

Jammu and Kashmir

HUMAN RIGHTS REVIEW - 2013

A brief by:

Jammu and Kashmir Coalition of Civil Society

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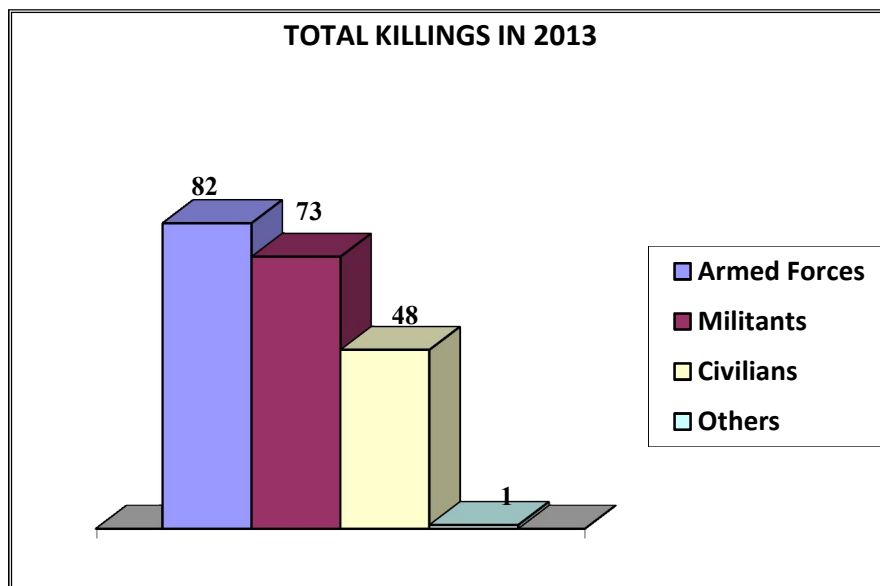
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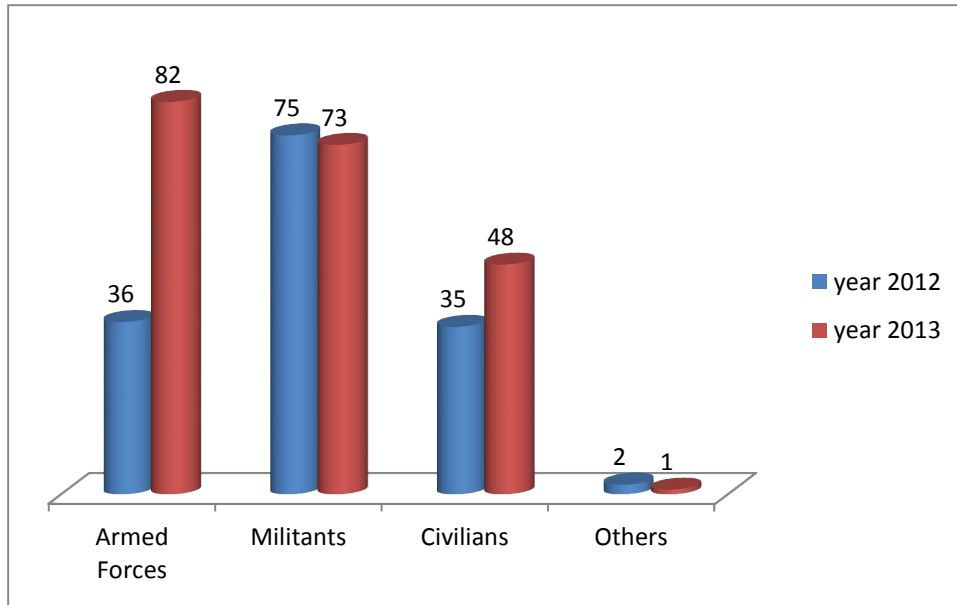
TOTAL KILLINGS

Year 2013 has passed, and government is already discussing escalation of violence. As usual the people of Jammu and Kashmir this year too witnessed unabated violence, human rights abuses, denial of civil and political rights, absence of mechanisms of justice, heightened militarization and surveillance. The year 2013 continued to add to the losses, victimization, mourning, pain and helplessness of the people of Jammu and Kashmir.

In 2013, a total of 204 people lost their lives due to violent incidents in Jammu and Kashmir. Out of 204 persons, 48 were civilians, 73 were alleged militants, 82 armed forces and police personnel and 1 was an unidentified person.



