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INDIA

Submission to the Human Rights Committee concerning the application of the International Covenant on Civil and Political Rights

I INTRODUCTION

On 29 November 1995, India submitted its third periodic report under article 40 of the International Covenant on Civil and Political Rights (ICCPR). The report was initially scheduled to be considered by the Human Rights Committee at its fifty-eighth session in New York in March-April 1997 but, at the request of the Government of India, was rescheduled for the Committee's fifty-ninth session in Geneva in July 1997.

This submission by Amnesty International to the Human Rights Committee does not analyse each aspect of the Indian government's report, much of which is full and informative. Rather its purpose is to provide supplementary and updated information on Amnesty International's concerns and the problems of implementation of the ICCPR in India where this may be useful. Not all the articles in the covenant have been addressed.

Suggestions to members of the Human Rights Committee of relevant questions concerning implementation of articles of the covenant are given throughout this submission, but for ease of reference have been repeated at the beginning of each relevant article.

The submission begins with recommendations to the Government of India, many of which have been made by Amnesty International over a number of years. Amnesty International is calling on the government, at this time when its international obligations are under scrutiny, to take steps to safeguard the rights set out in the covenant in law and in practice.

Since the consideration of India's last report to the Committee in 1991, the Government of India has put increasing public emphasis on the protection and promotion of human rights. India's report refers to the positive initiatives taken during the years since the second report was heard in 1991 -- in particular the establishment of a National Human Rights Commission (NHRC) in October 1993. The NHRC has begun to play a key role in upholding human rights in India.

Amnesty International urges that the **Protection of Human Rights Act, 1993** establishing the Commission be reviewed and amended as a matter of urgency to reflect concerns raised by Amnesty International and many other human rights organizations in India to ensure that it becomes more effective as an avenue of redress. A discussion of the NHRC is contained in Appendix A but reference is made to it throughout discussion of articles of the covenant.

In its report to the Committee, the Government of India refers to its holistic approach in seeking the realisation of human rights. Amnesty International strongly affirms the indivisibility and interdependence of human rights which has resonance in the Indian context. Many of the victims of civil and political rights violations come from economically and socially disadvantaged communities, of whom many are recognised as being in need of special protection by the Constitution of India. Moreover, those seeking the implementation of their economic, social and

cultural rights, have been subjected to torture, ill-treatment and arbitrary detention. Protesters with a range of varying demands -- for example the adequate resettlement and rehabilitation of people affected by industrial and infrastructure development projects -- have been among the victims of violations.

The wide diversity of human rights activists and non-governmental organizations working on a whole range of rights in India ensures the existence of a vibrant debate on human rights issues throughout the country, despite the difficulties which they face in working to realise and defend those rights. The material for this submission comes from these activists and organizations who have brought their concerns to the attention of Amnesty International. In addition, the media in India plays a very important role in raising human rights issues and reporting violations.

One of the gravest challenges faced by the Government of India is the armed opposition active in pockets throughout the country and in border areas. The demands of the armed opposition range from greater autonomy and economic development, to self-determination. While Amnesty International recognises the problems posed by the actions of many of these groups, and condemns the human rights abuses that they perpetrate, in dealing with armed opposition, the minimum standards prescribed by the ICCPR cannot be disregarded. Patterns of extrajudicial executions, "disappearances", torture and arbitrary detention have been documented in these regions over several years.

II RECOMMENDATIONS TO THE GOVERNMENT OF INDIA

Amnesty International's calls on the Government of India to take steps to ensure the realisation of the rights specified in the ICCPR. In order to achieve this:

Amnesty International urges the Government of India to

- Withdraw the declarations made at the time of accession to the covenant with respect to articles 9 and 13
- Review Article 22 of the Constitution of India to bring it in line with international standards. With a view to this, implement the changes to Article 22 of the Constitution as required by the Constitution (Forty-Fourth) Amendment Act, 1978
- Review the Protection of Human Rights Act, 1993 as a matter of urgency to strengthen the mandate and operation of the National Human Rights Commission, the state Human Rights Commissions and the Human Rights Courts
- Review the Armed Forces (Special Powers) Act, 1958, to ensure there are strict legal limitations on the use of force and firearms by law enforcement officials
- Ensure that UN standards concerning the conduct of law enforcement officials -- including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials -- are reflected in legislation, guidelines and training for police, paramilitary and armed forces in India
- Review all legislation at the central and state level, including the National Security Act, 1980, which provide for preventive / administrative detention, with a view to the removal of such provisions
- Amend the definition of a juvenile given in the Juvenile Justice Act to remove the possibility that a juvenile boy can be sentenced to death. This would bring Indian law into consonance with article 37(a) of the Convention on the Rights of the Child and with article 6(5) of the covenant
- Take steps to abolish the death penalty in law and practice and ratify the second optional protocol to the ICCPR
- Ratify the first optional protocol to the ICCPR to allow for individual complaints to the Human Rights Committee
- Ratify the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

Amnesty International urges the Government of India to take the following measures to ensure the safety of those defending the whole range of rights as set out in the Universal Declaration of Human Rights

- Give a commitment that human rights defenders will be permitted to document human rights violations, and protest and campaign against such violations, in freedom and back this up in law and administrative guidelines
- Ensure that the freedom to peacefully protest is granted throughout India and that excessive force will not be used against protesters
- Ensure the protection from harassment and attacks of those defending the rights of others who may be under threat from vested interests
- Order prompt and impartial investigations into all attacks on human rights defenders and bring those responsible to justice
- Ensure the free and unhindered flow of information to and from human rights organizations in India
- Grant free access to international human rights organizations and United National human rights mechanisms to all parts of India

Amnesty International urges the Government of India to take the following measures to end discriminatory practices

- Review the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Civil Rights Act, 1955 to ensure that they are fulfilling the purpose for which the Acts were passed -- that is, to grant protection to members of vulnerable communities
- Review the Code of Criminal Procedure and the implementation of existing safeguards to enhance the protection provided to women detainees
- Ensure that any woman who brings charges of rape or sexual abuse against law enforcement personnel is effectively protected from harassment or reprisals
- Provide training in the basic principles of international human rights law to government officials, including all members of the security forces

Amnesty International urges the Government of India to take the following measures to provide redress and end impunity

- Ensure meticulous adherence to laws which already exist in India which have been enacted to safeguard human rights
- Review all provisions protecting public servants from arrest and prosecution. To this end, amend sections 45 and 197 of the Code of Criminal Procedure, 1973 to remove the requirement of the sanction of the central or state government for the prosecution of members of the police or armed forces
- Ensure the accountability of members of the paramilitary and armed forces for human rights violations which take place in the context of situations of armed conflict in India
- Review the Code of Criminal Procedure to ensure mandatory judicial inquiries are carried out into all allegations of torture, death in custody, rape in custody, "disappearance", extrajudicial executions and into attacks on human rights defenders
- Take measures to ensure that investigations into human rights violations are fully independent and impartial and that victims, their relatives and witnesses are granted protection from harassment and intimidation
- Provide an effective machinery for prompt and adequate redress and compensation for victims of human rights violations which includes assurances that those found responsible for violations are prosecuted in accordance with law

III AN ANALYSIS OF IMPLEMENTATION OF ARTICLES OF THE ICCPR

Article 2(1)

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status.

- **The Committee is urged to enquire into measures taken by the Government of India to ensure the protection of those seeking to end discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**
- **The Committee is urged to enquire into measures being taken to ensure that police officers are protected from political or other influence and to prevent collusion with those who wield political, economic and social power**
- **The Committee should enquire into steps taken to provide training for law enforcement agents to guard against discrimination on the basis of sex, race, colour or religion**
- **The Committee should enquire into measures taken by the Government of India to ensure the implementation of legislation and other measures designed to safeguard the rights of members of the Scheduled Caste and Scheduled Tribe and other disadvantaged communities**

The disadvantage suffered by particular communities, minority groups and by women has been recognised by the Government of India, in the Constitution and in law. However, contrary to the Government of India's assertion that the civil and political rights recognized in the covenant are guaranteed to all individuals without distinction, Amnesty International believes that the rights of individuals in certain areas of India and those belonging to certain communities are not adequately safeguarded in practice. Throughout India, the practices of police and security personnel have been shown to discriminate against certain communities or groups of people.

Very often, the victims of human rights violations are those seeking to end discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the following discussion of article 2 and throughout this submission, examples are given of attacks by the state on human rights defenders including extrajudicial execution, "disappearance", arbitrary arrest and detention and the use of excessive force when policing peaceful protests.

- **The Committee should enquire into measures taken by the Government of India to protect the right to defend the fundamental rights and liberties of others**

"Sex"

The rights of women cannot be separated from the rights of all people in India, and therefore relate to all the concerns raised in this submission. However, patterns of violations against women are identified where appropriate throughout the submission. For a consideration of the application of the covenant to women, see under article 3 below.

"Language"

The requirements of equal access to justice, provided for by the covenant may be distinguished on the basis of language. For example, despite the fact that India has 14 official languages, according to information received by Amnesty International there are only two working languages of the Supreme Court of India -- English and Hindi -- and interpreters and translators are not routinely made available.

"Religion"

Consideration of the equal application of the covenant with respect to religion has to be read concomitantly with the section on "Social origin, property, birth or other status".

A number of religious minorities exist within India or within particular states, many of which face discrimination on the basis of their religion or social status. Discrimination on the basis of religion has fuelled the internal armed conflict in Jammu and Kashmir (see "Political or other opinion"). Muslims have faced numerous violations including extrajudicial executions, "disappearance" and torture, including rape (see articles 6(1) and 7) on the pretext of suspected association with the armed opposition active in the state, while many members of the Hindu community have been displaced to other parts of the country. In August 1996, CERD stated:

The Committee is seriously concerned that the Kashmiris, as well as other groups, are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention.¹

Muslim communities in other parts of the country have not been afforded adequate protection for their rights. Following the communal riots which took place in Bombay in December 1992 and January 1993, strong evidence emerged that the police singled out Muslims for attack and supported Hindu rioters². Police in the lower ranks were said to have sided with the Shiv Sena (a radical Hindu political party) which itself was accused of instigating the riots. Several Muslims later testified before the Srikrishna Commission of Inquiry, set up to investigate the riots, that police had refused to file complaints against Hindus who had attacked their property. Amnesty International has also received reports of numerous incidents in which Muslims were illegally detained and often subjected to torture at the time of the riots.

Reports of communal riots in other parts of India, indicate that Muslims have had difficulty in filing FIRs, and in ensuring thorough, prompt and impartial investigations. In April 1996, communal violence occurred between Hindus and Muslims in the town of Bhatkal in Karnataka following the murder of a Member of the Legislative Assembly belonging to the Bharatiya Janata Party (BJP), a right-wing Hindu

¹ CERD/C/304/Add.13, para 15.

² See pages 14-18 of *Memorandum to the Government of India arising from an Amnesty International visit to India 5-15 January 1994*, August 1994, AI Index: ASA 20/20/94.

nationalist party. During the period of violence, Muslim homes were raided by police and several young Muslim men were arrested and illegally detained -- they were released after two weeks only after the filing of *habeas corpus* petitions. Amnesty International also received unconfirmed reports that several detainees were subjected to torture including the beating of feet with iron rods and electric shock treatment.

In February 1995, an article was published in Bombay by a senior police officer who had just completed a year-long study of "Perception of Police Neutrality During Communal Riots" at the National Police Academy in Hyderabad. He concluded in his article that communal bias in the police force was rampant and that "No riot can last for more than 24 hours unless the state administration wants it to continue."³ His views were reinforced by other police officers.

"Political or other opinion"

Activists in India seeking the realisation of human rights have been regularly targeted by the security forces and many of these violations are documented throughout this submission. This has particularly been the case in areas of armed conflict where human rights defenders are at grave risk of arbitrary arrest, torture, "disappearance" and extrajudicial execution. Rather than ensuring the rights of these individuals, the state has targeted their activities, often labelling them as anti-national.

In all parts of India protests are regularly suppressed by police using excessive force and allegations are widespread that false cases are filed against activists in an attempt to prevent them from carrying out their activities.

The emergence of "renegade" groups (surrendered militants backed by security forces) has made the position of human rights activists in Jammu and Kashmir untenable. They have been unable to move around the state to document human rights violations for fear of threats by "renegades" and security forces. Amnesty International believes that there has been a deliberate policy to prevent human rights activists from carrying out their activities in the state. Since 1992, several individuals who have been closely involved in the documentation of human rights violations in Jammu and Kashmir, including lawyers and journalists, have been attacked and in some cases killed by unidentified gunmen (see Box 1).

In Punjab also, several lawyers have "disappeared" and are feared to have been killed (see article 6(1)). In the north-east region, Amnesty International has received reports about the harassment and targeting of human rights defenders, including journalists, lawyers, and also judges. On 17 May 1996, Parag Kumar Das, a human rights defender and journalist, was shot and killed in Guwahati in the north-eastern state of Assam. Information received by Amnesty International indicates that "surrendered" activists of the United Liberation Front of Assam (ULFA), known as SULFA, perpetrated the killing with the possible connivance of the government⁴.

In areas where armed groups are active, such as Andhra Pradesh and areas of Madhya Pradesh, alleged sympathisers of the *naxalite* movement have been targeted for attack by police (see Box 2). Since the *naxalite* movement is based on calls for radical land reform, this has meant that in many areas, the most vulnerable members of the community -- including *dalit* (members of a disadvantaged group determined by caste hierarchies) and tribal (in some regions, known as *adivasi*) people -- have been the victims of human rights violations. In Madhya Pradesh for

³ Article published in *Communalism Combat*, Bombay, February 1995.

⁴ See "India: The killing of a human rights defender", June 1996, AI Index: ASA 20/28/96.

example, according to reports, *adivasi* supporters of *naxalites* who have formed youth organizations and carried out campaigns against liquor manufacture, have been harassed by police and arrested on false charges at the behest of liquor manufacturers and sellers.

Jammu and Kashmir: Killing of a human rights defender

On 27 March 1996, the tied body of Jalil Andrabi, lawyer and prominent human rights activist, was found in the Jhelum river, Srinagar. He had been abducted by security forces in the presence of “renegades” on 9 March, weeks before he was due to attend the 52nd session of the United Nations Human Rights Commission in Geneva. He was the fourth prominent human rights activist to be killed in suspicious circumstances in Jammu and Kashmir in the previous four years (The deaths of three other prominent activists -- Mr H.N. Wanchoo, Dr F.A. Ashai and Dr Guru -- remain to be impartially investigated). While his was the first killing in which an independent investigation has been instituted, the investigation was hampered by the failure of the state and security forces to cooperate with it. Finally, at a High Court hearing on 10 April 1997, the special investigating team made up of police officials, submitted a report in which they claimed that a major from the 103rd Unit of the Territorial Army was responsible for the abduction and killing of Jalil Andrabi. It also reportedly indicated that several soldiers under his command were involved. The report of the Special Investigating Team was not made public.

The Investigating Team said that it had not been able to arrest the major whose whereabouts was unknown. In response, senior army officials stated in the High Court that the major had been in the service of the army for only a limited period of time and that he was no longer employed by them -- his contract being terminated on 7 November 1996. Furthermore, the army spokesman claimed that the major had not committed the crime in his official capacity and that therefore the army as a whole could not be held responsible for his actions. The Court ordered the special investigating team to make every effort to arrest the major and ordered that the full service records of the accused major be placed immediately before the court. The major was subsequently arrested and the case is continuing in court.

Andhra Pradesh: Human rights defenders attacked and under threat

In recent months, human rights activists in Andhra Pradesh have been the subject of attack and threats. On the evening of 6 April 1997 Gaddar, a prominent poet and activist who has campaigned on behalf of *dalits* for several years, was shot by unidentified gunmen in his home in Hyderabad. In previous months, Gaddar had been campaigning against the police practice of cremating as "unidentified", the bodies of suspected *naxalites* killed in "encounters" with police (see article 6(1)) and demanding that the bodies be handed over to relatives. He had previously been arrested by police during a protest on 22 February and detained until 1 March. Gaddar was seriously injured in the attack of 6 April and underwent surgery to remove five bullets.

A few days before the attack, on 1 April, a crowd of people had come to his house when he was away, accompanied by police in civilian clothing, protesting at *naxalite* violence. The crowd had previously visited the house of Mr Kannabiran, president of the Peoples Union for Civil Liberties (a national civil liberties organization) and activist and former President of the Andhra Pradesh Civil Liberties Committee (APCLC) to protest at his alleged support for *naxalite* violence. Gaddar's attacker was subsequently identified by Mr Kannabiran as one of those who had been to his and Gaddar's house. Although the police denied any involvement in the incident, local civil liberties organizations and many others allege that the police were behind the shooting of Gaddar. Amnesty International is concerned that an investigation into the incident is being carried out by a police inspector and is therefore not independent or impartial.

It is alleged that police have organized victims of *naxalite* violence to counter the allegations of human rights violations by police -- including widescale extrajudicial executions (see article 6(1)) -- being made by the APCLC and many others. Human rights activists allege that an organization called the "Green Tigers", which subsequently claimed responsibility for the attack on Gaddar, is being used as a cover by Andhra Pradesh police for illegal activities against activists. Following the attack on Gaddar, the "Green Tigers" published a threat, warning human rights activists, including leading members of the APCLC, to cease their support for the activities of *naxalites*.

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

As well as those defending civil and political rights of citizens, those defending a broad range of economic, social and cultural rights have been singled out for harassment by the state (see Box 3).

In December 1995, five social workers of a Calcutta-based voluntary organization campaigning against the acquisition of land for shrimp aqua-culture were arrested in Bhograi, Orissa. Four of the men were tortured while in detention and one of the men had to be hospitalised. They were only brought before a magistrate after two days when the magistrate ordered that they receive

proper medical treatment and be sent to jail. Subsequently, one of the men -- Biblab Halim -- was attacked by armed men allegedly hired by shrimp farm owners. When he attempted to file a complaint with police, they refused to file an FIR and illegally detained his driver for 24 hours before releasing him.

Activists calling for a separate hill state of Uttarkhand in north India have alleged that on various occasions police in Uttar Pradesh have committed human rights violations, including torture, illegal detention and harassment of student leaders, supporters of the movement and their family members.

In one such incident, over 200 buses carrying activists bound for a rally in Delhi were stopped in the early hours of 2 October 1994 by district authorities who attempted to persuade them not to attend the rally. Members of the Uttar Pradesh Police and the Provincial Armed Constabulary (PAC), searched the buses. After several activists began to demonstrate, police reportedly opened fire without warning. Twenty-four activists were killed and several injured. Several women protestors were rounded up by police from the buses and dragged into nearby sugarcane fields and raped. The Central Government instituted an investigation by the Central Bureau of Investigation (CBI) which found some months later that the police and PAC were guilty of the rape of seven women and of "misbehaving" with 17 others. It further found that over 400 activists had been illegally detained. Investigations were also carried out by a group of members of parliament and the National Commission for Women. Notably, the CBI found that police station diaries had been tampered with and evidence "deliberately destroyed". In February 1996, the Allahabad High Court delivered a judgement awarding compensation to the victims of the human rights violations and their dependents. The Court declared that the CBI did not require the state government's sanction for prosecution of the police officers "who had gone berserk ostensibly to satisfy their political bosses". However, although chargesheets were drawn up against 21 officers, as of June 1997, they had not been suspended from their posts or brought to trial.

Gujarat: Defenders of social and economic rights under attack

In August 1996, Medha Patkar, leader of the *Narmada Bachao Andolan* (NBA) was scheduled to address a press conference about the Narmada river development project in Ahmedabad, Gujarat. Police entered the private house where she was staying, told her that she would not be permitted to hold the press conference and arrested her under section 151 of the CrPC (*Arrest to prevent the commission of cognizable offences*) (for a discussion of this see article 9(1)). Medha Patkar was taken to Watwa Police Station, several miles outside the city of Ahmedabad where she was detained between 11.00am and 1.00pm. She was then served with a notice stating that she was being detained under section 68 of the Bombay Police Act (*All persons shall be bound to conform to the reasonable directions of a Police officer given in fulfilment of any of his duties under this Act*). She was then driven for three hours to the state border town of Godhra where she was handed over to the custody of Godhra police. She was then taken to Baroda where she was released at 8.30pm the following day.

Testifying at a public hearing on 28 January 1995, a woman who was active in the NBA referred to human rights violations to which activists were subjected when she testified:

The police squads surrounded Koti village as it was the centre for the NBA activities. The police beat the women, tore their clothes, thrust lathis into their mouths and I have been arrested many times. ... Three women have been raped.

