

*alleged*

# PERPETRATORS

*Stories of impunity in  
Indian Occupied Jammu and Kashmir*

**INTERNATIONAL PEOPLES' TRIBUNAL FOR HUMAN RIGHTS AND JUSTICE  
IN INDIAN ADMINISTERED KASHMIR  
AND  
ASSOCIATION OF PARENTS OF DISAPPEARED PERSONS**

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*Dedicated to those:*

***Killed*** in extra-judicial executions, custodial violence and fake encounters

***Buried*** in unmarked and unidentified graves

***Disappeared*** for countless years

***Tortured***

***Raped***

***Detained*** with complete disregard for the law

*and subjected to numerous other human rights violations*

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In particular we acknowledge the work of the legal fraternity that resulted in the rich documentation of human rights cases, and for sharing this documentation with us.

## **GLOSSARY**

**Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]:** Jammu and Kashmir legislation that provides special powers and immunity to the armed forces operating in Jammu and Kashmir. The immunity clause mandates that sanction for prosecution is to be granted in certain circumstances by the Central Government Ministries of Defence and Home Affairs.

**Border Security Force [BSF]:** Indian paramilitary force charged with guarding India's land borders

**Central Reserve Police Force [CRPF]:** Indian paramilitary force that assists the police in maintaining law and order and containing insurgency

**Criminal Procedure Code, 1989 [CrPC]:** Jammu and Kashmir legislation that lays down the procedural rules that govern criminal investigation and trial in Jammu and Kashmir

**Deputy Commissioner [DC]:** Head of the revenue department at the district level. The District Commissioner in each district also has certain law and order functions.

**Divisional commissioner:** Head of the revenue department at the divisional level. Jammu and Kashmir has two Divisional Commissioners: for Jammu and Kashmir. The Divisional Commissioner also has certain law and order functions.

**Ex-gratia government relief:** Government relief for death or disability as a result of violence attributable to the breach of law and order or any other form of civil commotion; Rs. 1, 00,000 granted for the death of any person

**Government backed militant [Ikhwan]:** Government backed militants used by the armed forces

**Hizbul Mujahideen [HM]:** A Kashmiri militant organization founded in 1989 and operational in Jammu and Kashmir

**Lashkar-e-Taiba [LeT]:** A Pakistan based militant organization founded in 1990 and operational in Jammu and Kashmir

**Public Safety Act, 1978 [PSA]:** Jammu and Kashmir legislation that allows for detention of persons

**Ranbir Penal Code, 1989 [RPC]:** Jammu and Kashmir legislation that lays down the substantive criminal laws

**Rashtriya Rifles [RR]:** Counter-insurgency/anti-terrorist force of soldiers deputed from other parts of the Indian army

**Special Operations Group [SOG] of the Jammu and Kashmir Police:** An informally constituted component of the Jammu and Kashmir Police constituted in the early 1990's and alternatively referred to as the Special Task Force [STF]

**Special Police Officer [SPO]:** Person recruited as a police officer to assist the Jammu and Kashmir Police

**SRO-43 [Statutory Rules and Orders]:** Rules for compassionate employment of family members of victims of militant related action or other specified reasons

**State Human Rights Commission [SHRC]:** A quasi-judicial human rights body formed under the Jammu and Kashmir Protection of Human Rights Act, 1997 for the protection of human rights in Jammu and Kashmir

**Structure of Indian Judiciary:** The judiciary in Jammu and Kashmir is composed of lower courts, criminal and civil, and a High Court with separate wings at Jammu city and Srinagar city. Further, all courts in Jammu and Kashmir are subordinate to the apex court of India: the Supreme Court.

**Village Defence Committee [VDC]:** Village level committee composed of civilians, armed by the government and used by the armed forces. The VDC's came into existence in the early 1990's.

## **EXECUTIVE SUMMARY: ALLEGED PERPETRATORS - STORIES OF IMPUNITY IN JAMMU AND KASHMIR**

This report, prepared over two years using information gleaned mostly from official State documents, portrays the state of impunity prevalent in Jammu and Kashmir. Where identities of individual perpetrators of crimes are known it seeks a process of accountability for institutional criminality.

In the highly militarized space of Jammu and Kashmir, it reveals an entrenched culture of impunity. Cases of human rights violations committed by members of various State forces are analyzed within the context of an occupation, an armed conflict, and a state of structural impunity. These have evolved within State institutions, including the armed forces, and traverse the application and interpretations of special laws, and finally the judicial system itself.

The defining feature of human rights violations here is that in the name of countering militant violence the Indian State authorizes armed forces to carry out every kind of operation, often without adherence to laws and norms. In a majority of cases crimes are not noted or investigated at all. Therefore, any listing or analysis of cases in this report would inevitably be an incomplete one.

However, even the rudimentary statistics contained in it reveal an appalling picture. Out of 214 cases a list emerges of 500 individual perpetrators, which include 235 army personnel, 123 paramilitary personnel, 111 Jammu and Kashmir Police personnel and 31 Government backed militants/associates. The designations of some of these alleged perpetrators points to a deep institutional involvement of the Indian State in the crimes. Among the alleged perpetrators are two Major Generals and three Brigadiers of the Indian Army, besides nine Colonels, three Lieutenant Colonels, 78 Majors and 25 Captains. Add to this, 37 senior officials of the federal Paramilitary forces, a recently retired Director General of the Jammu and Kashmir Police, as well as a serving Inspector General.

This report also seeks to turn the focus on *identities* of alleged perpetrators of crime and atrocity. Therefore, rather than a general reference to, for example, the Rashtriya Rifles, *names and ranks* of officers of this counter-insurgency force are mentioned. This stems from the understanding that despite a culture of systemic impunity that exonerates perpetrators, it is individuals who commit violations, and they must first and foremost bear responsibility for their acts. By naming names the report seeks to remove the veil of anonymity and secrecy that has sustained impunity. Only when the specificity of each act of violation is uncovered can institutions be stopped from providing the violators a cover of impunity.

The institutional culture of moral, political and juridical impunity has resulted in enforced and involuntary disappearance of an estimated 8000 persons [as on Nov 2012], besides more than 70,000 deaths, and disclosures of more than 6000 unknown, unmarked and mass graves. The last 22 years have also seen regular extra-judicial killings punctuated by massacres. The Gow Kadal [Srinagar] massacre of around 50 persons on 21 January 1990 and other mass killings discussed in this report are symbolic reminders of the persistent human rights violations in Jammu and Kashmir.

The concept of individual criminal responsibility is well established under international criminal law. From Nuremberg to the United Nations ad hoc tribunals – like the International Criminal Tribunal for Rwanda, and the International Criminal Tribunal for the Former Yugoslavia - to the most recent, the International Criminal Court [ICC], the focus of international law has gradually moved from laying responsibility for crimes from the general – the State – to the individual – the *perpetrator*.

This is not to suggest that the institutions and the State bear no responsibility: in fact, it is clear that it is the Indian State that fosters a climate of impunity in Jammu and Kashmir. As principles of command responsibility have been elaborated and evolved under international criminal law, along with other principles of individual criminal responsibility, such as Joint Criminal Enterprise, it is clear that individual perpetrators of crimes own only a certain part of the final responsibility. This is particularly true in case of organized structures such as the armed forces, where senior officers [and often, the government] also bear responsibility.

But, by focusing on individuals, the anonymity that protects the perpetrators of actual crimes can be eroded. By specifically naming alleged perpetrators, institutional cover is no longer allowed to shield them, thereby allowing for greater transparency and accountability. To facilitate justice, understanding of the specific is critical in order to allow for a greater understanding of the general.

Cases presented in this report reveal that there is an overwhelming reluctance to genuinely investigate or prosecute the armed forces for human rights violations. There is an occasional willingness to order compensatory relief, but not to bring the perpetrators to justice. Without adequate prosecution, and fixing of individual criminal responsibility, monetary compensation is at best a weak palliative measure, and at worst a bribe to buy the silence of the victims.

The role of the judiciary in a conflict zone is a vital and, often, only hope available for ensuring justice. It must serve as an effective check on the executive and be vigilant in ensuring that human rights of individuals are not violated. Despite the occasional passing of strong orders, this report contains numerous examples of the High Court effectively condoning the continuation of violations. The general experience in Jammu and Kashmir has been that the judiciary has allowed itself to be conscious of the power and will of the executive, thereby rendering itself subservient to the State.

Domestic processes of justice also do not appear willing to consider violations within this conflict in the light of relevant international humanitarian law i.e. the Geneva Conventions (1949), the Additional Protocols (1977), or international criminal law, as India has not yet legislated on crimes of Genocide, Crimes against Humanity and War Crimes. Domestic Indian law does not even criminalize “Enforced Disappearance” or “Torture”, which means that it is unable to prosecute perpetrators of such crimes, thus depriving the people of appropriate instruments to force prosecution.



Unwillingness of the Indian State to address human rights issues in Jammu and Kashmir has been most recently displayed by the Government of Jammu and Kashmir Home Department submission to the State Human Rights Commission [on 13 August 2012] about action taken on its recommendations of 19 October 2011 regarding unmarked and mass graves in three districts of North Kashmir. This submission exhibits an unwillingness to correctly appreciate the concerns of its own State institution, the SHRC, and a purported inability to take any action. For example, on the question of conducting Deoxyribose Nucleic Acid [DNA] tests on the bodies interred in the graves, it is stated that with “only 15/16 recognized labs in the Government as well as in the Private Sector, in the entire country” a comprehensive process cannot be undertaken. Instead, a ludicrous and unique solution is put forward: a blood relation of the victim “should be in a position to indicate with fair amount of certainty the exact location of the graveyard and the grave which is now sought to be re-opened”. This unwillingness of the Indian State to critique itself therefore requires focused attention from the international community.

In the context of the Kashmir conflict we do not consider this report to be a definitive or exhaustive list of alleged perpetrators. It merely seeks to begin a process of accountability. The cases chosen are those where we received information. In a State where institutions – such as the police – have proven ineffective, a majority of the violations have in fact *not* been investigated. Therefore, the names of alleged perpetrators in a majority of cases are officially unknown, though certainly part of living public memory.

This report does not attempt to travel through the chain of command to establish the full list of all possible perpetrators who could be held responsible for specific crimes. Further investigations would be necessary to understand more comprehensively the role of superior authorities involved in these crimes.

What is striking is that the documents in possession of the State itself indict the armed forces and the police by providing reasonable, strong and convincing evidence on the role of the alleged perpetrators in specific crimes.

We do not however believe that the entirety of the crime, including the role of alleged perpetrators, is captured in any one of the specific cases analyzed. Drawing from principles of Command Responsibility and Joint Criminal Enterprise under international criminal law, it is clear that only further non-partisan investigations would bring to light the entirety of criminality and culpability for each of the crimes documented in this report.

Despite available documents that indict the alleged perpetrators, the response of the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Indian State has been woefully inadequate. From denial of sanction for prosecuting members of armed forces under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] to limited prosecutions of members of the Jammu and Kashmir Police and civilian associates of the armed forces, the Indian State and its functionaries appear to have played a direct role in the commission of crimes and subsequent cover ups.

The list of alleged perpetrators, their ranks, units and area of operations strongly suggest that the crimes listed within this report occurred across Jammu and Kashmir, across various armed forces and the police, and at various levels of the hierarchy of each of these government forces.

The cases discussed in this report go contrary to the Indian State narrative of human rights violations as mere “aberrations”. Crimes in Jammu and Kashmir have not been committed despite the Indian State but because of it. The structures of the Indian State, including the Government of Jammu and Kashmir, must be accused of not just standing by while human rights violations have taken place, but carry a far higher culpability. They must be accused of willfully putting in place structures specifically meant to carry out these crimes.

For reasons attributable more to the authors and less to the all pervading criminality in the region, districts such as Baramulla, Kupwara and Srinagar receive more focused attention in this report, although the cases are from all over Jammu and Kashmir. The official designations of the alleged perpetrators and the geographical spread of the crimes committed against the people of Jammu and Kashmir indicate a decisive will of the Indian State, carried out by its functionaries as part of a design.

Numerous cases in this report reveal that volumes of evidence exist of crimes committed by specific perpetrators, assisted by a system where impunity is available right from the commission of the crime to the ultimate cover up.

Based on the information before it, we cannot conclusively pronounce on the guilt of any of the alleged perpetrators, but it is clear that enough evidence exists to warrant further action. However, in the absence of any institutional or political will to take the evidence to its natural conclusion – a trial where the crime and the guilt of a perpetrator can be proven beyond reasonable doubt – the Indian State stands indicted.

## INTRODUCTION

Prepared over two years, this report documents state impunity in Jammu and Kashmir. It seeks a process of accountability for institutional crime, where the identities of the individual perpetrators are known. Cases of human rights violations committed by individuals from various State forces are analyzed in the report, within the context of an occupation, an armed conflict and a state of structural impunity. Structures and the culture of impunity in the highly militarized space of Jammu and Kashmir have evolved within, and traverse through State institutions, the armed forces, the application and interpretations of special laws, and finally the judicial system itself.

The judicial attitude to the widespread practice of extrajudicial killings by staging 'fake encounters', as exemplified by a recent Supreme Court judgment serves to illustrate the hypocritical culture of structural impunity. Fake encounters [extrajudicial executions under the garb of legitimate encounters], along with various other human rights violations, have been a stark reality for the people of Jammu and Kashmir over the last 22 years. In 2008 the media reported the oral observations made in court by Supreme Court Justice Aftab Alam and Justice G.S. Singhvi, where the Justices made reference to the practice of fake encounters for rewards in Jammu and Kashmir<sup>1</sup>. In the backdrop of these observations, activists, lawyers, and most importantly, families of the victims keenly awaited the Supreme Court judgment in the *Pathribal* fake encounter case, where personnel of the 7 Rashtriya Rifles [RR] were found by the Central Bureau of Investigation [CBI] to have killed five persons in a fake encounter on 25 March 2000.

On 1 May 2012, the Supreme Court of India issued its final judgment in the *Pathribal* fake encounter case [*General Officer Commanding v. Central Bureau of Investigation (CBI) & Anr*]. The judgment unfortunately failed to address the legal issues within the reality of the ongoing conflict in Jammu and Kashmir, and has only strengthened the impunity that exists for human rights violations, particularly for the armed forces. The Supreme Court found that as per Section 7 of the Armed Forces Jammu and Kashmir [Special Powers] Act, 1990 [AFSPA] [Annexure 1], while a chargesheet may be presented before a court, no cognizance may be taken. This means that even where clear evidence exists indicting members of the armed forces of crimes, the court cannot recognize the prima facie validity of this evidence as crimes and begin trial, as it would in the normal course, without prior sanction of the government

While the Supreme Court initially states in its judgment that “the question as to whether the sanction is required or not under a statute has to be considered at the time of taking cognizance of the offence...”, it concludes by stating that cognizance may not be taken by a court without prior sanction. The effect of this conclusion might well be a complete negation of the qualifying portion of Section 7 of AFSPA which limits the need for seeking sanction only “in respect of anything done or purported to be done in exercise of the powers conferred by this Act”. This qualification is redundant unless a competent court is empowered to take cognizance of a case i.e. apply its judicial mind independently to the chargesheet and decide whether the qualification applies.

The Supreme Court states that “**facts of this case require** sanction of the Central Government to proceed with the criminal prosecution/trial” [emphasis added]. Therefore, it appears that on one hand the Supreme Court has effectively barred courts from taking cognizance of a case, but through this judgment, it has appreciated the facts of the *Pathribal* fake encounter case and found that sanction would be required to be sought<sup>2</sup>.

The thrust of the Supreme Court judgment is that there is a presumption of good faith when considering the need for sanction, and this presumption can only be dislodged by cogent and clinching material. Therefore, the Supreme Court when considering the application of Section 7 AFSPA places the onus on the investigating agency to sufficiently prove that an act was outside the official discharge of duty and was not in good faith. This finding of the Supreme Court would appear completely ignorant of the realities of rights violations in Jammu and Kashmir. For example, an allegation of rape would on the very face of the facts be clearly outside the official discharge of duty and there could be no question of the rape being committed in good faith.

The implications of the judgment in the *Pathribal* fake encounter case for human rights violations in Jammu and Kashmir remain relevant even in 2012. On 2 January 2012, Altaf Ahmad Sood was killed and two others injured at Boniyar village<sup>3</sup>. On the late evening of 10 February 2012, Ashiq Hussain Rather stepped out of his house and was shot dead by soldiers of the 32 Rashtriya Rifles of the Indian Army<sup>4</sup>. On 22 March 2012, Sajad Ahmad Dar, resident of Sopore, died in a hospital, having been in police custody, detained under the Public Safety Act, 1978 [PSA]<sup>5</sup>. The family of the victim stated to us that the Special Operations Group [SOG] of the Jammu and Kashmir Police had tortured him.

Altaf Ahmad Sood's death allegedly took place when people from the village were protesting power shortage in the area near a local power station. Personnel of the Central Industrial Security Force [CISF], guarding the power station, allegedly fired at the protesting crowd. The media reported that on 30 September 2011, a circular was issued by the CISF Deputy Inspector General [DIG] that “We may not wait for the arrival of the police or the presence of a magistrate for taking any steps against any activities which threatens the security of the installation”<sup>6</sup>. The CISF also initiated an independent parallel enquiry. The CISF probe report was submitted to the Ministry of Home Affairs and reportedly concluded that the CISF personnel had followed the standard operating procedure during the incident<sup>7</sup>. Police investigations resulted in a chargesheet against five CISF personnel, but not for the crime of murder<sup>8</sup>. A magisterial enquiry ordered by the Government of Jammu and Kashmir

<sup>1</sup> The Hindu, <http://www.hindu.com/2008/04/30/stories/2008043060391300.htm>, 30 April 2008.

<sup>2</sup> This seeming contradiction between the conclusions of the Supreme Court would require further clarification in the future, and perhaps is a pointer to the need to allow competent courts the opportunity to fully appreciate the specifics of a case before a request for sanction is necessitated.

<sup>3</sup> Economic Times, [http://articles.economictimes.indiatimes.com/2012-01-03/news/30584782\\_1\\_jammu-and-kashmir-counter-insurgency-grid-nasir-aslam-wani](http://articles.economictimes.indiatimes.com/2012-01-03/news/30584782_1_jammu-and-kashmir-counter-insurgency-grid-nasir-aslam-wani), 3 January 2012.

<sup>4</sup> Al Jazeera, <http://www.aljazeera.com/NEWS/ASIA/2012/02/201211192417545776.html>, 11 February 2012; Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Feb/12/youth-s-killing-triggers-protest-in-rafiabad-53.asp>, 12 February 2012.

<sup>5</sup> Daily Excelsior, <http://www.dailyexcelsior.com/web1/12mar25/news2.htm>, 25 March 2012.

<sup>6</sup> Mail Today, <http://indiatoday.intoday.in/story/kashmir-cisf-men-had-orders-to-fire-baramula-protesters/1/167162.html>, 4 January 2012.

<sup>7</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Jan/9/inquiry-officer-to-record-statements-from-today-65.asp>, 9 January 2012.

<sup>8</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Mar/4/cisf-men-charged-for-boniyar-killing-28.asp>, 3 March 2012.

concluded that the firing was unprovoked<sup>9</sup>. Following the killing of Ashiq Hussain Rather, the Government of Jammu and Kashmir and the army constituted enquiries<sup>10</sup>. Sajad Ahmad Dar's case was also subjected to a magisterial enquiry, which concluded that the jail authorities were found guilty of negligence<sup>11</sup>. The matter is presently before the High Court seeking further action.

### **State of Impunity**

The above detailed incidents, seen in the context of the *Pathribal* fake encounter judgment of the Supreme Court serve as a useful prologue to the present report - killings, apparently unprovoked, followed by a response from the government usually as a reaction to public outcry in the form of an enquiry or investigations, and a sense that the true perpetrators of the crimes may never be brought to justice. The story of Altaf Ahmad Sood, Sajad Ahmad Dar and Ashiq Hussain Rather strongly resonate with the story of impunity in Jammu and Kashmir. Coupled with the response of the Supreme Court, these implicate the Indian State in human rights violations in Jammu and Kashmir.

The defining feature of human rights violations in the last 22 years in Jammu and Kashmir is that in the name of countering militant violence the Indian State authorizes armed forces to carry out every kind of operation, with or without adherence to laws and norms. Significantly, in a majority of cases crimes are not noted or investigated at all. Therefore, any listing or analysis of cases would be an incomplete one.

The Jammu and Kashmir Police who are required to register First Information Reports [FIR] and carry out speedy and accurate investigations, often fail to do so. Families of victims are forced to approach various courts to order the police to file FIRs and carry out investigations. The situation is exacerbated in cases involving fellow police personnel. In fact, a circular was issued by the Home Department, Jammu and Kashmir, to the police stations [Letter# SP 5Exg/267881 dated 14 April 1992] directing them to disobey the Criminal Procedure Code [CrPC], 1989 by refusing to file FIR's against the armed forces without the approval of higher authorities, and refrain from reporting accusations of misconduct on the part of the armed forces in their daily logs. Besides, there is a routine lack of cooperation by the armed forces in police investigations. The reality of Jammu and Kashmir therefore points to an institutional impunity at political, judicial and moral levels.

This institutional culture of moral, political and juridical impunity has resulted in, by some estimates [as of 2012], enforced and involuntary disappearance of at least 8000 persons<sup>12</sup> besides more than 70,000 deaths<sup>13</sup>, and disclosures of more than 6000 unknown, unmarked, and mass graves<sup>14</sup>. The last 22 years have also seen numerous large-scale massacres, in addition to regular extra-judicial killings. The Gow Kadal [Srinagar] massacre of around 50 persons on 21 January 1990 and other mass killings discussed in this report are symbolic reminders of the persistent human rights violations in Jammu and Kashmir.

On numerous occasions, over the years, governments in power [both in Jammu and Kashmir and at New Delhi] have used the specters of security, national interest and public order to propagate violence, ineffectively address human rights violations, or altogether disregard the concerns of the people of Jammu and Kashmir. Violations by the armed forces are disregarded and referred to as false allegations leveled to demoralize the armed forces or malign their image. Alternatively, they are termed as "aberrations"<sup>15</sup>. Occasionally, the lives of innocent persons are considered "collateral damage" in the larger war waged in Jammu and Kashmir<sup>16</sup>. This approach, evident in the manner in which investigations are handled, is also revealed by the manner in which the process of seeking sanctions for prosecutions under AFSPA is dealt with. To begin with, the insistence on the sanction process in cases where it is inconceivable that the acts were carried out in exercise of the powers conferred under the AFSPA, is telling. For example, in the *Pathribal* fake encounter case of 25 March 2000, the five victims were killed and then burnt. This act of burning bodies, leaving aside the actual killing, would constitute an international crime [certainly a war crime] and the prosecution of this crime should not require a sanction for prosecution.

### **Impunity, Secrecy and the Politics of Misinformation**

#### **Sanctions**

The positions taken by the Government of Jammu and Kashmir and the union Ministry of Defence [MOD] with regard to cases where sanction for prosecutions under AFSPA have been sought highlight the pervasive climate of secrecy and non-disclosure, and the misuse of the sanction process. On 6 September 2011, the Jammu and Kashmir Home Department, in response to an application under the Right to Information Act, 2009 [RTI] submitted a list of 50 cases where sanction had been sought from the Ministry of Home Affairs [MHA] and MOD [Annexure 2]. On 10 January 2012, in response to an application under the RTI Act, 2005, the MOD submitted a list of 24 cases received for the grant of sanction from the Government of Jammu and Kashmir Home Department between 2007 and 15 December 2011 [Annexure 3]. Out of the 24 cases in the MOD list 14 find no mention in the Government of Jammu and Kashmir Home Department list. Therefore, while the MOD indicates that these 14 cases had been received at its office, the Government of Jammu and Kashmir Home Department appears to have no record of forwarding these cases. Also disconcerting is the manner in which the MOD has dealt with these 24 cases. In 19 of the 24 cases, sanction has been declined.

<sup>9</sup>Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Jul/21/cisf-resorted-to-unprovoked-firing-report-31.asp>, 21 July 2012.

<sup>10</sup>Daily Mail, <http://www.dailymail.co.uk/indiahome/indianews/article-2099843/Kashmir-erupts-boy-22--killed-accidental-army-bullet.html>, 12 February 2012.

<sup>11</sup> Kashmir Reader, <http://kashmirreader.com/09142012-ND-sopore-youth%E2%80%99s-death-in-jail-4171.aspx>, 14 September 2012.

<sup>12</sup> Public Commission on Human Rights, *State of human rights in Jammu and Kashmir, 1990-2005*, 2005, p.96; IPTK, *Buried evidence, Unknown, Unmarked and Mass graves in Indian-Administered Kashmir, A preliminary report*, 2009, p.10; APDP, *Half widow, Half wife?, Responding to gendered violence in Kashmir*, 2011, p.2.

<sup>13</sup> Public Commission on Human Rights, *State of human rights in Jammu and Kashmir, 1990-2005*, 2005, p.vi; IPTK, *Buried evidence, Unknown, Unmarked and Mass graves in Indian-Administered Kashmir, A preliminary report*, 2009, p.10; APDP, *Half widow, Half wife?, Responding to gendered violence in Kashmir*, 2011, p.2.

<sup>14</sup> Kashmir Reader, <http://kashmirreader.com/kreadernew/07042012-ND-government-has-no-record-of-unidentified-burials-1177.aspx>, 4 July 2012.

<sup>15</sup> Outlook, <http://news.outlookindia.com/items.aspx?artid=203079>, 21 February 2004.

<sup>16</sup> Times of India, [http://articles.timesofindia.indiatimes.com/2002-04-20/india/27140259\\_1\\_army-officer-local-militants-jamwal](http://articles.timesofindia.indiatimes.com/2002-04-20/india/27140259_1_army-officer-local-militants-jamwal), 20 April 2002; Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Jul/29/reduce-footprints-of-forces-antony-53.asp>, 29 July 2012.

The remaining 5 cases are “under examination”. Of these 19, in 5 cases, the MOD has declined sanction and either stated that the allegations were “motivated by vested interest to malign the image of the security forces”, or “under pressure from terrorists and sympathizers”, or “to put the army on defensive” or other similar formulations.

In all of the 24 cases, while occasional references are made to inconsistency of the evidence, there is no detailed explanation for the denial of sanction. Finally, an affidavit submitted by the MOD before the High Court on 5 June 2009 lists 35 cases received for the grant of sanction from the Government of Jammu and Kashmir at that point, and crucially, indicates only *one* case where court-martial proceedings had taken place [Annexure 4]. While the MOD has shared some information on sanctions, the MHA merely transferred the request for information to the various agencies under its control, such as the Central Reserve Police Force [CRPF], Border Security Force [BSF] etc. The agencies that responded refused to share information by stating they were exempted under the RTI Act, 2005 [Annexures 5-8]. The fact that this exemption did not apply to allegations of human rights violations or corruption was apparently considered irrelevant by them. The only exception was the Indo-Tibetan Border Police [ITBP] which responded on 21 September 2012 and stated that the Government of Jammu and Kashmir had never sent it any case for sanction relating to ITBP personnel [Annexure 9]. The issue of sanctions, and its effect on the human rights of the people of Jammu and Kashmir, is possibly best summed up by a recent, 23 February 2012, response of the Jammu and Kashmir Home Department to another RTI application on the number of cases in which sanction were granted by the Indian Government [Annexure 10]. The answer: *none*.

### **Court-Martials**

Similar to the contentious issue of sanctions is that of court-martials. A common defence to the charges of impunity, particularly where the armed forces are concerned, is that of a strong and vigilant internal court-martial process. But, the actual facts belie this claim. Between December 2011 and January 2012, the IPTK filed various RTIs to the MHA and MOD, seeking information on the court-martials conducted in Jammu and Kashmir from 1990 till the present time. The MOD did provide information but only in relation to the RR. By and large, even in the case of court-martials, the information provided again illustrates patterns and forms of impunity. Of particular significance is the absolute lack of accountability and transparency in relation to the armed forces engendered by their absolute refusal to share information. For example, information provided by communication dated 28 March 2012 was deficient but also telling: between 2001 and 2009, the period for which information was provided, only *four* officers [against numerous allegations] were subject to a court-martial process [Annexure 11]. Further, only two of these cases dealt with potential human rights violations. Major Rehman Hussain was dismissed from service for the charge of rape, and Major V.K.Rawat was found not guilty in a case of killing<sup>17</sup>. The agencies of the MHA refused to share information by stating they were exempted from the RTI Act [Annexures 14-18].

### **Political Maneuvers**

The politics of opacity, obfuscation and misinformation evidenced in these responses is amplified when contradictory statements of various political actors and senior military personnel are examined. In 1996, Prime Minister of India H.D. Deve Gowda stated that 272 members of the armed forces had been punished for human rights violations between 1991 and 1996 in Jammu and Kashmir<sup>18</sup>. But, on 23 November 2005, Union Home Secretary V.K. Duggal stated that since January 1990, only 215 members of the armed forces had been punished for excesses in Jammu and Kashmir<sup>19</sup>. The former Chief of the Army Staff General N.C. Vij on 21 May 2004 stated that two thousand complaints of human rights violations were received during the last 14 years and that "Most of them were found incorrect. 35 armed forces personnel were punished which included eight officers. Some of them were dismissed from service and later on jailed." But, in a contradictory letter to the National Human Rights Commission [NHRC] dated 24 May 2004, he stated that 131 army personnel of various ranks were punished for human rights violations<sup>20</sup>.

These references are only a sample of numerous contradictory statements ostensibly directed at trivializing the question of human rights violations and misdirecting the processes of justice<sup>21</sup>. But the role of the political establishment of the Indian State clearly goes further and even legitimizes human rights violations in Jammu and Kashmir. For example, on 13 January 2001, the then Chief Minister of Jammu and Kashmir,

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<sup>17</sup> By communication dated 18 June 2012, further information on cases relating to the RR was provided and related to the time period between 1999 and 2011 [Annexure 12]. Once again, only *seven* officers were said to have been subject to the court-martial process. Only three of these cases dealt with potential human rights violations. Information on Major Rehman Hussain was a repetition. Information was provided on the conviction by court-martial of Captain Ravinder Singh Tewatia, but no mention is made of the fact that this judgment was overturned on appeal before the High Court. The Government of Jammu and Kashmir chose not to appeal this judgment. Finally, Major Arvid Rishi was found not guilty for murder. By communication dated 22 June 2012, further information was provided on a case of two RR personnel [in the context of information on sanction for prosecution under AFSPA related cases where court-martials were conducted], Naik [Corporal] Harbhajan Singh and Rifleman Gurtej, who were dismissed from service and punished by imprisonment for 10 years for the rape of a woman [Annexure 13, which includes: first, the 18 April 2012 communication from the Ministry of Defence whereby of 44 cases, sanction was declined in 35, and under consideration in nine, and that of the 35 cases in only one case was a court-martial carried out; second, the 22 June 2012 communication from the Ministry of Defence providing details of the court-martial carried out].

<sup>18</sup> Syed Junaid Hashmi, *Official records in Jammu and Kashmir 'murky' on 'penalised' securitymen!*, <http://www.countercurrents.org/hashmi190111.htm>, 19 January 2011.

<sup>19</sup> Syed Junaid Hashmi, *Official records in Jammu and Kashmir 'murky' on 'penalised' securitymen!*, <http://www.countercurrents.org/hashmi190111.htm>, 19 January 2011.

<sup>20</sup> Syed Junaid Hashmi, *Official records in Jammu and Kashmir 'murky' on 'penalised' securitymen!*, <http://www.countercurrents.org/hashmi190111.htm>

<sup>21</sup> The contradictions continue with the MHA. In its Annual Report for the year 2007-08, while referring to the human rights issue, it states: "Since January, 1994 till December, 2007, out of 1,158 complaints of human rights excesses received against the personnel of the Army and Paramilitary Forces, 1,118 have been investigated, 1,085 of them found false, in 33 cases where the complaints were found genuine, penalties have been imposed on 62 personnel while in 6 cases compensation has been awarded" [Syed Junaid Hashmi, *Official records in Jammu and Kashmir 'murky' on 'penalised' securitymen!*, <http://www.countercurrents.org/hashmi190111.htm>]. Most recently, in a Ministry of External Affairs draft report to be submitted to the United Nations Human Rights Council, the following statistics were provided: "Since January, 1994 till December, 2010, out of 1,417 complaints of human rights excesses received against the personnel of Army and Central Para Military Forces, 1,388 have been investigated and 1,308 of them found false. In 80 cases where the complaints were found genuine, penalties have been imposed" [2<sup>nd</sup> Universal Periodic Review of India, Draft report, <http://www.mea.gov.in/mystart.php?id=5212>].

Farooq Abdullah was reported to have stated the following: “My orders to the police are wherever you find a militant, dispatch him as I do not want to fill jails”<sup>22</sup>. The statement later reflected in the Indian Army’s Doctrine for Sub-Conventional Operations released on 31 December 2006 which speaks of “neutralizing all hostile elements in the conflict zone that oppose or retard the peace initiatives and secondly, at transforming the will and attitudes of the people”<sup>23</sup>. Within a context of large-scale militarization, “neutralization” effectively means the use of violent force to subjugate any “element” that threatens or disrupts the coercive enforcement of “peace” and normalcy”.

### **Privatizing Impunity**

The political and moral impunity created is compounded by the lack of prosecutions against groups that have played pivotal roles in human rights violations in Jammu and Kashmir. For example, limited prosecutions against Ikhwan’s [government backed militants used by the armed forces], members of the Village Defence Committees [VDC], composed of civilians, armed by the government and used by the armed forces] and Special Police Officers [SPO] [quasi-official personnel of the Jammu and Kashmir Police], allows these parallel militias to continue rights violations with no accountability<sup>24</sup>. On occasion, these groups are also used to shield the other perpetrators of crimes such as the armed forces. Most importantly, these informal and parallel forces are not recognized officially, even when it comes to seeking sanction for prosecution, and the State therefore has complete deniability when it comes to their operations. These forces were unlawfully constituted to outsource violent reprisals. The Supreme Court on 5 July 2011, in *Nandini Sundar & Ors. v. State of Chattisgarh*, declared the Salwa Judum militia [in the state of Chattisgarh] illegal and unconstitutional<sup>25</sup>. The similarities between Salwa Judum in Chattisgarh and the militia in Jammu and Kashmir are striking, and the continued reliance by the armed forces and the political class on such militia in Jammu and Kashmir is troubling, particularly as the number of these militias are far greater in Jammu and Kashmir [reportedly 23,783<sup>26</sup>] than in Chattisgarh [6500 as per the Supreme Court judgment]<sup>27</sup>. The Chief Minister of Jammu and Kashmir, Omar Abdullah, responded by stating that there could be no comparison between Jammu and Kashmir and Chattisgarh as the SPOs in Jammu and Kashmir were doing their “regular duties”<sup>28</sup>, with no further explanation as to the nature of these duties or response to the specific violations by SPOs pointed out by human rights activists in Jammu and Kashmir.

### **Incentivizing Impunity**

This web of collusion between the Government of Jammu and Kashmir, the Indian Government, government/armed forces sponsored militia and the formal armed forces in generating and sustaining structures of impunity is also troubling due to the creation of incentives – in the form of monetary awards, other awards and out of turn promotions– for the killing of “militants”. In Jammu and Kashmir where the line between militants and non-combatants is itself continuously ignored, and the entire population is held suspect, incentives prove highly problematic<sup>29</sup>. For example, an enquiry into the uprising of 2010 by a civil society fact-finding team attributed the Macchil fake encounter killings of 30 April 2010 to this system of incentives and awards for killing of supposed militants<sup>30</sup>. On 25 January 2012, two police officers – former Superintendent of Police [SP], Sopore, Altaf Ahmad Khan and Deputy Superintendent of Police [DSP] Ashiq Hussain Tak – received gallantry awards despite being implicated in the 31 July 2011 killing of Nazim Rashid Shalla, a resident of Sopore<sup>31</sup>. On 24 September 2012, in response to RTI request filed on awards [non-monetary] and out of turn promotions to the Jammu and Kashmir Police for anti-militancy operations since 1989, it was stated that 2226 police officials had received out of turn promotions for anti-militancy operations as per Government Order No. Home-3 (P) of 2000, dated 6 January 2000 for “consistently exceptional performance on the anti-militancy front” [Annexure 19]. 560 police officials had received gallantry awards for their “gallant acts”. But, the names of these persons were not provided as it was felt the disclosure would endanger them. Further, on a further response of 25 October 2012 it was stated that the names and details of militants killed that formed the basis of these awards and promotions could not be provided as the disclosure would “hit the sentiments of the general people and create unrest and law and order problem” [Annexure 20]<sup>32</sup>. The secrecy that shrouds the identities of the recipients and the reasons for the bestowal of these supposedly public honours is revealing, especially in light of cases detailed in this report where implicated individuals were subsequently rewarded.

<sup>22</sup> Express India, <http://www.expressindia.com/news/ie/daily/20010115/ina15064.html>, 15 January 2001.

<sup>23</sup> See generally: Gautam Navlakha, *Doctrine for Sub-Conventional Operations: A Critique*, Economic and Political Weekly, Vol.42, No.14 (Apr. 7-13, 2007), pp. 1242-1246.

<sup>24</sup> See generally, Human Rights Watch, *India’s Secret Army in Kashmir*, 1996 [<http://www.hrw.org/legacy/reports/1996/India2.htm>].

<sup>25</sup> In Para 59 of the judgment, the Supreme Court states that: “The appointment of tribal youth as SPOs [Special Police Officers], who are barely literate, for temporary periods, and armed with firearms, has endangered and will necessarily endanger the human rights of others in the society”. But, the Supreme Court did allow the operation of the Salwa Judum in matters relating to “help people in situations arising out of mutual or man-made disasters, and to assist other agencies in relief measures” and “To facilitate orderly movement of people and vehicles, and to control and regulate traffic.”

<sup>26</sup> Daily News and Analysis, [http://www.dnaindia.com/india/report\\_scs-salwa-judum-judgment-reverberates-in-jammu-and-kashmir\\_1563859](http://www.dnaindia.com/india/report_scs-salwa-judum-judgment-reverberates-in-jammu-and-kashmir_1563859), 8 July 2011.

<sup>27</sup> See also generally: Times of India, 26 April 2011.

<sup>28</sup> Daily News and Analysis, [http://www.dnaindia.com/india/report\\_scs-salwa-judum-judgment-reverberates-in-jammu-and-kashmir\\_1563859](http://www.dnaindia.com/india/report_scs-salwa-judum-judgment-reverberates-in-jammu-and-kashmir_1563859), 8 July 2011.

<sup>29</sup> Bsharat Peer, *What lies beneath*, Foreign Policy, [http://www.foreignpolicy.com/articles/2011/09/29/kashmir\\_mass\\_graves?page=full](http://www.foreignpolicy.com/articles/2011/09/29/kashmir_mass_graves?page=full), 29 September 2011; *Disappearances in Kashmir*, <http://www.kashmirawareness.org/Page/View/disappearancesinkashmir>, 16 March 2009, *Kashmir police investigate Indian soldiers accused of murdering civilians*, <http://www.globalpeacesupport.com/globalpeacesupport.com/post/2011/10/31/Kashmir-police-investigate-Indian-soldiers-accused-of-murdering-civilians.aspx>, 31 October 2011.

<sup>30</sup> Fact finding team to Kashmir, 2010, *Four months the Kashmir valley will never forget, An enquiry into the mass uprising of 2010*, March 2011, p.1.

<sup>31</sup> Hindustan Times, <http://www.hindustantimes.com/India-news/Srinagar/Army-gives-gallantry-award-to-two-tainted-police-officers/Article1-802190.aspx>, 25 January 2012.

<sup>32</sup> A similar RTI application was filed to both the MHA [for agencies such as the CRPF, BSF etc] and the MOD [for the army agencies]. No information was provided. The Central Industrial Security Force [CISF] and the Sashastra Seema Bal [SSB] stated that they were exempt from providing information under the RTI Act, 2005 except in cases of human rights or corruption matters but that in the instant case the exception would not be relevant for the information sought. A RTI was filed to the Government of Jammu and Kashmir on monetary awards granted to the Jammu and Kashmir Police and the armed forces in Jammu and Kashmir from 1989 to 2012 for anti-militancy operations. Similar applications were also filed to the MHA and MOD for agencies working under them. No information was provided by the Government of Jammu and Kashmir. In the case of the MHA, the IB stated that they were exempt under the RTI Act, 2005. The SSB stated that they were exempt from providing information under the RTI Act, 2005 except in cases of human rights or corruption matters but that in the instant case the exception would not be relevant for the information sought. No information was provided by the MOD.

As a corollary to rewarding perpetrators of human rights violations, persons refusing to abide by the rules of impunity, find themselves marginalized, dismissed, or worse, killed. For example, the family of Captain Sumit Kohli, allegedly the author of an anonymous letter, to the families of four persons killed in Lolab, Kupwara in April 2004, that accused the army of the killings, claims that Captain Kohli was killed for speaking the truth<sup>33</sup>.

### **Inquiries and Iniquity**

The reaction of the Government of Jammu and Kashmir to violations has been limited and ineffective, and amounts to complacency. Inquiries when ordered by the government, often in response to public anger and protests, have proved ineffective<sup>34</sup>. A RTI was filed to the Government of Jammu and Kashmir on all enquiries whether magisterial enquiries or under the Commissions of Inquiry Act, 1962 between 1990 and 2011. While the IPTK had independent information on the constitution of a total of 157 such enquiries between 1 January 2003 and 1 March 2012 [Annexure 21], the Government provided a list of only 22 [Annexure 22]. In addition to this being woefully deficient, an examination of the information provided clearly indicated that the ordering and subsequent conduct of these enquiries was merely symbolic in nature with little intent to thoroughly investigate and indict the accused.

### **Judiciary: Endorsing Impunity**

#### **Lower Judiciary**

The lower judiciary in Jammu and Kashmir augments the failure of the Jammu and Kashmir Police by its ineffective functioning. A feature of the police investigative process has been the submission of closure reports before the lower judiciary. A closure report is filed under Section 173 (2) CrPC, 1989 and is filed when the police conclude that no prima facie case is made out in the matter. But the Magistrate before whom the report is filed must apply his own mind and may choose not to accept the opinion of the police and direct further investigations. The police and the court must inform the complainant/informant [often the family of the victim] of the closure report, according to Section 173 (2) (ii) CrPC, 1989 and the Supreme Court judgments on point<sup>35</sup>. Often, in Jammu and Kashmir, the lower judiciary has not exercised its judicial mind in this regard and has gone by the opinion of the police without issuing notice to the complainant/informant. This non-application of the judicial mind extends to other areas as well. For example in the Manzoor Ahmad Mir case, referred to in detail in this report, the victim disappeared on 7 September 2003 and was killed subsequently. The lower court stayed proceedings on a charge sheet against an officer named Captain Atul Sharma and stated that “no proceedings can take place against the accused” till necessary sanction under AFSPA is obtained. Therefore, no cognizance was taken of the charge sheet, which also indicted two other non-armed forces persons. The High Court, on 21 April 2007 found complete non-application of mind with regard to this order and stated that the Magistrate “should not have acted on the application of the Army, as the Army was not a party before the court at all”. The order was therefore quashed.

#### **High Court of Jammu and Kashmir**

Over the years civil society groups and individuals have also criticized the role of the High Court of Jammu and Kashmir<sup>36</sup>. The primary criticism against the High Court has been that it has not played the role of an interventionist court, even in cases of grave violations of the letter and spirit of the law, and thus served the interests of the government and armed forces in fostering the climate of impunity. The role of an institution such as the High Court in a conflict zone is vital and, often, the only hope available for ensuring justice. The High Court must therefore serve as an effective check on the executive. Regardless of the state or level of the conflict, the High Court must be vigilant in ensuring that the human rights of individuals are not violated<sup>37</sup>. In Jammu and Kashmir the High Court appears to have undermined the institution of an independent judiciary by making itself subservient to the State<sup>38</sup>. For example, it was reported that a retired judge of the High Court, Justice [retired] A.M. Mir, stated at a Jammu and Kashmir Police function in 2006 that “counter terrorism” measures were justified in the 1990’s in Jammu and Kashmir but that since the situation had changed there was now a need to follow the rule of law<sup>39</sup>.

Numerous examples contained in this report show the High Court condoning the continued violations of law. Despite passing strongly worded orders against the State, on occasion, the High Court rarely uses its powers to ensure the implementation of its own orders. A contributing factor has perhaps been the deliberate appointment of judges who critics have considered non-interventionist in nature. The manner of transferring

<sup>33</sup>NDTV, <http://www.ndtv.com/article/india/did-anonymous-letter-lead-to-captain-kohlis-death-51567>, 14 September 2010; Indian Express, <http://www.indianexpress.com/news/capt-kohli-knew-truth-behind-fake-encounter/681593/>, 15 September 2010.

<sup>34</sup>In cases where an enquiry does indict the state, such as the 2009 Justice Muzaffar Jan enquiry into the Shopian double murder and rape case, the findings are ignored.

<sup>35</sup>See for example: *Union Public Service Commission v. S. Papaiah & Ors.*, 1997 (7) SCC 614.

<sup>36</sup>See generally, Ashok Aggarwal, *In search of vanished blood: the writ of habeas corpus in Jammu and Kashmir: 1990-2004*, October 2008; Public Commission on Human Rights, *State of human rights in Jammu and Kashmir, 1990-2005*, 2005, p.161; Amnesty International, *A “Lawless Law”, Detentions under the Jammu and Kashmir Public Safety Act*, 2011 [<http://www.amnesty.org/en/library/asset/ASA20/001/2011/en/cee7e82a-f6a1-4410-acfc-769d794991b1/asa200012011en.pdf>]; Human Rights Watch, “Everyone lives in fear”, *Patterns of Impunity in Jammu and Kashmir*, 2006 [<http://www.hrw.org/reports/2006/india0906/india0906web.pdf>].

<sup>37</sup>For a discussion on the role of the judiciary within a conflict by Aharon Barak, ex-President of the Israeli Supreme Court, see: *Judgments of the Israel Supreme Court: Fighting Terrorism within the law*, 2005, <http://www.jewishvirtuallibrary.org/jsource/Politics/sctterror.html>. Of note are the following passages: “We need laws most in times of war”, “The protection of every individual’s human rights is a much more formidable duty in times of war and terrorism than in times of peace and security. If we fail in our role in times of war and terrorism, we will be unable to fulfill our role in times of peace and security. It is a myth to think that we can maintain a sharp distinction between the status of human rights during a period of war and the status of human rights during a period of peace.”

<sup>38</sup>In his dissenting judgment in *Liversidge v. Anderson*, [1942] AC 206, Lord Atkin stated that: “In England, amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.”

<sup>39</sup>Greater Kashmir, <http://www.greaterkashmir.com/news/2006/Apr/5/-situation-under-control--22.asp>, 5 April 2006.

judges has also been viewed as politically motivated and inimical to their independent functioning. For example, Justice Bilal Nazki was transferred out of the High Court of Jammu and Kashmir soon after he passed strong orders in the case of the 1996 killing of advocate Jaleel Andrabi<sup>40</sup>. A further criticism against the higher judiciary has been that some judges have remained mindful of their confirmation as permanent judges or of their post-retirement benefits while dealing with the State. The judiciary has therefore allowed itself to be undermined by the power and will of the executive. Another criticism against the High Court has been that judges have failed to assert themselves when the State is found violating the law. For example, judges have not imposed penalties on detaining authorities who have disregarded court orders. On 19 March 1999, the Government of Jammu and Kashmir Home Department, sent a fax message to the Superintendent, Central Jail, Srinagar [No: HOME/DETT/GEN/M/98/J], with a direction that High Court orders quashing detentions under the PSA were not to be implemented, i.e. detenus were not to be released, unless permission was granted by the Home department and the Criminal Investigations Department [CID]. On this issue being litigated before the High Court [Original Writ Petition (OWP) 362/1999], the Government of Jammu and Kashmir withdrew the fax message. Despite such a flagrant disregard of the High Court, on 13 August 1999, it merely noted that the withdrawal of the fax message was the end of the matter. No penalties were issued and no censure was made to the State thereby perpetuating violations.

### **State Human Rights Commission**

The judicial processes in Jammu and Kashmir, particularly the State Human Rights Commission [SHRC], have exhibited a strong inclination to simply grant compensation instead of effectively investigating and prosecuting human rights violations. While the victims and/or their families have not always received these benefits, the SHRC in particular has often focused on granting ex-gratia government relief [Annexure 23] or compassionate employment under SRO-43 [Statutory Rules and Orders] [Annexure 24]. Notwithstanding the value of both these benefits to victims and/or their families, it is unfortunate that the judicial processes have not demonstrated a similar willingness to provide true justice i.e. bringing the perpetrators to book.

### **Supreme Court of India**

The human rights story of Jammu and Kashmir, as evidenced in this report, must be seen in the larger context of the role of the Indian State and its functionaries in Jammu and Kashmir. While this report restricts itself to an analysis of specific cases, they must be understood to have occurred within an occupation by the Indian State and its functionaries against a struggle for self-determination. International Criminal Law has evolved over time and understands that in certain circumstances, crimes such as murder, rape, torture etc must be considered as Genocide, Crimes against Humanity or War Crimes. It is within this larger context of the role of the Indian State in Jammu and Kashmir that one may also analyze the manner in which the apex court in India, the Supreme Court, has dealt with Jammu and Kashmir related human rights matters.

From the more recent *Pathribal* fake encounter judgment to the *Masooda Parveen*<sup>41</sup> case, the Supreme Court has appeared to have actively aided, through its rulings, the impunity for armed forces in Jammu and Kashmir. In the *Masooda Parveencase*, the petitioner's husband, Ghulam Mohi-ud-Din Regoo was abducted on 1 February 1998 by the armed forces and his mutilated dead body was found on 3 February 1998. He was termed as a Pakistani trained militant, while the petitioner claimed Regoo was not a militant and was in fact a practicing advocate of the High Court of Jammu and Kashmir. The Supreme Court judgment is riddled with inconsistencies and an unwillingness to appreciate the militarized reality of Jammu and Kashmir or even the basic facts of the case<sup>42</sup>. In the absence of any substantiating evidence, and in face of credible evidence to the contrary, the Supreme Court accepted the version of the police and the armed forces that the victim was a militant, and therefore dismissed the petition without ordering any further investigations into the prima facie illegal manner in which the victim had been abducted and killed. Further, the Human Rights cell of the army had denied the petitioner compensation as it would demoralize the armed forces who considered the victim a militant. This language on the "morale" of the armed forces, which trumps any question of human rights, is clearly a defining concern of the army, as is seen in the responses to the RTI applications filed by the IPTK, as detailed above.

### **Introducing the "Alleged Perpetrators" report**

It is in this context that the present report has been prepared. The conflict in Jammu and Kashmir from 1989 to the present has been documented and debated on numerous occasions. More specific discussions on issues of impunity have also been undertaken by international groups, such as the 11 September 2006 Human Rights Watch report and the more recent 21 March 2011 Amnesty International report<sup>43</sup>. These reports by focusing on the state of human rights in Jammu and Kashmir, the role of laws such as AFSPA and PSA and instances of massacres and killings that have not been either appropriately investigated or prosecuted, have drawn attention to a culture of impunity. Therefore, the focus has been on the conflict in general, specific extraordinary legislations, specific killings, enforced disappearances, other violations, militarization, mass graves and issues relating to a state of impunity.

A reading of the reportage thus far reveals that in general, barring occasional instances, limited importance has been placed on the identities of the individual alleged perpetrators of the violence. References are frequently made to the role of the armed forces. But, names of specific alleged perpetrators are only occasionally mentioned. State violence is thus viewed as an impersonal and generalized phenomenon, within which individual acts of violence lose their particularity, and becoming merely representative of a larger context. This report differs from this approach in turning the focus to the identities of individuals and providing detailed information pointing to their involvement in specific acts of violence. Therefore, rather than refer to, for example, the RR, *names and ranks* of officers are mentioned. This stems from the understanding that despite a culture of impunity that exonerates perpetrators, it is individuals who commit violations, and they must first and foremost bear responsibility for

<sup>40</sup> Indian Express, <http://www.indianexpress.com/news/army-and-govt-did-nothing-says-judge-who-ordered-avtar-s-arrest/960849/0>, 12 June 2012.

<sup>41</sup> *Masooda Parveen v. Union of India & Ors.*, (2007) 4 SCC 548.

<sup>42</sup> For a more detailed analysis of the case, see: *Missing in Action*, PCHR and PUDR, November 2007 [<http://www.pudr.org/sites/default/files/pdfs/masooda-1.pdf>].

<sup>43</sup> Human Rights Watch, *Everyone lives in fear: Patterns of impunity in Jammu and Kashmir*, 11 September 2006; Amnesty International, *A lawless law: Detentions under the Jammu and Kashmir Public Safety Act*, 21 March 2011.

their acts. By naming names the report seeks to pierce the veil of anonymity and secrecy, which are crucial to the existence of impunity. Only when the specificity of each act of violation is uncovered can institutions be stopped from providing the violators the general cover of impunity.

Under international criminal law, the concept of individual criminal responsibility is well established. From Nuremberg, to the United Nations ad hoc tribunals – the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia, to other tribunals and most recently the International Criminal Court [ICC], the focus of international law has gradually moved from laying the responsibility for crimes from the general – the State – to the individual<sup>44</sup>. This is not to suggest that the institutions and the State in general bear no responsibility. In fact, it is clear, particularly in Jammu and Kashmir, that it is the Indian State that fosters a climate of impunity. Further, as principles of command responsibility<sup>45</sup> have been elaborated and evolved under international criminal law, along with other principles of individual criminal responsibility, such as joint criminal enterprise<sup>46</sup>, it is clear that the physical perpetrators of crimes own only a certain part of the final responsibility. This is particularly true in the case of organized structures such as the armed forces – senior officers, and often the government, also bears responsibility. But, by focusing on individuals, the anonymity that protects the perpetrators of these crimes can be eroded. By naming alleged perpetrators specifically, the cover of the larger institution is no longer allowed to shield them, thereby allowing for greater transparency and accountability. To facilitate justice, the understanding of the specific is important to allow for a greater understanding of the general phenomenon.

By highlighting the human rights violations in the specific cases in this report, we seek to draw the attention of the international community, and its institutions, to the state of human rights in Jammu and Kashmir. While we remain mindful of the larger political critique of international law and the United Nations, it seeks to bring the atrocities to international attention particularly as no suitable mechanism exists domestically.

The cases in this report clearly highlight the ineffectual domestic remedies in India in relation to human rights related cases in Jammu and Kashmir. The report of the Committee on Draft National Policy on Criminal Justice, Ministry of Home Affairs, May 2007, notes that in light of the creation of the ICC: “Our criminal justice system must be able to give better justice than what any international court can possibly offer under prevailing circumstances”. This is a clear reference to Article 17 of the International Criminal Court Statute that considers intervention when the State in question is unwilling or unable to genuinely investigate or prosecute.

Reading the individual cases examined in this report, alongside judgments of the Indian Supreme Court, and other literature on the subject of human rights in Jammu and Kashmir, it is clear that there is an overwhelming unwillingness to genuinely investigate or prosecute the armed forces for human rights violations. There is on occasion a willingness to order compensatory relief, but not to bring the perpetrators to justice. Without adequate prosecution and the fixing of individual criminal responsibility, monetary compensation is at best a palliative and at worst a bribe to buy silence. More importantly, domestic processes of justice do not appear to have the capacity or willingness to consider violations within a conflict in light of the relevant international humanitarian law i.e. the Geneva Conventions, 1949 and the Additional Protocols, 1977, or international criminal law, as India has not legislated on crimes of Genocide, Crimes against Humanity and War Crimes.

Domestic Indian law does not even criminalize “Enforced Disappearance” or “Torture”. Non-criminalization of Torture and Enforced Disappearance means that the Indian law is unable to proceed against perpetrators of such crimes, and people do not have the legal means to prosecute the perpetrators of such crimes. In the case of Torture the extant law has set the high threshold of “grievous bodily injury” whereby there is also no legal deterrence against such crimes. This read together with the Supreme Court’s understanding of “good faith” brings out certain infirmities in the Indian law, which is unable to provide justice for victims of crimes committed by government forces. The unwillingness of the Indian State to address human rights issues in Jammu and Kashmir has been most recently displayed by the Government of Jammu and Kashmir Home Department submission on 13 August 2012 to the SHRC on action taken on the SHRC recommendations of 19 October 2011 regarding unmarked and mass graves in three districts of North Kashmir. This submission exhibits an unwillingness to correctly appreciate the concerns of its own State institution, the SHRC, and a purported inability to take any action. For example, on the question of conducting Deoxyribose Nucleic Acid [DNA] tests on the bodies in the graves, it is stated that with “only 15/16 recognized labs in the Government as well as in the Private Sector, in the entire country” a comprehensive process cannot be undertaken. Instead, a ludicrous and unique solution is put forward: a blood relation of the victim “should be in a position to indicate with fair amount of certainty the exact location of the graveyard and the grave which is now sought to be re-opened”. The unwillingness of the Indian State to critique itself therefore requires further attention from the international community. We are mindful of the manner in which the brutalities in Nagaland, Manipur, Assam<sup>47</sup> and Punjab<sup>48</sup> have been successfully brushed aside or dealt with by the Indian State. It is important that the victims of Jammu and Kashmir are not dealt with similarly.

### **A Note on Scope, Methodology and Sources**

In the context of a conflict that has spanned about 22 years we do not consider this report to be a definitive or exhaustive list of alleged perpetrators. It merely seeks to begin a process of accountability. The cases chosen are those where we have received information. In a State where, as elaborated above, state institutions – such as the police – have proven ineffective, a majority of cases of violations have not been

<sup>44</sup>See generally, Article 25, International Criminal Court Statute; Gerhard Werle, *Individual Criminal Responsibility in Article 25 ICC Statute*, Journal of International Criminal Justice 5 (2007), 953-975.

<sup>45</sup>See generally, Article 28, International Criminal Court Statute; *Prosecutor v. Delalic et al.*, Judgment, ICTY, Appeals Chamber, 20 February 2001, paras 186-199.

<sup>46</sup>See generally: *Prosecutor v. Tadic*, Judgment, ICTY, Appeals Chamber, 15 July 1999, paras 188-229.

<sup>47</sup>See: Times of India, 2 October 2012 which reports a public interest litigation filed in the Supreme Court on 1 October 2012 which claimed that 1528 fake encounters took place in Manipur since 1979. See also: the PUDR reports on Assam, Manipur and Nagaland which provide a wealth of information on what happens when governments order military suppression of a popular movement [<http://www.pudr.org/content/reports-year-wise>].

<sup>48</sup>See generally, Ram Narayan Kumar & Ors., *Reduced to Ashes, The Insurgency and Human Rights in Punjab*, Final Report: Volume One, South Asia Forum for Human Rights, May 2003.



investigated. Therefore, the names of alleged perpetrators in a majority of cases are unknown. Further, due to the extensive work carried out in North Kashmir and around Srinagar, a pre-dominance of cases contained in this report are from these areas.

It is also important to note that this report does not attempt to travel through the chain of command to establish the full list of all possible perpetrators who could be held responsible for specific crimes. Further investigations would be necessary to understand more comprehensively the role of superior authorities involved in these crimes. In general, only cases where names of alleged perpetrators exist have been included here. The purpose is to ensure transparency<sup>49</sup>.

The focus is squarely on indictments against the Indian State and its functionaries. Within an occupation where authorities disregard the rule of law and criminalize the populace on the basis of their political aspirations, it is vital to first and foremost hold the authorities accountable. We are not unmindful of its responsibility to highlight other human rights violations. But, the Indian State does not even recognize the rights of belligerents in a conflict. All such actions by belligerents are immediately labeled as “anti-national”. These issues stem from the fact that the Indian State does not acknowledge the existence of an international or non-international / internal armed conflict. Therefore, it is difficult to correctly investigate and appreciate such crimes.

This report, by and large, allows official documents to speak for themselves. The intention behind this choice was not to in anyway undermine the validity or significance of oral testimonies in speaking truth to power, but was seen as a way of confronting the State with facts that it itself would consider valid and beyond reproof. If official documents, produced by the State’s own functionaries and institutions tell the “Official Truth” the documents in this report repeatedly and conclusively certify the impossibility of justice in Jammu and Kashmir. The documents are of different types: FIRs, statements before police and /or magistrates, police final reports [closure reports or charge sheets], High Court petitions, objections, other documents forming a part of the court record such as compliance reports, status report, judicial enquiries, SHRC documents from complaints to objections, police submissions and final orders. Further, documents from other State sources and ministries such as the MHA, MOD and Government of Jammu and Kashmir have been considered where available and relevant. As far as possible, we sought to contact the victims/ their surviving family members and obtain signed statements regarding the circumstances under which killings or other violations were carried out. The families were also provided an opportunity to consent to the use of such information in this report. On occasion, particularly in widely reported cases, media reports have also been considered. Acknowledging that while the documentary and other sources unearthed by our investigation points to damning evidence, it is not the conclusive establishment of guilt by a court of law, we have chosen to refer to specific officers and others named as “alleged perpetrators”<sup>50</sup>.

To provide as authentic and relevant a report as possible, we submitted various queries under the RTI Act, 2009 to the Government of Jammu and Kashmir and under the RTI Act, 2005 to the Indian Government<sup>51</sup>. Further, in almost all the cases, information on every FIR number and High Court petition number referred to in the report has been sought under the RTI Act, 2009 from the concerned authorities.

During the two years of preparing this report we has faced and learnt from numerous challenges. Limited human and monetary resources were a major challenge. This impacted on the ability to carry out extensive fieldwork and individual interviews on every case reported. The RTI process, that greatly enriched its quality, was often a time consuming and frustrating one due to the frequent obfuscation by governmental authorities and their personnel.

A tabular summary provides an overview of the report. Chapter I specifically deals with cases where a strong and detailed indictment exists against the alleged perpetrators. Cases within each Chapter are listed chronologically.

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<sup>49</sup> For an example of a report that also names alleged perpetrators, *see generally*: PUCL/PUDR, *Who are the guilty?*, 2003 [<http://www.pucl.org/Topics/Religion-communalism/2003/who-are-guilty.htm>].

<sup>50</sup> In a majority of cases the names of the alleged perpetrators are listed. As far as possible, full names and accurate designations are provided. In some cases, incomplete information is provided, for example: only the designation of an officer.

<sup>51</sup> RTI’s were filed on the following areas, and no response has been received to date: information relating to all prosecutions against the police in Jammu and Kashmir from 1990 to 2011 and information relating to all “interrogation centres” in Jammu and Kashmir from 1989 to date was sought from the Government of Jammu and Kashmir and the Jammu and Kashmir Police. Information was sought from the Jammu and Kashmir Police on all encounters from 1989 to date in Jammu and Kashmir. Deficient information was provided. Information was sought from the Jammu and Kashmir Police on all FIR’s filed against the police and armed forces in Jammu and Kashmir between 1989 and 2012. No information was provided. The police stated that they could not provide the information as per Section 8(1) (a) of the RTI Act, 2009 that provides an exemption for information that would prejudicially affect the sovereignty and integrity of India or its other interests or as the information could lead to an incitement of an offence. But, in contrast, in a RTI seeking substantiation of a statement in the Jammu and Kashmir Assembly in 2012 that there had been 444 FIR’s filed against the police and armed forces over the last three years in Jammu and Kashmir, information, albeit deficient, was provided [Annexure 25]. Information was sought from the Government of Jammu and Kashmir on suspensions and terminations of the police and the armed forces in Jammu and Kashmir from 1989 to 2012 for human rights violations and fratricides. No information was provided. Similar applications were made to the MHA and MOD for the agencies working under them. In the case of the MHA, the IB stated that there had been suspensions or terminations for human rights violations. The CRPF stated that they were exempted from providing information under the RTI Act, 2005 except in cases of human rights or corruption matters but that in the instant case the exception would not be relevant for the information sought. In the case of the MOD, it was stated that there had been 24 terminations from 1994 to 2012 [including 12 for rape, 3 for molestation and 3 for “death”]. Further, information had been sought on all inquiries conducted on the orders of the High Court in Jammu and Kashmir. Limited, deficient, but useful information was provided.

**Tabular Summary: Cases / Information in the Report**

Total number of cases: 214

Total number of alleged perpetrators: 500

1. Distribution of Alleged Perpetrators – by Affiliation and Rank

Army 235	Para-military 123	J&K Police 111	Government backed militants/ associates 31	Total 500
Rashtriya Rifles 96	BSF 70			
Other 139	CRPF 34			
	Other 19			
Major General 2	Addl Director General 2	Director General 1		
Brigadier 3	Dy Inspector General 2	Inspector General 1		
Colonel 9	Commandant 12	Dy Inspector General 2		
Lt Colonel 3	2 <sup>nd</sup> In-command [2 I/C] 1	Senior SP 2		
Major 78	Dy Commandant 13	SP 3		
Captain 25	Asst Commandant 7	Addl SP 2		
Lieutenant 4		Dy SP 6		
Other ranks 111	Other ranks 86	Other ranks 94		

2. Information on crimes in the report [some cases are about multiple instances torture, enforced disappearance, extra-judicial killing and/or rape]

Information on	Extra-Judicial Killing	Enforced Disappearance	Torture	Rape
Crimes in the report	124	65	59	9

3. Case wise listing of crimes [Cases 59, 73, 84, 108, 117, 162, 169, 176, 179, 192, 194, 199 and 212 either relate to crimes not listed below or are not ascertained]

Case #	•Extra-judicial killing	ΔEnforced disappearance	Ω Torture	§ Rape
1		Δ		
2		Δ	Ω	
3		Δ		
4		Δ		
5	•			
6		Δ		
7		Δ	Ω	
8		Δ	Ω	
9		Δ		
10		Δ	Ω	
11		Δ		
12	•			
13	•			
14	•			
15	•			

16		Δ		
17		Δ		
18	•			
19	•		Ω	
20		Δ		
21	•			
22	•			
23		Δ		
24	•			
25		Δ	Ω	
26	•			
27	•		Ω	
28		Δ		
29		Δ		
30		Δ		
31		Δ		
32		Δ		
33		Δ		
34		Δ		
35	•		Ω	
36	•			§
37		Δ		
38	•		Ω	
39	•		Ω	
40	•			

41	•		Ω	
42				§
43		Δ		
44	•			
45		Δ		
46		Δ		
47	•			
48		Δ		
49	•			
50		Δ		
51	•			
52	•			
53		Δ		
54		Δ		
55	•			
56		Δ	Ω	
57			Ω	§
58	•			
59				
60	•			
61	•			
62	•			
63	•			
64		Δ		
65	•	Δ	Ω	
66		Δ		
67	•		Ω	
68		Δ	Ω	
69		Δ	Ω	
70		Δ		
71			Ω	
72	•			
73				
74		Δ		
75	•		Ω	
76	•			
77		Δ		
78	•		Ω	
79	•			
80		Δ		
81	•			
82	•			
83	•			
84				
85	•			
86	•			
87	•			
88	•		Ω	
89	•			
90	•		Ω	
91		Δ	Ω	
92		Δ		
93	•			
94			Ω	
95	•		Ω	
96	•			
97		Δ		
98				§
99		Δ	Ω	
100	•			
101		Δ		
102	•			
103			Ω	
104	•		Ω	
105	•			
106	•			
107	•		Ω	
108				
109	•			
110	•		Ω	
111	•			

112	•			
113	•			
114		Δ		
115	•		Ω	
116		Δ	Ω	
117				
118		Δ	Ω	
119		Δ		
120	•			
121	•		Ω	
122		Δ		§
123	•			
124	•			
125		Δ		
126		Δ		
127		Δ		
128		Δ		
129	•			
130	•			
131	•			
132				§
133		Δ		
134	•			
135		Δ		
136	•		Ω	
137		Δ	Ω	
138	•			
139		Δ		
140	•			
141	•		Ω	
142			Ω	§
143		Δ		
144	•			
145		Δ		
146				§
147	•			
148	•		Ω	
149		Δ		
150	•		Ω	
151		Δ	Ω	
152	•			
153	•		Ω	
154	•		Ω	
155	•			
156	•			
157	•		Ω	
158	•		Ω	
159	•			
160	•			
161	•			
162				
163			Ω	
164	•			
165	•			
166	•			
167	•		Ω	
168	•			
169				
170	•		Ω	
171		Δ		
172	•		Ω	
173	•			
174				§
175	•			
176				
177			Ω	
178	•		Ω	
179				
180	•		Ω	
181	•			
182	•			

183	•			
184	•		Ω	
185	•			
186	•			
187		Δ		
188		Δ		
189			Ω	
190	•			
191	•			
192				
193	•			
194				
195	•		Ω	
196	•			
197	•		Ω	
198	•			

199				
200	•			
201	•			
202	•			
203	•			
204	•			
205	•			
206	•			
207	•			
208	•			
209	•		Ω	
210	•			
211	•		Ω	
212				
213	•			
214	•		Ω	

## **CHAPTER I: PROFILES OF CASES AS INDICTMENTS**

### Case No. **1**

#### *Victim Details*

Mohammad Shafi Dar [Abduction and Enforced Disappearance]  
Age: 19  
Occupation: 12<sup>th</sup> Standard student  
Son of: Ghulam Mohammad Dar [deceased], Raja  
Resident of: Gulab Pora, Mahrajpora, Tengpora, Bypass Srinagar District [present address], previously resident of Lachmanpora, Danderkhah, Batamalo, Srinagar District

#### *Alleged perpetrators*

1. Major [Deputy Commandant] Chuhan, 141<sup>st</sup> Battalion Border Security Force [BSF], Camp Batamalo bus stand

#### *Allegations in Brief*

On the intervening night of 22 and 23 May 1990, Mohammad Shafi Dar was taken by personnel of the 141<sup>st</sup> Battalion BSF headed by Major Chuhan. The victim subsequently disappeared, though the family of the victim was informed that he died during the interrogation. The victim was taken to the Joint Interrogation Centre [JIC], Hariniwas where he was tortured. Another person, Aijaz Ahmad Bhat, also picked up with the victim, was also detained at the interrogation centre and confirmed the presence and torture of the victim to his family.

#### *Case Progress*

The Batamalo Police Station entered the details of the incident in the Daily Dairy report no.14, on 4 June 1990.

On 21 February 2003, the victims name figured in a list of 45 people cleared by the Government of Jammu and Kashmir for grant of relief in favour of next of kins of missing persons. However, his brother Nisar Ahmad Dar was informed by one of the officials at Deputy Commissioner, Srinagar's office that the file has been closed. The official could not provide any reasons.

The victim's family approached the State Human Rights Commission [SHRC] on 26 March 2003. The SHRC issued a decision on 20 November 2007 indicting Major Chuhan, directing that a case be registered and recommending that relief of Rs. 2,00,000 be paid to the family of the victim and compassionate employment under SRO-43 [Statutory Rules and Orders] also be provided.

Over the inaction on implementation of this decision of the SHRC, the family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 311/2009]<sup>52</sup>. The BSF stated before the High Court that while the victim, and Aijaz Ahmad Bhat, were arrested by the BSF [but the date of the event is placed as 23 and 24 May 1990], they were handed over to the JIC, Hariniwas and the BSF received no further information regarding the two persons. The Government of Jammu and Kashmir and Jammu and Kashmir Police submitted before the High Court that First Information Report [FIR] no. 87/2008 u/s 364 [Kidnapping

<sup>52</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided but the present status of the petition is unknown.

/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Batamalo Police Station<sup>53</sup>.

Further, it was submitted that the SHRC was a recommendatory body and therefore the benefits recommended could only be actioned following the ascertainment of the cause behind the disappearance of the victim. Based on the filing of the FIR, the BSF and the SHRC were deleted as parties from the proceedings, vide an order dated 11 February 2010.

The family of the victim gave a statement to us on 27 February 2012.

#### *Case Analysis*

Based on the representations of the BSF before the High Court, the arrest of the victim by the BSF, and subsequent transfer to the JIC is established.

The SHRC sought a report from the Inspector General of Police [IGP], Kashmir who furnished a report on 11 March 2004. The police report confirms the lifting of the victim by the 141<sup>st</sup> Battalion BSF on 22 and 23 May 1990 but also states that the victim was working with the Al-Jehad outfit at the time. The family of the victim contended that the victim was lifted by the 141<sup>st</sup> Battalion BSF headed by "Major Chaun" [the spelling of the alleged perpetrator is as stated in the SHRC judgment]. The SHRC heard witness testimony. Witness Shabir Ahmad Dar, a cousin of the victim, stated that the victim and Aijaz Ahmad were picked up in the year 1990 by the BSF. The witness also stated that the victim was not involved in any subversive activity nor affiliated with any militant outfit. The mother of the victim also confirmed that her son was not involved in any militancy. The SHRC stated that: "merely alleging that the subject was working with Al-Jehad will not suffice to establish that the victim was indulging in militancy. However even if it is assumed that the subject was working for Al-Jehad outfit, it is admitted by the police that he was lifted by the BSF 141 Battalion headed by Commanding Officer Mr. Chaun. Even the criminals or the detainees have human rights and they are not deprived from these rights...no right has been given to the police or army to arrest a person on suspicion and kill him during the interrogation. This will be no justification for the BSF to do away with the victim. Victim should have been produced before the court of law, after being charged and challaned under law. This shows that the army and the police forces have utterly failed not only to protect the life of the victim but the apprehension of the complainant seems to be correct that during the custody her son had been killed. This is a gross human rights violation committed by the BSF personnel; it is being done by them because there **is no accountability of such forces**" [emphasis by the SHRC]. Consequently, the SHRC recommended that a case be registered against Mr. Chaun and recommended relief and SRO-43 benefits to the family of the victim.

The SHRC indictment of both the police and the army is usefully placed in the larger context of a lack of accountability. But, a criticism of the SHRC decision would be that it fails to delve deeper into the issue of where **exactly** the victim may have died. The family of the victim and Aijaz Ahmad Bhat accept that the victim was transferred to the Joint Interrogation Centre. Therefore, technically, the BSF, and Major Chuhan could well claim that no liability attaches to them. Nonetheless, what is beyond doubt is the death of the victim, and the BSF and the police would certainly be answerable to any investigations that would be carried out.

<sup>53</sup> Information on this FIR was sought through RTI on 5 May 2012. A copy of the FIR was provided by the Jammu and Kashmir Police.

Further, it is unfortunate that despite a decision from the SHRC, the family of the victim is yet to receive any relief/compensation.

It is noteworthy that it took the Jammu and Kashmir Police 18 years to file a FIR in the case and to date it appears no progress has been made in the case. We sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, we sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 2

### *Victim Details*

1. Fayaz Ahmad Shalla [Abduction and Enforced Disappearance]  
Occupation: Shawl hawker and feather dealer [in Nepal]  
Son of: Mohammad Ismaiel Shalla  
Resident of: Qazi Masjid, Habakadal, Srinagar
2. Bashir Ahmad Shalla [Torture leading to death]  
Son of: Mohammad Ismaiel Shalla  
Resident of: Qazi Masjid, Habakadal, Srinagar

### *Alleged perpetrators*

1. Personnel, 67<sup>th</sup> Battalion Central Reserve Police Force [CRPF], A Company

### *Allegations in Brief*

Fayaz Ahmad Shalla was picked up by CRPF personnel on 16 July 1990 and was taken to his residence. Subsequent to that he was taken to an unknown destination and then brought back to his house for a search at 9:30 pm. Nothing was recovered at his residence. The family of the victim state that the victim was in a terrible condition. During the second raid, the brother of the victim, Bashir Ahmad Shalla, was picked up and tortured at Hariniwas Interrogation Centre. He was subsequently released [but due to the torture he died later on]. Subsequent to that Fayaz Ahmad Shalla disappeared. The Deputy Inspector General of Police [DIG], Criminal Investigations Department [CID], Counter Insurgency Kashmir [CIK], Jaswant Singh informed the family that Fayaz Ahmad Shalla was in the Joint Interrogation Centre. Further, the Deputy Commissioner, Srinagar and Wajahat Habibullah, Divisional Commissioner, Srinagar, confirmed to the family of the victim that he was a militant and could not be released.

The family of Fayaz Ahmad Shalla gave a statement to us on 10 March 2012.

### *Case Progress*

The family of Fayaz Ahmad Shalla filed a petition [habeas corpus petition, HCP 346/1991] before the High Court of Jammu and Kashmir. On 15 April 1991 the High Court ordered that an interview be arranged between Fayaz Ahmad Shalla and his family and lawyer. As per the family, they were not allowed to avail of this order and meet with Fayaz Ahmad Shalla. On 20 May 1992, the Jammu and Kashmir Home Ministry submitted before the Court that the victim had not been picked up by “any of the security forces party in the valley”. The High Court appointed the District and Sessions Judge, Srinagar on 30 March 1995 as an enquiry officer, and a report was

submitted on 12 May 1998 that confirmed that the victim was lifted by the CRPF on 16 July 1990 by CRPF personnel at Fateh Kadal, detained at the CRPF Camp, Fateh Kadal and then taken to the Interrogation Centre known as Papa-II [Fair View Guest House] and then the Interrogation Centre at Hariniwas, and the victim’s whereabouts are not known subsequent to that. Following this, the High Court, on 15 December 1998, ordered that a case be registered and investigations carried out.

A contempt petition [no. 1/2001] was filed on 22 February 2001, a little less than two and a half years later, against the non-filing of the FIR. Subsequently, FIR no. 88/2001 u/s 364 [Kidnapping /Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Maharaj Gunj [S. R. Gunj] Police Station, which places the date of the incident on 15 July 1990 and states that Fayaz Ahmad Shalla was arrested along with Tanveer Ahmad Dhobi<sup>54</sup>. They were detained at CRPF camp at Fateh Kadal and then sent to Papa-II Interrogation Centre. The victim disappeared.