In the year 2012, a total of 148 people were killed as compared to 204 deaths in the year 2013. In the year 2012, 75 alleged militants were killed, while as in 2013, 73 alleged militants have been killed. In the year 2012, 36 armed forces and police personnel were killed while as in 2013, the figure has almost doubled with 82 deaths of armed forces and police personnel. The civilian killings have also increased from 35 in 2012 to 48 in the year 2013.



Out of the total 48 civilians killed this year, 6 were students, who were all minors and the youngest person killed was 7 year old Khursheed Hussain of Thanamandi, Rajouri who died while fiddling with an abandoned explosive and the oldest is 70 year old Habibullah Mir of Bomai, Sopore who was killed by unidentified gunmen. Amongst the civilians killed 5 were women.

At the beginning of this year on 9th February 2013, people of Kashmir valley woke up under a very strict curfew, which was imposed to tighten the grip of the armed forces to quell any civil uprising in reaction to the judicial murder of Mohammad Afzal Guru. The hanging of Mohammad Afzal Guru remains consistent with past conduct of the Indian State in relation to Jammu and Kashmir. His conviction was affirmed despite serious lapses in the trial and subsequently the execution was carried out in absolute secrecy. The family of Mohammad Afzal Guru came to know about the execution of Afzal Guru through media. No opportunity was provided to Afzal Guru to challenge the rejection of the mercy petition.

With the secret execution of Mohammad Afzal Guru, the refusal of the Indian State to hand over his body to his family and the absolute shut down in Jammu and Kashmir, the Indian State clearly communicated to the people of Jammu and Kashmir that there will be no right of mourning and “law and order” will be maintained at all costs. To impose its violent writ the protesters were meted out with brutal force which resulted in killings of 7 civilians in the month of February and 8 civilian killings in the month of March 2013.

At the same time, ex-Director General of Police, Jammu and Kashmir, Kuldeep Khoda, accused of serious human rights violations [confirmed by Crime Branch findings] was awarded and became the first Chief Vigilance Commissioner in Jammu and Kashmir. While Afzal Guru has been executed to satisfy a “collective conscience”, perpetrators of crimes in Jammu and Kashmir have never been prosecuted.

The months of July, August and September again saw the surge in the number of killings by the Indian armed forces. In the month of July, 7 civilians were killed, while as in August 5 civilians were killed and in September 9 civilians were killed. In the month of July in Gool area of Ramban district the personnel of Border Security Force to quell the protests fired upon the crowd and killed 4 civilians. The people in Gool area were actually protesting against the desecration of Quran. This was followed by massive protests across Jammu and Kashmir, which provoked the government to announce a Commission of Inquiry. The police recently filed chargesheet against 6 BSF personnel and the civil court has allowed the BSF to conduct the prosecution in a BSF Court Martial.

On the day of Eid ul Azha, 10th of August 2013, the Kishtwar town witnessed large scale communal riots which resulted in the killings of two people and a huge loss of property. The riots in Kishtwar brought into focus the role of the Village Defence Committee members which are present across 10 districts of Jammu region and majority of members in the VDCs are from Hindu community. In Kishtwar around 96% out of the 3287 VDC members are Hindus, based on information from the government through RTIs filed. The other districts too have an overwhelming majority of Hindu members in the VDCs. There have been repeated allegations against the VDCs for being involved in communal tensions and for their involvement in other criminal acts.

Followed by the riots in Kishtwar and widespread allegations against the VDCs, Jammu and Kashmir Coalition of Civil Society (JKCCS) filed a Public Interest Litigation in the Srinagar Bench of the Jammu and Kashmir High Court. The PIL besides seeking complete ban on VDCs also sought an investigation into the creation, existence and the crimes perpetrated by pro-government militia – Ikhwan, and the disarming of Special Police Officials (SPOs), and limiting their functions. The response of the government as usual has been of sabotaging the processes of justice. The case has been transferred to Jammu bench despite the fact the case could have been heard in Srinagar Bench of High Court as Ikhwan and SPOs exist in entire state and therefore the case was not only pertaining to Jammu region.

In the month of September 2013, Jammu and Kashmir witnessed more violence which was inflicted on the people of Kashmir to ensure smooth facilitation by the militarized State to hold a concert by Zubin Mehta. The concert was organized by German government with an active collaboration of the Government of India and the Jammu and Kashmir Government. There was widespread opposition to this international event being organized by German government in collaboration with Indian government which is institutionally culpable for the systematic violence and denial of democratic rights of the people of Jammu and Kashmir. On 7th September 2013, the day of the Zubin Mehta concert, 4 civilians were killed in Shopian by the personnel of Central Reserve Police Force (CRPF). Initially the CRPF's version about the incident which was actively propagated by large sections of Indian media was that they were being attacked by militants and that an encounter took place in which they killed some militants. Later it was ascertained that CRPF without any provocation killed 4 young boys at Shopian. On 11th September 2013 another civilian was killed in Shopian by the CRPF.

