

Sub: Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action.

I. Following guidelines should be followed while conducting the magisterial enquiry in case of custodial death or death in the course of police action.

- i Magisterial enquiry be conducted at the earliest without undue delay.
- ii The Enquiry magistrate should visit the place of occurrence to the acquaintance with the facts on ground. During the visit to the scene of crime, the Enquiry Officer should make an attempt to identify natural witnesses who are likely to have been present at the scene of crime. Enquiry Officer should take them into confidence and try to record their statements. Many a times members of the family of the deceased narrate the motive of the police officer who staged the encounter for killing the deceased. The motive so given should be thoroughly investigated for its veracity or otherwise.
- iii A public notice be issued through the vernacular newspapers to inform witnesses concerned with the enquiry. The enquiry magistrate should ensure that the information reaches all concerned particularly the close relatives of the victim. A free and fair opportunity should be given to the relatives of the victim while recording their statements.
- iv The magisterial enquiry should cover the following aspects.
 - a) The circumstances of death
 - b) The manner and sequence of incidents leading to death
 - c) The cause of death
 - d) Any person found responsible for the death, or suspicion of foul play that emerges during the enquiry.
 - e) Act of commission/omission on the part of public servants that contributed to the death
 - f) Adequacy of medical treatment provided to the deceased.
- V The enquiry magistrate should examine and verify the following records.
 - a) Inquest Report
 - b) Post Mortem Report: It is seen that the Enquiry Officer does not analyze the Post Mortem report; no attempt is made to draw any inference about the genuineness or otherwise of the encounter. PM report should be thoroughly analyzed; if necessary, help of State FSL should be taken.
 - c) Viscera Analysis Report
 - d) Histopathological Examination Report
 - e) Final cause of death

- f) MLC report/Initial Health Screening Report of the prisoner
- g) Medical treatment records
- h) Inquiry/Investigation report of the police
- i) FIR/General Diary (GD) entries/any other relevant police records.
- j) Ballistic examination reports of weapon and cartridges, if any, alleged to be used in the incident by the deceased.
- k) Forensic examination report of 'hand wash' of the deceased.
- l) The finger print expert report on finger print impression available on weapon alleged to have been used by the deceased.

vi The magistrate should examine family members and relative of the deceased, eye witnesses having information of the circumstances leading to encounter, doctors who have conducted the post mortem/provided treatment to the deceased, concerned police/prison officials, independent witnesses, co-prisoners and other such relevant persons.

II Report Writing

The Magisterial Enquiry Report should contain the gist of statements recorded, documents examined, discussion on allegations proved/not proved and grounds on which conclusion has been arrived at. MER should also contain specific/definite opinion about circumstances leading to death, whether use of force was justified and action taken lawful. The act of commission/omission on the part of public servants should be specified and names of officials responsible for death/cause of death may also be indicated. The enquiry magistrate may also suggest any systemic changes or improvement that may need to be brought about to void any such incidents in the future.

III Annexure to be attached with the report:-

- a) The statements of the family members/relatives of the deceased, concerned doctors who rendered medical treatment/conducted post mortem, concerned police/prison official, co-prisoners, independent witnesses and other such relevant persons.
- b) All other external reports which have been referred to or relied upon by the enquiry magistrate in his/her magisterial enquiry.