In 1999, the family of Fayaz Ahmad Shalla filed another petition [Original Writ Petition (OWP) 199/1999] before the High Court for compensation of Rs. 10,00,000 for the killing of the victim. As per records submitted before the High Court, the investigation in the case was closed by declaring the perpetrators as untraced on 17 November 2001, but reopened on 18 July 2007. A status report of April 2009 before the High Court from the Jammu and Kashmir Police indicates that the particulars of the CRPF personnel involved are yet to be ascertained, and the forces in control of the interrogation centres has also not been ascertained. But, a compliance report filed by the police authorities in August 2011 suggests that four sections of the CRPF 67<sup>th</sup> Battalion, A Company were deployed at New Fateh Kadal for static picket duty between 20 December 1989 and 19 June 1991. The compliance report also states that in the year 1990-1993 the “ITBP [Indo Tibetan Border Police] force was deployed for guard duty in JIC instead of CRPF”. The CRPF, in their affidavit of 28 September 2011 confirms the compliance report to the extent that the 67<sup>th</sup> Battalion, A Company was deployed at New Fateh Kadal at the relevant time but states that the nominal roll of personnel deployed at Fateh Kadal on 15 July 1990 can no longer be traced. The CRPF, in its initial response before the High Court in 2000, denies any control over the interrogation centres and any role in the arrest of the victim. The police and the Government of Jammu and Kashmir state that they have no responsibility in the instant case and deny playing any role in the incident.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Only information on OWP 199/1999 was provided.

The family of Fayaz Ahmad Shalla approached the State Human Rights Commission [SHRC] on 2 May 2001, and a decision was delivered on 25 March 2003 where ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. Further, the decision confirms the disappearance of Fayaz Ahmad Shalla. The family of Fayaz Ahmad Shalla received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

An enquiry by the District Magistrate, Srinagar, was constituted on 7 January 2003 to enquire into the incident as well.

<sup>54</sup> Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

## Case Analysis

As a preliminary point, the actions of the Jammu and Kashmir Police and the Government of Jammu and Kashmir would seem highly unsatisfactory in the instant case. First, the initial position of the government that no armed forces were involved in the incident was proved incorrect by the judicial enquiry report of 12 May 1998 and the SHRC decision of 25 March 2003 as will be seen below. Second, it appears to have taken the police authorities close to two and a half years to file a FIR despite the High Court ruling to that effect. Third, while the investigation was closed by declaring the perpetrators as untraced in 2001, no closure report was filed before the appropriate judicial authority until 2007 when the investigation was reopened. It appears from the order of the SSP, Srinagar, dated 18 July 2007, that the police was also mindful of this negligence as this order not only reopens the investigation but also orders a formal enquiry into the issue.

Before considering the findings of the judicial enquiry report of 12 May 1998 and the SHRC decision of 25 March 2003 [the results of the enquiry conducted by the District Magistrate, Srinagar are not available with the IPTK], the compliance report filed by the police before the High Court in August 2011 appears to implicate the four sections of the CRPF 67<sup>th</sup> Battalion, A Company which were deployed at New Fateh Kadal for static picket duty between 20 December 1989 and 19 June 1991. The presence of this battalion of the CRPF at the location during this period of time is not disputed by the CRPF before the High Court either, though the CRPF does suggest that no records of the “nominal roll of personnel” deployed at Fateh Kadal on 15 July 1990 are available as the case is twenty years old.

The judicial enquiry report was submitted on 12 May 1998. The testimony of Ikhtlaq Bashir Shalla, the cousin of Fayaz Ahmad Shalla, was recorded and was keeping in line with the allegations of the family. The witness was not cross-examined. Other witnesses also testified to the same sequence of events. Of most interest is the testimony of witness Abdul Aziz Rather who testified that he had met Fayaz Ahmad Shalla in the interrogation centre known as Papa-II and that he was told that the victim would be released very soon. Another witness, Ali Mohammad Bhat, also testified to meeting Fayaz Ahmad Shalla at the same interrogation centre. Both witnesses were cross-examined, but not on this particular piece of evidence. Witness Tanveer Ahmad Dhobi testified that he had himself been at the detention cell at Hariniwas interrogation centre and had met Fayaz Ahmad Shalla there, but that on the next day the victim was taken away from that centre. Tanveer Ahmad Dhobi was in fact lifted at the same time and in the same circumstances as the victim by the CRPF. The judicial enquiry report therefore concludes that the victim was lifted by the CRPF, taken first to Hariniwas interrogation centre and then subsequently to the Papa-II detention centre. The judicial enquiry reached this conclusion by stating that “no doubt lurks in the mind of this court” and that the conclusions were “irresistible”.

Two additional comments may be made on the judicial enquiry report. Both the family, and consequently the judicial enquiry report, place this incident on 16 July 1990, whereas the High Court [and the SHRC] in its proceedings place this incident on 15 July 1990. It is unclear where the difference may have arisen from, but it does not damage the findings of the judicial enquiry report in any manner. Further, the response of the CRPF before the High Court in 2000 on the findings in the judicial enquiry report of 12 May 1998 is curious. The CRPF denies any role in the incident based purely on the fact that the judicial enquiry report failed to identify the unit of the CRPF involved and the registration number of the vehicle in which the victim was carried.

The SHRC based its decision on reports submitted by the Inspector General of Police [IGP], Kashmir Zone, Srinagar which confirmed that Fayaz Ahmad Shalla was lifted by the CRPF on 15 July 1990 and disappeared. The SHRC presumes the death of the victim and states that “missing person was neither himself a militant nor he had got any link with any militant outfit as there is no mention about this aspect in the above police report”.

Therefore, in addition to the negligence of the police and State, and the culpability of the CRPF, culpability may also be attracted by other forces as the victim appears to be at different points in the Hariniwas interrogation centre and Papa-II. The question then arises on who had control over these centres.

The compliance report on investigations filed by the police authorities before the High Court in August 2011, suggests that in the year 1990-1993 “ITBP force was deployed for guard duty in JIC instead of CRPF”. One may add to this the role of officers such as DIG, CID, CIK Jaswant Singh, who according to the family, had knowledge of the whereabouts of the victim at some stage.

The role of the alleged perpetrator is based on unverified information that can only be clarified based on fair and thorough investigations.

Despite the passage of 22 years no progress appears to have taken place in the investigations.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 3

### Victim Details

Malik Nissar Ahmad Shah [Abduction and Enforced Disappearance]  
Son of: Malik Ghulam Rasool Shah  
Resident of: Verinag, Anantnag District

### Alleged perpetrators

1. Sub-Inspector [SI] Devi Dutt, 53<sup>rd</sup> Battalion Central Reserve Police Force [CRPF]

### Allegations in Brief

On 20 July 1990 Malik Nissar Ahmad Shah was picked up by SI Devi Dutt of 53<sup>rd</sup> Battalion CRPF, handed over to the 19<sup>th</sup> Battalion CRPF, Bijbehara, tortured and has disappeared since.

### Case Progress

First Information Report [FIR] no.112/1990 u/s 451 [House trespass] and 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Dooru Police Station on 22 November 1990.

The family of the Malik Nissar Ahmad Shah filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) no. 867/1991].

The family of Malik Nissar Ahmad Shah filed another petition before the High Court [habeas corpus petition, HC 535/1991]<sup>55</sup>. In response the Director General of Police [DGP], Jammu and Kashmir filed an affidavit stating that till date the whereabouts of Malik Nissar Ahmad could not be ascertained. The CRPF denied the arrest of the victim, and this was supported by an affidavit by the Station House Officer [SHO], Dooru Police Station. On 7 March 1995 the High Court ordered an enquiry which was conducted by the Sessions Judge, Anantnag. The petition was disposed off on 7 March 1995. The enquiry report was concluded on 3 October 2002. No objections were filed to the conclusions of the judicial enquiry. On 2 September 2003, the High Court that a FIR be filed at the Verinag Police Station.

#### *Case Analysis*

The enquiry report remains the only document on record for the purposes of analysis. But, prior to analyzing the enquiry report, a preliminary comment may be made on the rationale of the High Court disposing off the petition without waiting for the enquiry report. As per usual practice, the High Court should have awaited the submission of the enquiry report and then passed suitable directions. This is notwithstanding that the High Court subsequently did consider the judicial enquiry in its second disposal order of 2 September 2003. Further, it is unfortunate that a petition filed in 1991 reached conclusion only in 2003. Finally, it is particularly striking that despite the passage of 12 years the only relief the High Court could offer was the filing of a second FIR.

The enquiry judge issued notices to the respondents and the Public Prosecutor and the Chief Prosecuting Officer appeared on their behalf. According to the enquiry report, they filed objections and associated with the proceedings for a “pretty long period” during which time the petitioner produced and examined witnesses. On 1 February 1999 the Director General, CRPF and the Commandants of the 19<sup>th</sup> and 53<sup>rd</sup> Battalions were issued fresh notices to appear and file their statement of facts. Consequently, the Standing Counsel for the Union of India appeared, sought adjournments, but did not file any submissions. On 12 February 2002 no further opportunities were given. The Public Prosecutor, on behalf of Criminal Investigation Department [CID], Counter Insurgency Kashmir [CIK], Srinagar, on 15 May 2000, submitted that the victim had not been arrested by CIK. The petitioner and/or her counsel appeared before the enquiry only initially.

Unfortunately, one page of the enquiry report is not with the IPTK, but nonetheless, a summary of the relevant witness testimony is provided below:

- Ghulam Nabi Sheikh, stated that the victim was arrested from his shop, along with another shopkeeper Nazir Ahmad Sofi. Nazir Ahmad Sofi was released subsequently but the victim was shifted to the Bijbehara camp and subsequently his whereabouts were not known. On cross-examination, the witness confirmed that the arrest was executed by SI Devi Dutt in his presence.
- A witness whose testimony begins on page 3 of the enquiry report [the missing page] but continues on page 4 states that Nazir Ahmad Sofi was released after six months but the victim

was not. On cross-examination, the witness states that the arrest was executed by SI Devi Dutt.

- Malik Ghulam Rasool, the father of the victim, testified that at 9:00 am on 20.7.1990 the victim was arrested from his shop at Verinag by CRPF personnel and taken to the “Forces Camp”. Afterwards, his whereabouts were not disclosed. In January 1998 two police personnel came to his residence and informed him that the victim was detained “in some jail”. The witness was not informed of the specific jail at which the victim was detained. Despite efforts the witness could not find his son.
- Bashir Ahmad Shah, testified to the arrest of the victim at the Verinag market by CRPF personnel and his subsequent disappearance.

The enquiry notes that the petitioner [Aisha, the mother of the victim] also testified about the arrest of her son and even named the officer responsible. The enquiry report notes that the testimony of the witnesses was not damaged on cross-examination. The enquiry report therefore concludes in favour of the petitioner and confirms the arrest of the victim on 20 July 1990 by the 53<sup>rd</sup> Battalion of the CRPF in Verinag and that the whereabouts of the victim are unknown.

Therefore, the judicial process took 11 years to confirm the abduction and disappearance of the victim and indict the individual battalion without fixing specific culpability on SI Devi Dutt. Despite having evidence on record against SI Devi Dutt, the Sessions Judge, Anantnag, failed in fully discharging his duty on recording the entirety of the case. The delayed enquiry report apparently did not result in any further action or prosecution as this case finds no mention in the official documents related to cases sent by the Jammu and Kashmir Government for acquiring prosecution sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

The conduct of the High Court with regard to the disposal of the case seven years before the conclusion of the judicial enquiry is an indicator of the non-application of the mind. Further, the weak relief finally ordered, of a second FIR to be filed, and the delayed manner in which the entire case was handled effectively provided for the institutional delay of justice which strengthens impunity.

## Case No. 4

#### *Victim Details*

Mohammad Maqbool Bhat [Abduction and Enforced Disappearance]  
Son of: Habibullah Bhat  
Resident of: Gangbugh, Srinagar

#### *Alleged perpetrators*

1. Central Reserve Police Force [CRPF] personnel at Hariniwas Interrogation Centre
2. Deputy Inspector General [DIG] Jaswant Singh, Central Reserve Police Force [CRPF]

#### *Allegations in Brief*

On 21 July 1990 Mohammad Maqbool Bhat was abducted by the CRPF personnel and his whereabouts are not known to date. The victim was arrested with a person named Naseer Ahmad Dar, who was subsequently released and confirmed the abduction of the victim.

<sup>55</sup> Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.



### Case Progress

A petition was filed before the High Court [habeas corpus petition, HCP 541/1990] seeking directions regarding the whereabouts of the victim. On 12 November 1996 a direction was given for a FIR to be filed u/s 364 [Kidnapping/Abducting to murder] and 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] to be investigated by the Deputy Inspector General [DIG] Kashmir, Srinagar and progress reports were to be submitted to the court. Further, an enquiry was ordered which was conducted by the District and Sessions Judge, Srinagar. On 27 July 2004, following the conclusion of the enquiry, the High Court directed the Station House Officer [SHO] of Batamaloo Police Station to register an FIR, and conduct investigations.

The judicial enquiry noted that the counsel for the respondents appeared on 18 June 1997. But, an order of the enquiry of 27 September 1997 shows that the counsel for the respondents did not acknowledge the summons subsequently and avoided the summons and asked some “B.S.F. man” to receive the summons. The petitioner produced witnesses, and the evidence is summarized below:

- Habibullah Bhat, the petitioner, stated that he was sitting in his compound on 21 July 1990 and five gypsies [vehicles] were boarded by CRPF personnel and his son was with them. They entered the cow shed but nothing was recovered from there. The CRPF personnel told the witness that the victim would be released soon. The witness also stated that he found the victim at Hariniwas Interrogation Centre in the custody of CRPF personnel and DIG Jaswant Singh informed him that the victim would be let out soon. The witness went there and again to DIG Jaswant Singh who finally told him that the victim had been shifted to Jammu and “uptill now he does not know where Mohammad Maqbool is”. The witness was not cross-examined, although the counsel for respondents 1 to 3 was present [it is unclear who specifically these three respondents were].
- The testimonies of Ghulam Mohammad Dar, Abdul Rashid, Ali Mohammad Dar, Ghulam Mohammad Bhat and Abdullah Dar were summarized and confirmed the abduction.

Based on the above evidence the enquiry report found that there was an “irresistible presumption” that the victim was abducted by CRPF personnel on 21 July 1990.

A Letter Patent Appeal [LPA no. 121/1999] was also filed regarding the payment of compensation that was ordered in the same matter on 15 October 1998. The issue was whether the Government of Jammu and Kashmir or Central Government were to make the payment. On 10 September 2001 the Government of Jammu and Kashmir was ordered to make the payment of Rs. 50,000.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

### Case Analysis

The judicial enquiry constituted by the High Court has not been very thorough as it only confirms the crime by the CRPF without fixing the responsibility on the actual perpetrators. Given the knowledge DIG Jaswant Singh had of the victim’s custody it remains unclear why the judicial enquiry did not specifically indict him.

The police have failed in the instant case to perform their duty as they did not file the FIR on their own. Further, following the High

Court order of 12 November 1996 no FIR was filed. The 27 July 2004 order of the High Court directing the police to once again file the FIR suggests the High Court was kept uninformed of any progress from 1996 onwards. This order that comes without strictures against the police only confirms the fears that the police and the armed forces contemptuously disregard institutions of justice in Jammu and Kashmir.

Based on the available official Government documents, this case does not find a mention in the list of cases sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] thereby suggesting that investigations, if any conducted, never reached the stage of prosecution in 22 years. Further, it appears that the Ministry of Home Affairs has taken no action in this case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Ironically, while the petition remains alive after 22 years, the petitioner has died waiting for the institutions of justice to deliver.

## Case No. 5

### Victim Details

Mushtaq Ahmad Hajam [Extra-Judicial Killing]

Age: 23

Occupation: Government employee, Handicrafts Department

Son of: Ghulam Nabi Hajam [deceased]<sup>56</sup>

Resident of: Malik Sahib, Nowhatta, Srinagar, Presently resident of West Gate, Jamia Masjid [Yehya gate], Nowhatta, Srinagar

### Alleged perpetrators

1. Constable G. Ram Naik Lal, 2<sup>nd</sup> Battalion Central Reserve Police Force [CRPF], D Company

### Allegations in Brief

On 17 August 1990, Mushtaq Ahmad Hajam was returning from his evening prayers, when personnel of the CRPF fired upon him. At the point that it happened, the family of the victim heard one gunshot. Another person, Abdul Rehman, aged 80, who was walking along with Mushtaq Ahmad Hajam at the time of the incident told the family that Mushtaq Ahmad Hajam after being stopped and while trying to show his identity card to the CRPF personnel was shot on the front part of his head, thereby discounting any chance of him being shot while he was being chased. The family of Mushtaq Ahmad Hajam was subsequently informed by both the police and the CRPF that Constable Ram Naik Lal had shot the victim. Mushtaq Ahmad Hajam had not been involved in any militancy related activities.

<sup>56</sup> The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 that the name of the father of the victim was Mohammad Sultan. The family states that this is incorrect information.

In 1997/1998, the brother of Mushtaq Ahmad Hajam was called to meet a CRPF officer at Barzulla Camp who assured him that Constable G. Ram Naik Lal would not be released. Further, the brother of Mushtaq Ahmad Hajam signed, after being asked to, on blank papers.

The family of Mushtaq Ahmad Hajam received Rs. 1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

#### *Case Progress*

First Information Report [FIR] no. 63/1990 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at Nowhatta Police Station on 17 August 1990<sup>57</sup>. The 21 December 2011 Jammu and Kashmir Police communication stated that the case was closed by declaring the perpetrators as untraced on 26 February 2011. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the case diary in this matter was provided.

The case diary states that the Government of Jammu and Kashmir sent the case to the Ministry of Home Affairs for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] on 13 March 1996. Sanction for prosecution was declined by the Ministry of Home Affairs on 14 September 2000. The case diary reproduces the text of the denial of sanction.

The Ministry of Home Affairs states that Constable G. Ram Naik Lal was carrying out his patrolling duties when he found Mushtaq Ahmad Hajam moving in suspicious circumstances. On being challenged Mushtaq Ahmad Hajam hastened his movements in the darkness. Constable G. Ram Naik Lal fired one round at Mushtaq Ahmad Hajam and he died.

A Court of Inquiry was constituted by the CRPF in February 1991 which found Constable G. Ram Naik Lal to be not guilty of the crime based purely on the testimony of CRPF personnel. Meanwhile, Jammu and Kashmir Police investigations found Constable G. Ram Naik Lal to be guilty based on the statements of civilian witnesses. Accordingly, the Government of Jammu and Kashmir sought sanction for prosecution under AFSPA from the Ministry of Home Affairs.

Following this request, a fresh Court of Inquiry was constituted in September 1996. One civilian witness was examined. The Court of Inquiry once again found Constable G. Ram Naik Lal to be not guilty of the crime as the CRPF personnel had been briefed that if a person did not halt on being ordered to, action was to be taken depending on the situation. As Mushtaq Ahmad Hajam hastened his movements on being ordered to stop, Constable G. Ram Naik Lal “was left with no other alternative but to fire. Considering the situation that prevailed in J&K [Jammu and Kashmir] during that period the Constable cannot be blamed. He was discharging his bonafide duties when the curfew was clamped and it has to be enforced. The very fact that he fired only one round shows that his response was not excessive and that there was no over-reaction on his part.”

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

<sup>57</sup> Information on this FIR was sought through RTI on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

The family of Mushtaq Ahmad Hajam gave a statement to the IPTK on 7 March 2012.

#### *Case Analysis*

It is uncertain why the Government of Jammu and Kashmir and Jammu and Kashmir Police took six years to send the case file to the Ministry of Home Affairs for seeking sanction for prosecution under AFSPA. That too when according to the Ministry of Home Affairs the CRPF had already concluded their Court of Inquiry which exonerated the alleged perpetrator.

After the sanction was declined on 14 September 2000, it is unclear why the Government of Jammu and Kashmir did not agitate the matter further either in the court or with the Ministry of Home Affairs. Instead, the Government of Jammu and Kashmir chose to sit on the case for a further 11 years only to ultimately close the case by declaring the perpetrators untraced despite there being no dispute, including from the Ministry of Home Affairs, on the fact that Constable G. Ram Naik Lal shot Mushtaq Ahmad Hajam dead. The contestation of the Ministry of the Home Affairs is on the circumstances of the killing, which could have been further investigated and clarified to the Ministry of Home Affairs. Finally, investigations need to be conducted on what documents the brother of Mushtaq Ahmad Hajam provided his signature.

The rationale for the decline of sanction by the Ministry of Home Affairs is another example of the complete disregard for the rule of law by the armed forces in Jammu and Kashmir. In the given circumstances, Constable G. Ram Naik Lal had the clear alternative of pursuing Mushtaq Ahmad Hajam as opposed to opening fire upon him. Further, rather than shoot to kill, Constable G. Ram Naik Lal could have shot Mushtaq Ahmad Hajam, as per the standard operating procedures, below the waist. Under the guise of the “situation that prevailed in Jammu and Kashmir”, the Ministry of Home Affairs has condoned the cold blooded murder of an innocent person. Finally, both the Government of Jammu and Kashmir and the Ministry of Home Affairs should have made reference to the medical records in this case as the family of Mushtaq Ahmad Hajam contend that he was shot on the front part of the head. If true, the entire theory of the victim running away from Constable G. Ram Naik Lal would break down.

This case also provides a glimpse into the workings of the systems of justice of the armed forces. The initial Court of Inquiry by the CRPF acquitted Constable G. Ram Naik Lal presumably based on the testimony of potential co-perpetrators who accompanied him during the incident and did not hear the testimony of a single independent, impartial civilian witness. On conducting a fresh Court of Inquiry, it was considered appropriate to only hear the testimony of one civilian witness. No information was provided on what this civilian witness testified to. The instant case serves as an example to understand the processes of Court of Inquiries conducted by the armed forces and the process of determination of the grant/denial of prosecution sanction under AFSPA. This act of declining sanction and justifying the extra-judicial killing of Mushtaq Ahmad Hajam is a moral and political indictment of the Ministry of Home Affairs.

## Case No. 6

#### *Victim Details*

Javed Ahmad Ahanger [Abduction and Enforced Disappearance]  
Age: 17  
Son of: Parveena Akhter  
Resident of: Dhobi Mohalla, Batamalloo, Srinagar

### *Alleged perpetrators*

1. Major [Deputy Commandant] S. N. Gupta, National Security Guards [NSG]
2. Captain [Assistant Commandant] S.C. Katoch, National Security Guards [NSG] [Subsequently promoted as Major (Deputy Commandant)]
3. Captain [Assistant Commandant] Dinesh Sharma, National Security Guards [NSG] [Subsequently promoted as Major (Deputy Commandant)]

### *Allegations in Brief*

On the intervening night of 17 and 18 August 1990, Javed Ahmad Ahanger was picked up from his uncle's house and has disappeared. But, according to the family of Javed Ahmad Ahanger, he was seen in the custody of the alleged perpetrators at the Hariniwas Interrogation Centre.

### *Case Progress*

Between the date of the incident and the year 2004, the family of the victim filed four petitions before the High Court of Jammu and Kashmir. The first petition [habeas corpus petition, HCP 755/1990<sup>58</sup>] was filed before the High Court by the family of the victim. First Information Report [FIR] no. 17/1991 was filed before the Shergeri Police Station<sup>59</sup>.

The second petition [habeas corpus petition, Section 491-A Criminal Procedure Code, 1989 (CrPC) petition no. 64/1991<sup>60</sup>], along with the first, resulted in the court ordering an enquiry, on 3 October 1991, by the Additional District Judge, Srinagar, whose report was submitted before the High Court on 12 March 1992 and indicted the alleged perpetrators. In September, 1991, the Jammu and Kashmir Police submitted an affidavit before the High Court and denied the arrest of the victim. Further, the respondents filed objections to the judicial enquiry report. It was stated that no notice was received, and further, all allegations were denied.

On 26 August 1997 the High Court transferred the case to the Chief Judicial Magistrate, Srinagar to monitor the case. Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was denied by the Ministry of Home Affairs on 24 July 1996 but by another communication of 10 November 1999 the Ministry of Home Affairs indicated that a chargesheet could be filed before the competent court, following which sanction could once again be sought.

On 31 January 2003, the CJM, Srinagar confirmed that a chargesheet had been filed against the alleged perpetrators. The second petition was disposed off on 1 April 2003, following the enquiry conducted, based on information that a chargesheet had been filed in the court.

A third petition was filed by the family of the victim before the High Court against the denial of sanction by the Ministry of Home Affairs.

<sup>58</sup>Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided.

<sup>59</sup>Information on this FIR was sought through RTI on 7 October 2011. A copy of the FIR and chargesheet was provided on 21 December 2011. Further, information was provided that the chargesheet had been filed before the CJM, Srinagar on 4.2.2003 against three NSG Officers namely Major S.N.Gupta, Major Dinesh Gupta, and Major S.C.Katoch.

<sup>60</sup>Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

The final petition [Original Writ Petition (OWP) 574/2004<sup>61</sup>] was filed before the High Court on the larger issue of disappearance, and sought information on disappeared persons in the Kashmir valley, including the victim. This petition was disposed off by the court on 15 December 2005 as a charge sheet had already been filed. It appears from the record that no final orders were filed on the larger issue of disappearances.

Based on the 10 November 1999 communication of the Ministry of Home Affairs, the Chief Judicial Magistrate [CJM], Srinagar issued non-bailable warrants against the alleged perpetrators in 2003.

### *Case Analysis*

This case is perhaps one of the oldest cases available on record involving violations of the armed forces in the valley. The record speaks for itself in terms of an incident of 1990 still being unresolved in 2012.

The enquiry report of the Additional District Judge, Srinagar, may now be considered on the facts of the instant case.

The judicial enquiry report first notes that despite receiving notices, the respondent-accused persons did not associate themselves with the proceedings. The enquiry judicial report then summarizes the numerous witnesses that testified. The relevant witnesses and testimonies are further summarized below:

- Witness Bashir Ahmad Dar, Superintendent of Police [SP] Control room, Srinagar testified that in September 1991 he was charged with allowing family members to meet with detainees in the lock-ups. He used to provide the official vehicle to the families for this purpose. The witness confirms that the parents of the victim were provided with an official vehicle, driven by Mohammad Yousuf Dar, Senior Grade Constable, on the orders of the Director General of Police [DGP], Jammu and Kashmir, to meet with the victim at the "army hospital".
- Witness Mohammad Yousuf Dar, Senior Grade Constable, testified that on 25 September 1990 he did take the family to the army hospital, Badami Bagh, but the victim could not be found.
- Witness Javaid Ahmad Ahanger, the victim's cousin, testified to the events of 17 and 18 August 1990 and testified to the arrest of the victim by security personnel from the witness's residence, after the security personnel had beaten him. Witness Ali Mohammad Ahanger, the victims' uncle, and a witness named Aftab Ahmad Baktu confirmed the same. Aftab Ahmad Baktu stated more specifically that the NSG were involved and the victim was taken to an unknown destination in a gypsy.
- Witness Showkat Ahmad Khan testified that on the "intervening night of 17 and 18 August 1990 he found the alleged detainee Javaid Ahmad Ahanger who he already knew in the custody of the NSG near the gate of Oberio Palace which opens for Hariniwas. He was being beaten and at that time he found the alleged detainee Javaid Ahmad Ahanger in the custody of SP Kotoch, SP Dinesh and SP Gupta all from the National Security Guards". The witness stated that, on being asked, he informed the three officers that the victim was an innocent person. Thereafter, the witness testified that the victim was taken away by the

<sup>61</sup>Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

NSG personnel. On the following day the NSG personnel told the witness that the victim had been released.

- Witness Parveena Akhter, the mother of the victim, while confirming the details of the arrest of the victim [based on hearsay], also stated that Thakur Jaswant Singh, Deputy Inspector General [DIG], Criminal Investigation Department [CID] of Jammu and Kashmir Police, “informed her that her son had received an injury and as such he was admitted in Military Hospital Badami-Bagh and within two or three days he will be released”. When her son was not released, she approached the DGP, Jammu and Kashmir who told her that her son was in the army hospital and provided her with a vehicle through the SP Control Room, Srinagar to visit her son. But, she did not find her son at the hospital. The witness then testified to meeting with both the DGP, Kashmir and Thakur Jaswant Singh, DIG CID again, and once again received similar responses.

Based on a reading of the above testimony, witnesses Javaid Ahmad Ahanger and Ali Mohammad Ahanger, Aftab Ahmad Baktu confirm the victims arrest on the night of 17 and 18 August 1990. Javaid Ahmad Ahanger and Ali Mohammad Ahanger refer to the “security personnel” as being the ones who executed the arrest, whereas Aftab Ahmad Baktu specifically refers to the NSG. Next, witness Showkat Ahmad Khan provides the crucial link to the three alleged perpetrators [notwithstanding that he refers to them all as “SP” and there are mis-spellings of their names in the enquiry report attributed to the witness]. Witnesses Bashir Ahmad Dar and Mohammad Yousuf Dar are witnesses to the effect that on 25 September 1990 the DGP, Jammu and Kashmir appeared to believe that the victim was in the army hospital, Badami Bagh. Notwithstanding that the victim was not in fact found, this testimony does point to the knowledge of the police that the victim was in the custody of the army. The testimony of witness Bashir Ahmad Dar refers to the year “1991” but on a reading of Mohammad Yousuf Dar’s testimony, this could either be a typographical error or an innocent mistake on the part of Bashir Ahmad Dar. The original transcript of his testimony would need to be consulted. Finally, witness Parveena Akhter provides crucial evidence that corroborates the evidence of witnesses Bashir Ahmad Dar and Mohammad Yousuf Dar with regard to the visit to the army hospital Badami-Bagh. Crucially, her testimony has the potential to also indict the DGP, Kashmir and Thakur Jaswant Singh, DIG CID for their potential role in a cover-up, and perhaps more pertinently, their role as accomplices.

The enquiry report therefore confirms that the victim was arrested on the intervening night of 17 and 18 August 1990 and has since disappeared in the custody of the three alleged perpetrators in question. Interestingly, in the summary of conclusions, the enquiry report states Aftab Ahmad Baktu’s evidence to be that of an eye-witness as he too was in the custody of the NSG. While this is not the impression given in the summary of the testimony, one must assume this to be the position. The enquiry report relies greatly on the testimony of Showkat Ahmad Khan who testified to seeing the victim outside the Hariniwas Interrogation Centre by the three alleged perpetrators.

The enquiry report also adds that the witness testified that the victim was then taken away to “Hari Mahal”. The enquiry report also considers the question of whether the victim may have subsequently been released, as claimed by NSG personnel to Showkat Ahmad Khan. The enquiry report concludes that this does not appear to be the case based largely on the evidence of Parveena Akhter. The enquiry report is also particularly critical of the DGP, Jammu and Kashmir for not ensuring speedy and adequate investigations in the case.

To conclude, it might be appropriate, in a case such as this, to mention that the enquiry report ends by suggesting that the “authorities in this part of the country are playing” the game of holocaust.

No reasons are on record for the decline of sanction for prosecution. Despite the passage of 22 years there appears to have been no progress on the investigations, particularly as following the denial of sanction the Jammu and Kashmir Police do not appear to have taken any action in terms of filing a fresh and improved chargesheet. This has assisted in allowing the perpetrators to evade justice.

## Case No. 7

### *Victim Details*

Abdul Rashid Lone [Abduction, Torture and Enforced Disappearance]

Age: 18

Occupation: 8<sup>th</sup> Standard student / Carpet business / Farming

Son of: Mohammad Sultan Lone

Resident of: Lone Mohalla, Thinduma, Kreeri, Baramulla District

### *Alleged perpetrators*

1. Kripal Singh, 50<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Zangam, Pattan

### *Allegations in Brief*

On 23 August 1990, Abdul Rashid Lone went to his friend, Bitu son of Afzal Bakshi’s house in Izzar village. On the next morning, 24 August 1990, CRPF and army cordoned off the area. During the identification parade, Kripal Singh picked up Abdul Rashid Lone and took him to the CRPF camp at Zangam. Abdul Rashid Lone was seen by his maternal cousin namely Ghulam Rasool Lone, son of Wali Lone, resident of Lone Mohalla, Thinduma, when he went to collect his motor bike which had been seized by the CRPF. He was standing in the compound of the camp when the soldiers took Abdul Rashid Lone out to make him drink some water. The eye-witness states that Abdul Rashid Lone was only wearing shorts. His hands were tied. A day after Abdul Rashid Lone was picked up he was brought to the village for a search operation. The family states that his toe was bleeding and that he was walking unsteadily. The eye-witnesses saw the Kripal Singh with Abdul Rashid Lone. Abdul Rashid Lone was then taken back.

For the next three months, the family of Abdul Rashid Lone visited Zangam Camp and asked for his whereabouts.

After three months, the family filed a report with the Kreeri Police Post and later in Baramulla Police Station. They also filed a petition in the High Court.

The family visited many jails across India including Kotbalwal Jail, Rajasthan and Hiranagar and many other detention centres but could not find Abdul Rashid Lone.

The family of Abdul Rashid Lone gave a statement to the IPTK on 6 March 2012.

### *Case Progress*

First Information Report [FIR] no. 238/1997 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at

the Baramulla Police Station as a result of a petition filed by the family of Abdul Rashid Lone before the High Court of Jammu and Kashmir.

The judicial enquiry conducted by the High Court confirmed the abduction of Abdul Rashid Lone by the CRPF of Zangam Camp. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police information was provided that the investigations in the case were ongoing.

The State Human Rights Commission [SHRC] was approached and issued its final decision on 26 April 2001. Ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The family of the victim received both these benefits.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions, under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] stated on 6 September 2011 in relation to this case that sanction was sought on 24 November 2007 from the Ministry of Home Affairs.

#### *Case Analysis*

The document on record that may be considered for the purposes of analysis is the 26 April 2001 SHRC decision.

A report was received from the Police Headquarters which stated that during investigations it was confirmed that the alleged perpetrator was responsible for the abduction of the victim. It was also stated that sanction for prosecution under AFSPA was being sought. Based on this report, the SHRC found that it was clearly established that Kripal Singh was responsible for the disappearance of Abdul Rashid Lone.

While the indictment of Kripal Singh appears clear from the police report, the prosecution sanction process raises some worrying questions. As of 2001, it appears that the investigations were completed and sanction sought. But, from other documentation referred to above, it appears that the request for prosecution sanction was only sought in 2007, six years later. Further, as of 2012, it appears no prosecution sanction was given and the investigations seem to be ongoing [perhaps a reference to the fact that a final decision has yet to be taken]. The report of the police in 2001 before the SHRC was therefore a false statement.

Further, the Government of Jammu and Kashmir took seventeen years [1990 to 2007] to seek sanction in this case which in itself perpetuates impunity.

Significantly, it took the police seven years to file a FIR in the case, and that too only after the intervention of the High Court. This case serves as an example of how the mechanisms for the protection of human rights have been rendered useless in Jammu and Kashmir. Finally, it appears the Ministry of Home Affairs has taken no action in the matter.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 8

#### *Victim Details*

Khursheed Ahmad Bhat [Abduction, Torture and Enforced Disappearance]

Age: 29

Occupation: Shopkeeper

Son of: Wali Mohammad Bhat, Fatima Begum

Resident of: New Colony, Sopore, Baramulla District

#### *Alleged perpetrators*

1. Commandant Kripal Singh, 50<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
2. Deputy Superintendent of Police [DSP] Manmohan Sharma [Operational name: Moni Singh], 50<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
3. Deputy Superintendent of Police [DSP] Lakha Singh, 50<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
4. Constable Gabbar Singh, 50<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
5. Assistant Sub-Inspector [ASI] Ram Chandre [Operational name: Chaha]<sup>62</sup>, 50<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District

#### *Allegations in Brief*

The family of Khursheed Ahmad Bhat states that the victim was picked up by the 50<sup>th</sup> Battalion CRPF on 25 September 1990 at about 10:30 am from his shop. The CRPF was led by DSP Manmohan Sharma and DSP Lakha Singh. The family states that the victim was first taken to the 50<sup>th</sup> Battalion CRPF Headquarters at Fruit Mandi, Sopore and then to the Jageer Camp interrogation centre where he was tortured by ASI Ram Chandre, the head of the interrogation centre. Information regarding the shifting of the victim to Jageer Camp and then his torture was provided to the family by other persons. The family also believes that Commandant Kripal Singh and Constable Gabbar Singh were responsible for the torture of the victim. Despite various efforts by the family to trace the victim, he has disappeared.

The family of Khursheed Ahmad Bhat gave a statement to the IPTK on 24 December 2012.

#### *Case Progress*

First Information Report [FIR] no. 258/1990 u/s 345 [Wrongful confinement knowing that writ has been issued for his liberation], 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station<sup>63</sup>. The 9 May 2012 communication from the Jammu

<sup>62</sup> The names of the alleged perpetrators are spelt as per the SHRC decision of 27 October 2011. The family of the victim, while mentioning the same names, and titles, provides slightly different spellings of the names.

<sup>63</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated

and Kashmir provided information that the case was closed by declaring the perpetrators as untraced. By further communication dated 9 July 2012, a document was provided that states that sanction for prosecution was declined under Section 197 (2) [Prosecution of Judge and Civil servants] Criminal Procedure Code, 1989 (CrPC) by the Ministry of Home Affairs on 6 August 2002.

The family of the victim also filed a petition before the High Court of Jammu and Kashmir.

Deputy Commissioner, Baramulla, provided ex-gratia government relief of Rs. 1,00,000 to the family of the victim.

On 27 October 2011, the State Human Rights Commission [SHRC], having taken suo moto cognizance of the case, recommended that the sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] be accorded, and compassionate employment under SRO-43 [Statutory Rules and Orders] be provided to the family of the victim.

The family of the victim has not received the compassionate employment under SRO-43. Further, while the SHRC in its decision noted that sanction for prosecution under AFSPA had been sought from “higher authorities” on 3 November 1995, the Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it had not received the request for sanction in this case.

#### *Case Analysis*

The only document on record for the purposes of analysis is the decision of the SHRC on 27 October 2011. The SHRC begins by stating that despite being approached, over four years, the Director General of Police [DGP], Jammu and Kashmir, did not submit a factual report before the SHRC. The SHRC relied in its decision on the testimony of the family of the victim and the report of the Station House Officer [SHO], Sopore Police Station, filed before the High Court. This report states, based on investigations that involved statements of witnesses, that DSP Manmohan Sharma and DSP Lakha Singh forcibly entered into the shop of the victim and took him to the Fruit Mandi Camp, Sopore. Further, the report also states, based on witnesses that were kept in custody with the victim, that the victim was beaten and tortured by the other alleged perpetrators. The victim was beaten and tortured in the presence of the witnesses. He was then dragged to another room in a critical condition where he was further beaten and tortured. The police report then concludes that the victim had died in custody.

Based on this report, the SHRC concludes “beyond any doubt” that the victim had been arrested and tortured by the five alleged perpetrators. The SHRC states that “this is a proved and clear case of custodial disappearance”. The SHRC is then critical that sanction for prosecution had not granted even after the lapse of 16 years.

The indictment of the SHRC, based on the police report, is unequivocal. But, it is unfortunate that no action appears to have been taken against the alleged perpetrators.

First, it is unclear why the sanction was sought from the Ministry of Defence as the personnel implicated in the case fall under the Ministry of Home Affairs. It is further unclear why the Ministry of Defence did not clarify that the case did not pertain to them.

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9 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

Second, the police response in the RTI suggests that the case was closed by declaring the perpetrators as untraced. Further, and as a concluding remark that perhaps displays the unfortunate state of the present case, the death certificate issued in this case by the Baramulla District Administration may be considered. While presuming the death of the victim on 4 November 1990, the death certificate lists the cause of death as “subversion” which might suggest certain criminality on the part of the victim.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Based on the non-cooperation of Government of India [Ministry of Home Affairs], CRPF and the non-submission of the report by the DGP, Jammu and Kashmir, to the SHRC, and the information provided by the police that the case has been closed as untraced, suggests an institutional cover up and protection from prosecution for the alleged perpetrators.

## Case No. 9

#### *Victim Details*

Farooq Ahmad Bhat [Abduction and Enforced Disappearance]

Age: 15

Occupation: Student/Shopkeeper

Son of: Abdul Ahad Bhat

Resident of: Wazabagh, Hyderpora, Srinagar

#### *Alleged perpetrators*

1. Major [Deputy Commandant] Chawan, 102<sup>nd</sup> Battalion, Border Security Force [BSF]
2. Inspector Prem Nath Dogra, 102<sup>nd</sup> Battalion, Border Security Force [BSF]

#### *Allegations in Brief*

On 22 June 1991, at about 6:00 pm, Farooq Ahmad Bhat was picked up by the alleged perpetrators while he was assisting his father at their shop. Prior to this, on the same day an incident of cross-firing between the BSF and militants took place.

The father of the victim approached the Budgam and Saddar Police Stations but both Station House Officer’s [SHO] of the Police Stations refused to file a FIR. The father of the victim also wrote a letter to the Senior Superintendent of Police [SSP], Budgam and Srinagar, seeking that a case be registered.

The family also approached the BSF camp on the following day, were assured of the release of the victim, but no action was subsequently taken. The father of the victim states that on the day he visited the BSF camp he was asked to pay a sum of Rs. 50,000 for the release of his son but he refused to do so as his son was never involved in any militancy related activity. The father of the victim claims to have made various efforts to find his son, and estimates his expenditure in searching for his son as being enormous.

The family of the victim gave a statement to the IPTK on 26 November 2011.

### Case Progress

First Information Report [FIR] no. 17/1991 was filed at the Saddar Police Station regarding the cross-firing that took place before the victim was arrested<sup>64</sup>.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. HCP 691/1991]<sup>65</sup>. On 20 August 1993, based on a submission by the Superintendent of Police [SP], Criminal Investigation Department [CID], Counter Insurgency Kashmir [CIK] that stated that the victim was not in their possession, the High Court dismissed the petition. A Letters Patent Appeal [LPA] was subsequently filed by the family based on two contentions: that when the earlier petition was dismissed it was wrongly recorded that the applicant was present, when in fact he was not present, and therefore not heard, and that the petition should not have been dismissed as contradictory stands were taken by the respondents [which included the BSF].

A complaint was instituted before the State Human Rights Commission [SHRC] on 28 February 1998 [a supplementary petition was filed on 20 August 1998] and a decision was delivered on 29 September 1999 where ex-gratia government relief of 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The family of the victim received the benefits.

Another complaint was filed before the SHRC on 16 November 2006, and decided on the same day, to allow the father of the victim access to Tihar Jail, New Delhi to find the victim, New where he believed his son to be. The father, on searching Tihar Jail, was unable to find his son.

In 2011, the family of the victim filed another petition before the SHRC seeking investigations on the unknown, unmarked graves in the State and DNA testing to identify the bodies buried, to ascertain whether the victim has been buried in these graves.

### Case Analysis

Before analyzing the instant case, it would be important to note that despite the various efforts of the family of the victim, no case was registered.

The SHRC decision of 29 September 1999 is presently one of two documents on record that may be considered. The father of the victim specifically named the alleged perpetrators as being responsible for the abduction and disappearance of the victim. The SHRC sought reports from the Inspector General of Police [IGP], Kashmir, Director General of Police [DGP], Jammu and Kashmir and the Inspector General [IG], BSF. All three denied that the victim had been picked up and detained by the 102<sup>nd</sup> Battalion BSF. The SHRC concluded firstly that “there is enough material to say that the son of the complainant was lifted by the said security force. The simple denial on the part of the BSF cannot be taken as gospel truth in the face of the materials placed by the complainant on the file.” The SHRC also considered the testimony of the neighbours of the victim’s father, namely: Abdul Ahad Bhat, Ghulam Ahmad Dar and Mohammad Sultan Dar, that the victim was picked up by the 102<sup>nd</sup> Battalion BSF on 22 June 1991 at 6:00 pm from his shop and that

<sup>64</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>65</sup> Information on the petition number mentioned above was sought through RTI on 16 February 2012. No information was provided.

since then his whereabouts are unknown. The SHRC also considered a FIR that records the incident relating to the cross-firing between the BSF and militants and stated that: “it is not uncommon that the Security Forces in the retaliation of an incident do cordon the nearby areas of the incident and pick up some people (usually youth) for interrogation. In this process sometimes some people do not return home at all. This may be one of such unfortunate cases”. Finally, the SHRC considered the actions of the victim’s father in searching for the victim at various places as adding credibility to his testimony regarding the disappearance of his son. The SHRC also considered the issue of the specific battalion and names of officers concerned in the arrest being named by the victim’s family and the neighbours. The SHRC stated that: “it could be said as to how the complainant was knowing the officers and the unit named by him. The complainant in his complaint at Para no. 13 clearly states that the BSF Personnel of the same battalion were usually purchasing various articles from his shop through him and his son. As such this objection stands explained”. The SHRC therefore concluded that the victim was arrested and then “eliminated” and “died in the custody of the BSF”. The SHRC then recommended ex-gratia government relief of 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC also found that it was the SHO of Police Station Saddar and not Budgam who should have filed a FIR when approached, but as the concerned SHO had since deceased, no further action could be taken.

The SHRC decision therefore clearly implicates the 102<sup>nd</sup> Battalion BSF and also throws light on a pattern of disappearances in the state. But, what is an unfortunate feature of the decision is that it does not specifically indict the two officers of the battalion: “Mr. Chuwan” [a misspelling by the SHRC] and Prem Nath Dogra. This notwithstanding the analysis that the SHRC entered into while testing the basis on which the complainant [and it appears the neighbours as well] could have named these officers specifically. Further, the SHRC should have recommended that a case be registered against the alleged perpetrators.

The other document on record for analysis is a letter sent to the Deputy Commissioner, Budgam, from the Senior Superintendent of Police [SSP], Srinagar, dated 7 August 2000 which confirms that the victim was lifted by the 102<sup>nd</sup> Battalion BSF on 22 June 1991. This letter also confirms that the victim was not involved in any subversive activities.

Despite the passage of 21 years no progress appears to have taken place in the investigations. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 10

### Victim Details

1. Nazir Ahmad Gojjar [Abduction, Wrongful Confinement and Enforced Disappearance]  
Age: 20  
Son of: Israil Khan Gojjar, Zaitoona  
Resident of: Gojjar Patti, Malangam, Bandipora District
2. Majid Gojjar [Abduction, Wrongful Confinement and Torture]  
Resident of: Gojjar Patti, Malangam, Bandipora District

3. Mohammad Ayub Gojjar [Abduction, Wrongful Confinement and Torture]  
Resident of: Gojjar Patti, Malangam, Bandipora District

#### *Alleged perpetrators*

1. Brigadier V. K. Sharma, Dogra Regiment, Army, Camp Chitarnar, Bandipora District
2. Major R. P. Singh, Dogra Regiment, Army, Camp Chitarnar, Bandipora District
3. Major R. D. Singh, Dogra Regiment, Army, Camp Chitarnar, Bandipora District

#### *Allegations in Brief*

On 26 January 1992 there was a crackdown in the Gojjar Patti area. At around 2:00 pm, Nazir Ahmad Gojjar along with two other persons, Majid Gojjar and Mohammad Ayub Gojjar went outside to collect sticks and to graze their goats nearby. On hearing firing, the three of them were scared and sat down. The armed forces arrested them. The family of Nazir Ahmad Gojjar was informed subsequently by a retired army officer in the area that the force responsible for their arrest was the Dogra Regiment of the army. The three persons arrested were taken and kept at a location close by for the night. When the women of the village sought their release they were informed that the persons would be released. The mother of Nazir Ahmad Gojjar saw all three boys at that time. But, on the second day, 27 January 1992, the three persons were taken to the Chitarnar Camp. When the family of Nazir Ahmad Gojjar approached the forces of the Chitarnar Camp they were told that the persons arrested had been taken to the Badami Bagh Srinagar Headquarters of the army. On approaching the Badami Bagh Headquarters they were informed that the persons arrested had been taken to the Kot Balwal jail in Jammu. After four months, Majid Gojjar and Mohammad Ayub Gojjar were released. They informed the family of Nazir Ahmad Gojjar that all three of them after being arrested and spending a night in the location close to their residence were taken to the Chitarnar Camp for the night of 27 January 1992. On 28 January 1992 Majid Gojjar and Mohammad Ayub Gojjar were taken to the Badami Bagh Headquarters. Nazir Ahmad Gojjar was not taken along. Majid Gojjar and Mohammad Ayub Gojjar stated that they were tortured during their detention. Nazir Ahmad Gojjar has disappeared since. Majid Gojjar died one year or so after the incident. The family of Nazir Ahmad Gojjar believes that Majid Gojjar died due to the torture by the army during his detention.

#### *Case Progress*

The family of Nazir Ahmad Gojjar filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 606/1993]. On 1 November 1994, an enquiry was instituted to be conducted by the District and Sessions Judge, Baramulla. The enquiry was concluded on 2 May 1996 and confirmed that Nazir Ahmad Gojjar was arrested, and disappeared, by Brigadier V. K. Sharma, Major R. P. Singh and Major R. D. Singh. The High Court also monitored the process of seeking sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. On being informed that sanction for prosecution was being sought the petition was disposed off on 6 October 1998.

On 23 September 2002, the High Court was provided a copy of the denial of sanction. The denial of sanction was dated 4 April 2002.

First Information Report [FIR] no.114/1996 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Bandipora Police Station on 7 May 1996<sup>66</sup>.

The family of Nazir Ahmad Gojjar filed another petition before the High Court [Original Writ Petition (OWP) 47/2006] seeking ex-gratia government relief of Rs. 5,00,000, compensation of Rs. 50,00,000, compassionate employment under SRO-43 [Statutory Rules and Orders], completion of the investigations on the registered FIR and sanction for prosecution under AFSPA. The petition was disposed off with a direction on 12 April 2007 for consideration of the ex-gratia government relief and compassionate employment under SRO-43. Further, the order states that investigation be expedited and preferably be completed within three months.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided on both petitions.

In 2012, the family of the victim filed a petition before the High Court [Original Writ Petition (OWP) 955/2012] for sanction for prosecution under AFSPA. The petition remains pending.

The Inspector General of Police [IGP], Kashmir, in a letter dated 4 March 2006 states that during the investigation of this FIR offences u/s 302 [Murder], 342 [Wrongfully confining person] and 109 [Abetment] Ranbir Penal Code, 1989 [RPC] were found established against the alleged perpetrators listed above and a chargesheet was filed before the competent court and the case file was sent for the purpose of obtaining sanction for prosecution under AFSPA. Further, a letter dated 21 December 2009 by the Additional Superintendent of Police [ASP], Bandipora District, confirms that Nazir Ahmad Gojjar was not affiliated with any subversive activities.

The family of Nazir Ahmad Gojjar approached the State Human Rights Commission [SHRC] and the final decision was issued on 7 July 2006, and based on the report received from the IGP, Kashmir, recommended ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43. While the family of the victim received Rs. 1,00,000 ex-gratia government relief from the Deputy Commissioner's office, they received no compassionate employment under SRO-43. The family of the victim stated in a statement given to the IPTK on 9 February 2012 that they are not receiving the SRO-43 benefits because the authorities mistakenly identified Nazir Ahmad Gojjar as being a minor.

The Assistant Commissioner, Bandipora carried out an enquiry in the matter and a report was submitted on 20 September 2007 that confirmed the abduction of Nazir Ahmad Gojjar by the army and that Nazir Ahmad Gojjar was not involved in any subversive activity.

#### *Case Analysis*

The inquiry report of the District and Sessions Judge, Baramulla, of 2 May 1996 is presently the only detailed finding on the case [the 20 September 2007 report of the Assistant Commissioner, Bandipora, while indicting the army does not offer specific details on the unit of the army involved or the alleged perpetrators] that may be analyzed, as the charge sheet filed is not in possession of the IPTK. But, before doing so, a few preliminary points may be made:

- The age of Nazir Ahmad Gojjar appears to have been an issue with regard to the grant of compassionate employment under

<sup>66</sup> Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.



SRO-43. The family of Nazir Ahmad Gojjar when contacted by the IPTK stated his age to have been 20 years when he was arrested. But, in the petition filed before the High Court [Original Writ Petition (OWP) 47/2006] he is listed as being 23 years of age.

- It is surprising that the High Court, while making its order of 12 April 2007, did not seem to be appraised of the position taken by the police [in the 4 March 2006 letter referred to above] regarding the completion of investigations and the filing of the chargesheet.
- The report of the IGP, Kashmir to the SHRC on 4 March 2006 refers to the unit of the alleged perpetrators as the 60<sup>th</sup> Battalion of Infantry Regiment. It is unclear what the import of this may be as elsewhere the Dogra Regiment is clearly referred to.

The inquiry report states that four witnesses were heard on behalf of the family of the victim: "Ayoob Khan, Ghulam Mohi-ud-Din Sheikh, Yousuf Gujjar and" the mother of the victim, Zaitoona. No evidence in rebuttal was provided. The relevant portions of the testimonies of these witnesses are as below:

- Witness Ayoob Khan stated that "three years before" [it is uncertain when the testimony of the witness was given] he, his brother, Majid, and Nazir Ahmad Gojjar were arrested by the army during a crackdown and later taken to "Chiternaar, Bandipora" and then shifted to the interrogation centre. "In the evening" he and his brother were released but the Nazir Ahmad Gojjar's whereabouts have not been known to date. The witness was cross-examined but no damage was done to his testimony.
- Witness Ghulam Mohi-ud-Din Sheikh stated that in the month of January 1992, the personnel of the Dogra Regiment took into custody "Ayoob Khan, Majid and Nazir Gujjar". "After some time", Ayoob and Majid were released but the Nazir Ahmad Gojjar's whereabouts have not been known to date. The witness was cross-examined but no damage was done to his testimony.
- Witness Mohammad Yousuf Gujjar stated that in the month of January 1992 the army took three persons during a crack down at Malangam village: Majid, Ayoob and Nazir Gojjar. R.P. Singh and R.D. Singh of the Dogra Regiment of the army were responsible for this. Majid and Ayoob were released from the Jammu jail one month after their arrest but the Nazir Ahmad Gojjar's whereabouts have not been known to date.
- Witness Zaitoona stated that "about three years back" [it is uncertain when the testimony of the witness was given] the army during a crackdown arrested her son, Nazir Ahmad Gojjar, whose whereabouts are not known to date. R.P. Singh and R.D. Singh were the officers who arrested her son along with two other persons.

Based on the above testimony, the judicial inquiry concluded that it had been established that in January 1992, the Dogra Regiment of the army, headed by R.D. Singh and R.P. Singh, during a crackdown at the Malangam village, arrested Ayoob, Majid and Nazir Gojjar and took them to "Chiternar Camp" and thereafter at some time Ayoob and Majid were released. The judicial inquiry concluded that it was a "clear case" of custodial disappearance and directed that a case be registered against the Commanding Officer of the Dogra Regiment and R. P. Singh and R.D. Singh. While the inquiry report clearly establishes the disappearance of the victim and the role of the Dogra Regiment of the army, and specifically R.P. Singh and R.D. Singh, a few comments must be made:

- The names of the two other persons arrested along with Nazir Ahmad Gojjar vary slightly in the different accounts but this appears not to be a substantive issue as it seems clear across the board that "Majid and Ayoob" were arrested along with Nazir Ahmad Gojjar.

- Of greater ambiguity is the issue of when the two boys were released. While the family in the statement to the IPTK, states they were released after four months, Mohammad Yousuf Gojjar states it was one month. Ayoob Khan states he and his brother were released "in the evening" but it is not clear which evening and when. This discrepancy might well be a substantive one.
- The role of the Commanding Officer, Brigadier V.K. Sharma, in the incident is admittedly limited. While it cannot be ruled out that he would possibly have had knowledge of the incident, and would therefore bear the responsibility for not intervening, the evidence is too limited presently to make that conclusion.

The final issue to be considered would be that of the sanction for prosecution under AFSPA. Sanction for prosecution was declined on 4 April 2002 for the following reasons:

1. That out of four witnesses before the District and Sessions Judge, Baramulla only one, Mohammad Yousuf Gujjar, has named Major R.D. Singh and Major R.P. Singh, and so prosecution case is not convincing.
2. That there are contradictions in the statement of the two witnesses about the arrest and release. Ayub Khan deposed that his brothers were released the same evening but Mohammad Yousuf Gujjar said that he and his brother were released after a month from Jammu jail.
3. No witnesses blamed Colonel (now Brigadier) V.K. Sharma. He was named being the C.O of unit and on presumption of involvement, otherwise there was no evidence against him.
4. The Army officers denied on oath the arrest of individuals on 26 January 1992 or any other day and that they were not present in the unit during that period. In fact Major R.D. Singh was on annual leave for thirty days from 7 January 1992 to 5 February 1992 and Major R.P. Singh on casual leave of fourteen days from 22 January 1992 to 4 February 1992.
5. It is on record that the Lambardar [Numberdar, de facto revenue authority in the village, the family of the victim stated to the IPTK that his name was Mohammad Abdullah Sheikh]/ Sarpanch [the family of the victim stated to the IPTK that his name was Maawali Chauhan] of Malangam village certified on 25 February 2000 (witnessed by four prominent residents of the village) that the personnel of Dogra Regiment had not harassed or ill treated any person of the village. Nor was any man/ woman killed.
6. The grant of sanction to prosecute the Army officers is not justified based on available records and nor would it be in public interest. The prosecution of officers will undermine the morale, discipline, confidence and motivation of troops deployed in the sector.

The above reasons for the denial of prosecution sanction need to be analyzed one by one. The first reason is a misreading of the inquiry report. In addition to Mohammad Yousuf Gujjar, the mother of Nazir Ahmad Gojjar, Zaitoona, also names R.P. Singh and R.D. Singh. The second reason is more substantive as already stated above. But, it may be mentioned that Ayoob Khan's testimony, while referring to being released in the evening, does not state that he and his brother were released on the "same" evening. But, clearly, there is ambiguity caused by his evidence. The third reason has been commented upon above. To establish the role of the Commanding Officer, investigations would need to be carried. Without perusing the chargesheet prepared by the police against him, it would be difficult to comment on his involvement. Admittedly, barring the principle of command responsibility, his role is presently unclear. The fourth

reason, while persuasive if true, cannot be commented on presently as no official leave documents have been provided. The fifth reason for the denial of sanction, while apparently persuasive, is clearly misleading. A statement by the Lambardar/Sarpanch of the Malangam village eight years after an incident, in very general terms, is not convincing. This statement may have had more persuasive value if it was a specific denial of the instant incident being discussed. Further, the evidentiary value of such a statement is highly doubtful and it is most unfortunate that the Ministry of Defence would use such a piece of evidence to deny sanction for prosecution. With no information on the antecedents of the Numberdar/Sarpanch, or his breadth of knowledge of events in 1992, or when and under what circumstances his statement was placed on record, it is a highly unreliable piece of evidence. Further, the family of the victim states that there was no elected Sarpanch in the year 2000. He was a surrendered militant closely associated with the army. This case serves as a striking example of how the army undermines and subverts the processes of justice by making use of close associates or paid informers.

Therefore, in conclusion, the instant case appears to be a clear case of disappearance, despite certain ambiguities that are admittedly present. But, one might certainly argue that the correct forum to deal with such ambiguities might well be a courtroom. Therefore, perhaps sanction for prosecution should have been granted, especially against Major R.P. Singh and Major R.D. Singh. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 11

### *Victim Details*

Ghulam Nabi Bhat [Abduction and Enforced Disappearance]  
 Age: 20  
 Occupation: Tailor  
 Son of: Ghulam Ahmad Bhat  
 Resident of: Islamia Colony, Kani Dewar, Hawal, Srinagar

### *Alleged perpetrators*

1. Constable Labhour Singh, 107<sup>th</sup> Battalion, Border Security Force [BSF], Camp Hawal
2. Guard Commander N.K. Raina<sup>67</sup>, 107<sup>th</sup> Battalion, Border Security Force [BSF], Camp Hawal

### *Allegations in Brief*

On 8 June 1992, Ghulam Nabi Bhat was picked up by a BSF party at about 10:30 am. Mohammad Sharief Malik, a shopkeeper, was a witness to this abduction. Ghulam Nabi Bhat has disappeared since.

The family of Ghulam Nabi Bhat gave a statement to the IPTK on 15 February 2012.

### *Case Progress*

Following the abduction of Ghulam Nabi Bhat the BSF did not allow the family to meet him. Therefore, the family of Ghulam Nabi Bhat filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC)

<sup>67</sup> Both the alleged perpetrators were reported killed subsequently in militancy related activity

petition no. 88/1992]<sup>68</sup>. The High Court ordered a judicial enquiry on 15 November 1994, which was conducted by the District and Sessions Judge, Srinagar. The enquiry report was submitted on 12 May 1998. The report confirmed the disappearance of Ghulam Nabi Bhat during the custody of the BSF. The High Court disposed off the matter on 16 November 1998 directing a registration of a First Information Report [FIR].

FIR no. 124/1998 u/s 364 [Kidnapping/Abducting to murder], 343 [Wrongful confinement for three or more days] Ranbir Penal Code, 1989 [RPC] was filed at Nowhatta Police Station<sup>69</sup>. Subsequently, the BSF did not cooperate with the investigation and a letter was sent by the Station House Officer [SHO], Nowhatta Police Station to the Registrar General of the High Court on 1 August 2000 to this effect.

Consequently, a petition was filed by the family of Ghulam Nabi Bhat before the High Court [Original Writ Petition (OWP) 158/2001] seeking cooperation of the BSF with investigations, and compensation. In reply to this petition, the BSF admitted that the victim had been arrested by the BSF 107<sup>th</sup> Battalion, but as he was a suspected militant. Ghulam Nabi Bhat was kept at "TAC HQ 107 BATTALION BSF" for questioning but escaped on the intervening night of 9 and 10 June 1992. The BSF claimed an enquiry was conducted against the two alleged perpetrators. The State and the police took a similar position following their investigations but did not refer to Ghulam Nabi Bhat as a suspected militant, and stated that the two alleged perpetrators were responsible for only the escape of Ghulam Nabi Bhat. The response also states that both alleged perpetrators were subsequently killed in militancy related activity. No proof of the same is provided. The High Court held on 15 October 2003 that the case of escape from the BSF [while the representations before the court refer to the 107<sup>th</sup> Battalion, the High Court refers to the 106<sup>th</sup> Battalion. One can only assume this to be a typographical mistake] was not made out and also ordered compensation of Rs. 1,00,000. A Letters Patent Appeal [LPA] [no.176/2003] was filed against this decision on grounds that the compensation was not adequate. On 26 May 2010, the Division Bench of the High Court amended this compensation to Rs. 5,00,000, plus interest. Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

A Special Leave Petition [SLP] filed before the Supreme Court of India against this order was dismissed on 10 December 2010. A contempt petition [280/2010] was filed against the non-implementation of this order. Information on the contempt petition number was sought through RTI on 16 February 2012. No information was provided.

### *Case Analysis*

As an initial comment while analyzing the case, it is clear that the abduction of Ghulam Nabi Bhat by the 107<sup>th</sup> Battalion of the BSF on 8 June 1992 is accepted by all the parties, and crucially the High Court. The only point of disagreement appears to be on the position of the BSF, the State and police that the victim escaped and was therefore not disappeared in the custody of the BSF. The family of Ghulam Nabi Bhat does not accept this position and also states that no FIR on the escape of Ghulam Nabi Bhat was filed, thereby suggesting that it was a concocted story. But, crucially for Ghulam Nabi Bhat and his family, the High Court does not accept the theory

<sup>68</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided.

<sup>69</sup> Information on this FIR was sought through RTI on 5 May 2012. No information was provided.

that he escaped. The court, in its 15 October 2003 order states, on the issue of the escape of Ghulam Nabi Bhat, that:

“...nothing has been submitted to show that a serious department action was initiated, immediately after the so called escape against these personnel for their failure, to prevent escape of said Ghulam Nabi. It appears that the stand, of escape has been set up to avoid legal consequences, and in the facts and circumstances as reflected from the record, the stand taken is not sustained from record, and appears to be highly improbable, and has to be rejected...the State, in these circumstances, has obviously failed in its duty either to protect the life of an innocent citizen who was arrested by an agency of the State, or to account for his disappearance in the custody of the BSF.”

The enquiry report by the District and Sessions Judge, Srinagar was submitted on 12 May 1998. Relevant testimony before the judicial enquiry is summarized below:

- The evidence of Mehraj-ud-Din, brother of Ghulam Nabi Bhat, was recorded. The witness stated that at “10:30” on 8 June 1992 Ghulam Nabi Bhat was taken by the BSF and subsequently disappeared.
- Mohammad Sharief Malik also testified that Ghulam Nabi Bhat was taken by the BSF. The witness testified that Ghulam Nabi Bhat was taken to Papa-II “where S.P. Bashir Ahmed was on duty who told them that he was taken to Harwan and they searched him and 30<sup>th</sup> Battalion told them that he is in their custody and had promised them that he will be released after he was all right”.
- Witness Mohammad Ashraf Malik testified that he found Ghulam Nabi Bhat in Hotel no.4 at Shivpora, Srinagar. But, subsequently, he was not allowed to meet with the victim.
- Witnesses Abdul Rashid Mir and Ghulam Mohi-ud-Din also testified to the abduction of Ghulam Nabi Bhat by the BSF on 8 June 1992. They also stated that they had gone to meet SP Ghulam Nabi and were given a slip by Hazaratbal Police Station and they met Ghulam Nabi Bhat twice before he was taken to Hotel no. 3.
- Witnesses Sitara, Mumtaza and Abdul Majid Bhat testified to the abduction of Ghulam Nabi Bhat by the 107<sup>th</sup> Battalion of the BSF and meeting with him at Hotel no. 3.
- The respondents, the State and the BSF, stated before the enquiry that Ghulam Nabi Bhat was never arrested.

Before considering the conclusions of the enquiry, two preliminary points may be made. First, the manner in which the enquiry report summarizes the testimony of the witnesses is unclear, and lacks sufficient detail for a thorough analysis. Second, the stand of the BSF of blanket denial of arrest, as stated before the District and Sessions Judge, Srinagar, sharply contradicts with their subsequent stand that the witness was arrested but escaped. This apparent duplicity must be highlighted.

Based on the evidence before it, the enquiry report stated that an irresistible conclusion had been reached that Ghulam Nabi Bhat was abducted by the BSF on 8 June 1992 and then shifted from Hariniwas Interrogation Centre to Hotel no.3 and 4, Shivpora and subsequently Papa-II Interrogation Centre and then subsequently disappeared. While the enquiry report rightly confirms the abduction by the BSF it is unsure how the report definitively concludes that Ghulam Nabi Bhat was detained at Harinwas. But, as stated earlier, the witness evidence has been poorly summarized in the enquiry report.

In conclusion, from the enquiry report, to the contentions of the parties before the High Court, and the High Court orders, the abduction of Ghulam Nabi Bhat is beyond doubt. Further, the BSF, and it appears the 107<sup>th</sup> Battalion, is specifically to blame. But, what remains uncertain is the exact role of the alleged perpetrators listed above. Further, even assuming that the alleged perpetrators died in militancy related activities [for which no proof has been provided], a full investigation would be necessary to identify all persons responsible for the abduction and disappearance of the victim as the information on record, including sightings of the victim at various places, strongly suggests the involvement of a number of personnel of the armed forces. This is particularly important as it is unimaginable that a Constable and a Guard Commander [the designations of the alleged perpetrators] would have executed the crime without the involvement of superior officers.

Based on the witness statements before the judicial enquiry the victim was taken to atleast four places [Hotel no.3, Hotel no.4, Papa-II interrogation centre, and Harwan] following his abduction. These places would be under the command of senior officers, whose orders and acquiescence would be necessary for the detention of Ghulam Nabi Bhat.

It must also be borne in mind that considering that the story of the escape of Ghulam Nabi Bhat was considered to be a false one by the High Court, and in light of the suppression of facts vis-a-vis the arrest of the victim by the BSF before the judicial enquiry, the naming of the alleged perpetrators by the BSF may be a further attempt by the BSF to cover up the disappearance of Ghulam Nabi Bhat and the possible involvement of other senior officers.

Despite the passage of 20 years there appears to be no progress on the investigations.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 12

### *Victim Details*

Mehraj-ud-Din Baba [Extra-Judicial Killing (Custodial Killing)]  
Age: 18  
Occupation: 12<sup>th</sup> Standard student  
Son of: Mohammad Abdulla Baba  
Resident of: Shahi Mohalla, Awantabawan, Soura, Srinagar

### *Alleged perpetrators*

1. Sub-Inspector [SI] B.I. Singh or B. K. Singh [reportedly deceased]<sup>70</sup>, 107<sup>th</sup> Battalion, Border Security Force [BSF]

<sup>70</sup>There appear to be minor discrepancies in the names of the perpetrators, particularly the first alleged perpetrator: while the family refers to him as B.I.Singh, the Government of Jammu and Kashmir and police refer to him as B.K.Singh and also as B.I.Singh. The death of this person was confirmed before the High Court, but the family has stated that it requires further proof of the same.

2. Additional Director General [ADG], K.K. Verma, In-charge Fair View Guest House / Papa-II Interrogation Centre, Border Security Force [BSF], Srinagar
3. Inspector Raas Behari Dutta, Duty Sectional Officer, Fair View Guest House / Papa-II Interrogation Centre, Border Security Force [BSF], Srinagar

#### *Allegations in Brief*

On 23 December 1992, Mehraj-ud-Din Baba was tortured by personnel of the 107<sup>th</sup> Battalion BSF and this resulted in his death. Mehraj-ud-Din Baba was picked up at Ali Mardan Khan Bagh, while he was going to school. When the victim did not return home in the evening, his parents informed the local police station, but no action was taken. On 25 December 1992, BSF Sub-Inspector [SI] Gurbachan Singh handed over the body of the victim, bearing torture marks, to the Soura Police Station. The body had been received from the Fair View Guest House / Papa-II Interrogation Centre, Srinagar. The post-mortem report indicated that the death was due to injury in various organs of the body due to torture and fracture.

The family of Mehraj-ud-Din Baba gave a statement to the IPTK on 22 February 2012.

#### *Case Progress*

First Information Report [FIR] no. 260/1992 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Soura Police Station on 25 December 1992<sup>71</sup>. The FIR states that on 25 December 1992, SI Gurbachan Singh brought the body of the victim bearing torture marks. The 107<sup>th</sup> Battalion BSF had arrested the victim on 23 December 1992. The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was closed as chargesheeted. Also provided was a letter dated 14 January 2008 from the Director General of Police [DGP], Jammu and Kashmir, to the Inspector General of Police [IGP], Kashmir that states that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined by the Ministry of Home Affairs against ADG K.K.Verma and Inspector Raas Behari Dutta.

Also, on record is FIR no. 89/1992 u/s 302 [Murder], 307 [Attempt to murder] and 3(2) TADA and the Arms Act, 1959 at the Nowhatta Police Station which states that there was an encounter with militants on 24 December 1992, in which SI B.I. Singh was also injured.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 287/1993] seeking the completion of investigations. In October 1994, Station House Officer [SHO] of Soura Police Station stated that investigations were ongoing. It was stated that the body of the victim was received from the BSF and it had been stated by the BSF that the victim was a Hizbul Mujahideen militant. The SHO had sought information from the 107<sup>th</sup> Battalion BSF but had received no response. In the meantime, the 107<sup>th</sup> Battalion BSF had been transferred from the Kashmir valley and the investigations had now been taken up with the 84<sup>th</sup> Battalion BSF which had replaced the 107<sup>th</sup> Battalion. On 29 June 1995, the High Court passed a strong order that investigations be completed in four months and that the police use all available powers to do so. Subsequently the court was informed that SI B.K.Singh had been found involved in the crime and his whereabouts were being traced. In December 1995, the court was informed that SI B.K.Singh had died in an encounter and FIR

no. 89/1992 at the Nowhatta Police Station had been filed. On 22 October 1996, the High Court strongly criticised the role of the police in investigations and also stated that the role of other persons in the BSF responsible for the crime should also be ascertained. Eight years later, in November 2004, the Government of Jammu and Kashmir submitted before the High Court that the alleged perpetrators were responsible for the crime. Further, that SI B.I.Singh was dead, ADG K.K.Verma had retired from service and Inspector Raas Behari Dutta was serving at the Sector Headquarters, BSF, Kishan Ganj, North Bengal. Appended was a 19 January 2004 letter from the SHO, Soura Police Station that confirmed the names of the three alleged perpetrators, and stated that a chargesheet had been filed, that sanction for prosecution under AFSPA was required to be sought and that the three persons must be arrested. On 30 November 2004 the High Court issued its final decision, found that there was prima facie evidence against the alleged perpetrators, and stated that sanction for prosecution should be sought.

The family of the victim filed a contempt petition [no.1/2007] on the issue of delay in seeking the sanction for prosecution under AFSPA. During the proceedings, a letter from the Ministry of Home Affairs dated 12 November 2007 to the Jammu and Kashmir Home Department, was produced which declined sanction for ADG K.K.Verma and Inspector Raas Behari Dutta. Following this, and in light of another petition being filed against the denial of sanction, and seeking investigations as to whether SI B.I.Singh was indeed dead [HCP167/2008], the contempt petition was not pressed and was dismissed on 29 September 2009. Also brought on record was the denial of sanction by the Ministry of Home Affairs on 12 November 2007 that stated that there was no evidence against ADG K.K.Verma and Inspector Raas Behari Dutta.

HCP167/2008 was filed against the denial of sanction and also sought that investigations be carried out on whether SI B.K.Singh was indeed killed in an encounter.

In response to HCP167/2008, the BSF stated that while the victim was not arrested by the three alleged perpetrators, he was arrested by the BSF on grounds of him being an active militant. The BSF also stated that the victim was questioned by SI B. K. Singh at the "Far View Guest House" at about 5:30 pm and in the evening he was put into a cell in Fair View Guest House / Papa-II Interrogation Centre where he complained of chest pain. On reaching the hospital, he was declared as having been brought dead.

Further, the BSF states that "Ras Bihari Dutta" was "responsible for the security of Far View Guest House" but had no role in the incident. Further, that K. K. Verma only "visited the spot". The petition remains pending.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Also on record is a letter dated 7 May 1993 from the Superintendent of Police [SP], Srinagar, to the Deputy Commissioner, Srinagar confirming that the victim was not involved in any subversive activities.

The family of the victim received Rs.1,00,00 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

#### *Case Analysis*

As a preliminary point, it must be noted that a case in which an FIR was filed in 1992, the High Court passed an order to seek sanction in

<sup>71</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and internal correspondence of the police was provided.

2004 and the sanction was denied in 2007. Further, to date, it appears the perpetrators of the crime have yet to be punished.

Further, the 19 January 2004 letter of the SHO of Soura Police Station is curious as while it confirms that a chargesheet had been filed against the three accused, it states that the three accused “may kindly be made available in police station”. Notwithstanding the negligence of the police authorities, it seems a clear position of the Government of Jammu and Kashmir that the three alleged perpetrators were responsible for the crime.

In the face of the police investigations, the position of the BSF, denying the role of all three officers in the killing of the victim, would appear prima facie untenable. This was also a position supported by the High Court which found that the entire team responsible for the arrest and detention of the victim must be held responsible.

The role of SI B.I.Singh in the incident is beyond doubt. The control that the other two alleged perpetrators had over the Fair View Guest House is also beyond doubt. Therefore, the denial of sanction by the Ministry of Home Affairs on grounds of lack of evidence is clearly unfortunate as a court process would have certainly helped ascertain the truth. Finally, considering that the victim was found not to be involved in any subversive activities, the very arrest of the victim could be argued to have been illegal.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. **13**

### *Victim Details*

Ashiq Hussain Ganai [Abduction and Extra-Judicial Killing (Custodial Killing)]

Age: 24

Son of: Ghulam Rasool Ganai

Resident of: Dangiawacha, Rafiabab, Baramulla District

### *Alleged perpetrators*

1. Major Ashok Kumar, 17 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Watergam
2. Major General Verma, Army
3. Major Guraljit Singh, In-charge, 17 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Chatoosa

### *Allegations in Brief*

On 3 March 1993, the Dangiawacha village was cordoned off by personnel of the 17 JAKLI. During the search operation Ashiq Hussain Ganai was picked up in the presence of Major General Verma. He was taken to the Chatoosa Camp by Major Guraljit Singh.

On 6 March 1993 another search was conducted by Major Guraljit Singh. The house of the Ashiq Hussain Ganai was ransacked and damaged, but nothing incriminating was found. On 20 March 1993, the family approached Major General Verma who assured them that Ashiq Hussain Ganai would be released on 23 March 1993.

On 21 March 1993, Major Ashok Kumar picked up the Ashiq Hussain Ganai's father and brother and made them sign on a blank paper that the victim had been released. Subsequently, more negotiations and interactions with the army took place, including with the Commanding Officer of Watergam Camp.

On 12 April 1993 the mutilated and decomposed body of Ashiq Hussain Ganai was recovered from the Jhelum river 40 km away from the Chatoosa Camp.

### *Case Progress*

First Information Report [FIR] no. 18/1993 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Panzalla Police Station<sup>72</sup> on 12 April 1993. The 22 May 2012 communication of the Jammu and Kashmir Police stated that the case was under investigation.

The family of Ashiq Hussain Ganai filed a petition before the High Court of Jammu and Kashmir in 1993 [Original Writ Petition (OWP) 1592/1993]<sup>73</sup>. Station House Officer [SHO], Panzalla Police Station, on 30 July 1996 informed the High Court that the investigations had been completed on 7 August 1993 and the case was sent to the Jammu and Kashmir Home Department, for obtaining sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] from the Ministry of Defence. Later, the Jammu and Kashmir Home Department, appears to have forwarded the case to the Ministry of Defence on 24 March 1995.

On 7 May 1997, the High Court was informed by the Additional Advocate General, B.M. Sadiq, that the case file had been sent to the Ministry of Home Affairs, which had in turn sought a clarification from the Jammu and Kashmir Home Department. For this clarification, the case file had been sent to the Director General of Police [DGP], Jammu and Kashmir. On 6 May 1998, the High Court was informed that sanction for prosecution for Major Ashok Kumar and Major Guraljit Singh was denied by letter dated 19 March 1997 from the Ministry of Defence.

