CHAPTER THREE

REPORT OF WORLD HUMAN RIGHTS ORGANIZATIONS
ON KASHMIR - INDIAN RESPONSE

In all the years of creation of Pakistan, there has not been a moment of peace for India. India and Pakistan were forced to fight three wars but are no nearer resolving their differences than when Muslims of India put forth their plan for a homeland based on Islam. Pakistan keeps telling the world that the stumbling block is the future of Jammu and Kashmir. Pakistan is insistent that the State should go to it strictly on the basis of religion. This flies against the very face of India as a State sheltering more than ten crore Muslim and further giving them citizenship rights. Should India concede the Valley of Kashmir to Pakistan or the local groups in the garb of independence or autonomy on theocratic grounds its present composite nationalism which is also called secularism will fall to the ground instantly with disastrous consequences for the Muslim minority.

Pakistan’s ‘raisona etre’ is the hatred of India. They felt sooner or later India must be made to blood. They succeeded in the plans. First they encouraged Sikh Muslim for Khalistan, with the result military raised its eagle heads and Hindu – Sikh unity crashed to the ground. Ultimately, Punjab militancy was controlled with sacrifices of innocent men and women and children. The peace started in a gradual way. When Pakistan faced its defeat in Punjab, that she turned her arms towards Kashmir. According to the study made by American Central Intelligence Agency (C.I.A), Pakistan’s military intelligence used narcotics profits to find Separatist Movements in India. The study further cites that Pakistan’s powerful Inter-Services Intelligence
(ISI) Directorate used drug money to fund groups its support in the neighboring country, India. ISI developed funding arrangements with Sikh militants and Kashmir insurgents in India. Testifying before the Senate Judiciary Committee on 21.4.1993, the Director of C.I.A. Mr. James Woolsey said “Pakistan has supported the Kashmir and Sikh group, which have been waging long running insurgencies against India’s Central Government”. Kashmir’s and Sikhs have found a safe heaven in Pakistan. On the same day i.e. 21st April 1993, the Washington Post published a report date-lined Islamabad quoting a former officer of Pakistan’s Inter Service Intelligence (ISI) as claiming that the Jamaal –I – Islam “has hired former employees of ISI and the Special Services Group, the Army’s elite Commando force to run its Kashmir operation”. The report also quoted another former ISI official saying that Pakistan had specially trained Indian Muslims for participating in the Afghan jihad and later provided help thorough them to insurgents in Kashmir.

On January 16, 1990, Chief of Pakistan’s Jamhoori Itehad, appealed to the public to observe January 19 as a prayer day to express “firm solidarity with Kahsmiri freedom fighters. He also called upon Ulema to offer special prayers for the success of jihad that was waged by the Kashmir Muslims. On January 31, 1990 Sahibzada Yakub Khan, Pakistan’s Foreign Minister in a radio broadcast aroused public passion and justified Pakistan’s support to the terrorists in Kashmir. He Bemoaned: “I went to India with a bouquet of flowers but returned with a basket of thorns”. In her speck in the National Assembly the then Prime Minister Benazir Bhutto was all venom and fire. On February 1, 1990 Kahn Bhadur Khan, Pakistan’s Minister of state for Religious Affairs declared: “We are resolute to liberate Kashmir which is the life-line of Pakistan,” Earlier, an eleven Party Alliance was formed in
Pakistan-Occupied part of Jammu and Kashmir. The most venomous part was played by Jamaat-I-Islami. Its Chief, Qazi Hussain Ahmed strongly advocated intervention in Kashmir. He said: “We are a small power but a Muslim country. We live in a ocean of Muslim brotherhood. Hindus are not like us. The Brahmans and “Achhoot” can never form a nation like Ummat-e-Muslima. The people of Kashmir have carried the Pakistani flag. It is our duty to support the Muslims of Kashmir”. On February 4, 1990 a joint meeting of the Government and Opposition leaders was held at Islamabad to express Pakistan unanimous commitment to the Muslims of Kashmir in support of their “freedom struggle”. Opening the meeting which was attended by four Chief Minister, Federal Ministers and high-ranking military and civil officers, Ms. Nusrat Bhutto, a senior Minister, who presided in the absence of the Prime Minister, Ms. Benazir Bhutto, said : “The heroic struggle and firm determination of the on-going upsurge in Kashmir has again demonstrated beyond any doubt that he valiant Kashmiri Muslims will not be denied the inherent right self-determination nor will they yield to brute force or harsh coercion”. Throughout Pakistan, strike was observed on February 5, 1990 to express solidarity with the Kashmiri Muslims. It was Government-sponsored strike in which all political parties participated. Huge placards were displayed. These placards read: “Kashmir will be in Pakistan” Public rallies were held in almost all major towns of the country and fiery speeches were made. At one such rally at Lahore, the Jamaat-I-Islami leader thundered: “Indian forces have cordoned off Kashmiri. But they do not know the weapon, which could suppress the spirit of ‘jihad’ has still not been invested in he world”. Army Chief, General Aslam Beg said: “The changing scenario in Kashmir has posed new challenges and assigned new tasks and new missions to us”. On the following day Col. (Rtd) G.S.
Cheema, Minister of State of Defence said: “Without Kashmir Pakistan is incomplete”.
Thus, inside Pakistan, ‘jihad’ against India continued with fierce intensity. Although Central Governments and Provincial Governments changed. Ms. Bhutto was replaced by Ghulam Mustafa Jatoi and later by Nawaz Sharief as Prime Miniser, it made no difference so far as India-whipping was concerned. Nawaz Sharief began to play a double game. On the one hand, he began making gestures to Indian leaders showing his keenness to settle mutual differences in friendly way. On the other, he continued to instigate his own people and Muslims of Kashmir.
Side by side to launching of proxy war in Kashmir, Pakistan organized a massive campaign in the Islamic countries in general and Western countries in particular. While in the former she roused the sentiments in the name of Islam in the later she appealed to the democratic conscience in the name of human rights. Under the garb of human rights anti security forces campaign is carried on by the terrorists.
The result in the “proxy war” in Kashmir, the security forces are subjected to both physical and psychological warfare, faced with ruthless Terrorism, Indian Security Forces were pressed to protect the lives, of innocent men, women and children in J&K. the Pakistan’s aim is to defame the security forces world-wild. They level charge of excesses and atrocities against the security forces and violations of human rights.
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Pakistan relied on four reports regarding so-called violation of human rights in Kashmir. Three of these were prepared by PUCI, Independent initiative on Kashmir and Citizens for Democracy. Misguided Indians have been providing material for the Pakistani propaganda mills as a matter of habit or disease. Pakistan’s U.N. Enovy, Jamsheed Narkar, who spoke in the U.N. Economic and social Committee on self-determination in Kashmir on July 27, 1992, quoted from Published account of Justice (Rtd) V.M. Tarkunde and Justice (Rtd) Rajidner Sachar as well as from the article in Telegraph of Calcutta that advocate a plebiscite under U.N. auspicious. Peoples’ Union of Civil Liberties (PUCL), New Initiative on Kashmir, Human Rights Watch etc. should become victims of conceptual ambiguity, which involves a shift in the very parameters of fair judgment. None of these organizations could show any trace of human sensitivity or humanness or a modest concern for three lakh of displaced persons, who have been reduced to penury and frustration. The so-called Human Rights activists who will their honour and stop at no lies to propagate the cause of terrorists and their “Rights” and club the tiny community of Pundits as tyrants and exploiters and grabbers. H.R. Organizations have ignored the gross human rights violations against Kashmir Hindus.
The disinformation campaign launched by the self-styled Human Rights Groups, which have mushroomed in India, has been fully used by the terrorists abroad to malign India. The malicious and false reports of these Groups have provided grist to Pakistani propaganda abroad. These reports which claim to be based on factual accounts, are widely quoted in pamphlets distributed as publicity material. One such case of mass gang rape of innocent women of Kunan Pushpora was highly publicized and security forces were held responsible for graphical by PUCI, whereas Press Council of India which went into this allegation very-very thoroughly has stated that this was an imaginary incident fabricated by terrorists to malign the security forces. Terrorists violence itself is violation of human right and crime against humanity. Where terrorism prevails, there is a dispute between Police and Sate / Centre Security Forces. The former treat it a law enforcement problem and the latter takes the view that terrorism is a war against an established state. To counter terrorism Mr. Edwin Messe – III, Ex-OS Attorney General has developed a strategy:

1. In confronting terrorism, Government clearly delegates the responsibility and authority needed balance opposing objectives, make no concession, end the situation swiftly, hostages, apprehend the terrorists and minimize political damage.

2. A sound political climate be created in which it becomes difficult for the terrorists to develop an infrastructure for refuge and support. Prevention of terrorism can be achieved by gathering adequate intelligence in a democratic society by legitimate means without infringing on people’s freedom. Information so gathered through intelligence, be shared between domestic and international agencies and statutes should not prevent such
exchange. By sharing information we can stop the militant before they enter the country.

3. once terrorists strike, government must adopt decisive attitude and provide full support to the Para-military and military forces. It must prevent the terrorists from achieving their objectives.

4. When the terrorists are apprehended they must be brought to trial.

5. The public must be educated about the real nature of terrorism. The authorities must make clear to it that terrorism is not idealism but pure crime.

When the Security Forces entered in J&K to assist in Counter-Insurgency operations, the excesses and abuses committed by Security Forces with regards to violation of Human Rights in J&K. many Indians International N.G.O's criticize the security forces.

AMINISTY INTERNATIONAL U.K.

It is agreed that on the initiative of Mr. Peter Benson, a Conscientious British Barrister, Amnesty International was launched in 1961. The Amnesty International won the Nobel Peace Prize in the 1980, because of its crusading work.

Amnesty International was launched in 1961 as a campaign to free two Portuguese students who had been sentenced to seven years in prison for raising their glasses in public in a toast to freedom. It is a non-governmental organization whose sole aim is to promote and protect fundamental human rights in all parts of the world. From its birth in London it has become a truly international organization. Amnesty International’s one million-plus members, subscribers and regular donors live in more than 170 countries and territories, in every continent of the world. The organization's policy and mandate are decided by the International Council Meeting, a biennial
gathering of elected representatives from Amnesty International Groups around the world.

The first Amnesty International group in India was started in 1968 by Mridula Sarabhai, a human rights activist whom Amnesty International had adopted as a prisoner of conscience after her arrest in 1965. She said the letters she received in prison from Amnesty International members gave her the strength to bear her incarceration and the desire to launch Amnesty International in India. Today, there are 14 groups in India, organized into the Indian Section based in Delhi. The member's men and women, young and old, from every walk of life and from many of India's diverse ethnic, religious and social groups - are united by a common goal to protect human life, dignity and safety in all parts of the world. There are also more than 850 Amnesty International groups in 15 other countries in the Asia/Pacific region, with Sections in eight, including Bangladesh, Hong Kong, Japan, Nepal, the Philippines and South Korea.

Amnesty International actively promotes the full range of rights enshrined in the 1948 Universal Declaration of Human Rights and other international human rights instruments. These fundamental rights are universal - they apply to everyone, whatever the circumstances and wherever they live. Governments use many excuses to justify human rights violations: war, civil unrest, even cultural traditions. We listen to the victims and reject such excuses. Amnesty International also considers that political, civil, social, economic and cultural rights are indivisible they are all equally important and interdependent. For example, a climate of state violence against political activists not only denies people their political rights, but can also prevent people from claiming their social, economic or cultural rights.
While the principal focus of work is on violations by state authorities, Amnesty International also campaigns against abuses such as hostage-taking, torture and deliberate and arbitrary killings by opposition groups to be bound minimum humanitarian standards. Amnesty International works to stop human in an countries of the world, regardless of the politics government or opposition group concerned. To ensure the movement's independence and impartiality, its member do no gather, assess or act upon information used as the basis for Amnesty International documents is carefully verified through research networks, and that are independent and impartial, Amnesty International is funded by contributions raised by supporters; it neither seeks nor accepts money from any or government bodies such as the United Nations (UN).6

Amnesty international’s campaigns are primarily concern with civil political rights. We concentrate on these rights so we can be more effective by focusing our efforts and avoid duplicating the work of other organizations, not we feel thy are more important than others. Our campaigning work is governed by a precise mandate, which has been developed and expanded over the years in response to changing patters of human rights violations around the world and the demands Amnesty International’s members. Our main objective are:

- The immediate and unconditional release of prisoners of conscience people detailed for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, who have not used or advocated violence.
- The prompt and fair trial of political prisoners:
• An end to the death penalty, torture and other forms of cruel, inhuman or degrading treatment or punishment.
• An end to political killings and "disappearances".

The protection of these rights is fundamental for all peoples of the world, whatever their religion, ethnic origin or cultural traditions. Moreover, protecting these rights directly impinges on other rights that might be designated economic, cultural or social such as Amnesty International's work to protect those advocating social justice from arbitrary arrest and torture.

Every day the International Secretariat, Amnesty International's London based headquarters, receives reports of human rights violations. It verifies the reports and sends out relevant information or urgent appeals to Amnesty International members around the world. They respond with letters, faxes and general publicity. At the beginning of 1996, 4,345 volunteers groups were working on 4,012 long-term assignments concerning over 7,000 victims in nearly 100 countries. Amnesty International also regularly launches major campaigns, such as the 1995 campaign on Women and Human Rights, which are based on carefully compiled reports and other campaigning materials. These form part of Amnesty International's global-initiatives, planned in advance by the movement as a whole.

India's Amnesty International members do not lobby the Indian Government about human rights violations in India. This is left to other members. During the 1992 campaign against rape, torture and deaths in custody in India, for example, Amnesty International members and
supporters outside India called on the Indian Government to end the abuses and protect human rights.

All Amnesty International members can campaign in their home countries on several key areas of the organization's global human rights work. For example, they can:

- Mount national and local human rights education programs.
- Campaign for the abolition of the death penalty.
- Urge their government to ratify international human rights treaties and, in some cases, bring domestic laws in line with international human rights standards.
- Distribute Amnesty International reports.

The India Section, for instance contributed to the Indian Government's decision to ratify in 1979 the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This means that India can be held accountable for any violations of its international human rights obligations and urged to improve its human rights performance by the UN Human Rights Commission.

Throughout the world, Amnesty International is committed to strengthening, expanding and developing more systematic links with the broad human rights movement in ways that are mutually beneficial. Amnesty International is developing a closer and more interactive relationship with local, national, regional and international human rights non-governmental organizations through specific porous of cooperation. In India, Amnesty International recognizes that the local human rights movements have a long and proud history. Members of the board-based human right rights movement in India have for many years between working the
realization of civil liberties and other fundamental rights, while single issue
group have been working to protect the rights specific communities, or of
people in particular regions. The dialogue between Amnesty International
and these groups leads to a exchange of information and contacts to
networks with greater impact on the public and links to international advocacy. Amnesty International also takes an active role when national bodies are being established, for example, in on the his that led to enactment of the Protection of Human Rights Act in India. Since the creation of the National Human Rights Commission, under this Act, Amnesty International a constructive dialogue with the commission, welcoming many of its activities, whilst continuing to be concerned about the effect of its restrictive mandate.

Over the years Amnesty International has developed specialist networks which draw on the skills and resources of professional and other intent work unites groups. The Amnesty International heath professional network unites more around 10,000 health workers in more than 30 countries who campaign on human rights to sector. These include the deliberate denial of medical care to prisoners and the issuing of false medical certificates. The network promotes human rights education, and campaign on behalf of teachers under threat. Other Amnesty International specialist networks include those focusing on women, trade children, religious groups, journalists and lesbian and lesbian and gay groups. There is even a police and military network whose members work to rise awareness about human rights among their fellow officers.

