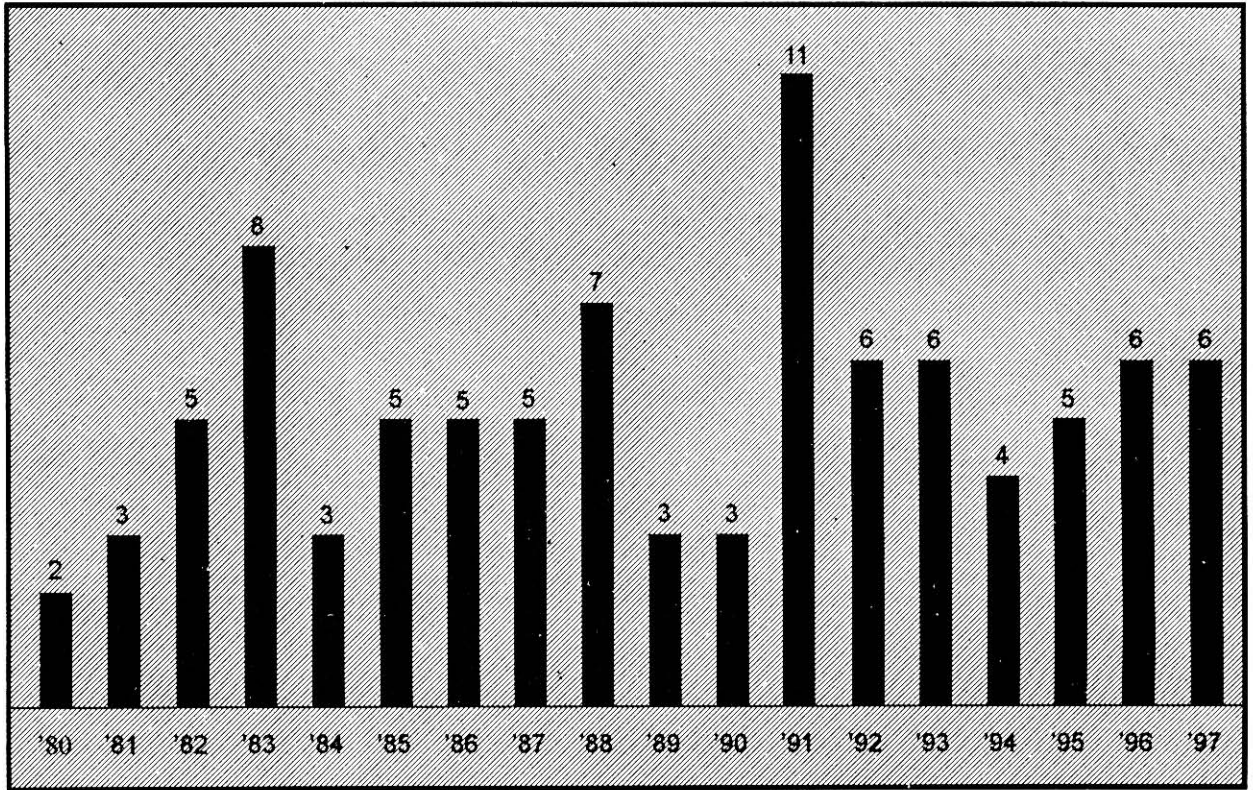


Capital Crimes



Deaths in Police Custody
Delhi 1980-1997

People's Union for Democratic Rights
Delhi
March 1998



*When crimes begin to pile up, they become invisible.
When sufferings become unendurable, the cries are no longer heard.*

– Bertolt Brecht

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I. Introduction

Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional rights.

Kishore Singh vs State of Rajasthan
AIR 1982 SC 625

Thirty-five-year-old Satyavan was picked up along with two others by the police on the afternoon of 2 March 1993 from the bus stand at Jharoda Kalan village. They were taken to Najafgarh police station. Satyavan's body was brought back to the village the same evening. Ten days prior to his death, he had been arrested in connection with a BJP rally in the area, and the police had demanded Rs. 50,000 from his family to set him free. He had been released after three days when Rs. 14,500 was paid, and had most probably been picked up again on 2 March to extort the remaining amount. At the police station the three men were brutally beaten and Satyavan collapsed. His companions were forced to take him back to the village. Satyavan died on the way. Police denied torture, alleging that Satyavan suffered from tuberculosis and was addicted to drugs. Satyavan was a truck driver and the sole bread winner of a family consisting of his handicapped father, wife and five children one of whom is again handicapped.

Satyavan's death is not an isolated instance. At least 93 others have died in the custody of Delhi Police since 1980, 47 in the last eight years (1990-97) alone. The alleged offences for which they were detained range from quarrels, loitering, missing an appearance in court, carrying a knife, pick-pocketing and petty theft, to robbery, kidnapping and homicide. But 19 of the victims were not accused of any offence. In a recent death on 4 August 1997, the victim, Shibu, had been regularly harassed, beaten and detained for short periods in different police stations. He was subjected to this form of low-intensity torture for over a year. He was not charged for any offence, neither was he a suspect. He was only 'interrogated' repeatedly in an abduction case. According to the police Shibu consumed poison and died. They denied any involvement and no First Information Report (FIR) has been registered.

In 1997, seven deaths took place. The police de-

nied its involvement in all seven and instead put the blame on the deceased. Barring one death which happened due to a heart attack, the police claimed that all the others were suicides. Why do these deaths happen and why does the police get away with murder?

Not only are there institutional checks such as mandatory executive inquiries, our laws and legislations recognize custodial deaths as grave violations of our rights. In June 1997, India ratified the international convention against torture. And yet, according to the all-India figures released by the Ministry of Home Affairs, there has been a sharp increase in these deaths (including those that happen in judicial custody) in the last year. As compared to 444 deaths in 1995-96 there were 889 deaths in 1996-97. So, while the government is busy improving its human rights image in international fora, the police is busy proving that torture and beating are hardly human rights issues. And to prove their point they managed to torture and cause the death of Hari Shankar in the custody of Hauz Qazi P.S. on 10 December 1997 (see Back Cover), ironically on the 'International Human Rights Day'.

Custodial death is a routine occurrence and does not usually merit more than a passing mention in the media. This is because the hapless victim is invariably a poor migrant residing in a slum settlement, is very often a minor law breaker, and perhaps even a habitual bad character or a social dropout, whose death is of little consequence. When such individuals die in custody, the police asserts that they were drug addicts or petty criminals, i.e. people undeserving of sympathy. Hostility to the alleged or real criminality of the victim thus determines the lack of sustained public attention on these crimes. This in turn enables the police to either deny their involvement or else present such deaths not as crimes, but merely as aberrations in the course of law-enforcement. Hence guilty policemen get away with murder, as the gen-

eral drift of public opinion tacitly abets the lawless conduct of men in uniform. It is not surprising then that no meaningful follow-up action is ever taken.

Such killings are not normally premeditated, being the most aggravated and accidental outcome of merciless torture and neglect. The average of five to six persons who die in this fashion every year comprise a miniscule proportion of the persons subjected to such treatment in custody. These deaths therefore point to a larger context of routine and habitual humiliation, beating and torture meted out to those detained in lockups.

This lack of prior intention to kill is used by the police to evade the charge of murder. The refusal of the police to investigate its own crimes further decreases the already slim chances of punishment. Not surprisingly, in these 93 deaths, prosecution has resulted in conviction in only two cases, in the death of Joginder Pal Gupta on 21 August 1990 at Model Town P.S., and of Laxman Singh on 5 August 1980 at Subzi Mandi P.S.

Deaths in police custody form a very small proportion of the total number of 'custodial deaths' as deaths in judicial custody are far more frequent than those in police custody. Home Ministry figures show that out of 889 custody deaths in 1996-97, seven hundred deaths took place in judicial custody alone. According to our investigation into one such death in 1994, we discovered that on an average, a death

occurred in Delhi's Tihar jail every eleventh day. The sheer number of these deaths, as well as the inaccessibility of jails to public scrutiny, make investigation into each and every case impossible. This report is therefore limited only to those deaths that occur in police custody.

From the mid-eighties, PUDR has investigated each and every reported case of custodial death and custodial rape in Delhi, and published brief reports of its investigation and findings. The reports are regularly forwarded to the authorities concerned, and also released to the press. In addition we have published two reports consolidating our findings: *Invisible Crimes: A Report on Custodial Deaths 1980-89* and *In Pursuit of Life: A Report on the Aftermath of Custodial Deaths in Delhi 1991*. The present report on custodial deaths in Delhi is another attempt to consolidate nearly two decades of work on this issue, and includes the pleas and recommendations made by PUDR in its petition submitted to the National Human Rights Commission (NHRC) last year. This is a report on how deaths happen in police custody and on what happens afterwards. It also chronicles the lives of those who then wait endlessly for paltry sums of compensation. Deaths in police custody need an urgent and immediate response. The present report is an appeal to all sections of people to protest against the lawless acts of the police.

II. Illegal Lives, Lawless Deaths

It is the end of a person's life in police custody which marks the beginning of our factfinding. While investigating the immediate circumstances and cause of death, the factfinding is inextricably linked with pursuing the life of the deceased. Incompleteness is structured into the investigation, as usually the victim was also the only credible witness to his torture. However despite the impenetrability of these deaths, there are certain determining factors in the lives of the victims which govern custodial deaths.

The economic and social background of the victims invariably provides the context in which they confront the might of the police, since most of them

led precarious lives as migrants struggling for adequate livelihood and decent living conditions in the city. Unable to find either, they are forced to become 'encroachers,' without any right to the civic amenities provided to Delhi's other citizens. Any attempt to find a livelihood or create one, involves the violation of one or another rule; and failure to do so pushes some of them into the world of petty crime. Trapped in this situation of perpetually breaking the law, the agency of the state they face constantly and directly is the police. The social roots of custodial deaths therefore lie beyond custody, in the lives of the victims.

The peripheral and precarious nature of their

lives is exemplified through some of the occupations of the victims: fruit-vendor, auto-driver, shop-employee, rickshaw-puller, watchman. While it is difficult to ascertain exact income levels as most of them held irregular and intermittent forms of employment, a broad categorization can be evolved based on the nature of occupation and consequently the degree of vulnerability to police brutality. A majority of them were migrants – either first or second generation – who resided in urban villages, slums and resettlement colonies. The most vulnerable were those who were forced into rag picking or else hawking their wares on foot-paths. Out of the 93 victims, occupational details are not available in 18 cases. Of the rest, 19 were either seeking employment or were employed on a casual basis, 26 worked in traditional occupations such as blacksmith or dhobi, or else were engaged in hawking, rickshaw pulling, or vehicle repair, 8 worked as drivers in autorickshaws, taxis, trucks and buses, 12 were organized workers in factories or else in government departments. Another 6 were petty traders, shopkeepers or small entrepreneurs.

However, not all the victims shared this social profile. For instance, Dilip Chakravarty, who died in August 1995, was a businessman engaged in transportation of goods across the country and resided in his own house in Dilshad Garden. Chakravarty was picked up from home without any specific charge, illegally detained and brutally tortured. He died almost a week later in a private hospital. Another victim, Joginder Pal Gupta, a resident of Model Town, was a licensing inspector with Delhi's Municipal Corporation. Like Chakravarty, there were no charges against him. But he was witness to the murder of his friend's brother in a family dispute. This became the reason for his own death, as the local police colluded with the friend's family to eliminate him. Such cases are rare exceptions, however, which only serve to highlight the much poorer social background shared by the overwhelming majority of victims.

1. 'Illegal' Lives

Most of the victims had come to Delhi in search of employment. Some like Shammu Khan (who died in June 1990) had migrated ten years earlier, and some like young Dilip (who died in January 1995) had come just a few days prior to their death. The desperation and aspirations which drive people to leave their native villages, often end in a bitter struggle for survival in the cities. The 1991 Census recorded that Delhi's population grew by 51.45% between 1981 and 1991, over a half of which was accounted for by in-migration. 60 % of these migrants who came in search of employment, stayed on as squatter population. Not surprisingly, the growth rate of jhuggi-jhopri (JJ) clusters is eight times the overall growth rate of the city. Of the 47 victims between 1990 and 1997, 13 resided in resettlement colonies, 15 in slums and JJ clusters, and 7 in urban villages.

The lack of basic civic amenities was the context for the death of Dilip in Shaheed Sukhdev Nagar in January 1995. Unaware of a trespass notice, Dilip, a newcomer to the city, used the nearby park for defecation. A constable guarding the park beat him up and he died on the spot. The park separating the JJ cluster from the middle class locality of Ashok Vihar, had over the years become a contested area. Since there are no toilets in the basti, residents often used the park for defecation, apart from using it as a short cut to the market and government school in Ashok Vihar. But the Residents Association of Ashok Vihar filed a writ petition in the High Court demanding exclusive rights over the park for leisure purposes. The court gave injunctions against 'misuse' of the park, and the police was posted to guard it. The irony cannot be missed. While there are no basic amenities in the basti which serves as the labour market for Wazirpur Industrial Area, the court observed that "there seems to be little justification for taxpayers' money being spent in favour of lawbreakers". Dilip's death and the subsequent firing on protesting resi-

जब सब बोलते थे
वह चुप रहता था
जब सब चलते थे
वह पीछे हो जाता था
जब सब खाने पर दूटते थे
वह अलग बैठा दूंगता रहता था
जब सब निढाल हो सोते थे
वह शून्य में टकटकी लगाए रहता था
लेकिन जब गोली चली
तब सबसे पहले
वही मारा गया

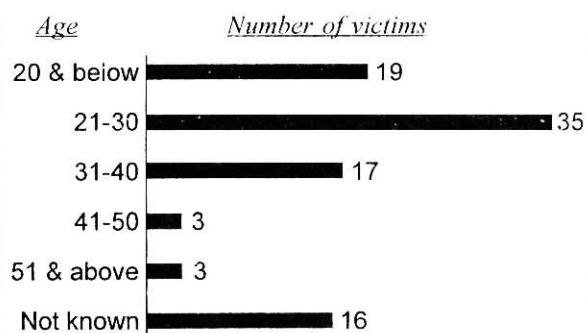
— सर्वेश्वर दयाल सक्सेना

dents of the basti, were explained away by the police as an "inevitable and necessary intervention in a conflict between haves and have-nots". The custodial death of Dilip is thus utterly consistent with the logic that governs the lives of JJ dwellers.

Ramzan's life in F Block jhuggi, New Seemapuri, best sums up the uncertainty of a JJ dweller's existence. A Bangladeshi refugee, he made his living through ragpicking. Unlike his brother, a drug addict, Ramzan supported his family across the border. His 'unauthorized' existence as a JJ dweller was further compounded by the fact that he was an illegal migrant. He was gambling with three other men when the police arrived, and died as a result of injuries sustained in beating. However, the SDM inquiry corroborated the police's story of accidental death. Despite public protest following his death in March 1992, no investigation was ordered. A key witness was pressurized by the local pradhan to testify that Ramzan's death was accidental. In JJ colonies pradhans are like overlords, hand in glove with police and politicians. In such a context, neither police nor SDM had any difficulty in explaining away the custodial death of an illegal migrant as an accident.

The power of the uniform and the proximity of the police station also enable policemen to make inroads into the lives of people who are forced to work and live on city roads and pavements for their livelihood. Matloob Hussain, a fruit vendor near Khureji Khas, died due to severe beating by the police in July 1996. Like all other vendors in the area, Matloob had to pay 'hafta' to the police personnel posted in the vicinity. The weekly payment had recently been increased to Rs. 200, in addition to fruits being taken away forcibly without payment. As an encroacher, the only way Matloob, sole bread-winner of a large family, could earn his livelihood, was by paying extortion money to the police. Despite the hafta payment, policemen would intermittently beat up the vendors in this area for encroaching. On the fatal day, Matloob was busy with a customer when police came to remove the vendors. Unable to run away, he became an easy target for police brutality. Beaten severely, he died two days later and paid the price for being an encroacher. Matloob lived and died then, constantly negotiating with policemen asserting their

They Died Young



power through extortion on the one hand and enforcing the law against encroachers on the other.