The Union of India and Major Guraljit Singh admitted in their submissions to the High Court that Ashiq Hussain Ganai was apprehended on 3 March 1993 and then taken to the Watergam Camp. Ashiq Hussain Ganai was then moved to the Chatoosa Camp on 11 March 1993. Further, Ashiq Hussain Ganai's house was subsequently searched based on information from him that his brother was in possession of a pistol. The allegation in the petition of signatures of the family of the victim being taken on blank papers was denied. It was stated that the victim escaped during an ambush on the army convoy on 23 March 1993. It was also stated that a Court of Inquiry was conducted vide HQ 79 Mountain Brigade convening order no. 113/1/GS(1) dated 25 March 1993 wherein it was established that the army personnel were not involved in the death of the victim. On 14 May 1999 the High Court allowed an amended petition to be filed to include the prayer that the denial of sanction for prosecution be quashed. The most recent order on record is of 20 November 2006 where the High Court granted further time for the filing of counter-objections to the amended petition.

The State Human Rights Commission [SHRC] was also approached. A final decision was given on 25 August 1999.

<sup>72</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>73</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received. The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that the case was sent to the Ministry of Home Affairs but sanction was not being recommended. The sanction process appears to have only been initiated for Major Ashok Kumar and Major Gurpaljit Singh.

#### Case Analysis

The record of the case displays that both the Additional Advocate General of the Government of Jammu and Kashmir and the Government of Jammu and Kashmir itself mistakenly refer to the request for sanction for prosecution under AFSPA being sent to the Ministry of Home Affairs. Further, while the sanction for prosecution was declined by the Ministry of Defence on 19 March 1997, the Ministry of Defence in 2009 contradictorily states that the case had not been received. Following the conclusion of investigations by the Jammu and Kashmir Police on 7 August 1993, the Government of Jammu and Kashmir sat on the file for two years before forwarding the case to the Ministry of Defence.

The conduct of the Ministry of Defence and the Government of Jammu and Kashmir is indicative of the non-seriousness with which the processes of justice in Jammu and Kashmir are administered. Particularly striking in the instant case is that the investigations do not seem to have focused at all on Major General Verma as no sanction was sought for his prosecution. Considering that Major General Verma was allegedly present when Ashiq Hussain Ganai was picked up, and had knowledge of his whereabouts subsequently, it needs to be investigated why the Jammu and Kashmir Police and the Government of Jammu and Kashmir did not implicate him in the crime.

Also, the alleged promises made by him for the release of Ashiq Hussain Ganai suggest both his knowledge of the whereabouts of the victim and his control over his subordinates who it could be presumed were acting on his instructions.

The only point of contention in the instant case is the question of the continued detention or escape of Ashiq Hussain Ganai.

No proof of legal arrest is provided. No proof of the actual escape is provided. This case is yet another example of the armed forces making unsubstantiated allegations on the escape of an illegally detained person. The burden lies on the armed forces to prove how and when Ashiq Hussain Ganai escaped or whether he was killed in their custody. Similarly, the rationale of the Court of Inquiry that exonerated the armed forces in the case has not been provided.

Finally, this case serves as an example of the non-seriousness of the Jammu and Kashmir High Court as it has dragged on for 19 years. The manner in which the High Court has not appreciated the record before it, particularly on the involvement of Major General Verma in the crime, suggests that the High Court has failed in asserting its authority.

## Case No. 14

#### Victim Details

1. Gowhar Amin Bahadur [Extra-Judicial Killing]

Age: 21

Occupation: Businessman [Readymade garments] and Gas cylinder vendor

Son of: Mohammad Amin Bahadur

Resident of: Danderkhah, Batamaloo, Srinagar

2. Javaid Ahmad Bakshi [Extra-Judicial Killing]

Son of: Ghulam Qadir Bakshi

Resident of: Baranpathar, Batamaloo, Srinagar

#### Alleged perpetrators

1. Commandant G. S. Shekawat, 4<sup>th</sup> Battalion, Border Security Force [BSF]
2. Deputy Commandant Sanyal Singh, 4<sup>th</sup> Battalion, Border Security Force [BSF]

#### Allegations in Brief

On 7 April 1993, there was a mine blast at the Batamaloo bus stand. On 8 April 1993, the adjoining area was cordoned off and men were ordered to gather at the bus stand. The BSF personnel present questioned the victim and there was an argument following which the alleged perpetrators took the victims away in a gypsy. They were taken to Banpora, Batamaloo to a cowshed where they were both killed. The body of Gowhar Amin Bahadur was found at the Police Control Room, Srinagar. The body of Gowhar Amin Bahadur had gunshots in the head and chest. Earlier, the family of Gowhar Amin Bahadur had heard three gunshots.

Subsequently, when legal proceedings were ongoing, a BSF lawyer, Bashir Ahmad Zargar, approached the family of Gowhar Amin Bahadur and attempted to bribe them to withdraw the case.

#### Case Progress

First Information Report [FIR] no. 74/1993 was filed at Shergari Police Station u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC]<sup>74</sup>. The FIR stated that the victims were picked up and killed. They were not a part of any militant organization. The FIR was filed following an application to the Chief Judicial Magistrate [CJM], Srinagar. This case was closed by declaring the perpetrators as untraced but then reopened.

Prior to the above, FIR no. 65/1993 was filed at the Shergari Police Station u/s 3 [Licence for acquisition and possession of fire arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 and TADA by the 4<sup>th</sup> Battalion BSF claiming that two unidentified militants were killed during a cordon and search operation by various battalions of the BSF and some arms and ammunition were recovered from the spot<sup>75</sup>. This FIR was subsequently closed by declaring the perpetrators as untraced but then reopened.

The post-mortem report of 17 April 1993 confirmed that the cause of death was multiple gunshot wounds.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 340/2003] for the completion of investigations, cooperation of the BSF in investigations and ex-gratia

<sup>74</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>75</sup> Information on this FIR was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

government relief. A letter dated 11 December 2002 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Commissioner, Srinagar, was annexed to the petition. This letter states that during investigations, and based on statements of witnesses, it was confirmed that the victims were abducted by the 4<sup>th</sup> and other battalions of the BSF on 8 April 1993. Communication had been made to the BSF to provide the nominal roll of the BSF personnel who were involved in the cordoning operation on that day. The BSF and the Commandant of the 4<sup>th</sup> Battalion BSF submitted objections to the petition where they stated that twelve persons were apprehended on that day, but the names of the victims were not listed. But, it was also stated that two unknown militants were killed on that day during firing, one of which may be the victims.

On 17 December 2003, the petition was dismissed for non-prosecution of the case by the petitioners.

The family of Gowhar Amin Bahadur approached the State Human Rights Commission [SHRC] on 21 October 2000 and a final decision was issued on 4 October 2006. The Inspector General of Police [IGP], Kashmir submitted a report dated 4 March 2002 which stated that investigations, and statements of witnesses recorded, confirmed that Gowhar Amin Bahadur was abducted by the 4<sup>th</sup> Battalion BSF during a cordon/search operation and then killed. The case was still under investigation. The Station House Officer [SHO] Batamalo Police Station also submitted a report stating that the Commandant of the 4<sup>th</sup> Battalion BSF, having been summoned, never appeared before the Police Station. Inspector General, BSF was also requested to submit a nominal roll of officials involved in the operation. This too had not been submitted. Based on the above, the SHRC concluded that Gowhar Amin Bahadur had been abducted and killed by the 4<sup>th</sup> Battalion BSF. Rs. 2,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

Another petition was filed before the High Court [Original Writ Petition (OWP) 187/2007] for the completion of investigations, payments of Rs. 2,00,000 ex-gratia government relief and compassionate employment under SRO-43, and compensation/damages of Rs.10,00,000. The police authorities submitted joint submissions before the High Court where the details of the investigations were provided, and it was stated that the investigations were ongoing. The Deputy Commissioner, Srinagar, relying on the BSF version of events stated that the family of Gowhar Amin Bahadur would not be entitled to relief/compensation. A compliance report dated 22 March 2010 was submitted by the Sub Divisional Police Officer [SDPO], Shaheed Gunj Police Station stating that investigations were ongoing, and statements of seven BSF personnel were recorded, including that of Commandant G. S. Shekawat that supported the BSF version of events.

On 28 May 2010, an enquiry was ordered by the High Court and it was conducted by the CJM, Srinagar, and was concluded on 26 February 2011. The enquiry found in favor of the family of Gowhar Amin Bahadur and found that the version of events of the BSF were baseless. On 10 June 2011, the High Court found in favor of the family of Gowhar Amin Bahadur and ordered Rs. 2,00,000 ex-gratia government relief, compassionate employment and completion of investigations to be monitored by the CJM, Srinagar. Subsequently, a contempt petition [no. 462/2011] was filed for the non-implementation of the High Court order. The police authorities provided written submissions before the High Court. It was stated that investigations were ongoing, witnesses were being examined, and the High Court order was not being disobeyed.

The Deputy Commissioner, Srinagar submitted that Rs. 1,00,000 had already been sanctioned/ provided to the family of the victim and the

additional Rs. 1,00,000 had been sanctioned and the compassionate employment under SRO-43 were being processed.

On 3 April 2012, the High Court ordered that the issue of compassionate appointment be finalised in two weeks. The matter was listed in two weeks and a status report on the investigations was sought.

On 11 September 2012 the High Court came down harshly on the Deputy Commissioner, Srinagar for disobeying the orders of the court in relation to compassionate employment and the ex-gratia government relief. The High Court stated that regardless of Rs. 1,00,000 already being paid, the family of the victim was to be now paid Rs. 2,00,000. Latest status of investigations was also sought. The petition remains pending with the High Court.

By order dated 9 July 2012, the CJM, Srinagar, noted that the BSF was not cooperating with the investigations and stated that the investigations must be expedited. The matter was put up for hearing on 20 August 2012.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The family of Gowhar Amin Bahadur has received Rs. 2,00,000 compensation to date.

The family of Gowhar Amin Bahadur gave a statement to the IPTK on 12 March 2012.

#### *Case Analysis*

The instant case serves as a strong indictment of the various processes of justice. A case of 1993 remains pending with limited progress, except for the payment of Rs. 1,00,000 of ex-gratia government relief. This notwithstanding a confirmation by the SHRC, CJM, Srinagar and the High Court that the victim was abducted by the 4<sup>th</sup> Battalion BSF. Further, Commandant G. S. Shekawat has admitted his role in the operation on 8 April 1993. This coupled with the findings on the operation being one where the victim was abducted and killed, the role of Commandant G. S. Shekawat would prima facie be established in the killing of the victim. The role of Deputy Commander Sanyal Singh, named by the family of the victim as being responsible, would have to be further established.

The filing of the FIR by the BSF while claiming to have killed unidentified militants is yet another example of the fake encounters carried out by the armed forces. The subsequent exposure of the falsehood of the FIR and the non-cooperation by BSF with the investigations suggests that the BSF enjoyed impunity for carrying out a fake encounter and non-cooperation with the investigations. This case also indicts the police for filing the FIR only after the intervention of the CJM, Srinagar and for not reporting the non-cooperation of the BSF in a timely manner. The police only referred to the non-cooperation of the BSF when required to do so by the SHRC, in 2000, and the High Court, in 2003.

The irresponsible attitude of the then Deputy Commissioner, Srinagar is condemnable. Despite the letter dated 11 December 2002 from SSP, Srinagar to the Deputy Commissioner, Srinagar which confirmed the abduction of the victim by the BSF, and the SHRC decision based on the report submitted by the IGP, Kashmir that confirms the abduction and killing of the victim by the BSF, the Deputy Commissioner, Srinagar relied on the version of the accused BSF.

The Ministry of Home Affairs appears to have taken no action in this case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

A case of gruesome human rights violations has been allowed to remain pending for 19 years due to the all pervasive culture of impunity.

## Case No. 15

### Victim Details

[Massacre / Extra-Judicial Killings]

1. Manzoor Ahmad Dar  
Age: 18  
Occupation: Student  
Son of: Sonallah Dar
2. Irshad Hussain Tak  
Age: 18  
Occupation: Student  
Son of: Ghulam Mohi-ud-Din Tak
3. Javed Ahmad Waza  
Age: 16  
Occupation: Student  
Son of: Ghulam Mohammad Waza
4. Sheikh Shabir Ahmad  
Age: 20  
Occupation: Student  
Son of: Sheikh Ghulam Nabi
5. Shabir Ahmad Shah  
Age: 18  
Occupation: Student  
Son of: Abdul Majid Shah
6. Mohammad Saleem Boda  
Age: 35  
Occupation: Government Employee  
Son-in-law of: Ghulam Mohammad Tak
7. Afroz Ahmad Zarger  
Age: 11  
Occupation: Student  
Son of: Abdul Rashid Zarger
8. Ghulam Mohammad Zarger  
Age: 50  
Occupation: Businessman  
Son of: Mehda Joo Zarger
9. Bashir Ahmad Wani  
Age: 30  
Occupation: Businessman  
Son of: Ghulam Ahmad Wani
10. Mohammad Abdullah  
Age: 50  
Occupation: Tailor  
Son of: Ghulam Mohammad Sheikh
11. Kamal Ji Koul  
Age: 16  
Occupation: Student  
Son of: Dwarka Nath
12. Mohammad Altaf Sheikh

- Age: 16  
Occupation: Student  
Son of: Nazir Ahmad
13. Riyaz Ahmad Gatoo  
Age: 18  
Occupation: Student  
Son of: Seraju-Din Gatoo
14. Ghulam Mohammad Pandit  
Age: 60  
Occupation: Businessman  
Son of: Ghulam Rasool
15. Mohammad Saleem Turay  
Age: 40  
Occupation: Government Employee  
Son of: Mohammad Abdullah Turay
16. Mohammad Shafi Wagay  
Age: 22  
Occupation: Businessman  
Son of: Mohammad Ramzan Wagay
17. Mukhtar Ahmad Ganai  
Age: 18  
Occupation: Student  
Son of: Mohammad Shaban
18. Mohammad Iqbal Ganai  
Age: 17  
Occupation: Student  
Son of: Mohammad Maqbool
19. Abdul Rashid Vaid  
Age: 17  
Occupation: Student  
Son of: Abdul Hamid Baba
20. Manzoor Ahmad  
Age: 18  
Occupation: Businessman  
Son of: Zoona
21. Mushtaq Ahmad Hamdani  
Age: 18  
Occupation: Student  
Son of: Ghulam Nabi Hamdani
22. Mohammad Shafi Hamdani  
Age: 18  
Occupation: Student  
Son of: Hanifa
23. Fayaz Ahmad Tak  
Age: 20  
Occupation: Businessman  
Son of: Fatima
24. Abdul Rahman Zaroo  
Age: 65  
Occupation: Businessman  
Son of: Abdul Aziz Zaroo
25. Mohammad Ashraf Zarger  
Age: 15  
Occupation: Student  
Son of: Khalil Mohammad Zarger
26. Manzoor Ahmad Zarger  
Age: 40  
Occupation: Businessman  
Son of: Abdul Samad Zarger

Residents of: Bijbehara, Anantnag District, Jammu and Kashmir

27. Gull Mohammad Kachroo  
Age: 60  
Occupation: Businessman  
Son of: Nissar Ahmad Kachroo
28. Parvez Ahmad Dar



- Age: 18  
Occupation: Student  
Son of: Mohammad Akber Dar
29. Showkat Ahmad Khanday  
Age: 18  
Occupation: Businessman  
Son of: Mohammad Ramzan Khanday
30. Ghulam Hassan Waza  
Age: 50  
Occupation: Government Employee  
Son of: Abdul Razak Waza
31. Karim Ganai  
Age: 45  
Occupation: Government Employee  
Son of: Ramzan Ganai  
Residents of: Pagal pora Tehsil, Kulgam District, Jammu and Kashmir

#### *Alleged perpetrators*

1. Deputy Commandant J. K. Rodala, 74<sup>th</sup> Battalion Border Security Force [BSF]
2. Sub-Inspector [SI] Malhar Singh, 74<sup>th</sup> Battalion Border Security Force [BSF]
3. Naik [Corporal] Nand Kishore, 74<sup>th</sup> Battalion Border Security Force [BSF]
4. Naik [Corporal] Khairul Hussain, 74<sup>th</sup> Battalion Border Security Force [BSF]
5. Lance Naik [Lance Corporal], K. Singh, 74<sup>th</sup> Battalion Border Security Force [BSF]
6. Constable H. B. Jayrama, 74<sup>th</sup> Battalion Border Security Force [BSF]
7. Constable Shiv Murtiappa, 74<sup>th</sup> Battalion Border Security Force [BSF]
8. Constable Ravi Kumar, 74<sup>th</sup> Battalion Border Security Force [BSF]
9. Constable Kulwant Singh, 74<sup>th</sup> Battalion Border Security Force [BSF]
10. Constable Bhoop Singh, 74<sup>th</sup> Battalion Border Security Force [BSF]
11. Constable Satisan T.R., 74<sup>th</sup> Battalion Border Security Force [BSF]
12. Constable Prem Singh, 74<sup>th</sup> Battalion Border Security Force [BSF]

#### *Allegations in Brief*

On 22 October 1993 a procession of about 2000 to 3000 people proceeded from the Jamia Masjid, Bijbehara in protest against the siege at Hazratbal shrine. The procession was peaceful and did not include any armed militants.

As the procession reached the main highway, Deputy Commandant J. K. Rodala took out his revolver and fired shots in the air. Following this, the other alleged perpetrators, and other personnel of the 74<sup>th</sup> Battalion BSF, fired indiscriminately on the procession. This resulted in the death of 35 civilians on the spot including the above-listed victims. Over one hundred other persons sustained injuries.

#### *Case Progress*

Following the incident, a first information report [FIR] no. 90/1993 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989

[RPC] was filed at the Bijbehara Police Station<sup>76</sup>. Further, the Government of Jammu and Kashmir ordered an enquiry by a Magistrate and the report was submitted on 13 November 1993.

Relatives of the 31 victims listed above filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 149/1996] seeking compensation of Rs. 50,00,000 each. The Government of Jammu and Kashmir and the Jammu and Kashmir Police made their submissions before the High Court. First, they accepted that the procession, while “highly sentimental”, was peaceful. Second that the firing on the procession was by a BSF patrolling party. Third, that the investigation in the case was finalized and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought. Fourth, that the Government of Jammu and Kashmir and Jammu and Kashmir Police cannot be held responsible for the acts, if established, of the BSF and that Rs. 1,00,000 ex-gratia government relief had already been paid to the families of the deceased. The Union of India [through the Ministry of Home Affairs and specifically by the Deputy Inspector General (DIG), BSF, Rajouri] made the following submissions:

- On 22 October 1993, Deputy Commandant J.K. Rodala, along with eleven others went to Bijbehara town.
- In anticipation of a BSF convoy that was to pass through the area, and seeing the large crowds gathered, Deputy Commandant J.K. Rodala asked SI Malhar Singh to tell the crowd to disperse. At this point, 2-3 persons in the crowd pounced on “CT Sajesh MV”. Then, there was gunfire from an AK-47 and SI Malhar Singh was injured on his right shoulder. Some members of the crowd then tried to grab his weapon. At this point, a “few rounds” were fired by the troops in self-defence.
- The findings of the enquiry magistrate are incorrect.
- The General Security Force Court acquitted all the alleged perpetrators.

In addition, other BSF personnel also filed their affidavits before the High Court and stated that “actions taken by them were in the official discharge of their duties and had due sanction of law”.

On 10 September 2007 the High Court delivered its final decision and granted Rs. 4,00,000 each to the petitioners. The Government of Jammu and Kashmir and Jammu and Kashmir Police filed a Letter Patent Appeal [LPA no. 69/2009] against the 10 September 2007 order<sup>77</sup>.

Further, it is reported that the National Human Rights Commission [NHRC] filed a petition before the Supreme Court seeking that that the findings of the General Security Force Court be made public. This petition was subsequently withdrawn<sup>78</sup>.

#### *Case Analysis*

As a copy of the findings of the General Security Force Court is not on record, the only documents that may be considered for the purpose of analysis are the Magisterial enquiry report of 13

<sup>76</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>77</sup> Information on the petition numbers was sought through RTI on 16 February 2012. Information was provided.

<sup>78</sup> Times of India, [http://articles.timesofindia.indiatimes.com/2002-07-06/india/27302159\\_1\\_nhrc-national-human-rights-commission-case](http://articles.timesofindia.indiatimes.com/2002-07-06/india/27302159_1_nhrc-national-human-rights-commission-case), 6 July 2002.

November 1993 and the final order of the High Court of 10 September 2007.

The Magisterial enquiry report submitted on 13 November 1993 clearly indicts the security forces in the killing at Bijbehara. The conclusions of the report are as follows:

- "On 22 October 1993 a procession of 2000 to 3000 people was taken from Jamia Masjid Bijbehara against Hazratbal siege. The procession was entirely peaceful and un-armed. There were no armed militants amongst the demonstrators.
- It has been established beyond any shadow of doubt that firing upon the procession was absolutely un-provoked and the claim made by the security forces that they were forced to retaliate the firing of militants for self defence is baseless and concocted.
- The enquiry conducted falsifies the assertion of the BSF personnel that total 51 bullets were fired by them. Actually, besides the cold blooded killing of 31 persons some 73 persons were injured.
- There were no casualties from the BSF side and which conclusively establishes the fact that there was no firing from the side of the processionists and there was no militant or armed person in the crowd.
- The security forces personnel have committed offence out of vengeance and their barbarous act is deliberate and well planned"

The report continues to state that "the role of Deputy Commandant Shri J.K. Rodala in the whole incident is equally culpable because of tacit approval given by him to the indiscriminate and un-provoked firing." The report then recommends the immediate dismissal of alleged perpetrators 2 to 12 listed above and the initiation of criminal proceedings against them and refers to the alleged perpetrators as "malignant and sick minded individuals". The report therefore clearly indicts the BSF and alleged perpetrators 2 to 12 in the Bijbehara incident<sup>79</sup>. The enquiry report while also indicting Deputy Commandant J.K. Rodala does not refer to him firing into the air, the signal that appears to have begun the firing. Nonetheless, the enquiry report serves as a clear indictment against him as well due to his tacit approval and considers him equally culpable as the others.

While the BSF, before the High Court, did not accept the findings of the Magisterial enquiry report, the High Court in its 10 September 2007 order did affirm the findings. The following are the relevant conclusions of the High Court:

- The plea taken by the DIG BSF, of there being a provocation for the firing, is contradicted by the affidavits of the BSF personnel.
- Though the DIG BSF states that SI Malhar Singh received a bullet injury no medical certificate indicating the same was placed on record.
- There is sufficient material on the record to support the version of events put forward by the petitioners. Particularly, the enquiry report of 13 November 1993.

Based upon the above, the High Court concluded that "these facts sufficiently show that the BSF personnel on duty opened fire on the mob without any provocation or cause. The procession was entirely peaceful and unarmed and there is no evidence of the presence of any armed militants in the mob. Thus there was no justification to kill these persons who were closely related to the present petitioners." Based on its conclusions the High Court ordered compensations of

<sup>79</sup> The report does not fully name "K.Singh, L.N.K., no. 84744051" but does refer to his designation, his first initial "K" and his number.

Rs. 4,00,000 to each of the petitioners in addition to the ex-gratia government relief already granted to them.

The High Court and the enquiry report clearly indict the BSF. As the affidavits of the BSF personnel are not presently with the IPTK it is unclear how they contradict with the position of the DIG BSF, but the indictment of the High Court remains unequivocal.

While submissions before the High Court suggest that the case against the BSF personnel has been sent for sanction, the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 does not refer to this case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Therefore, it would appear that investigations in the case had in fact not been carried out or completed. It needs to be ascertained on whose directions the police have not carried out or completed the investigations in a case where the Magisterial enquiry and the High Court have indicted the alleged perpetrators. The Magisterial enquiry now appears to have been rendered redundant by the inaction of the Government.

## Case No. 16

### *Victim Details*

Sajad Umar Guroo [Abduction and Enforced Disappearance]  
Son of: Ghulam Mohammad Guroo  
Resident of: 157, Rose Lane, Channapora, Chadoora, Budgam District

### *Alleged perpetrators*

1. Sub-Inspector [SI] Vinod Kumar, 30<sup>th</sup> Battalion Border Security Force [BSF], Camp near Neelam Cinema, Srinagar

### *Allegations in Brief*

On 10 June 1994, the BSF was arresting youth in relation to two grenade explosions at the exhibition crossing at about 10:45 am.

Sajad Umar Guroo was picked up at about 3:00 pm on 10 June 1994 at the exhibition crossing, Jehangir Chowk, Srinagar by the 30<sup>th</sup> Battalion BSF while he was waiting for a bus with his sister Shaheena. Shaheena chased the vehicle in which the victim was abducted in an auto rickshaw.

The vehicle entered Neelam Cinema at Shaheed Gunj, Srinagar, where the BSF was camped. Shaheena could not enter the camp, which was at that time headed by SI Vinod Kumar. The victim has disappeared since.

On the same day at 6:00 pm, SI Vinod Kumar raided the victim's house and had brought the victim along with him. An extensive search was conducted but nothing was recovered.

### *Case Progress*

The police filed first information report [FIR] no. 62/1994 at the Shaheed Gunj Police Station regarding the two grenade explosions<sup>80</sup>. The Shergari Police Station entered a Daily Diary report no.19 on 15 June 1994 in relation to the lifting of the victim.

The family of the victim approached the State Human Rights Commission [SHRC] and a final decision was delivered on 20 March 2003. Ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HC 315/1994]. Subsequently, another petition was filed before the High Court [Original Writ Petition (OWP) 572/2004] for grant of relief/compensation. Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

The family of the victim received Rs.1,00,000 ex-gratia government relief.

### *Case Analysis*

Before considering the SHRC decision for the purposes of analysis, a brief mention of two documents on record need be made.

On 13 May 2002, the Senior Superintendent of Police [SSP], Srinagar, wrote a letter to the Additional Director General of Police [ADGP], Criminal Investigation Department [CID] of Jammu and Kashmir Police, confirming that the victim was picked up on 10 June 1994 by the BSF and that since that date his whereabouts are not known. On 21 June 2002, the ADGP, CID, Jammu and Kashmir, Srinagar, wrote a letter [the copy on record is an unsigned document] to the Deputy Commissioner, Budgam and confirmed that the victim was picked up on 10 June 1994 by the 30<sup>th</sup> Battalion BSF. Further, the letter confirmed that the victim was not involved in subversive activities and was still missing.

The above two documents confirm the abduction, the unit responsible, the innocence of the victim and the continued disappearance. This may now be seen along with the SHRC decision of 20 March 2003. The SHRC decision was based on a 10 February 2003 report from the Crime Branch. The Crime Branch recorded statements of witnesses, including Mohammad Younis Bazaz. This witness, who was also lifted by the BSF on the same day, confirmed that he had seen the victim at Neelam Chowk, Srinagar where the BSF was stationed at a migrant house. The victim had been brought by SI Vinod Kumar.

Further, the Crime Branch concluded that the victim was not associated with any banned party. The BSF informed the Crime Branch that they had not lifted the victim. Based, it would seem purely on the submission of the BSF, and discounting the testimony of Mohammad Younis Bazaz, the SHRC concluded that, while the victim was an innocent person and was now disappeared, it could not be confirmed that he had been abducted by the 30<sup>th</sup> Battalion of the BSF.

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<sup>80</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Therefore, rather disturbingly, despite a clear conclusion on behalf of investigating agencies that the victim was abducted by the 30<sup>th</sup> Battalion BSF, and one strong eye-witness testimony that names SI Vinod Kumar, the SHRC was unable to confirm the abduction details and specifically indict SI Vinod Kumar.

Despite the passage of 18 years there appears to have been progress on the investigations.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 17

### *Victim Details*

Ghulam Hassan Baba [Abduction and Enforced Disappearance]  
Occupation: Imaam [Mosque priest]  
Son of: Ahad Baba  
Resident of: Wagad, Pahalgam, Anantnag District

### *Alleged perpetrators*

1. Commandant [Commanding Officer] R. K. Singh, 9 Para-Commandos, Army, Camp Srigufwara, Anantnag

### *Allegations in Brief*

On 7 July 1994, Ghulam Hassan Baba was picked up by Commanding Officer R. K. Singh of 9 Para-Commandos, Army, Srigufwara Camp, Anantnag and has disappeared since.

### *Case Progress*

First Information Report [FIR] no.14/1994 was filed at the Pahalgam Police Station through the Aishmuqam Police Post on 8 July 1994<sup>81</sup>.

The family of Ghulam Hassan Baba filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HC 111/1995]<sup>82</sup>. The Union of India and the Commanding Officer, 9 Para-Commandos, submitted that they had not arrested the victim. The High Court ordered an enquiry on 26 November 1996 which was conducted by the Sessions Judge, Anantnag and concluded on 9 August 2002.

### *Case Analysis*

The only document on record for the purposes of analysis is the enquiry report of 9 August 2002.

The enquiry report begins by stating that the court issued notices to the respondents on 10 December 1996. According to the enquiry report, on 31 December 1996, the Public Prosecutor appeared and associated himself with the proceedings for a "pretty long time", during which the petitioner testified and examined other witnesses.

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<sup>81</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

<sup>82</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

On 1 December 1999, fresh notices were issued to the State of Jammu and Kashmir, Director General of Police [DGP], Jammu and Kashmir, Superintendent of Police [SP] Criminal Investigation Department [CID], SP Anantnag and the Commanding Officer, 9 Para-Commandos, for the filing of statement of facts.

Consequently, Standing Counsel, Union of India appeared and sought time to file the statement of facts. The Public Prosecutor filed the statement of facts on behalf of the State of Jammu and Kashmir and its functionaries.

After being granted several opportunities to file the statement of facts the Union of India did not do so, and on 12 July 2002, no further opportunities were given. The petitioner appeared before the enquiry initially but subsequently opted to remain absent.

The State of Jammu and Kashmir and its functionaries stated that Ghulam Hassan Baba could not be traced in any Joint Interrogation Centre at Jammu or Srinagar but that a report had been lodged in Aishmuqam Police Post on 8 July 1994 that Ghulam Hassan Baba was abducted by the 9 Para-Commandos, and specifically the Commanding Officer R.K. Singh on 7 July 1994.

The petitioner examined the following witnesses:

- Mohammad Yaseen, the brother-in-law of the victim, stated that on 7 July 1994 at 5:00 pm Ghulam Hassan Baba was abducted from a shop in Kranagam village by the 9 Para-Commandoes who were stationed at Aishmuqam. The abductors arrived in taxi no. JKT 1516 which developed a defect and the witness and other pedestrians were made to push the vehicle, but it would not start and was therefore brought to Aishmuqam Camp. The witness stated that he went several times to the Aishmuqam Camp to seek the release of the victim but the "military people would avoid them on false promises". On cross-examination the witness added that a person named Mohammad Yousuf had been arrested earlier and was accompanying the victim in the vehicle that day. Mohammad Yousuf remained with him at the Aishmuqam Camp for several days and was subsequently released. Mohammad Yousuf disclosed this information in a sworn affidavit. The witness further stated that Mohammad Yousuf was now deceased.
- Salaam Baba, elder brother of Ghulam Hassan Baba, testified that the army arrested Ghulam Hassan Baba on 7 July 1994. Further, that Ghulam Hassan Baba was not a militant but an Imaam [Mosque priest].

The petitioner [Saja], wife of Ghulam Hassan Baba, stated that on 7 July 1994 army personnel in civilian dress abducted Ghulam Hassan Baba. Since that day, she had not seen Ghulam Hassan Baba.

The enquiry also considered the affidavit of Mohammad Yousuf Sheikh which states that he had been arrested by the Commanding Officer R.K. Singh on "15 June 1994" and released on "27 April 1994". Further, that Ghulam Hassan Baba was also arrested by the same army unit. The enquiry judge found this affidavit to support the petitioner's case and concluded that Ghulam Hassan Baba was abducted by the Commanding Officer R.K. Singh on 7 July 1994 and initially lodged at the Aishmuqam Camp and then shifted.

The enquiry report clearly indicts Commanding Officer R. K. Singh but two comments need to be made:

- While it is mentioned that the FIR refers to the Commanding Officer R.K. Singh, none of the witnesses before the enquiry judge refer to him

- The affidavit of Mohammad Yousuf Sheikh, as summarized by the enquiry judge, does indict Commanding Officer R. K. Singh but the dates of his own arrest as mentioned in the enquiry report appears to be incorrectly noted by the enquiry judge.

This case serves as another example of a delayed judicial process that took seven years to indict Commanding Officer R. K. Singh.

The delayed enquiry report apparently did not result in any further action or prosecution as this case finds no mention in the official documents related to cases sent by the Jammu and Kashmir Government for acquiring prosecution sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. Significantly, the Union of India, by choosing not to engage with the judicial enquiry, has attempted to undermine the process of justice and has displayed its non-seriousness to accountability.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **18**

### *Victim Details*

Mohammad Azad Khan [Extra-Judicial Killing]  
Occupation: Teacher, Education Department  
Son of: Sattar Ali Khan  
Spouse: Reshan Bee  
Resident of: Kamalkote, Uri, Baramulla District

### *Alleged perpetrators*

1. Major A. K. Abbot, 4<sup>th</sup> Sikh Regiment, Army
2. Subedar Gurmail Singh, 4<sup>th</sup> Sikh Regiment, Army

### *Allegations in Brief*

Mohammad Azad Khan was killed in custody by the alleged perpetrators on 8 July 1994.

### *Case Progress*

First Information Report [FIR] no. 76/1994 u/s 306 [Abetting suicide] Ranbir Penal Code, 1989 [RPC] was filed at Uri Police Station<sup>83</sup>.

The family of the victim filed a complaint before the State Human Rights Commission [SHRC] on 11 September 2008. The SHRC issued its final decision on 23 November 2009 and recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

### *Case Analysis*

For the purposes of analysis, the only document available with the IPTK is the SHRC decision of 23 November 2009.

The SHRC received a report from the Director General of Police [DGP], Jammu and Kashmir dated 30 May 2009 that confirmed that the victim was abducted on 8 July 1994 by the 4<sup>th</sup> Sikh Regiment, and subjected to severe torture while in custody. The victim was taken along by the army personnel towards Gohala bridge, Uri,

<sup>83</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. No information was provided.

where “reportedly” he jumped into the Jhelum river and drowned. The army personnel did not rescue him. During investigations, offences u/s 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] were established against Major “A.K. Abot” and Sobedar “Gurmail Sing” of the 4<sup>th</sup> Sikh regiment. The family of the victim filed a rejoinder before the SHRC and denied that the victim had jumped into the Jhelum river.

The SHRC confirmed, based on the police report, the abduction and severe torture of the victim, but did not make any observations on the death of the victim. The SHRC decision, and primarily the DGP report of 30 May 2009, serves as an indictment of the alleged perpetrators. But, it is unfortunate, that the SHRC did not pass any observations on the family of the victim’s objections to the police report version relating to the victim jumping into the Jhelum river.

The final detail to be considered is from the sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] documents in relation to this case.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that the case was under consideration. But, only the name of Major A. K. Abbot is mentioned.

Further, the victim is referred to as a militant and it is stated that the victim “managed to jump in Jhelum river while being escorted and killed by firing”. But, the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, on 6 September 2011 makes no mention of this case. The Ministry of Defence, despite the passage of 18 years from the crime, is further delaying the processes of justice by not taking a decision on the issue of sanction for prosecution under AFSPA. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 19

### *Victim Details*

Reyaz Ahmad Wani [Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 20

Resident of: Bhatnoor village, Pulwama District

### *Alleged perpetrators*

1. Captain Sharma, 22<sup>nd</sup> Battalion, Grenadiers, Army
2. Mushtaq Ahmad Ganaie, Informer, 22<sup>nd</sup> Battalion, Grenadiers, Army

### *Allegations in Brief*

On 13 September 1994, the personnel of 22<sup>nd</sup> Battalion Grenadiers, commanded by Captain Sharma, cordoned the Bhatnoor village. Mushtaq Ahmad Ganaie, acting as an informer, accompanied Captain Sharma. The soldiers entered the residential houses and beat many elderly people and insulted the women of the village. Further, the residents of the village were assembled at a place, an identification exercise was carried out, and during this process the victim was picked up and beaten mercilessly due to which he died on the way to the hospital.

### *Case Progress*

First Information Report [FIR] no. 112/1994 u/s 302 [Murder], 354 [Assault/Criminal force to a woman with intent to outrage modesty] Ranbir Penal Code, 1989 [RPC] was filed at the Pulwama Police Station<sup>84</sup>. During the investigations, a post-mortem was carried out. Following the investigations, a chargesheet was filed before the Chief Judicial Magistrate [CJM], Shopian on 17 April 1996 against Mushtaq Ahmad Ganaie, who then committed the case on the same day to the Sessions Court, Pulwama. Following further proceedings, including a High Court of Jammu and Kashmir order of 4 September 1996, the case was tried before the 4<sup>th</sup> Additional District Judge, Srinagar. On 23 September 2003, Mushtaq Ahmad Ganaie was convicted u/s 302 [Murder], 323 [Punishment for voluntarily causing hurt], 34 [Common intention] Ranbir Penal Code, 1989 [RPC], and sentenced to life imprisonment and fined. The case was referred to the High Court, Srinagar Bench for confirmation of the sentence.

The proceedings, if any, against Captain Sharma are not available on record. But, what is certain, based on official documents released by the State and Central Governments, is that the case relating to Captain Sharma was never referred for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], and neither has any information been made available by the Indian army on whether Captain Sharma was court-martialled.

### *Case Analysis*

The 23 September 2003 judgment of the trial court is the only document on record that may be analysed.

Below is a summary of the relevant evidence led during trial [unfortunately, the judgment does not detail the names of the witnesses]:

- Prosecution Witness [PW] 1, stated that he knew Mushtaq Ahmad Ganaie, the army informer and Reyaz Ahmad Wani. On 13 September 1994, an army contingent under the command of Captain Sharma laid siege to the village in the early hours and the residents were ordered to assemble near the *Ziyarat Sherif* [shrine] of the village. An identification parade was held during which Mushtaq Ahmad Ganaie identified Reyaz Ahmad Wani. Captain Sharma and Mushtaq Ahmad Ganaie took Reyaz Ahmad Wani for interrogation to a nearby tree. After sometime, the witness heard Reyaz Ahmad Wani “crying” that he was not a militant. But the alleged perpetrators continued to beat him. The interrogation continued for about two and a half hours. The witness, father of Reyaz Ahmad Wani [PW 2], and two others [PW 6 and 7] went to the alleged perpetrators and begged them to stop beating Reyaz Ahmad Wani and set him free. But, the request was not accepted and Reyaz Ahmad Wani continued to be beaten with sticks while he was hanging “with” the tree. The mother of Reyaz Ahmad Wani also intervened but she was kicked away and the father of Reyaz Ahmad Wani was beaten. After sometime, Captain Sharma called them [presumably including the witness] and asked them to take away Reyaz Ahmad Wani, who was half dead. Following a visit to the village doctor, and on the way to a hospital in Srinagar, Reyaz Ahmad Wani died. The army had taken the sticks and rope with them. On cross-examination, the witness clarified that he had

<sup>84</sup>Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 25 July 2012 from the Jammu and Kashmir Police a copy of the FIR and other investigation documents were provided and information was provided that a chargesheet was produced in court on 17 April 1996 and the case remain sub-judice

seen Reyaz Ahmad Wani being beaten with his own eyes. No damage to the witness testimony appears to have been done on cross-examination.

- PW 2, father of Reyaz Ahmad Wani, stated that on the morning of 13 September 1994, the army had laid siege to the village. An identification parade was carried out near the *Ziyarat Sherif* [shrine] at the village. The army was led by Captain Sharma and accompanied by Mushtaq Ahmad Ganaie, an informer. During the identification Reyaz Ahmad Wani was picked up by Mushtaq Ahmad Ganaie and taken for interrogation. Subsequently, the witness heard the cries of Reyaz Ahmad Wani as he was tied to a tree and beaten with sticks by the alleged perpetrators. The witness and his wife sought to intervene and asked that Reyaz Ahmad Wani not be beaten but their request was not given heed to. The witness stated that Mushtaq Ahmad Ganaie was “pulling the private part” of Reyaz Ahmad Wani. Subsequently, the rope by which Reyaz Ahmad Wani was tied to the tree was removed. Reyaz Ahmad Wani was taken to the village hospital, and then on the way to a Srinagar hospital he died. During cross-examination, the witness stated that the army troops, and Mushtaq Ahmad Ganaie, were acting under the command of Captain Sharma. No damage to the witness testimony appears to have been done on cross-examination.
- PW 3, the Lambardar [Numberdar, de facto revenue authority in the village] of Bhatnoor village, stated that at 6:00 am on 13 September 1994 the army personnel led by Captain Sharma cordoned the village. An identification parade was carried out to identify militants and Mushtaq Ahmad Ganaie identified Reyaz Ahmad Wani. Subsequently, the witness heard the cries of Reyaz Ahmad Wani as he was being beaten by both alleged perpetrators. The witness further stated that the father of Reyaz Ahmad Wani “went near the police where the deceased was being beaten up and saw the deceased having been kept hanging with a tree by the accused and the army personnel who were beating him up”. After this, both alleged perpetrators brought Reyaz Ahmad Wani to his house in a half dead condition. Reyaz Ahmad Wani was taken to the village hospital, and then on the way to a Srinagar hospital he died. Reyaz Ahmad Wani was not connected in any way to militancy. On cross-examination, the witness stated that they were not allowed to go to the place where Reyaz Ahmad Wani was being beaten, but the father of the victim had gone there and he informed them on what was happening. The victim was brought back to his house at about 3:00 pm.
- PW 5, stated that on 13 July 1994 the army had cordoned the village and the people were asked to assemble at a place near the *Ziyarat Sherif* [shrine] of the village. An identification parade was conducted and the victim was picked up by Mushtaq Ahmad Ganaie, who was accompanying the army, and was taken for interrogation by both the alleged perpetrators. Reyaz Ahmad Wani was tied to a tree and they heard cries of the victim. The alleged perpetrators were beating Reyaz Ahmad Wani with sticks. When the mother and father of Reyaz Ahmad Wani sought to intervene, his father was also beaten up. Subsequently, PW 2 and 3 were asked to take Reyaz Ahmad Wani away. Reyaz Ahmad Wani was taken to the village hospital, and then on the way to a Srinagar hospital he died. On cross-examination, the witness maintains that he saw the victim being beaten.
- PW 6, the brother of Reyaz Ahmad Wani states that he saw the “dead body” of his brother kept in the compound of his house. No damage to the witness testimony appears to have been done on cross-examination. The witness also stated that the family had received the ex-gratia compensation.
- PW 8, is the witness on the seizure memo and it was in his presence that the dead body of Reyaz Ahmad Wani was taken

by the police. The witness stated that there were injuries on the body of Reyaz Ahmad Wani, except his head.

- PW 10, the doctor who examined Reyaz Ahmad Wani at the village, confirms that the victim had suffered injuries that could be caused by sticks.
- PW 11 and 12 conducted the post-mortem on the dead body of Reyaz Ahmad Wani. They noted injuries on the body and noted that Reyaz Ahmad Wani had died due to “sustained torture”. PW 12 stated that all injuries were inflicted within twenty four hour duration.
- PW 13, the person investigating the crime provided details of the investigation.
- PW 14 and 15 are also of the police but their testimonies need not be recounted here.
- Defence witness [DW 1], Assistant Commissioner in the office of the Development Commissioner at the relevant date, stated that during the processing of the ex-gratia government relief case, the parents and other witnesses had stated that Reyaz Ahmad Wani had died due to gun fire. These statements were subsequently tampered and the reference to gun fire was substituted with a reference to Reyaz Ahmad Wani having died due to being beaten.
- DW 2 stated that on 9 September 1994 the father and elder brother of Mushtaq Ahmad Ganaie [the army informer] were kidnapped by unidentified persons and later the dead body of the father was found. The brother of Mushtaq Ahmad Ganaie was killed on 9 September 1994. Mushtaq Ahmad Ganaie remained in his house for four days of mourning.
- DW 3, Mushtaq Ahmad Ganaie, stated that on 9 September 1994 at about 10:30 pm his father and elder brother were kidnapped. The body of his father was found the next day and his brother’s body was found on 14 September 1994. From 9 September 1994 to 16 September 1994, Mushtaq Ahmad Ganaie remained at his house at village Chandgam, Pulwama. In cross-examination, he denied working with the army or with Captain Sharma.

The court considered the above evidence and the arguments of the counsel of the accused who appeared to limit himself to the issue of intent based on the reasoning that as the head of the victim was not targeted there was no intent to kill him. But, considering the other injuries, the court found that intent to kill was established. Further, the alibi plea was considered by the court to be an afterthought and was not accepted.

Before analysing the judgment of the court, a few points need to be made:

- It is unclear who PW 4, 7 and 9 were and what they testified. The judgment does not refer to them.
- PW 5 puts the date of the incident in July 1994, but this may well be a typographical error not attributable to the witness.
- There is a question to be considered on which witnesses actually saw the alleged perpetrators beat the victim. PW 2 testified that only the father went and saw what happened with the victim. But, this contradicts with PW 1 and PW 5 who also claimed to have seen the beating of the victim.
- It is unclear how the witnesses were able to identify the alleged perpetrators. No details are provided on the basis of their knowledge of the identity of the persons involved.
- None of the witnesses refer to the unit of the army involved in the operation, whereas the prosecution case referred to the 22<sup>nd</sup> Battalion Grenadiers.
- The issue of the change of statements during the ex-gratia government relief process, and the issue of whether the witnesses had spoken about the victim dying of gun fire, does not appear to have been adequately dealt with by the court.

But, notwithstanding the above points, the guilt of both the alleged perpetrators appears to have been soundly established by the evidence. The injuries to the victim, his death, the identification of the persons involved in the operation and the beating/torture itself appears to be based on reliable evidence. It is therefore unfortunate that while Mushtaq Ahmad Ganaie has been strongly indicted by this judgment along with Captain Sharma [particularly as evidence was led on how Captain Sharma was in command], it is only Mushtaq Ahmad Ganaie that has possibly been imprisoned. The status of investigation and prosecution against Captain Sharma is unclear based on the available documents.

As the culpability of alleged perpetrator no.1 is in fact greater than Mushtaq Ahmad Ganaie, therefore it is expected that Captain Sharma was also punished either by court-martial or in a separate trial by the criminal court for which prosecution sanction under AFSPA should have been sought. The official documents from the Ministry of Defence on sanction for prosecution under AFSPA do not list this case. Further, this case is not listed in the official documents from the Ministry of Defence on court-martials conducted. Therefore, an inference could be drawn that Captain Sharma has not been prosecuted either by court-martial or a criminal court thereby ensuring absolute impunity for Captain Sharma.

## Case No. 20

### *Victim Details*

1. Mohammad Iqbal Shah [Abduction and Enforced Disappearance]  
Age: 15  
Occupation: 10<sup>th</sup> Standard student  
Son of: Mohammad Yousuf Shah, Fatima  
Resident of: Wagoora, Baramulla District
2. Mohammad Ibrahim Shah [Abduction and Wrongful Confinement]  
Resident of: Wagoora, Baramulla District
3. Ghulam Mohammad Mir [Abduction and Wrongful Confinement]  
Age: 40  
Resident of: Wagoora, Baramulla District

### *Alleged Perpetrators*

1. Deputy Commandant M. C. Halder, 163<sup>rd</sup> Battalion Border Security Forces [BSF], Camp Kant Bagh, Baramulla District
2. Assistant Commandant J. N. Singh, 163<sup>rd</sup> Battalion Border Security Forces [BSF], Camp Kant Bagh, Baramulla District

### *Allegations in Brief*

Mohammad Iqbal Shah was picked up on 13 March 1995 by the BSF and has disappeared since. The family of Mohammad Iqbal Shah states that on 13 March 1995, at around 7:00 am, a huge contingent of BSF personnel from the 163<sup>rd</sup> Battalion camped at Kant Bagh, Baramulla forced their entry inside the victim's house. The BSF personnel attacked the family members, beat them and enquired after Mohammad Ibrahim Shah. Mohammad Iqbal Shah resisted the actions of the BSF and he was then beaten severely. The attack continued till twelve noon. Before leaving the area, the BSF personnel picked up Mohammad Ibrahim Shah, Ghulam Mohammad

Mir, a neighbour, and Mohammad Iqbal Shah. On the following morning the family of Mohammad Iqbal Shah sought to register a case, but the police refused to do so.

The family went to the BSF Camp at Kant Bagh, Baramulla to secure the release of the three persons but the BSF personnel at the camp denied that these persons were with them. The family paid visits to other areas, including the Central Jail, Srinagar, the military and paramilitary camps at Hajin and Naid Khai but did not find the three persons.

On the intervening night of 14 and 15 March 1995 the family heard that Ghulam Mohammad Mir had been thrown at the Pampore area. On being questioned, Ghulam Mohammad Mir knew nothing about the others saying they had been separated and blindfolded. The following night, Mohammad Ibrahim Shah was thrown in an area in Anantnag District, some 40 km from where Ghulam Mohammad Mir was found. Mohammad Iqbal Shah has never been seen after 13 March 1995. The family believes that Mohammad Iqbal Shah and others were picked up based on a malicious tip-off by a person named Ghulam-Mohi-Ud-Din, who was involved with militancy in the area and who had had a scuffle with Mohammad Iqbal Shah previously.

### *Case Progress*

From 13 March 1995 to date, the family of Mohammad Iqbal Shah filed four writ petitions before the High Court of Jammu and Kashmir and one complaint before the State Human Rights Commission [SHRC].

The first petition [habeas corpus petition, HCP 173/1995] was filed to seek the High Court's intervention in registering a case against the alleged perpetrators of the crime.

The High Court ordered an enquiry by the Sessions Judge, Baramulla on 16 July 1996, and based on this report which indicted the 163<sup>rd</sup> Battalion BSF for the disappearance of the victim, on 6 April 1999, more than four years after Mohammad Iqbal Shah disappeared, directed the police to file a First Information Report [FIR] against the BSF responsible for the disappearance<sup>85</sup>. The enquiry report confirms the abduction and disappearance of the victim. Further, Deputy Commandant M. C. Halder, 163<sup>rd</sup> Battalion BSF, confirmed that he was posted in Baramulla from October 1993 to October 1997. It was stated that the residence of the victim was not within his jurisdiction. Assistant Commandant J.N.Singh, 163<sup>rd</sup> Battalion BSF stated that on 13 March 1995 he was posted at the Matches Factory, Baramulla, his jurisdiction was restricted to Baramulla town, and that on that day the victim was not arrested by his battalion. The judicial enquiry did not accept this contention and stated that the 163<sup>rd</sup> Battalion BSF would need to explain the disappearance of the victim.

Consequently, FIR no. 88/1999 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>86</sup>. By communication dated 22 May 2012 from the Jammu and Kashmir Police information was provided that the case was under investigation.

In 1999, the family of Mohammad Iqbal Shah approached both the SHRC and the High Court. The SHRC issued its decision on 4 January 2000 where it confirmed the disappearance of the victim by

<sup>85</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

<sup>86</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

the 163<sup>rd</sup> Battalion BSF and recommended compensation of Rs. 3, 00,000 to the family of the victim. Service Writ Petition (SWP) no. 1734/1999 was filed before the High Court for ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]<sup>87</sup>. The final order in this case was issued on 5 March 2005 in favour of the family of the victim. Subsequently, on the non-implementation of both orders, another application was filed before the SHRC and a contempt petition was filed before the High Court [no.130/2005]<sup>88</sup>. The petition before the High Court was disposed off on 5 February 2008 following an agreement between the parties that the reason for delay was that the victim's family had not completed the necessary formalities for compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC disposed off the application before it on 28 May 2002 and stated that it could not implement its own recommendations.

On 13 March 2002 the family of Mohammad Iqbal Shah was provided with ex-gratia government relief of Rs.1, 00,000.

The third petition [Original Writ Petition (OWP) 553/2001] before the High Court was filed in order to accelerate the process of sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. The Union of India and the alleged perpetrators denied the allegations. The court issued an order on 4 September 2004 disposing of the petition by stating that the request and subsequent grant of the sanction was the prerogative of the State<sup>89</sup>.

On 26 June 2000 the Director General of Police [DGP], Jammu and Kashmir informed the Jammu and Kashmir Home Department that investigations had revealed the involvement of the alleged perpetrators in the crime in question. The Commandant of the 163<sup>rd</sup> Battalion BSF had been requested to produce the alleged perpetrators before the investigating agency.

On 24 May 2001, the Senior Superintendent of Police [SSP], Baramulla informed the Assistant Commissioner, Baramulla that a charge sheet had been produced in the court against the accused BSF personnel and the case had been sent to the Government for seeking sanction for prosecution.

In 2006 the family of Mohammad Iqbal Shah filed another petition before the High Court seeking damages of Rs. 20,00,000. This petition was disposed off, as per the family of the victim, due to the non-appearance of the advocate.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that on 9 August 2006, the Ministry of Home Affairs declined the grant of sanction.

The family of Mohammad Iqbal Shah also gave a statement to the IPTK on 13 March 2012.

#### *Case Analysis*

The SHRC issued its decision in the matter on 4 January 2000, basing itself on a report by the Superintendent of Police [SP] of

<sup>87</sup> Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

<sup>88</sup> Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided

<sup>89</sup> Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided

Baramulla, and found that Mohammad Iqbal Shah, and two other persons, were lifted by the 163<sup>rd</sup> Battalion of the BSF and confirmed the custodial disappearance of Mohammad Iqbal Shah.

Further, an enquiry report submitted by a committee constituted in pursuance of an order by the District Magistrate, Baramulla, concluded on 31 October 2001 that Mohammad Iqbal Shah had been abducted and went further to presume his death and stated that "his dead body has been disposed off somewhere". The report also found that the alleged perpetrators were involved in the abduction and subsequent disappearance. Further, the police investigations confirmed the role of the alleged perpetrators and produced a charge sheet before the court.

Notwithstanding, the above enquiries and conclusions, the Ministry of Home Affairs declined sanction for prosecution without specifying the reasons. Further, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. In fact, the FIR was filed four years after the event and that too only on the intervention of the High Court.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Mohammad Iqbal Shah continues to be disappeared, and the alleged perpetrators have not been prosecuted despite the evidence on record against them.

## Case No. 21

### *Victim Details*

Sonaullah Malik [Abduction and Extra-Judicial Killing (Custodial Killing)]

Occupation: Farmer

Son of: Ghulam Qadir Malik

Resident of: Zum Zum Pora, Zandfaran, Sheeri, Baramulla District

### *Alleged perpetrators*

1. Major Chinapa, 22 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
2. Major Achariya, Commandant [Commanding Officer ], 22 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
3. CHM Mohammad Aslam, 22 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla

### *Allegations in Brief*

Sonaullah Malik was a surrendered militant and was working as a farmer. On 12 May 1995, Sonaullah Malik was produced before the alleged perpetrators in the presence of the Lambardar [Numberdar, de facto revenue authority in the village] Amma Malik and a chowkidar [guard] Muhammad Suliman Malik. Subsequently, on the following day, the Lambardar and Chowkidar were informed that Sonaullah Malik was killed and his body was lying at Nowshahra, Baramulla. His body was handed over to the Boniyar Police Station.



The family of Sonallah Malik also states that during the search for the victim, his brother, Abdul Aziz, was tortured and lost his eyesight.

#### *Case Progress*

Two first information report's [FIR] have been lodged in this case. One, from the army, FIR no. 32/1995 at Boniyar Police Station that states that the victim died in counter insurgency<sup>90</sup>. Second, from the family of the victim, FIR no. 42/1995 at Sheeri Police Station u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC]<sup>91</sup>.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 23/2006] for prosecuting the officials responsible<sup>92</sup>. The Union of India and Commandant Major Achariya and CHM Mohammad Aslam filed a response before the High Court and alleged that Sonallah Malik was a militant, had been killed in an encounter with the 28 RR on 14 and 15 May 1995 and that the FIR 42/1995 was filed under coercion of the then Station House Officer [SHO] Sheeri Police Station, based on an affidavit by the Lambardar and Chowkidar [Village guard] that states this. But, the family of the victim states that this affidavit, not made before a magistrate, was in fact done under coercion by the army. Based on a lack of representation on two dates, the petition was dismissed.

The family of the victim approached the State Human Rights Commission [SHRC] on 15 July 2003. On 26 February 2005, the Inspector General of Police [IGP], Kashmir Zone, Srinagar, submitted before the SHRC that the body of the victim was brought to the Boniyar Police Station on 15 May 1995 by Major P. S. Lamba, Adjutant of the 28 RR. Further, that the investigation under FIR no. 42/1995 confirmed that the victim was killed in custody. A chargesheet had been prepared against the alleged perpetrators. The FIR by the army, no. 32/1995 was closed as not admitted. The SHRC issued its final decision on 9 November 2005 and concluded as per the investigations carried out that this was a case of custodial killing. Rs. 3,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders], subject to eligibility, were ordered.

Based on the non-implementation of the SHRC recommendations, a petition [Original Writ Petition (OWP) 725/2007] was filed before the High Court<sup>93</sup>. On 15 December 2007 the High Court ordered that appropriate orders be passed based on the SHRC recommendations.

The family of the victim received Rs. 1,00,000 but no compassionate employment under SRO-43.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that sanction was declined vide letter dated 12 March 2009.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions, stated on 6 September 2011 in relation to this case that sanction was declined.

<sup>90</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>91</sup> Information on this FIR was sought through RTI on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police it was stated that the case was closed declaring the perpetrators as untraced. Further, that the FIR itself was not traceable.

<sup>92</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

<sup>93</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

#### *Case Analysis*

As a chargesheet was produced against the alleged perpetrators and sanction for prosecution under AFSPA was sought a prima facie indictment of the alleged perpetrators is made out. No reasons have been provided for the decline of sanction for prosecution under AFSPA. As it is the responsibility of the Ministry of Defence to provide reasons for declining sanction, the declining of sanction is presently suspect.

Further, the role of the Lambardar and the Chowkidar needs to be examined. From taking the victim to the army, to signing the affidavit exonerating the army [allegedly under coercion] their role in the crime requires thorough investigations.

Finally, the non-seriousness of the police in the instant case can be gauged by the fact that on one hand the Government of Jammu and Kashmir has applied for sanction for prosecution under AFSPA based on a chargesheet being prepared against the alleged perpetrators, and on the other hand the police have closed the case by declaring the perpetrators as untraced, presumably after sanction for prosecution was declined.

Following the denial of sanction from the Ministry of Defence the police has chosen to close the case rather than agitating the matter in the court. The closure of the case as untraced is a cruel conclusion for the family of the victim who identified the alleged perpetrators and whose allegations were supported by the police investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 22

#### *Victim Details*

1. Hilal Ahmad Nasti [Extra-Judicial Killing]  
Age: 22  
Occupation: Messenger, Ellaquai Dehati Bank, Srinagar  
Son of: Ali Mohammad Nasti  
Resident of: Mohalla Syed, Kadipora, Anantnag District
2. Mohammad Ramzan [Extra-Judicial Killing]  
Resident of: Siligam
3. Ghulam Qadir Bhat [Extra-Judicial Killing]  
Resident of: Hutmara, Anantnag District
4. Farooq Ahmad Wani alias Masali [Extra-Judicial Killing]  
Age: 19  
Occupation: Carpet Weaver  
Resident of: Panzmulla, Anantnag District

#### *Alleged perpetrators*

1. Commandant [Commanding Officer] K. K. Sharma, 1 Rashtriya Rifles [RR], Army, Camp Aishmuqam
2. Major Jagtar Singh, 1 Rashtriya Rifles [RR], Army, Camp Aishmuqam

#### *Allegations in Brief*

Hilal Ahmad Nasti of Kadipora, Anantnag was staying at the house of his friend, Ghulam Qadir Bhat, in Hutmara on the night of 13 and 14 June 1995. The house was cordoned by the army unit of the alleged perpetrators, headed by Commandant K. K. Sharma and Major Jagtar Singh. Hilal Ahmad Nasti and Ghulam Qadir Bhat, were abducted and their dead bodies were recovered from the Lidder river on 23 June 1995. Mohammad Ramzan of Siligam was also

similarly abducted and killed. Their body parts were cut up and thrown in the river.

Subsequently, after Farooq Ahmad Wani alias Masali of Panznulla, Anantnag gave his statement before the Sub-Judge, Anantnag, he too was killed.

#### *Case Progress*

First Information Report [FIR] no. 208/1995 u/s 302 [Murder], 343 [Wrongful confinement for three or more days] Ranbir Penal Code, 1989 [RPC] was registered in the Anantnag Police Station in relation to the abduction and killing of Hilal Ahmad Nasti and the abduction of Ghulam Qadir Bhat<sup>94</sup>.

It appears that FIR no. 55/1995 and 58/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] were registered at the Pahalgam Police Station in relation to the killing of Mohammad Ramzan and Ghulam Qadir Bhat<sup>95</sup>.

In relation to the killing of Farooq Ahmad Wani, FIR no. 92/1996 was registered at the Pahalgam Police Station<sup>96</sup>.

The Station House Officer [SHO] of Anantnag Police Station has certified that Hilal Ahmad Nasti was not involved in any subversive activity.

Similarly, a certificate has also been issued in relation to Ghulam Qadir Bhat by the letter of the Senior Superintendent of Police [SSP], Anantnag of 17 February 2003. It should also be noted that the 17 February 2003 letter of the SSP, Anantnag, refers to the unit of the alleged perpetrators as being "9th RR". This letter also states that FIR no. 208/1995 stands closed as chargesheeted and sanction is being sought.

The post-mortem report on Hilal Ahmad Nasti confirms that his head, and limbs, were cut.

The family of Hilal Ahmad Nasti approached the State Human Rights Commission [SHRC] on 4 July 2001, and a final decision was given on 22 May 2003. Rs. 5,00,000 relief and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. Further, the concerned police authorities were asked to peruse the matter of sanction for prosecution.

The family of Ghulam Qadir Bhat also approached the SHRC and on 26 November 2008 the final decision recommended relief of Rs. 4,00,000 and recommended that the culprits be prosecuted.

The family of Hilal Ahmad Nasti gave a statement to the IPTK on 13 May 2012.

#### *Case Analysis*

In addition to the letter of the SSP, Anantnag that states that a chargesheet had been filed and sanction sought [though the information provided by the Ministry of Defence on cases where sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought does

<sup>94</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>95</sup> Information on these FIR's was sought through RTI on 2 July 2012. No information was provided.

<sup>96</sup> Information on this FIR was sought through RTI on 2 July 2012. No information was provided.

not list this case], the two documents that may be analysed are the Section 164 [Power to record statements and confessions] Criminal Procedure Code, 1989 (CrPC) statement of Farooq Ahmad Wani, and the SHRC decisions.

Farooq Ahmad Wani, in his statement, states that he was abducted on 13 and 14 June 1995. On the same night, the other three victims were arrested. On the following day, they were interrogated together. Subsequently, Mohammad Ramzan and Ghulam Qadir Bhat [but here a reference is made to "Ghulam Rasool" who would appear to be the same as Ghulam Qadir Bhat] were stripped, tied to a tree, shot dead, and then their heads and limbs were cut and they were thrown into the river. Hilal Ahmad Nasti and Farooq Ahmad Wani were then taken back to the camp. Five days later, on 22 and 23 June 1995 they were once again taken out. They were stripped. Hilal Ahmad Nasti was asked to climb onto a stone and then he was shot. His head was cut and then thrown into the river. Farooq Ahmad Wani was then taken to another place, but he slipped and fell into the river and he managed to escape.

The SHRC decision of 22 May 2003 begins by recounting the allegations. The SHRC decision recounts that the body of Hilal Ahmad Nasti was recovered from the Lidder river on 23 June 1995. The limbs of the body could not be found though. The decision also noted that the custodial death of the victim was proved. The decision notes that the police authorities informed the SHRC that during the course of investigations it was proved that the alleged perpetrators were involved in the crime and that a chargesheet was finalized and sanction for prosecution under AFSPA was sought and was pending. Further, that the Hilal Ahmad Nasti was not having any affiliation with any militant organization and was not involved in any militancy related activities. The SHRC decision of 26 November 2008, in relation to Ghulam Qadir Bhat, is very similar in its conclusions except that there appear to be no references to the issue of sanction for prosecution under AFSPA.

The Section 164 CrPC statement of Farooq Ahmad Wani, and the SHRC decisions, clearly indict the alleged perpetrators. While the police authorities state that sanction for prosecution under AFSPA had been sought in relation to the killing of Hilal Ahmad Nasti, the official documents from the Ministry of Defence do not list this case.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army. Therefore, an inference could be drawn that the instant case has not been prosecuted and neither has any court-martial been conducted, thereby ensuring absolute impunity for the alleged perpetrators.

## Case No. **23**

#### *Victim Details*

Mushtaq Ahmad Chacha [Abduction and Enforced Disappearance]

Age: 20

Occupation: Labourer

Son of: Ghulam Mohammad Chacha, Noora Sabi

Resident of: Ali Kadal, Mehrajgunj, Srinagar

#### *Alleged Perpetrators*

1. Commandant Dinesh Kotwal, 41<sup>st</sup> Battalion, Border Security Force [BSF], Camp Karan Nagar
2. Deputy Commandant Sardar Rai Singh, 41<sup>st</sup> Battalion Border Security Force [BSF], Camp Karan Nagar
3. R. S. Khoswa, Head, General Staff, 41<sup>st</sup> Battalion Border Security Force [BSF], Camp Karan Nagar

4. Superintendent of Police [SP], Criminal Investigation Department/Counter Insurgency Kashmir [CID/CIK], Srinagar, Jammu and Kashmir Police

#### *Allegations in Brief*

Mushtaq Ahmad Chacha was picked up on 9 July 1995 by the personnel of 41<sup>st</sup> Battalion BSF at around 11:00 am. The family of Mushtaq Ahmad Chacha states that they met the victim subsequent to his abduction and since then he has disappeared.

#### *Case Progress*

The family of the victim filed a petition before the High Court of Jammu and Kashmir in 1996 [Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. 197/1995, a habeas corpus petition]<sup>97</sup>. In reply to this petition, the State of Jammu and Kashmir and the police claimed that Mushtaq Ahmad Chacha was in fact arrested on 12 July 1995 in a case relating to First Information Report [FIR] no. 4/1995 filed by the Counter Insurgency Kashmir [CIK], Srinagar and that Mushtaq Ahmad Chacha subsequently escaped on 15 July 1995 for which another FIR was filed at Baghyas Police Station, Srinagar as FIR no. 92/1995 u/s 307 [Attempt to murder], 216 [Harbouring an offender] Ranbir Penal Code, 1989 [RPC]<sup>98</sup>. This FIR was filed on 23 July 1995, eight days after the alleged escape of the victim from custody.

Also on record is an order from the District Magistrate, Srinagar addressed to the Commandant, Joint Interrogation Centre [JIC], in-charge, Sanatnagar to allow the victim's [named as: Mushtaq Ahmad Shigan, son of Ghulam Ahmad Shigan, resident of Boniyarbal, Maharaj-Gunj, Srinagar] family to meet him. This order appears to be dated 7 September 1995. This order states that the victim was arrested on 9 July 1995. While there are certain variations in the name of the victim and certain other personal details in this order, it appears to be in relation to the victim as this order was also considered in a subsequent enquiry ordered by the High Court. There is also on record a Public Safety Act, 1978 [PSA] order of 27 September 1995 against the victim by the District Magistrate, Srinagar.

Based on the petition filed before the High Court, the Court ordered an enquiry by the Additional District and Sessions Judge, Srinagar on 25 February 1997. This enquiry was concluded and a report submitted on 20 July 2000.

The final decision of the High Court was issued on 14 May 2002. Rs.1,50,000 was ordered as compensation. It was left to the Union of India and the Government of Jammu and Kashmir to recover the amount of compensation from the persons responsible, particularly the SP, CID/CIK, Srinagar. The money was to be paid within three months, subject to extension on sufficient cause.

A criminal case was to be registered in case the disappearance was not covered by the existent FIRs and it was to be taken to its logical conclusion as far as possible within four months.

The family of the victim received Rs. 1, 50,000 from the BSF following the High Court order. But, the family has not received any

compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of the victim also gave a statement to the IPTK on 28 February 2012.

#### *Case Analysis*

At the outset, before considering the enquiry report of 20 July 2000, the sequence of events may be briefly considered. First, while the State of Jammu and Kashmir and the Jammu and Kashmir Police claim that the victim was arrested on 12 July 1995, the order of the District Magistrate, Srinagar of 7 September 1995 places the date of arrest as 9 July 1995. Second, while it is claimed that the victim escaped on 15 July 1995, the District Magistrate's order of 7 September 1995 allowing for an interview with the victim and the PSA order of 27 September 1995 would suggest that in fact the victim did not escape and at least until 27 September 1995 remained in custody. The enquiry report by the Additional District and Sessions Judge, Srinagar may now be considered.

Before the judicial enquiry, the police [as represented by SP, CID/CIK, Srinagar] stated that the victim was arrested on 12 July 1995 and was detained at the Joint Interrogation Centre [JIC], Fair View, manned by BSF personnel. The police further stated that during interrogation the victim disclosed the names of 2/3 militants in various hideouts in Srinagar. Therefore, on 15 July 1995 the victim was taken out of the lock-up by BSF personnel and taken to the Kani Mazar area in Srinagar city. Subsequently, in that area at about 9:15 pm there was heavy firing and the victim escaped. This was reported to the police by the BSF. Subsequently, an order under the PSA was requested and issued on 27 September 1995 but unexecuted as the victim had escaped. The BSF also presented its version before the enquiry. The BSF stated that the victim was arrested on 9 July 1995 and was taken to the CIK on 10 July 1995 where an FIR was lodged and then was brought back to the TAC Headquarters of the 41<sup>st</sup> Battalion BSF. The rest of the BSF version of events closely matches that placed before the enquiry by the police in relation to the events of 15 July 1995 and the escape of the victim. The BSF then states that the area was cordoned off till 11:25 pm to trace and nab the victim. On subsequent days as well efforts were made to find the victim. This continued until 23 July 1995 when finally the FIR was filed.

In addition to the contradictions between the versions of the BSF and the police regarding the date of arrest, and the difficulty with accepting the version of events on 15 July 1995 in light of the orders of the District Magistrate of 7 and 27 September 1995 and the fact that an FIR for an incident alleged to have happened on 15 July 1995 was only filed eight days later on 23 July 1995, the following relevant witness testimony and findings of the Additional District and Sessions Judge, Srinagar suggest that the family's version of events is in fact accurate, and that the victim did not escape and was disappeared in the custody of the BSF:

- Witness Ghulam Qadir Bhat confirmed that the victim was picked up on 9 July 1995 around 11:00 am by BSF personnel of the 41<sup>st</sup> Battalion and was taken first to a bunker, and then to Karan Nagar. The witness further testified that people assembled at Karan Nagar demanding that the victim be released. The witness was not cross-examined.
- While being uncertain about the year when the event took place, but suggesting that it was two years prior to his testimony [although it is unclear when the witness testified], witness Ghulam Qadir Sheikh confirms the version of events provided by Ghulam Qadir Bhat,

<sup>97</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided.

<sup>98</sup> Information on both FIRs was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of FIR no.92/1995 was provided.

including the time of the arrest as being around 11:00 am or 12 noon in the month of July. The witness was not cross-examined.

- The father of the victim also testified to the arrest of his son and him being taken to the BSF Camp at Karan Nagar on 9 July 1995. Crucially, he testifies that “they” [it is unclear who else the witness is referring to] met the victim in September or October 1995 at the BSF Camp at Karan Nagar and subsequently met him on two more occasions in October 1995 at the Karan Nagar Camp. He testified that he was accompanied by his wife: Noora [it is unclear whether the witness suggests that his wife accompanied him on all three occasions]. Further, he stated that he ran a shop at the Kani Mazar crossing and that there was no firing in the area in 1995 or 1996, and particularly between April and October 1995. The witness also testified that the “Deputy Commissioner told him that he should not pursue cases in Courts and if he does so he will be paid Rs. 5,00,000 and will be given a shop also”. The victim was cross-examined, but from a summary provided in the enquiry order, no damage appears to have been done to his testimony.
- Witness Noora Sabi, mother of the victim, stated that the victim was arrested two and a half years prior to the date of her testimony [it is unclear when the witness testified] and that she met him in October 1995, along with her husband, at the BSF Karan Nagar camp. She also testified that she met her son on two occasions at the Karan Nagar camp following the supposed date of his escape, i.e. 15 July 1995. The witness’s testimony, during the examination in chief, on meeting her son, matches the account of her husband in most respects except that her husband is unclear whether the first meeting took place on September or October 1995. But, on cross-examination, she testified that “they” met the victim “in the autumn of 95 at Karan Nagar on two times”. Therefore, a minor discrepancy exists following her cross-examination.
- Witness Assad Kalwal, a shop keeper at Kani Mazar, stated that in “these three years there was no firing in Kani Mazar either at the night or during the day”. He also testified that the victim was arrested by the BSF and stated that “when they were going in the camp they were asking them to come on a particular day, then they won’t allow them to meet him”. This appears to be a reference to the family of the victim attempting to meet with the victim, but the witness does not provide specific details. The witness also stated that the victim was “never released nor brought to P/S [Police Station]”. On cross-examination, the witness stated that the victim was arrested at Ali Kadal. He stated he saw him being arrested at about 10/10:30 a.m., which closely matches with the time of arrest as testified to by other witnesses. But, the witness does not remember the date of arrest. He also testified that he does not know the battalion number of the forces who executed the arrest and that “to him BSF and Army means same thing”. But, he also states that “the petitioner’s son was arrested by BSF. As they put up there they know it was BSF who arrested him”. Therefore, on cross-examination, while the witness’s evidence is not absolutely clear on his ability to identify the forces who arrested the victim, his evidence could be corroborative of the fact that the victim was arrested by the BSF.
- Witness Ali Mohammad Magloo, posted at the Safa Kadal Police Station, testified that a FIR [no. 92/1995] was filed by the BSF headquartered at Karan Nagar. The witness testified that a report was also submitted by the BSF on the incident which states that the initial arrest of the victim was

on 9 July 1995. Crucially, on cross-examination, the witness testified that the BSF personnel of the 41<sup>st</sup> Battalion did not produce the victim at the Police Station anytime after his arrest.

- Witness A.S. Bali, Commandant of the 12 Battalion Jammu and Kashmir Armed Police, posted from 1994 to 1995 as Additional SP, CIK, stated that the victim was always in the custody of the BSF. The witness also stated that “under law the custody of a person after arrest is given to the Police in which the case is registered” but he did not follow this up with the BSF as “his duty was of a supervisory nature”.
- Witness Sardar Rai Singh, Second in Command at the 41<sup>st</sup> Battalion BSF at Karan Nagar, testified that the victim was arrested on 9 July 1995. On interrogation he informed the BSF of the hideouts of certain militants at Kani Mazar. The witness was ordered by the Commandant Dinesh Kotwal to conduct a raid on 15 July 1995 and he was part of the raid. The witness then described the firing that took place at Kani Mazar and the escape of the victim. Attempts were made to locate the victim. This was around 9:00 pm to 10:30 pm. On cross-examination, the witness stated that the victim was taken to the police, but not by him personally, to seek the remand of the victim. Further, he stated that the interrogation of the victim was carried out by the Head of the General Staff, R.S. Khoswa. He also stated that he never allowed the family of the victim to meet with the victim in October 1995 and stated that the matter was within the “competence of Commandant”.
- Witnesses Raj Kumar, Rajender Singh, Nirmal Singh and four other members of the raid conducted testified to the incident of 15 July 1995 in a manner similar to witness Sardar Rai Singh. But, on cross-examination, witness Nirmal Singh stated that the victim was never taken to the Magistrate. He also testified that “the parents and other relatives of Mushtaq Ahmad Chacha used to come to the camp for meeting” the victim, but he did not provide further details except to deny knowledge of any visits in October 1995. Witness Rajender Singh testified that this incident took place on 19 July 1995 [which may be a typographical error and would need to be ascertained by checking the original enquiry records].
- Witness B. B. Vyas, the Deputy Commissioner Srinagar, and the person who issued the PSA order of 27 September 1995 testified that he had “presumed” that the victim was in police custody when he issued this order based on the police dossier before him, which would strongly suggest that the victim remained in custody at the date of the order.

An interesting feature of this case is the manner in which the State, and Jammu and Kashmir Police, and the BSF have taken opposing positions on the issue to deny any blame in the incident. The original position of the State and police was that the victim was in their custody till 15 July 1995, but subsequently, at the closing of the enquiry they argued that victim was never in their custody, but instead in the custody of the BSF. The BSF claims that the victim escaped from their custody on 15 July 1995, and using the order of the District Magistrate of 27 September 1995, suggests that at some point he returned to the custody of the police.

The enquiry, based on the above evidence, concluded that:

- The victim was arrested by the 41<sup>st</sup> Battalion BSF on 9 July 1995 at Ali Kadal
- The version of the BSF of the events of 15 July 1995 “apparently seems to be a fabricated” as no FIR was immediately lodged. Further, while the BSF claims that

searches for the victim were carried on subsequent days, the evidence before the enquiry does not suggest the same. Finally, witnesses have testified that there was no firing in the area at the alleged time period of the incident.

- The conduct of the police is highly questionable, especially in light of the District Magistrate order of 27 September 1995 that suggests the victim was in police custody. “The respondent no.3 has conducted himself in the present case in utter violation of the law on the subject. He seems to be mainly responsible for the custodial disappearance...” The respondent no. 3 was the SP, CID, CIK, Srinagar.
- The Deputy Commissioner, Srinagar “also seems to have acted mechanically” in passing the PSA order.

The observations made in the final decision of the High Court may now be considered. The High Court observed that “Obviously the stand of the BSF and State Police is self destructive to reveal custodial disappearance of Mushtaq Ahmed Chacha in circumstances not admittedly explained or brought to light. Their conduct and actions have violated law as per evidence recorded, fact-situation and circumstances of the case. The conclusions of the enquiry officer cannot be said to be unreasonable or not based on material/evidence. The attempt on the part of the State Police and the BSF to cover up or hush the matter is writ large on record. The only conclusion to be drawn is that Mushtaq Ahmed Chacha has disappeared while in physical custody of the respondent No.3, the main and chief culprit in the matter.”

