

Grim Realities

*of life, death and survival in
Jammu & Kashmir*

Andhra Pradesh Civil Liberties Committee (APCLC)
Human Rights Forum (HRF)
Organisation for Protection of Democratic Rights (OPDR)
Peoples Democratic Front (PDF)
Peoples Union for Democratic Rights (PUDR)

They make a desolation and call it peace.

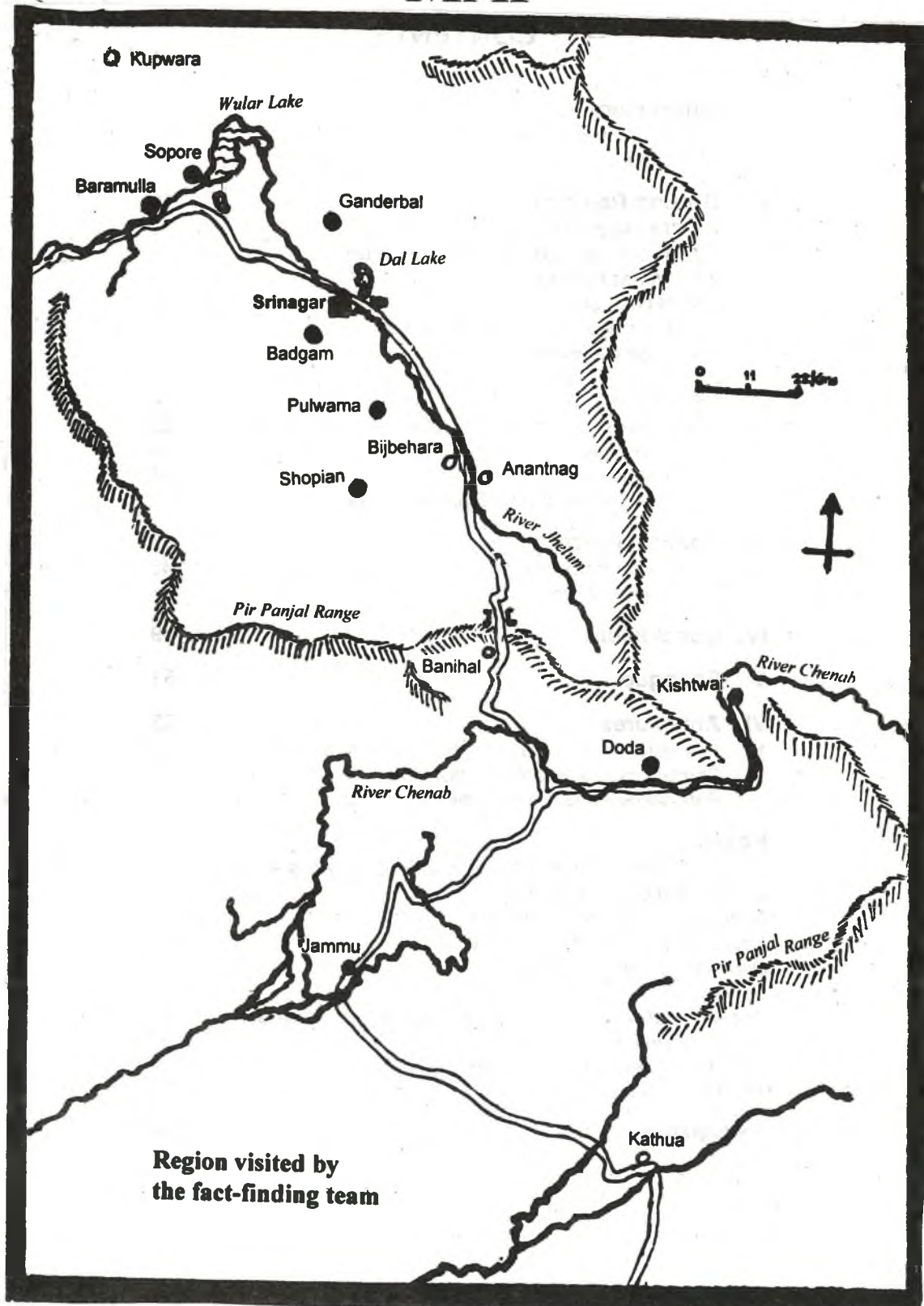
Who is the guardian tonight of the Gates of Paradise?

– Agha Shahid Ali

CONTENTS

	<i>page</i>
I. Introduction	3
1.1 The Political Background	3
1.2 The Fact-finding Team and the 'Ceasefire'	6
II. Ground Realities	10
2.1. The Migrant Camp	10
2.2. The Right to Demonstrate Peacefully	11
2.3. 'Vengeance' Killings	14
2.4. Human Shields	16
2.5. Rape and Molestation of Women	18
2.6. Custodial Killings	21
2.7. Fake Encounters	24
2.8. Torture	28
2.9. Agencies of Repression: Official and Unofficial Incentives	29
The Ikhwanis	33
2.10 Civil Society: Living, Dying and Surviving	34
III. Political Process	45
3.1 Popular Perceptions	45
3.2 People's Voices	46
IV. Conclusion	49
V. Epilogue	51
VI. Annexures	53
1. The historical background to the 'Kashmir' dispute	53
2. Chronology of relevant events in J&K	58
3. Reprisal by Rape - Testimonies from Doda	60
Boxes	
<i>The J & K Prevention and Suppression of Sabotages Act</i>	5
<i>Of Courts and Courts Martial</i>	12
<i>State Human Rights Commission</i>	17
<i>Encounters and NHRC Guidelines</i>	26
<i>Doda: Military and Militants</i>	28
<i>Rule of Law</i>	32
<i>The Association for the Parents of Disappeared Persons</i>	36
<i>The Kashmiri Pandits</i>	39
<i>Of Women, Resistance and Veils</i>	42
<i>The Search Goes On</i>	47
Photographs	30-31

MAP



was apparent in the quibbling over what should construe 'the core issue' – 'cross border terrorism' versus 'disputed territory'.

In a curious way, therefore, Kashmir is both grievously neglected and constantly in the news. In view of the unending blood letting going on there, Jammu and Kashmir *must* be in the news – but in its own right. To put it more plainly, the political process said to be underway for resolving the 'Kashmir issue' between India and Pakistan *should have* centrally involved the people of Jammu & Kashmir. And it *should have* given centre-place to their view – or rather their views – of the 'issue', because it is in truth their issue and not that of either India or Pakistan, a fact that should be obvious to all but is not because of the tangled web of fact and fiction that has enmeshed it.

Making the *people* of Jammu and Kashmir central in the issue requires three things. One: there should be a cessation of the human rights violations by the army and the police that have terrorised the people of the militancy-affected parts of Jammu & Kashmir for more than a decade. Two: an atmosphere should be created at the ground level by all concerned that would enable people to think and act free of fear. And three: both India and Pakistan should listen to the people of Jammu & Kashmir, not as benevolence but as elementary sense.

1.1 THE POLITICAL BACKGROUND

In a fundamental sense, the developments in J&K in the last 12 years are a consequence of the sense of alienation of its people, the refusal of the Indian State to recognise this reality, and to find a *political* rather than a military solution to the alienation. The alienation itself is a product of historical forces: the accession of J&K to India by the dogra Maharaja in the face of tribal raiders at the outskirts of Srinagar from across the Pakistani border; the promise of a plebiscite accompanying the accession; and the failure to implement it thereafter. Between 1947 and 1953 the conditional accession was kept alive in India, Pakistan, and in Jammu and Kashmir, as well as in the UN. Meanwhile, as a consequence of the war following the accession, a part of Kashmir was occupied by Pakistan, and the rest was taken over by India – Azad Kashmir/Pakistan Occupied Kashmir, and the

I.

INTRODUCTION

AUGUST 2001. Despite everything, hope that had arisen in many hearts in Jammu and Kashmir in the summer has been firmly and brutally stamped out. There seems to be no end to the cycle of repression and the repeated killing of aspirations that the people are condemned to suffer. Grim and oppressive, the month, and the months to come will be a time of trials for the people in the region, perhaps more intense than ever before. 'Peace' and 'dialogue' are yesterday's news. After the failure of the Agra talks in mid-July, militants have singled out and killed hindus. They have triggered explosions in public places killing innocents. The state for its part has ordered massive troop deployment, and extended the Disturbed Areas Act and the Armed Forces (J&K) Special Powers Act (already in force in the Kashmir Valley) to the six districts of Jammu region. Barring Ladakh, the entire J&K is since August 9 this year, a 'disturbed' area.

The way the Musharraf-Vajpayee talks in July went and their eventual failure over the 'core' issue is reflective of the way J&K has been used as a pawn between India and Pakistan. The lack of genuine concern on the part of both the countries

state of Jammu and Kashmir. From 1953 onwards seeking the will of the people through a plebiscite became more and more remote and was finally abandoned. That plebiscite is viable is demonstrated by the fact that a plebiscite was held in Junagadh, another of the disputed accessions of 1947. At different times and in varying degrees the people of J&K have contested the accession as it was never ratified by the people. India, on the other hand, has since 1953 increasingly held that J&K is an integral part of India, no longer subject to negotiation.

For more than 50 years the colonial legacy of an unresolved territorial dispute over J&K, has driven India and Pakistan to three full scale wars, and innumerable skirmishes on the line of control. After India and Pakistan tested their bombs in May 1998 there is anxiety about Kashmir as a possible nuclear flashpoint, especially in the international community, which has brought pressure upon the two countries to dialogue with each other. Treating the dispute as primarily a territorial one has meant erasing the aspirations of 13 million people on both sides of the LoC (Line of Control) and the daily reality of living in a 'homeland' whose destiny remains unsettled even 54 years after the sub continent became free.

The failure to ascertain the will of the people and the desire on the part of the Indian State to firmly integrate the state of J&K into the Indian Union has resulted in constitutional changes to erode the special autonomy provisions. In practice this has meant a denial of democracy, the manipulation of elections and even the jailing of the political leadership on many occasions. An example of the official attitude to democratic norms and procedures has been the repeatedly rigged elections. Barring the elections of 1977, elections in Kashmir have been neither free nor fair. In fact the rigged elections of 1987 were the turning point in the history of the valley, when to all accounts the Muslim United Front, comprising the Muslim Conference and other groups, had actually won. Salahuddin, the founder of the Hizbul Mujahideen was according to reports, one of the victorious candidates in these elections, having stood from the Amira Kadal area of Srinagar city. Yet when the results were announced the National Conference was declared victorious. The rigged election of 1987 was the immediate background to the emergence of a new phase of

the movement for azadi, the birth of militancy and to the cycle of repression, insurgency and further repression. The denial of democracy is also then the basis for the rampant violations of other democratic rights in the state. On 15 August 2001 the Prime Minister virtually admitted to the practice of rigged elections and promised that fair elections would be held in the state soon.

Today, however, militancy is talked about as though it is devoid of reason or of history. In the recent round of talks between India and Pakistan too we kept hearing about obdurate assertions by the Prime Minister that Pakistan should take responsibility for 'cross border terrorism'; predictably no mention was made in these 'talks' of India's own aberrations and failures in the practice of democracy in the state that gave birth to the movement for azadi, which later turned to militancy.

In this latest phase, the politics of separatist nationalism in Kashmir has witnessed a militant rising on the Indian side of the LoC and resulted in armed conflict between the state and the militants. An estimated 60,000 to 70,000 (projection based on Home Ministry figure of 40,000 dead till 1996) people are alleged to have died, 4000 are believed to have disappeared or be in illegal detention. More than half a million have been displaced and there are 15,000 widows and thousands of half widows of the disappeared. Multiple armed agencies are at large with little accountability. Kashmir has turned into a garrisoned state with more than five lakh army, para military and police personnel for counter insurgency operations. Constitutionally guaranteed freedoms have been suspended under the Armed Forces (J&K) Special Powers Act (1990) and the Disturbed Areas Act.

Militancy in Jammu and Kashmir is now 12 years old. There are many groups covering a wide ideological spectrum. Three distinct phases of the militant movement can be discerned. In the first phase, between 1988 and 1991, Jammu and Kashmir Liberation Front (JKLF) was the most dominant group with a secular and unqualified agenda of *azadi*. There were many mass demonstrations during this period in spite of state repression.

In the second phase from 1991 till about 1994, there was a proliferation of many groups with Hizbul Mujahideen (HM) as the principal force. It is now a

widely accepted fact that both the Indian and the Pakistani sides helped develop HM. Pakistan, because HM is Islamic in its ideology and pro-Pakistani and India because JKLF's popularity and secular credentials were proving a threat to India's democratic claims. It was easier for India to deal with HM than JKLF, for the former could be more easily discredited. This period therefore witnessed local youths crossing the border to Pakistan in thousands in order to get trained in the use of arms. Over a hundred *tanzeems* (political groups) proliferated. A standard counter insurgency tactic is to create a number of 'groupings' which indulge in activities bringing discredit to any insurgent movement. JKLF and its leader, Yasin Malik, were particularly targeted. By so targeting secular militancy a space was being created for the emergence and growth of the more fundamentalist militant groups.

During the third phase of the militant movement from 1995 onwards, the nature of militancy as well as the composition of the militants changed quite markedly. A new form of militancy emerged in the form of *jihad*. The *jihadis* are primarily foreign militants reported to be coming largely from different Islamic countries such as Sudan and Afghanistan as disciplined forces committed to a holy war against the Indian state. Even though the question of *azadi* continues to be as alive as before in the hearts of the people, the Hizbul Mujahideen remains the only 'local' militant organisation. According to government information about 50 per cent of the militants are still local, while the rest are 'foreign'. The *jihadis* have different modus operandi than the local militants. They deploy squads of *fidayeens* and belong to groups such as Lashkar-e-Toiba and Jaish-e-Mohammad, and so on. Alongside, from 1994-95, renegade or 'surrendered militants' emerged as a counter-insurgency force. Called Ikhwanis (after the first organisation formed by them), they were armed and fully abetted by the state, they became the 'sarkari' militants, used to 'quell' militancy, unhindered by law or fear of punishment. Besides the militant groups there are also non-militant groups committed to the cause of *azadi*. Many of them are part of the All Party Hurriyat Conference (APHC; henceforth 'the Hurriyat'). which is a federal organisation of 23 groups comprising the Jamaat-e-Islami, the Muslim Conference, the People's League, Kashmir Bar Association, State

The Jammu & Kashmir Prevention and Suppression of Sabotages Act, 1965

This Act was brought at the time of the India-Pakistan war in 1965. Thirty six years later, the legislation remains on the statute books. Recently the Act has been used to arrest and detain people in Doda district of J& K. In this Act:

- ❑ Use of an explosive or incendiary substance which can cause destruction of property, bodily injury or death is defined as "sabotage".
 - ❑ Short-cut summary procedure ordinarily meant for petty offences is to be followed.
 - ❑ The Judge need only record a memorandum of the substance of the evidence of each witness, rather than the whole deposition including chief examination and cross-examination of the witness.
 - ❑ While under ordinary law, the accused has a right to cross-examine all witnesses against him, allowing cross-examination of witnesses is left to the discretion of the judge under this law.
 - ❑ Statement recorded by a Magistrate can be admitted as evidence by the judge. Under the general law, only testimony of a witness tested by cross-examination is treated as evidence.
 - ❑ There is no right to even a single appeal. Ordinarily two appeals is recognized as a right of the accused.
- Given the fallibility of human judgement, the chances of errors and mistakes are very high and not having even one right to appeal is grossly unjust to the accused.
- Under this law, only if the Sessions Judge certifies as to special difficulty with regard to law or fact, then a review by a High Court judge chosen by the Government is the only redressal.
- ❑ The maximum punishment provided for sabotage is Death.

Employees Federation, Employees and Workers Federation etc.

The resistance movement has also tried various means, besides the use of arms, to resolve the conflict. Several groups and individuals have declared from time to time their desire to resolve the issue through dialogue and negotiations. For example, JKLF was the first to announce a unilateral cease-fire as far back as in 1994 when it also gave up on the use of arms. The Hizbul Mujahideen also declared a unilateral cease-fire in July 2000 with three conditions. These were that Kashmir should be recognized as a disputed territory, there should be tripartite talks involving India, Pakistan and the people of J&K, and that these talks should be unconditional and not restricted to the bounds of the Constitution of India. The response of the Indian state to these offers was greater militarisation. If we look at the figures of deployment of troops in J&K we find though in 1990 (as per official figures) there were only 300 militants, the Indian government had then deployed about 36,000 troops. In the following years the number of militants in the area has grown to about 4000 to 5000, including local and foreign militants. And estimated troop deployment has been 5 lakhs.

Despite the adoption of these various methods, the state has not been able to contain militancy. There have been historic reasons for the rise of militancy. One of the reasons for its survival and the continued support it gets lies in the nature of interaction between the state and the people, revealed in the incidents covered in this report. Though there are this and other socio-political factors to explain militancy, the recent trend in militancy in Kashmir towards planting of explosive devices in public places, the singling out and perpetrating massacres on the basis of religion, throwing of acid and other such coercive method to impose burqa on women are utterly reprehensible and deserve severe condemnation. There is also a shift in focus of militancy to the Jammu region. This area has a more varied demographic profile than the Valley – while 3 districts here have a muslim majority these are not very large (in Doda district the population ratio of muslims to hindus is about 60:40). Communal attacks by the militants followed by communal military response could create an explosive situation in this region.

Since the start of militancy, a series of administrative and political forms have been operative in the state from President's Rule to elected governments. In 1996 electoral politics was revived, and people were forced to vote. An elected government is now in office but opposition politics has no spaces to express itself in. The people are caught between a repressive state and an increasingly extremist militancy. They are tired, cynical and desperate for 'normalcy' and peace but in a fundamental sense alienated from India. And while there have been ceasefires and moves towards dialogues in the last two years the Kashmiri people, especially those who have questioned the accession, are being left out of the process of dialogue.

1.2 THE FACT-FINDING TEAM AND THE 'CEASEFIRE'

An eleven-member team of human rights activists from five civil, democratic and human rights organisations across the country undertook a fact-finding tour of the troubled parts of Jammu & Kashmir during 22 - 31 May 2001. Our fact-finding team met and spoke with pandit refugees living in the camp in Nagrota, Jammu. It visited 8 villages in Pulwama, Srinagar, Budgam and Baramulla districts, and 2 villages Mangota and Bihota in the Marmatt region in Doda district, as well as the towns of Sopore, Srinagar, Doda and Kishtwar and talked to a large number of people to investigate a total of 9 specific incidents of human rights violations by the army, paramilitary and the police in the Kashmir area and numerous instances or torture, assault, killing, disappearances and rapes, in Doda. The team also spoke to prominent persons of the state such as editor, 'Kashmir Times', Ved Bhasin, writer and author of several books on Jammu and Kashmir, Balraj Puri, APHC leaders Abdul Ghani Lone and Abdul Gani Bhat, the MLA from Bijbehara, Mehbooba Mufti, and politician Saidullah Tantray from Doda. The team also spoke to the Chief Secretary of J&K Mr. Ashok Jaitly, the Senior Superintendent of Police (SSP) Pulwama district, Mr. Mukesh Singh, and Deputy Commissioner, Pulwama, Mr. A.M. Khanday, as also the SSP of Doda, Mr. Ashkooor Wani. It spoke to journalists, professors and students at Kashmir university and Govt. Women's College, Srinagar, lawyers, the Association of Parents of Disappeared Persons in

the valley as well as citizens' groups and govt. hospital doctors in Doda.

The aim of the human rights team's investigation was to ascertain the reality of the cease-fire declared by the government of India at the end of last year; more particularly to investigate the frequent allegations of human rights violations in the State notwithstanding the cease-fire; and lastly to seek the views of the people concerning the ongoing political process and their role or place in it. We believe this to be an important exercise since the ceasefire is an integral part of the political process undertaken for resolving the 'Kashmir issue', and so how people have in fact fared in the ceasefire period is an important index of how fruitful the political process is likely to be.

Fact finding teams of human rights activists have been visiting Kashmir almost from the inception of militancy in the valley in 1988-89. The atmosphere, except in the very first years, has always been defined by fear. Some times it was more and some times it was less, but fear has always been the dominant factor. Fear of India's armed forces, fear of the anti-insurgency wing of the State police, fear of the 'renegades' (i.e., surrendered militants turned agents of the State) and fear of the militants. While questions pertaining to rights violations by the armed forces would often be answered frankly enough, though some times people would ask not to be quoted, political questions usually elicited oblique answers in the past. Knowing the 'mind' of the people has always been difficult in Kashmir during the last troubled decade.

We found a perceptible though not absolute difference this time. It is not that fear has completely gone, but we found people answering political questions much more frankly. And naturally there were a variety of views on the political scenario. It is difficult to identify the reason for this change. The armed forces were visibly present all over. Frisking and searching went on as ever. The State police, whose anti-insurgency wing is the Special Operations Group (SOG), were as they were before, competing with the Central armed forces in the use and abuse of their authority. The 'renegades', or Ikhwanis as they are collectively called these days, were as active as they have ever been since their inception – or invention – in 1995. News of custodial killings occupied much of newspaper space

every day. Stories of the Forces firing upon civilians either in retaliation for attacks by militants or for the purpose of dispersing a demonstration were not uncommon during the cease-fire (and subsequently, especially in July and August 2001 have been occurring with shocking frequency). And the militants too, were and have been as assertive as ever, whatever the army's public relations men may say for the consumption of the public outside the state. Yet during the fact-finding, perhaps due to a combination of factors, the people were much more vocal in the expression of their views, and there was a perceptible air of expectation that some thing would at last happen, that the obduracy of India and Pakistan would give way.

A few details about the 'ceasefire' and what it entailed follow. 'Unilateral cease-fire' in the form of a policy of Non-Initiation of Combat Operations (abbreviated as NICO) was initiated by the Government of India on 28 November. Its proclaimed nature was that the Forces on their own would for the time being stop hunting for the militants, though they would defend themselves and others endangered by militancy if and when attacked. The NICO was declared to be effective for the month of *Ramzan*. At the end of the festival month, the Government of India extended the NICO up to 31 May 2001. On 23 May the Government declared that it would not extend the cease-fire beyond 31 May, but would invite the Chief Executive of Pakistan for talks. Though it was not specified what the talks would be about, it was understood that Kashmir would be one of the issues that would be discussed.

It was always understood that the cease-fire would be part and parcel of a political process for resolving the issue. When cease-fire was declared on 28 November, it was said that the Government of India would directly talk to the militant groups based (or headquartered) in Pakistan, and that a delegation of the Hurriyat would be allowed to go to Pakistan to contact their leaders for the purpose of setting in motion the proposed direct discussions. As it happened the delegation never went. Though the Government never formally declared that it had given up the idea of talking directly to the militant groups and sending the Hurriyat as an emissary to initiate the process, it said almost as much by deciding to send the Vice-Chairman of the Planning Commission, Mr. K.C.Pant, as the representative of the Central Government, to talk to whoever would

talk on the Indian side of J&K, and thereby work out the modalities of the solution. The next change of tracks was on 23 May when direct talks with Pakistan's Chief Executive were mooted, but without continuing the cease-fire.

The discussions of the human rights' team with the people acquired a sharp edge because of the fortuitous fact that the very day we set foot in Kashmir (23 May) the Government of India announced withdrawal of the cease-fire after 31 May, and extended an invitation to Pakistan's Chief Executive (he had not yet declared himself President at that time) to visit India any time he pleased. Though the cease-fire in fact nominally continued till the last day we were there, the shadow of 1st June loomed ahead, and much more so the shadow of Parvez Musharraf's impending visit. We could distinctly sense the first in the mountainous villages of Doda tehsil on the last day of our tour – which was the last day of the cease-fire – and the latter was an unseen but real presence throughout the trip.

A comment commonly heard in all parts of the militancy-affected areas of the State was that the cease-fire of November 2000 to May 2001 was a 'farce' or a 'sham'. The observation was not unqualified, however. It was conceded that it was effective during the first month, i.e., during the month of *Ramzan*, and later mainly along the border with Pakistan where the two armies observed restraint. Elsewhere in the State, after the month of *Ramzan*, cease-fire at best may have meant some reduction in the intensity of suppression but there was little qualitative difference. There appear to be three reasons for this.

