

INDIA

@Torture continues in Jammu and Kashmir

"The brutality of torture in Jammu and Kashmir defies belief. It has left people mutilated and disabled for life. The severity of torture meted out by the Indian security forces in Jammu and Kashmir is the main reason for the appalling number of deaths in custody"

Despite denials by the Indian government, Amnesty International believes that torture continues to be widespread in Jammu and Kashmir. In its response of February 1995 to Amnesty International's report, *India: Torture and deaths in custody in Jammu and Kashmir* (ASA 20/01/95) published in January 1995 which had documented over 700 cases of deaths in custody, the government of India denied that torture was widespread. It admitted that some custodial crimes may have taken place but stated "these are few and far between". Since then, Amnesty International has continued to receive numerous reports of torture and other human rights violations by members of the security forces. It has expressed its concern about individual cases to the government in scores of letters to which it has received few replies.

This report documents the cases of three men who reportedly suffered severe torture at the hands of the security forces while in detention during the first two months of 1995. Following their release from detention, all three men have undergone amputation of feet or toes; one man also had his fingers amputated. Their descriptions of torture are remarkably similar and follow a pattern of torture in the state already documented by Amnesty International and other human rights organizations. However, Amnesty International is concerned that the testimony of the three men points to a further pattern of torture. All the victims allege that they were subjected to extremely low temperatures – two of them being made to stand bare-foot in snow – leading to severe frost-bite. In the absence of adequate medical treatment and exacerbated by other forms of torture such as burning and beating, the condition turned gangrenous and led to amputation. In one of the three cases – that of Nazir Ahmad Sheikh – the government has claimed that he was chased bare-footed through heavy snow and arrested, and that he subsequently developed frost bite. The failure of the security forces to guarantee adequate medical care and to maintain adequate medical records complicates the documentation of these cases.

Amnesty International believes that the best way of verifying the allegations contained in this report and all other allegations of human rights violations is for independent and impartial bodies to investigate them on the spot. To date, Amnesty International continues to be refused access to Jammu and Kashmir to carry out investigations into allegations of human rights violations. Denied this possibility, Amnesty International has cross-checked the reports to the best of its ability and only relied on sources from within India. It has deliberately excluded any sources that could be regarded as politically motivated.

Nazir Ahmad Sheikh

"I was taken to Interrogation Centre at Kalam-Chakla, where I was severely interrogated, the modus-operandi of the interrogation was that I was forced to walk bare-foot on the snow for hours and later on I was beaten with sticks inside the room... There-after I was shifted to Interrogation Centre, Langate, where I

¹From Amnesty International's report, *Torture and deaths in custody in Jammu and Kashmir*, published in January 1995, AI Index: ASA 20/01/95

was again forced to walk bare foot on the snow for hours and there-after my feet were burnt with Bhukari [a stove]... My lower limbs due to torture became totally non-functional, with the result I was urinating and defecating in the room... Finally at Badami-Bagh Interrogation Centre at Srinagar, because of my urinating and defecating, I became [a] nuisance for them besides my wounded feet have started developing infection. So after one month seven days I was thrown out from Badami-Bagh."

Nazir Ahmad Sheikh, the 25-year-old son of Abdul Jabbar Sheikh, was arrested by members of the Army's 14th Dogra Regiment after leaving his home at Chak Yahama, Handwara, to go shopping on 1 January 1995. There were witnesses to his arrest. He has alleged that he was taken to the army camp at Kalam Chakla where he was subjected to torture as described above over a period of 12 days. He says he was then transferred to Langate army camp where he was again tortured and interrogated for ten days. Once again he was transferred to the Joint Interrogation Centre, Baramulla, before being taken to the Badami Bagh army camp in Srinagar. He was finally released from custody on 6 February and handed over to local police who took him to the Bone and Joint Hospital, Srinagar, where he was diagnosed as having gas gangrene. On 17 February both feet and the fingers of his left hand were amputated. Other parts of his body reportedly bore marks of torture.

