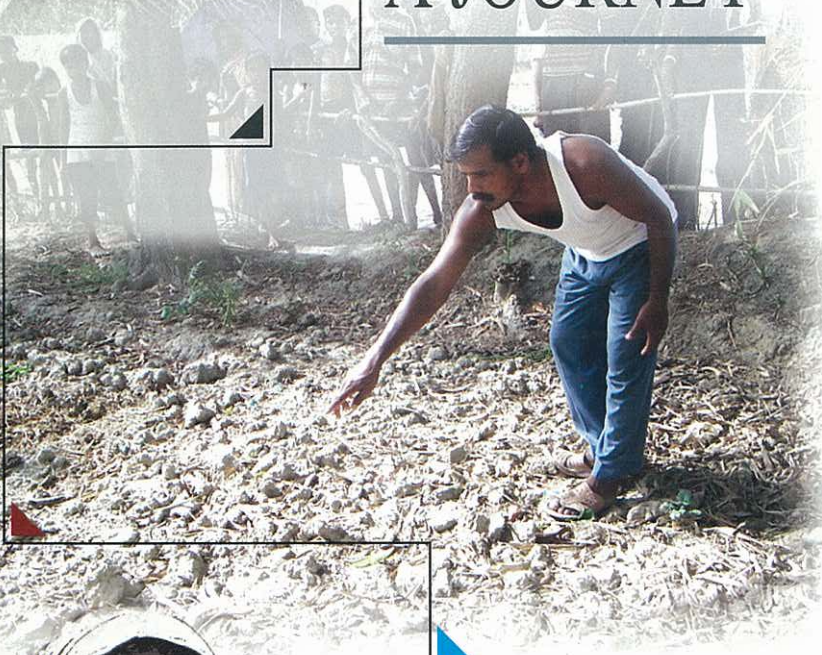


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# Mousumi's death & After

## A JOURNEY



A  
MASUM  
and  
AHRC  
Publication



**Mousumi's death and after: a journey**

## **Mousumi's death and after: a journey**

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*she wanted to live...  
she is living with death  
as truth buried under the soil*

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## The Backdrop

January 3, 2004 would have been just another winter day in Kolkata, if not the local vernacular and English dailies would have splashed with the news of a different kind - the dead body of a minor girl, buried under the soil for 63 days, preserved in quest of justice, was exhumed by an order passed on 20 December, 2003 by the learned court of the Sub-Divisional Judicial Magistrate, Diamond Harbour, West Bengal.

Peoples at large took notice of the incident and got curious about it. But they perhaps did not know, what lies beneath. It is a sordid saga of another dowry-death of a minor girl named Mousumi, married at sixteen and breathed her last at barely seventeen and half by inhuman torture resulting to death by her in-laws in a little village called Narayanpur in Southern Bengal, India and the horrendous act of the state-machineries to hush up the murder case in a most shameful manner.

### *Society, violence and women*

Violence on women is not an alien subject in a poverty-stricken country like India irrespective of all religious identities. It is almost ingrained in the social system. The existence of a woman is so vulnerable in the society that one is prone to fall prey to the misdeeds of the societal structure. Her miserable fate starts from her foetal days. In common belief, birth of a girl-child is treated as a curse to the parents. If the foetus is a girl, it is more likely to be the victim of female-foeticide in the name of amniocentesis. Though the system is banal, the private clinics and health service providers do practice it behind closed doors.

That is not enough. Rape is also an ever-pervasive menace irrespective of the age of the victim. From minor to adult, every girl is a potential victim of the vices of the patriarchal society - sometimes out of revenge and often under the pyre of lustful violators. The society sympathises with the victim not for the crime perpetrated upon her but for losing her chastity. The molesters often go unpunished, if not awarded with prizes and the societal castigation falls upon the victim.

Even when in home or outside, usually, a girl in India reaches her adulthood, suffering all the abuses, persecutions and silent molestations in every nook and corners of her living, ranging from close relations to alien intruders in her life. Being an adult, she becomes more prone to other degrading, cruel and inhuman treatment like torture for dowry, which even leads to her killing, forced to immolate herself as *sati* and so on.

So the cruelty and violations of human rights have carved a niche in societal arena, to be the part and parcel of one's being in India. And the perpetual recurrences of it have diluted the very terms like 'violence', 'murder', bride-burning etc. The words have shed their dangerous intonations and became acceptable to the society. We have become such tolerant that we bear the sufferings of others and can remain aloof, ignoring it.

The history does not speak in such negative term. In 1914, Snehalata Mukhopadhyay, a teenaged girl in Shyambazar, Kolkata had to immolate herself with fire seeing her father's inability to provide dowry for her marriage. In the erstwhile societal parlance, there was no dearth of hue and cry over the incident at that time. But the situation has changed since then. Our degree of tolerance has reached such a peak that there is hardly anyone to speak in defiance, on occurrences



of such gruesome incidents.

We are uttering the words in such a time when the Tortures, Deaths or Murders have shed their dangerous intonations and are being slowly gaining acceptance among ourselves. The words could spread its poisonous fangs in our daily lives and structures. The interrelations and mutual understandings of the different administrative structures exist in the layers of the society allow and often establish the foundation of such social crimes. It is being justified with the exertion of power and delimits the rights of the people.

### *The Judiciary: heap of confusions*

Let us shift our focus to the legal system or judiciary in India. The system is full of loopholes and a bunch of idiosyncrasies cast their shadow in delivering justice. For any particular kind of illegalities there are a number of varied interpretations in different statutes and laws. Whether a person is a minor or child or an adult shall be decided depending upon the case or statute with which the particular case is related. Contrary to U.N.O.'s uniform definition of a person under the age of eighteen as 'child', in which Government of India is a one of the signatories there is no clear cut and uniform definition irrespective of the laws and statutes in India. The Juvenile Justice Act, Laws relating to Child Labours or Hindu Marriage Act and Muslim Personal Law define and deal with a child or minor in different ways. Accordingly in the case of the death of Mousumi Ari at her late teens, no reference of her minor status of being child had been found due to such legal idiosyncrasies.

On the other, the criminal justice system is not a full-proof one, as claimed by the Indian judiciary. The system is fully

dependant on the police from the stage of probing of an incident to the case is finally charge-sheeted. And in a class-ridden society there is every possibility to cases become subject to twist and turns at the whims of the privileged classes and sections.

