

INDIA

Jammu and Kashmir: Remembering Jalil Andrabi

“He fought for the right to life, the right to liberty and the right to security”
Rifat Andrabi about her husband Jalil Andrabi.

Amnesty International is concerned that -- like hundreds of victims of human rights violations in Jammu and Kashmir -- prominent lawyer and human rights activist Jalil Andrabi will soon be forgotten. He was killed in March 1996 after being taken away on 8 March 1996 by members of the paramilitary Rashtriya Rifles and so-called “renegades” (see below) in Srinagar. One year after his dead body was found in the Jhelum river on 27 March 1996, the truth about the killing has not been revealed, no security personnel are known to have been suspended and no one has been criminally charged with causing his death. A year of delays in investigating his death appears to indicate the administration’s intention to consign his fate to oblivion.

Amnesty International believes that the investigation into Jalil Andrabi’s killing should be speedily concluded, its results be made publicly available and those responsible be brought to justice promptly and in a fair and open trial. The speedy conclusion of the investigation of Jalil Andrabi’s killing and the criminal prosecution of those responsible are not only important measures because justice always needs to be done and needs to be seen to be done -- but also because it would signal that the present government is committed to ending impunity in the state. Residents in Jammu and Kashmir would regain confidence that human rights protection is a reality to which the government of the state is committed. They would be able to rebuild their confidence that an elected government in Jammu and Kashmir respects fundamental rights and ensures their implementation.

Amnesty International today calls on the government of Jammu and Kashmir to ensure that the truth about the killing of Jalil Andrabi is revealed without further delay as a decisive step towards ending the impunity with which police and security forces have committed widespread human rights violations in the past. The hundreds of “disappearances” of young men in custody, of deaths in custody and of extrajudicial executions in Jammu and Kashmir which local, national and international human rights organizations have documented over the last few years should also be subjected to speedy, impartial and independent investigation with a view to bringing all perpetrators to justice.

The killing of Jalil Andrabi

Jalil Andrabi, a 36-year-old civil rights lawyer, married and with three young children, was the chairman of the Kashmir Commission of Jurists (a human rights organization in Jammu and Kashmir). He fought over many years to improve prison conditions in Jammu and Kashmir and documented cases of arbitrary arrests and detention, custodial killings and “disappearances”. Following a petition filed by Andrabi, the High Court in Srinagar in October 1994 ordered that

district committees made up of judicial, police and medical authorities make regular visits to all jails, detention centres and police lockups in the state. The only visit reported to have taken place, in December 1994, found widespread evidence of illegal detention, torture and ill-treatment. In October 1995, following another petition filed by Jalil Andrabi, the state government gave assurances that no prisoner would be detained outside the state.

Jalil Andrabi was to have represented the Kashmir Commission of Jurists before the United Nations Human Rights Commission in Geneva from 18 March 1996; in January 1996 Andrabi told newsmen that he knew that he was on the government hit list since attending the Commission in Geneva the year before. Shortly before his death, Andrabi attended a conference in New Delhi at which he held state authorities responsible for human rights violations in Jammu and Kashmir.

On 30 January 1996, Jalil Andrabi told journalists that two unidentified armed men, possibly renegades¹, had tried to lure him from his house a day earlier and that he had covertly photographed them. There are unconfirmed reports that these two men were subsequently killed.

In the evening of 8 March, Jalil Andrabi was reportedly taken from his car by personnel of the 35 Rashtriya Rifles unit stationed at Badgam as he was driving home with his family. The group of paramilitaries was headed by a Sikh major and accompanied by renegades acting as “spotters”, identifying passers-by. Andrabi’s wife Rifat who was present during the incident, attempted to file a First Information Report (FIR) in Sadar police station naming army personnel as responsible for the abduction, but was refused. The Inspector General of Police reportedly reassured Rifat Andrabi on the phone later at night that Andrabi was “with them” and would be released after the completion of investigations.

