

# **RAPE IN KASHMIR**

## **A Crime of War**

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## I. Introduction

Since January 1990, the north Indian state of Jammu and Kashmir has been the site of a brutal conflict between Indian security forces and armed Muslim insurgents demanding independence or accession to Pakistan. In its efforts to crush the militant movement, India's central government has pursued a policy of repression in Kashmir which has resulted in massive human rights violations by Indian army and paramilitary forces. Throughout the conflict, the security forces have deliberately targeted civilians, the majority of whom are widely believed to sympathize with the militants.<sup>1</sup> Indian security forces, which include the army and two paramilitary forces, the Central Reserve Police Force (CRPF) and the Border Security Force (BSF) have assaulted civilians during search operations, tortured and summarily executed detainees in custody and murdered civilians in reprisal attacks.<sup>2</sup>

In October 1992, representatives from Asia Watch and Physicians for Human Rights (PHR) traveled to Kashmir to document rape and other human rights abuses and violations of the laws of war by Indian security forces. They also investigated incidents of abuse by armed militant groups who have also committed rape and other attacks on civilians. PHR and Asia Watch condemn these crimes as violations of international human rights and humanitarian law.

Since the government crackdown against militants in Kashmir began in earnest in January 1990, reports of rape by security personnel have become more frequent. Rape most often occurs during crackdowns, cordon-and-search operations during which men are held for identification in parks or schoolyards while security forces search their homes. In these situations, the security forces frequently engage in collective punishment against the civilian population, most frequently by beating or otherwise assaulting residents, and burning their homes. Rape is used as a means of targeting women whom the security forces accuse of being militant sympathizers; in raping them, the security forces are attempting to punish and humiliate the entire community.<sup>3</sup>

Rape has also occurred frequently during reprisal attacks on civilians following militant ambushes. In these cases, any civilians who reside in the area become the target of retaliation. Anyone within range

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<sup>1</sup> The precise number of armed militant groups operating in the state is not known. There may be over 100 groups of various strengths and levels of organization. Most are loosely aligned with either the popular pro-independence Jammu and Kashmir Liberation Front or the pro-Pakistan Hezb-ul Mujahidin.

<sup>2</sup> These abuses have been documented in the Asia Watch/PHR report, *The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community* (March 1993); and in Asia Watch, *Kashmir Under Siege*, May 1991.

<sup>3</sup> Male detainees have been subjected to various forms of sexual molestation. For more on this see *Kashmir Under Siege*, p. 73. The significance of rape as a gender-specific form of abuse in Kashmir must be understood in the context of the subordinate status of women generally in South Asia, as in much of the rest of the world. Women who are the victims of rape are often stigmatized, and their testimony and integrity impugned. Social attitudes which cast the woman, and not her attacker, as the guilty party pervade the judiciary, making rape cases difficult to prosecute and leaving women unwilling to press charges.

may be shot; homes and other property burned, and women raped. In some cases, women who have been raped have been accused of providing food or shelter to militants or have been ordered to identify their male relatives as militants. In other cases, the motivation for the abuse is not explicit. In many attacks, the selection of victims is seemingly arbitrary and the women, like other civilians assaulted or killed, are targeted simply because they happen to be in the wrong place at the wrong time. Since most cases of rape take place during cordon-and-search operations, just living in a certain area can put women at risk of rape.

For their part, armed militant organizations in Kashmir have also targeted civilians, although not to the same extent as have the security forces. Particularly in early 1990, militant groups threatened, assaulted and murdered Hindus residing in the Kashmir valley -- driving many to flee to refugee camps in Jammu and Delhi.<sup>4</sup> Militant groups have also kidnapped and killed Muslim civilians whom they have accused of being informers or of not supporting their political views. Various armed militant groups in Kashmir have also committed rape, and we have included information about these cases in this report.

Although Indian human rights groups and the international press have reported on the widespread use of rape by Indian security forces in Kashmir,<sup>5</sup> the use of rape in the conflict has seldom attracted much international condemnation. During the week PHR and Asia Watch conducted investigations in Kashmir, we documented 15 cases of rape, 44 extrajudicial executions, 8 cases of torture, and 20 injuries resulting from indiscriminate shootings of non-combatants by Indian army and security force personnel. Eighty percent of these violations occurred during the visit or in the ten days preceding it. We also collected documentation on a large number of abuses that had occurred in the weeks and months preceding the visit, and both organizations have continued to receive such information. Because this information comes from credible sources, we believe that these abuses have continued unabated and may, in fact, have escalated to include the killings of Kashmiri human rights activists who assisted Asia Watch and PHR and provided information to international organizations and the foreign press.<sup>6</sup>

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<sup>4</sup> For centuries, the Kashmiri Hindu community, often called Pandits, shared the Kashmir valley and its distinct culture with the majority Muslim population. The exodus of perhaps as many as 100,000 in early 1990 was reportedly encouraged by government officials. For more on this, see Asia Watch, *Kashmir Under Siege* (May 1991), pp.147-151.

<sup>5</sup> See for example, Edward Gargan, "Where Violence has Silenced Verse" *New York Times Magazine*, November 22, 1992; Edward W. Desmond, "Himalayan Ulster," *New York Review of Books*, March 4, 1993; Barbara Crossette, "India Moves Against Kashmir Rebels," *New York Times*, April 7, 1991. The U. S. State Department has noted that, "Kashmir observers report that house-to-house searches, torture and gang-rapes of innocent civilians (especially in remote villages) increased following the launch of Operations Tiger and Shiva by security forces in September and October." U.S. Department of State, *Country Reports on Human Rights Practices for 1992*, January 1993, p. 1140.

