

Extracts from
Civil War and Uncivil Government
A Report to the People of India (November 1997)

by

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THE Government of India has repeatedly declared its intention of restoring peace and normalcy in Kashmir. This is not the same thing as working out a political solution. Hence, all efforts were geared to holding, first, Parliamentary polls, and then Assembly polls. Polls to Parliament were held in May-June 1996 and polls to the Assembly in September that year. The holding of the elections was preceded by the setting in motion of a 'game plan' thought up by Gen. (retd.) K.V. Krishna Rao, the Governor of Jammu & Kashmir. This plan was to encourage — as part of counter-insurgency operations — private armed gangs of former militants to live under the protection of the armed forces and commit crimes of violence at their direction. Gen. Krishna Rao has himself publicly and proudly taken credit for the plan. In an interview given to *The Indian Express* (3 October, 1996) he said that there were different opinions as to how the counter-insurgent groups of pro-government militants were to be used, and it was he who insisted on keeping the most prominent of them, Kuka Parrey's Ikhwan-ul-Muslimoon, under the control of the army. He succeeded, he says, in the teeth of interference by unnamed busybodies.

A number of such counter-insurgent or *sarkari* militant groups came up in Kashmir in 1995-96, each of them patronised by one wing of the armed forces: the Army, the Border Security Force (BSF), the Central Reserve Police Force (CRPF), the Indo Tibet

Border Police (ITBP), etc. The groups are collectively referred to as 'renegades' in Kashmir. Under the protective umbrella of the armed forces, the *sarkari* militants created such terror in Kashmir that the government's efforts at holding elections and initiating the process of 'normalising' the situation in the Valley could succeed. The role played by the pro-India militants and their protected violence in 'normalising' things in Kashmir is officially and openly acknowledged in the State.

At the end of the parliamentary polls, the Government of India declared that in view of the 'success' in getting votes polled for Parliament, it would soon conduct Assembly elections, too, and install a popular government in J&K. It was widely feared in Kashmir that the same tac-

tics of terror would be used to force people, whether they liked to or not, to also vote in the Assembly elections. As it happened, elections to the Assembly were soon held, in September 1996. The militant organisations as in the past gave a call for boycott of the elections, and indulged in a lot of violence to obstruct the process. The armed forces and their proteges, the *sarkari* militants, used the same threats and force as in the past to force people to vote. However, it is conceded by all observers that there was relatively more voluntary voting this time than in the past.

The National Conference, which had boycotted the elections to the Parliament, took part in the Assembly polls. It won with an unprecedented majority, securing 57 of the 87 seats. It formed



A cordon-and-search operation by army

the government on 9 October, 1996. There were two important promises made by the National Conference during the election campaign. One was that an end would be put to the *sarkari* militants phenomenon by disarming them; the other was that the new government would work for restoration of the pre-1953 position in the matter of J&K's relation with the Indian Union. This meant undoing all the statutory changes introduced since promulgation of the Constitution (Application to J&K) Order, 1954, that had effectively diluted the autonomy of the State. Thereby, both the terms of the instrument of accession and the Delhi agreement of 1952 would be fully brought back into effect.

Apart from these explicit promises, there was the implicit promise or understanding that once in power, the National Conference would strive to provide some degree of protection to the people from the high-handedness of the armed forces. These promises and hopes played a major part in motivating the voters to prefer the National Conference to the other parties in the fray. But hardly six months later, voices were heard from Kashmir complaining of persistent human rights violations by the armed forces and continued terrorisation of the people by the pro-government militants.

The Civilian Government

One visible change we witnessed after the installation of the civilian government was the greater movement of people and vehicles, at least

in the capital city and along and around the main highways. The movement in Srinagar lasts, at least in the capital city and along and around the main highways, until an hour after dusk, which is a remarkable change in itself. We even observed a traffic jam in Lal Chowk, the heart of commercial Srinagar, one afternoon. To the extent that the militants have taken a beating and withdrawn from certain parts of the State, there is now, at least in those areas, less fear of attacks or explosions engineered by them upon the vehicles or barracks of the armed forces and the resultant cross-fires or retaliatory attacks by the armed forces upon the neighbouring civilian populace. This used to be one major source of fear of moving about, especially after dark. Those Kashmiris who are targeted by the militants are also feeling more secure today, with the armed forces having gained ground in their war against militancy. Since the militants are quite ruthless in dealing with anyone who vocally differs from them, this feeling of security can be understood.

This is the flip side of the picture. On the other side is the fact that the armed forces feel no more restrained today than they did under Governor's rule. This is one expectation placed upon the Farooq Abdullah government that has been totally belied, according to everyone who spoke to our team. Thus, the fear of the arbitrary acts of the armed forces, far from decreasing after the

formation of the civilian government, appears to have actually increased. Armed 'renegades' moving around in the company of men of the army and the paramilitary, lounging at the gates of the State government officials' houses on Srinagar's Gupkar road, or moving in police jeeps brandishing their weapons at passersby, are a very common and unsettling sight in Kashmir.

In our earlier reports, we had noted that the average number of killings in the 'Kashmir War' was roughly 300 per month, with the armed forces accounting for nearly two-thirds of the killings and the militants for the remaining one-third. We give below in a table the monthly audit of deaths (taken from the daily newspaper *Kashmir Times*) since October 1996, i.e., the month in which the Abdullah government took power. Killings by the 'renegade' militants are included in the first category, for they operate together with and under the direct protection of the armed forces. In fact, separate killings by the *sarkari* militants are relatively few, and those who would look for evidence of the fear they cause in the number of incidents of killing attributed to them alone would be misled into thinking that the fear is exaggerated. They always operate together with the armed forces, and many cases of killing attributed to the armed forces are in fact a joint effort.

The fourth column of the table shows that there is a considerable number of cases in which the perpetrator of the killing is not known. This

Killings in J&K from October 1996 through May 1997

	Oct 1996	Nov 1996	Dec 1996	Jan 1997	Feb 1997	Mar 1997	April 1997	May 1997	Total
Armed forces and <i>sarkari</i> militants	138	154	84	134	91	109	137	157	1,004
Militants	111	81	95	86	92	82	58	59	664
Unknown gunmen	5	9	14	32	39	12	35	24	170
Total	254	244	193	252	222	203	230	240	1,838

number, in fact, appears to have increased now compared to the situation last year. These are usually cases of persons picked up by unidentified gunmen, killed and dumped later by the roadside, in a ditch or in a river, weighed down with stones. Considering the number of plain-clothes gunmen going around the Valley — various separatist groups, pro-government militants working under different wings of the armed forces, and the Special Operations Group of the J&K police — it is not to be wondered that people frequently do not know who has killed and why. These ‘unidentified’ killings naturally add to the terror.

From this table we can compute that there is a monthly average of about 230 militancy-related killings, about 125 of them by the armed forces and *sarkari* militants, 83 by Kahmiri militants, and the rest by unknown gunmen. The average number of killings per month has come down from the last year’s figure of 300, but it is still too high to allow the government to say that normalcy has returned.

Considering that there is a demonstrable decrease in the death rate in militancy related incidents in the Valley, it is interesting that we heard almost everyone say that ‘things have become worse after the Farooq Abdullah government took over’, or at least that they are as bad as ever. One reason is that the number of killings does not reflect the sense of insecurity and fear among the people. That sense of insecurity is linked to the perception that the security forces and their proteges, the *sarkari* militants, are on the one hand feeling more confident with their success in containing the militants to some extent; and on the other are as immune from any lawful control or accountability as ever. In earlier visits, human rights groups noted that the political aspect of the problem used to be given central importance by the Kash-



The first batch of reformed militants, who were inducted into the BSF, marching during a “passing out” parade at the BSF camp in Udhampur in Jammu & Kashmir (photo: The Hindustan Time)

miris. This time round, we noticed that the emphasis was more on human rights.

