Thus, it is clear that the deceased was beaten inside the jail and the enquiry officer has ignored that aspect. Thus, it is clear that the enquiry officer did not go into depth of the case and has given a finding in a very small paragraph merely by saying that there is no possibility of assault by the outsider in

the jail.

Under these circumstances, this Court is of the considered opinion that a detailed enquiry is required into the cause of death of the deceased. Accordingly, it is directed that the District and Sessions Judge, Morena shall conduct an enquiry into the matter afresh. Apart from considering the documents, the District and Sessions Judge, Morena is further directed to record the statements of the witnesses afresh. In case, if the District and Sessions Judge comes to a conclusion that the death of the deceased was under suspicious circumstance, then he shall also fix the responsibilities. The District and Sessions Judge, Morena is also directed to give a specific finding with regard to ante-mortem injuries sustained by the deceased as well as give a finding as to who is, prima facie, responsible for causing the said injuries. The Enquiry Officer shall also give a specific finding that why the deceased was not taken to the jail dispensary and why the jail doctor was not informed that why no first aid was given to the deceased in the jail itself. The District and Sessions Judge shall also enquire that whether any Doctor was posted in Jail Dispensary or not ? The report be submitted to the Principal Registrar of this Court and to the Principal Secretary, Department of Home, Vallabh Bhawan, Bhopal.

So far as the question of compensation is concerned, the Supreme Court in the case of **Nilabati Behera vs. State of Orissa**, reported in **(1993) 2 SCC 746** has held as under:-

"32. Adverting to the grant of relief to the heirs of a victim of custodial death for-the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to .the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the

indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title '*Freedom under the Law*' Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence... This is not the task for Parliament.... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this Country."

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy

available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exempellary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and persecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the

citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with [Rudul Sah v. State of Bihar and Anr.](#), [1983] 3 SCR 508 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under [Article 21](#) is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply And the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under [Article 32](#) or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."

The Supreme Court in the case of **RE-INHUMAN CONDITIONS IN 1382 PRISONS, IN RE**, reported in (2017) 10 SCC 658 has held as under:-

"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 Bihar**. (1993) 2 SCC 746 . 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. "

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 & Ors. v. Union of India.

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. The State of Maharashtra.

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.

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.

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 & Ors.

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 & Anr.

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 & Haryana High Court awarded compensation to the next of kin of the deceased.

g. Tmt. Rohini Lingam v. State.

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 & Anr. v. State of Kerala & Ors.

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 concerned police officers was concluded.

i. Ravindra Nath Awasthi v. State of U.P.

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 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.

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. Dukharam v. State of Chhattisgarh & Ors.

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.

1. Santosh Kumari v. State of H.P. & Ors.

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 Jammu & Kashmir v. Sajad Ahmad Dar.

48.13. 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 High Court awarded the compensation to the next of kin of the deceased.

n. Mrs. Meena Singh v. State of Bihar.

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 (Non-Government Organization) v. State of M.P.

48.15. 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.

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 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 the 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 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 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 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 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 complied with by 31st October, 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 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.

58.5. 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.

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 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.

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 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 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 30th November, 2017.

58.10. 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 carried out in other States as well and, if so, they require to be documented, studied and emulated.

58.11. 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."

The Supreme Court in the case of **Sube Singh vs. State of Haryana & Others**, reported in **AIR 2006 SC 1117** has held as under:-

"21. In cases where custodial death or custodial torture or other violation of the rights guaranteed under [Article 21](#) is

established, courts may award compensation in a proceeding under [Article 32 or 226](#). However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of [Article 21](#) is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroboration evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, courts may not award compensation as a public law remedy under [Article 32 or 226](#), but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

22. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier para are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters. In [State of MP vs. Shyamsunder Trivedi-1995 \(4\) SCC 262](#), reiterated in [ABDUL GAFAR KHAN and MUNSHI SINGH GAUTAM \(supra\)](#), this Court observed :-

"Rerely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available..... Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues..... The exaggerated adherence to and insistence upon the

establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case....., often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture." Improving the present situation

24. Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:

a) Police training should be re-oriented, to bring in a change in the mindset and attitude of the Police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.

b) The functioning of lower level Police Officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of investigation.

c) Compliance with the eleven requirements enumerated in D.K. Basu (supra) should be ensured in all cases of arrest and detention.

