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Cover photo: Kashmiris rounded up during a "crackdown" operation in Srinagar in December 1991. Torture is routine during such counter-insurgency operations. (c) Frontline

INDIA

@Torture and deaths in custody in Jammu and Kashmir

I. INTRODUCTION

"A teacher of a private school, namely Abdul Jabbar Mir... was arrested by the armed forces. Next day his dead body was handed over to his relatives through the police. There were marks of violence on the body of the deceased. His bones had been broken and there were injuries to his private parts..."
(Alsafa, an Urdu newspaper, 4 July 1992)

This account of the death of Abdul Jabbar Mir is typical of thousands of allegations of torture and deaths in custody which have been reported in Jammu and Kashmir since early 1990.

Usually there are few details available to the Kashmiri press and civil liberties groups that document human rights violations. But Abdul Jabbar Mir's case is exceptional: there was an eye-witness to his torture, the police themselves recorded that torture was the cause of death and a post-mortem confirmed this.

Abdul Jabbar Mir, who was tortured to death on 2 July 1992. A doctor who examined him concluded that he had been "put to a lot of torture" before his death

The army maintains that Abdul Jabbar Mir was taken away to locate an arms dump, that he tried to snatch a gun from a soldier and "was shot while trying to escape". But there is ample evidence that Abdul Jabbar Mir, like numerous other Kashmiri suspects, was brutally tortured and killed in custody.

Abdul Jabbar Mir, a 50-year-old school teacher from Tawheed Ganj, Baramulla, was married with three children. He was taken away from his home by army personnel on 1 July 1992. He was detained with 28-year-old Manzoor Ahmed, who said that both men were taken by the army to a stadium where they were beaten. They were then carried to an army camp. Manzoor Ahmed later testified that he was stripped naked, was beaten on his genitals, was given electric shocks and had needles driven into his back. He was then released.

Abdul Jabbar Mir did not survive. At 8.30pm the following day Major R.K. Chibbar of the 15th Punjab Regiment handed over his body to the police station in Baramulla. There, police recorded 10 separate injuries on his back, chest, leg, and forehead, and concluded that the "whole body from top to below had signs of torture". His relatives insisted on filing a complaint with the police, alleging that he was tortured to death, and took the unusual step of insisting on a post-mortem. The post-mortem, which was carried out on 3 July 1992, revealed multiple bruises, especially in the genital area, puncture wounds on the buttocks, injuries to lungs and heart, gunshot wounds and a fractured thigh. The examining doctor concluded: "Deceased has been put to a lot of torture". The torture allegations were investigated by the Crime Branch of the Srinagar police, but the outcome is not known.

On 4 September 1992 the Station House Officer (SHO) of Baramulla police station observed in his report: "As per records of this station, there is no such evidence which proves that the deceased had any direct or indirect link with any terrorist organisation".

Grave human rights violations have risen dramatically since mid-1992 and have reached alarming proportions: two appendices to this report list details of 706 people who are reported to have been killed in the custody of the security forces in the state since January 1990, nearly all after torture¹. The list is far from complete. The Times of India commented on 12 March 1993 that over the previous six months, "custodial killings of both militants and others became almost a daily phenomenon". The Kashmir Times of 26 April 1993 carried a report of police records listing 132 persons to have been killed in custody in the preceding 33 days alone.

The brutality of torture in Jammu and Kashmir defies belief. It has left people mutilated and disabled for life. The severity of torture meted out by the Indian security forces in Jammu and Kashmir is the main reason for the appalling number of deaths in custody.

Most of the people who are tortured and killed in custody are young men picked up by the army or paramilitary forces during "crackdown" operations in villages or other areas to identify suspected militants. The relatives of those arrested are often not told why they are taken away or where they are being taken. People have been tortured to death either in crude attempts to extract information about armed secessionist groups, to intimidate the local population, or as an act of reprisal for the killing by armed militants of security forces personnel. Initially, there were only few attempts to cover up such killings. Between 1990 and 1993 the Urdu-language press in Srinagar carried numerous reports of people arrested by the security forces whose bodies were later simply thrown on the roads, in rivers, or

¹ Amnesty International provided the Government of India with details of the 715 cases on 15 December 1994

brought to the police control room or were returned to their relatives often with multiple injuries. Later, the government sought to cover up such killings by attributing them to "encounters" between militants and the security forces (see Chapter III).

Torture is a daily routine for the vast majority of thousands of men and women who have been arrested in connection with the campaign for Kashmir's independence or for the state to join Pakistan. Scores of women claim that they have been raped. Despite a lack of medical facilities in remote villages, some medical examinations have been carried out confirming allegations of rape in dozens of cases. Hundreds of men, women and children have reportedly been extrajudicially executed in four successive years by the security forces, often in reprisal for attacks on their own personnel. Many other human rights violations are outside the scope of this report. They include hundreds of extrajudicial executions and "disappearances" as well as the detention of many thousands of political prisoners held for many months or years without being brought to trial². The houses of many civilians have been destroyed during raids or cordon and search operations commonly known as "crackdowns". There is a growing number of armed groups who have themselves resorted to violence and intimidation and have committed numerous grave human rights abuses which Amnesty International strongly condemns (see Chapter V). An estimated 17,000 men, women and children have died in the state since the secessionist campaign started in late 1989, according to police and hospital sources.

"Use of force can end in excess use of force which in turn leads to alienation and has a snowballing effect", the Director of the Border Security Force (BSF) told a November 1994 symposium organized by the International Committee of the Red Cross (ICRC). The ICRC was conducting its first training seminar to inform paramilitary forces operating in Jammu and Kashmir about humanitarian standards. Citizens for Democracy, a leading Indian civil liberties group, said in May 1994 after visiting the state:

"In fact as a result of frequent military and paramilitary crackdowns where the number of innocent people have been subjected to inhuman torture, the peoples' bitterness against the Indian Government and against India is increasing day after day".

Indeed, as Amnesty International described in its December 1993 report on "disappearances" in Jammu and Kashmir³, most of the Kashmiri population – including

² Since 1990, Amnesty International has raised concerns about them with the Indian Government in numerous letters, appeals and a series of reports and media releases.

³ 'An Unnatural Fate' - 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab, December 1993 (AI Index: ASA 20/42/93), page 7.

members of the Kashmiri police themselves – have become so alienated by what they perceive as the Indian Government's persistent sanctioning of grave human rights violations that their sympathies for secessionist groups have increased⁴. This in turn makes virtually the whole population suspect in the eyes of the security forces.

Since late 1989 thousands of arrests have been made each year under laws conferring broad powers to arrest and detain suspects without charge and without judicial review: more than 5,000 Kashmiri militants were in custody for aiding and abetting the campaign, according to a spokesman of the Ministry of Defence in Srinagar in October 1994. However, some civil liberties groups estimated that four times that number were being held without trial in the state. Prisoners are detained for many months or years, some of them outside the state. Many basic legal safeguards are denied to them and effective legal remedies to challenge their detention are virtually non-existent.

Although official instructions have repeatedly been issued that relatives of people arrested should be informed within 24 hours of arrest, arrests are rarely acknowledged or registered in practice. Lawyers have complained that arrests are sometimes made by members of the security forces travelling in cars without number plates. There appears to be little awareness among the security forces that they should abide by the law or observe human rights standards in Jammu and Kashmir: "Why do you talk of human rights? They don't deserve to be treated as human beings" one officer told a foreign correspondent in October 1993 who had asked him about the treatment of detainees in custody. They also believe they can act with total impunity. A reporter who had just been released from torture in detention told the same correspondent that his interrogators had threatened him saying: "Remember we are capable of doing anything, we can kill anyone in custody"⁵.

Court orders to protect detainees are routinely flouted by the security forces. In October 1994 a Jammu and Kashmir High Court judge, ruling on a public interest petition alleging widespread torture and arbitrary detention of detainees, found:

"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

⁴ "Particularly noticeable has been the number of times Indian security forces have 'rampaged' after guerrilla attacks. The severity of these attacks and their regularity have not only traumatized the local population but have also even alienated the local security forces, so much so that the government faced a local police revolt in May 1993, triggered by the death of one of their colleagues whilst in army custody". The Diffusion of Small Arms and Light Weapons in Pakistan and Northern India, Chris Smith, Centre for Defence Studies, University of London, September 1993, page 30.

⁵ The Observer, London, 24 October 1993.

complaints and many of which stand substantiated. Hundreds of cases have been brought to my notice where the detainees are in illegal detention. Despite the strong directions of this court they are not being released... Scores of cases are pending wherein the detainees have been allegedly done-away with after arrest. For years the detainees are languishing in jails, Sub-Jails and interrogation centres without any legal authority. In short, there is total break down of law and order machinery⁶.

Echoing the findings of numerous reports from the press and from local and international human rights organizations – including Amnesty International – the judge also observed that "hundreds of cases are pending [before the High Court] in which the whereabouts of the detainees are not known". The Government of India, in its response to the December 1993 Amnesty International report on "disappearances" in Jammu and Kashmir and Punjab, claimed that "the State Government [of Jammu and Kashmir] has responded to nearly 99 percent of all such petitions that have been filed, despite the tremendous strain under which the whole legal and administrative system has been put by the continuing violence and terrorism"⁷. However, this statement contradicts the High Court judge's findings in October 1994: "... even this court has been made helpless by the so-called law-enforcing agencies. Nobody bothers to obey orders of this court...".

There are three Indian security forces operating in the Kashmir valley: the army and two paramilitary forces, the BSF and the Central Reserve Police Force (CRPF). Allegations of torture, custodial deaths, extrajudicial executions and "disappearances" have implicated all three forces, but reports implicate the BSF in most custodial deaths. Few are attributed to the local police, whom officials suspect of sympathizing with armed secessionists.

Human rights violations continue on a large scale, effectively being ignored by the government: "Reports of violations of human rights are pouring in from across the Valley and the authorities seem not [to be] responding to the reports", The Kashmir Times wrote on 9 November 1994. In Amnesty International's view, these amount to a consistent pattern of grave human rights violations perpetrated by the security forces operating in Jammu and Kashmir, which the government has failed to effectively address and about which the international community has virtually remained silent.

⁶ Order of the High Court of Jammu and Kashmir, Srinagar, 17 October 1994, High Court Petition No.850/94, Jalil Andrabi vs State, also reported in The Times of India, 20 October 1994.

⁷ Response of the Government of India To Report of Amnesty International titled 'An Unnatural Fate' 'Disappearances' and Impunity in the Indian States of Jammu and Kashmir and Punjab, undated, sent to Amnesty International in June 1994, paragraph 30.4.

Amnesty International published a report in March 1992 which studied torture and custodial killings throughout India⁸. That report identified a pattern of torture, rape and deaths in custody throughout the country, even in states not facing organized armed opposition. That was the first time that Amnesty International raised its concern about these grave violations of human rights in Jammu and Kashmir with the government. The report listed 415 individuals reported to have died in the custody of the security forces in India's 25 states in the seven years from 1985 to 1992. Twenty-eight of the victims were from Jammu and Kashmir. That number turned out to be a gross underestimate. This report lists 706 cases recorded in four years in just one Indian state. These findings underline Amnesty International's experience elsewhere: in situations of armed insurgency, such as in Jammu and Kashmir, the protection of human rights is most acutely and gravely at risk.

The government's attitude towards human rights violations in Jammu and Kashmir

Positive developments

Amnesty International welcomes the government's recognition, notably in the last two years, that serious human rights violations have taken place in Jammu and Kashmir. It has occasionally condemned such violations, including torture and custodial deaths. Screening committees at state and district levels, which consist of high-level officials headed at state level by the Director General of Police, are said to be reviewing the evidence against detainees. The government has, from time to time, released scores of political prisoners. On 1 October 1994, the government ordered the release of 276 detainees. Around the same time three leaders of political parties who Amnesty International considered to be prisoners of conscience were released: Abdul Gani Lone, Sayeed Ali Shah Geelani and Shabir Ahmed Shah. Shabir Ahmed Shah had been detained without trial for five years, and has spent a total of 18 years in prison for his peaceful political activities. Amnesty International welcomed their release, as well as several important initiatives the government has taken to raise awareness among the security forces stationed in the state of the need to uphold basic standards of human rights and humanitarian law.

In July 1993 the Minister of State for Home Affairs, Rajesh Pilot, told the press that the government would respect human rights in its efforts to curb the separatist movement in Jammu and Kashmir, and that allegations of custodial deaths would be investigated. He reiterated earlier assurances that relatives must be informed within 24 hours of the arrest of their children, (even though, unfortunately, there is little evidence to show that these directives have been implemented). In June 1994 the Home Minister, S.B. Chavan, urged troops to be "sensitive" to human rights. That same month a human rights cell established in

⁸ India: torture, rape and deaths in custody, March 1992, (AI Index: ASA 20/06/92)

the state's Home Department was said to be monitoring abuses by the security forces reported in the press and elsewhere. The army and paramilitary forces have reportedly been made to follow courses in international humanitarian law. In November 1994 the Jammu and Kashmir government said it had asked the state police to investigate allegations of human rights violations reported in the local press over the previous eight months.

In an important departure from previous practice in the last two years, the government has taken steps to investigate several allegations of rape and certain incidents involving reported extrajudicial executions of unarmed civilians. It has so far ordered only one independent investigation: a judicial inquiry into allegations that at least 45 men and women were shot dead in reprisal by members of the BSF in the town of Sopore on 6 January 1993. By June 1994 the inquiry had not been completed; one of the delaying factors, according to the government, was that armed opposition organizations had threatened witnesses. One magisterial inquiry was ordered into similar allegations that the BSF ran amok and arbitrarily shot at least 37 unarmed demonstrators in the town of Bijbehara in October 1993; the magistrate recommended criminal proceedings against 12 BSF members, and concluded that the shootings were unprovoked. A staff Court Inquiry by the BSF itself held 14 BSF members responsible, and the National Human Rights Commission asked the government for detailed reports on the incident. It concluded that prosecutions should proceed, that compensation should be paid, (which the government says was provided to the families of 31 of the victims), and that the circumstances and conditions in which the BSF is employed in civilian areas should be thoroughly reviewed. So far, however, the 14 men are not known to have been brought to justice.

Although the government has dismissed the vast majority of allegations of rape by the security forces, it has informed Amnesty International that four members of the security forces were sentenced to terms of imprisonment ranging from three to 10 years for raping a woman in Srinagar in May 1993; that one was sentenced to three years' imprisonment for raping a woman named Noor Begum near Lari Bal; and that two were sentenced to five years' imprisonment for raping the bride Mubina Gani in May 1990. In July 1994 two more soldiers were reportedly sentenced to 12 years' imprisonment by a court-martial for raping a woman in Patan town in north Kashmir.

In October 1993 the government set up the National Human Rights Commission (NHRC) under the Protection of Human Rights Act, 1993. It is an independent body empowered to inquire into complaints of human rights violations throughout India and promptly initiated a series of visits to several states hearing complaints and making recommendations to the government. However, its power to investigate the widespread allegations of human rights violations in Jammu and Kashmir are extremely limited: Section 19 of the Protection of Human Rights Act precludes any investigation by the NHRC into complaints of human rights violations by the army and paramilitary forces, excluding virtually all those perpetrated in Jammu and Kashmir. All it can do when faced with complaints of

this nature is to call for official reports from the government, effectively functioning as a "post-box" of official views. In the case of the Bijbehara incident, the NHRC exercised these powers effectively, making its own recommendations and building on the critical reports from official bodies that had already carried out investigations.

Although the determination with which the NHRC appears to pursue complaints of serious human rights violations in some Indian states has surprised some of its most notable critics, several Indian commentators committed to the rule of law have expressed concern about various aspects of the Commission's visit to Jammu and Kashmir. The NHRC visited the Kashmir valley for only two days in June 1994 but did not travel outside Srinagar. The Commission reportedly received some 20 complaints of custodial deaths, "disappearances" and illegal detentions. The NHRC visited two interrogation centres in Srinagar notorious for torture: Hari Niwas Detention Centre and Papa II, but the Commission's Chairman told the press afterwards that the Commission met 60 detainees there who, he said, had "nothing specific" to mention. The Commission's determination to effectively investigate complaints of torture in Jammu and Kashmir must be in doubt as its Chairman apparently condones some forms of torture in the state. He reportedly told the Sunday Mail (7-13 August 1994) in response to a question about torture in Jammu and Kashmir: "...third degree methods have not been abandoned. It is in vogue and to a limited extent, if one does not use it, no investigation is possible". Since then, the NHRC has announced that a retired Director General of Police (DGP) would visit Jammu and Kashmir to investigate the complaints the NHRC received during its brief visit. However, his position as an officer holding DGP rank raises questions about the independence and impartiality of the investigator's visit.