2. 'Bad Character'

Our investigations over the years have pointed to one stark fact, that the majority of the deceased were young men between the ages of 18 and 35. Almost half of those killed were below 30 years of age. Of course there are exceptions like 62-year-old Ram Vilas, or 60-year-old Masoom Ali, or 9-year-old Naresh, or women like Shanti Devi and Rishna. But most of the deceased were young men, often unemployed. Out of 77 victims (the age of 16 victims is not known), 54 victims (i.e. 70%) were below 30 years of age, 19 of them being below 20 years old. Many of these victims had no steady source of livelihood. Frequently such unemployed young men residing in unauthorized colonies, end up being seen as habitual offenders who are then routinely picked up by the police. The classification of such men as 'bad character' means that irrespective of their involvement in a particular crime, they will be rounded up by the police and interrogated.

Take the case of Madan Lal. A resident of Pandav Nagar resettlement colony, he was unemployed at the time of his death in November 1993. He was picked up from his house by policemen in mufti, probably in connection with a theft. Within three hours he was dead. Initially the police denied all involvement, but spontaneous protests by residents forced higher officials to suspend three constables and one ASI (Assistant Sub Inspector). The police claimed

that Madan had consumed poison and one 'Naresh' had taken him to hospital. Our team could not find any Naresh at the address given by the police. The SDM could not find him and the youths of the locality could not trace him either. If 'Naresh' had come to the hospital with the dead body, why was he allowed to go without being questioned or detained by the police there? That the police can kill a person and invent another shows that the power of the uniform also means the power to tell tall tales. For the residents of the area, Madan's death brought home yet again the nature and extent of the police's power in the locality. According to them, the local police themselves encouraged illegal activities such as sale of liquor and drugs, and then demanded protection money and bribes. A few days prior to Madan's death, three other young men had been picked up and the police had demanded Rs. 12,000 from their families. Such constant fear of the police is best epitomized in the residents' description of one particular constable who roamed the locality on a motorcycle with a motorcycle chain in hand.

In a more recent case in September 1996, Anup died after he had been illegally detained and tortured at Connaught Place P.S. A resident of a jhuggi adjoining Hanuman Mandir, he was a chronic TB patient and a drug addict. According to the police he used to make a living by selling drugs. A key witness to the torture, Gogi, refused to meet our team despite several attempts. On the basis of his account a complaint had been filed in the High Court by a social worker living in the area. Gogi was repeatedly threatened by the police. His family confirmed that drug trafficking was a well-entrenched business from which the local police profited. Young men like Anup or Gogi

live in perpetual fear — there is no telling when the police will intimidate or arrest them for selling drugs.

Classification as a 'bad character' in official history becomes the rationale for detaining and torturing young men from deprived sections of society. Mukesh or Mukki was one such 'criminal' who died in November 1991. He had four cases against him under the Excise Act, had been picked up several times by the police, and was included in the list of habitual bad characters in Hauz Qazi P.S. Mukesh had tried several times to earn a living differently, but continuous police harassment made him give up. He became a smack addict and when his family disowned him, he started sleeping on pavements. On 27 November 1991 he was picked up on charges of being a nuisance during a wedding procession. He was drunk and people in the wedding crowd also showed the police that he had a knife on him. He was charged under the Arms Act and detained overnight in Kamla Market P.S. The following morning at Tis Hazari, a lawyer noticed a corpse seated on a bench in the corridor outside the courtroom. The police claimed that he had collapsed just then, but the Medico-Legal Case certificate recorded that Mukesh had died at least two hours before being taken to court. Police argued that the grievous injuries were due to beating by people in the marriage party who, according to them, were armed with hockey sticks. But no case for attempted murder was registered against them. And of course there were no witnesses to what happened within the police station at Kamla Market.

In Mukesh's case, his 'character' and lack of protest by immediate family or residents, allowed the police to declare that this was not a custodial death. The history of the aftermath in this case is as suspect as the 'character' given to Mukesh officially. Fifteen months after the death, an FIR was lodged against one Sub-Inspector and two constables. All three were suspended but later reinstated. Until January 1996 the case was pending trial and the department inquiry had not been completed.

3. Policing the Deprived

Custodial death is an aggravated form of police violence. The habitual manifestation of police brutality however is beating. People are routinely beaten in the normal discharge of duty. An encroacher, a loi-

Occupational Profile



terer, a vagrant – the very description invites the ire of the police. Police beating rickshaw pullers or hawkers, is a fairly common sight on Delhi roads. This culture of beating is the most immediate and visible meaning of the power of the uniform. Given the social profile of the victims, police brutality is a daily fact for them.

The penetration of the police in daily life is best exemplified through their intervention in family disputes. Quarrels, wrangles or scuffles are often settled through complaints at the police station. And this provides the reason for police intervention inside the family. Jagpal Singh, who died in January 1992, had an altercation with his grandmother. His aunt went to lodge a complaint at the Budh Vihar chowki, but had to shuttle several times between the police chowki and Sultanpuri P.S. Her statement was never recorded. Jagpal was brought to the chowki and died within a short time.

Likewise, Subhash Chand (who died in February 1990) had an altercation with his landlady. He was picked up from his house late at night and according to the police had been grievously injured by the landlady's family. He was taken to Lok Nayak Jayaprakash (LNJP) Hospital after his condition worsened and died two days later. According to Subhash's family the police did not record his statement of being beaten by the police; instead they manipulated it in such a fashion that the landlady's family became the accused and a case under S. 308, 34 of the Indian Penal Code (IPC) was filed against them. There were eye witnesses to the beating by the SHO in the P.S. The entire incident points to the manner in which the police can fabricate charges in matters of personal disputes.

Whatever the crime which the victim is accused of, his right to life cannot be violated, and the police do not have the right to torture even a murder suspect. But in at least 21 out of a total of 93 cases of

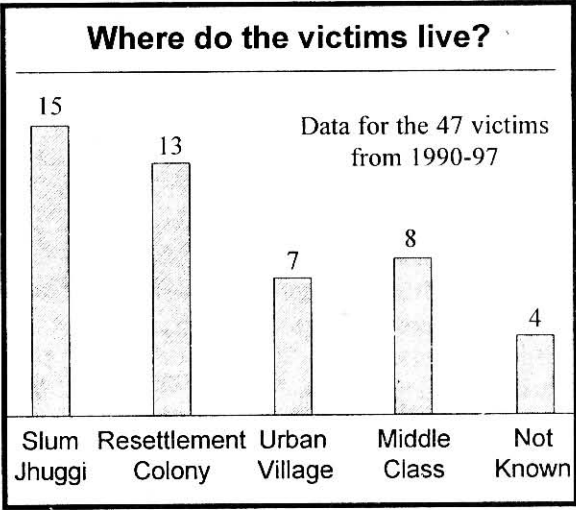
custodial death in these eighteen years, the victims were neither charged with any offence nor were they suspects in any specific case. They just happened to get the blunt edge of the stick. Take the case of Suresh, a safai karamchari from Bombay. He came to Delhi to attend a wedding. He was picked up on the night of 1 December 1993, along with another 150 boys or so, in connection with the stabbing of a Head Constable in the area. Suresh died 24 hours later in a private hospital. He had been beaten to the point of

death, even though as a visitor he could have had no connection with the stabbing incident.

Put simply, the police intervened in the lives of these victims of custodial death, in a variety of ways. Sometimes, like Om Prakash Kaushik (who died on 12 July 1991), they were picked up as 'unidentified' persons in an unconscious state, in routine discharge of police duty. Sometimes, as in the case of Mukesh, members

of the public handed over a suspect to the police, frequently after having beaten him up themselves.

But beating takes on a more specific form when it is used for interrogating suspects. In order to extract confessions and establish guilt, the police use a variety of methods of torture. Prolonged beating by lathis, iron rods, boots or belts is common. Frequently, electric shocks or burns are inflicted. Sexual abuse and other forms of humiliation are also not unknown. And this despite the fact that under S. 25, 26 of the Indian Evidence Act, confessions made to the police are not admissible as evidence in courts. There are also provisions against the use of torture under Sections 330 and 331 IPC. Further, Article 20(3) and Art. 21 of the Constitution hold torture as violative of fundamental rights. And several Supreme Court judgements have held torture as illegal (Nandini Satpathy vs Orissa AIR 1978 SC 1025; Sunil Batra vs State AIR 1978 SC 1678; Khatri vs Bihar AIR 1981 SC 1068, and the recent judgements in D.K.Basu vs West



Pradesh).

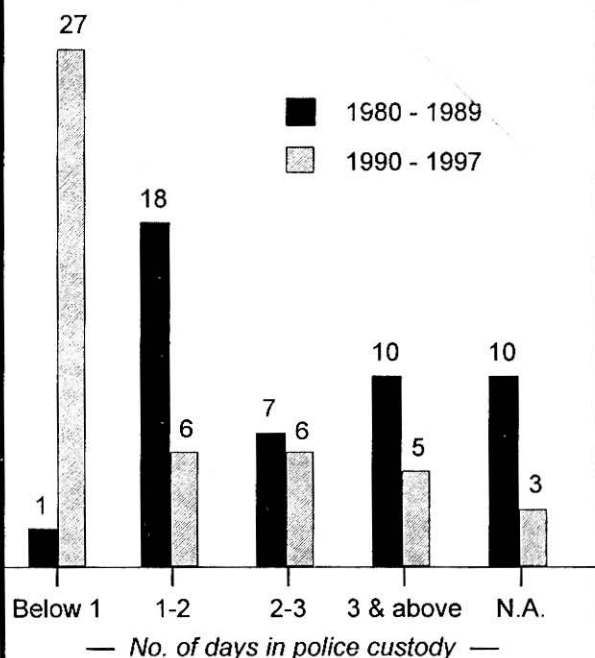
But whether or not confessions made to the police serve as evidence in a court of law, torture continues to serve a purpose for the police. While asserting the brute power of the police over the people, it helps in getting a confession and concluding an investigation. Not merely are these processes brutal and violative of all the rights of a detainee, the method of extracting evidence makes the conclusions forced, and the evidence suspect. And the possibility that a trial court may throw out such unsound evidence is still not enough of a deterrent, given the immunity that the State provides to its officials. Section 132 of the Criminal Procedure Code (Cr.P.C.) stipulates that no official using any means to disperse an assembly of persons can be prosecuted for any consequence thereof. S. 197 Cr.P.C. provides immunity from prosecution to any judge or public servant for any action committed by them in the course of their official duty. Police authorities routinely make use of these provisions to evade punishment.

Deaths in police custody do not occur only because of prolonged detention and torture. A person can die after being detained for less than two hours, or for as long as 25 days. According to our investigations, 28 victims died after being in custody for less than a day, while 24 others died within two days of detention. Forms of torture such as beating a suspect enough to cause grievous injuries, inflicting mental trauma or denying medical help, do not require a prolonged period of detention, nor are they necessarily connected with the place of death (See Box, 'What is Custody?'). For instance, in the cases of young Dilip (S. No. 77) and Matloob Hussain (S. No. 85), the actual period of detention was one hour, and that too not inside the police station. The real problem is that since torture is accepted as a routine part of investigation, the possibility of a custodial death happening during a simple 'investigation' can never be ruled out. Public opinion never takes note of the actual facts of torture, and therefore never really questions the police's power over a suspect's body and life.

4. Public Protest

Given the nature of the social context of custodial violence it is not surprising that the victim's family

How long does it take for a person to die?



Note: Figures on top of the columns refer to number of deaths

does not have the wherewithal to protest against police atrocities. Yet, public protest acts as real pressure and forces the police to at least suspend some officials, if not lodge an FIR. As compared to the 1980s, the number of public protests have doubled in this decade and this has also led to an increase in the number of FIRs filed. After the death of Ram Swaroop at R.K. Puram P.S. in January 1991, the DESU employees' union demonstrated in large numbers at the police station and cut off power supply to the police station as well as to the DCP's office the following morning, forcing the suspension of two policemen. In the case of Satyavan's death in March 1993, a crowd of 700-800 people belonging to neighbouring villages blocked the road with bricks and pipes and refused to cremate the body. It was only after the DCP and the SDM met the angry crowd that the body could be sent for a post mortem examination. That same night, the SHO was transferred to Police Lines and the Head Constable suspended. Two days later the suspension orders for the SHO also

came. A case under S. 304 IPC was registered against the two. But for such protests, the likelihood of action against guilty police personnel is extremely slim.

However, strong public protests can also draw other responses from the police. When Dilip died on 30 January 1995 in Shaheed Sukhdev Nagar, his neighbours in the JJ colony adjoining the park staged a massive protest. The police responded by firing on the demonstrators, and 3 more persons were killed. And such protests do not even guarantee that the police will finally register an FIR. Old Seemapuri residents demonstrated in front of the police station when Shammu Khan died on 5 June 1990 after being severely beaten, but no FIR has been registered till date.

But the lack of public protest effectively allows the police to deny all involvement, as can be seen in the case of Balwinder's death (S. No. 84). Since nobody in the neighbourhood was prepared to contest the police version that he had died as a result of beating by colony chowkidars, and nobody protested against the death of a loiterer late at night, the police did not even have to admit that the victim was actually taken to the P.S. and died there.

III. Police Folk Tales

Our fact finding into a custodial death is not a simple matter. The police may choose to give information or they may not do so. We are told routinely that the matter is under investigation and therefore they will not divulge any information. No comprehensive data is ever made available, and this in turn thwarts the possibility of effective follow-up. Only once did Delhi Police give us information about follow-up action, on cases between 1991 and 1994. Incompleteness is thus structured into our fact finding and the difficulties are further compounded by the bureaucratic obstacles involved in following up cases. Officers are routinely transferred. If we have the good fortune to meet a higher official we are told that he had not been involved with the case from the very start. Cases remain locked up in files in the dusty offices of Tis Hazari (whose name is symptomatic of the innumerable rounds one makes there).

In most cases of custodial death, an uncared-for life ends in an inconsequential death. But for public protest, these deaths would remain no more than statistics. But there are some cases, in which even death and its aftermath do not bestow any semblance of significance. Unknown, uncared for and unwanted when alive, they remain anonymous after death. A body was discovered near the Rain Basera (night shelter) in the Jama Masjid area on 24 April 1994. The SHO Kotwali agreed that a dead body had been discovered. The SHO Jama Masjid claimed that the boy could not have been picked up as there was no case against him at the P.S. Eyewitness accounts of the boy being beaten and taken away by two policemen (including ASI Ube Singh) on the afternoon of the previous day, were dismissed by the police on the grounds that they were drug addicts, and their statements could not be taken seriously. The SDM inquest concluded that this was not a custodial death. No departmental inquiry was conducted, and no case was filed. No attempts were made to find out who he was. The boy remained nameless.

The complete impenetrability of the system ensures that nothing is revealed and that nothing is done. This delay is not just a matter of bureaucratic red-tape. It actively helps in covering up the criminal acts of the police and, more importantly, it delays justice for the families of the victims.

In every case of custodial death, the police offer their version of the relevant events leading to the death, and of the causes of death. Following are the favourite official versions:

1. 'Suicide'

Among the causes for death given by the police, 'suicide' is offered as the explanation in the largest number of cases. Out of these 93 deaths, at least 29 victims are alleged to have committed 'suicide'. For example Vikal Kumar Adhana, an assistant in the Finance Ministry, who was picked up by the CBI

for impersonation and bribery, is alleged to have hung himself at Lodhi Colony P.S. on 24 March 1993, with a rope fashioned from a floor mat and suspended from a vertical bar of the cell! The police had no explanation, other than the victim's alleged remorse and depression, for how such a rope from a vertical bar could sustain his weight of eighty kilograms. Over the years, the methods invented for such 'suicides' have varied: from jumping to death (Shanti Devi, S. No. 88), to consuming chemicals (Mushtaq, S. No. 90), to hanging using a floor mat, or shirt sleeves (Ramesh, S. No. 92) or the matting of a charpoy (Rattan, S. No. 89). Often even the medical evidence contradicts the police story of suicide. For example in the case of Ramesh cited above, who was supposed to have committed suicide by hanging himself by his shirt sleeves, the post mortem examination note an injury at the back of his head.