One is that the State government of Jammu & Kashmir never saw eye to eye with the Union Government in the matter of the cease-fire. Immediately after the Central government announced NICO, the Director General of Police, J&K, Mr. A.K.Suri, announced that the Central government's decision applied only to the Central armed forces, and not to the State police. In particular, its anti-insurgency wing, the Special Operations Group (SOG, some times also referred to as the Special Task Force, the STF) would continue its operations. The Chief Minister of the State Farooq Abdullah repeatedly announced that his government was not very enthusiastic about the cease-fire. In the mountainous areas of Marmatt of Doda tehsil, we were told that soon after the cease-fire was announced, the army

camps in the area were removed and replaced by SOG camps. In effect the people got no reprieve.

The second reason is that within the army, too, different views of the cease-fire appear to have prevailed. As an experienced journalist put it to us in Srinagar, 'the cease-fire was as effective as the local commander of the Forces understood it'. It appears that in many parts of the state the army and the paramilitary did not take the cease-fire too seriously. "Earlier the crackdowns used to take place during the night as well as the day; after the cease-fire they confined themselves to crackdowns by day" was one comment we heard in Pulwama. Another comment we heard in the village of Haigam in Baramulla district was that after the cease-fire, the Forces took to searching the houses without ordering people to clear out and assemble in the open, as was the routine during crackdowns earlier. Perhaps many in the armed forces understood cease-fire to mean only easing the pressure on the people somewhat. Some did not do even that. We shall see below that in a number of instances the Forces behaved just as they have always done in the past, cease-fire or no cease-fire.

The third reason is that the militant groups rejected the cease-fire and continued their attacks, thereby lending strength to the arguments of those in the Indian establishment who were against the cease-fire. It is noteworthy that attacks upon the Forces by the so-called *Fidayeen*, which had started before the cease-fire, continued during – and after the cease-fire period too. The Press has translated the word *Fidayeen* as 'suicide squad', and perhaps that is what it is for all practical purposes. But we heard some interesting discussion about the matter in Kashmir: since suicide is believed to be contrary to the teachings of Islam, the militants fighting in the name of Islam would not admit that they are deploying 'suicide squads'. They describe the *Fidayeen* attacks as operations, in which the attackers do not voluntarily give up their lives but only take a very high risk in attacking their targets. Whatever the semantics, it is a fact that these attacks have created a heightened sense of insecurity in the Forces, and the fact that the *Fidayeen* attacks continued during the cease-fire period is one argument heard from the opponents of cease-fire in justification of their opposition.

For all these reasons the cease-fire was in fact not as effective by half as the concept suggests.

'Cease-fire is in Delhi, not here', 'cease-fire is there only in the papers', etc. were comments we frequently heard. If there is some exaggeration in these expressions, the legitimate disappointment of the people accounts for it. The background described above is with the intention that the reader keeps this in mind while looking at the reality of the 'cease-fire'.

While the fact of militant strikes during the cease-fire was known in the rest of the country, it was generally believed that the security forces were fettered during this time. In fact subsequent to the declaration of its withdrawal this was the view that was widely touted. The failure of the Agra summit was followed predictably by heightened militant activity and repression. Subsequent jubilant declarations of body-counts of 'terrorists' killed have also projected the impression that the armed forces are now able to 'deal' with terrorism without the 'restraints' of the cease-fire. While the government got some political mileage by declaring the unilateral cease-fire, and was able to present itself as a taker of peace initiatives, the truth is that there was no

cessation of fire. Hard-liners in the government, the Home Ministry, had feared that the cease-fire would 'lower the morale' of the security forces, and lead to a spread of militancy in the entire region. But not much changed after the 'Ramzan Initiative' – the hard-liners need not have feared. Beatings, torture, molestation of ordinary people by the security forces – it was business as usual in J&K.

The present report is divided into two parts. In the first part we deal with the ground realities concerning the human rights situation as we examined it during investigation. We have focused on the situation subsequent to the declaration of ceasefire on 28 November 2000. In the second part we discuss what the people of the State think of the vicissitudes of the political process. We would like to concede at the very start that the situation on the ground is extremely complex. This report is based on understanding derived in 10 days of fact-finding investigation. Therefore, what we are able to present to the reader is a glimpse of the grim state of affairs in Jammu and Kashmir.

II.

THE GROUND REALITY

“Welcome to Happy Valley

Where the world ends & paradise begins”

**-- A signboard
about 10 km from Srinagar,
on the Srinagar-Baramulla Road**

The first stop for the team investigating human rights violations in Jammu and Kashmir was the migrant camp at Nagrota.

2.1 THE MIGRANT CAMP

The Kashmiri Refugee Camp of Nagrota stands a short distance away from Jammu city, on the road to Srinagar, right at the edge of the small urban settlement that has come up around the army cantonment at Nagrota. Having come up in February 1990, this is the oldest of the 6 refugee camps in Jammu and Udhampur, housing almost exclusively, Kashmiri pandit refugees.

According to some of the residents of the Nagrota camp, there are altogether about 800 families in the camp while about 200-250 families live outside the camp in rented accommodation nearby. (Those we interviewed estimated that about 30% of the total refugees live in camps).

The houses are essentially single room tenements, 9 feet by 11 feet in size. Blocks of public toilets serve the settlement. These are utterly inadequate. Many of the families have enclosed part of the open area around their houses, and grown plants. There is an air of permanence about the camp. When a human rights team had visited them in 1997, there was an acute water crisis in the camp. This problem has now been partially solved, and overhead water tanks installed. However due to a fairly severe electricity crisis, the water cannot be pumped up often!

A sum of Rs. 600/- per month per head is given to the refugees for upto 4 members in the family, i.e. Rs.2400/- per month for a family of 4. In addition free rations of about 9 kg rice per head and 2-kg wheat flour per head and 1 kg sugar per head is given to each family. Those who held government jobs in the valley are being paid salaries (basic pay and Dearness Allowance) though a negligible number have got absorbed in jobs in Jammu. Their salaries are being paid primarily out of the defence grant by the Central government and partly by the state government. They complain that since they are no longer in the valley, no pandits are getting appointed there as people retire. They said that all new appointments of Kashmiri pandit youth are being made in the BSF and the J&K Police. A few of them have been back to Kashmir from time to time. While the army has occupied some of their houses it has not paid rent to them for years now.

In Jammu, they sense the resentment of the local dogra and other population. Local colleges and schools allow Kashmiri youth and children to study only in the afternoon shift. There is a strong suspicion that this implies essentially second-rate teaching. The heat of the Jammu area is something the pandits in the camp find difficult to withstand. Going to study in the afternoon with the sun overhead and the extreme heat is what some of the youth complain about bitterly.

Their view regarding their 'protectors' was different enough from the stereotype of pandit opinion, to be an eye-opener. The STF according to the pandits we spoke to in the camp, is itself a 'militant' force, which routinely harasses people. While a few again state rhetorically that all muslims in the Valley are militants – by giving birth to or giving shelter to militants (and the Army should be given a free hand as there is no question of an 'innocent' being

killed) – there is also understanding of the situation, devoid of rhetoric. So, according to some of the migrants, the main problem with Kashmir has been that Kashmiris have never got a genuine right to vote – “*Vote ka sahi hakk nahi mila*”. The centre has been imposing the state government on them. These ministers are openly corrupt. The root of the entire problem of militancy was the sustained failure of democracy.

The people at the Nagrota camp told us that a few Kashmiri Pandits continue to stay in the valley, like in Matan and Anantnag. Even in the course of our brief fact-finding we found that a few Kashmiri Pandits were living and working in the valley. For instance, one Pandit family lives in Haigam village (the head of this family is working in the Adult Education department); we also found one woman teacher in the Government Women’s College, Navakadal, Srinagar, who has also continued to live in the valley.

In 1997 our human rights team had heard that a list and valuation of their property that they had left behind in the valley was to be done. The list was made subsequently, and a valuation done and an additional ex-gratia payment of 1 lakh rupees for each household fixed but till date no compensation has been paid nor any further action taken.

Many of them keep going back to the valley and are in touch with their erstwhile fellow villagers. There is indignation at the fact that some ‘upstart’ labourers (in the valley) who had worked in the fields of pandit landowners (now staying in the camp) have in fact made enough money to now offer to buy their lands from them.

At Nagrota, sanitation, water and drainage are constant problems. As is the resentment of the locals against the migrants; the second-shift education that the young are getting; that they have still not been paid compensation for the property they have lost; and the fact that jobs are just not available.

Living in one-room houses, and having seen better days, the Kashmiri pandit refugees in Nagrota, though better off than other refugees in the country, miss the Valley intensely. The recent killings of hindus by militants in Doda and the blast in Jammu station is going to be one more blow to the pandits’ ever decreasing hope of going back to the valley.

After Jammu the team proceeded to the valley and Doda. Let us take a look at how and where the cease-fire was expected to make a difference in the overall situation of repression and violation of people’s rights in Doda and the valley but was ineffective.

2.2 THE RIGHT TO DEMONSTRATE PEACEFULLY

Like all lawful rights, the right to demonstrate peacefully requires no cease-fire between the Forces and militants to be effective. To assemble peacefully is a fundamental right under Art 19(1)(c) of the Constitution of India but the people of Kashmir could not claim it as legitimate even during the cease-fire. The distinct impression that one gets from the Press – that public demonstrations against human rights violations were held more frequently in the period of cease-fire than in the past was not denied by any one. The difference is not absolute, since even in the worst period, custodial killings and other rights violations have elicited quite spontaneous and some times massive protests in the valley, especially in Srinagar city. But there was some difference nevertheless. The pent-up anger and resentment perhaps found it a little more easy to express itself due to the expectations generated by the cease-fire, and could therefore have done so more vocally and more frequently during that period. Yet, there was at least one major instance where the people expected that the cease-fire would make a difference, but were brutally belied in their expectations.

This happened in the village of Haigam in Sopore tehsil of Baramulla district. There are 2000 households in this village, and one pandit family continues to live here. Thirty year old Jalil Ahmed Shah had once been a militant. He had surrendered some years ago and was living in Haigam where he ran a medical shop. Like all former militants, he had to obey a command that has no basis in the law: to appear regularly by army diktat at the 3 Rashtriya Rifles (RR) camp at Sopore. Shah was the first one to donate blood in Sopore for the earthquake victims in Gujurat. On 13 February this year, he was picked up on the way by the Forces before he reached the RR camp. That evening some jawans came to his house in Haigam with a letter from him asking his sister to ‘hand over his weapon’ to them. He did this possibly to inform his family

about his whereabouts and as desperate measure to save himself from being killed. They searched his house the next day and went away empty handed. On 14 February some men from the village went to Sopore to locate him but were unable to find out where he was being detained. The next morning that is on 15 February his dead body was found at the stadium in Baramulla town. The police of Baramulla informed Shah's family, and twenty of them went in a Matador van to Baramulla. It was noon by the time they got Jalil's body. It bore clear marks of torture and beating. Both his arms were broken and his head was severely injured.

In the meanwhile, 1000 to 3000 villagers from Haigam and surrounding villages had moved in a

'juloos' to the Srinagar-Baramulla highway by about 9.00 am. They blocked the highway and waited there for his body to arrive in order to perform the prayers before burial. They also wanted to express their protest against the wanton killing of Shah. A large number of women were part of the demonstration. Taslima, a young girl of the village, who was one of the demonstrators, said that, "Since there was a cease-fire we thought nothing would happen".

She was mistaken: she lost her sister Bilqisa and aunt Atiqa in the firing that ensued.

Owing to the delay in getting the body from the authorities in Sopore, the entire traffic including two army trucks got held up on the highway. There is a regular traffic of army vehicles on the highway,

Of Courts and Courts Martial : Justice to Survivors

For I am the Prosecutor, the Judge and I am also the Accused

Scenario A

A Murder is committed.

A Rape perpetrated.

The survivors file a FIR with the police naming the people involved – the Accused.

The police investigate, collect evidence, file charge-sheet and prosecute in court.

The Judge decides innocence or guilt of the Accused.

Scenario B

Armed Forces personnel go to a village commit brutal rape.

Ordinarily no FIR is registered.

If protests follow and in rare cases, investigation is done and the matter reaches the District and Sessions Judge.

The Army moves an application that the accused personnel will be court-martialled under the Army Act and the District and Sessions Court should let go of the matter.

The District and Sessions Judge releases the case to the Army Authorities.

In a courts-martial :

● The Accused is an army personnel. ● The prosecution is done by the Army. ● The judges are fellow army officers of the accused. ● The proceedings are held in the premises of the Army and are not public.

Courts-Martial proceedings under the Army Act are an internal matter of discipline. It deals with insubordination, cowardice in the face of the enemy, and other matters of this nature.

It has no relevance from the view point of justice to the victims and survivors of crimes committed by armed personnel. Even so far as courts-martial proceedings are concerned, for a rape survivor to go into the intimidating headquarters of the army unit and give evidence to the fellow officers of the accused is a near impossibility.

In all cases of crimes committed on civilian people, **justice for the victims and survivors demands that the criminal cases should be dealt with exclusively by the ordinary District and Sessions Courts and not left to court-martial proceedings by the Army.**

which leads to Baramulla. Sopore and Kupwara districts have long been seen as a 'hot-beds of militancy'. Police (including the SHO) from Sopore, within whose jurisdiction Haigam falls, came there. They were trying to persuade the demonstrators to disperse when the men of an army truck that was held up got impatient. They demanded that the people should disperse immediately or else face their bullets. When the people refused, the jawans got down from the trucks and hit them on the heads and backs with rifle butts. This went on for about ten minutes, but the demonstrators would not move. The army men then got ready to open fire. The SHO, Sopore, Khurshid Ahmed, who was there with his force, intervened and begged the jawans not to open fire, promising that he would talk to the demonstrators as he was convinced that he could persuade them to disperse. The army did not heed him and opened fire, which carried on for ten minutes. In fact, they opened fire so indiscriminately that the SHO himself would have been killed, but for the brave act of one villager, Safdar Ali Dar (22) of Budgam, who tried to shield the SHO and got killed in his stead.

The other three killed included two women: Atiqa Begum (35), mother of five children, and Bilqisa Bano (22), a second year BA student at Sopore, both from Haigam. Manzoor Ahmed Parra (18) a shopkeeper of Amberpora, Trez, was the third victim. Bilqisa was beaten prior to the firing and had fallen down. She was trying to ask for water. It was at that moment that she was fired at and killed on the spot. Atiqa rushed to her help and was also hit by bullets. She died later on the way to the hospital.

The firing was clearly not aimed below the knees, as per the rule, and those killed were shot on the upper part of their body. About 30 to 35 other demonstrators were also injured, two of them (Ghulam Mohammed Dar of Hanjipora and Samir Ahmed Parra of Haigam) seriously. They had fractures in the legs and even three months after the incident, were still unable to walk

Eyewitnesses were unable to clearly identify the Forces who fired on the peaceful demonstrators, though they suspected the Rashtriya Rifles. There was apparently a UN car, and a camera man also with the convoy which had halted.

The entire episode which took place at about 12 noon in Haigam, was telecast on Zee television

at 2.30 p.m when residents of Haigam staying in Delhi saw the brutal attack. The action of the army was contrary to even the draconian Armed Forces (Special Powers) Act. The Act says that the army is deployed to *assist* the civilian authority, *not to supplant it*. When the local SHO requested the army to leave it to him to handle the situation, the army had no right to brush his advice aside and proceed to deal with the crowd, quite apart from the fact that they behaved brutally in doing so.

The aftermath of the senseless massacre is worth a mention. The police of Sopore have registered an FIR and the Superintendent of Police, Baramulla district, is said to be personally investigating the case. Nothing much is likely to result from the investigation since army personnel in Kashmir refuse to submit themselves to investigation by civilian police. We will see this in greater detail below when we discuss the conversation we had with the Senior Superintendent of Police, Pulwama district. The army too has undertaken an inquiry into the firing. Significantly, this inquiry took place inside the 22 RR camp at Baramulla. People had to go there and depose against the army authorities in the presence of some of the same personnel who were involved with the incident. Even so the people went and identified one Major Jha as the main culprit in the Haigam firing. While giving their depositions the people requested that the local police should also be present as assurance that their statements would be properly recorded. This request was rejected.

It is reported in the Press that the army has initiated action against some personnel including Major Jha for the Haigam firing. We could not cross check this with the army because the interview we sought was first fixed and agreed upon, and then refused on the ground that we "did not give them sufficient notice". But we may take it as true, giving the army benefit of doubt, that action in the form of court-martial has indeed been initiated in the matter.

However, what is noteworthy is that the army chooses the incidents to investigate, is its own prosecutor and judge in the matter. They do not respect the proper procedure, i.e. let the police investigate and a civilian court try the offence. A decade ago the army would acknowledge no atrocities by its men and would prosecute none. Now it acknowledges a chosen few and prosecutes and punishes the offenders in the manner and by the procedure it

deems fit. The one is as arbitrary and unacceptable as the other, notwithstanding that the army is able to show a few court-martials today to the credit of its 'human rights awareness'. We will say more about this later.

The State government has also ordered a judicial enquiry into the Haigam firing. A retired District & Sessions Judge, O.P.Sharma, has been appointed to conduct the enquiry. The Commission, we were told in the village, has asked for affidavits to be sent by post to the office of the Deputy Commissioner, Baramulla, and seven affidavits have been sent by the villagers. Justice Sharma had however not visited Haigam till the end of May. His report was supposed to have been ready within 2 months. Three and a half months had passed after the incident when we went there. The report had not been completed till then. Haigam has lost hope that any action will be taken against the guilty.

The Commanding Officer of the army camp at Sopore is said to have 'apologised' for the incident. Routine harassment of villagers by the army continues. The Chief Secretary admitted that the Haigam incident was a 'bad one'. A compensation of Rs. 1 lakh each has been paid to the families of the victims by the Sub-Divisional Magistrate (SDM).

A crime committed by an ordinary citizen would be followed by a single investigation and trial. If the police do an honest job and witnesses do not lose courage, punishment follows. This crime committed by the army has seen three enquiries: an FIR registered to be investigated by the S.P., Baramulla; an enquiry by the army; and a judicial enquiry. The witnesses are determined to tell the truth, nothing but the truth and the whole truth if they are put in a witness box. And yet punishment to the perpetrators of the heinous killing is nowhere in sight!

2.3 'VENGEANCE' KILLING

In the last decade there have been a number of instances in Kashmir wherein the Forces have indulged in retaliation upon the civilian population when attacked by the militants. These incidents have drawn a lot of criticism from not only human rights groups but also local political leaders and the Press. That the army is aware of this criticism is evidenced by the fact that very often its Press notes relating to a grenade attack or a rocket attack upon

the Forces ends with the self-satisfied claim that 'the Forces did not retaliate'.

But they do retaliate – and all too frequently.

We have referred above to the tehsil town of Sopore, and commented that it is regarded as a 'hot-bed' of militancy. Even during the cease-fire, this town was practically taken over by the army at dusk. Any civilian moving out after dusk has to carry a lantern to indicate that he or she is a civilian.

New Colony, Sopore, is a locality of the well to do. Shakeel Ahmed Bula (28), a resident of New Colony, was killed by men of the 88 BSF on the evening of 8 May 2001. Bula was shot dead from behind just as he was at the entrance of his *mohalla*. He is survived by his wife, old parents and two small children, a girl of two and a one year old boy. Bula was a wholesale dealer in tea.

There had been a grenade attack on the Sopore police station that evening. Nobody was injured in the attack, but immediately the 88 BSF stationed in the Town Hall got into the act. People cleared the streets immediately and the BSF occupied the streets. Bula, living in the quiet New Colony, did not suspect anything. He went out at about 7.30 p.m. to buy some meat and was just returning at about 8-15 p.m. when a BSF truck full of jawans of 88 BSF entered his street. It appears that the BSF men were already there in the street and were checking the identity cards of the people going about. Just as Bula was opening the door at the entrance of the lane, the BSF men fired in the air and then directly at him. He was hit from behind by bullets fired by the BSF. The bullets pierced his body through the back and came out from the side. After he collapsed upon being hit (some of the bullets passed through the tin sheet surface of the door, making holes in it) he was mercilessly beaten with rifle butts and was dragged 20 yards to the truck in which he was taken to the hospital. The visible bullet holes in the tin sheet surface of the door bear testimony to it.

Initially the BSF men took him to the local Government hospital. Bula was alive and conscious at that time, though he was bleeding heavily. He could give his address and phone number as well as identify the officer commanding the BSF party as one K.N.Singh to the doctor on duty, Dr. Zuber Firzol. The doctor then informed his family. While in the hospital Bula also gave an account of the incident

directly indicting the BSF in front of the doctor and his relatives.

As Bula's condition was far more serious than the facilities available in the hospital at Sopore, Dr Firzol told the BSF personnel to take Bula to a big-ger hospital without further delay. Even though the army has good hospitals at Baramulla and Dragmulla which are closer to Sopore than Srinagar, the BSF chose to take the bleeding Bula to Srinagar. Along with him they took four persons from his mohalla, Shaukat Salim Bula, Mohammad Afzal Bula, Mohammad Ashraf Bula and Ghulam Qadir Lara. They are witnesses to the fact that on the way their truck was needlessly detained for about one hour at Pattan, even though Shakeel Ahmed Bula was fast losing consciousness. By the time they reached the Sher-e-Kashmir Institute of Medical Sciences hospital at Srinagar, he was dead.

An interesting bit added by Shakeel Ahmed Bula's elderly father Sonaullah Bula is that according to eye witnesses at the spot of shooting, the commanding officer K.N.Singh took out of his pocket a bullet and told a jawan to put it in the bleeding man's pocket, but the jawan refused. The BSF subsequently tried to show that Shakeel was caught in a cross fire – the total absence of bullet marks on the opposite side of the road weighs strongly against this version.

The killing of Shakeel Ahmed Bula is a case of the BSF going on a shooting spree in Sopore town in retaliation to the throwing of the grenade in the town. As a matter of fact, nobody was injured in the grenade attack, and yet the vengeance took one life.

Though the killing of Shakeel Ahmed Bula is as much a wanton act of homicide as the Haigam firing, no action has been taken in this case. His family filed an FIR on 9 May but neither a police investigation nor an army enquiry, much less a court martial is in progress. It is difficult to find any objective reason for this. It only illustrates our point that even though there are a few instances now where the army takes action against its personnel who indulge in human rights violations, it is the army that is the arbiter in the matter of which violations are punished, and to what extent. This is not rule of law but of convenience – to obey the law once in a while.

Another major instance of 'vengeance' firing is the Magam incident of 9 May. Magam is a big,

predominantly Shia village with a population of nine thousand people in Budgam district, on the road from Srinagar to the tourist destination of Gulmarg. The incident of firing itself has not attracted much attention but a sequel to it that happened on 10 May has received extensive coverage because it involved the thrashing of Press people.

The trouble actually started in Magam with the firing by STF on a religious procession taken out by the villagers on the occasion of Muharram (1 April). STF soldiers on way from Srinagar to their camp at Tangmarg, upon seeing the nearly 10,000 strong crowd comprising men women and children started beating up people and fired at them indiscriminately injuring 17 persons, 3 of them seriously. An FIR was lodged against the STF with the SHO himself naming some of the personnel. But the youth of Magam continued to be agitated. On 5 May an STF camp was set up in the village.

At 6-30 p.m. on 9 May a *fidayee*, Shoukat Ahmed Khanday, a resident of Tangmarg, pushed a *malai kulfi* cart containing an explosive device to the BSF camp in Magam. He exploded the device and was killed when it detonated. A BSF officer Pramod Kumar, as well as seven civilians died on the spot. However, as the BSF men in the camp started firing immediately after the blast and continued to do so for about an hour, it is not clear as to how many of the civilians died in the blast and how many in the firing. The seven killed are: Mohammad Asghar Wani and Ali Mohammad Wani, shopkeepers of Watmagam, Asmat Bano a class VIII student, also of Watmagam, Bashir Ahmed Khandey of Kunzer, Najmul Islam of Kanihama, Shabir Ahmed Dar of Pet Kanihama and Wali Mohammad Bhat of Bamburada. A lot of people were injured on the spot, four of whom were still in hospital when we visited the village on 27 May. Of them, an 18 year old TDC (class XII) student Bashir Ahmed Sheikh lost his eyes, whereas Nusrat Bano, sister of Asmat Bano, a class VII student, lost three fingers.

