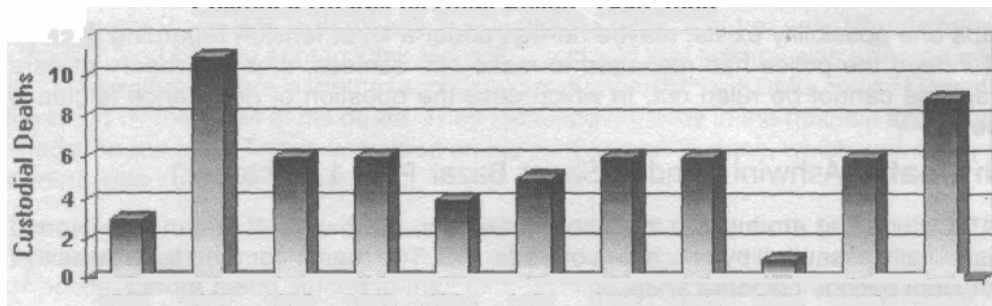
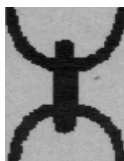


DEAD MEN'S TALES

Death in Police custody, Delhi 2000



A Report by
Peoples Union for Democratic Rights
(December 2000)



PUDR

Even as this report goes to press the Delhi Police has claimed another feather in its cap. Less than a week after the shocking breach of the high security Red Fort of December 22, the Delhi Police is proclaiming a 'successful closure' of the case. A sensational swoop on a south Delhi colony, a fierce 'encounter' in which the 22 year old Abu Samal was gunned down and a suspected perpetrator of the Red Fort attack has been brought to book. The colony where the encounter occurred is from all accounts in a state of shock and disbelief. Many questions are being asked about the police story. It will be a long time, if at all, before the truth about Abu Samal's killing emerges. But the stark fact remains — there is no institutionalized mechanism independent of the police to ascertain the truth in police claims of 'fierce encounters'. Here, the police sits judge over its own action.

Over the months the Delhi police has held numerous press conferences where it has given information about its success in curbing crimes in the city. This year alone, the Delhi police has shown its efficiency in eliminating dreaded "gangsters" through sensational encounters. In fact media reports suggest that crimes have come down in the last few months.

Encounters as a mode of solving law and order problems are 'efficient' only in the sense that they allow the police to dispense with due legal process. It does away with the need for investigation, collection of evidence, or preparing a case for the prosecution. In short this method does away with the basic principles of justice. The other, most frightening aspect of this misconceived 'efficiency' is the immense power and impunity it bestows on the uniform. The routine use of force as a substitute for investigation might disturb public conscience when it takes the form of such sensational encounters (for example, the shocking 'encounter' in which a businessman was shot dead by the police in Connaught Place in broad daylight, 'by mistake'). But these are hardly aberrations. They are in fact symptomatic of a deeper corrosion of the law enforcement machinery. Custodial violence is such a routine part of the law enforcement it passes unnoticed and unchallenged in most cases. Unless, of course, it actually results in a death in custody.

In fact deaths in custody are an outcome of the same brutal efficiency that allows the police to solve cases by killing the suspects. PUDR has for many years been investigating reporting and following up cases of deaths in custody.

This year there have been 9 deaths in the custody of the Delhi Police and 1 in the custody of the CBI, which we have investigated. Of the 9 deaths in police custody, 4 have been explained away as suicides and 3 have been attributed to public beating. In the remaining 2, the police admit that their men were involved in the beating of the victim. However, they deny that these deaths are "custodial" as they did not occur within the confines of a police station.

The official message is very clear — Delhi Police has been given a clean chit as far as responsibility for custodial deaths is concerned. Of course, it is conceded that there can be occasional lapses. For this reason, the top brass within the police force doles out some 'punishment' in most of these incidents. In all, 17 officials (including an ACP and three SHOs) have been suspended or transferred for their lapses in these incidents.

Interestingly, FIRs have been filed against the police in only two cases. In both the police deny that their men were responsible for the deaths.

If the police is so conscious of its own lapses and is ready to punish its own officers for their slightest negligence, then why does it not register FIRs against these officials? Clearly, these punishments are meant to be internal disciplinary actions by which the unruly lot within the police force get to spend some months in the District Lines on half pay. Not surprisingly, 3 have already been

reinstated.

What is the significance of these 9 deaths? The victims in most instances are petty thieves and offenders, drug pushers, vagrants etc.; whose deaths like their lives remain invisible. Deaths, which leave society, untouched. Sometimes though, their deaths do spark off angry protests. But for the vast majority of the custodial death victims, who belong to the poor and oppressed sections, there is no organised protest.

Of the 9 victims, 2 were vagrants, 1 was unemployed, 1 a college student, 1 a factory clerk, 1 self employed, 1 a suspect in a murder case, 1 a suspect in a terrorist case and 1 a petty businessman. Most were from fairly humble backgrounds. Very little is known about the family backgrounds of the two suspects but the little that can be gathered from talking to their relatives or from newspaper accounts, they too were not well off. Barring Sukhdev (died on 30th October, Crime Branch, Chanakyapuri), none of the others were "proclaimed offenders" or criminals. In fact, 4 of the victims had not broken any law at all.

The real significance of these custodial deaths lies in the fact that they unmask the police's grand theories of scientific interrogation and belief in human rights. In a context where the police is busy cultivating its human rights image as well as showing its efficiency in tackling crimes, custodial deaths question the police's legitimacy as custodians. They tarnish the carefully built, media oriented image of the police force as custodians of law and order. It becomes necessary for the police to deny that they were in any way involved in the deaths.

Invisible and hidden, custodial deaths point to a much deeper malaise within the police force. They show the brutal and criminal nature of the power of the uniform. Not all deaths happen because of police beating; some happen because of the negligence on the part of the police to provide medical assistance. Some others happen because the police fail to prevent the victims from committing suicide. Whatever may be the exact nature of the causes that led to the death, the fact is that these deaths do not occur merely because of "lapses" as the police would have us believe. Shortly after the death of Irshad (12th October, Seelampur), the DCP, North East, S. K. Gautam told press reporters that the incident was a "stray" one and that "it does not represent (the attitude) of the entire police force" (Indian Express, 14th October). Irshad's death is not a "stray" incident. It happened because the police beat him mercilessly. A day before this, Ashwini Gandhi was beaten in a similar fashion in another end of the city. He too died because of the beating. Can stray incidents repeat themselves?