The Pro-Govt. Militants

At the time of Assembly polls, both the National Conference and the Congress-I had spoken out against the atrocities of the pro-government militants and the patronage given to them by the armed forces. The daily newspaper *Greater Kashmir* dated 3 September, 1996 (Disarm Surrendered Militants’, Farooq asks Government) quotes Farooq Abdullah as saying that he apprehended rigging of elections to the State Assembly by the gun wielding surrendered militants. He added that his party (National Conference) would opt out of elections if the ‘renegades’ were not disarmed and that, “If I come to power I will not allow them to do this. If they want to use the gun, they should get out of the borders.” What Farooq Abdullah has done after taking over as chief minister is exactly the opposite. Indeed,

even during the elections, he did not mind taking the support of a minor *sarkari* militant group, even as he complained about the biggest of them, the Ikhwan-ul-Muslimoon of Kuka Parrey. The Muslim Mujahideen of Ghulam Nabi Azad, a small counter-insurgent group of Anantnag, declared its support for the National Conference, and its activists were seen protecting the campaign meetings of Farooq Abdullah against possible attacks by militants. Evidently his objection was not to the principle of army-sponsored private counter-insurgent gangs, but only to the trouble that he could have from groups opposed to the National Conference.

In one of his very first press conferences after taking over as chief minister, on 19 October, 1996, Farooq Abdullah admitted that the pro-government militants were working under the different wings of the security forces, the army, the BSF and the CRPF. This admission should have been followed, in the spirit of

his campaign promise, with the declaration that they would all be forthwith disarmed. But no. He said that these militants who had hitherto been working under different commands would be brought under one command, probably the J&K Police. By November, some of them had been appointed as Special Police Officers, using a provision in the J&K Police Act which facilitates such adhoc appointments. The framers of the Act could not possibly have dreamt that this provision, evidently meant for extraordinary contingencies, would be used to enroll known murderers and extortionists into the police force.

Even at the time of the campaign to the elections, when not only Farooq Abdullah but all the political leaders of J&K were demanding that the 'renegades' be disarmed, the Union Home Secretary Mr. Padmanabhaiah replied by saying, in an interview with Zee TV, that it would not be possible. "I may," he said, "have to disarm them at some stage in the future, but at this stage it is impossible."

It is perhaps understandable that in this situation Farooq Abdullah, who knows from past experience of J&K's chief ministers, including his own previous experience, that only those who cooperate with New Delhi's stratagems can survive in power in Srinagar, feels obliged to take an inconsistent stand in the matter of the Army's 'friendly' criminals. The decision to 'regularise' the *sarkari* militants means putting the stamp of the law on their criminal attacks on any and all partisans of Kashmiri self-determination, and anybody perceived as obstructing the Indian authorities' operations against them. Their victims range from armed militants to journalists, lawyers, writers, human rights activists, cadre of organisations such as Jamaat-e-Islami, Hurriyat Conference leaders, and

those among the common people of Kashmir who support and aid the movement. It is acknowledged by everyone, including officials and army men in Kashmir, that it is these criminal attacks backed by the might of the armed forces that succeeded in 'softening up' Kashmiris enough to hold elections in the Valley.

The press has reported that some hundred of these *sarkari* militants have been appointed Special Police Officers or security officers for ministers and other VIPs. Some have also been recruited into the Special Operations Group (SOG), also called the Special Task Force (STF) of the Jammu and Kashmir police. In appointing them, it is apparently understood that the police uniform is only a legal fiction. They operate in much the same way as in the past. They go around with their not-yet-uniformed colleagues of old, and indulge in murder and mayhem. But all of this now has the official sanction of performance of duty, that is to say the seeming sanction of law. In this sense the decision of the Abdullah Government has made things worse.

Indeed these *sarkari* militants — the Union of India's best friends in Kashmir — are a strange lot. They lead a simultaneous three-in-one existence. First, they are gun-carrying militants who indulge in killing and brutalising their opponents and destroying and stealing their property. Secondly, they are policemen who do much the same thing with the seeming authority of law. And third, they are activists and cadre of parliamentary parties such as the Jammu Kashmir Awami League, Jammu Kashmir Ikhwan, Tehreek-e-Wattan, etc., who nevertheless carry weapons in 'self-defence' and do all the things they would do in their first incarnation.

The fear they cause is almost tangible. In this trip as in the past nobody in the Kashmir Valley dared to be seen

with our team in public. People would talk to us in their homes, journalists in the newspaper offices, academics in their campus quarters, and lawyers in the Bar Association rooms. 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 the fear they experienced was the 'renegade' militants. When we met lawyers of the Pulwama district Bar in their Association room on the evening of 30 May, the President of the Bar said to us in quite a matter of fact tone: "If Papa Kishtwari comes to know 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 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.

Criminals Made Guardians

An example from cases investigated by our team illustrates the role played by the *sarkari* militants:

Imtiaz Ahmed Wani was a lift operator at Lal Ded hospital, Srinagar, and publicity secretary of the Medical Employees Association. He was, it is said by his colleagues, active in organising protests against harassment of medical employees by the armed forces. It must be added that hospi-

tals in Kashmir, among other places, are frequently subjected to crack-downs by the armed forces, during which doctors, attendants and staff are interrogated and the patients searched with the aid of informers to see if there is any militant (presumably an injured militant who has survived an 'encounter') among them. These crackdowns result in harassment, inconvenience and humiliation to all, and much more than that to the members of the staff who are suspected of helping militants to get treatment under a false name or a disguise. Protests against this kind of harassment are also quite common.

There was one such protest demonstration on 5 May this year. After the demonstration, Imtiaz Ahmed Wani went to his home in Dal Gate. His nine-year-old daughter Asthma and his much younger son Md. Idris were with him. His wife Haseena was not at home that evening. At about 9 pm two jeeps (white coloured Maruti Gypsies) of the J&K Police Special Task Force came to his house. Six men dressed in Kashmiri style and armed with guns got down and called Wani out. His daughter was told that they would send him back soon, and he was forcibly taken away in a police vehicle. But the 'policemen' were identified by a scared neighbour, who does not want to be named, as men of the Ikhwan-ul-Muslimoon leader Papa Kishtwari. Imtiaz Wani's colleagues believe that he was taken away by the *sarkari* militants only to silence his protest against harassment of medical employees by the forces. Wani was killed brutally. From the day after his abduction his mother Zoona went round all police stations in Srinagar trying to find his whereabouts, for after all he was taken away by men who came in police jeeps. But nobody answered her queries. Finally, on 26 May, when she went to the State Secretariat to give yet one



Eight militants of banned *Tehreekal Mujahideen* being produced before the media by the police in central district of Budgam on January 12, 1998. (Photo: *The Hindustan Times*)

more representation to the Minister of State for Home Affairs, Ali Mohammed Sagar, she met a young man there who had come to the minister to talk about his own missing brother. He had been going around police stations, looking at unidentified dead bodies to see if any of them was his brother. Hearing Imtiaz Wani's mother's description of her son, that boy told her to go to Nowgaon police station where there was a body that fitted the description. Sure enough, it was Imtiaz Wani's corpse. It had been found the same day, weighed down with stones and drowned in the water.

Rathnipora is a village in Pulwama district, about a kilometer off the Pulwama-Srinagar road. Close by, but on the Pulwama-Srinagar road, is another village called Lilhar. Lilhar is believed to be a stronghold of the *sarkari* militants, some of whom were appointed as Special Police Officers. On 17 May this year, there was an attack on Lilhar by militants in which three persons connected with the *sarkari* militants were killed. In retaliation, on the intervening night of 18-19 May, the Special Police Officer

(SPO) appointees of Lilhar, numbering ten in total, accompanied by an army officer whom the villagers of Rathnipora identified by name as Jagannath (but could not give the rank or regiment, raided Rathnipora and two neighbouring villages, Manvijah and Hanjipora. One after the other, they picked up Gulzar Ahmed Mir (a tailor), and Nazir Ahmed Sheikh (a school teacher) at Rathnipora, 70-year-old Ali Mohammad Bhat of Hanjipora, and Farooq Ahmed Dar (a carpet worker), Md. Ashraf (a student) and Dindar Mohammad (a student) at Manvijah. All of them were picked up from their homes with the authority lent by the abductors' designation as policemen. They were taken some distance and shot dead. The house of Gulzar Ahmed Mir at Rathnipora was set on fire. All the dead were supposed to have died in an 'encounter' between militants and the governments' armed forces. Thus, what would have been merely an act of retaliatory violence of one armed group against another was converted into state action against militants by dressing up one group as policemen. That this travesty of

the law does more damage to society than the gang war between militant groups is evidently a matter of no concern for our rulers.

