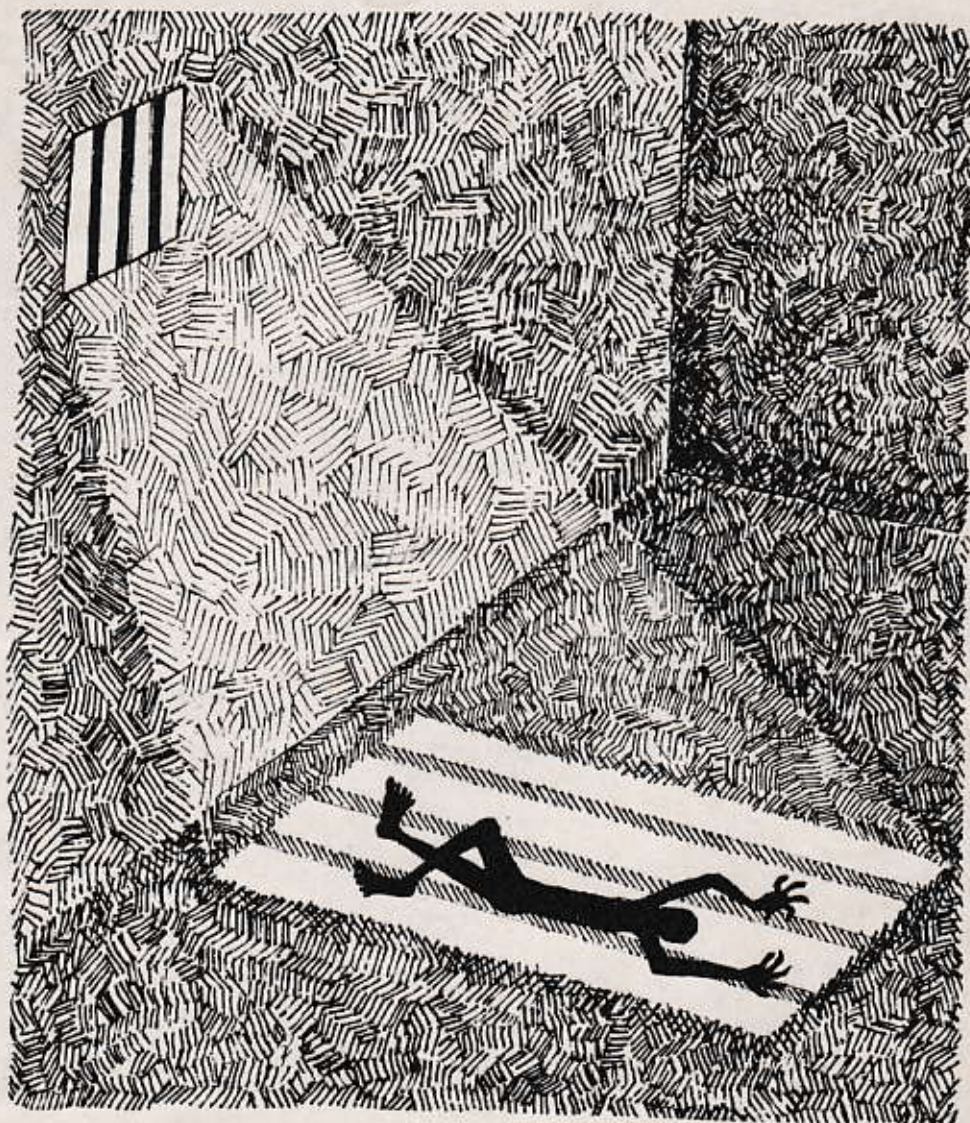


# INVISIBLE CRIMES

A Report on Custodial Deaths 1980-89



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

Bertolt Brecht

**People Union for Democratic Rights**

**Delhi**

**October 1989**

**Custody** : *Care, guardianship, safe-keeping.*

*Oxford English Dictionary*

**L**IFE, for many of us begins everyday with greetings from death in the news paper. In recent times the number of killings reported in the front page has increased manifold as the causes of social tensions have become varied and complex. Gradually we are all getting immunized. Death, like life, is no longer 'news', especially when institutionalised. This report is about such uncared for deaths in custody. It is also about uncared for lives.

