

HUMAN RIGHTS REVIEW

Jammu and Kashmir – 2012

A brief by: Jammu and Kashmir Coalition of Civil Society (JKCCS)

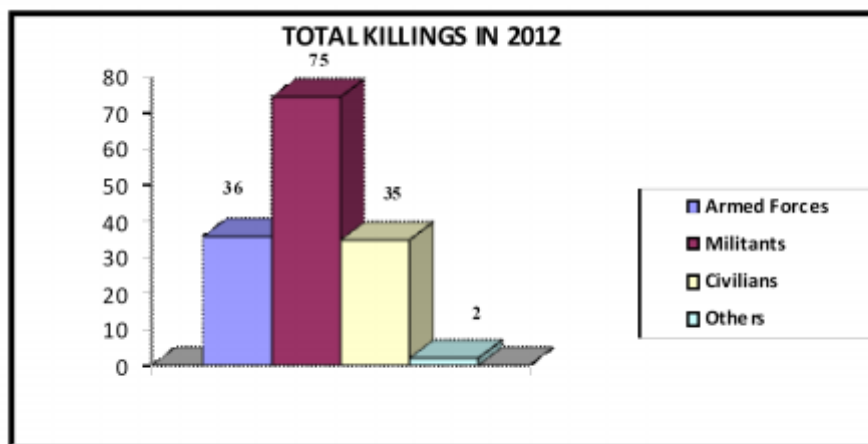
TOTAL KILLINGS

Year 2012 has just passed, and yet again like previous years, the government of Jammu and Kashmir has disgracefully claimed the year to be peaceful. This hyped peace is void of justice & peace and is packed with violence & injustice. In the year 2012 the people of Jammu and Kashmir in routine have witnessed unabated violence, human rights abuses, denial of civil and political rights, absence of mechanisms of justice, heightened militarization and surveillance. The figures of violent incidents suggest that 2012 as usual has been the year of loss, victimization, lies, mourning and pain for the people.

In 2012, a total of 148 people have lost their lives due to violent incidents in Jammu and Kashmir. Out of 148 persons, 35 were civilians, 75 were alleged militants, 36 armed forces personnel, 1 was an unknown person and 1 a retired police officer.

Out of the total 35 civilians killed this year, 6 were children and 9 were women, amongst whom 4 were tourists.

On 27th July 2012, four women tourists were killed in a grenade blast at Bijbehara, Anantnag. The government lied to the media that it was a gas cylinder blast, while as the injured and the eye witnesses made it clear that it was a grenade attack. On that day Indian Defence Minister, A. K. Antony was in Kashmir and had snubbed the army a day before by stating that there would be an inquiry into the fake encounter killing of Hilal Ahmed Dar of Bandipora, which had taken place on 25th July. The army had clearly stated immediately after the killing of Hilal Ahmed Dar that he was killed in a ‘genuine encounter’. Now recently on 28th December 2012, Jammu and Kashmir police said that the two militants killed in Pulwama encounter were responsible for the grenade blast on tourists in Bijbehara. Given the circumstances it is very important that this incident is probed by independent investigators.



UNMARKED GRAVES AND MASS GRAVES

PARTIAL ACKNOWLEDGEMENT BY POLICE

The Jammu and Kashmir government in response to a Right to Information application regarding unmarked graves in all the districts of Jammu and Kashmir while initially rejecting the information as threat to sovereignty and integrity of India and also threat to security and peace denied the information but later after the decision was challenged, the Police on 13th March 2012 vide order no: PHQ/RTI-4/2012/76-77 the First Appellate authority of the Police Headquarters conceded to our arguments shared 2683 FIRs numbers pertaining to 3 districts of North Kashmir. According to Jammu and Kashmir Police these 2683 FIRs are of those persons who after their killings continue to be unidentified and those were buried in unmarked graves. So far police has not revealed the details about other districts and also has not revealed how many unidentified persons buried in unmarked graves have been registered in these 2683 FIRs.

