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[EMBARGOED FOR: 22 February 1999] Public

amnesty international

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INDIA

'If they are dead, tell us' - 'Disappearances' in Jammu and Kashmir

February 1999 SUMMARY AI INDEX: ASA 20/02/99
DISTR: SC/CO

Wherever movements for autonomy or secession have appeared to threaten the Indian state, the Government of India has responded with harsh and repressive methods, ignoring its duty to protect and promote human rights. These measures have included arbitrary arrests, torture, deaths in custody and "disappearances" of those suspected to be involved in or to sympathise with insurgency. The legacy of this policy is now coming to light in Punjab where hundreds of unidentified bodies cremated by police between 1992 and 1994 have been discovered." "Disappearances" have also in the recent past been reported from the country's Northeastern states.

In Jammu and Kashmir, where opposition groups over the last seven years have intensified their struggle -- whether by peaceful or violent means -- for the region's accession to Pakistan or independence, human rights abuses committed both by agents of the state and by armed opposition groups have been grave and widespread.

Since 1990, some 700 to 800 people have "disappeared" after being arrested by police or armed or paramilitary forces. The victims have included men of all ages, including juveniles and the very old, and all professions, including businessmen, lawyers, labourers and many teachers. Almost all of them appear to be ordinary citizens picked up at random, without any connection to the armed struggle.

Over the past year, less people than in previous years have "disappeared" – but the whereabouts of hundreds of people who "disappeared" earlier have not be established. This includes the vast majority of over 100 cases which Amnesty International documented in its 1993 report (India: '*An unnatural fate*' - 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab, AI Index: ASA 20/42/93). These "disappeared"

persons -- if they are still alive -- still face violations of their rights to life, liberty and security of the person. Their families still live between hope and despair, unaware of the fate of their loved ones and unable to obtain redress from the institutions that are there to protect and promote human rights: police, the security forces, the courts and statutory human rights bodies. Often they are threatened and abused by the perpetrators to give up the search for their "disappeared" family members.

The current report describes the different facets of "disappearances" against the backdrop of recent political developments in Jammu and Kashmir. It seeks to identify the legal, institutional and political factors which facilitate "disappearances" and impede redress. The report concludes with a list of recommendations to prevent "disappearances" and to provide adequate redress.

In this month which celebrates the 50th anniversary of the Universal Declaration of Human Rights, Amnesty International appeals to the Government of India to ensure that all its citizens can enjoy all the basic right laid down in it, including:

- Everyone has the right to life, liberty and security of the person (Article 3)
- No one shall be subjected to arbitrary arrest, detention or exile (Article 9)
- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him (Article 10).

The "disappeared" in Jammu and Kashmir have been deprived of these basic rights for too long.

KEYWORDS: DISAPPEARANCES1 / IMPUNITY1 / DEATH IN CUSTODY / NATIONAL HUMAN RIGHTS COMMISSION / LEGISLATION / INVESTIGATION OF ABUSES / NON-GOVERNMENTAL ENTITIES / CHILDREN / JUVENILES / POLICE / HUMAN RIGHTS DEFENDERS / FAMILIES / AI & GOVERNMENTS / NON-GOVERNMENTAL ENTITIES / POSSIBLE EXTRAJUDICIAL EXECUTION /

This report summarizes a 71-page document, : INDIA: '*If they are dead, tell us*'- 'Disappearances' in Jammu and Kashmir (AI Index: ASA 20/02/99) issued by Amnesty International in February 1998. Anyone wishing further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

Embargoed for 22 February 1999

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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

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-free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence;

-ensure fair and prompt trials for political prisoners;

-abolish the death penalty, torture and other cruel treatment of prisoners;

-end extrajudicial executions and "disappearances".

Amnesty International also calls on opposition groups to halt abuses such as hostage-taking, torture and deliberate and arbitrary killings.

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Front cover: The Association of the Parents of Disappeared Person. Photo by Nissar Ahmed, courtesy of the Hindu.

INDIA

"If they are dead, tell us"
"Disappearances" in Jammu and Kashmir

"I went from pillar to post to get any trace of my son but to no avail. I lodged a report in the police station ... but the officer in charge refused to register a case. I approached the Inspector General of Police ... and at first he assured me that my son's whereabouts would be made known to me but when I approached him again after some days I was chased away. Finally I filed a petition in the High Court and pursued it for some time but could not continue for lack of money as I am very poor. ... My son had nothing to do with militancy ... His "disappearance" is unbearable for me. Neither his person is shown to me nor his dead body is shown. This is a horrifying experience for me and other members of the family... I am right now helpless. It is very difficult for me to manage the household affairs. His "disappearance" has virtually brought us to the level of begging. God knows what will happen to us." Haleema Begum about the "disappearance" of her son Bilal Ahmad Bhat on 3 December 1992.

1. INTRODUCTION

In 1998, which celebrated the 50th anniversary of the Universal Declaration of Human Rights, hundreds of "disappeared" people in Jammu and Kashmir - like Bilal Ahmad Bhat - did not enjoy the basic rights it lays down: "Everyone has the right to life, liberty and security of the person", "No one shall be subjected to arbitrary arrest, detention or exile" and "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".[1]

People who have "disappeared" in the custody of the state are not only deprived of these basic human rights, they are also at risk of further human rights violations which are unconditionally prohibited under international human rights law, the Constitution of India and Indian law. Away from the scrutiny of lawyers, family members and human rights monitors, the "disappeared" are likely to be tortured or killed with impunity.

Haleema Begum, whose statement is quoted above, is just one of hundreds of people in Jammu and Kashmir whose lives have been disrupted by the "disappearance" of a relative. Torn between the hope that their loved ones will be found and the despair when their search fails again and again, such relatives cannot mourn and overcome the loss. Once an earning person has "disappeared", their families often face poverty and are unable to pursue the cases of the "disappeared" in court. Some of those who have stood up for the "disappeared" have themselves been harassed, threatened or killed. Haleema Begum was shot dead in September 1998 by unidentified gunmen; some local observers link the killing to the persistence

[1] Articles 3, 9 and 10 respectively.

with which Haleema Begum sought to trace her son.

The relatives' efforts to trace the whereabouts of the "disappeared" in Jammu and Kashmir and to find redress for this gross violation of human rights have almost invariably been frustrated - by special laws in force in the state and the failure of institutions to provide redress, including police, security forces, courts and the state and central administration. Their responses encompass the spectrum from indifference, to connivance and active shielding of perpetrators of "disappearances".

Amnesty International acknowledges that over the last year, less people have "disappeared" in Jammu and Kashmir than in earlier years; however, the fate of some 700-800 people "disappeared" earlier remains unknown. The vast majority of cases documented in Amnesty International's report on "disappearances" published in 1993[2] remain unresolved, their families live in continued uncertainty and the factors which facilitated "disappearances" then are still in place.

The current report describes the different facets of "disappearances" against the background of political developments in the state. It then seeks to identify the legal, institutional and political factors facilitating "disappearances" and impeding redress, and to recommend ways of removing them with a view to bringing "disappearances" in Jammu and Kashmir to an end.

Haleema with her son Shakeel Ahmad, two daughters and two grandchildren.
(Photo: Amin War.)

Human rights organizations, including Amnesty International, which document human rights violations in Jammu and Kashmir have frequently been told that their expressions of concern disrupt the "fight against militancy" and "protect the rights of killers and saboteurs".[3] Amnesty International appreciates the gravity of the security

[2] India: *'An unnatural fate'* - "Disappearances" and impunity in the Indian States of Jammu and Kashmir and Punjab, AI Index: ASA 20/42/93.

[3] Director General of Police, Gurbachan Jagat is reported to have also said: "*Why are these so-called human rights organizations silent over the killing of innocent people by militants?*", Indian Express, 3 November 1997.

situation the Government of India is dealing with in Jammu and Kashmir and for that reason has sought a constructive dialogue with the government on how human rights can be effectively protected in such a difficult context.

Since the early 1990s, Amnesty International has in all its reports on Jammu and Kashmir expressed its opposition to human rights abuses perpetrated by armed opposition groups[4] and appealed to them to abide by minimum standards of international humanitarian law which prohibit hostage-taking, torture and killing of people taking no active part in hostilities. In 1997, Amnesty International documented[5] how such groups have over the years harassed, intimidated, tortured and killed civilians. Failing to distinguish between military and civilian targets, their targets have included civilian men, women and children, journalists and members of the Hindu minority. More recently, for instance, Amnesty International has urged that independent inquiries be set up to investigate the targeted killings of over 50 members of the Hindu minority in Wadhama in January 1998, in Barankote in April, in Surankote and Manchar in May and in Chapnari in June, allegedly by armed opposition groups.

There is evidence that Pakistan has provided men, training and military support to some groups seeking accession of Kashmir to Pakistan, though the Government of Pakistan has consistently denied such allegations. Many observers also believe that trained Islamist fighters from a range of Muslim countries including Sudan and Afghanistan, believing themselves engaged in a "holy war" in the state, engage in some of the more brutal abuses, especially targeting the Hindu minority.

However, while the state has the responsibility to restore and to maintain order in an extreme security situation of this kind, it also has the obligation to promote and protect human rights at all times, the most fundamental of which are not derogable in any circumstances. For this reason, Amnesty International continues to address the Union Government of India and the State Government of Jammu and Kashmir with its concerns regarding human rights violations, including "disappearances" in Jammu and Kashmir.

Amnesty International takes no position on the nature of the conflict nor on the positions of the Government of India or the armed opposition groups.[6] However, the

[4]Responding to the severity of human rights abuses perpetrated by armed opposition groups all over the world, the membership of Amnesty International in 1991 decided to expand the mandate of the organization to enable it to address such abuses. The mandate had previously only included human rights violations perpetrated by agents of the state.

[5]India: Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law, AI Index: ASA 20/38/97.

[6]Amnesty International uses the term 'armed opposition groups' for what are variously described as 'terrorists', 'militants' or 'freedom fighters' in order to emphasise the organization's impartiality and neutrality with regard to aims and methods of

organization welcomes any initiatives that would contribute to the establishment of a situation in which human rights of all people in Jammu and Kashmir would be permanently secured.

The data presented in this report come from a variety of sources; in many cases, Amnesty International has been directly approached by relatives of the "disappeared", while in other cases the organization - which has not been given access to Jammu and Kashmir - has received information from journalists, human rights activists and lawyers from Jammu and Kashmir and from other parts of India.

Amnesty International hopes to engage in a substantive and constructive dialogue with the Government of India on the concerns in this report. In this spirit, the organization submitted a draft of this report to the Government of India for comment in November 1998. An Amnesty International delegation visiting India in December 1998 discussed the report with officials in the Ministries of Home Affairs and External Affairs in Delhi. Their informal comments were welcome and have been reflected at different points in the report. The delegation asked once again for a list of prosecutions and disciplinary action against security force personnel in relation to human rights violations in Jammu and Kashmir (with sufficient detail including rank, date and place of the incident) to gain a better understanding of army accountability. Amnesty International believes that public disclosure of this information would be an important step forward in checking the problem of impunity for perpetrators and bolstering public confidence in the administration of justice. The delegation also asked the Government of India to expedite several cases in which the government appeared to have withheld sanction to prosecute after a perpetrator had been identified in preliminary investigations. Amnesty International also offered to send an expert delegation, including security personnel with experience of conflict situations, for a further round of high level meetings with representatives of the armed forces, Union and state government ministries responsible for Jammu and Kashmir, either in Jammu and Kashmir or elsewhere, for detailed discussion of the concerns raised in this report.

such groups.

2. RECENT POLITICAL DEVELOPMENTS IN JAMMU AND KASHMIR

In January 1990, the Jammu and Kashmir State Assembly was dissolved and central rule imposed on the state. In the following years, the confrontation between armed opposition groups and the government led to a sharp deterioration of the law and order situation and eventually the induction of large military and paramilitary contingents to assist the state government. Special laws giving wide ranging powers to the security forces were either passed or, if they were existing central laws, extended to the state.

Human rights violations, including arbitrary arrests, torture leading to hundreds of deaths in custody, and extrajudicial executions perpetrated by state police and armed and paramilitary forces soared in the early 1990s. Armed opposition groups were reported to have taken hundreds of civilians hostage and to have tortured and killed hundreds of unarmed civilians.

Kashmiris went to the polls in 1996, first in May-June to participate in election to the Union Parliament, then, in September to the State Legislative Assembly. The National Conference, which had boycotted the elections in May, won the State Legislative Assembly elections with an unprecedented majority, securing 57 of 87 seats. Its leader, Dr Farooq Abdullah, was sworn in as the state's Chief Minister on 9 October 1996, ending over six years of central rule.

The National Conference had won the elections inter alia on an implicit commitment that security operations would again be placed under civilian control and on promises to disarm and rehabilitate the so-called renegades (armed groups operating alongside the security forces).

Civilian control over security concerns appeared to be restored when shortly after the elections, the Chief Minister took over as head of the Unified Command which encompasses all the security forces in Jammu and Kashmir, while the Director General of Police was to coordinate security operations. In October 1997, the Chief Minister announced the withdrawal of armed and paramilitary forces from Anantnag and Baramullah towns "on an experimental basis", as indicative of the "returning normalcy in the valley".[7] He said law and order operations in these areas would henceforth be entrusted to the state police and the Central Reserve Police Force (CRPF).

Meanwhile, the state police had been significantly strengthened and prepared for its counter-insurgency tasks. In February 1997 Gurbachan Jagat, who had served in various capacities relating to counter-insurgency operations in the Punjab police, was appointed Director General of Police in Jammu and Kashmir. On taking

[7] Observers spoke of a "hyped withdrawal of the army from Anantnag and Baramullah, which never had operational army units there in the first place" (Praveen Swami in Frontline, 14 November 1997) while others pointed out that the paramilitary units had been withdrawn earlier.

up his new post, he declared, "*the militancy in Kashmir is on the decline and my dream is to eradicate it, like in Punjab*". The police force was restructured and its strength increased from 38,000 to 50,000[8] in August 1998. Its counter-insurgency branch, the Special Operations Group (SOG), earlier called the Special Task Force, set up in 1994 on a local basis, was given more and better communications and transport facilities, training by security agencies and a supplement of some 12,000 Special Police Officers (SPO), local people, including many renegades, with good local knowledge and links in the local population.

Police security operations became pro-active: "*The idea is rather than waiting for them [the militants] to attack us, we go after them. ... For the last five, six months, we have completely given up being on the defensive. We are using more manpower for operations .... with the flow of better information we are making more contacts and more killings.*"[9] Reports of the SOG's "outstanding performance on anti-militancy front"[10] have measured their "successes" in Southern districts - in which armed opposition groups had in the last two years begun to operate - by the number of killings of members of armed opposition groups, including 55 in Poonch, 48 in Rajouri, 54 in Doda in 1997, compared to 10, 10 and 75 respectively in the previous year.

In Doda district, armed village defence committees (VDC) set up to defend villages until the arrival of security forces were strengthened in November 1997, but following several incidents of members of armed opposition groups taking villagers hostage and decamping with VDC arms, the state government in June 1998 ordered them to be disarmed and replaced by SPOs. Responding to targeted killings of Hindu villagers in the first half of 1998, the state government in August 1998 set up a "three-tier security grid" in Jammu, involving operational pickets, defence pickets and border pickets in Rajouri, Poonch, Doda and Udhampur districts, requiring staffing of an additional 20,000 police personnel, special police officers (SPOs) and ex-servicemen.

Renegades, members of armed opposition groups who had surrendered to the government and were often engaged as informers on their former companions, in earlier years engaged in numerous abuses which different units of the security forces reportedly tolerated, acquiesced in or solicited. However, acknowledging that "the utility of the renegades is over"[11], the Union Government and the State Government of Jammu and Kashmir sought to rehabilitate and absorb them into the security forces. The Central Reserve Police

[8] The Hindu, 18 September 1998; The Telegraph of 30 October 1998 reported that the state police is to reach a strength of 70,000 by the end of 1999.

[9] Gurbachan Jagat, Reuter, 3 July 1997.

[10] Gurbachan Jagat, Indian Express, 3 November 1997.

[11] "Continued services of the surrendered militants was proving to be counter-productive in view of reports of excesses during the operations", Director General of Police Gurbachan Jagat in October 1997.

Force (CRPF) and the Border Security Force (BSF) both reportedly raised a battalion made up of renegades, and some 5,000 renegades were reportedly appointed Special Police Officers (SPO) in the state police. However, Jammu and Kashmir media reports indicate that some renegades still engage in "freelance" criminal activities, supported by and loosely attached to different security forces.

While the coordination of security operations has formally been placed in the hands of civilian authorities and more operations were entrusted to state police, the impression persists that the security forces do not only act "in aid of civilian authorities" as required by law. Shortly after the Chief Minister took over as head of the Unified Command, security forces were reported to have carried out some operations without informing the state police[12] and on 20 November 1996, the first meeting of the Unified Command to be headed by the Director General of Police was reportedly boycotted by commanders of the armed and paramilitary forces. In December 1996, the commanders of the 15 and 16 Corps stationed in Srinagar and Jammu respectively became *ex officio* Security Advisors to the Chief Minister who continued to head the Unified Command, though in his absence his security advisors were entitled to chair its meetings. The strength of the army has not been reduced in the state[13] despite greater participation of state police in security operations.

The manner in which the military leadership in the state publicly takes position on policy matters suggests that the army itself perceives its role to be more than "aid" to the elected government.[14] This attitude of the army leadership became apparent in the autumn of 1997, when one year after the end of central rule, the special security laws were about to lapse. The military leadership openly declared that the laws should be extended to facilitate army operations (see Section 4.1 relating to the laws in force in Jammu and Kashmir).[15]

[12] In mid-October 1996, paramilitary forces were directed by defence authorities not to carry out any security operations without prior permission of civilian authorities. However, only in Jammu was this directive strictly adhered to; in Kashmir, counter-insurgency operations reportedly continued to be carried out solely under army control.

[13] In the autumn of 1997, the army had 107 battalions, i.e. about 100,000 soldiers, deployed in counter insurgency operations in the Valley alone, but it is not deployed in Srinagar itself where the BSF operates. In addition, 22 Rashtriya Rifles battalions are stationed in the Valley and another 14 outside it. Troop deployment in Jammu-Poonch is separate (Times of India, 8 October 1997).

[14] "*The pronouncements of some of the senior officers of the army and paramilitary forces on affairs beyond their purview and jurisdiction for the past few months have created an impression that it is their writ, and not that of the "elected" civil government that runs in the state. They freely and openly comment on political issues and even on political agendas and political policies.*" The Kashmir Times, 3 October 1997.