Between 1980 and December 2000, there have been 109 custodial deaths in Delhi, as per PUDR figures. As statistical data they indicate the gross violation of rights that take place in custody. More than that the fact that there have been only 3 convictions (P.S. Subzi Mandi 1980, P.S. Model Town 1990 and P.S. Welcome Colony, 1992) so far, points to another serious aspect: the role of the SDMs and the judiciary. Over the years our investigations have shown that SDM inquiries almost routinely exonerate the police.

The post mortem findings which are crucial to indicting the police merely give the cause of death. In many cases, the fact that a heart attack (indicated in the p.m. report) could be preceded by torture or that the victim was forced to consume poison is never brought out by the SDM's report. As a result, the police is able to hold on to its claim that the death was natural. How are the doctors' panel constituted, why do the forensic findings take so long, why isn't the SDM's report made public; these questions point to a much larger area of collusion between doctors, SDM and the police.

Why have ten deaths taken place this year? What is the nature of the action taken by the

police and the executive authorities? Has compensation been given to the families of the victims? This brief report seeks to provide the context of these deaths and their follow up.

The Nine Deaths

PUDR investigated 9 deaths in the custody of the Delhi Police and 1 in the custody of the CBI the year 2000. Following are brief accounts of the deaths in police custody.

The First Death (Naresh; Seemapuri P.S.; 20 March)

For Naresh, the 20th of March, the day of the Holi festival this year, started with his attempt to enter and steal belongings from a home in a jhuggi\uster in Seemapuri. His movements around the small jhuggi at dawn woke up the inmates, Yogender, his wife Dayawati and their three children. Yogender raised an alarm and Naresh started running away. He crossed the road that runs adjacent to the jhuggis and tried to enter the district park on the other side. Milkmen and those out for a morning stroll chased Naresh and overpowered him. This happened around 5.30 a.m.

Naresh was thrashed by the crowd that gathered around him. A phone call by an onlooker informed the police who arrived by 6.00 a.m. The policemen took Naresh to the GTB hospital nearby. There was no attempt on the part of the police to apprehend those involved in the assault.

Naresh was discharged from the hospital after first aid and the policemen took him to the Seemapuri P.S. by 7.00 a.m. For three hours Naresh remained in police custody at Seemapuri thana. He was taken to the hospital once again at 10.15 a.m. but was declared brought dead.

At noon police again visited the site of the beating and arrested Yogender for causing death of Ramesh under section 304 IPC. Yogender remained in jail for the next two months. His family, wholly dependent on his earnings through vending vegetables on a cart, survived through difficult times to make both ends meet and also to secure his bail.

Very little is known about Naresh. He was not a resident of the area and no one knew the whereabouts of his family. His body remained unclaimed in the GTB hospital mortuary for three days. The police informed the SDM Seemapuri on 25 March and the post mortem was done on the 27th. The post mortem report records testicular injuries. There was no local protest against the death. The matter soon receded in memory.

It was however plain obvious that the death of Naresh occurred in the custody of the police. Yet the police informed the SDM about the death five days after the death — a delay for which no person is held responsible. From the sequence of events, the death could have resulted from any or all of the following: injuries inflicted by the mob; careless treatment at the hospital; denial or delay in medical access while in custody; further brutality at the police station.

The police story starts with asserting that Naresh was a drug addict. Such a conclusion without even being able to trace Naresh's family or other antecedents is mysterious. It is still useful as it lulls public reaction - the image of a thief and a drug addict is less likely conjure feelings of concern.

The second level was to register an FIR for causing the death of Naresh and to solve the case by arresting Yogender. The SHO claims that Yogender was arrested solely because the attempted-theft occurred at his house. So, it was not to apprehend the culprit but merely to solve the case.

But medical evidence pointed towards the police. The medical examination at the hospital recorded injuries on the face. However the death occurred due to groin injuries. As records go, these could only happen in police custody. Hence the third level of cover-up was to accuse the doctors of shoddy work. The doctors reacted sharply accusing the police of hurrying medical investigations. But the hospital authorities maintained silence following the threat by Police.

Secondly, in order to bolster their claim of shoddy treatment by doctors, police claims that Naresh was suffering from severe stomach ache from the time he arrived in the thana. In that case, not taking Naresh to the hospital again amounts to willful denial of medical help.

The Second Death (Ram Kripal; Patel Nagar P.S.; 25 March)

On 25 March, commotion broke out at the Y block jhuggi basti in Loha Mandi, near Naraina in West Delhi. Between 6 and 6.30 a.m., the residents of the jhuggi basti caught 35 year old Ram Kripal who was attempting a theft with another accomplice. The residents beat him up before calling up Patel Nagar police at about 7.00 a.m., Ram Kripal was handed over to the police on its arrival around 7.30 a.m. who took him to RML hospital at around 9.45 a.m. He died there at around 4.50 p.m.

According to some of the residents, Ram Kripal was beaten by the people and handed over to the guard of the market association from where the police arrested him. One eyewitness, a neighbour, maintained that Ram Kripal's condition was not critical when he was handed over to the police, as he was able to walk. According to him Ram Kripal was slapped and kicked by the crowd but no stones, sticks etc. were used. The ACP (West) also corroborated the above.

Where was Ram Kripal between 7.30 and 9.45 in the morning? According to press reports, a daily diary entry was made at the P.S. in the morning. But the police maintains that though they took Ram Kripal to the thana, he was not taken inside but was taken to the hospital from the thana gates around 9.30 a.m. This flimsy reasoning is used to argue that the death is not 'custodial'. And it today justifies the lack of an inquest by the SDM. The crime of willfully denying medical help for over two hours will remain unpunished.

However four police personnel, an ASI, a head constable and two constables were suspended on grounds of negligence. All of them have been reinstated, while a departmental inquiry is still on. Police claims that the suspensions are unconnected to the death of Ram Kripal.

Since the deceased could not be identified, newspaper reports say that the body was kept in the hospital for nearly five days after which it was handed over to the mortuary at Subzi Mandi. A wrangle followed between executive authorities as to who should conduct the inquest. The police registered a case against three residents of the jhuggi basti on charges of culpable homicide (S.304). The arrested persons are currently out on bail. The families of two of the accused had left the basti by the time the PUDR team went to meet the residents.

Ram Kripal was not a resident of the basti. As per newspaper reports, he was originally belonged to district Pratapgarh in U.P. and was earlier living in a jhuggi basti at Kirti Nagar.

However, he had left this area two months prior to his death. At that time he used to earn his living as a seller of iron scrap. Nobody had any knowledge of his subsequent whereabouts till the incident on 25 March. He seems to have been in desperate straits as he tried to steal from jhuggis whose occupants were utterly impoverished. The chances of getting caught were also very high as the jhuggis were very closely clustered together around the 6 ft. by 6 ft. area, which then became the site of the 'public beating'.