DENIAL OF DNA TESTS

In 2011 the SHRC after endorsing the findings of Association of Parents of Disappeared Persons (APDP) and International People's Tribunal for Human Rights and Justice in Kashmir (IPTK) regarding the presence of unmarked graves and mass graves in north Kashmir asked the Government of Jammu and Kashmir to carry out DNA tests and investigations into the unmarked graves and mass graves of North Kashmir. On 13th August 2012, the Jammu and Kashmir government submitted the Action Taken Report to the SHRC, wherein it is mentioned that the government would not carry out any DNA investigations of the unmarked graves and mass graves, as according to them it is an 'academic exercise in futility', has the 'potential of hurting the local sentiments' and can 'become the trigger for serious law and order disturbances'.

In this Action Taken Report submitted by the government to the SHRC while keeping the option available for the families of enforced disappearance to carry out DNA tests the government has laid out the procedure for the families to approach for DNA tests the Superintendent of Police of Human Rights Cell of CID, who has been made the nodal officer for the DNA tests. The family members of the disappeared have been asked to identify the graveyard and the particular grave in which they suspect that their loved ones have been buried and only then the nodal officer would proceed with the procedures of getting the DNA tests of the specific grave to be matched with the family claiming that to be their relative. It is an unfortunate statement by the government. How would the family members of the disappeared know whether their relatives are dead or alive and also if they are dead, where they have been buried?

We believe that the DNA tests of all the unmarked graves should be carried out first and only after that the family members should be asked to give DNA samples.

POONCH AND RAJOURI UNMARKED GRAVES

So far APDP/IPTK has submitted the prima-facie evidence of 6217 unmarked graves and mass graves in 5 districts; Kupwara, Baramulla, Bandipora, Poonch and Rajouri. While as the SHRC has acknowledged existence of 2156 unmarked graves and mass graves in Kupwara, Baramulla and Bandipora. This year during multiple hearings of the case of unmarked graves and mass

graves of Poonch and Rajouri, the Deputy Commissioner of the Poonch district has submitted the factual report so far and the factual report from the Deputy Commissioner of Rajouri is still pending.

The Jammu and Kashmir Police in its report submitted to SHRC while negating the presence of unmarked graves in Poonch and Rajouri has claimed that in various anti-militancy operations in these two districts have killed 3431 militants and out of whom 2080 are unidentified.

The Deputy Commissioner (DC) of Poonch in his factual report has claimed that there are no unidentified or unmarked graves in Poonch district and that they have identified all the foreign militants as well. The DC Poonch besides his reply has furnished the list of all the encounters in Poonch district and total number of casualties which have taken place in these encounters. Surprisingly the document annexed to the DC Poonch's reply suggests that the DC Poonch is lying, as the 110 page annexure has details of 1685 unidentified bodies and also reveals that in most of the cases of these encounter killings of the alleged militants the police does not have any photographic evidence.

The details which DC Poonch has provided are only about those cases where government claims people were killed in encounters, but there are a lot many cases reported in the media over last two decades where police has recovered unidentified dead bodies from various place and were buried as unidentified persons, the details of which have not been provided by the DC Poonch so far.

It appears that the government officials at various levels on the issue of unmarked graves and mass graves are attempting to obfuscate the truth and confuse the matter.

ENFORCED DISAPPEARANCES

On 10th December 2011, Association of Parents of Disappeared Persons (APDP) submitted 132 cases of enforced disappearances from Banihal to the SHRC. APDP urged SHRC to investigate the causes and circumstances which led to the disappearance of these 132 persons from Banihal. APDP had also stated that the family members of these victims were willing to cooperate for DNA tests. The SHRC issued notices to Director General of Jammu and Kashmir Police and the DC Office Ramban for submitting their factual reports regarding the disappearances. So far after many hearings at SHRC the government has failed to provide any factual report regarding the disappearance of these 132 disappeared men from Banihal area.