An analysis of the entirety of the evidence clearly points to the following conclusions:

- The victim was arrested by the 41<sup>st</sup> Battalion BSF on 9 July 1995 and taken to the Karan Nagar Camp
- Based on the evidence of Ali Mohammad Magloo, A.S. Bali and Nirmal Singh, the victim was never brought to the police station nor to a Magistrate
- There was no firing at the Kani Mazar area on 15 July 1995 and the victim did not escape on that date. This is based on the orders of the District Magistrate, and the evidence of the family of the victim that they met with him in October 1995.
- The Commandant of the 41<sup>st</sup> Battalion BSF at Karan Nagar, Dinesh Kotwal, Sardar Rai Singh, Deputy Commandant and the person apparently responsible for the interrogation of the victim, R.S. Khoswa, Head, General Staff, subject to further investigation/information, would appear to be most answerable for the arrest, denial of basic rights and disappearance of the victim in their custody.
- In addition, and if indeed, as per the District Magistrates order of 27 September 1995 suggests, the victim was in police custody, the police would also be answerable.
- While the enquiry appears to hold the State and police primarily responsible for the custodial disappearance, while also stating that the BSF must share blame, a reading of the entire record would more strongly suggest and implicate the BSF in the custodial disappearance.
- B. B. Vyas, the then Deputy Commissioner, Srinagar, cannot escape culpability in the disappearance of the victim. As according to the family of the victim, he was responsible for threatening and intimidating the family of the victim to withdraw the case, besides he also showed criminal negligence while passing the detention order. Further, the PSA order of 27 September 1995 confirms that the victim was alive, and in the custody of the State in the “Addl. lock-up fair-view” and orders that he be further detained for twelve months at the “Sub jail Rangreth”. B. B. Vyas can therefore not escape culpability in the matter

as his intimidation of the family and his orders of 7 September 1995 and 27 September 1995 when seen together point to his possible involvement in the cover up of the case.

Despite the passage of 17 years it appears that no progress has been made in this case. No Court-Martial appears to have been conducted as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir and no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir and no information was provided.

## 24

Case No.

### *Victims Details*

1. Ghulam Nabi Lone [Extra-Judicial Killing]  
Occupation: Assistant Engineer R&B Circle Srinagar/Budgam  
Son of: Ghulam Muhammad Lone  
Spouse: Rohi Jan  
Resident of: Malik Sahib, Nowhatta, Srinagar
2. Shakeel Ahmad [Extra-Judicial Killing]  
Occupation: Electrical Engineer, Power Development, Kishanpur  
Son of: Sofi Muhammad Abdullah  
Resident of: Ibrahim Colony, near Bypass crossing, Hyderpora, Srinagar
3. Ghulam Mohi-ud-din Zargar [Extra-Judicial Killing]  
Occupation: Shopkeeper [served as guide]  
Resident of: village Laynalab, Budgam District

### *Alleged perpetrators*

1. Major Bhim Singh, 34 Rashtriya Rifles [RR], Army, Camp Beerwah
2. Major S.S. Grewal, Adjutant, 34 Rashtriya Rifles [RR], Army, Camp Beerwah

### *Allegations in Brief*

On 23 July 1995 the victims, along with a colleague named Dr. Naseer Ahmed Laway, who survived the incident, were on an official survey assignment to Uri when the personnel of the 34 RR opened unprovoked fire upon them killing them on the spot. Later the troops apologized for the killings.

The family of Shakeel Ahmad gave a statement to the IPTK on 26 November 2011. The family of Ghulam Nabi Lone gave a statement to the IPTK on 29 November 2011.

### *Case Progress*

First Information Report [FIR] no. 116/1995 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Beerwah Police Station on 24 July 1995 through a written letter from the 34 RR Camped at Beerwah that during cross firing with militants the victims had died<sup>99</sup>. On 30 July 1995, Dr. Naseer Ahmed Laway

<sup>99</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 17 May 2012. By communication dated 13

filed his version of events before the police station [though the Station House Officer (SHO) of Budgam Police Station stated before the High Court that it never received the letter from Dr. Naseer Ahmed Laway of 30 July 1995]. The 13 June 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced on 17 October 1995.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 603/1998] by the wife of Ghulam Nabi Lone for compensation<sup>100</sup>. Investigations were conducted by the police, and the investigations by the police were finally closed and a closure report was filed before the Chief Judicial Magistrate [CJM], Budgam on 26 April 2010. The case was considered by the police as closed by declaring the perpetrators as untraced. A status report filed by the SHO, Beerwah Police Station dated 12 September 2007 stated that it was Major S.S. Grewal's unit that took part in the operation. The position of the 34 RR, and the Union of India, before the High Court is in line with the written report filed before the police station on 24 July 1995 i.e. that the victims were killed in cross-firing with militants, a claim the family of the victim rejects. It is suggested that the delay in Dr. Naseer Ahmed Laway filing his version before the police station suggests that it was a fabricated version. The State of Jammu and Kashmir and the SHO, Budgam Police Station stated that firstly the SHO, Budgam Police Station should not have been made a party as the FIR was filed before the Beerwah Police Station. Secondly, that they had no role in the incident, no knowledge of the incident, and the case for compensation was not made out.

The matter is sub-judice before the Chief Judicial Magistrate, Budgam.

#### *Case Analysis*

The unsigned letter of Dr. Naseer Ahmed Laway of 30 July 1995, as reproduced in the petition before the High Court, states that at about 1:15 pm on 23 July 1995 there was unprovoked firing upon his group, including the victims.

Of interest is his testimony that an officer named Major Bhim Singh "expressed deep regrets" for the killing and stated that it was a "misunderstanding". Dr. Naseer Ahmed Laway also refers to a Brigadier, but not by name, who also expressed similar sentiments.

The alleged perpetrators are not clearly indicted in the instant case, but material on record does raise a suspicion and further investigations would be warranted.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

In light of the material on record, further investigations must be carried out and the case reopened.

## Case No. **25**

#### *Victim Details*

Bashir Ahmad Bhat [Abduction, Torture and Enforced Disappearance]  
Son of: Nabir Bhat  
Resident of: Kuligam, Lolab, Kupwara District

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June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>100</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

#### *Alleged perpetrators*

1. Major S. A. Bakali [reportedly dead], 12 Maratha Light Infantry [MLI], Army, Camp Mirgund, Kuligam, Lolab, Kupwara District
2. Colonel P. K. Saniyal, Commanding Officer, 12 Maratha Light Infantry [MLI], Army, Camp Mirgund, Kuligam, Lolab, Kupwara District

#### *Allegations in Brief*

On 25 November 1995, Bashir Ahmad Bhat was picked up by personnel of the 12 MLI Army stationed at Kuligam, Lolab, tortured and has disappeared since.

#### *Case Progress*

First Information Report [FIR] no.38/1996 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Lalpora Police Station on 12 March 1996.

The family of Bashir Ahmad Bhat filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) 134/1997]<sup>101</sup>. The respondents to the petition, the Government of Jammu and Kashmir, Director General of Police [DGP], Jammu and Kashmir and Station House Officer [SHO], Lalpora Police Station, denied the arrest and custody of Bashir Ahmad Bhat. On 7 December 1999 an enquiry was ordered, and was conducted by the Principal Sessions Judge, Kupwara. The judicial enquiry was concluded on 15 May 2002. On 10 July 2003, the High Court directed the Senior Superintendent of Police [SSP], Kupwara to indicate the progress of investigations. On 28 September 2004, despite the High Court noting that there had been no substantive progress in the investigations, the petition was dismissed with an order that investigations be expedited.

#### *Case Analysis*

The document on record that may be analysed in the instant case is the enquiry report of the Principal Sessions Judge, Kupwara.

The enquiry report begins by stating that the Public Prosecutor filed objections on behalf of the respondents and the Commanding Officer who headed the 12 MLI Army at the relevant time. It was stated in these objections that Bashir Ahmad Bhat was never apprehended by the State agencies or Commanding Officer, 12 MLI. Bashir Ahmad Bhat was a surrendered militant as per the record maintained by the Company and he had volunteered to work as a source for the army and on his instance one pistol with magazine and six live rounds of cartridge were recovered. The petitioner [father of Bashir Ahmad Bhat] in the case produced four witnesses, in addition to his own testimony. The relevant evidence is summarized as follows:

- Jabar Khan, Chowkidar of the concerned area, stated that he saw the armed forces of 12 MLI stationed at Mirgund, Kuligam, Lolab, while they were taking away Bashir Ahmad Bhat to the concerned camp. Major S. A. Bakali was in charge of the camp and his office was functioning in a private house belonging to one Mir Abdullah. On the following day, the witness accompanied the petitioner and others to the camp and requested to see Bashir Ahmad Bhat. They were "rebuffed" and sent back. Bashir Ahmad Bhat has not been since then.

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<sup>101</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

- Abdullah Rather, the headman of the village, stated that he had spotted the armed forces of 12 MLI cordoning the house of the petitioner and then apprehending Bashir Ahmad Bhat. Bashir Ahmad Bhat was taken to the “camp located at Kuligam”. The witness accompanied others to the camp and asked for reasons of the arrest. They were directed to visit the camp on the next day. On the following day, on visiting the camp, they were not allowed to see Bashir Ahmad Bhat. But, they were promised that he would be set free. Bashir Ahmad Bhat has not been since then.
- Ahmad Mir and Mohammad Yousuf, neighbours of the petitioner, stated that Bashir Ahmad Bhat was arrested from his house by security forces belonging to the 12 MLI headed by Major S. A. Bakali and was lodged “in army camp at Kuligam”. Despite several requests by the village community the security forces refused to set him free. Bashir Ahmad Bhat has not been since then.

In rebuttal, Colonel P. K. Saniyal appeared in court and produced the surrender certificate of Bashir Ahmad Bhat. The witness stated that on 25 November 1995 he was posted as Commanding officer of 12 MLI headquartered at Panzgam, Kuligam. Bashir Ahmad Bhat was never arrested. The surrender certificate was issued by Major S. A. Bakali [now deceased] under his directions. The certificate stating that Bashir Ahmad Bhat “led to recovery of pistol by C-Company 12 Maratha” was also confirmed to be correct. Bashir Ahmad Bhat had surrendered before the 4<sup>th</sup> Grenadiers in September/October 1995 and had agreed to work as a source with that unit initially and then 12 MLI. It was under the command and supervision of 12 MLI that Bashir Ahmad Bhat led the personnel to the recovery of a pistol with magazine and six live rounds. But, the victim was not under the custody of the Company headed by the witness and was allowed to move freely. Information was maintained on all surrendered and active militants and Bashir Ahmad Bhat details may also be in these records. But, since the witness had shifted from the relevant place in August 1999 the record was not “in his reach”.

The enquiry report noted that “despite availing several opportunities” the Public Prosecutor had failed to persuade the armed forces stationed at Kuligam to provide the record referred to by alleged Colonel P. K. Saniyal in court. The enquiry report then stated that it is established beyond doubt that the victim enjoyed a “fiduciary relationship” with the army personnel of 12 MLI. This relationship was considered to be of an “un-ending nature and persons situated in these circumstances cannot avoid to be at beck and call of the security forces as, when and wherever so required and denial thereof could prove disastrous for them”. The enquiry report further stated that “this is yet another case which speaks volumes about apathy of the state functionaries as concerned authorities have not ventured to locate the arrested person as under law and directions of the Apex court”. The enquiry report also gave consideration to the fact that the record referred to by Colonel P. K. Saniyal was not produced in court. The enquiry report therefore found that the case of the petitioner was made out.

The enquiry report while stating that the petitioner testified does not produce the summary of the testimony. The enquiry report is a strong indictment of both alleged perpetrators. While admittedly it is unclear if either of the two alleged perpetrators had actual knowledge of the abduction of Bashir Ahmad Bhat, as persons directly in command of the 12 MLI army, and seemingly in control of Bashir Ahmad Bhat, the alleged perpetrators appear culpable in the disappearance of Bashir Ahmad Bhat. But, despite the passage of 17 years there appears to have been no progress on investigations or prosecutions. The High Court is also answerable for this delay especially considering that it limited to merely noting that investigations were not progressing when it chose to dismiss the

petition. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 26

### *Victim Details*

1. Fazal Hussain Dar [Extra-Judicial Killing]  
Occupation: Senior Inspector, Cooperative Bank, Doda  
Spouse: Nazira Begum  
Resident of: Malni Pranu, Bhaderwah, Doda District
2. Fareed Hussain Dar [Extra-Judicial Killing]  
Son of: Fazal Hussain Dar, Nazira Begum  
Resident of: Malni Pranu, Bhaderwah, Doda District
3. Mohammad Hussain Lone [Extra-Judicial Killing]  
Occupation: Farmer  
Spouse: Shaheena Begum  
Resident of: Malni Pranu, Bhaderwah, Doda District
4. Talib Hussain Lone [Abduction]  
Son of: Ghulam Nabi Lone  
Resident of: Malni Pranu, Bhaderwah, Doda District

### *Alleged perpetrators*

1. Deputy Inspector General [DIG], Kuldeep Khoda, Udhampur-Doda Range [as of 31 May 2012 ex-Director General of Police [DGP], Jammu and Kashmir]
2. Mohammad Ashraf, Special Police Officer [SPO] and Village Defence Committee [VDC] Commander
3. Abdul Sattar, associate of SPO Mohammad Ashraf
4. Tariq Hussain, associate of SPO Mohammad Ashraf

### *Allegations in Brief*

The victims were abducted on 3 January 1996. Fazal Hussain Dar, Fareed Hussain Dar and Mohammad Hussain Lone were shot dead but their bodies were not found. Talib Hussain Lone managed to escape.

### *Case Progress*

First Information Report [FIR] no. 7/1996 u/s 306 [Abetting suicide], 307 [Attempt to murder], 364 [Kidnapping/Abducting to murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Bhaderwah Police Station on 3 January 1996. On 8 April 1996, the family of Fazal Hussain Dar approached the National Human Rights Commission [NHRC]. On 10 March 1997, the family of Fazal Hussain Dar requested the Chief Minister, Jammu and Kashmir to hand over the investigations in the case to the Central Bureau of Investigations [CBI]. As a consequence of the matter being before the NHRC, on 24 June 1997 the then Director General of Police [DGP], Jammu and Kashmir, Gurbachan Jagat initiated a re-investigation into the case by the Crime Branch. On 16 January 1998, Additional Superintendent of Police [ASP] Bachan Singh Chowdhury submitted a progress report that indicted Kuldeep Khoda, the then Deputy Inspector General [DIG] of Doda-Udhampur range. On 12 November 1998, ASP Shikha Goel confirmed the earlier progress report and added that there had been tampering by the police in the case<sup>102</sup>. On 4 December 1999, the Senior Superintendent of Police [SSP], Crime and Railways, Jammu sent a letter to the then DGP, Jammu and Kashmir. The letter states that the NHRC referred the matter to the

<sup>102</sup> Indian Express, <http://www.indianexpress.com/news/civilians-killed-15yr-report-back-to-haunt-j&k-dgp/831717/0>, 14 August 2011.

DGP, Jammu and Kashmir to determine the facts of the case. During the investigations, the Crime Branch was “deputed to Session’s Court Baderwah to assess from the concerned court about the progress of case”. Copies of the testimony before the Court were collected and placed on the file by the Crime Branch. The witnesses were once again summoned and individually re-examined by the Crime Branch. The witnesses denied having any grievance in the matter. Further, the witnesses denied having statements recorded before the Crime Branch. Shikha Goel, ASP, Crime and Railways, Jammu, could not “lay her hand on any concrete result regarding the involvement of senior Police officers”. It was concluded that at the advanced stage of the trial the Crime Branch could not re-examine witnesses formally and it would be advisable to wait for the outcome of the trial. Finally, it was stated that “if approved” a “comprehensive report” may be sent to the NHRC.

On 23 December 1996, police investigations in the case led to the filing of a chargesheet against SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain before the Chief Judicial Magistrate [CJM], Doda. On 23 December 1996, the case was committed to the Sessions Court, Baderwah. On 1 July 1998 charges were framed by the Sessions Court, Baderwah against SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain. Abdul Sattar and Tariq Hussain were proceeded with u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC] as they were absconding. On 8 November 1999, the Sessions Court, Baderwah, acquitted SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain claiming that the witnesses in the case turned hostile.

On 14 August 2011, the Indian Express reported the case and for the first time indicated the involvement of DGP Kuldeep Khoda in the crime, based on the Crime Branch progress report of 16 January 1998<sup>103</sup>.

Following the disclosure of the details of the Crime Branch progress report of 16 January 1998, Nazira [widow of Fazal Hussain Dar] and Shaheena [widow of Mohammad Hussain Lone] filed a petition before the High Court [Original Writ Petition (OWP) no. 1258/2011], seeking re-opening of the case and fresh investigations by the CBI. Further, it was stated that while the subject matter of the petition comes under the jurisdiction of the Jammu wing of the High Court, the case may be heard by the Srinagar wing, as lawyers in Jammu were reluctant to take up this case of human rights violations by higher officials. Further, high fees were demanded which the petitioners were unable to pay. Finally, the petitioners came in contact with the Association of Parents of Disappeared Persons [APDP], which agreed to assist with the case. The matter was thereby heard by the Srinagar wing of the High Court. The following is a summary of the proceedings to date:

- On 23 September 2011, Justice Hasnain Masoodi of the High Court of Jammu and Kashmir invited Mohammad Ishaq Qadri, Advocate General to “assist” in the matter. No notices were issued.
- On 30 September 2011, the Advocate General was not present. A. M. Magray, Additional Advocate General told the court that the Advocate General was unaware of the previous order of the court.
- On the following date, the Advocate General appeared in court and stated that on the following date the full record of the case, including the proceedings at the NHRC and the entire Crime Branch record would be provided.
- For six months the Crime Branch records were not produced but on 16 April 2012, a transfer petition [7/2011] filed by SPO

Mohammad Ashraf and was admitted and the case was shifted to Jammu.

- On 20 April 2012, the matter was listed but the concerned advocate was unable to travel to Jammu due to the short notice provided. An adjournment was sought through the son of Fazal Hussain Dar.
- On 25 May 2012, the date on which the matter was listed, the case was not taken up. On the same day, the Advocate General placed written objections to the petition on record.
- On 29 May 2012, without a copy of the written objections being provided to the petitioners, nor they being given an opportunity of being heard, the petition was dismissed. As Justice Masoodi was not in Jammu on 29 May 2012, the decision was read out in court by the then acting Chief Justice, Virender Singh.

The case is now being referred to the Supreme Court.

On 19 April 2012, the son of Fazal Hussain Dar approached the State Human Rights Commission [SHRC] seeking investigations by the SHRC into the matter.

On 13 August 2012, the advocate for the complainant had sought an opportunity to advance further arguments on 22 August 2012. While this request was granted, no hearing was held on 22 August 2012. Instead of providing notice for the subsequent hearing on 12 September 2012, the SHRC chose to dismiss the case.

As per publicly available information, alleged perpetrator Kuldeep Khoda was awarded the Presidents Medal for Distinguished Service in 1999, the Director General of Police’s Commendation Medal for 2001 and the Sher-e-Kashmir Medal for Meritorious Service in 2004. Earlier, he had received the Police Medal for Meritorious Service in 1993.

#### Case Analysis

The manner in which the petition/complaint before the High Court and SHRC were dismissed is unfortunate and requires to be closely analysed.

Justice Hasnain Masoodi, the High Court judge hearing the case, appears to have acted in much haste and thereby denied the petitioners a fair hearing. The entire record of proceedings before the High Court is an indictment of the judiciary in the instant case. As the matter will be placed before the Supreme Court, a limited analysis of the judgment will be carried out here.

First, Justice Masoodi chose to invite the Advocate General to “assist” the bench instead of issuing notices, observing that this was a sensitive case.

Second, rather than provide assistance, the Advocate General did not initially appear before the Bench and subsequently despite agreeing to submit the complete Crime Branch record in the case, did not do so for eight months until the case was dismissed. The Crime Branch record was never presented before the High Court.

Third, the Chief Justice of the High Court admitted a transfer petition filed by SPO Mohammad Ashraf, despite him not yet being a party to the proceedings. Further, on 16 April 2012 the Acting Chief Justice of the High Court accepted the transfer petition, despite the Chief Justice having earlier allowed the petition to be heard in Srinagar. The objections filed by the petitioners were disregarded.

Fourth, the matter was listed as part-heard [perhaps to retain the case with Justice Masoodi], was taken up within *four* days effectively

<sup>103</sup> Indian Express, <http://www.indianexpress.com/news/civilians-killed-15yr-report-back-to-haunt-j&k-dgp/831717/0>, 14 August 2011.



precluding the petitioners counsel from appearing in the matter in Jammu.

Fifth, the matter was adjourned to 25 May 2012 but was not taken up. On the same day, while written objections were filed by the Advocate General, the record of the case including the Crime Branch reports were not submitted.

Finally, the case was dismissed, within four days, without the petitioners being heard on the objections filed by the Advocate General. Further, the dismissal came within a day of the Government of Jammu and Kashmir recommendation of Kuldeep Khoda, and three days before his retirement as DGP, Jammu and Kashmir, as the candidate for the post of the first Chief Vigilance Commissioner [CVC] of Jammu and Kashmir. The timing of the dismissal and his recommendation for the post of CVC raises doubts on the judicial process in this case. Particularly as, during the pendency of the case in the High Court, Kuldeep Khoda retained his position as the DGP of the State.

The judgment of 29 May 2012 is itself marred by faulty judicial reasoning and a failure to appreciate the facts of the case, and unfortunately, a failure to even appreciate the facts of the proceedings before it. For example, no mention is made of the fact that the Advocate General was ordered to provide the complete record of the cases. Further, Justice Masoodi appears to have disregarded a crucial legal question in the case. It was the obligation of the police and prosecuting authorities, whether the Crime Branch, the investigating authority that prepared the chargesheet or the Chief Prosecuting Officer, to bring the fact of the parallel investigations carried out by the Crime Branch to the attention of the Sessions Court, Baderwah. The first progress report of the Crime Branch was completed **before** the charges were framed by the Sessions Court, Baderwah. By not doing so, the Sessions Court, Baderwah was allowed to proceed to trial in a case where relevant incriminating evidence against the alleged perpetrators was collected in a parallel investigation. The Crime Branch investigations should have been the only basis for the trial as the parallel investigation ordered by the NHRC, the reasoning for which was endorsed by the then DGP, Jammu and Kashmir, was to address the concerns of the families of the victims.

The fear faced by the witnesses before the trial court was wrongly considered by Justice Masoodi. Justice Masoodi disregarded the fear of the petitioners and other witnesses [which did lead to witnesses turning hostile before the trial court] and instead stated that they did not complain of any coercion, undue influence and intimidation before or during the trial. It is only logical that a fearful witness, having little trust in a police agency, would not reveal any intimidation being faced.

Justice Masoodi callously observed that the families of the victim failed to appeal the trial court verdict for 11 years but failed to make a similar observation on the Government of Jammu and Kashmir which should have filed an appeal.

In addition the points noted above, Justice Masoodi has also wrongly interpreted the progress report of 16 January 1998 by the Crime Branch. Below is a summary of the crucial evidence in the case that strongly indicts the alleged perpetrators of the crime, particularly Kuldeep Khoda:

- Nazira, wife of Fazal Hussain Dar and mother of Fareed Hussain Dar, testified that on 3 January 1996, at about 9:20 pm, three or four masked men abducted her husband and son. During the trial court proceedings, Nazira was considered to have turned hostile as she in an earlier statement to the police

had specifically identified SPO Mohammad Ashraf, whereas in court she did not. But, her statement on the point has been consistent before the Crime Branch and the trial court. While this contradiction does raise some questions, a proper, independent investigation might well provide the necessary answers.

- Talib Hussain, testified that on 3 January 1996, at about 9:30 pm, he and Mohammad Hussain Lone, were working when unidentified persons abducted them and put them in a vehicle. Subsequently, some more persons were brought and put in the vehicle. They were taken to the Chenab River at some unknown place. When he was taken to the bank of the river, he was pushed into the river but he managed to hold on to a stone and survive. He then heard gunshots nearby. The witness managed to escape and subsequently he found out that SPO Mohammad Ashraf and his associates were responsible for the abduction and the killing of the other three victims.
- Shadi Lal, driver of the police vehicle that was used during the commission of the crime, stated that he knew SPO Mohammad Ashraf as someone who was close to the police.

On 1 January 1996, in the evening, he accompanied SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain from Doda to Batote, to hand over some store articles to Kuldeep Khoda. Following this, SPO Mohammad Ashraf met with Kuldeep Khoda for about an hour at his residence. Subsequently, they returned to Ramban and spent a night there.

On 2 January 1996, they went back to Batote. SPO Mohammad Ashraf once again met Kuldeep Khoda. The witness also met alleged perpetrator no.1 and told him that he needed to go to Doda and requested that the others be therefore provided a different vehicle. DIG Kuldeep Khoda did not accept this and asked the witness to continue with the group till 4 January 1996. On the same day, the group went to Doda and on the way they picked up two persons unknown to him. Further, at Police Post Assar, SPO Mohammad Ashraf and the two persons unknown to him procured arms and ammunitions and reached Doda on the evening of 2 January 1996.

On 3 January 1996, the group proceeded to Baderwah and reached by the evening. Then after some work was conducted they proceeded back to Doda. When they reached Pranu at about 9:00 pm, SPO Mohammad Ashraf asked the witness to stop the vehicle. After some time, one person was brought into the vehicle. Subsequently, three more persons were brought into the vehicle. SPO Mohammad Ashraf along with his two associates and PSO's boarded the vehicle and asked the witness to proceed towards Doda.

On reaching Pul Doda, SPO Mohammad Ashraf asked the witness to proceed towards Thatri as he had to perform some important work. Accordingly the party proceeded towards Thatri. When they reached near Prem Nagar, SPO Mohammad Ashraf stopped the vehicle and got down along with the civilians and his associates and asked the witness and PSO's to remain there on the road till he returned back and did not allow them to accompany him. The witness and PSO's remained on the roadside waiting. After half an hour of their departure the witness heard the sound of gun shots from the Chenab river side. SPO Mohammad Ashraf and his associates then came to the vehicle after about one hour but none of the civilians were along with them. They then proceeded and got down at the Kishtwar Police Station. The witness went to his residence for the night.

On 4 January 1996, SPO Mohammad Ashraf wanted to proceed to Batote and meet with Kuldeep Khoda. On reaching Batote, SPO Mohammad Ashraf went to DIG Kuldeep Khoda's residence and met with him. The witness then himself met Kuldeep Khoda and apprised him about the whole story and informed him that SPO Mohammad Ashraf and his associates had abducted civilians and then murdered them near Thatri and their dead bodies were thrown in the Chenab river. The witness further stated that DIG Kuldeep Khoda ordered the witness to produce SPO Mohammad Ashraf and his associates to SSP, Doda [Javed Makhdoomi] on 5 January 1996.

On reaching Doda, SPO Mohammad Ashraf went to meet SSP Doda and he was directed to remain present in District Police Line Doda and ordered him not to move outside and also keep the vehicle in District Police Line Doda. The witness later on himself appeared before the SSP, Doda and told him about lifting of the civilians by SPO Mohammad Ashraf and his associates and then subsequent killings.

- Baldev Raj, deputed as a PSO to SPO Mohammad Ashraf, stated that on 1 January 1996, he went towards Batote with Shadi Lal [driver], another PSO Somnath and SPO Mohammad Ashraf. On reaching Batote, SPO Mohammad Ashraf went to meet DIG Kuldeep Khoda. They then proceeded to Ramban.

On 2 January 1996 they proceeded to Batote where a police vehicle carrying arms and ammunition from Ramban also reached Batote and was produced before Kuldeep Khoda, who inspected it. SPO Mohammad Ashraf once again met DIG Kuldeep Khoda and the vehicle carrying the arms and ammunition was then dispatched for Assar village. The group then proceeded to Doda, along with two persons unknown to the witness but known to SPO Mohammad Ashraf. On reaching Assar village, SPO Mohammad Ashraf and his associates went to the Police Post Assar where they were provided arms and ammunition. They then proceeded to Doda.

On 3 January 1996, the group left Doda and reached Bhaderwah by the evening and then onwards to Parnu. On the way to Parnu SPO Mohammad Ashraf stopped the vehicle and brought two persons, one of whom was placed in the vehicle and the other was taken back. Subsequently, three more persons were brought and put in the vehicle. On reaching Pul Doda, SPO Mohammad Ashraf asked the driver to turn the vehicle towards Thatri. On reaching Thatri the vehicle was asked to be stopped by SPO Mohammad Ashraf where he along with his associates got down and took the civilians along with them. SPO Mohammad Ashraf asked the PSO's and driver to remain present in the vehicle. After half an hour the witness heard gunshots from the Chenab river. After one hour SPO Mohammad Ashraf and his associates returned. The civilians were no longer with them. The party then left for Kishtwar.

On 4 January 1996 they went from Kishtwar to Batote. On reaching Batote, SPO Mohammad Ashraf met with Kuldeep Khoda. Following this meeting, the driver Shadi Lal also met with DIG Kuldeep Khoda. Following this meeting, SPO Mohammad Ashraf once again met DIG Kuldeep Khoda. They then proceeded to Doda where SPO Mohammad Ashraf and his associates went to Police Post Assar where everyone except SPO Mohammad Ashraf deposited their arms.

The above summary of evidence strongly points to the involvement of DIG Kuldeep Khoda in planning and executing the crime, notwithstanding some of the minor contradictions that do exist in the testimony. The evidence suggests a close proximity between Kuldeep

Khoda and SPO Mohammad Ashraf. Further, DIG Kuldeep Khoda appears to be a key player at various points in the operation that resulted in the killing of the three persons – from meeting with SPO Mohammad Ashraf prior to the killings, inspecting arms, and meeting with SPO Mohammad Ashraf after the killings. What is at least certain from the above evidence is that the role of DIG Kuldeep Khoda cannot be conclusively ruled out. Further, it is unlikely that he would not have known of the reasons and purpose behind the crime.

The proceedings before the NHRC may also be considered. On 4 April 2000, the NHRC closed the matter on the basis that a chargesheet had been filed. But, on 19 June 1997, the NHRC noted that the investigations in the case were not satisfactory, and that the then DGP agreed with the NHRC opinion. It was also noted that the DGP would ensure an impartial, effective and expeditious *further investigation with the leave of the Court before which the matter was pending. The results of such investigations were to be placed before the Commission.* This clearly is a reference to the alternate Crime Branch investigations that were carried out but it appears that the NHRC was never apprised of the Crime Branch investigations and in fact on 4 April 2000 the NHRC does not appear to have any knowledge of the fact that the trial had also been completed. Based on the available record it is clear that the DGP, Jammu and Kashmir despite admitting that the police investigations were not satisfactory still proceeded with their own investigations for trial without factoring in the Crime Branch investigations eventually resulting in the acquittal. Therefore, the Crime Branch investigations were suppressed before the Sessions Court, Bhaderwah, NHRC and the High Court.

The crux of the case of the complainant before the SHRC was that the parallel Crime Branch investigation ordered into the case that implicated Kuldeep Khoda was never considered by the Trial Court, the NHRC or the High Court.

The SHRC was the first forum to have the opportunity to consider the Crime Branch investigations. The SHRC had a unique opportunity to critically study the Crime Branch investigations but instead chose to mechanically understand the import of these documents.

Despite an order from the SHRC to provide the final Crime Branch report, a so called "final" report of 4 December 1999 was provided. This was not a final or comprehensive report and did not provide cogent reasons to negate the earlier findings implicating Kuldeep Khoda. More crucially, this report was written when the accused Kuldeep Khoda was the Inspector General, Crime Branch. Therefore, the SHRC chose to rely on a document whose contents were directly under the control of an accused.

In light of the above, and considering the circumstances and time in which the trial was conducted, where it is likely that witnesses would feel great fear, the instant case should be re-investigated and if necessary, re-tried.

Case No. **27**

#### *Victim Details*

Jaleel Andrabi [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing]

Age: 36

Occupation: Human Rights Lawyer

Spouse: Rifat Andrabi

Resident of: Peer Bagh, Budgam District

### *Alleged Perpetrators*

1. Major Avtar Singh, 103<sup>rd</sup> Battalion Territorial Army
2. Sikandar Ganai, Government backed militant [Ikhwan]

### *Allegations in Brief*

On 8 March 1996, Jaleel Andrabi was travelling in a Maruti car along with his wife, Rifat Andrabi. The car was stopped near Parraypora by a military contingent headed by a Major and accompanied by Ikhwan. The victim was abducted.

The victim had been under constant surveillance due to his work as a human rights lawyer. On 29 February 1996, he had taken photographs of Ikhwan and others who were keeping him under surveillance. One of the Ikhwan identified was Sikandar Ganai.

Following his abduction, his family approached the Jammu and Kashmir Police but no action was taken.

On 27 March 1996, the dead body of the victim was recovered from the Jhelum river. The body bore torture marks.

### *Case Progress*

On 9 March 1996, one day after the abduction of the victim, the Jammu and Kashmir Bar Association filed a petition [habeas corpus petition, HCP 32/1996] before the High Court of Jammu and Kashmir<sup>104</sup>. The army denied the arrest of the victim.

On 14 March 1996, FIR no.139/1996 u/s 364 [Kidnapping/Abducting to murder] and [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Saddar Police Station<sup>105</sup>.

On 18 March 1996, a Special Investigation Team [SIT] was formed under the orders of the High Court to investigate the case. The High Court sought to monitor the investigations of the SIT. During the investigations, the dead bodies of Sikandar Ganai and his five associates were recovered. Therefore, crucial evidence in the case was destroyed. The SIT also retrieved the photographs taken by Jaleel Andrabi of persons involved in his surveillance. They were identified as Mohammad Abdul Shah, Nazir Ahmad [Operational names: Khalid, Bachpan] and Mohammad Muzaffar Sheikh.

In August 1996, Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, a Government backed militant [Ikhwan] and an associate of Major Avtar Singh, was arrested. He gave a section 164 [Power to record statements and confessions] Criminal Procedure Code, 1989 [CrPC] statement. In this statement it was recorded that in March 1996, Major Avtar Singh and Ikhwan Sikandar Ganai brought a person to the camp. Six other persons were present at this point: Sultan, Balbir Singh, Doctor Vaid, Mushtaq and Hyder. An argument ensued between Major Avtar Singh and the person abducted and he was then beaten and confined in a room. Mohammad Ashraf Khan was informed that the person abducted was Jaleel Andrabi. On the same evening, Mohammad Ashraf Khan heard cried from the room where Jaleel Andrabi was confined. Subsequently, he saw army personnel loading a gunny bag into a truck and leaving the camp. Major Avtar Singh subsequently

informed Mohammad Ashraf Khan that he had committed a mistake by killing Jaleel Andrabi.

On 10 April 1997, the High Court was informed that Major Avtar Singh was being considered an accused in the case. Further, that the SIT had tried to apprehend him but had been unable to do so. The Union of India represented that Major Avtar Singh had been removed from service on 7 November 1996. The High Court sought further attempts to apprehend Major Avtar Singh and sought to verify whether he in fact had been removed from service.

On 13 August 2001, the High Court was informed that a chargesheet had been filed against Major Avtar Singh before the trial court. The army had sought before the trial court that the case be referred for an army court-martial. No decision had been taken by the trial court.

On 22 November 2004, the High Court dismissed the petition as proceedings had been initiated for the production of a chargesheet in the case.

On 26 December 2000, a chargesheet was filed in the court of the Chief Judicial Magistrate [CJM], Srinagar against Major Avtar Singh. The family of the victim contended that the chargesheet was incomplete and further persons could be implicated. The CJM court rejected this contention.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], appears to state in relation to this case that the file had been received in June 2007. But, while the FIR no. is correct, the police station is listed as Baramulla and the victim as Imtiyaz Ahmad Wani. The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011, in relation to this case that sanction had been sought on 15 July 2003, but refers to the FIR no. as 29/1997.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport. On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself. Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

### *Case Analysis*

The processes of justice, from the delay of granting of sanction for prosecution under AFSPA to the manner in which Major Avtar Singh was allowed to acquire a passport and evade extradition, have assisted in his absolute impunity. With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him.

The absolute non-seriousness on the part of the State is evident even from the manner in which the sanction for prosecution documents refer to this case. There appears to be no absolute clarity on the status of sanction for this specific case. By allowing Major Avtar Singh to carry out the killing of Jaleel Andrabi and evade justice, other crimes of co-perpetrators and innocent persons, including the recent killing of his own family members, has been facilitated.

The death of Major Avtar, and the brutal killing of his family members, is an indictment of the Indian State. Over sixteen years, Major Avtar Singh has been allowed to leave the country, avoid extradition proceedings and run a business.

<sup>104</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

<sup>105</sup> Information on this FIR was sought through RTI on 5 May 2012. No information was provided.

The Indian State has effectively allowed for Major Avtar Singh to escape the rule of law, and in the process further innocent lives have been lost. A fair and impartial trial of Major Avtar Singh could have led to the unearthing of the truth behind the various killings, including perhaps the involvement of the highest levels of military/civilian authority.

## Case No. 28

### *Victim Details*

Shabir Hussain Bhat [Abduction and Enforced Disappearance]  
Son of: Ghulam Mohammad Bhat  
Resident of: Chattabal Mohalla, Patlipora Payeen, Srinagar

### *Alleged perpetrators*

1. Commandant [Commanding Officer] S. Raman Thakur [also referred to as "Thakar"], 2<sup>nd</sup> Battalion Garhwal Rifles / 121<sup>st</sup> Battalion Garhwal Rifles / 121<sup>st</sup> Battalion Territorial Army [all three units are referred to in the documentation], Army, Camp Sharifabad

### *Allegations in Brief*

On 27 April 1996 Shabir Hussain Bhat was picked up by personnel of the 2<sup>nd</sup> Battalion Garhwal Rifles / 121<sup>st</sup> Battalion Garhwal Rifles / 121<sup>st</sup> Battalion Territorial Army [all three units are referred to in the documentation] Sharifabad from his residence during a search operation and he has disappeared since.

The personnel responsible for the abduction were under the command of Commandant S. Raman Thakar.

### *Case Progress*

First Information Report [FIR] no. 255/1996 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Parimpora Police Station on 26 November 1996<sup>106</sup>. The 7 August 2012 communication of the Jammu and Kashmir Police states that this case is under investigation. The FIR refers to the abduction being carried out by the 121<sup>st</sup> Battalion Territorial Army. Further, it is stated that the victim was picked up from the house of one Salaam Gosami at Boat Colony, Bemina, Srinagar.

The family of Shabir Hussain Bhat filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491-A Criminal Procedure Code, 1989 (CrPC) 152/1996]<sup>107</sup>. An affidavit was filed on behalf of Commandant S. R. Thakar which stated that Commandant S. R. Thakar did not arrest Shabir Hussain Bhat, and neither was he required by the unit at the relevant time. The investigation agency produced the case diaries which reveal that Commandant S. R. Thakar was a Captain at the relevant time and had abducted Shabir Hussain Bhat. The complainant had identified Commandant S. R. Thakar in the FIR, but the investigations were ongoing. On 24 June 1997 the High Court transferred the case file to the Chief Judicial Magistrate [CJM], Srinagar to monitor the investigations. The final order of the CJM, Srinagar was issued on 18

<sup>106</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>107</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

March 2002. Based on this order, the High Court dismissed the petition on 30 April 2002.

### *Case Analysis*

The only document available on record for the purpose of analysis is the CJM, Srinagar order of 18 March 2002.

The order begins by noting that a chargesheet had been filed against Commandant S. R. Thakar u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 201[Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC]. Based on this, the order concluded that there was nothing further to monitor. A few references in the order may be considered:

- The order refers on occasion to the arrest of Shabir Hussain Bhat being on 26 June 1996, while initially noting that the arrest was in fact on 27 April 1996.
- On 14 March 2002 a statement of the Station House Officer [SHO] Parimpora Police Station was recorded. In addition to a chargesheet had been filed, it was stated that the case was required to be forwarded to Senior Superintendent of Police [SSP], Srinagar for obtaining the sanction for prosecution, under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] from the competent authority.
- The statements of witnesses recorded under Section 161 [Examination of witnesses by police] Criminal Procedure Code, 1989 [CrPC] confirm the abduction of Shabir Hussain Bhat by Commandant S. R. Thakar.
- Commandant S. R. Thakar is "reported to have been cashiered from the army and his arrest at no point of time has been made by the Investigating Agency during the course of investigation."

As the chargesheet filed against Commandant S. R. Thakar is not with the IPTK, the order and the relevant parts referred to above, serve as a useful indicator of the indictment against Commandant S. R. Thakar.

This case serves as another example of the delays in investigation and the ineffectiveness of the CJM, Srinagar in meaningfully monitoring the investigations. Despite the statement of the SHO Parimpora Police Station of 14 March 2002 that the case was forwarded to the SSP, Srinagar office for obtaining sanction, it requires to be investigated on whose direction for ten years the Jammu and Kashmir Government has not sent this case for obtaining sanction for prosecution under AFSPA as evidenced by the official documents available. Further, the Jammu and Kashmir Police contradictorily suggests that the case continues to be under investigation. It needs to therefore be ascertained whether any prosecution has taken place following the filing of a chargesheet. Further, it needs to be ascertained why the FIR in the case was filed seven months after the incident. Finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 29

### *Victim Details*

Mohammad Akbar Rather [Abduction and Enforced Disappearance]  
Age: 28  
Occupation: College student  
Son of: Mohammad Subhan Rather  
Spouse: Muneera  
Resident of: Palhalan, Pattan, Baramulla District.

### *Alleged Perpetrators*

1. Major S. S. Sinah [Operational name: Liyakat Ali Khan], 8 Raj Rifles, Army, Camp Palhalan, Pattan, Baramulla District
2. Aziz Rather, Government backed militant [Ikhwan]

### *Allegations in Brief*

The family of Mohammad Akbar Rathar states that on 28 November 1996, around 7:30 pm, Mohammad Akbar Rather was picked up by the 8 Raj Rifles and specifically Major S.S.Sinah during search operations at his residence. Mohammad Akbar Rather's family stated that following his abduction and detention he was not given medical care despite suffering from various ailments, including a urinary tract infection. The family also claimed that the victim was not a member of any banned organization, nor had helped any militant group in the commission of an offence. The family of the victim visited the Palhalan Camp, and met with Major S.S.Sinah on numerous occasions. The first occasion was at 10:00 pm on the evening of the arrest. They were informed that the victim would be released, but he was not released. The father of the victim also states that after about twenty days of Mohammad Akbar Rather's disappearance, a local Ikhwan named Aziz Rathar promised to assist in getting the victim released. But, he said that the father would need to prepare a feast for Major S.S.Sinah for the release of his son. The father of the victim states that he prepared a feast, a party was held at the house of Aziz Rathar, and Major S.S.Sinah was present at this party, but the victim was never released.

### *Case Progress*

A First Information Report [FIR] no. 277/2000 was filed u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] at the Pattan Police Station. Earlier, a Daily Diary report at the Pattan Police Station, entered on 14 December 1996, records that Mohammad Subhan Rather [father of the victim] informed them that his son had been arrested on 28 November 1996 at 7:30 pm. The entry also states that a "Major of Indian Army had stated to the plaintiff that his son has managed to escape during the night period of 30 Nov"<sup>108</sup>.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. 33/1997, a habeas corpus petition]. A final decision was delivered on 31 October 2000 based on an enquiry conducted by the Sessions Judge, Baramulla, implicating the army in the abduction of the victim. The judicial enquiry also named Major Sinah. The High Court ordered that a case be registered and the truth be ascertained within six months.

On 6 June 2000 the State Human Rights Commission [SHRC], which was approached by the family of the victim, found the involvement of the army in the custodial disappearance of Mohammad Akbar Rather and recommended ex-gratia government relief of Rs. 2,00,000.

The wife of the Mohammad Akbar Rather filed another petition before the High Court [Original Writ Petition (OWP) 312/2009] for implementation of the SHRC recommendations on ex-gratia government relief. But so far this relief has not been given to the family of the victim.

<sup>108</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

Further, an enquiry was also conducted under the chairmanship of the Additional District Magistrate, Baramulla.

The family of the victim also gave a statement to the IPTK on 24 December 2011.

### *Case Analysis*

As a preliminary point, the unit of the army implicated by the family needs to be considered. The father of the victim in the statement to the IPTK, maintains that the unit was the 8<sup>th</sup> Battalion Raj Rifles. But, in the petitions filed before the High Court and before the SHRC, reference is made to the "8<sup>th</sup> Field regiment". The father of the victim maintains that this may have been an inadvertent mistake, but that the family of the victim was always certain that it was the 8<sup>th</sup> Battalion Raj Rifles.

The SHRC, on 6 June 2000, based on a report by the Senior Superintendent of Police [SSP], Baramulla of 9 May 2000, implicated the army in the abduction and disappearance of Mohammad Akbar Rather and stated the following: "...investigation conducted which points towards the Army, 8<sup>th</sup> Field Regiment, who have not released the son of the Complainant nor given any clue about him, but the fact is established regarding disappearance of the Complainant's Son under the custody of Army who have not accounted for. The Complainant's son is certified not involved in any subversive activity, rather militancy related affair, but has disappeared under their custody".

The inquiry conducted by the Sessions Judge, Baramulla, on the orders of the High Court, was concluded on 4 September 1998. The inquiry begins by noting that the 8<sup>th</sup> Battalion Raj Rifles, despite being given notice, did not participate in the inquiry. The inquiry then proceeded to record the testimony of five witnesses. The following is the relevant evidence brought on record:

- Witness Kamal ud-Din, Lambardar [Numberdar, de facto revenue authority in the village], stated that following the Akbar's arrest in November 1996, he saw the victim at the Raj Rifles army camp at Palhallan, Pattan. The witness testified that Major Sinah told him that the victim would be released provided he handed over a pistol. The witness then spoke to the victim and asked him to hand over the pistol. The victim denied having any pistol with him. The witness then stated that the army spread a rumour in the camp that the victim had escaped on 28 November 1996.
- Witness Abdul Gaffar Kochey [his relation to the victim or his position in general is not mentioned] stated that Akbar was not involved in any militancy activities. He testified that the victim was arrested on 28 November 1996 by the Raj Rifles at Palhallan, Pattan. The witness stated that Major Sinah permitted them to meet the victim in the camp in the evening of 28 November 1996. Major Sinah said that had Akbar handed over the pistol he would have been released. The victim denied having a pistol. The victim has not been seen thereafter.
- Witness Ghulam Mohi-ud-Din stated that in the evening of 28 November 1996 he was in the house of the victim. The army surrounded the house and Major Sinah was the officer who then took away Akbar.

- Witness Mohammad Subhan Rather, father of Akbar, testified that on 28 November 1996, Major Sinah took away my son and since then he has not been seen.

Before considering the conclusions of the Sessions Judge, a few comments may be made on the above testimony:

- Witness Kamal-ud-Din's testimony confirmed the arrest of Mohammad Akbar by the 8<sup>th</sup> Battalion Raj Rifles and Major Sinah. The witness is unclear on the specific date of the arrest ["November 1996"] and this might explain his placing the alleged escape of the victim on the 28 November 1996. The family of the victim places it on 30 November 1996, based on rumours they claimed were spread by the army.
- Witness Abdul Gaffar Kochey's testimony strongly corroborates the above testimony. Further, his testimony also corroborates the family account of Mohammad Akbar that they met with the victim on the evening of his arrest.
- Witness Ghulam Mohi-ud-Din's testimony is crucial as it corroborates Akbar's family version of events at their house on 28 November 1996, and implicates the Major Sinah in the arrest of the victim.

No evidence was brought in rebuttal by the respondents before the inquiry. The Sessions Judge, based on the above testimony confirmed the role of Major Sinah in the arrest of the victim and stated that "it is therefore established that 8<sup>th</sup> Battalion of Raj Rifles which was camped at Palhallan Pattan in November 1996 has arrested the said Mohammad Akbar Rather and it is the 8<sup>th</sup> Battalion Raj Rifles which has to account for his disappearance."

Therefore, in the instant case, the role of the army is clear. The specific officer involved is also clearly indicted by the inquiry.

What is unfortunate therefore is that thirteen years following this inquiry, it appears no legal action has been taken against Major Sinah despite the High Court order that the investigations were to be completed in six months.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army. A barely legible letter dated 22 June 2009 from the Station House Officer [SHO], Pattan Police Station, to the Sub-Divisional Police Officer, Pattan, is also available. This letter appears to state that investigations confirmed the arrest of the victim by the army, camped at Palhallan, on 28 November 1996.

Further, there appears to be a reference to Major Sinah as being the in-charge of the camp, but the copy of the letter available, being illegible, makes it difficult to be definite. The letter then goes on to state that the army was not cooperating with the investigation, which was therefore closed by declaring the perpetrators as untraced in 2005 but then reopened once again and is ongoing.

## Case No. 30

### *Victim Details*

1. Mushtaq Ahmad Dar [Abduction and Enforced Disappearance]  
Age: 25  
Occupation: Labourer  
Son of: Azizi, Ghulam Mohammad Dar [deceased]  
Resident of: Tengpora, Bemina, Srinagar

2. Mushtaq Ahmad Khan [Abduction and Enforced Disappearance]  
Age: 25  
Occupation: Daily Wager in Forest Department  
Son of: Muhammad Sultan Khan [deceased]  
Resident of: Tengpora, Bypass, Batamalloo, Srinagar

### *Alleged Perpetrators*

1. Commandant [Commanding Officer] S. K. Malik, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
2. Major Vishu Jeet Singh / Major Vishwajeet Singh, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
3. Naib Subedar, Nazahar Mohammad, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar

### *Allegations in Brief*

On the intervening night of 13 and 14 April 1997, around midnight, Mushtaq Ahmad Dar was picked up by the personnel of the 20 Grenadiers camped at Boat Colony, Bemina, Srinagar. While the other members of the family were locked in one room, Mushtaq Ahmad Dar was tortured and then taken away. The next morning, Mushtaq Ahmad Dar's mother approached the concerned camp, the personnel of which admitted that they had picked him up and that he would be released shortly. But, subsequently they denied that Mushtaq Ahmad Dar was with them. A person named Nazahar Mohammad, Naib Subedar, demanded Rs. 20,000 from the Dar's family for his release. He subsequently returned the money to the family. Mushtaq Ahmad Dar consequently disappeared in Army custody.

Another victim namely Mushtaq Ahmad Khan of the same locality was also picked up by the same personnel around the same time. He too was tortured in a separate room in his residence before being taken away. The family of Mushtaq Ahmad Khan met with Nazahar Mohammad, Naib Subedar, and an officer named "Malik" of the 20 Grenadiers, but he was not released. Khan subsequently disappeared in Army custody.

### *Case Progress*

Mushtaq Ahmad Dar's family filed a petition before the High Court of Jammu and Kashmir [HCP 77/1999, a habeas corpus petition] seeking production of the victim, a judicial enquiry, prosecution of the 20 Grenadiers, and compensation of Rs.10,00,000. The respondents, Union of India and the Commandant, 20 Grenadiers denied any operation was conducted on 13 April 1997 and denied the arrest of the victim. On 2 May 2000 the High Court ordered an enquiry into the incident by the Court of Additional Sessions Judge, Srinagar. Further, on 2 April 2009, based on a High Court directive of 28 October 2003, a First Information Report [FIR] no. 66/2009 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was registered at the Parimpora Police Station. The report by the Court of Additional Sessions Judge, Srinagar, was submitted on 18 July 2002 and indicts the 20 Grenadiers and confirms the abduction but does not specifically name any perpetrators. While the State of Jammu and Kashmir and Director General of Police [DGP], Jammu and Kashmir appeared through counsel on some occasions, the Union of India and the Commandant, 20 Grenadiers made no appearance. On 25 March 2011 the High Court ordered prosecution on the FIR, confirmed that Dar was abducted by the 20 Grenadiers, and ordered compensation of Rs. 10,00,000. On the non-implementation of this decision, the family of the victim filed a contempt petition [no.4/2011]. On 1 May 2012, the 25 March 2011 order was upheld by the High Court subject to any subsequent directions passed on a Letter Patent Appeal [LPA] filed by the

respondents against the 25 March 2011 order. In June 2012, the earlier order on compensation was upheld<sup>109</sup>. A last opportunity to the Ministry of Defence to make the payment was made by the Division Bench of the High Court on 24 July 2012<sup>110</sup>. Reportedly, the LPA was dismissed and Rs.10,90,000, including interest, was paid by the Defence Secretary<sup>111</sup>.

Information on the petition number [HCP 77/1999] was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided. Information on the contempt petition was sought through RTI on 2 July 2012. Information was provided.

Mushtaq Ahmad Khan's family filed a petition before the High Court [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no.15/1999]. Based on the High Court order of 7 November 2000, FIR no.2/2001 u/s 364 [Kidnapping / Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Batamaloo Police Station. The family of Mushtaq Ahmad Khan also approached the State Human Rights Commission [SHRC] which recommended ex-gratia government relief of Rs. 1,00,000 on 2 June 2000 and the same was received by the family. Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

Information on both the above listed FIR's was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police, information relating to FIR no. 66/2009 was provided stating that the case was still under investigation. A copy of FIR no.2/2001 was also provided. Further, in response to a statement by the Government of Jammu and Kashmir on 5 March 2012 that over the last three years, 444 FIRs had been filed against the armed forces and the police, a RTI was filed seeking information on these cases. On 2 June 2012 information was provided on FIR no.66/2009 that the case was under investigation.

The family of Mushtaq Ahmad Dar also gave a statement to the IPTK on 24 November 2011 and the family of Mushtaq Ahmad Khan also gave an unsigned statement to the IPTK on 27 February 2012.

#### *Case Analysis*

In addition to the account of the family of Mushtaq Ahmad Dar, the enquiry report of 18 July 2002 of the Court of Additional Sessions Judge, Srinagar is presently the only account that may be considered in a case where an FIR was registered, on the intervention of the court, approximately twelve years following the abduction of the victim, and six years after the court ordered the filing of the FIR. Unfortunately, not much information [besides the account of the family] exists in the case of Mushtaq Ahmad Khan. But, as both cases are closely related, the below analysis would serve as an indictment for the alleged perpetrators in both cases.

The enquiry report found that it was "clearly established" that the victim was "lifted" by the 20 Grenadiers camped at Boatman Colony, Bemina and was in their custody. Further that as of the date of the enquiry report the whereabouts of the victim was unknown. The

<sup>109</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Jun/13/hc-directs-defence-secretary-to-compensate-victim-s-mother-67.asp>, 12 June 2012.

<sup>110</sup> Kashmir Reader, <http://kashmirreader.com/07252012-ND-custodial-disappearance-1995.aspx>, 25 July 2012.

<sup>111</sup> Kashmir Reader, <http://kashmirreader.com/10122012-ND-finally-defence-ministry-pays-rs-10-9-lakh-to-disappeared-man%E2%80%99s-kin-5535.aspx>, 12 October 2012.

enquiry report continues to state that "specifically liability could not be fixed because it is not known as to which of the Army personnel had lifted Mushtaq Ahmad Dar, though 20 Grenadiers is responsible for having lifted Mushtaq Ahmad Dar". The enquiry report bases this conclusion on the witness testimony heard, but it is unfortunate that the enquiry report does not confirm certain other details.

Witness Haji Abdul Rashid Dar states that he contacted Commanding Officer S. K. Malik "2-3" days after the incident and was told by the Commanding Officer that he would personally release Mushtaq Ahmad Dar. Thereafter, the witness states that he contacted the officer approximately ten times, but the victim was not released. The witness also speaks of an "army person", Nazahar Mohammad, demanding Rs. 20,000 [which was subsequently returned], and the witness speaks of meeting "Maj. Vishou" [whom the Additional Sessions Judge, while summarizing the evidence, refers to as "Maj. Vishu Jeet Singh"] who "assured him that Mushtaq Ahmad will be released as he [Mushtaq Ahmad] is not a militant". This evidence was not overturned or affected in any way in the cross-examination that followed. In fact, elements of it were corroborated by other witnesses. Witness Abdul Rehman Bhat confirms that Haji Ab. Rashid contacted army people. He also states, presumably after gaining this information from others that "army people admitted that Mushtaq Ahmad Dar is lying with them". Abdul Rehman Dar states, while presumably referring to Mushtaq Ahmad Dar's mother and himself, "number of times they went to army people for release of Mushtaq Ahmad". Ali Mohammad Dar also states the same. Finally, the victim's mother, Azizi, states that on the day following the incident, "...they went to Boatman Colony where 20 Grenadiers was camped" and that "...officers told her that Mushtaq Ahmad is in their custody". The totality of the evidence, founded on the specific names that witness Haji Abdul Rashid Dar mentioned should have resulted in the Additional Sessions Judge concluding not just on the abduction but also on the names of persons who clearly had knowledge of the incident and could be attributed with some level of responsibility. Also, of interest is the entry in the Daily Diary of the Batamaloo Police Station which might indicate that the victim was at some point brought to the police station. Another document of interest is a letter from the mother of the victim to the Station House Officer [SHO], Batamaloo Police Station which recounts the events and indicts "Major Vishwajeet Singh alias Singh Sahib, Sh. Kuladi, Kalla and Captain Anil Malik". Except for Major Vishwajeet Singh [who would presumably be alleged perpetrator no.2], the other names are unfamiliar on the record and the family of the victim also did not mention these names to the IPTK.

Notwithstanding the incomplete conclusions by the Additional Sessions Judge, it is important to highlight that a case that took twelve years for a FIR to be registered has still not resulted in any prosecutions, despite the findings of the Additional Sessions Judge in 2002. Further, it is also important to note that despite information that suggests that the FIR was filed on 2 April 2009, the enquiry report of the Additional Sessions Judge, Srinagar [which was issued on 18 July 2002] suggests that an FIR had already been filed.

Similarly, in the case of Mushtaq Ahmad Khan, while an FIR was registered, the victim remains disappeared. In this case, on 24 November 2003, the Deputy Commissioner, Srinagar, while sanctioning ex-gratia government relief of Rs. 1,00,000 recommended by the SHRC, referred to certain police correspondence that are pertinent.

First, the letter dated 21 June 2002 from the Senior Superintendent of Police [SSP], Srinagar confirms that the victim was arrested by the 20 Grenadiers on the intervening night of 13 and 14 April 1997 and has disappeared since. Further, that the victim was not involved in any militancy related activities.

Second, the letter dated 15 July 2003 from the SSP, Srinagar noted that a FIR had been filed and investigations were ongoing.

Third, the letter dated 20 September 2003 from the Criminal Investigation Department [CID] confirms the abduction and refers to the “army” as being responsible. Despite these confirmations, the police investigations have not resulted in specific indictments of the perpetrators of the crime.

Also, of interest, in both the above cases of disappearance, is a submission of November 2010 by the SHO, Parimpora Police Station, before the High Court in HCP no.77/1999. It is stated that a written report was filed in the Batamaloo Police Station on 14 April 1997 regarding the arrest of both victims. Further, SHO, Parimpora Police Station, based on investigations, confirms that a “Sikh Officer” of the 20 Grenadiers, camped at Tengpora, did abduct Mushtaq Ahmad Dar. It was also submitted that Major Rahul Jaswal, the Adjutant of 20 Grenadiers wrote a letter dated 17 November 2009 to the SHO where besides denying the arrest of Mushtaq Ahmad Dar, it was also stated that the case in the High Court had been dismissed on 19 July 2005, which is clearly a misrepresentation.

Despite the passage of 15 years both cases appear to remain under investigation. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **31**

### *Victim Details*

Abdul Rashid Wani [Abduction and Enforced Disappearance]

Age: 35

Occupation: Truck driver

Son of: Abdul Samad Wani

Resident of: 87, Madina colony, Bemina, Srinagar

### *Alleged perpetrators*

1. Captain Yadav, 2/8 Gorkha Rifles, Army

### *Allegations in Brief*

On 7 July 1997, Abdul Rashid Wani was abducted and has disappeared since.

### *Case Progress*

The family of the Abdul Rashid Wani filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HC 139/1997]<sup>112</sup>.

The Government of Jammu and Kashmir and the army unit implicated denied the arrest and detention of Abdul Rashid Wani. Therefore, on 6 April 1999 an enquiry was ordered, which was conducted by the Court of Sessions Judge, Srinagar and concluded on 1 February 2001.

Rs. 1,00,000 ex-gratia government relief and Rs. 4,00,000 in lieu of compassionate employment under SRO-43 [Statutory Rules and Orders] were received by the family of the victim.

<sup>112</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

### *Case Analysis*

The only document on record for the purpose of analysis is the 1 February 2001 enquiry report.

The enquiry report begins by noting that the respondents in the case, Government of Jammu and Kashmir, Director General of Police, [DGP], Jammu and Kashmir, other police authorities and the army unit implicated, appeared during the enquiry and denied the arrest or detention of Abdul Rashid Wani. The petitioner, Bilal Ahmad Mir, produced four witnesses, including himself, during the enquiry. The respondents did not choose to produce any evidence despite time and opportunity.

The relevant evidence as produced by the petitioner and witnesses was as follows:

- Farooq Ahmad Bhat, testified that on 7 July 1997 he was travelling in a Matador bus from Lal Chowk to Rangreth when personnel of the 2/8 Gorkha Rifles stopped the vehicle and brought down the witness. Abdul Rashid Wani, who was travelling on a scooter, was also stopped. Captain Yadav arrested the witness and Abdul Rashid Wani and made them sit in a vehicle and took them to Sharifabad Camp. The witness was released at 5:00 pm but the victim was not. The witness testified that Abdul Rashid Wani was known to him as he too was a driver. The witness informed the family of Abdul Rashid Wani that he had been arrested by Captain Yadav. On cross-examination, the witness stated that he had not seen Abdul Rashid Wani from the day of the arrest.
- Bilal Ahmad Mir testified that “Manzoor Ahmad Driver” informed him that “2/8 G.R” arrested Abdul Rashid Wani from the Matador bus. The witness went to the army camp but got no information. The witness went to the police station where an FIR was not registered but the police entered a report in the Daily Diary.
- Shabnam, wife of Abdul Rashid Wani, testified that in the evening they received information that Abdul Rashid Wani had been arrested by Captain Yadav while he was travelling in a Matador bus. The witness testified that she met with Captain Yadav who informed her that Abdul Rashid Wani was with him and would be released after two days. Subsequently, she once again went, along with her parents, to meet Captain Yadav who on this occasion denied the arrest of Abdul Rashid Wani. In January 2000, army personnel from the Sharifabad Camp came to their residence and asked them to withdraw the case from the court in exchange for compensation. They also informed the witness that they should not expect the “return of the dead person”. The witness further stated that “Army Captain informed her that Abdul Rashid Wani has been buried at Rawalpura”. The witness then went to the Rawalpura locality where the local people confirmed that Captain Yadav had killed a person during the night and the people of the locality buried the body in the vicinity. In cross-examination, the witness stated that the police refused to register any case against the army.
- Azizi, mother-in-law of Abdul Rashid Wani, testified on the same lines as witness Shabnam. Additionally, the witness testified that Captain Yadav admitted to the arrest of Abdul Rashid Wani and promised his release “after two days from 7 January 1997”. When the witness met Captain Yadav subsequently he denied the arrest of Abdul Rashid Wani.

The respondents did not adduce any evidence, and the enquiry concluded by stating that the Captain Yadav is responsible for the arrest and disappearance of Abdul Rashid Wani. The evidence, and the conclusions of the enquiry report are a strong indictment of Captain Yadav. One area that would require clarification is Bilal



Ahmad Mir's evidence where he refers to hearing of the abduction of Abdul Rashid Wani from a "Manzoor Ahmad". Further, the evidence suggests that Abdul Rashid Wani was in the Matador bus [this was also stated by witness Shabnam] and not a scooter as claimed by Farooq Ahmad Bhat. Notwithstanding these necessary clarifications, the enquiry report does strongly indict the alleged perpetrator.

The IPTK does not have the record following the enquiry report. But, a report entitled "In search of vanished blood: the writ of habeas corpus in Jammu and Kashmir: 1990-2004"<sup>113</sup> states that before the High Court the army challenged the testimony of the eye-witnesses. The High Court accepted the objections of the army, particularly on the issue of the alleged perpetrators name being mentioned by the witnesses without an indication of the source of knowledge.

The petition was disposed off with a direction to the Soura Police Station to register an FIR and investigate into the victim's disappearance. The High Court also dismissed the plea for compensation based on a lack of evidence to show the denial of a right to life.

The High Court's conclusions on the evidence are unfortunate. As stated above, the evidence of the witnesses do appear sound. While it is true that none of the witnesses provide the basis of their knowledge of Captain Yadav, the High Court could have taken other measures before summarily dismissing the witness testimony. For example, the enquiry report only provided a summary of the witness testimony. Perhaps the actual transcripts of the witness testimonies would provide more information.

Further, assuming the appropriate questions were not put to the witnesses during the enquiry, the blame must surely go to the enquiry officer conducting the enquiry and not the witnesses themselves. Further, inspite of the enquiry conducted on the directions of the High Court confirming the crime, the High Court has taken a strange position by dismissing the plea for compensation which it claims is due to lack of evidence to show the denial of a right to life. This decision appears to be not well thought out as in numerous other cases of enforced disappearances the High Court has ordered compensation.

Despite the passage of 15 years there appear to have been no investigations or prosecutions in this case. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **32**

### *Victim Details*

Fayaz Ahmad Beigh [Abduction and Enforced Disappearance]  
Age: 26/27  
Occupation: Camera man, Department of Central Asian Studies, University of Kashmir  
Son of: Abdul Rashid Beigh  
Resident of: Nowshera, Srinagar

### *Alleged perpetrators*

1. Superintendent of Police [SP], Hans Raj Parihar, Operations, Awantipora, Jammu and Kashmir Police
2. Sub-Inspector [SI], Mohammad Amin, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Lethpora, Awantipora, Pulwama District

3. Head Constable Ratan Chand, Jammu and Kashmir Armed Police [JKAP]
4. Constable Abdul Rashid Trali [reportedly deceased], Special Operations Group [SOG], Jammu and Kashmir Police
5. Inspector Sudershan Sood [also referred to before the State Human Rights Commission (SHRC) as Sudershan Kumar], 90<sup>th</sup> Battalion, Central Reserve Police Force [CRPF]

### *Allegations in Brief*

Fayaz Ahmad Beigh was abducted by the personnel of the SOG Camp, Lethpora, Awantipora, Pulwama District, from the University of Kashmir campus on 6 September 1997 at around noon. The victim was abducted along with his motorcycle, camera, cash of Rs. 4000, bank drafts and cassettes.

On the following day, SP Hans Raj Parihar along with CRPF personnel, headed by one Inspector Sudershan Sood raided the premises of the father of the victim. No recovery was made.

The family of the victim approached SOG officials through SP, Operations, Awantipora, Hans Raj Parihar, who after initial hesitance admitted that the victim was in the custody of STF/SOG personnel at Lethpora. Subsequently, the family of the victim received the victim's motorcycle in a broken condition. The family of the victim also approached Karnail Singh, SP, Operations, Pulwama and were given assurances regarding the victim. The victim has disappeared since.

### *Case Progress*

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 1411/1997] seeking the grounds of detention of the victim, registration of a case in the matter, and quashing of the false case registered at the Soura Police Station. This petition was withdrawn on 29 April 1998 following the complaint being admitted by the SHRC.

The family of the victim filed a complaint before the SHRC on 18 February 1998. The final decision was given on 3 April 2000 and Rs. 5,00,000 was recommended for the family of the victim.

Subsequent to the final decision of the SHRC, another petition was filed before the High Court [Original Writ Petition (OWP) 263/2001] seeking that the recommendations of the SHRC be implemented i.e. registration of a case, and payment of compensation. The Government of Jammu and Kashmir, in its submissions before the High Court, admitted that the victim had been abducted by the SOG and SP Hans Raj Parihar, but placed the date of abduction as 9 September 1997. Further, that the victim was detained at Kadalbal, Pampore. It was further submitted that the victim was taken by SI Mohammad Amin for recovery of arms and ammunition from University of Kashmir. Following the recovery of arms and ammunition from this location, and while on the way to Soura for further recovery, the party that was accompanied by CRPF personnel came under firing from militants at Nowhatta. During this firing, the victim escaped. First Information Report [FIR] no. 239/1997 u/s 307 [Attempt to murder], 224 Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Soura Police Station<sup>114</sup>. Following the conclusion of investigations, the final report was produced in the court of the 2<sup>nd</sup> Additional Munsif, Srinagar. The High Court, in its final decision of 9 October 2003, disbelieved this version based on the SHRC final decision that considered it to be

<sup>113</sup>Ashok Aggarwal, October 2008, pp.36-37

<sup>114</sup>Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police a copy of the FIR and investigation documents were provided and it was stated that the chargesheet had been produced in a court of law u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC].

fabricated. The High Court held that a case was to be registered in the matter and that compensation recommended by the SHRC be paid to the family of the victim. The High Court stated that the proper quantum of compensation as per public law based on the facts and circumstances would be Rs. 2,00,000 payable within two months, but the Government of Jammu and Kashmir could choose to pay the SHRC recommended amount of Rs. 5,00,000. No specific detailed reasoning is provided on how the High Court arrived at the proper compensation amount.

Subsequent to the above proceedings, as per media reports, a contempt petition was filed in 2012. According to the reports, in May 2012, the Principal Secretary, Jammu and Kashmir Home Department, submitted that on 9 April 2012, the Deputy Commissioner, Srinagar had been asked to pay the balance compensation of Rs. 3,00,000. Further, the Director General of Police [DGP], Jammu and Kashmir, had been asked to implement the decision of the High Court and register a FIR in the case, take it to its logical conclusion, and take departmental action against the erring police officials involved in the custodial disappearance<sup>115</sup>.

It is unclear when the family of the victim received the Rs. 2,00,000 compensation. Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Only information on OWP 263/2001 was provided.

The family of the victim once again approached the SHRC on 27 May 2008, on the sole issue of compassionate employment under SRO-43 [Statutory Rules and Orders] that had yet to be processed. The SHRC, based on an assurance from the Government of Jammu and Kashmir that the SRO-43 benefits were being processed, disposed off the application.

#### Case Analysis

The main document for analysis in the instant case is the SHRC final decision of 3 April 2000. But, the observations of the High Court in its final decision of 9 October 2003 may be briefly considered.

The High Court observed that:

“From the whole record an impression is fairly gathered that registration of FIR No. 239/97 is with the object of throwing a protective cover around the SOG police personal involved in custodial disappearance of Fayaz Ahmed Beigh to facilitate their escape from legal consequences which they may have to bear consequent upon ‘disappearance’ and ‘not being heard of after arrest’ of said Fayaz Ahmed, once he was taken in custody by the SOG Awantipora.”

The above observation provides further credibility to the SHRC final decision which may now be considered. The SHRC decision begins with the allegations of the family of the victim. Further, it is stated that the father of the victim approached Ali Mohammad Sagar, then Minister of Home, Jammu and Kashmir, who ordered an investigation by the Criminal Investigation Department [CID] of Jammu and Kashmir Police. The CID report dated 31 October 1997 stated that there was no ambush at Nowhatta as suggested in FIR no. 239/1997 filed at Soura Police Station. The decision also states that when the family of the victim approached SP Hans Raj Parihar they were informed that there was a demand of Rs.15, 000 by “some agency”. The money was not paid.

<sup>115</sup> Kashmir Global, <http://www.kashmirglobal.com/2012/05/27/14-year-old-custodial-disappearance-of-k-university-cameraman.html>, 27 May 2012.

SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali contested the complaint before the SHRC. They admitted that the victim had been arrested by the SOG at Kadalbal, Pampore, on 9 September 1997. Further, that under the orders of SP Hans Raj Parihar, a party headed by SI Mohammad Amin, and based on the disclosure of the victim, recovered arms and ammunition at the “University Campus”. Further, that on 10 September 1997 [though it is unclear whether the search and recovery at the University of Kashmir campus was also on the same day] the party, comprising of 30 personnel, including SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali of SOG and Inspector Sudershan Sood of CRPF, proceeded to Nowhatta where they came under firing. The victim escaped. It was further alleged that two persons: Ashaq Hussain and Tariq Ahmad Gujar had seen the victim in Delhi. SP Hans Raj Parihar also filed a separate response before the SHRC. In this response it was stated that he was not present at the SOG Headquarters on 6 or 7 September 1997. Further, that he never met the father of the victim and he did not inform him about a demand for money. He also denied that there was any search at the victim’s house on 7 September 1997.

The SHRC then considered witness evidence and documentation as summarized below:

- The SHRC heard the evidence of witnesses Ghulam Mohi-ud-Din Malik, Ghulam Ahmad Beigh, Mushtaq Ahmad and Abdul Majid Beigh, who confirmed that it was SP Hans Raj Parihar and others who abducted the victim.
- Further, the SHRC also considered certificates issued by police authorities to the effect that on 6 and 7 September 1997, SP Hans Raj Parihar was on duty elsewhere. The SHRC did not find this information credible as it suggested that this line of defence should have been raised by SP Hans Raj Parihar when filing objections before the SHRC. Further, the SHRC considered the evidence of the two police authorities that issued three of the letters, who stated that the information was provided based on their “memory”.
- The SHRC also considered the written statement, filed on 24 July 1998, of the Station House Officer [SHO], Nigeen Police Station. This written statement states that the SHO was informed of the abduction of the victim on 6 September 1997 and that on probing the issue it was found that the victim had been picked up by the SOG, Pulwama District. Further, the report of the abduction of the victim was entered in the records of the police station on 6 September 1997.
- The SHRC found that the evidence of SP Hans Raj Parihar unconvincing on his contention that he was not present when the arrest of the victim was carried out. Further, the SHRC noted his evidence that he was “holding over all charge of STF Camp Awantipora...so much so, that he was being made aware of even the minutest details”.
- SI Mohammad Amin testified that “he learnt about the presence of Fayaz Ahmad Beigh on 9 September 1997, at Kadalbal Pampore and then he found him with unregistered Motor Cycle and then he was taken to Latipora [Lethpora] SOG Camp.” Further, that he heard about the recovery of ammunition at the instance of the victim and the alleged firing upon the raiding party. The SHRC was critical of the role of SI Mohammad Amin in not making a written record of these events at the relevant time and concluded that there was evidence to suggest that the victim was not at Kadalbal, Pampore on 9 September 1997.
- Witnesses Abdul Aziz and Mohammad Ashraf from Tral were also heard by the SHRC [presumably produced by SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali]. The SHRC noted that these

witnesses, brought to prove the presence of the victim at Kadalbal, Pampore, on 9 September 1997, were not reliable as they did not even know who the victim was.

The SHRC concluded therefore that the victim was illegally arrested by SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali on 6 September 1997 from the University of Kashmir campus. The SHRC decision is therefore a clear indictment of SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand and Constable Abdul Rashid Trali. Inspector Sudershan Sood of CRPF may also be considered indicted [though not explicitly by the SHRC] in light of the submissions of the alleged perpetrators before the SHRC that specifically name him as being part of the party on 10 September 1997.

The Jammu and Kashmir Police have deliberately chosen to ignore the High Court directives on the registration of a case for nine years which is an act of furthering support to the alleged perpetrators. Interestingly, this impunity is being provided to SP Hans Raj Parihar when he is already under trial in an infamous Ganderbal fake encounter case from the last five years. On the contrary, as per publicly available information, alleged perpetrator Hans Raj Parihar was awarded the Director General of Police's Commendation Medal for 2001.

Further, it appears that no action has been taken in the case by the CRPF despite the involvement of one their personnel. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 33

### *Victim Details*

1. Bashir Ahmad Wani [Abduction and Enforced Disappearance]  
Age: 20  
Son of: Ghulam Nabi Wani  
Resident of: Mandakpal, Pampore, Pulwama District
2. Bashir Ahmad Bhat [Abduction and Enforced Disappearance]  
Age: 18  
Occupation: Farmer  
Son of: Fateh Bhat  
Resident of: Mandakpal, Pampore, Pulwama District

### *Alleged perpetrators*

1. Inspector Pritam Singh, Head of Special Operations Group [SOG], Camp Lethpora, Jammu and Kashmir Police
2. Selection Grade Constable Gansham, Special Operations Group [SOG], Camp Lethpora, Jammu and Kashmir Police
3. S. M. Jingral [also referred to as S.M. Jindral or Gindral on occasion], Station House Officer [SHO], Pampore Police Station
4. Sub-Inspector [SI] Ashiq Hussain, Pampore Police Station, Jammu and Kashmir Police

5. Constable Riyaz Ahmad, Pampore Police Station, Jammu and Kashmir Police
6. Sub-Inspector [SI] Manzoor Ahmad, Pampore Police Station, Jammu and Kashmir Police
7. Sub-Inspector [SI] Abdul Rashid, Pampore Police Station, Jammu and Kashmir Police
8. Mansoor Ahmad, Munshi at Pampore Police Station, Jammu and Kashmir Police
9. Constable Bashir Ahmad, Pampore Police Station, Jammu and Kashmir Police

### *Allegations in Brief*

The family of Bashir Ahmad Wani states that on 17 November 1997 they were asked to produce the victim at the Pampore Police Station, and specifically before SHO S. M. Jingral, by Ashiq Hussain and Constable Riyaz Ahmad. On 18 November 1997 the family produced the victim at the Pampore Police Station. The family was asked to return for the victim, four-five days later. The victim was not released as promised. Bashir Ahmad Wani has disappeared since.

The family of Bashir Ahmad Bhat states that on 22 November 1997, SHO S. M. Jingral came to the residence of the victim along with other police personnel and asked for the victim. On being informed that the victim was not at the house, the brother of the victim, Abdul Rashid Bhat was arrested and detained at the Pampore Police Station until the victim was produced. On 24 November 1997, the victim was produced at the Pampore Police Station and was detained along with Abdul Rashid Bhat for a few hours after which Abdul Rashid Bhat was released. In these few hours, the victim told Abdul Rashid Bhat that he would stay in the jail and it was better that Abdul Rashid Bhat be released as he was the earning member of the family. The victim was taken to another location by SI Abdul Rashid after half an hour consultation with Mansoor Ahmad and Constable Bashir Ahmad. The family of the victim came to know that Bashir Ahmad Bhat and Bashir Ahmad Wani were seen at the SOG Camp, Awantipora, where they were kept for three days before being transferred to another location. The family of Bashir Ahmad Bhat made various efforts to trace the victim. Bashir Ahmad Bhat has disappeared since.