The Third Death (Lekhraj; Connaught Place P.S.; 1 April)

Forty six year old Lekhraj, was an unconventional robber. With a graduate degree in history and an interest in writing and reading, Lekhraj was an unemployed man residing in Dallupura Village in Ashok Nagar in East Delhi. According to his mother, Phoolwati, he was a member of Delhi Public Library and he used to contribute to a jatiya patrika of the Gujjar community.

. On 31 March he was caught while attempting a robbery at gunpoint in Dandiya Jewellers in Connaught Place. His accomplice managed to escape. The security guards of the shop chased him and beat him up, and handed him over to the Connaught Place P.S. where SI Subhash Chand Gupta, the IO Ashok Nagar in East Delhi. According to his mother, Phoolwati, he was a member of Delhi Public Library and he used to contribute to a jatiya patrika of the Gujjar community.

On 31 March he was caught while attempting a robbery at gunpoint in Dandiya Jewellers in Connaught Place. His accomplice managed to escape. The security guards of the shop chased him and beat him up, and handed him over to the Connaught Place P.S. where SI Subhash Chand Gupta, the IO in the case, interrogated him. His interrogation went on until late evening and he was supposedly caught with the robbed jewellery. At about 11.50 p.m., he was taken to RML hospital for a check up and was discharged after first aid. He was taken to Tilak Marg P.S. at around 3.30 a.m. and lodged in the lock-up since the Connaught Place P.S. lacks a lock-up. Between 8 and 9 a.m. efforts to wake him up proved futile. He was rushed to the hospital but he was declared dead on arrival.

According to the SHO of Tilak Marg, Vimlesh Kumari Yadav, there were no injury marks on him when he was brought to the P.S. in the early hours of 1 April. He however, appeared tired and fell asleep almost immediately. She also indicated that he was suffering from some ill health but declined to elaborate.

The Additional DCP (New Delhi) M.K. Meena announced to the press that the police had taken suo motto action against the IO, Subhash Chand that very day. A case under S.304(A) (causing death by negligence) was registered against him as he had failed to take Lekhraj earlier to the hospital and had waited till 11.50 p.m. Subsequently, another constable, Naresh Kumar was suspended from duty and both Subhash Chand and the constable were transferred to the District Lines. The DCP told the PUDR team that the police were not responsible for the death of Lekhraj, who had succumbed to his injuries sustained during his attempted escape from the shop.

The family, however, had a different tale to tell. According to the mother, Phoolwati, they received a call from the Kalyanpuri P.S. at about 11 p.m. on the night of 31 March informing that Lekhraj had been arrested on charges of beating and fighting. Half an hour later, she received another call from Trilokpuri P.S. saying much the same thing. Next, the Connaught Place P.S. called her and said that he had been arrested in a brawl. A fourth call was made to his sister who lives elsewhere informing her of Lekhraj's whereabouts. The next morning, the mother sent her tenant, Nanakchand to the Connaught Place P.S. with money to procure the release of her son. Nanakchand did not find him in the P.S. and he was sent to Tilak Marg P.S. and told that Lekhraj was arrested and kept there.

Later in the morning, Lekhraj's mother and sister were called to the SDM's court at Patiala House and were informed by the SDM of his death. They identified his body in the hospital and saw a number of injury marks on the face. There was blood on his shirt and on his face, which was badly bruised. The post mortem was conducted on 2 April.

The police continue to use the double custody to shift blame from one to the other. The Tilak Marg police refute that they had any role to play in the death, as Lekhraj had been in the custody of the C.P police, before being shifted to their lock-up. The C.P police on the other hand deny responsibility as the death took place in the Tilak Marg P.S. The upshot of this wrangling of course is that the police on the whole get away scot-free. The SDM inquiry has still not been completed. The suspended policemen are still in the Police Lines. According to the NHRC guidelines, executive inquiries have to be completed within 8 weeks. Eight months have gone by and the inquiry is still incomplete. Even the SDM has changed. The family has not been contacted ever since Lekhraj died and no official information (including the transfer of SDMs) has been conveyed to them.

Death of Surendra Narain Pandey, CBI, Economic Offences Wing, Yashwant Place (23'February)

Surendra Narain Pandey, aged 60, died in the custody of the Central Bureau of Investigation (CBI) on 23 February, 2000. Pandey had been summoned to the Economic Offences Wing of the CBI under S. 160 CrPC in connection with the Indira Vikas Patra fraud case discovered in 1999. A retired postmaster from Kanpur, he was being questioned about the IVPs sold by the post office in his charge during his tenure. This was not the first time that he had been summoned by the CBI. He was due to return to Kanpur on 23rd evening. The immediate version given by the CBI officials to the Press was that Pandey was being questioned when he complained of chest pain and collapsed. He was rushed to Safdarjung Hospital where he was declared brought dead. At about 3.10 p.m. the hospital authorities, then, as per routine procedure, informed the Chanakya Puri P.S that a person had been brought dead to the hospital. On examining the body, the police didn't find any external injuries. According to the police neither the Medico Legal Case certificate nor the post mortem report gave the cause of death. The case was handed over to the ADM to inquire into under S. 176 CrPC. When PUDR contacted the ADM he denied the newspaper story. The Viscera Analysis Report was still awaited when we met him. According to the ADM there were no signs of external injuries or of foul play. Nor did Pandey apparently suffer from any ailment or ill health.

PUDR also met one of the 3 doctors who constituted the panel of doctors who conducted the post mortem examination. He reported that there were external indications like the dilation of pupils, of aluminium phosphide poisoning, a commonly used rodenticide that makes the victim go into shock. Death occurs within 24 hours.

We thus have two stories- that of a death due to natural causes 'chest pain' i.e., the CBI story; and of a death due to poisoning. The Chanakypuri police also contradict each other, with the IO Subhash Kumar sticking to the 'official' story of fatigue and collapse. The story in fact is elaborated further to avoid the charge of its being a 'custody death' by stating that when Pandey complained of fatigue, the CBI officers told him to leave for lunch and return later for further interrogation!

The story given out by the lower ranks of the police to PUDR was that Pandey had committed suicide. He had been permitted to leave by the CBI. But he consumed poison and collapsed near the gates of the CBI office.

We see a familiar pattern being repeated with the police and the CBI coming up with versions that would allow them to evade the question of custody: a death due to natural causes or due to suicide and not on the premises of the CBI.

Questions like the one asked by the doctor conducting the post mortem, i.e., how was Pandey in possession of the poison, as the pockets of those undergoing interrogation are checked and emptied by the CBI remain unanswered.

