Indien (25) 17/5-00

[EMBARGOED FOR: 26th April 2000] Public

amnesty international

83

INDIA

Persecuted for challenging injustice: Human Rights Defenders in India

April 2000 SUMMARY AI INDEX: ASA 20/08/00
DISTR: SC/CO

The report is divided into three parts. Part I sets out the background to Amnesty International's concerns. Part II looks at how the law has been used and misused against human rights defenders, how human rights defenders have been harassed in violation of the law and how their work has been adversely affected by the prevalence of impunity and limitations on access to the international community.

Part III of the report looks at specific areas of concern in relation to human rights defence in India, analysing the particular problems faced by human rights defenders coming from or working with specific groups identified as "vulnerable". The final chapter of Part III looks specifically at the problems faced in defending human rights in areas of armed conflict in India.

As an adjunct to the main report, Amnesty International will be publishing a series of recommendations which are intended to seek the full realisation of the rights of human rights defenders in India and thereby provide space for the unhindered defence of human rights.

KEYWORDS: HUMAN RIGHTS DEFENDERS1 / HARASSMENT1 / FREEDOM OF EXPRESSION1 / IMPUNITY1 / WOMEN / RELIGIOUS INTOLERANCE / ARMED CONFLICT / NON-GOVERNMENTAL ORGANIZATIONS / ADVERSE DISCRIMINATION / LEGISLATION / PHOTOGRAPHS / CHILDREN / ADMINISTRATIVE DETENTION / USE OF EXCESSIVE FORCE / TORTURE/ILL-TREATMENT / ARBITRARY ARREST

This report summarizes a 124 page document, : INDIA Persecuted for challenging injustice: Human Rights Defenders in India (AI Index: ASA 20/08/00) issued by Amnesty International in April 2000. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at http://www.amnesty.org and Amnesty International news releases can be received by email: http://www.amnesty.org/news/emailnws.htm

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

EMBARGO:
1930 GMT 26 April 2000
AI Index: ASA 20/08/00
Distr: SC/CO

INDIA

Persecuted for challenging injustice

Human rights defenders in India

Amnesty International, International Secretariat,
1 Easton Street, London WC1X 0DW, United Kingdom

TABLE OF CONTENTS

Cover photo: Two women activists being forcefully removed from a peaceful protest by police in Saharanpur district, Uttar Pradesh, 25 June 1997. © Private (AI use)

Persecuted for challenging injustice

Human rights defenders in India

"Human rights defenders need to carry the conviction to society that when we raise a voice against discrimination... we are talking about the principle of equality and ... the principles of right to life and liberty. These principles concern everyone and not only those affected. The greatest protection is if we carry the conviction into society at large that what we talk about concerns human civilisation."[1]

INTRODUCTION

The defence of human rights

Human rights defenders are the men and women committed to realizing the ideals proclaimed in the Universal Declaration of Human Rights, that all people should enjoy freedom from "fear and want". They may be grass-roots activists joining in a protest demonstration with a local movement or union or they may have a high public profile arguing at the national or international level for the defence of human rights. The methods they employ in this work vary enormously. Wherever there is persecution and oppression, when human rights are denied or human dignity is threatened, when harassed minorities or oppressed peoples are at risk, defenders strive to protect the weak and hold to account those who abuse their power.

Human rights defenders are on the front line of the struggle for human rights. They are frequently the only mediating force between the population at large and the power of the state. Local activists are also a crucial source of information -- often the only one -- about what is really happening in a country; it is they who alert international non-governmental organizations (NGOs) and the international media and who report abuses to the relevant United Nations bodies and other institutions; their action helps bring down the wall of silence that governments try to erect to conceal abuse.

In all societies, no matter how democratic they may appear, independent scrutiny by civil society makes an important contribution to ensuring that states protect human rights and conduct their activities within the parameters of the laws, treaties and contracts agreed upon within that society. Indeed, the best safeguard for the human rights of all individuals is the opening up of the state to reasonable public scrutiny and the encouragement of the community to become involved in these processes. Through campaigning and debate, human rights defenders promote the development of law and safeguards which can prevent abuses. They constantly remind governments that they must fulfil their promises and honour their legal and constitutional obligations to protect the rights of their citizens. This role continues to be important because the distance between government rhetoric and reality is often enormous.

---

[1] A human rights defender speaking at an Amnesty International meeting held in India during 1999.

Human rights defenders often pay a high price for their courage. New forms of harassment and repression are being carried out by governments including smear campaigns against individuals and institutions, attempts to criminalize activities essential to the defence of human rights, and the creation of legal obstacles to obtaining the means necessary to carry out human rights work. In some countries, the actions of these human rights defenders working on the front line makes them actual or potential victims of reprisals, threats, harassment or arbitrary arrests, forced exile, torture, "disappearance" or death.

> ***"no single organization or movement can really pressurize the State to adhere to policies of social justice... Only the collective energies of movements all over the country, and perhaps the world, can bring an effective pressure on the State."***
> [A human rights defender speaking at an Amnesty International meeting held in India during 1999]

Amnesty International's work with human rights defenders

Amnesty International, a worldwide movement established in 1961, considers itself part of a global movement of human rights defenders, a movement which the organization has committed itself to strengthening and supporting. Amnesty International recognises the crucial role that defenders play in the struggle for human rights and is giving top priority to their protection.

Amnesty International has worked with human rights activists throughout India for many years to reflect their concerns at international fora and to provide international support for national and local human rights initiatives. Based on a mandate set by its members which opposes the violation of certain rights within the Universal Declaration of Human Rights while promoting all rights in the Declaration, the organization could never hope to reflect the full range of concerns of human rights activists in a country as huge and diverse as India. However, the process of monitoring, reporting and reflecting on at least some of the concerns of the human rights movement has made the organization acutely aware of the growing problems faced by those defending human rights throughout India. While Amnesty International's prime concern -- as for all human rights defenders -- is for the victims of human rights violations, in publishing this report the organization is highlighting a trend in which human rights defenders in India are becoming targets themselves and their work for victims obstructed.

During 1999 Amnesty International held a series of meetings with human rights defenders in India. We brought together activists working on a broad range of issues to discuss and share experiences of their work in protecting and promoting the full range of human rights. Through this process Amnesty International has sought to identify patterns of harassment but also to facilitate interaction between activists and to encourage the establishment of mechanisms to strengthen their work to protect human rights.

On the basis of the discussions held during 1999 and research carried out by Amnesty International on India in recent years, this report seeks to demonstrate the particular problems and dangers faced by human rights defenders working on particular issues and with particular groups. The report is divided into three parts. Part I sets out the background to Amnesty International's concerns. Part II looks at how the law is used against human rights defenders in relation to the rights within the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (see below)

and other relevant international human rights standards. It also looks at how the Indian state has limited the access of human rights defenders to the rights set out in the Declaration. As well as looking at how the law is used against individuals and organizations defending human rights, this part also looks at the broader aspect of activities associated with human rights defence including the right to peaceful assembly and freedom of expression.

Part III of the report looks at specific areas of concern in relation to human rights defence in India, analysing the particular problems faced by human rights defenders coming from or working with specific groups identified as "vulnerable". In looking at these problems it is often difficult to differentiate between the human rights defenders and the constituencies they represent. The final chapter of Part III looks specifically at the problems faced in defending human rights in areas of armed conflict in India including aspects of the law used against human rights defenders and the way in which human rights defenders are under attack from both the state and armed groups. Case studies to illustrate concerns about human rights defenders are used throughout the report and a set of more comprehensive Casesheets are given in Appendix I to the report.

As an adjunct to this report, Amnesty International will be publishing a series of recommendations which are intended to seek the full realisation of the rights of human rights defenders in India and thereby provide space for the unhindered defence of human rights. These recommendations are those which have been put forward by human rights defenders in India themselves.

International protection of human rights defenders

On 9 December 1998, on the eve of the 50th anniversary of the Universal Declaration of Human Rights, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Declaration has become commonly known as the Human Rights Defenders Declaration as the broad range of individuals working for the promotion and protection of human rights have become collectively known as "human rights defenders".

The adoption of this Declaration was the culmination of more than twelve years of negotiations and lobbying by human rights organizations to ensure international recognition for the crucial role that human rights defenders play in promoting and protecting human rights and provide them with some international protection.

The text of the Declaration is given in Appendix II to this report. As well as setting out the rights of human rights defenders to various rights and fundamental freedoms including the right to know, seek, obtain and receive information about human rights and fundamental freedoms and the right to participate in peaceful activities against violations of human rights, it also sets out roles and responsibilities for these defenders including strengthening understanding, tolerance and peace among racial and religious groups and safeguarding democracy. In addition it sets out certain responsibilities of individual states towards human rights defenders including protecting them against violence, threats, retaliation and discrimination and promoting and facilitating the teaching of human rights and fundamental freedoms.

The Human Rights Defenders Declaration is not a treaty to which countries are bound. Nor is it justiciable. It was, however, adopted by every member of the United Nations through their participation in the UN General Assembly. To encourage its implementation, the 1999 session of the UN Commission on Human Rights called on all states to provide and give effect to the Declaration and to report on their efforts. The Commission urged all UN human rights bodies and mechanisms[2] to take the provisions of the Declaration into account in their work. The UN Secretary-General has prepared a report for this year's session of the Commission [March to April 2000] on activities undertaken to give effect to the Declaration, although only a handful of governments have provided information. Human rights organizations, including Amnesty International, are pressing the Commission to establish at this session a Special Rapporteur on human rights defenders with a mandate to monitor, document and intervene on behalf of human rights defenders under threat.[3]

[2] UN thematic mechanisms consist of a number of special rapporteurs, representatives, independent experts or working groups appointed (usually by the UN Commission on Human Rights) to look at specific types of human rights violations wherever in the world they occur. Country mechanisms also exist which look at the human rights situation in specific countries.

[3] See Amnesty International's report, *2000 Commission on Human Rights: Defending the defenders*. December 1999. AI Index: IOR 41/12/99.

PART I: Defending human rights in India

1. The human rights movement in India

"No one is going to give them their rights to live with dignity on a silver platter. They have to be extracted with force... We will have to strengthen ourselves to stop those who find it profitable to misuse authority and public funds. Perhaps the courts and the NGOs are the only solution."[4]
Justice Venkatachaliah, former Chair, National Human Rights Commission

The global trend towards rights awareness has led to a proliferation of NGOs and movements for human rights worldwide. In independent India post-1949, a civil liberties movement which had been active in opposing human rights abuses under the colonial rule of the British including the preventive detention of political prisoners, re-emerged to raise concerns about state atrocities against left-wing political activists particularly in West Bengal and Andhra Pradesh. The 1975 Emergency again galvanised the human rights movement to oppose the oppressive actions of the state. Many politicians who are active today were imprisoned by the state and were the subject of campaigns by the human rights movement in India and abroad. Given the history of the human rights movement, its political leanings are generally leftist and fiercely secular.

The human rights movement in India has in recent years been transformed from one primarily concerned with civil and political rights to a movement raising concerns across the broad spectrum of human rights from the right to livelihood and the right to employment to the right to a fair trial and freedom of expression. The current diversity of the human rights movement emerges from the range of issues of concern across the entire rights framework, and from the enormity of the human rights challenges confronting India as a democratic country facing extreme poverty, increasing pressure on resources, social discrimination, economic and industrial development and movements for self-determination to name but a few.

In recent years, the opening up of the economy to international competition has underlined the indivisibility of human rights: that all rights are interrelated and that one right should not be sacrificed for another -- a person protesting against a violation of the right not to be arbitrarily deprived of property should not be subjected to arbitrary detention, torture or ill-treatment. This in turn has challenged activists working on issues across the human rights spectrum to find new ways of working together and supporting each other.

The need for solidarity at the local and national level is reflected at the international level. Globalization has resulted in an increase in inequality, social disintegration and cultural hegemony, which has given rise to a growing number of excluded citizens throughout the world. The organizations and growing number of men and women who condemn such exclusion and disregard for human dignity are often persecuted for exposing the empty rhetoric of human rights promises and removing

[4] Chair of the National Human Rights Commission at a workshop on "Human Rights of Marginalised and Tribal Communities -- the role of non-governmental organizations and the NHRC in promoting a human rights culture for a just and equitable society", Dehra Dun, 1 October 1999. As reported in *The Times of India*, 2 October 1999, "People should fight for their rights: NHRC chief", by Man Mohan.

the mask of international respectability behind which governments, companies and other actors attempt to hide. There is a need to co-ordinate efforts at the international level to ensure that the globalization process does not become a levelling process flattening all human rights standards in its path.

Women holding a public meeting against domestic violence, child sexual abuse and the harassment of women activists in Uttar Pradesh, September 1999 (see Casesheet 6). © private (AI use)

India's human rights movement is made up of a variety of sectors, all working around various rights agendas but using different formats and approaches. There continues to be a strong civil liberties movement, dealing mainly with civil and political rights violations but increasingly addressing social and economic rights violations. There are also numerous social action groups which have grown up throughout the country in response to particular situations -- usually to address rights issues faced by the most economically and socially vulnerable at the grass-roots level. There are also numerous voluntary organizations carrying out a range of activities from provision of technical training to legal aid to awareness-raising. More recent years have seen the rise of "people's movements": loose networks of individuals directly affected by human rights abuses. In India the term "NGO" has commonly been used to describe those organizations receiving foreign funds for their

> *"Mutual solidarity requires first of all, all of us to recognise irrespective of the arena in which we are working, that whoever works for the protection of human rights anywhere is our colleague. In spite of whatever differences we may have."*
> [A human rights defender speaking at an Amnesty International meeting held in India during 1999]

work. Many human rights activists in India are ideologically opposed to foreign funding of human rights activities.

The range and scale of human rights abuses throughout India and the sectors which address them makes it difficult for the human rights movement to act as one and often makes it difficult for human rights defenders to offer one another solidarity. There are several specific issues which divide the human rights movement, such as the issue of foreign funding referred to above. In addition there is an ongoing debate within sections of the human rights community about the responsibility of human rights organizations to condemn abuses by armed opposition groups. Ideologically, some parts of the human rights movement are sympathetic to the political aims of many armed groups engaged in struggles for land or self-determination for example. Further, many human rights activists rightly stress the responsibility of the state under the Constitution and international human rights treaties. This has presented a dilemma in the face of abuses by these armed groups and opened activists to criticism of their lack of neutrality. In light of this, there is a growing acknowledgement that conflicts should be subject to common rules which protect civilians from violence and a framework within which such violence can be condemned. Amnesty International itself in 1991 amended its mandate to unconditionally oppose hostage-taking, torture and deliberate and arbitrary killings of civilians or those taking no direct part in the hostilities by armed opposition groups.

> ***"The movement itself must have a lot of ethical integrity, moral integrity... and that also includes being critical of movements which have come up from genuine peoples problems when they behave in a way which is undemocratic or contrary to the same norms which we are applying to the state or other oppressing groups."***
> [A human rights defender speaking at an Amnesty International meeting held in India during 1999]

While many of those involved in the defence of human rights may have differences of ideology, or even process, with one another, it is increasingly recognised that solidarity on key issues of human rights is a vital route to the realization of human rights. Discussions held with human rights defenders during 1999 reinforced that view.

There is also recognition of the need for some introspection by the human rights organizations in India about their own internal functioning as well as their human rights agendas: the need to root human rights struggles taking place throughout India on a broad range of issues, in the fundamental rights guaranteed to all; a recognition that a rigorous approach to the work of human rights defence should also be reflected in the way in which organizations are run and in which they respond to their constituencies by evaluating their work: that calls for transparency and accountability in government should be

> ***"We require much more solidarity than we have today... Because... we have not been able to -- even within ourselves -- really set up the concept of human rights as a value. As a value which is something more than the particular political situation to which it attaches itself, the particular social context from which it has arisen... It is a value by itself to which we are all committed, ought to be committed. It is something we need to internalise much more so that we can respond automatically, immediately to the harassment or suppression that the human rights activists are subjected to."***
> [A human rights defender speaking at an Amnesty International meeting held in India during 1999]

reflected in the transparency and accountability with which human rights organizations themselves function. While rights issues become blurred in political debate, for example for and against globalization, it is essential that in documenting human rights violations, human rights defenders remain loyal to the truth rather than projecting their own political beliefs. Only when these principles are upheld can human rights defenders truly stand together as a moral force against those who attempt to suppress human rights.

2. The challenge for human rights defenders in India

"Fifty years into our life in the Republic we find that Justice - social, economic and political - remains an unrealized dream for millions of our fellow citizens... Not surprisingly there is sullen resentment among the masses against their condition erupting often in violent forms in several parts of the country... Many a social upheaval can be traced to the neglect of the lowest tier of society, whose discontent moves towards the path of violence."[1]
Shri K.R. Narayanan, President of India

Throughout India, human rights defenders have faced severe problems in accessing redress for the victims that they represent and have been subjected to personal threats and violence because of the work that they are undertaking. Individuals and organizations have been targeted by the state or other vested interests for activities that appear to threaten their power base. Peaceful protests have been met with excessive force and human rights defenders have been detained.

For many years Amnesty International has been particularly concerned about the situation of those defending human rights in areas of armed conflict in India -- notably in Punjab, Jammu and Kashmir, and areas of the north-east but also in other areas where there is conflict between law enforcement agents and *naxalites* or other Maoist groups. Several human rights defenders have been killed or subjected to other human rights abuses by both state security forces and armed groups in these regions where human rights are so often sacrificed in the name of national security and the aims of the conflict (see Part III, Chapter 7). The conviction of the state that these human rights defenders are a "wing" of the armed opposition, while ignoring the very real human rights concerns that they are trying to raise has had a devastating impact on the work of human rights defenders in these areas of India.

The complexity of human rights issues presents a particular challenge to human rights defenders in India. India is a country replete with mutually reinforcing inequalities. Economic inequalities are huge -- people die of starvation and live as bonded labourers in some regions of the country while others enjoy an extremely affluent "middle class" lifestyle. Roughly 300 million of India's one billion population live below the poverty line. Economic inequality means unequal access to health, education and other facilities but it also means unequal access to justice.

Economic inequalities are exacerbated by social inequalities. The existence of the caste system condemns large sections of the population to live with little hope of improving their living and

[1] Address to the National by the President of India on the eve of Republic Day 2000, Tuesday 25th January 2000.

employment standards and in fear of atrocities by dominant castes. For tribal people there is widespread alienation from a society which is increasingly encroaching on the land and resources on which they rely. These inequalities are once again exacerbated by gender inequalities. In response to economic development, "liberalization" of the economy and globalization in recent years which have tended to merely exacerbate these inequalities, people's movements have emerged to challenge these forces which threaten the human rights of the most vulnerable. The fight against inequality and discrimination at the grass-roots in India is growing, fuelled by increased access to information and increased awareness of rights through the work of activists. Movements within the country have also found support from international initiatives.

> ***"In India there are one billion people, one billion people but 40% of them are poor because 300 million of them can't consume what has been produced... This 40% has to be addressed. The people who are working against globalization, liberalisation and politics of privatisation, we will have to face political and civil rights violations. It's all connected: socio-economic rights and political and civil rights are inter-linked. You protest because not only are your political expressions curbed but you are curbed because you are talking about the poor."***
> [A human rights defender interviewed by Amnesty International in Bangalore, December 1999]

However, those who have emerged as agents of social change are seen by those in power as a direct threat. "With the new approach to the right to development, agencies for development are also agencies for human rights, playing both the roles of activism and advocacy."[6] Branded and labelled as "anti-national elements", these human rights defenders have been harassed, including by the use of false criminal cases, threats, campaigns to discredit activists, the establishment of parallel NGOs, violence and preventive detention.

"People are getting organized and that is hurting the pride of some and pinching the pockets of some others. Why? Because people are coming to know of their constitutional rights. They have started demanding accountability from the sarpanches [village heads] *and the government servants. Slowly village people are asking their sarpanches i.e. the panchayat presidents to hold gram sabha* [village assemblies] *as prescribed by the law. People have started holding 'rallies' and handing over 'Memorandums' to the Government officials to express their grievances and demand basic amenities in their areas. These things are not often welcomed. As a result, as we had foreseen, some oppositions and misunderstandings were inevitably created."*[7]

Amnesty International acknowledges the steps that have been taken by the Government of India over a number of years to support the work of human rights defence for example through the establishment of statutory human rights institutions and the ratification of several international human rights treaties. In addition the organization acknowledges the support that government agencies have given to sectors of social activism through government funded programs and government-NGO cooperation. However, it is concerned that much of the state's actions in defence of human rights are

[6] "Delivering the Right to Development: ESCR and NGOs" by Arjun Sengupta, *Economic and Political Weekly*, 9 October 1999

[7] Annual Report of Legal Aid and Human Rights Centre, Baroda, Gujarat, July 1998 to June 1999.

at a rhetorical level and sporadic in their implementation. There is an urgent need for the state to take active steps to ensure the protection of activities in defence of human rights. More than that, in light of increasing concerns in recent years that organs of the state have been actively involved in suppressing human rights activities or acting in connivance with other groups engaged in the suppression of human rights defenders, Amnesty International believes that there is an urgent need for the Government of India to bring certain policies in line with the UN Declaration on Human Rights Defenders.

3. The responsibility of the state to protect human rights defenders and to take steps to ensure they can carry out their work freely

Rather than working with human rights groups and individuals to ensure rights for the most vulnerable, the state has in too many cases taken action to suppress their activities. Instead of welcoming the formation of international alliances on rights issues, the state has attempted to limit these and restrict them, labelling them as "anti-national". Such defamation plays a key role in generating and condoning attacks on human rights defenders as the perpetrators (who may not be directly associated with the state) feel immune from prosecution and free to abuse their power.

While the Government of India is clearly accountable under international standards for attacks, harassment and threats against human rights defenders carried out by law enforcement officials and other agents of the state, it also has clear obligations to take action against non-state actors who threaten the work of human rights defenders, whether the state orders, connives in or acquiesces to such abuses or not. A member of the UN since 1945, India has played an influential role in the elaboration of UN human rights standards, starting with the Universal Declaration of Human rights (1948). It has been a party to -- that is, has voluntarily taken on a legal commitment to uphold the provisions of -- the International Convention on the Elimination of All Forms of Racial Discrimination since 1968; the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights since 1979; the Convention on the Rights of the Child since 1992; and the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) since 1993. India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, but needs to ratify this treaty before it becomes a state party.

Article 12 of the Human Rights Defenders Declaration

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The understanding of responsibility for human rights violations has significantly widened in recent years to include not only violations of human rights by the state or its agents but also some abuses by private actors. If the state fails to act with due diligence to prevent, investigate and punish abuses, including attacks on human rights defenders, it is responsible under international human rights law. The responsibility of states to take action against human rights abuses by private persons is established in all the core human rights treaties. The ICCPR requires state parties to "ensure" the rights of the Covenant, an obligation which the Human Rights Committee has indicated extends to protection against acts inflicted by people acting in their private capacity. The Women's Convention also for example requires in Article 2(e) that states shall "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."

The current report documents not only attacks on human rights defenders by the state and its agents but by non-state actors: by armed groups in areas of armed conflict, by local "mafias", by political groupings, dominant castes and industrialists to name but a few, which have varying relations with the state. Almost all demonstrate a pattern of direct involvement, connivance in or acquiescence with the attacks by agents of the state. It was pointed out by many human rights defenders in India during discussions held with Amnesty International during 1999 that many non-state actors cannot operate without the support of the state and that the complexity of power relations in India means that the state is often behind the actions of what appear to be non-state actors. There are concerns at the gradual transfer of power, often through corruption, from the state machinery, in the form of government departments and officials, to individuals and groups including landlords, "mafia", politicians and others, who can misuse it without the same levels of accountability.

Torture, hostage-taking and killing of human rights defenders by armed groups in areas of armed conflict fall under the twin responsibility of the perpetrators and the state. The principles of international humanitarian law, particularly Common Article 3 of the Geneva Conventions, prohibit such acts directed against non-combatants and hold the perpetrators responsible for such abuse. At the same time the state retains its responsibility to protect all civilians, including human rights defenders, from abuses by non-state actors, including armed groups, and obligates it to exercise due diligence in investigating the abuse and punishing the perpetrators (see Part III, Chapter7).

PART II: Constraints on human rights defenders

1. USE AND MISUSE OF THE LAW AGAINST HUMAN RIGHTS DEFENDERS

The law in India has been used to suppress activities in defence of human rights in many ways. This chapter explores various provisions of the law -- both ordinary criminal law and special legislation -- which are used to prevent peaceful protest, to break up protests using force and to detain those defending human rights. It also looks at how the law is manipulated against human rights defenders as a means of harassment. This chapter does not cover in detail the use and misuse of the law in areas of armed conflict which is covered in Part III, Chapter 7. Nor does it document the use of numerous state legislations against human rights defenders.

a. The prevention and criminalization of peaceful protest and assembly

Although freedom of assembly is a fundamental right guaranteed under Article 19(b) of the Indian Constitution, protests are regularly suppressed by police using the law to ban protests and detain protesters.

> ***Article 5 of the Human Rights Defenders Declaration***
> For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
> (a) To meet or assemble peacefully

Section 144 of the Code of Criminal Procedure (CrPC) empowers executive magistrates to "direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management" as a means of preventing "obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray". The order can be made against a particular individual, people residing in a particular area or the public generally in a particular place. The order is valid for up to two months or a maximum of six months on the specific orders of a state government.

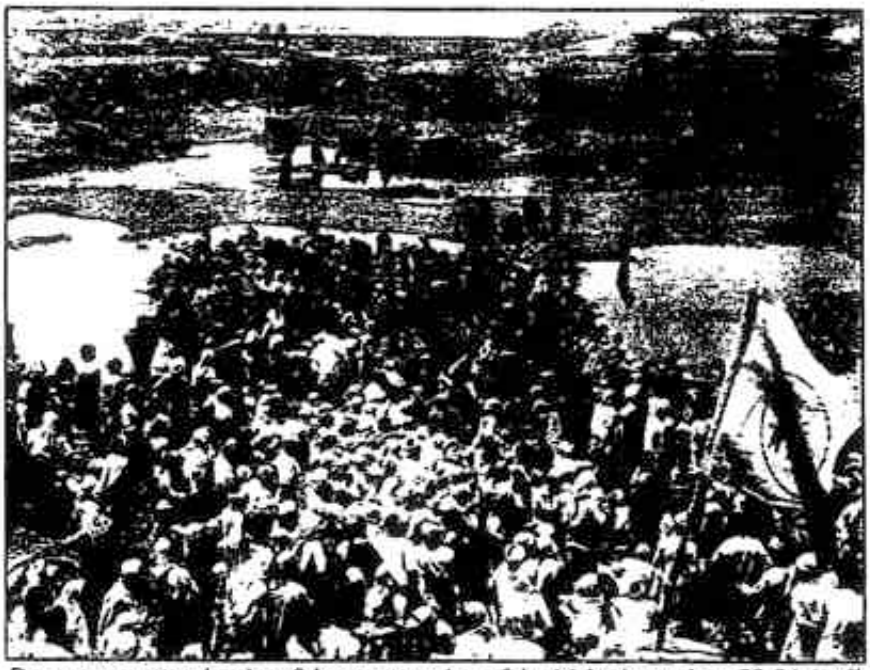
Section 144 has been used on numerous occasions in India to prevent peaceful protest in violation of international standards granting the right to peaceful assembly including Article 21 of the International Covenant on Civil and Political Rights (ICCPR) which states that "*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*". The Section is regularly imposed by executive magistrates in areas around construction sites or areas where there is conflict over land and where protests might be anticipated or are ongoing. The order effectively prohibits the gathering of more than five people in those areas and therefore the holding of public meetings or assemblies, however peaceful. It further permits the detention, under section 188 of the Indian Penal

"Many of us have been told that you are blacklisted, and they keep a file of you... they watch the demonstrations that we organize, the rally that we organize – it's nothing undemocratic, it's very much in the framework of democracy that we are expressing. We are expressing our dissent. It is nothing illegal, according to our Constitution it's nothing illegal. We have a voice. We can express... Today what is happening, the right of expression have been taken away, you can't write, you can't photograph, you cannot speak... this is increasing."
[A human rights defender interviewed by Amnesty International in Bangalore, December 1999]

Code (IPC), of those attempting to hold meetings on the grounds that they have violated the orders.

The Section has been used extensively to prohibit protests against proposals to dam sections of the Narmada River. On the evening of 7 March 2000, section 144 was imposed around the entrance to the Maheshwar dam site[8] in Khargone district of Madhya Pradesh while several hundred people affected by the dam were carrying out a peaceful *dharna* [sit-in] in a nearby field. The following day, over 350 people, including over 200 women, were forcibly removed and many of them arrested and detained. Several were reportedly beaten with *lathis* [long wooden sticks] and the clothes of several women were torn.

The courts in India, while finding that section 144 does not impinge on fundamental rights guaranteed within the Indian Constitution, have indicated that there are limits to its application emphasising that an order should only be passed to meet an emergency in exceptional and urgent circumstances. The courts have further observed that the order cannot be permanent or semi-permanent in nature and that repetitive orders under



Demonstrators at the site of the construction of the Maheshwar dam, 22-24 April 1998. © Private (AI use)

[8] The Maheshwar Dam is being constructed as part of a larger project to develop the Narmada River. As part of this project a plan was made to build several dams, the largest of which would be the Sardar Sarovar Dam to bring irrigation to a huge area of land along 75,000 km of canals in what would be the largest system in the world. Around 30 major, 155 medium and 3000 minor dams are planned to be constructed on the Narmada River as part of the "Narmada Valley Project".

section144 are "nothing but abuse of power."[9] Section 144 has however been imposed on an almost permanent basis in several areas of India including in parts of Manipur.

Amnesty International believes that section 144 has been used in violation of international standards to prevent peaceful assembly and as a means of directly prohibiting activities in defence of human rights.

Indian legislation also allows for **externment orders** to be issued against individuals to prevent them from entering a particular area. Amnesty International is aware of several human rights defenders who have been the subject of such externment orders. For example, Sections 55-59 of the Bombay Police Act which provide for removal of persons convicted of certain offences have reportedly been used in Maharashtra to ban human rights defenders from entering particular areas of the state. Section 37(4) of the Act (see below) has also been used to ban entry of individuals into certain areas.

Justice Kolse-Patil, a retired judge of the Bombay High Court who was active in the protests against the construction of the "Enron" power plant in Maharashtra, was arrested together with Mangesh Pawar, President of the *Sangharsh Samiti* [Struggle Committee], and General Secretary, Sadanand Pawar on 28 February 1997. The arrests were made under section 151 of the CrPC, to prevent the three men from taking part in a planned hunger strike. Mangesh Pawar and Sadanand Pawar were remanded to judicial custody for ten days. On their release they were ordered not to enter Chiplun and Guhagar *talukas* till 31 March (as permitted under section 37(4) of the Bombay Police Act), on charges that they were inflaming public passions by spreading false information against the government and asking people to boycott the district council elections. Mangesh Pawar was subsequently served with a show-cause notice on 18 April 1997 prohibiting him from entering Ratnagiri and Raigad districts of Maharashtra for a period of two years.

b. The prevention of freedom of expression

Article 6 of the Human Rights Defenders Declaration reflects Article 19 of the ICCPR to which India is a party. However, the rights set out in these international standards are regularly ignored. It is acknowledged that correspondence to and from many civil liberties organizations (particularly those which operate in areas of armed conflict) is intercepted by the authorities and that their telephones are regularly tapped.[10] Information and documentation sent to international human rights organizations is often intercepted and much of it does not reach its destination.

Too often, the Indian state has used the argument of national security to detain individuals exercising their right to freedom of assembly and expression. Often they are preventively detained, under special legislation in force in areas of armed conflict and elsewhere (see below and Part III, Chapter 7), particularly under the National Security Act. During 1999, Amnesty International was concerned to receive reports that several people who held meetings to protest against the conflict

[9] Jagdisharanand Avadhut AIR 1984 SC 51: 1983 Cr LJ 1872.

[10] In a judgement dated 18 December 1996, on Writ Petition (C) No.256 of 1991, *Peoples Union for Civil Liberties (PUCL) vs The Union of India & Another*, the Supreme Court held that telephone tapping was a violation of the right to privacy guaranteed under Article 21 of the Constitution of India.

between India and Pakistan over Kashmir in Kargil in June/July 1999 were detained on charges of sedition (section 124A of the IPC).

> ***Article 6 of the Human Rights Defenders Declaration:***
> Everyone has the right, individually and in association with others:
> (*a*) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
> (*b*) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
> (*c*) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

On 10 July 1999, a group of students and others were attacked while holding a public meeting calling for immediate peace between India and Pakistan, withdrawal of security forces from Kashmir and a solution to the conflict in accordance with the wishes of the people, at Sealdah Railway Station in Calcutta. When two of the activists went to the Railway Police to complain they were also arrested. Police claimed that three people had been brought to the police station by members of the public who suspected them of being "anti-nationals". The police claimed to be interrogating them. The three were released on the supply of personal bonds and were asked to attend court on 16 July. At that hearing they were charged with sedition and conspiracy against the state. They were remanded to judicial custody but were released on bail. The case is continuing.

A few days later on 25 July a meeting of the "Marxist study circle" was attacked in South 24 Parganas district of West Bengal. Several people were taken to hospital but police arrested five activists including the President of the Diamond Harbour branch of the Association for the Protection of Democratic Rights (APDR), a civil liberties organization. Five of the attackers were also taken into custody but released shortly afterwards. The five activists were charged under

> ***Article 19 of the ICCPR:***
> 1. Everyone shall have the right to hold opinions without interference.
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

section 124A[11] of the IPC. They were produced in the Diamond Harbour sub-divisional magistrate's court on 26 July. Though the magistrate himself remarked that the sedition charge may not stand in this case, in view of the "tense situation", he remanded them to judicial custody till 3 August. On 4 August they were granted bail.

The detention of Asish Gupta in Assam under the National Security Act (see Part III, Chapter 7), is also of particular concern in this context.

Amnesty International is concerned about proposals put forward by the Government of India and recently endorsed by the Law Commission of India, to introduce new anti-terrorist legislation in India. The proposed Criminal Law Amendment Bill which is an amended version of a Bill proposed by the then government in 1995 prior to the lapse of the Terrorist and Disruptive Activities (Prevention) Act (TADA), bears many similarities to TADA but would be a permanent legislation unlike TADA which was reviewed periodically.[12]

Of specific concern in the context of this report, is the proposed Section 4(1) of the Criminal Law Amendment Bill. This Section refers to punishment for "disruptive acts" and has an extremely broad definition including "questioning" "directly or indirectly" "by act or speech or through any other media or in any other manner whatsoever" "the sovereignty or territorial integrity of India". While sub-section (1) contains a specific proviso that "trade union activity or other mass movement without the use of violence or questioning the sovereignty or territorial integrity of India or supporting any claim for the cession of any part of India shall not be deemed to be a 'disruptive act'", Amnesty International believes that this provision is dangerous and could lead to the prosecution of people for the peaceful exercise of their right to freedom of expression of political or other conscientiously held views -- a fundamental freedom guaranteed in the Indian Constitution as well as the ICCPR -- as it did under TADA.

c. Preventive Detention

Human rights defenders are regularly subjected to preventive detention as a means of removing them from the site of planned protests. While provisions exist under the ordinary criminal law allowing for preventive detention, human rights defenders are also detained under special legislation enacted to grant special powers to the security forces to detain individuals whose actions are considered to be a threat to the national security of the country.

Article 22 of the Constitution of India lays down a justiciable fundamental right that provides safeguards for detainees. Article 22(1) and (2) of the Constitution obliges the authorities to bring anyone who is arrested before a magistrate within 24 hours of arrest and to permit him/her to consult a lawyer of choice. However, Article 22 contains a number of limitations that authorise preventive or

[11] 124A. *Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.*

[12] See *Law Commission of India: Working Paper on Legislation to Combat Terrorism*, available from the Law Commission of India, New Delhi.

administrative detention: clause 5 of the article lays down that these rights do not apply "to any person who is arrested under any law providing for preventive detention". Preventive detention laws by their very nature deny the detainee the right to be tried and to be tried "within a reasonable time" as no charges are brought for which the detainee could be tried.