Amnesty international constantly feeds its research to a wide variety of bodies. These include the UN and other international and regional government organizations, academics, members of legal profession..
interested groups and individuals, and governments. As the first international non-governmental organization to gain recognition before the UN's Economic and Social Council, Amnesty International is uniquely able to rise human rights issues in the UN.

Over the Amnesty international has produced dozen of reports on India, covering issues such as torture, including rape in custody, killings, the use of the death penalty and legislation that allows human rights violation, as well as thousands of case studies. These have formed the basis of letter-writing and other forms of campaigns urging the Indian Government and opposition group to end the abuses. The Indian authorities allowed Amnesty international to visit the country research purposes in 1994, but this was first such visit it had permitted in 14 years. Official contact with India has been maintained in other ways, for Amnesty international representative have attended conferences in India, and in 1977 and 1992 held high level talks with senior government officials. Amnesty International continues to seek regular access to India for research visits, such as those routinely carried out in many other countries of Asia.

Members a group of Amnesty International visited New Delhi in November 1992. They discussed with Home Minister and top officials of the government. The team consisted Mr. Ian Martin, Mr. Derek Evans, Miss Yvonne and Miss Sarah Thomas. These members of the A.I. themselves started that their investigation of human rights violation are confined to meeting with relatives of victims, lawyers and state level officers.

While above Amnesty Delegation was in Delhi, the Leaders of All India Kashmiri Samaj and Pannum Kashmir pressed hard for a meeting with delegation and delegates met on 25.11.1992, the Amnesty delegates appeared to be unconcerned with the plight of the minority community of
Kashmir. They could not give satisfactory explanation to delegates of Kashmir minority.

Anita Tiessen, Acting Head of Media Unit, Amnesty International, International Secretariat, London sent the following written explanation: “Amnesty strongly condemns abuses committed by armed opposition groups, such as taking hostages and arbitrary killing of civilians. It has appealed to such groups operating in Punjab, Jammu and Kashmir and elsewhere to halt such abuses and our organization will continue to do so. The primly focus of our work will, however, remain on human right violations committed by Governments who have themselves undertaken specific and binding obligations to uphold and protect human rights. I should also clarify that all national sections of Amnesty International including the Indian section work to protect human rights on an international basis in other countries than their own. Amnesty International sections are not authorized to represent the organization to carry out research on the human rights situation in their own country or take action on specific human rights concerns except death penalty”.

India being a open society and continues to be an easy pray of Amnesty International Asia watch and other international Organization for alleged violation of human rights.

Amnesty has been seeking entry into Jammu & Kashmir for the last many years. The Indian Govt. has denied organization's methods of investigations are suspect. Inspire of doubtful functioning of AI in the eyes of Govt. of India, Amnesty have been giving reports from time to time violation of HR. in Jammu and Kashmir.”
Amnesty’s Report on Rape

The damaging reports against India came in March, 1992, under the title: India: Torture, Rape and Deaths in Custody, which described rape as a common form of torture in India. In Jammu & Kashmir rape was found to be systematically practiced as part of attempts to humiliate and intimidates the local population. During 1993, rape continues to be a disturbing aspect of custodial violence in J&K.

It is also alleged that a young woman was raped by Security Forces in J&K and thereafter she was murdered. Like this allegation, earlier allegations of rape in that state published by A.I. were dismissed by Govt. despite strong evidence to the contrary. That unfortunate lady was Mrs. Sara write of Mohammad Rajab Ganai of Warapora village in Spore. Police and post-mortem concluded that "there were marks of violence on neck, breasts, left knee and there was a massive vulvae edema and extensive vaginal tear. Death was due to asphyxia due to ligature put on her neck and a constant power applied."

Amnesty International believes that there is substantive evidence that Sara was raped by soldiers and calls for an independent inquiry into the incident.

However, members of the security forces are rarely held responsible for such violations of Human rights. As per A.I. knowledge two security forces were reported. ly sentenced to ten to 12 years imprisonment for raping a Canadian Tourist in Oct. 1990. Most recently AI. was informed by Govt. that four soldiers had been court marshaled and sentenced to ten years imprisonment for raping a Canadian Tourist in May 1993, in Sri Nagar. A medical report apparently confirmed the report. The recently appointed
National Commission of Human Rights (India) have instructed District Magistrates and superintendents of Police in all India States to inform them all Indian States to inform them all cases of custodial death and rape alleged to have occurred in their state within 24 hours of the occurrence or of having come to their knowledge. In another case of rape of nine women in the village of Stopian, J&K on the night of 10/11 Oct, 1992. It urged that an independent and impartial inquiry be carried out into the allegations. The Government of India conducted two investigations, one by Army and other by Sp of Police. Said that, “these allegations were trumped up at the instance of the militant outfits to malign the reputation of the security forces”. In spite of strong prima-facie evidence of rape by medical expert and govt. bases its denial and GUS the “sketchy and unreliable medical report”.

**Hazratbal Shrine**

Amnesty international was seriously concerned about developments at the Hazratbal Mosque, Srinagar and has called on both sides involved in siege there to act with restraint and respect for human rights and basic human standard. Govt. was advised to use force only when strictly required at the same time Armed Separatists to protect the lives and safety of civilians trapped inside the Mosque. The Hazratbal Mosque was surrendered by Army on 16th Oct, 1996 to flush out 50 armed separatists. The siege of the Hazratbal Shrine was protested by the demonstrators and political leaders of Hurriyat were arrested and sixteen people were killed by Security Forces in Fatha Kadal, Srinagar and Bijebehara in Anantang.

Amnesty International urged an independent and impartial inquiry into the circumstances in which the 16 were killed and release all the arrested Hurriyat Leaders like, Ghulam Nabi Sumji, Abdual Gari Lone and
Prof. Abdul Gani, who were peacefully demonstrating against the siege of the Shrine.

**Human Rights Activists**

Amnesty International criticized the killing of human rights activists Shri Fridayrath Wanchoo by unidentified gunmen. Mr. Wanchoo, a state-level activists of People's Union of Civil Liberties (PUCL) had been energetically pursuing cases of suspected militants detained many of them without official acknowledgement for interrogation and drawing attention to abuses such as torture suspects. His death came at a time when moves to accommodate the view of International Human Rights Organization on the abuses in Kashmir and Punjab were getting off to a hesitant start. Only an inquiry seem to be impartial by Indian Civil Liberties Organizations such as PUCL can determine who killed him. A.I. demanded impartial inquiry and strict punishment under the Indian Law for the Wanchoo Murder. One more human rights activists was murdered on 27.3.1996. he had been arrested two weeks (8.3.96) earlier by Indian Paramilitary Forces. His body was discovered on 27.3.96 in the Jhelum river in J&K Mr. Jalil Andrabi had fought for many years to improve prison conditions and being a prominent Lawyer, documented cases of arbitrary arrests, custodial killings and disappearances. Despite a special investigation under the direction of the J&K High Court, the truth has still not been revealed. Amnesty International said “The Indian Govt. seems content to consign his fate, like hundreds of other human rights victims to oblivion”. “without justice being done and being seen to be done the people of J&K will have little confidence in the State Govt. ‘s commitment to protect human rights”.

Before his death, he told newsmen that the knew that he was on the govt. hit list. Jalil Andrabi was to have represented the Kashmir Commission
of jurists before, the United Nations Human Rights Commission in Geneva from 18.31996 shortly before his death, Andrabi attended a conference in New Delhi at which he held state authorities responsible for human rights violations in Jammu and Kashmir.

On the petition filed by Andrabi, the high court directed on Oct, 1994 to visit jails, detention centers and police lock ups and it was found that widespread evidence of illegal detention, torture and ill-treatment. It seems that Andrabi was really in hit list. The Govt. wanted to eliminate at all costs. False affidavit submitted by Security Forces compelled the High Court to report to the court every day on the progress of the whereabouts of Andrabi. He was shot dead by gIII shot and thrown in the nlclum river.

In April 1996, the NHRC requested permission from the High Court to intervene in the proceedings and to take part in the investigation. NHRC did so using its discretionary powers as the 'Protector of Human Rights Act 1993, does not mandate it to investigate allegations of violations by the armed forces. Killing of Jalil Andrabi caused shock around the world. UN High Commissioner for Human Rights in early April urged the Indian Govt. to undertake a "thorough investigation" aimed at "establishing the facts and imposing sanctions on those found guilty". In reply to Amne~1y International about the killing of human rights activists Jalil Andrabitl and Glimlam Rasool Sheikh the Govt. said "The allegation of Government hand in the killing of human rights activists in J&K have been made earlier also. In all incidents of killings of so-called human rights activists, Government has made available clinching evidence showing that they were targets of one or other militant organization, whose ideology did not match with theirs. It will also be pertinent to ask to what extent it would be justified to can them
human rights activists, whose apparent leaning or sympathy with particle's terrorists groups have earned them the wrath of other similar groups".

**Amnesty International's Recommendations**

Amnesty International calls on the Government of Jammu Kashmir:

- To ensure that the investigation into the killing of Jalil Andrabi is speedily concluded and that its results be made public and that all those found to have in some way been involved in it, by actively participating in it, ordering or condoning it or permitting the truth to be covered up, are immediately suspended and criminally charged.

- To publicly commit themselves to ending impunity and to actively implement such commitment by investigating all past reports of human rights violations, bringing to justice all those found responsible for abuses and providing redress to victims of victim's families.

- To inform all security personnel that violations will not be tolerated and perpetrators will not shielded.

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

- To issue clear instructions to state officials to cooperate fully and expedite the investigation into the death of Jalil Andrabi.

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

Amnesty's Concern on Extra-Judicial Killings

The Kashmir Times in an Editorial of 4 March 1993 commented, "during the past four years of violence of J&K the majority of those billed were the innocent citizens who were neither involved in the acts of militancy nor in the retaliatory action of the security forces.. the concern among the people having faith in the human value, peace and civil liberties over the large scale violations of human rights in the state is understandable. Unfortunately, there has been increase in the killings of innocent persons in Kashmir during the past few months while both govt. and the military outfit have been crying hoarse about the violation of human rights."

The killings of innocent are part of a consistent pattern of extra-judicial executions, which has started since early 1990 in the state. Such killings appears to be increasing day by day. On 21 May 1990, 47 people were killed by CRPF, opened firing to shoot to kill men and women participating funeral processing mourning the death of Srinagar's Islamic Leader Manlvi Mohammed Farooq on 13 April, 1992. BSF personnel killed 13 people in Sopore. The same year Kashmir lost its prominent Dr. Farooq Ahmed Ashai. But the shame act of Security forces was killing of 53 men and women in the town of Sopore on 61h January, 1993. It was confirmed
by A.I. who interviewed victims' relatives outside India. Town of Sopore killings indeed occurred at a time when the govt. has begun to publicly acknowledged that some human rights have been perpetrated in J&K and has increasingly emphasized the duty of the security forces stationed there to protect human rights. On 5.1.93 Lt. General D.S.R. Sahini, C-in-Chief of the Northern Command said, "the human rights would be given top priority in all army operation again militants".

The newly appointed Kashmir, Governor, General K V. Krishna Rao told police and paramilitary forces not to commit excesses. After hard pressing the issue the govt. told A.I. that action has been taken against 230 members of Security forces, but govt. failed to supply details of action taken. Kashmir Times reported on 13 January, 1993 that any action would tell upon the morale of the security torches, fighting what was described as an "undeclared war with the militants in extremely difficult situations".

**Human rights abuses by armed opposition groups**

Militant Organizations who have taken up arms to achieve Kashmir's independence or its accession to Pakistan have been equally vocal in condemning human rights violations while themselves flouting criminal laws prohibiting murder, torture and rape as well as international humanitarian standards addressed to such groups which specifically prohibit arbitrary killing, torture and the taking of hostages, On 2 March 993 an armed Kashmiri separatist group shot and killed Ghulmn Nabi Baba, a former Assistant Commissioner, after entering his house in Sopore. The following day the Ikhwan-ul. Muslimeen, an armed Kashmiri opposition group which favours a referendum to determine the political status of Kashmir, claimed responsibility for killing him. His body was later found near the office of the Sub-divisional Police officer, Sopore, at the same
place where, 24 hours earlier, the body of HabibuUah Mircha, a junior
government official and the brother-in-law of a Pradesh Congress Party
leaders, had been found. He too had reportedly been kidnapped and
murdered by armed Kashmiri separatists. Also on 2 March, Mohammed
Amin Deva was shot at by suspected armed separatists: last year,
when Additional Deputy Commissioner of Srinagar, he had been kidnapped
by members of such a group but had been set free.

Amnesty International unequivocally condemns such killings and
hostage takings by armed opposition groups: they violate the basic norms of
humanitarian behavior which should be observed by all parties to a conflict.
The organization renews its appeal to all armed groups operating in Jammu
and Kashmir to halt such human rights abuses of civilians and live up to
basic standards of humanitarian law. However, despite the considerable
difficulties faced by the security forces operating in the state, and the
provocation caused by repeated attacks by militant groups on their personnel
members of security forces can never be justified in resorting to human
rights violations, let alone violations such as those now being 'widely
perpetrated in Jammu and Kashmir. The International Covenant on Civil and
Political Rights, which India is bound to uphold, is explicit in stipulating that
torture and arbitrary killings can never be justified, even "in time of public
emergency which threatens the life of the nation"."

Such measures to prevent human rights violations should include:

- A review of all special laws currently in force in Jammu and
Kashmir which curb ordinary legal safeguards and facilitate
human rights violations, such as the Armed Forces (Special
Powers) Act, the Terrorist and Disruptive Activities
(Prevention) Act and the Jammu and Kashmir Public Safety
Act, so as to bring its provisions and law enforcement practices in line with international human rights standards as the Human Rights Committee of the United nations has urged the India Government to do;

- Strict instructions to all members of the security forces operating in Jammu and Kashmir that human rights violations not be tolerated under any circumstances and will invariably lead to prosecutions of those responsible;
- And a review training methods of the security forces stationed in Jammu and Kashmir to ensure that they are promptly given appropriate training in upholding and protecting human rights.
- In view of the mounting allegations of persistent rights violations by government forces and of human rights abuses by armed Kashmiri. Separatist groups, the government should allow the international Committee of the Red Cross unhindered access to the area including to all places where detained persons are held.

Amnesty International also appeals to armed opposition groups operating in Jammu and Kashmir to stop the arbitrary killing of civilians, the prevention of torture them and the taking of hostages. They should observe the minimum standards of humanitarian law provided in Common Article 3 of the 1949 Geneva Conventions.**

**Amnesty International’s Report on “Disappearances” and impunity in J&K and Punjab:**

Amnesty International was worried about its report “An unnatural Fate” Disappearances and impunity in Indian States of Jammu & Kashmir and Punjab” sent to Govt of India on 30.11.1993.
Amnesty International has been urging the Govt. of India to respond seriously to more in J&K and Punjab. The reply was disappointing, the whole issue was put on the govt. of Pakistan, was giving army training to militants since 1990.

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

Govt. of India replied on 30.6.94 (30.6.1994) that "it has never been the intention of the Govt. of India to overlook, encourage and much less, actually itself perpetrate human rights excesses". Govt. has not given any response to A.I.'s "Nine Point Programme to halt "disappearances" in the State. The Programme includes the recommendation:

1) to establish a commission to protect detainees
2) to keep accurate
3) to keep Public records on detainees)

According to AI: "The implementation of such measures would be a real advance for the effective protection of human rights in the state.

Inspite of strong evidence in many cases, often from eye-witnesses of Govt. responsibility for their detention, govt. of India continues to deny responsibility for the bulk of the disappearances and attempted to cover up the disappearances by suggesting that "A F.I.R lodged for Missing" Indian courts and Indian Press highlighted the "disappearances", Govt. very clearly maintains, during the last 3-4 years may had been allured, exhorted and in
some cases even forced to join the militant groups, and may even have been taken across the border and still may be there".