The Fourth Death (Mahadev Pandey; Gokulpuri P.S.; 31 August)

Through July and August, the Gokulpuri police were busy in trying to complete the investigation of a murder that had occurred two years ago. The suspect, Mahadev Pandey was a resident of a village in Ghonda district in east UP. Pandey earlier worked in Delhi, but had moved to his native village some time ago. Two years ago, one Jaiprakash died in a scooter accident near Gokulpuri. His father alleged that Pandey had deliberately run him over and appealed to the High Court to investigate the matter. The High Court directed the Gokulpuri police to complete the investigation.

According to the police, Pandey had been regularly coming to the P.S. in connection with the case and at the time of his death the case was almost in its final stages. Apparently, Pandey had almost admitted to his guilt.

The police say that on the fateful visit, Pandey came with his uncle on 30 August. He was interrogated as usual and since it had grown dark, the two decided to stay the night over at the police station in the barracks behind the thana. The following morning Pandey woke up and complained of chest pain. Both he and his uncle were offered tea and biscuits. He complained of nausea and stomach-ache and was rushed to GTB hospital but was declared dead on arrival.

The police department suspended the Station House Officer, B.S. Rana, Head Constable Rishi Pal and Constable Surinder Lal. The ADM North-East started his inquiry almost immediately and in his initial comments to the PUDR team, he said that there were no external injuries but the postmortem indicated poisoning. Currently, the inquiry is still incomplete, as the forensic findings have not come in as yet.

Pandey was a middle-aged man in his mid forties. His family asserted that he did not have any medical history of illness. Since the family resides outside Delhi, PUDR has not been able to meet them.

Why and how did Pandey die? The police have no real theories other than two very dissimilar ones. One, that he committed suicide by consuming poison. The other, that he had a heart attack and died suddenly. Either of these theories does not make absolute sense. How and why should he commit suicide in the presence of his uncle? Secondly, where would he get the poison in the morning? As far as the second possibility is concerned, the police themselves maintain that he was fine and that they had no knowledge of his heart condition? How can a healthy man suddenly die of a heart attack without exhibiting any symptoms? Moreover, the hospital isn't far from the police station — why could he not be provided medical assistance in time?

Perhaps one possibility exists; maybe he was under a lot of tension regarding the outcome of his case. If indeed the police had managed to make him confess, then the theory of harassment leading to suicide cannot be ruled out. In which case the question of negligence is clearly on the police's side.

The Fifth Death (Ashwini Gandhi; Sadar Bazar P.S.; 11 October)

On 11th October, at around 6 p.m., Ashwini Gandhi, the owner of Ratan Gas House in Bari Market, was brutally assaulted by policemen of Sadar P.S. The reason for the assault was the placing of a wooden stool outside Gandhi's shop.

Gandhi was a not a poor trader. He lived in Punjabi Bagh with his two brothers. Bari Market in Sadar where his shop is located is a crowded lane with shops on either side. Ashwini's shop is among the oldest ones here, set up after the Partition. Almost every shop in Bari Market owns a stool, which is periodically placed outside the entrance and the helper in the shop, sits on it. While this technically constitutes "encroachment" and the beat constables regularly use this as a pretext for extortion, matters went out of hand on 11th evening.

Police from the Sadar P.S., an SI and three others were doing their usual round and had picked up a couple of stools from some shops including Gandhi's. As usual, the owners went to settle the matter with the policemen. Perhaps, Ashwini refused to pay the bribe or argued with the police, as witnesses are not clear what led to the commotion. The police started beating him and dragged him from the lane onto the road all the way up to the Bara Tooti beat box. Some shop-owners say that they protested and tried to intervene whilst others say that they didn't realise what was happening and thought that the police had caught a pickpocket. Eyewitnesses say that SI Pramod Kumar kept kicking Ashwini even though he had collapsed. Newspaper reports say that Pramod Kumar told bystanders who were trying to prevent the beating, that Ashwini was trying to feign unconsciousness.

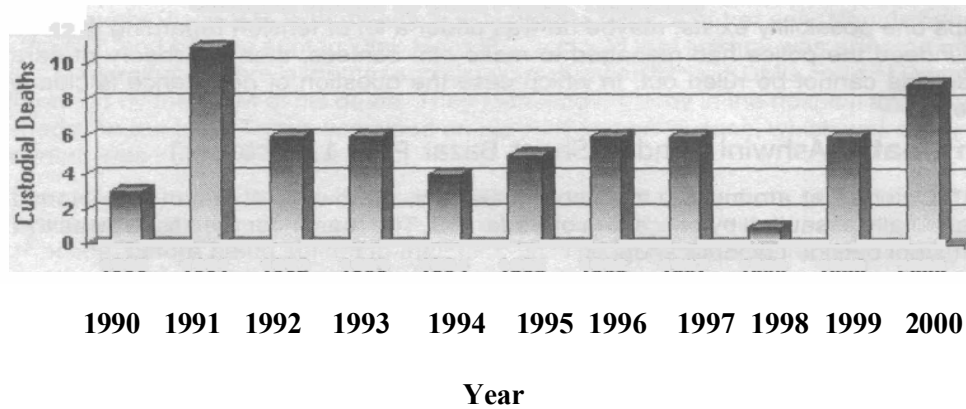
At the Bara Tooti Chowk, Ashwini's younger brother caught up with the police and persuaded them to take his brother to the nearest doctor, Pritam Singh. Singh who practices "integrated medicine" did not wish to get mixed up with a police case and sent the whole lot to Ganga Ram Hospital. In our conversation with Pritam Singh, it was clear that Ashwini's state was critical and that he was either nearly dead or dead. Gandhi was declared dead on arrival at the hospital at 7 p.m.

The traders's association in Bari Market observed a bandh on the following day. According to some traders, the local politicians show little interest in these matters as this is not a residential area and the traders have no votes to offer.

The SHO, Sadar, Gurbax Singh was categorical in stating that this was not a custodial death and that there was no question of a FIR being lodged. On 12 October, Ashwini Gandhi's brother had tried to lodge a FIR but was denied. The ADM, North had however started his inquiry under S.176 soon after the incident. In the meantime, the three accused policemen (SI Pramod Kumar, and Constables Chetan Kumar and Ravinder Kumar) were suspended and transferred to the police lines. They remain suspended. Eyewitnesses however, maintain that there were four policemen but the witnesses could not identify the fourth. The SHO maintained that there were only three as 'the police themselves had said that there were three of them'!

The police held the view that Gandhi's death was caused by an enlarged heart. The family dismissed this view and emphatically stated that there was no cardiac problem. The post-mortem findings clearly suggest that extreme stress and trauma triggered the cardiac arrest. The ADM's report has indicted the police for its brutality and injury marks on the body testify this.

