

# Kashmir : Will The Pain Never End?

Impunity of policing and aimlessness of politics : A report



A Publication of HRF, PDF & APCLC  
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## By Way of An Introduction

**M**ost Indians believe today that Kashmir is no longer a problem. In the imagery of our Press, the back of militancy (a beast) is broken, Pakistan (an unnatural excrescence) is cut to size, and the US (the only bully in town) is with us. This view celebrates political realism of a particularly cynical variety, but then that is not new: even otherwise sensitive Indians have generally had a cynical way of looking at Kashmir: that it is a game of power that abides no principles. The only difference is that Indian cynicism on Kashmir has now found a matching international ambience. But most Indians would not find it funny let alone true to be told that we have the Al Qaeda to thank for this.

This cynicism makes the task of the Indian State that much more easy in Kashmir, for the vigilant public opinion that it has to contend with – or so we fondly think - in other matters is absent here, excepting Kashmiri public opinion, which the very cooperative Indian media – the exceptions are very few - will not take beyond the Banihal pass.

This convenience for India's establishment has many victims, from abstract things like justice to concrete things such as human lives. But its direct victims are the people of Kashmir - their liberty, their lives and their dignity. It has been the task of human rights organisations to speak out about these victims, to the extent that our voices will carry. The task has not been easy, for the response in India to any democratic view about Kashmir is in general hostile. Kashmir has in many ways been the litmus test of Indian democracy, not only for the political establishment, but for the democratic public opinion too. To think and speak democratically about Kashmir is, for an Indian, to question all the ingredients of established Indian nationalism, not merely of the saffron variety but the progressive/ secular variety, too.

In continuation of this task, a team of eleven human rights activists from Andhra Pradesh, Karnataka and Delhi toured the Kashmir Valley from 6th to 10th May 2007. The team spoke to the victims of and witnesses to twelve incidents of violent death at the hands of the police or the armed forces, or in the course of the action of the armed forces against militants. To those victims and witnesses we also posed questions about the political process, both the India-Pakistan process and the internal political process of that State where different parties have been competitively demanding demilitarisation, reduction of the armed forces, restriction of the armed forces to the border, etc. The team also spoke to a cross-section of activists and spokespersons of the Kashmir movement, and its friends. And to lawyers who have been dealing with cases of human rights violations. A brief Press release was issued by the team at the end of the visit in Srinagar on 10th May.

What follows is a more detailed report, in which, to atone for the delay in bringing it out, we have incorporated some additional information obtained after the team's visit. We express our gratitude to the Public Commission on Human Rights and other friends of Kashmir, for the help they have given us in our endeavours.

Members of the team are: Burra Ramulu, K.Balagopal, V.S.Krishna (Human Rights Forum, Andhra Pradesh), N.Babaiah, V.S.Sreedhara, G.K.Ramaswamy, G.Chethan (Peoples Democratic Forum, Karnataka), D.Suresh Kumar, A.Srinivas (Andhra Pradesh Civil Liberties Committee), Bela Bhatia (researcher and human rights activist, Delhi) and G.S.Rammohan (writer and journalist, Hyderabad).

In Appendix-IV we are giving a brief note on the historical background of the Kashmir issue.

# What Has Changed?

**T**hat militancy has decreased in Kashmir is an opinion widely publicised outside that State. And by implication, that the police and Army's operations have also decreased. The first is partly true, and admitted by most of the people the team talked to. Though not all put the same construction on its implications. The second is deduced from the first, for it seems to follow logically that if militancy has decreased, operations against it must also have decreased. But that is not so. The reason why it is not is that the operations of the police and the Army are not exclusively or even predominantly against the militants. They are as much if not more against the civilians too. The Kashmir issue is a political issue, and even if guns enter the picture, politics is essentially a matter of the hopes, aspirations and vision of the people. And the Indian State is well aware of this fact. Its strategic planners would perhaps accuse us of taking them to be fools if we expect them to cease anti-militancy operations on par with decreasing militancy. But then we object to the very use of force against political aspirations *per se*.

Reduction in militancy and the consequent fear of sudden eruption of violence is reflected partly in the terrain our team could traverse. The interior areas of Tral, Kokernag, Shopian, Bandipora, the Wular lake in particular, are places which the Kashmiri friends and well-wishers of human rights teams from outside would in the past have actively dissuaded from visiting. This time we visited very remote villages in these areas. That also enabled the team to see how deceptive the increasingly free movement of people and traffic in Srinagar city, and the familiarly raucous sound of tourists is. The rural areas, especially those close to the hills surrounding the valley, continue to be in the stranglehold of the armed forces. Like in all

hilly regions, in these areas too, there are focal villages from which undulating paths lead to a cluster of habitations. An Army camp located at the focal village can control all movement to and from the whole cluster. Not movement of militants, who probably have other ways of ingress and egress. But the movement of civilians. The army has effectively controlled civilian life in the interior of the Kashmir valley and the militancy affected Pir Panjal hills of the Jammu region by these means, and it continues to do so as completely and effectively as ever. Nothing, and just nothing, that the army disapproves of can be done by the people who live in these areas. One is not talking of Fidayeen attacks but of peaceful dharnas and processions of a political nature.

The propensity and capacity of the police, the armed forces and their agents to pounce upon people, abduct them and deal with them as they please, not only in remote areas but in Srinagar city too, has not decreased one whit. The team had an unnerving taste of this the day before we started on fact finding. The Public Commission on Human Rights<sup>★</sup> held a three- day meet of Human Rights Defenders on 4-6 May, focusing particularly on attacks on Human Rights Defenders (or activists as they are normally called). Most of the members of our fact finding team attended the meet. One of the Kashmiri participants was Nasir Khora, a journalist from Doda. He reports for the Hindustan Times and is a popular and respected figure in Doda. On the evening of 5th May, as he came out of the Hotel where the participants were put up, he was abducted by five persons and forced into a Mahindra jeep waiting nearby. This was within shouting distance of the R.M.Bagh police station, but nobody intervened as Nasir was taken away. His abductors abused him for 'being with the group,' for 'being with Parvez', which is Parvez Imroze, Advocate and Chairperson of the Public Commission on Human Rights. Nasir was blindfolded, kicked, beaten with lathis and fists, and the growth on his cheeks was forcibly shaved in part. The last is a humiliating taunt, for Nasir needless to say is a Muslim. Quite late in the night, Nasir was thrown out of the jeep at the outskirts of Srinagar after relieving his pockets of the Rs 1500/- he had. He came back to the hotel by thumbing a ride. His shaken visage symbolised what the meet had discussed for three days: impunity in the hands of the agents of the State to commit acts of abduction and violence. All members of the team thronged to the R.M.Bagh police station the next day to register a complaint, and found a trainee IPS officer from South India running the police station. He looked more amused than shocked at the outrage but took the complaint and sent Nasir for medical examination. The human rights activists who attended the meet addressed the Press and condemned the crime. It is needless to add that the police have failed to find the criminals.

### **But...**

Yet it is not that nothing has changed. Two recent events of a heartening character certainly give rise to some hope in the matter, though one of them is probably a flash in the pan. That is the

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★ The Public Commission on Human Rights (PCHR) is a Kashmir-based human rights organisation functioning from 2002. It is a continuation of Kashmir Monitor, which has been in existence from 1994. PCHR undertakes extensive documentation of human rights violations and provides free legal assistance to victims of human rights violations.



prosecution of quite high ranking police and army officers for murder of five unarmed civilians, camouflaged as operation against armed foreign★ militants, in what have made it to the Press as the ‘Ganderbal killings’. The name of Ganderbal has got attached to these killings, not because all of them took place in the Ganderbal area, nor because the victims belong to Ganderbal. Indeed, four of the five victims belong to the Kokernag area of Anantnag district. And the fifth belongs to Banihal outside the Valley. The reason for the name is that the killers belong to the Special Operations Group (SOG) of the Jammu & Kashmir police at Ganderbal. They are Hansraj Parihar, the Senior Superintendent of Police (SSP) of SOG, Ganderbal, Bahadur Ram, Deputy Superintendent of Police (Operations), Ganderbal, and six lower rank personnel of the SOG (Asst. S.I of Police Farooq Ahmed Gudoo, constable cum driver Farooq Ahmed Padroo, and constables Shamim Ahmed, Mohammad Ashraf, Surinder Singh and Kishan Chand). A certain Colonel Vikram Singh of the Rashtriya Rifles is also facing prosecution along with them.

All the deceased were passed off as foreign militants at the time when the killings took place. But all were local civilians. They had been abducted at various points of time, and the families had been demanding to know their whereabouts. All such allegations are routinely dismissed by the State and its agencies as propaganda. But now it transpires that the allegations were true, and prosecution of quite senior police officers is underway.

The second event is the revolt in Pampore, Pulwama district, against the dreaded pro-Government militant, Papa Kishtwari @ Ghulam Mohammad Lone. A man suspected of killing anything like 100 persons and torching 100 houses in the town of Pampore alone, all within the knowledge and with the protection of the armed forces of India, has finally been put behind the bars, thanks to the courageous fight of the long suffering people of that benighted town, for trying to encroach onto a kabrastan, perhaps the most benign offence he has committed in his career of State-supported crime.

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★ In the discussion on this issue, we use the word ‘foreigner’ in the sense in which the Indian authorities use it, for convenience of narration. This is without prejudice to the view of the Kashmir movement, which regards Indians as foreigners as much as Pakistanis, and the people of the territories of old J&K on the other side of the Line of Control (LOC) as *not* foreigners.

# The ‘Ganderbal Fake Encounters’

**S**tories of foreign militants being killed in army operations are frequently greeted with skepticism by Kashmiris, but the outside world has never taken the suspicion seriously. On the contrary these stories serve two important purposes, and hence are believed with some glee and some pride by Indians. One is the proof that militancy in Kashmir is not a local phenomenon that has originated from a sense of injustice, alienation, political suppression etc., of the Kashmiris, but an extra-territorial conspiracy to dismember and destabilise India. Two, the Indian forces are capable of handling such conspiracies.

It is nobody’s case that there are no foreigners among the militants in Kashmir. There are, though not to the same extent as Indian authorities say. Indeed, as suggested in the footnote on the previous page, dividing the militants into ‘local’ and ‘foreign’ makes little sense when the political perspective underlying the militancy regards all non-Kashmiris as foreigners and all Kashmiris whether domiciled in Indian controlled or Pakistan controlled territories as local. And it is generally believed that while the Hizb-ul-Mujahiddeen is predominantly a Kashmiri organisation in this sense, the Kashmir operations of Islamist groups such as Lashkar-e-Taiba and Jaish-e-Mohammad are conducted predominantly by non-Kashmiris. Hence even if the word ‘foreigner’ is understood in the sense that the Kashmir movement gives it, there are quite a few of them operating in Kashmir, and therefore there will be some among those killed by the army. What makes for skepticism is the suspicion that the numbers are exaggerated by describing any and every victim of counter-insurgency operations as a foreign militant. If depicting persons killed in army/police operations as foreigners did not have

political and propaganda uses for the Indian authorities, and if the spokespersons for the administration were not seen as persons who have no qualms about lying 'in national interest', there would not perhaps have been this degree of skepticism or justification for it. As things are, however, the skepticism is not unreasonable.

But the 'Ganderbal killings' have revealed a more sinister use of such fictions. Suppose a street hawker is picked up in Srinagar and killed by the forces. If his name is revealed, then even if he is said to have been a militant in disguise, there can be a furore against killing of innocent people. The dead body has to be handed over to the family, and it may bear tell tale marks of the truth. Passing him off as a foreign militant has many advantages. Any old name - say, Mohammad Iqbal of Bahawalpur - can be hanged on the body, and since dead bodies of foreigners have no takers, the administration can itself bury or otherwise get rid of it. And it will carry with it the truth about its death to its grave.

These are not fanciful thoughts. Nazeer Ahmed Dekka (35) was a hawker. Some reports describe him as a hawker of old clothes, and some as a perfume seller. Ghulam Nabi Wani (40) is described as cloth-seller in some reports and a push-cart vendor in some. Both were picked up near Lal Chowk in the heart of Srinagar, Nazeer Ahmed on 16/2/2006 from the pavement near Kotibagh police station in Lal Chowk, and Ghulam Nabi on 2/3/2006 opposite Bisco School, also in Lal Chowk. Nazeer Ahmed was killed in alleged army operations and buried at Reshpura, Ganderbal as a nameless foreign militant, whereas Ghulam Nabi was killed and buried at Aisa, Bandipora, as Zulfiqar Ahmed of Pakistan Administered Kashmir.

Moulvi Shoukath Ahmed Kataria (27) of Duligam Nokoot Jabri, a remote habitation in the Pir Panjal hills near Banihal in the Jammu region, was Imam of the Alamgiri mosque in Srinagar. He was picked up on 4/10/2006, probably from the mosque where he had gone in the night to lock the gate. He was killed before dawn at far away Baazipora Ajas in Bandipora district, and buried as Abu Zahid of Karachi.

The other two of the 'Ganderbal killings' are of Abdur Rehman Paddar, a carpenter of Larnoo, Kokernag, Anantnag district, who was picked up from Batamaloo bus stand in Srinagar on 1/3/2006 and killed near Wasker, Ganderbal on 9/12/2006 and buried as Abu Hafiz, a commander of the Lashkar-e-Taiba, resident of Multan; and Ali Mohammad Padroo also of Kokernag who was picked up on 7/3/2006, killed on 14/3/2006 near Sumbal police station in Bandipora district, and buried under the beautifully vague name of 'Shaheen bhai of Pakistan'. Both of them were killed by the SOG of Ganderbal, and at least in the case of Paddar, it is known that a reward of Rs 1,25,000/- was paid to the SOG personnel. Indeed, the rewards are the main motive for fake encounters.

It is to be appreciated that when these persons were killed, the newspapers merely carried a report that some foreign militant was killed in army operations at such and such place. Their families did not know it was they. They continued to think of these persons as 'missing' after arrest. And so many thousands - 8,000 is the estimate of local human rights activists - are 'missing' in Kashmir that nobody would give any special attention to the pleas of the families of these five

persons. It was a chance recovery of the SIM card of the mobile phone of the carpenter Abdur Rehman Paddar from one Abdul Rashid Wagay who in turn said he got it from one Bashir Ahmed Bhat, an associate of a police constable cum driver by name Farooq Ahmed Padroo of the Special Operations Group of the J& K Police, Ganderbal, that led to the unraveling of the stories. The investigation went up to and stopped with these five killings because these five were linked by a common thread. They were planned and executed by the SSP of the SOG, Gandarbal, Hansraj Parihar and his associates.

