

# INDIA

## @Rising reports of deaths in custody in Delhi

### INTRODUCTION

Between 1 January 1993 and 11 April 1993 three men reportedly died in the custody of the Delhi police or those co-operating with them. There is strong evidence that they were killed in custody after torture by the police<sup>1</sup>. Details of the allegations, in two cases confirmed by eye-witnesses, are described in this report. The reports of these three custodial deaths appear to show a rise in the incidence of such killings in custody in the capital compared to recent years. If they continue at the rate reported in the first three and a half months of this year, ten people will fall victim to such gross human rights violations in Delhi during 1993, double the number recorded by Amnesty International in 1992, 1990 and 1989, when the organization registered four or five killings in the custody of the Delhi police each year<sup>2</sup>. An Amnesty International delegate who attended the Inter-Parliamentary Union Conference in New Delhi in April 1993 raised concerns about the apparent rise in custodial deaths in the capital with an official in the Ministry of Home Affairs.

The death of one of the victims, Mr Satyavan, apparently killed for failing to pay sizeable amounts of money which the police were seeking to extort from him, elicited a strongly worded editorial comment from one of India's leading newspapers, which described his death as

"a shocking reminder of how far police brutality can go if unchecked. The circumstances surrounding Satyavan's death point to a high degree of lawlessness in police stations and the virtual absence of supervision of their functioning by higher police authorities... The delay in bringing charges of

---

<sup>1</sup> One of the victims, Rajinder Prasad, allegedly died following beatings by both police and strongmen of the management of a factory in the Mayapuri industrial area, having been detained by police as well as the factory management.

<sup>2</sup> According to Amnesty International's statistics, four people were reported to have died in custody in Delhi in 1992; ten in 1991; and five each in 1990 and 1989. Official figures of such deaths are lower: the Minister of State for Home Affairs told parliament on 12 May 1993 that four people had died in custody in 1992, seven in 1991 and two in 1990.

murder or rape against errant policemen contributes to a commonplace attitude in police stations that they are accountable to no one."<sup>3</sup>

A retired Assistant Commissioner of Police wrote to another newspaper to say:

"Of late the police stations have become a nightmare for the accused/suspects in custody while the over-zealous and unintelligent policemen resort to third degree methods to achieve speedy results... Unless personal responsibility is assigned and the seniors are made squarely responsible/accountable, the custody deaths would continue to occur."<sup>4</sup>

Torture remains pervasive and a daily routine in every one of India's 25 states irrespective of whether arrests are made by the police, the paramilitary or the army. It happens regardless of the political persuasion of the party in power. Although the government is now contemplating introducing legal reform which would considerably strengthen legal safeguards for detainees, the proposals have not yet been introduced in parliament and, with rare exceptions, those responsible for torturing and killing detainees in custody go unpunished.

### **THREE REPORTS OF TORTURE AND DEATHS IN CUSTODY**

Below we give details of the deaths of three men in police custody or after police torture in Delhi reported since 1 January 1993.

#### Vikal Kumar

Vikal Kumar Adhana, a 33 year-old assistant in the Ministry of Finance, and father of three children from Tigaon, Faridabad, Haryana, died in the Lodhi Colony Police station on 23 February 1993. He was arrested from the Rajdeep Hotel in the afternoon of 23 February by the Central Bureau of Investigation (CBI) on suspicion of impersonation and demanding a bribe. He was first interrogated in the CBI office and later in the evening was taken to the Lodhi Colony police station. The police apparently made no entry in the daily diary of Vikal Kumar's arrest.

Vikal Kumar was found dead in the lock-up the following morning. The police claim that he hung himself using thin rope made from strings taken from a floor mat. He was taken to the All India Institute for Medical Sciences where he was declared dead by the doctors. Vikal Kumar's brother, Mr Bharti, complained to the High Court, alleging that his brother

---

<sup>3</sup> Indian Express, 5 March 1993

<sup>4</sup> Hindustan Times 12 April 1993

---

had been tortured to death by the CBI and the police. He demanded compensation for "wrongful confinement, detention, beating, torture and death".