Both families state that large sums of money have been spent in trying to find the disappeared. Further, SHO S. M. Jingral has threatened the family of Bashir Ahmad Wani and asked them to withdraw the case filed.

### *Case Progress*

The families of both victims filed *habaes corpus* petitions under Section 491 Criminal Procedure Code, 1989 (CrPC) before the High Court of Jammu and Kashmir [9/1998 and 10/1998].

In petition no. 9/1998, filed by the family of Bashir Ahmad Wani, by final order dated 14 July 1998, the High Court dismissed the petition based on a representation of the respondents that the victim had been released on 23 November 1997. But, on a Letter Patent Appeal [LPA no. 232/1998], the High Court bench on 4 August 2000 stated that the petition required rebuttal on affidavit by the respondents. On 13 March 2001, the bench hearing petition no. 9/1998 clubbed the two petitions [petition no. 9/1998 and 10/1998] together. On 7 August 2001, the bench hearing petition no. 9/1998 referred the matter for an enquiry by the District and Sessions Judge, Pulwama. But, on 23 July 2002, based on a submission by the petitioner in petition no. 9/1998 that the matter had been taken up by the State Human Rights Commission [SHRC] and a request that the petition be withdrawn, the petition was dismissed as withdrawn. Consequently, the enquiry was also closed on 6 August 2002.

In petition no.10/1998, filed by the family of Bashir Ahmad Bhat, by final order dated 14 July 1998, the High Court dismissed the petition based on a representation of the respondents that the victim had been released on 23 November 1997. But, on a LPA filed [LPA no. 231/1998], the LPA bench on 4 August 2000 stated that the petition required rebuttal on affidavit by the respondents. But, based on a submission by the petitioner in petition no. 10/1998 that the matter had been taken up by the SHRC and a request that the petition be withdrawn, the petition was dismissed as withdrawn.

The families of the victims approached the SHRC which issued its final decision on 14 July 2001. The SHRC recommended that a case of enforced disappearance of both victims be registered, and that Rs. 1,00,000 ex-gratia government relief be provided to both the families.

Following the non-implementation of the SHRC recommendations, both families filed Original Writ Petition (OWP) no. 37/2002 [and Interim Application no. 49/2002] before the High Court. On 4 February 2002 the High Court dismissed the petition directing that a first information report [FIR] be registered and that ex-gratia government relief as recommended by the SHRC be considered as per the rules. On further non-implementation of these directions the families of the victim filed contempt petition no. 255/2004 before the High Court. In response to the contempt petition, the Government of Jammu and Kashmir stated that they had not received the 4 February 2002 order of the High Court until the contempt petition had been filed on 29 November 2004. Further, that on receiving the order, FIR no. 98/2004 u/s 446 [House breaking by night], 464 [Making a false document] Ranbir Penal Code, 1989 [RPC] was registered at Police Station, Crime Branch, Srinagar and that the ex-gratia government relief was being speedily processed. On 4 October 2005 the High Court disposed the contempt petition based on the submissions of the Government of Jammu and Kashmir. On the issue of ex-gratia government relief, the High Court stated that the families could approach the Deputy Commissioner, who was the concerned officer.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided on contempt petition no. 255/2004. Information on the other petitions was provided. Information on the FIR was sought through RTI on 5 May 2012. No information was provided.

The Deputy Commissioner, Pulwama, in a letter dated 29 March 2005 to the Government of Jammu and Kashmir, confirmed that based on reports from the Superintendent of Police [SP], Awantipora and the Additional Deputy Commissioner, Pulwama, the two victims were not involved in any subversive activities. Both families received the Rs. 1,00,000 ex-gratia government relief each but are yet to receive compassionate employment under SRO-43 [Statutory Rules and Orders].

#### *Case Analysis*

Before considering the findings of the SHRC on 14 July 2001, a few preliminary comments may be made:

- While the family of victim Bashir Ahmad Bhat refers to SI Abdul Rashid, Mansoor Ahmad and Constable Bashir Ahmad before the High Court, they have not been considered as accused persons before the SHRC [SI Manzoor Ahmad, alleged perpetrator no.6 is considered a respondent in the case while not extensively referred to].
- The contention of the Government of Jammu and Kashmir in response to the contempt petition filed before the High Court

that they had not received the 4 February 2002 order, and therefore not acted upon it, for more than two years is most unfortunate and unreasonable.

The SHRC based its 14 July 2001 order on submissions made by the parties and witnesses presented before the Commission. The Additional Director General of Police [ADGP], Criminal Investigations Department [CID], Jammu and Kashmir, stated that the two victims were summoned by the Pampore Police Station on 23 November 1997 for questioning, handed over to the SOG, Camp Lethpora, and released on the same day. Two persons – Jan Mohammad Rather and Ghulam Mohammad Ganai - witnessed the release. The respondents took a similar position. It was further stated that Selection Grade Constable Gansham took the victim to the SOG Camp at Lethpora, which was headed by Inspector Pritam Singh. The questioning was related to a killing of a General Manager of a cement factory at Khrew who was shot dead by militants.

Based on the above submissions, the SHRC first stated that the taking into custody of the two victims by the Pampore Police Station was not in dispute. The SHRC then proceeded to consider the issue of the release of the victims. It is unfortunate that the SHRC did not, at this stage, highlight the differences in the versions of the families of the victims and the police on the issue of taking into custody of the victims. While the police appear to suggest that the victims were taken into custody on the same day [23 November 1997] the families of the victim have a different version, as highlighted above.

Nonetheless, the SHRC proceeded to consider the issue of the release of the victim. The SHRC found that "...it cannot be said that the respondents have been in a position to discharge the onus of proving that Bashir Ahmad Wani and Bashir Ahmad Bhat were released by the SOG namely Pritam Singh at Lethpora SOG Camp."

The SHRC found that the evidence of the witnesses on the release were rendered doubtful by the testimony of "one of the most respectable and responsible citizens namely Malik Mohi-ud-din, ex-speaker [of the Jammu and Kashmir Legislative Assembly] and an advocate", a neighbor of Jan Mohammad Rather and Ghulam Mohammad Ganai. Jan Mohammad Rather and Ghulam Mohammad Ganai had also worked for Malik Mohi-ud-Din. Malik Mohi-ud-Din testified that both these persons were aligned with the armed forces and had a poor reputation in the area. Further, they were said to be persons who got children of well-off people arrested and then released for huge sums of money from the parents of the children.

Further, the SHRC found other reasons to disbelieve the evidence of the witnesses. Ghulam Mohammad Ganai testified that Inspector Pritam Singh had released the two victims on his request. But, he also stated, contradictorily, that alleged perpetrator 1 did not know him and in fact he, the witness, knew Inspector Pritam Singh "by face".

The SHRC also considered the testimony of Khazir Mohammad, brother of Ghulam Nabi Wani, to contradict the testimony of Ghulam Mohammad Ganai<sup>116</sup>.

Khazir Mohammad states that Ghulam Mohammad Ganai did not tell the SOG personnel that the two victims were innocent and should be released. Further, the witness states that the victims were not released in his presence.

<sup>116</sup> It is uncertain what role Khazir Mohammad played in the events in question. The discussion of his testimony would suggest that he was one of the eye-witnesses to the release of the victim. But, in earlier parts of the SHRC order, reference is made to Jan Mohammad Rather and Ghulam Mohammad Ganai.

The SHRC states the following in relation to Khazir Mohammad's testimony: "He has stated that SOG people were writing something on a paper which was signed by him and his companion (Ghulam Mohammad Ganai). They did not know where those boys had gone". The SHRC also stated that "Moreover, the so called personal bond alleged to have been executed by the boys which is on the file is only with regard to one of the boys namely Bashir Ahmad Wani. This too is a photocopy and has not been put to the witnesses as required..."

The SHRC therefore concluded that it could not be conclusively stated that the victims had been released and that an investigation was necessary to "fix the responsibility on the officer, officials of the Police manning the Police Station Pampore and the SOG Camp Lethpora in No. 1997".

The story regarding the release of the victim has been discredited by the SHRC enquiry. The witnesses in favor of the alleged perpetrators have produced inconsistent and contradictory evidence.

Based on the record available in this case and the testimony of Malik Mohi-ud-Din, it is clear that the armed forces and their civilian extensions have facilitated the practice of illegal detentions and unrecorded arrest and "release" of victims which leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money.

The SHRC decision, while confirming the police custody of the victims, and dismissing the release of the victims, serves as a clear indictment of the alleged perpetrators in the instant case.

Also of concern is that the police before the SHRC and High Court have not produced the formal records of the arrest and hand over of the victims to the SOG. Neither have formal release orders of the victims been released.

## Case No. **34**

### *Victim Details*

Fayaz Ahmad Khan [Abduction and Enforced Disappearance]  
Age: 24  
Occupation: Truck driver  
Son of: Haji Abdul Rehman Khan [deceased], Sara Akhter  
Resident of: Abidabad, Gamamdar, Pantha Chowk, Srinagar

### *Alleged perpetrators*

1. Major Yadav Prashad, 197<sup>th</sup> Battalion<sup>117</sup>, Army, Camp Zakoora/ Ganderbal
2. Javaid Ahmad Reshi, Army informer
3. Mohammad Yousuf Akhoo, Army informer

### *Allegations in Brief*

The family of Fayaz Ahmad Khan states that on the intervening night of 25 November 1997 and 26 November 1997, troopers of the 197<sup>th</sup> Battalion ["Roma Battery"] led by Major Yadav Prashad raided the house of the victim. After identifying the victim with the help of Javaid Ahmad Reshi and Mohammad Yousuf Akhoo, he was taken

away. When the family asked Major Yadav Prashad why the victim was being taken away [the victim was suffering from bone disorder], they were told that he was being taken for questioning and would be released soon. Javaid Ahmad Reshi asked the family to come to Brain Nishat the next day. On the next day the family went to the Pantha Chowk Police Station and complained of the victim's abduction. The police did not file any report.

Subsequently, Javaid Ahmad Reshi visited the victim's house and asked for Rs. 40,000 for the victim's release. The family told him that they had already sent persons, including one of the brothers of the victim, to give him the money at Brain Nishat.

Further, when the brother of the victim met Javaid Ahmad Reshi, he asked him to prove that he knew the whereabouts of the victim. Javaid Ahmad Reshi then brought the watch and identity card of the victim as proof. The family paid Rs. 10-12,000 to the informer.

Two days later, the family states that with the help of a Kashmiri Pandit named Bitta, they went to the Zakoora Camp of the 197<sup>th</sup> Battalion of the army and asked Major Yadav Prashad to release the victim, and they were told that he would be released the next day. After some time, during which the family of the victim visited the camp asking for the victim, the Zakoora Camp was shifted to a place near Nuner, Ganderbal. The family of the victim visited this camp. Subsequently, the family of the victim also went to the headquarters of the army implicated at Kangan. They met with Brigadier Malhotra who informed them that the victim had been released and may have gone to Pakistan Occupied Kashmir.

The family of the victim informed the Nishat Police Station about the abduction of the victim by Javaid Ahmad Reshi and Mohammad Yousuf Akhoo who were from Nishat. The body of the victim has not been found to date.

The family of Fayaz Ahmad Khan gave a statement to the IPTK on 9 March 2012.

### *Case Progress*

According to the victim's family, while information on the incident was provided to the Pantha Chowk and Nishat Police Stations, no first information report [FIR] was filed.

The family of the victim approached the State Human Rights Commission [SHRC] and in their application to the SHRC, the victim's family recounts the events surrounding the abduction in a manner similar to the allegations above, but refers to Major Yadav Prashad as being from the 197<sup>th</sup> Battalion, Army Camp at Nuner Kangan, Ganderbal. On 25 November 1999, Nodal Officer, Police Headquarters [PHQ], Kashmir Zone, Srinagar, forwarded a letter dated 11 November 1999 from Superintendent of Police [SP], Srinagar city, East Zone to the SHRC. This letter states that a report was sought from the Station House Officer [SHO], Pantha Chowk Police Station and was received. This report confirms that there existed no FIR or missing persons report. The report further states that following verification it was found that on 26 November 1997 at about 11:00 pm army personnel raided the victim's house and took him along. On the following day, 26 November 1997 [thereby suggesting that the raid took place on the intervening night of 25 and 26 November 1997] the father of the victim, Ali Mohammad Khan and Ghulam Mohammad Ganie went to the army camp at Brain Nishat. They met two surrendered militants: Javaid Ahmad Reshi and Mohammad Yousuf Akhoo, who demanded Rs.10,000 for the release of the victim. Rs. 3000 was paid to them. On the following day when they returned to the camp, the in-charge of the camp, Major Yadav Prashad was not present. A few days later they met

<sup>117</sup> Possibly a part of the Territorial Army, but not expressly stated as such in the documents available.

Major Yadav Prashad who assured them of the release of the victim in his custody. But, the victim was not released. The letter of 11 November 1999 also confirms that the victim was a surrendered militant. The family of the victim filed a rejoinder to this report and maintained their earlier position.

Also on record are affidavits by Abdul Ahad Baba, neighbour of the victim, and Abdul Aziz Khan, brother of the victim. Abdul Ahad Baba confirms the abduction of the victim by the army. Abdul Aziz Khan's affidavit closely matches the more recent statement to the IPTK. He confirms that the abduction was undertaken by the 197<sup>th</sup> Battalion of the army led by Major Yadav Prashad and accompanied by Javaid Ahmad Reshi [whom he refers to as "Javid Auto"] and Mohammad Yousuf Akhooon. He states that Rs. 40,000 was demanded for the release of the victim, but only Rs. 4000 was paid. This matter was subsequently placed before the National Human Rights Commission [NHRC] on 14 June 2000.

The family of the victim also filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 94/1998] against the Union of India, Commandant of the Romo Battalion, Zakoora camp and Major Yadav Prashad, Commanding officer, 197<sup>th</sup> Battalion, Nuner Kangan camp<sup>118</sup>. The petition sought registration of an FIR, release of the victim and compensation of Rs. 5,00,000. In this petition, while repeating the family account of events, there is also a reference to a meeting with "Brigadier and Major and Commanding Officer Pretem Singh" at the Nuner Kangan, Ganderbal camp. They were assured that the victim was healthy and would be released soon. The petition also states that news reports of the incident were released by the family of the victim. Further, that the respondents denied the contents of the reports and stated that the victim had come to the camp along with Javaid Ahmad Reshi and promised to show the respondents an "arms dump". Based on this promise he left and never returned to the camp. The family of the victim denied this version of events in the petition. The petition further states that on the night of the abduction the victim was taken to the Central Jail, Srinagar, and was confronted with another detainee: Gulla Sheikh. Further, the Central Jail records, the family of the victim states in the petition, confirm this. The petition goes on to state that on 26 and 27 November 1997 the victim was taken to the house of Manzoor Ahmad Ahanger, where he was tortured by Major Yadav Prashad. The Union of India and Commandant, Romo Battalion, Zakoora responded to this petition before the High Court and stated that there was no officer by the name "Major Yadav Prashad" posted in the respondents unit. That the victim was a casual source for the army who informed them that he had some information for them. A unit of the army went to his house and collected him. The victim accompanied them voluntarily. With a promise to return with more information, the victim left the army unit on 30 November 1997.

The victim was an ex-company commander of Hizbul Mujahideen and continued to maintain links with them. Further, the victim had two murder cases pending against him and he may have planned to disappear.

The Court of Sessions Judge, Srinagar, pursuant to the High Court order of 3 November 1998, conducted an enquiry and issued its final decision on 27 March 2000.

The Counsel for the Union of India initially appeared before the enquiry but then subsequently abstained from the proceedings. Respondents no.2 and 3 [Commandant, Romo Battalion, Zakoora

<sup>118</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

and Major Yadav Prashad, Commanding officer, 197<sup>th</sup> Battalion, Nuner Kangan camp] submitted objections to this enquiry report. They stated that they had not received notice to appear before the enquiry. Further, that notices issued to "Romo Battalion, Zakoora" or "Major Yadav Prashad" had no value as neither the Romo Battalion, Zakoora, nor Major Yadav Prashad of the 197<sup>th</sup> Battalion Field Regiment, existed.

Further, the evidence of the witnesses before the enquiry were denied. The High Court dismissed the petition on 21 May 2002 and returned the matter for a fresh enquiry based mainly on the fact that the respondents had not been served notice.

#### *Case Analysis*

Before analyzing the documents on record, a few preliminary remarks need to be made:

- There are discrepancies in the recent statement of the family of the victim, and past statements, with regard to the amount of money demanded and paid for the release of the victim, but this would appear to be a minor discrepancy.
- In the statement to the IPTK the family of the victim states that they met with Javaid Ahmad Reshi in his residential area in Brain Nishat. But, the letter dated 11 November 1999 from SP, Srinagar city, East Zone to the SHRC states that the family of the victim and others met Javaid Ahmad Reshi and Mohammad Yousuf Akhooon at the "Army Camp" at Brain Nishat.
- Further, reference in the petition filed by the family of the victim before the High Court to the victim being taken to the Central Jail and then being tortured on the following day at Manzoor Ahmad Ahanger's house is uncorroborated. But, similarly, the counter suggestions of the Union of India and the army before the High Court on the victim accompanying the army and then leaving on 30 November 1997 remain unsubstantiated and unconvincing as the armed forces regularly ignores standard operating procedures for arresting or launching any anti-militancy operations.

The letter dated 11 November 1999 from the Superintendent of Police [SP], Srinagar, East Zone confirms that the victim was in the custody of the army. Further, the use of the word "raided" in this letter strongly suggests that the victim would not have accompanied the army unit voluntarily. The involvement of Javaid Ahmad Reshi and Mohammad Yousuf Akhooon is also clear vis-à-vis demand of money for the release of the victim. The involvement of Major Yadav Prashad is also clear from this letter as he assures the family of the victim that the victim would be released.

In addition, one may consider the enquiry by the Court of Sessions Judge, Srinagar of 27 March 2000. Before the enquiry, five witnesses testified. Relevant portions of their evidence are as below:

- Abdul Aziz Khan stated that on the intervening night of 25 and 26 November 1997 the victim was abducted by Major Yadav Prashad. The victim was handcuffed. On the following day, alleged perpetrator no.1 promised the release of the victim on 30 November 1997. The witness referred to alleged perpetrator no.1 as "Major Parshad".
- Ali Mohammad Khan confirmed the evidence of Abdul Aziz Khan.
- Mohammad Shafi Ganaie, testified that army unit of the 197<sup>th</sup> Battalion arrested the victim on the intervening night of 25 and 26 November 1997. Subsequently, alleged perpetrator no.1 promised the release of the victim on 30 November 1997. He referred to alleged perpetrator no.1 as "Major Yadav".

*Victim Details*

Abdul Rashid Bhat [Abduction, Torture and Extra-Judicial Killing]  
 Age: 28  
 Occupation: Shopkeeper  
 Son of: Ghulam Nabi Bhat  
 Resident of: Kulangam, Handwara, Kupwara District, Jammu and Kashmir

*Alleged perpetrators*

1. Major V. P. Yadav, 28 Gorkha Regiment, Army, Camp Chogul, Handwara, Kupwara District

*Allegations in Brief*

On 13 March 1998 [though in a Section 161 (Examination of witnesses by police) Criminal Procedure Code, 1989 (CrPC) statement to the police the witness refers to the event as occurring on 14 March 1998] at 11:00 pm, army personnel led by Major V.P. Yadav came to the residence of Abdul Rashid Bhat and demanded that he accompany them to the camp. Nothing incriminating was found in the residence of the victim. When the victim's brother, Abdul Ahad Bhat, questioned Major V.P. Yadav, he too was taken along. While the victim was taken in a jeep, Abdul Ahad Bhat was asked to walk along with the army soldiers. When Abdul Ahad Bhat reached the Chogul Camp he heard the victim crying from inside a room. Abdul Ahad Bhat ran towards the room and opened the door and saw Major V.P. Yadav beating the victim. The victim was bleeding from his right eye. Abdul Ahad Bhat asked Major V.P. Yadav not to torture his brother but the Major said that he would kill the victim and Abdul Ahad Bhat as well. Abdul Ahad Bhat was taken away to another room and kept there for the night.

At about 1:30 am Abdul Ahad Bhat heard activity and a doctor being called for because the victim had died. Subsequently, an army person brought Abdul Ahad Bhat some tea and told him that the victim had been killed and he would be killed as well.

At about 8:00 am in the morning, police personnel from the Handwara Police Station came. Abdul Ahad Bhat was brought out in the compound of the Camp and he saw Major V.P. Yadav sitting on a chair. Abdul Ahad Bhat asked him why he had killed his brother. Major V.P. Yadav asked him how he knew he had killed his brother to which Abdul Ahad Bhat responded that he had seen the torture and he had heard everything. Abdul Ahad Bhat was then taken to Handwara where he learnt that the victim's body was at a hospital. The body was kept in police custody for three days as the family of the victim refused to bury the body without any action in the matter. The people in the village protested the killing of the victim.

The family of Abdul Rashid Bhat states that they have been routinely harassed in connection with the filing of the above case. Raids have been conducted on their house, and they even heard of a plan to abduct members of the family. Abdul Ahad Bhat alleges that he was informed by Chowdhary Mohammad Ramzan, then Minister of the Jammu and Kashmir Government, and Mohammad Sultan Mir, then Member of the Legislative Council, that the father of Major V. P. Yadav had refused to fight in the Kargil war as a case was registered against his son. The Minister of Defence had therefore written to the Chief Minister of Jammu and Kashmir informing him of this situation. Following this, Chowdhary Mohammad Ramzan and Mohammad Sultan Mir called Abdul Ahad to Srinagar for a meeting at the Member of Legislative Assembly Hostel. Major V. P. Yadav

- Abdul Rashid Mir testified that "army people under the command of Major Yadav" came during the night and arrested the victim. The witness also stated that he knew Major Yadav well as he was posted at "Khunmuh camp" prior to his posting at the Zakoor camp.
- Abdul Rashid, brother of the victim, testified in a manner similar to Abdul Aziz Khan and Ali Mohammad Khan. But, this witness specifically referred to the alleged perpetrator no.1 being from the 197<sup>th</sup> Battalion. He also referred to alleged perpetrator no.1 as "Major Parshad".

The enquiry judge noted that "the respondents did not choose to rebut the evidence produced by the petitioner". The enquiry judge concluded that "Major Parshad Yadav" and his army personnel had arrested the victim on 25 and 26 November 1997

The evidence before the enquiry judge clearly indicts Major Yadav Prashad in the abduction of the victim. But, there exists a contradiction on when exactly the family of the victim met Major Yadav Prashad following the arrest of the victim. Before the enquiry judge the suggestion is that this meeting took place on the day following the arrest. But, in the petition filed before the High Court, this meeting is supposed to have taken place on 28 November 1997. Further, the role of Javid Ahmad Reshi and Mohammad Yousuf Akhoun does not come out in the enquiry report at all.

As stated above, objections were filed to this enquiry report. While the objections regarding notice are countered by the enquiry report itself which states that notice was served to the Union of India [whose counsel was present initially], the contentions that neither the Romo Battallion, Zakoor, nor a Major Yadav Prashad, existed, are more substantive.

The approach of the High Court in returning the matter for a fresh enquiry requires comment. The police letter of 11 November 1999 and the enquiry report clearly suggest the abduction of the victim.

Further, Major Yadav Prashad is specifically indicted. The correct procedure would have been for the High Court to order for the institution of an FIR and monitor the investigations. Clearly, a constitution of a new enquiry would serve little purpose. The family of the victim, and other witnesses, provided the information they had. Objections to this information were also on record.

Crucially, the position of the Union of India and the army is not that the victim was not known to them, and in fact confirms that the victim visited the camp. The dispute is on whether he was arrested or whether he visited the camp voluntarily, and whether he was in fact released on 30 November 1997. These are issues of fact that could be best ascertained by a thorough investigation, and possibly a trial.

In conclusion therefore, what appears clear is the abduction of the victim.

The role of Major Yadav Prashad is particularly clear whereas Javid Ahmad Reshi and Mohammad Yousuf Akhoun, while indicted by the family of the victim in the abduction as well, appear, atleast on record, to have more of a role post the arrest of the victim. What is perhaps unfortunate in this case is the reluctance of the High Court, based on the record presently available, to order for the registration of an FIR.

Therefore, despite the passage of 15 years the perpetrators of the crime have been able to evade justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

was present at this meeting. Major V. P. Yadav asked that the case be withdrawn in exchange for Rs. 22,00,000 and other employment benefits. The brother of the victim refused.

#### *Case Progress*

The army filed first information report [FIR] no. 30/1998 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 at the Handwara Police Station which stated that the victim was a militant, had confessed and led the army to a site where he opened fire and was killed in the cross fire<sup>119</sup>.

The family of the victim filed FIR no. 31/1998 u/s 364 [Kidnapping / Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] at the Handwara Police Station with their version of the incident. A chargesheet was produced in court by the police on 18 April 2000 against Major V. P. Yadav but the family of the victim states that the proceedings have since stalled.

The Gorkha Rifles instituted court-martial proceedings in the State of Himachal Pradesh against Major V. P. Yadav. While two brothers of the victim were asked to testify in March 2010, they were unable to do so as the proceedings were being conducted in Himachal Pradesh and they were unable to travel that far.

The victim's family approached the State Human Rights Commission [SHRC] which issued its final decision on 8 May 2001 and recommended relief of at least Rs. 3,00,000. The family of the victim received Rs. 1,00,000 ex-gratia government relief and also received compassionate employment under SRO-43 [Statutory Rules and Orders].

#### *Case Analysis*

The only document presently on record [as the charge sheet filed is not with the IPTK] for the purposes of analysis is the SHRC final decision of 8 May 2001. The SHRC decision was based in part on a report dated 28 February 2001 by the Inspector General of Police [IGP], Kashmir. The police report confirmed the allegations by the victim's family. The report also confirmed that the victim was a common citizen and was not associated with any banned organization. Finally, that a charge sheet was filed against Major V. P. Yadav on 18 April 2000. The SHRC therefore found that the victim was an innocent person having no connection with any subversive activities and was tortured to death. The SHRC described the incident as "a pure and simple murder".

The Jammu and Kashmir Police and subsequently the SHRC clearly indict the armed forces, particularly Major V. P. Yadav, in the killing of the victim. What is unfortunate in such a clear case of murder is that a charge sheet filed in the year 2000 has not resulted in the trial and arrest of the victim some twelve years later. While it appears that the court-martial proceedings have been conducted it is unfortunate that the access to this court-martial for the family of the victim was not considered.

Subsequently, what transpired in the court-martial proceedings was not communicated to the family members of the victim.

Further, this case does not find any mention in the information provided in relation to Court-Martials conducted by the army.

<sup>119</sup> Information on the FIRs was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Therefore, it is likely that the alleged perpetrator may have been exonerated. Finally, the allegation made by Abdul Ahad Bhat regarding the collusion of senior ministers of the Government of Jammu and Kashmir and Major V. P. Yadav in the attempted cover up of the killings needs to be seriously investigated.

## Case No. **36**

### *Victim Details*

[Massacre / Extra-Judicial Killings and Rape]

#### **Family 1**

1. Hassan Mohammad Sheikh  
Age: 70  
Son of: Kamal Sheikh
2. Zatum Begum  
Age: 35  
Spouse: Abdul Ahad
3. Shaheena Akhtar  
Age: 14  
Daughter of: Abdul Ahad
4. Showkat Mohammad  
Age: 10  
Son of: Abdul Ahad
5. Sarfaraz Ahmad  
Age: 8  
Son of: Abdul Ahad
6. Tahira Parveen  
Age: 8  
Daughter of: Abdul Ahad
7. Yaseen Akhtar  
Age: 10  
Daughter of: Mohammad Shafi Dar  
Resident of: Bonikat [Guest, brother-in-laws daughter]

#### **Family 2**

8. Ahmad Din Sheikh  
Age: 55  
Son of: Kamaal
9. Sarwa Begum  
Spouse name: Ahmad Din Sheikh
10. Zareena Begum  
Age: 30  
Spouse name: Mohammad Abdullah [pregnant, 8 months]
11. Yasmeen Akhtar  
Age: 20  
Daughter of: Ahmad Din Sheikh
12. Javaid Akhtar  
Age: 15  
Son of: Ahmad Din Sheikh
13. Shugufta Akhtar  
Age: 10  
Daughter of: Ahmad Din Sheikh

#### **Family 3**

14. Lassa Sheikh  
Age: 65  
Son of: Ibrahim Sheikh
15. Zainab Bi  
Age: 50  
Spouse: Lassa Sheikh
16. Mohammad Iqbal



- Son of: Lassa Sheikh
17. Shaheena Kousar  
Age: 12  
Daughter of: Lassa Sheikh
  18. Jabeena Kousar  
Age: 8  
Daughter of: Lassa Sheikh
  19. Tanveera Kousar  
Age: 4  
Daughter of: Lassa Sheikh

All residents of: Sailan, Surankote, Poonch District

#### *Alleged perpetrators*

1. J.P. Singh, Superintendent of Police [SP] Poonch [presently Deputy Inspector General [DIG], Jammu Range], Jammu and Kashmir Police
2. Major Goora, 9 Para, Army, Camp Bafliaz
3. Additional Superintendent of Police [ASP] Sevak Singh, Poonch, Jammu and Kashmir Police
4. Mohammad Younis [Operational name: Tiger], Special Police Officer [SPO], Surankote Police Station, Jammu and Kashmir Police
5. Mohammad Rafiq Gujjar [Operational name: Pathan], Surankote, SPO, Police line Poonch, Jammu and Kashmir Police
6. Maqsood Ahmad Khan, Havaldar Grade, Surankote Police Station, Jammu and Kashmir Police
7. Mohammad Akbar Malik, Havaldar Grade, Surankote Police Station, Jammu and Kashmir Police

#### *Allegations in Brief*

On the intervening night of 3 and 4 August 1998, 19 persons [6 male and 13 female] were killed at the house of Hassan Mohammad Sheikh in Sailan, Surankote, Poonch.

The cause of the massacre was said to be an act of revenge. Zakir Hussain, an informer, SPO, and an associate of the alleged perpetrators, was said to have been killed by a person named Imtiyaz, son of Lassa Sheikh [one of the victims]. The plan, as publicly vowed by the army and associates of Zakir Hussain, was to kill 19/20 relatives of Imtiyaz before the burial of their man Zakir Hussain.

The following persons were said to be eye-witnesses to the massacre:

- Mohammad Shabir [age 35], son of Ahmad Din
- Abdul Karim Sheikh [age 60], son of Ibrahim Sheikh
- Hussan Mohammad [age 50], son of Abdul Aaziz
- Masood Ahmed Sheikh [age 35], son of Lassa Sheikh
- Mohammad Rafiq [age 45], son of Sultana Sheikh,
- Abdul Ifhad [unclear] [age 40], son of Hassan Mohammad
- Mohammad Afzal [age 35], son of Hassan Mohammad
- Hassan Mohammad [age 50], son of Abdul Aziz

All the witnesses were residents of Sailan, Surankote, Poonch district.

#### *Case Progress*

The police filed a first information report [FIR] no. 122/1998 was filed u/s 122 [Collecting arms etc. with intention of waging war against India], 121 [Waging/attempting or abetting the waging of war against India], 302 [Murder], 449 [House-trespass to commit offence punishable with death] Ranbir Penal Code, 1989 [RPC] and 3 EAO

at Surankote Police Station on 4 August 1998<sup>120</sup>. The FIR states that the massacre was perpetrated by foreign militants.

After taking suo-moto cognizance, the State Human Rights Commission [SHRC] conducted spot investigations, presented an interim report, and issued its final decision on 21 October 1998. The SHRC directed the Superintendent of Police [SP], Poonch to identify the perpetrators of the killing. The Unified Command [the highest security advisory body, consisting of members from the State and Federal armed forces, including the police; this body advises the Government on all security matters] was said to be under an obligation to enquire into the role of the army in the incident. The SHRC also recommended compensatory benefits at par with the Wandhama, Ganderbal massacre case of 23 minority Kashmiri Pandits in which the victim families were to receive Rs.1,00,000 ex-gratia government relief each and compassionate employment under SRO-43 [Statutory Rules and Orders].

The families of the victims killed received ex-gratia government relief of Rs. 1,00,000 for each death but only a few were given compassionate employment under SRO-43 [Statutory Rules and Orders].

Three victim's families filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 1572/2011] for re-investigation and implementation of the SHRC recommendations<sup>121</sup>. The petitioners sought clarification on whether the case had been closed with the permission of the court as required by law. In December 2011, the Station House Officer [SHO], Surankote Police Station filed a compliance report before the High Court confirming that the case was closed by declaring the perpetrators as untraced. A petition seeking transfer of the case to the Jammu Bench of the High Court had been filed but was dismissed. Also on record before the High Court is a status report by the SHO, Surankote Police Station dated 19 September 2012 which states that the case was investigated and closed on three occasions. Further, that it is uncertain if the closure report was ever produced before a court as the relevant documents could not be retrieved from the court or the police offices. The office of the Sub Divisional Police Officer [SDPO], Mendhar, where the file last reached, was gutted in a fire in September 2010. Based on this report, and a shadow case diary filed, on 21 November 2012, the High Court ordered a re-investigation by the Central Bureau of Investigation [CBI].

On 22 May 2012, a complaint was filed before the SHRC alleging that following the petition filed before the High Court, the following four alleged perpetrators were harassing family members of the victims of the massacre, and eye-witnesses to the massacre: Mohammad Younis, Mohammad Rafiq Gujjar, Mohammad Akbar Malik and Maqsood Ahmad Khan.

#### *Case Analysis*

The SHRC final decision of 21 October 1998 may be analyzed. The SHRC decision begins by narrating the observations of the spot visits to the scene and surrounding areas of the events, conducted by the SHRC on 9 September 1998 and 10 September 1998. The following are the more relevant observations:

<sup>120</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that the case was closed by declaring the perpetrators as untraced.

<sup>121</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

- The walls of the house of Hassan Mohammad Sheikh, where the killings took place, were exhibiting bullet holes. The residents also showed the SHRC team a blanket and other household items bearing numerous bullet holes.
- An army camp, of the 9 Paras was situated at a distance of 700 feet from the house of Hassan Mohammad Sheikh.
- Following the killings, the other persons from the Sailan village who had migrated from the village proper were observed to be in a state of shock. Further, they informed the SHRC team that no relief had been provided to them thus far.

Following the above spot visits, an interim report was submitted to the Government of Jammu and Kashmir on 14 September 1998 to provide relief to the survivors. The SHRC team took depositions of eight witnesses. The order states that while many more witnesses seemed eager to testify, only eight finally did. "The reason given for not coming forward was orally expressed fear of the army who are in control of the area and three SPO's associates of slain SPO Zakir Hussain..." The order also notes that the army personnel "for some reason could not participate in the enquiry" despite being invited to do so.

The SHRC then summarizes the background of the incident and notes that a militant named "Imtiaz son of Lassa Sheikh" and another named Mumtaz son of Lassa Sheikh were wanted and were being chased by Zakir Hussain, who was a SPO and important informer for the army. On 3 September 1998, Zakir Hussain was killed allegedly by militants. The relations of Zakir Hussain and the army vowed that they would take their revenge by killing 19/20 persons before the burial of Zakir Hussain. This "was heard by a passerby witness while the Zakir's body was being removed from the scene". During the night hours, 19 persons belonging to the family of Lassa Sheikh and others were killed. The houses of these families were located in proximity to each other.

The SHRC order condemns the inaction of the 9 Para army, which was situated 700 feet away from the site of the killings. The SHRC states that "...short of any other noise and sound except firing, cries of killed, did not attract the attention of 9 Paras, who are camping nearby within the radius of human cry not to speak of firing sounds...why armed personnel as usual did not come on the spot is a matter of surprise...the silence of the army presumably leads to positive conclusion that associates of Zakir slain SPO group to take revenge of day time incident, planned the attack in question by taking aid of the force, may be the force to which Zakir slain SPO served as source, who has promised to avenge his killing". "The killing of 19 persons could not be an independent act, without planning, short of support by the force". The SHRC further notes that the mass of people that the SHRC team met ruled out the role of militants in the killings. These findings of the SHRC was based on the witness testimony before it, the relevant parts of which are reproduced below, along with some analysis [while the SHRC states that witness Jagjit Singh, SHO deposed before it, his evidence is not summarized in the order]:

- Witness Hassan Mohammad testified to witnessing the killing of Zakir Hussain on 3 September 1998 by unidentified armed men. He further deposed that the army did not allow civilians to move out from their house after 6:30 pm. The testimony relating to the curfew beyond 6:30 pm is important as it could serve to negate any suggestion that militants/civilians had carried out the Sailan massacre.
- Witness Aftab Azad testified that six days prior to the incident there was a rumour that "Imtiaz son of Lassa Sheikh" had returned to the area. The security forces had

raided Imtiaz's house and beaten his family. The witness also testified to the killing [of presumably Zakir Hussain] earlier in the day without specifically naming any one. The witness then testified that he heard firing and people moving around the house of Lassa Sheikh holding torch lights [therefore his testimony appears to be about the evening hours]. The witness also saw the movement of vehicles on the main road. On the following morning, at Sailan village, the witness saw people crying and dead bodies drenched in blood.

- Witness Mohammad Shabir testified that Zakir Hussain was a SPO and was attached to the 9 Paras at Bafliaz camp. Zakir Hussain had three more associates working with him. The witness then testified that on receiving the information of the death of Zakir Hussain the army arrived at the spot and declared that they would kill 20 persons before he was buried. It is uncertain if this is eye-witness testimony or hearsay. The witness then stated that on the night of 3 and 4 August 1998 when he came out of his house, he heard the sounds of people walking with torch lights [it is unclear whether the witness saw the people walking with torch lights]. There was a search light from the nearby camp as well. The witness then saw his family members [who were subsequently killed] being asked to go to the house of Hassan Mohammad for a brief talk. The witness then heard firing and cries but he kept himself concealed. The witness stated that "he saw army personnel with torches in hand who went down on the main road in the torch lights w[h]ere from he heard sounds of vehicles moving". The witness stated that he was the only survivor from his family. The evidence of the witness appears to clearly implicate the army in the killings at Sailan.
- Mohammad Rafiq Sheikh testified that on 3 August 1998 "the army declared that they will kill 20 persons in exchange of the killing Zakir". Once again, as with witness Mohammad Shabir, it is uncertain whether this is eye-witness or hearsay testimony.
- Witness Mohammad Afzal testified that he had gone to his sister's house on the intervening night of 3 and 4 August 1998 and heard intermittent firing. Further, he saw 10 to 15 persons in army uniform holding torches and stating that "they have taken revenge of Zakir nicely..." When the witness reached the house of his uncle where the firing had taken place he saw heaps of dead bodies. Members of his own family had also been killed.
- Witness Abdul Karim Sheikh was not present in Sailan during the night of 3 and 4 August 1998. But, he saw the dead bodies on 4 August 1998. The witness stated that he believed the persons responsible for the killings were personnel of the 9 Paras and three associates of Zakir Hussain. The witness also testified that "in the house where the occurrence took place, it was written on the wall that 5% work has been done leaving 95% to be done".
- Witness Dr. Mumtaz Hussain, one of the doctors that conducted the post-mortem examination, states that rape committed as well, but for some reason was not included in the post-mortem report. The SHRC decision unfortunately does not flesh out this testimony and therefore the details on rape are unclear.

The evidence on record before the SHRC clearly implicates the army, 9 Paras camped at Bafliaz. To that extent, it is clear that the role of the 9 Paras cannot be considered only as inactive by-standers but as the perpetrators of the killings. Further, while reference is made by witness Abdul Karim Sheikh to three associates of Zakir Hussain, the specific role they played in the events, if any, is unclear.

Further, it is unfortunate that none of the witnesses specifically name any of the perpetrators, although in the petition filed before the High Court, the seven alleged perpetrators are named as responsible for the killings. The SHRC in its conclusions states that the reason for the killing of the 19 persons at Sailan village was the killing of Zakir Hussain. Further, the army vowed to kill twenty persons before the burial of Zakir Hussain. The army was involved in the killing at Sailan as evidenced by the witnesses that testified to seeing uniformed army persons during the killings. The SHRC therefore concluded by indicting the three unnamed associates of SPO Zakir Hussain, and the armed forces in the area. But, the SHRC failed in identifying the names of the perpetrators perhaps attributable to a hasty investigative process. Further, the referral of the case to the Unified Command is inexplicable as it is a body without any investigative jurisdiction. Also, intriguing and indicting of the police, is that the case was closed by declaring the perpetrators as untraced on three separate occasions. Most indicting of the police is the response in the 19 September 2012 submission that the file itself could not be traced and that there was no information on whether this closure was ever confirmed by a court.

The closing of the case, the misplacing of the case file, and the non-consideration of the SHRC recommendations points to the callousness or acquiescence of senior police officials of the Jammu Range.

The outcome of the CBI investigation remains to be seen.

Finally, and of significance, as per publicly available information, alleged perpetrator J.P. Singh was awarded the President's Police Medal for Gallantry in 1997, and a year after the instant case, the Police Medal for Gallantry in 1999, and in 2000, the Police Medal for Meritorious Service. Prior to this, in 1995, he was awarded the Director General of Police's Commendation Medal.

## Case No. **37**

### *Victim Details*

Mohammad Syed Rathore [Abduction and Enforced Disappearance]  
Occupation: Miller/working with 8<sup>th</sup> Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army  
Spouse: Khadam Jan  
Son of: Mohammad Arif Rathore  
Resident of: Shahpora, Haveli, Poonch District

### *Alleged perpetrators*

1. Captain Mohit, 8<sup>th</sup> Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Shahpur, Haveli, Poonch
2. Subedar Balraj, 8<sup>th</sup> Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Shahpur, Haveli, Poonch

### *Allegations in Brief*

Mohammad Syed Rathore, working for the 8<sup>th</sup> Battalion JAKLI, was picked up and killed by Captain Mohit and Subedar Balraj of 8<sup>th</sup> Battalion JAKLI, Army, Shahpur Camp, Haveli, Poonch.

### *Case Progress*

The family of Mohammad Syed Rathore approached the State Human Rights Commission [SHRC] on 3 May 2007 and a final decision was issued on 2 July 2008.

The SHRC recommended ex-gratia government relief of Rs. 1,50,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

Further, it was recommended that a case of kidnapping and murder be registered against the alleged perpetrators. Consequent to the SHRC recommendations, a first information report [FIR] no. 23/2009 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Poonch Police Station<sup>122</sup>.

By letter dated 24 March 2009, the Senior Superintendent of Police [SSP], Poonch, informed the Deputy Commissioner [DC], Poonch, that FIR no. 134/1999 u/s 2, 3 of the Egress and Internal Movement (Control) Ordinance, 2005 was registered against the victim at the Poonch Police Station<sup>123</sup>.

Further, a chargesheet was produced before the competent court u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC] on 21 June 2002. It was also stated that Mohammad Syed Rathore was not involved in militancy related activities except for FIR no. 134/1999.

On 27 July 2009, the DC, Poonch, forwarded the case of the victim for ex-gratia government relief and compassionate employment under SRO-43, to the Financial Commissioner, Jammu and Kashmir Home Department. In this letter, the SHRC decision in the matter is dated as 4 January 2008, and the ex-gratia government relief amount is placed as Rs. 1,00,000, which is in contrast to the SHRC decision.

### *Case Analysis*

The document available for the purposes of analysis in the instant case is the SHRC decision of 2 July 2008. The SHRC begins with an excerpt from the report of the Director General of Police [DGP], Jammu and Kashmir and SSP, Poonch which is to the effect that the victim was kidnapped by the "Army personnel mentioned above" and that he was taken to their post for labour purposes but he has since never returned. Further, that while the complainant referred to the incident as taking place on 7 and 8 November 1999, during investigations the date of occurrence of the incident was found to be 7 and 8 November 1998.

The SHRC decision then states that "the SSP, Poonch has admitted in his report that Captain Mohit and Subedar Balraj of 8 JAKLI were operating in the area and they had lifted" Mohammad Syed Rathore from his water mill during the night of 7 and 8 November 1998. Further, that Mohammad Syed Rathore then disappeared and that the custodial disappearance/killing was established against Captain Mohit and Subedar Balraj.

In the instant case, the SHRC decision, based on investigative reports, is a clear indictment of Captain Mohit and Subedar Balraj. But, the date of the incident remains uncertain. While the police place the occurrence in the year 1998, an FIR is reported by the police to have been filed against Mohammad Syed Rathore in 1999. It requires to be investigated whether Mohammad Syed Rathore disappeared in 1998 or 1999. Further, investigations would be required on the connection between the FIR filed against Mohammad Syed Rathore and his disappearance. It also needs to be investigated why the police did not file a FIR for the disappearance of Mohammad Syed Rathore by Captain Mohit and Subedar Balraj by

<sup>122</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

<sup>123</sup> Information on this FIR was sought through RTI on 2 July 2012. No information was provided.

their own volition, particularly as they had the opportunity to investigate Mohammad Syed Rathore in relation his movements under the repressive Egress and Internal Movement (Control) Ordinance, 2005 while preparing the chargesheet against him. At that point they would have met with the family of Mohammad Syed Rathore for investigations against him and would have learnt of his enforced disappearance. They should have then filed a FIR. The reasons for inaction by the police need to be explained.

Apparently from the date of the crime, to when a chargesheet was filed against Mohammad Syed Rathore, to the time when the police filed reports before the SHRC, and finally since the filing of FIR no. 23/2009 the police has failed to play a responsible role in investigations and prosecution. It is inexplicable that only after the SHRC recommendations, around 10 years after the crime, the police have filed a FIR, and since then the police has failed to produce any substantive investigations. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **38**

### *Victim Details*

1. Mohammad Ayub Dar [Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 17  
Son of: Abdul Rehman Dar  
Resident of: Chraripora, Pakharpora, Budgam District
2. Bashir Ahmed Dar [Torture]  
Son of: Abdul Rehman Dar  
Resident of: Chraripora, Pakharpora, Budgam District

### *Alleged perpetrators*

1. Waris Shah, In-Charge, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Pakharpora

### *Allegations in Brief*

Mohammad Ayub Dar along with his brother Bashir Ahmed Dar was lifted by the SOG Budgam on the intervening night of 1 and 2 June 1999. They were taken to the Pakharpora Police Camp and tortured. Mohammad Ayub Dar was tied with ropes on a wooden plank and tortured to death. Subsequent to this, the SOG personnel lodged a false FIR which stated that Mohammad Ayub Dar was killed in cross firing. Bashir Ahmed Dar was released.

### *Case Progress*

The State Human Rights Commission [SHRC] took suo moto cognizance of the case on 7 June 1999 and issued its final decision on 26 August 2003. Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] for the family of the victim were recommended. Further, the SHRC recommended that a case for murder of the victim be registered against Waris Shah and his companions in the Crime Branch of the police.

First Information Report [FIR] no.77/2003 was filed. A chargesheet u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was presented before the District and Sessions Judge, Budgam.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 8/2007] against

the non-implementation of the SHRC recommendations with regard to ex-gratia government relief and compassionate employment under SRO-43<sup>124</sup>. Further, compensation of Rs. 15,00,000 was also sought. On 19 April 2007, the petition was disposed of with an observation that “respondents may take requisite lawful follow up action in terms of recommendation of” the SHRC.

### *Case Analysis*

The only document on record for the purpose of analysis is the SHRC final decision of 26 August 2003. The SHRC received a report from the Prosecuting Officer, Budgam on 14 June 2000.

This report stated that on 2 June 1999 Waris Shah lodged a written complaint with the Char-e-Sharif Police Station to the effect that during the intervening night of 1 and 2 June 1999, SOG, Pakherpora, along with CRPF personnel raided the Dalwan village. The raiding party came under heavy firing from militants, fire was returned and Yashpal Singh [no. 213] [but, the FIR refers to Ichpal Singh] sustained bullet injuries, and one unidentified dead body was also recovered from the scene of crime along with arms and ammunitions. FIR no. 34/1999 was filed at the Char-e-Sharif Police Station<sup>125</sup>.

The report also states that the dead body belonged to the victim, a militant. The family of the victim refuted these claims. It was stated that the victim was innocent, and was abducted for the purpose of finding his brother, Gulzar Ahmed, who was admittedly a militant.

On 1 August 2001, the SHRC referred the matter to the Crime Branch for investigations, and these investigations were concluded on 28 January 2002. The Crime Branch concluded that Gulzar Ahmed Dar, the brother of the victim, was a militant. Further, that the victim was arrested, tortured and killed by the SOG. On the antecedents of the victim, the Crime Branch stated that information could be sought from the Criminal Investigation Department [CID] of Jammu and Kashmir Police or the State.

On 8 April 2002, the SHRC sought information on the antecedents of the victim from the CID. The CID in its report confirmed the same version of events as reported by the Prosecuting Officer, Budgam on 14 June 2000.

The SHRC, based on the record before it and arguments heard, concluded that “it cannot be said that Mohammad Ayoub was a militant and got killed in an encounter”. Further, that the “encounter version as put by the police, has been smashed and dashed to the ground by the other wing of the same \_\_\_ [text unclear] i.e. Crime Branch”. The SHRC confirmed that the victim had been tortured to reveal the whereabouts of his brother, Gulzar Ahmed Dar. The SHRC therefore recommended that a case be registered against the alleged perpetrator.

The SHRC decision is a clear indictment of the SOG, and the alleged perpetrator. But, based on the record available, the only evidence to suggest the involvement of the alleged perpetrator appears to be that he was the person who filed the FIR regarding the encounter. Nonetheless, and despite the passage of 13 years, it is unclear if any progress has been made on the prosecution of the alleged perpetrator.

<sup>124</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

<sup>125</sup> Information on this FIR was sought through RTI on 17 May 2012. By communication dated 13 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further, information was provided that the case was closed by declaring the perpetrators as untraced on 11 October 2000.

*Victim Details*

1. Nazir Ahmad Gilkar [Torture and Extra-Judicial Killing (Custodial Killing)]  
Son of: Abdul Salam Gilkar  
Address: Bahaudin Sahib, Nowhatta, Srinagar
2. Javed Ahmad Shah [Torture and Extra-Judicial Killing (Custodial Killing)]  
Son of: Ghulam Mohammad Shah  
Resident of: Arampora, Botakadal, Srinagar.
3. Ghulam Rasool Matoo [Torture and Extra-Judicial Killing (Custodial Killing)]  
Son of: Ghulam Ahmad Matoo  
Address: Arampora, Nawakadal, Srinagar.

*Alleged Perpetrators*

1. Abdul Rashid Khan [Operational name: Rashid Billa], Station House Officer [SHO], Soura Police Station [later promoted as SDPO (Sub-Divisional Police Officer), Soura], Jammu and Kashmir Police
2. Tariq Ahmad Guroo, Special Police Officer [SPO], Jammu and Kashmir Police [Deceased]
3. Assistant Sub-Inspector[ASI], Mohammad Rafiq Chachoo, Jammu and Kashmir Police
4. Selection Grade Constable Mohammad Shafi Mufti, Jammu and Kashmir Police
5. Constable Ajaz-ud-Din Sheikh, Jammu and Kashmir Police
6. Constable Zakir Hussain Khan, Jammu and Kashmir Police
7. Constable Mushtaq Ahmad Lone, Jammu and Kashmir Police

*Allegation in Brief*

On 23 June 1999, in the evening hours, Nazir Ahmad Gilkar, Javed Ahmad Shah and Ghulam Rasool Mattoo were riding a scooter [no. DL-33-7771] following a wedding. They had a large quantity of money with them. They were stopped outside the Soura Police Station by the personnel of the Special Operations Group [SOG] of the Jammu and Kashmir Police. After frisking and checking their identity cards all three of them were dragged into the Soura Police Station and were detained there along with their scooter. Inside the police station, SHO Abdul Rashid Khan, along with the other alleged perpetrators tortured them ruthlessly, and later killed all of them.

The family of the victim states that when the victims did not return home from the marriage party, they went out to search them but could not find them. They then approached the Soura Police Station. But the police officials told them that they had no information on the victims and that they had not taken any person into custody. The families of the victims went to search in all the military camps but nothing was traced out.

On 24 June 1999, two dead bodies were reported to the Sheeri Police Station by N.S.Mehta, Assistant Commandant, 135<sup>th</sup> Battalion Border Security Force [BSF]. On 27 June 1999, another dead body was received from the Dal lake.

Following a newspaper report in a local daily which stated that two unidentified bodies were found and buried in the Kichama graveyard, the families of the victims went there and identified the bodies of Ghulam Rasool Mattoo and Javed Ahmad Shah, on the basis of clothes and other articles. After some more days, there was other news about a body being found in the Dal Lake which was later on

picked up by the police and subsequently buried in the premises of the Zakoor Police Station. The family of Nazir Ahmad Gilkar went there and identified the body. Later on, all the bodies were exhumed pursuant to the orders of district magistrates and were buried in their native graveyards.

According to the family of Nazir Ahmad Gilkar, he was tortured to death on the same night of his arrest and his body was thrown into Dal Lake. The other two victims, who were eye-witnesses to the killing of Nazir Ahmad Gilkar, were subsequently shot dead and buried in a graveyard at Kichama, Baramulla.

*Case Progress*

When the bodies of Javed Ahmad Shah and Ghulam Rasool Mattoo were exhumed from the Kichama graveyard, the Sheeri Police Station filed first information report [FIR] no.31/1999 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 201 [Causing disappearance of evidence/giving false information], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 and the Arms Act, 1959. When the body of Nazir Ahmad Gilkar was recovered from the Dal Lake, the Nigeen Police Station registered FIR no. 80/1999 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989<sup>126</sup>. Both the cases were investigated by the Crime Branch, Srinagar. On the orders of the High Court, Jammu and Kashmir, the separate charge sheets for the two FIR's were combined for a joint trial.

On 25 February 2000, the High Court of Jammu and Kashmir, Jammu, on being approached by the alleged perpetrators, transferred the trial from Srinagar to Jammu. Abdul Rashid Khan and Mohammad Rafiq Chachoo were proceeded against u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC]. Abdul Rashid Khan was absconding while Mohammad Rafiq Chachoo was undergoing psychiatric treatment. The alleged perpetrators were granted bail during the course of the trial. The 1<sup>st</sup> Additional Sessions Judge, Jammu acquitted the alleged perpetrators on 2 February 2008.

The families of the victims filed a petition [Original Writ Petition (OWP) 902/2008] before the High Court of Jammu and Kashmir, Srinagar against the non-filing of an appeal by the Government of Jammu and Kashmir against the acquittal. This remains pending.

Original Writ Petition's [OWP] 588/1999 and 68/2002<sup>127</sup> were filed before the High Court, Srinagar to provide security to the prosecution witnesses, travelling and boarding expenses, and a translator for the case so that the evidence could be correctly translated. Pursuant to a order passed in OWP 588/1999, security was provided. On 23 September 2002, in OWP 68/2002 the High Court dismissed the petition without further relief on the other prayers. A Letter Patent Appeal [LPA no.171/2002]<sup>128</sup> was filed against this order. The LPA was dismissed on 9 April 2003 to approach the trial court for relief.

The incident was widely reported by the media creating pressure on the Government of Jammu and Kashmir to order an inquiry<sup>129</sup>.

<sup>126</sup> Information on both FIR's were sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>127</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

<sup>128</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

<sup>129</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Feb/15/fugitive-rashid-billa-in-valley-police-turn-blind-eye-43.asp>, 15 February 2009.

## Case Analysis

The document that may be analyzed in the instant case is the trial court acquittal of 2 February 2008. After considering the procedural history of the case, the court proceeded to summarize the evidence. Relevant witnesses and their evidence is summarized below:

- Witness Farooq Ahmad, brother of Nazir Ahmad Gilkar, testified that he had joined his brother at the wedding function on 23 June 1999. Nazir Ahmad Gilkar exchanged his slippers with him. The victims left on a scooter that belonged to Javed Ahmad Shah. They went to Buspora to see off the bride but did not return. As checking was on near the Soura Police Station it was thought that the victims may have been arrested by the police. The witness, along with others including Parveen, Shagufta, the wife of Javed Ahmad Shah and Shagufta, the sister of Javed Ahmad Shah, went to the Soura Police Station before 10:00 pm. The witness asked the police guard at the main gate if the victims along with the scooter had been detained and he asked to meet with the SHO of the police station. He was informed that the SHO was not at the police station. Shagufta, wife of Javed Ahmad Shah, who had accompanied the witness to the police station, saw the scooter parked in the police station. They brought this to the attention of the police guard who asked them to return the next morning. The witness along with Iftar Ahmad visited the Soura Police station on the next morning at 7:30 am. Once again, the police guard informed them that there was no one in the police station. At this point, the witness did not see the scooter. Subsequently, the clothes of Nazir Ahmad Gilkar were identified by Mushtaq Ahmad in the Zakoora Police Station. During the cross-examination, the witness stated that the Soura Police Station had one main gate and another interior gate. He talked to the police guard from the main gate. One could see inside the police station. It was wrong to state that the clothes of Nazir Ahmad Gilkar were brought out from a box. They were hanging from a tree. Prosecution witnesses Ashfaq Ahmad Wani, Mushtaq Ahmad Khan and Mushtaq Bhat also accompanied him to the police station. He did not see the scooter, but "his attention was drawn to this fact by Mst. Shagufta". The scooter was lying near the Central Reserve Police Force [CRPF] post. The inner gate of the police station had no lights but there was a light outside the interior gate and it had its effect on the verandah.
- Witness Ashfaq Ahmad Wani, nephew of Nazir Ahmad Gilkar, identified the body of the victim on 1 July 1999 at the Zakoora Police Station. He enquired from the Munshi at the police station about the body and he was informed that the clothes of the victim were hanging from a tree. The witness recognized the clothes.
- Witness Shagufta, wife of Javed Ahmad Shah, testified that her husband and the other victims left on a scooter following the wedding at about 8:30 pm. The witness was informed that there was checking taking place near the Soura Police Station. At about 9:45 pm, along with Farooq Jeelani and others, went to the Soura Police Station. Farooq Jeelani talked the police guard at the main gate and in the meanwhile the others joined him. The witness saw the scooter parked in the police station through a grill. She believed her husband was in the police station. The police guard informed them that the SHO was not in the police station and that they should return on the next day. During the cross-examination, the witness stated that the Soura Police Station had an iron gate. The cross-examination could not be completed in the court time and later the accused had no option to further examine the witness.
- Witness Reyaz Ahmad, posted as a guard on the second gate of the Soura Police Station on 23 June 1999, testified that he knew the accused. The witness denied that any scooter or person was brought into the police station. The witness was declared hostile by the prosecution as he contradicted his Section 161 [Examination of witnesses by police] CrPC statement. His duty was upto 9:00 pm only. On examination by the defence counsel the witness stated that the relations of the deceased victims did not visit him and enquire about the victims. He stated that the police station has two gates and the main gate was manned by the CRPF. No one was brought to the police station from 6:00 pm to 9:00 pm on 23 June 1999. There is a 50 foot distance between the two gates of the police station and nothing can be visible of the compound from the entry gate.
- Witness Bilal Ahmad testified that he knew the deceased victims. He joined the wedding celebrations on 23 June 1999 and went in a car to see off the bride. The victims, riding on their scooter, were checked by the Soura Police Station. The victims did not return and their families started searching for them. He was informed by the families of the victims that the victims' scooter was lying in the Soura Police Station. But, on the following, the victims nor their scooter was found at the police station. In cross-examination, the witness testified that the Soura Police Station has a big gate. The scooter was following his car till the Sabzi Mandi.
- Witness Shagufta, the sister of Javed Ahmad Shah and cousin of Ghulam Rasool Mattoo, testified that the deceased victims had gone on a scooter to see off the bride following the wedding on 23 June 1999 at about 6:00/7:00 pm. They did not return. She along with other visited the Soura Police Station. The witness testified that she saw the scooter at the police station. The person at the gate asked them to return the following day as there was no officer at the police station. The gatekeeper also told them that if they do not leave the police station he would shoot them. The witness was accompanied by Farooq, Shagufta and others. The witness did not visit the police station on the following day. But, she was informed that neither the scooter nor the victims were found in the police station. During cross-examination, the witness stated that she does not know the registration number of the scooter and that it had no "specific identity". She could not remember how she had recognized the scooter at the police station.
- Witness Peer Noor-ul-Haq, a stamp vendor, testified that he was abducted by SDPO Abdul Rashid Khan and ASI Mohammad Rafiq Chachoo [in the judgment he is stated to have referred to him as "ASI Cheechu"] of the Soura Police Station a few days prior to 23 June 1999. He was tortured for two / three days. On 23 June 1999, two persons were brought to his room. They informed him that they had been arrested when they were returning after seeing off their sister-in-law and the police had seized their money and scooter. The witness is then stated to have testified that "the cries were for about one and a half hour". This appears to be a reference to the torture of one or more of the victims. The witness testified that he did not find these persons the next morning. During cross-examination, the witness testified that the height of the main gate is 10 feet and there is a five / six foot grill.
- Witness Parveen testified that she along with Shagufta, Farooq Ahmad and others went to the Soura Police Station. No date is mentioned but there is a reference in the cross-examination to the bride being seen off by the victims on a

scooter. Therefore presumably the police station visit took place on 23 June 1999, as referred to by other witnesses. The power was off at the police station. The gatekeeper was asked to enquire about the deceased victims. They were asked to return the following day as there was no officer in the police station. The gatekeeper threatened them with a gun. The wife of Javed Ahmad Shah recognized the scooter in the police station. No damage appears to have been done to her testimony in cross-examination.

- Witness Mukhteyar Ahmad Bazaz testified that he along with others had gone to Buspora to see off his cousin sister. On his return he saw police personnel checking the scooter, which was being ridden by the deceased victims, near the Soura Police Station. The victims did not return. But, on cross-examination the witness stated that he did not see the scooter of the victims being checked by the police.

Following the above evidence [which included other witnesses that turned hostile], the accused did not produce any evidence in defence.

Before considering the analysis of the trial court, a few preliminary comments may be made:

- There exists a potentially minor discrepancy in the testimony of Shagufta, wife of Javed Ahmad Shah, as she refers to Farooq Ahmad as Farooq Jeelani.
- The testimony of witness Parveen on the lack of power at the Soura Police Station may have an impact on the witnesses testimony regarding the sighting of the scooter and Farooq Ahmad's testimony that there was a light outside the interior gate. But, with the evidence presently on record, it could be argued that this testimony by itself does not discredit the other witnesses.

The trial court, while pointing out contradictions between the witness testimony and on occasion their past statements to the police, did not find strong evidence of even the sighting of the scooter at the Soura Police Station.

Further, no link between the crimes and the alleged perpetrators was found. The prosecution was criticized for not building a strong case. The alleged perpetrators were therefore acquitted, except for SDPO Abdul Rashid Khan, who was absent throughout the trial. No final order was passed against him.

The evidence in total does strongly suggest that the victims were stopped by personnel of the Soura Police Station, the scooter was sighted at the police station, and SDPO Abdul Rashid Khan and ASI Mohammad Rafiq Chachoo at least appear to be in operation during the incident at the Soura Police Station.

Further, the killing of all three victims is beyond doubt. But, admittedly, the evidence as it is does not indict any of the alleged perpetrators.

Serious enquiries would need to be made on the fairness of the trial and whether the investigation and prosecution of this case, considering it was being conducted against police officials, was done in a rigorous and professional manner.

From the shifting of the trial to Jammu, to the various witnesses, including police personnel, who turned hostile, to the fact that SDPO Abdul Rashid Khan continues to abscond, it is clear that the alleged perpetrators were assisted, and continue to be assisted, in evading justice.

Case No. **40**

#### *Victim Details*

Muhammad Sultan Bhat [Extra-Judicial Killing]  
Age: 28  
Occupation: Government employee [Notified Area Committee]  
Son of: Muhammad Akbar Bhat  
Spouse: Rafiq  
Resident of: Ganjpora, Batvin, Ganderbal District

#### *Alleged perpetrators*

1. Ghulam Mohammad Kaloo [Operational names: Ghulam Mohammad Sheikh / Mama Ikhwan], Government backed militant [Ikhwan]
2. Major S. Sehgal, Adjutant, In-charge of Camp, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
3. Lance Naik [Lance Corporal] Vikram Singh, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
4. Constable Vinod Kumar, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal

#### *Allegations in Brief*

The family of Muhammad Sultan Bhat states that on the intervening night of 19 and 20 September 1999, at about 10:00 pm, the victim was sleeping in the room when there was a loud banging on the door of the house. The family identified the person as Ghulam Mohammad Kaloo accompanied by army personnel and other Ikhwan. The victim was then taken away.

The next day there was an election in the area and the family went to the polling booth to ask about the victim but they were not told anything. In fact the army did not accept that they had arrested the victim the day before. The family was told by the head of the village [Mukhdam, namely Muhammad Maqbool Lone] that the wife of the victim, Rafiq was in love with Ghulam Mohammad Kaloo and for that reason the victim was abducted.

On the next morning, the family of the victim went to the Shadipora Police Post at about 9:00 am and reported that matter about the victim's abduction but the police only gave assurances to them, according to the family of the victim. The family states that they kept on searching for him for the next ten days but the family found no clue.

On 30 September 1999, the family went to the Ganderbal Police Station and asked about the whereabouts of the victim. The police asked them about the identification mark of the victim and the family told them that the victim had a mark on his right arm. The police then told the family that they had found a body with the same identification mark at Reshipora, Ganderbal. Then the family went to Reshipora and enquired about the recent burials in the graveyard in the area. The family later sought permission from the District Administration Office and on the next day the body of the victim was exhumed.

The family states that the victim was a militant of Al-Jehad in early 1990's and he was picked up from his house and detained for three years and after his release he never got involved in any militant activity.

The family of Muhammad Sultan Bhat gave a statement to the IPTK on 22 February 2012.

### Case Progress

First Information Report [FIR] no. 158/1999 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was lodged at the Ganderbal Police Station on 20 September 1999<sup>130</sup>. This was registered by Major S. Sehgal of 5 RR, in-charge Doderhama, Ganderbal Army camp and stated that the victim was a militant and killed in cross firing during an operation at Dilari village, Manasbal. The body of the victim was handed over to the Ganderbal Police Station.

The family of the victim filed a complaint before the State Human Rights Commission [SHRC] on 7 July 2000. The final decision of the SHRC was delivered on 1 October 2007. Ex-gratia government relief of Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The SHRC also recommended that the FIR lodged in the case be reopened and investigated by the Crime Branch. On the non-implementation of the SHRC recommendations, and the opinion of the District Level Screening-cum-Coordination Committee [DLSCC] that case was not covered under the ex-gratia government relief rules, the family of the victim filed an application before the SHRC on 29 January 2009. On 25 March 2009 the SHRC stated that it had no power to get its recommendatory judgments implemented.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 370/2009] on non-implementation of the SHRC recommendations<sup>131</sup>. The State of Jammu and Kashmir and the Jammu and Kashmir Police authorities filed their objections. It was stated that the issues of relief/compensation did not pertain to them.

Further, on the issue of reopening of investigations, it was stated that the investigations were still ongoing. It was also stated that the investigations in the case had been reopened and were being investigated by the “respondent organization” [presumably the Crime Branch which was a party to the proceedings]. The most recent order of the High Court on record is of March 2012 where the High Court states that the investigations suggest the involvement of the alleged perpetrators in the crime, and directed the Chief Secretary, Civil Secretariat, State of Jammu and Kashmir, and the Director General of Police [DGP], Jammu and Kashmir, to intervene and allow the production of the alleged perpetrators before the investigators.

### Case Analysis

The SHRC final decision on 1 October 2007, along with the proceedings in the High Court, may be analysed as indictments against the alleged perpetrators.

The Jammu and Kashmir Police reports before the SHRC stated that an encounter took place on 20 September 1999, between personnel of the 5 RR and militants. One militant, the victim, was killed in the exchange of fire. The SHRC heard witness testimony. Witness Haji Mohammad Maqbool Lone, Lambardar [Numberdar, de facto revenue authority in the village], stated that the victim had been lifted by the army. But, this witness, based on the summary in the SHRC decision, appears to provide hearsay evidence only. Two other

<sup>130</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>131</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

witnesses, Chowkidar [Village guard] Ghulam Rasool Lone and Aziz Bhat stated that the victim was a surrendered militant, and his wife had “illicit relations” with an Ikhwan and that was the cause of his death. The SHRC based on the record before it reached the conclusion that the victim was a surrendered militant and at the time of his death an employee in the Town Area Committee, Ganderbal. The SHRC also found that the victim’s wife did have “some affairs” with Ghulam Mohammad Kaloo, who then, with the “connivance of the Security Forces”, kidnapped and killed the victim. The SHRC disbelieved the version of events regarding an encounter with militants as stated by Senior Superintendent of Police [SSP] Crime and Additional Director General of Police [ADGP], Criminal Investigation Department [CID] as it stated that if an encounter had taken place it was likely that there would have been some injury to the security forces as well. Further, the SHRC also pointed out that the dead body of the victim should have been handed over to the police.

The numerous compliance reports filed by the Jammu and Kashmir Police before the High Court may also be considered for the purposes of analysis. Compliance report dated 3 March 2010 stated that the body of the victim was exhumed on 30 September 1999 by the orders of the District Magistrate, Srinagar, in the presence of the Tehsildar [Executive Magistrate 1<sup>st</sup> Class], Ganderbal and others. Further, that the case was closed by declaring the perpetrators as untraced on 28 December 1999, but reopened under the Crime Branch on 25 April 2005. This compliance report also confirms that the victim was a surrendered, and not an active, militant. Compliance report 2 June 2010 stated that the Crime Branch visited the 5 RR Camp at Doderhama, Ganderbal and met with Commanding Officers Colonel A.K. Botail and Lieutenant Colonel Joshi. On seeking information with regard to the operation that formed the subject matter of the FIR, the Crime Branch was informed that relevant records for the period were not available as the operation had taken place many years back. Nonetheless, the Crime Branch was informed that the operation was an ambush operation. Compliance report of 2 July 2010 confirmed the involvement of Ghulam Mohammad Kaloo in the abduction and killing of the victim. This was based on eye-witness testimony recorded during the investigations. But, the report stated that despite strenuous efforts Ghulam Mohammad Kaloo was yet to be arrested.

Further, based on the investigations conducted, the offences in the original FIR were omitted and sections 364 [Kidnapping/Abducting to murder], 302 [Murder], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] were considered proved against Ghulam Mohammad Kaloo and unidentified army personnel of the 5 RR, Doderhama, Ganderbal. In its subsequent, undated report, the Crime Branch stated that it had been informed by the 5 RR Camp, Ganderbal, that Ghulam Mohammad Kaloo was not associated with them. Further, that the Inspector General of Police [IGP], Crime had written to the Commandant, 31 Sub Area, to cause the appearance of Major S. Sehgal, Lance Naik Vikram Singh and Constable Vinod Kumar before the Crime Branch at the earliest. In a subsequent undated status report [but presumably of April 2011], the Crime Branch stated that the 5 RR unit had been “enthusiastically instrumental in getting the case closed as untraced by Police Station Ganderbal” in the initial proceedings of the case.

Another status report of the Crime Branch, undated once again but presumably around September 2011, confirms that Major S. Sehgal, Lance Naik Vikram Singh and Constable Vinod Kumar were main accused in this case along with Ghulam Mohammad Kaloo.

Also on record is the order of the Chief Judicial Magistrate [CJM], Srinagar of 31 May 2011 where the CJM stated that there was enough material on record to disclose the involvement of Major S.



Sehgal, Lance Naik Vikram Singh and Constable Vinod Kumar in the crime and a notice was served on the Commanding Officer of the alleged perpetrators to produce the alleged perpetrators before the investigators. The armed forces therefore appear to be not cooperating with the investigations in an attempt to evade justice and shield the alleged perpetrators.

The final point to be considered would be the status report filed before the High Court by the Jammu and Kashmir Home Department [the date of this status report is unclear but it would appear to be around September 2010].

While on one hand the Crime Branch appears to have found the victim to have been a surrendered militant only, the Home Department, in the context of relief/compensation, finds the victim to have been actively involved in militancy. This contradiction is clearly unfortunate and serves as an example of the various fronts that the family of the victim in the instant case have had to struggle against.

The above documents on record therefore clearly indict the alleged perpetrators in the crime of abduction and killing of the victim. But, despite this and the passage of 13 years, the perpetrators have evaded justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 41

### Victim Details

1. Mohammad Amin [Torture and Extra-Judicial Killing]  
Son of: Habib-Ullah Malik  
Resident of: Tendla, Doda District
2. Jaffar Hussain [Torture and Extra-Judicial Killing]  
Son of: Ghulam Nabi Malik  
Resident of: Tendla, Doda District
3. Abdul Majeed [Torture and Extra-Judicial Killing]  
Son of: Ahad Wani  
Resident of: Tendla, Doda District
4. Noor Mohammad [Torture]  
Son of: Abdul Sattar  
Resident of: Tendla, Doda District
5. Abdul Rashid [Torture]  
Son of: Mohammad Ramzan  
Resident of: Tendla, Doda District
6. Parvaiz Ahmad [Torture]  
Son of: Faiz Ahmad  
Resident of: Banatyas, Doda District
7. Anayat-Ullah [Torture]  
Son of: Din Mohammad Naik  
Resident of: Bhatyas, Doda District
8. Mohammad Abdullah [Torture]  
Son of: Alaf Din  
Resident of: Doloo, Doda District
9. Javed Iqbal [Torture]  
Son of: Mohammad Shafi Wani  
Resident of: Tendla, Doda District
10. Abdul Qayoom [Torture]  
Son of: Alia Khanday  
Resident of: Chillibala, Doda District
11. Mohammad Ramzan Malik [Torture]  
Son of: Gulla Malik  
Resident of: Tendla, Doda District
12. Liaqat Ali [Torture]  
Son of: Munawar Din

- Resident of: Tendla, Doda District
13. Arshad Hussain Malik [Torture]  
Son of: Abdul Rashid Malik  
Resident of: Dadian, Doda District
14. Javed Ahmad [Torture]  
Son of: Mohammad Ramzan  
Resident of: Dadian, Doda District
15. Farooq Ahmad [Torture]  
Son of: Noor Mohammad  
Resident of: Tendla, Doda District
16. Abdul Gani [Torture]  
Son of: Ali Mohammad  
Resident of: Dadian, Doda District

### Alleged perpetrators

1. D. N. Gupta, 5<sup>th</sup> Sikh Light Infantry [Sikh LI], Army
2. Major Ranjan Mahahan, 5<sup>th</sup> Sikh Light Infantry [Sikh LI], Army
3. Captain Vineet, 5<sup>th</sup> Sikh Light Infantry [Sikh LI], Army

### Allegations in Brief

The victims were called to the army post Gandoh on 21 January 2000. They were severely tortured by the alleged perpetrators due to which Mohammad Amin, Jaffar Hussain and Abdul Majeed died. The others were injured.

### Case Progress

First Information Report [FIR] no. 4/2000 u/s 302 [Murder], 307 [Attempt to murder], 109 [Abetment] Ranbir Penal Code, 1989 [RPC] was filed at the Gandoh Police Station on 22 January 2000<sup>132</sup>.

The State Human Rights Commission [SHRC] instituted the proceedings on 10 July 2000 and a final decision was delivered on 2 June 2008, and Rs. 2,00,000 relief was recommended for families of Mohammad Amin, Jaffar Hussain and Abdul Majeed, and compassionate employment under SRO-43 [Statutory Rules and Orders]. It was noted that Rs. 1,00,000 had already been paid. Rs. 75,000 was recommended for each of the other victims.

### Case Analysis

The document on record that may be considered for the purpose of analysis is the SHRC decision of 2 June 2008. The SHRC arrived at its decision by considering the following:

- A magisterial enquiry was conducted by Sub-District Magistrate, Bhaderwah where witness statements were considered and it was concluded that the alleged perpetrators were responsible for the deaths and injuries caused to the victims. It was also noted that due to threats from the army the witnesses had submitted affidavits denying the charges.
- The report of Senior Superintendent of Police [SSP], Doda, dated 13 September 2000, was also considered. This report, without naming the alleged perpetrators, confirmed that the victims had been called to the army post Gandoh on 21 January 2000, were tortured and Mohammad Amin, Jaffar Hussain and Abdul Majeed died whereas the others sustained injuries. Further, that the post-mortem reports of the three dead victims indicated the cause of death being shock due to trauma. With regard to the injured persons, the medical officer had reported that the injuries had been caused by a blunt object.

<sup>132</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

Based on the above, the SHRC found in favor of the victims and recommended that the investigation in the FIR registered be finalized. It is unfortunate that the SHRC in this case took seven years to deliver its final decision.

Further, despite the passage of 12 years there appear to have been no investigations or prosecutions.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army. Therefore, an inference could be drawn that the instant case has not been prosecuted and neither has any court-martial been conducted, thereby ensuring absolute impunity for the alleged perpetrators.

## Case No. 42

### *Victim Details*

1. [Name withheld] [Rape]  
Spouse: [Name withheld]
2. [Name withheld] [Rape]  
Daughter of: [Name withheld]  
Residents of: Village Nowgam, Banihal, Doda District

### *Alleged perpetrators*

1. Captain Ravinder Singh Tewatia, Commander, C-Company, 12 Rashtriya Rifles [RR], Army, Upper Gund, Banihal
2. Bharat Bhushan, Special Police Officer [SPO], Jammu and Kashmir Police
3. Shailender Singh [Operational name: Razaq], SPO, Jammu and Kashmir Police
4. Sanjay Kumar [Operational name: Mohammad Saleem], SPO, Jammu and Kashmir Police

### *Allegations in Brief*

On 14 February 2000, the alleged perpetrators came to the residence of the victims at about 8:00 pm. The alleged perpetrators asked the two victims to prepare tea. The family members were then asked to come out of the house for their statements to be recorded. Then the victims were taken in two separate rooms and raped by Captain Ravinder Singh Tewatia and SPO Bharat Bhushan. The other two alleged perpetrators remained outside the house, at a local inn, keeping guard. After about three hours the alleged perpetrators left.

