

INDIA

@Reaction to the government response to Amnesty International's report on "disappearances" and impunity in Jammu and Kashmir and Punjab

Amnesty International is urging the Indian Government to respond seriously to over two hundred cases of "disappearance" in Jammu and Kashmir and Punjab described in its latest report on human rights violations in these states. The government's 44 page published response to Amnesty International's report fails to do this.

The organization said, "we are deeply disappointed that the government's response hardly clarifies any of the cases of "disappearance" we have submitted and that the government has preferred to focus on political issues raised by Pakistan and others rather than responding to the grave human rights violations documented by Amnesty International in its report."

It called on the government to permit Amnesty International to visit the state so that it can investigate for itself the "disappeared".

- The bulk of the government's response, received by Amnesty International on 20 June, deals with the Indian Government's views on the political dispute between India and Pakistan about the status of Jammu and Kashmir and with abuses - unequivocally condemned by Amnesty International in its report and subsequently - committed by armed opposition groups in the state. Only a few pages respond to what the Amnesty International report 'An Unnatural Fate' - 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab' is all about: the pattern of "disappearances" in Jammu and Kashmir and Punjab. Scores more cases of this gross abuse of human rights have been reported to the organization since it sent its reports to the government on 30 November 1993.

- The government maintains that "it has never been the intention of the Government of India to overlook, encourage, and much less, actually itself perpetrate human rights excesses," but it shows little determination to halt them. The government has not made a single comment in its response about whether it will implement Amnesty International's Nine Point Program to halt "disappearances" in the state, which was included in its report. The program includes the recommendations to establish a Commission to Protect Detainees and to keep accurate and public records on detainees. The implementation of such measures would be a real advance for the effective protection of human rights in the state.

- Amnesty International welcomes information provided by the government indicating that fifteen of the 127 cases of "disappearances" in Jammu and Kashmir may have been clarified. It is now seeking to confirm that the individuals involved have indeed been released (in seven cases), are at their residence (in five cases) or in acknowledged detention (in three cases).

- Amnesty International remains disturbed that the government continues to deny responsibility for the bulk of the "disappearances", despite strong evidence in many cases, often from eyewitnesses, of government responsibility for their detention. The government seems to be continuing its attempts to cover-up the "disappearances" by suggesting that "no missing reports have been lodged with the local police" (even though international human rights standards clearly require that the government should investigate reports of "disappearances", such as those which Amnesty International submitted, regardless of whether there is a formal complaint and even though families have often complained that the police refused to register reports of "disappearances" unless they managed to persuade the courts to issue orders). Even less credibly, considering that the Indian press and eye-witnesses have persistently reported cases of people "disappearing" in custody and that the Kashmir courts have found clear evidence of such practices, the government suggested that the "disappeared" could be "among the thousands who had in the last 3 years been allured, exhorted and in some cases even forced to join the militant ranks and may even have been taken across the border, and may still be there". As shown below, a Kashmir court specifically rejected one such claim made by the government in an attempt to explain away the "disappearance" of Javid Ahmad Ahangar.

- The inability of the government to clarify the vast majority of "disappearances" in the state is borne out by the attached analysis of the 11 "disappearance" cases described in detail in the Amnesty International report, none of which have been clarified in the government's response. In one case, that of Mohammad Shafi Dar, the government contradicted itself by first acknowledging and then denying that he was taken into custody. To three allegations of "disappearance" (Manzoor Ahmed Zarger, Javeed Ahmad Shalla and Mohammed Sidiq Sofi), the government has no response at all.

- Even in those few cases in which the government appears to have definite information about the fate or whereabouts of the "disappeared" person by informing Amnesty International that "A case has been registered... and is under investigation" (as in the cases of Javid Ahmad Ahangar, Syed Basharat Ahmad Shah, and Peer Mohammed Shafi), the government fails to acknowledge its full responsibility for the "disappearances" in all these cases. It fails to explain what happened to these people after they were taken away by the security forces. In Amnesty International's view, this constitutes a denial of the Indian Government's responsibility in international law to promptly investigate all cases of "disappearance", to clarify the whereabouts of the persons concerned, and bring those responsible for making them "disappear" to justice.