Amnesty International has a copy of the "death report" of Vikal Kumar Adhana which is part of the inquest. Although recording the police version that Mr Kumar "died by hanging as per police report", it also lists several injuries on his body indicative of torture:

"Soles of both feet appear to be swollen, bruised multiple. External injuries on hands, swelling bluish colour, contusion. Bluish colour irregular shape marks on upper chest, lower side chest laterally and both arms. There is well marked ligature mark on the back."

The post-mortem report also records multiple external injuries to his body.

Two policemen were suspended from duty and an inquest was held by a sub-divisional magistrate. However, no full inquiry by an independent authority is known to have been held and no further action is known to have been taken against the officials allegedly responsible for his death.

#### Mr Satyavan

**Figure 1** Mr Satyavan's wife and son after his death.

Mr Satyavan, a 35-year-old father of five children and truck driver from Jharoda Kalan village, died allegedly of torture in Najafgarh police station in Delhi on 2 March 1993.

Mr Satyavan had first been arrested on 24 February 1993. According to his father the police said he was arrested in connection with a political rally by the opposition Bharatiya Janata Party, which had been banned. His younger brother went to the Najafgarh police station the same evening and was reportedly told that Mr Satyavan would be charged with an offence unless his family paid them Rs 50,000. Mr Satyavan was released two days after his arrest, the family apparently having managed to raise about a quarter of the sum demanded by the police. Villagers allege that the police harassed the family for the remaining money and that Mr Satyavan was rearrested on trumped up charges when they failed to pay. He was allegedly arrested again along with two friends, Balraj alias Billoo and Ishwar Singh, at 1 pm on 2 March from the bus stand by the Head Constable of the Najafgarh police station, the Station House Officer also being present.

According to a senior police officer Billoo and Ishwar Singh later told him that all three had been beaten in the police station until Mr Satyavan collapsed. Ishwar Singh described how, at the police station,

---

"They kicked and punched us and used *lathis* (sticks) to beat us black and blue... They were particularly severe on Satyavan and kept abusing him for not having done 'their work'. After a couple of hours Mr Satyavan lay motionless on the floor while Billoo and myself were badly hurt. We were told to pick up Satyavan and take him away. They threatened to charge us with his murder if we did not."

At around 6.15 pm on 2 March, Billoo and Ishwar Singh were released and made to carry Mr Satyavan's body back to the village. He was taken to a nearby nursing home where he was declared dead on arrival. The news of Mr Satyavan's death came to the attention of the media when some seven hundred people protested in the village, demanding immediate action against the police. They claimed that the local police often extorted money from innocent people by threatening that false charges would be framed against them if they did not pay. Villagers said they had complained many times about police excesses but that the local administration had failed to register their complaints.

The Station House Officer was subsequently transferred and the Head Constable suspended. Besides the inquest proceedings into the allegations by the Sub-Divisional Magistrate, the vigilance branch of the city's police has also reportedly begun an inquiry. A case of culpable homicide not amounting to murder has been registered and handed over to the Crime Branch. The *Hindustan Times* of 4 March 1993 observed: "justice demands a proper enquiry into the incident and deterrent punishment to those who have brought a bad name to the police." But to date, an impartial inquiry by an independent authority is not known to have been ordered and no charges of murder are known to have been brought.

Rajinder Prasad

**Figure 2** Three factory workers who were taken into custody with Rajinder Prasad and beaten by the police.

Rajinder Prasad, a 26-year-old factory worker at the India Safe Factory in Mayapuri industrial area, died on 11 April 1993 allegedly after being tortured by police and strongmen of the factory management. Police say he was run over by the Bikaner Express when he had gone to the railway track either to commit suicide or when falling accidentally on the track. They deny having arrested or tortured him, admitting only that he and others were taken to the police station to take their fingerprints. Factory workers, however, said he was thrown on the track when he was close to death after it became clear that he would not survive the torture.