The People's Union for Democratic Rights (PUDR) has been involved for many years now in investigating deaths in the custody of the Delhi Police. Some of them have been highlighted in the form of reports published or released to the press. Meanwhile, the Andhra Pradesh Civil Liberties Committee (APCLC) and the Association for the Protection of Democratic Rights (APDR), West Bengal, have conducted detailed and systematic investigations in their respective states. Stray cases, from other parts of the Country, once in a while attract the attention of the media. Courts have also been making interventions in some of these cases. Based on all these sources, this report attempts to trace the process by which custodial deaths have become institutionalised in the eighties.

In this decade, 48 people died in the custody of the Delhi Police. They died in the prime of their life. One boy Naresh, killed in Anand Parbat (1987) was just nine years old. He tried to prevent his mother being beaten up by the police, but was himself thrown to the ground and beaten with bricks. Like him 29 others who died were below the age of thirty. Yet, according to the police, these people died due to all kinds of natural causes, from ailments that the young do not normally suffer. Wilson, a twenty five year old balloon seller from Sultanpuri, suspect in a theft case, died due to 'cardiac arrest' (1984). Twenty one year old Jagdish Parshad died in Sadar Bazar police station merely due to 'fever' (1983). Om Prakash (1983) and Raj Kumar (1985), both below the age of 30 died due to 'chest pain'. Dayal Singh's tuberculosis flared up seven years later in a sudden 'attack' while he was in the Srinivaspuri police station (1987). Other victims died due to 'injuries received prior to the arrest' as the police describe it, without caring to note that the Punjab Police Rules, applicable to Delhi, makes it mandatory to get the arrested person immediate medical attention in all such cases (Rule 26.4). A majority are stated to have died by committing suicide, by hanging themselves (10), by consuming poison (3) or by setting themselves on fire (2). But strangely no one was charged with 'abetment of suicide' (S. 306, IPC). According to the police 20 people committed suicide, 8 died due to injuries received 'prior to the arrest' and the rest died due to some ailment.

In reality most of these people died due to severe beating and prolonged torture. Practically every person taken to a police station in connection with some or the other offense in our country is subjected to such torture, despite laws to the contrary (Art. 20 (3), Constitution; S. 330 & 331, IPC). Emmanuel, accused of murdering a girl (who later turned up alive) was beaten every single day from 27 March to 10 April (1980) in the cantonment police station. On 11th April his dead body was found lying on a road near the police station. He was one of the persons, the police claimed, who had died after taking poison. Wilson was tortured for six days. Seventeen year old Roshan was beaten everyday for seventeen days in Prasad Nagar police station. The use of such third degree methods is part of the 'investigation' of crime for our police. As a matter of fact confessions of the accused in the custody of the police are not admissible as evidence in courts of law (S. 25 & 26 Indian Evidence Act also S. 161 & 163 Cr.PC). The Supreme Court has held torture illegal in a number of cases (Nandini Satapathy vs. Orissa, AIR, 1978, SC 1025, Sunil Batra vs. State, AIR 1978 SC 1678 and Khatri vs. Bihar AIR, 1981 SC 1068). Yet torture has become the rule rather than the exception.

And the torture takes place in its commonest form, beating. Sticks, boots and belts and wooden rollers are the most common instruments of beating. Sexual abuse, designed not only to hurt but also to humiliate is part of the torture. Naked or semi naked men are a common sight in police lock ups. It is this process of torture, regular and systematic, whose end product is sometimes, death,

as in the case of these unfortunate 48 people in Delhi. In that sense it is perhaps misleading to isolate killing from the more general process of torture. The post mortem reports, when they are not doctored, sometimes do reveal the tell tale marks, wounds and lacerations on the arms, legs, neck, jaw, chest or damaged testicles. But severe beating alone does not always explain the death. It becomes lethal because of the vulnerability of the detained persons. Once inside a police station they have no way of defending themselves. Leave alone physical, even a verbal self-defence often leads to further torture. The disturbed and demoralised state of mind aggravates the physical shock and trauma. As the social background of the victims would reveal, most of them are undernourished people from poorer sections. They are subjected to detention and torture in lock ups whose sanitary condition is abominable. They are also denied food and water. Given this set of circumstances, prolonged beating can result in death. A dramatic reflection of this phenomenon is the season of death. In Delhi more than half of the victims died in hot summer months when an undernourished and dehydrated body's resistance is at its lowest.