The Human Rights Committee has expressed concern at India's reservation under Article 9 of the ICCPR[13] and the widespread use of special powers of detention.[14]

Section 107 of the CrPC states that "*When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*"

Human rights defenders are regularly detained on condition of furnishing a bond under section 107 of the CrPC (see below). Given that many of those detained under section 107 are detained for the peaceful exercise of their politically held views, human rights defenders regularly refuse to furnish a bond on principle and remain in detention for several days before release. According to human rights activists, when executive magistrates (who are sometimes police officials) wish to detain a person for any length of time they can refuse to accept sureties or raise the price. In 1984 concern was expressed by the Delhi High Court about Section 107 which judged that "quite sometime the powers under Section 107 are invoked quite rashly thus causing great deal of avoidable suffering. The Executive Magistrates are also police officers and by their very nature and training find it difficult to demarcate their dual functions as the custodians of law and order and as a protector of the human liberty."[15]

Section 151 of the CrPC states that:
"*(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.*
(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force."

Section 151 of the CrPC is used to detain individuals throughout the country on extremely flimsy grounds. It is used to detain so-called "habitual offenders", but is also used to preventively

[13] "With reference to article 9 of the ICCPR, the Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State."

[14] Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81. Para 24.

[15] Sunil Batra v The Commissioner of Police, Delhi. Cr W P No.20 of 1983, Delhi High Court. Order of 18/12/84.

detain those involved in peaceful demonstrations and human rights defenders. In Maharashtra section 151 has been amended to include provision for detention for up to 15 days (section 151(3)).

On the morning of 18 August 1996, over 250 villagers of Bijasen village in Seoni district of Madhya Pradesh were undertaking a *"satyagraha"* [non-violent protest involving fast] inside a temporary hut against the construction of the Bargi Dam.[16] They had been there since 21 July. Scores of police officers arrived with the District Collector of Seoni. The District Collector talked to activists, including Rajkumar Sinha and Asit Kumar of the *Bargi Bandh Visthapit evam Prabhavit Sangh* (BBVPS) [Organization of those displaced and affected by the Bargi Dam] about the rehabilitation package which had been offered to the inhabitants. When they expressed their refusal to accept this package, Rajkumar Sinha, Asit Kumar and thirteen others, including three women, were arrested by police. They were charged under sections 151, 107 and 116 of the CrPC, presented before an executive magistrate and remanded to judicial custody until 2 September 1996. When several demonstrators, including some women, tried to prevent the two activists from being arrested and taken away, they were beaten with *lathis* and rifle butts on their stomach, buttocks and wrist. One of the arrested women received a deep *lathi* wound on the upper part of her thigh. In response to a request for a report on the incident by the NHRC, the Government of Madhya Pradesh said that several of the demonstrators had been arrested under section 151 of the CrPC to prevent them from committing cognizable offenses "like stone pelting, stick wielding etc". The government further claimed that the protestors caused physical injuries to several police personnel. It went on to claim that "no brutal force was used to disperse the crowd nor any case of brutal injury has been reported to the administration".

On 20 August Medha Patkar, leader of the *Narmada Bachao Andolan* (NBA) [Movement to Save Narmada] went to Bijasen village to offer her support to the remaining protesters. However, while attempting to address the protesters, she herself was arrested under section 151 of the CrPC. She was held at a Forest Department Guest House at Rukhar, Seoni district and was not brought before a magistrate within 24 hours as the law dictates. By an Executive Magistrate order under Section 151 CrPC, she was told that she would be kept in custody until 4 September unless she gave surety of Rs.10,000 [US$230] and an undertaking that she would not lead an agitation for a year. Petitions were filed in the Madhya Pradesh High Court challenging her "illegal detention". On 30 August, the Madhya Pradesh High Court held her arrest to be illegal and ordered her release.

In a judgement in 1985 the Bombay High Court had held that section 151 should not be used in the guise of maintenance of law and order or to oppress social action groups.[17] In an order of 29 September 1999 the sessions court in Nandurbar, Maharashtra, ruled that agitations like those undertaken by the NBA could not be restrained in view of the fundamental rights under the Indian Constitution. The order quashed the arrest of Medha Patkar and other NBA activists under section 151 of the CrPC pointing out that there were no specific allegations against NBA activists. Despite these judgements clearly questioning the right of the state to detain those engaging in peaceful protest, arrests of human rights activists under section 151 of the CrPC continue.

India's police are governed by a variety of colonial legislation dating back to the 19th Century. One such is the Bombay Police Act of 1951 which is in force in the states of Maharashtra and Gujarat.

[16] The Bargi Dam is being constructed as part of the larger Narmada River project.
[17] *S V Lokhande vs M P Mirgali*, reported in 1985 BomLR (88) 114.

Section 37 of this Act has been used extensively to preventively detain protesters including those protesting against construction of the Enron power project in Maharashtra during 1998.[18]

Section 37 of the Bombay Police Act, 1951 grants police or District Magistrate powers to prohibit certain acts or assemblies in a particular area for prevention of disorder. These acts include:
(a) the carrying of arms, cudgels, swords, spears, bludgeons, guns, knives, sticks or lathis, or any other article, which is capable of being used for causing physical violence;
(b) the carrying of any corrosive substance or of explosives;
(c) the carrying, collection and preparation of stones or other missiles or instruments or means of a casting or impelling missiles;
(d) the exhibition of persons or corpses or figures or effigies thereof;
(e) the public utterance of cries, singing of songs, playing of music;
(f) delivery of harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing which may in the opinion of such authority offend against decency of morality or undermine the security of or tend to overthrow the State.

Sub-section 4 of Section 37 empowers the police or District Magistrate to "*by public notice temporarily reserve for any public purpose any street or public place and prohibit persons from entering the area so reserved except under such conditions as may be prescribed by such authority*".

During 1997 human rights defenders and villagers protesting against the Enron project were routinely arrested under section 135 of the Bombay Police Act which provides for imprisonment for up to one year and a fine for those disobeying orders made under section 37 of the Act. Amnesty International concluded that the imposition of these sections of the Bombay Police Act had been used to suppress peaceful protests in Ratnagiri district, Maharashtra, leading to the temporary imprisonment of hundreds of people whom the organization considered to be prisoners of conscience, arrested solely for the peaceful expression of their beliefs.

The National Security Act, 1980 (NSA) permits administrative detention for a period of up to one year. In considering India's second periodic report in 1991, members of the UN Human Rights Committee were convinced that the NSA derogated from rights guaranteed under the ICCPR -- notably article 9. The Committee observed that under section 8(2) of the NSA, the authorities may decide not to disclose the grounds on which people have been detained, in direct contravention of article 14(3)(a) of the Covenant. Amnesty International continues to urge the Government of India to review the NSA with a view to removing all provisions which are incompatible with international covenants to which India is a party.

In the context of an increase in the rhetoric of national security by the present government, Amnesty International has been concerned to receive information about the detention of individuals under national security legislation. Amnesty International acknowledges the right of the state to defend its borders and protect its citizens from violence. Nonetheless it is concerned that individuals and groups are being labelled as "anti-national" solely because they are challenging the state through

[18] See Amnesty International's report, *The "Enron project" in Maharashtra, protests suppressed in the name of development*, July 1997, AI Index: ASA 20/31/97.

peaceful dissent and defending human rights contained in the Constitution of India and in international human rights standards.

In Orissa, activist Narayan Reddy, campaigning against the location of a steel plant in Ganjam district of the state, was detained under the NSA on 23 July 1996. Several activists engaged in development activities with tribal communities of Rayagada district of Orissa were reportedly threatened by government officials with detention under the NSA in late 1998 in connection with activities in support of the local tribal community against construction of a bauxite mine (see Casesheet 1).

Such examples of the detention of human rights defenders under the NSA call into question the Government of India's statement made to the Working Group on Enforced or Involuntary Disappearances in 1997 that "The National Security Act was implemented in periods of crisis in order to protect the citizens against terrorism."[19]

d. Use of excessive force

Article 12 of the Human Rights Defenders Declaration:
1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

A man injured in police actions against those protesting against the construction of the Maheshwar Dam in Madhya Pradesh, 22-24 April 1999. © Private (AI use)

Ill-treatment

Many apparently peaceful protests by those defending human rights have been broken up by security forces using excessive force. This takes the form of severe beatings of protesters with *lathis*, kicking and tearing of clothes, particularly of women protesters.

Amongst the important principles and prerequisites for the humane performance of law enforcement functions, the preamble to the UN Code of Conduct for Law Enforcement Officials (the Code)[20] states "every law enforcement agency should be representative of and responsive and accountable to the community as a whole".

Article 1 of the Code states that "Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts". The Code emphasizes the exceptional nature of the use of force, stating in Article 3 that force may be used " ...only when strictly necessary and to the extent required for the performance of their duty". Amnesty International is concerned that

[19] Report of the Working Group on enforced or involuntary disappearances. E/CN.4/1997/34, para 184.
[20] Adopted by the UN General Assembly in 1979.

the practices of security officials in suppressing protest in India do not reflect the standards set out in the Code (see Casesheets 2 and 3).

Article 7 of the ICCPR, to which India is a party, prohibits the use of torture or cruel, inhuman or degrading treatment or punishment. This prohibition is further reinforced by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which India has signed, thereby indicating its commitment to ratify.

On 25 June 1997 between 40 and 50 women gathered together peacefully in Ghantaghar, Saharanpur in Uttar Pradesh, to protest against the treatment by police of Zeenat Naaz, President of the Deoband Municipal Board and representative of several local women's organizations. Around 200 police charged into the protesters. Several of the women were beaten on their chests and legs with *lathis* and rifle butts. They were kicked and thrown inside police jeeps where they were again beaten. Several lost consciousness. Some of the women said that police had beaten them on their genitals. At least 10 of the protesters were taken to hospital where they were kept under heavy police guard and placed under arrest on several charges including "rioting", "assault" and "criminal intimidation". Those arrested alleged that police forced them to provide thumb prints on blank paper before releasing them on bail.

Women activists being sat on in a jeep by police following a demonstration in Saharanpur, Uttar Pradesh, 25 June 1997. © Private (AI use)

In 1997 Amnesty International documented the ill-treatment of those protesting against the construction of the Enron project in Maharashtra. On 21 February 1997, villagers from Pawarsakhari village protested by *rasta roko* [road block] against two state cabinet ministers who were reportedly attempting to by-pass it by using an alternative route. A battalion of the Special Reserve Police (SRP) arrived and charged at villagers with *lathis*. Several people were beaten by members of the battalion and 96 people were detained. During protests which took place on 15 May 1997, the police, including the SRP used excessive force against the protestors:

"The police and SRP personnel stationed at the project site lathi-charged and dragged women protestors by their hair into waiting police vans. Many women protestors also reported that they were roughed up and manhandled by the police and their dresses and sarees were torn in the process."[21]

Police firing

Amnesty International is extremely concerned at the numerous incidents of police firings which occur throughout India leading to death or injury. Few are properly investigated and there appears to be little accountability for police actions. Many of these firings take place in response to demonstrations and rallies held by peoples' movements, unions and others to demand their rights from the state (see Casesheet 2). Reports of other violations including torture, ill-treatment and detention of demonstrators occurring at the same time as police firings indicate to Amnesty International that the use of firearms by police may be resorted to not just as a last resort law enforcement policy but as a means of 'teaching demonstrators a lesson'.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[22] state that force may only be used in exceptional circumstances, only when strictly necessary if non-violent means remain ineffective, and for the purpose of prevention of crime and effecting or assisting lawful arrest. Principle 5 states that whenever the lawful use of force and firearms is unavoidable, officers shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life.

A complex web of rules and regulations govern the use of force to disperse assemblies in India. Powers to resort to force are provided in Sections 129-131 of the CrPC and rest with an Executive Magistrate, the officer-in-charge of a police station or, in his absence, a police officer at least of the rank of Sub-Inspector. However, policing and public order are State subjects under the Seventh Schedule of the Indian Constitution and therefore guidelines for the use of firearms by police exist in numerous and varied regulations in different states[23].

During a visit to Mumbai in January 1994 to research human rights violations in the context of communal riots which took place in December 1992 and January 1993, the Director General of Police explained to Amnesty International delegates that in cases where demonstrators or mobs resort to arson, looting, plunder or stabbing, the procedure is for the police first to issue a warning, then to carry out a *lathi*-charge, then to employ tear gas, and if a threatening situation continued, finally to give a warning before firing. Fire has to be aimed below the belt. The police have to file a report with the

[21] From a report by the Committee for the Protection of Democratic Rights, Maharashtra, dated 4 July 1997.

[22] Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990.

[23] Under section 12 of the Police Act, 1861, an Inspector General of Police may, subject to the approval of the State Government, frame orders and rules relating to the functioning of the police, including, the use of force and firearms.

police station concerned, specifying what type of force had been used[24]. These provisions are laid down in the Model Rules regarding the Use of Force by the Police against Unlawful Assemblies, 1973 (referred to as the Model Rules) which specify that firearms should be employed "only in extreme circumstances when there is imminent and serious danger to life or property", that the senior officer "shall, unless circumstances make such action impossible, warn the crowd that if they do not disperse within the specified period, fire with live ammunition will be opened on them" and that he should ensure "that no firing contrary to or without orders takes place... whatever volume of fire is ordered, it shall be applied with the maximum effect. The aim should be kept low and directed at the most threatening parts of the crowd."

In West Bengal, police are governed by the Police Regulations of Bengal, 1943, which allow for use of firearms by police as a right of private defence, to disperse unlawful assemblies and to effect arrest. Regulation 153(c) relating to the dispersal of an unlawful assembly states: "*An order to fire upon a crowd should be regarded as an extreme measure to which recourse should be had only in the last resort when it is absolutely necessary for the defence of life or property or when a Magistrate, an officer-in-charge of a police station or police officer superior in rank to such officer considers it impossible to disperse a mob by any other means.*" Regulation 154 provides that a warning should be given, that "*firing should always be controlled and directed at a specified target*", that "*no greater hurt than is unavoidable should be inflicted*" and that "*firing should cease as soon as its object is achieved*". The only reference to the direction in which police should fire is given in Regulation 155(b) which states: "*He [the police officer in command] shall direct the firing in such a way as to secure immediate effect with a minimum of injury. Firing over the heads of the crowd or in any direction except on members of the crowd is strictly forbidden, as being likely both to cause injury to innocent persons at a distance and to embolden the participants in the disturbance by having no visible effect. Before he gives the actual order to fire, he should specify the range, the target and the number of rounds to be fired*".

Amnesty International is concerned that existing rules and practices appear to fall far short of international standards as set out in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which are underpinned by the principle that the absolute minimum force should be used and that there be full accountability for any action taken resulting in the loss of life. Principle 9 strictly prohibits the use of firearms:

"*...except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life... and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.*"

The various rules and regulations in force in India however, permit firearms to be used in considerably broader circumstances, not only when there is an imminent and serious threat to life, but also, to property.

[24] See Amnesty International's *Memorandum to the Government of India arising from an Amnesty International visit to India 5-15 January 1994*, August 1994, AI Index: ASA 20/20/94.

On 31 January 2000, two *dalit* men were killed in Jethuke village of Bhatinda district in the state of Punjab, when police opened fire on hundreds of people demonstrating about high bus fares and the detention of four leaders of the *Bhartiya Kisan Union* [Indian Farmers Union] (BKU) who were representing villagers in negotiations with the district administration on the issue.

That morning, negotiations between the district administration and four BKU leaders – Jhanda Singh Jethuke, President of the BKU, Natha Singh, Boota Singh and Shingara Singh – broke down. The BKU leaders left the meeting in a jeep but were stopped on the way by police who arrested them. They were taken to Rampura Phul police station and kept there overnight. News of the detention of the leaders spread and led to a gathering of villagers in Jethuke. Villagers staged a *dharna* on the railway track demanding the immediate release of the leaders. There was a scuffle with police as they tried to remove the public address system being used by the protestors. Police reinforcements were reportedly sent from Bhatinda. A *lathi*-charge followed and tear gas was used. At this point demonstrators reportedly started throwing stones at police. Police then reportedly opened fire.

According to reports, villagers started running towards their homes but police chased them and beat them. Several people were chased into the *Gurudwara* [Sikh temple] which was then sealed by police. Police prevented the *Ardas* [daily prayer] from being performed. Firing reportedly continued into the night and injured protesters were rounded up by police and taken away. Several BKU activists were reported to have fled their homes in fear of further police action. Villagers remaining in the village were not permitted to move around and the village was sealed by police. Two men – Deshpal Singh (aged 18) a BKU activist, and Gurmeet Singh (aged 22) a farmer returning from his farm – were hit by bullets in the abdomen and died. Several other demonstrators sustained injuries including bullet injuries and others had marks of abrasions, blunt injuries and deep wounds. Several police officers were also injured.

Police claimed that they were forced to fire in the air and that the two men were shot accidentally. They also claimed that protesters had opened fire on them and a First Information Report (FIR) to this effect was registered against the demonstrators at Bhatinda Railway police station. Villagers have denied this version of events. Press reports subsequently related that police had failed to locate the necessary orders of the Duty Magistrate required for resorting to fire to disperse a mob. They reported official sources as saying that the Duty Magistrate who was present at the spot did not given any order to the police to resort to firing.[23]

A magisterial inquiry was ordered into the incident which began work on 4 February.

On 29 May 1999, four fishworkers including a woman were killed and thirteen injured when police opened fire on people protesting against illegal prawn cultivation on Chilika Lake in Orissa.

Chilika Lake is one of the largest inland brackish water bodies in Asia. The lake was declared to be a wetland of international importance and attempts by large industries to establish industrial scale semi-intensive shrimp farms on its shores were stopped by court injunctions. However, smaller scale shrimp farms began to grow up around the lake leading to environmental damage and problems for local people, particularly the livelihood of fishworkers. The Supreme Court in 1996 ordered that there

[23] *The Tribune*, 5 February 2000.

should be no shrimp farms within 1000 metres of the lake. However, the lake was occupied by "mafias" and shrimp farms constructed, allegedly with the support of local politicians in violation of this order. Protests against these illegal shrimp farms were organized by the *Chilika Matsyajibi Mahasangh* [Federation of Chilika Fishermans Associations], supported by the National Fishworkers Forum, which on 28 May gave a 24 hour ultimatum to the local administration to demolish all the illegal prawn farming structures. When the administration failed to act to demolish the structures, the fishworkers themselves reportedly destroyed around 11 prawn farms. Police raided Sorana village at midnight that evening. They reportedly beat many of the villagers, threw tear-gas shells and finally opened fire.

An outcry followed this incident and there were calls for a judicial inquiry. However, the terms of reference of the judicial inquiry were reportedly finalised only on 5 July, over a month after it was ordered to investigate by the government. On 6 July the Chief Minister of Orissa announced that the government would enact a stringent law to curb prawn farming in Chilika lake: too late for those fishworkers who died in the firing.

Article 22 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires:
"*...Governments and law enforcement agencies shall ensure ...that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death or serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.*"

It is not clear whether all rules and regulations in India require a detailed report to be filed by police following the use of firearms. Regulation 157 of the Police Regulations of Bengal, 1943, requires that an executive enquiry be instituted to ascertain whether the firing was justified and whether the regulations were obeyed. However, the regulations make it clear that this is merely a departmental enquiry.

Amnesty International believes that existing rules that govern the use of force and firearms by police in response to assemblies should be reviewed and amended to bring them into full compliance with the UN Basic Principles on the Use of Force or Firearms by Law Enforcement Officials. Specifically, the government should ensure that any such rules and regulations permit no more than the minimum use of force and require full accountability for any action taken resulting in loss of life, by obliging anyone resorting to lethal force to file detailed reports on the incident. Failure to do so should attract prompt sanction.

Amnesty International also believes that the government should institute a public order training program for all police aiming to ensure that no more than the minimum damage and loss of life occurs during control of disturbances. Further, the police should be adequately equipped to employ non-lethal methods of crowd control.

e. The use of false criminal cases

An alarmingly high number of human rights defenders with whom Amnesty International consulted during 1999 indicated that they had criminal charges pending against them which were filed as a means of harassment by powerful interests who oppose their activities. While Amnesty International does not

condone criminal activity including violence against property or persons, the organization is concerned when there is clear evidence that criminal cases are filed maliciously against human rights defenders as a means of harassing them.

One such example is Vivek Pandit, of *Samarthan* and *Shramajeevi Sanghatana*, who has had scores of criminal charges filed against him. *Samarthan* provides legal literacy training in Thane district of Maharashtra and Shramajeevi Sanghatana works against bonded labour. In 1996 he and eight other activists were charged under section 302 (murder) of the Indian Penal Code (IPC). This case is still ongoing. To date [April 2000] he has around 15 criminal cases pending against him – the majority in connection with protest demonstrations in which he has been accused of obstructing public servants.

Shramik Mukti Sanghatana (SMS) [Organization for the Liberation of Labourers] works in Thane district of Maharashtra with tribal people. It has filed a number of writ petitions to protect land, forest and labour on their behalf. It conducts regular free legal aid camps and a number of developmental activities. Advocate Vijay Sathe, leader of the SMS, has been implicated in numerous cases over the years, beginning in 1989 when a case was filed against him in an attempt to prevent his activities in protesting against the removal of tribal people from an area of land. That case is still proceeding as are a number of other cases including cases filed in 1991 and 1994. In August 1999 criminal cases were filed against Vijay Sathe and seventy *adivasis* in connection with a land dispute.

Adivasi villagers had been occupying an area of land in Murbad *taluka* in Thane district for many years. This occupation was challenged by several Mumbai businessmen who claimed the land for themselves and attempted to forcibly occupy it on 18 August 1999. The SMS had approached the local administration over the issue but had received no response. It had then approached the Mumbai High Court in a writ petition but the High Court had reportedly directed them to "approach an appropriate forum". Villagers described how on 18 August the businessmen and a group of around 40 people including security guards approached their fields. Several are reported to have had guns and spears. Fearing that their crops were going to be destroyed, the villagers ran to protect their crops and a scuffle ensued. A shot was reportedly fired by a security guard. Charges under sections 307, 323, 336, 147, 148, 149 and 447 of the IPC[26] and sections 37(1) and 135 of the Bombay Police Act were filed against Vijay Sathe and the villagers. Vijay Sathe was further accused of having incited the tenants of the land to commit these crimes at a meeting held the previous day. Vijay Sathe was not present during the incident on 18 August and denies the allegation that he incited the villagers.

Police reportedly visited the village regularly for three days after the incident and detained around 19 people including women and children, many of whom were not present during the incident. Several are reported to have been beaten by police while being arrested. One woman testified to a fact-finding team of human rights activists who visited the village in October:

"My name is [name witheld]. I live with my husband, son and daughter-in-law. Being landless we work on other peoples' fields for a living. I do not know anything regarding the incident. We returned home from work at around 5 to 6pm. On the second day after the incident, while I was working at home, the

[26] The charges refer to allegations of attempt to murder, causing hurt, criminal trespass and rioting amongst others.

police took away me, my husband and my daughter-in-law to the police station. At that time my daughter-in-law was five months pregnant... The lady police constable slapped her on her cheek. Our names were not in the FIR, yet we were arrested and kept in jail for 22 days, when we were released by the court".

The 19 were released on bail by the court after being in detention for six days in police custody and sixteen days in judicial custody on condition that they appeared at Murbad Police Station every Thursday and Sunday.

The state of the criminal justice system in India ensures that it is easy for false cases to be filed against individuals as a means of harassment. Political influence over the police not just by politicians but by powerful individuals such as landowners or businessmen, ensures that registering such cases is relatively simple. Political influence over the police is viewed as one of the foremost causes of abuse within the criminal justice system. While there is a growing awareness of the need for institutional reform to change this reality -- a campaign for police reform has recently been initiated by several human rights groups including the Commonwealth Human Rights Initiative -- the evidence indicates that there has been little political will over the years to implement reform. The National Police Commission appointed in 1977 which issued a series of eight reports between 1979 and 1981 recommending wide ranging police reform itself pointed to the problem of false cases: "It is generally known that false criminal cases are sometimes engineered merely for the sake of making arrests to humiliate and embarrass some specified enemies of the complainant, in league with the police for corrupt reasons."[27] While it did not suggest remedies for this particular problem at the local level it did recommend the establishment of a State Security Commission as a guard against political influence over police at the higher levels. This recommendation is still pending. A decreasing conviction rate and repeated strictures by the courts concerning malicious prosecution and neglect by prosecutors in developing cases reinforce these concerns. Amnesty International believes that the harassment of human rights defenders by powerful interests through the filing of false criminal cases will continue for as long as the Government of India fails to address the failures of the criminal justice system -- notably the impact of political influence over the police.

Given that cases can take years to proceed through the courts, the impact on those obliged to defend themselves against criminal cases can be huge both in terms of time and financial and other resources. While many human rights defenders are granted bail by the courts, they are still obliged to prepare and present their defence and attend hearings for periods of several months if not years. This has an enormous impact on grass-roots activists living and working in rural areas often hundreds of kilometres from the place where the hearings are taking place. Days of work are lost, carrying with it financial consequences for those already economically disadvantaged. The case of the *Adivasi Mukti Sangathan* [Tribal Liberation Movement] in Madhya Pradesh (see Casesheet 4) is symptomatic of the problem. Amnesty International is also concerned about the vulnerability of human rights defenders to torture and ill-treatment when detained on these charges.

In July 1998, a series of criminal cases were filed against members of the *Bal Rashmi* Society, an organization concerned with the relief, welfare and development of socially and economically

[27] National Police Commission "Corruption in Police," Chapter XXII, para 22.24, Third Report of the National Police Commission.

disadvantaged women and children in Rajasthan. In the months that followed, the head of the organization, Alice Garg, had a total of seven cases filed against her for non-bailable crimes relating to rape, murder, attempt to rape and attempt to murder. Fellow workers and members of Alice Garg's family were also targeted with criminal cases. In addition, three activists were subjected to torture in detention in August. Abdul Sattar, one of the activists was reportedly stripped naked and beaten by up to 10 police constables. His torture, over a period of five days, included electric shock treatment to his hands, feet and genitals. The three detained activists were reportedly threatened by police and made to confess to serious crimes, including rape and fraud, for which charges were then filed against them and to testify against fellow activists including Alice Garg.

Alice Garg herself went into hiding, fearing arrest and torture by police. The accused throughout maintained their innocence, alleging that cases had been filed against them maliciously at the instigation of the ruling government in an attempt to discredit the organization whose activities it opposed. In September 1997, Alice Garg had been involved in a campaign to bring to justice those responsible for the alleged rape of a woman at the J.C. Bose Hostel in Jaipur by 15 people, including a Deputy Superintendent of Police. The campaign focussed on the failure of the police to arrest suspects and was critical of the role of the BJP state government.

Lawyers for the accused presented compelling evidence in several of the cases that the complaints filed against them were false including testimonies of complainants that they had been forced to file complaints with police. After much international pressure and intervention from the National Human Rights Commission (NHRC) and following state elections in which the BJP government lost power and a Congress government was elected, the Criminal Investigation Department (CID) of the Rajasthan police was asked to reinvestigate several of the cases in early 1999. In the majority of the cases the CID recommended that the cases be quashed. However four of the *Bal Rashmi* activists originally detained remained in custody with bail denied until 3 January 2000 on the orders of the Bassi magistrate who judged that they were also charged in other cases. The magistrate's order reportedly commented that Alice Garg was a Christian and claimed that she was engaged in converting people. The High Court of Rajasthan subsequently found that the actions of the magistrate had been wrong: "*The police, after thorough investigations of the offences alleged to have been committed in the case, had found no role therein of the present petitioner(s)... It seems to me that the change in political administration in the State... has influenced his [the magistrate's] opinion*"[23] and the four activists were released on bail.

On 20 November 1998 three social activists working for the *Vindhya Vikas Lok Sanghatan* (VVLS) [People's Organization for Development of Vindhyas] -- Rajkumar, Ramavtar and Murlidhar -- were called to the Badausa Police Station in Banda district of Uttar Pradesh by the Station House Officer on 20 November 1998, in connection with a case that was pending in the Allahabad High Court against one of them. During interrogation, the three men were reportedly beaten. Medical reports indicate that the men sustained injuries caused by a blunt object.

[23] Order of the High Court of Rajasthan, Jaipur Bench in Cr. Misc. Petition No. 547/1999 (Smt. Alice Garg vs. State of Raj. & Anr.); Cr. Misc. Petition No. 548/1999 (Smt. Alice Garg & Ors. vs. State of Raj. & Anr.); Cr. Misc. Petition No. 735/1999 (Smt. Alice Garg vs. State of Raj. & Anr.).

On 21 November, the three activists were again called to the Badausa police station where the Station House Officer threatened them to stop their activities with VVLS and leave the area. The three activists approached the Superintendent of Police (SP), Banda with a complaint about their treatment and met with him on 24 November. The three men then approached the Chief Judicial Magistrate, Banda, who on 16 December ordered that a case be registered against the Station House Officer of Badausa police station.

However, on 18 December, several cases were filed against the three activists under sections 406, 420, 467, 468, 504 and 506 of the IPC[29] in Badausa police station. The activists alleged that the cases were falsely filed at the instigation of the Station House Officer who also reportedly made threats to "eliminate" the three men in an "encounter".

The three men approached the Allahabad High Court to petition against the filing of the cases against them. On 13 January 1999 the High Court stayed their arrest in response to this petition. In March 1999, Amnesty International wrote a letter of concern about these incidents to the Chief Minister of Uttar Pradesh. No response was received to these concerns.

Amnesty International is concerned at reports that human rights defenders are regularly charged under section 153A of the IPC ["promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste, community etc. and doing acts prejudicial to maintenance of harmony"] indicating that this section has been used to punish human rights defenders engaged in challenging discriminatory religious, racial, caste and other practices.

Section 211 of the IPC makes it an offence to "institute or cause to be instituted any criminal proceeding" against a person, "knowing that there is no just or lawful ground for such proceeding or charge against that person". It must be shown that this was done "with intent to cause injury" before proceedings can be initiated against someone accused under this section. In some cases human rights defenders have filed counter-cases of harassment against police. However, this has additional consequences in terms of time and resources. On occasion, public pressure to force the authorities to withdraw false cases against individuals have been successful but it is rare for the authorities to simply drop a criminal case without the judicial process having been gone through which can often take years. Meanwhile, the work of human rights defence suffers.

f. Contempt of court

There is some concern at the use by the judiciary of the law of contempt of court (covered by the Contempt of Courts Act, 1971) in order to stifle legitimate dissent against judicial orders. In July 1999, the Supreme Court took offence at the writings and action of author Arundhati Roy (in publishing her article *The Greater Common Good*) which referred to Supreme Court orders on the Narmada dam issue:

"*Ms Arundhati Roy is not a party to the proceedings pending in this Court. She has, however, made comments on matters connected with the case being fully alive to the pendency of the proceedings in*

[29] The charges refer to allegations of criminal breach of trust, dishonesty, forgery, insult with intent to provoke breach of peace and criminal intimidation.

this Court. The comments made by her are prime facie a misrepresentation of the proceedings in this Court. Judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner in which it has been done by her... freedom of speech and expression does not include freedom to distort orders of the Court and present incomplete and one sided picture deliberately which has the tendency to scandalise the court... The right of criticising, in good faith in private or public, a judgement of the court cannot be exercised with malice or by attempting to impair the administration of justice... We are unhappy at the way the leaders of the NBA [Narmada Bachao Andolan] and Ms Arundhati Roy have attempted to undermine the dignity of the court. We expected better behaviour from them"[10].

While passing this opinion, the Supreme Court stopped short of initiating contempt proceedings against Arundhati Roy and the NBA but warned them not to continue to make such statements.

Amnesty International is concerned that while there is clearly legitimacy in protecting the proceedings of the courts and their orders from malicious comments and slander, objective criteria ought to be evolved and meticulously applied to prevent powers of contempt from being used to prevent legitimate comment and stifle the right to freedom of expression guaranteed by international human rights standards.

g. Control over resources

Article 13 of the Human Rights Defenders Declaration
Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

In contravention of Article 13 of the Human Rights Defenders Declaration, the Government of India has used the law to strictly regulate the flow of resources to human rights and other non-governmental organizations. There has been increasing concern in recent years about the use of such regulations to withhold funds from those organizations which may be critical of government policy. Amnesty International believes their use in this way also in practice leads to violations of the right to freedom of association (a right guaranteed in Article 22 of the ICCPR to which India is a party) as the existence and survival of many organizations relies on the resources that foreign funding brings to them. This right has also been reflected in Article 5(b) of the Human Rights Defenders Declaration.

Registration under the Foreign Contribution (Regulations) Act, 1976 (FCRA) is required by NGOs seeking foreign funds for their activities and is controlled by the Home Ministry. Only those NGOs registered with the Ministry of Home Affairs are allowed to accept foreign contributions "to further any cultural, economic, educational, religious or social programme". Section 5(1) of the FCRA prohibits all organizations of a political nature from accepting foreign contributions without the Central Government's prior permission. Section 6 requires registration of all associations accepting foreign contributions with the Central Government. While, as mentioned earlier, many human rights

[10] Chief Justice A S Anand and Justice B N Kirpal.

organizations are opposed to the idea of receiving foreign funds, there are many NGOs who rely, at least for part of their programs, on international funding.

> ***Article 22 of the ICCPR:***
> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
>
> ***Article 5(b) of the Human Rights Defenders Declaration:***
> For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
> (b) To form, join and participate in non-governmental organizations, associations or groups;

The process of registration is extremely lengthy and intrusive and the Home Ministry has wide powers to deny registration on vague grounds. Section 10 allows the Central Government to prohibit the receipt of foreign contributions if it is satisfied that it is likely to affect "prejudicially", (i) the sovereignty and integrity of India; (ii) the public interest; (iii) freedom or fairness of election to any Legislature; (iv) friendly relations with any foreign State; (v) harmony between religious, racial, linguistic or regional groups, castes or communities. There are serious allegations that the current BJP government has used its influence to target organizations which are critical of its policies and discriminated against organizations with real or imagined links to non-Hindu agendas. The rhetoric of groups such as the *Rashtriya Swayamsevak Sangh* (RSS) [Association of National Volunteers] and the *Vishwa Hindu Parishad* (VHP) [World Hindu Council] with direct links to the ruling BJP political party alleging the funding of Christian organizations by foreign agencies for the purpose of conversion has heightened tension over this issue in recent months.

During the hearing of India's third periodic report under the ICCPR in July 1997, members of the Human Rights Committee questioned the Government of India delegation as to why the responsibility for monitoring funding of NGOs lay with the Ministry of Home Affairs. The response of the delegation was evasive -- that it was difficult to answer as the rules of business of the government are decided by the Cabinet -- but pointed out that there was a relationship between the Ministry of Home Affairs and "matters that pertain to matters of a political and security nature when it comes to the activities of various groups."[21]

In September 1999, several organizations questioning BJP policy on rights issues -- in this case gender discrimination -- through a high-profile advertisement campaign were issued notices by the Ministry of Home Affairs. The notices asked the organizations to show cause as to why action should not be taken against them for violating provisions of the FCRA by engaging in "political activity". Newspapers reported that an NGO in Gujarat registered under the FCRA had received a notice in error as it had had nothing to do with the advertisement. An organization with the same name in Delhi, which is not registered under the FCRA, was associated with the advertisement. The editors of *Communalism Combat*, a publication devoted to addressing communal issues, who were behind the advertisements reportedly received abusive phone calls and letters. On 25 September a press statement

[21] Government of India delegate during the examination by the Human Rights Committee of India's Third Periodic Report of measures taken to implement the ICCPR, July 1997. From transcript of recording made by Amnesty International, made with the consent of the Human Rights Committee.

was issued by the BJP General Secretary alleging that "certain NGOs" were conducting "malicious propaganda against BJP... with the support of funds being pumped in by foreign countries. It means that foreign money is being used to oppose a nationalist party (BJP) which stands for the interest of the country... This amounts to interference in the electoral process of this country by foreign money power. This constitutes a threat to Indian sovereignty." The statement called on the government to investigate the funding of the organizations and prosecute them for violation of the FCRA. Show cause notices were issued by the Ministry of Home Affairs on 27 September, two days after this statement was made.

Other Delhi-based groups including Voluntary Action Network India (VANI) and the Indian Social Institute (ISI) who were not signatories to the advertisement were also served show cause notices. They apparently endorsed a pamphlet, "People's Agenda for the General Elections 1999", which was critical of the BJP-led coalition's record in government. In February 2000 several of the organizations received further notices from the Ministry of Home Affairs stating that their accounts would be audited.

