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# **Amnesty International and India**

## **Part I: A worldwide human rights organization**

### **What kind of organization is Amnesty International?**

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.

### **How is Amnesty International represented in India and Asia?**

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 members -- 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.

### **What is the basis of Amnesty International's work?**

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 civil and political rights, but can also prevent people from claiming their social, economic or cultural rights.

### **Does Amnesty International oppose abuses by opposition groups?**

Yes. While the principal focus of its 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, as it believes armed opposition groups to be bound by minimum humanitarian standards..

### **Is Amnesty International truly independent and non-partisan?**

Yes. Amnesty International works to stop human rights violations in all countries of the world, regardless of the politics of the government or opposition group concerned. To ensure the movement's independence and impartiality, its members do not gather, assess or act upon information about human rights cases in their own country. Amnesty International is funded by contributions raised by its members and supporters; it neither seeks nor accepts money from any government or governmental bodies such as the United Nations (UN).

### **How does Amnesty International focus its campaigns?**

Amnesty International's campaigns are primarily concerned with civil and political rights. We concentrate on these rights so we can be more effective by focusing our efforts and avoid duplicating the work of other organisations, not because we feel they 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 the changing patterns of human rights violations around the world and the demands of Amnesty International's members. Our main objectives are:

- C the immediate and unconditional release of prisoners of conscience -- people detained 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;
- C the prompt and fair trial of political prisoners;
- C an end to the death penalty, torture and other forms of cruel, inhuman or degrading treatment or punishment;
- C 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.

### **How are Amnesty International's campaigns organized?**

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 volunteer 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.

### **How does Amnesty International's Indian Section participate in campaigns?**

Amnesty International members in India work on all major campaigns. For instance, during the 1995 women's campaign, the Indian Section held a seminar to highlight the rights of women and joined international activities such as letter-writing to governments and opposition groups. Amnesty International members in India also campaign continually on behalf of individual victims of human rights violations around the world, such as a prisoner of conscience in Peru, a torture victim in Algeria or a death row prisoner in the USA. To guarantee impartiality, 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.

### **Do Amnesty International members in India work on any human rights issues concerning India?**

Yes. All Amnesty International members can campaign in their home countries on several key areas of the organizations'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.

### **Does Amnesty International work with other organizations?**

Yes. 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 programs of cooperation. In India, Amnesty International recognizes that the local human rights movement has a long and proud history. Members of the broad-based human rights movement in India have for many years been working for the realization of civil liberties and other fundamental rights, while single issue groups have been working to protect the rights of specific communities, or of people in particular regions. The dialogue between Amnesty International and these groups leads to a greater exchange of information and contacts, access to larger networks with greater impact on the public and links to international advocacy. Amnesty International also takes an active role when national human rights bodies are being established, for example, in commenting on the bill that led to the enactment of the Protection of Human Rights Act in India. Since the creation of the National Human Rights Commission, under this Act, Amnesty International has maintained a constructive dialogue with the Commission, welcoming many of its activities, whilst continuing to be concerned about the effect of its restrictive mandate.

### **Does Amnesty International work with interest groups?**

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

### **How else is Amnesty International's research used?**

Amnesty International constantly feeds its research to a wide variety of bodies. These include: the UN and other international and regional governmental organizations; international, national and local media and non-governmental organizations; academics; members of the legal profession; other 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 raise human rights issues in the UN.

### **How has Amnesty International campaigned on human rights violations in India?**

Over the years Amnesty International has produced dozens of reports on India, covering issues such as torture, including rape, deaths in custody, extrajudicial killings, the use of the death penalty and legislation that allows human rights violations, 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 groups to end the abuses. The Indian authorities allowed Amnesty International to visit the country for research purposes in 1994, but this was the first such visit it had permitted in 14 years. Official contact with India has been maintained in other ways, for example, Amnesty International representatives 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.

### **How do I find out more about Amnesty International?**

Contact Amnesty International's Indian Section, 13 Indra Prastha Building, E-109 Pandav Nagar, New Delhi-110092, India or write to the International Secretariat, 1 Easton Street, London WC1X 8DJ, UK.

## **Part II: Amnesty International's concerns in India**

### **Introduction**

The victims of human rights violations are not just statistics; they are people with names, families, friends and aspirations, whose lives are irrevocably affected when state officials or opposition groups abuse their rights. Amnesty International tells their stories and condemns those who have abused them -- often men in uniform who have been entrusted to protect the very rights they violate -- and urges that they be brought to justice and that steps be taken to end the violations.

