

INDIA

@Summary of human rights concerns in Jammu and Kashmir

Introduction

Human rights violations have risen dramatically in Jammu and Kashmir since late 1989, the start of the campaign for secession 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. 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 that the rule of law in the state had ceased to exist.

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". They continue to be regularly reported. Such killings and hundreds of deaths in custody – by far the highest in any Indian state – are facilitated by laws that provide the security forces with virtual immunity from prosecution. They also 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. They have increased further since security forces' operations intensified in mid-1992. The Kashmir Times reported in November 1994: "Reports of violations of human rights are pouring in from across the Valley [of Kashmir] and the authorities seem not [to be] responding to the reports". In Amnesty International's view, there is a consistent pattern of gross violations of human rights in Jammu and Kashmir. The situation has reached alarming proportions.

Yet the human rights crisis in the state has been largely ignored by the government and the international community. 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 the secessionist campaign started, 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 has warned the groups themselves that taking hostages does not further, in any way, the protection of human rights. Amnesty International continues to call on these groups to stop these abuses and to abide by basic standards of humanitarian law.

Three Indian security forces operate in Jammu and Kashmir: the army and the paramilitary Border Security Forces (BSF) and the Central Reserve Police Force (CRPF). Thousands of security force personnel are deployed in the state. Allegations of human rights violations have implicated all three forces, but most concern the BSF. The local police are suspected by officials of sympathizing with secessionist groups.

Arbitrary arrest and detention

Most of the Kashmiris arrested by the Indian security forces are young men picked up in operations designed to identify suspected militants. The local police are rarely informed when the security forces make arrests. Although Indian law requires that anyone arrested should be brought before a magistrate within 24 hours of arrest, this rarely happens. The government has failed to implement repeated assurances given by the Minister of State for Home Affairs that families should be informed of an arrest within 24 hours: the relatives of those arrested are often not told why they have been taken and to which place. People are arrested on mere suspicion. In October 1994 more than 5,000 Kashmiri militants were in custody for aiding and abetting the Kashmiri campaign, according to an official, but civil liberties groups in the state estimated that four times that number were being held. Some are held outside the state where it is virtually impossible for relatives to visit them. The Kashmiri press in November 1994 reported several cases of people who were repeatedly, wrongly, detained simply for having the same name as known leaders of secessionist groups wanted by the security forces.

Preventive detention and special laws in force in Jammu and Kashmir lack crucial legal safeguards. The government can detain people for up to two years without charge or trial under the Jammu and Kashmir Public Safety Act on broadly defined grounds of state security. In contravention of international human rights standards, there is no need to bring them before a judicial authority promptly after arrest. The grounds for detention can be withheld from the detainee simply for reasons of "public interest". This often happens. Under the Terrorist and Disruptive Activities Act people can be detained arbitrarily for "disruptive activities": this could include questioning whether Jammu and Kashmir should remain part of India or whether a plebiscite should determine the state's future, as the Indian Government once promised.

Thousands of arrests have been made under these laws each year. Court orders to protect detainees are routinely flouted. Some of those arrested are released after weeks or months, but others remain detained without trial for years. Shabir Shah had been detained for five years without trial when he was released in October 1994. He had spent a total of 18 years in prison for peaceful political activities. Amnesty International has received many complaints that people continue to be detained even beyond the legal period of their detention, even after the courts have ordered their release.

Torture

Torture in Jammu and Kashmir is of exceptional brutality and explains the appalling number of people who have died in custody of the security forces. In areas where the security forces are engaged in counter-insurgency operations, the entire civilian population is at risk. Torture includes beatings and electric shocks, hanging people upside down for many hours, crushing their legs with heavy rollers, and burning parts of their body. It has left people disabled for life: Amnesty International knows of several victims whose legs had to be amputated as a result of torture. This happened to Manzoor Ahmed Ganai, who died within weeks of having his legs amputated in February 1993. Soldiers had set light to his legs with paraffin and had suspended him upside down for around 24 hours. A doctor treating him in Srinagar's Bone and Joint Hospital said he could have been saved had he received timely medical treatment. The government informed Amnesty International that "often such reports are circulated to deflect attention from terrorist activities", and assured Amnesty International that the allegations of his torture would be investigated. However, Amnesty International was never given the results of the investigation, or informed whether any such investigation took place at all.

