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## **Amnesty International submission to the Jammu and Kashmir Home Department 30 March 2013**

Amnesty International welcomes the opportunity to make a submission to the Home Department of the Government of Jammu and Kashmir on the Draft Jammu and Kashmir Police Bill, 2013 (the Draft Bill).

**Amnesty International is deeply concerned that the Draft Bill, if passed into law in its current form, will perpetuate the culture of impunity for human rights abuses and violations that exists in Jammu and Kashmir.**

This submission analyses some of the provisions of the Draft Bill in light of India's international human rights obligations. Part I provides an introduction to the context in which the Draft Bill was introduced. Part II contains a brief background to policing practices in Jammu and Kashmir and their links to impunity and human rights violations. Part III presents an analysis of the Draft Bill's shortcomings and recommendations on how to address them.

### **I. Introduction**

On 14 February 2013, the Home Department of the Government of Jammu and Kashmir put up the Draft Jammu and Kashmir Police Bill, 2013 on its website and invited suggestions and comments from the public within 15 days.<sup>1</sup>

The Home Department said that the Draft Bill had been prepared in compliance with a 2006 Supreme Court judgement that directed state governments to enact reforms in the police system in order to 'secure the rights of the citizens under the Constitution for the rule of law'.<sup>2</sup> The judgement also said that states were expected to pass suitable state legislations on the lines of the Model Police Act, 2006, which was drafted by a committee set up by the Government of India.

At the time of publication of the Draft Bill, Kashmir was under curfew and access to the internet was severely restricted. Five days earlier, on 9 February 2013, Afzal Guru, a Kashmiri man convicted of being involved in an attack on the Parliament of India, had been secretly hanged in Delhi.<sup>3</sup> The Government of Jammu and Kashmir had imposed a week-long curfew the same day, and blocked access to cable television, mobile and internet services in many parts of Kashmir.<sup>4</sup> Over the week, three people were killed and over a hundred injured in clashes between protestors and security forces.<sup>5</sup>

Mobile internet services were restored on 16 February 2013.<sup>6</sup> Human rights organizations in Kashmir accused the government of using the situation in Kashmir to introduce the Draft Bill

in stealth, and asked for the time allocated for comments to be extended.<sup>7</sup> Some expressed concern that the government intended to pass the bill into law in the upcoming session of the state legislative assembly.<sup>8</sup> Opposition political parties also criticized the bill and promised to oppose its passage.<sup>9</sup>

On 27 February 2013, the Home Department extended the deadline for filing comments and suggestions on the bill by one month from March 1, 2013.<sup>10</sup>

Amnesty International is aware that the Jammu and Kashmir Draft Bill contains provisions that are identical or similar to those in the Police Acts of some other states. Some of the concerns raised in this submission would therefore equally apply to those states.

Nonetheless, given the nature of the ongoing violence in Kashmir and the long history of human rights violations, including by the police (described below in Part II), Amnesty International is particularly concerned about the Draft Bill in Jammu and Kashmir.

## **II. Background: Policing and Impunity in Jammu and Kashmir**

Since 1989, Jammu and Kashmir has witnessed prolonged violence between armed groups and Indian security forces. Amnesty International has documented extensive human rights abuses that have taken place in Jammu and Kashmir since the 1990s by all sides: security forces and state-sponsored militia groups, as well as various armed groups. These violations include torture and other ill-treatment, custodial deaths, rape, enforced disappearances, extra-judicial executions, unlawful killings, kidnappings, and violations of the right to freedom of expression.<sup>11</sup>

Local rights groups like the Jammu and Kashmir Coalition of Civil Society have also highlighted the role of security forces, including senior-level officers, in cases of alleged human rights violations.<sup>12</sup> They have also pointed out how hundreds of cases of alleged violations are not thoroughly investigated.

Serious questions remain about the human rights record of the Jammu and Kashmir police. Amnesty International has repeatedly raised concerns about the role of the state police in human rights violations in Jammu and Kashmir.<sup>13</sup> Local human rights groups have also specifically named senior police officials as being involved in particular violations.<sup>14</sup>

The number of members of armed groups operating in the region has markedly decreased in the last few years. While operations of security forces including the Army have declined, the role of the Jammu and Kashmir Police has been steadily increasing. Human rights violations have also continued.

In 2010, more than 100 people, some of whom engaged in stone-pelting, were killed in firing when the police and other security forces used excessive, and at times unnecessary, force in the Kashmir valley.<sup>15</sup> In 2011, The National Crime Records Bureau reported 595 complaints made against police personnel in Jammu and Kashmir.<sup>16</sup> In February 2013, the use of 'pepper gas' grenades by law enforcement officials reportedly led to the deaths of three people whose pulmonary conditions were exacerbated by exposure to the gas, and affected dozens of others.<sup>17</sup>

Amnesty International has also documented how the Jammu and Kashmir Public Safety Act (PSA) is used to secure the long-term detention of individuals without charge or trial.

Research conducted in 2010-11 showed that as a matter of practice, the Jammu and Kashmir police consistently favoured the use of the PSA - which is overseen by executive officers with almost no evidentiary requirements or possibility for independent review - over regular criminal proceedings.

Amnesty International's research showed that police personnel were working towards meeting monthly or quarterly targets of detentions. Most PSA detention orders were based on interrogation reports prepared by the police on the basis of confessional statements made by the detainee - often obtained after "sustained interrogation" during periods of illegal detention - raising concerns of torture and fabrication of evidence.

