

# **THE CRACKDOWN IN KASHMIR**

## **Torture of Detainees and Assaults on the Medical Community**

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**Physicians for Human Rights  
& Asia Watch**

**A Division of Human Rights Watch**

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## **Acknowledgments**

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## I. INTRODUCTION

Since early 1990, the north Indian state of Jammu and Kashmir has been the site of a vicious conflict between Indian security forces and Muslim insurgents demanding independence or accession to Pakistan. As the conflict enters its fourth year, Indian troops have increasingly targeted civilians in an effort to crush support for the guerrilla forces. Summary executions, rape, torture and deliberate assaults on health care workers have been part of this campaign, which has largely gone unnoticed by the outside world. In October 1992, Asia Watch and Physicians for Human Rights (PHR) sent a delegation to Kashmir to document human rights abuses and violations of the laws of war by Indian security forces. They also investigated incidents of abuse by armed militant groups who have also attacked civilians.

The conflict in Kashmir, which has its origins in the state's disputed accession to India in 1947, escalated sharply in January 1990 when government troops launched a brutal crackdown on militant groups in the predominantly Muslim Kashmir valley. From the outset, that crackdown was marked by widespread human rights violations against suspected militants and civilians. At the same time, militant groups stepped up their attacks, carrying out kidnappings and assassinations of government officials, civil servants and suspected informers and engaging in sabotage and bombings. In the three years since the conflict began, more than 6,000 persons have been killed in Kashmir by all sides and some 15,000 detained. In 1992 alone, some 2,000 were reported to have been killed -- most of them civilians.<sup>1</sup> Despite the escalation of violence, militant groups continue to command popular support throughout the valley, not necessarily for ideological reasons but because they are seen to represent the only alternative to the government's repressive policies and widespread abuses by the security forces.

In August 1992, Indian government forces stepped up their offensive against the militants by launching Operation Tiger, a campaign of surprise raids designed to capture and kill suspected militants and terrorize civilian sympathizers. Summary executions of detainees and indiscriminate attacks on civilians escalated during the operation, and during another which followed, called Operation Shiva. As winter approached, the security forces also engaged in frequent arson attacks, burning houses, shops and entire neighborhoods.

Despite the intensity of the conflict, the state's remoteness has helped insulate it from outside scrutiny. To the extent that observers have voiced concern about Kashmir, they have tended to focus on the conflict's role in increasing the risk of a nuclear confrontation between

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<sup>1</sup> No precise figure of the number killed is available. The U.S. State Department Country Report for 1990 cites press figures of 1,214 civilians, 189 security forces and 890 militants killed. For 1991, the figures were 900 civilians, 1,305 alleged militants and 155 security forces. For 1992, the figures were 1,106 civilians and 982 militants. However, the figures cannot be considered accurate because official sources cited in such press accounts often describe civilians killed by the security forces as militants. As the *Country Report* for 1992 notes, many of the alleged militants "died in encounters with security forces or under other suspicious circumstances." See U.S. Department of State, *Country Reports on Human Rights Practices for 1992*, January 1993.

India and Pakistan. Increasingly, however, reports of human rights abuses by Indian forces in the state have caught the attention of the foreign press and the international community.<sup>2</sup>

The PHR/Asia Watch team which visited Kashmir in October 1992 consisted of Patricia Gossman, research associate for Asia Watch, and Vincent Iacopino, M.D., a consultant to Physicians for Human Rights (PHR). The team traveled throughout the Kashmir valley from Srinagar to Handwara and Sopore in the northwest, and Anantnag and Shopian in the southeast. They interviewed 45 health professionals, including doctors, residents, medical students, ambulance drivers and other medical staff. Dr. Iacopino inspected six health facilities. During visits to three of the major hospitals in Srinagar, he interviewed, examined and reviewed medical documents of twenty patients who had been tortured or had suffered injuries as a result of indiscriminate shootings or assaults by government forces.

The Asia Watch/PHR team also interviewed local journalists, teachers, human rights activists and lawyers, and reviewed *habeas corpus* petitions, High Court judgements, and medical documents on hundreds of incidents of abuse by the security forces. In most cases investigated by the team, testimony was corroborated by multiple witnesses and physical evidence. While many of those interviewed had sympathies with one side or the other in the conflict, the findings contained in this report are based on PHR and Asia Watch's independent analysis of the testimony of over one hundred witnesses, medical examinations and other documentation of the incidents described.

This report is the first of three based on the team's investigations. It focuses on two issues: torture of detainees and interference with the provision of care to the sick and wounded. Health professionals in Kashmir have frequently been detained, assaulted and harassed while attempting to perform their duties. In some of the worst incidents of abuse, the security forces have deliberately prevented ambulance drivers from transporting injured persons to hospitals for emergency care. In several cases investigated by PHR and Asia Watch, security forces beat, shot or strafed ambulance drivers who were attempting to provide care to the wounded, and shot dead one driver while he was on duty. In other cases, security forces detained injured persons for prolonged periods before allowing them to seek medical care. In violation of international humanitarian law, the security forces themselves rarely provided medical assistance to the wounded.<sup>3</sup>

Security forces have also repeatedly raided hospitals and other medical facilities, even pediatric and obstetric hospitals. During these raids, the security personnel have forced doctors at gunpoint to identify recent trauma patients. Because of their injuries, the security forces have suspected these patients of militant activity. Injured patients have been arrested from hospitals, in

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<sup>2</sup> In late 1990 Asia Watch visited Kashmir and documented abuses government and militant forces. The resulting report, *Kashmir Under Siege*, was published in May 1991.

<sup>3</sup> See Chapter III for applicable international law.

some cases after being disconnected from intravenous medications or other treatments. The security forces have also discharged their weapons within hospital grounds and inside hospitals, and have entered operating theaters and destroyed or damaged medical supplies, transports and equipment. Doctors and other medical staff frequently have been threatened, beaten and detained. Several have been shot dead while on duty; others have been tortured.

Many of those seeking medical care are released detainees who have been subjected to torture. In fact, virtually everyone taken into custody by the security forces in Kashmir is tortured. Torture is practiced to coerce detainees to reveal information about suspected militants or to confess to militant activity. It is also used to punish detainees who are believed to support or sympathize with the militants and to create a climate of political repression. The practice of torture is facilitated by the fact that detainees are generally held in temporary detention centers, controlled by the various security forces, without access to the courts, relatives or medical care.

Methods of torture include severe beatings, electric shock, suspension by the feet or hands, stretching the legs apart, burning with heated objects and sexual molestation. One common form of torture involves crushing the leg muscles with a heavy wooden roller.<sup>4</sup> This practice results in the release of toxins from the damaged muscles that may cause acute renal (kidney) failure. This report documents a number of such cases which required dialysis. Since 1990, doctors in Kashmir have documented 37 cases of torture-related acute renal failure; in three cases the victims died.

The strict night curfew imposed on the towns and villages of the Kashmir valley has also seriously impaired health services. Because the neutrality of medical transport<sup>5</sup> is not respected by government security forces, ambulances cannot travel at night. Thus, physicians cannot attend to medical emergencies that occur after dark, including cases unrelated to the conflict, and individuals cases may undergo life-threatening delays before receiving medical care. During raids, hospitals are not accessible to patients in need of emergency care.

Attacks by armed militant groups<sup>6</sup> on members of the Hindu community in Kashmir since 1990 and attacks on those Muslims who are seen as opponents of the militants, drove many professionals, including medical personnel, to flee Kashmir.<sup>7</sup> Their departure has had a

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<sup>4</sup> These techniques, in particular the stretching of the legs and the roller treatment, are used by police and security forces throughout India, and have been widely documented in Punjab.

<sup>5</sup>For a definition of medical neutrality, please see Chapters III and IV.

<sup>6</sup>There are several dominant groups fighting Indian troops in Kashmir, and perhaps as many as one hundred smaller ones. The two most prominent are the Jammu and Kashmir Liberation Front, which is considered the most popular and which supports independence, and the Hezb-ul Mujahidin, which is reportedly the best armed and which supports accession to Pakistan.

<sup>7</sup>In 1990, militant groups killed and threatened many Hindu professionals, including medical workers, because they were seen as influential Hindus. They have also attacked other health professionals, including Muslims, suspected of

devastating effect on medical services in the state. In addition, militant groups have assassinated numerous civilians suspected of being informers. These have included health professionals suspected of giving information on injured militants to officials. These killings constitute grave violations of international law.

Since the escalation of the conflict in 1990, most ordinary health services have ceased to operate or have been severely curtailed. Rural immunization, family planning and maternal and child health care programs have nearly come to a standstill because the necessary road travel for health workers has become too dangerous. Even health programs in larger cities have been disrupted by frequent raids and curfews. Attrition of health professionals, particularly in rural areas, has left many primary health care centers, clinics and district hospitals virtually unable to perform ordinary health services. Their loss, together with the increase in traumatic injuries resulting from the conflict, has seriously overburdened hospitals in Srinagar, which are also short-staffed, overcrowded and experiencing serious shortages of essential supplies.

By focusing on the medical profession in this first report, Asia Watch and Physicians for Human Rights hope to draw the attention of the international community to the urgency of the medical crisis in Kashmir -- a crisis due in large part to the failure of government forces to abide by international law. This report concludes with our recommendations for action to be taken by the government of Prime Minister Rao to address the medical crisis in Kashmir. The most important of these is to grant access to the International Committee of the Red Cross (ICRC), a neutral humanitarian organization which operates confidentially, to assist in providing medical care and other humanitarian services in Kashmir.

### **The Response of the Government of India**

Before this report was published, Asia Watch and PHR provided the government of India with an advance copy of our findings and requested an official response. That response was received on February 9, 1993. In publishing it, Asia Watch and PHR hope to focus attention on the very grave human rights concerns which we believe lie at the heart of the crisis in Kashmir. In its response to this report, as in other official statements, the government of India has attempted to minimize these concerns and dismiss reports on widespread abuses by its security forces as "biased." Asia Watch and PHR have summarized the government's comments, together with a statement of the reasons why we believe such responses fail to justify the actions of government security forces.<sup>8</sup>

The government's response begins by questioning our use of the terms "armed conflict"

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being informers. For more on these and other abuses by militant groups, see Chapter VI.

<sup>8</sup> For the complete text of the Government of India's response to the PHR/Asia Watch report, please see Appendix B. The Government of India also provided a number of annexures, including press clippings, statistics on killings, arson and other acts of violence which, in consideration of space, are not included in this report.



and "medical neutrality" in the context of the conditions prevailing in Kashmir, "*because terms like 'armed conflict' and 'medical neutrality' are not only deceptive but could give actual respectability to terrorist organisations and their activities. ... Since 1989, what the Indian State of Jammu and Kashmir has been experiencing is an externally aided "Proxy War" of massive dimensions. The parties to this are not two opposing armies, but the forces of a motley group comprising over 100 terrorist outfits and pernicious religious extremism and propaganda, on the one hand, and the law enforcement Agencies of the State, which has [sic] desisted from reacting to this violent aggression and threat to its very sovereignty and integrity, by anything like a war but, through civilian law and order methods.*"(Government of India (GOI) response, p.1)

Asia Watch and PHR believe that the Kashmir situation constitutes "an armed conflict not of an international character" to which both international human rights and international humanitarian law apply. However, even if the security forces in Kashmir are involved in what the government describes as "*civilian law and order methods*", that does not justify the methods that have been used in Kashmir, which have included torture, rape, and extrajudicial executions. These abuses violate rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR), to which India is a party. By attempting to excuse such gross violations as legitimate means of "law enforcement", the government has signalled that these abuses are condoned as a matter of policy in Kashmir.