- If the government wishes to demonstrate its stated "respect for the judicial system and the rule of law", it should respond to the substance of numerous *habeas corpus* petitions and follow-up petitions in "disappearance" cases which remain pending in Jammu and Kashmir. The courts, as the Amnesty International report and the attached analysis show, have criticised the government for adopting "delaying tactics" by not responding to these petitions and have ordered the "disappeared" persons to be brought to court. The government has persistently failed to comply even after the courts have plainly rejected government assertions that the person concerned had not been arrested in the first place (as happened in the case of Mohammed Maqbool Bhat and Javid Ahmad Ahangar) or have found the government's claim that the "disappeared" person had been released to lack credibility (as the High Court found in the case of Rouf Ahmed Shah).

- Although the government has included statistics in its response purporting to show that "any suggestions of impunity [of the security forces for committing human rights violations] are ill-informed and incorrect", Amnesty International does not know of a single instance in which members of the security forces have been brought to justice for making people "disappear" in the state. Amnesty International knows of only three specific instances in which security forces' members have been sentenced to substantive forms of imprisonment for committing rape and other violations of human rights and although the government included in its response statistics showing that 15 members of the security forces have been sentenced, apparently since 1990, to terms of imprisonment ranging from one to 10 years for "alleged excesses in J&K", the government has not provided details of the specific incidents concerned of the crimes for which these persons were convicted. Unless the government does so, it is impossible to assess whether any human rights violations, including "disappearances", have been punished in this way.

- The government says that in three cases, Amnesty International listed the name of a "disappeared" person twice. Amnesty International accepts that there may be duplication of the cases of Mohammad Ashraf Yatu and Nazir Ahmed Mir but believes it is possible that two persons by the name of Ali Mohammad Mir have "disappeared" on two different dates. Only a visit to the state would enable Amnesty International to assess this issue properly.

- The Indian Government asks whether Amnesty International has raised concern about "disappearances" in that part of Kashmir held by Pakistan, there called Azad Kashmir. Amnesty International has not done so. No human rights violations of that nature have been reported to Amnesty International from the area called Azad Kashmir. Amnesty International reports separately, and persistently, about its human rights concerns in Pakistan. Most recently, it has reported on the suppression of the rights of the Ahmadiyya minority and on widespread reports of torture and custodial deaths in Pakistan.

- Contrary to the suggestions made by the Indian Government in its response, Amnesty International does not subscribe to any political ideology or theory, including about the partition of the Subcontinent or the accession of Kashmir at the time of independence. The organization's business is simply to work for the effective protection of human rights, whatever the political system or ideology of the country concerned.

- The government, in its response, provides many statistics on the scale of the abuses perpetrated by the armed opposition groups in Jammu and Kashmir. Amnesty International continues to stress that abuses committed by opposition groups can never justify government forces themselves resorting to torture, extrajudicial execution or other human rights abuses. We believe that governments must fulfil their obligations under international law to uphold and respect fundamental human rights as a universally recognised governmental responsibility. Amnesty International continues to appeal to opposition groups to respect international humanitarian law, including by ceasing hostage-taking, deliberate and arbitrary killings, as well as the torture and rape of prisoners.

Amnesty International's Comments on Cases listed in the document:
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

Amnesty International's report describes, in Appendix I, 128 cases of "disappearances" in Jammu and Kashmir. Only one of these cases has been clarified to date, that of Nazir Ahmad Misri, the first person listed in the Appendix. The cases described below are those which, because of the more detailed information Amnesty International has about them, were described in the main text of the Amnesty International Report, on pages 17 - 22, as examples of the practice of "disappearance" in the state of Jammu and Kashmir.

Mohammed Maqbool Bhat

Case 97, Amnesty International Report, whose "disappearance", including reports from witnesses to his arrest and detention, is described on pages 17 - 18 of the Amnesty International Report.

