

# INDIA

## @HUMAN RIGHTS VIOLATIONS IN PUNJAB: USE AND ABUSE OF THE LAW

### I) INTRODUCTION

Thousands of people have been arrested by police and security forces in Punjab since 1983, when armed Sikh opposition groups emerged demanding an independent Sikh state ("Khalistan") in Punjab. Prisoners have been kept detained for months or years without trial under provisions of special legislation suspending normal legal safeguards. There are many reports of torture during interrogation. The arrest and detention of some detainees remains unacknowledged for weeks or months. Records of arrests of people held for interrogation have either not been kept by police or their existence has been denied when judicial officials or relatives asked for them. In some cases, the police reported that the people concerned had been killed in armed "encounters", even after they were seen by witnesses to be arrested. In other cases, the police finally acknowledged the arrests, but claimed that the detainees had "escaped". Scores of people have simply "disappeared", the security forces refusing to acknowledge that they had ever been arrested. It is feared that many of them may have been killed in custody.

These human rights violations have taken place in a context marked by large scale acts of violence committed by armed Sikh groups. These acts have reportedly included hundreds of killings of police and other officials, hostage-takings and assassinations of political leaders and members of the public.

There is a clear pattern to the arrests, detentions, torture and "disappearances" described in this report. Often, people have been arrested on mere suspicion that they are linked to armed Sikh opposition groups. Those tortured in police custody tend to be people suspected of having links with such groups, of having information about them or harbouring them. In some cases parents, brothers or sisters of suspects have been arbitrarily detained and tortured in order to extract information about their relatives' whereabouts or activities. Those tortured are young people and the elderly, and some are women: the torture testimonies of a 17-year-old girl and a 60-year-old man are included in this report.

#### *Sources of Information*

To date, Amnesty International has not been granted permission to visit Punjab to verify reports of human rights violations in the state or to discuss such reports with the relevant state officials, although foreign parliamentarians and an

ambassador were able to do so in 1990. The previous Congress (I) government of Prime Minister Rajiv Gandhi, in office from 1984 until late 1989, categorically denied Amnesty International access to Punjab. It also failed to respond to Amnesty International's numerous appeals for investigations into specific allegations of arbitrary arrests, torture and extrajudicial executions and of "disappearances" after arrest. Although Prime Minister Vishwanath Pratap Singh's National Front coalition government<sup>1</sup> announced in July 1990 that Amnesty International representatives could come to India for private visits or to meet the government, no dates were set for such meetings, nor was Amnesty International granted permission to visit Punjab before the government fell in November 1990. Amnesty International delegates attending the World Congress on Human Rights in New Delhi in December 1990 renewed the organization's request to visit Punjab, when they met the Cabinet Secretary and the Foreign Secretary. They were told, however, that access to the state depended on the security situation, that Amnesty International could not travel to Punjab on this occasion but that the possibility of a future visit was not ruled out. Amnesty International renewed its long-standing request to visit Punjab in a letter of 3 April 1991 to the government.

Amnesty International deeply regrets that it has not been able to travel to Punjab to research the many allegations of grave human rights violations in the state, and to obtain information about official steps to stop the abuses. But reports of human rights abuses in Punjab are so serious and have been so persistent that Amnesty International has decided to publish the best documented cases. The organization has already raised many of the cases described in this report with the Indian authorities. The Amnesty International delegation which met the Cabinet Secretary in New Delhi in December 1990 asked for information about specific cases of alleged human rights violations described in this report. Amnesty International repeated this request in a letter to the government in February 1991. As of 1 April no response had been received.

Being unable to verify the numerous allegations of human rights violations in Punjab for itself or to seek clarification from state officials about measures officials say have been taken to halt and prevent human rights abuses, Amnesty International has had to base this report on individual accounts of human rights violations reported in recent years. These accounts are contained in sworn affidavits made by the victims or their relatives, and in reports from civil liberties groups and the Indian news media, which Amnesty International has checked as thoroughly as possible. In several cases the organization has been able to obtain medical records consistent with the allegations of torture, but in only one case was independent medical examination possible, and then only after the victim had left the country. Amnesty International has also drawn on reports, when available, of official judicial inquiries into a few dozen specific cases of alleged human rights violations. Amnesty International does not have details of the outcome of many of these investigations, although the reports of

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<sup>1</sup> The V.P.Singh government fell on 7 November 1990 and was replaced by a minority Janata Dal (Socialist) government headed by Prime Minister Chandra Shekhar, ruling with support from the Congress (I) Party until Mr Chandra Shekhar's resignation on 6 March 1991.

at least six of them have confirmed that human rights violations had taken place.<sup>2</sup>

## **Background**

Sikhs form two percent of India's total population of 840 million. Most Sikhs live in Punjab, a prosperous agricultural state north-west of New Delhi. The original state was first split between India and Pakistan in 1947, and portions of the Indian state were transferred to the two adjacent Hindi-speaking states, Haryana and Himachal Pradesh. Among the 12 million inhabitants of Punjab the Sikhs form a majority of about 60%. They have traditionally maintained close family links with the minority Hindu population.

Since Sikh leaders listed their religious, political and economic demands in the 1973 Anandpur Sahib resolution, the movement for greater autonomy or an independent Sikh homeland - "Khalistan" (the land of the Pure) - gained ground. Originally encouraged by elements within the Congress (I) party, the fundamentalist Sikh leader Sant Jarnail Singh Bhindranwale became prominent in the Khalistan movement. He collected armed followers who resorted to violence and operated from the holiest Sikh shrine, the Golden Temple in Amritsar, from where the army removed them by force in June 1984. An estimated 1,000 people, most of them Sikhs, were killed during the military operation, a traumatic experience for the entire Sikh community. The suppression which followed further strengthened Sikh demands, especially after nearly 3,000 Sikh residents in and around New Delhi were killed in the days following the assassination of Prime Minister Indira Gandhi by Sikh bodyguards in October 1984. Resentment increased when the perpetrators of these revenge killings were not brought to justice.

Successive Indian governments have opposed the creation of an independent Sikh state and insisted that a solution to the Sikh demands must be found within the federalist framework of the Indian Constitution. Faced with mounting acts of political violence in Punjab the Congress (I) government passed in March 1988 the 59th Amendment to the Constitution, permitting the suspension of the right to life in Punjab if a state of emergency was declared.

One of the first acts of the National Front coalition government, after it assumed office in November 1989, was to repeal the 59th Amendment. The government also announced that action would be taken against those responsible for the killings of Sikhs in the aftermath of the assassination of Indira Gandhi. These moves were widely welcomed in Punjab. In January 1991 Prime Minister

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<sup>2</sup> - inquiry by Justice Tiwana in 1985 finding that detainees in Nabha Jail were tortured;  
- inquiry by Sub-Divisional magistrate L.D. Hans finding that the Central Reserve Police Force (CRPF) had beaten villagers living near Kathunanagal in August 1990;  
- inquiry by K.S. Janjua, Commissioner, Jalandhar, finding that police and the Border Security Forces (BSF) had beaten villagers in Sarchur in January 1989;  
- investigation ordered by Punjab and Haryana High Court on 6 March 1990 into "disappearance" of three men finding that Devinder Singh Pujari, Rajinder Singh Pappu and Jurbaj Singh Jago had been illegally detained;  
- investigation ordered by Punjab and Haryana High Court on 10 October 1990 into "disappearance" of seven men finding that five of them had been illegally detained, the remaining two - Jaswant Singh and Chanan Singh - continuing to be unaccounted for;  
- investigation conducted by Deputy Commissioner, Ludhiana, S.S. Brar finding that the death of Harpal Singh and Baljit Singh on 14 July 1990 was not due to an armed "encounter" as the police claimed.

Chandra Shekhar held talks with some Sikh leaders, but no agreement was reached on the demand for separate status.

Although the Indian Constitution normally limits to one year the period in which any Indian state can be ruled directly by the union government in New Delhi, Punjab has been under continuous direct rule since May 1987. Parliament extended the period of direct rule for the ninth time on 13 March 1991. The last elections to the Punjab state assembly took place in 1985.

### ***The Role of the Security Forces and the Judiciary***

Most arrests are made by police officers, often in plain clothes and using cars without number plates. Arrests and interrogations are also carried out by paramilitary forces stationed in Punjab: the Border Security Force (BSF), mainly operating in the districts bordering Pakistan, and the Central Reserve Police Force (CRPF). Since May 1990 all security forces in Punjab have operated jointly under the command of the state's Director-General of Police. Nearly 1,000 commandos belonging to the National Security Guard, an elite force mainly recruited from the army and police, locally known as the "Black Cats", have also been stationed in Punjab, especially in the three border areas: Amritsar, Gurdaspur and Ferozepur. According to Indian press reports of June 1990, the National Security Guard conduct massive search operations in these border areas to arrest "militants" and seize arms. Officials say they are "trained to kill".

Since 1986 the Indian press has persistently carried reports that the police have used under-cover groups consisting of criminal elements, former or serving policemen with criminal records, or former armed separatists won over during detention, in counter-insurgency operations. Sometimes nick-named "cats", these irregular forces have been charged with obtaining intelligence about armed Sikh groups and arresting and even killing suspected leaders of those identified on police lists. All reports indicate they have been licensed to act with impunity. In a September 1988 interview with the bi-monthly *India Today*, former Director-General of Police, J.F. Ribeiro, admitted the police used under cover agents. The *Hindustan Times*, 12 December 1990, reported that under cover agents continued to operate in the state and were using weapons provided by the police to kidnap local people and extort money from them. For example, Jaswinder Kala of Tande village in Batala, a former armed separatist who had joined the police, was said to have raised a private army of 11 men and was himself shot after killing or arresting more than 12 militant leaders named on a police list.

Press reports further suggest that police officers themselves sometimes act in the guise of members of armed Sikh groups to extort money from villagers: "...it is not unusual for the police to carry their regulation .303 rifles during the day and a Kalashnikov [the favoured weapon of the armed Sikh separatists] at night, as they too take to extortion. They then return in the morning and threaten the families for dealing with the terrorists. If the families cannot meet their demands for money, the police round up all the young men" (*Far Eastern Economic Review*, 3 January 1991).

Amnesty International believes that policies adopted and instructions given by security officials have contributed directly to the human rights violations described in this report. Further, the failure to demonstrate official determination to investigate or hold security personnel accountable for alleged human rights violations may have led to the perpetuation of these practices,

including extrajudicial execution, "disappearance", arbitrary detention and torture.

On 30 August 1989 the Director-General of Police, Punjab, issued an order to all district police superintendents in the state promising financial rewards for the "liquidation" of 53 men described as "terrorists". (The text of the order is reproduced in *Appendix A*). In April 1990 the new Attorney General told the Supreme Court that the order had lapsed. However, Amnesty International received reports that at least six of the men listed had been killed by the police or members of the security forces. It is widely believed that the order was a direct incitement to the police to extrajudicially execute those named on the list and to attribute the killings to "encounters" with the police. Although there are rarely survivors of or eye-witnesses to these "encounter" killings, officials in Punjab and elsewhere have acknowledged that such extrajudicial executions occur. The Governor of Punjab, for example, issued an appeal to police officers in June 1990 "to stop fake encounters". Moreover, if the "encounter killings" occurred during genuine armed clashes, claimed by the police, there would be a substantial if not equal number of victims on both sides. Research carried out by Amnesty International shows that this is not the case. Of the 173 armed clashes in Punjab reported in the Indian news media between men described as "terrorists" or "militants" and the police or security forces in the period January - 31 December 1990, some 346 Sikhs were killed as opposed to 25 members of the police or security forces (See Chapter V).

Recent reports indicate the police continue to carry out extrajudicial executions under the guise of "encounter killings". For example, according to *The Statesman*, New Delhi, of 29 June 1990, two members of the All India Sikh Students Federation, Harpal Singh aged 24, and Baljit Singh, aged 20, were killed in what police said was an armed encounter in Kotla Ajner village. According to *The Statesman*, "The circumstantial evidence in the case collected by this correspondent after visiting the site and speaking to a number of villagers....clearly shows that it was a case of fake police encounter....According to the villagers, the victims were tortured by the police for a couple of hours and later killed". Attracting considerable publicity, this incident was one of the few into which the state government ordered an investigation. The investigating magistrate reportedly concluded: "the death of the two was not in the ordinary course of an encounter" (for further details, see Chapter V). Suspected members of armed Sikh groups who "disappear" from custody are often said by the police to have "escaped" and relatives have been threatened by the police for trying to find out what happened to them.

Bikram Singh, aged 33, was last seen in custody in May 1989. According to his father, Jaswant Singh, he was arrested on 2 May from his family home in Khudda village, Hoshiarpur district, by police officers from the Tanda and the Dasuya police stations.<sup>3</sup> The only reason given for his son's arrest was that he was being taken away for investigation, and would be returned soon. A week later, Jaswant Singh saw his son in Dasuya police station. He later described his son's condition in a letter to the Prime Minister of India:

"Bikram Singh wept and refused to tell anything. We felt that his health was gone to worst due to the ill-treatment of police officers. He was unable to walk even".

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<sup>3</sup> Policemen from both these police stations have also been implicated by relatives in the "disappearance" of S. Kuljit Singh Dhatt, described in this report.

Jaswant Singh visited his son on the following four days. On 14 May he was told that his son was no longer in the police station. When he requested information about his son, Jaswant Singh said, he was threatened by the police. Later he was told by the police that his son had "escaped" from custody. Bikram Singh's whereabouts remain unknown.

Independent institutions in India have sometimes exercised their powers to protect fundamental rights by investigating human rights abuses and taking effective steps to halt or prevent them. Details are given in this report of several cases in which the courts have ordered an official search for individuals who had "disappeared". Thanks to immediate judicial intervention, the victims were found alive in unacknowledged detention within days of the court order.

However, in many other cases the courts have simply declined to respond to *habeas corpus* petitions. In one case described in this report the High Court of Punjab dismissed a *habeas corpus* petition on technical grounds because it had been brought by a local human rights group unable to show a family relationship to the detainee and because the group had failed to specify an individual detaining the man. This is one of many instances known to Amnesty International in which legal remedies have failed to protect effectively the victims of grave human rights violations in Punjab: it demonstrates the need to establish an effective local complaints machinery to which victims, their legal representatives and relatives can have easy access.

Moreover, the police have repeatedly frustrated attempts to bring those accused of human rights violations to justice. Investigations into the conduct of police officers accused of torturing detainees have been extremely rare and even when they have established responsibility prosecutions are not known to have occurred, even several years after orders for criminal action were issued. For example, on 26 April 1988 the Supreme Court ordered officers of the Punjab Government to lay evidence against 21 police officers identified as having tortured detainees at Ladha Kothi jail in 1984 and 1985. But the Secretary to the Punjab Government charged with carrying out the order told the Supreme Court he was unable to do so "in a case with political overtones". As a consequence, none of the 21 police officers have been brought to justice, more than six years after the event (see Chapter III).

At most police officers allegedly responsible for human rights violations have been suspended or dismissed from service. In early 1990, the Director-General of the Punjab police told a visiting delegation of members of the European Parliament that in the first two months of 1990 seven police officers had been suspended and one dismissed for "crimes against the populous"(sic).

No further details were given about the action taken. In November the Indian news media reported that the Director-General had opposed the registration of criminal cases against the police accused of illegally killing Harpal Singh and Baljit Singh at Kotla Ajner village. According to these reports Punjab's Home Secretary, Ajit Singh Chatha, and the Governor's Adviser, P.S. Kohli, had recommended that the guilty policemen be punished in this and other cases in which there were credible allegations of police involvement in excesses. The Home Secretary was reported as saying such action was necessary if the credibility of the Punjab police was not to be eroded further. However the Director-General of Police opposed legal action on the grounds that such prosecutions would demoralize the police force. Indeed, to Amnesty International's knowledge, no police officers to date have been convicted for committing human rights violations in Punjab.

## *Violence by armed Sikh groups*

The human rights violations reported from Punjab have taken place in the context of police attempts to counter widespread and often indiscriminate violence to which armed Sikh groups have increasingly resorted in their campaign to establish a separate Sikh state. In recent years, members of these armed secessionist groups have killed hundreds of policemen, officials and politicians, members of rival Sikh groups as well as numerous Hindu and Sikh civilians, sometimes after keeping them hostage. Moreover, they have killed journalists and editors for what they had written or because they refused to write in the manner or language dictated by Sikh groups. They have also shot several members of the judiciary: two were killed in December 1990 alone. The Khalistan Commando Force, one armed Sikh group, claimed on 24 December 1990 that they had killed a judicial magistrate "for opposing them". They have threatened witnesses and potential witnesses to serious crimes committed for political purposes in apparent attempts to intimidate them and frustrate the judicial process.

According to official statistics issued in July 1990, armed groups operating in Punjab had killed 4,000 people, including 500 police officers, since 11 May 1987, the date when direct rule was imposed in the state. According to these sources, 1,860 armed Sikhs had been killed in that period, although unofficial sources put the total number of Sikhs killed during that time by the security forces in real or alleged "encounters" with the police at several thousand.

The number of political killings of all kinds escalated in the summer of 1990: more than 200 civilians were reportedly killed by armed Sikh groups in July alone, while 150 members of the latter were reportedly killed in the same month by the security forces or by rival armed Sikh groups. Some international media estimated that there were 600 politically-motivated killings in Punjab during September 1990 alone. During 1990 at least 3,800 people were officially reported killed by government forces and armed separatists, as compared to 1,800 during the previous year. The sharp rise in politically-motivated killings is attributed to a number of factors: the use of more sophisticated weapons by armed Sikh groups, a rise in inter-group killings and in killings by criminal elements, in the guise of armed separatists, during attempts to extort money from villagers (acts also committed by armed Sikh groups and by police officers themselves), and a renewed police offensive.

Many armed groups operate in Punjab and some have split into factions. The major groups are the following. The Panthic Committee, consisting of five members and headed by Dr. Sohan Singh, coordinates the activities of five organisations: the Babbar Khal sa (led by Sukhdev Singh), the Khal istan Liberation Force (led by Gurjant Singh Budhsinhwal a), the Khal istan Commando Force (led by Paramjit Singh Panwar), the Sikh Students Federation (led by Daljit Singh Bhattu) and the Bhindranwal e Tigers Force (led by Rajpal Singh Sangha). There are three other Panthic Committees led respectively by Zaffarwal , Gurbachan Singh Manochal and Usmanwal a, the latter group coordinating the activities of the Khalistan Commando Force (Udai Singh faction), the International Sikh Students Federation (led by Gurnam Singh Bundel a) and the Dashmesh Regiment (Sodhi group).