Moreover, international humanitarian law applies not just to declared wars but to any armed conflict of this scale, including an internal one. Indeed, the severity of the Kashmir conflict is underscored by the government's characterization of it as a "proxy war." The laws of war in question are the Geneva Conventions -- which India has ratified and is obligated to uphold -- in particular, Common Article 3, which governs the conduct of government forces and armed insurgents. The primary purpose of Common Article 3 is to insure humane treatment of those persons who do not or who no longer participate actively in hostilities, including the sick and wounded, and those taken into custody.<sup>9</sup> Common Article 3 explicitly states that the application of its provisions "shall not affect the legal status of the Parties to the conflict," and thus does not confer legitimacy on militant groups. Moreover, medical neutrality, as defined by international law and codes of medical ethics, provides that medical personnel can render medical care to populations on all sides of the conflict.

The government cites abuses by militant organizations, stating that, "*The blatant misuse of religion has inspired acts of gruesome brutality on the minority population in the Kashmir Valley, leading to the exodus of nearly two hundred and fifty thousand innocent people ... abduction, rape, torture, extortion, looting and killing ...*"(GOI response, p.2)

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<sup>9</sup> The fundamental principle that the wounded and sick should be respected and protected is part of customary international law. Protocol II to the Geneva Conventions provides further authoritative guidance for implementing the provisions of Common Article 3 by forbidding attacks against medical personnel, units and transports, unless they are used to commit hostile acts, outside their humanitarian function.

In this report, PHR and Asia Watch have documented such abuses, including indiscriminate attacks and targeted assassinations of members of minority groups. Asia Watch and PHR hold these militant groups accountable under international law for these violations. We have also discussed Pakistan's role in arming or providing shelter to militant groups in Kashmir. PHR and Asia Watch fully recognize India's right to prosecute persons responsible for the murder, rape and other crimes so long as it affords them the rights of due process. However, the Indian government cannot excuse itself from abiding by international human rights and humanitarian law on the grounds that the militants have also committed abuses.

The government condemns the "*willing gullibility of the authors*" (GOI response, p. 5) and the questions the credibility of those interviewed by PHR and Asia Watch. As noted above, Asia Watch and PHR are aware that many of those interviewed had sympathies with one side or the other in the conflict. However, the findings contained in this report are based on our independent analysis of the testimony of over one hundred witnesses, medical examinations and other physical evidence of the incidents described. Asia Watch and PHR are aware that many witnesses to abuse by either security forces or militants may have a motive to fabricate or exaggerate reports of abuse. For this reason, the investigators took a variety of steps to insure the reliability and honesty of the accounts they were given. The investigators sought out eyewitnesses to events, interviewed them individually, and probed them for details they were unlikely to have planned or coordinated in advance. In most cases, that testimony was corroborated separately by other witnesses. Whenever possible, the PHR/Asia Watch team also visited the sites of the incidents and asked witnesses to re-enact the events they had described, again with the goal of probing their accounts and clarifying details. On the strength and consistency of this testimony, and the irrefutable medical and other physical evidence we gathered, PHR and Asia Watch have determined that the Indian security forces have committed widespread and systematic human rights violations in Kashmir.

The government also states that two incidents described in the report are fraudulent: the transfer of Judge Rizvi and a crackdown in 1990 which lasted 17 days. However, the government has not provided any information about the circumstances of Judge Rizvi's departure, or its version of the length of the reported crackdown (see GOI response, p. 5).

The government states that "*terrorists may have forced themselves into hospitals to use them as sanctuaries ... This has been made possible both by connivance on the part of the doctors and medical staff and the sheer fear of the gun ...*" (GOI response, p.5) The government also lists medical personnel killed by militants. In the report, Asia Watch and PHR have documented killings by militants of medical workers, including health professionals suspected of giving information on injured militants to officials. As we have stated, these abuses represent serious violations of international law. We have also stated that if any militants who have not required medical treatment have used hospitals as sanctuaries, thereby violating the neutrality of the hospital and endangering the lives and security of civilians in the hospitals, they have committed serious violations of international humanitarian law.

The government states that, "*terrorists who have sustained injuries in counter-insurgency operations have surreptitiously got themselves admitted into some hospitals, and the staff, mostly out of fear and sometimes due to connivance, have not reported such cases to the police, which must be done under the law in all medico-legal cases ... Against this background occasional searches, based on specific information, have had to be made in the premises of certain medical institutions. It is also necessary in some cases, where terrorists are suspected to feign injuries, to have bandages etc. removed for verification. However, at no stage have any patients, reported to be critically ill, been subjected to such examination, and also in no case, at any stage, have life-support systems been disconnected as alleged in this report.*" (GOI response, p.7)

According to the information obtained by PHR and Asia Watch, when security forces conduct search operations in hospitals in Kashmir, they do not do so on the basis of specific information. Rather, they routinely conduct searches to look for any recently admitted injured patients whom, because of their wounds, they suspect of being militants. The government has admitted that security forces may "*remove bandages*" when "*terrorists are suspected to feign injuries.*" There is no evidence that militants have done this, particularly since hospitals are unlikely places for militants to seek refuge unless they are genuinely wounded, given the frequency of government sweeps. Removing bandages or otherwise interfering with medical treatments is in clear violation of international human rights and humanitarian law, both of which prohibit any cruel and inhumane treatment, including abuses against the sick and wounded. In fact, because searches of hospitals have become so abusive, many injured persons are too afraid to seek medical care.

International humanitarian law does not preclude searches of hospitals, but it does prohibit the security forces from engaging in abuses while conducting them. If the security forces have reason to believe that someone who has committed a crime is receiving treatment in a hospital, they may search for and arrest the person, but only if they do so without endangering the patient's health. The authorities may also require that a guard be posted for the duration of the patient's treatment.

While such measures are not precluded under international humanitarian law, international codes of medical ethics are equally clear about the role of physicians and other health professionals when confronted with acts that may potentially harm their patients. Article 1 of the Declaration of Tokyo, adopted by the World Medical Association in 1975, states: "The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife." Article 4 provides: "A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose."

Therefore, those physicians who choose not to divulge information about their patients to authorities (1) solely out of concern for their patient's safety and or (2) for no other reason, in the current context of widespread human rights abuses in Kashmir, are, in the opinion of PHR and Asia Watch, upholding their professional duties and responsibilities as physicians.

While the Indian authorities may prosecute health professionals for failing to provide information about persons in their care whom they believe may have committed crimes, they cannot physically abuse them for failing to do so. In this report, PHR and Asia Watch have documented numerous cases of doctors and other medical workers who have been arrested, beaten and tortured to reveal information about suspected militants. PHR and Asia Watch also documented a number of cases where patients were removed from life-support systems or while in critical condition. Such abuse constitutes cruel and inhuman and degrading treatment, and as such violates fundamental human rights guaranteed under the ICCPR.

In one such case described on p. 16 of our report, A., an eighteen-year-old man with a gunshot wound to the leg, was removed from the operating room while under anesthesia for an operation. The government, after acknowledging (pg. 2 of GOI response attachment) that the security forces did remove the patient from the hospital, has attempted to justify this abuse by stating that the patient, *"Riaz Ahmed Wani, a Pakistan-trained militant of the 'Al-Umar' outfit, was being treated clandestinely by the medical staff in the hospital. He was however, handed over to the Police Control Room, Srinagar, who in turn got him re-admitted to the hospital."* This abuse of a patient undergoing medical treatment represents a serious violation of human rights and international humanitarian law.

Our report describes a number of incidents in which security forces opened fire inside hospitals, apparently to intimidate the medical staff to identify suspected militants. Such actions, which needlessly endanger civilians, violate international law. The government has not provided any explanation for these incidents. The government lists one incident in which they claim that *"an exchange of fire"* took place when *"terrorists" fired on security forces "from the premises of the SKIMS, Soura, Srinagar."*(GOI response, p. 6) Without further information, PHR and Asia Watch are unable to comment on this incident. In many cases, however, the security forces routinely resort to lethal force even when circumstances do not warrant such action. Two security laws currently in force in Kashmir, the Armed Forces (Jammu and Kashmir) Special Powers Act and the Jammu and Kashmir Disturbed Areas Act, explicitly permit the use of lethal force against people who are not combatants and who do not pose a threat to lives of the security forces. These laws also provide the security forces with immunity from prosecution for their actions, thus effectively granting them a license to kill even such non-combatants.

Torture, which is widely practiced by Indian security forces in Kashmir, is a grave violation of internationally recognized human rights. The Indian government has provided no response to the incidents of torture documented in the report, except to say that in one case described, they were unable to identify the area or the officers and so were unable to provide any details (pg.4 of GOI response attachment). That incident involved the torture of three young men,

all of whom required medical treatment for acute renal failure which resulted from beatings and the "roller" treatment. There have been many such cases of torture-induced acute renal failure documented in Kashmir, as well as numerous cases of electric shock, beatings and other forms of torture. The Indian authorities have never indicated that they have taken action to put a stop to torture in Kashmir. Indeed, by permitting the security forces to hold detainees in undisclosed interrogation centers where they have no access to lawyers and family members, the authorities have signalled that the practice of torture is condoned. The authorities have never made public any action taken against security personnel responsible for torture. To Asia Watch and PHR's knowledge, not a single security officer has been held criminally liable for any incident of torture in Kashmir.

On the general state of health care delivery, immunization programs and other community health services, the government states that, "*it is not as if the entire health net-work in the State of the Valley, has collapsed. ... hospitals in the city of Srinagar, as well as in the rural areas continue to provide effective health services to the needy.*" (GOI response, p. 9) On the basis of our on-site inspections of six hospitals and clinics, and interviews with 45 health professionals, PHR and Asia Watch believe there is no question that medical services in Kashmir have been seriously impaired by the conflict. As we have stated in the report, responsibility for the crisis rests with both the government and the militants.

Although the government states that additional doctors and other medical staff have been appointed to positions in hospitals in Kashmir, the fact remains that hospitals remain seriously understaffed for the number of patients. The government acknowledges that the immunization program has suffered because of the violence, although it has not been shut down. In our report, we have stated that the program has been drastically reduced in Srinagar, and suspended in some rural areas of the valley. The government cites efforts by militants to disrupt the family planning program. PHR and Asia Watch condemn any attacks by militant groups on health workers or participants involved in the program. As with other militant abuses against health care workers documented in the report, PHR and Asia Watch consider such actions to be violations of international law.

Asia Watch and PHR have not questioned the legality of the curfew per se, but we have condemned actions by security personnel which have targeted clearly identified medical personnel and transports and have deliberately prevented the evacuation of the wounded. The government has also stated that while they believe the situation of medical supplies to be "*reasonably satisfactory*" and that, "*if necessary, additional funds will also be provided to augment the supplies.*" (GOI response, p. 10) It also states that "*efforts will be made*" to ensure that needed medical equipment is repaired. Asia Watch and PHR would welcome these measures. The government also states that the army has launched a "*civil action programme*" (GOI response, p. 12) which has included medical camps in which patients have been treated for eye ailments and dental work. Such programs are certainly welcome, and appear to signal the government's tacit acknowledgement of that ordinary civilian health services have been devastated by the conflict.

Finally, the government has stated that "*Wherever there is transgression, action has been taken. By now, over the last two years, action has been taken against over 100 personnel of the security forces, and this has involved punishments including imprisonment ranging from less than a month to seven years and various forms of departmental action including suspension pending enquiry in a number of cases.*" (GOI response,p. 14) While such punishments would be a sign of progress, the Indian government has never responded to queries from Asia Watch and PHR as to the specifics regarding the nature of the abuses, the identity and rank of those responsible for abuses, and what punishments have been ordered in any cases. The only prosecution that has been made public is that of two army soldiers convicted for the rape of a Canadian tourist in October 1990. At this writing, both soldiers have yet to begin their prison terms and remain in barracks in Kashmir while an appeal is pending. The government's failure to properly investigate numerous incidents of abuse and hold those responsible criminally liable has led the security forces to believe they can operate with impunity.