Police representatives were also part of the executive 'screening committees' which decided whether detainees should be released or not, while court orders of release were frequently ignored as the police repeatedly detained persons on 'fresh grounds'.<sup>18</sup> Follow up research conducted in 2011-2012 revealed that little had changed in actual police practice related to the PSA despite amendments to the law itself.<sup>19</sup>

Concern about the police's human rights record has been also raised by other bodies. The Jammu and Kashmir Coalition of Civil Society has reported that boys in Kashmir continue to be illegally detained and subjected to torture, intimidation and harassment. It also reports claims that police officials were demanding 'ransom' amounts for releasing boys who were illegally detained.<sup>20</sup>

UN Special Procedures that have visited India recently have also commented on rights abuses committed by the police in Jammu and Kashmir. In 2011, Margaret Sekaggya, the UN Special Rapporteur on Human Rights Defenders, drew attention to cases of human rights defenders in Jammu and Kashmir being attacked and beaten by police forces. She also mentioned that the Chair of the Jammu and Kashmir State Human Rights Commission had said cases of torture, killings and custodial death by the police and paramilitary forces were frequently brought to his attention.<sup>21</sup>

A Group of Interlocutors set up in October 2010 by the central government "to begin the process of a sustained dialogue with the people of Jammu and Kashmir" noted in their report that most young people in Kashmir feared victimization by the security forces/police and armed groups. Most people the Interlocutors spoke to said they were harassed by both the police and separatist groups. One recommendation made by the report was to end the intimidation and harassment of citizens by the police.<sup>22</sup> The Jammu and Kashmir state government said the report ought to form the basis of a dialogue between the central government and itself.<sup>23</sup>

The climate of impunity in Jammu and Kashmir has also meant that few members of the police or other security forces have been held accountable. Most of the killings by the excessive use of force in 2010 have not yet been investigated. A judicial commission was appointed by the state government in July 2010 to look into 17 killings committed during the unrest, but that report too has not yet been released. The Jammu and Kashmir High Court is currently hearing a public interest litigation filed by Yasin Malik, a pro-independence leader, seeking the registration of First Information Reports on 117 deaths that took place in 2010.

The climate of impunity is facilitated by immunity laws. Under the Armed Forces (Special Powers) Act, no legal proceeding can be initiated against a soldier without prior sanction from

the Central Government.<sup>24</sup> Sanction is virtually never granted.<sup>25</sup> Section 197 of the Code of Criminal Procedure, 1989, also gives immunity to the police in Jammu and Kashmir by requiring prior sanction from the state government before any serving public servant can be prosecuted “for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”.<sup>26</sup> Such approval is rarely granted by the government.

Indian courts have ruled that cases of misuse or abuse of power by public officials “can never be said to be part of the official duties” and no prior sanction is needed to prosecute them.<sup>27</sup> However prosecutions of police officials for human rights violations are still rare.

In March 2012, Christopher Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, recommended the immediate repeal of laws providing for immunity from prosecution of the police and armed forces.<sup>28</sup>

### **III. The Draft Jammu and Kashmir Police Bill: Concerns and Recommendations**

Amnesty International recognises the duty of all states to protect their populations from violence, including those committed by armed groups. However, such measures should be implemented in a framework of protection of all human rights and adherence to international human rights standards.

Several parts of the Draft Bill violate India’s international legal obligations. Some of Amnesty International’s concerns are outlined below:

#### ***Police Functions***

##### **1. Special Security Zones**

Under the Draft Bill, the Government of Jammu and Kashmir can declare any area a “special security zone” when it is “widely and intolerably beset with violence or insurgency or destruction of public property on account of communal or terrorist or anti-national activities.”<sup>29</sup>

The Bill provides that the state Government can ban or regulate the production, sale storage, possession or entry of certain substances or funds into Special Security Zones.<sup>30</sup> It can also set up a structure to integrate administrative measures with police responses, and create “an appropriate police structure and a suitable command, control and response system”. The Director General of Police is expected to lay down “Standard Operating Procedures to be followed by the police in a Special Security Zone”.<sup>31</sup>

##### ***1.1 Amnesty International’s Concern***

While states may choose to regulate certain substances or funds in notified areas, such restrictions must be necessary and proportionate and applied in a non-discriminatory manner. Rights groups working on police reform in India have pointed out that the powers granted under these provisions are too broad.<sup>32</sup>

The Model Police Act, 2006, drafted by a committee set up the Government of India, also provides for the creation of Special Security Zones. However it says that such a declaration has to be made by the Union Government, with the concurrence of the State Government. Further the declaration is time-bound.<sup>33</sup> The Draft Bill contains no such safeguard.

The declaration of certain areas as 'special security zones' and the introduction of special operating procedures could also facilitate human rights violations, especially when the duration of such a status is not fixed or declared. New Police Acts drafted after the Supreme Court order in states like Assam<sup>34</sup>, Tripura<sup>35</sup> and Chhattisgarh<sup>36</sup>, which are also witness to armed uprisings, do not contain similar provisions.

The establishment of Special Security Zones could, in practice, amount to creating undeclared emergency regimes. With respect to the AFSPA, the UN Human Rights Committee has said that it "regrets that some parts of India have remained subject to declaration as disturbed areas over many years" and recommended that "the application of those emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant."<sup>37</sup>

### *1.2 Amnesty International's Recommendation*

Chapter VII of the Draft Bill must be revised to ensure it is compatible with India's obligations under the ICCPR. The declaration of an area as a 'Special Security Zone' must be time-bound and subject to periodic review. The Draft Bill must lay down guidelines for any changes in police practices in special security zones to ensure that they remain consistent with the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

## 2. Village Defence Committees

The Draft Bill empowers the Director General of Police to constitute, with the approval of the State Government, "as many Village Defence Committees as he may deem necessary...for the protection of life and property of the inhabitants of that particular village." These committees "may also be issued suitable arms and ammunition."<sup>38</sup>

### *2.1 Amnesty International's Concern*

Village Defence Committees were originally constituted in the 1990s in Kashmir. Rights groups have documented allegations that these groups committed serious violations, including extrajudicial executions.<sup>39</sup> Some of these committees allegedly became the targets of armed groups themselves.<sup>40</sup>

Other than allowing such committees to be set up and armed, the Draft Bill provides no further details. It is silent on the potential membership of Village Defence Committees, what powers they will wield, who they are accountable to, and what training and compensation they will receive. Such a poorly-defined mechanism could enable the creation of vigilante groups and further facilitate human rights violations. Rights groups in India have also pointed out that giving authority to certain groups could result in power being concentrated within dominant powerful interest groups and perpetuate gender, caste or religious bias.<sup>41</sup>

The Model Police Act, 2006 does not provide for Village Defence Committees, although it advocates the setting up of a rural police system based on assistance from local villagers.