Following the issuing of an Urgent Action by Amnesty International on 10 March 1995, the government provided the organization with a response to the allegations of the torture of Nazir Ahmad Sheikh. A copy of the response is given in the appendix to this report. The essence of the government response is that Nazir Ahmad Sheikh fled barefoot into snow covered fields on seeing a security patrol approaching. He was chased and arrested. While welcoming the fact that the government has responded to the allegations, Amnesty International is concerned that the government has given no indication that an independent and impartial investigation has been carried out into these very serious allegations. Such an investigating authority should have access to the victim, witnesses, the security forces concerned, doctors who treated Nazir Ahmad Sheikh both in the army hospital and the Bone and Joint Hospital as well as all relevant medical records.

Amnesty International questions the government's account that Nazir Ahmad Sheikh tried to flee at the sight of an army patrol party and that he was chased and caught bare-footed in heavy snow. It is concerned that over a period of one month, Nazir Ahmad Sheikh's condition was allowed to deteriorate from "snow-bite" to a state necessitating amputation of both his feet and the fingers of one hand without any apparent attempt by the security forces to ensure that his condition was investigated and treated.

Amnesty International is concerned at reports that, when questioned by the parents of Nazir

1 Nazir Ahmad Sheikh, following amputation of both feet and fingers of his left hand recovering in the Bone and Joint Hospital, Srinagar.

Ahmad Sheikh, army authorities denied his arrest in defiance of orders that relatives of detainees should be informed within 24 hours of a person's arrest. The organization is further concerned at reports that the family of Nazir Ahmad Sheikh were prevented by police from filing a First Information Report (FIR) about his torture. On 11 March 1995 – over two months after the arrest – the Superintendent of Police, Kupwara, ordered that a report should be filed in the daily diary of Handwara police station concerning the incident following numerous appeals by Nazir Ahmad Sheikh's mother. This was done on 12 March.

Mohammad Amin Shah

"I was laid flat on a bed with my face downwards. My hands were tied with a rope. My legs were pulled apart and tied apiece with the bed. And then my back and heels were hit mercilessly with an iron belt. Next, I was tied with a post with my legs upward and the soles of my feet were subjected to merciless beating. Thereafter I was asked to have sufficient intake of water and, then three soldiers were made to sit on and press my inflated belly causing me immense pain and vomiting. Finally, electric shocks were given to me on my arms and feet"

Mohammad Amin Shah, son of Ghulam Ahmad Shah, was arrested, together with several others by members of the Border Security Force (BSF) 81 Battalion and the police Special Task Force from the General Bus Stand in Batamaloo, Srinagar, during a cordon and search operation on 29 January 1995. They were taken to the BSF camp at Karan Nagar, Srinagar. While at the BSF camp, Mohammad Amin Shah has alleged that he was subjected to severe interrogation and torture as described above. He was subsequently taken by the Special Task Force to Shergarhi police station where he claims to have been subjected to similar methods of torture. He has also described a different method of torture:

"... Later in the night, while I was in a bad shape, I was hand-cuffed and dumped outside on a cemented floor with one blanket spread over it and another to cover my body. My feet and legs below knee-joints turned cold and next morning, my feet had developed lot of swelling. Much though I beseeched my tormentors to grant me permission for movement to help restore circulation of blood but they would not agree"

He claims that he was not given any medical treatment. He was finally released from custody on 25 February 1995 at which time he was rushed to the Bone and Joint Hospital, Srinagar, where he underwent surgery on 2 March to amputate both his feet which were badly affected by gangrene.