Policemen, members of the para-military security forces and sometimes members of the army have repeatedly been singled out by armed secessionists. Since 1989 relatives of security force personnel have also been attacked. In September 1989 men believed to belong to the Babbar Khal sa group killed Rajan

Bains, the 15-year-old son of Gobind Ram, the former Senior Superintendent of Police, Batala. The killing followed reports in the Punjabi press that Gobind Ram had been involved in the torture of villagers and of suspects during interrogation, including the wives of two men alleged to belong to the Babbar Khalsa group (see Chapter III). Gobind Ram himself was killed on 10 January 1990 by a bomb reportedly planted by Sikh separatists.

Armed Sikh groups have also reportedly tortured members of the police and security forces. The *Press Trust of India* (PTI) reported on 15 July 1990 that armed Sikhs had kidnapped and killed a Punjabi police officer and that his body, when found, showed signs of torture.

Politicians are also prominent among the victims of armed Sikh attacks. Balwant Singh, former state Foreign Minister and member of the moderate Akali Dal (Badal) party, was killed on 10 July 1990 apparently for having advocated a peaceful solution to the Punjab problem. Four secessionist groups (the Khalistan Liberation Force, the Babbar Khalsa, the All India Sikh Students Federation (Daljit faction) and the Khalistan Commando Force) claimed responsibility for his killing, saying it had been carried out for the role Balwant Singh played in the signing of the 1985 accord between then Prime Minister Rajiv Gandhi and Akali Dal leader Harchand Singh Longowal, which provided for a peaceful settlement to demands for autonomy in the state.

Numerous civilians have also been targets of attacks by secessionist groups either because they disobeyed orders not to sell liquor or tobacco or, in the case of women, because they were described as "bad characters". For example, on 22 January 1991 the Khalistan Liberation Army was reported to have killed Amarjit Kaur because they believed she was a police informer. That same month, the Khalistan Commando Force (Zaffarwal), claimed responsibility for killing five women for being "bad characters". Mohinder Kaur was one of the five; she was killed in Pamal village on 2 December 1990, the day the group said it had killed two people for selling tobacco. The Babbar Khalsa group said in January 1991 that they had killed 46-year-old Bhajan Kaur of Bejron village, Anandpur, because she sold liquor.

Other victims were killed solely because they were members of Punjab's Hindu community, apparently in an effort to frighten Hindus into leaving the state. Some Hindu villagers may have been killed in retaliation for police action, but the Panthic Committee (Zaffarwal) said it had killed Hindus because they had "not contributed to the development of Punjab". In many cases, the victims of such killings were taken from buses or cars, segregated from Sikhs and shot. Sometimes they were first abducted and detained by their killers.<sup>4</sup>

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<sup>4</sup> On 4 November 1991 armed men put up a road block near Pandori Mahantan village, Gurdaspur district, and started detaining passers by. Those who were not Sikhs were detained for several hours. Ten of them were made to walk to a field at 7 pm, were lined up and shot. In a statement, the Bhindranwala Tigers Force claimed responsibility for the killings, apparently carried out in retaliation for the shooting of one of their leaders by police two days earlier. The police said the same group was responsible for killing 13 passengers travelling in three buses on 23 November at Parhol, Ropar district. According to a report in *The Statesman*, 24 November 1990, armed men shouted pro-Khalistan slogans when they boarded the buses. One of the survivors described how they "stopped the bus and asked all the Sikh passengers to get down. Then one of them said that they would not harm anyone. But then suddenly one of them ordered firing...". He described how most of the passengers were hit on the face, head or chest, but how he himself survived, having pretended to be dead.

Reports of such killings escalated at the end of 1990 and the beginning of 1991. Amnesty International counted 141 victims from a survey of Indian press reports between 1 November 1990 and 1 February 1991. The groups claiming responsibility for the killings were the Khalistan Liberation Army, the Khalistan Commando Force (panjwar), the Bhindranwale Tigers Force (Manohal), the Khalistan Liberation Front and the Dashmesh Regiment.

In a further important development, armed Sikh groups have issued directives related to various matters of public policy and social behavior. They have threatened and imposed penalties, including death, on individuals deemed not to have complied with them. The Panthic Committee led by Dr. Sohan Singh issued a "code of conduct" for journalists, columnists and editors to take effect from 1 December 1990. It ordered that all those working for the separate state of Khalistan should henceforth be described as militants or freedom fighters, and not as terrorists. The press was instructed not to publish sensational stories or gossip, and not to carry reports planted by intelligence agencies. The Public Relations Department, Chandigarh, was prohibited from issuing press statements in English or Hindi. The code threatened that "the generals (leaders) of any of the five organizations have powers to pronounce death penalty on any editor or journalist. Death penalty will be executed with the permission of the Panthic Committee. The journalist or editor can also appeal against the death penalty awarded to them by the Panthic Committee, which shall have the final say".

Less than two weeks later, the Panthic Committee issued a further notification directing the state government to adopt Punjabi in all its official work at all levels by 10 December 1990. It threatened that any departmental Secretary not taking notes in Punjabi would be eradicated along with his family. The "death penalty" would be imposed by the Panthic Committee for non-compliance with this order. The Punjab Public Relations Department, which had been specifically warned, started issuing its publications in Punjabi shortly afterwards. Particular directives were also given to the Education Secretary for the use and teaching of Punjabi in schools and universities. This followed orders issued earlier that Hindi should no longer be taught in schools in Punjab. "Secret organisations of militant Khalsa [pure] Organisation" threatened to maintain surveillance on named individuals who were singled out for special warning.

On 6 December, Rajinder Kumar Talib, the 55 year-old Chandigarh Station Director of All India Radio and a noted Urdu poet, was shot and killed by two men entering his house. Within days, the five groups supporting the Panthic Committee claimed responsibility for his killing, apparently carried out for not observing the language code. In their statement the five groups said that their action had been merely symbolic, that they had no personal enmity with R. K. Talib and that they had now covered the first stage of what they called "operation mother language". They warned that the same fate awaited others if they failed to implement the language code. On 20 January 1991, O.P. Viz, Principal of Modi College, was killed in his office. The Khalistan Commando Force (Panjwar) claimed

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Twelve Hindus killed on 9 January 1991 near Ludhiana, had first been detained in a farm house before they were shot at the Gill railway station. Armed men arrived at 3 pm in two cars at a farm house near the Gill railway station and then kidnapped a number of people from surrounding villages. All were Hindus, they included the plant manager of the Hindustan Cooking Gas Company - taken away after he failed to provide a ransom demanded earlier - shopkeepers and a rickshaw puller and his passenger. They were locked up in the farm house, from which they were taken at 6.30 pm, made to walk to a road, made to lie down, and shot. A little later, three men travelling on the road from Ludhiana to Malerkotla were stopped by the men who had just carried out the killings, dragged out of their car and two of them shot on the spot. The Khalistan Commando Force (Panjwar group) reportedly claimed responsibility for the killings.

responsibility, stating that "though he implemented Punjabi, it was only a show...he was allowing Hindi newspapers in the library".

Orders for the implementation of the use of Punjabi in universities were issued by the Panthic Committees on 29 December 1990, and the Vice-Chancellor and his entire family were threatened with murder. On 16 January 1991, a further notification about the use of Punjabi in official communications was issued directing that all schools should teach in Punjabi only, and that the teachers would be punished for non-compliance. The Panthic Committees also issued a 13-point program, which ordered that traditional Punjabi dress (salwar-kameez) should be worn by all girls at school. Mrs. Nirmal Kanta, headteacher at a government secondary school at Rajpura near Patiala, argued that many of her school's pupils came from poor working class families and lacked the means to immediately adopt traditional dress, and appealed for two weeks to do so. On 17 December 1990 she was killed at prayer time, at school, in the presence of her pupils. The Babbar Khalsa claimed responsibility, saying she was killed for "disobeying their orders".

### ***Amnesty International's Position***

Amnesty International condemns the torture or killing of prisoners by anyone, including the various armed groups resorting to such practices in Punjab. Murders of people for expressing their views can never be justified, whether the perpetrators be governments or those opposing them. Governments have a specific obligation to uphold and protect human rights: arbitrary detention, torture and extrajudicial killings of opponents are specifically prohibited by international law. In the case of armed non-governmental groups also, there can never be a moral or legal justification for the arbitrary or indiscriminate killing of people. Such acts are particularly reprehensible when committed against individuals solely for the peaceful expression of their conscientiously-held views, or for doing so in a certain language or, simply because they may be related to such persons.

Yet however provocative, the abuses committed by armed groups can never justify the security forces themselves resorting to arbitrary detentions, torture or extrajudicial executions of suspected opponents, the violations of human rights which are the subject of this report. Such practices are not only specifically prohibited in Indian law and in the Constitution itself, but they also contravene basic principles of international law. International human rights standards have been made by and are addressed specifically to governments. Countries which have become a party to the International Covenant on Civil and Political Rights (ICCPR) are legally bound to respect and ensure the rights protected in it. Although the ICCPR permits derogations from certain rights in strictly defined circumstances, it stipulates that even in times of emergency threatening the life of the nation all governments must, as a minimum and in all circumstances, protect the right to life and the freedom from torture.<sup>5</sup> India

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<sup>5</sup> Article 4 of the International Covenant on Civil and Political Rights reads in part:

" 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.....

2. No derogation from articles 6 [right to life], 7 [freedom from torture and cruel, inhuman or degrading

accepted a legal obligation to observe these standards when it signed and ratified the ICCPR in 1979, thereby clearly stating to the international community that it considered itself bound to uphold and protect these fundamental human rights. This report describes how the government has persistently failed to do that.

India's human rights record was recently examined by the Human Rights Committee<sup>6</sup>, the treaty body consisting of 18 men and women elected by State Parties to the ICCPR to serve as independent experts supervising implementation of the ICCPR, at its forty-first session, meeting in New York on 26 and 27 March 1991. Many members<sup>7</sup> of the Committee expressed concern that a number of the rights guaranteed in the ICCPR - notably the right to life, the freedom from torture (both non-derogable rights) as well as the right not to be arbitrarily detained and the right to a fair trial - appeared not to be effectively protected and had been violated in practice. Committee members were particularly concerned that provisions of special laws in force in India (and described in Chapter VI of this report), namely the Terrorist and Disruptive Activities (Prevention) Act, 1987, the National Security Act and the Armed Forces (Punjab and Chandigarh) Special Powers Act, not only short-circuited guarantees provided in the Indian Constitution and laws but were also incompatible with several rights provided in the ICCPR which India is bound to uphold.

One member of the Committee concluded - after the Attorney-General of India, Shri G. Ramaswamy, presented remarks to the Committee on behalf of the Indian Government - that he still remained concerned about the implementation of the Covenant in the so-called disturbed areas, the extraordinarily great number of arbitrary killings, widespread arbitrary arrests in some states, the excessive powers given to the security forces including authority to shoot to kill suspected law breakers and the failure to bring to trial a number of police officials alleged to be offenders.

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treatment], 8 (paragraphs 1 and 2) [prohibition of slavery and servitude], 11 [right not to be imprisoned for failing to fulfil contractual obligation], 15 [prohibition of retroactive punishment], 16 [right of everyone to recognition as a person before the law] and 18 [right to freedom of thought, conscience and religion] may be made under this provision."

<sup>6</sup> In contrast to the UN Commission on Human Rights, a body which consists of representatives of 53 governments and which is the central UN body charged with the promotion and protection of human rights, the Human Rights Committee consists of 18 experts from a wide range of legal systems who do not represent governments, sit in their personal capacity and, as a treaty body created by the ICCPR, supervises implementation of that Covenant. One of its tasks is to examine reports which State Parties to the ICCPR, under Article 40, are obliged to submit. India's first report (CCPR/C/10/Add.8) was examined in 1984; its second report (CCPR/C/37/Add.13), due in 1985, was examined on 26 and 27 March 1991.

<sup>7</sup> Views expressed by Mr. Aguilar Urbina (Costa Rica), Miss Chanet (France), Mr. El Shafei (Egypt), Mr. Fodor (Hungary), Mrs. Higgins (U.K.), Mr. Lallah (Mauritius), Mr. Myullerson (USSR) and Mr. Wako (Kenya).

## II) ARREST AND DETENTION

According to official figures, issued in July 1990, about 10,000 suspects had been arrested in Punjab since President's rule (direct rule from New Delhi) was imposed in the state in May 1987. It is difficult to give precise estimates of the numbers of political prisoners in Punjab because some of those arrested are held for short periods of time, and because official figures of the number of prisoners held are rarely given and when they are, are inconsistent. When former Prime Minister V.P. Singh announced, on 11 January 1990, a review of all cases of political detainees held in the state, officials in New Delhi said that 12,000 people were in detention, whereas state officials put the number at less than 6,000.<sup>8</sup>

Many new arrests under "anti-terrorist" laws have been made since the January 1990 review: over 900 arrests of alleged members of armed opposition groups had been officially reported in Punjab by June 1990. Since then scores and sometimes hundreds of new arrests have been reported each month. For example, in late November 1990 Sikh political leaders and human rights activists were among some 500 men and women detained to prevent them from attending a meeting at Anandpur. The meeting was reportedly called to discuss peaceful political reform and the position of the Sikh community. They were released 10 days later.

The Indian government does not publish statistics of the number of people held in connection with political activities under preventive detention or special "anti-terrorist" legislation in Punjab, but human rights groups in the state estimate the number of those held at any one time to be between 15,000 and 20,000.

### *Arbitrary and unacknowledged arrests*

Amnesty International has received many complaints of arbitrary arrests by the police and paramilitary forces operating in Punjab. According to these reports, arrests have been made without warrant, the security force agents making the arrests have not identified themselves and the arrested person or his or her relatives have not been informed of the grounds of the arrest or the specific charges against the arrested person. In many cases, the arrests are not recorded in the daily registers of the police stations.

Justice S.S. Sodhi, who carried out an investigation during a routine inspection of Amritsar Central Jail in February 1989, found that many of the detainees then awaiting trial complained that police had detained them illegally for weeks before formally arresting them. In his unpublished report the High Court judge has reportedly criticized official behavior in the registration of cases against detainees under the Arms Act for allegedly "harbouring terrorists" and "raising anti-national slogans". Justice Sodhi observed: "A stereotyped set pattern of their content emerges, almost as if there is a prescribed proforma where names etc. are filled in. What is more, one has to strain one's credibility to accept the version given in these reports" (*India Today*, 30 September 1989).

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<sup>8</sup> Since then, according to officials quoted in a *Press Trust of India* report of mid-January 1990, the cases of 1,400 detainees were reviewed, resulting in 600 releases.

Many detainees told Justice Sodhi that they were tortured during the initial period of unacknowledged detention, and that when they were finally granted bail the police immediately re-arrested them on fresh charges. Such claims continue to be made. For example Hardev Singh, son of Gurmail Singh of Nandpur village, Ludhiana, claimed in a sworn statement of 29 October 1990 that, just after he had been released on bail by the local court on 21 September 1987, "I was picked up by the police right outside the prison gate ...". He claimed that between September 1987 and March 1989 he was illegally detained by police no less than 38 times.

Detainees are often not brought before a magistrate within 24 hours, as normally required by section 57 of the Code of Criminal Procedure. During detention, detainees are often held incommunicado and tortured. In many cases police officials have simply denied knowledge of arrest or detention. They sometimes claimed later that the person in question either "escaped" or, if faced with a *habeas corpus* petition brought by the relatives, acknowledged the arrest but gave contradictory information about when and how the arrest was made. The case of Lakhwinder Singh illustrates this practice. His illegal detention was confirmed by the High Court which also granted compensation to the victim.

### *Lakhwinder Singh*

According to his brother Tarsem Singh, Lakhwinder Singh was arrested by officers from Dara Baba Nanak police station on 4 September 1990. The police refused to acknowledge his arrest but demanded between 15,000 and 20,000 Rupees for his release. Tarsem Singh brought a *habeas corpus* petition in the High Court of Punjab, which on 10 September 1990 ordered a warrant officer to search for his brother. In its order of 12 September 1990, the High Court described what happened when the warrant officer went to search for Lakhwinder Singh in the police station where relatives suspected he was being held:

"Accordingly, Shri R.L. Bhatia, warrant officer went to that police station along with the petitioner [Tarsem Singh, the brother] at about 12 noon on 11.9.1990. The outer gate of the police station was found open. On the direction of the warrant officer, Tarsem Singh shouted for his brother Lakhwinder Singh but at first there was no response. Later-on, after a few minutes, the alleged detenu responded to the call from the veranda near the main gate. The Head Constable was then present inside the police station. He appraised the warrant officer that Lakhwinder Singh was wanted in a murder case.....but there was no entry in the daily diary of the police station regarding the arrest of Lakhwinder Singh".

The Sub-Inspector of the police station then arrived and explained Lakhwinder Singh's presence in police custody to the warrant officer. He gave a different explanation in his statement to the High Court the following day. The High Court found that:

"The contradictory stand taken by the Sub-Inspector in his statement before the warrant officer and in the return filed by him clearly spells out that Lakhwinder Singh was being detained at the police station without showing his arrest in the above-referred murder case. Before the warrant officer, this Sub-Inspector had represented that he failed to arrest Lakhwinder Singh but he might have entered the police station along with the petitioner from the open gate but in the return [the Sub-Inspector's statement to the court] it is averred that Lakhwinder Singh had voluntarily

surrendered at 10 a.m. on 11.9.1990 at the police station just before the arrival of the warrant officer and his formal arrest was yet to be made."

The High Court found that Lakhwinder Singh had been illegally detained at the police station. It ordered that he be released and that the Sub-Inspector pay 5000 Rupees in compensation by 1 October 1990 (a sum still outstanding by mid-December).

This report includes several other cases in which the courts have been able to intervene effectively to locate people who were held in unacknowledged police custody (See Chapter IV). This happened twice to Baldev Singh. Because of the extraordinary circumstances of this case, it is described in detail.

### *Baldev Singh son of Jagir Singh*

Baldev Singh, a 25-year-old salesman in the Co-operative Department of the Punjab Government and a resident of Shahpur village in Amritsar district, was arrested on 18 April 1989. He was taken to the Mehta Chowk police station, Amritsar, according to a *habeas corpus* petition brought on 4 June 1989 in the Punjab and Haryana High Court by Baldev Singh's brother, Malkiat Singh. His detention was not officially acknowledged, no reason was given for his arrest, no charges were made against him and he was not brought before a magistrate. Instead of being detained at a police station or in jail, he was held at a private house which his brother, Malkiat Singh, claimed was being used by the police as an interrogation centre. The Station House Officer (SHO) at Mehta Chowk police station filed an affidavit on 5 June denying that Baldev Singh was being illegally detained at his police station.

