

Crimes of Habit

***A Report on Custodial Torture
in Vijay Vihar Police Station***

**People's Union for Democratic Rights
Delhi
April 2014**

On 10 July 2013 a leading news channel *Aaj Tak* telecast a video clip which showed several young boys describing their experience of custodial torture by policemen of the Vijay Vihar Police Station in outer Delhi. The incident had occurred between 26 and 28 March 2013. The story was leaked to the media in July 2013 by one of the constables posted there. The news was later reported in various newspapers including the *Times of India*, *Outlook*, *The Statesman*, *DNA*, *Daily Mail* and *Zee News*.

PUDR began its investigation into the case thereafter. To understand and intervene in this incident PUDR visited the Vijay Vihar Police Station (PS), and met policemen involved, the officials of the Juvenile Justice Board at Delhi Gate, some of the victims and their families, and the journalists who had highlighted the case. The following report is based on our fact finding investigation.

The Incident

According to the police, a theft had occurred in the hardware shop of one Raj Kumar Gupta in Budh Vihar Phase II during the evening/night of 23-24 March 2013. Different kinds of goods were stolen. A Daily Diary entry was made at Vijay Vihar PS on 24 March upon the owner's complaint. However the FIR (No. 162 of 2013) was lodged only on 26 March, when the owner produced the list of stolen goods. Shortly thereafter the police started rounding up adolescent boys (16 to 18 years) of the locality arbitrarily ostensibly for questioning in the case. According to the police a few of the boys they picked up had earlier been connected to such activities. All of these boys belonged to poor and socially and economically vulnerable families.

Those rounded up by the police included Shoab* a scrap dealer (*kabadiwala*) to whom the goods were supposedly sold. He was picked up from his shop on the afternoon of 26 March by some policemen in civilian clothes in a private car. The policemen dragged him into the car without giving any explanation. When he tried to ask about their identity or where they were taking him, one of the policemen slapped him. He saw another younger boy, who he later learnt was Manish was handcuffed, also sitting inside the car.

Similarly, another boy from Budh Vihar Phase II, Vikas was also picked up by late afternoon without informing his family. At least 7 – 10 boys were picked up that afternoon by the police and taken to Flat No. 7 of a DDA apartment complex known in the area as 'Lal Quarters' not far from the Vijay Vihar PS. According to some of the boys, the SHO of Vijay Vihar PS had directed the policemen not to detain the boys inside the PS premises as they were minors. It appears that two of the flats in Lal Quarters have been occupied and used routinely for illegal purposes including such interrogation and torture by the police.

The boys were detained there for two days and on the evening of 27 March 2013, shifted to a private builder's flat in the area. Constable Akhilesh Mishra of Vijay Vihar PS was posted in the builder's flat in the morning of 28 March. Seeing the condition of the boys, and afraid that charges of torture could be brought upon him if the boys or their families made a complaint later, he made a video recording of the boys' statements using his mobile phone while they were still in custody. He also requested the

* Names of all torture victims have been changed to protect their identity

SHO that he should be shifted out of this duty and informed him through the *munshi* at the PS that he had taken a video recording of this kind.

It seems that when the SHO came to know about the video recording, he started harassing Constable Akhilesh in connection with his work, regularly allocating inconvenient or difficult duties and shifts, frequently changing his shifts and so on. Finally, unable to withstand this situation any longer, Akhilesh decided to release the video clip he had made and the clip was aired on 10 July 2013, as mentioned, on a prominent Hindi TV news channel. Due to this 'insubordination' Akhilesh was suspended along with the other policemen involved in this incident.

As mentioned earlier, the video clip was made when the boys were in builder's flat, and referred to the treatment of the boys at the hands of the Vijay Vihar police during the period they had been detained illegally by them. The boys broke down while narrating their horrific and brutal treatment at the hands of drunk and abusive policemen while in illegal custody.