The human rights situation in India is full of contradictions. From the discussions of rights that underpinned the Constitution, to the recent establishment of the National Human Rights Commission (NHRC), Indian leaders have acknowledged the need for enforceable rights and monitoring of their implementation. The government and courts have indicated their support for attempts to establish legal aid schemes and judicial initiatives such as public interest litigation, which intend to ensure that access to justice is more freely available. Similarly, by defining categories of people in need of special protection, the particular vulnerabilities of groups with little political, social or economic power have been recognized.

However, the rights of all Indian citizens are inherently limited. The “Fundamental Rights” in Part III of the Constitution of India, 1950 are subject to conditions which have enabled successive governments to enact laws that violate India's obligations as a signatory to the International Covenant on Civil and Political Rights (ICCPR), for example in the acceptance of preventive detention implicit in Article 22 of the Constitution. Nonetheless, the right to approach the courts for the enforcement of rights provides remedies, including that of *habeas corpus*, when rights are violated. Despite the existence of remedies in the Constitution and in law, poor implementation of laws and court orders provide the context in which violations of human rights continue.

It is not just the legal framework that supports the continuing violence and denial of basic rights that are endemic throughout India. Local, regional and national power structures perpetuate corrupt practices and provide virtual impunity for those who violate human rights. Most often it is those with little power, disadvantaged by poverty or status, who suffer the consequences of the widespread abuse of power. In 1992, whilst documenting the incidence of torture, rape and deaths in custody in India, Amnesty International observed that half of India's population

were poor and illiterate, and a quarter of them were officially recognized as being in need of special protection:

*"People from this most vulnerable section of the population form the majority of torture victims: members of the scheduled castes and scheduled tribes, tribal women in the northeast, migrant workers, landless labourers...."*

Other types of victims were observed, such as:

*"people arrested for their political convictions or people arrested in connection with the situations of armed conflict that prevail in the northeast, Jammu and Kashmir, and Punjab."*

All the factors contributing to the widespread violation of human rights in India are linked. Provisions in the legislative framework that do not conform to international standards permit human rights violations by the forces of law and order to go unpunished. Protective measures, where they exist, are unevenly implemented, compounding the violations of the rights of individuals, many of whose rights are breached simply because of the ethnic, religious or social group to which they belong. The vulnerabilities of specific communities are clear in the large scale human rights violations and abuses seen in situations of internal armed conflict, such as in Jammu & Kashmir, where there is an armed opposition and where the security forces are extensively deployed. It is also clear in the pervasive endemic violence throughout the country, for example the continuing incidence of custodial deaths as documented extensively by Amnesty International in recent years, as well as by the NHRC.

This report summarizes the patterns of violations of rights in India that fall within Amnesty International's mandate, before examining some of the shortcomings of the legal and judicial system facilitating the continuing violations. The perpetrators and victims are then discussed.

## **Patterns of violations**

Amnesty International has several long-standing concerns about violations in India. These include torture and ill-treatment of detainees and prisoners, and unfair trials for political prisoners.

Over the years, the patterns of violations have changed. Increasingly, the forces of law and order have used extrajudicial methods to exercise control, particularly in regions experiencing internal armed conflict. Many people have "disappeared" after apparently being taken into



custody by agents of the state. Legal safeguards for the protection of detainees are thus ignored with impunity. Records of detention are not adequately maintained, the lawful role of the judiciary in the detention process is ignored and there is little access to judicial remedies for the relatives of the “disappeared”.

Extrajudicial executions, carried out by state agents or with their acquiescence, are common, particularly in situations of armed conflict. While the government dismisses the majority of these as deaths during “encounters” with armed opposition groups, full and impartial investigations into the circumstances of these deaths are rare, and there is little effort to substantiate claims that an “encounter” has taken place.

Whatever imperatives the Indian state has to maintain internal peace and security, the violation of rights protected by the Constitution of India as well as by international human rights standards is avoidable. Yet in recent years Amnesty International has reported the following patterns of human rights violations:

- C Preventive detention provisions have meant that thousands of political prisoners have been held without charge or trial. An NHRC report to the government stated that 3,007 people were in detention in Jammu & Kashmir in 1994, while local civil liberties groups estimated the number of detainees was 20,000. Fair and prompt trials are compromised by routine delays in the legal system throughout the country. Thousands of people remain detained under the provisions of the now lapsed Terrorist and Disruptive Activities (Prevention) Act.
- C Torture of detainees in police and military custody remains endemic, often in an effort to extract confessions or information. The most common method of torture is beating with *lathis* (canes). Other methods include suspension by the wrists and ankles and electric shocks. Reports of rape indicate that it is used as a method of torture by state agents as well as armed opposition groups. In 1995 at least 100 people died in the custody of the police or security forces throughout India, as a result of torture and medical neglect. The NHRC itself documented 130 deaths in custody in a 10-month period in 1995. Those tortured were both criminal suspects and political detainees. Despite indicating that it intends to do so, India has not ratified the UN Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.
- C Within prisons and other places of detention, poor conditions and ill treatment is widespread and fails to meet the requirements of the of the UN Standard Minimum Rules for the Treatment of Prisoners.