<sup>6</sup> On December 5, 1992, Hirdai Nath Wanchoo, a retired trade unionist and one of the most prominent human rights activists in Kashmir, was shot dead by unidentified gunmen. H. N. Wanchoo had documented hundreds of cases of extrajudicial killings, and had prepared *habeas corpus* petitions on behalf of detainees held illegally in secret detention centers. On February 18, 1993, Dr. Farooq Ahmed Ashai, an orthopedic surgeon who had documented cases of torture and indiscriminate shootings, was shot by paramilitary troops who then delayed him from being taken promptly to a hospital for medical care. On March 31, 1993, Dr. Abdul Ahad Guru, a leading Kashmiri cardiologist, was abducted by unidentified gunmen and shot dead. Dr. Guru had been a leading member of the JKLF and an outspoken critic of the Indian government's human rights record in Kashmir. He too had documented numerous cases of torture. Dr. Guru's political position also made him a target for rival militant groups threatened by his participation in government

This report is the second of a series which Asia Watch and PHR are publishing on human rights in Kashmir. In publishing this report, PHR and Asia Watch hope to focus international attention on the use of rape as a tactic of war in Kashmir and on government policies which have led the security forces to believe they can carry out these crimes with impunity.<sup>7</sup> The cases included in this report are illustrative; there have been many more cases of rape than was possible to document here.<sup>8</sup>

Rape by Indian police is common throughout India; the victims are generally poor women and those from vulnerable low-caste and tribal minority groups.<sup>9</sup> In some cases, women are taken into custody as suspects in petty crime or on more serious charges; in others, women are detained as hostages for relatives wanted in criminal or political cases; in still others, women are detained simply so that the police can extort a bribe to secure their release. In all of these cases, women in the custody of security forces are at risk of rape. Rape has also been widely reported during counter-insurgency operations elsewhere in India, particularly in Assam and other areas of conflict in northeastern India.<sup>10</sup> In both conflict and non-conflict situations, the central element of rape by the security forces is power. Soldiers and police use rape as a weapon: to punish, intimidate, coerce, humiliate and degrade.

There are no reliable statistics on the number of rapes committed by security forces in Kashmir. Human rights groups have documented many cases since 1990, but because many of the incidents have occurred in remote villages, it is impossible to confirm any precise number. There can be no doubt that the use of rape is common and routinely goes unpunished.

Indian government authorities have rarely investigated charges of rape by security forces in Kashmir. To our knowledge, the prosecution of two soldiers for the rape of a Canadian tourist in October 1990 is the only case of criminal prosecution which the Indian government has made public. The soldiers were sentenced to prison terms, but as of April 1993, the soldiers remained in barracks and the case was on appeal.

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negotiations to find a settlement to the Kashmir conflict.

<sup>7</sup> For other discussions of the practice of rape in armed conflict, see Americas Watch and the Women's Rights Project, *Untold Terror: Violence Against Women in Peru's Armed Conflict* (December 1992); Helsinki Watch, *War Crimes in Bosnia-Herzegovina*, Vol. II (April 1993); Shana Swiss, M.D., "Liberia: Women and Children Gravely Mistreated," (May 1991) and Asia Watch, "Rape, Forced Labor and Religious Persecution in North Arakan," (May 1992).

<sup>8</sup> For a discussion of the government's response to previous allegations of rape, see below pp.8-10.

<sup>9</sup> According to Amnesty International, rape in India "is so routine that a 1988 newspaper headline read: 'Another mass rape by Bihar cops.' In September 1989 the Rajasthan state government admitted that the police had been involved in over 50 rapes in the past few years. According to the Delhi police, 14 cases of rape were reported involving 20 police officers at 12 police stations between 1 January and 11 February 1990." Amnesty International, *India: Torture, Rape and Deaths in Custody*, (London: March, 1992).

<sup>10</sup> See *ibid*, pp. 24-29. See also, Asia Watch, *No End in Sight: Human Rights Violations in Assam*, April 1993.

While the government has claimed that inquiries have been ordered into reports of rape and action taken against the guilty, the Indian authorities have not made public any prosecutions or punishments of security personnel in any of these cases. In some cases, the investigations fail to follow through with procedures that would provide critical evidence for any prosecution.<sup>11</sup> Although there is no evidence that rape is sanctioned as a matter of government policy in Kashmir, by failing to prosecute and punish those responsible, or make known any action taken against security forces charged with rape, the Indian authorities have signalled that the practice of rape is tolerated, if not condoned. Indeed, in responding to reports by the press and human rights groups about incidents of rape, government officials unflinchingly attempt to dismiss the testimony of the women by accusing them of being militant sympathizers.

Rape by armed militant groups in Kashmir is less common, but has been reported with greater frequency in recent years along with other violent crimes including kidnapping and murder. In some cases, women have been raped by militant forces as a way of punishing other family members believed to be informers or suspected of opposing the militants. In other cases, members of armed militant groups have abducted women and raped them after threatening or murdering other members of the family. These cases are difficult to document, particularly because most Kashmiris are reluctant to discuss abuses by the militants out of fear of reprisal. We have included a number of such cases in this report.

## **II. The Applicable Law**

The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other forms of cruel, inhuman and degrading treatment. The Government of India has ratified the ICCPR. India has also ratified the four Geneva Conventions of 1949. Common Article 3 of the Geneva Conventions, which applies to internal conflicts, prohibits murder, torture and ill-treatment of non-combatants by both government and militant forces. Rape is clearly prohibited by Common Article 3; it is customarily understood to constitute both cruel treatment and an outrage on personal dignity.

While the conflict in Kashmir does not currently meet the conditions necessary for the application of Protocol II to the Geneva Conventions, which also governs internal conflict but of a different character,<sup>12</sup> we believe that Protocol II provides authoritative guidance for interpreting Common Article 3's prohibition on "outrages upon personal dignity." Protocol II outlaws "outrages upon personal dignity, in particular humiliating treatment, rape, enforced prostitution and any form of indecent assault." The commentary of the International Committee of the Red Cross explains that this article "reaffirms and supplements Common Article 3 ... [because] it became clear that it was necessary to strengthen ... the protection of women ... who may also be victims of rape, enforced prostitution or indecent assault."

Although the line between cruel and inhuman treatment and torture is not well defined in either

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<sup>11</sup> See for example the Kunan Poshpora case, described below on p. 6-7.