On the following morning, the Jammu and Kashmir High Court Bar Association, of which Andrabi was a member, filed a *habeas corpus* petition in the High Court which then directed all the law enforcement agencies in the state to declare whether they were holding Andrabi. In a sworn affidavit presented on 11 March, the army stated before the High Court that “Rashtriya Rifles do not operate in the said area, neither was any member deputed/present at Parayapora at 5.30 pm nor did any member of Rashtriya Rifles apprehend or receive the alleged detainee on the date and time given...”. Police reportedly urged the family to alter their FIR so

¹Renegades are members of armed groups who are now siding with the government, are armed by it and allegedly carry out operations on its behalf. They reportedly commit human rights abuses with the knowledge, acquiescence or on orders by, the authorities in Jammu and Kashmir. The Government of India in September 1996 in a response to Amnesty International’s report on the elections in the state stated that the allegation that “renegades” committed abuses on behalf of security forces was “baseless” and part of opposition group “propaganda” against their adversaries.

as not to mention suspected army involvement but to declare instead that Andrabi had been taken away by unknown persons. The family agreed to do so on condition that they could meet Andrabi. On 13 March, the FIR was finally registered but the family was not informed of Andrabi's whereabouts. On the following day, the High Court said it was not satisfied with affidavits denying the custody of Andrabi which junior officers of the army and the home ministry had filed and ordered secretaries of the Defence and Home Departments to file their affidavits relating to the whereabouts of Jalil Andrabi. The court also directed that a Special Investigation Team under the Deputy Inspector General of Police be set up to investigate Jalil Andrabi's whereabouts. It was directed to report to the Court every day on the progress of the investigation.

On 27 March, the decomposed body of Jalil Andrabi was found in the Jhelum river. His hands were tied up and his face was mutilated. The autopsy report said that Andrabi had probably been killed some 14 days earlier. He had apparently died of gun shot injuries to his head on which there were also injuries inflicted by a blunt weapon.

The inquiry set up on the direction of the High Court, first into the disappearance and then into the death of Jalil Andrabi does not appear to have concluded its task. On 2 April 1996, High Court judge Justice Bilal A. Nazki reprimanded the inquiry for not having done enough and reminded the state of its responsibility for the safety of every citizen. He reportedly said that in the case of Jalil Andrabi the state had failed to secure his life. He directed the Advocate General to ask the government if any compensation was to be paid to the bereaved family and if it considered setting up a judicial inquiry into the killing.

In June 1996, the composition of the Special Investigation Team and its assigned task were arbitrarily altered by the Inspector General of Police (IGP), Kashmir Range. While the original team consisting of three senior police officers, was to take instructions only from the High Court and to report to it alone, the IGP on 5 June handed over the investigation to the state crime branch and instructed the investigation team to report to him daily. In response to these changes, the Andrabi family filed a contempt of court petition. The IGP in August tendered his unconditional apology; the High Court reserved its orders on it but quashed the IGP's orders concerning the investigation. The High Court called on the state to cease from interfering in the investigation.

In response to the Special Investigation Team naming several suspects involved in the killing of Jalil Andrabi, the High Court on 13 August 1996 directed all police and security forces of the Kashmir Range "to make joint efforts for the arrest of the persons who according to [the] investigating agency are suspects in the case and are required by them. The concerned authorities should ensure the arrest of concerned persons ... within three weeks from today and hand them over to ... [the Special Investigation Team] for investigation". It also directed that the autopsy report be handed over to the Special Investigation Team within one week. The names

of the suspects have not been made public. To Amnesty International's knowledge, no one has been arrested or suspended.

Amnesty International has been informed that the Special Investigation Team in late autumn complained that it was not able to make any progress as neither the Rashtriya Rifles nor the army co-operated with it.

An order of the Jammu and Kashmir High Court of late 1996 noted "the fact that the functionaries of the Union of India have not been cooperating with the Investigating Team in a proper manner. We are sad to find that even after eight months, [the] post mortem report has not been furnished to [the] Investigating Team. Mr. Advocate General has taken it upon himself to look into the matter and make the report available to the Investigating Team before the next date." At the time of writing this report, in mid-March 1997, Amnesty International was informed that the post mortem report had still not been submitted as required by the High Court.