These incidents, whose details were narrated to our team by the relatives and friends of the victims give an idea of the nature of the nexus between the armed forces and the pro-government militants, and in particular, the consequence of the institutionalisation of this nexus when the Abdullah government took the *sarkari* militants into the police force. Official statistics say that about 2,500 militants have surrendered to date. (Some estimates put the number at 5,000). Not all of them would be prepared to turn criminals for the benefit of the Army. Those who are or can be induced to do so are sought out by the various wings of the armed forces. And now the proposal is that they be given uniforms and salaries for the contribution they make to securing the counter-insurgency strategies of the government. However, these grand plans of raising whole battalions of *sarkari* militants have not yet borne fruit. Evidently, there are some in the armed forces hierarchy who draw a line of demarcation between operating with private armed gangs (which is all right) and actually letting them into the force (which is not all right).

Our team tried to discuss recruitment of *sarkari* militants with the Chief Secretary of the State and the Brigadier, General Staff, Mr. Ashok Kapur. In spite of their polite replies and expression of respect for the rule of law, it is evident that both the civilian government and the armed forces have no desire to let go of the tactical advantage they have secured through the creation of the *sarkari* militant gangs. Nobody among the officialdom in Jammu and Kashmir denies the criminality of the 'friendly' militants. They add quickly that whenever they have received complaints

they have taken action against them. But such confessions have no effect upon the tactics of relying upon them to weaken militancy and beat down its popular support. When we questioned the spokesman of the Army whether it is normal for the BSF and CRPF to recruit persons with a criminal record, he said that it is not normal, but these are not normal times and Kashmir is not a normal place. This is, of course, the standard justification for all that is done in Kashmir, a perverse form of reasoning which denies democracy and democratic rights any role in solving social problems and resolving social crises.

The Dominance of Army

As the Army, the para military forces and the State police are all operating against militancy in Kashmir, there is a common or unified command that coordinates the operations of the various forces. The proper thing that Abdullah could have done was to make the DGP of the State the head of the unified command, thereby making the armed forces subordinate to the State police, who are answerable to the State Cabinet, and in particular to the chief minister who also holds

the Home portfolio. It is rumoured that Abdullah tried to do this, but evidently the Army and perhaps also the central government did not like this. The head of the unified command is Lt. Gen. Dhillon, commander of Srinagar-based 15th Corps of the Army. He and Lt. Gen. Bhullar, commander of the Jammu-based Corps of the Army (located at Nagrota, a suburban village of Jammu), are the security advisers to the Government of Jammu and Kashmir. In other words, as far as counter-insurgency operations are concerned, the State Government functions upon the 'advice' of the two commanders of the Army in the two main regions of the State. This announcement, which put paid to all hopes of civilian control of counter-insurgency operations, was made on 10 December last year, International Human Rights day! But that was probably a coincidence and not an expression of black humour.

Having done this, the elected government has stepped back and let the armed forces operate as in the past. The Army and the other armed forces are supposed to function in accordance with the Armed Forces (Special Powers) Act. Indeed, they



I.K. Gujral listening to the relatives of Kashmiri Pandit victims in Wandhama village, January 28, 1998 (Photo: The Hindustan Times)

are in Jammu and Kashmir by virtue of the provisions of that Act. Draconian though that Act is, it nevertheless lays down that the armed forces function only to aid the civilian government. To ensure this, the Act lays down, among other things, that whoever is taken into custody by the armed forces must be immediately handed over to the local police, who should look after the rest of the process of investigation, report to the court, etc. It is contrary to the spirit of this Act that the civilian government makes Army commanders rather than the DGP the head of the unified command of counter-insurgency operations, appoints Army commanders only as its security advisors and allows the army to deal with human rights violations as if they are a matter for the internal discipline of the forces rather than a violation of the Rule of Law which is or ought to be a major concern of the civilian government and the judiciary.

That the Army believes that atrocities committed by its men are not crimes to be punished by just and fair process but matters of internal discipline to be set right by its own mechanisms is clear from the talk of the Army bosses as well as the notes they periodically circulate pertaining to the forces' human rights record. The Army's mechanism for dealing with complaints of atrocities by the forces is to depute an officer of the forces to enquire into the allegation and file a report. The report is perused by the higher-ups of the Army and a decision is taken whether to proceed further or not. The whole matter, thus, rests with and in the Army. The normal institutions of law and justice have no role in the matter. Whatever the propriety of this arrangement in times when the Army operates only against the armies of other countries, it is certainly not only very inappropriate but unconstitutional that this

alone should be the mode of the armed forces' accountability to the law in times when the forces are engaged in counter-insurgency operations, that is to say armed operations against citizens of the country, whether they are militants or civilians. It is a clear violation of Articles 14 and 21 of the Indian Constitution.

Most complaints of human rights violations are 'found' by the army to be baseless: "95 per cent of the allegations are false" says an Army handout on human rights released in October 1995. The table (*below*) shows the Army's record in investigating its own crimes. The figures are taken from Army handouts to the press.

A comparison of columns 3 and 4 shows the large number of complaints that are reported to be false or baseless, especially in Kashmir. In an interview, the GOC-in-C, Northern command, Lt. Gen. Padmanabhan says that between October 96 and July 97, another 102 complaints were investigated and all of them were found to be baseless! The comparison would have been a fine compliment to the Army, but for the fact that it is the Army that is sitting in judgement over itself and arriving at these benign conclusions.

Under the Indian Constitution there can be no escape from an impartial and fair judicial scrutiny of all allegations of crimes committed. Even armed or violently inclined citizens of India are protected by the law as much as peaceful citizens, it must be remembered. Counter-insurgency

operations are aimed largely at the unarmed civilians who support the insurgency out of political and social sympathy (also, occasionally, because of pressure from the insurgents). By the Army's own estimate, the number of militants in Jammu and Kashmir is no more than 3,000 to 4,000, out of whom only 25 per cent are said to be active, i.e., about 800 to 1,000. And what is the strength of the armed forces fighting these militants? There are 60,000 personnel of the Army alone (not including the noncombatants like cooks, drivers, attendants, etc). The CRPF, BSF, ITBP and the Jammu and Kashmir Police STF would very easily take the figure well beyond 1 to 1.5 lakh. Why does counter-insurgency require such a huge force, well beyond a ratio of 3:100, even if one also counts the dormant militants? Without denying or condoning the ruthless terror employed by the militants, it must be said that much of this support is out of political affinity. And it is this mass that is in one way or other at the receiving end of the heavy counter-insurgency operations. It must be realised that this is the context of the human rights violations.

Plight of Hindu migrants

The migration of the Kashmir Pandits is one of the tragedies of the Kashmir situation. According to the office of the Relief Commissioner in Jammu, 28,561 families (which could easily mean 1.5 lakh people) have registered as migrants with the office. Of them,

Period	Complaints recorded	Complaints investigated	Complaints 'found' baseless	Personnel punished
From 1991 to Oct 1995 (Kashmir)	351	322	301	41
From 1991 to Oct 1996 (Kashmir)	490	482	460	52
From 1992 to Oct 1995 (North-east)	120	89	84	50

25,250, i.e., nearly 89 per cent are Hindu families, 1,468 are Muslim families, 1,803 are Sikh families and 75 are 'others'. Registration entitles the migrants to relief and rehabilitation.

While 28,561 families have registered as migrants, the State Governments estimate of total migrants appears to be about 60,000 families i.e. close to 3 lakh people (*The Indian Express*, 26 October, 96) The migrants' organisations such as the Panun Kashmir put the figure of migrant Hindus at 7 lakh, though the sources of their estimate are not clear.