The government, in its response: (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") acknowledge his arrest - as reported by Amnesty International in 1990 - but fail to provide any explanation about what happened to him afterwards, simply stating: "Inquiries made in the matter so far have not yielded any results and the person continues to remain untraced. The police case is under investigation" (page 40 of the government's response). The Indian Government has made this statement despite the findings of a Head Constable who had inquired into the

reported "disappearance". His findings, put before the Jammu and Kashmir High Court during *habeas corpus* proceedings on 21 October 1990, were that : "Mohammed Maqbool Bhat was done to death by the security forces". Criticizing the police for not vigorously pursuing these investigations for two years, the District and Session Judge, Srinagar, on 4 December 1992, found that:

"the averment of the forces that Mohd Maqbool was not picked up, detained or kept in custody by them appears to be wholly unacceptable and untrue. The statements of the witnesses and the independent fact finding inquiry by Ghulam Mohammed Head Constable in discharge of his official duties ... and the statements of ...(two witnesses) and registration of case as FIR 209 of 1992 under sec. 364/365 RPC are all in line with the host of circumstances and hard facts to reveal that Mohd Maqbool was taken into custody, whisked away and kept in JUC Hari Nivas... All these circumstances are reinforcing the inference that Mohd Maqbool Bhat after having been taken into custody has been done to death. In fact state has not come up with any evidence, material or facts to rebut the weight of the evidence tendered by the petitioner [father of Mohd Maqbool Bhat]...

... In the totality of circumstances and fact situation of the case as judged from the appreciation of the evidence, documents and material on record, Mohd Maqbool appears to have met an unnatural fate in so far as he appears to have been done to death surreptitiously and secretly by his captors after being tortured and physically abused....."

For the Indian Government to ignore these pertinent findings by a member of India's judiciary by saying that "Inquiries in the matter so far have not yielded any results.." is therefore a distortion of the truth.

Javid Ahmad Ahangar

Case 92, Amnesty International Report, described in detail on pages 18 - 20 of that report which described witnesses testifying in court to his detention and torture by members of the National Security Guard. The government's one line response (on page 40) to the two pages of detailed documentation about the facts of his arrest and subsequent "disappearance" is that: "A case has been registered in the concerned Police Station and is under investigation".

This response was given despite severe criticism of the police by the Srinagar judge for their failure to investigate the "disappearance" and his findings that, denials of senior police officials notwithstanding, Mr Ahangar had been arrested and was last seen in the custody of two named members of the National Security Guard.

Acting on a *habeas corpus* petition, the Jammu and Kashmir High Court ordered, in October 1990, an investigation into the "disappearance" by the Additional District and Session Judge, Srinagar. Witnesses identified by name three members of the Security Guards who they said had beaten Javid Ahmad Ahangar in the Hari Niwas interrogation centre. The Additional Sessions Judge, Srinagar, severely criticized the police for their failure to cooperate with the inquiry and their apparent attempts to cover-up the "disappearance" by suggesting that Javid Ahmed Ahangar had gone to "a neighbouring country" [Pakistan]. The Judge found:

"Petitioner's son [Javid Ahmad Ahangar] is shown to have been arrested by the National Security Guards as is established in material particulars by evidence which has remained unrebutted on record in the face of respondents [the state] failure to join the inquiry proceedings in obedience to proves of court and the persons upon whom such liability is located are criminally silent to account for his whereabouts so far. This silence seems to have been broken by the Director General of the police in his affidavit... he has deposed that he has ...[made] attempts in tracing his whereabouts... and that in view of the allegations of the abduction with an intent to murder a case FIR 17/91 U/S 364 R.P.C. P/S Shergari is under investigation.... he has deposed that since the alleged detainee [Mr Ahangar] is missing the state in these circumstances is not in a position to ascertain the whereabouts of such persons nor they can be accounted for having gone underground or stuck up in the neighbouring country. Reading in between the lines of this affidavit it is borne out that the chief of the police in the state has a well founded conception that the alleged detainee is missing....