Amnesty International believes that clear and objective criteria for deciding whether funds from foreign donors would be acceptable or not should be published and that powers to regulate the flow of foreign funds for human rights and development activities should be transferred to an independent authority.

2. OTHER ABUSES TO WHICH HUMAN RIGHTS DEFENDERS ARE SUBJECTED

Human rights defenders in India are subject to a range of abuses which occur in violation of the law in India. Many of the case studies set out in the previous chapter and Part III of this report, as well as in the Casesheets in Appendix I, document such abuses.

The torture and ill-treatment of human rights defenders has been of particular concern in areas of armed conflict (see Part III, Chapter 7). Many human rights defenders in these areas have been "disappeared" or extrajudicially executed. However, torture, ill-treatment and excessive force amounting to ill-treatment by security forces has also been used more widely throughout India, particularly in the context of suppressing peaceful protests (see previous chapter).

On 26 March 2000, two members of the Siliguri branch of the Association for the Protection of Democratic Rights (APDR) were reportedly beaten by police. The two men -- Asim Chakrabarty and Vivek Sarkar -- went to the Siliguri police station at 10pm to make a complaint to police about a case of harassment which had been brought to them. The officer-in-charge of the police station reportedly verbally abused them and stated that the APDR needed to be taught a lesson. As they were leaving, he hit them with a stick and other police joined him. Asim Chakrabarty's arm was twisted and reportedly broken and Vivek Sarkar was thrown in a ditch after being beaten. The two men were admitted to hospital where they received treatment for their injuries. A case was filed against them for attacking the police station.

The branding of human rights defenders as members of armed groups is common in areas of armed conflict. However, the branding of human rights defenders as "anti-national" has extended throughout the country. This has a severe impact on their work as they often rely on the support of the local community in carrying out their functions. Defamation by state and non-state groups -- notably in recent years by right-wing Hindu groups -- has stigmatized many human rights groups (see in particular Part III, Chapter 6) and led to the filing of false criminal charges and in some cases incidents of violence. The failure of the state to support the work of human rights defenders and to denounce the defamation of legitimate human rights activities leads to those engaging in such defamation feeling that they can carry out their activities against human rights defenders with impunity.

Intimidation of human rights defenders has taken many forms. This is explored in the next chapter in particular in relation to human rights defenders accessing international mechanisms and raising human rights concerns outside the country. However, intimidation of human rights defenders is also prevalent at the grass-roots level where local *goondas* [criminals] are often hired by vested interests (most commonly landowners, mafias and companies) to intimidate those organizing communities to defend their rights against exploitation and other forms of abuse (see cases in Part III and Casesheets in Appendix I). Human rights defenders have also been harassed by their employers as a result of their work.

In 1993 Dr Vineeta Gupta, a medical officer in the Punjab government health service and member of the Punjab unit of the People's Union for Civil Liberties (PUCL), represented the PUCL in a complaint to the NHRC concerning allegations of the molestation of a female officer by a Punjab government minister. She also attempted to take a stand against corruption within the government

health service. As a result of these activities Dr Gupta was transferred eight times between May 1992 and August 1995 and her professionalism was routinely questioned. A chargesheet was filed against her on the basis of a minor complaint in a case which continued for three years. She was suspended for one-and-a-half years on half pay. The NHRC took up her case and carried out an investigation which found the Punjab government guilty of harassment. Dr Gupta was also the petitioner in a case against the State of Punjab filed in the High Court in January 1997 calling for the removal of instruments of torture from police stations, Central Intelligence Agency Staff Offices, interrogation centres and police posts in the state of Punjab.[32] Dr Gupta was finally forced to resign from her job.

The monitoring of human rights activities has been dealt with to some extent in the previous chapter in the form of regulation of resources as well as in the next chapter -- in relation to international activities. The offices of human rights organizations are regularly visited by Intelligence Bureau officials asking for information about their activities. Many of these visits are carried out by officials who refuse to provide details of their identity. Intelligence Bureau officials were present either before, during or after all the meetings held by Amnesty International with human rights defenders during 1999.

Article 17 of the ICCPR:
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

On 5 June 1999, G.M. Butt, Deputy Bureau Chief of the Institute of Kashmir Studies, was stopped as he and his wife and three children were going in a car to the New Delhi airport to fly to Srinagar. He was manhandled and dragged from the car by some 12 to 15 men in plain clothes and taken away. He was not told who they were or why he was being taken away and his family was not informed of his whereabouts thereafter. On the evening of the same day, police announced that they had arrested G.M. Butt on the suspicion that he was carrying funds for 'Kashmiri militants'. He was released on the next day on a personal bond as there was no evidence against him. The only charge filed against him was for resisting arrest. G.M. Butt had believed himself abducted as none of the police had identified themselves or wore uniform.

In response to this incident, the South Asia Human Rights Documentation Centre (SAHRDC) based in New Delhi issued an urgent appeal dated 5 June. This led to a series of visits by members of the Special Branch of the New Delhi police in the following days, claiming to be following up the case but requesting details about those working at SAHRDC, whether or not it was a registered organization and about SAHRDC's association with G.M. Butt.

[32] Criminal Writ Petition No.27 of 1997. The instruments of torture listed included wooden rollers, belts, shackles, ropes and chains and voltage regulators.

3. DIFFICULTIES OF ACCESS TO EFFECTIVE REMEDY FOR HUMAN RIGHTS DEFENDERS

While the right to effective remedy is by no means the preserve of human rights defenders, it is often they who represent the rights of others in seeking redress. In the course of discussions with human rights defenders throughout 1999, it has been clear that the systematic failure of the state to provide redress to victims of human rights violations through a process of delay, political interference and legal impediments, takes its toll on activists who attempt on a daily basis to claim rights for India's citizens and is a severe hindrance to their work. For this reason, this reports sets out some of the main hurdles for human rights defenders in accessing effective remedies.

The factors referred to below have led to a situation of impunity for human rights violations which is a major hurdle for human rights defenders in trying to obtain the human rights guaranteed to their constituents in the Indian Constitution and in international human rights standards to which India is a party.

Besides, impunity also exists for those attacking and harassing human rights defenders themselves (see Casesheet 5). Threats are very rarely investigated and action is rarely if ever taken against those found to be filing politically motivated charges against human rights defenders. In many cases where the state is not directly responsible for harassment, the state hides behind the complexity of the situation in which this happens,

Article 9 of the Human Rights Defenders Declaration

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.
3. To the same end, everyone has the right, individually and in association with others, *inter alia*: (*a*) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay; (*b*) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments; (*c*) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

The right to redress is also clearly articulated in Article 2(3) of the ICCPR to which India is a party and set out in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

arguing that it has been impossible to allocate responsibility and take action against the perpetrators. The pressure on the police and the administration to cover up incidents of violence against human rights defenders is enormous.

a. The legal route to remedies

Problems with the criminal justice system begin when victims attempt to file complaints with police. Although police are obliged to register complaints of "cognizable offences" in writing under section 154 of the CrPC, it is normal practice for police to refuse to do so, particularly if the complainant is ignorant of legal procedures and/or from a vulnerable social group (including *dalits*, *adivasis* and women). The problem is often compounded if the person is filing a complaint against a locally powerful individual who has influence over agents of the state. Prominent local human rights activists with legal knowledge are often requested to accompany individuals to the police station to file complaints and pursue the Superintendent of Police of a district who has powers to order that a complaint (known as a First Information Report (FIR)) be registered. In many of the cases referred to in Part III of this report, police have at least initially refused to file cases on the basis of complaints by activists.

An *adivasi* woman in Maharashtra making a complaint to police.
© Private (AI use)

Once registered, pursuing a case through the criminal justice system can be tortuous. Given the limited resources of most human rights defenders and the crippling delays of the criminal justice system, it is rare for defenders to be able to pursue cases to their conclusion. Cases of death in custody for example can often take up to ten years to conclude. In trials relating to non-state actors, including multinationals also, delays make the system of redress almost obsolete. The case against those allegedly responsible for the gas leak in Bhopal in Madhya Pradesh -- which killed 8,000 people in its immediate aftermath and led to 500,000 more suffering from injuries[33] -- has been going on for 15 years despite vigorous campaigning on the part of lawyers and activists acting on behalf of the victims and their dependents.

In August 1999 the Supreme Court rejected a petition filed by the Association for the Protection of Democratic Rights and Abhijit Mazumdar, the son of the prominent CPI (M-L) leader

[33] According to the Bhopal Peoples Health and Documentation Clinic (BPHDC).

Charu Mazumdar who died in custody in July 1972, relating to allegations of systematic human rights violations against political activists in West Bengal in the 1970s[34]. The State government had ordered a series of inquiries since the late 1970s but each had failed to get off the ground. The Calcutta High Court rejected the petition in February 1999. On appeal, the Supreme Court argued that no useful purpose could be served in examining these issues after such a long period had elapsed.

Several human rights defenders whom Amnesty International consulted during 1999 spoke of how they filed cases before particular judges strategically in order to avoid judges who had little sensitivity to human rights issues. In addition, the problem of judicial insensitivity appeared to be widespread with caste and gender biases common -- particularly within the lower levels of the judiciary (see Part III, Chapters 2, 3 and 5).

The cost of litigation is also prohibitive. The Legal Services (Authorities) Act, 1987, provides for the provision of free legal aid. Those qualifying for legal aid under the Act include members of Scheduled Castes and Scheduled Tribes, women and children, the mentally ill and disabled, industrial workmen and those in receipt of an annual income less than Rs.9,000 [$US206.4][35].

Despite this, there continue to be severe problems for vulnerable groups in accessing legal aid. This also affects human rights defenders directly in the event that politically motivated charges are filed against them. Grass-roots activists are particularly affected by the lack of access to proper legal counsel.

Amnesty International is aware of some very successful initiatives developed by human rights organizations in various parts of the country to provide legal aid to individuals through the voluntary services of lawyers. These organizations struggle to deal with a heavy caseload on the basis of voluntary contributions while the state system fails.

Article 14(3)(d) of the ICCPR states that everyone should be entitled:
to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

Principle 17(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:
If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

In addition, ***Principle 6 of the Basic Principles on the Roles of Lawyers*** states:
Any such persons [arrested, detained or charged] who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

[34] Writ Petition 17141 (W) of 1998.
[35] This figure has been periodically amended and varies in different states.

In Gujarat, the Centre for Social Justice (CSJ), a socio-legal organization providing legal support, established a project in 1996 to study the workings of the legal aid system in a few districts of the state and to suggest remedies. Instead of setting up parallel systems they decided to try to work within the existing structure, make amendments and strengthen it. Their study found that several district legal aid committees were not functioning at all. The organization now runs several District Legal Aid Units which carry out the tasks of litigation, publicity, legal awareness and training programs as well as publicity. It also runs mobile courts for prisoners in jails and has been instrumental in persuading the Gujarat administration to appoint legal aid counsels for prisoners in jails. The projects run by CSJ have encountered many problems in terms of resistance from the state and judiciary.

Through a series of judicial decisions beginning in the late 1970s, the Supreme Court has conferred on the courts powers of policy making, legislating and administrative supervision of issues related to fundamental rights guaranteed within the Constitution. Known as Public Interest Litigation (PIL), this was envisaged by its proponents as a way of ensuring that justice was made available to those without the knowledge or resources to approach the courts. It emerged partly as a result of the growth of human rights activism around issues relating to the poor as well as an increase in investigative journalism. Individuals or organizations are permitted to approach the Supreme Court and High Courts "in the public interest" on behalf of those unable to do so themselves under Articles 32 and 226 of the Constitution.

> ***"The judiciary has coopted for its own concerns what began as a mechanism for redressing the grievances of the common man."*** [A Supreme Court lawyer speaking at a meeting of human rights defenders held by Amnesty International in India during 1999]

While PIL has enabled many victims who would not otherwise have had the opportunity to petition the Supreme Court, there are concerns that its ability to address violations of the fundamental rights of those it was intended to protect has been severely weakened in recent years. The large number of issues that are brought before the Supreme Court through PILs appears to have led it away from its original purpose of addressing fundamental rights issues. In a growing number of cases the Court has appointed lawyers as *amicus curae* to assist it on behalf of petitioners, thereby denying a voice to the original petitioners (human rights organizations and individuals) in court. In addition, the practice of forwarding PIL concerns to the NHRC for action [36] is of concern because of the limitations on the statute of the NHRC.

In many cases of human rights violations, in response to public pressure for justice, governments appoint Commissions of Inquiry under the Commission of Inquiry Act, 1952. The findings of these inquiries are not binding, nor do they automatically result in prosecution. Sub-section 4 of section 3 of the Act requires the relevant government to lay the report of the Commission of Inquiry before the Legislative Assembly together with a memorandum of action taken within a period of six months from the submission of the report. However, in 1986 an Ordinance was passed which included the proviso that this sub-section would not apply if in the opinion of the government it is not expedient "in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or in the public interest".

[36] This has been done in the case of allegations of mass human rights violations in Punjab (see below), bonded labour and concerns about mental health institutions and shelter homes.

The government's regular appointment of such Commissions in some states appears to amount to a deliberate policy of avoiding action against the perpetrators. Commissions of Inquiry have been criticised for their lengthy proceedings, often taking several years to hear evidence and produce their findings. In many cases it is only through public pressure that the reports of Commissions of Inquiry are tabled in the relevant legislative assembly and their findings made public. Given that at the end of this process their recommendations are not binding and prosecution of those responsible for violations is often brought only after their findings are made public, Amnesty International is concerned that Commissions of Inquiry do not provide prompt redress to victims.

This is particularly so in complex, high profile cases such as the inquiries into the riots which took place in Delhi in 1984 in which around 3,000 people (the majority Sikhs) were killed. A Commission of Inquiry was established in 1985 and produced a report in 1987 but this was widely criticised by human rights activists and failed to form a conclusion, recommending the formation of further committees to look into the number of those killed, the conduct of the police and to recommend and monitor the registration of cases against individuals. By July 1992, according to figures published by the People's Union for Democratic Rights, only 128 people had been convicted for related offences[37]. One of these committees (the Kapoor-Mittal Committee) established to investigate acts of omission and commission by police officials reportedly found 72 police officers guilty and recommended that action be taken against them but no action was taken on the recommendations of this report and several officers identified have since been promoted. In January 2000 the National Democratic Alliance government announced that it was establishing a new Commission of Inquiry into the 1984 riots whose report should be prepared in six months.

Similarly, the Srikrishna Commission of Inquiry into the Bombay riots in 1992/93 published its report only in August 1998. Its recommendations were rejected by the state government of Maharashtra (a Shiv Sena/BJP alliance) whose politicians had been indicted by the Commission. Following the loss of the state assembly elections to a Congress alliance in October 1999, the new government has indicated that it is willing to implement the recommendations but no specific action has yet been taken in this direction.

> ***"Not many defenders reach the stage of demanding sanction because it would be a useless exercise."***
> [A human rights defender speaking at an Amnesty International meeting held in India during 1999]

Another significant impediment to pursuing redress for an abuse is the sanction required for prosecution of state officials. Under section 197 of the CrPC 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 CrPC 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". This can also be extended to any forces charged with the maintenance of public order in states if state governments wish. The requirement of sanction continues to remain a barrier to prompt prosecution of state perpetrators of human rights violations -- most notably in areas

[37] See *"1984 Carnage in Delhi: A report on the aftermath"*, Peoples Union for Democratic Rights, Delhi, November 1992.

of armed conflict where provisions requiring sanction in the ordinary criminal law are reinforced by provisions in special legislation in force in those areas (see Part III, Chapter 7).

The National Human Rights Commission in its Annual Report for 1995-96 stated its support for the 1985 recommendation of the Law Commission that section 197 CrPC be amended to obviate the necessity for sanction. In addition, the UN Human Rights Committee in July 1997 in its concluding observations stated:

The Committee notes with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant. Therefore:

> *the Committee recommends that the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive. It urges that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel.*[38]

Despite this, the Government of India has so far refused to amend the CrPC, continuing to argue as it did to the Human Rights Committee that "sanction is not some sort of a protection even to lawless gentlemen so that there can be open season on fellow citizens. It is a protection against a person who may be needlessly attacked if he has acted in accordance within the requirements of law"[39].

At the same hearing, the Government of India referred to a case in Uttar Pradesh in which the High Court had found that the sanction for prosecution was not required because of the nature of the human rights violations. However, Amnesty International has been extremely concerned to learn that the High Court's ruling was recently overturned by the Supreme Court in response to an appeal which included the Union Government of India as appellant.

In the early hours of 2 October 1994 over 200 buses carrying activists calling for a separate hill state of Uttarakhand in north India bound for a rally in Delhi were stopped by district authorities who attempted to persuade them not to attend the rally. Members of the Uttar Pradesh Police and the Provincial Armed Constabulary (PAC), searched the buses. After several activists began to demonstrate, police reportedly opened fire without warning. Twenty-four activists were killed and several injured. Several women protestors were rounded up by police from the buses and dragged into nearby sugarcane fields and raped. The Central Government instituted an investigation by the Central Bureau of Investigation (CBI) which found some months later that the police and PAC were guilty of

[38] Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C 79 Add.81. para 21.

[39] The Attorney General of India, Mr Ashok Desai, during the examination by the Human Rights Committee of India's Third Periodic Report of measures taken to implement the ICCPR, July 1997. From transcript of recording by Amnesty International delegates attending the hearing made with the consent of the Human Rights Committee.

the rape of seven women and of "misbehaving" with 17 others. It further found that over 400 activists had been illegally detained. Investigations were also carried out by a group of members of parliament and the National Commission for Women. Notably, the CBI found that police station diaries had been tampered with and evidence "deliberately destroyed". In February 1996, the Allahabad High Court delivered a judgement awarding compensation to the victims of the human rights violations and their dependents. The Court declared that the CBI did not require the state government's sanction for prosecution of the police officers "who had gone berserk ostensibly to satisfy their political bosses". However, in a judgement on several petitions filed in appeal by the accused as well as the Union and Uttar Pradesh state governments, the Supreme Court in May 1999 termed the High Court decision on the waiving of sanction and the granting of compensation "unsustainable" and overturned it.[40] The case is ongoing.

b. Statutory human rights institutions

> ***Article 14(3) of the Human Rights Defenders Declaration:***
> The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms... whether they be ombudsmen, human rights commissions or any other form of national institution.

During the 1990s India established several national institutions for the protection of human rights. While welcoming the establishment of these bodies, Amnesty International is concerned that the now complex web of human rights institutions which citizens and human rights defenders can approach delivers a fairly unsystematic and often inadequate form of redress.

In 1992, the National Commission for Minorities and the National Commission for Women were established under separate enactments[41] and in 1993, the National Human Rights Commission was established under the Protection of Human Rights Act. The establishment of a National Commission for Children is currently reported to be under discussion. In addition to these Commissions established in the 1990s, the National Commission for Scheduled Castes and Scheduled Tribes is provided for under Article 338 of the Indian Constitution.

While there is no specific reference to human rights organizations in the statutes of the other National Commissions, the NHRC includes as one of its functions section 12(i): "encourage the efforts of non-governmental organisations and institutions working in the field of human rights". Amnesty International welcomes this and has welcomed the fact that the NHRC and some state human rights commissions have sought to consult with human rights organizations on issues of particular concern. When an Advisory Committee (the Ahmadi Committee) was established by the NHRC in June 1998 to look at possible amendments to the Protection of Human Rights Act, the views of human rights organizations were sought by the Committee. Only a handful of human rights organizations are known to have submitted comments -- a fact which must be regretted.[42] One of the issues raised by

[40] *A K Singh vs Uttarakhand Jan Morcha*, (1999)4 SCC 476.

[41] The National Commission for Minorities Act 1992 was subsequently amended in 1995.

[42] For Amnesty International's submission see "*India: Submission to the Advisory Committee established to review provisions of the Protection of Human Rights Act 1993*", October 1998, AI

organizations was the need to ensure representation from human rights organizations within the membership of the NHRC and state commissions as well as the investigative machinery of the commissions. However, although in isolated cases the Commission has sought the cooperation and assistance of human rights organizations in carrying out investigations into human rights violations, the current investigative staff are gathered from amongst civil servants, judiciary and the police. They do not need to have a proven record in human rights and it is nowhere specified that they should have training in human rights investigation, documentation or international human rights standards.

During discussions with human rights defenders during 1999, there was overwhelming concern about the lack of systematic responsiveness of the NHRC to complaints brought before it and its increasing resort to simply requesting reports from the concerned authorities without carrying out its own investigations. In relation to State Human Rights Commissions, the feedback was varied as the performance of State Commissions appears to a large extent to depend on the Chairperson and its members. However common concerns related to the lack of resources including investigative staff, the lack of human rights expertise amongst members, the lack of responsiveness to individual complaints and the failure of recommendations to be pursued or implemented. Human rights defenders have also pointed to the problem of pursuing cases on behalf of victims when under section 36(2) of the PHRA the Commission is not permitted to investigate complaints over a year old.

Amnesty International believes that there is a clear need for a systematic review of the working of the NHRC and state human rights commissions (beyond the deliberations of the Ahmadi Committee) and more generally the working of other national institutions including the National Commission for Women, National Commission for Minorities and the National Commission for Scheduled Castes and Scheduled Tribes, to assess their effectiveness and their actual impact on the human rights situation in the country. In addition, it is concerned that recommendations of the Ahmadi Committee submitted to the NHRC in November 1999 do not appear to have been pursued by the NHRC.

The National Commission for Women (NCW), established in January 1992 under the National Commission for Women Act, 1990 is a statutory body with the stated aim of investigating incidents of violence against women and promoting social, legal and economic equality of women. In addition to the NCW, several states of India have established State Women's Commissions[43]. Although called a national commission, the major reach of the NCW has been in Delhi and surrounding areas - notably Uttar Pradesh and Bihar which have high levels of violence against women and currently no State Women's or Human Rights Commissions. In October 1998 the Deputy Chief Minister of Rajasthan was reported as rejecting calls for the establishment of a State Women's Commission on the basis that "the National Women's Commission has been accusing the Government and the ruling party in most cases without even conducting an inquiry first. As for the National Human Rights Commission looking at its functioning one feels as if it is in the habit of offering protection to criminals and terrorists instead of the victims."[44]

Index: ASA 20/26 98.

[43] As of June 1999, there were reported to be State Women's Commissions in 14 states.

[44] *Daily Samachar Jaga*, Jaipur, 9 October 1998.

The NCW has traditionally had good interaction with and has been supportive of women human rights defenders in the country (see Casesheet 6) despite the fact that its members have not been drawn from amongst active members of the grassroots women's movement (under Section 3 of the Act the Chairperson and members are nominated by the Central Government[45]). Successive Annual Reports of the NCW have referred to its inadequate resources and in particular the urgent need for investigative staff to deal with complaints received. To date these have been ignored by governments. Amnesty International understands that amendments to the National Commission for Women Act are currently being drafted and will be submitted to the government during the year 2000. Suggested amendments include granting the NCW the power to impose punitive measures for non-implementation of its recommendations as well as providing for the establishment of an investigative wing and a permanent legal cell. Amnesty International was interested to note the recommendation of the Committee on the elimination of Discrimination against Women in January 2000 along these lines, that the NCW should be given greater powers and resources and that there should be NGO representation on the membership.[46]

The **National Commission for Minorities** (NCM) exists to monitor the situation of religious minorities in the country including the implementation of legal safeguards designed to protect these minorities. It can receive complaints about discrimination against minorities and carry out investigations into these complaints (although it does not have an investigative wing). As with the other statutory commissions its powers are recommendatory and as with the NCW its Chair and members are appointed by the government. Recommendations and Annual Reports of the NCM have been consistently overlooked by both central and state authorities. The NCM has repeatedly requested increased resources to perform its functions and a review of its statute was reportedly carried out and recommendations sent to the government in July 1997 without response.

State Commissions for Minorities also exist. The State Minorities Commission in Maharashtra was disbanded by the BJP-Shiv Sena alliance government after being established in 1992. However, in November 1999 the newly elected government announced its intention to revive the Commission. In April 1999 it was reported that the Uttar Pradesh government was introducing a bill to reduce the tenure of the State Minorities Commission from three years to one.

Article 338 of the Indian Constitution established the post of **National Commissioner for Scheduled Castes and Scheduled Tribes**. Between 24 November 1981 and 10 February 1986 there was no Commissioner. Dr B D Sharma was appointed to the post of Special Officer in February 1986, and submitted the 28th report of the Commissioner of Scheduled Castes and Scheduled Tribes (under Article 338). This report has yet to be tabled before the Lok Sabha and led to the publication in 1994 of Dr Sharma's monograph, *Dalits Betrayed*, based on this report.[47] Under the Constitution (Sixty-Fifth) Amendment Act, 1990, a five member National Commission for Scheduled Castes and

[45] In February 2000, two new members of the NCW were appointed for a period of three years to replace members whose terms had ended the previous October. Both were reported in the Indian press to be BJP activists. Source: *Indian Express*, 16 February 2000.

[46] See Concluding comments of CEDAW at CEDAW C/2000/I/CRP.3/Add.4, para 55 and 56.

[47] Sharma, B. D., *Dalits Betrayed*, (Har-Anand Publications, New Delhi, 1994). The Twenty-Eighth Report of the Commissioner for Scheduled Castes and Scheduled Tribes had been submitted to the President of India through the Union Minister of State for Welfare by the Commissioner for Scheduled Castes and Scheduled Tribes, Dr B D Sharma on 23 November, 1988.

Scheduled Tribes was set up within the Constitution, with a mandate "to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes" and "to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes". As required under Article 338, it submitted reports to the central government covering the years 1992-3, 1993-4 and 1994-5. To Amnesty International's knowledge, none of these reports have been tabled before the Lok Sabha. Following the dissolution of this Commission after the completion of the specified three-year term, a new Commission was constituted in October 1995. This Commission has submitted two reports covering the year 1996 and the 1997 to the Lok Sabha.

The PHRA provides for the establishment of human rights courts to provide "speedy trial of offences arising out of violation of human rights". Several state governments -- including Uttar Pradesh, Andhra Pradesh and Tamil Nadu -- have announced the setting up of such courts by designating sessions courts to hear human rights cases. However, in Tamil Nadu, the process was challenged by officials of the courts themselves and human rights activists who pointed to the fact that there are no guidelines as to the mandate and powers of these courts or the procedures which the courts should follow. The Tamil Nadu High Court gave an order in this regard in June 1997.

While welcoming the idea of human rights courts to provide prompt redress to victims of human rights violations, Amnesty International believes that guidelines for the procedures to be followed in relation to human rights courts should be laid down in the PHRA to ensure consistency and transparency. The organization also believes that procedures for human rights courts should fully reflect international standards for fair trial, notably Article 14 of the ICCPR and in addition, Amnesty International believes that certain further measures should be taken to ensure better access to redress through these courts: the requirement for governmental sanction for the prosecution for public servants should be removed in cases brought before human rights courts; an effective system for the provision of legal aid should accompany the establishment of human rights courts; the NHRC or SHRC should ensure the training and sensitisation in international human rights standards of judiciary and prosecutors engaged in hearing cases in human rights courts so as to ensure the application of and compliance with international human rights law; separate and adequate resources should be allocated to the functioning of human rights courts. Amnesty International is aware that the legal system in India is already over-burdened and that sessions courts may be unable to cope with an increased work-load. Additional resources will be needed to fulfil the PHRA's promise that human rights courts will be established "for the purpose of providing speedy trial of offences".

c. Alternative remedies forged by human rights defenders

The increasing disillusionment of human rights defenders with legal mechanisms for redress has led many to reject these mechanisms and pursue more direct action – to concentrate on mobilising public opinion through the media, awareness campaigns, holding *dharnas* etc. This has in turn led to the state using retaliatory measures including the arbitrary arrest, detention and ill-treatment of human rights defenders.

Given that official inquiries into human rights violations are often an inadequate means of remedy, human rights defenders in India have created their own alternative redress mechanisms and means of obtaining justice. These have ranged from the establishment of unofficial commissions and inquiries to the emergence of movements to demand information from the state which will enable

individuals and groups to assert their rights. While the mechanisms described below are a credit to the way in which the human rights movement in India has sought to find ways to provide a voice to victims of human rights violations in the face of state inaction, the problems inherent in official inquiries into human rights violations -- particularly their failure to lead to criminal prosecutions -- are even more glaring for these unofficial initiatives. The need for the state to respond to the very pressing demands of human rights defenders is acute.

"Peoples' Commissions/Tribunals"

On several occasions, human rights defenders have come together to carry out their own "commissions of inquiry" into incidents of human rights violations. So-called "peoples' commissions" have been held to look into a variety of issues in recent years including environmental concerns, incidents of police firings, and communal riots. Frequently presided over by retired judges, Supreme Court advocates and leading human rights activists, they present human rights defenders with an opportunity to collect evidence from witnesses and provide victims with an opportunity to make their grievances heard. While on a number of occasions these have been very positive experiences for all concerned, on several occasions the right of these unofficial commissions to sit has been challenged.

At the same time as the Srikrishna Commission of Inquiry was established by the Maharashtra government (see above) the Indian People's Human Rights Tribunal set up its own inquiry presided over by two retired High Court judges, Justice Daud and Justice Suresh. This People's Tribunal gathered affidavits and completed its work within a few months. Following the publication of the report of the People's Tribunal in July 1993 the Shiv Sena political party (ultimately indicted for inciting violence against Muslims by the Srikrishna Commission) filed an application to the Srikrishna Commission to take action against its authors on the grounds that they had brought the Srikrishna Commission into disrepute. The Commission ruled that no action should be taken against the People's Tribunal, Justice Srikrishna arguing that judges should not be above scrutiny.

Similar arguments were used more recently against the activities of the Punjab Peoples' Commission. The Peoples' Commission had been constituted by the Committee for Coordination on Punjab in 1998 with the purpose of collecting information on human rights abuses between 1979 and 1997 and pursuing justice. The Commission, presided over by a panel of three retired judges, held one sitting from 8-10 October 1998 in Chandigarh. A further sitting scheduled for 23-25 October in Ludhiana was postponed because of the filing of several petitions challenging the Commission in the High Court on the basis that it was establishing a parallel judicial system. The court disposed of these petitions in an order in December 1999[48].

The order of 20 December 1999 concluded that the Commission was attempting to undermine the authority of various institutions of the Constitution and establish a parallel judicial body. It should be "*restrained from holding public sittings or making investigations into the cases which have already been decided by the Courts or are pending before the Courts. They are also restrained from issuing summons to the officers of the Government and other agencies to appear before the Commission for the purpose of so called investigation/inquiry... It is however made clear that this order will not*

[48] Order of the Punjab and Haryana High Court dated 20 December 1999 in Civil Writ Petitions No. 14133, 16608 and 17121 of 1998.

prevent respondent no.3 [The Peoples' Commission] and the Interveners from collecting information regarding the violation of human rights, if any, by the State and its agencies and approach the Court for reference of such cases to the State Human Rights Commission and the National Human Rights Commission for appropriate consideration".

The order was shocking in that it appeared to point victims to an avenue of redress which in its own order it had demonstrated was closed to those victims. The order related how the Punjab Human Rights Commission (PHRC) had requested the central government to amend section 36(2) of the Protection of Human Rights Act so that the Commission could pursue cases over a year old[49] but how this had been denied by the Central Government on two occasions. It then related that in response to the court's question as to whether the Punjab government was prepared to set up an independent commission under the Commission of Inquiry Act 1952 the government ultimately indicated that it would not consider this option. The High Court order then pointed to the Supreme Court's order of 1996 to the NHRC to examine issues related to mass human rights violations in Punjab. However, it appeared to ignore the protracted debate over the Supreme Court's order which led to the NHRC in January 1996 declaring that it would restrict itself to awarding monetary compensation to those families who could prove that their relatives were illegally cremated by police in Amritsar district between 1984 and 1994 and the Supreme Court indicating that victims were free to file further cases with it.[50]

The Punjab Peoples' Commission was established in reaction to the failure of the state to provide redress to victims of human rights violations where hundreds of "disappearances" took place alongside deaths in custody, torture including rape, illegal detention and extra-judicial execution and where human rights defenders often themselves became the victims of human rights violations (see Part III, Chapter 7 and Casesheet 12). Human rights defenders in Punjab have become entirely demoralised by this frustrated search for redress.

Public hearings

Another format that has emerged from within the human rights movement in India for the redress of grievances is the "public hearing". Public hearings organized by members of the human rights movement are held throughout the country on a range of issues. Usually presided over by a panel of eminent people including members of the judiciary as well as administrative officials including police officers and government officers, victims are encouraged to come forward and give their testimony concerning the abuse they have suffered, in an informal atmosphere where they are given support by the presence of their peers. Officials are asked to respond immediately to the complaints made at these public hearings and to suggest remedies, although there is no official status to these hearings.

Amnesty International welcomes the opportunity these public hearings give to victims of human rights violations to air their grievances. However, it is concerned to have received some reports about repercussions for those bringing complaints to these hearings.

---

[49] Section 36(2) of the Act states: The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

[50] See Amnesty International's report, *India: A vital opportunity to end impunity in Punjab*, August 1999, AI Index: ASA 20/24/99.

Dalit lawyer, Epsi Bai (right), at the December 1999 public hearing with dalit women in Chennai.
© Tamil Nadu Women's Forum

In December 1999 a "public hearing with *dalit* women" was held in Chennai. Hundreds of *dalit* women attended the public hearing and many women testified to having suffered abuses. The testimonies were heard by a panel of eminent people including the chair of the National Commission of Women and several judges. As each complaint was heard, questions were asked of police officials present as to the action taken to investigate the abuses against the women. Where criminal cases had not been filed, police undertook to register complaints and investigate. During the hearing, three women reportedly testified to abuses in a particular area falling under the Thiruthani police station. As the Superintendent of that police station was not present at the hearing, the cases were sent to him for follow-up. Amnesty International has received reports that in the first week of February 2000, police went to the homes of the three women in the early hours of the morning, took them to the police station and asked them whether they wanted to make official complaints. No women police were present and the three women were reported to be so scared that they immediately retracted their complaints made at the public hearing.

The right to information

An organization in Rajasthan, the *Mazdoor Kisan Shakti Sangathan* (MKSS) [Organization for the empowerment of Peasants and Workers], has been instrumental in raising the issue of the right to information as a means to challenge corruption and ensure a more transparent and participatory democracy. The MKSS began its work in focussing on minimum wages and other issues of livelihood and development. It campaigned by means of staging *dharnas* and other activities. However, the members of the organization realized that they always had to rely on the same officials who had abused their rights for figures and documents to prove the abuses. They recognized the need to make certain documents public as a means of securing their rights. Through public hearings (*Jan Sunwais*) the poor and the middle classes in villages who had never come together before joined hands to demand information and access to records. A range of issues were placed in the broader framework of democratic rights, transparent governance and right to information. In addition to building alliances at the local level, the campaign for the Right to Information in Rajasthan has provided a point of convergence for other mass based struggles including issues of rehabilitation of

Article 6(a) of the Human Rights Defenders Declaration:
Everyone has the right, individually and in association with others:
To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

displaced people, atrocities against women and land alienation. The right to information has been identified as a minimum requirement that needs to be met in these struggles. It has provided the space to increase citizen's participation in the democratic and decision-making process.

Growing from the work done in Rajasthan, there is now a National Campaign for People's Right to Information (NCPRI). This is a coalition of activists and organizations, journalists, lawyers and bureaucrats working at the national level for sustained and informed advocacy for legislation on the right to information and amendment and repeal of laws that hinder this right such as the Official Secrets Act, 1923. The NCPRI has endorsed a Bill drafted by the Press Council of India and the National Institute of Rural Development in 1997. Several drafts for a national legislation on the right to information currently exist. The National Alliance government introduced a Freedom of Information Bill for Promotion of an Open and Transparent Government in the budget session of Parliament in February 2000. The Bill would make the right to information a statutory right. However, there are restrictions in areas of national security, public order and morality. Once enacted the legislation would prevail over the Official Secrets Act. The NCPRI have four main objections to the Bill: the lack of provisions for accountability and penalties for non-implementation and abuse; the lack of an independent forum for appeal; blanket exclusions and loose time frames for providing information.

Amnesty International believes that this campaign can make a valuable contribution to the work of human rights defenders in securing rights from the state.