The Governor of Jammu and Kashmir, Krishna Rao, has himself acknowledged that prisoners have died in custody from torture. He told India Today in a report of 31 May 1993 that

"I genuinely feel bad if torture leads to death. I belong to an army whose chivalry is well known... Where is the need to kill a militant if he is totally defenceless? I've told the forces to be careful. Custodial deaths will hurt my cause, so I have a vested interest in putting an end to them".

On 26 April 1993 Mr Mehmood-Ur-Rehman, the Additional Chief Secretary for Home Affairs, said that "I am against custodial deaths. It is an article of faith with us. After all, human life is precious"⁹. Indeed, the Governor has promised that the sternest possible action would be taken against those responsible for killing detainees in custody. But that has not happened.

⁹ Times of India 28 April 1993.

The initiatives the government has taken signify an officially stated commitment not to tolerate human rights violations, an important first step towards their eventual eradication. However, this will remain an empty gesture unless it is matched by the political will on the part of the government to take concrete and effective steps to halt human rights violations in Jammu and Kashmir not only in words, but also in practice. That has yet to happen.

Attempted cover-up

The government has sought to cover up torture and deaths in custody, rather than ensuring that effective, independent investigations are carried out and that the perpetrators are brought to justice.

Despite the assurances of the Minister of State for Home Affairs that custodial deaths would be investigated, official investigations are extremely rare. In the few cases in which they have reportedly been held, their outcome is either not known or investigations were held by members of the security forces themselves and not by an independent body. Dismissing the allegations, such inquiries often concluded, without specifying the evidence, that the person died "in cross-fire". The human rights cell established in June 1994 by the Jammu and Kashmir state government is reportedly headed by an Inspector General of Police who is also in charge of the Kashmir intelligence service. The cell also incorporates members of the paramilitary forces and the army who themselves stand accused of committing grave violations of human rights¹⁰. Not surprisingly, the human rights cell has found most of the allegations of human rights violations to be "false and misleading" and "inspired by militants". It has not stated on what grounds it based these conclusions. Amnesty International has not received a satisfactory response to any of the 28 allegations of deaths in custody in Jammu and Kashmir raised in its previous report on torture and custodial deaths (see Chapter III). The organization does not know of a single case where an investigation has been conducted by an independent and impartial authority into a report that someone has allegedly died in custody as a result of torture

It is possible – as in any situation of armed conflict – that armed separatist groups and their sympathizers have inflated reports of deaths in custody for propaganda purposes. However, it is essential in cases where the government's investigation finds that this has occurred, that the evidence for this conclusion is presented. To dismiss allegations of deaths under torture without making public the evidence diminishes the credibility of government findings. It also makes a mockery of the government's expressed intention to take human rights violations in Jammu and Kashmir seriously.

¹⁰ The Observer, London, 13 November 1994.

The government has responded to well-documented reports of torture resulting in death by stating that "there is no policy to carry out torture of detainees in Jammu and Kashmir" and suggesting that "often such reports are circulated to deflect attention from terrorist activities". India's Ambassador in Bonn did so in response to Amnesty International's urgent appeal on behalf of Manzoor Ahmed Ganai (Case 176, Appendix I), a farmer and embroidery worker from Wakoora, Ganderbal. Arrested on 7 January 1993 with 16 other young men from his village during a "crackdown" by the army's 10 Bihar Regiment, he was held for three weeks and tortured for 10 days in Mansabal army camp. He said that he was given electric shocks, was beaten with sticks and guns and was trampled on by soldiers. He said that soldiers set light to his legs with paraffin and that he was suspended upside down by the feet for around 24 hours until he lost consciousness. He was released on 27 January 1993 and immediately taken to the Bone and Joint Hospital, Barzulla, Srinagar, where both his lower legs had to be amputated. He had developed gangrene. He died three weeks later. A medical examination reportedly revealed that death was due to renal failure, which Kashmiri doctors often relate to the after-effects of torture (see Chapter III).

According to an Amnesty International medical expert who examined photographs of Manzoor Ahmed Ganai's legs before amputation, there were clear marks on his ankles which were consistent with the tying of ropes around the ankles. A doctor who treated him in Srinagar said that he could have been saved had he received timely medical treatment. India's Ambassador assured Amnesty International on 19 March 1993: "We are ascertaining the facts of the case and a further communication will follow". But there was no further communication. Nor, as far as Amnesty International is aware, was any investigation carried out.

Manzoor Ahmed Ganai recovering in the Bone and Joint Hospital, Srinagar, in February 1993, from the amputation of his lower legs necessitated by army torture. He died within weeks

His legs before amputation show peripheral discoloration and deep circular skin lesions just above the ankle, marks consistent with the torture allegations. He was suspended by his feet for many hours.

Attempts by relatives of victims to bring complaints against the security forces have persistently been frustrated. The first step which relatives have to take is to register a complaint with the local police, who are obliged in law to take their statement down in writing in a First Information Report (FIR) (see Chapter IV). However, lawyers allege that the local police have been secretly instructed to refuse to register complaints of human rights violations without first obtaining permission from higher authorities. They cite an order from the Superintendent of Police (South Srinagar), dated 4 April 1992: "If there is any misdemeanour by the security forces during search operations or otherwise... FIRs should not be lodged without approval of higher authorities". This instruction clearly contravenes Indian law.

Complaints to the courts seeking to ensure that the security forces investigate allegations of custodial killings or produce the "disappeared" in court have routinely been ignored by the government to whom they are addressed. The pattern of official non-compliance with court orders in such cases in Jammu and Kashmir has been criticized by High Court judges themselves and has been described in other Amnesty International reports¹¹ and by civil liberties groups in the state (see Chapter IV).

Virtual impunity

The government has given different figures at different times on action taken against members of the security forces for alleged human rights violations. The government told Amnesty International in November 1992 that action had been taken against 230 members of the security forces. In July 1993 it revised that figure downwards to 135. However, a year later it claimed that as of 20 May 1994 action had been taken against 174 members of the security forces. Seventy of these 174 actions resulted in terms of imprisonment imposed on 15 members of the army, 40 members of the BSF and 15 members of the CRPF. Of these 70 prison sentences, the majority (55) were of less than a year's duration. Only 15 members of the security forces were sentenced to terms of imprisonment of one year or more.

¹¹ See An Unnatural Fate - Disappearances and impunity in the Indian states of Jammu and Kashmir and Punjab, pages 16-21.

Amnesty International welcomes the publication of this information. It shows that the government does not wish its security forces to remain entirely immune from prosecution for committing human rights violations. The few prosecutions that have taken place establish the important principle of accountability for human rights violations. However, unfortunately, they bear no relation whatsoever to the gravity and persistence of the numerous human rights violations that have been reported in Jammu and Kashmir during the last four years. Moreover, the government continues to refuse to provide any information about the type of offences for which the 174 punishments were imposed, the identity of the security forces involved, and the incidents to which the punishments relate. From other information provided by the government, it appears that at least half of the 15 terms of imprisonment of one year or more were imposed following convictions for rape. None of these punishments are known to have been imposed on any members of the security forces for torturing and killing hundreds of suspects in custody¹².

This is not surprising since laws in force in Jammu and Kashmir allow the security forces to operate with virtual impunity (see Chapter IV). They assist the government in shielding the perpetrators of these grave human rights violations from prosecution. Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act provides that unless previous approval has been obtained from the central government, "No prosecution, suit or other legal proceeding shall be instituted.. against any person in respect of anything done or purported to be done in exercise of the powers of the Act". Members of the UN Human Rights Committee examined India's periodic report about its observance of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) in 1991. They felt that this particular provision was highly dangerous in that it encourages violations of the right to life. Committee members recommended its prompt review. However, to date the government has failed to conduct a review or to bring provisions of the act which clearly contravene international human rights standards in to line with India's obligation to protect human rights, notably the right to life.

Reaction to the United Nations

The government's negative attitude to responding in real and effective terms to concern expressed by UN bodies dealing with human rights in India is evident from its reaction to two UN experts. The UN Special Rapporteur on torture and the UN Special Rapporteur on extrajudicial, summary and arbitrary executions have in recent years submitted numerous

¹² In the first case of its kind in the state known to Amnesty International, eight army officers were recently reported to have been arrested after the public protested against the death in army custody of Khazir Mohammad Akhoun of Veeripora Soiteng on 14 December 1994 (The Times of India, 17 December 1994).

cases to the Indian government, highlighting their concern that prisoners are routinely tortured in police stations and that many have died as a result in the state. The UN Special Rapporteur on extrajudicial, summary and arbitrary executions stated in his report to the 50th session of the UN Commission on Human Rights that he was informed:

*"about the persistence of numerous violations of the right to life in Jammu and Kashmir.... serious concerns have been expressed about a large number of killings by the Indian security forces. Very often these killings were said to be the result of torture or ill-treatment in custody".*¹³

The government has responded to some of these allegations. However, the government's responses have consisted of outright denials, or statements that the allegations were being investigated, or that they were "*sub judice*". The UN Special Rapporteurs are not known to have been informed of the outcome of investigations into any of the cases they submitted. This prompted the Special Rapporteur on extrajudicial, summary and arbitrary executions to request further information about the outcome of investigations and the procedures the government had followed in carrying them out. In 1993 he proposed that both Special Rapporteurs visit India:

*"In the light of these allegations and, in particular, of the fact that similar reports had come before the Special Rapporteur over a number of years, the Special Rapporteur conveyed to the Government of India his interest in carrying out a visit to that country with a view to being in a better position to evaluate the situation and, consequently, proposing constructive recommendations that may help prevent the recurrence of such violations. With reference to the particular problem of deaths in custody due to ill-treatment, it was suggested that such a visit could be carried out jointly with the Special Rapporteur on the question of torture".*¹⁴

No invitation has been extended. The Special Rapporteur was informed that it was preferable to let the newly established human rights mechanisms in India deal with alleged violations of the right to life. In response the Special Rapporteur explained that he "remains concerned at allegations of violations of the right to life that continue to come before him", that he did not intend to carry out tasks which fell within the competence of national institutions charged with investigating human rights violations, but that he wished "to seek

¹³ Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, E/CN.4/1994/7, paragraph 327

¹⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1994/7, paragraphs 334, 339 and 342.

first-hand information which would provide him with a better understanding of the situation and the problems faced by the authorities with respect to the right of life". To Amnesty International's knowledge, the government continues to refuse to allow the two Special Rapporteurs to visit India to conduct on-site investigations.

The Home Minister, S.B. Chavan, also reportedly stated that India would "politely" refuse entry to a UN fact-finding team to the Kashmir Valley¹⁵.

Denial of access

The Indian Government has repeatedly stated, as it did during the last session of the UN Commission on Human Rights in February 1994, that it has always worked in a spirit of openness and transparency in Jammu and Kashmir. This policy of transparency resulted in several brief visits by Ambassadors of a number of countries to the state in the course of 1994, and one visit by the ICRC in March 1994 to assess humanitarian needs. However, it does not appear to apply either to UN human rights mechanisms or, with the exception of the International Commission of Jurists, to international non-governmental human rights organizations such as Amnesty International.

Amnesty International first asked to visit the state in March 1990 and has continued to press the government for permission to visit Jammu and Kashmir. It has made the request in numerous letters and whenever it has had the opportunity to meet government officials in Delhi or elsewhere. The government has told Amnesty International that it has no objection to such a visit "in principle", and the Minister of State for External Affairs assured an Amnesty International delegation in February 1994 that the government had "no objection to non-governmental organizations visiting Kashmir". However, all requests have been refused to date. The Indian Government has said either that the time was not ripe for such a visit, or that permission to visit would be considered "on a case by case basis". Amnesty International has been denied the opportunity to see for itself the situation in the state, and to establish the veracity of the numerous disturbing reports of human rights violations and abuses by talking to local officials, civil liberties activists and others. There is no doubt that such a visit would considerably enhance the organization's ability to report in a balanced and accurate manner on the complex human rights situation in Jammu and Kashmir.

Political context

Kashmir has long been disputed territory between India and Pakistan. As a matter of policy, Amnesty International takes no position on territorial disputes. Jammu and Kashmir, during the pre-independence period a so-called princely state, has a predominantly Muslim

¹⁵ The Telegraph, Calcutta, on 27 February 1994

population. At the time of partition, Kashmir's then Hindu Maharajah considered various options and eventually decided to accede to India in October 1947 after Pathan tribesmen from Pakistan had invaded the territory. After a brief war in 1947 and 1948, Pakistan gained control of the mountainous western and northern areas of Kashmir, which it calls Azad Kashmir (Free Kashmir), and which India calls Pakistan Occupied Kashmir (POK). India remained in control of the central region around Srinagar, the Kashmir valley, with its overwhelmingly Muslim population; of the region of Jammu in the south which has a Hindu majority; and of the predominantly Buddhist region of Ladakh in the east. This constitutes the state of Jammu and Kashmir, with a population of over seven million. The UN monitors the 1949 cease-fire line. The 1950 Indian Constitution granted Jammu and Kashmir a degree of autonomy unique in India. This has been largely curtailed, however, by subsequent legislation and developments.

The Indian Government initially promised that the state's accession to India would be the subject of a referendum. This was endorsed by the UN in several resolutions on the conflict. However, whatever the reasons – which remain disputed between India and Pakistan – the referendum was never held, a cause for mounting discontent among Kashmiris. Resentment has been increased by persistent reports of irregularities in most elections in the state, notably the most recent 1987 state elections¹⁶.

Many observers see the alleged rigging of the 1987 elections in favour of a coalition of the National Conference and ruling Congress parties, to the detriment of the Muslim United Front coalition of Kashmiri nationalist and pro-Islamic parties, as a turning point in the growth of Kashmiri nationalism¹⁷.

Pakistan continues to call for implementation of UN resolutions adopted in the late 1940s urging a plebiscite; India argues that these have been overtaken by the 1972 Simla

¹⁶ For example, Kuldeep Nayar, a noted Indian commentator, wrote in the *Indian Express*, 31 October 1994: "But for the 1977 polls, the elections in Kashmir were managed from New Delhi. In fact, today's situation in the valley is very much the result of what was engineered then. The people did not elect their representatives; the representatives were forced upon them."

¹⁷ Balraj Puri, an expert on Kashmir, described the situation at the time as follows: "As the two parties [Congress and National Conference] formed a coalition government... both types of discontent [against the state government and the centre] were diverted to communal and secessionist outlets. The lack of a democratic tradition, civil liberties and free elections, further forced the popular discontent to seek outlets outside the Indian system... While the National Conference Congress coalition blocked secular and nationalist outlets of discontent, the assembly elections of 1987, which were widely perceived to be unfair, blocked the democratic outlets also. The alienation of Kashmiri Muslims is, thus, the result of a cumulative process" *Economic and Political Weekly*, 27 January 1990, page 192.

Agreement between India and Pakistan and that the dispute over Kashmir should be settled bilaterally between the two countries.

Since the second half of 1989, armed opposition groups have increased their activities in the Kashmir valley, extending them since 1992 to Doda, a district in Jammu with a Muslim majority and a substantial Hindu population. India has consistently claimed that Pakistan provides military support and training to secessionist groups, including the *Hizbul Mujahideen*. This group wants Kashmir to become part of Pakistan and has admitted to having training camps in Pakistan. By 1988, Pakistan's Inter Services Intelligence (ISI) Directorate was reported to have established training camps in Azad Kashmir. Military support for militant groups has undoubtedly come from across the border.

The present degree of official involvement remains disputed, with recent reports finding further compelling evidence that elements of the Government of Pakistan have sponsored a significant flow of arms to Kashmiri militants¹⁸. Military officials and militants in Pakistan-held Kashmir told the news agency Reuters in August 1993 that groups wanting Kashmir to become part of Pakistan, like the *Hizbul Mujahideen*, had received direct military assistance from Pakistan until the beginning of the year. In May 1994 Pakistani military sources reportedly admitted that arming, training and providing logistical support to these groups had been resumed, the efforts being coordinated by the ISI and its field intelligence unit¹⁹. The Prime Minister of Pakistan-held Kashmir, Sardar Abdul Qayyum Khan, urged Islamic states in May 1993 to provide money and arms to those fighting Indian rule on the other side of the border, and reportedly admitted in May 1994 that training of Kashmiri militants on his territory may take place²⁰. Pakistan, however, continues to deny that it provides military aid.