In these telling circumstances [no apparent action taken to investigate the case after the FIR was filed] it appears that the Director General of police has not at all admonished for reprimand the officials of police station Shergari for their apathy and lassitude for not making any headway in the investigation regarding that of locating the whereabouts of the alleged detainee... it can safely be concluded that the alleged detainee [petitioner's son namely, Javed Ahmad Ahangar] was arrested by the National Security Guards during the intervening night of 17/18 of August 1990, from the residential house of one Ali Mohammed Ahangar of Dhobi Mohalla Batamaloo and thereafter he was last seen in the custody of the officials of the national Security Guard namely [X] and [Y] by Showkat Ahmed, who too was at that time under detention."

In the face of such strong evidence and such decisive findings by a member of the Kashmir judiciary, for the government to deny responsibility for the fate of Javid Ahmed Ahangar three years after he "disappeared", by simply stating that the case "is under investigation", is an abrogation of its obligations under international law to promptly

investigate the "disappearance", to clarify his whereabouts and bring those responsible to justice. The Jammu and Kashmir High Court has reportedly ordered the Home Secretary and the Director General of Police to produce Javid Ahmed Ahangar in court, but this is not known to have happened to date. Amnesty International wrote to the Ministry of Home Affairs on 5 May 1994 asking whether Javed Ahmed Ahangar may be held in Shivpora prison, Badamibagh, Srinagar, where, according to one report, he was sighted. This letter remains unanswered.

Syed Basharat Ahmad Shah

Case no 76, Amnesty International Report, described in detail on page 20 of that report, including that three witnesses told the court that they had been arrested with him by the Central Reserve Police Force. The government's response, on page 39, is that: "A case has been registered in the concerned Police Station and is under investigation."

The inquiry officer, the District Magistrate, appointed by the High Court to investigate this "disappearance", concluded in his 7 May 1992 report that Mr Shah's whereabouts were definitely known to those who took him into custody. On the basis of statements by witnesses recorded before him the inquiry officer concluded:

"Therefore, the fact that Syed Bashrat Ahmad Shah.... was picked up by the CRPF 50 BN on 12.10.90 along with four other persons mentioned above is established, though his whereabouts are not known at the moment and should be known to that said battalion itself."

Despite the strong evidence of his arrest and detention by the CRPF, the government, three years after the event, maintains simply that the case is "under investigation" and continues to refuse to disclose his fate or whereabouts.

Mohammad Shafi Dar

Case no. 116, in the Amnesty International Report, described in detail on pages 20 - 21 of that report, providing details of his arrest by the 141st Battalion of the Border Security Forces as submitted to the High Court at Srinagar in *habeas corpus* petition no. 451/90.

The government has provided Amnesty International with two contradictory responses on this case. The government's response (on page 41) to the facts set out in the Amnesty International report reads: "Earlier inquiries had revealed that this person had gone outside the State for business purposes. A Habeas Corpus petition No. 184/91 was filed by Abdul Shaikh vs. State. Subsequently to further inquiries this person has been declared untraced. **There is no record that he had been arrested by any authority**" (emphasis added). However, in an earlier reply, dated August 1993, to 70 cases of "disappearance" in Jammu and Kashmir which Amnesty International had submitted to the government in November 1992, the government, had admitted that Mohammad Shafi

Dar had been arrested. It has said: "**As per enquiries, made by the concerned Police Station, this person had been apprehended by the security forces and thereafter released.** At the time of the enquiry by the Police officials, it was gathered that he had gone outside of State for business purposes after the release" (emphasis added).