<sup>12</sup> The objective conditions which must be satisfied to trigger Protocol II's application contemplate a situation of classic civil war, essentially comparable to a state of belligerency under customary international law. See Article 1, para. 1 of Protocol II. India has not ratified Protocol II.

humanitarian or human rights law, rape also violates the ICCPR and Common Article 3 prohibitions on torture. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of with the acquiescence of a public official or other person acting in an official capacity.<sup>13</sup>

When any party to an armed conflict, internal or international, uses rape, or acquiesces in the use of rape by its combatants, with the intention of inflicting severe pain or suffering and for the purposes of coercing, punishing, or intimidating, or to obtain information or a confession, it constitutes torture.

Until recently, rape has often escaped international scrutiny and condemnation, including rape committed in the context of armed conflict. In the past, rape has often been accepted as "spoils of war" or mischaracterized as incidental to the conflict or as a privately-motivated form of sexual abuse rather than an abuse of power that implicates public responsibility. Reports of the widespread use of rape as a tactic of war in the former Yugoslavia have been instrumental in focusing attention on the function of rape in war and have provoked international condemnation. Such condemnation must be extended to the use of rape in internal conflicts as well.

Finally, India's own criminal law makes torture a crime and explicitly prescribes punishments for members of the police or other security forces who have committed rape. Under section 376(1) of the Indian Penal Code (IPC), a minimum term of seven years' imprisonment may be imposed for rape. In addition, the Criminal Law (Amendment) Act of 1983, which for the first time provided for the offense of custodial rape, prescribes a mandatory 10 years' imprisonment for police officers who rape a woman in their custody.<sup>14</sup> The sentence may be extended to life, and may also include a fine. Commissioned officers of the paramilitary and military forces are included under Section 376(2)(b) of the IPC and are thus also subject to this mandatory sentence. The Criminal Law (Amendment) Act (1983) also shifts the burden of proof regarding consent to the accused.<sup>15</sup>

However, despite the changes in the law, there is no evidence to show that the authorities have been

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<sup>13</sup> The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1. Although India has not ratified the convention, this definition is considered authoritative under international law.

<sup>14</sup> Custody is customarily understood to include situations where the victim is effectively under the control of the police or security forces and is not limited to conditions of detention in a prison or lock-up.

<sup>15</sup> Indian Evidence Act, Section 114-A. The inclusion of this provision in the Criminal Law Amendment Act provoked considerable controversy among civil liberties groups, women's organizations, bar associations and others. See Flavia Agnes, "Fighting Rape -- Has Amending the Law Helped?" *The Lawyers*, February 1990, p. 6.

willing to enforce it.<sup>16</sup> Moreover, Section 155 (4) of the Indian Evidence Act remains in effect. It states:

The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him ... when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

A survey of rape case judgements in the seven years following the adoption of the Amendment Act reveals that judges continue to base their decisions largely on the "character" of the rape victim.<sup>17</sup>

India's military laws, notably the Army Act and equivalent legislation governing the federal paramilitary forces, also prescribe courts-martial and punishments for members of these forces responsible for rape. In general, military courts in India have proved incompetent in dealing with cases of serious human rights abuses and have functioned instead to cover up evidence and protect the officers involved. In this report, Asia Watch and PHR recommend that all military or paramilitary suspects in rape cases be prosecuted in civilian courts.

### **III. Rape by Indian Government Forces in Kashmir**

Reports of rape by Indian security forces in Kashmir emerged soon after the government's crackdown began in January 1990.<sup>18</sup> Despite evidence that army and paramilitary forces were engaging in widespread rape, few of the incidents were ever investigated by the authorities. Those that were reported did not result in criminal prosecutions of the security forces involved.

#### **A Pattern of Impunity**

In one well-publicized case, in May 1990 a young bride, Mubina Gani, was detained and raped by BSF soldiers while she was traveling from the wedding to her husband's home. Her aunt was also raped. The security forces had also fired on the party, killing one man and wounding several others. The government claimed that the party had been caught in "cross-fire." After the incident was publicized in the local and international press, Indian authorities ordered the police to conduct an inquiry. Although the inquiry concluded that the women had been raped, the security forces were never prosecuted.<sup>19</sup>

In July 1990, police in Sopore registered a case against the BSF for the rape of Hasina, a 24-year-old

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<sup>16</sup> See Amnesty International, "India: New Allegations of Rape by Army Personnel in Jammu and Kashmir," p. 3.; and Flavia Agnes, "Fighting Rape -- Has Amending the Law Helped?" *The Lawyers*, February 1990, pp. 4-11.

<sup>17</sup> Flavia Agnes, "Fighting Rape -- Has Amending the Law Helped?" *The Lawyers*, February 1990, pp. 4-11.

<sup>18</sup> Numerous incidents of rape have been reported by Indian and Kashmiri human rights groups. See, for example, Committee for Initiative on Kashmir, *Kashmir Imprisoned* (July 1990).

<sup>19</sup> Amnesty International, *India: Torture, Rape and Deaths in Custody*, (London: March, 1992), p. 21.

woman from Jamir Qadeem, on June 26, 1990. According to doctors at the Subdistrict Hospital in Sopore, the BSF had entered the neighborhood at about 11:00 p.m. after an exchange of cross-fire had taken place between their forces and some militant groups. The BSF had then conducted a search of the neighborhood. The doctors stated that when Hasina was brought to the hospital she had vaginal bleeding. The medical superintendent's report also recorded bite marks on her face, chest and breasts and scratches on her face, chest and legs, and injuries to her genital area. A police report filed on July 5, 1990, charged members of the BSF with rape. However, to Asia Watch/PHR's knowledge, they have yet to investigate the case.<sup>1</sup>

The reported rape on February 23, 1991, of women from the village of Kunan Poshpora by army soldiers of the Fourth Rajputana Rifles became the focus of a government campaign to acquit the army of charges of human rights violations. The incident provides a telling example of the government's failure to ensure that charges of human rights violations committed by members of its armed forces are properly investigated and those responsible held to account.