That it is the social and economic vulnerability of the victims which provides the context for torture and death is reflected in their backgrounds. About 15 of the victims in Delhi were from resettlement colonies and 13 were from jhuggi-jhopidis. A menial employee of a small shop, a servant, a taxi driver, a balloon seller, a rickshaw puller, a tonga driver, two auto drivers, a dhobhi and a migrant vegetable vendor were among those killed. Thus migrant casual labourers (11), servants (2), petty traders (4), small irregular self employed hawkers (7), were the people who lost their lives. Among others there is one and only one regular employee, Asha Ram. He was a sweeper in New Delhi Municipal Corporation.

It is not difficult to explain the causes of these deaths, with or without post-mortem reports. But what is difficult to comprehend is the rationale of police violence. Policemen during the course of their service go through a process of dehumanisation which gets reflected in their exercise of power.

#### CUSTODY DEATHS IN THE EIGHTIES

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989 (up to July)
Andhra Pradesh	NA	NA	NA	1	27	16	19	24	20	5
Bihar	NA	NA	NA	NA	NA	NA	NA	NA	15	NA
Delhi	1	3	5	8	3	8	5	5	7	2
Karnataka	34 (Break up not available)								NA	NA
Kerala	NA	NA	NA	NA	NA	NA	NA	4	8	3
Uttar Pradesh	NA	NA	NA	NA	NA	NA	NA	NA	22	NA
West Bengal	2	2	7	8	11	7	9	8	19	8

Source : APCLC for Andhra Pradesh, APDR for West Bengal and PUDR for Delhi. All others, Press Reports.

A sense of moral superiority over the alleged criminals, for some of them, is the only available cover for the profanity of their existence. And in any case their concern is not so much the prevention and detection of crime as much as maintenance of 'order'. More concretely their concerns are making money or currying favour with influential people. It is in such a context that torture has become a regular practice. That power which society confers on the police to prevent and detect crime and to maintain law and order sets them apart from that very society, to emphasise which the paraphernalia of uniforms, lathis and the like are added. But given an iniquitous society and the dehumanisation of the policemen, the power gets transmuted against poor and marginal sections of the society. It is this larger process that facilitates torture, leading to periodical deaths. Any attempt to 'explain' these killings by causative factors like the character of the 'criminals', the nature of crime or lacunae in the legal system etc. are meaningless exercises, however well meaning the apologists and analysts who provide them may be.

Consider the facts. In all the 47 cases there were only eight cases, in which the charges can be termed as serious; five suspected terrorists allegedly involved in the transistor bomb cases and three suspects in murder cases. The so called terrorists were killed after prolonged and brutal torture. Their alleged disregard for decency and democracy pales before the inhuman torture to which they were subjected. And in one of the three murder cases, the girl said to have been murdered turned up alive after the man suspected of committing the murder was himself murdered. There were six cases of suspects in robbery and kidnapping. All the rest were suspects in petty offenses. Chotey Lal, tortured to death in Sultanpuri (1983) was alleged to have stolen thirty watches. Gopi Ram killed in Patel Nagar (1986) had intervened when his nephew was being beaten by the police in the street. Ratan Lal, a darning man, lost many of his clothes in a burglary that took place in his shop. But the police suspected that one item, a shawl, belonging to an IAS official, was stolen by Ratan Lal himself. He was taken to the Lodi Colony police station where he died a day later (1988). Twenty eight people died in custody for such small offenses. Worse was the case of seven others who were never charged or suspected in any crime. They just got on the wrong side of the police, more or less accidentally. They paid with their lives because they challenged the power of the police. In a sense all the victims are victims of a power that has little relation with its ostensible rationale of detection and investigation of crime and maintenance of law and order. But this exercise of power is part of the sovereign functions of our socialist state and hence the policemen are protected.

The very constitution that protects its citizens from torture also provides some form of protection to the policemen who perpetuate such torture (A. 300 (1), Constitution and S. 132 & 197, Cr.PC). In theory citizens can lodge a private complaint for assault, hurt, wrongful confinement and murder (S. 351, 323, 342 and 302, IPC). But in many places, like Delhi, prosecution of policemen requires prior permission from the police themselves! There are other institutional safeguards as well.

If a person dies in police custody, magistrates are empowered to hold enquiries (S. 176, Cr. PC). In Delhi all such enquiries are conducted by an executive, not a judicial magistrate. In almost all the cases of death in the custody of the Delhi Police, such enquiries were ordered. But the law is eloquently silent about the aftermath of an enquiry. In Delhi, according to an answer given in the Lok Sabha by P. Chidambaram, the Minister of State for Home Affairs, two out of the thirteen magisterial enquiries conducted between 1984 and 1986, held the policemen guilty of murder. We do not know which these two cases are nor do we know the grounds for exoneration in other cases, since the reports of these magisterial enquiries were not made available to us.