The Indian Govt. asked whether AI. has raised concern about disappearances in that part of Kashmir held by Pakistan, there Galled "Azad Kashmir" we call it Pakistan Occupied Kashmir (POK).

Amnesty International has done so. No human rights violation of that nature have been reported to AJ. from the area called Azad Kashmir. Amnesty has been reporting violation and suppression of Human Rights in Pakistan, Commented one Scholar of the Amnesty. Whatever, the Political System or Ideology of the country concerned, the organization's business is simply to work for the effective protection of human rights.

Amnesty welcomed information provided by the Govt. indicating of the 127 cases of disappearances in J&K may have been clarified. It is now seeking to confirm that the individuals involved have indeed been released (in seven cases) are at their residence (in five cases) or in acknowledged detention (in three cases). Not satisfied with Govt. of India's response, the Amnesty called on the Govt. to permit Amnesty International to visit the state so that it can investigate for itself the "disappeared". Till date no team of AI. Has been granted permission to visit J&K as Govt. feels A.I. biased and of partiality."

**Torture and Deaths in custody in Jammu & Kashmir**

Torture by the Indian Security Forces has become routine in the J&K since militancy raised its head in 1989. The number of Kashmiris who have died in custody as a result has reached alarming proportions. Amnesty
International issued its report in January 1995 under the title "INDIA: TORTURE AND DEATHS IN CUSTODY IN JAMMU AND KASHMIR". The Amnesty has listed 715 detainees allegedly tortured to death or shot dead during detention period from 1990-1994. The Amnesty International has divided details of 715 deaths in its Appendix-I and Appendix-II.

In Appendix-I reported deaths in custody has been given from January 1990 to Oct. 1994. According to it 424 people reported to have died in custody of a security force as a result of torture, shooting and medical neglect in J&K in the list of 424 reported deaths (1) Name, (2) Address, (3) Age, (4) Occupation, (5) Date or approximate, (6) date of Death, (7) circumstances of arrest, (8) Reported circumstances of death, (9) official Action known.

In Appendix-II: reported deaths in custody in Jammu and Kashmir, 1990-94. About which few details are known. This list summarizes data about 291 people reported to have died in the custody of the security forces, as a result of torture, shooting or medical neglect in J&K between 1990. August 1994.

<table>
<thead>
<tr>
<th>PER YEAR DEATHS IN CUSTODY</th>
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<tbody>
<tr>
<td><strong>Year</strong></td>
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<tr>
<td>----------</td>
</tr>
<tr>
<td>1990</td>
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<tr>
<td>1991</td>
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<td>1992</td>
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<tr>
<td>1993</td>
</tr>
<tr>
<td>1994</td>
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<tr>
<td>5 years</td>
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Approximately 85 persons died in custody per year.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of deaths</th>
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<tbody>
<tr>
<td>1990</td>
<td>14</td>
</tr>
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<td>1991</td>
<td>13</td>
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<td>1992</td>
<td>72</td>
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<td>1993</td>
<td>121</td>
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<tr>
<td>1994</td>
<td>71</td>
</tr>
<tr>
<td>5 years</td>
<td>291</td>
</tr>
</tbody>
</table>

Per year 58 people.

The list is far from complete. The Times of India commented on 12 March 1993 that over the previous six months "custodial killings of both Militants and others became almost a daily phenomenon". The Kashmir Times of 26 April 1993 carried a report of police record listing 132 persons to have been killed in custody in the preceding 33 days alone. The seventy of torture meted out by the security forces in J&K is the main reason for the appalling number of deaths in custody. During “crack down” operations, young men are picked up by the army or paramilitary forces, to identify militants are tortured and killed in custody. People have been tortured to death either in crude attempts to extract information about armed militants of security forces personnel. The dead bodies were disposed off or thrown in...
rivers, on roads and Govt. started to use the name of ‘encounter’ to hush up the custodial deaths.

At the same period 17,000 men, women and children have been killed by militants as per police and hospital sources, started late in 1989. Citizen for Democracy, a leading Indian Civil Liberties group said in May 1994 after visiting the state.

“In fact as a result of frequent military and paramilitary crackdowns where the number of innocent peoples have been subjected to inhuman torture, the peoples bitterness against the Indian Govt. and against India is increasing day by day”

This has made virtually the whole population suspect in the eyes of the security forces. The security forces claim “remember we are capable of doing anything, we can kill anybody in custody”. There are three Indian security forces – BSF and CRPF. Allegations of torture, custodial deaths, extra-judicial executions and disappearance have implicated all three forces but BSF leads in custodial deaths. But 10 cal police have negligible custodial deaths.

In March 1992, A. I. published data of 415 individuals custodial deaths in India now 715 custodial deaths have been pointed out by A.I. only in one state of Jammu and Kashmir.

**Govt. Response of 31.1.1995 Report on Torture and deaths in custody.**

The Govt. of India, keeping its image in the world, replies on 17. 2. 1995 list of 525 of the 715 cases of above reports. Out of 525 individuals clarifications six names were duplicate. The govt. showed no willingness to order prompt, independent and impartial investigations into allegations of
torture and deaths in custody, to establish an independent Commission to protect detainees or to ensure that those found responsible for them are promptly brought to justice as A.I. had recommended. The govt. refused A.I. to visit Jammu & Kashmir to justify the custodial deaths committed by security forces. Govt. even refused to amend overhaul Indian laws and practices in the state. Our 519 custodial deaths confirmation, 283 deaths were due militants killed in encounters and cross firing or non-militants persons caught up in cross-firing. In 81 other cases, the govt. has also dismissed the allegations by saying that “No reports were lodged in concerned Police Station”. 32 cases alleged custodial deaths had been closed as untraced not substantiated after investigation. In 14 other cases of deaths of the alleged victim was attributed to sickness or an accident, without the govt. providing any medical or other evidence to substantiate its claims. There was prima-facie evidence of human rights violation in 85 cases were charges framed and have been produced in court. But no security service personnel have been punished.

Leading Newspapers in India have pointed out that Govt.’s tendency is to hide crime committed by security forces rather than to act decisively to establish truth. According to Kashmir Times 24.12.1994 “in many cases there is compelling evidence that individuals whom the govt. claims have been killed in ‘encounter’ were in fact arrested and tortured. One such case of torture and in custody will establish the false claims of govt. of “encounter killings”. According to India Today (15.1.1993), Srinagar Flash (24/30.11.1992) and Kashmir Times(12.11.1992)

Mr. Tabsum Qureshi was arrested by B.S.F., and killed by BSF on 7.11.1992. The torture marks and bullet injuries were visible on the dead
body of Tabassum Qureshi. In many more cases, the alleged custodial deaths were reported in the local and national press, but the govt. failed to investigate them.

The govt. failed to satisfy the Amnesty's International allegation of violation of human rights by the security forces. The govt. response in the form of "encounter", "Cross-firing" fell ill, and official policy to obstruct available legal remedies are far from satisfactory to the Amnesty's allegation. Even the J & K High Court Judge commented "the Security Forces and the administration have displaced a total disregard for the rule of law.

RECOMMENDATIONS:

Number of times A. I. have recommended steps to safeguard and protection of human rights in J & K, where, torture, deaths in custody, rape and sexual abuses have reached alarming position. But the govt. failed to act, thus it resulted alienating of Kashmir population.

Even in its report: "India: Torture and Deaths in Custody in Jammu & Kashmir. It has recommended eight steps to enhance the protection of human rights. The recommendations are addressed to the central Govt. of India as well as to the state govt. of Jammu and Kashmir. They are based on International human rights standards provided in the International Convenant on civil and Political rights, the UN Principles on the effective Prevention and Investigation of Extra- Legal Arbitrary and Summary Execution and UN Declaration on the Protection of all persons form being subjected to torture and other cruel, inhuman and degrading treatment of Punishment."
These recommendations draw upon measures which Amnesty International has previously proposed to the government of India in a series of reports on torture and deaths in custody and on the human rights situation in Jammu and Kashmir. Virtually none of them have ever been implemented. Amnesty International’s recommendations by the judiciary in the state of Jammu and Kashmir itself.

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

- Judicial inquiries should be made mandatory into all allegations of torture, including rape, and deaths in custody. The government should ensure that all prima facie reports if these human rights violations published by the news media and by civil liberties groups and human rights bodies, including the cases listed in this report, are promptly and effectively investigated and impartial body.

- Judges should have all necessary resources and powers to carry out their investigations effectively, including powers to compel witnesses to attend and to obtain documentary evidence. Witnesses should be protected from intimidation and harassment.

- The inquiries should be conducted within a reasonable time and their results should immediately be made public. Special care should be taken to protect poor and illiterate victims who lack access to existing redress mechanism.
♦ All detainees should have the right to a medical examination promptly after admission to the place of custody and regularly thereafter. Furthermore, a prompt medical examination should be provided following any allegations of torture and the examining doctor should preferably be experienced in examining people claiming to be victims of torture. All detainees should have the right to petition for a second medical examination by an independent doctor of their choice. The doctor’s reports should give a clear account of the person’s history, should state all the examinations’ findings and give a clear interpretation as to whether the findings are consistent with the torture allegations. The detainee or his or her representatives should have access to the medical report in full. Prompt medical examination, by a female doctor wherever possible, are of crucial important to women who allege that they have been raped: otherwise it is virtually impossible to prove disprove the allegations authoritatively.

♦ Post-mortem examinations should be carried out by independent doctors, preferably experts in forensic pathology, on the bodies of all those who died in custody. The post-mortem report should state the cause, manner and time of death and account for all injuries on the body, including any evidence of torture. The family of the deceased should have the right to have a representative
present at the autopsy and should have access to the post-mortem report immediately on completion.

♦ The government should issue immediate instructions to officials to comply with all outstanding court orders regarding torture and deaths in custody and bring prosecution against officials who fail to cooperate with judicial investigation into these human rights violations.

Mandatory Judicial inquiries into all allegations of torture and deaths in custody would ensure compliance with Article 34 of the UN Body of Principles for the Protection Of All Persons under any form of detention or Imprisonment which states:

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

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

1. Establish a Commission to Protect Detainees

♦ The Indian Government should establish a Commission to Protect Detainees of Jammu and Kashmir with a broad mandate to protect the rights of all those taken into custody. The commission should be a fully independent and impartial body composed of men and women known for their integrity and impartiality with a proven expertise and competence in human rights protection. The Commission should have a mandate to investigate complaints of arbitrary and illegal detention, torture including rape, deaths in custody and “disappearances”. The formation of such a Commission should be widely publicized to encourage relatives and witnesses to submit information to it.

♦ The Commission should have all necessary powers and resources to carry out effective investigations, including powers of immediate and unhindered access to all places where people may be held in acknowledged or unacknowledged detention, powers to compel witnesses to attend and obtain all relevant documentary evidence. Failure to cooperate with the Commission should be an offence and the government should take immediate action against any official who fails to cooperate promptly and fully.

♦ The commission should regularly hear evidence from the committees which the High Court of Jammu and Kashmir at Srinagar, in October 1994, ordered to be constituted in each
district of the state. These Committees should consist of the District and Session Judge, the District Superintendent of Police and the Chief Medical Officer. They have a mandate to visit each prison, interrogation centre and police station to prepare lists of detainees with the case against them, the period of their detention, the facilities available to them in detention and any need for medical treatment.

♦ Inquiries by the Commission into specific complaints received should be speedily conducted and the results should be made public immediately. The Commission’s findings should be automatically transmitted to the courts for appropriate legal action. The Commission should ensure appropriate follow-up.

♦ The Commission should take all necessary measures to protect witnesses and relatives of victims of human rights violations from any form of ill-treatment intimidation or reprisal.

♦ The Commission should be empowered to make recommendations for interim relief and appropriate redress to the victims of arbitrary or illegal detention, torture including rape, deaths in custody and “disappearances”, as well as their relatives.

♦ The Commission should be asked to analyze the factors which contribute to these grave human rights violations and the reasons why existing legal mechanisms such as habeas corpus have failed, with rare exceptions, to protect detainees in Jammu and Kashmir. It should make specific recommendations to the government about the implementation in India laws and law
enforcement practices of the UN Principles on the Effective Prevention of Extra-Legal, Arbitrary and Summary Executions, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.  

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

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

1. Respect and strengthen legal safeguards

♦ The government should ensure that existing legal safeguards are always respected, notably the rules that all detainees be produced before a magistrate within 24 hours of arrest and that the police must register First Information Report whenever they receive complaints of human rights violations by the security forces. Any existing instructions prohibiting the police from doing so should be immediately withdrawn.

♦ Detainees should be brought before a judicial magistrate within 24 hours of arrest and that rule should be extended to all those held in preventive detention under the Jammu and Kashmir Public Safety Act. The law should be amended to that effect.

♦ Anyone detained should be promptly informed of the grounds for detention. This should also apply to all those held preventive detention under the Jammu and Kashmir Public Safety Act.

♦ All detainees must have the opportunity to be promptly by a judicial or other independent authority and have their detention supervised and reviewed by such a body. This is a requirement of international human rights standards provided in the UN Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment.

1. Strengthen safeguards against torture and deaths in custody
♦ The state government should maintain a central, up-to-date and accurate register of all those arrested and where they are being held.

♦ Anybody with the power of arrest — the police, paramilitary forces and the army — should be obliged to inform the central agency responsible for maintaining the register immediately whenever a person is arrested. They should inform the agency of the time and place of the arrest, by whom it was made, and where the detainee is held. The time of any transfer and the name of the official to whom the detainee is transferred or the time and date of release should also be recorded.

♦ All police stations, detention centers and prisons should keep full, accurate and up-to-date records of this information as well as charges or reasons for detention.

♦ Members of the judiciary, relatives of victims and their legal representatives as well as other relevant bodies and interested parties should have immediate access to such information. Failure to comply with these requirements should attract prompt sanctions.

♦ Relatives should be informed of any arrest or transfer of a detainee immediately and certainly within 24 hours. The government should consider introducing written and signed statements notifying relatives of an arrest, the reason for the arrest and the place where the detainee is being held.
♦ Access to relatives and lawyers should be prompt: the UN Basic Principles on the Role of Lawyers specify that lawyers should have access to detainees with 48 hours of arrest.

♦ Article 5 of the UN Code of Conduct of Law Enforcement Officials, which states that it is a duty to disobey any order from a superior to inflict torture, should be incorporated in relevant laws, especially the Indian Police Act. Such a provision should be included in instructions to anyone who may be involved in the custody or treatment of detainees.

♦ Procedures for the supervision of interrogation should be introduced and records should be kept of the officials conducting the interrogation, other people present, and the precise times of interrogation sessions.

♦ All detainees should be held only in officially recognized places of detention, and the names of all prisons and detention centres should be widely publicized. Secret or *adhoc* detention should be abolished.

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

1. Bring the perpetrators to justice

♦ The government should take immediate steps to ensure that torture an ill-treatment of detainees will invariably lead to the perpetrators being brought to justice. It should issue directive to all concerned – regardless of whether they belong to they army,
the paramilitary forces or the police — that torture is forbidden under any circumstances, as stipulated in Article 4 of the International Covenant Civil and Political Rights. Those suspected of involvement in such practices should be suspended from active duty during the course of the investigation or at least be removed from any position of control or power, direct or indirect, over complainants, witnesses and their relatives.

♦ The government should review all laws which prevent or seriously inhibit such prosecution being brought and abolish any provisions which do so from Section 6 of the Armed Forces Special Powers Act, Section 26 of the Terrorist and Disruptive Activities (Prevention) Act, and Section 22 of the Jammu and Kashmir Public Safety Act. It should ensure that the rights of all those accused of human rights violations are protected by full legal safeguards provided in international human rights instruments during their trial.

1. Compensate the victims

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

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

1. Increase cooperation with national and international bodies

- The government should effectively respond to the observations and recommendations made by various civil liberties groups in India including Jammu and Kashmir.