The rapes allegedly occurred during a search operation in the village conducted by the army unit. The village headman and other village leaders claimed that they reported the rapes to army officials on February 27, and that the officials denied the charges and took no further action. Officials countered that no clear complaint was made. A local magistrate who visited the village requested that the commissioner order a more comprehensive investigation, only to be told that officials in Delhi had denied the charges without checking with officials in the state. A police investigation that was eventually ordered never commenced because the police officer assigned to conduct it was on leave at the time and was then transferred by his superiors.

In response to criticism of the government investigation, army officials requested the non-governmental Press Council of India to investigate the incident. A committee sent by the Council visited the village more than three months after the incident occurred. After interviewing a number of the alleged victims, the committee concluded that contradictions in the women's testimony, and the fact that the number of alleged victims kept changing, rendered the charge of rape "*baseless*." The committee examined medical reports based on examinations conducted on 32 of the women two to three weeks later, on March 15 and 21, 1991, which confirmed that the hymens of three of the unmarried women had been torn. The committee concluded that the medical evidence was "*worthless*", that "*such a delayed medical examination proves nothing*" and that such abrasions are "*common among the village folk in Kashmir*." About the torn hymens, the committee argued that they could be the result of "*natural factors, injury or premarital sex*."

While the results of the examination by themselves do not prove the charge of rape, they do raise serious doubts about the army's version of events in Kunan Poshpora. The alacrity with which Indian military and government authorities in Kashmir discredited the allegations of rape and their failure to follow through with procedures that would provide critical evidence for any prosecution -- in particular prompt independent medical examinations of the alleged rape victims -- undermined the integrity of the investigation and indicates that the Indian authorities have been far more interested in shielding government forces from charges of abuse. Under the circumstances, the committee's eagerness to dismiss any evidence

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<sup>20</sup> See Asia Watch, *Kashmir Under Siege*, p. 87.

that might contradict the government's version of events indicated that it was far more concerned about countering domestic and international criticism than about uncovering the truth. The report echoes the government's concern about international criticism by arguing that the charges against the army constituted "*a massive hoax orchestrated by militant groups and their sympathisers and mentors in Kashmir and abroad ... for reinscribing Kashmir on the international agenda as a human rights issue.*"

Those who have attempted to document incidents of rape have also been abused by Indian security forces. In November 1990, Dr. K., a surgeon at the Anantnag District Hospital, was arrested after he had made arrangements for a gynecologist to examine seven women who had alleged that they had been raped by security forces. The women, who had been brought to the hospital while Dr. K. was on night duty, reported that the security forces had broken up a wedding and raped all of them, including the bride. On November 29, Dr. K. was arrested from his home by members of the CRPF who had surrounded his house. The CRPF blindfolded him along with two friends who were with him at the time and took them to a military camp. The security forces asked Dr. K., "Why did you call the gynecologist?" When he replied, "I treat people irrespective of who they are," they proceeded to beat him with *lathis* (canes) and a metal belt. His friends were also beaten in this way. The three men were detained for four days.

Even when investigations are ordered, they do not result in prosecutions. A magisterial inquiry was ordered in the case of five women reportedly raped near Anantnag on December 5, 1991, but the magistrate's report has never been submitted. According to the *Kashmir Times* of January 14, 1993, the state government has ordered inquiries into 87 incidents of killings, rape and arson. None has resulted in criminal prosecutions. In seven courts-martial held between April 1990 and July 1991 involving incidents of rape, deaths in custody, illegal detention and indiscriminate firing on civilians by army soldiers, only one officer has been dismissed. The most severe punishment for the remaining officers was either a suspended promotion, or marks of "severe displeasure" in their files.<sup>21</sup>

Asia Watch and PHR documented fifteen individual cases of reported rape by forces of the Indian army and Border Security Force (BSF). Two of the incidents occurred within a few days of the Asia Watch/PHR team's visit to Kashmir; the third had occurred several months earlier. To our knowledge, government authorities have ordered an investigation into only one of these incidents. As of March 1993, the results of that investigation had not been made public.

### **Rape in Shopian**

On the night of October 10, 1992, an army unit of the 22nd Grenadiers<sup>22</sup> entered the village of Chak Saidapora, about four kilometers south of the town of Shopian, district Pulwama, on a search operation for suspected militants. During the operation, at least six and probably nine women, including an eleven-year-old girl and a 60-year-old woman, were gang-raped by several of the army soldiers.

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<sup>21</sup> See South Asia Human Rights Documentation Centre, "Massacre in Sopore," January 31, 1993, p. 12.

<sup>22</sup> A military unit that traditionally was armed with grenades.

Asia Watch and Physicians for Human Rights (PHR) interviewed a gynecologist and assistant surgeon at the Shopian District Hospital who examined seven of the women on October 11 and the remaining two on October 12. The doctor stated that seven of the women were brought to the hospital at 1:30 p.m. by the Station House Officer (SHO) of the local Jammu and Kashmir police station in Shopian.<sup>23</sup> She told PHR/Asia Watch:

All of the women were weeping. They told me that "something bad" had happened at about midnight, that 25 army men had come into the village and into their homes. They told me that the soldiers had accused them of feeding and sheltering the militants, and asked them how many militants stay there.

The doctor conducted semen tests and examined the seven women separately that day.<sup>24</sup> Because the SHO had mentioned nine cases, the next day, October 12, the doctor went to the village where the rapes reportedly occurred to locate the other two, N., 20, and her sister A., 18. She examined both of the young women, but did not conduct a slide test for sperm at that time. On October 14, the Assistant Subinspector of the Jammu and Kashmir police station in Shopian, Ghulam Nabi, brought A. and N. to the hospital for complete examinations. The doctor described to PHR/Asia Watch the following findings for all nine women:

Z., 11, had abrasions and bruises on her chest and face. Her vaginal area was tender, and she had a ruptured hymen with a one half centimeter vaginal tear. Blood from the tear had coagulated. The semen test was positive.

S., 60, had no marks of injury elsewhere on her body but was very tender around the vagina. The semen test was positive.

H., 30, had abrasions and bruises on her face and in the genital area. The semen test was positive.

N., 20, was also tender around the vagina and had a torn hymen.

P. had marks on her chest and abdomen. The semen test was positive.

A., 18, was very tender around the vagina. Her hymen had been torn.