The Hindu migrants from Kashmir are peculiar among the refugees in India. Whereas usually refugees are from the lower sections of society, these are not all poor or socially backward. All of them are Brahmins. A sizeable proportion of them is of the urban middle class or rural landlord class. But a number of them are of the urban small trader, lower class employee or rural small farmer category.

According to the government's rehabilitation policy, those migrants who hold government employment continue to draw their salaries. The other families get a relief of Rs. 450 per head per month subject to a maximum of Rs. 1,800 per family. They get 9 kgs of rice, 2 kgs of *atta* and 1 kg of sugar per head per month. Of the 28,561 families of migrants, 4,500 are staying in government-organised camps. The rest have their own accommodation. The camps consist of one-room tenements constructed by the government. In the beginning they lived in tents, but one after the other all the camps have started acquiring permanent structures. The camps in and around Jammu city house 90 per cent of the migrants living in camps. There are also camps at Udhampur and Kathua.

Our team visited the Nagrota camp near Jammu. The residents spoke to us in very bitter tones about



Kashmiri Pandits demonstrating at Jantar Mantar, New Delhi, against the killing in Wandhama village in Ganderbal area of Jammu and Kashmir on January 27, 1998 (Photo: *The Hindustan Times*)

their problems and their prospects. As many of them have seen a better life, they find life in the one-room tenements difficult. The government's logic is that it cannot create bigger dwellings for the refugees who are expected to go back some day. That sounds reasonable on the face of it, but that 'some day' looks remotely far away, and the refugees do not have a regular water supply, even after seven years of residence. Municipal water tankers come from Jammu two or three times a day. The promised overhead tank has not materialised. The camp has no drains either.

Educational and employment opportunities are a cause of just complaints. The Jammu schools and colleges are not able to cope with the influx of prospective education seekers. Perhaps there is also the usual resentment of locals against refugees, especially the kind of refugees who can compete for education and jobs. Most of the migrants study in the additional shifts of the schools, and that

tells on the quality of the education they get. Jobs are equally difficult to get. When the migrants are selected for government jobs, they are not given posting in the Jammu or Ladakh regions but in the Kashmir region, where they cannot go. Their request that either they be posted outside the Valley, or else their joining report be taken and kept in abeyance until they are able to go and work in the Valley is not accepted.

One complaint we heard from the resident of the Nagrota camp is that a surrendered militant (who is a criminal and an anti-national in the eyes of the migrants, even if he is repentant) gets much better rehabilitation. Apart from those who are allowed to carry guns and indulge in loot and extortion, even those rehabilitated by lawful methods get Rs 2,400 per person per month, whereas each refugee gets only Rs 450 per month up to a maximum of Rs 1,800 for the whole family, irrespective of its size. This is a commonly heard complaint. The victims of militancy are looked after by

the State, but not as well as surrendered militants, who are regarded as a prize catch. Then there is a third category, victims of the Army or the police's counter-insurgency operations, who get no rehabilitation at all, and are looked upon as enemies of both the State and the society.

But the biggest complaint of the migrants is that their prospect of going back to their home looks bleak. No amount of rehabilitation in the place of refuge can be equal to an opportunity for a safe and honourable return to the Valley. This is quite apart from the fact that Kashmiris find the heat and dust of the North Indian plains, of which Jammu is very much part, physically unbearable. Much of their property back home has been destroyed or looted. The government has been making an estimate of the loss, but is yet to compensate them. As for their return, they are not very hopeful. After the parliamentary polls last June, and more so after Assembly polls, there was a trickle of returning migrants. *The Indian Express* reported on 5 October, 1996 that 69 Hindu families had returned to Baramulla, but the staff officer of the Relief Commissioner's office in Jammu told us that 18 families had gone back to Baramulla but they all soon returned to Jammu.

While Farooq Abdullah has been occasionally saying that the Pandits could come back, the Pandits themselves are sceptical. As early as October 1996, soon after taking power, the Abdullah government announced that it would set up a panel headed by the State's Financial Commissioner (a post equivalent to that of Chief Secretary) to coordinate the return of the migrants to the Valley. It was actually constituted about eight months later, in May 1997. It is not known what work, if any, it has done to date. In the meanwhile, on 23 March 1997, there was a brutal mas-

sacre at the village Sangrampora in Budgam district in the Valley, in which seven Pandits who had not migrated were taken out of their homes and killed by unidentified militants. This was evidently aimed at forestalling the return of the migrants to the Valley. No militant organisation in the Valley has taken responsibility for the gruesome act, and nobody in the Valley ventures any opinion as to who could have done it. The militants who want no semblance of normalcy to return, or the agents of the Indian Army who aimed at creating a situation for which the militants would be blamed? For the record, all public personalities and organisations condemned the killing. Muslim neighbours of the massacred Hindus grieved with their families and consoled them. Their open expression of sorrow has been described by the not usually very sympathetic Srinagar reporter of *The Indian Express* as 'the first instance in seven years of insurgency wherein Muslims have openly grieved for persons of the minority community killed by militants'. After this incident, what little enthusiasm the migrants had about their return has evaporated. But not the hope that some day they might.

Abuses by the Armed Forces

A total of 1,004 persons have been killed by security forces (including the Jammu and Kashmir police) during the period October 1996 - May 1997. There are at least two ways in which a killing may take place at the hands of the armed forces other than in the course of operations permitted by the Armed Forces (Special Powers) Act. One is when a person or persons who have no weapons in their hands or who are in no position to use them to cause violence are shot down by the armed forces. Two, is when a person (whether militant or civilian) is taken into custody and then killed by the forces. No impar-

tial (or any) investigation ever takes place to elicit the circumstances under which each killing has taken place. Nor does any court of law go into the report of such an investigation to decide whether any infringement of law has taken place. But even without such a procedure, there can be a fair assessment of the kind that civil rights organisations do on the basis of fact finding investigation in the rest of the country. Such investigation is very difficult, almost impossible to do in Kashmir. What is possible is only a vague estimate.

Custodial Torture and Killing

The Human Rights division of the Institute of Kashmir studies, in its recent publications, has said that about 2,000 persons are estimated to have been killed in the custody of the security forces ever since the militancy began. There is no way of assessing the veracity of this figure. In the first six months of the coming to power of the Farooq Abdullah government, they estimate that about 130 persons have died in custody.

In Kashmir the killing is often the purposeful culmination of torture. The torture may sometimes be to elicit information, but equally often it is a brutal signal to other Kashmiris that they had better not get into militancy, for this may be their fate. Whatever the purpose of the torture, the torture is frequently extended till it becomes fatal. Or else, bullets are pumped into the body at the end.

Our team met and spoke to patients in the Sher-e-Kashmir Institute of Medical Sciences at Soura, Srinagar (popularly known as the Soura hospital) on the evening of 28 May. They were in the nephrology ward of the hospital, i.e., they were being treated for kidney damage. The particular disease they are suffering from is called Rhabdomyolysis. It is a severe form of kidney failure, and may result in

death if not treated in time. The cause of this type of damage to the kidneys is said to be very severe beating on the thighs and (especially) the buttocks. Doctors at the nephrology ward of the Soura hospital said that almost every day they get one patient with torture inflicted kidney damage. Only those who come to hospital within 24 hours have a chance of survival. If they require dialysis the patients will have to pay for the Hemodialyzer which the hospital does not supply. This means a cost of Rs. 1,000 to 1,200 every day or once in every two days. The doctors said that about 300 torture-induced Rhabdomyolysis patients have had dialysis done in the last six years. There is no count of those who needed to but do not have dialysis for want of money, and those who could not even reach the hospital in time. Instances described by victims, doctors, and the relatives of victims in the Valley helped us to identify the following forms of torture commonly used in Kashmir:

- ❑ Beating repeatedly and hard for hours at a stretch with rifles and thick sticks all over the body, but especially the thighs and the buttocks, leading to kidney damage, and the disease of Rhabdomyolysis. The person is often suspended (upright or upside down) while being beaten.
- ❑ Keeping wooden rollers on the thighs, with the person lying on the stomach or on the back, and trampling upon the rollers, sliding up and down, crushing the thigh muscles, or else standing on the rollers and beating on the legs and soles of the feet with sticks and rifles.
- ❑ Giving electric shocks to sensitive parts of the body such as penis and testicles. Splashing the organ with water simultaneously to enhance the impact of the application of current.