## II. HISTORICAL BACKGROUND

The origins of the conflict in Kashmir lie in the subcontinent's partition in 1947 which created the independent states of India and Pakistan. As a result of the partition, hundreds of nominally independent "princely states"<sup>10</sup> were absorbed into the two new nations. However, Kashmir's ruler, Maharaja Hari Singh, refused to accede to either nation, apparently in the hope that the state might be permitted to remain independent. An invasion by Pakistani tribesmen<sup>11</sup> in August and September 1947 and an uprising among Kashmiri Muslims in the state's western regions ultimately compelled the maharaja to seek the assistance of Prime Minister Nehru of India, who agreed to send troops only if Kashmir formally acceded to India. On October 27, 1947, the maharaja agreed to Kashmir's accession to India, on the condition that Kashmir be permitted to retain its own constitution.<sup>12</sup> Indian troops succeeded in halting the Pakistani forces, driving them back to the western third of the state, which then acceded to Pakistan as "Azad" (free) Kashmir.

At the time, British authorities stated that the question of Kashmir's accession should be settled by a plebiscite as soon as law and order was re-instated and the invading forces had left. But the plebiscite was never held. The Indian government argued first that the essential precondition to a plebiscite, the exit of Pakistani troops from "Azad Kashmir," had not been met, and later that the Kashmiri people had effectively ratified accession by voting in local elections and adopting a state constitution. United Nations intervention achieved a cease-fire on January 1, 1949.

Through the 1950s and 1960s, political discontent with the central government's attempts to control politics in the state grew. Pro-independence and pro-plebiscite activists were repeatedly jailed. In 1964 the first militant group, the Jammu and Kashmir Liberation Front (JKLF), was formed to fight for independence. On July 2, 1972, India and Pakistan signed the Simla Accord, under which both countries agreed to respect the cease-fire line and to resolve differences over Kashmir "by peaceful means" through negotiation and meetings to discuss "a final settlement." Since then, the Simla Accord has been the cornerstone of all bilateral discussions of the Kashmir issue.

In 1986 then Indian Prime Minister Rajiv Gandhi and Farooq Abdullah, Chief Minister of

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<sup>10</sup> These nominally independent states were ruled by Indian princes under the suzerainty of the British government. At the time of partition, they were officially free to accede to either Pakistan or India or remain independent.

<sup>11</sup> According to most reports, the forces included army soldiers and irregulars in civil dress.

<sup>12</sup> Instrument of Accession, clause 7. Thus Kashmir retained autonomy in all areas except defence, currency and foreign affairs. As a consequence of Kashmir's conditional accession, article 370 was incorporated in 1949 into the Indian constitution which provided *inter alia* that other articles of the constitution "may be extended to Kashmir ... only in 'consultation' with the state government if it pertains to matters regarding legislative power of Parliament, and with the 'concurrence' of the state government if it pertains to other matters."

Jammu and Kashmir, forged a new accord, which was widely criticized as a betrayal of Kashmiri interests. Charges of widespread corruption soon discredited Farooq Abdullah's National Conference party. A new opposition party, the Muslim United Front (MUF), which had the support of pro-independence activists, Islamic fundamentalists and many frustrated Kashmiri youth, was launched and contested the March 1987 polls for seats in the state assembly. Widespread irregularities in the vote count and mass arrests of MUF candidates in the election's aftermath caused a watershed in popular disillusionment with state politics and drove many to support emerging militant groups.

After the elections, militants of the JKLF and other groups -- many of whom claimed to receive arms and training in Pakistan -- grew bolder, detonating bombs at government buildings, buses and the houses of present and former state government officials, and enforcing a state-wide boycott of the November 1989 national parliamentary elections. One month later, JKLF militants abducted the daughter of Home Minister Mufti Mohammad Sayeed, then freed her when the government gave in to demands for the release of five detained militants. That event, together with a surge in popular protest against the state and central governments, led New Delhi to launch a massive crackdown on the militants. In response, the state government resigned in protest and governor's rule was declared on January 19, 1990.<sup>13</sup> In the weeks that followed, security forces opened fire on crowds of unarmed demonstrators, killing hundreds, and militants<sup>14</sup> intensified their attacks on the security forces. As protests, attacks and reprisals intensified over the next few months, Kashmir's civil war began in earnest. In May 1990, rising tension between Pakistan and India following the escalation of the conflict in Kashmir raised fears of another war between the two countries, according to international observers.<sup>15</sup>

By the end of 1992, political negotiations for resolving the crisis in Kashmir remained deadlocked. In March, five prominent political leaders were released from prison, apparently as part of a government effort to pave the way for elections in the state. Government officials have also stated that they are willing to negotiate with militant leaders as long as such talks remained "within the framework of the Indian constitution." Pakistani leaders who called for a plebiscite along the lines of the 1947 conflict have excluded the option of independence from the parameters of that plebiscite. Militant leaders have rejected limitations from both sides. Independent observers and the international press have speculated that independence continues to

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<sup>13</sup> Under the Jammu and Kashmir Constitution, governor's rule may be imposed for six months, after which, pursuant to the Constitution of India, president's rule, which permits New Delhi to suspend state government and rule directly, may be enacted for six-month periods. Article 370 of the constitution allows president's rule in Kashmir for only one year at a stretch and only after six months of governor's rule. President's rule was imposed in July 1990. Jammu and Kashmir's legislative assembly was formally dissolved in February 1990.

<sup>14</sup>By 1990, there were already more than 50 armed militant groups, some of which were loosely aligned with the JKLF, the Hezb-ul Mujahidin, or other dominant groups.

<sup>15</sup> That concern prompted the U.S. (in the form of the Gates Mission) and the then Soviet Union to warn both governments against provoking a confrontation.



be favored by the most popular of the militant groups in the valley of Kashmir.<sup>16</sup>

In August 1992, the Indian government launched a brutal new offensive in the Kashmir valley called "Operation Tiger," which was characterized by surprise raids and search operations designed to capture and kill militant leaders. Summary executions of detainees increased during this period. A second security operation, code named Operation Shiva, followed. In early October 1992, the central transmitting station for telecommunications between Kashmir and the rest of India was all but destroyed in a bomb blast. It was not known who was responsible for the sabotage, which virtually shut down telephone connections to the Kashmir valley.

On January 6, 1993 in the single largest civilian massacre of the conflict, at least 65 people were shot dead or burned to death when Indian paramilitary forces rampaged through a neighborhood in the city of Sopore reportedly in retaliation for a militant attack that killed two soldiers and injured others. A local police official at the scene stated that the security forces "ran amok"<sup>17</sup> and prevented police and fire fighters from intervening. Army officials claimed that those who died were killed in "cross-fire". Central government authorities suspended several officers and ordered an inquiry. At the time this report went to press, the results of that inquiry were not available.

Government forces operating in Kashmir include the Indian Army and India's federal paramilitary forces, the Central Reserve Police Force (CRPF) and the Border Security Force (BSF). The local Jammu and Kashmir policemen are generally not involved in counter-insurgency operations.

Armed militant groups, of which there are perhaps a dozen or more prominent groups and as many as 100 smaller ones, do not control territory in Kashmir, although they do have considerable support throughout the valley, and may take refuge among local civilians. They carry weapons such as AK-47s, grenades, rocket launchers and other small arms. They also lay land mines. The guerrillas generally avoid engaging government forces in combat, but rely instead on guerrilla tactics such as hit-and-run attacks and ambushes. Almost all of the groups report that they have obtained arms and other support, including training, in Pakistan. Officially, the Pakistani government has denied involvement in arming and training Kashmiri militants, but the claim is generally not considered credible.<sup>18</sup>

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<sup>16</sup> In addition to the Muslim-majority valley of Kashmir, where the actual armed conflict is located, the disputed state includes the Hindu majority area of Jammu and the Buddhist majority area of Ladakh with histories and political interests distinct from those of the valley.

<sup>17</sup> See "India Says Troops 'Went Amok' in Kashmir", *New York Times*, January 8, 1993.

<sup>18</sup> Pakistan's support for pro-independence groups like the JKLF has reportedly waned in favor of pro-Pakistani groups like the Hezb-ul Mujahidin.

### III. THE APPLICABLE INTERNATIONAL LAW

International human rights and humanitarian law prohibit torture under any circumstances. Article 5 of the Universal Declaration of Human Rights states "No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>19</sup> India is a party to the International Covenant on Civil and Political Rights (ICCPR). Articles 4 and 7 of the ICCPR explicitly ban torture, even in times of national emergency or when the security of the state is threatened.<sup>20</sup> India is also a party to the Geneva Conventions of 1949 -- the "laws of war" -- and thus obliged to uphold Article 3, common to all four conventions, which prohibits torture in situations of internal armed conflict.<sup>21</sup>

Allowing medical personnel to care for the sick and wounded is also a key principle of international humanitarian law. Common Article 3 of the Geneva Conventions states, "The wounded and sick shall be collected and cared for." Standards for the protection of medical neutrality have been incorporated into the Code of Medical Neutrality in Armed Conflict<sup>22</sup>, (see Appendix A), which provides, in article 1, that the sick and wounded combatants and civilians be protected and provided with medical care without delay; in article 2, that medical workers be respected, protected and assisted in the performance of their medical duties and that, under article 3, the sick and wounded shall be treated regardless of their affiliations and with no distinctions on any grounds other than medical ones. Article 5 of the Code prohibits attacks on defenseless sick or wounded combatants or civilians.

Asia Watch and Physicians for Human Rights believe that the Kashmir situation

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<sup>19</sup>U.N. General Assembly resolution 217 A (III) of December 10, 1948.

<sup>20</sup>Article 4 states "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed. . . no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision." Article 7 states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." International Covenant on Civil and Political Rights, U.N. General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976 in accordance with article 49. India became a signatory on April 10, 1979.

<sup>21</sup> Common Article 3 states " In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, . . . the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, and who shall in all circumstances be treated humanely . . . a) no violence to life and person, in particular, cruel treatment and torture. . . c) no outrages upon personal dignity, in particular, humiliating and degrading treatment. The Geneva Conventions of 1949, August 12, 1949, Geneva. Entry in force: October 21 1950. India has ratified the Geneva Conventions.

<sup>22</sup>"The four Geneva Conventions of 1949 and their two Additional Protocols of 1977, set forth rules and principles concerning medical treatment and neutrality which bind all parties to armed conflicts. These humanitarian laws as well as other treaties, agreements and resolutions provide the basis from which the [Code of Medical Neutrality in Armed Conflict] is consolidated." See Devin, J. and the International Commission on Medical Neutrality in *Violation of Medical Neutrality*, Wackers, G.L. and Wennekes, C.T.M., eds., 1992, Amsterdam, The Netherlands, p. 119.

constitutes "an armed conflict not of an international character" to which both Common Article 3 and the Code of Medical Neutrality apply, even though the various guerrilla forces in Kashmir do not control territory. The Indian government has attempted to counter criticism about human rights violations in Kashmir by arguing that the laws of war do not apply because the conflict is not a declared war. But, even if the Kashmir conflict were not judged to be an "armed conflict" by the standards of international humanitarian law, the principle of protecting medical neutrality is increasingly recognized as being equally valid in situations of "internal strife."<sup>23</sup> Moreover, that principle applies to all parties to the conflict or strife, both government and guerrillas.

Persons protected by Common Article 3 of the Geneva Conventions include all-noncombatants, even if they have provided food, shelter or other partisan support to one side or the other, and members of the armed forces of either side who are in custody, are wounded or are otherwise *hors de combat*. If under these circumstances, such persons are summarily executed or die as a result of torture, their deaths are tantamount to murder.