¹⁸ India: Arms and Abuses in Indian Punjab and Kashmir", Human Rights Watch Arms Project, September 1994, Vol. 6, No.10, which found that "Pakistani support for militants - direct support in the form of arms shipments and training, and indirect support in the form of a green light to purchase arms originally destined for Afghanistan - has greatly facilitated abuses" (page 5). An earlier study also found that: "The majority of the weapons in the possession of the militants point to the Afghan pipeline, either from the bazaars of the NWFP or the stocks controlled by the ISI [Pakistan's Inter-Services Intelligence]. The fact that an AK47 fetches Rs. 27,000 (c.\$870) - somewhat lower than the going price in Dara - suggests that commercial gain is minimal or non-existent, which points both to the number of weapons which must have reached the region and the likely involvement of the ISI." The Diffusion of Small Arms and Light Weapons in Pakistan and Northern India, page 28, see under footnote 4.

¹⁹ The Guardian, 17 May 1994.

²⁰ India Today, 15 May 1994.

Since 19 January 1990 Jammu and Kashmir has remained under direct rule from Delhi (first Governor's rule and since 18 July 1990 President's rule). Direct rule was extended for another six months from 3 September 1994, since when the government has announced it intends to hold elections in the state in early 1995, possibly around March.

Although a considerable number of Kashmiri Hindus continue to live in the Kashmir valley, thousands of others – the government claims as many as 250,000 – have fled the conflict since 1990. They live in the Jammu region of Kashmir and in Delhi in overcrowded camps. They claim that they were attacked by Muslim fundamentalists who killed a number of them and that these killings and other threats prompted them to leave the valley. These threats were undoubtedly real and they have submitted 22 cases which occurred in 1990 to Amnesty International. However, Indian press reports suggested that the then Governor of Jammu and Kashmir, Mr Jagmohan, actively encouraged members of the Hindu community to leave the state. Many of their houses have been destroyed and they have lost their means of livelihood, remaining entirely dependent on what they claim to be inadequate government support. On 2 August 1992 the Indian press reported a joint statement by several pro-Pakistan groups: *Hizbul Mujahideen*, *Al-Umar Mujahideen*, the Muslim brotherhood, *Al-Jehad* and *Hizbullah*. The statement warned Kashmiri Hindus not to return to the Kashmir valley and threatened them: "Otherwise, they will have to face grave consequences here". An officially estimated 20,000 Muslim families have also had to migrate from the valley.

Sources

Amnesty International's attempts to obtain accurate and reliable information have been hampered by the government's refusal to allow the organization to visit the state and by difficulties in communication. Curfews and search operations inhibit the ability of lawyers, civil liberties groups and journalists to follow up reports of human rights violations, which often occur in remote villages that are difficult to reach. Members of civil liberties groups who have documented allegations of human rights violations fear to carry on their valuable work since three leading members of such groups were killed by unidentified gunmen between December 1992 and April 1993. Many people in the state say that they have written to Amnesty International, but their letters almost never reach the organization.

In these difficult circumstances, Amnesty International has based this report solely on sources within India itself, in order to ensure that its information is as accurate and unbiased as possible. Its sources include first-hand accounts from victims, signed statements from eye-witnesses, legal affidavits before the Jammu and Kashmir High Court, judgments by that court and reports from lawyers. Amnesty International has also relied on post-mortem reports, reports in the Indian press including the Kashmiri press, testimony from Indian and foreign journalists and doctors visiting the state, and detailed reports from civil liberties groups based both in Jammu and Kashmir and in other parts of India. Amnesty International has carefully cross-checked the data from all these sources. Where the Indian

Government has responded to specific cases raised previously by Amnesty International, this information has been included in this report (see Chapter III and Appendix I). In view of the importance which Amnesty International attaches to reliable first-hand information from unbiased sources, Amnesty International has excluded all information from countries other than India, including Pakistan. Nor has Amnesty International accepted, for the same reasons, information from or offers to carry out research on Jammu and Kashmir in Pakistan held Kashmir.

II. TORTURE

"You always know in advance about the `current' because they send in the barber to shave you from head to foot. This is supposed to facilitate the flow of electricity. After he finishes shaving you, he hands you a cup of water to drink and then they attach the electrodes."

Torture victim, Jammu and Kashmir²¹.

Naseer Ahmad Hajam, a university student, was left with broken bones and in acute pain after being tortured by the Indian security forces. He was reportedly arrested with his younger brother and 12 others on 23 November 1994, when soldiers carried out a cordon and search operation in the Batamaloo district of Srinagar.

Naseer said that electric shocks were administered to his ears, eye-lids, fingers and genitals. His bones were broken when his limbs were crushed with heavy rollers. His interrogators taunted him before wetting his genitals and administering electric shocks through four wires. He said the process continued for hours at a time, and that he lost consciousness at least twice²².

Torture has become routine since 1990, when thousands of regular and paramilitary Indian troops were deployed in Jammu and Kashmir. A graphic account of a typical counter-insurgency operation was given in a report on events in the village of Mujagund and neighbouring areas in June 1994. The report was compiled by a two-person inquiry team led by Justice Bahauddin Farooqi, a retired judge heading a civil liberties group.

Troops from Zainakot army camp raided Mujagund on 25 June 1994 in search of a suspected militant. They cordoned off the village and forced all the men into an orchard, where they were divided into two groups – young and old. The young men were then beaten

²¹ The Observer, London, 13 November 1994

²² Kashmir Times, 25 November 1994.

and paraded before informers (known as "cats") who identified seven of them as connected to the militants. The seven were Fayaz Ahmad Lone, Abdul Rashid Lone, Mushtaq Ahmad Bhat, Abdul Majid Dar, Ghulam Mohammad Rather, Ghulam Mohammad Dar and Dr Ghulam Mohammad Bhat, a senior hospital doctor.

The troops then set up a makeshift interrogation centre in a house and interrogated each of the seven men under torture. Dr Ghulam Mohammad Bhat gave the inquiry this description of the torture to which he was subjected which included electric shocks:

"To begin with, I was stripped completely naked; Next, my hands were tied; Then, I was laid flat on the wet mattress on the ground with my legs apiece; Thereafter, one soldier [put his] feet on my chest and two others sat on my two legs... my nose and mouth were covered with wet cloth over which water was poured continuously, some of which trickled down my throat causing me painful suffocation from which I could get momentary relief only when the cloth was removed. But this relief was neutralised by the power shocks applied, meanwhile, on my penis which shook me from top to the bottom even without being able to cry;"

He went on to describe how he was tortured for periods of twenty minutes after which he was ordered to stand outside the room while the next person was given the same treatment. Those awaiting interrogation were beaten and kicked. The torture sessions stopped when the troops captured a young man suspected of being a militant, but the torment continued. According to Dr Ghulam Mohammad Bhat "They kicked us, showered lathi blows on us and hurled abuse at us for nearly three hours". In dealing with other victims, he told the judge still cruder forms of torture were used, "the most painful of them being the insertion of a cog-needle through the umbilicus". Finally, the villagers were forced at gunpoint to slap each other. At dusk the "crackdown" was called off and the villagers were released. When the soldiers had gone villagers realized that their most precious belongings had been looted.

In areas where the security forces are engaged in counter-insurgency the entire civilian population is at risk of torture. In August 1994 Human Rights Watch/Asia published a list of 63 interrogation centres in Jammu and Kashmir where torture has been reported. Most were camps of the BSF or the CRPF. Although most of the victims are young men suspected of sympathizing or being involved with the armed opposition, no one is safe. Women, middle-aged men, elderly people and children have all suffered torture and ill-treatment at the hands of Indian soldiers and members of the BSF and CRPF.

Kashmiris rounded up during a "crackdown" operation in Srinagar in December 1991. (c)
Frontline

Torture has been described in thousands of media reports, analyzed in medical journals, recounted in testimonies from former detainees, and in numerous reports of investigations conducted by local and other Indian civil liberties groups, and by international non-governmental organizations such as Human Rights Watch/Asia and Physicians for Human Rights, Denmark (PHR/D), as well as Amnesty International. Torture has also been

documented by the United Nations Special Rapporteur on torture. Nevertheless, the Indian Government routinely denies allegations that its troops are responsible for systematic torture, and virtually no soldiers have been brought to justice for torturing detainees in their custody.

Methods of torture

Doctors treating torture victims in clinics and hospitals in Jammu and Kashmir are so accustomed to seeing patients admitted from interrogation and torture centres with acute renal failure that they are now calling it "Physical Torture Nephropathy". They attribute this to a combination of dehydration during torture and breakdown of soft tissue. As with any form of acute renal failure, it can lead to death unless treated urgently and if the patient survives they may suffer chronic kidney damage.

In 1992 six doctors from the Nephrology Department of the Institute of Medical Sciences (IMS) in Srinagar published a paper in the Journal of Islamic Medical Association of North America²³. The doctors described 10 cases of acute renal failure which they had treated between July 1990 and August 1991. "All were males between 18 and 28 years of age and in apparent good health when apprehended by the police. There was alleged history of physical torture of different types. All were beaten on the buttocks, back and limbs; two cases were also given repeated electric shocks and one case was put to 'sit and stand' exercises for about three hours." The paper detailed the clinical features of renal failure displayed by the 10 young men. All had raised levels of the enzyme creatinine phosphokinase in their blood and the muscle breakdown product myoglobin in their urine, suggesting that their renal failure resulted from destruction of muscle known as rhabdomyolysis.

In late 1992 the doctor in charge of the dialysis unit at the IMS told The Observer (London) that the institute had treated 40 cases of acute renal failure as a result of torture since 1991²⁴. "In medical jargon this phenomenon is called rhabdomyolysis," he said. "I can tell you with authority that no part of the globe has contributed so many cases to medical literature."

A doctor from the IMS told a law lecturer visiting Jammu and Kashmir on behalf of the Federation Internationale des Ligues des Droits de L'homme (FIDH), International Federation of Human Rights Leagues, who visited the IMS in 1992, that 20 per cent of beds in the hospital were occupied by young men who were being treated for gunshot wounds or

²³ "Acute Renal Failure Following Physical Torture", The Journal of Islamic Medical Association of North America, 1992.

²⁴ The Observer, London, 17 January 1993.

for "burns and other injuries caused by serious torture"²⁵. He saw two cases of men who had suffered acute renal failure following rhabdomyolysis "caused by the method of torture known as the 'roller treatment'. The muscles on the legs are crushed or ruptured by the torture, leading to a breakdown of toxins. These toxins enter the bloodstream and cause acute renal failure."

One of the two men being treated for this condition was 24 year-old Shabir Ahmed Baday, from Nawakadal, a civil servant. He had been arrested on 18 August 1992 during a "crackdown" by the BSF in his area.

*"He was picked up, blindfolded, taken somewhere and thrashed with lathis. He was taken next to the Papa II interrogation centre and subjected to the 'roller treatment'. He started to pass blood in his urine soon after and requested to see a doctor. This request led to renewed beating. He was released four days later and brought to the Medical Institute by his family. His legs appeared to be destroyed, his knees were soft and spongy. His buttocks were purple in colour, as were the soles of his feet. His back was covered in serious bruises and clots."*²⁶

The "roller" is a common method of torture in Jammu and Kashmir. Victims are forced to lie on their backs and a round pole is rolled over their legs and bodies with great force, often by two of the torturers standing on each end of the pole and "walking" it over the victim.

The "roller" is just one of many methods of brutal torture which have been described by detainees who survived the experience. Such accounts were included in a report of the Jammu and Kashmir Bar Association detailing allegations of human rights violations between 21 March 1994 and 15 June 1994. One of the victims was Fayaz Ahmad, a youth from Koligam, Lolab Kupwara, who had gone missing for nine months after his arrest in March 1992 until he was dumped at a police station.

Fayaz Ahmad said that after his arrest he had been taken to an army camp where informers had identified him as a militant. He was then taken to an interrogation centre. His torture began with beatings, being dipped in water and given electric shocks in order to extract a confession. He was then moved to another army camp where both his feet were burned by being put on an iron stove and he was then given electric shocks near the hips, stripped naked and hanged upside down. After further such torture he was taken to a

²⁵ "Extrajudicial Executions, Rape, Arbitrary Arrests, Disappearances and other Violations of Basic Human Rights by the Indian Security in Indian-administered Kashmir", Report No.167, January 1993, by FIDH.

²⁶ *Ibid.*

hospital in an army camp outside Srinagar. There petrol was poured over his legs and set alight. His finger nails were pulled out and salt and chili powder rubbed into the wounds in order to force him to confess. Fayaz Ahmad stated that he had seen five other detainees killed during his nine months' detention. Three had been tortured to death and two were doused with petrol and burned alive at Badami-Bagh army camp.

In June 1993 two doctors from Physicians for Human Rights/Denmark (PHR/D) conducted a fact-finding visit to Jammu and Kashmir. They examined seven patients in a public hospital in Srinagar; all were men aged between 18 and 32 and all claimed that their injuries had been sustained under torture. In all seven cases the delegates found medical evidence consistent with the claims of torture. The torture described consisted

of "beatings, forced distortion of joints, electric shocks, suspension by rope, insertion of metal objects into the body and burns with heated metal objects in one case and with a kerosene stove in another case... In all seven cases there was clinical and paraclinical evidence supporting the statements about torture... In three of these cases the scars and wounds indicated exposure to extremely violent torture. In one case renal failure on the basis of torture-induced rhabdomyolysis... and a clinically apparent brain damage corroborated the history of torture."²⁷

The back of a 30-year-old torture victim examined by doctors from PHR/D showing scars from beatings with metal objects and burns from heated metal rods

The plight of two torture victims being treated in Srinagar hospitals was described in an article published in the Kashmir Times on 13 May 1994. One was Ghulam Mohammad Dar, aged 28, a peasant farmer from Letapora in Pulwama district. Ghulam Mohammad Dar had been detained on 26 April 1994 when security forces raided houses in his neighbourhood. He was taken to an army camp in Khannabal and allegedly tortured by being burned, given electric shocks, beaten and kicked, and subjected to the roller treatment. After three days of allegedly continuous torture he was dumped by the side of a road in Charsoo. He was found by villagers who rushed him to hospital. Doctors diagnosed acute renal failure, and told the newspaper that it would take him at least a year to recover, if he responded to treatment.

According to doctors, Ghulam Nabbi Sheikh, the other torture victim whose case was reported in the Kashmir Times, had a very low chance of survival. Ghulam Nabbi Sheikh

²⁷ Forensic Science International, Elsevier, 68 (1994) 103-115

had been arrested when security forces raided his village, Kangri Pora, near Beerwah in Budgam district, on 10 May. After several hours of interrogation under torture he was sent to hospital in a critical condition. The torturers had forced an iron rod into his anus, severely damaging his lower intestine.

Other torture methods reported by detainees include: plunging victims into freezing water, or pouring boiling water over them; amputation of body parts such as fingers, and mock execution.

Some people have been tortured so badly that they are now disabled for life. Ghulam Mohammad Bhat, from Ribon, Sopore, is an old man whose feet had to be amputated after he had been tortured by the army. He says he was hung upside down for six days. Three lawyers obtained an order from the Jammu and Kashmir High Court on 26 December 1991 permitting them to meet him in the Badami-Bagh army hospital, Srinagar, which they eventually did, but only after the intervention by the Deputy Superintendent of Police CID.