d) Simple and fool-proof procedures should be introduced for prompt registration of first information reports relating to all crimes.

e) Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to FIRs, Mahazars, inquest proceedings, Post-mortem Reports and Statements of witnesses etc. and to bring in transparency in action.

f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against Police personnel and take stern and speedy action followed by prosecution, wherever necessary. The endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence building measures (CBMs), and at the same time, firmly deal with organized crime, terrorism, white-collared crime, deteriorating law and order situation etc. CONCLUSION :"

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that even if the case of the respondents is accepted, then it is clear that no first aid was given to the deceased in the jail hospital. It is not also known whether in the jail, the Doctor was available at the relevant time or not ? It is clear that there were lack of medical facilities in the jail. Further, although the deceased was lodged in the jail but still ante-mortem injuries were found on the body of the deceased which were not explained by the respondents.

Considering the totality of the case, as this Court had directed for a fresh enquiry by District and Sessions Judge, Morena, therefore, without commenting into the merits of the case, as it may prejudice the mind of the Enquiry Officer, this Court is of the considered opinion that the State must compensate the petitioner for the death of her husband in the jail. Accordingly, without prejudice to the right of the petitioner to file a civil suit for claiming the compensation, it is directed that the State shall pay an amount of **Rs.3,00,000 (Rupees Three Lacs)** as compensation to the petitioner, with liberty to the State to recover the same from the defaulter officer (s).

A coordinate Bench of this Court in the case **Vishnu Prasad**

Sharma vs. the State of Madhya Pradesh passed in CRA 9761 of 2018 on 11th January, 2019 while discarding the enquiry report, submitted by the CJM, had directed for an enquiry against the CJM. The relevant paragraphs read as under:-

"There are glaring irregularities in the report and the findings in para 23 appears to be prima facie concocted, coloured and under influence. Another glaring disparity is that there is mention of report of Dr. A.D.Vinchurkar, but no such report is available along with the enquiry report and statements of only upto witness No.10, have been enclosed i.e. Dr. D.S. Pandoliya, who was part of the team which had conducted postmortem on deceased Golu. Thus, there are no documents to show that Golu was ever medically examined soon after the arrest and ever visited Distt. Hospital, Guna, while he was alive after his arrest.

In view of such biased report and there being no explanation to support the statements of witness No.4 Pahalwan that on 22 he and Golu were beaten by the family members of the girl in question, (as there is no corroboration of this narration from the statements of Dr. A.D.Vinchurkar who had examined Golu on 23.11.16 and there is allegation of Golu's mother that Golu was taken into custody on 22.11.16), it is apparent that CJM did not try to go into the depth of the case while he was conducting a magisterial enquiry which further compounds the act of inefficiency of the CJM. Even statement of witness No.5 Naveen Sehriya is in the nature of hearsay. Therefore, this Court directs the Principal Registrar (Vigilance) at Principal Seat, Jabalpur, to conduct an enquiry against Shri Sanjay Kumar Gupta, CJM, Guna (MP) for which purpose Principal Registrar of this Court shall forward his Mritu Jaach Prativedan dated 21.3.17 alongwith statements recorded by such CJM. The inquiry officer shall also afford an opportunity of hearing to the complainant. The complainant will be free to approach Human Rights Commission against the concerned doctors and police officials. "

Thus, the District and Sessions Judge, Morena is directed to supply a copy of the enquiry report to the Principal Registrar of this

Court also.

It is also made clear that if it is found by the District and Sessions Judge that the enquiry which was conducted by the Judicial Magistrate First Class, Morena was not in accordance with law, then in the light of the directions given by the Coordinate Bench of this Court in the case of **Vishnu Prasad Sharma** (supra), it is directed that the Principal Registrar of this Court shall forward the enquiry report to the Principal Registrar (Vigilance) at Principal Seat, Jabalpur to conduct an enquiry against **Shri Rajesh Jain, the then JMFC, Morena**. Apart from the above, the complainant shall also be free to approach the Human Rights Commission against the jail authorities as well as the doctor, who was posted in the Jail Hospital, District Morena at the relevant time, as there is nothing on record to show that any treatment was given to the deceased in the jail.

With the aforesaid directions, this petition is **finally disposed of**.

(G. S. Ahluwalia)
Judge