In the case of Shibu (S. No. 91), the police absolved itself of all culpability on the grounds that in the first place he had consumed poison, and in the second place, he had done so outside the premises of the Nehru Place police post. The police version forgot to mention that for a whole year Shibu had been continuously harassed and beaten in different police stations. Under these circumstances, it is not difficult to believe that he may have been driven to take his own life in order to finally escape the clutches of the police. Police yarns of suicide wilfully conceal the aggravated mental torture that is also a significant cause for deaths in police custody.

Suicides might actually happen in police custody, but police stories of suicide cannot be accepted without scrutiny. There are never any witnesses to either confirm or to counter the police version. Under these circumstances, it is not for the police to deny foul play. It is for the courts to prove that no offence was committed. Unless an FIR is registered under the relevant section of the IPC (306, abetment to suicide) in each and every case of 'natural' death, suicide will remain an easy explanation offered by the police. Not surprisingly, the police offered stories of 'suicide' in six out of the seven cases we investigated in 1997.

2. Ill-health and Injuries

Other police versions revolve around prior ailments and injuries. 13 persons are alleged to have

died due to injuries sustained prior to their detention, 6 due to fever or illness, 5 due to heart attack, 3 due to stomach pain, 3 due to heat stroke or dehydration, 2 due to tuberculosis, 2 due to chest pain, and 5 due to accidents. Some others are alleged to have died due to ailments like viral hepatitis or fits. Sometimes the police may actually cite a whole series of these ailments for the same victim. Jagan Nath died on 10 May 1991 (S. No. 52), allegedly because of a brain tumour, weak nerves, a history of blood pressure and head injuries caused by his banging his own head against the cell wall. The police stuck firmly to this story even though the victim had been detained for twelve to fourteen hours at the Lahori Gate P.S., and had vomited blood and fallen unconscious after being beaten in front of his father. The case of Indal who died on 2 January 1996 (S. No. 82) is similar. He was caught while trying to steal a car stereo at Shaiduljab near the Badarpur-Mehrauli road. His accomplice escaped but he was thrashed by passers-by and handed over to the police. He was taken to the Mehrauli P.S. He died a couple of hours later. Police officials claimed that his family had a history of epilepsy!

Such claims firstly have to confront the fact that the victims, in general, were in the prime of their youth – barely eight percent of them being over 40 years of age. It is difficult to believe that the overwhelming majority of young men suffer from a variety of chronic ailments. Secondly, police needs to explain how the 'ailments' – old, new and hitherto unknown – miraculously blossom once the person is in custody, to cause death within hours and sometimes minutes.

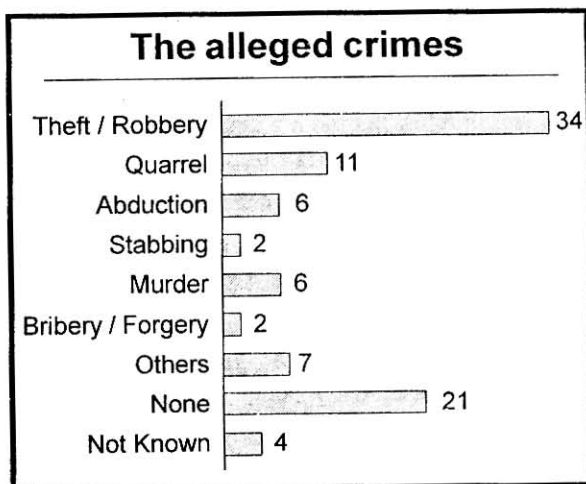
Thus, according to the police, these 93 deaths in their custody have occurred either because the detained persons were themselves responsible for their untimely demise, or because of natural causes and physical infirmities. But once in custody, people are deprived of the freedom to look after themselves. It is therefore the responsibility of the police to monitor their physical condition and provide timely medical aid. Failure to do so makes the police responsible for the death. Moreover some of these 'natural' causes such as stomach pain, do not indicate anything more than the vivid imagination of the police officials offering these stories. And in such cases the police feels obliged to offer accounts at all, only because it has

already been compelled to accept that these victims did die in their custody.

Very often the police say that the victim was beaten by the public or by a private party and he died as a result of the injuries sustained then. According to S. 53 Cr.P.C (examination of the accused by a medical practitioner at the request of a police officer) a medical examination is mandatory when there is reason to believe that it will afford evidence as to the commission of an offence. The police hardly ever adhere to this provision. In the case of Balwinder (S. No. 84), the police claimed that he had sustained injuries as a result of public beating. They never took him for a medical examination and since he died shortly after, they refused to acknowledge it as a custodial death even though he died after he was handed over to the police.

Sometimes, however, medical examinations are conducted but for very different reasons. In the case of Mukesh (S. No. 59), the police explained 38 injuries including a fracture of the lower leg and a head injury which resulted in brain haemorrhage, as injuries sustained prior to detention. The police did take Mukesh for an examination before detaining him, and it was noted that Mukesh had consumed alcohol. But there was no mention of any injuries. Likewise, the police also took Indal (S. No. 82) initially to All India Institute of Medical Sciences (AIIMS), where the Medico-Legal Case report (MLC) noted the presence of alcohol and advised that he be kept under observation. Despite this, the police took him back to the P.S. When Indal finally died, the police failed to explain why they had not followed the medical advice. Further, the post mortem examination carried out at AIIMS clearly indicted the police, as it revealed the time of death to be not more than an hour and a half after the first medical examination. It also noted twenty eight injuries, including internal injuries to the liver, which had not been noted in the first medical examination. It stands to reason that Indal died not because he had been beaten by the public, but because he had been tortured by the police after having been medically examined.

The official explanation that the person had prior injuries or was beaten up by the public before being detained, also cannot absolve the police of responsibility. According to the Punjab Police Rules (Rule



264 applicable to Delhi), the police is obliged to give proper medical assistance to an injured person at the time of arrest. The prior injuries may not be fatal, but can lead to death in the absence of timely medical attention. 19-year-old Rajesh died on 6 September 1991 (S. No. 57), after having been severely beaten by five people when he and his brother went to the fields near their house to defecate. When he went to the police station to lodge a complaint, three of his assailants were already present there. Although his injuries were serious, the police did not take him to hospital until his condition became critical. In such cases, deprivation of medical help or neglect by the police aggravates prior injuries, and leads to the death of the person. The police is still directly liable for criminal negligence.

In 1989 the Supreme Court upheld this position in the case of *Parmanand Katara Vs Union of India* (AIR 1989 SC 2039): "The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life, so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to be tantamount to legal punishment."

3. Not detained

The version offered by the police does not hinge upon cause of death alone. It covers all the events leading to the death, starting with the detention itself. In a large number of cases the official story either

denies that the person was detained, or states that he was picked up much later than the actual time of detention. Unofficial (illegal) detentions in the name of inquiries or interrogation are quite common, without a record in the Daily Diary of the police station, or formally registering arrest, or complying with the provisions of S. 160 Cr.P.C (police officer's power to require attendance of witnesses). The practice of not keeping a record of detention or release is then useful in concealing the actual period of detention. In February 1997 Shanti Devi (S. No. 88) was illegally detained for three days in police custody, along with many other relatives, because her son was accused in a kidnapping case. (This in spite of the fact that S. 160 Cr.P.C expressly forbids police officers from interrogating women and males under the age of fifteen as witnesses, at any place other than their own residence.) But according to the police, Shanti Devi came to the police station 'voluntarily' to assist the official investigation, and after hearing that her son was accused, she committed 'suicide' by jumping from the third floor of the Najafgarh thana. They made her alleged 'suicide' seem more plausible by stating that she had come to the thana that very day. The police was widely applauded for solving the kidnapping case, and this 'suicide' was conveniently forgotten.

The fudging of Daily Diary entries is also useful in the cover-up operation after the person ultimately dies as a result of torture. Surat Lal (S. No. 80) died on 12 October 1995. The Samaipur Badli police claimed that he had either committed suicide or had been accidentally hit by an express train. His body was found on the rail tracks adjacent to the thana. He had been picked up the night before on charges of theft. The police told our team that Daily Diary entries had been made for Surat Lal's detention and release, but did not show them to us. They also said the victim had been released as there was

no evidence against him. Eight months later the SDM report categorically indicted the police and recommended that the Investigating Officer be charged under S. 302 IPC (murder), and that departmental action be taken against the then-SHO for negligence. Contrary to the police's earlier assertions, no entries had actually been made in the Daily Diary. Surat Lal had been illegally detained and tortured in custody.

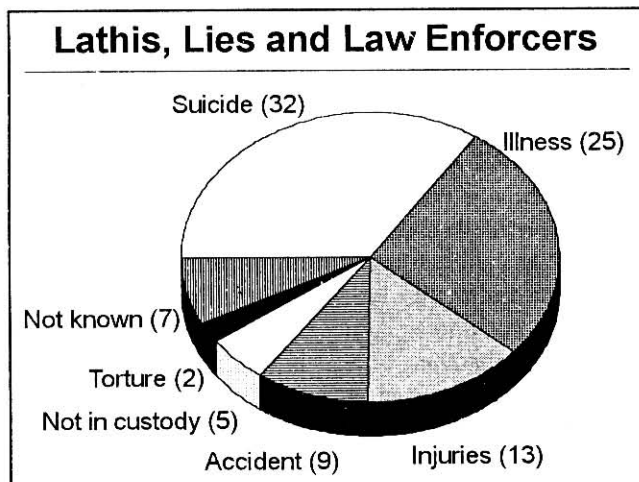
4. Death outside detention

Even if the police admit that a person was detained in the police station, they will deny that it was a custodial death if the victim died afterwards outside their custody. After a detained person is subjected to severe torture he may be released: Dilip Chakravarti (S. No.79) was released after being detained illegally by Special Staff (North East District) on 30 July 1995. He lapsed into a coma caused by head injuries and died six days later at a private hospital. Raghunath, a secondary suspect in a theft case, was brutally tortured at Guru Tegh Bahadur Enclave police post in

November 1991. He was let off after three days and he died 11 days later.

Alternatively, the police accept that the victim had been detained, but then offer tales of aborted escape attempts leading to death. Jagpal (S. No.62) had come to Delhi from Meerut in January 1991, with the hope of being recruited into the army. He was

the sole breadwinner in his family consisting of a young wife, an infant child, a mother and two younger brothers. He died on 20 January in the custody of Budh Vihar P.S. after an altercation with his grandmother. At the chowki, he was handcuffed to the post of a wooden cot. As the story goes, when he found himself alone for a brief while in the chowki, he freed himself merely by lifting the cot. Then he jumped into the nearby nala in order to escape from the pursuing policemen. And he drowned. And the fire brigade had



to be called in, and it took them three hours to fish out his body.

5. "Not our custody"

Another option available to the police is to shift a person from their custody to the custody of another police station or to judicial custody. When more than one police station is involved, each can deny its culpability and blame the other. When a suspect is remanded to judicial custody after being severely tortured by the police, death may occur in jail. On 28 May 1994 Kuldeep Singh (S. No. 74) was taken from Indira Gandhi International Airport P.S. to Palam P.S. after having been interrogated for nearly eighteen hours, and finally remanded to judicial custody. He died in jail and the SHO of Palam P.S. stated that he died due to heat stroke. In another case, Ajay (S. No. 78) was arrested on 5 June 1995 by the Paharganj Special Investigation Unit (SIU) in connection with a break-in and stabbing at an automobile shop. He was presented before the court the next day and remanded to police custody for one day, before being transferred to Tihar Jail. He died in jail on 11 June. The SDM report submitted on 3 March 1996 stated that Ajay's death was due to torture and recommended action

against Jama Masjid police and SIU Paharganj.

But these options are exercised by the police only when they are forced to admit that a victim was actually detained. Sometimes victims or their bodies may just disappear, rendering all further explanation unnecessary. In March 1991 the Gokulpuri police dumped 50-year-old Rishna's body (S. No. 51) in a nala near the Loni border. Her body was conveniently discovered as 'unidentified' by two unidentified men and was kept in the mortuary of Guru Tegh Bahadur Hospital. The following day another unidentified man came to the hospital, claimed the body and cremated her as unidentified. Only after the cremation did the sordid tale of torture and detention ending in a violent death surface. Six policemen were charged with murder (S. 302), destruction of evidence (S. 201) and common intention (S. 34 IPC). The Gokulpuri police repeated their act with Sharif, who was arrested in Muzaffarnagar for the kidnapping of his nephew, and died on 16 June 1993 while being escorted back to Delhi by them. They threw his body into the Hindon river and it was never recovered. Similarly Ram Swaroop's body (S. No. 40) was disposed of secretly by Inderpuri police after he died in their custody on 19 September 1988.

हम कैसे गुनहगार हैं, उनसे न पूछिए
वे अदालतों के पार हैं, उनसे न पूछिए
ये जुल्म-ओ-सितम उनके, और ये अपनी बेकसी
जो मौत के फनकार हैं, उनसे न पूछिए

— गोरख पाण्डेय

Table I

कौन था वो, कहां का था वो, क्या हुआ था उसको ?