The obligation to comply with Common Article 3 is absolute for all parties to the conflict and independent of the obligation of the other parties.<sup>24</sup> Thus, the government of India, like other governments, is obliged to abide by these provisions and is responsible for violations committed by and attributable to its armed forces and paramilitary forces.<sup>25</sup> It cannot excuse itself from complying with Common Article 3 on the grounds that the militants are violating Common Article 3, and vice versa. However, Common Article 3 in no way precludes the government of India from punishing persons for crimes under its domestic laws. Thus, Kashmiri militants may be tried for murder, kidnapping or other crimes, so long as they are afforded the rights of due process.

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<sup>23</sup> See for example, *Declaration of Minimum Human Rights Standards of 2 December 1990, including an Introduction and an Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence of 17 June 1987*, Institute for Human Rights, Abo Akademi University, 1990.

<sup>24</sup> Common Article 2, The Geneva Conventions of 1949, "Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations."

<sup>25</sup> The principal government forces operating in Jammu and Kashmir -- the Indian army, the Central Reserve Police Force and the Border Security Force -- are all entities of the central government in New Delhi. Army soldiers report, ultimately, to the Minister of Defense; the CRPF, BSF and other national paramilitary police forces report to the Home Minister. As such, the actions of these troops are governed by the international laws of war and international human rights law which bind the government of India. In addition, since January 19, 1990, the central government has ruled the state directly.

#### **IV. VIOLATIONS OF MEDICAL NEUTRALITY BY GOVERNMENT FORCES**

Since the escalation of the conflict in Kashmir in early 1990, Indian security forces have exhibited blatant disregard for international laws protecting the medical neutrality of health care workers and medical facilities in Kashmir. Their actions have made an already dangerous situation for health care workers in the state increasingly desperate and contributed to the deaths of countless injured Kashmiris.

The evidence gathered by the Asia Watch/PHR team indicates that the Indian security forces have deliberately prevented injured persons from receiving medical care. PHR and Asia Watch interviewed doctors, ambulance drivers and other health care workers who testified that security forces have shot ambulance drivers, arrested patients from hospitals over the objections of doctors, and even removed them from intravenous medications or other treatments, and opened fire within hospitals. The security forces have not only prevented health care workers from carrying out their duties, but have arrested and tortured medical professionals because they have carried out those duties. While it is not possible to say with precision how many persons have died or suffered serious injury as a result of deliberate interference with the delivery of health care services by the security forces, that number is certainly in the hundreds.<sup>26</sup>

##### **Preventing Medical Personnel from Transporting the Wounded**

Article 7 of the Code of Medical Neutrality in Armed Conflict requires that "Medical facilities, equipment, supplies and transport shall be respected and protected, regardless of whom they serve, and shall not be destroyed." The Code also provides, under Article 6, that "Medical workers shall have access to those in need of medical care, especially in areas where civilian medical services have been disrupted. Similarly, persons in need of medical care shall have access to such services." Indian security forces in Kashmir have systematically violated these provisions by preventing medical personnel from evacuating injured persons for medical treatment. Ambulance drivers have been among the principal victims of these actions. These drivers are frequently stopped while on duty, and a number have been fired on and beaten by security personnel. In some cases, the drivers have been detained, tortured and killed. The following cases are taken from Asia Watch/PHR interviews.

- Ambulance driver A.<sup>27</sup>, 39, described an incident in April 1992, in which he was used as a shield by the security forces as he was driving through an area in which armed militants and government troops were engaged in a gun battle. The incident occurred at about 8:00 a.m., when A. was bringing emergency room staff to the Saura Medical Institute, a 540-bed care center in

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<sup>26</sup>The PHR/Asia Watch team reviewed the personal data on hundreds of persons injured or killed in custody that was compiled by health professionals and human rights activists in Kashmir.

<sup>27</sup>PHR and Asia Watch have chosen to use initials to protect the identity of witnesses. In some cases of death, or where the incident has been publicized, the victim's full name appears.

Srinagar. The security forces ordered A. to remain in the hospital bus which was positioned in such a way as to shield a military bunker from sniper fire by militant forces. A. stated that the bus sustained damage from the gunfire, and security forces intentionally broke many of the windows as well.

Two months later, on July 31, 1992 at about 6:30 p.m. A. was sent to pick up Dr. A., a gynecologist consultant, from her home. He was stopped at Lal Bazar by Border Security Force (BSF) soldiers, who opened fire into the air, forcing him to back up. They ordered him to stop, then removed the keys from the vehicle, and struck him in the forehead with the butts of their rifles. He was then beaten with kicks and fists, and only then was he permitted to show his identification papers. He explained to the BSF that he was on emergency duty. At this time, A. observed that three injured persons were lying on the road in front of his vehicle. The BSF ordered him to leave the area, but before he did so he asked if he could take the injured persons with him. The BSF told him that he could, but when he proceeded to back up, the BSF opened fire on the ambulance, shooting through the windshield. A. was shot in the abdomen and right wrist. He managed to drive himself back to the hospital where he was treated for his injuries. At the time he was interviewed in October, he had scars on his abdomen and wrist consistent with his testimony and stated that he was still unable to work because of ongoing disabilities related to his injuries.

A. had been an ambulance driver for the Medical Institute for ten years. Prior to the July 1992 shooting, he had frequently been stopped by security forces while transporting patients and medical personnel in official vehicles. The incidents occurred approximately one to six times every month and generally lasted for more than 30 minutes. He also stated that, in the past year, security forces beat him about twelve times while on duty. In each of these cases, he had first shown his identification card and curfew pass to the authorities. The vehicle is also marked with a prominent red cross.

- On July 19, 1992, at about 10:00 p.m., doctors at the Srinagar Medical College Hospital, a 700-bed care center, called the Badami Bagh Army Hospital to arrange for an ambulance to pick up anti-serum for a patient who had gas gangrene, a wound infection which spreads quickly and can cause death within a short time. Ghulam Nabi Bhat, 30, the ambulance driver, was accompanied by two of the patient's attendants in an official hospital ambulance, which was clearly marked with a red cross. When the vehicle reached the gate of the army hospital, a soldier opened fire, shooting Ghulam Nabi Bhat and one of the attendants at point blank range. The attendant survived, but Bhat died at the scene and was later buried on the grounds of the Medical College Hospital. Since this incident, the hospitals have voluntarily adopted a strict policy, out of fear, that no ambulances travel after 8:00 p.m.

- On April 19, 1992, M., an ambulance driver, drove a pregnant patient from the Bone and Joint Hospital in Srinagar for an appointment at the Maternity Hospital. At about 2 p.m., as he was waiting to transport her back to the Bone and Joint Hospital at about 2:00 p.m., some 60 Indian army soldiers surrounded the Maternity Hospital. At the time, M. was alone in an official

hospital ambulance. When he showed the soldiers his identification card, one of the soldiers said to him, "You have managed to get this card from somewhere because you are a militant." When M. attempted to explain that he was an ambulance driver and was waiting to transport a patient, the soldiers ordered him to accompany them, saying, "You come with us until we find out who you really are."

M. was taken to a nearby army hostel. At about 5:00 p.m. he was forced to strip naked in the presence of eight army soldiers and two officers, one of whom was referred to as "Dedwal." They accused him of being a militant and ordered him to tell them the names of other militants. The soldiers beat him with *lathis* (canes) on his back and knees even after he fell to the floor. They forced him to swallow some alcohol.<sup>28</sup> The soldiers pulled his legs apart at a wide angle, causing him great pain,<sup>29</sup> and applied electric shocks to his wrists, ankles and toes.

M. was detained for two weeks, during which he was tortured about six times in a similar fashion. On the sixth day, he was taken to a military doctor at Badami Bagh Army Hospital in Srinagar and examined. Then he was returned to the army hostel. He was released on May 2.

M. stated that he had been detained or harassed by security forces while on duty "about one hundred times" in the past year. On two occasions, his ambulance was seized and his identification card taken.

● On July 31, 1992 at about 7:00 p.m., a BSF search party came to the door of a home in the Lal Bazar neighborhood of Srinagar and kicked it open. At that time there were seven family members at home. N., 17, a student, stated:

The soldiers came inside, there were many of them, and ordered all of us to stand up and go outside. Then they started beating us with their rifle butts. Then they pushed my two cousins, Sh., 22, who is employed by the government, and S., 27, a businessman, off the veranda and outside a gate in the wall that surrounded our house. All the BSF went outside with them. We heard four or five shots. At that time my father, who works as an ambulance driver, came home and saw the situation. He pleaded with BSF to allow him to take my cousins to the hospital, saying, "You have done your work, now let me do my duty." But instead they shot him.

N.'s father was shot in the arm and side. After about half an hour neighbors came and took all three men to the hospital. S. had been shot in the abdomen, and Sh. had a broken jaw from being beaten with rifle butt. They were hospitalized for six weeks and then released. The government

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<sup>28</sup> Islam prohibits the consumption of alcohol. The act was particularly cruel since the incident also occurred in the month of Ramadan, when devout Muslims fast during daylight hours.

<sup>29</sup> Stretching the legs in this fashion is a common torture technique in India.

has given no explanation for the incident.

### **Refusal by Security Forces to Provide or Permit Medical Care for Wounded**

- On September 29, 1992 there was a crackdown<sup>30</sup> in the Tara Bal area of Srinagar. Security forces entered a house where M., 22, a businessman in Srinagar, lived with his parents. Without warning, the soldiers opened fire with automatic weapons. M. received numerous bullet wounds. After the soldiers left, the family transported M. to the hospital. As they passed security forces on the way, one soldier said to them, "You mean this bastard is still living?" and began striking M. with the butt of his rifle. The soldier stopped after several women interceded and the family was able to get M. to the hospital. As of October 1992, M. remained in intensive care.

- One day in April 1991, at approximately 11:30 a.m., while a crackdown was underway, G., 70, was sitting at home when soldiers forced the door open and, without warning or question, shot him once in the chest. His wife pleaded with soldiers to transport him to the hospital or allow the family to transport him, but the soldiers refused. After the crackdown ended about four hours later, the Jammu and Kashmir police transported G. to the Saura Medical Institute in Srinagar, where doctors treated him for a hemothorax (collection of blood in the chest) resulting from the gunshot wound. He survived.

- On August 14, 1992, M., 74, a resident of the village of Daksum, 100 kilometers from Srinagar, went into the fields at about 6:30 a.m. to relieve himself, not realizing that the village had been surrounded by the security forces. As he was leaving his house, he was shot in the foot. Despite his injury, he was detained with all the other men from the village. At 9:30 a.m. he was seen by an army doctor but was not permitted to get the injury treated. Despite his requests to be allowed to get medical care, he was not permitted to leave to a hospital until 3:00 p.m. when the crackdown ended. At that time, he and his son, G., were made to travel in a military truck which was also used to transport the bodies of twelve villagers shot by the security forces during the crackdown. M. and G. were dropped off at Kukernag, 15 kilometers from the village, and the bodies were taken elsewhere. They traveled by bus and taxi to Srinagar where they were able to get an ambulance to take them to the hospital. When PHR's Dr. Iacopino examined him in October 1992, M. had a large, 15-centimeter, infected wound in the left foot which extended to the level of the bone. At the time of the visit, M. was awaiting amputation of the foot.

Contrary to international humanitarian law, medical vehicles have also been prevented from transporting wounded patients due to curfew restrictions. International humanitarian law exempts medical vehicles and personnel from such restrictions. Doctors described numerous cases of patients with traumatic injuries who died after being arbitrarily delayed in transit, or whose injuries or illnesses worsened because of the delays. Even when the injured received assistance from local residents, they were not able to reach hospitals in a timely manner since the

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<sup>30</sup> Crackdown is the term commonly used in Kashmir for cordon and search operations.

roads are sealed during crackdowns.