"Social origin, property, birth or other status"

Throughout India, poverty is one of the key factors determining vulnerability to human rights violations perpetrated by state officials and opportunities for redress. Amnesty International is aware of a number of cases in which police officials collude with politically, socially and economically dominant groupings, in perpetrating such violations (see Box 4). There is a pattern of ill-treatment of economically disadvantaged groups in custody, and the suppression of protests. A survey carried out by the Peoples Union for Democratic Rights, a Delhi-based human rights organization, in August 1991, showed that almost all those who died in custody in Delhi come from economically weaker sections of society.

Economic disadvantage is often exacerbated by the existence of rigid social hierarchies. India has recognised the vulnerable status of members of many of the *dalit* and tribal peoples. Many of these groups have been designated as 'Scheduled Castes' and 'Scheduled Tribes' by the Constitution of India⁵, and Articles 15, 46, 335 and 338 of the Constitution specifically refer to the need to protect members of such communities from discrimination and injustice⁶. Violations against members of these communities, previously punishable under a succession of acts including the **Protection of Civil Rights Act, 1955**, are currently punishable under the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**. This act provides for punishment for the destruction of property belonging to Scheduled Caste or Scheduled Tribe communities as well as for legal action against public servants who wilfully neglect their duties required to be performed under the Act. It also provides for special courts to be set up to hear cases of violations.

Many individuals with whom Amnesty International delegates spoke during their visit to India during July and August 1996, spoke of the failure of the 1989 Act to provide relief to victims of atrocities. Amnesty International believes that the authorities' failure to implement the provisions of this Act has led to a widespread feeling of impunity amongst those committing atrocities against tribals and *dalits*. It is widely accepted that the majority of crimes committed against members of these communities are charged under sections of the Indian Penal Code (IPC) rather than the 1989 Act. There is also concern that very few special courts have been set up under this Act.

- **The Committee should enquire into steps taken to ensure the setting up of Special Courts under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the number of such courts established to date**

⁵ The Constitution of India includes 'schedules' (lists) which are intended to comprise those communities which suffer particular political, economic and social disadvantage.

⁶ Some groups have raised concern about their lack of inclusion in the Schedules -- notably members of the *dalit* community who are of a Christian faith.

Maharashtra: State connivance in violating rights of tribals

In Kopergaon district of Maharashtra in recent years, officials of the local Agricultural Corporation and local landowning farmers have attempted to evict *adivasis* from uncultivated land which they have been occupying for several years. Hundreds of cases have been filed against individual *adivasis* in the local courts for offences including encroachment, violence against farmers and theft. *Adivasis* and activists claim that these cases have been filed in an attempt to harass them. *Adivasis* also claim that they have been consistently subjected to other forms of harassment including the destruction of their property, verbal and physical abuse and arbitrary arrest by police including routine beating in custody. While police have registered complaints against *adivasis* filed by farmers, they have regularly refused to register complaints made by *adivasis* or to investigate allegations of harassment.

In one incident, on 14 December 1996, officials of the Agricultural Corporation visited lands occupied by members of the Bhill and Vadari *adivasi* communities in Shingve village, and destroyed their huts and crops. The clothes of some of the women were reportedly torn by officials. When one of the *adivasi* women attempted to file a complaint at the nearby police station, she was refused by police. Despite sending complaints to local officials, no action was taken against Agricultural Corporation officials. Instead, police registered complaints filed by several farmers that they had been attacked by *adivasis* when they went to speak to them about their encroachment on the land.

A study on the "Efficacy of the Enforcement System in Delivering Justice to Raped Scheduled Caste Women"⁷ found that many sections of the **Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act** had not been implemented in any of the fifty rape cases that were studied in Meerut and Bandra districts of Uttar Pradesh. These sections related to its effective implementation: legal aid was not available; there was no provision for travelling and maintenance expenses; there was no economic or social rehabilitation for the victims. The study also pointed to excessive delays by police in filing chargesheets against those allegedly responsible and delays in the sanction of monetary relief for victims.

A national workshop in August 1996, attended by members of the NHRC, noted the following: that the violation of human rights of *dalits* had increased; that investigation into atrocities on *dalits* is "inadequate" and often "biased"; that the conviction rate of the perpetrators of atrocities against *dalits* is very low; that most of the atrocities on *dalits* centred around land disputes and that there was a need to sensitize law enforcement agencies and judiciary to the special problems posed in the protection of the rights of *dalits*.

Violations of the rights of those in a socially and economically disadvantaged position often occur in the context of land conflicts and struggles for resources. Local landlords are often in a position to influence the local police in any disputes they may have with villagers. In several parts of India, including in parts of Andhra Pradesh, Bihar, Karnataka, Tamil Nadu and Uttar Pradesh, conflicts between *dalits* asserting their rights to land against powerful local landlords, have led to violent incidents in which police have colluded. *Dalits* as well as tribal people are also the victims of human rights violations by police including the filing of false cases, destruction of property, illegal detention and torture.

In July and August 1995, there were several inter-caste clashes in the Tirunelveli Kattabomman, Chidambaranar and Tuticorin districts of Tamil Nadu. The clashes reportedly began as a result of the disfigurement of a statue of a leader of the Marava caste (a majority land-owning caste). This led to attacks on *dalits* and reprisals. On 31 August, hundreds of police entered the village of Kodiyankulam, on the pretext of searching for home-made weapons. Several people, including women and children, were beaten by police and many houses belonging to *dalits* were destroyed together with their contents. Several people received bullet injuries when police fired on them. A writ petition was filed by a local doctor in September 1995 concerning the incident, calling on the authorities to prosecute police officials under the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**. This petition was disposed of by the Tamil Nadu High Court when the government ordered an investigation by the CBI. The CBI investigation has not yet been completed and no action has yet been taken to prosecute police officers allegedly involved.

- **The Committee should enquire into measures taken by the Government of India to ensure the implementation of legislation and other measures designed to safeguard the rights of members of the Scheduled Caste and Scheduled Tribe and other disadvantaged communities**

⁷ A report prepared for the Scheduled Caste Development Wing of the Ministry of Welfare, Government of India, by the Multiple Action Research Group (MARG), June 1995. The report is concerned with 50 cases in which FIRs have already been filed.

Amnesty International is also concerned that the apparent connivance of the police in supporting particular social groups, or those at an economic advantage, allows the perpetuation of practices, such as bonded labour.

Despite the attention given to the issues of bonded and child labour in recent years, the concern of activists within India and the existence of legislation abolishing its practice in India, these practices continue to be widespread. The large number of bonded and child labourers -- in the most vulnerable position in society -- are not afforded adequate protection against exploitation by the police or state authorities. Employers are able to ensure that police turn a blind eye to their activities and labourers are often unaware of their rights. In a petition filed in the High Court of Madras, Tamil Nadu, a former bonded labourer testified:

*"I have studied in school up to class II and am the only literate labourer in the quarry. To my knowledge, no Government officials or police officials have ever visited the quarry. Nobody outside the quarry even seems to be aware of our plight"*⁸.

Aside from members of *dalit* and tribal communities, other individuals and communities have been targeted for attack by the state because of their social origin. In areas of armed conflict in particular, young males are often assumed to have links with armed opposition groups and are picked up arbitrarily by security forces and are often subjected to human rights violations including illegal detention, torture and extrajudicial execution. During the height of the conflict in Punjab, young Sikhs were regularly arrested and detained arbitrarily within the state and outside, while in Jammu and Kashmir, Amnesty International has received numerous reports of young men with no apparent links to armed opposition groups being taken away by security forces simply because of their name, age or appearance. Lawyers report that at the time of Republic Day in January in New Delhi, Kashmiris are regularly rounded up by police from residences and hotels and detained briefly for periods of time. It is not clear whether any of these individuals are charged with offences.

The situation is similar in the north-east state of Manipur, where young men are regularly arbitrarily detained on suspicion of having links with armed groups. This caused a retired judge hearing evidence during a Commission of Inquiry into the killing of a young woman by members of the Central Reserve Police Force (CRPF) to observe:

"These days, any person, more particularly young man of Manipur will have second thought to go forward towards the armed personnel".

The absence of safeguards for the protection of detainees, the disregard for arrest and detention procedures and the existence of special legislation in areas of armed conflict which allows for the arrest and detention of individuals on vaguely defined grounds, ensures the continuing use of discriminatory practices by security forces in these areas.

⁸ Petition No.605 of 1996, K. Vadivel vs State of Tamil Nadu.

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant

Article 2(2)

- **Enquiries by the Committee into the status and progress in implementation of reforms, directives and suggestions made by the Supreme Court, the Law Commission, the NHRC, the National Police Commission and by the government itself, would be worthwhile**
- **The Committee should enquire into the government's intention to make judicial inquiries into death in custody, "disappearance", rape and extrajudicial execution, mandatory in law**

The legal edifice in India is very large. Legal protections proliferate, but are nullified by the effect of other legislative provisions or are not consistently implemented. The gap between constitutional and legislative protection and the ground reality is wide and exacerbated by a slow legal process.

In its third report to the Committee, the Government of India states: "Any person who claims of his rights being violated by a provision of law may invoke the jurisdiction of the Supreme Court or a High Court for relief and the Court, if so satisfied, may strike down the law as being violative of the fundamental rights and as such void" (para 34). The Government of India goes on to say that both the **Armed Forces (Special Powers) Act** and the **Terrorist and Disruptive Activities (Prevention) Act** (TADA) have been "tested in the High Courts as well as in the Supreme Court".

This is not borne out by the facts. Seventeen years have lapsed since petitions challenging the constitutional legality of the **Armed Forces (Special Powers) Act** were first filed in the Supreme Court of India in 1980 (see article 4(2)). As India's report details, constitutional challenges to **TADA** resulted in the Supreme Court finding several provisions in the Act unconstitutional. However, it was only as a result of widespread protests in the country at its misuse that the Government later allowed the Act to lapse when it came up for annual review in May 1995.

The Supreme Court and High Courts have played a significant role in passing far-reaching judgements recommending measures to safeguard the rights of detainees, and in other areas of human rights protection. The Committee while hearing India's second periodic report pointed to the "excellent instructions" of the Supreme Court in particular. Amnesty International welcomes judgements safeguarding the rights of detainees. However, as with legislation, the poor implementation of court orders, for example, those forbidding the use of fetters in ordinary circumstances or ensuring that relatives are informed of the arrest of individuals, leaves a wide gulf between judicial pronouncements and reality.

In December 1996, the Supreme Court passed an order⁹ in response to a Public Interest Litigation originally filed in West Bengal in 1986, relating to the issue of violence in police custody. While

⁹ *Shri D.K. Basu vs State of West Bengal*, Writ Petition No.539 of 1986 with Writ Petition No.592 of 1987. See also *Prisoners Rights*, Bombay 1996, edited by Colin Gonsalves, Monica Sakhrani and Annie Fernandes, for a full documentation of judgements relating to the rights of detainees in India.

considering the petition, the Supreme Court heard affidavits from several state governments concerning custodial violence as well as suggestions from the Law Commission of India. The final order of 18 December 1996 listed a number of measures that should be implemented to protect detainees including the preparation of a memo of arrest; the entitlement of an arrestee to inform a friend or relative of their arrest as soon as possible; the medical examination of arrestees on request on arrest and every 48 hours of their detention, and the setting up of police control rooms holding information on arrest and place of custody of detainees. The court envisaged that failure to comply with these measures would invite departmental action and contempt of court proceedings against police officials. Finally, the court directed that states should pay compensation for human rights violations committed by its officers.

On 28 February 1997, the Calcutta city police issued a notification to its officers based on the above Supreme Court judgement directing them to follow the court's directions concerning arrest and detention procedures. Amnesty International is not aware of whether other states have taken action to implement the Supreme Court's directives on this petition.

Numerous suggestions have been made by sitting judges of the Supreme Court, the Law Commission, the NHRC, the National Police Commission¹⁰ and by the government itself for changes necessary to the law within India. Some of these suggestions, many of which have been pending for over a decade, are outlined below (see also Appendix A).

Concern for the ratification of the Convention against Torture remains relevant, given the persistence of endemic torture throughout the country (see article 7). Despite the Government of India's long-standing commitment to ratify CAT, it has not yet done so. The Government of India has indicated to Amnesty International that the lengthy process of consultation with all the States in the Union and the existence of different laws regulating the police and prisons have contributed to this delay. While Amnesty International welcomes the consultation process which it hopes will ensure implementation of articles of the Convention once it is ratified, the government's response raises fears that the differing procedural and legislative provisions enforced in different states may provide differing degrees of protection against human rights violations such as torture, as the administration of the police and prisons remain a concern of specific states.¹¹

¹⁰ Following the 1975-77 state of emergency in India, which saw widespread excesses, a National Police Commission (NPC) was established in 1979 to inquire "into the system of investigation and prosecution ... the use of improper methods, and the extent of their prevalence".

¹¹ See the Constitution of India, List II, State List, Entry 2 which empowers the States to legislate with respect to the police, including railway and village police. Also see the Constitution of India, List II, State List, Entry 2 which empowers the States to legislate with respect to: Prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

As a federal state, responsibility for legislative decision making rests with the central and the state governments. The extent to which centrally enacted legislation is applicable in each state of India is unclear -- for example the notification of the centrally legislated **Legal Services Authorities Act, 1987** is left to the discretion of each state. Much legislation has to be notified for application in each state before becoming valid law¹².

In 1995 and 1996, the Law Commission of India circulated questionnaires relating to the IPC and CrPC, which sought opinion from lawyers and other concerned individuals on proposed amendments. Although a number of responses have been returned to the Commission, including from women's groups, and the need for reform has been recognised within India, the Commission itself estimates that its recommendations, if accepted, will take several years to implement. Included in the questionnaire were questions relating to punishment for non-registration of a First Information Report (FIR) (see article 2(3) below). In its 154th report, published in 1997, the Law Commission made several suggestions for amendments to the IPC and CrPC. They included suggestions that women below the age of 18 be questioned in the presence of their parents; that they should not be called to the police station for questioning; and that as far as possible, the offence of rape would be tried by an in-camera court with a woman judicial officer presiding.

The **Code of Criminal Procedure (Amendment) Bill**, presented to parliament by the previous government in May 1994, suggested an amendment to section 176 of the CrPC to provide for judicial inquiries into every case of death in custody, "disappearance" and rape. It also included an amendment that would empower the detainee to inform a nominated person of their arrest and an amendment prohibiting the arrest of a woman "after sunset and before sunrise" except in "exceptional circumstances". Amnesty International welcomed this proposal but notes that the Bill has still not become law, nor has the government referred to it in its report to the Committee. To Amnesty International's knowledge, the need for mandatory judicial inquiries into allegations of extrajudicial executions has not been discussed.

- **The Committee should enquire into the government's intention to make judicial inquiries into death in custody, "disappearance", rape and extrajudicial execution, mandatory in law**

Between 1979 and 1981 the National Police Commission made a series of detailed recommendations relating to the selection of police officers, their training, supervision, working conditions and pay, and proposed an effective machinery to investigate human rights violations by the police. It also recommended that a special unit should be created in the Home Ministry to examine and implement these recommendations. However, despite repeated calls by human rights activists as well as several senior police officials for the government to implement these recommendations, they have not been implemented or incorporated into law.

¹² Article 226 of the Constitution of India empowers the High Courts to issue writs for the enforcement of the Fundamental Rights set out in Part III of the Constitution, or for any other purposes. The limits of the applicability of this article have been delineated by case law. In a leading case in 1982, the Supreme Court of India held that mandamus will not issue to direct a subordinate legislative authority to enact or not to enact a rule, order or notification which it is competent to enact (*A K Roy v Union of India* AIR 1982 SC 7 or 810).

Article 2(3)

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted

- **Members of the Committee should stress the need to ensure access to all components of redress -- investigation, prosecution and compensation -- for victims of human rights violations, without reservation or discrimination**
- **The Committee should enquire into measures taken to ensure that all allegations of human rights violations -- particularly those in areas of armed conflict -- are investigated. In addition enquiries should be made into the steps taken by the authorities to ensure that these investigations are impartial and that their findings are made public**
- **The Committee should enquire into the practice of the Indian authorities in requiring sanction for the prosecution of officials suspected of perpetrating human rights violations**
- **Committee members should make enquiries concerning the number of security forces prosecuted for human rights violations in states of the north-east of India**
- **Enquiries about mechanisms used to monitor the payment of compensation to ensure that it reaches victims would be worthwhile**
- **The Committee should enquire into measures taken by the government to ensure that victims, their relatives and witnesses are granted adequate protection from harassment during the full process of registration, investigation and prosecution of human rights violations**

Notwithstanding the extensive remedies available in the general criminal and civil law, as well as through constitutional provisions, full redress for human right violations has not been forthcoming. The discussion of article 2(3) will focus on the availability of the three components of redress, namely investigation, prosecution of perpetrators and compensation. However, before this, a brief discussion of the legal system and the legal process is necessary.

The implementation of those laws which do conform to international standards for the protection of human rights is compromised by a legal system that is prone to lengthy delays and does not provide easy access to justice. The system mitigates against those who are economically

disadvantaged (see article 7). It cannot be assumed that all persons have equal access to justice -- much depends on the local situation.

Amnesty International is concerned that the legal system has effectively broken down in areas where there is internal armed conflict. In Jammu and Kashmir, court orders are regularly disregarded by officials in the administration and the security forces. In 1994, a petition was filed in the High Court of Jammu and Kashmir concerning a range of human rights violations in jails and interrogation centres in the state. The judge hearing the petition found that the allegations required a thorough probe, commenting:

*"There is total breakdown of law and order machinery. I should not feel shy to say that even this court has been made helpless by the so-called law enforcing agencies. Nobody bothers to obey the orders of this court. Thousands of directions have been given to top administrative and law enforcing agencies which have not even been responded to"*¹³.

Human rights activists in Jammu and Kashmir have referred to the cynicism with which citizens now approach the legal system after years of seeking redress without result. A similar situation prevails in the north-east states -- the isolation and perceived alienation from the rest of India has impacted on the use of the legal system. For example, lawyers in Manipur have reported that many in the state do not consider "Indian" law to be appropriate to their situation. Difficulties in communication in remote regions have further limited access to justice. Access to redress in areas of armed conflict is further curtailed through legislation governing the operations of members of the armed forces which grants extensive powers to these forces and protects them from investigation and prosecution (see below)¹⁴.

In many cases, victims or their relatives, attempting to seek legal redress for human rights violations have been subjected to harassment and intimidation. In Punjab, this meant that hundreds of victims and their relatives failed to file complaints concerning torture, "disappearance" and extrajudicial execution at the time of their occurrence. In December 1994, a civil writ petition was filed before the Punjab and Haryana High Court by a lawyer who had taken up hundreds of human rights cases in the state. He expressed concern at the presence of members of the Punjab police in the High Court premises in Chandigarh which had led to attempts to abduct witnesses and petitioners presenting *habeas corpus* writs in cases of alleged "disappearance"¹⁵.

Reports of harassment and intimidation of victims, relatives and witnesses continue to be received from Punjab in particular but also from other states throughout India. In a case of a "disappearance" which is currently being heard in the Supreme Court of India -- that of the "disappearance" of Sarwan Singh in Punjab in January 1993¹⁶ -- several witnesses were reportedly intimidated in March 1997 into signing affidavits refuting that they had given affidavits to the

¹³ Hearing on 17-10-94 of Petition No. 850/94 in the High Court of Jammu and Kashmir.

¹⁴ For a comprehensive discussion of legislation governing the operations of armed forces which limits access to redress, see "Internal Militarisation: Blood on the Tracks", by Gautam Navlakha, published in the Economic and Political Weekly, Bombay, 8 February 1997, pp 299-306.

¹⁵ Civil Writ Petition 8134 of 1994 in the High Court of Punjab and Haryana.

¹⁶ Civil Writ Petition 463/464 of 1995 in the Supreme Court of India, *Human Rights Trust and Another vs State of Punjab and Others*.

human rights organization which brought the case to court, testifying to the arrest by police of Sarwan Singh.

- **The Committee should enquire into measures taken by the government to ensure that victims, their relatives and witnesses are granted adequate protection from harassment during the full process of registration, investigation and prosecution of human rights violations**

The NHRC is often seen to intervene when the judicial process fails or when an individual is not in a position to approach the courts. However, in the absence of the power to make binding recommendations and order the prosecution of those found responsible, the NHRC can never replace a judicial system in providing adequate redress and compensation for victims of human rights violations.

Investigation

International standards place the onus on the state to ensure that the legal system provides adequate mechanisms for thorough, prompt and impartial investigations in cases of human rights violations. In India, various types of investigations can be launched by the authorities and courts into allegations of human rights violations.

Investigations into deaths in custody are mandatory in India under section 176 of the CrPC. Such inquiries are not always held, and are more likely to take place when a death in custody leads to a public outcry. They can be conducted either by an executive magistrate (appointed by the state government and remaining subject to executive control) or by a judicial magistrate (judicial official, independent of the executive, appointed by the High Court of the state, and who remains under judicial supervision). Lawyers say that most inquiries are carried out by executive magistrates. This means that they remain under executive control, as opposed to the more independent inquiries carried out by judicial magistrates.