No.	Date	Police Station	Name (Age)	Background	Alleged offence	Time in Custod	Police version
1	11.4.80	Cantonment	Emmanuel (27)	Shop employee	Murder	25 days	Suicide
2	5.8.80	Subzi Mandi	Laxman Singh (NA)	* N.A.	*N.A.	*N.A.	Burn injuries
3	*.5.81	Trilokpuri	Chotey Lal (29)	Casual labour	Petty quarrel	1 day	Suicide
4	*.6.81	Shahdara	Daya Ram (24)	Shop employee	Theft	1 day	Fever
5	*.6.81	Madangir	* N.A.	Bihari migrant labour	Quarrel	2 days	Suicide
6	13.5.82	Roshanara	Jungalee (27)	Villager, Bullandshahr	Robbery	2 days	Suicide
7	*.6.82	Shahdara	Mahipal Singh (NA)	* N.A.	Robbery	1 day	Previous injuries
8	20.6.82	Alipur	Surinder Singh (30)	Villager, Chajjipur	Quarrel	*N.A.	Suicide
9	9.8.82	Vasant Vihar	Prakash Singh (17)	Domestic servant	Theft	1 day	Suicide
10	*.10.82	Adarsh Nagar	Ravi Kumar (22)	* N.A.	Murder	2 days	Suicide
11	*.3.83	Sarai Rohilla	Harish Gandhi (23)	Menial employee	Missed court date	1 day	Previous injuries
12	10.4.83	Shahdara	Khajan Singh (20)	Owner of a small press	Kidnapping	5 days	* N.A.
13	8.6.83	Lajpat Nagar	Ram Parshad (32)	Goldsmith	Theft	2 days	Suicide
14	2.7.83	Sadar Bazar	Jagdish Prashad (21)	* N.A.	Carrying knife	3 days	Fever
15	4.7.83	Darya Ganj	Mohd. Arif (NA)	* N.A.	Theft	2 days	Suicide
16	30.8.83	Kalyanpuri	Rajinder (20)	Casual labour	Quarrel	* N.A.	Previous injuries
17	*.9.83	Mangolpuri	Om Prakash (30)	Taxi driver	None	1 day	Chest pain
18	*.9.83	Sultanpuri	Chotey Lal (17)	Cycle shop employee	Theft	4 days	Previous injuries
19	*.3.84	Defence Colony	Rajpal (19)	Tailor	Abduction	1 day	Previous injuries
20	11.8.84	Sultanpuri	Wilson (25)	Balloon seller	Petty theft	6 days	Heart attack
21	10.12.8	Kalkaji	Bharat Bhushan (20)	* N.A.	Theft	12 days	Suicide
22	*.5.85	Karol Bagh	Mohinder P.Singh (-)	* N.A.	Transistor bomb	* N.A.	Suicide
23	24.5.85	Ramesh Nagar	Roshan (17)	* N.A.	Petty theft	17 days	Illness
24	8.7.85	Mangolpuri	Raj Kumar (25)	* N.A.	Pick pocketing	1 day	Chest pain

No.	Date	Police Station	Name (Age)	Background	Alleged offence	Time in Custod	Police version
25	16.9.85	Pahar Ganj	Langda (30)	Rickshaw puller	Theft	1 day	Illness
26	*.9.85	Nangloi	Raj Kumar (24)	* N.A.	Pick pocketing	1 day	Suicide
27	24.1.86	Karol Bagh	Daljit Singh (NA)	* N.A.	Transistor bomb	8 days	Heart attack
28	30.4.86	* N.A.	Madan Lal (NA)	* N.A.	* N.A.	* N.A.	Died after release
29	12.8.86	Jheel	Suraj (25)	* N.A.	Theft	5 days	Suicide
30	24.8.86	Patel Nagar	Gopi Ram (40)	Tonga driver	Quarrel	2 days	Over dose of drugs
31	20.9.86	Srinivaspuri	Dayal Singh (40)	Chowkidar	Theft	2 days	Tuberculosis
32	7.4.87	Nangloi	Laxman (25)	Petty trader	Murder	1 day	Previous injuries
33	*.6.87	Patel Nagar	Kamal (NA)	* N.A.	* N.A.	* N.A.	* N.A.
34	*.8.87	Shahdara	Mahir (26)	Auto driver	Petty theft	* N.A.	Suicide
35	25.8.87	Vivek Vihar	Mahinder (18)	* N.A.	Stabbing a policeman	1 day	Previous injuries
36	26.11.8	Anand Parbat	Naresh (9)	Son of truck driver	None	1 hr.	Not in custody
37	23.2.88	Prasad Nagar	Shanker Dalai (NA)	Goldsmith	Loitering	1 day	Stomach pain
38	17.4.88	Vivek Vihar	Azad (26)	* N.A.	* N.A.	* N.A.	* N.A.
39	14.5.88	Lodi Colony	Ratan Lal (NA)	Darner	Theft	* N.A.	Suicide
40	16.9.88	Inderpuri	Ram Swaroop (40)	Vegetable vendor	None	1 day	# Not Given
41	6.10.88	Trilokpuri	Asha Ram (40)	Sweeper, NDMC	Quarrel	1 day	Fits
42	23.10.8	Pahar Ganj	Durga Parshad (30)	Vegetable vendor	Quarrel	* N.A.	Shot in his house
43	17.12.8	Tilak Nagar	Sardara Singh (NA)	Auto driver	Public nuisance	* N.A.	Previous injuries
44	19.3.89	Welcome Colony	Vijay Kumar (30)	Dhobi	Drug trafficking	1 day	Suicide
45	13.6.89	Mangolpuri	Ganesh Kumar (26)	Petty shop keeper	Theft of electricity	1 day	Stomach pain
46	19.10.8	Geeta Colony	Om Prakash (26)	Factory worker	Kidnapping	1 day	Suicide
47	3.2.90	Geeta Colony	Subhash Chand (40)	Small furniture shop owner	Dispute with landlady	3 hrs.	Previous injuries
48	5.6.90	Seemapuri	Shammu Khan (22)	Rickshaw puller	Stabbing	1 day	Suicide
49	21.8.90	Model Town	Joginder P. Gupta (37)	Licencing Inspector, MCD	None	12 hrs.	Heart attack
50	31.1.91	R. K. Puram	Ram Swaroop (40)	Chowkidar, DESU	Theft of cables	3 days	Tuberculosis

No.	Date	Police Station	Name (Age)	Background	Alleged offence	Time in Custod	Police version
52	10.5.91	Lahori Gate	Jaganath (34)	Peon in private company	None	18 hrs.	Previous illness
53	11.7.91	Adarsh Nagar	Ram Vilas (62)	Retired factory worker	Refusal to vacate disputed house	1 hr.	Heart attack
54	12.7.91	Timarpur	Om Prakash Kaushik (32)	MCD employee	None	10 hrs.	Accident
55	14.7.91	Connaught place	Shankar Lal (30)	Auto driver	None	4 hrs.	Alcohol overdose
56	19.8.91	Patel Nagar	Jairam Singh (50)	Retrenched factory worker	Theft	4 hrs.	Stomach pain
57	7.9.91	Sultanpuri	Rajesh (19)	Student; son of class IV employees	Private quarrel	8 hrs.	Viral hepatitis
58	28.9.91	Preet Vihar	Brijeshwar (27)	Rickshaw puller	None	6 hrs.	Unknown poison
59	28.11.9	Kamla Market	Mukesh Kumar (NA)	Unemployed	Public nuisance	14 hrs.	Previous injuries
60	29.11.9	GTB Police Post	Raghunath (NA)	Migrant casual worker	Secondary suspect in theft case	3 days	Not in custody
61	11.1.92	Hauz Khas	Rattan S. Bisht (22)	No regular employment	Theft	9 hrs.	Suicide
62	20.1.92	Sultanpuri	Jagpal Singh (22)	No regular job	Quarrel	3 hrs.	Drowned while escaping
63	7.3.92	Seemapuri	Ramzan (18)	Rag picker	Gambling	10 hrs.	Accident
64	17.3.92	Welcome	Darshan Singh (20)	Motor mechanic	Robbery	5 days	Torture by police
65	7.7.92	Alipur	Raj Kumar (21)	Vegetable hawker	Robbery suspect	2 days	Previous injuries
66	*.92	Samaipur Badli	Jaswant Singh	* N.A.	Theft	* N.A.	* N.A.
67	24.2.93	Lodhi colony	Vikal Kumar (35)	Assistant in Finance ministry	Impersonation & bribery	1 day	Suicide
68	2.3.93	Najafgarh	Satyavan (35)	Truck driver	None	3 hrs.	Tuberculosis
69	16.6.93	Gokulpuri	Sharif (40)	Rickshaw puller	Kidnapping	3 days	Drowned while escaping
70	5.9.93	Ashok Vihar	Vinod (20)	No regular employment	Robbery suspect	1 day	Suicide
71	29.11.9	Patel Nagar	Madan Lal (21)	Unemployed	None	3 hrs.	Unknown poison
72	5.11.93	Kanjhawala	Om Prakash (27)	Private bus driver	None	2 days	Accident

No.	Date	Police Station	Name (Age)	Background	Alleged offence	Time in Custod	Police version
73	24.4.94	Jama Masjid	Unknown (20)	No regular work	None	Unclear	Dehydration
74	29.5.94	IGI Airport	Kuldeep Singh (21)	Son of taxi driver, deported from Germany	Possessed forged documents	2 days	Heat stroke
75	27.8.94	Seelampur	Masoom Ali (60)	Retired army pensioner	Quarrel	7 hrs.	Heart attack
76	3.12.94	Mangolpuri	Suresh (26)	Sweeper in Bombay	None	1 day	Torture by police
77	30.1.95	Ashok Vihar	Dilip (18)	Migrant in search of job	Defecation in park	1 hr.	None
78	11.6.95	Jama Masjid, SIU Paharganj	Ajay (23)	Auto mechanic	Robbery and stabbing	2 days	Heat stroke
79	7.8.95	Spl. Staff (N-E dist.)	Dilip Chakravarti (38)	Owened transport company	None	15 hrs.	Died after release
80	12.10.9	Samaipur Badli	Surat Lal (35)	Rickshaw puller	Theft	13 hrs.	Suicide
81	31.12.9	Subzi Mandi Police Post	Ghulam Mohammad. (NA)	Fruit seller	Eloped with married woman	2 hrs.	Suicide
82	3.1.96	Mehrauli	Indal (19)	Unemployed jhuggi resident	Theft	14 hrs.	Prior injuries / Mental disorder
83	24.2.96	ISBT Police Post	Ravinder (20)	Vegetable Seller	Abduction	7hrs.	Suicide
84	1.6.96	Chittaranjan Park	Balwinder Singh (NA)	* N.A.	Theft	Unclear	Beating by residents
85	13.7.96	Geeta Colony	Matloob Hussain (33)	Fruit Seller	None	1hr.	Faulty treatment
86	30.8.96	Sarojini Nagar	Sonu (19)	Unemployed	Theft	14 hrs.	Illness
87	12.9.96	Connaught Place	Anup (32)	Jhuggi dweller	None	3 days	Accident
88	5.2.97	Najafgarh	Shanti Devi (50)	Housewife. Shopkeeper family	None	2 days	Suicide
89	24.4.97	Tilak Nagar	Rattan Singh (20)	Self employed in household industry	Auto theft	1 day	Suicide
90	9.6.97	Greater Kailash	Mushtaq (22)	Blacksmith	Robbery	4hrs.	Suicide
91	4.8.97	Nehru Place Police Post	Shibu (24)	Unemployed	Kidnapping	4hrs.	Suicide
92	17.8.97	Old Delhi Rly. Stn.	Ramesh (28)	No regular employment	Pickpocketing	2hrs	Suicide
93	10.12.9	Hauz Qazi	Hari Shankar (55)	Small trader	None	2 days	Heart attack

What is custody?

Om Prakash Kaushik, a resident of Timarpur, died on 12 July 1991 at Hindu Rao Hospital. According to the police, they had found him lying in a vacant plot in a drunken state, had taken him to Timarpur P.S., and then to hospital once his condition deteriorated. Although the body bore marks suggesting beating around the groin area, the police maintained that this was not a custodial death, because Kaushik had never been arrested. Shankar Lal was found lying unconscious around midnight on 10 July 1991 in the Connaught Place area. The police claimed that he had no identification papers, and they merely took him to Ram Manohar Lohia Hospital where he died on the morning of 14 July, without gaining consciousness. Even though the post mortem report revealing extensive injuries all over the victim's body, especially at the wrists and ankles, clearly suggested torture, the police again denied that this was a custodial death, since the victim had been picked up in an unconscious state. And in November 1993, the police used a similar argument in the custodial death of Om Prakash, who had been found in a drunken state and charged with drunken driving. If the victim was drunk and incoherent, the police account of how he was brought to the thana was even more incoherent: they claimed that he was brought on a scooter, a tractor trailer, in a police jeep, and in a DTC bus! The SDM Punjabi Bagh concluded that Om Prakash had died as a result of injuries sustained during driving, but ordered an investigation. An FIR was lodged, but more than two years later in January 1996, it was still 'pending investigation'. These cases clearly point to the extremely limited definitions of arrest and custody which are used by the police to deny their culpability.

According to the *Criminal Law Journal* (Cr.L.J. 635 (637) 1970) however, custodial death is defined as: "Death occurring during the period when some limitation is placed upon the liberty of the deceased, and that limitation must be imposed, either directly or indirectly, by the police". Clearly this means that it is immaterial whether or not the death occurs within the premises of a police thana or chowki. What matters is once under the control of the police, the person has lost his freedom of movement. The Supreme Court also upheld this position (SC 513, AIR 1990) in the case of Naresh's death. In this incident of 26 November 1987, Naresh, a nine-year-old school boy, died after he was beaten with bricks and rods in his own house, when he tried to protect his mother from rough treatment during a police search of his house, in a landlord-tenant dispute. The Court held that the issue in defining custody in this instance was not so much place of death, as the power of the police over the victim which was the cause of death.

Despite judicial rulings, the police often persist in limiting the definition of custodial death to death within the thana premises. This limited definition is then used to scuttle official inquiries, as in the case of Ram Vilas. A retired worker of Ayodhya Textile Mills, he was beaten to death on 11 July 1991 by the security guards of the Mills in a dispute over the ownership of his house. The police then did not hand over his body to his family, and hastily took it to Nigambodh Ghat for cremation, under the protection of more than 300 armed policemen. And no official inquiry was held, on the ground that he died in his own home. On 13 July 1996 Matloob Husain, a fruit vendor, was beaten up by police at Khureji Khas, and later died due to the injuries inflicted on him. The police maintained that this was not a custodial death because the victim had never been detained. There are many other instances where beating or torture which occurred outside thana premises, led to the death of the person. Sonu, who died on 30 August 1996, was 'interrogated' on the move. A suspect in a theft case in which his younger brother had been arrested, he was tortured severely, even on the floor of the police jeep in which he was being taken from one place to another. He died before reaching hospital, as a result of these injuries. And the police stated in their defence that he was never taken to a police station. Such deaths are clearly custodial deaths, since they are caused by injuries inflicted while the victims were in police custody.

IV. The Immediate Aftermath

1. SDM Inquiry

According to S. 176 Cr.P.C. it is mandatory that the nearest executive magistrate shall hold an inquiry into every case of death in police custody. In Delhi as soon as a case of death in police custody is reported, the nearest SDM begins an executive inquiry. The Magistrate has the powers to record any material evidence, examine the dead body, inform the relatives of the deceased and allow them to be present at the inquiry. The post mortem examination report is handed over to the SDM, who also records its findings. The SDM inquiry has the power to indict the police. Given the extreme improbability of the police indicting themselves for their own criminal acts, the holding of an SDM inquiry is an important safeguard in upholding the fundamental rights to life, liberty and equality guaranteed under the Constitution, which are violated with impunity in cases of custodial death.

However, SDM inquiries are not held in every case of custodial death. They are usually held only in cases where the police *prima facie* accepts the death as having taken place in its custody. Between August 1986 and October 1989, 17 custodial deaths had occurred and no SDM inquiries took place in at least four of these. In the 35 cases between October 1991 and the present no SDM inquiries were held into the deaths of Raj Kumar in September 1992 (S.No. 65), Sharif in June 1993 (S.No. 69) and Balwinder in June 1996 (S.No. 84). The police versions were that two of these deaths were due to beating by a crowd, and the third was a suicide. Accepting police versions as the basis for not holding an SDM inquiry, defeats the very purpose of such an inquiry. It allows the police to sit in judgement over their own conduct.

Also, an SDM inquiry is concerned solely with the cause of death. As such it is concerned with torture and other kinds of humiliation of the victim, only if these are obviously the immediate cause of death. Once it is ruled that death occurred otherwise, torture never forms the basis for indictment or criminal prosecution. The implications of this singleminded focus on the immediate cause of death can be seen

clearly in the case of Kuldeep Singh who died in May 1994 (S. No. 74). The police maintained that he died because of heat stroke. The post mortem report gave heat stroke as the clinical cause of death. However the report also mentioned the presence of injuries, some of which were inflicted while Kuldeep was in custody. The SDM report faithfully recorded all the injuries that the post mortem report stated. It also stated the other fact that Kuldeep Singh had been illegally detained. In spite of such clear evidence of torture, the SDM report stuck doggedly to the immediate cause of death as heat stroke, accepting without question the appearance of seven injuries during the period of custody. The two recommendations made by the SDM report, concerning charges of wrongful confinement and attempted extortion of money from the family of the victim, thus had nothing to do with the death itself.

In some cases the findings of the SDM inquiry seem to contradict the facts of the case more directly. The SDM inquiry into the death of Ratan Singh Bisht in Hauz Khas P.S. in January 1992, (S.No. 61) concluded that the victim had committed suicide, despite injury marks around the shoulder, legs and groin. The SDM inquiry into the death of Ramzan (S.No. 63) reached similar conclusions. In such cases the possibility of collusion between the area SDM and the local police cannot be ruled out. The most telling instance is the indictment of the area SDM by the CBI and the Sessions Court for colluding with the police in covering up the death of Joginder Pal Gupta in Model Town P.S. on 21 August 1990 (S.No. 49).

