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India:

@ An unnatural fate

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## 1. THE PATTERN OF 'DISAPPEARANCES' IN JAMMU AND KASHMIR AND PUNJAB AND THE CONTEXT IN WHICH THEY OCCUR

### Introduction

This report is written in an attempt to help those seeking to clarify what happened to hundreds of men and women who have "disappeared" in two Indian states in recent years. There is substantial evidence that they were captured by the security forces who deny that they have done so or know of their fate or whereabouts. Details of 208 people who have reportedly "disappeared" since 1 January 1990 are described in this report, 128 of them in Jammu and Kashmir, and 80 in Punjab. Legal remedies have been persistently obstructed by officials as part of a pattern to cover-up these systematic human rights violations.

"Disappearances" are one of the gravest forms of human rights violations. In India, they occur in several states, including Assam and the other north-eastern states, Andhra Pradesh, Gujarat, Tamil Nadu and Uttar Pradesh. In recent years, however, most "disappearances" have occurred in Jammu and Kashmir and Punjab, where, Amnesty International believes, "disappearances" are now systematically practised by the security forces. This report examines the practice of "disappearances" in these two states in which armed opposition groups have also resorted to abusing human rights on a wide scale, violating basic rules of humanitarian law in the process. Amnesty International condemns such practices unequivocally.

Specific allegations of "disappearances" in Jammu and Kashmir reported by Amnesty International were dismissed by the government in August 1993 as "grossly exaggerated or false". The government said that it believed "that volumes of unsifted and unchecked allegations have been listed deliberately and mischievously with the sole aim of discrediting the security forces and internationalising the issue." Amnesty International was glad to receive from the government, at that time, detailed information about 70 allegations of "disappearances" in the state which Amnesty International had raised with the Home Ministry in November 1992. However no more than three of the 70 cases appear to have been clarified by the government's response. In Jammu and Kashmir itself, government officials have subverted legal proceedings initiated to clarify "disappearances" by refusing to respond to scores of *habeas corpus* petitions pending before the Jammu and Kashmir High Court since 1991. Nevertheless, the courts found convincing evidence that some had "disappeared". At the end of one judicial inquiry a District and Sessions Judge reported to the Jammu and Kashmir High Court that the victim had met "an unnatural fate" at the hands of his captors:

*"...That the averment of the forces that Mohammed Maqbool was not picked up, detained or kept in custody by them appears to be wholly unacceptable and untrue... In the totality of circumstances... as judged from the appreciation of the evidence, documents and material on record, Mohammed 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... he appears to have been simply done away with to death illegally and mercilessly by those who profess to protect and enforce the law."*

In Punjab, where Amnesty International has urgently appealed to the government to clarify the fate of many dozens of victims of "disappearances", court orders to produce them have also been ignored and police and senior officials have routinely denied any knowledge about them. S.L. Kapur, himself a former Punjab Chief Secretary, reportedly wrote to the Home Secretary in Delhi on 12 April 1992, saying "The police denials are too general and not credible". In some cases, officials have even refused judicial officers permission to search for "disappeared" people in detention centres, in blatant disregard of Indian law and the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 13 of which

prohibits all states from taking any measures to curtail or impede such investigations.

The systematic practice of "disappearance" has been facilitated by the condition of virtual impunity apparently granted to the security forces. Amnesty International knows of only one case in Punjab in which a judge – in October 1991 – held the police squarely responsible for a "disappearance". He found:

*"Dalbir Singh seems to have been arrested with an ulterior motive and the police has apparently come out with a lame excuse about his running away from the custody... I am of the conviction that Dalbir Singh has not run away from the interrogation room as asserted by the police and SHO Ramesh Chander and ASI Harbans Lal are answerable about his disappearance."*

However the perpetrators of the crime, like all others responsible for grave human rights violations in Punjab, have not been brought to justice. Eleven specific allegations of "disappearances" described in Amnesty International's May 1991 report on Punjab were also dismissed without supporting documentation, despite strong evidence – some from eye-witnesses – to the contrary. The government never responded to the other six "disappearances" listed in that report, although Amnesty International established that one of the victims was acknowledged to be in detention.<sup>1</sup> To date, all the other victims remain unaccounted for.

The government's inability or unwillingness to resolve "disappearances" is also reflected in the reports of the UN Working Group on Enforced or Involuntary Disappearances. As of 1 January 1993, the Group had sent a total of 169 specific allegations of "disappearance" to the Indian Government. Nearly all of them, 150 cases, remain unclarified, although the government gave responses in 35 of the 169 cases. However, of those 35, the government's response clarified only 18 "disappearances" (stating that the bodies of 13 persons had been identified, that three were in prison and that two had been released).<sup>2</sup>

'Disappearances' prohibited in international and Indian law

The Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly on 18 December 1992, states in its preamble:

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

The same Declaration, in Article 1, condemns "disappearance" as:

*"a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights... Such act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life."*

These rights are guaranteed in Articles 16, 9, 7 and 6 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party and therefore bound to uphold.

The Indian Government has correctly pointed out that the security forces operating in areas of armed insurgency do so in extremely difficult circumstances and, in its June 1993 statement to the World Conference on Human Rights, has acknowledged that "in fighting these disruptive forces, we accept that at times aberrations from democratic norms can take place". Specifically referring to Jammu and Kashmir, in August 1993 the Indian Government representative told the Subcommission on Prevention of Discrimination and Protection of Minorities that "The difficulties that have arisen in the full and unhindered enjoyment of human rights in Kashmir

valley today are due to instigation and abetment of ruthless terrorism and secessionism”.

Although the admission that human rights are being violated is a welcome step towards curbing their occurrence, the implication that they could be justified by the human rights abuses committed by those resorting to arms in opposing the government is not. In fact, the Declaration in Articles 2 and 7 makes clear that the prohibition of “disappearances” is absolute: “No State shall practise, permit or tolerate enforced disappearances”, and “No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.” In March 1993 the UN Commission on Human Rights called in resolution 1993/35 on all governments to take “legislative or other steps to prevent and punish the practice of disappearances, with special reference to the Declaration on the Protection of All Persons from Enforced Disappearance, and to take actions to that end nationally, regionally and in cooperation with the United Nations”.

“Disappearances” not only cause great suffering to the victims but also to their families. In an important decision, the Human Rights Committee has held that enforced disappearance not only constitutes violations of the human rights of the victim, but also of the rights of the relatives notably of their right not to be subjected to torture, provided in Article 7 ICCPR:

*“The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of Article 7.”<sup>3</sup>*

In Jammu and Kashmir an additional District and Sessions Court judge, commenting on the anguish suffered by the mother of Javed Ahmad Ahangar who “disappeared” in August 1990, echoed these views:

*“One shudders at the thought of a situation in which the petitioner [the victim's mother] presently feels totally helpless to obtain or collect any sort of information from the authorities about the whereabouts of her son.”*

“Disappearances” also violate safeguards provided in the Indian Constitution. Article 21 prohibits deprivation of life or personal liberty except according to established legal procedures – a safeguard which can not be suspended even under states of emergency. Article 22 prohibits detentions unless detainees are informed of the grounds for arrest and are permitted the right to consult and be defended by a lawyer of their choice. “Disappearances” also constitute breaches of Sections 57 and 167 of the Code of Criminal Procedure, which require all arrested persons to be brought before a magistrate within 24 hours of arrest, not to be kept in police custody for more than 15 days and afterwards for no longer than 60 or 90 days in remand without being granted bail. Furthermore, Sections 330 and 331 of the Indian Penal Code specifically prohibit voluntarily causing hurt to extort confessions or any information which may lead to the detection of an offence; and Section 346 of the Indian Penal Code specifically prohibits wrongful confinement in secret detention.

#### **Other human rights violations**

This report concentrates on “disappearances”, one of several forms of gross human rights violations of concern to Amnesty International in both states which are described in various other Amnesty International reports<sup>4</sup>. Human rights violations persistently perpetrated in Jammu and Kashmir and Punjab include, reportedly, hundreds of extrajudicial executions, sometimes in the form of staged “encounters”, routine and brutal torture, including, especially in Jammu and Kashmir, rape, and the detention of many thousands of political prisoners held for months or years without being brought to trial while they are denied the minimum legal safeguards

provided in international human rights standards. Many have died in custody after torture and numbers of custodial deaths in Jammu and Kashmir have reached alarming proportions; they are currently by far the highest in any Indian state.

Amnesty International is also concerned about numerous human rights abuses reportedly committed by armed secessionist groups, many of whom have resorted to taking hostages, deliberate and arbitrary killings and torture, including rape. They are gross abuses of basic principles of humanitarian law, which such groups are bound to respect.

#### **Patterns of 'disappearances'**

Most of the hundreds who have "disappeared" in Jammu and Kashmir and Punjab in recent years are young men suspected of having links with one of the many armed secessionist groups operating in these states. Available evidence suggests that many of them are taken into custody arbitrarily, the main factors prompting their arrest being their religious affiliation (Muslim or Sikh), sex, age, and place of residence if within areas associated with the activities of armed secessionist groups. Records are often not kept of people arrested. People illegally detained are not brought before a magistrate within 24 hours of arrest, as Article 167 of the Code of Criminal Procedure requires. However, when required to respond to a *habeas corpus* petition, police sometimes retrospectively register a First Information Report (FIR) acknowledging the arrest, changing the actual date to a later one, usually the day before the detainee is eventually brought before the magistrate.

Hardly any "disappearances" have been clarified by the security forces. Sometimes officials eventually admitted, usually in response to a *habeas corpus* petition, that an arrest was made, only to claim later that the "disappeared" person "escaped" or was "killed in an encounter". In other cases, and unfortunately this happens only extremely rarely, they released the person, sometimes after mounting national and international pressure, as happened in Punjab with several lawyers and journalists.

Detainees arrested by the army and paramilitary forces in Jammu and Kashmir are usually taken to special interrogation centres, where torture is reportedly routine. Their relatives are not told where they are and do not know where to look for them, since "disappearances" may be perpetrated by the various paramilitary forces as well as the army, each acting independently. One human rights activist said the situation facing relatives seeking the "disappeared" was "like a maze". A 29 August 1993 report in the *Los Angeles Times* described the situation in Jammu and Kashmir: *"Many of those arrested are identified by 'cats', informers whose faces are hidden under black cotton hoods. In some cases, hundreds of men are pulled from their homes or vehicles and marched before such secret accusers. Each time a 'cat' points, the soldiers grab another man out of line. Many are never seen alive again. Each morning, a sad parade of men and women wanders from government office to office in Srinagar, clutching tattered legal petitions and writs, dog-eared photos and desperate hopes of finding those who have been arrested or disappeared."*

Central government officials have also been approached by anxious relatives; the *Times of India* reported on 25 July 1993 that a crowd of several hundred people, mostly women, met Rajesh Pilot, the Minister of State for Internal Security, *"...seeking the release of their relatives picked up by the security forces. Some of them wanted to be told about the whereabouts of their kith and kin who have been missing since their arrest."*

Legal remedies have failed to provide either protection or relief. In its fifth report of October 1992, the Jammu and Kashmir High Court Bar Association gave 16 examples of *habeas corpus* petitions which remained pending in court because the government either failed to respond or simply denied the arrest. However, the High Court has sometimes ordered Sessions Court judges to carry out detailed inquiries – involving cross-examination of witnesses – which yielded *prima facie* evidence

that persons whose arrest and detention the government denies had in fact been arrested by paramilitary forces. H.N. Wanchoo, the civil liberties activist tragically killed in December 1992, urged the Jammu and Kashmir High Court, since 1991, to take steps to trace 62 "disappeared" people. He feared that:

*"the persons have been possibly killed by the security forces by torturing them in the interrogation centres which has become the normal practice of the forces..."*

Hundreds of people are alleged to have died in custody in recent years in Jammu and Kashmir and often their bodies were dumped in the open, sometimes with visible injuries. An example was given by the Jammu and Kashmir High Court Bar Association:

*"Master Abdul Ahad Akhoun (B.A. B.Ed) R/O Charishrief, Badgham, was arrested by the forces during crackdown operations... taken to some torture centre, where he was tortured ruthlessly. He was Headmaster of a school and an aged person. His dead body was received by his relations on 4.7.92. His body was full of injuries. There were injuries like knife cuts and blue marks on various parts."*

*Since little attempt is made to conceal what has occurred, it appears that this practice, together with that of "disappearances", is part of a deliberate policy to intimidate the population to prevent them supporting armed opposition groups in the State.*

*Torture is also common in Punjab, as Amnesty International described in its May 1991 report, Human Rights Violations in Punjab: Use and Abuse of the Law. Since the report was published, numerous allegations of torture in police stations and other detention centres have been made. In Punjab also, Amnesty International fears that death in custody after torture is a common cause of "disappearance". A common explanation is that a missing person cannot be produced in court because he "escaped" from police custody. Such routine explanations tend to be identical and lack credibility especially since the police claim that many detainees "escaped" despite being handcuffed and outnumbered by several armed police.*

*These practices are facilitated by growing corruption among the Punjab police. Reuters, in a 28 October 1992 report, quoted a police officer as saying that people in Punjab had become alienated by the level of police extortion and torture:*

*"In any other State in India, you pay about 50 Rupees if your son or brother is [to be] released from jail. In Punjab the asking rate starts at 10,000 Rupees."*

*The officer said that it had become common practice for police to pick up young men at random, often torturing them, before extorting money for their release and that part of the funds collected thus by police were used to increase the money senior police officials paid in reward to police officers for the killing of wanted militants. India Today, on 15 October 1992, also observed:*

*"In an increasing number of instances, the Punjab Police have been subverting the process of law by stalling inquiries and shoving those indicting them under the carpet. They have been killing suspects in false encounters. And operating a bloated and unaccounted 'secret service fund' running into crores<sup>5</sup> of rupees in an arbitrary and dangerous fashion."*

#### **Responsibility for 'disappearances'**

In Jammu and Kashmir, para-military groups, especially the Border Security Force (BSF), and the Central Reserve Police Force (CRPF), are primarily responsible for unacknowledged detentions, "disappearances" and other human rights violations; a smaller number are perpetrated by the army. The police are rarely accused of committing them and are themselves reportedly critical of excesses committed by the security forces. Although all the security forces theoretically operate under the supervision of the Director General of the Jammu and Kashmir Police (presently M.N. Sabharwal) in practice the army and paramilitary forces act independently of the local police<sup>6</sup>.

The army and paramilitary forces operate in extremely difficult circumstances. They are frequent targets of attack: the government pointed out that during the year

1992 alone, 499 members of the security forces lost their lives, and that another 1,558 were injured or incapacitated. They operate in a hostile environment, often without adequate knowledge of local conditions and customs, including being able to speak the Kashmiri language. The army is trained to use maximum force against a foreign enemy, the BSF to police border areas. Neither have been specially trained to fight insurgency. *The Pioneer*, 9 May 1993, described how the lack of training leads to excesses:

*"Army authorities admit in private that the bulk of the BSF and CRPF personnel, including middle-level officials, who are deployed for operations in congested localities in Srinagar and other towns, are hardly briefed either about the logistical details of the chosen location or about the psyche of the people whose houses they are going to search. Excesses are thus bound to occur, with even old men, women and children not being spared. Kashmiri police officials say that besides intensifying the people's resentment and thus providing fertile recruiting grounds for the militants, this also angers the Kashmiri personnel in the police force. They get upset about their people being treated in this inhuman fashion."*

An example of how the local police, the army and the paramilitary commonly operate was given in a report by the Jammu and Kashmir Basic Rights (Protection) Committee, Srinagar, of December 1992. It described an army cordon-and-search operation conducted in villages around Wullar Lake in September 1991 during which 15 people were killed and 11 people were taken into custody who have since "disappeared". Over 300 people were reportedly beaten:

*"...the local police, being either inefficient or under pressure from the above (the Indian army), took no action in the matter beyond registering a case... Neither the aggrieved persons nor the eye witnesses have been examined by the police."*

In May 1993, after Kashmir police had strongly protested against the killing of one of their own men by the army while in their custody, the Indian press reported that the government had decided to give the army overall command of security operations in the Kashmir valley. In Srinagar such operations would be conducted primarily by the BSF. Final responsibility for all operations reportedly rests with Lt. Gen. M.A. Zaki, the Advisor to the Governor on Internal Security matters, with day to day control of operations being exercised by the Corps Commander of Jammu and Kashmir, Lt. Gen. Surinder Nath. Recent reports, however, suggest that a unified command structure has not yet been implemented, that the different branches of the security forces continue to operate with little co-ordination between them in terms of command and control of operations and that a lack of leadership combined with pressure to produce "results" contributes to the excesses being perpetrated.

Broad powers given to the army and paramilitary forces to make arbitrary arrests under special laws, described elsewhere in this report, facilitate "disappearances". These forces rarely inform the local police when they make an arrest nor do they hand detainees promptly to police for custody as required by Section 6 of the Armed Forces (Jammu and Kashmir) Special Powers Act. Detainees are rarely brought before a magistrate within a day of arrest as required by law. The government has failed to implement specific assurances repeatedly given by Rajesh Pilot, the Minister of State for Home Affairs, since March this year and most recently repeated on 10 September, that whenever a person is detained in Jammu and Kashmir the family should be informed within 24 hours. Although the government has repeatedly said it is making attempts to discipline its forces and take measures against those responsible for human rights violations, Amnesty International knows of only two cases in which members of the security forces have been sentenced to undergo substantive terms of imprisonment. Moreover the information the government has provided about the measures taken is contradictory and reflects an entirely inadequate reaction to the gross and persistent human rights violations committed by the paramilitary and armed forces in Jammu and Kashmir.



In **Punjab**, by contrast, it is the police who have been primarily responsible for unacknowledged detentions as they play a crucial role in counter insurgency. The other security forces operating in Punjab, under the command of the Director General of the Punjab Police, are paramilitary groups such as the BSF, the CRPF and the National Security Guard which operate particularly in the area where Punjab borders Pakistan.

Two changes seem to have occurred since Amnesty International published its last major report on Punjab in May 1991. First, in Punjab itself, the police appear to operate more openly, without trying to conceal abductions by wearing plainclothes or using vehicles without number plates as they used to do. Second, the Punjab police have increasingly extended their operations to abduct and kill suspected Sikh militants outside the state, acting without the knowledge of the local state police concerned and, when doing so, have resorted to under-cover tactics to conceal their identity as they often did in Punjab (see Chapter III).

These changes, accompanied by increasing reports of what the Indian press euphemistically calls "highhandedness" of the Punjab police, appear to coincide with increased powers given to the now 60,000 strong Punjab police following the re-appointment of Kanwar Pal Singh Gill as Director General of Police (DGP) in December 1991. Punjab's Chief Minister Beant Singh, in office since February 1992, decided to let K.P.S. Gill run the police without intervention from local government. As reported above, this included providing monetary rewards for performance and effectively giving the police licence to kill suspected militants, thereby encouraging arbitrary detentions, extrajudicial killings and "disappearances". The operation of a "licence to kill" policy by the Punjab police was evident from K.P.S. Gill's September 1993 address to senior police officials in Jalandhar, whom he reportedly told that the CRPF would not be allowed to leave Punjab "until the last terrorist was killed". This prompted *The Indian Express* to comment on 23 September 1993: "In the context of 'encounter' deaths in Punjab in which presumed terrorists have been killed in unexplained circumstances.... Gill's words... have the effect of encouraging law breakers in the Punjab police".

Reports of human rights violations in Punjab are routinely dismissed by officials as "concocted" and although K.P.S. Gill had announced earlier this year that the government would inquire into alleged excesses committed by some 400 police in the course of cordon-and-search operations, Punjab's Chief Minister on 5 February 1993 specifically ruled out that the Punjab police would be "screened and cleaned up", as it could hamper "anti-terrorist operations". Amnesty International is concerned that these statements amount to direct signals to the Punjab police that they can act with total impunity.

### **Victims**

In **Jammu and Kashmir** security forces routinely detain young men whom they suspect of supporting armed secessionists or to have either harboured militants or their arms and ammunition. Relatives of such people are also detained. In practice any young Muslim man living within a village, rural area or part of town noted for activities of any of the pro-independence or pro-Pakistan groups can become a suspect and a target for the large-scale and frequently brutal search operations described in Jammu and Kashmir as "crackdowns". These involve arbitrary arrests of dozens or even hundreds of people who are often tortured. Recent press reports indicate that a "catch 22" situation has developed; Kashmiris, who may not have been in favour of secession in the past, have become so alienated by what they perceive as the Indian Government's persistent sanctioning of grave human rights violations by the security forces in the state that their sympathies for secessionist groups have increased. This, in turn, makes virtually the whole population suspect in the eyes of the security forces. Police officer Kumar told *Reuters* on 19 April 1993: "Anyone who utters the word independence can be arrested. That means everyone".