Custodial Deaths by Delhi Police, 1990 2000



The Sixth & Seventh Deaths (Bijender & Reena; Mangolpuri P.S.; 12 October)

The two deaths of Reena and Bijender at Mangolpuri P.S. on 12 October, are bizarre cases of custodial deaths. Both Reena and Bijender lived in S Block of Mangolpuri and had known each other for the last six years. Bijender belonged to a Labhana Sikh family and Reena's family is part of the Jadav community. While Reena was a third year pass course student of Shyama Prasad Mukherji College, Bijender was a clerk in a factory and was 25 years old. Both went "missing" on 25 September.

According to Bijender's family, he had been married to another girl belonging to his community earlier this year. On 25 September, he went to his factory where he worked in the records division, and did not return home. He contacted his family on 8 October and informed them of his marriage with Reena. He was advised by his family to surrender to the police as Reena's family had lodged a case of abduction against him.

Reena's family maintained that Bijender had abducted her as she had left home for college on the 25 and did not return. Unlike Bijender's family which had accepted the second marriage, Reena's family was hostile and had therefore pressed charges against him.

On the advice of the family, both returned to Delhi on the 11 October and surrendered to the Mangolpuri police on the following morning at 9.30 a.m. before SI Neeraj Tyagi, the investigating officer. For the next three hours they were separately questioned. It is unclear what took happened for the next three hours, for the case only needed to be closed since the two were consenting adults.

At about 12.30 p.m. Bijender collapsed and seemed to be suffering from epileptic fits. He was rushed to Sanjay Gandhi Memorial Hospital but he died shortly after reaching the hospital.

According to Bijender's father, Chandu Singh a vegetable seller, his son was all right at 11 a.m. However, at about 1p.m, he saw his son being taken in a semi conscious state by the police. He had either consumed poison or had been poisoned in the intervening period. Bijender's family maintains that the police had not discouraged Reena's family from meeting him in this intervening period. They suspect foul play on the part of the police as they find it difficult to believe that Bijender had returned only to commit suicide, especially as his family had accepted his second marriage.

Nearly four hours later, Reena allegedly consumed poison in the lavatory of the P.S. and died before medical help could be given. A woman constable escorted her but she still consumed poison inside the lavatory. According to the DCP this is a clear case of suicide as she had made her inten-

tions known a while before she consumed poison. It is then all the more surprising that the police had not searched her. It is only afterwards that the police acted. The DCP rushed her in his own car to the same hospital, she could not be saved.

Immediately after the deaths, there were violent protests by the residents of the neighbourhood at the hospital site. While an angry mob threatened to set fire to the police station, some vehicles were damaged. The windowpanes of a bus were smashed and the police had to resort to teargas in order to bring the crowd under control. The girl's family however, while exonerating the police completely, maintains that the boy's family had pressured Reena into committing suicide. The sister of Bijender informed the PUDR team that the police had been harassing her in their absence concerning Bijender and Reena's whereabouts. She claimed that she had already paid Rs. 2000 to SI Neeraj Tyagi in order to prevent harassment of other family members. Even on the 12th she paid she paid another 1000 to Neeraj Tyagi, to ensure Bijender's safety.

The ADM's inquiry has been completed. But its findings are not known. No suspension orders have been issued against any policeman. The SHO Mangolpuri was transferred. The Police Commissioner had declared to the press that the DCP (Crime) would personally conduct an inquiry into the case (Indian Express, 17 Oct). An inquiry is being conducted — not into the gross negligence (at best) of the Mangolpuri police but on the charge of S. 309 (attempt to commit suicide), put on Bijender and Reena after their death! A Vigilance Inquiry was ordered, and is probably ongoing against SI Neeraj Tyagi and the others. The police refused divulge the current status of this inquiry, deeming it 'confidential'. While both deaths happened within the precincts of the police station, the police are not treating these as "custodial deaths". In the opinion of the police, both committed suicide and therefore the police are in no way responsible for their deaths.

The Eighth Death (Irshad; Seelampur P.S.; 12 October)

Mohammad Irshad Khan's death in a crowded lane in Gautampuri on 12th October, is perhaps the most well publicised case of custody death this year. 26 year old Irshad Khan was returning home with his four-year-old son from school in the afternoon. In the crowded lane of Gautampuri, Irshad got into a fight with a rickshaw driver, as there was a near accident between the Irshad's scooter and the rickshaw. Four policemen arrived on the scene including SI Vijay Kumar and Constable Swatantra Kumar from Seelampur P.S. who were in the area in connection with an investigation. The other two policemen have not been identified but witnesses allege that they were in civilian dress and were riding a motorcycle with a U.P. number plate.

What followed was the brutal beating of Irshad by the policemen. Eyewitnesses say that the police rained blows on Irshad. During the spate of blows, witnesses state that it was Constable Swatantra who hit Irshad on the back of his head. The blows were fatal and Irshad was literally thrown into the drain. Irshad collapsed and died on the spot. His four year old son, Danish, was a mute spectator to his father's murder. According to one witness, after beating him to death, the policemen were trying to resuscitate him by bringing a shoelace close to his nostrils. He was taken to GTB hospital in a PCR van but was declared brought dead by the doctors there.

Gautampuri is a crowded area and there were enough bystanders and passersby who witnessed the incident. The death sparked off a very angry protest from the people against the police. All shops in Jaffrabad, Seelampur and Chauhan Bangar downed their shutters and through the day sporadic incidents of violence were reported. A DTC bus and a two-wheeler were stoned and destroyed and the Seelampur P.S. was also stoned.

The incidents of violence had more to do with the police's attitude following the death than the death itself. Senior police officials rushed to the spot, including the Additional DCP who denied the role of the police in Irshad's death. Public anger was also directed against the attitude of the police in Usmanpur P.S. who kept the family in the dark about Irshad's condition. Over the next two days, six battalions of the police force including the Rapid Action Force were deployed in the area as the police maintained that the area was communally sensitive and that rioting was a strong possibility.

The first post mortem examination was conducted at GTB hospital and the findings showed that the death was caused by heart attack and that there were no injury marks on the body. Public anger was directed against the obvious fudging of the inquiry. Given the nature of the protest, police officials placated the people by saying that a second post mortem would be ordered. As a result, the body could not be handed over the day after the death. This also led to escalation of tensions and the police conducted flag marches in the area.

Irshad's body was finally handed over to the family on 14th and he was buried in the Welcome Qabristan at about 7 p.m. He is survived by his 20 year old pregnant wife, Rayeesa and their four year old son, Danish. Originally from Agra, he resided in Chauhan Banger (New Seelampur) and was one of the five brothers and was engaged in the family business of footwear workshop in the same area.