Those magisterial inquiries which are held are often inconclusive, which is inevitable when, as happens in many cases, magistrates depend on the police to investigate allegations of misconduct by their own forces. The police are often reluctant to bring forward evidence which might implicate their colleagues and senior officials have been known to participate in routine cover-ups by police of deaths resulting from torture (see article 6 and Box 10).

The state or central government authorities can also order an investigation to be conducted under the **Commissions of Inquiry Act, 1952** -- the findings of which are not binding, nor do they automatically result in prosecution. Such a Commission was appointed to investigate the immediate causes of, responsibility for and the conduct of security forces during riots which took place in Bombay in December 1992 and January 1993. In several instances, the terms of reference of such Commissions of Inquiry have been criticised by activists within India. For example, when a Commission of Inquiry was established to investigate a police firing which occurred on 1 July 1992 in Bhilai, Madhya Pradesh, in which 11 protesting industrial workers were killed, its terms of reference excluded incidents which did not occur on that day. The Commission therefore refused to hear evidence of the subsequent torture and ill-treatment of individuals by the police and of connivance between politicians and industrialists which facilitated the violations.

Punjab: Continuing pursuit of justice

Harjit Singh, son of Kashmir Singh, an employee of the Punjab State Electricity Board, "disappeared" after his arrest by Punjab police on 29 April 1992. Following appeals for his release, the police claimed that he was arrested on 11 May 1992 and that he was killed in an "encounter" on the following day. Harjit Singh's relatives dispute this claim and refer to several sightings of Harjit Singh in police custody.

In a hearing in October 1992 of the *habeas corpus* petition filed by Kashmir Singh regarding his son's "disappearance", a warrant officer was appointed by the High Court to search for Harjit Singh. The warrant officer, Kashmir Singh and a relative visited the Mal Mandi Interrogation Centre, Amritsar on 17 October and reportedly caught sight of Harjit Singh behind the bars of a window on the first floor of the interrogation centre. When they were finally granted access to the interrogation centre by a police officer who initially refused them entry, Harjit Singh was not there. As a result of this incident, the High Court appointed a sessions judge to inquire into whether Harjit Singh was present at the Mal Mandi Interrogation Centre or whether he was killed in cross-fire on 12 May 1992. The High Court requested the sessions judge to conclude the inquiry within three months.

On 28 November 1995, the findings of this three year inquiry were finally disclosed to the High Court of Punjab and Haryana. The report noted that the state authorities did not fully support their version of the arrest and subsequent death of Harjit Singh with evidence. It also revealed that the police did not follow arrest and detention procedures fundamental to ensuring the protection of the human rights of prisoners and detainees as well as investigation procedures which would ensure independence and impartiality.

However, the inquiry failed to reach a conclusion about the fate of Harjit Singh and recommended that the case be thoroughly investigated by a "Specialised Agency under the directions of the Hon'ble High Court".

Despite this, as of the beginning of June 1997, and despite repeated appeals by Amnesty International and the intervention of the NHRC, no further enquiry has been ordered by the High Court and the case remains pending.

Although the onus is on the officer of a court to ensure speedy justice, it is clear that during the inquiry, the powers of the court to require evidence and to ensure that the case was investigated in a thorough, impartial and unhindered manner were not fully exercised. Several of the state respondents, including key police witnesses, failed to appear before the judges during the hearings of the enquiry. In addition, on several occasions, witnesses and relatives of Harjit Singh -- including his four-year-old son -- were subjected to harassment and intimidation by police.

Commissions of Inquiry have also been criticised for their lengthy proceedings, often taking several years to hear evidence and produce their findings. Given that at the end of this process their recommendations are not binding and prosecution of those responsible for violations is often brought only after their findings are made public, Amnesty International is concerned that Commissions of Inquiry do not provide prompt redress to victims. This is particularly so in complex, high profile cases such as the inquiries into the riots which took place in Delhi in 1984 in which around 3,000 people (the majority Sikhs) were killed. A Commission of Inquiry was established in 1985 and produced a report in 1987 but this was widely criticised by human rights activists and failed to form a conclusion, recommending the formation of further committees to look into the number of those killed, the conduct of the police and to recommend and monitor the registration of cases against individuals. By July 1992, according to figures published by the People's Union for Democratic Rights, only 128 people had been convicted for related offences¹⁷. Similarly, the Srikrishna Commission of Inquiry into the Bombay riots in 1992/93 is still hearing evidence over three years after its establishment (see article 2(1)).

Individual victims of human rights violations throughout India can now appeal to the NHRC which has taken up thousands of complaints since it was set up in 1993. It can order investigations by the states concerned or undertake investigations using its own investigative machinery with the assistance of the state authorities (as it did for example in Andhra Pradesh -- see article 6(1)). In many instances it has not accepted the findings of state investigations and has called for the presence of state officials to explain the absence of redress measures for victims.

However, the ability of victims to approach the NHRC is not always clear-cut. In January 1996, a human rights organization in Bihar (JOHAR), concerned that it would not get a fair hearing in a local court where it alleged that the judiciary was under the control of the local administration, filed a petition in the Supreme Court regarding deaths in custody in Bihar during 1995. In response to the petition, the Supreme Court stated: "The petitioners are at liberty to take such other proceedings, as are available to them in law" and dismissed the petition. When the organization approached the NHRC some months later it responded: "In the light of the direction of the Supreme Court, the Commission would not be right in entertaining this complaint. If the complainants are not in a position to meet the expenses of the litigation, it is open to seek the assistance of the legal aid authorities. No action".

Moreover, the mandate limitation of the NHRC which means that it cannot look into an allegation of a violation which took place over a year before the complaint is made to it, excludes thousands of victims from seeking redress through this channel. There are often compelling reasons as to why a victim does not come forward immediately to make a complaint.

In Jammu and Kashmir, Amnesty International has documented hundreds of cases in which there is evidence to suggest that police and security forces have been responsible for "disappearances" and deaths in custody, but where investigations have not been carried out by the authorities. Where allegations have been made but insufficient evidence exists, Amnesty International has called for impartial investigations into those allegations, in accordance with the article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance and article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as article 2(3) of the covenant. In response to Amnesty International's allegations of "disappearances"

¹⁷ See "1984 Carnage in Delhi: A report on the aftermath", Peoples Union for Democratic Rights, Delhi, November 1992.

and deaths in custody in both Jammu and Kashmir and Punjab, the Government of India has denied that these violations have occurred, and insisted that effective remedies exist for anyone who wishes to make a complaint. This does not appear to be the case.

In 1994, a human rights cell was established by the Jammu and Kashmir authorities, staffed by a Divisional Commissioner and representatives of the police and other security forces. The human rights cell has dismissed the majority of allegations of violations without stating the grounds on which it based these conclusions.

The impartial investigation of violations perpetrated by members of the armed and paramilitary forces is made more difficult in areas of armed conflict by the protections granted to these forces by a variety of legal provisions (see "Prosecution")

In March 1997, the central government filed a petition in the Guwahati High Court challenging the right of the Government of Manipur to order a judicial inquiry into the death of a 15-year-old student following arrest by a battalion of the armed forces. The inquiry had been established on 21 February 1997 following a public outcry over the death of Kangujam Ojit Singh who had been arrested on 16 February by members of the 57 Mountain Division of the armed forces on suspicion of having links with an armed opposition group. He was handed over to police by members of the armed forces on 19 February who also lodged an FIR with police claiming that Kangujam Ojit Singh had been arrested that morning. Police kept him in detention and denied access to his relatives who attempted to visit him there. Late in the evening of 19 February his condition worsened and he was taken to hospital where he died the next day. An inquest found several injuries on his body, concluding that death was caused by "contusion and oedema of lungs associated with multiple bruises resulting from blunt force injuries on the body -- Homicidal in nature".

In its petition, the central government argued that under entries of List II of the Seventh Schedule of the Constitution and sections of the **Commission of Inquiry Act, 1952**, the state government did not have powers to order a Commission of Inquiry into the conduct of armed forces personnel deployed in aid of civil power. As well as challenging the right of the state government to order an inquiry, the government gave its version of events leading to the death of Kangujam Ojit Singh, stating that on 19 February, he had been chased by armed forces personnel during which time he sustained a "sprained leg" for which he was provided with medical treatment before being handed over to police.

Attempts by the central government to prevent an inquiry into this incident while providing a version of events which denied the allegations made by petitioners, heighten Amnesty International's concerns about impunity within the armed forces. The father of Kanjugam Ojit has filed an appeal in the Guwahati High Court which is still being heard.

- **The Committee should enquire into measures taken to ensure that all allegations of human rights violations -- particularly those in areas of armed conflict -- are investigated. In addition enquiries should be made into steps taken to ensure that these investigations are impartial and that their findings are made public**

Prosecution

In India, the first step to providing a remedy for the violation of human rights is to make a complaint at a police station. Police officers are obliged under section 154 of the CrPC to take a complainant's statement down in writing in a First Information Report (FIR). Reports suggest however, that in certain areas of the country, and for certain vulnerable groups in society, there are restraints on the filing of FIRs. For example, it is reportedly common for police to refuse to file FIRs of complaints submitted by disadvantaged groups, including women and members of the scheduled caste and scheduled tribe communities (see article 2(1)).

Lawyers in Jammu and Kashmir allege that there is more systemic disregard of this provision in the state and that local police have been instructed to refuse to register complaints of human rights violations without first obtaining permission from higher authorities. Amnesty International has a copy of an order from the Superintendent of Police (South Srinagar), dated 14 April 1992, which states: "If there is any misdemeanour by the security forces during search operations or otherwise... FIRs should not be lodged without approval of higher authorities". The organization knows of many cases in which police in Jammu and Kashmir have refused to file FIRs and have thus ensured that victims or their relatives cannot pursue remedies. This instruction clearly contravenes Indian law¹⁸ and is of particular concern since in communications with Amnesty International, the Government of India has pointed to the failure of individuals to file FIRs as a reason for why allegations of human rights violations have not been fully investigated in the state.

Victims of human rights violations can either bring a civil suit for damages or initiate a criminal complaint. However, civil claims involve such lengthy and costly procedures that very few embark on them and complaints against police are rarely successful. In civil complaints, the hearing of "pre-charge evidence" can -- according to lawyers -- take up to six years during which lawyers for the police and the complainant appear before the court to argue their cases concerning the charges to be framed. Hearings often take place only every four months or so and adjournments are frequent. Once charges have been framed, the case for the prosecution is handed over to a public prosecutor and the trial proceeds.

In a famous case, in August 1996, a Calcutta metropolitan magistrate found two police officers guilty of torturing Archana Guha in 1974 over 20 years after she and her brother began legal proceedings against them (an appeal against this judgement has now been filed by the police officers). During the course of the lengthy legal process, on 8 February 1994, the Supreme Court of India expressed concern about the way in which police officers accused of torturing Archana Guha in their custody had been able to abuse the Indian legal system to escape justice by repeatedly seeking the higher courts' interference to delay judicial proceedings at the lower courts on one pretext or other. Dismissing the appeals of two policemen challenging their trial the Supreme Court judges concluded: "The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so."

The Supreme Court's 1994 observations underline the inability of the Indian legal system to provide speedy and effective remedies to victims of human rights violations.

¹⁸ See *India: Torture and deaths in custody in Jammu and Kashmir*, January 1995, AI Index: ASA 20/01/95 and *India: Analysis of the Government of India's response to Amnesty International's report on torture and deaths in custody in Jammu and Kashmir*, March 1995, AI Index: ASA 20/05/95.

Another significant impediment to pursuing a case of human rights violation, is the sanction required for prosecution of state officials. Under section 197 of the CrPC no court can take cognizance of an offence alleged to have been committed by a public servant or member of the Armed Forces while "acting or purporting to act in the discharge of his official duty except with the previous sanction of the Central or State Government". Section 45 of the CrPC also protects members of the armed forces from arrest "for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government". This can also be extended to any forces charged with the maintenance of public order in states if state governments wish.

In January 1997, the Tamil Nadu Pazhangudi Makkal Sangam (a human rights organization) and the Peoples Union for Civil Liberties presented a written submission to the High Court of Madras in a hearing concerning the jurisdiction of Human Rights Courts as set up under the **Protection of Human Rights Act, 1993**. The submission referred to the issue of sanction for prosecution arguing that if section 197 of the CrPC were to apply to prosecutions under the **Protection of Human Rights Act**, it would "defeat the very purpose of the Act and the very purpose for which Human Rights Courts have been set up, which is for speedy trial of human rights offences... One cannot infer the necessity of sanction when it may result in the very negation of the act and by extension negate the very commitment to enforcement of fundamental right and to the International Covenants"¹⁹. The hearings in this case are continuing.

In areas of armed conflict, these provisions are reinforced by provisions in special legislation. Section 7 of the **Armed Forces (Special Powers) Act** specifies that "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act". In examining India's second periodic report in 1991, members of the Human Rights Committee questioned how article 2(3)(a) of the covenant was being applied, with specific reference to this section of the Act. Concern was expressed that this provision could be used to "destroy fundamental rights with impunity except at the good pleasure of the central government".

Contrary to the statement made by a member of the Indian delegation to CERD claiming that "The Government had always granted permission for prosecution of members of the security forces if it appeared that the rights of individuals had been infringed"²⁰, information received by Amnesty International demonstrates that sanction for prosecution has not always been available (see Box 6).

- **The Committee should enquire into the practice of the Indian authorities in granting sanction for prosecution of officials suspected of perpetrating human rights violations**

¹⁹ Suo Moto CrI.R.C. No. 868 of 1996 in the High Court of Judicature at Madras: Written Submission on behalf of the Petitioner and the People's Union for Civil Liberties (PUCL)

²⁰ CERD/C/SR.1162, para 46

Amnesty International echoes the concern expressed by members of the Committee in 1991 concerning the application of article 2(3)(a). For instance, the organization knows of only one case in the north-east of India in which members of the security forces have been tried and convicted during the last ten years for violating human rights (see Box 12). In the state of Manipur, in several cases where FIRs have been filed with police and forwarded to judicial magistrates for investigation, advocates representing the security forces concerned have filed review petitions challenging the right of magistrates to investigate offences allegedly carried out by public servants or members of the Armed Forces under these sections, thereby stalling the legal process²¹.

- **Enquiries by Committee members concerning the number of security forces prosecuted for human rights violations in states of the north-east of India would be worthwhile**

Amnesty International considers that impunity prevails in India for members of the police and security forces committing human rights violations. Although in some cases, police officers have been publicly prosecuted for human rights violations, the majority of offences go unpunished and uncensured. On occasion, the government has announced that action has been taken against members of the security forces in Jammu and Kashmir in connection with human rights violations. In October 1996, the Union home ministry revealed that 272 security personnel had been dismissed, made to retire or convicted after criminal prosecution for abuses in Jammu and Kashmir. However, despite repeated requests, no details of the nature of the offences committed or the punishments provided have been given to Amnesty International to date.

The attitude of the officials implicated in human rights violations reveals a lack of concern for the minimum standards provided in the ICCPR. Concerned about an increasing number of judgements indicting officials for human rights violations and the effect this was having on the morale of the police force, police officials reportedly appealed to the Punjab government in 1995 to intervene with the judiciary. A senior Punjab police officer was quoted as saying in 1994: "Abnormal situations needed an abnormal approach to handle it. So, why put us in dock? Moreover, whatever the police did, they had the sanction of the state. We operated within the framework of the state's policy for which we are individually being asked to pay". Most recently, several police officers detained on charges of human rights violations in the state have gone on hunger strike demanding immunity from prosecution.

Police officers have reportedly asked that extraordinary legislation be passed in the state to secure a cut-off date, which would mean that cases against the police relating to a certain period -- the height of the fight against armed secessionists -- could not be heard in the courts (see article 6(1)). According to reports, while a few police officers have now been prosecuted in Punjab for human rights violations, hundreds of petitions alleging violations by Punjab police remain pending in the courts and there continues to be an urgent need for the Government of India to address the issue of impunity for past human rights violations in the state (see Box 9).

²¹ See pages 2-3 in "India: Official sanction for killings in Manipur", April 1997, AI Index: ASA 20/14/97

Jammu and Kashmir: Failure to prosecute security forces

In 1991, an investigation into the "disappearance" of Javed Ahmed Ahanger was carried out by an Additional District and Session Judge, Srinagar, on the direction of the Jammu and Kashmir High Court. His report was submitted to the court in 1992. After examining several witnesses, including police officers, the judge found that there was evidence to show that Javed Ahmed Ahanger had been arrested by members of the National Security Guard and that he had subsequently "disappeared". He also expressed grave concern that despite the fact that a complaint was lodged with police by Javed Ahmed Ahanger's father in 1991, it was clear that no investigation had been carried out by police.

In May 1995, the High Court directed the Station House Officer, Shergari police station, to complete an investigation "in all respects, as per the relevant provisions of law" by 21 October 1995. The Station House Officer finally submitted his report to the court in December 1995, stating that the case had been investigated and finding a case for prosecution under section 364 of the Ranbir Penal Code (this relates to "kidnapping or abducting in order to murder").

The Additional Chief Secretary, Home, Government of Jammu and Kashmir, stated before the court that sanction for prosecution of the officers was applied for from the Ministry of Home Affairs in New Delhi in July 1995. However, at a hearing of 20 February 1996, a fax message from the Deputy Secretary to the Government of India to the Chief Secretary of the Government of Jammu and Kashmir, the Additional Chief Secretary and the Director General of Police, was presented to the court, in which it was stated that no request for sanction had been made by the state government. The court then made a further request that sanction be granted.

In July 1996, the central government notified the High Court that it would not grant sanction for the prosecution of the National Security Guard personnel. The grounds given were that there were problems with the police investigation into Javed Ahmed Ahanger's "disappearance", which according to the government, did not examine in person the National Security Guard personnel responsible. The central government requested the state government to pursue further investigations under the "prescribed procedure" and resubmit its request for prosecution if necessary. Further investigations are currently being carried out, and as of June 1997 sanction has not yet been granted.

Compensation

In a number of instances, monetary compensation has been granted to victims of human rights violations in India, usually on a discretionary basis by the courts and the NHRC. The need to file separate civil proceedings in the courts to ensure compensation in civil cases deters many from seeking this form of redress. In the case of Archana Guha, although she has succeeded in bringing those responsible to justice 20 years after she was tortured (see above), she would have to file a new case in the courts if she wished to receive monetary compensation for the injuries she sustained while in custody.

The NHRC has taken a leading role in calling for victims and their relatives to be provided with monetary compensation. In particular, it has called for an amendment to the law so that cases relating to violations of human rights and compensation could be tried together in one court with one set of evidence so that victims would not have to endure two separate cases and wait considerable lengths of time for final compensation.

In October 1995 the NHRC suggested that monetary compensation for victims of police abuse should be taken from those responsible. While Amnesty International welcomes efforts to compensate victims, it is concerned that redress and compensation should not merely take the form of monetary awards -- it should include the prosecution of those found responsible in accordance with law. The responsibility for compensation is also broader than the perpetrators -- the state must bear responsibility for the illegal actions of its officials.

Amnesty International has received reports that the full amount of compensation ordered by the courts is not always received by victims due to corruption in the administration.

- **Enquiries about mechanisms used to monitor the payment of compensation to ensure that it reaches victims would be worthwhile**

The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant

Article 3

- **The Committee should enquire into the implementation of legislative and other safeguards to protect women**

Women activists have played a major role in the campaign for the whole range of human rights in India. Because of this, they have often been targeted for attack by the state and women protesters are often the subject of harassment and ill-treatment by law enforcement agents in the context of protest movements (see article 2(1) and articles 19 and 21).

The Government of India has itself recognised the particular vulnerabilities of women, for example in its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women on 9 July 1993 and the earlier establishment of the National Commission for Women. However, India has yet to submit its first report to the Committee on the Elimination of all forms of Discrimination against Women (CEDAW).

Nonetheless, the persistence of forms of sexual torture, including rape, and the barriers facing those who seek legal redress, illustrate the continuing vulnerability of women within the criminal justice system, and in their relationship with predominantly male law enforcement personnel (see article 7).

The National Commission for Women has made proposals for legal provisions and amendments that would provide greater protections for women in custody.²² However, reports indicate that these proposals have remained dormant. Similarly, numerous suggestions were made by lawyers and women's activists to strengthen legal safeguards in response to questionnaires on the criminal law distributed by the Law Commission of India in 1995 and 1996, but it is unclear if and how these are being acted upon (see article 2(2)).