Doctors and other health professionals are also unable to be present when and where they are needed. Doctors reported that staff are often unable to reach the hospitals until 10-11:00 a.m. and must leave by 3-4:00 p.m. to avoid being caught outside after curfew. Even so, they are often caught in crackdowns. The absolute restriction on travel after dark has interfered with the transport of consultants and medical technicians needed for emergencies. If surgery cannot be postponed, others not trained for special procedures must fill in, which has hurt the quality of patient care. For example, doctors described repeated incidents where anesthesiologists and cardiothoracic surgeons were called on to perform cesarean sections. One consultant now sleeps in one of the hospitals in Srinagar because it has become impossible for him to travel during curfew hours.

Curfew restrictions have also prevented the transport of blood products, oxygen and other emergency supplies. Travel restrictions have also hindered communication between doctors at different hospitals. Because the hospitals have not had a reliable telephone system since the conflict began, doctors must send messengers or travel themselves to consult with colleagues.

### **Raids on Hospitals**

Since the escalation of the conflict in 1990, the security forces operating in Kashmir have repeatedly violated the neutrality of hospitals, clinics and other facilities. Doctors in Kashmir described frequent raids<sup>31</sup> during which security personnel have cordoned off hospitals, sometimes for days at a time, to search for injured patients whom they suspect of militant activity. During hospital raids, injured patients have been arrested from hospitals, in some cases after being disconnected from intravenous medications or other treatments. International humanitarian law does not preclude such searches, but it does prohibit the security forces from engaging in abuses while conducting them.<sup>32</sup> If the security forces have received information that someone who has committed a crime is receiving treatment in a hospital, they may search for and arrest the person, but only if they do so without endangering the patient's health.

Witnesses testified that in one particularly cruel incident early in 1990, Indian army doctors ordered the medical staff at the Saura Medical Institute to transfer all patients with recent injuries to them so that their cases could be reviewed. Physicians at the Institute complied with the order, but objected to the transfer of one patient in the intensive care unit who was awaiting surgery for a liver abscess. At the time, the infection had spread to the bloodstream (a condition known as sepsis) and the patient required life-sustaining cardiac pressor agents to maintain his blood pressure. Despite the patient's precarious condition, the hospital staff were forced to remove him from the intensive care unit and pressor support. The patient died three hours after

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<sup>31</sup>Raids or cordon-and-searches are commonly referred to as crackdowns.

<sup>32</sup>See for example Geneva Conventions Protocol I, Article 10 and 11 (1); Protocol II, Article 5/2 (e) and Article 7 (2).



he was disconnected from his medication and before he was able to be returned to the intensive care unit. The crackdown reportedly lasted for seventeen days, during which time no one was allowed to enter or exit the hospital grounds. According to hospital staff, five dialysis patients who were not permitted to enter the hospital compound died as a result.

Medical workers are routinely verbally harassed and some have been beaten and detained. The security forces have also deliberately destroyed medical equipment and supplies, and have opened fire within hospital premises and inside hospitals, apparently to intimidate hospital staff.

As of February 1993, these raids have continued. Doctors interviewed by the PHR/Asia Watch team in October 1992 at the sub-district hospital in Shopian described two raids on the facility in the two months prior to the PHR/Asia Watch visit. The security forces had confiscated medications, destroyed equipment, and forced doctors to identify the injured. No patients were detained during those raids, however.

A doctor who worked at the emergency center of the district hospital in Sopore told Asia Watch/PHR that the hospital had been raided ten times between August and October 1992 and that security forces had opened fire inside the hospital even as physicians were attempting to care for patients. He described one crackdown in which the staff had been trapped inside the hospital for three days.

A physician at the Saura Medical Institute stated that the facility was subjected to more than twelve raids between April 1991 and April 1992. On five occasions, hospital employees were detained during these raids. During a six-hour crackdown at the hospital hostel in April 1991, an Indian army contingent of some 800 surrounded the facility. The forces which entered demanded the medical staff to "show us the arms." They beat three attendants with the butts of their rifles. An ambulance driver was also beaten.

According to a doctor at the Srinagar Medical College, during a raid in August 1992, no personnel were allowed to enter or exit the hospital grounds for three days and night, which severely interfered with patient care. The doctor estimated that there had been twenty raids on the hospital since April 1992. During these crackdowns, the security forces first surrounded the premises, then entered the hospital while discharging their weapons both outside and inside the building, and searched for recently injured patients. An inspection of the hospital by the PHR/Asia Watch team revealed bullet marks at the building's entrance and around the windows of the hospital. There were half a dozen such marks outside the doctors' emergency on-call room. Gunshot marks were also visible inside the hallways of the Medical College hospital and inside its wards.

Doctors at the Bone and Joint Hospital, an orthopedic hospital, reported that the hospital had been raided three or four times between May and October 1992 and that on several occasions, patients were forcibly taken from the hospital, even from the operating theater. During

these raids, the hospital was surrounded by as many as one hundred soldiers, and the entire complex searched, including the residents' and doctors' living quarters.

One doctor who witnessed numerous raids told PHR/Asia Watch that security officers often check the surgical registries themselves and rifle through medical records and admission documents to seek out recent cases of injuries, apparently because they believe that anyone injured may be a militant. Consequently, patients with injuries often refuse to be admitted to the hospital. Another doctor estimated that one third of those injured who required hospitalization refused admission and are examined only as outpatients because they fear they may be accused of being a militant. If they are admitted, many leave at the first sign of a raid because they fear they may be arrested. He said that patients who have injuries resulting from torture or beatings request that the physician attribute the cause to a motor vehicle accident for the records and not to the security forces out of fear of reprisals.

- On June 23, 1991, Dr. R. was on duty at the Bone and Joint Hospital at about 2:30 p.m. when twelve BSF troops, accompanied by Deputy Superintendent of Police (DSP) Sharma, entered the emergency unit. DSP Sharma asked Dr. R. if "any militants were admitted" that day. Dr. R. pointed to an old woman in the emergency room. Unsatisfied, Sharma told Dr. R., "You show us the militants," while three of the BSF troops held him at gunpoint. At gunpoint, they escorted Dr. R. into the operating theater where A., an eighteen-year-old man with a gunshot wound to the leg, was under anesthesia and undergoing an operation. Six of the BSF troops removed A. from the room. BSF troops also searched the hospital for "weapons and ammunition." They found neither, but deliberately destroyed surgical instruments and supplies of medicines during the search. A. was released from custody later that night at about 10:30 p.m. and survived.

### **Detentions, Harassment and Assaults on Health Care Workers**

Health care workers have been murdered, assaulted, illegally detained and harassed by government security forces. They are routinely subjected to such abuses because they are suspected of treating militants, and are therefore believed to be supporting the demands of the militant groups. They have also been forced to falsify reports of deaths. Doctors and other health care workers told PHR/Asia Watch that they may have to travel past fifty or more military bunkers and checkpoints on their way to and from hospitals. The fact that they carry identification cards or travel in clearly marked medical vehicles has not protected them. In fact, the cards are often confiscated and several doctors who have been stopped by security forces have been told, "The only use for this card will be to identify your dead body." The cases described below represent a small sample of the instances of such abuse which have taken place.

- In late September 1992, there was a crackdown in the Kamar Wari neighborhood of Srinagar. Dr. Q., 28, was waiting near his home for the hospital bus when army troops surrounded the area at about 9:15 a.m. and began beating local residents and ordering them to go to their homes. There was no shooting at the time. At about 1:00 p.m., all the men of the

neighborhood were ordered to assemble on the mosque grounds. There were about 45 to 55 men altogether. Dr. Q. identified himself as a physician and asked to leave. The soldiers told him that they had strict orders that no one could leave. The men were paraded before a masked informant, and four individuals were selected and taken away.

At 3:00 p.m. there was a second identity parade. Dr. Q.'s younger brother, a pre-medical student, was one of those selected. When Dr. Q. attempted to intervene and showed one of the officers, Captain Rana, his own identity card, the captain threw the card away and said, "You doctors in the Institute are militants because you treat militants." Dr. Q. replied, "We Kashmiris are being tortured and killed," and he rallied the other men assembled there to chant slogans in protest. The troops surrounded the men, pushed them together and began to beat them. Captain Rana slapped and punched Dr. Q. several times and kicked him in the chest until he fell to the ground. The crowd of detainees was then told to turn away as the captain put a gun to Dr. Q.'s head and cocked the trigger, saying, "I'm going to shoot him." As Dr. Q. pleaded with the captain not to shoot, Colonel Dhadwani arrived and accused Dr. Q. of being an "instigator." The colonel and captain then let Dr. Q. and his brother go. Dr. Q. was later treated for a perforated left eardrum which had begun bleeding after he was beaten.

- On October 2, 1992, BSF troops surrounded the Nowhala Area of Srinagar in a crackdown at 12:30 p.m. Soldiers entered the home of Dr. F., and ordered him to go outside. He informed the soldiers that he was an anesthesiologist in the emergency service and that his shift began at 4:30 p.m. that day at the Saura Medical Institute. He also stated that the ambulance used to transport medical personnel would soon arrive for him. The soldiers refused to permit Dr. F. to leave and forced him to line up to be paraded several times in front of informants along with all the other men of the neighborhood. The crackdown did not end until October 4 at 6:30 p.m., more than two days later. Dr. F. later learned that the ambulance driver who had come for him had been turned away at the crackdown site and told not to return.

As a result of Dr. F.'s absence, certain surgical cases were delayed. The most urgent of these was that of a patient with a small bowel obstruction. When Dr. F. was unable to come to work, one of the surgical residents attempted to assume the responsibilities of the anesthesiologist because the doctors feared that if the surgery were delayed, the obstruction might progress to a state of bowel perforation. However, the resident was unable to successfully intubate<sup>33</sup> the patient and ultimately the surgery had to be postponed. Over the next 48 hours, the bowel obstruction did progress to perforation and although the patient underwent surgery on October 5, the operation was complicated by sepsis, a serious blood-borne infection brought on by the bowel perforation. Patients who have experienced bowel perforation often have chronic problems with subsequent bowel obstruction because of scar formation in the abdomen, and sometimes require additional surgery. The delay in this patient's surgery may cause the patient to suffer long-term health problems.

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<sup>33</sup> Major abdominal surgery requires the placing of a breathing tube during anesthesia.

- In October 1992, we interviewed Dr. S. a resident at the Bone and Joint Hospital who lives on the hospital grounds in the men's dormitory. He said that since the beginning of 1992, the security forces have launched three or four early morning raids on the residents' living quarters and in the hospital. Sometimes the soldiers conduct the inspection by themselves; in other cases they have forced physicians to identify those recently admitted because of gunshot wounds.

- Dr. S. described one incident which occurred about six months prior to the PHR/Asia Watch interview. He and two other doctors were returning from the hospital in an official hospital vehicle carrying the red cross emblem. They were stopped by several CRPF soldiers who ordered them out of the vehicle. The CRPF soldiers then proceeded to slap the men and strike them with their rifle butts. When one of the doctors objected, saying, "I'm a doctor," a soldier replied, "Any doctor can be a militant," and the doctor was again beaten. Before releasing the doctors, one of the soldiers warned them, "We will kill you if we see you again."

- Dr. R., of the Bone and Joint Hospital, reported to us in October 1992 that during his 50-kilometer round trip commute to the hospital every day, he is frequently detained and harassed by security forces at checkpoints on the way. Several times, his identification card has been confiscated and thrown away by soldiers and he cannot travel to or from work.