As per the account given by the boys they were beaten with sticks and boots. The police opened the handcuffs of the boys one by one and beat them with *lathis* on their legs and soles of their feet. They also kicked them with boots on the face and body. At least two of the boys sustained cuts on their faces as a result. While Manish started bleeding from his mouth, Vikas began to vomit blood as a result of the severity of the assault. In the case of one of the boys, his internal muscular injuries, sustained during the beating had not healed 7-8 months later. The policemen also continuously used violent and intimidatory language and verbal overtly sexualized abuse while addressing the boys during their detention. The boys were stripped and subjected to sexualized torture by pulling their pubic hair and squeezing their nipples etc. They were also threatened with sodomy using sticks and chilly powder etc. During their entire period of detention of over two days, the boys were given food only twice. Their money, mobile phones, and other belongings they were carrying were taken away from them.

Six boys testified to painful and humiliating torture at the hands by the police in the video clip. These accounts were independently confirmed by some of the witnesses and survivors in the course of the PUDR investigation. It was also revealed in the course of the investigation that the family members of the boys who were picked up were not informed about their whereabouts by the police. When some families approached the Vijay Vihar PS about the missing boys, they were not given any

information. However one of the boys had managed to phone and inform his family that he was at Lal Quarters. His family reached the Lal Quarters the same evening, but was told that he was not there. Members of the families of some of the other boys also reached Lal Quarters on 27 March but were also told that the boys were not there. The brother of one of the boys in fact caught a glimpse of him and the other boys being taken away from the Lal Quarters flat late in the afternoon that day. On 28 March as a result of the pressure that the families of the boys put on the police and their threat of going to the media, all the boys except two were released by the police. These two boys apparently 'confessed' to the theft and were charged with the crime. Only one of these boys was found to be a juvenile and proceeded against under the Juvenile Justice Act.

It is important to reiterate the fact that during this entire period, the boys were being illegally detained by the police and that the PS and the SHO were aware of the detention. They were also handcuffed for some of the time. Significantly all the police officials at the PS, including the new SHO do not deny the fact that the boys were detained. The ATO (Anti Terrorist Officer) who is the second in-charge of the PS confirmed the media reports that the boys had been taken to another flat after Lal Quarters. The understanding that this kind of 'interrogation' can be a legitimate and regular investigative method appears to be so deep rooted that the police failed to even perceive it as a possible offence. The police in their account repeatedly asserted that the boys had a criminal background to downplay the gravity of the violation committed by the police. The 'second-SHO' at the PS also stated that it is a regular investigative method, and kept insisting that the media has completely exaggerated the incident. He also stated that only one of the boys was in fact a juvenile – exposing the underlying belief shared by wide sections within the police, that torture of adult citizens by the police is legal and justifiable. His emphasis in his entire conversation with us was on how wrong it was on the part of the constable to have made the video and leaked it to the press. He appeared to be primarily concerned about the fact that such a 'routine' and 'normal' method of police 'investigation' at his Police Station had got undue publicity!

Aftermath

After the story became public on 10 July 2013, the Delhi Commission for Protection of Child Rights took *suo motu* cognizance of the matter and asked for a report from the police by 17 July. The Juvenile Justice Board presided by Judge Geetanjali Goel, apart from confirming that one of the

boys arrested in the case was a juvenile, refused to share any information with our team.

The police took action by suspending six policemen of the Vijay Vihar PS–Inspector Sunil Kumar (the then SHO of Vijay Vihar), head constable Lal Singh, constables Rahul, Rajkumar, Subhash and Akhilesh (who made the video clip) – were placed under suspension after a preliminary inquiry. A routine departmental inquiry (the kind that is set up after any suspension) was ordered into the matter. The then SHO was directly implicated because he knew about the illegal detention and torture. Two other policemen Satbir and Sherpal who were also named by the boys in the video clip were however not suspended or charged. The suspension of the SHO was revoked within a few months of the exposé. The inquiry reinstated the policemen and all the suspended policemen are now back on duty, their suspension having been lifted in the wake of the ‘findings’.

