

Death at the hands of law enforcement agencies!

By Dr G Sreekumar Menon, Commissioner

DEATHS in Custody have become a painful reality of everyday life. The Malda Custodial death has put the Kolkata Customs grappling with various aspects of post-death investigation. The process will be painful for the bereaved family and, the Department will have to explain the rationale for each step taken, in a manner that is understood by professionals, the bereaved family, the public and the law courts. Inquiries are too often at risk of being platforms for Official and sanitized version of Deaths to be given judicial approval, rather than being an opportunity for the family to contest the evidence presented and to discover the true circumstances surrounding the unnatural death of their near and dear one. **Too often families are left isolated from the investigation process.** They are unable to access the investigator, let alone the actual investigation. The limited ambit of investigations, ineffective inquires and the failure to prosecute those responsible are all painful issues for bereaved families. Where a citizen dies or suffers ill treatment in custody, the reaction of the State raises serious questions about **the protection of human rights.** The Police or any other law enforcement agency has to comply with guidelines prescribed by National Human Rights Commission. **Laws are already in existence about the importance of a full inquiry into deaths in custody.** There is a requirement for an Inquest. However the Inquest has a very narrow remit and is manifestly not a public inquiry, it is concerned primarily with establishing the medical cause of death, how the person died, by what means and not in **what broader circumstances.**

The obligation of the state to protect the right to life requires the State taking appropriate measures to protect life, to investigate suspicious deaths and ill-treatment in custody. But there seems to be an **institutional inability for the authorities to acknowledge that the need of a family whose member has died in custody are similar to that of someone who has lost a member in a death in a hospital.** Finding out how someone has died is a fundamental human right. The family can have a real information deficit after a death in custody. They have a very steep learning curve to understand the complex legal investigations and procedures that are initiated after such a death. Families need to receive clear accurate information about Post mortem, organ retention, the inquest process and legal rights. However, tragically, the investigation and inquest has become **an arena for accusations, deceit, cover-up, legal chicanery and mud-slinging.** Investigations of deaths in custody are **secretive, slow and not independent.** The relatives of the deceased are often excluded and marginalized. To them, the investigation and inquiry procedures appear as attempt, to avoid blame and demonise the deceased.

There have been a significant number of high profile deaths in custody that have raised public disquiet, and concerns about inhuman and degrading treatment, systemic failings and the unlawful use and abuse of force. What is apparent in custodial death is

- The lack of accountability and transparency in the investigation process
- The callous disregard for the bereaved families
- The inadequacy of the inquest process
- The woeful inequality of the resources of the bereaved family which is pitched against the might of the State
- The inappropriate response of the governmental machinery coupled with serious short comings in the existing mechanisms of legal and democratic accountability

The question arises as to how best to **identify the systemic failings** and how further future tragedies can be avoided. The investigatory mechanism has to operate within a framework that ensures openness, accountability and compatibility with Human Rights.

(The views expressed are personal of the Author)