We utter such words in utmost pain to portray the gruesome scenario of the state of West Bengal, where crime is a just for existence, injustice is order of the day and the unholy nexus of the crimes and its misdemeanors and the accumulation of it in the corridors of power. Within this power structure lie the family and other social relations on one side and the composition of the police, the health system, the legal system or the judiciary on the other. We present here an incident that have taken place in the southern fringe of West Bengal; the planned murder of Mousumi Ari – a teenaged married girl and the concerted efforts of the existing power structure to dilute the case. On the other hand it would give us a glimpse over the fight of a semi-literate poor family against the power structure in pursuit of truth and justice. It is an exposition of the spiraling of corruption rampant in the different layers of society. With this, we take the cudgels in exposing the real face of Indian democracy, the judiciary, the execution of law and order, its civil society and in documenting a deconstruction of the architecture of the faces behind masks.



## The incident

### *In the circle of families*

The incident took place in the village Narayanpur under Kakdwip police station, 24-parganas (south), West Bengal. Narayanpur is situated on the bank of Hataniya Doania, one of the saline rivers encompassing the southern fringe of West Bengal. The village is divided into small areas called *gheri* and identified by its numbers. Most of the inhabitants once came from adjacent districts like Medinipur. So a Medinipurite dialect casts its shadow in their voice and speech. In the proximity of several rivers and Bay of Bengal, most of the villagers are economically dependant on agriculture and fishing. In 4<sup>th</sup> Gheri of Naraynpur, lived Sukumar Sahoo with his family consists of his wife Laxmi, daughter Mousumi and his son, since long. Sukumar was and still being a labourer in a fishing trawler. Very often he used to sail from far to farthest in the deep sea for the sake of his earning. Although, semi-illiterate, he can read and write. They were almost happy with their meager income from fishing. Sukumar got admitted his daughter Mousumi and son into a local Higher Secondary school, Narayan Adarsha Vidyapith for education.

Their happiness did not last long. In course of time her daughter Mousumi met a young boy named Bidhan Ari, in the vicinity and developed an affair with him. Bidhan was unemployed and habituated with drinking and gambling. He was the only son of Swadesh Ari, a home guard in the Kakdwip Police Station. With some added income and influence in the area, Swadesh Ari and his family had a decent living compared to Sukumar's family.

In 2002, Mousumi at the age of sixteen was promoted to

grade nine in school. On 1<sup>st</sup> February of the same year, the very day of *Saraswati puja* (worshipping an Indian deity of Education and Learning), when Mousumi and her brother were on their way to school to observe the worship ceremony, Mousumi took a detour from her way back to home on the pretext of illness and sent her brother alone to school. But there was no whereabouts of her till the same evening when she was found to be going to Swadesh Ari's house accompanied by Bidhan and his mother. She was wearing with *shankha* and *sindur* (bangles made of conch-shell and vermilion, both are identities of Hindu married girl) on her forehead. Violating all legalities and procedures, Mousumi's marital status was changed at the age of barely sixteen.

Sukumar did not agree with his daughter's marriage at her tender age and also he could not bear the marriage with Bidhan for his lower cast identity and also for untimely stop over her education. Mousumi know the objections of her parents and did not dare to face them till she breathed her last. However, her aunt Matangini Sahoo occasionally used to find her while, passing through their residence. After the marriage, the husband Bidhan and his family members used to torture Mousumi both physically and mentally for dowry and money from her father. Mousumi knew her father's inability to meet the demand of her in-laws for dowries.

### *Web of tapestry*

On 25<sup>th</sup> October, 2003, in the early morning Laxmi Sahoo, the mother of Mousumi, heard from some villagers the news of Mousumi's death by committing suicide in her in-laws house. It was a day of *Kali Puja* (worshipping the goddess of Power). In absence of Sukumar, who was out in fishing in the deep sea, Laxmi and Matangini hurried to the Swadesh Ari's house. When Laxmi and other family members went to the house they found Mousumi sat on the earthen floor of her bedroom, resting her back on the wall.

She was unconscious and bleeding profusely. Blood was oozing out from her mouth and nostrils. There were big haematomas over chest, below the ear which was seen by the all witnesses. There were bloodstains on the floor and walls. They noticed a printed sari posing to be a noose hanging from the ceiling, a sleeper and a vest, both bloodstained below the cot. Mousumi's in-laws explained that she had hanged herself and they had cut the sari and brought her body down. Laxmi touched Mousumi's unconscious body and felt it was warm. No physician was called to check her. At last information was given to the local police station.

Police from Kakdwip station, led by Sub Inspector Mr. A K Ghosh, arrived at the scene at 8-9 a.m. and rather than investigating properly, they removed Mousumi's bloodstained clothes worn by her and put fresh clothes on her body erasing the very first evidence of crime with the help of the family members of Mousumi's in-laws. A number of villagers gathered in front of Swadesh Ari's house. They took away the bloodstained clothes in a packet without issuing any seizure list. The bloodstained clothes are untraceable since then. Police also sent the unconscious Mousumi's body to the police station without being attended by any medical practioner. The Kakdwip police station is 17-18 km away from the 3rd Gheri of Narayanpur village.

For hours together, Mousumi's unconscious body, covered with a polythene sheet and tied with thick rope, left unattended by any physician, remained on a cycle rickshaw van, in the open courtyard of the Kakdwip police station. According to police records the body remained there from 12.45 p.m. till next morning when it was sent to the hospital for post mortem. The police also asked Laxmi, Matangini and other relatives of Mousumi to come to the police station. After they reached the police station, they were almost kept

and virtually put in confinement in the police custody insisting to follow their whims - to lodge a complain for Mousumi's suicide and not to project the cause of Mousumi's death, as murder. Laxmi denied paying her heed to the evil design of the police. It was a clear case of cold-blooded homicide. Mousumi's uncle Subodh drafted three successive complaints to lodge and handed over to the Officer-in-charge (OC), Mr. Debasis Chakraborty, all of which were torn to pieces and thrown away.