The 'Ganderbal killings' are now under investigation by a special investigation team supervised by DIG of Police (Central Range) Farooq Ahmed. The State Government has also ordered a judicial probe by a retired judge of the High Court by name M.L.Koul. The Press has in the meanwhile carried reports that Hansraj Parihar was earlier found by the High Court to have been involved in the custodial killing of one Fayaz Ahmed, a photographer who worked in Kashmir University, in the year 1997. There were allegations in the same year of his involvement in the disappearance of two persons from Pampore. This merely illustrates the truth that impunity feeds on itself. An officer once permitted to get away with murder will do it all the more easily the next time. One only hopes that Hansraj Parihar's name will not be heard again in the same context.

Is it not reasonable to suspect that if each case of death of an alleged foreign militant at the hands of the forces is investigated and matched with contemporaneous cases of disappearance of civilians, many may match and reveal a very ugly side of counter-insurgency, which has always been suspected by the people of Kashmir? To repeat, it is nobody's case that there are no 'foreign' militants in Kashmir and that none of them is dying in army operations. But now that the 'Ganderbal killings' have revealed that this situation is coming in handy to cover up for the killing of civilians for rewards or promotions or just to create terror among the people, would not an impartial enquiry into all such incidents be a just and reasonable demand?

Almost simultaneously with the sensational disclosures pertaining to the Ganderbal killings, the Press carried reports of three men of the border district of Rajouri in the Jammu region who are missing from 1997. The reports said that they are now suspected to be three of the many buried along the Line of Control (LOC), purportedly in an encounter while crossing the LOC. Abdul Aziz (26), Mohammed Yousuf (45) and Mohammad Aziz (22) of village Kotdhara in Rajouri district were picked up from the village by 18 Dogra regiment of the Army on 9th October 1997. They are missing ever since. However, recently three informers of the Army revealed that these three were shot and buried in two pits at Peer Badaser area near the LOC. On the basis of this information, the police have started investigation, though what it will lead to is not clear because it appears that with the recent fencing of the LOC by India, the burial pits/graves find themselves on Pakistan side of the LOC.

Thus, the Ganderbal outrage is not an exception. It is an exception only in that the police investigated the offence diligently and the Government agreed for prosecuting the killers in uniform. But perhaps that was because it was the police that were involved. What would have happened if

it was the Army and not the police who had killed those five men? It is difficult to see the State Government taking an equally firm stand and the Army silently watching.

That is why the demand for a comprehensive investigation into all cases of ‘foreign militants’ killed in ‘encounters’, to be matched with contemporaneous allegations of civilians missing after arrest is a just demand. The Ganderbal story shows that there are certain places in Kashmir where the dead bodies of alleged foreign militants have been buried, whole graveyards reminiscent of the Punjab phenomenon which Jaswant Singh Kalra tried to unravel with fatal consequences for himself. Some of these places are located near army camps and some in villages in which the writ of the renegades or Ikhwanis runs. Some of the graves carry no names, and some carry plaques put up by the army describing the body buried there cryptically as Mushtaq bhai, Shaheen bhai etc of Pakistan, as said by residents of Batmohalla, Sumbal where there are 30 graves of alleged foreign militants, to the Press. One is tempted to ask which carpenter, which perfume seller and which Imam of Kashmir is lying under which plaque.

However, Chief Minister Ghulam Nabi Azad rejected the demand raised by some legislators in the State Assembly for a comprehensive enquiry, saying that ordering a probe into all such incidents that happened from 1990 or 1996 ‘will create many hurdles and everybody will get involved in it, and we will be back to square one’. He added that the members should be satisfied with the case of the missing carpenter and the five cases related to it. His meaning is clear: digging up old skeletons (literally!) may embarrass all, so be happy with the action in this one case (which was taken not as a matter of principle but because events got out of hand and the truth became public knowledge). This again brings us back to impunity, the core human rights concern in crisis situations. The Chief Minister is not concerned with putting an end to impunity as such, but only wishes to appear to do some thing once in a while. And his reason could not be more plain: if you do any thing more, everybody will get dragged in. That is why we have described the action taken in the ‘Ganderbal encounters’ case as a flash in the pan.



# The Pampore Revolt

**T**he second incident is the revolt in Pampore against Ghulam Mohammad Lone alias Papa Kishtwari, a professional murderer living for almost two full decades in the protection of the State police and the armed forces of India. This, we hope, is not a flash in the pan, and does indicate the emergence of courage in the people to put an end to the Indian Army's macabre tactics of counter-insurgency: arm willing criminals to undertake the more unsavoury of its deemed tasks, like killing civilians, terrorising people, silencing critical members of the intelligentsia and other partisans of the movement of self-determination, etc. It has its origins in the first attempt to hold elections in Kashmir Valley after the rise of militancy. This was the Parliament polls to the seats of Srinagar, Anantnag and Baramulla, held on 23 and 30 May 1996. A minimum of participation was to be ensured, and it was achieved by letting loose pro-government armed gangs, usually called renegades or 'Ikhwanis' after Ikhwan-ul-Muslimoon, the first counter-insurgent gang, to terrorise the people into voting. A team of three civil rights organizations, which toured the Valley to observe the polls noted the impact of this criminal strategy in its report: *Voting at the Point of a Gun : Counter-insurgency and the Farce of Elections in Kashmir, July 1996*. Eight groups of renegades were identified by the team at that time, but the number and names have kept changing thereafter. Most of the renegades are ex-militants. Papa Kishtwari was formerly of the Harkat-ul-Ansar. He surrendered on 11 Nov 1995 and worked for a while as gate-man in a timber mill before turning into one of the most dreaded of Kashmir's pro-government militants. He was second in command to Jamshed Shirazi alias Kuka Parrey, the topmost Ikhwani. He belonged to South Kashmir whereas Kuka Parrey belonged to North Kashmir. Kuka Parrey earlier worked with the militant group Ikhwan-ul-Muslimeen

That team had met and interviewed Papa Kishtwari. 'It is our guns that have made elections and democracy possible in Kashmir' he boasted to the team. This is how that team's report described the role of the renegades in the conduct of that poll:

*As soon as the polls were announced, the counter-militants set up political formations... (some of them nominated their own candidates for the polls)... and the other counter-insurgents supported candidates without forming political parties. This was not their own decision, but part of the Army's 'game plan' (in the words of an articulate campaigner for the Congress' Srinagar candidate, Ghulam Mohammad Magami) for the successful completion of the polls.....*

*The 'game plan' is to introduce a criminalised political force into the electoral arena, with the hope that it will succeed in breaking the poll boycott. If the Army's guns and counter-militants' guns together succeeded in getting a decent percentage of votes polled, thereby giving 'victory' to the Government of India in its efforts to hold polls by hook or crook, then it can go on to hold polls for the Assembly too, and demonstrate to the world that the Indian State still has its way in Kashmir....*

*This 'game plan', then, was devised and set in motion as soon as elections were announced. Soon Kashmiris started witnessing the strange spectacle of candidates going around asking for votes, accompanied by armed youth with a criminal record carrying unlicensed weapons and carefully watched over by protective army men in uniform. Later in the day, the same campaigners may well be found lynching or killing a Jammata activist or a Hizb-ul-Mujahideen supporter. As Papa Kishtwari, Deputy Supreme Commander of Ikhwan-ul-Muslimoon, who was supervising the campaign of Subhan Kishan Tikoo, the Anantnag candidate of Kuka Parrey's J & K Awami League, said to us: 'I campaign during the day time and conduct operations at night'. He added that he had deputed 32 surrendered militants (armed, of course) to go to different booths 'to give courage to the people'. That sounds innocent enough, but it means some thing else when a former militant carrying an automatic weapon comes to your house, with an army man hovering in the background, and directs you to come and line up at the polling station, or else...*

Having tested the usefulness of the renegades in successfully conducting elections, the Army continued to use them as instruments of suppression even after the polls. They had the run of the Valley for quite a few years, the latter half of the 1990s being the worst period of their outrages, and are still a source of fear and danger to unarmed partisan's of the *azaadi* movement in the Valley, though they have been considerably weakened by attacks by militants. Kuka Parrey himself



**Most dreaded pro-Govt. militant  
Papa Kishtwari**

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has been killed by the militants, and we found in his native village Hajam in Baramulla district, which we passed on 10th May this year, that the Army had commemorated him by naming a school run by it 'Kuka Parrey Army Goodwill School'. The Indian Army has been consistent in the shameless exhibition of its close links with the renegades, in life as well as in death.

Papa Kishtwari continued to lord it over Pampore on the Jammu-Srinagar highway in Pulwama district, and neighbouring villages. The area is famous for the saffron crop, and Pampore, a town of about 40,000 people, is a major center of saffron trade. The number of murders committed by Kishtwari is said to be no less than a hundred in Pampore itself. For almost a decade any mention of his name would evoke stony silence in the town. Visiting human rights teams made efforts to get information about his rumoured depredations, but nobody would speak. Here is an extract from the report *Civil War and Uncivil Government: Human Rights Violations in Kashmir under the National Conference Government, November 1997* published by three human rights groups.

*(The existence of the renegades) traverses law, crime and legitimate politics, but crime is its idiom from start to finish. Crime in the interests of the Union of India's counter-insurgency strategy. The fear they cause is almost tangible. In this trip as in the past, nobody in the Valley dared to be seen with our team in public. People would talk to us in their homes, journalists in their newspaper offices, academics in their campus quarters, and lawyers in the Bar Association room. But not one would accompany us even a couple of yards outside these safe zones. And all of them uniformly said that the main source of fear they experienced was the 'renegade militants. When we met lawyers of the Pulwama district Bar Association in their Association room on the evening of 30 May, the President of the Bar said to us in a quite a matter of fact tone: 'if Papa Kishtwari comes to know that that human rights activists have come here and are talking to the lawyers, he will blow up this Court building and kill all of us right now'. Papa Kishtwari (alias Ghulam Mohammad Lone) is the second most notorious 'renegade' leader after Kuka Parrey alias Jamshed Shirazi, the chief of the Ikhwan-ul-Muslimoon, the principal Sarkari militant outfit. Papa Kishtwari lives in Pampore, a small town in Pulwama district, located on the Jammu Srinagar highway. His house is guarded by a truck-load of CRPF men and at any time there is a van of the J&K Police standing at the gate, ready for his use. It is indeed a macabre experience to drive past his heavily guarded house in the knowledge that there is a dreaded and known murderer inside, securely protected by the forces of Law and Order.*

But finally Pampore took courage this year. Part of the reason could be that he has lost many of his gang in attacks by militants. But sheer vexation is no less an important reason. The occasion was provided by Papa Kisthwari's attempt to grab some land which was part of a kabrastan. He tried to make plots in the kabrastan and sell them. An altercation took place with the local people at a masjid in the last week of April 2007, in the course of which Papa Kishtwari slapped an elderly person by name Abdul Gaffar Dar and hit one Md Amin @ Bijli. Enraged by this, one Basheer Ahmed slapped Kisthwari. This unexpected act of courage acted as a tonic. People raised slogans against Kishtwari. His security guard (a policeman) opened fire at the protestors. The

people then moved towards the police station, where they demanded action against Kishtwari. The police opened fire at them, injuring five persons. This enraged the people further and the protests continued, with people sitting on a dharna outside the Pampore police station on 28th April. Congress leader and MLC, Mohammad Amir Bhat joined the protest. They got up only after Kishtwari was arrested.

The dam broke. When our team went to Pampore on 9th May, we were surrounded by victims of Papa Kishtwari who poured out their stories. The contrast with the past when people would just stare blankly when his name was mentioned could not have been more striking. Indeed, when we reminded people of the silence that answered our queries in the past, we were shown one trader by name Ghulam Mohammad Mir who ‘spoke to you when you came here in 1997, and then Kishtwari fined him 50,000 rupees’. Perhaps he was lucky. If he had been a poor person with no money to pay, Kishtwari may have killed him.

Many stories of murder, extortion and arson committed by Kishtwari have now come out. A general estimate is that he has killed more than 100 persons in Pampore itself, and torched an equal number of houses and shops. Some cases have now been filed in the Court. One of them pertains to the murder of Abdul Samad Dar of Frastabal, Pampore whose son has filed a case in the Court of the Chief Judicial Magistrate, Shopian. But a larger list is now with the Government. Perhaps because traders were among the main victims of Kishtwari’s extortionist crimes, the Saffron Growers & Dealers Association of Pampore took the initiative in gathering information and putting down a detailed complaint on paper. It has listed 22 cases of murder committed by Papa Kishtwari’s gang in the complaint given on 8/5/2007 to the Government. A translation of their complaint is given in Appendix-I to this report.

A brief narration of some of these crimes would indicate how much damage the Indian Army has done to civilian life in Kashmir by adopting this means of counter-insurgency. The crimes began in 1995, when Kishtwari killed Abdul Samad Dar. Dar was a civil contractor and a well-built man. Dar’s son Nisar Ahmed Dar talked to us of his father’s killing. Nisar Ahmed had just completed his plus 2 at that time. Kishtwari had demanded Rs 30,000 from his father and his father had refused. In the Ramzan month of 1995, Kistwari walked into Dar’s house, took Abdul Samad into the garden and straight away shot him dead. This killing was followed by the murder of a labourer by name Mohammad Shaban. The killings continued openly until 2001, and clandestinely thereafter. It was seen by the people that the Army and the Police were protecting him, and they understandably got scared. As with all renegades, the Army and the Police supported



**Nisar Ahmad Dar talking to us about his father's killing**

his acts of violence because of his preparedness to attack the sympathisers of militancy and critics of the State's repressive measures. And he took advantage of it by indulging in extortion and violence on his personal account too.

Ghulam Rasool Sheikh, saffron trader, editor of the papers Saffron Times and Rehnuma-e-Kashmir and President of the Auqaf Trust of Pampore, was among the few who spoke out in those days. He confronted Kishtwari in the Pampore police station one day, and on another occasion exchanged strong words in an Eid gathering. On 22/3/1996 he was kidnapped from the main road as he was coming home from Srinagar, and his dead body was fished out of the Jhelum<sup>★</sup> river on 10/4/1996. He was 50 years old at that time. The blatant killing of such a prominent man increased the fear of Kishtwari manifold.

A double murder that took place in the night of 5/1/1996 illustrates the impunity Papa Kishtwari enjoyed in Pampore better than any thing else. The victims were Abdul Rashid (about 18 years old) of Drangbal, Pampore and Fiaz Ahmed Wani (about 30 years old) of Tolbagh, Pampore.