- The government should allow international human rights and humanitarian bodies’ access to Jammu and Kashmir. In particular, the government should invite the UN Special Rapporteur on Torture and the UN Working Group on Enforced or Involuntary Disappearances to visit Jammu and Kashmir. The India Government should allow Amnesty International to visit the state for purposes of research into human rights violations and abuses.

Human Rights Abuses by Armed Opposition Groups

(Amnesty’s International Report – Jan, 1995)
Although this concentrates on patterns of grave human rights violations perpetrated by Govt. forces, armed militant groups have themselves committed numerous human rights abuses which are of grave concern to Amnesty International. They have kidnapped many civilians and have intentionally killed some them, they have tortured some of those in their custody and they have "executed" suspected informants. Amnesty International condemns these human rights violation unreservedly. Amnesty International condemns the deliberate and arbitrary killings, torture and hostage – taking by Militants. There is no moral legal justification for the arbitrary and indiscriminate killings of civilians. Hostage-taking does not further in any way, the protection of human rights.

Such grave human rights violations and abuses can never be condoned, either in time of peace or war. They are strictly prohibited in Indian law and common article ‘3’ of the Geneva Convention which applies to all armed conflict of a non-international character. The International Committee of the Red Cross describes this as “any situation where, within state’s territory, clean and unmistakable hostilities break out between armed forces and organized armed groups”. The basic rules of humanitarian law have been violated by both the Indian Govt. and many of the armed groups opposing it.

Armed opposition groups have grossly violated human rights by kidnapping killings, torture hostage taking.

Torture: Armed Separatist groups have tortured their captives. Al – jehad (Pro-Pakistan) group released number of persons in exchange for release of some of their members on 2 July 1993.
Other groups ill-treated civilians. Islamic women’s Organisation, Dukhatara-e- Millat (Daughter of Faith) campaigned in May 1992, against women not wearing the traditional burqa. Four female students were hospitalized because paint sprayed on their faces by campaigners had damaged their eyes. At the end of July 1994, militant groups again directed women to dress code strictly when out of their homes.

There have been several reports of women being raped by members of militant groups. According to the police, some have since sought police protection. Shahina 19 year old girl from Handwara gold Delhi based journalists in February 1994 that she had been raped in 1992, by members of various militant groups, but Kashmiri journalists were not allowed to meet her to discuss the allegations.

**Kidnapping:** One of the first hostages taken since militancy started was Dr. Rubiya Sayeed, the daughter of India’s Home Minister1 in December 1989 and held until five JKLF prisoners were released.

Kidnapping of Mrs. Nahida (27.2.1990) daughter of Prof. Saiffudin Soz, National Conference M.P. got wide publicity in India and International media. JKLF released her in exchange for four militants.

General Manager of Jammu and Kashmir Bank was kidnapped and released.

Jammu and Kashmir Govt., Director of Food and Supplies, Mr. Mohammad Iman Khan was kidnapped by Pro-Pakistan militants outfit. The youth group “Nasir-ul-Islam out the outlaswed Hizbul Mujahidding was responsible for the official kidnapping.”

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Ikhaawan-ul-Muslimeen group of militants claimed responsibility for abduction Mr. K. Dordiswamy, executive Director of the Indian Oil Corporation (28.1.1991). The year 1990-91 in Kashmir have been dominated by kidnapping and as 1992 approached the abductions pose a major challenge to govt.

Muslim Jaanbaz Force, abducted two Swedish Engineer Ian Ole Loma and john Jansoon from Sri Nagar on March 1991. The two spent 97 days in captivity before escaping on July 6 from village in South Kashmir.

Last week of June relegated so the background all earlier abductions, Pasdaran-I-Islam tried to capture a group for eight Israeli Tourists from a houseboat on 26-27 June 1991.

"The Tourist resisted and in the gun-battle one tourist and two militants were killed One tourist Shri Yair Zitshaki was found missing. An estimated 350 abduction gave taken place. Some kidnappers were released unconditionally, others were not so lucky" on 3 January 1994 two professor of Agriculture University, Prof, Rashid and Prof, Ahmad were kidnapped by masked gunman, and two are not traceable as yet.

In June 1994, one of the longest ever kidnapping in Jammu and Kashmir came to end when Pankaj Sinha, Former MLA of Congress (I) from Bihar was rescued by BSF. He was abducted from Rajbagu in June16, 1993, his captors Al-Umar Mujahiddeen outfit demanded the release of Ten Kashmiri militants in exchange for their hostage. In mid June 1994, 10 Congress workers were abducted by Islamic Front on 6 June, 1994; two British Nationals were kidnapped while trekking near Pahalgam by HARKATUL ANSAR, a Pro-Pakistan group. The Group wanted that A.I. officials should meet its members in Pakistan. A.L. said "we deplore that the
group has taken Hostages in blatant violation of he Principles of humanitarian law which prohibits such action. The two British Hostages were released on 23.6.94. In July 1995, unknown militant group Al Faran kidnapped six tourists in Kashmir, two Americans one of them later escaped, two Britons, one German and one Norwegian. The group demanded the release of twenty on detained militants, principally top members of the militant group, Harkat-Ul-Ansaar. On 13, August, 1995 Police discovered the beheaded and mitilated body of Norwegian hostages, Mr, Hans Christian Oster. According to Govt. sources 548 persons were kidnapped in 1994-95. Four journalists were abducted by IKHAWAN-UL-Muslimeen force in July 1995.31

Killings by militants

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

Even members of the families of politician have been assassinated or abducted. The Al-Umar Mujahideen, admitted in May 1991 that it had murdered Sheikh Sadiq, a businessman and cousin of former Chief minister Dr. Farooq Abdullah, who has perceived as pro-Indian. The group’s chief field commander warned. “The Sheikh’s family is responsible for the present miseries faced by the Kasmiri people and I will not relax till I hack Dr. Farooq Abdullah and all the other members of his family and associated to death” (The Telegraph, Calcutta, 8 May 1991) On 9 April 1995 armed militants abducted Sheikh Arshad, son of former MP Sheikh Mohammad Akbar from his home in Baramulls.

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

Members of security forces have also been killed after capture; the Kashmir Times reported on 25 April 1993 that militants abducted a soldier from Cachturan village, Thal, in pulwama and had later killed him in the
Pahalgan area. Others have been abducted but released. On 1 My 1994, tow abducted police officers were released by militants, The Superintendent of police, Zahoor Hussain Chesti was reportedly abducted by militants at Baghe-mehatab on the outskirts of Srinagar on 6th July 1994. Amnesty International does not know what happen to him, but Constable Sraj-ud-Din of Keran in Kupwara district, reportedly abducted on 10 October 1994, was released five days later.

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

During 1994 a number of hostages were killed by their captors, On 16 April 1994, the body of Bashir Ahmad was found. He had been abducted on 11 April 1994 by militants. On 5 May 1994 three hostages were reportedly killed by militants on 11 April 1994 by militants. On 5 May 1994 three hostages were reportedly killed by militants, while three others were released. All six had been abducted by militants on 30 April 1994. On 12 July 1994 the Director of State Motor Garages, Riyaz Rathord, his sokn and two others were abducted by militants. Amnesty International does not know what happened to them.
In February 1994 three people were killed in a bomb explosion in Jammu. A Sikh militant organization claimed responsibility for the explosion and said it was in revenge for communal riots in Jammu in 1989. A similar incident occurred on 25 August, 1994 when nine people, eight of them children, were killed by a bomb which exploded on a school bus 12 miles south of Jammu. Twenty-nine people, most of them children, were injured. No militant group claimed responsibility for the bomb but the authorities suspected Sikh militants to have been responsible.

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

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

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

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

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

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

♦ Respect the basic standards of humanitarian law which require that all people taking no active part in hostilities should at all times be treated humanely. All members of armed opposition groups should receive training in their obligations under Common Article 3 of Geneva Conventions to uphold these basic minimum standards.

♦ Armed opposition groups in Jammu and Kashmir should immediately release all hostages or any people held because of their non-violent, conscientiously held beliefs.

♦ None of those held in captivity should be tortured, including by being raped, ill-treated or humiliated.

♦ No civilians should be deliberately killed. In particular, they should not be killed for expressing their views or because of political views attributed to them, or because of who their relatives are or because they belong to another religious community.

♦ Allegations that these basic standards of humanitarian law have been abused should be promptly investigated; those found to be responsible should be immediately removed from any positions or responsibilities.
The Human Rights Commission (India) set by the Indian Govt. in October 1993, has severely indicated by the UK based Amnesty International. In its latest report on the human rights violations in Jammu and Kashmir entitled “India: Torture and deaths in custody in J & K”. Apart from reiterating its earlier views about the continuing atrocities perpetrated by the armed forces and state police has singled out the National Human Commission for “not effectively investigating complaints of torture in J & K it is perhaps first ever criticism of a national human rights body in any country.

“All the NHRC can do when faced with complaints of the nature rights violation is to call for official reports form Govt. effectively functioning as a “POST BOX” of official views”. It is also said that NHRC’s power to investigate the wide spread allegations of human rights violation in J & K are extremely limited since section 19 of the Protection of Human Rights Act precludes any Investigation by the NHRC into complaints of Human Rights violations by the Army and Para-military forces, thereby excluding virtually all those perpetrated in J & K.

To order prompt, independent and impartial investigations into allegations of torture and deaths in custody, to establish an independent commission to protect detainees or to ensure that those found responsible for them are promptly brought to justice as A.I had recommended. The govt refused A.I to visit Jammu & Kashmir to justify the custodial deaths committed by security forces. Govt even refused to amend overhaul Indian laws and practices in the state. Our 519 custodial deaths confirmation, 283
deaths were due militants killed in encounters and cross firing or non-militants persons caught up in cross-firing. In 81 others cases, the govt has also dismissed the allegations by saying that “no reports were lodged in concerned Police Station.” 32 cases alleged custodial deaths had been closed as untraced not substantiated after investigation. In 14 other cases of deaths of the alleged victim was attributed to sickness or an accident, without the govt. providing any medical or other evidence to substantiate its claims. There was prima-facie evidence of human rights violation in 85 other cases, which were said to ‘under police investigation’. Only in case of 8 cases were charges framed and have been produced in court. But no security services personnel have been punished.

Leading newspapers in India have pointed out that Govt.’s tendency is to hide crimes committed by security forces rather than to act decisively to establish truth. According to Kashmir times 24.12.1994 “in many cases there is compelling evidence that individuals whom the govt claims have been killed in “encounter” were in fact arrested and tortured. One such case of torture and death in custody will establish the false claims of govt. of “encounter killings”. According to India Today (15.1.1993), Srinagar flash (24/30.11.1992) and Kashmir times (12.11.1992) Mr Tabsum Qureshi was arrested by B.S.F. , and killed by BSF on 7.11.1992. The torture marks and bullet injuries were visible on dead body of Tabasum Qureshi. In many more cases, the alleged custodial deaths were reported in the local and national press, but the govt failed to investigate them.

The govt. failed to satisfy the Amnesty’s international allegation of violation of human rights by the security forces. The Govt. response in the form of ‘encounter’, ‘cross-firing’ fell ill, and official policy to obstruct available
legal remedies are far from satisfactory to the Amnesty's allegation. Even the J&k High Court Judge commented 'the security Forces and the administration have displaced a total disregard for the rule of law.

Recommendations:
Number of times A.I. have recommended steps to safeguard and protection of human rights in J&K, torture, deaths in custody, rape and sexual abuses have reached alarming position. But the govt. failed to act, thus it resulted alienation of Kashmir population.

Even in its report: “India: Torture and deaths in custody in Jammu & Kashmir. It has recommended eight steps to enhance the protection of human rights. The recommendations are addressed to the central Govt. of India as well as to the govt. of Jammu and Kashmir. They are based on International human rights standards provided in the International Covenant on Civil and Political rights, the UN Principles on the effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions and UN Declaration on the Protection of all persons from being subjected to torture and cruel; inhuman and degrading treatment of Punishment.

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

1. Investigate impartially all allegations of torture and deaths in custody. Judicial inquiries should be made mandatory into all allegations of torture, including rape, and deaths in custody. The government should ensure that all
prima facia reports of these human rights violations published by news media and by civil liberties group and human rights bodies, including the cases listed in this report, are promptly and effectively investigated by an independent and impartial body.

Judges should have all necessary resources and powers to carry out their investigations effectively, including powers to compel witnesses to attend and to obtain documentary evidence. Witnesses should be protected from intimidation and harassment.

The inquiries should be conducted with in a reasonable time and their results should immediately be made public. Special care should be taken to protect poor and illiterate victims who lack access to existing redress mechanisms.

All detainees should have the right to a medical examination promptly after admission to the place of custody and regularly thereafter. Furthermore, a prompt medical examination should be provided following any allegations of torture and the examining doctor should preferably be experienced in examining people claiming to be victims of torture. All detainees should have the right to petition for a second medical examination by an independent doctor of their choice. The doctor's reports should give clear account of the person's history, should state all the examination's findings and give a clear interpretation as to whether the findings are consistent with the torture allegations. The detainees or his or her representatives should have access to the medical report in full. Prompt medical examinations, by a female doctor whenever possible, are of crucial importance to women who allege that they have been raped: otherwise it is virtually impossible to prove or disprove the allegations authoritatively.
Post mortem examinations should be carried out by independent doctors, preferably experts in forensic pathology, on the bodies of all those who died in custody. The post-mortem reports should state the cause, manner and time of death and account for all injuries on the body, including any evidence of torture. The family of the deceased should have the right to have a representative present at the autopsy and should have access to the post-mortem report immediately on completion.

The govt should issue immediate instructions to officials to comply with all outstanding court orders regarding torture and deaths in custody and bring prosecutions against officials who fail to cooperate with judicial investigations into these human rights violations. Mandatory judicial inquiries into all allegations of torture and deaths in custody would ensure compliance with Article 34 of the UN Body of Principles for the Protection of All Persons under any form of detention or Imprisonment which states:

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

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

1. Establish a Commission to Protect Detainees:

The Indian govt should establish a commission to Protect Detainees of Jammu and Kashmir with a broad mandate to protect the rights of all those taken into custody. The commission should be a fully independent and impartial body composed of men and women known for their integrity and impartiality with a proven expertise and competence in human rights protection. The commission should have a mandate to investigate complaints of arbitrary and illegal detentions, torture including rape, deaths in custody and "disappearances". The formation of such a commission should be widely publicized to encourage relatives and witnesses to submit information to it.

The commission should have all necessary powers and resources to carry out effective investigations, including power of immediate and unhindered access to all places where people may be held in acknowledge or unacknowledged detention, powers to compel witnesses to attend and obtain all relevant documentary evidence. Failure to cooperate with the commission should be an offence and the govt should take immediate actions against any official who fails to cooperate promptly and fully.

The commission should regularly hear evidence from the committees which the High Court of Jammu and Kashmir at Srinagar, in October 1994, ordered to be constituted in each district of the state. These committees should consist of the District and Session Judge, the District Magistrate, the District Superintendent of Police and the Chief Medical Officer. They have a mandate to visit each prison, interrogation centre
and police station to prepare lists of detainees with the cases against them, the period of their detention, the facilities available to them in detention and any need for medical treatment.

Inquiries by the commission into specific complaints received should be speedily conducted and the results should be made public immediately. The commission’s findings should be automatically transmitted to the courts for appropriate legal section. The commission should ensure appropriate follow-up.

The commission should take all necessary measures to protect witnesses and relatives of victims of human rights violations from any form of ill-treatment intimidation or reprisal.

The commission should be empowered to make recommendations for interim relief and appropriate redress to the victims of arbitrary or illegal detention, torture including rape, deaths in custody and “disappearances” as well as their relatives.