By this time, in the evening of 25 October 2003, Sri Dipak Kumar Kanungo, Executive Magistrate, Kakdwip, South 24-Pargannas, came at the police station and 'conducted' the inquest under section 174(3) of the Criminal Procedure Code without opening the polythene sheet or untying the ropes or even seeing the body. Ignoring all legalities, even without any medical examination of the unconscious body of the victim, he completed his inquest report construed the body to be one without life. Mousumi's relatives were also not called to the inquest despite their presence in the police station. According to the report of Sri Kanungo, there was no mark of injury in the body of Mousumi. The Sahoo-family could apprehend how an unholy nexus of the administration were at work in converting a case of murder to be posed as a case of suicide.

It was about 10.30 of night. The last bus from Kakdwip was about to leave for its destination-Namkhana. And sparing the bus means having no alternative to return to their village and to spend their night in the police station. Subodh was again forced to draft another letter having dictated by the OC and handed it over to him. It was again rejected by the police with an instruction to replace some words to be put into - '*she was compelled to commit suicide*'. Considering the fate of Mousumi's body, their departure from police station and the hassles of the police formalities-Subodh succumbed to the pressures of the police. He added those

words under duress and Laxmi signed in the formal complaint to get relief from the awkward situation. On the basis of their dictated and concocted complaint the police lodged an First Information Report (FIR) against five persons include Swadesh Ari, the father-in-law, Bidhan Ari, the husband, Minati Ari, the mother-in-law, Minati Ari and Tusu Ari for dowry-death and torture. (Kakdwip P.S case no. 73/2003 under sections 498A and 304-B of Indian Penal Code.

On 26th October 2003 Mousumi's body was sent for Post-mortem in the same rickshaw van to the Diamond Harbour Hospital, 46 km away from the Kakdwip Police Station. According to records at about 1.45 p.m. Dr. Gouranga Biswas, an anaesthetist, attached with the same hospital carried out the post-mortem of the body (P.M. No. 658 dated 26.10.2003). In his report, Mr. Biswas observed that there was no mark of injury in the body except "*...one non-continuous oblique ligature mark high-up in the neck with a gaping below left mandible about 3 inches with printed saree....*". His report clearly indicated the case to be one of suicidal in nature. Most surprisingly, the autopsy surgeon supplemented his findings that the '*non-continuous oblique ligature mark*' was caused by '*printed saree*' and not with others.

Before analysing the credibility of the report we can overview the present state of affairs of the mode and modalities of Post-Mortem system in most of the hospitals in West Bengal. The reality is – the very person who is entrusted to conduct the post mortem and to submit the report thereon, normally does not carry it out by him. In most cases the medical officer does not have any required competence or professional expertise to carry out the post-mortem. In practice, a dom (a person belongs to hindu lower caste community involved in discharging crematorial service and hence untouchable) usually does the necessary jobs to

conduct the post mortem examination of a dead body. He does the dissection as well as stitching it after the post-mortem. The medical officers only sign the reports after filling in an official form with some clichéd words. The tragic part of the system is that the cause and truth of an abnormal death – whether the case is a suicide or homicide is dependant and being shaped and determined by such irresponsible, undisciplined and incompetent mode of handling.

### *Truth buried*

Sukumar Sahoo, Mousumi's father had returned to his village by that time. He sailed through the Bay of Bengal and reached the mid-sea in a trawler. There was no possibility of communicating him about his daughter's murder. At last he was contacted using a radio transmitting system. Being communicated the information; he left the trawler and reached his village via the Port of Paradip, Orissa. When he arrived the Diamond Harbour Hospital, the hospital authority handed him over a dead dissected body of his daughter, Mousumi.

A person, who had not seen his beloved daughter for one year and eight months was just carrying the dead body of her with a volley of questions, remained unanswered. Sukumar and her family decided immediately to preserve the body of their beloved Mousumi, whom they had not seen for long time. What they'll do with the preserved body was unknown? They only knew a grave wrong was being committed against by a section of police, the hospital and the legal system itself. But did not lost their hope – there might be some occasion when they'd find the truth behind the death of their beloved. One day, they'd expose the



cunning fishes, guilty of murdering their child and were slipping away for the time being and get to put them behind bars.

And the answer was blowing in the wind. As they were involved in fish trade since their childhood, they knew how to preserve fishes for pretty long time.. how to arrest its rotting. Instead of cremating Mousumi's body upon getting it back from the morgue, and against all religious customs and social traditions they took the unprecedented step to bury their child. Accordingly, 70 kilograms of salt was purchased from a local grocery. They pitted a hole in the courtyard of their ancestral home, covered the dead body with plastic sheets and buried it in the eight-feet-deep pit. The pit was then filled with the salt purchased.

A body destined to rot in the falsity of some ill-motivated persons got buried in quest of truth.

### *Run Sukumar, Run*

What the semi-literate, poor villagers will do then from a remote place? The local administration had already been ruined...biased and influenced. Kolkata is about 150 kilometers away from Namkhana. So to reach the higher authority was a far cry. Sukumar started to write... to the Chief Minister, to the Police Superintendent of the District and the State Human Rights Commission. He informed them the cause of death of their child was not suicide, but a cold-blooded murder. And the Mousumi's husband, in-laws and his relatives had caused to her death. He appealed to the authorities to find-out the actual cause of death and further post-mortem on the body of Mousumi; exhuming the body from the pit.

Sramajibi Mahila Samity, a local women's organisation extended their helping hand. They lodged their complain to different administrative authorities. But none of them replied, like the fate of Sukumar's complaint.

A month had elapsed by this time. In the first week of December 2003, Sukumar Sahoo and his relatives along with Sramajibi Mahila Samity contacted MASUM (Banglar Manabadhikar Suraksha Mancha), a human rights body based in West Bengal. A fact-finding team of MASUM went to the Narayanpur village, Namkhana. They talked to the local villagers, Superintendent of Diamond Harbour Hospital, the Kakdwip Police Station, *Panchayet* (Local self-governing body) representatives, different local political party activists irrespective of their hues and colours and the victim Mousumi's parents and other relatives. How an unholy nexus of the local administrative bodies was active in creating a web of falsity became clear to the organisation.