**Mohammad Shafi Sofi, a trader, told us how Papa Kishtwari came along with 50 to 60 persons to his house on 8/11/1995, and set his house on fire. His sister, 35 year old Shakila Bano, tried to douse the fire with water, and for that sin Kishtwari fired straight at her and killed her.**

Abdul Rashid's father Mohammad Ramzan Khan is a tailor, and the boy himself was working as bus conductor. The father said to us that Kishtwari demanded an amount of Rs 5 lakhs from him. Not that he really believed the tailor could pay such an amount, but he was punishing him for speaking out against the renegade. When the father refused, he took the son away on the night of 5/1/1996, hitting the mother who came in the way. The boy's eyes were bandaged and his hands tied behind the back, and he was shot dead at a road intersection in the town at about 10-30 in the night. Along with him was shot Fiaz Ahmed Wani, who was also abducted by Kishtwari from his house the same evening and killed in

the same manner with eyes bandaged and hands tied behind the back. The residents nearby heard the shots but no one dared come out, and the bodies lay there all night. The next morning, Kishtwari went up to the bodies, and pumped a few more bullets into them.

We heard many such stories, all from the late 'nineties, but we will narrate only two more. Mohammad Shafi Sofi, a trader, told us how Papa Kishtwari came along with 50 to 60 persons to his house on 8/11/1995, and set his house on fire. His sister, 35 year old Shakila Bano, tried to douse the fire with water, and for that sin Kishtwari fired straight at her and killed her. He seems to have spoken a filmi line after shooting Shakila Bano: 'Jo saala kuch kahega, samjho uska laash kal milega' (If any fellow shoots his mouth, then take it that his dead body will be found tomorrow). Her grieving brother gave a police complaint, and for that unpardonable act, Kishtwari abducted him and released him only after extorting Rs 25,000/- from his family.

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★ Kashmiris spell it as Jehlum but we are using the more common spelling that people of other States are accustomed to.



As said above, there is a specific complaint listing 22 murders committed by him, given to the State Government by the Saffron Growers & Dealers Association of Pampore. Whether the Government will act on it will be a test of the possibility of rule of law in Kashmir. The usual excuse that complainants and witnesses are not willing is no longer available. In fact, these 22 killings have been picked out of the hundred or so committed by him because these are crimes which the victims are willing to speak about. All they need is willingness of the administration to stand by its duty in law. **We demand that the State Government should act upon the complaint without any further delay so that the jailed renegade does not come out on bail in the land grab case and take revenge against the people who have stood up and complained against him.**

It will be fitting to conclude this section with an account of the travails of the most vocal victim, Masooda Parveen of Chandhara near Pampore. She teaches at Mantaki Higher Secondary School, Awantipora and frankly admits that she regarded herself as an Indian, and her thoughts centered only on a decent education and a good career for her sons, until the Supreme Court of India dismissed the case she filed for her husband's death at the hands of Kishtwari's men and the Army, the 17 Jat Regiment. Interestingly, she did not lose faith in India when her husband was killed by this unholy combination of criminals and India's army men, but only when the Supreme Court dismissed her plea for justice.

Her husband was Ghulam Mohiuddeen Regoo, lawyer and saffron trader. He incurred substantial debt to two other dealers of saffron, namely Mohd. Saleem Bhat and Ghulam Mohd. Deva, and was pressurised by them to make good the dues. The family seem to have made over to them 12 kanals<sup>★</sup> of land in satisfaction of the debt, but the creditors were not satisfied. The creditors initially approached the Hizb-ul-Mujahideen, and Regoo was once kidnapped by militants with the demand to pay Rs 20 lakhs to his creditors. Masooda approached the district leader of the Hizb-ul-Mujahideen and explained the whole story. That man was satisfied and released Regoo.

The creditors then approached police, and the police of Pampore as well as SOG personnel intervened on their behalf. Regoo was now accused of being a militant. The police periodically detained Regoo to force him to clear his debt. Masooda paid bribes totaling Rs 50,000/- to get her husband released from time to time. Since she and her husband believed that the 12 kanals of land given to the creditors satisfied the debt they owed, Masooda approached the Superintendent of Police, Awantipora, Mushtaq Sadiq, and complained about the conduct of his subordinates, and asked him to call the creditors and settle the issue. That officer said he was observing fast on the occasion of Ramzan, and he would take up the matter as



**Masooda Parveen with her husband's Photograph**

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★ A kanal is approximately 1/8th of an acre. 12 kanals is therefore about an acre and a half.

soon as the festival was over. May be he intended to, but Ghulam Mohiuddeen was killed before Eid.

On the night of 2 Feb 1998, Regoo came back home late in the evening after a visit to Baramulla. Soon after he entered the house, two renegades from Kishtwari's camp, by name Basheer Ahmed Langoo and Abdul Khalid Bhat came in saying that they were searching for a militant allegedly hiding in the house. Masooda told them to search if they were so suspicious. They however asked her husband to go along with them. From a window Masooda saw Major D.S.Punia of 17 Jat Regiment from the camp at Lethpora and some other army personnel standing outside the house. The renegades took Regoo away, locking the main door of the house from outside. The family members shouted aloud and some neighbours unlocked the door. Masooda and other members of the family went out, but the army men outside pushed them back. When Masooda caught the Major's attention, he told her that her husband would be released soon.

**The way the Supreme Court dealt with her case makes depressing reading. The Court declared in an inspired prologue that when the might of the State is pitted against a lonely widow, the Courts must tilt just that little bit in favour of the widow, but went on to express faith in the Army's story without any evidence.**

Masooda went back into the house, and saw blood on the floor of her husband's room. She realised that her husband has been injured and went to the Lethpora camp of the Army. At the entrance she was accosted, not by a jawan, but by a renegade who confidently said Regoo would soon be released. She returned home. The next day the SI of Police, Pampore, sent word for Masooda, saying that her husband was being released and she should send two persons. She went behind the police vehicle to Pampore. At the police station no one talked to her. After a while she came home, but the dead body of her husband had preceded her.

Masooda has put up a tenacious fight for justice. She went to the Superintendent of Police, Awantipora who had promised to resolve the problem after Eid, and gave the names of the renegades who had taken part in her husband's abduction. The police could do nothing about 17 Jat Regiment, but she got them to detain the renegades Basheer, Khalid and Salim. However, the MLA, Pampore, Mushtaq Ahmed Kuchay of the National Conference, got them released. She met the MLA in the SP's office where he had come to secure the release of the renegades, and the MLA apparently asked her where she got the money to put her sons in a good English medium school in Srinagar. It may be added that Papa Kishtwari later joined the National Conference and was expelled from that party only the day before his arrest this year, caught by surprise by the unexpected outburst of public anger against the renegade's depredations.

Later Masooda Parveen moved the Supreme Court of India. The Army came out with a story in which the renegades had no role. It was said that Regoo had links to the militants and he admitted so much when he was taken in for questioning. He was made to accompany the Army personnel in a search for a place where arms and explosives were hidden by militants. Once he neared the place and tried to open it, there was a blast that cut him to pieces. The way the Supreme

Court dealt with her case makes depressing reading. The Court declared in an inspired prologue that when the might of the State is pitted against a lonely widow, the Courts must tilt just that little bit in favour of the widow, but went on to express faith in the Army's story without any evidence. It was declared that Regoo was indeed a militant and there is no reason to disbelieve the Army's story of how he died★.

The Court's view is really strange. It need not have expressed any view at all as to Regoo's character or as to the circumstances of his death. In law, the allegation was one of custodial death, with the further complaint that private individuals were allowed to participate in the Army's job. In the face of the serious complaint made by the wife of the dead man, and the totally different version given by the Army, the Court could have asked the District Judge, Pulwama to receive evidence and enquire into the matter and send a report. Or, more conventionally, it could have said there are serious disputes about factual matters, and since the Supreme Court cannot decide the truth of the contested claims in a writ petition, the petitioner should file a criminal case in the local Court against her husband's abductors. It could have directed the Government of India to give sanction to prosecute the Army personnel if the local Court felt there was enough material in her complaint to take cognisance of the case. Instead, the Supreme Court chose to decide the factual dispute, and declared that Regoo indeed was a militant as seen from the Army and police records, and he died the way the Army said, thereby foreclosing all other avenues of justice. It is unthinkable how any Court could have come to such a conclusion on mere affidavits and self-serving records. That is when, Masooda Parveen says, she lost faith in India, a faith that survived Major Punia's collusion with Kishtwari's men Basheer, Khalid and Salim, and also survived the sight of her husband's mutilated body sent by the Lethpora camp of 17 Jat Regiment via Pampore police station.

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★ The judgement, delivered on 2/5/2007, is reported and available for everyone to read: Masooda Parveen vs Union of India, (2007) 4 Supreme Court Cases 548. It is reproduced in Appendix-II to this report with a brief critique. Later this year, a review filed by Masooda has also been dismissed by the Supreme Court.

# Impunity of the Police & Armed Forces

## 1. Custodial Killings

Ghulam Mohiuddeen Regoo's is an old case. It should not be thought that custodial killing is a thing of the past. Allegations of custodial killing are a regular matter in Kashmir, and many of them are substantially true.

Our team enquired into three incidents of custodial killing that happened in recent months, the victims being Mohammad Yakub Mir of Abi Nowpora, Dalgate, Srinagar, Zahoor Ahmed Sofi of Brar, Arigam, Bandipora district and Fiaz Ahmed Qadir of Sadunara, Sumbal, also of Bandopora district. Zahoor Ahmed's case has been confirmed by the Assistant Commissioner, Baramulla who conducted the statutory magisterial enquiry, as a case of custodial death at the hands of the SOG camp Kaloosa, Bandipora, but no action has been taken against the policemen. Regarding Mohammad Yakub's death too there is enough material to fix responsibility on the 52 Rashtriya Rifles. Only the case of Fiaz Ahmad is doubtful, mainly because his native village Sadunara is in an Ikhwani-dominated area where silence rules.

Mohammad Yakub Mir (22) was a labourer who was engaged in some civil works along with 25 other labourers at the Budshah bridge on the Jhelum river in the heart of Srinagar. His house was in the outskirts of the city. He seems to have tried militancy in a half-hearted fashion about four to five years ago and given up without doing any thing. He crossed the LOC for arms training in 2002 and came back, but surrendered in 2003 without putting his training to any effect. He was detained in jail for 25 days before being bailed out. That case under the Arms Act is still pending trial. In June 2004 his house was raided and his family members were told to hand him over. When he went to the Shergari police station the next day he was detained for 15 days, tortured and implicated in a case under the Arms Act again. This prosecution however has ended in acquittal.

Even after that he has been off and on taken by the police/armed forces for interrogation and released without filing any case.

He had a brother and seven sisters, their father being a boatman. The daily earnings of Mohammad Yakub and his brother were essential for the survival of this poor family. His father says he was a very devout person, who offered prayers five times a day without fail. On 21 Jan 2007 he left his place of work at the Budshah bridge and went to offer noon prayers at the mosque at Maisuma, and never returned. A complaint was lodged with the Maisuma police station on 22nd January. Messages were then sent to all police stations, and the Press carried the news with the boy's photograph. On 25th January the family received a phone call from Pattan police station in Baramulla district informing them that Mohammad Yakub's dead body was in the police station and they may come and take it. He is said to have died in an encounter at Wayloo near Pattan on



**Father of Md. Yakub Mir  
with his photograph**

25/1/2007 with the 52 Rashtriya Rifles. Evidently Mohammad Yakub was picked up at the mosque or its vicinity and finished off in the ritual killing of alleged militants that happens every year in the Valley and elsewhere on the occasion of 26 January and the 15 August, to the accompaniment of stories of foiled conspiracies for the disruption of India's republic/ independence day celebrations. The fact that there were 36 bullet wounds in his body speaks of close-range killing, and not exchange of fire between armed combatants from a distance. The Maisuma police too were convinced prima facie that it was a case of abduction and killing and have registered a case in Cr.No.61/2007 under Secs. 364 (abduction) and 302 (murder) of the penal code, prudently leaving the identity of the abductors blank.

Zahoor Ahmed Sofi (19) was a resident of Brar near Arigam, Bandipora district. It is an interior area where people live at the mercy of any one who has a gun in hand. Zahoor Ahmed was working as attender in a private College of Education at monthly salary of Rs 3000/-, for one year by that time. The family had only 2 kanals of land and they were three brothers and three sisters and his salary was an important support for the family.

On 26th August 2006, at about 8-30 pm policemen of the SOG came to their house in Brar and surrounded it. They took out Zahoor Ahmed and searched the house for 10 to 15 minutes. Then they took Zahoor Ahmed away in their vehicle. There is a police outpost at Arigam, to which the family members of Zahoor Ahmed went immediately. The police Sub-inspector in charge of the Arigam outpost spoke to the police headquarters at Bandipora and confirmed the arrest. The next day they went to Bandipora and met the Deputy Superintendent of Police, who promised that the boy would be released that afternoon. He was not. They went the next day and a similar promise was made and similarly not kept. This went on day after day. The SOG police





**Family members of Zahoor Ahmed Sofi**

who took away Zahoor Ahmed never gave audience to the boy's family members. It was the regular police who spoke to them and made promises they could not keep. On the sixth day however the father Habibullah Sofi was shown the boy from a distance. Zahoor Ahmed was evidently in pain and could not speak. The local MLA and MLC too made efforts to get the boy released but they too could only get promises. The problem with 'Special' forces like the SOG is that apart from being not answerable to the law (which is common to all the forces in crisis situations), they are rarely accessible to the people even to express

protest or make a request. This is one of the reasons for opposing such forces. The people, faced with their arbitrary exercise of power, go round the offices of the regular police forces or executive magistrates seeking information or succour, but those officers may be equally helpless even if they have the desire to be helpful.

On 4th September the dead body of Zahoor Ahmed Sofi was given to his family. There were signs of burns at various places on the body. He had evidently been tortured to death. The Asst. Commissioner, Baramulla (Sub-Divisional Magistrate), Mr Abdul Kabir Wani who conducted the mandatory magisterial enquiry, held categorically in the report he submitted on 12/1/2007 that Zahoor Ahmed Sofi had been tortured to death by the SOG, camp Kaloosa, Bandipora district. The officer also observed that the Sub-inspector of police in charge of the Arigam outpost did not cooperate with the enquiry. In spite of the passage of ten months the State Government has not acted on the report. Going by past experience it probably will not. The notion of deterrence is apparently confined to civilian offenders. With the police and armed forces it is somehow believed that they can be made to behave themselves without ever punishing them when they misbehave.