According to Amnesty International's information, Mohammad Shafi Dar was arrested on 23 May 1990 by the 141st battalion of the BSF during a raid led by Deputy Superintendent Chawhan. There is reportedly one witness to his arrest: Ajaz Ahmad Bhat son of Ali Mohammad Bhat, resident of Srinagar, who was arrested with him and later released. The Chief Judicial Magistrate of Srinagar was appointed by Justice Parray of the High Court to investigate Mohammad Shafi Dar's "disappearance" and in his report of 4 August 1992 the magistrate said he had found *prima facie* evidence of Mohammad Shafi Dar's arrest by the security forces. The government's assertion that there is no record of his arrest is furthermore contradicted by the fact that Mohammad Shafi Dar's parents submitted appeals about their son's arrest and "disappearance" to the President and Prime Minister of India, the Governor of the state and the Director General of Police, Jammu and Kashmir.

The government's contradictory responses - first admitting and then denying Mr Dar's arrest - can only be part of an official cover-up to hide the fact of Mohammed Shafi Dar's detention and subsequent "disappearance" at the hands of the security forces. This conclusion is reinforced by the findings of the High Court inquiry that he had been arrested by the security forces.

Wahid Ahmed Ahangar

Case No. 114, Amnesty International Report, described in detail on page 21 of that report, including his parents saying that they managed to see him in detention after obtaining official permission. The government's response (on page 41) is that: "No missing report had been lodged in the concerned Police Station about the person. A Habeas Corpus Petition No. 991/91 Mustafa Magh vs. State was filed. Inquiries made in the matter have not yielded any result and the person remains untraced despite best efforts and there is no record to show that he was arrested by any authority."

Amnesty International's information contradicts this. Wahid Ahmed Ahangar was reportedly arrested by the 79th Battalion of the BSF at his residence at Lalbazar, Srinagar, at 11.15 a.m. on 26 May 1990. He was then kept in unacknowledged detention. His parents say they saw him twice in detention: first on 3 June 1990 at the Papa 2 interrogation centre, Srinagar, after obtaining official permission, and then in October 1990 at Pantha Chowk interrogation centre. The parents filed a *habeas corpus* petition (No 676/90), which remains pending. The government has simply continued to deny that he was arrested in the first place.

Peer Mohammed Shafi

Case No. 91, Amnesty International Report, described in detail on page 21 of that report, giving accounts by eyewitnesses to his arrest by the Central Reserve Police Force after being blindfolded in August 1990, and that the police reportedly questioned 20 witnesses confirming his arrest. The government, however, in response to a *habeas corpus* petition (no. 559/91) simply denied his arrest. In its response to the Amnesty International report, the government, on page 39, said: "On 15 December 1990 a case was registered at the concerned Police Station on the basis of information that on 22 August 1990 Mohd. Shafi was arrested by the security forces and till date his whereabouts are not known. After investigation a charge sheet has been filed against concerned personnel of the security forces."

Although the government's latest response appears to acknowledge responsibility for the "disappearance" of Peer Mohammed Shafi (despite reportedly first denying in court that he was arrested), it fails to clarify what happened to him after his arrest by the security forces. Nor does the government say what charges have been filed against the security forces personnel, or whether any compensation has been granted to the victim's family. The fact that charges have been brought against security forces personnel indicates that the government must have definite information about what happened to Mr Shafi after his arrest which it has not revealed.

Manzoor Ahmed Zarger

Case No. 100, Amnesty International report, described in detail on page 21 of that report, including that he was reportedly arrested by the Border Security Force on 15 July 1990. His father placed advertisements in five newspapers about his missing son and filed a *habeas corpus* petition in the High Court. The High Court ordered that Manzoor Ahmed Zarger be produced in court, but the government failed to comply. The Director General of Police on 6 May 1992 confirmed in court that Manzoor Ahmed Zarger had been arrested on 15 July, but said he had been released two days later. This was contradicted by another detainee, Mir Nazir Ahmad, who saw him being treated in a BSF hospital after that date: on 26 July 1990.

The government has no response to any of these charges: his case is not even mentioned in the government's response.