In response to the *habeas corpus* petition, the Punjab and Haryana High Court appointed a warrant officer to find Baldev Singh and bring him before the court. On 6 June 1989 the warrant officer and Malkiat Singh went to the house in which Baldev Singh was allegedly being held. The door was locked and the police at the nearby Mehta Chowk police station, when approached, claimed that they were unable to help the warrant officer gain entry. However, when the warrant officer broke into the house Baldev Singh was found in a locked room. According to his brother, he was naked, and "was unable to move about on account of torturing".

The SHO at Mehta Chowk police station claimed he knew nothing of Baldev Singh's detention. He denied that he had been arrested and brought to the police station, pointing out that his name was not registered in the daily diary entries dating from 18 May 1989. However, earlier records, starting from 18 April 1989 (the date Baldev Singh was arrested, according to his relatives), were not made available for scrutiny. The Mehta Chowk police officers also stated that no criminal case had been registered against Baldev Singh and therefore his presence was not required at the police station. They also said they did not know who owned or occupied the house in which Baldev Singh had been detained. The warrant officer therefore handed Baldev Singh over to the custody of his brother, Malkiat Singh, as the High Court had directed.

Malkiat Singh later reported, in a sworn statement, that he took his brother to Chandigarh, accompanied by two friends, Surjit Singh and Mangal Singh, and their brother-in-law, Kuldeep Singh. They went to see Baldev Singh's lawyer who advised him to go to a relative's house until 8 June when he hoped to obtain a court order for Baldev Singh's admission to hospital.

Surjit Singh, Mangal Singh and Kul dip Singh returned to their vil l age but were stopped on the way by police officers led by the SHO from Mehta Chowk police station. All three were taken into custody and forced to discl ose where Bal dev Singh was staying. Bal dev Singh was re-arrested the foll owing day, 7 June, by the SHO of Mehta Chowk police station, al ong with other police official s, all in plain clothes, travelling in the van which Malkiat Singh had used to collect Bal dev Singh the previous day. They went to the house where Bal dev Singh and his brother Malkiat were staying and took them away. When they had driven past Kharar, Malkiat Singh was ordered to get out of the van and the police then drove off with Bal dev Singh. Malkiat Singh swore an affidavit, dated 8 June 1989, in which he said that he had been threatened:

"The Police official s told him (Malkiat Singh) that they will deal with him subsequently for filing *habeas corpus* petition and will teach the applicant a lesson by just keeping and torturing him in the manner Bal dev Singh is being kept and treated."

On 9 August 1989 Bal dev Singh's father, Jagir Singh, brought another *habeas corpus* petition in which he requested that the SHO of the Mehta Chowk Police station and the Central Reserve Police unit stationed at Ramdas, Amritsar district, produce Bal dev Singh. In this petition, Jagir Singh alleged that after the police had abducted his son on 7 June they had handed him over to the Central Reserve Police Force (CRPF) stationed at P.W.D. Rest House, Ramdas, Tehsil Ajnal a, Amritsar District, claiming that he was an extremist called Tota Ram from Mahal la Nanaksar of Taran.

The court upheld this *habeas corpus* petition, and again ordered a warrant officer to locate Bal dev Singh. The following day, 10 August, the warrant officer accompanied by Bal dev Singh's father and brother, went to the rest house where the CRPF were stationed. Although the CRPF denied any knowledge of Bal dev Singh, the warrant officer found Bal dev Singh in a room inside the rest house. According to the warrant officer's report of 11 August:

"The petitioner (Jagir Singh) took me near one room and called the alleged detenu by name in loud voice. Some one gave response from inside the room and we went inside and saw that the alleged detenu, who was identified by his father and also told me his name as Bal dev Singh, was lying on a loose cot wearing only underwear. He was too weak to walk and is a skel eton."

Despite this, the CRPF denied that Bal dev Singh was in their custody and told the warrant officer to inquire at the nearby Ramdas police station. At the police station the officer in charge also denied Bal dev Singh was in police custody, adding he was not required at the police station in connection with any charge. Returning to the rest house, the warrant officer tried to serve CRPF personnel with the court's notice to bring Bal dev Singh to the court the following day. However, they refused to accept the notice, saying that Bal dev Singh was not their responsibility. When the SHO of the Mehta Chowk police station eventual ly arrived he accepted the warrant officer's notice to present Bal dev Singh in court the next day. He did not do so, however, but brought an affidavit, dated 11 August 1989, to the High Court of Punjab and Haryana at Chandigarh in which he denied that he had ever been responsible for arresting and detaining Bal dev Singh.

Final ly, on 25 August, the police brought Bal dev Singh to court and handed him over to his relatives. The High Court ordered that he should be admitted to the Postgraduate Institute of Medical Education and Research at Chandigarh for treatment. According to a report in the *Indian Express* of 5 September 1989:

"Doctors attending on him have listed a number of injuries and deformities. It may take months before he can walk straight... Newsmen visited Baldev Singh in the special male surgical ward of the PGI on Sunday. Baldev Singh told them that he was made to confess that he was a terrorist and involved in killings. He said the actual issue for which he was tortured was the appointment of another salesman in a cooperative society. The party, which wanted its man to be posted, used the police".

A report in *India Today*, on 30 September 1989, cited unofficial sources as maintaining that Baldev Singh's detention was a case of "mistaken identity." In the end, no case was registered against him. To Amnesty International's knowledge no action has been taken against those responsible for Baldev Singh's illegal detention and torture.

The practice of keeping detainees in unacknowledged detention is not restricted to the state of Punjab: it happens in many other Indian states. In the southern state of Tamil Nadu, on 22 January 1991, the Madras High Court "expressed concern and anguish at the series of cases being brought to its notice through *habeas corpus* petitions complaining about the police resorting to 'illegal' detentions. The bench said quite often the arrest was not shown in the records. Only when writ petitions [*habeas corpus* petitions] were filed the date of arrest was recorded and the detenu was then sent to a Magistrate for being remanded. This sort of practice was bad in law". (*The Hindu*, Madras, 23 January 1991.)

Amnesty International believes that incommunicado detention without access to lawyers or relatives has been an important factor in facilitating torture and, in some cases, "disappearance". International human rights standards require that states guarantee prompt and regular access to a lawyer and the Basic Principles on the Role of Lawyers, adopted by consensus at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in September 1990 stipulate that access to lawyers should not be later than 48 hours from the time of arrest (Article 7).

### ***Harassment of relatives of people wanted by the police***

Amnesty International has received numerous reports that family members including brothers, fathers, mothers and sisters have been detained and often tortured if the person the police wanted to arrest could not be found, if the police wanted to extract information about that person's activities or whereabouts, or in retaliation for bringing legal action on behalf of missing family members. There is some official confirmation of this practice.

On 18 September 1990 the Director-General of Police, Punjab, issued new guidelines to the police and para-military forces which appeared to acknowledge that innocent people had been arrested. The Director-General, according to a report in the *Indian Express* of 20 September 1990, said that women and children should not be brought to police stations "unless there were special reasons" and that "any unexplained presence of persons in the police stations would be looked into". He also added that whenever suspects were brought to police stations or other places for questioning, it would be "advisable" to inform the relatives and respectable persons of the locality about the arrest. The following are some examples of arbitrary arrests of family members.

In a July 1990 affidavit, Piara Singh, a 68-year-old man from Rattan village, Ludhiana district, described how his family was harassed by police who were searching for his son, Gursharan Singh, a member of the All India Sikh Student Federation. Piara Singh claims he was arrested more than 50 times. During his one week detention by the Station House Officer (SHO) at Sudhar police station, he said that his legs were pulled apart to 180 degrees, that a heavy steel roller was rolled on his thighs and that he was hung upside down from the ceiling with his hands tied behind his back. He claims he was tortured in a similar way on a number of other occasions because he was unable to give information about his son's whereabouts.

Bhajan Singh, from Maksudra village, Ludhiana, and two of his five sons, Balwant and Bhagwant Singh, aged 24 and 22, signed affidavits on 20 May 1990 describing the repeated and ongoing harassment of family members by the police who were seeking to apprehend alleged militants, including an elder son in the family. Bhagwant Singh, in his affidavit, alleged:

"That during the period I was in jail, SHO [name withheld] kept on harassing my parents and the family members, even when he had been transferred...That after the last rites of my killed brother Jasvir Singh [who had been killed by the police in an encounter his family believed to have been staged by the police as a cover-up] were over, [name withheld] SHO picked up my father Bhajan Singh and mother Gurcharan Kaur.. my mother was set free after two days but my father was subjected to humiliation during 15 days illegal detention. He was pressurized to produce my elder brother who...had stopped visiting us".

Hardev Singh, a 55-year-old mason living in Ghawaddi village, Ludhiana, stated in an affidavit that he was detained several times by the police in an attempt to get him to produce his son. He said he was detained for one night at Sadr police station, Ludhiana, at the end of May 1987 and released on condition he hand over his 20-year-old son, Gurmeet Singh, to the police as soon as possible.

Hardev Singh took his son to the Sadr police station on 1 June 1987 and was assured by the police that he would be released the next day. However, on 2 June the police denied that Gurmeet Singh was in their custody. Hardev Singh petitioned the Ludhiana magistrate's court to have his son brought before the court, expressing fears that he could be killed in a staged encounter. The case was heard on 8 June 1987 and according to his affidavit, Hardev Singh was tortured because of his efforts to find his son:

"the Naib Court (police constable attached to the Court) [name withheld] told me in clear terms that since I had filed a case against the police, so I would be taught a proper lesson. Meanwhile, I came to learn that Gurmeet Singh was in illegal detention in Dehlon police station where I contacted SHO [name withheld] who started torturing me physically and I was made to write that I would not pursue the case of disappearance of my son".

Gurmeet Singh's "disappearance" was later resolved when he was brought before a magistrate's court and was later released on bail.

An article in the *Indian Express*, 4 April 1989, described a case of the torture and extrajudicial execution of two brothers by police who were trying to extract information about another brother.

"In Bolawal village, a young man named Kulwant Singh had absconded and was suspected (probably rightly) of having become a terrorist.

The police arrested his elder brother Nirwar Singh, tortured him and subsequently declared that he died in a police encounter. Later they arrested the youngest brother, Dilbagh Singh, and tortured him for extracting information about his absconding brother. On May 2nd 1988, the police visited the house again about 2am and as Dilbagh Singh was trying to run away, he was shot dead. The story was told by his tearful mother and corroborated by villagers."

### III) TORTURE

#### *Official investigation of torture*

Torture in Punjab continues to be widespread and its use to force confessions from Sikh detainees has been confirmed by at least two official commissions of inquiry. A one-man commission, headed by retired Justice Tiwana, was set up by the Punjab government in November 1985 to investigate claims that 92 detainees held in Nabha Jail under the National Security Act had been taken to Ladha Kothi jail, Sangrur District, and tortured. Justice Tiwana submitted his report in May 1986. He concluded that: "It appears that the sole purpose of declaring the Interrogation Centre as a Jail at Ladha Kothi was the torture of prisoners by Police Officers who remained posted at that place. Thus torture of the inmates of the Jail has taken place from 31.5.1984 to 31.3.1985."

The Tiwana Commission Report also found that there was a pattern to the practice of torture and the methods used. These included rotating heavy logs over the victims' thighs until the muscles were severely injured and forcing their legs as wide apart as possible, causing intense pain and pelvic injury. Compensation was eventually paid to the 90 victims of torture listed in the report, although none of the 21 police named as participating in or supervising the torture have been brought to justice. According to some reports, people continued to be tortured in Ladha Kothi jail during 1990.

The second judicial investigation was that conducted in February 1989 by Justice S.S. Sodhi, in Amritsar jail. He found that many detainees complained that they were tortured by police when kept in illegal detention preceding formal arrest.

Official confirmation of police excesses was also provided in February and March 1989. In February 1989 the then Governor of Punjab, Siddhartha Shankar Ray, met village elders from over 200 villages in the Batala district. The villages had been raided by the police in search of Sikhs suspected of belonging to armed separatist movements, and their weapons. Villagers complained that they had been arbitrarily detained and beaten by police who suspected them of harbouring "terrorists".

For example, the villagers from Sarchur village said that on 10 January 1989 the Punjab police and Border Security Force led by the Senior Superintendent of the Batala Police rounded up the male inhabitants of Sarchur and surrounding villages. They said the men were ordered to lie on their stomachs, and then were beaten with leather belts, batons and bamboo poles for over an hour.

Inhabitants of Padde village alleged that the same Senior Superintendent of Police, Batala, had ordered that month that seven village officials be beaten on their backs and the soles of their feet in public for 20 minutes. About 40 village officials from the area resigned in protest. An inquiry commission, one of whose investigators was the district police chief accused of responsibility for the alleged torture, exonerated the police of malpractice. However, the villagers' protests continued and the Governor of Punjab visited the area on 14 February 1989. According to a report in *The Statesman* dated 18 February:

"Speakers talked about how their families were being humiliated, beaten up and kept in illegal custody for days, and sometimes even weeks together. Many of them narrated their horrifying experience of being beaten up by the police on charges of harbouring terrorists

and non-cooperation in getting them arrested. They also told the governor how the police was extorting large sums of money from them."

After hearing the villagers' complaints, the Governor was reported in the *Indian Express* of 4 April as promising that "such excesses would not happen again". He ordered two investigations into the complaints. One was carried out by a police official, Mr. Sarabjit Singh, Deputy Inspector General (DIG), Border Range, who concluded that the complaints were unsubstantiated. The second was conducted by K.S. Janjuar, Commissioner, Jalandhar. His report confirmed the allegations of torture and ill-treatment. It was not until September 1989, however, that the Senior Superintendent of Police of Batala allegedly responsible for the abuses was transferred to the Punjab Armed Police, Jalandhar. Although many allegations of his involvement in torture or ill-treatment have been made, to Amnesty International's knowledge no disciplinary action has been taken against him.

### *Press reports of torture*

There have also been many reports of torture and ill-treatment in Punjab in the Indian press, some of which quote official acknowledgments that torture took place. According to an article in the *Sunday Observer* 9 April 1989:

"Indeed police beatings, even torture and rape of villagers in some of the terrorist affected areas are heard so often that there must be at least some truth in them. Senior civilian officials that this writer talked to admit that such things happen and that they are helpless to do anything about them."

According to a report in the *Hindustan Times*, 22 September 1990, the BSF had arrested more than 160 young men the previous fortnight and tortured them at various interrogation centres. About 15 young men said they were taken away in the second week of September, held for three days at the BSF headquarters at Barath and given 10 to 50 lashes each day. At least seven young men from Dhariwal said they were given electric shocks, had heavy logs rolled over their legs and were hung upside down. Doctors treating them suspected that two - Prem Singh and Dilbagh Singh - suffered brain haemorrhages. The previous week the police and BSF detained Hardev Singh, aged 20. When he was released on 20 September 1990 he passed blood in his urine, and had multiple fractures to his left arm. Dharam Singh Sandhu, also kept in custody of the BSF, was given electric shocks repeatedly.

The *Indian Express* reported on 9 September 1990 that the district administration had held an inquiry into allegations that on and around 30 August 1990 about 200 residents of five villages near Kathunangal - Talwandi Phuman, Chachowali, Marrar, Gujarpura and Pangli - were rounded up and beaten by members of the CRPF and that some young men among them were later taken to Thiriawal CRPF station and tortured. The incident, apparently a reprisal action, took place the day after a landmine had exploded, damaging a patrol jeep. Journalists who saw the villagers reported that: "Many of them could not walk and showed injuries on the limbs. Electric shocks were given to some of them".

A local civil liberties group, the Punjab Human Rights Organization (PHRO), investigated the villagers' allegations. Its report, published in October 1990, claims that almost all the 200 detained Sikh youths were tortured and that

police from Kathu Nangal police station both incited CRPF personnel to torture the villagers and participated in the torture themselves. The report gave specific details about 18 cases of torture. Karay Singh was beaten and then dragged behind a jeep. Harjinder Singh and Harbhajan Singh had their thighs cut after which powdered red chillies were rubbed into the wounds and electric shocks applied. Randhir Singh had his fingernails torn out and the flesh on his hands was cut. Partap Singh was beaten with leather belts. Two of those tortured, Sarabjit Singh and Mukhtair Singh alias Mukha, were, according to the PHRO report, only 12 and nine years old. Most of the villagers were reportedly released on the evening of 30 August 1990.

An inquiry conducted by Sub Divisional Magistrate L.D. Hans reportedly denied allegations that mass beating of villagers had taken place but acknowledged that the CRPF had beaten some people.

### *Testimonies of the Practice of Torture*

Torture takes place in official places of detention, notably police stations. Other places where torture is reportedly often used are: Beeco Interrogation Centre, Batala; Ladha Kothi Jail; the CRPF Headquarters at Mal Mandi, Amritsar, and the police stations and headquarters of the Criminal Investigation Agency (CIA). But some detainees were tortured in secret detention centres located in private houses, while their detention was denied by the authorities.

The most common methods of torture reported include hanging people from the ceiling and beating them or using them as a human swing, forcing their legs wide apart causing pelvic injury, rolling iron or wooden bars across the thighs, beating the genitals and inserting chilli powder into the rectum and other sensitive parts of the body. Other torture victims claim they have been given electric shocks. These methods of torture are described in the following testimonies from former detainees. In most cases, torture occurred while the detainees were denied access to the outside world and were held in unacknowledged detention.

#### *Surinder Singh alias Pappu*

Surinder Singh (also known as Pappu) was allegedly illegally detained between 30 November and 22 December 1990, and subjected to torture. A *habeas corpus* petition on his behalf was filed at the High Court of Punjab and Haryana on 21 December by his father Avtar Singh.

Avtar Singh alleged that his son had been detained by the Assistant Sub Inspector, Jodhewal police station, in Dheri village, Ludhiana district on 30 November, and that he feared his son had been badly tortured. On 21 December the High Court ordered a court warrant officer to search the Jodhewal police station and any others in Ludhiana District if necessary to secure the release of Surinder Singh, provided he was not involved in a recognizable criminal case.

The warrant officer and his father found Surinder Singh at Jodhewal police station the following day, and he was immediately released. In a statement to the High Court on the same day Surinder Singh alleged that he had been illegally detained, that no case had been registered against him and that his arrest had not been entered in the daily register. The warrant officer confirmed these claims in his report of 7 January 1991.

Surinder Singh said that he had been followed by the police after his release and, fearing for his safety, he had asked the warrant officer to bring him straight to the High Court. Before the court he alleged that he was tortured and requested medical examination and treatment. The High Court issued orders for the medical examination of Surinder Singh at the Civil Hospital, Chandigarh, which took place on the same day, 22 December 1990. The medical report stated that Surinder Singh was unable to walk due to pain and described 18 scars, abrasions and bruises on his body and all four limbs, indicating that he had been beaten. The report also stated that all these injuries could have been caused by torture and appeared to have been inflicted in the period during which Surinder Singh was in detention. However, the High Court did not recommend any further investigation into the allegations of torture.