Implementation of existing legislative and other safeguards has been lacking at a number of levels and contradicts India's commitment to protecting the rights of women. Incidents of rape in custody -- a phenomenon which is also discussed under article 7 -- are a stark illustration. An amendment was made to the **Evidence Act** in 1983, to presume lack of consent in cases where sexual intercourse in custody is proven. In the same year, the offence of "custodial rape" was introduced into section 376 of the IPC. There have been few convictions for such practices, despite continuing reports of this violation.

In recognition of the existence of discriminatory practices against women the Indian government has passed numerous legislative measures and established Women's Police Stations in some metropolitan areas. However, during a visit to a women's police station in Bangalore in August 1996, Amnesty International delegates learned that cases of custodial rape are not dealt with there,

²² For a discussion of proposals made by the ad hoc subcommittee appointed by the National Commission for Women, in 1993 see *Memorandum on Reform of Laws Relating to Sexual Offenses*, prepared by Shamona Khanna and Ratna Kapur, Centre for Feminist Legal Research, New Delhi, 27 February 1996.

but normally with the Criminal Investigation Department (CID) because of the seriousness of the crime.

Uttar Pradesh: *Dalit* woman tortured by police

At about 10pm on the night of 13 July 1996, several police officials visited a house in the village of Nangal Kahadar, Etawah district, in Uttar Pradesh.

They questioned 18-year-old Nisha Devi, wife of Sarvesh Kumar, about the whereabouts of her elder brother-in-law whom they suspected of *dacoity*. After she told them that he had gone to the house of his sharecropper, they left.

The police returned to Nisha Devi's house at around midnight when she told them that her brother-in-law hadn't returned. At this, the police began to beat Nisha Devi and her father-in-law. They threatened to take Nisha Devi and her 13-year-old sister-in-law to the Bakewar Police Station saying that they would "fill chillies in them" and attempted to force the two women into their jeep saying that they would keep them there until the brother-in-law surrendered. When they resisted, police ripped the sari from Nisha Devi's body. She was pinned to the ground by one of the police officers and her feet were beaten with a wooden baton. A police officer kicked her on the vagina. Her elder sister-in-law tried to intervene and soon the entire village had gathered to protest. On the intervention of villagers, the police left the village. However, before they left one of the police officers told Nisha Devi that if she complained he would ask the policemen to rape her in the police station, saying "they will tear your vagina apart and all your enjoyment will go away".

While police were in her home, they stole a sum of Rs1,100 (approximately \$US 31) and some gold jewellery from an attache case.

Nisha Devi reported the incident to the Superintendent of Police on 15 July in person. She was medically examined at the Dr B. Ambedkar hospital on 16 July and the medical report confirmed injuries to her legs and spine.

A First Information Report (No.205/96) was only filed on 27 July 1996 against four police officials under sections 394 (*Voluntarily causing hurt in committing robbery*), 504 (*Intentional insult with intent to provoke breach of the peace*), 506 (*Punishment for criminal intimidation*), 354 (*Assault or criminal force to deter public servant from discharge of his duty*), 511 (*Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment*) of the IPC. Although one police official was immediately arrested the rest absconded.

Human rights activists who investigated this incident report that local police officials are attempting to put pressure on Nisha Devi to withdraw her complaint. In one incident, police officials visited her husband's house and told him to compromise or his life and that of his wife would be at risk.

In January 1994, an Amnesty International delegation visited Bombay and documented cases of women who had been illegally detained by police and tortured to force the surrender of suspects whom they could not find in the wake of the bombings which took place in Bombay on 12 March

1993²³. Evidence of the illegal detention of women as "hostages" has appeared from many states in India. In November 1993 in Thnganjavur district of Tamil Nadu, it was reported that police entered the home of a 20-year-old woman at 2am in search of her husband. When she told them that her husband was not at home, they forcibly took her to the Orathanadu police station where she was allegedly gang-raped by three police officers. Her husband reportedly committed suicide after hearing about the incident. Subsequent reports stated that the victim was being harassed by police and ruling politicians, to keep quiet about the incident.

The courts have judged that the practice of calling women to police stations is a "flagrant contravention of proviso to section 160(1)"²⁴ which concerns a police officer's power to require attendance of witnesses "provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides". However, the practice continues. The NHRC requested information from the state government of Delhi concerning the rape of a woman in custody in July 1994, asking "why the woman was detained at the police station for the night; how it was that there was no supporting entry for her detention at the police station and what steps had been taken or proposed to be taken to ensure that women were not called and detained at the police station for investigation, particularly at night. The Commission said that it had already taken serious objection to such practices persisting notwithstanding the decision of the Supreme Court in the case of *Nandini Satpathi vs. State of Orissa* about 15 years back".²⁵

Amnesty International believes that safeguards should be established in law and that those violating those safeguards should be held to account. In 1994, it welcomed the provision contained in the **Code of Criminal Procedure (Amendment) Bill 1994**, which sought to prohibit the arrest of a woman after sunset and before sunrise. The Government of India has on many occasions since, pointed to this piece of legislation as a measure aimed at safeguarding women detainees. However, Amnesty International notes that this provision has been under consideration since its inclusion in a **Code of Criminal Procedure (Amendment) Bill in 1988** which was never passed.

Women living in situations of internal armed conflict have also been particularly vulnerable to rape and other violations (see articles 6(1) and 7). Amnesty International has received numerous reports that female relatives of alleged members or sympathizers of armed opposition groups in the state of Punjab have "disappeared" or been killed in police custody, often after torture.

While the number of such reports has declined in recent years, many of those cases which took place several years ago remain pending before the courts without result and reports of the ill-treatment of women in custody in Punjab continue (see Box 8).

Both the courts and the NHRC have issued directives to protect women in armed conflict situations. In 1991, the Supreme Court held that:

²³ See *India: Memorandum to the Government of India (arising from an Amnesty International visit to India 5-15 January 1994)*, August 1994, AI Index: ASA 20/20/94, pages 4-5.

²⁴ *Smt.Nandini Satpathy v. P.L. Dani* AIR 1978 SC 105.

²⁵ Human Rights Newsletter, newsletter of the NHRC, Vol 2, No.2, February 1995.

Punjab: Torture of a woman in custody

On 5 May 1995, Devki Rani, a 45-year-old female resident of Ludhiana, in the state of Punjab, was taken from the Civil Hospital by police where she was visiting her husband. Her son, Rajesh Kumar (aged 18), had earlier been arrested and was also in police custody. Devki Rani was taken to the Atam Park police post where she was stripped naked. She later testified:

"My legs were stretched apart and hands tied behind in the police post. SI (Sub-inspector) climbed on my thighs. I was tortured and molested by ASI (Assistant Sub-Inspector), HC (Head Constable), Constable and two other men. My head was dipped in the water several times... My son Rajesh Kumar was compelled to disrobe me. I was kept in wrongful confinement for three days and was released on May 11 at 9pm".

The actions of police were apparently carried out on the instructions of a local clothes dealer who had employed Devki Rani's other son, Surinder Kumar (aged 15), but who had recently left his employment after he failed to receive his salary. Devki Rani filed a suit in the local Labour Court against the clothes dealer concerning this, and in response, the clothes dealer went to the police and filed a case against Devki Rani, saying that she had stolen some items of clothing.

Following the filing of a petition in the High Court by the International Human Rights Organization, Punjab, a CBI inquiry was ordered, which as far as Amnesty International is aware, is still proceeding.

*"The Army Officers while effecting the arrest of a woman or making search of woman or in searching the place in the actual occupancy of a female shall follow the procedure meant for the police officers as contemplated under the various provisions of the Code of Criminal Procedure, namely the proviso to sub-section (2) of section 47, sub-section (2) of section 51, sub-section (3) of section 100 and proviso to sub-section (1) of section 160 of the Code"*²⁶

Continuing incidents of rape in armed conflict situations (see article 7 and Box 12) indicate that these directives are routinely disregarded by security forces.

Regular reports appear in the Indian media of the stripping and parading of women as punishment for various crimes. Such practices have reportedly been carried out by police officers, such as in the stripping of a woman in Tentulia village, Jagatsinghpur district, Orissa in February 1995, by police officers complying with a court order to vacate illegal possessions of land.

The police response to rape, domestic violence and other forms of violence against women carried out in the community has often amounted to acquiescence. In Rajasthan, on 29 May 1994, a 35-year-old woman was stripped and paraded naked on a donkey by members of the upper-caste community in a rural village, allegedly in retaliation for crimes committed by her son. She was dragged around the village temple with her legs tied and beaten with sticks. Hot water and kerosene were then poured into her mouth and she died shortly afterwards. A report in *Frontline* of 29 July 1994 said that four policemen had been suspended from duty but that the government had refused to order a judicial inquiry into allegations of police negligence. Police had reportedly illegally detained all members of her family on the morning of 29 May following a complaint concerning her son's crimes but had failed to act to stop the events leading to her death.

Police in India have been accused of systematically failing to register cases of domestic violence and to take basic steps to investigate cases of rape and other forms of torture or ill-treatment perpetrated in the community. Articles about rape in Indian newspapers have talked about the "double rape" of reporting such a crime at a police station where women become targets of ridicule and abuse. Moreover, access to justice is a significant hurdle (see article 14).

All too often reports of rape speak of attempts by police to persuade women to withdraw cases or to sully the reputation of women in order to imply that the incident did not occur. It is not a legal requirement for police to send women who allege that they have been raped for an immediate medical examination. Much medical evidence is lost because this simple procedure is not followed. Bhanwari Devi, a *saathin* (village development worker), who was raped on 22 September 1992 in Bhatari village, Rajasthan, by five men of a higher caste, was not able to have a medical examination for 52 hours. She was initially refused an examination by the Primary Health Centre because a female physician was not on duty and she was therefore sent to Jaipur. A physician at the SMS Government hospital, Jaipur, refused to examine her without a magistrate's order. The magistrate refused to grant an order because it was "outside office hours". The next morning she was given an authorisation for a general medical examination (not a rape examination). She was finally examined at 9pm on 24 September.

- **Enquiries by the Committee into the implementation of legislative and other safeguards to protect women would be worthwhile**

²⁶ Order by Justice S Ratnavel Pandian in 1991 in *Editor "Boodhbar" vs Union of India and Another*, Civil Appeal No 2551 of 1991.

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin.

2. No derogation from articles 6, 7, 8, (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary on the date on which it terminates such derogation.

Article 4

- **The Committee should enquire into the continued application of the Armed Forces (Special Powers) Act which amounts to *de facto* derogation from non-derogable covenant rights**
- **The Committee should enquire into provisions contained in numerous enactments (listed under article 9(1)), including the National Security Act and the Jammu and Kashmir (Public Safety) Act, which allow for preventive detention, with a view to assessing whether such provisions amount to *de facto* derogation from articles of the covenant**

India has made no formal derogations from the covenant. However, when hearing India's second report in 1991, the Committee found that the **Armed Forces (Special Powers) Act** and the **Terrorist and Disruptive Activities (Prevention) Act** (now lapsed), violate articles 6, 9 and 14 of the covenant. State parties to the ICCPR may not take measures derogating from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18, even in time of emergency.

Amnesty International considers that specific legislation operative in India constitutes a suspension of rights under article 6 and possibly under article 7 of the covenant, amounting to a *de facto* derogation from the non-derogable rights which is incompatible with the object and purpose of the covenant.

The arbitrary deprivation of life, unconditionally prohibited by article 6(1) of the covenant and non-derogable under article 4(2), is permitted under section 4(a) of the **Armed Forces (Special Powers) Act, 1958** which has been operative in large parts of the north-east region for almost four decades, and has subsequently been applied in Punjab and in Jammu and Kashmir. Section 4(a) gives the armed forces and the paramilitary forces broadly defined powers to shoot to kill in areas declared to be disturbed, either under this Act or under the **Disturbed Areas Act, 1955**:

“if ... it is necessary so to do for the maintenance of public order ... fire upon or otherwise use force, even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly

of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms, ammunition or explosive substances.”

India's report elucidates the reasons for the continued application of the **Armed Forces (Special Powers) Act**, stating:

"...such statutes were enacted by a democratically elected Parliament, their duration was subject to periodic review, and not only could their validity be tested by judicial review, but also any action taken thereunder could be challenged before the High Courts and Supreme Court. ... if individual and isolated aberrations have occurred, there are judicial remedies available, including procedures for apprehension and punishment for such perpetrators of human rights violations" (para 17)

However, Amnesty International understands that judicial review of the **Armed Forces (Special Powers) Act**, which has been in force for over four decades, has been pending in the Supreme Court of India since 1980. Meanwhile, activists in India continue to campaign for its repeal²⁷.

- **The Committee should enquire into the continued application of the Armed Forces (Special Powers) Act which amounts to *de facto* derogation from non-derogable covenant rights**

In hearing India's second report to the Committee in 1991, Committee members were convinced that the **National Security Act, 1980** also derogated from the rights of the covenant -- notably article 9. Amnesty International considers the raft of other legislation at central and state level which allows for preventive detention, to also be a suspension of covenant rights amounting to *de facto* derogation (this legislation is discussed under article 9(1)).

While none of the legislation that allows for preventive detention directly derogates from article 7 which specifies the right not to be subjected to torture and to cruel, inhuman or degrading treatment or punishment, these pieces of legislation, including the **National Security Act** and the **Jammu and Kashmir (Public Safety) Act** involve the suspension of important legal and constitutional safeguards and thereby facilitate torture and cruel, inhuman and degrading treatment of detainees (see articles 7 and 9). For instance, while the authorities are obliged under Article 22 (Clauses 1 and 2) of the Constitution of India to bring anyone arrested before a magistrate within 24 hours of arrest and to permit them to consult a lawyer of their choice, these safeguards are not available "to any person who is arrested or detained under any law providing for preventive detention" (Article 22 (5) of the Constitution) (see article 9). As the Special Rapporteur on torture has noted: "Torture is most frequently practised during incommunicado detention."²⁸

- **The Committee should enquire into provisions contained in numerous enactments (listed under article 9(1)), including the National Security Act and the Jammu and Kashmir (Public Safety) Act, which allow for preventive detention, with a view to assessing whether such provisions amount to *de facto* derogation from articles of the covenant**

²⁷ See "Where 'peacekeepers' have declared war", Report on violations of democratic rights by security forces and the impact of the Armed Forces (Special Powers) Act on civilian life in the seven states of the north-east, National Campaign Committee Against Militarisation and Repeal of Armed Forces (Special Powers) Act, April 1997.

²⁸ E/CN.4/1995/34 at 173.

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life

Article 6(1)

- **Amnesty International urges the committee to remind the Government of India that under article 4 of the ICCPR there can be no derogation from the right to life**
- **The Committee should enquire into measures taken to review laws and standing orders relating to the use of force and firearms by security officials and bring them in line with the UN Principles**
- **Enquiries by the Committee into measures taken by the authorities to ensure clear lines of command within the security forces and to ensure accountability of those in charge of security forces would be worthwhile**
- **The Committee should enquire into the mechanisms which exist to ensure that lethal force is not used as an alternative to arrest**
- **Enquiries by the Committee into measures taken in India to prevent "disappearances" and to ensure their prompt and impartial investigation would be worthwhile**

On many occasions the Government of India has pointed to threats to the internal security of the country and the need for special measures to deal with those threats. Amnesty International considers that on the pretext of national security, in many parts of the country, the Government of India has not adequately safeguarded the most fundamental right of its citizens -- the right to life.

Despite the existence of Article 21 of the Constitution of India which safeguards the right to life, each year in India thousands of people "disappear", are extrajudicially executed, die in custody or are judicially executed

As already discussed, the **Armed Forces (Special Powers) Act** which has been in force in Jammu and Kashmir, Punjab (now lapsed) and states in the north-east region, provides the security forces in those areas with powers to shoot to kill, thus providing official sanction for the excessive use of force.

"Disappearances" and political killings

In its General Comments on article 6(1) of the ICCPR, members of the Committee pointed to the need under this article for states to take specific and effective measures to prevent the "disappearance" of individuals and "establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life".

Amnesty International notes that the Government of India, in its report to the Committee makes no reference to "disappearances" and would like to express its concern at the government's

unwillingness -- apparent in its communications with Amnesty International as well as the UN Working Group on enforced or involuntary disappearances -- to address this grave issue.

Amnesty International has received reports of hundreds of "disappearances" in India in recent years, the majority of which have been reported from the states of Jammu and Kashmir and Punjab where "disappearances" have been systematically practised by police and security forces²⁹. "Disappearances" have also been reported from states in the north-east region of India as well as from Maharashtra, Tamil Nadu and Kerala.

In its 1993 report, Amnesty International documented over 100 cases of "disappearance" in Jammu and Kashmir and pointed to a pattern of impunity which allowed for such practices to continue. Since the publication of that report, the organization has continued to receive reports of "disappearances" and is mindful of the fact that the authorities have not ensured that the fate of those who have "disappeared" has been thoroughly and impartially investigated. On 22 October 1996, the Chief Minister of Jammu and Kashmir, Dr Farooq Abdullah expressed, before the state assembly, his unhappiness over the "disappearance" of people in detention over the last seven years; he is reported to have said: "It is surprising that the security agencies who arrested these youths are denying that they have arrested them"³⁰.

Over 60 cases of "disappearance" had been included in a *habeas corpus* petition filed in the Jammu and Kashmir High Court by Mr Wanchoo, a lawyer active in the People's Union for Civil Liberties, in 1991 (see article 2(1)). Following his death, none of the cases were heard in the court and lawyers attempting to get the cases listed have reportedly found that many of the files of these cases are now missing from the High Court premises. The petition -- filed in 1991 -- is still pending in the High Court. A further 200 cases are reportedly also pending in the High Court.

In Punjab, with the improvement of the law and order situation in the state in recent years, hundreds of relatives of victims are now coming forward to file petitions in the High Court of Punjab and Haryana and in the Supreme Court of India. Allegations about the incidence of "disappearances", which had been vehemently denied by the Indian authorities, are now being confirmed.

Punjab: "Flagrant violation of human rights on a mass scale"

²⁹See "An Unnatural Fate: 'Disappearances' and impunity in the Indian states of Jammu and Kashmir and Punjab", December 1993, AI Index: ASA 20/42/93, "Harjit Singh: A case study of 'disappearance' and impunity", April 1995, AI Index: ASA 20/12/95, "Harjit Singh: In continuing pursuit of justice", February 1996, AI Index: ASA 20/01/96 and "Determining the fate of the 'disappeared' in Punjab", October 1995, AI Index: ASA/28/95.

³⁰ *The Hindu*, 23 October 1996.

In January 1995, a petition was filed in the High Court of Punjab and Haryana by the Human Rights Wing of the Akali Dal. The petition presented a study of two cremation grounds in Amritsar district, showing that over 800 "unidentified" bodies had been cremated by police between 1992 and 1994. It also presented evidence that many of these people had earlier been picked up by Punjab police.

Over a number of years hundreds of young men suspected of involvement in the activities of armed opposition groups -- and in many cases their relatives -- were picked up by police and subsequently "disappeared". Estimates of the exact number of those who have "disappeared" vary. Some individuals are only now coming forward to file petitions in the courts in Punjab concerning the "disappearance" of their relatives some years ago. Fear of themselves becoming victims of human rights violations by police prevented them from coming forward before.

The petition was rejected by the High Court on the grounds that families concerned should file petitions in the courts concerning relatives themselves. The issue was then taken up by a human rights organization in New Delhi -- the Committee for Information and Initiative on Punjab (CIIP) -- which filed a petition in the Supreme Court in April 1995.

In November 1995, a bench of the Supreme Court ordered the Central Bureau of Investigation (CBI) to carry out an investigation into allegations contained in the petition. In the course of its investigations between November 1995 and December 1996, the CBI submitted a total of five reports to the Supreme Court -- all of these reports have remained sealed at the request of the CBI which argued that their disclosure could hamper further investigation for the determination of criminal responsibility, and would cause considerable "embarrassment" to many people. In response to these findings, the Supreme Court expressed concern at the "flagrant violation of human rights on a mass scale".

According to the Supreme Court the CBI has completed identification of 585 bodies, has "partially identified" 274 and has not identified a further 1,238. On producing its fifth report, the CBI pleaded its inability to continue investigations to determine criminal responsibility in such a large number of cases and suggested that the inquiry be continued by the Punjab police. However, the Supreme Court, on 11 December 1996, ruled that this option was unacceptable, and asked the CBI to continue its investigations, to register cases where necessary and to submit quarterly reports on the progress of its investigations. To date (June 1997), charges have only been filed against police officers for the abduction and murder of three individuals who were subsequently cremated as "unidentified".

In the same ruling, the Supreme Court directed the NHRC to "have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties [CIIP]", particularly the issue of compensation. In those cases where the CBI has identified the victim, the NHRC is to thoroughly examine each case and determine the amount of compensation to be granted to relatives.