On 3 December 2003, MASUM submitted a memorandum to Mr. R. K. Jahuri, the Inspector General of the C.I.D state demanding further investigation into the case of murder of Mousumi. He confided the representatives of MASUM for looking after the case and delegated the duty one lady police officer, Ms Lahiri, DSP-CID. The concerned police officer submitted her report within one week to Mr. Jahuri, informing that the police of Kakdwip had rightfully discharged their duties and lodged cases against the husband and his relatives of the deceased under 498A and 304-B of Indian Penal Code and accordingly arrested a few persons. The C.I.D. Department ended their functionality here with regard to the case.

MASUM then met Justice Mukul Gopal Mukhopadhyay, the erstwhile Chairman of West Bengal Human Rights

Commission, WBHRC. Justice Mukhopadhyay called for a report from the Police Superintendent. He expressed his inability to perform properly for administrative mechanisms prevailed in the system. He did not proceed further with any other action on his part.

### *A silver line*

On 19 December 2003, MASUM put on a deputation before the Sub-Divisional Judicial Magistrate, Diamond Harbour Court, demanding further post-mortem of the body and discussed the same with the Assistant Public Prosecutor of concerned Magistrate's court at Diamond Harbour. On the next day, i.e. 20 December, entire records related to the case were submitted before the court.

It was a historic order to the families of Mousumi as well as to the human rights group working around the world, what the learned court passed on the very day. It was like a silver line in a gloomy sky. Learned SDJM, Diamond Harbour, Mr. S. K. Khamari ordered that the buried body, preserved with salt, shall be exhumed from the pit and be conducted a further post mortem of the body. He directed the Director of Health Services, Govt. of West Bengal to take the steps necessary for conducting the post-mortem.

MASUM convened a Press Conference. All the leading dailies and television channels covered the Press conference in details. The entire episode of the inhumanity perpetrated to a minor housewife was brought to the notice of common people. MASUM then put on several deputations to the Chief Secretary of the state, the Home Secretary (see APPENDIX - II), the Director General of Police and the Inspector General of Police, the Director of Health Services, of the state.

On 2 January 2004, Mousumi's body was exhumed in the presence of senior police officials, villagers and media people. But remarkably, the same Executive Magistrate Sri Dipak Kumar Kanungo, who conducted the first inquest, held also the second inquest, and found nothing. It is surprising to note, how the District Magistrate or the Sub Divisional office could depute the same person for inquest, when his earlier inquest report was open to question and the judiciary passed an order for re-examination? He and the local police officers then made an attempt to get the post mortem also conducted at the same hospital. However, MASUM again met the administrative officers at Writers Buildings and raised the question of partiality and biasness of the Diamond Harbour Hospital. MASUM successfully lobbied government officials for the post mortem to be held at the Calcutta Morgue of the Medical College & Hospital, Kolkata. The body was later taken to the hospital on 3rd January, 2004 in a lorry hired by the parents and other relatives of Mousumi.

A team of doctors led by Dr A. K. Gupta, Professor, Medical College, Calcutta and Head of the Forensic and State Medicine, and Associate Professor, Dr. L. K. Ghosh, of the same department examined the body ( P.M. No. 10, Calcutta Police Morgue, dated 03.01.2004). In the second post mortem, Dr. L. K. Ghosh found numerous injuries on the body and reported that “.....*Death in my opinion appears to be due to the effect of intracranial injury due to forceful impact on head with hard blunt agent or hard rough surface in consequence* “. The medical team could not find any mark on the neck as indicated in the first report, but noted that the first autopsy surgeon had failed to properly examine the victim. The second report negated in definitive terms the first report that mentioned the existence of “one non-

*continuous oblique ligature mark ..... with printed saree....".* The observation of second post mortem clearly indicated the impossibility of 'suicide' as the cause of Mousumi's death. It became crystal clear that Mousumi's death was caused by forcefully beating her with blunt agents or consecutively striking her on a rough surface. A case of planned homicide. And the first post-mortem examination was manufactured accordingly for the benefit of the interested.

Consequent to the second post mortem report, the police added a new section 302 of Indian Penal Code with the old sections i.e. 498A and 304B against the five accused persons in the charges of torturing the bride and dowry-death. However the final investigation report of the police is still feeble to prove the case as murder and not a case of suicide. Police did not present the blood stained cloths of Mousumi to the court till date, they did not try to search the blunt weapon which was used for murder As the report includes 37 witness statements, all carefully crafted by the investigating officer, Sub-inspector, Mr. Ghosh which are part of his work to pervert the course of justice, rather than to undertake a real investigation and accurately record genuine statements.

□ □ □

## Social Reaction

### *In the locality*

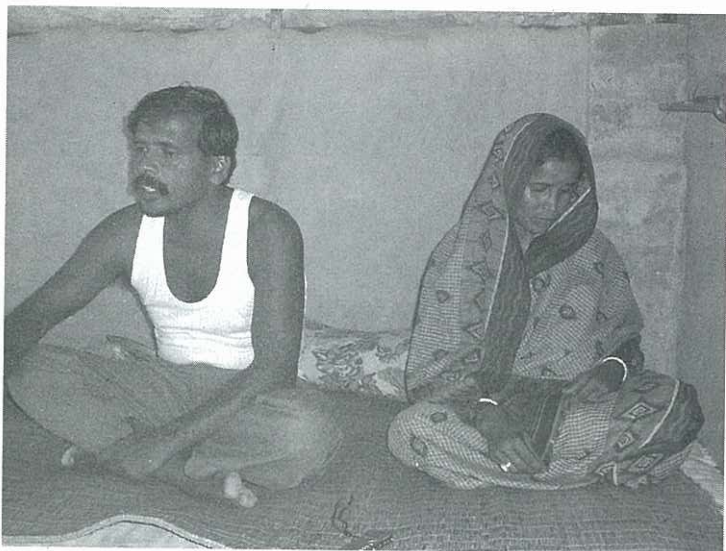
When the paternal family of Mousumi was shattered with their ill-fate; the murder of their daughter by her in-laws, it's fact, that they did not find all the neighbours standing beside them. At that moment only Matangini Sahoo, wife of Sukumar's elder brother extended full support for the helpless Laxmi Sahoo, Mousumi's mother along with few other villagers. Matangini, a spirited and courageous lady was a member of the Sramajibi Mahila Samity. She and her husband Subodh almost acted as shields to Laxmi during her days of ordeals. From accompanying Laxmi to the police station to taking up the dead body from the morgue they showed immense mental and moral courage, which is quite incomparable. Consequently they assembled all the villagers and inspired them with their moral courage. Later on being morally charged, the neighbours did not turn the table to the Sahoo family. Overcoming their immediate hesitation, they extended their whole-hearted support to the Sahoo family. In literal sense they are very much with Sukumar and his family since then.