[15] Lt. Gen. Krishan Pal, General Officer Commanding of the army's 15 Corps based in Srinagar said in September "*as long as the Jammu and Kashmir police are not fully prepared to take control, the army and paramilitary forces should not go back to barracks*" (The Kashmir Times, 1 September 1997) and "*the situation warrants that if the army has to be here these laws have to be here*". (The Kashmir Times, 3 October 1997).

The extension of the special laws affording wide ranging powers to the security forces were confirmed in October 1997 by the State Legislative Assembly; the civilian government is not known to have made any effort to curtail or amend these powers.

The new Union Government formed after elections in March 1998, won by the Bharatiya Janata Party led by A.B. Vajpayee and backed by several regional parties, expressed a will to adopt a proactive approach to what are described as "*infiltrators and Pakistani and Afghan mercenaries*" carrying out the armed struggle in Jammu and Kashmir. Security forces were called upon to initiate operations against members of armed opposition groups rather than react to attacks initiated by them.[16]

In June 1998 Home Minister L.K. Advani who in June 1998 was additionally given the Kashmir portfolio, said: "*Terrorism will be stamped out from our land. We are on the right track and militancy will be totally eliminated through a multi-pronged strategy*"[17]. Part of this multi-pronged approach was spelled out on Independence Day 1998, when he said: "*We are satisfied with the progress we are making. Daily eight to ten militants are being eliminated. The process of attrition is on ... There is no other solution but just to eliminate the terrorists.*"[18]

Meanwhile, many observers believe that the struggle in Jammu and Kashmir has undergone significant change, with local armed opposition groups largely decimated or marginalized. "*[The] complexion of militancy has undergone a serious change. It is no longer an urban phenomenon ... foreign militants have come to dominate the terrorist brigades ... Afghanis, Sudanese and Egyptians are far more determined and far more deadly in their operations. In contrast, the local militants ... mostly targeted the armed forces, selected politicians and government officials ...*"[19] The current apparent calm in Srinagar and other towns is thus not a reliable indicator of the law and order situation of Jammu and Kashmir; pitched battles, bomb attacks and targeted killings have been increasingly reported from rural areas and from previously calm areas in the South.

The years of armed struggle have taken a heavy toll of lives lost, about which reliable figures are impossible to obtain. According to official handouts 19,866 people have died in Jammu and Kashmir since January 1990, including 9,123 members of armed opposition groups, 6,673 victims of armed opposition groups, 2,477 civilians killed by Indian security

[16]Defence Minister George Fernandes in August 1998 clarified that the new proactive approach did not allow "hot pursuit" of members of armed opposition groups spotted fleeing to Pakistan.

[17]Reuter, 26 August 1998.

[18]AFP, 13 August 1998.

[19]Madhu Kishwar, "'*We need a surgeon's knife, not a butcher's' - The tragedy of Kashmir*, in: Manushi, November-December 1997.

forces and 1,593 security personnel.[20] A year earlier on 24 April 1997, Minister of State for Home Affairs, Ali Mohammad Sagar, told the Legislative Assembly that in the seven years of unrest, 16,991 persons, including 7,849 civilians, 1,319 security personnel and 7,823 "militants" including 121 foreign mercenaries, had been killed. He admitted that 454 persons were missing since 1990. The Institute of Kashmir Studies believes that the number of dead since 1989-1990 lies between 40,000 and 50,000.

The official figures conceal that hundreds of victims were not killed as legitimate targets in situations of armed conflict but were deliberately and arbitrarily killed or died as the result of torture inflicted in the custody of state agents. The Jammu and Kashmir Bar Association documented 218 deaths in custody in 1996; all victims had reportedly been arrested first and killed in detention centres inside and outside the state. In the following year, the Institute of Kashmir Studies said that some 200 people died in custody in 1997; in the first half of 1998, around 60 deaths in custody were reported. The real number of such deaths is considered by many observers to be twice as high as the number of reported deaths, i.e. some 350 to 400 deaths per year. Officials have declared in many of these cases that the victims were killed in shoot-outs or "encounters" with police but witnesses have indicated that the victims had been in detention days before the alleged shoot-out or that security forces resorted to shooting even though they could have arrested suspects.

[20] PTI release reported in AFP, 13 September 1998.

3. "DISAPPEARANCES" IN INDIA

"It is surprising that the security agencies who arrested these youths are denying that they have arrested them."[21] Chief Minister Dr Farooq Abdullah, in his maiden address to the Legislative Assembly in October 1996, asking legislators to assist families to trace their "disappeared" relatives.

Wherever movements for autonomy or secession have appeared to threaten the Indian state, the Government of India has responded with harsh and repressive methods. These have included arbitrary arrests, torture, deaths in custody and "disappearances" of those believed to be connected with insurgency. The legacy of this strategy is now coming to light in the state of Punjab where traces of hundreds of "unidentified" bodies cremated by police between 1992 and 1994, have been discovered and where investigations into allegations of thousands of "disappearances" are beginning.[22]

"Disappearances" have begun to be reported from the Northeastern region of India where insurgent groups challenge New Delhi's rule.

In Jammu and Kashmir it is an ongoing process; in some years, especially 1990, 1991 and 1992, more people "disappeared" than in other years. Fewer "disappearances" were reported in 1996 and 1997, perhaps because of fear and intimidation following the killing of a well-known human rights activist in early 1996 which led to a virtual suspension of documentation and reporting of human rights violations. The year 1998 has witnessed a lower level of cases of "disappearances" while other human rights violations continue to be reported in large numbers. But the process has not stopped and available mechanisms have failed to provide redress for the hundreds of "disappearances" of earlier years.

> Any act of enforced "disappearance" is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field. (Article 1 of the UN Declaration of the Protection of All Persons from Enforced "disappearance" [UNDPPD])

[21] The Hindu, 23 October 1996.

[22] In October 1998, the National Human Rights Commission (NHRC) began investigating past human rights violations in Punjab following a challenge to its powers to do so by the Government of India. In December 1996, the Supreme Court of India had ordered the NHRC to investigate reports of "disappearances" in Punjab following allegations of illegal cremations of hundreds of bodies by Punjab police. The Government of India challenged the NHRC powers to undertake this inquiry but in September 1998 the Supreme Court dismissed the challenge ruling that the NHRC would be acting "sui generis" and that provisions of the Protection of Human Rights Act which prevent the NHRC from investigating past human rights violations committed over a year earlier, therefore did not apply. Beside the NHRC, a People's Commission made up of former judges and eminent persons are also investigating "disappearances" in Punjab.

3.1 The Number of "Disappeared" in Jammu and Kashmir

The number of people who have "disappeared" in Jammu and Kashmir is difficult to estimate in the face of widespread fear of relatives to report such incidents, the absence of systematic monitoring by domestic human rights organizations able to enjoy adequate protection to perform their task with confidence, and the lack of access by international human rights groups such as Amnesty International and by the relevant UN human rights mechanisms. Lawyers in Jammu and Kashmir estimate that between 700 and 800 people have "disappeared" in Jammu and Kashmir, including over 400 with respect to whose "disappearance" petitions were filed in the Jammu and Kashmir High Court. According to some observers the number of "disappeared" could be as high as 2,000. Amnesty International is not aware of a single case in which those responsible for "disappearing" a person in custody have been brought to justice, i.e. convicted and sentenced for the crime.

3.2 The Victims

The victims of "disappearance" belong to all ages and professions, including businessmen, lawyers, labourers and farmers - most of whom appear to be ordinary civilians having no connections with armed opposition groups operative in Jammu and Kashmir. They include juveniles (see below), and old people.

The latter group includes a 70-year old farmer from Malgonipora, Sopore, **Abdul Ahad Bhat**, who was reportedly arrested by the 195 Bn. BSF on 12 December 1990 during a raid in which some 60 people were arrested. He still remains untraced. Several school teachers have also been picked up and "disappeared". **Sonaullah Ganai**, a 60-year-old retired school principal, was arrested by RR on 12 May 1994, while coming out of the local mosque in Sicop Road, Bijbehara, district Anantnag, apparently because his son was rumoured to have joined an armed opposition group. In May 1997, **Manzoor Ahmad Tantrey** of the department of Civil Engineering at the Regional Engineering College of Srinagar was arrested by army personnel along with a colleague who was later released; two months earlier another colleague, **Prof. M. Akbar Lone** was taken into custody by the armed forces and has not been heard of since.

The relatives of the "disappeared" are victims of this crime as well; their lives are often shattered when a son or a husband "disappears" and whole families are marked by suffering and despair. Many relatives undertake long and painful searches and travels to trace their "disappeared" family members, following any lead that may bring them closer to them.

The Kashmir Times of 19 May 1997 described in detail such a search. When his son **Mohammad Akbar Rather** was arrested by a Major of the 8 Raj Rifles from his home in Palhalan village, Pattan, on 28 November 1996, Mohammad Subhan Rather first approached the Major who promised his release that evening and on subsequent days as well; at some stage a large sum of money was demanded in return for the release. On 30 November, soldiers informed the father that Mohammad Akbar Rather had escaped from custody. Mohammad Subhan Rather stated that his son had nothing to do with any armed group and would not have escaped from custody. Nonetheless he gave several hundred Rupees to a group of renegades working for the Major to trace his son in the surrounding areas. They could not trace him. Mohammad Subhan Rather then filed a complaint with police on 14 December 1996. At the end of December 1996, a young peasant from the neighbouring village of Wusan, Abdul Ahad Dar, was picked up by the same Major who managed a forced confession from him. Mohammad Subhan Rather further related that the Major "*straightaway drove to me to say that Dar had seen Akbar in Delhi. I knew that the breakthrough was a white lie but I was compelled by him to leave for Delhi as he had threatened that otherwise he will himself go to Delhi and will kill Akbar there.*" The father searched for his son in Delhi for some three weeks but could not find him. A Kashmiri intelligence officer whom he met in Delhi volunteered to persuade the Major to release Akbar; reportedly, the Major promised on this occasion to release Akbar if the case were to be withdrawn. The trip cost Mohammad Subhan Rather some 20,000 Rupees but did not lead to his son's release. When the army agreed to release Abdul Ahad Dar, the family hoped to learn from him some details about Akbar. However, immediately after his release, Abdul Ahad Dar was reportedly re-arrested by the security forces and "disappeared" in custody. In late March 1997, Dar's body was found buried in a field. Another man, Mohammad Subhan Dar, was picked up and beaten for having alerted police about the dead body.

3.3 The Perpetrators

People "disappear" in the custody of all the security forces engaged in counter-insurgency operations in Jammu and Kashmir. These include the regular state police and its counter-insurgency wing, the Special Operations Force (SOG) and the centrally controlled Central Reserve Police Force (CRPF), the Border Security Force (BSF), the Rashtriya Rifles (RR) and the army besides smaller paramilitary units.

Renegades, while usually acting in conjunction with any of these agencies are also reported to have actively taken people into their custody and "disappeared" them.

On 29 May 1997, Mohammad Hussain Mir, a student from Rathnipora village was taken from a bus at Lilhar, along with a fellow student who was beaten by renegades in the presence of police and security personnel and then let off. Mir however, was taken away and his family has not been able to establish his whereabout since.

Abduction and hostage-taking of unarmed civilians has also been used by armed opposition groups to seek to free arrested associates or to frighten or harrass the population. The most well-known instance is the abduction of three men, British tourists Keith Mangan and Paul Wells and American Fred Hutchings on 4 July 1995; in the following days German Dirk Hasert and Norwegian student Hans Christian Ostro were also abducted, all of them allegedly by a little-known group, Al-Faran. With the exception of Hans Christian Ostro, whose dead body was found in August 1995, the fate and whereabouts of these men remain unknown.

Others abducted by members of armed opposition groups have reportedly included members of the administration, the security forces, journalists and ordinary civilians. Mohammad Ismail of Rajpura village in Doda district was kidnapped by members of an armed opposition group in October 1997 and held in an unknown place; a few days later, his body, bearing marks of injury was found in a nearby forest.

Renegades have been particularly targeted for abduction and hostage-taking by armed opposition groups. In April 1997 15 renegades were reportedly abducted by an unknown armed opposition group from a highly guarded camp at Zachaldara village in Kupwara district. The bodies of three of the renegades were shortly afterwards found in an adjoining village. The fate of the remaining 12 renegades is not known to Amnesty International.

A Ministry of Home Affairs report released in October 1996 said that since 1989 1,765 people, including 122 politicians and 20 foreign nationals, had been abducted. Of these, 639 people had been killed in the custody of the abductors, 692 had been released and 434 remained untraced.

The families of these abducted persons - like the families of those who "disappeared" in the custody of the state have lived between hope and despair which has taken a heavy toll on their lives. Amnesty International has repeatedly called on armed opposition groups allegedly involved in these abuses to classify their role in the abuse and to release those who continue to be held hostage, in contravention of the basic standards of international humanitarian law.

3.4 Reasons for "Disappearing" People

Many people appear to be arbitrarily detained during "crackdowns" without any discernible reason. Some are arrested as the only male members found in their homes during raids. Others appear to be arrested in an attempt to force male relatives, assumed to be involved in an armed opposition group, to surrender. Extortion reportedly also plays an increasing role in many human rights violations, including "disappearances" in Jammu and Kashmir. The most common motive for "disappearing" people in custody appears to be to intimidate young people not to join the militancy or to frighten the general population not to

shelter or associate themselves with members of armed opposition groups.

Custodial killings in Jammu and Kashmir have been characterized as not so much the unintended outcome of torture inflicted to obtain information but as a "purposeful culmination of torture" constituting a "brutal signal to other Kashmiris that they had better not get into militancy".[23] "Disappearances" may be an even more potent tool of intimidation, as months and years of enduring hope and despair may render families ready "to do anything if only he comes back alive", as some mothers have said.

> No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced "disappearances". (Article 7, UNDPPD)

"Disappearances" appear to have been used sometimes as a punitive measure. Following the alleged rape on 22 December 1996 of 16-year old Atri in village Hakoora Badasgam in district Anantnag, her family filed a complaint with police and Atri made a statement before the Chief Judicial Magistrate in Anantnag. When the Rashtriya Rifles (RR) unit reportedly responsible for the rape learned of this attempt to seek justice, they picked up **Gul Mohammad Shan**, Atri's father, and took him away. His whereabouts could not be established afterwards. According to reports the RR unit threatened remaining family members to the extent that they locked their house and moved away. No one apparently now dares to pursue the complaint about Atri's rape or her father's "disappearance".

3.5 Recent "Disappearances"

Human rights observers in Jammu and Kashmir believe that some 30 people "disappeared" in the state in the first half of 1998. Some of the recent "disappearances" reported to Amnesty International include the following:

> **Riyaz Ahmad Lone**, who was picked up on 20 March 1997 from his home in village Anderbugh Lolab, district Kupwara in the presence of relatives and neighbours by 36 Bn. Rashtriya Rifles and taken to their camp at Divar Anderbugh. Village elders looking for him there on the next day were told by camp authorities that Riyaz Ahmad Lone was not in the camp. His parents then attempted to file a complaint with police but the police refused to register it. They then reportedly approached the Superintendent of Police at Kupwara who told them that the army had informed him that Riyaz Ahmad Lone had been released. His whereabouts remain unknown.
>
> **Gulam Mohammad Sheikh**, a 35-year old farmer with seven children, was picked up in April 1997 during a raid of his village Potwari Magam, Tehsil Handwara, district Kupwara in the presence of several family members

[23] Civil War and Uncivil Government - Report on Human Rights Violations in Kashmir under the National Conference Government, issued by the Andhra Pradesh Civil Liberties Committee, Hyderabad, the Committee for Protection of Democratic Rights, Mumbai and the People's Union for Democratic Rights, Delhi, in November 1997 following a fact-finding visit to the state in May-June 1997, p.22.

and taken away, probably to the RR camp at Seelu. His whereabouts are not known to date.

Mohammad Rafiq Palhoo was arrested in the night of 8-9 August 1997 from his home in Mander Bagh, Srinagar, by an unidentified security agency. A First Information Report (FIR) alleging his abduction was filed within an hour and following protests by local people, the concerned Senior Superintendent of Police assured the protesters that immediate action would be taken. It is not known if any action was initiated.

Hilal Ahmed Khan, a student, was arrested by security forces during a raid on his home in housing Colony Channapora, Srinagar on 17 August 1997 at around 4 pm. He was released on the following day by the security forces who handed him over to police from Chowki Nagam who later handed him over to his father. However, the security forces had surrounded his house when Hilal and his father returned there. He was rearrested and taken to the camp of the security forces at Bagat Kanipora. His parents approached camp officials who denied his arrest and detention. They have filed a petition in the Srinagar High Court. No further details are known at present.

On 30 July 1998, four persons from Batapora Lolab, who were on a visit to Uri, were arrested by personnel of the Rajput regiment at Uri. Two of the detainees, Habibullah Malik and Abdul Majid were subsequently released but **Ghulam Qadir Lone** and **Abdul Rahim** continued to be detained while the detaining authorities have denied holding them.

On 2 August 1998, two brothers, **Mohammad Younis** and **Abdul Hamid** were arrested by personnel of the Madras Regiment at Hathi Krand who later denied holding them.

Nasser Ahmed Bukhari, a student of physics at Srinagar University, was arrested on 31 August 1998 in front of several people by personnel of the Rashtriya Rifles who later denied detaining the student when family members sought to meet him. Public protests followed demanding the registration of an FIR. Amnesty International is not at present aware what further action was taken.

Bashir Alam Mir and **Khalid Sheikh** from Kalamkote, Tehsil Uri, Baramullah district were arrested on 9 September 1998 at Dulanja village by security forces who later denied holding them when approached by the "disappeared" men's relatives.

The most recent case to come to Amnesty International's attention is the "disappearance" of **Meraj-ud-Din Peerzada**, former Secretary General of the Jammu and Kashmir People's League following his arrest on 16 October 1998 by a unit of the SOG on Lal Chowk in Srinagar. Several police stations approached by the family denied holding Meraj-ud-Din Peerzada and refused to register a complaint. Until the time that this report went into print, his whereabouts were not known.

3.6 "Disappearances" affecting children and juveniles

Amnesty International is particularly concerned about the "disappearance" of children and juveniles in Jammu and Kashmir and the way the "disappearance" of family members affects them. While it is frightening for any detainee to be cut off from the outside world and from the support that family members and lawyers can provide, this situation is particularly threatening for vulnerable children and youths. Parents of "disappeared" children and juveniles suffer an enormous sense of fear, responsibility and despair as they search for their dependents. Juveniles are also gravely affected when a family member "disappears".