On 28 January 1997, the NHRC held a preliminary hearing and asked the CIIP to submit in writing its views on the terms of reference of the role of the NHRC before the next hearing of 15 February. Officials of the Ministry of Home Affairs were also requested to submit their views. In its submission to the NHRC, the CIIP argued that the Commission was bound not only to look into the issue of compensation but also to look at the causes and implications of these massive violations and the culpability of the state. This would include looking at the correlation between the complaints about missing persons, police abductions, illegal detentions and false "encounters" prevalent in Punjab and the illegal cremations. The NHRC is in the process of considering these submissions.

Jaswant Singh Khalra, General Secretary of the Human Rights Wing of the Akali Dal political party, "disappeared" on 6 September 1995, months after he filed a petition in the Punjab and Haryana High Court alleging that in one district alone, thousands of bodies had been cremated as "unidentified" by police and that these were the "suspected militants" who had been executed by

police (see Box 9). The petition filed by Jaswant Singh Khalra has resulted in a CBI inquiry, ordered by the Supreme Court (see below). The Supreme Court also ordered a CBI inquiry into the "disappearance" of Jaswant Singh Khalra which in August 1996 found nine police officials guilty of involvement in his abduction. The Supreme Court directed that the nine men face trial for the abduction and that further investigations be carried out to ascertain the fate of Jaswant Singh Khalra. To date, his fate remains unknown. Amnesty International continues to receive reports of extrajudicial executions perpetrated by the security forces in regions throughout the country. On 14 March 1997, Tarn Taran police shot dead Kashmir Singh whom they suspected of links to the Khalistan Commando Force (there were no charges against him). Police claimed that he had been killed in self-defence after attacking them with a sword. However, his father testified that police had entered their house at night and forced him and his son into a jeep. He was thrown from the jeep after a short distance and alleged that his son was later tortured and shot. Following a public outcry, the police instituted an inquiry into the incident on the orders of the Punjab Chief Minister. The inquiry team concluded its investigations within three weeks, leading to the arrest on murder charges of three police officials. The Inquiry report found that there were 18 injuries on the body of Kashmir Singh -- many of them a result of his skin being pierced by a "sharp-edged weapon" -- four abrasions to his knees and four bullet wounds.

On 31 March 1997, two men were shot and killed and one injured by police in the centre of Delhi after a car chase. Police believed the men to be gangsters but shot at them before verifying their identity. They subsequently discovered that the men were businessmen. Delhi police officials initially reported the incident as an "encounter", denying the need for an investigation. They were subsequently forced to retract this and the Delhi Police Commissioner was forced to resign after a public outcry. A CBI investigation was immediately carried out and it was announced that ten police officers would face charges of murder. While Amnesty International welcomes the swift action taken to investigate this incident and to prosecute police officers in this instance, it is concerned that the majority of "encounter killings" -- particularly those in areas of armed conflict -- are not investigated.

On 25 September 1996, Dr Ameda Narayana, a medical doctor who had been treating members of the People's War Group (PWG)³¹, was killed outside the city of Warangal in Andhra Pradesh while on his way to treat a patient. According to reports received by Amnesty International, a policeman stopped him, saying that he needed treatment but as the doctor approached him, he was shot in the head and died instantly. The government claimed that he was killed by "unidentified gunmen". Despite the fact that a case was registered by police concerning the incident, according to information received by Amnesty International, the police have not carried out an investigation into the death of Dr Narayana.

After receiving allegations from the Andhra Pradesh Civil Liberties Committee that police in Andhra Pradesh have carried out hundreds of extrajudicial executions, the NHRC carried out investigations into several of these during 1996 (see Box 2). The NHRC concluded that the evidence did not show any attempt by the police to arrest those killed. It further noted that no action was taken to investigate the conduct of police officers, stating that "attention was confined to the conduct of the deceased" and that this was violative of the fundamental right to life guaranteed by Article 21 of the Constitution. It recommended that "the police should change their practice, keeping the legal position in view" and that in future, all "encounter" killings should be

³¹ The People's War Group is a faction of the Communist Party of India (Marxist-Leninist), CPI(M-L), a Maoist organization.

investigated by an independent agency. Despite these directives, killings of suspected members of the PWG in alleged "encounters" continue. Amnesty International has received reports that since the NHRC judgement in November 1996 over 70 individuals have been killed in "encounters" with police in Andhra Pradesh. In addition, in those cases investigated by the NHRC in which they found sufficient evidence to recommend that police officials be charged with murder, the Andhra Pradesh government has yet to begin investigations.

Regular reports of false "encounters" between police and suspected criminals have been received from Maharashtra and Tamil Nadu. In an incident in Rajasthan in December 1996, one person was killed and several others injured when police opened fire on a marriage party, reportedly mistaking it for a gang of criminals. Such incidents indicate that there are insufficient restrictions on the use of firearms.

Amnesty International notes that in 1991 members of the Human Rights Committee asked for clarification from the Government of India on the use of firearms by law enforcement officials. During a visit to Bombay in January 1994, Amnesty International delegates were shown Model Rules regarding the Use of Force by the Police against Unlawful Assemblies (1973). The organization is aware that there are rules specific to individual states which exist but which do not appear to be publicly available. The Model Rules specify that firearms should be employed "only in extreme circumstances when there is imminent and serious danger to life and property". Amnesty International believes that the Model Rules permit firearms to be used in considerably broader circumstances (particularly when there is a threat to property) than those set out in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and has called on the government to review laws and standing orders relating to the use of force and firearms by police and bring them in line with the UN Principles³².

Some Indian officials have acknowledged that security forces within India resort to extrajudicial executions when faced with armed insurgency. In March 1997, *India Today* published an article revealing that a survey conducted among Indian Police Service (IPS) officers at the National Police Academy, Hyderabad, had found that "over 50% of the senior officers believe that in 'hostile situations', the police are justified in resorting to extra-legal methods or denying fundamental rights to terrorists and insurgents"³³. Killings have often been attributed to "encounters", despite evidence to the contrary. In the absence of routine thorough and impartial investigations into allegations of unlawful killings, and redress mechanisms as envisaged in article 2(3) of the ICCPR, Amnesty International fears that these killings will continue.

Amnesty International believes that the routine use of excessive force by armed forces in areas of armed conflict is linked to the need for clarity in the chain of command within the armed forces. Although armed and paramilitary forces are required to be accompanied by state police in all operations, in practice, they regularly undertake operations without the presence or knowledge of police. Amnesty International has received reports from the north-east of India that state police are often expressly restricted from areas where armed and paramilitary forces are undertaking search operations³⁴. This absence of control on the operations of the armed and paramilitary forces is

³² See pages 18-21 of *India: Memorandum to the Government of India arising from an Amnesty International visit to India 5-15 January 1994*, August 1994, AI Index: ASA 20/20/94.

³³ "Wrong Arm of the Law", *India Today*, 31 March 1997.

³⁴ Commissions of Inquiry set up to investigate human rights violations in Manipur have repeatedly referred to the importance of this requirement in their recommendations to the government (see

exacerbated by the general lack of transparency in the internal disciplinary proceedings of the security forces and the protection granted to them in legislation which prevents army officials from being held publicly accountable for their actions and strengthens the feeling of impunity.

In this context, Amnesty International is particularly concerned at the repeated assertion by those in authority that when human rights violations occur, they are the actions of individuals and do not reflect on the law and order machinery as a whole.

- **Enquiries by the Committee into measures taken by the authorities to ensure clear lines of command within the security forces and to ensure accountability of those in charge of security forces would be worthwhile**

According to human rights activists, the long-standing application of the **Armed Forces (Special Powers) Act 1958** in parts of the north-east region, has led to widespread human rights violations including deliberate and arbitrary killings and indiscriminate killings. In one state -- Manipur -- Amnesty International has received sufficient reports of deliberate and arbitrary killings by members of the security forces to conclude that there is official sanction for extrajudicial executions³⁵. As well as the killing of suspected members of armed opposition groups in suspicious circumstances, there are numerous reports of security forces opening fire during search operations, resulting in the death of innocent women and children in clear violation of the right to life. Similar incidents have been reported from other states in the north-east region.

The NHRC and the Supreme Court have regularly pointed to practices employed by security forces which violate individuals' rights and have made recommendations which have attempted to prevent future violations. However, in an order concerning the extrajudicial execution of two men by police in Manipur in 1991, the Supreme Court, while granting compensation to the relatives of the two men, did not recommend the prosecution of those found responsible and remarked: "It is not for the court to say how terrorists should be fought". This statement suggests that the security forces are being given a free hand in operations against armed opposition groups.

- **The Committee should enquire into measures taken to review laws and standing orders relating to the use of force and firearms by security officials and bring them in line with the UN Principles**
- **The Committee should enquire into the mechanisms which exist to ensure that lethal force is not used as an alternative to arrest**

Another factor which has weakened the right to life of individuals in areas of armed conflict in India is the emergence of armed groups acting in connivance with the government. These armed groups, active in Jammu and Kashmir, states of the north-east, and in other parts of the country, such as Bihar, have perpetrated human rights violations, including deliberate and arbitrary killings, with impunity.

On 11 July, 1996, nineteen women and children from the *dalit* community were killed in an armed attack in the Bathani tola (hamlet), Barki Kharav village, Sahar district, Bihar. Over 100 armed men of the Ranbeer Sena, a "private army" of upper-caste landlords of the district had targeted the hamlet, on the assumption that the residents were supporters of the CPI(ML-Liberation), a Maoist group with support in the area. According to reports, the police failed to intervene until after the attack, despite the existence of three police camps within a 1.5 kilometre radius of the hamlet -- which would give weight to reports that the Ranbeer Sena was acting in connivance with the police. After a subsequent visit to Bathani tola, the Minister for Home Affairs, Mr Indrajit Gupta admitted that the massacre exposed the total failure of the police administration in Bihar.

³⁵ See *India: Official sanction for killings in Manipur*, April 1997, AI Index: ASA 20/14/97

Deaths in custody

Amnesty International has extensively documented deaths of individuals in the custody of police and security forces as a result of torture and ill-treatment³⁶ (also see article 7). In 1992, the organization launched a worldwide campaign on the issues of torture, rape and deaths in custody in India. As part of that campaign, it published a report which included an appendix listing 415 cases of deaths in custody reported from throughout India between January 1985 and November 1991. Amnesty International has continued to raise cases of deaths in custody with the government on a regular basis. Many of the responses which it has received to individual cases of deaths in custody have sought to deny that they occurred as a result of torture. The organization has repeatedly appealed to the government to ensure that all deaths in custody are promptly and impartially investigated and that systematic procedures are put in place to ensure this. The continuing receipt of reports indicates that torture leading to deaths in custody continues to be an endemic problem throughout India -- during the period 1 April 1995 to 31 March 1996, the NHRC received 444 complaints of death or rape in custody.

Amnesty International acknowledges the many positive steps taken by the NHRC in particular to highlight the issue of torture leading to death in police stations, to prevent the occurrence of such deaths in the future and to provide redress to the relatives of victims. Intervention by the NHRC has increased the transparency with which the issue of custodial violence is addressed in India (see Appendix A).

In several cases the NHRC has found accounts by state governments of incidents in which individuals have died in police custody to be unsatisfactory and has called for further investigations by the state or has carried out its own investigations. In several cases this has led to the disclosure that individuals died as a result of torture and the initiating of proceedings against police officers responsible (see under articles 2(1),7 and 24 and Box 10).

The NHRC noted the lack of interest of the government in ending impunity in Jammu and Kashmir when it noted in its annual report for 1995-1996 that the state authorities had not complied with its 1993 directive to inform it within 24 hours of any cases of death in custody. The limitations of the **Protection of Human Rights Act, 1993** (see Appendix A), ensure that the very serious allegations of widespread torture leading to deaths in custody and extrajudicial executions in areas of India such as Jammu and Kashmir and in the north-east region, are not systematically investigated by the NHRC.

Amnesty International believes that those arrested in areas of armed conflict are particularly vulnerable to torture and sometimes death in custody since they are not offered the same protections as individuals in other areas.

³⁶ See Amnesty International reports: "*India: Torture, rape and deaths in custody*", March 1992, AI Index: ASA 20/06/92, "*India: Rising reports of custodial deaths in Delhi*", June 1993, AI Index: 20/6/93, "*India: Deaths in custody in 1993*", June 1994, AI Index: ASA 20/02/94, "*India: Torture and deaths in custody in Jammu and Kashmir*", January 1995, AI Index: 20/01/95, "*India, Deaths in custody in 1994*", August 1995, AI Index: 20/18/95, "*India: Analysis of the government's response to reports of deaths in custody in 1993*", October 1995, AI Index: ASA 20/29/95.

West Bengal: Illegal police practices lead to death in custody

Debu Pramanik, an out of work dock labourer died in the custody of West Bengal police on 12 July 1996 after being held in custody for 60 hours.

Debu Pramanik was taken into custody following a disturbance involving a drunk police constable from Keota outpost, Hooghly district, on 9 July 1996. The constable had become drunk after drinking at the house of Debu Pramanik. Unable to make his way back to the police outpost, at approximately 11.30pm, police from the outpost came to the village to remove the drunken police constable from the street where he was lying. Police also took Debu Pramanik with them.

He was taken to Sahagunge Thana police outpost and held until the early hours of 10 July before being transferred to Chinsurah police station. Police refused to allow his wife, Bula Pramanik to visit him in detention, did not provide him with food and did not register his arrest in their records. They subsequently registered the arrest as having taken place at 9.05pm on 11 July 1996. At around midday on that day, he was finally taken to the court of the Sub-divisional Judicial Magistrate. However, the assistant superintendent of the court lock-up refused to admit Debu Pramanik because he was unable to stand or walk and sent him for medical treatment. However, police did not take him to a doctor and on 12 July at 12.55pm, he was released on bail. His wife attempted to take him home by auto rickshaw but he was pronounced dead by a doctor 35 minutes after his release. The post mortem report from Imambara hospital morgue, found a number of injuries on the body which were between 12-36 hours old. These included a number of burn marks, bruises and swellings on the victims leg, toes, knee, chest and face. Debu Pramanik also suffered from pulmonary tuberculosis and cirrhosis of the liver.

Investigations carried out by the West Bengal Human Rights Commission following press reports and a complaint lodged by the Association for the Protection of Democratic Rights (APDR) produced overwhelming evidence that Debu Pramanik was arrested on 9 July 1996 finding that

"most of the GD [General Diary] entries were manipulated and made subsequently to support the false claim of the police regarding the arrest and detention of Debu Pramanik on a later date".

The state Commission recommended the criminal prosecution of the officer in charge of Chinsurah police station, and the instituting of departmental proceedings against two other officers. In summing up, the Commission noted:

"The Commission views with displeasure the tendency on the part of even senior police officer, who, presumably, motivated by narrow departmental consideration goes out of his way to defend police action even if the said action is illegal and unlawful. The Commission initially faced difficulty in proceeding with this investigation because of lackadaisical response even from the S.P. [Superintende of Police] Hooghly... The report received from S.P. is not found factually correct"

The Commission further asked that its "displeasure and disapproval" of the conduct of the S.P. and other officers should be communicated to them by the government and ordered that the investigation into the death initiated by the local police station should be transferred to the crime branch and that Rs20,000 in interim compensation be paid to Bula Pramanik. To date, no action has been taken against police officials.

It is alleged that the police officers arrested and tortured Debu Pramanik in order to obtain money from him. The victim's only source of income had been the illegal production of alcohol which local police had allowed him to continue to produce in return for bribe money he was forced to hand over to police. It is reported that both police from Chinsurah police station and the police outpost were demanding more money which Debu Pramanik was unable to pay.

In response to Amnesty International's allegations of over 700 cases of death in custody in Jammu and Kashmir between 1990 and 1995, the government termed the majority of them as "encounters" with members of armed opposition groups without providing supporting evidence for this version of events (see Box 11). Eighty-five cases were said to be "under police investigation" or the subject of a "Magisterial Inquiry under section 176 CrPC". In only eight cases were charges said to have been produced in court, but the government did not say whether any of the alleged perpetrators had been brought to justice³⁷.

Reports from Jammu and Kashmir indicate that deaths in custody have continued since Amnesty International's report was published in January 1995 and that in recent months the number of deaths in custody have been escalating. In January 1997, the Jammu and Kashmir Bar Association documented 218 deaths in custody during 1996. All had reportedly been arrested first and then killed in detention centres inside or outside the state. More recently, the Institute of Kashmir Studies documented 29 cases of deaths in custody during January 1997, 33 during February 1997 and 32 during March 1997, stating in a report that "the overall situation in the state, far from showing the slightest improvement, has been progressively deteriorating... Official claims that the victims have been killed in "encounters" or in "exchange of fire" are contradicted not only by the witnesses who saw them being arrested and taken away by the forces before being killed, but also by medical evidence"³⁸.

³⁷ See *India: Analysis of the Government of India's response to Amnesty International's report on torture and deaths in custody in Jammu and Kashmir*, March 1995, AI Index: ASA 20/05/95.

³⁸ "Kashmir: A Paradise Outraged", Institute of Kashmir Studies, Report No.29, Published 1 May 1997.

Jammu and Kashmir: "Encounter" revealed as death in custody

In its January 1995 report detailing torture and deaths in custody in Jammu and Kashmir, Amnesty International described the case of Farooq Ahmad Lone, a resident of Tekipora, Lolab, Kupwara, who was arrested by members of the BSF 19th Battalion in July 1993 after leaving Srinagar in search of employment. In a report filed at Sopore police station, Farooq Ahmad Lone's uncle stated that the BSF brought his nephew back to their village on 20 July 1993, searched his house, and beat him and his father. The BSF did not find anything and returned to Sopore with Farooq Ahmad Lone.

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

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

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

The Station House Officer declared the BSF version of events as false and initiated proceedings for a further police investigation. Proceedings were also initiated to establish a judicial inquiry under section 176 CrPC.

Although this occurred in 1993 and Amnesty International submitted this information about the findings of the police investigation to the Government of India in 1995, in its response to Amnesty International, the government gave the following response:

"On 20th July, 1993, a special operation party of Security Forces apprehended Mohd. Farooq Lone. The person was a Pak training Militant. During preliminary questioning, he voluntarily agreed to lead Security Forces for effecting recoveries in village Tekipora but nothing was recovered from the hideout. While the party was on way back, the vehicle in which the Security Forces and the accused were travelling met with an accident en route... Militants taking the advantage of the area and the accident, resorted to heavy firing upon the Security Forces. The apprehended, Mohd. Farooq Lone who was in open Gypsy received a bullet injury. He succumbed to his injuries on way back to Sopore".

The government disregarded documentary evidence and did not refer to the police investigation carried out or the initiating of a magisterial inquiry under section 176 CrPC. As far as Amnesty International is aware, no further action has been taken to investigate this incident or to bring those responsible to justice.

Article 6(2)

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court

- **The Committee is urged again to request information about the application of the death penalty in India, and whether there are differing practices in the different states**
- **The Committee should enquire into specific steps being taken to abolish the death penalty in India and to safeguard the rights of those facing sentence of death**

The number of offences carrying the death penalty in India increased in the 1980's, and offences carrying the death penalty are now found in numerous laws, including the **Indian Penal Code**, the **Army Act**, the **Air Force Act**, the **Navy Act**, the **Commission of Sati (Prevention) Act**, the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act**, the **Narcotics, Drugs and Psychotropic Substances Act**, the **Arms Act**, the **Explosives Act** and the **Inflammable Substances Act**.

In addition to these statutes, the application of the death penalty for those convicted of causing death by dangerous driving is under consideration by the Government of India, according to a report from *Agence France Presse* quoting the transport secretary Mr Srinivas Rath on 6 January 1997.

According to the Government of India, the circumstances in which the death penalty is used is in accordance with the directive of the Supreme Court -- that it be used only in the "rarest of rare" cases. However, when questioned by the Human Rights Committee in 1991, Mr Ramaswamy responded that no information was available regarding the number of persons currently on death row (at para 47 in CCPR/C/SR.1040). Amnesty International's information indicates that at least two people were judicially executed in India during 1996 and at least 30 sentenced to death. However this information is not exhaustive, and application of the death penalty seems to vary from state to state.

Statistics on the application of the death penalty within the country continue to be unavailable.

- **The Committee is urged again to request information about the application of the death penalty in India, and whether there are differing practices in the different states**

In a detailed examination of the death penalty in India in 1989, Amnesty International noted that those who are judicially executed tend to come from disadvantaged and vulnerable sectors of society. In 1995, two men from Andhra Pradesh -- Gantela Vijayavardhana Rao and Satuluri Chalapathi Rao -- were sentenced to death after setting fire to a bus while robbing passengers in 1993. Twenty-three people died. At no point when arrested or committed for trial by the local magistrate were either of the two accused offered legal aid or told of their rights (see article 14). At the time of writing petitions seeking commutation of their sentences are pending before the central government, having been referred by the President of India. Should the execution of the two men take place, this will be the first time that an execution will be carried out in the state of Andhra Pradesh for at least 17 years.