In April 1996, the National Human Rights Commission (NHRC) requested permission from the High Court to intervene in the proceedings and to take part in the investigation. The NHRC did so using its discretionary powers as the Protection of Human Rights Act 1993 does not mandate it to investigate allegations of violations by the armed forces. A senior officer of its investigation division visited Jammu and Kashmir in early April 1996 and spoke to witnesses including members of the Andrabi family. The NHRC in May directed state authorities to take appropriate measures to ensure the safety of the Andrabi family and of other witnesses. In mid-March 1997, the NHRC informed Amnesty International that a "Senior Superintendent of Police of [the] NHRC also investigated into the case and submitted his report. The Commission has decided to make available the investigation report of NHRC to the High Court. The matter is now before the High Court for disposal."

To Amnesty International's knowledge, no one has so far been arrested, nor has any member of the security forces been suspended in connection with the killing of Jalil Andrabi. The killing of Jalil Andrabi caused shock around the world. For example, the UN High Commissioner for Human Rights in early April 1996 urged the Indian Government to undertake a "thorough investigation" aimed at "establishing the facts and imposing sanctions on those found guilty".

Amnesty International, too, has on several occasions appealed to the authorities in India to ensure a prompt and impartial investigation into Jalil Andrabi's death with a view to bringing perpetrators to justice. In September 1996, the Government of India responded to Amnesty International's report *India: Human rights abuses in the election period in Jammu and Kashmir* (AI Index: ASA 20/39/96) which expressed the organization's concern about the killing of human rights activists Jalil Andrabi and Ghulam Rasool Sheikh. The government said: "The allegation of Government hand in the killing of human rights activists in J&K have been made

earlier also. In all incidents of killings of so-called human rights activists, Government has made available clinching evidence showing that they were targets of one or other militant organization, whose ideology did not match with theirs. It will also be pertinent to ask to what extent it would be justified to call them human rights activists, whose apparent leaning or sympathy with particular terrorist groups have earned them the wrath of other similar groups.” An appended fact sheet further said that Rifat Andrabi had reported to police immediately after the abduction that they had been stopped by army personnel and that her husband had been picked up from the car. “On further probing by the police personnel, Mrs. Andrabi stated that some unidentified armed abductors had used a private ambassador taxi for whisking away her husband.” The Government said that the Special Investigation Team was continuing with its task, “monitored closely and exclusively by the High Court, [so] it is difficult to make further comments”, but then reiterates its view that “it is common practice that these terrorist outfits precipitate a major incident or the killing of a prominent person just on the eve of international conferences ... in order to gain propaganda mileage ...” Given the significant part played by Jalil Andrabi in securing human rights protection in the state and given the eye-witness accounts to his arrest, Amnesty International cannot consider this response to be meaningful.

The new government in Jammu and Kashmir

Amnesty International seeks to constructively engage with the Government of India and the newly elected state government of Jammu and Kashmir on the wider issue of impunity that is key to the organization’s concern about the delay in the investigation of the killing of Jalil Andrabi.

Impunity, literally the exemption or protection of perpetrators of human rights violations from punishment is one of the main contributing factors for the continuing patters of human rights violations the world over. By bringing perpetrators of human rights violations to justice, governments are sending a clear signal that such violations will not be tolerated and that those found responsible will be held fully accountable. When there is failure to investigate human rights violations and those responsible are not held to account, a self-perpetuating cycle of violence is set in motion resulting in continuing violations of human rights.