Nazir Ahmad Gojar, son of Israil Gojar, was 14 years old when on 26 January 1992 he was picked up by army personnel of the Dogra Regiment from a field near his home in Gojar Pathi Malagam Bandipora, district Baramullah, where he was grazing cattle. Two neighbours in sworn affidavits said that they witnessed the arrest and beating of three persons, including Nazir Ahmad Gojar, by the army unit. One of the two co-arrested persons, Mohammad Ayub Gojar, later testified that they were picked up together with Nazir Ahmad Gojar, beaten and tortured for one night in a nearby forest and taken to the army camp at Chittamar Bandipora. On the following day, all three detainees were taken along for a search of their houses in Malagam by the army and then shifted to Sonarwani camp. According to Mohammad Ayub Gojar, they were then separated and taken to an interrogation centre in Srinagar. When he saw the third co-arrested person, Majid, again at Badami Bagh Jail, Nazir Ahmad Gojar was not there. Mohammad Ayub Gojar and Majid were released after some five months in detention; Majid died soon after his release.

There was no criminal charge against Nazir Ahmad Gojar; he was not brought before any magistrate and when his parents approached the army authorities, the arrest and detention of Nazir was denied.

In mid-1993, Nazir Gojar's mother, Zaitoon Begum, filed a *habeas corpus* petition in the Jammu and Kashmir High Court arguing that the detainee "*has either been done away with or ... been tortured so much so that the respondents* [the state of Jammu and Kashmir, the Union of India and the army] *cannot legally justify the same and in order to avoid the consequences, they do not disclose the same*". On 1 November 1994, the High Court appointed District and Sessions judge Baramullah to hold an inquiry into the "disappearance". His findings, submitted to the Court on 2 May 1996, noted that two respondents - Corps Commander Northern Command and Union of India through Secretary to Government, Ministry of Home Affairs - "*despite being apprised of the pendency of the inquiry in this court by a registered postal notice remained absent and did not associate themselves with the inquiry itself*" and concluded that the "... *failure of the army of not disclosing the whereabouts of the missing individual Nazir Gojar so far suggests with force that it is a clear case of custodial "disappearance" of the missing individual Nazir Gojar about whom the presumption of death during custody can be drawn.*" The district and sessions judge further directed police station Bandipora to register a complaint of murder (section 302 RPC) against the Commanding Officer of the

Dogra Regiment and the two officers in charge of operations at camp Chittamar Bandipora. Following the registration of the First Information Report (FIR 114/96), the police investigated the case and stated that Nazir Gojar "*disappeared in custody and there is every possibility that he may have been killed while in custody*". The High Court, on the basis of the police findings directed police, vide its order of 7 October 1997, to finalize the inquiry within two months. In October 1998, the court stated that the police inquiry was complete and prosecution of the three officers could begin, pending state sanction (on sanctions necessary to start prosecution see chapter on laws in force in Jammu and Kashmir). Zaitoon Begum then filed a petition for compensation for the death of her son, arguing that her son was the "*hope of the family and the source to feed them*" as she herself is an illiterate housewife and her husband too old to sustain four minor daughters and two young sons. It is not known if she has received compensation.

Learning to Live in the shadow of a gun *Courtesy of the Hindu*

Waheed Ahmad Ahangar, then 16 years old, was arrested on 26 May 1990 by 79 Bn BSF from his home during a raid on the Lal Bazaar area of Srinagar. His father, Mohammad Maqbool Ahangar described the fearsome task of tracking a "disappeared" juvenile, his hopes and fears and the promises and threats parents in his position have to cope with: "*We immediately rushed to the DGP* [Director General of Police] *Srinagar the next day, i.e. 27 May. We had a meeting with ...* [him]. *He told us that Waheed is under police remand for three days, directed us to come after three days, He promised an interview with Waheed. On 1 June we again went to his office. A clerk ... provided us the interview slip for 3 June 1990. We went to Papa Two* [an interrogation centre] *and handed over the slip .... We saw Waheed and gave him soap, toothpaste and some clothes. After some time we again went to Papa Two where ...*[an inspector] *told us that Waheed had been shifted to some unknown place. We approached the DGP again. He again gave us the slip for an interview. We went to Panthachowk Interrogation Centre and saw Waheed behind the bars.*

The next time we went to Panthachowk we were told that Waheed had tried to escape from custody and that he was shifted to Old Airport [interrogation centre] *or Papa One. On our way back home Inspector ... met us. He told us to get a slip from ... as according to him, Waheed was still in Panthachowk Interrogation Centre.* [That person] *told us that Waheed had been shifted to Jammu. When we told him that Waheed was still in Srinagar ... he told us to disclose the name of the person who had sent us here.... We refused and left. Then we used to go daily to the DGP Srinagar and like many others used to sit outside day by day. On 28 November 1990 a man ... told us that Waheed had been hospitalized in Intensive Care Unit of Badami Bagh Army Hospital, Srinagar. Straightaway we went to the DGP. He told us to come after some days. On 1 December, I and eleven others ... headed towards Badami Bagh Hospital. We were told to wait for some time. In the meantime a plain clothes CBI Officer came and abused us. We had to come back. ... One day the DGP ... saw me and called me in. He consoled me and told me to come after a few days. He even promised me to take me in his vehicle to where my son Waheed had been kept. ... Meanwhile a BSF inspector ... told me that Waheed was under his custody and he was supposed to submit the report. (I had filed a writ petition before the Hon'ble High Court at Srinagar.) He told me to forget it and threatened me of dire consequences in case I pursued the case ..."*

Writ petition 676/90 about the "disappearance" of Waheed Ahmad Ahangar is still pending and the state government has denied arresting and detaining him. It is not known if any inquiry was set up to establish his whereabouts.

Mohammad Maqbool Bhat was 17 years old when he was arrested on 21 July 1990 by a Central Reserve Police Force (CRPF) unit at Machawa, Badgam along with a friend who after his release reported that they had been taken to Hari Niwas Interrogation Centre. An FIR was lodged on 29 October in Saddar police station, Srinagar. Later a *habeas corpus* petition (No. 451/90) was filed in the High Court. The court appointed a judicial inquiry which in its report of 4 December 1992 concluded that the prisoner had indeed been arrested by the CRPF notwithstanding the affidavits of the Deputy Inspector General of Police and the Deputy Inspector General of the CRPF denying arrest. The Court then directed the registration of criminal charges against the detaining authorities. It is not known if state sanction to prosecute has been applied for.

Javaid Ahmad Dar was reportedly only 8 years old when he was arrested on 3 October 1990, possibly by CRPF personnel, after throwing some stones at their vehicle. Police officials variously admitted that the child was held in the Old Airport Interrogation Centre and later denied holding the child. A CRPF officer in a Srinagar interrogation centre told the parents that Javaid had been adopted by a CRPF officer and taken away. In a letter dated 16 January 1991, police informed the parents that the child was held in the Joint Interrogation Centre, Jammu, but authorities there denied holding him. A *habeas corpus* petition was filed in the High Court but the state government informed the court that Javaid had not been arrested at all. Meanwhile his whereabouts remain unknown and the petition remains pending in the court.

Children and juveniles are also particularly gravely affected when their fathers or elder brothers "disappear" causing them fear and anguish at a time when they should grow in trust and confidence. The high level of psychiatric problems experienced by juveniles noted in Kashmir can be partly traced to the insecurity felt when witnessing human rights violations at close hand.[24] A recent study on the situation of children in Jammu and Kashmir carried out over four years by Muzamil Jaleel, a former journalist, concluded that more than 10,000 children had been orphaned since 1990 but that the number is steadily increasing. *"Kashmir children are socialized to violence and if this socialization towards violence continues unabated, there will be a revival of large-scale violence after a decade ... For the Kashmiri child, A stands for arms, B stands for bullet, C stands for curfew."* Similarly, the Voluntary Health Association of India said that while psychiatric disorders had increased exponentially in the general population in Jammu and Kashmir with even healthy people suffering from anxiety disorders and depression, leading to an increased suicide rate and indiscriminate resort to psychotropic drugs, it was children who suffered most. *"The trauma of losing a family member along with the added stress of shouldering family responsibilities played havoc with the delicate equilibrium of many adolescents"* many of whom had to take up work to sustain their families.[25]

3.7 "Disappeared" or dead in custody?

Many people who have "disappeared" in custody are believed to have been killed by the detaining authorities. Custodial deaths in Jammu and Kashmir are estimated to number some 300 to 400 per year.

The most well-documented recent case of a "disappearance" which was found to conceal a custodial killing is that of human rights lawyer and activist **Jalil Andrabi**.

[24] See: Children in South Asia: Securing their rights, AI Index: ASA 04.01/98.

[25] The Status of health in Kashmir, Voluntary Health Association of India, 1997, p. 29; also: Mushtaq A Margoob, *"A study of the present magnitude of psychiatric disorders and existing treatment services in Kashmir (1990-94)*, in: JK Practitioner, July-October 1995.

Andrabi was arrested on 9 March 1996 by a unit of the Rashtriya Rifles stationed at Badgam, headed by a Sikh major and accompanied by renegades acting as "spotters". On the following day the Jammu and Kashmir High Court Bar Association of which Andrabi was a member, filed a *habeas corpus* petition in the High Court. While hearings took place and various law enforcing agencies swore that Andrabi was not and had never been in their custody, Andrabi was already dead. His decomposed body was found in the Jhelum river on 27 March. His hands were tied and his face was mutilated. The autopsy report said that Andrabi had probably been killed some 14 days earlier.[26]

A 24-year old student, **Ashiq Hussain Ganai**, was arrested on 3 March 1993 in the presence of relatives and neighbours by two majors identified by name, leading a unit of 17 JAK Rifles in village Dangiwach, district Baramullah. Initially the army denied his arrest but on 20 March, his father Ghulam Rasool Ganai was assured by the Major General stationed at Baramullah that Ashiq would be released on 23 March 1993. However, on 21 March the two majors responsible for Ashiq's arrest raided the family residence, took Ghulam Rasool Ganai and his younger son Nisar Ahmed away in an army vehicle, forced them to sign papers the contents of which were not shown to them and released them. On 22 March 1993, the family was told by the Major General that Ashiq had been transferred to the custody of the 79 bn of the army and that he would be released on 25 March. On that date the family was informed that Ashiq had escaped during cross firing at Sangram Pora. Since Ashiq did not return and the family did not believe the explanation, they continued to search for Ashiq; however, each agency approached denied holding him. On 12 April 1993 a mutilated and decomposed body was found in the Jhelum river near Doabgah Achabal, Sopore which was subsequently identified as Ashiq's.

On 8 November 1996, taxi driver **Shabir Ahmad Bhat** of Pattan was forced by an army unit to drive up to their camp at Mirgund and was held there. His mother Zaina Begum was told on the following day at the camp that her son would be released in a day or two. On the third day after the arrest the owner of the taxi approached the camp to retrieve his taxi. He reportedly spoke to Shabir Ahmad Bhat. Zaina Begum subsequently requested the Superintendent of Police at Baramullah to intercede with the army authorities to release her son; he wrote to them on 21 November 1996. Nothing was heard about his fate till 7 March 1997 when Shabir Ahmad Bhat's dead body was found in a ditch at Dewar Ekmanpora near Pattan.

[26]For details see: India. Jammu and Kashmir: Remembering Jalil Andrabi, AI Index: ASA 20/10/97.

4. FACTORS FACILITATING "DISAPPEARANCES" AND HAMPERING REDRESS

As the case studies described below indicate, a number of factors contribute to people "disappearing" in custody in Jammu and Kashmir. These include the laws in force in Jammu and Kashmir which give security forces wide powers of arrest and detention and virtual impunity, the attitude of police and the security forces, the unwillingness or inability of the higher judiciary to play a more forceful role in providing redress, the attitude of the government which appears to shield offenders and the vulnerability of human rights defenders campaigning against "disappearances" in the state.

4.1 Laws in Force in Jammu and Kashmir

While the regular laws in force in India are not fully in consonance with international human rights standards, several laws in operation in Jammu and Kashmir facilitate human rights violations and the impunity with which they are perpetrated by inadequately safeguarding the rights of those under arrest and detention.

One of the most notorious laws in force in the state was the Terrorism and Disruptive Activities (Prevention) Act (TADA), 1987 which gave security forces and armed forces special powers in the use of force, arrest and detention.[27] Following intense national and international lobbying, it was not renewed or replaced when it lapsed in 1995. However, cases can still be filed under TADA under section 14 which provides that it should be applied to active trials in various courts before its expiry and to defendants tried in future in connection with offences alleged to have been committed before its lapse. The practice of linking people to an ongoing case and committing them to trial under TADA has been reported from Jammu and Kashmir since the lapse of TADA in 1995. For instance, Javed Ahmed Mir of the Jammu and Kashmir Liberation Front was remanded in judicial custody in September 1996 in connection with a charge registered against him under TADA in 1990.

According to the Concluding Observations of the UN Human Rights Committee at its hearing of India's third periodic report in 1997, 1,600 people remained in detention under TADA provisions in 1997.[28] It is difficult to ascertain how many people from Jammu and Kashmir are still being held inside or outside the state under TADA. The All Parties Hurriyat Conference informed Amnesty International that on 1 January 1996, some 1,487 persons were

[27] For analysis of TADA provisions and its contribution to human rights violations in the state, see: India: *'An unnatural Fate'* - 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab, AI Index: ASA 20/42/93 and India: The Terrorist and Disruptive Activities (Prevention) Act: The lack of 'scrupulous care', AI Index: ASA 20/39/94.

[28] CCPR/C/79/Add.81, para 25

detained under TADA in Jammu and Kashmir. In December 1996, Minister of State for Home Affairs, Maqbool Dar, in a written statement to the Upper House of Parliament stated that in Jammu and Kashmir 482 people were still detained under TADA. However, as many detainees from Jammu and Kashmir are lodged outside the state, the total number of Kashmiris detained under TADA is unclear. In mid-1996, for instance, Amnesty International was informed that 35 Kashmiri detainees were held under TADA in Jullunder Jail and 117 in Jodhpur Jail.

A review board to look into pending cases under TADA is reportedly progressing only very slowly. In January 1997, the Supreme Court expressed concern about the continuing detention of persons under TADA and its misuse to detain those who should be charged under the ordinary criminal law. In March, in response to a petition filed by the All-Muslim Minority Council, the Supreme Court issued notices to the central and state governments to provide lists of TADA detainees who remained in detention. The petition alleged that Supreme Court orders concerning the release of TADA detainees had not been complied with. It is not clear if such lists of TADA detainees have been forthcoming.

Foremost among current laws contributing to the disregard for human rights in Jammu and Kashmir is the Armed Forces (Special Powers) Act, 1958[29] which was introduced in Jammu and Kashmir in December 1990 after six districts in the Kashmir Division and two districts in the Jammu Division had been declared "disturbed areas". It gives the armed and paramilitary forces sweeping powers which facilitate arbitrary arrest and detention and extrajudicial executions and reinforce the impunity of offenders acting under it.

The Act allows security forces in areas declared "disturbed" (section 3) to "*arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest*", including the power to shoot to kill (section 4). Section 7 indemnifies armed forces from prosecution for any acts done under the Act (see below).

In its third periodic report to the United Nations Human Rights Committee in November 1995, in accordance with its obligations following ratification of the ICCPR in 1979, India elucidated the reasons for the continued application of the Armed Forces (Special Powers) Act, stating:

"*... such statutes were enacted by a democratically elected Parliament, their duration was subject to periodic review, and not only could their validity be tested by judicial review, but also any action taken thereunder could be challenged before the High Courts and Supreme Court. ... if individual and isolated aberrations have occurred, there are judicial remedies available, including procedures for apprehension and*

[29]Discussed here is the Armed Forces (Jammu and Kashmir) Special Powers Act, i.e. the act extended to Kashmir. In other parts of the country it takes a slightly different form. Comments cited here apply to features the Act shares in all its regional variations.

punishment for such perpetrators of human rights violations".[30]

In its concluding observations following consideration of India's report in July 1997, the Human Rights Committee recognized that "*terrorist activities in the border states that have caused the death and injury of thousands of innocent people, force the State Party to take measures to protect its population. ... however, ... all measures adopted must be in conformity with the State Party's obligations under the Covenant*".[31]

It said it remained "*concerned at the continued reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respects to articles 6,7,9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.*"[32]

It further expressed its concern that many parts of India had remained subject to declaration as disturbed areas over a long period of time - the Armed Forces (Special Powers) Act has been applied in Jammu and Kashmir since 1990 - and that the Union Government was using emergency powers in such areas without publicly declaring an emergency and the derogation from specific obligations under the Covenant and without informing the United Nations and other State Parties to the ICCPR as required by article 4(3) of the Covenant.[33]

Judicial review of the Armed Forces (Special Powers) Act has been slow. In November 1997, the Supreme Court upheld the constitutional validity of the Act after hearing petitions challenging it filed in 1980, 1982, 1984, 1985 and 1991.[34] The court said that the powers given to the army deployed in a state in aid of civilian force was not intended to supplant or substitute it, they were not "*unreasonable or arbitrary*". It ruled that the declaration of an area as "disturbed" should be periodically reviewed. Without laying down strict conditions for the use of force proportionate to the occasion, the court maintained that the requirement of the Act under section 4 relating to the use of force included the subjective assessment by an army officer of specified rank and the issuing of a warning before shooting to kill, thereby providing "*an indication that while exercising the powers the officer shall use minimal force required for effective action ...*" With respect to the prosecution of army personnel subject to sanction, the Court ruled: "*We are of the view that since the order of the central government refusing or granting the sanction ... is subject to judicial review, the central government shall pass an order giving reason.*"

The judgment has been criticised by some human rights groups, journalists and activists as a

[30]CCPR/C/76/Add.6, para 50.

[31]CCPR/C/79/Ad.81, para 4.

[32]Ibid, para 18.

[33]Ibid, para 19.

[34]Naga People's Movement of Human Rights vs Union of India (1998) 2 Supreme Court cases 109.

"shocking ruling"[35] (On the requirement of sanction for prosecution see Section 4.5 on the protection of offenders by the state).

The Jammu and Kashmir Disturbed Areas Act, 1992 gives powers to police in areas declared "disturbed" by the state government, similar to those conferred on army and paramilitary forces under the Armed Forces (Special Powers) Act. In such areas, any magistrate or police officer of a certain rank, if he considers it necessary, may "*fire upon or otherwise use force even to the causing of death against any person*" who is committing any act which may result in a serious breach of public order (section 4); such personnel are also empowered to destroy arms dumps or fortified positions or shelters (section 5). Section 6 gives legal immunity to persons acting under the Act: "*No suit or prosecution shall be instituted except with the previous sanction of the government against any person in respect of anything done or purporting to be done in exercise of the powers conferred by section 4 and 5.*"

In August 1998, following a wave of killings of civilians in Doda district, the army asked that the area be declared "disturbed", so that the special security laws could be applied. "*We do not have the power to cordon off and search villages where militants are hiding. Neither can we detain or interrogate suspects in these areas*", an army spokesman said[36]. To Amnesty International's knowledge, Doda had not been declared "disturbed" at the time of publication.

