

Independent People's Tribunal

on

Human Rights Violations – torture, custodial killings, disappearances & rapes in Kashmir

Organised by Human Rights Law Network & ANHAD, Feb 20-21, 2010

Srinagar

February 21, 2010:

An interim report by the jury

We have been hearing about large-scale violations of human rights of the people of this state. We had testimonies from about 37 victims and their kin. We have also had testimonies/statements from journalists and members of civil society.

We went through the testimonies and evidence presented before us and presenting our preliminary observations in this interim report.

One thing is clear to us that there is a sense of suffering and injustice writ large on the face of everyone who made their statements before us. We have made it clear that we are not in any way linked with the official institutions or authority, and yet so many of them gave vent to their feelings in their physical and emotional state, which only strengthens our opinion that there is substantial truth in those allegations.

The testimonies are spread over a canvas of various violations of human rights for a period of two decades, and it is clear that by way of relief and remedies what government has done amounts to a meagre little. It is here the state has to answer in large measure for all indifferent attitudes, deficiencies and neglect.

It cannot be said that the Armed Forces (Special Powers) Act, 1958 has been in force for nearly two decades in this state. This Act has been misused wherever it has been made applicable (Manipur, for instance). Therefore, if we take this situation into account, this draconian law has undoubtedly facilitated grave human rights abuses including “disappearances” by the very nature of the power bestowed on the armed forces.

Any abuse of power by the armed forces is a criminal offence. It should promptly be investigated by an agency independent of the security forces, followed by impartial prosecution. The testimonies of all witnesses clearly establish that there has been no satisfactory investigation by any agency or authority in the state, leave alone any prosecution. On the other hand, we get an impression that all institutions of the State, the executive, the legislature, the human rights

commission, and to a certain extent even the judiciary have failed to do justice to the victims of “disappearances” and other human rights violations.

The UN General Assembly in 2006 has unanimously adopted the International Convention for the Protection of all Persons from Enforced Disappearances. Earlier, there was the UN Declaration to the above effect (December 1992). Article 2 of the Declaration says, “the prohibition” of “disappearances” is absolute and no State can find an excuse. Article 7 says, “no circumstances, whether a threat of war, internal political instability, or any other public emergency may be invoked to justify” these acts of violation. Hence, it is not open to the State to resort to enforced disappearances which would include all custodial deaths on the ground of any threat to internal security or external safety and stability. It is here the State’s liability becomes absolute, and we should have no hesitation in making these observations.

We have the testimony of Ms Parveena Ahangar, who is the Chairperson of the Association of Parents of Disappeared Persons (APDP), which clearly establishes that 8,000-10,000 persons have disappeared since 1989. Incidentally, we may point out that during the period between 1984-1994 during the agitation for Khalistan in Punjab, there had been similar disappearances, and recently a report based on the state’s Human Rights Commission, shows that over 2,059 bodies were identified in Amritsar district and still over 1,000 bodies are lying there in the district, and there are a large number of skeletons discovered in other districts as well. Moreover, internationally, disappearances and “custodial deaths” fall within the definition of “torture”. Prohibition of torture and ill treatment is underlined by its non-negotiable status in human rights laws. No State can justify such an act.

Observations:

1) Various instances of the security forces’ crimes have been brought to our notice. These are violations against the Geneva Conventions, the Indian Penal Code and the civil law of the country. The police/paramilitary and surrendered militants have flouted Indian laws and the rules of war. As a consequence, large numbers of civilians have died, including women and children. Women, including young girls, have been harassed, raped, and gang raped, and children in their early teens shot.

2) The judicial machinery has barely functioned. Despite the stern report of the Bijbihara magisterial enquiry, recommending the severest action against the BSF officers and Jawans, nothing was done. A number of cases filed in the district and high courts have been pending for years, and there are numerous cases of lack of judicial action taken in terms of awarding compensation and instructing the security forces to produce the disappeared and so forth.