Though we made enquiries at the Magam police station about the nature of the injuries on the dead bodies, to ascertain how many of them died in the blast and how many in the immediate firing by BSF, we could not get the required information. We were told that the entire file of the case (No 41/2001, PS Magam) including the *panchnama* and autopsy reports was with the Superintendent of

Police, Sopore, who is investigating the case. However, it is clear that at least some of the civilians would have died in the explosion. Such killings of civilians by militants in grenade or other explosions in public places is a matter of great concern. In many cases explosive devices are planted in public places ostensibly with the Forces as target, but civilians who are non-combatants also get killed. Such killings, even if militants argue that they are unintended, must be condemned. The very method of using explosive devices in public places results in such fatalities, and it is therefore no excuse to say that they did not intend to kill non-combatants.

Immediately after the blast the BSF went around the village in a vengeful mood, firing indiscriminately. Ghulam Mohammad Bhat, a newspaper vendor, near the Magam police station, and Ghulam Mohammad Dar, an auto-driver on the main road were killed.

There are eyewitnesses to the auto-driver's killing. He did not belong to Magam, but was a resident of Qamarwari in Srinagar. He had brought some passengers to Magam on that fateful evening and was merely passing near the entrance of the village when the BSF men, who were going round the village letting bullets loose upon the streets and houses, fired upon his vehicle. A bus from Srinagar had entered the village just then and was very close to the auto-rickshaw. The bus passengers saw the auto-rickshaw being fired upon, and the driver Ghulam Mohammad Dar being killed. They told us that the BSF men also fired at the bus but fortunately there were no casualties.

The next day, the Press from Srinagar went to Magam. The dead bodies were still there when they reached the village. The people put the dead bodies in the chowk and were demonstrating against the arbitrary firing by the BSF. They intended to take out a procession, but even before they started, the BSF lathi charged the crowd, not sparing even the journalists. In fact the Press and media personnel were very badly beaten and their photographic equipment was destroyed. This assault on the Press attracted wide comment and condemnation, but the incident of the previous day went without its due attention in the Press. The people of Magam were very resentful about this. They told our team that the television channels seemed much more concerned about the breakage of cameras and equipment rather than the loss of human lives at Magam.

As one resident of Magam said, the manner in which the Press reports incidents in the valley the full import of what actually happens does not get conveyed.

The people of Magam had been observing a continuous hartal since the day of the incident although a cheque of Rs. 1 lakh had been paid as ex gratia payment to some of those killed in the *fidayee* attack. Until the day of our visit (27 May) nobody, 'not even the naib-tehsildar or the local MLA' had visited them to share their grief; only the Hurriyat Conference leaders had come. 'How can they (the government) claim to govern us?' they asked us.

At the Magam police station we came to know that four BSF personnel are named in the FIR and they have been suspended. The Superintendent of Police, Sopore, is investigating the killing. But it is most unlikely that the BSF will cooperate with him to put the guilty in the dock. It is rarely that cooperation is offered by the security forces. Failing that, whether the suspension of the killers will end in benign revocation or a punishment commensurate to the crime depends entirely upon the will and pleasure of the BSF. Such 'accountability' is a mere sham and is a mockery of the justice which the people seek.

2.4 HUMAN SHIELDS

There are instances where the truism, that 'people in militancy affected areas are caught between two guns' is literally true, thanks to the armed forces using the common public as a shield to protect themselves from attacks by militants. One such incident was widely reported in the Press, and we give it here as an illustration, without testifying to its veracity in all respects, because our team could not investigate it for want of time. The incident occurred at Dandipora near Kokernag in Anantnag district on 24 April, 2001. There was an attack upon a contingent of Indo-Tibet Border Police (ITBP) by militants. Many of the ITBP men were injured. A passing bus was commandeered to take them to the hospital. The ITBP men forced some women to get into the bus with them as a shield against further attacks on the way. The militants fired at the bus killing a six month old child Imtiaz Ahmed who was in the arms of his mother who had been forced to board the bus upon the order of the ITBP contingent.

State Human Rights Commission

The first half hour of our meeting with the chairperson of the SHRC was almost straight out of a Kafka novel: bells rang, various officers and clerks were summoned, people scurried up and down the staircases and in and out of the the chairperson's office and Justice Parray got more and more agitated at the files he was shown and figures that the files contained. His staff could hardly understand, or obdurately refused to understand, what he was getting agitated about – that according to the figures only four 'cases' had been dealt with since he had taken over as chairperson on 15 September 2000. Parray got angrier by the minute at his lackadaisical staff: 'These figures are not accurate', he said to the officer who brought in the files: 'where are the cases I've recommended? Only four cases dealt with by me? What do you mean? *Ham kya gajar mooli kat rahe the?*' Finally, one of his staff shuffled in with another file. The figures in this were more updated, though still not accurate in Parray's view. Anxious about the kafkaesque drama proceeding any further, and before he could send for more files, we told Parray that we had a few questions which did not require figures and so we ultimately got on with our meeting.

The J&K State Human Rights Commission was set up in December 1997. The State government officials take great pride in the fact that 'they' took the initiative in its setting up – as if that alone was proof of their commitment to human rights in the state. Meant to be an autonomous commission – even though all appointments to it are made by the State government – the J&K Commission is rendered more ineffective than elsewhere because it is dogged by a basic dispute about its jurisdiction. While Parray is of the view that the Commission has jurisdiction over human rights violations committed by the army, the army believes otherwise as they claim to be 'protected' by the Armed Forces Special Powers Act, in operation since 1990. Parray pointed out that they were deluged by a flood of complaints against the army and other para military forces – collectively described as the security forces – and he believed that the Commission could both investigate and recommend action because it had the power to enquire into any violations performed by those in 'authority'. On the basis of the meaning derived from section 21 of the IPC the army and para military forces fell within the term 'authority'. Further since article 152 of Indian Constitution has specifically excluded J&K from the definition of 'state' in Part VI of the Constitution, which is not like other states, the army was not exempt from being regarded as 'authority'. The army disputes this interpretation: initially the army used to at least respond to the notices issued by the SHRC; now they do not even bother to do so. Instead they demand that the cases be routed through the NHRC, where the legislation setting it up specifically excludes the army and so they become exempt from investigation.

And if this controversy about jurisdiction does not create a sufficiently bizarre situation as far as the Kashmiri people are concerned, where the main perpetrators of the human rights violations are the security forces whose innumerable violations cannot then be investigated, the SHRC has only one investigating officer! Either way, therefore what investigative powers does the Commission have? Further they have no powers of punishment – only recommendatory powers and so it has ended up as a toothless body recommending compensation in cases which are not controversial – in killings by 'unidentified' persons or the killings of innocents in crossfire. In the case of all other human rights violations, rapes (for which the army has its own mechanisms of punishment, and where the proceedings are conducted by itself, on their own premises to which women do not wish to go) and encounter killings by the security forces, Parray believes that justice will ultimately only be provided by the uparwala—the Almighty!

But there was another incident, which we were able to investigate. It happened at Zazna village in Ganderbal tehsil, Srinagar district. Ganderbal is on the Srinagar-Leh highway, and Zazna is quite some distance off the highway. There is a lift station maintained by the State's Irrigation Department near Zazna, and a 5 RR camp. At about 12 noon of 17 May 2001, a contingent of 25 men of the 5 RR came to the lift station. The outer gate was locked. They broke open the lock and came in and asked three of the employees on duty at that time to accompany them. The story they gave was that some militants had escaped along a path near the lift station, and the workers should help the army locate them. Mohammad Sultan Ittoo (pump operator), Habibullah Dar (gate operator) and Ali Mohammad Ganai (gardener) went with them. After walking some distance along an unfrequented pathway, they came upon an olive green cloth bag. The army men directed these irrigation department workers to open the bag. They refused and argued for half an hour. Finally they were coerced by beatings and threat to kill.

The RR men then took position behind three *badaam* trees and aimed guns at the workers. Mohammad Sultan Ittoo pressed one of the buttons. When nothing happened, he pleaded with the jawans that he would not press the second one. But the jawans aimed their guns and threatened to open fire. As soon as he put his hand on the other button, it exploded. Ittoo died on the spot. Habibullah Dar who was by his side suffered serious bleeding injuries, and Ali Mohammad Ganai who was at a slight distance was also badly injured. He sustained a compound fracture in his right upper arm. For one hour the injured and bleeding Dar and Ganai lay there. According to Ganai one army man told him, "You too die here". An hour later the army men brought a taxi there and after beating the taxi driver forced him to take the two injured men to the Government hospital at Sumbal. No army man accompanied them. At Sumbal, Ganai informed Dar's sister who happens to live there. The doctor at Sumbal directed the two to be taken to Srinagar. Dar's sister shifted him to SMHS (Hospital), Srinagar, where he died at 2-30 that afternoon. Ganai was admitted to the Bone and Joint Hospital, Srinagar where he was operated upon. He was still in bed at his home in Waqoora near Zazna when we met him on 28 May. He is an eyewitness and a victim of the ar-

my's indefensible method of using non-combatant civilians as a 'shield'. Ganai's statement with full details of the incident has been recorded by the Ganderbal police. If the killers had been anybody else they would have been securely behind bars by now, but catch the Ganderbal police locking up a RR jawan!

The Ganderbal employees had struck work to protest against the killing of their co-workers. A compensation of Rs. 1 lakh has been given by the government to the families of the deceased and jobs have been offered to members of their families. The C.O of the 5 RR is also said to have visited the aggrieved families. But Ganai, the sole survivor, has not been given any compensation nor any money for his treatment. The sole earner in a large family, he had already spent Rs. 10,000/- on his treatment when our team visited him. The doctors have told him to continue his medication for at least 3 more months. Incapacitated by his injuries he was also unable to go to work. To add insult to injury a few army officers had come to his house and offered Rs. 5000/- to Ganai for his treatment and said that this was all 'the will of God' (*yeh upar wale ka karm hai*).

An FIR has been filed against the army in the Ganderbal P.S, on the basis of the statement given by Ganai in the hospital at Sumbal.

2.5 RAPE AND MOLESTATION OF WOMEN

In Kashmir as in every other place, it is difficult to get people to talk in specific terms of sexual assault on women by the police or the armed forces. There are frequent allegations in the Press, and the fact that the incidents are often followed by demonstrations and *bandhs* indicates that the allegations reported have a basis. Yet getting people to speak of concrete instances is not easy. Perhaps the presence of women in our team made it possible for some women who had experienced sexual assaults to speak openly and in detail about their encounters with the security forces.

We heard the most horrifying stories in Doda. The district has been affected by militancy and has suffered human rights violations by the armed forces – for more than five to six years now. Hardly any human rights teams had visited the district till we went there on 30 and 31 May this year.

Raja Begum (43 years) and her daughter Gulshan Bano of Baldarri (near Bihota village, Marmatt, Doda) have been subjected to gang-rape, assault and repeated harassment by the armed forces. These brutalities are commonly borne by women in areas of armed conflict as in the mountainous Marmatt region of Doda. About three years ago, there was a grenade explosion near their house in Baldarri. Shortly thereafter, the army personnel of 322 ADA came to their house in large numbers, apparently in search of Raja Begum's husband and sons. Her husband was not at home, and her two sons were working as manual labourers in Himachal Pradesh. The army took the mother and daughter into separate rooms in the house and gang-raped them. Gulshan was then about 16 years old. Then they took the two women to the army camp at Goha, blindfolded them and detained them for five days and raped them repeatedly. Then they were shifted to police custody and detained for four days in Doda and four days in Bhaderwah and were finally released. There was a big protest demonstration at Doda, leading to the lodging of a FIR by the police. A medical examination was done, but the doctors turned in an inconclusive report. The army did not hand over the crucial evidence of Gulshan's blood stained salwar to the police.

The harassment of the family continues. When two of Raja Begum's sons, Farooq and Farman Ali, came home from their place of work in Himachal Pradesh in the latter part of the year 2000, the army took them away saying that they were involved in a bomb blast. They were detained in the Joint Interrogation Centre at Jammu for twenty-five days and tortured severely. According to a local journalist, the intervention of Amnesty International got them released. They are now too scared to come back home. Raja Begum and her daughter Gulshan are being coerced to retract their complaint. On a complaint made by them, the SHRC is conducting an inquiry into the matter. Even if the SHRC records a clear cut finding, no action will be taken against the guilty. And yet the pressure on the two women continues. Some times they are threatened and some times they are offered the inducement of jobs to Raja Begum's sons. There are other women who have been similarly assaulted by the Forces, but they are unwilling to speak out, says the courageous Raja Begum. At nearby Bihota village where there has been an army camp from the year 1994 we

were told of an officer of the 19 Sikh Regiment who used to freely enter houses and molest women. He is said to have raped 26 women before he was transferred as a consequence of protests lodged by the villagers outside the office of the Deputy Commissioner, Doda.

Razina Begum of Bihota, whose husband Ayub joined the militants three years ago, wept uncontrollably as she spoke to us about the harassment she has suffered at the hands of the army that has been camping in the village for the last seven years. Because her husband had joined militancy, the army men of the camp had an excuse ready for raiding her house at odd hours and calling her to the camp whenever they pleased. She spoke of an incident that happened on the 29 October 2000. Other women of Bihota also told us about it. There was a cordon and search operation in the village by the 15 Bihar Regiment from the camp at Butungal near Baldarri. One woman from the village was picked up and taken away to the camp. On 30 October 2000 about twenty women with a few men from Bihota went to try and get her released. These women were in turn detained for four to five hours and sexually assaulted and molested. They were released only at 8 p.m. on 30th October. "After that we went in a delegation to the Deputy Commissioner and the Senior Superintendent of Police, Doda. There were more women than men in the delegation. But in spite of relating all that happened to us, in spite of the fact that our complaint has reached as far as the Home Ministry, nothing has happened" an angry Razina said to us.

Even as we were talking to the villagers in Bihota on 31 May 2001, a contingent of the 8 RR was setting up camp due to the end of cease-fire, beating and picking up young men while setting up camp there. The initial hostility between the human rights activists and human rights violators got diffused into Telegu speaking camaraderie. The RR jawans and a number of the human rights team were from Andhra Pradesh. The fact of our being non-Kashmiri was what really prevented us from harassment by the security forces (not just in the village in Doda but all over J&K). On 1 June, 2001 three women of Bihota who had spoken to us about the routine aggression and violence and also about the mass sexual assault at Butungal, were raped and then taunted by 8 RR jawans: "Where are your Human Rights protectors? They have gone and

nobody can now protect you from us." Following the rapes the women – Sakina Begum (w/o Mohammad Din Bhat, r/o Bihota), and her daughters in law, Naseema Begum (26 yrs, w/o Abdul Jabbar) and Hasina Begum (18 yrs, w/o Reyaz Ahmed Bhat) were taken to the district hospital, Doda, for treatment. An FIR (no. 59/2001) was also lodged at P.S Doda, under section 362,452,382,149 RPC (Ranbir Penal Code). No action has been taken against the accused. The medical report too appears to present a watered down version of the violation. Complicity of the police in the circumstances would not be surprising. (See Annexure 3 for testimonies of victims).

Apart from rape, sexual assaults are common in the remote villages of Doda. Mangota is a village near Bihota lower down on the same range. Fatima Begum of that village narrated to us an incident that happened on 16 March this year. Around 20 STF men entered the village at about 10-30 a.m. As this was during the cease-fire period the army camps had been replaced by STF camps. Three of the policemen assaulted Fatima Begum and her daughter in law Jameela, a deaf and mute person. Jameela managed to lift a thick stick and threaten them, or else they would have been raped. Fatima Begum said to us that whenever the STF comes to the village the men are driven away and then 'it is their *raj*. They do as they please. They demand food and if we resist they beat us. If the women also run away to escape them, they destroy the household goods'. Molestation is common on such occasions. There are many *nallas* close by. After they take the women there, who is to stop them?'

Alai Waripora, a remote hamlet in Kreeri police station limits of Baramulla tehsil and district in the valley, has been witness to an equally horrible incident. On 13 April this year men of the 29 RR raided the village, ostensibly looking for militants. It was only later that their sinister purpose became clear. Having surveyed the hamlet in the afternoon, the army men came back late in the night. They dragged out three women whom they had spotted that afternoon. In spite of the remoteness of the village and the fear that the presence of the army must have struck in their minds, a few of the villagers protested. Mohammed Sultan Alai (65) and Ghulam Hassan Alai (28) came out and protested. They were shot dead on the spot. The RR men went on firing in the dark for a long time to scare the villagers.

Then the three women were taken away to the camp of the 29 RR. The next day, a huge crowd of people from Alai Waripora and neighbouring villages gathered on the Baramulla-Srinagar highway and protested. It was only as a consequence of the protest that the three women were let off at noon. Only one of them, Aisha Begum is known by name as she has lodged an FIR against her assaulters. The villagers are not admitting that two others suffered the same fate. We could gather the full details only from the people of Kreeri, which is located three kilometres away from Alai Waripora.

The Press has reported that action has been taken against one officer of the 29 RR for the incident. But the details remain shrouded in mystery. Moreover, the selective method of taking action destroys any element of accountability. It becomes merely a tactical act to do some thing, or at least give the impression of having done some thing when there is a major well-publicised protest. But the strategy seems to be to keep the actions as opaque as possible so that nobody will know if the action taken is really substantial, and no one is sure that it will not be reversed.

Mehbooba Mufti, Vice-President of the People's Democratic Party (PDP) and MLA from Pampore in Anantnag district, told us of quite a few instances of rape in which no action was taken in spite of specific complaints. Mufti is one of the few 'mainstream' politicians (mainstream in Kashmir means those who accept the State's accession to India as final) who have taken a public stand against atrocities of the armed forces and other undemocratic acts perpetrated by the State and Central Governments in the course of tackling the ongoing movement. She told us of Mariam w/o Mohammed Hussain of Patnazi in Kishtwar tehsil, Doda district, who was raped by men of 26 RR. She lodged a complaint of rape (FIR No. 20/2000), but no action has been taken till now. Nafeza Begum and her daughter Kulsum Bano of Nowgam, Banihal tehsil, Doda district were raped by the Forces in the course of destroying their house. They lodged a complaint against the Forces on the ground of destruction of property as well as rape on 16/12/2000, but no action has been taken till now. Saira Begum of Kantoi, Kishtwar tehsil, Doda district was raped by an officer of the 10 RR. She lodged a complaint on 7/2/2000, but no action has been taken. Mufti said that of all the crimes committed by the

Forces, rape draws the least response in terms of investigation and punishment since there is no pressure upon any of the authorities to take action. She was particularly critical of the State government: 'Even if they cannot control the army they should at least control the SOG and the surrendered militants'. On the contrary, she felt that the State police are worse than the army, since they do nothing but harass and loot the people. She made the point that we too would like to emphasise: 'In some cases the State claims to have taken action. But if action is taken, it should be seen to have been taken'.

2.6 CUSTODIAL KILLINGS

The greatest number of complaints of human rights violations in the cease-fire period have been about custodial killings. Thanks perhaps to the consistent campaign by the local Press and the Hurriyat Conference, the expression 'custodial killing' has gained wide currency in Kashmir and almost everybody understands it without translation.

We have already referred to the custodial killing of Jilil Ahmed Shah as the prelude to the Haigam firing. We investigated three more incidents, two in Srinagar city and one in Pulwama district.

1. Sixty five year old Ghulam Mohiuddin Pandit of Mohanpora, Shopian tehsil, Pulwama district, was a most unlikely 'militant'. He was a scheduled caste farmer with just two canals (a quarter of an acre) of land, a horse which he rode to transport goods for hire, and a family of eleven to support. On 21 Feb 2001, the army men of the 1 RR camp at Ahgam asked Pandit and the *numberdar* of Mohanpora to come to the camp. As the *numberdar* was away, Pandit took the *numberdar's* son Manzoor Ahmed Khandey with him and went to the RR camp. At the camp Pandit was beaten non-stop from 3 pm to 5 pm on the allegation that he was sheltering militants. The *numberdar's* son was also beaten but not to the same extent. Pandit's intestines, bladder and pancreas were severely damaged.

Seeing that his condition was serious, the Forces sent him home at 5 pm. He was unable to walk back from the camp and had to be carried to the village. From the village the people took him to Srinagar with the assistance of the Shopian police. He died the next day at the SMHS, Srinagar. A complaint was lodged by the family of the deceased at

the Shopian police station. Mukesh Singh, the Senior Superintendent of Police, Pulwama district, admitted that Ghulam Mohammad Pandit's death was a case of custodial killing. He, however, stated that there would be no further investigation of the case since the complainant (probably the *numberdar's* son) had himself turned 'hostile' (the term used by criminal lawyers to imply withdrawal of the case). He also accepted that this was likely to have happened out of fear of the army. But when the SSP was asked, "Does not the Police Department have a duty to give protection and support to complainants and witnesses who are threatened by the accused, more particularly an armed and organised accused?" he responded in an outburst of candidness, "What can we do? We are one hundred and the army is three thousand. They are in the villages, and we are here; I cannot change their decisions", he added. In other words, the only custodial death that the SSP of the district accepted to have taken place is not likely to result in any justice because the army men who killed the deceased have successfully threatened the complainants and witnesses to stop talking about it. When the police abdicate their responsibility so completely, the victims of custodial killings have no hope of justice from any quarter.

In fact, the fear the army had put in the hearts of the people of Mohanpora was palpable. It was perhaps our good fortune that we went to Mohanpora while the afternoon *namaz* was being read. All the adult males were in the *masjid*, and it was the young boys and girls who talked to us, and they talked freely enough, telling us the above facts and much else about life in rural Kashmir. When the adults came out of the *masjid* as we were leaving, they begged that we should excuse them for not telling anything, but have a cup of tea and go away without questioning them about Ghulam Mohammad Pandit's killing.

2. Aijaz Ahmed Kitab was a resident of Al Noor colony of Ilaahibagh, Buchpora, on the northern outskirts of Srinagar city. He was once a militant but had surrendered. His health was very badly damaged due to the torture he had suffered. On one occasion he was jailed under the State's preventive detention law, the Public Safety Act (PSA), and released after three years when the detention was quashed by the High Court. [The PSA is among the most undemocratic of legislations in the country

which permits detention without trial for upto two years for "creating hatred on grounds of region or community", among others.] Kitab was arrested again on 4 April 1998 by the 'Cargo' unit of the Special Operations Group (SOG) of the State police. He was tortured severely for forty days. Then he was handed over to the M.R.Gunj police station, Srinagar, where he was tortured for another twenty days and then remanded to the Central Prison, Srinagar.

The torture he suffered had damaged his kidneys irreparably. It is a fact known to Kashmiris for more than a decade that the torture known as 'roller treatment' in the parlance of the police has the effect of causing renal failure which can lead to death. Human rights activists know that the police use this method of torture all over India, but nowhere else has it resulted in the kind of irreparable or fatal damage as in Kashmir where the army (and recently the SOG too) uses it with brutal intensity. Kitab's medical case-sheet shows that his left kidney was 36% and the right kidney 64% dysfunctional.

In jail he took treatment for his ailment, but he needed the co-operation of the prison authorities to visit hospitals for the tests and treatment that were beyond the capability of the prison's doctor. When the cooperation was not forthcoming his lawyer Nazir Ahmed Ronga, who happens also to be president of the Kashmir Bar Association, moved the SHRC. It worked just once: upon the SHRC's order the authorities of the Central Prison, Srinagar, sent Kitab with an escort to the SMHS. But when the same thing happened again and Ronga moved one more petition before the SHRC and obtained one more order, the prison authorities merely ignored it. This is perhaps as much a comment on the limits of the State Human Rights Commission as on the predicament of prisoners with serious ailments.

Kitab was released by the court on bail on 17 October 2000. This March he got married to Raja Begum, a police constable whom he seems to have met in the course of his visits to court under police escort. He was in fact afraid to come back and stay at home after his release, but it was his wife-to-be who reassured him. She requested Deputy Superintendent of Police, Devender Singh of the SOG, who was the officer who had earlier tortured Kitab most brutally, to give him some kind of a testimonial so that he would not be harmed by any other police officer. It is not unusual that a police officer

who tortures a person most severely becomes his patron and protector thereafter, and the victim acquires some kind of a claim on his good offices. Devender Singh gave her a piece of paper signed by him, saying that in the event of any officer arresting Aijaz Ahmed Kitab, that officer should contact him. Despite this, and despite the fact that he had completely left militancy and was in fact spending several days in a month in hospital, Kitab believed, on the basis of the experience of others who had tried to leave militancy and lead a normal life, that the Forces would not let him be. He was often in great pain due to his dysfunctional kidneys and would say to his wife: "If they do pick me up again they should kill me at one go - I hope they will not torture me any more, I will not be able to take it".