The Jammu and Kashmir Public Safety Act, 1978 (PSA) permits administrative detention for a period of up to two years on vaguely defined grounds to prevent people "*from acting in any manner prejudicial to the security of the state or the maintenance of public order*". Under section 22, legal proceedings against officials for acts "done in good faith" are disallowed. Important legal and constitutional safeguards, including the right to be brought before a magistrate within 24 hours of arrest and to consult a lawyer of one's choice, are not available to anyone held under preventive detention legislation. Thousands of people have over the years been detained under the Act.

In August 1997, despite repeated official assertions that the state was fast returning to normalcy, the Jammu and Kashmir Prevention and Suppression of Sabotages Act, 1965 intended to "*provide for the speedy trial of, and enhanced punishment for the offences of sabotage,*"[37] was notified by the State Government of Jammu and Kashmir and came into force under SRO [Statutory Rules and Orders] 272 dated 7 August 1997. Within days, a district and sessions judge was appointed to try offences under the Act in a designated court in Jammu. Police were reportedly instructed on 12 August to book saboteurs under the Act. While nobody to Amnesty International's knowledge has so far been charged and tried

[35] A.G. Noorani, "*Supreme Court on Armed Forces Act*" in: Economic and Political Weekly, 4 July 1998. For an analysis see also: South Asia Human Rights Documentation Centre: Armed Forces Special Powers Act: A study in National Security tyranny; Gautam Navlakha: "*Internal Militarization. Blood on the Tracks*" in: Economic and Political Weekly, 8 February 1997

[36] The Telegraph, 6 August 1998.

[37] Its purpose as defined in the heading of the Act.

under the Act, the organization is concerned that the Act contravenes international standards for fair trial, including the rights to equality before the law, the right not to be tried under retrospective application of law, to a public trial and to appeal against conviction and sentence. The Jammu and Kashmir High Court Bar Association announced it would challenge the Act.

When the Jammu and Kashmir Disturbed Areas Act, 1992[38] was about to lapse in October 1997, the debate was re-opened whether there was any need for special laws in Jammu and Kashmir under an elected civilian government and given official claims of an improved law and order situation. Before State Legislative Assembly elections in September 1996, the National Conference had criticized the laws saying that they encouraged abuses by security forces in the state. Minister for Law and Parliamentary Affairs, P.L. Handoo in January 1997 told the press in Jammu that all central laws extended to the state during central rule would be reviewed - without, however, mentioning the criteria against which they would be reviewed nor the envisaged time frame.[39]

In September 1997, Brigadier Ashok Kapur at 15 Corps headquarters said that army authorities were opposed to withdrawing the Armed Forces (Special Powers) Act and the Jammu and Kashmir Disturbed Areas Act as the situation "on the militancy front" had not sufficiently improved, and a withdrawal would make the army's task work more difficult. Similarly, Commander of the Srinagar based 15 Corps Lt. Gen. Krishan Pal said that it would be difficult for the army to carry on counter-insurgency measures without the Acts: "*For a small operation we have to wait for the requisition from a Magistrate and follow the orders from him for every stage which is not possible... We do not want to leave the work half done and invite trouble again ...*"[40]

On 8 October 1997, the state assembly unanimously passed the Jammu and Kashmir Disturbed Areas Act, 1997 to remain in force for one year. It is identical to the 1992 Act but for two amendments. It is mandatory for a police officer to report to the nearest magistrate within 24 hours the cause of death or injury of any person, caused while acting under section 4 of the Act, and the powers to shoot to kill earlier vested in a head constable are now vested in a sub-inspector or inspector of police.

When presenting the bill to the Legislative Assembly, the Chief Minister said that "*at this*

[38] All central laws extended to the state while it was under central rule were to lapse one year after an elected government assumed office.

[39] At the same time he asserted that the laws which had been extended to the state with the consensus of the state government, had all been beneficial for the people - yet somehow they had diluted the meaning of article 370 of the Constitution of India which secured the State's autonomous status within the Indian Union. The concept of autonomy pursued by the state government was intended to "preserve the right of the state legislature to enact its own laws ... we want to use our own discretion and judgment and enact identical laws through our legislature as guaranteed in the Constitution of India ... we might even go a little further and enact better laws on the same issues which would not be inconsistent with the central laws." The Kashmir Times, 1 February 1997.

[40] The Hindu, 27 September 1997.

point in time, when the security forces are poised for a decisive breakthrough there is immense justification for continuing the powers which flow from this act in order to combat terrorism and eradicate militancy".[41] After the passage of the Act, the Chief Minister said that no democratic government would like to continue such laws but that they were necessary to "fight anti-national elements". "*The only advantage it gives them* [the security forces] *is that it makes them able to move and they have a cover, what is known as legal cover for their actions*".[42]

4.2 Practices of the Police in Jammu and Kashmir

In July 1997, Justice A.Q. Parray of the Jammu and Kashmir High Court observed in a case of torture allegedly perpetrated by the counter-insurgency wing of the state police that the "*Police Task Force are still behaving in a way which is neither recognized by law nor is provided by any procedure established by law*".[43] He asked the Advocate General to disclose the status of implementation of the guidelines laid down by the Supreme Court with respect to arrest and detention in the case Ashok K. Johri vs State of West Bengal. The Supreme Court had at the time directed that all police observe these guidelines and that any police officer not obeying them was liable to departmental action and contempt of court.

This reminder flies in the face of official praise for the state police. Only three months earlier, Chief Minister Dr Farooq Abdullah was quoted as saying that the Jammu and Kashmir state police and the Punjab police had achieved excellence in fighting terrorism and they could be trusted in the proxy war-like situation facing the state.[44] The reference to Punjab police was no chance remark as the Director General of Police appointed in February 1997 had served for many years in counter-insurgency operations in Punjab where high levels of human rights violations had been reported.

The Jammu and Kashmir state police have shown a disturbing disregard for the rule of law in their expanding counter-insurgency operations, leading to increasing allegations of arbitrary arrests, torture, killings and "disappearance" perpetrated by police officers themselves and reports of their connivance in abuses committed by other agencies such as the renegades. It is also shown in the way police have obstructed victims' and victims' families' access to redress.

Bashir Ahmed Wani, s/o Ghulam Nabi Wani was handed over to the station house officer of Pampore on 19 November 1997 by his father and several notables of the area after police had

[41] The Kashmir Times, 7 October 1997.

[42] Sunday, 26 October - 1 November 1997.

[43] Allegations of abuses by the SOG were also raised in the Legislative Assembly in October 1997. In May 1998, Kuldeep Nayar wrote: "*The SOG ... is said to be more brutal and more personal as if it is settling scores. ... I never heard of so many instances of excesses before. Complaints are so many that after hearing them for some time, you become numb. Incidents become numbers and the victims merely a subject. People are reportedly picked up on suspicion and tortured endlessly ...*" The Hindu, 28 May 1998.

[44] The Kashmir Times, 26 April 1997.

four days earlier directed that Bashir Ahmed Wani present himself for investigation to police. However, the family were not allowed to meet the detainee during the following four days after which police informed them that Bashir Ahmed Wani had been transferred to a unit of the Special Operation Group (SOG) at Lethpora police station. During the first four days of Bashir Ahmed Wani's detention, Bashir Ahmed Bhat, s/o late Fateh Bhat was arrested and detained in the same police station and also transferred to Lethpora. The families of both the "disappeared" men approached the home ministry which directed police to release the detainees. However, the station house officer Lethpora claimed that both men had been released on 23 November 1997 after being found innocent; however, neither man was seen on or after that date (see for further details the chapter on the Human Rights Commission).

On the night of 1 and 2 August 1997, **Fayaz Ahmed Khan**, a 20-year-old mason, was arrested during a raid of his home in Hakabazar area, Srinagar, by personnel of the SOG and taken to their camp at Aloochabagh, Srinagar. While three other persons arrested with Fayaz were known to be later transferred to the Joint Interrogation Centres at Kupwara and Anantnag, the family of Fayaz lost track of him. The local police station refused to register the father's complaint about the "disappearance" and the SOG denied holding him. On 7 October 1997, Fayaz' father submitted an application to the Deputy Commissioner (DC) about the "disappearance" of his son; the DC endorsed the application to the Senior Superintendent of Police for appropriate action who in turn instructed the Superintendent of Police in charge of the SOG to trace and recover Fayaz Ahmed Khan. The latter denied holding the detainee. Fayaz Ahmed Khan's family reportedly lacks the wherewithal and the money to file a writ petition in the High Court.

Jammu and Kashmir police have also ignored constitutionally secured legal safeguards that would provide redress to victims and victims' families. The first step for victims to ensure that a serious human rights abuse is investigated, the whereabouts of the prisoner established and those responsible brought to justice, is to register a complaint with police. Police officers are obliged under section 154 of the Code of Criminal Procedure to take a complainant's statement down in writing in a First Information Report (FIR).

Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced "disappearance" has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced "disappearance" has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. (Article 13, Para's 1 and 2 UNDPPD)

Lawyers and activists in Jammu and Kashmir have repeatedly asserted that there is systemic disregard for this right to file a complaint and that local police have been instructed to refuse to register complaints without first obtaining permission from higher authorities. Amnesty International has a copy of an order from the Superintendent of Police (South Srinagar) dated

14 April 1992, which states: "*If there is any misdemeanour by the security forces during search operations or otherwise ... FIRs should not be lodged without approval of higher authorities*".

This instruction - which clearly contravenes the law - is of particular concern to Amnesty International since in communications with Amnesty International, the Government of India has pointed to the failure of individuals to file FIRs as a reason why allegations of human rights violations have not been fully investigated in the state.

Local observers have cited a number of possible reasons for police refusal to file complaints. Police may be afraid of repercussions from an organization they consider more powerful than their own; they may also fear being seen to aid and abet the cause of armed opposition groups if they do their duty and register complaints against security forces. They may indeed prefer to be directed by a court to register a complaint as this will reduce their perceived responsibility for doing it.

Sometimes it takes relatives years of persistent efforts to achieve this elementary first step.

Mohammad Anwar Mir was arrested on 23 January 1992 by 4th Bn. Border Security Force from his employer's house at Tatoo Ground, Batamaloo, Srinagar. To this day, his whereabouts are unknown and his relatives have not succeeded in having a complaint about his "disappearance" registered with police.

Mir's widowed mother, Zoona, and his brother, Abdul Aziz Mir, filed a *habeas corpus* petition (No 200/1992) in 1992 in the Jammu and Kashmir High Court at Srinagar; notice was issued by the Registrar and several hearings took place in the same year. The petitioner could not pursue the matter but later sought to revive the case, but in 1997 the case could not be traced. They also sent applications to the Chief Secretary of the Government of Jammu and Kashmir, to the Additional Chief Secretary, Home Department in 1992, to the Home Department of the Government of India and to the Director General of Police, Jammu in 1993. This led to several of the addressees directing their subordinate officers to investigate the case - without any result. Formal applications were also made to the Station House Officers (SHOs) of police stations Shergahi, Srinagar and Char Sharief, Badgam who refused to accept the complaint; then registered letters containing the complaints were sent - again without any action being taken. In March 1997, the "disappeared" man's brother filed a writ of mandamus requesting the court to direct the relevant police stations to register the complaint. The outcome is not known to Amnesty International.

Amnesty International is not aware of any steps being taken to stop this violation of the constitutionally secured first step towards redress, nor whether steps have been taken to implement Supreme Court guidelines issued in several similar cases. However, the organization welcomes the announcement made in February 1998 by the state government that forthwith human rights education will be part of state police training and hopes this will lead to greater adherence to safeguards in the law.

No order or instruction of any public authority, civilian, military or other, may be invoked to justify and enforced "disappearance". Any person receiving

such an order or instruction shall have the right and duty not to obey it.

Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced "disappearance" are prohibited. Training of law enforcement officials shall emphasize the above provisions.

(Article 6, Para's 1, 2 and 3 UNDPPD)

Police are also reported to have ignored or flouted High Court orders. In the case of the "disappearance" and later killing of Jalil Andrabi, the High Court in mid-March 1996 directed that a Special Investigation Team under the Deputy Inspector General of Police be set up to investigate the victim's whereabouts. The team was directed to report to the Court every day on the progress of investigations. In June 1996, the Inspector General of Police (IGP) arbitrarily altered the composition of the team and its assigned task. While the original team consisting of three senior police officers was to take instructions only from the High Court and to report to it alone, the IGP handed over the investigation to the state crime branch and instructed it to report to him daily. Following the Andrabi family's filing a contempt of court petition, the IGP tendered his unconditional apology and the High Court called on the state to cease interfering and reversed the IGP's orders.

4.3 Practices of the Jammu and Kashmir High Court

The higher judiciary in Jammu and Kashmir appears in many ways unable or unwilling to provide justice to the "disappeared" and to their families. The Jammu and Kashmir High Court has two benches, one at Srinagar and one at Jammu. At present between 200 and 400 *habeas corpus* petitions - different information is given by different sources - are reportedly pending in the Srinagar bench and it is foreseeable that it will take years to clear the backlog of petitions - even given the full cooperation of the respondents. This number includes over 60 cases of "disappearance" filed in 1991 by H.N. Wanchoo (see below), a lawyer active in the People's Union for Civil Liberties. Following his killing in 1992, none of the cases were heard in the court and lawyers attempting to get the cases listed reportedly found that many of the files of these cases were missing in the High Court premises.

Habeas corpus petition are heard only by one or two judges, on one day per week, Tuesdays, leading to lengthy delays. Given the unresponsiveness of the respondents and the long adjournments granted by judges, this schedule of hearings on a single fixed day per week contributes to long delays.

Security of tenure of judges, an essential requirement for the independence of the judiciary, appears not adequately provided for in the Jammu and Kashmir High Court as there is a large proportion of unconfirmed judges.[45] Their

[45] In November 1997, five High Court judges were sworn in; these included one permanent judge (who had earlier been an additional judge) and four new additional judges with a two year tenure. A month later, four High Court judges were sworn in; they included two permanent new judges and two sitting judges of the High Court who were sworn in as additional judges for a further period of two years. This brought the strength of the Jammu and Kashmir High Court to 12 judges. In August 1997, when the strength had only been eight judges, including three additional judges, the sanctioned strength had been raised to 14. In the subordinate judiciary, seats of eight out of 52

unsecured tenure makes them open to government pressure as they may risk not being confirmed if they pass judgments not appreciated by the authorities. Advocates practicing in Jammu and Kashmir have also pointed out that judges, some of whom have been transferred after making observations critical of the government, are hesitant when a case reaches the final stage and have repeatedly adjourned it, apparently to avoid having to make a judgment or pass an order.

Filing *habeas corpus* petitions, the most essential remedy for families whose relatives have "disappeared", is a time consuming and expensive process which affected families may not always know and trust and which more often than not does not lead to the recovery of the person.

> The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced "disappearance"s under all circumstances, including those referred to in article 7. (Article 9, Para 1, UNDPPD)

Practicing advocates in Jammu and Kashmir have told Amnesty International that in the vast majority of cases, High Court judges do not admit *habeas corpus* petitions right away despite the urgency of finding the "disappeared" person who may be at risk of losing his life and physical integrity. Instead, the court asks the respondents to explain why the petition should not be admitted against them. Whereas the court usually gives four weeks notice for this stage, in practice, the process may take several months as the state frequently fails to file objections to the admission of a petition. If the state fails to respond the court usually gives the respondents more time to file objections.

> The whereabouts of **Ghulam Nabi Dar**, arrested on 10 July 1994 by 10 Mountain Brigade, remained unknown. His family immediately filed a complaint in the Kulgam police station, then, in 1995, presented a *habeas corpus* petition in the High Court. The High Court, before admitting the petition, issued four weeks' notice to the state, which were extended again and again. In September 1997, the High Court finally imposed a fine on the Superintendent of Police for not ensuring that objections were filed. At the same time it extended the time once more by two weeks.

Once a *habeas corpus* petition is admitted, hearings may stretch over several years. Petitions are placed before whichever judge is available so that the same petition may repeatedly be placed before a judge who is not familiar with the case. The lack of continuity of hearing which is to the detriment of the victim, could easily be overcome, advocates hold, by structuring the working of the court differently.

The Jammu and Kashmir High Court also appears to be unduly lenient towards the non-appearance of respondents or other non-compliance with court orders such as production of evidence or affidavits which is a regular occurrence. Usually, hearings are adjourned and respondents given another several weeks to appear and respond. In dozens of cases, agents of the state have filed affidavits denying arrest and detention of a "disappeared" person but when

sanctioned district and sessions judges were vacant in mid-1997. Indian Express, 18 August 1997.

judicial inquiries subsequently confirmed arrest and detention, none of the state agents revealed to have filed false affidavits have been held to account by the court - though clearly it is an offence (see also Section 4.4 on the attitude of the security forces).

> Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention. (Article 12, Para 1, UNDPPD)

The Jammu and Kashmir High Court has directed the setting up of judicial inquiries into "disappearances" in a large number of cases. These judicial inquiries have on several occasions noted that the security forces have failed to co-operate with them to establish the whereabouts of "disappeared" persons or to submit relevant evidence. For instance, in the case relating to the "disappearance" and the later killing of Jalil Andrabi, the Jammu and Kashmir High Court noted in late 1996, "*the fact that the functionaries of the Union of India have not been cooperating with the Investigating Team in a proper manner. We are sad to find that even after eight months* [the] *post mortem report has not been furnished to* [the] *Investigating Team.*"

Following the submission of the report of the judicial inquiry relating to a case of "disappearance" to the court, the High Court gives the state the opportunity, usually within two weeks, to file objections. At this stage again the state has regularly failed to respond to court orders, leading to further generous adjournments. In 1994, a petition was filed in the Jammu and Kashmir High Court relating to a range of human rights violations in jails and interrogation centres in the state. The judge hearing the petition found that the allegations required a thorough probe and commented:

"There is a total breakdown of law and order machinery. I should not feel shy to say that even this court has been made helpless by the so-called law enforcing agencies. Nobody bothers to obey the orders of this court. Thousands of directions have been given to top administrative and the law enforcing agencies which have not even been responded to."[46]

In a few cases the court has attempted to enforce compliance by imposing fines on state representatives for failure to respond to the order to file objections.