4. ACCESS TO THE INTERNATIONAL HUMAN RIGHTS COMMUNITY

The reticence of the government to allow all those concerned with human rights access to India has appeared often to contradict its own stated policy. In its fourth periodic report to the Human Rights Committee the government talked of its *"policy of transparency, responsiveness and dialogue with domestic and international non-governmental organizations, adherence to major international human rights instruments and cooperation with the United Nations human rights machinery."*[51]

> ***Article 5(c) of the Human Rights Defenders Declaration:***
> For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to communicate with non-governmental or intergovernmental organizations.

Access to India has long been of concern to the international human rights community. Visits have been made to India by the United Nations High Commissioner for Human Rights in May 1995 and by the Special Rapporteur on religious intolerance in December 1996. However, the government has yet to invite the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit India, despite their repeated requests to do so.

The United Nations Working Group on Enforced or Involuntary Disappearances has also made repeated requests to visit India, particularly in the light of the hundreds of cases of "disappearance" that have been reported from the states of Jammu and Kashmir and Punjab over recent years.

Amnesty International and many international and national human rights NGOs, have urged the UN Commission on Human Rights to establish a Special Rapporteur with the mandate to monitor, document and intervene on behalf of human rights defenders subjected to human rights violations, to devise an effective strategy to better protect human rights defenders and to study ways to monitor the implementation of the Human Rights Defenders Declaration.[52] In light of the concerns raised in this report, Amnesty International hopes that such a mechanism would be granted early access to examine the situation in India.

The Government of India has on many occasions barred access to international human rights organizations. While Amnesty International has been granted access to India for organizational meetings, for many years Amnesty International delegates were not able to visit the country to carry out research in the country. In 1992, a delegation visited New Delhi for eight days to hold talks with the government. In January 1994, one year after the initial proposal was made, Amnesty International delegates visited Bombay and Delhi for 10 days to enquire into police practices in the context of communal riots that had taken place in Bombay in December 1992 and January 1993. In July-August 1996, an Amnesty International delegation visited Delhi, Karnataka and Rajasthan for five weeks in

[51] India's report to the Human Rights Committee, CCPR C 76 Add.6, 17 June 1996, para 5.

[52] See Amnesty International's report, *"2000 UN Commission on Human Rights - Defending the Defenders"*, December 1999, AI Index: IOR 41/12/99.

the first open-ended research visit that the organization had been able to conduct in the country. While Amnesty International has welcomed access for its delegates to attend the series of meetings with Amnesty International members and human rights defenders in India which took place during 1999, the organization is disappointed that the issue of access for its delegates for the purposes of research has continued to be problematic for the government. A proposal for a research visit to Delhi, Uttar Pradesh and West Bengal made in November 1996 took place only in May 1999 following a long silence from the authorities. Amnesty International has made repeated requests to visit states of the north-east as well as Jammu and Kashmir for numerous years but to date has been refused access.

In June 1995 the International Committee of the Red Cross after long negotiations signed a Memorandum of Understanding with the Government of India to allow it access to Jammu and Kashmir under certain conditions. However, it does not have access to other areas of India.

In November 1998 an Amnesty International delegate was denied a visa to attend a meeting on health and human rights in Mumbai. Amnesty International was informed that the organizers of the meeting had failed to obtain the required permission to hold an international meeting from the Ministry of Home Affairs and the Ministry of External Affairs. The organization was told that the organizers would also have to obtain clearance from the Ministry of Health and Family Welfare as the meeting related to health issues. Several other international delegates were denied visas for this meeting.

In July 1999 three foreign nationals were denied visas to attend the 11th Annual John Hopkins International Philanthropy Fellows Conference on Building Civil Society, organized by the Development Support Initiative, Bangalore. The Indian High Commission in London reportedly told the applicants that "all conferences to do with the voluntary sector and which appear to be Government/politically sensitive has to get clearance for participants from abroad."[53] This was the first that the human rights community had heard of this rule being applied systematically, which puts restrictive administrative hurdles in the way of those organizing meetings to which they would like to invite international participants. The Director of Voluntary Action Network India (VANI), who questioned this procedure, was informed by the Ministry of Home Affairs that "there were no written rules but such was the practice that was being followed for sometime."[54]

It has been difficult to obtain information about representatives of organizations who have been denied visas to attend meetings in India since the publication of information about these guidelines. However, Amnesty International knows of a handful of cases in which visas have been denied and is concerned that these regulations present a further attempt by the Government of India to restrict access to the country by members of the international human rights community, thereby restricting the flow of information on human rights and their ability to act on these. This is clearly contrary to the spirit and intention of Article 5(c) of the Human Rights Defenders Declaration and the Government of India's own stated policy of openness and transparency.

Not only have there been problems in accessing India, but human rights defenders working in India have also faced problems and harassment in leaving the country or returning after taking part

[53] *The Hindu*, 25 June 1999.

[54] From Press Release of Human Rights Features, "India Restricts NGO Meetings", HRF/7/99, 20 September 1999, published by the South Asia Human Rights Documentation Centre.

in human rights activities outside the country. While in several cases human rights defenders have been successful in attending such meetings, others have been prevented from leaving the country while others have been subjected to intense questioning on their return.

In December 1999 Iqbal Ahmed Ansari, a Muslim academic and human rights activist, was unable to attend the Parliament of World's Religions held in Cape Town at which he had been invited to speak on human rights and Islam after the authorities failed to renew his passport in time despite repeated requests.

In August 1999 two human rights activists from Jammu and Kashmir -- Assadullah Mir and Firdous Asime -- were held at New Delhi airport while on their way to attend a training workshop in Nepal. After several protests they were finally allowed to leave on 31 August.

On the night of 19-20th January 1997, human rights activist and author of several books on Punjab, Ram Narayan Kumar, was detained for five hours at New Delhi's international airport when he was about to leave for Austria where he lives for part of the year. Ram Narayan Kumar is a member of the Committee for Information and Initiative on Punjab and has been active in pursuing justice for victims of human rights violations in Punjab. In 1996 he was involved in the production of a short documentary film concerning human rights abuses in Punjab and the "disappearance" of human rights defender Jaswant Singh Khalra. Prior to the incident of 19-20 January 1997, he had been rebuked by an Indian Embassy official in Vienna for "defaming India" by carrying out this work. The same official reportedly telephoned him in early September 1996 to ask when he was planning to return to India. When in Delhi subsequently he was visited by several men who would not identify themselves but wanted to asked him "some questions". When he refused unless they presented identity cards they went away.

At around 10pm on 19 January Ram Narayan Kumar was stopped at the immigration counter by an official who having checked his passport number on the computer asked if he had produced a video film on Punjab. He was asked to step aside and wait for a while. About two hours later another official asked him if he had authored a book titled *The Sikh Unrest in Punjab and the Indian State*. He was not allowed to telephone a friend and was reportedly told "You are under detention. Forget your flight and about contacting anyone". He was then led to a room which contained around 25 officers. When he asked them to identify themselves and tell him on what legal basis he was being detained they refused. He was asked to explain what his forthcoming book contained (his book, *The Sikh Unrest and the Indian State: Politics, personalities and historical retrospective*, was about to be published). He was also asked to give details of his political and personal background. His interrogation lasted until 5am when he was finally released by which time he had missed his flight. However, he left on a flight the next day.

Ram Narayan Kumar sent a written complaint about his treatment in a letter to the NHRC on 27 January 1997. He received an acknowledgement of his complaint from the Commission but did not hear from them again until he received a communication from the Law Division dated 17 December 1999 informing him of the proceedings of the Commission on the basis of his complaint. It stated that the NHRC had discovered that there was a "look out for culprit" notice issued against him for his suspected involvement in smuggling activities and that immigration officials had denied detaining him or harassing him. It went on to state: "it appears that the action has been taken to interrogate the complainant as per law, in view of some information available with the police. They denied causing

any harassment to the complainant other than the inconvenience implicit in his questioning for nearly 5 hours. Consequently, no action is warranted on this complaint and the case is accordingly closed". Amnesty International is concerned at the NHRC's failure to take action against the harassment of Ram Narayan Kumar or at least to ascertain the basis on which he was suspected of smuggling activities.

Human rights defenders have also been harassed by state authorities on their return to India after carrying out human rights activities abroad.

On 14 September 1997, the Committee on Human Rights, Manipur (COHR), and several other human rights organizations organized a "meet the press" program at Naoba restaurant in Imphal to provide information about the recently concluded hearing of India's third periodic report under the ICCPR by the Human Rights Committee in Geneva. Babloo Loitongbam, representative of COHR, who had attended the session in Geneva, spoke about the activities of COHR at the Geneva hearing and the recommendations of the Committee which had a bearing on the situation in Manipur. The next day, the issue appeared in the headlines of the Manipur press.

On the same morning an Assistant Sub-Inspector from Imphal Police Station visited his home when he was out and told his father that the Superintendent of Police of Imphal District wanted to speak to him. Babloo Loitongbam went to the police station with his father where he was told that the police would like to record some information in connection with the press conference. He was asked his personal details, information about his human rights work, reasons for working with COHR and the activities of COHR and these were noted down on a piece of paper. He was also asked about his recent visit to Geneva and the activities he was engaged in there. Babloo Loitongbam spent a full day at the police station before being allowed to leave.

PART III: Specific areas of concern

1. HUMAN RIGHTS DEFENCE IN THE CONTEXT OF ECONOMIC AND INDUSTRIAL DEVELOPMENT

At a time of increasing globalization, as international financial institutions, multinational companies and other economic actors extend their influence, development is all too often being pursued at the expense of human rights, rather than as a human right itself. Amnesty International believes that as the activities of these institutions impact on the lives of more and more people, they share a responsibility for the promotion and protection of human rights. The Universal Declaration of Human Rights calls on "every organ of society" to promote the rights set out in the Declaration.

Sustainable development cannot be measured solely in terms of economic indicators: it is a holistic process that embraces the development of civil society, the strengthening of the rule of law and the fulfilment of individuals' and groups' aspirations in the civil and political, social and cultural as well as economic spheres. Protection for human rights is an essential part of development and good governance; protection for human rights and good governance are a fundamental part of sustainable development. Care needs to be taken to prevent human rights from being the casualty of efforts to promote liberalisation, competitiveness and development. Amnesty International seeks to remind governments of their obligations to find ways of balancing respect for human rights with attempts to achieve economic growth.

A demonstration by villagers in front of the Dabhol Power Project (Enron Project) in Ranagiri District of Maharashtra. 17 May 1997
© Santosh Harhare, *Midday*, Bombay

Rapid liberalization of the Indian economy in recent years and increasing inflow of foreign investment for major infrastructural projects including by the World Bank and international financial institutions, has led to widespread displacement and loss of access to traditional resources and means of livelihood of many in the country. Many of those affected by the activities of economic actors, including multinational companies, and involved in protests against them have been from *dalit* or *adivasi* communities particularly concerned with displacement. In these instances, whole communities often unite to defend their rights. They widely report that rather than being

consulted and provided with access to information, repressive tactics are used against them to expedite projects. Amnesty International believes that full consultations about the human rights impact of economic decisions with those to be affected -- often with activists and with non-governmental organizations as representatives of affected communities -- are vital means through which human rights are safeguarded in the context of development.

> ***Article 2(3) of the UN Declaration on the Right to Development:***
> States have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on **the basis of their active, free and meaningful participation** in development and in the fair distribution of the benefits resulting therefrom. [emphasis added]

While the focus of activism is often on the institutions involved directly in the particular development project, the state is also involved through its deployment of security forces to curtail freedom of association, expression and assembly. Attacks by law enforcement officials on economic and social rights activists are common. The state has also taken steps to prevent the funding of non-governmental organizations involved in local protests against development projects (see Casesheet 1). While Amnesty International takes no position on the construction of industrial or other projects, it defends the right of individuals to peacefully protest against such projects without fear of suppression by the state and other interests. The organization believes that -- far from curtailing their activities -- the state has an obligation to protect human rights defenders whose rights are set out in the Human Rights Defenders Declaration.

Action taken by the state against communities and peoples' movements including the NBA, protesting against threats to the human rights of those threatened with or undergoing displacement in the context of the development of the Narmada River are well documented. Arbitrary detention, ill-treatment and rape have been used by law enforcement agents against those protesting. While activists of the NBA are to some extent granted greater protections than their colleagues protesting against less well-known development projects by the media attention that the issue has gained, they continue to be subjected to threats and harassment, if not by the state directly then by other vested interests.

On the morning of 9 December 1999 six unidentified armed men entered the office of the NBA in Baroda, Gujarat. They reportedly threatened an NBA activist Raghu Raghuvanshi with a knife and told him that the NBA should "leave Gujarat or else face death". They destroyed documents, damaged a computer and stole Rs.20,000 [$US460]. The NBA was reported to have been receiving threatening calls since October 1999. A written complaint was made to the Commissioner of Police which led to an enquiry. Earlier, in March 1994, the NBA office in Baroda was attacked by Gujarati politicians in full view of the media. A judicial inquiry was ordered into that incident but no action was taken against the perpetrators

Meanwhile on the night of 10 January 2000, several thousand men and women from villages affected by construction of the Maheshwar dam gathered in the village of Sulgaon. They were joined by supporters of their cause from outside the region. From there they walked to the Maheshwar dam site in the early hours of the morning, avoiding police patrols. Around 2,000 people occupied the site. At around 11am police returned to the site and began arresting people. Women were reportedly dragged into waiting buses. Several of the police officers were reported to have smelt of alcohol. Two

well-known activists -- film-maker Jharana Jhaveri and author Arundhati Roy -- were taken to a nearby vehicle belonging to the project and driven away. After protesting about the use of a private company vehicle for detaining protesters they were transferred to a police vehicle. In all, 973 people were arrested and lodged in the Maheshwar Jail. There was reportedly no electricity and no water in the jail.

In Uttar Pradesh the National Thermal Power Corporation (NTPC) has been engaged for several years in constructing an ash dike near the villages of Mithini and Khairi in Sonebhadra district as part of the expansion of an existing thermal power plant, the Rihand Super Thermal Power Project, financed in part by the World Bank. Villagers have been resisting attempts to displace them from their land - the second displacement that they would have had to undergo in the last 36 years[55]. A people's organization, the *Grameen Kalyan Sangharsh Samiti* (GKSS) [Village Welfare Struggle Committee], is leading the protests against the present situation. It filed a petition in the Uttar Pradesh High Court calling for the halt of the construction until those affected had been granted full rehabilitation. The amount of fear and repression associated with the resettlement component of the project led most of the claimants to request anonymity.

The World Bank held meetings with local inhabitants in which it gave assurances that no force would be used to evict villagers. However, in the meantime, violence was used against villagers. Reports from the GKSS and from the World Bank team's own back-to-office reports reportedly indicated that people had been beaten by police and by NTPC employees.

On 27 June 1996, the Sub-divisional magistrate arrived unannounced with several bulldozers. Villagers sat in protest in front of the bulldozers. The police were called and in an attempt to force them to move, the police reportedly beat men and women protesters. Thirteen men and nine women were dragged and their arms twisted and they were taken to a jeep. One woman's arms were twisted by a female police officer who also reportedly flung her two-year old son on the ground. They were then taken to the local police "lock-up". Two women were reportedly severely beaten with sticks. Three children were also taken into police custody. At least 25 people were placed in a police lock-up including two teenagers. The women and children were released early the next morning (28 June). However, the men remained in detention in Mirzapur jail under section 151 of the CrPC for 14 days. Several of those arrested were activists of the GKSS. The Station House Officer, Bijpur, reportedly stood on the chest of a 70-year-old man and threw him onto a drain before dragging him to the police jeep.

No action has been taken against employees of NTPC for violence against peaceful protesters. On 19 September 1996, an NTPC engineer reportedly instigated a dumper truck driver to drive the truck over the crowd of villagers squatting before it. Twenty-eight-year-old Ram Narain was run over and remained unconscious for some time, although he was later resuscitated. The villagers filed a FIR and the truck driver was taken into custody only to be released immediately. No action was taken against the engineer who was removed from the site with the help of the Central Industrial Security Force to stop him being attacked by the villagers. The owner of the land on which the incident took

[55] The process of displacement began in 1960 with the construction of the Rihand dam which is believed to have uprooted about 200,000 people of whom some 20,000 moved to the bordering Sarguja district of Madhya Pradesh and another 20,000 are believed to have been dispersed.

place later testified before an investigative team of the NHRC and reportedly suffered repeated intimidation by the engineer.

Trade union activists have also been targeted for their activities in defending the economic rights of workers, particularly in relation to wages and working conditions.

In Madhya Pradesh, the *Chattisgarh Mukti Morcha* (CMM) [Chattisgarh Liberation Movement] was targeted for attack by both the state and industrialists during the early 1990s. Prominent labour leader Shankar Guha Niyogi was shot dead in his home in Bhilai on 28 September 1991. Industrialists were widely believed to be behind the killing of the labour leader who led protests within cement producing industries in Bhilai calling for wage increases and regularisation of work. Several other CMM activists were attacked by people believed to be hired thugs of the industrialists in the context of these protests and Niyogi had received several threats before his death. In addition, the local authorities attempted to prevent the CMM from leading protests by imposing section 144 of the CrPC around industrial plants and placing extemment orders on several CMM activists.

An initial investigation into the killing of Shankar Guha Niyogi was carried out by the police but following demands by the CMM for an impartial investigation, the Central Bureau of Investigation (CBI) was requested to investigate. On 23 June 1997 the sessions court at Durg in Madhya Pradesh convicted six men linked to leading industrialists of the murder. However, in June 1998, the High Court of Madhya Pradesh acquitted all six saying that the evidence was not sufficient to prove their guilt.

In July 1992 at least sixteen people died when police opened fire on protesting industrial workers (including women and children) in Bhilai when they were protesting against their employers' violation of labour laws. A Commission of Inquiry was appointed into the firing by the Madhya Pradesh government but when proceedings did not begin for some weeks the CMM filed a petition in the High Court and obtained an order for it to commence its proceedings. The terms of reference of the Commission excluded incidents which did not occur on that day. The Commission therefore refused to hear evidence of the subsequent torture and ill-treatment of individuals by the police and of connivance between politicians and industrialists which facilitated the violations. A "Peoples' Tribunal" (see Part II, Chapter2) was held into the firing immediately afterwards which published its findings in July 1993. It found that "*Time and again, in deposition after deposition, the picture which emerged was that industrialists behaving as if they were above law, using extra-legal, coercive means to cow down a mass of peaceful but determined workers, struggling to achieve rights which are legally theirs. The state, a mute spectator for the most part intervened in a manner so lackadaisical that it bordered on tokenism, stands guilty of complicity in allowing this industrial dispute to drag on for so long*". It also concluded that the firing on protesters violated rules for the use of firearms by police. However, to date, no action has been taken against police officials for their actions.

While Amnesty International recognises the duty of the state to safeguard the employees and property of industrial and infrastructural development projects, the organization believes that in safeguarding one set of rights the rights of those who express peaceful opposition to such projects should not be compromised. It is concerned at the failure of the state to properly investigate incidents of excessive force used against demonstrators or threats and violence against those defending social and economic rights. Amnesty International further believes that national and multinational corporations also have a responsibility to adopt and enforce transparent policies on human rights, to

publicly urge full and impartial investigations into all reported human rights violations and urge that the perpetrators be brought to justice and to establish strict guidelines for all security personnel subcontracted by, seconded to, or employed by them, to ensure their training reflects international human rights standards and to ensure they are fully accountable.

2. HUMAN RIGHTS DEFENDERS WORKING WITH *DALITS*

"The Indian authorities had sought to redress the injustices affecting the lower castes through constitutional provisions and laws and also through affirmative action. The conflicts which still occurred reflected the move towards greater equality as the underprivileged became more aware of their rights and sought to assert them. Neither the Government nor its authorities condoned or tolerated infringements of the law".[56]

"The assertion of rights by members of the Scheduled Castes particularly their refusal to accept humiliation, as part of their being, is being retaliated in many areas by other communities ... The alignment of the administration with the dominant economic interests and social classes makes the position still worse".[57]

While both these statements -- the first a statement by a representative of the Government of India to a UN treaty body, the second the comment of the former Commissioner for Scheduled Castes and Scheduled Tribes appointed by the Government of India -- acknowledge the growing assertion by *dalits*[58] of their human rights, they present two different pictures of the reaction of the state to this movement.

Article 17 of the Constitution of India states that the practice of "untouchability" is abolished and forbidden. Despite this, "untouchability" continues to be practised in India in many forms, reinforcing an iniquitous social hierarchy and allowing for the continuing disempowerment and humiliation of many people. Many *dalits* continue to be segregated -- localities housing *dalits* are spatially segregated from non-*dalits*, often extending to the provision of separate wells, eating places and temples. Many are agricultural labourers -- estimates suggest that at least two thirds of the bonded labourers in India are *dalits* -- while *dalit* women, and often children, dominate certain spheres of work, such as civic sanitation, scavenging and leatherwork (including the flaying and tanning of carcasses). In most parts of the country, *dalits* have a proportionately small share in agricultural landholding, despite the allocation of government land.

This situation exists despite Article 17 and despite other provisions in the Constitution as well as legislative and administrative safeguards. The Constitution also provides for positive discrimination for caste groups as a means of providing protection and promotion of their rights. Lower caste groups are ensured reservations in political bodies as well as public sector employment. In addition, various other protective mechanisms have been put in place by the state to ensure rights for *dalits*. Legislation to criminalize abuses against Scheduled Castes and Scheduled Tribes began with the Protection of

[56] Representative of the Government of India at the hearing of India's report to the UN Committee on the Elimination of Racial Discrimination in September 1996. in response to questioning. CERD/C/SR.1162, para 36 at page 7.

[57] *Dalits Betrayed*, by Dr B.D. Sharma, pages 27-28.

[58] This term -- meaning "oppressed" -- is widely used to describe members of the "Scheduled Castes". This is a group, formerly known as "untouchables" designated in the Constitution of India as "Scheduled Castes". The schedule (list) currently includes many groups which are isolated and disadvantaged by their low status in the traditional Hindu caste hierarchy and therefore exposed to discrimination and social, economic and cultural injustice.

Civil Rights Act, 1955. This Act was enhanced by the enactment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 and Rules of 1995 which extended the scope of abuses which were criminalized and provided for graver penalties. Within the latter Act there are penalties for police acting negligently. Other legislation exists to protect the land rights of scheduled castes and scheduled tribes for example as well as legislation outlawing traditional abusive practices including "manual scavenging" (the manual disposal of human waste by *dalits*).

Despite this, abuses continue at a high level. However, a growing awareness of rights amongst these communities, demands for social and political equality and an unwillingness not only to allow such abusive practices to continue but to be a silent witness to the apathy of the administration, has led many *dalits* and others to take active steps to defend those rights. This movement has taken many forms -- from pursuing cases of "atrocities" in the courts to the formation of political parties, to forcibly claiming use of village resources to forming associations to agitate for better or minimum wages, to much larger protest movements. In October 1998, a National Campaign on *Dalit* Human Rights was launched incorporating individuals and organizations from throughout India. The Campaign is seeking to highlight the rights of *dalits* and press for a range of demands including the restoration of land to *dalits*, the reservation of jobs in private bodies and the right to freedom of thought and expression[59].

> ***"The Universal Declaration of Human Rights says that all people are born equal, so that gives us a new kind of hope to work, and our governments are also signatory to all these conventions and treaties that talk about human rights so we want our government to be first responsible and for that human rights activists all over the world, the defenders, the governments outside India, the UN, should respond to a matter like this [discrimination against dalits] because the whole matter of caste issue is being treated as an internal issue, as a local problem. But there are laws and legislation to curb untouchability, but in a real sense the people are not free."***
> [*Dalit* human rights defender Ruth Manorama speaking about the National Campaign on *Dalit* Human Rights at a Summit for human rights defenders held in Paris in December 1998]

The growing assertion of *dalit* human rights which necessarily challenges existing power groups, be it landlords, employers or even so-called "backward castes", has met with violent reaction in some quarters. In February 1998 the *Times of India* reported that the annual report of the National Commission for Scheduled Castes and Scheduled Tribes which was presented to the President had referred to frequent caste clashes erupting in Uttar Pradesh, Bihar and Tamil Nadu, stating "Whenever the *Dalits* have tried to organise themselves or assert their rights, there has been a backlash from the feudal lords resulting in mass killings of the *Dalits*, gang rapes, looting and arson"[60].

Amnesty International recognises the huge challenge that the socio-economic situation in India presents for the state and the country as a whole. However with commitments such as that enunciated in the above-quoted government statement to the United Nations in mind, the existence of legislation designed to safeguard the rights of *dalits*, and with Constitutional guarantees for the abolition of "untouchability" and prohibition of discrimination on the basis of caste, Amnesty International believes the state must respond to abuses against *dalits* with a powerful message -- not

[59] See *Black Paper. Broken Promises & Dalits Betrayed*, National Campaign on *Dalit* Human Rights, Secunderabad, Andhra Pradesh, India.
[60] *Times of India*, 10 February 1998.

just through rhetoric but in practice -- that those who strive for equality will not be punished but that the state will find ways of supporting those initiatives.

All too often however, the words of B.D. Sharma (above) ring true and it is NGOs working with *dalits* or *dalit* activists themselves, defending their own and their fellow communities' rights, that bear the brunt of the violence be it by the state or non-state groups. Rather than supporting the work of *dalit* activists who are seeking to attain the rights within the Constitution, within the local context in which these struggles are taking place, the state machinery, urged on by its own inherent prejudices as well as local powerful interests, seeks to suppress their activities.

In its report published in March 1999 entitled *Broken People*, the international NGO Human Rights Watch noted that *dalit* activists are frequently charged under the National Security Act, the Indian Explosives Act and sections of the Indian Penal Code: "During our investigations, Human Rights Watch came across several [other] cases of police harassment of NGO activists, ranging from periodic police visits, to arrest and charges of aiding and abetting in various crimes or interfering in police investigations"[61]. This finding was borne out in discussions which Amnesty International held with human rights defenders during 1999.

On 6 August 1991, a conflict which erupted between *dalits* and members of the upper caste community in the village of Tsundur in Guntur district of Andhra Pradesh, led to an attack on the *dalit* community during which eight *dalits* were killed. In the aftermath of this killing, there were allegations that the authorities had failed to take adequate action against those responsible who were able to influence the process to avoid prosecution. A Commission of Inquiry was established, under the charge of Justice Gangadhara Rao, but the *dalit* community boycotted the Commission in protest. The trial of those accused of the killing of eight *dalits* has not started, almost nine years after the incident. On 10 September 1991, demonstrations by the *dalit* community demanding action against the perpetrators led to further human rights violations. Kammerla Anil Kumar, a *dalit* activist was one among several *dalits* who were on hunger strike as part of a *dharna*. Police came to arrest those holding the *dharna* but they resisted arrest. Police reportedly opened fire without giving a warning and Anil Kumar was killed. *Dalit* activists claim that he was attempting to intercede with the police when he was shot dead. Police subsequently filed cases against several of the *dalit* leaders under sections 147 [*punishment for rioting*] and 332 [*Voluntarily causing hurt to deter public servant from his duty*] accusing them of provoking the police. They were finally convicted on these charges in April 1999.

In October 1994 the *dalit* community of Karanai, a small village near Mahabalipuram in Chengai-MGR district of Tamil Nadu, installed a life-size statue of B.R. Ambedkar on a piece of land to which a *dalit* claimed ownership. The piece of land was part of Panchami land[62] and the installation of the statue was an attempt to reassert *dalit* rights over the land. The statue was pulled down and disfigured on the same evening. A few days later on 10 October, the *dalit* community held a *dharna* on the national highway. The Collector reportedly ordered police to open fire and 14 people including several women received gun-shot wounds. Two local *dalit* leaders -- John Thomas and Elumalai -- were shot dead. 130 *dalits* were arrested including 20 women. Several were beaten and women were

[61] See "*Broken People: Caste Violence Against India's 'Untouchables'*", Human Rights Watch, March 1999, Chapter VIII "The Criminalization of Social Activism".

[62] Panchami land was allotted to *dalits* in 1933 by the British Government. It is not transferable. Much of the Panchami land is now disputed between *dalits* and upper castes.

beaten and partially stripped. Several women took shelter in a nearby school but armed police surrounded it and arrested many of the women who were taken to Chenglepet police station. They were verbally abused and beaten with *lathis*. The women were held overnight at the police station. Any words of protest were reportedly met with further beatings. The next morning while some of the women were released, several were taken to court where they were remanded to judicial custody for 15 days. A Commission of Inquiry was ordered by the Tamil Nadu government.

The Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Rules of 1995 acknowledge the important role of awareness raising and the work of NGOs in preventing atrocities. Rule 3 which refers to areas "identified" as atrocity-prone, calls for a visit by the District Magistrate and Superintendent of Police in order to review the law and order situation and establish mechanisms to monitor the situation. Sub-section viii of Rule 3 instructs these officers to "set up Awareness Centre and organize workshop in the identified area or at some other place to educate the persons belonging to the Scheduled Castes and the Scheduled Tribes about their rights and the protection available to them under the provisions of various Central and State enactments or rules, regulations...". Sub-section ix further instructs them to "encourage Non-Government Organizations[63] for establishing and maintaining Awareness Centres and organizing Workshop and provide them necessary financial and other sort of assistance". However, the reality is often very different.

In early 1998, 25-year-old Sham Tohra, a *dalit* activist from Ghurde, Hathgoa, *Tehsil* [administrative unit] Ambar in Jalna district of Maharashtra was banned from the district for two years after several criminal cases were registered against him by police. In July1998, while attempting to visit his wife and new-born child at night, he was seen in the village. He was attacked by a group of several hundred upper-caste villagers who reportedly cut out his tongue and cut off his hands and his legs at the knees before setting fire to his body. Villagers reportedly warned his wife and other members of his family not to report the incident and attempted to prevent anyone from leaving the area. However, the incident was reported to *dalit* activists and Sham Tohra's wife attempted to file a case with police. Police initially refused to register a case but when activists accompanied her to the police station the Superintendent of Police finally registered a case of murder along with offences under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act against nine high-caste villagers. One of the accused who was the owner of a sugar factory reportedly used bribery to obtain anticipatory bail. After six months, the High Court of Maharashtra ordered the arrest of the nine men. They are currently reported to be in judicial custody in Aurangabad Central Jail.

Human rights defenders from outside areas where caste-based abuses have occurred who attempt to highlight those abuses and put pressure on the authorities to take remedial action are sometimes themselves made the subject of harassment by the state. This has reportedly included externment from particular areas under Section 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which provides for "removal of person likely to commit offence".

In February 1998, residents of two areas of a village, one of bonded labourers and the other of a Scheduled Caste community, in the Kookal Panchayat area of Kodaikanal, Tamil Nadu, announced their intention to boycott the 12th Lok Sabha elections in protest at the lack of adequate

[63] Defined as *a voluntary organization engaged in welfare activities relating too the scheduled castes and the scheduled tribes and registered under the Societies Registration Act, 1860.*

infrastructure in the area. It is alleged that, as a consequence of this public declaration, residents of these two areas were targeted for harassment over a period of several days, leading to an attack by the police, assisted by supporters of the *Dravida Munnetra Kazhagam* (DMK) political party who were angered at the proposed boycott. On 26 February over 100 police men and women entered the colonies, accompanied by men armed with sticks and iron rods (reportedly mobilised by members of the DMK party) and attacked villagers and their property for several hours. Buildings were reportedly severely damaged and their contents damaged and looted. Kerosene was also reportedly poured on stored food grains. Many of the women, children and elderly people were reportedly beaten with *lathis* and iron pipes and kicked, and the clothes of several women were reportedly torn. Following this action, 16 women and nine men from the local area were arrested on charges of attempt to murder and *dacoity* (criminal theft), which appeared to be exaggerated. Police reportedly returned to the village after the incident and threatened villagers.

Several human rights organizations, including People's Watch-Tamil Nadu and the state branch of the Peoples Union for Civil Liberties, subsequently investigated the incident and concluded that police were responsible for a range of violations against the inhabitants. Together with other social service and human rights organisations in Tamil Nadu, they provided food to the villagers following the incident, and publicised the incident. Henri Tiphagne, Director of People's Watch-Tamil Nadu, was subsequently targeted for his activities in support of the victims of harassment and attack. On 24 March, a case of *dacoity* was lodged against him under section 395 of the IPC (crime number 55 of 1998) which appeared to have been lodged with the intention to intimidate him and interfere with his work.

In March 1998 Amnesty International wrote to the Chief Minister of Tamil Nadu urging the government to ensure that the victims of the attack on the 26 February, and their families, received adequate redress (including impartial investigation of the incident and bringing to justice those responsible). The organization also urged the government to review the charges against Henry Tiphagne. No response was received from the Tamil Nadu government to these concerns and the case against Henry Tiphagne still stands. A government-appointed Commission in November 1998 indicted police for committing abuses against *dalits* and destroying property. The government accepted its findings and directed that compensation should be paid to the residents.

Dalit human rights defenders with whom Amnesty International consulted during 1999 spoke of the feeling of ostracisation which affects their human rights work. The discrimination faced by *dalits* in society is compounded for those defending *dalit* human rights by the fact that they have to seek justice from just those social groups and institutions who discriminate against them: the police, the judiciary, state officials. Epsi Bai, a *dalit* woman lawyer from Tamil Nadu, spoke of the way in which she was often treated with contempt when appearing in cases in court. Not only that, but she talked of the way in which her colleagues within the Bar Association also discriminated against her. Many *dalit* women activists have spoken of the sexual insults they and their colleagues have to face when dealing with the police.

As a state party to the ***International Covenant on Economic Social and Cultural Rights*** and the ***International Covenant on Civil and Political Rights***, India has undertaken to ensure that the provisions of both treaties apply without discrimination or distinction of any kind, such as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

In the course of raising human rights issues, *dalit* human rights defenders often have their credibility questioned because of inherent caste prejudices. In addition, as many of the abuses suffered by *dalits* are at the hands of members of the dominant caste and other non-state actors, their avenues for redress are more limited. Atrocities against *dalits* are often considered routine or acceptable to society and therefore when complaints are made to the authorities action is not taken.

In its dialogue with the Committee on the Elimination of Racial Discrimination, the Government of India has asserted that there are numerous avenues for redress for victims of discrimination. Replying specifically to a question posed by the Committee about caste discrimination by private individuals, the Government of India state that "*the Government's approach to such incidents included affirmative action, vigilant monitoring by statutory bodies and awareness-raising through education, and was supplemented by the role of non-governmental organizations, the press and civil society in general. There were numerous channels and procedures for bringing complaints and seeking redress, notably through the National Human Rights Commission, the government being determined to ensure that the perpetrators of such acts were brought to justice in accordance with the law*"[64].

In practice, there are numerous hurdles to *dalits* seeking justice. Section 21 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act imposes positive duties on state and central governments to ensure proper implementation of the Act. These include the provision of legal aid and travel expenses for witnesses and victims attending trials. It states that many offences are "non-bailable" and do not allow for anticipatory bail, therefore protecting victims from possible reprisals. However, the reality has been very different. In many cases cognisance is not taken of abuses. When cases are filed they are often not filed under the Act as police are under pressure from the perpetrators who are aware of the graver penalties for offences under the Act.

At a meeting in Chennai in December 1998 at which members of the police, judiciary and human rights movement were present[65], successive speakers from the police, with specific reference to implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act and the issue of inter-caste violence, asserted that they were not a social service but a law enforcement agency and that they were therefore unable to deal with issues such as inter-caste violence. This is symptomatic of the problem. Victims have nowhere to turn but to the police to enforce laws designed to end discrimination. But the police are not equipped or willing to do this. It is a crisis which can no longer be overlooked.

Finally, Amnesty International is concerned at apparent attempts by the state to limit the work of human rights defenders in internationalising the issue of discrimination against *dalits*. The Government of India has explicitly stated that the issue of caste discrimination does not fall within the remit of the International Convention on the Elimination of All Forms of Racial Discrimination which India ratified in 1968. At the hearing of India's report to the Committee on the Elimination of All Forms of Racial Discrimination in September 1996, the Committee explicitly affirmed that "the

[64] CERD/C/SR.1162, Summary record of the 1162nd meeting: India, Malta, 13/08/96, Para 45.

