

*Kamla Market Police Station*

# **A Death In Our Times**

**People's Union for Democratic Rights  
Delhi  
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A man is beaten to death in a police station. Two policemen cart his body to be produced before a magistrate. They seat the corpse outside the crowded courtroom and argue with the magistrate that it should be given 14 days judicial remand -- till the proceedings are stopped when a lawyer notices the dead body and informs the court!

No this is not in the latest Amitabh Bachhan thriller! From all available evidence at present it appears to have actually happened in the Court of the Chief Metropolitan Magistrate, Tis Hazari, on the afternoon of 28 November this year. The story as pieced together by a PUDR fact-finding team begins from the congested *galis* of the Walled City.

Gali Arya Samaj is situated between Turkman Gate and Ajmeri Gate in the Walled City. The walls, such as they were, have crumbled now but their presence seems palpable here -- in the oppressive competition to earn a living; in the claustrophobic hovels which pass for houses; in the desperate attempt to cling onto a semblance of middle-class status. House No. 1534, on a lane off the main *gali* was where Mukesh Kumar, alias Mukki, lived. With no regular profession, he occasionally supplied liquor to people on dry days, or after liquor shop timings. This he would procure from the shops at the borders of the union territory meant specifically for that purpose. Thus he was arrested a number of times on the account of possession of more than the legally permitted number of bottles. He had four cases on him under the excise act. In addition, he was picked up on four occasions while carrying a knife. This led to his being included in the list of people termed "habitual bad characters" (B.C.) in the Hauz Qazi Police Station. Two cases of "breach of peace" were added to his record which dated back to 1977.

In the past few years Mukesh Kumar had tried, with the assistance of his family, to earn a living -- by setting up a tea stall, and earlier by driving a cycle rickshaw. Both attempts were foiled by policemen who harassed him continuously. Lately he had become a "smack" addict. His addiction became a cause of friction in the household (comprising his two brothers, their wives, children, and his aunt who had brought him up). They had asked him to leave. For over half a year, Mukesh had been sleeping on the pavements. On 18 November extermment proceedings had been started against him by the police. Mukesh was discovered dead in the custody of the Kamla Market police ten days later.

#### Police Version

According to the Delhi Police, (the accounts reconstructed from the interviews of the DCP Central, SHOs of Kamla Market, Paharganj and Hauz Qazi Police Stations) a wedding ceremony was being held in

an open area near "Hamdard" Chowk. On the road an obviously inebriated man was abusing the people at the marriage party. Many people had gathered around him and some had started beating him up when a patrol (from the Kamla Market P.S.) on beat reached there. Mukesh was arrested after two members of a crowd recovered a knife from him (under 27 54/59 Arms Act). He was then taken for a medical examination at J.P.N. Hospital -- which confirmed that he had consumed alcohol. He was then locked up for the night at the Paharganj P.S. since the Kamla Market P.S. lacks a lock-up. The next afternoon, enroute to being produced before the Chief Metropolitan Magistrate (CMM) at Tis Hazari courts, Mukesh was taken to a photography studio. By 2.30 p.m. Mukesh and the constables accompanying him reached the court. While waiting to be produced before the CMM, Mr. J.P. Sharma, Mukesh collapsed. He was taken to Hindu Rao hospital where the MLC record at 4.15 p.m. states: "brought dead".

#### Medical Evidence

But the MLC at the Hindu Rao hospital recorded something more -- that the body was brought dead "*in rigor mortis*", i.e. stiffening of the body after death which generally (in this weather) starts in 2-4 hours. The time of death accordingly could not be later than 2.15 p.m. The post mortem examination too supports this finding and puts the time of death around 1 p.m. Thus it would appear that Mukesh was already dead when he was "produced" before the court. Closer examination of the medical evidence reveals more discrepancies in the police version. When Mukesh was taken for medical examination to J.P.N. hospital, the doctor's report, apart from drunkenness, lists 7 injuries. But the post mortem report identifies 38 injuries including a fracture of the lower leg bone (tibia) and a head injury by "blunt force" impact which caused a brain haemorrhage and resulted in death. Neither of these two are among the injuries recorded at J.P.N. hospital. Prima facie, these injuries have occurred while Mukesh was in police custody.

More questions arise. How could Mukesh, with an untreated leg fracture be brought to the court? He should have been crying with pain -- unless of course he was already dead, or close enough to death to make no difference. If he was so badly injured, why was he not taken to the hospital first? Could it be so that the policemen could say that death resulted while he was in judicial remand? At Tis Hazari itself, his case was going on before the magistrate when a lawyer noticed the dead body outside and informed the court. If he was alive till then, as claimed by the police, why did they not take him inside the courtroom as is routinely done and is supposed to be done with every accused person?

Police argues that all injuries and especially the more grievous ones were a result of the beating by the people from the marriage party -- who according to the police were armed with hockey sticks and lathis! In that case why were the attackers not arrested for criminal assault? At another level the police argument uses the fact that Mukesh was a "habitual" B.C. and a "smack addict", to justify his death.

What appears most stark in all these arguments given by the police is their attitude towards custodial deaths in general. That they are a sort of regular nuisance arising out of their daily work and some off-hand remarks should suffice in diluting the issue. In this respect, their confidence regarding this particular case also arises out of two basic reasons -- the lack of any independent witness after Mukesh was taken into custody till his death and the lack of protest from the family.

The police attempts at questioning the character of the victim are similar to the ones forwarded immediately after a rape in police custody is reported. In the case of Mukesh's death, this can be taken to any extreme since the victim cannot have a say.

The death of Mukesh therefore raises many fundamental issues about the effectiveness of the law relating to custodial deaths. After the death an enquiry by a Sub Divisional Magistrate is being conducted. But there are no witnesses to the death apart from the police personnel. A cohesive and well thought out story is all that is needed for the police to be let-off. On the other hand the any evidence that can be procured against the police account would only be circumstantial. And then anyway, no action is taken against the police on the basis of the SDM enquiry reports alone.

It is important to identify this lacuna -- in the context of the growing brazenness with which the police is going about torturing "suspects"; in the context of the police having taken upon itself the role of declaring whether a certain death is in custody or not; in the context of eleven deaths in the custody of Delhi police this year.

PUDR demands that the law relating to custodial deaths be amended to make it effective. That in case of custodial deaths -- as in the case of rape in custody --, the policemen in charge of the victim, should be held responsible for the death unless the contrary is proved

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