On 30th August 2012, the International Day of Disappeared, APDP submitted 507 cases of enforced or involuntary disappearances from Baramulla and Bandipora districts to the State Human Rights Commission (SHRC) for investigations into the causes and circumstances which led to their disappearances. APDP had urged SHRC to investigate whether these people are dead or alive and if they have been killed, then it should be ascertained whether these people have been buried in unmarked graves and mass graves in entire Jammu and Kashmir through DNA tests. After initial reluctance from the SHRC and the Jammu and Kashmir government to admit these 507 cases of enforced disappearances, finally on 24th December 2012 the case has been admitted and the notices have been issued to the Director General of Jammu and Kashmir Police

and the Deputy Commissioners of Baramulla and Bandipora districts to furnish their reports regarding the disappearance of these 507 persons.

Besides the unabated denial and injustice from the government regarding the cases of enforced disappearance of last 22 years, the phenomenon of disappearance continues to haunt the people of Jammu and Kashmir. People have disappeared even in this year. Atleast 2 persons have disappeared this year. Mohammad Maqbool Khan S/O Ghulam Nabi Khan R/O Drangbal, Baramulla, a 47 year old man disappeared mysteriously on 23rd March 2012. Shabeena Begum W/O Amir-ud-Din Naik R/O Azmabad, Mandi, Poonch, a 40 year old woman was abducted by Jaswant Singh a personnel of Army, 13th Sikh Light Infantry. The government as usual has failed to initiate any conclusive investigation into those who disappeared this year.

Successive governments have given contradictory statements about the total number of people 'missing' in Jammu and Kashmir. In 2002, the National Conference government said 3184 persons are 'missing', then in 2005 Peoples' Democratic Party led government claimed 3931 persons were 'missing' and in 2009 the present National Conference led government divulged that 3429 persons are missing in Jammu and Kashmir since 1989. Recently, on 8th October 2012, Chief Minister, Omar Abdullah said that 2305 persons have been declared missing in Jammu and Kashmir since 1989 and in 182 cases FIRs have been lodged, while missing reports have been filed in most of the remaining cases.

Pertinently, APDP on 7th October 2011, applied for information under Jammu and Kashmir Right to Information Act 2009 from the State Home Department for providing all the lists of 'missing persons' as claimed by various governments. More than a year has passed the state government has failed to provide any information regarding the contradictory figures of 'missing persons' divulged by various governments on the floor of Jammu and Kashmir Legislative Assembly.

EXTRA-JUDICIAL KILLINGS AND CUSTODIAL KILLINGS

The year 2012 has not been free of extra-judicial killings and custodial killings. 8 persons were killed extra-judicially by the armed forces and police. In all these cases of extra-judicial killings, the government has failed to either prosecute or conduct an impartial conclusive investigation. Whether it was the killing of Altaf Ahmad Sood, a 21 year old boy allegedly shot dead by paramilitary Central Industrial Security Forces (CISF) when they opened fire upon protesters demonstrating against non-availability of power supply at Boniyar in North Kashmir's Baramulla district, or Hilal Ahmad Dar, a 25 year old a resident of Lahipora, Aaloosa, Bandipora who was killed in a fake encounter by army (27 RR) which was admitted by the army as a 'genuine encounter', or Ashiq Hussain Rather, a resident of Rafiabad, Baramulla killed by the army (32 RR); the armed forces continues to kill civilians with the impunity provided under Armed Forces Special Powers Act (AFSPA) and so far in none of these cases as well any meaningful investigations has been carried out, which could have led to the prosecution of the armed forces personnel.

Nazir Ahmed Sheikh, a 35 year old employee of Srinagar Municipal Corporation and a resident of Dalgate, Srinagar, according to his family was killed after torture in the Srinagar Central Jail.

