

EDITORIAL

Death and denial of care in Indian prisons

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Custodial death is generally linked in the public mind with police brutality and torture, not with indirect brutality through negligence and callous treatment in jail custody. Yet it is not known how many of the thousands of prisoners who die in our jails every year die due to neglect by the jail authorities. The official *Prison Statistics India (PSI)* in its most recent report states that 1,879 men and women died due to “natural causes” in prisons across India in 2021. Natural causes are defined in the report as “illness” and “ageing”. According to the report, 185 more prisoners died of “unnatural” causes, and 52 of “causes not yet known” [1: p 179]. “Unnatural deaths” include “deaths due to negligence or excesses by jail personnel”^a. The vagueness of this classification in the *PSI* data had been noted by Justice Lokur in a landmark Supreme Court judgment, in 2013, when he said: “The distinction made by the NCRB [National Crime Records Bureau] 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?” [2]

Nor does the *PSI* report tell us how many of these “natural” deaths resulted from pre-existing conditions prior to incarceration, and how many from conditions developed in prison; whether treatment was given, and whether it was adequate. We will never have such important details unless a system is put in place for greater transparency and accountability. For now, it is only when looking into individual deaths that some facts emerge. Let us look at two recently reported cases.

A 2023 Bombay High Court judgment in *Vishnu Sandipan Kute and Ors vs State of Maharashtra and Ors* exposes the jail authorities’ callousness and neglect of the health of individuals in jail custody [3]. The High Court granted monetary compensation to the petitioners, the family of 32-year-old Pratap Kute who had been charged under sections 143, 147, 148, 326, 452 and 506 of the Indian Penal Code, 1860, with rioting and house trespass. Pratap died in February 2012, a little more than a month after entering the jail. He died because his illness was neglected by all concerned — from the jail superintendent to the magistrate to his police escort. The postmortem report showed the apparent cause of death as “Pulmonary Koch’s with Miliary Tuberculosis of Liver and Spleen in Sero Positive Case”, not a condition which could have developed overnight. Yet there is no mention in any records of a visit from the prison medical officer; there seems to be no evidence of even the mandatory health screening [3] at the time of admission. The only step taken that might constitute “medical care” — after the undertrial prisoner complained of acute distress and asked to be moved to a government hospital — was to send a blood sample for testing [3].

The High Court noted that the jail authorities did nothing even after Pratap complained to the magistrate, on February 7, 2012, of his distress; the prosecution insisted that “it is the boundent (sic) duty of the State to provide medical aid and that the medical facility is available in jail”, and resisted hospital treatment on this ground [3]. After the perfunctory gesture of collecting his blood sample three days after his complaint, the jail authorities did nothing till his illness reached a point of no return. Only on February 23, 2012, did they shift him to the government hospital in Beed, where he died on February 27 [3]. When the attending physician at the Beed hospital informed the police escort that the patient needed advanced care beyond their capacity, and should be shifted to the better equipped government hospital in Aurangabad, the police escort refused. He stated that “he is unable to shift the accused to Government Medical College & Hospital, Aurangabad and that they would have no grievance if the life of the deceased Pratap was in danger.” [3] This chain of negligence, in the judges’ view, “reflects total callous and insensitive mindset of the police authorities as well as the jail authorities.” [3] Noting that prisoners, being incarcerated, are unable to seek treatment, and it is the obligation of the authorities to provide them with care in order to protect their right to life, guaranteed by Article 21 of the Constitution, the High Court awarded the family monetary compensation of Rs 10 lakh [3].

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Restitution for a life

Compensation may go some way towards recognising the prison system's culpability in its blatant disregard for the right to life of prisoners entrusted to it; compensation may even provide some relief to a poor family which has lost its breadwinner. However, such neglect must also be exposed, and this must lead to "initiation of disciplinary proceedings/prosecution against the erring public servant" as declared by the National Human Rights Commission (NHRC) [4].

In 2012, the year Pratap Kute died, *Prison Statistics India* reported 126 "unnatural deaths" in Indian prisons [5: p 133]. Not one of these deaths is reported as "due to negligence/excess by jail personnel" [5: p.135]. Even in *PSI* 2021, only one death due to negligence/excess is reported for the entire country [1]. This seems to contradict a Home Ministry statement reporting that 2,152 people died in judicial custody and 155 in police custody in 2021-22, and that the NHRC recommended monetary compensation in 137 of these cases [4]. Clear and reliable documentation would be the first requirement for any kind of reform.