Medical evidence, including data from foreign doctors examining torture victims in the state, corroborates a number of the torture allegations. Torture has also been documented by the UN Special Rapporteur on torture. Even the police have testified to the torture of suspects in several cases. Nevertheless the Indian Government routinely denies all allegations that its troops are responsible for torture. There have been a handful of exceptions in cases of rape. Virtually no members of the security forces have been brought to justice for torturing detainees in their custody.

Deaths in custody

Hundreds of Kashmiris have died in custody after arrests in "crackdown operations" to identify suspected militants. Sometimes the mutilated bodies of the victims are returned to the families without further explanation. However, in recent years the government has

increasingly sought to cover up such killings by attributing them to "encounters" or "cross-fire", without providing any evidence, rather than ensuring that the perpetrators are brought to justice. Such claims have been made even in cases where witnesses saw the arrest and the bodies of the victims showed marks of torture consistent with the findings of medical examinations or police reports. The Times of India commented in March 1993 that over the past six months, "custodial killings of both militants and others became almost a daily phenomenon". Many more have been reported since then.

Masroof Sultan, a student, was tortured with electric shocks in a notorious interrogation centre called Papa II in Srinagar. He was beaten until one of his legs was broken, and survived three attempts by BSF personnel to murder him. They apparently intended to kill him in retaliation for the shooting of three BSF men one day earlier. He survived by pretending to be dead. The police found him, barely alive, after the BSF announced that a "militant" had been shot dead in an "exchange of fire".

Not a single investigation by an independent and impartial body into the numerous cases of people reported to have been killed in custody is known to have been carried out. None of the perpetrators have been brought to justice.

Extrajudicial executions

Hundreds of men, women and children are reported to have been extrajudicially executed by security forces in recent years, often in reprisal for attacks on their own personnel. On 6 January 1993 at least 53 unarmed people were shot dead in reprisal killings by members of the BSF in the town of Sopore. Although this was the one instance in which the government departed from previous practice in the state and instituted a judicial inquiry, the inquiry is not known to have been completed and the culprits are not known to have been brought to justice.

In October 1994 at least 37 unarmed demonstrators were reportedly shot dead by members of the BSF who ran amok, firing indiscriminately in the town of Bijbehara. The 14 BSF men identified by a BSF Staff Court Inquiry and a magisterial inquiry as responsible are not known to have been brought to justice. Investigations into such cases are exceptional: hardly any reports of extrajudicial executions have been the subject of any official investigation. Furthermore sections 4 and 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act grant the security forces broadly defined powers to shoot to kill in "disturbed" areas – facilitating extrajudicial executions and killings of suspects in custody.

"Disappearances"

In a December 1993 report Amnesty International documented 127 cases of "disappearance" that had occurred since January 1990. Since then many more "disappearances" have been reported. They prompted a judge of the Jammu and Kashmir High Court to observe in October 1994: "hundreds of cases are pending [before the High Court] in which the whereabouts of the detainees are not known". The Government of India, in its response to Amnesty International's December 1993 report on "disappearances", claimed that: "the State Government [of Jammu and Kashmir] has responded to nearly 99 percent of all such petitions that have been filed, despite the tremendous strain under which the whole legal and administrative system has been put by the continuing violence and terrorism".

However, the information provided by the Indian Government in response to Amnesty International's December 1993 report clarified at most 15 of the 127 cases of "disappearance". The government continues to deny responsibility for the bulk of cases, despite eye-witness evidence in a number of cases that the victims were in government detention before their "disappearance". In some cases, the Jammu and Kashmir High Court has found evidence of "disappearances", but its orders to produce victims before the court are routinely ignored by government officials. In October 1994, a judge from the Jammu and Kashmir High Court observed: "even this court has been made helpless by the so-called law-enforcing agencies. Nobody bothers to obey orders of this court..."