### *Case Progress*

First Information Report [FIR] no. 20/2000 was filed in the Banihal Police Station u/s 452 [House trespass after preparation for hurt/assault/wrongful restraint], 342 [Wrongfully confining person], 356 Ranbir Penal Code, 1989 [RPC] on 15 February 2000. The FIR states that both the victims were raped. The alleged perpetrators are not named<sup>133</sup>. The 15 June 2012 communication from the Jammu and Kashmir Police states that the case was closed as chargesheeted and transferred to the Sessions Court, Jammu on 19 October 2007 from the Sessions Court, Ramban.

<sup>133</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

Following the investigations, two separate chargesheets were prepared [u/s 376 (Rape), 452 (House trespass after preparation for hurt/assault/wrongful restraint), 342 (Wrongfully confining person) and 166 Ranbir Penal Code, 1989 (RPC)] for Captain Ravinder Singh Tewatia and SPO Bharat Bhushan. Both chargesheets were produced on 1 April 2000 at the Chief Judicial Magistrate [CJM], Banihal. SPO Bharat Bhushan was committed for trial on 1 April 2000 to the court of Additional Sessions Judge, Ramban. During the trial he was granted bail. On 1 April 2000, Captain Ravinder Singh Tewatia, and his chargesheet were forwarded to the army authorities. A Summary General Court-Martial [SGCM] was convened and Captain Ravinder Singh Tewatia was found guilty u/s 376 (1) [Rape] Ranbir Penal Code, 1989 [RPC] and was sentenced vide order dated 1 October 2000 to dismissal from service and imprisonment for seven years. Captain Ravinder Singh Tewatia challenged the order of 1 April 2000 by the CJM, Banihal before the Additional Sessions Judge, Ramban, which was rejected on 14 December 2000, and then filed Criminal Revision no. 11/2001 before the High Court of Jammu and Kashmir. Captain Ravinder Singh Tewatia also challenged the findings of the SGCM on 1 October 2000 [which was confirmed by the Confirming Authority on 14 December 2000] before the High Court, Jammu bench, in Original Writ Petition [OWP] 742/2001.

The final judgment in this case by the High Court was on 31 December 2002. The judgment of the SGCM was set aside. Criminal Revision no. 11/2001 was considered infructuous and disposed off. The High Court considered the medical report on record which found evidence of recent sexual assault. The Union of India, Ministry of Defence, filed a Letter Patent Appeal [LPA no.17/2003] before the Jammu bench of the High Court that remains pending before the court to date.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Further, two RTI's were filed, to the Director Litigation, Jammu, and the Jammu Bench of High Court, on 26 April 2012 for the documents, including the final findings, at the SGCM level. While responses were received, the documents were not provided for varied reasons.

### *Case Analysis*

For the purposes of analysis, the documents on record available to the IPTK will be considered. Essentially, the submissions before the High Court in OWP 742/2001, including the final decision of 31 December 2002 may be considered. While arguments on procedural issues were raised, the focus of this analysis will be on the substantive issues.

The substantive arguments of Captain Ravinder Singh Tewatia before the High Court were as follows:

- Though "complainant party" knew the Captain Ravinder Singh Tewatia "very well" much before the occurrence and alleged to have identified him during the occurrence, no mention was made of him in the FIR or before the police or other authorities who met with the concerned persons. The identity of Captain Ravinder Singh Tewatia was mentioned for the first time before the SGCM. The involvement of the Captain Ravinder Singh Tewatia in the occurrence came to be established during an identification parade conducted by the Tehsildar at the Ramsu Police Post, where he was identified by victim no.2 and her father.
- There is a contradiction between the testimony of victim no.2 and her father. Victim no.2 states that she was raped in the kitchen on a mat. Following the rape, she folded the mat and

then had a bath. Her father states that when he saw victim no.2 after the rape, she was unconscious.

- There were ten members of the family in the house during the occurrence. There were allegation of beating but none of the family members was found to have been injured. Further, victim no.2, on medical examination, was found to be “sound and oriented and without any mark of injury on any part of the body”.
- The medical report pertaining to the examination of victim no.2 is a fabricated document.
- According to Sona-Ullah and the FIR the timing of the occurrence was 8:00 pm. But, the evidence suggests that the ambush party under the command of Captain Ravinder Singh Tewatia left the company location at Upper Gund at 8:30 pm and “after deploying in the way the army personnel near the house of Abdul Gani Rather and two SPOs at namely Shailender and Sanjay” at a local inn, Captain Ravinder Singh Tewatia and SPO Bharat Bhushan reached Nowgam at 9:00 pm. Therefore, the four persons who were at the house of the victim at 8:00 pm could not have included the alleged perpetrators.
- The statement of Captain Ajit Singh pertaining to the confession of Captain Ravinder Singh Tewatia is unreliable. As per Captain Ajit Singh the confession was made on the morning of 15 February 2000 but the confession was not disclosed to the senior officers of Captain Ravinder Singh Tewatia in the same evening, when investigations were being made. This was brought up by the prosecution for the first time before the SGCM. There were also other contradictions in the statement of Captain Ajit Singh.

Attached to the main submissions of Captain Ravinder Singh Tewatia before the High Court was a letter addressed by his advocate under Section 164 of the Army Act, 1950 to the Defence Secretary, Government of India. This letter makes the following additional substantive arguments:

- While repeating the argument that the name of Captain Ravinder Singh Tewatia was not mentioned in the FIR, it is submitted that the father of victim no.2 on being questioned [presumably before the SGCM] stated that this was due to the fear of the family in specifically naming the perpetrator. Victim no.2 also deposed to being threatened by Captain Ravinder Singh Tewatia prior to the rape. The response given in this letter is that this is not a believable statement as the father of victim no.2 was in the company of “his own people”.
- The father of victim no.2 had been investigated earlier by Captain Ravinder Singh Tewatia for his involvement with militants. This coupled with the area in question being a “hub of militancy activities” and the “people having a soft corner for militants” suggests that the allegations of rape were unreliable.
- The lack of injuries on victim no.2, lack of any shouting or struggle on her part, suggests there was no rape but consensual sexual intercourse. Further, the father of victim no.2 asked Captain Ravinder Singh Tewatia to be careful that the victim was not impregnated. Therefore, his concern was on the issue of impregnation, thereby suggesting that the intercourse itself was consensual.

The final decision of the High Court was issued on 31 December 2002. The relevant points are as under:

- The testimony of victim no.2 is reproduced in great detail. One point of interest is a reference to a person named “Imtiaz” who spoke in Kashmiri. She also stated that she recognized alleged perpetrator no.1 when they were in the kitchen as he had come to their house on a raid about a month prior to the incident. She mentioned this to her parents after the incident of rape and on

the next morning to her uncle. She also stated that following the rape she did not fold the blanket. But she did have a bath. The main act of rape was for about 30 minutes. She stated that Captain Ravinder Singh Tewatia had sexual intercourse twice with her. She also stated that she did not reveal the name of the perpetrator out of fear.

- The testimony of the father of victim no.2 is also reproduced in great detail. The testimony is very similar to the testimony of victim no.2. The father also stated that when he entered the kitchen, his daughter was unconscious. After she awoke she told her parents that she had been raped.
- The testimony of Captain Ajit Singh is also reproduced in great detail. The crux of his testimony was that on 15 February 2000 Captain Ravinder Singh Tewatia told him that he had sexual intercourse with victim no.2.
- The High Court also considered the testimony of SPO’s Shailender Singh and Sanjay Kumar. From their testimony, the High Court concluded that “Imtiaz” was a code name, but it is unclear whose code name it was.
- In its conclusions, the High Court stated the following:
  - “If the evidence of these SPO’s is discarded, then there remains nothing to substantiate that the petitioner ever entered the house in question”.
  - That the name of Captain Ravinder Singh Tewatia, which was known to victim no.2 and her father should have been told to the police. At the very least, the uncle or other relatives should have been informed. Further, victim no.2 never stated in the FIR that she was raped twice. victim no.2 is not a reliable witness.
  - The allegations of persons being beaten is not reliable as there were no injury marks on any of the persons.
  - The villagers, following the incident, were protesting against the 31 RR, of which Captain Ajit Singh was a part. This was considered to be the reason why Captain Ajit Singh chose to shift the blame to Captain Ravinder Singh Tewatia.
  - “That the parents of the girl” stated that she was found unconscious following the alleged rape, but victim no.2 stated that she went for a bath. This was a contradiction.
  - That who typed the medical report, and why it was signed by only three out of the four Doctors is unclear. Further, it is unclear whether it was typed on the date of examination or thereafter. No reliance can be placed on the medical report.

Based on the above findings, the decision of the SGCM was set aside and the statement of victim no.2 was found unreliable.

Before analyzing the decision of the High Court, the following preliminary points may be made:

- The IPTK does not have a copy of the decision of the SGCM. Further, the victims, or their family members, have not been met by the IPTK. Therefore, this limits the scope of the analysis.
- From the reading of the documents it appears that the conviction of Captain Ravinder Singh Tewatia was for the rape of victim no.2. But, technically, as it was allegedly a joint operation, the charge for both rapes could hold against him.
- The documents available provide very little information on the rape allegation against SPO Bharat Bhushan, except the information received by RTI which may pertain to SPO Bharat Bhushan as well. Therefore, the analysis will focus on the allegations against Captain Ravinder Singh Tewatia.

The submissions and findings may now be analysed as follows:

*Victim Details*

Ghulam Qadir Sheikh [Abduction and Enforced Disappearance]  
 Son of: Subhan Sheikh, Zeba  
 Resident of: Gund, Shatipora [also referred to as Sonthipora],  
 Kralpora, Kupwara District

*Alleged perpetrators*

1. Major Agarwal, 14<sup>th</sup> Rajputana Rifles, Army, Camp Panzgam, Kupwara

*Allegations in Brief*

On 8 March 2000, Ghulam Qadir Sheikh was picked up by army personnel of the 14Rajput Rifles and has disappeared since.

*Case Progress*

A missing report was entered in the Daily Diary vide no. 6 of the Kralpora Police Post on 30 March 2000.

Following inaction by the police, the inhabitants of the village moved an application before the Superintendent of Police [SP], Kupwara. The matter was taken up with the Commandant, 68<sup>th</sup> Mountain Brigade, Trehgam, and a reply was received wherein the armed forces were directed to cooperate with the police. The mother of Ghulam Qadir Sheikh also contacted the Commanding Officer, 14Rajput Rifles on several occasions but was told that Ghulam Qadir Sheikh had not been arrested by the 14Rajput Rifles.

First Information Report [FIR] no. 81/2000 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station on 9 August 2000<sup>134</sup>.

The family of Ghulam Qadir Sheikh filed a petition before the High Court of Jammu and Kashmir [HCP 251/2000] for his release and compensation of Rs. 10,00,000<sup>135</sup>.

On 25 September 2001, the Station House Officer [SHO] of the concerned Police Station was asked to submit a status report. The report submitted indicted the 14 Rajput Rifles. But, the respondents contended that conclusions arrived at by the SHO were not acceptable to the Superintendent of Police [SP] Kupwara and therefore the matter was reinvestigated by the Deputy Superintendent of Police [DSP].

The reinvestigation suggested that the disappearance of the victim was at the hands of "masked gunmen". On 10 October 2002 the High Court directed that the results of the investigations be placed before the Magistrate, and also directed an enquiry to be conducted that was carried out by the Principal Sessions Judge, Kupwara and concluded on 25 June 2007. As per the status report of SHO Trehgam, dated 15 April 2011, before the High Court, the case was closed by declaring the perpetrators as untraced on 6 January 2002. On 3 May 2011, the High Court disposed off the petition and ordered compensation of Rs.10,00,000.

<sup>134</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

<sup>135</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

- There appears to be a contradiction on when Captain Ravinder Singh Tewatia was first identified i.e. during the identification parade or before the SGCM. Further, on one hand he states that medical examination confirms that victim no.2 was not injured. On the other hand he suggests the medical report was a fabricated document. Further, the medical report does confirm sexual assault.
- The issue of Captain Ravinder Singh Tewatia not being named in the FIR appears to be a major issue. The family of the victim suggest that this was due to their fear. It would prima facie appear to be unfortunate that the High Court chose to dismiss fear as a legitimate reason. Within the context of Jammu and Kashmir, it would appear to be a legitimate reason. Further, while victim no.2 states that she informed her parents right after the incident, and her uncle the following day, that Captain Ravinder Singh Tewatia was responsible, the High Court erred by not giving any weightage to this. Further, while on one hand the High Court accepts that the uncle was informed, subsequently the High Court states that he was not informed. This would once again appear to be an error on the part of the High Court. Further, the mere fact that victim no.2, or Sona-Ullah, did not mention earlier that she was raped twice, while a contradiction for the High Court, appears to be very minor.
- The issue of what exactly victim no.2 did immediately following the rape also appears to be an issue that the High Court gave weightage to. Based purely on the records available, the contradiction is not adequately made out. While victim no.2 does state that she had a bath, she does not explicitly state that she was *not* unconscious immediately following the rape.

Therefore, based on the record available, it would appear that the story of victim no.2 is consistent with the other evidence, and that the High Court erred by overturning the SGCM decision.

The final point to be considered is the manner in which the Government of Jammu and Kashmir has approached the matter. In response to a RTI application filed, the Director of Litigation, Jammu has stated vide letter dated 17 May 2012 that the Government of Jammu and Kashmir did not challenge the High Court judgment as the order was not directed against the State. Considering that the police within the State deemed it fit to file a chargesheet in the case, it is unfortunate that the Government did not deem it fit to further litigate the matter. This is particularly alarming considering that the LPA filed by the Ministry of Defence remains pending from 2003.

Further, in addition to concerns with the court-martial proceedings in Jammu and Kashmir, it is clear that the instant case should have been tried before the criminal courts.

Firstly, in light of section 34 [Common intention] of the Ranbir Penal Code, 1989 [RPC], Captain Ravinder Singh Tewatia would be guilty of the rape of both victims.

Second, by splitting the case between the court-martial and the criminal court, the efficacy of the trial is affected.

Finally, it is concerning that the trial of SPO Bharat Bhushan does not appear to have reached any logical conclusion. It is also unfortunate that SPO's Shailender Singh and Sanjay Kumar, who abetted in the crime, do not appear to have been proceeded against.

This case is also an example of the inevitability of the acquittal of alleged perpetrators as even when a court-martial finds a person guilty, ultimately the processes of justice appear to result in a denial of justice.

### Case Analysis

The enquiry report of 25 June 2007 is the main document on record for the purposes of analysis.

The enquiry judge heard the evidence of the mother of the victim [the petitioner in the case] and four other persons, and the relevant evidence may be summarized as follows:

- Zeba, mother of Ghulam Qadir Sheikh, stated that “about seven years ago” the army personnel posted at Panzgam entered into her house and abducted Ghulam Qadir Sheikh. On the next day her house was raided by the army and Ghulam Qadir Sheikh was with the raiding party. No illegal arms or ammunitions were seized during the search. On the next day, the witness informed the Kralpora Police Post about the incident. The witness also approached the Panzgam army Camp and she learnt that the 14Rajput Rifles were posted there. The witness was told that she could meet with Ghulam Qadir Sheikh at Payarpora, Kupwara District. The witness met the victim at Payarpora but has never seen the victim after that meeting and was not allowed to meet him again. The witness stated that Major Agarwal was the officer in whose custody her son was lying. Ghulam Qadir Sheikh was not involved in militancy. The witness was cross-examined by the Public Prosecutor and she stated that “it were the army personnel who told her that it was Major Agarwal who was posted in those days at Panzgam”.
- Azie, wife of Ghulam Qadir Sheikh, stated that while she, her husband and other family members were in her residence the army personnel came and abducted her husband. The witness was assured that Ghulam Qadir Sheikh would be released on the next day. On the next day a raid was conducted, Ghulam Qadir Sheikh was with the raiding party, but no illegal article was recovered. The witness stated that the “army personnel were from 14 Battalion of Rajput Regiment and the unit was being headed by one Major Agarwal”. The mother of Ghulam Qadir Sheikh went to the Panzgam Camp and then subsequently met Ghulam Qadir Sheikh at Payarpora. The witness stated that the mother of Ghulam Qadir Sheikh saw him being handcuffed. Ghulam Qadir Sheikh was not involved in militancy. On cross-examination, the witness stated that “...the army did not allow her to meet her but after two days she met with her husband at Payarpora”. The witness also stated that the abduction took place at about 8:00 pm in the evening.
- Rafiq, sister-in-law of Ghulam Qadir Sheikh, stated that Ghulam Qadir Sheikh was abducted by army personnel at about 8:00 pm in the evening. “The army personnel knocked the door and said that don’t [be] afraid”. Ghulam Qadir Sheikh was brought again the next morning for a search but no illegal items were recovered. The mother of Ghulam Qadir Sheikh met him at Payarpora. “He was taken from the bunker handcuffed”. On cross-examination, the witness stated that about nine years ago she was married and residing in the same house. In those days, they were living in a joint family. Further, that “when they went to Payarpora for meeting the said Ghulam Qadir about 10/12 army personnel were there and some Major Agarwal was heading these Army men, who took her brother-in-law into the custody”.
- Abdul Ahad Mir, son of the the village Chowkidar [Village guard] on the day of the abduction of Ghulam Qadir Sheikh and presently the Chowkidar of the village, confirms the abduction, but based on what he had heard about it. The witness stated that his father reported the abduction to the police.
- Mohammad Gulzar, the village headman of the area, stated that about eight years ago Ghulam Qadir Sheikh was abducted by Major Agarwal and on the next day Major Agarwal brought Ghulam Qadir Sheikh along to raid his house. The witness went

to the camp to meet Ghulam Qadir Sheikh and was told that he was in the camp and would be released very soon. Ghulam Qadir Sheikh was not involved in militancy. On cross-examination, the witness stated that it was 8:00 pm “and was pitch dark and the identification was to some extent difficult”. His house was at a little distance from that of Ghulam Qadir Sheikh. The witness was called by the army and then entered into the house of Ghulam Qadir Sheikh. The army personnel were in uniform without badges. On the following day when the search of Ghulam Qadir Sheikh’s house was conducted Ghulam Qadir was kept in the vehicle and the witness “could not see him”. The witness came to know about the name of the Major at “that time when the petitioner got the clue”.

The enquiry report then states that J. S. Suraj, Colonel, Commanding Officer had submitted a detailed investigation report wherein it had been stated that the petitioner was unclear about the unit involved in the abduction. The abduction was denied.

Based on the appraisal of the above, the enquiry judge stated that “it is emphatically clear” that Ghulam Qadir Sheikh was abducted by the 14Rajput Rifles on “8<sup>th</sup> of March 2003”. But, subsequently, the enquiry judge also states that “it is not clear by which unit he was picked up”. Further, that “some armed personnel whether from army or from other security agency” were responsible.

A few comments may be made with regard to this case in light of the enquiry report:

- First, there exists some uncertainty about who met Ghulam Qadir Sheikh at Payarpora. It is unclear whether it was only the mother of Ghulam Qadir Sheikh that met him at Payarpora.
- Second, the identification of Major Agarwal as being responsible needs further clarification. While the witnesses do refer to him, the basis of their knowledge is unclear.
- Third, the ambivalence of the enquiry judge is unfortunate. On one hand the judge claims that the abduction by the 14 Rajput Rifles was “emphatically clear” but then later expresses doubt.
- Fourth, the role of the police and the High Court does seem unfortunate in this case. Following the status report before the High Court of the concerned Police Station indicting the 14 Rajput Rifles there appears to have been a cover-up and an attempt to shield the armed forces. The re-investigation ordered by the SP Kupwara fails to provide any basis for the change in the claim by the concerned SHO indicting the 14 Rajput Rifles. Considering that the evidence before the judicial enquiry does suggest a prima facie case against the 14 Rajput Rifles and Major Agarwal, the subsequent investigations and the closure of the case appears to be a cover-up. Further, the manner in which the High Court confines itself to the issue of compensation without considering the investigations and prosecutions in this case is unfortunate and allows for the Major Agarwal and the 14 Rajput Rifles to evade justice. This action of the High Court, after 11 years, is inadequate.
- Fifth, and finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

### Case No. 44

*Victim Details*  
[Massacre/Extra-Judicial Killings]

1. Fayaz Ahmad Khan  
Son of: Ghulam Hassan Khan
2. Mohammad Rafiq Khan  
Son of: Juma Khan

3. Hanief Khan Gojar  
Son of: Abdul Gafoor Khan
4. Akhter Ali Khan  
Son of: Pappa Khan
5. Noorani Khan  
Son of: Pappa Khan
6. Nissar Ahmed Khan  
Son of: Sabzar Ali Khan
7. Noor-ul Amin Khan  
Son of: Popa Khan
8. Mushtaq Ahmed Khan  
Son of: Farid Khan

All Resident of: villages close to Barakpora, Bulbul Nowgam, Anantnag District

#### *Alleged perpetrators*

1. Assistant Sub-Inspector [ASI] Ashok Kumar, Special Operations Group [SOG], Jammu and Kashmir Police
2. Head Constable Krishan Kumar, Special Operations Group [SOG], Jammu and Kashmir Police
3. Selection Grade Constable Chaman Lal, Special Operations Group [SOG], Jammu and Kashmir Police
4. Sub-Inspector [SI] R.P. Roy, Commander, Central Reserve Police Force [CRPF]
5. Constable P.C. Hundique, Central Reserve Police Force [CRPF]
6. Constable Shyam Kumar, Central Reserve Police Force [CRPF]
7. Constable S.V. Limbekar [Operational name: Venkati], Central Reserve Police Force [CRPF]

#### *Allegations in Brief*

On 3 April 2000, eight persons were killed [five immediately and three subsequently due to injuries sustained] and 14 others were injured in firing at Barakpora, Bulbul Nowgam, Anantnag district, as a procession of thousands of people were heading towards the office of the Deputy Commissioner, Anantnag from Achabal at 1:45 or 2:00 pm, in protest of the killings of five civilians in the infamous Pathribal fake encounter of 25 March 2000.

#### *Case Progress*

First Information Report [FIR] no. 93/2000 was filed at the Anantnag Police Station<sup>136</sup>.

On 3 April 2000 the Jammu and Kashmir Government appointed an inquiry commission under the Commission of Inquiry Act, 1962, headed by Justice Pandian, a retired Supreme Court Judge. The report of this Commission was submitted on 27 October 2000. The report, after fixing the responsibility of the crime on the alleged perpetrators, recommended at least a sum of Rs. 2,00,000 relief for the family of all the deceased victims. Further, relief was also ordered with regard to the persons injured.

#### *Case Analysis*

The Pandian Commission based its conclusions on witnesses provided by the complainants, affidavits of SOG and CRPF personnel, and the Commission's own witnesses. The Pandian Commission considered the Barakpora incident as one of the links in

<sup>136</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

the unbroken chain of two other incidents: the Chattisinghpora massacre of 20 March 2000 and the Pathribal killing of five civilians on 25 March 2000. Further, the Commission stated that the Barakpora killings was an unwarranted, brutal attack amounting to murder, and causing grievous and simple hurt without any justification and authority. In giving this finding, the Commission fixed responsibility on the alleged perpetrators listed above.

The findings of the Pandian Commission therefore clearly indict the alleged perpetrators listed above. Further, the Commission's report was never tabled in the Jammu and Kashmir Legislative Assembly for implementation and neither there appears to be any conclusive investigations conducted by the police to prosecute the alleged perpetrators. The Pathribal fake encounter case, investigated by the police and later by the Central Bureau of Investigation, resulted in a charge sheet submitted before the trial court and was challenged by the army in the High Court and Supreme Court. In this particularly case, despite a fair enquiry by Justice Pandian, no charge sheet has been produced against the police or the CRPF personnel resulting in continued impunity. Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. **45**

#### *Victim Details*

Mushtaq Ahmad Wani [Abduction and Enforced Disappearance]  
Age: 27  
Son of: Mohammad Sultan Wani [deceased]  
Resident of: Pethseer, Sopore, Baramulla District

#### *Alleged perpetrators*

1. Major Jatindara, 29 Rashtriya Rifles [RR], Army, Camp Odoora, Sheeri, Baramulla, and headquartered at Uplana, Singhpora, Baramulla

#### *Allegations in Brief*

On 9 August 2000, Mushtaq Ahmad Wani was picked up from Tashkant chowk, Baramulla [before the High Court, the point of abduction is referred to as the "Baramulla chowk"], at some point in the afternoon. Eye-witnesses to the abduction informed the family of the victim that he had been abducted by the army. The army brought the victim subsequently to his house for a raid. The mother of the victim saw him at this point in army custody, specifically the 29 RR. Another person informed the family that on one occasion he had seen the victim in an army uniform. The victim informed him that he was being forced to work for the army. The family went to the 29 RR camp but were given false promises of his release but denied permission to meet with the victim. Mushtaq Ahmad Wani has disappeared since.

The family of the victim has reason to believe that Major Jatindara was responsible for the abduction and disappearance of Mushtaq Ahmad Wani because on 19 August 2000, Major Jatindara abducted the brother of the victim and told him that he could meet with the victim. Subsequently, he was tortured at the Odoora and Uplana Camps, and then released.

The family of Mushtaq Ahmad Wani petitioned various persons, including the President of India, but received no assistance. Further, a political worker of the Janata Dal party, Ghulam Mohammad Shah, took Rs. 40,000 from the family promising to assist them in the search for the victim. But, he subsequently provided no assistance.

The family of Mushtaq Ahmad Wani gave a statement to the IPTK on 15 December 2011.

#### *Case Progress*

First Information Report [FIR] no. 47/2001 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>137</sup>.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) 23/2000]<sup>138</sup> seeking the release of the victim. The 29 RR filed a counter affidavit before the High Court. The principal argument was that the F Company of the 29 RR [specifically named by the family of the victim in their petition] was deployed in Waddipura, Pattan and not in Baramulla. The 29 RR denied the arrest of the victim. The High Court on 25 September 2001, basing itself on the submission of the 29 RR, stated that the victim's family did not rebut the submission of the 29 RR and therefore there was no merit in the petition. The petition was dismissed.

On 21 July 2004, following a complaint by the family of the victim, the State Human Rights Commission [SHRC] indicted Major Jatindara and recommended ex-gratia government relief of Rs. 1,00,000.

#### *Case Analysis*

Before considering the conclusions of the SHRC, a preliminary comment may be made on the 25 September 2001 decision of the High Court. It is unfortunate that the Court did not order an enquiry and instead dismissed the petition based only on the submissions of the 29 RR. Further, the emphasis on the issue of the location of the camp would appear misplaced. The High Court should have considered that an armed force may in fact carry out activities beyond its jurisdiction, particularly when one considers that the allegation in question is one of an illegality.

The SHRC based its 21 July 2004 decision on the submissions of the family of the victim and a report submitted on 28 December 2001 by the Inspector General of Police [IGP], Kashmir and a report submitted on 6 August 2003 by the Senior Superintendent of Police [SSP], Baramulla. The police reports confirmed the abduction of the victim by Major Jatindara on 9 August 2000 and his subsequent disappearance. The SHRC concluded that it was a "clear cut case of forcible disappearance". The SHRC also considered the reference to the victims past militancy activities in the IGP, Kashmir report. The SHRC stated that "True, that in one of the reports the police says that the husband of the Complainant had attained the arms training. But there is nothing on the file to show that he has done any harm to anybody. On the other hand it is clear from the reports that after allegedly coming back from across the border he was apprehended and had remained in detention for about three years and that after his release he had not indulged in any illegal activity but had stuck to

<sup>137</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>138</sup> Information on the petition number was sought through RTI on 16 February 2012. No information was provided.

his domestic work when he was apprehended by Major Jatindara". The SHRC continued by stating that "in this connection it may be stated that an allegation against a person that he has attained the illegal arms training is not sufficient by itself. If the husband of the Complainant had received any training, a case for that should have been lodged and the man should have been prosecuted...no reason for the arrest of the complainant's husband has been furnished by any agency." The SHRC then recommended ex-gratia government relief and stated that "the Government shall take all the necessary and serious steps against Major Jatindara to its logical conclusion and that Major Jatindera is brought to justice."

Therefore, despite the unwillingness of the High Court to implicate the 29 RR in the abduction and disappearance of the victim, both the police and the SHRC clearly indict the alleged perpetrator. Although the police investigations submitted to the SHRC confirm the abduction and disappearance of the victim by the alleged perpetrator, the subsequent recommendation for prosecution by the SHRC appears to have been disregarded. The callous approach of the police and the High Court is concerning as it has amounted to continued impunity. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 46

#### *Victim Details*

Ghulam Mohammad Mir [Abduction and Enforced Disappearance]

Age: 27

Occupation: Taxi driver

Son of: Abdul Khaliq Mir

Resident of: Kalsari, Pattan, Baramulla district

#### *Alleged perpetrators*

1. Captain Gurjeet Singh Sandal, 29 Rashtriya Rifles [RR], Army, Camp Chekseri, Nipora, Pattan, Baramulla District<sup>139</sup>

#### *Allegations in Brief*

On 14 October 2000 in a mine blast at Watipora, main road of Pattan, Captain Gurjeet Singh Sandal received minor injuries. After the blast, on 15 October 2000, several people were arrested, including the victim and Manzoor Ahmad Dar, who were travelling in the victim's taxi. The victim was arrested at around 1:20 pm by Captain Gurjeet Singh Sandal and two soldiers of 29 RR. After the arrest they were taken to the Yatipora Headquarters of the army, and the taxi was left outside the camp. The father of the victim went to the Yatipora Headquarters but there he was slapped by Captain Gurjeet Singh Sandal and thrown out of the camp.

Manzoor Ahmad Dar was released after some days. Manzoor Ahmad Dar told the family that he had seen the victim in the camp and his condition was bad. On returning to the camp, the father of the victim was given false promises of the release of his son. The victim has subsequently disappeared.

The father of the victim states that he sought help from various quarters, including the present Chief Minister of the State, Omar Abdullah, but he received no assistance.

<sup>139</sup> Chekseri Camp is a tertiary camp associated with the Hyderbegh Camp [also referred to as Yatipora].

Further, he was forced to sign a statement by the Chekseri Camp that the army had no role in the incident. Further, he states he spent an enormous amount in the search for his son and for seeking justice. The father received Rs. 1,00,000 as ex-gratia government relief after the recommendation of State Human Rights Commission [SHRC] but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Ghulam Mohammad Mir gave a statement to the IPTK on 12 December 2011.

#### *Case Progress*

First Information Report [FIR] no. 260/2000 u/s 346 [Wrongful confinement in secret] was filed at Pattan Police Station<sup>140</sup>.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [HCP 264/2002, a *habaes corpus* petition] seeking a judicial enquiry. The Defence Ministry, Union of India, and Captain Gurjeet Singh Sandal stated that the mine blast on 14 October 2000 took place on the Pattan Nihalpora road and not in Watipura. Further, no person of the unit was injured. The victim was not picked up. Finally, that Captain Gurjeet Singh Sandal was not “on the strength of the unit on 14 October”. He reported to the unit on 6 January 2001.

The petition was dismissed on 23 November 2004. The main reason, and arguably the only reason given [as the other arguments of the respondents are referred to but do not appear to have been the reason for the disposal], for disposing the petition was that the petitioners in their petition had stated on one occasion that “all the persons arrested were released within 25 days”. The High Court understood this to mean that the victim had also been released.

On 30 September 2004 the State Human Rights Commission [SHRC], approached by the family of the victim, issued its final decision implicating Captain Gurjeet Singh Sandal, and recommended ex-gratia government relief of Rs.1,00,000, compassionate employment under SRO-43 [Statutory Rules and Orders] and recommended that the investigation in the case be completed as soon as possible.

On inaction of the SHRC recommendations, another petition was filed before the High Court [Original Writ Petition (OWP) 265/2008] seeking that investigations in the case be completed, the SHRC recommendations be acted upon, further compensation of Rs.15,00,000 be paid, that the graves in the State be investigated and DNA testing be done.

On 9 April 2008 the Court ordered that the recommendations of the SHRC be implemented and stated that on the issue of investigations the matter could be agitated before the concerned Chief Judicial Magistrate [CJM].

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

On 23 April 2010, the office of the District Magistrate, Baramulla, after enquiry, stated that the victim could be presumed to be dead.

#### *Case Analysis*

<sup>140</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

As a preliminary point, there appears to be a contradiction in the position taken by Union of India and Captain Gurjeet Singh Sandal before the High Court in HCP 264/2002 that the alleged perpetrator was not at the alleged position during the time of the incident, and the position taken by the police authorities. A report dated 6 April 2001 by the Station House Officer [SHO] of Pattan Police Station implicates Captain Gurjeet Singh Sandal in the incident [referring to him as the “incharge camp 29 RR Cheekseri”]. Further, a report from the Senior Superintendent of Police [SSP], Baramulla dated 4 June 2001 to the SHRC also implicates the alleged perpetrator in the abduction of the victim.

The 30 September 2004 SHRC final decision was based on a police report. The police report stated that “during the course of investigation the witnesses have deposed that troops of 29 RR Camp Cheksari headed by Captain Gurjit Singh Sandal lifted said Ghulam Mohammad Mir son of Khaliq Mir resident of Kalsar Pattan.” The police also noted that no cooperation was received from the army in the investigations.

There is also a letter dated 4 June 2001 from the SSP, Baramulla to the SHRC on record. This letter also confirms that the victim was apprehended by troops under the command of the alleged perpetrator and that the taxi of the victim was found outside the “Hyderbagh” camp. The SHRC then heard further evidence from witnesses and concluded that the victim was abducted by Captain Gurjeet Singh Sandal, “Camp Hyderbegh Yedipora Pattan” and that it could be presumed that he had been “liquidated while in custody”. The SHRC also stated that it was “disappointing to find that in this case also state police has failed to complete the investigation because of non-cooperation from the Army”.

A final point to be made is the unfortunate order of 23 November 2004 of the High Court. Any reading of the petition of the victim’s family could lead a reader to only one conclusion: that the victim was never released. But, the High Court unfortunately focused on one line, completely out of context, and dismissed the petition.

Further, even assuming that the victim had been released, the High Court erred by not deeming it necessary to enquire into the legality of the detention of the victim.

Instead, the petition was dismissed with no enquiry. It was therefore only after the intervention of the SHRC that the High Court, around four years later, finally accepted that the victim was disappeared which was contrary to their earlier 23 November 2004 position.

This case serves as an unfortunate example where the police and SHRC have found in favour of the victim family, and against the perpetrator, but no justice, vis-à-vis prosecution of the alleged perpetrator, has taken place.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. **47**

#### *Victim Details*

Abdul Majeed Khan [Extra-Judicial Killing]  
Age: 45  
Occupation: Chemist  
Son of: Ghulam Mohammad Khan, Hanifa [deceased]  
Spouse: Fata  
Resident of: Khaipora, Tangmarg, Baramulla District



### *Alleged perpetrators*

1. Major K. Bhattachariya, 59<sup>th</sup> Field Regiment, Army, Camp Batapora, Tangmarg
2. V. R. Godekar, 59<sup>th</sup> Field Regiment, Army, Camp Batapora, Tangmarg

### *Allegations in Brief*

On 8 January 2001 Abdul Majeed Khan was picked up from his residence by 32 to 40 army personnel of the 59<sup>th</sup> Field Regiment of Batapora, Tangmarg, headed by a Captain. At the time of the incident, the officers present assured the family that the victim would be released the following day. But, on the following day the 59<sup>th</sup> Field Regiment when confronted by the family of Abdul Majeed Khan denied that he had been picked up. Subsequently, on the same day his dead body was found close to his residence.

### *Case Progress*

First Information Report [FIR] no.3/2001 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Tangmarg Police Station<sup>141</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was still under investigation.

While the family filed a writ petition before the High Court of Jammu and Kashmir in 2001 [Original Writ Petition (OWP) 63/2001], it was subsequently withdrawn. Both alleged perpetrators were made party to the petition. In response to this petition, the State of Jammu and Kashmir and the Jammu and Kashmir Police stated that it is confirmed upon investigations conducted thus far that the victim was picked up by the personnel of the 59<sup>th</sup> Field Army Regiment camped at Batapora and that “they were involved in the murder of the deceased”. Further, that the victim was not involved in any anti-national activity and the army was not co-operating in providing the names of officers involved in the incident. The post-mortem report states the probable cause of death as: “excessive internal bleeding in abdomen due to splenic rupture following blunt trauma to abdomen...”. The High Court, taking cognizance of the position of the State and the police, issued an order on 13 August 2003 directing the army to cooperate in the investigation. But, on 30 July 2004, the court issued an order stating that the police should also make more efforts on its own part in getting information from the army. On 16 November 2002, the High Court allowed for an amended petition to be filed as the original petitioner [mother of the victim] had died, and an amended petition was sought to be filed by the wife of the victim.

Consequently, the amended petition was filed in 2004 [OWP 663/2004], seeking completion of investigations and grant of relief from the authorities. Both the alleged perpetrators were made parties to the petition. The Union of India, the 59<sup>th</sup> Field Regiment and the alleged perpetrators responded to the petition on 24 August 2005 denying any role in the incident. Further, they stated that in Section 164 [Power to record statements and confessions] Criminal Procedure Code, 1989 [CrPC] statements recorded before the Pattan and Baramulla Magistrates, witnesses had stated that they were forced to give testimony against the army. But, on record, a statement given by Fayaz Ahmad Bhat, a neighbour of the victim, on 31 January 2001 before the Pattan Magistrate, confirms the version

of events as given by the family of the victim. Similarly, a statement given by Haneefa, mother of the victim, on 31 January 2001 to the Pattan magistrate also confirms the abduction of the victim and subsequent killing of the victim. Abdul Majid Rather [Son of Ghulam Hassan Rather], a neighbour, also gave a statement on the same date to the Pattan Magistrate that once again confirms the abduction and killing of the victim. Mohammad Sharief Rather [son of Saifullah Rather], Mohammad Yousuf Khan [son of Shahbaz Khan], also neighbours, confirm the same details. Therefore, based on the documents available on the record, the statement of the Union of India, the 59<sup>th</sup> Field Army Regiment and the alleged perpetrators on 24 August 2005 in relation to statements before the Pattan and Baramulla Magistrates, would appear to be incorrect [though no statements before the Baramulla Magistrate are available with the IPTK]. The Government of Jammu and Kashmir and police authorities responded to the petition and stated that the personnel of the 59<sup>th</sup> Field Army Regiment were responsible for the abduction and killing of the victim. It was also confirmed that the victim was not involved in any anti-national activity. The High Court gave its final decision on this petition on 16 February 2006 and directed investigations by the police authorities, cooperation by the army, and also directed the Deputy Commissioner, Baramulla for relief and other benefits to be given to the family of the victim, if found eligible.

Subsequently, a contempt petition [no. 206/2006] was filed before the High Court against the non-implementation of the High Court decision of 16 February 2006. On 10 August 2006, after considering a status report by the police, the High Court stated that the Station House Officer [SHO] concerned with the matter is “not proving effective in causing the presence of the army personnel of the regiment and his party and the said regiment is not cooperating with the investigation of the case”. The court therefore ordered that the investigation be transferred to a senior police officer of the rank of Deputy Inspector General of Police [DIG]. The court also sought a response from the Deputy Commissioner, Baramulla [seemingly in reference to the issue of relief and other benefits]. On 23 December 2006 a status report on investigations was submitted by the DIG in charge of the investigations. The investigation concluded that the victim was picked up and killed by personnel of the 59<sup>th</sup> Field Regiment, Batapora during interrogation. The investigation further revealed that on that day two other persons were picked up along with the victim: Mohammad Maqbool Rather and Ashaq Hussain Mir. All three were interrogated by Major Bhattachariya and Mohammad Maqbool Rather and Ashaq Hussain Mir state that serious injuries were caused to the victim which resulted in his death. The investigation therefore concludes against Major Bhattachariya but also states that the investigation has been unable to find the names of the party who actually picked up the victim. The investigation report states that a charge sheet has been filed against Major Bhattachariya. But, the report states that sanction is being sought and it appears from the wording of the report that the charge sheet has yet to be physically placed before the respective court. The contempt petition was dismissed on 6 September 2007 for want of prosecution.

Another contempt petition [no.411/2007] was filed on the issue of continued non-implementation of the direction on the relief [as the Deputy Commissioner, Baramulla had not filed his response before the High Court] and on the status of the sanction for prosecution sought. Subsequently, Deputy Commissioner, Baramulla submitted a response and stated that an enquiry by the Additional District Magistrate, Baramulla was conducted and based upon this report, relief of Rs. 1,00,000 had been paid to the family on 15 January 2002, but that compassionate employment under SRO-43 [Statutory Rules and Orders] were to be provided by chronological order based on the year of the event, and as the victims’ death fell in the year

<sup>141</sup> Information on the FIR number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

2001, it was yet to come up, but that a request for relaxation on this time issue had been submitted and a decision is awaited. The contempt petition was dismissed based on the submissions of the Deputy Commissioner, Baramulla.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The National Human Rights Commission [NHRC] was also approached by the family.

#### *Case Analysis*

The submissions before the High Court of the Jammu and Kashmir Police and the statements given to the Pattan Magistrate unequivocally implicate the 59<sup>th</sup> Field Army Regiment and Major K. Bhattachariya. But, there appears to be no evidence on record to implicate V.R.Godekar. Nonetheless, despite an indictment against the 59<sup>th</sup> Field Army Regiment and Major K. Bhattachariya, based on information available the alleged perpetrators do not appear to have been punished.

It is noteworthy that despite the passage of 11 years no progress appears to have taken place on the investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **48**

#### *Victim Details*

Mohammad Ashraf Koka [Abduction and Enforced Disappearance]

Age: 23/24

Occupation: Junior Assistant, Sub-Judge Court, Bijbehara

Son of: Ghulam Hassan Koka

Resident of: Kokagund, Verinag, Dooru, Anantnag District

#### *Alleged perpetrators*

1. Commandant Inder Singh Negi, 10<sup>th</sup> Battalion Indo-Tibetan Border Police [ITBP], Camp Verinag
2. 2<sup>nd</sup> In-charge [2 I/C] R.S. Raina, 10<sup>th</sup> Battalion Indo-Tibetan Border Police [ITBP], Camp Verinag
3. Doctor P.S. Gunjiyal, Medical officer [also spelt on occasion as "P.S. Gungial", "Ganjal"], 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
4. Inspector Rajinder Singh [also spelt on occasion as "Ragender Singh"], 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
5. Sub-Inspector [SI] Pratap Singh [reportedly dead], 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
6. Head Constable Hukum Singh, 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
7. Head Constable Ajit Kumar, 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
8. Sunil Joshi [INT Wing], 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
9. Junior Commissioned Officer [JCO], R.S. Chauhan [also spelt on occasion as "R.S.Chowan"], 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
10. Junior Commissioned Officer [JCO] Mishra, 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag

11. Sub-Inspector [SI] Ram Pratap, 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Camp Verinag

#### *Allegations in Brief*

On 27 October 2001, Mohammad Ashraf Koka was picked up from his residence at around 7:30 pm and subsequently disappeared. The family of Mohammad Ashraf Koka states that he was picked up by personnel of the 10<sup>th</sup> Battalion Indo Tibetan Border Police [ITBP], Verinag Camp. The father of the victim recognised R.S.Raina, Doctor P.S. Gunjiyal, SI Pratap Singh, Head Constable Hukum Singh, Head Constable Ajit Kumar, Sunil Joshi, JCO R.S.Chauhan, JCO Mishra and SI Ram Pratap on this occasion.

#### *Case Progress*

A First Information Report [FIR] no. 96/2001 was filed at the Dooru Police Station on 3 November 2001 on the orders of the Chief Judicial Magistrate [CJM], Anantnag. According to the family of the victim the Station House Officer [SHO], Dooru Police Station, Abdul Majeed refused to file the FIR<sup>142</sup>.

The family of Mohammad Ashraf Koka filed a petition in the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no.6/2002] for the police to take action. The ITBP denied that Mohammad Ashraf Koka was in their custody. The High Court ordered an enquiry to be conducted by the District and Sessions Judge, Anantnag on 16 September 2003. By an order dated 21 December 2004 a direction was given to investigate the occurrence, and the petition was disposed off despite not having received the report of the District and Sessions Judge, Anantnag. The report of the District and Sessions Judge, Anantnag is dated 21 October 2004 and recommended that full investigation be carried out in the case.

The family of Mohammad Ashraf Koka filed a contempt petition [2/2005] against the inaction of the police in completing investigations, following which the High Court issued another order on 14 November 2005 that investigations be completed. Due to inaction a second contempt petition [1/2006] was then filed and the High Court then issued orders on 16 October 2007 to the CJM, Anantnag to follow the provisions of the CrPC when the charge sheet would be filed before it. This order of the court was made following a report submitted by the police authorities before it indicting eleven personnel of the ITBP. Also of note, is an order passed by the High Court on 23 May 2007 that states that SI Pratap Singh is reportedly dead. The family of the victim approached the High Court again due to the non-progress of the case and the matter remains pending before the High Court.

The State Human Rights Commission [SHRC] was also seized of the matter and issued a decision on 22 May 2003 and confirmed the custodial disappearance of the victim and recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

On 28 July 2009, after receiving only Rs. 1,00,000, the father of Mohammad Ashraf Koka approached the SHRC. But, on being informed that as per the rules only Rs. 1,00,000 were payable, the father of Mohammad Ashraf Koka did not pursue the matter further. The final decision dismissing the matter was made on 20 August 2009. The brother of Mohammad Ashraf Koka has received compassionate employment under SRO-43.

<sup>142</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Inder Singh Negi, one of the alleged perpetrators in the case, filed a petition under Section 561-A [89/2007] before the High Court to quash the FIR filed. But, on 18 May 2009 the petition was dismissed due to the continued absence of the petitioner.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

#### Case Analysis

The documents on record that may be used for purposes of analysis are the SHRC decision of 22 May 2003, enquiry report of the District and Sessions Judge, Anantnag of 21 October 2004 and the following submissions made by police authorities:

- A status report of the SHO of Dooru Police Station [date not ascertainable] filed before the High Court confirms that based on witnesses and incriminating material, a “prima facie case has been established against” all the eleven alleged perpetrators listed above, but that Sub-inspector Pratap Singh is dead. **Further, it is stated that further identification parade would not be necessary.**
- A letter from the Senior Superintendent of Police [SSP], Anantnag dated 31 December 2007 to the Deputy Commissioner, Anantnag, states that Mohammad Ashraf Koka was not involved in subversive activities and no adverse records existed against him. What is also of interest is that this letter states that the investigations in the case had been concluded as challan against 11 accused personnel of the ITBP. This appears quite in contrast to the delay that is being witnessed by the family of Mohammad Ashraf Koka by the police authorities in concluding the case and actually filing a charge sheet before a court.

The SHRC decision of 22 May 2003 may now be considered. The SHRC based its decision on reports by the Deputy Commissioner, Anantnag and Inspector General of Police [IGP], Kashmir who both based their reports on the testimony of Manzoor Ahmad Wani who had accompanied the party that picked up Mohammad Ashraf Koka. Manzoor Ahmad Wani stated that Mohammad Ashraf Koka was “kidnapped by a group of 50 to 100 uniformed persons whose faces were covered and the man who appeared to be their boss was speaking plain Urdu”. Based on essentially this testimony, the SHRC concluded that the victim “is missing for the last about two years due to militancy related circumstances” and recommended ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC did not indict the personnel of the ITBP. The SHRC decision therefore confirms the abduction of the victim, but clearly errs by referring to “militancy related circumstances” – a conclusion that is unfounded. On 9 June 2004 the father of Mohammad Ashraf Koka again approached the SHRC seeking that its earlier decision be enforced and that the ITBP be indicted. The SHRC, by its decision of 22 July 2004, forwarded its recommendations on compensation to the government once again, and on the issue of the role of the ITBP left the matter to the High Court which was seized of the writ petition. The final point to be made with regard to the SHRC would be the order of the Deputy Commissioner, Anantnag of 12 February 2009 which despite the SHRC recommendations, only granted ex-gratia government relief of Rs. 1,00,000.

The enquiry report of the District and Sessions Judge, Anantnag may now be considered. As a preliminary point, it must be noted that the report is dated 21 October 2004, but the High Court in its order of 21 December 2004 appears not to have received the report. The enquiry

heard numerous witnesses and the relevant evidence is considered below:

- Ghulam Hassan Koka, the father of Mohammad Ashraf Koka, testified that prior to the incident, personnel of the ITBP, particularly “Sunil Joshi, R.S. Chauhan, R.S. Raina, Shera and Dr. Ganjal”, met with the witness and made enquiries about his son. In the month of August 1999 an officer from the 24<sup>th</sup> Battalion ITBP Camp Verinag came to the house of the witness and asked for the attendance of Mohammad Ashraf Koka. The witness then says “same was obtained but was not accepted by ITBP officer”. Then in the month of July 2001 officials of the 10<sup>th</sup> Battalion ITBP Camp Verinag came to the house of the witness and asked him to meet the Commanding Officer of the 10<sup>th</sup> Battalion ITBP. The witness was not allowed to enter the camp but subsequently met with Sunil Joshi, R. S. Chauhan, R.S. Raina, Shera and Dr. Ganjal, who asked him to produce his son “Imtiyaz Ahmed”, but the witness stated that this person was not his son. On 27 October 2001, the witness stated that the ITBP arrested Mohammad Ashraf Koka from his residence. The witness names specific officers: “Sunil Joshi, R. S. Chauhan, R.S. Raina” and “Dr. Ganjal”. The witness also testified that “Dr. Ganjal...tried to open fire on his (witness’s) wife and did fire a shot in the air...” On 28 October 2001, the witness testified that he submitted a written report at the Dooru Police Station regarding the incident. The witness also speaks of meeting with a Rajinder Singh, Deputy Commander of the ITBP at the “Deputy Commissioner’s office” on 11 January 2002, along with an Abdul Majid, a judicial clerk, where he was informed that the victim had been picked up by the BSF. The witness evidence was not damaged on cross-examination.
- Mohammad Hussain Koka, the brother of Mohammad Ashraf Koka also testified. The witness testified that in August 1999 at about 10:30 pm, personnel of the ITBP Camp Verinag came to his residence and enquired after Mohammad Ashraf Koka and asked for his attendance certificate. This was done. Then, on 9 July 2001 ITBP personnel again came to his house and asked for his brother “Imtiyaz”. The witness informed them that Imtiyaz was not his brother but that Mohammad Ashraf Koka was his brother. The ITBP personnel asked for the victim to be presented in the camp by the evening. As Mohammad Ashraf Koka was at that point in Srinagar, he could only go to the camp two days later. On the incident of 27 October 2001, the witness testified to the presence of “150 police personnel”. On cross-examination, the witness testified to “four persons” entering the house along with his father. One of them was a person named “Manzoor Ahmad Wani”. Manzoor Ahmad Wani informed them that the persons he was accompanying were from the ITBP. The witness testified that he too could identify that they were from the ITBP based on their name and shoulder plates. Manzoor Ahmad Wani had been picked up by them to help them identify the witness’s house. The witness also testified to the presence of “Sunil Joshi, some R. S. Raina and S. Chouhan” from the 10<sup>th</sup> Battalion of the ITBP. The witness testified that he knew them as they used to come to his house earlier.
- Witnesses Ghulam Hassan Bhat, Ghulam Rasool, Ali Mohammad Ganie, Abdul Aziz Koka, Ghulam Ahmed Koka and Mohammad Sultan Koka testified to the events of 27 October 2001 and confirmed that at around 7:30 pm, the victim was taken by the ITBP.

- Witness Ghulam Nabi Sheikh testified to the events of July 2001 when the father of the victim went to the camp of the ITBP. The witness also testified that in October 2001, the mother of “Manzoor Ahmad” told him that her son had been taken by the security people to identify the house of Mohammad Ashraf Koka. It was through this that he became aware that the ITBP picked up the victim.
- Witness Reyaz Ahmad Koka, the younger brother of Mohammad Ashraf Koka, testified that on 27 October 2001 personnel from the Verinag Camp came to their house. Five people entered the house, one of whom was “Sunil Joshi”. Mohammad Ashraf Koka was then taken by them. The witness also testified that on the following day when the family went to the Verinag Camp they were not allowed inside but one of the ITBP soldiers informed them that Mohammad Ashraf Koka was indeed inside the camp. On cross-examination the witness places the incident on 22 October 2001. Witness Tasleema Akhter, sister of Mohammad Ashraf Koka, testified almost exactly as Reyaz Ahmad Koka did in his examination-in-chief, including by naming “Sunil Joshi”.
- Constable Ajit Kumar testified and provided very little by way of testimony. Hukum Singh confirmed that in the year 2001 he was posted at Camp Verinag. The witness then denied the events of 27 October 2001. The witness also confirmed that Sub-Inspector Ram Pratap was posted at camp Verinag in 2001. The witness then stated that he “does not know whether in the year 2001 any security person namely R. S. Chauhan, R.S. Raina, Sunil Joshi, Mishra were posted there or not”. Head Constable Nand Singh, posted at ITBP, Camp Verinag, denied any crackdown or arrest in October 2001. But, he confirmed that in October 2001 Inder Singh was the commanding officer. But, he stated that he did not know “R. S. Chauhan or any Mishra or any Sunil Joshi”. But, he stated that he knew “second commandant R. S. Raina”.

The testimony of Ghulam Hassan Koka, undamaged on cross-examination, appears strong and reliable. The only question may be on the meeting with “Rajinder Singh” that he places on 11 January 2002 at the Deputy Commissioner’s office. Before the SHRC, the witness stated that he met the same person on 12 January 2002 and was informed that his son was in the custody of the 54<sup>th</sup> Battalion of the BSF and was arrested by them. Further, he states that Rajinder Singh was “Dy.SP ITBP camped at Sangam bridge”. There are discrepancies: the rank of the officer, and the date of the incident.

Further, it is unclear whether this is the same person who is also considered one of the alleged perpetrators [Inspector Rajinder Singh, ITBP, Camp Verinag]. But, these discrepancies would not affect the credibility of the witness testimony. The testimony of Mohammad Hussain Koka appears to match the testimony of his father closely, both on the earlier incidents and the events of 27 October 2001. Though, Mohammad Hussain Koka initially refers to police uniforms, on cross-examination he not only refers to the ITBP but also names specific officers that match with his father’s testimony. While the testimony of witnesses Ghulam Hassan Bhat, Ghulam Rasool, Ali Mohammad Ganie, Abdul Aziz Koka, Ghulam Ahmed Koka and Mohammad Sultan Koka are partly hearsay, they are consistent and serve to corroborate the testimony of the father and brother of Mohammad Ashraf Koka. Reyaz Ahmad Koka and Tasleema Akhter further corroborate the existing evidence, though in cross-examination Reyaz Ahmad Koka places the incident on 22 October 2001. This by itself may not take away from the credibility of the witness [as the exact date may not always be easy to remember] but it may equally be a typographical error in the enquiry

report and it would be appropriate to check the original transcript of the witness.

Ghulam Nabi Sheikh’s testimony on the events prior to 27 October 2001, particularly the incident in July 2001 when they went to the ITBP camp appears to corroborate the testimony of Ghulam Hassan Koka and Mohammad Hussain Koka. It must be said that this evidence is not properly fleshed out by any of the witnesses, but it does appear consistent through their testimonies. His testimony on Manzoor Ahmad further corroborates the already existing testimony on the events of 27 October 2001 and further supports the theory that Manzoor Ahmad Wani was forced to point out the house of the victim to the ITBP.

The enquiry report proceeded to then draw its own conclusions from the witness testimony and confirmed the abduction of Mohammad Ashraf Koka on 27 October 2001 and stated that “no fault on the part of Mohammad Ashraf has come on record which could be said to be a cause for his disappearance or a case for his non-return”. But, the enquiry report found contradictions when it came to the role of ITBP in this abduction. The enquiry report found that in the written report filed before the police station on 28 October 2001 and in the application before the CJM, Anantnag, Ghulam Hassan Koka did not specifically name the ITBP. But, despite the other witnesses who have testified to the role of the ITBP, and despite the enquiry recognizing the statement of Ghulam Hassan Koka that “it is the SHO who asked him to bring an application mentioning therein that unidentified persons lifted his son”, the enquiry report refused to indict the ITBP. The enquiry report when reaching this conclusion also relied on the witnesses produced by the ITBP. The conclusion of the enquiry report, in light of the extensive testimony that suggests the role of the ITBP, is unfortunate.

In conclusion, considering the existing police reports, SHRC judgment and enquiry report on record, in the words of the SHO of the Dooru Police Station [date not ascertainable] filed before the High Court, a “prima facie case has been established against” all the eleven alleged perpetrators listed above. It is therefore particularly unfortunate that the case remains pending in the High Court with no action being taken by the authorities in question.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. 49

### *Victim Details*

Nazir Ahmad Bhat [Extra-Judicial Killing]

Age: 21

Occupation: Chemist/Student

Son of: Nizamuddin Bhat

Resident of: Harpora, Naidkhai, Sumbal, Bandipora District

### *Alleged perpetrators*

1. Constable Gorakhnath Gwali, 88<sup>th</sup> Battalion, Border Security Force [BSF], Camp Iqbal Market, Sopore, Baramulla District

### *Allegations in Brief*

The family of Nazir Ahmad Bhat states that on 29 December 2001 as soon as the victim reached the Iqbal market, Sopore, he was stopped by personnel of the 88<sup>th</sup> Battalion of the BSF and asked to assist them in carrying a box to the second floor of the BSF camp. On entering the camp, Nazir Ahmad Bhat was searched, and all his personal belongings, including his identity card and money were taken away by the BSF, particularly by Constable Gorakhnath Gwali. The victim was then forced to wear a BSF uniform and locked into a room. Gun powder was thrown on his body and he was set on fire. Nazir Ahmad Bhat managed to jump out of a window and he screamed in Kashmiri for help from the people in the market. He was rescued by the people in the area and taken to a hospital where he succumbed to his injuries on 9 January 2002.

During his stay in the hospital he narrated his version of events to others. The family states that subsequently it has come to be known that Constable Gorakhnath Gwali had an insurance policy of Rs. 26,00,000, and had engineered to kill the victim with his uniform on, and minus his identity documents, so as to claim the money under the policy. Constable Gorakhnath Gwali is yet to be arrested.

The family of Nazir Ahmad Bhat gave a statement to the IPTK on 19 December 2011.

### *Case Progress*

First Information Report [FIR] no. 339/2001 u/s 302 [Murder], 307 [Attempt to murder], 392 [Robbery] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station<sup>143</sup>.

The family of Nazir Ahmad Bhat also state that a case was filed in the High Court. Further, proceedings were also ongoing in a Baramulla court.

On 30 October 2002, after being approached by the family of the victim, the State Human Rights Commission [SHRC] issued a decision where it recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] to the family. The family states that they have received only Rs. 1,00,000 to date, but they did receive compassionate employment under SRO-43.

Further, the family of the victim states that on directions of the National Human Rights Commission [NHRC], the BSF made a payment of Rs. 5,00,000 to the family of the victim.

### *Case Analysis*

The medical certificate issued by the Shri Maharaja Hari Singh [SMHS] Hospital, Srinagar confirms the death of the victim due to burning and complications that followed. Letters from the police; from the Sumbal Police Station on 1 December 2006, Senior Superintendent of Police [SSP], Baramulla on 3 July 2002 and SSP, Ganderbal, on 11 December 2006; all confirm the incident and killing of the victim by the alleged perpetrator and that the victim was not involved in any subversive activities and that there was no adverse report against him.

The SHRC issued its decision on 30 October 2002, based on a report from the Inspector General of Police [IGP], Kashmir. The SHRC confirmed the version of events as per the family. The SHRC noted

<sup>143</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. On 11 May 2012 a copy of the FIR and chargesheet were provided.

that Constable Gorakhnath Gwali was absconding, and also that the victim was not alleged to be involved in any militancy related activities.

This is therefore a case where the guilt of Constable Gorakhnath Gwali and the innocence of the victim are beyond doubt. Surprisingly, despite the passage of almost ten years no action appears to have been taken against Constable Gorakhnath Gwali, and it is difficult to understand how a person earlier working with the armed forces continues to evade the processes of justice without the acquiescence of the Government.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

## Case No. **50**

### *Victim Details*

Manzoor Ahmad Dar [Abduction and Enforced Disappearance]  
Occupation: Chemist  
Age: 37  
Son of: Ali Mohammad Dar  
Spouse: Jana  
Resident of: Rawalpora, Srinagar

### *Alleged perpetrators*

1. Major Kishore Malhotra, 35 Rashtriya Rifles [RR], Army

### *Allegations in Brief*

On 16 January 2002, the house of the victim was raided by personnel of the RR. No incriminating material was found.

During the intervening night of 18 and 19 January 2002, at about 12:30 am, personnel of the 35 RR, led by Major Kishore Malhotra, arrested Manzoor Ahmad Dar from his residence and detained him at the JAKLI Regimental Centre, Haftchinar, Srinagar.

The family of Manzoor Ahmad Dar visited this location regularly but they were not allowed to meet him. Manzoor Ahmad Dar has disappeared since.

### *Case Progress*

First Information Report [FIR] no. 33/2002 u/s 363 [Kidnapping], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sadder Police Station on 1 February 2002<sup>144</sup>.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 288/2002] for the production of the victim and investigations on the FIR. A judicial inquiry was conducted by Chief Judicial Magistrate [CJM], Budgam based on the High Court order of 17 March 2003, and indicted the RR forces on

<sup>144</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

10 October 2003. The Union of India and RR made submissions before the High Court. The incident was completely denied. The final order in the case was given by the High Court on 24 July 2004 and the Station House Officer [SHO] was ordered to expedite the investigations.

A contempt petition [no. 53/2005] was filed before the High Court against the non-implementation of the High Court order. The police claimed that the investigations could not be concluded as the Commanding Officer, 145<sup>th</sup> Battalion, BSF was not cooperating with the investigations. On 16 April 2007, the High Court while addressing the matter stated that “it is not clear for what purpose communications are being addressed to them when there is a clear finding from the Chief Judicial Magistrate, Budgam, that missing person was lifted by Rashtriya Rifles personnel”. The SHO, Police Station Sadder was given two months to complete the investigations. A direction was sent to the Director General of Police [DGP], Jammu and Kashmir to immediately approach the army authorities to get an identification parade done.

On 23 July 2007, the High Court was informed by the investigating officer in the case that Colonel Kishore Malhotra, c/o 7<sup>th</sup> Assam Regiment, was not cooperating with the investigations. The High Court ordered that he present himself before the investigating officer within 15 days.

On 6 September 2007 the Union of India submitted before the High Court that a questionnaire had been sent to Colonel Kishore Malhotra, but if the investigating officer required his physical presence, the Union of India had no objection. The Investigating officer stated that the presence of Colonel Kishore Malhotra was required. The High Court ordered that Colonel Kishore Malhotra was to be produced before the investigating officer within two weeks.

On 11 October 2007, on being informed that a communication had been sent to the Brigade Commander, 12 Sector RR with no result, the High Court directed that a direct communication be sent to Colonel Kishore Malhotra to appear before the investigating officer on 15 November 2007 failing which coercive measures would be taken.

On 21 November 2007, the High Court set the date of 10 December 2007 for the appearance of Colonel Kishore Malhotra before the investigating officer.

On 12 December 2007 the investigating officer informed the court that Colonel Kishore Malhotra had not appeared before him. The High Court, while terming it a “gross violation of the directions of the Court” ordered that the General Officer Commanding, 15 Corps, Badami Bagh Cantonment, Srinagar be directed to ask Colonel Kishore Malhotra to appear before the investigating officer within two weeks.

On 19 February 2008, based on the submissions of the Union of India, the High Court ordered that a communication be sent through the General Officer Commanding [GOC], Northern Command to Colonel Kishore Malhotra.

On 7 April 2008, the Union of India stated that there was no information from the GOC, Northern Command. The High Court ordered a dasti [by hand] notice on Colonel Kishore Malhotra.

On 13 May 2008 the High Court was informed that a Sub-Inspector travelled to Drass, which was the available address of Colonel Kishore Malhotra, but the officer in charge refused to disclose the actual location of Colonel Kishore Malhotra. The High Court directed that the GOC, Northern Command, Udhampur, inform the

High Court within two weeks the present posting of Colonel Kishore Malhotra.

On 5 June 2008, the High Court was informed by Union of India that Colonel Kishore Malhotra would be available at Brigade Headquarters, Drass on 16 June 2008 to meet the investigating officer. Further, the High Court was informed that a Special Investigation Team had been appointed in the matter.

On 10 July 2008, the High Court was informed that Colonel Kishore Malhotra did not appear before the investigating officer. The High Court ordered that Colonel Kishore Malhotra appear before the Senior Superintendent of Police [SSP], Srinagar, the Chief Investigating Officer, within three weeks. On 2 September 2008, this order was challenged [Interim Application no.1308/2008] but dismissed by the High Court and the 10 July 2008 order was maintained. The Union of India appealed against this order, and the 10 July 2008 order, before the Supreme Court, but the SLP was dismissed on 24 August 2009.

On 1 December 2009 the High Court was informed that Colonel Kishore Malhotra had appeared before the SSP, Srinagar. The High Court ordered that an affidavit be filed showing compliance.

On 16 April 2010, the High Court, after receiving the Compliance report, ordered that on the next date of hearing the status of the case be provided.

On 28 May 2010, the High Court observed that while Colonel Kishore Malhotra met the investigating officer, he was given a questionnaire to which he responded. Therefore there was no verbal interrogation. In response, Colonel Kishore Malhotra stated that at the relevant time he was posted at Old Airport, Srinagar. Rawalpora, from where the victim was abducted, was an area under his responsibility. Other armed forces, such as the Border Security Force [BSF], Central Reserve Police Force [CRPF] and Special Operations Group [SOG] of Jammu and Kashmir Police were also operating in the area. Colonel Kishore Malhotra denied that he had ever raided the house of the victim. He denied that he had abducted the victim. Colonel Kishore Malhotra stated that as a responsible Commander he had met the family of the victim and tried to assist them. He denied that he had ever told them not to approach the media. The High Court expressed dissatisfaction with the investigation and ordered that the Inspector General of Police [IGP], Kashmir Range, monitor the investigations and that the investigations be completed within two months.

On 28 December 2010, five weeks time was sought for completion of the investigations by the Special Investigation Team. This was granted.

On 22 March 2011, the investigating officer sought more time to procure the presence of Colonel Kishore Malhotra, reportedly posted at Chandni-Mandir, Kolkota. Time of three weeks was given.

On 19 April 2011, the High Court ordered the investigating officer to file an affidavit with the present posting of Colonel Kishore Malhotra, so that the High Court could issue directions for procuring his presence before the investigating officer.

On 3 May 2011, the High Court, on receiving information on the present posting of Colonel Kishore Malhotra, gave the investigating officer two weeks time to ensure the presence of Colonel Kishore Malhotra.

On 9 August 2011, on being requested, an extension of three months time for completion of investigations was granted.

On 8 December 2011, time was sought for filing a compliance report.

On 21 February 2012, the High Court ordered the personal appearance of the investigating officer to explain his inability in completing investigations.

On 23 February 2012, the investigating officer appeared before the court and stated that the inability to conclude investigations was due to being unable to procure the presence of Colonel Kishore Malhotra. The High Court stated that the investigating officer instead of using the powers under the Code of Criminal Procedure, was addressing request letters to Colonel Kishore Malhotra and others. The investigating officer undertook to secure the presence of Colonel Kishore Malhotra within ten days, and present a chargesheet five days after that.

On 10 October 2012, the High Court ordered the Inspector General of Police [IGP], Kashmir, to file a personal affidavit in the matter on or before 6 November 2012 and clarify how long it would take to complete investigations. Previously, the police had sought to execute an arrest warrant against the alleged perpetrator in Pune but were unable to locate him<sup>145</sup>.

The High Court petition remains pending.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

Also on record is a letter dated 24 July 2010 from the IGP, Kashmir Zone, Srinagar, to the SSP, Srinagar, that states that the disappearance of the victim is confirmed, the BSF has issued a certificate stating that the victim was of good character, the case was closed as untraced on 22 October 2003, a Special Investigation Team was constituted on 20 April 2007, and that proper investigations need to be carried out as per the High Court directions.

#### *Case Analysis*

The statements of the family of the victim, the conduct of the army and alleged perpetrator, and the direction of the police investigations suggest the role of the alleged perpetrator in the crime.

The police investigations in this case have been weak and ineffective right from the start.

From wasting time with approaching the BSF, to not using the coercive powers under the Criminal Procedure Code, 1989 (CrPC) for interrogating the alleged perpetrator, the investigations have only helped the alleged perpetrator to evade the processes of justice. The farce of interrogating the alleged perpetrator, over five years, is evidence enough of this.

The delayed police investigations have also resulted in the possible dilution of evidence.

The High Court, while criticizing the police, has been similarly ineffective as it has failed to utilize its coercive powers in ensuring the compliance of its own orders.

The manner in which the army, and the alleged perpetrator, has disregarded the police investigations and the High Court orders suggests that the army does believe itself to be governed by the rule of law.

<sup>145</sup> Kashmir Reader, <http://kashmirreader.com/10132012-ND-igp-to-file-personal-affidavit-5577.aspx>, 13 October 2012.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **51**

#### *Victim Details*

Altaf Ahmad Shah [Extra-Judicial Killing]

Age: 21

Son of: Ali Mohammad Shah

Resident of: Peth Zanigam, Beerwah, Budgam District

#### *Alleged perpetrators*

1. Major Vikash Lakhera, 19 Rashtriya Rifles [RR], Army, Badami Bagh Cantonment, Srinagar
2. Captain Raju / Captain Rajee<sup>146</sup>, 19 Rashtriya Rifles [RR], Army, Badami Bagh Cantonment, Srinagar
3. Personnel of 34 Rashtriya Rifles [RR], Army, Beerwah, Budgam District, Camped outside the Beerwah Police Station
4. In-charge, Special Operations Group [SOG], Jammu and Kashmir Police, Magam, Beerwah, Budgam District, Camped outside the Beerwah Police Station

#### *Allegations in Brief*

The family of Altaf Ahmad Shah states that the victim was arrested on 17 June 2002 by the 19 RR. The family states that the victim was arrested along with a person named Mohammad Ayoub Wara, resident of Shivpora, Srinagar who had some links with the troops of the 19 RR. The victim was arrested from the house of Mohammad Ayoub Wara, where he had been working as a painter. Mohammad Ayoub Wara was subsequently released and he informed the family of the arrest of the victim. The family states that on 20 June 2002, the victim was handed over to the joint camp of 34 RR and SOG, Magam. The victim was handed over to the Beerwah Police Station in an injured condition on 22 June 2002. The victim was transferred to the Sub-District Hospital, Beerwah, followed by Shri Maharaja Hari Singh [SMHS] Hospital, Srinagar and finally Sher-e-Kashmir Institute of Medical Sciences [SKIMS] Hospital, Soura where he died on 26 June 2002. The family of the victim believes that the victim was innocent and he had been tortured to death.

The family of Altaf Ahmad Shah gave a statement to the IPTK on 23 December 2011.

#### *Case Progress*

The family of Altaf Ahmad Shah states that they filed a First Information Report [FIR] at the Ram Munshi Bagh Police Station on the arrest of the victim. On the death of the victim FIR no.73/2002 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was also filed at the Beerwah Police Station<sup>147</sup>. The 21 December 2011

<sup>146</sup>The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], refers to this person as "Raju" whereas the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, on 6 September 2011 refers to him as "Rajee".

<sup>147</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

communication from the Jammu and Kashmir Police states that on 26 June 2002 the Naib Subedar of 34 RR Camp Beerwah handed over three injured persons to the Beerwah Police Station – Altaf Ahmad Shah, Hilal Ahmad Shah and Mohammad Imran Shah. They were then transferred to hospitals, and then two were released. Altaf Ahmad Shah died. Two of them were found involved in a case under FIR no.71/2002 and a chargesheet was filed. Investigation found that Altaf Ahmad Shah had died due to severe torture and a chargesheet was filed against [Major] Vikash Lakhara and Captain Raju and the case file was sent for prosecution sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

FIR no.71/2002 u/s 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 stands registered at the Beerwah Police Station against the victim and two others [brother, Hilal Ahmad Shah, and cousin, Mohamamd Imran Shah, of the victim]<sup>148</sup>. This FIR suggests that the three persons had arms and ammunitions with them. The family of the victim rejects this version. They stand by their version of events and state that when the victim was brought to the police station on 22 June 2002, he was able to inform the family. At this point, the brother and cousin of the victim went to meet him. At that point they were apprehended by the 34 RR and falsely implicated, along with the victim, in this case.

A letter from the Senior Superintendent of Police [SSP], Budgam, dated 22 November 2003, to the Deputy Commissioner, Budgam, based on a report states, that FIR no.71/2002 was never proved against the victim, whereas the other two arrested were chargesheeted. The letter also states that the victim was found not to be involved in subversive activities. This letter also confirms that the victim was tortured.

Also on record is a letter from the Deputy Superintendent of Police [DSP], Headquarters, supervisory officer of the Beerwah Police Station, to the Superintendent of Police [SP], Budgam, on 21 December 2002. This letter is based on the report of the Station House Officer [SHO] Beerwah Police Station. The report states that on 22 June 2002 the SHO of the Beerwah Police Station was called to the 34 RR camp. There he was given a written report bearing the signature of the in-charge SOG, Magam. That report stated that there was a joint operation of the 34 RR and the SOG, Magam at Peth Zanigam village and three suspects were apprehended: Altaf Ahmad Shah, Mohammad Imran Shah and Hilal Ahmad Shah. Arms and ammunition were recovered from them. The letter states that they were handed over to the Beerwah Police Station in an injured condition. On the report of the SOG, FIR no.71/2002 was filed. They were then shifted to Sub-District Hospital, Beerwah and then SMHS, Srinagar.

On 24 June 2002, the other two were released, but the victim was transferred to SKIMS, Srinagar. He died due to torture and the FIR no.73/2002 was filed. During the investigation of the case FIR no. 71/2002 it was found that the victim had been arrested by the armed forces on 17 June 2002 at Shivpora, Srinagar where he had been working as a painter. The authorities of the 34 RR informed the SHO, Beerwah Police Station that the victim had been received in a sick condition from 19 RR personnel.

On 4 June 2003 the State Human Rights Commission [SHRC] issued its decision and recommended ex-gratia government relief of Rs. 3,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC also recommended that a chargesheet

be filed against the culprits of the killings of the victim. A letter from the Deputy Commissioner, Budgam to the Jammu and Kashmir Home Department states that the ex-gratia government relief ordered by the SHRC of Rs. 3,00,000 is not permitted under the rules and the matter may be taken up by the Government.

The family of the victim filed a petition before the High Court of Jammu and Kashmir against the non-implementation of the SHRC recommendations on compensation.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration.

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA stated in relation to this case on 10 January 2012 that sanction was declined on 8 February 2010. The reason for declining sanction was that “individual was apprehended in a bona fide military operation and handed over to police. The individual expired after four days in police custody. Army involvement not established in killing of the individual”<sup>149</sup>.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

#### *Case Analysis*

Before considering the decision of the SHRC, a few preliminary comments may be made:

- The Jammu and Kashmir Police clearly indict the armed forces in the torture of the victim. The police in its letters does not specifically name which of the three units [19 RR, 34 RR, SOG] might be responsible, but does suggest that the torture would have taken place when the victim was in their custody. Further, the police also found that the victim was not involved in any subversive activities – thereby the victim was not booked under FIR no.71/2002.
- An immediate contradiction in the position of the 34 RR and SOG, Magam [as per the police letters of 21 December 2002 and 22 November 2003] is evident. On one hand the two armed forces initially claimed that the victim was apprehended during a joint raid on 22 June 2002 but, subsequently the 34 RR took the position that they had in fact received the victim in a sick condition from the 19 RR. This contradiction is clearly telling.

The conclusions of the SHRC may now be considered. The SHRC first considered the position of the family of the victim, which was that the victim had been apprehended by the 19 RR on 18 June 2002 [which does contradict with the statement given to the IPTK, but does not appear damaging]. The family also states that they believe the victim was handed over to the 34 RR and then the Beerwah Police Station on 22 June 2002.

The SHRC then considered the post-mortem report of the victim which confirmed death by torture. The SHRC also considered the report of the IGP, Kashmir which stated that on 22 June 2002 the Officer in-charge of the Beerwah Police Station was called to the 34

<sup>148</sup> Information on this FIR was sought through RTI on 5 May 2012. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the chargesheet was provided.

<sup>149</sup> The Ministry of Defence places this incident as occurring on 26 February 2002. Considering the consistency of dates from other sources [family and police], it is assumed that this is a typographical error, particularly as the case does not seem to turn on this issue.



RR camp and was handed over a report bearing the signature of the In-charge of the SOG, Magam. The report of the IGP, Kashmir repeats the sequence of events already narrated above including that the three persons arrested were handed over in an injured condition and that finally no case was made out against the victim under FIR no.71/2002, and that the victim was initially arrested on 17 June 2002 by the 19 RR. Based on this report, the SHRC states the following: “it is unfortunate to note that in case the person of Mohammad Altaf Shah<sup>150</sup> was apprehended or taken for interrogation by 19 RR for any involvement whatsoever kind was found involved he should have been handed over by the 19 RR as per the requirements of law and the judgment of the Apex Court as well Hon’ble High Court of the State to the local police...”.

The SHRC was therefore first critical of the manner in which the victim had been handled by the 19 RR. The SHRC then, relying on the police investigations, confirmed the innocence of the victim. The SHRC then considered the responsibility of the three units: 19 RR, 34 RR and SOG, for the torture of the victim and stated that “all these units namely 19 RR, 34 RR and SOG Magam are responsible for this...” The SHRC then issued recommendations on ex-gratia relief and SRO-43 benefits and that the investigation against the culprits must be expedited.