The semen tests for G., S., and A.B. were negative, but they exhibited similar tenderness and some marks of injury.

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<sup>23</sup> The local Jammu and Kashmir police are not generally not involved in counter-insurgency operations in Kashmir. Their functions are generally limited to collecting bodies of persons killed during such operations and informing the families.

<sup>24</sup> The presence of sperm can only be detected within 48 hours of ejaculation.

The doctor told Asia Watch/ PHR that she gave a copy of the medical report to the local police Station House Officer. On October 12, an army official came to the hospital to ask about the incident and she told him the findings of the examinations.

Asia Watch and PHR interviewed the nine women, who narrated following accounts:

S., about 25, testified that on the night of October 10 she was in the house that was owned by her father in law, who is about 70, and his wife. Both of her in-laws in the house at the time. S.'s father-in-law told Asia Watch/ PHR that during the night, there was knocking at the door and three soldiers entered and asked, "Where are the womenfolk?" She continued,

I told them they are sleeping. They went into that room to search it and as they started searching they told me to get out. I was taken away by other soldiers.

S. told Asia Watch/PHR:

One soldier kept guard on the door and two of them raped me. They said, "We have orders from our officers to rape you." I said, "You can shoot me but don't rape me." They were there about half an hour. Two raped me and two raped [her sister-in-law] H. Then they left.

Their father in law was released about half an hour later.

A. and N. told Asia Watch/PHR that lived nearby and were asleep when at around midnight about eight or nine soldiers came to the house. Their brother went to the door and said, "The army has come to search our house." Four soldiers entered the house and ordered the father and brother to be taken out of house. The soldiers entered a room where the women were sleeping. A. and N. told PHR/Asia Watch:

They did not say anything when they came in but they were talking among themselves but we could not understand. They covered my eyes and mouth with cloths and told us to lie down.

N. and A. said they had been raped by each of the soldiers. The soldiers struck their 10-year-old sister in-law with rifle butts and sent her out of the room.

P. told PHR/ Asia Watch that there was a knock at the door of her in-laws' house at about midnight.

When my father-in-law answered, he was sent away. Three soldiers came into the room, and told me to put my daughter aside. When I refused, he picked her up and put in her in a corner. I told him not to touch me and he said, "We have orders, what can we do?" All three of them raped me.

Z. told PHR/ Asia Watch that four soldiers came to the house, but only two came inside while two remained outside. She said that when her father opened the door, the soldiers kicked him and sent him away.

At that point, Z. broke down and was not able to continue.

G. stated that three soldiers entered her house and took her husband outside. Only one came into her room.

He told me, "I have to search you." I told him women are not searched, but he said, "I have orders," and he tore off my clothes and raped me.

S.B. stated that three soldiers came into her room and told her to take off her clothes. When she protested that she was an old woman, one of them kicked her in the chest and she fell. Then he put one hand over her mouth pulled off her *salwar* (loose trousers), and raped her.

In response to requests by Asia Watch and PHR for information from the government about the incident, authorities have stated that the army unit, normally stationed in Chak Saidapora, "*conducted search operations in the village on specific information that some militants were hiding there.*" They stated that the search was carried out "*from 0010 hours to 0145 hours during which seven houses were searched in the presence of an elderly man.*" Senior government officials have also admitted that the search was carried out in violation of military regulations prohibiting soldiers from entering villages after dark.<sup>25</sup>

In the statement provided to PHR/Asia Watch, Indian authorities have claimed that "*the residents of the 7 houses identified and confirmed that the same 3 army persons had entered and searched each house and hence it is difficult to believe that the same persons could have indulged in acts of rape in different houses within an hour and 35 minutes.*"<sup>26</sup> The government statements adds that, "*Two of the women who have been alleged to have been raped were wives of terrorists viz. Takub Hussain a Platoon Commander of Hizbul Mujahideen and Mohd. Yakub a Group Commander of the same militant group.*"

As we have noted above, one of the ways security forces in Kashmir use rape is as a weapon against women suspected of being sympathetic to or related to alleged militants. While Asia Watch/PHR do not know whether such suspicions motivated the soldiers responsible for the rapes of these women, it is clear that the authorities intend to use the accusation that the women associated with "terrorists" both to discredit the women's testimony and -- implicitly at least -- shirk responsibility for the abuse. Moreover, even if such charges were well-founded, they in no way justify the use of rape by security personnel.

The government statement also claims that only four of the women were medically examined, and have questioned the credibility of their testimony on these grounds. PHR/Asia Watch were provided with specific medical evidence and testimony on all nine cases. Hospital authorities also stated

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<sup>25</sup> See Amnesty International, "India: New Allegations of Rape by Army Personnel in Jammu and Kashmir," AI Index: ASA 20/02/93, January 1993.

<sup>26</sup> PHR and Asia Watch have received no further details from the government about how the army personnel were identified by the residents, i.e. by unit, rank or other marking. If any individuals were identified, a semen and blood test could provide corroborating evidence.

that the evidence was also provided to army officials and was, presumably, a significant factor in the government's decision to order a police investigation into the case.

The government statement has specifically attempted to discredit the testimony of the 11-year-old Z., stating that "*During the enquiry she was not found to have any visible signs or marks of injury or any physical excesses nor did she display any fear or anger and appeared to be oblivious of the alleged incident.*" In fact, the doctor who examined Z. the day after the incident confirmed that her hymen was torn, that blood had coagulated around the tear and that she was very tender around the vaginal area. When Z. described to PHR/Asia Watch how she was raped, she broke down and was unable to continue speaking.

According to the English language daily, *Kashmir Times* of October 14, 1992, police in Shopian registered a criminal case of gang-rape against the BSF on October 13. The statement provided by the government of India to Asia Watch/PHR stated that the case had been transferred to the Crime Branch -- a special investigative branch of the police. As of April 1993, the government has not made public the results of the investigation, nor any action taken to prosecute and punish those responsible.