The commission should be asked to analyze the factors which to these grave human rights violations and the reasons why existing legal mechanisms such as habeas corpus have failed, with the rare exceptions, to protect detainees in Jammu & Kashmir. It should make specific recommendations to the govt about the implementations in India laws and laws enforcement practices of the UN Principles on the Effective Prevention and Investigations of Extra-Legal, Arbitrary and Summary Executions, the UN Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.
Amnesty International believes that the establishment of such a commission should be priority in Jammu & Kashmir. Legal mechanisms to protect human rights have collapsed in the state. Human rights violations are virtually excluded from effective investigation by the National Human Rights Commission, which has no powers to investigate for itself the vast majority of complaints of human rights violations perpetrated in Jammu & Kashmir: those committed by the army and paramilitary forces. The establishment of a commission to Protect Detainees would be an important way of ensuring compliance with Article 7 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions:

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

1. Respect and strengthen legal safeguards:

The govt should ensure that existing legal safeguards are always respected, notably the rules that all detainees be produced before a magistrate within 24 hours of arrest and that the police must register First Information Reports whenever they receive complaints of human rights violations by the security forces. Any existing instructions prohibiting the police from doing so should be immediately withdrawn.

Detainees should be brought before a judicial magistrate within 24 hours of arrest and that rule should be extended to all those held in preventive
detention under the Jammu & Kashmir Public Safety Act. The law should be amended to that effect.

Anyone detained should be promptly informed of the grounds for detention. This should also apply to all those held in preventive detention under the Jammu & Kashmir Public Safety Act.

All detainees must have the opportunity to be heard promptly by a judicial or other independent authority and have their detention supervised and reviewed by such a body. This is a requirement of international human rights standards provided in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Strengthen safeguards against torture and deaths in custody:

The state govt. should maintain a central, up-to-date and accurate register of all those arrested and where they are being held.

Anybody with the power of arrest—the police, paramilitary forces and the army should be obliged to inform the central agency responsible for maintaining the register immediately whenever a person is arrested. They should inform the agency of the time and place of the arrest, by whom it was made, and where the detainee is held. The time of any transfer and the name of the official to whom the detainee is transferred or the time and date of release should also be recorded.

All police stations, detention centers and prisons should keep full, accurate and up-to-date records of this information as well as the charges or reasons for detention.

Members of the judiciary, relatives of victims and legal representatives as well as other relevant bodies and interested parties should have
immediate access to such information. Failure to comply with these requirements should attract prompt sanctions.

Relatives should be informed of any arrest or transfer of a detainee immediately and certainly within 24 hours. The govt. should consider introducing written and signed statements notifying relatives of an arrest, the reason for the arrest and the place where the detainee is being held. Access to relatives and lawyers should be prompt: the UN Basic Principles on the Role of the lawyer specify that lawyer should have access to detainee with 48 hours of arrest.

Article 5 of the UN Code of Conduct of the Law Enforcement Officials, which states that it is a duty to disobey any order from a superior to inflict torture, should be incorporated in relevant laws, especially the Indian Police Act. Such a provision should be included in instructions to anymore who may be involved in the custody or treatment of detainees.

Procedures for the supervision of interrogation should be introduced and records should be kept of the officials conducting the interrogation, other people present, and the precise times of the interrogation sessions.

All detainees should be held only in officials recognized places of detention, and the names of all prisons and detention centers should be widely publicized. Secret or adhoc detention centers should be abolished.

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

1. Bring the perpetrators to Justice:

The govt should take immediate steps top ensure that the torture and ill-treatment of detainees will invariably lead to the perpetrators being
brought to justice. It should issue directives to all concerned—regardless of whether they belong to the army, the paramilitary forces or the police—that torture is forbidden under any circumstances, as stipulated in Article 4 of the International Covenant on Civil and Political Rights. Those suspected of involvement in such practices should be suspended from active duty during the course of the investigation or at least be removed from any position of control or power, direct or indirect, over complainants, witnesses and their relatives.

The govt should review all laws which prevent or seriously inhibit such prosecutions being brought and abolish any provisions which do so from Section 6 of the Armed Forces Special Powers Act, Section 26 of the Terrorist and Disruptive Activities (Prevention) Act, and Section 22 of the Jammu & Kashmir Public Safety Act. It should ensure that the rights of all those accused of human rights violations are protected by full safeguards provided in international human rights during their trial.

1. Compensate the victims

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

1. Abide by International obligations and human rights standards

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

1. Increase cooperation with national and international bodies:

The govt should effectively respond to the observations and recommendations made by various Civil Liberties Groups in India including Jammu & Kashmir.

The govt should allow international human rights and humanitarian body’s access to Jammu & Kashmir. In particular, the govt should invite the UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions the UN Special Rapporteur on Torture and the UN Working Group on Enforced or should allow Amnesty International to visit the state for purposes of research into human rights violations and abuses.


Although this concentrate on the patterns of grave human right violations perpetrated by Govt. forces, armed militant groups have themselves committed numerous human right abuses which are of grave concern of Amnesty International. They have kidnapped many civilian and have intentionally killed some of them, they have tortured some of them who were in their custody and they also have “executed” suspected informants. Amnesty International condemns these human rights violation unreservedly. Amnesty international condemns the deliberate and arbitrary killings, torture and hostage-taking by Militants. There is no moral or legal justification for the arbitrary and indiscriminate killings of
civilians. Hostage-taking does not further in anyway, the protection of human rights.

Such grave human rights violations and abuses can never be condoned, either in time of peace or war. They are strictly prohibited in Indian law and common article ‘3’ of the Geneva conventions which applies to all armed conflict of a non-international character. The International Committee of the Red Cross describes this as “any situation where, within state’s territory, clear and unmistakable hostilities break out between armed forces and organized armed Groups.” The basic rules of humanitarian law have been violated by both the Indian Govt. and many of the armed groups opposing it.

Armed opposition groups have grossly violated human rights by kidnapping, killings, torture hostage taking.

Torture: Armed Separatist groups have tortured their captives. Al-Jihad (Pro-Pakistan) group released number of persons in exchange for release of some of their Members on 2 July 1993. Other groups ill-treated civilians. Islamic women’s ORGANIZATION, Dukhatara-e-Millat (Daughter of faith) campaigned in, May 1992, against women not wearing the traditional burqua. Four female students were hospitalized because paint sprayed on their faces by campaigners had damaged their eyes. At the end of July 1994 militants groups again directed women to observe dress code strictly when out of their homes.

There have been several reports of women being raped by members of militant groups. According to the police, some have since sought police protection. Shahina 19 year old girl from Handwara told Delhi based journalists in February 1994 that she had been raped in 1992, by
members of various militant groups that Kashmiri journalists were not allowed to meet her to discuss the allegations.

Kidnapping: one of the first hostage taken since militancy started was Dr. Rubiya Sayeed, the daughter of India's Home Minister in December 1989 and held until five JKLF prisoners were released.

Kidnapping of Mrs. Nahida (27.2.1990), daughter of Prof. Saifuddin Soz, National Conference M.P. got wide publicity in Indian and International media. JKLF released her in exchange for four militants.

General Manager of Jammu & Kashmir Bank was kidnapped and released.

Jammu & Kashmir Govt., Director of Food and Supplies, Mr. Mohammad Iman Khan was kidnapped by Pro-Pakistan militant’s outfits. The youth group "Nasir-ul-Islam out the outlawed Hizbul- Mujahideen was responsible for the official kidnappings.

Ikhawan -ul-Muslimeen group of militants claimed responsibility for abduction of Mr. K. Dordisway, executive Director of the Indian Oil Corporation (28.1.1991). The years 1990-91 in Kashmir have been dominated by kidnapping and as 1992 approached, the abductions pose a major challenge to govt.

Muslim Jaanbaz Force, abducted two Swedish Engineers Ian Ole Loma and John Jansson from Srinagar on March 1991. The two spent 97 days in captivity before escaping on July 6 from village in South Kashmir.

Last week of June relegated so the background all earlier abductions, Pasdaran-i-Isalm tried to capture a group of eight Israeli Tourists from a Houseboat on 26-27 June 1991.

"The Tourist resisted and in the gun-battle one tourist and two -militants were killed. One tourist Shri Yair Zitshaki was found missing. An
estimated 350 abduction have taken place. Some kidnappers were released unconditionally, others were not so lucky" on 3rd January 1994 two Professors of Agriculture University, Prof. Rahid and Prof. Siraj Ahmad were kidnapped by masked gunman, and two are not traceable yet.

In June 1994, one of the longest ever kidnapping in Jammu & Kashmir came to an end when Pankaj Kumar Sinha, Former MLA of Congress (I) from Bihar was rescued by BSF. He was abducted from Rajbagu on June 16, 1993, his captors Al-Umar Mujahiddeen outfit demanded the release of Ten Kashmiri militants in exchange for their hostage. In mid June 1994, 10 congress workers were abducted by Islamic Front on 6 June, 1994; two British Nationals were kidnapped while trekking near Pahalgam by HARKUTUL ANSAR, A Pro- Pakistan group. The Group wanted that A.I. Official should meet its members in PAKISTAN. A.I. said "we deplore that the group has taken Hostages in blatant violation of the Principles of Humanitarian law which prohibits such actions. The two British Hostages were released on 23.6.94. In July 1995, unknown militants group Al Faran kidnapped six tourists in Kashmir, two Americans one of them later escaped, two Britons, one German and one Norwegian. The group demanded the release of twenty one detained militants, principally top members of the militants group, Harkat-Ul-Ansar. On 13 August 1995 Police discovered the beheaded and mutilated body of Norwegian hostage, Mr. Hans Christian Oster. According to Govt. sources 548 persons were kidnapped in 1994-95. Four journalists were abducted by Ikhawan-ul-Muslimeen forces in July 1995.

**Killings by militants:**

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Politicians and well-known personalities have been frequent targets of attack. Kashmir University’s Vice-Chancellor, Professor Musheer-ul-Haw, was kidnapped and killed in April 1990 along with Abdul Ghani, his personal secretary, and businessman H.L. Khera. They were reportedly held and killed by the Jammu and Kashmir Students Liberation Front. The Kashmir Times reported that on 2 March 1993 militants entered the house of 64 year-old Ghulam Nabi Baba in Sopore and shot him dead. He was a former Assistant Commissioner and a friend of former chief minister Sayeed Mir Qasi. On 10 April 1994 unidentified militants entered the house of Ghulam Qadir Mir, 65 year-old former independent member of legislative assembly Muran village, Pulwama and shot him dead. He was the 11th member of the legislative assembly to be killed reportedly by militants in 4 years. In southern district of Doda, members of BJP have been targeted. On 30th May 1994 militants at songi village, near Bhardwaj. Indian Express reported on 17th Nov 1994 that 78 people had been abducted by militants in Doda district, in 1994, 31 of whom had been killed in custody.

Even no of families of politicians have been assassinated or abducted. The Al-Omar-Mutagen, admitted in May 1991 that he had murdered Sheikh Saddiq, a businessman and cousin of former CM Dr Farooq Abdullah, who was perceived as pro Indian. The group chief field commander warrant: “the Sheikh family is responsible for the present miseries faced by the Kashmiri people and I will not relax till I, hack Dr Farooq Abdullah and all other members of his family and associates to death”, (the telegraph Calcutta, 8 may 1991). On 9 April 1994 armed militants abducted Sheikh Arshad, son of former MP Sheikh Mohammad Akbar from his house in Baramulla.
Qasi Nasir Ahmed, a respected Muslim cleric and political leader, was shot dead on 19-20 June 1994 by unidentified gunman. His body was found at Dsayal gaon at Anantnag. The govt and armed militants group accused the principal pro-Pakistan group of hizabull mujahideen although the group denied the responsibility. However, hizabull mujadin killing Wali mohd ittoo, 53 year old former speaker and leader of National conference on 18 march 1994. He was shot dead as he left a mosque in Jammu. The group claimed that his death was a warning to all those who harped on the tune of so called political process. Several days later hizabull mujadeen offered cash reward for any one who killed the state Chief minister Dr Farooq Abdullah.

Members of security forces have also been killed after capture: Kashmir times reported on 25 the April 1993 that militants have abducted a solider from chatruy goan village, Tral in Pulwama and had later killed in the Phalgam area. Others have been abducted but released. On may 1 1994, two abducted police officers were released by militants. The S.P Zahoor Hussan Chasti, was reportedly abducted by militants at Bagh -a- Mehtab on the out skirts of Srinager on 6 July 1994. Amnesty international does not know what happen to him, but constable Siraju- u – Din of Keran in Kupwara district reportedly abducted on 10 Oct ,. 1994, was released 5 days later.

Particularly disturbing was the killing of 15 may Hindu passenger who were taken from bus JKY-2003 traveling to Jammu and shot dead by unidentified gunmen on 14th august 1993. Communally targeted killing of civilian travelers – which have been quite common in Punjab had not before been reported from Jammu & Kashmir. The hizabull mujadin and JKLF condemned the killings, for which the police alive militants. In
June 1, 1994 JKLF admitted that atrocities committed by the militants had alienated the people and stated that strict action would be taken against erring elements amongst its own sources.

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

**Recommendations**

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

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Armed opposition groups in Jammu & Kashmir should immediately release all hostages or any people held non-violent, conscientiously held beliefs.

None of those held in captivity should be tortured, including by being raped, ill-treated or humiliated.

No civilian should be deliberately killed. In particular, they should not be killed for expressing their views or because of political views attributed to them, or because of who their relatives are or because they belong to another religious community.
Allegations that these basic standards of humanitarian law have been abused should be promptly investigated; those found to be responsible should be immediately removed from any positions of responsibility.

Criticism of N.H.R.C by amnesty International

The National Human Rights Commission (India) set by the India Govt. in October 1993, has severely indicted by the UK based Amnesty International. In its latest report on the human rights violations in Jammu & Kashmir entitled “India; Torture and deaths in custody in J&K”. Apart from reiterating its earlier views about the continuing atrocities perpetrated by the armed forces and state police has singled out the National Human Rights Commission for “not effectively investigating complaints of torture in J&K. It is perhaps first ever criticism of a national human rights body in any country.

“All the NHRC can do when faced with complaints of the nature of human rights violations is to call for official reports from Govt. effectively functioning as a “postbox” of official views. It is also said that NHRC’s power to investigate the wide spread allegations of human rights violation in J&K are extremely limited since section 19 of the Protection of Human Rights Act precludes any investigation by the NHRC into complaints of Human Rights Violations by the Army and Para-military forces, thereby excluding virtually all those perpetrated in J&K.

The report goes on to add that the commission visited the Kashmir valley for only two days “but did not travel outside Srinagar”. NHRC visited two interrogation centers “notorious for torture” and me 60 detainees. Amnesty criticism chairman of NHRC’s remarks in the press conference, he said “if one does not use third degree methods no investigation is possible”. Commission was severely criticized for an independent and
impartial investigation, done by Retired D.G.P. These criticisms assume greater significance since the Amnesty report was to be tabled at the annual conference of UN Human Rights Convention.

India: Torture and deaths in custody in Jammu and Kashmir

This is severe indictment of alleged human rights violation in Kashmir in the latest issue of its journal for Amnesty's British Section has ended up as a classic case of human wrong. Evidently professional India-intent on malicious propaganda, have conned the Amnesty into portraying. What amounts to a major bloomer? It has damaging impact on the organization's credibility worldwide. “Amnesty wanted India to have egg on its face, instead the egg landed on Amnesty”. The picture on the cover of the latest issue of its campaign journal shows a dark woman with her palms raised to her face. She is shown standing in front of a block cloth, possible spread over a shroud, on which some Arabic words are printed. The caption says “A Kashmir woman in mourning “ and in the contents it is mentioned “Kashmir where India has turned heaven into hell”. An Italian freelance photographer risked his life for these photos of besieged Srinagar. “The credit for the photos is to Kash Freelance, a news agency.