Rajinder Prasad and seven other men, including Rajinder Prasad's younger brothers, were reportedly questioned by factory guards after the theft of 26,000 Rupees from the factory safe. On 7 April they were taken to Mayapuri police station for further questioning. Rajinder Prasad's younger brothers claim that they were taken to the police station in the factory owner's car and beaten with *lathis* and boots. Another detainee, Jinnulal, alleged that "Rajinder was beaten so badly that he could not move. There was blood all over his body". Ramchander, who was also detained with Rajinder Prasad, alleges that:

"For the next three days, we were beaten up at the Mayapuri police station and then locked up at the factory in the night and beaten up by the owner's men. All of us, except Sharda, were brought back to the factory on

---

the night of 10 April. In the morning, we found that Rajinder's condition was horrible. He could neither sit nor walk. Rajinder was bundled into a car by the owner's men and taken to the railway tracks, they said, for him to make a call of nature. Next we came to know he had been run over."

Six of the men were released on 10 April 1993. Rajinder Prasad and one other person were not released.

On 13 April Narinder Pal, the factory owner, and three of his men were arrested and charged with wrongful confinement, causing hurt and intimidation, although no such action is known to have been taken against the policemen allegedly involved. Rajinder Prasad's colleagues claim they went to Mayapuri and Naraina police stations but that the police refused to register their complaints of torture and murder. It is not known whether an independent inquiry has been ordered into the death of Rajinder Prasad.

### **RESPONSE FROM THE GOVERNMENT AND THE SUPREME COURT TO RECENT REPORTS OF CUSTODIAL DEATHS**

#### Official condemnation of custodial violence

Unfortunately, reports of increased custodial violence in the capital come in the wake of clear condemnation of such practices by the Prime Minister himself. He addressed the Delhi police on 17 February this year to draw attention to the growing number of complaints about human rights violations, urging them to "ensure that excesses are not committed, especially in custody. Human rights are of paramount importance in a democracy like ours." More recently on 12 May, Minister of Home Affairs, Mr S.B. Chavan told heads of police and intelligence forces that "the death of a person in custody is a very serious matter" and urged "all the investigation officers to avoid [the] use of third degree methods in investigation of crime", adding "that this must be enforced...". At the opening of the Inter Parliamentary Union Conference in New Delhi on 12 April 1993, President Shanker Dayal Sharma expressed in more general terms the view that

"there is increased realisation that recognition of human rights and enforcement of human rights leads to stability in society and makes for upward mobility of the weaker sections."

#### Lack of effective action by government

Amnesty International warmly welcomes these statements. They demonstrate that torture practices are not government policy and that there is recognition at the highest governmental level that India faces a major problem of custodial violence which needs to be addressed. These statements mark a distinct improvement on previous official policy which, as described in Amnesty International's March 1992 report *India Torture, rape and deaths in custody* ignored the existence of custodial violence altogether.

However, the organization remains gravely concerned about the government's lack of determination to translate into practice the commitment it says it has made to protect human rights. It has failed to take the concrete measures for their protection - such as strengthening legal safeguards for detainees in custody - that it told Amnesty International it would take during meetings in New Delhi in November 1992. The three cases described above demonstrate the continuation of the pattern of custodial deaths described in Amnesty International's March 1992 report, at least in the capital. They underline the need for the government to take immediate and effective steps to strengthen legal safeguards for all those taken into custody and to ensure that at least in all recent cases of torture and deaths in custody, the authorities take swift action to order independent and impartial enquiries, bring the perpetrators to justice and to ensure that adequate compensation is promptly granted to the victims or their relatives.

#### Supreme Court judgments enhancing the potential for victims of human rights violations to gain redress

In contrast to the government's apparent lack of determination to improve the human rights record of the police, the Supreme Court has in recent months given important rulings which could help prevent human rights violations and facilitate effective relief being granted to the victims of custodial violence and their relatives.