Even here, it sets down criteria for their selection, outlines duties and responsibilities, sets up tenures and refers to training being imparted. Importantly, the village based policing in the Model Act does not envisage the provision of arms and ammunition.

Several countries have recognized the effectiveness of various types of mechanisms where communities support police efforts in tackling crime and disorder. The Draft Bill however effectively creates a form of armed militia without any detail of their roles, responsibilities or training.

### *2.2 Amnesty International's Recommendation*

Any such system of village level armed militias groups should be strictly regulated to ensure that its members act in compliance with international human rights law and standards, including the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as appropriate. The creation of any mechanisms must be preceded by detailed information on the procedures of recruitment and training of such militias, as well as their powers and functions. Such groups must be subject to rigorous supervision and an effective command structure, along with other mechanisms to ensure that they do not become vigilante groups.

## 3. Special Police Officers

The Draft Bill says the Director-General of Police can, with the approval of the State Government, temporarily engage “any able-bodied and willing person to be a Special Police Officer to assist the police.”<sup>42</sup>

### *3.1 Amnesty International's Concern*

While states may choose to appoint special police officials in an ad hoc manner, the guidelines for the effective implementation of the UN Code of Conduct for Law Enforcement Officials requires governments to ensure that any and all law enforcement officials are trained in national laws and other texts on human rights.<sup>43</sup>

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials also says that governments and law enforcement agencies should be selected by proper screening procedures, have appropriate qualities for the exercise of their functions and receive continuous and thorough professional training, particularly in the use of force and in issues of police ethics and human rights.<sup>44</sup>

The Draft Bill is silent on issues of recruitment, qualifications, functions, powers, and accountability mechanisms for special police officers. It also does not expressly include the training requirement for SPOs mentioned in the Model Police Act, 2006. Instead, it implies that the conditions of appointment shall be enumerated separately.<sup>45</sup>

The practice of appointing state-sponsored special police officers has previously led to grave rights violations in India. In the mid-to-late 1990s in Kashmir, some former members of armed groups were hired as special police officers. They were reportedly trained and armed by various military or other security forces as a militia and which took part in operations against armed groups. They are believed to have committed repeated human rights violations<sup>46</sup>, including torture, illegal detention, extrajudicial executions and enforced disappearances.<sup>47</sup>

Special police officers in the state of Chhattisgarh are also alleged to have committed serious human rights violations with the support of security forces. In 2011, the Supreme Court ordered the disbanding and disarming of the Chhattisgarh SPOs - which included children<sup>48</sup> - and said that their formation was unconstitutional.<sup>49</sup> The Court said that the poorly-trained SPOs were mostly poor, young adivasis who were provided negligible training and pushed to “literally become cannon fodder”.

### *3.2 Amnesty International's Recommendation*

Any persons appointed as Special Police Officers must be provided with adequate training, proportionate to the powers exercised by them. Any such SPO mechanism must ensure sufficient accountability systems including regular supervision of SPOs within an effective command structure. All SPOs must be required to act in compliance with the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

## ***Police Accountability***

### 4. Sanction for Prosecution

Under Section 142 of the Draft Bill, no person can start legal action against a police officer for any action “done or intended to be done in good faith in the discharge of his official duties” without the permission of the State or Central Government. Section 92 says that every police officer “shall be considered to always be on duty”.

#### *4.1 Amnesty International's Concern*

The requirement of prior sanction or permission for prosecution violates the non-derogable right to remedy guaranteed to all persons under international human rights law.<sup>50</sup> Amnesty International and other human rights organizations have documented how the requirement of prior sanction creates a climate of impunity for serious human rights violations in Kashmir.<sup>51</sup> Section 92 also seems to suggest that all acts done by police personnel at any point in time would be in the official discharge of their duties, thereby expanding the scope of the immunity.

#### *4.2 Amnesty International's Recommendation*

Any law which provides immunities from prosecution for human rights violations, including those which lead to *de facto* immunity, should be deleted from the Draft Bill. The Government of India and the Government of Jammu and Kashmir must ensure that there is a prompt, thorough, impartial and independent investigation of any alleged violation. Those found responsible must be promptly brought to justice before a civilian court in proceedings which meet international fair trial standards, without recourse to the death penalty.

### 5. Range of 'misconduct' allegations

The Draft Bill envisages the setting up of Police Complaints Authorities at the state and district level to investigate complaints against police officers.<sup>52</sup> The Draft Bill says that these

Authorities shall inquire into allegations of “serious misconduct” against police personnel<sup>53</sup>, which are defined to be death in police custody, grievous hurt, rape or attempt to rape, unlawful detention, and forced deprivation of property.<sup>54</sup>

#### *5.1 Amnesty International’s Concern*

Genuinely independent police complaints bodies can play a key role in ensuring police accountability. However for this system to be effective, it must be empowered and effectively resourced to investigate a broad range of misconduct.

For instance, the Independent Police Complaints Commission (IPCC) of the UK can receive complaints of a much wider scope involving death or serious injury, allegations of serious or organised corruption, allegations against senior officers, allegations involving racism, and allegations of perverting the course of justice.<sup>55</sup>

Similarly, the South African Independent Complaints Directorate must investigate any death in police custody, deaths as a result of police actions, any complaint relating to the discharge of a firearm by a police officer, rape of any person in custody or by a police officer, any complaint of torture or assault against a police officer and corruption-related matters.<sup>56</sup>

The Draft Bill, by restricting the mandate of Police Complaints Authorities, can enable impunity for other kinds of violations, like arbitrary or abusive use of force, ill-treatment not amounting to grievous hurt, etc.