PROBES AND INQUIRIES

In 2012, the government while remaining consistent with the previous year has ordered 8 different probes on various human rights abuses.

So far only two inquiries have concluded and officials have been indicted but no prosecution proceedings have been initiated, which is nothing unprecedented as even in the past probes have been announced by the government to neutralize the public pressure. From 2003 to 2012, different governments have appointed 163 probes but justice remains elusive.

On 12 January 2012, JKCCS sought information under RTI Act regarding all the probes and inquiries ordered and/or conducted by the Government of Jammu and Kashmir, including inquiries under the Commissions of Inquiry Act, 1962, and magisterial inquiries, between 1990 and 2011. Since almost a year the Home Department has not given any information related to the inquiries ordered from time to time by government on various human rights violations. It appears that the Jammu and Kashmir government's reluctance to share this information is based on the fact that these inquiries will only expose the lies of the politicians and officials who order these inquiries to mislead the people of Jammu and Kashmir and to pacify public anger. The aim of these inquiries has never been to convict perpetrators. If perpetrators would have been punished as a result of meaningful and effective probes in the past, it would have helped in creating deterrence for the recurrence of these crimes. We urge the government to ensure that investigations and probe should not be politically motivated, but aimed at holding the perpetrators accountable.

KILLINGS OF POLITICAL WORKERS

Killings of civilian political workers continue to be an unabated phenomenon. In the year 2012, we have recorded killings of 5 civilian political workers. 3 out of the 5 political workers killed belong to ruling National Conference party, 2 were independent Sarpanches. In the last several years the political workers who have been killed no one has been prosecuted.

Killings of civilian political workers at the hands of state or non-state actors, is completely unacceptable. Killing of civilian political workers only creates a culture of intolerance and chokes dissent. It is therefore, JKCCS has been urging all the combatant forces – Indian military forces and the members of United Jihad Council to refrain from killing any civilian political workers.

JKCCS demands an impartial and independent investigation into all the killings of civilian political workers. Impartial investigations would help bringing the perpetrators to justice and also act as a deterrent.

SUICIDES AND FRATRICIDES BY ARMED FORCES PERSONNEL

Suicides and fratricides by the personnel of the Indian armed forces, continues to exist as an issue in the year 2012. This year, 9 armed forces personnel committed suicides in Jammu and Kashmir due to unknown reasons and 1 personnel was killed in fratricidal incident of violence.

TORTURE/HARASSMENTS/ILLEGAL DETENTIONS

The paranoia of government regarding the summer uprising of 2008 and 2010, was very evident this year in the actions taken by the government. Even in 2011 and 2012, when there was no apparent street uprising, hundreds of boys were detained on the pretext of being stone pelters. These young boys are subjected to torture, intimidation and harassment. In many police stations boys are illegally being detained; sometimes for few hours and sometimes for few days. Some boys are regularly being called to police stations on one pretext or the other. There is complete disregard towards the juvenility of the boys being detained. This year many minors were arrested on charges of stone pelting. Around 225 persons were detained under the Public Safety Act in the year 2012.

In some cases people alleged that police officials have been demanding ransom for releasing these boys who were illegally detained in various police stations. Also this year parents of some alleged stone pelters were detained in various police stations to pressurize their children to surrender before the police.

RAPES AND MOLESTATIONS

On 15th August 2012, Altaf Ahmed Khan presently a S.P ranking officer in Jammu and Kashmir Police was awarded Gallantry Award by the President of India. Altaf Ahmed Khan is an accused in a rape and torture case of 2004, when he was posted in Handwara area. In November 2008, SHRC in its judgment recommended investigation and prosecution against Altaf Ahmed Khan. So far Police has neither carried out any investigation nor have they registered a case against Altaf Ahmed Khan, instead he was awarded with DG's commendation award in 2012 followed by that on 26th January 2012 the General Officer Commanding of the 15 Corps Army awarded Altaf Ahmed Khan for bravery and finally his name was recommended for President's Gallantry award.