In **Punjab**, Amnesty International noted in its May 1991 report: "Sikhs are often arrested on mere suspicion that they are linked to armed secessionist groups". This pattern has continued. Those who have "disappeared" after arrest by the police are often people suspected of involvement with or of harbouring members of armed secessionist groups or their weapons. Students or industrial workers are also often picked up after bomb attacks. Victims of "disappearances" also include young men violating curfew.

One disturbing new development in the last few years in both states is the arrest and "disappearance" of several lawyers, journalists and human rights activists who have campaigned on behalf of victims of human rights violations often in extremely difficult conditions. Several lawyers and journalists active in documenting human rights violations have "disappeared" in Punjab (see Chapter III). Others were killed having themselves painstakingly collected data about "disappearances". One of them was Hriday Nath Wanchoo, the much respected human rights activist who initiated numerous court petitions for the "disappeared" in Jammu and Kashmir and who, despite the government's failure to respond to any of them, did not cease to press their cases in court until his killing on 5 December 1992 by unidentified gunmen. The targeting of people who have exposed reports of human rights violations is of particular concern to Amnesty International.

#### **Sources**

It is Amnesty International's policy to verify allegations of human rights violations first-hand whenever possible, and preferably on the spot. However, Amnesty International has been refused permission to do so: to date, it has not been allowed to enter India to visit either Jammu and Kashmir or Punjab, although the Ministry of External Affairs stated in August 1993 that Amnesty International could visit Jammu and Kashmir. The Government of India has recently agreed to allow Amnesty International to enter the country to carry out research and discuss the human rights situation with state officials in Maharashtra. Amnesty International's longstanding request to visit various Indian states for such purposes – refused since 1984 – has often been raised with government representatives and was discussed at length with officials when an Amnesty International delegation visited New Delhi in November 1992.

Denied the opportunity to directly verify allegations of human rights violations in the two states, Amnesty International has carefully cross-checked information from all available official and non-governmental sources. In doing so, Amnesty International has only drawn upon sources from within India itself – including data about "disappearances" provided this year by the government – and strictly excluded any information sent to it from countries other than India.

Sources include first hand accounts in sworn testimonies by relatives of victims, and letters and telegrams they have sent to state and central government officials. We have also relied upon extensive investigations carried out by Indian civil liberties groups and numerous reports in the Indian press. Evidence has been considerably strengthened by judicial investigations in both states which, after cross-examination of witnesses, have confirmed security forces' responsibility for "disappearances" in several cases in recent years. Amnesty International has only included specific cases in this report if they appeared in at least two sources.

In **Jammu and Kashmir** detailed information on individuals who have "disappeared" is especially hard to obtain and verify. With rare exceptions, Amnesty International has not received responses to the numerous letters it sent to individuals about human rights in the state, even though many such responses had, Amnesty International was told, in fact been sent; the presumption must be that they were intercepted. While communications networks and transport are efficient in Punjab, this is not the case in Kashmir. Contact by telephone is extremely hard to establish, at times all communications by telex or telephone with the state are cut off and communities

outside the capital Srinagar are isolated and difficult to reach by road or telephone. Despite these difficulties, Amnesty International has been able to obtain data from various Indian sources which establish a clear picture of the gross human rights violations persistently being perpetrated in the state.

Civil liberties groups report that military operations, strikes and curfews imposed during daytime greatly inhibit their efforts to investigate specific incidents. It is difficult for journalists, lawyers and human rights groups to investigate and follow up reports that reach them as well as for families of victims to report "disappearances" or to contact lawyers in Srinagar willing and able to approach the High Court about them. Fear of reporting human rights violations increased sharply since three leading human rights activists were killed by, as yet, unidentified gunmen between December 1992 and April 1993. Some of those who have done this invaluable work say they have now become too afraid to report on cases of torture, extrajudicial execution and "disappearance", lest they become victims themselves.

The facts presented in this report can therefore only reflect a partial picture of the total scale of human rights violations being perpetrated in Jammu and Kashmir. Since detailed information about human rights in the state reaches Amnesty International only with considerable delay and for other reasons described above, the list of "disappearances" in this report for the year 1993 is far from complete.

#### **Political context**

Human rights violations perpetrated in Jammu and Kashmir have risen sharply in the context of the mounting conflict between the Government of India and the various armed groups who oppose it. They demand separation from India either to establish an independent state or accession to Pakistan. In Punjab some groups advocate greater autonomy, others demand that Punjab become a separate state. The Government of India is adamantly opposed to these demands. In its view, acceding to them could encourage demands for increased autonomy or separatism elsewhere in India, notably the north-east, mark the start of a process leading to the eventual break-up of the country, and further complicate its long-running border security concerns with Pakistan, with which it has fought three wars, two of them over Kashmir.

#### **Jammu and Kashmir**

Kashmir is the long-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 population. When India gained independence, it was, like other Muslim majority areas, expected to become part of Pakistan. However, Kashmir's then Hindu Maharajah decided, in the face of a Pakistan backed rebellion, to accede to India in October 1947. After a brief war in April 1948, Pakistan gained control of the mountainous western and northern areas of Kashmir, which it calls Azad Kashmir. India remained in control of the central region around Srinagar, the Kashmir valley, with its overwhelmingly Muslim population, and of the Hindu majority region of Jammu in the south. This constitutes the state of Jammu and Kashmir, with a population of seven million. The UN monitors the 1948 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 a referendum – which would have re-opened the question of the state's accession to India – should determine Kashmir's future, and this was endorsed by the UN in several resolutions on the conflict. However, the referendum was never held. India's failure to honour that promise has been a source of mounting discontent among Kashmiris. Resentment increased by persistent reports of irregularities in most elections in the State, notably the most recent 1987 state elections. Many observers see their alleged rigging 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 nationalism. The state has remained under President's Rule (direct rule from Delhi) since 19 January 1990. It was extended for another six months from 3 September 1993, the government apparently abandoning earlier plans to hold elections in the state by December this year.

Pakistan continues to call for implementation of UN resolutions adopted in the late 1940s urging a plebiscite; India argues these have been overtaken by the 1972 Simla Agreement between India and Pakistan and that the dispute over Kashmir should be settled bilaterally between the two countries.

Especially since the second half of 1989, armed opposition groups have increased their activities. India has consistently claimed that Pakistan provides military support and training to secessionist groups, notably to the best armed among them, the Hizbul Mujahideen, which favours Kashmir to become part of Pakistan, and which has itself admitted to having training camps in that country. By 1988, Pakistan's Interservices Intelligence Directorate was reported to have started establishing training camps in Azad Kashmir. Military support has undoubtedly come from across the border but the present degree of official involvement remains disputed. Military officials and militants on the Pakistan side of Kashmir told *Reuters* in August 1993 that groups favouring Kashmir to become part of Pakistan, like the Hizbul Mujahideen, had received direct military assistance from Pakistan until the beginning of the year. Pakistan, however, has denied it provides military aid, although Acting President Wasim Sajjad declared in August 1993 that his country would continue its political, moral and diplomatic support for the Kashmiris and urged: "The freedom fighters should continue their struggle". The Prime Minister of Pakistan-held Kashmir, Sardar Abdul Qayyum, also urged Islamic states in May to provide money and arms to those fighting Indian rule on the other side of the border.

The Pakistan Government's efforts to highlight human rights violations in Jammu and Kashmir have no doubt heightened political sensitivity of the issues and made it more difficult for the human rights problems in Jammu and Kashmir to be effectively addressed on their own merit.

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 and live in the Jammu region of Kashmir, and in Delhi in overcrowded camps in unhygienic conditions. They claim that Muslim fundamentalists singled them out for attack, killing a number of them – they have submitted 22 cases which occurred in 1990 to Amnesty International – and that these killings and other threats prompted them to leave the valley. These threats were undoubtedly real and Hindus had indeed been targets of such killings, although other 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 Hizbul Mujahideen, Al-Umar Mujahideen, the Muslim brotherhood, Al-Jehad and Hizbullah, all pro-Pakistan armed groups, warning Kashmiri Hindus not to return to the Kashmir valley threatening them: "Otherwise, they will have to face grave consequences here".

### **Punjab**

Punjab was divided in 1947 between India and Pakistan, and its boundaries within India have been altered subsequently. Today 60 per cent of Punjab's 20 million inhabitants are Sikhs, although they have traditionally maintained close family links with the minority Hindu population.

The movement for greater autonomy or an independent Sikh homeland "Khalistan" (the land of the Pure) gained ground after Sikh leaders listed their religious, political

and economic demands in the 1973 Anandpur Sahib resolution. The Sikh fundamentalist leader Sant Jarnail Singh Bhindranwale became prominent in the Khalistan movement, resorted to violence and intimidation while operating from the holiest Sikh shrine, the Golden Temple in Amritsar. The army removed him from there by force in June 1984. Many Sikhs were killed during the military operation. Sikh demands were strengthened, especially after nearly 3,000 Sikh residents in and around New Delhi were killed in the days following the assassination of Prime Minister Indira Gandhi by Sikh bodyguards in October 1984. Two people were later executed for the murder of Indira Gandhi, but nearly ten years after her death none of the perpetrators of these killings, which reportedly include influential politicians from the ruling Congress Party, have been brought to justice. In August this year an official two member committee recommended prosecution of 298 police.

Successive Indian Governments have opposed the creation of an independent Sikh state and insisted that a solution to the Sikh demands must be found within the federalist framework of the Indian Constitution. In February 1982 elections to the state assembly were held in Punjab ending five years of continuous direct rule from Delhi. Although many Sikh separatist groups boycotted the elections, the Congress Party was elected in office and Beant Singh became Chief Minister. By the beginning of 1993 violence had abated, the police having captured or killed many leaders of armed secessionist groups.

#### **Human rights abuses perpetrated by armed opposition groups**

Since late 1989 the campaign for secession has become increasingly violent in Jammu and Kashmir. Independent sources say it has claimed at least 13,000 lives on both sides. 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. Reports suggest that since 1992 the militants have been joined by several hundred Afghan and Arab veterans of the Afghanistan war.

Although this report concentrates on one, deeply disturbing, pattern of grave human rights violations perpetrated by government forces, armed militant groups have committed numerous human rights abuses themselves. As of September 1993, the lives of four hostages were being threatened by armed separatists groups in Jammu and Kashmir who have kidnapped and killed dozens of officials and civilians, and tortured some of them. The latest known of many such hostages is Dr Gazanfar, son of Abdul Qayoom, a former Minister of the state, who was abducted from his clinic at Rambagh on 30 August 1993. Pankaj Kumar Sinha, a former member of the Bihar Legislative Assembly continued to be held by the Al-Omar Mujahideen since 16 June 1993.

One of the first hostages was Rubaiya Saeed, the daughter of India's then Home Minister, captured in December 1989 and held until five JKLF prisoners were released. She survived, but 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, reportedly by the Jammu and Kashmir Students Liberation Front. The Ikhwan-ul-Muslimeen abducted K. Doraiswamy, executive director of the Indian Oil Corporation a year later. They released him in exchange for six of their members held by the authorities.

Politicians and well-known personalities have been frequent targets for attack. Even members of their families have been assassinated. One militant group, the Al-Omar Mujahideen, admitted in May 1991 that they 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 threatened: "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). Since then, scores of civilians have been killed. *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 the same day Mohammed Amin Deva, Administrator of Srinagar Municipality, was shot and injured in the stomach. He had earlier been kidnapped and released in 1992. 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.

Local journalists and media personnel persistently complain of harassment by government forces but they have also been threatened, captured and some reportedly even killed by armed militant groups in apparent attempts to intimidate the press. Lassa Koul, the widely respected Srinagar station director of Doordarshan – the national television station which had become the subject of daily official interference in its reporting – was killed by a militant group on February 1990. On 23 April 1991, Mohammed Shaban Vakil, the editor of the Urdu-language *Alsafa* paper, was the first journalist killed, but in his case the government and armed opposition groups accused each other of assassinating him. Yusuf Yameel, who works for *Reuters*, the BBC and is Calcutta's *The Telegraph* correspondent, was first 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 “to face the consequences” if it continued to refuse publishing an advertisement critical of another militant group. That same month, Abdul Gani, manager of *The Srinagar Times*, was abducted by militants claiming to be associated with the Hizbul Mujahideen.

Less well-known victims include people suspected to be police informers. Two of them were pushed out of passing vehicles in June 1991 with bombs tied around their waists and blown to pieces. Al Omar Commandos claimed responsibility, saying the two men had been “on the payroll of the BSF and therefore been eliminated”. Hizbul Mujahideen leaders have also admitted to such killings during the last two years. Some have been killed by hanging, *The Kashmir Times* reporting on 23 April 1993 that “Unidentified militants hanged to death two brothers at Heegam-Sopore in Baramulla district”. Several members of the security forces have also been killed after capture; the same paper 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.

Some sections of armed separatist groups have tortured those held in captivity. 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. The fundamentalist women's organization, Dukhtaran-e-Millat (“Daughters of Faith”) campaigned in May 1992 against women not wearing the traditional “burqa” (robe covering themselves). Four students who did not do so were hospitalised because paint sprayed on their faces by campaigners had damaged their eyes. There have been several reports that women were raped by militant groups, the police saying some have since sought police protection. Shahina, a 19-year-old woman from Handwara, told Delhi-based journalists in February this year 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.

Particularly disturbing is the recent 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. No such communally targeted killings of civilian travellers – which unfortunately have been quite common in Punjab – have been reported from Jammu and Kashmir. The Hizbul Mujahideen and the JKLF have condemned the killings, for which the police alleged militants were responsible.

In Punjab the violence perpetrated by armed secessionist groups in their campaign to establish a separate Sikh state is also both ruthless and widespread. It is frequently targeted at Hindu civilians. In May 1991 Amnesty International reported that such groups had killed hundreds of police, officials and politicians, members of rival Sikh groups as well as numerous Hindu and Sikh civilians. They had killed journalists and editors for what they had written or because they refused to write in the manner or language dictated by Sikh groups. Amnesty International said that they also shot several members of the judiciary. This pattern has continued although the level of political violence has been reduced this year.

On 6 January 1992 the government announced that state elections would be held in February. (They had previously been set for June 1991 but were cancelled after 26 candidates had reportedly been killed by armed secessionists). Secessionist groups ordered a boycott of the elections and announced that any Sikh who voted would be shot. Two days later, two groups of armed men reportedly dressed in police uniform shot and killed 20 Hindu mill workers in Kherar town, Ropar district and Malerkotla, Sangrur district. They had apparently separated the Hindus from the Sikhs, women and children before firing on the Hindu men. On 1 February 1992 armed Sikh separatists shot M.L. Verma, Haryana's Additional Principal Secretary, his wife, son, driver and armed guard. On 19 February, the day of the elections, armed secessionists reportedly shot 17 people.

In 1992 relatives of members of the security forces and of local government were increasingly attacked. For example, in the week of 13 August 1992, 49 relatives of policemen were officially reported to have been shot, apparently in retaliation for the killings by police of Sikh leaders including Gurjant Singh Budhsingwala of the Khalistan Liberation Force and Sukhdev Singh Babbar of Babbar Khalsa International. In June 1992 Mukhtiar Singh, brother of Gulzar Singh, the Punjab labour minister, was kidnapped. His dead body was recovered on 3 July in Bhatinda district. On 4 January 1993 a civil servant, R.N. Goel, Under-Secretary in the Department of Home Affairs, was shot in Panchkula, Chandigarh.

Numerous Hindu civilians have been targets of attack. They include migrant workers apparently targeted as part of a campaign by armed secessionists to force non-Punjabis to leave the state. On 10 March 1992, 15 of them, senior executives and technicians from the Indian Acrylics factory in Gaghwan Kothe village near Patiala, were shot by armed secessionists outside their homes. On 25 May 1992 five Tamil engineers working in the town of Mansa were shot by armed separatists. On 30 October 1992, 25 farm labourers from Bihar were killed in Silokalan village and Daburji village, Ludhiana, by armed men suspected to belong to the Bhindranwale Tiger Force of Khalistan.

Buses carrying civilians are a common target. On 1 December 1992 a bus travelling between Jagraon and Ludhiana was hijacked allegedly by members of the Khalistan Liberation Force. Sixteen Hindus out of 56 people travelling on the bus were separated and shot dead.

At the end of 1992 the Indian press reported that Sikh women had often been sexually attacked by members of armed separatist groups. They were apparently kidnapped, raped and then forcibly married to one of the armed separatists – often to the leaders of a particular group. *India Today*, 31 December 1992, described that Manjit Kaur was kidnapped from her father's house in Tarn Taran by members of the Khalistan Liberation Force on 23 June 1992, was raped and then forced to marry Amalok Singh, a member of the Khalistan Commando Force.

Armed Sikh groups continued to threaten and even kill people for failing to implement their December 1990 orders that Punjabi was the compulsory teaching language in university. In April 1992 two Hindu professors, Dr Bharat Bhushan Aggarwal (chemical engineering) and Professor K.L. Sharma (sociology) of Punjab University in Chandigarh were shot in their homes. The Babbar Khalsa organization claimed

responsibility for the killings and threatened that more Hindu teachers would be killed unless policy was changed to ensure that most university lecturers and students were Sikhs.

Media personnel continued to be targeted in brutal attempts by militant groups to enforce their Punjabi language code. On 27 May 1992 one of All India Radio's supervisors, 50-year-old Mohan Lal Manchanda, was found beheaded outside Patiala. Babbar Khalsa International had claimed responsibility for his kidnapping in Patiala on 18 May. They had threatened to kill him if the government did not implement their demands for greater use of the Punjabi language in radio programs.

#### **Amnesty International's position**

Amnesty International condemns the deliberate and arbitrary killings, torture and hostage taking often resorted to by armed opposition groups in Kashmir and Punjab. There is no moral or legal justification for the arbitrary or indiscriminate killing of civilians, especially if the victims are selected for peacefully expressing their conscientiously held views, for being related to a person whose political views one opposes, or for belonging to a particular religious community.

Such grave human rights abuses can never be condoned 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 International Committee of the Red Cross (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, to provide relief to civilians if needs are observed and to disseminate information on international humanitarian law to para-military forces. However, as yet, the ICRC has not obtained permission to carry out its services in the state.

Common Article 3 provides that in cases of such non-international armed conflict, persons 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, such as those specified in this report, which the Indian Government is bound to uphold. As this report goes on to show, the government has failed to uphold the most important of these standards, notably those protecting the right to life of Indian citizens.

## **II. 'DISAPPEARANCES' IN JAMMU AND KASHMIR**

### **Pattern and numbers of 'disappearances'**

At least 128 people have "disappeared" in Jammu and Kashmir in the last three years; the numbers are probably much higher and are rising. Two leading civil liberties groups, the Peoples' Union for Civil Liberties and Citizens for Democracy found during a visit in May 1993: "'Disappearances' are a common phenomenon... Instead



of such instances coming down, their incidence, it was alleged, was going up... Scores of cases of people who were being picked up and were not heard of again came to our notice."

Many thousands of people have been detained without trial in the state since 1990 under the Public Safety Act (PSA) and the Terrorist and Disruptive Activities Act (TADA). That Act defines "terrorist and disruptive activities" so broadly that people can be held for peacefully expressing views which simply support a claim for secession or the holding of a plebiscite to determine that question. Often, the acts are used in succession. The Home Minister said on 10 March 1993 that 1,826 people were held under TADA in Kashmir. Later official figures indicated that the total number of people held in detention was considerably higher although different figures were given by different officials: on 23 June 1993 the Minister of State for Home Affairs told foreign correspondents that 5,000 Kashmiris were detained without trial in the state, while the state government announced on 27 September 1993 that 20,000 cases had been registered under TADA since January 1990 in the state, of whom 14,500 people had been released after interrogation or obtaining bail, leaving, apparently, 5,500 in detention. However, the DGP told *The Los Angeles Times* in August that 2,870 Kashmiris were held under public safety and anti-terrorist laws. So far none of those arrested under TADA has ever been convicted. Unofficial estimates put the number of political detainees held under these and other laws as high as 20,000. It is hard to estimate the numbers of people who have "disappeared" from among those arrested. The figures that do exist are not comprehensive, and only reflect "disappearances" from more accessible areas in and around Srinagar. The Jammu and Kashmir High Court Bar Association reported in October 1992 well over 300 cases of "disappearance" in which *habeas corpus* petitions were pending at the High Court in Srinagar.