#### *5.2 Amnesty International’s Recommendation*

The definition of “serious misconduct” must be expanded to include complaints of a broader range of human rights violations perpetrated by the police and include police failure to register or investigate such complaints. Where the acts of police personnel amount to an offence, action taken by the police complaint body must not preclude criminal prosecution. The state government must also take into account the disappointing experiences in other states in setting up police complaints authorities and ensure that errors and loopholes elsewhere are not replicated.<sup>57</sup>

### 6. Statute of Limitations

The Draft Bill says that no complaint shall be entertained by a Police Complaint Authority if it is made six months after the incident occurred.<sup>58</sup>

#### *6.1 Amnesty International’s Concern*

No statute of limitation can apply to crimes under international law. With regard to crimes such as torture, rape or arbitrary detention, the application of a statute of limitations is a breach of India’s obligations under international law.<sup>59</sup> Such a limitation can deprive victims of the right to remedy, especially in a region like Jammu and Kashmir which has been the site of grave human rights violations. Reports of violations often surface much later than they occur, owing to fear of retribution from the police or security forces.

#### *6.2 Amnesty International’s Recommendation*



The provision must be amended to state explicitly that ‘misconduct’ that amounts to a crime under international law will not be subject to any limitations. Officials suspected of committing such offences must also be tried in proceedings consistent with international fair trial standards.

## ***Police Powers***

### 7. Keeping Information Confidential

The Draft Bill says that all information collected by the police shall be kept confidential except for official purposes, which shall “mean and include publication of the said information for the detection of or prevention of crimes.”<sup>60</sup>

#### *7.1 Amnesty International’s Concern*

The object of this particular provision may have been to ensure confidentiality of information with respect to accused persons or witnesses and related privacy concerns. But the provision can be interpreted in a manner that enables unwarranted restriction by the police of access to information about detentions or investigation, which could potentially lead to violations of victims and families’ rights to know the truth and access remedies. Amnesty International’s research shows that families and victims often have to go to great lengths to obtain information about detained or disappeared people or the status of investigations.<sup>61</sup>

India’s Right to Information Act, which gives citizens the right to inspect and obtain public information from the government, already makes an exemption for information that may impede an investigation or prosecution or that may endanger the life of any person or that may reveal the source of information.<sup>62</sup> It also exempts personal information whose disclosure is not related to public interest, or which would invade privacy.<sup>63</sup> Yet Right to Information applications that seek details of government inquiries on human rights violations have not received responses.<sup>64</sup>

The failure of the authorities to make information available to victims of human rights violations may also be inconsistent with international human rights standards. The UN Committee on Economic, Social and Cultural Rights has emphasized the importance of being able to access information with respect to rights contained in the Covenant.<sup>65</sup>

#### *7.2 Amnesty International’s Recommendation*

The phrase ‘any official purpose’ in Section 10 must be amended to explicitly include requests for information made under the RTI Act. Such a provision must further not effectively restrict sharing of information about the status of investigation with complainants or victims, or the fate or whereabouts of any person detained.

### 8. Mandatory Prior Information

The Draft Bill says that any organization or group which conducts an activity or programme “which is otherwise lawful but has the potential of disturbing the law and order” must inform the police.<sup>66</sup>

### *8.1 Amnesty International's Concern*

International human rights standards require laws to be clear: “a norm, to be characterized as a ‘law’, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”.<sup>67</sup> The language used in the section – “...which is otherwise lawful but has the potential of disturbing the law and order...” - fails to meet this standard. It may be difficult for anyone organizing an activity to know for certain whether they need to inform the police. As mentioned earlier, the Jammu and Kashmir police are viewed with suspicion and fear in many parts of Kashmir. Amnesty International is concerned that this provision can have a chilling effect on individuals and communities from exercising their constitutional rights to freedom of association and assembly.

### *8.2 Amnesty International's Recommendation*

The section must be revised to bring it in line with international human rights law and standards. It must specify the kind of activities that have the potential to disturb law and order and require prior notification of the police. Any restrictions on the rights to freedom of expression or assembly must be provided by law, imposed only for certain grounds as specified in the ICCPR and subject to strict tests of necessity and proportionality.

## 9. Entry to Private Places

The Draft Bill empowers all police officers to “have free entry in every public place including private establishments where members of the public are present” in order to “prevent serious disorder or breach of peace and imminent danger to persons assembled.”<sup>68</sup> Elsewhere, the Bill says that police officers who enter any building or place without lawful authority or reasons for causing annoyance can be imprisoned for up to a year.<sup>69</sup>

### *9.1 Amnesty International's Concern*

International human rights standards stipulate that “no one shall be subjected to arbitrary or unlawful interference with his privacy.”<sup>70</sup> Laws and policies which limit the right to privacy must be the least restrictive possible, “reasonable in the circumstances”, and not run counter to other human rights.<sup>71</sup> The provision in the draft bill appears to be framed too broadly, allowing the police entry into private places even for minor breaches of peace. Further the absence of definition of ‘serious disorder’ also makes the provision vague.

The Supreme Court of India has said that the right to privacy is part of the right to life and personal liberty guaranteed by the Constitution of India.<sup>72</sup> The Model Police Act, 2006 does not carry a similar provision. Rights groups have previously reported several instances of alleged harassment and intimidation by the Jammu and Kashmir police. Amnesty International is concerned that the Draft Bill may facilitate violations of the right to privacy by empowering the police to enter private establishments arbitrarily.

### *9.2 Amnesty International's Recommendation*

The Government of Jammu and Kashmir should ensure that the particular provision is consistent with international human rights law and standards. Any interference with the right to privacy must be lawful and not arbitrary. The provision must therefore not be worded in a broad or vague manner and should specify in further detail the conditions under which the police can enter private establishments. Any police action that does not meet these criteria

must be characterised as misconduct that can be investigated by the Police Complaints Authority.

#### 10. Details from Service Providers

The Draft Bill requires all providers of services to the public to furnish the details of any service they provide, including “records, description and information”, on demand by a police officer discharging official duties.<sup>73</sup>

##### *10.1 Amnesty International’s Concern*

The Draft Bill does not specify the purposes for which information can be accessed by a police officer. It does not require any judicial or executive oversight or supervision for such acquisition of information. In effect, it gives the police powers to monitor and intercept communications, without adequate checks and balances and constraints on these powers.

Under international human rights standards, the confidentiality of correspondence should be guaranteed de jure and de facto, and any law which limits this right must be reasonable and the least restrictive possible.<sup>74</sup>

Amnesty International is concerned that the Bill does not provide any grounds on which the police may seek access to information from service providers. Instead of requiring necessity and proportionality of such requests, the Bill provides complete access to any persons, without any safeguards to prevent arbitrary or unlawful interference with the right to privacy, especially around information and correspondence. The Bill could also have a chilling effect on others who fear that their communications may be intercepted.