Apart from the departmental inquiry the police also launched an investigation into the criminal charges. An FIR was lodged, also on 10 July 2013 following the telecast, under Sections 323 IPC (‘voluntarily causing hurt’ –punishable by one year prison term or Rs. 1000 fine or both) and 342 IPC (wrongful confinement – punishable by one year prison term or Rs. 1000 fine or both) specifically against a few of the policemen like head constable Lal Singh and constable Rahul. An investigation was set up under the DIU (District Investigation Unit) headed by an ACP. One of the briefs it had was to establish the age of the boys concerned. It also aimed to check the authenticity of the video-clip. According to the police officials conducting this investigation, it was ‘nearly complete’ in March 2014. Yet based on our investigation, we fear that the investigation has been far from fair. The entire effort of the chief investigating officer from an early stage in the investigation appears to have been directed not at uncovering the truth, but explicitly giving the accused policemen a clean chit by ‘proving’ that the adolescents were not minors and the video clip was doctored. He had declared that the video had not been edited and doctored long before the CFSL (Central Forensic Sciences Laboratory) report. When this report arrived, it declared (fulfilling exactly the uncannily accurate ‘prediction’ made by the investigating officer) that the video clip recording of the testimonies of the boys in custody had apparently been ‘edited.’ Based on this the DIU investigation concluded that the clip and the entire testimony of the boys on their torture by the police in custody could not be regarded as authentic. Both the departmental inquiry conducted by the police and the investigation into the criminal charges against the

accused policemen have thus almost drawn to a close and echo each other in exonerating them.

It needs to be noted also that during the PUDR fact finding investigation our team found that the accused policemen were putting pressure, intimidating and harassing the boys and their families asking to change their statements. The family of one of the boys had to change residence to avoid harassment by the police. One of the boys and his family members were repeatedly stopped on some pretext or another on the road, by the police, slapped, threatened and told that they would be picked up again and charged. We submitted an application to the DIU in December 2013 complaining about the harassment of the boys who had testified to torture before the camera. We also learnt that a few of the boys were offered money and bribes by the police to change their testimony and deny that they had been tortured by the police. An atmosphere of fear prevailed when our team went to try to locate the boys who had suffered torture. As mentioned, they confirmed the kind of torture meted out to them, and the circumstances under which they were picked up and detained. It must be noted that all informants in the area spoke to us on condition of anonymity, as they were in constant and palpable fear of the police. Given the vulnerable economic, and social, and legal background of these adolescent torture survivors and their friends, neighbours and family members, the constant presence of, and pressure by the police who had perpetrated the torture was a real threat, hardly conducive to their ability to speak the truth.

Some Questions

It is precisely because the victims of custodial torture at Vijay Vihar in 2013 were socially and economically vulnerable that there appears to be little public concern at this shocking miscarriage of justice that has taken place there with the complicity of the police. Apart from their predisposition to finding the policemen who were actually accused of torture innocent, their complicity stands exposed concretely also by the sections of law under which the accused policemen were charged in the FIR which was lodged in the case. It is important to ask why sections that *are* available in law and directly applicable, such as Section 330 (punishment for hurt to extort confessions) punishable by imprisonment for seven years or Section 331 (for grievous hurt to extort confessions) punishable with imprisonment for up to 10 years not applied? Instead, in the FIR that was lodged, a few of the accused policemen were charged under Sections 323

and 342 of the IPC which essentially means that this case was treated as a 'private complaint' – that is, it means that any person who is assaulted by any other person, can file a complaint under sections 323, 342 or 351 of IPC for assault, hurt or wrongful confinement. The adolescent boys' complaint of police torture in custody was thus reduced to this, and the fact that the accused were policemen and the victims, young poor boys who were tortured while being illegally detained by them, does not even factor in the sections used in the FIR. The near impossibility of such 'private complaints' being registered when the accused are policemen, in the context of the enormous difference of power between them and those who were most commonly the victims of custodial violence makes these sections in law somewhat meaningless for curbing it. In the rare instances where, due to extraordinary circumstances of this violence coming unexpectedly to light as in Vijay Vihar, policemen are charged under these general sections against assault, the investigations conducted by fellow policemen, intent upon protecting their own, almost certainly never find the accused guilty.