When Mousumi's dead body was released from the morgue, Sukumar and his family decided to preserve it by burying the dead body with salt for future investigation. Being hailed from a Hindu religious community the act of burying a dead body instead of cremating was an act against the hindu religious customs and social traditions. In other occasion, it could have hurt the sentiment of the villagers. But hats off to the spirit of the neighbours, who not only put any obstruction to their action but gave their moral support for the act, which itself was revolutionary and set an example to

## Mousumi's death and after: a journey



Sukumar is a helper in the fishing trawler

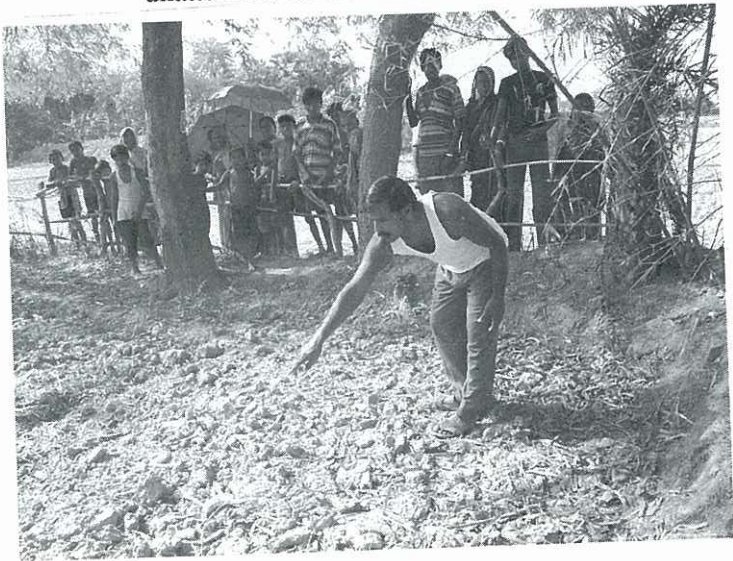


Sukumar and Laxmi : After the disaster

## Mousumi's death and after: a journey



Kakdwip P.S. : Mousumi's body remained here unattended for hours in the courtyard



Here lies the truth



## Mousumi's death and after: a journey



Namkhana Narayan Vidyamandir where  
Mousumi used to study



Dr. Gouranga Biswas who conducted the first Post Mortem

# Mousumi's death and after: a journey

## POST-MORTEM REPORT

(P.R. Form No. 55—Mile Rule 284)

PR. No. 668

7461

Station Diamond Harbour S.D.  
26.10 day of October 19

N.B.—Indicate the sites of all the injuries and when an injury or injury is found note "Blatant"

No.	1. Fracture, Dislocation, etc., character	2. Fracture, Dislocation, etc., extent	3. Marks of ligature or other incision, etc.
1	One non-continuous oblique ligature mark high up in the neck with a gaping below left mandible about 3" inches not printed saree.		By

2. Measurements

3. Bone and spinal Cord. (The spinal cord need not be examined unless its examination is deemed necessary)

\* One non-continuous oblique ligature mark high-up in the neck with a gaping below left mandible about 3" inches with printed saree....."

sd/- Gouranga Biswas, M.O., D.H. Hospital

### Report of the First Post Mortem Examination

POST-MORTEM REPORT No. 10  
(P.R. Form No. 55—Mile Rule 284)

STATION

4.25.10.2003 350 on 25 January 2004

Date and hour of



ence of high up non continuous ligature mark over neck could be detected even in careful examination. On inspection of the neck was found as that when a string modified

2. Measurements

3. Bone and spinal Cord. (The spinal cord need not be examined unless its examination is deemed necessary)

.....no evidence of high up non continuous ligature mark over neck could be detected even on careful examination. ....

Opinion: Death in my opinion appears to be due to the effect of intracranial injury due to forceful impact on head with hard blunt agent or hard rough surface in consequence.

Signature of the Medical Officer as to the cause of death

Signature of the Coroner

Signature of the Assistant Professor

Signature of the Head

Opinion :- Death in my opinion appears to be due to the effect of intracranial injury due to forceful impact on head with hard blunt agent or hard rough surface in consequence.

sd/- Lakshmi Kanta Ghosh, Associate Professor,  
Dept. of Forensic & State Medicine, Medical College, Calcutta

I concur

sd/- Dr. A. K. Gupta, PROF. & HEAD  
Dept. of Forensic & State Medicine, Medical College, Calcutta

### Report of the Second Post Mortem Examination

others. Of late the villagers stand beside the Sahoo family, irrespective of their political belief and identity. They are ready to take part in any concerted effort in support of the family.

### *International Support*

The murder of Mousumi Ari attracted the attention of the Asian Human Rights Commission (AHRC) an international organisation based in Hong Kong. They immediately sent a couple of appeals in the form of their 'URGENT ACTION' to the numerous human rights activists and organisation working for human rights across the world, so that they could raise their voice in protest against the inhuman torture and murder of Mousumi Ari (see APPENDIX - III). On the other they wrote to the Chief Minister, Sri Buddhadeb Bhattacharya, demanding immediate suspension of the guilty police personnel and reinvestigation of the case ( see APPENDIX - IV ). Mentioning the report of the first post mortem of Mousumi, they also wrote to the President of India, the Home Minister and Indian representative in the United Nations informing them about the ongoing state of affairs of false, irresponsible, post mortem system in West Bengal. Getting information from AHRC, some other big international human rights organizations, like OMCT also issued Urgent Action and sent letters to different authorities of Indian governments.

□ □ □

## **Action, inaction** of Police and criminal justice system

### *In the name of investigation*

Reviewing the entire episodes, some important points get prominence with regard to the Indian criminal justice system. There are a number of lacunas inherent in the system itself, which delimits the concept of free and fair trial. Since the moment of committing an offence and the sequential events i.e. investigation of the offence and finally giving the charge sheet; the police has been delegated with a sovereign power. In fact which is dependent upon the competency and will-to-do of the police?