### *Iqbal Singh, son of Kulwant Singh*

Iqbal Singh from Muktsar in Faridkot district was first arrested in 1984 and interrogated for 15 days, during which he said he was tortured. He was transferred to Nabha jail and then taken to Ladha Kothi and tortured for 10 days. He was eventually released in August 1985. His case was investigated by the Tiwana Commission which confirmed that he was one of those tortured at Ladha Khoti.

He was rearrested in Muktsar four years later, on 12 April 1988, by men in plain clothes travelling in three cars with tinted glass and without number plates. According to the *Indian Express* of 19 June, as he was driven off he shouted out to a passer-by that he was being abducted by the Criminal Investigating Agency (CIA) of Faridkot. The passers-by then informed his family of his arrest.

On 15 April 1988 Iqbal Singh's father made enquiries to the Senior Superintendent of the Faridkot police, who denied knowledge of the arrest. However, on 22 April Iqbal Singh's mother received confirmation that he was held at the CIA centre at Faridkot from an official working at the centre. Iqbal Singh wrote a letter to his mother, dated 23 April, which was smuggled out of the centre, saying he was afraid that he was going to be killed. On 10 May 1988 a human rights organization brought a *habeas corpus* petition on his behalf to the Supreme Court. The court ordered state and police officials to bring Iqbal Singh before a magistrate and to allow him to see his lawyer and family.

After his lawyers had notified senior officials of the Supreme Court order, Iqbal Singh was released on 12 May 1988. He said he had been tortured at the CIA centre at Faridkot during interrogation about alleged links with Sikh militants, charges which he denied. He said that he and other prisoners were told they would be shot if they did not confess to their crimes. He gave the following account of how he was tortured:

"I was blindfolded once again. My clothes were torn out and I was stripped naked. My turban was used to tie my hands to the back. My right leg was squeezed into a hole in a heavy block of wood which was suspended from the ceiling. I stood balancing myself on my left leg. After half an hour my leg was removed from the Kathi, and then I was hung upside down from the ceiling and beaten. After some time, I was taken down. The toes of my feet were tied together as also my hands to the back. Then I was made to lie down with my back to the floor. A heavy iron pipe was put on my legs. Four policemen got on top of it while two of them held the pipe tight across my legs from both the ends and

rotated it up and down. My thigh muscles ruptured. Then they started pulling my legs apart until I felt them ripping out from the pelvis. Then they started kicking me in the region of my sensitive organs. I became unconscious."

Iqbal Singh said he had chilli inserted into his anus, and then petrol poured onto it. He said he became delirious and on one occasion heard an officer threaten to kill him and throw him into a canal. Eventually he was told that his interrogation had been "unnecessarily severe" and that he would be allowed to live if his legs recovered. A few days later he received medical treatment. Amnesty International does not know of any investigation into the allegations of Iqbal Singh's illegal detention and alleged torture.

Amnesty International has continued to receive allegations of similar methods of torture, sometimes inflicted on several members of one family at the same time. For example, Bhagwant Singh, son of Bhajan Singh from Maksudra village said in a sworn affidavit that he was arrested on 4 May 1989 with his brother and a woman staying in the house. They were allegedly taken to police station Dhelon and tortured by the following methods:

"While one constable held us tightly from behind, two others pulled our legs apart to 180 degree[s]. An iron bar of about 95-100kg was rolled on the thighs. After tying our hands behind our backs with a rope, the other end of the rope was passed through a loop in the ceiling and we were suspended in the air ... This 'suspension in the air' method [of] torture was inflicted daily for 4/5 times."

#### *Balkar Singh, son of Makar Singh*

Amnesty International has obtained independent medical corroboration of torture allegations in the case of Balkar Singh, a 40-year-old Sikh, who was living in Canada and had Canadian citizenship. He returned to India in October 1987 to visit a relative. On 2 November he was arrested at the Amritsar International Hotel, by the CRPF and taken, blindfold, to the CRPF headquarters at Mal Mandi, Amritsar.

Balkar Singh stated in a *habeas corpus* petition to the Supreme Court, dated 19 January 1988, that when he arrived at Mal Mandi he was tortured by CRPF personnel in the presence of six senior police officers. Part of this statement is reproduced below:

"... the Petitioner's (Balkar Singh) hands were tied behind his back and he was hamstrung from the ceiling. Thereafter the Petitioner was tied fast at the ankles and one of the members of the team conducting the torture sat in between the legs and started jumping and pulling the Petitioner and using him as a swing... After some time the Petitioner was made to sit on a chair and strapped to it.... the team began administering electric shocks first to the penis, then in the anus, thereafter under the armpits, temple of the head and ultimately the nose..."

"he was made to sit on the ground with one man pressing his knees against [his] back and two others gradually eagle spreading the legs to virtually an angle of 180 degrees... He was [then] made to lie down on his stomach with the hands behind his back and beaten mercilessly with a leather strap... These tortures continued for a period of fourteen hours...on one occasion the Petitioner heard the officers suggesting that the Petitioner ought to be shot dead to avoid any implication while

some officers were of the opinion that kerosene oil should be sprinkled and the Petitioner be burnt alive leaving no trace whatsoever of him."

During his interrogation Bal kar Singh said that he was questioned about his alleged involvement with the Sikh separatist movement, about money and weapons which the police said he had smuggled into the country and about his involvement in the 1985 Air India plane crash.<sup>9</sup> Bal kar Singh denied these accusations. He was then threatened that if he told anyone about his torture his relatives in India would also be tortured or killed.

Bal kar Singh claims that his arrest was not formally acknowledged until four days after his detention. The First Information Report, filed on 6 November, stated that he was arrested for being a "terrorist", and for being in possession of arms. On 7 November he was brought before a magistrate and remanded in custody until 19 November. Bal kar Singh said he complained to the magistrate of torture during the hearing, and requested medical treatment. A medical examination was carried out on 16 November by Dr Anand Gopal Singh Bawa of the Civil Surgeon Office in Amritsar. His report recorded two bruises on the body of Bal kar Singh, one of 5cm by 4cm on the sole of his right foot and another of 5cm by 3cm on the back of his right forearm. He stated that Bal kar Singh complained of pain in his inner thighs and in the left side of his chest. Dr. Anand Gopal Singh Bawa found that the injuries had occurred between 11 and 16 November and that they were caused by a blunt instrument.

Bal kar Singh was then transferred to the Central Jail, Amritsar, where a second medical examination was carried out on 25 November by the prison doctor, Dr Vijay Kumar Sharma. Contrary to the findings of the first medical examination the prison doctor found there to be no sign of external injury. The report did not rule out the possibility of ill-treatment, but noted that Bal kar Singh had not complained of any physical torture. The Indian Government then refused to allow an independent medical examination by an outside expert: when a representative of the Canadian High Commission and a Canadian doctor visited Bal kar Singh on 26 November, the Canadian doctor was not allowed to carry out a medical examination. The Indian government simply dismissed the allegations of torture in a communication dated 14 December 1989 to the United Nations Special Rapporteur on Torture.

"Bal kar Singh was medically examined on 16 November 1987 and the Medical Officer's report showed that the allegations of torture could not be established. Furthermore, a detailed report was also received from the Senior Superintendent of Police, Amritsar, in which allegations of torture were not only denied but a counter allegation was made that this was done by him deliberately so as to defame the Indian Police"...

"In November 1987 in Amritsar, Mr. Bal kar Singh appeared before a team of Canadians who had been granted consular access to him. He deliberately pretended to limp and levelled allegations of torture and illegal confinement. However, Mr. Singh could not show any visible mark of physical injury and the allegations of torture were not substantiated." (E/CN.4/1990/17 at page 25).

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<sup>9</sup> Three hundred and twenty-nine passengers were killed following an explosion on board a flight from Canada to Bombay in June 1985.

On 3 December 1987 Bal kar Singh's case was raised in the Canadian Parliament. The Secretary of State for External Affairs told its members that during the visit of the Canadian team to the prison "there was evidence given by Mr Bal kar Singh of physical abuse. It was the view of the Canadian doctor present that he had indeed been seriously physically mistreated". He said the Canadian Government had lodged two formal complaints with the Indian Government about Bal kar Singh's ill-treatment and requested that he receive immediate medical attention.

After repeated representations on his behalf by the Canadian Government, Bal kar Singh was eventually released on 25 October 1988. One month after his release several Canadian doctors examined him. An independent medical examination carried out on 21 November 1988 found injuries compatible with the allegations of torture Bal kar Singh had made:

"restricted neck motion, particularly rotation to the left; slightly tender lower left ribs; a 1x2 cm area of increased pigmentation on the plantar aspect of the right foot; poor visual acuity in the left eye and a rash consisting of large areas of depigmentation over the whole body....The area of increased pigmentation found on the bottom of Mr. Singh's right foot is compatible with a history of being beaten on the soles of the feet".

Further examinations, by a rheumatologist and a psychiatrist found, respectively, that "the musculo-skeletal complaints that Mr Singh described were compatible with the history of torture he has described" and that he was "suffering from post-traumatic stress disorder following torture".

More than three years later, the allegations of torture are still under investigation by the Indian Supreme Court. On 1 August 1988 the High Court of Punjab and Haryana appointed Judge Aggarwal from Amritsar to carry out an immediate inquiry into the conduct of six police officials said to have been present at the torture sessions. Despite repeated summonses, the police officials failed to appear before the inquiry. Various excuses were given: in a letter to Judge Aggarwal on 18 August 1988 the Senior Superintendent of Police in Amritsar stated that the police officers could not attend the scheduled court hearing as they "were engaged in tackling the local law and order problem". In a letter to the Supreme Court on 25 January 1989, Judge Aggarwal complained that "the police department does not seem too inclined to extend any cooperation in the matter".

The inquiry report was eventually submitted to the Supreme Court on 27 February 1989, over six months late. Judge Aggarwal had been able to interview Bal kar Singh, Dr Anand Gopal Singh Bawa and Vijay Kumar Sharma, but none of the police officers who were allegedly responsible for the acts of torture. The doctors' testimonies contained evidence of injuries on Bal kar Singh's body consistent with allegations of torture. Dr Anand Gopal Singh Bawa reaffirmed that Bal kar Singh complained about pains in his thighs and chest when he medically examined him on 16 November 1987 and that he had received bruises on the sole of his right foot and right forearm. Dr Vijay Kumar Sharma, the prison doctor, who examined Bal kar Singh on 25 November 1987, said that he "could not rule out" the possibility that Bal kar Singh had been physically tortured as he had walked with a limp, complained of weakness and body aches and claimed to have passed blood. Nevertheless, Judge Aggarwal's report concluded that the allegations of torture could not be fully substantiated.

Five of the six police officers finally gave their statements to the inquiry on 2 and 3 May 1989. All denied the allegations. The judge in his second inquiry

report found no evidence of torture, but the matter has yet to be decided by the Supreme Court. Judge Aggarwal's reports illustrate the great difficulties all torture victims face when they have to prove torture to the satisfaction of the court in the face of persistent police denials, police failure to co-operate with judicial investigations and government refusal to permit independent medical examination by outside medical experts.

### *Elderly people tortured*

Even people over 60 years old have been tortured. In one such case, a medical report corroborated the torture allegations.

Takhat Singh, a 60-year-old Jathedar (Sikh priest) from Lajpat Rai Market, Ludhiana, claims that he was arrested on 1 September 1989 with his son, Inder Mohan Singh. The police alleged that he had criticised them at a Bhog (memorial) ceremony. He alleged that he was taken to the CIA, and that, under the supervision of the Senior Superintendent of Police and an Inspector of the CIA, he was stripped naked, beaten and had his legs pulled apart.

Takhat Singh Jathedar was released after two days. He was medically examined in a civil hospital on 6 September. The medical report listed the following injuries: a bruise of 15cm by 10cm on his left thigh; a bruise of 8cm by 5cm on his right thigh; and a bruise on the left side of his chest. The report concluded that the injuries had been inflicted with a blunt instrument within the previous five to seven days.

### *Torture and ill-treatment of women*

Since 1984 women in Punjab have often been ill-treated and tortured in the context of the targeting of families of suspected members of armed Sikh groups. Women have been arrested and tortured either to force them to reveal information about male relatives suspected of involvement in Sikh groups, to force the men to give themselves up to the police, or to deter the women from giving food or shelter to suspected Sikh militants. In many cases villagers have been ordered at gunpoint by armed Sikhs to give such shelter and support. The victims include women as young as 17 years old, as well as women over 50.

During 1988 and 1989 reports of torture of women in Punjab by the police and the CRPF frequently appeared in the Indian press. According to a report in *India Today*, 30 September 1989, the reports made the then Governor of Punjab issue instructions in May 1989 that women should no longer be detained in police stations in order to force their male relatives to give themselves up to the police. But the practice continued, at least during 1989, as illustrated by the following specific examples.

#### *Gurmeet Kaur and Gurdev Kaur*

Gurmeet Kaur and Gurdev Kaur, two women in their thirties from Krishan Nagar, Amritsar, were detained and tortured in August 1989. Their husbands were suspected of being associated with armed Sikh groups. Gurmeet Kaur's husband, Mehal Singh, whom she claimed she had not heard from for five years, is the elder brother of Sukhdev Singh, a leader of the armed separatist group Babbar Kal sa. Gurdev Kaur's husband, Kulwant Singh, allegedly joined an armed group.

On 11 August Gurdev Kaur's house was raided by the Batala police. She was detained for three days together with her father, father-in-law, brother and two brothers-in-law. She was interrogated about her husband's whereabouts, but was released after three days, claiming she had been beaten during interrogation.

On 21 August she was rearrested at her work place, along with her colleague Gurmeet Kaur, by an Assistant Superintendent of Police and six men in plain clothes. Several colleagues and customers witnessed the arrest. The two women were taken by van to the Beeco interrogation centre, Batala, and detained without charge. Both women say that they were tortured during interrogation about their husbands' whereabouts. Gurdev Kaur was released the following day, 22 August. In a press interview reported in the 24 September 1989 issue of the *Illustrated Weekly of India*, she described how she was tortured by senior police officials:

"He kept on hitting me while I screamed for mercy. He hit me so violently that the ligaments of my left arm and shoulder got torn. I fainted because it was so painful. When I regained consciousness I heard the SSP [Senior Superintendent of Police] telling an inspector who was there to beat me. He hit me on the head. They then tied my hands behind and made me lie on the floor on my stomach. I was lashed with a whip and then interrogated about my husband. They placed roller planks on my legs and three men got up and rolled the planks up and down. I fainted with the pain."

Gurmeet Kaur was detained until 3 September 1989. She claims the police tortured her, and threatened to kill her and to torture her children if she did not disclose the whereabouts of her husband. She described in a press interview reported in the *Times of India*, Patna, of 7 September 1989 how she was tortured:

"I was hit constantly on my limbs, and chest...After tying my hands the senior police officer himself forcibly pushed me in order to make me lie down as I was unable to. As a result I suffered an injury on my head as it hit against the ground. He meanwhile caught hold of a leather strap and began beating me. And whenever he felt tired there would be others to take over.

"And thus this went on for days. Many times, I felt unconscious...sometimes my torturers would be drunk and they would jeer and taunt me. Planks would be put on my thighs and four men would stand on them at a time. Sometimes they would threaten to force horse urine in my mouth. And once they even took me out in a jeep saying that they were going to kill me."

After her release Gurmeet Kaur required hospital treatment. According to a press report she was unable to sit up on her own and the muscles of her left leg were damaged.

A subsequent inquiry into the torture of the two women, instituted after the incident had been widely reported in the Indian press, reportedly contributed to the state government's decision to transfer the SSP accused of supervising the torture of the women from Batala to the Punjab Armed Police Headquarters at Jalandhar (where he was killed by a bomb believed to have been placed by Sikh separatists on 10 January 1990). However, no further action against the police allegedly involved is known to have been taken and the outcome of the investigation is not known.

### *Shrimati Siso*

Shrimati Siso, a resident of Paili village, Hoshiarpur district, complained to the Chief Judicial Magistrate, Hoshiarpur, on 25 July 1989 that four police officials at Balachaur police station, Hoshiarpur, had illegally detained her and gang raped her. The officers allegedly involved were the Station House Officer (SHO), the Moharrir Head Constable and two other Head Constables, all from Balachaur police station.

At 4 or 5 am on 9 February 1989 these four police officials came to Shrimati Siso's house and asked her about the whereabouts of her cousin, Hazura Singh. Unable to provide information, she was arrested and taken to Balachaur police station. Shrimati Siso said she was asked to sign a blank piece of paper. She refused and was then kicked and beaten by the Station House Officer and the Moharrir Head Constable. At about midnight on 9 February, she claims these two men returned to her room and raped her. Later the same night she said she was raped by the two other Head Constables. She also claimed that the Station House Officer threatened to implicate her in a crime or to kill her if she told anyone about the rape. She was released on 10 February 1989.

After her release Shrimati Siso said she was refused a medical examination by the Senior Medical Officers at the Civil Hospitals in Balachaur and Garhshankar because, she thinks, they feared retaliation by the local police. On 13 February, she complained to the Governor of Punjab against the four police officers alleged to have raped her. Shrimati Siso and witnesses were summoned to the Punjab Secretariat in Chandigarh and the Deputy Superintendent of Police was ordered to record their statements on 17 July 1989. However, Amnesty International does not know the outcome of the investigations. No action is known to have been taken against the police allegedly involved and no case was registered against them. Shrimati Siso then filed a complaint with the Chief Judicial Magistrate, Hoshiarpur, urging that the four police officers be dealt with according to law. The outcome is not known.

### *Surjit Kaur of Rarranwali*

The *Hindustan Times* reported on 30 September 1989 that Surjit Kaur, a 50-year-old woman from Rarranwali was arrested by the Valtoha police on 3 July 1989 in connection with the kidnapping of a village elder. She was taken to the Valtoha police station and detained for nine days, but apparently not charged. The newspaper quoted her as saying that on the first day of her detention the police:

"broke my feet and hands beating mercilessly with a rod. They poured water on my face and once I had regained my senses, six men stood in a semi-circle and started pushing and dragging me by the hair. And when I fell down they kicked and punched me like a sandbag"

Her nephew, Dr. Sewa Singh, who had been brought to the police station with her, was forced to watch her torture. That evening both were reportedly transferred to Bhikhiwind police station where Surjit Kaur was interrogated again in the presence of four officers including the Deputy Superintendent of Police of Patti. She claimed she was beaten again until 11pm during the interrogation. During the week that followed she said that she was tied to a bed in the sun for a day and was whipped. The police eventually released her in exchange for 4,200 Rupees "bail" money. Another condition for her release was that her 20-year-old son Rasal be brought to the police station. He was released the same evening.