First, in a decision of potential far reaching importance for effective State accountability for human rights violations in India, the Supreme Court, in a judgment of 24 March 1993<sup>5</sup>, established the principle that the State's failure to protect the fundamental rights provided under the Constitution entitles victims of such violations to compensation. The Supreme Court awarded "exemplary damages" - amounting to Rs 150,000 - to the

---

<sup>5</sup> Writ petition No. 488 of 1988



---

mother of Suman Behera, who was killed in police custody in Orissa on 1 December 1987. Suman Behera's body had been thrown on a railway track to make it appear that he had died in an accident. The Supreme Court ordered the state of Orissa to take action to prosecute the police officials responsible.

As noted in Amnesty International's March 1992 report, civil suits against the police for torturing detainees had remained largely unsuccessful. The courts had been reluctant to grant compensation to victims of custodial crimes in civil and in public law complaints because the State had been able to argue that it was not liable for the conduct of its officers when they discharged their "sovereign functions" (although the courts had granted compensation in some cases on an ad hoc basis). But in this case the Supreme Court held that the doctrine of sovereign immunity - a defence which the State could have raised to deny liability but had, to its credit, not used in this particular instance - simply did not apply to cases in which constitutionally guaranteed fundamental rights had been violated. The Supreme Court held that Suman Behera's fundamental right to life, guaranteed in Article 21 of the Constitution, had been violated, and said: "The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy." The Court added: "It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution" and acknowledged that "a claim in public law for compensation for contravention of human rights and fundamental freedoms... is an acknowledged remedy for enforcement and protection of such rights". In specifying that "this remedy in public law has to be more readily available when invoked by the havenots, who are not possessed of the wherewithal for their rights in private law" the Supreme Court also referred to Article 9(5) of the International Covenant on Civil and Political Rights, which provides for an enforceable right to compensation in cases where guaranteed rights have been violated<sup>6</sup>.

In a concurring judgment, one Supreme Court judge stressed that the Supreme Court and the High Courts not only had the power and the jurisdiction, but in fact had an obligation to grant relief to victims by calling upon the State to repair the damage done by its officers to the fundamental rights of citizens, notwithstanding the latter's right to other available remedies such as criminal suits or criminal proceedings. He also described custodial deaths as "perhaps one of the worst crimes in a civilised society governed by the Rule of Law".

---

<sup>6</sup> When India became a party to that Covenant in 1979, it made a reservation substantially limiting its obligation to pay compensation to some victims of human rights violations, declaring: "Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State".

---

In line with the principles articulated in this judgment, Amnesty International believes that the government should now proceed with proposals to change the law to provide financial relief to victims of crimes committed in custody of State agencies or public officers. Such changes have been under consideration since 1989 and were presented to a Conference of Chief Ministers held in New Delhi on 14 September 1992 and again on 13 November 1992.

Second, the Supreme Court's determination to ensure that effective remedies are available to relatives of victims of custodial deaths was also evident from the court's 19 March 1993 judgment in which it awarded Rs.300,000 compensation to the widow and two children of Joginder Kumar, who had died in police custody on 6 August 1990, the day after he had gone to the Model Town police station. His body was found to have seven external injuries, although police claimed that he had died from a heart attack. The judges, who emphasized that their ruling did not prejudice the widow's right to claim further compensation through other legal avenues, also directed the Delhi administration to sanction the prosecution of five police officials and a Sub-Divisional Magistrate. An inquiry by the Central Bureau of Investigation (CBI), which was carried out on orders of the Supreme Court, established that the magistrate had "deliberately underplayed" injuries on Mr Kumar's body in order to save police officials by listing in his initial inquest report only three simple injuries instead of the seven external injuries established by the post-mortem examination. On 20 April, some ten days after the Delhi administration had given permission for prosecution, the head of the police station and the other officials reportedly continued in their posts and had not been suspended from duty. Two days later, the Commissioner of the Delhi police, Mr M.B. Kaushal, merely ordered the head of the police station's transfer to another police station. They are not known to have been prosecuted yet.

#### Analysis of the government's response to allegations of custodial death reported by Amnesty International

Amnesty International has received reports of 484 deaths in custody since 1 January 1985 in which it is alleged that torture or medical neglect caused death. Amnesty International published the report *India Torture, Rape and Deaths in Custody* in March 1992, which listed 415 such deaths, and by November 1992 had submitted 455 cases to the Indian government. The government has commented on 230 of these cases. In a statement of 5 April 1993 the Ministry of Home Affairs acknowledged that in more than a third of the cases which it had been able to verify with the various state governments (in 85 out of 230 cases) there was prima facie evidence that further action was needed against the police allegedly responsible for torturing and killing suspects in their custody.