In October 2011 the State Human Rights Commission (SHRC) passed a judgment on the Kunan Poshpora mass rape case of 1991, demanding re-opening of the case and also filing a case against the then Director Prosecutions. More than a year has passed the Jammu and Kashmir government has not implemented the SHRC recommendation to re-open the Kunan Poshpora mass rape case.

In none of the other rape and molestation cases registered by Jammu and Kashmir Police for the previous years any progress was made on investigations. The Ministry of Defence this year released information regarding 24 cases in which Jammu and Kashmir government has sought sanction for prosecution under Armed Forces Special Powers Act (AFSPA) against army personnel in last 5 years. The Ministry of Defence mentioned that out of 24 cases sanction has been declined in 19 cases.

Unfortunately the Ministry of Defence in some of the rape cases has also declined the prosecution sanction. In a case of rape of 1997, the Ministry of Defence claims, despite the police investigation, that the rape victim was the wife of a dreaded HM militant and was forced to lodge this false allegation by the anti-national elements.

IMPUNITY

Government of India has been claiming that despite the imposition of AFSPA, mechanisms of justice are functional and deliver whenever anyone is found indulging in human rights abuses, but this year the International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir [IPTK] and the Association of Parents of Disappeared Persons [APDP] released a report, "alleged Perpetrators – Stories of Impunity in Jammu and Kashmir".

"alleged Perpetrators" report examines 214 cases of human rights violations using information gleaned mostly from official State documents, in addition to witness testimonies. The report portrays the state of impunity prevalent in Jammu and Kashmir. Out of 214 cases a list emerges of 500 individual perpetrators, which include 235 army personnel, 123 paramilitary personnel, 111 Jammu and Kashmir Police personnel and 31 Government backed militants/associates. Among the alleged perpetrators are two Major Generals and three Brigadiers of the Indian Army, besides nine Colonels, three Lieutenant Colonels, 78 Majors and 25 Captains. Add to this, 37 senior officials of the federal Paramilitary forces, a recently retired Director General of the Jammu and Kashmir Police, as well as a serving Inspector General.

This report seeks to turn the focus on identities of alleged perpetrators of crime and atrocity. This stems from the understanding that despite a culture of systemic impunity that exonerates perpetrators, it is individuals who commit violations, and they must first and foremost bear responsibility for their acts. By naming names the report seeks to remove the veil of anonymity and secrecy that has sustained impunity. Only when the specificity of each act of violation is uncovered can institutions be stopped from providing the violators a cover of impunity.

After the release of the report Chief Minister Omar Abdullah was reported to have told the media that the government will examine this report. Followed by this statement two of the alleged perpetrators named in this report were cleared for their promotions in the Departmental Promotion Committee meeting of the Jammu and Kashmir Police.

AFSPA REVOCATION

The Chief Minister Omar Abdullah on 20th December 2012 said that Army has scuttled AFSPA revocation and also previously on 16th April 2012, ex-Army chief had said that AFSPA was a functional requirement in certain areas like Jammu and Kashmir. Jammu and Kashmir Congress Chief said on 9th August 2012 said that he was instrumental in stalling the AFSPA revocation. These statements bring into focus the fact that army is *de facto* controlling Jammu and Kashmir, and Chief Minister is helpless, while as army has been using the services of some politicians to maintain its existence in Jammu and Kashmir with impunity.

KILLINGS DUE TO UNEXPLODED SHELLS AND LANDMINES

This year three persons have lost their lives in explosions, which were caused due to unexploded shells used during counter insurgency operations. Two out of the three persons killed are minors.

The Indian army continues to use landmines on the pretext of protecting the borders from 'infiltrators', but the fact is that these landmines used by Indian army have not deterred

infiltration ever, but has caused havoc in the lives of those living close to border areas. This year as well, Jammu and Kashmir has witnessed several persons injured due to landmines, which also include the personnel from the armed forces.