##### *10.2 Amnesty International’s Recommendation*

The Draft Bill must be amended to bring it in line with international human rights standards. The grounds upon which a police official may seek information from service providers must be clearly specified and any such action should further be necessary and proportionate to achieve the lawful purpose. All such police requests must be supervised and reviewed by a judicial or executive authority. Any arbitrary or unlawful police action to monitor or intercept communications must be categorized as misconduct and should be investigated by the Police Complaints Authority.

#### 11. Right to Demand Services

The Draft Bill gives police officers powers to “demand and accept the services of any able-bodied adult person” in order to prevent or stop offences. The Bill says that “no person shall disobey without reasonable cause the lawful and reasonable directions so given.”<sup>75</sup> Anyone who disobeys directions can face legal proceedings if the District Superintendent of Police permits it.

##### *11.1 Amnesty International’s Concern*

This provision is not mentioned in the Model Police Act, 2006. The Draft Bill does not specify the kind of directions that a police officer can give to an individual, what constitutes reasonable cause to disobey such directions, or a review or appeal mechanism for such instructions. Such a provision may place individuals – whose services are sought by the police

to stop an offence – at risk of injury or even death. Further, seeking the involvement of members of the general population to stop an offence from taking part or to prevent future offences in this manner may also leave them vulnerable to retaliation or revenge attacks.

The history of human rights violations by security forces, including the police, in Jammu and Kashmir also leads to concern that such a provision could be abused and lead to prohibited forced labour.<sup>76</sup> Allegations of forced labour by security forces have been previously raised in Kashmir.<sup>77</sup>

### *11.2 Amnesty International's Recommendation*

The Draft Bill must clearly specify that no such demand for services from individuals should be made by police officials where they are aware, or should be aware, that the individual may be placed at risk of injury or death. It should not be a criminal offence to refuse any demand for services. Arbitrary or abusive demands or directions by police officers should be classified as misconduct and subject to disciplinary and/or criminal proceedings, as appropriate.

## **Definitions**

### 12. Crimes Against Women

The Draft Bill criminalizes the performance in public of “any sexual gestures or acts degrading the dignity of women”.<sup>78</sup>

#### *12.1 Amnesty International's Concern*

The concept of defining a criminal offence in relation to the ‘dignity’ of women, rather than as crimes against their right to bodily integrity, is archaic and discriminatory. It also falls short of the status and scope of international standards on non-discrimination and equality<sup>79</sup> which, as applied to the treatment of rape and other sexual violence, require these crimes to be defined as infringements against the physical and mental integrity of the victim, rather than as a crime against dignity.

In January 2013, the Justice Verma Committee - set up by the Government of India to consider reforms to strengthen laws against sexual violence - also recommended that provisions which used similar language be replaced with more appropriate formulations.<sup>80</sup>

#### *12.2 Amnesty International's Recommendation*

The relevant sections should be replaced with provisions that define forms of violence against women with reference to the physical and mental integrity of the victim, and not notions of dignity.

### 13. Torture

The Draft Bill criminalizes deliberate “torture or any kind of inhuman or unlawful personal violence or serious misconduct.”<sup>81</sup>

#### *13.1 Amnesty International's Concern*

While India has not yet ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is a signatory to the Convention.<sup>82</sup> The Prevention of Torture Bill, 2010, which was drafted partly to comply with the Convention, is still pending before Parliament. The definition of torture in the Draft Torture Bill also falls short of the requirements of this Convention in many respects.<sup>83</sup> Torture is not defined anywhere in the Draft Police Bill, or in any other law in force in Jammu and Kashmir.

### *13.2 Amnesty International's Recommendation*

The Draft Police Bill must prohibit all forms of torture and other ill-treatment. The definition of torture must include, at a minimum, all the elements laid out in Article 1 of the UN Convention Against Torture.<sup>84</sup>

Torture, as well as any attempt to commit it and any act that constitutes complicity or participation in torture, must be made a criminal offence punishable by appropriate penalties – excluding the death penalty - which take into account its grave nature.<sup>85</sup> Other acts of ill-treatment which in the relevant context constitute - or in other contexts would have constituted - crimes under international law should also be criminalised.<sup>86</sup>

## 14. Right to Reparations

Section 133(b) of the Draft Bill prescribes imprisonment for up to one year when a police officer "deliberately, knowingly and maliciously with intent to implicate an innocent person in a criminal offence records a false statement or make a forged document or raises a false allegation of attack on the police."

### *14.1 Amnesty International's Concern*

The Bill does not make any provision for reparations to victims of intimidation and harassment through wrongful implication in a criminal offence. Under the ICCPR, anyone subject to unlawful arrest or detention shall have an enforceable right to compensation.<sup>87</sup> International standards also stipulate that victims of gross human rights violations are entitled to adequate, effective and prompt reparations.<sup>88</sup>

### *14.2 Amnesty International's Recommendation*

Authorities must provide effective remedies, including reparations, for all human rights violations committed by police personnel, including abuse, wrongful arrest and detention.

## **IV. Conclusion**

The Draft Jammu and Kashmir Police Bill, 2013 suffers from several serious flaws that, if not amended, would lead to violation of India's international obligations.

The Government of Jammu and Kashmir must desist from introducing the Draft Bill in its present form in the State Legislative Assembly, and instead hold deep and wide consultations with all key stakeholders, including civil society groups, police personnel and members of the public, before adopting a new police Act. Amnesty International urges the Government to put in place robust mechanisms to make the police more transparent, accountable, and respectful of human rights. All legislation and rules, particularly those related to the

regulations, powers and duties of the police, must be consistent with international human rights law and standards.

Crucially, the State Government must take into account the prevailing state of impunity for human rights violations in Jammu and Kashmir, and ensure that this situation is not exacerbated by passing the Draft Bill in its current form.