### *Gurmit Kaur of Leharka*

Gurmit Kaur was 17 years old when she was reportedly tortured. According to the Punjabi newspaper *Charhdi Kala* (18 May 1989) Gurmit Kaur's father, Swaran Singh, and her brother had been in jail for two years, charged with harbouring members of armed Sikh opposition groups. She was reportedly arrested on 21 April 1989 by the police, detained and questioned. Released that evening, she was rearrested the following day and taken to Thiriyewal village for identification. She says she was then blindfolded, beaten, repeatedly hung upside down and that chili powder was put in her eyes. Later that evening, she claims she was raped by police officers, who were apparently drunk, until she fainted. On release she had to undergo hospital treatment. Amnesty International is not aware of any action having been taken to investigate the allegations.

### *Deaths in custody as a result of torture*

There have been persistent allegations that political prisoners have died while in custody as a result of torture. Often such deaths are not acknowledged: civil liberties groups in Punjab have alleged for many years that the police later claimed that such people have died in armed "encounters" (see Chapter V). But sometimes the police have acknowledged that people died in their custody and the Indian press and civil liberties groups have carried reports that such deaths were due to torture.

### *Surinder Singh of Basti Jodhewal*

Surinder Singh was arrested by police at Phillaur on 24 April 1989 while he was travelling by bus to Nakodar. According to a report in the *Indian Express*, Delhi, of 2 May 1989 the police suspected he had information about the activities of armed Sikh groups and brought him to the local police station at Phillaur and tortured him. When his family asked about him, the Phillaur police reportedly denied that they knew where he was being held. But his parents managed to locate him in the police station and secured his release several days later.

Surinder Singh died within days of his release. According to the press report: "He was in a very bad physical state when he was released. The efforts of private doctors to save his life failed and he succumbed to his injuries [resulting from torture] yesterday [30 April 1989]".

### *Sukhdev Singh*

Sukhdev Singh alias Kaka, a 22-year-old Sikh welder, died of injuries reportedly received while in the custody of the CIA police, Jalandhar, on 2 October 1990. His body was discovered near Sahnewal town in Ludhiana district. The Punjab Human Rights Organization (PHRO) investigated his death and reported that he had been beaten with various instruments on 1 October shortly after arrest.

According to the PHRO report, Jalandhar police raided Nandpur village at 10am on 1 October 1990 in search of Sukhdev Singh. The police beat his brother, Darshan Singh, who disclosed where Sukhdev Singh was. On seeing the police, Sukhdev Singh apparently ran into nearby fields where, the report alleges, the police beat him to death. The police visited Nandpur village the next day and denied having arrested Sukhdev Singh. They suggested a search near the rice shelter where his body was found.

The post-mortem was conducted by Dr G. S. Grewal, who reportedly recorded at least 10 injuries on the body and head. The PHRO report states that the police claimed that Sukhdev Singh "poisoned himself". A magisterial inquiry reportedly recorded testimony from parents and witnesses, but despite three summonses the police did not appear before the magistrate.

### *Cruel, inhuman and degrading treatment*

Some Sikh detainees have been held for long periods in overcrowded conditions, and Amnesty International has received reports that some of them have been held in iron fetters for years, apparently to prevent their escape.

Hundreds of Sikhs have been detained in recent years in prisons outside the state of Punjab and 20 of them, held under the provisions of the Terrorist and Disruptive Activities (Prevention) Act in Bareilly Central Jail, Uttar Pradesh, complained to the Supreme Court in December 1989 that they had been held without trial, in iron fetters, for nearly four years. Prison records show that they were arrested at various dates in 1986, 1987 or 1988. One of their family members also told the Supreme Court that relatives, who often had to travel long distances, were refused visits to which they were entitled when they arrived at the prison.

The District Judge, Bareilly, K.C. Bhargava, carried out an investigation into these allegations on orders of the Supreme Court. In his report of 9 April 1990 he recorded that the Superintendent of the Central Jail had indeed stated "that the undertrials are being kept in fetters due to security reasons". The Superintendent denied that they had been kept in such conditions for four years in Bareilly Central Jail itself, pointing out that they had been received in the prison at various stages between August and December 1989 confirming that they "were received from other jails in fetters" and that "the fetters were continued on them because of their antecedents of being arrogant in committing serious heinous crimes". The District Judge concluded that for security reasons it was necessary to keep certain Sikh prisoners in fetters. On 13 September 1990 the Supreme Court stated in an order that:

"We fail to understand why proper security arrangements cannot be made in Jail to guard these undertrials. Armed guards can be posted to guard them if security reasons so demand but it seems inhuman to keep them in fetters while they are awaiting trial which is delayed, notwithstanding this Court's order to expedite them".

The Supreme Court ordered that the prisoners should not be kept in fetters. The Supreme Court ordered that their trial be completed quickly, preferably within a period of three months. Amnesty International does not know whether the iron fetters were subsequently removed or whether trials have now started.

Keeping people in iron fetters for long periods constitutes, in Amnesty International's view, a form of cruel, inhuman or degrading treatment, prohibited in Article 7 of the International Covenant on Civil and Political Rights. Moreover, the United Nations Standard Minimum Rules for the Treatment of Prisoners strictly limit, in Rule 33, the circumstances in which instruments of restraint can be applied - and then only temporarily - and require that "chains or irons shall not be used as restraints".



#### IV) UNACKNOWLEDGED DETENTIONS AND "DISAPPEARANCES"

Amnesty International has received many reports that the police refuse to acknowledge that they detain people arrested in Punjab on suspicion of being members or sympathizers of Sikh armed groups advocating a separate Sikh state, even though there are sometimes eye-witnesses to their arrest or detention. Such people are held in illegal detention for weeks and sometimes months, without any record of their arrest or their place of detention. Although the detention of some was eventually acknowledged, particularly after *habeas corpus* petitions were brought, such legal remedies have, in other cases, remained entirely ineffective and police officials have continued to deny knowledge of arrest or detention or else claimed that the person in question had "escaped".

There are numerous instances in which police and security forces have denied arresting or detaining people believed to have been taken into custody illegally. In several cases, the Punjab and Haryana High Court have confirmed that people were held in unacknowledged and illegal detention and ordered that legal proceedings be taken against the police officers responsible. In one such case, the High Court initiated contempt of court proceedings against police officials who disobeyed court orders to release detainees held in illegal and unacknowledged detention.

The "disappearance" cases listed below remain unresolved.<sup>10</sup> Amnesty International has selected those recent cases which have been reported to the organization in the greatest detail. Relatives have expressed fears that "disappeared" persons have been tortured and may even have been killed while in police custody. One of the victims was said to be 15 years old at the time of his "disappearance".

##### *Devinder Singh Pujari, Rajinder Singh Pappu and Jurbaj Singh Jago*

Devinder Singh Pujari from Moraikalan, Rajinder Singh Pappu from Amritsar, and Jurbaj Singh Jago from Mehrdipur, were reportedly last seen in custody on 7 March 1990. The exact date and place of their arrest, in mid-1989, is not known.

In late February 1990 a local human rights organization was told of the men's whereabouts by a prisoner released from CRPF custody. The organization immediately brought a *habeas corpus* petition on behalf of the three men in the Punjab and Haryana High Court which, on 6 March, ordered their release and appointed a warrant officer to search for them. The following day, the warrant officer and members of the human rights organization visited the camp of the 85th Battalion of the CRPF, where they believed the detainees were held. They say that they managed to find the three detainees but that, before they were able to speak to them, the men were driven away in a CRPF jeep without a number plate.

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<sup>10</sup> Additional data about the context in which "disappearances" occur is provided in an Amnesty International report of July 1989 entitled: India: Some Recent Reports of "Disappearances" (AI Index: ASA 20/08/89).

In his report to the Punjab and Haryana High Court of 8 March, the warrant officer described how the missing men were found in the CRPF camp. He said that when they arrived at the camp, they were told to wait for the return of the Assistant Commandant, who was on patrol. The warrant officer reported: "During this period nobody was present there and we went outside in front of store rooms numbering 19A, 19, 20A and 20. The doors of the stores were locked from outside and there were chinks measuring 6" x 6" on the upper side. I and the petitioner called the names of alleged detainees from outside in low voice and from that position of door of room No. 19 and 20A the alleged detainees responded to the call and signalled with their heads in affirmative." A member of the local human rights organization, who had been told to wait outside, said he saw a sentry go to store rooms No. 19 and 20A and take the three men away in a CRPF jeep which carried no number plate. The warrant officer said: "I came out and ran towards these rooms and saw that a jeep was going out of the main gate taking the alleged detainees at a very fast speed". He complained to those in charge: "In the meantime, one DIG rank officer and Senior Superintendent of Police (SSP) Amritsar...and many police and CRPF officials reached there. I narrated the whole incident to the high rank officials saying that those officials did not allow me the search of the alleged detainees". Later, the Assistant Commandant of the camp told the High Court: "the detainees were not detained illegally in the premises of the 85th Battalion". Similar statements were reportedly made in court by other police and CRPF officials.

The High Court did not believe the statement of the Assistant Commandant and on 22 March 1990 started contempt of court proceedings against these officials "for illegal detention and disobeying the orders of this court in not allowing the warrant officer to release the alleged detainees". The court dismissed the denials of officials that the three men had been in their custody as "of no consequence". However, the contempt of court proceedings were subsequently dismissed, apparently because the officials involved were transferred outside Punjab. No other legal action is known to have been taken against them and the current whereabouts of Devinder Singh Pujari, Rajinder Singh Pappu and Jurbaj Singh Jago remain unknown.

### *Jaswant Singh and Chanan Singh*

These two elderly Sikhs were among a group of seven men reportedly arrested at the same time. All seven cases were mentioned in a *habeas corpus* petition which secured the release of five of the men who were awarded compensation by the High Court. The whereabouts of Jaswant Singh and Chanan Singh remain unknown.

On 10 October 1990 the Punjab and Haryana High Court heard a *habeas corpus* petition brought by the Punjab Human Rights Organisation on behalf of seven men allegedly held at either Dera Baba Naka police station, Kalanaur police station, Kotla Surat Malli chowkie or Shahpar chowkie, since 4 October. The PHRO alleged the seven men had been beaten in custody. It stated that the police had refused to acknowledge their detention, although they had told the men's families that unless a bribe for their release was paid the men would be killed in a false "encounter".

The High Court appointed two warrant officers to search for the detainees. One went with a relative of one of the detainees to Dera Baba Naka police station on 11 October. None of the seven men were found when they searched the cells, but when the relative called the detainees by name in a loud voice there was an answer from one of the rooms in the police station. All of the seven men except Jaswant Singh were found in that room, although there was confusion about one of them, Chanan Singh. None of the prisoners' names had been recorded in the

daily register. Five of the men were then released. Chanan Singh was kept in custody because his father's name and the name of his village differed from the details given in the *habeas corpus* petition. Jaswant Singh was not found during similar searches of the other police stations named in the *habeas corpus* petition.

In his report given on 30 October, the High Court judge said that the Moharrir Head Constable of the Dera Baba Naka police station had claimed the six men went to the police station of their own accord to meet the Station House Officer on 11 October [the day they were found in the police station by the warrant officer]. The SHO was not there so they had been asked to sit in the room where they were found. The judge concluded: "There appears to be no force in this contention [the police claim] as in case the alleged detainees wanted to simulate their confinement at the police station, then there was no question of Jaswant Singh and Chanan Singh missing therefrom". The judge also said there was no evidence that the PHRO or the seven detainees had any motive to falsely implicate the police of that particular police station, and ruled "there is no escape but to conclude that the above-referred persons were being illegally detained". The judge ordered the police officers in charge to pay 5000 Rupees compensation to each of the five men. The whereabouts of Chanan Singh and Jaswant Singh are still not known.

### *Jasbir Singh*

Members of the security forces, as well as the police, hold people in unacknowledged detention. Jasbir Singh, a 20-year-old man from Bhikki, Bhatinda District, was arrested in front of local villagers, on 6 February 1990 by CIA officers, believed to be from Rampura. No reason was given for his detention. Several witnesses made sworn statements to the court that they had seen Jasbir Singh in detention of the CIA officers at Rampura between 6 and 13 February, and that Jasbir Singh had told them that he had been tortured, with the result that he passed blood with his urine. On 15 February the warrant officer, acting on orders of the High Court responding to a *habeas corpus* petition, raided the CIA offices, at Rampura, and found Jasbir Singh, and the CIA acknowledged his arrest but told the court it had taken place that day. The CIA had persistently denied any knowledge of his detention when family members inquired about him a week earlier.

### *Devi Dayal*

In other cases, *habeas corpus* petitions have failed to locate the "disappeared". Devi Dayal's petition was dismissed on technical grounds.

On 28 November 1990 the Punjab and Haryana High Court dismissed a *habeas corpus* petition brought by the President of the Ropar District Unit of the PHRO on behalf of Devi Dayal, son of Chanan Singh, post office Suron, Rajpura, Patiala district. The petitioner stated that Devi Dayal was held by CIA staff in the Rajpura police station and that the CIA refused to acknowledge the detention. He alleged that Devi Dayal had been beaten in custody.

The High Court first dismissed the petition because the petitioner did not live in the same district as Chanan Singh. The petition was brought to court again the following day by the same petitioner and one other. The High Court once more dismissed it, this time on the grounds that the human rights group could not show how it was related to or interested in the fate of Devi Dayal. The court denied that his fate was a matter of public interest. It also refused to hear the petition

because it did not identify any individual among the CIA staff as responsible for illegally detaining Devi Dayal.

As a result, Devi Dayal's whereabouts remain unknown. Amnesty International believes that identifying individual officers as responsible for illegal detentions, as the High Court required, is impossible in many cases because the police take effective steps to conceal their responsibility.

### *Parvinder Singh*

In other cases the courts have simply upheld police denials that a "disappeared" person was in custody, even when there were witnesses to the arrest and the identity of arresting officers was known.

Parvinder Singh, the son of Chain Singh, was 26 years old at the time of his "disappearance" in August 1990. Married with two children, he was working as a Lower Division Clerk in the Punjab State Electricity Board, Balachor, Hoshiarpur district.

On 30 October Chain Singh brought a *habeas corpus* petition on behalf of his son to the Punjab and Haryana High Court. The petition stated that Parvinder Singh was taken from his office at the Punjab State Electricity Board (PSEB) on 3 August by police officials including two Sub Inspectors (hereafter Sub Inspector A and B), and the Station House Officer at Balachor police station. Chain Singh said that he feared his son could be killed by the police in a fake "encounter". He requested that the judge order the police to bring his son before the court for his release and that compensation be paid for keeping him in illegal detention.

An Assistant Executive Engineer at the PSEB witnessed the arrest and had described it in a letter to the Senior Superintendent of Police at Kapurthala written on 9 August: "On dtd. 03/08/90 Addnl Station House Officer City Police Station. p. unknown (perhaps named [Sub Inspector B]) accompanied with his squad and SHO Balachaur reached this office at about 10.00 a.m. and taken the above named official [Parvinder Singh] with them and told that 'he is desired in connection with some enquiry / investigation of a case and will be free within a few minutes'. But it is surprised [surmised] that the official concerned has been kept under secret confinement by the City Police Bhagwara...".

On 11 November the Sub Inspectors A and B, made statements to the High Court in response to the *habeas corpus* petition. Sub Inspector A acknowledged that he went to arrest Parvinder Singh on 3 August 1990 under the Arms Act and the Terrorist and Disruptive Activities (Prevention) Act at the office of the Punjab State Electricity Board and said he requested permission from a senior official of the Board, Balwant Singh, as Parvinder Singh's employer, to arrest him but that this was denied. Both he and Sub Inspector B claimed that they were only allowed to talk with Parvinder Singh for 15 minutes within the premises of the PSEB, that they were not allowed to arrest him and that they left Parvinder Singh in his office. Sub Inspector A told the court that Parvinder Singh was not in detention and had absconded to escape arrest.

On the basis of the police statements, without further investigation, the High Court dismissed the petition on 20 November. Parvinder Singh's father and his employers, despite many enquiries and letters to police and state officials, failed to establish why or where he was detained. His whereabouts remain unknown.

### *Ravail Singh, son of Massa Singh*

Ravail Singh was a truck driver from Jabbowal Tehsil, Baba Bakal a village, Amritsar district. On 16 June 1990 at about 3pm police officers from Jandial a police station came to his house, searched it and took him to the police station. Ravail Singh's two brothers and a man from Muchhal vil l age witnessed his arrest. Later that day Ravail Singh's wife and brothers visited the office of the Station House Officer, Jandial police station, who denied that Ravail Singh had been arrested. His wife then visited the Senior Superintendent of Police (SSP), Majitha, who al so denied knowl edge of Ravail Singh's arrest.

On 16 June Ravail Singh's wife appeal ed on his behal f to the Chief Justice of Punjab and Haryana High Court, the Governor of Punjab, the Chief Secretary of Punjab and the Director-General of Pol ice, Punjab. On 14 July she sent further appeals to the Governor of Punjab, the Director-General of Pol ice, Punjab, the Inspector General , Border Range, Amritsar and the Prime Minister of India.

On 17 July Ravail Singh's rel atives again visited the office of the SSP, Majitha, who asked them whether they had "moved any compl aint to the High Court". They told him that they had brought a *habeas corpus* petition. The SSP then apparently told them that Ravail Singh was being held in police custody and would be brought to court upon successful application of the petition. However, to Amnesty International's knowledge he was not brought to court, the *habeas corpus* petition was dismissed and there is no information about Ravail Singh's whereabouts or fate. The police have subsequently told the family that he is "not in their custody", al though some reports indicate he may be hel d in prison.

#### *Bal dev Singh of Warian vil l age*

In some cases, the police have denied arresting people even though they were afterwards seen in custody by their rel atives. In one case the victim was a boy of 15 at the time of his "disappearance".

Bal dev Singh, then aged about 15, was arrested with his twin brother, Kal a Singh on 16 October 1988. When they were arrested the boys were watching television in the family home in Warian, Taran Taran, Amritsar district. The arrests were reportedly carried out by the Sarhal i police and witnessed by other vil lagers. The police al so took away the tel evision set, some cl othes and some agricul tural tool s. No reason for their arrest was given.

