

INDIA

@Sikkim: torture of an opposition politician

Biraj Adhikari, a computer engineer, businessman and opposition politician, may have been permanently disabled because of torture he suffered while in police custody in Sikkim. A medical examination carried out outside India by an independent doctor with expertise in examining torture victims, confirmed that the after-effects of trauma found during the examination exactly fitted Biraj Adhikari's account of his torture during interrogation. His case illustrates the treatment opposition politicians risk suffering in a state which, until May 1994, was ruled for many years by a state government which has shown itself to be intolerant of political dissent.

Biraj Adhikari, the then 32-year-old Secretary General (now Vice President) of the Sikkim Democratic Front (SDF) was arrested on 24 June 1993 at about 2.30 by the Superintendent of Police, East, near his plastic bag factory – Scan Industries (P) Ltd., Baghley Khola. Biraj Adhikari's arrest followed a series of reportedly largely peaceful demonstrations organized by the SDF, one of the few parliamentary opposition parties in Sikkim. He was arrested days after leading a demonstration on 22 June 1993 in which he and other party leaders protested against arrest warrants taken out on opposition leaders. Although some violence occurred during that demonstration, reports differ about who instigated the disturbances. After the first two demonstrations, most party leaders, including the SDF's leader, had gone into hiding. Some 300 people were arrested during the 22 June and previous demonstrations. All except some 30 were released within days, and the remaining 30 were released after a month.



1 Biraj Adhikari

Although the Superintendent of Police subsequently denied this, Biraj Adhikari has asserted that he was not told the reasons for his arrest or the charges against him. Nor was he shown a warrant for his arrest. He asserts that the police simply told him that he had been arrested for an unspecified "cognizable offence" for which no warrant was necessary. Biraj

Adhikari was sent under police escort to Sadar police station where he was formally arrested at 5 pm.

Biraj Adhikari's mother tried to visit him at the police station on the evening of 24 June but was refused permission. His father, who is a senior Indian Administrative Service (IAS) officer in the state, fearing that something might happen to his son, telephoned the Deputy Inspector General of Police asking him to ensure his son's safety. The same evening, Biraj Adhikari was taken from his cell at around midnight and tortured by six police personnel for over an hour before partially losing consciousness, apparently due to loss of blood. The purpose of the torture appeared to be to intimidate him not to continue his political activities. The torture included being beaten repeatedly on the soles of his feet, at one stage with a stick which had a nail through one end, causing severe bleeding of the feet. This is how he has described his treatment:

"At around midnight of the same day, I was woken up and taken to the room of the Officer-in-charge.... The door was then bolted and I was asked to remove my spectacles, wrist watch and shoes. I was then thrown onto the floor forcibly and my legs were tied at the ankles with a rope. My legs were then lifted above the floor and I was struck mercilessly on the soles with a danda [stick]. As they were hitting me, S.I. [X] exhorted his men to hit me harder and that the force they were using was not enough. He was also repeatedly asking me the name of my father, his work and also the whereabouts of our party president... On my telling him that I had no idea, I was hit on the palms with the same danda.

Then a sack was thrown over my chest and they stomped upon me with their boots. I was also hit with the danda on my chest and neck. I was lifted by my ankles with my head hanging downwards and S.I. [X] kicked me mercilessly on my ribs and chest. During this time, both the S.I.s were threatening me by saying that they would kill me, my children and family if I opened my mouth and that they had sanction from the "highest levels". They also told me to leave my party and sit quietly at home otherwise they would kill me the next time they caught me. They also reminded me that people like Dharam Dutt Sharma [see below] had vanished from police custody in the past and that if I do not agree to leave my party, the same fate shall await me.

At this point in time two more constables came into the room. One of them had a wooden roll with an iron nail protruding from the tip at right angles to the roll. They then adjusted the nail by tapping it on the floor and proceeded to assault me with this device, puncturing my soles in the process. Blood splurged out in a jet and splashed onto the uniform of my assailant and also onto the floor. After sometime, I was made to frog-jump on the floor and the whole floor was bloodied. Because of excessive bleeding as well as a result of the grievous injury and the unbearable and excruciating pain, I felt dizzy and almost lapsed into a state of semi-consciousness.