In fact, the basis for a reporting system does exist. According to the Home Ministry statement, "Pursuant to the guidelines issued by the NHRC, every death in custody, police or judicial, natural or otherwise, is to be reported to the Commission within 24 hours of its occurrence. If an enquiry by the Commission into custodial death discloses negligence by a public servant, the Commission recommends to authorities of Central/State Governments for paying compensation to the Next of Kin (NoK) and also for initiation of disciplinary proceedings/prosecution against the erring public servant" [4]. However, the NHRC's recommendations are not binding on the authorities.

Pratap's custodial death only came to public attention because the family persisted in seeking a legal remedy, and even that took 11 years to reach a resolution. For all those prison deaths which are just figures in the *PSI* reports — or not even recorded there — strict regulatory oversight is essential to uncover cases of negligence and brutality in the justice system. The Home Ministry response revealed that just *one* 'Disciplinary Action' was taken in 2021-22 against an "erring official" [4].

When such cases are exposed, monetary compensation to the victim/family is a must. How is this compensation calculated? There appears to be no rational basis for the calculation of compensation for "unnatural" prison deaths. This suggests compensation is awarded as "largesse" rather than through a rights-based approach. A formula needs to be worked out based on clear principles as laid down in Supreme Court judgments such as *National Insurance Company Limited v Pranay Sethi* [6]. Here, the Court had intended to derive a standard for "just compensation" in motor accident cases, giving some weightage not only to the deceased's earnings, but to the age of the deceased, the number of dependents, inflation, future prospects, funeral expenses, the partner's loss of consortium, etc. We need to move beyond focusing solely on the deceased's earnings, which simply compounds the injustice to the deprived — the majority among those incarcerated — and reduces the value of their lives.

What is "appropriate treatment" in prison?

In Pratap's case, no "treatment" was even offered until it was too late. But the question of appropriate treatment is revealed in another recent Maharashtra case, *Kanchan Ramakrushna Nanaware vs. State of Maharashtra* [7]. Kanchan Nanaware suffered from a congenital heart defect and had undergone surgeries for this condition prior to her arrest in 2014 [7]. Kanchan and her husband, Arun Bhelke, were detained for offences under sections of the Indian Penal Code, 1860, for cheating, and forgery for the purpose of cheating, etc. Later charges were added under the Unlawful Activities (Prevention) Act (UAPA), 1967, claiming that they were part of a Maoist front organisation [8]. Kanchan's imprisonment as an undertrial lasted for six years, until her gradual deterioration and death in January 2021 [8]. Her applications for bail on medical grounds were rejected by the Additional Sessions (UAPA) Court judge, Pune, on the ground that her medical problems were being treated [8]. When the Supreme Court ordered bail under a decongestion exercise during the acute stage of the Covid-19 pandemic, Kanchan was excluded on the ground that she was a UAPA detainee. On appeal, the Bombay High Court, in 2020, ordered the setting up of a special committee of experts at the Sassoon Hospital, Pune, to assess her health status for transplantation [7]. The hospital had stated, as early as February 18, 2020, that heart and lung transplantation was the only option left for her [7]. The High Court had therefore instructed the authorities to locate government facilities performing heart/lung transplants, to which the response was that there were none [7]. No further step — such as evaluating her medical condition in order to put her on the transplant list — was taken. In January 2021, she developed a brain ailment and was operated on. She died soon after the surgery, on January 24, 2021, aged 38 [8].