Notably it is sharp public reaction and not the statutory provisions that have led to follow-up action in many cases. When Chotey Lal, a worker in a cycle shop, was killed in Sultanpuri police station (Sept. 1983), people of the area demonstrated at the thana. The police opened fire, killing

## Custodial Deaths in Delhi

Sno.	Name (age)	Date	Background	Police Station	Alleged offence
1.	Emmanuel (27)	11.4.80	Employee in a small shop	Cantonment	Murder
2.	Chotey Lal (29)	7.5.81	Casual Labour	Trilokpuri	Petty quarrel
3.	Daya Ram (24)	7.6.81	Employee in a small shop	Shahdara	Theft
4.	NA	7.6.81	Bihari migrant labour	Madangir	Quarrel
5.	Jungalee (27)	13.5.82	Villager Bullandshahr	Roshanara	Robbery
6.	Mahipal Singh (NA)	7.6.82	NA	Shahdara	Robbery
7.	Surinder Singh (30)	20.6.82	Villager Chajjipur	Alipore	Quarrel
8.	Prakash Singh (17)	9.8.82	Servant	Vasant Vihar	Theft
9.	Ravi Kumar (22)	7.10.82	NA	Adarsh Nagar	Murder
10.	Harish Gandhi (23)	7.3.83	Menial employee	Sarai Rohilla	Missed court date
11.	Khajan Singh (20)	10.4.83	Owner of a small press	Shahdara	Kidnapping
12.	Ram Parshad (32)	8.6.83	Goldsmith	Lajpat Nagar	Theft
13.	Jagdish Prasad (21)	2.7.83	NA	Sadar Bazar	Carrying knife
14.	Mohd. Arif (NA)	4.7.83	'Habitual'	Darya Ganj	Theft
15.	Rajinder (20)	30.8.83	Casual labour	Kalyanpuri	Quarrel
16.	Om Prakash (30)	7.9.83	Taxi driver	Mangolpuri	None
17.	Chotey Lal (17)	7.9.83	Worker in a cycle shop	Sultanpuri	Theft
18.	Rajpal (19)	7.3.84	Tailor	Defence Colony	Abduction
19.	Wilson (25)	11.8.84	Balloon seller	Sultanpuri	Petty theft
20.	Bharat Bhushan (20)	10.12.84	NA	Kalkaji	Theft
21.	KS Narang (NA)	7.5.85	NA	Patel Nagar	Transistor bomb case
22.	Mohinder S. Khalsa (NA)	7.5.85	NA	Karol Bagh	Transistor bomb case
23.	Mohinder Pal Singh (NA)	24.5.85	NA	Karol Bagh	Transistor bomb case
24.	Jagdish S. Narela (NA)	24.5.85	NA	Karol Bagh	Transistor bomb case
25.	Roshan (17)	24.5.85	NA	Ramesh Nagar	Petty theft
26.	Raj Kumar (25)	8.7.85	'Habitual'	Mangolpuri	Pick pocketing
27.	Langda (30)	16.9.85	Rickshaw puller	Paharganj	Theft
28.	Raj Kumar (24)	7.9.85	NA	Nangloi	Pick pocketing
29.	Daljit Singh (NA)	24.1.86	NA	Karol Bagh	Transistor bomb case
30.	Madan Lal (NA)	30.4.86	NA	NA	NA
31.	Suraj (25)	12.8.86	NA	Jheel	Theft
32.	Gopi Ram (40)	24.8.86	Tonga driver	Patel Nagar	Quarrel
33.	Dayal Singh (40)	20.9.86	Chowkidar	Srinivaspuri	Theft
34.	Laxman (25)	7.4.87	Petty trader	Nangloi	Murder
35.	Kamal (NA)	7.6.87	NA	Patel Nagar	NA
36.	Mahir (26)	7.8.87	Auto driver	Shahdara	Petty theft
37.	Mahinder (18)	7.8.87	'Habitual'	Vivek Vihar	Stabbing
38.	Naresh (9)	26.11.87	School boy	Anand Parbat	No offence
39.	Azad (26)	7.1.88	NA	Vivek Vihar	NA
40.	Ratan Lal (NA)	14.5.88	Darmer	Lodi Colony	Theft
41.	Shankar Daley (NA)	23.2.88	Goldsmith	Prasad Nagar	Loitering
42.	Asha Ram (40)	6.10.88	Sweeper, NDMC	Trilokpuri	Quarrel
43.	Ram Swaroop (40)	16.9.88	Migrant vegetable vendor	Indrapuri	None
44.	Sardara Singh (NA)	10.12.88	Auto driver	Tilak Nagar	Public Nuisance
45.	Durga Parshad (30)	23.10.88	Vegetable vendor	Paharganj	Quarrel
46.	Vijay Kumar (30)	19.3.89	Dhobi	Welcome Colony	Drug trafficking
47.	Dinesh Kumar (26)	13.6.89	Small trader	Mangolpuri	Theft of electricity
48.	Om Prakash (26)	19.10.89	Factory worker	Geeta Colony	Kidnapping