After a while Kitab joined Shabir Ahmed Shah's Jammu and Kashmir Democratic Freedom Party (JKDFP), a party that has disavowed violent methods of struggle for *azadi* and believes in a political solution. Shabir Shah was the only prominent Kashmiri leader to talk to K.C.Pant, the Government of India's emissary to Kashmir, a fact that even led to derogatory comments of 'collusion with India' being made against Shah by the Hurriyat Conference. But even before Pant's visit, Shah has been a consistent advocate of a political solution through dialogue. If nothing else, that should at least have saved his cadre from fake encounters and custodial killings, but Aijaz Ahmed Kitab's decision to join JKDFP possibly for protection from being killed by the police did not work.

On the afternoon of 19 May 2001 Kitab had gone to his party's office at Rajbagh in Srinagar. He came out of the office at about 4 p.m. Accompanying him was a person whom he himself had introduced to the party a few days earlier saying that he would be useful as an office boy. Nobody knows his name, or his whereabouts after Kitab's killing. As they came out of the office, Kitab was picked up by a vehicle identified as a Maruti Gypsy. At 8.15 p.m. that night a message was sent from the Rajbagh office of the JKDFP to a public telephone booth on the Buchpora-Hazratbal main road in Ilaahibagh, to inform Kitab's family that Kitab had been taken away. As Kitab had a pager with him, his wife Raja Begum immediately tried to contact him on the pager, but her message was not received. She went out from her colony to the main road and made phone calls to all the SOG officials

she knew. Deputy Superintendent of Police Devender Singh was of course the first person she contacted, and he said that if Kitab had been taken away by the police or the Forces he would not survive because there was a reward of Rs 1 lakh on his head. This is a telling comment on the nature of extra-judicial killings in Kashmir: the reward announced by the Government for a militant, or in this case an ex-militant, is an incentive to the Forces to kill him.

Raja Begum persisted and used all her connections as a police constable to save her husband's life. But even as she was making frantic calls from the public telephone booth, she saw a Maruti Gypsy and some cars rush past the booth. She noted the number of the Maruti Gypsy. It was JK01A 7973. After a while she heard shots. The time was 10 p.m.

The next morning she went to the Rajbagh office of the JKDFP, but they could tell her nothing more than what they had conveyed the previous night. She rang up Devender Singh again, and he said two things: Kitab was not yet dead because he (Devender Singh) was in the CID and he would know if he had been killed; two, if Kitab had survived the night, he (Devender Singh) would hand him over to her that day. He was wrong, as Raja Begum learnt a little later. Deputy Superintendent of Police Jagtar Singh of the SOG, Ganderbal was the officer who had taken away Kitab and had killed him that very night within the hearing of his wife. The road from Srinagar to Ganderbal lies along Buchpora, and Jagtar Singh appears to have killed him on the way and gone off to his headquarters. Raja Begum believes that the shots she heard as she was at the STD booth on the night of 19 May were the ones that killed Aijaz and that the Maruti Gypsy she saw was the one in which he was brought to the site of the killing. According to the newspapers which carried the official version, however, Kitab was killed in an 'encounter'.

Raja was able to see the dead body of her husband of less than 2 months only the following morning. Kitab's body had severe injuries on the back of his neck and arm, and there was mud beneath his nails and in his mouth. His pager was on his person. Many messages – from her, from the DSP and other officials she had contacted to help save him were on it. Obviously he had not been able to receive or respond to these.

There were 24 bullet injuries on the front of his body; and in addition the right side of his neck and right arm were seriously dismembered due to bullet injuries. There is one more dimension to this tragic story. We have referred to the letter given by the DSP Devender Singh to Kitab to the effect that if any police officer arrests him, he is to contact the person who had issued the letter. We asked Raja Begum why Kitab did not show the letter to the policemen who arrested him. Raja Begum's reply was that Kitab was not carrying that letter. It was at home. The reason? After Kitab joined the JKDFP, he did not think it wise to keep the letter on his person, for if he was found carrying such a letter his party would suspect him of having 'links' with the police or even that he was a police informer. Since militant organisations – or even nonmilitant organisations fighting the State – have an unfortunate tendency to regard mere suspicion as proof in such matters, he thought it wise to leave the letter at home, and thereby deprived himself of the one chance he had of saving himself.

As our team left the residence of Kitab we were called back by Raja. We then learnt that about one and a half months ago, one Aijaz Ahmed Mir, a resident of a neighbouring colony got killed in an encounter. Mir had been about the same age as Kitab, and had also been an ex-militant who had been in the Jammu jail at about the same time as him. After Mir's death the newspapers for some reason had stated that 'Aijaz Ahmed Kitab' had got killed in an encounter – due to some reason he was carrying an identity card which stated that he was 'Aijaz Ahmed Kitab', thought the other particulars were different. Raja Begum does not want to speculate on the implication of this mistaken identity. Perhaps it was a case of a death being foretold? Or a simple case of a hit list of ex-militants which the SOG had to steadily go through, to perhaps claim the reward that might still be there for killing some of them? Or perhaps they wanted to eliminate Aijaz Ahmed Mir all along, who it appears had returned to militancy after his release, and 'finding' that in fact 'Kitab' had got killed in the earlier encounter, thought they were killing Mir? Anyway no explanations were offered though Kitab's own identity card was in his pocket and his wife and family members identified his dead body. In June the NHRC asked for an explanation from the SOG for Kitab's death.

3. The third incident we investigated in Srinagar was the killing of Mohammad Ismail Kaloo of Rampora, Chattabal and Niyaz Ahmed Shah of Karannagar on the intervening night of 17 & 18 May 2001. They were killed at Harwan, but were picked up in Srinagar city on the morning of 17 May. Niyaz Ahmed Shah (28) was admittedly a militant and his family has not seen him – except for an occasional surreptitious visit – for the last twelve years. Even the surreptitious visits had stopped during the last three years. Indeed, he must have been one of the first group of militants in the valley. He left home at the age of 16 or 17, when he was a high school student. He was very brilliant – the propaganda that militants are all illiterate and uneducated is not true’, said his brother Akhter Hussain.

Mohammad Ismail Kaloo was also a militant, but he had given up – or at least intended to give up militancy – after his release from jail in 1996. But life is difficult for released militants. ‘They are frequently called to the camp by the police or the Forces. If they report to the camp, the militants suspect them. If they do not, the Forces take them away’, said Mohammad Ismail’s brother. Mohammad Ismail, he said, was taken at least twenty five times after his release by the STF, beaten up again and again and released. He was a graduate, but the only work he had been able to find was that of an electrician. However he could not settle down to this work because of repeated arrests. When he was not found, the STF used to take his brothers and father away with them.

Kaloo’s family moved all judicial forums with an unusual tenacity. They petitioned the SHRC more than once. They filed habeas corpus petitions in the High Court. They had the experience of seeing a Court order torn and thrown away by the SHO of Sigdagar Bagyas police station. They had the experience of seeing the helplessness of the SHRC. Once, when a Court order for the release of Mohammad Ismail’s father Ghulam Mohammad Kaloo could not be ignored any longer, the police booked a case against that 65 year old man saying that he had thrown a grenade at the police chowki!

Finally, we were told, Mohammad Ismail Kaloo went to Delhi for a long time. The STF seems to have thought he had gone back to his old ways. Anyway, he came back a month before his killing and was staying at home and going out to work as an electrician. From the fact that he was caught with

Niyaz Ahmed Shah, it appears that he had not cut off all his militant connections. On 17 May he went out in the morning as usual, and was said to have been caught by the STF in the house of one Ghulam Mohammad Bhat at Darish Kadal in Srinagar city, along with Niyaz Ahmed Shah. That evening the STF brought Mohammad Ismail to his house at about 7.30 p.m. A team led by Farooq Ahmed Rishi, Deputy Superintendent of Police, spent one hour in the house, searching the house and the roof for weapons or any other evidence. The DSP told his family to have a last look at him, for they would not see him again. A clear expression to commit cold-blooded murder.

They did not see him again. After the search he was taken away and killed that night along with Niyaz Ahmed Shah at Harwan, some distance from Srinagar. They were told of his death at 7 a.m. in the morning. When about a few hundred local people agitated for the body and went in a procession towards the STF headquarters at Batamaloo in the city, they were lathi charged, beaten and finally the body was handed over at 5 p.m. Both the bodies had multiple brutal injuries. An STF personnel told Niyaz Ahmad’s family that the reason for not giving the bodies till 5 p.m. was that if they did, a procession would have been taken out.

2.7 FAKE ENCOUNTERS

Fake encounters are not always easy to distinguish from custodial killings. Most custodial deaths, such as the killing of Mohammad Ismail Kaloo and Niyaz Ahmed Shah above, are officially explained as encounter deaths. The thin line of difference lies in whether the victims were physically detained in custody for at least a short while before being killed, or were directly shot dead as soon as they were spied or apprehended. In both cases the only witnesses are the security forces – and in most cases of custodial deaths in Kashmir, the police choose to register them as ‘encounter’ deaths, thereby avoiding all investigation (and violating NHRC guidelines on ‘encounter’ deaths).

Mohammad Sayyid Malik and Sheraz Ahmed Khan, both teenagers, were killed by the BSF on the night of 16 May 2001 at Dangom. Their villages are in Shopian tehsil of Pulwama district. Malik was a school drop out who was working as a tailor in Dangom, a small village comprising 75 households, where he resided. Khan was a class 12 student at

Shopian, and a resident of Daggpora, an even smaller village comprising 30 households. One thing is reasonably clear: they may or may not have had sympathies or even some kind of links with militancy, but they were not themselves armed militants. Khan had, according to his classmates, attended class till that day. He left home to go to college as usual on that morning, and did not come back. Why he went to Dangom is not very clear. Or perhaps he did not, and the BSF caught him at Shopian and took him to Dangom to pair him with Malik. One does not know.

Curiously, Sheraz's family received a phone call, stating that his dead body was in Dangom even before it had supposedly been 'identified'.

On 16 May, Mohammad Sayyid Malik himself was at home till late that evening. The last *namaz* was performed, and his family was watching TV. The power went off, and all of them dispersed to go to bed. The family had two houses next to each other. His brother saw Mohammad Sayyid going out of the house. He assumed that he had gone to relieve himself, and had then decided to go and sleep in the other family house next door. Soon thereafter they heard gunfire quite close by. The sounds went on till midnight. It was because the BSF used flares three times to light up the village that the villagers knew that the BSF was there. They did not suspect that Mohammed Sayyid was dead.

He was in fact killed not far from his house. He and Sheraz Ahmed Khan were shot dead just outside the house of Abdul Rashid Sheikh at one end of the village. The BSF fired all over the house, its version being that both of them were militants, and were sheltering in that house. That still does not account for the bullet marks on the house, since the official story of their killing is not that they were shot dead in that house. According to the SSP, Pulwama district, the BSF laid an ambush for them near the village and killed them. An ambush means that the Forces, having prior knowledge of the route being taken by militants, lie in wait for them along the route. As soon as the militants step into their zone of fire, the Forces warn them of their presence and ask them to surrender. If they do not obey, but open fire or throw grenades at the Forces, then they fire at them in self-defence. The most remarkable thing about this story of self-restraint and respect for the law is that as per the official version it is always the Forces who first reveal their presence

by issuing polite warnings, and it is the militants who fire or throw grenades first. The fact that generally it is only the militants who get killed makes it unlikely that the procedure described is followed.

In any case, this story does not account for the marks of bullets all over the house of Abdul Rashid Sheikh and his neighbour, Mohammad Akbar Wani, bullets that forced the inmates of Wani's house to crawl on all fours into a safe corner of the house. Nor does it account for the fact that the body of Sheraz Ahmed Khan had its hands tied behind with ropes. The people of Dangom saw this the next morning, when the BSF announced a 'crackdown' and gathered all the people in the open. They were then told of the 'encounter' that had taken place the previous night, and of the two dead bodies discovered by the BSF at the end of the encounter. The people were asked to go and identify them. They identified the body of Mohammad Sayyid Malik, the local boy, and saw that the other youth, Sheraz Ahmed was also dead and his hands were tied behind his back.

As the news of the incident spread students came out on to the streets of Shopian in a massive demonstration against the killing of the two young boys. Against the story of the BSF that Sheraz was a militant, they asserted that he had attended classes even on the day he was killed. "Yesterday he was with us in the class. How could he die in a shootout?" was their question. It took all the authority and persuasive powers of a local Moulvi, whose help was requisitioned by the police, to calm the students and let the family perform the last rites.

After this both the families of Malik and Khan went to lodge a complaint at the police station regarding this brutal incident. Both were dissuaded from doing so by the authorities. Malik's family went to meet the SSP two days after the incident. They were told that they were too late, and an FIR could only be lodged immediately after an incident. The family of Khan went to meet the SHO at Shopian. They were told that since the BSF had already filed an FIR against the deceased, naming them as notorious militants, hence they would not be able to file one as the matter was anyway under investigation. Sheraz's family urged the police to check his attendance record in school, as proof of his innocence. The police in turn told them that they had a photograph of him with a gun. When his family asked to see the photograph it was not shown to them.

Encounters and NHRC Guidelines

Even if one ignores the idiosyncrasy of DC Pulwama's self-serving rule of the thumb (i.e., he would only investigate cases of custodial killing, when there was not a 'whiff of militancy' about the victim!) the DC's view of the matter is certainly a most odd understanding of the duties of an executive magistrate under the law. The Indian Constitution does not permit different standards for militants and non-militants in the matter of the protection the law must give, or in the matter of the right to life. Articles 14 and 21 are equally applicable, as fundamental rights, to all persons, patriotic or unpatriotic, militant or *sadhu!* Assessment of the justification given by the security personnel for the use of force would of course depend among other factors on whether the victim was in fact armed or not, but the very allegation or suspicion that he was armed does not put the killing beyond the pale of independent scrutiny.

The complete arbitrariness of this procedure, the use of subjective, discretionary and totally random criteria for conducting even the most basic administrative inquiry is shocking. The magisterial inquiry by the executive magistrate is routinely done in all cases of custodial deaths in the rest of the country. The NHRC Guidelines on Encounter Killings clearly require that an encounter be treated as an extraordinary death and an FIR be lodged against the one who has killed. That person would then have to prove that it was a real 'encounter' and not a murder. Conveniently, and not surprisingly, both the SSP and the DC were unaware of the NHRC guidelines.

We discussed this matter with the Chief Secretary of Jammu & Kashmir when we met him at Srinagar on 28 May. He agreed readily that magisterial enquiries should be held routinely into all allegations of extra-judicial killing by the police or the Forces. However given the limited discretion that the civilian administration enjoys in such matters in areas where the army is operating against secessionist movements the judicial system is simply not able to proceed against the accused security personnel.

A more important matter is the requirement of punitive action against extra-judicial killings by the Forces or the police. The expression 'the law will take its course' has become quite popular these days; it has acquired over the years the air

of a fashionable political expression, even as politics has over the years acquired much that is unlawful to hide. But the law must in any case take its course as impartially in the matter of misdemeanours of political leaders and the army, as it does in case of the common run of citizens. What, then, is the course that the law takes in the matter of extra-judicial killings by the Forces in Kashmir? Let the SSP, Pulwama, speak: (referring to the Dangom type of so-called 'ambush') In an ambush laid by the army, if militants are coming along and are warned but they attack and are fired on in return, an FIR is registered against the dead militants'. And since the persons mentioned in the 'accused' column of the FIR are dead, the investigation abates. If some of the militants have escaped, the investigation continues against them. If they are caught alive at any point of time, they will be prosecuted for having attacked the Forces. No FIR is registered, and no investigation ever takes place, into the killing committed by the Forces, or into the validity of the plea of self-defence taken by them.

This is, of course, the procedure followed by the police and other Forces all over the country in the matter of 'encounter' killings. The National Human Rights Commission (NHRC), after a detailed enquiry into 'encounter' killings in Andhra Pradesh, had this to say about this procedure in a letter addressed on 27 March 1997 to all States:

The practice obtaining in Andhra Pradesh, as perhaps elsewhere also, is that when an encounter death takes place, the leader of the police party engaged in the encounter furnishes information to the Police Station about the encounter and the persons that died....This information (is) recorded in the Police Station describing the persons killed by the bullets fired by the police as accused and FIRs (are) drawn up accordingly. Without any more investigation, the cases (are) closed as having abated in view of the death of the accused. No attempt whatsoever (is) made to ascertain if the police officers who fired the bullets that resulted in the killings were justified in law to do so, and, if otherwise, whether and if so what offences were committed by them.

Under our laws the police have not been conferred any right to take away the life of another

person. If, by his act, the policeman kills a person, he commits the offence of culpable homicide whether amounting to the offence of murder or not, unless it is proved that such killing was not an offence under the law. It is, therefore, clear that when death is caused in encounter if it is not justified as having been caused in the exercise of the right of self-defence or in the proper exercise of power under Sec 46 of the Cr.P.C., the police officer causing death would be guilty of the offence of culpable homicide. Whether the causing of death in an encounter in a particular case was justified as falling under any of the two conditions can only be ascertained by a proper investigation and not otherwise.

Then the NHRC went on to add that every such report made by the leader of a police party to the local police station stating that his party has killed some one in an encounter should be treated as 'sufficient to suspect the commission of a cognizable offence' and the information should be entered in the appropriate register. The case should be investigated by an 'independent investigation agency'.

This applies equally to the other armed forces, except that where the Armed Forces (Special Powers) Act is in force, the killing may be justified under that Act too, in addition to the two provisions mentioned by the NHRC. But that makes no difference to the principle stated in the NHRC's order. Even the Armed Forces (Special Powers) Act, draconian though it is, does not give the army arbitrary power to kill. It does not permit killing of a person after being taken into custody. It does not permit the killing of person while asleep, while eating or having a bath. It does not permit the killing of a person who is bona fide willing to surrender. Thus the NHRC's circular has its application to the police, the army and paramilitary forces in Jammu and Kashmir, too.

Having learnt from the SSP, Pulwama, that even the senior officers of the State's police had not heard of the NHRC's circular, we drew the attention of the Chief Secretary of the State to it. Considering that even the other States in the country, including Andhra Pradesh whose ugly record of extra-judicial killings gave rise to the circular, have not begun to implement it, it would perhaps be too much to expect J&K to do so without further prodding.

Khan's family then went to the court and got an order from the court directing the police to lodge the FIR. The police disregarded the judicial order, and no FIR has been lodged except the one by the BSF, posthumously accusing the victim.

The SSP, Pulwama, with whom we had a detailed discussion of the matter, had a foolproof rebuttal of the students' allegation. The police had, he says, intercepted a wireless message sent by local militants to their leadership in Pakistan in which it was said that two militants had died and others had escaped in the ambush laid by the BSF at Dangom on the night of 16 May. What he had to show in support of this was a hand written transcript of the message by the policemen who are said to have intercepted it. Such 'proof' is beyond rebuttal. While it is quite possible that local militants might communicate with their Pakistani colleagues or leaders, and that such messages could be intercepted by the Indian Forces or the police, reliance cannot be placed on such claims solely on the basis of mere handwritten transcriptions allegedly made by the interceptor. This would become the simplest way for the Forces or the police to prove that someone had connections with militancy or with Pakistan.

We also had occasion to discuss in detail with not only the SSP but also the Deputy Commissioner (the District Magistrate), Pulwama, about the conduct of magisterial enquiries into killings by the Forces. A magisterial enquiry is a mere administrative procedure that does not result in any punitive action, or even publication of the report. For this reason, the refusal to permit even such a routine enquiry is all the more reprehensible. The simple fact is that enquiries by executive magistrates do not as a rule take place in the case of killings by the Forces in Kashmir. It appears that it is the discretion of the Deputy Commissioner (DC) to decide whether to have a magisterial inquiry or not. On what basis he makes this assessment appears to be left to the officer. The DC, Pulwama, told our team that he went by his own rule of thumb: 'If there is even the slightest whiff of militancy in the incident, we do not take it up for inquiry'. His rule of the thumb for smelling the 'whiff' of militancy was: if the victim is not a militant, the family will usually be satisfied with monetary compensation or the promise of a job to a surviving sibling. If they ask for an inquiry and all that, then he must have been a militant! So if you

don't ask for an inquiry, they need not hold it because even the victim has not asked for it. And if you ask for it, they won't do it because the very fact that you made such an 'unnatural request shows that there is militancy involved in the whole incident.

2.8 TORTURE

Torture, especially of youth, is routinely meted out. In fact deaths in custody in Kashmir, as elsewhere, have to be seen as a consequence of this routinised torture, beating, etc. But compared to other parts of India, the extent and brutality of torture is far greater. Throughout our enquiry into gross violations of human rights mentioned above, we kept hearing about torture in custody of the most shocking kind. In Mohanpora, elderly Ghulam Mohiuddin died as a consequence of the torture in the army camp, while Aijaz Ahmed Kitab was undergoing treatment for his ruined kidneys (as a result of earlier torture by the SOG) at the time of his killing (see section 'Custodial Deaths'). Torture could be meted out for absolutely any kind of 'crime' or for nothing in particular. Particularly in Doda almost every villager in some areas (like Marmatt) are suspected by the Forces, just this suspicion is enough for them to be detained in the army or STF camp or the Joint Interrogation Centre in Doda for days (or months). For instance, Riyaz was picked up as he was drinking tea at a shop, on 17 May this year, by the STF following a blast in a police station in Kishtwar town. Almost all boys and young men from the neighbourhood were also picked up for questioning. He was taken away to the JIC, tortured and 'questioned' for about 10 days, during which his family had no inkling as to his whereabouts. He has been picked up several times earlier. Riyaz's story is not extraordinary. Torture is so common that in Doda today (and likewise in the valley), it does not really become an issue for people to protest about any more. Torture is also a method of forcing villagers to perform *begar* (forced labour) for them (the issue of *begar* is discussed later). On 7 April 2001 the STF came to Ghulam Hussain Dar's house in Chilhot (village Bihota, Doda) primarily because they had failed to supply the 'quota' of firewood, that every villager has to give them. They looted and destroyed everything from jewellery and cash to utensils and beat up the residents, including Dar's aged mother. And 10 days later they took away his 25 year son

Faizullah to their camp. He was strung up with his hands and legs stretched and tied up, and not allowed to sit for four days and nights. His mouth was gagged and eyes covered, and he was accused of being a militant and tortured so that he would 'own up'. Barrels of guns were poked hard into his chest. A month after his release, he still had difficulty walking and eating.

DODA : Military and Militants

The Union Government following a policy decision, consciously started setting up and arming Village Defense Committees (VDCs) comprising exclusively of hindus about 1996-97. In some places, where this attempt to create a schism between hindus and muslims living peacefully was resisted, coercion was used by the armed forces. In Gath-Doda, a village about ten kilometers from Doda town, the hindu residents refused to form a VDC and as a consequence were beaten, abused and threatened with death.

At an operational level, the armed forces personnel treat each muslim as a traitor of the motherland. As punishment they take forced labour and unleash beatings, torture, rape and death on the muslim population. Despite large protests and complaints, the perpetrators of such heinous crimes go largely unpunished.

The militants single out and kill hindus in Doda. The Union Government takes "tough" measures. On the ground, this gets translated into even more beatings and torture of the muslim residents by the armed forces. The very object of the militants in killing hindus is to create a communal divide. The response of the Government of India is the very one desired by the militants.

On August 15 2001, the militants kill five hindus in Udhampur and booby-trap one of the bodies with a grenade. The armed forces risk the lives of muslim residents and force them to lift the bodies. Two innocent muslim citizens die in the ensuing explosion. The Government of India and the militants seem to work in tandem at dividing the people along communal lines.

2.9 AGENCIES OF REPRESSION: OFFICIAL AND UNOFFICIAL

During the 12 years of the current phase of a militant movement for *Azadi*, the presence of the army in J&K has so visibly grown that the state appears to be virtually under siege. Army presence has become synonymous with the Indian State. But despite this massive presence of the security forces, neither has militancy been eradicated, nor has the desire for autonomy-self rule-*azadi*-or its variants abated. Given that during this period no serious political moves have been made to resolve the crisis in J&K, and faced with continued resistance, the state has thus resorted to a variety of strategies, all part of the 'military' handling of the continuing political crisis. Among these measures is the offer of incentives and rewards for killing – supposedly the militants but in reality a large number of civilians also get targeted. Another measure gaining currency in J&K is a specific counter-insurgency measure, the recruitment and deployment of 'surrendered militants', renegades, 'Ikhwanis' in the parlance of people in the valley who are currently regarded as the most dreaded arm of the state in J&K.