Some SDM reports remain pending for years. The inquiries into the deaths of Bijeshwar Paswan on 28 September 1991 (S.No. 58), Jagpal Singh on 20 January 1992 (S.No. 62) and Vinod Kumar on 5 September 1993 (S.No. 70), had not been completed at least until January 1996. In the case of Raghunath who died on 29 November 1991 (S.No. 60), the SDM finally submitted his report four years later in December 1995. The most frequent cause for this is stated to be the delay in finalizing the reports of post mortem examinations.

Despite all these limitations the SDM inquiry still remains vitally important. It is significant that in at least three cases, the deaths of Mukesh Kumar in November 1991, Om Prakash in November 1993 and Masoom Ali in August 1994, criminal cases were filed only after SDM reports concluded that these deaths had been caused by torture in police custody. And in the case of Surat Lal the charge was changed from S. 330 IPC (voluntarily causing hurt to extort confession) to S. 302 (homicide) because of the SDM's recommendation.

However, the findings of an SDM inquiry are not admissible as evidence in a court of law, due to its status of executive inquiry, where no accused parties exist whose guilt can be proven or denied. Neither the policemen, who may be identified as those responsible for causing death of a person in their custody at the end of such an inquiry, nor the victim's family, can present or cross-examine witnesses during the course of the SDM inquiry. The potential toothlessness of the SDM inquiry is also reinforced in law – S. 176 Cr.P.C. fails to stipulate any mandatory action on the findings of such an inquiry.

The findings nevertheless need to be made public, since they do have the power to indict the police, and can mobilize public opinion against custodial violence. Repeated attempts to get SDM inquiry reports made public, have not yielded much so far. In 1990, PUDR filed petitions in the SDM courts requesting reports in 17 cases. In many cases the reports were 'untraceable' and by some coincidence, only those reports that did not indict the police were made available. In 1997, PUDR submitted applications in this regard to the Lt. Governor, and to the Home Minister and Home Secretary in the Delhi Government. Their response is awaited.

Thus for the present, family members of the victim as well as concerned civil rights organisations are denied access to the SDM reports. This lack of information is apparent in the tables provided – in some cases the outcome of the report is known either because some newspaper found the information and published it, or else police released the findings in cases where they were exonerated. But in a vast number of cases even up-to-date information about whether the reports are pending or completed, is not available.

2. What the Doctor Said

In September 1997, Delhi newspapers reported protests by residents of localities adjoining the mortuary at Old Subzi Mandi in the Civil Lines area. They were protesting against the piling up of bodies inside and even outside the mortuary, which led to stray dogs sometimes leaving an arm or a leg or a bone outside someone's house. The stench from the accumulated bodies also brought fear of infectious diseases. The Civil Lines mortuary is also a major centre for post mortem examinations in custodial death cases. Such pressure on its limited resources can itself delay post mortem examination. The delay makes both the exact cause and time of death more difficult to ascertain, thus substantially weakening the SDM report. Doctors in mortuaries and departments of forensic medicine in Delhi have also highlighted the prolonged delays in finalizing post mortem reports, when they have to send test samples to the Central Forensic Science Laboratory (CFSL) in Chandigarh. For example, the CFSL had not completed its viscera analysis report till over four years after the death of Bijeshwar Paswan (S. No. 58) in 1991.

Apart from the problems caused by these institutional delays, post mortem reports also have other limitations. On 31 December 1995 Ghulam Mohammad, a Kashmiri fruit trader at Azadpur Subzi Mandi, died at the police chowki there by consuming poison (S.No.81). And on 24 February 1996 Ravinder, a vegetable vendor in Modinagar (Uttar Pradesh), died at ISBT police post in similar circumstances (S. No. 83). In such cases post mortem reports might only confirm the cause of death as poisoning. But when the deaths occur in police custody, foul play cannot be ruled out since there are no witnesses to the sequence of events which may have forced the victims to consume poison. Post mortem examinations are inherently blind to these considerations, and are therefore only of limited use in such cases.

The single-minded emphasis on the immediate cause of death often apparent in SDM reports, finds echoes in post mortem reports as well. Clinical causes of death such as heart attack or dehydration are common conclusions of post mortem reports in custodial death cases. Other evidence the victim's body offers of torture, or even ill-treatment by the police, is

equally significant. Forms of torture such as the denial of food and water, compounded with the dreadful atmosphere of police custody, might lead to severe mental trauma for a detained person, bringing on a heart attack. The clinical cause of death in such cases is less significant than the events in police custody which bring the victim to this physical condition. For example the post mortem report in the death of Masoom Ali (S. No. 75) cited heart attack as the clinical cause of death, but also suggested that the 'contraction of arteries' which was the cause of death, could have been brought on by physical and psychological torture of the victim.

The rare occasions when the SDM has ordered a second post mortem examination, such as in the case of Shammu Khan (S. No. 48) who died on 5 June 1990, also point to other possible problems with post mortem examinations. It was only the second post mortem report in this case that stated that the victim's death was caused by shock resulting from multiple trauma, and which ruled out the police story of death by poisoning. Similarly, in the death of Vikal Kumar Adhana (S. No. 67), the post mortem report failed to note *any* external injuries, while the SDM had earlier noted on the body of the victim, multiple bruises and concussions, swelling of the soles and palms, and bluish irregular marks on the upper chest, lower side and arms of the body. In these cases the doctors carrying out post mortem examination obviously colluded with the police.

The most obvious example of collusion was in the case of Madan Lal's death in 1993 (S. No 71). The police had claimed that Madan had died to poi-

son and the post mortem conducted by at least two doctors, Dr. L T Ramani and L K Barua, confirmed the police version, also adding that there were no external injuries. In June 1994 the CBI took over the investigation on the NHRC's direction. Later, the CBI asked the Health Ministry to suspend these two doctors for fabricating the post mortem report. According to the viscera analysis it was evident that Madan had been tortured as there were clear indications of injuries which the post mortem had 'failed' to note.

These are cases where it has clearly been proved that doctors fabricated the post mortem report in collusion with the police. Generally, the report provided by the doctors is accepted by the SDM without scrutiny. In the case of Ramesh's death in August 1997 (S. No 92) the post mortem report stated that death occurred because of hanging. The SDM report accepted the doctors' diagnosis and did not care to explain how a man managed to 'hang' himself in a lock-up which faces not just the duty room but the entire Old Delhi Railway Station. The clinical cause of death and the facts of the case are very often at odds with each other.

What makes this situation worse is that post mortem reports are not made available even to the family. The concealment of post mortem reports from the family only increases the possibility of collusion between doctors, SDM and police, and as such actively covers up the illegal acts of the police. Sometimes this cover-up goes to the extent where even the body is not shown to relatives of the victim, as in the case of Sharif (S. No. 69) or Rishna (S. No. 51).

V. Police Investigation

According to the procedures laid down in the Criminal Procedure Code, investigation of a crime is done by the police as the investigating agency. Filing of the FIR, examining of witnesses and filing of the chargesheet against the accused is the task of the police. In a murder case the chargesheet has to be filed within a stipulated period of 90 days. Only after this does the judicial process start at the lower courts where charges are framed and the case is tried. Any

delay in the investigation casts doubts on its bonafides and thus favours the accused. No other inquiry, whether by the SDM or internal police inquiries, can act as a substitute for criminal investigation, as only this can lead to prosecution of the guilty policemen.

1. Lodging of the FIR

The first step necessary to ultimately prosecute and convict the guilty policemen, is the lodging of an

FIR at the police station. It is mandatory in law for the police to record any information about a cognizable offence, in the form of a written FIR (S. 154 Cr.P.C). Registration of the FIR must then be followed by police investigation of the case. In actual practice the police measure their performance in terms of the total number of criminal cases solved successfully. Their internal schemes of rewards and punishments also work by this logic, which affects every stage of the criminal-investigation process. If the police have to show a high percentage of solved cases, then they also have to keep in mind the number of cases registered at all in the first place. This is why the registering of an FIR is difficult in virtually any case. And this difficulty is compounded many times over in cases of custodial death, where police have to lodge a case against themselves, at the same police station where some of them tortured a person to death. It is only to be expected therefore that over the years they have evolved any number of strategies to either avoid lodging an FIR, or to scuttle the process of criminal investigation in other ways.

FIRs have been filed against police officials in less than one third of the total deaths. In the 35 cases since late September 1991, FIRs were filed, and that too either because of public protest or because of the recommendation of SDM reports, in only 19 cases. However in spite of public protests against the death of Shammu Khan (S. No. 48), and the opinion of a two-judge bench of the High Court that 'the prime cause of death (was) the beating allegedly given to him while in police custody,' no FIR has been filed to date, seven years later.

Further, when the victim is assaulted by a private party, it is the duty of the police to register a case against that private party. In at least 14 such cases between June 1982 and June 1996 the victim was said to have been beaten by local people prior to detention. Either no case was registered against the parties involved, or it was registered and not followed up. The police is then guilty of dereliction of duty on two counts – detention of an injured person without medical treatment, and the implicit sanctioning of private vengeance. For example, Balwinder (S. No. 84) was caught loitering in Chittaranjan Park on the night of 31 May 1996, and beaten up by residents and watchmen before being handed over to the police, in

whose custody he was at the time of death. The police scuttled investigation effectively by lodging an FIR against 'unknown persons' and concealing the fact that the victim had been in their custody.

What needs to be noted is that even when an FIR is lodged the charge is not necessarily murder (S. 302 IPC) for which the punishment can be either death or life imprisonment. Out of the 19 cases from September 1991 murder charges have been levelled in only four cases (S. No. 64, 69, 70, 80). But then in the case of Sharif (S. No. 69) the police contested the FIR at the High Court and managed to prove that Sharif's widow had filed the FIR under "misguidance." The CJM (Chief Judicial Magistrate) Ghaziabad accepted that the eight accused policemen of Gokulpuri P.S. were in no way connected with Sharif's death and disappearance.

Cases of culpable homicide not amounting to murder (S. 304 IPC) have been lodged in 11 cases. The punishment for this is also very serious: imprisonment for life or for a term which may extend to ten years, and the guilty party is also liable to pay a fine. Despite the seriousness of this charge, only in five cases (S. Nos. 59, 60, 68, 71, 76) have the police completed investigation, and the cases are pending trial in court. In the case of Madan Lal (S. No. 71) who died in November 1993, the FIR was lodged almost immediately and the chargesheet was finally made in December 1997.

2. Departmental Inquiries

Another strategy used by the police for not lodging an FIR and therefore not conducting investigation, is to hold a whole range of internal inquiries. These can be Departmental inquiries, Vigilance inquiries, Crime Branch inquiries, District Crime Cell inquiries, and so on. These are conducted by policemen of a different police station, or by senior police officials. The family of the victim has no rights in such an inquiry, no say as to who should be interrogated, and no right to present evidence of their own or to cross-question witnesses. Ordinarily after a custodial death, through internal action which may be either disciplinary or simply routine, some police officials are transferred or suspended. For instance in the death of Ramesh (S. No. 92) on 17 August 1997, a departmental inquiry is being conducted by ACP

(Crime & Railways). One constable has been suspended, and the Additional SHO who was on duty that night has been transferred to District Lines. No FIR has been lodged even though Ramesh died inside the lock-up. Departmental inquiries thus become useful ploys in scuttling investigation.

Departmental inquiries are meant to cover lapses of service regulations. They do not amount to criminal charges against accused policemen, or offer the possibility of justice to the victims and their family. Punishment postings or for that matter suspensions which are the routine outcomes of departmental inquiries, may be acceptable within the context of police rules. But criminal charges in cases of custodial death require criminal investigation either by an investigation agency independent of the police, or by the judiciary. The police's stock response to custodial death is to state that a departmental inquiry is under way and that suitable action will be taken. They thus argue that internal disciplinary action is adequate enough response and renders criminal prosecution redundant.

This neat substitution of departmental inquiry for criminal prosecution also allows the police the advantage of deluding the public and the victim's family that serious action is being taken against the guilty. But often a very curious thing happens. The suspended personnel are reinstated without 'prejudice' on the basis of such inquiries. For example in the death of Ratan Singh Bisht (S. No. 61), Sub-Inspector Lal Chand was initially suspended but later reinstated on the basis of the departmental inquiry. Curiouser still is the case of Vikal Kumar Adhana (S. No. 67) – a departmental inquiry was initiated but was pending till early 1996 when we followed up the case. In spite of this as well as another pending judicial inquiry, the Head Constable and one constable who had been suspended immediately after the death, have been reinstated.

But then there are cases where even the formality of a departmental inquiry is not adhered to. In at least eight out of 35 cases from late September 1991 to date, no such departmental action was taken (See Table 2 for details). And when such an inquiry is conducted, both the manner in which it is conducted and the conclusions it reaches are always in defence of the police. Out of 19 cases between September 1991

and 1994, departmental inquiries were ordered in 13 cases. By January 1996, only four of these inquiries had been completed, and two had exonerated the policemen of all charges (S. Nos. 65, 69). The inquiries concluded that these were not custodial deaths even while SDM reports were pending. In the case of Madan Lal (S. No. 71) the department inquiry exonerated Sub Inspector Kali Ram who had been accused of pressuring the victim's family. The others accused in the same case (1 Assistant Sub Inspector and 3 Constables) are facing trial in court. In the case of the death of Darshan Singh (S. No. 64) one Inspector was suspended along with 1 head constable and 3 constables. The SDM concluded that it was a clear case of custodial death and the case is currently in court. The head constable and the 3 constables are facing trial. However on the basis of the department inquiry the inspector was reinstated and five years of his service have been forfeited. The facts speak for themselves. The logic of these inquiries is simple: as and when a death occurs a routine internal inquiry might be ordered, which, if completed, routinely exonerates the police.

In other words these inquiries can either contest the findings of the SDM report, or make 'redundant' the lodging of an FIR by concluding that the police were not responsible, or simply delay their findings.

3. Dilatory Tactics

If, in spite of all these hurdles, an FIR is successfully registered, it does not at all follow that adequate investigation will ensue. Sometimes the investigation is not pursued on the plea that the SDM's report is pending. In the case of Dilip (S. No. 77) who died on 31 January 1995, a case was filed under S. 304 (a) IPC against the guilty constable and the Crime Branch took over the investigation. Until August 1996 the investigation had not proceeded on the plea that the SDM report had not yet been submitted. It is conveniently forgotten that the two are independent processes and the SDM inquiry cannot substitute for criminal prosecution.

Then there are at least four cases where it is concluded that the death was not custodial even before the completion of the SDM report. In one such instance, Bijeshwar Paswan (S. No. 58) died at Swami Dayanand Hospital on 28 September 1991

after having been beaten up and taken away by policemen of Preet Vihar P.S. The SDM report had not been completed when we followed up the case in September 1995, because the forensic report was pending. But the police had already concluded that this was not a custodial death but death due to some 'unknown poison'. Pending SDM reports are thus useful for

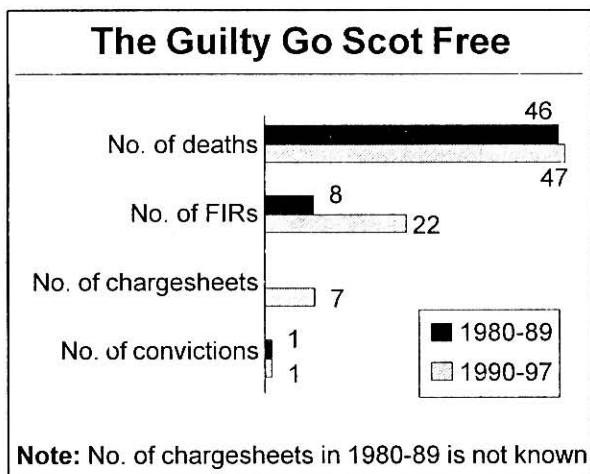
the police in more than one way – criminal investigation can be either delayed or else wound up because the magisterial inquiry is pending.

