

# **Report of Independent People's Tribunal on Human Rights Violations in Kashmir**

February 20-21, 2010

**Srinagar, Kashmir**



Independent People's Tribunal

# **Report of Independent People’s Tribunal on Human Rights Violations in Kashmir**

2010

Design

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Published by



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Printed by

**Shivam Sundaram**

Green Park, New Delhi

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## Acknowledgements

Before we proceed forward and present to you the report on the Independent People's Tribunal on Human Rights Violations in Kashmir, we consider it as our duty to acknowledge the efforts put forth by the people involved in conducting this tribunal.

We express our deep gratitude to the hon'ble Jury members for taking time off from their busy schedule, traveling to Srinagar, hearing depositions, studying each and every case meticulously and finally putting down a comprehensive report.

The tribunal could not have been conceived and conducted without the courage and faith of the victims who made it a point to depose before the jury despite the threats to their families and themselves, especially in the circumstances where people have lost faith in the remedial and retributive systems.

It is only because of the dynamic leadership provided by Colin Gonsalves of Human Rights Law Network and Shabnam Hashmi of ANHAD that the idea of conducting a tribunal in Kashmir could have been conceived.

We would like to acknowledge the support and guidance provided to us by Ms Parveena Ahanger and Mr Mir Hafizullah of Association of Parents of Disappeared Persons. They were the strength behind us and provided us with all possible help in order to make the tribunal a success.

The Programme Coordinators Syed Faisal Qadri, Tanveer Hussain Khan, Ms Narjees Nawab and Ms Lebul Nissa also deserve a special mention for coordinating the event, faced with a challenging task of convincing the victim families to come forth and were duly rewarded with the trust the victims reposed in them by an overwhelming participation in the tribunal. Mr Imran Ali from HRLN Delhi provided crucial support to HRLN Sringar unit during the tribunal.

Our special thanks to the team of young and dynamic volunteers

of HRLN and ANHAD, Kashmir, namely Ms Khairunnisa, Ms Aliya, Mr Sajid Iqbal, Mr Irshad Wani, Ms Farah, Ms Ufera, Zaid, Shariq, Mohsin Ali and Mr Ishfaq Yousuf for putting in strenuous efforts and showing extraordinary courage in conducting fact-findings in remote villages of Kashmir. Without their tireless efforts the tribunal would not have been possible.

Thanks are also due to Ms Aliya Anjum, Ms Saiba, Ms Seema Duhan and Ms Miriam Beringmeier for meticulously recording the minutes and statements of all the victims who deposed during the tribunal.

Special thanks to Saima Siddiqui, Mukhtar Ahmad, Rafaquat Wani, Yaseen, Mushtaq and Aslam for providing their continuous support and managing the backstage arrangements.

Finally, we must thank Parul for helping the jury members in finalising the draft and editing this report.

**–Harsh Dobhal**  
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## INTRODUCTION

This Tribunal was initiated by Human Rights Law Network and ANHAD and held in Srinagar, Kashmir, on February 20-21, 2010.

There is a general perception that human rights situation in J&K is bad and largely unaddressed. The various official human rights mechanisms including the judiciary and the SHRC, are unable to act proactively and rein in human rights violators – the army, paramilitary forces, police and surrendered militants. In this context, it was felt that a civil society initiative including retired members of the judiciary was imperative to clarify the situation and the reasons for the continued deaths and suffering.

Violence is a reality of conflict and it serves as a means and a weapon to meet an objective of overpowering the opponent; and is generally characterized by the use of civilian lives – women and children, in particular – in the realization of this objective.

Over the last twenty years, the state of Jammu and Kashmir, particularly the Valley of Kashmir, has experienced the worst forms of human rights violations. Torture, custodial killings, rapes, disappearances and fake encounters are on an ever-increasing rise. These practices and the underscoring impunity accorded to the state armed forces, has become a norm rather than an exception. The recent *Amarnath Land Row Agitation* of 2008, is representative of many other such cases where civilians were taken into illegal custody and tortured, and where unarmed protestors got fired at. What is noteworthy is that survivors of human rights abuse suffer not only physical harm (at times resulting in lifelong disabilities), but are also affected by psychological trauma, as is endorsed by the swelling number of patients suffering from post traumatic stress disorder at the Govt. Psychiatric Diseases Hospital in Srinagar.

The practice of human rights abuse is protected, if not

encouraged, by legislations like the Armed Forces (Special Powers) Act, Public Safety Act and the Disturbed Areas Act – where security forces are given sweeping powers to shoot, kill, arrest and detain along with blanket immunity from prosecution for such heinous acts. These powers are in complete disregard of the most fundamental postulates of international law enshrined in the UNDHR (Universal Declaration of Human Rights, 1948), the ICCPR (International Covenant on Civil and Political Rights), ICESCR (International Covenant on Economic, Social and Cultural Rights), UNCAT (UN Convention Against Torture) and the UN Convention on the Elimination of Enforced Disappearances, among others. The latter two have been signed but not ratified by India.

Keeping in view the basic principles of Human Rights as enshrined under the Constitution of India and various International Covenants, and in order to highlight the forms and extent of human rights abuse suffered by civilians in Kashmir, the Human Rights Law Network, in collaboration with ANHAD, organized an independent people's tribunal on the 20<sup>th</sup> and 21<sup>st</sup> of February 2010 at Srinagar, Kashmir.

The Tribunal was organized with an aim to provide a platform to the victims of the ongoing armed conflict. The tribunal witnessed testimonies from all sections of *Kashmiri* society, including victims, their family members, social activists, journalists and academicians. In all, 37 testimonies came to be recorded during the two-day long tribunal. Victims and their family members narrated their stories of suffering that they have experienced since the past two decades. The idea behind conducting such an event was to highlight the sufferings of all such victims and to formulate certain suggestions/ recommendations in order to minimize the use of force against the common man in the name of national security by the security agencies.



## **SUMMARY OF EVIDENCE**

**T**he Tribunal heard testimonies from about 37 victims and their kin. We have also had testimonies/statements from journalists and members of civil society as expert testimonies.

It is clear that there is a sense of suffering and injustice writ large on the face of everyone who made his or her statements before the Tribunal. We had made it clear that we are not in any way linked with the official institutions or authority, and we will not be able to give or guarantee any relief to any of them. As yet so many of them gave vent to their feelings in their physical and emotional state, which only strengthens our opinion that there is substantial truth in those allegations.

Their testimonies are spread over a canvas of various violations of human rights for a period of two decades, and it is clear that by way of relief and remedies, what government has done amounts to a meager little. It is here the state has to answer in large measure for all indifferent attitudes, deficiencies and neglect.

## I. Custodial killings

There have been a large number of custodial killings since the conflict began. The pattern in most cases is similar even though the perpetrators may be from different forces serving the Indian state. The cases cited represent the dominant form of this method of violation of human rights. We are citing testimonies of victims, relatives of victims and others with first-hand information to illustrate our findings.

### Testimonies



Masooda Parveen

*Victim: Advocate Ghulam Mohiddin Regoo*

*Represented by: Masooda Parveen*

*Relationship with victim: Wife*

*Resident: Pampore*

*District: Pulwama*

I am a mother of two. At the time of the incident, my husband was a practicing lawyer. On 1<sup>st</sup> February 1998, at around 9 o'clock, my husband had just returned from the mosque after offering the last prayer of the day. Two renegade militants – Bashir Ahmad and Abdul Khaliq – entered our house. Bashir's face was partially covered with a handkerchief. He caught hold of my husband's collar, and alleged that a militant – Arshid Ahmad Ganaie – was hiding in our house. In fact, Arshid was already in their custody, in a car parked outside our house. The two people took my husband with them and a few days later his mauled dead body was returned to us. Major Poniyal of the Jat Regiment, stationed at Laidpora Pulwama, was involved in bringing all of this about. At the time of handing his body over to me, they also gave me relevant documents and the copy of the FIR.

I approached the government authorities in order that the culprits are brought to book, but to no avail. The district administration had offered me a job, but later declined to acknowledge they had ever done that. When I contacted the local MLA regarding the matter, he avoided me. I approached the then Chief Minister Mr. Farooq Abdullah, but he shooed me away stating that I was the wife of a 'traitor'. My son, who

is an agriculture graduate, has been constantly denied a passport by the state. I myself wanted to take the case of my husband's gruesome murder to a UN body, but was also denied a passport. I am now contesting my case in the Supreme Court with the hope that we get justice and my sons can travel abroad for their advanced studies. When the Supreme Court called for the records of our case from the Police, they stated that they had lost the file. In the meantime, our harassment from the state continues, as has been the case since my husband's brutal murder.

*The case of Gh Qadir Pandit is a striking instance of the state of the judiciary and police. Even though the sessions court concluded the "custodial death", which was reported to the Jammu and Kashmir High Court, the high court directed the concerned sessions court to start investigations after three years of their filing the case. The police refused to file an FIR on the ground of jurisdictional ambiguity. The victim's family then filed an application to the high court seeking directions to specify the police station under whose jurisdiction the case fell, but no orders were passed. Mr. Pandit's brother comment that he was "...so disillusioned with the justice delivery system in Kashmir that I thought it best not to follow up on the case any further," sums up a common criticism of the judicial system, the SHRC and the police.*



*Pandit*

*Victim: Gh Qadir Pandit*  
*Represented by: Pandit, Brother*  
*Resident: Bijhama Uri*  
*District: Kupwara*

**O**n the 22<sup>nd</sup> of May Gh Qadir Pandit, my brother, was taken into custody along with others. While in custody, he was stripped naked, tortured and hung upside down. When we went searching for him at the army camp where he was believed to have been taken, they told us that he had already been killed. An FIR was filed at the police station Bandipora. The sessions court later concluded "custodial death" of the victim that was reported to the High Court of J&K. The high court directed the concerned sessions court to start investigations after three years of our filing the case. Also, there is a jurisdictional ambiguity as to which police station is supposed to investigate into the matter, and therefore a few police stations refused to file the FIR. At this I filed an application in the high court seeking directions to specify the police

station concerned in the case, but no orders were passed. However, I was so fatigued following up the matter that we finally chose not to file the contempt petition. I was drained by litigation – mentally and physically. I was also so disillusioned with the justice delivery system in Kashmir that I thought it best not to follow up the case any further.



*Saleema Begum*

*Victim: Nazir Ahmad Gilkar*

*Represented by: Saleema Begum*

*Relationship with victim: Sister*

*Resident: Bahu-ud-din sahib Nowhatta*

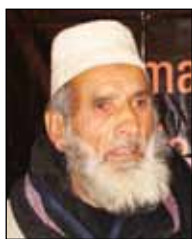
*District: Srinagar*

On 29<sup>th</sup> of June 1999, my brother Nazir Ahmad Gilkar was returning from a marriage party, where he had accompanied the bride to her marital home, along with two others – Javed Ahmad Shah and Hilal Ahmad Mattoo – who were his fellow riders on a motorcycle (DL3C 7771). Javed Ahmad had about Rs.47000 in his pocket (which was the money gifted to the bride that was supposed to be given back to the bride's parents) and some gold ornaments, Nazir Ahmad was also carrying Rs.15000 and so was Hilal Ahmad. Everyone from the contingent returned home save these three men. We suspected Rashid Billa – who was the then SDPO at Soura (and is now an SP) and was feared in the area for having killed about 512 persons extra judicially – may have been involved in taking them into his custody. A group of twenty persons from the neighborhood went to the police station at Soura in order to search for the men. The station had been barricaded from all sides. At this point, Javed Ahmad's wife saw parked in the ground of the police station the bike that the three had been riding on. When we demanded to meet the detainees, STF personnel chased after us and fired gunshots in air. When we returned to the police station the next morning, the station Munshi yelled at us that we should better search for my brother's dead body in the villages.

We were visiting Hazratbal Shrine when we got to know that a dead body had been recovered from a local *nallah* and that two other boys had been killed in Baramulla and were not locals. We then went to Baramulla where we found out that the vehicle that had brought the men to Baramulla was from Soura. We then continued searching for the third body that was recovered from the *nallah*. When we finally found

the third body, which belonged to my brother, we found that a wire was tied around his neck and the other end was tied to gunnysacks. He had been brutally hanged and torture marks were visible on his body. *(Breaks down, and is taken away from the podium in a semi-conscious state)*

The case was transferred to Jammu Lower Court. Our testimony was required in the court, so we went to Jammu. We went to represent ourselves as witnesses, but the same day the matter was transferred to the TADA court. This was another obstacle for us; we started being harassed. That is why we didn't follow the case. Rashid Billa is involved in 512 murders, but to date, no case has been registered against him. He is currently in Punjab.