[65] First Coordination Meeting on Strengthening the Human Rights System, organized by the Government of Tamil Nadu (Department of Adi-Dravidar and Tribal Welfare and Bonded Labour Elimination) and the Tamil Nadu State Legal Services Authority (TNSLSA), 14-15 December 1998, Chennai.

situation of the scheduled castes and scheduled tribes falls within the scope of the Convention" and expressed great concern that India had failed to reconsider its position on this[66]. Amnesty International hopes that given the positive role that India played in the movement against racial discrimination in South Africa, it will positively respond to initiatives by this UN mechanism to encourage ways of addressing problems of caste discrimination in India.

[66] CERD/C/304 Add.13, Concluding observations of the Committee on the Elimination of Racial Discrimination: India. 17 09 96. Para 14.

3. HUMAN RIGHTS DEFENDERS WORKING WITH *ADIVASIS*

Over 70 million people belong to *adivasi*[67] communities in India – around eight per cent of the total population. After independence in 1947, India made special provisions designed to protect the rights of *adivasis* including enacting special regulations to protect areas of *adivasi* land from encroachment by non-*adivasis* which included restrictions on purchase and transfer of land. *Adivasis* are also granted protection under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (see above). Many areas inhabited by *adivasi* people – notably areas of the north-east – were granted special status under the Fifth Schedule of the Constitution.

However, friction between traditional community rights of *adivasis* and the pressure of powerful interests in a country where there is intense competition for land and resources, has produced a complexity of problems. A major issue of concern has been illegal encroachment by non-*adivasi* landowners onto land traditionally owned by *adivasis*. *Adivasis* often do not possess land records and much of their land is communally owned, thereby facilitating challenges to land ownership. In many areas, the authorities have failed to act to prevent processes of dispossession and to enforce legislation designed to protect the rights of members of scheduled tribes. In addition, as *adivasis* have traditionally inhabited many of the areas of India which are rich in minerals, the process of economic liberalisation which has seen increasing investment in mining and other extraction industries, has led to widespread displacement of *adivasis* who are reported to constitute between 40 and 50% of the displaced population[68]. The state's approach to rehabilitation has been piecemeal (there is no national legislation or policy on rehabilitation) and entirely inadequate in the view of many *adivasi* activists. Many *adivasis* inhabit forest areas as they have been traditionally dependent on forest produce for their livelihood. This has brought them into regular conflict with forest department officials who oversee management of the forest areas and prevent *adivasis* from cultivating the forest land. Other problems are also apparent. The widespread existence of corruption complicates and entrenches the daily struggles for *adivasi* people still further and increases the stake which those holding power have in maintaining the status quo through which *adivasi* people are easily exploited.

While there have been a few success stories of *adivasi* movements challenging the actions of the state and private companies in acquiring land for industrial purposes, thereby displacing *adivasi* inhabitants, the odds against *adivasi* movements are huge.

"The fight for Adivasis' rights began by organizing peoples' movements through local struggle committees, direct action in the form of rallies, cultural action, dissemination of project related literature, representation to the government and legal action starting from the lower courts. After a

[67] Tribal people in India, also known as Scheduled Tribes (because of their special designation within the Constitution), are commonly known as *adivasis*, meaning "original inhabitants". This term also denotes their position as an indigenous population. The Government of India has taken a consistent position at the UN Working Group on Indigenous Populations that Scheduled Tribes are not equivalent to indigenous peoples.

[68] See *Rehabilitation Policy and Law in India: A Right to Livelihood*, Walter Fernandes and Vijay Paranjpye, page 18.

protracted legal battle of two and a half years at the provincial High Court and two years at the central Supreme Court, a full bench of the Supreme Court delivered an historic judgement in 1997"[69].

In the context of these conflicts, "peoples' organizations" of *adivasis* have been formed and non-governmental organizations have become involved in a process of assertion of *adivasi* rights to land as well as against various forms of exploitation. The activities of these organizations which aim to educate *adivasi* communities about their land and other rights and empower communities at the lowest level have often been viewed with suspicion by the authorities in India. Some non-*adivasi* activists are viewed as "outsiders" who have no *locus* within *adivasi* communities, while others are branded as anti-national or supporters of radical left-wing organizations which seek land reform through violent means -- *naxalites*. More recently many activists with links to the Christian church have been accused of converting *adivasis* (see Chapter 6). In this way, Amnesty International is concerned that the authorities have sought to criminalize campaigning activities for land rights. In addition, vested interests including landowners and local politicians -- aided directly or indirectly by the police and local administration -- have also sought to criminalize those who defend *adivasi* rights as a means of suppressing these movements (see Casesheet 4).

Adivasi activists approaching the state in order to claim rights for their communities have talked of a sense of isolation and estrangement. As with *dalits*, in approaching the state or the criminal justice system for redress -- whether for land rights or for civil and political rights violations -- they face discrimination inherent within the system as both have in-built biases against them. Legal systems and procedures are often entirely alien to them. Even the language of rights is something that they are removed from and many *adivasi* activists have complained that the issues of their right to land, forest and water and other concerns of *adivasi* communities as "indigenous peoples" are not taken seriously by many human rights organizations.

On 22 February 1999, fifteen *adivasis* in Orissa including Biswambar Jani, President of the *Banpur Malanchal Bhumi Surakhya Sangathan* [Banpur Forest Area Land Protection Organization], and two activists of the *Ekta Parishad* [Committee for Unity] -- Sri Purna Bhopa and Sri Anil Mohapatra -- were detained on charges of attempt to rape and rioting. They were sent to Khurda jail and denied bail. All were involved in campaigning in Bhatapada and Badasula villages in Banpur block, Khurda district of Orissa against the displacement of *adivasis* through the acquisition of land by plantation companies. A dispute was ongoing between *adivasis* and the plantation companies concerning ownership of reserve forest where *adivasis* had been living for many years. 12,000 *adivasis* in 72 villages in Banpur block who were reported to be affected were arguing that the land had been illegally transferred to the plantation companies in an area where "land mafias" were operating. The complaint against the *adivasis* was filed by a female employee of a plantation company and is alleged

[69] "*Development, Equity and Justice. Adivasi Communities in India in the era of Liberalisation and Globalization*". Report on a Roundtable organized by Centre for Social Knowledge and Action, Ahmedabad and Minority Rights Group, 6-9 April 1998, New Delhi, India. This relates to the struggle of *adivasis* in Vizag district of the Eastern Ghats region of Andhra Pradesh against companies which obtained a lease for 120 acres in a small *adivasi* village for the purposes of mining in violation of state legislation designed to protect the sale of land from *adivasis* to non-*adivasis*. The Supreme Court ruled that the government had no right to grant mining leases in lands belonging to *adivasi* people in "Scheduled Areas" which prohibit transfer of land from *adivasis* to non-*adivasis*.

to have been filed as a means of harassment. Other incidents of harassment have also occurred (see below).

Given that land and land acquisition is at the heart of many conflicts in which *adivasis* are involved, the right to information is crucial to many of the *adivasi* struggles. Typically *adivasi* people are given little say in the process of land acquisition and planning for mining and other industrial projects. Information on industrial projects as well as land records etc. are often impossible to obtain. Local administrative officials backed by state officials are often keen to bypass procedures which provide for consultation with local people.

In January 1997 a Public Interest Litigation petition (No. 2083/97) was filed in the High Court of Orissa by two local organizations: the Committee for Legal Aid to Poor and *Ekta Parishad* (a membership-based voluntary organization working with *adivasi* people promoting *lokshakti* [people power] to achieve self-reliance and independence through awareness-raising and organization building). The petition referred to a survey carried out by the two organizations in Niladriprasad and Damia Barbar panchayats of Banapur block in Khurda district which had uncovered violations of the fundamental rights of inhabitants of the area, especially members of the Scheduled Tribe community: "During the course of survey *prima facie* appear[ed] that there seems to be massive exploitation, victimisation by atrocity against women, illegal transfer of property, unauthorised lease of land to commercial plantation companies and other, mis-utilisation of funds without implementation of schemes". The petition also pointed to the sexual abuse of women residents of the reserve forest area by forest officers and members of the Central Reserve Police Force (CRPF) and regular searches of villages and arrests by CRPF and local police.

Members of *Ekta Parishad* interviewing *adivasi* villagers
© Private (AI use)

The petition requested that the area be declared an "identified area" under rule 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 (see Chapter 2 above) and directions be given under Rule 6(i) (iv) of the Act "by protecting the rights of the petitioners who are working for the S.T. communities and real sympathisers of the victims of S.T. communities and people". The organizations filed a further petition arguing that "the Petitioners as well as aggrieved S.T. Communities are apprehending that by filing such Petition their life may put in danger or they may be tortured more by the alleged persons" and requested protection under Rule 6(i) (iv). Amnesty International has received disturbing reports that following the filing of the petitions

in the High Court CRPF and forest department officials have indeed harassed *Ekta Parishad* activists and *adivasi* people.

On 4 November 1997, when Gangi Reddy, Director of the Rural Reconstruction and Development Society (RRDS) (a social action and community development organization working with *dalits*, *adivasis* and women in Nellore district of Andhra Pradesh) was returning from Gudur where he had been on business, he was attacked from behind and beaten with sticks and rods after getting off the bus at Saidapuram. His left hand was fractured. He recognized his attackers as relatives of a person with whom *adivasis* had been in conflict over a piece of land. Earlier that year RRDS had became involved in the dispute in Kammavaripalli village in Saidapuram*mandal* [administrative area]. Some land belonging to *adivasis* was being sought after by one Siddamma with the backing of a powerful local landowner, politician and moneylender. The *adivasis* alleged that he was changing land records in favour of Siddamma. The *adivasis* had voted against him in Panchayat elections in 1995 and they allege that he was bitter about this. Around 65 *adivasis* were dependent on the area of land which was five acres. Gangi Reddy represented the *adivasis*' case before the District Collector and the Revenue Divisional Officer. A *dharna* was organized in Gudur which led to the Revenue Divisional Officer (RDO) visiting the area and declaring that the land belonged to the *adivasis*. However the case went to court and Gangi Reddy provided support to the *adivasis* in this struggle.

Gangi Reddy went to the police station immediately after the attack on 4 November and made a complaint and was admitted to the Government Hospital, Gudur. He was discharged from hospital on 30 November. Siddamma's family lodged a complaint with police that Gangi Reddy had tried to attack and rape Siddamma's mother. This complaint was immediately lodged as an FIR against Gangi Reddy under sections 354 and 373 IPC[70]. There was much protest at the harassment of Gangi Reddy. A hunger strike was held for several days. Siddamma's family also tried to hold a rally by allegedly paying people to attend. They called for the arrest of Gangi Reddy and released a pamphlet stating "Who is Gangi Reddy? Why he is coming to Sydapuram? He is creating problems in the villages. He is a *Naxalite*".

The branding of *adivasi* activists as *naxalites* is commonplace. In Thane district of Maharashtra, the *Bhoomi Sena* [land army], an organization of *adivasis*, mainly landless labourers, founded in 1970 which organizes tenants for their rights to land under the Tenancy Act as well as organizing *adivasis* on issues of minimum wages, corruption, administrative abuse, bonded labour and forest rights, has been accused of being part of a separatist movement called "*Hamara Gaon Hamara Raj*" [Our Village Our Rule]. An article which appeared in the *Indian Express* on 17 August 1999 stated "unrelated violent incidents in the last three months in Thane district have led to the police to believe that Bhumi Sena a suspected front of a *Naxalite* group is gradually rearing its head again in the forests of the district". "*Hamara Gaon Hamara Raj*" is a slogan of the *Bhoomi Sena* for implementation of the Panchayati Raj (Extension) Scheduled Areas Act of 1997 which provides for self-rule for *Gram Sabhas*.

In 1986, residents in Surguja district of Madhya Pradesh, bordering the state of Bihar, were notified that land was to be acquired for the establishment of the Semarsot Wildlife Sanctuary, to be

[70] Assault or criminal force on a woman with intent to outrage her modesty and buying a minor for purposes of prostitution.

financed by the World Bank. At this time there was much local protest and the project was not pursued for several years. However, on 28 October 1996, a second notification was issued, declaring that 43,000 hectares of land would be acquired, directly affecting 51 villages and displacing 35,000 people, 85% of them *adivasi* people. As part of the protests against this move, the people organized a movement called the *Jan Sangharsh Samiti* (JSS) [Committee for People's Struggle] made up of several local committees. The JSS held meetings, submitted a memorandum with thousands of signatures, held demonstrations and met with the Chief Minister. The JSS then began a program of organized hunger strikes, demonstrations and a non-cooperation movement.

Following a mass meeting of *adivasis* on 10 June 1997 at Dhorkhana village to discuss the issue of village self-rule, a group of 12 activists of the JSS were attacked and beaten. At a forest checkpost in Awadih village, a forest guard and several other armed men reportedly attacked the activists and damaged the jeep which they were travelling in. The left hand of Dharmu Ekka, Chairman of the JSS, was broken and the left leg (fibula) of Shravan Kumar Gupta was broken. The activists were taken to the Government hospital at Balrampur where doctors reportedly refused to treat them and they were left unattended for 18 hours. After repeated requests they were taken to the District hospital in Ambikapur, 80 kms away. There doctors refused to treat them once more as it was after 6pm. They were given x-rays only the next morning and subsequently went to a private hospital.

The forest guard subsequently filed a FIR in which he stated that the activists had attacked him and that he had been forced to beat them. He also alleged that the activists were involved in *naxalite* activities in Bihar. The activists were granted anticipatory bail as a result of the case being filed against them but the case against them is continuing.

4. HUMAN RIGHTS DEFENDERS WORKING AGAINST CHILD AND BONDED LABOUR

Bonded labour, a form of slavery, is illegal in India. Article 23 of the Indian Constitution prohibits the use of forced labour, and bonded labour is specifically outlawed under the Bonded Labour System (Abolition) Act, 1976 as well as international human rights treaties of the UN and International Labour Organisation to which India is a party. Child Labour is also prohibited under the Child Labour Prohibition and Regulation Act, 1986. Despite this, the practice of child and bonded labour continues in many states of India. The Acts prohibiting these practices are routinely not implemented at the local level. Employers are often able to ensure that police turn a blind eye to their activities, labourers are often unaware of their rights and police themselves are often unaware of the provisions of the Acts.

A number of human rights organizations in India are involved in campaigning against bonded and child labour and filing cases for their release and rehabilitation. While Amnesty International recognizes that several government initiatives are being undertaken to abolish child and bonded labour, it is concerned that a number of individuals and organizations working for the abolition of child and bonded labour have faced threats and harassment in carrying out this work and require the full protection and support of the state in this work.

Sankalp, an organization working in Shankergah in Allahabad district of Uttar Pradesh started working on child labour in the area but received so much information on bonded labour (engaged in Silica sand-mining) that they took on this issue also. In early 1998 they approached the District Magistrate with an application concerning the existence of bonded labour in the district. The response of the District Magistrate was that there had been no bonded labour in the district for 20 years.*Sankalp* got together several case histories of bonded labourers and presented them to the district-level Bonded Labour Vigilance Committee (appointed by district administration under the Act). The Committee visited the area and heard the testimonies of several bonded labourers. A lawyer on the Committee persuaded the Committee to pursue the issue and a case was registered under the Act. These actions have led to the freeing of eight villages in the district. However, 46 villages remain under the control of the Raja of Shankergah.

In three of the liberated villages, the villagers -- mainly Khol tribals -- have, through selling possessions and borrowing money, acquired ownership of the land on which they live and work. They have also attempted to send their children to school to draw them away from labouring for the Raja as they had always done. However, these actions have reportedly upset the Raja who is now challenging their right to own the land. The lawyer acting on behalf of the villagers has received several threatening phone calls urging him to stop pursuing the case and the bonded labourers themselves have also reportedly received repeated threats from contractors.

On 10 December 1999, Volunteers for Social Justice filed cases with the District Magistrate for the release of Amar Singh and another bonded labourer, Charan Singh, who were bonded to a landlord in the village of Dhingi *Tehsil* Nabha. As no action had been taken to release the two men by late December, they took refuge in the offices of Volunteers for Social Justice. Amnesty International received worrying reports that police had threatened the men's relatives at the behest of landlords. Amar Singh's brother-in-law and Charan Singh's son-in-law were reportedly picked up by police and

threatened with imprisonment if the two men did not return to work or repay the debt they owed to the landlords.

At around 7am on 7 February 2000 several landlords went to the office of Volunteers for Social Justice -- a human rights organization based in Phillaur, in the Jalandhar district of Punjab, working on behalf of bonded labourers -- asking for its Coordinator Jai Singh, who was not there. At around 12.30pm several landlords confronted his daughter and Amar Singh (who had taken refuge with the organisation) outside the office. After an argument Amar Singh ran to the office for help. The landlords followed him and reportedly forced their way into the office and attempted to abduct several other bonded labourers who were in the offices. They reportedly beat one of the bonded labourers before they left.

Volunteers for Social Justice called the local police immediately. It is not known if the police recorded a case, but after media reports and public pressure police visited the offices of Volunteers for Social Justice on 9 February to take written statement from those present on 7 February.

The incident appeared to be the latest in a series of events in which bonded labourers and those defending their rights in the area had been harassed and threatened by vested interests. Members of Volunteers for Social Justice had received threats on previous occasions.

Those seeking to promote the rights of children and to campaign against the use of child labour have also become the victims of human rights violations.

In February 1997, child labour activists held demonstrations in the streets of Ferozabad, Uttar Pradesh, calling for the immediate implementation of Supreme Court directives passed in December 1996 which upheld the law banning child labour in several industries in India and required a Rs20,000 fine on employers for the rehabilitation of child labourers. It is alleged that the glass and bangle industry, in connivance with the district administration, has ignored Supreme Court directives and Indian legislation banning child labour and continued to exploit children.

Following these protest marches, members of the *Bachpan Bachao Andolan* (BBA -- a national organization calling for an end to child labour and affiliated to the South Asia Coalition on Child Servitude) set up a temporary camp outside the office of the District Magistrate, Ferozabad. Dilip Sevarthi, head of the Ferozabad unit of the BBA, undertook a hunger strike.

On the evening of 19 February 1997, police attacked several of the activists with *lathis*. Two of the activists -- Dilip Sevarthi and Thakur Das -- received severe blows to the head. A third activist -- Ram Bahadur -- was taken into custody. Dilip Sevarthi and Thakur Das were reportedly refused medical treatment from local hospitals and private clinics which were reportedly acting under instructions from the local authorities. The two men were subsequently arrested on 24 February under sections 147 (Punishment for rioting), 323 (Punishment for voluntarily causing hurt), 332 (Voluntarily causing hurt to deter public servant from his duty), 353 (Assault or criminal force to deter public servant from discharge of his duty) and 504 (Intentional insult with intent to provoke breach of the peace) of the IPC and held in Agra Jail. They were released on bail on 28 February.

5. WOMEN HUMAN RIGHTS DEFENDERS

"The growing strength of the non-governmental sector, particularly women's organizations and feminist groups, has become a driving force for change. Non-governmental organizations have played an important advocacy role in advancing legislation or mechanisms to ensure the promotion of women. They have also become catalysts for new approaches to development. Many governments have increasingly recognized the important role that non-governmental organizations play and the importance of working with them for progress -- yet, in some countries, governments continue to restrict the ability of non-governmental organizations to operate freely."
[Beijing Declaration and Platform for Action -- UN Fourth World Conference on Women, September 1995, paragraph 26]

For women in India the challenge in defending human rights is compounded by gender discrimination inherent within traditional societies as well as within state structures. Women are often condemned by their own families as well as their community for speaking out against human rights abuse. When they seek help from the state to enable them to carry out their legitimate activities they are often confronted with further discrimination from the criminal justice system and from the state machinery.

Despite these hurdles women have played an extremely active role in India in promoting and protecting human rights and are often in the front line of human rights defence. Women have forcefully lobbied for measures to address discrimination in the political, social and cultural spheres and are increasingly engaged in promoting and protecting social and economic rights at the grass-roots level, whether through local government or non-government development programs, protest movements or awareness-raising. Women have been at the forefront of campaigns against the sale of liquor in several states which is seen as a social evil leading directly to economic deprivation and physical violence within their families. As women are the most vulnerable amongst all the marginalised and socially deprived sections, it is not surprising that women are also in the forefront of many struggles launched by these sections of the community.

Far from demonstrating the Government of India's adherence to articles of the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention -- to which India became a party in 1993), particularly Article 5 calling on parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women", information received by Amnesty International concerning the harassment of human rights activists defending the rights of women, demonstrate a pattern of inaction on the part of the state machinery as well as direct connivance in the harassment.

In January 2000, India's initial report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) was heard. In its concluding observations, the Committee expressed concern that "despite the willingness of the Government to work with NGOs and women's groups, women activists and human rights defenders are exposed to violence and harassment in the

communities in which they work". It urged that the Government of India strictly enforce the law and protect women activists and human rights defenders.[71]

> ***"The struggle begins at home... and intensifies in society... and is the hardest against the state and the police."*** [A woman human rights defender speaking at an Amnesty International meeting held in India during 1999]

Women have been vocal in calling for greater consultation, access to information, and the halting of "development policies " which threaten to destroy their way of life and their family. Their movements are often viewed by the state to be in direct opposition to policies of economic development and they are often met by force in police actions to remove protestors. Such action against women protesters has been highlighted in well known incidents in opposition to the development of the Narmada River as well as the construction of the Enron power plant in Maharashtra. In a report on one incident in relation to the development of the Narmada River, the National Commission for Women commented: "This violence, accompanied by vulgar and sexual abuse, is a big blow to the empowerment of women who have, for the first time, come out of their homes to protect their right to life."[72]

The challenges faced by women human rights defenders in India emerge at several levels. The harassment they face is often extremely personal and based on their gender. Assumptions are often made about the morality of women human rights defenders who tend to travel alone or in groups in the course of their work.

The problems of women human rights defenders also extend to problems faced within the organizations that they work for. At a meeting held with human rights defenders in India during 1999 a women's activist complained that women were increasingly used as human shields by organizations to protect victims but that there was no concomitant decision-making power given to women on policy and other critical issues.

A women's rights activist in the north-east described in a meeting with Amnesty International how her husband -- a government employee -- was summoned by his superiors and lectured on his inability to control his wife and his promotion withheld. "*A time came when the staunchest supporter of the movement, my own friends and colleagues advised me to make compromises for the safety of my family.*"

An *adivasi* activist told of how her husband had complained bitterly about her human rights work and the effect it was having on their family (because of the harassment of forest officials). Her refusal to give up the work led to their eventual separation and the loss of her home to her husband.

On 22 September 1992, Bhanwari Devi, a *saathin* (village development worker) working to eradicate child marriage with the state-sponsored Women's Development Programme in Bhateri village, Rajasthan, was raped by five men of a higher caste. Bhanwari Devi is a *dalit*. The rape was

[71] CEDAW/C 2000 I CRP.3 Add, para 57 & 58.

[72] Extract from the Conclusions of the National Commission for Women's "Report of the Inquiry in respect of violence, arrest and use of force by police and others against women demonstrators at Maheshwar Hydel Project Site on 22 and 23 April 1998", dated 26 May 1998.

widely seen as punishment for her actions in challenging accepted social and cultural norms. As well as highlighting the vulnerability of women human rights defenders, her case demonstrates the struggle for redress for women in a discriminatory system.

The police initially refused to record Bhanwari Devi's statement. She was also initially prevented from undergoing a medical examination. After much protest, the government ordered an inquiry to be carried out by the Central Bureau of Investigation. It finished its investigation in September 1993 but was reported to have subjected Bhanwari Devi to excessive questioning about the incident. It found Bhanwari Devi's allegations to be true and chargesheets were filed against five men. The trial began in a lower court only in October 1994. In a verdict given in November 1995, the Court found that the delay in filing her complaint with police and in obtaining a medical examination indicated that she had made the story up. Shockingly, it commented that the incident could not have taken place because upper caste men, including a brahmin, would not rape a woman of a lower caste. The men were acquitted of the charge of gang rape but convicted of minor crimes. An appeal against this judgement was lodged in the Rajasthan High Court which is still ongoing to date. Bhanwari Devi has been ostracised from the village community since the incident in 1992. Throughout, constant pressure has been put on her to withdraw the case by members of the local community as well politicians.

In 1995, in light of Bhanwari Devi's case, women's groups in India expressed concern about the impact on women human rights defenders of their increasing empowerment.

"Bhanwari's case will set a precedent for numerous others working as agents of change at the rural level as well as like programmes concerned with women's empowerment around the country. With the growth of such programmes a fall out is inevitable since empowerment of one gender assumes disempowerment of the other. The natural consequence will be a higher incidence of sexual harassment and violence towards women."[73]

This concern led to the filing of a writ petition in the Supreme Court by NGOs regarding the broader issue of sexual harassment at the workplace.[74] Referring directly to the UN Convention on the Elimination of All Forms of Discrimination against Women, the Supreme Court provided a definition of sexual harassment and set out binding guidelines "enforceable in law until legislation is enacted to occupy the field" to prevent this abuse.

In areas of the north-east where there is armed conflict between armed groups and the state and where civilians are regularly caught between the two, women have been at the forefront of movements for peace and human rights defence. In Manipur, adult women in villages throughout the state have spontaneously mobilised in response to human rights violations. Known as *Meira Paibis* [torch bearers], they gather as soon as an incident has occurred and take out demonstrations, lobbying the authorities for redress. In the course of these activities they have regularly been ill-treated by police and security forces (see also Casesheet 11).

---

[73] *Indian NGO Report on the Women's Convention*, published by the Coordination Unit for the World Conference on Women - Beijing'95, December 1995, p.123.

[74] Vishaka and others, Petitioners vs. State of Rajasthan and others, Writ Petition (Criminal) Nos. 666-70 of 1992, D/- 13-8-1997.

On 16 October 1999, *Meira Paibis* involved in a peaceful protest against the killing of ten civilians by members of the Central Reserve Police Force at Tonsem Lamkahi on 3 October, were beaten and several received severe injuries. Two of the women gave the following testimonies[75]:

Ms Leichombam Ongbi Ramabati: *"As I got tired, I stayed back at Moirangkhom Leipung School. When the marchers returned back, I again joined them. After a while a few police vehicle came charging towards us. We heard their siren alarm. We got helter-skelter ran into a shop to hide myself, but it was already packed with police men. I was headed towards a nearby house when some policemen caught me. They gave a hard blow with their rod on my left arm. Their rods were tipped with metal. I managed to enter the house. It was only on reaching the house that I realized that I was bleeding."*

- Human Rights Alert, Manipur

Ms Leishram Prema Devi: *"As the Singjamei group was returning from peaceful protest march, a police team... dispersed the protestors from behind... We tried to brave the police threat but as their pressure mounted, we jumped into the road-side ditch for safety and hid. All of a sudden a severe sharp blow fell on my left temple and I cried out in pain. The policemen did not hit us again but threatened us to leave the spot immediately or else face the consequences".*

- Human Rights Alert, Manipur

[75] The testimonies were given to members of the Manipur human rights organization Human Rights Alert, during an Amnesty International mission.

Attempts by women to seek redress through the criminal justice system are regularly frustrated. Unless supported by male relatives or a strong social group, women often find themselves at a severe disadvantage within the system. Given that women often approach the criminal justice system in an attempt to find refuge from violence within their own family or community and must often do this alone and in the face of strong societal pressure, access to redress is strongly weighted against them. The majority of women are too scared to go to the police initially to report a crime. In many cases they are simply turned away, but in too many they are subjected to further abuse. This problem has been recognised by the authorities but there has been little attempt to put in place effective measures to remedy the situation including training or bringing state agents who are accused of such conduct to justice.

Outside the formal criminal justice system, women in India can turn to other bodies for support and partial redress. While welcoming the existence of a large number of active non-governmental and voluntary organizations which provide shelter, legal and emotional support, and temporary economic support to women in the absence of adequate state structures, Amnesty International is concerned at the vulnerability of such initiatives to pressure from families, police, community or state. The organization believes that there is clearly room for discussion on ways in which the state can address the abuse of women's rights through actively supporting the work of voluntary sector organizations.

6. HUMAN RIGHTS DEFENDERS FROM RELIGIOUS MINORITY COMMUNITIES

Many human rights defenders from religious minority communities[76] work on a range of human rights issues not just related to the human rights of the communities from which they come. In this way they are subject to the same problems as human rights defenders working on specific issues or more generally as described in other chapters of this report.

However, the identification of human rights defenders as coming from specific minority communities has brought many specific problems for these human rights defenders. This in itself indicates the discriminatory attitude of the state and other actors towards human rights defenders from minority communities. In addition, human rights defenders also face alienation from their own community by raising issues which challenge traditional religious norms. They are caught between two conflicting pressures.

Article 1(3) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) states:
Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Right-wing Hindu political groups and associations including the *Rashtriya Swayamsevak Sangh* (RSS) [Association of National Volunteers], *Vishwa Hindu Parishad* (VHP) [World Hindu Council] and *Bajrang Dal* [trained militant wing of the VHP] which have links with the ruling BJP have failed to clearly denounce acts of violence against members of religious minorities including NGOs and have made public statements which might have incited individuals to violence. In recent years, many social action groups and non-governmental organizations have been subjected to harassment and attacks on the basis of their Christian of Muslim association. Many involved in activities such as working with women who have been subjected to domestic violence, have been accused of converting those they aim to help, often by extremist Hindu groups which in some areas wield influence over police and other aspects of the administration.

An organization in Allahabad in Uttar Pradesh has been targeted for attack by right-wing Hindu groups. *Sahyog*, a legal cell operating under the Diocese of Allahabad, runs a short stay home for women-in-crisis. The home is run by Sisters. Many women suffering from domestic violence stay in this home. In January 1998 they were charged by *Bajrang Dal* activists of kidnapping and converting two girls who were living at the home. In late 1998, a Transit Home for Migrant Child Labour run by *Sahyog* was targeted by right-wing Hindu groups. In January 1999 after a woman found refuge at the short stay home alleging severe domestic violence, her husband visited the home and

[76] For the purposes of this report, Amnesty International has defined religious minority communities as in the main, non-Hindus including Muslims, Christians and Sikhs. However, it acknowledges that in some areas of India, Hindus themselves are a minority such as in Jammu and Kashmir.

threatened to use the influence of the VHP and the Bajrang Dal to prevent the work being carried out by *Sahyog*.

The rhetoric of national security of the present government which has been overtly linked to loyalty to the Hindu religion by such groups has led to the increased labelling of non-Hindu human rights activity as 'anti-national'. It is almost as if human rights defenders from religious minority communities have to prove their citizenship first before they can carry out the work as human rights defenders. The case of Iqbal Agwan, President of the Institute for the Development of Youth, Woman and Child (see Casesheet 7) is illustrative of this problem. This attitude towards human rights activity based on religious discrimination which ignores the fundamental principles on which the UDHR was based -- that all human rights should be guaranteed to all, regardless of their religion[7] -- has led to attacks on several members of religious minority communities.

Much of the violence against Christians in recent years has centred around deprived areas of India such as the Dangs district in Gujarat, where Christian missionaries and other Christian-based organizations have traditionally carried out development activities with *adivasi* and *dalit* communities, organizing health and educational services. There are concerns that the real reason behind the attacks on Christian communities is opposition to their work in support of the empowerment of the socially and economically disadvantaged, which has threatened local powerful interests. Amnesty International is concerned that at the same time as committing itself to a "National Plan of Action for Human Rights Education" as part of the UN Decade for Human Rights Education (1995-2004), the Government of India should take all steps to ensure that those engaged in human rights education and awareness raising activities should be able to operate freely and without freedom of threat and harassment.

Allegations that organizations have been engaging in conversions is used as a tool to alienate them from the community they work with. In March 1999, the office of the social organization *Navsarjan* in Vadodra in Gujarat was attacked, allegedly by members of the VHP. *Navsarjan* alleges that the VHP activists carried out the attack at the instigation of local landlords who were angry at *Navsarjan*'s involvement in securing minimum wages for agricultural labourers, the majority of them *dalits*. Several women doing tailoring work in the *Navsarjan* office (as an alternative to working in the houses of landlords where they are reportedly paid Rs.7 a month) were dragged and kicked by the attackers. When they went to the police to file a complaint they were reportedly abused. A complaint was only filed after the Home Minister himself intervened having met with office-holders of *Navsarjan*. The landowners are reported to be

Article 6 of the Human Rights Defenders Declaration:
Everyone has the right, individually and in association with others:
(*b*) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

Article 15 of the Human Rights Defenders Declaration:
The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education...

[7] Article 18 of the UDHR states: "Everyone has the right to freedom of thought, conscience and religion".

supporters of the BJP and have accused *Navsarjan* of carrying out conversions to Christianity. While the head of *Navsarjan* is a Christian, the majority of *Navsarjan* activists are not Christian and the work of the organization has no religious basis. The incident had a negative impact on the work of *Navsarjan*. Several women withdrew their money from the savings societies organized by *Navsarjan* after rumours spread that they would soon be leaving the area.

Amnesty International believes that the Indian Government has an obligation to guarantee all its citizens the right to physical security and protection against violence, whether inflicted by state officials or by other individuals or groups and has called on all state and central authorities to take all necessary steps to prevent further acts of violence against members of religious minorities.

7. HUMAN RIGHTS DEFENDERS IN ARMED CONFLICT

"... During our one hour meeting Jalil narrated how helpless he felt after the attempts on his life by the government militants accompanied by Rashtriya Rifles and how alone he braved the situation and rushed to Delhi, petitioned to hundred embassies of different countries for his safety. He had also met Indian human right groups and apprised them about his ordeal. He expressed satisfaction about his campaign and even stated that if he had not taken these measures he was gone. He was content and satisfied and under the impression now he is safe and [the] ordeal is over... we agreed in principle for a coordination of human rights activists in the valley which had failed twice in [the] past and also it was agreed that efforts should be made to condemn the human right excesses, committed by the violators who-so-ever it may be: no selective condemnation. We decided that in future if any human rights activist is in trouble a collective effort would be made for providing him psychological support..."

[An account by a human rights defender in Jammu and Kashmir of his last meeting with Jalil Andrabi March 1996. Two days later Jalil Andrabi was abducted and later killed]

Since independence, India has seen several armed conflicts[1] affecting parts of the country. Thousands of Indian armed and paramilitary forces are currently deployed within the country's borders to suppress armed insurgencies in states of the north-east and Jammu and Kashmir. In addition, law enforcement agents are engaged in systematic security operations against *naxalite* and other Maoist groups in several other areas of India including Andhra Pradesh and Bihar. Many of these conflicts have continued for many years with a high cost to human life on both sides as well as civilians caught between the two. There have been widespread reports of human rights violations in these contexts by members of the armed and paramilitary forces as well as police forces. Amnesty International has documented disturbing patterns of human rights violations in Punjab, Jammu and Kashmir and areas of the north-east for many years demonstrating a habitual disregard for the rule of law by law enforcement agents. At the same time, armed groups have been responsible for torture, hostage-taking and killing of civilians, in contravention of international humanitarian law (see below).

Human rights groups, many of which may have operated under "normal" conditions before the conflicts erupted, have had to adapt to the changing circumstances and face the risks involved in raising human rights concerns in a situation of often violent conflict. In discussion with human rights defenders working in areas of armed conflict during 1999, various issues were highlighted as being particular problems faced by them.

Perhaps most strikingly, human rights defenders operating in areas of armed conflict in India have found that there is no room for dialogue or peaceful dissent -- either with the state on one side

[1] Amnesty International uses the term "armed conflict" in relation to areas where it has concerns about certain abuses by armed political groups regardless of the level or nature of the conflict involved: the organization does not suggest there is any particular status to the fighting in question by using this term. International humanitarian law standards apply to international armed conflict and to specific categories of internal armed conflict, while providing the basis for minimum humane standards for fighting which falls far short of this. Amnesty International believes that political groups that resort to arms should abide by the standards set out in Common Article 3, paragraph 1(a), (b), and (c) whatever the extent of their resort to armed violence, and whatever the level of fighting or violent confrontations with the government.

or the armed opposition on the other. The middle ground – where normally human rights groups as part of civil society would operate – is eroded.

Governments are quick to condemn human rights defenders as politically in league with the armed opposition, as defending the rights of "terrorists" and of exaggerating facts for political ends. In communications between Amnesty International and the Government of India concerning the human rights situation in Jammu and Kashmir, the Government of India has openly questioned the credibility of human rights defenders, pointing to political affiliations and implying that documented human rights violations are a result of conflicts between armed groups. Amnesty International does not believe that such responses are meaningful when not supported by the findings of independent and impartial investigations.