Another specific aspect of the case that needs to be highlighted is that even though the police at Vijay Vihar, including the then SHO, appear to have known of the illegal detention and torture of the boys long before the matter went public, why was no action taken against the guilty policemen between the end of March and 10 July 2013? Further, why has the irrefutable and widely known fact of illegal detention of the boys by the police not been taken up for investigation and prosecution? Even if the police in their investigation are trying to cast doubt on the question of torture, the illegality of the detention and interrogation of the boys is undeniable. Illegal detention has been upheld repeatedly as a violation and an offence in law and several court judgments. There is undeniable evidence that the police have violated the guidelines of arrest in the D.K. Basu judgment (See Box). Why were the accused policemen not charged with these violations? This is evidently not an innocent oversight. The blatant manner in which the custodians of law clearly violate it and seek to validate custodial torture thus becomes evident in this case, not just in the way in which the torture was actually meted out but the way in which the higher ups in the police have, through the framing of the FIR and investigation, by actively going to lengths to undermine the allegations and implicitly, by failing to charge the guilty under the sections which apply.

This incident of torture in the custody of and by policemen of the Vijay Vihar P.S. narrated above is not an isolated example of custodial torture. Torture in police custody is a norm rather than exception in all parts of the country including Delhi. PUDR's experience of investigating custodial deaths and rapes over the last 30 years or more shows that deaths in police custody are not aberrations, but are usually the unintentional consequences of routinised torture. As per our information, there have been at least 138 deaths in custody of Delhi police from 1980 till date, many of which can be clearly attributed to brutal torture and ill treatment in custody.

The fact of torture of this nature at the hands of the police is not unique to Vijay Vihar PS. Nor is this practice of illegal detention, and keeping and interrogating the accused in private quarters by the police in uniform, particularly new. However what made this case of custodial torture of adolescent boys at Vijay Vihar last year extraordinary was that, due to the specific circumstances, the torture became known and visible, with the testimonies of the survivors of torture being made public. In the majority of the incidents of custodial violence and torture, those who suffer it do not report such incidents to the police because of different reasons – their own vulnerable status, out of fear of further torture, or harassment to their families by the police etc. The conspiracy of silence that surrounds this 'public secret'^{*} is further extended – by the perpetrators and the victims/survivors, given the huge structural imbalance of power between the police and those who are tortured in police custody in the course of investigations by them. This imbalance and the vulnerability of the survivors is greater, if (as in the case of some in the Vijay Vihar case) those who suffer torture are minors or adolescent delinquents.

The Vijay Vihar case exposed visibly therefore, the fact of custodial torture by the police, a fact that was widely known. It might have provided state authorities an opportunity to punish those among the police who were habitual offenders guilty of the offence of torturing people in custody. Yet the widely shared attitude among the local police that the accused policemen had not done anything 'wrong,' and that the matter should not have been made public, seems to have been shared by the police officers carrying out the inquiry and investigation.

Both set out, primarily it appears, to find ways of exonerating the guilty – and not surprisingly, they did. This reflects a common pattern of the police, including higher officials, while paying lip service to human rights,

* The term is used by lawyer Nitya Ramakrishnan in her book 'In Custody: Law, Impunity and Prisoner Abuse in South Asia' (2013)

repeatedly shielding their own personnel, particularly in cases of custodial violence. While custodial torture itself constitutes a serious violation, protecting the perpetrators of torture, allowing them to go scot free, constitutes an equally grave violation. With regard to the Vijay Vihar PS torture case, the Delhi police are guilty of both.