Ghulam Mohammad Bhat who was hung upside down, reportedly for six days, during interrogation in December 1991

Ghulam Mohammad Bhat's legs which had to be amputated from the ankles following torture

The three lawyers met him on 2 January 1992. When they asked Ghulam Mohammad Bhat why he was detained, he broke down, removed the blanket covering his legs and showed his bandaged legs amputated from the ankles. In the presence of army officers and the Deputy Superintendent of Police CID/CIK, he then described how he had gone to the mosque to pray on 4 November 1991 and how army personnel surrounded the mosque. He said he had been arrested and blindfolded by order of an officer from the Rajput Rifles whom he recognized from a previous occasion when he had been interrogated

during six days' detention in March 1991. He claimed that this officer threatened him saying that this time he would see to it that both his legs would be chopped off. In a petition to the High Court, the lawyers quoted Ghulam Mohammad Bhat as telling them how he had been tortured in army custody:

"... I was taken to some interrogation centre where both my legs and feet were tied very tightly with a rope and I was hung upside down for about six days... over and above this, I was being beaten ruthlessly and mercilessly with sticks and iron rods during all these days... I developed an excruciating pain in my feet. Thereafter, I was brought down and the ropes were untied. I requested them to provide me with some medicine so that my pain could subside. They refused medical aid and my cries out of pain and agony had no impact on them. In the process my feet... started stinking. I remained in this agonizing state for a couple of weeks till they saw that my feet had completely rotten and had to be chopped off. The threat given to me at the time of my arrest by Mr (X) stands translated into reality".

Rape and sexual abuse

The rape and sexual abuse of women has been widely reported in Jammu and Kashmir since the Indian security forces began counter-insurgency operations in 1990, although the stigma associated with rape and the fact that it often occurs in remote places means that this abuse is under-reported. Rape has been systematically used as a means of punishing women suspected of being sympathetic or related to alleged militants and as a weapon in the security forces' efforts to intimidate and humiliate the local population.

In October 1992 nine women and girls, one aged just 11 years old, were reportedly raped in the village of Shopian by an army unit searching for armed separatists. Despite detailed medical evidence supporting reports by civil liberties groups that the women had been raped, the authorities dismissed the allegations, informing Amnesty International that they "were trumped up at the instance of the militant outfit to malign the reputation of the security forces". They based their denials on two investigations, one carried out by the army and the other by a Superintendent of Police. Questioned by The Observer (London) shortly afterwards, the Director General of Police, Commander B.S. Bedi, also dismissed reports of rape with this characteristic response: "We carried out investigations of the allegations and they were found to be wrong. These women were wives of militants". In December 1993: Amnesty International reiterated its appeal for an independent investigation, saying:

"The lack of an independent and impartial investigation into the allegations, for which there is substantive evidence, continues to cast doubt on the government's

*assertions that the alleged rape by members of the security forces did not take place*²⁸.

Amnesty International never received a reply.

There were three separate reports of rape and sexual abuse during June 1994 alone. On 6 June two girls were reportedly gang-raped and several people were tortured by soldiers during an army search operation in Chak-e-Saidpora Balla village. On 12 June soldiers raided the village of Doru Shahabad in Anantnag district. Men, women and children were reportedly beaten and herded into a school building, while soldiers searched their homes and looted their property. Villagers claimed that 15 women were "molested" and beaten by soldiers. In another incident in early June seven women were allegedly raped by two army officers in Haihama village, Kupwara district.

In November 1994 16-year-old Hanifa was reportedly gang-raped by soldiers of the 26th Punjab Regiment during a search operation by the army at Lathi Shot near Sopore. Another woman, Naseema, told a judge visiting the same village that she had been gang-raped in July 1994 by members of the security forces, that her husband was shot dead and that her brother-in-law was tortured.

In November 1993 Sara, a young woman, was reportedly raped and killed during a cordon and search operation by the security forces in Sopore. Eye-witnesses claim they saw five soldiers approach Sara as she was collecting firewood outside Warapora village. They reportedly saw the soldiers returning some time later. Sara's body was found by villagers later that day. She had been stripped and there were multiple marks of violence on her body. A post-mortem was conducted and concluded: "There were marks of violence on neck, breasts, left knee and there was a massive vulval edema and extensive vaginal tear ... Death was due to asphyxia due to ligature put on her neck". To Amnesty International's knowledge the rape and killing of Sara has not been further investigated.

One of the most widely reported cases of gang-rape took place in Kunan Poshpora village in February 1991, when at least 23 women, ranging in age from 80 to 13, were reportedly raped at gunpoint by soldiers of the 4th Rajput Rifles who had raided the village.

²⁸ Amnesty International has published two documents on the incident: New allegations of rape by army personnel in Jammu and Kashmir, January 1993 (AI Index: ASA 20/02/93) and Comments on the government's response to allegations of rape in Shopian, Jammu and Kashmir, December 1993 (AI Index: ASA 20/47/93). The latter concluded: "In Amnesty International's view, the medical evidence of recent sexual intercourse in these cases and the associated signs of violence constitute *prima facie* evidence of rape. Taking into consideration the statements of witnesses and other circumstantial evidence such as their ages, marital status and their signs of emotional distress at the time of interview, the allegations of rape are compelling and merit independent and serious investigation".

Women of Kunan Poshpora village, at least 23 of whom claim to have been raped by members of the army in February 1991, (c) Anthony Woods

International publicity resulted in investigations by the army, a local magistrate and a team from the Press Council of India. Only the magistrate concluded that there was sufficient evidence to warrant a full inquiry. The press council team dismissed the testimony of victims on the grounds that there were "inconsistencies" and described medical evidence that rape might have occurred as "worthless". The government, on the basis of the press council report, dismissed the allegations of rape, describing them as "a consequence of exaggeration, and often outright fabrication". However, Amnesty International's request in a letter of 5 August 1991 for copies of the medical records were ignored.

As for the victims, three years after the incident their situation is desperate. In June 1994 Women's Initiative, an Indian non-governmental organization, published a report of its visit to Kunan Poshpora. One woman, nine months pregnant when raped, had delivered her baby three days after being raped by eight soldiers. Its left arm was reportedly fractured. Another woman, five-and-a-half months pregnant when raped, delivered a stillborn child two weeks later. Two of the raped women, one of them the mother of six, had committed suicide. Women were apparently still receiving medical treatment for injuries sustained during the rape.

"No marriage had taken place in the village in the last three years. All girls, raped and non raped, are single. All the married raped women have been deserted. After intervention by militants and elders, two husbands did take their wives back, one on the condition that there be no conjugal relations, the other that he live in the city away from his wife."²⁹

A handful of soldiers have been prosecuted or disciplined for rape in Jammu and Kashmir, but there are no independent investigations and in most cases the perpetrators go free.

III. DEATHS IN CUSTODY

The case of Masroof Sultan, who was tortured, shot and left for dead, provides rare evidence of the security forces' deliberate intent to kill its victims.

"We were separated in two groups, one consisted of young men. I was in that group. Then 12 gypsy cars arrived. They told us to come forward [one by one] and face each of the gypsy vans. When it was my turn they said: 'You come and sit here. You are a militant'. I said no, I am a college student, release me.'

They kicked me and said: 'We will kill you'. Four persons in all were taken away. They took me to a small room. The higher officers went away. The others said: 'accept you are a militant from the JKLF, Hezbul Mujahideen'. I said: 'I am not a militant'. They said: 'In Kashmir every person is a militant'. Then they started kicking and punching me all over my body. I cried a lot.

They stuck a stick under my knees and tied my hands and feet tightly and suspended me. I could not move. They started hitting me with a heavy wooden stick. They hit me a lot on the right side. For three hours they hit me. This leg (the right leg) is now fractured. I lost my senses, they did not give me water.

Then an inspector came, he had three stars on his uniform. He told me: 'Accept'. I said: 'No'. He told the others to carry on. I heard the noise of the other three [detainees]. Then the captain said: 'shift him to Papa II'. This is a dangerous interrogation centre. I felt I would die.

²⁹ "The Green of the Valley is Khaki", Women's testimonies from Kashmir, Women's Initiative, page 11.

A circular encrusted wound "highly consistent with... electric torture" on the arm of Masroof Sultan, according to an independent doctor who examined him

At Papa II... they poured cold water over my body. They attached metal rings to my toes and genitals. They took metal wires and touched my toes [giving me electric shocks]. I lost my senses and cried a lot from pain. They told me, 'Accept this time [you are a militant]. If you do not you will die, after one minute you will die'. They did this ten or twelve times. Then they touched my arms and legs with the wires, and then other places of my body. I found I had blood in my nose and lots in my mouth.

Then the captain came and ordered that I be taken to Rambag. They carried me in the van because I could not walk. In the van they told me: 'We'll release you, you are innocent. But last night in Batamaloo four of our people were killed. Now we have to kill you, then we are equal'.

They stood me against a tree. An officer said: 'one, two, three' and they fired. They hit my legs first. I fell down. After ten minutes they came again. They saw I was still alive. The officer told his men: 'shoot him in his heart'. The shot hit me here [in the chest]. The officer looked and found I was still alive. 'You bastard, what are you doing, why are you misfiring?' he asked his men. 'Shoot at his head'. The shot hit me in the neck. After that, I tried to stop breathing and pretended to be dead'. A soldier took my sweater and left."

Masroof Sultan, a 19-year-old college student from Batamaloo, was on his way to take a chemistry exam on the day after a mine had killed several members of the paramilitary BSF. He miraculously escaped his torturers and three attempts by the BSF to murder him. He was found by the police, who had been tipped off by the BSF that a body of a "militant" shot dead in an "exchange of fire" was lying on the road.

Masroof Sultan, with open wounds on his legs, likely to have been caused by gunshots and torture. A foreign doctor concluded that his fractured leg "may well have been caused by severe beating"

However, Masroof Sultan survived to tell his tale to several people including foreign doctors who took down the above account, and confirmed that the injuries found on his body were consistent with the torture he said he had suffered³⁰. Masroof Sultan's unique testimony clearly illustrates the type of torture prevalent in Jammu and Kashmir. It also demonstrates how officials have tried to cover up killings by falsely stating that the victims were "militants" who died in "encounters" or in "cross-fire".

Hundreds of Kashmiris – especially young men – have died in custody after being arrested in the course of "crackdown" operations to identify suspected militants. Often their bodies have been returned to their families disfigured by marks of torture. No one is safe.

Mohammed Ashraf Ganai (Case 312, Appendix I), a 21-year-old salesman of kerosene oil, was one of 19 young men arrested on 19 August 1992 at Barzulla, on the outskirts of Srinagar. The 19 were singled out from thousands who had been told to assemble near the local bridge. Eight of them were released the following day, but they had reportedly been tortured. Five more were released on 22 August, but five others, including Mohammed Ashraf Ganai, continued to be held. His parents were not told where their son had been taken and searched several interrogation centres before learning that he had been taken to the interrogation centre at Gogoland, near the airport.

Abdul Rahman Ganai, father of Mohammad Ashraf Ganai, whose injured body was handed to him by police shortly before this photograph was taken, (c) Janina Struk

His father, Abdul Rehman Ganai obtained written permission from the police to visit his son there on 29 August. He waited for five hours in vain. He then learned by chance from the father of another detainee that Mohammed Ashraf Ganai had been taken somewhere else in a critical condition. Abdul Rehman Ganai rushed to the police control room, where the police told him that the BSF had just delivered the body of his son. Apparently the body still had an oxygen mask on its face, and the BSF claimed he was still alive, but the police said that he was dead on arrival. Relatives noted blood from the nose and ears, marks of beating on the back and injuries to the genitals. Alsafa reported on 30 August 1992:

"Mohammed Ashraf Ganai, resident of Barzulla, who was arrested on 19 August 1992 during a crackdown, was killed during interrogation when his dead body was

³⁰ For details of the medical evidence see: Masroof Sultan: A rare survivor of torture and attempted killing in custody in Jammu and Kashmir, June 1993 (AI Index: ASA 20/28/93).

handed over to his relatives by the police. Blood was oozing out of his nose and ears and his head was smashed".

No explanation for deaths in custody: A policy of intimidation

Official explanations of the cause of deaths in custody are rare. Particularly between 1990 and 1992, the security forces appear to have made few attempts to conceal deaths in custody, possibly as part of a deliberate policy to deter the local population from supporting armed opposition groups. Usually the bodies of people taken into custody were either dumped by the side of the road a few days after arrest, thrown into rivers or handed over to the local police who then informed the relatives of the death without further explanation about how the injuries had been sustained.

The reports of the Jammu and Kashmir High Court Bar Association for 1991 and 1992 give many examples of such deaths in custody. For example Abdul Salam Bhat (Case 341, Appendix I), a resident of Soura, Srinagar, was arrested by the security forces on 22 June 1992 during a "crackdown". Four days later his body was handed back to his relatives via the local police station. Marks on his body indicated that he had been burnt with hot iron rods. Latif Ahmed (Case 302, Appendix I), resident of Baghundar, Pampore, was arrested on 2 September 1992. His body, with multiple injuries, was found in a field the next day and handed back to his relatives by the police. These cases were included in petitions to the High Court of Jammu and Kashmir lodged by civil liberties activist H.N. Wanchoo who requested that they be investigated. However, the outcome of the petition is still not known.

Implausible official explanations for deaths

Officials have sometimes given highly improbable explanations for deaths in the custody of the security forces.

Javid Ahmed Iqbal (Case 386, Appendix I), from Buchwara, Srinagar, was arrested on 22 August 1991 in the Natipora area of Srinagar, where he had gone to meet his aunt, according to a report in the Daily Aftab on 27 August 1991. At first the security forces and the police promised his father that his son would be released, because he had been found innocent during interrogation. But on 29 August 1991 his body was handed over. The security forces claimed that Javeed Iqbal Bhat had died of "heart failure", even though his body had visible deep wounds on the head, legs and limbs. The father registered a case of murder against the security forces with police, but the outcome is not known.

Two brothers, Nazir Ahmad Khan and Manzoor Ahmad Khan (Cases 260 & 261, Appendix I), residents of Laweypora, Bandipora, were reported to have been tortured to death in custody³¹. According to a report from Bandipora police station on 1 October 1992, Nazir Ahmed Khan, who worked in the employment exchange, and Manzoor Ahmed Khan, a sanitary inspector, were arrested on 28 September 1992 by an army patrol party searching for militants during a "crackdown". Their bodies were handed to Sumbal police station on 29 September by D.D. Joshi of Safapora Mahar army camp no.10. D.D. Joshi also submitted a written report to the SHO of the police station, according to which Nazir Ahmed Khan and Manzoor Ahmed Khan:

The bodies of two brothers, Nazir Ahmed Khan and Manzoor Ahmed Khan, who died in army custody apparently from torture.

"... were apprehended at Laweypora, Bandipore on 28 September 1992. They were attempting to escape and were apprehended by Army. During the scuffle they fell down often but were overpowered. At approximately 14.50 hours 28 September 1992 Manzoor Ahmed complained of giddiness and had a bout of vomiting. Before medical treatment could be given to him he died at approximately 15.00 hours on 28 September 1992. On seeing his brother in this state Nazir Ahmed Khan fainted out cold and could not be revived. He expired at approximately 15.35 hours on 28 September 1992."

The Sumbal police, however, found that both bodies were wounded and scratched. The abdomen of one was torn and the head, which was also wounded, had stitches in it. A post-mortem carried out at Bandipora Hospital on the bodies concluded, according to a police report, that "burn injuries initiated on the body of the deceased led to cardiac arrest, followed by cardio-respiratory failure evolving in the death of the deceased". (The burn injuries were not mentioned in the army's report and most probably indicate the method of torture used).

³¹ The Srinagar Times, 30 September 1992

Bandipora police, apparently disbelieving the army version, registered a case of murder: "As per the remarks of doctors and post-mortem report of doctors regarding the deceased persons, offence falls within Section 302 of RPC (murder)." The police were made responsible for initial investigations into the case, but Amnesty International does not know their outcome.

August 1992 onwards: Encounter killings used to conceal deaths in custody

"Operation Tiger", launched in August 1992, was the first in a series of security forces operations code named variously "Shiva", "Eagle" and "Cobra". Their aim was to suppress the various armed separatist groups through a "catch and kill" policy: suspected armed separatists picked up through "crackdowns" are shot dead. After the launch of "Operation Tiger" deaths in custody rose, matched by increasing denials by the security forces of their responsibility for these deaths by attributing them to "encounter killings" or "cross-fire".

Some of the government's claims of "encounter killings" may indeed be true. There are shoot-outs between armed separatist groups and the security forces, especially in urban areas. However, security force officials have used this to cover up custodial killings by falsely attributing them to "encounters" or "cross-fire" with militants. The three attempts by the BSF to kill Masroof Sultan in custody, followed by a false statement that he was killed in "cross-fire", graphically illustrates this pattern. The Jammu and Kashmir High Court Bar Association, in its 1992 report, described the emerging pattern thus:

"In the month of September 1992, the government has started 'Operation Tiger' and during these two months [a] number of people were arrested by the forces during crackdown operations in presence of thousands of locals and immediately after taking them into custody, the people in the crackdown heard the noise of some gunshots and after the crackdown was lifted, the people found the dead bodies of these arrested persons. On the next day, government announces on the media that these persons have been killed in an encounter."