⇒ ***Incentives***

The way the Forces are motivated to perform the risky job of counter-insurgency operations can, and does, lead to human rights violations. That the people of Kashmir are all religious fundamentalists, agents of Pakistan and India-haters, is a view strongly inculcated in the Forces. This works very powerfully with the army and the paramilitary which are almost entirely non-Kashmiri and predominantly (though not exclusively) hindu. They feel a sense of patriotic duty, which justifies, in their eyes, all their actions against the people. In Doda we were told that while beating the kith and kin of militants the Forces repeatedly say, "Why are you still here, why don't you also go to Pakistan!" The militant may or may not have in fact gone to Pakistan, and he and his family may or may not view the matter the way Pakistan views it. But identifying the disaffection of the Kashmiri mind with Pakistan is a strategy that the Indian establishment has worked out, both as a propaganda ploy and as a motivation for its Forces.

This is also true of equating all the Kashmiri people with militancy. While we were talking to people in a hamlet of Bihota, Doda tehsil, a group of armed soldiers of the 8 RR camp being set up in

the main village came there. Initially, there was some antagonism between the army personnel and the human rights team. However, as most of the army personnel and some team members were from Andhra, the tension dissolved into Telugu-speaking camaraderie. They started asking the children who had gathered there seemingly friendly questions, such as whether they were going to school. When one little girl replied that she was, the soldier said to her, "And then you will also go and become a militant." With the kind of training the army men appear to receive, it would probably not occur to him that his comment was offensive. Not only was he erasing different positions among the people who are fighting the Indian establishment today. An extremely complex situation was being reduced to: Kashmiri is equal to militant is equal to Pakistan. An army that operates with this kind of an understanding can only be very insensitive, self-righteous, and callous towards the people.

This is as far as the mental or ideological mindset is concerned. There is also plenty of material motivation. Cash rewards are ubiquitous. When a militant who carries a reward on his 'head' is killed, the money goes to the killer. As far as the police (SOG) are concerned, it appears that the State Government even has a policy of giving cash awards and out of turn promotions for successful operations against militancy. This may look like a reasonable recompense for the risk taken, but can in fact become an incentive to kill. There is a thin line of difference between using necessary force on a person in self-defence or while overcoming resistance to arrest, and using force on the person after taking him into custody. While the former is permissible in every legal system, the latter is impermissible and unacceptable even in the norms of the conduct of war. Giving incentives for killing militants is an act that can lead to wanton violation of this line of division.

But official material incentives apart, opportunities of making money by corrupt practices abound, in which the army, the paramilitary and the police appear to partake equally. Taking money to release a detainee, or to go a bit slow in torturing him, or to send him to jail instead of killing him, appears to be a widespread practice now with the Forces in Kashmir. According to some people the going rate is any thing above Rs 10,000. We have spoken above of the villagers whom we met outside



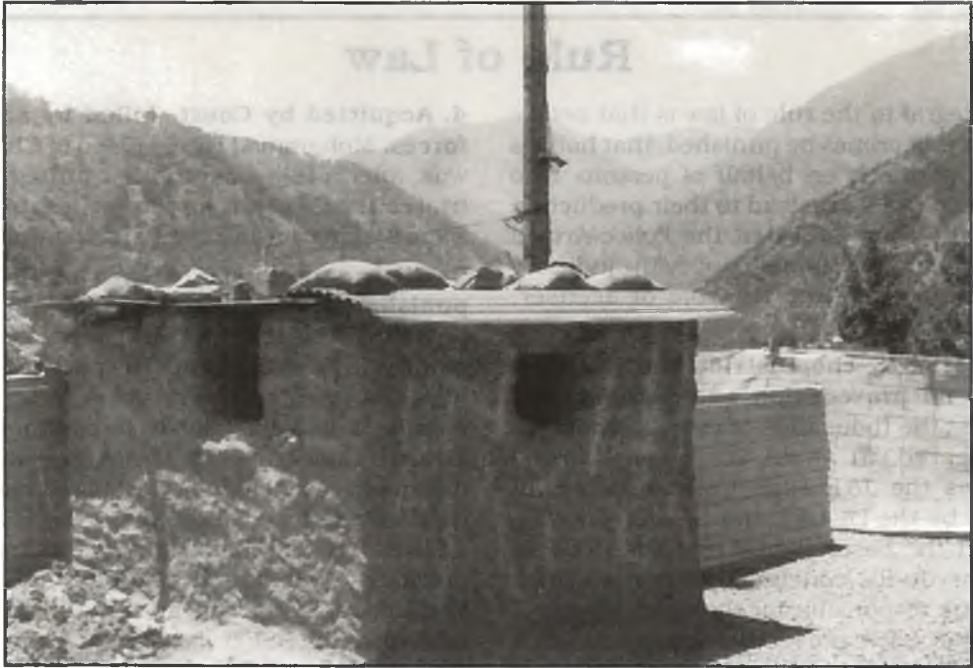
↑ Ghulam Hassan Alai, r/o Alai Waripora, tehsil Baramulla
shot dead by 29 RR on 13/4/2001

Aijaz Ahmed Kitab r/o Buchpora, Srinagar
killed in SOG custody on 19/5/2001 →



Ali Mohd. Ganai r/o Waqoora near Ganderbal,
forced to detonate mine by 5 RR on 17/5/2001 ↓





Jammu & Kashmir - Skyline (above) and Cityscape (below)



Rule of Law

Integral to the rule of law is that people who commit crimes be punished, that habeas corpus petitions on behalf of persons who have been picked up lead to their production before the court and that the Police-Armed Forces-Executive ultimately obey the judiciary and do not combine the role of accuser, prosecutor and judge.

1. Indicted by the District and Sessions Judge, no prosecution and punishment. Amongst the thousands of people, who have disappeared, in about 70 habeas corpus petitions the J&K High Court ordered an inquiry by the District and Sessions Judge. Even in the cases, where the District and Sessions Judge concluded that the armed forces are responsible for the disappearance, there has been no further action towards prosecution of the guilty.

2. Preventive detention quashed by Court, thereafter illegally kept in jail for six months. Hussamuddin Ahmed, a lawyer now practicing in the J&K High Court, was jailed under Public Safety Act (PSA), the State's preventive detention law, in 1990. He was detained in Coimbatore Central Prison. The J&K High Court quashed the order of detention, but the government ignored the order. Six months later, he was transferred to the Central Prison in Jammu. There he learnt of the quashing of his detention from a newspaper report. Instead of being released six months earlier as per the High Court's order, he had to file a habeas corpus petition in order to be released from jail.

3. Released on bail by High Court, killed by Special Operations Group. Aijaz Ahmed Kitab was in jail for three years under the PSA and was released when his preventive detention was quashed by the High Court. He was again arrested on 4 April 1998 and severely tortured resulting in severe damage to his kidneys. Kitab was released by the High Court on bail on 17 October 2000. On 20 May 2001, 7 months later, the SOG, led by DSP Jagdar Singh, picked him up and killed him in cold blood.

4. Acquitted by Court, killed by security forces. Mohammad Ismail Kaloo of Chattabal was, after a full-scale trial, acquitted by the trial court. However, he was picked up by the security forces around 12 May and killed.

5. Killing in custody by the BSF, no punishment of guilty. Mushtaq Ahmed was picked up by the BSF and kept for three months in the BSF camp. His parents visited him at the camp many times. After three months, it was officially declared that he was arrested under the PSA. The Magistrate, after due inquiry, concluded that Ahmed had been rightfully detained. Thereafter, the BSF filed a FIR at P.S. Safa-kadal stating that ten days previously Mushtaq Ahmed had been taken to a hideout by the BSF and was killed by the militants. *The BSF camp is located barely half a kilometre from P.S. Safa-kadal. Yet this totally improbable FIR was filed ten days after the supposed incident.* An inquiry by the Assistant District and Sessions Judge has held that the BSF and the administration were responsible for Mushtaq's death. No action has followed.

6. Accused identified as the perpetrator of thirteen murders, yet goes scot-free. Human Rights lawyer, Jalil Andrabi, was detained and killed in front of eyewitnesses in 1996. Subsequent to a habeas corpus petition, a special police investigation team was appointed. The team reached the conclusion that Major Avtar Singh was the murderer and was responsible for 13 killings. Despite the orders of the High Court, the army has not yet produced the accused.

7. Judiciary orders the registration of a FIR, the police refuses. The bodies of two schoolboys were found in Dangom village. One of them, Shiraz Ahmed Khan, had his hands tied behind his back. The BSF filed a FIR saying that both had been killed in an encounter. Police refused to register an FIR by the family members of Shiraz. The family then filed an application (dated 22 May 2001) before the Chief Judicial Magistrate, Shopian, for registration of a FIR. The Chief Judicial

Magistrate ordered the registration of a FIR on behalf of the family. The SHO of P.S. Shopian refused to register the FIR.

8. Carrying of arms by police personnel inside court premises is totally against the independence of the judiciary. A person in civilian clothes with a pistol in his hand was found chasing another in the J&K High Court premises. The official CRPF on duty caught him. The person with the pistol produced documents identifying him as a special police constable authorised to carry a pistol and use it in the high court premises. Only after a strike for one and a half months by the lawyers was a FIR registered regarding this incident. The premises of the court are supposed to be in control of the judiciary and free from pressures from the executive.

the office of the Senior Superintendent of Police, Pulwama and the complaint they made to us. The BSF is accused of a peculiar malpractice, taking advantage of the cash rewards the State gives to militants who surrender. It enters into a compact with local youth who are allowed to cross the border and go to Pakistan and come back with a weapon or two so that they get recognised as militants: then they 'surrender' to the BSF, and the cash reward is shared by the 'surrendered militant' and the BSF personnel who have arranged the drama. The BSF and other men of the Forces are frequently accused of acting in collusion in smuggling valuable Himalyan timber. As mentioned earlier we ourselves saw men of the RR camp at Goha in Doda tehsil carrying up to their camp neatly sawn planks of timber commandeered from the villages of the mountainous interior. There is thus money to be made on the side to offset the risks – or the patriotic impulses required in dealing with militancy. When the peace process was announced a cynical observer remarked that vested interests had developed in keeping the conflict going in the state: the official and unofficial incentives seemed to be working.

⇒ *The Ikhwanis*

We have referred above to the 'renegades', as Kashmiris call them: those former militants who have, after surrendering, taken to using arms on

behalf of the State. It is not only the militants, their sympathisers, or other partisans of *azadi* that call them 'renegades'. Everybody in Kashmir does, including ruling party leaders. It was about the year 1994 -95 that this phenomenon started. The RR was the first wing of the army that took such surrendered militants under its wings, provided protection for their crimes against the common people. Then they were used against the militants, their supporters and sympathisers, as well as journalists and human rights activists critical of the State's methods of dealing with militancy. The 'renegades' live in close proximity to their patrons. They go around openly with weapons and commit offences of extortion and worse upon the common people. The people know better than to resist them, for that is a sure way of calling the wrath of the armed forces upon themselves. Occasionally they do resist, and force the police to arrest them, but invariably the army intervenes and takes them away from the police station. In return for this patronage, they put at the disposal of the security forces their considerable knowledge of militancy and its overground supporters. They not only provide information and accompany the Forces in the raids, but also independently use their weapons against all 'enemies of the State'. It is a public secret that the elections that heralded the 'restoration of democracy' in Kashmir were made possible by the depredations of these 'renegades'.

The first organisation of renegades was the Ikhwan-ul-Musilmeen of Jamshed Shirazi, alias Kuka Parrey. Later more came into being, and other wings of the armed forces too started mimicking the Rashtriya Rifles in acquiring their own loyal band of 'renegades'. Some of these 'renegade' leaders, including Kuka Parrey, have become legislators. This 'strategy', if it can be graced by that name, amounts to letting licensed criminals loose in society in the name of tackling militancy and its social support base. "Surrendered militants are a menace. They are so powerful and uncontrolled that if they see a good looking girl, they will pursue her and force the parents to marry her to one of them," said a social worker we met. No State that subscribes to even the minimum canons of the rule of law should be seen doing this, but the Indian armed forces have been openly and calculatedly doing this for five years now and have created unbelievable terror in the valley.

We were told that now there are four or five gangs, each under the wing of one unit of the armed forces, mainly the Rashtriya Rifles and the Border Security Force. Today they are all commonly referred to as 'Ikhwanis', known as such because of the original group. It is officially admitted that, each of the Ikhwanis is now paid Rs 5000 per month, and their commanders are paid Rs 10,000. This was reputed to be stated by the DGP in an interview given to the radio. This is in addition to the looting and extortion they might commit under the benign eyes of their patrons in the armed forces. "The army makes them addicts of drink and drugs so that they will never leave its side," said a senior journalist to us.

But there has also been a recruitment of the 'renegades' into the police force. Quite a few of them are designated SPOs – Special Police Officers. The Police Act permits such designation of civilians if the exigencies of the situation so demand, but that provision was never intended to enable recruitment of such dubious characters into the police force to serve as an officially consecrated gang of killers motivated by personal vengeance. One could see them at many places in the valley, slouching in a most casual way, the uniform crumpled and an automatic rifle looking any thing but safe slung on the shoulder. But quite a few of them have been taken into the Special Task Force (also known, as said earlier, as the Special Operations Group) of the J&K Police. Since recruitment to that Force is guided by strict rules, there is no way that persons who not only have a record of acts of violence as militants, but also a record of crime thereafter, can be recruited. This recruitment was vehemently denied by the Chief Secretary of J&K, who said that the 'renegades' are only taken as SPOs (Special Police Officers) and were to assist in collecting counter insurgency information. The SPOs were supposed to be under the discipline of the police but were not members of the regular police force. Almost every body else we met however told us that the STF contains a number of 'renegades', and that by this process of recruitment a renegade was merely replacing an unlicensed gun for a licensed gun. The renegade are subject to no authority but can draw upon the protection of the state.

For this reason among others, the STF is hated and dreaded. As of now, the STF is the most feared outfit of the State in the valley. It is described as

more ruthless, corrupt and inhuman than any of the other wings of the Forces. 'The STF has done in one year more than the army did in ten years' was the comment of an elderly person of Doda, where there is an active citizens' peace committee. As part of a strategy, one wing after another of the counter-insurgency has been put in this position in Kashmir over the years: the CRPF, the BSF, the Rashtriya Rifles and now the STF. In the latter half of the nineties one heard precisely such an opinion about the RR. In the first half it was the BSF. The only difference is that unlike the others the STF is a State outfit and not a Central outfit. The metamorphosis of the STF into the most dreaded outfit of state terrorism, thus seem to be part of a revised strategy of the state to distance the security forces from day to day local terror and yet be assured that they wield the ultimate reins of authority. Local terror can continue unabated without the army being implicated directly. Further attacks against the militants, or other ex-militants who have not become renegades, can be mounted by the renegades without blame being apportioned to the security forces. The killing of militants or ex militants in encounters can be represented as gang wars for territoriality among militants.

Our team ran into a few of the renegades at Alai Waripora in Baramulla district. We did not know at first who they were but we were struck by the strange hostility that we encountered for the first time. The experience of human rights activists in the valley has been that they are treated with respect and spontaneous affection, and occasionally with the disdain reserved for the useless, but never with hostility. However, in Alai Waripora we found some thing close to hostility in their attitude to us. One of them tried to silence someone who was telling us of the women of the village who were raped. It was only after we left the hamlet and walked up to Kreeri, where we had left our vehicles, that a young man from a nearby village told us that those men were 'renegades'.

2.10 CIVIL SOCIETY: LIVING. DYING AND SURVIVING

With the Armed Forces' treatment of the Kashmiri people as potential militants and therefore anti-India, there has developed over the last twelve years a growing sense of alienation among the people. The presence of the Forces at every street

corner, constant frisking, unexpected crackdowns and other modes of harassment have made the people insecure. Their lives are marked with perpetual fear. This situation is prevalent across class, occupation or place of residence. A youth from the village of Kreeri in Baramulla district who is a student of a college in Sopore told us: "everyday we tie our *kafans* (shrouds; a Hindi saying this means to risk one's life or to court death) before setting out not knowing whether we will return home in the evening. There must hardly be any family left in Kashmir which hasn't lost a loved one in the past twelve years." This feeling of loss and readiness for any eventuality was echoed by almost everyone we met. While instances of repression are quite common in urban areas, they are at their worst in rural areas.

In rural areas normal life is a distant dream. There is a common feeling of being under siege all the time. All males from about the age of 6 in the region are required to have identity cards on their person at all times. Besides, young men are picked up, taken to the army camps, and submitted to various forms of torture. A few such cases encountered by our team have been discussed earlier (see 'Ground Reality', section on 'Torture'). Beatings are a routine form of torture that men, and sometimes also women, are subjected to. Other widespread forms include hanging the persons upside down from trees; submerging their bodies in filthy sewage water; throwing water, with chilly powder into their eyes; and in some cases subjecting them to electric current. The more remote the village the more acute the repression since the chances of Press reportage correspondingly decrease.

The villagers of Dagpora, a remote village in Pulwama district, for instance, had no respite even during the month of Ramzan when crackdowns by the security forces continued. Men mentioned how humiliated they felt during these crackdowns when they were beaten in the presence of their women and they could do little. People in many villages expressed anguish, anger and dejection. "*Zulm bahut hai*" (there is too much repression) was the common complaint. An old man in Haigam, who has witnessed the struggle for 'azadi' for the last 53 years, said that in the last 12 years torture had taken extreme forms. "The Forces now barge into our houses, beat us, loot and destroy our property." He

expressed a sense of exhaustion when he said that the situation was now beyond control since their protests also had no effect.

The situation in Doda district is another example of the horrendous situation that prevails in rural areas. Torture by the armed forces is a daily routine for the villagers of this mountainous district in the Jammu region of the state. A sprawling district lying along the Pir Panjal ranges, Doda is as big as the whole of the Kashmir valley. The Chenab is to Doda what Jhelum is to Kashmir; but while the Jhelum running along the plains has made Kashmir a prosperous valley, the Chenab running through deep gorges has made Doda only picturesque. Due to its inaccessible terrain, very little of what happens in Doda becomes public knowledge.

Take *begar* (forced labour) for instance. This is the most common form of everyday torment that villagers of this region experience. Seventy year old Gulab Din and Ghulam Hussain of Chilhot, a hamlet of Bihota village, told us that they were taken to the STF camp in Bihota in the dead of winter and forced to bring wood from the forest as well as wash and clean the camp for eight days. Gulab Din was thrashed till his right shoulder broke. Ghulam Hussain had a sharp knife put to his throat as a threat when he showed signs of resistance. Both their sons were militants, and that was the reason for this punishment. Another elderly villager, Ghulam Qadir Zargar, who was taken away some years ago by the army and released after 45 days of torture. Zargar is still unable to get up from his bed, three years after. Some villagers had also been forced to make furniture from wood acquired by the army men from the forests.

Demanding *begar* is a two-in-one measure for the Forces: the relatives of the militants are humiliated, harassed and thereby kept under 'control', and simultaneously manual work for the army camp gets done. While we were in Doda, we got a chance to witness the practice of *begar* first hand. As we were returning downhill from Bihota to Goha, we saw four local boys carrying a huge drum up the hill for the new RR camp that had just replaced an STF camp at Bihota. As we reached Goha, we also saw jawans of the RR camp carting freshly made wooden sleeping planks which had obviously been commandeered from the villagers residing in the forested Marmatt area beyond Goha.

Association of the Parents of Disappeared Persons

One of the major civil society responses to state terrorism in the valley of Kashmir has been the setting up of the Association of the Parents of Disappeared Persons (APDP) in 1994. Its founder chairperson is Parveena Ahangar. When her son Javed Ahmed Ahangar was picked up in 1990 by the security forces, and then disappeared, Parveena Ahangar was sick with grief and anxiety for about two years as she went about looking for her son. During this period the boys of the mohalla in which Javed's family lived, were supportive of Parveena and the family filed a habeas corpus petition for the missing Javed. Very soon there were 120 other cases that were filed and Parveena's *habeas corpus* writ petition to produce her missing son was one of the first to come up for hearing. The case along with the finding of the enquiry officer was sent to the Home Ministry for grant of sanction to prosecute the officer, Captain Katoch who was heading the unit that had picked up Javed from his house. The Home Ministry refused the sanction. Parveena filed another petition in 1998 challenging the Union Government's decision to refuse sanction to prosecute the officers who picked up her son and the case is still pending.

It was the filing of more and more cases like Parveena's and the difficulties of each family's individual struggle to find their missing relatives, and to break the isolation of each such struggling family, that led to the founding of the APDP. There are over 400 families who are now members of the Association and they are drawn from all over the state – from Pattan, Baramaulla and from distant villages, not just Srinagar. The main objectives of the group are to collectively trace the missing persons; to put pressure on the government to account for the missing, and to try to stop the disappearances altogether. Together the Association has staged dharnas and chakka jams to draw attention to their plight. They have also tried to extend support

to each other by organising solidarity meetings in the districts. The Association has also produced a legal manual of what steps are to be taken when someone is picked up and is not traceable thereafter as well as to create an awareness about the rights of the people. But the work of the Association and their activities can be dangerous as there can be reprisals – one woman who had searched for her son, much like Parveena, was shot dead and is believed to have been killed by the security forces.

The response of the state to the legal strategies used by the families of the disappeared has been to offer them one lakh as compensation; normally compensation is given to innocents – those killed in 'crossfire' or to those killed by militants, not to people they have picked up. But because cases are filed to trace the disappeared the authorities offer them a lakh of rupees as ex-gratia relief but this also entails the closing, or the withdrawal, of the cases. Most families of the disappeared do not want to give up the cases although some families are in such strained circumstances that they are forced to settle for the ex-gratia relief. For others their struggle to find loved ones simply continues given that the courts are hemmed in by the refusal of the Home Ministry to prosecute the officers of the security forces who have picked up the persons who have disappeared.

What the families of the disappeared are left with is the memory of a loved one – no body to bury or grave to mourn over. It is this deeply felt need that led to the decision of the APDP to put up a memorial to the missing persons. A date was fixed – 18 July 2001—and about 500 persons and the media collected at the Shaheed Mazaar, which was set up in 1990. Three children born after their fathers had disappeared laid the foundation stone of the memorial. But soon after the stone was laid there was firing in the neighbourhood leading to a stampede and people running away. At night the structure

was demolished by the J&K police; this led to a sense of outrage in the valley and a partial hartal took place. The IG of police, Ashok Bhan, told the media that the memorial was demolished because it had trespassed on state land. The municipal authorities on the other hand denied that they had approached the police to demolish the memorial and attributed the move entirely to the police. And to add insult to injury Parveena Ahangar as chairperson of the association, and Parvez Imroz, a human rights lawyer and a patron of the association have been charged with section 447 IPC (criminal trespass). Matters have come full circle; instead of providing relief to Parveena Ahangar's distress and guaranteeing her rights as a citizen of the country the state has now made her the offender and let themselves off the hook.

The APDP has not given up on constructing a memorial for the missing persons, a symbolic recognition of the loss of their loved ones. They will continue the struggle to put up the memorial, whatever the odds against them.

Forcing people to provide food is a common practice indulged in by the STF. According to a villager, during the cease-fire period when the STF had replaced the army in Bihota, the STF men did not have a single meal at their own expense. At meal times, they would appear firing shots in the air, pretending to be on the lookout for militants. After a perfunctory search they would settle down for a meal.

Destruction and looting of people's property by the army and the STF forces is endemic. Shamsuddin, the elderly branch post-master of Mangota (who has a shop in the village) narrated the following incident. One day, he was in his shop-cum- post-office when he saw an STF man approaching with a gang of 30 to 35 men. He quickly shut the shop hoping that they would go away. The gang, however, broke open the doors and looted all the goods and threw out the grain. Post-office records, which were also housed there, were torn up. He estimated the damage to be around Rs.

42,000. Fifteen other houses of Mangota were similarly vandalised. All the victims calculated the exact cost of the damages hoping that an inquiry would be conducted and their losses compensated. Following a registered complaint to the district Deputy Commissioner of Police, an inquiry by the Naib Tehsildar did take place, but nothing has resulted from it till now.

The constant harassment by the Forces has compelled some villagers to leave their villages and live somewhere else, at least temporarily, as the residents of hamlets like Badhat, Tatana, Bughrana, Kalchanda etc. have started residing at the roadside village of Drabshalla. When one such person, Basheer Ahmed, decided to return to his village, (on 12 March, 1998) he was picked up by the 26 RR men on the allegation that he was related to a militant, who had been killed earlier. The army alleged that he must have come to collect ammunition belonging to the militant. He was taken to Dhar, then to the camp at Tatana, and later to the district headquarters at Thattri. Two days later his dead body was found by a Gujjar herdsman near the bridge on the Chenab river.