It was then I was asked to go back to my cell. By this time I was unable to walk on my feet so I had to crawl to the outer room where I tried to tie my bleeding feet with a handkerchief. At this moment constable [Z] snatched the hanky and told me to bleed to death. As he snatched the hanky, I managed to take a look at his wrist watch which showed the time as 1:20 AM. I then crawled back to my cell and remained bleeding throughout the night till I was given medical aid by the team of doctors from STNM [Sir Thutob Namgyal Memorial] hospital at around 10AM of the next day i.e. the 25th of June 1993.

According to a medical report of 7 July 1993, the following injuries were found after his examination in hospital:

1. Multiple contusions of both feet, soles, ankles including lower forth of both legs, red in colour with swelling of the entire involved area, local temperature raised.
2. Laceration 1 x .5 cms base of L.forth toe with clotted blood around the area.
3. Active movements of the toes could not be elicited, movement of the ankles restricted and painful. Tenderness present in the involved areas. Plantar reflex could not be elicited due to tenderness.

An x-ray received on 28 June 1993 led the Senior Orthopaedic Surgeon, Gangtok, to conclude that bones in both feet had been broken: "...x-rays [of] both feet showed evidence of fractures base of 5th metatarsal both sides without gross displacement".



2 Biraj Adhikari's feet, photographed in the STNM Hospital, showing swelling and puncture marks

On 1 July, Biraj Adhikari's wife brought a *habeas corpus* petition in the Sikkim High Court. On 6 July, the Advocate General was unable to tell the court when Biraj Adhikari was brought before a magistrate (Indian law requires that this happens within 24 hours of arrest) and ordered that Biraj Adhikari be brought to court the following day. This happened, but Biraj Adhikari had to be brought to court on a stretcher.

On 7 July 1993, the Sikkim High Court ordered : "looking to the medical report, as also the condition of Shri Biraj Adhikari, we think it will be proper, rather necessary to safeguard the health and life of Shri Adhikari, that some second opinion should be taken

about his treatment". The Court ordered his transfer to the All India Institute of Medical Science (AIIMS), Delhi, on 15 July, and that he be treated at the expense of the state.

An independent medical expert, experienced in examining torture victims, examined Biraj Adhikari outside India ten months after his ordeal. He confirmed that the injuries on his body were consistent with the torture he described he underwent. According to the medical expert's report, Biraj Adhikari

"still suffers from severe pain in both feet and ankles. They swell, particularly under the soles. He is kept awake by the pain and during the day can walk only about half a mile, preferably with the help of a walking stick. He has to soak the feet in hot water and takes painkillers regularly...

... Almost one year after detention, this man has persistent severe pain and tenderness of both feet together with oedema which is most marked under the soles. This is a most unusual appearance which fits in with no known disease process. The fact that he had fresh fractures of the fifth metatarsal of both feet indicates that he must have suffered very severe blows. It is difficult to envisage any accident which would have caused these injuries.

The scars under the feet indicate that he suffered numerous puncture wounds. These could have occurred naturally, but it is extremely unlikely that they would be so numerous from natural causes. Injuries to the soles do not easily cause scars, so it is not surprising that they are not very prominent.

Nor is it surprising that there are no relevant scars on the trunk since Mr Adhikari states that after his interrogation he was covered with bruises but had open wounds only on the finger and feet, and these are the places where he now has scars. His credibility is enhanced by the fact that there are numerous scars which he does not attempt to attribute to wounding during detention but dismisses as childhood injuries.

It is my opinion that although my examination of Mr Adhikari was undertaken nearly a year after the alleged events, there is still clear evidence of the after-effects of trauma which cannot be explained by natural causes but fits in exactly with his account of his treatment under interrogation.

I believe that the symptoms will gradually decrease, and may be helped by treatment such as physiotherapy, but that he is likely to have a considerable degree of permanent disability due to destruction of the soft tissues of the soles of the feet."