## ENDNOTES

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<sup>1</sup> The notice is available at <http://jkhome.nic.in/hOme.pdf>

<sup>2</sup> *Prakash Singh & Ors vs Union of India*, (2006) 8 SCC 1, available at <http://www.indiankanoon.org/doc/1090328/>. The Model Police Act is available at [http://mha.nic.in/pdfs/ModelAct06\\_30\\_Oct.pdf](http://mha.nic.in/pdfs/ModelAct06_30_Oct.pdf)

<sup>3</sup> Amnesty International, *New execution points to worrying and regressive trend* (Index: PRE01/071/2013)

<sup>4</sup> See “Afzal Guru hanging: fourth day of curfew in Kashmir valley”, *BBC*, 12 February 2013, available at <http://www.bbc.co.uk/news/world-asia-india-21422696>; “Internet Gag”, *Greater Kashmir*, 14 February 2013, available at <http://www.greaterkashmir.com/news/2013/Feb/14/internet-gag-29.asp>. Omar Abdullah, the Chief Minister of Jammu and Kashmir, said in an interview that internet services were blocked to curb rumours. See “Would’ve preferred it if Guru’s execution didn’t happen: Omar”, *CNN-IBN*, 10 February 2013, available at <http://ibnlive.in.com/videos/372000/jk-cm-omar-abdullah-lashes-out-at-centre-oppn-says-would-have-preferred-if-afzal-guru-wasnt-hanged.html>

<sup>5</sup> See “Indian authorities lift strict curfew in Kashmir”, *Associated Press*, 16 February 2013, available at <http://bigstory.ap.org/article/indian-authorities-lift-strict-curfew-kashmir>; “Scores injured in clashes amid curfew”, *Greater Kashmir*, 10 February 2013, available at <http://www.greaterkashmir.com/news/2013/Feb/10/scores-injured-in-clashes-amid-curfew-57.asp>

<sup>6</sup> See “Mobile Internet services restored in Kashmir valley”, *The Hindu*, 16 February 2013, available at <http://www.thehindu.com/news/national/mobile-internet-services-restored-in-kashmir-valley/article4421785.ece>

<sup>7</sup> See “Civil society objections to proposed police bill”, *Kafila*, 26 February 2013, available at <http://kafila.org/2013/02/26/kashmir-civil-society-objections-to-proposed-police-bill/>

<sup>8</sup> See “Did you consult people!”, *Greater Kashmir*, 28 January 2013, available at <http://www.greaterkashmir.com/news/2012/Jan/28/did-you-consult-people--27.asp>

<sup>9</sup> See “Police bill provisions will send Kashmir to medieval period”, *Hindustan Times*, 25 February 2013, available at <http://www.hindustantimes.com/India-news/Srinagar/Police-Bill-provisions-will-send-Kashmir-to-medieval-period-PDP/Article1-1017334.aspx>

<sup>10</sup> The notice is available at <http://jkhome.nic.in/Police%20Bill%2020130001.pdf>

<sup>11</sup> Amnesty International, *India: An unnatural fate – disappearances in the Indian states of Jammu and Kashmir and Punjab* (Index: ASA 20/42/93); Amnesty International, *India: Summary of human rights concerns in Jammu and Kashmir*, (Index: ASA 20/02/95); Amnesty International, *India: Torture and deaths in custody in Jammu and Kashmir* (Index: ASA 20/01/95); Amnesty International, *India: Torture continues in Jammu and Kashmir* (Index: ASA 20/33/95); Amnesty International, *India: Human rights abuses in the election period in*

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*Jammu and Kashmir* (Index: ASA 20/39/96); Amnesty International, India “*If they are dead, tell us*”, “*Disappearances*” in *Jammu and Kashmir* (Index: ASA 20/02/99); Amnesty International, India: *Impunity must end in Jammu and Kashmir*, (Index: ASA 20/023/2001); Amnesty International, India: *A ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act* (Index: ASA 20/001/2011); Amnesty International, India: *Still a ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act, 1978* (Index: ASA 20/035/2012)

<sup>12</sup> International People’s Tribunal for Human Rights and Justice in Indian-Administered Kashmir and Association of Parents of Disappeared Persons, *Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir*, December 2012, available at [http://kashmirprocess.org/reports/alleged\\_Perpetrators.pdf](http://kashmirprocess.org/reports/alleged_Perpetrators.pdf) (IPTK-APDP, *Alleged Perpetrators*)

<sup>13</sup> See, for example, Amnesty International, India: *Urgent need for Government to act as death toll rises in Kashmir* (Index: ASA 20/027/2010); Amnesty International, India: *Child detained without charge or trial: Murtaza Manzoor* (Index: ASA 20/015/2011); Amnesty International, India: *Teenager detained without trial in Kashmir* (Index: ASA 20/027/2012); Amnesty International, India: *Child arbitrarily detained in Srinagar* (Index: ASA 20/041/2012)

<sup>14</sup> IPTK-APDP, *Alleged Perpetrators*

<sup>15</sup> See “India announces moves to ease crisis in Kashmir”, *BBC*, 25 September 2010, available at <http://www.bbc.co.uk/news/world-south-asia-11411951>

<sup>16</sup> National Crime Records Bureau, *Crime in India: 2011 Compendium*, 28 June 2012, p.164, available at <http://ncrb.nic.in/CD-CII2011/Compendium2011.pdf>

<sup>17</sup> The Jammu and Kashmir State Human Rights Commission and many civil society groups have demanded that security forces cease using the “pepper gas”. See “SHRC castigates police over use of pepper gas”, *Greater Kashmir*, 27 February 2013, available at <http://www.greaterkashmir.com/news/2013/Feb/28/shrc-castigates-police-over-use-of-pepper-gas-24.asp>

<sup>18</sup> Amnesty International, India: *A ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act* (Index: ASA 20/001/2011) (Amnesty International, *A ‘Lawless Law’*); Amnesty International, India: *Still a ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act, 1978* (Index: ASA 20/035/2012)

<sup>19</sup> Amnesty International, India: *Still a ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act, 1978* (Index: ASA 20/035/2012)

<sup>20</sup> “A review of human rights in Jammu & Kashmir in 2012: JKCCS” *Kafila*, 5 January 2013, available at <http://kafila.org/2013/01/05/a-review-of-human-rights-in-jammu-kashmir-in-2012-jkccs/>



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<sup>21</sup> *Report of the Special Rapporteur on the situation of human rights defenders, Mission to India* (10-21 January 2011), 6 February 2012, available at <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>

<sup>22</sup> “A New Compact with the People of Jammu and Kashmir”, available at <http://mha.nic.in/pdfs/J&K-InterlocutorsRpt-0512.pdf>

<sup>23</sup> See “Omar supports interlocutors’ report, PDP alleges U-turn”, *Hindustan Times*, 30 August 2012, available at <http://www.hindustantimes.com/India-news/Srinagar/Omar-supports-interlocutors-report-PDP-alleges-U-turn/Article1-921970.aspx>

<sup>24</sup> Section 7 of the AFSPA, 1990, states: “Prosecution of persons acting in good faith under this Act: No prosecution, suit or 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.”