### **Rape in Haran**

The incident occurred on July 20, 1992, during an army search operation near the town of Haran, approximately 25 kilometers west of Srinagar. Asia Watch and PHR interviewed J., a resident of Haran, who stated that at about 6:30 a.m., five soldiers came into the courtyard and ordered her to give them some water. Two of the soldiers then dragged her into her room and then one of them removed her clothes while the other stood at the door. She stated,

The first soldier slapped me and then pushed me to the ground where I fell on a wooden stake and hurt my back. Both of the soldiers raped me. At some point I fainted, and when I regained consciousness, I discovered that my husband had placed a blanket over me.

A second woman, H., told Asia Watch/PHR that she was at home at about 9:00 a.m. when two Sikh soldiers entered the house. H. was pregnant at the time. Other soldiers remained outside in the compound. She stated,

They told me that I had to go to a shop with them to search it. My father said he would come, but they said, "No, she has to come." I refused. Then one of them asked for some milk but when I gave it to him, he touched my breasts and pushed me into a corner. One covered my mouth with his hand while the other held a gun. They ordered me to lie down. One of them raped me. Then I fainted.

Three days later H. saw a doctor.

F., H.'s mother, stated that she was in bed when the soldiers came. She tried to run away when she saw the soldiers enter H.'s room, but other soldiers caught her and took her back to the room. She was not raped or assaulted. Asia Watch/PHR requested information from the government of India about this

incident, but as of April 1993 we had received no response.

### **Rape in Gurihakhar**

The security forces have committed rape as a form of retaliation against civilians, most of whom are believed to be sympathetic to the militants. Such reprisals have occurred frequently after militant attacks on security patrols. In one such case, on October 1, 1992, a BSF patrol returning from a crackdown in the village of Bakhikar, in Handwara district, came under attack by militant forces. One member of the BSF patrol was killed. Following the ambush, BSF forces rampaged through the nearby village of Battektut, killing ten people and burning houses and grain stores. After leaving Battektut, the BSF forces entered the village of Gurihakhar.

B., 35, a resident of Gurihakhar, testified that on October 1 at about noon, she was in her home with her sister-in-law and mother-in-law, when security forces came to the house. One stayed outside while the other came inside the room where she was with her child. She told PHR/Asia Watch,

He put his gun to the baby and told me to put him aside. I refused, and he beat me with the gun butt on my back and covered my mouth with his hand. Then he forced me to the floor and took off my clothes and raped me. Then we heard a gunshot outside and he left.

R., 25, stated that two security men came into her room where she was feeding her child. She told us,

One of them forced me to the floor and covered my mouth with a cloth, and blindfolded me with a scarf. He threatened me, 'If you scream, we will shoot your children.' Then he raped me.

On October 2, 1992, local police took the women to a female doctor in Handwara who confirmed that the women had been "severely molested," but that because they were not virgins, it was not possible to confirm whether rape had occurred.

Asia Watch and PHR also interviewed the mother of a 13-year old girl in the same town who provided an account of the rape as if she, and not her daughter were raped, seemingly to protect her daughter from public humiliation. As a rape victim, the daughter may be socially ostracized and unable to ever marry. A fourth woman in the village, S. who had given birth on August 18, was also reportedly raped during the same attack. The witness Asia Watch and PHR interviewed stated that S. had been emotionally distraught since the incident and was reluctant to speak to outsiders.

PHR/Asia Watch requested information from the government about these cases, but received no information about the reported rapes.

### **IV. Rape by Militant Groups**

Twelve major militant organizations, and perhaps dozens of smaller ones, operate in Kashmir. They

are roughly divided between those who support independence and those who support accession to Pakistan. The most prominent of these groups are the Jammu and Kashmir Liberation Front (JKLF), a pro-independence group which is the oldest and reportedly the most popular of the organizations, and the Hezb-ul Mujahidin, which supports confederation with Pakistan and is reportedly the best armed. The other major groups are Al-Jehad, Al-Barq, Hizbollah, Ikhwan-ul-Muslimin, Jamait-ul Mujahidin, Al-Umar Mujahidin, Tekriq-ul Mujahidin, Allah Tigers and Ul-Umar Commandos.

The militant forces do not control territory in Kashmir. Their military operations are generally characterized by ambushes of government forces and hit-and-run attacks for which they rely on weapons such as AK-47s, grenades, mines and other small arms. Much of this weaponry reaches Kashmir from Pakistan, and militant leaders freely acknowledge that they receive support from Pakistan's Inter-Services Intelligence (ISI). Pakistani leaders, while officially denying that they provide arms, cite instead their "moral and political support" of the Kashmiri militants.<sup>27</sup> Weaponry from Afghanistan has also reportedly reached Kashmir through Pakistan military conduits. According to one recent report,

There is evidence too that at least some of the rebel factions have established ties with the mujahedin of Afghanistan, who now have time on their hands and a huge arsenal of American- and Pakistani-supplied weapons.<sup>28</sup>

In early 1993, after the U.S. reportedly threatened to include Pakistan on its list of countries sponsoring terrorism, Pakistani officials launched a public relations campaign to counter the charges.<sup>29</sup> However, that campaign has not resulted in any discernible reduction in arms supplies to Kashmiri groups who have traditionally received such support. A report in the *Washington Post* cited a former ISI official as stating that as a result of increased pressure from the U.S., the ISI was "increasingly funneling assistance to India through third parties" and that the political party Jamaat-i Islami had "hired former employees of ISI and the Special Services Group, the army's elite commando force, to run its Kashmir operations."<sup>30</sup>

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<sup>27</sup> "Pakistan to Back J-K Ultras: Sharif," *Times of India*, December 25, 1990.

<sup>28</sup> Anthony Spaeth, "No Peace in the Valley," *Harpers*, April 1993, p. 82.