In the case of Mousumi's murder, apparently, the police had at no time given any importance to the complainant or informant. And the complexities arose from there. Since ignoring the real complain, police itself decides its own modes and methods of investigation, it can make someone as an offender, despite one's innocence or vice versa. Or make someone as an offender with lighter punishable offences rather than what one committed actually and deserve a higher degree of punishment. In the Mousumi's case, the police with ill motive manipulated the case and ignored the victim family to lodge a complain of murder (Section 302 of Indian Penal Code, IPC) and charge shifted as dowry-death (Section 304B of IPC). In this case the police, with the intention of saving one of their colleagues and his family, initiated its investigation and framing the charge sheet choosing an offence subjected to a lighter punishment to save the perpetrators from penalty.

## *The unanswered questions*

The analysis of the series of incidents chronologically would lead us to find how the police influences the corridors of administrative power and thus empowers its methods of investigation and framing of the charges

The incident of Mousumi's murder took place at the juncture of 24-25 October 2003. It was brought to the notice of the villagers on 25 October, morning. But according to the official documents, first F. I. R. was recorded at 4.10 p.m. on the same day i.e. **at least after 9 hours since the incident took place and that is also actually done at 11.00 p.m.** by forcefully got it signed by the mother of the deceased. In this case police deliberately resorted to falsify the case of murder and pose it a case of suicide. They crafted the case and the times and events best suited to their choice.

Secondly, to wipe out the trace of murder and confuse the case, the police while investigating, at the outset, got disrobed the bloodstained garments from the unconscious body of Mousumi and put some fresh garments on it. The bloodstained garments were taken away by police and are still untraceable since then. In such a way, police can reshape and mould any incident for their vested interest and wipe out any evidence. In this case the police did it for their own colleague. But on other occasion, bribery, political influence or good relations with police often become vital factors of taking their partisan attitude:

Thirdly, The police did not collect any sample of blood spattered around the place of incident or send them to forensic laboratory for examination, which is mandatory in the case of unnatural death. There was no quarry or taken up any action by the higher administration of police against the investigating police officer for such willful commission of error.

Fourthly, if the investigating agency itself trying to shield the perpetrators and the higher authorities are willfully keep mum, even after getting a number of complaints from various quarters, does it not simply mean that those officers including the Chief Minister got 'something' from the local police? The question arises – whether the 'Rule of Law', 'Good Governance' do exist at all in this particular region or state ?

Under section 174 of the Criminal Procedure Code, every unnatural death is to be investigated properly. According to law, in case of death of a married woman within 7 years of her marriage and if there is any doubt with regard to the cause of her death, the dead body and the cause of death to be investigated by an Executive Magistrate[ Sections 174 (i) to (v)]. An Executive Magistrate and then an Autopsy Surgeon shall examine her body. In this case, Mousumi's dead body was examined by an Executive Magistrate, Sri Dipak Kanungo. Normally the examination should be done at the place of incidence after declaring the person is dead by a Medical Officer. But Sri Kanungo conducted his inquest while the body was in police custody and according to the direction of the police. Before conducting the inquest, it is to be confirmed that the body is declared 'dead' by a medical practitioner. But in Mousumi's case no medical practitioner had examined her body before conducting the inquest. We are in doubt, whether Sri Kanungo had done his duty on an unconscious, alive body of Mousumi? He did not find any mark of external injury on her body as he did not think to see the body, since it was wrapped with polythene sheet and tied with rope and mounted on a cycle rickshaw van. Nobody had opened the rope and polythene sheet before the body was sent to the morgue at Diamond Harbour Hospital on the next day. When SDJM of Diamond Harbour

Court ordered for further post-mortem, the same Executive Magistrate was assigned by the authorities to conduct the post mortem again. What efficacy can one expect from the same person on his second exercise?

Moreover, there are two sides in a trial according to the criminal justice system of our country. One is prosecution and the other is defence. To prove the offence of the accused, the prosecution is to produce substantial and definite proof and/or evidence before the court. The defence will always be there to counter opponent's views. The Indian Criminal Justice System believes that the accused is innocent until proved guilty in any court of law. From the documents it is apparent that in Mousumi Ari's murder case the prosecution was very much manipulative since the beginning. In this case the prosecution started it with a suicidal story and in the last week of January 2004, they hurriedly submitted a charge sheet adding a new section 302 (regarding murder) without any thorough, proper and impartial enquiry. Even till date the police could not recover the blunt agent, the weapon used for murdering Mousumi, nor produced before the court the blood-stained clothes worn by Mousumi, which they had taken away from the place of occurrence

In the case police recorded (actually crafted) 37 witness statements. Initially all the statements were targeted to establish the case as 'suicide'. It is clear that some of the witnesses would be in favour of suicide and a few in favour of murder. This mixed and/or contradictory statements would definitely give a clean cheat to the accused. The case would become weak for the victim family. Actually who gave the statements; they do not know what have been written in their name. Resultantly, what was recorded in the

police documents under section 161 of the Criminal Procedure Code, would definitely differ from what they would say before the court at the time of taking evidences. So the trial would turn into a farcical event resulting acquittal of the guilty persons.

### *Who are the guilty?*

It is true that the in-laws family of Mousumi cooked up the plan to murder her and acted accordingly. But the role of (1) Amiya Kanti Ghosh, Sub Inspector of Police and Investigating Officer of Kakdwip police station, (2) Debashis Chakraborty, Officer-in-Charge of Kakdwip police station, (3) Dipak Kumar Kanungo, Executive magistrate, Kakdwip, South 24- Pargannas, (4) The Sub Divisional Officer, Kakdwip, who again appointed Mr. Kanungo to conduct inquest (5) Dr. Gouranga Biswas, Medical Officer attached with Diamond Harbour Hospital are beyond proof that all these persons were hand in glove to shield the perpetrators. The Superintendent of Police of South 24-Pargannas, The District Magistrate of South 24 Pargannas, the Inspector General of Police, CID, the Home Secretary, the Chief secretary, the Human Rights commission of the state, the Chief Minister of the state are responsible for deliberate failure to discharge their rightful duties.