Although bearing the expenses for his medical treatment, the government has failed to grant Biraj Adhikari any compensation, either for his torture or his continuing disability.

At the time of his arrest the police filed two First Information Reports mentioning Biraj Adhikari. The first, dated 22 June, listed minor offences including unlawful assembly, assault and obstructing a public officer. The second, dated 23 June, described an incident that took place that day in which the police entered a building at midnight to disperse what they claimed was an "unlawful assembly" and during which a policeman was said to have been attacked. Biraj Adhikari maintains that he was not even present in the building where the alleged incident took place. However, his name was later added to those named in the First Information Report, which includes a case of "attempted murder".

Biraj Adhikari was released on bail on 21 August 1993 but the case is still proceeding. He has stated that he believes that the former Chief Minister, Nar Bahadur Bhandari, personally ordered his arrest as part of a crackdown on the Sikkim Democratic Front. He has filed a First Information Report at the Gangtok police station against the policemen who tortured him but no action is known to have been taken against them. According to a report in The Statesman of 30 June 1993, police authorities are quoted as saying that no orders were given to beat Biraj Adhikari and that his harassment was due to "undue enthusiasm on the part of some policemen".

Following the hearing of the *habeas corpus* petition, at the High Court of Sikkim, an armed guard was assigned to Biraj Adhikari. The guard was withdrawn in Autumn 1993 and since then, Biraj Adhikari says, he has been attacked by two men in plainclothes on one occasion and has received threatening phonecalls.

BACKGROUND

Sikkim is a small North Indian state strategically placed bordering China, Nepal and Bhutan. With a population of over 400,000 it is India's least populated state. An Indian protectorate since independence, Sikkim only joined the Indian Union in 1975 when it became India's 22nd state under the Constitution 38th Amendment Act. This followed a crisis in which the opposition demanded democratic reform and the then ruler of Sikkim, the Chogyal, opposed the merger and the earlier measure by which Sikkim was associated with the Indian Union. Since 1979, the state has been governed under virtual one-party rule by Chief Minister Nar Bahadur Bhandari, first as leader of Janata Parishad and later, after Mr Bhandari had briefly been dismissed on corruption charges in 1984, as leader of the Sikkim Sangram Parishad (SSP). The SSP's power base lies with the ethnic Nepalese community in Sikkim, long term settlers who are Hindus and make up some 70% of the population. They felt disadvantaged compared to the minority Lepcha and Bhutia community, who are Buddhists and, as the native inhabitants, traditionally played a leading role in the state.

Following the SSP's three successive election victories, capturing all 32 seats in the state Legislative Assembly's last elections in 1989, the SSP has ruled virtually without parliamentary opposition in the state under the government of a Chief Minister who has reportedly vigorously suppressed any form of opposition in the state. The Sikkim Democratic Front was not formed until March 1993 and its leader, Pawan Kumar Chamling, became the lone opposition member of the Legislative Assembly.

In May 1994, 18 dissident SSP members of the Legislative Assembly withdrew their support for Chief Minister Bhandari and called on him to step down as President of the party. The crisis was precipitated by New Delhi's decision to withdraw proposals for income tax exemption for the two minority communities, the Bhutias and Lepchas. Representatives of the majority Nepalese community, backed by the Chief Minister, had been seeking similar exemption. The dissidents, led by 13 members belonging to the Bhutiya and Lepcha minorities who interpreted the Chief Minister's stand as an attempt to divide the various ethnic groups, were expelled from the party. However, they in turn removed him from the presidency of the party and formed a parallel party, the Sikkim Sangram Parishad (Sanchaman) (SSP(S)).

On 17 May, Nar Bahadur Bhandari failed to win a vote of confidence by a narrow margin during a special session of the Sikkim Legislative Assembly called by the Governor of Sikkim. A new minority SSP(S) government, led by Sanchaman Limboo, currently Chief Minister, was formed on 18 May and is currently in power. Elections to the Legislative Assembly are due before the end of the year.