It is worth noting that both Pratap and Kanchan were undertrials and could very well have been discharged by the courts after a trial. Kanchan had been acquitted in six of the nine cases in which she had been booked [8]. If they had received the necessary treatment, they might have lived to be free. In fact, the Supreme Court had, in 2016 and 2017, granted regular bail (as distinct from medical bail) to persons charged with almost identical offences in UAPA cases, on the principle that stringent bail conditions could only be justified by speedy trials. The Court had balanced the seriousness of the charges levelled against the individual's rights and the period of custody already suffered [9,10]. Kanchan died, denied both medical bail and a speedy trial,

though her serious health condition was known and on record. She had been treated, on several occasions, in the government-run Sassoon General Hospital, Pune, but the treatment had done nothing to improve her health; the High Court noted that the complete medical records had not even been produced before the Court [7]. When the State persistently refuses medical bail for seriously ill prisoners in its custody, it becomes responsible for providing them with appropriate specialised treatment. In this case, the treatment would have been organ transplantation in a multispecialty institution. No steps were taken towards even initiating this process; the High Court was simply informed that such a facility was not available in government institutions in Pune or Mumbai [7].

Ethical questions abound on the issue of prisoners receiving expensive treatment and scarce resources at State cost. Rule 24.1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states: "The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status." [11] The SC explained in 1996, in *Shri Rama Murthy vs St of Karnataka*:

...society has an obligation towards prisoners' health for two reasons. First, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap. [12: para 35]

In the United States, the United Network for Organ Sharing, which oversees organ transplants, functions on the principle that "... one's status as a prisoner should not preclude them from consideration for a transplant". There are "medical and non-medical factors that may influence one's candidacy for transplant" but once listed, "all candidates should be eligible for equitable allocation of organs." [13]

Who will bear the cost of such treatment? When judges permit prisoners to undergo costly treatments at their own expense they privilege prisoners with resources over those who are poor. However, if the State is adamant about not giving seriously ill prisoners expensive treatment for which they cannot personally afford to pay, it should adopt the policy of "compassionate release" available in the United States. Under 18 United States Code 4205(g) or 3582(c)(1)(A), the State may, in "particularly extraordinary or compelling circumstances" [14] which include terminal illness, release such prisoners into the care of their families if the prisoner or relatives apply for such a release.

The system needs a revamp

The introduction to the *Model Prison Manual 2003* [15] frankly states that: "...whereas India is second to none in terms of an enlightened thinking with regard to the purpose and objective of imprisonment, the gap between proclaimed principles and actual practices appears to have been widening in recent years." [15: Perspective] Successive versions of the manual, while laying out detailed guidance for ideal administration of the food, safety, healthcare, etc of prison inmates, have been honoured more in the breach.

Most jails lack the well-equipped prison hospitals so meticulously described in Chapter VII of the *Model Prison Manual of 2016*. The manual has exact specifications for bed strength, a pathology laboratory, qualifications and number of medical officers, their precise duties, and those of nursing assistants, etc [16]. Adequate investment in healthcare facilities, whether infrastructure or staff, is essential to ensure the inmates' right to healthcare. The manual seems to acknowledge that medical professionals in prison are doctors, and not prison officials: "The Prison medical administration may form part of the State Medical Services/ Medical Department instead of the prison administration." [16: Chap VII, 7.02] Yet it later states, "These Chief Medical Officers shall be under the Superintendent of Prisons." Prison doctors are expected to function in the Hippocratic tradition. They are unlikely to do this if they are subordinated to the prison administration.

Another necessary step would be to impress upon medical personnel that their primary duty as doctors is to care for their patients, and failure to do so will be penalised. Clearly, these are only small steps towards reform. A major overhaul of both the public and official mindset regarding prisoners and an urgent revamping of the criminal justice system are sorely needed.

When individuals fall ill in prison, they must be given adequate treatment, and their condition and treatment documented. Any abuse or neglect must be recorded. If they die due to neglect or abuse, compensation needs to be paid. This is not a matter of charity but the right of those for whose lives and dependents the State is responsible. Calculation of such payments needs to be based on clear and transparent criteria — eg those laid out in existing decisions of the Supreme Court. They must *not* be based primarily on the person's earnings, which hits the underprivileged hard.

While a Model Prisons Act is said to be in the offing, the current, long-standing state of prison functioning — in spite of so many model prison guidelines, court verdicts and commissions — suggests that it would take more than yet another law to improve the dismal conditions of prisoners in India.

Note: The category of “unnatural” deaths explained in the PSI reports includes “suicide, murder by inmates, death due to assault by outside elements, death due to firing, accidental deaths inside prison, etc,” besides “death due to negligence or excesses.”