**Since a responsible Executive Magistrate has concluded that the SOG, camp Kaloosa, is responsible for the death of Zahoor Ahmed Sofi, the State Government should have a crime registered against the personnel responsible, suspend them from service, and have them tried for murder.**

Sadunara is a village near Sumbal in Bandipora district. Across the Jhelum is Hajam, the native village of Kuka Parrey @ Jamshed Shirazi, the original Ikhwani. The debt the Army owes that criminal is acknowledged in the prominent sign board of a school in the village which reads: Kuka Parrey Army Goodwill School. That influence is evident in Sadunara where no one wants to speak out against the Army. Fayaz Ahmed (aged about 25) of this village, a farmer with 20 kanals of land, was found dead in his own fields on 1st August 2006 with injuries indicating electric shocks and other forms of torture on his body. The doctor at the Government hospital, Sumbal, who performed the post-mortem described the wounds as 'third degree torture'. He had

actually gone to his fields on the morning of 30th July and was missing ever since. On the night of 31st July there was a crackdown by 13 Rashtriya Rifles in the village and in the morning, after the crackdown was lifted, Fayaz Ahmed's dead body was found in his own land. The most probable inference is that the 13 RR took him into custody on the morning of 30th July from his fields, and after he succumbed to the treatment they gave him, they undertook a crackdown on the village, in the course of which they dumped his dead body in his fields again. The crackdown was intended to camouflage the dumping of the dead body.

Unfortunately, it was difficult to get any thing from the villagers. Being a renegade stronghold, there was fear or reluctance to speak out against the army. A lot of people gathered around us when we introduced ourselves, but they only indulged in a lot of aimless conversation. Only one person spoke out, that too outside the hearing of the people who had gathered to talk to us, and gave us the information set out above.

## 2. Human Shields

It is tragic that none of the heads of impunity has fallen into disuse over the years. It is arguable that consistent agitation and criticism has lightened somewhat the extent of violence against civilians, but not a single form of suppression has vanished. The use of people as human shields in fighting the militants is a particularly obnoxious abuse which should have long since been discarded by an army which claims human rights awareness, but no.

On 13th Jan 2007, the 14 Rashtriya Rifles went to the village of Sumlar in Bandipora district in search of militants. Militants ran into the vacant house of Mohammad Yousuf Lone and hid upstairs. The soldiers wanted a human shield, a sacrificial goat, who would go into the house ahead of them and draw the fire of the militants so that they would know if the militants are in the house, and if so where in the house. They asked Basheer Ahmed Lone (34), a neighbour, to enter the house of Mohammad Yousuf Lone and see if the militants were there. Basheer Ahmed, father of six (his wife



**Wife and children of Basheer Ahmed Lone**

Ameena is pregnant with the seventh child), by vocation a Helper at the Power Development Project, Kishanganga, obeyed reluctantly. He went inside his neighbour's house and the militants opened fire. The jawans of 14 Rashtriya Rifles entered the house behind Basher Ahmed and fired back. After an exchange of fire for about 15 minutes, both the holed up militants and Basheer Ahmed died. The villagers are of the opinion that it was the soldiers' guns and not the militants' guns that got Basheer Ahmed. That is as it may be, but even if it was the militants who hit him, he entered the house as sacrificial lamb at the behest of the Army, and the Army must answer for his death. And the only acceptable answer is that the Army will stop using people as human shields. A tragic footnote to this story is that in the year 2000, Basheer Ahmad's younger brother Nazeer Ahmad was killed identically.



**Tahira, wife of Nazeer Ahmed Shah**

Chekki Chullend is a small village of 100+ houses close to Shopian, Pulwama district. Nazeer Ahmed Shah of this village died on 11/2/2007 when the 62 Rashtriya Rifles stationed at Behibagh and the SOG jointly launched cordon and search operation in the village and directed him to show them the house of one Asadullah Rather. He and one other villager went up to the house to show it to the forces, and started back. The time was about 7-45 a.m. By that time the Army men had surrounded the village, and two militants who were in the village came out and ran. The Army men opened fired, and it is not known whether the militants fired back. At the end both the militants and Nazeer Ahmed died. Nazeer was hit by a bullet directly in the forehead and the bullet exited from behind. He leaves behind wife Tahira and four children, with 5 kanals of land to support them.

The Army said he was caught in the cross-fire, but it was they who dragged him out of his house to do an errand for them. When the Army comes to undertake cordon and search operations to catch militants known to be hiding in a village, it should direct all people to remain indoors. Instead of that, to make a villager help them find a house is to expose him to death, and when death does happen, it is the Army that is responsible, whoever might have fired the bullet that killed him.

**It is time that the armed forces and the police took a decision at the highest level that it shall be a matter of utmost priority for the forces that all steps will be taken to ensure that unarmed civilians are not injured in the course of their operations against militancy. In particular any thing resembling the use of civilians as human shields shall never be done. It should not normally be necessary to advice any agency or instrumentality of the State that it should take a decision not to commit a particular crime, but in the face of complete absence of any accountability to the law, we are constrained to make this demand.**

### **3. Vengeance killing**

This was a very common form of mass killing in Kashmir in the early 'nineties. Any attack by the militants on the forces would invite retaliation against the local civilians, often on large numbers of them. Over the years, repeated criticism has curbed its occurrence, but incidents keep happening that prove that the army has not given up the notion that all Kashmiris are responsible for every instance of violence by any militant or militant group.

Md Afzal Kumar (37), an employee of Centaur Hotel, Srinagar and resident of Arigam, Tral, Anantnag district, was killed by the army (42 Rashtriya Rifles) on 8/2/2007, apparently in retaliation to the killing of three of their men in a land mine blast nearby. Md Afzal used to leave home for Srinagar at 7-30 am every day and return at about 6-00 pm. He would then pray in the local

mosque, often alone. He was praying as usual on the evening of 8/2/2007 when men of 42 Rashtriya Rifles barged into the village. The speculation is that there was a land mine blast at Kahalal, Tral, about 10 to 12 kms from Arigam, in which three jawans died and the angry soldiers were on the look out for a suitable object for retaliation. When they came into Arigam, Md Afzal was praying alone in the mosque. The army men forced themselves into the mosque and opened fire, damaging the wall to some extent. They then dragged Md Afzal out, made him stand by the side of the mosque and shot him dead. They stood guard over the prostrate body for two hours before leaving the village. By the time people took him to a hospital, Md Afzal Kumar was dead.

It is not clear why the Rashtriya Rifles men picked on Md Afzal Kumar. May be they had some information that he had sympathies for militancy, may be his known piety made him a target, may be some informer had given misleading information. But whatever the reason, there is little doubt that he was killed in cold blood and in retaliation to injury caused to the Army by militants.



**Saleema, wife of Md. Afzal Kumar**

#### **4. Detention of a Juvenile**

The most heart-rending of all our visits was to the house of Azad Ahmed Wani of Gojwar, Nowhatta, Srinagar. He was 16 years and 3 weeks old when he was arrested on 3rd November 2006, and he is still in jail in the Central Prison, Srinagar. The desperation of his doting mother and four sisters left us deeply moved.

The family is evidently very poor. Indeed, it is a remarkable thing about Kashmir that while the movement itself is not about poverty, the worst victims are almost all poor. A movement that speaks in the name of a nationality or ethnicity and does attract the wide allegiance of all social classes within the community, from the very rich to the poor, should at least be class-neutral in the social profile of victims of State repression. But no, the worst victims are from very poor classes. An echo of this is some times heard in villages when families of victims of Army action complain about the Hurriyat Conference leaders: they lead comfortable lives while it is the poor who suffer. The Hurriyat leaders do not exactly lead comfortable lives, for their safety is constantly under threat from the agencies of the State, and the so-called moderates among them are threatened also by the militants, a threat that can brutally come true as happened with Abdul Gani Lone<sup>★</sup>. But all this said, it remains true that the poor supporters of the movement are much more vulnerable.

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★ Lone was an accessible and unpretentious person. Appendix-III carries an interview he gave at Bangalore a little before his killing by militants, apparently in retaliation for his forthright views about Pakistan's role in the Kashmir movement.



**Mother and sisters of Azad Ahmed Wani**

Azad Ahmed Wani's father had married a second time and left the family. Mother Hamida makes ends meet somehow and had pinned her hopes on Azad Ahmed, her only son. In any other situation, arrest on a charge that is obviously concocted – that he was carrying weapons and assaulted some one – would not perturb the family beyond a point. They would expect that after a few months he would be bailed out, or in the worst case he would be free in a couple of years. But experience of Kashmiris has been otherwise. Once a person is jailed in a militancy related offence, freedom is literally a receding

chimera. It beckons temptingly again and again but recedes each time it appears near at hand. The plain reason is that no law operates. The whims of the Army/ Police decide the matter and not any law or Court order. And the Army/ Police prefer to keep such persons in jail indefinitely, in the belief that if they are freed there is always a possibility of their getting involved with militancy again. Extended preventive detention is what the Army/ Police want and they have their ways of getting it. That their ways are unlawful, indeed unconstitutional, has not made it impossible. So why bother about the law?

Speaking to Azad Ahmed's advocate, we innocently asked whether bail is such a difficult thing that the boy's family has given up all hopes of seeing him again. His answer was that bail is difficult but not impossible to get, but it only invites fresh charges or a preventive detention warrant under the J&K Public Safety Act. The police all over have a tested method of defeating unwelcome bail orders: concoct a new charge and re-arrest the person at the prison gates. But elsewhere it usually works once or at most twice. In Kashmir it works forever. People are in jail as long as the police/army want, law or no law, even as formally all the motions of determination of guilt by the law Courts are gone through with. The expression Kafka-esque inevitably comes to mind when describing the militancy-related criminal justice system in Kashmir.

To get back to Azad Ahmed Wani's case, the boy was picked up from the street on 3rd November 2006. It appears that someone travelling in an autorickshaw tried to force him to get into the vehicle, alleging that the boy owed him some money. When shopkeepers around intervened, that man said the boy had stolen some thing. They insisted that he should be taken to the police station. The mother and sisters were informed and they too went to the police station. At that stage there was no whisper of militancy-related allegations against him.

He was shifted from Khanyar police station to Kotibagh police station and then to the SOG's Cargo camp before finally being sent to jail on the charge of carrying weapons and assaulting some one. As said in the beginning, he was only 16 years and three weeks old at the time of his arrest. Under the Juvenile Justice Act, 2000 made by the Indian Parliament a juvenile is one who has not completed 18 years of age at the time of the offence. Jammu & Kashmir unfortunately



follows the old law which puts it at 16 years. **Considering the frequency with which very young persons are charged with militancy-related offences in the State, J & K needs an amendment to its law of juvenile offenders even more urgently. A juvenile cannot be sent to jail or tried for any offence, including ‘terrorist’ offences, but only sent to a correctional home for a limited period. It is hoped that the rulers of the State will realise this need.**

### **5. Killing by ‘mistake’**

A very tragic incident happened at Ahlan Godool beyond Kokernag, deep in the interior of Anantnag district on the 3rd October 2006. Hashim Ali Naikoo is a farmer with 5 kanals of land on which he had sown a maize crop. As the crop had grown tall, the Army insisted that they should harvest the crop early for the maize stalks may help the clandestine movement of militants. On the evening of 3rd October, Hashim Ali went to harvest the crop along with his son Md Ashraf Naikoo (22), daughter-in-law Lateefa Bano (wife of another son), daughter Misra Bano (25) and her husband Kabir Naikoo. It was dark by the time they finished the day’s work. In the situation prevailing in the interior parts of the Valley, they would not have worked till after dark, but for the insistence of the Army that the crop has to be harvested fast. They carried a lantern as directed by the Army (all civilians moving about in the dark must carry a lantern or else the Army will shoot). As they were coming back home, gunfire started, aimed directly at them. Hashim Ali saw that those who were firing at them were in Army uniform. There were three of them. The firing went on for 10 to 15 minutes inspite of Hashim Ali shouting loudly that they were villagers. Excepting Hashim Ali, all the others were hit. Md Ashraf and Misra Bano died, and Kabir Naikoo has been crippled for life. Soon after the firing stopped, an Army officer (of the 36 Rashtriya Rifles) came and asked ‘where have the terrorists gone?’ Hashim Ali replied that they were in Army fatigues.

The Army initially gave the impression that it was militants who had shot at Hashim Ali Naikoo’s family, but later a Brigadier said to Hashim Ali that ‘a mistake may have happened on the part of my men’. And the Hizb-ul-Mujahideen which operates in the area issued a statement saying that they were not responsible for the killing. Later the army issued a statement accepting the crime and expressing ‘regret’. Their version is that they laid an ambush for militants who were expected to be coming along, and seeing a party of five with some implements in hand, they challenged them, upon which the five started running. The soldiers then opened fire and killed two. This does not explain two things. The five persons were carrying a lantern, as per the instructions of the army, whereas no militants would be carrying lanterns or any kind of lights. Secondly, two of the five were women, and there are no woman militants in Kashmir. Nor can the Army blame Hashim Ali for being out in the open so late because it was they who



**Hashim Ali Naikoo who lost two of his family members**

insisted on the maize crop being harvested quickly. And finally, since when is ‘regret’ an answer to wanton killing? Once again, we are constrained to pose the question posed above, and again and again in the last 17 years: punishment for committing an offence is supposed to act as a deterrent for the repetition of the offence. That is the philosophy that rules the penal system, and any other view of punishment is firmly resisted by the ruling world view. But how is it that only in the case of the police and the armed forces, it is believed that a graceful admission and apology are a sufficient substitute?.

These are incidents which our team probed by talking to the victims/witnesses. But they do not give a full picture of the situation in Kashmir. Arbitrary acts of the armed forces and the police, and protests in various forms by the people are reported every day in the Press. Each of the incidents reported above led to protests of varying degrees of intensity by the people, especially while taking the dead body for cremation, often resulting in lathi charge and shelling of tear gas by the forces. And while fatalities due to violation of human rights are no longer as numerous as fifteen or even ten years ago, arbitrariness of policing whether done by the police or the armed forces is as common as ever. The terror created by renegades is also not as intense as it was in the later half of the ’nineties but their depredations and the collusion of the police and armed forces with their crimes is also as common as ever. Acts of violence committed by ‘unidentified gunmen’ are frequently reported in the Press, and it is anybody’s guess whether they are militants or renegades or common criminals who have taken advantage of the prevailing situation where no one dares speak out against any one holding a gun. And of course there are a number of killings unambiguously attributable to the militants.

To get a feel of the situation<sup>1</sup>, we reproduce the statistics of killings for the period Jan to Nov 2006:

<b>No.of violent deaths in 2006</b>				
<b>Month</b>	<b>Militants</b>	<b>Soldiers</b>	<b>Civilians</b>	<b>Others</b>
Jan	64	19	21	2
Feb	61	14	14	0
Mar	34	15	15	9
Apr	41	18	31	6
May	57	21	112	9
June	68	14	42	9
July	96	14	40	7
Aug	80	31	35	3
Sep	59	22	46	8
Oct	65	42	20	4
Nov	50	18	39	1

Sexual abuse of women by the armed forces is frequent. On 3rd Feb 2006 men of the 42 Rashtriya Rifles molested women of the Gujjar hamlet of Dudkulian in the Tral area of Anantnag district. On 4th March 2006 a soldier of 52 Rashtriya Rifles stationed at Trakpora camp in Tangmarg entered a house in Tantaypora and molested a woman. On 12th May 2006, a soldier of 30 Rashtriya Rifles made an attempt to rape a woman in her home at Ashpora, Handwara. The outrage was prevented by her sister-in-law raising an alarm. On 8th June 2006 a school girl was molested by men of the 36 Rashtriya Rifles on the pretext of frisking her at Hakoora, Anantnag. People protested and forced the Commandant to apologise. On 16th August, personnel of 55 Rashtriya Rifles attempted to molest a woman at Arihal, Pulwama district in her house. The cries of her children brought the neighbours and saved her. On 22nd of the same month, in Kupwara, a woman was raped by a policeman in a hospital. On 23rd September 2006 people of Drangbal, Pampore, Pulwama district protested in large numbers against the action of a CRPF jawan in trying to lure a school girl into prostitution. On 26th October 2006 personnel of 53 Rashtriya Rifles tried to molest a 11 year old girl at Zinpachal village, Charar-i-Sharief, leading to protests, and further thrashing of her father for having complained.