❑ Forcing the person to stand bending forward and keeping a lighted stove between the legs, thereby burning the legs, thighs and sexual organs. Or, in winter, forcing the person to sit or walk on snow without any protection to the skin.

❑ Sticking sticks and rods up the anus, causing rupture and haemorrhage inside.

❑ Forcing the person's head into water, sometimes even drain water, until he nearly chokes to death.

It will perhaps be said that these tortures are not new to Kashmir and that the police (and army and paramilitary) operating anywhere in India also use them. That is true enough. All civil rights organisations know of the various forms of torture used routinely by the 'forces of law and order' in India. But we also know that the degree and severity of the torture is nowhere so barbarous as we have observed it to be in Kashmir. In Kashmir, the result of these commonly used forms of torture is invariably death or permanent disablement.

We give below as an example the facts our team could gather about a

custodial killing and its aftermath. The facts were gathered by visiting the village in question and talking to the victims' family as well as other local people.

Parrey was picked up from his shop in his village by army men and *sarkari* militants. He was brought home. His wife Saleema was tied up behind the house, and he was beaten till 4 pm. They kept asking him to hand over a gun they claimed he had with him. Then the soldiers and their 'friendly' militants searched Parrey's house and found Rs. 1,25,000 in cash which they pocketed. They took the severely injured Parrey away with them. Next morning his dead body was found in a nearby village.

To deter protests against the killings, the Major ordered a crackdown in Tulmulla on 17 Feb. In the course of the crackdown, the Major fired in the air and arrested and tortured 20 to 25 students of that village. The frightened people ran away from the village. yet, later there was a major protest at these custodial killings. Both the general secretary of the National Conference, and Ali Mohammad Sagar, the Minister of



JKLF militants after their capture (Photo: India Today)

State for Home, came to the village. The villagers had earlier given a police complaint about the two custodial killings, but it was only after Sagar came to the village that a case was registered (crime no. 162/97, Ganderbal PS). But no investigation has been done till now.

Some of the stories told by the villagers about this Major make ugly reading. He and his men had the nasty habit of searching school girls physically as they went to and from school. The Major also insisted on teaching classes for 9th and 10th standard girls. He only wished to educate them, he said, but his educational philanthropy did not extend to younger girls. One day in January this year, this Major took 11-year-old Seema, daughter of Bashir Ahmed to his camp but the father rushed to the camp, shouted at him and got the girl back. Perhaps in retaliation for this, Bashir Ahmed, was picked up and beaten severely and released. He was admitted to the Soura hospital, but he is fortunately out of danger.

When our team discussed this case with Ashok Kapur, Brigadier, General Staff, who spoke to us on behalf of the Army, his reply was that the Major was very efficient in counter-insurgency operations and that therefore the militants and their sympathisers were interested in discrediting him by spreading malicious stories about him. The Army spokesman gave an interesting explanation of these complaints. Whenever an army crackdown takes place, he says, those among the local people who are sympathisers of militancy immediately come up with complaints of torture, molestation, etc., to discredit the operation. Those who are not sympathisers of militancy never complain. This argument can be, and is actually meant to be, used in the converse form. All those who complain about abuses by the forces must be sympathisers of militancy.

Persons taken into custody by the armed forces frequently come out dead. The Armed Forces (Special Powers) Act says that the armed forces must hand over anybody taken into custody to the local police within twenty-four hours. The spokesmen of the Army say that this is invariably done and the delay that is sometimes observed is only because of the difficult terrain and inaccessibility of many of the areas of operation. As a matter of fact, prolonged illegal detention and torture are very common. It is at the end of the 'interrogation' that the severely injured person is handed over to the police. Too often, it is only the dead body that is handed over.

While this is the common pattern, there are many cases where the person taken into custody simply disappears afterwards. There is no count of how many such 'disappearances' have taken place in Kashmir in the last seven years. But the Kashmir Bar Association has recorded the pendency of 409 writ petitions concerning 'disappeared' persons in the High Court at Srinagar. Of course, any one of them may turn up dead any day. Hopefully, some of them may even turn up alive if not exactly well.

In Kashmir it is frightening how easily one can be picked up by the armed forces and just be not heard of afterwards for any length of time.

Our team visited the Regional Engineering College, Srinagar, to confirm newspapers reports of arrests of senior teachers of the College. We were shocked to hear of two professors who had been arrested by the armed forces and were not heard of ever since. Manzoor Ahmed Tantrey of the Department of Civil Engineering had been taken into custody on 8 May this year. Dr. Nazir Ahmed of the Mechanical Engineering Department, who was arrested along with him, was released a couple of days later. But nothing is known of the whereabouts

and the welfare of Tantrey. And Prof. M. Akbar Lone, also of the Civil Engineering Department, has been missing for two months. He was last seen being taken into custody by the armed forces.

The family and friends of such 'missing' people usually run around to the police and the army officials, using all the influence they can muster to find out where the person is, whether he is still alive and when and by what means his release can be secured. The 'means' include payment of bribes. One of the scandals of the counter-insurgency operations of the armed forces is the lucrative business of taking money for letting off an abducted person alive. There is no estimate of the proportion of army officers who indulge in this criminal business, nor of how much money has been made on this account. But the occurrence of such instances of extortion is frequently alleged.

Rape by the Armed Forces

Complaints of rape, molestation and other forms of sexual abuse by the armed forces during counter-insurgency operations are heard with alarming frequency. Our team investigated one such incident which happened a few weeks before our visit to the valley, and had created quite a furore because the people agitated about it and forced the Minister of State for Home Affairs, Ali Mohammed Sagar, to visit the village. The army had routinely denied the incident. Ali Mohammed Sar, making a statement in the Assembly, had said that 'something seems to have happened, but not as much as is claimed'. This is in line with the peculiar explanations one often hears in Kashmir, such as that 'only one woman has been raped' or that, 'women were only molested and not raped', and so on.

The village in question is Wavoosa near Rangreth, Budgam district, quite close to Srinagar city. What

happened (as narrated to us by the victims and other women of the village) was that at about midnight of the intervening night of 22-23 April, a group of army men from the 12 Raj Rifles unit came to the village. They went into three houses, one after the other, and sexually assaulted women. The first house was that of Abdul Ahad Mir who has seven daughters. He was not at home that night. Only his eldest daughter, Maqsooda, is married, and her husband Ghulam Hassan Mir was the only man at home that night. The Raj Rifles men, led by an officer who was described as having a 'French cut beard', came to the house. The officer himself stood outside, but the men entered the house saying there were some Afghan militants in the house and they wanted to search. As a matter of fact, according to Abdul Had Mir's wife Mughli and three daughters (Waheeda, Maqsooda, and Rubeena) who spoke to our team, they did not search the house at all. They were more interested in searching the women for the weapons allegedly hidden in their clothes. We are to suppose that the soldiers honestly suspected the women to be sleeping with guns hidden in the clothes they wore. Maqsooda's husband was dragged out by one man, and the women were forced to put off the lights. Maqsooda was threatened that if she shouted her husband would be killed. Then she was forced to remove her clothes and she was sexually assaulted. Another man went into the room in which her younger sister Waheeda, who was suffering from an infected appendix, was sleeping. Waheeda ran into her mother's room. When the mother tried to put on the light, she was forcibly restrained, and Waheeda was taken to another room and assaulted sexually. Rubeena, too, had the same experience. She was asked to remove her clothes so that they could search for hidden weapons, and was raped. Two other sisters, Kulsooma and Rifat, suffered the same



Main Bazar of Sopore after it was set on fire by security forces

fate, but they were not there when we visited the home.