Due to public pressure, a case under section 302 IPC was registered at the Usmanpur P.S. against SI Vijay Kumar and Constable Swatantra Singh. The two were arrested and sent to judicial custody. The SHO of Seelampur P.S., H.C. Rana, ACP T.R. Virde and the SHO (Usmanpur), Niranjana Singh were all transferred. The remaining two policemen (whose names have been identified as Constables Mahesh and Dharampal) have neither been arrested nor charged. There were three witnesses to the incident. In the following days, one of them, Pawan Kumar Jain was charged u/s 308 (attempt to murder) for assaulting Constable Swatantra Singh. Newspaper reports state that he was "threatened" by the police of the area. He told the PUDR team (when the team revisited the area after a month) that he had put in a complaint to the police regarding the harassment. He, however, has not lodged any FIR.

Significantly, the Police Commissioner told the media that Constable Swatantra Singh was critically injured and was "battling for life at All India Medical Sciences". Newspaper reports contradicted the Police Commissioner's claim, as Swatantra Singh was never admitted to AIIMS. Doctors at Safdarjung hospital said that he was admitted there and that there was nothing wrong with him and that the police wanted "extra care for one of their own and hospitals usually oblige in such cases" (Statesman, October 31st).

No SDM inquiry is being conducted in this case. The findings of the second post mortem are still not available, as the forensic examination of the heart is not complete.

Irshad's death is a clear case of custodial death. The police however, contest the claim and have refused to go by the normal procedure following a custodial death, that of ordering a magisterial inquiry. Instead, they communalised the incident and the Police Commissioner said "Whatever be the police role, the Muslims in the area do not seem to trust the police" (Indian Express, October 16th). This is a deliberate attempt on the part of the Police Chief to divert attention from the fact of custodial violence and death. Residents allege that the police had initially tried to arrest two Hindu youth for Irshad's death before public protest had started.

When police use and exploit the communal card in order to deflect attention, it becomes a

telling comment on the communal mindset of the police force in the city. The protest in the area had nothing to do with communal tensions, as people had spontaneously protested against police's brutality.

The Ninth Death (Sukhdev; Chanakyapuri Crime Branch; 30 October)

On 30th October at 4.50 p.m., 45 year old Sukhdev Singh died in RML Hospital. He was in the custody of the Crime Branch, Chanakyapuri. The police had arrested 8 suspected ISI agents on 30th October and Sukhdev was alleged to have given shelter to three of them. The police arrested Sukhdev on 30th at about 12.30 p.m. from near his residence at Shyam Nagar, near Tilak Nagar.

According to the police, Sukhdev was questioned for less than 10 minutes and he complained of giddiness and asked for coffee, which was provided. He was rushed to RML hospital where he suffered convulsions and died within an hour.

The police has not taken any action against any of its personnel. Currently, the ADM, New Delhi, R.C. Meena is conducting the executive inquiry. The forensic report on the heart is awaited.

Sukha or Sukhdev was originally from Jalandhar and his family lives in Hong Kong where they owned a restaurant. Apparently, the business shut down two years ago. Sukha, however, was arrested in 1995 on charges of smuggling goods worth Rs. 1 crore. He was in Tihar for one year and according to the police, he developed contacts with ISI agents in jail. The police maintain that Sukha was connected with recent bomb blasts in the capital. Other investigative agencies such as the RAW and the IB and Directorate of Revenue Intelligence (DRI) were already investigating his links prior to his arrest.

How did Sukha die? The police put out a story of poisoning and natural death together. According to them, the coffee that was provided at the police station was not poisoned but it triggered a heart collapse. The ADM, R.C. Meena elaborated the police story by informing the PUDR team that Sukha was given poisoned coffee two weeks earlier at Rajpura bus stop. At that time he was admitted to LNJP hospital in the capital and was treated for food poisoning. This fact has helped them in concocting the story of lingering food poisoning, which triggered the heart collapse.

Sukha's wife who arrived a day later denied any possible medical problem prior to the food poisoning incident. The post mortem was carried out two days later and media reports suggest that the panel of doctors was difficult to decide, as it was a "sensitive case". The ADM, however, denied this reluctance.

The allegation of torture or harassment by the police rests on the forensic findings. The delay in the finalising of the ADM's report strengthens the police's claim that it is unconnected with Sukha's death. What is surprising is that this is a "custodial death" in its most rigorous definition as Sukha was interrogated by the police within the precincts of the station. Despite this, no FIR has been lodged against any policeman.

The Aftermath

The police continues to deny that police is responsible for the nine custody deaths in their custody this year. Three arguments are employed to deny their culpability: the definition of custodial death, public beating and suicide.

Definition of Custody

In October there were 5 deaths: 2 in Mangolpuri Police Station, 1 in Sadar Bazaar P.S, 1 in Seelampur P.S and 1 in Chanakyapuri P.S. The Police Commissioner was in the news quite frequently especially in the second week of October, explaining the role of the police. What is revealing is that the police refused to consider the death of Irshad as "custodial". The fact that the police has refuted the death as custodial even though they admit that their own men were involved in the beating needs to be examined and explained.

Consider the sequence of events. Public protest against the police forces them to lodge an FIR against two policemen. The two are arrested and sent to judicial custody. The first post mortem report comes in and it says that Irshad died of heart attack. Public protest again forces the police to order a second post mortem. Various thana officials are suspended and this sends out the message that the police is serious in punishing its own men. At this juncture two things happen simultaneously. Firstly, the police, particularly the Commissioner, vehemently say that Seelampur is a communal tinderbox and that the people don't trust the police. Secondly, police categorically says that the death isn't a custodial and that a witness had grievously assaulted one constable. Interestingly, the same constable is arrested for murdering Irshad.

Custodial torture in Nand Nagri Police Station (or who is responsible for the death of Ram Narain?)

On 30 August at about 5.30 a.m. the police picked up 3 youths, Rakesh, Sonu and Harish (about 18 to 20 years of age) from D-1 block, Nand Nagri, and took them to the P.S. While Sonu worked in a small packaging unit and was picked up from work, the other two youths used to do odd jobs and were picked up from their houses. The police had been rounding up youths like this for questioning, regarding a murder that took place in the vicinity about a week earlier.

The father of Rakesh, Ram Narain, a jalebi vendor, worried about his son went to the P.S to find out. He was told to come later. When he went again in the evening at about 8.00 p.m., he found that the SHO Iqbal Khan, Additional SHO Malik, SI Anand Prakash Sharma, beat constables Sanjeev and Praveen and head constable Kharak Singh were all present in the P.S. The SI was interrogating the youth and said that they would be released only in the morning. Ram Narain was told to come back later. He witnessed the police torture and tried to intervene. He was pushed away by the police and fell down. Then he went home.