The Law and Custodial torture

Torture in police custody is routine despite the fact that it violates the fundamental rights guaranteed by the Constitution. Thus, for instance,

- ❑ Article 21 – The right to life, which includes the right against torture
- ❑ Article 22 – which provides protection against arrest and detention in certain cases

Moreover the following points reveal how certain provisions in law provide protection against illegal detention and torture:

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Further,

❑ Article 20 (3) of the Constitution provides that – ‘No person accused of any offence shall be compelled to be a witness against himself’ and thus puts a curb on forcing an individual to confess his crime. As investigations of custodial deaths conducted by PUDR have shown, most of these deaths were the consequence of torture to interrogate the accused and extract ‘confessions’.

❑ Section 163 of CrPC not only prohibits use of inducement, threat or promise, but also restricts police officers from preventing any person wanting to make statements during the course of the investigation

Though torture is not criminalised as a separate offence, there are laws which aim to prohibit torture in custody. Under Sections 330 and 331 of the IPC there are provisions for punishment for whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct. Further section 348 of the IPC makes any wrongful confinement to extort confession, or compel restoration of property punishable upto three years and fine. (None of these were applied in the present case.)

However, despite these provisions in the laws, the police routinely use brutal methods of torture to extract confessions admitting guilt. Beating of accused by police, with sticks, boots, belts, for long periods is common. Electric shocks are administered in some cases. Humiliation, stripping, sexual abuse are also among the methods used. Torture, thus serves to reinforce police's power over people and helps them conclude investigations quickly, without following proper procedures of investigation or even interrogation. In most cases in which custodial violence and torture takes place, fear of further torture, of being remanded to police custody again, or of being subjected to horrific police torture again in future once they serve the present sentence (in many cases of torture the accused are involved in theft or robbery), or of their family members being harassed – are some of the factors that often ensure that some accused reiterate their (false) confessions, given to the police after intense torture, before the judicial magistrate as well. The judicial magistrates too unfortunately fail to critically examine such 'confessions' or take measures to ensure that those in custody or their families are protected against the threat of further torture or harassment.

This practice of custodial torture has been repeatedly questioned in court and a large number of Supreme Court judgments have held that custodial torture as illegal. These include the judgments in the *Nandini Satpathy vs. Orissa* (AIR, 1978, SC 1025) *Sunil Batra vs. State* (AIR 1978 SC, 1678) or the *Khatri vs. Bihar* (AIR, 1981, SC 1068) cases. Other cases laid down guidelines and conditions for arrest and detention. Thus in the *Joginder Kumar vs. State of U.P.* (1994 SCC 260) the Supreme Court laid down directives that arrests should not be made, unless they are absolutely necessary and there is no other way except arresting the accused. The court further said that unnecessary and unjustified arrests led to harassment and loss of faith in the system. It was in the *DK Basu vs. State of West Bengal* (1997, 1 SCC 416) judgment that the apex court laid down guidelines to secure citizens against police atrocities and illegal detention

undermining basic human rights as provided in the constitution. The court further said that failure to comply with these guidelines not only renders an officer liable for punishment through departmental enquiry but also amounts to 'contempt of court'.

"Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society." (*D.K. Basu vs. State of West Bengal, 1997*)

Recognising custodial torture as leading to custodial death, the SC judgment in the *Nilabati Behera vs. State of Orissa* (1993 (2) SCC 746) held that the state has to take responsibility pay compensation in such cases to ensure enforcement and protection of human rights. In the case of *Sube Singh vs. State of Haryana*, (AIR 2006 SC 1117), even though the court did not give compensation to the complainant who had accused the police of torturing him, it strongly reiterated the view that the state had to take responsibility for police torture, and stated that compensation should be paid by the state, and not the individual policeman in cases of custodial torture for the violation of the fundamental rights enshrined in Article 21 of the constitution. It upheld this kind of compensation could be given as a 'public law remedy' in cases where torture victims survived, provided there was proof of torture. A number of SC judgments, such as the *State of MP vs. Shyamsunder Trivedi* (1995), *Abdul Gafar Khan vs Vasant Raghunath Dhoble and Another* (2003) and *Munshi Singh Gautam (D) & Ors vs State Of M.P* (2004), softened standards of proof required by victims/survivors to prove torture by the police arguing that "Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available...." (*Munshi Singh...vs. State of M.P,2004*).