<sup>29</sup> As part of that effort, Nisar Ali Khan, chief political adviser to Pakistan's Prime Minister Nawaz Sharif, met with U.S. officials in Washington on April 6, 1993. See Farhan Bokhari, "Pakistan Seeks to Allay US Fears over Terrorist Links," *Financial Times*, April 7, 1993. According to an *Associated Press* report, on the eve of talks between U.S. and Pakistani officials in April 1993, the U.S. ambassador to Islamabad, John Monjo, indicated that Pakistan has not moved forcefully enough to curb assistance to the Kashmiri insurgents. George Gedda, "Christopher Raises Terrorism Issue with Pakistani Official," *Associated Press*, April 7, 1993. In meetings with Asia Watch in 1992, Pakistani officials disavowed responsibility for events in Pakistan-controlled Azad Kashmir -- where many of the training camps are reportedly based. The claim cannot be considered credible, since the Pakistani military, including the ISI, have a considerable presence in the province.

<sup>30</sup> Molly Moore and John Ward Anderson, "After Cold War, U.S.-Pakistan Ties Are Turning Sour," *Washington Post*, April 21, 1993.

Militant organizations operating in Kashmir have committed grave violations of human rights and international humanitarian law. A number of these groups have executed civilians, including Muslim political leaders and civil servants, prominent Hindus and other civilians they have accused of being government informers.<sup>31</sup> Militants have also thrown grenades at buses and government buildings and have detonated car bombs, killing and wounding civilians.

While militant threats to women were reported as early as 1990, most frequently by groups reportedly seeking to enforce their interpretation of "Islamic" culture in Kashmir, reports of rape by militant groups were rare in the conflict's early years. A July 1990 report cited frequent threats to women by one group, "warning the women that severe action will be taken if they do not maintain *purdah* (or *burqa* -- clothing which entirely conceals the body)."<sup>32</sup> Such threats have continued, and women who have challenged the militants have been attacked. On May 13, 1993, members of the women's militant organization, Dukhtarane-Millat (Daughters of the Nation) issued warnings to women in Srinagar not to come outside without wearing *burqas*. The militants sprayed paint on women who defied the order. Four students were hospitalized with eye injuries from the paint.<sup>33</sup>

Reports of rape by militant groups in Kashmir have increased since 1991. The reasons for this are not clear, but the increase coincides with a rise in other violent crimes against civilians, including kidnapping, extortion and murder. In some cases, women have been raped and then killed after being abducted by rival militant groups and held as hostages for their male relatives. In other cases, members of armed militant groups have abducted women after threatening to shoot the rest of the family unless she is handed over to a militant leader. The fact that local people sometimes refer to these abductions and rapes as "forced marriages" gives some indication of the social ostracism suffered by rape victims and code of silence, and fear, that prevents people from openly condemning such abuses by militant groups.

Some incidents of rape by militants appear to have been motivated by the fact that the victims or their families are accused of being informers or of being opposed to the militants or supporters of rival militant groups. One of the earliest such cases involved a staff nurse at the Saura Medical Institute, Sarla Bhat, 27,

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<sup>31</sup> Militants have also killed and wounded members of the security forces -- the CRPF, BSF and others -- operating in Kashmir. These are not violations of the laws of war if these killings occur in combat or ambush and are not the result of perfidy. Insofar as members of the security forces have combat duties and are actively engaged in hostilities, they are legitimate military targets, subject to direct attack. Although policemen, customs agents and other government personnel authorized to bear arms are excluded from the definition of "armed forces" and are not proper military targets, policemen with combat duties are proper military targets. See Report of Working Group B, Committee I, 18 March 1975 (CDDH/I/238/Rev.1; X, 93), in Levie, Howard S., ed., *The Law of Non-International Armed Conflict*, (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1987), p. 67. BSF, CRPF and other national security forces operating in Kashmir routinely engage in combat with militants. In many situations, they are, in effect, acting in lieu of army soldiers to perform purely military functions. Under international humanitarian law applicable in internal armed conflicts, the government may try members of guerrilla forces for sedition, treason and murder in violation of state laws, but must afford them due process.

<sup>32</sup> Committee for Initiative on Kashmir, *Kashmir Imprisoned*, July 1990, pp.46-47.

<sup>33</sup> From South Asia Human Rights Documentation Centre, April 7, 1993.

who was kidnapped from the institute on April 14, 1990. Her body was found four days later. A note found near the body stated that the JKLF took responsibility for the killing and accused Bhat of informing the security forces about the presence of a number of wounded militants in the hospital.<sup>34</sup> The post-mortem report concluded that she had been raped before she was shot dead.

Rape by militant groups is a violation of international humanitarian law under Common Article 3 of the Geneva Conventions, which prohibits murder, torture and ill-treatment of non-combatants by both government and militant forces. As we noted above, in both conflict and non-conflict situations, the central element of rape is power. Both security forces and armed militants have used rape as a weapon: to punish, intimidate, coerce, humiliate and degrade.

The fear of rape has reportedly been a factor in the flight of Muslim families from Kashmir.<sup>35</sup> However, cases of rape by militant groups are difficult to investigate because most Kashmiris are reluctant to discuss abuses by the militants out of fear of reprisal. According to one report, the increasing number of rapes has led to an increase in abortions in Kashmir, resulting in one case in the murder of a doctor who complained about having to perform them. Militants from the Hezb-ul Mujahidin and Al Jihad reportedly accused the doctor of being an informer.<sup>36</sup>

A 1992 case of rape and murder by militants attracted publicity in part because the incident provoked street protests condemning the militants for the crimes. The incident involved the family of a retired truck driver named Sohanlal, 60, who lived in Nai Sadak, Kralkhud. At about 8:30 p.m. on March 30, 1992, armed militants entered Sohanlal's home. According to his son, the men demanded food and shelter. The family complied. After about two hours, Sohanlal and his wife, Bimla, heard their daughter, Archana, crying for help from a room on the ground floor of the house. When they reached the room, the militants shot Sohanlal, killing him instantly. The bodies of the two women were discovered in the street outside the house. According to the autopsy report, both women had been raped before being shot. According to one report, 5,000 women staged a protest march to condemn the rapes and murders.<sup>37</sup> To Asia Watch/PHR's knowledge, no group has claimed responsibility for the incident.<sup>38</sup>

## V. Conclusions and Recommendations

As the conflict in Kashmir enters its fourth year, central and state authorities have done little to stop the widespread practice of rape by Indian security forces in Kashmir. Indeed, when confronted with the evidence of rape, time and again the authorities have attempted to impugn the integrity of the witnesses,

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<sup>34</sup> Yusuf Jameel, "Ex-Minister Shot Dead by J&K Militants," *Telegraph*, April 20, 1990.