Bal dev Singh and Kal a Singh's mother went immediat ely to the Sarhal i police station accompanied by the vil l age leader of Dargapur. There she was abl e to see both her sons and to hand over cl othes to them. Kal a Singh was rel eased 20 days later by the Sarhal i police and the tel evision set was al so returned. The mother returned to the police station to ask about Bal dev Singh but was reportedl y tol d that he had been "taken by the Central Reserve Pol ice Force for investigation".

The mother then appealed to the Prime Minister of India and the then Governor of Punjab to establish Bal dev Singh's whereabouts. The governor informed her, on 5 December 1988 that he had forwarded her l etter to the Deputy Inspector General of Pol ice - Grievances. No further progress has been made in the investigations and Bal dev Singh's relatives have been unabl e to establish his fate or his whereabouts. On 20 August 1990 his relatives wrote to Amnesty International asking for assistance in tracing him.

#### *Kushwinder Singh, son of Shamsher Singh*

In another case, a man "disappeared" after being seen in custody by a fellow prisoner at the CIA interrogation centre, Patiala.

Kushwinder Singh is the second of three sons, the youngest of whom, Rajinder Pal Singh, was killed in 1985, allegedly while in police custody. Kushwinder Singh was arrested on 26 January 1989 and released on bail in April 1989. His trial was set for 21 July 1989. The night before the trial Kushwinder Singh and his father stayed with a relative in Madanpur near the court. On 21 July, while he and his father were waiting for a bus to take them to court for the trial, armed men in plain clothes driving a van and a jeep without number plates seized Kushwinder Singh and forced him into the jeep. His father claims the armed men were led by an Inspector of the CIA, Patiala.

The family heard nothing about Kushwinder Singh until the end of August 1989 when a former detainee who had been arrested on the same day, told them that he had been held with Kushwinder Singh in the CIA interrogation centre at Patiala until 23 August. Kushwinder Singh's father, accompanied by a former member of the Punjab Assembly from Ropar, went to the CIA staff office in Patiala where the father identified the Inspector who had arrested his son. The Inspector denied that he had taken Kushwinder Singh into custody.

The family received another report that Kushwinder Singh had been seen in custody, this time from the wife of the relative in Madanpur with whom Kushwinder Singh and his father had stayed before the trial. She said that as she was returning home from the hospital in Chandigarh on 26 October she saw a person in handcuffs being led from the hospital and into a van by seven or eight policemen. She thought she recognized the person from behind as Kushwinder Singh, and she called out his name. When he turned, she definitely recognized him as Kushwinder Singh, but the policemen escorting him continued to lead him away. Since then his family has received no further information about Kushwinder Singh. His fate or whereabouts remain unknown.

Other well documented cases of "disappearance" are selected from dozens reported to Amnesty International since 1988 and are summarized below.

#### *Baljinder Singh alias Raju Baljinder Singh alias Raju*

Baljinder Singh, a car dealer and active member of the All India Sikh Students' Federation from Amritsar, went with a friend to Jalandhar on 9 June 1989 to complete the sale of his car. When they arrived at the dealer's office, they were driven to a building which they later realized was the Criminal Investigation Agency's (CIA) office. According to one report, the police arrested Baljinder because they wanted to obtain information about one of his relatives. Baljinder Singh was seen in police custody on the evening of 9 June 1989, after which he was reportedly interrogated for fifteen days and tortured by officials of both the CRPF and the CIA. Soon after the arrest, Baljinder Singh's relatives brought a *habeas corpus* petition in the Punjab and Haryana High Court but the petition was dismissed. He is not known to have been brought before a court. Members of a civil liberties group raised his "disappearance" with the then Governor of Punjab, Nirmal Kumar Mukarji, who promised an investigation, but his relatives have received no further information and remain unable to establish his fate or whereabouts.

#### *Hardeep Singh son of Amarjit Singh*

Hardeep Singh, aged 25, son of Amarjit Singh of Verka village, Amritsar district, was reportedly arrested by police from Sector 27 in Chandigarh at 9 pm on 21 April 1989. The following day relatives were told that Hardeep Singh had been

transferred from Sector 27 police station to the police station in Sector 11. When they went to the police station in Sector 11, relatives were apparently able to see Hardeep Singh but were not allowed to talk to him. After news of his arrest had been published in a local Punjabi newspaper on 29 April, relatives made further inquiries at the police stations both in Sector 11 and 27. They were told that Hardeep Singh had been taken to Amritsar by police from Saddar police station, Amritsar. However, when the relatives went to Saddar police station the police denied he was held there. Relatives sent numerous appeals to police and government authorities but to Amnesty International's knowledge no replies were received. After several months in unacknowledged detention Hardeep Singh was reportedly released towards the end of 1989. Relatives claimed that during his detention he was subjected to torture.

### *Darshan Singh Dalia*

Darshan Singh Dalia, an artisan from Dalia village in Ludhiana district and reportedly an active member of the Khalistan Liberation Force, was allegedly arrested while waiting at the Ropar bus stand on 26 March 1988. The arrest was reported in several Punjabi newspapers including *Punjabi Tribune* (2 April 1988) and *Ajit* (7 April 1988) and was witnessed by a friend. Dalia had frequently been detained for short periods before this and a reward of 100,000 rupees had reportedly been announced for anyone informing the security forces of his whereabouts. He was last seen at Hoshiarpur City Police Station in the first week of April 1988. A local human rights organization brought a *habeas corpus* petition on his behalf at the Punjab and Haryana High Court on 27 October 1989 and informed the court that in May 1988 the Ministry of Home Affairs had published a booklet alleging that Darshan Singh Dalia had disclosed information leading to the discovery of arms from a secret hide-out in Amritsar, an apparent indication that he was in detention at the time. The authorities continued to deny his detention claiming that the disclosures in the booklet had been made by Darshan Singh Dalia to a second source who passed them on to the government. The judge ruled that he must have been in custody when the booklet was written and ordered that Darshan Singh Dalia be produced in court on 7 November 1989. Because the authorities continued to deny that he was in their custody, it was impossible to locate him and bring him before the court. His whereabouts remain unknown.

### *"Escape" from custody*

In scores of "disappearance" cases the police have claimed that detainees "escaped" to cover-up the fact that they actually had died while in police custody or were being kept in unacknowledged detention. Relatives have claimed that prisoners said to have "escaped" were tortured by the police and were in too weak a state of health to make a successful escape attempt. Their fate or whereabouts are not known since, according to their relatives, the victims never returned home after their "escape". The circumstances in which police claim prisoners "escaped" are often identical and are hardly credible.

Relatives have appealed to the government to order impartial investigations into whether prisoners said to have "escaped" were in fact victims of extrajudicial execution or illegal detention. In the cases known to Amnesty International, such appeals have received no response. In one of the following cases an inquiry was held by the police, but family members have been reluctant to cooperate with such inquiries and instead have demanded judicial inquiries, with full guarantees of impartiality and independence. In another case, relatives

brought a *habeas corpus* petition and the Supreme Court subsequently ordered an inquiry, but its outcome is not known.

### *S. Kuljit Singh Dhatt of Ambala Jattan*

Kuljit Singh Dhatt was the 35-year-old village leader of Ambala Jattan, a village in Hoshiarpur district where he "disappeared". He was also a member of the governing council of Khalsa College. His relatives say that police from Tanda police station arrested Kuljit Singh Dhatt on 23 July 1989 at a relative's house in Garhi village. According to press reports, he was arrested in connection with the killing of a local president of the Congress (I) party on 19 July. His brother said that when he went to the police station, he was told that Kuljit Singh Dhatt would soon be released.

However, the police maintain that Kuljit Singh Dhatt "escaped" from their custody on the night of 24/25 July while he was being taken to the Mand area for investigation into the recovery of arms. Police apparently told his relatives that while handcuffed he jumped into the Beas river at 3am and disappeared.

Kuljit Singh Dhatt's relatives contest the police claims. They believe that he was either tortured to death in Tanda police station, or that he was shot at the orders of a senior police official, whom they named, and that the police disposed of his body. Police have denied the charge of torturing and killing him. The police announced that a departmental inquiry would be held by the Inspector, Special Staff (Crime), but Kuljit Singh Dhatt's relatives said they would not cooperate with such an inquiry, dismissed it as a cover-up, and reiterated their demand that a judicial inquiry by a sitting judge of the High Court be held instead. Kuljit Singh Dhatt's fate or whereabouts remain unknown.

### *Kulwinder Singh, son of Tarlochan Singh Sidhu*

Kulwinder Singh (alias Kid), in his early twenties, is from Mohali, District Ropar. Like Kuljit Singh Dhatt, he "disappeared" in July 1989. He had been arrested in September 1986, apparently because he was suspected of having links with the All India Sikh Students Federation and was held for two years in Nabha jail. After his release, on 27 October 1988, he and his family were reportedly harassed by police who raided the family home on a number of occasions, sometimes taking Kulwinder Singh and other family members into custody for several days at a time.

On 4 January 1989 Kulwinder's father, Tarlochan Singh Sidhu, was assured by the Senior Superintendent of Police that his son was not wanted on criminal charges and that the family would not be subjected to further harassment. In February 1989 Kulwinder Singh got married and moved out of his family home. On 22 July 1989, at about 11am, a large number of policemen, many in plain clothes, surrounded Kulwinder Singh's house. They included an Inspector of the CIA staff, Patiala. Eye-witnesses say they saw Kulwinder Singh and another man (later identified as Palwinder Singh, alias Pola) approaching the house, when nine or 10 policemen came towards them and tried to arrest them. They say Palwinder Singh tried to escape and was shot and wounded. Kulwinder Singh was arrested, blindfolded, and his hands and feet were tied. Both men were taken away in a jeep without licence plates.

On 24 July, Kulwinder Singh's father heard news of an armed "encounter" near Sohana police station between police and two men described as "terrorists". Fearing that police had killed his son and Palwinder Singh in a staged incident he contacted a human rights organization who requested permission for their representatives and Kulwinder Singh's father to see the bodies. Their request

was granted but by the time they arrived at the Civil Hospital in Ropar the bodies had been removed. They were later reportedly cremated as "unclaimed" bodies.

The following day Kulwinder Singh's father applied for a judicial order that the Ropar police produce in court the photographs, clothes and other articles removed from the two bodies. The Station House Officer of Mohali police station responded in an affidavit dated 27 July 1989. He stated that on 22 July police had raided the house of Kulwinder Singh, that the "terrorists" Kulwinder Singh and Palwinder Singh had opened fire on them, that police had returned fire killing Palwinder Singh, and that Kulwinder Singh had "managed to escape". Kulwinder Singh's relatives disputed this; they believed that Kulwinder Singh was still in police custody. They said they had received news of him from two recently released prisoners who had seen him alive in police custody in Patiala. One of the prisoners had claimed to have seen him at the residence of the Inspector, CIA staff, Patiala, on 24 July 1989.

One month later, on 22 August, Kulwinder Singh's father appealed for a judicial inquiry into the incident to the President and the Home Minister of India, the Governor of Punjab and the Home Secretary, Punjab. He received no response, and on 22 September 1989 he brought a *habeas corpus* petition on his son's behalf before the High Court. In their reply to the court, the police repeated their claim that Kulwinder Singh "escaped". At the time of writing there was no further information about his whereabouts nor has the identity of the two bodies which were cremated been made public, as far as Amnesty International is aware.

#### *Jarnail Singh, son of Wazir Singh*

Jarnail Singh and his brother Mehal Singh from Mahandipur village, Amritsar district, were arrested on 5 May 1989. According to press reports, they were arrested on suspicion of "aiding terrorists". Their father, Wazir Singh, immediately made inquiries about where the brothers were held, and, when he was unable to get his sons released, obtained a judicial order from the Judicial Magistrate, Patti, and the Deputy Commissioner, Chandigarh, instructing the Khem Karan police to bring his sons before a court. However, only one of the brothers, Mehal Singh, appeared in court. He was remanded to judicial custody on 27 May 1989.

After Wazir Singh had appealed again on his son's behalf to the Deputy Commissioner, Amritsar, a case was registered against Jarnail Singh under the Terrorist and Disruptive Activities (Prevention) Act. On 14 July Jarnail Singh appeared before a judicial magistrate without the assistance of a lawyer, and was remanded in custody for three days. On the day he was due to appear in court again, 17 July, the police told the magistrate that Jarnail Singh had "escaped" from custody on 15 July at 5.10 am. According to the police report, Jarnail Singh had been taken from the police station that morning to assist the police in recovering weapons. When the police jeep came to Bahak, Chaba Village, Jarnail Singh said he wanted to use the toilet. As he squatted down, according to the police report, "he suddenly pulled the handcuffs with a jerk [from the policeman] and snatched the chain from the hands of [the policeman guarding him] and ran off into the darkness".

Wazir Singh did not believe this account. In a report in the *Indian Express*, Chandigarh, 11 August 1989, he described the escape story as "an old and fabricated one. It was strange that a handcuffed person could escape from the custody of armed policemen". He said he feared that his son was either held in

illegal detention in the Mal Mandi Camp of the Central Reserve Police Force, Amritsar, or had been tortured to death there.

## V) EXTRAJUDICIAL EXECUTIONS AND "ENCOUNTER" KILLINGS

There are numerous allegations that members or sympathizers of armed Sikh groups are captured, tortured and then extrajudicially executed, the killings attributed by the police to armed "encounters". There are rarely survivors, either wounded or captured, of such alleged clashes. Witnesses may have observed the arrest of the victims, or may have seen them in custody, but are rarely present when killings occur, making it difficult to dispute police claims. Sometimes the bodies are rapidly cremated by the authorities before they can be independently examined and relatives complain that they are denied access to the post-mortem reports.

The practice of routinely attributing arbitrary and unlawful killings to "encounters" has been sufficiently widespread to receive considerable attention and condemnation in the Indian press for many years, not only in Punjab but also in other states, notably Andhra Pradesh. Some Indian officials have acknowledged that police routinely resort to extrajudicial executions when faced with armed insurgency. In 1988 the Supreme Court of India stated: "it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. 'Encounter death' has become too common".

The new Governor of Punjab, on assuming office in June 1990, effectively acknowledged that extrajudicial executions occurred when he issued an appeal to police officers "to stop fake encounters". Apart from such authoritative statements, there is also important circumstantial evidence of such a police practice. Amnesty International carried out a survey of all incidents reported during 1989 and 1990 in three English-language newspapers published in Delhi. During 1990, 173 incidents were reported in which Sikhs had been killed in armed clashes with the police or security forces. Only in 15 of these incidents, according to the press reports, were members of the security forces or the police killed. In total 346 Sikhs had been killed as against no more than 25 policemen or members of the security forces.<sup>11</sup> The figures for 1989 were very similar: a total of 298 Sikhs were reported killed in 178 "armed encounters" as against only 16 members of the police and security forces<sup>12</sup>. Had these incidents been genuine encounters with members of armed groups as claimed by the police, the number of police casualties would certainly have been expected to be considerably higher than that recorded in press reports.

Further evidence that the police routinely resort to extrajudicial executions in the guise of "encounter killings" is provided by an order issued by the Director-General of Police, Punjab. The order, issued on 30 August 1989 to all district superintendents of police in Punjab, promised financial rewards for the "apprehension/liquidation" of 53 men described as "terrorists/extremists" (See *Appendix A*). The order has been widely regarded as a direct incitement to the police to extrajudicially execute the persons named in the order and to attribute the killings to "encounters" with the police. Amnesty International has received reports that, since the order was issued, six of the men named in it have

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<sup>11</sup> The incidents were reported as involving 142 clashes with members of the security forces, 22 with the police, two with the National Security Guard, two with the C.R.P.F., four with the B.S.F. and one with the army.

<sup>12</sup> The incidents that year were reported as involving 122 clashes with the security forces, 31 with the police, 12 with the C.R.P.F., 11 with the B.S.F., one with the army and one with the village protection force.

been killed: Gursewak Singh, Ranjit Singh (killed on 29 May 1990), Gurmit Singh, Kamaljit Singh (killed by Jalandhar police on 18 October 1989), Sukhjinder Singh (killed in Gurdaspur) and Satnam Singh (killed in Batala Police district). There are unconfirmed reports that seven others named on the list have also been killed.

A year later, in April 1990 the new Attorney General confirmed that the order had been issued but told the Supreme Court that it had now lapsed. He stated that a new order had been issued, dated 1 April 1990. It announced rewards for the "arrest/apprehension" of 41 men, many of whose names had appeared on the earlier list. The word "liquidation" was no longer used. Amnesty International believes that extrajudicial executions continue to be carried out in the guise of "encounter killings". Some recent examples are described below. In one case, a magistrate found there was evidence that two men had not been killed in an armed encounter, as the police had claimed.

### *Harpal Singh and Baljit Singh*

According to *The Statesman*, New Delhi, of 29 June 1990, two students, Harpal Singh, 24 years, and Baljit Singh, 20 years, both members of the All India Sikh Students Federation, were killed by the police on the night of 14 June 1990 in what the newspaper described as an armed encounter in Kotla Ajner village. As in other such cases, no policemen were reported killed or wounded in the incident. According to the press report, "The circumstantial evidence in the case collected by this correspondent after visiting the site and speaking to a number of villagers....clearly shows that it was a case of fake police encounter....According to the villagers, the victims were tortured by the police for a couple of hours and later killed".

*The Statesman* article also alleged that a few days after the incident police picked up four Harijans (members of the Scheduled Castes formerly known as "Untouchables") and took them to Khanna police station. Initially they were asked to become witnesses to the Kotla Ajner "encounter", but all refused on the grounds that they knew nothing of the incident. They were then forced to put their thumb prints on blank pieces of paper. The correspondent from *The Statesman*, having met three of the four men, concluded that the police were trying to collect false evidence to substantiate the official version that the deaths occurred in a genuine encounter.

A PHRO team which visited Kotla Ajner in late June and early July 1990 also concluded that this was a clear case of faked "encounter". They constructed the following account of the incident from statements provided by eye-witnesses.

On 14 June 1990 Harpal Singh and Baljit Singh were reportedly looking for the President of the Akali Dal. Harpal Singh was apparently on bail, with several cases under TADA and the Arms Act pending against him. Outside the village of Kotla Ajner they were seen by police from Khanna police station who gave chase in a jeep. The scooter on which the two men were travelling slipped and they tried to run away on foot. This happened at about 6.45 pm. The police opened fire and Harpal Singh was hit in the right thigh, at which point Baljit Singh raised his arms in a gesture of surrender and started to walk back towards Harpal Singh.

12 villagers say they saw that police dragged Harpal Singh back to the local primary school where the two men were held, one with an injury to his leg and the other with his hands tied behind his back, in the custody of the police. The school was then cordoned off and around two hours later more shots were heard in the locality.