Various civil liberties groups have documented "disappearances". The Jammu and Kashmir People's Basic Rights (Protection) Committee listed 57 "disappearances" since 1990. Two human rights activists, H.N. Wanchoo and P. Imroz, brought a *habeas corpus* petition – no.1601 of 1991 – requesting the Jammu and Kashmir High Court to order that 62 people who had "disappeared" be brought before it. In 1992 that number had risen to 82. As of October 1993, none of them were known to have re-appeared. The People's Union for Civil Liberties collected data about 73 "disappearances" between 1990-91. The late Dr Abdul Ahad Guru, Chief of Surgery and Professor of Cardiac Surgery at the Institute of Medical Sciences, Srinagar, named 199 people who had "disappeared" between 1990 and January 1992. The data, he said, were apparently leaked by police sources. Amnesty International lists in an Appendix to this report 128 people who have "disappeared" in Jammu and Kashmir between January 1990 and September 1993. All cases were reported by at least two sources from within the state. The list excludes dozens more "disappearances" identified by one source only and is far from complete.

#### Tracing the 'disappeared'

**It is extremely hard for relatives to find people who are held in secret detention: no records of arrests appear to have been kept, nor do the army or paramilitary forces hand arrested persons over to the local police without delay as required under Section 6 of the Armed Forces Special Powers Act. (In October 1993 new rules were said to have been drawn up for the army requiring that arrests be immediately recorded and be communicated to the local police.) When relatives approach officials they deny the arrest or give contradictory accounts to cover up the "disappearance".**  
H.N. Wanchoo and P. Imroz described in their *habeas corpus* petition to the Jammu and Kashmir High Court:

**"under the statute the persons detained are to be registered in the Roznamcha (police register) or in the police diaries, there should be publication of these persons detained but the same has not been done by the respondents (DGP and State of Jammu**

and Kashmir)... At the initial stage the authorities informed the relatives that the said detainees have been detained and will be released after the investigation is over. But unfortunately by the passage of time after hard persuasions of the relatives of the said detainees the authorities, particularly the DGP, categorically denied that these persons are in detention."

That petition is still pending. On 15 October 1991 Justice B. Khan, acting on it, ordered the Jammu and Kashmir government to provide a list of detainees held in jails in and outside Kashmir so that they could obtain medical and legal assistance. The government agreed to submit this within a month. However, to Amnesty International's knowledge, the list has not been compiled or made public.

Lawyers have reported that people are often taken away in police vans without registration numbers. Relatives visit numerous interrogation centres and approach various officials from the security forces and police in vain; sometimes they offer bribes in their anguish to obtain information or the release of detainees. The security forces do not normally inform relatives of an arrest or the place where an arrested person has been taken. In February 1992 the Jammu and Kashmir High Court Bar Association got permission to visit Central Jail, Poonch (in the Jammu region of the state), and reported: "no relation has been permitted to see the detainees, particularly from Kashmir nor their relations have ever been informed regarding their detentions and the place of lodging." Amnesty International welcomes instructions reportedly given on 3 March 1993 by the Minister of State for Internal Security, Rajesh Pilot, that the security forces should inform the family within 24 hours of an arrest. However, the instructions appear not to have been implemented even though the Minister has repeated them publicly several times since.

#### The failure of the legal machinery

Some families who know there are legal remedies and who are in a position to contact lawyers have turned to the courts in efforts to trace the "disappeared", but when they do, they face many difficulties. The government, in response to Amnesty International's list of 70 people reported to have "disappeared" in Jammu and Kashmir presented during its November 1992 visit to Delhi, informed Amnesty International on 16 August 1993:

"In the cases of alleged disappearances, it has been found that no report has been lodged [by the relatives] with the concerned Police Stations and this fact alone leads us [to] believe that the 'disappearances' have been stage-managed affairs to exfiltrate the so-called disappeared persons for obtaining arms, training and such other assistance in Pakistan and subsequently to raise the bogey of 'disappearances' before international fora".

Amnesty International wishes to point out that states should investigate reports of "disappearances", whether there has been a formal complaint or not. Article 13.1. of the UN Declaration on Enforced Disappearance is absolutely clear on this point: "Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that [competent and independent State] authority for such an investigation, even if there has been no formal complaint". Moreover, in its March 1993 report, the Jammu and Kashmir High Court Bar Association pointed out that local police persistently refused to register complaints of human rights violations and that parents of "disappeared" persons had often first to obtain court orders to have their complaints – that their children had been arrested and "disappeared" – registered by the police. The courts have also found it hard to take effective action in "disappearance" cases for several reasons.

First, there is a backlog of thousands of cases which remain pending at the Jammu and Kashmir High Court branch at Srinagar because it was effectively closed for a period of time and only re-opened in 1992. Second, in those cases of "disappearances" which have come to court, the security forces and government

representatives have been accused of routinely flouting court orders to file affidavits by a certain date or to bring a detainee before the court as part of persistent attempts to cover up "disappearances". H.N. Wanchoo and P. Imroz complained to the Jammu and Kashmir High Court that the government adopted delaying tactics "resulting in irreparable injury to the petitioner and the persons covered by the petition." On 22 May 1992 Judge Gupta agreed: "There is considerable force in the submission of P. Imroz regarding the delay." However, the DGP failed to appear in court and H.N. Wanchoo had to file a contempt petition against him for not complying with the order. The case remains pending.

This pattern of non-compliance is also evident from High Court inquiries into specific allegations of "disappearance" on the basis of *habeas corpus* petitions, described below. On 25 September 1992 the High Court of Jammu and Kashmir once more expressed concern about government officials totally disregarding court orders, even in *habeas corpus* cases. Justice R.P. Sethi found:

*"It has been brought to my notice that various orders passed by this court in the Habeas Corpus petitions have been flouted by the respondents (i.e. government) and the detainees not been set at liberty despite the directions. It has been noted by this court in a number of cases that the authority of the respondent-state have been taking liberty with interpreting and implementing the court directions which if allowed would endanger the Institution of Judiciary and shake the confidence of the people in the rule of law"* (Justice R.P. Sethi in writ petition no 2458/92).

Third, legal mechanisms that do exist are inadequate to provide effective redress to victims even in cases where there is strong evidence of government responsibility for "disappearances". As shown below, several recent judicial inquiries have in fact concluded that a "disappeared" person was illegally detained by government forces. The judges concerned have usually referred the reports of such inquiries to the Division Bench of the High Court for final judgment. However, civil liberties groups complain that such Division Benches have not been constituted at the Srinagar branch of the High Court. The result is that even in life threatening cases of "disappearances" legal proceedings are indefinitely stalled, and the victims are denied effective legal action to protect their most basic human right: the right to life.

#### **Courts finding evidence of 'disappearance'**

Recently, the Jammu and Kashmir High Court has investigated several alleged "disappearances" and has been presented with strong *prima facie* evidence that security forces kept the victims in secret detention. In all cases the security forces continued to deny this, even in the face of testimony by eye-witnesses cross-examined in court. The cases of Mohammed Magbool Bhat, Javed Ahmad Ahangar and Syed Basharat Ahmad Shah are described in detail because they give graphic accounts of what happens when people "disappear". They illustrate the pattern of cover-up to which paramilitary and army officers resort to hide "disappearances" by remaining, as one judge put it, "criminally silent" or by giving clearly contradictory statements about people whom they probably killed in their custody. In describing them Amnesty International has relied on the text of judicial inquiries reported by the Jammu and Kashmir High Court Bar Association, sworn affidavits by witnesses, reports in the Srinagar press and data produced by civil liberties groups in Jammu and Kashmir.

**Mohammed Magbool Bhat**, from Gangbug, Batamaloo, Srinagar, around 15 years old at the time of his "disappearance", was reportedly picked up by the CRPF with his school friend, Naseer Ahmad Dar, from the roadside at Mochho, where he was to visit his aunt on 21 July 1990.

After his arrest the CRPF brought Mohammed Magbool Bhat back to his father's house at about 6-7 pm. They reportedly searched the cow shed for weapons while Mohammed Magbool Bhat was crying and shouting that he had been arrested at Mochho. His father

and neighbours who had gathered said they begged for the boy's release but CRPF personnel put him back into their car with a cotton sheet over his head. They apparently made signs to the boy's father that they would kill him for deceiving them because, contrary to their expectations, they had not found any weapons at his home. Then they drove to the family's vegetable farm where they again searched in vain for weapons before driving off with Mohammed Magbool Bhat.

Naseer Ahmad Dar was released from custody seventeen days later, and claimed that both he and Mohammed Magbool Bhat had been taken to the Hari Niwas Joint Interrogation Centre but that he had been separated from Mohammed Magbool Bhat three hours after their arrest. Under cross-examination, he testified in court that the security forces who took them into custody were speaking Urdu rather than Kashmiri, were wearing uniforms and that the words "CRPF" were clearly written on their shoulder bills, badge and belts; one of the occupants of the jeep was apparently an officer as he had a star on his uniform. He told the court that during their detention in Hari Niwas Joint Interrogation Centre the two of them were tortured before they were separated.

On hearing this, Naseer Ahmad Dar's parents reported their son's arrest immediately at Saddar Police station, and later, in person, to the DGP, Mr Saxena, and the Director General of the Criminal Investigation Department, Jaswant Singh. Both officials denied that they knew anything about it. The parents then went to jails at Kotbalwal, Jammu, Udhampur, Kathua and Hiranagar hoping to locate their son but without success. On 22 August 1990 Mohammed Magbool Bhat's father, Habibullah Bhat, brought a *habeas corpus* petition (no.451/90) in the Jammu and Kashmir High Court. Government and security officials failed repeatedly to respond to the petition despite two orders from the court on 24 August 1990 and 6 February 1991. Eventually the government advocate denied the arrest. On 17 July 1991 the Deputy Inspector General (DIG) of Police, K.K. Suri, and the DIG of the CRPF, Mr Negi, swore affidavits also denying that Mohammed Magbool Bhat had been arrested by either of the forces. However, Judge Rizvi ordered an inquiry by the District and Sessions Judge, Mr Bashir-ud-Din. On 26 May 1992 he also directed the police to register a case against the security forces and to conduct an investigation.

Judge Bashir-ud-Din began his inquiry in June 1992. The state, represented by the Public Prosecutor, Mohammed Abdullah, denied in court on 6 July 1992 that Mohammed Magbool Bhat was detained and declared he was "untraced". The CRPF, represented by Deputy Commandant R.S. Cheema, appeared in court on 27 July 1992 also to deny that any of its members had arrested Mohammed Magbool Bhat or taken him into custody. Between 22 August and 15 September 1992 the judge examined Mohammed Magbool Bhat's father together with six witnesses. They testified that they had seen Mohammed Magbool Bhat being brought to his father's house. The judge also examined the Station House Officer (SHO), Fareed Ahmad from Saddar police station, who said that a "fact finding probe" into Mohammed Magbool Bhat's "disappearance" had been carried out in response to a letter of 22 September 1990 from the Senior Superintendent of Police (SSP) in Srinagar. Head constable Ghulam Mohammed, who had carried out the investigation, told the court that he had interviewed people at Mochho, the place of the alleged arrest, and at Gangabag and that his investigations confirmed that Mohammed Magbool Bhat had indeed been taken into custody on 21 July 1990 either by the CRPF or the BSF. He entered his report in the daily diary under no. 17 on 21 October 1990. He told the judge that he had also come to know that "Mohammed Magbool Bhat was done to death by the security forces". His report was sent to the Superintendent of Police (SP), City South, Srinagar.

The judge then drew attention to the police investigation into Mohammed Magbool Bhat's "disappearance" which had been ordered by the High Court on 26 May 1992 and criticized the police for not vigorously pursuing the findings of the Saddar police station investigations. The judge presented his inquiry report on 4 December 1992

to the High Court and reportedly concluded:

*"it is established beyond doubt that Mohammed Maqbool was picked up by the forces at Machho on 21-7-90 along with Naseer Ahmad in presence of people including the witness Mohammed Maqbool Allai...it is manifest that both he (Naseer Ahmad) and Mohammed Maqbool were...kept for some time at Joint Interrogation Centre Hari Niwas where they were interrogated by the forces turn by turn and then separated."*

Another illustration of official attempts to cover-up and frustrate legal proceedings into alleged "disappearances" is the judicial investigation into Javed Ahmad Ahangar's "disappearance". The investigating judge criticized senior officials for failing to appear before him to answer the allegations. Some of them reportedly first acknowledged his arrest, but later claimed he had been "released". The inquiry also shows that security forces detain people apparently on the basis of little or no incriminating evidence.

**Javed Ahmad Ahangar**, an 18-year-old man from Dhobi Mohalla, Batamaloo, Srinagar, was reportedly arrested on the night of 17/18 August 1990 by the National Security Guard whose members entered his uncle's house at 2 a.m. where he was sleeping. They said that they were looking for a man named Javed. His parents were not told where he was taken. After many fruitless inquiries they approached the DGP. He gave them an entry pass to the army hospital, Badami Bagh, to which, the DGP told the parents, their son had been taken. The parents visited the hospital, with a police constable, but did not find their son.

Javed's mother, Parveen Akhtar, brought a *habeas corpus* petition (no. 755/90 and 491-A no. 64/91) before the Jammu and Kashmir High Court and on 3 October 1990 the court ordered an inquiry into Javed's "disappearance". It was conducted by the Additional Sessions Judge at Srinagar, Abdul Rehman.

Judge Rehman examined Javed Ahmad Ahangar's cousin who shares the same name and from whom he had been receiving tuition the night he was arrested. He testified that they had both been taken out of the house by the National Security Guards, that he saw his younger cousin Javed Ahmad Ahangar being beaten and that he had been taken into custody even though a man known to the Guards told them that they had arrested the wrong man. The judge recalled:

*"After a moment both he and the alleged detainee were taken in main Bazar Batamaloo and he was taken near a Gypsy (jeep) where he found an officer with white uniform sitting inside. The officer called the boy who too was sitting in the Gypsy and told him 'Shaukat is this the boy who is required by us'. Shaukat declined and said 'no Sir he is not the boy'. After this the alleged detainee Javed Ahmad Ahangar was forced to sit in another Gypsy and...was thereafter carried away."*

The Judge also examined Aftab Ahmad Buktu, who was at that time detained in Ramnagar sub-jail as a suspected member of the JKLF. He testified that he had been taken into custody by the National Security Guard on the same night as Javed Ahmad Ahangar and that he witnessed his arrest. Another detainee, Shaukat Ahmad, was also examined. The judge summarized his evidence as follows:

*"he has been very clear about the identification of the officers of the National Security Guard in whose custody he found the alleged detainee [Javed Ahmad Ahangar] last of all near the gate of Oberio opening for Hari Niwas interrogation centre...During the intervening night of 17/18 of August, 1990, he was taken out of Hari Niwas interrogation centre and he found the alleged detainee in the custody of the National Security Guards receiving beatings...on the directions of their officers namely, SP. Kotoch, SP. Dinesh and SP. Gupta."*

The judge criticized state officials, the National Security Guard and the DGP for remaining "criminally silent" for failing to participate in the inquiry and respond to the allegations. The DGP, who had first told the parents that Javed had been taken to the military hospital, finally made a sworn statement on 10 September 1991 denying that Javed had been detained. He implied that Javed may have gone

“underground” or gone “to a neighbouring country” and said that the state was not responsible for someone's whereabouts in these circumstances. He did, however, say that a police investigation had been initiated at Shergari police station in response to an FIR which Javed's father had lodged with the police after the alleged arrest. The judge, however, indicated this was part of a cover-up:

“Reading in between the lines of this affidavit it is borne out that the chief of police in the state has a well founded conception that the alleged detainee is missing.”

The judge also examined the case diaries at Shergari police station to see how far the police investigation had proceeded. He discovered that “nothing has been done by the investigating officer so far” and he noted that:

“the Director General of Police has not at all admonished or reprimanded 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 missing person.”

In his final report of 1992, the judge concluded:

“that the alleged detainee [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 of all seen in the custody of the officials of the National Security Guards namely S.P. Kotoch, S.P. Dinesh and S.P. Gupta and by Shawkat Ahmad who too was that time under detention. From the day the alleged detainee was last of all seen in the custody of these officials near Hari Niwas interrogation centre his whereabouts are not so far known to the parents of the alleged detainee.”

Frustrated by the apparent policy of state officials and security forces in Jammu and Kashmir not to comply with judicial investigations, the High Court has issued contempt proceedings. However, as Syed Basharat Ahmad Shah's case shows, this appears to have had little effect. The magisterial inquiry in his case confirmed that Syed Basharat Ahmad Shah had been secretly detained, this time by the CRPF.

**Syed Basharat Ahmad Shah**, a university student in his early twenties from Ziarat, Batamaloo, was reportedly taken into custody near Warpora, Sopore, by the Central Reserve Police Force on 12 October 1990. His father said in court that he was arrested while travelling in a tonga to Dangerpora village. Two other men travelling with him, Shabir Ahmad Mir and Ghulam Moni-ud-Din Rather, residents of Batamaloo, were also arrested, as were the two tonga drivers, Mohammed Sultan Sofi and Sonauallah Hajam. Three of the men were later released on 24 December 1990. Ghulam Moni-ud-Din remained in jail, but the whereabouts of Syed Basharat Ahmad Shah remain unknown. His parents apparently went in vain to various jails to find their son. The father, Syed Mohammed Amin Shah, then brought a *habeas corpus* petition (no.896/91) in court, but government officials denied that Syed Basharat Ahmad Shah had been detained. The High Court of Jammu and Kashmir then ordered an inquiry by the District Magistrate of Baramulla, the SP and the District Judge.

The District Magistrate examined Shabir Ahmad Mir, one of the five men arrested. He told the court that they were blindfolded after arrest and tortured at some place on the Sopore-Bandipora road, and were then taken to the CRPF camp Doabgah, where they were kept in a hall for seven days and again tortured. He further stated that after seven days when some CRPF men woke them up by kicking them, he heard one of them saying “Syed Basharat Ahmad Thanda Pardh Gaya”. [Syed Ahmad Thanda has died.] This witness stated that he could only hear the words because he had been blindfolded.

The judge's requests to the Jammu and Kashmir Home Commissioner and the Additional DGP to allow Ghulam Mohammed-ud-Din's statement to be recorded, although he was in jail, were not complied with. However the District Magistrate cross examined the two tonga drivers. Their testimony confirmed that of Shabir Ahmad Mir: Mohammed Sultan Sofi told the judge that at Doabgah camp other detainees had called Syed

Basharat Ahmad Shah's name but that "he had been beaten ruthlessly by his captors and was not in a position to reply".

In August 1991 the District Magistrate asked the Commandant and Deputy Commandant who had been in charge of the 50th Battalion of the CRPF at the time of Basharat Ahmad Shah's arrest to participate in the inquiry. They refused to do so, first on grounds that they had been posted out of the battalion, and later because they had retired. The District Magistrate accused the CRPF of applying "dilly-dally tactics" and observed:

"Had the concerned CRPF personnel been keen to finalize the findings, they could have produced these officers well before their retirement because much lead time was given to them."

Instead, the CRPF was represented in court by the Deputy Commandant Sh. Yadav and officer M.L. Mina. They repeatedly denied that the CRPF had taken Syed Basharat Ahmad Shah into custody. They also failed to produce the Deployment/Movement register of their troops during October 1990 when they were stationed at Doabqah camp, as the magistrate requested. The District Magistrate concluded in his report that Syed Basharat had been detained illegally, and that the CRPF were fully responsible for clarifying what had happened to him:

"Therefore, the fact that Syed Basharat Ahmad Shah s/o Syed Mohammed Amin Shah r/o Ziarat Batamaloo, Srinagar was picked up by CRPF 50 Btn. on 12th October 1990 along with four other persons mentioned above is established, though his whereabouts are not known at the moment and should be known to the said Battalion itself."

After the inquiry report was submitted on 5 June 1992, the High Court reportedly issued contempt proceedings against the Additional Chief Secretary (Home) for not complying with the court order to produce the detainee in court. On 2 September 1992 the case was referred to the Division Bench of the High Court where it is still pending.

These reports by judicial officials inquiring into "disappearances" show determination and courage on the part of judges and magistrates who ordered them and carried them out in the face of persistent obstruction by state officials. Unfortunately this is not always so. At least in one case the High Court has reportedly queried whether it has powers to appoint such inquiry officers in "disappearance" cases in the first place.