YEAR 2013	CIVILIANS KILLED
JANUARY	4
FEBRUARY	7

MARCH	8
APRIL	2
MAY	2
JUNE	3
JULY	7
AUGUST	5
SEPTEMBER	9
OCTOBER	0
NOVEMBER	0
DECEMBER	1
Total	48

PERPETRATORS OF CIVILIAN KILLINGS

Out of the total 48 civilian killings 26 have been directly killed by Indian armed forces (CRPF, BSF, Army, Police and VDC) while as allegedly unidentified gunmen have killed 9 persons, the militants are suspected to have killed 5 civilians, 5 persons were killed in cross firing/clashes and 3 people died due to fiddling with unexploded explosives.

As usual so far none of the accused armed forces personnel have been held accountable for these killings and like always government claimed that ‘law will take its course and the guilty will not be spared’, but on ground no trials have taken place and armed forces refuse to cooperate with the police investigations.

KILLINGS OF INDIAN ARMED FORCES

The number of Indian armed forces personnel getting killed has increased double as compared to 2012, when 36 personnel were killed in various encounters by militants. In the year 2013, 82 Indian armed forces and police personnel have been killed by militants and out of them 8 committed suicides, while 4 were killed in fratricides.

Amongst the 82 Indian armed forces and police personnel killed in 2013, 42 belong to the Indian army out of which two were Junior Commissioned Officers, while as 17 were the personnel of different paramilitary groups, 22 personnel were from Jammu and Kashmir Police and one was a VDC member.

YEAR 2013	KILLINGS OF ARMED FORCES AND POLICE PERSONNEL
JANUARY	3
FEBRUARY	0
MARCH	9
APRIL	7
MAY	10
JUNE	12
JULY	10

AUGUST	10
SEPTEMBER	11
OCTOBER	5
NOVEMBER	2
DECEMBER	3
Total	82

PROBES AND INQUIRIES

In 2013, the government has ordered 7 different probes on various human rights abuses. So far no probe has yielded any results, which is not unprecedented as even in the past, probes have been announced by the government to pacify public anger. From 2003 to 2013, Governments have appointed 170 probes but justice remains elusive.

It appears the basic objective of the government to appoint probes is not to convict perpetrators but to only deflate the public anger. 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. Investigations and probe should not be politically motivated, but aimed at holding the perpetrators accountable.

The State Home Department in response to the RTI application seeking 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 2012, in the month of November 2013, passed an order stating that disclosure of such information would threaten the security, sovereignty and integrity of the country and can also threaten the law and order situation, therefore the government has decided to keep this information as classified and not reveal it to the general public. The Jammu and Kashmir government's refusal to make public information relating to various probes and inquiries establishes that the government is not interested in punishing the guilty and protecting the human rights of the people, and the real concern for them is control and the status quo which should not be breached even if the cost is justice and human rights of the people of Jammu and Kashmir.

SUICIDES AND FRATRICIDES BY ARMED FORCES PERSONNEL

The psychological health of the Indian armed forces continues to be an issue which requires attention of the government. Suicides and fratricides by the personnel of the Indian armed forces, continues to exist as an issue in the year 2013. This year, 8 armed forces personnel committed suicide in Jammu and Kashmir due to unknown reasons and 4 personnel were killed in fratricidal incidents.

TORTURE/HARASSMENTS/ILLEGAL DETENTIONS

Since 2008 and 2010 civilian uprisings the government for the fear of non repetition of the uprisings continues to detain youths from different districts on different pretexts. Torture, intimidation and illegal detentions are regularly being meted out to a very huge number of boys who in the past or recent times may have participated in protest demonstrations.

In some cases people alleged that police officials have been demanding ransom for releasing these boys who were illegally detained in various police stations.