> In February 1997, the High Court imposed a fine of 5,000 Rupees on the Union of India as it had failed to file objections after an inquiry established the facts of the "disappearance" of **Mohammad Afzal of Muran**, arrested on 28 December 1990 by the 142 Bn of the army. Again, in July 1997, the High Court in two cases of non-compliance with court orders imposed a fine of 5,000 Rupees on the state. Ghulam Rasool Hazari of Khawjabagh, Baramullah was allegedly arrested by a BSF unit on 29 September 1994 and remained untraceable since then. Sheikh Gowhar Ayoub (see case details below) "disappeared" in the custody of 7 Jat Regiment following arrest on 4 August 1995.

[46]Hearing of petition No 850/94 in the High Court of Jammu and Kashmir on 17 October 1994.

Inquiries had established the fact of arrest and "disappearance" as described by the petitioners; court directives to file objections were repeatedly ignored and so the court imposed fines for non-compliance with its orders. Again, on 16 September 1997, the High Court imposed a fine of 1,000 Rupees on the Superintendent of Police Anantnag as the state failed to file objections as directed by the court in the case of Ghulam Nabi Dar of Radawani, Anantnag, who "disappeared" after being arrested on 10 July 1994 by the 81 Mount Brigade of the army. Despite registration of an FIR in police station Kulgam and the filing of a *habeas corpus* petition, his whereabouts remain unknown. The High Court had in 1995 asked the state to file objections but despite numerous adjournments, the state failed to respond. Along with imposing the fine, the court granted one last adjournment of two weeks to file objections.

The fining of state agents for non-compliance with court orders does not appear to have had any significant impact on the state's attitude. Similarly the mechanism of charging state agents with contempt of court is rarely taken seriously and the court does not avail of the possibility to impose stricter fines or censure to enforce compliance with its orders.

Following the filing of objections by the state, the courts ask the state to back up the objections with affidavits. This process again takes considerable time; many of the affidavits intended to back up the objections may again have to be presumed to be false.

In some cases, the court has ordered the registration of criminal charges against the detaining authority after judicial inquiries had established their responsibility for "disappearing" a person.

Waheed Ahmed Ahanger of Lalbazar, Srinagar was arrested on 27 May 1990 by 141 Bn of the Border Security Force. State authorities in Jammu and Kashmir denied the arrest but a spokesperson for the Union Government asserted that Ahanger was released on 18 June 1990 through the police control room in Srinagar. An inquiry had earlier established the arrest of Ahanger. In view of these contradictions the High Court directed that a case be registered, and entrusted the Chief Judicial Magistrate with monitoring the progress. It is not known if criminal charges were registered.

Even once registered, criminal prosecution is not assured. The special laws in force in Jammu and Kashmir require the Union Government to give sanction for prosecution of military and other central forces and the state government to give sanction for prosecution of police acting under such legislation - which is withheld as a matter of course (see Section 4.5 on the protection of offenders by the state).

The courts have also on the whole failed to acknowledge the severe financial constraints under which families live when an earning member, sometimes the main bread winner of the family "disappears" and to provide relief.

The victims of acts of enforced "disappearance" and their family shall obtain redress and shall have the right to adequate compensation, including the means

for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced "disappearance", their dependants shall also be entitled to compensation. (Article 19, UNDPPD)

The Government of India has stated that "*whenever a prima facie case of human rights violations is established, exemplary action under the law is taken against the offenders and appropriate relief provided to the victims, including compensation*"[47] and "*the payment of compensation to victims of alleged involuntary "disappearance" is foreseen and provided for by the courts*".[48] So far this has happened only in very few cases. In September 1997, the Supreme Court of India in a case of "disappearance" of two young men in the custody of the army in Imphal[49] awarded compensation, referring to and endorsing the reasoning of the Supreme Court in an earlier case.[50] In it the Supreme Court had said that "*there was an obligation upon it, conferred by Article 32 of the Constitution, to forge the new tools necessary for doing complete justice and enforcing the fundamental rights guaranteed by the Constitution. This enabled it to award monetary compensation in appropriate cases where that was the only mode of redress available.*"

[47]E/CN.4/1998/43, para 209.

[48]Ibid, para 212.

[49]Thokchom Lokendra Singh and Kangujam Loken Singh had "disappeared" in Imphal in September 1980.

[50]Nilabati Behara vs State of Orissa (1993) 2 SCC 746.

At the time of writing this report Amnesty International was informed that for the first time an order of payment of compensation in a case of "disappearance" was issued by the High Court in Srinagar in October 1998.

The father of **Mohammed Maqbool Bhat** (17) (see case details above) is to be paid 50,000 Rupees by the state by the end of 1998. Amnesty International has not yet been able to obtain a copy of the order; a report by the Institute of Kashmir Studies quotes the order as saying: "*The petitioner's [the victims's father, Habib-ullah Bhat] recorded statement is firm on taking the stand that his son was last seen by him with the security forces and up till now has not been able to get his whereabouts. The inquiry conducted by this court, therefore, suggests irresistible presumption that the detenu Mohammad Maqbool Bhat was last seen in their custody and his fate is still unknown to the petitioner who alleges that [the] end must have come to his son during the custody of security forces. The respondents did not adduce any evidence nor was statement of facts submitted. Therefore, the evidence recorded has remained un-rebutted and points to the result indicated above.*"

Amnesty International was informed in January 1999 that the compensation had not been paid to the family by year end and that contempt of court proceedings were considered by the lawyer involved.

Redress through the courts is also hampered by other factors which result from the state's failure to create public awareness of human rights and to provide adequate legal aid so that relatives of the "disappeared" can seek redress.

Human rights lawyers have told Amnesty International that people whose relatives have

"disappeared" are frequently not aware of their right to legal redress; they do not know or understand the legal process, its cost or requirements. In fact, they find it as intimidating as the state apparatus that has "disappeared" their relatives. Accordingly, they do not file petitions in the High Court but try informal channels through personal contacts and locally influential persons, pleading with the perpetrators or through offering and paying of bribes. Their cases go unrecorded - which distorts the perception of the human rights situation and the suffering of victims and victims' families. Intimidation and threats by perpetrators are another factor which prevents victims' families from seeking redress through the courts. Those living in remote areas in particular feel vulnerable in the presence of the armed forces and afraid to pursue cases of "disappearance".

Syed Shabir Hussain was arrested in March 1997 from his village Sultan Dehki in Kupwara district by an army unit deployed there. When family members approached the army unit, they were told that Syed Shabir Hussain had escaped from custody. The family has not seen Syed Shabir Hussain since and believes him to be still in custody. However, due to the presence of the army in the area, they have not dared lodge an FIR or to approach any court.

Beside lack of knowledge of, or trust in, the judicial process, ordinary people usually also lack the financial resources to sustain an often long drawn judicial process, especially if they live in remote places a long distance away from the seat of the court. While filing a petition costs the petitioner several hundred Rupees, costs to the attorney for preparing and attending hearings run into several thousand Rupees a year - which is clearly "out of reach for a poor person even if they sell their property or belongings", as a lawyer told Amnesty International. Many a petition has been "dismissed in default" simply because family members of "disappeared" people living in far-flung places could not afford to travel to the court frequently or to pay legal fees. Legal aid, though provided for, is insufficient and only meant to overcome temporary financial constraints.

4.4 The attitude of the security forces

In a revelatory remark, CPM leader M.Y. Tagirani said after the announced withdrawal of the army from Anantnag and Baramullah, "*I dream of a Kashmir free of bunkers and security forces so that the rule of law is established and the common man feels secure*".[51]

The surfeit of powers enjoyed by the armed and paramilitary forces in Jammu and Kashmir flowing from the special laws governing their operations, the virtual abdication of control by the elected State Government of Jammu and Kashmir and the apparent impunity provided by the Union Government refusing sanction to prosecute, have led to the security forces' thorough disregard for the human rights of people in Jammu and Kashmir. Not only have they continued to perpetrate human rights violations, including "disappearances" over the years, but they have reportedly threatened many who have sought redress.

[51] Times of India, 10 October 1997

Few of the legal restrictions on the exercise of the security forces' powers are observed. Although section 6 of the Armed Forces (Special Powers) Act provides for the arrested person to be handed over by the security forces to the nearest police station "*with the least possible delay, together with a report of the circumstances occasioning the arrest*" and despite the fact that the courts - most recently the Supreme Court - have issued directives that this provision should be understood as meaning "within 24 hours", it is clear that members of the armed forces have routinely ignored this and held people in their custody for long periods of time before handing them over to police - and in fact, in many instances do not hand them over at all.

Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each state shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the above paragraph above, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person. (Article 10, Parts 1, 2 and 3 UNDPPD)

Human rights activists and lawyers have repeatedly told Amnesty International that those arrested on suspicion of armed opposition activities regularly go through a process of prolonged detention and interrogation by security forces that last months and even years. Torture at this stage must be assumed to be widespread. During this time no record is made of arrest and the detainees are not brought before a magistrate; if security forces decide to release them, an FIR is lodged with the police showing the detainee as having been arrested a few days earlier under the Public Safety Act or some other legislation. At this point the detainee is presented to the magistrate who orders that the detainee be remanded in judicial custody or released. During the period of incommunicado detention, detainees are transferred between various detention centres, security forces camps and unofficial detention centres. Lawyers and relatives are denied access to detainees during this period. Many however, do not get transferred to official police or judicial custody at all: they "disappear".

On rare occasions, security forces have expressed regret that they did not observe specific safeguards.

When Subdivisional Police Officer (SDPO) on 18 March 1995 contacted the Commanding Officer of the 9 Rashtriya Rifles camp at Frisal to inquire into the "disappearance" of **Mohammad Yousuf Lone** (see details below), the camp commander confirmed the arrest on 6 March 1995, but insisted that the detainee had been released. According to the SDPO, "*he* [the Commander] *felt negligence for not having handed over the subject to the local police*". Mohammad Yousuf Lone remains "disappeared" to this day.

In some cases, though they are obliged to hand over detainees to police without delay, security forces hand detainees over to other security forces instead, making it even more difficult to trace their whereabouts.

Mohammad Maqbool Sheikh of Nowagam Handwara was reportedly arrested by members of the BSF on 9 August 1993. The state prosecution informed the court that the BSF after completing their investigation handed the detainee over to the 16 Sector Army for further investigation - who denied holding him. There has been no trace of his whereabouts. In 1996, the High Court directed Kupwara police to register a case of custodial death of Mohammad Maqbool Sheikh.

Army admissions of human rights violations have usually been followed by assertions that abuses have been investigated and perpetrators brought to justice. The numbers given vary however, making it difficult even to obtain an accurate numerical account.

Lt. Gen. S. Padmanabhan, General Officer Commanding-in-Chief, Northern Command, said that between 1990 and November 1997 there had been 686 allegations of human rights violations against the army. Of these, 661 cases had been investigated, 639 cases were found "baseless", 22 true, and 25 cases were still under investigation. In the 22 cases proved correct, 52 personnel, including 21 officers and 31 men, were sentenced to various unspecified punishments. The cases included six rape cases in which 17 people were found guilty, three cases of molestation of women in which seven people were found guilty and four custodial deaths involving 10 persons and eight cases of theft involving eight persons. He said: *"All of those found guilty have been brought to book and sentences range up to 12 years of imprisonment and removal from service ... Discipline is the bedrock of any army. Human rights and discipline go hand in hand. When you violate human rights, you violate the code of conduct ... What people often complain about is not a gross violation of human rights. It is just that some of our methods perforce will cause inconvenience. If a village is cordoned off, there will be some inconvenience. This is mistaken as a gross violation. Besides, some of our people may be rude in their manners..."*[52]

In October 1996, a Home Ministry report for 1995-96 stated that 272 security personnel stationed in Jammu and Kashmir, including 153 BSF, 80 CRPF, and 39 army personnel, had been "sacked, jailed or disciplined" for abuses committed in the past five years; these included 80 persons jailed for between three months and 12 years, 19 dismissed or forced to retire, 16 demoted and 70 fined. Another 27 security personnel were suspended, while 60 were arrested pending inquiry or court martial.

A Jammu and Kashmir government spokesperson in May 1997 said that over the previous four years, 224 security personnel had been demoted and 51 others dismissed from service. Of 2,600 complaints against security personnel received between January 1992 and September 1996, 2,288 were found false and

[52] The Hindu, 21 November 1997.

baseless; in the remaining 312 cases unspecified action had been taken.

In May 1997, an army spokesperson said that four soldiers had been sentenced to 10 years' imprisonment for raping two women a year earlier in southern Kashmir and had been dismissed from service.

Few of these statements contain details about the nature of the allegations or the offences, the nature, composition and terms of reference of the inquiries, the identity of the offenders and the punishments awarded. The statement about the punishment for rape contained neither the place and date of occurrence nor the identity of the army personnel. Army sources have reportedly held that publishing the name and rank of officers and the punishments inflicted would have a demoralizing effect on the forces. Amnesty International has repeatedly sought more specific information about convictions and punishments for human rights violations, but without success. In its meetings with Government of India officials in December 1998, Amnesty International again urged them to supply these details for inclusion in this report - public disclosure of such information would be an important sign of the government's willingness to tackle this abuse and the prevailing impunity that surrounds it.

Any person alleged to have perpetrated an act of enforced "disappearance" in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring all persons presumed responsible for an act of enforced "disappearance", found to be within their jurisdiction or under their control, to justice. (Article 14, UNDPPD)

Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, shall be suspended from any official duties during the investigation referred to in article 13.

They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts. (Article 16, Para's 1 and 2 UNDPPD).

Some allegations of human rights violations by security forces are believed to be investigated by army staff who then report to other army officers of higher rank who then decide if and how allegations should be further pursued. It should be noted that army inquiries in the majority of investigations of allegations of abuses perpetrated by the army come to the conclusion that these are baseless. Then Prime Minister Deve Gowda said in November 1996 that a human rights cell had been set up in 1993 in the army at its headquarters as well as in the commands engaged in counter insurgency operations to train the forces in human rights protection, to investigate allegations of abuses and to take action against offenders, but no further details as to its working were revealed.[53] It has been pointed out that "*the Army believes that atrocities committed by its men are not crimes to be punished by just*

[53] PTI reporting on the seminar "*The Indian Army and Human Rights*, 7 November 1996

and fair process but matters of internal discipline to be set right by its own mechanisms".[54]

All acts of enforced "disappearance" shall be offences under the criminal law punishable by appropriate penalties which shall take into account their extreme seriousness. (Article 4, Para 1, UNDPPD)

The first ever "People's Tribunal", consisting entirely of former Supreme Court and High Court judges, was to investigate allegations of army abuses in November 1996; following the withdrawal of a former Chief Justice of the Supreme Court from the Tribunal, the probe did not take place. Other commitments to investigate allegations of abuses have not come to anything either. All Parties Hurriyat Conference leader Mohammad Yasin Malik ended his indefinite hunger strike protesting against killings and rape in Jammu and Kashmir on 15 May 1997 in New Delhi after human rights activist Kuldeep Nayar conveyed to him the assurances by then Indian Home Minister Indrajit Gupta that *"the government will not shield anyone found guilty of such crimes."* Complaints of violations of human rights of the people of Jammu and Kashmir will be investigated by the appropriate agency and action taken against the guilty".

Sometimes admissions of abuses are couched in the excuse that these were individual failures. Then Prime Minister Deve Gowda said: *"Such violations were committed by individual members of the security forces and are not reflective of any systemic failure as the forces were engaged in counter-insurgency operations to protect the unity and integrity of the country."*[55] In a number of cases, when individuals serving in the armed forces were identified as likely to have perpetrated human rights violations by inquiries set up under court orders, the army has declared that the individuals could not be found. When one year after the "disappearance" and killing of Jalil Andrabi, in April 1997, the Special Investigation Team identified Major Avtar Singh as involved in the case, the representative of the Union Government submitted that he had not committed the act in his official capacity. Moreover, Col. Joshi, representing the army disclosed that Major Avtar Singh had served with the Territorial Army 103 Bn camped in Ludhiana and had been "disembodied" [released] in November 1996. The suspect has not been traced since.

Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms. (Article 12, Para 2, UNDPPD)

Similarly, following the "disappearance" of Sajad Bazaz from Hazratbal by a named officer of 30 Bn BSF in 1991, the BSF representative stated in a court hearing of the *habeas corpus* petition that the officer in question had not committed the act in his official capacity. However, when the court drew the logical conclusion that this obviated the need for seeking

[54] Civil War and Uncivil Government - Human Rights Violations in Kashmir under the National Conference Government, November 1997, p.16.

[55] PTI reporting on the seminar *"The Indian Army and Human Rights"*, 7 November 1996.

sanction for prosecution, the BSF insisted on trying the BSF officer themselves.

Some recent statements by security personnel have pointed to the psychological stresses under which security forces operate.[56] Some have gone as far as to suggest that investigations into abuses contribute further to the stress level and should be avoided, implying that accountability weakens the army. Major-General Samay Ram, a recently retired officer who had commanded troops in Jammu and Kashmir, related the high incidence of stress-related breakdowns, suicides (about 300 reportedly since 1984) and indiscipline, to confusion about fighting countrymen and the competition between units to kill the maximum number of "militants". Ram criticized senior officers for instituting inquiries into encounter killings as "*such actions demoralize leaders of junior levels, inhibiting them ... The soldier is already under tension and stress with regard to his own survival; inquiries of this nature further compound the problem.*"[57]

The security forces have as a rule denied violating the law also in courts of law. On numerous occasions representatives of armed forces have denied in court that persons whose *habeas corpus* petitions were heard had been arrested by them. In many of these cases affidavits denying arrest and detention must be assumed to have been false, contradicted not only by family members or other people witnessing arrest but also by investigations set up under High Court orders.

In case of the "disappearance" and later killing of human rights lawyer **Jalil Andrabi**, who had in front of witnesses including his wife been taken away on 9 March 1996 by personnel of the Rashtriya Rifles led by a Sikh major, the army stated in a sworn affidavit before the High Court on 11 March that this was not the case: "Rashtriya Rifles do not operate in the said area, neither was any member deputed/present at Parapoyare at 5.30 pm nor did any member of Rashtriya Rifles apprehend or receive the alleged detenu on the date and time given." An inquiry set up on high court orders subsequently identified the army major as responsible for the abduction of Jalil Andrabi.

Similarly in the case of **Bashrat Ahmad Shah** (see case study below), CRPF authorities denied that the battalion alleged to have arrested the victim was on patrolling duty in the area of the incident at the time in question. The investigating magistrate questioned the credibility of this assertion and the High Court later asserted that he had indeed been picked up by the CRPF. Again, in the case of the "disappearance" of Fayaz Ahmed Sheikh (see below for details), the Ministry of Defense denied outright that Rashtriya Rifles had arrested him, adding, "no operations were carried our by unit" at the place and time in question - which a police inquiry found to be untrue.

[56] In December 1997, the Additional Director General of the CRPF said that some 2,826 CRPF personnel, about 15 % of the total force in the state, was mentally adversely affected by continuous operational duties. The Kashmir Times, 15 December 1997.