In the test (extracts from photographer’s alleged diary), it is noted that his name has been withheld on his request. All this is very melodramatic and could seem credible but for the utter ignorance of the geo-ethnic reality that the cover picture betrays.

The woman described as Kashmiri is very dark complexioned, a feature alien to people in the valley is wearing a sari (which Valley women don’t wear) and has a cloth over her head, in a manner never seen in the valley. The woman’s features are clearly of those of a South Indian.
However what really stupefy is the outer contours of a decorative piece—which is usually in copper or bronze with Shiva in dance form or a simpler one used for Aarti and is found in most households in all the four States in South India – which is visible on the right edge of the cover photograph. There is nothing in the background to confirm the location where the woman is standing but the contour of the decorative piece on her left makes one wonder as to where the picture was really taken.

The-in-charge of the Amnesty Campaign, British section, Mr. Dan Jones was told by The Hindustan Times (18.11.94) the apparent discrepancies in the cover picture which made on suspect it of being a contrived one He did admit that the woman in the photo was a “Hindu”. He had asked the photographer and he had so clarified. He also said that unfortunately, Amnesty could not visit Kashmir but was emphatic is assuring that it did not have any bias for or against any country or issues.

There was lot of protest on these wrong photographs in many Indian Newspaper strong criticized. Amnesty’s report and photographs. The Amnesty was compelled to apology and take responsibility of photographs. Amnesty to clarify its point by writing letters to major Indian newspapers, few of which reproduced”.

V.N. Narayana
The Editor
Hindustan times
Dear Mr, Narayan, 1 February 1995

The article in the Hindustan Times “Amnesty lied: the camera did not” published today (31 January) completely distorts the action taken by Amnesty International on the use of a photo allegedly from Jammu and
Kashmir in the British Section’s Campaign Journal, and falsely accuses the organization of “fudging the facts.”

The article, published on the same day as a new Amnesty International report on torture and deaths in custody in Jammu and Kashmir, also claims to have “exposed” Amnesty International’s effort to represent India as a gross violator of Human rights.

We have to question why the Hindustan Times has chosen to resurrect the issue of the photo today, rather than focus on the real issue of serious human rights violations in Jammu and Kashmir. The Amnesty International report includes 715 cases of deaths in custody in the state, and calls for the government to fully and impartially investigate those cases.

In focusing on the issue of the photograph in the Campaign Journal, you falsely accuse Amnesty International of going through an “elaborate charade” to prove our innocence in the use of the photo.

You also falsely quote Amnesty International’s British Section Director David Bull of saying “it is better that a photographer lie than Amnesty”. Mr. Bull has never made such a statement and Amnesty International’s actions show clearly that the organization has never tried to shirk its responsibility in this matter.

Then investigation commissioned by the International Secretariat of Amnesty International into the British Section’s use of the photo was carried out independently by a senior media expert, and led to the British Section issuing an apology and a correction in the Journal. It has also led to recommendations about how such errors can be avoided in future.

The correction clarified that the picture used on the cover of the Journal was in fact of a Tamil Muslim woman in Tamil Nadu, and not of a Kashmir woman as stated in the original photo caption.
Amnesty International made the findings of the investigation available to the government to the public through a news release. The organization has also accepted full responsibility for the error and in its apology and correction has never named the photographer nor laid the blame for the error on him.

In the same spirit of openness, Amnesty International is again calling on the Indian government to carry out full, impartial investigations into torture and deaths in custody in Jammu and Kashmir and to make the findings public. Amnesty International make the findings of the Investigation through to the govt. and to the public through a news release. The organization has also accepted full responsibility for the error, had in its apology and correction has never named the photographer nor laid the blame for the error on him.

In the same spirit of openness, Amnesty International is again Calling on the Indian Govt. to carry our full, impartial investigation into torture and deaths in custody in Jammu and Kashmir and make the findings public

Sincerely,

Sd/-

Derek Evans
Deputy Secretary General
Amnesty International
The Editor,
The Times of India
7 Bahadurshah Zafar Marg
New Delhi 110002
India
3rd February, 1995
Dear Sir,

I wish to correct several statements made by various government officials in reaction to the publication of the Amnesty International report, India: Torture and deaths in custody in Jammu and Kashmir carried in yesterday’s issue of your paper.

In it, your correspondent reports the Home Minister, Mr. S.B. Chavan, as saying that the report is one-sided and biased, that the Amnesty International reports have seldom carried the government’s version of events, and that it ignores the role played by Pakistan in Jammu and Kashmir.

This is far from the truth.

One section of the Amnesty International report describes positive developments including steps the government has taken in recent years, notably the release of several prisoners of conscience in Jammu and Kashmir, to improve the human rights situation in the state. On the role played by Pakistan, the report explicitly states. “The present degree of official involvement remains disputed, with recent reports finding further compelling evidence that elements of the Government of Pakistan have sponsored a significant flow of arms to Kashmiri militants”.

Finally, India’s High Commissioner in London is not correct in stating, as reported by your correspondent, that the India Government has responded to Amnesty International’s recommendation in 15 pages. The 15 pages of the government’s response deal entirely with the 10 point program against torture produced by A1 in another report published three years ago, entitled India.

Torture, rape and deaths in custody.
While Amnesty International welcomes the government’s belated response to those recommendations, it regrets that the government has so far not responded to the eight detailed recommendation made in the present report for the prevention of torture and custodial deaths in Jammu and Kashmir, notably on the two key recommendations that the government establish a Committee to Protect Detainees and that it order impartial and independent investigations into the over 700 reports of deaths in custody in the state listed in the two appendices to the report. These are very serious allegations and we hope the government will respond to them with the seriousness that the human rights situation in Jammu and Kashmir deserves.

Yours sincerely,

Sd/-

Anita Tiessen
Program Director
Media and Audio-visual.

The Editor
The Pioneer

Dear Sir,

The distortions and misrepresentations in the 8 February opinion piece by Mr. Kanchan Gupta, Deputy Editor of the Pioneer, cannot pass uncorrected by Amnesty International. Mr. Gupta and the Pioneer do a disservice to the Indian public by deliberately missing up a gains taxingly documented research report, prepared by Amnesty International Secretariat and substantiating the persistent human rights violations in the state of Jammu and Kashmir with a
single photograph illustrating an article produced by the organization’s British Section.

Amnesty International’s Action clearly show that the organization has never tried to shrink responsibility for this photograph, used on the front cover of the Campaign Journal of Amnesty International’s British Section. An investigation commission by the International Secretariat of Amnesty International was carried out independently by a senior media in the Journal. It has also led to recommendations about how such errors can be avoided in the future.

We question the government of India’s attempts to evade responsibility for the behavior of its security forces in the state when it suggests that people who died were shot dead in “encounters”, despite hard evidence of testimonies from survivors, from eye witnesses, from medical reports that contradict official excuses. The Pioneer only diverts attention from the lack of investigation into the vast majority of deaths in the custody of security forces.

This organization does agree with. The Pioneer’s deputy editor that India would do well to “strengthen our own system to ensure that the scope for violations is minimized”. After listing more than 700 separate cases of suspicious deaths in custody. Amnesty International made eight detailed recommendations for the protections for the protection of human rights in Jammu and Kashmir. They included investigations of those 700 cases by an independent and impartial body and the establishment of an independent commission and protect detainees in the state. We also urged the government to reform the TADA, which your paper agreed has been abused in India, to bring it in line with basic minimum international standards.
The Indian government's failure to take up that extensive recommendation is at the heart of this controversy. What should be questioned in the editorials and opinion pieces of the Pioneer is the government's refusal to carefully consider such reforms in keeping with the spirit of dialogue that the government would maintain with our organization.

Mr. Gupta also accurately points out that Amnesty International is not alone in questioning the enormous number of deaths in custody in Jammu and Kashmir. There is mounting International concern about the grave human rights situation there, with the US State Department, the various special experts of the United Nations Human Rights Commission and Human Rights Watch - Asia all confirming the criticism leveled by Amnesty International.

We fully agree with your paper that the serious allegations we have described in our latest report are not unique to India. Custodial rape is unfortunately a common occurrence in many countries. So are extra-judicial executions, torture and ill-treatment. But where your paper is wrong is in suggesting that Amnesty International is engaged in "tailoring their reports to suit the West's political agenda". The opposite is the case. In the past year, Amnesty International has published reports, among many others, on deaths while in French Police custody, ill-treatment by Danish police, physical violence by Swiss Police against people in custody and allegations of cruel, degrading conditions in US prisons.

Nor it is true that Amnesty International tries to justify acts of brutality committed by terrorists. An entire chapter of our latest report describes in great detail the numerous human rights abuses committed by armed opposition groups in Jammu and Kashmir. With the publication of the report, we repeat our call on these groups to stop abusing human rights.
Human right is the concern shared by the entire world community, with activists fighting to protect those rights. Without the dedicated work of many human rights activists in India, the work of human groups like Amnesty International could suffer in quality and effectiveness. We share with those groups, a desire to see human rights protected in India.

Sincerely,

Sd/-

Herve Berger
Deputy Secretary General
Amnesty International

Over the 36 years, Amnesty has become a formidable force. No country, how ever powerful. However, insensitive to the world opinion, however arrogant can afford to shrug off its accusations as they once used to. Amnesty had become accepted as the voice of mankind’s conscience.

**ASIA-WATCH (USA)**

In contrast to Amnesty, little is known in India of Asia Watch. Amnesty has a limited mandate under its statute: briefly, to secure the release of “prisoners of conscience”. Urge a fair and speedy trial for all political prisoners. Oppose torture and the death penalty and extra-judicial executions and “disappearances”.

Asia Watch keeps vigil on the observance of all internationally recognized human rights. It was founded in 1985 and its chairman is a highly respected academic, Dr. Jack Greenberg, Professor of Law at Columbia University. He rendered enormous help to justice Thurgood Marshall during his legal battles on behalf of the NAACP and is at work on biography of the great Judge.
Asia Watch, however, is a division of Human Rights Watch which was established in 1978 with the foundation of Helsinki Watch by a group of lawyers, publishers and other activists. Its concern was to watch the observance of the provisions of the Final Act of the Conference on Security and Cooperation in Europe concerning human rights. The document was signed by all the European States, the USA and Canada in Helsinki on August 1, 1975. It reaffirmed respect for human rights as a legal obligation to the world community under International Law.

Today, Human Rights Watch includes, besides Asia Watch, African Watch, Middle East Watch, Helsinki Watch, Americas Watch, the Fund for Free Expression and three collaborative projects – the Arms Projects, Prison and Women’s Project.

A leading organization in USA have been releasing Human Rights violation in the world.


Britain has been censured in the Report on “Human Rights in Northern Ireland”. There are at least three reports on Israel’s misdeeds. The Fund for Free Expression has published legal studies on the right to free speech which are of great relevance to our situation.
No honest person can withhold praise for an organization which renders services such as these. Then appropriate response is not to band the door in the face of Asia Watch or Amnesty but to let there in to see the situation for themselves, explain the Government’s view point, and respond to their views to open, honest discussion. They can err in their assessments. But their integrity and commitment are beyond reproach.

Similarly Asia watch has been releasing Periodical reports on violation of human from time to time. The J & K had been pride of place in their scrutiny. Asia Watch fact finding mission went to Jammu and Kashmir in December, 1990. the report was written by Miss Patricia and James A Goldstone under the title “HUMAN RIGHTS IN INDIA- KASHMIR UNDER SIEGE”.

The report was released on 5 May 1991 and one of the Authors Miss Patricia Goss man told India abroad service the report was sent to the state department to several Congressman and women interested in India, embassies of the other Govts. In the capital and other Govts. And Non-Governmental organizations in USA and around the world, and the United Nations. Asia Watch recommended that New Delhi establish independent Commissions of inquiry into encounter killings, reprisal killings and other forms of extra-judicial executions, rape, torture and assault carried out by security forces. It calls on militant organizations to abide by Geneva Convention and condemns their act of violence against civilians.

Asia watch itself has cited the case of Ms Sarla Bhat a staff nurse at the Institute of Medical sciences in Soura, Srinagar, who was shot dead on April 18, 1990. Her body was found in Lal Bazar with a note in which the JKLF claimed responsibility. Four days prior to her killing, Sarla Bhat had
been kidnapped from the Nurses Hostel by the unidentified men and post-mortem report concluded that she had been raped before she was killed.

According to Asia Watch analysis India has violated international humanitarian law in dealing with Kashmiri militants but has also acknowledged:-

Pakistani militancy intelligence’s hand in the insurgency in the valley. In its 110-page report Asia watch says, quoting unnamed sources, that the Pakistan army’s field intelligence unit helped organize the Jammu and Kashmir Liberation Front (JKLF) since its inception. In 1988, the inter-services intelligence (ISI) had begun to establish training camps in Pakistan-occupied Kashmir manned by retired Pakistan army officers, it says.

According to Asia watch, while the militants do not control any territory and operate in guerilla fashion, they command considerable support in the Kashmir Valley. There are several dozen groups operating in the state divided between those who want independence and those who support accession to Pakistan. The JKLF is in the former category while the Hizbul Mujahideen in the latter. While both sides to Kashmir’s bloody separatist conflict have been responsible for human rights abuses. Asia watch says that attacks on civilians by India government security forces have been marked by particularly deliberate crudity.

The report, titled ‘Kashmir under siege’, includes testimony gathered by Asia watch investigators on some 200 extra-judicial killings allegedly by security forces since the beginning of 1990, as twice as many instances of torture, rape and wholesale destruction of neighborhoods. The Indian government may not have explicitly sanctioned the abuses that have taken place in Kashmir, the report says, “it has however, abdicated its
responsibility to enforce the law, and has given the security forces free rein to engage in gross abuses in the name of fighting "terrorism".

Asia watch is occasionally consulted by the state department and members of Congress. Its reports influence legislation on capitol Hills. The obligation to apply article three of the four Geneva conventions, to which India is a signatory, is absolute on all parties to the conflict independent of the obligation of other parties, Asia watch asserts. Thus the Indian government cannot excuse itself from complying with Article 3 on grounds that the militants are violating Art 3 and vice versa, the report maintains.

Asia watch also claims India is obliged to comply with the international covenant on civil and political rights (ICCPR) to which it is a party. The role of the Indian army, the Central Reserve Police and the Border Security Force, the principal government forces operating in Jammu and Kashmir, have come under particular attack from the rights organization. It has given detailed accounts of events such as the alleged massacre and arson in Handwara by the BSF, the massacre in Phazipora, killings in Pattan, Noorbagh by BSF and CRPF and other incidents of extra-judicial executions.

The report goes on to accuse security forces of frequently violating international norms of medical neutrality in armed conflicts because they had attacked medical personnel and entered hospitals and prevented treatment of those wounded in the conflict. Incidents of torture, arson, curbing of press freedom through intimidation and other means are also outlined based on interviews with alleged victims in Kashmir and New Delhi, where Asia watch fact-finding mission went in December 1990. This is just the beginning of long-term commitment to work on India.
Asia Watch concedes that govt. of India, like all govt. is entitled to take steps to end a violent secessionist campaign, but it insists that it do so without derogating from its obligation to respect the international human rights and humanitarian law.

It reiterates the demand of other human rights organization that the Government of India hold the Army and the security forces accountable for their actions, and that it prosecute all members of these forces responsible, for murder, torture, rape and assault.

According to the report, India’s own interests have suffered due to its failure to properly investigate abuses committed by its forces and to account for hundreds of persons detained under security legislation in Kashmir. This has fuelled separatist sentiment in the valley and eroded hopes of re-establishing democratic process and peace in the state.

In its evenly balanced report, Asia Watch observes that the militant groups have grown in strength and have used their increased militancy and political power to engage in abuses against the civilian population. These groups, the report goes on, have systematically violated international humanitarian law by engaging in summary executions, kidnappings, threats and assaults on civilians.