- C Dozens of political detainees have "disappeared", most of whom were young men suspected of links with armed opposition groups. The lack of adequate redress runs counter to the provisions of the UN Declaration on the Protection of All Persons from Enforced Disappearance.
- C The excessive use of force in counter-insurgency and law enforcement, led to the reported extrajudicial execution of hundreds of people by the security forces.
- C The death penalty is still applied. At least three people were judicially executed during 1995.

Amnesty International also recorded human rights abuses by armed opposition groups, which have continued to be common in the past year. Hostages were taken, many were tortured and killed, and civilians and members of the security forces were deliberately and arbitrarily killed. Such abuses are strictly prohibited by Indian law and by common Article 3 of the Geneva Convention, which prohibits "murder of all kinds" of protected persons in non-international armed conflicts.

## **Legislation that contravenes international human rights standards**

A complex web of legal norms governs all aspects of life in India, with differing bodies of civil and personal laws governing specified regions and communities. Many of Amnesty International's concerns relate to the body of criminal law as applied throughout the country. Some of these laws, like the Indian Penal Code and Indian Evidence Act, were enacted in the colonial period, while others such as the Code of Criminal Procedure were introduced or re-enacted after independence. Jurists in India have for many years maintained that certain laws need to be updated and amended. However, the lengthy process of introducing new legislation or amendments has not been extensively undertaken for the criminal law. An example is the Code of Criminal Procedure (Amendment) Bill which has been pending before the *Lok Sabha* (parliamentary 'House of the People') in its present form since 1994.

### **Arrest, Detention, Trial and the Legal Process**

Amnesty International is particularly concerned about existing measures for the protection of detainees and for ensuring that political prisoners are given a fair trial. Protection for detainees is extensively provided for in Indian law. For example:

- C Sections 46-58 of the Code of Criminal Procedure provide for arrest and detention procedures, including that the arrested person be informed of the grounds of the

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arrest, and that a medical examination, if requested by the police or the arrested person, can be held.

- C Sections 56 and 167 of the Code of Criminal Procedure state that a person arrested is not to be detained for more than 24 hours before being brought before a magistrate, who can then order detention in police custody for a further 15 days, and thereafter in judicial custody for up to 60 or 90 days (depending on the seriousness of the alleged offence).

However, Amnesty International is concerned that these measures do not provide adequate safeguard against human rights violations. For example, police do not have to inform relatives promptly of an arrest. The absence of this simple procedure facilitates “disappearances”. Similarly, the absence of mandatory procedures to ensure that all detainees are given a prompt medical examination following arrest facilitates deaths in custody. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment sets out comprehensive guidelines for arrest and detention, but many of these guidelines are not followed either in law or in practice in India.

Amnesty International welcomes the intention behind the proposed amendments to the criminal law which seek to strengthen the provisions for the protection of detainees, but notes that many of these amendments were first introduced in the *Lok Sabha* in 1988 and are yet to be legislated. For example, included in the Code of Criminal Procedure (Amendment) Bill, 1994, are:

- C an amendment to Section 176 of the Code of Criminal Procedure to provide for judicial inquiries into every case of death in custody, “disappearance” and rape;
- C an amendment that would empower the detainee to inform a nominated person of their arrest (see above);
- C an amendment prohibiting the arrest of a woman “after sunset and before sunrise” except in “exceptional circumstances”, a qualification which Amnesty International fears would leave the provision open to misuse.

Moreover, the legal safeguards that do exist are not implemented by the police and the security forces. Arrest and interrogation procedures are routinely flouted. Detainees are not always brought before a judicial magistrate within 24 hours of arrest. Inquests into deaths in custody are not always held. These problems are compounded by lengthy delays and flaws in the legal process (see below).

### **Impunity**

Sanctions against public officials for human rights violations exist in the general criminal law. These include:

- C Article 21 of the Constitution of India protects the right to life, and Articles 32 and 226 of the Constitution provide for the enforcement of all fundamental rights;
- C Sections 330 and 331 of the Indian Penal Code forbid torture;
- C Section 376 of the Indian Penal Code provides for the punishment of a police officer who commits rape;
- C Section 176 of the Code of Criminal Procedure states that a magisterial inquiry must be held when there is a death in police custody;
- C A civil suit for damages can be brought under Section 79 of the Civil Procedure Code;
- C A criminal prosecution can be brought against a public servant under Section 197 of the Code of Criminal Procedure. This provision cannot be used against a member of the armed forces. Amnesty International is concerned to note that the Code of Criminal Procedure (Amendment) Bill, 1994 seeks to extend this impunity to other public servants acting for the maintenance of public order.