<sup>25</sup> See “...and now judicial impunity?: JKCCS”, *Kafila*, 2 May 2012, available at <http://kafila.org/2012/05/02/and-now-judicial-impunity-jkccs/>

<sup>26</sup> Section 197 of the Criminal Procedure Code, 1989, states: “Prosecution of Judges and public servants.- (1) When any person who is Judge within the meaning of Section 19 of the Ranbir Penal Code or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the State Government or the Government of India, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no Court shall take cognizance of such offence except with the previous sanction (a) in the case of persons employed in connection with the affairs of the Union, of the Government of India; and (b) in the case of persons employed in connection with the affairs of the State, of the Government; (2) The Government of India or the State Government, as the case may be, may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

<sup>27</sup> For instance see *Choudhury Parveen Sultana vs State of West Bengal*, AIR 2009 SC 1404, available at <http://indiankanoon.org/doc/1954186/>, where the Supreme Court set aside a High Court order denying permission to prosecute a Deputy Police Superintendent. The official was accused of threatening a resident of Berhampore town to withdraw his complaint against five police personnel who had attacked him.

<sup>28</sup> See “Press Statement - Country Mission to India Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions 19 – 30 March 2012”, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12031&LangID=E>

<sup>29</sup> Section 82

<sup>30</sup> Section 85

<sup>31</sup> Section 86

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<sup>32</sup> “Experience indicates that once the SSZ are created, police will push for, and get, special powers that will curtail civil liberties.” Commonwealth Human Rights Initiative (CHRI), “A Note of Dissent”, available at [http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/model\\_police\\_act\\_chap9.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/model_police_act_chap9.pdf)

<sup>33</sup> Section 112 of the Model Police Act, 2006, says the notification has to be approved by the appropriate legislature within six months, and cannot exceed two years unless it is ratified by Parliament with the concurrence of the State Legislature. The Act is available at [http://mha.nic.in/pdfs/ModelAct06\\_30\\_Oct.pdf](http://mha.nic.in/pdfs/ModelAct06_30_Oct.pdf)

<sup>34</sup> Available at [http://www.humanrightsinitiative.org/programs/aj/police/india/acts/assam\\_police\\_act\\_2007.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/acts/assam_police_act_2007.pdf)

<sup>35</sup> Available at [http://www.humanrightsinitiative.org/programs/aj/police/india/acts/tripura\\_police\\_act\\_2007.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/acts/tripura_police_act_2007.pdf)

<sup>36</sup> Available at [http://www.humanrightsinitiative.org/programs/aj/police/india/acts/chhattisgarh\\_police\\_act\\_2007.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/acts/chhattisgarh_police_act_2007.pdf)

<sup>37</sup> *Concluding observations of the Human Rights Committee: India*, 4 August 1997, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En). India acceded to the ICCPR on 10 April 1979. Further, while international human rights law allows States to take measures which derogate from some of their obligations in times of emergency (Article 4(1) of the ICCPR), these measures may only be taken when they are absolutely necessary, proportionate to the threat, non-discriminatory and subject to international review. Importantly, they must be ‘of an exceptional and temporary nature’. See Human Rights Committee, General Comment No. 29: States of Emergency (article 4), 31 August 2001, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/71eba4be3974b4f7c1256ae200517361](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/71eba4be3974b4f7c1256ae200517361). The state must also notify other state parties through the UN Secretary-General (Article 4(3) of the ICCPR).

<sup>38</sup> Section 62

<sup>39</sup> Human Rights Watch, *Beyond the Kashmir conflict: Abuses by Indian Security Forces and Militant Groups Continue*, 1 July 1999, available at <http://www.unhcr.org/refworld/docid/45d0609b2.html>.

<sup>40</sup> International Crisis Group, *Asia Briefing*, 17 February 2004, available at <http://www.crisisgroup.org/~/media/Files/asia/south-asia/nepal/B030%20Nepal%20Dangerous%20Plans%20for%20Village%20Militias.pdf>

<sup>41</sup> Commonwealth Human Rights Initiative, “PADC Model Act, 2006: A Note on Issues of Concern”, available at

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[http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/issues\\_for\\_concern\\_mpa.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/issues_for_concern_mpa.pdf)

<sup>42</sup> Section 63

<sup>43</sup> Resolution 1989/61 adopted by the Economic and Social Council, 24 May 1989 and endorsed by the General Assembly in its Resolution 44/162 of 16 December 1989.

<sup>44</sup> Principles 18-20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>45</sup> Section 63

<sup>46</sup> Amnesty International, *India: Human rights abuses in the election period in Jammu and Kashmir* (Index: ASA 20/39/96)

<sup>47</sup> Amnesty International, *India: Human rights abuses in the election period in Jammu and Kashmir* (Index: ASA 20/39/96); Human Rights Watch, *Beyond the Kashmir conflict: Abuses by Indian Security Forces and Militant Groups Continue*, 1 July 1999, available at <http://www.unhcr.org/refworld/docid/45d0609b2.html>.