Mohammed Shafi Dar, son of Ghulam Mohammed Dar from Lachmanpora, Batamaloo, was reportedly arrested on 23 May 1990 by the 141st battalion of the BSF during a raid, led by Deputy Superintendent (DS) Chawhanalong. He was arrested with Ajaz Ahmad Bhat, who was later released. The parents apparently sent letters to the President of India, the Prime Minister, the State Governor and the DGP. No reply was received and they brought a habeas corpus petition (no. 451\90) in the High Court at Srinagar. Judge Parray ordered the Chief Judicial Magistrate at Srinagar to conduct an inquiry. He submitted his inquiry report on 4 August 1992. It is said to have confirmed that Mohammed Shafi Dar had been taken into custody by the security forces. However, no further action has been taken apparently because one of the High Court Judges questioned whether the High Court had any powers to appoint a judicial officer to carry out inquiries in habeas corpus cases.

The cases described above remain exceptional since, unfortunately, many habeas corpus petitions do not even reach the inquiry stage because of the delaying tactics employed by the government and its agents and because evidence from witnesses who may have seen the "disappeared" person being arrested or in detention is often not available. This is illustrated by the lack of progress in the habeas corpus petition brought on 22 September 1991 to locate 62 missing detainees, referred to above.  
Tactics of cover-up

Sometimes, however, government representatives have appeared in court but only to deny arrests despite witnesses testifying to the arrest or detention or even in

the face of evidence of local police investigations confirming the arrest. Waheed Ahmad Ahangar, son of Mohammed Maqbool and resident of Lal Bazar, Srinagar, was reportedly arrested by the 79th Battalion of the BSF on 26 May 1990. His relatives apparently managed to see him on 3 June 1990 at the Papa 2 interrogation centre, Srinagar. They say they saw him a second time either in October or November 1990, this time at the Pantha Chowk interrogation centre. Since then his whereabouts are unknown. A *habeas corpus* petition (no.696/90) was brought in the High Court of Jammu and Kashmir, and the government responded by denying the arrest. The case is still pending in the High Court.

Peer Mohammed Shafi, a 40 year old headmaster and son of Peer Ghulam Mohammed from Khood Sheer-a-bad, Pattan, Baramulla District, was reportedly taken into custody by the 46th or 49th battalion of the CRPF in August 1990; the precise date of his arrest is not clear. Witnesses claimed he was blindfolded before being taken away. Apparently an FIR – no. 193/90 P/S Pattan U/S 364 RPC – was registered about his arrest at Pattan police station. The police reportedly questioned 20 witnesses who confirmed that Peer Mohammed Shafi had been taken into custody. A *habeas corpus* petition (no.559/91) was brought in the High Court and the government responded by denying Peer Mohammed Shafi's arrest. The petition is still pending and his whereabouts are not known.

In some cases where arrests were eventually acknowledged, officials claimed that detainees who have “disappeared” were either “released” or had “escaped” on a certain date, usually without substantiating such claims. In several such cases witnesses have seen the “disappeared” person in detention after that date.

Manzoor Ahmad Zarger son of Mohammed Sidiq and resident of Akhwan Sahib, Gojwara, Srinagar was reportedly arrested at Gojwara market by a patrol of the BSF on 15 July 1990. His father, Mohammed Sidiq Zarger, asked the District Magistrate for information about his son but had no success. He then placed advertisements in five different newspapers in July, September and October 1990. Finally the family brought a *habeas corpus* petition (no. 832/90) in the High Court of Srinagar.

At first, State officials apparently delayed answering the *habeas corpus* petition and finally, on 2 April 1992, the High Court reportedly ordered that the state should produce Manzoor Ahmad Zarger in court. But that did not happen. On 6 May 1992 the DGP for Jammu and Kashmir, B.S. Bedi, confirmed in a sworn statement that Manzoor Ahmad Zarger had indeed been arrested on 15 July 1990 but that he had then been released two days later on 17 July. This was contradicted by the testimony of Mir Nazir Ahmad, himself detained, who claimed that he had seen Manzoor Ahmad Zarger in detention after that date when being treated in a BSF Hospital until 26 July 1990. His whereabouts are still unknown.

Rouf Ahmad Shah, son of Ghulam Qadir Shah, from Chargi, Drugmulla, Kupwara was reportedly arrested from his house on 26 May 1990. The family filed a *habeas corpus* petition no.201\90 and the High Court ordered the District Magistrate from Kupwara to carry out an inquiry. His report confirmed that Rouf Ahmad Shah had been taken into custody by the security forces. The army responded in court claiming he had been “released”, however, the District Magistrate reportedly questioned that his release by the army had been established. The High Court reportedly ordered the police to register a case against the security forces identified to be responsible for Rouf Ahmad Shah's “disappearance” but Amnesty International has no information as to whether this was done. A further hearing was set for 12 November 1992. The whereabouts of Rouf Ahmad Shah are still unknown.

Javeed Ahmad Shalla and Mohammed Sidiq Sofi of Khankahi Moulla, Srinagar (reported leaders of the armed Kashmiri group, the Ikhwanul Muslimeen), were reportedly taken into custody by the 116th Battalion of the BSF either on 23 or 24 March 1992 at 1.30 am in the morning. They were reportedly taken from the house of Mohammed Maqbool Dar at Bemina, Srinagar, along with eight other people: Shabir Ahmad Bhat, Feroz



Ahmad Beg, Mohammed Hussain Khan alias Altaf, Mohammed Yousuf Beg, Mohammed Maqbool Dar, Massarat Jan, Mudassar Maqbool and Shakeel Ahmad Beg. All were reportedly taken to the BSF Tattoo Ground Interrogation Centre at Batamaloo and tortured. Four of them, released a few days later, confirmed this.

Javeed Ahmad Shalla and Mohammed Sidiq Sofi were not released, however. A habeas corpus petition (no. 888/92) was brought by Javeed Ahmad Shalla's brother and by the human rights activist H.N. Wanchoo. On 6 May the Jammu and Kashmir High Court ordered that both men be brought to court within three weeks.

This did not happen. Instead, the Additional Chief Secretary claimed that on 24 March 1992 both men had "escaped" from custody during an ambush by militants, while the two men were being transported from the BSF interrogation centre to an unspecified destination. He said that armed separatists fired on the car carrying the two detainees and that they escaped in the crossfire. However, the four detainees who have been released all claimed that Javeed Ahmad Shalla and Mohammed Sidiq Sofi were detained in their company until after that date, i.e. 5 pm on 25 March. The whereabouts of the two men remain unknown.

#### 'Disappearances' during 'crackdowns'

People "disappear" also in the course of "crackdowns", a term used to describe what have often been brutal raids by the security forces on villages or specific areas of a town. During such raids all inhabitants are forced to assemble in an open area. They are often divided into groups of women and children, old men and young men. Hooded "informers" are used to identify suspected militants, usually from the group of young men. These suspects are then taken into custody. They are asked about names of members of secessionist groups, the places from where they operate and keep their arms. Those arrested are often tortured.

"Crackdowns" are not a new phenomenon. Such operations have been carried out by the army and paramilitary forces in other border areas where the government faces secessionist demands, such as in the north-east. In Manipur, one of India's remote northeastern states, for example, similar tactics have been used, also accompanied by reports of widescale human rights violations.<sup>9</sup>

"Crackdowns" in Jammu and Kashmir are not confined to rural areas but are also common in Srinagar. Many "crackdowns" have been reported since the launching of "Operation Tiger" in the summer of 1992, involving an estimated 400,000 Indian troops and police. These and subsequent military operations have been accompanied by increasing reports of human rights violations, including "disappearances".

An area which has repeatedly been subjected to "crackdowns" is that of the fishing villages around Wullar Lake, 50 kilometres north of Srinagar. Operations took place in July, September and December 1991 and March/April 1992, when the villages were cordoned off from 28th March to the 5 April 1992. In Kunis village 12 men were reportedly taken away by the army and their whereabouts remain unknown. Seven of them are: Irshad Ahmad son of Mohammed Akram, Muzafar Ahmad son of Abdul Gani, Abdul Wadir Dar son of Mohammed Dar, Abdul Rehman Mir son of Ghulam Ahmad Mir, Bashir Ahmad Mir son of Gh. Hassan Mir, Ghulam Rasool Mir, and Mohammed Ramzan Lone. The government denied their arrest, informing Amnesty International: "Neither any report registered, nor any case lodged in the concerned Police Station".

Villagers from Kemoo Ghat reported that young men were singled out for beatings during interrogation about the whereabouts of militants. Two men from Ashtangoo village said they were tortured. Several women from Hatlab Ghat reported that they had been raped. Money and livestock was apparently looted from the villages during the "crackdown".

Another "crackdown", this time at Nanil Village, took place early in the morning on 25 April 1992. Security forces entered the village and forced everyone out of their houses. The men were told to assemble in front of the high school and the women in the Baba Rish Saheeb area. They were kept there without food and water

from 7 a.m. in the morning until 8 p.m. in the evening. The same happened on 26 and 27 April.

Witnesses report that Bashir Ahmad Beg, a 40-year-old man, was severely beaten and then taken away by the security forces. His whereabouts are unknown, although the government recently informed Amnesty International he was in custody. Nor has it been established what happened to six other villagers who were also reportedly taken into custody by the security forces: 35-year-old Abdul Ghani Mir s/o Abdul Aziz Mir, 22-year-old Syed Ahmad Wani s/o Khazar Mohammed Wani, 30-year-old Mohammed Ayub Padder s/o Mohammed Ramzan Padder, 22-year-old Shabir Ahmad Darsi s/o Ghulam Mustafa, 21-year-old Mohammed Yuqoob Khan s/o Ali Mohammed Khan, and 22-year-old Mohammed Yousuf Rather s/o Amma Rather. Of these, the government said that four had been released and that two were in detention. Amnesty International is seeking further details about their current whereabouts and the circumstances in which their reported release took place.

During the operation four young men were reportedly shot and killed, and Abdul Ghani Mir, a 32-year-old man, was beaten unconscious. He was taken away by the security forces and reportedly died in their custody. The government informed Amnesty International that an inquiry was in progress and that a case had been registered, but the nature of the inquiry or of the charges is not known.

From 14 to 16 August 1992 the villages of Kokarnag and Desue, located in the Kashmir valley about 80 kilometres southeast of Srinagar, were also subjected to such a cordon and search operation. This was reportedly carried out by the 92nd O.R. Battalion of the army led by Colonel Mathur and Captain Ashoke Gupta. Some 13 villagers were reportedly killed and another six "disappeared". In FIR nos.25 and 26 the army maintained that the deaths in Desue and Kokarnag took place during "crossfire" between militants and the army after the army had been fired upon, but villagers told members of various civil liberties groups that no crossfire had taken place, pointing out that no members of the security forces were killed or injured. On 15 August 1992, Ghulam Nabi Lone, son of Ghulam Ahmad Lone and Irshad Hussain Lone, son of Muhammed Ibrahim Lone from Kokarnag were reportedly beaten in front of the assembled villagers and later tortured until they died. The army delivered their bodies to the police on 16 August. The army reportedly entered Desue on 14 August firing indiscriminately. Villagers were forced to assemble in the grounds of the school and were reportedly beaten. Eleven men were reportedly killed by the security forces as a result. A number of people were taken into custody for interrogation and reportedly tortured. Six of them "disappeared" and their whereabouts remain unknown: 30-year-old Abdul Rahman Decca, s/o Ghulam Qadir Decca, 17-year-old Ghulam Rasool Decca, s/o Mohammed Ramzan Decca, 19-year-old Fiaz Ahmad Decca, s/o Abdul Rahman Decca, 21-year-old Mushtaq Malik, s/o Gulla Malik, Gulzar, resident of Wadail, Kishtwar, and Shabir, resident of Wadail, Kishtwar.

#### Recent 'Disappearances'

Scores of people continue to "disappear" in Jammu and Kashmir. Although the list of 128 "disappearances" in the state attached to this report includes only two cases from 1993 the actual number is believed to be much higher because detailed information from the state requires cross-checking and reaches Amnesty International only with considerable delay. Ashaq Hussain Ganai is one of the most recent victims.

Ashaq Hussain Ganai is a student around twenty years old from Dangiwachi village, Rafiaband, Baramulla district. He was reportedly arrested on 3 March 1993 by an army unit belonging to the 17th battalion of the Jammu and Kashmir Rifles or unit 79 of JAKLI 17 during a search operation at Dangiwachi. Apparently two other men, namely Bashir Ahmad Shah and Naseer Ahmad Mir, were arrested at the same time and their whereabouts are also not known.

His relatives searched for him at Chatoosa army camp but did not find him, although the army agreed to accept clothes and fruit for him, an indication that he was

apparently kept in the camp. Approaches to army officials, the State's Governor, the Chief Secretary and the Union Minister for Internal Security were also unsuccessful. On 16 March the DIG of Police of Baramulla/Kupwara district requested the army to allow the parents to see their son, but permission was refused.

The parents then approached Major General I.K. Verma on 20 March and were told that their son would be released on 23 March. Already the following day, on 21 March, members of the armed forces came to the father's house and asked him and his other son, Naseer Ahmad, to come with them as Ashaq would be released that evening. Some distance from the house the army personnel reportedly forced the two men to sign some documents, which they were not allowed to read, before driving off and firing into the air. The following day his father, Ghulam Rasool Ganai, filed an FIR no. 5 March 22 in protest at the Panzalla Rafiabad police station. Later, Major Gurpal Singh told the family that Ashaq Hussain had been handed over to "higher authorities in Baramulla" but would soon be released.

On 23 March Ghulam Rasool Ganai went to see Major General Indo Kumar Verma again and was told this time that his son would not be released that day as earlier promised but instead on 25 March, the festival of Eid, along with 11 other detainees. However, later that same day Major Ashok Ahuja told Ghulam Rasool Ganai that his son had "escaped" during "crossfire" at Sangranpora. This was contradicted by a statement of the commanding officer of 17 JAKLI unit who, when contacted that day, said that Ashaq Hussain was still in their custody. Later that day the Commanding Officer of 17 JAKLI filed a FIR no.13 with the Panzalla police station stating that Ashaq Hussain had "run away" from the army during "crossfiring". On 25 March eleven detainees were indeed released but Ashiq Hussain was not among them.

On 26 March a delegation, including the District Magistrate, went to Major General Indo Kumar Verma's office. He assured them that he had issued release orders for Ashaq Hussain and promised to look into the case. If there had been foul play, he promised to discipline those responsible. On 28 March the new Governor of Jammu and Kashmir, K.V. Krishna Rao, visited Baramulla and Ghulam Rasool Ganai expressed anguish about his son to him also. He was told that there would be a full inquiry into the case.

Amnesty International's appeal of 26 April 1993 to the government to clarify his fate or whereabouts remains unanswered and his parents are still desperate to find out where he is or what happened to him.

### III. 'DISAPPEARANCES' IN PUNJAB

#### Pattern and numbers of 'disappearances'

Each year, scores of people "disappear" in Punjab from among the many thousands of political prisoners detained in the state. Official figures given by the Home Minister in March 1993 put the number of people then held under TADA in Punjab at 14,457; unofficial sources say several thousands more are held without trial under TADA and preventive detention laws in force in Punjab.

Nearly all "disappearances" are attributed to the Punjab police; few involve the army or paramilitary forces. Usually, no explanation about the reason for an arrest is given and arrests are often not registered at the local police station. Victims are sometimes abducted by police in plainclothes, travelling in cars without number plates. Several relatives of victims have complained that the police threatened them not to pursue their attempts to trace the "disappeared". A few victims who have survived have said that, before they were released, the police threatened to torture and kill them if they were to disclose what had happened to them.

State complicity in such practices is evident from a clear pattern of official cover-up. This involves officials routinely ignoring numerous letters expressing anguish for the life and safety of the "disappeared". Cables from relatives to government officials reporting a "disappearance" and requesting immediate intervention also go unanswered. Officials even go to the extent of giving

contradictory statements. In court, police persist in denying that “disappeared” persons were arrested, despite sworn testimonies from eyewitnesses to their arrest. When habeas corpus petitions are brought in court by relatives trying to trace a “disappeared” person, they are rarely successful: the police either deny the arrest, or simply claim that the victim “escaped” from custody or has been killed in an “encounter” while keeping them in secret detention to extract information. India Today reported on 15 October 1992:

*“Many of the cases of killing of militants as reported by the police, and dutifully carried by the newspapers are plain disinformation... the police have been acting beyond the pale of the law time and again, and often in the most blatantly callous fashion. The police have devised many ways to keep the judiciary off their back. One of them is proclaiming that a militant has escaped. He can then be kept in custody, for an unlimited period to extract information by whatever means.”*

Both the Central government as well as the state police are part of the system of cover-up. According to the same India Today article:

*“The summary execution policy has the blessings of some key officials at the Centre, as borne out by a series of secret communications from Delhi. One such letter of December 30, 1991, from V.G. Vaidya, the special director now promoted as director of the Intelligence Bureau, to Gill [the DGP, Punjab] came in the wake of SSP Sanjeev Gupta inadvertently justifying the encounters. Wrote Vaidya: ‘They (district officials) should refrain from even implicitly hinting that they indulge, connive, or approve of anything which is in violation of the law of the land. Their professional compulsions in executive action should not get reflected in their public utterances.’ The so-called professional compulsions are clearly subverting the law of the land... Predictably, talk of police excesses is militant propaganda for the Punjab Government.”*

The Supreme Court of India in September 1993 successfully intervened when a Punjabi couple, Vipin Gogia and Ms Jaspreet Kaur marrying against the wishes of their father, a former Deputy Commissioner of Hoshiarpur, were reportedly abducted by the Punjab police from a Delhi guesthouse even after they had sought the Supreme Court's protection. The Chief Justice of India told the Chief Minister of Punjab that he was “sad at the state of affairs in the State”. The court was also critical of the Delhi Police Commissioner, M.B. Kaushal, for acting casually on the court's order to trace the missing couple. In this case, the victims fortunately appeared in court within days of their “disappearance”. Had the two missing people been suspected political activists, they would most probably not have survived.

Again, on 4 October 1993, the Supreme Court of India heard another habeas corpus petition about two men, related to a Punjab leader of the Congress Party who is a strong critic of Punjab's Chief Minister and the state's police force. They had been held in unacknowledged detention by Punjab police since 9 August and were released on 2 October 1993. Ordering the medical examination of one of them, Daljit Saini, who appeared in court limping and weak telling the court he had been beaten mercilessly, India's Chief Justice said that “This is a test case where we will determine whether there is rule of law in the state of Punjab”. He sternly warned Punjab's Advocate General that “if the police do not work within the four corners of the law, a situation will arise when the state's credibility is at stake”(The Pioneer 5 October 1993). The same paper had commented on 25 September 1993:

*“The Supreme Court's action at this juncture has lent a lot of weight to the theory being propounded by human rights activists that the State police do not work within its jurisdiction. Punjab's civil magistracy has also accused the Punjab police of taking the law in its own hands. The timing of the Supreme Court action coincides with rumours of Punjab Police Chief, K.P.S. Gill's transfer... This is bound to have serious implications for the Punjab police because until now, Mr Gill has been instrumental in assuring the cops that their misdeeds would be overlooked as long*

*as they produced results against the militants”.*

In line with this policy, the government has persistently failed to order independent and impartial inquiries into allegations of “disappearances”. Not a single police or other official has been brought to justice for perpetrating such gross violations of human rights. Police officers who had been transferred in the wake of public protests about human rights violations were often reinstated later on. In the knowledge that they will not be held accountable, police continue to violate human rights with impunity. The following examples, selected from numerous similar cases of “disappearance” known to Amnesty International, illustrate these patterns.

**Surjit Singh**, a 44-year-old farmer and father of five children from Sanganan village, Amritsar district, “disappeared” in June 1992. The family immediately made efforts to trace him. On 16 July 1992, Surjit Singh's brother, Gurdip Singh, wrote to the Governor of Punjab, the DGP and the Punjab Chief Minister about Surjit Singh's “disappearance”, saying:

*“...we approached the various police stations including the SP Amritsar and SSP Majitha but his whereabouts are not known. Kindly intervene and save the life of my brother...we apprehend false implications of case or encounter, kindly help the aggrieved family and deliver justice.”*

The family did not receive a response to these or other appeals. On 22 October 1992 Kashmir Kaur, Surjit Singh's wife, brought a *habeas corpus* petition (no. 667 of 1992) in the High Court of Punjab and Haryana. She (“the petitioner”) told the court how:

*“on 2 June 1992 in the early hours of the morning, a police party from police station Chheharta, headed by Mohinder Singh, came to the house of the petitioner and forcibly took away the detenu (Surjit Singh). The petitioner, Baldev Singh Sarpanch and one Sewa Singh of village Sanganan requested [Superintendent Mohinder Singh] as to why the detenu was being taken away, but they were abused and kicked by [SI Mohinder Singh].”*

When Kashmir Kaur and the two other villagers went to Chheharta police station, Mohinder Singh reportedly told them that he had handed Surjit Singh over to the Deputy Superintendent of Police (DSP), Mohinder Singh Sidhu, at Sadar police station, Amritsar. Yet when Kashmir Kaur went to Sadar police station the police denied that her husband was there. She told the court that she had since learned from what she considered reliable sources that her husband was still in the custody of Mohinder Singh and Mohinder Singh Sidhu and that he had been tortured. She feared he would be killed by the police in a “false encounter”.