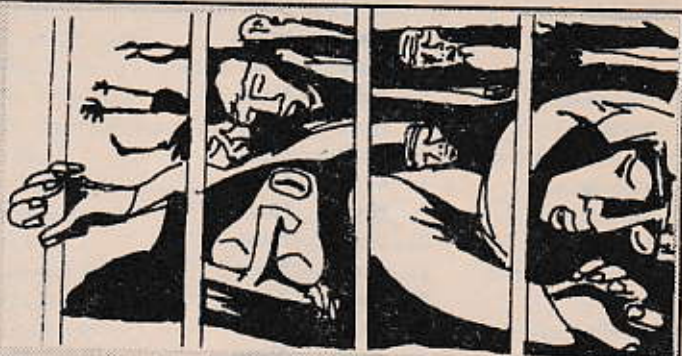
# Custodial Deaths in Delhi

Official cause of death	Days in custody	Follow up			
		Transfers(T) Suspensions(S)	Public response	Court intrevention	Prosecution
Suicide	25	3 (T)	None	None	None
Suicide	1	None	None	None	None
Fever	1	None	None	None	None
Suicide	2	None	None	None	None
Suicide	2	None	None	None	None
Previous injuries	1	None	None	None	None
Suicide	-	4 (S)	None	None	None
Suicide	1	None	None	None	None
Suicide	2	None	None	None	None
Previous injuries	1	None	None	None	None
NA	5	None	None	None	None
Suicide	2	3 (S)	None	None	None
Fever	3	None	None	None	None
Suicide	2	None	None	None	None
Previous injuries	-	None	None	None	None
Chest pain	1	None	None	None	None
Previous injuries	4	3 (S)	Demonstration: police kills 4	None	Against 3 policemen
Previous injuries	1	None	None	None	None
Heart attack	6	4 (T)	Agitation by local residents	SC ordered procecuton	Against 4 policemen
Suicide	12	6 (T)	None	HC ordered procecuton	Against 6 policemen
Suicide	-	None	None	None	None
Suicide	-	None	None	None	None
Suicide	-	None	None	None	None
Suicide	-	None	None	None	None
Suicide	-	None	None	None	None
Illness	17	None	None	None	None
Chest pain	1	None	None	None	None
Illness	1	None	Rickshaw union demonstrated	None	None
Suicide	1	None	None	None	None
Heart attack	8	None	Writ by PUDR	None	None
Died after release	-	None	None	None	None
Suicide	5	None	None	None	None
Over dose of drugs	2	2 (S)	None	SC ordered procecuton	Against 2 policemen
Tuberculosis	2	None	None	None	Against 3 Policemen
Previous injuries	1	None	None	None	None
NA	NA	NA	NA	None	None
Suicide	-	3 (T)	None	None	None
Previous injuries	1	7 (S)	People demonstrated	None	None
None	-	1 (S)	None	PUDR-Saheli writ	Against 2 policemen
NA	NA	NA	NA	None	None
Suicide	NA	None	None	None	None
Stomach pain	-	1 (S)	Demonstration by Goldsmith	None	None
Fits	1	2 (S)	5000 people demonstrated	None	None
None	1	6 (S)	None	PUDR writ	Against 6 policemen
Previous injuries	-	8 (S)	None	None	None
Shot in his house	-	None	People demonstrated	None	None
Suicide	1	1 (S)	None	None	None
Stomach pain	1	None	None	None	None
Suicide	-	1 (S)	None	None	None

four more people. But four officials were suspended and a case was lodged against them. Similar demonstrations were held against the killing of Wilson (1984), Bharat Bhushan (1984), Mahinder (1987) and Durga Prasad (1985). In some cases professional associations led the demonstration like Rickshaw Chalak Union (1985) and the Jewellers Association which led the agitation when goldsmith Shankar Daley was killed (1988).