ROLE OF INSTITUTIONS OF JUSTICE

Judiciary in Jammu and Kashmir continues to show an abysmal performance and has failed to live up to the expectations of the victims. Amongst the people of Jammu and Kashmir disillusionment regarding judiciary is at its lowest, as it has failed in holding perpetrators accountable. Notwithstanding the powers to protect life and liberty of citizens, judiciary has disappointed people of Jammu and Kashmir. Judicial activism for protecting the civil and political rights and seeking accountability from the state actors is very apparent in India, but it seems to be completely absent in the Jammu and Kashmir judiciary.

Justice Masoodi [then an additional Judge] of the Jammu and Kashmir High Court dismissed the petition filed by the families of three persons abducted and killed in Baderwah on 3 January 1996. The ex-Director General of Police, Kuldeep Khoda was implicated in the case by a Crime Branch progress report that came to light through the media on 13 August 2011. The families of the deceased filed a petition before the Srinagar Bench of the High Court in September 2011. The families of the victims of the killings had waited 16 years for justice. The High Court decision by Justice Masoodi is a further disappointment to the families who have watched with increasing frustration the proceedings before the High Court. Following the filing of the petition, at every step, the families have witnessed a judicial process that they may well perceive as being against the interests of justice.

Simultaneously the family members of the Baderwah triple murder case had also filed a petition at SHRC. Subsequent to the dismissal by High Court the SHRC has dismissed the case. The SHRC by its decision has affirmed its unwillingness to look closely at the facts of the case and instead follow the Trial Court, High Court and National Human Rights Commission [NHRC] decisions. The SHRC rationale for dismissing the complaint was that the case had been litigated before the High Court and findings had already been returned on 29 May 2012. While recognizing its powers to consider the complaint notwithstanding the High Court order, the SHRC chose to dismiss the complaint by refusing to appreciate the facts of the case and thereby affirmed its disinterest in ensuring justice, particularly in a serious case of human rights violations that was perpetrated by a senior police official.

SUPREME COURT OF INDIA

On 15 July 2012, the Supreme Court took *suo-moto* cognizance of the deaths of 67 Amarnath pilgrims over the first 17 days of the Amarnath yatra. Referring to a clear disregard for human life, the Supreme Court cited the constitutional rights to life [Article 21] and freedom of movement [Article 19(1) (d)] in India and issued notices to the Central Government, Government of Jammu and Kashmir and the head of the Amarnath Shrine Board. Subsequently, a high powered committee was constituted to investigate the reasons behind the deaths.

This pro-active approach of the Supreme Court when contrasted with its past record in Jammu and Kashmir related human rights matters raises serious questions on the manner in which

human rights violations in Jammu and Kashmir from 1989 to date are viewed in New Delhi. The approximately 8000 persons subject to enforced disappearances, 70,000 persons killed during the conflict, at least 120 persons killed in the 2010 protests, disclosures of 6217 unmarked graves largely authenticated by the Government of Jammu and Kashmir through the RTI process and the State Human Rights Commission, rape, widespread torture and numerous other human rights violations should surely have merited similar pro-active action from the Supreme Court. On the contrary, cases that have been litigated before the Supreme Court, from the Masooda Parveen case to the recent Pathribal fake encounter case; have been dealt with in disappointing and problematic ways.

We believe that the enforced disappearances of the men, women and children of Jammu and Kashmir are a clear disregard for human life and should shake the conscience of any State or judicial system that considers itself civilized, and respectful of the rule of law and human life. The right not to disappear and right to life in Jammu and Kashmir should also be a concern for the Supreme Court.

That the human rights violations, coupled with the complete failure of the investigative and prosecutorial mechanisms in Jammu and Kashmir, are not considered worthy of attention by the Supreme Court is shocking and a damning indictment of the Indian State and all its functionaries. This prioritization of some lives over others is condemnable.