Despite court judgments and legal and constitutional provisions that safeguard citizens against custodial torture, it continues to be rampant. One of the reasons perhaps is that, despite strictures against torture, even progressive judgments focused on custodial *deaths*, and the courts have not been as responsive in cases of custodial torture, where death does not

occur. The fact that custodial deaths were often unintended consequences of routinized custodial torture, while understood widely by courts, is disregarded in many of the remedies suggested by them or in the steps taken to curb custodial deaths.

Another very significant reason for the widespread continuation of torture is that the law against police torture is ambiguous and contains loopholes that enable its continuation. That is, there are provisions in law, which, rather than acting as deterrent, promote torture by the police either directly or indirectly. For instance, even though confessions in police custody are not admissible as evidence, sections like S. 27 in the Indian Evidence Act allow items, objects (regarded as 'facts') supposedly 'recovered' by the police 'in consequence of information received from a person accused of any offence', i.e., in the 'confessions' made in police custody, are allowed to be considered as 'evidence'. This provides the police a loophole to implicate the accused based on statements extracted under torture, by showing 'recovery' of incriminating objects from them as 'evidence.' This provides the police a direct practical incentive to torture accused to 'solve' crimes. Further, the policemen who torture accused in custody are insulated from prosecution in law – thus sections in the Criminal Procedure Code (like S 132 (1) and S. 197 CrPC) prohibit prosecution against any officers of the police, armed forces, executive magistrate, judge or a public servant without the sanction of the Central Government or state government.

In the last few decades torture in police custody has been legitimized by bringing in or proposing various draconian legislations one after the other which allowed confessions made before high ranking police officials admissible as evidence. These implicitly validated extraction of confession statements by any means, including torture. These Acts included Terrorist and Disruptive Activities (Prevention) Act – TADA, 1985-1995, [S. 15], Section 15 (A) of Criminal Law Amendment Bill (1995, 1999), Prevention of Terrorism Ordinance 2001- POTO [S 32(1)], Prevention of Terrorism Act (POTA) 2002, Section 32(1) and various similar state legislations. While these laws have been repealed it needs to be remembered that these Acts have a clause that allows prosecution under them even after they are withdrawn or repealed, they have effectively a life after death quality, as the number of cases that are still going on under these laws demonstrate. And under the Malimath Commission Report, this provision was recommended for inclusion in routine laws.

These laws and their afterlives have created powerful enclaves of legitimacy for custodial torture. Moreover these laws feed on popular paranoia about terror – for the police, violation of all procedural safeguards

related to arrest, custody and torture are more easily overlooked when they project an arrested individual as 'terrorist'. Such an individual is pronounced and accepted as guilty even before police investigation, let alone trial and conviction. Torture is an inevitable method used in these cases, often resulting in false implication and later conviction after the trial. It is important to note that these exceptions are maintained, in the name of dealing with 'organised crime', in existing laws like the Maharashtra Control of Organised Crimes Act (MCOCA, 1999). Under Section 18 of the law, confessions made by a person before a police officer not below the rank of SP and recorded by such officer either in writing or on any mechanical devices like cassette, tapes etc. is considered admissible as evidence in the trial.

Whether it is torture in the context of routine police investigation or in areas of armed conflict where torture is used deliberately as a means of state repression, its direct or indirect continuation is reflective of the state's refusal to prevent torture. This is clearly revealed by India's failure to ratify the UN Convention Against Torture. The fact remains that, while there are, as discussed above, laws that could be used to deal with cases of custodial torture, there are in fact no clear legal definitions of custodial torture, or explicit provisions to deal with it. The Parliament passed a highly inadequate, limited and biased Prevention of Torture bill in 2010, which ignored all the Supreme Court judgments and their recommendations, and upheld torture in many contexts. Protests about its nature had led to a revised bill being drafted by a select committee of the Rajya Sabha in 2010. While this revised bill is wider in ambit, reflects demands made by the critics, and addresses many of the problems of the earlier act, it still has a few continuing limitations. Even so, it is significant that this bill and the issue has not even been properly discussed in the legislature for over three years and continues to remain pending. This consistent failure to pass a clear law to curb torture, especially torture by state authorities amounts to a further intentional validation of custodial torture, and is a violation of democratic rights. It also adds support to the impunity and official sanction the police responsible for custodial torture appear to enjoy, as is apparent in the 2013 Vijay Vihar PS case.