Amnesty International has also welcomed the provision included in the Criminal Law Amendment Bill 1995 which states, in Section 24(2), that any police officer who "corruptly or maliciously proceeds or threatens to proceed against any person for an offence" under the proposed bill would be prosecuted.

Amnesty International is concerned about the effect upon human rights of the large body of law enacted to administer regions of the country where political violence is widespread. Impunity for the armed forces in general criminal law is extended by **special legislation**, and can be further extended when a state emergency is declared by the President in any part or the whole of India. Similarly, regions of the country continue to be placed under President's rule where the powers extended increase the ability of police and security forces to act with impunity.

An example of special legislation is the Armed Forces (Special Powers) Act, which is enforced in Jammu & Kashmir, parts of the northeast, and Punjab & Chandigarh. It has been criticized by the UN Human Rights Committee for providing the security forces with broadly defined powers to shoot to kill, with virtual impunity from prosecution. Amnesty International's concerns include that:

- C the power to shoot to kill violates Article 6 of the ICCPR which guarantees the right to life, and Article 3 of the UN Code of Conduct for Law Enforcement Officials. As Article 6 of the ICCPR is a non-derogable article, the right to life must be respected at all times and in all circumstances. This special legislation is therefore of particular concern as it indicates that India has not fully taken on its obligations under international human rights law.
- C that Section 6 of the special legislation protects people operating under the Act from prosecution, giving the impression that the security forces can act with impunity, and facilitating torture, extrajudicial executions and “disappearances”.

Other special legislation confers similar impunity on the armed forces, including the Jammu and Kashmir Public Safety Act (see below) and the Assam Disturbed Areas Act. Impunity is further ensured as the NHRC cannot examine reports of violations by members of the armed forces.

### **Preventive detention**

Special legislation, as outlined above, provides for preventive detention, thereby separating the detainees from the normal judicial process and the safeguards attached to it (see below).

In the past Amnesty International has expressed concern about the use of the Maintenance of Internal Security Act, which is no longer in force, and the numerous arrests made under it during the emergency rule of 1975 to 1977. Similarly, the extensive public criticism and government review of the use of the Terrorist and Disruptive Activities (Prevention) Act (TADA), the legislation most widely used for preventive detention, led to its lapse in May 1995. However, Amnesty International is concerned about reports of the continuing application of TADA for offences committed before its lapse as well as the continued detention of hundreds of people under its provisions who have not yet been brought to trial and who Amnesty International believes will not receive a fair trial.

The Jammu & Kashmir Public Safety Act is extensively used for preventive detention. Other legislation including the National Security Act and the Prevention of Blackmarketeering and Maintenance of Supplies of Essential Commodities Act, continue to provide for prolonged periods of detention without trial. The proposed extension of provisions similar to those which existed in TADA into the general criminal law, through the Criminal Law (Amendment) Bill, 1995, is of particular concern. It would mean that the provisions of this special legislation, previously limited in its application to specific regions and activities, would be extended to the whole of India. Amnesty International routinely monitors proposed legislation, for example, the organization is concerned to note the provisions in the Conservation of Forests and Natural Eco-Systems Bill which would provide forest officials with powers to arrest on the suspicion that a forest is being encroached upon, and could lead to arbitrary arrests and detentions.

## The death penalty

Amnesty International opposes the death penalty in all circumstances because it violates the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. These rights are spelled out in the ICCPR as well as in the Constitution of India. Imposition of the death penalty also carries a risk of killing an innocent person and has no unique deterrent effect.

Despite India's ratification of the ICCPR which states, in Article 6(5), that the death penalty shall not be imposed for crimes committed by persons below the age of 18, the Juvenile Justice Act, which provides a uniform legal framework for the treatment of children, defines a juvenile as "a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years". This means that the availability of the death penalty in the general criminal law is applicable to any male aged 16 or over, in contravention of the ICCPR and the Convention on the Rights of the Child, ratified by India in 1992.