- On September 28 or 29, 1992, Dr. K. had just left his house on his way to Anantnag when the house was surrounded by security forces. Dr. K. was blindfolded and taken to a military camp. When the security forces accused him of "treating militants." He replied, "I am a doctor and I have to treat everyone." The security forces began kicking Dr. K. and beating him with *lathis*, and their fists. They forced him into a sitting position and pulled his legs apart several times causing intense pain in his inner thighs. They also pressed a heavy wooden roller over his thighs and applied electric shocks to his arms, chest and back. At one point he asked them, "Why are you doing this to me? I am a surgeon." He was released after two days and hospitalized at the Saura Medical Institute where he was treated for acute renal failure. When PHR's Dr. Iacopino examined him in October 1992, he had scars on his forearms and wrists that were consistent with superficial burns from electric shock.

Dr. K. previously had been detained in November 1990 after he had made arrangements for a gynecologist to examine seven women who had alleged that they had been raped by security forces. The women, who had been brought to the Anantnag District Hospital while Dr. K. was on night duty, reported that the security forces had broken up a wedding and raped all of them, including the bride.

Shortly afterward, on November 29, Dr. K. was arrested from his home by members of the CRPF who had surrounded his house. Even though Dr. K. showed them his identification card, the CRPF blindfolded him along with two friends who were with him at the time. They were taken to what they later saw was a kind of military camp. The security forces asked Dr. K., "Why did you call the gynecologist?" When he replied, "I treat people irrespective of who they

are," they proceeded to beat him with *lathis* and a metal belt. His friends were also beaten in this way. Later all three men were moved to another place where they were again interrogated and beaten. On one day, a CRPF soldier intentionally shot at Dr. K.'s foot, grazing it with a bullet. The three men were detained for four days.

- In another incident in the winter of 1991, security forces surrounded the Bone and Joint Hospital complex. About 10 soldiers came to the residents dormitory as Dr. L. happened to be passing in front of it with a medical book in his hand. The soldiers approached him and accused him of being a militant even after he showed them his medical card. He was detained there for about half an hour while some of the soldiers searched the men's and women's dormitories for "militants and weapons." Dr. L. was finally released after the matron from the nurses' quarters vouched for his identity. No one else was arrested that night.

- Dr. G., a surgeon at the Saura Medical Institute, described repeated incidents of harassment, detention and assault by the security forces. At the time of the PHR/Asia Watch mission, the most recent attack had occurred on October 9, 1992, at about 8:15 a.m., when troops opened fire on Dr. G.'s clinic which is in a small building next to his living quarters. When PHR examined the clinic, bullet marks were clearly visible in the exterior walls of the building. No one was in the building at the time, and no explanation was provided for the shooting.

Early on the morning of August 7, 1992, CRPF soldiers shot into Dr. G.'s house from a distance of approximately thirty meters. Dr. G.'s nephew, a 20-year-old second year medical student who was sleeping in the house, was hit in the shoulder blade. Approximately thirty gunshots were heard, but no one else was injured. When PHR inspected the house in October 1992, multiple bullet marks were clearly visible in many of the interior and exterior walls and floors of the house. The nephew, who has a scar over the shoulder bone, reportedly had a comminuted (shatter) fracture of that bone.

Shortly afterwards, in September 1992, the nephew was detained by CRPF forces while he was on his way to the hospital. Even though he showed the soldiers his identification card, he was taken from his private vehicle to a CRPF interrogation center. There he was blindfolded and beaten. His interrogators also stretched his legs apart, gave him electric shocks, and beat him on the abdomen with *lathis*. While they were torturing him they asked him why his uncle had been arrested and told him to identify militants. He was released after 24 hours.

Dr. G. had been arrested at the Delhi airport on August 12, 1990, as he was returning from a pediatric-cardiothoracic meeting in Riyadh, Saudi Arabia. He was held for three days in Delhi, and was then transferred to an interrogation center on Canal Road in Jammu. He was held there for one month and twenty days, and was then transferred to the Kathua Jail. The First Information Report (FIR)<sup>34</sup> was not filed until two months after his arrest. In it, he was charged

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<sup>34</sup> The First Information Report is required to be made out promptly upon the apprehension of a subject. It is the starting point for any further investigation and prosecution.

with "participating in the release of five militants"; "passing money to earthquake victims in Iran"; distributing Rs. 150,000 (approximately \$5,360) to "militants" and "donating Rs. 100,000 (approximately \$3,570) to the JKLF on July 1, 1990."

The first charge had to do with his participation as an intermediary in the government's efforts in December 1989 to negotiate the release of Rubia, the daughter of the Home Minister who had been kidnapped by the JKLF. Because Rubia's older sister, Dr. Mahmooda, had been trained by Dr. G., he was asked to assist in the negotiations. Rubia was released after five detained JKLF leaders were released from custody. The second charge was based on an appeal which Dr. G. placed in a newspaper for earthquake victims in Iran. Dr. G. reported that the Rs. 50,000 (approximately \$1,785) that was donated was sent by bank draft to the Iranian Consulate in Delhi. The third charge was based on a similar appeal Dr. G. organized in March, 1990, for survivors of two villages (Magam and Tangmarg) which were burned by security forces. The money collected, Rs. 150,000, was distributed to victims. On the date specified in the last charge, Dr. G. stated that he was in Saudi Arabia at the medical conference.

Dr. G. was released from jail on December 23, 1990. The case was never brought to court. However, in November 1990, while he was in jail his passport was impounded. Since his release, officials from the Central Bureau of Investigation (CBI) have questioned Dr. G. on many occasions about his professional and personal activities. When PHR/Asia Watch interviewed him in October 1992, he stated that he believed he had been under surveillance for a number of months.

- M., 36, a worker in the medical records department at the Saura Medical Institute was arrested along with several colleagues during a crackdown by the BSF on October 14, 1992. The BSF surrounded the area at about 7:00 a.m. During an identification parade, he and three other hospital workers were selected along with 300 men detained that day, even though they had shown the BSF their identity cards. They were taken to a BSF bunker where two soldiers beat each of them with *lathis*, fists, and kicks. Their hands were tied behind their backs, and the soldiers demanded, "Where are the guns?" They accused the men, saying, "The hospital is a den of militants, and you are supporting them." M.'s left elbow was fractured and dislocated after he was beaten for thirty minutes. The men were detained for approximately eight hours and were given no food or water during that time.

- Dr. W. told PHR/Asia Watch that he was first detained in March 1990 by CRPF troops who took him to an interrogation center and accused him of "treating militants." He was detained for twenty-four hours. Before he was released, his interrogators told him, "We will annihilate all Kashmiris."

After that, there was a crackdown in his neighborhood. He asked one of the soldiers if he could speak to an officer, but he was not allowed to do so. He and several other men were then ordered to sit in cow dung. They refused, and Dr. W. told the soldiers, "You are bringing shame to this uniform. I was once in your uniform, and what you are doing is wrong." He was then beaten with fists and rifle butts and kicked and sustained injuries to the chest and thighs. After

he was beaten, one soldier told him, "There are ten thousand people here. We'll kill all of them, and you will be responsible."

- On June 11, 1991, during a raid on the Srinagar Medical College on June 11, 1991, Dr. Maqbool, an ENT resident, was shot dead at the entrance of the hospital for no apparent reason. The keeper of the laboratory animal facility was also shot dead while on duty on the hospital grounds.

- A doctor was called to BSF headquarters in Sopore following an incident in which three suspected militants and a civilian had been killed by BSF forces. The doctor was told to write the post mortem report based only on an external examination of the bodies, and the BSF provided no explanation for the deaths. The report was then filed with the police.

## V. TORTURE: THE MEDICAL EVIDENCE

International human rights law prohibits torture and other cruel, inhuman or degrading treatment or punishment.<sup>35</sup> Torture is widely practiced in Kashmir as a means of extracting information from detainees, coercing confessions, punishing persons believed sympathetic to the militants and creating a climate of political repression.<sup>36</sup> One doctor in Srinagar who has treated torture victims estimated that he had seen four times the number of torture cases in 1992 than in previous years. He attributed the increase to intensified government operations. The PHR/Asia Watch investigations indicate that most detainees taken into custody in Kashmir are tortured.

Lawyers interviewed by Asia Watch/PHR stated that security personnel routinely ignore procedural safeguards when taking persons into custody. Although Indian law requires that everyone taken into custody must be produced before a magistrate within 24 hours, in fact, detainees are rarely produced at all.<sup>37</sup> Prohibitions and safeguards against torture in the Indian Penal Code (IPC) and the Code of Criminal Procedure (CCrP),<sup>38</sup> which prohibit the use of coerced confessions and prescribe inquiries into deaths in custody and prison terms for officers guilty of torture, are also routinely disregarded. To the knowledge of PHR and Asia Watch, security personnel responsible for torture in Kashmir have never been held criminally liable for

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<sup>35</sup>The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture, in article 1, as "any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person. . .when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official." Article 2 states that "no exceptional circumstances whatsoever, whether . . . internal political stability or any other public emergency may be invoked as a justification of torture." Article 4 states that "each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.", U.N. General Assembly Resolution 39/46 of December 10, 1984. Entry into force June 26, 1987. 23 countries have ratified the Convention, 40 additional countries have become signatories. Though India has ratified the ICCPR which explicitly bans torture, India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

<sup>36</sup> Torture is widely used by Indian police and other security forces, not only in areas of insurgency but throughout the country. It is used not only against political detainees, but also against petty criminals and persons who have committed no crime at all. Those most vulnerable are the poor, members of "scheduled" castes and tribes, "dalits" (untouchables), landless laborers and women. See Amnesty International, *India: Torture, Rape & Deaths in Custody*, (London: 1992). Article 3 of the Code of Conduct for Law Enforcement Officials states "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

<sup>37</sup> Under Article 9 of the ICCPR, "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law. . . and shall be entitled to a trial within a reasonable time or released."

<sup>38</sup> Sections 330 and 331 prescribe prison terms and fines for officers guilty of torture. Section 176 of the CCrP requires a magisterial inquiry into any death in custody. The Indian Evidence Act and the CCrP also prohibit the use of coerced confessions.



their actions.<sup>39</sup> The U.N. Code of Conduct for Law Enforcement Officials (Resolution 34/169, December 17, 1979) states, in Article 5, that "no law enforcement officials may inflict, instigate, or tolerate any act of torture or other cruel, inhumane or degrading treatment or punishment nor may any law enforcement official invoke superior order in exceptional circumstances such as . . . internal political instability or any other public emergency . . . as justification for torture."

Every security force has its own interrogation centers in Kashmir, which include temporary detention centers at BSF, CRPF and army camps, hotels and other buildings that have been taken over by security forces. Detainees are first interrogated by the detaining security force for periods of time which may range from several hours to several weeks. During this time the detainee is not produced before a court or given access to anyone outside the interrogation center. Those suspected of being militants are then usually handed over to Counter-Intelligence Kashmir (CIK), and interrogated at Joint Interrogation Centres (JICs) at which each security force is represented. Detention at the JIC may last for months. If a First Information Report (FIR) is to be made out, it is not done until after the detainee is handed over to the CIK.<sup>40</sup>

The following list of interrogation centers represents only a portion of those in operation:

1. Old Airport Road
2. Hari Niwas, Gupkar Road, Sonwar
3. Papa I (BSF)
4. Papa II (BSF)
5. Red 16 -- Badam Bagh (Army Cantonment)
6. Gogoland -- between the old and new airports (CRPF)

Lawyers in Kashmir told PHR/Asia Watch that they have filed some 15,000 petitions since 1990 calling on state authorities to reveal the whereabouts of detainees and the charges against them. However, the authorities have not responded, and the petitions remain pending in the courts. A large number of bail applications are also pending. Even when the High Court has

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<sup>39</sup> Government officials claim that they have punished 230 security personnel for abuses in Kashmir. They have never made public the nature of the abuses, the identity and rank of those responsible for abuses, and what punishments have been ordered. The only prosecution that has been made public is that of two army soldiers convicted for the rape of a Canadian tourist in October 1990. At this writing, both soldiers have yet to begin their prison terms and remain in barracks in Kashmir while an appeal is pending. According to the 1993 U.S. Department of State *Country Reports on Human Rights Practices for 1992*, 33 army and paramilitary personnel have been imprisoned for unexplained abuses in Kashmir, 27 of these for terms of one month or less. Eighteen were dismissed and 45 were demoted or reprimanded. Principle 9 of the Basic Principles on the Effective Prevention and Investigation of Extralegal Arbitrary and Summary Executions requires a thorough investigation.