<sup>35</sup> *Ibid*, p. 43.

<sup>36</sup> See Harinder Baweja, "People Turning Against Militants," *India Today*, May 31, 1992, p. 42.

<sup>37</sup> Harinder Baweja, "People Turning Against Militants," *India Today*, May 31, 1992, p. 42.

<sup>38</sup> Provided by South Asia Human Rights Documentation Centre, April 7, 1993.

discredit the testimony of physicians or simply deny the charges -- everything except order a full inquiry and prosecute those responsible for rape. In a recent example of this kind of response, Lt. General D. S. R. Sahni, General Officer Commanding in Chief of the Northern Command was asked to answer charges of rape by the security forces in Kashmir. In response,

Gen. Sahni alleged that the militants trump up charges of rape against the forces. A soldier conducting an operation at the dead of night is unlikely to think of rape when he is not even certain if he will return alive, he said.<sup>39</sup>

In this statement, General Sahni betrays the attitude that lies behind the failure of government and military officials to understand the pervasiveness, severity and nature of rape in armed conflict. Rape, to most officials, is a rare but regrettable "excess", a disciplinary matter, not a crime under national and international law. The single most important deterrent to rape by security personnel is the rigorous prosecution and punishment of those who commit such abuse. By failing to take such action, the Indian government has signalled that rape by its forces is condoned.

In addition to the prosecution and punishment of security forces who rape, Asia Watch and PHR recommend additional steps to prevent rape. Some of these were reportedly endorsed by Kashmir's Director General Police Bedi when he was first appointed, including requiring female officers to be present during search operations in Kashmir. However, reportedly under pressure from the Directors of the paramilitary forces, the BSF and CRPF, the reforms were never implemented. While we do not believe that the mere presence of female officers will be sufficient to prevent rape, the fact that the government has been unwilling to enact even these minimal measures underscores the fact that the administration in New Delhi, which sets policy in Kashmir, has essentially abrogated its responsibility to control its security forces. Until the government does so, it is unlikely that the abuses will end.

Asia Watch and PHR are also unaware of any efforts by the militant groups to prevent their forces from committing rape. Nor, to our knowledge, have any groups publicly condemned these rapes. In fact, as noted above, some groups have continued to encourage violent attacks on women who do not conform to dress codes and other prescribed social behavior. In doing so, these groups help to create a climate of fear for women.

## **Recommendations**

- The government of India should support swift investigations of rape by security forces and paramilitary forces in Kashmir. Security personnel, including police, army and paramilitary, responsible for rape should be prosecuted in civilian courts. Only with such trials and appropriate punishments will these forces receive the clear, unequivocal message that rape is not condoned by their superiors. Those found guilty of rape should be punished regardless of rank. The punishments should not be less than those specified under civilian law. The results of these investigations and the punishments should be made public as a means of giving the people of Kashmir a reason to believe in the government's commitment to justice and

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<sup>39</sup> Dwarika Prasad Sharma, "Army to Safeguard Human Rights," *Times of India*, January 6, 1993.

the rule of law.

- To insure adequate protection against rape, the government of India should provide police training, perhaps after consultation with international experts, on adequate evidence gathering for rape prosecutions. Explicit prohibitions against rape should be included in training for all enlisted men and officers in the police, paramilitary and military as a way of sending a clear signal that rape is no longer tolerated by the state.

- Militant forces who have committed rape have committed grave violations of international human rights and humanitarian law. These groups should prohibit all violent assaults on civilians, including rape. The international community should condemn these abuses and bring pressure on these groups to end all such abuses.

- Medical workers who have examined and treated rape victims should be protected from abuse. Medical facilities, including private licensed physicians, should be encouraged to give testimony and introduce physical evidence in court with regard to rape and other forms of sexual and physical abuse.

## **ASIA WATCH**

*Asia Watch was founded in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair is Jack Greenberg and the Vice Chairs are Harriet Rabb and Orville Schell. Sidney Jones is Executive Director. Mike Jendrzeczyk is Washington Representative. Therese Caouette, Patricia Gossman, Jeannine Guthrie, Robin Munro, and Dinah PoKempner are Research Associates. Grace Obama-Layat and Vicki Shu are Associates, and Mickey Spiegel is Research Consultant.*

*Asia Watch is a division of Human Rights Watch, which also includes Africa Watch, Americas Watch,, Helsinki Watch, Middle East Watch and the Fund for Free Expression. The Chair of Human Rights Watch is Robert L. Bernstein and the Vice Chair is Adrian DeWind. Aryeh Neier is Executive Director and Kenneth Roth is Deputy Director.*

## **PHYSICIANS FOR HUMAN RIGHTS**

*Physicians for Human Rights (PHR) is an organization of physicians and other health professionals that brings the knowledge and skills of the medical sciences to the investigation and prevention of violations of international human rights and humanitarian law. Since its founding in 1986, it has conducted over forty missions concerning over twenty-five countries.*

*Physicians for Human Rights works to apply the special skills of health professionals to stop torture, "disappearances" and political killings by governments and opposition groups; to report on conditions and protection of detainees in prisons and refugee camps; to investigate the physical and psychological consequences of violations of humanitarian law and medical ethics in internal and international conflicts; to defend the right of civilians and combatants to receive medical care during times of war; to protect health professionals who are victims of human rights abuses and to prevent physician complicity in torture and other human rights abuses.*

*Physicians for Human Rights adheres to a policy of strict impartiality and is concerned with the medical consequences of human rights abuses regardless of the ideology of the offending government or group. The President of the Board of Directors is H. Jack Geiger, M.D.; the Vice President is Carola Eisenberg, M.D. Eric Stover is Executive Director; Susannah Sirkin is Deputy Director; Shana Swiss, M.D. is Director of the Women's Program, Barbara Ayotte is Senior Program Associate and Gina VanderLoop is Development Director.*

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