IMPUNITY

On 6th December 2012, IPTK/APDP released its report “alleged Perpetrators: Stories of impunity in Jammu and Kashmir”. This report indicted the Indian State of perpetrating widespread and systematic human rights violations in Jammu and Kashmir, and then awarding individual perpetrators of crimes and ensuring absolute impunity. The Indian army dismissed the report with no substantive arguments or information. Meanwhile, the Government of Jammu and Kashmir informally responded to the report by awarding and promoting alleged perpetrators named in the report, for example S. M. Sahai who was promoted to the post of Additional Director General of Police (Armed). Further, in September 2013, available information suggested that Superintendent of Police (SP) Altaf Ahmad Khan was being considered for deputation to the United Nations peacekeeping forces. As detailed in the report evidence suggests that SP Altaf Ahmad Khan, and two of his associates, were responsible for the rape and torture of a female victim from Kupwara District on 3 July 2004, and SP Altaf Ahmad Khan, and other personnel of the Jammu and Kashmir Police and army, are responsible for the torture and custodial killing of Nazim Rashid Shalla, resident of Sopore, Baramulla District on 30/31 July 2011. In both cases, in November 2008 and February 2013 respectively, the State Human Rights Commission [SHRC] confirmed the crimes and role of SP Altaf Ahmad Khan. Further action was recommended. SP Altaf Ahmad Khan continues to enjoy impunity, and apparently additional perks. JKCCS communicated the indicting information on SP Altaf Ahmad Khan to Principal Secretary to Government, Home Department, Jammu and Kashmir, and the UN Department of Peacekeeping Operations (DPKO), New York.

In 2013, and as a follow up to the above mentioned report, a process of engagement with foreign governments, including the European Union, was initiated. These governments have and will continue to be urged to blacklist and take action against any personnel of the armed forces or police who have been responsible for human rights violations in Jammu and Kashmir. The action sought will range from denial of visas, to prosecutions against such alleged perpetrators if and when they step on foreign soil. The list of 500 alleged perpetrators in the report forms the present basis for the campaign. The list will be updated.

ROLE OF INSTITUTIONS OF JUSTICE

The role of institutions of justice for human rights violations in Jammu and Kashmir continued to come under scrutiny in 2013.

On 25th April 2013, the Supreme Court passed judgment in the Zahid Farooq Sheikh case. This was met with positive reaction by various political and public sections of Jammu and Kashmir. Both the lower judiciary and the High Court, in this case of a killing of a 16 year old boy on 5th February 2010, acquiesced to the BSF request to have the case tried by court-martial. The Supreme Court set aside these judgments, ordered that the record of the case be returned to the Chief Judicial Magistrate [CJM], Srinagar, but also noted that within eight weeks the BSF could once again request that the matter be tried by court-martial. The judgment unfortunately did not

order for the trial to be conducted by the civilian court. The judgment upheld that the actions of the accused were done while on “active duty”. On 14th September 2013, the CJM Srinagar, allowed the BSF to carry out a court-martial of its men in the case. The CJM failed in asserting his judicial will and ordering that the case continue in the civilian court.

Court-martials continue to be the favored option of the armed forces when forced to do so by public outrage. In December 2013, the Indian army chose to court-martial 6 personnel for the Machil fake encounter case of 2010. The record of the Indian State with court-martials has been abysmal and through complete lack of any transparency has served to ensure impunity in Jammu and Kashmir. Strangely the media discourse has only selectively highlighted Armed Forces Special Powers Act as a draconian law providing impunity, while as in cases like Pathribal, Machil, Zahid Farooq and several others, it is the court-martial laws provided in various armed forces legislations that ensure impunity (such as Army Act, BSF Act etc.)

In the Sailan, Surankote case of the massacre of 19 persons in 1998, following the High Court of Jammu and Kashmir order in 2012, CBI investigations began in 2013, but are yet to culminate in a chargesheet.

In the case of Masarat Alam, political leader of Hurriyat Conference, the Supreme Court barred the preventive detention of Masarat Alam Bhat without giving him a week to take action against any proposed detention. During the Supreme Court case the government of Jammu and Kashmir revoked his Public Safety Act detention, but, since March 2013 the Jammu and Kashmir Police continues to hold Masarat Alam, in 8 different FIR’s, thereby circumventing the intent behind the Supreme Court order. Therefore, the illegal detention of Masarat Alam continues.

Finally, the absolute state of impunity in Jammu and Kashmir was perhaps most clearly exhibited by the developments in the Kunan Poshpora mass rape and torture case. Following 22 years of impunity, the case was revived by a public interest petition filed by 50 women in the High Court, Srinagar. Finally, on 18 June 2013, Judicial Magistrate, Kupwara, ordered further investigations in the case. But, to date, the Jammu and Kashmir Police, specifically SP Abul Jabbar the investigating officer appointed, has carried out no investigations. Further, the army continues to deny that the rape and torture took place and has sought to stall proceedings by filing a revision petition before Sessions Judge, Kupwara that has been contested by the survivors and remains pending. Further, the High Court has yet to assert itself, and ensure proper investigations, despite being approached on two occasions (a writ petition remains pending before the court). The survivors and civil society activists continue to hold the State accountable at every step.

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