## THE FINAL DIAGNOSIS

Dayal Singh (40) used to work as a chowkidar in New Friends Colony and lived in a jhuggi in Navjivan Camp, Govindpuri. He was picked up in connection with a theft in New Friends colony. A day later, on 20 September, 1986 he died in the custody of the Srinivaspuri police. The police claimed that he died



of tuberculosis, from which he had suffered seven years earlier. Like him many people died due to 'heart attack', 'chest pain' or 'fever' or simply committed suicide in their chosen bizzare fashion. But for the tragic circumstances, the medical folklore of the police sounds farcical. The pathological examination and the post mortem reports are one way of verifying the tragi-comic tales of the police. Policemen depend more on doctors than on magistrates to get away. A vigilant medical community would certainly help a long way. In our country neither the Indian Medical Association, nor the Medical Council of India are known to take up the professional conduct of the medical community in such cases. The post mortems, as in Delhi, are often conducted in police hospitals by police doctors, who routinely endorse the 'diagnosis', given earlier by their employers. The public have no access to the police hospital at Civil Lines, unless they become corpses. However in Bombay the postmortem is conducted by the Coroners Court, under Bombay Police Act. After years of battle in the Supreme Court, in August 1989, the Committee for the Protection of Democratic Rights (CPDR), Bombay won the right to be present in each such examination (CPDR vs. Maharashtra, SLP (Civil) No 12159/1954).

In some of the cases the services of a Forensic Laboratory are engaged. But in many states there simply are no Forensic Laboratories. And that includes states with high crime rates like UP, Bihar and MP. The Central Forensic Laboratories (CFSL) consequently are heavily burdened. The Laboratories located in Chandigarh, Delhi, Hyderabad and Calcutta, are under the Home Ministry. Local magistrates and police have no way of expediting the work of these labs. All the 12 cases of death in Tihar Jail that took place in the last two years, for instance, are still pending with the CFSL. Every year the Delhi police submits 15,000 cases to the Laboratory. The tools and techniques of analysis used in these over worked labs is anybody's guess.

But Dayal Singh's case was an exception. His body was taken to the All India Institute of Medical Sciences (AIIMS) for post mortem. The doctor who conducted the first post mortem confirmed the police diagnosis, that of TB. He was to claim later that he could not see the external injuries since there was no light in the mortuary of this premier hospital of the country. But the Resident Doctors Association (RDA) of AIIMS took up the issue. A second post mortem was conducted by a high powered team of senior doctors. They confirmed that Dayal Singh had died due to the injuries received in the police station and not due to the TB that suddenly erupted, after seven years, in the dead of the night inside the Srinivaspuri police station.



Initiative by local people, or associations, or family members were also the cause of intervention by High Court or Supreme Court. Vidya Jyoti moved the High Court in the case of Wilson's murder. Family members moved the High Court in the case of Bharat Bhushan. Gopi Ram's wife who filed a petition in the Supreme Court which ordered the prosecution of the policemen, is doggedly pursuing the case. Altogether in the six cases that the courts were approached, enquiry was ordered in three and prosecution in two. But in an environment in which the legal system is clearly decaying, the higher courts instead of enforcing the Constitution are enforcing the Criminal Procedure Code, in vain. Thus in Daljit Singh's case (1986), the honourable judges of the High Court gratuitously advised PUDR, the petitioner, to lodge a private complaint, a piece of advice for which one doesn't need the High Court. But it must be added that public reaction and/or court intervention are the primary reason why at least some follow up action was taken.

Sixteen policemen were transferred in four cases and 39 policemen were suspended in twelve cases in the past decade. As far as we could ascertain, in almost all cases, the guilty policemen are back at their jobs.