[57] Paper presented by Maj.Gen.(ret'd.) Samay Ram, summarized in The Telegraph, 20 October 1998.

Security forces have on innumerable occasions refused to cooperate with court orders to respond to court directives, to submit evidence or to co-operate with inquiries set up by courts (see also Section 4.3 on practices of the Jammu and Kashmir High Court). Often they simply do not respond at all.

Abdul Rashid Lone of Thimblan Patta, Baramullah, was arrested during cordon and search operations by the Central Reserve Police Force (CRPF) in August 1990. An inquiry set up on High Court orders and carried out by the District and Sessions judge Baramullah found that Lone had indeed been taken away by the CRPF and had not been released since. The High Court then directed the respondents on three different occasions, for hearings on 24 April, 8 July and 29 August 1997 to file their comments of the inquiry report. At its last hearing, the court noted that since representatives of the CRPF had not attended any of the hearing and no state authorities had filed their comments, it appeared that neither had any interest in pursuing the matter; it directed the District and Sessions judge to direct the concerned police station to register a case and for the investigating police officer to present the charge sheet before the competent court after completing the investigation.

Amnesty International is aware of dozens of cases where security forces have not only defied the courts but have also actively threatened, harassed or intimidated relatives of "disappeared" persons and other victims of human right violations to stop them from seeking redress.

Mohammad Yousuf Lone, a young unemployed graduate, was arrested on 6 March 1995 at around 11.30 a.m. by a patrol party of 9 Rashtriya Rifles (RR) stationed at Frisal camp, from the office of, and in the presence of, the Executive Magistrate in Kulgam where the young unemployed graduate had gone to inquire about his employment prospects. No reason was given for the arrest and no charge was pending against the prisoner. When Mohammad Yousuf Lone's parents approached the commanding officers who had been identified by witnesses during the arrest, they were beaten and threatened but the prisoner's whereabouts were not disclosed. On 7 March, the prisoner's brother, Abdul Rehman Lone, filed a First Information Report (FIR 7/95) in police station Kulgam. The Station House Officer on 12 March requested the Commanding Officer 9 RR to provide information on the case; when police received no response, the Sub-Divisional Police Officer of Kulgam along with the Station House Officer of Kulgam visited the 9 RR camp at Frisal on 18 March 1995 and met the Commanding Officer who verbally and in writing declared that following the arrest of Lone who was "found to be moving around under suspicious circumstances" he was released on the same day after questioning. The Subdivisional Police Officer Kulgam in a letter of 24 March 1995 to the Superintendent of Police District Anantnag mentioned that the RR Commanding Officer had "*felt negligence for not handing over the subject to the local police or Numberdar/Chawkidar of Frisal*" but explained that it had been the detainee's desire to be released early to enable him to return to his village on the same day.

Upon the family's request, the Executive Magistrate, Kulgam on 10 March 1995 wrote to the District Magistrate that Lone had been arrested from his office in his presence and noted that the arresting RR colonel had on 9

March confirmed the arrest in the presence of the District Magistrate but had, on the same occasion, claimed to have released Lone on the day of arrest at around 5 p.m. Since Lone had not reached his home, the Executive Magistrate requested the District Magistrate to personally intervene to ascertain the whereabouts of the prisoner.

When weeks after the "disappearance" of Mohammad Yousuf Lone, his whereabouts remained unknown, the brother of the prisoner in early 1996 filed a *habeas corpus* petition (No 44/1996) in the Jammu and Kashmir High Court. When the named RR respondents were issued notice to appear before the High Court, they reportedly called the petitioner, Abdul Rehman Lone, and threatened to kill him if he did not withdraw the petition. According to reports Abdul Rehman Lone was subsequently picked up by RR personnel in early 1997 from his house. His dead body was found several days later. Mohammad Yousuf Lone's father is now pursuing the case, though he, too, has received threats.

The father of **Ashiq Hussain Ganai**, who was arrested on 3 March 1993 by 17 JAK Rifles, "disappeared" after his alleged escape from army custody till his dead body was found on 12 April 1993 (see case description above), vigorously pursued the case of his son's arbitrary arrest, "disappearance" and killing. When police failed to investigate allegations made in the FIR (no 18/93) filed on 12 April 1993, he obtained High Court directions to police to undertake and complete the investigation. The charge sheet holding the two majors responsible was sent through proper channels with the request for grant of sanction to the Union Government in 1996. The Ministry of Defense in March 1997 informed the Government of Jammu and Kashmir that "Central Government after due consideration of the facts and circumstances of the case have decided not to grant the sanction to prosecute ..." without giving any reason. This decision was communicated to the High Court in October 1997. In December 1997, Ghulam Rasool Ganai filed a petition in the High Court challenging the refusal to grant sanction.

While pursuing his son's case, Ghulam Rasool Ganai was tortured and threatened to make him withdraw the petitions. On 30 October 1997, a major of the 28 Rashtriya Rifles camped at Dangiwacha threatened to burn down his house along with all its residents if the case was not withdrawn within 20 days. On 12 November 1997, Ghulam Rasool Ganai filed an application in the High Court seeking protection for himself and his family and a court order of 15 December 1997 directed local police to provide protection. Nonetheless, on 30 March 1998, the same major took Ghulam Rasool Ganai to the 28 RR camp. There, according to Ghulam Rasool Ganai, *"he beat me ruthlessly. Due to beating, blood started flowing from my nose and wounds on different parts of my body. Then he ordered a pro-government militant ... who works with the army camp, to take off my clothes, take me out of the camp and kill me. He ... pressurized me to withdraw the case against the above mentioned army majors. He threatened to kill my two sons and torch my house. He also threatened to involve me in militancy related crimes. He took my signature by force on about 20 blank papers along with my thumb impression... In the circumstances I feel highly insecure, myself and my family, at the hands of 28 RR."*

In some cases witnesses are threatened to make statements which would exonerate the security forces. Following the arrest on 29-30 August 1994 of **Fayaz Ahmed Sheikh** by a unit of 1 Rashtriya Rifles from his home at Zamalgam Daroo village in Anantnag district, the

search of his house by the RR unit in Fayaz Ahmed Sheikh's presence on the following day and his "disappearance" in their custody since then, the father of the prisoner filed a complaint in police station Daroo. The Ministry of Defense, responding to a representation by the National Human Rights Commission of India, submitted its report of 5 June 1996; it stated inter alia that "*no individual was apprehended/held for questioning by the company operating in village Zamalgam during the operations. No operations were carried out by the unit in village Zamalgam on 30 August 1994 nor any party from 1 RR visited the house of Fayaz Ahmad Sheikh on that date.*" It also declared that the person identified as carrying out the arrest and raid was at the time on temporary duty in Delhi and could not have been involved in the operations as alleged. Moreover, "*the unit has obtained No Objection Certificate signed by the elders ... of the village. This indicates that the Army was not involved in the alleged incident in which Fayaz Ahmed Sheikh ... was missing.*" The report ends by stating, "*during the investigation, it was reliably established that Fayaz Ahmed Sheikh had links with the militants*".

The police investigation revealed that the unit of 1 Rashtriya Rifles had indeed picked up Fayaz Ahmad Sheikh during their raid. Local observers have reported that the RR officers were upset by the inquiry and harassed and threatened the village population till they agreed to sign blank papers.

4.5 The protection of offenders by the Union Government

In some 50 cases, judicial inquiries set up under Jammu and Kashmir High Court directives have identified the unit or even individuals responsible for arrests, detention and "disappearance" of people. However, even if a criminal complaint is then filed, criminal prosecution cannot begin unless the union government grants sanction for prosecution.

No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations. (Article 16, Para 3, UNDPPD)

Persons who have, or are alleged to have, committed offences referred to in article 4, paragraph 1, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction. (Article 18, Para 1, UNDPPD)

Sanction to criminally prosecute members of the armed forces is difficult to obtain. Under ordinary criminal law, section 197 of the Code of Criminal Procedure states that no court can take cognizance of an offence alleged to have been committed by a public servant or member of the Armed Forces while "*acting or purporting to act in the discharge of his official duty except with the previous sanction of the Central or State Government*". Section 45 of the Code of Criminal Procedure also protects members of the armed forces from arrest for "*anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government*".

The provisions are reiterated by a variety of acts in force in areas of armed conflict, notably in Section 7 of the Armed Forces (Special Powers) Act which specifies: "*No prosecution, suit or other legal proceedings shall be instituted, except with previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers*

conferred by this Act." The Jammu and Kashmir Public Safety Act provides similar protection from prosecution in section 22 and the Jammu and Kashmir Disturbed Areas Act in section 6.

To Amnesty International's knowledge, the Union Government has not given sanction in any single case of "disappearance". Public disclosure by the government of the action taken against perpetrators (see p.37) would help clarify this point. In the case of Javed Ahmad Ahanger, sanction to prosecute was refused on purely formal grounds in the face of overwhelming evidence by witnesses and an earlier judicial inquiry (see case details below). In the case of Ashiq Hussain Ganai who first "disappeared" and whose dead body was later found, sanction was refused by the Ministry of Defense in March 1997 without giving any reason - making it difficult for family members pursuing the case to apply for judicial review of the decision.[58] The organization is constrained to conclude that central authorities are intentionally shielding offenders among security forces. It is conceivable that some of them may have been tried and convicted by court martial but due to the secrecy surrounding the conduct of the security forces, no evidence is available to support this assumption.

Amnesty International is currently aware of only one case in which government refusal to grant sanction to prosecute in a case of "disappearance" and subsequent custodial killing was challenged. The father of Ashiq Hussain Ganai filed a writ petition against the government decision in December 1997; it is pending in the Jammu and Kashmir High Court.

Following examination of India's third periodic report under the International Covenant on Civil and Political Rights (ICCPR) in July 1997, the UN Human Rights Committee in its Concluding Observations said that requirement of sanction by the Union Government *"contributes to a climate of impunity and deprives people of remedies to which they may be entitled ..."*.[59] It recommended that *"the requirement of governmental sanction for civil proceedings be abolished"*. In examining India's second periodic report in 1991, members of the Human Rights Committee had similarly questioned how article 2(3)(a) of the ICCPR - which relates to the right to an effective remedy of anyone whose rights or freedoms have been violated - was applied in view of this provision of the Armed Forces (Special Powers) Act. Concern was expressed that this provision could be used to *"destroy fundamental rights with impunity except at the good pleasure of the central government"*.

Amnesty International is concerned that the Government of India has also shielded offenders in the security forces from international scrutiny.

Over the past years, Amnesty International has repeatedly submitted cases of

[58] See Supreme Court of India judgment of November 1997 relating to the Armed Forces (Special Powers) Act cited above which directs the central government to give reasons for grant or refusal of sanction to prosecute as such decision is subject to judicial review.

[59] CCPR/C/60/IND/3, para 21.

"disappearances" allegedly perpetrated by police or security forces to the Government of India calling for impartial investigations into those allegations with a view to bringing perpetrators to justice. In response, the Government of India has denied that these violations have occurred and insisted that effective measures are in place for everyone who wishes to seek redress.

States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced "disappearance". (Article 2, Para 2, UNDPPD)

In some instances, the Government of India in its response to Amnesty International's concerns about security forces "disappearing" people in custody has also argued that armed opposition groups have committed the offence. In the case of the "disappearance" and later killing of Jalil Andrabi, the Government of India wrote to the organization in September 1996: "*In all incidents of killings of so-called human right activists, [the] Government has made available clinching evidence showing that they were targets of one or other militant organization, whose ideology did not match with theirs. It is also pertinent to ask to what extent it would be justified to call them human rights activists whose apparent leaning or sympathy with particular terrorist groups have earned them the wrath of other similar groups. ... It is common practice that these terrorist outfits precipitate a major incident or the killing of a prominent person just on the eve of international conferences ... in order to gain propaganda mileage ...*" This response is countered by eye-witness accounts of Andrabi's arrest and findings of the inquiry set up and supervised by the High Court which identified an army major as responsible for the "disappearance".

The Government of India's unwillingness to address the serious issue of "disappearances" which is apparent in its communications with Amnesty International, is also reflected in its third periodic report to the Human Rights Committee.[60] The report makes no reference to "disappearances" at all, despite hundreds of cases of "disappearances" reported from Jammu and Kashmir as well as from other states of India. In its General Comments on Article 6(1) of the ICCPR which says that "*Every human being has the inherent right to life, this right shall be protected by law. No one shall be arbitrarily deprived of his life*", members of the Human Rights Committee had pointed to the need for states to take specific and effective measures to prevent "disappearances" and "*establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life*".

The fact that "disappearances" take place in Jammu and Kashmir has been officially acknowledged. Chief Minister of Jammu and Kashmir, Dr Farooq Abdullah, shortly after assuming office, expressed before the State Legislative Assembly his unhappiness over the "disappearance" of people in detention over the past seven years, and is reported to have said: "*It is surprising that the security agencies who arrested these youths are denying that they have*

[60] CCPR/C/76/Add.6.

arrested them".[61] Nonetheless, no effective measures have been taken to end "disappearances" and to investigate the fate of hundreds of people who have "disappeared", including the over 100 cases submitted by Amnesty International in its 1993 report.

The Working Group on Enforced or Involuntary Disappearances noted in January 1998 that the Government of India had replied to allegations of non-compliance with provisions of the Declaration on the Protection of All Persons from Enforced Disappearance, by denying these allegations and describing the allegation that investigations are rarely carried out into cases of "disappearances" as "completely baseless":

"*Instructions have been issued by the Government to all authorities concerned that inquiries must be conducted into every allegation which is brought to their attention. Various police and armed forces organizations also have their own statutory acts which make it mandatory for them to investigate allegations involving their personnel. Whenever a prima facie case of human rights violations is established, exemplary action under the law is taken against offenders and appropriate relief provided to the victims, including compensation. The extensive range of statutory, institutional and judicial remedies that are available domestically ensure that no one enjoys impunity and the superior courts of India, the National Human Rights Commission, the Parliament, the legislature and the press all closely monitor the Government's action in this regard.*"[62]

Nonetheless, the Working Group concluded that new cases of "disappearance", including seven from 1997, continued to be reported to it and that the majority of the 272 cases of "disappearances" received between 1983 and 1995, mostly from Punjab and Jammu and Kashmir, had not been clarified. Referring to special legislation in force in Jammu and Kashmir and other parts of India, the Working Group concluded that it "*wishes to remind the Government of India of its obligation to bring its laws into line with the relevant provisions of the Declaration and to take all measures necessary to prevent further cases of "disappearance", to investigate all outstanding cases and to bring the perpetrators to justice*".[63]

In its annual report 1997, the Working Group on Enforced or Involuntary Disappearances reminded the Government of:

"*its commitment under article 13.5 to punish those responsible appropriately. In addition, all persons alleged to have perpetrated an act of enforced "disappearance" should be brought to justice, in accordance with article 14. ... the Working Group, while taking into account the legitimacy of derogating from some human rights commitments, in accordance with international law, during public emergencies, nevertheless wishes to stress that pursuant to article 7 of the Declaration, no circumstances*

[61] The Hindu, 23 October 1996

[62] E/CN.4/1998/43.

[63] Ibid, para 217.

whatsoever may be invoked to justify enforced disappearances."[64]

4.6 The Limited Mandates of the Jammu and Kashmir Human Rights Commission and the National Human Rights Commission

The mandate of the state Human Rights Commission set up under the Jammu and Kashmir Protection of Human Rights Act, 1997, passed by the state assembly on 30 April 1997, precludes any inquiry into allegations of abuses committed by the armed or paramilitary forces or any other central agencies. Article 13 of the Act states:

"The Commission shall perform all or any of the following functions, namely:

a) inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into complaints of -

(i) violations of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant..."

[a 'public servant' being defined with reference to the Ranbir Penal Code (section 21) applicable to Jammu and Kashmir].

This narrow authority of the Commission contradicts the commitment earlier made by Dr Farooq Abdullah when he came to office. The Chief Minister in his first radio broadcast had said that *"a committee will be set up to look into the cases of detained youths ... It will be all powerful and trustworthy and any agency or individual found guilty of violating human rights will be put behind bars".*[65] A year later he said, *"it is not that we have not brought them* [the security forces] *under the commission. That is the constitutional position. The security forces are not covered by the* [National] *Human Rights Commission either... I want them to be very much included. We are going to accept all the complaints against them and forward them to the government of India."*[66]

Given the numerous allegations of abuses committed by the security forces in Jammu and Kashmir, local human rights monitors have expressed scepticism regarding the effectiveness of the state Commission. The Jammu and Kashmir Bar Association in May 1997 issued a statement pointing to the shortcomings of the Jammu and Kashmir Protection of Human Rights Act, 1997; it said that by keeping the security forces outside the purview of the Commission the government had rendered it infructuous. Jammu and Kashmir Minister for Law and Parliamentary Affairs, P.L. Handoo, defended the Act saying that the security forces were not under Jammu and Kashmir state control and allegations of abuses would therefore have to be addressed to the National Human Rights Commission which could forward them to the Armed Forces.

Section 19 of the Protection of Human Rights Act (PHRA) setting up the National Human Rights Commission of India (NHRC), restricts the mandate of the NHRC by specifying that it is not empowered to investigate allegations

[64] E/CN.4/1997/34.

[65] AFP, 11 October 1996.

[66] Sunday, 24-30 August 1997.

of human rights violations by armed forces. Whenever human rights violations by members of the armed or paramilitary forces are reported to the NHRC, its mandate restricts its action to seeking a report from the Central government. There are no powers of investigation. After receiving the report, the NHRC can either not proceed with the case if it is satisfied with the report or make recommendations. The central government is required to inform the Commission of the action taken on its recommendations within three months.

Amnesty International is concerned that the NHRC, established in response to domestic and international concern about human rights violations perpetrated by both police and armed forces, and which has played a positive role on many human rights issues and is regularly held up by the Government of India as a demonstration of the way India is addressing human rights concerns, is prevented from independently investigating a large number of violations. This has had the effect of rendering the Commission incapable of combating impunity facilitated by special legislation in force in areas of armed conflict. In a few high profile cases, the NHRC has creatively interpreted the limitation of its mandate and intervened in incidents of human rights violations by security forces, most notably in the case of the killing of Jalil Andrabi. However, Amnesty International believes that the NHRC requires the power to undertake more consistent investigation of abuses by security forces if it is to play a significant role in bringing such violations to an end.