On 21st January 2007, a jawan of 148 battalion of CRPF and his civilian associate were arrested in Kishtwar in Doda district for raping a minor girl, and on 29th January 2007 a massive protest shook the village of Banagund in Anantnag district against harassment of two sisters by an SI of Police of the 142 battalion of CRPF. The CRPF was again in the news on 26th March 2007 for molestation of a woman in Nowpora, Srinagar by men of its 96th battalion. An attempt by two soldiers of the 9 Rashtriya Rifles to rape a woman caused massive protests in Anantnag district on the 29th of the same month.

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1. This information is taken from Informative Missive, a monthly bulletin published by the Public Commission on Human Rights, Kashmir. 'Others' includes renegades, Army informers, Army personnel other than soldiers, members of Village Defence Committees, unidentified bodies, etc. 'Civilians' are predominantly those killed by militants, but it also includes those killed by the Army/ Police. 'Militants' is a category which may well include civilians killed by the armed forces and passed off as militants, in cases where no cross-checking has been done. In those eleven months, there were only 11 days when no one was killed in militancy-related violence!

# The Political Process: Aimlessness All Round

**T**he political process we are referring to should not be confused with the peace process with Pakistan, though the two are related. The peace process is to be welcomed, and every step that lessens distrust and suspicion and improves communication and understanding between the two countries is a positive step. But given the fact that the unresolved dispute over Kashmir (which is short for ‘dispute over the accession of Jammu & Kashmir to India’) is one of the obstacles in the way of that process, it inevitably includes determined effort to push *this* political process, namely the process of resolution of the Kashmir dispute. Except that when it is seen as part of the India-Pakistan peace process, the dispute ceases to be a problem of the Kashmiris and becomes an India-Pakistan problem. And that makes matters worse. A bus service from a place in India-held Kashmir to a place in Pakistan-held Kashmir is good for the India-Pakistan peace process but does nothing much in itself to take forward the resolution of the Kashmir dispute, though it may provide a convenience for the people of the State. Not many people realise this difference, and expect Kashmiris to see every such initiative as a step in the resolution of the dispute that has wrought unspeakable havoc in that State.

The dispute, it is needless to add, has become an India-Pakistan dispute and therefore a contributing element of the enmity between the two countries because what began as the issue of self-determination of the citizens of the old J & K State was converted into a territorial dispute between these two countries. The political issue we are here concerned with is not this territorial dispute but the issue concerning the right of the people resident in this territory to decide their political future. They never had a proper opportunity to decide it, and events beyond their control pushed them partly into India and partly into Pakistan. It is the fate of the promised political

process for resolving this issue that we are concerned with, and we insist that the Confidence Building Measures that India and Pakistan indulge in exchanges over are only peripherally concerned with this core issue.

We must refer here again to the comments we began with. Namely the suspicion that the Indian establishment in its heart of hearts believes that the Kashmir issue is no longer an issue at all. That it believes the international situation is in favour of its desire to keep Kashmir with it forever, and so it will not do any thing about it. That is why the political process we have been hearing about for at least eight years now has achieved nothing except to split the All Party Hurriyat Conference (the Hurriyat, in short). We have seen interlocutors like K.C.Pant and Ram Jethmalani being sent to Kashmir to initiate a process of dialogue without an agenda; we have heard of some thing called Track-II diplomacy, namely unofficial dialogue between protagonists of all shades aimed at softening attitudes and identifying meeting points; we have seen the Prime Minister himself holding roundtables with political parties in Jammu & Kashmir; etcetera. But whatever other benefits may have resulted from these initiatives, insofar as the core political issue is concerned, not only any result but no aim at all is discernible in these initiatives other than the desire to buy time and let the new regional and international equations work themselves out.



**A common sight: This one is in Bandipora**

The Indian Press has largely been complicit with this duplicity, which means that the public gets to know nothing of what is actually happening in the name of dialogue, and gets to hear very few opinions other than the official. The Press usually merely reports official handouts, and when it writes some thing on its own, that is often as bad as the handouts in its insensitivity to Kashmiri aspirations, which are routinely greeted with a snigger. Cynicism about any thing to do with the Kashmiri identity is the hall-mark of this commentary, which demeans and debases Kashmiri politics. Perhaps the most prolific reporter on Kashmir in the Indian Press is Praveen Swami of The Hindu. He has mastered the art of spinning stories by merely putting together the reports of Police/ Army intelligence, and publishing them with his by-line. One may fairly say that he has discovered a new brand of investigative journalism: ‘the State agencies do the investigation and I do the journalism’. This adds credibility to what would otherwise be seen as the opinion of intelligence agencies, with all the invention and fabrication that are part of the trade.

In addition, every opinion emanating from the Kashmiri identity is reported derisively by him, as if to say: now listen to one more lie, dear reader. What is bad is condemned unrelentingly and what aims to be good is pilloried as hypocrisy. The narrow-minded are damned for being narrow-minded, and those who are not are damned for pretending to be not. In this view, a Kashmiri in politics is either vicious or a liar. It is difficult to distinguish the tone of this premier Kashmir

reporter of one of India's premier newspapers from that of army men who tell every one who visits Kashmir: 'these people will tell you a lot of things, but don't be taken in. They are all liars'.

Let us get back to our comments on the political process.

The Hurriyat united, whatever its defects, was a political force whose presence worked towards a genuine dialogue. It represented the whole spectrum of political opinion opposed to the accession of J & K to India, though perhaps its composition and internal dynamics did not represent the various strands of 'separatist' opinion in proper proportions. The Hurriyat divided is a mere shadow of what it was. The division has left a vacuum that is inimical to a democratic resolution of the basic issue. We say this without implying that the Hurriyat fully represented the whole range of political opinion in the Valley, let alone the entire State. That may honestly be disputed but there is little doubt that it did represent quite a wide range, and it was the only organisation that did so. The split in the Hurriyat is therefore to the advantage of the Indian establishment's interests.

It is common knowledge that the split in the Hurriyat was not an innocent development. It is known that Pakistan has been under pressure from the US to ensure that its proteges in Kashmir talk to India, not because the US desires political dialogue in good faith but because it believes the Kashmir issue unresolved is a breeding ground for Jihadi politics.

And that Pakistan has in turn put pressure on the Hurriyat because that country has its own reasons for wanting to be on the right side of the US. Those leaders of the Hurriyat who were amenable to this pressure are described by the Indian Press as 'moderates' and those who are not are called 'hardliners'. From the beginning however the Hurriyat has been for talks, but that was tri-partite dialogue in which Kashmiris have an equal status with India and Pakistan.

Talking to India separately may be defended as a step in that direction. Abstractly, there is nothing one can say in justification or against that claim. There can conceivably be a situation where such a view could be correct. The question then would be whether it is in the given

situation. Has the decision of the so-called moderate faction of the Hurriyat furthered the cause of political self-determination of Kashmiris, or has it played into the hands of those who are against such a right?

It was difficult to elicit the views of ordinary people on this. As in the past we found that people were not very forthcoming with their political views. It could be because we were outsiders and trust could not be won in the short time we spent in each place. It could be fear of speaking out in an ambience dominated by at least three varieties of guns: of the militants, the Army and the renegades.



**In every nook and corner one can find such  
army bunkers**

Or it could be the despair born of a sense of helplessness, which would appear to make all political discussion fruitless. We are inclined to think the last is the dominant mood. Events are moving so high over the heads of the ordinary Kashmiris, that despair born of a rational pessimism is a natural response, even if 'optimism of the will' has not died.

The will is not dead. The one statement that is repeatedly made is : 'we want freedom'. And even without pressing, they add: 'freedom from both India and Pakistan'. That the desire for self-determination should be driven into a state of despair is itself a violation of a basic human right, the right to meaningful political choice.

Whatever the stated and unstated views of the people, it is an undeniable fact that those who have agreed to talk with India have achieved nothing. As Syed Ali Shah Geelani, the 'hardline' Hurriyat leader as the Indian Press calls him, says: 'The Mirwaiz Farooq group has sat 130 times with the Government of India from 2002, but nothing has emerged from it'. We are not sure there have been 130 sittings, and may be it is a rhetorical flourish, but the basic comment is valid. It was said in the beginning, when the Government of India expressed its willingness to talk about Kashmir with Pakistan and the Hurriyat, that it meant that it is accepting that accession of J & K to India is a disputed fact. Formally, it may appear to be so, but in reality it would be so if the desire for talks was expressed in good faith. If the Government of India has opted for it only to buy time, it does not follow that India has accepted the disputed nature of the accession. And the way the Indian rulers are progressing with the dialogue indicates just that. No one has heard any Indian leader of importance say in public that accession of J & K to India is disputed. There is very little doubt that the Indian public has understood that the dialogue India has promised is only an attempt to put pressure on Pakistan to stop assisting militancy, so that it will become easier for India to defeat militancy militarily, after which the political problem can be ignored as was done until 1989.

In fact, India has already achieved some success in this direction. It has fenced the LOC, an achievement that would have excited strong protest from Pakistan if circumstances had been different. Substantial reduction in movement across the LOC is claimed by India's military establishment in J & K. Not all the militant groups are obedient of the wishes of the Pakistani establishment and hence the movement may not die out totally. But it will become less easy, and if tomorrow Pakistan is persuaded to actively stop the process, it will become even less easy. How do the Kashmiris see the situation where Pakistan is persuaded by its own circumstances, interests or pressure from the US to stop its support to militancy in Kashmir? We did not find much realistic assessment of the consequences of this change even in politically active circles. 'The struggle will continue'. 'It will be more self-reliant'. 'There will be no effect because all militants are local.' These were some of the responses we got. More pointed questions led to rhetoric and sweeping generalisations about the impossibility of suppressing popular aspirations for ever. We are willing to put this down to desperation.

**Events are moving so high over the heads of the ordinary Kashmiris, that despair born of a rational pessimism is a natural response, even if 'optimism of the will' has not died.**



A more fruitful discussion is going on about the 4-point formula of Musharraf for resolving the issue. The formula is not very different from what was suggested some years ago by Bill Clinton, the then President of the U.S. It has always had takers within the Indian establishment. Namely, that minus the Kashmir Valley the rest of the old State of J & K will be partitioned between India and Pakistan, and the Valley will be given self-rule supervised jointly by India and Pakistan, their good conduct guaranteed by the U.S. It was not treated as a serious proposition since it was believed that Pakistan would not agree to it, but with Musharraf expressing a similar proposal, the ‘formula’ becomes a likely framework of a political solution. The four points of Musharraf’s formula are: 1) Porous borders; 2) Self-rule; 3) Joint Management; and 4) De-militarisation. To give the details, the five administrative regions that the old J & K is at present divided into, namely Kashmir Valley, Jammu, Ladakh, Azad Kashmir and the Northern Areas



**Each step you have to prove your identity**

are, under this formula, supposed to be given self-rule in their respective territories. At the stage of a proposal, the meaning of the expression self-rule is not elaborated. May be it means autonomy such as J & K was originally guaranteed when it acceded to India. Movement of people between these regions will be more or less free. The regions will be de-militarised, which can only mean that no army but only the civil police can operate there, and all the five regions will be jointly managed by India and Pakistan. It is not stated by Musharraf as to who will arbitrate if problems arise in the course of joint management, but the answer seems obvious. Who else can it be but the US?.

Barring the joint management★ by India and Pakistan and the implied supervision of the US, this sounds like a little paradise. Except that if de-militarisation means that these territories cannot have their own armies too, they will be tempted to ask why they alone in the whole world must be model world citizens. But joint management means not only that both India and Pakistan retain their access to what they have already laid their hands on, but will get more. It will not be just access as tourists but power as well, for these territories will not be sovereign, but will only have self-rule. The residual power will be with those who ‘manage’ them. India will then have power over Gilgit and Baltistan, not to mention Mirpur and Muzaffarabad, and Pakistan over Ladakh and Jammu. This is surely a bonus that will satisfy the extreme nationalism on both sides which has always wanted the whole and nothing but the whole of Hari Singh’s Jammu & Kashmir. But if all the five regions are to have self-rule, then it is difficult to see why there should be any ‘management’ of the regions at all, much less joint management by their present occupants. Once

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★ It is interesting that Musharraf has chosen to use the term ‘management’ instead of the more usual ‘administration’. Is it an unconscious acknowledgement of the looming presence of the compulsions of the neo-liberal world dispensation, which is impatient with politics and believes that the world is not to be administered for the good of its denizens but managed for the greater profit of the deserving?

self-rule is given, all that Jammu & Kashmir needs is to be left alone. To satisfy their aspiration for self-determination by promising them self-rule, but simultaneously satisfy the egoism of extreme Indian and Pakistani nationalism by promising them that they can not only continue to show the whole of Hari Singh's kingdom in their maps as they do at present but also exercise the residual power over these territories if they can at all manage to share it without biting at each other, and to guarantee the US a permanent right to meddle in the sub-continent – this seems to be the idea behind the Musharraf formula, as it was with the less complicated Clinton formula.

One feature of this formula, which has been noticed and commented upon appreciatively by close observers like Balraj Puri, is that unlike many other formulae including Musharraf's own previous proposal, it does not divide the region along communal lines but along the historically evolved lines of division, which is an overlay of accident and political expediency upon ethnic cleavage. To this extent it is an improvement, but otherwise there is much that is debatable about it.