When SDM reports exonerate the police, scuttling the investigation despite registration of FIR is easy as happened in the case of Ramzan (S. No. 63). Strong public protest forced police to register an FIR at Seemapuri P.S. under S. 304 IPC. However the SDM Shahdara concluded that it was not a custodial death as a result of which no investigation took place. Thus even though a case was registered u/s 304 IPC for which the punishment may extend upto ten years, it made no difference to the policeman charged.

If the SDM report exonerates the police, the criminal investigation is automatically scuttled. But if it happens to indict the police, its findings can always be contested. In the case of Shammu Khan (S. No. 48), the SDM report concluded that there was circumstantial evidence to prove that multiple injuries were inflicted upon Shammu at the P.S. and he died as a result of them. The police has chosen to bypass this clear indictment by simply ignoring the implied injunction to register an FIR. They have also chosen to contest all the evidence including the SDM report, by filing an affidavit in the court which stated that Shammu Khan died because of poisoning. Significantly, the viscera analysis report found no traces of poison.

4. Harassment

The police create huge obstacles in the course of criminal investigation, by harassing and intimidat-



ing witnesses and the victim's family. Persons who had been detained together with the suspect, are threatened with dire consequences if they disclose what actually transpired in custody. Sometimes the family is also harassed in order to intimidate them into not lodging FIRs, as for example in the case of Kuldeep Singh (S. No. 74).

Family members or friends of the detainee are

often harassed and even beaten, either for information about the crime in which the detainee is a suspect, as in Shanti Devi's case (S. No. 88), or in order to extract bribes, as in the case of Sonu's death (S. No. 86).

Sometimes family members are harassed and tortured by policemen belonging to police stations different from the ones in which the accused were lodged. For example, the widow and relatives of Ram Swaroop (S. No. 40), were harassed by Najafgarh police in an area under Azadpur P.S., while Ram Swaroop was killed by the police at Indrapuri P.S. Wilson (S. No. 20) was killed by the Sultanpuri police on 11 August 1984, and witnesses to his death were tortured by the police of Defence Colony P.S. The involvement of policemen from other police stations unconnected with the custodial death, clearly indicates that the police acts in collective defence, as the Supreme Court observed in the case of Ram Swaroop.

5. Collective Defence

So the crime may be individual, but the defence is collective. The crime may be committed in one police station, but within hours, the mechanisms of collective defence swing into operation. Every police official from the Commissioner of Police to the SHO of the P.S. involved, has the same version of events to offer, even before any inquiry has been conducted to ascertain all the facts. And every police official cites the ordering of a departmental inquiry, or the fact of an SDM inquiry, as the reason for not lodging an FIR.

This machinery of collective defence amounts to a defence of police methods in which interrogation may lead to the death of a detained person. The institutionalization of torture implies that the particular policemen guilty of battering a suspect to death, may have done so only because they happened to be on duty at the time, and that any policeman is potentially capable of doing so. Since beating and torture during or outside interrogation is not regarded as a crime, the death that may be its consequence is likely to be regarded as merely 'accidental.' Routine torture however does not preclude the possibility that the police might also cold-bloodedly target and eliminate a person, as in the case of Joginder Pal Gupta (S. No. 49). And the machinery of collective defence swings into motion just as efficiently in such cases of premeditated murder as well.

6. Investigation Sabotaged

The police's refusal to register FIRs and the deliberate delays between the registration of the FIR and the filing of the charge sheet, minimizes the chances of effective prosecution.

Consider the following facts: between 1990 and December 1997, 70 suspensions, 12 transfers and 4 dismissals were effected because of Departmental Enquiries. Since these measures are carried out almost immediately after a death occurs, they give the impression that the police is serious about crimes committed by its personnel. However, these prompt actions obscure a much larger fact: the lack of any meaningful investigation. In the same period, in a total of 47 deaths that occurred, FIRs were registered in less than half, in 22 cases to be precise. Amongst these, investigation did not take place in 3 cases: in 2 of these (S. Nos. 63, 69) charges were dropped and in one case (S. No. 82) the FIR did not name any accused. As per our information, of the remaining 19, charge-sheets have been filed in only 7 cases (S. Nos. 49, 59, 60, 64, 68, 71, 75). Despite FIRs having been filed in the other 12 cases, the matter does not seem to have reached the court. For some of these cases this state of suspended animation has continued for over five years. And these involve 42 policemen, 20 in four cases of murder, 16 in five cases of culpable homicide, and 6 in three cases of causing death by

criminal negligence. Between 1980 and 1990, in a total of 46 cases of custodial death, 43 suspensions and 6 transfers were effected. However, in 38 of these cases, nothing further happened because no FIRs were registered.

The lawlessness of the police is not limited to the custodial death itself therefore, but also extends to their deliberate sabotaging of investigation. Although the lodging of an FIR is mandatory in law, it is systematically scuttled. If it is lodged, no copies are ever given to the victim's family. Further, Daily Diary entries meant to record time of detention and release, are routinely fudged. Not only is it difficult to ascertain the exact circumstances of detention, it is also difficult to clearly identify the policemen on duty in the police station at the relevant time. The police succeed with this ruse because the Duty Roster in police stations is not subject to scrutiny. Thus the policemen involved can conveniently deny that they were on duty when the death occurred.

Given that criminal investigation is vitally important in order to convict the guilty, and that the police act in a blatantly partisan manner when investigating their own crimes, it is necessary for an independent agency to investigate each and every case of custodial death. It is also contrary to the principles of natural justice and rule of law, to entrust the investigation against police officers to police authorities. Therefore an agency independent of the police, like the CBI, must investigate and prosecute in a timebound manner. That this will yield at least some results is apparent from the cases of Joginder Pal Gupta and more recently, Anup. Following public protest, the CBI took over the investigation of the death of Joginder Pal (S. No. 49) and indicted five policemen and one SDM. And in 1997, the CBI indicted personnel of Connaught Place P.S. for the custodial death of Anup (S. No. 87). In order to circumvent all the fabricated stories and subversion of criminal investigation by the police, it must also be made mandatory for them to make available for scrutiny authenticated copies of the FIR, relevant Daily Diary entries and Duty Roster. These safeguards must be made mandatory and implemented, to make investigation effective.

Table II

तेरी रहजनी से गिला नहीं, तेरी रहबरी का सवाल है

No	Name (Age)	Public response	Departmental action	Enquiries	Prosecution/Compensation
1	Emmanuel	None	3(T)	SDM	None
2	Laxman Singh	* N.A.	* N.A.	* N.A.	Sessions Court sentenced 3 policemen to life imprisonment in 1993
3	Chotey Lal	None	None	* N.A.	None
4	Daya Ram	None	None	* N.A.	None
5	* N.A.	None	None	* N.A.	None
6	Jungalee	None	None	* N.A.	None
7	Mahipal Singh	None	None	* N.A.	None
8	Surinder Singh	None	4(S)	SDM	None
9	Prakash Singh	None	None	* N.A.	None
10	Ravi Kumar	None	None	* N.A.	None
11	Harish Gandhi	None	None	* N.A.	None
12	Khajan Singh	None	None	* N.A.	None
13	Ram Parshad	None	3(S)	SDM	None
14	Jagdish Prashad	None	None	* N.A.	None
15	Mohd. Arif	None	None	* N.A.	None
16	Rajinder	None	None	* N.A.	None
17	Om Prakash	None	None	* N.A.	None
18	Chotey Lal	Demonstration; 4 killed in firing	3(S)	SDM	Against 3 policemen
19	Rajpal	None	None	* N.A.	None
20	Wilson	Agitation by local residents	4(S)	SDM	SC orders prosecution; case against 4 policemen

No	Name (Age)	Public response	Departmental action	Enquiries	Prosecution/Compensation
21	Bharat Bhushan	None	6(S)	SDM	High Court orders prosecution; case against 6 policemen
22	Mohinder S.	None	None	SDM	None
23	Roshan	None	None	SDM	None
24	Raj Kumar	None	None	SDM	None
25	Langda	Rickshaw Union demonstration	None	SDM	None
26	Raj Kumar	None	None	* N.A.	None
27	Daljit Singh	Writ by PU DR	None	* N.A.	None
28	Madan Lal	None	None	* N.A.	None
29	Suraj	None	None	* N.A.	None
30	Gopi Ram	None	2(S)	Crime branch Delhi Police	SC orders prosecution, case against 2 policemen
31	Dayal Singh	None	1(S)	SDM (not traceable)	Murder case against 1 policeman
32	Laxman	None	None	None	None
33	Kamal	None	None	Crime branch Delhi Police	None
34	Mahir	None	3(T)	None	None
35	Mahinder	Demonstration	7(S)	SDM	None
36	Naresh	Writ in SC by PU DR and Saheli	2(S)	Crime branch Delhi Police	S.302 against 2 policemen, changed to S.308, SC awarded compensation of Rs. 75,000
37	Shanker Dalai	Demonstration by goldsmith union	1(S)	None	None
38	Azad	None	None	SDM	None
39	Ratan Lal	None	None	SDM (not traceable)	None
40	Ram Swaroop	Writ in SC by PU DR	6(S)	Crime branch Delhi Police	S.302 against 6 policemen, SC awarded compensation of Rs. 50,000
41	Asha Ram	5000 people demonstrated; lathi charge	2(S)	SDM (not traceable)	None

No	Name (Age)	Public response	Departmental action	Enquiries	Prosecution/Compensation
42	Durga Parshad	Demonstration	None	None	None
43	Sardara Singh	None	1(S)	SDM	None
44	Vijay Kumar	None	1(S)	SDM	None
45	Ganesh Kumar	None	None	SDM	None
46	Om Prakash	None	1(S)	SDM	None
47	Subhash Chand	None	1(T):SHO	Vigilance branch Delhi Police	Sessions Court ordered CBI inquiry, police ignored it
48	Shammu Khan	Demonstration; road block; Writ in SC by PUDR	2(S)	SDM	Writ pending in High Court, no criminal case filed
49	Joginder Gupta	Massive demonstration; road block, Widow filed writ in SC	3(T)	SDM	SC ordered CBI investigation and Rs. 3 lakh compensation, 5 policemen and SDM charged. SHO, SI, SDM convicted and 5 lakh compensation ordered by Sessions court.
50	Ram Swaroop	Demonstration by DESU employees. Power supply to DCP office cut off.	2(S)	SDM	None
51	Ms. Rishna	None	6(S)	Crime branch Delhi Police	S302 against 6 policemen
52	Jaganath	PUDR filed petition in SC with wife	1(S)	SDM held SHO, SI, ASI and 3 C responsible for death	None. Court awarded compensation of Rs. 1 lakh and directed police to give job to victim's wife
53	Ram Vilas	Protest by workers	None	None	None
54	Om P. Kaushik	Protest by relatives and neighbours	None	SDM	None
55	Shankar Lal	None	None	SDM	None
56	Jairam Singh	Massive protest at PS by residents; tear gas and lathi charge	3(S):SI, ASI, C	SDM	S.302 against 3 policemen
57	Rajesh	Demonstration at thana	2(S):both SI	SDM	None

No	Name (Age)	Public response	Departmental action	Enquiries	Prosecution/Compensation
58	Brijeshwar	Rickshaw pullers block road and pelt stones. Tear gas, lathi charge and arrest of protesters.	None	SDM inquest not completed till Sept, 95	None
59	Mukesh Kumar	None	Censure against SHO	SDM; DE (incomplete till Jan 1996)	Against SI and 2 C u/s 304/34 as per recommendation of the SDM; trial pending in ASI's court till Jan 1996
60	Raghunath	None	None	SDM report in Dec. 95, DE (held in abeyance)	S.342/304/34 against SI and C. Charges framed under S.342 by court.
61	Rattan S. Bisht	None	1(S):SI, 1(T): SHO	SDM (exonerated the police)	None
62	Jagpal Singh	None	3(S):SI, HC, C	SDM (report pending till Dec 95)	None
63	Ramzan	Protest by jhuggi residents	1(T):C	SDM	S.304,308. Charge dropped after SDM exonerates C.
64	Darshan Singh	Strong protest and road block	5(S): SHO, HC, 3C; SHO's 5 yr. service forfeited, rest dismissed	DE (action against SHO), SDM (concluded death due to torture and illegal detention)	S.342./323/302/34 against HC, 3C. Arrested and facing trial.
65	Raj Kumar	Protest by residents of neighbouring villages	2(S): SI, C.	DE (no action)	None
66	Jaswant Singh	Family filed writ in High Court	* N.A.	* N.A.	High Court ordered CBI investigation in 1995
67	Vikal Kumar	None	2(S):HC, C	DE (pending till Jan 1996), SDM, Judicial Enquiry	None
68	Satyavan	Massive public demonstration	2(S): SHO, C.	SDM (concluded foul play)	Crime Branch charges u/s 304/384/323/365/210/219/34 against SHO, HC, 2C. Charges framed by court u/s 304/385/365/342/330/34. Trial pending till Jan 96.
69	Sharif	None	8 (S):SI, 2ASI, HC, 4C.	DE (no action)	S 302/201 IPC against 8. CJM Ghaziabad exonerated all.
70	Vinod	None	3(S): SI, HC, C	SDM (pending till Sept	None

No	Name (Age)	Public response	Departmental action	Enquiries	Prosecution/Compensation
71	Madan Lal	Protest by residents, stoning burning a police post.	4(S):ASI, 3C	SDM (concluded foul play), DE (no action), NHRC orders Sessions Judge to investigate	S.341/342/304. CBI files chargesheet against ASI. 4C in Dec 97 and asks Health Ministry to suspend 2 doctors, NHRC ordered compensation of Rs. 50,000
72	Om Prakash	None	1(S):C	SDM, DE (pending till Jan 1996)	S.304-A pending investigation as of January 1996
73	Unknown	None	None	SDM	None
74	Kuldeep Singh	Writ in SC by family	None	SDM, Vigilance Delhi Police, DE (held in abeyance)	SC orders CBI to investigate and awards compensation of Rs.1 lakh. Accused exonerated by CBI.
75	Masoom Ali	None	Censure against SHO	DE (held in abeyance), SDM (recommended action against SHO, SI, HC for negligence & dereliction)	S.166 against ASI, HC. Pending trial.
76	Suresh	Gherao of police station by neighbours	6(S): SHO, 2 SI, 3C; 1(T) Addl.SHO.	SDM (concluded foul play)	S. 304 investigated by Crime Branch, all 6 facing trial
77	Dilip	Stone pelting on police by slum residents. Police firing claimed 3 lives	1(S): C	SDM, Spl. Exec. Magistrate (concluded foul play)	S.304-A against C investigated by Crime Branch, Lt. Governor ordered compensation of Rs. 50,000
78	Ajay	None	None	SDM (concluded foul play)	S.304 investigated by Crime Branch
79	Dilip Chakraborti	None	4(S): 2 SI, 2 HC	SDM	S.302 against 10 policemen
80	Surat Lal	None	1(S): HC	SDM	S.330 IPC against HC, changed to S.302 on SDM advice, investigation by Crime Branch
81	Ghulam Mohd.	None	None	SDM (report pending till June 97)	None
82	Indal	Colony residents protest outside hospital and later at DCP office	3(T):HC, 2C	SDM (held police guilty)	S.304 registered No accused named. Investigation by Crime Branch pending till June 1997
83	Ravinder	None	None	SDM, DE (no action)	None

No	Name (Age)	Public response	Departmental action	Enquiries	Prosecution/Compensation
84	Balwinder Singh	None	None	SDM inquiry u/s 174	None
85	Matloob Hussain	Shops were closed. Road blocked.	None	SDM (recommended prosecution of 2C)	S. 304 investigation pending with Crime Branch till June 97
86	Sonu	None	7(S): SI, HC, 5C	SDM	S.304.against unnamed, Investigation by Distt. Crime Cell pending till June 97.
87	Anup	Writ in High Court by a friend	None	SDM	High Court ordered CBI probe which led to S. 304/342/506 against SHO, SI
88	Shanti Devi	None	None	SDM (suspected foul play. Advised CBI probe)	CBI probe ordered
89	Rattan Singh	None	4(S):SHO, SI, HC, C	SDM	S. 304-A against all 4. ACP Crime Branch investigating
90	Mushtaq	None	None	SDM	None
91	Shibu	None	None	SDM	None
92	Ramesh	None	1(S): C; 1(T): Addl.SHO	SDM	None
93	Hari Shankar	Residents protest at PS and at mortuary; dharna by PUDDR at police headquarters	1(T): SHO	SDM (concluded foul play)	NHRC concluded death due to torture, and asked Delhi Govt. to respond. L.G. ordered CBI probe, recommended compensation, and job to one family

Note: The following abbreviations have been used in the table:

(T) – Policemen Transferred; (S) – Policemen Suspended.