Amnesty International has noted with interest the announcement made by the government of Chief Minister Dr Farooq Abdullah in October 1996 and approved by the state cabinet in January 1997, that a permanent Jammu and Kashmir Human Rights Commission is to be established. It is to be composed of a retired High Court judge as its head and a serving district judge as well as a third person connected with human rights. Like other Indian state commissions set up as envisaged by the Protection of Human Rights Act 1993, the commission in Jammu and Kashmir will, according to official statements, not be empowered to investigate allegations of human rights violations by armed or paramilitary forces. A senior official stated that defence matters are governed by Defence of India Rules and that the army is under the

control of the central government. This implies that a state human rights commission will not be able to deal with the vast majority of abuses which in Jammu and Kashmir are reportedly perpetrated by the army, the paramilitary forces or the renegades acting at their behest. Amnesty International in October 1996, wrote to the Chief Minister of Jammu and Kashmir seeking clarification on this issue and calling for a wider mandate for the Jammu and Kashmir Human Rights Commission, but has so far received no response.

Though Amnesty International has not been able to visit the state to independently verify allegations, it has received numerous reports from victims and victims' families, journalists, visitors to the state and local human rights activists which indicate a persistently serious human rights situation in the state. In January 1997, the Jammu and Kashmir Bar Association reportedly decided to file criminal cases against the Jammu and Kashmir government and the Indian armed forces relating to the custodial deaths of 218 people in 1996, including those of 113 civilians, 98 members of armed opposition groups and seven government employees. All had apparently been arrested first and then been shot dead or tortured to death in detention centres inside or outside Kashmir. One of these men was Jalil Andrabi.

Amnesty International's recommendations

Amnesty International calls on the Government of Jammu and Kashmir:

- C to ensure that the investigation into the killing of Jalil Andrabi is speedily concluded and that its results be made public and that all those found to have in some way been involved in it, by actively participating in it, ordering or condoning it or permitting the truth to be covered up, are immediately suspended and criminally charged;
- C to publicly commit themselves to ending impunity and to actively implement such commitment by investigating all past reports of human rights violations, bringing to justice all those found responsible for abuses and providing redress to victims or victims' families;
- C to inform all security personnel that violations will not be tolerated and that perpetrators will not be shielded.

Amnesty International calls on the state government of Jammu and Kashmir and the Government of India:

- C to issue clear instructions to state officials to cooperate fully and expedite the investigation into the death of Jalil Andrabi;
- C to ensure that the Jammu and Kashmir Human Rights Commission be granted a mandate that will not exclude investigation of human rights violations perpetrated by security forces as an institution with limited authority will neither be able to deal with the most severe human rights abuses committed in the state nor succeed in rebuilding the trust of people in Jammu and Kashmir that justice will be done;
- C to further ensure that lawyers and human rights activists in the state who have played an active role in documenting human rights violations will be given a role in the Commission;
- C to ensure transparency and openness by permitting international human rights organizations like Amnesty International and UN human rights mechanisms including the Special Rapporteur on torture regular access to the state.

Earlier publications by Amnesty International on Jammu and Kashmir include:

India: Human rights abuses in the election period in Jammu and Kashmir, September 1996, AI Index: ASA 20/39/96

India: Torture continues in Jammu and Kashmir, November 1995, AI Index: ASA 20/33/95

India: Analysis of the Government of India's response to Amnesty International's report on torture and deaths in custody in Jammu and Kashmir, March 1995, AI Index: ASA 20/05/95

India: Torture and deaths in custody in Jammu and Kashmir, January 1995, AI Index: ASA 20/01/95

India: Summary of human rights concerns in Jammu and Kashmir, January 1995, AI Index: ASA 20/02/95

India: An Unnatural Fate - "Disappearances" and impunity in the Indian states of Jammu and Kashmir and Punjab, December 1993, AI Index: ASA 20/42/93

India: Masroof Sultan - a rare survivor of torture and attempted killing in custody in Jammu and Kashmir, June 1993, AI Index: ASA 20/28/93

India: Sopore - A case study of extrajudicial executions in Jammu and Kashmir, April 1993, AI Index: ASA 20/17/93

These publications can be obtained from:

Amnesty International
International Secretariat
1 Easton Street
London WC1 8DJ
United Kingdom