The leaders of various armed separatist groups were the first targets. Mohammad Ashraf Shah (Case 303, Appendix I), alias Iqbal Zargar, the deputy chief of the *Al-Umar Mujahideen*, a separatist group, resident of Noorbagh, Srinagar, was arrested on 2 September 1992 during a "crackdown" operation in Noorbagh. The next day official sources claimed that Mohammad Ashraf Shah had died in an "encounter". However, his relatives said that his body bore marks of torture on the face, body and genitals. India Today also questioned the official version of his death:

"In September, when Mohammad Iqbal Zargar, the deputy chief of the Al-Umar Mujahideen, was arrested during a search, an official spokesman confirmed his

arrest to the press. The next morning, however, the authorities claimed Zargar had been killed in an encounter soon after his arrest. How he could have been killed in an encounter 'after his arrest' is a question no one has any answer to."
(15 January 1993)

Sometimes the relatives of separatist leaders have been tortured and killed in custody, either to intimidate them or because of mistaken identity.

On 7 November 1992 Tabbasum Qureshi (Case 216, Appendix I), a 21-year-old resident of Syed Pora, Nowhatta, was taken away by the BSF during a cordon and search operation. Two witnesses testified to his arrest. Tabbasum's brother, Altaf Qureshi, had been commander-in-chief of an armed separatist group, the *Ikwanul Muslimeen*. (According to the security forces, Altaf Qureshi had died in an "encounter" a few weeks before Tabbasum's death, although civil liberties groups and his relatives claimed that he had been tortured and died in custody.)

Tabbasum Qureshi's father said that his son was taken for interrogation to the BSF camp at Kawoosa Building, Nowhatta, and that later that day his body was left at Khawaja-Bazaar. The BSF claimed that Tabbasum's death was due to an "encounter" but his body reportedly showed visible evidence of torture:

"His body having 'distinct torture marks' and bullets was later handed over to the local police. 'Tabbasum was not even remotely connected with militancy and his only fault was that he was the brother of Altaf, a top ranking guerrilla' his wailing mother told reporters."³²

Following Tabbasum Qureshi's death, government sources announced in the media that the acting chief of *Ikwanul Muslimeen*, Omar Hayat Qureshi, had been killed in an "encounter". This charge was refuted publicly a few days later by Omar Hayat Qureshi himself, who stated: "I feel greatly pained that an innocent student was killed instead of me by the so-called security forces". India Today added: "The person killed was not the Ikhwan chief but Tabbasum Qureshi, younger brother of Altaf Qureshi, the slain former chief of the same group".

Medical evidence

Post-mortems are not common in Jammu and Kashmir: doctors often lack the necessary resources and relatives dislike the practice. However, in some cases, post-mortem reports have found evidence consistent with torture. Shamim Ahmed Shah (Case 402, Appendix I),

³² The Kashmir Times, 12 November 1992

23-year-old resident of Mughal-Mohalla, Rainawari, Srinagar, was arrested at home during a "crackdown" by the army on 18 December 1990. He was apparently taken to the army camp at Badami-Bagh where he was interrogated and tortured by personnel from the 12 Raj Rifles. On 21 December 1990 his father Ghulam Mohammad Shah, accompanied by the SHO from Rainwari police station and another police officer, collected the body of Shamim Ahmad Shah from the Badami-Bagh army hospital.

A post-mortem report of 21 December noted bruises and subcutaneous haemorrhages on Shamim's back and shoulders and bruises on his face, thighs and penis. The doctor concluded that the cause of death was "extensive crushing of tissues and large extravasation (outflow) of blood... leading to pain, haemorrhage, shock and death". The police at Rainwari police station started investigations under section 124 of the Code of Criminal Procedure. Ghulam Mohammad Shah brought a case against the government and the Commandant of the 12 Raj Rifles at the High Court of Jammu and Kashmir about the killing of his son. The results of the investigation and the court case are not known.

Official statements that victims have been killed in "encounters" or an "exchange of fire" are contradicted not only by witnesses who saw them being arrested and taken away by the security forces before being killed, but also by medical evidence. The dead, bullet-ridden bodies often show marks of torture.

Farooq Ahmad Lone (Case 92, Appendix D), a resident of Tekipora, Lolab, Kupwara, was arrested by members of the BSF 19th Battalion in July 1993. He had reportedly left for Srinagar in search of employment. In a report filed at Sopore police station, Farooq Ahmad Lone's uncle stated that the BSF brought his nephew back to their village on 20 July 1993, searched his house, and beat him and his father, who according to the police, was "injured badly". The BSF did not find anything and returned to Sopore with Farooq Ahmad Lone, taking his brother Mohammad Shafi with them.

The same day the Sopore police were told to collect Farooq Ahmad Lone's body from the BSF at Fruit Mundi, Sopore. An Assistant Superintendent of Police was deputed to investigate and collect the body, and he reported that the body had bullet wounds and "multiple injuries of torturing".

However, an Adjutant of BSF 19th Battalion, filed a First Information Report stating that Farooq Ahmad Lone had died while being taken on a search operation by the BSF. The report stated that one of the cars in the BSF convoy returning to Sopore had been forced to stop for repairs near Zaloor and was fired on by militants. Farooq Ahmad Lone, who was handcuffed in the back of an open van, was alleged to have been shot by militants in the exchange of fire and to have died of his injuries. According to the police, however, there was no injury to any other person and a post-mortem carried out on 22 July 1993 concluded that Farooq Ahmad Lone had been tortured before he died and that he had been shot at very

close range from above. This is most unlikely in cases of "exchange of fire". The medical officer found:

"I am of the opinion that the deceased has been put to interrogation and tortured before death and death itself has taken place due to sudden extensive bleeding from laceration of heart, lungs and other abdomen vessels due to blood injuries wounds from front of chest to left flank"

According to the police report, the doctor also found

"that beside bullet injuries there are other seven injuries on his person and all the bullet injuries have 2 to 3mm round rings of burns around. The nature of injuries suggest that the deceased was fired upon from a very close range. The direction from a small fire-arm and the direction of entry wounds and exit wounds suggested that the deceased was fired from upward to downward as all the bullet entry wounds are on the chest and exit wounds are on the left flank down."

The police concluded that the BSF version of events was false: "The SHO Police Station Sopore, in view of the contradictions in the FIR and circumstances of the case... declared the complaint of the Adjutant of 19th BN. BSF as false vide D.D. [daily diary] No 23 dated 20-7-1993". The police initiated proceedings by requesting the District Magistrate of Baramulla to order an inquiry into the death by nominating a magistrate. Amnesty International does not know whether this has happened.

Cover-up tactics

There are numerous other examples to illustrate the pattern of cover-ups. Sometimes officials plant evidence. On 14 October 1992 the 22nd Battalion of the BSF cordoned off the Dal Gate area of Srinagar. The BSF ordered all the residents to assemble at Tugh Bagh, and singled out 50 people who were taken away. The remainder, numbering several hundred, were ordered not to move until 9pm. Among those taken away by the BSF were Shabir Ahmed Mir (aged 22) of Old Gagribal; Mohammad Hussain Bhat (aged 22); Zahid Hussain Bawan (aged 21); and Mussadiq Hussain Sahaf (aged 25) of Buchwara (Cases 230-233, Appendix D). On the following day their bodies were handed over to their families.

The bodies of four men reportedly killed in detention after security forces cordoned off the Dal Lake area of Srinagar in October 1992, (c) Meraj-ud-Din

Amnesty International has signed statements from several witnesses who saw the arrests. The four men's relatives lodged *habeas corpus* petitions in the High Court of Jammu and Kashmir. According to the petition brought by the father of Shabir Ahmed Mir:

"All the boys were picked up by the said forces in presence of thousands of the people of the locality including their kith and kin... after 7pm the above said four boys... were taken by the BSF near the Home of Ex-DIG Police Mr Syed Ahmad Shah alias Bhanji, where they were put to death... the dead bodies of all the four boys were given in the custody of the state police... and on the following day on 15th of October 1992, the dead bodies of all four boys were handed over to their relatives by the local police officers. Those who witnessed the

broad day murder of these boys are ready to give their statements and they are also ready to cooperate with the Investigating Agency".

The police apparently refused to file a First Information Report about the alleged murder of his son. The father then asked the court to order the police to do so. He also petitioned the court for an impartial investigation into the incident. On three successive occasions, 18 November, 29 December 1992 and 29 January 1993, the High Court asked the Additional Attorney General, M. Sadiq, to respond to the allegations, but each time he failed to appear.

The Indian Government, in response to a report by Human Rights Watch/Asia, claimed that the four men had been killed in an "exchange of fire" with the security forces, saying there was:

"a joint operation by the Border Security Force and the Police. On October 14 1992 when the party was approaching Dal Gate, militants opened fire which was returned by the security forces. During a search operation of the area, four bodies of terrorists who had been killed were found along with 3 AK 56 rifles with magazines and ammunition... the bodies of all the four terrorists were handed over to the Police. It would be clear from this that this was a targeted operation based on information and the persons who were killed can by no means be categorised as innocent students."

This statement implies that the government believes that it is allowable to shoot people who are targeted by the security forces, rather than detaining them and trying them in court as the law requires. The government's version of events is not accompanied by supporting evidence. The government has provided no proof from independent sources, as could have been obtained if it had ordered an independent, impartial investigation. Such an inquiry, quite properly requested by the father of one of the victims, has, to Amnesty International's knowledge, not been held, nor are legal proceedings for murder known to have been instituted.

A report of the Executive Committee of the Jammu and Kashmir High Court Bar Association observed that:

"One of the retired police officials[s] who is putting up in the locality, later on narrated the story of these persons who were asked to be in a row near his place of residence and narrated to the journalists that the forces pumped bullets into their bodies from a close range and in the meanwhile a video film was being taken by some person who was accompanying the forces..."

The Bar Association has reported several other instances when video films were apparently taken after arms had been planted on the bodies of victims of custodial killings to make it appear that they were killed in "encounters".

Such cover-up tactics continue. Mohammed Ismail Butt, a 62-year-old man and reported member of the *Jamaat Islami*, was reportedly killed when a Sikh regiment of the army cordoned off the Dar Al Ikraa school in Srinagar searching for armed Muslim militants³³. The school teachers whom Mohammed Ismail Butt was visiting that day denied that he was an armed separatist, but he was dragged away in front of many witnesses by the army. They apparently suspected him of being a militant because he wore a beard. According to the witnesses, he was briefly interrogated behind a stack of rice, then murdered. The army claimed that he died trying to hurl two hand grenades at soldiers. The schoolteachers say the two grenades were planted by soldiers who took pictures of the body with the two grenades next to it, then took them away again after photographing the scene.

Victims

Virtually all the victims of arrest, torture and death at the hands of the security forces are young men suspected of belonging to armed secessionist groups or of assisting them, giving them shelter or hiding their weapons. Relatives of armed separatists, who may not themselves be involved in militant activities, are also targeted by the security forces. In Jammu and Kashmir, the entire population is under suspicion, even the police.

Riyaz Ahmed (Case 134, Appendix I), a constable with the 11th Battalion of the Jammu and Kashmir Armed Police Force, was taken into custody by the army on 21 April 1993 during a "crackdown" around the Hazratbal Shrine complex where he was said to be waiting at a bus stop. The army apparently suspected him of aiding Kashmiri separatists. Riyaz Ahmed was in civilian clothes at the time as he was on sick leave. Another police officer, Bashir Ahmed Gilkar, pleaded for him to be released. Later that evening his body, apparently marked by torture, was handed to the police control room by members of the army along with the bodies of two other people who had been arrested at the same time. One of these was allegedly a member of the armed group *Al-Umar Mujahideen*. A government spokesman claimed that all three were killed in an "encounter" with militants.

Several hundred local policemen demonstrated and demanded the suspension of the Senior Superintendent of Police. They claimed that he knew of Riyaz Ahmed's arrest and had not intervened to save him but instead had told the army to "teach him a lesson". The Indian press also reported that there was little question that Riyaz Ahmed, despite official denials, had been arrested and had been killed in custody. The Pioneer on Sunday reported:

³³ The Observer, London, 13 November 1994

"It is also clear that some senior officials of the Jammu and Kashmir police were not only aware of Riyaz's detention, but had also assured agitated policemen that he would be released after necessary investigations. There can be little doubt then that the man was not killed in an encounter as is being claimed by the security forces, but in cold blood." (9 May 1993)

The State Government responded to the protests by announcing an inquiry, and a compensation payment to be paid to Riyaz Ahmed's family; an admission that there was *prima facie* evidence that Riyaz Ahmed had been killed in custody. On 25 April 1993 the Director General of the Jammu and Kashmir Police stated that a joint inquiry into Riyaz Ahmed's death would be conducted by a brigadier from the army and by the Inspector General of the Kashmir police. The Senior Superintendent of Police at the centre of the dispute was transferred. However, no information has been revealed as to whether the government inquiry was held or what its outcome was. No one has yet been brought to justice for the death of Riyaz Ahmed.

1993 to 1994: The pattern continues

The death of Riyaz Ahmed prompted the Kashmiri press to become increasingly critical of the human rights situation in Jammu and Kashmir during the first half of 1993, and concern spread throughout India. Since then, the Kashmiri press and civil liberties groups have continued to document numerous deaths in custody following torture. They are set out in the Appendices to this report. A few examples illustrate the continuing pattern.

Jan Mohammad Dinposh and Imtiaz Ahmad Nihami (Cases 174 & 175, Appendix I), both residents of Nawab Bazaar, Shah Mohalla, Srinagar District, were arrested at Shah Mohalla on 27 February 1993 by the BSF during a "crackdown". Each of their arrests was seen by witnesses who stated that they saw the two men being dragged blindfolded out of the house in which they were arrested. Their bullet-ridden bodies were found that evening within the cordoned off area.

On 12 June 1993, following shooting between security forces and armed separatists at Recka Chowk, a cordon and search operation was mounted by the BSF in and around Sheikh Daud colony, Batamaloo, Srinagar. Tariq Pervaiz Rohella (Case No.110, Appendix I), a businessman and resident of Sheikh Daud colony, was arrested by members of the 4th Battalion of the BSF as he returned home from visiting the bank. He was bundled into a nearby car along with Mohammad Ayub Wani (Case No.109, Appendix I), a carpet weaver and local Imam, who had been arrested at home. Four labourers from a nearby building site were also forced into the van which drove away but returned a few minutes later accompanied by a jeep from which a Sikh officer emerged. According to an eye-witness, "both Tariq and Ayub were brought down and together firstly tied to a fencing pole with a

barbed wire in the open space opposite the house of one Rehman Khan, beaten mercilessly and then fired upon from the close range". To Amnesty International's knowledge no investigations into the killings have been carried out.

Several deaths in custody have been reported from the Muslim majority district of Doda, where the activities of armed militants sharply increased during the second half of 1993 with the killing of a number of members of the Hindu community. On 13 May 1993 two young men – Masood Ahmad Malik (Case 123, Appendix I) and Shabir Ahmad Najjar (Case 124, Appendix I) – were arrested in Bhaderwah town, Doda district, by the Tibetan Battalion of the army, stationed at Bhaderwah Road. Apparently a curfew had recently been imposed because armed separatists had killed a local Hindu activist. Two witnesses signed statements testifying to the arrests. According to The Telegraph, Calcutta, of 15 May 1993, the security forces claimed the men were killed in cross-fire, but local people protested that they were killed in custody. According to their fathers both Masood Ahmed Malik and Shabir Ahmed Najjar were killed in custody by the army on the day of their arrest and their bodies were then dumped at Idgah, Bhaderwah.

In contrast to the situation in the Kashmir valley, many human rights violations in the Doda district are attributed to the Jammu and Kashmir police. On 25 May 1993 a young man named Akhter Hussain (Case 119, Appendix I) also from Bhaderwah town, Doda District, who was arrested on 23 May 1993 with four other people, was reportedly tortured to death in custody. His body was handed over to his family the next day. The police claimed that he had been killed in "cross-fire". Large demonstrations were held in Bhaderwah in protest against his death in custody.