*Gh Qadir Teli*

***Gh Qadir Teli, whose son was a victim, was himself severely tortured and stripped naked by the 21 RR. He also filed petitions at the J&K High Court and SHRC about his missing son but nothing concrete happened.***

**M**y son was a 17-year-old school dropout and had started working on our farm. He had three elder sisters, and was the only substantial source of income for our family. I got him married in 2008 in district Baramulla. On the fateful day of 25<sup>th</sup> of November 2006, he was not feeling well and had gone to see a doctor, Dr. Habibullah Mattoo, in Sopore. While he had been waiting for his turn at the clinic, a fellow villager had called him on his mobile phone, which is when he had confirmed his location. At around 1 o'clock in the afternoon, I saw a huge crowd outside my house. Some people standing closeby advised me against going home at that time as there the army had raided my house and were searching it. Disturbed by the gravity of the situation, I thought of calling my son. I went to a phone booth to make the call, but his cell phone was switched off. During this time, the army was harassing the rest of my family inside the house. Finally I reached home at around 9:30 in the evening, but my son was nowhere to be seen. For the next three days there was no news of him. I registered a missing report at the police station on 8<sup>th</sup> of December 2006. However, the army – led by some DSP Tickoo – raided my house soon after and asked for the original copy of the report, which I had to hand him out of fear. Fortunately enough, I

had already made photocopies. I then returned to the concerned police station and lodged a fresh complaint.

A few days following this, the army came looking for me, but somehow I managed to get away. But on another occasion, 21 RR raided my house again and took me into custody. They then took me to Handwara where I was severely tortured while being stripped naked. You can imagine what I might have gone through considering it was the body of an old man they were inflicting inhuman treatment on. They were trying to coerce me to accept that my son was a militant, and that I had ammunition in my possession, but I didn't succumb. When they released me, I filed an application with the district magistrate reiterating that I had been subjected to illegal detention and torture and that the whereabouts of my son were unknown. I also filed petitions at the J&K High Court and the State Human Rights Commission, but nothing has come out of them.

*Sometimes the brutality of the security forces was barbaric. When Zaina, mother of the late Imtiaz who was tortured and then taken away by the Special Task Force of J&K police, finally received her son's body, she found that his legs had been amputated. Even in this case, the legal process proved fruitless.*



Zaina Begum

*Victim: Imtiaz*

*Represented by: Zaina Begum*

*Relationship with victim: Mother*

*Resident: Bijbehara*

*District: Anantnag*

**1** 8-year-old Imtiaz was working in a bakery in Kulgam district. Around midnight the Special Task Force of J&K police forced entry into our house. All the family members were locked up in one room except my two sons, Imtiaz and Javed. They were taken into another room in the house where they were tortured, as the rest of us could hear their painful shrieks. The STF personnel then took my sons with them as they left the house. After some time, one of my sons was brought back but the other one, Imtiaz, was not. I then went to the local politician, Mehbooba Mufti, asking for her intervention, seeking release of my son; but no appointment was given. We then went back to the local police station

where the police assured us that my son would be released by 6 o'clock that evening. In the evening, a constable arrived at our house and said that a male member of the family should accompany him to the police station. We then learnt that they had killed my teenage son. Till 9:30 in the night we were struggling with the police to get my son's dead body. They were refusing to let us have it until we signed a document that said that my son was a militant. They threatened to kill our entire family if we didn't do it. However, we resisted the pressure and refused to concede to the absolutely false charge that was being levelled against my son. When we finally received the body, it was mauled. His legs had been amputated. Can you imagine what trauma I would have gone through after seeing my young son's body so ruthlessly mutilated? My brother-in-law then lodged an FIR in Kulgam, about 30 kms from Bijbehara town. But we were constantly threatened by the police to withdraw it. The threats and harassment were so distressing that we finally had to withdraw the FIR. No postmortem was conducted on my son's body.





## II. Enforced Disappearance

One of the most harrowing consequences of the armed conflict in Kashmir is that people in detention go missing. Majority of missing persons are men, which leaves a large number of women awaiting news that would decide their fate, living lives of half-widows. A state like this results in a severe identity crisis amongst the women – with the immense agony of not being sure whether they are still married or widowed.

Enforced disappearances in Kashmir started in 1989, following the outbreak of armed conflict. The state has seen heavy deployment of security forces (more than 600,000—the highest number of army personnel during peacetime anywhere in the world) since.

In international human rights law, disappearances at the hands of the State have been codified as enforced or forced disappearances. The Rome statute establishing the International Criminal Court defines enforced disappearance as a crime against humanity. However, the police do not entertain missing reports with regard to these persons.

Association of Parents of Disappeared Persons (APDP), an organization founded by concerned persons in Kashmir, has been demanding the whereabouts of people who have been subjected to enforced custodial disappearance by various security agencies, troops and police – mostly since the breakout of armed rebellion from 1988. Even though the Association continues to highlight their sufferings and their demands, their genuine pleas and grievances are yet to strike the conscience of the so-called elected representatives of people.

According to the International Convention on Enforced Disappearances, no exceptional circumstances whatsoever – whether a state of war, a threat of war, internal political instability or any other public emergency – may be invoked as a justification for enforced disappearance, and the state is under the obligation to investigate acts of enforced disappearance.



## Testimonies



*Azra Begum*

*Victim: Mushtaq Ahmad Dar*  
*Represented by: Azra Begum*  
*Relationship with victim: mother*  
*Resident: Tengpora*  
*District: Budgam*

**M**y son, Mushtaq Ahmad Dar, used to ply a three-wheeler during the day and during the night he would work as a baker at his aunt's bakery shop in Tengpora. On midnight of 20<sup>th</sup> April 1997, while we were all sleeping, 20 Grenadiers of the army raided our house. But my son was at the bakery shop, which is at some distance from our house, for an overnight stay. But as the army personnel were looking for him, my other son went to call him and brought him home. While he was on his way to home, all of us were locked in one room of our house and he was kept in another room. I recognized him by his coughing. Soon after we were kept in the separate rooms, the army personnel started interrogating him and by way of coercion, were forcing him to admit that he was in possession of arms and was a militant. Interrogation was conducted till 4 am in the morning. After that, the same army men apprehended him.

When I tried to locate the whereabouts of my son, I came to know that the officers who were involved in my son's apprehension were Mr. Nazar Mohammad and Mr. Sharma of the 20 Grenadiers of army battalion. Later I was asked to get in touch with Mr. Nazar Mohammad since he was the person concerned. When I met him he assured me that he would help me in finding the whereabouts of my son. However, the army officer, namely Mr. Sharma, denied that he had apprehended my son.

I visited every detention centre, from Pattan to Nihalpur to Kangan, whenever I got any news regarding my son. I even registered an FIR the same day that my son was detained and was taken to Parimpora Police Station. When my search bore no results about the whereabouts of my son, I filed a writ petition in the high court that is still subjudice. I have also registered a case at SHRC that is yet to be disposed off.

I am not here for money, I don't want any monetarily compensation; but I want justice for my son who disappeared and for my own self.



*Aijaz Ah. Kakroo*

*Victim: Ghulam Hassan Kakroo*  
*Represented by: Aijaz Ahmad Kakroo*  
*Relationship with victim: Son*  
*Resident: Bijhama, Uri*  
*District: Kupwara*

On 12<sup>th</sup> of September 1990 at 4 am, my father, Ghulam Hassan Kakroo, was apprehended by the 7<sup>th</sup> Sikh Regiment of Indian army. Subsequent to his detention, I lodged an FIR in the police station at Bijbehara Uri District.

After lodging the FIR, I started to find the whereabouts of my father. The SHO of the police station at BijhamaUri, namely Kishen Singh Bali, accompanied me to the camp of 7<sup>th</sup> Sikh Regiment of Indian Army – the same battalion that had apprehended my father. Also, it was said that my father was present in the camp. He also informed that army personnel beat up my father. The officer assured me that my father would be released in the evening. But after three-four days, I realized that it was a delaying tactic and nothing else.

District Magistrate Baramulla conducted an inquiry<sup>1</sup> where a committee was constituted for conducting and inquiring into the whereabouts of Ghulam Hassan Kakroo who is missing since 1993. As per one of the reports received from the army, it was revealed that Ghulam Hassan Kakroo was not involved in any subversion/terrorism-related activities, and hence the case was recommended for exgratia relief<sup>2</sup>.

As per the report received from the *Tehsildar*, Uri, Ghulam Hassan Kakroo is missing since 12.09.1990.<sup>3</sup>



*Halima*

*Victim: Abdul Rashid Ganie*  
*Represented by: Halima*  
*Relationship with victim: Wife*  
*Residence: Handwara*  
*District: Kupwara*

My husband Abdul Rashid Ganie was a farmer and I come from Kupwara. On 5<sup>th</sup> of January 1998 at 7 pm, the BSF 131 Battalion that was

1. Vide Order no DCB/R/missing Bla-2003.dated 28-01-2003.

2. Vide order no: 28027/c-11/651 dated 26 /06/2000.

3. Vide order no 177/N dated 15.04.2000.

accompanied by SHO Kupwara, namely Yousuf Band, apprehended my husband. The army personnel (BSF) had come in a big one-ton vehicle and a small gypsy. My husband was 29-30 years old.

There were nearly 100 army personnel surrounding him. He pleaded to them that he wanted to talk to her wife but due to the presence of so many personnel, he couldn't talk to me.

The next morning, when I set to locate the whereabouts of my husband, I met the DSP. But the DSP denied having the custody of my husband. Then I approached the commanding officer of the army battalion through SHO Handwara – the same SHO who was accompanying the army personnel when they had apprehended my husband. But the commanding officer denied the detention of my husband. Then I tried to lodge an FIR, but SHO Handwara said that he can't file an FIR regarding my husband's case for the next three days. In order to file the FIR, the SHO demanded bribe from me that was finally settled at Rs.15000. In order to pay the bribe sum, I had to sell my property. I have been verbally abused by many police officers while I was running from pillar to post in order to find the whereabouts of my husband.

I went to the home minister's office but even that bore no fruits. I even approached the then Forest Minister Muhammad Ramzan, who called on the SHO Handwara regarding my husband's case. SHO Handwara agreed that I will be provided a meeting with my husband. But the forest minister went to Jammu, and then the SHO never followed up the case. Since then I don't know the whereabouts of my husband.



*Rahti Begum*

*Victim: Mehrajudin Dar*

*Represented by: Rahti Begum*

*Relationship with victim: Mother*

*Residence: Tengpora*

*District: Budgam*

I have four children and Mehrajudin Dar was my only son. In the intervening night of 19<sup>th</sup> -20<sup>th</sup> of April 1997, my three daughters, my husband and my son were all sleeping in our house when army personnel suddenly broke open the door and entered forcibly into our house. I along with my husband and daughter were locked up in one room and army men apprehended my son. My son was screaming that he is being taken

away by the army and was asking for help. After they took him away, we immediately went to Boats Colony and to all the nearby army camps in order to find the whereabouts of my son. But all our efforts bore no fruit.

I have paid saffron and almonds worth Rs.50000 in bribe to the army officer concerned. But till date we have received no information or clue regarding my son.

My son was married and has two children. He was a shopkeeper. Presently I am sustaining his wife and the two children.

At least I want to perform his last rites. I want to mourn over his death properly. The case of my son's disappearance is subjudice in the high court, but we have lost hope and hence have not pursued it, we are very disillusioned.



*Khatija Begum*

*Victims: Muhammad Shafi Rah,  
Muhammad Ahmed Rah  
Represented by: Khatija Begum  
Relationship with victims: Mother  
Resident: Maharaj Gunj  
District: Srinagar*

It has been more than 10 years now. My two sons were working in Nepal in a leather factory. On 28<sup>th</sup> of August 2000, they were arrested in Nepal<sup>4</sup> along with 27 other *Kashmiris*. Many of the arrested *Kashmiri* boys were later on released but my two sons were not among them.

When we came to know about the release of some of the *Kashmiri* boys, we immediately met them with the hope that they may be able to give us some information about our sons. They told us that both of our sons have been transferred to a jail in India. We left for Delhi the very next day and travelled even to Jodhpur in order to locate the whereabouts of our children, but to no avail. No state authority has informed us anything about the detention of our son.

We have lodged an FIR in two police stations, namely police stations at Zaina Kadal and Shaheed Ganj. We have also filed a *habeas corpus* case<sup>5</sup> in the high court that is still subjudice. We have also filed our complaint at both the National Humans Rights Commission<sup>6</sup> and the

4. The Katmandu post ,dated 09.09.2000

5. HCP no:- 04/2002

6. Case No :- 2004/UC dated 17.09.2003.

States Human Rights Commission<sup>7</sup>.

My complaint has not yet been disposed off in either of the Commissions. I went from pillar to post in government offices in order to locate my sons. Bipon Kishore, Under Secretary to Government, Home Department<sup>8</sup>, directed the Additional Director General of Police to take up my matter with his counterparts in Rajasthan. I also received a letter<sup>9</sup> by Special Secretary to Chief Minister Naeem Akhtar, written to Financial Commissioner, Home Department of India, whereby they were asked to make all possible efforts to locate my two sons. Again I approached the Agriculture Minister of J&K, Abdul Aziz Zargar, and briefed him about the situation. The minister sent a letter<sup>10</sup> to the then Deputy Prime Minister L.K. Advani, urging him to make personal efforts to trace the whereabouts of the missing youth. Despite so many official letters, we have not received any information regarding our missing sons.



Lal Sheikh

*Represented by:* **Lal Sheikh**

*Relationship with victim:* **Father-in-law**

*Resident:* **Bijhama, Uri**

*District:* **Kupwara.**

*(The case was not listed for IPT. However, the family had somehow heard about the IPT and came on their own to share their story).*

The army battalion headed by Major Mishra apprehended my son-in-law. When I approached the detaining authorities, I was assured that my son-in-law will be released within the coming days. But nothing happened. Instead, we faced repeated threats from the army not to register any FIR. Due to threats, we did not register any FIR. We did not dare to move even to the court of law due to constant threats.