Human rights defenders in areas of armed conflict are regularly harassed by the state because of their activities and restrained from carrying out their professional as well as their human rights activities. In Andhra Pradesh in June 1997, a letter was issued by the Government of Andhra Pradesh to Universities in the state to take disciplinary action against teachers and faculty members who were associated with the Andhra Pradesh Civil Liberties Committee (APCLC -- a well-respected human rights organization). As a result five individuals associated with the Osmania University, Krishnadevarya University and Nagarjuna University were requested to disassociate themselves from the APCLC (see also Casesheet 8).

In Assam, human rights defenders associated with the *Manab Adhikar Sangram Samiti* (MASS) [Human Rights Action Committee] -- many of them journalists -- have been regularly detained on charges of having links with the United Liberation Front of Assam (ULFA), an armed opposition group. To date, none of those detained has been convicted. In August 1997, four human rights defenders and journalists were arrested after speaking out against the establishment of a Unified Command (under which increasing powers were granted to the armed forces in Assam) and against government corruption. They were repeatedly charged with having links with ULFA and publishing statements issued by such groups. Three of them -- Ajit Kumar Bhuyan, Lachit Bordoloi and Prakash Mahanta, all members of MASS -- were subsequently charged under the National Security Act, which allows for detention without trial on loosely defined grounds of national security (see Casesheet 9).

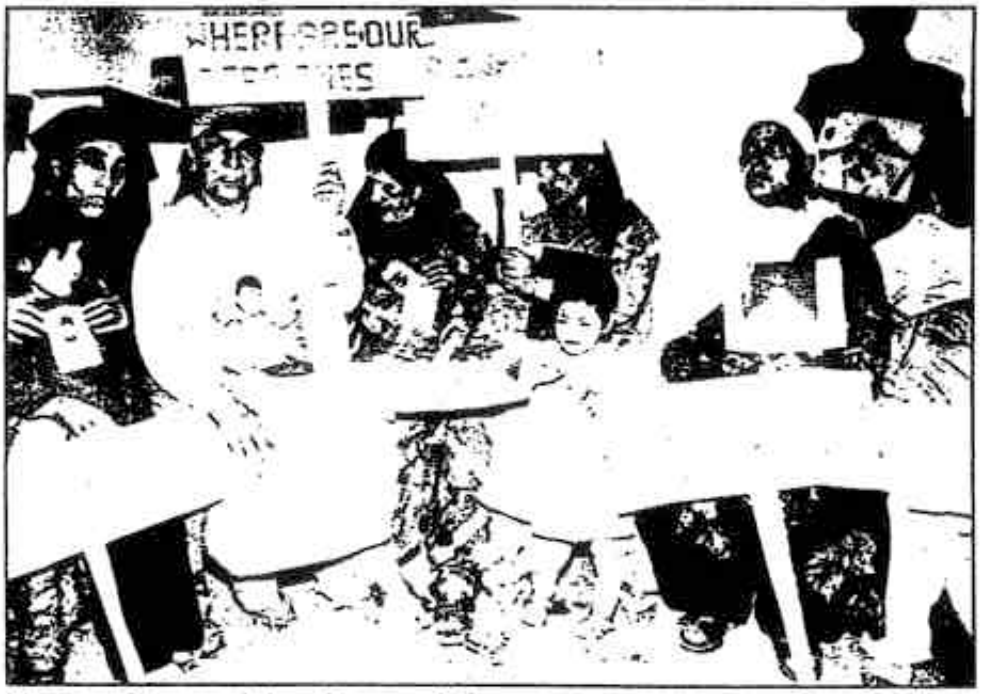
In June 1999 Asish Gupta, Vice-Chair of MASS and Secretary General of the North East Co-ordination Committee on Human Rights (NECOHR), was arrested in Assam in connection with a criminal case. A few days later an order for his detention under the NSA was issued by the Government of Assam. The order expressed fears that there was a possibility that Asish Gupta would be released from judicial custody and argued that if released it was likely that he would "again indulge in activities prejudicial to the maintenance of public order as well as the maintenance of security of the State". The grounds for detention led Amnesty International to believe that Asish Gupta may have been detained solely as a means of preventing him from carrying out his activities as a journalist and human rights defender. They included reference to a press release issued on 2 June 1999 by NECOHR concerning the situation in Kargil, Jammu and Kashmir. The press release included the following statements:

"NECOHR's stand... is that both India and Pakistan had forcefully divided the Kashmir people into two. The two governments i.e. the Pakistan and Indian government are in fact the intruders and violators of the rights of the people of Kashmiri in the right to self-determination.

NECOHR strongly believes that only Kashmiri people have the right to decide their own future and this is not in the hands of India or Pakistan to interfere in this decision.
NECOHR strongly condemns the ongoing war and appeals to the United Nations and the international community to immediately intervene and seek a plebiscite among the Kashmiri people to decide their own future. Only this could bring about a lasting solution and peace to the struggling people of Kashmiri".

Asish Gupta was detained under the NSA for almost exactly six months. In November 1999 he was granted bail in cases against him under the IPC and the Unlawful Activities (Prevention) Act. However, on 16 December, in response to a writ petition, the Guwahati High Court ordered his release under the NSA, judging his detention illegal.

The ordinary criminal law (see Part II, Chapter 1) as well as special legislation is used to prevent demonstrations or even gatherings of victims or their relatives.



Members of the Association of Parents of Disappeared Persons in Jammu and Kashmir.
© Nissa Ahmed, *The Hindu*.

In Jammu and Kashmir, meetings of the Association of Parents of Disappeared Persons are reportedly held within the High Court premises in order to avoid the need for permission to hold assemblies under section 144 CrPC. Security forces guarding the High Court premises have on occasion reportedly tried to stop parents of the "disappeared" entering the complex. The Jammu and Kashmir Public Safety Act is regularly used to detain political activists peacefully protesting against state policy or human rights violations.

In 1997, an attempt was made by police in Manipur to prevent the All Manipur Students' Union from carrying out a series of activities including debates, symposia and competitions in Imphal between 21 September and 15 October 1997. A press release of the organization had asked that "special emphasis may kindly be given to the problems of Territorial Integrity and the Separate Society of the Nation". Police had argued that this amounted to subversive activity. However, the court ordered that such activities were not illegal in a democratic country. In Manipur in November 1999, police cordoned off a hall in the capital, Imphal, where a meeting was to be held on November 27 to protest against the Armed Forces Special Powers Act. They arrested two volunteers of the Committee Against Atrocities on Civilians (CAAC)*, Kangjam Tombi and Pukhrambam Brogen, who were at the hall preparing for the meeting. The previous day, two CAAC volunteers were arrested while they were distributing badges and pamphlets and were later denied bail. Senior police officials reportedly told human rights activists that it was 'anti-national' to peacefully challenge any law upheld by the Supreme Court of India.

On 23 February, four MASS activists were reportedly arrested by police while putting up posters to advertise a forthcoming meeting of MASS. In protest at these arrests, Dhirawati Choudhury, a MASS woman activist started a fast along with other protesters. Police reportedly beat several of the protesters with *lathis* and tore the clothes of Dhirawati Choudhury. Twelve women protesters, including Dhirawati Choudhury were arrested and taken to Bongaigaon police station where they were allegedly subjected to further beatings. On 1 March Dhirawati Choudhury was detained under the National Security Act but was released on the recommendation of the Advisory Board on 29 March.

> ***"To the extent that we are able to convince society around us that what we are talking of is not Peoples War or LTTE or ULFA or Hizbul-Mujahideen but something else. We can never convince the state... Human rights defenders in armed conflict situations should be able to convince society around them that suppression of these defenders and suppression of Peoples War and LTTE and so on is not the same thing"***
> [A human rights defender speaking at an Amnesty International meeting held in India during 1999]

As the state strengthens the security apparatus in areas of conflict, civil institutions weaken. Political parties are often marginalised and in most cases ignore human rights issues or use them for their own political ends. The media is also pressured into a situation where reporting on human rights violations by security forces is avoided given that supporting the morale of the security forces is considered paramount. This ensures that the public at large (particularly in other parts of India) is ill-informed of the ground situation and therefore the opportunity for debate on human rights issues is severely restricted.

Journalists who have attempted to gather information and report on human rights abuses by either side in the conflict have themselves become the target of attack by security forces and armed groups as well as by "renegades". On 27 June 1997, journalist Surinder Oberoi, was beaten by police after he directed his photographer Tauseef Mustafa to take pictures of the police beating and kicking a woman demonstrator in front of the UN Observer Group office in Srinagar. He was beaten with sticks on his head and shoulders till other journalists intervened. Around 50 local journalists protesting

* The committee had been formed after 10 civilians had been shot dead by the security forces in October.

against this incident on the afternoon of the same day were tear-gassed and some 20 were injured in police beatings. In February 2000, security forces reportedly turned their guns on journalists who attempted to find out what had happened when Ghulam Mohiuddin Najar, a political activist and teacher, released on bail by the Chief Judicial Magistrate, Srinagar, was shot dead by members of the Special Operations Group, a unit of the state police, at the gate to the court.

Civilians in areas of armed conflict often live in such a state of fear and anxiety that they are indifferent to larger issues of human rights protection. With the suspension of traditional forms of human rights protection which exist in civil society -- i.e. questioning by civil society and the media as well as through the political process and the work of human rights defenders -- the balance of power is shifted dangerously towards a spiral of state repression.

In Jammu and Kashmir and Assam, the use of 'vigilante groups' or 'renegades' by security forces is well documented.[10] The security forces have encouraged members of armed groups to surrender their arms in return for rehabilitation and employment. However, in the absence of sufficient funds for rehabilitation or proper employment training programs, many of these 'surrendered militants' have become an unofficial arm of the security forces, carrying out abuses with even more impunity than the official security forces. For human rights defenders, this situation poses great challenges in ascertaining who the perpetrators of violations are and in holding them to account. Such groups operate without uniform or identity badges and the fear they generate is enormous. There is no apparent chain of command and therefore no accountability.

In Jammu and Kashmir such 'renegades' have been responsible for intimidation of human rights defenders on many occasions. A senior human rights activist related to Amnesty International officials how prior to State Assembly elections in Jammu and Kashmir in 1996 he had gone to a village in Badgam district to document an incident in which security forces had destroyed houses and beaten inhabitants. On his return to Srinagar his car was stopped by two 'renegades'. They got into the car with him and drove with him for some time. Eventually they told the driver to stop the car and got out, telling him to drive on. The human rights activist saw this as a clear warning concerning his activities and had not been out of his house to document human rights abuses since that time. He has subsequently left the state.

Human rights defender Jalil Andrabi who was abducted and killed in March 1996.
© Private - AI use

Investigations into the abduction of human rights defender Jalil Andrabi on 8 March 1996 found that it was carried out by members of the security

[10] See Amnesty International's report, *India: Human rights abuses in the election period in Jammu and Kashmir*, September 1996, AI Index: ASA 20/39/96.

forces accompanied by "renegades". The day before Jalil Andrabi's abduction, "renegades" entered the house of senior journalist Ghulam Nabi Khayal in Srinagar. They asked him to accompany him to an unknown destination but he refused. When his wife raised the alarm, they left the house, firing their pistols into the air. Twenty minutes later a hand grenade was thrown at his house. An unexploded bomb was found by police in the compound of his house the next morning.

In Assam, "surrendered" members of ULFA (known as SULFA) have been accused of targeting relatives of members of ULFA as well as human rights defenders including Parag Kumar Das, a prominent journalist and human rights defender, who was killed in May 1996 (see Casesheet 9).

Parag Kumar Das © Chinmoy Roy

In areas of armed conflict human rights defenders are faced with problems of access to areas where allegations of human rights violations are emerging. In Jammu and Kashmir for example, it is extremely difficult for human rights activists to travel far outside Srinagar in any safety. However, most of the human rights violations are reported to be occurring outside Srinagar -- outside the gaze of the international and national media and the scrutiny of human rights defenders. In Manipur, human rights defenders have had problems in accessing areas where human rights violations have taken place due to army cordons. In April 1999 the Chair of the Manipur Human Rights Commission himself was stopped by the armed forces and his vehicle and colleagues searched while engaged in an investigation of alleged human rights violations in Churachandpur district of Manipur. When activists do gain access to victims of human rights violations in remote areas, they are often faced by people living in extreme fear who find it impossible to trust anyone who claims to want to help them. Many refuse to make official complaints or to testify, fearing further reprisal, or even under pressure withdraw earlier testimonies, making it difficult for human rights activists to properly document cases or pursue justice for the victims. In 1997 [exact date and details witheld for reasons of security] allegations of the rape of several women in Jammu and Kashmir reached human rights organizations in the state. However, subsequent inquiries by the NHRC led to the Human Rights Cell of the Army Headquarters in Jammu and Kashmir responding that following investigation by executive and army officers it was found that there was no truth in the allegation. No independent judicial inquiry was carried out in the very serious allegation and the NHRC accepted the government's report and closed the case. Human rights defenders in the state were unable to pursue the case for redress for the victims as they were so terrorised they refused to give

further testimony. In this scenario, human rights defenders are unable to properly monitor the situation and can in some cases lose their credibility as human rights defenders.

The isolation felt by many human rights defenders working in areas of armed conflict cannot be underestimated. In several states of the north-east, access even of Indian nationals is restricted by the Restricted Areas Permit Act which is in force in the state of Manipur. In response to concerns about this Act raised by members of the Human Rights Committee in 1997, the Government of India delegation described it as a necessary "regulation for entries to some of the sensitive border areas of the country which fall in various states... where because of being border areas, these kinds of permits are issued."[81] Access of international human rights monitors has been severely restricted to all areas of armed conflict in India for many years (see Part II, Chapter 3).

This isolation affects not only access to information relating to human rights but also impacts on regular communication channels and the resources necessary to sustain such communication. Communication systems are closely monitored by the state: it is widely acknowledged that mail addressed to human rights defenders is opened and that telephone calls are tapped. An article in the *Indian Express* in 1997 reported that letters arriving in India from certain countries are taken away by members of the Intelligence Bureau and read and monitored before being sent on to their destination[82]. The offices of human rights organizations in Jammu and Kashmir and Assam have been raided and searched by security forces on several occasions.

In publishing this report, Amnesty International acknowledges the personal sacrifice made by scores of human rights defenders in pursuing their work, particularly in areas of armed conflict where the loss of life of human rights defenders has been high. In Jammu and Kashmir, several human rights defenders have been killed, many in circumstances which have never been clarified (see Casesheet 10). The killing of Jalil Andrabi in 1996 led to a high level of anxiety amongst human rights activists in Jammu and Kashmir. Human rights investigation and documentation was brought to a virtual standstill for a period of several months and many human rights activists left the Kashmir valley in fear of their lives. Unfortunately the state policy of harassment and intimidation of human rights defenders proved effective and victims of abuse in areas where they occur on a large scale remained without the advice and support that human rights defenders could have extended.

A human rights defender who still works in Jammu and Kashmir described his reaction to the news of Jalil Andrabi's death in the following way:

"Dumb founded, I could not believe it. We hurriedly jumped into another colleague's car and rushed to his [Jalil Andrabi's] residence. Shell shocked and thoroughly scared a stream of helplessness overtook us. I broke down on the back seat of the car. What was shocking for me despite worldwide appeals, petitions to hundred embassies about the threat to his life, it could not save him".

[81] Government of India delegate during the examination by the Human Rights Committee of India's Third Periodic Report of measures taken to implement the ICCPR, July 1997. From transcript of recording by Amnesty International delegate attending the hearing made with the consent of the Human Rights Committee

[82] *Indian Express* 20 March 1997

In Punjab, scores of human rights defenders were killed or "disappeared" during the conflict there. Members of their families were not spared either. Lawyer Kulwant Singh his wife and two-year-old son "disappeared" after they went to Ropar police station to speak to the Deputy Superintendent of Police concerning the release of a woman and her minor son on the evening of 25 January 1993. Police denied that they had picked up Kulwant Singh and his family and claimed that they had arrested two "terrorists" who had admitted to the murder of the lawyer and his family. The family's car was subsequently found in a nearby canal but the bodies of the lawyer, his wife and son were never found. The High Court of Haryana and Punjab initially rejected a petition calling for an investigation into their "disappearance". However, in December 1993, the Supreme Court ordered a CBI investigation into the incident. In November 1995, the CBI reportedly found four police officers stationed at Ropar police station responsible for the "disappearance" of the lawyer and his family. It also found that police had attempted to implicate another man in the murder of the lawyer and his family and had forced him to make a confession through torture. He was subsequently awarded compensation by the Supreme Court. The Supreme Court also awarded compensation to the parents of Kulwant Singh and ordered the state government to take action against the Deputy Inspector General of Police and several other police officers.

Jagwinder Singh, a 24-year-old lawyer, was taken from his home by the Kapurthala police on 25 September 1992. His wife, Naseeb Kaur, and father who were in the house witnessed his arrest. The next day the Kapurthala and Jalandhar District Bar Associations went on strike to protest his arrest. Lawyers also visited the police but they denied any knowledge of Jagwinder Singh's arrest or whereabouts. State government officials repeatedly promised that his whereabouts would be revealed. These turned out to be false promises and Jagwinder Singh remains a victim of "disappearance" whose fate and whereabouts are unknown. Lawyer Sukhwinder Singh Bhatti has also not been seen since he was abducted by armed men on 12 May 1994 while travelling on a bus from Sangrur to his home village of Badbar. The bus was stopped by armed men in plain clothes reportedly travelling in a van without number plates. The men took Sukhwinder Singh Bhatti off the bus and drove him away in their van. Reports from Punjab suggested that the police were responsible for the abduction, because the unnumbered van was able to travel past two police posts without being stopped. The police denied that he was in their detention. A *habeas corpus* petition was filed in the Punjab and Haryana High Court which in July 1994 ordered a CBI investigation into his "disappearance". In July 1997, it was reported that a constable who was being investigated by the CBI in connections with Sukhwinder Singh Bhatti's "disappearance" had committed suicide in March 1997. Sukhwinder Singh Bhatti was known to have defended young Sikh men reportedly held in Sangrur jail on political grounds.

As in the case of many human rights violations by security forces in areas of armed conflict, the perpetrators of violations against human rights defenders are rarely brought to justice. The killing of human rights defenders in Jammu and Kashmir in the early 1990s (see Casesheet 10) have still not been impartially investigated. The investigation and prosecution of those responsible for the killing of Jalil Andrabi continues over four years after his death. Similarly the investigation and prosecution of those responsible for the "disappearance" of Jaswant Singh Khalra in Punjab continues amidst worrying allegations of state interference with the process (see Casesheet 5).

Human rights defender Jaswant Singh Khalra who "disappeared" in September 1995.
© Private (AI use)

Special legislation in force in areas of armed conflict makes it more difficult for victims of human rights violations and human rights defenders to access justice. In an already difficult situation, the psychological toll that this takes on human rights defenders and those they are trying to help can be extreme.

The Armed Forces (Special Powers) Act, currently in force in Assam and Manipur[33] and Jammu and Kashmir[34] and formerly in force in Punjab[35] provides that "No prosecution, suit or other legal proceeding shall be instituted, except with the 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" (Section 6 and 7 respectively). The Act empowers security forces to arrest individuals and enter property without warrant and to use force -- including lethal force -- to effect an arrest in areas declared as "disturbed". It is widely believed to have facilitated grave human rights violations in areas where it is in force -- in particular extra-judicial executions -- and several members of the UN Human Rights Committee have stated that certain provisions of the Act violate articles of the ICCPR. However, provisions protecting security forces from prosecution have continued to provide for impunity and the Supreme Court in 1997 upheld the constitutionality of the Act[36] including section 6 specifically ordering that *"Section 6 of the Central Act in so far as it confers a discretion on the Central Government to grant or refuse sanction for instituting prosecution or a suit or proceeding against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act does not suffer from the vice of arbitrariness. Since the order of the Central Government refusing or granting the sanction under Section 6 is subject to judicial review, the Central Government shall pass an order giving reasons"*.

All special legislation in force in areas of armed conflict provides for sanction from the central or state government before prosecutions can be initiated against members of the security forces for acts committed under the legislation. While the Government of India has repeatedly claimed at international fora (most recently at the consideration of its initial report to the UN Committee on the Elimination

[33] Its full title being the Armed Forces (Assam and Manipur) Special Powers Act, 1958.
[34] Its full title being the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.
[35] Its full title being the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983.
[36] The Supreme Court finally gave its judgement in a petition originally filed by the Naga People's Movement for Human Rights (NPMHR) fifteen years previously in 1982.

of Discrimination against Women in January 2000[87]) that sanction is regularly granted and that victims of human rights violations have several avenues for redress in areas of armed conflict, this is not borne out by the reality. In Manipur where several Commissions of Inquiry have been established under the Commission of Inquiry Act 1952, the armed forces have repeatedly put barriers in the way of investigation and prosecution, arguing that Commissions of Inquiry appointed by the state government do not have powers to investigate the actions of the armed forces which are under the command of the central government.

Problems of the criminal justice system which limit access to justice throughout India are compounded in areas of armed conflict by various factors including political influence over the judiciary, contempt for legal processes by the administration and security forces and intimidation of witnesses and human rights lawyers by security forces. Even Bar Associations have become politicised and succumbed to political pressure not to pursue human rights issues. Numerous summons to attend court hearings or respond to writs are ignored by the administration and security forces in Jammu and Kashmir and states of the north-east, leaving human rights lawyers attempting to pursue cases in the courts powerless. In October 1994 a judge of the Jammu and Kashmir High Court commented:

"The Police agencies and the administration appear to have thrown to winds the rule of law. All sorts of illegalities are being committed by them and even criminals and terrorists may be ashamed of them. The High Court is replete with such complaints and many of which stand substantiated. Hundreds of cases have been brought to my notice where the detenues are in illegal detention. Despite the strong directions of this court they are not be[ing] released... Scores of cases are pending wherein the detenues have been allegedly done away with after arrest. For years the detenues are languishing in jails/Sub-Jails and interrogation centres without any legal authority. In short, there is total break down of law and order machinery... even this court has been made helpless by the so-called law-enforcing agencies. Nobody bothers to obey orders of this court...."

Amnesty International has most recently documented this phenomenon it its report on "disappearances" published in February 1999[88].

Even in the case of human rights defender Jalil Andrabi, the High Court was forced to issue a contempt notice against the Inspector General of Police for arbitrarily altering the composition of the task force set up to investigate his killing. While the original team had been directed to take instructions in the investigation only from the court and to report to it alone, the team appointed by the Inspector General of Police was ordered to report to him on a day to day basis. An unconditional apology was eventually tendered to the High Court. In addition the post mortem report was not given to the investigating team for a period of over eight months.

[87] "The Act [Armed Forces (Special Powers) Act, 1958] did not grant security forces immunity from prosecution or other legal proceedings. It only provided that prosecution could not be taken up without prior consent of the Central Government. That sanction was invariably granted whenever there was prima facie evidence". *Committee on the Elimination of Discrimination against Women concludes Consideration of India report*. Press Release, WOM 1171, 31 January 2000.

[88] See Amnesty International's report, *India: If they are dead tell us "Disappearances" in Jammu and Kashmir*, February 1999, AI Index: ASA 20 02 99.

As well as the courts, other avenues of redress are severely limited in areas of armed conflict. Section 19 of the Protection of Human Rights Act prevents the National Human Rights Commission from investigating on its own, allegations of human rights violations by members of the armed and paramilitary forces. This restriction applies also to members of the state human rights commissions. In an interview with the BBC in July 1999, India's External Affairs Minister Jaswant Singh stated that "every single" allegation of human rights violation in Jammu and Kashmir was investigated by the NHRC. Amnesty International is concerned that these claims, although not based in fact, are repeatedly made by the Government of India at international fora.[89]

State human rights commissions have been set up in Jammu and Kashmir[90], Assam and Manipur[91] and operate in the midst of armed conflict. The Chair of the Assam Human Rights Commission is also the Chair of the Manipur Human Rights Commission. It has been suggested that there should be only one Human Rights Commission in the north-east covering all states. The Chair of the Assam Human Rights Commission has commented that his task is virtually impossible given that the Commission is not able to investigate allegations of human rights violations by armed and paramilitary forces which operate so extensively in the state. There are similar concerns about the limitations of the Jammu and Kashmir Human Rights Commission whose work has been severely restricted by its resources and statute as well as lack of cooperation from the state government.

The Ahmadi Committee set up in 1998 to consider amendments to the Protection of Human Rights Act (PHRA) was reported to have seriously considered extending the powers enshrined in the Act to allow the Commissions to investigate the actions of the armed and paramilitary forces. Discussions have been held between members of the NHRC and members of the armed forces to find ways in which the redress mechanisms of the armed forces (in particular the process of court martial) could become more open to scrutiny. However, when the recommendations of the Ahmadi Committee were finalised, they restricted themselves to recommending that the definition of armed forces in the PHRA should not include the paramilitary forces, thereby opening up this wing of the security forces to independent investigation by the Commissions. While Amnesty International welcomes this limited move forward, it is conscious of the fact that no action has been taken by the NHRC or by the Government of India to implement any of the recommendations of the Ahmadi Committee despite the fact that they were presented to the NHRC in October 1999. In addition, the fact that the NHRC has recently been forced to go to the Supreme Court to obtain directions to the armed forces to hand over documentation concerning action taken by them against those allegedly responsible for the extra-judicial execution of 37 civilians in Bijbehara in 1993 which they have so far refused to do, does not bode well.

---

[89] Most recently in response to the Committee on the Rights of the Child the government stated: "the National Human Rights Commission set up under the Protection of Human Rights Act, 1993, the State Human Rights Commissions in Jammu and Kashmir and Manipur inquire into all complaints of violation of human rights." (Written replies by the Government of India concerning the list of issues (CRC.C.Q.IND.1) received by the Committee on the Rights of the Child relating to the consideration of the initial report of India (CRC.C.28.ADD.10)).

[90] This Commission was established under the Jammu and Kashmir Protection of Human Rights Act, 1997.

[91] Established in March 1996 and December 1998 respectively.

While the NHRC and some state human rights commissions have in some instances questioned the actions of security forces in areas of armed conflict, these have invariably met with silence or inaction.

The post-conflict scenario of Punjab amply demonstrates the continuing dangers for human rights and human rights defenders when the state fails to address human rights violations or impunity during armed conflict. Several human rights defenders were killed or "disappeared" in Punjab during the phase of conflict between 1979 and 1995. The fate of many remains unknown. Defence of human rights in Punjab is still viewed with suspicion by the state. Although no case of "disappearance" or killing of a human rights defender has been reported since the "disappearance" of Jaswant Singh Khalra in 1996, a large number of human rights defenders continue to dedicate their efforts to uncovering the fate of those who remain "disappeared", by campaigning for truth, justice and reparation and providing a unique and important historical record of past violations, and receive harassment and intimidation for this work. Recent attempts to establish systematic investigative mechanisms by human rights defenders, including the formation of the Committee for Coordination on Punjab and the People's Commission, appear to have led to greater suppression of human rights defenders (see Casesheet 12).

Attacks on human rights defenders by armed groups

While international human rights standards impose certain obligations on states to protect and promote human rights, even in areas of armed conflict, the rules of international humanitarian law prohibit hostage-taking, torture and the deliberate or indiscriminate attack on civilians and those not taking direct part in hostilities and place obligations on armed groups to take concrete steps to avoid such attacks. Armed opposition groups have an international legal obligation to respect fundamental rights.

All parties to a conflict, including armed opposition groups, are bound by the provisions of Article 3 common to the four Geneva Conventions of 1949 which states:
"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

A fundamental principle of the laws of armed conflict is the principle of distinction. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian populations

Amnesty International has welcomed the fact that throughout its discussions with human rights defenders in India during 1999, there was a growing consensus on the need for armed groups in India to abide by international humanitarian law.

As indicated above, human rights defenders operating in areas of armed conflict in India have been subjected to threats and abuse from both sides to these conflicts. Human rights defenders are often treated as "traitors" by armed groups because they fail to openly support the violent methods of the groups or to condone their actions. They are often branded as agents of the state and subjected to violence and intimidation. This undoubtedly puts human rights defenders in an extremely difficult and dangerous position.

In Jammu and Kashmir, several human rights defenders have been attacked by armed groups. They include Parvez Imroz who was shot and injured by unidentified gunmen on 14 April 1995 and Mian Abdul Qayoom, President of the Jammu and Kashmir Bar Association who was shot and seriously injured on 22 April 1995 as he was leaving his home. No investigation was ever carried out into these attacks. Journalists reporting on the conflict have also been subjected to human rights abuses by armed groups in the state. On 7 September 1995 a parcel bomb delivered to the BBC office in Srinagar exploded killing a cameraman Mushtaq Ali and injuring journalist Yusuf Jameel and photographer H.U. Naqash.

In July 1997, social and environmental activist Sanjoy Ghose was taken hostage by members of the United Liberation Front of Assam (ULFA). Sanjoy Ghose was a founder of the Association of Voluntary Agencies for Rural Development-North East (AVARD-NE), a Gandhian organization, working on the island of Majuli, on the Brahmaputra river in central Assam. Activists of AVARD-NE had been the subject of a campaign by ULFA for two months. In mid-May 1997 anonymous posters were put up on the island claiming that members of AVARD-NE were Research and Analysis Wing (RAW) intelligence agents and that they were destroying the indigenous culture of Assam. Members of the editorial board of the AVARD-NE newsletter were later threatened by armed men not to cooperate with the work of the organisation.

Following Sanjoy Ghose's kidnapping, a statement by the Commander-in-Chief of ULFA published in a local newspaper claimed that he had been "arrested" because he was a RAW agent and other intelligence services of the central government and that he was accused of being involved in spreading disinformation about ULFA. It was stated that ULFA was in possession of specific information relating to these allegations, and that Sanjoy Ghose would be interrogated. If found guilty, Sanjoy Ghose would be punished, according to ULFA's internal regulations.

Despite appeals from across the human rights movement in India and abroad[5], he was not released. A series of contradictory statements were issued by ULFA concerning his fate which to date remains unclear. Security forces have arrested several people in connection with his kidnapping and arrests continue. In January 2000 it was reported that one of those accused of the kidnapping of Sanjoy Ghose was negotiating with police for his surrender. In a press statement issued at the end of June 1998, ULFA reiterated its opposition to NGO activity in Assam whom they claimed were working as agents of the central government -- they reportedly threatened "dire consequences" should a visit by Sanjoy Ghose's wife and colleagues to Assam to seek details of his whereabouts proceed.

Many areas of India experience conflict between the state and *naxalite* groups. *Naxalism* was inspired by Mao Zedong and surfaced in India in the late 1960s in Naxalbari, West Bengal, as a revolt against the oppression of the landlord class on poor peasantry, particularly *adivasi* people. *Naxalite* factions have surfaced in many states of India at various times including in West Bengal, Kerala, Orissa, Bihar, Madhya Pradesh and Andhra Pradesh. The movement has been riven by factionalism due to differences over ideology, theory and strategy.

Human rights defenders operating in areas where *naxalites* and other armed Maoist groups are active have faced severe difficulties in carrying out their activities. In Andhra Pradesh, the People's War Group and some of the myriad of other *naxalite* groups are reportedly responsible for intimidating *adivasi* and *dalit* villagers into providing them with food and shelter. Some of these armed groups have viewed human rights defenders engaged in "development" activities with suspicion and compelled villagers to speak out against the work of human rights defenders. This has led in some cases to violent actions against the human rights defenders.

[5] For Amnesty International's appeals, see *India: Amnesty International appeals to ULFA to release prisoner of conscience*, 10 July 1997, AI Index: ASA 20 37 97 and *India: On anniversary -- fate of hostages must not be forgotten*, 2 July 1998, AI Index: ASA 20 14 98.

During the late 1990s, *Samata*, a community-based organization with members from 49 *adivasi* villages including women's thrift societies and grain banks[93] operating in East Godavari district of Andhra Pradesh, was subjected to threats and harassment from the Peoples War Group (PWG)[94].

Samata, which had been operating in the area since 1986, first came into conflict with the PWG -- which had been operating in the area for some time -- in 1989. The PWG accused *Samata* activists of being imperialist agents obtaining money from foreign sources. In an attempt to control the activities of *Samata* the PWG floated a front organization: *Dandakaranya Girijana Rytu Coole Sangam*. *Samata*'s contacts in various villages were replaced by *Sangam* activists and pressure was put on all Samata activists to become part of *Sangam*. The Director of *Samata*, Ravi Pragada and other activists refused.

On 6 September 1991, two *Samata* activists were picked up by the PWG and beaten in Annumarthy village. A message was sent through them to Ravi Pragada to leave the area or face the consequences. On 2 October 1991 due to threats from the PWG, Ravi Pragada moved from the area in order to work with *adivasis* in Paderu agency of Vishakhapatnam district while continuing *Samata*'s activities in East Godavari district through the local people. However, in December 1996 PWG cadres reappeared in the villages in Vishakahapatnam district that *Samata* was working in. In July 1997, the *Samata* team of activists working in East Godavari district was given a deadline of 29 August 1997 to quit.

Following *Samata*'s victory in the Supreme Court in a land case, pressure on the organization and its activists from the PWG reportedly intensified. On 29 August a *Samata* activist was reportedly forcibly detained for two days by members of the PWG and a further message was sent to the organization to leave the area. *Samata* activists withdrew from the area for some time but in early 1998 tension built up when villagers became angry at the violent activities of PWG members in Peddamallapuram village in East Godavari district.

On the night of 16 June 1998, four groups of PWG cadres entered Peddamallapuram village in East Godavari district. A *Sarpanch* [Headman] and a member of the *Zilla Parishad* [District Council] were attacked and killed and several women *adivasis* were beaten. Following this incident, the PWG issued a statement in which it listed the names of several individuals who were on its "hit list". One of those killed on 16 June was on the list, the other was not. The PWG

[93] "Grain banks" are a form of barter system for *adivasi* groups to encourage farmers to save money. People share their grain with the bank. If they require grain they retrieve it with interest. Everything left over is sold and the profit given to the bank.

[94] The PWG was formed in April 1980. It has attempted to unify Marxist-Leninist groups under its umbrella but has always been strongest in the southern and central part of India. Its merger in 1998 with the CPI (M-L) Party Unity in Bihar gave it a foothold in the north. It is reported that there are currently around 18 naxal groups functioning in Andhra Pradesh of which the PWG is the largest with several underground and over ground units. In some districts there is almost a parallel administration with state officials too scared to enter these areas. The PWG was banned by the state government for many years. According to police, during the last ten years the PWG and other "extremist groups" have been responsible for the deaths of 1,960 people, including 1,615 civilians and 345 policemen in Andhra Pradesh.

is subsequently reported to have stated that his killing was a mistake. The names of several *Samata* activists including Ravi Pragada was also on the list.

This appeared to contradict a circular issued in February 1998 by the Central Committee of the PWG which had called for PWG cadres to refrain from using violence against voluntary organizations and others. Fearing that this indicated a lack of clear chain of command amongst PWG cadres, *Samata* withdrew from the area completely following this incident.

Ravi Pragada and other *Samata* activists have also been subjected to threats and harassment by the state including illegal detention and filing of cases against them accusing them of involvement in *naxalite* activities.

Activists in Bihar, where for decades, members of CPI (ML) groups often described as *naxalites* and espousing a Maoist ideology[95], have been organising landless peasants into an armed political movement, have reported that they are squeezed between the administration and other vested interests on one side and the *naxalite* groups on the other. While social activists have been working with low-caste groups through various forms of peaceful protest to pressure the government to institute land reforms, *naxalites* have advocated the use of violence against upper caste landlords as a means of achieving land reform. In opposition to this, private landlord armies have been formed since the mid-1990s, the largest being the *Ranvir Sena*[96] which have been responsible for a number of violent attacks on low-caste communities whom they suspect of supporting the activities of the *naxalites*. Many of those killed have simply been demanding better wages without using violence.

Hundreds of people, mainly *dalits*, have lost their lives in a series of killings and reprisals in recent years. A climate of impunity prevails in the state where corruption is rampant and where there are serious allegations that the police, judiciary and political parties have acted in connivance with private armies such as the *Ranvir Sena*. Successive investigations ordered by the state into massacres of *dalit* communities carried out by the *Ranvir Sena* have failed to reach a conclusion or lead to prosecutions. It is widely alleged that investigating authorities have been unable to pursue investigations due to political interference.