Impunity and Crimes of Habit

Despite repeated injunctions like the following issued by the courts there have not been any effective efforts made or mechanisms built by the state to prevent the police from carrying out custodial torture and casually, regularly violating fundamental rights:

“The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under- trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions.” (*Nilabati Behera vs. State of Orissa, 1993*)

Simple measures like surprise inspections of police lock ups, which can even act as a deterrent have not been implemented in any serious way by those higher up in the police hierarchy. The official attitude appears to be at best, an ambivalent one towards custodial torture. At worst, many police officers effectively sanction it. This amounts to a fundamental subversion of justice. As the police also investigate cases of torture and seem to be collectively interested in the continuance of torture, charges of torture against the police are rarely ‘proved’. The Supreme Court too recognized this while ruling against custodial torture, stating “Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues.....” (*Munshi Singh...vs. State of M.P,2004*).

As evident from the account of torture by the Vijay Vihar police in March 2013, and the fate of the investigations and inquiries that have followed, this is precisely what seems to have happened in this case. The lawlessness of the police have extended, as discussed above, to intimidating and threatening witnesses so that they are coerced by the accused themselves or by their fellow policemen (conducting the investigation and inquiry) bound by ‘ties of brotherhood’ to the accused, into withdrawing or changing statements, so that all evidence of torture indicting the guilty policemen is erased. In other words “...in the ultimate analysis the society suffers and a criminal (*in this case the policemen guilty of torture*) gets encouraged.”

The extremely low rate of conviction in custodial torture and death cases bears testimony to this kind of endemic miscarriage of justice. It is not surprising that few statistics exist in this regard. However PUDR’s earlier reports, show that out of 94 deaths in police custody in Delhi between 1980 and 1998, as per our follow-up investigations, policemen were convicted in only 2 cases. It needs to be remembered that a very large number of cases of torture by the police that do not result in death do not

even get reported, making questions of prosecution or punishment of the guilty redundant. This impunity of the police contributes to the continuation of routine torture, and they become habitual offenders, protected by the tacit sanction of the state and consent of large sections of civil society. This impunity for torture has to be further seen within the context of general police high-handedness and brutality – as evident, for instance, in the common sight in Delhi of police beating rickshaw pullers, or the police abusing and collecting illegal *hafta* or protection money from street vendors – which are blatantly illegal commonplace, every-day practices of the police.

Custodial Torture and Social Sanction

'Inspector sahab, ise kadi se kadi saza dijiye!' (Inspector, Sir, give him the harshest punishment!) – this is a common 'dialogue' in Hindi films and television serials. The sentence is an expression of a grave misconception amongst a large section of the common people, that it is the job of the police to punish the guilty. This is a misconception that along with many other factors, contributes to the sanction given by the society at large to police torture. Also, most of the people picked up by the police and subjected to torture belong to the marginalized sections of the society. For the dominant sections in civil society, it appears that their existence is not really of much importance. Together with this, general apathy for the have-nots does not let custodial violence, or even death or rape become an issue of any significance. There are isolated instances of protest in cases of police torture, but they are really negligible as compared to how widespread the phenomenon is.