7. Case No:-SHRC/2001/166

8. Vide letter No Home/PB\_V/MIS/J/2002 dated 06.01.2003.

9. Vide No CMS/9/2001.

10. Vide letter No PSM/AP/222 dated 05.03.2003.



*Bhakhti Begum*

*Victim: Manzoor Ahmed Wani*  
*Represented by: Bhakhti Begum*  
*Relationship with victim: Son*  
*Resident: Tragpora*  
*District: Baramulla*

I got my son married and it was on the eighth day of his marriage that we, along with my son and daughter-in-law, were supposed to go towards Baramulla. While we had boarded the bus and were still at the bus stand, some *ikwanis* entered the bus. (*Ikwanis* are the counter-insurgency force that comprises of surrendered militants) Major Bhattacharya, an army major from 28 regiment of Rashtriya Rifles force, accompanied the *ikwanis*. Two *ikwanis*, namely Qayum and Ghulam Ahmed Malik (alias Jehangir), came to us while we were in the bus and the person named Jehangir, caught hold of my son and asked him to get down from the bus. They also broke a bottle of alcohol, whose shards hurt me badly. This incident took place at the Tragpora crossing in Baramulla district. My son was apprehended on 22<sup>nd</sup> of December 2001. He was taken to an army camp. When I sought reason, they told me that they would let him go after interrogating him.

The next day I went to the army camp in order to seek the release of my son. But his release was denied. Then on the third day, an *ikwani* came to my house. He threatened me not to register an FIR in a police station or else my son will lose his life. The following day I went to the police station where Mr. Khurshid Khan was SSP Baramulla.

I approached MLA Rafiabad while he was addressing a public gathering in that area. I then went to the minister's dak bungalow where the counter insurgent Qayoom was also called upon.

After a month and a half when my son was apprehended, an *ikwani* namely Qayoom dropped at my house at midnight and physically assaulted me. I was hospitalized for four days. I lodged an FIR in the police station at Sopore regarding my son's disappearance.<sup>11</sup>

After that incident, I met Major Bhattacharya and asked him to release my son. He threatened to shoot me if I continued asking for my son's release. Later, *ikwani* Qayoom came to our house and threatened us not to follow the legal proceedings, he even offered us one lakh rupees. But we did not withdraw the FIR. We have filed a

11. FIR no:-126/2002

*habeas corpus* petition<sup>12</sup> in the high court, which got transferred to the District Court Baramulla, and the Principal District Judge at Baramulla was directed to conduct an inquiry regarding the matter and furnish his report within three months. The case is subjudice in the district court for past four years now. We have refused the compensation that was offered to us. Because we don't want money. Many years have passed since the victim disappeared. The counter insurgents (*ikwanis*), namely Qayum and Ghulam Ahmed Malik (alias Jehangir) who were accompanying Major Bhattacharya while my son was apprehended, are presently in jail at Baramulla. The victim's wife remarried, she has been married for two years now.

The family has been threatened again, only 20 days ago, by the counter insurgent's brother to withdraw the case.



*Ali Mohd Sheikh*

*Victim: Bilal Ahmad Sheikh*  
*Represented by: Ali Mohd Sheikh*  
*Relationship with victim: Father*

**M**y son was working as a salesman in a shop near Lal Chowk. He was out for routine work, but when he did not return that evening, we went to search for him. Inquiries at different places revealed that our son had been apprehended near the bypass area by the army. This incident took place on 30<sup>th</sup> of March 1997. The area from where my son was apprehended is under 20 battalion of Indian army. The case is still subjudice.



*Zahoor Ahmed Mir*

*Victim: Ali Mohd Mir*  
*Represented by: Zahoor Ahmad Mir*  
*Relationship with victim: Son*  
*Resident: Nishat*  
*District: Srinagar*

**M**y father, namely Ali Muhammad, was killed by Ghulam Ahmad (alias Papa Kishtwari) on 26<sup>th</sup> of June 1996. I filed a case in the high court in the year 2006. I also filed a case in State Human Rights Commission in the year 2007. After I got the case registered, it pressurized the police and only then could I get an FIR lodged against Papa Kishtwari in

12. HCP no:-56/2006



the concerned police station. Papa kishtawari is a surrendered militant and is now a government-sponsored person. He even won uncontested elections. Papa Kishtwari is believed to have committed 150 murders, but only 26 are registered against him. His accomplices have been left free. I want my father's dead body. Papa Kishtwari is in jail because of me, but he is not being punished. I want justice.



*Abdul Rashid Beig*

*Victim: **Fayaz Ahmad Beigh***

*Represented by: **Abdul Rashid Beigh***

*Relationship with victim: **Father***

*Resident: **Khajapora, Nowshera***

*District: **Srinagar***

**M**y son, namely Fayaz Ahmad Beig, was working as a photographer in the Department of Central Asian Studies at the University of Kashmir. He was arrested during his duty hours by H.R. Parrihar, SP, STF at Awantipora on 06.09.97, and was taken to some unknown destination along with his motorcycle. When my son didn't return back, I set to locate his whereabouts. I approached STF and SOG officials through SP operation Awantipora, who, after taking lot of time, admitted my son's detention. But my efforts brought no results. I haven't seen my son till date. The STF agency concocted a baseless story that my son had escaped from custody.

The SHO Soura, namely Abdul Rashid Khan (alias Rashid Billa), is hand in glove with the criminals. He has given a legal cover to my son's disappearance and has created false evidence by registering a false case against him. I approached the then Home Minister Ali Muhammad Sagar to seek his help in order to locate my son. He ordered a CID inquiry. The IG (CID) submitted its report stating that Fayaz Ahmad Beig was arrested from the university campus and the story put forth by STF was proved false. I approached the SHRC and registered a complaint<sup>13</sup> in December 1997. The complaint was disposed of on 03.04.2000. SHRC in its order rejected the STF/police story of Fayez Ahmad's escape from custody as ridiculous and recommended a compensation of Rupees five lakh. The SHRC also directed the registration of a criminal case against SP Parihar and his subordinates. Unfortunately, the then state government did not pay

13. File no SHRC /2008/09



any heed to the recommendations of SHRC and left the case virtually unattended for years together. In the meanwhile we also filed a *habeas corpus* petition<sup>14</sup> in the high court, wherein we prayed to show the case of detention of my son and the authority and law under which my son was detained. However, we were made to withdraw the writ petition on the ground that the case was already pending with the State Human Rights Commission.

Later on, in order to get the recommendations of SHRC implemented, I filed a writ petition in the high court<sup>15</sup>. The hon'ble high court in subsequent decision upheld the recommendation of SHRC and directed the state government to execute the recommendations given by SHRC. It is painful to note that the government has slept over the matter and shown no response even to the high court's decision. In January 2004, the Home Department and SP (operation) H.R. Parihar filed an appeal against the order passed by the high court in the division bench, Srinagar on admission of LPA<sup>16</sup>. The Hon'ble Chief Justice directed the trial court to pass an appropriate order in session of *challan*<sup>17</sup>. On our application, the trial court Srinagar passed an order on 12.12.2007 that the criminal proceedings cannot be started against a dead person, therefore, *challan* has been consigned to records after due compliance.

The case is still pending before the division bench.

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14. HCP No 1411/97

15. OWP no :- 263/OWP-2002.

16. 182/03

17. 239/97

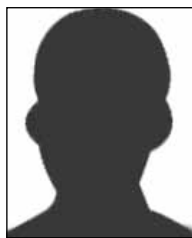
### III. Rape cases

Rape is a particularly heinous crime. It has been used as a method of humiliating an individual and community and destroying their honour. Since the stigma never goes away, the victim is shunned and shamed for life.

#### Testimonies

##### **Kunan Poshpora Village Mass Rape**

On the intervening night of February 23 and 24, 1991, about 23 women from Kunan Poshpora village in the border district of Kupwara were raped by the troops of the 4<sup>th</sup> Rajputana Rifles during a search operation. As per reports, at around 11:00 pm in the night, army personnel in large numbers entered the village. This was followed by the segregation of women from men. While the men were asked to assemble in a village field, the women were ordered to stay put inside the houses. This is when the army men barged into the households and gang rapes followed. Reportedly, women from ages 13-80 were raped. One such woman, who is now 120 years of age stated that she was stripped naked, dragged out of her house into the snow-filled front yard and gang raped. A police investigation into the incident never occurred.



*Victim:* **Bakhti W/o Mohd Siddiq**

*Resident:* **Kunan Poshpora**

*District:* **Kupwara**

On the night of 23rd of February 1991, our village was cordoned off by a large group of drunken army personnel at night. The next morning I came to know that other women from the village had similarly suffered. At this point, the men folk who had been assembled in the village field during the search operation the preceding night were being asked by the army to raise their hands in agreement and say it aloud that no excesses had been committed in the village, and were being filmed while doing so. This is when we women folk went over

to the field in half-naked condition to make it known to the men what had happened to us. On seeing us, the men lost their cool, and refused to accept what they were being ordered to say. On getting home, the men too shared their stories of torture that had been inflicted on them by the army. Learning of the brutality that had been meted out to the women in the village, the men tried to file FIRs, which was a daunting task in context of the fear of reprisal by the concerned army men. There was no primary health centre nearby where we womenfolk could have gotten ourselves examined in order to collect medical evidence.

At the time of the incident I was 30 years old. Within a year of the incident, four women from our village – Saja, Mehtaba, Zarifa and Jana, succumbed to death stemming from the mental trauma and disgrace they had to put up with. These women had also been struggling with physical ailments subsequent to the incident. The self-humiliation resulting from our traumatic experience didn't allow us to visit any of our relatives from other villages, nor did they pay us a visit. We also had to take our children out from their schools, for fear of being apprehended and tortured by the army. "My son and many young men from the village grew up harbouring vengeance in their hearts, for what had been done to the women in their families."

Following the incident of mass rape in the village, proposals for marriages stopped coming from outside our village, since the news of the rapes had become common knowledge all around the Valley. As a consequence, marriages between victim relatives from within our village started to take place. Many people came to our village for documenting or reporting the wrong that was done to us, and we shared our stories with them, yet justice has eluded us to date. Now, we are disillusioned and personally I find it despairing and difficult to revisit that harrowing ordeal of ours by narrating it to people time and again. At the same time, the mental and physical pain suffered that night and after continues to haunt me. My old husband has died and now it is my last wish that the guilty army personnel be punished. I had lodged an FIR bearing No. RI/1387/83 under RPC section 376,452 & 342 at Trehgam Police Station on 2-03-1991. However, nothing came of it.



*Victim:* **Faba**

*Resident:* **Kunan Poshpora**

*District:* **Kupwara**

I was approximately 25 years old and a mother of two at the time of the incident. At around 11:00 pm on the night of February 23rd, army personnel barged into our house. They caught hold of my husband and were taking him away when I insisted on accompanying him. My husband stopped me by saying that I should wait for him at home as he would be back in sometime and there was nothing to worry. Therefore, I stayed back and bolted the doors of my house. After a while, there was a loud knock at the door. Noticing that the army had surrounded my house, I did not unlock the door. At this, eight to ten army men broke the door open, barged in and raped my unmarried sister and me. My sister is now suffering from post traumatic stress disorder. With great difficulty, we were eventually able to get my sister married to someone from the same village, whose family had suffered likewise. Post rape, she even delivered a baby who did not survive. After two to three months of the incident, a lady doctor was called into the village for conducting abortions on women who had conceived as a result of the rapes. My son was five to six years old at the time of the incident and he now faintly remembers what had happened to his aunt and me that night.

The women from the village tried to preserve their clothes for some time in order to substantiate rape, and showed them to the media or any other authorities who came to the village for investigating/reporting rape. Currently those clothes are in police custody.



*Victim:* **Khera**

*Resident:* **Kunan Poshpora**

*District:* **Kupwara**

Before the mass rape incident, the army had tortured my husband at an earlier occasion that had left him badly injured. And when he tried to file a complaint regarding this, he was again tortured. Following this, the army began to raid our house and torture my husband frequently, together with harassing the family for no particular reason. At the time of the incident, I had seven children – three sons

and four daughters. Two of my daughters were nine and ten years old respectively, and my sons were in their teens.

On that night around my house got surrounded by a sizeable number of army men, and a good number barged into my room while I was breast feeding my youngest daughter. They forcibly snatched my infant daughter from me and placed her near the window. They smashed the light bulbs in the room and started raping me, taking turns. I struggled to save myself, but the roomful of army men wouldn't let me. As far as I remember, as many as five men raped me. After that I lost consciousness out of the trauma that I was experiencing. My daughter, baffled by my cries, fell out of the window and suffered multiple fractures. She became disabled from that day on. We spent a lot of money on her treatment but to no avail.

My eldest son was at the bakery on that day, the place he used to work at. However, when he came to know of our ordeal, he wanted to avenge the rape and molestation of his family members and other women from the village. Many other young men from the village felt likewise and planned to cross over to Pakistan to get trained in arms. My son therefore became a militant eventually. He got back home after nine years of training. The army then killed him while he had gone for a visit to the family paddy fields one morning. With great difficulty I had gotten one of my daughters married. That is because people refrained from forming matrimonial alliances with people, especially women from our village after the mass rape. However, her husband's family routinely taunted my daughter for hailing from the 'raped village'. Later, she and her husband were compelled to leave her matrimonial home in order to live in peace.