### Postscript

India is a country with a vast population of under-privileged people. Taking into consideration of the divisions on the basis of its religion, class, caste, community – the rural population is the real marginal of society. Devoid of the advantages and comforts available in the urban areas, they are either almost forgotten or virtually non-existent in our normal social life. No one bothers to find whether they do exist or lost, except to be used as vote-banks. But despite all odds someone like Sukumar Sahoo or his relatives, denies to accept the disaster to their fate. Ignoring all geographical, economical hindrances they continue their struggles like sailing through a tormented sea in a dingy boat in quest of truth that will unravel the injustices meted out to them. The same quest of truth once led him to preserve the body of his daughter instead of cremating her. His semi-literate, rural simplicity gave him the impetus to continue his struggle to face the harsh realities all around. But his struggle has thrown up a real challenge to the Indian Judicial system. Whether the judicial system shall continue to depend on the policing system; who are, in Justice Mullah's words "....most organised goons in the country..."? There is no qualitative change in the standard of functioning of the Indian police since the days of colonial rulers. But it assumed the notoriety of being the most corrupt organisation in the country. Considering the situation, we apprehend the fate of the case of Mousumi's murder will go astray and concept of free and fair justice will turn into tears to the victim families.

Being members of a democratic country and on behalf of its civil society we demand:

- Further investigation into the incident of murder of

Mousumi Ari to be conducted by any impartial agency other than the state-police or C.I.D.

- Immediate suspension pending enquiry of the guilty persons associated with Kakdwip police station, Diamond Harbour Hospital and the civil administration, accused of attempting to hush up the case of Mousumi's murder, tampering with and eloping the relevant documents and immediate initiation of criminal cases against them.
- Fresh case to be started as per statement of Smt. Laxmi Sahoo
- The judicial system shall be free from interference and influence of Police and administration to develop an independent and impartial judicial system.
- Necessary changes to be made in the law clearly without any confusion so that the inquest be conducted by a Judicial Magistrate in lieu of an Executive Magistrate.
- Immediate stop over of the ongoing farce in the name of conducting post-mortem in the district and Sub Divisional hospitals. Only trained medical practitioners should be employed to conduct the post mortem. Medical practitioners shall be punished for deliberate and intentional wrongful reporting of the post mortem.
- Immediate ratification of International Convention Against Torture, inhuman and degrading punishment, CAT in short, by the Government of India.

□ □ □

**APPENDIX – I**

**Excerpt from some relevant domestic laws in India**

**Criminal Procedure Code:**

**Section 154. information in cognizable cases.-**

- (1) Any information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the state government may prescribe in this behalf.
- (2) A copy of the information as recorded under sub section (1) shall be given forthwith, free of cost, to the informant.
- (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to sub section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

## Section 174. Police to enquire and report on suicide, etc.-

- (1) When the officer in charge of a police station or some other police officer specially empowered by the state government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest *Executive* Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.
- (2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub Divisional Magistrate.
- (3) *When*
  - (i) *the case involves suicide by a woman within seven years of her marriage; or*
  - (ii) *the case relates to the death of a woman within*

*seven years years of her marriage in any circumstances raising a reasonable suspicion that some other persons committed an offence in relation to such woman; or*

*(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or*

*(iv) there is any doubt regarding the cause of death; or*

*(v) the police officer for any reason considers it expedient so, to do, he shall, subject to such rules as the State government may prescribe in this behalf, 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, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.*

- (4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

*Sub section (3) has been substituted by Act 46 of 1983-the Criminal Law (Second Amendment) Act, 1983, to deter offences against married women.*

### Section 176

- (1) When any person dies while in the custody of the police or 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 cause of death either instead of, or in addition to, the investigation held by the police 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.

- (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.
- (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.*

### Section 3

- (1) In this code, —
  - (a) Any reference, without any qualifying words, to a Magistrate shall be construed, unless the context otherwise requires —
    - (i) In relation to a area outside metropolitan area,

as a reference to a Judicial magistrate;

.....

.....

(4) Where under any law, other than this Code, the function exercisable by a Magistrate relate to matters —

(a) Which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any court, they shall, subject to the provisions of this Code be exercisable by a Judicial Magistrate; or

(b) Which are administrative or executive in nature, such as the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

## Indian Penal Code

### Sec. 498-A

Punishment for subjecting a married woman to cruelty  
(Imprisonment three years and fine)

### Sec. 304-B

Dowry death

(Imprisonment of not less than seven years but which may extend to imprisonment for life)

### Sec. 302

Murder

(Death or imprisonment for life and fine)

**Sec. 201**

Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence  
(Imprisonment for 7 years and fine)



APPENDIX- II

(Letter from MASUM to the Home Secretary, Govt. of West Bengal)

**Manabadhikar Suraksha Mancha (MASUM)**

26 Guitendal Lane, Howrah-I, W.B., India

Phone 91-033-2622 2632 2650 8700,

Mobile: 98301 06734, e-mail: kurity25@vsnl.net

23 December, 2003

The Home Secretary,  
Government of West Bengal,  
Writers' Buildings, Kolkata-1.

*Sub: Prayer for re-examination of a dead body*

Ref: Kakdwip P.S. Case no. 73/03 dated 25.10.2003

Dear Sir,

I want to draw your kind attention into a peculiar case. One girl, Mousumi Ari @ Sahoo aged about 16 years was murdered within 20 months of her marriage in her in-laws house, at 3rd Gheri, Narayanpur, Police Station Kakdwip, 24 Parganas (South) on 25 October 2003. Mousumi's husband is Bidhan Ari son of Swadesh Ari. Swadesh Ari is a policeman, posted at Kakdwip P.S. Mousumi was pregnant at that time.

There were blood stains in the floor, wall of the bedroom. Police started a case of dowry death. Police party forcibly obtained signatures from the eyewitnesses from the family members in blank paper. According to 176 Cr.P.c. the inquiry of magistrate held without informing the family members of the victim, though at the relevant time they were present at Kakdwip P. S.

The autopsy surgeon, Dr. Gouranga Biswas, attached with Diamond Harbour State Hospital, done P.M. examination in a mala fide manner, as alleged. There were not single words of injuries of the body of Mousumi in the P.M. report. Interestingly, there was no finding of the autopsy surgeon that deceased was pregnant for 5 months.

