

INDIA

@Comments on the government's response to the allegations of rape in Shopian, Jammu and Kashmir

In December 1992, Amnesty International reported the alleged rape of nine women in the village of Shopian, Jammu and Kashmir, on the night of 10/11 October 1992. It urged that an independent and impartial inquiry be carried out into the allegations.

The Indian authorities have responded to Amnesty International by saying that the result of two investigations into these allegations, one of them carried out by the army, the other by a Senior Superintendent of Police, was that "these allegations were trumped up at the instance of the militant outfit to malign the reputation of the security forces".

Amnesty International remains concerned that there is strong *prima facie* evidence of rape and torture and that there has been no independent investigation into these allegations. The two investigations which have taken place were carried out by the police and the army who may have a vested interest in covering up the abuses. Since the army version of events and the testimony provided by the alleged victims, supported by reports of medical examinations carried out promptly after the incident, lead to entirely different conclusions, Amnesty International continues to press the government to institute a judicial inquiry into this incident and take action against anyone who may be identified as responsible for raping the women.

The government bases its denial on what it calls the "sketchy and unreliable medical report" given by the medical officer and also on allegations that two of the women involved were wives of militants who therefore had a vested interest in wrongly accusing the army of raping them. Amnesty International does not believe that their testimony can be dismissed without closer examination. There is strong evidence of rape in medical reports and in the findings of several local human rights groups which visited the area and interviewed the victims. For example, the government claimed that the 11-year-old girl who was allegedly raped "bore no visible signs of excesses". This is clearly contradicted by her medical examination, carried out within 24 hours of the alleged rape, which concluded that she had a torn hymen, a positive semen test and also marks of violence on her body including scratches and bruises.

Furthermore, two unmarried teenagers, aged 18 and 20 were examined by a doctor who visited the village on 12 October. They had initially been reluctant to come for a medical examination with the other women on 11 October, the day after the rape. The examination found that both young women had torn hymens and vaginal tenderness. On 14 October they went to the hospital and were given a full medical examination including a test for the presence of semen. The semen test reportedly was positive for both women.

The government disregarded the findings of their medical examination, saying that "2 minor girls [ie the 18-year-old and the 20-year-old] were medically examined after a lapse of 66 hours and even then sperms were found present in microscopic test, which is not possible". However, according to an independent forensic pathologist consulted by Amnesty International, "semen can be detected up to 120 hours after intercourse... there is no reason to doubt that semen could be detected at 66 hours." Medical literature supports this view: sperm can be detected in the vagina as long as 72 hours¹ or 120 hours² after intercourse.

The report of medical examinations on several other alleged victims and also the reports written by a Kashmiri and other human rights organisations who visited the area provide evidence that:

- a 60-year-old woman had a tender genital area and a positive semen test;
- a 30-year-old woman had abrasions and bruises on her face and genital area, with a positive semen test;
- a 30-year-old woman showed a positive semen test and had marks on her chest and abdomen;
- a 25-year-old woman had scratches and bruises and a tender genital area;
- a 22-year-old woman had scratches and bruises and a tender genital area;
- a 45-year-old woman had scratches and bruises and a tender genital area;

The government dismissed the medical report on the grounds that "the opinion of [rape] having been committed ... has been given by the Medical Officer on circumstantial evidence rather than on purely medical grounds". It is not clear what this means: it may indicate that the government accepts that sexual intercourse has been documented, at least in some cases, but believes that this evidence does not prove that rape has occurred. Medical evidence alone cannot determine whether rape has been committed since the defining characteristic of rape is whether intercourse has taken place without consent. To determine this question it is necessary to evaluate both the medical evidence and the testimony of the alleged victims.

In Amnesty International's view, the medical evidence of recent sexual intercourse in these cases and the associated signs of violence constitute prima facie evidence of rape. Taking into consideration the statements of witnesses and other circumstantial evidence such as their ages,

¹Moreau DM. Major Physical evidence in sexual assault investigations. In : Hazelwood RR, Burgess AW (eds). *Practical Aspects of rape investigation: A multidisciplinary approach*. New York: Elsevier

²Willott GM, Allard JE. Spermatozoa - their persistence after sexual intercourse. *Forensic Science International*, 1982; 19: 135-154.

marital status and their signs of emotional distress at the time of interview, the allegations of rape are compelling and merit independent and serious investigation.

Recommendation

Due to the contradictory findings of the army and police investigations which refuted the rape allegations, the medical evidence and the findings of investigations carried out by human rights organizations which indicated that at least three and possibly nine of the women had been raped, Amnesty International urges the government to immediately order a fully independent and impartial inquiry into these allegations. The investigations which have been held to date were conducted by the army and the police and were not independent and impartial.

Please send polite letters expressing the points made above and in view of these urging the government to order an independent and impartial inquiry into the allegations of rape in Shopian to:

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