The UN Human Rights Committee, examining India's third periodic report on its implementation of the ICCPR recommended that the restriction imposed by Clause 19 be removed; a member of the Committee during the course of the hearing in July 1997 commented that Clause 19 was "*driving a huge hole in the jurisdiction of the NHRC.*" Similarly the Committee on the Elimination of Racial Discrimination (CERD) in 1996, commenting on Clause 19, recommended its removal: "*This is too broad a restriction on its powers and contributes to a climate of impunity for members of the armed forces.*"[67]

The NHRC itself has repeatedly expressed its concern about this restriction as when it acknowledged in its 1995-96 Annual Report that "*this exclusion has rendered a large number of violations by such personnel to go uninvestigated and unpunished*". Amnesty International's concern about the issue is heightened by the publicly stated position of the Government of India on the powers of the NHRC prior to the setting up of an Advisory Committee in June 1998 to review the PHRA. In response to the 1996-97 Annual Report's recommendation that armed and paramilitary forces should report deaths and custodial rape to the NHRC within 24 hours, the government indicated that it would not amend its position as laid down in the PHRA. [68]

In a report submitted to the Advisory Committee,[69] Amnesty International urged that the restriction placed on the powers of the NHRC in

[67]CERD/C/304/Add.13, para 16.

[68]The Hindu, 9 July 1998.

[69]In a report issued under the same title, AI Index: ASA 20/26/98.

relation to complaints of human rights violations against members of armed and paramilitary forces under Clause 19 of the PHRA be removed immediately. It also urged that a review parallel to the review of the PHRA be undertaken of the Jammu and Kashmir Protection of Human Rights Act 1997 establishing the Jammu and Kashmir Human Right Commission. It said that the need for this was particularly acute in Jammu and Kashmir where high levels of human rights violations are reported and where procedures to secure redress are severely limited.

The Jammu and Kashmir Human Rights Commission does not appear to have vigorously pursued allegations of "disappearances" in the state, even when allegedly perpetrated by forces other than the security forces and thus well within its mandate to investigate.

Two families in late 1997 filed complaints in the Jammu and Kashmir Human Rights Commission. According to the families of the "disappeared" men, Bashir Ahmed Wani held since 19 November 1997 in police station Pampore, was transferred after four days to a unit of the SOG at Lethpora police station. Bashir Ahmed Bhat was arrested a little later and detained in the same police station and also transferred to Lethpora. The station house officer at Lethpora claimed that both men were released on 23 November 1997 after being found innocent but neither man were seen on or after that date. On the basis of these complaints, the Jammu and Kashmir Human Rights Commission called for a detailed report from the Inspector General of Police, which was on 4 May 1998 forwarded to the two families without comment or further investigation. The report said the two men "*... were brought to police station Pampore, on November 23, 1997 under suspicious circumstances. Later on they were sent to SOG ... Lethpora where after preliminary investigation they were found innocent and were released on the same day, i.e. November 23, 1997, in presence of two respectable persons, Abdul Rashid Ganie, ... and Jan Muhammad Rather ...*". The two persons cited as witnesses when contacted by the families were not aware of the supposed release of the two men. The Jammu and Kashmir Human Rights Commission is not known to have undertaken any further investigation of these cases.

4.7 Initiatives Against "Disappearances" Under Threat?

Relatives of "disappeared" people in Jammu and Kashmir in 1995-1996 set up the "Association of Parents of Disappeared Persons" (APDP). The Association is chaired by Parveen Ahanger, the mother of the "disappeared" Javed Ahmad Ahanger (see case description below). Its activities are coordinated by human rights advocate Parvez Imroz, who for several years has sought judicial remedy for the "disappeared" and redress for other human rights violations in the state. The APDP has so far reportedly documented 300 cases of people who have "disappeared" since 1990, campaigned to locate "disappeared" persons and sought to organize distressed parents for mutual support and action. In public meetings, members of the Association have repeatedly demanded that authorities reveal the whereabouts of their missing relatives or "*if they are dead, tell us so we do not have to live in this terrible uncertainty.*"

Many families face severe financial hardships if their main bread earner "disappears". Women whose husbands have "disappeared" face particular problems beyond the absence of the main provider of family income. They cannot remarry though they may be widows nor dispose of any property to sustain the family. Under Muslim personal law, a person is acknowledged as dead only if his body is buried. In the absence of a body, a person can only be declared dead seven years after he was last seen.

The activities of the Association have been restricted by the limited resources at their disposal and threats to the security of its members; on some occasions, security forces reportedly questioned whether members of the Association had the right to meet on the premises of the Jammu and Kashmir High Court. The organization has sought cooperation with other non-governmental human rights organizations in India, holds press conferences to highlight its concerns and has established communication with other similar organizations of parents of "disappeared" in Asia, including the Asian Federation Against Involuntary Disappearances launched in Manila in June 1998.

The killing in September 1998 of one of the members of the APDP, Haleema Begum and her 14-year old son Shakeel Ahmed, and the absence of any official response to the killings - be it public condemnation of the killings, the setting up of a judicial inquiry, police investigation or protection for the surviving witnesses - has intimidated other members of the Association.

Human rights defenders in Jammu and Kashmir have worked at great risk to themselves. They have frequently been labelled as engaging in "anti-national" activities and been targeted by the security forces, often with the help of "renegades". Their attempts to travel to all parts of Jammu and Kashmir to document human rights violations have been severely constrained, suggesting a deliberate attempt on the part of the government to conceal the truth in the state. The legal partner of Parvez Imroz, H.N. Wanchoo, who had included over 60 cases of "disappearance" in a *habeas corpus* petition filed in the Jammu and Kashmir High Court in 1991, was killed by unidentified gunmen in 1992. Earlier, the prominent activists Dr F.A. Ashai and Dr Guru had been killed by unidentified men. No one has been brought to justice for the killings of either of these human rights lawyers. The "disappearance" and killing of prominent human rights activist and lawyer Jalil Andrabi in 1996 brought human rights documentation in the state to a virtual standstill for several months.

The restrictions and risks which human rights defenders in Jammu and Kashmir face in documenting violations, including the frightening killings of some prominent defenders over the last years, coupled with the lack of access of domestic and international human rights NGOs, including Amnesty International as well as of relevant UN human rights mechanisms, has led to fewer cases of human rights violations, including "disappearances" coming to light. This creates an illusion of calm and observance of human rights. The Government of India has attempted to use the fact of fewer reported "disappearances" to stave off criticism of its human rights record. Most

notably and most worryingly, the United Nations Working Group on Enforced or Involuntary Disappearances, in its January 1996 report noted that it had received few reported cases of "disappearances" during 1995, including from Jammu and Kashmir. As a result, representatives of the Government of India responded to a request by the Working Group to visit India by stating:

"Given the fact that the allegations of "disappearances" have drastically fallen in the last three years, coupled with the Government of India's commitment to investigate the old cases, it is the view of the Government of India that the suggestion of the Working Group regarding a visit to India in 1996 is deemed inappropriate and unnecessary".

5. THE ABSOLUTE PROHIBITION OF "DISAPPEARANCES" IN LAW

"Disappearances" are unconditionally prohibited under the Constitution and law of India as well as under international human rights law.

The Indian Constitution guarantees the right to life, and article 21 prohibits the deprivation of life or personal liberty except in accordance with established legal procedures - a safeguard which may not be suspended even in a state of emergency. Sections 57 and 167 of the Code of Criminal Procedure require all arrested persons to be brought before a magistrate within 24 hours of arrest, not to be held in police custody for more than 15 days and afterwards for no longer than 60 or 90 days in remand without being granted bail. Section 346 of the Indian Penal Code specifically prohibits wrongful confinement in secret detention.

The International Covenant on Civil and Political Rights (ICCPR) includes a range of rights which India, as a party to the Covenant, is obliged to uphold. These include the right to life, article 6(1); the right to liberty and security of the person, article 9; the right to be free from torture or cruel, inhuman or degrading punishment, article 7; and the right to a fair and public trial, article 14. Article 2 obliges state parties to investigate all reports of violations of human rights and provide redress to victims or their relatives.

The UN Declaration on the Protection of All Persons from Enforced Disappearance was adopted by the UN General Assembly without a vote in December 1992 "as a body of principles for all States" (Preamble). India has a responsibility to adhere to its provisions. It says in its preamble that the General Assembly considers that

"enforced "disappearance" undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, ...the systematic practice of such acts is of the nature of a crime against humanity"

The Declaration emphasises the non-derogable right to be free from "disappearances", stating in article 2 that the prohibition of "disappearance" is absolute and in article 7: *"No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced "disappearance""*. It places the obligation on states to adopt and enforce safeguards against "disappearance" (articles 2, 3, 4(1), 8, 10, 11, 12, 13, 14, 16, 17) and requires states to provide judicial remedy (articles 9, 13, 14, 16, 17, 18) and to provide redress to victims and their families (19).

A large number of other international treaties, including the UN Convention against Torture and Cruel,

Inhuman or Degrading Treatment or Punishment - which India signed in October 1997 but has not yet ratified - and various UN guidelines and principles also prohibit specific aspects of violations of human rights that occur during "disappearance". The latter group include the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

6. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International urges the Union Government of India and the State Government of Jammu and Kashmir and other relevant institutions to make an honest effort to

- **end and prevent further "disappearances" in the state;**
- **establish the whereabouts of those currently "disappeared";**
- **bring the perpetrators to justice;**
- **and compensate the victims or their families.**

Each of these objectives requires that a number of measures be taken.

■ end and prevent "disappearances"

The Union Government of India and the State Government of Jammu and Kashmir should publicly commit themselves to end all "disappearances" and make it known that this grave human rights violation will no longer be tolerated.

To this end, Supreme Court of India directions highlighting existing legal safeguards relating to arrest, detention and interrogation given in December 1996[70] and reiterated by the Jammu and Kashmir High Court in 1997 should be fully and meticulously implemented. These include the preparation of a memo of arrest; the entitlement of the arrestee to inform a friend or relative of their arrest as soon as possible; the medical examination of the arrestee on request on arrest and every 48 hours of their detention; and the setting up of a control room holding information on arrest and place of custody of all detainees. The court envisaged that failure to comply with these measures would invite departmental action and contempt of court proceedings against police officers. Finally, the court directed that states should pay compensation for human rights violations committed by its officers. The government should ensure that such directions are fully implemented and made part of the training of security forces.

The most important means of preventing "disappearances" is to end the virtual impunity with which this grave human rights violation is committed (see below).

■ investigate "disappearances"

Amnesty International endorses the recommendation made by the UN Human Rights Committee that legislation be passed to make judicial inquiries into all cases of "disappearance" mandatory. Meanwhile, all allegations of "disappearance" should be thoroughly investigated by an independent and impartial inquiry with a view to holding

[70] In D.K Basu vs State of West Bengal, 1997 and reiterated by the Jammu and Kashmir High Court in W.P. No 79 of 1997, Nazir Ahmed Baghwan vs State of Jammu and Kashmir.

the perpetrators to account; its results should be made public.

Amnesty International urges the State Government of Jammu and Kashmir to review as a matter of urgency the mandate and practice of the Jammu and Kashmir Human Rights Commission set up under the Jammu and Kashmir Protection of Human Rights Act, 1997 parallel to a review being undertaken of the Protection of Human Rights Act, 1993 by an Advisory Committee, to ensure that the state Commission becomes a more effective avenue of redress for all human rights violations, including "disappearances". The organization also urges that the Protection of Human Rights Act, 1993 be suitably amended to remove restrictions on powers of the NHRC under Clause 19.

- **bring perpetrators to justice**

Since the filing of *habeas corpus* petitions is the main mechanism for seeking redress, the process should be made more efficient. In accordance with the constitutional requirements - *"The State shall ... secure a judicial system which is humane, cheap, certain, objective and impartial whereby justice shall be done and shall be seen to be done ..."*[71] - the judiciary should be fully empowered and adequately resourced to fulfil this task. The judiciary itself should make every effort to become a reliable instrument of redress. It should not permit undue delay in admitting and hearing *habeas corpus* petitions and respondents should not be allowed by the courts to delay the completion by wilful non-co-operation.

Everyone who contributes to "disappearing" a person by directly effecting a "disappearance" or by ordering, aiding, abetting or concealing it should be held to account.

This includes security personnel who arrest persons without handing them over to police, detain them without legal authority and torture them, police who refuse to register FIRs or to investigate allegations of "disappearance", and state agents who file false affidavits, disregard or circumvent court orders and threaten or attack complainants or witnesses. Only by ending impunity for "disappearances" will the Union Governments of India and the State Government of Jammu and Kashmir send a clear signal that "disappearances" will not be tolerated, whoever the perpetrator may be. To this end, all provisions contained in the Code of Criminal Procedure and in special laws in force in Jammu and Kashmir which protect public servants from arrest and prosecution by requiring state sanction for prosecution should be reviewed and amended.

While laws requiring government sanction to prosecute remain in force, the Union Government should as a matter of principle grant sanction in all cases in which there is convincing evidence that security forces have committed violations, including "disappearances". The Government should further make it publicly known that it will give sanction in all cases as this alone will remove the apparent

[71] Constitution of Jammu and Kashmir, Article 18.

perception of security forces of their virtual impunity. There should also be a recognition and a public acknowledgment that "disappearances" and other human rights violations like torture, arbitrary detention and extrajudicial killings are not mere lapses of discipline but grave offences to be tried in a court of law and not the object of departmental proceedings.

All trials of people alleged to have participated in "disappearing" people should be before a competent and ordinary court, not special tribunals, and should be fair and open. However, while the law permitting the prosecution of security forces for alleged human rights violations by court martial remains in force, army authorities should drop the secrecy which now surrounds such processes. The offender, the place, time and nature of the offence and the identity of the victim should be revealed to convince the public that justice is done and send a signal to the forces that violations will not be tolerated. In order to stop those in authority from making the excuse that human right violations are the acts of individuals and not the responsibility of the force as a whole, clear lines of command and accountability should be established and implemented in the security forces.

- **ensure that juveniles do not "disappear"**

The special vulnerability of children and juveniles imposes particular duties on the state to promote and protect their rights, including the obligation to *"recognize that every child has the inherent right to life"*, to *"ensure to the maximum extent possible the survival and development of the child"* and that *"no child shall be deprived of his or her liberty unlawfully or arbitrarily"* (Articles 6(1), 6(2) and 37 respectively of the Convention on the Rights of the Child). Article 24(1) of the ICCPR lays down the right of every child, without discrimination, *"to such measures of protection as are required by his status as a minor, on the part of his family, society and the State"*. The "disappearance" of children and juveniles also goes against the spirit of the Jammu and Kashmir Juvenile Justice Bill, 1997,[72] which the state assembly passed in April 1997. It seeks to provide for the "care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles". Under its section 41, cruelty to juveniles can be punished with imprisonment of up to six months.

The Union Government of India and the State Government of Jammu and Kashmir should take these commitments seriously, take adequate measures to ensure that no security personnel contravenes them and that no further juveniles "disappear".

- **ensure that human rights defenders, including relatives of "disappeared" persons, can act freely and safely**

Amnesty International urges the State Government of Jammu and Kashmir to take measures to ensure the safety of those defending the rights of others,

[72]Based on a central law, the Juvenile Justice Act, 1986.

including family members of the "disappeared", witnesses of "disappearances" and their legal counsel and human rights support groups.

This should include giving a commitment that human rights defenders will be permitted to document human rights violations and protest and campaign against such violations, in freedom and without fear, and backing up such commitment by law and administrative guidelines. It should also ensure the protection from harassment, attacks and intimidation of those defending human rights and order prompt and impartial investigations into such attacks whenever they occur. The flow of information to and from human rights defenders, be they individuals or organizations, should be unimpeded and international human rights organizations and United Nations human rights mechanisms should be given free access to Jammu and Kashmir. Amnesty International is particularly concerned that nobody who has provided information on the "disappearances" described in this report should be intimidated or harassed.

- **compensate victims and victims' families**

Amnesty International believes that in all cases in which it is conclusively shown that a person has been "disappeared" by state agents, adequate compensation should be paid to the families of the victim through an effective mechanism to be put in place as is required by article 19 of the UN Declaration on the Protection of All Persons from Enforced Disappearance.

- **ratify and fully implement international human rights standards**

Amnesty International urges the Union Government of India and the State Government of Jammu and Kashmir to ensure full compliance with international standards, both with treaties ratified by India and with principles adopted by the UN which are listed above.

Specifically, the organization urges the Government of India to take seriously its international commitments following ratification of the ICCPR; as indicated in its submission to the UN Human Rights Committee[73], Amnesty International believes that laws, including the Armed Forces (Special Powers) Act, contravene in substantive ways provisions of the Covenant. In its analysis Amnesty International considered specific legislation operative in India as "*amounting to a de facto derogation from the non-derogable rights which is incompatible with the object and purpose of the Covenant*".[74]

[73] Submission to the Human Rights Committee concerning implementation of articles of the International Covenant on Civil and Political Rights, AI Index: ASA 20/27/97.

[74] ibid, p.37.

7. FOUR ILLUSTRATIVE CASES OF "DISAPPEARED" PERSONS

The following four cases are described in greater detail to document the process of how people "disappear" in custody and the enormous struggle their relatives engage in to trace their loved ones - as well as the methods by which those responsible evade accountability.

JAVED AHMAD AHANGER

Amnesty International's 1993 report on "disappearances" included the case history of Javed Ahmad Ahanger. Developments since 1993 illustrate the lack of commitment of police, state and central authorities to establish his whereabouts and to hold those responsible to account.

Javed Ahmad Ahanger, then 18 years old, was arrested at 2 am on 18 August 1990 at his uncle's house at Dhobi Mahalla, Batamaloo, by members of the National Security Guard (NSG). None of the family members present at the time were told of the reasons for his arrest.

The following day, Javed's mother, Parveena Ahanger, approached the DIG (Deputy Inspector General) of Police who told her that Javed had been admitted to the Military Hospital Badami Bagh and would be released within two or three days. When this did not happen, she approached the Director General of Police who issued the following order on .....: *"Shri Ghulam Nabi Ahanger, his wife Mst. Parveena and Miss Raja may be allowed to enter Military Hospital to see Javed Ahmad Ahanger who is under treatment there. This has approval of DG Police J&K."* The family did not find the detainee at the hospital; there was no record of his admission

to hospital. When the DIG was approached again he reiterated that Javed would be released within days. A second visit to the hospital did not yield any further insight into his whereabouts.