The tribunal heard repeated examples of FIRs filed by the families that were distorted by the police to accuse the victims. Counter FIRs have also been lodged by the police. Under the pretext of translating FIRs from Urdu into English, the police have completely distorted the complaints made in the original FIR. One such case with evidence was produced before the Tribunal.

The State Human Rights Commission has no power to investigate paramilitary and military excesses, though it does have the power to request investigation reports of the enquiry by the paramilitary and the military forces. The SHRC seems to have failed to exercise its powers proactively to provide justice to the victims. The general trend is that the state as well as the central government ignores the recommendations made by this Commission.

3) The worst case of mass rape was heard by the women jurists from the testimonies by women from Kunan Poshpora, who talked about the incident dated February 22, 1991, when the army came to their village, isolated the men, and gang-raped at least 23 women, as young as 14 and as old as a 100 year-old. The rape took place in front of their young children. There was brutal impact on their bodies and since then, they have suffered physical and mental trauma for years. They have been socially discriminated and ostracised, landing them into a severe traumatic state of mind that has been permanent. This is the worst of the human rights violations.

4) Throughout the conflict, people have been maimed and disabled due to the indiscriminate firing of security forces during even non-violent protests. People have also been disabled during interrogations where torture was inflicted. We heard the testimonies from Bijbehara where forces had indiscriminately opened fire on peaceful demonstrators in 1993. Many injured persons have been disabled for life and have suffered mentally, physically, and financially. Hardly any steps have been taken for their rehabilitation.

The testimonies we heard of disabled persons revealed that they were totally shocked and shattered. The disabled deposed before us to say that they could bear with the aftermath of physical injury, but not with the mental pain, agony, and trauma that make them feel that they die several deaths everyday, rather than living even once.

Recommendations:

The controversial Armed Forces Special Powers Act should be withdrawn from Jammu & Kashmir. Even the Public Safety Act and other anti-terror laws should correspond to the provisions of the International Covenant on Civil and Political Rights which India has ratified.

It should be noted that India has been repeatedly criticised in the UN Human Rights Committee for the existence of the Armed Forces Special Powers Act, which violates several articles of the ICCPR.

Keeping in view the large concentration of military and paramilitary forces in the state of Jammu & Kashmir, which is disproportionate to the civilian population and is also making civil administration ineffective in many matters, the Government of India should take immediate steps to minimise the number of these forces in order to bring relief to the civilian population.

We recommend the establishment of a special judicial authority making an independent and thorough inquiry into all allegations of human rights violations, including disappearances,

custodial killings, rape, torture, including torture of prisoners, fake encounters, and all other cases related to excesses by security forces.

Every case of killing by police and security forces in situations like protests, demonstrations, riots, etc. should be followed by a judicial inquiry into the police/security forces firing/actions, followed by proper, time-bound administrative action. It is made clear that the police have no license to kill anyone in any situation, unless they can justify this action under Section 100 of the IPC, which has to be done in a judicial procedure.

Provide proper rehabilitation to families of deceased, injured, and traumatised victims, especially the raped.

Compensation as interim relief should be arranged promptly. Compensation should be adequate and purposeful. Compensation should be for both injury to person as well as for damage to property, i.e. houses, etc.

The state should immediately establish fast track courts for the purpose of trying the large number of pending cases.

Both state as well as central governments should take immediate steps to address the sufferings of detainees who are languishing in various jails and interrogation centres in and outside the state of Jammu and Kashmir and have been complaining of torture and inhuman treatment inside the prisons.

The state should provide witness protection since many of the witnesses are being threatened.

Jury members

Justice S Suresh, former Judge, Bombay High Court

Justice Malay Sengupta, former CGI, Sikkim High Court

Justice A Baruah, former Judge, Calcutta High Court

Professor Kamal Mitra Chenoy, Jawaharlal Nehru University, Delhi

Dr. Nusrat Andrabi, former Principal, Government Women's College, Srinagar

Professor Anuradha Chinoy, Jawaharlal Nehru University, Delhi

Shujaat Bukhari, senior journalist, Srinagar