In six out of the 48 cases, prosecution was launched against 24 policemen. The entire process of prosecution of policemen is farcical, sometimes leading to tragic results. Usually it is difficult to establish even a prima facie case against the policemen. In a revealing survey, the National Police Commission (First Report, 1979) found that the percentage of indictments is directly related to the enquiring authorities. Thus enquiries by the police department, CBI and other agencies exonerated more policemen. The indictments were lower in magisterial enquiries and higher in judicial enquiries. Once policemen are indicted the police attempt to change the charge. Thus in the case of Naresh (1987), the charge was changed from murder (S. 302) to culpable homicide (S. 308, IPC). In the case of Gopi Ram (1986) the charge was changed from murder (S. 302) to causing hurt by an act endangering life (S. 336). When a case reaches the trial stage, the witnesses are harassed. In the case of Naresh, Poonam the main witness was mysteriously murdered in February 1989. In the case of Gopi Ram, the High Court had to cancel the bail of two policemen for "tampering with evidence". In the case of Wilson the main witness Karpa was beaten in public by the police and was 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 13 witnesses were implicated in some or other false case during the course of the trial of Wilson's murder. In none of the cases filed so far have the policemen been punished.

The punishment of the guilty policemen is in fact a rare occurrence anywhere in the country. Recently, in one of the notorious cases of this decade, the Maya Tyagi incident in Baghpat, the sessions court awarded punishment. Iswar Tyagi and two others were killed by police in Baghpat (Meerut, UP) in June 1980. Tyagi's wife, Maya, who was pregnant was stripped and paraded naked in the streets. The incident led to widespread protest all over the country. A judicial enquiry indicted the police. The investigation was entrusted to the CID. Meanwhile one of the main Sub-Inspectors involved in the incident was shot dead, reportedly an act of vengeance. The prosecution of the other ten policemen continued and in January, 1989, the sessions court at Bulandshahr awarded death sentence to six policemen and life sentence to four others. There are a few other cases where the courts have awarded punishment to guilty policemen. In 1980 the Supreme Court confirmed life sentence on ASI Raghubir involved in a custodial death in Haryana (Raghubir Singh vs. Haryana, 1980, Cr. L.J. 801). The Kerala High Court in confirming the punishment for a policeman even suggested that the provision for police remand should altogether be done away with (TN Jayadesh vs. Kerala, 1980, Cr. L.J. 906). In April 1984 the Patna High Court confirmed the life sentence on two constables involved in a killing in Kawakol (Nawada, Bihar). Supreme Court set aside the High Court judgment and awarded life sentence to policemen involved in the custodial killing at Hussain

## ROPES OF SAND

On 10 March, 1982 C. Paul, an assistant pastor and C. Daniel, a headmaster, in the village Huining, Ukhrul East district, Manipur were arrested by the jawans of 21st Sikh Regiment. Thereafter the two men disappeared. Almost an year later the Naga People's Movement for Human Rights (NPMHR) filed a habeus corpus petition in the Supreme Court, with the help of PUDR. The government could not produce them in the court and eventually the Supreme Court came to the inference that 'both must have met an unnatural death'. And by way of 'exemplary costs' awarded Rs. 1 lakh each to the two widows (Sebastian



Hongary vs. Union of India, AIR 1984 SC 1026). Earlier in a related case the Supreme Court awarded Rs. 35,000 to Rudul Shah who was kept in custody for 14 years after he was acquitted (Rudul Shah vs. Bihar, AIR, 1983, SC 1086). More recently in January, 1989 the Supreme Court awarded Rs. 50,000 to the wife of Ram Swaroop who was killed in Indrapuri police station. It also awarded monetary compensation to others who were tortured (PUDR vs. Commissioner of Police, Delhi, Cr. W.P. No. 401 & 402 of 1988). Similarly the court also awarded Rs. 25,000 to the father of Kathamuthu, a landless peasant, killed in Dhanwantari, Pondicherry in 1986 (G. Venkatachalam vs. Pondicherry, September, 1989). In a related case AP High Court in February 1989 awarded Rs. 1,40,000 to the family members of Challa Chinappa Reddy who was killed by his enemies inside the sub-jail at Koyalakuntla, Kurnool (Challa Chinnappa Reddy vs. AP, Appeal No. 2162/86). These are among the few instances where the courts have ordered the state to pay monetary compensation in cases of custodial death. The arbitrary manner in which the price of life (or the cost of death) is determined speaks for itself. It originates in the law, or to be more precise, in the absence of it.