Rouf Ahmed Shah

Case no. 119, Amnesty International Report, described in detail on page 21 of that report, including that he was reportedly arrested from his house on 26 May 1990. In response to a *habeas corpus* petition (no. 201/90) brought by his family, the High Court ordered the District Magistrate of Kupwara to carry out an inquiry. The Magistrate's report confirmed that he had been taken into custody by the security forces. The government, in their response on page 41, acknowledge that a petition was filed in court but say that it claimed he was arrested on a different date: 20/21 August 1990, adding: "The concerned

security force unit has reported that on 23 August 1990, this person was released on the road near Faqirpora on his assurance that he would work as spotter for them and will provide them useful information. The case is under investigation."

However, according to Amnesty International's information, the investigation of Rouf Ahmed Shah's "disappearance" on orders of the Jammu and Kashmir High Court found, after examining witnesses, that while there was evidence of his arrest by the security forces, the claim that he had been released by the army, could not be confirmed. The High Court is reported to have directed that cases be registered against the men responsible for Rouf Ahmed Shah's "disappearance". The government's response indicates that the court orders have not been complied with. The government has failed to establish Rouf Ahmed Shah's whereabouts after his arrest with any credibility, and it has disregarded the findings of a judicial officer appointed by the Jammu and Kashmir High Court, who reportedly found that army claims of his release were not credible.

Javeed Ahmad Shalla and Mohammed Sidiq Sofi

Cases no. 43 and 44, Amnesty International Report, described in detail on pages 21 - 22 of that report, including that they, as leaders of an organization called the Ikhwanul Muslimeen, were reportedly taken into custody by the 116th Battalion of the BSF in March 1992 along with at least eight others. Four of them, released later, confirmed the two men's detention and torture at the Border Security Force Tattoo ground Interrogation Centre at Batamaloo. In response to a *habeas corpus* petition brought by Javid Ahmad Shalla's brother (no. 888/92), the High Court, on 6 May 1992, ordered both men to be produced in court within three weeks. This did not happen. The government claimed that on 24 March 1992 the two men had "escaped" from custody at Budgam, but those detained with them claim they were seen in the custody of the security forces after that date, on 25 March 1992 at 5pm.

The government has no response to these allegations, even though they have been raised before the Jammu and Kashmir High Court. These cases are not even mentioned in the government's response to Amnesty International.

Ashaq Hussain Ganai

Case No. 2, Amnesty International report, described in detail on pages 23 - 24 of that report, including that he was reportedly arrested by an army unit on 3 March 1993 with two others whose whereabouts are also still unknown. His parents made numerous appeals to state officials who promised that they would intervene and that he would be released on 23 March 1993 and, when that did not happen, that he would be released on 25 March 1993.

The government, in their response on page 36, acknowledges his arrest by the security forces, saying that he had volunteered to assist the security forces, that the security

forces, as a goodwill gesture on the eve of the festival of Id, had agreed to release him. However, they say he "escaped" and was killed by militants:

"On 23 March 1993 when Ganai was being brought by an escort party from Chatussa to Watergam to effect his release, the escort party was ambushed by militants near a hill feature North of the road and West of village Sangrampora. Surprisingly, while counter-operations were being undertaken by the escort party, Ashaq Hussain escaped. This was reported by the escort party, to their Headquarters and an FIR was lodged in the concerned Police Station on 24 March, 1993. On 12 April, 1993, the dead body of Ashaq Hussain Ganai was recovered from near the bank of River Jhelum at Doabgah (Baramulla) by the locals. The body was identified by relatives and taken over by them... It is strongly suspected that since Ashaq Hussain had helped the security forces to recover arms and ammunition, he was killed by the militants and the blame laid on the security forces..."

Amnesty International has serious doubts about the credibility of the government's assertion that Ashaq Hussain Ganai "escaped" from custody. The government has failed to give any details of the alleged escape, and it appears to be contradicted by the Commanding Officer of 17 JAKLI of the army who reportedly maintained on the day of the alleged "escape" that Mr Ganai was still in their custody. Furthermore, although the government claimed Mr Ganai had "escaped" on 23 March, the Kashmir Times reported two weeks later, on 7 April 1993, that his father, Ghulam Rasool Ganai, was still looking for him, since he had not returned home nor contacted his family.