Impunity

The security forces operating in Jammu and Kashmir believe they can act with total impunity, and some of them have told visiting journalists as much – a reporter who had just been released from torture in detention told a correspondent that his interrogators had threatened him saying: "Remember we are capable of doing anything, we can kill anyone in custody". The Indian Government has taken some steps against the security forces accused of committing human rights violations. In May 1994 it said that action had been taken against 174 members of the security forces, but only 15 had been convicted to terms of imprisonment of one year or more. Although the government apparently does not wish its security forces to remain entirely immune from prosecution, the few prosecutions that have taken place – mostly in connection with rape – bear no relationship whatsoever to the gravity and scale of the human rights violations reported in the state during the last four years. The government also continues to refuse to provide any information about the type of offences for which the 174 members of the security forces were punished, the identity of the security forces involved, and the incidents to which the punishments relate.

All three special laws in force in the state assist the government in shielding the perpetrators of human rights violations from prosecution, and encourage them to act with impunity. Provisions of the Armed Forces (Jammu and Kashmir) Special Powers Act clearly contravene international human rights standards laid down in the International Covenant on Civil and Political Rights, as members of the UN Human Rights Committee have pointed

out. One Committee member felt that provisions of the act – including immunity from prosecution – were highly dangerous and encouraged violations of the right to life. Yet, since India's report about the way in which it had implemented its obligations under the Covenant was examined in March 1991, the government has refused to take measures to bring this law as well as the Jammu and Kashmir Public Safety Act and the Terrorist and Disruptive Activities (Prevention) Act in line with international human rights standards which the government is bound to uphold.

Government attitude towards human rights in the state

Amnesty International welcomes steps taken by the Indian Government towards acknowledging and dealing with certain of the human rights violations its security forces are committing in Jammu and Kashmir. Government ministers and other senior officials have publicly condemned some human rights violations; they have taken initiatives to raise awareness of human rights standards in the security forces; they have released some detainees including several prisoners of conscience; and they have stated that allegations of torture and deaths in custody would be investigated. A handful of the perpetrators of human rights violations have been brought to justice. However, these efforts have had no noticeable effect on the deteriorating human rights situation in Jammu and Kashmir and bear no relation whatsoever to the gravity and scale of the human rights violations in the state.

The Indian Government ordered one judicial inquiry into the widely publicized incident in January 1993 involving the arbitrary shooting of civilians in Sopore in which over 50 people were killed and ordered other inquiries into another incident in October 1993 in Bijbehara. However, official investigations human rights violations – even incidents widely reported in the Kashmiri press – are extremely rare. In the few cases in which they have reportedly been held, their outcome is either not known or investigations were held by members of the security forces themselves and not by an independent body. The government's response has been to cover up human rights violations rather than ensuring that they are properly investigated and that the perpetrators are brought to justice.

The government's unwillingness or inability to investigate torture and deaths in custody in Jammu and Kashmir is evident from its response to the 28 reports of custodial deaths which Amnesty International listed in its March 1992 report, India: Torture, rape and deaths in custody. In contrast to the responses which Amnesty International received from other Indian states, the state government of Jammu and Kashmir denied all allegations that the victims had been killed in custody and dismissed all allegations of torture. In most cases, the Indian Government said Amnesty International had not provided sufficient details (details which Amnesty International has since provided), even though information had been published in the Kashmiri press, or by civil liberties groups or the cases were pending before the courts in Jammu and Kashmir. Some of the cases to which the government failed

to respond were described in detail in the Amnesty International report or in the international press.