The report notes adds; “A freelance photographer and western television crew were shown militant recruits receiving instructions in armed operations in the Azad Kashmiri section of Pakistan. News reports have suggested that Kashmir militants have also received training in guerrilla warfare from Afghan guerrillas at Zawar, 90 minutes drive from Pakistan. Recent reports suggest that cross-border assistance to the JKLF has been declining in favor of the pro-Pakistan Hizb-ul-Mujahideen”.

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The report meticulously documents major incidents of violations by the security forces as well as the militants, some of which have already been highlighted by the media and the human rights organizations of India. In many cases it conducted its own inquiries and judicious.

Referring to controversial versions about the migration of Kashmiri Pundits from the valley, the report concludes. "It is clear that many Hindus were made the targets of threats and acts of violence by militant organizations and that this wave of killing and harassment may to leave the valley. Such threats and violence constitute violations of the laws of war."

The report documents many specific cases to support its conclusion.

The situation in Kashmir is war-like. Asia Watch has just reminded the combatants of the rules of the game that are supposed to be observed in such situations. But the Government of India is not a war against the people of Kashmir whom it considers to be citizens of India. There can be, therefore, no questions of a deliberate policy of the government, much less of the country, to allow excesses of the security forces. Their lapses, we have been assured, are not due to but in spite of, the official policy.

The Asia watch report makes no reference to the continuing of militants to infiltrate Kashmir is evident from the fact that the number of terrorists killed on the border was 374 in 1991 and of those killed elsewhere were 168 in 1991. The number of persons killed in terrorist action was 382 in 1991.

It is to be borne in mind that the stress-level of the security personnel on the street in Srinagar or elsewhere in the Valley is very high as they do not know wherefrom an attack would come. This leads to a tendency to over-react at times. But then, prompt remedial action is taken. This is borne out by the fact that the people themselves are demanding that Para-military
forces should set up bunkers in their areas so that militants do not have a free run of the place and the people can live in peace and carry on earning their livelihood. Attempts to spread canards about excesses by security personnel tend to have a demoralizing effect on the force. At the same time, wrongdoing cannot be left unpunished. Every effort is made to strike a balance.

Naturally allegations of outrages committed by law-enforcing agencies are viewed seriously not only by the courts but also by the legislatures, including Parliament, and the media which are quite free in India.

New Delhi's view is that the real situation in Kashmir is camouflaged by a very carefully designed and executed plan of forces inimical to India to promote secession through violence, coercion, and a malicious propaganda campaign both within and outside the country. Those behind this game have lobbied hard and long in the US and the UK. Not having succeeded there, they were trying to beguile other forums.

Since the foreign human rights organizations apply Western yardsticks to third world developing countries such as India, they do not show any understanding of the ground reality here. But what is lost sight of is that the delays affect both the terrorists and the security forces personnel equally. It is not as if cases involving security personnel are disposed of speedily and those with terrorists allowed to languish. The fact is that witnessed do not show up and judges go on adjourning the case hearings from one date to another. A Classic example of delay is in the case of Maqbool Butt. The case began in 1967 and his execution came 17 year later in 1984.

What the human rights organizations need to understand is that both security personnel and terrorists arrested have the same protection of law.
But the have civil rights and the right to defend themselves. Even where Army officers or jawans are punished by court martial procedures, the verdict of the normal courts has to be sought. It will be some time before a mechanism is wormed out to cut down delays.

The credentials of the one of the co-authors of the May 5, 1991 report by Asia watch entitled. “Human rights in India Kashmir under siege” have come into question.

Investigations here by government agencies reveal that a Jawaharlal Nehru University (JNU) scholar was found in possession of a large amount of foreign exchange and some incriminating documents suggesting his having links with Pakistan. He is also associated with Asia watch.

An extract of a letter sent by the JNU scholar to Firdaus Kashmiri of Hizb-e-Islami extols Ms Patricia Grossman who wrote the report with Mr. James A. Goldstone. The extract: “Patricia has done good work. The resolution which was passed by the American Senate on Kashmir about 15 days back was drafted by Pattiz. Earlier, she had won over several senators during briefing sessions. The most important session continued for seven hours in which Patricia replied to series of questions convincingly. Asia watch criticized militants groups: “A number of these groups have executed civil servants, including Muslim political leaders associated with the National Conference party, prominent Hindus and other suspected of being government informers. Militants have also thrown grenades at buses and government buildings and issued widespread threats to members of the minority Hindu community. Those militants groups which expose fundamentalist Islamic ideology have also issued threats to
persons associated with businesses they consider un Islamic, liquor dealers and cinema hall owners”.

**ASIA WATCH / PHYSICIANS FOR HUMAN RIGHTS**

Since early 1990, the Valley of Kashmir has witnessed increasingly violent conflict between Indian security Forces and Muslim insurgents seeking an end to Indian occupation. In efforts to crush the insurgency, Indian forces have indulged in massive human rights violations including extra-judicial executions, rape, torture and deliberate assaults on health care workers.


The present report focuses on sharp escalation in human rights abuses, especially summary executions, custodial deaths and reprisal killings by Indian Para-military forces in J & K. The report also criticized militants and investigated incidents of abuses by armed groups who have also attacked civilians. Militants have assassinated Hindu and Muslims. They have accused some of being informers other supporting Govt. policies or being otherwise opposed to the objectives of various militant groups.

In early 1990, members of the Hindu minority took the brunt of these attacks. The murders and attacks drove many Hindu and Muslim professionals to flee Kashmir. Rape and other violet attacks on women by militant groups has also increased. Militant groups have also engaged in
indiscriminate attacks which have wounded and killed civilians, detonating car bombs and other explosive devices. These attacks, killings, rapes and other abuses constitute grave violations of international law.

As the State Department country Reports for 1992 notes, "In Jammu and Kashmir state, militant groups seeking Kashmiri independence continued to carry out politically motivated killings on a wide scale, targeting government and police officials, alleged police informers members of the press, and members of rival factions. Among the victims was the daughter of a former Member of Parliament, an employee of the state road Transport Corporation, and Nazir Siddiqui, who earlier mediated the change of militant detainees for kidnapped Indian oil executive.

Asia watch and physicians for Human Rights released report on the atrocities committed in Kashmir and the 58 pose report entitled "THE CRACKDOWN IN KASHMIR TORTURE OF DETAINNEES AND ASSAULTS ON MEDICAL COMMUNITY! Blames Indian Security Forces for targeting civilians in an effort to crush support for guerilla forces".

According to report since 1992 three human rights activists have been killed in Kashmir, making it now one of the most dangerous places in the world to do human rights work.

• On December 5, 1992, Hirdai Nath Wanchoo, a retired trade unionist and one of the most prominent human rights activists in Kashmir, was shot dead by unidentified gunmen. H.N. Wanchoo had documented hundreds of cases of extrajudicial killings, and had prepared habeas corpus petitions on behalf of detainees held illegally in secret detention centers run by government forces. He
dedicated his life to documenting every extra-judicial killing, death in custody and disappearance by security forces in Kashmir.

• On February 18, Dr. Farooq Ahmed Ashai, an orthopedic surgeon who had documented cases of torture and indiscriminate shootings by security forces, was shot by paramilitary troops at a security post while he was returning home in the evening. The security forces did not permit his wife to take him promptly to hospital for medical care. They were finally permitted to leave but Dr. Ashai died from blood loss shortly after reaching the hospital.

• On March 31, 1993, Dr. Abdul Ahad Guru, a leading Kashmir cardiologist, was abducted by unidentified gunmen and shot dead. Dr. Guru had been a senior political leader of the militant organization the Jammu and Kashmir Liberation Front, or JKLF, and an outspoken critic of the Indian government's human rights record in Kashmir. He too had documented numerous cases of torture. Dr. Guru's political position also made him a target for rival militant groups and other hard-line elements threatened by his participation in government negotiations to find a settlement to the Kashmir conflict. His death remains a mystery. Despite the urging of Indian and international human rights groups for judicial inquiries into these killings, Indian Government authorities have been unwilling to establish independent investigations into any of the cases. Moreover, these are not isolated cases, while human rights monitoring has become particularly dangerous in Kashmir, human rights activists have also been detained assaulted and in some cases killed in Punjab, Andhra Pradesh, Assam and elsewhere in India.
Together with these targeted killings of individuals, there has been a sharp increase in other abuses in Kashmir, particularly the summary executions of detainees. During a visit to Kashmir on October 1992, Asia Watch and Physicians for Human Rights (PHR) documented.

44 deaths in custody and extrajudicial killings.

15 cases of rape.

20 indiscriminate shootings of non-combatants,

And 8 cases of torture.

More than 80 percent of the cases had occurred during the week the investigators were in Kashmir or in the two preceding weeks. Human rights monitors in Kashmir have documented more than 100 deaths in Custody between July and October 1992. Several hundred more have been recorded in the past six months.

Many of these killings paraded before hooded informants. Those pointed out by the informants are taken away and within the next few hours, several of the detainees may be shot dead and their bodies dumped on the streets. It has reached the point in Kashmir that those who are actually taken into military interrogation centers can could themselves lucky. At least they are still alive.

In addition to these “custodial deaths,” the security forces frequently engage in reprisal attacks against civilians. In Kashmir, much of the civilian population is sympathetic to the militants in Kashmir, in large part because of the brutality of the security forces. While extrajudicial executions, rape and arson attacks on civilians have characterized security operations throughout the conflict, the civilian casualties from such attacks have escalated sharply in recent weeks.
On January 6, 1993 in the single largest civilian massacre of the conflict, some 65 people were shot dead or burned to death when Border Security forces troops rampaged through a neighborhood in the city of Sopore reportedly in retaliation for a militant attack that killed two soldiers and injured others.

As local police official at the scene stated that the security forces “ran amok” and prevented police and fire fighters from intervening. Witnesses stated that the troops had shouted, “kill then all” as they shot into the market and set shops on fire. Army officials claimed that those who died were killed in “cross-fire”.

The New York Times reported the “The blaze in Srinagar, the first major conflagrating to consume a significant section of the city, was set by rampaging border Security forces, according not only to local residents, but also to a senior official of the security forces here. A Cop came and said to me, ‘the BSF is burning everything in sight, “said this official, who would speak only with an assurance of anonymity. “I asked him how he knew. He said, ‘One of the BSF borrowed a matchbox from me.”

The burning and killing in Srinagar was only the latest in violent outbursts by the security forces against civilians in reprisal for militant attacks or alleged attacks.

Asia Watch investigated an incident last October, for example, where a man and a woman were burned alive in Badasgam when BSF troops locked them in a shop and torched it and ten other buildings after mistaking a sonic boom for a militant attack. An army investigator later confirmed that the troops’ action was “unprovoked”.

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Last October, the prominent Indian weekly newspaper, The Illustrated Weekly, reported that the Director General of Police, Bedi, acknowledged that he had no control over Border Security Force Inspector General Patel.

Since the government crack-down against militants in Kashmir began in earnest in January 1990, Indian army soldiers raped as many as eight Kashmiri women and an eleven-year-old Kashmiri girl.

In a 1991 case of reported gang by army troops which was widely publicized in Kashmir, the government went to great lengths to discredit the reports; through they never conducted a proper investigation of the incident.

Rape most often occurs during crack down cordon-and-operation during which men are held for identification in parks or school yards while security forces search their homes. In these situations the security forces frequently engage in collective punishment residents and burning their homes, Rape is also used as a means of targeting women whom the security forces accuse of being militant sympathizers.

Security forces are systematically torturing detainees reported by American Human Right.

"Virtually everyone taken into custody by the security forces in Kashmir is tortured," said the report by Asia Watch and the Physicians for Human Rights group.

"Methods of torture include severe beatings, electric shock, and suspension by the feet or hands, stretching the legs apart, burning with heated objects and sexual molestation," the report alleged.
“One common form of torture involves crushing the leg muscles with a heavy wooden roller,” said the report by two researchers who visited Indian-ruled Kashmir in October. It is said doctors in Kashmir had reported 37 cases in which such torture had released toxins from the damaged muscles which caused kidney failure and three people had died as a result.

The Indian government, in an official reply to the report printed as a part of it, made no direct rejoinder to the accusation of torture but said action had been taken in the past two years against more than 100 security men accused of human rights abuses.

It said punishments ranged from jail terms of under a month to seven years as well as lesser disciplinary action.

**The scope of the conflict and the applicable International Law**

Indian government forces operating in Kashmir include the Indian army and Indian federal paramilitary forces, the Central Reserve Police Force (CRPF) and the Border Security Force (BSF). As of mid-1993, at least 300,000 paramilitary troops were deployed in the valley, together with at least 100,000 Indian army troops. In May 1993, an Indian journalist, writing in India Today (Harinder Baweja, ‘Losing Control”. May 31, 1993, p.25) observed,” The escalation is self-evident. While in 1990 there were only 36 paramilitary companies today there are 300, and two more army divisions will be moving in this month”. The local Jammu and Kashmir policeman are generally not involved in counter insurgency operations, largely because they are believed to be sympathetic to the insurgency. In fact, in April 1993 most of the force went on strike to protest the death in custody of a constable, Riaz Ahmed.
After security forces stormed the police headquarters, some 1000 of the police were disarmed and interrogated.

The Applicable International Law

I- International human Rights Law and Standards:

International human rights law prohibits the arbitrary deprivation of life under any circumstances. The Government of India is a signatory to the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR expressly prohibits derogation from the right to life. Thus, even during time of emergency, "(a) a one shall be arbitrarily deprived of his life". (Article 4, Article 6, ICCPR).

The ICCPR also prohibits torture and forms of cruel, inhuman and degrading treatment. Articles 4 and 7 of the ICCPR explicitly ban torture, even in times of national emergency or when the security of the state is threatened.

The evidence gathered by Asia Watch and PHR clearly proves that the Indian army, the Central Reserve Police force and the BSF – the main Indian government forces operating in Jammu and Kashmir – have systematically violated these fundamental norms of international human rights law”.

II- International humanitarian Law

In addition, Asia Watch and PHR believe that the government of India is bound by

International humanitarian law (the law of armed conflict) applicable in non international (interval) armed conflict. The applicable law is found in Article 3 common to the four Geneva conventions of August 12, 1949, additional authoritative standards are found in Protocol II (1977) Additional to the Geneva Conventions of 1949. India has
ratified the four Geneva conventions of 1949, and is thus obliged to uphold Common Article 3.

Torture and rape have all been prominent abuses engaged in by Indian forces in Kashmir and common Article 3 forbids each of them. Rape is clearly prohibited by common article 3, including its prohibitions on torture, and it also violates the ICCPR July 1992. Asia Watch and PHR directly investigated 19 such killings two research missions to Kashmir in 1992 and 1993.

Lawyers in Kashmir told Asia Watch that the number of deaths in custody had increased since launching of "Operation Walla" in September 1991, and escalated further with the launching of Operations "Tiger" and "Shiva" in late 1992.

Asia Watch and PHR obtained lists of death in custody compiled by human rights monitors and lawyers, documenting fifteen in custody in July 1992; 19 in August, 1992; 37 I September, 1992; and 36 in the first two weeks of October, 1992. Writ petitions urging a judicial inquiry into the deaths were filed in the Jammu and Kashmir High Court each month during this period. Asia Watch and PHR also obtained incomplete lists for the period from December 1992 through March 1993 which detail an additional 128 deaths in custody. Detainees have also disappeared in the custody of the security forces.

**Attempt Execution of Masroof Sultan**

Masroof Sultan 19-1" chemistry student traveled by bus everyday from his residence in Butmaloo to Siri Pantap College in Lal Chowk, Srinagar. In his account to Asia Watch, Masroof related how on 8 April, 1993, the BSF launched a crackdown in the area and stopped the bus he was on. He was taken from the bus and after about
an hour he was asked to join several hundred detainees surrounded by dozens of security forces.