Next the Raj Rifles men went on to a neighbouring house, that of Ghulam Qadir Bhat whose wife Mahmooda spoke to our team. She was alone at home with her young son and daughter. Her husband was out on duty. He works for BEACON, the Indian Army's border roads organisation, as a driver. The soldiers went and knocked upon the door at the back. She thought they had come for drinking water and opened the door. When they tried to come in, she asked them not to do so, as the children would be scared. But they barged in. They asked her where her husband had gone. She said he had gone on duty. "No", they said "he has gone to Pakistan". Then they said, "you have a pistol hidden in your clothes", and forcibly removed her clothes and raped her. This time it was the commander with the 'French cut beard' who committed the assault.

Then the soldiers went to another neighbouring house, that of Ghulam Qadir Wani, whose wife Khati and daughter Naza spoke to our team.

Khati told us that it was nearly 1:45 am by the time they reached her house (their expedition had started at about midnight with Abdul Ahad Mir's house). They broke the window, flashed a torch inside, and tried to come in, but there was a mesh that prevented them. They then broke open the door and came in. Khati's husband and son (Fiaz Ahmed Wani) were thrown out of the house, and Khati was thrown on the floor. A pistol was put at her throat and she was threatened that she would be shot if she shouted or tried to put on the lights. Then the soldiers raped her daughters Naza and Fareeda. Naza spoke to us and confirmed what her mother said. Khati's daughter-in-law Sara (wife of Fiaz Ahmed) also caught the attention of the army men. But about her, the comment of the household is that she prefers to say that she was 'only molested and not raped'. Sara was not there for us to talk to directly.

The women, who wept while narrating the terrible incidents of that night, told us that the soldiers selected these three homes with the knowledge that there was only one man in one

house, none in the second, and two (of whom the elder is an asthma patient) in the third. The soldiers, who have the prerogative of questioning any one and searching every house, know well which house is fair game for their nocturnal assaults.

The spokesman of the Army had his own explanation to offer for the Wavoosa outrage. His version is that this was an army operation against militants that night at Wavoosa, and the army men saw some light being flashed from these three houses. Suspecting that the inmates were signaling to the militants, the soldiers raided the houses. They may have, in their anger, behaved a little roughly with the people in the houses, which was exaggerated into a complaint of rape at the instigation of the Hurriyat Conference leaders. Such are the facile explanations possible when men in uniform are allowed to sit in judgement over their own acts and to exculpate themselves without fear of any challenge to their judgement.

The day after the outrage, a police complaint was given by the people of Wavoosa. No case was registered by the police. Nor were the women sent for medical examination. Then, after about 20 days, the Minister of State for Home went to the village and heard the victims. Only then, under his directions, did the police register a criminal case. Later the District Magistrate, Budgam, came to the village and took down the statements of the victims. And a certain Brigadier Sanyal of Raj Rifles also came and enquired into the incident. Yet the army's official version remains what we have quoted above, and the civilian administration is yet to move in the matter. As long as the authorities in Jammu & Kashmir do not create and cooperate with a fair process of enquiry into allegations of human rights abuses by the forces, allegations against them that are clearly and coherently made must be put in print and publicised.

Killings Treated as Deaths

Since real exchanges of fire do take place every day, the possibility of someone being caught in between cannot be ruled out. But often, this possibility is only a cover for retaliatory attacks upon unarmed civilians. That is to say the militants attack the forces and make good their escape, sometime before and sometimes after the armed forces hit back at them. But after they are gone, the armed forces continue with their revenge, targeting the civilian population. In the beginning of militancy in Kashmir there were plenty of such incidents. They probably brought more disrepute to the Army than any of the other forms of human rights abuse. Subsequently, the Army has been more cautious in its reactions. One often sees odd news items in the press in which a spokesman of the armed forces, while reporting an attack upon the armed forces by militants, makes it a point to add the self-congratulatory bit of information that 'the forces did not retaliate'. However, while such retaliatory murders of civilians have decreased over the years, they have not vanished altogether.

Destruction of Dwellings

Both the militants and the security

forces punish their enemies not only by physical liquidation but also by burning down property. Also, dwellings suspected to be shelters of militants are attacked by the armed forces, and dwellings used as camps by the armed forces are attacked by the militants. The houses of many migrant Hindus have been destroyed by militants, and the dwellings of persons sympathetic to or participating in militancy have been destroyed by the armed forces.

The Institute of Kashmir Studies has compiled figures of the number of houses blasted during the first five months of this year in Kashmir:

Jan	-	64
Feb	-	40
Mar	-	16
Apr	-	21
May	-	40

Freedom of Expression

The people affected by the violence of the security forces and the *sarkari* militants frequently resort to protest demonstrations. Rapes and custodial killings usually give rise to such protests. Army crackdowns on villages or urban areas are commonly followed by demonstrations in which people



Women protesting the killing of a Pandit family (Photo: Meraj-ud-in)

complain about abduction of persons, destruction of property and molestation of women during the crackdown. Such demonstrations are tolerated by the police and the forces only up to a point. They are frequently lathi charged and dispersed.

The press is an important vehicle of expression under conditions such as prevail in Kashmir. Unfortunately, the press has been under tremendous pressure from both the militants and the authorities to toe their line, or to refrain from writing uncomfortable truths. While the militants use the threat of physical attacks and ban on newspapers, the authorities have on occasion resorted to confiscation of newspapers and, much more frequently, veiled threats of physical attacks. Sedition cases have been filed in plenty against the Kashmir press. In an article written in *Kashmir Times*, 29 September, 1997, Showkath Shafi Masudi says that since the beginning of militancy in 1990, about 400 sedition cases have been filed against Kashmir papers! Sedition is such a vague but serious charge that this can effectively stifle all critical writing or reporting.

In recent times, the All Party Hurriyat Conference has been the target of repeated arrests for undertaking demonstrations against human rights violations by the armed forces. On 27 June this year, for instance, the Hurriyat leaders planned a rally at Iqbal Park in Srinagar, to protest against human rights violations by the armed forces. Permission for the rally was refused and prohibitory orders under Section 144 of Criminal Procedure Code were promulgated. Hurriyat activists distributing the handbills for the rally were arrested on 24 June, and on 25 June all the senior leaders of the Hurriyat were arrested from that organisation's office at Rajbagh, Srinagar. They were, however, released the same day. On 27 June, the Hurriyat Conference leaders decided

that in lieu of the rally for which permission was denied, they would proceed in a group to the office of the U.N. Military Observation Group (UNMOG) in Sonawar, Srinagar, and submit a memorandum. The group was lathi charged and prevented from going to the UNMOG office. A group of women demonstrators who also tried to approach the UNMOG office was also lathi charged. Press persons who tried to photograph the women and talk to them were attacked by the police and beaten. In protest against this attack, journalists led a procession later in the day to the Secretariat to meet the chief minister. They were stopped on the way by the police. When they argued with the policemen, they were again beaten with sticks and rifle butts. The press persons then sat on a dharna right there on the road. The police again burst teargas shells and beat them. Two hours later, the chief minister personally came there and took the journalists into the Secretariat and tied to make peace with them. But he would not agree to suspend the police officers whom the journalists identified as the ones responsible for the attack on them. This incident — a rather minor one, in comparison with what routinely goes on in the valley — is symbolic of the Farooq Abdullah government's attitude towards human rights.

Police, Courts and Army

The Jammu and Kashmir police do not usually dare to take up investigation of complaints against the armed forces. Indeed, as we have seen above, they do not usually even register a case upon receiving a complaint. It requires some pressure from somebody influential to goad them to register a case. The reason is quite simple. The police are as scared as everybody else of the charge of aiding and abetting militancy. The police therefore would like to have

some publicly known pressure exerted on them before registering a crime.

But even registering a case cannot go far because the Army refuses to co-operate. And since the accused are usually army personnel, unless such cooperation is forthcoming, the investigation cannot proceed far. Even if it does, and a final report (chargesheet) is prepared by the police, prosecution requires permission from the Central Government, and the permission is difficult to get.