The police denied all charges against them. Mohinder Singh denied he knew Surjit Singh or that he went to Sanganan village to arrest him on 2 June 1992: he simply said that Sanganan village was not in his area of operation. He also denied telling Kashmir Kaur and the two other villagers that he had handed Surjit Singh over to the police at Sadar police station, Amritsar. The DSP at Sadar police station also denied that Surjit Singh had ever been handed over to him. The court case is still pending and the whereabouts of Surjit Singh remain unknown.

**Gurvinder Singh**, a 25 or 26-year-old farmer from Jeonpura, Patiala, was reportedly taken into custody by the Chandigarh police on 18 January 1992. He was apparently due to appear in court on unspecified charges but had been released on bail in April 1991.

His father, Gurbachan Singh, says that he sent a telegram to the Governor of Punjab on 20 January 1992 about the abduction of his son. Two days later, he wrote to the Governor of Punjab and the Inspector General, Internal Security, Punjab. In it, he described that the police from Mullanpur visited his house daily and threatened the inhabitants and that two more of his relatives had been taken into custody. On 27 January 1992 Gurbachan Singh brought a *habeas corpus* petition – no.67 of 1992

– in the Punjab and Haryana High Court. In a sworn statement he described how on 18 January 1992 the Chandigarh police had come to Jeonpura in two Gypsy jeeps (one of them with the number plate CH-OI-1307), one Maruti van and one Nissan truck. One of the officers was reportedly wearing a name plate which read Amarjit Singh. He described how the police:

*“started firing without any provocation. [Gurvinder Singh] when due to fear of the police ran out of the house, he was also shot and possibly the injury is on the leg or on the back. When [Gurvinder Singh] fell down due to the injury he was pounced upon by the police and thrown into a waiting Gypsy jeep and the boy was taken to unknown destination.”*

Inspector P.K. Dhawan, in charge of the Operation Cell, Chandigarh police, replied to these charges on 5 May 1992. He denied in a sworn statement that Gurvinder Singh had been taken into custody by the Chandigarh police. He did admit, however, that seven members of the Chandigarh police with two sections of the CRPF and seven members of the Patiala police had raided the village of Jeonpura on 18 January. He claimed that the Chandigarh police had received secret information that Gurvinder Singh, together with his brother Lakhwinder Singh, had been involved in a bomb attack on the SSP's car on 29 August 1991 in which three people, including one police officer was killed and several others injured.

Inspector Dhawan also maintained that when the police arrived at Gurbachan Singh's house two young men ran out of the back door and fired on the police when ordered to stop. When the police opened fire on the running men, he claimed, they “escaped” under cover of darkness. Inspector Dhawan also denied that anyone in the raiding party was named Amarjit Singh or that a gypsy jeep with a number plate CH-OI-1307 was used by the police party.

Gurvinder Singh has not returned home. Neither his whereabouts nor the results of the court case are known.

**Manjit Singh**, a farmer from Panchhian village, Amritsar District, was not even suspected of supporting militant groups. He was reportedly picked up by the army on 2 March 1991 for “violating curfew” and the army say that he was handed over to the police who gave contradictory statements about him. At first police suggested that he was in army custody and later claimed that he had been “released”.

Darshan Singh, the father of Manjit Singh, says that his son together with his friend Ajit Singh had been installing a tubewell in their fields on 2 March. When they returned home at about 8 pm, army personnel from the 14th Dogra Battalion took them away to their unit stationed near Amritsar. On 4 March the parents of the two men received a message that their sons were at Dera Baba Nanak police station. However, when they went there, they were told that the army had taken the two young men away again. On 16 March they approached the SSP at Batala. He contacted the Dera Baba Nanak police station by radio and told the parents that he had received a message that their sons had never been held in custody by the Dera Baba Nanak police.

The parents of both men appealed to numerous officials asking them to clarify what happened to their sons. They appealed to the Prime Minister of India, the Home Secretary in New Delhi and to the DGP, Punjab, the Governor of Punjab, the Deputy Commissioner for Amritsar and Gurdaspur, the Army and SSP for Batala and Majitha. According to Darshan Singh's father “no reply to this communication has been received from any quarter”.

Eventually, on 10 October 1991 Captain Mishra of the 6 Rashtriya Rifles Battalion wrote to Darshan Singh to say that his son and Ajit Singh “were apprehended by 14 DOGRA on 3 March '91 and were handed over to Police Station Dera Baba Nanak on the same day. You are therefore requested to approach Police Station Dera Baba Nanak and get your son from there.” However, once more, the police told the families that their sons were not in police custody. The police in turn suggested that they were held by the army.

Finally, Darshan Singh brought a *habeas corpus* petition – no. 1184 of 1991 – in the Punjab and Haryana High Court, testifying to his son's arrest by the army. In court the police claimed that the two men were “released”. Gurdev Singh, DS of Dera Baba Nanak police station swore an affidavit on 6 February 1992 acknowledging that Manjit Singh and Ajit Singh had indeed been brought to the Dera Baba Nanak police station on 3 March 1991 by Major Deol of the 14th Dogra Regiment of 6 Rashtriya Rifles Battalion. He stated that they had been brought in for breaking curfew but that “in the presence of Major Deol, those persons were released at the same time”, and that they were no longer in police custody.

The army version contradicts this in important detail. In an affidavit to the High Court of Punjab and Haryana of 9 February 1992 Colonel T.P.S. Bakhshi of the 14th Dogra Battalion acknowledged that the army had arrested Manjit Singh and Ajit Singh, saying this happened at 2.15 am on 3 March. He also stated that the army handed the two men over to the police at Dera Baba Nanak police station the same day and stressed that a receipt thereof was obtained from the police. Significantly, however, he made no reference to the police claim that the army's Major Deol was present when Manjit Singh and Ajit Singh were “released”. The whereabouts of Manjit Singh and Ajit Singh are still unknown.

**Gurjit Singh**, the 21-year-old son of Randhir Singh of Mohi village, Ludhiana district, was reportedly taken into custody on 8 May 1993 near Birmi village bus stop by five police in plain clothes, when riding a scooter with a friend from Jagraon. Witnesses saw that the men who abducted him drove a Maruti van without number plates. They also took the scooter and told his friend to carry on by foot. This friend informed Gurjit Singh's parents of what had happened. They went to the local police station but the police denied arresting him. However, on 11 May a police officer unofficially told the parents that Gurjit Singh was in their custody. He gave no further information as to why Gurjit Singh had been arrested or where he was being held leaving the family deeply concerned about their son's safety.

Gurjit Singh is one of scores of “disappeared” men on whose behalf Amnesty International addressed numerous appeals to the Indian Government. However, no reply was received and his “disappearance”, like that of the others, remains unresolved.

#### **The role of the judiciary in resolving 'disappearances' and police attempts to frustrate the judicial process**

Courts in Punjab have found compelling evidence of police responsibility for “disappearances”. Occasionally the courts have ordered judicial officers to locate people held in unacknowledged detention, although, unfortunately, in other cases they have abdicated that responsibility. In those cases where the courts have intervened, the police have often responded by intimidating witnesses and refusing to cooperate with court inquiries. *The Tribune*, Chandigarh, reported on 28 August 1993:

*“During the height of the militancy, the police had always snubbed the magistrates whenever they tried to take the side of victims of police excesses... The police... acted in defiance of orders from judicial... courts”.*

When police eventually admitted to an arrest of a “disappeared” person, they often changed the real date to a later one only to make routinely false and identically worded claims that a detainee either “escaped from custody” or was killed in an “encounter between police and terrorists during the recovery of arms”. When Baljit Singh appeared in court on 28 November 1992, he asked the judge to order that he be kept in shackles to prevent police from killing him in custody and fabricating such an “escape” story. Nevertheless, the police claimed the following day that he had “escaped”. Baljit Singh has not been seen since (for details, see *Appendix*). The “disappearances” of Dalbir Singh, Harjit Singh and Hardeep Singh, described below, illustrate this pattern. In Dalbir Singh's case, the court rejected police attempts to cover-up as lacking in credibility and squarely held the police guilty

of illegally detaining him, ordering the state to pay compensation. The “disappearance” of Harjit Singh is remarkable because officials continue to deny his detention even though a court official and his father saw him in police custody and were then refused permission to enter the prison while the victim was whisked away before they could save him.

**Dalbir Singh**, a 22-year-old student from Behlolpur village, Ropar district, “disappeared” on 6 February 1991. His father, Gurmukh Singh, brought a *habeas corpus* petition – no. 211 of 1991 – in the High Court of Punjab and Haryana on 23 February 1991, informing the court that a police party from Kharar police station had raided the family home at 6.30 am. Nothing was found but the police arrested Dalbir Singh telling his family that he would be released later that day after questioning.

On 7, 9 and 11 February, Dalbir Singh's father visited Kharar police station, where he was again promised by Inspector Ramesh Chander and Assistant Sub Inspector Harbans Lal that Dalbir Singh would be released. However, police took Dalbir Singh back to Behlolpur in an attempt to recover something suspected to be hidden there. Nothing was found and Dalbir Singh was kept at Kharar police station.

On 8 February 1991 Dalbir's father sent telegrams about his son's “disappearance” to the Governor of Punjab, the Deputy Commissioner and the SSP for Ropar. The next day he wrote to the Governor expressing concern about the safety of his son especially because the police had now told him that he had “escaped”.

In court, Inspector Ramesh Chander and Assistant Sub Inspector Harbans Lal acknowledged Dalbir Singh's arrest, but claimed it had taken place one day later, on 7 February 1991, when an FIR – No. 19 of 7.2.91 – had been registered under Section 25 of the Arms Act. In it, Dalbir Singh was accused of harbouring weapons. The police claimed, unconvincingly, that because “the door of the lock up was not functioning properly”, Dalbir Singh had been held in the interrogation room of the police station, from where he had “escaped” at 3.30 am on 8 February 1991. The constable on duty that night told the court that at 3.30 am he had heard a sound from the interrogation room, and found that Dalbir Singh had gone and that the window panes and an iron window bar were apparently broken. Two search parties failed to find him. How Dalbir Singh could have broken the iron window bar was not explained.

The Sessions Judge for Ropar District rejected the police version and concluded in his report, dated 16.10.91, that:

*“There was hardly any justification to arrest him [Dalbir Singh] and put in the police lock-up when no incriminating article has been recovered from his person or from the search of his house.”*

The judge held the police responsible for Dalbir Singh's “disappearance” and on 5 February 1992 Judge G.S. Chahal of the High Court confirmed that:

*“the police has caused the disappearance of Dalbir Singh alias Banka. The State is liable for the action of its officers for such matters. I therefore order that the State shall pay a compensation of Rs.50,000 to the parents, wife and infant child of Dalbir Singh alias Banka.”*

It is distressing that despite these unequivocal judgments, naming the perpetrators of his “disappearance”, Dalbir Singh's captors are, to date, not known to have been brought to justice.

There is equally strong evidence that the police have flouted court orders in their attempts to cover-up the “disappearance” of Harjit Singh, even going to the extent of intimidating witnesses testifying in court.

**Harjit Singh**, a 22-year-old married man with two children from Buttar Kalan village and an employee of the Punjab State Electricity Board, was reportedly picked up at about 11 am on 29 April 1992 by DSP Darshan Singh Mann and other police. He was abducted from the Thatia bus stand near Sathiala college. He was reportedly detained at Ghagar Bhanar police station until 1 May and tortured. Transferred to Metha police station for three to four days, a police officer allegedly told a villager pleading



for Harjit Singh's release that he was too badly injured to be released. Apparently his arms and legs were broken. From there Harjit Singh was reportedly taken to Mal Mandi Interrogation Centre, Amritsar, notorious for reports of torture.

In court, DSP Darshan Singh Mann denied that Harjit Singh had been arrested on 29 April 1992 but claimed that Senior Inspector Dharam Singh from Lopoke police station had made the arrest two weeks later on 11 May 1992. Harjit Singh was, he said, no longer in police custody because he had been killed in an encounter on 12 May 1992. The following day, his parents received what police alleged were his ashes. However, in his affidavit of 15 October 1992 to the High Court of Punjab and Haryana – in writ petition no. 651 of 1992 – Harjit's father claimed that he saw his son in a police van after that date, on 26 May 1992 near the Central Investigation Agency building at Kapurthala and again in a police van near Mehta Chowk police station on 9 August.

This prompted the court to question the police version of events and on 15 October 1992 Judge H.K. Sandhu held that there was *prima facie* evidence that Harjit Singh was held in illegal custody of the Punjab police. He ordered a warrant officer to locate him. If there was a case against him, the police were instructed to produce him in court.

On 17 October 1992 the warrant officer and Harjit Singh's father, a relative named Anoop Singh and another villager went to Mal Mandi CIA Interrogation Centre at Amritsar, where they believed Harjit Singh was kept in secret detention. The father saw his son who signalled to him from a first floor window. R.L. Bhata, the warrant officer, described in his 21 October 1992 report that:

*“we reached there at about 9.00 am. The main gate of Mal Mandi C.I.A. Amritsar towards G.T. Road was found locked from inside. A CRPF Jawan (soldier) who was at gate duty, informed one constable... I disclosed my identity to him. On this he refused to open the door and directed the CRPF Jawan not to open the door and went inside the building... We remained outside the main gate from 9.00 am to 9.30 am. During this half hour, the petitioner (Harjit Singh's father) pointed out to me that his son Harjit Singh the alleged detenu was in the first room of the building and was giving signals with his hand to him... His hands... were, we thought, hand-cuffed as he was moving his hands with difficulty. We also saw him giving signals... that we should enter the premises from backside. We... entered in the premises, but when we reached near the room where Harjit Singh was seen by us [he] was not there and the second gate was also closed by police Jawans and we were not allowed to enter the building. I repeatedly told the police constable inside that he should not behave like this, but the constable did not care saying he would face the consequences and I and the petitioner remained there for another half hour standing outside... When I protested he disclosed his name as Gurwant Singh No. 747. At about 10.00 am Shri D.R. Sharma, SP in charge of CIA Staff Mal Mandi, Amritsar, reached there and the door was then opened. I searched the rooms. Nobody was found in any room. In the first room where the alleged detenu Harjit Singh was seen by us, only handcuffs were seen hanging with [from] the iron bars of [the] window in that room...”*

The other members of the search party swore statements supporting these findings and contempt of court proceedings were instituted against police officer Gurwant Singh.

In November 1992 the police began to intimidate witnesses. On 6 November just before the Punjab and Haryana High Court was about to hear the case again, the police tried to abduct Anoop Singh outside the Court. He was one of the members of the search party who had sworn in court that he had identified Harjit Singh at the Mal Mandi interrogation centre. Anoop Singh escaped after police beat him with rifle butts and ran into the court room to tell the judge. In May 1993 Amnesty International was told that Anoop Singh had died in mysterious circumstances. The police have also reportedly visited Harjit Singh's father's house and threatened the family.

Since then, the case has had to be postponed time and again. The DGP, K.P.S. Gill, refused to comply with court orders to appear on 13 May to explain what happened to Harjit Singh and later sent a legal representative. Contempt of court proceedings were instituted against Gurwant Singh, the police officer who refused the search party entry to the prison. He failed to appear on six occasions when the court called him.

Police attempts to cover-up are also clearly demonstrated in Hardeep Singh's case, although some officials have resisted pressure to participate in such tactics. In this instance, the Deputy Commissioner, Ludhiana, (an Indian Administrative Service officer), maintained his account of events in court even though it did not back up the police version.

**Hardeep Singh**, a farmer from Latala village, Ludhiana, was reportedly taken away from his home at 6 a.m. on 11 August 1992 by police from Dehlon police station led by SHO Darshan Singh. Hardeep Singh's house was raided and he and his wife Harjinder Kaur were beaten. Hardeep Singh, his cousin Amarjit Singh and the latter's wife, Nasib Kaur, were taken away by police, but Harjinder Kaur was said to be in such a serious condition that she was left with the village police. She died at 4 pm that day.

On 12 August about four hundred villagers went to the Deputy Commissioner's office at Ludhiana to protest and present a memorandum. Some leaders of political parties joined them. The Deputy Commissioner promised a post mortem on Harjinder Kaur in a civil hospital in Ludhiana, a magisterial inquiry into the incident and that cases would be registered against the guilty persons. He then telephoned the SSP for Jagraon District, Swaran Singh, in front of the villagers and political leaders and reportedly agreed that SHO Darshan Singh should be transferred and that Hardeep Singh, Amarjit Singh and Nasib Kaur should be released in time for Harjinder Kaur's cremation.

Deputy Commissioner S.S. Channy confirmed that these assurances were given in a signed affidavit to the High Court of Punjab and Haryana of 8 September 1992 in which he stated: "The SSP, Jagraon, [Swaran Singh] was immediately directed to arrange... to release other kins of the deceased [Harjinder Kaur] at least for the purpose of cremation and arrest later, if needed by the police", thus seemingly confirming that Hardeep Singh, Amarjit Singh and Nasib Kaur were kept in custody as of 12 August 1993. Shri Raminder Singh, sub-divisional magistrate for Ludhiana, was asked to conduct the magisterial inquiry, but its results are not known to date. However, Hardeep Singh, Amarjit Singh and Nasib Kaur were not released in time for Harjit Kaur's cremation on 13 August as the Deputy Commissioner had directed, although Nasib Kaur was released on 15 August. On that day, further appeals were made in person to the Deputy Commissioner and the SSP for Jagraon for the release of the two men. Jagjeet Singh, President of the Marxist Forum, and Mohinder Singh, a Latala village leader, swore in court that the SSP had assured them that Hardeep Singh and Amarjit Singh would be released the following day, 16 August, thus admitting that both men were still in police custody. Amarjit Singh was released, on 19 August, but not Hardeep Singh.

On 27 August a *habeas corpus* petition – no. 543 of 1992 – was brought in the Punjab and Haryana High Court. SSP Swaran Singh and SHO Darshan Singh denied any responsibility for Hardeep Singh's arrest and illegal detention, claiming that he was "not at home". They also denied that Hardeep Singh, Harjinder Kaur, Amarjit Singh and Nasib Kaur had been beaten by police even though Harjinder Kaur's post mortem report of 12 August 1992 clearly established that she had died "due to haemorrhage and shock as a result of extensive injuries". The report noted "blueish red contusions" across Harjinder Kaur's abdomen, the top of her left shoulder and on the front and back of her left and right thigh. There were "partially scabbed abrasions" on the middle of her back and right elbow. Her thighs were "badly crushed

and lacerated". Most unconvincingly, the post mortem report recorded that according to the police she had died because a buffalo had fallen on her. Both policemen even denied that Amarjit Singh and Nasib Kaur had been detained by them.

All that the police admitted was that Hardeep Singh had been arrested, claiming, however, that this did not happen on 11 August in Latala village but at 9.30 pm on 15 August in Kalakh village and that police officer Bakhsish Singh had been responsible. The police claimed that Hardeep Singh had admitted under interrogation that day that he knew where certain arms were hidden and that on 16 August, en route to recovering these arms, Hardeep Singh "escaped" from the police party. This conflicts with the sworn testimony of Deputy Commissioner S.S. Channy which apparently confirmed that Hardeep Singh was already detained as of 12 August. The Deputy Commissioner also stated in court that:

*"as per information received from respondent [SSP Swaran Singh] the kins of the deceased [ie. Amarjit Singh and Nasib Kaur] were released after necessary interrogation except Hardeep Singh son of Mohinder Singh, who was arrested in case F.I.R. No.66 dated 11.8.1992 u/s 212/216 IPC, 25/54/59 Arms Act and 3/4/5/TDA (P) Act, P.S. Dehlon..."*

It should be noted that this statement contradicts the police denials that Amarjeet Singh and Nasib Kaur had been arrested and also that the FIR, registering the case against Hardeep Singh, was dated 11 August – the actual date that he "disappeared" – and not 15 August, when the police wrongly claimed that he had been arrested. On 18 November 1992, Justice G.S. Chahal, having heard the contradictory evidence, ordered a judicial inquiry into Hardeep Singh's "disappearance". He directed that it should be held by the Sessions Judge from Ludhiana and be concluded within three months. The results of the inquiry are not known a year later.