However, the government also said that 145 of the more than four hundred specific allegations of human rights violations in Amnesty International's March 1992 report *India: Torture, Rape and Deaths in Custody* "have not been substantiated". Unfortunately the

---

government did not clarify the nature of the investigations held to probe allegations of custodial violence which led it to that conclusion. In none of the cases in which inquiries were said to have been conducted has documentary evidence so far been provided to support the government's assertion that Amnesty International's allegations could not be substantiated. Amnesty International asked that copies of reports of post-mortem and magisterial inquiries be made available, and was glad to receive the government's assurances in November 1992 that reports of magisterial inquiries would be made available to relatives and to Amnesty International in future. However, no such documentary evidence had been received from the government as of 1 June 1993.

Apart from making general statements, since July 1992 the government has also sent Amnesty International details about individual cases listed in Amnesty International's March 1992 report. To date, the organization has received over two hundred "fact sheets", 198 of which deal with the 415 cases of custodial deaths listed in Amnesty International's report. Amnesty International welcomes the detailed investigations which the government is conducting into the allegations described in its report, and has made a preliminary investigation of the 198 detailed responses it has so far received.

Unfortunately, the government's response reinforces Amnesty International's concern about the lack of determination to bring perpetrators of custodial crimes to justice and to grant compensation to the victims or their relatives. Although Amnesty International was glad to learn that monetary compensation had been paid to victims in a further eight cases it was not previously aware of, the total number remains very small: Amnesty International knows of no more than 18 cases since 1 January 1985 in which compensation is reported to have been granted, with ex-gratia payments paid in a further six cases.

As regards criminal proceedings against the alleged perpetrators of custodial deaths, prime facie evidence of police abuse was found by the government in 63 out of the 198 fact sheets, dealing with such allegations, of which 61 reportedly led to criminal prosecutions and 37 to "departmental action". Although recognizing that a number of these cases are still to be determined by the courts, Amnesty International regrets to note that in no more than six of these 61 cases were police officials convicted by the courts and given terms of imprisonment ranging from one to eight years. In 19 of the 61 cases were police personnel reportedly acquitted and responsibility for the deaths has not been established. Of those police personnel who were suspended without criminal proceedings, three more were reinstated.

The lack of inquiries by magistrates in many cases into allegations of custodial deaths, even though they are mandatory in law, also remains significant and is cause for deep concern. Amnesty International's preliminary survey shows that inquiries by magistrates were said to have been conducted in no more than 62 out of the 198 cases of custodial deaths and that judicial investigations carried out under the Commissions of Inquiry Act were held in a

---

further nine cases. (An inquiry, the nature of which was not specified, was said to have been conducted in a further 67 cases.)

In dismissing about two thirds of the allegations made by Amnesty International in its March report as "not to have been substantiated", the government maintained that in seven cases there was no evidence that the person named in Amnesty International's report had died in custody, that in some cases the cause of death had been suicide and not torture, and that marks of injuries found on the bodies of some victims had been inflicted before arrest and not during detention, as Amnesty International alleged.

The government has only named one of the seven people whose death in police custody it denies: that of Virendra Bahadur Singh. According to Amnesty International's March 1992 report (page 176), he was taken away from his home on 9 June 1986 and interrogated for six days at Bakshi-ka Talab police station in Lucknow district. The government confirms that he was arrested and was held in a police station, but claims that "he escaped after jumping the walls" of the police station. It says he is alive and now works as a taxi driver at Bakshi-ka Talab. Amnesty International, of course, hopes that what the government says is true and is continuing its investigations into the circumstances of his death. However, a press report issued at the time of the incident appears to contradict the government's version. The Telegraph, Calcutta, of 16 July 1986, reported: "Virendra Bahadur Singh, who had never indulged in criminal activities, was dragged out of his house on the night of June 9 and interrogated for six days at the Bakshi-ka-Talab police station... He reportedly died on June 14. The body was disposed of by the police and a rumour floated that the 'accused' had fled." In contrast to the government's acknowledgement to Amnesty International that "Shri Virendra Bahadur Singh was... arrested and kept in lock-up", The Telegraph report continued: "Later, the police said it had not even arrested him."