A school-going teenager, Fiaz Ahmed, s/o Lal Deen Darwani, was similarly shot dead by the army men one winter day while he was crossing the fields on his way back from school. When the 26 RR men realized that they had killed a schoolboy they picked him up and threw his body in the Chenab. They must have known that this was safe disposal for the Chenab flows with such great force that there would be little chance of the body ever surfacing. Even if it did, it would be many hundred miles away perhaps in Pakistani territory and beyond recognition after having been in water for many days and therefore highly decomposed.

Suspected militancy is used as an excuse to harass the people not only by the Forces but also by corrupt businessmen in league with the Forces in order to eliminate their rivals and advance their goals. The Managing Director of a company colluded with the STF men to get his Deputy arrested allegedly as a commander of Hizbul Mujahideen because she had risen to success and wealth through her own intellectual resources.

In Doda, we heard of the detention, torture and remand by the STF of a trade unionist. This was widely known and reported in the local Press to have

been done at the behest of the management. Dulhasti hydro-electric project being constructed on the Chenab river near Doda (presently handled by sub-contractor J.P Industries) is a show piece of development in J&K. Young Javed Zargar of Bhalesa is an employee of J.P Industries who has put up a valiant fight for the rights of workers in this project. When 1480 workers were illegally removed, he fought in the courts and got them awarded Rs. 5 crores as compensation. Some time in the second week of April this year, the police of Doda took Zargar into custody and shifted him to the dreaded Joint Interrogation Centre (JIC) at Doda, accusing him of 'militancy'. After being held in the JIC for several weeks, he was remanded to judicial custody. The SSP of Doda confirmed that he was charged under the Public Safety Act, and sent to jail, as he was a threat to 'Public Safety'. Given the provisions of the Act, issues like 'evidence' to prove his militant links are redundant. And if need be, some 'confession' given during weeks of 'interrogation' in the JIC can be attributed to Javed, negating all need for proof of his guilt. But the workers of the J.P Industries have learnt their lesson – anybody who talks of workers' rights hereafter at the Dulhasti project had better beware of being called a militant and jailed or killed.

As a journalist put it, what has happened over the past decade is that the army harassment of the people has been institutionalized. People are not allowed to move around freely; their very right to life has been taken away. If the first forty years after independence were witness to consistent violation of democratic rights and erosion of all democratic norms in J&K, the last ten years have seen the violation of the most fundamental of all rights – the right to life. The responsibility of this reprehensible state of affairs lies with the Indian government that has failed to take action against the guilty personnel. The atrocities committed by the army and its task forces have gone unchecked. Without accountability in the ranks, governance in the state has become akin to army raj.

In this situation where the political system has failed to redress their legitimate aspirations and the repression unleashed upon them has continued unabated it is not surprising that militancy retains its legitimacy amongst the people. Not only are the militants fighting for azadi on their behalf but are also taking on the state for the humiliation and

torture of the last decade. The militants are thus seen as the only countervailing force against the tyranny of the Indian armed forces and necessary in the first battle with the Indian State.

It is not that everyone favours the militants or all militant groups uncritically. But a widely held sentiment is that the Indian State deserves all it gets. As evidence of this fact a journalist of a local paper humorously related how people in a local rally raised the slogan 'aiwa aiwa, lashkar-e- toiba !'(in the same vein as the advertisement) even though they did not support that particular militant group per se. What they were trying to convey to the Indian State was that if it did not respond positively to the political crisis it would be groups like the Lashkar-e-Toiba that would take over the state.

Many people also express the view that they are caught between two set of guns, one wielded by the state and the other by militants. This feeling was expressed strongly in Magam, where there is a strong Shia population. One young university woman student, a Shia muslim, indicted the militants for adding to Jagmohan's manoeuvres and creating fears among the pandits, and thus driving them away from the valley. The militant groups have also been criticised for trying to police some parts of civil society. The Press has on occasion been targeted for not carrying human rights violations or when it was critical of the militants. Women, in some phases of militancy, have been targeted for not wearing the burkha. Recently, acid was thrown on two young women. Although many of the militant organisations including the HM and the LeT have condemned these attacks reports from the valley suggest that women are fearful of this most recent round of attacks on their freedom to dress as they think appropriate. These actions of the militants are most reprehensible and must be strongly condemned. There is good reason to feel some concern, which has been voiced by many Kashmiri people, that if a political resolution to the crisis in Kashmir does not take place soon, right wing militancy that they do not favour will grow.

STUDENTS

Academic life, like other aspects of everyday existence, shows the visible consequences of harassment by the Forces. We met a group of students pursuing a master's degree in commerce at Kashmir University. They told us that over the

The Kashmiri Pandits

Official reaction in the form of imposition of central rule in January 1990, and Jagmohan being sent as Governor at the same time followed the onset of militancy in the valley in 1989. A massive army crackdown resulted. Militants killed a few prominent Kashmiri pandits as they were seen as government agents. They also killed many more muslims who were seen as 'informers' and agents. In some early processions demanding *Azadi*, some specifically Islamic slogans were raised. Overall the hindus in the valley began to feel insecure. And Governor Jagmohan decided that the armed forces would not be able to provide security for the widely dispersed pandit community and advised them to leave the valley. This was the official reason. The fact that Jagmohan deliberately stopped all efforts by both muslims and hindus in the valley to stop the communalisation of the situation, indicates the real objective – migration of all pandits would give the entire issue of *azadi* a deeper communal colour. It would encourage the replacement of a *Kashmiri* identity with a *muslim* identity. The consequence of this policy was that the Kashmiri pandit refugees migrated in large numbers in 1990-91. They were assured that they would be back within 6 months. Meanwhile the round of repression on people and protest in the valley continued. Finally, Jagmohan was asked to leave after the firing by CRPF on a peaceful procession taken out after the murder of Mirwaiz Farooq on 24 May 1990. Forty-seven innocent people were killed in the valley.

According to the office of the Relief Commissioner in Jammu, 28,561 families (which could easily mean 1.5 lakh persons) had registered as migrants with the office till 1997. Of them, 25,250, i.e., nearly 89 percent were hindu families, 1468 were muslim families, 1803 were sikh families, and 75 were 'others'. Registration entitled the migrants to relief and rehabilitation. The State Government till then estimated that the total

no. of migrants appeared to be about 60,000 families, i.e., close to 3 lakh people. Migrants' organisations such as the Panun Kashmir put the figure of migrant hindus at 7 lakh, though the source of their estimate is unclear.

Those who had the resources to do so, subsequently migrated elsewhere – to Delhi and other parts of the country. In some states, there were special reservations for them under which some of them got jobs. The sikhs in the valley however, stayed on. Most of them continued to do so even after the Chittisinghpora massacre of sikhs in 2000.

All hindu migrants from the valley are pandits – owing to the course of history in the valley, the only hindus in the valley were Brahmins. A fairly large segment of the migrants is from the urban middle class or the rural land-owning class. Many of the large houses occupied by the army we saw in the valley had in fact been abandoned by pandits.

In the valley, Kashmiri pandits and sikhs comprised about 3% of the population there. They had occupied about 30% of all government jobs. Even if these are rough estimates, the pandits, at least occupied a disproportionately high percentage of all government jobs compared to their population size.

Not surprisingly, the leadership of the pandits is provided by organisations like the Panun Kashmir, with a well-established communal agenda. Beset by the problems of day-to-day existence in the camps, the Kashmiri pandits are today pawns in the larger agenda of fundamentalist organisations. Even as communalisation and communal propaganda centring on them grows, and the government shows no interest in resolving the Kashmir issue, their living conditions – and lives – remain stagnant, unchanged and exiled. And they seem to be condemned – to living permanently in temporary camps.

last few years the number of men students has decreased and at present women students comprise over fifty percent of the student population in the university. Male students are the most vulnerable segment of society who are constantly harassed by the Forces. To escape the harassment the sons of the well-to-do parents have gone out of the state to pursue studies. Those who have stayed behind are often picked up by the Forces. According to the students many among the custodial arrests have been young men with M.A. and Ph.D. degrees. They have been detained in jail for two to three years under completely arbitrary laws like the PSA. There was crackdown conducted by the BSF recently in a hostel on the University campus and some students were locked out of their hostel rooms for three days until the search was over. There is no active Students Union in the University because no student would want to take the leadership and incur the wrath of the Forces. Even those who manage to complete their studies have no job security. As an articulate and agitated student put it, 'We don't have any status as post-graduate students as we did in the past. We do not have any future.' When their own lives are thus wrecked, how can they think of India or Kashmir, they ask. Perhaps their resentment towards the Forces and their own frustration regarding their future has driven some of them to at least sympathise with the militants. The teachers at the Government Women's College in Navakadal, Srinagar, corroborated the fact there had been ironically a reversal of the situation when the young boys stayed home for the fear of being exposed to the harassment of the Forces, it was the young girls who were more visible on the streets as well as in colleges. The girls have to face, as we shall see later, another set of problems.

TEACHERS

Even the Faculty of the University hasn't been spared the humiliation and tortures of the Forces. In 1996, during a crackdown by the Army, all the professors, deans and the vice-chancellor were forced to come out of their offices and were made to sit in an open ground in a crouched position for nearly two hours. The humiliating ordeal came to an end only when a Captain finally came and asked them to get up and go, without so much as an apology. A Professor of Kashmir University, who was deeply affected by the experience replayed the entire incident for us and spoke for all self-respecting

Kashmiris when he said, 'No civilized and self-respecting society can forget or forgive the crimes committed by the Indian Army, for every Kashmiri is affected by the reign of terror unleashed by the army.' The Professor, who has spent a part of his student life at a University in Delhi, and who has been a liberal all his life, feels that the army atrocities have reached beyond a point of tolerance: in his view it could only be termed as colonial rule of India in Kashmir. The Professor is likely to be representative of a major section of the Kashmiris who may not be particularly sympathetic to the extremism, and may even have been inclined to be with India in the past, but have grown increasingly resentful of the atrocities of the army and thus become alienated from India.

WOMEN'S COLLEGE

The Government's Women's College, situated in Navakadal, a highly sensitive, militant affected area of Srinagar, is 40 years old. A teacher from the education department of the college told us that the literacy rate in Kashmir is 49%. For girls it is slightly lower at 45%. The general opinion of the teachers in the college was that education had suffered because of the conflict, though it was boys who were more affected than girls. They recalled never having missed a class during all these years in spite of the fact that the area is in a very sensitive part of the city. Once all the three college buses were gutted and there were attempts to damage college buildings. There were times when fundamentalists were forcing a dress code for women. Even some women came and propagated the use of the burkha during 1995-96, though they were not against women's education. The teachers felt that they have gone through many phases of dislocation, but it is significant that the pandit teachers have not left the college. One young woman who has been a teacher of English for the past eight years, was most articulate about how they coped with the enforcement of purdah. For a few days they would put a chaadar on. And within a few days they would chuck them.

According to the teachers unemployment was among the biggest problem faced by the college students. Since development has come to a standstill in Kashmir, and with no new industries or business enterprises, employment is not available. Marriages have also been affected. Since young men are not getting jobs the boy's family prefers a

girl with a job so that there is a means of support. Girls usually get married at the age of 24 to 25, though the trend is changing now and they are getting married soon after graduation. In any case there are fewer boys available for marriage. Because of unemployment there is frustration in the youth but yet there is no policy to give them jobs. 'Peace can prevail only if there is employment,' said one of the teachers.

WOMEN

What has it been for women to live in Kashmir in the times of conflict? The women of the valley obviously feel very insecure and vulnerable because of the fear of molestation, rape and killing by the Forces, an account of which has been given earlier in the report. The experience of women during the crackdowns conducted by the army has also been harrowing. While they are not asked to leave the house during the raid, they prefer to come out because of the fear of being alone with the security forces inside the house. A social worker providing medical relief to the people, told us that in districts such as Kupwara where militancy is intense and so is the army's heavy-handed behaviour, it has become a habit with the security forces to force themselves into houses and stay for the night. Crackdowns are particularly hard for women and children because they are forced to sit in a crouching position for long hours, without food or water and even without being able to relieve themselves. In addition they would be harassed and humiliated as women. In Mohanpura village, about a month after the killing of Ghulam Mohiuddin security forces molested a young unmarried girl of 14. One young high school student told us that no woman went out after 5 p.m. in the evening because it was regarded as unsafe.

Because of these insecure conditions and the inescapable presence of the army the age of marriage has dropped in villages to 14 to 15 years for a girl, which about ten years ago used to be 20 to 22 years. This is indeed a retrogressive change and it is perhaps a consequence of the accounts of or actual encounters with predators in uniform who have raped and assaulted women. The difficulties of finding a husband for a girl who has been molested or raped, because despite sympathy for the girl, the stigma survives —as happened in Kunan Poshpora in District Kupwara, where 30 women and young girls were raped in 1991—has

led to marrying girls off well before they fall prey to possible assaults.

Apart from the fear of sexual assaults women are experiencing other kinds of psychological trauma and physical hardships. Added to their own personal insecurities women also have to come to terms with the loss of their sons, husbands and dear ones. As a sociology lecturer in the Government Women's College put it, women live under tremendous emotional and psychological trauma: 'It is high time both countries realized that Kashmir is going through difficult times, especially the women of Kashmir, since there is not a single home that is not touched by the crisis. Political leaders should know that women are the most exploited section, since they have to bear the brunt, as they have lost their husbands or sons. All of us suffer from poor mental condition.' The unbearable suffering that the women have gone through was poignantly brought out in Haigam where Taslima recounted the deaths of her sister Bilquisa and aunt Atiqa during the firing at a demonstration to protest against the killing of a fellow villager. Taslima had earlier lost her father in 1992 and brother in 1996 in the conflict in Kashmir. Taslima told us that having witnessed three deaths in the family she had finally, after the death of her sister, lost the courage and will to live.

Everyday life has also been harder as medical facilities like other facilities have been severely dislocated or have even collapsed in the last few years. Women doctors who are posted in rural areas leave because of the similar fear of humiliation and harassment by the security forces so there are virtually no medical facilities for women in the countryside. Women have to travel all the way to Srinagar for treatment, or just to deliver their babies. In areas where the influence of militants is predominant, there is a ban on abortion. 'Many women have migrated to the towns from villages to save themselves', said an elderly social worker of Doda. The trauma experienced by women whose loved ones are missing or killed has led to a high incidence of nervous breakdowns, the loss of will to live and even suicides.

Despite fears and insecurities many women in Kashmir are trying to maintain a semblance of normalcy and display a remarkable capacity to surmount the odds against them. There is a strong investment in education which has been an important concern of the Kashmiris since 1950s.

Of Women, Resistance and Veils

Attempts have been made from the beginning of the recent phase for the movement for the *azadi* of Kashmir by a section of the militants to 'reform' the culture of the people. This has led to policing civil society by the closing down of cinema halls and ensuring that the youth are not corrupted by the consumption of alcohol and drugs. Among the more persistent attempts has been the enforcement of the burkha upon women. There has been an equally persistent struggle on the part of women to resist the diktat: in 1990: two women wrote open letters to those militants who were forcing the wearing of the burkha and other ways of making women conform which were published in the *Alsafa*; the first was entitled '*Burkha pehene ki dhamki akhir kyon?*' and the second '*mujahid bhaiyon ke naam.*' Among the arguments used then were that since the burkha was a symbol that made women feel inferior how could a religion which gave equal status to women and men compel the woman to feel inferior? Further, the martyr Maqbool Bhatt of the JKLF had said, just before he was sent to the gallows, that he was against the use of the Burkha in muslim society because it confined women within the four walls of the home; and finally the burkha was impractical for the bulk of Kashmiri women who could not possibly work in the fields, as they usually did, wearing a burkha.

In the mid 1990s there was another concerted attempt to enforce the burkha. College and university students got to know of the diktat through the newspapers, the strategy normally adopted in such situations, and they held discussions in their classes. Among the arguments that came up were: why were women alone being coerced into a dress code when there was no such code for men? Women students were furious and tried to resist the imposition of the code as well as the manner in which they were being coerced. Young men would enter buses and make women without the burkha get off the bus. Some women began to conform and wear the

burkha out of fear—*dar ke mare* they told us—not out of conviction. Others appeared to conform: a young pandit woman recalled how she and others had put the chador on for a few days and then chucked them off. A sociology student, who has now become a teacher, had preferred to walk to the university rather than accept the imposition. A senior teacher said she would rather not go out at all than be forced to wear the burkha. The refusal to be cowed down and the bad name the imposition brought to the movement probably had its effect and after a while the whole move to force the burkha upon women died out. Women teachers at a college told us of a story doing the rounds at that time: some shopkeepers who had an excess of black cloth on them spearheaded the campaign via the boys in order to get rid of the stocked cloth! When the cloth had been disbursed the movement too died out at that time.

The burkha issue has remained a matter of discussion among women in particular. At the Women's College a lively discussion took place in our presence during which the sociology and history of the wearing of the burkha in the valley was outlined for us: it had been a practice restricted to the elite initially and was worn even by rajput dogras and pandits. Later it became a symbol to be adopted by upwardly mobile women whose families were aspiring for a higher status. About 80% of women in the villages never wear it anyway. On the whole the women that we spoke to were against any coercion, considered that it was not required by the Koran, where the term *purdah* merely implied covering the body, and felt that the Kashmiri *phiran* was an adequate and eminently suitable garment (*hamara libaz khud ek pardah hai* they said). They took pride in Kashmiri society which had been able to distinguish between westernisation and modernisation: Kashmiri women were for modernisation and not westernisation and there was no question of policing their conduct.

The feisty women of Kashmir are now being threatened once more. There have been acid attacks recently on girls not wearing the burkha mounted by a little known militant group called the Lashkar-e-jabbar. Despite the fact that both the Lashkar-e-toiba and the Hizbul Mujahidin have condemned this attack we have been told that women are more fearful now than they were before and the traders are having a field day. Many others have also condemned the enforcement of the burkha and the resort to violence including the Mirwaiz of Kashmir, Moulvi Umar Farooq and the Vice President of the Democratic People's Party, Mehbooba Mufti. Mehbooba has said, 'in all these years the women of Kashmir have borne the brunt of militancy; any such diktat was not acceptable to them now.' Hurriyat leader Abdul Ghani Bhat has expressed suspicion about the origins of the move especially because no one has been apprehended for the acid attacks even three weeks after the event. A more direct expression of the same view has come from the Hizbul Mujahidin which alleges that the diktat is a deep conspiracy against the movement for azadi in Kashmir. The Hizbul Mujahidin has also said that Islam did not believe in coercion.

A most interesting reaction to the diktat has come from a schoolteacher who has now begun to wear the burkha— out of fear, but whose worries are of a different order now: how will she run for cover when a grenade explodes or a shootout takes place? She says, 'Those who have ordered us to wear the burkha don't know what would happen to us if violence broke out around us. Can we run as fast while wearing the burkha?' she asks pertinently.

The enforcement of any kind of dress codes/ the burkha upon women, whoever is behind it, must be condemned. We hope that the democratic sections of Kashmiri society will ensure that their movement for *azadi* (freedom) is for all, not just for men.

This concern has survived in spite of the difficult times. Even in distant villages we met young girls studying in 11th and 12th standards with a desire to become doctors or lawyers in future. An enthusiastic young girl in Mohanpura told us that she wanted desperately to be a doctor and would even postpone marriage till she became one. But the difficult times through which young girls were living were also a reality as her companion immediately shot back that the situation was not conducive for a girl to become a doctor. (*yahaan doctor bananeke haalaat hi nahin hein.*) A girl of another remote village, Kreeri, was determined to be a lawyer in order to fight against injustice. Injustice/oppression (*zulm*) in her view was of two kinds: within the household men were responsible for *zulm* and outside it was perpetrated by the state. But she also knew that her dream was not going to be fulfilled as higher studies in Srinagar would require high fees or a scholarship, which were beyond the reach of the poor. The most appalling effect of the situation in Kashmir, however, is, that the girl-children of the men killed in army operations are taken out of school, for the family can no longer afford their education. Considering that even by official count there have been forty thousand deaths in the valley in the recent years, this is certainly not a small number. Nevertheless, in spite of a terrible sense of insecurity inside the home and outside, in spite of uncertainties about her life, it is the courage of the Kashmiri woman who still sends her daughter to school and college because she hopes for a different dawn that has left an impact upon us.

The presence of women wherever we visited, in Srinagar or in distant villages, was striking. They came in large numbers to talk to us, and were forthcoming with their information and their perceptions. We were also told that women have come out in large numbers to participate in all the protest demonstrations in the valley. In Haigam it led to the killing of two women. In the villages of Dangom, Dagpura and Mohanpura where there were incidents of custodial killings, the young girls we met had known the young dead victims as their classmates in Shopian and had also taken part in the procession to protest against their killing. The young women of the valley are in every way part of the conflict that has gripped their lives, their world. They are not confined to their domestic space, while leaving the struggle to their men in the public sphere.

This is also another unique aspect of the Kashmiri women who, unlike anywhere else, have lived not only through the struggle, but also with it as vocal and articulate, confident and courageous, representatives of the struggle.

And yet their voices are not able to impact the political process, even less than their men who too do not seem to be able to shape the politics of contemporary Kashmir. What would be women's role in the peace process? Shouldn't they participate in something that has a crucial bearing on their lives we asked the many women we met in the course of our investigations. According to Mehbooba Mufti, one of the few mainstream political leaders, who has been fighting against human rights violations by the Forces in the valley, perhaps the conditions were not very conducive to talk about women's experience of the conflict at the moment; that would be possible only in future, when things were better. There are too many pressures and forces, which make it difficult to foreground women's voices. This position was echoed also by women teachers in the Navakadal College. Additionally it was stated that since public forms of political activity had more or less collapsed in Kashmir it was difficult for women to make themselves heard.

Women, nevertheless, have pronounced views on the situation in Kashmir. The young girls of Mohanpura who had told us that the times were not conducive to realizing their ambitions also said that the new conditions could be created only when the

people's opinion would emerge more fully (*haalaat badlenge jab awam ki rai banengi*). And what did they want? Of course, *azadi* since, as one girl put it very succinctly, it was the first step to everything else. And they also placed a responsibility upon us – *halat badlenge jab tum halat banaoge* – they told us clearly sending out a message to civil society in India. For the young student of Kreeri the fight against the state was linked up with the fight against patriarchy, for she believed that Kashmiri women were also victims of male oppression. This young woman's perception of different forms of injustice or '*zulm*' and their interconnection had made her determined to be a lawyer to help her fight against them. There was also a need to unite in order to end injustice. And though the '*zulm*' of the state seemed invincible she believed that one could fight the great forces of injustice by first fighting against the small manifestations of it in one's own backyard (*'chhote chhote zulm ko ladne se hi bada zulm katta hai.'*). Her determination to struggle against all forms of oppression and her courage and confidence in the face of extremely trying conditions represent the never-failing hope of the Kashmiri people, especially the women, in times of black and bleak despair. And who will not be affected by the long struggle of the once housebound Parveena Ahangar to find her son (see box), her resolve to challenge the government, and to unite those equally affected as her: hers is a life which is an inspiration to women anywhere in the world.

III.

POLITICAL PROCESS

3.1 POPULAR PERCEPTIONS

Cynicism and disillusionment about democratic institutions and processes is high in Jammu and Kashmir. The long history of rigged elections and puppet regimes has not allowed any serious opposition to grow. Democratic space has shrunk in the bargain. In this section, we try to capture some of the perceptions regarding certain aspects of the political process.

□ *On the elected government and elections*

There is almost a universal lack of faith, across class divisions, in the present government led by Farooq Abdullah. According to some, Farooq Abdullah was only interested in playing personal politics and imposing 'dynastic rule' on Kashmir. Others felt that his government was corrupt and not in the least serious about resolving the problem. The villagers of Magam, for instance, were indignant that not a single official or political leader from the state government had visited the village even twenty days after the incident of explosion and BSF firing in May to either understand the situation or express sympathies. The Hurriyat leadership, on the other

hand, visited them and listened to their complaints. But the state which was supposed to protect them seemed to have abdicated its responsibilities: "How can they claim to govern us," burst out an old man. Some villagers of the valley were categorical that whatever be the situation, they would not tolerate the command of Farooq Abdullah. Some journalists and members of the opposition in fact went so far as to observe that the state government had a vested interest in worsening the situation. If it had good intentions and a political will it could control the security forces and take action against the erring personnel. But the National Conference could thrive only by keeping the issue alive. We were told that large amounts of funds were siphoned off by the state government to give compensation and employment to the relatives of the NC activists who were killed. Perhaps this was the only way the NC could broaden its base in the face of the hostility it encounters in the state, by promising monetary help. Some people thought that if Jammu and Kashmir was given more autonomy, Farooq Abdullah would not stop bloodshed, as he would never talk to the militants.