Cases against the police are not known to have been registered, as had been promised. The refusal of the police to discipline its members became evident in October 1992 when Inspector Darshan Singh – who had been transferred following the agreement between the Deputy Commissioner and the SSP – was posted back to the Dehlon police station. He allegedly intimidated relatives of Hardeep Singh and Harjinder Kaur as well as others connected with the case.

Unfortunately, in other cases, the courts failed to take any decisive action when parents of the "disappeared" asked them to intervene to save the lives of their children.

For example, **Jasbir Singh**, son of Nirmal Singh, resident of Doraha village, P.O. Doraha Mandi, Ludhiana district, "disappeared" on 31 December 1990. He was reportedly taken away during a police raid headed by Inspector Harbans Singh from the Central Investigations Agency, Samrala, and Inspector Harish Chander from Samrala police station. Two dozen other young men were also arrested after they had attended a religious ceremony in Bhagwanpura village on 28/29 December. The same evening Nirmal Singh, Jasbir Singh's father, was arrested by police from Sadar Khanna police station, but released on 4 January 1991.

On 3 January a friend of Jasbir's father cabled the Punjab and Haryana High Court requesting the court to intervene and treat the telegram as a *habeas corpus* petition. The court did so. In the following days, cables were also sent to the Governor of Punjab, the Home Secretary and to Paramjit Singh Sandhu, SP at Bhatinder. Village leaders wrote to S.J.S. Khera, SP.

The CIA Staff, Samrala, and police from Samrala denied in court abducting Jasbir Singh or his father, Nirmal Singh. On 8 April 1991 the judge dismissed the petition on the strength of the police denials alone. He refused permission for a judicial inquiry into Jasbir Singh's "disappearance". His whereabouts are still unknown.

**Punjab police responsibility for 'disappearances' elsewhere in India**

**Grave human rights violations by the Punjab police are no longer confined to Punjab itself. In the last two years, they have reportedly crossed the state borders to**

arrest and even kill suspected government opponents in other Indian states, apparently without even informing the state police. Indian law forbids the police from one state to make arrests in another state without prior permission from the local state police concerned. The "disappearance" of Gulshan Singh, Umrao Singh and Gurjasbir Singh are examples of such blatantly illegal Punjab police practices which have, this year, been carried out in West Bengal, Bombay, Uttar Pradesh and even Delhi itself, leading the Chief Justice of India in September to state in the Supreme Court that the credibility of the state government and its police force was in question.

After the shooting of a Sikh couple in Calcutta on 17 May, widely attributed to a plain clothes commando unit of the Punjab police from Sangrur operating without informing the state authorities concerned, *The Telegraph*, Calcutta, of 29 May 1993 reported that:

*"The Union and State Home Ministry are flooded with complaints from many states, besides West Bengal, including Gujarat, Himachal Pradesh and Jammu and Kashmir against the highhandedness of the Punjab police. Only the Uttar Pradesh government has withstood the Punjab police operations..."*

The Pioneer wrote on 16 July 1993 that:

"Local papers reported the incident as an attack by terrorists dressed as policemen. Ironically, that is an appropriate description of the way the Punjab Police has been summarily executing militants and suspected militants".

However, Punjab's DGP, K.P.S. Gill, simply denied that Punjab police were responsible for the killings despite strong evidence from official sources to the contrary. Moreover, he reiterated in an interview with *The Telegraph*, Calcutta, of 4 June 1993 that he would continue "hot pursuit" raids against suspected Sikh militants in other Indian states under "Operation Chase". Gulshan Singh is one of the victims of that strategy.

There is strong evidence that Gulshan Singh, an employee of the Trade Fair Authority in Delhi, and son of K.K. Josh from Amit Vihar, Delhi, was abducted by Punjab police on 3 April 1993, without the Delhi police being informed. He had first been arrested in May 1992 and charged in connection with a bomb attack on Jagdish Tytler, the then Union Minister for Surface Transport. In June 1992 he was released on bail but police from the Operation Cell in Delhi kept him under constant surveillance. On 3 April 1993 at 10 pm when Gulshan Singh had completed his regular worship at the Gurdwara Nanak Piao, a Sikh temple in north-west Delhi, several witnesses saw and testified in court that he was bundled into a white Maruti van, without number plates, by five men in plainclothes and driven away. Gulshan Singh's father immediately cabled the Governor of Delhi, the Commissioner of Police and the Home Secretary but received no reply. On 5 April he brought a *habeas corpus* petition - no. 226 of 1993 - in the High Court of Delhi. The Court ordered the Delhi Police Commissioner to produce Gulshan Singh in Court on 12 April 1993. On 8 April 1993 Inspector/Administrator Jai Pal Singh of Delhi's Operation Cell informed the High Court that Gulshan Singh had not been arrested by the cell and was not wanted in any of their cases. A.K. Sinha, Deputy Commissioner of Police added on 13 April that Gulshan Singh was also not in custody of three other Delhi police stations. Gulshan Singh's father said that his suspicions increased when an employee in his son's office told him that between 6 and 12 April an Assistant Sub-Inspector from the Intelligence branch had called to say that Gulshan Singh should be removed from the employer's list because he was in detention. On 13 April Gulshan Singh's paternal uncle reportedly received an anonymous phone call indicating that Gulshan Singh was in police custody at Gurdaspur. On 20 April 1993 a report in *The Statesman*, Delhi, confirmed his illegal arrest by Punjab police:

"Official sources said that Gulshan Singh was picked up by Punjab police... on April 7... It is learnt that Punjab Police had taken the accused to Punjab for interrogation

in connection with a case in Amritsar. Sources added that the operation was conducted by Punjab Police without informing the Delhi police. Official sources in the Ministry of Home Affairs said that only the Intelligence Bureau had been informed about the operation, conducted by a team of Punjab Police headed by a DS. Sources added that it was in violation of the jurisdiction of Delhi police as any State police force is required to inform the local police before undertaking such an operation. Punjab Police have repeatedly been accused by police forces in Delhi and UP of making incursions into their territory without prior information and sanction."

On the basis of the new information, the Delhi High Court on 21 April ordered the Punjab state government to answer the habeas corpus petition and produce Gulshan Singh before the court on 3 May 1993. However, this did not happen and the police continue to refuse to disclose where he is.

Punjab police are also believed to be responsible for a "disappearance" in the state of Madhya Pradesh. Although they have denied this, their statements clearly contradict press reports quoting local police saying that police from Punjab had come to Madhya Pradesh state to make the arrest.

The victim is **Gurjasbir Singh**, who had worked as a truck driver in Bhilai, Madhya Pradesh. On 13 August 1992 Punjab police reportedly took him away from the house of a friend in Bhilai. On 14 August his wife, Narinder Kaur, cabled Gurjasbir's father in Delhi about his son's arrest. A local Madhya Pradesh paper, the *Daily Desh Bandhu*, published an article on 15 August 1992 quoting D.P.S. Thakur, Additional Superintendent of the local police, as saying that twelve police led by Sub-Inspector Makhan Singh had come from Jullundur, Punjab, on 12 August, stayed overnight at the Kesari Lodge and had arrested Gurjasbir the following day. They had used a car without number plates before returning to Jullundur. The Punjab police were said to be accompanied by an informer whose face was covered and who apparently identified Gurjasbir Singh before his arrest. The local police claimed that the Punjab police had not informed them that they intended to arrest Gurjasbir Singh.

Narinder Kaur then went to Punjab to search for her husband. She went to Jullundur, where she was told that Gurjasbir Singh had been arrested by the SP (Operation) Longo, Hoshiapur. But then she saw her husband's name mentioned in the *Indian Express* of 1 September 1992. It described him as "dreaded militant Gurjasbir Singh, Lt. General of Khalistan Commando Force in Hoshiarpur who was wanted in connection with a bomb blast on the Deputy Commissioner of Police in Delhi 1990". It quoted the Hoshiapur police as saying that he had been arrested on 31 August near Cholang village. However, when she contacted the Hoshiapur police, they denied any knowledge of her husband's custody.

On 6 September Gurjasbir Singh's mother cabled the Punjab and Haryana High Court asking the court to intervene because she feared her son would be killed in an "encounter" staged by the police. On the same day the *Punjab Kesari* published a report that Gurjasbir Singh had escaped from police custody at village Syal, Khurd, district Hoshiarpur. The High Court apparently failing to respond to the family's plea, Narinder Kaur brought a habeas corpus petition - no. 6 of 1992 - in the Supreme Court, Delhi on 17 September. The Supreme Court, which has rarely intervened in "disappearance" cases involving alleged militants, ordered that the High Court of Punjab and Haryana should deal with it.

On 18 November 1992 the Hoshiapur police admitted in court that they had arrested Gurjasbir Singh but denied that they had done so in Madhya Pradesh on 13 August. In his affidavit Harbhajan Singh, DSP Hoshiapur, reiterated that Gurjasbir Singh had been arrested on 31 August at Cholang village, with arms and explosives, that he had been presented before the Judicial Magistrate of Dasuya the following day, on 1 September, and had been remanded in police custody until 6 September. Claiming that Gurjasbir had admitted to hiding arms at his house in Delhi, the police said they had taken him there on 4 September to recover these weapons. But he "escaped"

en route, even though he was outnumbered by several armed policemen. In language identical to numerous similar apparent attempts to cover-up what are widely believed to be murders of prisoners in custody in Punjab, the police claimed:

“When the police party reached near Saila Khurd at about 4 a.m. accused Gurjasbir Singh requested to the police party that he wanted to ease himself. On this ASI Jalwant Singh, Constable Sadhu Ram had opened the handcuffs from his belt. In the meantime accused Gurjasbir Singh had managed to fled away along with handcuffs from police custody...accused Gurjasbir Singh is still absconding.”

Such explanations cannot be accepted as credible without further corroboration in view of the false statements the Punjab police have made about Gurjasbir Singh's illegal and unacknowledged arrest in Madhya Pradesh. The outcome of the *habeas corpus* petition is not known.

#### The targeting of human rights activists

Increasingly, the police are reportedly targeting journalists and lawyers who have tried to expose human rights violations by the security forces in Punjab by making them suffer such violations themselves. The examples given below also clearly illustrate government complicity in unacknowledged detentions. The “disappearances” of the following men provoked strong protests from lawyers and journalists as well as numerous appeals from abroad. Yet, with the exception of Malwinder Singh Malli, protests have failed to elicit any substantive government response as to what happened to them. Nor was an inquiry ordered into their “disappearance”.

Ram Singh Biling, a 35-year-old journalist from Tathogal village, Malerkotla subdivision, Sangrur District, was picked up by police at 8.45 am on 3 January 1992 at a police check post in Bhogiwal village while travelling by bus from Malerkotla to Jalandhar. Previously, his house had been raided by plainclothes police on 25 and 26 December 1991.

Ram Singh Biling wrote for two Punjabi papers, *Az di Awaz* and *Ajit* published in Jalandhar. He was also district secretary of the Punjab Human Rights Organization (PHRO) which has frequently reported on “disappearances” and other alleged human rights violations by the Punjab police. The PHRO expressed concern that it was this involvement that might have prompted his arrest. Together with fellow journalist, Malwinder Singh Malli – whose “disappearance” is described below – he had initiated legal action in the Punjab and Haryana High Court in Chandigarh on behalf of two young Sikh detainees .

Ram Singh Biling was reportedly taken to the police check post of Lohat Baddi, where he was recognised by Gurcharan Singh, a farmer from Palasour village. Ram Singh Biling managed to talk to him and said that he feared he might be tortured and killed in custody. The next day Ram Singh Biling's uncle together with village elders went to Lohat Baddi police post. They say that they saw him but were not allowed to speak to him. On 6 January a village delegation met the SSP for Sangrur. He first denied that Ram Singh Biling had been detained, but when he was told that the villagers had seen him in police custody he said that other security forces could have ordered his detention and reportedly admitted that he was being kept temporarily at the Lohat Baddi police post. He promised an inquiry. The Indian Express of 23 January reported that the SSP had asked a police detective to carry out the inquiry. The results are not known.

Reports about Ram Singh Biling's abduction appeared in Punjabi newspapers and also in the *Indian Express* and *The Hindustan Times*. Journalist unions demanded his release. Numerous cables were sent to the Governor of Punjab, the DGP and the Chief Justice of Punjab and Haryana High Court requesting intervention. In May 1992 twenty members of Congress of the United States appealed to the Prime Minister of India. However, the government has maintained absolute silence about his fate or whereabouts. *India Today* reported on 15 October 1992 that, when asked by the central government, the Sangrur police had claimed: “Biling was neither wanted nor arrested

**by us", but that a police Inspector General posted in Chandigarh had admitted that Biling had died at the police's hands, apparently, from torture.**

Malwinder Singh Malli is a journalist for the Punjabi Tribune and was editor of Paigam, a left-wing monthly publication. He worked closely with Ram Singh Biling. Initially kept in secret detention for several days, his arrest was acknowledged and he was released after spending seven months in detention without trial. His case illustrates the police harassment to which those publicising human rights violations continue to be subjected.

In 1991 Malwinder Singh Malli became General Secretary of the PHRO and documented human rights abuses by police in Sangrur district. According to the PHRO, he was arrested on 23 August 1992 while travelling by bus from Dhury to Malerkotla. His arrest may have been connected with legal actions he had initiated on behalf of victims of "disappearances" and extrajudicial executions. In August 1991 he had urged the High Court of Punjab and Haryana to intervene to protect Harjinder Pal Singh who had reportedly been kept in unacknowledged detention since 18 August. Malwinder Singh Malli claimed that Harjinder Pal Singh was detained at the CIA interrogation centre at Ladha Kothi and was later killed by police in a false "encounter" on 9 September. He then initiated contempt of court proceedings against the SP for swearing false affidavits and the High Court issued a contempt notice in November 1991. Malwinder Singh Malli claimed that two weeks after this the police started to harass him.

First, he claimed, the SSP at Sangrur threatened him that if he did not withdraw from the Harjinder Singh case he would himself be arrested by the police since such a focus on specific human rights violations served to demoralize the police. Malwinder Singh Malli's house, he said, was raided on 17 December 1991 by the CRPF and on 24 and 25 December by CIA staff from Ladha Kothi interrogation centre, arriving in plain clothes. He received threats that his wife and son would be kidnapped. After that Malwinder Singh Malli, his wife and son went into hiding. Eight months later he was arrested. Numerous appeals were sent from abroad, expressing concern for his safety.

On 4 November 1992 the Indian High Commission in London responded to appeals sent by Amnesty International. Although Amnesty International believes his arrest took place on 23 August 1992, the government put the date at 27 August 1992. Amnesty International believes that the arrest date was changed to give legal sanction to his arrest: the government maintains that Malwinder Singh Malli was brought before a Judicial Magistrate at Sangrur on 27 August which complies with the legal requirement that all arrested persons be brought before a magistrate within 24 hours of arrest. The magistrate ordered his detention under the National Security Act. He was held without charge of trial for seven months and released sometime in March 1993.

Jagwinder Singh, a 24-year-old lawyer, was taken from his home by the Kapurthala police on 25 September 1992. His wife, Naseeb Kaur, and father who were in the house and witnessed his arrest, swore an affidavit that at 6.30 am:

"three policemen in uniforms armed with weapons entered the house... and inquired about Jagwinder Singh, advocate... That the policeman wearing the uniform of the rank of Sub-Inspector said to Mr Jagwinder Singh, advocate, to accompany with [him] on the pretext of being called by the SSP, Kapurthala. They further told the [father] and Jagwinder Singh advocate, that they are from the CIA staff, Kapurthala. That the [father] and his [Jagwinder Singh's] wife can identify the policemen if they are brought before us."

On 26 September 1991 the Kapurthala and Jalandhar District Bar Associations went on strike to protest against his arrest. Lawyers also visited the SSP Kapurthala and the DIG. However, both police officers denied any knowledge of Jagwinder Singh's arrest or whereabouts.

Through September and October lawyers in Punjab continued to protest. On 4 October the Chief Minister, Beant Singh, reportedly promised a deputation of lawyers that he would reveal the whereabouts of Jagwinder Singh in the presence of the DGP and the SSP, Kapurthala, thus apparently admitting to his arrest. On 13 October the Finance Minister, Kewal Krishan Sharma, informed the District Bar Association that the Chief Minister had formed a Committee to investigate Jagwinder Singh's "disappearance" and that its outcome would be known within a week. This promise not having been met, the lawyers held a rally on 30 October outside the offices of the SSP, Kapurthala, who denied that Jagwinder Singh was in custody.

On 5 November Chief Secretary A.S. Chatha said that his whereabouts would be clarified. This again turned out to be a false promise and Jagwinder Singh remains a victim of "disappearance" whose fate and whereabouts are unknown.

Although Amnesty International is deeply concerned that numerous national and international appeals have failed to bring about the release of numerous "disappeared" people in Punjab, it welcomes the recent release of one lawyer and human rights activist who had been kept for three weeks in secret detention.

Like Malwinder Singh Malli, 35 year-old **Jaspal Singh** was an active human rights advocate. He lives in Chandigarh, is politically active and, as President of the Ropar Unit of the PHRO, had acted on behalf of many victims of human rights violations. Following several raids on his house since April 1993, which prompted Amnesty International to appeal for assurances from the government that Jaspal Singh should not be harassed and be treated strictly according to the law, he was abducted shortly after leaving his home at 4.30 pm on 16 August 1993. He had told his family he was going to the police who wanted to see him. A habeas corpus petition of 19 August 1993 resulted in an order of the High Court of 1 September to produce him in court by 9 September. Just before that hearing, on 9 September, Jaspal Singh was, fortunately, released. Throughout his detention, however, senior police officials had denied he was kept in custody.

#### **IV. IMPUNITY: THE LACK OF LEGAL SAFEGUARDS AND ACCOUNTABILITY**

Important legal safeguards, some of them summarized in the Introduction to this report, unfortunately do not exist for the numerous people arrested under special and preventive detention laws in force in Jammu and Kashmir and Punjab. For example, Article 22 (Clause 2) of the Constitution obliges the authorities to bring all arrested persons before a magistrate within 24 hours of arrest, to inform them as soon as possible of the grounds for their arrest and to permit them to consult a lawyer of their choice. However, all those measures, so important to protect people from arbitrary imprisonment 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). Indeed, preventive detention laws now in force for many years in both states do not contain any such safeguards to protect against human rights violations. Moreover, special legal provisions in force in both states contravene some of the most important human rights standards provided in international human rights instruments, notably the right to life and the right not to be subjected to arbitrary arrest and detention.

#### **Preventive detention laws**

In Punjab, the National Security Act, 1980 (NSA), which normally permits people to be detained without charge or trial to prevent them from acting "in any manner prejudicial to the defence of [or] the security of India..." was amended in 1984 and empowers the government to hold people for an extended two year period.

In Jammu and Kashmir, the **Jammu and Kashmir Public Safety Act** (PSA) has been in force since 1978. Like the NSA, it grants extensive powers to the government to detain people for a maximum of 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). The latter action is defined



to include “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, in effect, for simply questioning whether Jammu and Kashmir should remain part of India. This contravenes their right to peacefully express their opinions. Furthermore, although the original Act obliged the authorities to inform an arrested person of the grounds for arrest, normally within five days, Section 13 of the Act was amended in 1990 removing any such obligation. In fact, lawyers report that it is common practice not to inform detainees held under the Act of the grounds for their detention. Detention orders often conclude:

*“The disclosure of the specific grounds at this stage will hamper the further investigations and will also cause prejudice to the security of the State. Therefore, the specific grounds of your detention are not being disclosed [to] you in the public interest in pursuance of Subsection 2 of Section 13 of the Jammu and Kashmir Public Safety Act, 1978.”*

Equally, grounds for detention can be withheld from persons detained under the NSA for reasons of “public interest”. These legal provisions are clearly incompatible with the requirements of Article 9 (2) of the ICCPR, which obliges India to ensure that all arrested persons shall be informed at the time of arrest of the reasons for the arrest and be promptly informed of any charges against them.

Both the NSA and the Jammu and Kashmir PSA require that persons held under its provisions be brought before an Advisory Board – consisting of persons qualified to sit as High Court judges – within seven and four weeks respectively, although numerous detainees have complained that they were never brought before the Board or did not appear before it within the period stipulated by law. However, even as they stand, these provisions contravene Article 9(4) of the ICCPR, prompting a member of the Human Rights Committee monitoring the implementation of the ICCPR to observe: *“these are periods that are very considerably longer than would be compatible with Article 9(4) of our Covenant... There is no provision under the National Security Act that requires a person to be brought forward promptly. In that context the Attorney General [of India] 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.”*<sup>10</sup>

Furthermore, of specific concern in Jammu and Kashmir is the 6 February 1990 Amendment to the Jammu and Kashmir PSA which, by removing the words “in the State” from Section 10 of the Act, permits the authorities to detain people in any part of India. Hundreds of detainees from Kashmir have reportedly been held in states far removed from Kashmir. If the authorities refuse to disclose the place where people are held, their relatives will be unable to locate them if the detainees are held outside Jammu and Kashmir. Once they have come to know that a detainee is held in such a place, the costs of travelling to faraway places makes it practically impossible for relatives to meet detainees or to arrange any legal assistance for them.