The Muslim Conference, an important constituent of the Hurriyat faction led by Mirwaiz Omar Farooq, has welcomed the Musharraf formula. Since the Muslim Conference has never been a loyal follower of the Pakistan government there is nothing surprising about it. Syed Ali Shah Geelani, the leader of the other faction, has rejected it, describing it in his conversation with us as triple slavery: under India, Pakistan and the US. In his



**An over whelming presence in the villages too**

statements to the Press, he has called for plebiscite as per the original United Nations resolutions. When we talked to him, however, he reiterated the demand of tripartite dialogue and added that though he is for merger of Kashmir with Pakistan, 'if in the tripartite dialogue it emerges that the old territory of J & K is to be an independent State, we will accept that'. Yasin Malik of the JKLF is reiterating his known stand that there can be no solution without involving the people of Kashmir as the primary party to the dispute. In other words any formula including Musharraf's is not to be discussed and decided by India and Pakistan with US as referee and then informed to Kashmiris but to be decided upon by a process which involves the people in a decisive role from the outset. The JKLF has again begun its safar-e-azaadi, journey of freedom, a kind of padyatra for freedom that Yasin Malik has undertaken in the past too. Over all, however, political opinion is lukewarm because people do not see any thing happening excepting unending sparring by India and Pakistan in the name of dialogue.

It may be thought that the significance of Musharraf's proposal is in doubt after recent events in Pakistan. This is not so obvious as it seems. Firstly, it is not at all clear that Musharraf is all set to go. Secondly, it will not matter if he does go. Musharraf would not have come out with the proposal if it did not have the blessings of the US. It is in any case known that the US has long been of the view that some kind of division of the disputed territory with joint sovereignty is the nicest way of placating the egos of Indian and Pakistani nationalism while allowing the US a

handle to fiddle in the sub-continent. And if Musharraf is replaced in Pakistan, it will not be by any one less acceptable to the US. It does not matter whether that will be Benazir Bhutto, some segment of the Pakistan Muslim League, or some entity even more to the right. And it does not matter whether the replacement will be by way of the peaceful mode of elections or one more coup. Whichever way, it will be extremely difficult for anyone inimical to US interests to come to power in Islamabad. The North-west of Pakistan is too crucial for the perceived security interests of the US for that to be easy. Hence the Musharraf formula is bound to outlive its supposed proponent and there should therefore be no cause for surprise if we hear a lot about it in the days to come, Musharraf or no Musharraf.

Finally, a word about the other kind of demilitarisation that is being talked about in the Valley, mainly by the People's Democratic Party (PDP) which is in the ruling coalition. The PDP has been asking for demilitarisation, in the sense that the Army should go back to its barracks. The other demand of the PDP is that the J & K Armed Forces (Special Powers) Act be repealed. Of course, if the Army is withdrawn from civilian areas, that Act will not have any area of operation. The Congress leadership of the State, through Chief Minister Ghulam Nabi Azad has rejected the demand for withdrawal of the Army from the Valley, and the C-in-C, Northern Command of the Army is reported in the Press to have said that withdrawal of the troops is out of the question until peace is restored.

One response to the PDP's demand has been that if the Army goes back and the police take over the whole job of counter-insurgency, that will not improve matters since the State police have turned out to be as brutal as the Army. It is true that the Special Operations Group (SOG) of the State police have proved a match for the Rashtriya Rifles of the Indian Army in the matter of brutality of their conduct. Hence it is argued that more important than the demand for demilitarisation or withdrawal of the Army is strengthening the moribund institutional framework for checking human rights abuses. There is considerable truth in this, and indeed, in report after report human rights organisations have stressed the need for strengthening institutions of democracy and rule of law.

Yet the demand for withdrawal of the Army need not be dismissed as a rhetorical demand. The fact that the police can be equally brutal would not impel any of us to accept replacement of the police by the Army in our respective habitations, and there is no cause for reasoning differently in the case of Kashmir. If degrees of difference do matter, then it needs to be seen that making the police accountable to the law is to some extent easier than in the case of the armed forces. **Removing the Army camps that dot the Valley would certainly relieve the people of an oppressive feeling of strangulation.**<sup>3</sup>

## Appendix - I

### **Notorious Mumalun alias Papa Kishtwadi's day of judgment has come**

We discontinued walking and our paths closed

As our feet started strolling, we found the way.

We the residents of Tehseel Pampore and Saffron Growers Association (comprising 26 towns) hereby wish to inform to the State and Central Government about the atrocities committed by a rogue named Mumalun alias Papa Kishtwadi in Pampore and adjacent areas.

Mumalun started his career as a poor watchman in 'jawaizi' mill in Bagandar street in Pampore in 1990. He was staying in a rented hut nearby. In 1992 he introduced himself as an agent of Central Government and slowly started doing mischievous and anti-social activities. He gradually unfolded his evil designs one-by-one killing innocent people and spreading bloodbath and terror with the help of his goondas. He brought terror in the hearts of the people around the valley of Pampore and spread havoc in the lives of hundreds of innocuous residents and squandered money worth crores of rupees.

The following is a small list which corroborates his vulgar accumulation of wealth.

- 2 houses in Farishta Bil
- 1 house and 8 shops in Bathandi Narwal in Jammu
- 1 house and many shops in Kishtwad
- Many video coach buses which travel between Jammu and Kishtwad
- Many Tata Sumo vehicles for rent
- A Scorpio vehicle, a Maruti Car and a Gypsy car provided by the Government for himself
- Apart from these, he has unaccounted money worth crores of rupees that he squandered all these years.

This was not enough for this irreligious extremist. He founded an Aashiyana (choultry) named "char yaare Basafa" and mobilised

money to the tune of lakhs of rupees from the people in the name of religion. He started usurping a Muslim graveyard at Farishta Bil and tried to wrest the empty land there. This was too much a test to the patience of the residents of Pampore. They mobilised themselves and started acting together so as to stop the atrocities committed by Mumalun. On Friday the 4<sup>th</sup> May 2007, angry and frustrated residents called for a banch and observed peaceful and complete bandh in Pampore valley.

Now, we request the government earnestly to look into the matter at the earliest. We demand an enquiry into the illegal killings, accumulation of wealth of Mumalun by CBI/CID. The other cases of fraud should also be investigated properly and justice done as soon as possible.

This list is only half of the people who were killed by this savage murderer.

Sl.	Name	Father's Name	Resident of	Date of Death	Year	Occupation	Age
1.	Peer Zubair Ahmed Shah	Peer Shareefuddin Shah	Namblabal, Pampore	24 <sup>th</sup> February	1969	Student	24 years
2.	Shaik Gulam Rasool	Mohammed Shaban Shaik	Namblabal, Pampore	18 <sup>th</sup> March	1996	Journalist, Zafran Times & Gen. Secretary, Auqaf Committee	40 years
3.	Shakeela Banu	Gulam Rasool	Namblabal,	8 <sup>th</sup>	1995	House Wife	26 years
4.	Fayaz Ahmed Wani	Gulam Rasool Wani	Tala Bagh, Pampore	5 <sup>th</sup> January	1995	Contractor	35 years
5.	Mohammed Shafi Ganai	Gulam Qader Gunai	Tala Bagh Pampore		1994	Driver	24 years
6.	Irshad Ahmed Batt	Gulam Ahmed Batt (Umma	Tala Bagh, Pampore Kalu)	8 <sup>th</sup> November	1995	Labourer	26 years
7.	Farooq Ahmed Zat	Gulam Hasan Zat	Namblabal, Pampore	13 <sup>th</sup> November	1996	Driver	25 years
8.	Manzoor Ahmed Wani @ Hatta	Haji Gulam Hasan Wani	Namblabal, Pampore	28 <sup>th</sup> June	2001	Business man	33 years
9.	Mohammed Shaban Dar	Gulam Kader Dar	Namblabal, Pampore	10 <sup>th</sup>	1996	Govt. Servent	55 years
10.	Merajuddin Shaik	Mohammed Sultan Shaik	Namblabal Pampore	16 <sup>th</sup> June	1993	Nil	35 years

11.	Abdul Samad Dar	Mohammed Sultan Dar	Farishta Bal, Pampore	6 <sup>th</sup> January	1996	Nil	52 years
12.	Gulam Hasan Mir	Gulam Mohmmmed Mir	Farishta Bal, Pampore	6 <sup>th</sup> January	1996	Landlord	50 years
13.	Abdul Rasheed Khan	Mohammed Ramzan Khan	Daranga Bal, Pampore	6 <sup>th</sup> January	1996	Labourer	26 years
14.	Basher Ahmed Hajjam	Gulam Mohammed Hajjam	Dhobi Mohalla, Kadla Bal	-	-	Student	22 years
15.	Mohiuddin Gunai	Haji Abdal Salam Gunai	Chanda Hara	7 <sup>th</sup> May	1999	Zafran Trader	52 years
16.	Mohiuddin Rebu (Advocate)	Abdul Raheem Rebu	Chanda Hara	-	1995	Advocate	50 years
17.	Habeebullah Dar	Abdul Haq DAR	Khanmoha, Srinagar	5 <sup>th</sup> May	1996	Respectable Citizen	60 years
18.	Peer Basheer Ahmed	Peer Gulam Ahmed	Khanmoha, Srinagar	5 <sup>th</sup> May	1996	Business man	35 years
19.	Basheer Ahmed Batt	Gulam Nabi Batt	Khanmoha, Srinagar	5 <sup>th</sup> May	1996	Govt. Servant	36 years
20.	Haji Umma Rathar	Haji Qader Rathar	Mahapar Deen	-	2002	Business man	52 years
21.	Merajuddin Zargar @ Hatta	Gulam Ahmed Zargar	Kunah Bal, Pampore	-	-	Goldsmith	45 years
22.	Zahoor Ahmed Meer	Ali Mohammed Meer	Bareen Nishat	29 <sup>th</sup> June	1996	Contractor	54 years

The list of remaining innocent victims who were killed by Papa Kishtwadi and the other facts about his involvement in squandering wealth and felling of trees will be printed and submitted at the earliest.

Printed by:

G.M.Panpuri

President,

All Jammu & Kashmir Saffron Growers Associations (26 towns)

Awardee: Kisan Keesar Saman Leader,

Azeen Registered Peoples Welfare Committee, Pampore.

## Appendix - II

# **Judgement of Supreme Court in Masooda Parveen V. Union of India**

1. In this writ petition, a prayer has been made that the respondent, Union of India be called upon to pay compensation and to provide a job on compassionate grounds for the custodial death of Ghulam Mohi-ud-din Regoo, the husband of Petitioner 1.
2. The facts taken from the petition are as under:

The deceased Ghulam Mohi-ud-din Regoo was an advocate enrolled and practising in the High Court of Jammu and Kashmir before the Srinagar Bench. In addition to his practice he was also a small-time businessman trading in saffron, but on account of certain factors, sustained heavy losses on which his creditors approached local militants for help in recovering the amounts due to them. As a consequence of this pressure, Regoo shifted from his Village Chandhara to Sopore and remained away for a period of two years from 1992 to 1994 and then returned as there was in the meanwhile a decline in the strength of the militants. It appears that some militants who were working along with the army got him arrested on 6-10-1994 on the allegation that he was a Pakistani trained militant (PTM) and he was kept in custody for about three months and then released, and on return continued to follow his vocations in a peaceful manner. On 2-2-1998 some surrendered militants along with a unit of the army (17 Jat) reached Regoo's home in Chandhara at about



8.30 p.m. and searched his house but found nothing incriminating therein. He was nevertheless taken to the Lethapora Army Camp, the headquarters of 17 Jat, and tortured mercilessly leading to his death whereafter explosives were placed on his dead body and then detonated to camouflage the murder. It is further the petitioners' case that the morning after the incident, his body was handed over to the police and was thereafter subjected to a very casual and cursory post-mortem examination. It is in these circumstances that a case for compensation, etc. has been made on the plea that the deceased had left behind an indigent family comprising of Petitioner 1 (his widow) and four children, the eldest being a son 20 years of age. Petitioner 1 sent several applications to the State Chief Minister, and other government agencies and also addressed letters to the Chief Justice of India on 22-6-1998 and 20-7-1998, on which the matter was referred to the Supreme Court Legal Services Committee which advised her to approach the State High Court. Petitioner 1 in her letter dated 19-10-1998 to the Chief Justice of India pointed out that she was not interested in pursuing her case before the Jammu and Kashmir High Court as the Bar Association was politicising it which was not called for. The matter was accordingly treated as a writ petition under Article 32 of the Constitution of India and after notice to the parties, rule nisi was issued on 9-2-2001.

3. Two affidavits-in-reply have been filed by the respondents, one by Major D.S. Punia, the officer in charge of the patrol of 17 Jat which had arrested Regoo and taken him for interrogation to the Lethapora Army Camp and the other by Respondents 3 and 4, the State of Jammu and Kashmir, etc.
4. In the affidavit-in-reply filed by Major D.S. Punia, the story, has to a point, been admitted. It has however been pointed out that on the basis of intelligence provided to the battalion, a patrol party from the Lethapora Army Camp had searched Regoo's house at about 8.30 p.m. on 2-2-1998 which had led to his apprehension and that he had thereafter been taken to the camp and interrogated on which he had revealed that he was a Pakistani trained militant and an Ex-divisional Commander of Al Barq Terrorist Group, and had also offered to lead a patrol to a hideout in the Wasturwan Heights, a short distance away, where arms and ammunition had been stored in a militant hideout. It has further been deposed that a patrol under his command was accordingly deputed to move to the hideout accompanied by Regoo to effect the recoveries but as patrol leader, he had stopped the patrol fifty metres short of the hideout and after ensuring that he was not in a position to escape, Regoo had been released with a direction to go forward to uncover the hideout and when he had tried to create an opening in it, an explosion had resulted (probably due to booby trapping) leading to his death at about 2.30 a.m. on 3-2-1998. It has also been pleaded that three jawans, Sepoy Kashi Ram, Havaldar Randhir Singh and L/NK Munim Singh too had received minor splinter injuries and had been treated in the medical inspection room and thereafter discharged. It has further been highlighted that the search of the hideout had thereafter been carried out and 3 AK magazines, 130 rounds of AK ammunition and 5 hand grenades had been recovered. Along with the affidavit, Annexure A has been appended to prove the injuries suffered by the three jawans, Annexure B the seizure memo in support of the recoveries of the arms and ammunition

and Annexure C, the copy of the FIR lodged at Police Station Pampore on 3-2-1998. It has accordingly been pleaded that Regoo was not an innocent as claimed, who had been done to death in army custody but was in fact a militant who had died in an explosion while in the process of uncovering a cache of arms and ammunition.