Scores of deaths in custody continued to be reported during 1994. Abdul Rashid Bhat (Case 46, Appendix I) from Fatehpura, Baramulla, was reportedly arrested at Daradapura, Baramulla, on 28 March 1994 by the 15th Punjab Regiment of the army during a search operation. He was reportedly tortured for four hours, then taken to the Mashroom building near the Government Degree College, Baramulla, and shot at point-blank range. His body, reportedly disfigured by torture, was handed over to the local police station.

Abdul Rashid Lone (Case 14, Appendix I), from Ladhu, Pampore, Pulwama district, was reportedly picked up by the army's A-169 Field Regiment on 21 July 1994, paraded before an informer, then set free. Shortly after he returned home, between 10 and 15 armed security force personnel entered his home and searched the premises. Abdul Rashid Lone was interrogated in the kitchen. His family claim they heard his screams. He was then taken with several others to the army headquarters at Khrew.

The following day there was an explosion near Ladhu village and villagers found parts of Abdul Rashid Lone's body. The army promised to hold an inquiry into his death. The officer in charge of A-169 Field Regiment stated in a First Information Report that Abdul

Rashid Lone had been killed during an attempt to recover arms and explosives while in army custody, a claim often made by the security forces in Jammu and Kashmir to cover up custodial killings.

Deaths due to torture and lack of timely medical care

Some victims have died because of the lack of timely treatment for serious injuries inflicted by torture.

Mushtaq Ahmad Bhat (Case 3, Appendix I), an 18 year-old mechanic, was arrested on 19 March 1994 by the 5th Garwal Rifles during "crackdown" operations at Akhraj-pora, Srinagar. He was first taken to an unofficial interrogation centre at Gogoland near Srinagar. He was seen there by members of his family who said that he had been tortured during interrogation and that he had severe injuries, including burns to the left side of his body and ankles and wounds to his head. He was moved to several interrogation centres, and complained repeatedly that he was not given medical treatment. On 22 August 1994 his elder brother was told by police that Mushtaq Ahmed Bhat was ill. By the time that relatives reached Rangreth Interrogation Centre, he had died after complaining of chest pain. His fellow detainees had apparently pleaded in vain for a doctor to see him. The Chief Judicial Magistrate directed the police to register a case and conduct an investigation. A magisterial inquiry was also reportedly ordered into his death. Amnesty International does not know the outcome of either investigation.

The government's response to Amnesty International's allegations of deaths in custody in Jammu and Kashmir

The government's inability or unwillingness to investigate reports of torture and deaths in custody is evident from its response to the allegations listed in the Appendix to Amnesty International's March 1992 report. Amnesty International presented details of 28 men who had died in the custody of the security forces in Jammu and Kashmir between 4 May 1989 and 13 September 1991. As of December 1994, the government had responded to 21 of these allegations. In contrast to the responses which Amnesty International received from other Indian states – nearly all of whom conceded that there was *prima facie* evidence in a number of cases that suspects had been killed in custody – the government of Jammu and Kashmir has denied that any of those listed in Amnesty International's report had been killed in custody and dismissed all allegations of torture.

The government responded to the substance of the allegations in no more than three cases: without providing any evidence, it said that no evidence was found that Ghulam Mohammed Shah (page 128 of the March 1992 report) was tortured; Abdul Gani Khan (page 124 of the March 1992 report and Case 404, Appendix I) had, according to the government, "died in cross-firing between terrorists and security forces"; and Mohammed

Altaf Khan (page 126 of the March 1992 report and Case 418, Appendix I) was said not to have been arrested and the government provided instead information about another man, with a different name, who had reportedly died two days earlier. In none of these cases did the government offer any documentary evidence – in the form of daily arrest registers or post-mortem reports – to support its denial of these specific allegations.

In the vast majority of its responses (in 18 out of 21 cases) the government simply stated: "it has not been found possible to verify allegations on account of absence of essential details relating to parentage, residence and place of incident etc.". It is true that Amnesty International's list did not include some of these details, which could not all be incorporated for lack of space, but all such available details have now been included in the Appendices to this report. The lack of such information in that Amnesty International report does not justify the government's failure to investigate these allegations. The information the government said it needed to conduct investigations has in many cases been published elsewhere. More detailed information about these deaths has been provided in reports by civil liberties groups and in the press. For example, the death of Fayaz Ahmed Mattoo (page 125 of the March 1992 report and Case 409, Appendix I) was described in the Daily Roshni, Srinagar, of 25 June 1990, with full details including a picture of the victim. Similarly, the death of Mohammed Ashraf Ahangar (page 124 of the March 1992 report and Case 394, Appendix I) was reported in the Kashmir Times and the Daily Alsafa, both of 19 July 1991, also with his picture. The press reported that he was killed during interrogation by his torturers who cut his abdomen and neck with a knife.

Details of these deaths in custody were also given in First Information Reports registered with the police, (for example, in the case of Mangata Khan (page 125 of the March 1992 report and Case 410, Appendix I). In many cases of deaths in custody details are set out in petitions to the High Court. The cases of Khazir Mohammed, Mohammad Ashraf, Bashir Ahmad, Ghulam Hassan Sheikh, Fayaz Ahmad Mattoo, Mangata Khan, Ghulam Qadir War, Mohammad Altaf Khan, Mohammad Ayub Khan, Abdul Majid Khan, Shabir Ahmad Sulati, Hilal Ahmad, (pages 124-127 of the March 1992 report and Cases 389, 394, 407-411, 418-421, 424, Appendix I) are the subject of writ petition no. 1733 of 1991 submitted to the High Court of Jammu and Kashmir on 24 September 1991 by H.N. Wanchoo and the Convenor of the People's Union for Civil Liberties in Srinagar. That petition alleged that the victims were killed in the custody of the security forces after torture and asked the High Court to order a judicial inquiry and compensation for the victims' relatives.

Seven of the cases to which the government has failed to respond are described in great detail in Amnesty International's report, as well as the international press. For example, Imtiaz Ahmed Mir, a bookseller, was reportedly arrested in October 1990 in Anantnag by the 53rd Battalion of the CRPF. His body was found by the road-side the next day with marks of torture and bullet wounds (page 125 of the March 1992 report and Case 405,

Appendix I). His family registered a complaint with police but the CRPF apparently denied having arrested him. His death was reported in Newsweek of 26 November 1990 which described his body as showing dark bruises, cigarette burns and a bullet wound in the stomach.

IV. THE LEGAL FRAMEWORK AND THE COLLAPSE OF THE RULE OF LAW

Powers of arrest and detention

Preventive detention and special laws in force in Jammu and Kashmir under which thousands of people have been arrested, lack vital legal safeguards. These laws provide the security forces with sweeping powers of arrest and detention, with broad powers to shoot to kill and with virtual immunity from prosecution. These special legal provisions contravene some of the most important human rights standards laid down in international human rights instruments to which India is a party, notably the right to life and the right not to be subjected to torture or to arbitrary arrest and detention.

The Jammu and Kashmir Public Safety Act (PSA) has been in force since 1978 and permits people to be detained for up to two years on vaguely defined grounds to prevent them "from acting in any manner prejudicial to the security of the state or the maintenance of public order" (Section 8.1 as amended in 1990). This includes "promoting, propagating or attempting to create feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community" or, notably, of "region". This broad definition permits people to be detained without trial for simply questioning whether Jammu and Kashmir should remain part of India. This contravenes their right to express their opinions, guaranteed in Article 19 of the ICCPR. Although the Act obliges the authorities to inform an arrested person of the grounds for arrest within five days, clause 2 of Section 13 of the Act permits the authorities to withhold any facts for reasons of "public interest". Lawyers report that this provision has been broadly interpreted and that it is indeed common practice not to inform detainees held under the Act of the grounds for their detention.

Constitutional safeguards also do not apply to persons held under the PSA. Article 22 (Clauses 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 them to consult a lawyer of their choice. However, these measures, which are so important to protect people from arbitrary imprisonment, torture and "disappearance", simply do not apply "to any person who is arrested or detained under any law providing for preventive detention" (Clause (5) of Article 22).

The PSA's provisions are clearly incompatible with the requirements of Article 9(2) ICCPR, which obliges India to ensure that anyone who is arrested is informed at the time of

arrest of the reasons for the arrest and informed promptly of any charges against him or her. Such provisions contravene Article 9(4) ICCPR which requires all people arrested or detained to be brought promptly before a court to decide without delay on the lawfulness of detention. This contravention of the ICCPR was noted by a member of the UN Human Rights Committee³⁴.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), is also in force in Jammu and Kashmir. Section 4 of the TADA prohibits not only "terrorist acts" but also "disruptive activities" which are very broadly defined as:

"any action taken, whether by act or by speech or through any other media... which questions, disrupts, or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or which is intended to bring about or supports any claim... for the cession of any part of India or the secession of any part of India from the Union..."

This broad definition allows people to be detained arbitrarily for questioning whether Jammu and Kashmir should remain a part of India or for discussing the possibility of holding a plebiscite to determine the state's future as the Indian Government once promised. People can be arrested on mere suspicion and can be remanded for up to 60 days in police custody. Amnesty International has analyzed the provisions of the TADA and found that many of them contravene important international human rights standards, especially the right to liberty and security, to a fair trial, to freedom of expression, and the right not to be tortured³⁵.

On 5 July 1990 the Jammu and Kashmir Governor declared six districts in the Kashmir Valley and a small area in Jammu to be "disturbed" areas (Budgam, Srinagar, Anantnag, Baramulla, Kupwara and Pulwama). In "disturbed areas" the army and paramilitary forces are granted sweeping powers of arrest and search without warrant under Section 4(c) of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

³⁴ The observation was made with reference to the National Security Act, which contains virtually identical provisions to the PSA, but which applies to all other parts of India. One member of the Human Rights Committee said: "There is no provision under the National Security Act that requires a person to be brought forward promptly. In that context the Attorney General might be interested to note that the United Kingdom has found it necessary to enter a derogation because it was anxious that a seven day gap before bringing a person before a judicial or other authority might not be compatible with the Covenant. And one is talking about very substantially longer periods here". India: Examination of the Second Periodic Report by the Human Rights Committee, AI Index: ASA 20/05/93 March 1993, page 12.

³⁵ See: The Terrorist and Disruptive Activities (Prevention) Act: The lack of 'scrupulous care' AI Index: ASA 20/39/94, November 1994.

Powers to shoot to kill

Section 4(a) of the Armed Forces (Jammu and Kashmir) Special Powers Act grants the army and the paramilitary forces in "disturbed areas" broadly defined powers to shoot to kill:

"if... it is necessary so to do for the maintenance of public order... fire upon or otherwise use force, even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms, ammunition or explosive substances."

In Amnesty International's view, these broadly defined powers facilitate the shooting of suspects in custody. Many members of the UN Human Rights Committee have expressed concern that these provisions of the Act, notably those in Section 4(a), contravene the right to life provided in the ICCPR.

Significantly, all three laws make the security forces immune from prosecution for acts committed while exercising powers under these laws. Thus, they are encouraged to act with impunity. Section 22 of the PSA prohibits legal proceedings against officials for acts "done in good faith", and Section 26 of the TADA – under which many prisoners are held in the state – prohibits, legal action against any members of the security forces "purporting" to exercise powers in good faith. Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act provides that unless previous permission has been obtained from the central government:

"No prosecution, suit or other legal proceeding shall be instituted... against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

Soldiers cordoning off the lake area in Srinagar in December 1991. Broad powers to shoot to kill with impunity have been found by the UNHRC to contravene the right to life.

(c) Frontline

A member of the UN Human Rights Committee (UNHRC) has pointed out:

"Purported is the dangerous thing because anyone killing anybody can say 'Well I thought I was performing my functions'. It is a highly dangerous [word] when

*one is dealing with the right to life. I sincerely hope, Attorney General, that you will bring this to the attention of the government. True, there are disturbed areas but people also live in disturbed areas and not everyone causes disturbance in a disturbed area.*³⁶

Nothing has been done to change the law since this observation was made in March 1991. Amnesty International continues to believe that the provisions of these acts have been interpreted by the security forces as a licence to torture and kill people in custody. The Inspector General of Police, Kashmir, reportedly wrote to the Deputy Inspector General of Police, Baramulla, on 19 April 1994 drawing his attention to the fact that Section 197 of the Code of Criminal Procedure (which provides that public servants, including the police, and members of the armed forces cannot be prosecuted without prior permission from the government that employs them) had been strengthened by a 1991 amendment. As a result, all "members of the forces charged with the maintenance of Public order in the state" are protected from any prosecutions for actions taken "while acting or purporting to act" in good faith when the state is under direct rule by central government, as has been the case in Jammu and Kashmir since 1990.

Virtually no prosecutions of members of the security forces alleged to have committed human rights violations have taken place under ordinary legal procedures. Amnesty International knows of no such prosecutions in cases of deaths in custody. Those who have tried to pursue prosecutions have invariably been frustrated by government officials. One of the ways they have done so is by refusing to appear in court to answer specific allegations.

The breakdown and obstruction of legal remedies

In October 1994 the High Court of Jammu and Kashmir in Srinagar heard a public interest petition which alleged that the rule of law in the state had been totally abandoned. The judge hearing the petition summarized the complaint thus:

"... it is alleged that all the norms and standards as fixed by various laws of the arrested persons/detenues, they are being blatantly abused. All kinds of tortures are being perpetuated upon the detenues. No facilities are provided to them. They are arrested and detained without any authority of law for years together. No medical facility is being provided to them. Sufficient and proper food is not being allowed to them. Their kith and kin are not allowed to see them. The lawyers are not allowed to interview them to arrange their defence. Without registering any cases they are being detained for months and years together.

³⁶ India: Examination of the Second Periodic Report by the Human Rights Committee, AI Index: ASA 20/05/93 March 1993, page 9.

They are not being produced before the Magistrates. No cases are lodged against them in the courts. No investigation is held in cases registered against them. Even after earning bail orders from the competent courts, they are not released, so-much-so even after quashing of detention orders by the High Court, they are not released. In short the allegation is that the law of jungle is prevailing and the rule of law has been given go by..."

The judge held that these allegations were very serious, that they required a thorough probe and that the government's response to them was "cursory in nature" and "lacking in detail". He said that there was an "urgent need for judicial intervention" and made a series of detailed "interim directions" to protect detainees. However, he complained that "Nobody bothers to obey the orders of this court"³⁷.

Those seeking to use legal remedies to protect victims of human rights violations in the state or to gain some redress have been invariably frustrated.

H.N. Wanchoo, a well-known civil liberties activist from Srinagar, carefully documented numerous human rights violations and raised them in *habeas corpus* petitions in court. Tragically he was killed on 5 December 1992 in circumstances that have not yet been clarified³⁸. In November 1991 he asked the High Court of Jammu and Kashmir to order a judicial inquiry into the suspected custodial killing of Showkat Ahmed Bhat and the death of Muzafar Ahmed Mirza, (Case 371, Appendix I) who died in hospital after torture. On 20 November 1991 the court agreed, saying that there was a *prima facie* case, and called on the Additional Advocate General to answer the allegations within a week. The judge added:

"In view of the seriousness of the allegations made... in respect of the un-natural death of Muzafar Ahmad Mirza and Showkat Ahmed Bhat it would be just and proper to direct the police concerned to register cases in this respect so as to find out who is responsible for causing their deaths... it is therefore directed that two cases shall be registered separately under section 302/IPC [murder] for alleged unnatural deaths of above mentioned two persons. It is also directed

³⁷ High Court Petition No.850/94, Jalil Andrabi vs State, order of the High Court of Jammu and Kashmir, Srinagar, 17 October 1994, also reported in The Times of India, 20 October 1994.

³⁸ No militant organization has claimed responsibility for his murder but the government claims that one of them, the *Jamiat-ul-Mujahideen*, was responsible. The Central Bureau of Investigation (CBI) brought charges against 12 people in June 1994, three of whom were arrested. However, continuing suspicion in the valley that official agencies may have had a hand in his assassination will not be laid to rest until an independent and impartial inquiry has been held and the charges have been proven to the satisfaction of a court of law.

that the investigation of the said cases shall be conducted by some Gazetted police officer. The Deputy Inspector General, Kashmir, Srinagar shall supervise the investigation and submit progress reports thereof to this court fortnightly."