SILENCING THE OPPOSITION

There have been persistent allegations that acts of peaceful political opposition to previous governments in Sikkim often resulted in imprisonment and sometimes torture. Amnesty International has received reports of two government opponents alleged to have died as a result of torture in police custody in the state, but the perpetrators have yet to be brought to justice.

In February 1988, **Dharma Dutta Sharma**, a local Congress(I) activist, was allegedly beaten to death by Sikkim police. Police are said to have attempted to dump his body in West Bengal but were reportedly discovered by Communist Party of India (CPI (M)) activists. Traces of Dharma Dutta Sharma's possessions were recovered but his body has never been found. According to one report, a farmer was hired to cut the body into pieces and throw it in the river which divides Sikkim and West Bengal. Two police officials were suspended, a chargesheet was filed and they were arrested but subsequently granted bail. It is reported that the First Information Report, filed at Naya Bazar Police Station in West Sikkim, charged the two police officials with abduction and murder. The Government of Sikkim, in response to Amnesty International's Report, India: Torture, rape and death in custody, published in June 1992, which described the case of Dharma Dutta Sharma, stated that there had been delay in legal proceedings due to the difficulty in getting witnesses to attend hearings. Although the state government has said that it "has not spared any efforts to bring the perpetrator of this crime to book", Amnesty International is not aware that there have been further hearings in the case for more than six years. No compensation is known to have been awarded to the family of Dharma Dutta Sharma.

On 8 December 1993, **Dhan Raj Tamang**, a 28-year-old SDF party worker from West Sikkim died, also allegedly due to torture, in police custody. He was arrested by police on 7 December 1993 and allegedly beaten throughout the night of 7 December and was released from custody the next day on the point of death. He collapsed on reaching the home of a SDF party activist and was certified dead by doctors when they reached the house. A post mortem report allegedly listed "grievous injuries". One police officer has reportedly been arrested in connection with the death of Dhan Raj Tamang and the case is presently being heard in the Additional Magistrate's Court, West Sikkim. The outcome is not known. No compensation is known to have been awarded to the family of Dhan Raj Tamang.

Other political opponents were reportedly beaten in police stations or arbitrarily arrested by Sikkim police even outside the state.

On 24 October 1992, **Duk Nath Nepal**, a member of the CPI(M)'s Sikkim State Organising Committee was taken to a police station and beaten for four hours. (The CPI (M), which rules neighbouring West Bengal, has reportedly sought to build up a power base in the state but has failed so far to obtain a seat in the state's assembly). Duk Nath Nepal was not shown a warrant for his arrest. On the same night, Hem Lall Bhandari, a lawyer and opposition activist (see below), was taken into custody and beaten, impairing his hearing,

causing pains in his stomach and legs and his face to swell. Both men were paraded through Gangtok market-place with their hands tied behind their backs and taken to the Additional District Collector who remanded them to police custody. They were granted bail in November 1992.

In November 1991, **Rajinder Baid**, editor of a Hindi daily, Janpath Samachar, was arrested in West Bengal by Sikkim Police in plainclothes and illegally detained and beaten. The West Bengal Government was not informed about his arrest. Rajinder Baid was reportedly detained on charges of sedition but was not produced before a magistrate or allowed to contact his family or his lawyer. Nor was he allowed medical treatment for his injuries. He was produced on the orders of the Supreme Court after a *habeas corpus* petition was filed by his son and was brought to Delhi. The Supreme Court ordered that he be handed over to Delhi police and admitted to All India Institute of Medical Science for treatment at the state's expense. The Advocate General of Sikkim told the Supreme Court that plainclothes policemen had taken away the editor specifically "for printing and circulating a seditious pamphlet in a foul language". However, the Court ruled that there had been nothing seditious in the article mentioned in the First Information Report of the police.

Hem Lal Bhandari, then a practising Sikkimese lawyer resident in Bombay, had first been arrested in Bombay on 29 September 1987. The state government had accused him of participating in a campaign criticising the merger of Sikkim with India. He was kept in a Bombay police station and moved to Delhi and released after about a week, on bail. The Bombay High Court held his detention, *prima facie*, illegal because no grounds for his detention under the National Security Act were given when he was ordered to be detained. The Supreme Court also quashed his detention because the government had failed to provide grounds for his detention under the Act within the five day period specified by law, the court ruling that the legal provision "is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention."