*The judges asked the victims if any magisterial inquiry had taken place after the incident, as reports have suggested. The victims replied by saying that there were many people who came and asked questions after the incident; however, they do not know of their identities. On an aside, the victims collectively testified, that they refrained from discussing the rapes with or in presence of their sons, apprehensive that they might take matters into their own hands. They added that on the next morning of the rapes, a local resident, Abdul Ghani Dar, who was also a police constable, called a lady doctor to conduct check-ups of the victim women. (The said police constable's cousin was also a victim and she had later conceived as a result of the rape. The foetus*

was later aborted). The said doctor conducted a medical check-up on all women who had been raped, and their clothes were taken to Police Station Trehgam later on. The doctor medically cleansed all of the raped women in order to prevent pregnancies. The victims stated that the police constable had taken the initiative of getting this done in order to save the village from humiliation. On 17<sup>th</sup> of February 1993 an unidentified person killed the said policeman. His parents are still alive, but his mother lost mobility and his father became a patient of depression after their son died. The victims reported that women from Kunan Poshpura faced social rejection for many years after the incident; to the extent that they were not allowed seats in public transport by fellow passengers. Instead, they were made to sit on the floor, away from the others. On being asked by the judges what they expected from the Tribunal, the victims replied in unison that they wanted the perpetrators to be punished.

The then Chief Justice of the J & K High Court, Justice Mufti Baha-din, led a fact-finding mission to the village and concluded that normal investigative procedures were blatantly disregarded in this case. A Press Council of India investigation followed, which called the allegations of these women 'a well-fabricated bundle of lies'. No further investigations were conducted and the matter remains unredressed till date. The government's handling of the case was widely criticized in national and international circles, including international human rights organizations like Human Rights Watch and Amnesty International.

If such an incident would have had occurred in the rest of India, there would have been a sustained public outcry and agitation. The judiciary would also have responded.

### **Shopian Rape and Murder Case**

The Shopian double murder and rape case is a highly publicized recent case, which stirred up a controversy and mass protests over the government mishandling of the investigations. Following the incident, there was a Valley-wide strike that continued for about ten days. Shopian town, where the incident had actually taken place, observed a complete shutdown for 47 days. The following expert testimony amply explains the facts of the case:



*Ab. Rashid Dalal*

## **Abdul Rashid Dalal President (Majlis-e-Mashawrat)**

On the 29<sup>th</sup> of May 2009, Asiya Jan (17 years) and Neelofar Jan (22 years), sister and wife of Shakeel Ahmad Ahangar respectively, went to their family orchard in Nagbal, Shopian. Since they did not return from the orchard until late in the evening, the family panicked. Shakeel Ahmad together with some relatives and friends set out to search for them, but the two women were nowhere to be found. At this, they reported the matter to the local police station at about 10 pm. Personnel from the local police station, headed by Mohammad Yasin accompanied by Shakeel and his companions, started to search for the women but again to no avail. The next morning, their bodies with visible injuries, were recovered from the highly militarized area of the town. Neelofar's body was found upstream, close to the bridge over *Nallah* Rambiarra (a local stream). It is a very shallow stream. After another round of search, Asiya's body was found about 1.5 km downstream at an elevated dry spot of the stream. It is pertinent to mention that there are army camps housing the Rashtriya Rifles, Central Reserve Police Force, Special Operations Group and the J&K Police surrounding the sites of recovery of the bodies. The District Police Lines and the residential quarters of the police personnel also lie close to the site.

There had been drinks and dinner in the camp. That is when the men in uniform had forcibly taken Asiya and Neelofar to the said camp where they mercilessly gang raped and murdered the young women. After the recovery of the bodies, large-scale protest demonstrations regarding the incident began in Shopian town and the entire Valley (of Kashmir) followed suit. The concerned Superintendent of Police, Javed Iqbal Mattoo, not only did not conduct the investigations properly, but also ascertained hushing them up. The then Divisional Commissioner Masood Samoon and Chief Minister Omar Abdullah also endorsed the cause of death as 'death by drowning' as claimed by the police. It is noteworthy that no one has ever drowned in the said stream (*Rambiarra Nallah*) in the recent or past history of Shopian.

Right after the recovery of the bodies, began a saga of obfuscation, lies and cover ups by the police and administration. The police brazenly stated in their report that the postmortem did not reveal any marks

of violence on the bodies of Asiya and Neelofer – such marks were indeed visible even to the naked eye when the bodies were recovered. A bleeding wound on the frontal region of the skull, sharp cuts on the right side of the eyebrow and below the right eye, a sharp cut on the nasal bridge and a profusely bleeding left nostril were all visible. The police had also falsely stated that one Sub Inspector Gazi Abdul Kareem was leading the search team, instead of Mohammad Yasin. The police coupled this with the circulation of fake postmortem reports. Then a constable, Mohammad Yasin Ganaie (No 538/ spn) who was part of the police's plan to distort the truth, wrote an anonymous letter stating that he had an affair with Asiya, which was not approved by her brother Shakeel and therefore he (Shakeel) was the one who had murdered the women. Also, a group of migratory shepherds, who were camping near the orchard where Asiya and Neelofar had gone, were forced to leave before the dawn of 30<sup>th</sup> May 2009. All of these facts and circumstances point towards the attempts of the police in botching the investigation of the rape and murder.

A Special Investigation Team (SIT) was constituted by the then D.S.P South Kashmir on 30/05/2009 and was headed by Mushtaq Ahmad Shah, D.S.P Awantipora. But the SIT also seconded the police version of the facts amid ongoing mass resentment displayed through continued Valley wide protests. Prefaced with the intensity of public opinion following the mismanagement of the investigation and destruction of evidence and more particularly, in view of the circumstances in which the bodies of the women victims were found, the Chief Minister Omar Abdullah instituted a Public Inquiry Commission (Jan Commission) on 01/06/2009. The Commission was however vested with only recommendatory powers and its mandate was to inquire into the causes and circumstances relative to the rape and murder of the victim, to verify the veracity of the investigations carried and the involvement of the state machinery into botching them up. The District Bar Association followed suit by constituting a 'fact finding mission' headed by its senior members.

Advocate Mohd Yousuf Bhat and the Chairman of the Kashmir Bar Association, Advocate Mian Abdul Qayoom preferred a Public Interest Litigation (PIL OWP 515 of 2009) in the High Court of J&K, among other things praying for the registration of FIR and preservation of evidence. Despite this, the concerned police, including the SIT, failed



to file an FIR for 'any' penal offence, let alone rape and murder for about a week. After continued public pressure, especially from the population of Shopian town, P.S. Shopian finally filed a case under Sec 376 RPC (Ranbir Penal Code) on 06/06/2009 vide FIR No.112 of 2009 and on 08/06/2009 offences under sections 302,326,342,201 and 120-B RPC were incorporated. On 8<sup>th</sup> of June 2009, the DGP formed another SIT in which three more members were inducted by the Division Bench of the high court. The investigation of this SIT also moved at a snail's pace and in turn started the harassment and intimidation of the bereaved family on one pretext or the other. They also did not preserve evidence including the samples collected during the postmortem of the women. On June 21<sup>st</sup>, the *Jan Commission* submitted its interim report recommending administrative action against Shopian Police for destruction of evidence, failure to file FIR in a timely manner and the loss of critical evidence. The final report of the *Jan Commission* that came out on the 10<sup>th</sup> of July refuted the theory of 'death by drowning' and observed that the murder was committed in order to destroy evidence of rape. It also laid down that the bodies had been recovered from an area on which surveillance is maintained by the armed forces on a day and night basis. It would be inconceivable, that a civilian could have deposited two bodies at two spots under the strong vigil of the army, unless the army was conniving in the matter. The Commission also put on record that there was enough material on the file to conclude that the involvement of security agencies in the matter could not be ruled out. The police investigation team headed by Dr Haseeb Mughal, instead of helping the Commission in locating involved persons, made disparaging remarks about the victims.

During the course of the investigation, a Delhi-based newspaper revealed that the forensic investigation in the Shopian Case was fabricated and that the DNA samples were not actually collected from the bodies of the victims. The government reacted by transferring the investigation of the case from the SIT to the CBI. The CBI further worsened matters by filing a charge sheet against 13 lawyers, doctors, a civilian and the brother of Asiya – Shakeel Ahmad Ahangar – in the Court of Chief Judicial Magistrate Srinagar on 10<sup>th</sup> of December 2009, for offences punishable under Sections 120-B read with 167,193,194 and 195-A RPC and concluded the investigation by saying that the cause of death was drowning, therefore ruling out rape and murder of

Asiya and Neelofar. The CBI hushed up the case by putting the blame on all those advocating for justice to the victims and by coercing the witnesses to withdraw the statements made by them before the *Jan Commission*.

The Majlis-e-Mashawarat, a neutral and apolitical body, was constituted on 09/06/09 for spearheading a campaign aimed at procuring justice for the victims. The *Independent Women's Initiative for Justice (IWJIJ)*, another independent body, carried out a detailed investigation regarding the matter and negated the theory of death by drowning as declared by the CBI. Majlis-e-Mashawrat has requested the *International People's Tribunal on Human Rights* in Kashmir to probe the matter. The Tribunal while accepting the request approached the chief minister of the state for collection of evidentiary material.



*Shakeel Ahmed*

*Victims: **Asiya Jan, Neelofer Jan***  
*Represented by: **Shakeel Ahmad Ahangar***  
*Relationship with victims: **Brother of Asiya Jan, husband of Neelofer Jan***  
*Resident: **Bonagam, Shopian***  
*District: **Pulwama***

I want to reiterate that I will fight for justice until my last breath and I will never resort to violent means of seeking it. However, it is incidents like these that compel young *Kashmiri* men to resort to stone-pelting and then the state brands them as terrorists and lodges them in jails.



*Shakeel Ah. Dar*

*Victim: **Ashmali Begum***  
*Represented by: **Shakeel Ahmad Dar***  
*Relationship with victim: **Son***  
*Residence: **Noorpura tral***  
*District: **Pulwama***

On 20<sup>th</sup> of April 2002, my mother, namely Ashmali, was on her way to a farm for grazing cattle. On her way a few army personnel chased and sexually assaulted her. When my mother returned home, marks of sexual violence were apparent on her body. I immediately took her to the nearby hospital where she succumbed to the violence committed on her by the army personnel. The cause of death in the medical report

showed cardiac arrest. At that point of time, my siblings and I were too young to take any action or register an FIR against the perpetrator. However, after the incident I registered a complaint with the *tehsildar*, but to no avail. My family, especially my sister was persistently threatened by the army personnel of that area to withdraw the case and not to follow it. Since postmortem was not conducted on my mother's body so no evidence could be found.

I was threatened by 42 Rashtriya Rifle of Army not to take up case further or follow any going on proceedings.



## IV. Amarnath land row

*“There can be seen a transition from violence to non-violence in movements in Kashmir with the Amarnath agitation. There were provocations from Jammu, there was a blockade on food, milk, medicine; but Kashmiris were hosting the yatris that were here.”*

–Yaseen Malik (IPT 21/22-02-2010).

On 26<sup>th</sup> of May 2008, the Government of India and the state government of Jammu and Kashmir reached an agreement to transfer 99 acres (0.40 km<sup>2</sup>) of forest land to the Shri Amarnath Shrine Board (SASB) in the main Kashmir Valley to set up shelters and facilities for the Hindu pilgrims. This caused a controversy, with demonstrations from the Kashmir Valley against the land transfer and protests from the Jammu region supporting it<sup>1</sup>. After a month of agitation and nearly 100 deaths across the Valley, demands of the Muslim protesters from the Kashmir Valley were accepted by revoking the land transfer decision on 1<sup>st</sup> of July 2008<sup>2</sup>.

### Testimonies



Hamida Banu

*Victim:* **Mohammad Lateef Wani**

*Represented by:* **Hamida Banu**

*Relationship with victim:* **Wife**

*Resident:* **Pantha Chowk**

*District:* **Pulwama**

I am wife of Mohammad Lateef Wani who was a truck driver bearing Number JK 05B –0559. On 5<sup>th</sup> of August 2008 he was driving a fruit truck from Jammu to Srinagar and was attacked by a mob that threw stones at him, one of which hit him in the head. Seriously injured, he was airlifted to AIIMS Delhi (Medical deliverance unit -Apex Trauma Centre at Jai Prakash Narayan All India Institute of Medical Sciences) where on 17<sup>th</sup>

1.  
2. Wikipedia

of August he succumbed to death, after being in coma for about a week. FIR registered against the victim FIR No.48/08 dated 5-8-2008 under section 279<sup>3</sup>, 337 Ranbir Penal Code.

I received an amount of Rupees one lakh from the state authorities but that is kept in fixed deposit. What do I do with it? Also the Red Cross Committee has now stopped the grant of Rupees 1000.