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References

1. National Crime Records Bureau, Ministry of Home Affairs. *Prison Statistics India 2021* [Cited 2023 Apr 6]. Available from: <https://ncrb.gov.in/en/prison-statistics-india-2021>
2. Supreme Court of India. In *Re Inhuman conditions in 1382 prisons*. WP (Civil) No. 406 of 2013. 2018 Sep 15 [Cited 2023 Mar 21]. Available from: <https://indiankanoon.org/doc/88050370/>
3. High Court of Bombay. *Vishnu Sandipan Kute and Ors vs State of Maharashtra and Ors*. Criminal W.P. No.1464 of 2015. 2023 Mar 2 [Cited 2023 Mar 22]. Available from: <https://theleaflet.in/wp-content/uploads/2023/03/ordjud-3.pdf>
4. Lok Sabha. Response by Shri N Rai, Minister of, State, Union Home Ministry, to unstarred question no. 3019 on custodial deaths. 2022 Mar 22 [Cited 2023 May 25]. Available from: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/LS-22032022/3019.pdf>
5. National Crime Records Bureau, Ministry of Home Affairs. *Prison Statistics India 2012*. 2013 Sep [Cited 2023 Apr 16]. Available from: <https://ncrb.gov.in/sites/default/files/PSI-2012.pdf>
6. Supreme Court of India. *National Insurance Company Limited v Pranay Sethi on 31st October, 2017*. Special Leave Petition (Civil) No.25590 of 2014. 2017 Oct 31 [Cited 2023 April 29]. Available from: <https://indiankanoon.org/doc/139996215/>
7. Bombay High Court. *Kanchan Nanaware vs State of Maharashtra*. Interim Application (St) No, 2136 Of 2020, in Crim. Bail Application 765 of 2020. 2020 Oct 7 [Cited 2023 May 20]. Available from: <https://indiankanoon.org/doc/41471752/>
8. Shantha S. Awaiting Trial For Six Years, UAPA Prisoner Dies While In Custody. *The Wire*. 2021 Jan 25 [Cited 2023 Apr 25]. Available from: <https://thewire.in/rights/uapa-undertrial-prisoner-death-custody>
9. Supreme Court of India. *Angela Harish Sontakke vs St of Maharashtra*. Spl Leave Appeal (CRL.) NO(S). 6888/2015 In Crim Bail Appln No. 1570/2014. 2016 May 4 [Cited 2023 May 22]. Available from: <https://indiankanoon.org/doc/126797204/>
10. Supreme Court of India. *Sagar Tatyaram Gorkhe and Anr vs State of Maharashtra*. Spl Leave Appeal No 7947 of 2015. In: Crim Bail Application No. 1657/2014. 2017 Jan 3 [Cited 2023 May 22]. Available from: https://main.sci.gov.in/jonew/courtnc/rop/2015/22295/rop_911651.pdf
11. United Nations Office on Drugs and Crime. United Nations Standard Minimum Rules for the Treatment of Prisoners. Adopted by the General Assembly on December 17, 2015 [Cited 2023 Apr 29]. Available from: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf
12. Supreme Court of India. *Shri Rama Murthy vs State of Karnataka*. 1996 Dec 23 [Cited 2023 Mar 22]. Available from: <https://indiankanoon.org/doc/748775/>
13. Organ Procurement and Transplantation Network. Convicted Criminals and Transplant Evaluation. Ethics Committee Position Paper. Reviewed in 2015 [Cited 2023 May 21]. Available from: <https://optn.transplant.hrsa.gov/professionals/by-topic/ethical-considerations/convicted-criminals-and-transplant-evaluation>
14. US Department of Justice. Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g). 2019 Jan 17 [Cited 2023 May 23]. Available from: https://www.bop.gov/policy/progstat/5050_050_EN.pdf
15. Bureau of Police Research and Management, Ministry of Home Affairs. *Model Prison Manual for the Superintendence and Management of Prisons in India*. 2003 [Cited 2023 Mar 23]. Available from: <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>
16. Bureau of Police Research and Management, Ministry of Home Affairs. *Model Prison Manual for the Superintendence and Management of Prisons in India*. 2016 [Cited 2023 Mar 23]. Available from: <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/PrisonManual2016.pdf>