With their faith in the government machinery completely shaken, the people have boycotted participation in political processes that, in their eyes, make a mockery of democracy. A crucial example is the widespread defiance against state elections. Almost everywhere we went people told us that they had boycotted the 1996 state assembly elections. In Dagpora village, a young man related how they were forced to cast their votes under threat by the Forces. But they were cleverer; they went and defaced their votes instead. The same was done by a number of the other villagers across the region.

□ *On Azadi*

"We want to wake up one morning and find ourselves free."

What do the Kashmiris desire the most today? The inhuman suffering of the past twelve years has made people desire an atmosphere free of bloodshed most of all. But, as a journalist put it very clearly, peace must be gained with dignity and honour through a lasting political solution. A peace that for the people is synonymous with '*azadi*' or independence from both India and Pakistan. Sustained and continuing repression by the Government of India has made freedom from India

the immediate priority as Pakistan could be dealt with later. Freedom to have economic and trade relations with all the countries of the world is part of the conception of *azadi*. In Doda, *azadi* seems to symbolise *azadi* from their immediate oppressors, ironically known as 'security' forces. Along with *azadi* the primary concern here is to even out the differences between the Valley and the Jammu region. Given, the territorial instincts of nation states, the desire for dominion over Kashmir of India and Pakistan, the complex question of how *azadi* would be achieved has no easy answers. While the people swing between the two extremes of hope and despair, they hold close the dream of *azadi* that many of them have nurtured for so long. Like other dreamers they want their dream to come true.

□ **Who represents the people?**

It is always a vexed question as to who actually represents the people. There is a 'duly' elected government of J&K. However there is little doubt that it does **not** represent the people. The Hurriyat claims to be their true representative. According to Prof. Abdul Ghani Bhat, it represented even "the heartbeats of the hindus and buddhists in Ladakh." While this may be excessive, in a referendum the Hurriyat may well get a majority even though in the Hurriyat itself there is only a token representation of the Jammu and Ladakh regions.

The Hurriyat however has its critiques. Its claim to represent all the people is contested by some in the valley even though it is widely acknowledged that in instances of human rights violations the Hurriyat leaders are the only ones who reach the victims and offer support and solidarity. In the absence of any other political grouping or human rights interventions, this does give the Hurriyat a certain amount of credibility. Besides, a section felt that after the achievement of *azadi*, if the Hurriyat or any other leaders failed to fulfill their aspirations they could be controlled. The pandits we met were of the opinion that the Hurriyat could be seen as a 'Kashmiri' representative though more moderate elements within (like Abdul Ghani Lone) and outside (like Shabir Shah) Hurriyat should also be included. As far as their own representation was concerned they felt that in any talks representation of all communities should be sought including themselves.

Whether the Hurriyat represents the Kashmiri people or not it was a unanimously held view, even by opposition leaders, that they should be consulted. Mehbooba Mufti, for instance, maintained that it was imperative that the government talk to the Hurriyat as well as HM militant leaders. She felt that the Hurriyat represented those who challenged the accession to India and only by talking to them could one convince them otherwise. Whatever India's position on Kashmir the necessity of engaging with separatist and militant leaders in talks and negotiations could not be negated.

□ **The Future**

The Kashmiris have great hopes about a peaceful existence and a political arrangement that would make such a peace possible. At the same time they fear that all parties involved have a vested interest in not resolving the issue. There is a strong perception that both India and Pakistan are selfishly using Kashmir for their respective political gains. A view that came through strongly was that neither country would want to resolve the issue for then they would lose the main ground on which their conflict is premised.

There was also a firm belief that Pakistan could no longer be excluded from any political arrangement arrived at regarding Kashmir. One of the suggestions for a pragmatic solution rather than the ideal one of *azadi* was that both segments of Kashmir could be unified territory. However, external affairs and defence in the two segments would remain in the hands of Pakistan and India according to the territories under their present control. Another suggestion was that the LOC could be opened up with immediate effect. Cross-border visits and trade would lessen tensions, boost the morale, and open up possibilities of friendship and peace.

3.2 PEOPLE'S VOICES

- ♦ Doda is the '&' in Jammu & Kashmir (popular saying in Doda town – referring to its acute neglect by all concerned)
- ♦ Anybody who is voted to power has to take an oath to abide by the Indian Constitution. If Salahuddin had been allowed to become an MLA he too would have taken an oath and remained within our constitution. Perhaps this kind of militancy would have never begun...*(Kashmiri pandit migrant at Nagrota*

Camp, Jammu, on the farce of the 1987 election).

- ♦ “Yahan paani nahi dete, vote kya denge!” – (*Kashmiri pandit on why they could not vote in the Nagrota Camp and had to send their votes to Srinagar by post*).
- ♦ “We do not want the command of Farooq Abdullah.” (Young man of Dagonora)
- ♦ “Sheikh Abdullah was a communist in Delhi, a socialist in Jammu and priest (who wished to be worshipped) in Srinagar.” (A schoolteacher in the valley).
- ♦ “All the jobs and funds are siphoned off by the relatives of the National Conference activists who were killed. Even the mother in law of a killed NC worker was given employment in an aangan wadi.” (Mehbooba Mufti Sayeed, PDP)
- ♦ “We want azadi from both India and Pakistan, but from India first – because it is bigger and rules over us. We will deal with Pakistan later.”
- ♦ “Hum to chahte hain ki hum so jaayen aur subah aazadi a gayi ho.” [“We want to wake up one morning and find ourselves free.”] (Villager in Pulwama)
- ♦ “The political talks between Vajpayee and Musharraf have only been announced by the government to divert attention from the Tehelka scam.”....Also, “If the talks do not provide a genuine political resolution there will be more bloodshed and Kashmir will be ruined.” (Senior academic in Kashmir University, Srinagar)

The Search Goes On

Parveena Ahangar's struggle to find her son reads like a saga of Kashmiri women. Ever since her son disappeared 11 years ago she has been searching for him everywhere: in Meerut, in Varanasi, in Delhi's Tihar jail, and in army camps in Kashmir. But all the response she has got from the authorities whose officers took him away from his house one night is the ex-gratia payment of one lakh rupees. But Parveena has been insisting: 'give me back my son or give me his body. What will I do with 1 lakh when my family is destroyed? I want justice and I want my son.' And as she went from authority to authority and from court to court her struggle and her search eventually became a search for many more sons and many more husbands who had also 'disappeared'. She says with great poignance: 'I don't feel I am alone in my pain when I see the distress of other women, especially of much younger women, with young children to fend for.'

Among Parveena's possessions is a green plastic bag in which she files clippings of missing persons which appear in newspapers – her own archive of people who have disappeared. Among these cuttings was a cartoon that depicted an everyday situation in Kashmir — custody deaths in interrogation centres— titled *choo mantar*. It had two parallel visuals: in one a policeman is waving a cloth over a person who has been picked up for questioning. In the second the cloth is being shaken out and poof! the person has disappeared. Clearly the cutting meant something to Parveena — that is what had happened to her son — he has disappeared and no one will take responsibility for his disappearance – not the chief minister, not the army authorities, not the Home Ministry, and not the courts where a petition of hers still awaits attention. Parveena's sorrow has no end. Expressing her grief she had earlier said: 'Every day I die a hundred times. My tears are my Jesus and resurrect me after death.' While parting she said to members of the team, '*Allah se mein dua karti hoon ki mujhe itni himmat de ki mein is bete ko dhund sagoon.* [I pray to Allah that he gives me the strength to be able to find my son.]'

Will Parveena's tears be rewarded? Will she find her son? Who will take responsibility for her sufferings? And will we look away leaving Parveena to continue to wage a lonely and long battle for justice?

- ♦ “APHC does not represent Kashmir – it is an accident of history in which 6 people came together by accident.” (senior journalist)
 - ♦ “It is not necessary that the Hurriyat wear the crown when azadi comes.” (Villagers in a south Kashmir village)
 - ♦ “We have not committed any crime. Why are we being punished?” (Old man of Magam village)
 - ♦ “We just want peace at all costs. As of now the APHC are our representatives.” (Shia villagers at Magam)
 - ♦ “How can they claim to govern us?” (an old man in Magam, referring to the elected representatives of the area who had not visited them even once after the blast and ensuing firing).
 - ♦ “The Forces compel us to go and cast our votes. We do not have any faith in elections like this. We go and deface our votes.” (A young man in Dagpora village)
 - ♦ “Minorities should have an equal part in the governance and development of Kashmir.” (A senior professor at Kashmir University)
 - ♦ “We have been defeated but we cannot be vanquished.” (retired professor of Kashmir University).
-

IV.

Conclusion

HUMAN RIGHTS ACTIVISTS are always accused in public fora, by government and armed forces of being only interested in talking of the human rights violations of the 'militants'. What of the 'human rights' of the security forces so valiantly defending the nation who die and sustain injuries in the process of fighting against the militants? Human rights activists are then harangued in television-shows of lowering the morale of the armed forces by raising questions of human rights violations. According to this view, the security forces are barely able to catch any criminal because they have to tread very carefully out of fear of human rights groups crying foul.

But a basic truth is forgotten - it is sad that it has to be repeated – that when militants kill or attack, it becomes a crime in law and they are hunted, arrested and often killed. But when armed forces kill unarmed people, it is simply assumed that they are doing so in the interests of 'national security'. Even if there is any official investigation as to why an officer of the armed forces kills someone, inquiries have a peculiar way of not ever getting completed. So a Haigam today becomes a 'bad one' for the Chief Secretary, only because there is protest

and it is reported in the electronic and print media. In custodial killings and encounter deaths, the 'security' forces simply say that the person killed was a militant, and this is enough to not conduct even the mandatory magisterial inquiry into the killing – the 'whiff' of militancy taints it as stated by the Deputy Commissioner, Pulwama.

Just the official stamp of 'militant' on a corpse is a surefire way of getting around all uncomfortable questions – for instance, what is the evidence that a person was a militant? Should this not have been established in a court of law? As per law a person is innocent until proven guilty. Moreover, 'cross-fire' and 'encounter' are the two magic terms which seems to obviate the need to give any explanations of killings by the security forces. In complete violation of all principles of justice, the general assumption becomes that the ones killed must be guilty. In a region teeming with armed personnel, present nearly in every village and hamlet, it is hardly likely that complaints against them will be followed through, even if they are made (e.g., the chief witness turning hostile as at Mohanpora), and FIRs against them are not even lodged in most cases inspite of court orders (e.g., in the case of Sheraz Ahmed Khan of Dagpora).

These are the issues which human rights organisations have been raising time and again. What is important here is that all of these practices of the security forces have been carrying on throughout the period of militancy and even during the cease-fire. But things appear set to get far worse. For under the extended Disturbed Areas Act the armed forces can act completely at will without even the mildest of checks or questions. Especially, after the announcement of the Home Minister on 19 August this year that serious thought is being given to provide some kind of 'amnesty' for those security personnel who were (or had) engaged in counter-insurgency duties. The implications of such 'amnesty' would be too disastrous to be contemplated in the case of Jammu and Kashmir, and provide a clear licence to violate with impunity the human rights of the people of the state- a bleak and chilling scenario given the extent of violations even without such an 'amnesty'. It would spell the end of absolutely any future political resolution of the issue. In the climate of alienation we saw in the Valley and Doda such a step will contribute to quantum growth in the degree of alienation and

sense of betrayal. Institutionalisation of brutality would fundamentally undermine the basic principles of a democratic state.

A genuine cease-fire, cessation of hostilities on all sides, immediate cessation of human rights violations by the armed Forces, genuine freedom and opportunity to the people to discuss and debate their future, and a continuous trilateral political process involving India, Pakistan and the appropriately identified representatives of all sections of the State: this is what Jammu & Kashmir requires today. To this end we place before the Indian and J&K Governments the following demands :

- Custodial killings must stop
- The retaliatory killing of civilians in revenge for attacks by militants upon the Forces must stop.
- Army personnel guilty of torture, extra-judicial killing and molestation of women must be prosecuted forthwith so that the people are assured that the rule of law rather than the rule of the gun prevails.
- The army must necessarily function under civilian authority wherever civilians are involved.
- Whenever an enquiry is held or an investigation is undertaken into human rights violations by any wing of the Forces in a particular locality, the armed forces unit in that locality must be replaced in the interests of a fair investigation/enquiry.
- In all incidents of human rights violations by the armed forces, the accused personnel must be tried in the ordinary criminal Courts in the interests of justice. Court martial is an internal matter of the army with the object of maintaining discipline and should have no place in trial of criminal offences arising out of human rights violations. In all such matters permission for prosecution must automatically be given by the Government of India once the police file a charge sheet.
- NHRC guidelines pertaining to the method of investigating alleged encounters must be

strictly followed whether in the case of the police or the armed forces.

- Forces such as the SOG which has acquired a reputation of being a killer squad must be strictly disciplined. The practice of enrolling surrendered militants who have committed gross offences such as murder into the SOG should stop. It is totally illegal and violative of rule of law.
- People's right to hold peaceful protests and demonstrations and to exercise all democratic rights should be respected.
- Widespread harassment of women which is part of the violence unleashed by the Forces has created fear and insecurity among the women of the areas of conflict. The security of women must receive the highest priority from the administration.
- Since the cease-fire was ineffective, and even that has been lifted, a genuine cease-fire which would help bring peace to the valley is imperative. But it should be part and parcel of a sincere political process that will involve the people of Jammu & Kashmir as well as Pakistan and resolve the issue expeditiously and justly.
- The armed forces should immediately remove all the mines placed round its cantonments and camps and stop using such devices which are internationally condemned.

Following are the demands to the militant groups :

- We demand that the militant groups should stop planting explosive devices in public places, whereby they are endangering the lives of civilians.
- Throwing of acid and other coercive methods to impose burquas and other control measures on women be stopped forthwith.
- In any future political process being initiated, we demand from the militant groups a commitment that they will reciprocate the cease-fire and join the political process.

V.

Epilogue

THE UNDECLARED WAR between the state forces and all suspected 'militants' which in effect means all the people of the Valley as well as parts of Jammu region like Doda, continues unabated. The much-hyped talks on July 13 and 14 held due to reasons other than any genuine desire to resolve the Kashmir dispute as we know now, came to nothing. This determined refusal to address the issue of Kashmir or speak to representatives of Kashmiris, translated immediately and predictably into a series of militant and fidayeen strikes. Belying even lingering hopes after the failure of the Agra summit of moving towards a resolution, the situation is rapidly moving from bad to worse.

The Government of India is busy flaunting the highest ever body-counts of 217 'militants' killed in June and 233 in July this year (The Indian Express, 10 August 2001) as high strategy and index of victories against 'cross-border terrorism'. The army and paramilitary are free to 'catch' and kill well-known leaders like Commander Masood or Mustafa Khan of the Hizbul Mujahideen in custody and claim that these were 'encounter' deaths. When popular protests occur, they are simply silenced by the

security forces as in the case of the recent firing upon a huge demonstration and funeral procession for Commander Masood in Magam, killing 2 people and injuring several. (The Tribune, 5 August 2001) Some of these 'militants', like Masood, were also immensely popular figures, and belonged to groups which had disclaimed the commission of the recent killings of villagers in Atholi, Doda, or the Jammu railway station firing which so tragically claimed 13 innocent lives. In fact it would hardly have been difficult to track down figures like Commander Masood in case the state had so desired. For Masood, whose real name was Abdul Hamid Tantray used to contribute a regular column for the Urdu paper 'Chattaaan' in which he was in fact writing lately of a peaceful solution to the Kashmir question. Instead of taking steps to decrease the suffering and alienation of the people of the region by checking human rights violations, the Government appears to be going in for further militarisation. The security forces in the state have unquestioned authority. With the extension of the Armed Forces (J&K) Special Powers Act (1990) to four additional districts on 9 August 2001, their power is extended to virtually the whole of J&K with the exception of Ladakh. As a newspaper headline described it, the security forces have "more teeth" to fight the ultras (The Statesman, 9 August 2001). Unfortunately, it will be the civilians who will bear the brunt especially in remote areas like Doda where the immunity that the security forces already have will get increased manifold.

There are other anti-people proposals mooted by the government since the Agra summit. For example, the Home Ministry has proposed to consider amnesty for armed personnel involved in cases of human rights violations; the decision to appoint 1000 Special Police officers in Doda district (6/8/2001, The Hindustan Times, New Delhi); the arming of the Village Defence Committees comprised exclusively of hindus with automatic weapons; and the massive influx of additional battalions in Doda. These "tough" measures, taken mainly after the killing of hindus in Doda (on 3 and 15 August 2001), could on the ground get translated into further suspicion, routine targeting and torture of the ordinary muslim population which in turn could lead to further widening of the communal divide. This move hardly provides security to the hindu population for it could in fact lead to further retaliatory

killings of the minority communities by the militants in an ever spiralling cycle of violence. More soldiers, freshly armed with powers to apprehend and kill on suspicion, trained to suspect all local muslims, is the most potent formula for alienating the people, communalising the situation, and forcing people to turn to militants as the only ones who can 'stand up' to the army atrocities. Alienation of the people from the Indian forces thus directly widens the support base of militancy.

Besides the official moves mentioned above, the Unified Command has also taken the totally unconstitutional and illegal decision to use helicopter gun-ships within the territories of J&K (The Tribune, 10 August 2001). This is clearly indicative of moving further towards a situation of "war" against the Kashmiri people. Even the Draconian Armed Forces (Special Powers) Act, 1990, does not permit bombing and strafing of populations as a measure to fight 'terrorism'. In the face of these facts, the Prime Minister's promise of "fair and free" elections on 15th August this year as well as talk of granting 'autonomy' lacks credibility.

As our fact-finding revealed, rampant human rights violations by security forces even during the cease-fire period were the norm. Under the new

regime of 'body-counts' with enhanced and unchecked powers for the security forces the implications for the rights of the people in Jammu and Kashmir are ominous. In many of the violations we investigated, the official versions presented the victims as 'dangerous militants'. It is frightening to think of the very real possibility that the truth of the body-count statistics touted by the government so jubilantly to 'prove' that terrorism is on the run is similar. And unlike the cease-fire period, today these violations would even be legitimised in the name of 'Disturbed Areas'.

In the light of the above it is desperately urgent that the truth of these past incidents be known and action be taken against the accused. It is important to recognise that state repression and militancy grow simultaneously, and that the former is not an antidote to but only provokes the latter. Only when the draconian Armed Forces (J&K) Special Powers Act is removed and an immediate stop put to the daily – now 'official' – war on the people in the state can a real peace process begin. The peace process, if sincere, would have to include a genuine cease-fire as well as a political process that respects the participation of the people of Jammu and Kashmir in determining their future.

VI.

Annexures

ANNEXURE I

The Historical Background to the 'Kashmir' dispute

The Kashmiri movement for azadi, for independence is not new; it is not a creation of the events, the acts of omission and commission, of the last 12 years although most people in India may have become conscious of the Kashmir 'problem' only in the last decade. Long before 1947, and the partition of the sub continent there was a movement for azadi in J&K – an azadi from the dogra monarchy, from the British presence – and a *movement for self rule, a self rule of the people of J&K*. The events of 1947 and thereafter have aborted the goal of self rule but the desire for it has not abated; it is manifest in new forms even as its history itself has been obscured, especially outside the boundaries of J&K. Both India and Pakistan have been complicit in erasing this history and of the alternate possibilities of statehood as envisaged by the people of Jammu and Kashmir.

Key moments in this history for self rule in Jammu and Kashmir go back at least to the 1920's when maharaja Hari Singh became the ruler: the dogra monarchy in Jammu and Kashmir had become operative in 1846 when the British handed it over to Gulab Singh, a dogra from Jammu, in return for 75 lakh rupees. Years later the poet Iqbal, who hailed from Kashmir, bemoaned this sale of a people:

They sold the farmer, the field, the rivulets and the vale

They sold a people and how cheaply!

Dogra rule was harsh and extortionist, focussed on a rapacious relationship with the people. In 1924 there was a strike in the Government owned silk factory in Srinagar (the silk industry was a state monopoly) against the exploitative conditions under which they were forced to work. This dramatically highlighted the oppressive conditions under which the bulk of the people of J&K were governed under dogra rule which in the words of

Sir Albion Bannerji, senior member of the Council of State of J&K regarded them as labouring under poverty and practically governed like 'dumb driven cattle', who had no opportunity for representing their grievances. By the end of the decade Sheikh Abdullah, a schoolteacher in Srinagar who had studied in Aligarh and along with a few others like him constituted a potential new leadership began to mobilise the Kashmiris against the maharaja's government. In July 1931, a delegation of Kashmiris including Sheikh Abdullah met the maharaja about the oppressive conditions of the people – peasants, artisans and shepherds – in the valley, mainly muslim. At the same time a man called Abdul Qadir who was alleged to have given a seditious speech earlier and had been arrested was ordered to be tried on 13 July in Srinagar. As the trial was to begin, a large number of people collected and attempted to force their way into the jail. The police opened fire and 22 people were killed; regarded as the Jalianwala Bagh of Kashmir, it began to be commemorated as martyrs' day by Kashmiris.

The struggle against the maharaja's repressive rule was at the same time a struggle against feudal oppression, a struggle against the discrimination of the muslims by the maharaja, and against 'alien rule'. In this struggle the secular character of the resistance, even though the bulk of the 'oppressed' were muslim, and their oppression included specifically muslim grievances, was sought to be stressed by Sheikh Abdullah. In 1938 in a presidential address to the National Conference he said: 'Like us the large majority of hindus and sikhs in the state have immensely suffered at the hands of the irresponsible government....establishing a responsible government is as much a necessity for them as for us.' And in 1939 he argued that unity among all segments of the people must stand for economic equality, on the principles of socialism and a progressive outlook. The very shift of the name of the party with which Sheikh Abdullah was associated from Muslim Conference (1932) to the J&K National Conference in 1938 was to emphasize its inclusive character.

In pursuance of the goals of the Kashmiri people as articulated through its 'representatives' in the National Conference towards self rule and liberation from a repressive political system a manifesto/ constitution was drafted: the document called Naya Kashmir was adopted in 1944 and it

emphasized the socialist character of the constitution. The National Conference leaders also pledged to eradicate communalism in all forms and to safeguard the rights of 'women, workers and weaker sections of society.' The Naya Kashmir document was published along with a declaration, which stated:

We the people of Jammu, Kashmir, Ladakh, Frontier Districts, illaqa of Poonch, Chinani in general terms called the subjects of Jammu and Kashmir, on complete equality and personal power do hereby unite to save succeeding generations from the deep pit of oppression, poverty, dishonour, superstition and illiteracy and put them on the path of scientific knowledge and honest labour, under a benevolent government towards a happy and peaceful valley...to fulfil the objective that we are destined to accomplish in our history so that our country sparkles like a jewel on the snow-white forehead of Asia. We give to ourselves this constitution with our endorsement.

The 'Naya Kashmir' document was presented to the maharaja in the form of a memorandum as well as circulated among the people. A major struggle was imminent: the maharaja's continued misrule led to the Quit Kashmir Movement. Sheikh Abdullah challenged the very legality of the maharaja's rule attacking the 'sale' of Kashmir as recorded in the Treaty of Amritsar, demanded its abrogation and exhorted the people to be ready for sacrifices for the cause of freedom. He was arrested on 25 May 1945. The QKM spread as people rebelled against the government of the dogra rulers; hartals continued for many days. Repression was swift and came in the form of mass arrests, punitive police action, lathi charges, mass searches – 'complete terrorisation' in full swing as G.M. Sadiq put it. But the movement continued: the resisters damaged the bridges and prevented the movement of the army. And the poet Sahir Ludhianvi wrote;

Red salute to you oh Kashmiri peasantry!

Red salute to you oh men of integrity!

Red salute to you, red salute from us.