The police claimed they had shot the two men in self-defence and had recovered a revolver from one of the bodies. But later the SHO, Bhullar, told the PHRO team that Harpal Singh, finding himself surrounded, had committed suicide. Both villagers and the PHRO team claimed the site of the killing contained evidence that the men had been tortured before they were killed by the police while in their custody. The SHO at Khanna police station reportedly refused requests from the parents to hand over the bodies for the last rites, and they were only allowed to see the bodies after they had been placed on a funeral pyre by the police. Even in this condition, Baljit Singh's father claimed there were signs that torture had been inflicted upon his son before he died. As of December 1990 relatives had been unable to obtain copies of the post-mortem reports.

The incident attracted considerable publicity as the new Governor of Punjab, Virendra Verma, taking the oath of office on the same day, had promised to put an end to false "encounters". The incident was one of the few into which the state government ordered an investigation, conducted by the Deputy Commissioner, Ludhiana, Mr S. S. Brar. Despite reports of police intimidation of witnesses, the Deputy Commissioner reportedly found that: "death of the two was not in the ordinary course of an encounter". However, senior police obstructed legal action to hold the police officials involved accountable in law. According to a 15 November 1990 report in *India Today*, Punjab's Home Secretary A. S. Chadha and the Governor's Advisor, P. S. Kohli, recommended criminal prosecution of the police involved. However, the Director-General of Police protested that such prosecutions would demoralize the police force. As of writing, no prosecutions are known to have been instituted.

### *Kulwant Singh*

On 8 July 1990, Kulwant Singh, aged 24 from Nawangarwan village, Ropar district, was reportedly stopped by police while illegally riding on a scooter with two others, Amarjeet Singh and Harjeet Singh. Eye-witnesses saw the police take Kulwant Singh to a nearby plot of land and shoot him at point blank range.

According to the report of a local civil liberties group which investigated this incident, the police were drunk and started to abuse the three men after Kulwant Singh had told them that his brother was an Assistant Sub Inspector in the Punjab police. They knocked Kulwant Singh's turban off, chased and beat him. Local residents came out to investigate what was going on but were ordered indoors from where several of them witnessed the police push Kulwant Singh into a vacant residential area, and shoot him from a distance of 3 to 4 feet. About 15 minutes later one of the police officers allegedly placed a revolver close to the dead man's head.

In an affidavit of 14 July 1990, Gurcharan Singh Randhawa stated that he saw police beating a man, forcing him to run and then witnessed him being shot. He also noticed that his hands were empty but that later a policeman in plain clothes placed a gun near Kulwant Singh's head. At least six other witnesses signed affidavits also saying that Kulwant Singh had been beaten while empty-handed, pleading to be left alone, that the police fired randomly in the air and ordered bystanders to go indoors, and that Kulwant Singh was shot and a gun was then placed beside his dead body.

Kulwant Singh's body was removed to Mohali police station, followed by a local crowd. There, the Senior Superintendent of Police reportedly told a member of parliament from the area, Bibi Bimal Kaur Khalsa, that the men involved in the

incident had no previous police record. However, the following day the same police official was quoted in newspapers as saying that Kulwant Singh and his companions had previously looted a petrol station at Ghanoli and that they were on their way to commit a similar crime when detained. Earlier, at the scene of the shooting, the police had claimed that Kulwant Singh had shot someone and was "trying to run away". They maintained that he was killed in an "exchange of fire" with the police and that a 9-mm bore Mauser had been recovered from his body. On 23 July the Senior Superintendent of Police told a delegation from the PHRO that Kulwant Singh had been stopped, had pointed a gun at the head of the constable nearest to him, had shot two rounds, injuring the constable in the arm and run off, and that the police chasing him fired when he refused to stop.

There is limited and inconclusive medical evidence to support the police version of events; doctors did find an injury on the arm of one police constable but could not establish with certainty that it was caused by a bullet. But police statements about the incident have been inconsistent and contradictory and are themselves contradicted by detailed eye-witness accounts. Furthermore, two constables reportedly attempted to interfere with medical tests to assess whether they had acted under the influence of alcohol. There are thus substantial grounds to believe that Kulwant Singh was deliberately killed by police. The Deputy Commissioner ordered that an inquiry be conducted by the Additional Deputy Commissioner, Ropar, Mr Arun Goel. Amnesty International does not know the outcome, although the inquiry report has reportedly been submitted to the government.

### *Charanjit Singh*

Two students from Punjab Agricultural University, Charanjit Singh and Jaspreet Singh, were reportedly detained on 9 July 1989. On 14 July a telegram was received at the Punjab and Haryana High Court from Gulwant Singh, the father of Charanjit Singh. In it he claimed that CIA police led by the Deputy Superintendent of Police, Ludhiana, had detained his son in Model Town on 9 July 1989 and that he had since "disappeared". Gulwant Singh stated that he feared that his son might have been tortured or killed in a faked "encounter", and requested that the telegram be treated as a *habeas corpus* petition.

In replying, affidavits from the Senior Superintendent of Police and Deputy Superintendent of Police, Ludhiana, claimed that Charanjit Singh had been killed in an encounter on 19 July 1989. They alleged that police had signalled to two men on a scooter to stop, but that they left the road and started to fire at the police. The police returned fire in self defence and in the exchange of fire one Sikh youth was killed and the other escaped - a common police version of events in an "encounter" situation.

In its judgment delivered on 9 May 1990, the High Court stated that it was difficult to believe that a father would send a telegram to the High Court 10 days in advance of his son's death, expressing the fear that his son might be killed in a faked "encounter" without substantial grounds for his concerns. The court considered that "these facts raise obvious questions which need to be answered" and the District and Sessions Judge, Ludhiana, was directed to hold an inquiry into the incident and submit a report within three months. The inquiry is not known to have been held.

### *Rajinder Pal Singh Gill*

Rajinder Pal Singh Gill, an assistant professor in horticulture at Punjab Agricultural University, Ludhiana, was reportedly arrested by the Ludhiana police in Chandigarh, Punjab, on 25 January 1989. He was arrested at the

residence of a relative, apparently on suspicion of involvement in "harbouring terrorists".

Two people claim to have seen Rajinder Pal Singh Gill in the custody of the police, one as he was allegedly brought to the CIA Headquarters at Ludhiana on 25 January and the other at the same place early the following morning. His relatives filed a *habeas corpus* petition before the High Court, which directed the Director-General of Police, Punjab, and the Senior Superintendent of Police, Ludhiana, to produce Rajinder Pal Singh Gill in court on 10 February 1989. The police refused to give information about his arrest or whereabouts until 15 February, when they announced that he had been killed in an "encounter" with two others on the night of 26 January 1989 at Khehra Bet, Ludhiana. His body was not handed over to the relatives but cremated by the police. The police did not make public any further details about the circumstances of the alleged "encounter".

Amnesty International is concerned that Rajinder Pal Singh Gill was deliberately killed by the police in a staged "encounter".<sup>13</sup> Police failed to explain why notification of the "encounter" was not given until nearly a month after it took place and have not produced detailed evidence that he died in a real armed encounter with the police. Eye-witnesses have claimed to have seen Rajinder Pal Singh Gill in police custody, and his wife, Rajinder Kaur, stated in a telegram on 27 August 1988 to the Chief Justice of the Punjab and Haryana High Court, at a time when she herself was in detention, that the Superintendent of Police (Detective) had previously threatened that her husband would be killed in an "encounter". Local human rights organizations investigating his arrest and subsequent killing allege that Rajinder Pal Singh Gill was deliberately killed in custody and that the "encounter" was staged by the police to cover-up the killing.

## VI) THE LEGAL FRAMEWORK

Legal procedures in India contain important safeguards for the protection of human rights. Article 22 clause 1 of the Constitution provides that nobody shall be detained in custody without being informed, as soon as possible, of the grounds of arrest nor shall the right to consult and to be defended by a legal practitioner of his or her choice be denied. Section 57 of the Code of Criminal Procedure stipulates that prisoners must normally be brought before a magistrate within 24 hours of arrest. The Code provides in Section 167 that arrested persons can be kept in police custody for up to 15 days without charge at the formal request of a senior police officer, if detention is authorized by a judicial magistrate. After the 15 day period, arrested persons must be remanded in judicial custody. The maximum period for which a prisoner may be placed on remand by a magistrate is 60 days. The magistrate cannot authorize remand of a prisoner unless he or she is brought before him.

These safeguards, however, are often not observed in practice and do not apply to prisoners arrested under special legislation relating to national security, which has been in force in Punjab since 1985. The Constitution, in Article 22 clause 3, provides that "any person who is arrested or detained under any law

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<sup>13</sup> See India: Alleged Killing of University Teacher in a Staged "Encounter", AI Index: ASA 20/05/89, for further details.

providing for preventive detention" does not benefit from the important guarantee of having to be brought before a magistrate within 24 hours of arrest as is normally required. Although Article 22 clause 5 of the Constitution establishes that a person held in preventive detention has the right to be informed "as soon as may be" of the grounds for arrest, this guarantee can be nullified by officials simply withholding information on grounds of "public interest" (clause 6). Furthermore, although Article 22 of the Constitution establishes that all arrested persons have the right to consult a lawyer of their choice, clause 3 withdraws the guarantee from people held in preventive detention.

The National Security Act (NSA), which permits preventive detention without charge or trial for up to one year, is in force in Punjab. The NSA does not stipulate that arrested persons have to be brought before a magistrate within 24 hours of arrest. It provides that the grounds for detention have to be communicated to a person detained under the Act within five and, exceptionally, within 10 days, but permits withholding this information on vaguely defined grounds of "public interest". The Act also prohibits a detained person from being legally represented when his or her detention is reviewed by an Advisory Board.

Some members of the Human Rights Committee<sup>14</sup>, recently examining India's second report about the measures it had taken to implement the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), expressed their concern to the representative of the Indian Government that the provisions of the NSA contained derogations from the rights guaranteed in the ICCPR of which the Committee ought to have been notified. They were particularly concerned that, under the NSA, there was no need to disclose the grounds of detention to a person detained under the Act and that it may take up to 7 weeks after the date of arrest before the Advisory Board reviews the detention. One member added that these were periods "very considerably longer" than would be compatible with Article 9(4) of the ICCPR.

### ***The Terrorist and Disruptive Activities (Prevention) Act, 1987***

Most arrests in Punjab are made under the provisions of the *Terrorist and Disruptive Activities (Prevention) Act* (TADA). When arrests are made under the TADA, charges under the Arms Act or the Indian Penal Code are often added. Several customary safeguards do not apply to persons arrested under the TADA which, in section 20 (4)(b) allows detention in judicial custody for investigation for up to one year without formal charge. This contravenes Article 9(2) of the ICCPR which obliges India, as a party to the Covenant, to ensure that "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him".

Those arrested under the TADA do not have to be brought before a judicial magistrate as is normally required; instead they can be brought before an executive magistrate, who is directly under executive control from the state's Home Ministry. This effectively grants the authorities arbitrary powers to decide whether a person need be brought before a judicial body to decide on the lawfulness of detention, as required by Article 9(4) of the ICCPR. Although Section 167(2b) of the Code of Criminal Procedure requires that a magistrate can only order the detention of a person if he or she is brought before him in person,

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<sup>14</sup> Observations made by members of the Human Rights Committee during its forty-first session on 26 - 27 March 1991. Summary records of this session will be published approximately two months after the closure of the session.

this often does not happen in practice. Lawyers working on civil liberties cases in Punjab told Amnesty International that police or prison officials frequently inform the magistrate that the security situation does not allow the detainee to be brought before him.

Bail is difficult to obtain: Section 20(8) of the Act requires that a Public Prosecutor has to be informed if bail is applied for and, if he opposes it, the detainee has to convince the magistrate of his or her innocence of the alleged offence. The difficulties of obtaining bail are evident from Mohan Inder Singh's bail application. According to the Central Bureau of Investigation, he was arrested on 19 January 1988 in connection with alleged offenses under the Passport Act and under the TADA for preparatory "terrorist" activity. His lawyer maintains he was arrested one year earlier, on 5 January 1987. On hearing his application for bail the Designated Court, Ajmer, held on 1 March 1990 that no bail could be granted until two witnesses in Canada had been examined.<sup>15</sup> However, as of January 1991, the government had failed to provide the means to record the evidence of these two witnesses and Mr Singh remained imprisoned. Appeal against refusal to grant bail lies only with the Supreme Court, an action which is costly and unlikely to produce quick results.

The TADA imposes a minimum of five years' imprisonment for anyone convicted of "terrorist" and "disruptive" activities: the latter are so broadly defined<sup>16</sup> that they encompass any act, including the peaceful expression of views, which questions the sovereignty or territorial integrity of India or which supports any claim for secession. Maximum punishment for such activities is life imprisonment, and execution if the proscribed activities result in death. The five-year mandatory minimum sentence also applies to anyone who "advises or incites or knowingly facilitates" a "terrorist act" or a "disruptive activity" or any act preparatory thereto. The same punishment can be imposed to "whoever harbours or conceals, or attempts to harbour or conceal any disruptionist". During the recent examination of India's second report to the Human Rights Committee, some Committee members said they were concerned that the provisions of the Act were overly broad and asked what protection the Act provided against arbitrary detention and the violation of other rights guaranteed by the ICCPR.

These broad provisions of the TADA are open to abuse and indeed have, according to lawyers, been widely misused. A report in *India Today*, 15 August 1988, also concluded that the wide powers of arrest given to the police in Punjab had been misused and that there were many instances of false arrests, police excesses and extortion. Civil liberties lawyers have told Amnesty International that people have been imprisoned under the Act for matters entirely unconnected with violent political acts: in one case a property broker was

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<sup>15</sup> Article 9(4) ICCPR reads: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention, and order his release if the detention is not lawful".

<sup>16</sup> Article 4 (2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 defines "disruptive activity" as any action taken:

- "(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or
- (ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union....."

imprisoned under the TADA simply for letting a house to a man arrested under the Act.<sup>17</sup> In another case<sup>18</sup>, the Special Public Prosecutor argued that it was an offence under the TADA to move a resolution at a political meeting which "appeals [to] all Sikh organisations to forgo [forge] unity" and to participate in the passing of a resolution which condemned the central government's policy regarding Punjab as "anti-Sikh" and which urged all Sikhs to "unite themselves to achieve the resolution of Anandpur Sahib" [a resolution listing Sikh demands for greater autonomy in Punjab in a peaceful manner]. Amnesty International considers people solely imprisoned for such peaceful expressions of their views to be "prisoners of conscience" entitled to be immediately and unconditionally released: they should not be labelled "terrorists".

Trial s under the TADA take place before special courts which may sit at any place including in prisons, and the Act obliges all Special Courts to conduct trials *in camera* (Section 16).

Moreover, the identity of witnesses can be kept secret. Such restrictions can make the effective cross-examination of witnesses virtually impossible and, consequently, seriously undermine the fairness of the trial. Trials held *in camera* necessarily lack important legal safeguards available to defendants tried in open court. Although the International Covenant on Civil and Political Rights, in Article 14, permits the press and the public to be excluded from a trial, or parts thereof, such restrictions are only allowed in strictly defined circumstances and the Covenant does not permit a mandatory provision obliging courts to do so in all cases without, as a minimum, being able to exercise their discretion. The Human Rights Committee, in its General Comment on Article 14 ICCPR, has stressed that:

"The publicity of hearings is an important safeguard in the interest of the individual and of society at large...apart from such exceptional circumstances [as listed in Article 14 paragraph 1]...a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited to a particular category of persons...the judgement must, with certain strictly defined exceptions, be made public".

A number of trial s have been held under the provisions of the TADA in several jail s inside and outside Punjab, including in New Delhi's Tihar jail . Lawyers who had defended people tried under the TADA have told Amnesty International that the public was often denied attendance at such trial s, that witnesses felt overawed and inhibited from giving evidence freely against the police in the intimidating atmosphere inside a prison and that few lawyers were therefore prepared to defend people standing trial inside a jail .

A further concern is that, in four situations identified in Section 21 of the Act<sup>19</sup> the burden of proof is shifted to the accused person, who has to prove his

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<sup>17</sup> Swaran Singh vs. State of Uttar Pradesh.

<sup>18</sup> Case No.16/11, State vs. Varinder Pal Singh, Narinder Singh Khalsa, Harmohinder Singh Dhillon and Gurnam Singh decided on 10 February 1988 by the Additional Judge, Designated Court, Chandigarh.

<sup>19</sup> Section 21 of the TADA provides that if anyone is prosecuted for committing a "terrorist act" under Section 3, the Designated Court shall presume the guilt of the accused in the following four situations:

"if it is proved -

"(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives...were used in the commission of such offence; or

or her innocence. This clearly contravenes the important safeguard provided in Article 14(2) of the International Covenant on Civil and Political Rights, which reads: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law". The Human Rights Committee, in its General Comment 13(21)(d) on Article 14 of the ICCPR, stated ".....the presumption of innocence...is fundamental to the protection of human rights... By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt.... It is...a duty for all public authorities to refrain from prejudging the outcome of a trial".

The shift in the burden of proof and the obligatory provision to hold all trials conducted under the TADA *in camera* were matters criticized by members of the Human Rights Committee when they examined India's second periodic report. One member found the provisions of the TADA "disturbing" whereas another called the provision of presumption of guilt "completely unacceptable".

Section 15 of the TADA permits a confession made to a senior police officer to be considered in evidence. This provision could serve as an incentive to the police to obtain "confessions" under torture: this is apparently the reason why Section 26 of the Indian Evidence Act normally excludes all confessions made in police custody, unless they are made in the presence of a magistrate. Section 15 of the TADA could also encourage the police to resort to recording false statements. Amnesty International knows of several cases in which witnesses were forced to sign their name on a blank piece of paper, enabling the police to fill in their own version of events. This practice was referred to by the judge of the Designated Court, Chandigarh, in a case brought under the TADA<sup>20</sup>, on 17 November 1987.

"..it appears that the recovery of these firearms was not affected in the manner alleged by these witnesses... the attestation of the witnesses figures right at the bottom of this paper which clearly shows that the attestation was obtained on the foot of this paper when it was blank and that is why in order to fill up the gap between the attestation of the witnesses the spacing of lines interse had become wider towards the fag end of this document".

Although Indian law normally permits a two staged appeal (first to the High Court and then to the Supreme Court), appeal against judgement by a Designated Court trying cases under the TADA lies only with the Supreme Court, and has to be filed within 30 days instead of the normal 60 days. Lawyers familiar with these appeals explained that most failed to meet this deadline because of the time involved in first finding a qualified lawyer and then raising the funds to pay him. Many people convicted under the provisions of the TADA are poor and are convicted by courts sitting far away from Delhi: even if they can identify a Supreme Court lawyer willing to make the appeal, they can rarely afford the

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- (b) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence;
  - or
  - (c) that a confession has been made by a co-accused that the accused had committed the offence; or
  - (d) that the accused had made a confession of the offence to any person other than a police officer..."

