

Deaths in Custody:

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Carelessness?

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“I am sad with what happened.” There is nothing more common than hearing this coming from a family member who just lost their loved one in death in custody cases. That despondency, disappointment, melancholy tone of their voice, can an everyday man like us ever imagine?

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According to the statistics produced, there were a total of 104 deaths in custody from 2011 to 2018 (freemalaysia.com). Bearing in mind these are the reported cases, one is led to imagine what the actual numbers are, including the unreported cases. And how many cases out of this overall number are caused by natural deaths?

While we always hear people demanding justice, where is justice in these cases? Quoting Benjamin Franklin, ‘justice will not be served until those who are unaffected are as outraged as those who are.’ Therefore, deviling in deeper is there more than meets the eye to these deaths in custody cases?

The police custody, or ‘lockups’ are places where police remand suspects for investigation purposes. And should there be any deaths in custody, the coroners should conduct an inquest on this matter. There are several reasons that deaths in custody cases are worrying and should be treated seriously in Malaysia: While some countries, like the United Kingdom, produce statistics for deaths in custody every year, some countries do not. Malaysia, is one of those which do not. As such, NGOs have to request the Home Minister in Parliament in order to obtain these data.

This gives the Home Minister sole discretion to decide on whether they should disclose such information regarding deaths in custody. As a result of this, the question posed: Is this systematic and transparent?

Arguably, one might adduce that there might be a conflict of interest as such agencies are under the purview of the Home Ministry. The transparency of this system is further questioned as the full facts of the cases may not be answered.

The real causes of deaths are often left undetermined. According to EDICT, the coroners have failed to conduct 80 inquests while there are 107 mandatory inquests to be conducted (based on the statistics from 2010 to 2016). This illustrates that more than a substantial part (75%) of deaths in custody have not been investigated properly. The relevant authority provides that the causes of deaths include sudden sickness, suicide, conditions of the lockups and abuse of power.

However, it is submitted that these are all attributable to one main cause -- negligence of the relevant authority. This matter is further exacerbated as we should bear in mind that a person suspected of crime will only be remanded for a short period of time, which is 1 to 14 days, with some special cases up to 28 or 30 days. This is so as it would be a stretch of the imagination if something grave were to happen during that period, let alone death.

To contextualize, any preconceived connection drawn may not be precise. The suspects which are thought to have died due to sudden sickness, in actuality died due to the failure of the relevant authority in providing appropriate medical care. Suspects which were thought to have died due to suicide were in actuality, done so due to coercion to adduce facts. More formidably, suspects thought to have died from natural causes were either dead due to acts of violence brought against the suspect by the authorities and the dilapidated conditions of the lockup.

In Thanabalan's case, the relevant authority claims he passed away due to sudden attack of sickness. However, this all stems from the fact that the Shah Alam lockup is unhygienic which causes him to contract rat urine disease and later, the relevant authority is negligent by failing to provide medical care immediately. Besides, in Jestus Kevin's case, it is argued that the suspect died due to violence act being committed against him by the authority as a result of abuse of power. If those facts are enough to make one nod in disbelief and have anger enveloped within themselves, then what more of the unreported cases? The fear, perturbation one has to go through behind the cold, iron bars of custody.

Further, there is a social stigma on deaths in custody. Some cases were not brought to the courts for the social perception and beliefs. For instance, some family members did not want to sue the authorities as they fear the community would know that they have a family member who is suspected of crime(s) and be stigmatised as a result of that.

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In a nutshell, the gravity of the death in custody issue cannot be undermined. We would never want someone to be treated unfairly just because they are a suspect. This goes against common sense and the notion of presumption of innocence. Ultimately, just because they are a suspect, it makes them no less human than us!

Moving forward, the appropriate actions to be taken to remedy this situation is not limited to legal solution which is the legislative reform, but there is another efficient and 'close to life' solution which is a social protest. As Elle Wiesel put forward, "There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest."



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