Democratic support poured in from outside the boundaries of the state. The Hindustan Times wrote: whatever the situation, tyranny and repression are no cure for the problem. The state government should know that the times are over when oppression could seek obedience and faith from its

subjects.' In response to the movement Nehru, who had earlier been prevented from entering Kashmir by the government, wrote 'A real people's movement can never be crushed this way...'

For his role in the Quit Kashmir Movement Sheikh Abdullah was sentenced to a three year imprisonment and was in jail when India and Pakistan became independent and Partition took place. As ruler of a native state Hari Singh kept his options open at the lapse of British paramountcy. His ministers were seriously exploring various possibilities including accession to Pakistan and independence – or accession to neither India nor Pakistan. An important aspect of Hari Singh's decision about the future of Kashmir was which option would give him the maximum leverage against Sheikh Abdullah and the Kashmiri agitators. The maharaja and hindu leaders of Jammu were also not in favour of merging with a secular India and preferred to be an independent hindu state. Accession to Pakistan itself was also being seriously considered as Jinnah's emissary assured the maharaja that 'Pakistan would not touch a hair of his head, or an iota of his power.' For the National Conference on the other hand the whole question of 'accession' was contingent upon the *prior liberation* of the Kashmiri people from Hari Singh's rule-freedom before accession was their slogan. It was only a representative government that could decide on the issue of accession, not the maharaja. In a telegram to the cabinet mission Sheikh Abdullah said, 'the right of accession is a contentious issue between three parties, the people the rulers and the federation. We Kashmiris have to put it in its historical perspective. A sale deed does not have the status of a treaty. Therefore after the termination of British rule Kashmir has the right to become independent. We Kashmiris want to inscribe our own destiny...'

This was not to be, at least not in August 1947, nor since then. As Hari Singh dallied Pakistan backed an incursion of raiders on October 24, 1947 who crossed into J&K allegedly in support of an uprising of muslims of Poonch against the rule of the maharaja. Earlier riots had broken out in the Jammu region against the muslims although the valley witnessed no rioting and was regarded as a beacon to other areas by Gandhi. The raja's army collapsed and Hari Singh now panicked. To protect his own kingdom against the raiders and the rebels

at Poonch, who declared the region under their occupation as Azad Kashmir, he needed immediate military help from India to repel the invaders. Even at this stage the maharaja was using the option to go with Pakistan if the army did not fly into Srinagar the very evening that he signed the accession – 'the army must fly to Srinagar this evening otherwise I will go and negotiate terms with Jinnah,' was his message to the Government of India. It was under these circumstances that the instrument of accession to India was signed. As India accepted the accession it also agreed that 'once law and order was restored, the consent of the people of J&K would be obtained.' In the meanwhile Pakistan formally entered the military war in J&K and the matter of the 'dispute' between India and Pakistan was taken to the UN in an attempt to end the war. In April 1948 a UN resolution touched upon the plebiscite question. It stated: 'both India and Pakistan desire that the question of accession of Jammu and Kashmir to India or Pakistan should be decided upon through the democratic method of a free and impartial plebiscite.' The war between India and Pakistan ended with the ceasefire of 31 December 1948.

When the maharaja signed the instrument of accession to India in October 1947 he was also 'persuaded' to share power with Sheikh Abdullah, who had opposed his rule since the 1930s. In the early years after the accession there was an uneasy sharing of power between Hari Singh, Sheikh Abdullah and the Government of India. Sheikh Abdullah succeeded in implementing land reforms – about the only region on the sub-continent where land reforms succeeded although his attempt at doing so without compensation for the jagirdars was obstructed by Karan Singh, the son of Hari Singh, in whose favour the latter had abdicated, the regent of J&K who referred the matter to the President of India – one of the first acts violative of the autonomy of J&K. The land reforms were also represented as a communal move as the landowners, though drawn from all communities, were mainly Dogra Rajputs and Kashmiri Pandits. Balraj Madhok who was associated with the RSS had founded the Jammu Praja Parishad in 1947 and it was reputed to be financed by Hari Singh; among the issues that it campaigned for was a full integration of J&K with India. This in turn created anxieties about the

independent status of J&K and the right of the people of J&K to shape their own destiny.

Between 1949 and 1952 the ambiguities in the relationship between India and Jammu & Kashmir remained. The Constituent Assembly of India in drafting the constitution acknowledged, through article 370, the special status for J&K within the Union of India; the second dimension of the accession, ascertaining the will of the people, does not however feature in the constitutional provisions. Simultaneously the J&K constituent assembly was also elected and convened – again a unique feature of J&K – to draft a constitution for J&K. The constitution of J&K was to be framed within article 370 of the Indian Constitution according to the Delhi Agreement between Sheikh Abdullah and Nehru concluded in 1952. According to the Agreement the head of the state of J&K would not be appointed by the President of India, but would be elected by the J&K assembly and article 356, providing for the imposition of president's rule in the states would not apply to J&K. The head of the state would be called the Sadr-i-Riyasat, the head of the elected government would be called the Prime Minister – not Chief Minister as in other states and the Indian flag would fly in J&K but along with the flag of J&K which would be distinct.

The Indian government recognised the importance of Sheikh Abdullah in heading J&K while the Government tightened its grip over the state because he was not pro Pakistan, and he was popular. Nevertheless his relationship with the Government of India was fraught with tension because as a popular leader, of the Valley in particular, he was committed to azadi or at least the maximum possible autonomy and not an integration into India: the original ideal was an independent neutral J&K neither tied to Pakistan or India, a 'Switzerland' of the east. For example in 1949 after the ceasefire between India and Pakistan Sheikh Abdullah was trying to make it clear that the accession question was still to be negotiated whatever the 'help' extended by either India or Pakistan to J&K. Said Sheikh Abdullah:

Before the issue of accession, we had raised the slogan of 'freedom': whatever the role played by Pakistan during our freedom struggle will not affect our decision. Nor will the fact that Mr. Nehru and the Indian National Congress helped us in our freedom struggle affect our objective... We reiterate

and declare that we stand by our principles by which we shall prove that we are virtually the builders of the New Kashmir.

Despite the promise of ascertaining the will of the people the Nehru government had no intention of actually finding out what the people wanted through the holding of a plebiscite – even though a plebiscite was actually held in the other disputed accession of 1947, the state of Junagadh in February 1948 where the Nawab, a muslim ruler over a hindu majority, had acceded to Pakistan; the people voted to go to India – a decision that Pakistan has never accepted. Sheikh Abdullah's 'janus' faced positions and ambivalent statements may well have been a consequence of the difficulties he had in straddling the distance between the stated ideals of the struggle of the people of the valley and what was expected of him as their leader on the one hand, and Indian state's plans for the gradual but firm integration of J&K into the Union of India on the other. This divide was also the basis for the repeated arrests of Sheikh Abdullah, the frequent change of regimes and the history of 'unopposed' contests and rigged elections. This repeated round of political manipulation was alarming to the leadership of Kashmir and began the process of alienation. As early as the first attempt to topple Sheikh Abdullah in 1953 Maulana Massodi, a respected leader and former general secretary of the National Conference warned the Indian government through a press release: 'If the Kashmiris rose as one man against Pakistan in 1947 it was because they saw that that country wanted to force them into a position which they were not prepared to accept. If today demands are made in India which endanger the present autonomous position of the state the Kashmiris should not be blamed if they start thinking of independence.' No heed was paid to such a view and by 1989 azaadi was the dominant slogan in the valley.

Over the years the special status of J&K enshrined in article 370 has itself been whittled down by expanding the legislative power of the Indian Parliament over the J&K assembly. Even the distinctiveness of J&K in terms of nomenclature of its executive heads has been overridden by legislative manipulation – one reason why J&K must have a pliable or puppet regime. Originally the head of State was called the Sadr-i-Riyasat and the head of the elected government was called prime minister,

now J&K conforms to other states. The J&K Constituent Assembly had been in the process of formulating a constitution for the state between 1951 and 1956; with Sheikh Abdullah in jail from 1953 manipulating the Constituent Assembly was facilitated through the puppet regime of Bakshi Ghulam Mohommed; in 1954 the Constituent Assembly, while adhering to the special position of J&K, confirmed the legality of the accession to India – without reference anymore to the will of the people. When the constitution came into force in 1957 Sheikh Abdullah regarded it as a direct repudiation of the Indian commitment to the promised plebiscite. But as long as elections were held and could be manipulated the Indian government believed that it was demonstrating to the world that the instrument of accession was being endorsed by the election results. Challenging the fairness of the elections itself was then regarded as an 'unpatriotic' act. And further, as long as J&K remained a subject of international dispute, one party rule was regarded as necessary not just by the government at the centre but even by the intelligentsia belonging to the opposition in India.

After more than a decade of incarceration Sheikh Abdullah was released in April 1964. Nehru was keen also to explore the possibility of a settlement with Pakistan and at his suggestion Sheikh Abdullah went to Pakistan. He was there when Nehru died. Sheikh Abdullah returned immediately and his mission remained incomplete. In the months after Nehru's death the Government of India gave priority to what Balraj Puri, an astute observer of J&K politics called 'the constitutional integration of J&K with India rather than its emotional integration.' By December a series of constitutional amendments were rushed through in the teeth of popular opposition. These included the dropping of the distinctive nomenclature of executive positions in J&K and the extension of article 356 of the Indian Constitution to J&K making it possible to institute president's rule without prior approval by the state's legislature – a clause to be much used thereafter especially in the 1980s. Further, the head of the state was now to be nominated by the centre instead of the state's legislature. The basic structure of the constitution of J&K was thus perceptibly altered; in a note prepared for the J&K Basic Rights Protection Committee in 1990 Chief Justice Mufti Bahauddin

Farooqi has held that these provisions violate the federal provisions of article 370.

The constitutional amendments were received with outrage by the people of the valley. A cycle of repressive measures began anew and Sheikh Abdullah was back in jail by May 1965, and there were mass arrests of members of his party, the Plebiscite Front. The popular unrest was regarded by Pakistan as an expedient moment to attempt an armed intervention: armed infiltrators came in to Kashmir in August 1965 to 'liberate Kashmir'. Significantly, even though there was popular discontentment against India, the Kashmiris did not respond to the Pakistani overtures, and official war broke out on September 5, 1965 between India and Pakistan which ended on 23 September 1965. It is also significant that right from 1947 Pakistan has looked for a mass upsurge of the Kashmiris against India as a means of countermanding the accession to India: it failed repeatedly till the qualitatively different upsurge in 1989-90 which has become part of the contemporary politics and history of the region.

Between 1965 and 1989 the troubled relationship between the Government of India (GOI) at the centre, the discontented leadership in the valley and the people of J&K was sought to be resolved through accords, in 1974 between Indira Gandhi and Sheikh Abdullah—when the GOI agreed to 'sympathetically consider amendment or repeal of some category of central laws extended to the state after 1953 as the state legislature decides; and the Rajiv – Farooq accord in 1986, meant to ensure greater funds for J&K but in actuality a power sharing agreement between the two leaders as it facilitated the formation of a coalition government comprised of the National Conference and the Congress Party. The first accord paved the way for Sheikh Abdullah's return to electoral politics and second paved the way for Farooq Abdullah's re-entry: both on terms set by the Central Government. Farooq Abdullah was quite explicit about this when he said, 'Anyone who wants to form a government in Kashmir cannot do so without sharing power with New Delhi. Far from bridging the distance between the Government at the centre and the people of Kashmir, these accords have further alienated the people as the accords are perceived as core elements in continuing the manipulative politics in the state. When the assembly elections of 1987

were rigged to defeat the emerging oppositional coalition—the Muslim United Front—many of the defeated candidates became the leaders of militant groups in the valley. In Balraj Puri's opinion, 'If the accords blocked secular and nationalist outlets of discontent, the elections blocked constitutional and democratic ones as well.' The constant erosion of the democratic right to their own destiny finally created the conditions for the Kashmiri people taking to arms and thus for the birth of militancy. By 1989-90 as public protests, police firings and curfew grew so did the cycle of repression, insurgency and another round of repression: it was this cycle that became the pattern/norm in the last decade of the last millenium.

There has been a persistent policy of denying Kashmir a right to democracy: one party rule has been imposed on the state through manipulation of elections, opposition parties have been prevented from growing and elementary civil liberties and human rights have been denied to the people. This refusal to integrate Kashmir, within the framework of Indian democracy has proved to be the greatest block to the process of Kashmir's emotional integration with the rest of India. The basic premises of this policy are that the Kashmiris are unfit for democracy, do not deserve it, or that democracy and national interest are incompatible.

ANNEXURE 2

Chronology of relevant events in J&K upto the beginning of militancy

15 Aug 1947: The British leave India. The country is partitioned. Princely States allowed to choose whether they would join India or Pakistan or be independent. Maharaja Hari Singh, ruler of J &K, is undecided.

24 Oct 1947: Raiders in large number from Pakistan enter J&K in the Poonch region.

26 Oct 1947: Maharaja Hari Singh offers accession to India in return for help to fight the raiders. But he offers accession on condition that J&K will be an autonomous entity within India. The Centre would have power only in matters pertaining to Defence, Communications and Foreign Affairs.

27 Oct 1947: Government of India accepts the offer of accession, including the condition of autonomy, and adds that once law and order is restored in J&K, the consent of the people of the State would be obtained, and only then the accession would be treated as final. Indian Army sent in.

2 Nov 1947: Prime Minister of India, in a broadcast over All India Radio, says that the future of J &K would be decided by the people of the State, and that a referendum would be held in the State under international auspices once peace is restored.

31 Dec 1947: Govt of India applies to the United Nations (U .N) to intervene against the aggression committed by Pakistan on J&K. In that plea, it says: 'the Govt of india wants to make it very clear that as soon as the raiders are driven-out and normalcy is restored, the people of that State will freely decide their fate, and the decision will be taken according to the universally accepted democratic means of plebiscite or referendum. To ensure free and fair plebiscite, the supervision of the U .N will be necessary'.

21 Apr 1948 : U.N. passes resolution on the Indian complaint. Inter alia, it notes with satisfaction that 'both India and Pakistan desire that the question of accession of J&K to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite.' It initiates measures to pave the way for implementation of the promise. Eight more resolutions are passed until December 1957 to the same effect.

26 Jan 1950 : Constitution of India adopted. Article 370 of the Constitution of India adopted. Article 370 of the Constitution incorporates the autonomy of J & K as envisaged by the instrument of accession. But it adds two clauses that give the Central government the scope to dilute the autonomy.

Oct 1951 : The Constituent Assembly of J&K is elected and convened. It is to draft a Constitution for the State in accordance with the instrument of accession, and also function as legislature for the State until the adoption of the State's Constitution. Sheikh Mohammed Abdullah's National Conference (NC) wins all the seats in the Constituent Assembly unopposed. There are allegations of intimidation from his' opponents.

24 July 1952 : In the background of differences between the NC and the Govt of India about the nature of the Constitution J&K was to have, Sheikh Abdullah and Jawaharlal Nehru enter into the 'Delhi Agreement' which lays down some specific details about the contours of the autonomy that J &K was to enjoy.

9 July 1953 : Sheikh Abdullah, Prime Minister of J&K, arrested on vague grounds and dismissed from office. He is not charged, then or later, with any specific offence, never tried in a Court of Law, and never sentenced to imprisonment, but spends the next fourteen years and a half (till 2 Jan 1968) in jail, except for two periods of freedom in 1958 and 1964-65, totalling one year and five months.

1954 : Constitution (Application to J&K) Order is passed by Parliament, extending the list of subjects. Parliament could legislate upon vis-a-vis J&K. This is done while the State's Constitution is still in the making.

9 Aug 1955 : Sheikh Abdullah's associate Mirza Afzal Beg forms Plebiscite Front to oppose the National Conference, which he declares to have become a stooge of the Central government.

17 Nov 1956 : The Constitution of J&K is adopted by the State's Assembly. It declares that 'the State of J&K is and will be an integral part of India'. . Sheikh Abdullah protests from prison.

24 Jan 1957 : U.N Security Council passes a resolution saying that the above declaration would 'in no way constitute a valid disposition of the State in terms of the U.N resolutions'.

1957 : Elections held to the State Assembly under the new Constitution. NC, led by Bakshi Ghulam Mohammad, wins. But 43 out of the 75 seats are returned unopposed. Allegation of intimidation and terror by NC.

1958 : Parliament passes law extending Central Services to J&K.

1962 : National Conference wins the Assembly elections once again, taking 70 of the 75 seats in the Assembly. But 34 of them are elected unopposed. Allegation of terror and intimidation by :NC

11 Oct 1963 : About one year after the thumping victory, Prime Minister Bakshi Ghulam Mohammad is deposed and Khwaja Shansuddin is elected in his place. Allegation that the change was imposed by Delhi.

1 March 1964 : Shamsuddin also deposed and G.M. Sadiq elected in his place, again allegedly at the behest of Delhi. Bakshi Ghulam Mohammad protests. He is arrested on grounds of corrupt practices, but released eleven weeks later, without being charged or tried.

1964 : "Series of statutory amendments made by Parliament with approval of J&K government, which dilute the autonomy of the State. In the U.N., India's representative declares that under no circumstances will India agree to the holding of a plebiscite in Kashmir .

1965 : National Conference reconstitutes itself as the J&K wing of the Indian National Congress.

1967 : The Congress, led by G.M.Sadiq, wins the Assembly polls with a thumping majority. But 39 of the 75 seats returned unopposed. Allegations, once again, raised against the Congress for its tactics of terror and intimidation.

9 Jan 1971 : Sheikh Abdullah, now free and the leader of Plebiscite Front, plans to go to Srinagar (from New Delhi) to campaign for Parliament polls, but he and his associate M.A.Beg are served with orders prohibiting them from entering J&K.. The State Assembly later bans the Plebiscite Front from participating in polls.

24 Feb 1975 : The Indira-Abdullah accord (also called the Parthasarathi-Beg accord) signed by Indira Gandhi and Sheikh Abdullah. It swears by Article 370, but accepts that J&K is an integral part of India. Sheikh Abdullah agrees to become

Congress party's leader in J&K, and thereby regains his freedom to participate in political activity in the State.

25 Feb 1975 : Sheikh Abdullah is elected leader of the Congress Legislature Party in J&K. But in July he revives the National Conference.

1977 : Assembly elections held in J &K after the lifting of the Emergency. Generally described as the first free and fair elections in the State. Abdullah's National Conference wins with a sizable majority.

8 Sept 1982 : Sheikh Abdullah passes away; His son Farooq elected leader of N.C.

1983 : National Conference, under Farooq Abdullah's leadership, wins the elections to the State Assembly. Farooq takes the N.C into the anti-Congress camp in Indian politics. He attends the Vijayawada conclave of Opposition parties, and himself convenes a conclave in Srinagar .

1984 : Gul Shah, N.C. leader, engineers a split in the party and requests J&K Governor B.K. Nehru to recognise his faction, to which the Congress declares its support, as the majority. Nehru refuses. Central government then replaces Governor Nehru with Jagmohan who dismisses Farooq Abdullah's government on 2 July and swears in Gul Shah as Chief Minister .

6 March 1986 : Congress withdraws support to Gul Shah and Governor's rule is imposed in J&K.

7 Nov 1986 : Farooq Abdullah enters into power sharing agreement with Rajiv Gandhi. He comments: 'Anyone who wants to form a government in J&K cannot do so without sharing power with New Delhi'.

23 Mar 1987 : Elections held in J &K for the State Assembly. NC-Cong combine formed as a consequence of the Rajiv-Abdullah accord opposed by Muslim United Front, consisting of 13 parties including Jamaat-e-Islami. Widespread allegations of rigging and malpractices in counting. By all accounts, MUF did well in the polls, but was declared to have won in only four seats. Farooq Abdullah forms government, but militancy takes over the State by 1989.

Jan 1990 : Jagmohan sent a Governor once again. He dismisses the State Assembly and takes over the administration.

May 1990 : On 24th, CRPF opens fire in Srinagar killing 47 people. Jagmohan replaced by Girish Saxena as Governor.

July - September 1990 : Disturbed Areas Act and Armed Forces (Special Powers) Act imposed.

Sep - Oct 1996 : Elections to the State Assembly. National Conference forms government.

ANNEXURE 3

Reprisal by Rape: Testimonies from Doda

Following are the statements of the women our team spoke to in Bihota, Doda, who were raped by the armed forces for speaking to us (*recorded by the People's Forum for Peace, Doda*):

(see Back Cover, also section 'Rape and Molestation' in chapter 1, 'Ground Reality')

Statement of Sakina Begum w/o Mohammad Din Bhat, r/o Bihota, Mermatt, Doda

"On 1 –06- 2001 (Friday) I (Sakina) was busy with my chores, my house was cordoned by the troops of 8 RR, all dressed in uniforms, carrying guns. Some of them entered the house. "Where are your Human Rights protectors? They have gone and nobody can now protect you from us", shouted one of the army soldiers. "You old bitch, we won't leave you", said the other. Later he beat me with a stick on my head and back and kicked me in my abdomen. I fell on the ground, shouting for help but nobody came to my rescue. Being an elderly and physically weak woman, I could not save myself from those beasts of 8 RR. One of them dragged me inside a room and threw me on the bed and tore my clothes exposing my body and private parts, then he raped me. He left the house uttering abuses on me, which I could not understand. Later I came to know that the other men of 8 RR had also raped my two daughters in law, Naseema and Hasina, wives of Abdul Jabbar and Reyaz Ahmed."

Statement of Naseema Begum (26) w/o Abdul Jabbar r/o Bihota, Mermat (Doda).

"On 1st June 2001, I (Naseema) along with my kids, mother-in-law and sister-in-law was at my

home, tending cattle in the cowshed. All our men folk were away on work; they had left the house in the morning. All of a sudden I saw many army personnel in uniforms, armed with guns approaching my house. They were furious and started beating me with rifle butts. I fell down and my baby was snatched from my lap and thrown to the ground. One of the soldiers caught hold of me by hair and dragged me into a room; two other soldiers also entered the room. I cried for help and pleaded them not to hurt me but all in vain. One of them shut the door from inside and sat on the window, which was open. The other soldiers held both my hands and one of them pushed my jaws apart to prevent my cries from reaching out. Then the third untied my trousers, pulled it down and threw it away and raped me. After raping they left me writhing in pain. Later, I got up, put on my trousers and narrated the story to my mother-in-law (Sakina Begum) who had a similar story to tell. My sister-in-law Hasina Begum had also been raped in the same house in another room. All of us went to the village elders and narrated our story to them."

Statement of Hasina Begum (18) w/o Reyaz Ahmed Bhat r/o Bihota, Mermat (Doda).

"On 01-06-2001, I (Hasina) along with my mother-in-law and sister-in-law and some kids were busy in tasks at home. Our men had left for their work. A large number of uniformed armed soldiers of 8 R.R. approached our house and some of them barged inside. They accused us of narrating our woes to the Human Rights team that had visited our village a day earlier. Amid these accusations some of them started beating us with rifle-butts and sticks. A soldier caught my hands and I was dragged inside a room where four other soldiers also entered. I was pushed to a bed. My trouser was untied and pulled off and thrown into the corner of a room. Amid my protests to save myself, two soldiers raped me. My lower jaw was pushed down to stop my cries from reaching out. I fell unconscious and when I revived, I was taken to Doda Hospital for treatment."

September 2001

Published by: Secretary, Peoples Union for Democratic Rights, Delhi on behalf of joint fact-finding team of civil liberties, democratic rights and human rights organisations

For Copies: M. Ratnamala
302, Megha Apartments,
2-1-253, Nallakunta,
Hyderabad - 500044

K. Balagopal
304, Kiran Apartments
Red Hills
Hyderabad - 500004

C. Bhaskar Rao
College Quarters, Nagaram
Guntur district, (A.P.) - 522268

Prof. N. Ramesh
366, 8th Cross, 8th Main
Padmanabha Nagar
Bangalore - 560070

Dr. Sudesh Vaid
D-1, Staff Quarters
I.P. College, Shamnath Marg
Delhi - 110054

Suggested Contribution: Rs. 10

Printed at: Hindustan Printers, Navin Shahdara, Delhi - 110032

On 1 June, 2001 three women of Bihota who had spoken to our fact-finding team about the routinised aggression and violence and also about the mass sexual assault at Butungal, were raped and then taunted by 8 RR jawans: "Where are your Human Rights protectors? They have gone and nobody can now protect you from us." Following the rapes the women were taken to the district hospital, Doda, for treatment. An FIR (No. 59/2001) was also lodged at P.S Doda, under section 362,452,382,149 RPC (Ranbir Penal Code). No action has been taken against the accused.