*Advocate Nadeem Qadri intervened with the permission of the Honourable Jury and said that a case has been registered before the State Human Rights Commission File No. 147/2008 seeking class IV employment for the widow, who is mother to three minor children, and also for a reasonable and just compensation to be awarded according to the prevailing under Motor Vehicles Act; as a compensation of Rupees one lakh for the death of sole bread winner of the family seems arbitrary and unreasonable.*



*Zeeshan Bashir*

**Victim: Zeeshan Bashir S/o Bashir Ahmed Dar**

**Resident: Kawdara Rajouri Kadal**

**District: Srinagar**

*Zeeshan is unable to walk without support; he uses a walker and sits on a chair to give his testimony.*

I was working as a salesman in Goa with a decent salary; I had come back for a vacation. On 26<sup>th</sup> of June 2008 I left my home to buy milk, there was stone-pelting on Indian armed forces and in retaliation the forces opened fire, I got caught in the crossfiring and a bullet hit me in my leg, The crossfiring had led to a stampede, people were running about, I was dragged and trampled upon by CRPF men over a great distance, they kicked me over the wound and then left me in a trash can. I was unconscious, lying in a trash heap, having lost a lot of blood and having been beaten very severely. I wasn't one of those pelting stones but I feel that CRPF deliberately trampled on me. An SHO of some police station came and took me to the hospital where I was infused with 19 points of blood. The discharge book of SMHS Hospital states in its findings that I had been hit by a bullet at left gluteal region<sup>4</sup>.

3. Section 279, Ranbir Penal Code penalizes driver causing rash and negligent driving to be punished with imprisonment which may extend to six months or fine may extend to 1000 Rs or with both 337 a person who endangers life and safety of others shall be punished with imprisonment which may extend to 6 months or with fine up to 5000 Rs or both

4. Page 14 of the discharge book also placed in records before the Hon'ble High court as annex B to the Writ Petition no OWP 143/2010 .CMP NUMBER 225/2010.

I have been declared permanently disabled by a team of doctors. Yes, an FIR was lodged at Seki Dafar Police Station, I also have filed a writ petition in the high court of J&K with the help of HRLN advocates; but I have come here primarily to share my grief.



*Riyaz Ah. Bhat*

*Victim: Javid Ah. Bhat S/o Abdul Majid Bhat*  
*Represented by: Riyaz Ahmed Bhat, Brother*  
*Resident: Ranghamma Nowhatta*  
*District: Srinagar*

That day (6<sup>th</sup> of September 2008) my 24-year-old brother wanted to go to Jammu. He was a Sumo driver. His car broke down, so he came back. As he stepped out of the house, he saw the SHO of that locality passing through the area on his vehicle. Suddenly, some people started pelting stones on the officer's vehicle. In retaliation, the officer fired. But the bullet (type of the bullet is disputed) hit the victim instead, who died on the spot. The next day, the concerned officer was transferred from the area.

The victim was taken to SMHS hospital where he was declared brought dead. No postmortem was done since it was thought as not required because everyone knew what had happened. The hospital record mentions, "Fire arm injury, entry wound over pericardial area about 1 cm\*1 cm. No exit wound, surgical casualty at 2.15 pm."<sup>5</sup>

The family registered an FIR but there are two versions of FIR, one in English and other in Urdu (official language of the state of Jammu and Kashmir). The Urdu version of FIR has a small note at the end making it legible that the victim was a bystander and was not a part of rioters. However, the same is deleted in the English version. Both are stamped FIRs.

Sections in Urdu version of FIR 69/08, dated 6/9-2008 are 148, 149, 353, 337, 336, 427 of Ranbir Penal Code.

The English version of the FIR has the following sections 69/08 dated 06-9-2008 148, 149, 353, 307, 336, 427 of Ranbir Penal Code.

The case is also pending before the State Human Rights Commission.<sup>6</sup>

5. Shri Maharaja Hari Singh Hospital, Srinagar out door patient department ticket number 906027

6. 224/2008





Nazima Jan

*Victim:* **Sameer Ah. Batloo**  
*Represented by:* **Nazima Jan**  
*Relationship with victim:* **Sister**  
*Resident:* **Karfaeli Mohallah**  
*District:* **Srinagar**

Sameer was a driver (*breaks down*). He was the only source of income for the family and had a salary of Rs.5000. He used to go to Pahalgam with *yatris* during Amarnath *yatra*, During the Amarnath land controversy, he went to the workshop to get his vehicle back to go to Pahalgam with *yatris*. When he reached Fateh Kadal, he was killed during firing by CRPF. An FIR dated 25/06/08 UNDER section 148, 149, 336 was lodged in Shahid Ganj. We have also applied for compensation to the Minister and moved an application under SRO 43 but there has been no result.

**Reported in Srinagar, June 26 (KMS):** *“In occupied Kashmir, Indian troops, in their fresh acts of state terrorism, martyred two young Kashmiri boys at two different places. Indian Central Reserve Police Force personnel and Special Operations Group barged into the house and killed a 12th class student, Farooq Ahmed Rather, who was sitting next to a window in his house at Mazhama in Budgam while a 17-year-old Sameer Ahmad Batloo was killed by an indiscriminate firing of Indian Central Reserve Police Force on a mob at Tashwan in central Srinagar.”*



Haseena Begum

*Victim:* **Tanveer Ah. Handu**  
*Represented by:* **Haseena Begum**  
*Relationship with victim:* **Mother**  
*Resident:* **Safakadal**  
*District:* **Srinagar**

My son was 25-26 years old. On the fateful day of 14<sup>th</sup> of August 2008 he left home along with a relative to their shop at Safakadal chowk. Someone told them that the water tank that supplied water to the shop was leaking. He went to check the leak. Gunshots were heard before he set out to check the leak. The CRPF and J&K police were conducting a joint operation during the Amarnath land row agitation. He dropped his cell phone in nervousness and then bent down to pick it up, which

is when he was shot in the chest.

We were told that he has been hit in the leg. After some time people assembled near our home and his dead body was brought in. I fainted, a complete blackout. The rest I don't remember, but when I came back to my senses, he had been made ready for his last journey.

The police station concerned (Sekidafar) has finally filed an FIR even though they were initially reluctant. The government has sanctioned an ex-gratia relief of Rupees one lakh and a job for the next of kin, but we have received nothing so far.



*Mehbooba Begum*

*Victim: Feroz Ah. Khan S/o Mehraj-ud-din Khan*

*Represented by: Mehbooba Begum*

*Relationship with victim: Mother*

*Resident: Tengpora, Nawab Bazaar*

*District: Srinagar*

On the fateful day of 22<sup>nd</sup> of June 2008, Mehraj left home for his uncle's shop in the Maisuma area. But there was a protest going on there, tear gas shelling, etc. People started running being chased after. A shell hit my son and some persons took him to the hospital where he stayed for 11 days. He died on 5<sup>th</sup> of July 2008.

He was engaged and was soon going to get married. No compensation has been yet received by the family. Once we tried to approach the secretariat, which was closed for *darbar*. I did not pursue it further. An FIR was filed, but it is pending at the concerned police station. The FIR has been written against the victim under 366 (stone-pelting; waging war against state) instead of against the police under 302 (murder).



## V. Case of Unidentified Gunmen



*Javed Ahmed Tak*

*Victim: Javed Ahmed Tak S/o Habibullah Tak*

*Resident: Bijbehara*

*District: Anantnag*

I was residing in the house of my uncle, who was a national conference activist. Some militants came inside the house and tried to abduct my uncle (1997) and opened fire. As a result of the confrontation I was injured and lost many vital organs. I can't walk anymore because of leg injury. My right kidney had to be removed. I have been using a wheelchair for the last 13 years.

I am representing a large number of people who have been disabled by the conflict. Dispute must be ended, things must be resolved; disputes create violations and violations create dispute. A disabled person dies many times each day...very different from cases of death. We don't want this sadness, this anxiety anymore. "People don't talk, but paper talks." We can use this as a supporting document that I have attended this forum.

I lodged an FIR on the same day, many surgeries were done. I got no help from the government I was an undergraduate student at the time of the incident. The police report stated that the people involved were unidentified gunmen. I filed a case at SHRC. Its recommendation to the government to provide Rupees 2.5 lakh as compensation and a government job was not honoured by the state. The case then went to the high court, which also passed a favourable order, but the order went in contempt. The district administration mailed me a cheque of Rs.75000 as ex-gratia relief, I refused it for myself (Rs.75000 for general disability by district magistrate) because my father had spent more than Rupees 10 lakh on my treatment. But my father used the money to register an organization for people with disabilities. Ours is a registered organization working for disabled people.

I approached HRLN, where Advocate Faisal fought my case. I request the jury to ensure that disabled persons are rehabilitated. When

I travel, no transportation is accessible to me... even this place is not accessible to me, I had to ask many people to come and help me.



## VI. Cases of unprovoked firing



*Farooq Wani*

*Victim: Wamiq Farooq*  
*Represented by: Farooq Wani*  
*Relationship with victim: Father*  
*Resident: Rainawari*  
*District: Srinagar*

**W**amiq Farooq had gone out to play with his friends but only his dead body returned home. Wamiq today lies buried along with the tennis ball he carried in his pocket when he was killed.

On 31<sup>st</sup> of January 2010, Wamiq (12) was killed with a tear smoke canister fired directly at him by a policeman at Rajouri kadal. He was rushed to Sher-e-Kashmir Institute of Medical Sciences (SKIMS) where he succumbed to his injuries. Doctors who attended on him said that he was brought in as an “unknown patient”. His name and address were not known. He was admitted in medical emergency for resuscitation in a critical condition. His brain was badly damaged and some of his brain matter had come out. He was later kept in mortuary, as his identity could not be established.

Even Ali Muhammad Sagar, Minister, promised us that he would personally investigate into this matter but all his promises have turned out to be empty.



*Rafiqa and Farooq Ahmed*

*Victims: Ghulam Ahmed Ganie*  
*S/o Ghulam Mohd. Ganaie, Abdul Gani Ganie*  
*S/o Mohd. Ramzan Ganaie*  
*Represented by: Rafiqa; Farooq Ahmed*  
*Relationship with victims: Niece of victims;*  
**Ghulam Ah. Ganie's son**

**T**he incident date is 23/7/1991. On this date, both the victims, father and uncle, went to the fields for routine work. The army started to fire

indiscriminately and without a warrant. Both were killed in crossfiring. Though both of the deceased victims' families received compensation and jobs, the compensation isn't enough as no action has been taken on the perpetrators. We don't know whether anyone was charged for this barbaric act or not.



*Hajra Begum*

*Victims:* **Bashir Ahmed Sofi; Nazir Ahmed Sofi**

*Represented by:* **Hajra Begum**

*Relationship with victims:* **Mother**

**M**y son was a baker by profession. I don't remember the date, but I remember that 14 RR battalion raided our house. The next day, I went to the army camp, where I saw my son in custody. On the same day, in the evening, RR people again raided the house and we were told that my son had escaped from custody. The youngest son was also taken into custody on the pretext that perhaps the elder son will come back. The next day, I lodged an FIR in the police station at Bandipora. In retaliation the army people put some gunpowder on our house and blew it up. The same people told us the next day that there was a firing incident in Chattergam area, where some boys were killed and my son Bashir was one of them. Nazir, the other son was released later.



*Ghulam Qadir*

*Victim:* **Riyaz Ahmed Ganie**

*Represented by:* **Ghulam Qadir Ganie**

*Relationship with victim:* **Father**

*Resident:* **Noorpura Tral**

*District:* **Pulwama**

**M**y son was a driver by profession and as usual had left for work that day. The same day, police appeared at our house. The Special Task Force forced him to drive a vehicle of STF personnel who were going for a counter insurgency operation. That vehicle was blown off the road and all of them were killed. The next day, the body was handed over to me. I received compensation (ex-gratia of Rupees one lakh consistent with killings in militancy-related encounters), a job was also provided. But my child was forced in this circumstance, and got killed, he was not the employee, we would have never allowed him to enter such an area.

## VII. Expert Testimonies



*Riyaz Masroor*

### **Mr. Riyaz Masroor**

*Journalist*

Rising Kashmir local daily

When we approach the consequences of the problem – these victims are the consequences of the problem – when an effort is made to ensure justice, it is advisable to understand the broader perspective of the problem. These injustices, these violations of human rights, these denials to express even anger... I think the respective jury members come from the state, which despite all the conflicts and insurgencies is intact. It is because of a rich and strong democratic tradition. But the whole world, not just Indian citizens, know that those traditions have not crossed the Jawaharlal Nehru tunnel. Mohd Yasin Malik launched a completely democratic practice of touring thousands of villages, he observed the anger within the society and informed the same to the PM of India that there is anger, that nothing has been done. People need to be addressed in accordance to their wishes. By denying opportunities to the *Kashmiri* youth, by negating them and denying them their democratic rights, we are preparing a future band of suicide bombers.

There has been huge media hype against Rathore in Ruchika, Urvashi murder case, Jessica Lal murder case... but how they give a spin to our cases, it has to be told.



*Mohd Yasin Malik*

### **Mohd Yasin Malik**

*Chairperson*

Jammu & Kashmir Liberation front (JKLF)

Some people in the audience became charged as they have become disillusioned. But I am aware that unless we form an opinion within India for our movement, as we don't have a state, a media (which is controlled by the state) and we don't have

resources. We need support within and outside India. I took 150 victims of disappearance to Delhi but they were abused, and black ink was thrown over me. But there were good people also.