But that did not happen. The court order was never complied with and the Deputy Inspector General failed to appear in court to present his reports.

This has, unfortunately, been the fate of many such petitions. H.N. Wanchoo presented a more general petition to the High Court of Jammu and Kashmir in 1991 requesting a judicial inquiry and a response from the government to allegations of scores of custodial killings by the security forces. The following year he repeatedly brought this petition to court, virtually every month, each time adding many new names. He presented a list of 26 people reportedly killed in custody between July and December 1991 and of a further 155 alleged victims killed between July and November 1992. The government failed to respond to any of them, thus denying justice and any effective form of redress to the victims and their relatives.

The High Court heard the petitions on a number of occasions, including on 4 June 1992, and apparently ordered the government to respond to the allegations several times. In a complaint to the High Court of 2 November 1992, human rights activists expressed their anxiety;

"That in spite of many opportunities given by this Hon'ble Court the respondents [officials] did not file objections to the Petition and thus justice to be given to killed persons in custody is delayed. That the killings in custody continue unabated..."

In fact, since 1992, measures appear to have been taken to frustrate any attempts to bring complaints against the security forces about human rights violations in the state, including custodial deaths. Victims and relatives cannot do so unless they register a complaint with the local police. Under Section 154 of the Code of Criminal Procedure, the police are obliged to take the statements of complainants down in writing in a First Information Report. H.N. Wanchoo publicly brought this to the attention of the High Court of Jammu and Kashmir on 2 September 1992, stating that:

"The police refuse to register First Information Reports on the plea that they have instructions from higher authorities not to register such FIRs."

A month later, this issue was raised again in the High Court when the relatives of four men who were allegedly shot dead after being taken away by the 22nd Battalion of the BSF on 14 October 1992 (Cases 230-233, Appendix I) complained that they could not pursue their complaints because officials persistently failed to appear in court and the police refused all

their attempts to register First Information Reports. The experience of Dr Ghulam Nabi Bhat, the cousin of one of the victims, Mohammad Hussain Bhat, is typical. The High Court, in an order of 30 January 1993, summarized his experience as follows:

"The case of the petitioner is that his cousin got allegedly killed at the hands of the respondents [government and BSF commanders]... Notice has been issued to the respondents in the matter on 2-11-1992. Mr. S.M. Sadiq, AAG [Additional Advocate General]... on 18-11-1992... has been given two weeks' time to file objections. Then the matter has again come up before the court on 29-11-1992. Objections were not filed on that date, nor Mr Sadiq was available. Mr Sadiq is not available today [30 January 1993] also, nor objections have been filed even till date. The petitioner's allegation is that consequent to the event indicated, he lodged a FIR in the concerned police station, but the officer concerned refused to register the case."

Mr S. Shukla, acting for the Additional Advocate General, pointed out to the court that in such cases the petitioner could go to the Superintendent of Police "to get his grievance redressed". However, as the judge found, the Superintendent was apparently himself involved in this illegal practice:

"Learned counsel... has drawn my attention to a photostat copy of a circular letter No. SF(S-Exg)2678-81 dated 14-4-1992 issued by the concerned SP [Superintendent of Police] to the SHOs [Station House Officers] of the area concerned not to register cases. In that event the petitioner's right to agitate the matter stands precluded at the initial stage and the matter... stands clouded which is not the policy of the law."

On 29/30 January 1993 the High Court ordered that Ghulam Nabi Bhat and the relatives of the other three men killed on 16 October 1992 should be allowed to have their complaints officially registered in accordance with the requirements of the Code of Criminal Procedure.

Refusal to investigate or prosecute

The police are obliged by law to investigate reports of criminal offences (Sections 155 and 156, Code of Criminal Procedure). An inquiry into all cases of deaths in custody by a magistrate is mandatory under section 176 of Code of Criminal Procedure. However, between 1990 and 1992 police investigations into deaths in custody were rare, even when cases were raised with senior officials. The case of Arshad Hussain Jan, (Case 396, Appendix I), a young engineer, is one example. On 16 June 1991 his body was found in the River Jhelum at Noor Bagh. Officials denied that he was ever taken into custody. However, Arshad Hussain Jan's close relative Yasmeen was present when he was taken away by the CRPF. She told a civil liberties group that she could identify them:

"On Friday, 7 June 1991, I was in my house at Nawab Bazar, Srinagar... We also had Arshad Hussain Jan with us... Around 11pm, we heard the sound of gun-fire and got terrified. A little while after, CRPF personnel dragged out the inmates of the houses in our neighbourhood and beat them mercilessly... Six CRPF men burst into our house and ordered me, my husband, Arshad Hussain and my oldest son to stand up and turn around... I could easily identify the CRPF men because they had become familiar to us due to their continued deployment in our locality for quite some time. They belonged to the 67th Battalion of CRPF and even wore badges to demonstrate it... CRPF decided to let off my husband and carried away Arshad Hussain for questioning, as they put it, assuring us that he would be sent back very soon... [At] our doorstep, the CRPF men pushed us back with force and proceeded on foot along with Arshad Hussain towards Zaina Kadal side... I distinctly heard two gun shots just 15 or 20 minutes after CRPF had carried off Arshad Hussain. We waited up for Arshad Hussain the whole night but he did not return."

"...meanwhile word had gone around that during the night... the security forces had shot dead someone at Zaina Kadal bridge and thrown his dead body in the river Jhelum. On 9 June 1991... I met (X) a CRPF jawan [soldier] [of the 67th Battalion] near Jammu and Kashmir Bank, Zaldagar. I knew him well because he had been on duty in our locality for a long time... He told me that we had better look for Arshad Hussain's body in the 'Naddi' [river Jhelum] because he had been shot dead by (Y) and thrown into the 'Naddi'."

...I kept on visiting the police station frequently to make inquiries about Arshad Hussain but the visits proved futile till 16 June 1991 when his bullet-ridden body was recovered by the police from river Jhelum and handed over for burial to us."

Bashir Ahmed Jan, Arshad Hussain's father, went to the Director General of Police to ask him to intervene. He reportedly called the Inspector General of the CRPF to his room, who assured him that he would not hesitate to parade CRPF men for identification. He reportedly suggested that Arshad Hussain's father give a written application to the Director General of Police which was done the following day. The police registered a criminal case against the CRPF, but, to Amnesty International's knowledge, the victim's father and cousin were never called to identify the men who took Arshad Hussain Jan away and shot him dead in custody. The culprits are still at large.

This pattern continues. Mohammad Iqbal Mochi's case (Case 80, Appendix I) is a more recent example of the authorities' unwillingness to pursue investigations and prosecute the perpetrators of human rights violations. Mohammad Iqbal Mochi was from Ramban, in

the southern district of Doda, where he was arrested by police in August 1993 on suspicion of having committed an offence under the TADA. His father said that the police entered their house and beat up their family, but left when they apparently could not find anything. On 9 August 1993 Mohammad Iqbal Mochi died in police custody; when the news spread there were large protest demonstrations in the village.

An inquiry conducted by the Additional Deputy Commissioner was submitted to the District Magistrate of Doda. A post-mortem was conducted and a First Information Report about the murder named the police from Ramban police station. When local police failed to investigate, the Crime Branch, Jammu, started an investigation in April 1994. The inquiry heard an eye-witness who saw Mohammad Iqbal Mochi's arrest, and his father reportedly named police officers who beat his son. Although a Subdivisional Police Officer has reportedly given a written statement that Mohammad Iqbal Mochi was killed in police custody, no one is known to have been charged with the murder. In June 1994 the family reported that they were threatened by police whenever they tried to pursue the case.

V. HUMAN RIGHTS ABUSES BY ARMED OPPOSITION GROUPS

The campaign for secession has become increasingly violent in Jammu and Kashmir since late 1989. According to the government, more than 7,000 people were killed between January 1990 and August 1993, 600 of them members of the security forces killed by militant groups. In April 1994 the government said that a further 62 members of the security forces had been killed in the preceding three months, and that 3,307 members of militant groups had been killed by the security forces since 1990. Since 1992 the militants have apparently been joined by several hundred Afghan and Arab veterans of the Afghanistan war. Although this report concentrates on patterns of grave human rights violations perpetrated by government forces, armed militant groups have themselves committed numerous human rights abuses which are of grave concern to Amnesty International. They have kidnapped many civilians and have deliberately killed some of them; they have tortured some of those in their custody; and they have "executed" suspected informers. Amnesty International condemns these human rights abuses unreservedly.

Kidnapping

One of the first hostages taken since the secessionist campaign started was Rubaiya Saeed, the daughter of India's then Home Minister. She was captured in December 1989 and held until five Jammu and Kashmir Liberation Front (JKLF) prisoners were released. Another group, *Ikhwan-ul-Muslimeen*, abducted K. Doraiswamy, executive director of the Indian Oil Corporation in April 1991. They released him in exchange for six of their members held by

the authorities. According to the government, 139 people were kidnapped during the first five months of 1994.

On 3 January 1994 two professors of the Agriculture University, Professor Abdul Rashid and Professor Siraj Ahmad, were kidnapped by masked gunmen from their houses in Sehama on the outskirts of Srinagar. No militant organization claimed responsibility and the whereabouts of the two men remains unknown.

In June 1994 one of the longest ever kidnappings in Jammu and Kashmir came to an end when Pankaj Kumar Sinha, a former legislator of the Congress(I) Party from Bihar, was rescued by members of the BSF. He had been abducted by a pro-Pakistan armed opposition group, the *Al-Umar Mujahideen*, on 16 June 1993 in Rajbagh. His captors had demanded the release of 10 Kashmiri militants in exchange for their hostage. In mid-June 1994, 10 Congress(I) workers were abducted by another group, the Islamic Front, in central Srinagar. Five of them were set free shortly afterwards.

On 6 June 1994, two British nationals were kidnapped while trekking near Pahalgam by *Harkatul Ansar*, an allegedly pro-Pakistan armed group. The group asked Amnesty International representatives to meet its members in Pakistan. Rejecting this request, Amnesty International said: "We deplore that the group has taken hostages in blatant violation of the principles of humanitarian law which prohibits such action". The two British hostages were released on 23 June.

Amnesty International then appealed to all armed groups in Jammu and Kashmir to release all hostages they were holding, including the remaining five Congress(I) workers. To date, the Indian Government has failed to reply to Amnesty International's request of 21 June 1994 for information about them, as well as about other Indians taken hostage by armed opposition groups.

In October 1994 four tourists, three British and one US national, were abducted in the capital, New Delhi, by another group called *Al-Hadid*, which demanded the release of detained members of various militant groups. The US national was found by police unharmed but the three British men were freed only after a police raid in which two policemen and one of the abductors were killed. This was the first reported kidnapping by an armed Kashmiri group outside the state.

Killings

During 1994 a number of hostages were killed by their captors. On 16 April 1994, the body of Bashir Ahmad was found. He had been abducted on 11 April 1994 by militants. On 5 May 1994 three hostages were reportedly killed by militants, while three others were released. All six had been abducted by militants on 30 April 1994. On 12 July 1994 the

Director of State Motor Garages, Riyaz Rathore, his son and two others were abducted by militants. Amnesty International does not know what happened to them.

Politicians and well-known personalities have been frequent targets of attack. Kashmir University's Vice Chancellor, Professor Musheer-ul Haq, was kidnapped and killed in April 1990 along with Abdul Ghani, his personal secretary, and businessman H.L. Khera. They were reportedly held and killed by the Jammu and Kashmir Students Liberation Front. The Kashmir Times reported that on 2 March 1993 militants entered the house of 64-year-old Ghulam Nabi Baba in Sopore and shot him dead. He was a former Assistant Commissioner and a friend of former Chief Minister Syed Mir Qasim. On 10 April 1994, unidentified militants entered the house of Ghulam Qadir Mir, a 65-year-old former independent Member of the Legislative Assembly in Muran village, Pulwama, and shot him dead. He was the 11th Member of the Legislative Assembly to be killed, reportedly by militants, in four years. In the southern district of Doda, members of the Bharatiya Janata Party (BJP) have been targeted. On 30 May 1994 Swamiraj Katal, the BJP vice-chairman of Doda district, was reportedly shot dead by militants at Songi village, near Bhaderwah town. The Indian Express reported on 17 November 1994 that 78 people had been abducted by militants in Doda district in 1994, 31 of whom had been killed in custody.

Qazi Nissar Ahmed, a respected Muslim cleric and political leader, was shot dead on 19 or 20 June 1994 by unidentified gunmen. His body was found at Dayalgam near Anantnag. The government and an armed militant group accused the principal pro-Pakistan group, the *Hizbul Mujahideen*, of killing him, although the group denied responsibility. However, *Hizbul Mujahideen* admitted killing Wali Mohammad Ittoo, 53 year-old former speaker and leader of the National Conference, on 18 March 1994. He was shot dead as he left a mosque in Jammu. The group claimed that his death was a "warning to all those who harped on the tune of a so-called political process". Several days later, the *Hizbul Mujahideen* offered a cash reward for anyone who killed the state's former Chief Minister, Dr Farooq Abdullah.

The Indian Government has published details of 52 such incidents involving prominent people who were kidnapped by armed groups between 8 December 1989 and 6 December 1992, of whom it said 25 were killed by their captors.

Even members of the families of politicians have been assassinated or abducted. The *Al-Umar Mujahideen*, admitted in May 1991 that it had murdered Sheikh Sadiq, a businessman and cousin of former Chief Minister Dr Farooq Abdullah, who was perceived as pro-Indian. The group's chief field commander warned: "The Sheikh's family is responsible for the present miseries faced by the Kashmiri people and I will not relax till I hack Dr Farooq Abdullah and all other members of his family and associates to death" (The Telegraph, Calcutta, 8 May 1991). On 9 April 1994 armed militants abducted Sheikh Arshad, son of former MP Sheikh Mohammad Akbar from his home in Baramulla.

Local journalists and media personnel persistently complain of harassment by government forces but they have also been threatened, captured and even killed by armed militant groups in apparent attempts to intimidate the press. Lassa Koul, the widely respected Srinagar station director of the national television station was killed by a militant group on February 1990. He had previously struggled to limit official interference in his station's reporting. On 23 April 1991 Mohammed Shaban Vakil, the editor of the Urdu-language Alsafa paper, was the first journalist to be killed, but in his case the government and armed opposition groups accused each other of assassinating him. Yusuf Jameel, who works for Reuters, the BBC and The Telegraph of Calcutta, was kidnapped for a day by the army in June 1990, and then twice attacked by militants throwing grenades at his house on 31 March and 18 February 1992. On 10 September 1993 the Urdu paper Aftab suspended publication because the pro-Pakistan *Jamiat-ul-Mujahideen* group had threatened it would "face the consequences" if it continued to refuse to publish an advertisement critical of another militant group. That same month, Abdul Gani, manager of The Srinagar Times, was abducted by militants who claimed to be associated with the *Hizbul Mujahideen*.

Threats against the news media including newspapers and radio stations by militant organizations continued in 1994. In March 1994 *Al-Umar* threatened the Director General and 10 other employees of All India Radio with death unless it stopped broadcasting. On 30 August 1994 Ghulam Mohammad Lone, a reporter with a local newspaper, and his seven-year-old son were killed by unidentified gunmen at their home in Kangan township. The government blamed militants but his wife and residents accused an army officer. His wife claimed the officer had warned Ghulam Mohammad Lone to stop reporting excesses allegedly committed by the army. Local journalists urged a judicial probe into his death.

Less well-known victims include people suspected of being police informers. Two such men were pushed out of moving vehicles in June 1991 with bombs tied around their waists and blown to pieces. *Al-Umar* Commandos claimed responsibility, saying the two men had been on the payroll of the BSF and had therefore been eliminated. *Hizbul Mujahideen* leaders have also admitted to such killings.

Other victims have apparently been targeted because of their pro-Indian views. Armed militants reportedly killed a vocal India supporter, Chaudhury Tajuddin on 1 July 1994 together with his seven-year-old daughter, Jamila. Chaudhury Tajuddin was abducted with his daughter while they were on their way to Tregam hospital. Their bodies were found later that day by the roadside.