The circumstances in which the death penalty is used have been narrowed by Indian courts; the penalty is now applied only in the "rarest of rare" cases. Nonetheless, in a detailed examination of the death penalty in 1989, Amnesty International noted that those who are judicially executed tend to come from disadvantaged and vulnerable sectors of society. Moreover, the number of offences carrying the death penalty has increased. Offences carrying the death penalty are found in numerous laws, including:

- C the Indian Penal Code; the Code of Criminal Procedure; the Army Act; the Air Force Act; the Navy Act; the Commission of Sati (Prevention) Act; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act; the Narcotics, Drugs and Psychotropic Substances Act; the Arms Act; the Explosives Act; the Inflammable Substances Act

## A legal process that facilitates violations

The lengthy delays in the conclusion of legal proceedings and the inherent problems in using the law for those suffering political, social and economic disadvantage in themselves facilitate violations. The implementation of those laws which do conform to international standards for the protection of human rights is compromised by a legal system that is unable to cope with its docket, and does not provide easy access to justice. The problems include: proceedings in the Supreme Court are only conducted in the English language, which effectively excludes the

majority of the population from seeking judicial redress in this forum; the ineffectiveness of the judicial system in many areas; the high costs involved; the difficulties inherent in accessing judicial fora discourage the registration of cases, for example, when a relative has “disappeared”.

Amnesty International welcomes the intention behind the Legal Services Authorities Act, which aims at the provision of legal aid to those unable to afford legal redress. However, as with other legislation, Amnesty International is concerned that it is not comprehensively applied throughout the country and therefore does not provide universal right to call upon a lawyer of one's choice, as called for in the UN Basic Principles on the Role of Lawyers. Similarly, public interest litigation, a legal mechanism that emerged in response to the need for greater access to justice, is also subject to the delays of the whole legal system, and to the poor implementation of the orders that are given.

International standards place the onus on the state to ensure that the legal system provides adequate mechanisms to provide redress and full, fair and impartial investigations, in cases of human rights violations. Amnesty International has raised its concerns with the Indian authorities about the failure of the legal system to ensure that all violations are redressed, that existing safeguards are implemented, and that full investigations are carried out.

## **The perpetrators of human rights violations and abuses**

While recognising that human rights can be violated by any person, whatever their status, Amnesty International's concerns for the protection and promotion of human rights within its mandate, lead to specific concerns relating to the conduct of the forces of law and order, and of armed opposition groups.

Although many legal sanctions do exist, in practice state agents are able to act with little fear of being held accountable. However, initiatives, for example by the NHRC, to introduce training in human rights, have acknowledged the need for greater sensitivity to human rights issues throughout the forces of law and order. Similarly, whilst there have been few instances of criminal action taken against state agents, awards for compensation have been made by the courts to the families of some victims, acknowledging the lasting effect of the violation of human rights.

### **The police**

There is wide scope for the abuse of power within the confines of police stations in India. As acknowledged by successive National Police Commissions within India resort to torture and

other forms of cruel, inhuman and degrading treatment is encouraged by many factors. These include: the lack of investigatory machinery available to police; pressure on police to mete out instant punishment because of the inability of the criminal justice system to deliver justice promptly and effectively; corruption; poor wages. The sense of impunity generated by the infrequency with which police officials have been held publicly accountable for their actions, the rare convictions of those responsible for rape or deaths in custody, and the length of legal proceedings, further encourages the perception that resort to torture is acceptable.

Police are given wide powers under a variety of legislation which allows them to arrest, detain and investigate. Detainees can be kept in police custody for long periods, particularly under legislation permitting preventive detention, during which they are at risk of torture and ill-treatment. In violation of Indian law and police procedure, the practice of unrecorded police detentions is common and there is little doubt that it facilitates police abuse such as beatings and other forms of ill-treatment or torture, such as rape. Moreover, lawyers and relatives are routinely denied access by police to people held in custody. Most torture and ill-treatment in India occurs during the first stage of detention in police custody, when access to outsiders is routinely denied. Indian law is virtually silent on the procedures for questioning suspects in police custody, and no provisions exist detailing safeguards in the Code of Criminal Procedure.

The methods used by the police during law enforcement are also of concern. Amnesty International has documented discriminatory practices in policing that mitigate against the rights of specific communities, and is investigating reports that the police use violent methods during routine procedures, for example in evictions from illegal settlements, or when land is acquired by the government. In addition, Amnesty International has documented cases where the police have acted in collusion with other power brokers in civil society, facilitating the torture and ill-treatment of people. Amnesty International has documented the illegal actions of police officers outside their home state, and is investigating reports which suggest that the police act in collusion with other members of civil society, to violate the rights of Indian citizens.

The police are rarely required to give a public account of their actions. No independent groups or agencies have the authority to visit police stations or inspect police records, and it appears that the judiciary seldom undertake this function. There is no independent police complaints mechanism to encourage transparency and accountability in day-to-day policing. Although the NHRC has investigated complaints against the police, it cannot enforce its findings.