Every *Kashmiri* is a sufferer and they are hurt and they have no dignity left. There are a few kinds of Indians in Kashmir – one who straight away supports Kashmir, another group that says we will talk about human rights violations, a third group says we will only talk about human rights. We have told all groups that we will work with them... we are stateless people, we have no resources of the state, we have no media. That is why the *Kashmiris* are being beaten or tortured.... or the ones who are not terrorists are also labelled such. During the proceedings of this tribunal, especially in the disappearance cases, it was proved that they were ordinary *Kashmiri* people. I took these victims to Delhi, but they were humiliated there... they were abusing me; they threw black ink on me. But there were good people that were with them, parliament members, etc. If someone is going to get compensation, what will one lakh rupees achieve? Will that person return? The killer has not been identified even though the family members saw this happening in front of them... My CBI case of 1995 was transferred to Rajasthan, the SC moved it because of the security environment here. My advocate went to the SC and asked why only 3 TADA cases were being transferred when there were thousands of cases pending. The chief justice turned around and told my lawyer that only the home ministry is heard in Kashmir-related cases.

I think that if this Tribunal could go to Delhi and sit in front of the major political parties, these disappearance cases...the biggest problem with those whose husbands are missing is that they cannot say whether they are widows or whether their husbands are just missing. Neither can the children call themselves orphans or say that their father is still alive...this is what I conveyed to the PM of India. This is the primary case...the *Kashmiri* women; the ones who can neither say they are wives or widows.

My personal request to the tribunal is to take seriously the cases of disappearances, because if you hear all the stories, you will get confused. Have a tribunal on disappeared persons in Delhi, or have the PM listen to these cases... let them start their normal lives.

There can be seen a transition from violence to non-violence in movements in Kashmir with the Amarnath agitation. There were

provocations from Jammu, there was a blockade on food, milk, medicine; but *Kashmiris* were hosting the *yatris* that were here.

They were not showing any kind of reaction against them. As far as harmony is concerned, it is in the soul of the *Kashmiri* people. *Kashmiri* people did not learn harmony from education, but it is our spiritual institution. Although people were killed, *Kashmiris* have not shown any retaliation. Does that mean we are still terrorists? Do not humiliate *Kashmiri* people – do not give them a sense of defeat. Then you are pushing them to another revolution.

Is the Indian civil society ready to follow the Gandhian, non-violent democratic movement? The second movement, Bhagat Singh, etc. failed. Is Indian civil society ready to play a constructive role in Kashmir?



*Mir Hafizullah*

### **Mir Hafizullah**

*Legal Advisor*

Association of Parents of Disappeared Persons (APDP)

**M**y name is Mir Hafizullah and I am a legal advisor to the Association of Parents of Disappeared Persons formed by Praveen ji. I hope that these kinds of tribunals when set up should be able to discharge their duty well. I completely fail in understanding why Jaleel Andrabi's case was not handed over to the CBI. His murderer is till date living in open in California and the Indian Government has till date not been able to do anything about it.

Srinagar has the largest number of disappearance cases and extra-judicial killings. The Government of India is not taking any initiative for the inquiry or setting up of a commission to look into disappearances cases in Kashmir, which is the greatest issue in Jammu & Kashmir. The incidents are not isolated and the policy is institutionalized. It's under the guise of draconian laws like Armed Forces Special Powers Act, Disturbed Areas Act and Public Safety Act that army in Kashmir is enjoying power without any accountability and suspicion forms enough grounds to execute those powers. The state government has no mandate to hold an inquiry or probe in any matter that is headed by central government and is carried out by its armed forces. Though an inquiry commission could be set up under the constitution of the union



government, the Prime Minister and the Home Minister of India claim that the level of violence has decreased. Also there was an emphasis made that there will be zero tolerance for any human rights violation. But last month alone we had six extra judicial killings, which included two minor students in Kashmir.



*M Y Naqash*

### **M Y Naqash**

*Senior Leader*

All party Hurriyat Conference

The right to self-determination is a basic human right enshrined in the UN charter. This independent people's tribunal set here today is listening to the heinous crimes committed by Indians in uniform over Kashmir's civil population. State-sponsored terrorism is on its peak. People of Kashmir have been subjected to cruelty at the hands of Indian army for past two decades now, regardless of their age and gender. All this continues unabated and is the policy of the Indian establishment to unleash the reign of terror in Kashmir. In the guise of draconian laws like AFSPA, DAA, PSA, Indian establishment has given unaccountable power and authority to its security forces to detain, molest, and rape women. It is our humble submission to the Tribunal that *Kashmiri* people want their inherent right to be restored... We appeal to the jury members to mention it in the report that the *Kashmiri* people want freedom from the politico territorial occupation of India. And also I ask all the jury members sitting here in the panel to argue for repealing the draconian law.



*Prof. Hameeda*

### **Prof. Hameeda Nayeem**

*Professor of English*

Department of English, University Of Kashmir

Let me begin with the source of human rights violations in Jammu and Kashmir.

In the backdrop of the increasing dominance of the military nation state, the actual role of the military is not confined to that of external defence. On the contrary, the military is used as a means to neutralize domestic challenges to the state while the nature of these challenges is diverse and historically contingent, what is important to note is the negotiation



of these challenges through military rather than institutional means—a trend that propels the military into an increasingly political role within the state.

In a context characterized by the elimination of the distinction between war and human rights abuse (Kaldor 2001,08), the military function as an agent of the state not only not bound by the rules of war, the rule of law or by the Geneva convention, but in fact empowered to violate each with impunity

Kashmir exemplifies the intersection between militarization for external defence and use of the military for domestic repression that has transformed the Indian state into a source of deep insecurity for the citizens – as instruments of the persistent violator of human rights and converted the Indian military into an illegitimate agent of repression. Both in turn seriously undermine the democratic credential of the state.

In 1989-90 the slogan for *azadi* not only symbolized popular protest against the denial of democracy in Kashmir but also a growing desire for freedom from Indian rule over Kashmir, right over land and the restoration of dignity that the *Kashmiris* felt had been violated by the Indian State.

As simmering resentment transformed into mass rebellion, Kashmir is stripped under the shadow of a virtual military rule – marking its descent into a ‘state’ of militarization from which it is yet to emerge.

The State military processes are not separate from but embedded within Kashmir’s society. Militarisation in Kashmir, characterised by the use of the military as an agent of domestic repression and the dissolution of civil-military distinctions.

Since 1990 Kashmir is subject to a range of legislative provisions –AFSPA, NSA, PSA, TADA.

AFSPA violates the non-derogable provisions of international human rights law including the right to life, the right to be free from arbitrary deprivation of liberty, and from torture and cruel inhuman, and degrading punishment as enshrined in International Covenant on Civil and Political Rights (ICCPR) to which India is signatory. The AFSPA also violates Art 21 of the Indian Constitution. PSA contravenes India’s own constitutional provisions, the Geneva convention and Art 9 & 14 of the International Covenant on Civil and Political Rights (ICCPR).

The extraordinary powers invested with the military in Kashmir are reinforced by an institutional context that restricts civil jurisdiction

over military authority. The National Human Rights Commission or its local counterpart lacks power of scrutiny or jurisdiction over the military. The access of International Red Cross to detention centres in Kashmir is restricted. Repeated requests by UN Special Rapporteur and Amnesty International to visit Kashmir have met with official refusal.

Violence by the state parallels violence by members of militant groups who are guilty of kidnapping, killing and rape of women – both Hindus and Muslims.

*“Brutal as militants’ violence can be, it cannot justify state violence. The essential focus is the political context of militant violence.”* – Patanjali Vardarajan

Kashmir’s institutional context symbolizes the contradiction between the Indian State’s claim to democracy and legitimacy and its undemocratic and illegitimate violation of the rule of law. This contradiction is not a post 1989-90 feature, but a policy endorsed by successive regimes in New Delhi. As Kanabiran captures the contradiction, “Freedom of speech, assembly and association in the State can be suspended at anytime on ground of security”. No judicial review of such suspensions would be allowed – it is a state of judicial paralysis.

The impunity accorded to the military undermines the integrity of Kashmir’s judiciary and extinguishes hope for justice for large numbers. Kashmir’s courts remain spectators to a reign of repression. In 1993 there were 7000 *habeas corpus* petitions pending in the Jammu and Kashmir High Court. (Vardarajan 1993-24)

By the year 2001 in Kashmir there were 350000 civilians under detention in Kashmir (Oberio 2001, 196). Interrogation centres run by military and Para military forces remain beyond judicial scrutiny, be it for those who are in the custody irrespective of being detained legally or illegally or for those who have disappeared in army custody and whose whereabouts are unknown till date.

But I have great hope that this report will create an opening in the mindset of Indians and help restoring civilian and democratic powers that have been denied to the *Kashmiri* people. Not the state, but the Indian people who have to come together and put moral pressure on the government.

Once you give *Kashmiris* what is due to them, you are not bowing down to Pakistani pressure, but you are accepting the inalienable rights

of the *Kashmiri* people that have been upheld by the UN resolutions and by JN. If you listen to *Kashmiris'* genuine aspirations... please make a distinction between your fight with Pakistan and what is due to *Kashmiris*.



*Parveena Ahangar*

**Parveena Ahangar**

*Chairperson*

Association of Parents of Disappeared Persons (APDP)

**T**he State has an indifferent attitude towards tracing the persons who have disappeared. Between 1989 and today nearly 8-10,000 persons have disappeared. In most of the cases, the military take away the common people by force and they never come back.





## FINDINGS

It is true that we sat for two days for public hearings. The first day, there was a Bandh in Srinagar as someone had been killed by the police. The day after the 2<sup>nd</sup> day, again there was a Bandh, because a child had been killed in a stampede. Perhaps this is the kind of life for every Kashmiri citizen. No one knows when and for what time, and where curfew could be imposed, and every movement will be at a standstill. If we had been able to sit a little longer, we would have heard the same facts, and of course, more mothers and more Parents of Disappeared Persons would have told the same story – a story of illegal arrest, arbitrary detention and torture, custodial deaths and rape; all with no hope for justice.

Were Jammu and Kashmir to be called a ‘banana republic’ (as it often is), such a dubious distinction, though unfair in many ways, would be fairly apposite in many others. Some describe the socio-political upheaval of the past two decades as a civil war; others label it as a terrorist movement, with political and infrastructural backing from across the Line of Control: have it either way, there is no denying the fact that the people of the state have borne the brunt of the extreme violence of the past twenty years, all in the name of security, at the hands of armed forces.

## I. Militarisation

In Kashmir, there is one soldier for every twenty people. There are 15,00,000 armed troops, 3,00,000 army men, 70,000 Rashtriya Rifle soldiers, 1,30,000 central police forces as against the total population of 1 crore. In the past 20 years, a generation of Kashmiris has grown with soldiers at every street corner “often even in their living rooms” (Sunday Times of India, 13<sup>th</sup> June, 2010). The grievance of the people is that instead of confining the role of the military and security forces to that of external defence and as against militants, it is regularly and continuously used for domestic repression; and as Professor Hameeda Nayeem says : “that has transformed the Indian state into a source of deep insecurity for the citizens – as instruments of the persistent violator of human rights and converted the Indian military into an illegitimate agent of repression. Both in turn seriously undermine the democratic credential of the state.”

This excessive militarization has resulted in wiping out all space for the exercise of democratic rights by the people, the result being terrorization of the people at large. This has resulted in ruthless action on all dissent, and at the same time the military indulges in acts of violence against people with impunity.

We are of the view that all these acts of violence against innocent people are violations under the Geneva Convention, 1949, to which India is a party. The provisions of the Common Art.3 of the Four Conventions dealing with “armed conflicts not of an international character” occurring within a State require the parties to treat humanely all persons taking no part, or not being able to take active part in the hostilities....; and further the parties are prohibited from indulging in violence to life and person, in particular murder of all kinds, and cruel treatment and torture.

There is a further Protocol II of June 1977 for Protection of Victims of Non-International Armed Conflicts which further reiterates that all persons who do not take any direct part in hostilities are “entitled to respect for their person, honour and convictions and religious

practices.” They shall “in all circumstances” be treated humanely without any adverse distinction. Art.13 says: “The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.” To give effect to this protection, the Protocol says: “The Civilian population as such as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population are prohibited.” It is unfortunate that the State, which has sponsored these armed forces who have indulged in killings, loot, arson and rape of innocent victims, has not kept these provisions of the Convention in mind.



## II. Draconian Laws

Militarisation is invariably accompanied by Draconian laws. Together they have such a cascading effect that all human rights and democratic rights get washed away. This is what happened in Manipur, Assam, Kashmir and other places.

In Manipur, the **Armed Forces (Special Powers) Act, 1958**, has been in force for five decades. It was first enacted to contain Naga dissidence. It was introduced in Assam in 1980 and in Kashmir in 1987. Section 4 of the Act states that armed forces officers have only to form an “opinion” to consider what may be necessary, and then on the basis of such “opinion” they “can fire upon or otherwise use force, even to the causing death against any person” and they can “arrest, without warrant any person” and “enter and search without warrant any premises” at any time, and use force to achieve this objective. S.6 of the Act gives them full protection against any prosecution or legal proceedings in respect of anything done or “purported to be done” in exercise of the powers conferred by this Act. The result is that in all these States, and of course, in Kashmir, arbitrary arrests, detention, torture and custodial deaths, rape and midnight raids into homes and disappearances have become routine.