The above record: from the police investigations, on both FIR’s, and the indictment of the SHRC suggests a strong case against the 19 RR, 34 RR and the SOG, Magam. But, the Ministry of Defence declined sanction against the two 19 RR officers named above. The Ministry of Defence appears to blame the police by suggesting that the victim was in their custody at the time of the death of the victim. But, both the family and the police clearly suggest that the victim arrived in police custody in an injured condition, apparently tortured by the personnel of the 19 RR, 34 RR and the SOG, Magam. While, with records presently available [which does not include the charge sheet against the officers] it would be impossible to comment on the guilt or the innocence of the two specific officers, but clear responsibility needs to be fixed on specific persons, and most importantly, responsibility needs to be fixed on all three units involved in this case and not just the 19 RR.

The Ministry of Defence by declining sanction for prosecution under AFSPA effectively endorses the crimes perpetrated, which do not appear to have taken place in a bona fide military operation. Also, based on the record, the involvement of SOG of Jammu and Kashmir Police, based at Magam, appears to have not been considered in the investigations conducted by the Jammu and Kashmir Police. It was possible for the police to investigate and then prosecute the culpable SOG personnel involved [particularly the In-charge SOG, Magam] as the SOG is not covered by AFSPA.

The approach of the Ministry of Defence and the police is that of conveniently blaming each other without actually carrying out an impartial investigation which could have resulted in prosecution of the accused from both the police and the army.

The refuge of the blame game appears to only help the perpetrators. The police shields its personnel by not carrying out thorough investigations, while the Ministry of Defence does so by arbitrarily declining sanction. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

<sup>150</sup> For no discernible reason, the SHRC, on occasion, refers to the victim as “Mohammad Altaf Shah” instead of “Altaf Ahmad Shah”. But, it is clear that the SHRC is referring to the same person.

## Case No. 52

### *Victim Details*

Javaid Ahmad Magray [Extra-Judicial Killing]  
Occupation: 12<sup>th</sup> Standard student  
Son of: Ghulam Nabi Magray, Ameena  
Resident of: Soitang [Lasjan], Tehsil Chadoora, Budgam District

### *Alleged perpetrators*

1. Major Srivastava, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment<sup>151</sup>, Army, Camp Soitang
2. Lieutenant Verma, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
3. Subedar Surinder Sinha, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
4. Havaldar Hamanta Bordoloi, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
5. Havaldar Naba Ch. Sinha, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
6. Lance Naik [Lance Corporal], Romesh Singh, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
7. Sepoy S.U. Borbhuiya, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
8. Sepoy Zakir Hussain, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
9. Sepoy Ashok Choudary, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
10. Sepoy David Lalthanmawia, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
11. Sepoy Bijoy Sinha<sup>152</sup>, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang

### *Allegations in Brief*

Javaid Ahmad Magray’s father states that in the morning of 1 May 2003 his son was missing from his room. His bed appeared as if it had not been slept in the night before. The window in the room was half open. His bicycle was in the lawn of the house, suggesting that he had not gone outside the house. Outside, on the main road, there were many persons from the army. The army persons denied having seen the victim. A large crowd gathered concerned about the victim. They claimed to have heard gunshots at midnight. There were blood stains, and a tooth, lying on the ground, encircled by a chalk marking.

Lieutenant Verma told the people concerned for the victim that he was in the army camp. They accompanied him to the Camp where Lieutenant Verma said the victim would be brought out in five minutes. But, he then told them that the victim had been handed over to the police. It seemed that the only reason that Lieutenant Verma had given them this information after entering the camp was to ensure that he would not be questioned repeatedly by the family and others demanding information.

The people then proceeded to the police station where they were told that a boy was brought in serious condition to the police station at 3:00 am and they had shifted him to Bone and Joints Hospital,

<sup>151</sup> Possibly a part of the Territorial Army, but not expressly stated as such in the documents available.

<sup>152</sup> The names of the perpetrators vary from document to document. The above listing is therefore subject to these variations.

Barzulla and then the Shri Maharaja Hari Singh [SMHS] hospital. After that the residents of the area went to the hospital where the victim was undergoing an operation. After the surgery, the doctors shifted him to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura where the doctors declared him brought dead. An autopsy report confirmed death by shooting. The victim was shot from a close range, and he was shot in his legs, shoulders and inside his mouth.

The family of the victim believes that the motive behind the killing of the victim was that he used to pass by the camp in the early hours of the morning, and may have identified someone at the camp as working with the army. They believe he was taken out of his room through the window. The family also states that Subedar Surinder Sinha camped at Soitang headed the patrol party that killed the victim.

#### *Case Progress*

The army filed First Information Report [FIR] no.63/2003 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 at the Nowgam Police Station on 1 May 2003 that on the intervening night of 30 April 2003 and 1 May 2003 a militant had been injured in firing while another militant escaped<sup>153</sup>. The FIR, according to the family of the victim was “misleading and concocted” and was filed by Major Srivastava of the 119<sup>th</sup> Battalion Assam Regiment under the signature of Lieutenant Verma, the head of the Soitang Camp.

The victim’s family lodged FIR no.64/2003 u/s 302 [Murder], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] at the Nowgam Police Station on 1 May 2003 against Lieutenant Verma, which the police first refused to lodge, and only on the intervention of a Minister was it finally registered<sup>154</sup>. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police [DSP], Headquarters, Srinagar that a chargesheet had been filed in the case and that the Home Department had raised some observations which were being rectified, following which the case would be resubmitted for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The Deputy Commissioner of Budgam ordered an enquiry on 10 May 2003 and the Assistant Commissioner, Budgam was appointed as the enquiry officer. The enquiry report was submitted on 12 August 2003 and confirms that the victim was not involved in any militancy activity and was killed without justification by Subedar S. Sinha and his associates.

On record is a report sent to the Deputy Commissioner, Srinagar on 19 July 2003 from the Senior Superintendent of Police [SSP], Srinagar. This states that the victim was not involved in militant activities, as claimed by the army. It also states that investigation on both cases [the FIR filed by the army and the victim’s family] is ongoing. The report also states that FIR no.63/2003 was based on a

<sup>153</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>154</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

written report from a “Major Sh. Wastoo” of the 119 Battalion Assam Regiment, Camp “Soitong” which suggested that the victim was a militant and was killed in cross firing.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Service Writ Petition (SWP) 1842/2003]<sup>155</sup>. The petition sought the status of the investigations, action to be taken and compensation/ compassionate employment under SRO-43 [Statutory Rules and Orders] for the brother of the victim. The petition was dismissed on 21 February 2006 for non-appearance.

An application was filed subsequently for its restoration and the petition was restored. The response of the State of Jammu and Kashmir before the High Court stated that compassionate employment for the brother of the victim could not be allowed as the victim was a minor at the time of his death. The petition remains pending in the High Court.

The alleged perpetrators 3 to 11, based on the State of Jammu and Kashmir’s representations before the High Court, were chargesheeted u/s 302 [Murder] and 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC]. In relation to the FIR filed by the family, the Ministry of Defence, on an order of the High Court, filed an affidavit before the High Court in 2009 on sanctions for prosecution, and stated that this case remained under consideration with regard to alleged perpetrators 3-7 and 10-11 listed above. Sanction for prosecution of alleged perpetrators 3 to 11 was sought from the Ministry of Defence, by the Jammu and Kashmir Home Department, on 16 July 2007.

On 3 January 2011, as per a 10 January 2012 response to a RTI, the Ministry of Defence declined sanction with regard to “Sub Surendre Sinha” and stated that “the individual killed was a militant from whom arms and ammunition was recovered. No reliable and tangible evidence has been referred to in the investigation report”.

The FIR filed by the army was closed as not admitted.

The family approached the State Human Rights Commission [SHRC] on 2 September 2003 and a final decision was issued on 26 February 2004 based on a report of the Inspector General of Police [IGP], Kashmir, which recommended ex-gratia government relief of Rs. 2,00,000 to the family of the victim and compassionate employment under SRO-43 [Statutory Rules and Orders]. On 17 March 2009 the National Human Rights Commission [NHRC] directed payment of Rs. 3,00,000.

#### *Case Analysis*

The two documents on record that may be analyzed, in a case where no charge sheet was filed in a court [although a case appears to have been made out against alleged perpetrators 3 to 11], are the SHRC judgment of 26 February 2004 and the Assistant Commissioner, Budgam enquiry report of 12 August 2003.

The SHRC found that the factum of the death of the victim was established, and that the victim was not a militant and was not involved in any anti-national activities. The SHRC decision was based, in part, on a report from the IGP, Kashmir which found that the deceased was not involved in any militancy related activities. But, the SHRC placed “complete reliance” on the Assistant Commissioner, Budgam’s enquiry report of 12 August 2003, and recommended ex-gratia government relief of Rs. 2,00,000 and

<sup>155</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

compassionate employment under SRO-43 [Statutory Rules and Orders].

Before the Assistant Commissioner, Budgam, the army claimed that there had been cross firing and that the victim, a militant, had died. The army also confirmed that the person leading the patrol party was Subedar Surinder Sinha.

Besides the statement of the father of the victim, the enquiry also recorded the statements of three lecturers who had taught the victim. They all testified to the character of the victim and that he had never taken part in anti-national activity. Similarly, the principal of the educational institution provided, by letter, the same testimony to the enquiry.

An interesting argument was also raised by Major Srivastava, when he claimed that the BSF had visited the house of the victim at 10:30 pm for questioning. This was raised to suggest that the security forces were honourable in their intentions, thereby suggesting that the questioning the night before adds credibility to the army version of cross-firing with militants. But, the BSF, through a letter, denies that any BSF party conducted any visit to the victim's house on that night. The enquiry then concludes that "there is default/hand of army in killing the deceased". Subedar Surinder Sinha, despite being called by the enquiry to testify, did not do so.

The enquiry finally concluded that the victim was not a militant, was killed by Subedar Surinder Sinha and the patrolling party without any justification and crucially that the superior officers were informed.

The final document of relevance is a letter to the Deputy Commissioner, Srinagar, dated 19 July 2003 from the SSP, Srinagar, which confirms that the victim was not involved in "subversive activities".

Therefore, the enquiries on record conclusively indict Subedar Surinder Sinha, his associates, and Major Srivastava and Lieutenant Verma for their role as supervisors who appeared to cover up the killing of the victim. These indictments appear to call into doubt the Ministry of Defence position of 3 January 2011, while declining sanction. Further, contrary to the documents on record, the Ministry of Defence accepts the position of the army that the victim was a militant.

The final point to be made would be on the discrepancies, in names of the perpetrators and for whom the sanction was sought. This is apparent from the sanction documents and other representations. These discrepancies, while possibly unintentional, further complicate the matter. Particularly when one considers that the sanction, it could be argued, was denied only in the case of "Sub Surendre Sinha", as his is the only name mentioned in the denial of sanction document. It is also noteworthy that the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 53

### *Victim Details*

Mohammad Hussain Ashraf [Abduction and Enforced Disappearance]

Age: 22

Occupation: Carpet weaver

Son of: Mohammad Yousuf Ashraf

Resident of: Ashraf Mohalla, Mir Behri, Rainawari, Srinagar

### *Alleged perpetrators*

1. Captain G. Rathee, Adjutant, 7 Para, Rashtriya Rifles [RR], Army
2. Colonel Rajbeer Singh, 7 Para, Rashtriya Rifles [RR], Army
3. V. K. Mishra, MT Unit, Army
4. Naik [Corporal] Balbir Singh, 7 Para, Rashtriya Rifles [RR], Army
5. Havaldar Balakrishna Sohan [Retired], 7 Para, Rashtriya Rifles [RR], Army

### *Allegations in Brief*

Mohammad Hussain Ashraf was picked up by the personnel of the 7 Para, RR, Khrew Camp, on 24 May 2003 at Sempora, Balhama while he was waiting to board a vehicle for his residence. Mohammad Hussain Ashraf was picked up in vehicle no. 98-B-065366 P and has disappeared since. Mohammad Hussain Ashraf had no affiliations with any militant organization.

### *Case Progress*

The family of Mohammad Hussain Ashraf filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) 17/2003] seeking directions to the respondents to identify the location of Mohammad Hussain Ashraf<sup>156</sup>. The respondents contended that Mohammad Hussain Ashraf "deranged, mentally unbalanced", was lifted by the army on 24 May 2003 but was released as he was mentally unsound. Further, that a report was lodged on 28 May 2003 at the Pantha Chowk Police Station.

On preliminary enquiry, it was found that Mohammad Hussain Ashraf was lifted by the 7 Para, Khrew Camp in a vehicle bearing registration no. 98-B-065366 P. On further enquiry by the police it was ascertained that after the arrest the whereabouts of the arrested person were not revealed and thereafter a First Information Report [FIR] no. 34/2003 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 120-B [Criminal Conspiracy], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was registered at Pantha Chowk Police Station<sup>157</sup>. During the investigations, "Army Captain Adjutant for CO (G. Rathee)", revealed that Mohammad Hussain Ashraf was arrested but then released after being found to be "mentally retarded". On 11 November 2003 an enquiry was ordered, and conducted by the 1<sup>st</sup> Additional Sessions Judge, Srinagar [the date the enquiry report is unclear].

The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was chargesheeted on 30 May 2011. Further, the investigation documents provided refer to Naik [Corporal] Balbir Singh, 7 Para RR and Havaldar [Retired] Balakrishna Sohan, 7 Para RR, as the persons accused of the crime as they arrested the victim and they say they had handed him over to their officers at the Badami Bagh Cantonment, Army.

### *Case Analysis*

The document on record that may be analysed is the enquiry report.

<sup>156</sup>Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

<sup>157</sup>Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and other investigation documents were provided.

The enquiry report begins by stating that notices were issued to the Commanding Officer, 7 Para, RR. The Commanding Officer did not choose to associate with the enquiry but submitted a reply/rejoinder. It was stated that on 24 May 2003 a Quick Reaction Team [QRT] from 15 Corps Battle School consisting of troops of 7 Para was directed to accompany a Mahindra jeep for repairs at Choudhary Motors located at Sempora. The jeep belonged to the 15 Corps Battle School, Khrew. While the troops were deployed at Choudhary Motors, a civilian truck driver informed the QRT that person had threatened him and had boasted that he was a terrorist. When the QRT approached the truck, this person jumped out and started running. He was pursued and caught. He was found to be mentally unsound and he was left there and allowed to go.

The Commanding Officer has denied that the person was picked up and taken in the vehicle. He admitted that the relatives of the person visited the unit in Shershali and they were politely informed that the troops had not picked up and detained any person on 24 May 2003.

The Government of Jammu and Kashmir and its functionaries were represented by the Additional Public Prosecutor during the enquiry. Further, the Station House Officer [SHO], Pantha Chowk Police Station, submitted his reply and it was stated that a preliminary enquiry was conducted and it was found that the victim was lifted by the 7 Para, RR, Khrew Camp. Thereafter, an FIR was registered. During investigations the statements of witnesses were recorded. The officers of the army did not respond to requests for information. But, by communication dated June 2003, "Captain Adjutant for Col. G. Rathee" to the Senior Superintendent of Police [SSP], City East, it was stated that Mohammad Hussain Ashraf was in a truck and had threatened the driver by calling himself a terrorist. The QRT team approached the truck, chased after him, caught him but on finding him mentally retarded, they released him. But, crucially, the SHO stated that during investigation Mohammad Hussain Ashraf was found not to be mentally unsound.

During the enquiry, witnesses were led on behalf of the petitioner in the matter, in addition to the petitioner's evidence. No evidence was led by either the Government of Jammu and Kashmir or the Commanding Officer, 7 Para, RR. Below is a summary of the relevant evidence:

- Ghulam Mohammad Ashraf, who lived in the same neighbourhood of Mohammad Hussain Ashraf and employed him in his carpet weaving centre at Mir Behari as a weaver, stated that Mohammad Hussain Ashraf was mentally sound. The witness heard about the abduction of the victim "last year" [it is unclear when his testimony was recorded] from Ali Mohammad, a resident of Balhama, whose house Mohammad Hussain Ashraf had gone to. All efforts to trace him were made but to no avail. During the cross-examination by the Additional Public Prosecutor, the witness stated that Mohammad Hussain Ashraf had been working as a carpet weaver for the last ten years and was not associated with any political or militant organization.
- Irshad Hussain, living in the same neighbourhood as Mohammad Hussain Ashraf and working as a carpet weaver, stated that "last year" [it is unclear when his testimony was recorded] in the month of May Mohammad Hussain Ashraf had gone to the residence of his relative, Ali Mohammad Bhat at Balhama. The next day, on 24 May 2003, Ali Mohammad Bhat came to the residence of the petitioner and told him that the army had picked up his son. The petitioner and his wife went to Balhama where they got the confirmation of the arrest of their son. The next day the witness himself went to Balhama and learnt that the army had picked up Mohammad Hussain Ashraf

on the road side at Sempora, "near the Crasher [crusher]". A work shop was also located there. The abduction was confirmed by the mechanics of the work shop. The army personnel had come to the work shop to repair their vehicle. The mechanics said that the army had taken Mohammad Hussain Ashraf "to village" and he was not handed over to any person nor let off. Mohammad Hussain Ashraf was mentally sound and was working as a carpet weaver. Mohammad Hussain Ashraf was not remotely connected with militancy and was not a member of any political organization. A search was launched for Mohammad Hussain Ashraf but he was not traced. During the cross-examination by the Additional Public Prosecutor, the witness stated that he had known Mohammad Hussain Ashraf for the last seven / eight years and had good relations with him and used to visit his house.

- Yasir Ahmad Malik, a mechanic at the Choudhary work shop at Sempora, stated that about "one year ago" [it is unclear when his testimony was recorded] RR personnel came to the work shop to repair their vehicle. In the meantime the RR personnel brought a boy to the work shop and interrogated him there. They then took the boy along with them in the vehicle. The army had come in one Mahindra Jeep and truck. A few hours later the army once again came to the workshop and asked the witness and others to show them the way towards Balhama as they wanted to hand over the boy to the person with whom the boy had stayed the night with. The witness and another mechanic, Shabir Ahmad Bhat, accompanied the army personnel to Balhama. The boy had told the army that he had stayed for a night at Balhama with a person who owns the rice husking machine. On reaching Balhama the army told the witness and Shabir Ahmad Bhat to go back. The boy was not released by the army in the presence of the witness and nor was he handed over to the person with whom he had stayed for the night. The following day, the petitioner and his wife came to the workshop to enquire about the boy. The witness, Shabir Ahmad Bhat and the manager of the work shop took them to Balhama. The petitioner and the manager also went to the RR Camp. There they were told to go to another RR Camp at Khrew. The boy was not released. The witness also stated that during the interrogation at the work shop the boy had not been beaten by the RR personnel. During the cross-examination by the Additional Public Prosecutor, the witness stated that the boy was not a militant and was 20/21 years old.
- Shabir Ahmad Bhat, a mechanic at the Choudhary work shop at Sempora, stated that "last year" [it is unclear when his testimony was recorded] RR personnel came to the work shop for repairing their Mahindra vehicle which had developed some defects. They had also come in a military truck. The manager of the work shop, Zubeer Abas, told the witness to start repairing the vehicle. Meanwhile, the army had picked up "the boy" and brought him to the work shop. The boy was interrogated by the army. Thereafter, the army took the boy along with them in their vehicle. The boy was about 22/23 years old. The boy was not released by the army at the work shop. After one or two hours the army returned to the work shop. They sought assistance to find their way to Balhama so that the boy could be handed over to the person with whom he had stayed the night. The witness and "Mohammad Yassir" accompanied the army in a jeep. Another jeep and a truck followed this jeep. The boy had told the army that he had stayed at Balhama with a person who owned a rice husking machine. On reaching Balhama and the house of the person who owned the rice husking machine, the witness and the person accompanying him were asked to return. The army did not release the boy in the presence of the witness and nor was he handed over to any person. "Next or 3rd day" the petitioner came to the work shop to enquire about the boy. The manager, the witness, the petitioner and his wife [Khazri]

went to the RR Camp, Khrew. The petitioner and manager went inside while the others waited outside. The army told them to go to another camp situated at Sheer village. At that camp they were told that their officer was not present in the camp. They then returned to the work shop. The petitioner and his wife came several times after this to search for the victim. The witness did not accompany them to the army camp again. The boy was not beaten during the interrogation by the army at the work shop. During the cross-examination by the Additional Public Prosecutor, the witness stated that the boy was not carrying any arms when he was brought to the work shop.

- Ali Mohammad Bhat stated that in the year 2003, “after the month of Muharram on the day of festival at Dargah”, Mohammad Hussain Ashraf came to his house at Balhama and stayed there for a night. The witness was related to Mohammad Hussain Ashraf. On the following morning, Mohammad Hussain Ashraf left his house and the witness was later informed that Mohammad Hussain Ashraf had not reached his house but was arrested by the army near Sempora. On the same day, at 3:00 pm, the army along with the victim raided his house but no illegal items were found. Mohammad Hussain Ashraf was then taken back by the army i.e. he was not released or handed over to the witness. The witness then informed the petitioner about the events. The petitioner then proceeded to search for the victim but could not trace him anywhere. Mohammad Hussain Ashraf was mentally sound. The army had picked up Mohammad Hussain Ashraf a little away from the work shop at Sempora. During the cross-examination, the witness stated that Mohammad Hussain Ashraf was not associated with any organization. The witness had no knowledge on which battalion the army personnel belonged to.
- Nissar Ahmad, the Station House Officer [SHO] of Tral Police Station, stated that in the year 2003 he was posted as Division Officer of Police Division Khrew. On 25 May 2003, the petitioner came and informed him that his son had been picked up by unidentified army near Sempora. The witness instructed him to approach the Pantha Chowk Police Station. On 29 May 2003, the witness returned and informed him that he had approached the 32 RR and 15 CBS. He came to know that the victim had been picked up by the 7 Para army on 24 May 2003 near Sempora and was taken in vehicle no.98/B/06536P. “He” [it is unclear whether this is a reference to the witness or the petitioner, but more likely the witness] contacted the Colonel of the 7 Para, Rajbeer Singh [alleged perpetrator no. 2] and Captain Rathee [alleged perpetrator no.1] who confirmed that the victim had been picked up at Sempora, near Choudhary Motors, on suspicious basis and then had been let off at the same place. On being asked in whose presence the victim had been released or to whom he had been handed over, both the army officers could not give a satisfactory reply. Thereafter, he informed the SHO, Pantha Chowk Police Station of the matter. No damage was done to his testimony during the cross-examination by the Additional Public Prosecutor.
- Nissar Ahmad, SHO Pantha Chowk Police Station, stated that in November 2003 he was posted as SHO, Pantha Chowk Police Station. On 24 May 2003, the petitioner had lodged a report on the abduction of the victim near Sempora by the army in jeep no. 98-065366. Preliminary enquiry was conducted by the then SHO “Nizir Ahmad” who found that Mohammad Hussain Ashraf had been picked up by the 7 Para army but was not released. FIR no. 34/2003 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was registered and initial investigation was conducted by “Nazir Ahmad”. Statements of witnesses were recorded, and on his transfer, the witness took up the investigations in November. These investigations confirmed the abduction and the fact that Mohammad Hussain Ashraf had not been released. The version

given by the army, of the release of the victim, was found to be incorrect. Further, while it was not found that Mohammad Hussain Ashraf was mentally sound, sufficient evidence was collected to show him to be a “normal human being” not suffering from any mental disease and he was not mentally unsound. Further, the driver of the jeep was found to be V.K. Mishra [alleged perpetrator no. 3] who belonged to the MT Unit. The driver was not produced before the witness but the army stated in writing that he had been transferred to some other unit [it would appear to a 7 Para RR unit stationed outside Agra]. The army had not cooperated with the investigation. During cross-examination by the Additional Public Prosecutor the witness stated that evidence had been found to show that the victim was not a militant nor associated with any organisation.

- Mohammad Yousuf Ashraf, the petitioner and father of Mohammad Hussain Ashraf, stated that his son, aged 22, was a labourer and carpet weaver. On 23 May 2003 he had gone to the residence of Ali Mohammad Bhat. On 24 May 2003, Ali Mohammad Bhat informed the witness that Mohammad Hussain Ashraf had been arrested by the army at Sempora. The witness went to Balhama to enquire after his son. He was asked to contact the Khrew Camp of the army. He lodged a report with the SHO, Pantha Chowk Police Station. He also received information about the events on 24 May 2003 from Yassir Ahmad Malik and Shabir Ahmad. The witness went on the “next day” along with police and his wife to the RR Khrew Camp. The police went inside, while he and his wife waited outside. The police came out and informed him that the army informed them that Mohammad Hussain Ashraf was in the custody of 7 Para. The witness along with the police went to the 7 Para army and were told to come the next day. The Officer of the 7 Para army came to the police station and confirmed to the witness that Mohammad Hussain Ashraf was in their custody and asked the witness to come to the camp on the following day to collect Mohammad Hussain Ashraf. On the next day he went to the 7 Para army camp and met Colonel Rajbeer Singh but Mohammad Hussain Ashraf was not handed over. The witness was told that the boy had been released. No damage to his testimony was done on cross-examination by the Additional Public Prosecutor.

Based on the above evidence, the enquiry report confirms the abduction of Mohammad Hussain Ashraf and confirmed that Mohammad Hussain Ashraf remained in the custody of the 7 Para army personnel.

Further, the version given by Colonel Rajbeer Singh was found to be contrary to facts. Mohammad Hussain Ashraf was not a militant and was mentally sound. The 7 Para RR army was accountable for the disappearance of Mohammad Hussain Ashraf.

Before further analyzing the enquiry report, a few comments need to be made:

- The testimony of Yasir Ahmad Malik on Mohammad Hussain Ashraf antecedents, i.e. not being a militant, appear to not be based on any personal knowledge as the witness does not appear to know Mohammad Hussain Ashraf.
- Witness Shabir Ahmad Malik refers to a “Mohammad Yassir” accompanying him with the army personnel to Balhama. Despite the minor discrepancy in the name, it would seem reasonable to conclude that this was witness Yasir Ahmad Malik. But, Shabir Ahmad Malik’s version of events after the petitioner came to the work shop differs in some respects from Yasir Ahmad Malik’s version. Yasir Ahmad Malik states that he was a part of the group that accompanied the petitioner and his wife that day, whereas Shabir Ahmad Malik does not include

him. Further, Yasir Ahmad Malik states they went to Balhama and then a RR Camp and then finally to the RR Camp at Khrew. Shabir Ahmad Malik does not mention going to Balhama and he states they went to the Khrew Camp first and then to the camp at Sheer village. Further, Yasir Ahmad Malik appears to suggest that only the manager and the petitioner went to the RR Camp while Shabir Ahmad Malik states that the entire group was present. Further, the petitioner's evidence seems to contradict these two witnesses as well in terms of the camps approached and the persons present.

Despite the above inconsistencies, the enquiry report's conclusions appear reasonable. The role of V. K. Mishra [alleged perpetrator no. 3] is clear. Colonel Rajbeer Singh [alleged perpetrator no. 2] and V.K. Mishra [alleged perpetrator no. 3] also appear to have knowledge of the abduction of the victim.

Further, their role in the incident must be considered in light of the fact that they were unable to produce any evidence of the release of the victim by personnel under their command.

In these circumstances, they would also be reasonably indicted. Naik [Corporal] Balbir Singh, 7 Para RR [alleged perpetrator no.4] and Havaldar [Retired] Balakrishna Sohan [alleged perpetrator no.5] have been found involved the crime through investigations.

In addition to why it took eight years for a chargesheet to be filed in this case it needs to be ascertained whether the chargesheet led to any prosecutions.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 54

### *Victim Details*

Manzoor Ahmad Mir [Abduction and Enforced Disappearance]  
Occupation: Mason  
Son of: Ghulam Mohammad Mir  
Spouse: Haseena  
Resident of: Tantray Pora Delina, Baramulla District

### *Alleged perpetrators*

1. Captain Atul Sharma [Operational name: Sameer], In-charge, 22 Rashtriya Rifles [RR], Army, Camp Delina
2. Mohammad Yousuf Mir, Government backed militant [Ikhwan]
3. Manzoor Ahmad Mir, Government backed militant [Ikhwan]

### *Allegations in Brief*

Manzoor Ahmad Mir was picked up from his house on 7 September 2003 and has subsequently disappeared. The family of the victim states that Captain Atul Sharma, along with two Ikhwan's, Mohammad Yousuf Mir and Manzoor Ahmad Mir, and 20 to 25 soldiers of the 22 RR arrived at the victim's residence at about 10:30 pm and arrested the victim. No incriminating material was found in the house. The family of the victim approached the 22 RR for the release of the victim, but he was not released. The family also states that after the abduction Captain Atul Sharma was shifted to a camp at Bomai, Sopore

A body identified to be that of the victim was exhumed from the 22 RR camp on 6 July 2006 [on the site allocated for the construction of a hospital]. The family identified this body as being that of the victim based on certain identifiers. The family also provided their blood and other samples to the Government on 29 July 2006 for the purposes of establishing the identity of the body exhumed, but they are yet to get a confirmation that the body was indeed that of the victim. Two months subsequent to sending the samples, the brother of the victim approached SSP, Baramulla, Muneer Khan and DSP [Operations] Junaid who informed him that the DNA testing report did not match the dead body with the victim. The family of the victim also states that after about one year of the abduction of the victim, the Commanding Officer [said to be an uncle of Captain Atul Sharma] of an army camp at Sopore sought to compromise with the family of the victim for a sum of Rs. 2,50,000. The brother of the victim also says that he was harassed and a false case of possession of arms and ammunitions was almost placed on him, but due to the intervention of certain higher authorities, he was able to escape being falsely implicated.

The family of the victim gave a statement to the IPTK on 29 December 2011.

### *Case Progress*

FIR no. 224/2003 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>158</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police stated that the case had been chargesheeted.

The State Human Rights Commission [SHRC] was also approached by the family of the victim, and on 30 December 2004 the SHRC recommended ex-gratia government relief of Rs. 1,00,000 to the next of kin of the deceased and compassionate employment under SRO-43 [Statutory Rules and Orders].

Further, the family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 402/2005] for action on the recommendations of the SHRC. The final order of the High Court was delivered on 17 April 2006 with an "observation" that the recommendations of the SHRC may be implemented.

A charge sheet was split against Captain Atul Sharma, being from the army, and against the other two alleged perpetrators, being non-army personnel. The charge sheet was produced before the Sessions Judge, Baramulla on 20 December 2003. The Sessions Judge, Baramulla, on 9 October 2004, framed charges against Mohammad Yousuf Mir and Manzoor Ahmad Mir.

The family of the victim filed another petition before the High Court [OWP 380/2006]. This petition was filed against a 31 August 2005 order of the Sub-Judge, Judicial Magistrate, Baramulla which stayed proceedings on the charge sheet against Captain Atul Sharma and stated that "no proceedings can take place against the accused" till necessary prosecution sanction is obtained [although the petition itself is wider and refers to issues relating to investigations as well]. Therefore, no cognizance was taken of the charge sheet. The High Court, on 21 April 2007 found complete non-application of mind with regard to this order and stated that the Magistrate "should not have acted on the application of the Army, as the Army was not a party before the court at all". The order was therefore quashed. But,

<sup>158</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

mistakenly, the High Court, while clearly referring to the 31 August 2005 order, ordered that a 9 October 2004 order be quashed. A review petition was filed against this order.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution, stated in relation to this case that sanction had been declined in February 2009. The Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution, stated in relation to this case that sanction had been declined on 23 February 2009. Further, that the allegation was motivated by vested interests to malign the image of security forces. Neither any operation was carried by any unit in the area nor any person was arrested as alleged.

The family of the victim filed a petition before the High Court [OWP 1091/2011] and challenged the denial of sanction<sup>159</sup>. The Union of India and Captain Atul Sharma denied that they had any role to play in the incident.

#### *Case Analysis*

The SHRC in its order of 30 December 2004 found in favour of the victim's family and confirmed the allegations made. This confirmation was based on the charge sheets filed against the accused, and a report received from the Inspector General of Police [IGP], Kashmir dated 16 July 2004. The IGP's report, based in turn on a report by the Senior Superintendent of Police [SSP] Baramulla, states that during the course of investigation the army authorities were requested several times to cooperate with the investigative agency but did not. The report states that "as per evidence collected a case was prima-facie established against Captain Atul Sharma of 22 RR and others". The report also states that "in view of the circumstantial evidence the issue is suspicious as the person has been eliminated and also the corpse has been destroyed as the same could not be recovered". Also of value is a reference in a letter dated 17 December 2003 from the police authorities in Baramulla to the Deputy Commissioner, Baramulla that the victim was not found to be involved in any subversive activities. But, the family of the victim state that they are yet to receive any benefits recommended by the SHRC.

Therefore, it would appear to be unfortunate that in a case where the police authorities, and the SHRC, have found in favour of the victim and indicted the alleged perpetrators, the Ministry of Defence has denied sanction for prosecution of the main accused, Captain Atul Sharma. Further, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

The only discernible reason for the denial of sanction appears to be that there was no operation carried out by the concerned unit and that the victim was not arrested. It is difficult to understand how the Ministry of Defence reached this conclusion as the material before it, presumably the chargesheets prepared by the police, indict the alleged perpetrators. Further, the family of the victim state that they have not been provided the benefits ordered by the SHRC. Also, the

<sup>159</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

family state that Mohammad Yousuf Mir and Manzoor Ahmad Mir have received bail. Therefore, despite an early indictment of all three accused persons, two are released on bail, with no indication of the trial reaching completion, and sanction has been declined for prosecution of Captain Atul Sharma. Further, over the last six years the State has failed to produce the results of the DNA tests on the body exhumed.

## Case No. **55**

#### *Victim Details*

Tahir Hassan Makhdoomi [Extra-Judicial Killing]  
Age: 23  
Occupation: 1<sup>st</sup> yr BA student/part time farmer  
Son of: Ghulam Hassan Makhdoomi  
Spouse: Afroza  
Resident of: Tujjar Sharief, Sopore, Baramulla District

#### *Alleged perpetrators*

1. Major Rajinder Singh [Operational name: Major Rajiv]<sup>160</sup>,  
22 Rashtriya Rifles [RR], Army, Camp Bomai, Sopore,  
Baramulla District

#### *Allegations in Brief*

The family of Tahir Hassan Makhdoomi sought permission for the wedding of the victim on 10 and 11 September 2003 from the Major of the 22 RR Bomai Camp on 9 September 2003. It is pertinent to mention that in the rural areas of Jammu and Kashmir the army had implemented a policy that villagers were to seek the prior permission from the concerned local army camp for organizing any functions where guests would be invited and there would be late night activities.

The wedding of the victim ended on 11 September 2003. At around 4:30 am on 12 September 2003 the family of the victim states that their house was raided by soldiers from the 22 RR, Bomai Camp. The family states that the soldiers were sent by Major Rajinder Singh. The soldiers claimed that the victim would be released by 7:00 am. While the family protested, they were beaten and the victim was taken away. Over the next few days the family approached the Bomai Camp. But, while the soldiers accepted that the victim was in their custody, he was not released. The family of the victim was asked repeatedly over three days to return at a subsequent time. No other information of the victim was provided.

Around 5:00 am on 15 September 2003, Major Rajinder Singh came to the house of the family of the victim and informed the father of the victim that his son had been an informer for the army and had died in an explosion during an anti-terrorist operation at Yemberzalwari. Subsequently, the left leg of the victim, the only part of his body that could be recovered from the explosion, was provided to the family of the victim. Based on the information provided by Major Rajinder Singh, only the victim was killed in this incident. Nobody from the army was injured or killed.

The family of the victim states that the reason that the victim was killed was because of an angry exchange of words between Major Rajinder Singh and the victim's father two or three months prior to

<sup>160</sup> The spelling of the alleged perpetrator is taken from the State Human Rights Commission [SHRC] final decision of 2 November 2006. The family of the victim spells the name slightly differently as "Rajendra".

the incident. During a crackdown, Major Rajinder Singh referred to the victim's father as a "Jamaati" to which the victim responded that it was not unlawful to be a member of the Jamaat-e-Islami. On this, Major Rajinder Singh had threatened the victim's father.

Subsequent to the death of the victim, Major Rajinder Singh approached the uncle of the victim to compromise. But, the compromise was not accepted.

The family of Tahir Hassan Makhdoomi gave a statement to the IPTK on 24 December 2011.

#### *Case Progress*

First Information Report [FIR] no. 321/2003 u/s 302 [Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station following orders from the Chief Judicial Magistrate [CJM], Sopore<sup>161</sup>.

On 19 March 2005, the Additional District Magistrate, Baramulla, stated that based on a police report there was nothing adverse found against the victim.

On 2 November 2006, the State Human Rights Commission [SHRC], having taken suo moto cognizance, issued a final decision and recommended ex-gratia government relief of Rs. 2,00,000, compassionate employment under SRO-43 [Statutory Rules and Orders] to the family of the victim, and directed the police to file a charge sheet against Major Rajinder Singh.

The family of the victim has received Rs. 1,00,000 and the compassionate employment under SRO-43 [Statutory Rules and Orders] to date. Also, of note, is the suo-moto cognizance taken by the SHRC again on 10 December 2007 on the same matter. By decision dated 12 August 2009, the SHRC noted that the family of the victim had received ex-gratia government relief [without specifying the amount received] and compassionate employment under SRO-43, and disposed off the matter by stating that the investigations must be brought to a logical conclusion.

The National Human Rights Commission [NHRC] took suo-moto cognizance on the case on 19 September 2003. The Secretary, Ministry of Defence, was asked to submit remarks on the case<sup>162</sup>. The progress of the suo-moto cognizance before the NHRC remains unclear.

#### *Case Analysis*

The SHRC decision of 2 November 2006 is presently the only document on record for the purposes of analysis. This decision is based on the report to the SHRC from the Director General of Police [DGP], Jammu and Kashmir on 3 January 2005. The report states that two FIR's, one from the family of the victim [321/2003], and the other from the 22 RR [322/2003<sup>163</sup>] had been investigated. The FIR from the army refers to the victim being an informant and dying during an operation. It also states that five soldiers were injured. The report of the DGP, Jammu and Kashmir states that during

<sup>161</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>162</sup> The Tribune, Chandigarh, <http://www.tribuneindia.com/2003/20030921/nation.htm#5>, 20 September 2003.

<sup>163</sup> Information on FIR no.322/2003 at Sopore Police Station was sought through RTI on 2 July 2012. No information was provided.

investigations under FIR no. 321/2003, offences had been prima facie established against Major Rajinder Singh and others. With regard to FIR no. 322/2003 the report states that while statements of army personnel had been recorded, no details on the alleged injured soldiers had been provided.

Before considering the manner in which the SHRC dealt with this report, it is clear that this report implicates Major Rajinder Singh and others of the 22 RR. Further, the army version of events, while not specifically refuted by the police, appears highly improbable considering that despite the passage of close to two years [from the date of the incident to the submission of the report of the DGP, Jammu and Kashmir to the SHRC], the army does not appear to have provided information regarding the others injured during the operation.

The SHRC concluded that "certain things are obvious". First, that the victim had been taken into custody by the 22 RR headed by Major Rajinder Singh. Second, that it "had been admitted by the police authorities that Tahir Hussain Makhdoomi was murdered during the custody". The SHRC continued to state that "Even if we believe the version of Army, it does not absolve them from the responsibility of protecting a man in their custody... Once a man is jailed or is in the custody of the police his human rights does not cease at all." The SHRC therefore strongly indicted Major Rajinder Singh and directed the police to file a charge sheet against him.

The allegation that the victim was an informant is untenable considering that the victim was forcibly abducted from his residence. Further, for the three days when the family was continuously approaching the Bomai Camp, they were never informed that the victim was serving as an informant for the army or that he had been sent on an operation. The branding of the victim as an informant appears to have been aimed at deriving impunity for the armed forces and simultaneously discrediting and thereby disabling the family from seeking social support.

Despite the clear indictment of the alleged perpetrator, as accepted by the police in 2005, it appears that no action has been taken to date. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **56**

#### *Victim Details*

Mohammad Yousuf Kumar [Abduction, Torture and Enforced Disappearance]

Age: 35

Occupation: Islamic Scholar

Son of: Abdul Razzak Kumar

Spouse: Fatima

Resident of: Pogal, Banihal, Ramban District

#### *Alleged perpetrators*

1. Major Samlok Dass, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
2. Commandant [Commanding Officer] Sharma, Army, Nachlana, Headquarters
3. Captain Chouhan, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
4. Subedar Rampaul, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
5. Naik [Corporal] Manoj Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal



6. Sepoy Sandeep Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
7. Sepoy Mohinder Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal

#### *Allegations in Brief*

On 10 January 2004 Mohammad Yousuf Kumar, along with his brother Ghulam Mohammad Kumar, was on his way to Jammu when he was picked up by personnel of the 23 RR at Kot Pogal. The victim and his brother were taken to the Government High School at Pogal and tortured by Major Samlok Dass. Their house was raided but no recovery was made. The family of Mohammad Yousuf Kumar also claims that the victim was subsequently moved to the Ukhral Tehsil camp in Pogal, Banihal where he was kept for a day. Following this, he was again shifted to the headquarters at Nachlana where he was lodged for another two days. Commanding Officer Sharma interrogated him and sent him back to Major Samlok Dass. Major Samlok Dass and Sepoy Mohinder Singh tortured the victim again in his cabin. On 16 January 2004, Ghulam Mohammad Kumar was released.

The whereabouts of the victim are not known to date. The family of the victim believes, as stated in an unsigned statement to the IPTK, that the persons responsible for the death of the victim are those named above.

#### *Case Progress*

A First Information Report [FIR] no. 15/2004 u/s 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine], 343 [Wrongful confinement for three or more days] Ranbir Penal Code, 1989 [RPC] was filed at the Banihal Police Station following public pressure<sup>164</sup>. By communication dated 15 June 2012 from the Jammu and Kashmir Police it was stated that this case was still under investigation by Crime Branch, Jammu.

The family also filed a petition before the Srinagar bench of the High Court of Jammu and Kashmir seeking completion of investigations in the case. But, it was dismissed as the brother of the victim had filed another petition before the Jammu bench of the High Court.

The State Human Rights Commission [SHRC] was also approached by the family and on 2 January 2008 the SHRC recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] to the family and recommended that investigations be carried out by the Crime Branch against "Major Dass and his associates".

#### *Case Analysis*

The SHRC decision of 2 January 2008 provides an indictment that may be analyzed. The SHRC heard the testimony of Mohammad Iqbal Kumar who stated that the victim was killed because he imparted religious education to children which offended the personnel of the 23 RR. The SHRC also considered the report of the Superintendent of Police [SP], Ramban who stated that "Major Dass of Ukhral camp admitted that during patrolling they met Mohammad Yousuf" who subsequently admitted to them that he had contacts with the militants and "when they launched the operation Mohammad Yousuf was with them and he ran away from their camp". Crucially, SP, Ramban's report states that three army persons "Subedar Rampaul, Naik Manoj Singh and Sepoy Sandeep Singh" were questioned and confirmed that the victim was brought to the

"army post Ukhral" on 10 January 2004 by a party under Major Dass. On 11 January 2004 he was taken to the battalion headquarters at Nachlana. On 14 January 2004 he was brought back to Ukhral army post but he escaped during the night.

The SHRC, based on the above, indicted Major Dass and the RR personnel with him at Ukhral camp. The SHRC stated that "Major Dass was in command of this camp" and that the explanation of disappearance "is not only irrational, fantastic but is meritless" and that "the country does not require the services of such officers like Major Dass and the personnel with him". The SHRC also stated that "we are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped and killed". "The law of presumption speaks sharply against Major Dass's explanation that he ran away in darkness". The SHRC stated that "it clearly means that they killed him and destroyed his very existence in a convenient manner".

A few points may be made in analysis of the above judgment of the SHRC. First, it must be mentioned that the SHRC based its above findings, partly, on a constant reference to the victim having been in custody for "14 days".

Based on the evidence before the SHRC it is difficult to understand the basis for this. Nonetheless, and the second point of interest, is that it is clear that the fact that the victim was with the personnel of 23 RR is beyond doubt.

Further, the fact that he was shifted from Ukhral camp to the headquarters at Nachlana, and then back, is also clear. Finally the role of Major Dass is also clearly established. What remains, and this may well be borne out by investigations that were recommended by the SHRC, is the role of the other persons that the family accuses in this incident. Based on the present evidence, and their statements to that affect, Subedar Rampaul, Naik Manoj Singh and Sepoy Sandeep Singh may find themselves accused of being accomplices. But, the role of Captain Chouhan is still to be ascertained. Further, whether the victim was first taken to the Government High School at Pogal is also yet to be ascertained.

In conclusion therefore, while acknowledging the role and need for further investigations, the SHRC judgment is a clear indictment of the army in the presumed killing of the victim and the role of Major Samlok Dass appears to be beyond doubt. But, despite the passage of eight years there appears to be no progress on the investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **57**

#### *Victim Details*

[Name withheld] [Torture and Rape]  
 Age: 16 [at the time of the incident]  
 Daughter of: [Name withheld]  
 Resident of: Zachaldara, Kupwara District

#### *Alleged perpetrators*

1. Deputy Superintendent of Police [DSP], Altaf Ahmad Khan [now Superintendent of Police (SP)], Jammu and Kashmir Police

<sup>164</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012.

2. Constable Parveena, Handwara Police Station [currently working in Criminal Investigations Department (CID)], Jammu and Kashmir Police
3. Constable Haleema, Handwara Police Station, Jammu and Kashmir Police

#### *Allegations in Brief*

Mushtaq Ahmad Wani was killed on 4 June 2004. The victim was picked up on 3 July 2004 from her school by the alleged perpetrators and taken to the Zachaldara Police Post. Abdul Qayoom Bhat, a cousin of the victim, and a surrendered militant, was arrested in relation to the killing of Mushtaq Ahmad Wani.

The victim was kept at the Police Post for three hours. Constables Parveena and Haleema beat her with wooden sticks. DSP Altaf Ahmad Khan was present at this time. The victim was beaten all over her body. DSP Altaf Ahmad Khan then asked Constables Parveena and Haleema to leave the room and he told them he would extract the statement from the victim himself. DSP Altaf Ahmad Khan beat the victim and then started tearing her clothes. The victim's shirt and pyjama were removed and she was thrown on the floor. The victim asked for water and she was given water with salt and chilli. A heavy roller was rolled over the victim's legs. During the beatings by DSP Altaf Ahmad Khan the victim spat on his face against his sexual advances. The victim was kicked in her abdomen by DSP Altaf Ahmad Khan and this resulted in her falling unconscious. Subsequently, the victim realised that she had been raped while she was unconscious as she was bleeding profusely from her vagina.

Following the events, the victim was hospitalized for close to fifty days where she was operated upon and her uterus was removed.

#### *Case Progress*

Following protests, the victim was allowed to go to the Handwara Police Station. The victim filed an application but no First Information Report [FIR] was recorded.

The victim approached the State Human Rights Commission [SHRC] and on 19 November 2008 the final decision was issued where it was stated that the victim had been subject to "the worst type of human rights violations at the hands of two lady constables and the DSP Altaf Ahmad Khan". The SHRC recommended appropriate relief and an enquiry by a senior administrative/police officer. The victim received Rs. 75,000 as relief.

#### *Case Analysis*

In a case where no FIR has been lodged, and apparently no investigations conducted, the proceedings at the SHRC may be analysed.

On 31 January 2008, the SHRC received a report from the Inspector General of Police [IGP], Kashmir dated 24 June 2005 which stated that the victim was summoned to the Zachaldara Police Post and when she stated that she was passing through her menstrual course she was let off. The victim contested this report before the SHRC.

The SHRC therefore set up an enquiry to be conducted by the Sub District Magistrate, Handwara. The enquiry was conducted by the Assistant Commissioner, Handwara where a "number of witnesses" were examined. The SHRC in its final decision refers to the testimony of only two of the witnesses [in addition to narrating the complaint of the victim herself]: Dr. Mohammad Yousuf and Dr. Mohammad Farooq. Dr. Mohammad Yousuf stated that the victim was brought to the hospital at about 2:00 pm. She had multiple

bruises and "haematomas" on her entire body. Dr. Mohammad Farooq also corroborated this testimony and confirmed signs of torture on the victim's body. The SHRC concluded that the victim had become "the worst type of human rights violations at the hands of two lady constables and the DSP Altaf Ahmad Khan".

Also, on record is a certification from the Sub-District Hospital, Handwara, dated 23 August 2006, which states that the victim was admitted in the hospital on 3 July 2004. She was found to have multiple bruises and haematomas on her whole body. She had intermittent vomiting and "LOC". "Haemodynamically she was having hypertension". She was also having "fear psychosis".

The SHRC decision while indicting the alleged perpetrators [but only DSP Altaf Ahmad Khan is referred to by name], lacks rigorous analysis and is unfortunately vague when referring to the "worst type of human rights violations". The victim had complained of torture and molestation. The SHRC decision, in addition to not discussing the other witnesses examined, does not in detail spell out the torture and molestation that took place. Further, despite receiving the complaint from the victim on 24 March 2005 and the response from the IGP, Kashmir, on 24 June 2005, the SHRC ordered an enquiry almost three years later on 31 January 2008.

Notwithstanding the weaknesses in the SHRC decision, it does serve as an indictment on the alleged perpetrators [particularly DSP Altaf Ahmad Khan as he is specifically named in the SHRC decision]. But, despite the SHRC recommendation for an inquiry, it appears no investigations have taken place. Further, DSP Altaf Ahmad Khan was promoted as a SP, awarded the Director General of Police's Commendation Medal for 2010, Gallantry award on 26 January 2012, a Presidents Police Award for Gallantry on 15 August 2012, but has multiple accusations against him of human rights violations while he was posted in the Sopore area of Baramulla District. In the extra-judicial killing of Nazim Rashid Shalla, DSP Altaf Ahmad Khan was implicated in the case and transferred from Sopore.

## Case No. **58**

#### *Victim Details*

Abdul Rehman Padder [Abduction and Extra-Judicial Killing (Fake Encounter)]

Age: 36

Occupation: Carpenter

Son of: Ghulam Rasool Padder

Resident of: Drawai, Nyamatpora, Larnoo, Kokernag, Anantnag District

#### *Alleged perpetrators*

1. Senior Superintendent of Police [SSP] Hans Raj Parihar, Ganderbal, Jammu and Kashmir Police
2. Deputy Superintendent of Police [DSP] Bahadur Ram Kaith, Special Operations Group [SOG], Jammu and Kashmir Police
3. Assistant Sub-Inspector [ASI] Farooq Ahmad Gudoo, In-charge Special Operations Group [SOG], Jammu and Kashmir Police, Camp Sumbal
4. Farooq Ahmad Padder, Source for Senior Superintendent of Police [SSP] Hans Raj Parihar
5. Manzoor Ahmad Malik, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Sumbal
6. Bansi Lal, Personal Security Officer [PSO] of DSP Bahadur Ram Kaith

7. Zaheer Abass Choudhary, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Sumbal

*Allegations in Brief*

The family of Abdul Rehman Padder states that on 8 December 2006 the victim called his sister at about 9:00 am and informed her that following his noon prayers at the Hazratbal shrine he would meet Farooq Ahmad Padder at his rented residence in Chitrashahi, Batamaloo, regarding a job opportunity for which the victim had paid Rs.75,000. The victim stated that he would call once again at 2:00 pm. When the victim did not call at the promised time, the family of the victim began their search for him. A colleague of the victim, Ghulam Ahmad Wani, informed the family that on that day he went along with the victim to the Batamaloo market, following which the victim informed him that he was to go and meet Farooq Ahmad Padder regarding a job opportunity. This was at about 2:00 pm. Following this, the family of the victim contacted Farooq Ahmad Padder and inquired about the victim. Farooq Ahmad Padder assisted them by taking them to various places to look for the victim. On 14 December 2006, on the suggestion of Farooq Ahmad Padder, the family approached the Batamaloo Police Station and filed a missing report.

Following investigations, the family learnt that Farooq Ahmad Padder had been responsible for the abduction of the victim and he had received Rs. 1,20,000 from the other alleged perpetrators for his role in the abduction.

Subsequently, in January 2007, the body of the victim was exhumed from a graveyard in Sumbal, Bandipora District. Abdul Rehman Padder was killed in a fake encounter by the alleged perpetrators, buried and given the false identity of Abu Hafiz, a foreign militant. Following the arrest of Farooq Ahmad Padder, the family of the victim faced threats and intimidation from his family.

The family of Abdul Rehman Padder gave a statement to the IPTK on 2 February 2012.

*Case Progress*

First Information Report [FIR] no. 133/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Ganderbal Police Station on 9 December 2006 wherein the deceased Abu Hafiz, resident of Multan, Pakistan, was shown to have been killed in an encounter<sup>165</sup>.

The 9 July 2012 communication from the Jammu and Kashmir Police states that investigations were carried out by the then Superintendent of Police [SP] South, Srinagar and were closed as not admitted.

Following a missing report filed in the Batamaloo Police Station, FIR no. 6/2007 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the same Police Station on 23 January

2007 regarding the abduction of the victim and a Special Investigation Team was constituted to investigate the case<sup>166</sup>.

On 8 March 2007 a charge sheet against the above listed alleged perpetrators was submitted before the Senior District and Sessions Judge, Srinagar. The trial is ongoing. SSP Hans Raj Parihar and DSP Bahadur Ram Kaith filed criminal transfer applications before the High Court, Jammu and Kashmir, seeking that the trial be transferred out of Kashmir, to Jammu or any other jurisdiction. The reasons provided were lack of legal assistance in Kashmir and the prejudicial atmosphere in Kashmir against them. On 25 April 2007 the applications were not granted and were dismissed<sup>167</sup>.

The family of the victim received ex-gratia government relief of Rs. 1,00,000. The SSP, Anantnag, conducted a verification of the victim and found on 3 January 2007 that he was not involved in any militant or subversive activities and there was nothing adverse on record against him. A similar report was submitted by the SSP, Srinagar on 28 April 2007. The family of the victim also states that they are litigating the issue of compensation before the High Court.

The Justice [retired] M.L.Koul commission was constituted to enquire into the instant case, along with others, in 2007, but was shut down in 2008 with no conclusion.

*Case Analysis*

The charge sheet in the case forms the only document on record for the purposes of analysis. The Special Investigation Team based its investigations on the tracking of the cell phone used by the victim [through the IMEI number] and witness statements collected. The main findings by the Special Investigation Team, as recorded in the charge sheet, are as follows<sup>168</sup>:

- On 6 December 2006, AP 1, 2, 3 and 4 held a meeting at the official residence of AP1 at the SOG Camp, Ganderbal. AP1 paid some amount of money to AP4. Following this payment of money to AP4, AP3 was in continuous contact with him until 8 December 2006.
- AP4 contacted the victim from 6 December 2006 to 8 December 2006 and arranged for his presence at Batamaloo, Srinagar.
- On the afternoon of 8 December 2006, AP6 instructed AP5 to pick up the victim who was walking along with AP4. At this point, in addition to AP4 and the victim, AP 5, 6 and 7 were present. Subsequently, the cell phone of the victim was handed over to AP3.
- The victim was taken to the SOG Camp, Sumbal and specifically to the personal office room of AP3. After some time AP2 also reached the location and went to the personal office room of AP3. After an hour or so, AP2 left Camp Sumbal and headed towards Ganderbal.
- On 8 December 2006 at about 8:00 pm, AP3 directed his men at SOG Camp Sumbal to be prepared for an operation. The victim was made to wear a "Khan dress and a Pheran". His hands were tied. A pouch carrying magazines and a diary purportedly written by the victim were also tied around his waist. The victim was then taken to village Waksoora, Ganderbal by AP 3, 5, 6 and 7 and other personnel of the SOG. The victim was taken to an orchard in the village. At about 11:00 pm the victim was shot by AP5. AP5 on finding the face of the victim not disfigured,

<sup>165</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>166</sup> Information on this FIR was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>167</sup> *Hans Raj Parihar and Anr. v. State*, 2008 CriLJ 2673.

<sup>168</sup> The alleged perpetrators are referred to as AP followed by the number as listed above.

and identifiable, instructed AP7 to open fire on the face of the victim. The instructions were carried out. At 11:10 pm, following the killing of the victim, AP3 contacted AP2. An AK-series weapon along with a grenade and wireless set brought from the SOG Camp, Ganderbal were kept beside the body of the victim to show that the victim was a Pakistani terrorist.

- On 9 December 2006 at about 3:00 am the body of the victim was taken to the SOG Camp Sumbal and kept there till the morning. On 9 December 2006, FIR no. 133/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Ganderbal Police Station wherein the deceased Abu Hafiz, resident of Multan, Pakistan, was shown to have been killed in an encounter.
- A cash reward of Rs. 1,00,000 was paid to the encounter party.
- On 1 February 2007 the body of the victim was exhumed. DNA experts from CFSL, Chandigarh submitted their opinion that the body was that of Abdul Rehman Padder.
- The ammunition of the AK-Series shown to have been recovered from the alleged Pakistani terrorist was found to bear the same number as that of the ammunition issued to the SOG Sumbal Camp.
- The seven alleged perpetrators were arrested.

Based on the above findings the Special Investigation Team concluded that a criminal conspiracy was hatched in December 2006 by the alleged perpetrators to kill the victim with the object to receive “appreciation, cash rewards, besides retaining their posting at lucrative places”. The cash reward of Rs. 1,00,000 received by AP1 and 2 was distributed amongst all the alleged perpetrators.

Further, it was found that AP4 had assisted the family of the victim in the search of the victim only for the purposes of escaping criminal liability and gaining sympathy. FIR no. 133/2006 was closed as not admitted and the final report of the case was submitted before Chief Judicial Magistrate, Srinagar on 27 February 2007.

Finally, the Special Investigation Team also states that “the investigation has also found and detected serious defaults on part of the officers/officials of DPL [District Police Lines] Srinagar and Police Station Ganderbal against whom a departmental enquiry has been recommended”.

The charge sheet filed above in this instant case serves as a categorical indictment not just on the specific alleged perpetrators but also on the state of affairs in the Jammu and Kashmir where cash rewards have served to incentivize extra-judicial executions.

The brazenness of the circumstances is further highlighted by a reference in the charge sheet to a further attempt to cover up the killing.

The charge sheet states that soon after the matter of the fake encounter was discovered, AP1 managed, on 4 January 2007, to write an application to the Home Minister of the State, endorsed by the Member of the Legislative Assembly of Pampore, in the name of the victim and purportedly bearing his thumb print. This was done to create the impression that the victim was alive.

The preliminary investigations in this case suggest that other people could have been killed in a similar manner for awards and other incentives and buried into unmarked, unidentified graves in Jammu and Kashmir.

Of particular significance in the case of alleged perpetrator Hans Raj Parihar is that he was implicated in other cases, which are referred to

in this report, and yet he received, as per publicly available information, the Director General of Police’s Commendation Medal for 2001.

## Case No. 59

### *Victim Details*

Manzoor Ahmad Wani [Grievous hurt (bullet injury)]  
Age: 30  
Occupation: Salesman, Hardware shop  
Son of: Mohammad Abdullah Wani  
Resident of: Bumthan, Mir Bazaar, Anantnag District

### *Alleged perpetrators*

1. Rifleman Mukesh Singh, 36 Rashtriya Rifles [RR], GARH RIF, Camp Larkipur, Anantnag

### *Allegations in Brief*

On 10 December 2006, Manzoor Ahmad Wani was cleaning up the shop when two soldiers appeared and one of them, Rifleman Mukesh Singh, caught hold of the collar of the Manzoor Ahmad Wani and abused him without any reason.

When Manzoor Ahmad Wani protested, the soldier threatened to shoot. The soldier cocked his gun and shot. Manzoor Ahmad was rushed to the District Hospital, Anantnag, and was then referred to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Srinagar. His left kidney and spleen were completely shattered and his large intestine was also affected. Both the kidney and spleen were removed.

Manzoor Ahmad Wani gave a statement to the IPTK on 29 April 2012.

### *Case Progress*

First Information Report [FIR] no. 270/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Qazigund Police Station<sup>169</sup>.

The Head of General Surgery, SKIMS, Srinagar, issued a certificate on 13 December 2006 that stated that Manzoor Ahmad Wani had received grievous injuries [“loss of spleen and one kidney”]. Further, that the victim was liable to recurrent infections and due to removal of one kidney he was liable to have a possible renal failure.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 973/2007] seeking the completion of investigations and payment of Rs. 10,00,000 compensation<sup>170</sup>.

Further, a Summary General Court-Martial [SGCM] was instituted in October 2008. But, the victim has no knowledge of the findings of the court-martial. But, by letter dated 18 June 2012, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI], information was provided by the Judge Advocate General Department that Rifleman Mukesh Singh was found “Not Guilty”.

<sup>169</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>170</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

Manzoor Ahmad Wani approached the State Human Rights Commission [SHRC] on 29 November 2007 and a final decision was issued by the SHRC on 22 July 2008. Ex-gratia government relief of Rs. 75,000 was recommended. Manzoor Ahmad Wani received Rs. 75,000 from the Government of Jammu and Kashmir and Rs. 50,000 from the army.

#### *Case Analysis*

In addition to the medical certificate issued on 13 December 2006 that confirms the injuries sustained by Manzoor Ahmad Wani, the SHRC final decision of 22 July 2008 serves as an indictment of Rifleman Mukesh Singh.

The SHRC decision begins with a narration of the Manzoor Ahmad Wani's testimony. Manzoor Ahmad Wani submitted to the SHRC that Rifleman Mukesh Singh asked him to show his identity card and also "to put off the clothes". Manzoor Ahmad showed his identify card but refused to "put off the clothes" [in his statement to the IPTK the Manzoor Ahmad Wani has stated that he was asked to lift his *pheran*]. The Rifleman Mukesh Singh then said "you Kashmiris are born to die" and fired at the victim. The Director General of Police [DGP], Jammu and Kashmir, Srinagar submitted a report dated 27 May 2008 to the SHRC. This report states that the Rifleman Mukesh Singh asked Manzoor Ahmad Wani to show his identity card but he showed him his election card. The Rifleman Mukesh Singh insisted that another identity card be displayed, there was a "heated exchange", following which the Rifleman Mukesh Singh shot at Manzoor Ahmad Wani.

The chargesheet, following investigations, in the case was produced before the Judicial Magistrate 1<sup>st</sup> Class, Qazigund on 30 November 2007. The victim was found not to have been involved in any subversive activity till date. Based on the above, the SHRC found that the case against the Rifleman Mukesh Singh was "clearly established".

The SHRC final decision, and the production of a chargesheet before the competent court, therefore strongly indicts the Rifleman Mukesh Singh in the instant case. But, it appears that the case was transferred to a Court-Martial, where despite strong evidence against the alleged perpetrator, he has been acquitted. Further, it is unclear if the acquittal of Rifleman Mukesh Singh was agitated by the State or the army itself.

## Case No. **60**

#### *Victim Details*

Abdul Qayoom Lone [Extra-Judicial Killing]

Age: 32

Occupation: Driver, Health Department

Son of: Abdul Samad Lone [deceased]

Spouse: Saleema Begum

Resident of: Watlab, Sopore, Baramulla district

#### *Alleged perpetrators*

1. Constable Anil Ramachari, 179<sup>th</sup> Battalion, Central Reserve Police Force [CRPF], Camp Chinkipora

#### *Allegations in Brief*

The family of Abdul Qayoom Lone states that on 25 August 2007 at about 6:00 pm the victim was returning home with his friend Mohammad Ayoub Khan on a motorbike. Mohammad Ayoub Khan

was riding the motorbike, with the victim sitting behind. Their motorbike almost had an accident with a CRPF vehicle at Lalbab Sahib, Chinkipora, Sopore. There was an exchange of words and a Sepoy with the CRPF, Satpal Singh, slapped the boys. Subsequently, they were allowed to proceed, but were stopped and checked by the CRPF on two further occasions on the same road. Following the third occasion of interacting with the CRPF, Constable Anil Ramachari of the CRPF fired at the victim and his friend as they rode away on their motorbike. The victim died as a result of the shooting. While there were eye-witnesses to the event, the eye-witnesses did not identify Constable Anil Ramachari during the identification parade before the police. The family believes this was due to fear of reprisals against them.

The family of Abdul Qayoom Lone also states that persons from the CRPF had offered the family money to compromise on the case, which they refused to do.

#### *Case Progress*

First Information Report [FIR] no. 275/2007 was filed at the Sopore Police Station u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC]<sup>171</sup>.

The family of Abdul Qayoom Lone states that during the identification parade before the Executive Magistrate [Tehsildar, Sopore] the eye-witnesses identified Sepoy Satpal Singh but not Constable Anil Ramachari. The family of the victim states that this was due to the witnesses being afraid and being harassed. Further, statements were made by the eye-witnesses before the District and Sessions Judge, Baramulla.

The family of Abdul Qayoom Lone filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 918/2007], seeking that the investigations in the case be completed and that the Union of India, the 179<sup>th</sup> Battalion of the CRPF and Constable Anil Ramachari cooperate with the investigative agency.

While the Government of Jammu and Kashmir and Jammu and Kashmir Police confirmed that the incident had taken place, they submitted before the High Court that investigations were ongoing and that the 179<sup>th</sup> Battalion CRPF was not cooperating. Letters from the Station House Officer [SHO], Sopore Police Station to the Additional Superintendent of Police [ASP], Sopore, confirm that there was indiscriminate firing on the victim.

The Union of India, 179<sup>th</sup> Battalion CRPF and Constable Anil Ramachari denied the entire incident. On 29 September 2009, the High Court ordered that cooperation be provided to the investigative agency and that the investigation be completed within three months.

On continued non-conclusion of the investigation, the family filed a contempt petition [no.153/2010] before the High Court. The Government of Jammu and Kashmir and the Jammu and Kashmir Police continued to claim that they had not received cooperation from the Union of India. Further, they confirmed that while the witnesses had identified "HC/GD Satpal" during an identification parade, others [that included "Ct/GD Anil Ramachari"] were not identified. Further, that the 179<sup>th</sup> Battalion CRPF in their Court of Inquiry had found none of their personnel guilty. On 27 September 2011, the High Court ordered that cooperation be provided, and that investigation be concluded in six weeks. This petition remains pending.

<sup>171</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The State Human Rights Commission [SHRC], after being approached by the family, issued its final decision on 1 April 2010 and recommended ex-gratia government relief of Rs. 1,00,000 and other benefits due to the victim by virtue of his employment with the Health Department. The family has received the Rs. 1,00,000.

The family of Abdul Qayoom Lone gave a statement to the IPTK on 19 December 2011.

#### *Case Analysis*

The instant case provides an interesting example of the challenges that families of victims face in Jammu and Kashmir.

On one hand the incident itself appears to have been witnessed by other persons. But, if the family of the victim is to be believed, the witnesses, due to fear, have not identified Constable Anil Ramachari.

On the other hand, the investigations in the case continue to drag on despite High Court rulings setting deadlines for investigations, and ordering cooperation. The role of the Union of India and the 179<sup>th</sup> Battalion of the CRPF in this case has been criticized by the Government of Jammu and Kashmir, and acknowledged by the High Court. But, what is perhaps most curious in this case is the role of the police investigating the case. This would become apparent on considering the SHRC decision of 1 April 2010.

The SHRC begins by considering the reports filed before it by the Director General of Police [DGP], Jammu and Kashmir, the SHO of Sopore Police Station and the Deputy Commissioner, Baramulla.

The SHRC states that during investigation the basic facts of the case – the death of the victim due to the indiscriminate firing of the CRPF – have been made out. The SHRC then states that “Constable Anil Ramachari...is identified by the eye witnesses as accused who fired upon Abdul Qayoom Lone”.

The SHRC then states, based on the SHO, Sopore Police Station report that the victim was not involved in any subversive activities. This matter of the eye-witnesses naming Anil Ramachari as the person who fired at the victim is confirmed by the DGP, Jammu and Kashmir letter to the SHRC on 2 September 2008 and a letter from the SHO of the Sopore Police Station to the Commanding Officer of the CRPF, 179<sup>th</sup> Battalion, Sopore of 30 August 2007.

Further, the family of the victim received a copy of a document – which also states that Constable Anil Ramachari is the person identified to have killed the victim in the presence of Satpal Singh – from the SHO of Sopore Police Station. This is an unsigned document.

Finally, and relevant to the issue, the family of the victim sought protection for the eye-witnesses in the case from the High Court during the proceedings [under Criminal Miscellaneous Petition (CMP) no.: 986/2008]. The contention was that these witnesses were being harassed.

The High Court on 4 June 2008 asked the SSP, Baramulla to consider the matter and take necessary action.

Therefore, the police accept that the witnesses have named Anil Ramachari.

It is on record that the witnesses appear to have been harassed. Satpal Singh has been specifically identified during the identification parade.

Therefore, the only lacunae in this case, that Anil Ramachari was not positively identified during the parade, would appear to in fact be a case of witnesses, intimidated and harassed, unable to take the final and crucial step of pointing out the alleged perpetrator.

Under these circumstances, it would appear that the system seems unable to deal with this issue and unfortunately, the only outcome might well be a closure report in this case.

The positive identification of Satpal Singh, and that the bullet that was fired and killed the victim was provided to the police [according to the family], should ordinarily have assisted the police in implicating the alleged perpetrator.

The CRPF Court of Inquiry lacks transparency and it is unclear whether in the Court of Inquiry, or during police investigations, Satpal Singh, having been identified, was ever questioned.

If Satpal Singh has suppressed facts in this case, he could also be considered as a co-accused in the case for his role in the killing and subsequent cover up.

The post crime support to the alleged perpetrator and the non-cooperation of the CRPF with the investigations suggests an endorsement of the crime by the CRPF.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Therefore, this case might well serve as another example of one where the systems of justice are unwilling to deal with the realities of justice in Jammu and Kashmir.

## Case No. **61**

#### *Victim Details*

1. Farooq Ahmad Rather [Extra-Judicial Killing]  
Age: 30  
Occupation: Shawl seller/appearing for 12<sup>th</sup> Standard exams  
Son of: Abdul Rehman Rather  
Resident of: Mazhamma, Beerwah, Budgam District

#### *Alleged perpetrators*

1. Constable Jarnail Singh, Special Operations Group [SOG], Magam, Jammu and Kashmir Police

#### *Allegations in Brief*

On 25 June 2008 there was a peaceful protest on the Amarnath shrine land issue about 100 yards from the residence of Farooq Ahmad Rather. A road in the area had been blocked with stones. A police party arrived, removed the stones and then started firing

indiscriminately. They entered the houses in the area and beat the residents. During this indiscriminate firing, a bullet hit the victim while he was sleeping inside his residence. The family of the victim and others immediately attempted to rush the victim to the hospital. They were initially stopped by the police who wanted to take the body from them. This was resisted and the victim was taken to the hospital. The victim succumbed to his injuries. The protest was completely peaceful and there was no stone pelting taking place.

The Senior Superintendent of Police [SSP], Budgam, Ashiq Bukhari, told the family not to agitate the issue and that in return employment would be provided. But, subsequently, SSP Ashiq Bukhari was transferred. The family of the victim blames Constable Jarnail Singh for the death of the victim.

The family of Farooq Ahmad Rather gave a statement to the IPTK on 14 March 2012.

#### *Case Progress*

First Information Report [FIR] no. 80/2008 u/s 149 [Liability for other members of unlawful assembly], 341 [Wrongfully restraining person], 307 [Attempt to murder], 386 [Extortion through fear of death/grievous hurt], 392 [Robbery], 511 [Attempting to commit offence punishable with life imprisonment and in the process doing act towards the commission of offence] Ranbir Penal Code, 1989 [RPC], was filed at the Magam Police Station<sup>172</sup>.

The family of the victim approached the State Human Rights Commission [SHRC] in 2011 and the matter is still pending [the family of the victim filed a rejoinder before the SHRC on 19 March 2012]. To date, they have received Rs.1,00,000 ex-gratia government relief, but no compassionate employment under SRO-43 [Statutory Rules and Orders]. A letter dated 17 August 2008 from the Magam Police Station to the SSP Budgam confirms that there was nothing adverse against the victim in the police records. The final decision was given by the SHRC on 13 June 2012.

#### *Case Analysis*

In addition to the final decision of the SHRC, a series of letters and other documents may be considered.

To begin with, the letter dated 17 August 2008 from the Magam Police Station clearly establishes the innocence of the victim. The application made by the family of the victim before the SHRC, in contrast to the statement given to the IPTK, accepts that there were violent protests in Mazahama village on 25 June 2008. Assuming this to be the position of the family, the remainder of the documents will now be analyzed.

On 13 February 2009 the Superintendent of Police [SP], Budgam, writing to the Deputy Commissioner, Budgam, refers to Constable Jarnail Singh firing some bullets “in air in haste” which resulted in the death of the victim. But, on 22 October 2011, in a letter written by the Director General of Police [DGP], Jammu and Kashmir, Srinagar, to the SHRC, there is no longer any reference to Constable Jarnail Singh although the remainder of the facts remain the same. Consequently, the letter now states that the investigation was concluded and the case was closed by declaring the perpetrators as untraced on 20 February 2011. Therefore, it appears to be a situation of the Constable Jarnail Singh being shielded as within a period of two years he no longer finds mention in the record of the police.

<sup>172</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

The Deputy Secretary, General Administration Department [GAD], Government of Jammu and Kashmir, dated 28 October 2009, to the Deputy Commissioner, Budgam, that states that “SRO-43 covers only the civilians who die as a result of militancy related action and not in civil commotion”, thereby denying any SRO-43 benefits to the family of the innocent victim. The Assistant Commissioner [Revenue], Budgam, by letter dated 16 December 2009, to the SHRC, referred to the position of the GAD and forwarded the 28 October 2009 letter. The family of the victim argued against the position taken by the GAD when filing its submissions before the SHRC. It was argued that this was an inconsistent position taken by the Government of Jammu and Kashmir as there have been numerous instances of SRO-43 benefits being provided in cases such as the instant one [some of these cases may be found in this very report]. Further, granting of SRO-43 benefits only in militancy related cases is discriminatory as there exists no discernible reason that a person killed in a “civil commotion” or at the hands of the armed forces should not be entitled to compensation.

The SHRC final decision begins by referring to the documents on record. In addition to some of the documents referred to above, reference is also made to a letter from the Sub-District Police Officer [SDPO], Budgam to the SP, Budgam which confirms the direct involvement of the alleged perpetrator in the killing of the victim. The SHRC first confirmed the death of the innocent victim by the alleged perpetrator. But, the SHRC considered this to be an “accidental death” and not a cold blooded murder. But, continuing, the SHRC stated that standard operating procedures had not been followed and that the alleged perpetrator must be punished.

Further, the SHRC, commenting on the closure of the case, stated that “the investigating officer cannot hush-up the matter in such a slipshod manner”. The SHRC recommended the reopening of the case for further investigations by an officer not below the rank of a Deputy Superintendent of Police [DSP].

Further, the SHRC stated on the issue of compassionate employment that there can be discrimination and that the family of the victim must also be provided compassionate employment.

This case serves as a strong example of the widely adopted practice in such circumstances when rules on how and when to control a crowd are violated.

Within the context of Jammu and Kashmir, and the past violations in similar circumstances, it is vital that perpetrators of such crimes must not be allowed to be protected under the guise of accidentally causing the deaths of innocent victims.

## Case No. 62

#### *Victim Details*

Manzoor Ahmad Beigh [Extra-Judicial Killing]  
Age: 40  
Occupation: Car broker  
Son of: Abdul Ahad Beigh [deceased]  
Resident of: Begh Mohalla, Aluchi Bagh, Srinagar

#### *Alleged perpetrators*

1. Inspector Khursheed Ahmed Wani, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Cargo, Shergari
2. Hilal Ahmad alias Sahaba, Civilian

### *Allegations in Brief*

On 18 May 2009, Manzoor Ahmad Beigh was abducted from his shop in Khanyar. The brother of the victim was informed at around 1:30 pm, by two friends of the victim that Manzoor Ahmad Beigh had been receiving numerous calls from Inspector Khursheed Ahmed Wani to visit the SOG Cargo Camp, Shergari.

On the day of his killing, the victim, and his two friends went to the camp. While the victim entered the camp, his friends were made to wait outside for more than three hours. They saw a Santro car, with the victim in it, leaving the camp. The victim was taken to the Ramzaan Hospital, where based on the poor condition of the victim he was not admitted, and then taken to the Shri Maaharaj Hari Singh [SMHS] hospital where he was declared dead on arrival. The family of the victim state that the body of the victim bore torture marks.

### *Case Progress*

First Information Report [FIR] no. 32/2009 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at Police Station Karan Nagar<sup>173</sup>.

Following public protests, the District Magistrate, Srinagar ordered an inquiry into the killing. The Additional District Development Commissioner, Srinagar, was appointed as inquiry officer and submitted his report on 25 May 2009 and indicted Inspector Khursheed Ahmed Wani for unnecessarily calling the victim to his camp. But the final conclusion was left subject to the post-mortem report in the case.

A post-mortem report, dated 18 May 2009, was submitted by the Department of Forensic Medicine, Government Medical College, Srinagar. The report states that the victim was brought to the hospital by an auto driver, thereby contradicting the family of the victims' reference to a Santro car. The report stated that there were abrasions on the body of the victim. The report concluded by stating that death was caused due to a massive sub-dural haemorrhage **caused by blunt force**. Also on record is a letter from the Head of Department, Forensic Medicine, Government Medical College, Srinagar, to the Sub-District Police Officer [SDPO], Shaheed Gunj, Srinagar, dated 7 April 2011, which stated that "the fall which deceased had can cause sub dural haemorrhage or sub dural haemorrhage can cause fall". Further, that the "abrasion found where mechanical in nature. The possibility of acquiring abrasion while handling of the body cannot be ruled out".

The State Human Rights Commission [SHRC] took suo moto cognizance of the case on 22 May 2009 and issued its final decision on 5 January 2011. A letter from the Assistant Commissioner, Kashmir, dated 27 June 2009, to the SHRC states that Inspector Khursheed Ahmed Wani had been dismissed from his service by the Government.