<sup>20</sup> State vs. Sher Singh (alias Shamsher Singh son of Mulla Singh).

high fees and make arrangements within the 30 day limit. Appeals are simply added to the long list of cases already pending: lawyers said that unless a special application was made to the Supreme Court, the appeal would not be heard until several years later. The result has been that very few appeals against judgements handed down by Designated Courts hearing cases under the TADA procedures have come up for final decision before the Supreme Court.

Amnesty International believes that there should be sufficient time and adequate facilities to appeal against judgements handed down by Designated Courts acting under the TADA procedures, not only because other important legal safeguards have already been suspended under the Act's provisions, but also because the courts are empowered to impose the death penalty. This concern has also been reflected by the United Nations, when it called upon governments, in General Assembly Resolution 35/72 of 15 December 1978:

"...to review their legal rules and practices so as to guarantee the most careful legal procedures and the greatest possible safeguards for the accused in capital cases".

Moreover, the United Nations Economic and Social Council recommended to member states of the United Nations, in resolution 1989/64 of 24 May 1989, to take specific steps by:

"(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases".

Legal proceedings under the TADA, if initiated, are subject to long delays and rarely result in convictions. More than 130 Sikh men have complained to the Punjab and Haryana High Court that they were arrested at various dates during 1988 and that, although charges were brought against them under the TADA, the Arms Act and the Penal Code, their trial failed to proceed for two years or more. This was either because the judge who came to prison to try them found the room too small or because they could not be removed to another place for the trial to take place, the state government having opposed their removal for reasons of danger to public order. Lawyers said that, as of early 1991, the trial had still not proceeded.

The most typical illustration of trial delays from which political prisoners arrested in Punjab are likely to suffer is the case against 324 Sikhs who were held in Jodhpur Jail, Rajasthan. Arrested in June 1984 at the time the army forcibly removed the armed Sikh leader Sant Jarnail Singh Bhindranwale and his followers from the Golden Temple in Amritsar, Punjab, these Sikhs were held without trial for more than four years. Their trial, held inside the prison, on charges of "waging war", had begun in January 1985 but was indefinitely suspended in July 1985. One hundred and thirty-seven detainees were released in September 1988 and the rest in March 1989: no reasons were given either for their release or why they had spent between four and five years in jail without trial. Such practices contravene not only the assurances India gave to the Human Rights Committee when it said that "speedy trial is a fundamental right of an accused implicit in article 21 of the Constitution"<sup>21</sup>, but also the requirements of Article 9(3) of the ICCPR that "Anyone arrested or detained on a criminal charge ...shall be brought to trial within a reasonable time or to release". In its General

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<sup>21</sup> CCPR/C/37/Add.13 at paragraph 55

Comment 13 (21)d on Article 14 the Human Rights Committee specified that "This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay".

In other cases, people were re-arrested on new charges immediately after the courts ordered their acquittal. Bhupinder Singh, alias Binda, son of Teja Singh, was arrested on 10 July 1989 on charges of having conspired with four others to assassinate the then Minister of Home Affairs, Buta Singh. Charged under the TADA, he pleaded not guilty and on 29 November 1990 the Designated Court acquitted him, finding no evidence of conspiracy to kill. He was kept in prison, however, apparently in connection with other charges, but as of February 1991 no steps had been taken to prosecute him.

According to official figures given in the Lok Sabha (Lower House) in May 1987, only six out of 1,487 cases registered under the TADA resulted in conviction or acquittal. Justice S.S. Sodhi of the Punjab and Haryana High Court found in April 1989 that only eight out of 364 investigated cases registered under TADA had been "disposed of" by the Additional Designated Court established under the Act in the preceding two years.

The lack of convictions is no doubt related to the intimidation of witnesses and the attacks on judges to which members of armed Sikh groups have persistently resorted: witnesses are said to be too frightened to give evidence and some judges reportedly fear to give judgments. On the other hand, the fact that many charges are brought without substantive evidence or are based on evidence fabricated by the police must also contribute to the low conviction rate. In a number of cases Designated Courts have acquitted accused persons on the basis of inadequate police investigations, invoking a Supreme Court directive that the investigations of cases under the TADA not only have to be thorough but also of a high order.<sup>22</sup> The lack of court convictions, according to some reports, has resulted in the police resorting to extrajudicial executions instead of arresting suspects and bringing them to court. But very few of those committing such grave human rights abuses are ever held accountable.

### ***Lack of accountability***

Indian law provides criminal liability for law enforcement personnel committing abuses. Apart from other substantive provisions in the Indian Penal Code<sup>23</sup>, Sections 330 and 331 of the Indian Penal Code make it a criminal offence to "voluntarily cause hurt" or "grievous hurt to extort confession", punishable with up to seven or 10 years' imprisonment respectively. Furthermore, Section 346 of the Indian Penal Code prohibits keeping people in unacknowledged detention. Wrongful confinement of "any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public

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<sup>22</sup> Balbir Singh vs. State of Haryana, A.I.R. 1987, Supreme Court at page 1053, referred to in the judgement of the Additional Judge, Designated Court, Chandigarh, dated 10 February 1988, in State vs. Varinder Pal Singh and others, at page 14.

<sup>23</sup> For example, Section 300 (murder); Section 326 (voluntarily causing grievous hurt by dangerous weapons or means).

servant..." can be punished with up to two years' imprisonment. A three-year prison sentence can be imposed if the wrongful confinement is aimed at extorting a confession.

However, Amnesty International knows of no case in which police officers who have tortured detainees or killed detainees or who have kept them in unacknowledged and illegal detention have been held accountable under these or other provisions of the Indian Penal Code. As described in this report, legal proceedings have still not been instituted against the policemen accused of having tortured Sikh detainees in Ladha Kothi jail more than six years ago, although the official inquiry had identified by name 21 police officials against whom there was *prima facie* evidence of involvement in torture and although the Supreme Court had ordered an inquiry against the relevant police officials. In several other cases described in this report, police officials have failed to appear before or refused to cooperate with inquiries conducted to establish responsibility for torture allegedly perpetrated.

If no action is taken by the authorities, the victim can bring a criminal complaint against the police. For that purpose, he or she can complain to a magistrate under the procedures provided in Sections 200 - 204 of the Code of Criminal Procedure. But these provisions do not apply to acts committed by the paramilitary forces, such as the CRPF and the BSF. Moreover, the accountability of the military in cases of human rights violations is inhibited by Section 7 of the Armed Forces (Punjab and Chandigarh) Special Powers Act, introduced in October 1983, and still in force in the state. The Act provides general impunity to members of the military and air forces from all prosecutions or legal action:

"No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act".

Most members of the Human Rights Committee, when reviewing India's second report at their in March 1991 meeting, expressed deep concern about this and other provisions of the Armed Forces Special Powers Act, particularly in respect of its application in north-east India. One member said he found the provision of immunity from prosecution to be contrary to ICCPR Article 2(3)(a) which requires that any person whose rights are violated should have an effective remedy. Another Committee member asked the Attorney-General to draw the attention of his government specifically to the words "purporting to be done" in the Act which he described as "dangerous". The Committee member pointed out that any member of the military could justify killing anybody by simply saying he thought he was performing his function and so remain immune from prosecution.

Amnesty International believes that it is very important that police, paramilitary, and military forces are held accountable, in law and in practice, not only to demonstrate that the government does not tolerate such practices, but also as a measure to prevent the future occurrence of the grave violations of human rights described in this report.

## VII) RECOMMENDATIONS

Although most of the human rights abuses detailed in this report took place under previous administrations, the pattern of abuses described -- involving grave violations of the right to life, the right not to be tortured and not to be arbitrarily arrested and detained -- continued under the National Front

coalition government and the Janata Dal (S) administration. Those legal safeguards that still apply in Punjab have clearly failed to prevent gross human rights violations. The right to *habeas corpus* is no longer an effective remedy to resolve cases of unacknowledged detentions and "disappearances" in the state: the security forces have often simply ignored orders to bring people before the courts. The situation may deteriorate further unless the Indian Government takes determined action to halt these practices and prevent further human rights violations by establishing a comprehensive program to protect human rights, including a complaints machinery providing effective remedies at the local level.

Amnesty International urges the government to consider implementing such a program and, basing itself on international standards and with a view to further enhancing the protection and promotion of human rights in Punjab, makes the following specific recommendations:

*Detainees, unacknowledged detention and "disappearances"*

**1. The government should order a review of all cases of people detained without charge or trial in Punjab, and ensure that all detainees against whom there is no evidence that they committed recognizable criminal offences be released.**

**1a. All those making arrests should be instructed to identify themselves, to inform the person to be arrested and his relatives of the reasons for the arrest and the grounds on which the arrest is made. There should be a clear and evident chain of command whenever security personnel carry out arrests of persons in connection with political activities.**

**1b. The government should prohibit the practice of holding detainees in secret places of detention. All persons arrested should be held in police stations, jails, or other officially recognized places of detention and their detention should be subject to the effective control of a judicial authority.**

**1c. The government should maintain registers updated on a daily basis of all arrests and detentions, the reasons for the arrests, the places where detainees are kept or transferred to and the identity of the arresting officer(s).**

**1d. Relatives, lawyers, doctors and other interested persons should have access to these registers and should immediately be informed of the place of detention and transfers.**

**1e. Any member of the police or security forces failing to register or giving false information about arrests should invariably be subjected to appropriate proceedings.**

Implementation of these recommendations would contribute to bringing Indian practice into line with important standards adopted by the United Nations. Article 9(2) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, provides that anyone who is arrested shall, at the time of arrest, be promptly informed of the reasons for arrest and of any charges against him. The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the General Assembly

of the United Nations in resolution 44/159 of 15 December 1989) require governments to ensure that anyone deprived of his or her liberty shall be detained in officially recognized places of custody and that accurate information on their custody and whereabouts is promptly made available to relatives and lawyers (Principle 6). The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the General Assembly of the United Nations in resolution 43/173 of 9 December 1988) makes detailed provisions, in Principles 4 and 12, for judicial or other independent supervision of arrest and detention and for keeping of detailed records, to which detainees and their lawyers shall have access.<sup>24</sup>

**2. Notwithstanding special provisions in the National Security Act and the Terrorist and Disruptive Activities (Prevention) Act, all arrested persons should be brought before an independent judicial officer (magistrate) within 24 hours of arrest, as normally provided in Indian law, and should be informed of the grounds for arrest. Incommunicado detention should be prohibited and relatives and lawyers should be allowed access to detainees promptly after arrest and regularly throughout their detention/imprisonment. A medical examination should take place immediately after arrest and regularly thereafter. Detainees should have the right to be examined by a doctor of their choice.**

**2a. The government should carefully study the observations made by the Human Rights Committee which recently examined India's second report submitted under Article 40 of the ICCPR, including the concern expressed by Committee members that a number of provisions in special legislation in India were incompatible with the rights provided in the ICCPR. The government should order a review of the National Security Act, the Terrorist and Disruptive Activities (Prevention) Act, 1987, (TADA) and the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983, so as to bring their provisions in line with the guarantees provided, respectively, in Articles 9, 14, 6 and 2 of the ICCPR.**

The National Security Act's provisions for review by an Advisory Board within seven weeks are inconsistent with ICCPR Article 9(4) which stipulates that anyone who is detained is entitled to take proceedings before a court which should decide without delay on the lawfulness of detention. Similarly, Sections of the TADA specified in this report are inconsistent with ICCPR Article 14(2) which lays down the presumption of innocence and ICCPR Article 14(1) which provides that hearings should be fair and public, the Covenant not permitting an obligatory provision to hold all trials *in camera* as stipulated in the TADA. ICCPR Article 6 prohibits arbitrary deprivation of life and, contrary to the immunity from prosecution provided in the Armed Forces (Punjab and Chandigarh) Special Powers Act, ICCPR Article 2(3)(a) provides that all victims of human rights violations have the right to an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

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<sup>24</sup> The text of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles") and of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (the "Principles"), are attached in full as Appendix B and C to this report.

Although the Punjab state government issued new guidelines for the police in September 1990, including a directive that it would be "advisable" to inform relatives and respectable persons of the village of an arrest, the directives do not make it obligatory to do so. The UN Body of Principles require access to legal counsel and notification of the family "without delay" and, even in exceptional circumstances, access to relatives or lawyers must be given within days of arrest. (The Basic Principles on the Role of Lawyers, adopted by the Eight UN Congress on the Prevention of Crime and the Treatment of Offenders in September 1990, specify that all arrested and detained persons shall have prompt access to a lawyer, not later than 48 hours from the time of arrest.) Moreover, nobody shall be detained "without being given an effective opportunity to be heard promptly by a judicial or other authority" (Principles 11, 15, 16 and 18).

**3. The government should establish a fully impartial and independent body, consisting of people chosen for their integrity and trusted by all sections of the community, empowered to investigate substantive allegations of torture, claims that detainees are kept in unacknowledged detention or may have been killed in custody, and all killings in disputed circumstances by the security services.**

**3a. In order to be effective, such a body should have full and effective powers to take interim measures to prevent or halt impending or ongoing human rights violations and to compel attendance of witnesses and production of relevant documents. It should be empowered to take effective measures to protect witnesses and potential witnesses from all forms of threat and intimidation.**

**3b. This body, or another competent, independent and impartial body, should have full and effective powers to make unannounced visits to places where people are believed to be held in unacknowledged detention. The findings of the investigations of these bodies should be published in full. In the cases of deaths in custody or of people who have died in suspicious circumstances in armed clashes with the police, the relatives should have access to the post-mortem report and be allowed to have a representative attend the post-mortem examination.**

These recommendations are based on principles from the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Principle II provides for an independent commission of inquiry with effective powers of investigation in cases of an "apparent existence of a pattern of abuse". In addition Principles 15, 16 and 17 state respectively that all those involved in any investigation should be protected from violence and intimidation; that the families of those alleged to have been extra-legally killed should have access to all information relevant to any investigation and have a right to insist that a qualified representative be present at the autopsy; and that the methods and findings of any investigation be made public in a report. Finally, Principle 7 stipulates that:

"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."

In making this recommendation Amnesty International recognizes the important role which the Punjab and Haryana High Court has played in several cases by ordering the court appearance of detainees who were kept in unacknowledged detention and tortured. However, the court's orders have often been flouted by police and members of the security forces, the court has not acted in all cases it was asked to intervene, and access to the court is restricted to those who are able to find a lawyer willing to represent them.

### *Torture*

**4. The government should order impartial investigations into all allegations of torture or ill-treatment and victims should receive adequate compensation.**

**4a. All those detained or imprisoned should promptly be medically examined, be allowed to request an independent body for a second medical examination, and written records should be kept of the findings of these examinations, to which all concerned parties shall be ensured access.**

**4b. The government should abolish all forms of torture and ill-treatment that are recognized as cruel, inhuman or degrading by international standards, notably the detention of people for long periods in iron fetters.**

These recommendations are based on a number of different international human rights standards. The ICCPR, to which India is a party, prohibits all forms of torture and cruel, inhuman or degrading treatment or punishment, under any circumstances. Article 4 of the ICCPR emphasizes that even in emergency situations no state may derogate from its obligations not to permit torture or cruel, inhuman or degrading treatment or punishment.

Article 9 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment calls on states to proceed promptly with impartial investigations into all allegations of torture "even if there has been no formal complaint". Article 11 says that, in accordance with national law, victims should be afforded redress and compensation.

Principles 24, 25 and 26 of the UN Body of Principles provide for a medical examination as promptly as possible after admission to a place of detention or imprisonment, the right to petition an independent body for a second medical examination and the need to keep written records of such examinations, to which access shall be ensured. In Amnesty International's experience, regular medical examinations can not only serve to detect and deter torture, they can also inhibit wrongful allegations of torture being made.

Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners permits restraints on prisoners only during transit and to prevent escape. Article 33 also requires that "chains or irons shall not be used as restraints". Amnesty International considers the use of iron fetters to constitute cruel, inhuman and degrading treatment in contravention of Article 33 of the Standard Minimum Rules for the Treatment of Prisoners, and urges that their use, either as instruments of restraint or for any other reason, be abolished.

## *Government accountability*

**5. The government should issue strict instructions that torture, illegal detention -including of parents, women and children of wanted persons - and extrajudicial killings of perceived opponents in staged "encounters" or "escapes" will not be tolerated. Claims by security spokesmen that killings occurred in "encounters" or that prisoners "escaped" should be subjected to thorough investigations, as should allegations that detainees have been tortured in custody.**

**5a. The government should demonstrate its commitment to protect human rights by invariably bringing those responsible for torture, extrajudicial executions and "disappearances" to justice. There should be no immunity from prosecution in law or practice for any member of the security forces responsible for such human rights violations and any legal provisions providing for such immunity - such as Article 7 of the Armed Forces (Punjab and Chandigarh) Special Powers Act - should be repealed.**

Government accountability would be improved by the implementation of a range of provisions contained in international human rights law. Article 10 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment calls for criminal proceedings to be instituted against alleged offenders, in accordance with national law, and Article 18 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions calls on governments to ensure that persons identified by investigations as having participated in extra-legal, arbitrary and summary executions are brought to justice. The UN General Assembly, in resolution 33/173, of 20 December 1978, called on governments "to ensure that law enforcement and security authorities or organizations are fully accountable especially in law, in the discharge of their duties, such accountability to include legal responsibility for "unjustifiable excesses which might lead to enforced or involuntary disappearances...".

## *Training of the security forces*

**6. The government should institute a training program for all members of the security forces involved in the arrest, interrogation and detention of suspects in Punjab. For that purpose, the government should consider translating into Punjabi and Hindi the International Covenant on Civil and Political Rights (and the Human Rights Committee's General Comments on specific Articles of that Covenant made under ICCPR Article 40), the Code of Conduct for Law Enforcement Officials, and the Commentary thereto, as well as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. It should instruct all law enforcement personnel in the safeguards contained in these instruments and distribute these documents in all police stations, jails and interrogation centres where political prisoners are held.**

The Code of Conduct prohibits torture, obliges officials to disobey orders to torture detainees and lays down the strict limits within which the use of lethal force is authorized.

### *Compensation*

**7. The victims of torture, wrongful arrest and, in the case of extrajudicial executions and "disappearances", their relatives, should be given full and adequate compensation.**

Article 11 of the Declaration against Torture provides for redress and compensation for victims of torture and Principle 20 of the Principles stipulates that families and dependants of victims of extra-legal executions have a right to fair and adequate compensation within a reasonable time.