Amnesty International has noted one more response from the government in which it apparently denied the death of the victim. Swapan Das, a 14 year old boy from Calcutta, was reportedly taken into custody of the Thakurpur police on 24 July 1989 and his body found hanging in an unfinished building the following day (page 184 Amnesty International report). The government's brief response simply states: "the Government of West Bengal have found that no such death has taken place". However, the press reported the boy's death at the time and even the fact that a police officer had been arrested in connection with his murder. According to a report in The Telegraph, Calcutta, "An officer of the special branch of the city police, Mr Murari Mohan Mukherjee, was arrested last night in connection with the murder of a 14-year-old boy, Swapan Das.... The officer... was charged with murder and remanded to jail custody till August 9."

Finally, the government alleged in its 5 April 1993 statement that in many cases of custodial deaths listed in the Amnesty International report "the cause of death in custody had

---

clearly been established as ... illness or injury sustained before the arrest". One such case, in which the government makes that assertion, is that of Mahinder Kumar, who, according to the Amnesty International report (page 155), was arrested on 24 August 1987 by Vivek Vihar police and died the following day in Jay Prakash Hospital in New Delhi from multiple injuries sustained under torture. The government informed Amnesty International: "The Magisterial Inquiry concluded that he died due to blunt injuries inflicted by mob on him before he was arrested by police." However, the Amnesty International report (on page 51) carries a picture of his injured friend, Ram Kumar, in the operating theatre of Jay Prakash hospital. Ram Kumar, according to the Indian Express of 26 August 1987, described how he and Mahinder Kumar were brutally tortured in Delhi's Vivek Vihar police station by 15 men who "started kicking us in the stomach and groin. They also laid us on our backs and put large rods across our legs... others stood on the rods and rolled them back and forth." He said that both he and Mahinder were hung upside down and beaten with sticks until "Mahinder started vomiting blood." Seven Police officers, including the Station House officer of the Vivek Vihar police station, were, according to the Indian Express of 27 August 1987, suspended: "They were believed to be directly involved in the torture which resulted in Mahinder's death."

## RECOMMENDATIONS

◆ Amnesty International urges the government immediately to order independent and impartial inquiries into the three reports of torture and deaths in custody described in this report and to take steps to ensure that police allegedly involved are suspended pending the inquiry, that those found to be responsible are promptly arrested and brought to justice and that the relatives of the victims are granted prompt and adequate compensation.

◆ Amnesty International also urges the government to review and implement its ten point program for the prevention of torture, published in March 1992 (see Appendix).

◆ Amnesty International recommends that the government take steps to introduce legal reforms which it proposed to successive meetings of Chief Ministers last year, many of which would substantially enhance safeguards for detainees in custody. Amnesty International recommends in particular that legislation be enacted:

- to oblige the police to provide information about an arrest and the place of detention to relatives or anyone nominated by the arrested person and oblige medical practitioners conducting medical examinations of arrested persons to make their reports available to them;

- to provide for mandatory judicial inquiries into all allegations of deaths in custody and "disappearance";

- to make it obligatory for postmortem examinations to be conducted within 24 hours of the time of death;
- to make it obligatory to provide copies of inquiry reports immediately to the victims, their relatives or their legal representatives;
- to introduce an obligation for payment of financial and other relief by the State for custodial crimes committed by State agencies or public officials (without an upper limit being imposed in law and without there being a bar on additional civil proceedings);
- ◆ that the government withdraw the reservations it made when it became a party to the International Covenant on Civil and Political Rights so that, like other countries which are a party to that Covenant, it assumes its full obligations to provide an enforceable right to compensation for victims of unlawful arrest and detention.