At home he sat morosely and then started crying. He complained of chest pain. He was taken to GTB hospital but could not survive the heart attack he suffered. He was declared dead on reaching the hospital. On hearing of the death, Rakesh was released by the police the same night and the other two were released the following day. On 31 August, angry residents of the area blocked traffic inside Nand Nagri for over an hour and a half. The police lathicharged to disperse the crowd.

The boys were tortured very badly by the police — their legs were held apart and they were beaten in the groin, shoulders, head and ears. A week after the incident they were still unable to walk. Their injuries are listed in the certificate given by the doctor who examined them when they were taken their by their families after the incident.

In this immensely complicated story, which is at points so absurd that it seems unreal, one thing becomes clear as the days go by. In spite of the media attention given to police brutality, the police is not treating the death as custodial. In fact, the current inquiry is not being conducted under section 176 of the IPC which is mandatory for every case of custodial death. The reason given is that the first post mortem said that it was a heart attack and the second one isn't out yet. The SDM Seelampur, Sanjeev Mittal who is currently conducting the inquiry is doing so under section 174 relating to unnatural death. Thus the nature of the inquiry exonerates the police at its inception.

Again the fact that beating took place in a public place and not the confines of a police station, is being used to defend the police. But this goes against the very definition of custody, which is not confined, to the narrow meaning of police precincts. The Supreme Court has upheld in 1990 the definition of custody as defined in the Criminal Law Journal of 1970. The definition states that "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". It is therefore immaterial whether the death occurs inside the premises or outside. The same definition of 'custody' has also been accepted by the NHRC.

In the case of the death of Ashwini Gandhi in Sadar Bazar, the ADM's report, does not restrict itself to the narrow view of custody. Even though Gandhi died of a heart attack, stress and trauma preceded the attack, and the ADM's report treats it as a custodial death. But despite the strong similarities Irshad's death is not even being investigated as a death in 'custody'.

Public Beating

In three cases the police maintain that they are not responsible because the public beat the deceased before being handed over to the police. This is true in all three cases (Naresh, Ram Kripal and Lekhraj). However, in each of these cases there is a crucial time gap when the deceased was in the custody of the police before dying. The police has not been able to explain what happened in this period in any of these cases. In Seemapuri, there are witnesses who contradict the police story that Naresh wasn't brought back to the P.S. But in the case of Lekhraj and Ram Kripal there aren't any witnesses who can contradict the police story.

In such a situation, the executive inquiry becomes very important as it can bring fresh facts to light. The SDM inquiries are still to be completed in each of these three cases. In the case of Ram Kripal, no SDM inquiry was ordered. In the case of Connaught Place P.S. the SDMs have changed and not bothered to complete the inquiry. This is in gross violation of the NHRC recommendations made in 1998 that SDM inquiry should be completed within eight weeks.

Two of the deceased were vagrants and no family members could be contacted. But in the case of Lekhraj, his family is still waiting for justice.

Suicide

In the remaining cases, the police claim that the deceased committed suicide or had heart attacks while in custody.

Even if one accepts the police version, surely the question of negligence or abetment to suicide cannot be ruled out. Particularly in the case of Reena and Bijender, the police's investigation leaves enough room to suspect their negligence, at the very least. How could the two smuggle in poison without the knowledge of the police?

In the case of Mahadev Pandey, the police themselves admit that they had nearly wrapped up the case of murder. Can the possibility of harassment be ruled out? In such a case how can the police claim that they have no knowledge of his possessing poison, especially since he stayed the night over at the police station? Just to cover themselves fully they have also held on to the view that the death might be caused by heart attack. In which case why couldn't they take him to the hospital on time? The ADM North East is also not unduly perturbed by the slowness of his investigation. Forensic findings do take time but custodial death investigations were placed under the charge of the ADMs because their experience equips them to do a better investigation. In this case, four months have gone by but still the inquiry is pending. When the report is finalised it will not be disclosed to the public. What is the validity of these findings if the public does not get a chance to scrutinise them? It should not be forgotten that local level collusion cannot be ruled out. In the Model Town case (1990) for instance, the CBI and the Sessions Court had indicted the SDM for colluding with the police in covering up the death of Joginder Pal Gupta in August 1990.

In the case of Sukhdev's death this year in Crime Branch, Chanakyapuri, the police theory is laughable. They changed their minds as to what caused death three times. First it was heart attack, then it was suicide and finally it was an activated case of food poisoning (whatever that means!).

Conclusion

This year the Delhi police is responsible for nine deaths in its custody: one death every forty days. Last year the number was six. The NHRC provides a figure of 11 deaths which excludes the death of Ram Kripal on 25 March. This indicates that three custodial deaths have gone unreported and also uninvestigated by us. Thus the total number of deaths for the year stands at 12, double that of last year.

Custodial deaths are not limited to deaths in police custody alone. We have been unable to investigate deaths in judicial custody in any consistent way, owing to the complete opacity of the Tihar Jail. As per NHRC figures, 19 deaths have occurred in judicial custody in Delhi till 30 November this year, bringing the total number of deaths in custody in the capital to 31. The extremely high number of custodial deaths this year is a reflection of this growing disregard for due process of law amongst its custodians in Delhi.

These deaths are not an aberration. They are usually unintentional but by no means unforeseeable outcome of the deliberate and everyday use of force by the police. This routine exercise of power is manifested in their dealings with hawkers, vendors, and petty shop-owners in the form of hafta collection; or their rounding up, detention and beating of vagrants and petty offenders every time a crime takes place in a locality, or is even 'anticipated'; or acting at the behest of local vested interests for personal gain. Or else during interrogation of 'suspected' lawbreakers ranging from terrorists to petty thieves. It is precisely in these contexts that custodial violence is perpetrated and allowed to pass unnoticed by both the state and civil society.

Lack of criminal accountability in cases of custodial violence resulting in death allows custodial violence in general to continue unchecked. The large number of lathicharges on peaceful protesters this year, for example two lathicharges on blind students by the Delhi Police are just a continuation of the same process of routinisation of brutality. The gruesome police attack on Jamia Milia students in their hostels in April, even as they were preparing for their annual examinations must be remembered. The injured and shocked victims of the attack were further arrested and charged under a number of false cases, forced to listen to communal abuse by the police, and were unable to write their examinations. Why? The police explanation: two 'criminals' were hiding in the hostel. The

numerous students who were attacked in the course of the supposed 'search' operation were casualties in the course of 'investigation'! No punishment has been meted out to the police, for what is clearly a case of custodial violence even though not on police premises. The false charges against the students have only recently been dropped.