SHO – Station House Officer; SI – Sub Inspector; ASI – Assistant Sub Inspector; HC – Head Constable; C – Constable

SC – Supreme Court

DE – Departmental enquiry

CJM – Chief Judicial Magistrate

u/s – under section

VI. In The Courts

1. Judicial Indifference

If police investigation is marked by harassment and dilatory tactics, the story at the prosecution level is one of apathy. Between crime and punishment is the long shadow of judicial indifference and delay. Cases can be tried for years, as public prosecutors and judges come and go. The successful delays at the investigation stage ensure that the initial public outrage has faded. Further delays in prosecution effectively ensure that the victim's family loses all hope of justice. For the latter, fear of the police is compounded by this knowledge of the invariable failure of the courts. Thus very few families are willing to fight this long and futile battle for redressal.

Before a trial can start, charges have to be framed. This itself can take years. Take the case of Mukesh (S. No. 59), who died in November 1991. The SDM recommended that an FIR be registered against one Sub-Inspector and two constables under S. 304 and 34 (common intent), IPC. Until January 1996, the case was pending in the court of the Additional Sessions Judge, and no charges had been framed.

If and when a case does finally reach the court, the initially framed charges may be changed, as in the case of Raghunath who died on 29 November 1991 (S. No. 60). On 3 December 1991 an FIR was lodged under S. 342 (wrongful confinement), 304 and 34 IPC, against SI Jeevat Ram and Constable Gajraj Singh. However when the case reached the court the only charge framed was under S. 342. The punishment for wrongful confinement is imprisonment for 1 year or a fine of Rs. 1000 or both. Such is the price of justice! In the custodial death of Naresh (S.no.36), the charge was changed from S.302 IPC to S.308 IPC, for which the maximum punishment is only three years imprisonment or merely fine.

The police can also adopt methods considerably more brutal than the subtle legal stratagems listed above. Witnesses can be intimidated even during a trial. In the case of Wilson's death (S. No. 20) on 11 August 1984, the main witness Karpa was beaten in

public by the police and detained. He was produced only after a habeas corpus petition was filed. Another witness and his wife were tortured in the police station. Six out of the thirteen witnesses were implicated in false cases during the trial.

2. Cases in Court

Thus, few cases ever reach the courts. Between 1990 and now of the 22 FIRs lodged, only 6 cases have reached the trial stage (S. Nos. 49, 60, 64, 68, 71, 75).

While courts regularly monitor the course of criminal investigation more and more in scams and corruption cases, the judicial silence on investigation and prosecution in cases of custodial violence is deafening. In the last couple of years, the judiciary has sporadically addressed the problem of compensation in cases of custodial deaths. In many instances writ petitions have been admitted in the Supreme Court regarding compensation. However, the stark fact remains that judicial procedures of prosecution in the lower courts hardly ever move. In short, the state can be made to fulfil only one part of its liability, namely the arbitrary awarding of compensation in certain selected cases. But it is effectively allowed to abdicate the other part of its liability, the prosecution and conviction of those personnel guilty of violating citizens' rights.

Consider the implications of this process. A man dies in custody. The family of the deceased can hardly mourn the loss as they have to try and ensure that the FIR is lodged. They also have to be present as witnesses for the SDM inquiry. So, the immediate aftermath means an enormous amount of time spent in order to make sure that the mechanisms of the process start moving. They are not given any proof of this process, as the police doesn't give them a copy of the FIR and the SDM does not give them a copy of his report. From time to time they are visited by a constable of the police station who intimidates them for starting the process. They then wait endlessly for the prosecution of the guilty and compensation. They also find that despite the immediate departmental action,

the same policemen continue to haunt the locality and assert their power. If a chargesheet is filed they do not know and if the charges are changed in the court then too they do not know. They wait endlessly. They know that the man who died in custody was tortured, but they have no means of making the investigating officer or the magistrate or the judge believe them. They are told that the deceased committed suicide and that the police are in no way responsible for his death. The law takes its own course. The public prosecutor is hardly aware of the circumstances of the family and is least interested in the facts of the case. The suspended policemen are reinstated; the death is filed and the 'case' remains pending for years.

To date, there have been only two convictions in the last 18 years, in the deaths of Joginder Pal Gupta (S. No. 49) and Lakshman Singh (S. No. 2). The Sessions Court in 1995 convicted three of the six accused in the case of Joginder Pal Gupta, and ordered the SHO, one Sub-Inspector and the SDM to pay fines of Rs. 3.5 lakhs, Rs. 2 lakhs and Rs. 20,000 respectively, or else to undergo imprisonments of two years, one and a half years and six months. For the death of Lakshman Singh the Sessions Court in 1993 sentenced 3 policemen to life imprisonment. The victim had died of burn injuries at Andha Moghul Chowki (Subzi Mandi P.S.) in August 1980.

3. The Question of Punishment

The implications of the Court asking the guilty policemen to pay a fine in lieu of imprisonment in the case of Joginder Pal Gupta, are far-reaching. The CBI had indicted five policemen under S. 304, 342, 34 IPC. The SDM was charged with abetment of the offence (S. 109), and framing an incorrect record or writing with intent to save person from punishment (S. 218). The punishment for which is either three years' imprisonment or fine, or both. The CBI's charges are itself significant: the police were not booked for

murder but for culpable homicide. This section distinguishes between crimes with intent and those committed without intent. The former carrying the punishment upto life imprisonment and the latter a punishment upto ten years which

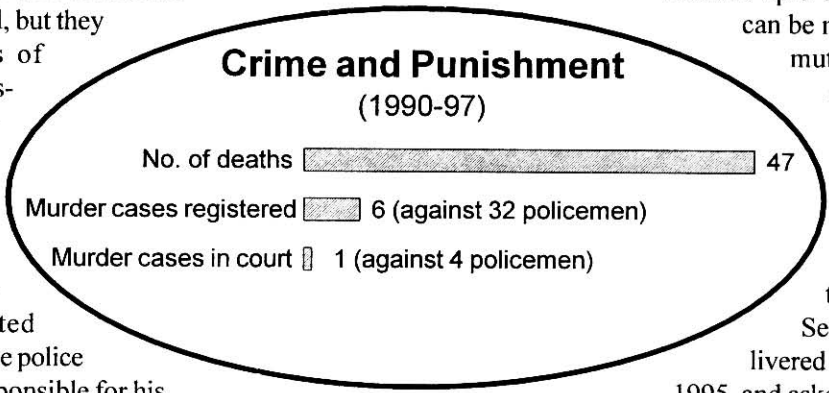
can be monetarily commuted. It is easy to shift the charge to the latter because police intention is normally to beat and threaten. The Sessions Court delivered its judgement in 1995, and asked the convicted

either to pay a fine or else to undergo imprisonment. If punishment for murder can be commuted to payment of fines, then deaths in police custody are very easy crimes. In the other case of Lakshman Singh, the Sessions Court sentenced three police constables to life imprisonment in 1993. Perhaps the courts fix punishment not on the basis of the offence alone, but also on the basis of the rank of the guilty: an SHO and Sub-Inspector guilty of murder get no imprisonment, while constables guilty of the same offence are punished as per the law. The lowering of punishment to this extent as in the case of Joginder Pal Gupta, makes a mockery of law and justice.

4. The Burden of Proof

Keeping these obstacles against conviction, the Supreme Court in its judgement in State of Uttar Pradesh vs Ram Sagar Yadav (AIR 1985 SC 416) stated that "The police officer alone and none else, can give evidence as regards the circumstances in which a person . . . comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove as to who the offenders are."

The Court therefore recommended that the law



The Courts on Custody

The Supreme Court has in a recent judgement [on writ petition (CrI) No. 539 of 1986 D.K.Basu Vs State of West Bengal and writ petition (CrI) No. 592 of 1987 Ashok K. Johri Vs State of Uttar Pradesh], insisted upon transparency of action and accountability as necessary safeguards to check the abuse of police power. In the D.K.Basu judgement, Justices Kuldeep Singh and A.S.Anand have listed a number of requirements to be followed in all cases of arrest or detention until such time as the enactment of the requisite legal provisions. Some of the requirements deal specifically with the prevention of illegal detention. These are as follows:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. The police officer carrying out the arrest shall prepare a memo of the arrest at the time of arrest and such memo shall be attested by at least one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lockup, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police through the Legal Aid Organization in the District. Where the next friend or relative of the arrestee lives outside the district or town, the police station of the area concerned should telegraphically communicate within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place

of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, if he so requests, also be examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the concerned State or Union Territory. The Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9. Copies of all documents including the memo of arrest referred to above, should be sent to the Area Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board. Failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceeding for contempt of Court may be instituted in any High Court of the country having territorial jurisdiction over the matter.

The extent of these detailed instructions is itself an indication of judicial concern over illegal detention, torture and custodial death. However, an individual being picked up by the police anywhere in the country, is under enormous pressure as he or she directly confronts the power of the men in uniform. In such a situation, it is extremely unlikely that he or she will be able to insist on the safeguards these judicial orders provide.

as to burden of proof in such cases be reexamined, "so that the handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection." The Law Commission in its 113th report titled *Injuries in Police Custody: Suggested Section 114 B Evidence Act* (submitted on 29 July 1985), recommended the insertion of a new section in the IEA: that in cases of injury in police custody, the court may presume that the injury was caused by the police officer having custody. The Commission also recommended that the expression 'custody' cover legal as well as illegal arrest. Such a reversal of the customary legal understanding that a person is innocent until proven guilty, is already in place in the case of custodial rape, through the 1983 amendment to the Indian Evidence Act.

But lacunae in law, police methods during investigation and harassment during prosecution, are not the only impediments to conviction of guilty policemen in custodial death cases. Delays in the judicial process are an endemic problem in the legal system, but in the context of custodial death cases they also suggest the rank indifference of courts to the plight of victims' families seeking justice. In the case of Shammu Khan (S. No. 48) his mother Fatima, wife Ajmeri and PUDR filed a petition in the Supreme Court for criminal prosecution of the guilty policemen and compensation for the family. The apex court in its wisdom rejected the petition on 1 November 1990, on the grounds that 'the allegations needed further investigation.' The Court's feeling that investigation was needed *before* registration of an FIR, in a clear-cut case of violation of an individual's fundamental right to life by an agency of the state, is somewhat baffling. The case was transferred to the High Court which issued a show cause notice to the police on 7 December 1990. Since then, in the last seven years, the case has come up 38 times, in front of 15 judges. On 3 December 1991, the two judges then hearing the case found that 'the prime cause of death (was) the beating allegedly given to him while in police custody', and ordered the police to 'show cause' why further action should not be taken against them, and adequate compensation given to Shammu's family. For a whole year between 9 May 1995 and 9 May 1996, the case was first on the Court's list, under the

category 'overnight part-heard'. If on some occasions state counsel appearing for police did not appear, on some other occasions he appeared without the relevant file. And on other occasions, judges hearing the case got routinely transferred within the High Court. There has been no judgement yet, in a case where post mortem and SDM reports clearly indicted the police.

The judicial delay of seven years has not only allowed the police to escape even preliminary criminal prosecution, let alone punishment of any sort, it has also denied Shammu Khan's family compensation.

5. The Question of Immunity

This situation in which the police have already invented their own avenues of defence and evasion of responsibility, aided by judicial delay and indifference, is made even bleaker by the immunity that the state provides to its personnel. The same legal system and Constitution which provide protection against torture, also protect the policemen who perpetuate the torture. Article 300 (1) of the Constitution does allow citizens limited avenues to sue the government, but restricts that right by making it 'subject to any provisions which may be made by Act of Parliament'. S. 358, Cr.P.C also provides for compensation (a princely sum of Rs.100) to persons groundlessly arrested. But the law does not provide any compensation for families of victims killed in police or judicial custody. The absence of any provision that would make the state liable for acts done by its personnel in the course of executing its sovereign functions, is a serious lacuna and needs to be remedied. The very first Report of the Law Commission (Liability of State in Tort) had recommended relaxation of the rule of government immunity. But the recommendation was never implemented and Parliament has not passed any Act making the state liable for the acts of its officials.

In 1993 the Supreme Court, while awarding compensation to the widow of Behera who was killed in the custody of Orissa police in December 1987, also ruled that the state could not invoke sovereign immunity in cases of violation of constitutional rights; the Court affirmed that compensation for such violations is a fundamental right. While this remains a land-

पुलिस के थप्पड़ों
 बूट की ठोकरीं
 लाठी के प्रहारों से
 मरे आदमी का,
 केस सुनने को वक्त नहीं
 न्याय के मठाधीशों को
 मौलिक अधिकारों का क्या हनन?
 हम
 कानून
 संविधान
 मानव अधिकारों के
 रक्षक हैं
 कहीं किसी मेनका गांधी के पासपोर्ट में
 अड़चन न पड़ जाए,
 कहीं किसी अंतुले के बराबरी के अधिकार पर
 आंच न आ जाए,
 कहीं किसी थापर को सुबह तक जमानत का
 इंतज़ार करना न पड़ जाए
 नहीं, . . . नहीं।
 हम रात को सो न पाएंगे
 हमारी अंतरात्मा
 झकझोर देगी हमें
 रिक्शा चलाने वाला शम्भू
 हिरासत में मरता है, मरने दो
 दो कौड़ी का आदमी
 जिसके जीने न जीने से
 फर्क ही क्या पड़ता है
 हमें खींचने को
 एक रिक्शा तक
 कम न होगा
 बुढ़िया झूठ बोलती है
 बेटे की मौत के बारे में
 दूध पीता बच्चा
 पैदा ही क्यों किया
 भूख से मरती है पत्नी
 तो क्या हुआ
 हमें फुरसत नहीं
 न्याय, समानता का
 मेवा खा
 सत्य, अहिंसा की
 जय-जयकार कर ही
 सो पाते हैं हम
 चैन की नींद

mark judgement, it has made little difference, either to the question of blanket immunity to public servants no matter how grave their violation of citizens' rights, or to the principle of the state's liability to pay compensation. Simply because it has not been implemented.

6. Compensation

The existing laws, mechanisms, procedures and safeguards have therefore not only failed to check the menace of custodial deaths, they have also failed to deliver justice to the families of the victims. The fact that only five police officials have been convicted in two cases out of a total of 93 reported cases in Delhi (there is every likelihood of more cases than PUDR has come across), speaks for itself. It is consistent with this context of weak or failed safeguards that there is no statutory provision for compensation in every case of death in custody. The award of compensation is arbitrary. It is paid only in a miniscule number of cases, and that too due to the intervention of some other agencies.