The following are a few examples illustrative of the vagaries of criminal investigation in Kashmir:

This incident happened in 1992. The Dal Gate area of Srinagar was cordoned off by the BSF and people were forced to assemble for identification. Later the commander of the unit, A.K. Sethi, directed the arrests of four youth. They were taken into neighbouring hills and shot dead. They were declared to have died in a crossfire. When people went to the police station to lodge an FIR, the Sub Inspector said that there was a circular not to file such FIRs. Then the parents of the four youth filed four writ petitions in the High Court, seeking a direction to the police to lodge an FIRs. The High Court issued the directions asked for, and the police registered the cases and completed the investigation. But the trial of the BSF officer has not started, as the Central govt has not given sanction.

The case of Jalil Ahmed Andrabi, human rights lawyer, is well known. He was abducted by *sarkari* militants acting under the instructions of an army officer on 9 March 1996. The High Court was moved immediately, and upon the direction of the High Court, the IG of police, Kashmir Zone, constituted a special investigation team (SIT) headed by S.K. Mishra, SSP Srinagar. Even as this was going on, Andrabi's dead body was fished out of the Jhelum River on 26 March.

The SIT then continued its investigations, goaded by frequent criticism from the High Court.

After many months, the SIT came to the conclusion that one Major Avtar Singh was the officer responsible for Jalil Andrabi's abduction and killing. The SIT informed the High Court of this on 10 April 1997. Major Avtar Singh belonged to the 103rd Territorial Army, based in Ludhiana. The Army then informed the High Court that under the Territorial Army Act, the Army recruits persons temporarily for a specified period, and that this Major Avtar Singh, who had been so recruited, had been 'disembodied', i.e., his services dispensed with, with effect from 7 Nov 1996, (perhaps about the time it became apparent that the SIT was closing in on Avtar Singh as the likely culprit). His whereabouts, the Army told the High Court, were not known! The irritated judges of the Srinagar High Court directed the Army and the Union government to extend all co-operation to the SIT in unearthing that man's whereabouts. To date, there is no news of the whereabouts of this Major Avtar Singh..

The courts, too, must share the blame for the abysmal depths to which rule of law has plunged in Kashmir. The High Court of Jammu and Kashmir has two benches, one in Srinagar and one in Jammu. In Srinagar, there are five judges in summer and two in winter. This puts a lot of pressure on the Srinagar bench since it is within its jurisdiction that routine and regular violations of the law by the armed forces take place. The lawyers of the Kashmir Bar Association told our team that in cases where persons are taken into custody and detained beyond 24 hours, they move a habeas corpus petition under Sec. 491 Cr.P.C. (it is the old code that is applicable to J&K), and in the case of persons detained under the preventive detention law, Public Safety

Act (PSA), they move the High Court under Article 226 of the Constitution of India.

There are, we were told, 1,300 such petitions pending with the Srinagar bench of the High Court. 'Missing' persons remain missing and it is only occasionally that an order emanates from the High Court directing a District Judge to enquire into the person's disappearance and file a report with the High Court. The 1,300 pending cases have to pass through the court which hears them only once in a week. And this in the teeth of the uncooperative attitude of the respondents (the Army, the State and the Union Govts.), who do everything possible to prolong the hearing.

But even when the courts do give orders they are not obeyed by the administration. A prisoner who obtains bail has no guarantee that he can get out of jail, for the release order may just be ignored. It then requires another habeas corpus petition to obtain the person's release! Of course, a simpler and seemingly 'legal' method of defeating bail orders is to rearrest the

released person under a preventive detention order (PSA). The administration makes no secret of its malafide intention in issuing PSA warrants. Or else, the released person is simply implicated in any one of the umpteen cases pending investigation, which is enough to ensure that he is not released.

In July this year, Justice Ali Mohammad Mir of the Srinagar bench of the High Court had occasion to comment upon this atrocious practice. The case pertains to one Nooruddin Shah of Doru, Anantnag district. He was arrested on 25 May 1993 under the PSA. One year later, when the detention period came to an end and he was to be released, he was shown as an accused in a criminal case. This stratagem was resorted to again and again, and today he is still in jail.

The sad case of Farooq Ahmed Khan of Gulistan, Baramulla district, exemplifies the extent to which the orders of the judiciary have been rendered irrelevant in Kashmir. We give the details from the information provided to us by the Kashmir Bar Association, and the letter written in



desperation by Farooq Ahmed Khan's lawyer Hussamuddin Ahmed to the Supreme Court of India in the hope that he will thereby activate that court's famed epistolary jurisdiction, and that at least the apex court's orders will be obeyed by the Army and the administration in Kashmir.

Farooq Ahmed Khan, a graduate from Kashmir University, just then selected as a teacher by the State's Service Selection Board, was rounded up in a routine crackdown as early as 1990, the beginning of militancy, by the 8th Bihar Regiment. Today, seven years later, his family is unable to obtain his release in spite of many release orders issued by competent courts. After his arrest, Farooq Ahmed was subjected to brutal torture by the armed forces before they realised that he was an innocent young man, unconnected with any crime or with militancy. But as he had been severely tortured, they did not wish to release him immediately. They asked his father Baba Nawab Khan to execute an undertaking that he would not report his son's arrest and detention to any authority. Then they asked him to come and collect his son after a week by which time his wounds would have healed.

Right at that time the commandant of the army unit that had arrested Farooq Ahmed was directed to shift all the arrested persons in his custody to Srinagar for further interrogation. He did, and thus Farooq Ahmed Khan went to Srinagar instead of home. There he was booked under PSA and taken to the district Jail, Udhampur, to be detained for one year. It was three months after he was locked up in Udhampur jail before his father found out what had happened to his son. He sought the help of the Kashmir Bar Association, which filed a habeas corpus petition for Farooq Ahmed Khan, challenging the detention order. By the time the petition was decided, the detention period of one year was over.

But in spite of the completion of the period, Farooq Ahmed Khan had not been released. Hence, on 17 Nov 1992 the High Court directed the young man's release.

This order was not obeyed. The young man was removed from Udhampur jail and taken to the detention centre at Kotbilwal, Jammu. This detention was not authorised by any law or lawful procedure. Unable to secure his son's release, the frustrated father died of a heart attack. There was thereafter nobody to plead on the young man's behalf. Two and half years later, on March 1995, he was shifted again to the detention centre at Rangreth near Srinagar, where his incarceration continued, without any legal sanction. In 1996 a team of lawyers from the Kashmir Bar Association visited this detention centre. They were moved by Farooq Ahmed Khan's emaciated appearance and sad story. They then moved the High Court with a habeas corpus petition under 491 Cr.P.C. The court asked the respondents to either show which law the young man had been detained under or else produce him in court.

The lawyers went to the High Court with a habeas corpus petition which came up for hearing on 4 February, 1997 before Justice Kawoosa. The lawyers narrated the sordid story of the petitioner's totally unjustified and unlawful detention for 7 years. The judge then directed the respondent to declare in an affidavit once for all the particulars of all the FIRs Farooq Ahmed Khan was wanted in, and made an order that he shall not be shown as an accused in any other FIR after the filing of this affidavit. The authorities were given three weeks time but took 7 months to file their affidavit, in which the young man was shown as an accused in FIR 8/94 CIK. The lawyers then obtained bail for him, but this release order too was not honoured. Instead, the au-

thorities flashed messages to the police stations in Baramulla and Sopore to register fresh cases against Farooq Ahmed Khan.

The lawyers then filed a contempt petition against the authorities before Justice Kawoosa. But the judge, this time, dismissed it without even giving a hearing to the petitioner. That is where the matter rests - or did rest as of 31 May 1997 when our team met the members of the Kashmir Bar Association at the District and Sessions Court, Srinagar.

It would be wrong to give a picture of unrelieved bleakness. In the teeth of all its difficulties (some of them self-created) the Srinagar bench of the J&K High Court has been off and on successfully getting enquiries conducted into allegations made in habeas corpus petitions. In 55 cases, reports have been submitted by district judges indicating clearly identified units of the armed forces, or sometimes even individual officers of the Army.