After being detained for a further hour, despite showing his college ID card four BSF men came up to him and kicked and punched him until his nose and lips were bleeding and an officer threatened to kill him.

Then he was taken to a room and asked, along with those other young men, to admit that he was a militant.

Security forces put a wooden stick under Masroof’s fell unconscious. He was awakened when cold water was thrown on his face and his hands loosened. He was threatened that if he did not admit to being a militant he would be taken another interrogation centre (at Hari Niwas) and be given electric shocks there.

At Hari Niwas cold water was thrown on him and two copper wires which were attached to an electric socket in the wall brought and he was made to touch his feet and genitals for several seconds at a time. This process continued for half-an-hour while they kept asking him if he was militant and demanding that he give up his gun. When they removed the wires, Masroof saw blood on his genitals. Then the BSF men touched the wires to Masroof’s chest and arms and back until he lost consciousness. After a while he was blindfolded, dressed in his own clothes and carried to a jeep and driven-off- all the while being punched and kicked, and jabbed with barrels of the BSF men’s guns.

That they took him out of the jeep and stood him against a tree and told him they knew he was innocent but for BSF men had been killed in Batmaloo in a blast and they needed to equalize the score.
He was then shot in both legs and on falling the BSF men shot him in the chest and arm to make sure he was dead. Then a bullet grazed the back of his neck. He held his breath as someone kicked him again, then shouted, “he’s dead”. After about an hour and a half; some Jammu and Kashmir policemen cam across him and took him to the hospital.

Masroor was examined by a member of PHR and results were documented in photographs while the interview was recorded on video. He was also interviewed by foreign journalists.

Violation of medical neutrality by government forces

Since the escalation of the conflict in Kashmir in early 1990, Indian security forces have exhibited blatant disregard for international laws protecting the medical neutrality of health care workers and medical facilities in Kashmir. Their actions have made an already dangerous situation for health care workers in the state increasingly desperate and have contributed to the deaths of those needing medical care in the region.

The evidence gathered by the Asia Watch/PHR team indicates that the Indian security forces have deliberately prevented injured from receiving medical care. PHR and Asia Watch interviewed doctors, ambulance drivers and other health care workers who testified that security forces have shot ambulance drivers, arrested patients from hospitals over the objections of doctors, and even removed them from intravenous medications or other treatments and opened fire within hospitals. The Security forces have not only prevented health care workers from carrying out their duties, but have arrested and tortured medical professionals because they have carried out those duties,
While it is not possible to say with precision how many persons have died or suffered serious injury as a result of deliberate interference with the delivery of health care services by the security forces, that number is certainly in the hundreds.

**Preventing medical personnel from transporting the wounded.**

Article 7 of the Code of Medical Neutrality in Armed conflict requires that “Medical facilities, equipment supplies and transport shall be respected and protected, regardless of whom they serve, and shall not be destroyed”. The Code also provides under Article 6, that “Medical workers shall have access to those in need of medical care especially in areas where civilian medical services have been disrupted. Similarly, persons in need of medical care shall have access to such services”. Indian security forces in from evacuating injured persons for medical treatment. Ambulance drivers have been among the principal victims of these actions. Drivers are frequently stopped while on the drivers have been detained, tortured and killed.

Contrary to international humanitarian law, medical vehicles have also been prevented from transporting wounded patients due to curfew restrictions. International law exempts medical vehicles and personnel from such restrictions. Doctors described numerous cases of patients’ wit traumatic injuries that died after being arbitrarily delayed in transit, or whose injuries or illness worsened because of the delays. Even when the injured received assistance from local residents they were not able to reach hospitals in a timely manner since the roads are sealed during crackdowns.

Doctors and other health professionals are also unable to be present when and where they are needed. Doctors reported that staff
are often unable to reach the hospitals until 10-11 am and must leave by 3-4.00 pm to avoid caught outside after curfew. Even so, they are often caught in crackdowns. The absolute restriction on travel after dark has interfered with the transport of consultants and medical technicians needed for emergencies. If surgery cannot be postponed, others not trained for special procedures must fill in, which has hurt the quality of patient care. For example, doctors described repeated incidents where anesthesiologists and cardiothoracic surgeons were called on to perform cesarean sections. One consultant now sleeps in one of the hospitals in Srinagar because it has become impossible for him to travel during curfew hours.

Curfew restrictions have also prevented the transport of blood products, oxygen and other emergency supplies. Travel restrictions have also hindered communication between doctors at different hospitals. Because the hospitals have not had a reliable telephone system since the conflict began, doctors must messengers or travel themselves to consult with colleagues.

**Raids on hospitals:**
Since the escalation of the conflict in 1990, the security forces operating in Kashmir have repeatedly violated the neutrality of hospitals, clinics and other facilities. Doctors in Kashmir described frequent raids during which security personnel have condoned-off hospitals, sometimes for days at a time, to search for injured patients whom they suspected of militant activity. During hospital raids, injured patients have been arrested from hospitals, in some cases after being disconnected from intravenous medications or other treatments. International humanitarian law does not preclude such searches, but it
does prohibit the security forces engaging in abuses while conducting them. If the security forces have received information that someone who has committed a crime is receiving treatment in a hospital, they may search for and arrest the person, but only if they do so without endangering the patient’s health.

Witnesses testified that is one particularly cruel incident early in 1990, Indian army doctors ordered the medical staff at the Saura Medical Institute to transfer all patients with recent injuries to them so that their cases could be reviewed. Physicians at the Institute complied with the order, but objected to the transfer of one patient in the intensive care unit who was awaiting surgery for a liver abscess. At the time, the infection had spread to the bloodstream (a condition known as sepsis) and the patient required life-sustaining cardiac pressure agents to maintain his blood pressure. Despite the patient’s precarious condition, the hospital staff was forced to remove him from the intensive care unit and pressure support. The patient died three hours after he was disconnected from his medication and before he was able to be returned to the intensive care unit. The crackdown reportedly lasted for seventeen days, during which time no one was allowed to enter or exit the hospital grounds according to hospital staff, five dialysis patients who were not permitted to enter the hospital compound died as a result.

**Detention harassment and assaults on health care workers:**

Health care workers have been murdered, assaulted, illegally detained and harassed by government security forces. They are routinely subjected to such abuses because they are suspected of treating militants believed to be
supporting the demands of the militant groups. They have been forced to falsify reports of deaths. Doctors and other health care workers told PHR/Asia Watch that they may have to travel past fifty or more military bunkers and check-points on their way to and from hospitals. The fact that they carry identification cards or travel in clearly marked medical vehicles has not protected them. Intact, the cards are often confiscated and several doctors who have been stopped by security forces have been told, “The only use for this will be to identify your dead body”.

Conclusions

Based upon the Report’s findings, Asia Watch and PHR came to the following conclusion:

1. The foremost among the reasons behind the human rights crisis in Kashmir has been the Indian Government’s unwillingness to take effective steps to curb abuses by its security personnel.

2. That in their efforts to crush the insurgency movement in Kashmir, the Indian Government forces have systematically violated international human rights and Humanitarian law. Among the worst of these violations have been the summary

   Executions of hundreds of detainees in the custody of the security forces in Kashmir.

3. Indian army soldiers and federal paramilitary troops of the Central Reserve Police
Force and the BSF have also engaged in frequent reprisal attacks against civilians. Opening fire in crowded markets and residential areas, and burning down entire neighborhoods. During search operations, the security forces have routinely assaulted civilians. The security forces have also used lethal force against peaceful demonstrators, shooting unarmed civilians. Security legislation has increased the likelihood of such abuses by authorizing the security forces to shoot to kill and to destroy civilian property. Under these laws, the security forces are protected from prosecution for human rights violations.

4. The government of India’s failure to institute an independent judicial inquiry into the assassination of human rights advocate H.N. Wanchoo raises serious questions about the possibility of government complicity in the murder.

5. Most detainees taken into custody by the security forces are tortured.

6. Methods of torture include severe headings, electric shock, suspension by the feet or hands, stretching the legs apart, burning with located hearted objects sexual molestation and psychological deprivation and humiliation.

7. Since the Indian government’s crackdown began in January 1990, reports of rape by Security personnel have become more frequent.
8. Health professionals in Kashmir have frequently been detained, assaulted and
Harassed while attempting to perform their duties.

9. Security forces have also repeatedly raided hospitals and other medical facilities,
and discharged their weapons within hospital grounds and inside hospitals, and have entered operating theatres and destroyed or damaged medical supplies, transport and equipment.

SHORT FALLS OF ASIA WATCH AND PHYSICIAN FOR HUMAN RIGHTS:-
In October 1992, Asia Watch and PHR sent delegations to Kashmir to document human rights abuses and violations of the Laws of war, by the Indian security forces. Almost as an aside the report also says that “they also investigated incidents of abuse by armed groups who have also attacked civilians. “This lukewarm reference to the activities of militants has been made only with the intention of claiming objectivity instead of providing actual picture of terrorism.

Asia Watch has always claimed to be even-handed. PHR has described itself in the report as an organization that “adheres to a policy of strict impartiality”. Based on the report neither claim bears close scrutiny. The report devotes 18 pages to the violation by security forces but has filled just one and a half pages to “militant abuses”, which included only two instances of atrocities by militants. The report admits that “Asia Watch and PHR are aware that many witnesses abused by either the security forces or the militants may
have a motive to fabricate or exaggerate reports of abuse”. But that does not prevent the two organizations from determining “that the Indian security forces have committed widespread and systematic human rights violations in Kashmir”. This convincingly shows that this conclusion had been pre-determined. The Government had explained that exchanges of fire had taken place when terrorists fired on the security forces from hospital premises, “without further information, PHR and Asia Watch are unable to comment on this incident,” says the report. But in the very next sentence it adds without providing any evidence that “in many cases, however, the security forces routinely resort to lethal force even when circumstances do not want such action”. Where Asia Watch and PHR have been most partisan is in their description of the Kashmir situation as, “an armed conflict not of an international character,” despite the Government of India’s almost anguished depiction of the crisis as “an extremely aided proxy war of massive dimensions”. When it has become a recognized international fact of life that Pakistan has been aiding and abetting the Kashmir militants with training arms and sanctuary. Asia Watch and PHR seem to have gone far beyond their human rights brief by opting to let Pakistan off the book by ruling out the “international character” of the conflict.

Asia Watch and PHR must realize that usage of phrases like “laws of war” are completely misplaced in the Kashmir scenario where the Indian Security forces are struggling hard against many odds to curb the menace of typical militancy being fought by proxy by
the enemy across the borders and which is directed both against the State and its upon from within the precincts of hospitals, what else can they do except shoot back. The terrorists in the Valley, who are getting orders from across the border, maliciously choose vulnerable places like hospitals, schools or thickly populated areas for launching their attacks on the security forces with the sole aim of causing as much civilian losses as possible for gaining maximum propaganda mileage. The genuine object of investigation of an organization of PHR should have been how hospitals had been converted into criminal dens by the terrorists and thus denied essential medical facilities to the common man. Even in an open war and intense hostilities, hospitals are meticulously kept out of the conflict. PHR should know for its record that the terrorists in the Kashmir Valley made hospitals particularly big Government hospitals, centers of collusive and conspiratorial activities. Practically, all the facilities of these hospital beds, they used the hospital stores of hiding their weapons, they sneaked into staff quarters whenever necessary and they escaped from the backyards through secretly charted routes.

There can be no two opinions on the need to ensure security forces conform to the laws of the land. The reports on Kashmir focus on the issue of rape. The law provides sufficiently stringent punishment for any member of the paramilitary or the army.

In all, action has been taken against over 100 personnel for violations of human rights. Yet, much more needs to be done on this score.

The Asia Watch report itself compares rather poorly with better-documented reports compiled by Indian civil liberties groups.
Many allegations are not well substantiated and the absence of names and specific timings will make it difficult to enquire into such cases.

The problem is compounded by the fact the writers did not contact or communicate with the authorities before their reports. The result is a vital issue has not been given the thorough treatment it requires.

Human rights violations on the part of the security forces are indeed inexcusable. There is no doubt lawless behavior on the part of the guardians of the law has no place in a democratic society. One incident like Sopore or “ethnic targeting” by the Provincial Armed Constabulary sets progress back by peons.

Most of the human rights groups like Asia Watch PHR or Amnesty International visiting the militancy torn Jammu and Kashmir state to collect evidence of alleged human rights abuses by the security forces are supplied forces incorrect information by militants, their over ground supporters and some self-styled human rights activists. The reports are mainly based on pre-juiced information without checking the veracity of these claims from Govt agencies.

Report on missing persons prepared by the Denmark based Physicians for Human Rights is misleading the drafters have failed to realized that the hundreds of youth were in indoctrinated by Pakistani agents into the credo of Terrorism and taken across the border for imparting terrorist training. There is no record of visiting such youths for training; even the parents were unaware of the visits of their children to Pakistan occupied missing persons. Govt. investigates all
such cases and during the preliminary investigation of 51 such cases, it was found that at least in two cases the alleged missing persons, Hassan Wani of Kanipora and Farooq Ahmed Bhat of Nowgam, were at home when the police went to their houses to ascertain their whereabouts.

In three other cases no such person as claimed in the report was residing in the mentioned localities. Obviously, someone had concocted the names, the sources said.

In another 20 cases, no report was filed in the local stations by the relatives of the alleged missing people.

Investigations also revealed an interesting case where the name of militant Mogi-ud-Din of Poshwari, Kupwara, who was killed by the militants of another outfit in February, 1992, was included in the list of missing persons. This militant had surrendered to the security forces and was later let off to enable him to start his career afresh. Objectivity if these reports are the biggest casualty. The HRW report objectively tends to facilitate Pakistani’s game plan.

The most irritating in Human rights watch report of 1993, is that it has treated Kashmir as a “disputed territory”, Its director’s justification was “it is in the context of the ongoing conflict in the state, between Indian Security Forces and Muslims insurgents demanding independence or accession to Pakistan that human rights abuses and violations International humanitarian law have occurred. It should be noted that Kashmir is also considered a disputed territory by UN”, While it has conveniently taken shelter behind the UN categorization of Kashmir as “disputed territory”. Its attitude to the terrorist aspects of militant activity does not reflect thee world
organizations unequivocal condemnation of “all act”. Methods and practices of terrorism in all its forms and manifestation of “all act”, methods and practices of terrorism in all its forms and manifestation as destructive of human rights, fundamental freedom and democracy?

According to the report the Human Right Watch “takes no stand on attacks (by terrorist) against Legitimate military target provided that International norm of human rights and humanitarian law are observed” as if the inspiration and ideology behind the attacks recognize such values. Even a cursory acquaintance with the tactics being followed by the terrorists will dispel the illusions of their carrying a war exclusively against the security forces which are “legitimate targets” in the judgment of HRW.

The HRW’s alibi for the mis-statements and other inadequacies in its reports is that the Govt of India does not let its representatives go to Kashmir, so it relies on clandestine visitors who go snooping and procure “Sanitary Inspectors Reports”.

The report no doubt, acknowledges Pakistan’s role in the insurgency in Kashmir adding that “It is widely accepted by Western and non-western experts that the ISI of Pakistan is the main body facilitating movement of weapons across the border to Kashmiri militants”. It is also admitted that the sophisticated weapons including Chinese origin automatic assault rifles like A.K. 47 and their variants supplied by the ISI to the secessionists are from the ‘Afghan Pipeline’ of the C.I.A.

H.R.W. believes that the Govt and the people of India have to be made to learn respect for human rights by foreign Govts. And external agencies like it and to be effective such lessons have to be
accompanies by threats of sanctions. The Washington based human rights organization, Asia Watch, has been persisting with its demand that the US should cut back aid to India and cease relations has been careful not to talk about racial discrimination in the US.
REFERENCES