The death penalty in India is carried out by hanging. In response to a petition filed by a Supreme Court advocate challenging the rule that bodies should be left hanging for half-an-hour as "barbarous", in January 1995, the Supreme Court held that the bodies of death-row convicts would only be permitted to remain hanging till such time that the doctor declared them to be dead.

During the Fifty-third session, the Commission on Human Rights passed a resolution calling for an end to judicial executions in the world³⁹; India abstained.

- **The Committee should enquire into specific steps being taken to phase out the application of the death penalty in India and to safeguard the rights of those facing sentence of death**

Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women

Article 6(5)

- **Enquiries by the Committee into the intention to remove the application of the death penalty to children would be worthwhile**

The **Juvenile Justice Act, 1986** which provides a uniform legal framework for the treatment of children, defines a juvenile as "a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years". This means that the availability of the death penalty in the general criminal law is applicable to any male aged 16 or over, in contravention of article 6(5) and also Article 37 of the Convention on the Rights of the Child, ratified by India in 1992. To Amnesty International's knowledge the death penalty has not been used against juveniles. However, during the hearing of India's second report under the covenant, the Government of India indicated that the discrepancy in age was currently under review. Despite this, there has been no change in the legal position.

³⁹ E/CN.4/1997/L.20, 27 March 1997.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation

Article 7

- **In light of the widespread disregard for arrest and detention procedures which safeguard the rights of detainees, the Committee should enquire into measures taken to ensure the systematic monitoring of the use and implementation of existing safeguards present in the criminal law, police manuals and government guidelines to protect detainees**
- **Enquiries by the Committee into measures to protect those in state institutions from torture and ill-treatment would be worthwhile**

Section 330 and 331 of the IPC and section 29 of the **Indian Police Act** specifically forbid the practice of torture, while section 376 of the IPC specifies the offence of rape in custody. Despite these safeguards, Amnesty International has documented widespread torture of detainees throughout India for many years. As well as the torture of political prisoners in areas of internal armed conflict, there is widespread torture of common criminal suspects. As with all the violations raised in this submission, certain communities and groups are particularly vulnerable to this practice (see article 2(1)) as documented by Amnesty International in its 1992 report *Torture, rape and death in custody*. In many instances, torture of detainees leads to their death in custody (see article 6(1)). A major factor contributing to the continuing practice of torture, is the impunity granted to the perpetrators (see article 2(3)).

Amnesty International welcomes the Government of India's stated commitment to eradicate torture, and the commitment to ratify the CAT (see article 2(2)). Amnesty International also welcomes interventions on the issue of torture by the NHRC and acknowledges its programmes in human rights training amongst police and security forces, and its concern for deaths in custody (see article 6(1)). However, despite these positive steps there appears to be no indication that the practice of torture is diminishing, nor are there fewer reports of deaths in custody.

Torture of both men and women has been widely reported. The torture of women, combined with the inequalities women face in general (see article 2(2) and 3) has had repercussions on the perception of the police station by women. Many women, fearing the kinds of torture, including rape, that are perpetrated in police stations, staffed predominately by men, are less inclined to approach the police for redress.

Activists in India have pointed to an increase in the torture, including rape, of women, as a punitive act, used to punish a woman's husband, other family members, or her community (see article 3 and Box 7).

Rape and sexual abuse of women has been widely reported in Jammu and Kashmir since Indian security forces began counter-insurgency operations in 1990. Women appear to have been subjected to such violations to punish them for their real or assumed sympathy with or relation to men suspected to be members of armed opposition groups, or to intimidate and humiliate the local population.

Manipur: Rape as an instrument of torture

At 3am on the morning of 1 August 1996, soldiers from the Mahar Regiment of the Indian armed forces, entered the house of Ms Elangbam Ongbi Ahanjaobi Devi (37). They were undertaking a combing operation in the Takyel Khonban locality of Imphal, Manipur. Soldiers took away her husband, Mr Elangbam Ibotombi Singh, and kept her inside the house with her 8-year-old son who is a victim of polio. Two soldiers bolted the door and proceeded to strip Ahanjaobi Devi in front of her son and then raped her.

Ahanjaobi Devi was given a medical examination on 2 April 1996. Following the filing of a First Information Report, the case was referred to the District and Sessions Court, Manipur East.

The Chief Judicial Magistrate of Imphal, in his order for the prosecution of the two armed forces personnel, recommended that the soldiers should be tried in a civil court and not by a court martial. However, the Defence Ministry, in an order of 17 August 1996 ordered that they should be tried by a court martial in response to which the Chief Judicial Magistrate wrote to the Defence Minister requesting him to give the grounds for this order. It is not known what reasons were given by the Defence Ministry but their order for the case to be tried by court martial stood.

Orders were subsequently sent to Ahanjaobi Devi and the army personnel to attend the court martial which reportedly began hearing evidence at the local army camp in February 1997. On 13 April the Army announced that the proceedings would be held in open court and the media would be allowed to attend the hearings. On 5 June 1997, the court martial sentenced the two army personnel to 10 years imprisonment.

Amnesty International believes that this is a rare case in which the victim of rape reported the incident to the authorities and that due to a public outcry, action was taken against the personnel allegedly responsible. Rape in India brings with it a very real fear of stigmatisation and reprisal for women. Ahanjaobi Devi and her husband did not report the incident immediately, fearing the consequences. It was only through support and encouragement from her local community that Ahanjaobi Devi found the courage to seek justice from the authorities. It is also significant that the incident occurred in Imphal, the capital city of Manipur, where access to a hospital and police was relatively easy. Human rights activists in Manipur have told Amnesty International that they fear that many more incidents go unreported because of the remoteness of many villages in the region.

Amnesty International documented such cases between 1993 and 1995⁴⁰ and presented these to the Government of India which dismissed these allegations, many of which were supported by substantive evidence. The dismissal was sometimes based on investigations by the very security forces alleged to have committed these violations. Despite calls by national and international human rights organizations, none of the allegations were subjected to independent and impartial investigations.

Reports of rape by security forces in Jammu and Kashmir continue. At around midnight on 22 April 1997, several armed forces personnel forcibly entered the house of a 32-year-old woman in the village of Wawoosa in the Rangreth district of Jammu and Kashmir. They reportedly molested her 12-year-old daughter and raped her other three daughters aged 14, 16 and 18. When another woman attempted to prevent soldiers from attacking her two daughters, she was beaten. Soldiers reportedly told her 17-year-old daughter to remove her clothes so that they could check whether she was hiding a gun. They molested her before leaving the house. A 29-year-old woman was also reportedly raped in her home in the same village. No action is known to have been taken against the alleged perpetrators but according to information received by Amnesty International, the women were reluctant to file a complaint for fear of reprisal and being stigmatised in their community.

Rape of women in the context of the ongoing armed conflict in states of the north-east is also regularly reported (see Box 12).

Police officers in India acknowledge that beatings of suspects in police stations are routine. During a visit to Bombay by Amnesty International delegates in January 1994, a senior police official referred to the use of a "good thrashing", while another said "not all police know how to behave rationally and politely". During a visit to a women's police station in Bangalore in August 1996 by Amnesty International delegates, senior police officers spoke of the perceived need to use force to obtain information about crimes in some instances. Other reasons given by police for the continuing use of torture are poor pay and employment conditions, lack of equipment and poor training in the use of investigative methods. In particular, senior officials point to the lack of awareness of basic human rights throughout the country.

In March 1997, a deputy inspector general of police in the state of West Bengal -- where a state human rights commission was established in February 1995 -- was quoted as saying:

*"Crime increased over the last couple of years since the West Bengal Human Rights Commission came into being. It is difficult to extract information from hardened criminals without resorting to third-degree methods"*⁴¹

His statements appear to have been endorsed by several other police officials in the state as well as the West Bengal Home Minister (in charge of police) Mr B. Bhattacharya who reportedly called on police to "see to it that the message of human rights does not get the better of them".

⁴⁰ See *India: New allegations of rape by army personnel in Jammu and Kashmir*, January 1993, AI Index: ASA 20/02/93, *India: Comments on the Government's response to allegations of rape in Shopian, Jammu and Kashmir*, December 1993, AI Index: ASA 20/47/93, *India: Reports of rape in 1993*, March 1994, AI Index: ASA 20/09/94, *India: Torture and deaths in custody in Jammu and Kashmir*, January 1995, AI Index: ASA 20/01/95.

⁴¹ "Rights bogey haunts crime busters", *The Telegraph*, 30 March 1997

Amnesty International notes that there is considerable public acceptance for the improper use of force by the police as a means of teaching criminals a lesson. Several police and government officials have referred to the pressure on police to mete out instant punishment because of the inability of the criminal justice system to deliver justice promptly and effectively. It is clear also that police are susceptible to bribery and corruption -- allowing themselves to be used for personal or political ends to act illegally against specific individuals in return for financial reward.

In December 1996, a petition was filed in the High Court of Punjab and Haryana by members of the Peoples Union for Civil Liberties (PUCL), calling for the removal of instruments of torture from police stations, Central Intelligence Agency Staff Offices, interrogation centres and police posts in the state of Punjab⁴². The instruments of torture listed included wooden rollers (used to roll over the legs of suspects with two or four policemen sitting on them thereby tearing the muscles), belts (which are tied to a handle and used to beat suspects), shackles (used to tie suspects to the wall, floor or a wooden plank while beating), ropes and chains (used for hanging suspects upside down from hooks in the ceiling) and voltage regulators (used to give electric shocks). The petition stated: "Such an order or removal from police station of these instruments of torture will go a long way to stop the prevalent third degree torture inflicted on every person brought to the police station for investigation or for any other purpose and is breeding bribery and barbarity for suspects try to escape the medieval torture by paying illegal gratification thus corrupting the fair and honest investigation". The petitioners cited recent cases of torture in which injuries had been inflicted by the use of these instruments.

In one of the cases referred to, three men -- Jarnail Singh, Ram Singh and Jagjeet Singh -- were called to the Varadhman police station in Bhatinda, Punjab, by a Sub-Inspector in connection with a marital dispute on 24 May 1996. The three men were beaten. Jarnail Singh (the husband of the woman who had made a complaint) was released after some time, but Ram Singh and Jagjeet Singh were kept there, thrown on the ground and beaten with heavy belts on their buttocks until the skin was removed. The next day they were charged under section 107/151 of the IPC and subsequently released on bail. The PUCL took up this case and sent appeals to the NHRC, and state officials in Punjab⁴³. It is not known what action has been taken by the authorities to provide redress to the three men.

Disregard for arrest and detention procedures facilitates torture (see article 9(2)). While, torture and ill-treatment often occurs during the first stage of detention in police custody, Indian law is virtually silent regarding the questioning of suspects in police custody. There are no provisions concerning interrogation in the CrPC. In January 1995, the Government of India, in correspondence with Amnesty International, referred to a set of undated guidelines issued by the Ministry of Home Affairs to state governments to "curb the use of questionable and coercive methods by police during investigation". The guidelines referred to safeguards within the CrPC and further stated:

"The instructions contained in the Police Manuals of different States regarding prohibiting or restricting the use of force by the police while effecting arrest, interrogating suspects and accused or during any other stage of police inquiry or investigation, should be brought to

⁴² Criminal Writ Petition 27 of 1997 in the High Court of Punjab and Haryana, Chandigarh. Dr Vineeta Gupta and others (Petitioner(s)) vs State of Punjab and others (Respondent(s))

⁴³ PUCL Bulletin, December 1996

the notice of all police officers for strict compliance and if necessary, refresher courses may be conducted for the police personnel".

However, it is not clear what status these guidelines hold within police training or disciplinary procedures, or whether there is systematic monitoring by state or central governments of the use in training and implementation of these guidelines and instructions contained in Police Manuals.

Police recording obligations do not provide for comprehensive custody records to be kept containing hour-by-hour accounts of what happens to persons in custody (medical condition on arrival, the length and time when suspects are questioned, the provision of food, the presence of lawyers or other visitors, periods of sleep, and so on).

- **In light of the widespread disregard for arrest and detention procedures which safeguard the rights of detainees, the Committee is should enquire into measures taken to ensure the systematic monitoring of the use and implementation of existing safeguards present in the criminal law, police manuals and government guidelines to protect detainees**

Amnesty International also has concerns about conditions of detention which may constitute cruel, inhuman or degrading treatment. In January 1997 the Supreme Court directed that prisoners should not be tortured in jails and said any physical force used against them constituted "cruelty". It also held that neglect of prisoners and provision of inadequate food and clothing would also constitute state violence against them. The judges gave an example of Tihar Jail in Delhi which has a capacity of 2,500 but which holds 8,500. It is interesting to note that the government, in its report to the Committee, has pointed to previous similar Supreme Court judgements setting out safeguards for detainees, which in light of recent judgements, and recent pronouncements by the NHRC, appear not to have been implemented in practice.

In December 1993, Amnesty International received information from the APCLC, documenting the condition of those awaiting trial in jails in the Chittoor district of Andhra Pradesh⁴⁴. They estimated that of a prison population of over 12,000, around 9,000 were awaiting trial, many in conditions amounting to cruel, inhuman or degrading treatment. The APCLC's report documented over-crowding, delays by police in filing chargesheets, repeated postponement of hearings, lack of availability of legal aid, poor sanitary conditions and lack of medical facilities but identified the problem of the lack of police escorts between jails and court as the major reason for the delay in trials⁴⁵.

⁴⁴ Over 3 million people, known as "undertrials" are reportedly in custody awaiting trial according to a report in the *Asian Age* (London) of 25 November 1996. Many undertrials have been detained for longer periods awaiting trial than they would have received as a sentence had they reached trial, the majority because of their inability to produce the bail requirements. As indicated under article 2(3), the legal system is overloaded and unable to cope with the vast number of cases going to trial. Practical problems such as the shortage of police personnel to escort detainees from prison to court hearings, means that trials are delayed unnecessarily, and this can lead to torture or to cruel, inhuman or degrading treatment.

⁴⁵ "Orphans of Justice: Conditions of under trial prisoners in the prisons of Chittoor district", A report by APCLC Chittoor district unit, December 1993.

As well as those awaiting trial, Amnesty International has received reports that non-criminal mentally ill men and women are held in jails throughout India. It is reported that many of these mentally ill people have been jailed on the wishes of their relatives and with the connivance of police. According to a report, between July and September 1994, over 200 non-criminal mentally ill inmates were found in jails in the state of Uttar Pradesh and discharged⁴⁶.

In October 1994, a human rights activist Jalil Andrabi (see Box 1), filed a petition in the High Court of Jammu and Kashmir alleging a range of human rights violations in jails, sub-jails and interrogation centres in the state. As a result of this petition, the High Court ordered that district committees consisting of judicial, police and medical authorities should make regular visits to all jails, detention centres and police lockups in the state. As far as Amnesty International is aware, visits were restricted to only one district in the state during December 1994 and have not subsequently taken place. The visits found widespread evidence of illegal detention, torture and ill-treatment.

While Amnesty International's focus has been on torture perpetrated by the security forces (including police, armed forces and paramilitary forces), the organization has received reports alleging that torture is perpetrated by other government officials, including by or with the connivance of the personnel staffing prisons, protective homes for destitute women, the mentally ill, children's homes and orphanages.

According to reports received, there is little or no access to state institutions by activists within India, and redress for the victims is therefore not available. Moreover, the restrictions on Amnesty International's access to India has meant that case reports could not be further investigated.

- **Enquiries by the Committee in to measures to protect those in state institutions would be worthwhile**

⁴⁶ "State of Human Rights in India 1996", Legal Resources for Social Action, Tamil Nadu.

Article 9(1)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law

- **The Committee should enquire into the effect of India's declaration with respect to preventive / administrative detention**
- **The Committee should enquire into whether the Government of India is considering reviewing Article 22 of the Constitution which allows for preventive / administrative detention**
- **Amnesty International urges the Committee to seek information from the Government of India relating to the application of enactments permitting preventive / administrative detention**
- **The lack of transparency in the use of provisions of the Code of Criminal Procedure which allow for administrative detention are cause for concern. Enquiries into the use of these provisions by the Committee would be welcome**
- **The Committee should look into measures taken to review TADA cases and ensure that those charged under its provisions receive a fair trial**
- **Enquiries by the committee into use of legislation to arbitrarily detain women and children would be worthwhile**

When ratifying the ICCPR in 1979, India made a **declaration** with respect to articles 9 and 13 of the covenant. The effect of these declarations have been to allow for human rights violations. From an analysis of the effect of the declaration, and on reading the General Comments of the Committee, Amnesty International considers the effect of the declaration is to remove the autonomous meaning of the covenant obligations under article 9.⁴⁷

In its third report to the Human Rights Committee, the Government of India has omitted any discussion of the declaration it made with respect to Article 22 of the Constitution of India when ratifying the covenant, and its effect on the application of article 9(1).

Article 22 of the Constitution of India is a justiciable fundamental right that provides protection from arrest and detention in certain cases. Article 22 (1) and (2) of the Constitution obliges the authorities to bring anyone who is arrested before a magistrate within 24 hours of arrest and to permit him/her to consult a lawyer of choice. However, Article 22 contains a number of limitations that authorise preventive or administrative detention: clause 5 of the article lays down that these

⁴⁷ *General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, General Comment No. 24 (52) 1, E/1995/49. 13 April 1995, para 19, states:

Nor should interpretive declarations or reservations seek to remove an autonomous meaning to covenant obligations, by pronouncing them to be identical, or to be accepted only in so far as they are identical, with existing provisions of domestic law.

rights do not apply “to any person who is arrested under any law providing for preventive detention”. Preventive detention laws also by their very nature deny the detainee the right to be tried and to be tried “within a reasonable time” as no charges are brought for which the detainee could be tried.

The **Constitution (Forty-Fourth) Amendment Act, 1978** made amendments to Article 22 of the Constitution of India to strengthen the procedural safeguards for those held under preventive detention. In 1991, Professor Rosalyn Higgins asked why section 3⁴⁸ of this constitutional amendment had not been brought into force. To Amnesty International's knowledge these amendments have still to be brought into force.

- **The Committee should enquire into whether the Government of India is considering reviewing Article 22 of the Constitution which allows for preventive / administrative detention**

The Government of India's report to the Human Rights Committee focuses on the application of the **Terrorist and Disruptive Activities (Prevention) Act (TADA)** and its subsequent repeal in 1995. While Amnesty International welcomes that **TADA** -- which contained provisions contravening international human rights law -- was allowed to lapse, it notes that its provisions continue to be used retrospectively against some individuals and that hundreds remain in detention under its provisions.

Cases can still be filed under **TADA** under section 14 which provides that it should be applied to active trials in various courts before its expiry and to defendants tried in future in connection with offences alleged to have been committed prior to the lapsing of the Act. This means that any person can be linked to an ongoing case and be committed to trial under **TADA**, a practice that has been reported from Jammu and Kashmir. For instance Javed Ahmed Mir of the Jammu and Kashmir Liberation Front was remanded to judicial custody in September 1996 in connection with a charge registered against him under **TADA** in 1990.

An unknown number of people are still in detention in Jammu and Kashmir under **TADA** who were arrested earlier. According to information made available by the All Parties Hurriyat Conference, there were 1,487 persons detained under **TADA** in Jammu and Kashmir on 1 January 1996. In December 1996, Minister of State for Home Affairs, Maqbool Dar, in a written statement to the Upper House of Parliament stated that in Jammu and Kashmir 482 people were still detained under **TADA** -- 18 months after it lapsed. Amnesty International is not in a position to assess if these figures are correct but it is concerned to note reports that there are no mechanisms for review of the cases of those detained under **TADA** in the state.

In January 1997, the Supreme Court expressed concern about the continuing detention of individuals under **TADA** and its misuse to detain those who should have been charged under the ordinary criminal law. In March, in response to a petition filed by the All-India Muslim Minority Council, the Supreme Court issued notices to the central and state governments asking them to provide lists of **TADA** detainees who remained in detention. The petition alleged that previous Supreme Court orders concerning the release of **TADA** detainees had not been complied with.

⁴⁸ This amendment envisaged that no law providing for preventive detention would authorise the detention of a person for longer than two months unless sufficient cause was given by an official Advisory Board, whereas the existing period is three months.