<sup>48</sup> Human Rights Watch, *Being Neutral is Our Biggest Crime*, July 2008, available at <http://www.hrw.org/sites/default/files/reports/india0708webwcover.pdf>

<sup>49</sup> *Nandini Sundar & Ors vs State of Chhattisgarh*, AIR 2011 SC 2839, available at <http://supremecourtindia.nic.in/outtoday/wc25007.pdf>

<sup>50</sup> Article 2(3) of the ICCPR says that states must ensure “that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

<sup>51</sup> IPTK-APDP, *Alleged Perpetrators*; Amnesty International, *India: Impunity must end in Jammu and*

*Kashmir*, (Index: ASA 20/023/2001)

<sup>52</sup> Section 100

<sup>53</sup> Section 107

<sup>54</sup> Section 2(xxxviii)

<sup>55</sup> For more information see <http://www.ipcc.gov.uk/en/Pages/investigations.aspx>

<sup>56</sup> For more information see [http://www.ipid.gov.za/lodge\\_complaint/lodge\\_complaint.asp](http://www.ipid.gov.za/lodge_complaint/lodge_complaint.asp)

<sup>57</sup> Commonwealth Human Rights Initiative, *Police Complaints Authorities in India: A Rapid Study*, December 2012, available at [http://www.humanrightsinitiative.org/publications/police/PCA\\_Rapid\\_Study\\_December\\_2012\\_FINAL.pdf](http://www.humanrightsinitiative.org/publications/police/PCA_Rapid_Study_December_2012_FINAL.pdf)

<sup>58</sup> Section 120

<sup>59</sup> The UN Committee against Torture has said that no statute of limitations should apply to torture or any other international crime. UN Committee against Torture, Summary account of the results of the proceedings concerning the inquiry on Serbia and Montenegro, in Report of the Committee against Torture, UN Doc. A/59/44 (2003-4), para. 213(h). See similarly the Committee's conclusions and recommendations on numerous occasions, for instance on Chile, *ibid.*, para. 57(f); Tajikistan, UN Doc. A/62/44 (2006-7), para. 38(18)(b), Denmark, *ibid.*, para. 39(11), Italy, *ibid.*, para. 40(19); Latvia, UN Doc. A/63/44 (2007-8), 34(17), Algeria, *ibid.*, para. 38(11).

<sup>60</sup> Section 10

<sup>61</sup> Amnesty International, *A 'Lawless Law'*

<sup>62</sup> Section 8(1)(g) of the Right to Information Act, 2005

<sup>63</sup> Section 8(1)(j) of the Right to Information Act, 2005

<sup>64</sup> "A review of human rights in Jammu & Kashmir in 2012: JKCCS" *Kafila*, 5 January 2013, available at <http://kafila.org/2013/01/05/a-review-of-human-rights-in-jammu-kashmir-in-2012-jkccs/>

<sup>65</sup> Committee on Economic, Social and Cultural Rights (CESCR), General Comment no. 14: The Right to the Highest Attainable Standard of Health (Article 17), 11 August 2000, available at <http://www.unhcr.org/refworld/pdfid/4538838d0.pdf>. Also see CESCR, General Comment no.15: The Right to Water (Article 11 and 12), 20 January 2003, available at <http://www.unhcr.org/refworld/pdfid/4538838d11.pdf>

<sup>66</sup> Section 81(4)

<sup>67</sup> Human Rights Committee, General comment no. 34: Article 19, Freedoms of opinion and expression, 12 September 2011, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>68</sup> Section 16

<sup>69</sup> Section 133(a): "Whoever, being a Police Officer (a) enters into or conducts unnecessary searches or causes to be searched without lawful authority or reasons in any building, vessel, tent or place for causing annoyance...shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be liable to fine."

<sup>70</sup> Article 17 of the ICCPR

<sup>71</sup> Human Rights Committee, General Comment no. 16: Article 17, The right to respect of privacy, family, home and correspondence, and protection of honor and reputation, 4 August 1988, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/23378a8724595410c12563ed004aeecd](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/23378a8724595410c12563ed004aeecd)

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<sup>72</sup> *R. Rajagopal vs State of Tamil Nadu* (AIR 1995 SC 264), available at <http://indiakanoon.org/doc/501107/>

<sup>73</sup> Section 24

<sup>74</sup> Human Rights Committee, General Comment no. 16: Article 17, The right to respect of privacy, family, home and correspondence, and protection of honor and reputation, 4 August 1988, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/23378a8724595410c12563ed004aeecd](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/23378a8724595410c12563ed004aeecd)

<sup>75</sup> Section 14

<sup>76</sup> Article 1 of the Abolition of Forced Labour Convention, 1957 (No. 105), ratified by India on 18 May 2000. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C105)

<sup>77</sup> For example, armed forces have been accused of using civilians for forced labour in Kupwara district between 1990 and 2003. See “Army challenges SHRC’s jurisdiction”, *Greater Kashmir*, 15 October 2012, available at <http://www.greaterkashmir.com/news/2012/Oct/16/army-challenges-shrc-jurisdiction-81.asp>

<sup>78</sup> Section 135(1)

<sup>79</sup> See, for example, article 1 and 15 of the Convention on the Elimination of Discrimination against Women, which India ratified on 9 July 1993.

<sup>80</sup> *Report of the Committee on Amendments to Criminal Law*, January 23, 2013, p.436. Available at: <http://mha.nic.in/pdfs/criminalLawAmndmt-040213.pdf>

<sup>81</sup> Section 133(c)

<sup>82</sup> India signed the Convention on 14 October 1997.

<sup>83</sup> Amnesty International, *India: Briefing on the Prevention of Torture Bill* (Index: ASA 20/030/2010)

<sup>84</sup> Article 1 of the UNCAT states: “Torture means 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, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

<sup>85</sup> Article 4 of the UNCAT

<sup>86</sup> For instance acts which would have constituted “cruel treatment” and “outrages upon personal dignity, in particular humiliating and degrading treatment”, which are prohibited in

Common Article 3 of the four Geneva Conventions of 1949 and criminalized under the statutes of subsequent international criminal tribunals and the Rome Statute of the International Criminal Court. See Article 16 of the UNCAT and Human Rights Committee, General Comment no. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment, 3 October 1992, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5)

<sup>87</sup> Article 9(3) of the ICCPR

<sup>88</sup> Principle IX of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law