The other Act which is resorted to silence all protest and dissent is the **Jammu and Kashmir Public Safety Act, 1978**. This law is especially draconian in nature, falling far short of meeting international human rights standards, and has become notorious for its rampant misuse at the hands of the armed forces. Under this Act, the maximum period of detention is two years, without trial, for “persons acting in any manner prejudicial to the security of the State.” What would constitute such an action is again left to the better judgement of the arresting agency or official, thereby giving sweeping powers to the security forces to arrest and detain at their pleasure.

Prisons in Jammu and Kashmir and beyond are full of detainees booked under the infamous PSA, with reports suggesting that even minors have been arrested and detained under this law on a number



of occasions. Furthermore, very often the PSA is slapped on a person again and again, at the end of successive periods of two years, thereby making the actual period of detention much longer. Farooq Ahmed Dar, one such detainee, had to spend sixteen years in prison before he was finally released in 2006. There have been various instances where political leaders and common people have been slapped with successive detention orders despite the fact that Courts keep on quashing them. This is done only with a purpose and intention not to release the detainee.



### III. Disappearances

One other impact of militarization and arbitrary detention is large scale custodial deaths, extra-judicial killings and enforced disappearances. We have the testimony of M/s Parveena Ahangar, who is the Chairperson of the Association of Parents of Disappeared Persons (APDP), which clearly establishes that from about 1989, about 8-10,000 persons have just disappeared. Many of them were killed while in custody of the army or the security men. One Rashid Billa (SDPO) at Sowa is reported to have killed over 512 persons extra-judicially. Whenever and wherever the next of Kin went to the police stations or army camps to enquire, or to claim the bodies, they were either threatened or tortured. Some had to pay bribes to get information. What is important is that there has been no proper investigation to apprehend the culprits and to punish them.

Mohd. Yasin Malik (Chairperson of J&K Liberation Front – JKLF) says that he took 150 victims of disappearances to Delhi; but they were abused and black ink was thrown over him. The fact remains that no serious investigation was done even by the Central Government.

He also pointed out that the worst sufferers were women and children. He said : “they cannot say whether they are widows or whether their husbands are just missing. Neither can the children call themselves orphans or say that their father is still alive...this is what I conveyed to the PM of India. This is the primary case...the Kashmiri women; the ones who can neither say they are wives or widows. Tell what you are! Are you a widow or are you still married?”

The UN General Assembly in 2006 has unanimously adopted the International Convention for the Protection of all Persons from Enforced Disappearances. Earlier, there was the UN Declaration to the above effect (December 1992). Article 2 of the Declaration says that, “the prohibition” of “disappearances” is absolute and no state can find an excuse. Article 7 says, “no circumstances, whether a threat of war, internal political instability, or any other public emergency may be invoked to justify” these acts of violation. Hence, it is not open to the

state to resort to enforced disappearances that would include all custodial deaths on the ground of any threat to internal security or external safety and stability. It is here the state's liability becomes absolute, and we should have no hesitation in making these observations.



Report of Independent People's Tribunal on Human Rights Violations in Kashmir

## IV. Rape

Militarised environments expose women to serious forms of dehumanization. The masculinity cult that pervades military establishments are intrinsically anti-female and therefore create a hostile environment for women. Rape becomes a common feature in such a situation. In all such cases there have been no investigations. There are complaints pending from 1991. It appears that in 1991 about 100 women, including minors and the elderly (between 13 to 80 years), the pregnant and disabled were raped in Kunan Poshpara, Kupwara by the 4<sup>th</sup> Rajputana Rifles, during a search operation. However, till today no action has been taken against the culprits, despite several reports in the newspapers and journals, and also by various NGO groups, both national and international.

Apart from such direct abuse, women had to suffer further humiliation. In the words of Bakthi (a witness before us): "At the time of the incident I was 30 years old. Within a year of the incident, four women from our village – Saja, Mehtaba, Zarifa and Jana, succumbed to death stemming from the mental trauma and disgrace they had to put up with. These women had also been struggling with physical ailments subsequent to the incident. The self-humiliation resulting from our traumatic experience didn't allow us to visit any of our relatives from other villages, nor did they pay us a visit. We also had to take our children out from their schools, for fear of being apprehended and tortured by the army. "My son and many young men from the village grew up harboring vengeance in their hearts, for what had been done to the women in their families."

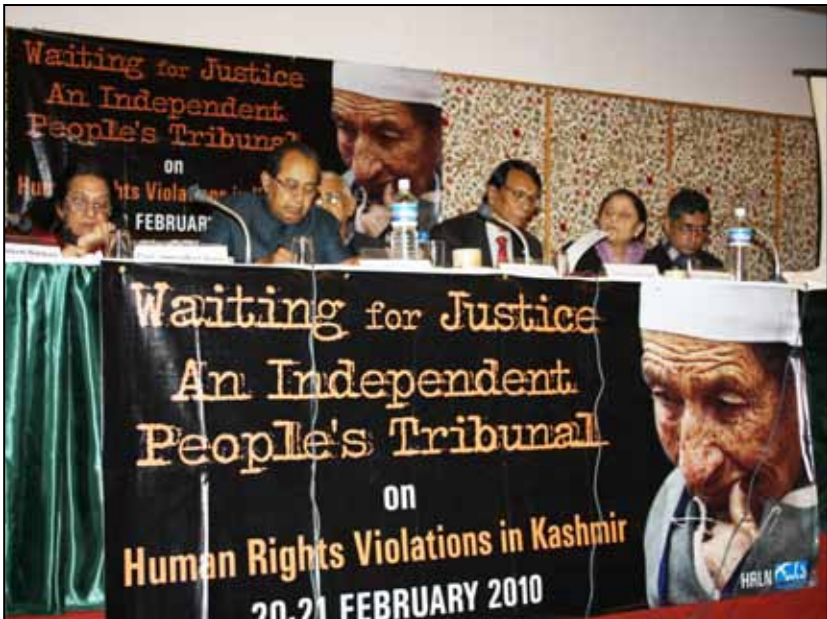
We must also say that quite a number of rape cases go unreported due to constant threats from the army men and also due to fear of social stigma and the futility of taking up an embarrassing legal battle.

Such abuses have taken place in places like Manipur where the army is placed above the civilian police, with the same result of utter indifference by the concerned authorities.

## V. Plight of the Disabled

Throughout the conflict, people have been maimed and disabled due to the indiscriminate firing of security forces during even non-violent protests. People have also been disabled during interrogations where torture was used. We heard the testimonies from Bijbehara, where forces had indiscriminately opened fire on peaceful demonstrators in 1993. Many injured persons have been disabled for life and have suffered mentally, physically, and financially. Hardly any steps have been taken for their rehabilitation.

The testimonies we heard of disabled persons revealed that they were totally shocked and shattered. The disabled deposed before us to say that they could bear with the aftermath of physical injury, but not with the mental pain, agony, and trauma that make them feel that they die several deaths every day, rather than living even once.



## VI. Failure of all Democratic Institutions and Redressal Mechanisms

Routine criminal investigations – a key function of the police – are among the first to deteriorate under militarization. All complaints against the army men just remain without any investigation. As we have seen above, under AFSPA, the army can shoot, kill, or do any heinous act, and they get protection; and the police become helpless. This also leads to a situation where the police acquire a taste for impunity, when they have to work within a military environment. This is exactly what has happened in Kashmir. Here, the rules do not operate as laid down in the statute books. For example, we heard testimonies from the victims, that FIRs filed by them were distorted by the police to accuse the victims themselves. In some cases, the police just refuse to record FIRs and the victims remain helpless. The police appear to be not bothered about the complaints from the victims, because they know that no one will question them.

This has also affected the Judiciary. No criminal court could be in a position to do proper justice, with impunity for the actions of the army, and with no investigation being possible by the police. It appears that in 1993 there were 7000 *habeas corpus* petitions pending in the Jammu & Kashmir High Court. Some of the petitions are still pending. In about 2001, there were 35000 civilians under detention and quite a number of them still continue to be inside, while the Courts remain judicially paralytic. In quite a number of cases where the victim had been killed, the courts have not even awarded any compensation to the next of kin. We have also some cases where the complainants have been made to go from one court to the other for nearly two decades, with no relief whatsoever. Many of them feel that they would get no justice through the courts.

Even the National Human Rights Commission (NHRC) and the State Human Rights Commission (SHRC) are not in a position to do



anything, inasmuch as they have no power to investigate or to take any action on any complaint of violation o human rights by the army. Even when complaints were made to the SHRC, it has failed to exercise its powers proactively to provide justice to the victims.

Needless to say that the Executive and the Legislature were more involved in playing power politics than in rescuing the people from gross human rights violations.







# RECOMMENDATIONS

## **1. Withdraw the Armed Forces (Special Powers) Act, 1958 (AFSPA) and the Jammu & Kashmir Public Safety Act, 1978 (JKPSA)**

It is necessary that these draconian laws should be withdrawn forthwith. These laws together with militarization emanate from the notion that the use of force is necessary for the effective ruling of a population. Similar is the belief that Terrorism cannot be eliminated without a harsh law like TADA, POTA, etc. However, it is our universal experience that nowhere in the world have harsh laws ended terrorism, nor has any militarization succeeded in suppressing insurgency, unless taken to the extreme, developing into a situation of genocide, as in Sri Lanka.

It is true that all these laws have been upheld by the Supreme Court of India. That does not mean (as Justice B.P. Jeevan Reddy's Committee for Review of AFSPA says) that the Supreme Court has pronounced "upon the wisdom or the necessity of such an enactment". The Act has become "a symbol of oppression, an object of hate, and an instrument of discrimination and highhandedness". Therefore (as the Committee has recommended) the Act should be withdrawn forthwith.

It should be noted that India has been repeatedly criticized in the UN Human Rights Committee for the existence of the Armed Forces Special Powers Act, which violates crucially several articles of the ICCPR. Hereto annexed as *Annexure I* is the Concluding Observations of the U.N. Human Rights Committee on the Report of India (Extracts).

The other Act - the JKPSA, which provides for arbitrary detention is equally violative of ICCPR. We wonder how such draconian laws could have been upheld after *Maneka Gandhi's*(1978) case by any Constitutional Court.

## **2. Minimise the number of Army men**

Keeping in view the large concentration of military and paramilitary forces in the state of Jammu & Kashmir, which is disproportionate to the civilian population and is also making civil administration ineffective in many matters, the Government of India should take immediate steps

to minimize the number of these forces in order to bring relief to the civilian population.

### **3. The need for a Special Judicial Authority**

We recommend the establishment of a special judicial authority making an independent and thorough inquiry into all allegations of human rights violations, including disappearances, custodial killings, rape, torture, including torture of prisoners, fake encounters, and all other cases related to excesses by security forces. In any case the NHRC and/or the SHRC be authorised to investigate all allegations of violence by the agents of the State, which includes the Army and the security forces (as recommended by the U.N. Human Rights Committee)

### **4. No licence to kill**

Every case of killing by police and security forces in situations like protests, demonstrations, riots, etc. should be followed by a judicial inquiry into the police/security forces firing/actions, followed by proper, time-bound administrative action. It is made clear that the police have no license to kill anyone in any situation, unless they can justify this action under Section 100 of the IPC, which has to be done in a judicial procedure.

### **5. Need for rehabilitation**

Provide proper rehabilitation to families of deceased, injured, and traumatized victims, especially the raped. Compensation as interim relief should be arranged promptly. Compensation should be adequate and purposeful. Compensation should be for both injury to person as well as for damage to property, i.e. houses, etc

### **6. Establishment of Fast Track Courts**

The State should immediately establish Fast Track Courts for the purpose of trying the large number of cases which are pending. The Courts should call for records from every police station and give suitable directions to investigate and file charge- sheets within a time bound framework.

### **7. Release all detainees**

Both state as well as central governments should take immediate steps

to address the sufferings of detainees who are languishing in various jails and interrogation centres in and outside the state of Jammu and Kashmir and have been complaining of torture and inhuman treatment inside the jails.

### **8. Scheme for Witness Protection**

The State should provide witness protection since many of the witnesses are being threatened.

### **9. Establish 'Grievance Cells'**

As Justice Jeevan Reddy's Committee says, "Over the years many people from the region have been complaining that among the most difficult issues is the problem faced by those who seek information about family members and friends who have been picked up and detained by armed forces or security forces. There have been a large number of cases where those taken away without warrants have "disappeared", or ended up dead or badly injured. Suspicion and bitterness have grown as a result. There is need for a mechanism which is transparent, quick and involves authorities from concerned agencies as well as civil society groups to provide information on the whereabouts of missing persons within 24 hours."

As recommended by the Committee, it is necessary that the Government should first establish a "Grievance Cell" in every town where armed forces are deployed. These cells will receive complaints regarding allegations of missing persons or abuse of law by security/armed forces, make prompt enquiries and furnish information to the complainants. The Cell should have the full authority to inspect and call for every record maintained by the security forces or by the local authorities. The Cell should have one or two senior members of the local administration and one or two independent senior citizens who do not belong to any political parties.