While social sanction for torture as well as a lack of executive and political will to stop custodial torture (indeed tacit and explicit official support for it) allow it to continue as a 'public secret' it is important to underline and reiterate the dangers of its continuance. As mentioned, the use of 'third degree' methods is most common in the course of interrogating 'suspects' and extracting statements from them to 'solve' cases. This effectively means that instead of relying on systematic gathering of evidence and scientific investigation linking particular accused to a crime, the police subject suspects to interrogation through torture, and based on their statements extracted under duress and pain, 'accused' are identified, arrested, convicted and the case 'closed.' Under S. 27 of the Evidence Act, 'objects' supposedly connecting accused to the crime (even when these connections are made in confessions to police) are valid as evidence. These can form

the basis of the police account of the crime, used to identify and prosecute the 'guilty.' This amounts not only a serious violation of the rights of those subjected to torture, but also presents a dangerous prospect that those actually guilty of crimes are not identified, while innocent citizens, often from marginal sections, are wrongfully arrested and prosecuted.

Conclusion

Given the precarious lives of most of those who suffer custodial violence at the hands of the police and the mammoth power of the police in relation to them, custodial torture by the Delhi police has rarely come to light. In cases like this one at Vijay Vihar, which got exposed and highlighted and as a result a case got filed, the victims are unlikely to get any justice in the present scenario. With the policemen reinstated, and the investigation predictably exonerating them, the possibility for the adolescent boys who had suffered torture by the police, challenging the investigation or fighting for compensation in court is bleak. In a situation where the boys and their families have already faced direct harassment and intimidation, the chances that they will be, indeed, have been pressurized into a coerced silence, and retracting their testimonies are very high. The possibility that the guilty policemen, responsible for dehumanizing and illegal torture last March, will be brought to book, indicted or punished is even more distant. Thus the 'habit' acquired by custodians of law of torturing suspects, and notions of police impunity in cases of custodial violence in the area will only will get more deeply entrenched after this case. The possibility that this case and the police cover-up will effectively deter others who might be tortured by the police in the area from complaining against them is very high. Custodial torture, a crime and violation of rights, while being in full public view, was exposed by the media briefly at Vijay Vihar. And now, through the mechanism of the police investigation into the case, it is again being made 'invisible,' and its perpetrators, offenders in uniform, who criminally assaulted boys in their custody, are being left scot-free. This will have disastrous implications for justice and democratic rights, in the specific instance as well as in the general struggle to stop custodial torture.

In the light of the above, PUDR demands:

1. A fresh, independent and fair investigation should be ordered into the case of custodial torture of 26-28 March 2013 by the police of the Vijay Vihar PS. The biased DIU investigation and its findings should be rejected. The policemen guilty of torturing the boys should be properly identified and prosecuted. Protection should be given to the witnesses and conditions be created so that they may testify freely.
2. The practice of using private quarters (like the Lal Quarters' flat and the builders' flat) for interrogation of suspects should be stopped immediately.
3. Policemen responsible for intimidating and pressurizing witnesses in the course of the DIU and departmental investigations in the Vijay Vihar custodial torture case, should be punished.
4. Mechanisms should be placed in order to put a check on widespread occurrence of torture in the custody of the police in Delhi and in the rest of the country.

Procedures Laid Down for Arrest

By the Supreme Court in the Judgment in the D.K. Basu vs State Of West Bengal case (1996)

The judgment laid down the following requirements for arrest and detention.

“A. The following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

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

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

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

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

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

(11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board. (Para 36)

B. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of arrestee. (Para 39)

The Arrest

Across the street,
I watch as one cop
slaps a kid against a wall,
twists his arm up
behind his back
while the other frisks him.
He's a crook,
I say to myself,
and I suddenly feel safer.
But then I think,
what if he's innocent.
And then none
of us are safe.
I walk away thinking
well as long as I'm innocent
and as long as no one
assumes I'm guilty
then I'm as safe
or as unsafe
as I was
right before I saw this incident.
As the cops drag
their suspect away,
I thank them
for clearing that up for me.

- John Grey

Published by: Secretary, People's Union for Democratic Rights (PUDR)

For Copies: Dr. Moushumi Basu, A-6/1, Aditi Apartments, D Block,
Janakpuri, New Delhi - 110058

Suggested Contribution: Rs. 5