5. Respondents 3 and 4 have supported the stand taken by the first and second respondents and have in support of their case, appended several documents from the police record. Several affidavits and documents by way of a rejoinder have also been filed by Petitioner 1.
6. Before we embark on an appreciation of the various contentions raised by the learned counsel for the parties, we must give a preview of the manner in which we intend to deal with this matter. We cannot ignore the fact that many in Kashmir who have gone astray are Indian citizens and it is this situation which has led to this incident. We do appreciate that a fight against militancy is more a battle for the minds of such persons, than a victory by force of arms, which is pyrrhic and invariably leads to no permanent solution. We cannot ignore that in this process some unfortunate incidents do occur which raise the ire of the civil population, often exacerbating the situation, and the belief of being unduly targeted with a feeling in contrast of the law and order machinery that it is often in the dock and called upon to explain the steps that they have taken in the course of what they rightly believe to be the nation's fight. We however believe that the examination of a complaint, and the provision of an effective redressal mechanism preferably at the hands of the administration itself, or through a court of law, if necessary, is perhaps one of the most important features in securing a psychological advantage. We also understand that in an investigation of this kind based only on affidavits, with a hapless and destitute widow in utter despair on the one side and the might of the State on the other, the search for the truth is decidedly unequal and the court must therefore tilt just a little in favour of the victims. We have chosen to examine this matter on this broad principle.
7. Mr M.S. Ganesh, the learned Senior Counsel for the petitioner has raised three basic issues before us, first that the search in Regoo's house and his detention was apparently taken under the authority conferred by the Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 (hereinafter referred to as "the Act") which retains the pre-eminence of the civil authority over the army inasmuch that it provides that the use of the armed forces would be only "in aid of the civil power", but has pointed out that the army authorities had completely excluded the participation of the local administration and the police in this operation, secondly, that the story projected by the respondents in their affidavit was clearly an afterthought as despite specific orders of this Court and the undertakings given by Respondents 3 and 4 from time to time, the original police record has not been produced and only a shadow file with several significant passages missing, had been put on record from which an inference had to be drawn that an attempt was being made to conceal the truth, and finally, that there were no evidence to show that Regoo was a Pakistani trained militant or that he had any association with any militant organisation, as alleged.
8. Mr Vikas Singh, the learned counsel for Respondents 1 and 2 has however pointed out that the action taken on 2-2-1998 and 3-2-1998 by the army patrol was fully in consonance with

the provisions of the Act, which authorised a search, seizure and arrest under certain circumstances. It has also been pleaded that the original police file could not be produced in court as it had been lost and this matter had also been referred to a departmental enquiry and that Regoo was a Pakistani trained militant and an Ex-divisional Commander of Al Barq militant organisation had been revealed by Intelligence inputs received by the battalion and by his interrogation on 2-2-1998.

9. We now take up the arguments seriatim.

10. It is true, as has been contended by Mr Ganesh, that the army action had been taken pursuant to the notification under Section 3 of the Act declaring Jammu and Kashmir as a disturbed area. Section 4 of the Act permits persons of specified rank to arrest without warrant in situations referred to therein. Section 6 to which special reference has been made by Mr Ganesh, is however, reproduced below:

*“Arrested persons and seized property to be made over to the police.—Any person arrested and taken into custody under this Act and every property, arms, ammunition or explosive substance or any vehicle or vessel seized under this Act, shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest, or as the case may be, occasioning the seizure of such property, arms, ammunition or explosive substance or any vehicle or vessel, as the case may be.”*

11. A bare reading of this provision would show that information with regard to the arrest of any person or seizure of property or arms and ammunition or explosives under the Act has to be conveyed to the officer in charge of the nearest police station with the least possible delay, etc. It is Mr Ganesh’s plea that despite the fact that Police Station Pampore was a stone’s throw away from Village Chandhara, no effort had been made by the army to convey the information to the police at the earliest and the police had been called in only on the morning of 3-2-1998 after Regoo had been done to death. Mr Ganesh has also placed reliance on the judgment of this Court in *Naga People’s Movement of Human Rights vs Union of India*<sup>1</sup> to contend that while upholding the vires of the Armed Forces (Special Powers) Act, 1958, this Court had laid down certain guidelines which would mutatis mutandis apply to a search, seizure and arrest under the Act as well. He has pointed out that the basic principle which governed the exercise of authority under the Act was that the army was to act in aid of the civil power meaning thereby that the pre-eminence of the civil authority had in no way been diluted. He has, in particular, placed reliance on the specific conclusions drawn in para 74 of the report and has pointed out that this Court had clarified that the civil power continued to function even after the deployment of the armed forces, and a person arrested and taken into custody was to be handed over to the officer in charge of the nearest police station with the least possible delay so that he could be produced before a Magistrate within 24 hours and that any property or arms and ammunition likewise seized were to be handed over to the police along with a note explaining the circumstances which had led to the recovery, and the creation of an agency which could redress the grievances of those who alleged misuse of

authority by the armed forces so that if the allegations were found proved compensation could be paid as a follow-up measure.

12. We have considered Mr Ganesh's argument in the light of the facts of the case. We have also perused the site plan produced by him in Court today giving the general locations of Chandhara Village, Police Station Pampore, Lethapora Army Camp and the Wasturwan Heights where Regoo had apparently met his end. Concededly all four locations are very close to each other, the maximum distance being 4-5 kilometres, with Village Chandhara virtually in the middle. We must however observe that the application of the guidelines referable to Section 6 and in the cited case cannot be mechanically applied and must of necessity relate to the facts of each case. It is almost the admitted position that Regoo had been taken from Village Chandhara at about 8.30 on the night of 2-2-1998 and had been interrogated at Lethapora Army Camp and had met his end at about 2.30/3.00 a.m. on 3-2-1998. To our mind therefore the time gap between the arrest and the death was clearly minimal. It is also apparent, as contended by Mr Vikas Singh, that after Regoo had been detained, and his interrogation had revealed the presence of arms and ammunition the first priority would have been to recover the weapons as to cause any delay could lead to a failure of the operation. We agree with Mr Vikas Singh's submission that in the short time available to the army patrol it was perhaps not feasible nor practicable to first inform Police Station Pampore situated at the extreme north with the Lethapora and Wasturwan Heights situated towards the extreme south with Chandhara in the centre to first approach the police authorities. We are also not unmindful of the fact that prompt action by the army in such matters is the key to success and any delay can result in the leakage of information which would frustrate the very purpose of the army action. We re-emphasise however that the guidelines laid down in the cited case must be scrupulously observed and any deviation should be frowned upon by the Court.
13. We now examine the other two arguments of Mr Ganesh. It has been emphasised that the story with regard to the circumstances in which Regoo had died and the fact that the original record had not been produced before this Court led to the inference that there was something amiss and the respondents were accordingly engaged in a cover-up exercise.
14. It is true that the original police record has not been produced before the Court despite several opportunities and only a shadow file with some pages missing is before us and has been appended as an annexure to the written statement on behalf of Respondents 3 and 4. Mr Ganesh has accordingly been at pains to emphasise that had the original file been produced the true story of the circumstances leading to Regoo's death would have been revealed and it is for this reason that the file had been withheld. Mr Vikas Singh has, however, pointed out that it had to be understood at the very outset that the raid on Regoo's house and all subsequent events were purely an army operation and the police had come into the picture only after Regoo had died. He has in this background submitted that the record up to the stage of his death was with the army and he has produced the relevant army file before us during the course of the hearing. We have examined this record and find that it is almost contemporaneous with the incident. The record starts with an application addressed by Petitioner 1 to Shri Atal

Bihari Vajpayee, the then Prime Minister of India, asking for relief from the Prime Minister's Relief Fund and compensation on account of the killing of her husband. This application had been received in the Prime Minister's office on 8-6-1998 and had been forwarded to the Ministry of Defence about three weeks later. The matter had thereafter been examined in the Human Rights Cell of the army and the entire record including the after-action report dated 2-2-1998/3-2-1998 pertaining to the incident examined along with the seizure memos and a recommendation had been made that as Regoo was a militant, any compensation awarded to his family would lower the morale of the security forces engaged in fighting militancy. These recommendations were accepted by the General Officer Commanding who was an officer in the rank of Major General. It is noteworthy that this entire exercise started on 26-6-1998 when the application was received by PM's Office and the enquiry was completed and approved right up to the rank of Major General by 29-10-1998.

15. We have also examined the various annexures constituting the shadow file appended with the reply of Respondents 3 and 4. We put it to Mr Ganesh repeatedly as to whether he could identify the information that had to be obtained from the police record. He could give no categorical answer to this query except to state that the reluctance of the civil authority to produce the file betrayed a guilty mind and the possibility existed that there was something in the file which needed to be hidden.
16. It is also interesting to note that in addition to the several documents appended to the inquest report furnished by the police by way of annexures with the written statement of Respondents 3 and 4, a statement of Jalaluddin Regoo, the brother of the deceased completely exonerating the army of any wrongdoing, has been appended although it has been pointed out by Mr Ganesh that he had filed an affidavit denying that he had made any such statement. We are therefore of the opinion that there is not an iota of evidence to support the petitioners' plea except for the statements that she has made in the present petition. It has already been observed at the very initial stage that the court must lean a little in favour of the victims on account of the adverse situation in which they stand placed, but the Court must find something to lean on. We find no evidence to suggest that the petitioners' case was worthy of belief. On the contrary, we have the army and police records pertaining to the incident which clearly show that Regoo was indeed a militant and that the circumstances leading to his death were as per the circumstances put on record by the respondents.
17. We thus find no merit in the petition. It is accordingly dismissed with no order as to costs.

## **A brief critique of the judgement of the Supreme Court in Masooda Parveen vs Union of India.**

1. The Court refers to ‘militants working with the Army’ quite casually. Though these lines appear at a place where the Court seems to be summarising the allegations of the petitioner, the fact that the Court ignores this allegation completely, as if it is nothing to comment about, is striking. It appears that the Supreme Court has no qualms about the practice of the Army operating in tow with civilians bearing weapons.
2. It is clear from the version of the army that after taking Regoo into custody they did not hand him over to the local police but proceeded to take him to the Lethpora camp of the army, and themselves interrogated him and took him to search for hidden arms and explosives. However, the Armed Forces (Jammu & Kashmir) Special Powers Act (AFSPA, in short) does not endow the Army with any power to investigate offences. Only the police can do it. AFSPA has not endowed the armed forces with all the powers of the police, and only what they have been endowed with can be exercised by them. Arrested persons must be handed over to the custody of the police forthwith as mandated by Sec 6 of AFSPA and it is for the police to investigate the offences they may be suspected to have committed. This includes interrogation, seizure of any material they may be willing to disclose, etc. Hence, the Army should have handed over Regoo to the Pampore police and should not have taken him to the Lethpora camp of 17 Jat Regiment. Thus it is not just a case of there being non-compliance with the mandate of Sec 6 of AFSPA, namely to hand over the arrested person immediately to the police. It is a case of exercise of non-existent powers by the army.

Apart from that, the way the Supreme Court has met the argument of the petitioner’s counsel regarding non-compliance with Sec.6 creates an exception to Sec.6 that is too casually laid down and has no basis in the facts of the present case. The armed forces can always plead the danger that delay would lead to ‘leakage of information’ and ‘failure of the operation’ and never hand over the arrested person to the police. Sec.6 leaves no scope for any exception to be carved out, but even if it had to be, it could not be in such sweeping and general terms that would frustrate the object of the language used by the legislature. Coming to the facts of this case, it is not as if the arms or ammunition Regoo allegedly promised to reveal were placed there just then and would vanish if there was delay of ten or fifteen minutes. The Court notes that all the relevant areas including the police station of Pampore are within a range of 4-5 kilometers, with the place of arrest being in the middle. It would have taken hardly ten minutes to inform the Pampore police, make over the accused to the police, and hand over the investigation to them.

3. The judgement, by these means, seemingly takes care of the argument concerning non-compliance with Sec 6 but does not at all deal with the allegation that Regoo was deliberately killed. The only material relied upon is a statement made at the inquest by the brother of the deceased exonerating the army of any wrong doing. Since it is nobody’s case that the brother was an eyewitness, it is not clear what value such a certificate give by him has. In any case,

we need not tell the judges of the Supreme Court that in a cognisable offence, the statement given by a witness at the inquest is not evidence.

4. Whether Regoo was murdered or he died in the circumstances claimed by the Army is a disputed question of fact which could not have been decided without taking evidence. The Supreme Court could have asked the District Judge, Pulwama, to conduct an enquiry by taking evidence and submit a report, as has been done in many cases, for instance the celebrated case of Nilabati Behera vs State of Orissa 1993. Or it could have directed some agency such as the CBI to investigate the matter. In the worst case the Court could have declared that the issue cannot be decided in a writ petition, and left it to the petitioner to file a criminal complaint against the Army and the renegades. Instead it proceeded to decide a question of fact with no evidence before it at all.

It is altogether a classic instance of injustice done to the case and to the law by a hastily written judgement. However, a review petition has also been dismissed by the Supreme Court, and so Masooda Parveen is left with no remedy in law.



### Appendix - III

## Interview with Abdul Gani Lone

**M**r. Abdul Gani Lone was one of the leaders of All Party Hurrit Conference (APHC). He served for more than two decades as an MLA in the J&K Assembly and was also the Cabinet Minister for Education and Tourism. He was in Bangalore in May 2002 as part of his All-India tour to meet people and share the views of APHC with the public. These meetings are significant as it is for the first time that representatives of the APHC were meeting the people to talk about their perception of the Kashmir problem with a view to explore a peaceful solution to the vexed issue. Here are some excerpts from an exclusive interview he gave to Prof. N.Ramesh and V.S.Sreedhara in Bangalore.

*Q. APHC is a conglomeration of various groups with varied ideological and political views. There seems to be quite a few contradictions among the constituents of APHC, like for instance between the fundamentalists and the secularists. You have repeatedly mentioned that there is one point that binds them together: to initiate the peace process through a dialogue. Beyond this point, the contradictions within the APHC begin to surface. Are you of the opinion that contradictions can wait till this basic demand is met? How do you plan to address this question of contradiction?*

Lone.: There are contradictions of the sort you have mentioned. But it is the Hurriyat's problem. It should also be noted that the contradictions are blown out of proportion by some politicians in

India. Like you have your Advanis we have our Gilanis. When Gilani stated that the Kashmir problem is a religious problem, his own organisation, Jamait-e- Islami, immediately clarified that it was a political issue and not a religious one. But all the units of the Hurriyat are unanimous on one issue: to solve the present problem through a meaningful dialogue. At the moment there is the rule of the gun. Under this condition political projections cannot be articulated. How do we know what the people want? The only way is to have the plebiscite. But the Government of India is not ready for it. Then the only option left is to have a dialogue. When we go to the dialogue, all the options are available. All the voices will be heard. I do not see any contradiction in this. Even in Pakistan there is powerful section of people who advocate the need for a dialogue.