AMNESTY INTERNATIONAL'S CONCERNS

Amnesty International is concerned at persistent reports of arbitrary detention, torture and ill-treatment of opposition politicians in Sikkim, of which the illegal detention and torture of Biraj Adhikari in June 1993 is a detailed example.

◆ Amnesty International is concerned that there has not been an independent and impartial inquiry into the torture of Biraj Adhikari. The organization is also concerned that compensation has not been granted to him, despite the fact that he suffers long-term if not permanent disability, and that those responsible for torturing him or ordering that he be tortured have not been brought to justice.

◆ Amnesty International is also concerned at the death of Dhan Raj Tamang in December 1993, allegedly due to torture in police custody. The organization believes that a fully independent and impartial inquiry should be held into his death and that compensation should be paid to his relatives.

◆ Amnesty International is furthermore concerned at the lack of progress in the trial of those charged in connection with the death of Dharna Dutta Sharma in February 1988 apparently in police custody and that those responsible have not been brought to justice.

Amnesty International hopes that the Government of India's repeatedly stated commitment to prosecute members of the security forces responsible for human rights violations will be put into effect in the state of Sikkim. The organization has been concerned for many years at the lack of political will shown by the authorities in many parts of India to conduct thorough and independent investigations into human rights violations, prosecute and punish those found responsible and compensate the victims or their families. For example, in March 1994, Amnesty International published a document which reported that nearly 16 years after Archana Guha, a school headmistress from West Bengal, was tortured, those accused of doing so had still not been brought to justice (see India: *Archana Guha - 16 years awaiting justice: the lack of speedy and effective redress mechanisms for torture victims*, AI index: ASA 20/08/94 of March 1994). She is permanently disabled as a result of the torture she suffered.

Although senior government officials have repeatedly condemned custodial violence, reports suggest that torture remains a pervasive and daily routine in every one of India's 25 states. In March 1992, Amnesty International called on the government to implement a ten point program for the prevention of torture in India but this has not happened. The government has announced plans to strengthen legal safeguards to protect persons held in police custody from torture. However, no progress has been made to implement legal reforms, put before parliament in May this year, which the government has been discussing since September 1992, and some of which would substantially strengthen the protection of detainees in custody.

Amnesty International welcomes reports that in December 1993, the Sikkim Government constituted a cell comprising the Home Secretary, and the Director General of Police to look into complaints of human rights violations in the state. This body should take prompt and effective measures to impartially investigate all reported allegations of human rights violations in the state. It should assist in ensuring that prompt and adequate redress is provided to victims of reported human rights violations in Sikkim, including those described in this report.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

To the Government of Sikkim:

- ◆ Amnesty International urges the government to immediately order a full, independent and impartial inquiry into allegations of the torture of Biraj Adhikari. It should take steps to ensure that those allegedly involved are suspended pending the inquiry and, if evidence is found against the perpetrators, that they are promptly arrested and brought to justice and that Biraj Adhikari is granted prompt and adequate compensation;
- ◆ Amnesty International urges the government to immediately order an independent and impartial inquiry into the circumstances surrounding the death, reportedly from police torture, of Dhan Raj Tamang and to take steps to ensure that the police allegedly involved are suspended pending the inquiry, that those found to be responsible are promptly brought to justice and that his relatives are granted prompt and adequate compensation;
- ◆ Amnesty International urges that all necessary steps be taken to minimize the delays in bringing to trial members of the security forces suspected of committing human rights violations in Sikkim. It particularly urges the government to ensure that the trial of those charged in connection with the death of Dharma Dutta Sharma proceeds promptly and that prompt and adequate compensation is granted to his relatives;
- ◆ Amnesty International urges the government to establish an independent machinery to receive and effectively act upon complaints about human rights violations in the state of Sikkim.

To the central government:

- ◆ Amnesty International urges the government to review and implement Amnesty International's ten point program for the prevention of torture published in March 1992.