### **Special Laws**

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 (Badgam, Srinagar, Anantnag, Baramulla, Kupwara and Pulwama). In such disturbed areas the armed forces and paramilitary forces are granted sweeping powers under Section 4(c) of the **Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, to:**

***“arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest.”***  
Although Section 6 of the Act requires the army to hand over all arrested persons

to “the nearest police station with the least possible delay”, this provision is apparently routinely violated by the army and paramilitary forces making arrests in Jammu and Kashmir. The same Act also provides broadly defined powers to shoot to kill in section 4, and the security forces acting under its provision are granted virtual immunity from prosecution (see below).

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), replacing and strengthening a May 1985 Act of the same name, which was introduced as a temporary provision, also facilitates “disappearances”. The wide powers of arrest granted to the police under the Act, combined with the absence of fundamental legal safeguards for detainees, creates a climate which encourages abuse of power and facilitates illegal and secret detention. The *Indian Express*, in an editorial of 13 October 1993, spoke of the “blatant and widespread violation of civil rights that TADA has come to represent” and that “During the eight years it has been in force it has been widely misused and proved to be less than useful against the genuine militant in Punjab...”

The Act has been in force in both Punjab and in Jammu and Kashmir since 1985. TADA has often been cited by police in Punjab in cases where people held under its provisions have “disappeared”, the police claiming that they “escaped” from custody. Police reportedly often threaten civilians with arresting them on false charges under the Act's sweeping provisions. According to *The Hindustan Times* of 17 May 1992, reports that the Punjab police had abused the broad powers given to them under the Act to extort money were admitted by senior police officials.

Section 4(2) in particular provides wide scope for abuse. It permits people to be arrested on suspicion of having committed “disruptive activities” 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...”

Thus, any individual who advocates the establishment of “Khalistan” or any person discussing the possibility of holding a plebiscite in Jammu and Kashmir to determine the State's future can be detained without trial under the Act's sweeping provisions. TADA had allowed for detention for investigation for up to one year without charge (normally that period is strictly limited to 60 or 90 days), although a May 1993 amendment to the Act reduced that period to six months. People can be arrested on mere suspicion and can be held for prolonged periods in police custody, where torture is most likely to occur. Indian law normally restricts police custody to a maximum of 15 days (Section 167 Code of Criminal Procedure), but TADA extends the period to 60 days (Section 20 (4)(b)).

Although the government has informed Amnesty International that “the accused under TADA is in judicial custody under valid and bona fide and legal order of a competent judicial authority”, this is in fact not the case. The normal law, in section 167 of the Code of Criminal Procedure, requires a judicial magistrate – who is an independent judicial official acting under the supervision of the High Court – to authorize a detention. TADA, instead, transfers these powers to a “Judicial Magistrate, Executive Magistrate or Special Executive Magistrate” (Section 20 (3) TADA): the latter two officers are appointed by and responsible to the Executive, and are not required to have had any legal training. Thus, judicial control over TADA detentions is not guaranteed.

Trials are by Special Courts sitting *in camera* and the identity of witnesses can be kept secret. These provisions clearly contravene Article 14(1) and (3) ICCPR. A member of the Human Rights Committee examining these and other provisions of TADA described them as “disturbing” and incompatible with Articles 9 and 14 of the ICCPR.<sup>11</sup>

In India, a leading human rights lawyer concluded:

*"The procedural provisions of TADA are unjust and unreasonable not only in regard to the accused, but in regard to the society as a whole. In the first place, the TADA provisions lead to unjustified arrests of innocent persons, their detention in police and judicial custody for long periods and their conviction even when they may be innocent. The injustice so caused leads to intense dissatisfaction among the relations and friends of the persons accused and tried under the TADA and thereby swells the ranks of terrorist gangs. The arbitrary power given to the police by the TADA are justly described as amounting to "State terrorism" which is clearly counterproductive because it feeds the flames of terrorism.*

*Secondly, the grant of arbitrary powers to the police increases the prevailing corruption in the police force to a very substantial extent. These conclusions are borne out by the experience in Punjab, Kashmir and elsewhere. From both the individual and social point of view, the TADA provisions are unjust and unreasonable and should be struck down as violative of Article 21 of the Constitution."*

The gross abuse of the Act's broad powers has also prompted calls from many people, including members of the ruling Congress party itself, to withdraw its provisions. In July 1992 Jagmeet Singh MP (Congress) told parliament that the special powers given to the police in Punjab were being grossly misused, even to the extent of encouraging the killing of innocent people, and that the government should withdraw its provisions (*The Statesman*, 16 July 1992). More than 1,000 TADA petitions have been kept pending for years in the Supreme Court, some of them challenging the constitutional validity of the Act, but the Supreme Court has not decided the issue and the Indian Government has failed to bring TADA's provisions in line with the ICCPR as the Human Rights Committee in 1992 strongly urged it to do.

#### Lack of accountability

It is extremely important for police, paramilitary and army personnel to be held accountable both in law and in practice whenever they violate human rights. Doing so is not only the best evidence that a government can give to show that it does not tolerate such practices; it is also one of the most potent measures to prevent the future occurrence of grave violations of human rights such as those described in this report. The UN Working Group on Enforced or Involuntary Disappearances underlined this in its 1990 report:

*"Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military will become all the more brazen when they are not held to account before a court of law"<sup>12</sup>.*

However in India such prosecutions are extremely rare, especially in Jammu and Kashmir and even more so in Punjab, a state where no such prosecutions have been recorded at all. As regards "disappearances", Amnesty International does not know of a single case in either state in which the perpetrators have been brought to justice.

Indian laws discourage prosecutions against officials. Both the NSA (Section 16) and the Jammu and Kashmir PSA (Section 22) prohibit legal proceedings against officials for acts "done in good faith" under the Act. TADA, in Section 26, prohibits in even stronger terms legal action against anyone "purporting" to exercise powers in good faith in accordance with the act, thus providing virtual immunity from prosecution, as does Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act. That section provides that unless previous sanction of the Central Government has been obtained, "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". Examining India's second periodic report, one member of the Human Rights Committee remarked:

*"In the section which gives immunity both from prosecution and from civil process I find a very dangerous word here. It says 'no prosecution, [etc.] against any person in respect of anything done or purported to be done'. Purported is the dangerous thing because anyone killing anybody can say 'Well I thought I was performing my functions'. It is a highly dangerous one [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... This is a very, very serious matter."*

India's then Attorney General replied that if an officer had exceeded his powers, the government would grant permission to prosecute him. Last November in Delhi, Amnesty International asked the Indian Government for statistics describing how often such permission had been granted. However, to date, no such statistics have been provided.

In Punjab, Amnesty International does not know of any police officer who has been brought to justice for committing any of the numerous and grave human rights violations reported in the state, and the state government has explicitly made it clear it has no intention of doing so. In November 1990 the DGP opposed the suggestion by Punjab Home Secretary Ajit Singh Chatha and Governor's Advisor P.S. Kohli that legal action should be taken against police who had perpetrated human rights violations. He said that it would "demoralize" the police force. This year, the same type of excuse was given by Chief Minister Beant Singh who told the press on 4 February 1993 that the Punjab police would not be "screened and cleaned up" as it could hamper "anti-terrorist operations". Contradicting the statement by Punjab's DGP, K.P.S. Gill, reported a few days earlier that at least 400 police were suspected of committing "excesses" during "flush-out operations" in Punjab, the Chief Minister was quoted as saying that reports of police atrocities were "baseless and concocted" (*The Telegraph*, Calcutta, 6 February 1993). In a subsequent interview published on 15 April 1993 in *India Today* K.P.S. Gill this time not only denied allegations of abuses by police but also made it clear that they were neither his nor the state's responsibility:

*"Q. But aren't there credible allegations of your officers having killed people in custody?"*

*A. My orders to my officers are clear – stay within the law. Still, if an officer has done something wrong, it is between him and his maker."*

In Jammu and Kashmir the situation is different. Although government responses about human rights remain ambivalent and generally tend to deny specific allegations of violations, officials have this year begun to acknowledge that some violations have been perpetrated in the state and that the government does not tolerate them. On 4 April 1993 the *Kashmir Times* reported the newly appointed Governor of Kashmir K.V. Krishna Rao telling police and paramilitary officers that there should be "no mishandling, public harassment and custodial death" and that "jawans [soldiers] and commanders should carry out anti-militant operations in a proper manner leaving no scope for complaint". However, in the same article he reportedly said that allegations of human rights abuses committed by the security forces were "baseless". The paramilitary forces themselves tend to excuse abuses as inevitable. On 18 April 1993 a BSF officer was quoted in *The Pioneer on Sunday* as admitting:

*"The militants are not easily identifiable which compels us to use a heavy hand...Frankly, given the situation, wherever forces are deployed excesses are inevitable. Whenever one of our boys gets killed, the others become very difficult to control."*

An encouraging sign is that the state government, for the first time since 1990, has ordered one independent and impartial investigation into a particular incident involving large scale human rights abuses: the extrajudicial execution of dozens

of men and women in Sopore in January<sup>13</sup>. Furthermore, the government has repeatedly said it is making attempts to discipline its forces and take measures against perpetrators of human rights violations. However, the information the government has provided about such measures is contradictory and fails to provide a clear picture about what action has been taken in response to specific allegations of violations. During its November 1992 discussions with Indian Government officials, Amnesty International was told that action had been taken against 230 members of the security forces in Jammu and Kashmir, although its repeated requests for further details of the specific action taken, by which body and for what offence, failed to elicit a response from the government, apparently on the grounds that such information would demoralize the security forces in Kashmir<sup>14</sup>. However, India's representative gave different figures to the United Nations Subcommission on 13 August 1993 saying that 141 officers had been punished including 45 imprisoned. DGP B.S. Bedi told *The Los Angeles Times* on 29 August 1993 that 161 soldiers had been punished or were investigated, whereas the Minister of State for Home Affairs said on 6 July 1993 that 135 members of the security forces were awaiting trial or had been punished for committing human rights violations.

In so far as can be assessed, the government's response so far appears to reflect an entirely inadequate reaction to bring about a reduction in the high level of serious and gross human rights violations being perpetrated in the state. The most that usually happens is that some officials implicated in the crime are suspended from duty. For example, one of the few cases in which official action is known to have been taken is that of the widely publicized rape of the teenage bride, Mubina Gani in May 1990 by BSF soldiers. Amnesty International was told by the government that seven BSF personnel have been suspended, that a staff court of inquiry blamed two constables for the rape and two others for not exercising proper control and that a BSF court would try the accused. However, as of May this year, the trial was not known to have been started.

Amnesty International knows of only two cases in which members of the security forces have reportedly been sentenced to undergo terms of substantive imprisonment for perpetrating human rights violations, and one of these cases had attracted considerable international protest, because a foreign national was involved. Two members of the security forces were reportedly sentenced to 10 and 12 years' imprisonment respectively for raping a Canadian tourist in October 1990. Recently Amnesty International was told by the government that 4 soldiers had been court martialled and sentenced to ten years imprisonment for raping a woman, Nazira Jan, a mother of four children, on 25 May this year at Zainakote in Srinagar. A medical report apparently confirmed the rape. According to press reports, soldiers had threatened to kill her whole family if she reported the incident to the police.

Although such convictions, however few, set an important precedent in establishing the principle of accountability for human rights violations, numerous other serious human rights violations go unpunished. One example is the October 1992 allegations of rape of between six and nine women by four soldiers in Chak Saidapora, Shopian. Although medical examinations carried out by independent doctors within hours of the army search operation found evidence that six women had been raped, and although journalists and a civil liberties group travelling to the village confirmed the allegations, a probe by a senior police official simply dismissed the reports in June as "false and incorrect". Such actions, together with the Indian Government's repeated denial of responsibility for illegal detentions and "disappearances", as described below, suggest that in practice the Indian Government sanctions the illegal methods resorted to by the security forces in their attempts to crush the rebellion in Jammu and Kashmir.

A hopeful sign that this could change is the reported decision of the government

to adopt a more open policy on human rights questions involving the security forces in Punjab and Jammu and Kashmir. *The Indian Express* reported on 28 September 1993 that Home Minister S.B. Chavan had written to the Chief Minister of Punjab and the Governor of Jammu and Kashmir to say that inquiries into allegations of human rights violations should be more transparent, that stringent punishment should be given to law enforcement officials breaching the law and that details thereof should be made public. Such measures, if implemented, could go a long way in reversing the tide of events.

#### Government response to concern expressed by the international community about 'disappearances'

In general the Indian Government has responded to allegations of "disappearances" by denying them. In a note verbale dated 8 January 1992 to the United Nations Working Group on Enforced and Involuntary Disappearances, the government stated that allegations of human rights violations made against members of the security forces were mostly found to be inaccurate, highly exaggerated or deliberately false. When allegations had been borne out, disciplinary action had been taken against those responsible<sup>15</sup>.

The UN Working Group received reports of "disappearances" mainly from Jammu and Kashmir, Punjab and Assam. A total of 169 cases had been transmitted to the Indian Government as of 1 January 1993, of which only 18 cases had been clarified (See Chapter I).

As regards Punjab, the only detailed response to allegations of "disappearances" which Amnesty International received was the 31-page reply which the government sent on 9 May 1991 to Amnesty International's report: "Human Rights Violations in the Punjab: Use and Abuse of the Law". Amnesty International welcomed it as the first response of its kind, but was disappointed by its contents which, in denying responsibility for the "disappeared", merely appeared to restate police versions of events and failed to substantiate denials by referring to relevant official or judicial investigations.

Amnesty International's report had listed 14 Sikhs who had allegedly "disappeared" after arrest by the police and three who were said to have "escaped" from custody<sup>16</sup>. So far, the government has failed to comment on six of these, namely the "disappearances" of Baljinder Singh from Amritsar, on 9 June 1989; Jasbir Singh from Bhikki, Bhatinda District, on 6 February 1990 (whose arrest was acknowledged on 15 February 1990); Devi Dayal from Suron, Patiala District, on 28 November 1990; Devinder Singh Pujari, from Moraikalan, Rajinder Singh Pappu, from Amritsar, and Jurbaj Singh Jago, from Mehrdipur all sometime in 1989 and last seen in custody on 7 March 1990.

The government denied the arrests of a further six men who "disappeared" despite witnesses testifying to the arrests or reports of their arrests appearing in the local press. Jaswant Singh and Chanan Singh were reportedly detained by police at Dera Baba Nanak police station on 4 October 1990, but the government said they were not wanted in any case there. Parvinder Singh, Balachor, Hoshiapur District, "disappeared" in August 1990. The government said he was a proclaimed offender and absconding. Hardeep Singh from Verka village, "disappeared" on 21 April 1989. Darshan Singh Dalla from Dalla village, Ludhiana district, "disappeared" on 26 March 1988. The government denied both men's arrest. Kushwinder Singh "disappeared" on 21 July 1989 in the presence of witnesses and relatives who claimed he was subsequently twice sighted in custody. The government claimed he was never arrested, that the Punjab and Haryana High Court had dismissed a *habeas corpus* petition about him, but never produced a copy of the court order as Amnesty International requested. The government admitted to only two arrests, but claimed that one person was released and subsequently killed in an "encounter" (as happened with Baldev Singh whom the government claims was killed in such an "encounter" on 6 August 1990 but whose

relatives were still searching for him or his body six months later). The government admitted that the other, Ravail Singh, was detained but said that he had been arrested on 26 July rather than 16 June 1990, when Amnesty International believes he was illegally arrested and detained for one month. To date, the government has failed to inform Amnesty International where he is being held.

As regards the three men who "disappeared" after their arrest, the government claimed that they had "escaped" from police custody: namely Kuljit Singh Dhatt on 25 July 1989, Kulwinder Singh on 22 July 1989 and Jarnail Singh on 15 July 1989. However, they are not known to have returned home. Kulwinder Singh was seen by two prisoners in Patiala after the date of his alleged "escape", whereas the government informed Amnesty International that the Supreme Court had appointed a Commission of Inquiry to investigate the allegations of Kuljit Singh Dhatt's "disappearance", but its outcome is not known.

Since January 1990 Amnesty International issued 19 urgent action appeals on "disappearances" in Punjab. Amnesty International received responses from the government to eight of the 19 appeals. One of them clarified the "disappearance" by reporting that Malwinder Singh Malli was in detention. Five consisted of letters simply saying that Amnesty International's query had been forwarded to Delhi (without further responses being received). In one other (that of Harjit Singh), the government claimed the victim was killed in an "encounter" and in the last case the police simply denied the arrest.

In **Jammu and Kashmir** also, hardly any "disappearances" have been clarified by the government, although Amnesty International was glad to learn that the government responded in September to a recent urgent action appeal on behalf Nazir Ahmad Misri, who reportedly "disappeared" on 7 June this year, by acknowledging his arrest and informing Amnesty International that he "is presently in custody". The government failed, however, to clarify what happened to the other alleged victim of a "disappearance" in the state on whose behalf Amnesty International also issued an urgent appeal: Ashiq Hussain Ganai. He has not been seen since his abduction on 3 March which is described in Chapter II of this report.

In November 1992, Amnesty International gave the government a list of 70 people who had "disappeared" in the state since January 1990. In August 1993 the government responded to all but one of them (the alleged "disappearance" on 1 September 1990 of Nazir Ahmad Teli, son of Abdul Rahim Teli). However, in 66 out of the 69 cases the government failed to clarify their fate or whereabouts, whereas two of those listed were said to be in custody and one was reported to have died. Most cases were simply dismissed as "false" although the government also informed Amnesty International that investigations were in progress in 13 cases of which only one had been concluded, the local police declaring the victim to be "untraced". Nine of those on Amnesty International's list, the government said, had been released, but Amnesty International does not consider these cases to be satisfactorily clarified since no details have yet been given as to where and when the releases took place. In five other cases the arrests were simply denied. The 69 responses are described in detail below.

In 39 cases of "disappearance" the government informed Amnesty International that no report had been lodged with the police stations concerned which led the government to believe that the "disappearances" were "stage-managed affairs to raise the bogey of 'disappearances' before international fora." However, the difficulties encountered by a number of families trying in vain to register reports about arrests and "disappearances" with the police have been described in this report and details of 27 of these 39 cases were in fact submitted to the Jammu and Kashmir High Court in writ petition No. 1601 of 1991 by two civil liberties activists. As far as is known, the government has failed, despite several court orders, to respond to any of them, the High Court agreeing with the two men who brought the petition that

officials were apparently adopting delaying tactics (see Chapter II). Furthermore, the government said that allegations that Abdul Qayoom Sheikh and Mohammed Ashraf Malik, both residents of Mandrowa, Kupwara, "disappeared" in April 1990 could not be investigated for lack of sufficient details. Both these allegations, however, are also the subject of the same *habeas corpus* petition still pending in the Jammu and Kashmir High Court.

The government said that six of the 70 alleged "disappearances" concerned incidents in which militants and other persons had been killed in an "exchange of fire" between militants and security forces. In four cases (of Manzoor Ahmad Nagar, Ali Mohammed, Abdul Majid and his brother, who "disappeared" on 16 August 1992) the government agreed that there had been shooting in the area, but denied reports that the above men were arrested afterwards. In one case (of Riyaz Ahmad Hazar from Dallhassanyar, Srinagar, who "disappeared" on 29 July 1990) the government supplied information concerning another person allegedly missing since another date from another place. The security forces denied arresting Master Abdul Latief, missing since 17 May 1990. The government informed Amnesty International that 13 cases of alleged "disappearance" were under investigation. The outcome of the investigations into the alleged "disappearance" of Shawkat Ahmad Baba on 23 September 1990 is not known. In a further 12 cases concerning the alleged "disappearance" of Shabir Ahmad Darsi, Bashir Ahmad Beg and Abdul Gani Mir (in April 1992), of Mohammed Afzal Sheikh (on 28 December 1990), of Abdul Rashid Pandith (on 10 July 1990), of Ali Mohammed Mir (on 9 August 1990), of Abdul Rashid Malik (on 19 December 1990), of Ghulam Ahmad Malik (on 17 June 1990), of Mohammed Ayub Khan (on 15 October 1990), of Peer Mohammed Shafi Jeelani (on 22 August 1990) and of Khursheed Anwar Bhat (on 25 September 1990), investigations or proceedings under sections 174 and 176 of the Code of Criminal Procedures were in progress. Their outcome is also not known. Furthermore, Latief Ahmad Khan's "disappearance" on 17 July was investigated and the local police, according to the government, closed his case as "untraced".