*Q. There is a general feeling that Kashmiris want to go to Pakistan...*

It is a mistaken projection that people of Kashmir want to go Pakistan. Similarly some people say that Kashmir being a Muslim majority area may accede to Pakistan. But we should remember that Kashmir never acceded to Pakistan in the past. In fact, they preferred to accede to India. Such being the facts of history how can it go to Pakistan? India will never agree for this. Either Pakistan should wage a war and take away Kashmir or people should voluntarily decide to join Pakistan. But Indian Government would not allow this and there is no third possibility. Even the pro-Pak lobby is one with us that we should go for a dialogue, which means even they are closing the option of Pakistan. You see, the contradiction is not a very serious one. Our stand is very clear. If you do not go for a plebiscite, let us discuss the problem through a dialogue. So, either India or Pakistan claiming Kashmir as its own territory is not acceptable to us. Even in POK, the Pakistan presence is overpowering. They conduct elections but do not respect the people's mandate and bring their own military person to rule. If we were ready to concede to either India or Pakistan, then why would we press for a dialogue?

*Q. Let us assume that India agrees for a dialogue with a condition that they do not either consider the Hurriyat as Kashmir's true representative or that they would not have a dialogue with fundamentalist factions within the APHC. What would be your response? What about the people of Jammu and Ladakh? Who represents them?*

Dialogue is a dialogue and there can not be any preconditions for a dialogue. Fundamentalism is a problem that we should address within the APHC. It is also our problem as to who should represent us and with what mandate. We are conscious of all this. We know that we cannot go to the dialogue table with a demand that Kashmir will be an Islamic state. Who is going to listen to us? In the same way, we cannot go with a pro-Pak theory as well. These are our problems. For instance when some fundamentalists raised their voice, we decided that their representatives should be changed. Partition has its residues, which make one feel that any Muslim arguing for independence is does so for religious reasons. As I said earlier, Kashmir is a political issue, not a religious one.

As far as the representation of Jammu and Ladakh is concerned, they too need to be heard. The moment everyone agrees to go in for a dialogue, contacting every people becomes a necessity. Either APHC will have to limit their own role to the Valley or it will have to come out with some

alternative proposals so that the interests of other people of Jammu and Kashmir are also represented. The very principle of dialogue is based on the notion of representation. This is only a procedural issue. People in Kashmir want peace and an end to their suffering and violence. Hurriyat's demand for dialogue is aimed at this objective.

*Q. Why aren't there any non-Muslims in APHC?*

There are some non-Muslims with us. Efforts are on to have more of them from Jammu region. We are talking to the Sikhs there. Let me make it clear that there is no ban for non-Muslims from joining APHC.

*Q. Mr. Yousuf Tarigami of Kashmir Unit of CPI(M) in a recent interview to a Kannada magazine has said that APHC has only one point programme: to rake up anti-India feelings among the people of Kashmir and that it cannot lay claim to be the sole representative of Kashmir because it has not won any elections, though he concedes that it is an important political presence in Kashmir. What is your reaction to these comments?*

Tarigami is totally wrong. It is not mandatory to win elections for anyone to voice the opinion of the people. One needs to fight an election if one wants to become a Chief Minister, not for a dispute resolution. For instance, in the fifties, when the Government of India held discussions with Sheik Abdullah, he was not an elected representative but a leader of the people. It is only the Hurriyat which is in a position to talk to Pakistan, to the militants. We can tell them that if they do not come round for talks, they will face our opposition. People have become militants because militancy has been thrust upon them. Only the Hurriyat has the guts, support and the conviction to tackle the militancy problem. From Tarigami's camp who is there to talk to them?

The question is not whether people's support is total or complete. The question is whether one is able to carry all the views. As I said earlier, if people of Ladakh are invited, they will be invited as Ladakhis and not as the leaders of the State of Jammu and Kashmir. The same holds good for Hurriyat also.

*Q. One reason normally put forth for the rise of militancy is the problem of unemployment and economic underdevelopment. There is also the feeling that the youth are being misguided...*

This is a wrong perception. Kashmir is not underdeveloped. We are better placed than the people of many other States in India like Bihar or some parts of UP. Ours is the only State which is supported by the Centre even for the payment of its services. Our education is free and we are the only State which has implemented land reforms. Land has been given to the people free of cost and there are no landlords. Ours is not a social or an economical problem; ours is a political problem. So many doctors and engineers have left their comfortable jobs and come back to Kashmir



**Abdul Gani Lone**

and have been martyred. Most of the young men have joined the movement by choice. Thousands of youths have laid down their lives for a cause they have believed in. There is a sense of alienation and nothing is being done to remove or lessen this feeling. People are disillusioned with both Pakistan and India. Mohammad Ali Dogra once asked Moulana Sahib, father of Omar Farooq, where would Kashmiris go if there were to be a plebiscite. Moulana replied that Kashmiris living on the Indian side would vote for Pakistan and those in Pakistan occupied area would want to go to India! It is not at all surprising because people get to see the oppression from their own side and think that the other camp is a better choice.

There is a deep feeling of desperation, anger and shame. What else could be the reaction of people when their daughters are raped and sons and brothers are killed? The official number of rape cases is said to be 500, but it is much more. Due to shame many women do not come out and report the matter to the police. But the people know, they have it etched in their memory. When there is no one to care for them or console them, who should fight against the shame? Why shouldn't they? I cannot forget what the Government of India did to Sheik Abdullah, though I have fought with him bitterly in the Assembly and there is no love lost between the two of us. But for Kashmiris he was a great man. Even after long years of imprisonment, when he came out, he did not say he would go to Pakistan. Why was he ill treated by India? What could be the feeling of an ordinary citizen of Kashmir, if a man of Abdullah's stature was treated like this? This is a question on which the Kashmiri people cannot be convinced. Yet we are seeking a dialogue. Today I am considered a moderate. So are Omar Farooq and Prof. Bhat. But see the fate of these moderates. While they refuse to talk to us, the Government of India lionises the extremists. They may not have done it deliberately, but the result is that moderate voices are being pushed to the margins.

That is why we are saying that the Indian leaders should talk to APHC. When you have a weapon do not blunt it. If you do not talk to the moderates, militants will increase.

*Q. What will be your economic policy when you come to power, even hypothetically speaking?*

As mentioned earlier, we do not have the problem of landlords in Kashmir. So far as the economic polices are concerned, we do not know what sort of atmosphere we will be in when the Kashmiris come to power. Now it is too premature to think of that. First we want the present problem to be solved.

*Q. You have been saying that the Indian leadership took the matter to the UN and promised the plebiscite to the people of Kashmir and continued to make the promise which the people took seriously. Do you think if the plebiscite had been held around 1950, Kashmiris would have voted in favour of India?*

Certainly. If only the plebiscite was held at that time India would have won hands down. But the Indian Government itself was not confident and went on postponing it, only to reject the demand altogether. The then Congress Government felt that it might not get the support of the Kashmiris and did not believe them.

*Q. What about the Pundits? Aren't they a harassed lot? How would you see their plight?*

Pundits are an integral part of the social fabric of Kashmir. It is very sad that they too are alienated and have lost their home and identity. We want them to come back. After all they were our teachers. We have learnt our Koran from them. How can we not have them with us?

*Q. You have been touring India with some of your colleagues in APHC. What is that you expect of these meetings?*

We have been denied audience by the Government of India. The Chief Ministers of various States that we visited chose not to meet us. So we have come to the supreme power – the people of the land – with an alternative plan to solve the Kashmir problem with a meaningful dialogue. Unfortunately the Kashmir issue is being used by both the countries for their own political interests and gains. I would like to emphasise that it is not a dispute between India and Pakistan or Hindus and Muslims. It is a political and above all, a human issue. We do not want that Indians should support our independence theory or right to self-determination. We want you to consider why there should be such killing and tragedy, why people are dying in Kashmir. America ran away from Lebanon because the people protested against their own people getting killed there. People here should know that a lot of their money is being spent on Kashmir, their own people in the Army are getting killed. Our purpose of talking to the people here is to request them to have a public opinion on the happenings in Kashmir and to pressurise the Government to stop the killings.

*Q. There is a feeling among many in India – particularly among some human right activists – that if India agrees to the policy of self-determination by the Kashmiris, it would work against the interests of the Indian Muslims and that there would be a communal backlash.*

I do not understand why Kashmiris should be held hostage for some one else's interests. But I strongly feel that this is a baseless fear. Secularism in India is still strong enough to protect the interests of the minorities. The logic behind such an argument is dangerous.

*Q. What is the general attitude of the ordinary people towards Vajapeye.?*

He has a moderate image. When he was the Foreign Minister he opened a passport office here. He is the only Prime Minister who went in for a unilateral ceasefire. Kashmiris credit him for both.

## Appendix – IV

### **A Brief Historical Background**

**J**ammu & Kashmir (J & K) was one of the largest of the ‘Princely States’ of colonial India. It is today divided between India and Pakistan. Jammu, the Kashmir Valley and Ladakh are the three divisions in Indian part of J & K, whereas Mirpur, Muzaffarabad and the Northern Areas (Gilgit & Baltistan) are in Pakistani part of J & K. Today’s unrest is mainly concentrated in the Kashmir Valley and the Pir Panjal areas of Jammu.

The rulers of the erstwhile J & K were a Dogra family from Jammu. Gulab Singh, jagirdar of Jammu in the reign of the Maharaja Ranjit Singh of Lahore, is believed to have helped the British treacherously in the Anglo-Sikh wars of the nineteenth century. After the British victory, Kashmir was added to his territories by the British in return for Rs 75 lakhs, and a token annual rent of twelve pashmina goats, one horse and three pairs of shawls.

Prior to India’s independence there was a vigorous movement in Kashmir for an end to the rule of Gulab Singh’s dynasty and establishment of a democratic political order. The movement also championed the cause of the Muslims of Kashmir who faced discrimination and oppression. Its main voice was the J & K Muslim Conference, which renamed itself the J & K National Conference in the year 1938. Its tallest leader was Sheikh Mohammed Abdullah.

When the British left India, all the ‘Princely States’ were believed to have regained their sovereignty and were free to join either India or Pakistan or be independent. Hari Singh, the ruler of J&K, prevaricated, while the National Conference wanted removal of the monarchy and establishment of democracy before any decision concerning accession could be taken. In this situation, a large mob of people from the North-West Frontier Province of the newly created Pakistan raided J&K with the connivance of the Pakistani authorities

on 24 October 1947. While Hari Singh's Government was paralysed, the people of Kashmir Valley resisted the attempt to settle the issue of accession by force and the National Conference took over their leadership. India's response to Hari Singh's request for help was to demand that J & K should accede to India before the Indian Army could step into the State to stem the invasion. Thus it came about that J & K acceded to India.

The accession was predicated on the condition that J & K would be an autonomous province of India, with the Center having power only over Defence, External Affairs and Communications. In turn, India assured the people of J&K that their view would be taken in a free and fair referendum or plebiscite before accepting the accession as final. This promise was made by India not only to the people of J & K but also to the United Nations, to which body India complained of Pakistani aggression. The plebiscite was never held, inspite of the efforts made by the United Nations to persuade India and Pakistan to agree on the modalities of the referendum. The crux of the Kashmir movement is the demand that the right to self-determination guaranteed by promise of plebiscite should be honoured.

The autonomy promised by the instrument of accession was written into the Indian Constitution in Article 370. As the Central Government was to have only limited power over the State, the State needed to have a constitution of its own. Elections were held for the Constituent Assembly. The National Conference was certainly a popular party but it was not the only political force in J&K. But India pinned its hopes on National Conference and its leader Sheikh Mohammad Abdullah, who it was hoped would ensure merger of J & K with India. Hence the National Conference was allowed to use strong-arm methods to monopolise the Constituent Assembly. Yet, in due course, Abdullah was suspected of harbouring the idea of writing the promise of plebiscite into the State's Constitution. He was arrested on 9<sup>th</sup> August 1953 and was in jail more or less continuously till 2<sup>nd</sup> January 1968. He was never tried in any Court of Law and never sentenced to imprisonment. He was simply jailed without reference to any law. Pliant leaders were encouraged to take his place, condoning their corrupt practices. More and more powers were assumed by the Center over J & K using the services of the pliant leaders. No one who held views inimical to India's interests has been allowed to win elections in J & K. This strangulation of democracy led to a lot of dissatisfaction which reached its height in 1987 when the candidates of the Muslim United Front who actually polled more votes than their rivals were declared to have lost the elections.

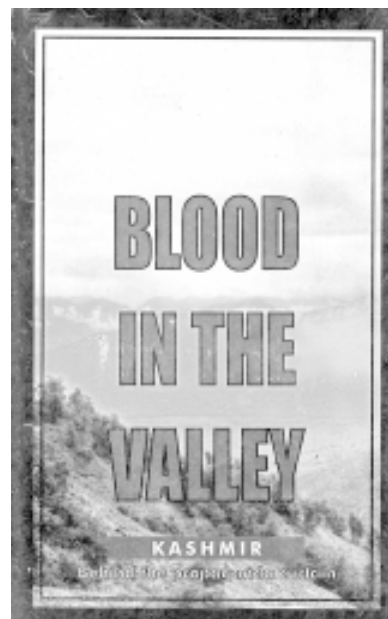
This is the background in which militancy broke out in Kashmir in the year 1989. That the democratic assertion of the right to self-determination was suppressed by cunning and brute force, leaving Kashmiris with no option but to 'take up the gun', is the common observation of all the supporters and sympathisers of the movement. It was only in 1996 that elections of any kind at all were held in Kashmir Valley again, and then by the force of the Army together with the 'renegades', i.e., surrendered militants acting as armed agents of the State.

The armed forces and lately the police, especially the Special Operations Group, indulge in the most brutal forms of torture with complete impunity in J & K. And the political process supposed to have been initiated to resolve the 'Kashmir issue' just does not care to hear the Kashmiri people.



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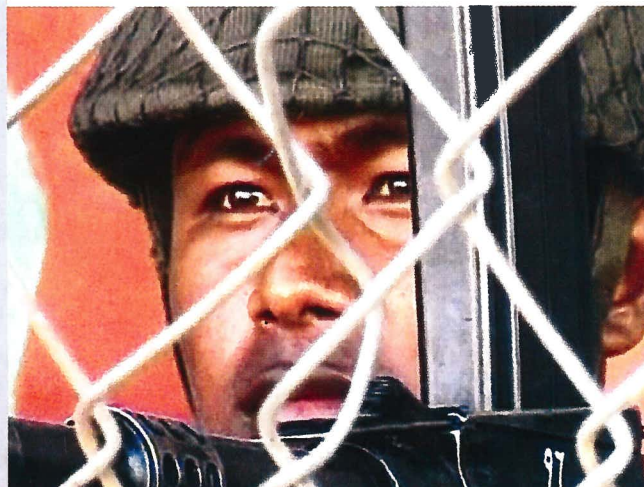


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Events are moving so high over the heads of the ordinary Kashmiris, that despair born of a rational pessimism is a natural response, even if 'optimism of the will' has not died.

The will is not dead. The one statement that is repeatedly made is : 'we want freedom'. And even without pressing, they add: 'freedom from both India and Pakistan'. That the desire for self-determination should be driven into a state of despair is itself a violation of a basic human right, the right to meaningful political choice.







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