Members of the security forces have also been killed after capture; the Kashmir Times reported on 25 April 1993 that militants had abducted a soldier from Chatrugam village, Tral, in Pulwama and had later killed him in the Pahalgam area. Others have been abducted but released. On 1 May 1994, two abducted police officers were released by militants. The

Superintendent of police, Zahoor Hussain Chesti was reportedly abducted by militants at Bagh-e-Mehtab on the outskirts of Srinagar on 6 July 1994. Amnesty International does not know what happened to him, but Constable Siraj-ud-Din of Keran in Kupwara district, reportedly abducted on 10 October 1994, was released five days later.

Particularly disturbing was the killing of 15 male Hindu passengers who were taken from bus JKY 2003 travelling to Jammu and shot dead by unidentified gunmen on 14 August 1993. Communally targeted killings of civilian travellers – which have been quite common in Punjab – had not before been reported from Jammu and Kashmir. The *Hizbul Mujahideen* and the JKLF condemned the killings, for which the police alleged militants were responsible. In June 1994 the JKLF admitted that atrocities committed by the militants had alienated the people and stated that strict action would be taken against "erring elements" amongst its own forces.

In February 1994 three people were killed in a bomb explosion in Jammu. A Sikh militant organization claimed responsibility for the explosion and said it was in revenge for communal riots in Jammu in 1989. A similar incident occurred on 25 August 1994 when nine people, eight of them children, were killed by a bomb which exploded on a school bus 12 miles south of Jammu. Twenty-nine people, most of them children, were injured. No militant group claimed responsibility for the bomb but the authorities suspected Sikh militants to have been responsible.

Torture

Some members of armed separatist groups have tortured their captives. The pro-Pakistan *Al-Jehad* group released two clerks working in the intelligence service on 2 July 1993 in exchange for the release of some of their members. Journalists saw marks of beatings on their faces and backs, which they said resulted from torture during the first four days of their captivity.

Other groups have ill-treated civilians. The Islamic women's organization, *Dukhtaran-e-Millat* (Daughters of Faith) campaigned in May 1992 against women not wearing the traditional *burqa* (robe). Four female students were hospitalized because paint sprayed on their faces by campaigners had damaged their eyes. At the end of July 1994 militant groups again directed women to observe the dress code strictly when out of their homes.

There have been several reports of women being raped by members of militant groups. According to the police, some have since sought police protection. Shahina, a 19-year-old woman from Handwara, told Delhi-based journalists in February 1994 that she

had been raped in 1992 by members of various militant groups, but Kashmiri journalists were not allowed to meet her to discuss the allegations.

Amnesty International's position

Amnesty International condemns the deliberate and arbitrary killings, torture and hostage-taking by armed opposition groups in Jammu and Kashmir. There is no moral or legal justification for the arbitrary or indiscriminate killing of civilians. Many of the victims are selected for peacefully expressing their conscientiously held views, because of the political views of their relatives, or for belonging to a particular religious community. Hostage-taking does not further, in any way, the protection of human rights.

Such grave human rights abuses can never be condoned, either in time of peace or war. They are strictly prohibited in Indian law and by Common Article 3 of the Geneva Conventions which applies to all armed conflicts of a non-international character. The ICRC describes this as "any situation where, within a State's territory, clear and unmistakable hostilities break out between the armed forces and organized armed groups". The ICRC has submitted specific proposals to the Indian Government to visit prisons in the valley and to provide relief to civilians. It has disseminated information on international humanitarian law to paramilitary forces. However, as yet, the ICRC has not obtained permission to visit prisons and other places of detention.

Common Article 3 of the Geneva Conventions provides that in cases of non-international armed conflict, people taking no active part in hostilities, including members of the armed forces who have laid down their arms, should be treated humanely. The following acts are specifically prohibited at all times and in all places and should be observed by all parties to the conflict, including, it is stressed, by armed groups opposing the government: violence to life and person, including murder, mutilation, cruel treatment and torture; taking of hostages; humiliating and degrading treatment. These basic rules of humanitarian law have been routinely violated by both the Indian Government and many of the armed groups opposing it. Amnesty International calls upon all armed opposition groups to halt such practices, and specifically to groups in Jammu and Kashmir to release all hostages they are holding at present.

However provocative, the grave abuses committed by armed separatist groups can never justify the security forces resorting to arbitrary detentions, torture, extrajudicial executions or "disappearances". Such practices are specifically prohibited in Indian law and clearly contravene international human rights standards which the Indian Government is bound to uphold. As this report shows, the government has failed to uphold the most important of these standards, those protecting the right to life and the right not to be tortured of Indian citizens.

VI. RECOMMENDATIONS

Amnesty International recommends that the following steps be taken to enhance the protection of human rights in the state of Jammu and Kashmir, where torture and deaths in custody have reached alarming proportions. The recommendations are addressed to the central government of India as well as to the state government of Jammu and Kashmir. They are based on international human rights standards provided in the International Covenant on Civil and Political Rights, the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

These recommendations draw upon measures which Amnesty International has previously proposed to the Government of India in a series of reports on torture and deaths in custody and on the human rights situation in Jammu and Kashmir. Virtually none of them have ever been implemented. Amnesty International's recommendations are also inspired by measures to protect the rights of detainees advocated by the judiciary in the state of Jammu and Kashmir itself.

1. Investigate impartially all allegations of torture and deaths in custody

- ◆ Judicial inquiries should be made mandatory into all allegations of torture, including rape, and deaths in custody. The government should ensure that all *prima facie* reports of these human rights violations published by the news media and by civil liberties groups and human rights bodies, including the cases listed in this report, are promptly and effectively investigated by an independent and impartial body.
- ◆ Judges should have all necessary resources and powers to carry out their investigations effectively, including powers to compel witnesses to attend and to obtain documentary evidence. Witnesses should be protected from intimidation and harassment.
- ◆ The inquiries should be conducted within a reasonable time and their results should immediately be made public. Special care should be taken to protect poor and illiterate victims who lack access to existing redress mechanisms.
- ◆ All detainees should have the right to a medical examination promptly after admission to the place of custody and regularly thereafter. Furthermore, a prompt medical examination should be provided following any allegations of torture and the examining doctor should preferably be experienced in examining people claiming to be victims of torture. All detainees should have the right to petition for a second medical examination by an independent doctor of their choice. The doctor's reports should give a clear account of the person's history, should state all the examination's findings

and give a clear interpretation as to whether the findings are consistent with the torture allegations. The detainee or his or her representatives should have access to the medical report in full. Prompt medical examinations, by a female doctor wherever possible, are of crucial importance to women who allege that they have been raped: otherwise it is virtually impossible to prove or disprove the allegations authoritatively.

- ◆ Post-mortem examinations should be carried out by independent doctors, preferably experts in forensic pathology, on the bodies of all those who died in custody. The post-mortem report should state the cause, manner and time of death and account for all injuries on the body, including any evidence of torture. The family of the deceased should have the right to have a representative present at the autopsy and should have access to the post-mortem report immediately on completion.
- ◆ The government should issue immediate instructions to officials to comply with all outstanding court orders regarding torture and deaths in custody and bring prosecutions against officials who fail to cooperate with judicial investigations into these human rights violations.

Mandatory judicial inquiries into all allegations of torture and deaths in custody would ensure compliance with Article 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which states:

"Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment."

Furthermore, Article 9 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions requires that: "There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances".

2. Establish a Commission to Protect Detainees

- ◆ The Indian Government should establish a Commission to Protect Detainees in Jammu and Kashmir with a broad mandate to protect the rights of all those taken into custody. The Commission should be a fully independent and impartial body composed of men

and women known for their integrity and impartiality with a proven expertise and competence in human rights protection. The Commission should have a mandate to investigate complaints of arbitrary and illegal detention, torture including rape, deaths in custody and "disappearances". The formation of such a Commission should be widely publicized to encourage relatives and witnesses to submit information to it.

- ◆ The Commission should have all necessary powers and resources to carry out effective investigations, including powers of immediate and unhindered access to all places where people may be held in acknowledged or unacknowledged detention, powers to compel witnesses to attend and obtain all relevant documentary evidence. Failure to cooperate with the Commission should be an offence and the government should take immediate action against any official who fails to cooperate promptly and fully.
- ◆ The Commission should regularly hear evidence from the committees which the High Court of Jammu and Kashmir at Srinagar, in October 1994, ordered to be constituted in each district of the state. These Committees should consist of the District and Session Judge, the District Magistrate, the District Superintendent of Police and the Chief Medical Officer. They have a mandate to visit each prison, interrogation centre and police station to prepare lists of detainees with the cases against them, the period of their detention, the facilities available to them in detention and any need for medical treatment.
- ◆ Inquiries by the Commission into specific complaints received should be speedily conducted and the results should be made public immediately. The Commission's findings should be automatically transmitted to the courts for appropriate legal action. The Commission should ensure appropriate follow-up.
- ◆ The Commission should take all necessary measures to protect witnesses and relatives of victims of human rights violations from any form of ill-treatment, intimidation or reprisal.
- ◆ The Commission should be empowered to make recommendations for interim relief and appropriate redress to the victims of arbitrary or illegal detention, torture including rape, deaths in custody and "disappearances", as well as their relatives.
- ◆ The Commission should be asked to analyze the factors which contribute to these grave human rights violations and the reasons why existing legal mechanisms such as *habeas corpus* have failed, with rare exceptions, to protect detainees in Jammu and Kashmir. It should make specific recommendations to the government about the implementation in Indian laws and law enforcement practices of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the UN Body of Principles for the Protection of All Persons under Any

Form of Detention or Imprisonment and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

Amnesty International believes that the establishment of such a Commission should be a priority in Jammu and Kashmir. Legal mechanisms to protect human rights have collapsed in the state. Human rights violations are virtually excluded from effective investigation by the National Human Rights Commission, which has no powers to investigate for itself the vast majority of complaints of human rights violations perpetrated in Jammu and Kashmir: those committed by the army and paramilitary forces. The establishment of a Commission to Protect Detainees would be an important way of ensuring compliance with Article 7 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions:

"Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to their records".

3. Respect and strengthen legal safeguards

- ◆ The government should ensure that existing legal safeguards are always respected, notably the rules that all detainees be produced before a magistrate within 24 hours of arrest and that the police must register First Information Reports whenever they receive complaints of human rights violations by the security forces. Any existing instructions prohibiting the police from doing so should be immediately withdrawn.
- ◆ Detainees should be brought before a judicial magistrate within 24 hours of arrest and that rule should be extended to all those held in preventive detention under the Jammu and Kashmir Public Safety Act. The law should be amended to that effect.
- ◆ Anyone detained should be promptly informed of the grounds for detention. This should also apply to all those held in preventive detention under the Jammu and Kashmir Public Safety Act.
- ◆ All detainees must have the opportunity to be heard promptly by a judicial or other independent authority and have their detention supervised and reviewed by such a body. This is a requirement of international human rights standards provided in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

4. Strengthen safeguards against torture and deaths in custody

- ◆ The state government should maintain a central, up-to-date and accurate register of all those arrested and where they are being held.
- ◆ Anybody with the power of arrest – the police, paramilitary forces and the army – should be obliged to inform the central agency responsible for maintaining the register immediately whenever a person is arrested. They should inform the agency of the time and place of the arrest, by whom it was made, and where the detainee is held. The time of any transfer and the name of the official to whom the detainee is transferred or the time and date of release should also be recorded.
- ◆ All police stations, detention centres and prisons should keep full, accurate and up-to-date records of this information as well as the charges or reasons for detention.
- ◆ Members of the judiciary, relatives of victims and their legal representatives as well as other relevant bodies and interested parties should have immediate access to such information. Failure to comply with these requirements should attract prompt sanctions.
- ◆ Relatives should be informed of any arrest or transfer of a detainee immediately, and certainly within 24 hours. The government should consider introducing written and signed statements notifying relatives of an arrest, the reason for the arrest and the place where the detainee is being held.
- ◆ Access to relatives and lawyers should be prompt: The UN Basic Principles on the Role of Lawyers specify that lawyers should have access to detainees within 48 hours of arrest.
- ◆ Article 5 of the UN Code of Conduct of Law Enforcement Officials, which states that it is a duty to disobey any order from a superior to inflict torture, should be incorporated in relevant laws, especially the Indian Police Act. Such a provision should be included in instructions to anyone who may be involved in the custody or treatment of detainees.
- ◆ Procedures for the supervision of interrogation should be introduced and records should be kept of the officials conducting the interrogation, other people present, and the precise times of interrogation sessions.
- ◆ All detainees should be held only in officially recognized places of detention, and the names of all prisons and detention centres should be widely publicized. Secret or *ad hoc* detention centres should be abolished.

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- ◆ The practice of keeping detainees in prolonged police or paramilitary custody should be ended, as should legal provisions identified in this report permitting such practices.

5. Bring the perpetrators to justice

- ◆ The government should take immediate steps to ensure that torture and ill-treatment of detainees will invariably lead to the perpetrators being brought to justice. It should issue directives to all concerned – regardless of whether they belong to the army, the paramilitary forces or the police – that torture is forbidden under any circumstances, as stipulated in Article 4 of the International Covenant on Civil and Political Rights. Those suspected of involvement in such practices should be suspended from active duty during the course of the investigation or at least be removed from any position of control or power, direct or indirect, over complainants, witnesses and their relatives.
- ◆ The government should review all laws which prevent or seriously inhibit such prosecutions being brought and abolish any provisions which do so from Section 6 of the Armed Forces Special Powers Act, Section 26 of the Terrorist and Disruptive Activities (Prevention) Act, and Section 22 of the Jammu and Kashmir Public Safety Act. It should ensure that the rights of all those accused of human rights violations are protected by full legal safeguards provided in international human rights instruments during their trial.

6. Compensate the victims

- ◆ There should be a statutory right to compensation. The victims of "disappearances" and their families should obtain redress and adequate compensation. An effective machinery for redress for victims of torture and ill-treatment, including rape, and deaths in custody should be established. Torture victims should have the right to medical treatment and rehabilitation.

7. Abide by international obligations and human rights standards

- ◆ Any legal provisions under the Terrorist and Disruptive Activities (Prevention) Act, the Armed Forces Special Powers Act, the National Security Act and the Jammu and Kashmir Public Safety Act which the UN Human Rights Committee has found to be in clear contravention of India's obligations under the International Covenant on Civil and Political Rights should be repealed and the laws should be reviewed to bring them in line with international human rights standards. India should sign and ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Increase cooperation with national and international bodies

- ◆ The government should effectively respond to the observations and recommendations made by various civil liberties groups in India including Jammu and Kashmir.
- ◆ The government should allow international human rights and humanitarian bodies access to Jammu and Kashmir. In particular, the government should invite the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the UN Special Rapporteur on Torture and the UN Working Group on Enforced or Involuntary Disappearances to visit Jammu and Kashmir. The Indian Government should allow Amnesty International to visit the state for purposes of research into human rights violations and abuses.

II. Armed opposition groups

Armed opposition groups have committed numerous human rights abuses in Jammu and Kashmir. Amnesty International urges all armed opposition groups in the state to take the following steps.

- ◆ Respect the basic standards of humanitarian law which require that all people taking no active part in hostilities should at all times be treated humanely. All members of armed opposition groups should receive training in their obligations under Common Article 3 of the Geneva Conventions to uphold these basic minimum standards.
- ◆ Armed opposition groups in Jammu and Kashmir should immediately release all hostages or any people held because of their non-violent, conscientiously held beliefs.
- ◆ None of those held in captivity should be tortured, including by being raped, ill-treated or humiliated.
- ◆ No civilians should be deliberately killed. In particular, they should not be killed for expressing their views or because of political views attributed to them, or because of who their relatives are or because they belong to another religious community.
- ◆ Allegations that these basic standards of humanitarian law have been abused should be promptly investigated; those found to be responsible should be immediately removed from any positions of responsibility.

GLOSSARY

BSF	Border Security Force
CID	Criminal Investigation Department
CIK	Counter-Intelligence, Kashmir
CMP	Civil Miscellaneous Petition
CRPF	Central Reserve Police Force
CWP	Criminal Writ Petition
DGP	Director General of Police
DIG	Deputy Inspector General of Police
DS	Deputy Superintendent
DSP	Deputy Superintendent of Police
FIR	First Information Report
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IG	Inspector General of Police
JKLF	Jammu and Kashmir Liberation Front
OWP	Original Writ Petition
PSA	Public Security Act
RPC	Ranbir Penal Code (same as Indian Penal Code)
SHO	Station House Officer
SSP	Senior Superintendent of Police
SP	Superintendent of Police
TADA	Terrorist and Disruptive Activities Act