2 Mohammad Amin Shah in the Bone and Joint Hospital, Srinagar, before amputation of both his feet.

Bashir Ahmad Mir

On 13 February 1995, Bashir Ahmad Mir, the 19-year-old son of Wali Mohammad, and resident of Ladoo village, Pulwama, went to the bus stop to catch a bus to Khrew village. He was reportedly picked up by members of the army's 8th Mountain Artillery Brigade who were stationed at Khrew and taken to the house of Jabar Mir, a villager, where he was allegedly beaten and urged to confess that he was a militant. When he refused, he was allegedly stripped naked and forced to walk bare footed in the snow for four hours. Still naked, he was then taken in a jeep to Khrew Army Camp. He has alleged that while at the army camp he was beaten and given electric shocks. He has also claimed that he was once again forced to stand in snow for hours at a time following which his feet were burnt on a coal stove. Early in the morning of 14 February, he claims that an acid-like chemical was poured on his feet resulting in the burning of his flesh. He was kept in solitary confinement with no medical treatment for four days after which he was shifted to the army hospital at Badami Bagh, Srinagar.

3 Bashir Ahmad Mir

Bashir Ahmad Mir claims that while at the army hospital he was not provided with adequate medical treatment and his condition worsened. He claims to have been told by doctors there that both his legs would have to be amputated below the knee but that he refused to allow them to carry out the amputation. On 5 April, on the orders of the Additional Judge of the Designated Court at Srinagar (Order No.1095-AJ-TADA of 5 April 1995) he was released from army custody on bail. This followed orders for his release by the state screening committee². He was taken to the Bone and Joint

²Screening committees at state and district level, which consist of high-level officials headed at state level by the Director General of Police, are said to be reviewing the evidence against detainees and ordering the release of some.

Hospital on 6 April 1995. The toes of both his feet were subsequently amputated. A doctor at the Bone and Joint Hospital is reported to have stated "the victim was kept on ice for about nine hours resulting in frost bite and then acid was sprinkled on his feet and all his blood capillaries were lost in the process of brutal torture. The lack of medical attention also added to the problem and the result was gangrene"³.

4 The feet of Bashir Ahmad Mir following amputation of his toes.

³Valley Reporter, May 1995

Background

Human rights violations have risen dramatically in Jammu and Kashmir since late 1989, the start of the campaign for secession from India or for the state to join Pakistan. Many thousands of Kashmiris are arbitrarily detained under special laws that lack vital legal safeguards and provide the security forces with sweeping powers to arrest and detain. They are held for months or years without charge or trial. Torture by the security forces is a daily routine and so brutal that hundreds have died in custody as a result. Scores of women claim that they have been raped. Hundreds of civilians, including women and children, have been extrajudicially executed. Often these deliberate killings have been disguised by officials claiming they occurred in "encounters" or "cross-fire". In January 1995, Amnesty International published a report documenting over 700 reported deaths in custody in Jammu and Kashmir between 1990 and 1994. Although the government responded to this report and to many of the cases contained in it, the information provided lacked any substantial evidence to support the government's dismissal of many of the grave allegations of torture which led to the hundreds of deaths in custody which Amnesty International had documented. Deliberate killings and deaths in custody are facilitated by laws that provide the security forces with virtual immunity from prosecution and which allow the security forces to shoot to kill.

In December 1994 Amnesty International detailed 128 cases of "disappearance" in the state, very few of which have been clarified by the government, and the numbers continue to rise, as do reports of other grave human rights violations. In Amnesty International's view, there is a consistent pattern of gross violations of human rights in Jammu and Kashmir and the situation has reached alarming proportions. Efforts by relatives to use legal avenues to obtain redress have been persistently frustrated: court orders to protect detainees are routinely flouted and the legal machinery in the state has broken down. A judge of the Jammu and Kashmir High Court said in October 1994 stated that the rule of law in the state had ceased to exist and that "there is total breakdown of law and order machinery"

International human rights experts on these specific human rights violations from the United Nations and from international organizations such as Amnesty International continue to be denied access to the state. Since 1989, an estimated 17,000 men, women and children have died in the state from violence from both sides, according to police and hospital sources.