### **The army**

As with the police, the general acceptance of violence mitigates against active recognition of human rights by the members of the armed forces, although recent initiatives to introduce human rights training could nurture a concern for human rights. Some violations occur when the army is deployed in civilian areas, particularly at times of civil disturbances. However, it is when



it is called upon to deal with situations of internal armed conflict that most of the violations take place. The existence of special legislation granting the army wide powers (see above) leaves civilians including political activists and members of armed opposition groups, particularly vulnerable to violations. These include arbitrary arrest and detention, incommunicado detention in unofficial interrogation centres, torture and ill-treatment, “disappearance” and killings in “encounters”.

While the NHRC has been vocal in its criticism of many police procedures and practices, the army and paramilitary forces do not come under its remit. There is therefore very little scope for the independent investigation of army practices, procedures or violations, nor for bringing those responsible for violations to justice. Again, the lack of transparency in the internal disciplinary proceedings and court martials prevents army officials from being held publicly accountable for their actions.

### **Paramilitary groups**

There are several paramilitary forces in India, including the Central Reserve Police Force (CRPF), the Border Security Force (BSF), the Rashtriya Rifles and the Provincial Armed Constabulary (PAC), and these operate with even fewer safeguards than the armed forces. Amnesty International has documented a number of occasions when members of these forces have resorted to excessive use of force and committed gross violations of human rights. As with the armed forces, the NHRC is not empowered to examine reports of violations by paramilitary forces, and, again, with notable exceptions, few of the forces have ever been held publicly accountable for their actions.

### **Prison administration**

Amnesty International has been concerned at the conditions in prisons throughout India for many years and first documented these in a report published in 1974. The Prison Act of 1894, which has been regularly criticized, remains in force. Repeated calls, most recently by the NHRC, for the standardization of prison manuals, which set out guidelines on the management of prisons, have not yet been heeded. Despite the concern expressed about the prison system by the judiciary in India, Amnesty International continues to receive many reports of conditions in prisons which contravene the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

Although prison officials can be identified as the perpetrators of human rights violations, many of the problems in prisons emanate from the slow legal proceedings which mean that detainees await trial for many years, and from the inadequate facilities provided to house detainees. Whatever the cause, the effect is undisputed. In November 1995 the NHRC expressed concern

at the “dismal” conditions in many prisons all over the country, including the inadequate diet, lack of sanitation and poor medical facilities, and called for urgent action to improve them. The Commission described an almost 300 % increase in the number of reported deaths in judicial custody in 1995, caused by poor nutrition, lack of medical care, overcrowding and in some cases, torture.

Overcrowding in prisons is endemic throughout the country. For example, Tihar Jail in Delhi, built for 2,500 detainees, now houses 9,000 inmates, 8,000 of whom were reported to be awaiting trial. As a direct result of overcrowding, many detainees in Jammu & Kashmir are sent to jails outside their home state, and procedures for informing relatives of such moves are often disregarded. Some states, including Arunachal Pradesh, do not have a state prison, so detainees are sent to other state prisons to await trial or serve their sentence, in this case to Assam. This distancing of detainees from their family and legal counsel contravenes principles set out by the UN.

In addition to lawful prisons and detention centres, unofficial interrogation and detention centres have been established by the police and security forces. These are not subject to any legal regulation and therefore provide those in positions of control with impunity to violate the human rights of those detained.

### **Armed opposition groups**

The term “armed opposition group” is used by Amnesty International to refer to entities which have some of the features of governments, in that they exercise exclusive and effective authority over the population in territories which they control or over which they have a strong influence. Noting the increase in the incidence of human rights abuses by such groups which contravene minimum standards of humane behaviour, as expressed in a number of international instruments, Amnesty International, in 1991, began to campaign against torture, the killing of prisoners, other deliberate and arbitrary killings and the taking of hostages by these groups.

Amnesty International is aware of reports throughout India of abuses by armed opposition groups, including by armed militias and private armies. It has condemned the deliberate killing of thousands of civilians in Punjab. In Jammu & Kashmir, armed separatist groups have captured and killed civilians, taken hostages, tortured and raped women in their custody. In Andhra Pradesh, groups have killed or mutilated alleged “informers”, and in the northeast of India, many armed opposition groups have committed abuses including torture and deliberate killings on the civilian population. Amnesty International has repeatedly called on such groups to observe basic humanitarian law and to immediately halt such abuses.

## **The victims of human rights violations and abuses**

The victims of human rights violations in India come from every community and every region. The complexity of Indian society and its inclusion of many different ethnic, cultural, religious, social and political groupings, mean that trends can only be used as a general indication of patterns that have emerged. From its work over the past few decades, Amnesty International has been able to identify those most vulnerable: political and social activists, scheduled castes, scheduled tribes and other disadvantaged communities, minorities, women, children and refugees. State agents have also been the victims of human rights abuses; they have been captured, tortured and killed by armed opposition groups acting in situations of internal armed conflict. Similarly, civilians, in the context of sporadic disturbances, and, in particular, in regions where there is on-going conflict, have become victims of abuse, regardless of their group or personal identities.