Of late there has been a growing climate of approval for such methods in official quarters. Especially during the tenure of the present Police Commissioner, Ajay Raj Sharma, 'encounters' and custodial violence have become the quickest way for policemen to rise within the ranks, (viz. the career graph of ACP Rajbir (*Hindustan Times*, 27.12.2000). Encounters are the preferred way as they 'finish off' a case altogether, but all 'solved' cases translate into promotions and rewards. Torture is an 'efficient' means to this end. A case in point is the rounding up, detention and torture of local youths at Nand Nagri following a murder in the locality in late August. Ram Narain, the father of one of the youths picked up died due to a heart attack brought on by the sight of these interrogation methods (see Annexure II).

While torture is routine to the point of becoming invisible, the visibility of custodial death in the media and human rights fora (and now, syllabi of Police Training Schools) has not brought its victims any closer to justice. On the basis of this year's investigations, we found

- that there is near total arbitrariness in the implementation of procedural safeguards (such as the SDM/ADM's inquiry) after the occurrence of a death in custody. In the nearly identical cases of the deaths of Naresh and Ram Kripal, an SDM inquiry was initiated in the former and not the latter. Similarly, while Irshad's death by police beating on the road was very similar to that of Ashwini Gandhi, the former is only being investigated as an 'unnatural' death u/s 174 CrPC and the latter is being investigated as a custodial death such under S.I76, CrPC.
- that the institution of magisterial inquiry is dependent on the police version of the sequence of events. Hence the denial of "custody" by the police results in the denial of an SDM inquiry to the victim. The deaths of Ram Kripal and Irshad are glaring examples.
- that the series of police inquiries announced in the press by the police commissioner (*Indian Express*, 17.10.2000) following the spate of custodial deaths turned out to be an eyewash. In the case of Reena and Bijender's death, the DCP (Crime) was supposedly conducting an inquiry. We discovered that the brief of the inquiry limited to the case of attempted suicide filed against the victims. In the other two deaths occurring in October no such inquiry seems to be underway.
- that all information concerning inquiries is declared classified. The police refuse to part with information is best exemplified in the Mangolpuri case where the office of the DCP, Vigilance informed us that the information is 'confidential' whether the inquiry is completed or not! The situation in SDM inquiries is no better. In the sole case this year in which the ADM has submitted the inquiry report, the same is not available to the family of the victim, leave alone the public at large. Also the institution of ADM rather than SDM inquiry into custodial death this year on the supposition that a senior officer would investigate a graver crime had certainly not resulted in speedy investigation.
- that the stock response of senior police officials immediately following a custodial death is to deny the involvement of the police. To this purpose an entire sequence of

events is spun hinging on "a weak heart", "epilepsy", or "suicide brought on by self-loathing", or even "a cup of laced coffee drunk a fortnight earlier". This amounts to nothing less than complicity, misleading the investigation and an attempt to subvert the process of law.

- that there are no mechanisms to award compensation when a death occurs in custody. Most of the victims do not have the resources, economic and social to access courts to demand compensation. The NHRC has in the past investigated the cases of custody death reported to them and awarded compensation occasionally, along with recommending some action. But even the NHRC's parameters for awarding compensation are totally arbitrary.
- that the first information is a crucial piece of evidence for a criminal investigation. Its recording in an FIR is the starting point of an investigation. Non-filing of FIR is a rule in custodial death cases. FIRs were filed only in 2 of the cases this year. Even *the possibility* of criminal prosecution of the police is ruled out in the absence of an FIR.
- that in the one case where there are witnesses who can testify to police beating causing death (Irshad's case) the police has been pressurising and intimidating them, and charging them in false cases. Such intimidation has in earlier instances resulted in charges being dropped against the police and is responsible for the miniscule number of cases in which conviction (for causing death in custody) has taken place till date (3 in the last 20 years).

In the light of the above, PUDR demands:

- Mandatory magisterial inquiry under section 176 CrPC must be initiated into the cases of death in custody of Ram Kripal and Irshad.
- All ongoing magisterial inquiries must be expedited and their reports submitted.
- FIRs should be lodged in each of the cases, and investigation and prosecution be done accordingly.
- Compensation should be immediately granted for each of the deaths.

We are also forced to once again reiterate our long standing demands:

- i. 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 case should be suspended till completion of inquiry/investigation.
- ii. The magisterial inquiry must be made time bound.
- iii. The magisterial inquiry report and the post mortem report must be made available to the family and must be made public.
- iv. Upon indictment by the magisterial inquiry, registration of charges against the police should be mandatory and not left to the whims of the executive authorities.
- v. The broad definition of custody must be accepted and applied by all authorities concerned.
- vi. Appropriate guidelines should also be laid down for payment of immediate compensation to the family of every individual who dies in police custody.
- vii. " Ideally cases of custodial deaths should be investigated by an independent agency like the CBI.
- viii. The preventive measures suggested, recommended and ordered by the Supreme Court in the 1977 DK Basu judgement must be immediately implemented.

The Trigger Happy Police

Date & Place	Nature of Incident	Persons dead or injured
11 February, Najafgarh	Two constables in civilian dress shot at an alleged bootlegger after asking for a bribe. South West Distt. police claim that the two were arrested. Newspaper sources contradict this claim	Raju, the alleged bootlegger suffered three bullet wounds.
27 March Lawrence road.	Encounter with gangsters	3 killed
5 April Mayur Vihar	Encounter with carjackers	No one killed
12 April	Special Staff constable shoots at robbers in his house	1 killed
10 May Amar Colony	Constable shot at a miscreant, supposedly in self defense.	1 injured in the leg
21 May, Jharoda Kalan, Najafgarh	Encounter with gangsters	2 killed
24 June, Manesar	Encounter with gangsters. Crime Branch was chasing Satbir Gujjar	2 killed incl. a bus conductor
25 June, Yamuna Pushta	Firing on slum dwellers	1 killed
9 August, Modinagar	Encounter with gangsters. Delhi Police was chasing gangsters	1 killed
20 November Vishwas Nagar	Firing on mob protesting against closure of industrial units.	3 killed
21 December Batra Cine Complex, Mukherjee Nagar	Killing of youth on 4th floor of building, in pitch dark after 10 minute exchange of fire	1 killed. No policeman injured
26 December, near Batla House, Okhla	Killing of youth, suspected militant, in closed room.	1 killed.

Note: This is an incomplete list,



compiled from Newspaper reports