<sup>40</sup> Detainees are generally detained outside the state under one of two laws: the Jammu and Kashmir Public Safety Act or the Terrorist and Disruptive Activities Act (TADA). Both laws suspend safeguards against arbitrary arrest and grant the authorities sweeping powers to detain persons even for the peaceful expression of their political views. For more on these laws, see Asia Watch, *Kashmir Under Siege*, pp. 108-125.

ordered state authorities to produce detainees in court or release those against whom no charges have been brought, state and security force officials have refused to comply. Lawyers have also filed petitions charging officials with contempt for non-compliance, but these petitions have also received no response.

Under pressure from the authorities, the courts routinely grant government officials extended time to respond to petitions. After that, judges generally refer the case to the "larger bench." According to lawyers in Kashmir, that bench must be constituted by the Chief Justice. Despite the referrals, it has not been constituted. One judge, S. M. Rizvi, who managed after great resistance from the security forces to obtain records for 14 detainees -- but only after they were released -- determined that no procedural safeguards had been followed in any of the cases. Detainees who had been held for up to a year had not been granted access to legal counsel. In some cases, after a year had passed without formal charges being brought, the security forces filed another FIR to hold the detainee on the pretext of a new investigation. Shortly after Rizvi had succeeded in obtaining these records, he was transferred out of the state. Since then, judges have been reluctant to challenge the actions of the security forces.

Although a great number of methods of torture are practiced in Kashmir, some of the most common include severe beatings, electric shock, suspension by the hands or feet, stretching the legs apart, burning with heated objects, and crushing the leg muscles with a heavy roller.<sup>41</sup> Extensive muscle damage (rhabdomyolysis), such as that caused by the roller treatment, releases toxins that may result in acute renal (kidney) failure and may require dialysis.

### **Torture Victims with Acute Renal Failure**

According to doctors that we interviewed at the Saura Medical Institute, of the large number of detainees tortured in this way, 37 of them have been diagnosed with torture-induced acute renal failure since July 1990. Three patients with acute renal failure died, two as a consequence of pulmonary edema and one from a ruptured spleen. Approximately ten patients required dialysis; the remainder of patients with rhabdomyolysis did not.<sup>42</sup>

- During a crackdown in the Telbal neighborhood of Srinagar on October 13, 1992, BSF forces detained fifteen young men. All of the detainees were taken to an empty house where they were interrogated and tortured. Several of the detainees were later admitted to the hospital with acute renal failure. F., 22, who works as a private driver in Srinagar, was beaten with *lathis* on his buttocks, arms and hands. His feet were tied, and he was beaten on the soles of his feet with *lathis* while being suspended. There were approximately twenty BSF soldiers present while he was being beaten, among them three officers who ordered the others to carry out the torture. The

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<sup>41</sup> Some of the other methods, such as sexual molestation, placing chili powder in the eyes and elsewhere in the body, and methods of psychological abuse are documented in Asia Watch, *Kashmir Under Siege* (May 1991).

<sup>42</sup> See also G.H. Malik, "Acute Renal Failure Following Physical Torture," (Nephron, forthcoming).

officers, identified as Yadav, Chander and Qadiri, each had two or three stars on their uniforms. While beating him, the soldiers accused F. of being "a commander of the militants." F. was also tortured with the roller on his thighs, and was beaten so severely he began vomiting. He was detained for about three hours.

F. stated that a doctor, whom F. identified by his medical bag and stethoscope, was present when they were tortured. The doctor ordered F. to take some medicine, but F. refused. The doctor then said to him, "If you don't take the medicine, I'll put a shoe in your mouth." F. was admitted to the hospital with signs and symptoms of acute renal failure.

- B., a sixteen-year-old student, was also taken into custody during the Telbal crackdown. He was beaten with *lathis* on his buttocks, arms and hands and was also subjected to the roller treatment. The torture lasted approximately five hours, and he was released at about 2:30 p.m. Soon after his release, he experienced diffuse body aches, shivering and vomiting. He was admitted to the hospital with the symptoms of acute renal failure and subsequently required dialysis. When PHR examined him in October, B. appeared to be improving. However, extensive bruises were visible on his shoulders and back and diffuse, moderate bruises over the buttocks where the roller had been applied.

- H., a seventeen-year-old student was at home when the Telbal crackdown began. When he came out of his house at 7:00 a.m., he told the BSF soldiers who stopped him that he was a student. They assured him, "We will not harm students who have identification cards." H. requested to be allowed to leave because he had an examination that day, but he was made to join a group of students in the area had been separated from the men assembled outside. The students were detained until 3:00 p.m. H. noted that some soldiers were videotaping the group of students as well as the other detainees.

H. and twelve other students were taken in jeeps to a nearby house. There each of them was beaten and tortured in turn. The methods of torture included roller treatment, suspension upside down by both hands and feet, and beating. H. was tortured for approximately one hour. In addition to the methods mentioned, H. was also beaten with a strap approximately 100 times while suspended. After he was released he began vomiting. When the vomiting continued for three days, he was admitted to the hospital. When PHR examined H. on October 19, H. had extensive and marked bruises which were confluent and extended from the mid-posterior thighs to the upper back, highly consistent with crush-type injury which results from the roller treatment.

### **Additional Torture Cases**

- Dr. H., a surgeon at the Srinagar Medical College described the case of Muzaffar Ahmed Mirza, 35, an Arabic teacher, who died as a result of torture. Muzaffar Ahmed Mirza

was arrested on October 4, 1991, in a crackdown in Tral, a village about four kilometers south of Srinagar. He was beaten and given electric shock to the genitals. After that, an iron rod was inserted into his rectum and pushed through to his chest. He was found by the side of a road and taken to the Medical College hospital the next day in severe pain, coughing up blood and showing signs of peritonitis (inflammation of abdominal cavity). The physicians performed a laparotomy (opening up the abdomen) and a portion of Mirza's rectum was repaired. Shortly afterward Mirza began to have difficulty breathing, and an X-ray of the chest showed a ruptured lung. An aspiration of the chest cavity was positive for bile, indicating that the metal rod had perforated the liver and ruptured the diaphragm. The next day Mirza underwent chest surgery which revealed a large laceration of the diaphragm and left lung. Within two or three weeks, he died of subsequent internal infection. A PHR examination of the abdominal and chest X-rays of the patient and confirmed the finding of a ruptured lung and signs of bowel perforation.

Mirza was interviewed by several journalists before he died, and the case has been widely reported in the international press. The Indian video news program *Eyewitness* also interviewed Mirza, but the edition was censored.<sup>43</sup> To Asia Watch and PHR's knowledge, the government has never publicly commented on the incident or prosecuted those responsible for Mirza's death.

- G., 56, who ran a fruit business and taught in a *madrassah* (religious school) in Reban, about four kilometers from Sopore, was arrested from his home at 6:00 a.m. on March 22, 1991, by the 6th Rajput Regiment of the Indian Army. He was taken to an army camp in Sopore where he was ordered to undress. Army officials questioned him, asking "Why do you want to leave India? We feed you and you are ungrateful." He was beaten on his shoulders, back and legs with *lathis*. He was then forced to stand in a tank filled with cold water up to his waist as soldiers poured buckets of water over his head. This went on for about two hours. G. was then blindfolded and taken to the army cantonment in Badami Bagh, Srinagar, which he learned after the blindfold was removed and he was able to ask other detainees at the camp where he was.

G. was then taken to a room about twelve feet square where 30 young men were detained. After a short time, he was taken to another room where he was again told to undress, and he was beaten with *lathis*. There were four soldiers, one of whom he recognized as one of those who beat him in Sopore. An army doctor, wearing a stethoscope and apron who was in the room told the soldiers not to beat him. Two other young men, who were also undressed, were waiting in the room. They did not appear to have been beaten. The soldiers stopped beating G. and left. The doctor examined his chest and back with the stethoscope. Then he told him to get dressed. After the examination G. was taken to small cell, about three feet by five feet, where he was held for three days. After that he was again blindfolded and taken to an interrogation center near the Old Airport in Srinagar where he was punched, kicked and beaten severely with a cable half an inch in diameter for about half an hour. While he was being beaten the soldiers told him to identify militants. The soldiers also applied electric shock to his chest and temples using a wire attached

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<sup>43</sup> See Edward W. Desmond, "Himalayan Ulster," *New York Review of Books*, March 4, 1993, p. 26; Edward A. Gargan, "Behind its Mountain Walls, Kashmir Wages Vicious War," *New York Times*, October 28, 1991.

to a hand crank generator. He was tortured intermittently in this way for two weeks. G. was released on April 16, 1992. He was made to sign a statement which he was told said that the army had not taken any of his belongings. He was then taken by the soldiers to a police control room, where his relatives signed papers which stated that he had been handed over to them.

G. was again arrested by the 6th Rajput Regiment on November 4, 1991, during a crackdown in Lorihama, an adjacent village where he has his orchards. He was taken to an army camp at Panzgam. There he was beaten several times a day. As a result of the beatings on the soles of his feet, his feet became swollen and turned black. The soldiers then applied salt on the feet and wrapped them in bandages, after which the skin peeled off. Some soldiers inflicted further injury by stomping on his feet and grinding their boots into them. By this point, the bones of the feet were visible and the feet stank. Two weeks after G.'s arrest, an officer came to his cell and, seeing the condition of G.'s feet, asked the soldiers, "Why didn't you bring this to my attention? Take him to a hospital and save his life. I am accountable to my superiors." The soldiers told the officer that G. was "a dangerous militant", but they took him to the medical center, from where he was transferred to the army hospital. He was admitted to the army hospital on November 20, 1991 and on November 22 both of his feet were amputated. He was released from the army hospital on September 22, 1992. G. has filed an application with the High Court seeking redress, but as of October 1992, had received no response.

## **VI. OTHER MEDICAL CONSEQUENCES OF THE CONFLICT**

The conflict in Kashmir has devastated basic health services in the state. Many community health care programs which had been in place for years have ceased to operate or have been severely curtailed. The main reason for the breakdown in medical services is that travel has become too dangerous for health care workers trying to visit rural towns and villages, or even attempting travel between major cities. Militant ambushes and gun battles between militants and security forces occur frequently. Vehicles traveling on the roads are stopped and searched repeatedly at numerous security checkpoints. Security officials at these checkpoints frequently detain passengers, or refuse them permission to proceed further and order the vehicles to turn back. Convoys of army soldiers and other security forces which move along the roads often delay other vehicle traffic.

The programs that have suffered the most as a result of the conflict have been the rural immunization, maternal and child health care and family planning programs. Before the conflict, immunizations in rural areas had been carried out under a nation-wide program called "Door to Door." Doctors in Kashmir reported that in 1989-90, before the conflict worsened, approximately sixty percent of the children in Kashmir were successfully immunized in this program and the dropout rate was very low. However, since the escalation of the armed conflict in 1990, health workers responsible for the program have not been able to visit rural areas and the program has been suspended.

Community health programs in larger cities have also been disrupted by frequent crackdowns and curfews. Although immunizations continue to take place in Srinagar, even these efforts are impeded by crackdowns and transportation difficulties. One doctor cited the example of a recent immunization drive in the suburb of Batsapura, which was disrupted when BSF forces launched a crackdown and the area was inaccessible for three days. When doctors requested to be allowed to continue the immunizations, the BSF refused. Doctors reported that the normal immunization rate in Srinagar area has been markedly reduced since 1990. Doctors in Kashmir have expressed fear that this may result in epidemics of diseases that previously had shown signs of declining. For example, physicians have had to respond to an outbreak of diphtheria and have treated sporadic cases of mumps, neither of which had been reported for several years.