### **Political and Social Activists**

Political and social activists are targeted for human rights violations across the country. The victims represent a wide spectrum of political views and a diversity of interests and opinions. Over the years, Amnesty International has documented violations against non-violent activists, such as J P Narayan, other political leaders, such as L K Advani, and social activists, such as Mrinal Gore. All three were arrested during emergency rule between 1975 and 1977 and were amongst the dozens adopted by Amnesty International as prisoners of conscience.

Many others working in a non-violent manner have had their rights violated, particularly in the context of internal armed conflict. They include journalists and human rights activists, abused by the security forces as well as armed opposition groups. Among other targeted groups are "Naxalites" active in different parts of the country and armed opposition groups active in Jammu & Kashmir, Punjab and the northeast areas.

Amnesty International has also highlighted violations of the rights of activists working with specific communities, or in the context of land, labour and property struggles. From the large metropolitan centres located throughout the country, to the vast rural areas, land is at the centre of many of the tensions within India that lead to pervasive violations of human rights. Similarly, Amnesty International is investigating reports that evictions from squatter or slum settlements are often conducted in a violent manner, with the collusion or complicity of the police. Violations in the context of environmental activism, much of which is concerned with the displacement of people from their land and the destruction of the natural habitat, also take place. For example, in 1992 Amnesty International expressed concern at the shooting of a woman who was protesting at her eviction from land that was to be used for resettlement as a result of the Sardar Sarovar dam project.

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**Scheduled castes, scheduled tribes and other disadvantaged communities**

Many of the dalit and adivasi communities, designated as “scheduled castes” and “scheduled tribes” by the Constitution, together with other socially and economically disadvantaged communities, some of which are designated as “other backward classes” by the Constitution, are especially vulnerable to the types of human rights violations prevalent throughout India. In some instances, the desire for autonomy expressed by indigenous communities, for example in northeast India, has resulted in acute tensions resulting in violations by the armed forces and abuses by armed opposition groups.

Amnesty International is also investigating reports that the speedy and just resolution of unresolved land conflicts, including those subject to litigation, could reduce the instances of abuses against indigenous people, often perpetrated by or with the acquiescence of state agents. Moreover, Amnesty International is concerned that the perception amongst disadvantaged communities, that a high level of violations is normal reinforces the vulnerability of these people within the criminal justice system.

**Minority groups**

The “minority” status of a group of people can be difficult to define because ethnic, religious and cultural differences suffuse the country. Some communities are national minorities, such as Muslims, Sikhs and Christians. But at a local and regional level, even the majority can be in a minority situation. Similarly, local power structures can mean that a community that is disadvantaged in one region may not be so in another.

Politics in India are increasingly being defined on communal grounds. The resultant inter-communal tension puts an onus on the state to provide communities under threat with protection, and to ensure the peaceful co-existence of people with ethnic, religious or cultural differences. However, it is in situations where state interference has been called for that some of the worst violations have occurred. In the past Amnesty International has responded to reports of communal bias in policing in Bombay and in the activity of the armed forces in Jammu & Kashmir. Also reported has been the excessive use of force directed against Muslim communities, for example by the Provincial Armed Constabulary in Uttar Pradesh.

**Women**

The rights of women cannot be separated from the rights of all Indian citizens, and therefore relate to all the issues discussed in this document. As an individual, as a participant in civil society as, for example, a contract worker or a lawyer, or as a mother, daughter or wife, every human rights violation impacts on women. Recognizing this, Amnesty International’s 1995 global campaign, Human Rights are Women’s Right, highlighted the cases of individuals and groups

of women who have often been the “invisible” victims of human rights violations. The Government of India has also recognised the particular vulnerabilities of women by its ratification of the UN Convention on the Elimination of Discrimination Against Women, in 1993, and earlier, of the UN Convention on the Political Rights of Women, in 1961, and by passing numerous laws and amendments to legislation that seek to address specific violations of the rights of women.

Amnesty International has documented the violations of women’s rights in the context of internal armed conflict, for example, rape and torture by the armed forces and in the custody of the police. In addition, Amnesty International is investigating cases of police inaction, where the non-registration of cases and the poor implementation of evidentiary systems and protective mechanisms amounts to the violation of women’s rights. However, concern remains that the few convictions of police officers for crimes against women, the delay in introducing legal safeguards to protect women detainees, and the problems of the legal process exacerbate the specific vulnerabilities of women.