- **The Committee should look into measures taken to review TADA cases and ensure that those charged under its provisions receive a fair trial**

Notwithstanding the lapse of **TADA**, there is no lack of constitutional and legislative provisions allowing for administrative detention. The minimum guarantees delineated by article 9(1) of the covenant are suspended by a range of special legislation. In addition to Article 22 of the Constitution, the constitution is clear that preventive detention is a subject on which legislation can be made⁴⁹. Legislation permitting preventive detention, can be made by the central government:

*"for reasons connected with defence, foreign affairs, or the security of India"*⁵⁰

In addition, both the central and state governments can enact legislation permitting preventive detention:

*"for reasons connected with the security of a State, maintenance of public order, or maintenance of supplies and services essential to the community"*⁵¹

Under the federal system prevailing in India, the States of the Union of India retain extensive jurisdiction over the application of the criminal law, for example in preventive detention legislation. The effect of such legislation may be to deprive people living in certain areas of the minimum guarantees safeguarded by the covenant (see articles 4(2) and 9(2)).

The Armed Forces (Special Powers) Act, currently in force in large parts of the north-east region and in Jammu and Kashmir, allows for arbitrary arrest and detention. In areas declared "disturbed", the armed forces or paramilitary forces are given sweeping powers 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 5 of the Act provides for the arrested person to be handed over to the nearest police station "with the least possible delay" and despite the fact that the courts -- and more recently the NHRC -- have issued directives that this provision should be interpreted as meaning "within 24 hours" (see article 6(1)), it is clear that members of the armed forces have routinely ignored this and held people in their custody for long periods of time before handing them over to the police.

A number of laws have been enacted by the central government that allow for preventive detention.

⁴⁹ The Seventh Schedule of the Constitution of India specifies subjects on which laws can be made by the central government, by both the central and state governments and by the state governments alone.

⁵⁰ Seventh Schedule, List I - Union List, Entry 9.

⁵¹ Seventh Schedule, List III - Concurrent List, Entry 3.

The National Security Act, 1980 permits administrative detention for a period of up to one year. Reports of widescale use of the NSA in Nagaland have been received by Amnesty International although, due to difficulties in access to India, the organization has not been able to verify this information. In addition to its widespread use in areas of armed conflict, reports of arrests under the Act have been received from Tamil Nadu (to detain those with alleged links to the Liberation Tigers of Tamil Eelam (LTTE)) and Orissa (where an activist, Mr Narayan Reddy, campaigning against the location of a steel plant, was detained under the Act on 23 July 1996) during 1996. In February 1997, the Tamil Nadu government warned that it would arrest anyone "supporting" the LTTE under the NSA. In May 1997, the Chief Minister of Uttar Pradesh announced that over 500 people had been detained under the NSA in the state during the previous two months. The majority of these are alleged to be "criminals". Such reports call into question the Government of India's statement made to the Working Group on enforced or involuntary disappearances in 1997 that "**The National Security Act** was implemented in periods of crisis in order to protect the citizens against terrorism"⁵² (see Box 13).

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) permits administrative detention for a period of up to six months.

The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 allows for administrative detention for a period of up to six months.

The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) permits administrative detention for a period of up to six months.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 provides for administrative detention for a period of up to six months.

Legislation in force in some states in India, that has been brought to the attention of Amnesty International.

The **Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986** allows for administrative detention for a period of up to twelve months.

The Assam Preventive Detention Act, 1980 provides for administrative detention for a period of up to six months.

The Bihar Control of Crimes Act, 1981 permits administrative detention for a period of up to twelve months.

The Gujarat Prevention of Anti-Social Activities Act, 1985 provides for administrative detention for a period of up to twelve months.

The Jammu and Kashmir Public Safety Act, 1978 permits administrative detention for a period of up to two years on vaguely defined grounds to prevent them "from acting in any manner prejudicial to the security of the state or the maintenance of public order". Thousands of people

⁵² Report of the Working Group on enforced or involuntary disappearances, E/CN.4/1997/34, page 36.

have been detained under this Act in Jammu and Kashmir. Provisions of the Act contravene articles 9(2) and 9(4) of the ICCPR.

The Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 provides for administrative detention for a period of up to two years.

The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 allows for administrative detention for a period of up to twelve months.

The Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Act, 1980 provides for administrative detention for a period of up to twelve months.

The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981 permits administrative detention for a period of up to six / twelve months (information provided to Amnesty International is unclear on this point).

The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 provides for administrative detention for a period of up to twelve months.

According to information received, other enactments permitting preventive / administrative detention exist, including an enactment in Uttar Pradesh, colloquially called the **UP Goondas Act**.

- **Amnesty International urges the Committee to seek information from the Government of India relating to the application of enactments permitting preventive / administrative detention**

While these pieces of legislation unequivocally allow for preventive detention, other legal provisions exist which, in their application also allow for preventive detention. Under the general criminal law, any person detained on suspicion that s/he may commit a breach of the peace, disturb the public tranquility or do any wrongful act leading to such a breach, is obliged to demonstrate why s/he should not be called on to provide sureties (see sections 107, 116(3) and 151 of the **Code of Criminal Procedure, 1973**). According to information received by Amnesty International, politically motivated arrests under these provision are widespread -- reports indicate that where a magistrate has an interest in detaining a person, the sureties required to be paid may be refused, even if the person is able to provide them, thus allowing for administrative detention.

Reports indicate that these provisions are used to harass those unable to counter the actions of the police and judiciary because of their socially or economically disadvantaged position within Indian society. To Amnesty International's knowledge, details of such detentions do not appear in the statistics of the National Crime Record Bureau, as the arrest is preventive in nature. Moreover, according to the rules framed under the **Delhi Police Act, 1978**, certain police officers are empowered to perform the role of an Executive Magistrate. This calls into question the independence of the judiciary.⁵³

⁵³ See the order of 18 December 1984 given by Justice Rajindar Sachar and Justice S B Wad in *Sunil Batra vs The Commissioner of Police, Delhi*, Criminal Writ Petition No 20 of 1983.

- **The lack of transparency in the use of provisions of the CrPC which allow for administrative detention are cause for concern, therefore enquiries into the use of these provisions by the Committee would be welcome**

These provisions are used extensively to suppress protests (see articles 2, 19 and 21), and are used in a similar manner to implicate people in false charges, often leading to their arrest. Reports also indicate that the **Immoral Trafficking Prevention Act, 1956** exposes prostitute women to harassment by the police and has led to the arbitrary detention of women solely on the basis of their gender⁵⁴ and that many people, including minors, defined as mentally ill, are detained solely on the basis of their illness. Children, too, are arbitrarily detained (see article 24).

- **Enquiries by the committee into the use of legislation to arbitrarily detain women and children would be worthwhile**

⁵⁴ *Subversive Sites: feminist engagements with law in India*, Ratna Kapur and Brenda Cossman, Sage Publications, New Delhi, 1996, pp 123-124.

Article 9(2)

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him

- **The Committee should enquire into measures taken to ensure meticulous adherence by police to legal provisions and guidelines designed to safeguard the right set out in article 9(2) of the covenant**

Procedures for arrest by the police are laid down in sections 46-58 of the CrPC, and require the police to inform the arrested person promptly of the offence or grounds for his arrest and of the charges brought. They also require a magistrate to order a medical examination at the request of the arrested person.

While examining India's second periodic report in 1991, members of the Human Rights Committee observed that under section 8(2) of the **National Security Act**, the authorities may decide not to disclose the grounds on which people can be detained, in direct contravention of this article of the covenant (see articles 4(2) and 9(1)).

Amnesty International has extensively documented the way in which guarantees which do exist against arbitrary arrest and detention procedures are flouted in practice. For example, delegates from the organization who visited Bombay in January 1994 found evidence of widespread abuse of these legal safeguards⁵⁵ and would be interested to learn what steps have been taken by the Government of India to ensure that police officers inform detainees of their rights following arrest.

The **Jammu and Kashmir Public Safety Act** (PSA) obliges the authorities to inform arrested persons of the grounds for arrest within five days but clause 13(2) of the Act permits the authorities to withhold any facts for reason of "public interest". Lawyers report that this provision has been broadly interpreted and that it is indeed common practice in the state not to inform detainees held under the Act of the ground of their detention. Amnesty International has received reports that a large number of people in Jammu and Kashmir are arbitrarily detained, either under the **PSA** or without reference to any law whatsoever. Reports indicate they are not brought before a tribunal at all, or are charged and tried after a prolonged period in unacknowledged and unrecorded detention of the security forces, often in places not officially designated as detention centres.

⁵⁵ See pages 3-5 of "Memorandum to the Government of India arising from an Amnesty International visit to India 5-15 January 1994, August 1994", AI Index: ASA 20/20/94.

Article 9(3)

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement

- **The Committee should enquire into measures taken by the Government of India to ensure that safeguards to protect detainees during arrest and detention which exist in law and in directives by the court and the NHRC are adhered to in practice**
- **The Committee should request details of measures taken by the government to ensure the implementation of directives issued by the courts and the NHRC which interpret section 5 of the Armed Forces (Special Powers) Act which states that individuals arrested by the armed forces should be handed over to police "with the least possible delay" as meaning within 24 hours**
- **The Committee should enquire into the presence of unofficial interrogation centres in several states in India -- notably Punjab and Jammu and Kashmir -- and measures being taken by the authorities to ensure that records are kept of all detainees held in custody and that relatives are informed of the whereabouts of detainees and have access to them**

Section 57 of the CrPC requires that all arrested persons be brought before a magistrate within 24 hours of arrest. This right is safeguarded in Article 22(2) of the Constitution of India. If a detainee is brought before a magistrate, under normal legal provisions the magistrate may remand a person in police custody for up to 15 days, and thereafter in judicial custody for up to 60 or 90 days (depending on the seriousness of the alleged offence). At the end of this period the suspect has to be charged or released on bail (section 167 of the CrPC). Such remand in police custody is apparently routinely granted by magistrates for minor offenses. These periods of police custody are dangerously long. Delays in bringing detainees before a judicial authority are common and facilitate "disappearances" and other violations.

Despite the legal safeguards, such as that in section 347 of the IPC which makes "wrongful confinement to extort property, or constrain to illegal act" an offence punishable with three years' imprisonment, such practices continue to be used by law enforcement personnel with virtual impunity. Amnesty International knows of many cases in which detainees have not been brought before a magistrate within 24 hours.

Section 6 of the **Armed Forces (Special Powers) Act** provides that any person arrested and taken into the custody of the armed forces should be handed over to the nearest police station "with the least possible delay". In May 1996, the NHRC made a ruling on a case of the death in custody of Kheshiho Sumi. He had been arrested on 12 November by members of the Assam Rifles in Nagaland under section 5 of the **Armed Forces (Special Powers) Act** and had allegedly died in their custody while being taken to identify a "militant hideout". The NHRC commented that it was the obligation of security forces to hand arrested persons over to the police and not to keep them in custody for carrying out interrogation.

- **The Committee should request details of measures taken by the government to ensure the implementation of directives issued by the courts and the NHRC which interpret section 5 of the Armed Forces (Special Powers) Act which states that individuals arrested by the armed forces should be handed over to police "with the least possible delay" as meaning within 24 hours**

The practice of incommunicado detention, sometimes in unofficial detention centres, has been used in areas of India where there is internal armed conflict, notably in Punjab (see article 7) and in Jammu and Kashmir, and facilitates the practice of torture.

Safeguards spelt out in Article 22 of the Constitution do not apply to persons held under preventive detention legislation (see under article 9(1)) more commonly in force in areas of armed conflict.

Human rights activists from Jammu and Kashmir have told Amnesty International that those arrested in the state on suspicion of armed opposition activities, regularly go through a process of detention and interrogation which lasts several months. During this time there is no record made of their arrest and they are not brought before a magistrate. Finally, an FIR is lodged with the police, showing the person as having been detained a few days earlier under sections of the **Jammu and Kashmir Public Safety Act** or other legislation. At this point, the investigation report is presented to a magistrate who orders that the detainee be remanded to judicial custody. During this period of incommunicado detention, detainees are transferred between various security force camps, temporary and unofficial detention centres as well as "Joint Interrogation Centres" (JIC)⁵⁶. Lawyers and relatives are denied access to detainees throughout this process. Although frequent applications for access are made to the High Court and granted, they are regularly denied by the security forces.

Reports from Jammu and Kashmir also indicate that detainees are often kept in prison despite orders for their release on bail. Hundreds of petitions have been filed in the High Court of Jammu and Kashmir seeking the release of detainees following orders for their release on bail by the courts.

- **The Committee should enquire into the presence of unofficial interrogation centres in several states in India -- notably Punjab and Jammu and Kashmir -- and measures being taken by the authorities to ensure that records are kept of all detainees held in custody and that relatives are informed of the whereabouts of detainees and have access to them**

⁵⁶ Reports indicate that several unofficial JICs have existed in Jammu and Kashmir for several years. They include Kot Balwal in Jammu and several, including Hari Niwas, PAPA I, PAPAIL, Badgam and Fairview, in the Kashmir valley. These JICs are staffed by personnel from all security agencies operating in the state.

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful

Article 9(4)

- **The Committee should enquire into measures taken to ensure adherence by law enforcement agencies and government officials to court directives**

In addition to the provision in section 57 of the CrPC requiring that all arrested persons be brought before a magistrate within 24 hours of arrest, the remedy of *habeas corpus* is available in the Supreme Court of India, under Article 32 of the Constitution and in each High Court, under Article 226 of the Constitution.

While the right to file *habeas corpus* petitions exists in Jammu and Kashmir, in practice approaching the High Court in Srinagar to ascertain the lawfulness of detention is a long process which rarely leads to a satisfactory conclusion in procedural and substantive terms. Security forces frequently do not co-operate with the court's requests for appearance or documentary evidence and do not necessarily honour its decisions. Reports from states of the north-east also indicate that court orders are regularly disregarded (see Box 13).

Manipur: Courts uphold rights of detainee

In September 1996, a judge of the Imphal bench of the Guwahati High Court, found the Chief Secretary and Joint Secretary of the Home Department of the Government of Manipur and the Thoubal District Magistrate guilty of contempt of court and sentenced them to imprisonment for two months. The order was contained in a judgement which described the failure of the state authorities to release a detainee -- Shri Kh. Brojen Singh -- who had been detained under the National Security Act, despite court orders for his release. As a result, the man had been illegally detained by the state for a total of 76 days.

Shri Kh. Brojen Singh had filed a *habeas corpus* petition in the High Court following his arrest on 28 April 1995. On 7 September 1995 the High Court quashed his detention and ordered that he should be released forthwith. Although a release order was issued on the same day and sent to the state government and the Thoubal District Magistrate, Shri Kh. Brojen Singh was not released. He then filed a further petition for contempt proceedings against state officials. In the meantime, the state filed a special leave petition in the Supreme Court to overturn the September High Court order for his release.

The state's petition was rejected by the Supreme Court on 3 November which once more ordered his immediate release. He was finally released on 23 November -- 76 days after the original order for his release was given. In sentencing the state officials, the judge commented:

"If the writs and more particularly the writ of habeas corpus is allowed to be defied and wilfully flouted by persons in authorities in the manner as has been done in the instant case, apart from violating the fundamental rights of the petitioner, has certainly resulted in shaking the confidence of the people in the authority of the court... The writ of Habeas Corpus is a valuable right, which can not be allowed to be stripped by the persistent, wilful defiance of the authorities"

Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation

Article 9(5)

- **The Committee should enquire as to the government's intention concerning amendments proposed in the Criminal Law (2nd Amendment) Act 1995, particularly with regard to the right to compensation for those who have been illegally detained**

The right to compensation in cases of illegal detention is not guaranteed under Indian law but as with compensation in all cases of human rights violations is subject to the discretion of the courts and the NHRC (see article 2(3)). The **Criminal Law (2nd Amendment) Bill**, introduced to parliament in July 1995, provides for compensation in such cases but sets a limit on the amount of compensation which can be granted. In the objects and reasons given in the text of the Bill, the then Home Minister referred to the need to provide for compensation in cases of illegal detention in light of India's obligation under article 9(5) of the ICCPR. However the Bill has been pending for nearly two years.

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

Article 14

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.
 - (c) To be tried without undue delay.
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

- **The Committee should enquire into measures taken by the government to ensure that political prisoners in India receive a fair trial as set out under article 14 of the covenant**

Thousands of people awaiting trial are not guaranteed their rights under article 14, many of whom are political prisoners. The long pendency of a vast number of cases awaiting trial has received much attention in the media and amongst the executive and the judiciary. Measures to cope with the problem have included the designation of special courts to try certain cases as a priority such as consumer courts. In October 1996, the Supreme Court delivered a controversial judgement ordering that if trial has not commenced for more than one year in cases in which the offence is punishable by up to one year's imprisonment, the cases should be closed. While Amnesty International welcomes such attempts to resolve the issue of delays in trials, it is concerned that what is needed is a fundamental review of the criminal justice system. Sufficient resources need to be allocated for this to occur.

Access to justice has long been recognised as important within India. In 1980, Justice Bhagwati of the Supreme Court directed:

*"the magistrates and Sessions judges in the country to inform every accused who appears before them and who is not represented by [a] lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State"*⁵⁷

This right has subsequently been codified in the **Legal Services (Authorities) Act, 1987**, which provides for the provision of free legal aid. However, Amnesty International has been concerned to note that it appears that the Act has not been notified in all states.

Awareness of rights and of the meaning of the law by individuals cannot be assumed in India. The majority of detainees are unaware of their rights in relation to arrest and detention procedures or trial procedures. Many are illiterate or do not speak or read Hindi or English -- the legal languages of the Supreme Court of India.

The right of everyone to receive a fair and public hearing by a competent, independent and impartial tribunal established by law is further vitiated by special legislation which is in clear contravention of article 14 (see article 9).

Despite its lapse in May 1995, hundreds of people remain detained under **TADA**. Trials of people accused under **TADA** are before special courts which may sit *in camera* and can and do take place in jail. Confessions made to a senior police officer can be admitted in evidence. In some cases, the burden of proof has been changed and put on the person accused of committing a "terrorist act" to prove his/her innocence. The identity of witnesses can be kept secret. Persons convicted following such trials are liable to receive considerably higher penalties than if they had been convicted under ordinary criminal laws. They can even be sentenced to death. Appeals to the High Court are excluded; they must be made within 30 days of judgement and that only to the Supreme Court, a legal remedy only very few Indians can afford

The majority of those who remain awaiting trial under **TADA** are detained in connection with the conflict in Jammu and Kashmir. Trials of detainees in Jammu and Kashmir -- under **TADA** in specially designated courts as well as under other legislation -- are not only subject to long delays due to the general backlog of cases in the courts, but also appear to be wilfully delayed to prolong their detention periods. Amnesty International is aware of dozens of cases which have been pending for years; hearings are often delayed by non-attendance of the prosecutor and by state authorities not attending hearings to which they were called. The fact that many prisoners are lodged in prisons outside the state may also contribute to the delay in their trials. Amnesty International has been informed that in mid-1996 35 prisoners from Jammu and Kashmir were lodged in Jullunder Jail and 117 in Jodhpur Jail, at a distance of around 1,300 kms from Srinagar. These lists may not be exhaustive. It is difficult for prisoners lodged in Jullunder or Jodhpur to maintain contact with their families and their lawyers, and for those among them whose trial is pending, to appear for court hearings in Jammu and Kashmir.

- **The Committee should enquire into measures taken by the government to ensure that political prisoners in India receive a fair trial as set out under article 14 of the covenant.**

⁵⁷ Order dated 19 December 1980 in *Khatri and others vs State of Bihar and others* (1981) 1 SCC 627.

Articles 19 and 21

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

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*order public*), the protection of public health or morals or the protection of the rights and freedoms of others.

- **Enquiries by the Committee into safeguards ensuring that freedom of expression is not arbitrarily curtailed would be worthwhile**
- **The Committee should enquire into safeguards in place to ensure that powers granted to police and local executive officers under certain sections of the CrPC and various Police Acts are not used to prevent legitimate activities protected by the covenant**

Many of the violations referred to in this submission to the Committee have taken place in the context of protest or dissent. From the discrimination faced by those of a particular political opinion, to the suppression of protests by a variety of human rights defenders, including journalists and lawyers, there is a common, underlying aim -- the curtailment of freedom of expression and protest. For this reason, articles 19 and 21 of the covenant have been discussed together.

The right as set out under article 19 of "freedom to seek, receive and impart information and ideas of all kinds" has been widely curtailed in India. It is acknowledged that correspondence to and from many civil liberties organizations (particularly those which operate in areas of armed conflict) is intercepted by the authorities and that their telephones are regularly tapped⁵⁸. Information and documentation sent to international human rights organizations is often intercepted and much of it does not reach its destination. An article in the *Indian Express* recently reported that letters arriving in India from certain countries are taken away by members of the Intelligence Bureau and read and monitored before being sent on to its destination⁵⁹.

The importance of transparency and openness in public life has gained greater prominence and has added fuel to initiatives to ensure greater access to information. A campaign seeking the right to information has been consolidated in the form of **Right to Information Bill**, proposed by the Press Council of India.