Human rights defenders in Bihar have reportedly been threatened by *naxalites* to join the violent movement and move away from peaceful methods. The leader of the *Mazdoor Kisan Mukti Morcha* [Worker Peasant Freedom Front] has reportedly been beaten at his home by members of the PWG and threatened to leave the organization and to join the violent movement. In addition, those involved in fighting through peaceful means for land rights have regularly become caught

[95] The *Naxalite* groups in Bihar are dominated by the Maoist Communist Centre (MCC), the Communist Party of India (Marxist-Leninist) Party Unity, and the Communist Party of India (Marxist-Leninist) (CPI-M-L) Liberation. The latter has joined parliamentary politics while the Party Unity and the MCC have spearheaded a militant grassroots movement advocating the use of violence and are banned underground movements. In 1998 the Party Unity merged with the PWG (see above) and became known as the CPI-M-L) People's War.

[96] The *Ranvir Sena* is a private army set up by predominately upper caste landlords in 1995 in Bhojpur in response to the increasing politicization of landless agricultural workers. Since then it has reportedly perpetrated a number of massacres.

in the conflict between *naxalites* and landlords, industrialists or the state. In August 1997 despite protests by the *Kutku Doob Shetra Sangarsh Samiti* (KDSSS) [Kutku Submergence Area Struggle Committee], the sluice gates of the Kutku dam were opened and as a result 21 villagers were reportedly drowned. Following this incident, an engineer of the dam, Baijnath Mishra was murdered, reportedly by *naxalites*. However, the leader of the KDSSS, Jagat Singh, was arrested in connection with the murder in August 1999. He is currently on bail.

APPENDIX I
Casesheet 1

Work of human rights defenders threatened because of opposition to industrial projects in Orissa

Industrial development projects in India have been vigorously implemented, affecting large sections of the population who are increasingly being marginalised, particularly through displacement. One such example can be found in Orissa (Rayagada and Koraput districts), where Amnesty International in 1998 and 1999 received worrying reports of attacks on *adivasis* and members of non-government organizations working with them.

Since 1993 several multinational and Indian companies have been involved in the development of mining and processing plants in this region of Orissa which is rich in minerals. A limited company named Utkal Alumina and made up of a division of the Norwegian company Norsk Hydro, the Canadian company Alcan Aluminium and the Indian Aluminium Company (INDAL Ltd) proposed to establish a bauxite mine and alumina refinery. Larsen & Toubro, a large Indian engineering company pursuing joint ventures with multinationals also planned to develop projects in the region. Following the completion of area surveys by the companies, local people began to openly protest against the projects, calling for greater consultation. Families facing displacement or loss of land were reportedly offered monetary compensation amidst allegations that threats of violence as well as inducements were used to persuade families to accept compensation.

Activists from several non-governmental organizations including Agragamee working with *adivasis* in the region in supporting these communities to assert their right to information and their right to livelihood appear to have become targets of police and local gangs acting in connivance with the companies who have a stake in the projects. Several of the incidents of violence which were reported during 1997/98 appear to have been led by individuals who have been seen regularly within a work site established by Larsen & Toubro in Rayagada district and travelling in company vehicles.

In separate incidents on 2 and 3 December 1997 Agragamee field centres in Sunger village (Kashipur district) and Kerpai (Kalahandi district) were destroyed by a gang. Two days after these events, on 5 December 1997, a camera crew of STAR TV, which was in the area to make a film about *adivasi* women, was attacked by a gang, reportedly hired by Larsen & Toubro. In another occurrence on 5 January 1998 around 100 police from Rayagada used *lathis* to beat *adivasis* of Kuchaipada and Sunger villagers under Kashipur block, in the course of evicting them to make way for an aluminium plant. Rather than being taken to hospital, the injured were taken into custody. The National Human Rights Commission (NHRC) inquired into the incident after being informed by the convenor of *Lokshakti Abhiyan*, a local voluntary organisation. Amnesty International does not have any further information as to their findings.

Amnesty International received reports of an incident which occurred on 29 March 1998 in the run-up to a demonstration against the construction of an aluminium processing plant in Kashipur (Rayagada district). Criminal elements reportedly prevented several demonstrators from attending the demonstration while two visiting speakers were arrested, leading to the cancellation of the meeting. Following their release from police custody, one of the speakers -- Rabi Mishra -- was seized by a criminal gang, reportedly hired by Utkal Alumina, and taken to a building (formerly an Utkal Alumina office). His hair, beard and moustache were cut after which he was driven some distance away and forced to walk back on foot. Rabi Mishra allegedly testified that the gang forced him to sign a paper saying that he knew how to make bombs, use

firearms and that he was being paid monthly by the secretary of Agragamee. A response from Norsk Hydro to concerns about this incident put to it by Norwatch (a Norwegion based non-governmental organization) reportedly stated that some of those who took part in the incident were hired by Utkal to do casual labour and that as a result of this incident their assignments with Utkal were suspended. They also made a commitment that the company would implement measures to ensure that personnel working for them behaved properly.

Another of the tactics reportedly used to suppress the protests and as a means of harassment has been the filing of cases by company employees against scores of local people and activists. Cases have also been filed by local people against company employees but none have reportedly been investigated. In some instances it has been alleged that local police have reportedly attempted to persuade local people to modify complaints they have filed with police against criminal elements linked to companies who have participated in violence.

On 16 June 1998 at 3.00am, police from Kashipur police station reportedly entered Agragamee's training centre at Mallijharan village and arrested five male workers of Agragamee. Nimain Champatiray, Nigamananda Swain, Baikuntha Sahoo, Kishore Martha and Nara Jhodia - were charged under various sections of the Indian Penal Code. They were sent to Rayagada district jail where they remained for three days after which they were released on bail. They were allegedly arrested on the basis of testimony from people who have previously been accused by Agragamee activists of attacking their workers.

On 24 December 1998, the Government of Orissa issued a Show Cause Notice to Agragamee. A similar notice was issued to another NGO, Lakshman Nayak Society for Rural Development, on 8 January 1999. The notices threatened the organizations with the withdrawal of official registration and funding on the basis of reports that they had been involved in criminal activities and had incited *adivasis* to violence in an attempt to prevent the establishment of industrial projects in the district. Two more organizations, Ankuran and Women's Integrated Development Agency (WIDA), have been threatened with funding withdrawal.

The Chief Minister was reported as saying that he would ask the Central Government to stop funding the organizations and that he would also try to ensure that they did not receive foreign funds. The Show Cause Notices were issued on the basis of reports that members of the organizations had been involved in criminal activities and had incited *adivasis* in the region to violence in an attempt to prevent the establishment of industrial projects in the district. They appear to have been issued at the instigation of the District Collector and Superintendent of Police of Rayagada district who were reported as saying that those opposing the establishment of aluminium plants in the area should be imprisoned under the National Security Act (NSA), which allows for administrative detention for a period of up to one year. In a report submitted in April 1998, the Collector is reported to have argued that "when the development of the people is at stake, the government has to choose either of the two: continuance of such NGOs or large-scale industrialisation of the district". The notices were still pending by the end of 1999, adversely affecting the ability of the organizations to carry out their development work in the region.

Despite two letters to the Chief Minister of Orissa and a public statement expressing serious concern about the situation, Amnesty International has never received a response from the state government. In subsequent communications with Norsk Hydro, Amnesty International has received assurances that they had raised concerns with the Government of Orissa about the Show Cause notices and that they were committed to ensuring that the rights of those affected by the project were protected. Amnesty International welcomes these assurances.

Firing on protesters followed by further harassment in Madhya Pradesh

In December 1997 Dr Sunilam, National Secretary of the Indian Solidarity Committee on Democracy, Freedom and Human Rights was approached by farmers from Betul district of Madhya Pradesh for help. Heavy rains and disease had led to the destruction of their crops, bringing the threat of starvation to villagers. The non-availability of fodder for cattle had added to their desperate condition. The farmers were demanding compensation for their damaged crops as emergency relief and asked Dr Sunilam to take up the issue with the state administration. Dr Sunilam reportedly advised them to organize as a group and they formed the *Kissan Sangharsh Samiti* (KSS) [Farmers Struggle Committee]. The KSS organized a series of peaceful rallies and demonstrations between the end of December and early January but no action was taken by the administration on the basis of their complaints.

On 12 January 1998 at around 10am, farmers started gathering near the *Tehsil* [administrative unit] office in Multai for a further demonstration. Around 8,000 people were reported to have gathered by 12pm. The local administration had been informed that it would take place although section 144 of the CrPC had been imposed in Multai three days earlier. Armed police with rifles were deployed on the roof of the *Tehsil* Office from where police reportedly began throwing stones at demonstrators. Five teargas shells were reportedly thrown and then police reportedly opened fire without warning. Around 130 rounds were reported to have been fired. Twenty-one people died and over 250 were injured. The majority of wounds were reported to be above the waist. Police reportedly chased after demonstrators and shot them. A curfew was imposed following the incident. A shopkeeper closing his shop was also shot during a ten minute relaxation of the curfew. There are serious allegations that he was shot dead while pleading with the police to spare him. A 17-year-old boy was also shot while watching a nearby cricket match.

As soon as the shooting had finished a curfew was imposed and no-one was allowed to approach the bodies. Police stopped people in the street and an advocate attempting to return home was severely beaten. The injured were sent to Betul in the evening along with the bodies of the dead. The following day the Tehsil office was reportedly washed down with water and whitewashed and police reportedly tried to burn some files in order to establish that the farmers had tried to burn the office. Broken windows which had been hit by bullets were restored.

Dr Sunilam reached the scene of the shooting at around 1pm although police claim that he was present at the start of the demonstration. He was arrested from Multai hospital where he had taken two people who had been injured in the demonstrations, taken to the local police lock-up and beaten. At 11.30pm he was hand-cuffed and taken to a piece of land nearby where he was photographed with guns.

"*The petitioner was taken away in a police vehicle towards Betul with armed policemen, around a lonely place the petitioner was asked to get down within 5 minutes. Sensing the intention of the policemen, petitioner refused to get down from the vehicle fearing encounter but policemen started beating the petitioner till the time he became semi-unconscious. Petitioner was thrown over the bushes and police rifles and cartridges were planted near by him, then police photographer took photographs and a video-film was prepared. Again two gun-shots were fired at the petitioner and empty cartridges were photographed. The petitioner could listen to the discussion going on amongst the police officials in which every police official was asking other, to follow in the instruction of superintendent of police and senior officials from Bhopal and kill the petitioner but nobody was ready fearing exposure and was trying to force other to follow the instructions.*" [extract from a petition filed by Dr Sunilam]

On return to the lock-up he was again beaten and forced to sign on several papers and give his thumb impression. While police claimed to have recovered weapons from a room used by Dr

Sunilam, the owner of the lodge who was named as a witness by police later gave an affidavit saying that police had forced him to sign as a witness. Police also reportedly pressurised witnesses to sign affidavits that the firing was started by supporters of the KSS and Dr Sunilam. Reports lodged by injured persons with police have reportedly not been registered or investigated.

Dr Sunilam was released from Bhopal jail on bail on 27 March 1998. Around 300 farmers were chargesheeted in around 56 different criminal cases relating to offences including dacoity, attempted murder, voluntarily causing hurt, rioting and joining an unlawful assembly armed with a deadly weapon. All the FIRs filed against the farmers were lodged by employees of the district administration as well as police officials who claimed that demonstrators had attacked them and attempted to burn down the *tehsil* office. All the FIRs also said that Dr Sunilam was present before the firing occurred. A year and 10 months after the incident, *challans* [formal charges before the court] had not been filed in the majority of cases.

In May 1998, Dr Sunilam and his colleague Anirudh Mishra (against whom charges had also been filed) filed a petition in the High Court of Madhya Pradesh seeking the quashing of criminal proceedings initiated against them claiming that the cases had been filed as a means of restricting their movements. Dr Sunilam was required to appear every two weeks in court in 24 cases.

In June 1998 the NHRC gave an order requesting the state government to consider withdrawing a number of the cases on the grounds that they related to same incident: "*The grievance aired by the petitioners* [Shri Prashant Bhushan and Dr Y.P. Chhibbar of the PUCL] *that the whole episode reflects a mood of hostility and vindictiveness of the district administration cannot be brushed aside. In view of the above, the Commission recommends that the State Administration will reconsider the propriety and fairness of filing a series of successive charges relating substantially to the same incident.*" [Proceedings of the NHRC, Case No.2466/12/97-98, Dated 17 June 1998]. However, in February 1999 the Chief Minister of Madhya Pradesh, while reportedly acknowledging that many of the cases against Dr Sunilam were fabricated, indicated that the CBI was investigating the cases and that therefore they could not yet be withdrawn.

The Collector and Superintendent of Police were suspended after the firing incident. The Deputy Chief Minister visited soon after and reportedly said at a press briefing that he had recommended that charges of murder be filed against district officials. A judicial district level inquiry was initiated on 2 February 1998 functioning in Jabalpur, 350kms from Multai making it almost impossible for affected farmers to testify. The inquiry was given three months to produce its report. It was subsequently moved to Betul, 70 kms from their residence. A petition was filed by Dr Sunilam requesting the inquiry to be moved to Multai and that it be presided over by a High Court judge. A further petition was filed (No.2183 of 1998) calling for the transfer of the investigation to the CBI. This was dismissed by the High Court on the grounds that the court did not want to interfere in a matter which was already the subject of a judicial inquiry. The judge is reported not to have even visited Multai or met with affected farmers. In its order of June 1998 the NHRC recommended that the inquiry be shifted from Jabalpur to Multai or Betul and that the Madhya Pradesh government should consider appointing a High Court Judge to head the inquiry "having regard to the gravity of the situation and loss of so many lives". In addition it commented: "*It is the essence of the right to free movement and of speech and expression that those in authority tolerate not only the views of others with which they do not agree, but also the views they may even despise. Dr Sunil Mishra's*[Dr Sunilam] *constitutional rights require to be protected. The Commission therefore recommends that the DGP Madhya Pradesh do provide Dr Sunil Mishra protection in regard to the lawful exercise of his constitutional and democratic rights*". To Amnesty International's knowledge, no such protection was provided.

Use of force against protesters in Tirunelveli leads to deaths

On 23 July 1999 17 people lost their lives in the town of Tirunelveli (south Tamil Nadu) following an attack by police on a peaceful protest march. The march was taken out in support of tea estate workers in Manjolai in Tirunelveli district employed by the Bombay Burmah Trading Company - who have been agitating over a year over wage and employment conditions. The protest march (headed by leaders from various political parties) had been organised to demand a solution to the wage dispute and the immediate release of 654 workers who had been detained following demonstrations on 7/8 June 1999.

The demonstration on 7 June 1999 was staged before the Collectors Office [Chief Administrator for the district]. It had been called to reinforce demands for a revision of wages and repayment of half-day wages withheld by management for late attendance at work which ongoing negotiations had not resolved. Four-hundred-and fifty-four workers were arrested and remanded in custody. On 8 June 1999, 198 women workers who staged a hunger strike before the Collectors offices were also arrested and remanded in judicial custody. All the workers, including women and children, were detained for nearly 50 days in Tiruchi Central Jail with cases registered against them for damaging public property. The arrested workers refused to be released on bail and demanded the withdrawal of cases, which they alleged were filed as a means of harassing them. To protest against the non-resolution of these issues, a multiparty protest rally was organised with oral permission from the concerned administrative authorities on 23 July.

The leaders of the demonstration attempted to enter the Collectors Office so that they could speak to him about their concerns but were not allowed in. The police resorted to *lathi* [long wooden stick] charging, tear gas and firing of shots to disperse the protestors. The 17 victims who died, including two women and a two-year-old child, were alleged to have drowned when they, along with hundreds of other processionists, were *lathi* charged and chased into the nearby Thamiraparani River. However allegations that many died of head injuries (and not drowning) incurred when police surrounded both banks of the river and prevented them escaping out of the river, are supported by photographic evidence and the findings of an unofficial Public Inquest organised by human rights activists. Many witnesses (including women) have reported that police verbally abused them, calling them by their caste names. Further evidence of the torture of women has been reported by women taken to Tirunelveli police station after the protest.

From the evening of 23 July 1999 and throughout the next few days the police continued to retrieve dead bodies from the river and the Chief Minister also announced that compensation of Rs. 100 000 [$2,300] would be paid to families of the deceased. On 26 July 1999 it was announced by the Tamil Nadu government that 17 bodies had been released by them. Six bodies were handed over to relatives. The same day the 652 Manjolai tea estate workers who were in jail were released. Relatives of 11 of the deceased refused to take the bodies after seeing the injuries and blood on the deceased, alleging that police violence had led to their deaths.

The post mortem reports state that the deaths were due to drowning and do not record any injuries sustained by the victims. However, photographs taken in the hospital prior to the post-mortem examination clearly show injuries. Demands for a re-post mortem were met with condemnation from doctors of the Tamil Nadu Medico Legal Society who threatened direct action if a second post-mortem was conducted on the bodies. The Government turned down demands for second post mortems and the suspension of district level officials who were involved in the incident.

On 27 July 1999 police requested the relatives of the 11 dead people to collect the bodies and the Tamil Nadu Law Minister publicly supported the Government's decision in rejecting calls for a second post-mortem. He further alleged that the cause of the police excesses was due to a section of the processionists misbehaving with women police.

On 28 July 1999 the 11 dead bodies which were not received by their relatives were buried by the police at four different places. In another attempt to request a re-post mortem of the bodies which had been buried, a petition was moved in the High Court which requested that arrangements be made for a re-post mortem by independent doctors and for a direction to the Central Bureau of Investigation to investigate the cases of death, injuries and those who went missing. In response the Government filed a counter affidavit. The High Court directed that the Petitioner be provided with copies (at his own cost) of the original post mortem report. The petition was subsequently dismissed by Justice Balakrishnan on 15 October 1999.

In a separate move the police made counter-allegations against demonstrators accusing them of violent protest. A series of First Information Reports (FIRs) were registered by officers at different police stations, at different points in time. The FIRs stated that fatalities and injuries were a result of mass violence in the procession, an organised attack on the police and abuse of women police officers. The remaining FIRs, lodged by individuals, accused processionists of threatening them to participate.

A Commission of Inquiry to investigate what happened on 23 July 1999, was ordered by the Tamil Nadu Government. Amnesty International notes with concern, however, that there have been considerable delays in this enquiry. Further, Amnesty International is concerned to learn that despite invitations to government officials to attend the unofficial Public Inquest conducted by human rights activists, no government official turned up to give their depositions.

Criminalization of *adivasi* rights activities

The *Adivasi Mukti Sangathan* (AMS) [Tribal Liberation Movement] is a "peoples organization" which has been working for the rights of *adivasi* people in Khargone and Khandwa districts of Western Madhya Pradesh since 1992 (Madhya Pradesh has the largest percentage of *adivasi* population of any one state). Its activists campaign against the illicit trade in liquor, timber smugglers, corruption in government, illegal occupation of *adivasi* land by non-*adivasis* and exploitation by money-lenders and traders. Through this work, AMS activists have come into conflict with those who seek to profit from these trades and exploitative practices. At the village level this has led many AMS activists into violent confrontations and the filing of numerous criminal cases against them. At the district and state level, this led in 1997 and 1998 to the AMS becoming the subject of a sustained campaign of harassment by the administration.

The AMS alleges that the Deputy Chief Minister (who originally comes from Khargone district) connived with the liquor lobby, cotton trade, money-lenders and forest mafia to suppress the activities of the AMS which was challenging corrupt and exploitative practices. The AMS further alleges that the Deputy Chief Minister orchestrated the formation of the *Adivasi Samaj Sudhar Shanti Sena* (ASSSS) [Tribal Peace Army] in June 1997 as a means of challenging the activities of the AMS. Members of the ASSSS (also an organization of *adivasi* people) lodged scores of criminal cases against AMS activists which they say were unfounded. Complaints made by AMS activists to police against ASSSS activists, including several allegations of rape of *adivasi* women, were reportedly routinely ignored.

On his part, the Deputy Chief Minister accused the AMS of fermenting conflict, of having links to *naxalite* organizations, of indulging in violence, of extortion and of receiving funds from overseas. The AMS has strenuously denied these allegations. On 9 June 1997, the Deputy Chief Minister reportedly stated that had he been Home Minister, he would have "wiped out" the AMS from India. On 3 September 1997, the Deputy Chief Minister was reported to have promised in a public meeting a gun licence to *adivasi* members of the ASSSS to "fight against *naxalites* and so-called terrorist organizations". On 30 August 1997 at a high-level meeting held by the Government of Madhya Pradesh to discuss the activities of the AMS the possibility of banning the organization was reportedly discussed. On 25 September 1997, *The Telegraph* reported that the Madhya Pradesh Home Minister had stated that the government was considering tabling a Bill to regulate non-governmental organizations, such as the AMS, in order to route foreign funds through the state government.

Just a few of the incidents in which AMS have been charged with criminal offences are described below. As of the end of 1999, 456 criminal cases against almost 100 AMS activists remained. While around 40-60 activists remained in hiding four were in jail and 33 on bail. All those on bail were obliged to attend court cases up to four times a week at the sessions court in Khargone – around 60km from their homes.

- In July 1997 14 AMS activists were charged under various sections of the IPC, including attempt to murder, house trespass and rioting with a deadly weapon. The charges followed a series of violent incidents: on 12 July an AMS activist – Sajan – was attacked and injured by a villager in Bondarimal village in apparent retaliation for his activities in persuading *adivasi* villagers not to pay bribes to forest officials; on 19 July several AMS activists were reportedly attacked and opened fire on by members of the ASSSS in Bondarimal village. When an AMS activist attempted to file a complaint at Warla police station, the sub-inspector refused but AMS activists were instead themselves charged. Many of the AMS activists charged were reportedly not present at the incident on 19 July. Their requests for bail were rejected as police argued that they were involved in criminal activities and that they could hamper investigations. All except one (who was accused of carrying a gun on 19 July) were finally released on bail on 29 August. They alleged that they were beaten by prison officials in Sendhwa prison on 28 August.

- In early August 1997, four AMS activists and two other villagers were arrested for the gang rape of two *adivasi* women. The women were raped at a farm house near Khargone on 30 July. One of the women subsequently testified to a lawyer that the AMS activists were not responsible for the rape. The arrested men alleged that they were severely beaten by police while in custody. The four activists were subsequently released when the court found that there was no evidence against them.

- Also in August 1997, a series of violent incidents led to the arrest of 15 AMS activists and scores of *adivasi* villagers. They were charged with the murder of Jhagadia Patel (The *Patel* [hereditary title for those who

traditionally settle village disputes and get share of money from solving them. Also used by local government to collect revenue] of Kabri village) who was reportedly killed in retaliation for his alleged involvement in the gang-rape of Nmlibai, the wife of an AMS activist, Kaliya (who had intervened in a land dispute against the interests of Jhagadia Patel). Kaliya was subsequently killed while in police custody. Remanded to police custody for three days after surrendering before the police in Indore on 14 September on condition that he and others would be granted protection by police, he and three others were taken to Bhagwanpur police station in two jeeps accompanied by 16 police personnel. While the others were left at the police station, Kaliya was taken in a jeep – handcuffed and with his legs chained – to several villages for the purposes of identifying the location of illegal firearms. While returning to the police station, the police jeep passed through Kabri village. Villagers and ASSSS activists stopped the jeep with a stone barrier and attacked it with bows and arrows, stones and other weapons including guns. Kaliya was killed. The Government of Madhya Pradesh refused to hold a CBI inquiry into Kaliya's death. However, a magisterial inquiry was carried out by the Sub-Divisional Magistrate, Khargone. The report was never published and no action has been taken against those responsible for his murder. A PUCL team investigating the incident found that "*Taking all circumstances into consideration, the team is of the prima facie view that there is complicity of the police in the custodial death of Shri Kaliya*".

- On 10 September 1997 Madhuri Krishnaswamy (f), an AMS activist was arrested while addressing a press conference in Bhopal. She was charged under sections 386 and 387 of the IPC in connection with an extortion case filed earlier in Barud police station. Twenty-seven other activists were named in the same case. The charge was allegedly framed as a result of the involvement of the AMS in solving a dispute between *adivasi* villagers. *Tods* (settlement of a dispute between two parties after paying a fine) traditionally involve the transfer of money. The case against the activists is still continuing in the courts and they are obliged to attend court every month.

In September 1997 the Madhya Pradesh Human Rights Commission registered a complaint made by *adivasis* in Khargone district and instructed the Director General of Police to carry out an investigation into allegations and present a report by 20 September 1997. No report was received by the Commission which therefore initiated its own independent inquiry by a three-member team into allegations of false cases being filed against *adivasis* and harassment by police. The team visited Khargone on 14, 15 and 16 October and submitted a report on 6 November. As well as recommending that interim compensation be paid to the family of Kaliya who died in police custody, it found that "*both organizations* [the AMS and ASSSS], *which had initially been set up with the motive of raising the social and economic level of the adivasis, had later become involved in violent activities*". However, it further found evidence of bias in the way that the police and local administration had dealt with violent incidents. Expressing concern that there were no *adivasi* police officers operating in the district it concluded: "*It is a subject of concern that Khargone police took no action on the rapes that were reported to the police. Unfortunately, the view of the District Police Superintendent, that those complaints are false, has been expressed without a full investigation being made. For officers to hold such views, can cast a shadow on their impartiality... The Commission asks that a special investigative group be immediately set up by the government. This group must efficiently investigate crimes that have been recorded in this area and only bring prosecutions against people where proof of their involvement in these crimes exists. In this way complaints that the local police is not impartial and that it falsely holds innocent Adivasis, can be properly countered*".

The National Commission for Women (NCW) also sent a team to carry out investigations in the district. On 30 September 1997, the Chairperson of the NCW wrote to the Chief Minister of Madhya Pradesh calling on him to withdraw police and civil personnel "who connived in atrocities on *adivasi* women and protecting culprits" and recommended an investigation by a "high level inquiry commission" with security provided to villagers.

Following state assembly elections in late 1998 the situation in Khargone district reportedly improved. The Deputy Chief Minister left office and members of the AMS and ASSSS made attempts to settle their disputes. However attacks on the AMS for their work in challenging the liquor mafia and other powerful interests have continued. On 5 May 1999, Moti Ram, an AMS activist, was attacked and subsequently died of his injuries in retaliation for his anti-liquor campaigning.

The problems of redress: The case of Jaswant Singh Khalra

Investigations into human rights violations against human rights defenders often become mired in delay. Attempts to distance the state from responsibility for high-profile attacks on human rights defenders have been characterised by interference, intimidation and harassment.

In September 1995, Jaswant Singh Khalra "disappeared" after being arrested by police. Khalra had been involved in a campaign to highlight the plight of hundreds of people who "disappeared" after being arrested by the Punjab police during the 1980s and early 1990s. He was instrumental in filing a petition in the Supreme Court concerning the fate of those who "disappeared". Nine police officers are currently on trial on charges of criminal conspiracy to kidnap or abduct Jaswant Singh Khalra (they are not charged with his murder). The process of investigating the fate of Jaswant Singh Khalra and bringing those responsible for his "disappearance" to justice has demonstrated the lengths to which the police force in Punjab will go to protect officials from prosecution. In April 1998, Amnesty International published a report entitled *A Mockery of Justice* (AI Index: ASA 20/07/98), outlining concerns about reports that the judicial process underway to bring to justice those responsible for Jaswant Singh Khalra's "disappearance" was being severely undermined. It described how police officers had delayed proceedings and intimidated witnesses, how judicial orders had been disregarded, evidence suppressed and how members of the Khalra Action Committee (a group of relatives and colleagues formed to pursue investigations into his fate) had themselves suffered intimidation and abuse.

Since the publication of its April 1998 report, Amnesty International has continued to receive reports of further intimidation and delays in the proceedings as well as additional information about intimidation referred to in that report.

In particular, Kuldip Singh, who claims to have witnessed the murder of Jaswant Singh Khalra, has testified that he was threatened by police to withdraw his statement. In a statement dated 20 June 1999 he claims that he was told:

> *"We have implicated Kikkar Singh in so many cases. Nobody could save him. So who will help you? Those CBI officers who have recorded your statements have gone to apologise to the former DGP [Director General of Police] as the Centre has pressurised them. The people who have recorded your statements, what help can they render you. If you do not give any statement then you will not get any harm. Otherwise nobody will help you".*

Kikkar Singh to whom the police referred was implicated in five criminal cases by Punjab police after giving testimony in Jaswant Singh Khalra's case implicating police in his illegal detention and torture. He remains in custody in Nabha Jail.

Kuldip Singh has further testified that police in April 1998 forced him to file a case against the wife of Jaswant Singh Khalra, Paramjit Kaur:

"...made me to sign a false complaint against Smt. Paramjit Kaur and four others in which it was alleged that they had paid me Rs.50,000/- as a bribe for becoming a witness in the Khalra case."

Paramjit Kaur was charged in April 1998 with attempting to bribe Kuldip Singh.

Rajiv Singh, who was due to appear as a witness in the case of Jaswant Singh Khalra before the Sessions Judge, Patiala on 25 July 1998, was detained by police in early July 1998

on charges of forming an organization supporting a separate state of Khalistan: *Tigers of Sikh Land*. This accusation has been strenuously denied and human rights activists claim that the *Tigers of Sikh Land* has been created by police as an excuse for harassing and detaining individuals. Sarabjit Singh was also detained on charges of belonging to the Tigers of Sikh Land in a case filed against him on 16 July 1998. In response to a complaint by Sarabjit Singh's father, the Punjab Human Rights Commission investigated allegations of his illegal detention and false implication. The Commission recommended that the case against Sarabjit Singh and others (including Rajiv Singh) be cancelled:

> "*Instead of this, a criminal case may be got registered against the police officers responsible for registering a deliberately concocted criminal case against the above named seven former militants/terrorists, none of whom appears to be pursuing militant/terrorist activities at the moment and at least a few of them appear to be making a genuine effort to lead a dignified life of a law abiding citizen. The investigation of this case may be handed over to CBI, because it is likely that influential police officers may not pursue investigation of this case with honesty and sincerity. Those police officials, whose names come out during the course of investigation by the CBI as being responsible for registering a false case, departmental enquiry may also be started against them*".

The PHRC sent their recommendations to the Punjab government but received no response.

Harassment of women activists highlighting domestic violence and child sexual abuse in Uttar Pradesh

Despite statements by the Government of India, regarding their support for women's organisations at the recent hearing of India's report to the Committee on the Convention on the Elimination of Discrimination against Women, women's activists face numerous barriers and discrimination when they seek redress or justice for women.

In Uttar Pradesh during 1999, activists of several organizations were subjected to severe harassment because of their actions in defending the rights of a woman and her child who had been subjected to domestic violence and child sexual abuse. On 10 June, Ela Panday and her 11-year-old daughter left her husband, Jagdish Chand Panday and their home in Karvi, Banda district, after having been subjected to systematic violence. Her daughter was also reportedly subjected to sexual abuse. Ela Panday immediately made a statement to this effect before the Sub-divisional Magistrate of Karvi and was provided help and support by several women's human rights organizations including *Vanangana*, Social Action and Research Centre, *Gudiya*, and the Association for Advocacy & Legal Initiatives in Lucknow.

On the same day that Ela Panday and her daughter left their home, Jagdish Chand Panday filed an application with police in Karvi asking them to register a case of kidnapping against three members of *Vanangana*. In addition to this application, Jagdish Chand Panday made repeated threats to the lives of members of *Vanangana*, Social Action and Research Centre and *Gudiya* (one member was threatened with the kidnap of her son). However, despite filing an application concerning these serious threats with police in Benares, the police failed to register a First Information Report (FIR) or investigate these complaints. On 19 June a statement was made by Ela Panday and her daughter to the District Magistrate, Benares, under Section 164 of the Code of Criminal Procedure concerning the allegations of domestic violence and child abuse against Jagdish Chand Panday. Following this, the police in Benares filed a FIR under several relevant sections of the Indian Penal Code against Mr Panday.

On 7 July Jagdish Chand Panday filed an application for stay of his arrest and quashing of the FIR against him in the High Court. The High Court judge asked that the daughter be brought before him to give her story, indicating that before deciding on the application for stay of arrest he wished to verify the story of sexual abuse. The judge asked that the father, mother and daughter be brought before him together in his chambers on 16 July at which time the daughter would give her statement. Lawyers acting for Ela Panday refused to allow the statement to be given in front of the father arguing that unnecessary pressure would be placed on the child who had already made a statement to a judicial officer. In reaction to this argument, the judge reportedly threatened the lawyers with contempt of court. Amnesty International has received further reports that the High Court judge, Jagdish Chand Panday and his lawyers made several derogatory statements against Ela Panday's lawyers and the human rights organizations who had taken up her case in open court. Amnesty International is concerned that these reports indicate a lack of respect by the judiciary for human rights defenders, and insensitivity to the issues of domestic violence and child abuse.

Following arguments on both sides, the judge finally heard the daughter's statement alone, and indicated that he was satisfied that her statement was not being made maliciously. Jagdish Panday was finally arrested on 22 July but later released on bail on 30 August. On 5 August 1999 Mr Panday filed a further application charging the activists with kidnapping and a FIR was lodged against them. A month later the application was dismissed when the inquiry found no substance in the charges made.

Amnesty International has written to the government of Uttar Pradesh on two occasions but received no response. In September, the National Commission for Women visited Karvi to investigate the incident following complaints by several NGOs including Amnesty International. In its report released on 20 November 1999, the Commission found substantive evidence against Mr Panday and recommended that he be tried without delay. They, further recommended that the case be transferred to another court, after noting statements of the District Magistrate who said that, "it would have been better if such an act [child sexual abuse] had not been allowed to surface since it could lead to perversion in society."

The Commission expressed grave concern at the way in which human rights activists became the focus of harassment by Mr Panday as well as other members of the local community (Mr Panday went so far as to file a petition in the local court alleging that the Commission Members had demanded a bribe of Rs.50,000 in return for giving him a favourable report). Local right wing Hindu groups also reportedly joined in the attack against the women activists claiming that they were westernised and were receiving foreign funding. The Commission commented: "Recognising the growing need for interventions by civil society and women's groups in order that the hidden sores of society are revealed, the State should devise some mechanism to legitimize these interventions".

Religious discrimination involved in attack on human rights defenders in Madhya Pradesh

Human rights defenders from religious minority communities have been subjected to harassment and threats in an attempt to undermine their work and question their commitment to India (increasingly linked to an idea of Hindu traditional values). There are concerns that the real reason behind the attacks on human rights defenders from religious minority communities is opposition to their work in support of the empowerment of the socially and economically disadvantaged, which has threatened local powerful interests.

The Institute for the Development of Youth, Woman and Child (IDYWC) (commonly known as PRAYAS) has been working in tribal areas of the Amarwara block of Chhindwara district in Madhya Pradesh. PRAYAS have been working, in particular, against the exploitation of the *adivasis* which has brought them into direct confrontation with moneylenders and traders and also politicians who fear the support that the organization has amongst the *adivasi* community. In an effort to hamper these efforts local politicians have connived with police officials to harass PRAYAS activists by targeting their religious affiliation.

On 11 December 1999 the President of PRAYAS, Mr Iqbal Agwan, went to Tamia to visit one of PRAYAS's projects. When Iqbal Agwan left to return to Chhindwara at about 7pm he gave a lift to an acquaintance and his family. When one of the children began to vomit Iqbal Agwan stopped the car. The Superintendent of Police (SP), Chhindwara, stopped his car just ahead of them and asked why they had stopped. He proceeded to ask Iqbal Agwan for the papers of the vehicle and immediately started abusing Iqbal Agwan asking how he could afford such a vehicle. He asked Iqbal Agwan to go to the City Kotwali Police Station. After dropping off his passengers at around 9pm Iqbal Agwan went to the police station and was immediately taken to the SP's residence. The SP, reportedly, started abusing him saying "I will lodge a CBI inquiry against you. I know that you are an ISI (Inter Intelligence Services) agent helping Pakistan. I will see to it that you will be in jail for 20 years and your organization will close down". He then reportedly asked an Inspector who had accompanied Iqbal Agwan from the police station to beat him. After being slapped and kicked by the SP, Iqbal Agwan was taken to the police station and put in a lock-up.