The learned S.D.J.M., Diamond Harbour, in which court the case is pending, after hearing the all aspects, passed an order on 20.12.2003 for re examination of the body, which is still under the earth.

We met the parents, relatives, villagers, local elected members of Panchayat, political leaders, Superintendent of Diamond Harbour Hospital, Officer-in-Charge of Kakdwip and took their statements. We also met Inspector General, cm and SDJM, Diamond Harbour and requested them for re examination of the dead body.

In these circumstances, I appeal to your good self, to arrange re post mortem examination of the body of Mousumi as early as possible by a team of expert doctors in Kolkata to find the truth.

Yours truly

(KIRITY ROY)

*Secretary*

**MASUM**

APPENDIX- III

(Urgent Action appeal of Asian Human Rights Commission)  
URGENT ACTION

ASIAN HUMAN RIGHTS COMMISSION  
URGENT APPEALS PROGRAM

UA-33-2004: INDIA: Police, magistrate and doctor cover-up murder of 17 -year-old girl INDIA: Defective police procedures, collusion between judicial and police officers

Dear friends,

The Asian Human Rights Commission (AHRC) has received information on the attempt to cover up the murder of 17-year-old girl Mousumi Ari by the police, magistrate and the doctor.

Mousumi Ari, of Narayanpur Village, West Bengal, was murdered by her in-laws in October 2003. However, as her father-in-law is connected with the police, the officers concerned with the case colluded with the investigating magistrate and doctor to cover up the truth. Due to public pressure, the family members have now been charged with murder. However, the police and prosecution still appear to be acting to get an acquittal. Meanwhile, the police officers, magistrate and doctor involved are all still at their posts and none have faced disciplinary action despite flagrantly violating the law.

Your urgent action is requested to have Mousumi's murderers brought to justice, and the perpetrator state officers held to account for their actions.

Yours truly,

Urgent Appeals Desk  
Asian Human Rights Commission (AHRC)

## APPENDIX- IV

( Excerpts of the letters from Asian Human Rights Commission addressed to the Chief Minister of West Bengal Mr. Buddhadeb Bhattacharya.)

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1. The police failed to send Mousumi's body immediately to a hospital as is their primary duty, to determine if she was. even dead at the time of their arrival. In fact, the police appear to have kept the body for over 24 hours.
2. The police removed evidence from the scene of the crime, but did not record it on the list of seized items. They also failed to collect vital evidence, which should have been sent for forensic examination.
3. The police failed to secure the place of occurrence. Subsequently, bloodstains on the floor and walls were simply washed away, thus vital evidence was destroyed.
4. The police refused to record a complaint of murder from the mother. Instead they forced her to sign a complaint indicating that her daughter had committed suicide due to cruelty.
5. There are inconsistencies in the times and dates of various official records, speaking to the fact that they had been badly fabricated.
6. Although the body had not been declared legally dead by a doctor, as required by law, the magistrate held his inquest, and did so without the family members present. The same magistrate was later called upon to conduct a second inquest.
7. While the Investigating Officer added a charge of murder to his final report, the substance of the

investigating documents, including the majority of witness, suggests an act of suicide. This contradiction may allow the Court to acquit the accused on the benefit of the doubt.

8. The first autopsy surgeon failed to properly examine the body, and may not even have sighted it.

*SdI Basil Fernando*  
*Executive Director*

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### 2nd letter

While Mousumi Ari's case is remarkable because of the steps taken by the family to obtain justice despite the obstacles placed before them, it is in every other respect typical of the total decay of the criminal justice system in India today. Let us ask some basic questions about the role that each part of the criminal justice machinery plays in such cases.

What is the intended role of the police? It is to apply the law and investigate crimes. Throughout India, however, the police are responsible for the most flagrant violations of the law in order to protect the perpetrators of crime.

What is the intended role of the autopsy surgeon? It is to establish the cause of death. Throughout India, however, doctors fail to conduct proper autopsies and either deliberately or carelessly submits false reports that again allow the perpetrators of crimes to escape detection.

What is the intended role of the magistrate at time of inquest? It is to inquire independently, and through a quasi-judicial process, into the cause of death. Throughout India,

however, magistrates collude with the police to produce fabricated reports. In West Bengal in particular, the magistrates responsible for these inquiries are under the same department as the police, and therefore for all practical purposes no procedure for independent inquiry exists.

What is the intended role of the bureaucracy, government agencies, and human rights commissions? It is to ensure that the citizens of the country are properly governed, and their rights protected, Throughout India, however, the state agents, including senior police, ministers, chief secretaries and human rights commissioners, fail to take any interest in the misdeeds for their subordinates, and often assist them in covering up crimes. In fact, subordinate officers can expect that their illegal actions will either be ignored, or steps will be taken to protect them.

Who is responsible for the increase of crime? Throughout India, it is the agents of the criminal justice system: the police, judicial officials, medical personnel and other state officers who one way or another prevent even the most rudimentary criminal investigations from proceeding as they should, Where criminals control and staff a system, it can only be expected that crime will increase as a result. It then falls to the victims themselves to stand for justice and fight against this rampant criminality through whatever means they have available."

Sd/ Basil Fernando  
*Executive Director*



**M**ousumi, a teenaged girl hailed from a poor family in Narayanpur village, Kaldwip, 24-parganas.

Married at her tender age of fourteen and half. At the age of seventeen, she fell prey to the wrath of her in-laws, for dowries. She was murdered, eventually.

According to the definition of the United Nations - it is a case of child-murder.

The administration not only remained mute, an unholy nexus of the police, hospital-morgue, legal administration resorted to veil the culprits... to wipe out any trace of the murder.

It's not a sporadic incident but a part of the general scenario in the state of West Bengal.



The judicial system in India- poses to be one of the superior kind could not prove itself to be a foolproof system. Real culprits use its inherent lacunas. Heinous crimes like torture or child-murder almost go unnoticed or without awarded any punishment.

In protest against the all-pervasive torture in our society, Banglar Manabdhikar Suraksha Mancha ( MASUM ) and Asian Human Rights Commission ( AHRC ) have jointly taken up the uphill task of exposing the unholy nexus of the persons in power ..... pointing out the loopholes in the Criminal Justice system in India.

**The book is  
a modest endeavour  
towards this destination.**