However, the government told Amnesty International that on investigation of these 13 cases, two men, Bashir Ahmad Beg and Shabir Ahmad Darsi, were found to be in custody and that one man, Abdul Gani Mir, had died (all had reportedly "disappeared" in April 1992), although Amnesty International was not told when the two men were arrested, or where they are being held. Nor was Amnesty International given any details about the reported death of Abdul Gani Mir.

In the remaining nine alleged "disappearances" of Nazir Ahmad Dhar, Mohammed Muzamil Khan, Ghulam Hasan Wani, Mohammed Shafi Dhar, Syed Ahmad Wani, Mohammed Ayub Paddar, Mohammed Yakub Khan and Mohammed Yousuf Rather (in April 1990, 13 December 1990, 15 October 1990, 23 May 1990 and the remaining four on 25 April 1992 respectively) the government said that they had been released, although no details about them were given. Amnesty International is asking to be informed where and when this happened and whether any witnesses were present at the time of release. The organization is concerned that a Chief Judicial Magistrate appointed by the High Court reportedly found evidence of Mohammed Shafi Dhar's arrest and detention. The *habeas corpus* petition about his "disappearance" was reportedly still pending before the High Court as of March 1993, without his whereabouts having been clarified. The government informed Amnesty International that they were investigating the "disappearance" of Rouf Ahmad Shah whom the security forces also reported as having been released, without, however, giving details as to when this happened.

## V. A PROGRAM TO HALT "DISAPPEARANCES"

### I. The Government

Amnesty International recommends that the government take the following steps to clarify "disappearances" and prevent the occurrence of this gruesome form of human rights violations which, in the opinion of the United Nations Working Group on Enforced or Involuntary Disappearances, constitutes "the most comprehensive denial



of human rights of our time"<sup>17</sup>. The recommendations which follow are addressed to the central government and, among the state governments in particular, to Jammu and Kashmir and Punjab, where "disappearances" are systematic practice.

### 1. Commission to Protect Detainees

The Government should establish a Commission to Protect Detainees in states where "disappearances" are often reported. The Commission should be a fully independent and impartial body composed of men and women known for their integrity and impartiality of judgment with a proven expertise and competence in human rights protection. They should have a mandate to effectively protect the rights of all those taken into custody. The formation of such a Commission should be widely publicized so that relatives and witnesses can submit information to it.

The Commission should undertake prompt and thorough inquiries whenever there is *prima facie* evidence that a "disappearance" has occurred, and carry out exhaustive investigations to establish where the "disappeared" are and what happened to them. 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 persons may be held in acknowledged or unacknowledged detention, powers to compel the attendance of witnesses and to see all relevant official records from detaining authorities and obtain other relevant documentary evidence. Failure to cooperate with the Commission should be an offence and the government should take immediate action against any official failing to do so.

The Commission should take care to take all necessary measures to protect witnesses and relatives of persons reported to have "disappeared" from any form of ill-treatment, intimidation or reprisal, in recognition of their particularly vulnerable position.

Inquiries 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 be empowered to make recommendations for interim relief and appropriate redress to the victims of "disappearances" and their relatives.

The Commission should be asked to analyze the factors contributing to "disappearances" as well as the reasons why existing legal mechanisms including *habeas corpus* have failed, with rare exceptions, to provide effective remedies to protect the lives and safety of hundreds of people whose arrest and secret detention officials continue to deny. It should have a mandate to make specific recommendations to the government about how best to implement the UN Declaration on the Protection of All Persons from Enforced Disappearance in Indian laws and effective law enforcement practices.

Amnesty International believes that the establishment of such a commission should be a priority in Jammu and Kashmir where legal mechanisms for redress are, at present, especially poor and where virtually all human rights violations are excluded from the effective mandate of the Human Rights Commission which the government established by ordinance on 28 September 1993. The immediate establishment of such a commission could be one of the best ways in which the government could ensure compliance with the obligation of all governments, last restated in the December 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance, to ensure that competent authorities conduct prompt and impartial inquiries whenever there is reason to believe that a "disappearance" has occurred.

### 2. Keep accurate and public records and inform relatives

The state government should maintain a central, up to date and accurate register of all persons arrested in the state and the place where they are being held.

The police, paramilitary and army authorities making any arrests should be obliged to inform the central agency responsible for maintaining the register immediately whenever a person is arrested, the place, exact time of the arrest, by whom it was

made, and where the arrested person is being kept or to whom he or she has been transferred. The exact time when a transfer took place and the name of the official to whom the detainee was transferred should also be recorded.

All police stations, detention centres and prisons should keep fully accurate and up-to-date records of these data as well as the reasons for the detention and the time and date of the person's entry and release.

Members of the judiciary, relatives of victims and their legal representatives as well as other relevant bodies and interested parties shall 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 not later than twenty four hours. The government should consider introducing written and signed statements notifying the relatives of an arrest, the reason for the arrest and the place where the arrested person is being held.

### **3. Keep detainees in official places of detention**

All persons should be held only in officially recognized places of detention, and the names of all prisons and detention centres where people may be detained should be widely publicized. Secret or ad hoc detention centres should be abolished.

### **4. Adopt an active policy to prevent "disappearances" and strengthen the legal machinery**

The government should make it clear through publicly stated commitments and through concrete actions that it will not tolerate "disappearances" under any circumstances. It should issue immediate instructions to the security forces that arrests should always be made by law enforcement officials strictly following established legal procedures. They should be made by officers in uniform clearly showing their rank and the forces to which they belong and vehicles used by the police, paramilitary forces or the army should have number plates clearly displayed at all times. The practice of abducting some people in unmarked cars should be strictly forbidden. The government should order a prompt review of the reasons why *habeas corpus* provides virtually no effective redress to victims of "disappearance". It should issue immediate instructions to officials to comply with all outstanding court orders regarding "disappearances" and bring prosecutions against officials who fail to cooperate with judicial investigations into "disappearances" or deny judicial officials access to places where "disappeared" persons are suspected to be held. The government should ensure that sufficient resources are made available to both states to enable the judiciary to speedily and effectively clarify the fate or whereabouts of "disappeared" persons and protect their families from any intimidation and ill-treatment. Adequate funds should be available for legal aid, enabling relatives to promptly institute *habeas corpus* proceedings.

**The UN Working Group on Enforced and Involuntary Disappearances emphasized in its 1992 report: "Concerned Governments must promote the indispensable changes needed to improve *habeas corpus*, introducing, if necessary, legal reforms to repair the deficiencies. Such reforms should deal with expeditious process, availability of the procedure and unimpeded access of authorities to suspected places of detention".**

### **5. Bring the perpetrators to justice and provide compensation**

The government should take immediate and effective steps to ensure that all those against whom there is evidence that they have participated in or sanctioned "disappearances" should be promptly brought to justice before the ordinary criminal courts, regardless of whether they belong to the army, the paramilitary forces or the police. 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 where they can exercise power over victims, witnesses and relatives of the "disappeared".

**The government should review all laws which prevent or seriously inhibit such**

prosecutions being brought and remove any provisions which do so from the relevant sections in the Armed Forces Special Powers Act, the Terrorist and Disruptive Activities (Prevention) Act, the National Security Act and the Jammu and Kashmir Public Safety Act.

The victims of "disappearances" and their family should obtain redress and adequate compensation, including as complete a rehabilitation as possible.

The UN Working Group on Enforced or Involuntary Disappearances has expressed concern in several reports about the way in which the use of military courts appears to exacerbate the problem of impunity. The Group concluded in 1991: "A recurrent theme in times of internal crisis or under the doctrine of national security is that military personnel attested to have engaged in gross misconduct against civilians hardly ever see their cases investigated in any rigorous manner. In the few cases which are brought to trial, they are almost invariably acquitted or given sentences that, by any standard, are grossly disproportionate to the crime committed. Subsequent promotions are even commonplace." The Group therefore reiterated in several reports, last in 1992, that "military tribunals should be reserved exclusively for those members of the security forces who commit military crimes, a category from which such serious human rights violations as enforced disappearances must be clearly and explicitly excluded".

#### 6. Introduce a clear chain of command

The government should ensure strict supervision, including a clear chain of command, over all law enforcement officials responsible for apprehending, arresting and detaining people, as well as over all officials authorized to use force or firearms to prevent any of them instigating or tolerating "disappearances".

#### 7. Strengthen legal safeguards to prevent 'disappearances' and abide by international obligations and human rights standards

The government should ensure that all persons, whether arrested under special anti-terrorist laws or preventive detention laws, are brought before a judicial magistrate within 24 hours of arrest. They should have an effective opportunity to be heard promptly and have their detention supervised and reviewed by a judicial or other independent authority, as international human rights treaties to which India is a party, like the International Covenant on Civil and Political Rights, require.

Such 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 Human Rights Committee found to be in clear contravention of these and other obligations of India under the ICCPR should be repealed.

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

Relatives and lawyers should have prompt and subsequent regular access to detainees. Detainees should be examined by a doctor promptly after admission to any place of detention, and should have the right to be medically examined by a doctor of their choice.

Detainees should be promptly informed of any charges against them. Procedures for the supervision of interrogation should be introduced and records should be kept of the officials conducting the interrogation, other persons present, and the time between interrogation sessions.

Qualified individuals, independent of the security forces, should make regular unannounced visits to all places where arrested persons are held and be ensured prompt and unhindered access to all detainees held there and be able to communicate with them in private. Their findings should be made public.

In order to prevent unwarranted suspicions that releases of detainees are a mere

simulation, the government should consider introducing procedures requiring releases of all detainees in the two states to be witnessed by the detainee's parents or close relatives, or, if they are not available, his or her lawyer, as well as a judicial official or local village leader. The release document should record the name of the person to be released, the exact date and time of the release, the name and signature of the persons receiving the released detainee and their relationship to him or her, as well as the signature of the other witnesses present. Failure to abide by any of these procedures should attract prompt sanctions.

#### 8. Train the security forces and the army.

All the forces involved in making arrests, including the police, the army and the paramilitary forces, should receive adequate human rights training to make them fully aware that "disappearances" involve the gravest violations of human rights and attract criminal sanction, in India as well as abroad. They should be trained to uphold international human rights standards, especially those laid down in the Declaration on the Protection of All Persons from Enforced Disappearance, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Code of Conduct for Law Enforcement Officials.

Training should emphasize that making people "disappear" is an offence even in emergency situations or in the extremely difficult circumstances faced by the security forces presently operating in Jammu and Kashmir, and that orders from a superior officer are no defence.

To facilitate these efforts, the texts of the above and other relevant legal instruments should be translated into Hindi, Urdu, Kashmiri and Punjabi.

#### 9. Increase cooperation with national and international bodies

The government should respond to the observations and recommendations made by various civil liberties groups in India as regards human rights in Jammu and Kashmir and Punjab.

The government should allow international human rights and humanitarian bodies access to states where "disappearances" occur to enable them to share their experiences with the Indian Government to clarify and prevent "disappearances". In particular, the government should invite the UN Working Group on Enforced or Involuntary Disappearances to visit both states, and permit the International Committee of the Red Cross to establish a presence in Jammu and Kashmir, visit prisons and detention centres in the state and carry out its protection services there. International human rights bodies should be permitted free access to investigate reports of human rights violations.

## II. Armed opposition groups

Amnesty International urges all armed opposition groups in Jammu and Kashmir and Punjab to take the following steps.

Respect the basic standards of humanitarian law which require that all persons taking no active part in hostilities should at all times be treated humanely. All members of these groups should be trained about their obligation under Common Article 3 of the Geneva Conventions to uphold these basic minimum standards.

Groups in Jammu and Kashmir should immediately release all hostages or any persons held for their non-violent conscientiously held beliefs.

None of those held in captivity should be tortured, including being subjected to rape, ill-treated or humiliated.

No civilians should be deliberately killed. In particular, they should not be selected for peacefully expressing their views or for the political views attributed to them, for merely being related to politicians or policemen or for simply belonging to another religious community.

Allegations of violations of these basic standards of humanitarian law should be promptly investigated and those found to be responsible for them should be immediately removed from any positions of responsibility.

## GLOSSARY

BSF Border Security Force

CRPF Central Reserve Police Force

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

NSG National Security Guards

PHRO Punjab Human Rights Organisation

PSA Public Security Act

SHO Station House Officer

SSP Senior Superintendent of Police

SP Superintendent of Police

TADA Terrorist and Disruptive Activities Act

## ENDNOTES

<sup>1</sup>See: *Human rights violations in Punjab: use and abuse of the law*, AI Index ASA 20/11/91 pp 34-44 and *Response to the Indian Government's comments on Amnesty International's report on Punjab*, AI Index ASA 20/25/91.

<sup>2</sup>Report of the UN Working Group on Enforced or Involuntary Disappearances, E/CN.4/1993/25, 7 January 1993, page 25. One more "disappearance" had been clarified by a non-governmental group reporting that the person was in prison.

<sup>3</sup>*Quinteros vs Uruguay*, Communication No. 107/1981, Report of the Human Rights Committee, 15 September 1983, Supplement No.40 (A/38/40), paragraph 14.

<sup>4</sup>Recent reports in which these human rights violations have been described are: *Human rights violations in Punjab, use and abuse of the law*, May 1991 (ASA 20/11/91); *Response to the Indian Government's comments on Amnesty International's report on Punjab*, February 1992 (ASA 20/25/91); *India: Torture, Rape & Deaths in Custody*,

March 1992, (ASA 20/06/92) Chapter 1; *New allegations of rape by army personnel in Jammu and Kashmir*, January 1993 (ASA 20/02/92); *Sopore: a case study of extrajudicial executions in Jammu and Kashmir*, April 1993 (ASA 20/17/93); *Three reports of deaths in custody and "disappearances" in Punjab*, April 1993, (ASA 20/19/93) and *Masroof Sultan: a rare survivor of torture and attempted killing in custody in Jammu and Kashmir*, June 1993 (ASA 20/28/93).

<sup>5</sup> A crore is ten million.

<sup>6</sup> The various Indian states are responsible for law and order, maintained by the state police responsible to the state government through the Director General of Police. The army have their own command structure and the paramilitary forces like the BSF and CRPF are official forces which function under the Minister of Home Affairs of the central government in Delhi.

<sup>7</sup>H.N. Wanchoo claimed that the state government had ordered the registrar of the High Court to prevent all his petitions joining the queue for hearing by keeping them on "open date" listing.

<sup>8</sup> A tonga is a rickshaw pulled by a horse.

<sup>9</sup> See "Operation Bluebird", A case study of torture and extrajudicial executions in Manipur, ASA 20/17/90, October 1990.

<sup>10</sup>Comments made by Professor Rosalyn Higgins during the examination of India's second periodic report at the Committee's forty-first session, 26-27 March 1991, summarized in ICCPR/C/SR.1039-1042 (See the Amnesty International document *India: Examination of the second periodic report by the Human Rights Committee*, March 1993, (ASA 20/05/93), page 12.

<sup>11</sup>See *India: Examination of the Second Periodic Report by the Human Rights Committee*, AI Index: ASA 20/05/93, page 11.

<sup>12</sup> UN Commission on Human Rights, 46th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1990/13, 24 January 1990, paragraph 344.

<sup>13</sup>See: *Sopore: a case study of extrajudicial executions in Jammu and Kashmir*, April 1993, AI Index: ASA 20/17/93. As of October 1993, the judicial commission conducting the inquiry was not known to have published its findings.

<sup>14</sup>"Himalayan Ulster" *The New York Review of Books*, 2 March 1993, page 26.

<sup>15</sup>Report of the UN Working Group on Enforced or Involuntary Disappearances, E/CN.4/1993/25, 7 January 1993, paragraph 274.

<sup>16</sup>See "Response to the Indian Government's Comments on Amnesty International's report on Punjab". AI Index: ASA 20/25/91, February 1992.

<sup>17</sup> Report of the UN Working Group on Enforced or Involuntary Disappearances, E/CN.4/1990/13, January 1990, paragraph 338.

**KEYWORDS:** DISAPPEARANCES1 / IMPUNITY1 / TORTURE/ILL-TREATMENT / EXTRAJUDICIAL EXECUTION / DEATH IN CUSTODY / ARBITRARY ARREST / MASS ARREST / ADMINISTRATIVE DETENTION / EXTORTION / SEXUAL ASSAULT / HARASSMENT / HOSTAGE-TAKING / POLICE / MILITARY / PARAMILITARIES / NON-GOVERNMENTAL ENTITIES / RELIGIOUS GROUPS - HINDU / RELIGIOUS GROUPS - ISLAMIC / RELIGIOUS GROUPS - SIKH / JOURNALISTS / EDITORS / LAWYERS / HUMAN RIGHTS ACTIVISTS / STUDENTS / MANUAL WORKERS / CLERICAL WORKERS / TEACHERS / CIVIL SERVANTS / POLITICIANS / BUSINESS PEOPLE / MANAGERS / BROADCASTERS / ACADEMICS / DOCTORS / FARMERS / MILITARY AS VICTIMS / DRIVERS / WOMEN / JUVENILES / FAMILIES / POLITICAL VIOLENCE / EMERGENCY LEGISLATION / ESCAPES / ELECTIONS / LEGISLATION / HABEAS CORPUS1 / INVESTIGATION OF ABUSES / COMPENSATION / PRISONERS' LISTS / AI AND GOVERNMENTS / MISSIONS / UN /

The parents of 26-year-old Nazir Ahmad Misri, a schoolteacher who "disappeared" from Srinagar in Jammu and Kashmir after being taken away by the army in June 1993. His parents believe he was taken for teaching Islam to his pupils and did not know

if he was dead or alive. In September the government acknowledged he was in custody saying that he was arrested for "unlawful activities" as an alleged "Base Commander" of the JKLF but did not specify where he was.

The back of Mr M. (name withheld), one of numerous victims of torture in Jammu and Kashmir. He was arrested in mid-August 1992 and during interrogation hot irons were applied to his back. (c) Janina Struk

Harnam Singh is one of many victims of "disappearances" in Punjab. Armed men wearing khaki turbans took him away on 16 December 1991 with his mother, who was released within an hour. No arrest warrant was shown and no reasons for his arrest were given to his relatives who reported his arrest to the Bhatinda police and other officials. They were never told of his fate or whereabouts.

The Indian army escorts a group of Kashmiri young men suspected of planning to go for military training in Pakistan to the Indian army headquarters in Srinagar in August 1993. (c) Popperfoto/Reuters

Gulzar Ahmad Mir "disappeared" in June 1991. His father was handed a slip of paper with the address of a jail in Srinagar written in his son's hand in April 1992.

However, his name was not entered on the jail records and his family has been unable to discover where he is held.

Mohammed Magbool Bhat who "disappeared" on 21 July 1990. A judge carrying out an inquiry, found that local police confirmed his arrest, as did a young man who was arrested and tortured with him, and concluded that Mohammed Magbool Bhat had been arrested by the CRPF and had probably been killed in their custody. The CRPF continue to deny that they know anything about it. (c) View Weekly

A woman pleading with Indian Security forces in Jammu and Kashmir for the safety of her son who was arrested.

Ranjit Singh and Gulab Singh "disappeared" in September and May 1992 respectively and Jagjit Singh Jaggi in August 1991. Their families sent cables and letters to officials but failed to receive any response about their fate or whereabouts.

Manjit Singh son of Bachan Singh. Jalandhar police held an inquiry into his "disappearance" in August 1991 when he was seen to be arrested while waiting for a bus to Sangatpur. His family visited him every day for a week after his reported arrest but on 13 August police suddenly denied any knowledge of him. Nothing is known about the outcome of the police inquiry.

Harjit Singh was last seen by a court officer and his father in secret detention at 9 am on 21 October 1992 at Mal Mandi CIA Investigation Centre, Amritsar. But the CRPF flouted High Court orders, denying a search party, consisting of the two men, access for half an hour. When they were finally allowed in, all that remained were his hand-cuffs.

Soldiers patrolling the streets of Srinagar in 1991 (c) Anthony Woods

Irfan, who holds a picture of her brother, Tajuddin Mohammed, an engineering student from Bangalore, sitting on the doorstep where her brother was shot dead by the BSF at point blank range. There had been firing in the area and Irfan says that the BSF banged on the door and shot her brother, at home awaiting his exam results, three times. The police came to apologise but the government apparently issued a statement that he had been "killed in crossfire". As far as Amnesty International knows, no inquiry has been held and nobody has been brought to justice for killing him.

(c) Janina Struk