### **Children**

As an especially vulnerable group, children tend to have less defence against human rights violations than adults, and are unable directly to access the legal system to seek remedy for violations. Amnesty International has reported many violations of the rights of children, or of close relatives, in India, despite the government having acceded to the UN Convention on the Rights of the Child in 1992.

Children, defined by the Convention as anyone below the age of 18 years, have been imprisoned and detained, have been tortured and have died in custody. They have been extrajudicially killed, and as already noted, boys between the ages of 16 and 18 can be judicially executed because of the definition of a child in the Juvenile Justice Act. In situations of internal armed conflict, children have been directly targeted and have been effected by the violations against members of their families. Delays in the legal process exacerbate the violations against children, many of whom remain in custody for long periods awaiting the pendency of trials. Amnesty International has also documented instances of rape of girls by members of the police, the armed forces and armed opposition groups.

### **Refugees**

Amnesty International opposes any person being forcibly returned to a country where there is a risk of imprisonment as a prisoner of conscience, of torture, “disappearance”, or execution. India has not ratified the 1951 Geneva Convention relating to the Status of Refugees, which protects refugees against forcible return (*refoulement*) to the country from which they fled

persecution. Nonetheless, India is bound by the principle of *non-refoulement*, which is a norm of customary international law.

Additionally, Amnesty International notes the internal movement of people within India as a result of human rights violations in particular regions. For example, large numbers of residents of Kashmir, from Hindu communities, have been compelled to leave their homes to avoid being targeted by armed opposition groups. Amnesty International has also expressed its concern for the safety of members of the Chakma and Hajong communities in Arunachal Pradesh, who had been displaced from Bangladesh.

### **Other victims of human rights violations**

Section 377 of the Code of Criminal Procedure effectively bans acts of adult consensual homosexual activity and allows for the imprisonment of people on the basis of their sexual orientation. Amnesty International would consider anyone imprisoned for such reasons to be a prisoner of conscience.

## **Glossary of Amnesty International documents**

*Much of the information and documentation contained in this report can be found in Amnesty International documents. All are available from the International Secretariat in London (see page 5).*

### **General documents**

*Amnesty International Reports*, an annual summary of Amnesty International's concerns around the world

*Human Rights are Women's Right*, March 1995 (AI Index: ACT 77/01/95)

*"Disappearances" and Political Killings: Human rights crisis of the 1990s. A manual for Action*, February 1994 (AI Index: ACT 33/01/94)

### **India specific documents**

*Determining the fate of the "disappeared" in Punjab*, October 1995 (AI Index: ASA 20/28/95)

*Deaths in custody in 1994*, August 1995 (AI Index: ASA 20/18/95)

*Open letter to members of parliament: The Criminal Law Amendment Bill 1995*, August 1995 (AI Index: ASA 20/20/95)

*Punjab police: Beyond the bounds of the law*, May 1995 (AI Index: ASA 20/08/95)

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

*Torture and deaths in custody in Jammu and Kashmir*, January 1995 (AI Index: ASA 20/01/95)

*Summary of human rights concerns in Jammu and Kashmir*, January 1995 (AI Index: ASA 20/02/95)

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

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

*Reports of rape in 1993, March 1994 (AI Index: ASA 20/09/94)*

*Archana Guha - 16 years awaiting justice: the lack of speedy and effective redress mechanisms for torture victims, March 1994 (AI Index: ASA 20/08/94)*

*'An Unnatural Fate', 'disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab, December 1993 (AI Index: ASA 20/42/93)*

*The Human Rights Commission Bill: Amnesty International's observations, August 1993 (AI Index: ASA 20/33/93)*

*Sopore: a case study of extrajudicial executions in Jammu and Kashmir, April 1993 (AI Index: ASA 20/17/93)*

*Examination of the second periodic report by the human rights committee, March 1993 (AI Index: ASA 20/05/93)*

*Torture, rape and deaths in custody, March 1992 (AI index: ASA 20/06/92)*

*Allegations of extrajudicial killings by the provincial armed constabulary in Aligarh, Kanpur and Bijnore, Uttar Pradesh, in November and December 1990, February 1991 (AI Index: ASA 20/02/91)*

*'Operation Bluebird' A case study of torture and extrajudicial executions in Manipur, October 1990 (AI Index: ASA 20/17/90)*

*Torture of members of tribal community in Maharashtra, one of whom died in police custody, November 1989 (AI Index: ASA 20/15/89)*

*The death penalty, October 1989 (AI Index: ASA 20/13/89)*

*Reports of human rights violations in Bihar, November 1988 (AI Index: ASA 20/12/85)*

*Police brutality, deaths in police custody and preventive detention, October 1980 (AI Index: ASA 20/02/80)*

*Short report on detention conditions in West Bengal jails, September 1974*