Although there is a provision for compensation to persons groundlessly arrested (S. 358 Cr.PC) the law of the land is eloquently silent on compensation in case of death. The policemen usually take protection under the blanket provision that the state is not liable to prosecution for any action undertaken by it in pursuance of its sovereign functions (which presumably includes killing its citizens). To be sure, the Constitution does provide avenues to sue the government but 'subject to any provisions which may be made by Act of Parliament' (A. 300 (1)). No such act was ever made in case of people subjected to torture by the police. As in other cases where no law exists, the past practice continues to be valid. And it is your choice to decide how far back into the past you would go to justify the present position. The East India Company, for instance, never paid any compensation for the murder and plunder it indulged in. The post-colonial liberal justice did try to make amends. The very first Report of the Law Commission (Liability of State in Tort) had recommended the relaxation of the rule of government immunity. It was never implemented. The AP High Court judgement, cited earlier, held that Article 300 (1) of the constitution is subject to Article 21 which guarantees protection to life and personal liberty. The Supreme Court too discussed this question in the Bhagalpur Blindings case (Khatri vs. Bihar, AIR 1981 SC 1068). The judges were of the opinion that if the state is not liable to pay compensation for acts of its servants outside the scope of their authority, then the constitutional guarantee for the protection of life would be a 'mere rope of sand'. And that is where it stands today.

## LAW : IN SEARCH OF LEGISLATORS

Brij Lal was a small farmer from Haibatpur, Hussain Gunj (UP). One day in 1969 he quarreled with his neighbour who then went and lodged a complaint against Brij Lal for the offence of cattle trespass. The complaint was of course false. But the policemen demanded a bribe and Brij Lal was willing to pay Rs. 100. The policemen were not satisfied. Brij Lal took an unusual step that sealed his fate. He complained to the Superintendent of Police. Enraged the SHO and two constables brought him to the police station around 10 a.m. By noon his condition became critical. Later the Additional District Magistrate who recorded the dying declaration counted 19 injuries on his body. In due course the policemen were prosecuted and the sessions court convicted them. But on an appeal, the

Allahabad High Court acquitted them. The Supreme Court set aside the judgement and sent the policemen, sixteen years later, to goal. It was in this case that the court passed stringent strictures against the policemen and attempted to 'impress upon the government the need to amend the law.... so that the burden of proof in cases of custodial death will be shifted to the police' (State vs. Ram Sagar Yadav, AIR, 1985, SC 416). Such an amendment had already been made in the case of custodial rape. The Law Commission, following the Supreme Court suggestion recommended that Section 114 of the Indian Evidence Act should be amended accordingly. That was in 1985. Neither the government nor the opposition has taken any initiative to make the necessary amendment so far.



Gunj (State of U.P. vs. Ram Sagar Yadav, AIR, 1985, SC 416). These are just about the only cases where guilty policemen were punished by the courts in the eighties. But in many cases the actual incidents of custodial death for which they were punished had taken place in the seventies.

The meagre and somewhat perfunctory role of the highest court of the land is perhaps the best reflection of the failure of our institutional mechanisms to protect the right to life and liberty of the people. On the contrary all institutions and structures seem to be engaged in defending a lawless policeman, once he commits a murder. The crime is individual but its defence becomes collective. Beginning with fellow policemen, who spread implausible stories about unnatural deaths, a camaraderie overtakes the otherwise faction ridden police bureaucracy. The witness in the case of Wilson killed in Sultanpuri, for instance, were tortured by the police of Defence Colony. The relatives and widow of Ram Swaroop, killed by Indrapuri police, are now being harassed by the Nazafgarh police in a place that comes under the jurisdiction of the Azadpur police. Senior police officials give their sanction to this organised subversion of the legal process. Executive magistrates, doctors and jail officials help them. And finally the courts exonerate them. Political authority is never too eager to displease its police. We are told not to 'demoralise' the police. One can even find liberal

intellectuals using the specious argument that any criticism of police lawlessness will demoralise the police. In the end abetting police lawlessness becomes a moral duty! In a systemic and systematic campaign like this, images are imposed on the unfortunate people beaten to death that justify every such murder in retrospect. In this collective cover up of a crime all other differences are lost. A revealing reflection of this phenomenon is the table given on custodial deaths in seven states. These states at the time when these deaths took place are ruled by Congress (I), Telugu Desam, Janata Party and Left Front.

The collectivization of the defence can perhaps be understood not by looking at deaths but by looking at the lives of the people who have died. By and large these are the people marginalised by the economy and in some cases by the polity. The continuous process of generating destitutes, at its margins, is part of the process of development. If, by chance, these people come into contact with the police mechanism, then they become 'criminals', to be tortured and killed. It is the 'value' of the murderer and the 'worthlessness' of the murdered that govern the response of the powers that be. Thus the social roots of the custodial deaths lie beyond the custody. We can become more sensitive to these uncared for deaths only when we begin to care about their uncared for lives.

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