### **10. The need for dialogue with the people**

From the evidence put before us, and other human rights reports on J&K it is clear that the rule of law does not operate as laid down in the statute books. Talks between Kashmiri leaders including the separatists and the Central Government have not led to any positive outcome. In fact it would appear that the real mass discourse is a reflection of

the mass alienation in the Kashmir Valley. Demonstrations and street protests often resulting in clashes and stone throwing have regularly led to civilian deaths fuelling another cycle of protest. The Government's focus is on containing the armed militants but not on having a sustained dialogue with the population and its leaders. The numbers of militants killed as indices of peace in the Valley is misleading. The crucial indicator of mass alienation is not the infiltration of militants but resistance by the people.

Any path for a solution of the J&K problem must squarely and frontally deal with this mass alienation of the people and directly confront its causes. As a confidence building measure, the Government should hold talks with the J&K representatives, organisations of men and women, in Srinagar. Currently talks on these matters are held in Delhi including talks with Pakistan. The Kashmiris find themselves out of the dialogue process as no talks are held in Srinagar.

***Signed:***

- **Justice H. Suresh**, former Judge, Bombay High Court
- **Justice Malay Sengupta**, former Acting CJ, Sikkim High Court
- **Professor Kamal Mitra Chenoy**, Jawaharlal Nehru University, Delhi
- **Dr. Nusrat Andrabi**, former principal, Government Women's College, Srinagar
- **Professor Anuradha Chenoy**, Jawaharlal Nehru University, Delhi
- **Shujaat Bukhari**, senior journalist, Srinagar

**Annexure I****Interim Report of the Independent People's Tribunal on Human Rights Violations in Kashmir**

An Independent People's Tribunal on Human Rights Violations in Kashmir was organised on February 20-21, 2010 by Human Rights Law Network and ANHAD in Srinagar, Kashmir. Following is the interim report released on February 21, 2010.

**Introduction**

Since yesterday, we have been hearing about large-scale violations of human rights of the people of this state (J&K). We had testimonies from about 37 victims and their kin. We have also had testimonies/statements from journalists and members of the civil society.

We went through the testimonies and evidence presented before us and are presenting our preliminary observations in this interim report.

- One thing is clear to us that there is a sense of suffering and injustice writ large on the face of everyone who made their statements before us. We had made it clear that we were not in any way linked with the official institutions or authority, and yet so many of them gave vent to their feelings in their physical and emotional state, which only strengthened our opinion that there was substantial truth in those allegations.

- Their testimonies are spread over a canvas of various violations of human rights for a period of two decades, and it is clear that by way of reliefs and remedies, what government has done amounts to a meagre little. It is here the State has to answer in large measure for all indifferent attitudes, deficiencies and neglect.

- It cannot be gainsaid that the Armed Forces (Special Powers) Act (1958), has been in the force for nearly two decades in this state. This Act has been misused and is being misused wherever it is made applicable (Manipur, for example). Therefore, if we take this situation into account, this draconian law has undoubtedly facilitated grave

human rights abuses including “disappearances” by the very nature of the power bestowed on the armed forces.

- Any abuse of powers by the armed forces is criminal offence. It should promptly be investigated by an agency independent of the armed forces, followed by impartial prosecution.

- The testimonies of all witnesses clearly establish that there has been no satisfactory investigation by any agency or authority in the state, leave alone any prosecution. On the other hand, we get an impression that all institutions of the state, the executive, the legislature, the human rights commission, and to a certain extent even the judiciary have failed to do justice to the victims of “disappearances” and other human rights violations.

- The UN General Assembly in 2006 had unanimously adopted the International Convention for the Protection of all Persons from Enforced Disappearances. Earlier, there was the UN Declaration to the above effect (December 1992). Article 2 of the Declaration says that, “the prohibition” of “disappearances” is absolute and no State can find an excuse. Article 7 says, “no circumstances, whether a threat of war, internal political instability, or any other public emergency may be invoked to justify” these acts of violation. Hence, it is not open to the State to resort to enforced disappearances which would include all custodial deaths on the ground of any threat to internal security or external safety and stability. It is here the State’s liability becomes absolute, and we should have no hesitation in making these observations.

- We have the testimony of Ms. Parveena Ahangar, who is the Chairperson of the Association of Parents of Disappeared Persons (APDP), which clearly establishes that 8-10,000 persons have disappeared from about 1989. Incidentally, we may point out that during the period 1984-1994 during the agitation for Khalistan in Punjab, there had been similar disappearances, and recently a report based on the state’s human rights commission, shows that over 2059 bodies were identified in Amritsar district and still over 1000 bodies are lying there in the district, and there are a large number of skeletons in other districts. Moreover, internationally, disappearances and “custodial deaths” fall within the definition of “torture”. Prohibition of torture and ill treatment is underlined by its non-derogable status in human rights laws. No State can justify such an act.

## General Findings

1) Various instances of the security forces' crimes have been brought to our notice. These are violations against the Geneva Conventions (Common Articles 2/3), the Indian Penal Code and the civil law of the country. The police/paramilitary and surrendered militants have flouted Indian laws and the rules of war. As a consequence, large numbers of civilians have died, including women and children. Women, including young girls, have been harassed, raped, and gang raped, and children in their early teens shot.

2) The judicial machinery has barely functioned. Despite the stern report of the Bijbihara Magisterial Enquiry, recommending the severest action against the BSF officers and Jawans. But nothing was done. A number of cases filed in the District and High Courts have been pending for years, and there are numerous cases of lack of judicial action taken in terms of awarding compensation and instructing the security forces to produce the disappeared and so forth.

The tribunal heard repeated examples of FIRs filed by the families that were distorted by the police to accuse the victims. Counter FIRs have also been lodged by the police, the latest incident being as recent as yesterday. Under the pretext of translating FIRs in Urdu into English, the police has completely distorted the complaints made in the original FIR. One such case with evidence was produced before the Independent People's Tribunal.

The state human rights commission has no power to investigate paramilitary and military excesses, though it does have the power to request investigation reports of the enquiry by the paramilitary and the military forces. The SHRC seems to have failed to exercise its powers proactively to provide justice to the victims. The general trend is that the state as well as the central government ignores the recommendations made by this Commission.

### 3) Rape

The worst case of mass rape was heard by the women jurists from the testimonies by women from Kunan poshpora, who talked about the night of February 22, 1991, when the army came to their village, isolated the men, and gang raped at least 23 women of all ages from 14 to even a 100 year old woman. The rape took place in front of their young children. There was brutal impact on their bodies and since then, they have suffered physical and mental trauma for years. They

have been socially discriminated and ostracised, landing them into a traumatic state of mind that has been permanent. This is the grossest of human rights violations.

4) Throughout the conflict, people have been maimed and disabled due to the indiscriminate firing of security forces during even non-violent protests. People have also been disabled during interrogations where torture was used. We heard the testimonies from Bijbehara, where forces had indiscriminately opened fire on peaceful demonstrators in 1993. Many injured persons have been disabled for life and have suffered mentally, physically, and financially. Hardly any steps have been taken for their rehabilitation.

The testimonies we heard of disabled persons revealed that they were totally shocked and shattered. The disabled deposed before us to say that they could bear with the aftermath of physical injury, but not with the mental pain, agony, and trauma that make them feel that they die several deaths everyday, rather than living even once.

### **Recommendations**

1. The controversial Armed Forces (Special Powers) Act should be withdrawn from J&K. Even the Public Safety Act and other anti-terror laws should correspond to the provisions of the International Covenant on Civil and Political Rights which India has ratified.

It should be noted that India has been repeatedly criticised in the UN Human Rights Committee for the existence of the Armed Forces Special Powers Act, which violates crucially several articles of the ICCPR.

2. Keeping in view the large concentration of military and paramilitary forces in the state of Jammu & Kashmir, which is disproportionate to the civilian population and is also making civil administration ineffective in many matters. The Government of India should take immediate steps to minimise the number of these forces in order to bring relief to the civilian population.

3. We recommend the establishment of a special judicial authority making an independent and thorough enquiry into all allegations of human rights violations, including disappearances, custodial killings, rape, torture, including torture of prisoners, fake encounters, and all other cases related to excesses by security forces.

4. Every case of killing by police and security forces in situations like protests, demonstrations, riots, etc., should be followed by a judicial



enquiry into the police/security forces firing/actions, followed by proper, time-bound administrative action. It is made clear that the police have no licence to kill anyone in any situation, unless they can justify this action under Section 100 of the IPC, which has to be done in a judicial procedure.

5. Provide proper rehabilitation to families of deceased, injured, and traumatised victims, especially the raped.

6. Compensation as interim relief should be arranged promptly. Compensation should be adequate and purposeful. Compensation should be for both injury to person as well as for damage to property, i.e. houses, etc.

7. The state should immediately establish fast track courts for the purpose of trying the large number of cases which are pending.

8. Both state as well as central governments should take immediate steps to address the sufferings of detainees who are languishing in various jails and interrogation centres in and outside the state of Jammu & Kashmir and have been complaining of torture and inhuman treatment inside the jails.

9. The state should provide witness protection since many of the witnesses are being threatened.

- **Justice H. Suresh**, former Judge, Bombay High Court
- **Justice Malay Sengupta**, former Acting CJ, Sikkim High Court
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- **Professor Anuradha Chenoy**, Jawaharlal Nehru University, Delhi
- **Shujaat Bukhari**, senior journalist, Srinagar

## Annexure II

### Appendix II : Concluding Observations of the UN Human Rights Committee on the report of India, 1997 (Extracts)

18. The Committee remains concerned at the continuing reliance on special powers under legislation such as the Armed Forces Special Powers Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to Article 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. The Committee, noting that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, hopes that its provisions will also be examined for their compatibility with the Covenant.

In this respect, bearing in mind the provisions of Article 1, 19 and 25 of the Covenant, the Committee endorses the views of the National Human Rights Commission to the effect that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and emphasizes that terrorism should be fought with means that are compatible with the Covenant.

19. The Committee regrets that some parts of India remains subject to declaration as disturbed areas over many years--for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer--and that in these areas, the State party is in effect using emergency powers without resorting to Article 4, paragraph 3, of the Covenant.

The Committee recommends that the application of these emergency powers be closed monitored so as to ensure its strict compliance with the provisions of the Covenant.

...

21. The Committee notes with concern that criminal prosecution or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the Central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with Article 2, paragraph 3, of the Covenant.

The Committee recommends that the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive. It urges that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commissions of Enquiry Act of 1952, be empowered to direct prosecution of security and armed forces personnel.

22. The Committee regrets that the National Human Rights Commission is prevented by Clause 19 of the Protection of Human Rights Act from investigating directly complaints of human rights violations against the armed forces, but must request a report from the Central Government. The Committee further regrets that complaints to the Commission are subject to one-year time-limit, thus preventing the investigation of many alleged past human rights violations.

The Committee recommends that these restrictions be removed, and that the National Human Rights Commission be authorized to investigate all allegations of violations by agents of the State. It further recommends that all states within the Union be encouraged to establish Human Rights Commission.

23. The Committee expresses concern at allegations that police and other security forces do not always respect the rule of law and that, in particular, court orders for habeas corpus are not always complied with, particularly in disturbed areas. It also expresses concern about the incidence of custodial death, rape and torture, and at the failure of the Indian Government to receive the United Nations Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

While the Committee welcomes the requirement by the National Human Rights Commission that all such alleged incidents be reported and investigated, and that all post mortem examinations be taped, it recommends:

- a. the early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody;
- b. the adoption of special measures to prevent the occurrence of rape of women in custody;
- c. the mandatory notification of relatives of detainees without delay;
- d. the guarantee of the right of detainees to legal advice and assistance and to have a medical examination;
- e. and that priority be given to providing training and education in the field of human rights to law enforcement officers, custodial officers, members of the security and armed forces, as well as judges and lawyers, and that the United Nations Code of Conduct for Law Enforcement Officers be taken into account in this regard.

24. The Committee regrets that the use of special powers of detention remains widespread. While noting the State party's reservation to Article 9 of the Covenant, the Committee considers that this reservation does not exclude, inter alia, the obligation to comply with the requirement to inform promptly the person concerned of the reasons for his or her arrest. The Committee is also of the view that preventive detention is a restriction on liberty imposed as a response to the conduct of the individual concerned, that the decision as to continued detention must be considered as a determination falling within the meaning of Article 14, paragraph 1, of the Covenant, and that proceedings to decide the continuation of detention must, therefore, comply with that provision.

The Committee recommends that the requirements of Article 9, paragraph 2, of the Covenant be complied with in respect of all detainees. The question of continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with Article 14, paragraph 1, of the Covenant. It further recommends, at the very least, that a central register of detainees under preventive laws be maintained and that the State party accept the admission of the International Committee of the Red Cross and the Red Crescent to all types of detention facilities, particularly in areas of conflict.

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Footnote: This appendix consists of extracts from the 1997 Concluding Observations of the UN Human Rights Committee on the periodic report of India in compliance with the International Covenant on Civil and Political Rights, to which it is a party (CCPR/C/79/Add.81, 4 August 1997). India has failed to submit subsequent reports to the committee as required under the covenant.