Take the case of Shammu Khan. He and his family lived in a jhuggi in the resettlement colony, New Seemapuri. They had migrated to Delhi in the early '80s from Allahabad. He worked in a cycle repair shop, and occasionally used to pull a rickshaw to support his sister, mother, wife and infant child. The denial of compensation to Shammu's family after the loss of their sole breadwinner, would only have reduced them to destitution. Even their plea for interim compensation was rejected. The violation of rights that resulted in Shammu Khan's death, has thus been perpetuated subsequently upon his family. Which is not to argue that the fact of compensation itself is sufficient redressal for victims of police atrocities.

For the custodial death in Indrapuri P.S. of Ram Swaroop (S. No. 40), a vegetable seller at Azadpur wholesale market, the Supreme Court ordered compensation of Rs. 50,000 to be paid to his wife Reshmi, now singlehandedly supporting a family of five children (the youngest of them being four years old) by selling vegetables (PUDR vs Commissioner of Police, 1989 4 SCC 730). But for Patasi Devi, another migrant labourer who was picked up and detained along with Ram Swaroop, and stripped and molested at the police station, the Supreme Court ordered a

compensation of Rs. 500. Such is the price of a migrant worker's dignity.

For Naresh's death (*Saheli, PUDR & Others vs Commissioner of Police AIR 1990 SC 513*), the Supreme Court awarded compensation of Rs. 75,000. In the case of Joginder Pal (S. No. 49), a sum of Rs. 3 lakhs was awarded to his widow. In the case of Jagan Nath (S. No. 52), a sum of Rs. 1 lakh was awarded to his wife and mother. The NHRC ordered a sum of 50,000 to be paid to Madan Lal's family in 1993 (S. No. 71) and in the case of Dilip (S. No. 77) on the recommendation of the NHRC the Lt. Governor of Delhi awarded Rs. 50,000 to the family. In the case of Kuldeep Singh (S. No. 74) the Supreme Court awarded compensation of Rs. 1 lakh to the family. Prof. Bhim Singh, leader of the Jammu and Kashmir Panthers Party, was detained illegally by the police for a period of two days. He subsequently petitioned the court which awarded compensation of Rs. 50,000 in 1986. Such exemplary awards by the court are welcome no doubt. But when the life and liberty of those whose rights are infringed upon are neither politically or socially powerful, why haven't the courts shown such generosity? Moreover, in the few instances where payment of compensation was ordered intervention by some other agency was instrumental.

In one or two recent instances, the courts have made the guilty policemen pay compensation to the victim's family. This firstly makes the compensation amount small enough to be paid by an individual. Secondly, it seeks to replace a crime committed by the state by an individual's aberrant act. It therefore shifts the culpability from the State onto the individual.

Not every death in custody may be due to torture. The victim may have died due to ill health, sometimes in the course of prolonged illegal detention, sometimes within 24 hours of detention. Death may also be due to injuries re-

ceived prior to detention. Having no freedom to look after themselves, detained persons remain at the mercy of the police. Hence the state is responsible for the health and lives of these persons and is liable for their death.

The state has formulated guidelines for payment of compensation to the families of victims affected by different crisis situations. Guidelines have been laid down for payment of compensation in cases of death or injury in communal riots. Similarly, provisions have been laid down for payment of compensation in cases of death or injury in plane or train accidents. Guidelines should also be evolved for compensation in cases of custodial violence and deaths, taking into consideration various relevant factors like extent and nature of deprivation of fundamental rights, nature of injuries, number of days in custody, physical and mental agony suffered by the victim and his family, and deterrent value. Factors such as the means of livelihood left available to the victim's family, the number of members in the family, and the number of children and the costs of their education, should also be taken into account when the amount of compensation is determined. The value of a person's life cannot be determined in the present arbitrary manner, and cannot be determined solely by a mechanistic assessment of the person's socio-economic situation and his potential earning capacity.

Most of the 93 people who have died in the custody of Delhi police in the last 18 years were from poor families. In many cases they were the sole earning members of their families. Denial of compensation further enhances the agony caused by the untimely death of the victim. When no compensation is paid, the life of the victim, already identified as worthless in the manner of his death in custody, is rendered doubly worthless as the state abdicates its liability for his death.

93

Compensation was ordered in 6 of the 93 deaths i.e. in 6.45% of the cases

6

VII. Conclusion

According to official statistics, 188 persons died in police custody in our country between April 1996 and March 1997, the latest period for which such details are available. (Custodial death figures are provided by financial year for some obscure reason!) In the same period, Delhi recorded five deaths. Relative to the population, Delhi's rate of custodial deaths works out to over five times the national average.

The frequency with which people die in the custody of Delhi Police does not exhibit any tendency to decline over time. On the contrary, the average number of deaths which stood at 4.6 per year during the 1980s has increased to 5.875 per year during the 1990s. There is also a significant difference in the two decades in the period of detention. In the eighties, a large number of people died after prolonged periods of illegal detention. This phenomenon largely upheld the argument, save in a few instances, that apathy and negligence aggravated the physical and mental assaults suffered by the victim and finally led to death. In the nineties, however, over 60% of the victims died after spending only a few hours in custody. It leads to the two alternative conclusions that either the health of those who are detained has significantly deteriorated over the decade, or else the brutality which people experience in custody has significantly changed for the worse. The former seems implausible, but the latter is visible in the increasing number of victims with grievous injuries sufficient to cause death. Yet, charges of murder are not registered as a rule. Instead, negligence and culpable homicide not amounting to murder continue to be the only charges. That is, in cases where any crime whatsoever is registered.

These two decades have however witnessed an increasing attention by the media, as well as protests by civil rights groups and local residents concerning such deaths. Unfortunately, this concern finds little reflection in our state institutions. Though an increase in the number of FIRs registered is apparent, but this minimal regard was observed in less than a half of the custodial deaths in this decade and in less than a third of the deaths since 1980. But contrary to popu-

lar belief, less than a third of such cases in which FIRs were filed actually managed to reach the court in this decade. With respect to conviction, however, the record in the two decades is uniform – in only one case in each decade did the court convict the guilty. In other words, justice remains denied to the victims and their families.

The law itself is not to blame for such a state of affairs. Provisions exist in the law to apprehend and punish the culprits. The causing of every possible form of bodily harm is listed as an offence under the Indian Penal Code, and procedures for cognition, investigation, prosecution, and conviction are laid out in the Code of Criminal Procedure. Obviously, the fact that such no prosecution takes place for these custodial offences implies a criminal disregard for the established laws and procedures by those entrusted with ensuring their implementation. The police station refuses to register an FIR, looking up to senior officers for decision. The senior officers dole out half truths and plain lies. Where sustained public pressure results in an FIR, investigation is inordinately delayed. And if the matter does manage to reach the court, the charges are ill-framed, the investigation substandard, and the public prosecutor unwilling to press charges.

Such forms of petty 'misdemeanours' and mild 'dereliction of duty' (as the police is prone to refer to it) are in fact crimes listed in the statute books. And they are punishable too. When the police refuse to register an FIR, the courts can be approached for the same. But the police is never held guilty for non-registration of a crime. Supplying false information to mislead the public and the investigation is also a crime. But no court has held any senior police officer guilty for such baseless assertions when the truth is found to be to the contrary. Courts are not inclined to demand reasons when the investigation is deliberately delayed or the work is shoddy. The failure of the state institutions is complete when the accused is a member of that apparatus. And therefore it ceases to be categorised as a failure.

Yet this entire process of crime, lies, apathy,

and still more crimes, is achieved without any apparent denial of people's rights. For, the people are free to approach the courts, even to the highest level. That their poverty and social status prevents them from knocking at the doors of justice, is no concern of our rulers. The right to equality before law is effectively rendered meaningless. And in turn the right to life and liberty becomes a mockery.

Thus custodial deaths continue to occur. And

justice continues to be denied. A news story, an occasional media hype, scattered protests, countered by police claims of respect for human rights, abetted by civil society's fears of growing criminality. This marks the ending of a life in the most obscene and grotesque manner – a killing by the state.

This report is a reiteration of the demand for a state and institutions that respect the Constitution and the laws through which they came into existence.

Necessary Safeguards

While there are provisions in the law meant to check the arbitrary powers of the police and institutional safeguards meant to serve as checks and balances, the question still remains as to how to police a policeman. While the police have sought to justify their lawlessness by refusing to even investigate the crimes committed by their own colleagues, the judiciary has aided and abetted them through its failure to comprehend both the recurrent nature of such crimes, as well as the immensity of the violation involved. It has failed miserably in punishing the guilty policemen. The creation of the NHRC was perhaps an attempt to record and check the seriousness of the violations of human rights by the agencies of the state. While the NHRC does have the powers to recommend action, it does not have powers to enforce its recommendations. If the menace of custodial death is to be checked, the procedures regarding investigation must be defined clearly and appropriate changes must be made in existing law. Some of these are suggested below:

1. In each and every case of death in police custody, it is essential that the case is registered immediately and investigated and prosecuted efficiently. All police personnel suspected to be connected with the death be suspended till completion of enquiry/investigation.
2. Every case of custodial death should be investigated by an independent agency such as the CBI.
3. The mandatory magisterial inquiry under S. 176 Cr.PC must be carried out in every case of custodial death, or whenever there is an allegation of police involvement. These inquiries must be made time-bound.
4. The executive magistrate empowered to conduct enquiry under S.176 Cr.P.C. be changed to judicial magistrate. This would ensure greater independence from the police as well as make the collected evidence admissible in court.
4. Appropriate changes be made in existing law to ensure *mandatory* registration of criminal charges in the event of a magisterial enquiry indicting the police for causing of death, and also where the enquiry concludes existence of torture, illegal detention, negligence, etc. Registration of crime should not be left to the whims of executive authorities.
4. The participation of the family and of democratic rights organizations in these inquiries will make them more effective. The family must have the right to present witnesses and medical experts, to cross-examine witnesses and to address the Magistrate before the inquiry is completed.
5. Post-mortem reports and magisterial inquiry reports must be made available to the family and be made public.
6. The preventive measures suggested, recommended and ordered by the Supreme Court in the 1977 D.K.Basu judgement must be immediately implemented.
7. And the law must be appropriately amended. The onus of proof should be shifted to the police in all cases of custodial violence. For this the Indian Evidence Act should be suitably amended as per the recommendations of the Law Commission in 1985.
8. Appropriate guidelines should also be laid down for payment of immediate compensation to the family of every individual who dies in police custody.

पुकारता रहा बे-आसरा यतीम लहु
किसी के पास सुनवाई का न वक्त था, न दिमाग
न मुद्दई, न शहादत, हिसाब पाक हुआ
यह खून था खाकनशीनों का, मिट्टी की खुराक हुआ
— फैज़

As this report goes to print, another person was killed in the custody of Delhi Police on 16 February – the first custodial death in 1998.

Thirty five year old Man Singh was a resident of a resettlement colony, New Ranjit Nagar. A dalit by caste, and by profession, a petty vendor selling sweet meats outside three schools in Chawri Bazaar and Ajmeri Gate areas, and the sole breadwinner for his aged mother and two minor children, Man Singh was picked up from New Delhi Railway Station by two constables around 4.30 p.m. Police claimed that Man Singh was found loitering in “suspicious circumstances” and was therefore taken for “questioning”.

Man Singh was detained in a small room under the pedestrian overbridge on platform No. 10. His dead body was discovered by the night beat constable in the same room, the next morning. The *post mortem* report stated that the death occurred around 6 p.m., barely two hours after being taken into custody. The injuries were numerous, in the groin region, thighs, hips, and on the head. The injuries were inflicted with boots, belts, and sticks. The post mortem confirms that the injuries were sufficient to cause death. Yet the police have charged the two constables for wrongful confinement and culpable homicide not amounting to murder.

The terror of the police at the New Delhi Railway Station has ensured that no vendor or coolie is willing to testify. Also, since the investigation is being carried out by the crime branch of the Delhi Police. If any witness accounts are available, the police is the only agency that knows of them.

The abysmal record of prosecution and conviction of policemen leaves the bereaved family little hope of obtaining justice.

Available PUDR Reports

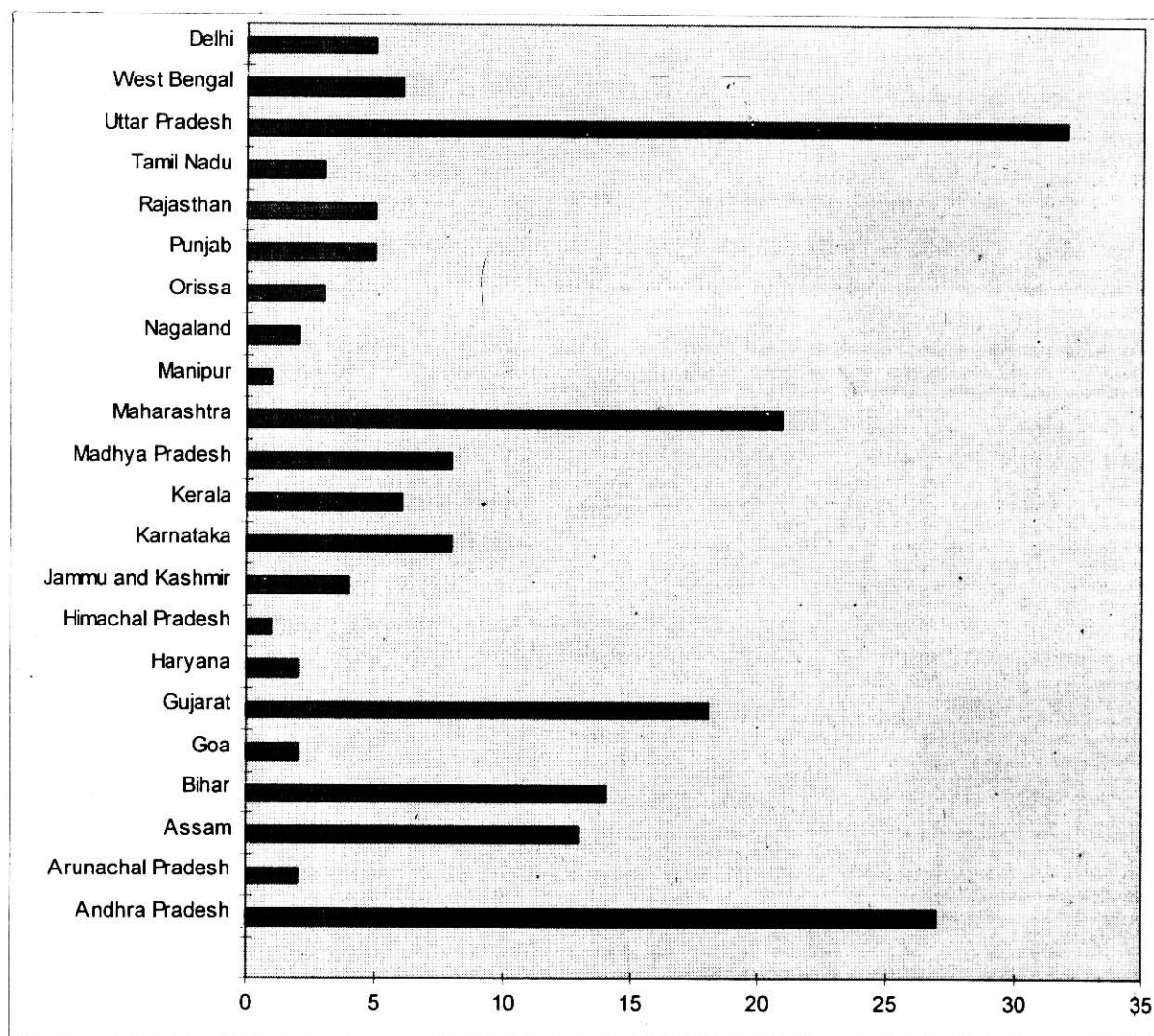
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Note: * refers to the publication being a joint report of a number of civil rights organisations

** refers to the report being also available in Hindi

Deaths in Police Custody

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