The government's response to Amnesty International's December 1993 report, 'An Unnatural Fate' - 'Disappearances and impunity in the Indian states of Jammu and Kashmir and Punjab', was equally disappointing. The bulk of the government's response -- received by Amnesty International six months after it had been sent to the government -- dealt with the Indian Government's views on the political differences between India and Pakistan about the status of Jammu and Kashmir and with human rights abuses by armed opposition groups. Although Amnesty International welcomed information in the government's response that may have clarified 15 of the 127 "disappearance" cases from Jammu and Kashmir, the government failed to respond to the vast majority of the allegations. It denied responsibility for having detained the victims, despite strong evidence to the contrary, often from eye-witnesses, and orders from the Jammu and Kashmir High Court finding convincing evidence of "disappearance". Significantly, the government failed to clarify any of the 11 cases which that report described in particular detail. In one case, that of Mohammad Shafi Dar, the government gave contradictory responses. It first acknowledged and then denied that he was taken into custody. There was no response at all to the 80 "disappearance" cases listed in the report from the state of Punjab. The Indian Government has not so far taken any steps towards implementing the detailed recommendations which Amnesty International made in that report in a nine-point program to halt "disappearances".

Reaction to the UN

The government's negative attitude towards responding in real and effective terms to concern expressed by international human rights bodies is also evident from its reaction to UN experts on human rights. The UN Special Rapporteur on torture and the UN Special Rapporteur on extrajudicial, summary and arbitrary executions have in recent years submitted numerous cases to the Indian Government, highlighting concern about the large number of reports of torture and deaths in custody in the state. Although the government did respond to some of the allegations, the responses consisted of outright denials, or statements that the allegations were being investigated, or that they were "*sub judice*". The Rapporteurs are not known to have been informed by the government of the outcome of specific investigations into cases they submitted.

So far, the government has not invited the two Special Rapporteurs to visit India, as the Special Rapporteur on extrajudicial, summary and arbitrary executions proposed in his December 1993 report to the UN Commission of Human Rights. The Special Rapporteur was informed that it was preferable to let the newly established human rights mechanisms in India deal with alleged violations of the right to life. In response the Special Rapporteur explained that he "remains concerned at allegations of violations of the right to life that continue to come before him", that he did not intend to carry out tasks which fell within the competence of national institutions charged with investigating human rights violations, but that he wished "to seek first-hand information which would provide him with a better understanding of the situation and the problems faced by the authorities with respect to the right of life". To Amnesty International's knowledge, the government has failed to invite the two Special Rapporteurs to visit India, despite their requests to do so. Nor has the Indian Government undertaken a review of the special laws in force in the country, notably in Jammu and Kashmir, provisions of which clearly contravene international human rights standards in the International Covenant on Civil and Political Rights. This was requested in March 1991 by the UN Human Rights Committee.

Denial of access

The Indian Government has repeatedly stated, as it did during the last session of the UN Commission on Human Rights in February 1994, that it has always worked in a spirit of openness and transparency in Jammu and Kashmir. This policy of transparency resulted in several brief visits by ambassadors, other government officials and members of parliament from a number of countries to the state in the course of 1994, and one visit by the ICRC in March 1994 to assess humanitarian needs. However, it does not appear to apply either to UN human rights mechanisms or, with the exception of the International Commission of Jurists, to international non-governmental human rights organizations such as Amnesty International. The organization has sought permission to visit the state for the last four years,

but continues to be refused to do so. Those visits to the state by diplomats and others that have taken place in the course of 1994 have, sadly, not resulted in any improvement in the grave human rights situation in the state, which the Indian Government and member states should no longer be allowed to ignore.

Sources

Amnesty International's attempts to obtain accurate and reliable information have been hampered by the government's refusal to allow the organization to visit the state and by difficulties in communication. In these difficult circumstances, Amnesty International bases its reports about the human rights situation in Jammu and Kashmir solely on sources within India itself, in order to ensure that its information is as accurate and unbiased as possible. Its sources include first-hand accounts from victims, signed statements from eye-witnesses, legal affidavits before the Jammu and Kashmir High Court, judgments by that court and reports from lawyers. Amnesty International also relies on medical reports, reports in the Indian press including the Kashmiri press, testimony from Indian and foreign journalists and doctors visiting the state, and detailed reports from civil liberties groups based both in Jammu and Kashmir and in other parts of India. In view of the importance which Amnesty International attaches to reliable first-hand information from unbiased sources, Amnesty International has excluded all information from countries other than India, including Pakistan.