Following the registration of an FIR (No 17/91) at police station Shergahi alleging kidnapping or abduction with intent to murder under section 364 RPC, and the filing of *habeas corpus* petitions (Nos. 755/90 and 64/91) in the Jammu and Kashmir High Court, the Director General of Police in his affidavit denied before the court that Javed had been arrested as claimed by the petitioner, and said that police were investigating the complaint. In October 1991, the Jammu and Kashmir High Court directed that a judicial inquiry into the "disappearance" be carried out. An Additional District and Session Judge, Srinagar, was entrusted with the task and submitted his report to the court in 1992. After examining several witnesses, including police officers, the judge had found that there was evidence to show that Javed Ahmad Ahanger had been arrested by members of the NSG and that he had subsequently "disappeared". None of the three NSG officers alleged to have carried out the arrest followed the direction to appear before the investigating judge. The judge noted that a relative of the detainee had also been arrested and held with him before being released. This relative testified that an informer before whom Javed was brought had said that Javed was not a militant. Despite this, he testified, Javed was stripped and beaten by the NSG staff. Javed was seen on the night of his arrest by another detainee at the Hari Niwas detention centre in the custody of the NSG where he was also beaten on orders of the three NSG officers. In his report, the Additional District and Sessions Judge also expressed grave concern that despite the fact that a complaint was lodged with police by Javed Ahmad Ahanger's father in 1991, it was clear that no investigation had been carried out by police.

After a few hearings in the intervening years, the Jammu and Kashmir High Court in May 1995 directed the Station House Officer, Shergahi police station, to complete the investigation "*in all respects, as per the relevant provisions of law*" by 21 October 1995. The Station House Officer finally submitted his report to the court in December 1995; it recommended prosecution of the three NSG officers under section 364 RPC. The High Court then issued direction that the case be processed for accord of sanction.

The Additional Chief Secretary in the Home Department of the Government of Jammu and Kashmir in February 1996 submitted an affidavit to the High Court stating that sanction for prosecution of the three officers had been applied for from the Ministry of Home Affairs in New Delhi; his statement did not mention the date of the application. However, at a court hearing on 20 February 1996, the copy of a message from the Deputy Secretary, Government of India faxed to the Chief Secretary of the Government of Jammu and Kashmir was produced. The fax, dated 30 January 1996, stated that no request for sanction had been received from the state government. The court then made a further request that sanction be granted.

On 24 July 1996, a letter was sent from the Deputy Secretary in the Ministry of Home Affairs in New Delhi to the Special Secretary in the Home Department, Government of Jammu and Kashmir. It said that the Central Government had decided "*that the case is not a fit case for accord of prosecution sanction*" for the following reasons:

"a) During investigation by the Police, the three officers were neither associated with the investigations nor summoned for identification and recording of the statements by the Investigating Officer. The Investigating Officer at no stage even intimated the officers under whose control these three officers were working, to produce them before him for purposes of investigation. Even the rank, parentage, age and the initials of the three officers have not been mentioned.

b) That the Investigating Officer has not examined some of the prime witnesses appearing in the Inquiry Report of the Additional Distt. & Sessions Judge, to arrive at a logical conclusion about the arrest of Shri Javed Ahmad Ahanger.

c) It seems that the Investigating Officer has not conducted investigations independently and mainly relied upon the Inquiry Report of the Additional Distt. & Sessions Judge, Srinagar.

d) It seems that the investigating Officer has not conducted the investigation in accordance with the prescribed procedure."

The message further requested the state government to "vigorously pursue" further investigations under "prescribed procedure". Amnesty International believes that this withholding of sanction to prosecute is based upon quite unacceptable formal grounds, given that an independent judicial inquiry had already in 1991 established that there was evidence to show that Javed Ahmad Ahanger had been arrested by three members of the NSG and subsequently "disappeared".

In a High Court hearing on 10 December 1996 the presiding judge noted that the police had made no effort to remedy the defects of the investigation so as to make it possible to obtain sanction for prosecution indicating that far from "vigorously pursuing" investigations, no action had been taken. He also recommended that a police officer not below the rank of deputy superintendent of police be entrusted with the completion of the investigation. In January 1997, the Deputy Superintendent of Police reported to the court that he had filled the gaps in the investigation and that he requested four weeks to "*procure the presence of the persons who have been identified as per investigation as the alleged accused persons*".

A High Court order of 4 March 1997 directed the Union Government to fully cooperate with the investigating team and to send the three NSG officers to Srinagar to enable the investigating team to examine them within eight weeks. The Institute of Kashmir Studies on 10 July 1997 reported that the High Court on that day directed a police team headed by a Deputy Superintendent of Police to arrest an NSG officer in Pune where he was undergoing medical treatment. The other two officers alleged to have arrested Javed Ahmad Ahanger had reportedly already surrendered and were in army custody in Srinagar.

Amnesty International was told at the end of August 1997, that the investigation, under the supervision of the Chief Judicial Magistrate, Srinagar, had been completed. Since then no news has been received on the case.

SYED BASHRAT AHMAD SHAH

The case of Bashrat Ahmad Shah demonstrates how denials by central authorities - despite evidence to the contrary - non-co-operation by those responsible for the arrest and subsequent "disappearance" of the victim and their delay tactics have contributed to the continuing mystery surrounding Bashrat's fate despite persistent attempts to discover the truth.

Syed Bashrat Ahmad Shah, a 25-year-old businessman, was arrested on 12 October 1990 by personnel of the 50 Bn of the CRPF near Warpora, Sopore, along with four other men - Shabir Ahmad Mir, Ghulam Mohiuddin Rather, a horse carriage driver Sultan Sofi and Sonaullah Hajam. All were travelling in a horse carriage. The latter two men were released on 30 October 1990. Shabir Ahmad Mir was released on 24 December 1990 and Ghulam Mohiuddin Rather was detained for some time under the Public Safety Act and released on orders of the High Court. Bashrat Ahmad Shah, however, who was on a business trip when arrested remains "disappeared" to this day.

The four other men later testified that they were arrested together with Bashrat Ahmad Shah and taken to the CRPF camp near Watlab. After three days, they were moved to the CRPF camp at Jageer Doabgah, Sopore, where they were held for about one week. Records and witness accounts indicate that the other four men were on 21 October taken to the Joint Interrogation Centre at the Old Airport, Srinagar, and that Bashrat Ahmad Shah was last known to have been with them on 21 October. There was no criminal case registered against Bashrat Ahmad Shah, and he was not involved in any political party.

Bashrat's family repeatedly approached the CRPF to ascertain his whereabouts. When these efforts proved fruitless, Bashrat's father filed a *habeas*

corpus petition (No 896/1991) in the High Court on 14 January 1991. By its order of 16 January 1991, the Jammu and Kashmir High Court directed the Inspector General of police, the Deputy Inspector General of police and the CRPF as well as other authorities to disclose within two weeks where and under what law or authority Bashrat Ahmad Shah was being detained. When none of these authorities responded to the directions, the High Court passed orders on 31 January 1991 for the detainee to be brought before the court within one week's time. The respondents, including the CRPF, declared in sworn affidavits that the detainee had not been arrested by them, had not been handed over by them to other state authorities and was not in their custody.

On 23 August 1991, the High Court directed police station Sopore to register a complaint (FIR 184/1991) under section 364 and 365 RPC and initiated three inquiries, by the state police, by the Deputy Commissioner Baramullah and by the Chief Judicial Magistrate, Sopore. All three investigating authorities in their reports submitted in 1992 concluded that Bashrat was taken into custody by 50th Bn of the CRPF on 12 October 1990 and that since then his whereabouts remain unknown.

The sub-division police officer, Sopore police station, where the FIR was registered, conducted the police investigation. In his report to the High Court dated 7 April 1992, he stated that he had questioned the witnesses and approached the CRPF for details of the arrest of Bashrat and the other four men. The CRPF Commandant and the Deputy Commandant stated to him on 25 February 1992 that they had recently been posted to Sopore and would scrutinize the record of the battalion; the CRPF Commandant in charge of the battalion in October 1990 had been transferred to Punjab. In his letter (no J-ii-1-92-GPS-50) dated 22 March 1992, the CRPF Commandant replied to the sub-division police officer that according to the battalion record, the troops of the battalion were not on patrolling duty on the Warpora road on 12 October 1990 and had not arrested Bashrat Ahmad Shah. Neither the Commandant nor the Deputy Commandant made themselves available to the investigating police officer.

In his report of 16 April 1992 to the court, the Superintendent Police Baramullah under whose direction the police investigation had been conducted by Sopore police station, noted that the CRPF had not cooperated with the police inquiry and had failed to pinpoint which officer was responsible.

The Deputy Commissioner of Baramullah recorded statements of the co-arrested persons who stated that they had been blindfolded after arrest and tortured in both CRPF camps. Witness Shabir Ahmad Mir testified before him that he heard one CRPF staff at Jageer Doabgah, Sopore, mention the death of Bashrat Ahmad Shah and that again during detention at the Joint Interrogation Centre at the Old Airport, Srinagar, the interrogating officers several times referred to Bashrat Ahmad Shah's death at Jageer Doabgah camp.

The Deputy Commissioner concluded in his report dated 6 May 1992

that the CRPF were fully responsible for clarifying what had happened to Bashrat despite their denial of his arrest. His report said *inter alia* that CRPF authorities had repeatedly been asked since August 1991 that the CRPF Commandant or Deputy Commandant in office at the time of the occurrence should appear before the inquiry and that the CRPF had replied only in March 1992 that the persons concerned had retired or were in the process of retiring.

"... the very fact that 50 BN CRPF was given a number of occasions/chances right up from the date proceedings were started by me, i.e. 27-8-1991 till 28-4-1992 to produce the then Commandant/Dy. Commandant before me for establishing facts of the case and that the said Battalion did not produce these officers and that only in March 1992 they informed that these officers have retired/are in the process of proceeding on retirement, clearly indicates that they have applied dilly-dallying tactics and did not co-operate with me for finalization of the findings. The present Commandant of the said battalion has vide his letter No.J.II-1/91-92-50 dated 28-4-1992 given in writing that Shri K.S. Panday and Sh. Kewal Krishnan, the then Commandant/Dy. Commandant respectively have already been retired from CRPF service. Had the concerned CRPF personnel been keen to finalize the findings they would have produced these officers well before their retirement because much lead time was given to them."

The Deputy Commissioner, Baramullah in his report also noted that the statement by the CRPF that they had not patrolled the area on 12 October 1990 and therefore could not have picked up Bashrat Ahmad Shah loses credibility in view of the fact that the CRPF did not maintain any record of movements. *"...the non-existence of Deployment/Movement Register with the concerned Battalion also gives... indication that the patrolling party could move in any direction it liked. Therefore, there is less credence to be given to the statement of the concerned Battalion Officer that no patrolling was done on 12 October 1990 by the personnel of the said Battalion on Sopore/Warapora road or any locality nearby."*

Amnesty International is not aware of what happened between the submission of these reports in 1992 and 1997. On 11 April 1997, the Jammu and Kashmir High Court at Srinagar disposed of the *habeas corpus* petition, noting that the police had completed their investigation and finalized the charge sheet. It concluded: *"So in view of the investigations conducted and the enquiries made by different functionaries, it is evident and clear that the person of Bashrat Ahmad Shah was apprehended by 50th Bn. CRPF on 12-10-1990 at Warapora on the Sopore/Bandipore road and since then his whereabouts are not known."* The court then directed: *"The SHO P/S Sopore is accordingly directed to produce the challan* [police charge-sheet] *before the competent court for trial. The other reliefs which the petitioner may be entitled to under law of the land will be looked into after conclusion of the trial to be conducted in the matter against the erring defaulting officers of the CRPF."*

It is not known if sanction to prosecute has been applied for as required under the Armed Forces (Special Powers) Act.

Bashrat Ahmad Shah's mother Haleema Quereshi was reported as saying, *"His memories have created a vacuum in my chest. I don't know how I have withstood the nightmarish experience so long."* Mohammad Amin Shah, Bashrat's father said about the memories of his son, *"Life is not a black board and you simply cannot erase it with a duster. I cannot forget my son even in my grave."*

SHEIKH GOWHAR AYOUB

The case of Sheikh Gowhar Ayoub indicates the problems encountered by families to obtain redress when the detaining authorities deny they are still holding the victim.

Sheikh Gowhar Ayoub, a 19-year-old college student, was picked up at around 3 pm on 4 August 1995 by army personnel of the 7 Jat Regiment, when he was walking home from Bemina Degree College, Srinagar. Several relatives and passers-by witnessed the arrest but army subsequently denied holding him. On 5 August 1995 his family filed a complaint at Batamaloo police station, Srinagar (FIR 19/95). The family was reportedly informed by another detainee that he had seen Sheikh Gowhar Ayoub in army custody. On 26 September 1995, a *habeas corpus* petition (No341/95) was filed in the High Court. A further petition (No 539/95) was filed on 26 December 1995. The petitions were heard in the Jammu and Kashmir High Court but the state respondents failed to bring Sheikh Gowhar Ayub to court as ordered by the judge or to explain what had happened to him.

A letter dated 18 September 1995 from Brigadier Arjun Ray to Lt. General D.D. Saklani, Advisor (Home) to the then Governor of Jammu and Kashmir stated that Sheikh Gowhar Ayub was apprehended *"and the unit released him inadvertently on its own without involving the police. The unit is trying to locate the individual. ... It is also learnt that the aforesaid individual is a militant belonging to TUM group and in all probability would have rejoined militancy."* According to the victim's family, Sheikh Gowhar Ayub had no connection with any political group. In April 1996, the court directed the respondents to place proof of their assertions of the release of Sheikh Gowhar Ayoub before the court. It is not

known if the respondents have complied with this direction.

A judicial inquiry was subsequently set up on High Court orders under the Chief Judicial Magistrate, Srinagar. Following police failure to cooperate with the inquiry and to appear in the court at a hearing on 18 December 1997 as directed, the Chief Judicial Magistrate Srinagar issued non-bailable warrants relating to contempt of court against the SHO.

In August 1998, in response to an inquiry by Amnesty International regarding the "disappearance" of Sheikh Gowhar Ayub, the Jammu and Kashmir Human Rights Commission replied by forwarding, without comment, a report of the Inspector General of Police, CID, J&K Camp Srinagar dated February 1996 which repeated the army statement quoted above.

The mother of Sheikh Gowhar Ayoub, a widow, wrote to Amnesty International: *"The way you have taken interest to locate my son has given me determination that humanity has not been wiped off from this world where cruelty has become a routine matter. Kindly forgive me for becoming emotional. I am always losing control on my mind and patience whenever there is any mention of my missing son."*

BILAL AHMAD BHAT

The case of Bilal Ahmad Bhat indicates that poor people have little chance of pursuing channels of redress for the "disappearance" of a relative.

Bilal Ahmad Bhat, a then 30-year old labourer, was arrested on 3 December 1992 by 95 Bn and 137 Bn of BSF on the roadside during a crackdown at Padshahi Bagh, Srinagar and taken to Badami Bagh Interrogation Centre. Another young man, Nisar Ahmed Dar, was arrested with him but released after 10 days. Bilal's mother, Haleema Begum, initially tried to lodge a complaint in Saddar police station, Srinagar but police refused to register it. The Inspector General of Police reportedly told Haleema that she would be allowed to meet Bilal but later this permission was withdrawn on the grounds that the security forces did not allow access. On a later occasion he reportedly told Haleema that Bilal was apprehended by another section of the security forces - which he did not identify.

Having approached various other agencies and pleaded with them in vain to reveal her son's whereabouts, Haleema Begum filed a *habeas corpus* petition in the Jammu and Kashmir High Court (No. 153/93) on 10 September 1993.

Since Bilal had reportedly been the only earning member of the family, Haleema faced severe financial constraints which rendered her unable to pursue the *habeas corpus* petition in the High Court. She approached all the authorities she could think of and was very vocal in her requests for help.

On 12 September 1998, Haleema Begum and her younger son, Shakeel Ahmed, were shot dead in their home on the outskirts of Srinagar. Neighbours reportedly stated that around 8.30 pm three masked gunmen asked for Haleema Begum and Shakeel Ahmed's house, stormed inside and shot them dead at pointblank range. Two young female relatives were injured in the shooting. Despite the risk to the lives of these two witnesses, no security measures were taken by the authorities to protect them in hospital. A First Information Report (FIR) was subsequently filed with the police about the incident but to Amnesty International's knowledge police have not started to investigate the murder. No judicial inquiry was set up as demanded by Congress Legislative Party leader Mehbooba Mufti, nor does the Jammu and Kashmir Human Rights Commission appear to have taken note of the incident.

Local observers link the killing to Haleema Begum's persistent efforts to trace her "disappeared" son but there have also been allegations that she had antagonized various political groups whose financial support she had sought for her quest. The killings have frightened many of the members of the Association of the Parents of the Disappeared Persons in whose activities Haleema Begum had participated. Nonetheless, the parents of the "disappeared" have vowed not to give up their search.

Amnesty International

14-POINT PROGRAM FOR THE PREVENTION OF "DISAPPEARANCES"

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied. "Disappearances" cause agony for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; often they are tortured; many are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead.

The United Nations has condemned "disappearances" as a grave violation of human rights and has said that their systematic practice is of the nature of a crime against humanity. Yet thousands of people "disappear" each year across the globe, and countless others remain "disappeared". Urgent action is needed to stop "disappearances", to clarify the fate of the "disappeared" and to bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of "Disappearances". It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop "disappearances" and to work for their eradication worldwide.

1. Official condemnation

The highest authorities of every country should demonstrate their total opposition to "disappearances". They should make clear to all members of the police, military and other security forces that "disappearances" will not be tolerated under any circumstances.

2. Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit "disappearances". Officials with chain-of-command responsibility who order or tolerate "disappearances" by those under their command should be held criminally responsible for these acts.

3. Information on detention and release

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

4. Mechanism for locating and protecting prisoners

Governments should at all times ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained.

5. No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.

6. Authorization of arrest and detention

Arrest and detention should be carried out only by officials who are authorized by law to do so. Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event. Governments should establish rules setting forth which officials are authorized to order an arrest or detention. Any deviation from established procedures which contributes to a "disappearance" should be punished by appropriate sanctions.

7. Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8. Prohibition in law

Governments should ensure that the commission of a "disappearance" is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of "disappearances" and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9. Individual responsibility

The prohibition of "disappearances" should be reflected in the training of all officials involved in the arrest and custody of prisoners and in the instructions issued to them. They should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance". An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance".

10. Investigation

Governments should ensure that all complaints and reports of "disappearances" are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. Officials suspected of responsibility for "disappearances" should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence. Complainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals. The investigation should not be curtailed until the fate of the victim is officially clarified.

11. Prosecution

Governments should ensure that those responsible for "disappearances" are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction.

12. Compensation and rehabilitation

Victims of "disappearance" and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation.

13. Ratification of human rights treaties and implementation of international standards

All governments should ratify international treaties containing safeguards and remedies against "disappearances", including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Declaration on the Protection of All Persons from Enforced

Disappearance, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14. International responsibility

Governments should use all available channels to intercede with the governments of countries where "disappearances" have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate "disappearances". No one should be forcibly returned to a country where he or she risks being made to "disappear".