Conclusion

Two things are admitted by every one who has written about Kashmir. One is that there is a strong feeling in Kashmir for what one may call separatism for want of a better word. The meaning of the feeling of separateness ranges all the way from a desire for autonomy within India to merger with Pakistan to total independence for all Kashmiris from both India and Pakistan. In conversation, most Kashmiris say that it is the last that they want. It is up to us whether we choose to believe them or suspect their bonafides in declaring that what they want is not merger with Pakistan but total independence. However that may be, there is no way that the 'Kashmir problem' can be tackled without recognising and respecting these feelings. Of course, the people of Jammu and Ladakh have different feelings. They have frequently given

expression to their apprehensions. Not all people in those regions think alike, just as not all people in Kashmir think alike. And yet, it is the 'emotional issue of autonomy', or the feeling of separate Kashmiri identity, widely held in Kashmir, that is the starting point and the root of the problem. Other feelings and apprehensions must be considered in conjunction with this fundamental root of the problem. Only an honest and democratic approach on this basis can result in an acceptable political solution. Instead, what we have seen all these decades is a manipulative approach to the problem that has sought to force the situation so as to make the incorporation of Jammu & Kashmir in India an 'accepted fact'.

The second fact, which again all observers accept, is the 'alienation' of the Kashmiris. This expression is apparently intended to convey the complete lack of faith in the Indian government on the part of the Kashmiris. This is not a capricious loss of faith but a well grounded mistrust. There was a certain situation prevalent in the valley up to 1953, a situation created to the mutual satisfaction of the Kashmiris and Union of India. Two agreements marked this situation. One, the instrument of accession by virtue of which Jammu & Kashmir became part of India (without which it would never have become part of India), which was given constitutional status later in article 370. And two, the Delhi Agreement of 1952 between the prime minister of India and the then prime minister of Jammu & Kashmir. The elements of this autonomy were eroded gradually after 1953, not by any democratic means, not with the free consent of the people of Jammu & Kashmir, but by putting in jail anybody (beginning with Sheikh Abdullah himself), who would stand by the provisions of the agreement on autonomy, by suppressing the civil rights of crit-

ics, and rigging elections to provide a pliable government in Jammu & Kashmir that would endorse all that New Delhi did. Once again, we can do no better than quote the prominent columnist Kuldip Nayyar, who cannot be accused of being a partisan of Kashmiri separatism:

If posterity ever apportion blame for the conditions in Jammu & Kashmir, New Delhi will have far more to explain than Islamabad. From the beginning, we have made a hash of things in that state. We jailed Sheikh Abdullah, who was instrumental in the integration of Jammu & Kashmir in the Indian Union. We never allowed the people of the state to choose their rulers as the rest of the country did and saw to it that New Delhi's choice was Srinagar's choice. (*The Indian Express*, 14 October, 1996).

It is in this context that the recent promises of restoration of autonomy must be seen. It is not a sop to the Kashmiris to give up the demand of secession, but a restoration of what was agreed upon in good faith but taken away by undemocratic and forcible means. To restore autonomy is the only act of atonement by which New Delhi recovers the trust of Kashmiris so that an honest process for resolution of the crisis can be begun.

Farooq Abdullah has constituted a committee headed by Karan Singh to go into the question of restoration of autonomy. According to its terms of reference, the committee is to 'examine and recommend measures for the restoration of autonomy consistent with the instrument of accession and the Delhi agreement of 1952'. That seems to be in accordance with the poll promise, but even as the committee was getting on with its labours, Abdullah made statements that effectively negate the promise. He has declared that the restoration that emerges from the labours of the committee may be anything between the pre-1953 posi-

tion and the position at the time of the Sheikh Abdullah - Indira Gandhi Accord of 1975. By that time in fact autonomy had almost been totally eroded. The committee was soon caught in a crisis. Karan Singh, its Chairman, resigned on 29 July, 1997, giving as reason the other pressing commitments he had. The resignation was accepted by the government on 6 August. The real reason for the resignation, according to press reports, appears to be that Karan Singh had prepared a draft of the proposed restoration of autonomy, which was too meagre to satisfy the other members of the committee. What will finally emerge from all this, and whether it will serve the purpose of restoring the average Kashmiri's faith in the Indian polity, is anybody's guess.

But Farooq Abdullah has done a good thing by constituting another committee to go into devolution of power within the state, that is the question of regional self-rule, which will help calm the trepidations of the people of the Jammu & Ladakh regions. But as far as the Kashmiris are concerned, and therefore as far as militancy is concerned, autonomy for the state is bound to be the central issue, and in that matter, Farooq Abdullah has clearly diluted his poll promise by implying that it can mean anything short of the promised pre-1953 position.

Acts of Violence by Kashmiri Militants

Before going to the demands that we place before the Union and state governments we would like to refer to the acts of arbitrary violence indulged in by the militants. As we have said above, they use methods of ruthless terror against anyone who opposes or disagrees with them. Terror is used also to force the media, the intelligentsia, and society at large to obey their dictates. That the goal of separation espoused by the militants finds size-

able sympathy in Kashmir does not excuse their methods of arbitrary violence and terror. Their year, for instance, the militants imposed a ban on five Srinagar-based daily newspapers (*Srinagar Times*, *Nada-i-Mashriq*, *Al-Safa*, *Roda-e-Jehad*, and the weekly, *Chattan*) because they did not expose the army's human rights violations to the satisfaction of the militants. The ban lasted from 1 March to the end of April. The militants also killed a TV journalist, Syedian Shafi, on 16 March, because they did not take kindly to his working for *Doordarshan* programmes on Kashmir that were not to the militants' liking. The fact that the *Doordarshan* programmes are slanted does not excuse such violent intolerance towards the professionals working for the programmes. We heard that Shafi was an honest and dedicated worker. There have also been many instances of militants killing their political opponents merely because of political differences. Such arbitrary acts of violence cannot be justified even by the noblest cause, and must be condemned.

Demands

We put forward the following demands before the central and state governments:

1. Withdraw the Armed Forces (Special Powers) Act and the J&K Disturbed Areas Act that give arbitrary powers to the armed forces and the police. Also, withdraw the Public Safety Act (PSA), a preventive detention law that is being misused to rearrest persons lawfully released by the courts.
2. Put an immediate end to all human rights violations such as torture, custodial killing, fake encounters, arson, rape and looting of property. Firm direction must be given to the armed forces to follow lawful procedure and the rule of law.

3. Hold an enquiry into violations of human rights by the armed forces, the police, and the pro-government militants by a retired Chief Justice of India.
4. Disarm the pro-government militants, Stop the policy of recruiting them into the police and the armed forces. Stop the policy of encouraging private armed gangs to do the State's counter-insurgency mission.
5. Investigate and prosecute all allegations of bribery and extortion by security forces and the police.
6. The State government must ensure that every complaint of human rights violation is registered as a crime by the police and investigated without fear or favour. The Centre should ensure that the armed forces cooperate with these investigations. Sanction must be given for all such prosecutions. The counter-insurgency operations must be supervised by the state police under the control of the state government and not by the army, which should only aid the state government at its request.
7. The State government has set up a State Human Rights Commission, which is a welcome step. It must, however, appoint members of proven independence and integrity. This caution is necessary

because the appointing authority will be an almost exclusively National Conference body, given the overwhelming majority for that party in the State Assembly and the Council.

8. The Supreme Court's directions regarding arrest and interrogation given in D.K. Basu versus State of West Bengal, 1997, must be strictly followed by the police and the security forces. These directions have been reiterated by the Srinagar Bench of the Jammu & Kashmir High Court in W.P.No. 79 of 1997, Nazir Ahmed Baghwan versus State.
9. The J&K state government has issued an order laying down compensation to be paid to victims of militant's violence. This order is not being fairly implemented. The government should ensure the impartial implementation of the order. Similar compensation must be paid to the victims of the violence of armed forces and pro-government militants.
10. The problems of the migrants in Jammu must be attended to immediately. Their educational and employment needs must be fulfilled. Conditions for their honourable return to the valley must be created. □

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By Vijaydan Detha

Translator: Ruth Vanita,

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