The next morning when he asked that his family be informed of his arrest and for access to a lawyer, the officers refused, telling him that the SP had said that nobody should be allowed to see him. At 12pm he was taken to the office of the Sub-Divisional Police Officer (SDPO) Chhindwara [in charge of the administrative unit] where several officers were present. The SP reportedly abused him calling him an ISI agent saying, "What are your connections? If you don't tell we will give electric shock to you". He was also kicked, beaten and slapped by the other officials present.

Meanwhile, on 11 December, when Iqbal Agwan didn't return home his brother, Sadiq Agwan, (founder and Secretary of PRAYAS) went to the Kotwali City police station to register a missing person's complaint. When he saw PRAYAS's vehicle parked in the police station premises he questioned officers about his brother's whereabouts, but was refused any information. Sadiq Agwan attempted to contact the SP at his residence but his call was not answered. He contacted a well-known human rights activist who also repeatedly tried to contact the SP but had no success.

At 4.30pm the next day, three police vehicles arrived at Sadiq Agwan's house with Iqbal Agwan. He was not allowed to talk to his family members and the police did not inform his family why he had been detained. The police reportedly abused his family members accusing them of misappropriating funds and being agents of the ISI. The police took photographs of the house and asked to be shown the office. After taking several documents from a cupboard in the office, they put some law books, Amnesty International reports and papers lying on the office table into the cupboard

and sealed it. No *Panchnama* [a record of an arrest which has to be signed by two witnesses] was provided despite repeated requests. The door of the office was then sealed. When police officers attempted to drag Sadiq Agwan into the police jeep and he asked why, one of the officers reportedly shouted: "You will come to know very soon. You are ISI agents and we know how to handle you". He was taken with his brother back to the police station and they were placed together in a cell.

An hour later Sadiq Agwan was taken to Amarwara police station. Four police vehicles and several senior police officials were present. After a few hours he was taken to PRAYS's Amarwara project office. On arrival there, at around 10pm, they found a police vehicle outside, the office sealed and members of staff confined to their rooms. Sadiq Agwan's wife was verbally abused by the police officers. Both Sadiq Agwan and his wife were questioned. The police asked for ledgers, funding correspondence, receipts, staff lists and the salary register amongst other documents. They remained there until 2am at which time Sadiq Agwan was taken back to the Amarwara police station. He was kept in the lock-up overnight. At 12pm the next day he was taken back to the Amarwara project office where he was again questioned, by the police and assistant public prosecutor, about funding and whether the organization was receiving money from Pakistan. At about the same time a representative of the National Human Rights Commission and Sadiq Agwan's lawyer arrived at the project office. Local human rights activists had put pressure on the National Human Rights Commission (NHRC) to intervene. The NHRC asked a local representative to make urgent inquiries. However, when the representative went to Chhindwara police station to visit Iqbal Agwan he had been refused point blank and told that he was not on the premises.

Due to apparent pressure from the NHRC, police officials at the project offices started to leave. However the same day, the SDPO Amarwara returned at 9pm with a CID Inspector and recorded Sadiq Agwan's statement until midnight. Iqbal Agwan was released at 10pm on 13 December 1999. He was made to sign on a piece of paper which he was not allowed to read. They told him that he was not allowed to leave Chhindwara and that he was not allowed to make a complaint against them. On 16 December 1999 a regional Hindu language newspaper, *Dainik Bhaskar*, reported that the SP (Chhindwara) had declared that PRAYAS has ISI connections.

Approaches to both the Madhya Pradesh Human Rights Commission (MPHRC) and the NHRC failed to produce any results. Despite a visit by an investigative officer from the MPHRC no report was produced on the basis of the complaint of PRAYAS filed with the Commission. When PRAYAS made a formal complaint to the NHRC they were informed that the NHRC could not take up the case since a complaint had already been registered with the MPHRC. PRAYAS attempted to file a case in the High Court in Madhya Pradesh to get a stay on the police investigations to ensure that they were protected from further harassment. However there are fears that the lawyer acting for PRAYAS was approached by the police before the case was heard as he failed to request a stay. In the meantime pressure was put on PRAYAS by the SDPO (Chhindwara) to withdraw the complaint to the MPHRC and the court case. The SDPO threatened to file 15 criminal cases against Iqbal Agwan and ensure that he did not get bail. PRAYAS subsequently abandoned their attempts to pursue redress through the courts and the MPHRC. Since they have done this they have reported that the harassment has declined.

Amnesty International is extremely concerned at the way in which the organization has been prevented, through threats and harassment, from pursuing redress and that those responsible for the illegal detention and torture of human rights defenders are not being brought to justice.

Human rights defenders labelled and discredited in Andhra Pradesh

Human rights defenders in Andhra Pradesh – most notably the Andhra Pradesh Civil Liberties Committee (APCLC) – have raised concerns about human rights violations by police against *naxalites* for many years. They have carefully documented hundreds of incidents in which alleged extrajudicial executions have been carried out by police. However the Government of Andhra Pradesh have consistently labelled APCLC activists as *naxalites*. Several members of the APCLC are alleged to have been killed by police in the late 1980s and early 1990s. In 1997, a further series of attacks on APCLC activists occurred, apparently at the direct instigation of the Andhra Pradesh police.

On 22 February 1997, several APCLC activists, including a popular ballad singer and poet, Gaddar, were arrested by police while demonstrating against the killing of an alleged *naxalite* in an "encounter" with police. All of the activists were subsequently released on bail. Gaddar remained in jail under heavy security on charges of obstructing government functionaries, denigrating police officials and violating the Public Safety Act by speaking in support of the Peoples War Group (PWG – the largest armed naxalite group operating in Andhra Pradesh). He was released unconditionally on 1 March following widespread protests at his detention. Over previous months Gaddar had been campaigning against the police practice of cremating as "unidentified", the bodies of suspected naxalites killed in "encounters" with police and demanding that the bodies be handed over to relatives.

On the afternoon of 1 April 1997, around 200 people claiming to be victims of *naxalite* violence were taken by the police to the High Court of Andhra Pradesh to meet with the Chief Justice of Andhra Pradesh and put their concerns to him. Following this, the people came in two buses to the house of Mr Kannabiran, President of the Peoples Union for Civil Liberties (a national civil liberties organization) and activist and former President of the APCLC to protest at his alleged support for *naxalite* violence. They were accompanied by policemen in plain clothes who allegedly attempted to incite the crowd to violence. However, after receiving assurances from Mr Kannabiran that he would look into their complaints, they handed over copies of their petitions and left peacefully. They subsequently went to Gaddar's house demanding to meet with him. When they found that he was not at home, after verbally abusing his wife, they left.

On the evening of 6 April 1997 several men came to Gaddar's house and asked for him saying that they wanted to discuss something with him. As Gaddar was speaking to them, one of the men pulled out a gun and shot him. He was seriously injured in the attack and underwent surgery to remove five bullets. Although the police denied any involvement in the incident and launched an investigation, civil liberties organizations and many others allege that the police were behind the shooting of Gaddar and that the attack was carried out by a section of the Andhra Pradesh police known as the "Greyhounds" who are trained to counter the activities of *naxalites*.

On 24 April 1997, a statement was issued by the "Green Tigers", claiming responsibility for the attack on Gaddar and alleging that APCLC activists and other alleged "*naxalite* sympathisers" - naming Dr Varavara Rao, Dr K Balagopal and Mr K G Kannabiran of the APCLC, as well as Gaddar - had instigated *naxalites* to commit abuses. The "Green Tigers" were reported to have been formed by the Andhra Pradesh Government in 1997 with the help of police in order to counter the activities of human rights defenders who were highlighting human rights violations by police. The statement of the "Green Tigers" warned the APCLC

activists to cease their activities. This threat was repeated in an interview by a "district secretary" of the group published in a national newspaper on 10 May.

On 27 May 1997, Mr T. Puroshotham, Joint Secretary of the APCLC and a lawyer, was attacked from behind while returning to his home at around 8pm. The attack took place in front of a police station when four men hit him on the head with an iron rod. Mr Puroshotham claims that he was attacked by police in plain clothes and made a statement to police to this effect. A few days after the incident, the "Green Tigers", reportedly claimed responsibility for the attack. A few days before the attack, Mr Puroshotham had filed a writ petition in the High Court of Andhra Pradesh, seeking a direction from the court to the Mahaboobnagar police authorities to preserve the dead bodies of two people killed in an exchange of fire with police on 21 May, so that they could be identified by their relatives. The High Court gave an order in accordance with his request and on the day of his attack, Mr Puroshotham had accompanied the parents of the dead men to Mahaboobnagar to collect the bodies from the mortuary. Mr Puroshotham was reportedly verbally abused by police officials at the police station.

On 5 June 1997 the Government of Andhra Pradesh wrote to Universities in the state directing them to take disciplinary action against teachers and faculty members associated with the APCLC. As a result, five individuals associated with the Osmania University, Krishnadevaraya University and Nagarjuna University, were requested to disassociate themselves with the APCLC. Amnesty International wrote to the Chief Minister of Andhra Pradesh expressing grave concern but no response was received.

In August 1999, Puroshotham (see above) was charged under section 420 of the IPC [cheating] after defending three alleged *naxalites*. Police reportedly forced the accused to file a case against Puroshotham alleging that he had tricked them. He was arrested at midnight on 26 August 1999 and detained in the lock-up at Alampur Police Station and later released on bail. The case is currently pending in court. Puroshotham has also received threatening phone calls on many occasions.

Fundamental freedoms subsumed in violence in Assam

Human rights activity in Assam has been a victim of the bitter and violent conflict which has raged in the state for many years. Armed groups fighting for secession from India – notably the United Liberation Front of Assam (ULFA) – have been fighting Indian armed and paramilitary forces and the state police for decades at the cost of thousands of lives. Fighting for a separate state of Bodoland by Bodo armed groups has also brought widespread violence to areas of Assam. Allegations of widespread corruption amongst politicians and state government officials complicate an already complex conflict scenario. The formation of counter-insurgency groups made up of surrendered members of ULFA (SULFA) increases the lack of accountability of the state for human rights abuses and the dangers for those attempting to monitor the human rights situation. Human rights activity in Assam has come under direct attack from the state which has failed to distinguish between the right to freedom of opinion and expression of members of the human rights movement and criminal acts. While ideologically close to the armed groups, members of the *Manab Adhikar Sangram Samiti* (MASS) [Human Rights Action Committee] have on several occasions condemned human rights abuses by ULFA and deny allegations that they are organizationally linked to the armed group. Despite numerous charges against members of MASS, so far none have been convicted. International monitoring of the human rights situation has been prevented by the failure of the Government of India to permit international human rights organizations access to the state.

On the afternoon of 17 May 1996, **Parag Kumar Das**, journalist and executive editor of a local newspaper *Asomiya Pratadin*, and Secretary General of MASS and the North-East Coordination Committee on Human Rights (NECOHR) was shot dead in Guwahati when picking up his son from school. In June 1996, Amnesty International published a report expressing concern at the apparent acquiescence of the state authorities in his killing (AI Index: ASA 20/28/96). As a journalist and human rights defender, Parag Kumar Das had been instrumental in reporting human rights violations by the security forces. He had also reported on allegations of corruption within the state government and links between members of SULFA and state officials. He had been detained on several occasions under TADA and the NSA previously. In January 1996 cases were filed against him for "promoting enmity, hatred or ill-will" after a statement by the Commander-in-Chief of ULFA was published in *Asomiya Pratadin*. Information received by Amnesty International indicated that SULFA activists perpetrated the killing with the possible connivance of the government in reprisal for an attack by ULFA the previous day in which police officials were killed. The CBI was asked by the government to investigate the killing of Parag Kumar Das but to date the perpetrators have not been identified or brought to justice.

Ajit Kumar Bhuyan, editor of *Asomiya Pratadin* and Chairman of MASS, has been arrested on numerous occasions. In March 1992 he was arrested under the NSA and detained for two months, reportedly for writing articles about human rights violations by the Indian army. He was also briefly arrested in December 1993 after attempting to convene a meeting to observe Human Rights Day. In July 1994 he was detained for almost three months under TADA for alleged involvement in instigating a kidnapping. He was again detained in August 1997 when several members of MASS were arrested by police on charges of "waging or attempting to wage war or abetting waging of war against the Government of India" (section 121 IPC) after *Asomiya Pratadin* had published a series of critical articles about corruption and inefficiency within the government and had voiced concern over the Unified Command [civilian and security force command structure] in Assam.

The detention of the MASS activists began with the arrest of **Prakash Mahanta**, a reporter with *Asomiya Pratidin* and Chief Organizing Secretary of MASS on 14 August in Nagaon district. He was served with a detention order under the NSA at the end of September. **Lachit Bordoloi**, Secretary-General of MASS was arrested on the evening of 17 August 1997. He was held in police custody for several days but was later transferred to judicial custody where he was served with a detention order under the NSA at the beginning of October. **Asish Gupta** Vice-Chair of MASS and Secretary-General of NECOHR was arrested on the evening of 27 August 1997 from the offices of *Asomiya Pratadin*. His house was later raided by police and several books and documents taken from the house. He was charged under Section 13(2) of the Unlawful Activities (Prevention) Act 1967, in connection with the seizure of ULFA leaflets from his possession. After three days in police custody he was transferred to judicial custody and taken to the Guwahati jail hospital where he underwent treatment for a gastric ulcer and problems with his spinal cord. He was released on bail on 19 September 1997. Asish Gupta was detained on the same charge again in June 1999 despite the fact that in almost three years since the case was filed, a chargesheet had still not been drawn up by police. At the same time he was issued with a detention order under the NSA based on four "grounds for detention", the first of which was related to the same case. Asish Gupta spent almost six months in detention under the NSA but was released on bail under

the Unlawful Activities (Prevention) Act in December 1999. At the same time, his detention order under the NSA was quashed by the High Court.

Several office-holders of MASS have been killed in recent years. MASS accuses the security forces and state government of being behind these killings. In, Amnesty International is extremely concerned at the absence of independent and impartial investigations into these killings and the resulting climate of impunity for attacks on those defending human rights in Assam.

On 30 May 1997, **Cheniram Nath**, Chairman of the Hatichung unit of MASS from Jamuguri village in Nagaon district of Assam was picked up by members of the army from the house of a friend near his own. He was reportedly beaten before been taken away. His detention led to widespread protests in the area. On 1 June his dead body was handed over to Sadar Police by members of the 13th Mahar Army Regiment. They claimed that he had been shot dead during an army operation in Senchowa on the night of 31 May while trying to escape. When MASS activists approached the Assam Human Rights Commission to ask the Chairman to investigate the incident, he reportedly refused, pointing out that the Commission does not have powers to independently investigate allegations of human rights violations by the armed forces. A petition concerning his death was filed in the Guwahati High Court on 9 December 1998 when MASS finally obtained copies of the relevant documents from the authorities including the FIR and *post mortem* report. On 14 September 1999 the High Court ordered the District and Sessions Judge, Nagaon, to conduct an inquiry which according to reports has not yet begun.

On 4 April 1999, **Nripen Sarma**, Chair of the Patacharkuchi unit of MASS and resident of Dharamtala in Barpeta district was reportedly taken from his home by a group of armed gunmen, some of whom were masked. Relatives of Nripen Sarma have alleged that although the armed men were wearing civilian dress, two of them were known to them as local police officials. One of the men reportedly asked Nripen Sarma's sister to go to the police station the next day. When she approached the police, they denied any knowledge of Nripen Sarma or his arrest. In the evening of 5 April his dead body was found in the Pahukata river nearby. The body reportedly had bullet injuries. Police officials subsequently attributed the death of Nripen Sarma to members of SULFA. A complaint was filed with police but Amnesty International understands that no action was taken on the basis of this to investigate his death. A magisterial inquiry was ordered but is being presided over by an executive, not a judicial magistrate.

On the evening of 27 April 1999 a group of armed men reportedly knocked on the door of **Nabin Tamuli**, an "advisor" to the Tinsukia district unit of the MASS. Two were reportedly in fatigues while the others were in plain clothes. All were masked. The men forced their way into Nabin Tamuli's house and took him away in a vehicle. When his relatives went to the police the next day, police denied any knowledge of his whereabouts. His relatives also approached the local army camp but were not able to obtain any information. A written complaint was lodged at the Digboi Police Station. His relatives claim that no action has been taken by police to investigate his abduction.

On the night of 16 September 1999, **Ananta Kalita** a member of a youth organization – the *Assam Jatiayatabadi Yuba Chatra Parishad* (AJYCP) – was picked up from his house at Kalitapara, Hajo, in Kamrup district of Assam by unidentified armed men. He was reportedly beaten before being taken away in a vehicle. On 19 September, he was brought to the Milagaon office of the AJYCP seriously injured with bullet injuries to his head. Ananta Kalita subsequently claimed that he had been picked up by police and members of SULFA and kept for two days at the 10th Assam Police Battalion camp in Guwahati where he was tortured and questioned intensively about the activities of ULFA. On the night of 18 September he was taken to the Jorabat police station in a vehicle. Police entered the police station leaving him in the vehicle but returned shortly afterwards and he was taken to a nearby hill. There he claims a drunk armed man took him to the edge of the slope, shot him in the head with a pistol and pushed him down the slope, shooting at him once more but missing. Ananta Kalita said he regained consciousness at around 4 in the morning and made his way to a nearby road from where he was helped to the AJYCP office in Maligaon. The bullet reportedly passed through his cheeks. The district administration ordered an executive magistrate to investigate. However, after strong protests the Government of Assam ordered a judicial magistrate to inquire. This inquiry is continuing. In the meantime, the Assam Human Rights Commission was approached by MASS and several other organizations. In response, the Commission asked for a report from police who denied any involvement in Ananta Kalita's abduction. The Commission has not carried out its own investigation into the incident and has simply forwarded the report of the police to the complainants.

Silencing of human rights defenders in Jammu and Kashmir

Since the early 1990's the work of human rights defenders has been severely curtailed in the state of Jammu and Kashmir. The growth of pro-independence militancy in the early 1990's in turn led to hightened activity by the security forces in the region and an accompanying increase in the human rights violations perpetrated. A high incidence of torture, including rape, the use of excessive force to quell dissent and a high number of "disappearances" was met by protest which was voiced either by individuals or by mass protest on the streets of Srinagar or other urban areas.

The conviction of the state that human rights defenders are a "wing" of the armed opposition had a devastating impact on the work of defenders in the area and they became vulnerable targets for human rights violations themselves. In 1996 the murder of respected human rights activist Jalil Andrabi signalled an almost complete halt to work on human rights in the state as activists were confronted with the high risks they would run by continuing their work in the region. As well as targeted violence, human rights defenders who live in the state are also at risk of becoming victim to incidents of random violence. For example, on 14 April 1995 the Secretary of the Srinagar branch of the PUCL, Mr Parvez Imroz, was shot and injured by unidentified gunmen while driving home in his car.

The deaths of many of the prominent members of the human rights community in Jammu and Kashmir has been successful in silencing many voices of concern about human rights in the Valley, leaving a continuing void which only serves to feed the impunity with which violations are still perpetrated in the state.

The much respected human rights activist **H N Wanchoo** frequently initiated petitions in the Jammu and Kashmir High Court on behalf of the families of people who had "disappeared" after arrest despite the government's failure to respond to the petitions. He was killed by unidentified gunmen in Srinagar on 5 December 1992. The Central Bureau of investigation carried out an investigation and three arrests were made but, contrary to statements by the government that it was the work of the armed opposition, there was strong suspicion in the Valley that official agencies had a hand in his killing.

Dr Abdul Ahad Guru, a surgeon at the Institute of Medical Sciences in Soura, was found shot dead on 1 April 1993. Dr Guru was deeply concerned and spoke about the many victims of brutal torture treated in his hospital; he often met journalists and members of human rights organizations, including a delegation from Amnesty International to whom he described methods of apparently routine torture used by the security forces. There were allegations that he may have been the victim of an extrajudicial execution by the security forces or their agents. Dr Guru was travelling in a car when he was seized by two armed men. His body was found the following day close to his hospital with three gunshot wounds. At his funeral, his brother-in-law, Mr Ashiq Hussain, was shot and killed when police intervened to disperse a crowd which had gathered to mourn Dr Guru.

Dr Farooq Ashai was another respected surgeon who may have been the victim of extrajudicial execution. While travelling in his car with his wife and daughter Dr Ashai was shot dead by unidentified gunmen. The government maintained that he died due to crossfire but his wife was adamant that there were no other shots fired than those which struck her husband. Like Dr Guru, Dr Ashai was well known associate of foreign journalists and human rights activists and spoke out against the violations and abuses endured by the population of Jammu and Kashmir.

On 9 March 1996 the prominent lawyer and human rights activist **Jalil Andrabi** was taken away by members of the paramilitary Rashtriya Rifles and so-called "renegades" (members of armed groups who reportedly carry out operations on behalf of the government). Rifat, Jalil Andrabi's wife,

witnessed his abduction: this was the last time he was seen alive. On 27 March 1996 the body of Jalil Andrabi was found in the Jhelum river.

The work of the Special Investigation Team [SIT] which was set up to investigate Jalil Andrabi's killing was hampered by obstructive behaviour by the police and by the withholding of important documents, such as the post mortem report, for over eight months. The family of Jalil Andrabi have also been consistently denied access to vital case documents. Following its investigation, the SIT in April 1997 held that a Major from the territorial army was responsible for the killing. In response, the army maintained that as the Major had been hired for a specific period only and was not currently in army employment (they stated that he had retired from service in November 1996) they could not be held responsible. Amnesty International expressed grave concern at this attempt by the armed forces to absolve itself of responsibility for the actions of personnel under their command. Despite the SIT's finding, no perpetrator has yet been apprehended or brought to justice.

At the time of writing, the latest hearing into the case which was meant to be held in the High Court in Srinagar on 9 March 2000 was cancelled because the three judge bench moved to the Jammu High Court. On 27 March 2000, the anniversary of the finding of Mr Andrabi's body, the Bar Association in Srinagar refused to work in protest at the continued failure of the government to ensure that those responsible for his death and those of other human rights defenders were brought to justice.

Attacks on human rights defenders continue. On 5 December 1999, there was a security operation near the town of Baramulla in Jammu and Kashmir. The security forces reportedly asked for advocate **Kisan-ul-Din Ahmed**. He was taken to a school building where he was reportedly tortured. His mother-in-law and son were also reportedly taken by security forces and beaten. The reason for this treatment was reported to have been because he filed a case against the security forces in the High Court.

In recent years, there have been attempts to ensure that the voices of relatives of victims of human rights violations are heard. **The Association of Parents of Disappeared Persons** [APDP] is an association of families who have lost family members through "disappearance". Set up in August 1996, the main objective of the APDP is to find their "disappeared" children or other relatives, or at least to find the truth about their fate and bring those responsible to justice. Made up of people who have no previous experience of dealing with human rights violations or campaigning on rights issues, the Association holds press conferences and meetings to raise awareness of the role of impunity in "disappearances" as well as pursuing writ petitions against the state government in the High Court of Jammu and Kashmir. The activities of the APDP are limited by the lack of funding, support and government approval for their work. In September 1998 Haleema Begum, a member of the APDP, was shot dead by unidentified gunmen; some local observers link her killing to the persistence with which she sought to trace her son. In order to avoid violent confrontation with the police, the APDP hold their meetings in the buildings of the High Court of Srinagar, in the offices of the High Court Bar Association.

Threats and violence against human rights defenders in Manipur

Manipur has been riven by internal conflict and has been under a permanent state of emergency for decades, fuelled by economic under-development, drug smuggling and corruption. Amnesty International has for some years expressed concern about the widespread human rights abuses which have been committed by all sides in the conflict. Of additional concern have also been provisions of special legislation which allow the armed forces virtual impunity. In response to human rights issues local people have come together to protest at the activities of the security forces – most commonly forming Joint Action Committees in an effort to campaign for redress for victims while other human rights organisations have been carefully documenting human rights violations.

Wahengbam Joykumar Singh, from Yaripok in Thoubal district of Manipur is a community worker in the United Youth Council involved in the work of Joint Action Committees. During 1999 he was subjected to threats and harassment by security forces as a direct result of his human rights activity.

In March 1999 a 14-year-old girl committed suicide after she was detained by the Assam Rifles and questioned about her alleged links with an armed group. Joykumar persuaded the girl's father to file a complaint with the Manipur State Human Rights Commission (MSHRC), accusing a Captain of the 7th Battalion of the Assam Rifles of illegally detaining and harassing her.

On 27 June 1999 at around 6.30pm Joykumar was stopped by members of the Assam Rifles, who took his identity card and told him to collect it from the Assam Rifles camp in Yaripok. The men reportedly told him not to go to the police and that if he did his house would be raided and he would be arrested. When he went to the camp at 7.30am the next day he was met by the Captain who reportedly questioned Joykumar about two complaints he had filed with the MSHRC in which he was named, including that concerning the 14-year-old girl. The Captain reportedly threatened to have Joykumar killed unless the complaints against him were dropped and threatened to plant evidence against him and charge him with giving support to armed groups unless he stopped his human rights work. Joykumar was questioned until 2.30pm. Whilst not ill-treated, he was reportedly made to sign a statement that he was in good health before he left the camp.

On 10 July the same Captain led several Assam Rifles personnel to Joykumar's house. As he was not there, the Captain told his younger brother to tell Joykumar to come to the Assam Rifles camp the next day. Joykumar subsequently went into hiding and a complaint concerning the threats against him was filed with the MSHRC on 12 July. Despite requests by the MSHRC to the state police asking them to ensure Joykumar's safety, the local police have said unofficially that they are unable to protect him because they do not have authority over the Assam Rifles (who are under the command of the Ministry of Defence). The National Human Rights Commission have repeatedly expressed concern about Joykumar's safety to the Ministry of Defence.

On 8 September the Officer in Charge of Yaripok Police Station told Joykumar that he wanted to meet him urgently. When Joykumar contacted the police station, after returning from a work trip on 10 September, he was told that the police would visit him the next morning. At 4.30am the next day the Captain, who had previously harassed Joykumar, arrived at the compound where Joykumar lives as part of a search operation in the village. After searching his uncle's house, in the same compound, they detained his cousin, Wahengbam Nimai, on charges

of keeping an illegal weapon. Wahengbam Nimai was subsequently handed over to police on 13 September.

In another incident, another human rights defender, **Y. Mani** (Vice President of the All Manipur United Clubs Organization (AMUCO)), was taken into army custody, on 16 April 1999, where he was badly beaten and allegedly threatened with death. The 32 Rashtriya Rifles (a paramilitary unit of the armed forces) accused him of belonging to the Revolutionary People's Front (an armed opposition group). They reportedly then beat him about his body, including his head and face, with a wooden stick, and on his back with an iron chain and threatened to shoot him and dump his body. He was handed over to police as "white", which indicates that he is not a suspect, after interventions from AMUCO and the Governor of Manipur.

Women in the North East are similarly subjected to state repression but additionally face gender discrimination on many fronts. Despite these barriers, they are present at the front line of the movement for the protection of human rights within their communities. ***Meira Paibis*** (Torch Bearers) are a movement of women who have been working towards protecting citizens from the excesses of military action through sustained and spontaneous response to state human rights violations within their local communities. The main form of action which the human rights movement has been utilising is that of mobilising adult women immediately after incidents of violations have occurred and pushing for redress with the authorities. In other instances they have kept vigil all night by gathering at street corners in all seasons and intervened in cordon and search operations. However the women involved in the organisation are themselves becoming the targets of abuse by security forces because of their work.

In one incident in February 1996 the *Meira Paibis* were involved in protests against the shooting of a schoolboy by security forces. A 25-year-old-woman, **N. Pishakmacha Devi**, (not a member of *Meira Paibis*) also joined the movement of people who were demanding a judicial enquiry and punitive action against the security forces. When no inquiry was initiated by the state government and the family refused to accept the body, the victim's colleagues from college decided to cremate the body and preparations began for a procession. After the initial preparations were being made for the procession the Central Reserve Police Force and Police arrived at the procession in an effort to stop it. Despite this protestors decided to proceed with the demonstration.

Despite Pishakmacha's initial thoughts that the police would spare the women who were part of the agitation, the protestors were beaten and tear gas was used to disperse the crowd. Pishakmacha was herself beaten by the police and when she regained consciousness found herself at the Regional Medical College Hospital. She had suffered severe stomach and back injuries and felt numbness on the right side of her body. Four years later she still suffers from pains and is unable to work. She has stated: "I have little to hope for from this life. My prospects of leading a normal life are over. Despite my father's request to the government, my family has not received assistance of any kind. The Manipur Human Rights Commission would not accept any petition as the incident is more than a year now". (*Manipur Update*, Volume 1 Issue 11, January 2000, a monthly newsletter of Human Rights Alert, Manipur).

Attacks on human rights defenders continue in Punjab despite end to conflict

During the armed conflict which took place in Punjab between armed opposition groups fighting for an independent state of Khalistan and state security forces, it is widely acknowledged that the latter were responsible for widespread human rights violations including illegal detention, torture, extrajudicial execution and "disappearance". Throughout this period (1979 to 1994), human rights defenders, many of them lawyers, attempted to alert the international community to the human rights violations and to pursue cases in the courts. As a result of these activities many were themselves targeted by the police. Numerous lawyers and journalists "disappeared" and are believed to have been extra-judicially executed.

Despite the end to the conflict in the mid-1990s and the return of relative peace, human rights defenders involved in investigating past and present human rights violations continue to be at grave risk in Punjab. Amnesty International believes that the fact that past human rights violations have not been systematically addressed has enabled members of the police force responsible for those violations to continue to harass and threaten those investigating their actions. Until the state ensures an end to impunity for past human rights violations, human rights defenders will remain under threat.

Since the "disappearance" of Jaswant Singh Khalra in September 1995 (see Casesheet 5) which galvanised many human rights organizations in the state into working together to document past human rights violations and to push for justice for victims and their relatives, there has been a systematic attempt to suppress human rights activity in the state. Rather than "disappearances" and extrajudicial executions, the Punjab police have used threats, violence and harassment through the filing of false cases as a means of suppression.

In July 1998 several human rights defenders were arrested on charges of conspiring to secure the escape of several prisoners at Burail Jail in Chandigarh. Jaspal Singh Dhillon, Chair of the Human Rights and Democracy Forum (HRDF) was arrested on 23 July 1998 and only released on bail in May 1999. Other human rights defenders arrested in connection with the case were lawyer Daljit Singh Rajput, Rajinder Singh Neeta (also of the HRDF) and Kulbir Kaur Dhami (involved in establishing a trust for children affected by the former conflict in Punjab). It was widely alleged that the charges were filed against them as a means of harassment because of their human rights activities. Daljit Singh Rajput and Jaspal Singh Dhillon had been involved in several high profile cases against police officials. Daljit Singh Rajput has reported that during interrogation he was stripped naked, forced to stand for hours and laid on the floor with police officers standing on his arms and legs. Jaspal Singh Dhillon has reported that he was interrogated for hours at a time about his human rights activities, occasionally slapped on the face, forced to stand for hours and repeatedly threatened with death.

On 4 October 1998, High Court lawyer **Arunjeev Singh Walia**, went to the Phase VIII SAS Nagar Central Police Station, Mohali, Ropar district to visit a detainee whom he was representing. He was detained by the Sub-Inspector and assaulted -- he was slapped and threatened with death. His identity card issued by the Bar Council of Punjab and Haryana and a card of the human rights organization Lawyers for Human Rights, Chandigarh, were taken by the Sub-Inspector. Arunjeev Singh Walia has testified in an affidavit to the High Court that the Sub-Inspector bragged that there were around twenty-five writ petitions pending in the Punjab and Haryana High Court and other courts containing allegations that he was responsible for "disappearances" and that it would be easy to "disappear" him in the same way. Arunjeev Singh Walia was released when several colleagues went to the police station. The District Bar Association of Chandigarh subsequently filed a Criminal Contempt Petition in the High Court. A departmental enquiry was ordered but the Sub-Inspector remained in his post.

In mid-1998 35-year-old **Kesar Singh**, Block President of the Punjab Human Rights Organization (PHRO) and associated with the Committee for Coordination on Disappearances in Punjab (CCDP) had several false criminal cases filed against him. On 5 June 1998 a case was registered against him under section 406 and 506 of the IPC [criminal breach of trust and criminal intimidation]. He was threatened by a police inspector that if he did not stop working for the PHRO he would have further false cases filed against him. He was released on bail after six days. However, he was picked up again by the same police inspector on 28 July 1998 from his home in Kalewal village along with another man. The two were reportedly tortured by two police officials in the presence of the Superintendent of Police. They were reportedly stripped and dragged by their hair and their legs were stretched far apart. The next day, 29 July, they were taken to another police station and brought before more police officers who again asked him to desist from carrying out human rights activities. Kesar Singh, in a statement said: *"when I replied that nothing is wrong in it he directed the policemen present over there to set me right. That when I again said that they should shoot me dead, the DIG [Deputy Inspector General of Police] said that they have not changed the policy and now they will eliminate the human rights activists by rafting them in jails."* Kesar Singh was subjected to several periods of police remand during which time he was repeatedly threatened to cease his human rights work and not to depose in court against police officials in several cases of human rights violations. While he was detained, his house was searched and money, personal possessions, documents and his motorcycle taken away. A further case was filed against him under sections of the Arms Act and the Explosives Act. He was finally remanded to judicial custody on 1 September 1998 and sent to Nabha Security Jail.

Amreek Singh, journalist and member of the CCDP and General Secretary of the Punjab Human Rights and Democratic Forum, Chandigarh worked with Jaswant Singh Khalra (see Casesheet 5) in documenting illegal cremations before his "disappearance". On 29 July 1998 Amreek Singh was called to the Crime Operation Branch of Chandigarh Police in Sector 26 of the city for questioning. He went there at 11am with lawyer **Harshinder Singh** who is also a member of the CCDP. They were shown a letter written by the Inspector General of Police (Intelligence) Punjab stating that two Sikh "terrorist" were roaming the city of Chandigarh in a vehicle – the vehicle was identified as that of Harshinder Singh, used by both men in the course of their human rights work. Amreek Singh and Harshinder Singh were warned by police to stop their work of documenting cases of "disappearances" in Punjab or they would have a criminal case filed against them. They were sent away with a warning that their activities were being watched. Amreek Singh filed a complaint with the Punjab Human Rights Commission (PHRC) on 30 July 1998 concerning this incident. In his statement he asked: *'Is it an offence to prepare the documentation of some cases where the people allege that their relations had been killed during the last decade in Punjab by Punjab Police under the garb of terrorist? And is it an offence to file Petitions before this Hon'ble Commission against the highhandedness of Punjab Police in the recent past and is there anything unlawful to speak against the modus operandi and illegal violations of human rights of the citizens of the State by the Punjab Police?"*. The case was disposed of by the PHRC with an order dated 1 December 1998 with the observation that "endless harassment is caused to any-one merely because he has raised issue pertaining to the human rights of any individual or any citizen and that action, if any, must always be taken only within the limits prescribed by law".

APPENDIX II

UNITED NATIONS
General Assembly

Distr.

GENERAL
A/RES/53/144
8 March 1999

Fifty-third session
Agenda item 110 (*b*)

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
[on the report of the Third Committee (A/53/625/Add.2)]

53/144. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998,1 in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights.2

1. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;

2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of *Human Rights: A Compilation of International Instruments*.

85th plenary meeting
9 December 1998

ANNEX

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights2 and the International Covenants on Human Rights3 as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from

apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,2 the International Covenants on Human Rights3 and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(*a*) To meet or assemble peacefully;

(*b*) To form, join and participate in non-governmental organizations, associations or groups;

(*c*) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(*a*) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(*b*) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(*c*) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(*a*) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(*b*) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(*c*) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(*a*) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(*b*) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

AI Members only

AI Index : ASA 20/08/00
Distr : SC/CO

Amnesty International
International Secretariat
1 Easton Street
London WC1X 0DW
United Kingdom

DETACH THIS SHEET FROM THE MAIN DOCUMENT BEFORE COPYING OR DISTRIBUTING FOR PUBLIC USE

INDIA
Persecuted for challenging injustice
Human rights defenders in India

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. Please note that a 14-page summary of this report is also available (AI Index: ASA 20/09/00).

The report is linked to a Section Level Action on Human Rights Defenders in India scheduled for May 2000. Please see the Main Action Circular (AI Index: ASA 20/11/00).

DISTRIBUTION BY THE IS

This document has been sent direct by the IS to:

The Government of India
Human rights defenders in India
Media in India
India country coordinators
SARAN coordinators