The government is not alone in violating human rights standards: armed opposition groups have committed numerous abuses themselves. They have taken and killed hostages and have

subjected a number of them to torture, including rape. Family members of politicians have been assassinated or abducted. Amnesty International has repeatedly and unequivocally condemned these human rights abuses and continues to call on all armed opposition groups to stop these abuses and to abide by basic humanitarian standards.

Conclusion

Amnesty International is gravely concerned by these reports of torture which it believes warrant immediate independent and impartial investigation by a judicial body. Amnesty International calls on the government to order prompt independent and impartial investigations into these and all reports of torture in Jammu and Kashmir. The government has informed Amnesty International that it has set up a state human rights cell to investigate such allegations, but as stated in Amnesty International's report, *Analysis of the Government of India's response to Amnesty International's report on torture and deaths in custody in Jammu and Kashmir* (AI Index: ASA 20/05/95) of March 1995, the composition of the cell, consisting entirely of government officials, underlines the organization's concern that the cell is neither independent nor impartial. The government has given no indication in its response to allegations of the torture of Nazir Ahmad Sheikh that an independent and impartial investigation has been carried out into the allegations. Amnesty International is also unaware of investigations into the torture of Mohammad Amin Shah and Bashir Ahmad Mir.

Apart from serious concerns about the use of torture by security forces in Jammu and Kashmir, these cases also raise concerns about arrest and detention procedures.

In its January 1995 report, Amnesty International made several recommendations to enhance the protection of human rights in the state of Jammu and Kashmir. One of these recommendations was that all detainees should have the right to a medical examination promptly after admission to the place of custody and regularly thereafter. The recommendation went on:

Furthermore, a prompt medical examination should be provided following any allegations of torture and the examining doctor should preferably be experienced in examining people claiming to be victims of torture. All detainees should have the right to petition for a second medical examination by an independent doctor of their choice. The doctor's reports should give a clear account of the person's history, should state all the examination's findings and give a clear interpretation as to whether the findings are consistent with the torture allegations. The detainee or his or her representatives should have access to the medical report in full.

In its response to this recommendation, the government pointed to section 54 of the Code of Criminal Procedure which provides for a medical examination of a detainee if the detainee alleges at the time when he is produced before a magistrate that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other persons of any offence against his body.

While Amnesty International acknowledges the existence of this provision, the practice in Jammu and Kashmir is that most detainees are not brought before a magistrate within 24 hours of their arrest as provided by Indian law. Article 9(3) of the International Covenant on Civil and Political Rights states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. There is no indication in the three cases described above that any of the detainees were brought before a magistrate following their arrest thus denying them an opportunity to make a complaint of torture and preventing the impartial documentation of their medical condition immediately following arrest or at any other time during their period of detention.

Furthermore, the victims have alleged that they were not provided with adequate medical treatment as specified in Principle 24 of the Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE GOVERNMENT OF INDIA

- Amnesty International urges the government to immediately order independent and impartial inquiries into allegations of the torture of Nazir Ahmad Sheikh, Mohammad Amin Shah and Bashir Ahmad Mir. The government should further ensure that the victims and their relatives are offered full protection from harassment and intimidation during and after the investigations;
- Amnesty International urges the government to ensure that if members of the security forces are found to be responsible for the torture of the three men, that they are immediately brought to justice;
- Amnesty International urges the government to ensure that provisions are made for the full rehabilitation of the victims and that they are granted prompt and adequate compensation;
- Amnesty International urges the government to ensure that legal safeguards for the protection of detainees are rigorously implemented, including rules that all detainees be produced before a magistrate within 24 hours and that they be entitled to a medical examination promptly following arrest;
- Amnesty International reiterates its appeal to the government to implement the eight detailed recommendations for the protection of human rights in Jammu and Kashmir, made in its report *India: Torture and deaths in custody in Jammu and Kashmir*;
- Amnesty International urges the government to allow international human rights and humanitarian bodies access to Jammu and Kashmir. In particular the government should invite the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture to visit Jammu and Kashmir.