In addition to immunization problems, nutrition programs and maternal and child health programs have virtually been discontinued in rural areas and have been sharply reduced in Srinagar and surrounding areas.

The violence has also resulted in the attrition of health care professionals, both Hindu and Muslim, from the state, which is estimated at 30 percent for doctors and 80 percent for nurses since 1990. The attrition has been compounded by a 30 percent decrease in the number of medical school graduates in the state since 1990. Drastic reductions in professional and ancillary staff, together with shortages of supplies and equipment, have hurt rural areas in particular and have rendered many primary health care centers, clinics and district hospitals non-functional.

Their loss, together with the increase in traumatic injuries as a result of the conflict, has seriously overburdened hospitals in Srinagar, which are also short-staffed, overcrowded and experiencing serious shortages of essential supplies.

Doctors at the obstetric hospital in Srinagar reported that because of transportation difficulties, the hospital frequently runs out of supplies. For example, between July and October 1992, the hospital was unable to obtain nitrous oxide for general anesthesia, and was forced to substitute spinal anesthesia, or in some cases, ether. On other occasions, the hospital has run out of intravenous adrenaline and steroids. It no longer has any working respirators; all are non-functional and the hospital has not been able to get them repaired or replaced.

Doctors at the Saura Medical Institute reported that their CAT scan has been out of order for two years. They have been unable to get it repaired because trained engineers are not available in Srinagar and those from outside refuse to travel to Srinagar for safety reasons. The Srinagar Medical College's CAT scan has been non-functional for the past year. The chemistry laboratory has only one instrument to measure basic electrolytes and serum chemistries, and it has been out of order for the past several months. As with the CAT scan, outside engineers have been unwilling to come to Kashmir to repair the equipment.

The Srinagar Medical College has two plain X-ray machines for the entire hospital; in 1990, there had been at least six. The fluoroscopy service -- another kind of diagnostic imaging device -- is also disabled and has not been repaired. At the same time, the need for X-rays has grown with the increase in traumatic injury cases.

Dr. H., a surgeon at the Srinagar Medical College, described one preventable death which had resulted from the hospital's lack of critical resources. A thirteen-year-old boy was brought in for an elective lobectomy (partial lung removal) due to bronchiectasis. During the procedure, the electricity went off, which has become a common occurrence since the conflict began. The hospital's generator was not working, nor was the foot pedal-operated aspiration device. Without electricity, the doctors could not maintain proper suction, and, according to Dr. H., "the boy drowned in his own secretions while on the operating table."

Doctors also reported that not a single telephone in the Srinagar Medical College is functional. At the Saura Medical Institute, only one telephone works. The only means of communication is personal contact, but because that depends on reliable transportation which is impossible during crackdowns and curfews, doctors cannot obtain the advice of or consult with their colleagues.

Nearly all of the hospitals in Srinagar are overcrowded. The Srinagar Medical College has a 700-bed hospital, but between May and October 1992, it had been running a census of over 1,000 patients. The hospital has four operating theaters. Theater No. 4, which doctors described as representative of the other three, was used for 2,276 cases of gunshot wounds and blast injuries between January and mid-October 1992. The Department of Surgery, which lost 60

percent of its staff in 1990, remains 30 percent understaffed. There are approximately ten nurses during the day and approximately five at night for all patient services for 1,000 beds. In 1990, there were fifty for each shift.

Medical education has also suffered. Medical students have expressed concern that the attrition of doctors has reduced the overall quality of the teaching at the medical school. Doctors' preoccupation with clinical problems and practical issues like transportation has also affected the quality of teaching. Curfew restrictions have severely restricted students' ability to participate in clinical rotations. The conflict, which has disrupted regular mail delivery throughout the valley, has made it impossible for the Srinagar Medical College to receive medical journals and updated texts. Finally, like all other health professionals, medical students are subjected to routine detention, harassment, and assault on their way to and from their studies and work.

The Indian Red Cross provides no medical assistance in Kashmir. The International Committee of the Red Cross (ICRC), which has its regional headquarters in New Delhi, has not been permitted to carry out any of its protection and medical services in Kashmir. Although the ICRC has been allowed to carry out general educational programs in India, even that activity has not been permitted in Kashmir. In mid-1992, the medical community in Srinagar sponsored a symposium on the treatment of trauma. ICRC speakers who were invited were not allowed to attend.



## VII. MILITANT ABUSES

The oldest and most widely known militant organization, the Jammu and Kashmir Liberation Front (JKLF), has spearheaded the movement for an independent Kashmir. A large number of other militant organizations have emerged since 1989, some of which also support independence, others of which support Kashmir's accession to Pakistan. Although all groups reportedly receive arms and training from Pakistan, the pro-Pakistani groups are favored by Pakistan's military intelligence, the Directorate of Inter-Services Intelligence (ISI), which apparently provides arms and training to most of the militant organizations. The most powerful of these is the Hezb-ul-Mujahidin. A number of militant organizations have claimed responsibility for abuses, which have included assassinations, kidnappings and other attacks on civilians. There are many other cases in which no group has taken responsibility, and it is impossible to say which of the many groups operating in the state have committed these abuses.

Militant forces who have committed violent abuses have also contributed to the crisis in medical care services in Kashmir. Since 1990, militants have assassinated Hindus and Muslim civilians in the Kashmir valley. They have accused some of being informers, others of supporting government policies or being otherwise opposed to the objectives of various militant groups. In early 1990, members of the Hindu minority took the brunt of these attacks. The murders and attacks drove many Hindu and Muslim professionals, including health professionals to flee Kashmir.<sup>44</sup> These killings, attacks and threats constitute grave violations of international law. The cases described below are illustrative; there have been many similar abuses by militant groups.

- G.K. Muju, a lecturer at the Srinagar Medical College and a member of the working committee of the All State Kashmiri Pandit Conference, received threats in 1990 from militant groups who included his name on hit lists of prominent Hindus which had been posted in mosques around Srinagar. After rocks were thrown at his home on a number of occasions, Muju and his immediate family left Srinagar for Jammu on March 6, 1990. On July 6, Muju's parents, who had remained behind, were attacked in their home by an unknown assailant. His 75-year-old mother was stabbed in the neck; his 80-year-old father was knifed in the chest, and died at about 5:00 a.m.

- Sarla Bhat, 27, a staff nurse at the Saura Medical Institute in Srinagar, was shot dead on April 18, 1990. Her body was found in Lal Bazar in Srinagar. Police sources claimed that a note found near the body stated that the JKLF took responsibility for the killing and that the organization accused Bhat of telling the security forces that a number of militants were in the hospital. According to one source, Bhat had revealed this information after overhearing a conversation between a doctor and a wounded militant four days before she was killed, Bhat was kidnapped from the nurses' hostel by unidentified men.

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<sup>44</sup> Government authorities, in particular then Governor Jagmohan, reportedly encouraged the exodus.

Militants have also planted land mines on public roads which pose a serious risk to civilian traffic, including medical vehicles.

Members of militant groups with easy access to arms have also used their weapons to settle personal scores and engage in extortion. One doctor interviewed in October 1992 conveyed the sense of fear that he and other doctors felt inside the hospital: "The hierarchy of the hospital system no longer exists. I can't even ask the floor sweeper to do his job, because you never know who's carrying a gun or who someone may be." Finally, any militants who have not required medical treatment but have used hospitals as sanctuaries, thereby endangering the lives and security of civilians in the hospitals, have committed a grave violation of international humanitarian law.

## VIII. CONCLUSIONS AND RECOMMENDATIONS

As this report goes to press, the conflict in Kashmir had entered its fourth year, and there are no signs of the violence abating. Instead, the killings have escalated as government forces have undertaken brutal offensives in the valley aimed at killing suspected militants and crushing support for them among the civilian population. Efforts to restart a political process remain stalled, largely because the continuing abuses have alienated and embittered a greater proportion of the civilian population, regardless of their support or opposition to the militants' goals. More than any other factor, the increase in human rights violations testifies to the failure of the Indian government's policy toward the crisis. In the words of one long time observer, India's fight in Kashmir has become a war on the people.

Foremost among the reasons behind the human rights crisis in Kashmir has been the government's unwillingness to take steps to curb abuses by its security personnel. Government officials have admitted that "excesses" have been committed and that action has been taken against those responsible. In fact, in the vast majority of cases, members of the security forces have not been held criminally liable for abuses that include torture, rape and murder. When punishments have been given, they have been limited to administrative disciplinary measures. Despite complaints by medical workers in Kashmir about violations of medical neutrality, assaults on health professionals and other actions by the security forces to deliberately obstruct health services, there has been no response from the government.

The recommendations below are crucial steps the government of India must take to address the medical crisis in Kashmir and the human rights abuses which have created it.

- I. The government of India must permit, at a minimum, the International Committee of the Red Cross of the Red Cross  
  - . State authorities and the headquarters of the army and paramilitary operations in Kashmir should and for neutrality of hospital premises. Removal of patients from hospital premises should be prohibited until the patient's treatment is completed. Security personnel should be trained in the principles of medical neutrality.
  - . Physicians in Kashmir should be permitted to carry out post mortems in all cases of unnatural death cultural concerns about the process. Those conducting post mortems must be able to function impartially and independently of any potentially implicated persons or organizations."
  - . Detainees should have access to prompt medical examinations by civil medical staff. The resul
  - . The government of India should strengthen and enforce the safeguards existing in Indian law that all detainees have immediate and regular access to lawyers, family members and medical care. Security personnel responsible for torture should be held criminally liable and the victims should be comp
  - . A centralized register of detainees accessible to lawyers and family members should be established i

retrieved when the person is released.

- . Militant organizations should immediately desist from any actions that interfere with or impede
- . Militant groups should abide by the provisions of Common Article 3 of the Geneva Conventions w
- . Neither the government nor militant groups should interfere with the actions of international ar
- . A center should be established in Kashmir or in an area accessible to Kashmiris to treat victims of
- . Physicians complicit in human rights violations should be disciplined by their professional associations. Medical schools should carry out programs of education on the human righ

## APPENDIX A

### **Code of Medical Neutrality in Armed Conflict**

(These standards are based on rules and principles concerning medical neutrality set forth in the four Geneva Conventions of 1949 and their two additional protocols of 1977, and apply to all situations of international and internal armed conflict.)

1. Sick and wounded combatants and civilians shall be protected, treated humanely, and provided with medical care without delay.
2. Medical workers shall be respected, protected, and assisted in the performance of their medical duties.
3. The sick and wounded shall be treated regardless of their affiliations and with no distinction on any grounds other than medical ones.
4. Medical workers shall not be punished for providing ethical medical care, regardless of the persons benefiting from it, or for refusing to perform unethical medical treatment.
5. Attacks on defenseless sick or wounded combatants or civilians are prohibited. Upon detention, they shall receive thorough and responsible medical exams and medical care.
6. Medical workers shall have access to those in need of medical care, especially in areas where civilian medical services have been disrupted. Similarly, people in need of medical care shall have access to such services.
7. Medical facilities, equipment, supplies and transports shall be respected and protected, regardless of whom they serve, and shall not be destroyed.
8. A recognized medical emblem, such as the red cross or the red crescent, shall be displayed by all medical units, personnel, and transports provided it is used for medical purposes only.
9. Parties to an armed conflict shall cooperate to make and support practical agreements for the care of the sick and wounded.
10. No party to a conflict can legitimately claim to serve the interests of its nation's citizens if it violates this code, which is based on moral, ethical and legal principles.