⁵⁸ In a judgement dated 18 December 1996, on Writ Petition (C) No.256 of 1991, *Peoples Union for Civil Liberties (PUCL) vs The Union of India & Another*, the Supreme Court held that telephone tapping was a violation of the right to privacy guaranteed under Article 21 of the Constitution of India.

⁵⁹ *Indian Express* 20 March 1997.

Journalists have not always been able to engage in their professional activities unimpeded by state interference. This is the case in the state of Jammu and Kashmir in particular. The Committee to Protect Journalists has documented scores of incidents from the state in which journalists have been arrested and tortured by security forces or abducted and sometimes killed by members of armed opposition groups. Prior to the national election in May 1996, the Union government issued a circular directing newspapers in Jammu and Kashmir not to carry any statements of any member of an armed opposition group or of anything that might hamper elections. The Union Home Ministry reportedly stated that anyone who violated this directive would be prosecuted. During the election period, Amnesty International received reports that journalists had their cameras taken away, were beaten and subjected to intimidation and harassment when they sought to report the coercion to which voters were subjected⁶⁰.

The harassment of human rights defenders seeking to mobilise national and international support for challenges to legislation or practices of the government, has also been brought to the attention of Amnesty International. On 14 November 1996, 15-20 plainclothes CID officials forcibly entered the offices of the Other Media, New Delhi, which houses the Campaign against the **Armed Forces (Special Powers) Act**. Two men working for the International Alliance of Indigenous and Tribal Peoples were questioned in a threatening manner. During the night of 19-20 January 1997, Mr Ram Naryan Kumar, a supporter of the Committee for Information and Initiative on Punjab who has written a book, *The Sikh Unrest in Punjab and the Indian State*, was illegally detained for several hours at Indira Gandhi International Airport and denied access to a lawyer.

- **Enquiries by the Committee into safeguards ensuring that freedom of expression is not arbitrarily curtailed would be worthwhile**

Although freedom of assembly is a fundamental right guaranteed under Article 19 of the Constitution, protests are regularly suppressed by police using the law to ban protests or by use of excessive force. In addition, allegations are widespread that false cases are filed against activists in an attempt to prevent them from carrying out their activities (see article 2 (1)).

In recent months, hundreds of people -- the majority women -- protesting against the Enron power project in the state of Maharashtra have been arrested and detained for periods of between 10 and 15 days by the authorities before release. Section 37(1) of the **Bombay Police Act** has been imposed in the Ratnagiri district of Maharashtra where protests have been taking place for several years against the project. This grants powers to police to prohibit "certain acts for prevention of disorder" including assemblies of persons or processions and to "temporarily... prohibit persons from entering the area so reserved". The President of the Sangharsh Samiti (an organization campaigning against the project) -- Mangesh Pawar -- was issued with a show-cause notice in May 1997, prohibiting him from entering the immediate area of the project for a period of two years. He had previously been prohibited from entering the area for a period of one month after his arrest and detention under section 151 CrPC on 27 February (see under article 9(1)).

Section 144 CrPC also empowers magistrates to "direct any person to abstain from a certain act" if he/she considers that such a direction "is likely to prevent... obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public

⁶⁰ See *India: Human rights abuses in the election period in Jammu and Kashmir*, September 1996, AI Index: ASA 20/39/96.

tranquillity, or a riot or an affray". This section has been widely used in India to prevent the assembly of more than five persons and hence to suppress protest.

- **The Committee should enquire into safeguards in place to ensure that powers granted to police and local executive officers under certain sections of the CrPC and various Police Acts are not used to prevent legitimate activities protected by the covenant**

Reports indicate that legislation allowing for preventive/administrative detention, as detailed in article 9(1), is used to suppress freedom of expression and protest. For example, in Jammu and Kashmir, those who uphold and express specific opinions on the status of the region may be arbitrarily detained under the **Jammu and Kashmir Public Safety Act** which provides for the detention of those "promoting, propagating or attempting to create feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community" or, notably, of "region".

In an attempt to suppress protests, activists are regularly arrested under section 151 of the CrPC. In May 1997, six members of the All Parties Hurriyat Conference (a political umbrella group opposing Indian rule in Jammu and Kashmir) were arrested under section 151 while on hunger strike in New Delhi in protest at an increase in human rights violations in Jammu and Kashmir.

Article 24(1)

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

- **The Committee should enquire as to whether the Juvenile Justice Act has been notified in all states of India and whether police and security forces are given training in its provisions**
- **The Committee should enquire into allegations that several minors are detained under special legislation in the state of Jammu and Kashmir and make enquiries into measures taken by the authorities that safeguards to protect arrested minors are fully implemented, particularly in areas of armed conflict**

When examining human rights violations that have taken place within India, it is apparent that children have been directly affected by such violations, and have often themselves been the victims. Whether it is in situations of internal armed conflict, or as members of a socially or economically disadvantaged community, children have been particularly vulnerable.

At the international level, India has demonstrated its commitment to safeguarding the rights of children by ratifying, the Convention on the Rights of the Child (CRC) on 11 November 1992. At the domestic level, the **Juvenile Justice Act, 1986** -- which to Amnesty International's knowledge has not been implemented throughout India -- details safeguards to protect children from human rights violations. For example section 18(2) of the **Juvenile Justice Act** specifies that no child can be put in jail or police lock up. However, a discrepancy exists between the CRC and Indian law on the age of offenders who can be sentenced to death (see article 6(5)).

Amnesty International has received a number of reports relating to street children and children from remand homes who have subjected to human rights violations after being picked up by police.

In October 1993, a 10-year-old boy, Raja, was arrested by police in Tamil Nadu on charges of theft. He was subsequently sent to an Observation Home in Dharmapuri from where he escaped on 22 November 1993. On 28 January 1994 his brother handed him over to the Hosur police. The police claimed that Raja had been found hanging in the toilet of the lock-up a few days later and that on the way to hospital he had jumped out of the police jeep and escaped. Following allegations that the boy had been killed in custody, police officers admitted that he had died due to torture in custody and that they had attempted to burn his body in order to destroy the evidence. The case against police officers remains pending in the courts.

In a study of "*Police Abuse and Killings of Street Children in India*"⁶¹, the Human Rights Watch Children's Rights Project has detailed numerous instances where male children have been illegally detained, tortured, and have died in custody.

⁶¹ Human Rights Watch/Asia, November 1996.

Kerala: Young boy illegally detained and tortured

On 26 May 1996, a 14-year-old ragpicker, Rajesh, was forcibly dragged into a jeep by several policemen in Trivandrum, Kerala. No reasons were given for his arrest. While he was in the jeep, the police officers began beating him. This continued when they reached the Police Station. Rajesh's mother was not informed by the police about his arrest. However, she heard rumours that he was being detained and went to the police station. She appealed to the police to release him but the policemen only abused her verbally and threatened her against taking any action to secure his release. When an advocate approached the police they denied that Rajesh was in their custody and transferred him to a different police station.

On 3 June, Rajesh's mother filed a "search petition" before the High Court, and the judicial magistrate ordered an advocate to search for Rajesh at the police station. However, police reportedly knew of the impending search and shifted Rajesh once more to the police station where he had originally been held. Police officers at the police station denied before the court that Rajesh had been in their custody. On several occasions, Rajesh's mother was harassed and threatened by police. Police also tried to obtain money from her in exchange for Rajesh's release.

On 5 June, Rajesh's mother submitted a memorandum to the Chief Minister of Kerala, and sent a telegram to the Director General of Police, regarding the illegal detention of her son. On 7 June, the police from Thiruvallom police station finally produced Rajesh before the court at Vanchiyoor claiming he had been arrested on 6 June on a charge of theft. The Court remanded Rajesh to judicial custody and he was sent to the juvenile wing of Poonjapura Central Prison. He was released on bail on 10 June. On his release, he was admitted to the Government General Hospital, Trivandrum, for treatment of his injuries sustained while in police custody. While at the hospital he was interviewed by a team from a local human rights organization -- the Kerala Civil Liberties Committee -- which took up his case. He told them that police had pierced pins through his nails, banged his head against the wall, forced him to sit on an imaginary chair for long periods, and beaten the soles of his feet. To date, Amnesty International knows of no inquiry ordered into the illegal detention and torture of Rajesh.

An example of the vulnerability of children is seen in the reports received by Amnesty International concerning children working in railway stations and other public areas being picked up by police for working illegally and charged with travelling without a ticket. The children are unable to pay the Rs.500 (US\$14) fine and are sent before a magistrate of the Juvenile Justice Court who remands them to the custody of a government observation homes. Rather than receiving rehabilitation training, it is widely accepted that the majority are made to work, often in the houses of observation home employees.

In regions of internal armed conflict, the unlawful killings and "disappearances" that have taken place have affected the lives of the children and families of those that have been killed. Children themselves have been among the victims of excessive force used by law enforcement officials. In Manipur children have often been the victims of indiscriminate firing by security forces as documented in Amnesty International's April 1997 report.⁶² In May 1994, three young boys -- Nisar Ahmad Mir (aged 13), Fayaz Ahmad Bhat (aged 16) and Irshad Ahmad Mir (aged 16) -- were reportedly arrested by members of the BSF and killed in custody. The BSF claimed that they had been shot dead while running away after shooting at security forces. In response to queries by Amnesty International, in 1995 the Government of India stated that their deaths were being investigated, but has not provided the organization with any information concerning the investigation or its outcome.

Moreover, children have been known to be have been arrested and detained in Jammu and Kashmir under special legislation. On 23 June 1993, Mushtaq Ahmad Wani, a 14-year-old student was arrested by members of the BSF during a search operation in a district of Srinagar. When his father appealed to the authorities for his release they told him that Mushtaq Ahmad Wani had admitted his involvement with armed opposition groups and said that he was being detained for interrogation at PAPA II interrogation centre, Srinagar. A case was later reportedly filed against him under the **Jammu and Kashmir Public Safety Act**. Amnesty International wrote to the Governor of Jammu and Kashmir in April 1994 expressing concern at the detention of Mushtaq Ahmad Wani and other minors reportedly being held under the **Jammu and Kashmir Public Safety Act** in the state but received no response to its letter.

- **The Committee should enquire into allegations that several minors are detained under special legislation in the state of Jammu and Kashmir and make enquiries into measures taken by the authorities that safeguards to protect arrested minors are fully implemented, particularly in areas of armed conflict**

In addition to those children directly affected by human rights violations, those seeking to promote the rights as set out in article 24 of the covenant and articles of the CBC have also become the victims of human rights violations (see Box 15).

⁶² "India: Official sanction for killings in Manipur", April 1997, AI Index: ASA 20/14/97.

Uttar Pradesh: Defenders of childrens' rights suppressed

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

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

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

Appendix A: The National Human Rights Commission (NHRC)

- **The Committee should enquire into measures being taken to strengthen the mandate and operation of the National Human Rights Commission, the State Human Rights Commissions and the Human Rights Courts**

Constituted under the **Protection of Human Rights Act, 1993**, the NHRC is empowered to "study treaties and other international instruments on human rights and recommend measures for their effective implementation"⁶³. The NHRC has suggested a greater integration of the International Covenants within its concern, in an amendment to the Act proposed in its 1993-4 Annual Report, where it has sought to amend the definition of human rights in the Act to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants, Convention and Treaties to which India is a party".

The NHRC has been active in monitoring human rights violations, in raising concerns on a broad range of human rights issues and in furthering human rights education. As can be seen in the discussion on specific articles of the covenant, the NHRC has intervened on a number of key concerns. Although its pronouncements are recommendatory in nature, they have had the effect of raising the profile of concern for human rights.

In particular, Amnesty International acknowledges the important role the NHRC has played since it was set up in addressing the issue of custodial violence. One of its first actions was to request that it be informed of death or rape in police custody within 24 hours of occurrence. While in some states it has not succeeded in implementing this directive (notably Jammu and Kashmir), the NHRC has become an important monitor of the extent of custodial violence. During the period 1 April 1995 to 31 March 1996, the NHRC received 444 complaints of death or rape in custody. During the same period, the NHRC received a total of 11,153 complaints from organizations and individuals on a variety of issues, around half of which were dismissed "*in limini*" but the rest which it took cognizance of⁶⁴. In addition to complaints received, reports indicate that many organizations and individuals within India concerned with human rights have been regularly consulted by the NHRC.

The concerns of the NHRC have extended to the implementation of international human rights law in India. For example, in February 1997, the chairperson of the NHRC wrote to the Prime Minister of India urging the government to promptly accede to the Convention against Torture.

However, Amnesty International continues to have serious concerns about particular clauses in the **Protection of Human Rights Act 1993**, including the provision (Section 19) that limits the mandate of the NHRC and specifies that it is not empowered to investigate allegations of violations by the armed forces. In several high profile cases, the NHRC has disregarded this limitation and intervened in incidents of human rights violations by security forces -- most notably in Jammu and Kashmir in the case of the killing of lawyer Jalil Andrabi in March 1996 and the killing of civilians by security forces in Bijbehara in October 1993. However, Amnesty International considers this

⁶³ The Act defines international instruments as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁶⁴ Annexure-VII, page 89-90, National Human Rights Commission Annual Report 1995-96.

ad-hoc approach, which does not ensure consistent investigation of human rights violations by armed and paramilitary forces, to be inadequate.

Another limitation of concern to Amnesty International is the time-limit of one year, after which the NHRC cannot take cognizance of a complaint. Again, this provision has been overlooked in specific cases, but the general practice of disregarding cases filed more than one year after a violation is alleged to have been perpetrated, remains. This is problematic, as many victims approach the NHRC as a last resort, after using other mechanisms such as the courts. Moreover lack of resources are often an obstacle to filing a complaint within the time-frame required.

Principle 2 of the Principles relating to the status of national institutions, adopted by the United Nations Commission on Human Rights in 1992, states "A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence"⁶⁵.

In 1996, the Committee on the Elimination of Racial Discrimination (CERD), when hearing India's report on its adherence to the International Convention on the Elimination of All Forms of Racial Discrimination concluded:

*Clause 19 of the Protection of Human Rights Act prevents the National Commission on Human Rights from directly investigating allegations of abuse involving the armed forces. This is too broad a restriction on its powers and contributes to a climate of impunity for members of the armed forces. Moreover, it is regretted that the Commission is debarred from investigating cases of human rights violation that occurred more than a year before the making of the complaint.*⁶⁶

CERD accordingly recommended repeal of clause 19 of the Act.⁶⁷

As envisaged under the **Protection of Human Rights Act 1993**, to date, state Human Rights Commissions have been established in Assam, Himachal Pradesh, Madhya Pradesh, Tamil Nadu and West Bengal. The governments of Kerala, Nagaland and Punjab have announced their intention to set up state commissions in the near future.

In May 1997, the **Jammu and Kashmir Protection of Human Rights Bill** was passed by the state legislative assembly envisaging the setting up of a Human Rights Commission in the state. Despite requests, Amnesty International has not received a copy of this Bill. However, statements made by the Chief Minister indicate that the Commission will not be mandated to investigate violations by armed and paramilitary forces who are responsible for the majority of violations in the state. Similar concerns apply to the state Commission in Assam where human rights violations by armed and paramilitary forces are widespread.

Also under the **Protection of Human Rights Act 1993**, human rights courts can be set up to provide "speedy trial of offences arising out of violation of human rights". Several state

⁶⁵ Annex to Resolution 1992/54 on National Institutions for the promotion and protection of human rights. Adopted by consensus by the United Nations Commission on Human Rights 3 March 1992.

⁶⁶ CERD/C/304/Add.13, para 16.

⁶⁷ *ibid*, para 28.

governments -- including Uttar Pradesh and Tamil Nadu -- have announced the setting up of such courts by designating sessions courts to hear human rights cases. However, in Tamil Nadu, the process has been challenged by officials of the courts themselves and human rights activists who have pointed to the fact that there are no guidelines on the mandate and powers of these courts or the procedures to be followed by them.

Amnesty International believes that the **Protection of Human Rights Act** should be reviewed and amended as a matter of urgency to reflect concerns raised by Amnesty International and several other human rights organizations in India.

Appendix B: Human rights training for security forces

- **Enquiries by the Committee into the extent to which international human rights standards are reflected in the training of government officials, including the security forces would be worthwhile**

In examining India's second periodic report, questions were raised about the dissemination of the text of the covenant, for example into India's minority languages, and whether the Code of Conduct for Law Enforcement Officials was widely known in law enforcement circles in India. While Amnesty International is aware of a number of initiatives to further human rights awareness in India, detailed information of the curricula of human rights training for security officials, and the extent to which such training accounts for India's obligations under the ICCPR or under the soft law, has not been made available to the organization.

Human rights training would need to account for the various officials engaged in law enforcement activities, as the perpetrators of human rights violations are not from any specific cadre of security officials within India, and are most often found in the lower ranks -- those who are least informed about the protection of human rights. Thus training is necessary for the police (for the national cadre in the National Police Academy, and for state level cadre in the State Training Colleges and State Training Schools), for the state-level paramilitary forces, for the central paramilitary forces and for various battalions of the armed forces.

There has been increasing concern for the human rights content of training programs for the police within India. The NHRC has been active in encouraging human rights training for police at all levels and -- in association with the National Law School, Bangalore -- has developed a syllabus for the training of police officials of all levels which is currently being tested on an experimental basis in Karnataka. However, the extent to which such training incorporates the standards in the covenant is unclear. Moreover, the existence of different cadres -- the Indian Police Service is trained on a national level and the state cadres are trained on the state level -- and different regulations governing the training of these cadres means that there are difficulties in assessing the processes of police training in India. Enquiries into this by the Committee would be worthwhile.

Human rights training for armed and paramilitary forces appears to have received less attention although the NHRC has initiated occasional training seminars on human rights. However, it is not clear to what extent armed and paramilitary forces are given instruction in international human rights standards -- in particular those relating to the use of force and firearms.

Amnesty International has no information on the training in human rights given to other officials of the state who are alleged to perpetrate human rights. Such officials would include the staff of jails, of institutions for those with mental illness, for women, for children and for other personnel, including forest officials.

Appendix C: Access for International Human Rights Monitors

- **The Committee should enquire into steps taken to ensure free access to international human rights organizations and United National human rights mechanisms to all parts of India**

Access to India, and therefore, access to information, has long been of concern to the international human rights community. Some key initiatives have been taken by the government to further this access. In June 1995, the Government of India demonstrated its concern for the realisation of human rights by allowing the International Committee of the Red Cross access to those detained in the context of the situation in Jammu and Kashmir. Visits have been made to India by the United Nations High Commissioner for Human Rights in May 1995 and by the Special Rapporteur on the question of religious intolerance in December 1996. However, the government has yet to invite the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit India, despite their repeated requests to do so.

The United Nations Working Group on enforced or involuntary disappearances has also made repeated requests to visit India, particularly in the light of the hundreds of cases of "disappearance" that have been reported from the states of Jammu and Kashmir and Punjab over recent years. In many cases of "disappearance" that Amnesty International has raised with the Government of India, the response received has stated that *habeas corpus* petitions filed by the relatives of the "disappeared" or by human rights activists have been dealt with by the courts. Reports from within India indicate that this is factually incorrect. While recognising that there have been fewer reports of "disappearances" in 1995 and 1996, Amnesty International considers it vital that the fate of those who have "disappeared" should be established and that the question of impunity for the perpetrators of such violations should be resolved in order to provide redress and to prevent further "disappearances" (see article 6(1)). However, the Government of India has justified its unwillingness to invite the Working Group on the grounds that there have been fewer reports of "disappearances", notwithstanding the expertise that the Working Group could offer.

Amnesty International has been able to initiate a fuller dialogue with the Government of India since the last hearing of the Committee, although at the time of writing, proposals to visit India have been held pending. In 1992, a delegation visited New Delhi for eight days to hold talks with the government. In January 1994, one year after the initial proposal was made, Amnesty International delegates visited Bombay and Delhi for 10 days to enquire into police practices in the context of communal riots that had taken place in Bombay in December 1992 and January 1993. In July-August 1996, an Amnesty International delegation visited Delhi, Karnataka and Rajasthan for five weeks in the first open-ended research visit that the organization has been able to conduct in the country. However, the organization is disappointed that the issue of access for its delegates has continued to be problematic for the government -- a letter sent to the government in November 1996, proposing an Amnesty International research visit to Delhi, Uttar Pradesh and West Bengal in January 1997, has yet to receive a response.

The reticence of the government to allow all those concerned with human rights access to India appears to contradict its own policy, which is articulated in its report:

A policy of transparency, responsiveness and dialogue with domestic and international non-governmental organizations, adherence to major international human rights

instruments and cooperation with the United Nations human rights machinery. (para 5, page 4)