The family of the victim approached the Chief Judicial Magistrate [CJM], Srinagar on 9 September 2009 to monitor the investigations of the police. On 26 April 2012, the Special Mobile Magistrate, PT&E Srinagar, took cognizance of the final report of 26 April 2012 submitted by Sub-Divisional Police Officer [SDPO], Shaheed Gunj, the Investigating Officer. The conclusion of the Investigating Officer was that a prima facie case was not made out against any person and the case had been closed. A status report on record of 13 February

<sup>173</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. On 2 June 2012 a copy of the FIR was provided.

2012 suggests that the witnesses, whose statements were recorded, did not testify to physical force being used.

Further, the witnesses do not state that the victim was at any point restrained/assaulted/confined. The Court stated that all the witnesses except one witness had deposed that the death took place in the cabin of Inspector Khursheed Ahmed Wani. The single witness had stated that the death took place in the lobby of the cabin. The Court noted that the victim had died "of his own due to sub-dular haemorrhage". There were no marks of violence on the head of the deceased as noted by two doctors who deposed under Section 164-A [Evidence of material witnesses to be recorded by Magistrate in certain cases] Criminal Procedure Code, 1989 (CrPC). The case was closed as not admitted/not proved. This decision has been challenged in the High Court of Jammu and Kashmir. Notices have been issued to the parties in the case.

### *Case Analysis*

In the instant case, the investigative process may be analysed in addition to the role of the alleged perpetrators.

On record is a 3 December 2011 order of the CJM, Srinagar, monitoring the investigations, which states the following:

- "I am compelled to note here 'Sorry State of things' as regards investigation of the case."
- "If this is to be the pace of investigation, then only God knows when investigation will be completed."
- "The conduct of the investigation cannot be left to sweet will of investigating agency."

Based on the above observations, the Court ordered the Senior Superintendent of Police [SSP], Srinagar to monitor the investigations on a daily basis, submit progress reports fortnightly, and for investigations to be completed within two months. Further, and of particular interest, is a letter dated 25 September 2009 from the Chief Prosecuting Officer, Srinagar to the SDPO, Shaheed Gunj, Srinagar. This letter states that a combined reading of the evidence collected during the investigations suggests that there was a money dispute involving the victim and Hilal Ahmad alias Sahaba. Further, the victim was called to the Cargo Complex by Inspector Khursheed Ahmed Wani.

During his time at the Cargo Complex the victim developed "some complications" and died. The letter continues, in very clear and strong language, to suggest that the investigations must not be concluded until a perpetrator is found as there is evidence to suggest that the death of the victim was not natural. Even if Inspector Khursheed Ahmed Wani is found not to be involved, the investigations must not be concluded. The letter states that "the clinching point which will change the course of investigation is 'the circumstances and the condition of the deceased at the time when he complained of giddiness'. No finding on this point has been returned that is whether he was hit on the head or he fell in a way which exerted force on his head or otherwise". Further, it was stated that till date prima facie evidence had come on record against Inspector Khursheed Ahmed Wani under Sections 166 [Public servant disobeying law, with intent to cause injury to any person] and 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC].

Therefore, this document clearly suggests that atleast on 25 September 2009, the guilt of Inspector Khursheed Ahmed Wani, albeit to a lesser extent, was considered to have been established, but that further investigations were being suggested. It is then unclear why in 2012 the case was considered closed by the investigating authorities, and endorsed by the lower judiciary.



With regard to the event itself, the post-mortem report, despite the more nuanced wording of the 7 April 2011 letter referred to above, clearly suggests that the death of the victim was due to unnatural causes. The references to abrasions and death caused by a blunt force strongly point to this. Further, the SHRC decision of 5 January 2011 may also be considered. The SHRC decision refers to a report from the Director General of Police [DGP], Jammu and Kashmir of 3 September 2009. This report states that:

- The victim had business dealings with another car broker: Saiba resident of Nishat. The victim owed Saiba Rs. 40,000.
- On the morning of 18 May 2009, Inspector Khursheed Ahmed Wani called up the victim and asked him to report at the SOG Camp, Shergari.
- The victim was taken inside the camp, while his friends were made to wait outside.
- "After some time the deceased is believed to have lost his consciousness and was reportedly taken to Ramzaan Nursing Home, Gogjibagh wherefrom he was referred to SMHS Hospital Srinagar where he was pronounced brought dead."
- The victim was not involved in any subversive activity.

The SHRC's investigating wing also conducted investigations and submitted that "the torture of deceased in cargo camp at Srinagar is a stark reality and also the investigation conducted by SDPO Shaheed Gunj Srinagar seems to be biased". The report dated 2 December 2010 states that statements of the following close relatives of the victim were recorded: Mohammad Shafi Pampori, Abdul Qayoom Khan, Abdul Majid Beigh, Imtiyaz Ahmad Bhat and Mushtaq Ahmad Beigh. The witnesses stated that the victim was a car broker and owed Rs. 40,000 to another car broker named Hilal Ahmad Bhat, resident of Brain, Nishat. On 18 May 2009 the victim was asked by Inspector Khursheed Ahmed Wani to report at the SOG Camp, Cargo. The victim went there along with two friends: Mohammad Sultan Shagoo and Sameer Ahmad Bakshi. The victim was taken inside whereas the two friends waited outside. The victim remained inside the camp for more than two hours and as he was leaving the room of Inspector Khursheed Ahmed Wani the victim fell down and lost his consciousness. The witnesses also stated that there were multiple injuries on the body of the victim. The witnesses stated that Inspector Khursheed Ahmed Wani was a close relative of Hilal Ahmad Bhat. The investigating wing also recorded the statements of Dr. Ghulam Qadir Shah and Dr. Mammer. Both Doctors confirmed the injuries on the body of the victim. They also stated that the "death was caused due to a grievous injury on the head of the deceased". They confirmed that the death was caused by a blunt force. The Doctors also gave their opinion that the victim had been tortured.

Inspector Khursheed Ahmed Wani was also given an opportunity to produce evidence. Four witnesses were produced. The witnesses confirmed that the victim owed Rs. 40,000 to Hilal Ahmad.

Further, that Hilal Ahmad "filed an application" before the alleged perpetrator no.1, who then called the victim and directed him to pay the amount. The victim, "while leaving SOG Camp Cargo", fell down and lost his consciousness.

The investigating wing did not find these version of events credible. It was observed that these version of events do not explain how the victim sustained injuries on his shoulders, head, chest, and "intraparenchymal haemorrhage" of his kidneys. It was therefore concluded that the victim had been brutally tortured in custody. Further, that Hilal Ahmad should not have approached Inspector Khursheed Ahmed Wani for assistance. It was concluded therefore

that Inspector Khursheed Ahmed Wani was involved in the commission of the crime.

The SHRC, based on the above, concluded as follows: "There is no doubt that the investigation being conducted by SDPO Shaheed Gunj is a protracted with no intention to conclude the investigation, it will be in the interest of delivery of justice, if the investigation of the case is transferred to State Crime Branch for fair and transparent investigation, as the Inspector Khursheed Ahmad has exceeded his powers in summoning the deceased Manzoor Ahmad Beigh in Cargo camp at Srinagar in settling the matter of a civil nature."

The SHRC decision, similar to the Additional District Development Commissioner, Srinagar inquiry, appears to limit the culpability of Inspector Khursheed Ahmed Wani, despite the unequivocal conclusions of its investigating wing. Considering that it is established that the victim was called by Inspector Khursheed Ahmed Wani to the camp, was seen entering the camp, was declared dead on reaching the hospital, and appeared to have been killed by a "blunt force", the culpability of the alleged perpetrator no.1 should have been concluded to have been for murder.

Nonetheless, despite the apparent slow and faulty investigations being conducted by the police authorities, the available documents appear to strongly point to the guilt of Inspector Khursheed Ahmed Wani. In light of this, the 26 April 2012 decision of the Special Mobile Magistrate, PT&E Srinagar, based it would appear on statements by doctors, is highly questionable. It would appear that the "doctors" had provided contradictory statements during the police investigations under Section 164-A [Evidence of material witnesses to be recorded by Magistrate in certain cases] Criminal Procedure Code, 1989 (CrPC).

Finally, the Additional District Development Commissioner, Srinagar report of 25 May 2009 may also be considered. The conclusions were based on statements of witnesses, relevant portions of relevant witnesses are summarized below:

- Abdul Majid Beigh, brother of the victim, testified to receiving information on his brother on 18 May 2009 from a person named Mohammad Sultan. Further, he states that he saw his brother lying dead in the hospital. Further, that the two persons who had informed him about the incident and the driver of the auto were arrested.
- Mohammad Sultan, stated that on 18 May 2009, while he was with the victim, the victim received a phone call following which he turned pale. The victim told him that he owed Rs.40,000 to a person named Hilal Ahmad alias Sahaba who was now "teasing" him through SOG. Inspector Khursheed Ahmed Wani had called him and directed him to report to him within 10 minutes. The victim then went to the camp along with Sadiq Ahmad, the witness and Sameer Ahmad Bakshi. They went in an auto. The victim entered the camp and the others remained outside. Subsequently, the witness stated that he left the place and only Sameer Ahmad Bakshi remained there [no further mention is made of Sadiq Ahmad]. After one and half hours he called Sameer Ahmad Bakshi to find out what had happened. The victim had not yet been released. The witness called back again in 15 minutes. The situation remained the same. At about 1:30 pm the witness called once again and he was informed by Sameer Ahmad Bakshi that the victim had some heart trouble and was being taken to Ramzaan hospital. He subsequently saw the dead body of the victim at the SMHS hospital.
- Sameer Ahmad Bakshi, testified in a similar manner as Mohammad Sultan but provided some additional details. Sameer Ahmad Bakshi stated that he spoke to a STD shop

owner Imtiyaz Ahmad Bhat and requested him to go into the SOG camp and intervene in the matter. He then left for his house. He returned and spoke with Imtiyaz Ahmad Bhat who informed him that Inspector Khursheed Ahmed Wani had fixed instalments of the borrowed amount but the victim had felt giddy and fell down and had been taken to the hospital.

- Imtiyaz Ahmad Bhat, stated that on 18 May 2009, Sameer Ahmad Bakshi did speak with him and requested him to intervene in the matter relating to the victim and Inspector Khursheed Ahmed Wani. At about 1:40 pm the witness entered the camp and met Inspector Khursheed Ahmed Wani. A discussion took place, with the victim present, the terms of compromise were established, and then the victim felt giddy and fell down.
- Zahoor Ahmad, a constable, stated that he was at the gate of the Cargo camp on 18 May 2009. At 12:00 noon the victim came along with another person. Both of them were allowed inside. He also stated that "the said vehicle came out of the Cargo premises with some persons in it" but he did not see the victim.
- Zamir Hussain Teli, stated that on 18 May 2009 at about 11:30 am he made a phone call to Hilal Ahmad alias Sahaba. Then they met, following which Hilal Ahmad called up Inspector Khursheed Ahmed Wani and then both the witness and Hilal Ahmad went to the Cargo camp. Discussions on monetary transactions took place between the victim and Hilal Ahmad. Following the conclusion of these discussions, the victim felt giddy and fell down.
- Khursheed Ahmad Wani, stated that on 18 May 2009, the victim threatened Hilal Ahmad alias Sahaba, a relative of his. The victim then came to the witness alone, with no one accompanying him. Hilal Ahmad and Zamir Hussain also came to the office. Subsequently, Imtiyaz Ahmad, a STD owner, also came to the room. The transactions were concluded and then the victim felt giddy.
- Mir Mudasir, apparently a friend of a friend of Inspector Khursheed Ahmed Wani testified to the events on 18 May 2009. The witness testified to seeing Hilal Ahmad alias Sahaba and Zamir Hussain. Further, he refers to another person who was called in and discussions took place on monetary transactions. The victim felt giddy and fell down.
- Hilal Ahmad alias Sahaba also testified to the threat he received from the victim and maintained that the victim felt giddy and fell down as he was leaving the office of Inspector Khursheed Ahmed Wani.

The witness statements above do contradict each other in certain respects. Imtiyaz Ahmad Bhat says he went into the camp at 1:40 pm whereas Mohammad Sultan says he called at 1:30 pm and Sameer Ahmad Bakshi told him that the victim was being taken to the hospital. Further, Zahoor Ahmad testified that both the victim and another person, with him, were allowed inside the camp. But, Inspector Khursheed Ahmed Wani contradicts this portion of the evidence as he says the victim came to him alone.

But, the crucial evidence appears to be that of the eye-witnesses. Imtiyaz Ahmad Bhat's testimony clearly favors Inspector Khursheed Ahmed Wani. But, it could be argued that the witness did not have an opportunity to view the entirety of interactions between the victim and Inspector Khursheed Ahmed Wani. Zamir Hussain Teli's evidence is also strongly in favor of the alleged perpetrators but it may well be considered to be biased evidence considering his proximity to Hilal Ahmad alias Sahaba and the fact that since he was present during the interaction he too could be implicated in the crime, if admitted. The same might also be said of Mir Mudasir. Crucially perhaps, Inspector Khursheed Ahmed Wani, in his evidence, **does not state that the victim fell down at any point.** This could be a crucial piece of evidence.

In light of the above documentation in the case, a few key observations may be made: the investigations in the case appear to have been consistently doubted and faulted. The SHRC record, and particularly the evidence of the doctors before the SHRC, strongly point to a unnatural cause for the death of the victim. It is undeniable that the victim was in the custody of the alleged perpetrator no.1, following which he died.

In light of the above, it is clear that the case should not have been closed, and it should have instead been investigated in a fair, professional and thorough manner which does not appear to be the case.

Further, while the statements available on record [during the enquiry conducted by the Additional District Developmental Commissioner] do, in part, favor the alleged perpetrators, it is clear that further investigations would be needed and clearly the involvement of the alleged perpetrators in the murder of the victim cannot be ruled out.

The Special Mobile Magistrate, PT&E Srinagar, without giving an opportunity to the informant [family of the victim], which is mandatory as per law, closed the case.

Finally, in addition to the culpability of the alleged perpetrators in this case, the role of the Doctors also needs to be strongly scrutinized due to their contradictory statements.

## Case No. **63**

### *Victim Details*

Zahid Farooq Sheikh [Extra-Judicial Killing]  
Age: 16  
Son of: Farooq Ahmad Sheikh  
Resident of: Sheikh Mohalla, Brein, Nishat, Srinagar

### *Alleged perpetrators*

1. Commandant Randeer Kumar Birdi, 68<sup>th</sup> Battalion Border Security Force [BSF]
2. Constable Lakhwinder Kumar, 68<sup>th</sup> Battalion Border Security Force [BSF]

### *Allegations in Brief*

On 5 February 2010, Zahid Farooq Sheikh left home to play cricket along with his friends. When they reached the playground they found it wet and decided not to play. All the boys except the victim and Mushtaq Ahmad Wani returned to the locality. The victim and Mushtaq Ahmad Wani went to the Boulevard road and sat on the bank of the lake on the roadside. Three BSF vehicles, a Bolero, a Gypsy and a 407 Matador, coming from Lal Chowk Side stopped in front of them. The Bolero was inscribed with a Hangul [Stag] sign on it. Few BSF personnel asked the boys why they were outside on the day of a strike. The family of the victim states that there was in fact no strike on that day. The BSF personnel then abused them and told them to leave the place immediately. The boys then started to leave. They got afraid and crossed the road for moving back to their locality. At this point, Commanding Officer Randeer Kumar Birdi stepped down from his car and asked Constable Lakhwinder Kumar to open fire on the boys. Constable Lakhwinder Kumar did not fire. Commanding Officer Randeer Kumar Birdi repeated his order upon which Constable Lakhwinder Kumar merely cocked his gun. At this the Commanding Officer Randeer Kumar Birdi abused Constable Lakhwinder Kumar and forced him to shoot. The boys started to run

as they were fired upon by Constable Lakhwinder Kumar. One of the bullets pierced through the victim's chest. Even after the bullets were fired both the boys continued to run for safety and the BSF personnel chased them. The victim collapsed near his locality.

#### *Case Progress*

First Information Report [FIR] no. 4/2010 u/s 302 [Murder], 109 [Abetment], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Nishat Police Station<sup>174</sup>. The 2 June 2012 communication of the Jammu and Kashmir Police stated that the case had been chargesheeted.

An enquiry was ordered in the matter to be conducted by the Divisional Commissioner, Kashmir, Ms. Naseem Lankar<sup>175</sup>.

A charge sheet against the alleged perpetrators was filed before the Chief Judicial Magistrate [CJM], Srinagar on 6 April 2010. An application was moved before the CJM by the BSF to exercise the option of a court-martial by the BSF under the BSF Act, 1968 read with Section 549 [Delivery to military authorities of persons liable to be tried by Court-Martial] Criminal Procedure Code, 1989 [CrPC].

On 25 November 2010 the CJM passed its decision allowing for the court-martial of the alleged perpetrators. The CJM held, firstly, that the visit for an annual medical examination [and the return journey] were a part of the official duty of the alleged perpetrators. Further, the CJM held that the specific instance took place while the alleged perpetrators were on "active duty". On 21 October 2011 the High Court of Jammu and Kashmir [following Criminal Revision Petitions filed [and combined] 30/2010 and 32/2010] confirmed the decision of the CJM<sup>176</sup>. The matter is presently before the Supreme Court.

The BSF instituted a trial by the Security Force Court against the alleged perpetrators. But, the family of the victim refused to testify as they wanted the trial to be conducted by the criminal court in the State.

#### *Case Analysis*

The prima-facie involvement of the alleged perpetrators in the instant case is beyond doubt and uncontested by the BSF. A charge-sheet has been filed and a court-martial process instituted by the BSF. The key issue that faces the family of the victim is whether the BSF has a right to try the alleged perpetrators in the court-martial. Before considering this legal issue, a few remarks may be made on the evidence established in the case thus far:

- The chargesheet filed in the case states that during investigations, Constable Lakhwinder Kumar implicated Commanding Officer Randeer Kumar Birdi. The chargesheet, based on investigations, implicates Commanding Officer Randeer Kumar Birdi u/s 302 [Murder], 109 [Abetment] and 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC], and Constable Lakhwinder Kumar u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC].

- A BSF document on record confirms that on the day of the incident, the Commanding Officer Randeer Kumar Birdi had at his disposal a "Tata 407", "Gypsy" and "Bolero" vehicle, thereby mostly confirming the eye-witness testimony on the three vehicles present at the scene of the crime.
- The Section 164-A [Evidence of material witnesses to be recorded by Magistrate in certain cases] Criminal Procedure Code, 1989 (CrPC) statement of Mushtaq Ahmad Wani [dated 9 February 2010] confirms the details, as recounted above, of the incident. It should be noted that in his statement the witness does not refer to the "Bolero" vehicle at the scene of the crime. This would appear to be a minor inconsistency between the version of the family of the victim and the witness.
- The CJM, in his order, terms the incident as "unfortunate and bizarre". The CJM confirms that the incident took place and states that this was when the BSF personnel were on their way back from the Composite Hospital, Humhama after the annual medical examination of Commanding Officer Randeer Kumar Birdi, to their headquarters at Nishat. The CJM confirms that the victim and his friend were chased for about 50/60 yards, following which on the orders of Commanding Officer Randeer Kumar Birdi, Constable Lakhwinder Kumar shot at and killed the victim. The CJM in his order also states that the alleged perpetrators not only fled from the spot but also concealed the incident and fabricated evidence such as the number of rounds remaining in the gun.

The main argument before the CJM [and then the High Court and presently the Supreme Court] revolves around the legal issue of whether the alleged perpetrators were on active duty during the incident. The BSF authorities argued that the alleged perpetrators were on active duty [Constable Lakhwinder Kumar as a bodyguard for Commanding Officer Randeer Kumar Birdi] as the medical examination came within the term "duty". Reference was also made to a Government of India notification [SO 1473 (E)] dated 8 August 2007 that states that Jammu and Kashmir is an area of active service for the BSF. A detailed analysis of the provisions and the law will not be carried out here. But, the instant case serves as another example of the armed forces not submitting themselves to the civilian court process by interpreting provisions of the law to effectively shield themselves from a transparent prosecution.

<sup>174</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police, a copy of the FIR was provided.

<sup>175</sup> The Tribune, <http://www.tribuneindia.com/2010/20100211/main3.htm>, 10<sup>th</sup> February 2012.

<sup>176</sup> Information on the petition numbers was sought through RTI on 2 July 2012. Information was provided.

## CHAPTER II: PROFILES OF OTHER CASES

Case No. **64**

### *Victim Details*

Raja Ali Mardan Khan [Abduction and Enforced Disappearance]  
Age: 60  
Occupation: Worked at the Co-operative store  
Son of: Wali Mohammad Khan  
Resident of: Bela, Salamabad, Boniyar, Baramulla District

### *Alleged Perpetrators*

1. Major Thapa, 3<sup>rd</sup> Sikh Regiment, Army, Camp Boniyar

### *Case Information*

On 13 May 1990 at about 6:00 pm, Raja Ali Mardan Khan was picked up between the Boniyar market and his residence. In 1990, from the Boniyar market to the residence of the victim, both sides of the road were lined with army camps and bunkers. The regiment in the area was the 3<sup>rd</sup> Sikh Regiment. Persons in the area confirmed to the family of Raja Ali Mardan Khan that he was picked up by army personnel. Raja Ali Mardan Khan has disappeared since. On the evening of his disappearance, his daughter went to the house of Mohammad Shafi Geelani. There was a raid conducted by Major Thapa. Major Thapa asked the daughter of the victim where her father was. She said he would be returning from work. Major Thapa told her he would not return that day. Based on this exchange, the daughter of the victim believes that Major Thapa was responsible for the disappearance of her father.

A report was filed before the Station House Officer [SHO] Baramulla Police Station but no First Information Report [FIR] was filed. The police claim that Boniyar Police Station, based on information from Javed Ahmad Khan, the son of the victim, filed a missing persons report vide no.5 in the police Daily Diary on 18 May 1990.

The daughter of Raja Ali Mardan Khan states that following the incident, the family visited various officials, including the Inspector General of Police [IGP], Kashmir and the Divisional Commissioner, Kashmir. Following this, Major Thapa threatened the family of Raja Ali Mardan Khan and raided their house several times to influence them to not pursue the case. Based on this, the daughter of Raja Ali Mardan Khan is convinced that Major Thapa was responsible for the abduction and disappearance of Raja Ali Mardan Khan.

The son of Raja Ali Mardan Khan filed a petition before the High Court of Jammu and Kashmir in 1995 but did not pursue the case. Another petition was filed by the daughter of Raja Ali Mardan Khan before the High Court for the registration of a FIR, investigations and compensation [Original Writ Petition (OWP) no.618/2005]<sup>177</sup>. The Government of Jammu and Kashmir of Jammu and Kashmir and the police authorities submitted joint objections to the High Court dated 17 April 2006. It was confirmed that a missing report no.5 dated 18 May 1990 was entered in the Daily Diary of the Boniyar Police Station. The police through all available resources conducted the search of Raja Ali Mardan Khan but could not trace him despite

<sup>177</sup> Information on the petition number OWP 618/2005 was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

strenuous efforts. The search was continuing. The petition was dismissed for lack of representation on 7 June 2007.

The family of Raja Ali Mardan Khan received no relief or compensation, as per the statement of the son of Raja Ali Mardan Khan given to the IPTK on 20 February 2012. The daughter of Raja Ali Mardan Khan gave a statement to the IPTK on 17 September 2012.

Raja Ali Mardan Khan resided in an area that falls very close to the Line of Control between the Indian and Pakistani administered Kashmir. The area is under heavy army control. This could explain the fear faced by the family of Raja Ali Mardan Khan that resulted in litigation not being pursued in this matter.

It is significant that without the filing of a FIR for 16 years [and perhaps to date] the police states that the search for Raja Ali Mardan Khan continues. This confirms the disappearance of Raja Ali Mardan Khan. The non-investigation and prosecution has created a cover for Major Thapa.

Further, based on available documents with the IPTK, it appears that the Ministry of Defence, Deputy Commissioner, Baramulla and the 3<sup>rd</sup> Sikh Regiment have not filed any objections to the High Court petition. This displays a disregard for the High Court and the processes of justice.

Case No. **65**

### *Victim Details*

1. Latief Khan [Abduction, Wrongful Confinement, Torture and Enforced Disappearance]  
Age: 45  
Occupation: Fruit business, shop owner and an ex-serviceman [army driver]  
Son of: Yakooob Khan  
Resident of: Chandanwari, Boniyar, Uri, Baramulla district
2. Bashir Ahmad Khan [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 45  
Son of: Ali Akbar Khan  
Resident of: Chandanwari, Boniyar, Uri, Baramulla district
3. Samad Saraf [Abduction, Wrongful Confinement and Torture]  
Resident of: Sangri Colony, Baramulla

### *Alleged Perpetrators*

1. Assistant Commandant Pandey, 46<sup>th</sup> Battalion Central Reserve Force [CRPF]
2. Deputy Superintendent of Police [DSP] S.M. Sahai, Uri [presently Inspector General of Police (IGP), Kashmir], Jammu and Kashmir Police
3. Constable Ghulam Nabi, Jammu and Kashmir Police
4. Constable Mohammad Ashraf, Jammu and Kashmir Police
5. Fareed, Jammu and Kashmir Police [reportedly killed]

### *Case Information*

The family of Latief Khan states that on 14 July 1990 at about 4:00 am a joint group of CRPF and police personnel came to the house of Latief Khan. Assistant Commandant Pandey and DSP S.M.Sahai

were present. Latief Khan was taken out of the house, beaten with a piece of wood and then taken away. The rest of the family was locked inside the house. Further, the beddings in one of the rooms were burnt.

Three police personnel accompanying the group were recognized by the wife of the victim, Latief Khan. They were: Mohammad Ashraf, Ghulam Nabi and Fareed. They were the guards of DSP S.M.Sahai. Subsequently, Bashir Ahmad Khan was picked up from his house, and Samad Saraf [who used to stay at the residence of Latief Khan and work as a salesman at a shop] was picked up from the mosque after he had offered prayers.

All three were taken to the Matches factory, Baramulla. When the family of Latief Khan approached DSP S.M.Sahai they were given various excuses and were told that Latief Khan would be released. He also stated that the CRPF was questioning the victims at the Matches factory, Baramulla.

On 17 July 1990, the body of Bashir Ahmad Khan was found in the Jhelum river. On 31 July 1990, Samad Saraf was released. He informed the family of Latief Khan that at the Matches factory, Baramulla, all three victims had been tortured.

On various occasions, Jaswant Singh, Additional Deputy Inspector General [DIG] of Police, Criminal Investigations Department [CID], Counter Intelligence Kashmir [CIK], Srinagar issued permissions to the family of Latief Khan to meet with the victim at various locations. But, Latief Khan was never found.

Samad Saraf, in an audio recorded interview to the IPTK on 6 March 2012, is unclear of the actual date of abduction ["In the year 1990, May or August either it was 7 August or 8 August"].

Further, a contradiction with the events as recounted by the family of Latief Khan, Samad Saraf states that he was at the house when the police and the CRPF came to the residence of Latief Khan, where he too was staying. DSP S.M.Sahai asked Samad Saraf if Abdul Rashid Querishi had sold ammunition to Latief Khan. Samad Saraf denied the allegation in defence of Latief Khan. Samad Saraf then confirms that DSP S.M.Sahai and others beat Latief Khan. While Latief Khan was being beaten, a police personnel asked whether Samad Saraf was getting late for his morning prayers. Samad Saraf then left for the mosque. After his prayers at the mosque, Samad Saraf was picked up by CRPF personnel and put into a vehicle where he saw Bashir Ahmad Khan. They were taken to the Matches factory camp. At the camp they were interrogated and beaten. Bashir Ahmad Khan was tortured and died in custody. Samad Saraf was shifted to a few locations, interrogated, and asked to name persons who came across the line of control from Pakistan. Subsequently, after "18-19" days, he was released.

Also of interest is a letter sent on 25 September 1990 from Qazi Mohammad Amin, District Magistrate, Baramulla, to M. Rehman, Additional Chief Secretary, Jammu and Kashmir Home Department, which pleads for the release of Latief Khan on behalf of the family. What is of interest in this letter is that the District Magistrate appears to accept that the victim had been picked up by the CRPF and "DySP Uri" on 14 July 1990.

The family of Latief Khan received Rs. 1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders]. The family of Latief Khan gave a statement to the IPTK on 20 February 2012.

First Information Report [FIR] 2/1991 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] Ranbir

Penal Code, 1989 [RPC] was filed at the Uri Police Station on 6 May 1991<sup>178</sup>.

On 10 October 2009, following an enquiry conducted by the Tehsildar, Boniyar, the Sub-Divisional Magistrate, confirmed that Latief Khan was killed in army custody and was declared as dead as on 2 May 1998 [the death certificate lists his death as on 10 April 1999].

The family of Latief Khan filed a petition before the High Court of Jammu and Kashmir [HCP 47/1991]<sup>179</sup>. The Government of Jammu and Kashmir denied the arrest of Latief Khan. On 20 May 1994 a judicial enquiry was ordered. But, the case file was only received by the District and Sessions Judge, Baramulla on 12 August 1999. The enquiry conducted by the District and Sessions Judge, Baramulla was concluded on 20 February 2003 and stated that the applicant was asked to adduce his evidence and was given number of opportunities but failed to do so. The enquiry report concluded that the allegations had not been proved. Based on this report, the High Court dismissed the petition on 1 April 2003.

The family of Latief Khan informed the IPTK that they had sought to produce their evidence before the judicial enquiry. But, on the day they had gone to do so no evidence was heard and they were told that they would be informed on when to return. But, they were not informed subsequently.

Despite the passage of 22 years, there exists no information on record on whether any investigations or prosecutions were carried out in this case by the Jammu and Kashmir Police.

In fact, as per publicly available information, DSP S.M.Sahai was awarded the Director General of Police's Commendation Medal for 1994, Police Medal for Gallantry in 2004, Sher-e-Kashmir Medal for Gallantry in 2007, Sher-e-Kashmir Medal for Meritorious Service in 2011 and the Presidents Medal for Distinguished Service in 2011.

Further, considering the testimony of the family of Latief Khan, the manner in which the High Court ordered judicial enquiry was conducted is open to strong criticism.

The absolute impunity in this case for Assistant Commandant Pandey is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 66

### *Victim Details*

Ali Mohammad Mir [Abduction and Enforced Disappearance]  
Son of: Saif-ullah Mir  
Resident of: Dardpora, Kupwara District

<sup>178</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>179</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

### *Alleged Perpetrators*

1. Suraj Singh / Surjit Singh [Operational name: Jagjit Singh], 66<sup>th</sup> Battalion Border Security Force [BSF], Trehgam

### *Case Information*

On 9 August 1990, Ali Mohammad Mir was picked up by the BSF at Kralapora Market, Kupwara and has disappeared since. First Information Report [FIR] no.11/1992 was filed at the Trehgam Police Station<sup>180</sup>.

The family of Ali Mohammad Mir filed a petition before the High Court of Jammu and Kashmir which was disposed of by an order dated 27 July 1991 that ordered the release of Ali Mohammad Mir.

As Ali Mohammad Mir was not released, another petition was filed before the High Court [HCP 197/1992]. This petition sought the release of Ali Mohammad Mir and an enquiry. The High Court ordered a judicial enquiry by the Chief Judicial Magistrate, Kupwara. The enquiry report was submitted on 28 October 1998 and confirmed the disappearance of Ali Mohammad Mir. The alleged perpetrator [alternatively referred to as Suraj Singh or Surjit Singh] was named by witnesses but a positive finding was not returned. In this petition an order was issued on 27 June 2000 for compensation of Rs. 1,00,000. Further, the High Court confirmed the disappearance of the victim by the personnel of the 66<sup>th</sup> Battalion BSF, Trehgam. A Letters Patent Appeal [LPA] [no.130/2000] was filed by the Union of India against the order on compensation<sup>181</sup>.

After confirming the disappearance of Ali Mohammad Mir by the 66<sup>th</sup> Battalion BSF, the High Court should have continued to monitor the investigations on the FIR. But, instead the High Court limited itself to the issue of compensation.

The approach of the High Court clearly resulted in a denial of justice as it appears no investigations or prosecutions have taken place. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. **67**

### *Victim Details*

1. Ghulam Mohammad Lone [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 40  
Occupation: Carpet seller  
Son of: Ali Mohammad Lone  
Spouse: Zoona Begum  
Resident of: Kripalpora Sri, Pattan, Baramulla District
2. Mohammad Ayoub Khan [Abduction and Torture]

<sup>180</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>181</sup> Information on the petition numbers was sought through RTI on 16 February 2012. No information was provided.

- Son of: Khushi Mohammad Khan  
Resident of: Singhpora, Pattan, Baramulla District
3. Parvez Ahmad Bhat [Abduction and Torture]  
Son of: Ghulam Ahmad Bhat  
Resident of: Kripalpora Sri, Pattan, Baramulla District
4. Farooq Ahmad Dobi [Abduction and Torture]  
Son of: Ali Mohammad Dobi  
Resident of: Sherabad Khour, Pattan, Baramulla District

### *Alleged Perpetrators*

1. Commandant<sup>182</sup>, 46<sup>th</sup> Battalion Central Reserve Police Force [CRPF], Camped at the Matches Factory, Baramulla

### *Case Information*

On 21 August 1990 at about 4:30 pm Ghulam Mohammad Lone alongwith three other persons, Mohammad Ayoub Khan, Parvez Ahmad Bhat, Farooq Ahmad Dobi, were picked up at the Kripalpora national highway road. A CRPF patrol party stopped near them as they were pushing their car on the road and abducted them. They were taken to the Matches Factory, Baramulla.

On 22 August 1990 Ghulam Mohammad Lone's dead body was brought by the Baramulla Police Station to the Pattan Police Station. At 2:30 pm the body was handed over to the family of Ghulam Mohammad Lone. Mohammad Ayoub Khan, Parvez Ahmad Bhat, Farooq Ahmad Dobi were released after three weeks. All of them had been tortured. They confirmed that they were all taken to the Matches Factory where the CRPF was camped. They were tortured separately and heard the cries of Ghulam Mohammad Lone till 2:00 am on the night of 21 August 1990.

The brother of Ghulam Mohammad Lone is not sure of the name of the officer responsible for the crime, but according to him the officer was infamous in the area.

The family of Ghulam Mohammad Lone gave a statement to the IPTK on 15 December 2011.

First Information Report [FIR] no.210/1990 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>183</sup> on 22 August 1990. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced. The FIR, filed by the 46<sup>th</sup> Battalion CRPF, states that Ghulam Mohammad Lone was arrested and taken into custody on 20 August 1990. Two anti-personal mines were recovered from his body. On 21 August 1990 when he was being escorted to the toilet he pushed aside the sentry guarding him and tried to escape. While running he struck an obstacle and fell down and he was overpowered by the sentry. During the scuffle with the sentry he became unconscious and died.

According to a police report on record the post-mortem report was carried out by Medical Officer, Baramulla, Dr. A.R.Wani and vide his report dated 22 August 1990 it was confirmed that the apparent

<sup>182</sup> The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 does not specifically name the alleged perpetrator for whom sanction for prosecution was sought.

<sup>183</sup> Information on this FIR was sought through RTI on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR and closure report was provided.

cause of death as severe beating resulting in blood loss and electric burns leading to shock cardio-respiratory arrest.

Also on record is a letter from the Deputy Commissioner, Baramulla to the Divisional Commissioner, Kashmir that refers to a report from the Superintendent of Police [SP], Baramulla. This report states that the 46<sup>th</sup> Battalion CRPF handed over the dead body of Ghulam Mohammad Lone and stated that Ghulam Mohammad Lone was lifted by them in a “suspected condition” but he tried to escape near the Matches Factory and while running he fell unconscious and died. Further, it was noted that the victim was not involved in unlawful activities.

The family of the victim was given Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs but declined on 25 September 2000.

The text of the application of the 46<sup>th</sup> Battalion CRPF for the filing of the FIR by itself is an admission of the illegal detention and custodial death of Ghulam Mohammad Lone.

The post-mortem report belies exposes the lie of the CRPF regarding the circumstances of the death. In the context of the FIR, post-mortem report and testimonies of witnesses, the decline of sanction by the Ministry of Home Affairs is untenable and serves as an example of institutional support for crimes.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the CRPF.

Finally, instead of further agitating the matter and conducting conclusive investigations the Jammu and Kashmir Police unfortunately has closed the case by declaring the perpetrators as untraced despite having clear evidence against the Commanding Officer of the 46<sup>th</sup> Battalion CRPF and his personnel.

## Case No. 68

### *Victim Details*

Tariq Ahmed Lone [Abduction, Torture and Enforced Disappearance]

Age: 35

Occupation: Fruit Business

Son of: Muhammad Ghulam Nabi Lone [deceased]

Resident of: Wanigam, Bala, Pattan, Baramulla District

### *Alleged Perpetrators*

1. Commandant Kripal Singh, Border Security Force [BSF], Camp Zangam

### *Case Information*

The family of Tariq Ahmed Lone states that on 9 September 1990, at about 6:00 am, a group of BSF personnel led by Commandant Kripal Singh entered the house of Tariq Ahmed Lone. They caught hold of

Tariq Ahmed Lone as he was the only male member in the family present then. He was taken outside the house and near the village mosque. The BSF personnel started to beat him up severely.

For almost one or two hours he was tortured severely as per the eye-witnesses present. The BSF was asking Tariq Ahmed Lone to hand them the weapons of one Prince Khan, a relative of the victim. As per the family of Tariq Ahmed Lone, he fell unconscious at the place. He was dragged and then taken away in the army vehicle. He was taken to the Zangam Camp.

On the same morning, one Pir Muhammd Shafi of Sherabad Pattan was also abducted by Commandant Kripal Singh.

On the following day the BSF personnel informed the family of Tariq Ahmed Lone that he had been taken to another camp.

The family of Tariq Ahmed Lone went to the Zangam Camp for the next one month to ask for the victim’s release, but the army personnel did not give any details on the whereabouts of Tariq Ahmed Lone.

Later the family filed an FIR at the Pattan Police Station.

The family states that because of the fear of the army, they could not file any case in the court.

The family was given Rs. 1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Tariq Ahmed Lone gave a statement to the IPTK on 6 March 2012.

Despite the passage of 22 years, no information exists on record on the status of investigations or prosecutions conducted by the Jammu and Kashmir Police.

Further, the state of absolute impunity is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 69

### *Victim Details*

1. Abdul Rashid Sheikh [Abduction, Wrongful Confinement, Torture and Enforced Disappearance]

Age: 30

Occupation: Carpet Business

Son of: Abdul Khaliq Sheikh

Spouse: Zubeida

Resident of: Kripalgarh, Pattan, Baramulla District

2. Ghulam Mohammad Sheikh [Abduction, Wrongful Confinement and Torture]

Resident of: Kripalgarh, Pattan, Baramulla District

3. Bashir Ahmad Sheikh [Abduction, Wrongful Confinement and Torture]

Resident of: Kripalgarh, Pattan, Baramulla District

4. Ghulam Mohammad Rather [Abduction, Wrongful Confinement and Torture]  
Occupation: Veterinary Doctor  
Resident of: Kripalgarh, Pattan, Baramulla District

#### *Alleged Perpetrators*

1. Commandant Sharma, 24<sup>th</sup> Battalion Border Security Force [BSF], Camp Wodoora, Sopore

#### *Case Information*

On 25 November 1990 there was crackdown in the Singhpora area. During the crackdown there were some gunshots in the Matipora area. Further, the crackdown was being extended to the Kripalgarh area as well so people tried to escape from their houses. Abdul Rashid Sheikh was not able to and he returned home. The BSF personnel of the 24<sup>th</sup> Battalion led by Commanding Officer Sharma came to the house of the Abdul Rashid Sheikh and arrested him along with Rs.1,00,000 that he had from his business. Two relatives of Abdul Rashid Sheikh: Ghulam Mohammad Sheikh and Bashir Ahmad Sheikh, along with a veterinary doctor Ghulam Mohammad Rather, were also arrested. Ghulam Mohammad Rather was released three days after his arrest. Ghulam Mohammad Sheikh and Bashir Ahmad Sheikh were released 31 days after their arrest. According to Ghulam Mohammad Sheikh and Bashir Ahmad Sheikh, Abdul Rashid Sheikh was detained with them for three days after the arrest at the Wodoora Camp. They were all tortured but Abdul Rashid Sheikh was tortured more severely as he had a long beard.

On 28 November 1990 morning, Abdul Rashid Sheikh was taken out of the camp and a few hours later the BSF personnel who had taken him returned only with his pheran, which was then given to a militant. They claimed he had been released.

During this period, the family of Abdul Rashid Sheikh approached Deputy Inspector General [DIG] Chappra of the BSF camped at Baramulla and sought his assistance. Initially the DIG refused to acknowledge that Abdul Rashid Sheikh had been arrested but after four days he accepted that he had been detained along with the others at the Wodoora Camp. While he stated he would assist in the release of all the persons detained, Abdul Rashid Sheikh was never released.

On 25 November 1990 the family of Abdul Rashid Sheikh went to the Pattan Police Station Pattan and filed a FIR. But, subsequently, the Police Station refused to accept that the FIR had been filed. But, four years later, using influence, the FIR was filed.

The family of Abdul Rashid Sheikh received ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Abdul Rashid Sheikh gave a statement to the IPTK on 13 February 2012.

The family of Abdul Rashid Sheikh filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.515/1991]<sup>184</sup>. The Superintendent of Police [SP], Criminal Investigations Department [CID], Counter-Intelligence Kashmir [CIK], Srinagar filed a report wherein it was stated that Abdul Rashid Sheikh was not received in any Joint Interrogation Centre nor had he been arrested. A judicial enquiry was ordered on 24 May 1994 and it was stated that if the

<sup>184</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

enquiry judge came to the conclusion that the victim had been killed during custody he would get a case registered with the concerned police station and the culprits would be tried in a court.

The judicial enquiry was conducted by the District and Sessions Judge, Baramulla and was concluded on 20 February 2003.

The enquiry report begins by stating that while the order for an enquiry was given on 24 May 1994, it was received by the enquiry court on 24 October 2000. Further, that in the petition filed in the High Court it was alleged that Abdul Rashid Sheikh was arrested along with Ghulam Muhammad Sheikh and Bashir Ahmad Sheikh. These two persons were released on 25 December 1990. The report also noted that it is alleged that the DIG, BSF, Baramulla permitted the father of the victim to meet with Abdul Rashid Sheikh on 29 November 1990 but he was not allowed to meet him.

During the proceedings, the Public Prosecutor opted not to submit any statement of facts. Advocate Karnail Singh submitted a parawise reply for one respondent [it is unclear who the respondent was]. The allegations were denied.

The father of Abdul Rashid Sheikh testified in addition to two other witnesses.

- Abdul Khaliq Sheikh, father of the victim, stated that during a crackdown in his locality by the BSF Abdul Rashid Sheikh was arrested. Abdul Rashid Sheikh was neither a militant nor did he work as a counter-insurgent. On cross-examination, he stated that he was unable to distinguish between the BSF and Central Reserve Police Force [CRPF] personnel and therefore cannot say which branch of the armed forces abducted his son.
- Ghulam Mohammad Sheikh, a neighbor of the victim, confirmed that Abdul Rashid Sheikh was arrested and not released.
- Ghulam Mohammad Rather, stated that he was arrested along with Abdul Rashid Sheikh. The witness was released after two days but Abdul Rashid Sheikh was not.

The enquiry concluded by confirming the abduction of the victim, stated that "it leads to the only conclusion that Abdul Rashid Sheikh has been eliminated in the custody by that branch of the Security Forces which had taken him in custody". But, the identity of the armed forces could not be established.

There exist only two areas of contradiction between the statement provided by the family of the Abdul Rashid Sheikh [specifically, his brother] to the IPTK and the judicial enquiry:

- In the statement it is stated that Ghulam Mohammad Rather was released in three days but in the enquiry he states two days.
- In the statement the alleged perpetrator is specifically named. In the enquiry no names are provided.

The Jammu and Kashmir Police took four years to file a FIR in this case, and that too only after the use of influence.

Further, no information exists on record on the state of investigations or prosecutions over the last 18 years following the filing of the FIR.

The Ministry of Defence seems to have cared very little about the High Court judicial enquiry order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.



*Victim Details*

Abdul Rashid Malik [Abduction and Enforced Disappearance]  
Occupation: Employee at Social Forestry Department  
Son of: Abdul Gani Malik  
Resident of: Trehgam, Kupwara District

*Alleged Perpetrators*

1. Inspector B.D. Gupta, 66<sup>th</sup> Battalion Border Security Force [BSF], Camped at Trehgam
2. Sub-Inspector [SI] Hanuman Singh<sup>185</sup>, 66<sup>th</sup> Battalion Border Security Force [BSF], Camped at Trehgam

*Case Information*

On 19 December 1990, Mohammad Maqbool Lone, son of Aziz Lone, came to the house of Abdul Rashid Malik along with Inspector B.D.Gupta and Sub-Inspector Hanuman Singh and called the victim out of the house. Abdul Rashid Malik had Rs.3000 on him. The victim has disappeared since.

The father of Abdul Rashid Malik sought to find the whereabouts of his son. In 1991, the District Magistrate, Kupwara wrote a letter to the Commanding Officer of the 66<sup>th</sup> Battalion BSF with directions that the whereabouts of Abdul Rashid Malik be provided to his father.

FIR no.36/1992 u/s 302 [Murder], 201 Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station on 13 April 1992 by the father of Abdul Rashid Malik<sup>186</sup>. The 6 January 2012 communication from the Jammu and Kashmir Police states that the investigation was closed as chargesheeted, sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought but declined. By further communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the final report in the case dated 17 August 2008 was provided. The final report states that Abdul Rashid Malik was called through Mohammad Maqbool Lone to the 66<sup>th</sup> Battalion BSF Camp, Trehgam. Abdul Rashid Malik was carrying Rs. 3000 with him. B.D.Gupta and Hanuman Singh of the 66<sup>th</sup> Battalion BSF had asked for him. Abdul Rashid Malik was subsequently killed but the body was not found. The investigations were unable to get cooperation from the BSF and due to lack of necessary information the accused could not be traced.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction for prosecution was declined by the Ministry of Home Affairs on 20 June 2007.

<sup>185</sup> The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 referred to the alleged perpetrator as "Nanoman Singh".

<sup>186</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 6 January 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Ministry of Home Affairs 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the Jammu and Kashmir Police inexplicably closed the case by declaring the perpetrators as untraced following the decline of sanction for prosecution under AFSPA instead of further agitating the matter. It also needs to be ascertained on what basis the Jammu and Kashmir Police concluded that Abdul Rashid Malik was killed as the body was not found and no evidence has been brought forward on record.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

*Victim Details*

Manzoor Ahmad Naikoo [Wrongful confinement and Torture]  
Age: 51  
Occupation: Businessman  
Son of: Abdul Aziz Naikoo  
Resident of: Palhallan, Pattan, Baramulla District

*Alleged Perpetrators*

1. Personnel of Camp Hyderbeigh, Pattan, Baramulla District
2. Personnel of 2<sup>nd</sup> Dogra Regiment, Army
3. Major S.S. Sinha [Operational name: Liyakat Ali Khan], 8 Rajputana Rifles, Army, Camp Palhallan, Pattan, Baramulla District

*Case Information*

The victim was tortured on three separate occasions.

First, on 23 April 1991 at the Hyderbeigh Army camp, Pattan. Manzoor Ahmad Naikoo does not remember the identities of the perpetrators of the torture. Also, he did not file any complaint.

Second, on 28 September 1991, Manzoor Ahmad Naikoo was brutally tortured by personnel of the 2<sup>nd</sup> Dogra Regiment, Army, at his residence and in the nearby High School building. Manzoor Ahmad Naikoo was beaten and his hands were tied. A cloth was tied to his penis, which was then set on fire. Manzoor Ahmad Naikoo was electrocuted. Further, a rod was inserted in his rectum.

Following this incident of torture, the victim was operated upon and a medical certificate was issued by the Shri Maharaja Hari Singh Hospital [SMHS], Srinagar that confirmed that the operation was for an injury sustained during interrogation.

Manzoor Ahmad Naikoo continues to live the horror of the torture as he has a medical condition where he cannot defecate or urinate naturally. Manzoor Ahmad Naikoo does not remember the identities of the perpetrators of the torture.

FIR no.120/1991 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Pattan Police Station for the

second incident of torture, along with the custodial death of Mohammad Latif who was also tortured on that day<sup>187</sup>.

The victim, in relation to the second incident of torture filed a suit before the Additional District Judge, Srinagar, against the Union of India and the State of Jammu and Kashmir for damages for injuries sustained.

The court found in favor of the victim and confirmed the torture against the victim by the 2<sup>nd</sup> Dogra Regiment but did not identify specific perpetrators. The court ordered that the victim be given Rs.5,00,000 with interest. The Government of Jammu and Kashmir appealed this decision. Manzoor Ahmad Naikoo received the money ordered.

Third, at the army camp of the 8 Rajputana Rifles, Palhallan in 1996. Manzoor Ahmad Naikoo, while digging a pit in his ancestral orchard to plant trees, found the dead body of a person who had disappeared earlier from a nearby village.

After the body was exhumed, Manzoor Ahmad Naikoo was called to the 8 Rajputana Rifles Camp at Palhallan. He was questioned for an hour on why he had informed others about the dead body and then he was allowed to leave.

15 days later personnel of the 8 Rajputana Rifles arrived at his shop. Manzoor Ahmad Naikoo was asked to leave his shop and in the meanwhile soldiers of the 8 Rajputana Rifles planted *Jamaat-e-Islami* [religio-political organization] literature in his shop. Major Sinha arrived at the shop and told his men to take Manzoor Ahmad Naikoo to the camp.

In the camp, Major Sinha started beating the victim with a cane and accused him of selling *Jamaat-e-Islami* literature. Manzoor Ahmad Naikoo was detained at the camp for a night. During the night, he was interrogated and asked to reveal all the information he had about his relatives. The victim had no idea why he was being asked for this information as none of his relatives were either militants or in politics.

Next morning, the village Lambardar [Numberdar, de facto revenue authority in the village] came to the camp and met Major Sinha. Major Sinha called Manzoor Ahmad Naikoo into his room and questioned him on why he had informed other people about the dead body he had found, instead of informing the army immediately. The Lambardar pleaded the victim's innocence and he was set free.

Manzoor Ahmad Naikoo gave a statement to the IPTK on 1 March 2012.

The Jammu and Kashmir Police do not appear to have conducted any substantial investigations on FIR no.120/1991 to result in any prosecution of personnel of the 2<sup>nd</sup> Dogra Regiment despite the passage of 21 years and the confirmation of torture by the Additional District Judge, Srinagar.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], no sanction for prosecution appears to have been sought in this case.

<sup>187</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

The torture that was inflicted on Manzoor Ahmad Naikoo in 1996, for the third time, is an example of how the persistent impunity allows for the repetitive victimization.

The responsibility of the continued threats, harassment and sustained torture also lies on the inaction of the mechanisms of justice and lack of investigations by the Jammu and Kashmir Police.

## Case No. 72

### *Victim Details*

Mohammad Ayoub [Extra-Judicial Killing (Custodial Killing)]  
Occupation: Employee in 2 Field Ordnance Depot [FOD], Srinagar

### *Alleged Perpetrators*

1. Colonel Gulshan Raj, 2 Field Ordnance Depot [FOD], Army
2. Major G.L.Yadav, 2 Field Ordnance Depot [FOD], Army

### *Case Information*

Mohammad Ayoub was killed in custody on 21 June 1991.

First Information Report [FIR] no.55/1991 was filed at the Nishat Police Station<sup>188</sup>. The 21 December 2011 communication from the Jammu and Kashmir Police stated that the case was closed as chargesheeted against NCA authorities and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction for prosecution was declined vide order dated 29 September 2008.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. No reasons are on record for the decline of sanction for prosecution.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Finally, despite the passage of two years from the decline of sanction on 29 September 2008 and the response of the Jammu and Kashmir Police to a RTI on 21 December 2011, the police does not appear to know that sanction has been declined and therefore the decline has not been agitated.

## Case No. 73

### *Victim Details*

Identity not ascertained [Crime not ascertained]

<sup>188</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

### *Alleged Perpetrators*

1. Constable Mohammad Yousuf, resident of Sachan Ang [Unit not ascertained]
2. Other accused persons

### *Case Information*

First Information Report [FIR] no.102/1991 u/s 3/25 TADA and 3/5 Explosives Act was filed at the Ram Munshi Bagh Police Station on 15 August 1991 for an incident took place on the intervening night of 14 and 15 August 1991<sup>189</sup>.

The FIR copy provided is unclear but appears to refer to an incident where a grenade was thrown in a house.

The 21 December 2011 communication from the Jammu and Kashmir Police states that case has been closed as chargesheeted against Constable Mohammad Yousuf and other accused persons.

The case file has been submitted for accord of obtaining sanction for prosecution on 7 April 2003 and was awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received. There exists little information in relation this case. It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 12 years to investigate and process the case for acquiring sanction for prosecution which apparently helped the perpetrators in evading justice.

## Case No. **74**

### *Victim Details*

Abdul Khaliq Mir (Shah/Peer) [Abduction and Enforced Disappearance]

Age: 39

Occupation: Imam, Village Mosque

Son of: Mohammad Syed Shah/Peer

Spouse: Mehmooda

Resident of: Garoora, Bandipora District

### *Alleged Perpetrators*

1. Deputy Superintendent of Police [DSP] Neigi [also referred to as "Nagee" or "Naygi"], 50<sup>th</sup> Battalion Central Reserve Police Force [CRPF], Camped at Wannagam, Bandipora

### *Case Information*

On 2 September 1991, Abdul Khaliq Mir was picked up by personnel of the 50<sup>th</sup> Battalion CRPF, operating under the command of DSP Neigi.

First Information Report [FIR] no. 62/2002 was filed at the Bandipora Police Station u/s 346 [Wrongful confinement in secret]

<sup>189</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police an unclear copy of the FIR was provided.

Ranbir Penal Code, 1989 [RPC] against the CRPF personnel<sup>190</sup>. This was following a State Human Rights Commission [SHRC] direction dated 14 February 2002.

A report on this FIR was submitted by the Police Station to the judicial enquiry conducted on the orders of the High Court of Jammu and Kashmir where it was stated that there had been no progress in the investigations as the 50<sup>th</sup> Battalion CRPF was posted outside the State even though a unit of the same was posted at Bandipora in 1990. Further, police communications are on record, such as a 20 November 2009 letter from the Station House Officer [SHO], Bandipora Police Station to the DSP, Headquarters, Bandipora, seeking the intervention of authorities to ascertain the current position of the 50<sup>th</sup> Battalion CRPF and the alleged perpetrator. Another letter from the SHO, Bandipora Police Station, dated 25 April 2006 to the Sub-Divisional Police Officer [SDPO], Bandipora, complains of the lack of cooperation of the CRPF in ensuring the presence of the 50<sup>th</sup> Battalion CRPF and the alleged perpetrator for investigations. Also on record is a letter from the Senior Superintendent of Police [SSP], Baramulla to the Inspector General of the CRPF, dated 13 August 2004, seeking the presence of the alleged perpetrator for questioning before the Bandipora Police Station.

The family of Abdul Khaliq Mir filed a petition before the High Court [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no. 93/1997]<sup>191</sup>. On 6 April 1999 the matter was referred for a judicial enquiry, which was conducted by the Sessions Judge, Baramulla, and concluded on 20 January 2003. The petition was disposed off on 20 July 2004 with a direction for the investigations in the case to be expedited.

The judicial enquiry report states that the respondents appeared before the enquiry judge. A statement of facts was submitted by respondents 6 and 7 [presumably the Union of India and the CRPF]. The allegations were denied. Further, it was stated that the alleged perpetrator was posted as the Commandant of the CRPF personnel in Bandipora in 1991 but was relieved from Bandipora on 3 July 1991.

The following is a summary of the relevant evidence of the petitioner and his witnesses before the enquiry judge:

- Ghulam Mohammad Shah, stated that Abdul Khaliq Mir was picked up from his in-laws house at Wannagam, Bandipora by the armed forces. He could not say which branch of the armed forces had arrested him.
- Abdul Salam Shah, testified that personnel of the 50<sup>th</sup> Battalion CRPF picked up Abdul Khaliq Mir on 2 September 1991. Abdul Khaliq Mir had not returned home to date. On cross-examination, the witness stated that he came to know that it was the personnel of the 50<sup>th</sup> Battalion CRPF who had arrested the victim, "during the search". There were a group of 40 personnel involved in the arrest. They came in two small and one heavy vehicle. Despite stating that the witness had been cross-examined, the final line of the summary of this witness is that the witness was not cross-examined.
- Mohammad Ayoob Akhoun, stated that on 2 September 1991 50<sup>th</sup> Battalion CRPF personnel under the command of the "Dy S.P" stationed at "Wangam", Bandipora, came to the house of the father-in-law of Abdul Khaliq Mir. The house was searched

<sup>190</sup> Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 25 October 2012 from the Jammu and Kashmir Police a copy of the FIR and other documents were provided.

<sup>191</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

and Abdul Khaliq Mir was arrested. The witness along with “many more person” were present on the spot. On cross-examination, the witness stated that he was himself an army personnel. Therefore, he could say that a Dy S.P. was commanding the CRPF personnel. Further, that “the Camp at Block Bandipora had a sign board which read that 50<sup>th</sup> Battalion of CRPF was stationed at that place”.

- Mehmooda, wife of Abdul Khaliq Mir, stated that at 1:00 pm on 2 September 1991 personnel of the 50<sup>th</sup> Battalion CRPF arrested Abdul Khaliq Mir from his in-laws house at Wannagam, Bandipora. On cross-examination, the witness stated that there were 30/40 CRPF personnel during the arrest. They had come in two small and one heavy vehicle. Abdul Khaliq Mir had come to see her because she had delivered a baby in her father’s house. The witness stated that she did not know whether the alleged perpetrator or some other officer commanded the CRPF personnel.

The non-applicants 6 and 7 [presumably the Union of India and the CRPF] produced the following two witnesses:

- V.P.Srivastava, Deputy Commandant, 130<sup>th</sup> Battalion CRPF, who stated that he knew of one Neigi who was posted as Assistant Commandant of 50<sup>th</sup> Battalion CRPF and was transferred from 50<sup>th</sup> Battalion to the 72<sup>nd</sup> Battalion on 3 July 1991. This person joined the 72<sup>nd</sup> Battalion CRPF on 6 July 1991. “A copy of the signal” was produced by the witness. The witness further stated that no person was arrested by the 50<sup>th</sup> Battalion on 2 September 1991. On cross-examination, the witness stated that he did not remember where he was posted in the month of July 1991 but it was not in Kashmir. Further, which officer was placed at what place in 1991 in Kashmir was not known to him.
- Baldev Singh, Deputy Commandant 50<sup>th</sup> Battalion CRPF, stated that no company of the 50<sup>th</sup> Battalion CRPF was posted at Bandipora, but it was in Budgam District. None of the six companies of the 50<sup>th</sup> Battalion CRPF was posted in Bandipora on the relevant date. A DSP R.S.Neigi was transferred from the Battalion on 3 July 1991 and took charge of the 72<sup>nd</sup> Battalion on 6 July 1991. On cross-examination, the witness stated that he could not say whether any operation was conducted by the “50<sup>th</sup> Battalion BSF, in Allosa, Bandipora on 1 September 1991.” Accordingly, he was not in a position to depose whether the 50<sup>th</sup> Battalion CRPF conducted any operation in Aloosa, Bandipora on 2 September 1997 or 4 September 1997. The witness was posted in Imphal during this period. The witness stated that he had not brought the record of special operations conducted by the 50<sup>th</sup> Battalion from 1 September 1991 to 3 September 1991. Similarly, he had not brought “all the record” regarding the operation conducted on 2 September 1991 by the 50<sup>th</sup> Battalion. The witness stated that only one officer of the name of Neigi was posted in the 50<sup>th</sup> Battalion on 2 September 1991 [this appears to be a mistake in recording as it seems that the witness position was that the officer had been transferred by that date].

Based on the above, the enquiry report concluded that the 50<sup>th</sup> Battalion CRPF was camped at Block Bandipora and that Abdul Khaliq Mir had been arrested by the armed forces. But, the enquiry report states that it is unclear whether the alleged perpetrator or any other officer was commanding the personnel at the time of the arrest.

The enquiry report appears to therefore confirm the abduction of the victim and the role of the 50<sup>th</sup> Battalion CRPF but does not indict the alleged perpetrator. This is unfortunate considering that the witnesses appear quite clear on his role notwithstanding the official documents

that suggest he was no longer with the 50<sup>th</sup> Battalion CRPF on the relevant date.

On 26 September 2000 the family of Abdul Khaliq Mir approached the SHRC. Before the SHRC, submissions were made by the Commandant of the 50<sup>th</sup> Battalion CRPF who stated that the allegation was baseless, and that from April 1998 the 50<sup>th</sup> Battalion was not stationed in the area in question and that in September 1999 the battalion was not in village Garoora. The police authorities on the other hand confirmed the abduction of Abdul Khaliq Mir on 3 September 1990 by the 50<sup>th</sup> Battalion CRPF.

The SHRC disregarded the submissions of the Commandant of the 50<sup>th</sup> Battalion CRPF as it did not respond to the allegation for the relevant date. Despite the police report referring to the incident taking place on 3 September 1990 [while the family of Abdul Khaliq Mir referred to September 1991] the SHRC found that the abduction had taken place by the 50<sup>th</sup> Battalion CRPF and recommended Rs.1,00,000 ex-gratia government relief.

Despite the passage of 21 years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. Further, it is shocking that the Jammu and Kashmir Police only filed the FIR 11 years after the crime only on the intervention of the SHRC. Further, it appears that absolute impunity has been ensured for the perpetrators of the crime as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Finally, it is clear that the impunity in this case was compounded by the High Court which should have remained seized of the investigations instead of leaving it to the discretion of the Jammu and Kashmir Police.

## Case No. **75**

### *Victim Details*

Mohammad Maqbool Gachoo alias Farooq [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 35

Son of: Ghulam Mustafa Gachoo

Resident of: Ashraf Mohalla, Dal, Rainawari, Srinagar

### *Alleged Perpetrators*

1. Kuldeep Singh, 69<sup>th</sup> Battalion Border Security Force [BSF], Camp Naydyar

### *Case Information*

On 30 December 1991 at about 10:00 am there was crackdown in the area. The inhabitants of the locality were taken out and lined up. The BSF personnel, from the Naydyar Camp, took Mohammad Maqbool Gachoo along with Ghulam Hassan Bhat, Showkat Ahmad Kanu, Mohammad Ismail Guchoo, Mohammad Yousuf Kantroo, Showkat Hussain Kantroo, Asadullah Ashraf, Ghulam Ahmad Ashraf and Gulzar Ahmad Ashraf. Some of the BSF personnel remained in the area and only left at about 5:00 pm. Subsequently, some of the

persons picked up were released after having been injured in custody, but Mohammad Maqbool Gachoo was not.

On the following day, 31 December 1991, the police along with personnel of the BSF came to the house of Mohammad Maqbool Gachoo. The cousin of the victim, Mohammad Ibrahim Bhat, and his uncle, accompanied them to the Police Control Room at Batamaloo. Mohammad Ibrahim Bhat saw the body of Mohammad Maqbool Gachoo in a BSF van. The dead body of the victim bore torture marks. The body was moved to the police car. Mohammad Ibrahim Bhat questioned a Major of the BSF on why his cousin had been killed. He received no answer. Subsequently, about six days later, a Sikh person came to the house of Mohammad Ibrahim Bhat and took him to the BSF Headquarters where he was asked to withdraw the FIR. He refused.

In 2011, Mohammad Ibrahim Bhat and others were taken to a BSF Court of Inquiry at Panthachowk, Srinagar. While Mohammad Ibrahim Bhat, and his brother Ghulam Hassan Bhat, testified accurately on the events of 31 December 1994, the other persons did not. Mohammad Ibrahim Bhat states that a person named Adil Khan, represented himself as an advocate, and paid money to certain people to alter their testimony. He was in fact, according to Mohammad Ibrahim Bhat, an agent of the BSF. Adil Khan also told Mohammad Ibrahim Bhat to withdraw the allegations in return for financial and employment benefits. Mohammad Ibrahim Bhat refused. The family of Mohammad Maqbool Gachoo has no information on who killed the victim.

The family of Mohammad Maqbool Gachoo received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Mohammad Maqbool Gachoo gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no.75/1991 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Rainawari Police Station on 31 December 1991<sup>192</sup>. The 21 December 2011 communication from the Jammu and Kashmir Police stated that the investigation was closed as chargesheeted before the court on 4 November 2009. The copy of the incomplete chargesheet provided states it was filed on 3 November 2009. The chargesheet states that Mohammad Maqbool Gachoo was tortured to death in the custody of the 69<sup>th</sup> Battalion BSF. The police had tried to contact the BSF but they were informed by the BSF that a BSF enquiry would take action against the responsible perpetrator.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that it was sent to the Ministry of Home Affairs on 29 August 2008 and sanction for prosecution of Kuldeep Singh of the 69<sup>th</sup> Battalion BSF was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

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<sup>192</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR and incomplete chargesheet were provided.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 76

### *Victim Details*

Mohammad Ramzan Rather [Abduction and Extra-Judicial Killing (Custodial Killing)]  
Son of: Abdul Ahad Rather  
Resident of: Kamad, Anantnag District

### *Alleged Perpetrators*

1. Lieutenant Colonel M.M. Singh, 17 Jammu and Kashmir Rifles, Army

### *Case Information*

First Information Report [FIR] no.127/1991 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station<sup>193</sup>. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed as chargesheeted against Lieutenant Colonel M.M. Singh and that the casefile was submitted for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. A copy of the FIR was provided on 21 May 2012. The FIR states that on 29 March 1991 Mohammad Ramzan Rather was apprehended and then died in custody on the same day. He was said to be a militant of the Muslim Janbaz Force. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, in addition to re-stating the information already provided, it was stated that while sanction for prosecution had been sought, no response had been received.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1991 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 77

### *Victim Details*

Sajad Ahmad Bazaz [Abduction and Enforced Disappearance]  
Age: 22

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<sup>193</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

Occupation: Student / Shopkeeper  
Son of: Ghulam Ahmad Bazaz  
Resident of: Hazratbal, Srinagar

#### *Alleged Perpetrators*

1. Deputy Commandant D.S. Rathore, 30<sup>th</sup> Battalion Border Security Force [BSF]
2. Head Constable Kartar Chand Raina, 30<sup>th</sup> Battalion Border Security Force [BSF]
3. Head Constable Shoni Lal, 30<sup>th</sup> Battalion Border Security Force [BSF]
4. Azad Ahmad Mir, son of Mohammad Sultan Mir, [Operational name: Asgar], Informer, Border Security Force [BSF]
5. Vinod Kumar, Border Security Force [BSF]

#### *Case Information*

Sajad Ahmad Bazaz was picked up on 12 February 1992 by personnel of the 30<sup>th</sup> Battalion BSF. Subsequently, Captain Anil Pal, 69<sup>th</sup> Battalion BSF, based in Sanatnagar, admitted to the family of Sajad Ahmad Bazaz that the victim was picked up by one battalion and transferred to another battalion of the BSF.

Further, K. Narendra Koshar of the Intelligence Bureau hinted to the family of the victim that the victim was with “them” and he provided them with an identifier – wound on the right hand of the victim – which the family recognized. Further, the family of Sajad Ahmad Bazaz states that this wound, received due to a household accident, was used by the authorities to slap a false case on the victim alleging that the injury took place across the border in Pakistan.

Sajad Ahmad Bazaz’s arrest was the fall out of an altercation he had with the “Cat” [Informer], Azad Ahmad Mir, who owed him over Rs.1000 and had refused to pay.

The family of Sajad Ahmad Bazaz gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no.44/1992 u/s 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Nigeen Police Station on 27 June 1992<sup>194</sup>. The 21 December 2011 communication from the Jammu and Kashmir Police stated that the case was closed as chargesheeted and filed by the Crime Branch, Kashmir before the court on 19 June 2004 against Azad Ahmad Mir.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction had been sought from the Ministry of Defence on 24 January 2003 and was awaited. Reference is only made to Deputy Commandant D.S. Rathore.

The family of Sajad Ahmad Bazaz filed a petition before the High Court of Jammu and Kashmir [HC no.181/1992, a *habaes corpus* petition].

Notices were issued but the parties, including the Union of India could not show the authority under which the victim had been

<sup>194</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

arrested. Therefore, the High Court, disposed off the petition on 1 September 1992 by holding the arrest of the victim as illegal. On the continued confinement of the victim, the family filed a contempt petition [no.15/1992]. The BSF denied having arrested the victim. The High Court, on 8 October 1993 ordered an enquiry. This enquiry was concluded by the District Judge, Bank cases Commissioner, Srinagar, on 28 July 1994.

The witnesses on behalf of the petitioner confirmed that the victim had been abducted by BSF personnel.

Further, the mother of Sajad Ahmad Bazaz stated that she saw that the BSF personnel were accompanied by “Azad Ganai Alias Asgar”. The father of Sajad Ahmad Bazaz identified the BSF personnel responsible for the abduction as “Vinod Kumar”. The enquiry report found that there was “voluminous, un-impeachable, impartial and sufficient evidence on record to show that Sajad Ahmad has been arrested by 30<sup>th</sup> BN BSF on 12 February 1992.” The enquiry report notes in particular the written statement of 26 April 1994 by Mahmood-ur-Rehman, Additional Chief Secretary, Home Department which was submitted during the enquiry. This statement admits the arrest of the victim by the personnel of the 30<sup>th</sup> Battalion BSF. Further, that a chargesheet had been completed against Deputy Commandant D.S. Rathore and Azad Ahmad Mir and sanction for prosecution was submitted to the Government on 25 September 1993 [but, also on record is a letter dated 4 January 1994 from the Government of Jammu and Kashmir seeking sanction for prosecution from the Ministry of Home Affairs].

The Jammu and Kashmir Police submitted a progress report before the High Court on 2 July 1996 wherein it was stated that Deputy Commandant D.S.Rathore had been interrogated. Further, that Head Constable Kartar Chand Raina and Head Constable Shoni Lal had accompanied the Deputy Commandant when arresting the victim.

It appears that the contempt petition was dismissed in July 2004 as being infructuous as a chargesheet had been filed against Azad Ahmad Mir. But, on 21 May 2002, the Ministry of Home Affairs declined sanction for prosecution purely on the basis that a parallel court-martial process by the BSF had acquitted Deputy Commandant D.S. Rathore.

On 20 November 1999, the family of the victim were awarded Rs.2,00,000 as compensation based on a suit filed before the District Judge, Srinagar against the Union of India. The family of the victim appealed this order before the High Court as they had sought compensation of Rs. 40,00,000.

It is noteworthy that the Government of Jammu and Kashmir took 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Even after the confirmation of the arrest and detention of Sajad Ahmad Bazaz by the judicial enquiry, and despite the passage of twenty years, no official information exists on the alleged perpetrators being brought to justice. Further, it needs to be ascertained why all the alleged perpetrators were not proceeded against before a court, as it appears proceedings were only considered against Deputy Commandant D.S. Rathore and Azad Ahmad Mir.

Finally, the manner in which the BSF used the court-martial proceedings to subvert any hope of justice in this case is consistent with the all pervasive impunity in Jammu and Kashmir.

## Case No. 78

### *Victim Details*

Mushtaq Ahmad Shora [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 34

Son of: Ghulam Nabi Shora

Resident of: Karfali Mohalla, Srinagar

### *Alleged Perpetrators*

1. Additional Director General [ADG] K.K.Verma, In-charge Hariniwas Interrogation Centre, Srinagar, Central Reserve Police Force [CRPF]
2. Commandant K.C.Sharma, 75<sup>th</sup> Battalion Border Security Force [BSF]
3. Deputy Commandant Rowhat, 75<sup>th</sup> Battalion Border Security Force [BSF]

### *Case Information*

On 27 February 1992 there was a crackdown by the 75<sup>th</sup> Battalion BSF under the command of Commandant Sharma and Deputy Commandant Rowhat in the Karfali Mohalla, Srinagar.

Mushtaq Ahmad Shora along with others was taken away. The family of Mushtaq Ahmad Shora learnt that the victim was at the Hariniwas Interrogation Centre. Commandant Sharma allowed the family to meet with him. Mushtaq Ahmad Shora had been badly tortured and unable to move.

Subsequently, friends of Mushtaq Ahmad Shora met him at the army hospital. He was pleading and crying that the BSF had hurt him and that he would die.

The family of Mushtaq Ahmad Shora requested ADG Verma to allow the victim to be moved to a civilian hospital but this request was not accepted. Mushtaq Ahmad Shora died on 10 March 1992.

On 27 February 1992, an entry as Daily Diary no. 25 was made at the Shaheed Gunj Police Station. The entry states that the 75<sup>th</sup> Battalion of the BSF conducted a crackdown in Karfali Mohalla and the surrounding areas. An identification parade was conducted.

The BSF personnel abused a person which resulted in a protest by the people. The Deputy Commandant Rowhat fired two gun shots and caused injury to two persons. They were rushed to the hospital.

On 1 March 1992, an entry as Daily Diary no.12 was made at the Shaheed Gunj Police Station that stated that there was a protest on 1 March 1992 and the Police Station was informed of the crackdown by the 75<sup>th</sup> Battalion BSF on 27 February 1992 at the Karfali Mohalla, Srinagar and the abduction of Mushtaq Ahmad Shora and others. The persons arrested had not been released.

The death certificate issued by the army hospital attributed death due to acute renal failure. The post-mortem report confirms the torture of the victim and states that “the deceased has died of injuries to vital internal organs, Hemorrhage, shock of death due to having got pressed under a smooth, heavy object in prone position”.

The family of the victim filed a petition, through the Peoples Union for Civil Liberties, before the High Court of Jammu and Kashmir [Service Writ Petition (SWP) 1242/1992]<sup>195</sup>.

Despite the confirmation of torture leading to the death of Mushtaq Ahmad Shora, and the Jammu and Kashmir Police being cognizant of the incident, the investigations seem to have led nowhere. In fact, it appears the Jammu and Kashmir did not even file a FIR, which was legally required to have been done.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, no sanction for prosecution appears to have been sought in this case.

## Case No. 79

### *Victim Details*

Sheikh Hamza [Abduction and Extra-Judicial Killing]

Son of: Sonauallah

Resident of: Watergam, Wagoora, Baramulla District

### *Alleged Perpetrators*

1. Captain Gorpala Singh, 17 Jammu and Kashmir Light Infantry Rifles [JAKLI], Army
2. Subedar Charan Dass Singh, 17 Jammu and Kashmir Light Infantry Rifles [JAKLI], Army

### *Case Information*

Sheikh Hamza and three persons, Ghulam Mohammad, son of Mukhta Dar, Zahoor Ahmad Bhat, son of Gul Bhat, Abdul Rajab, son of Wali Mohammad other persons were picked up on 7 April 1992. Subsequently Ghulam Mohammad, Zahoor Ahmad Bhat and Abdul Rajab were released. The family of Sheikh Hamza approached the Jammu and Kashmir Police to enquire into the whereabouts of the victim but apparently no action was taken.

First Information Report [FIR] no.1/1994 u/s 344 [Wrongful confinement for ten or more days], 302 [Murder], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station on 1.1.1994<sup>196</sup>. The communication of 9 May 2012 states that the case was closed by declaring the perpetrators as untraced. By further communication dated 9 July 2012, a document was provided that states that sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined in this case.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that the case had been received in July 2008 and was under consideration.

The Ministry of Defence, in response to an RTI on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to

<sup>195</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided.

<sup>196</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By letter dated 9 May 2012 a copy of the FIR was provided.

this case that sanction was denied on 15 January 2010 and that: “individual was released after questioning. The FIR was lodged after 20 months from the date of operation. The individuals named in the complaint were never borne on the strength of the unit”.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been declined.

While the FIR places the incident on 7 April 1992, the Ministry of Defence in both its 10 January 2012 and 2009 submissions incorrectly places the date of the incident as 7 July 1992 and 7 July 1999 respectively.

The response of the Ministry of Defence confirms the abduction and custody by the army of Sheikh Hamza.

The arrest and the alleged subsequent release of Sheikh Hamza is not supported by documentary proof which renders the theory of release of the victim suspect. It is unreasonable for the Ministry of Defence to claim benefit from the delayed filing of the FIR particularly when the FIR itself notes that various attempts were made by the family of the victim to get a FIR filed earlier.

Based on the evidence on record, the burden to prove the non-involvement of the alleged perpetrators or the deployed army unit in the crime is upon the army and the Ministry of Defence. Specifically because the Ministry of Defence accepts the arrest without providing proof of release. Surprisingly, this decline of sanction led to the police disregarding its own investigations and hence closing the case by declaring the perpetrators as untraced.

## Case No. **80**

### *Victim Details*

Mohammad Rafiq Bhat [Abduction, Wrongful Confinement and Enforced Disappearance]

Age: 19

Occupation: Carpet weaver

Son of: Abdul Rehman Bhat

Resident of: Qutubudinpora, Nowhatta, Srinagar

### *Alleged Perpetrators*

1. Inspector Jain, 69<sup>th</sup> Battalion Border Security Force [BSF]
2. Commandant Sethi, 69<sup>th</sup> Battalion Border Security Force [BSF]

### *Case Information*

On 19 August 1992, Mohammad Rafiq Bhat was picked up from his maternal home in Miskeenbagh by the personnel of the 69<sup>th</sup> Battalion BSF. The family of Mohammad Rafiq Bhat went to the Fair View Guest House, Srinagar [operational name: Papa-II Joint Interrogation Centre] to find him. While initially they were told to wait, subsequently, they were informed that Mohammad Rafiq Bhat was not detained there. Then the family saw him at the Shivpora Camp. The camp authorities informed them that they could only allow a meeting with Mohammad Rafiq Bhat following receipt of permission from authorities at Papa-II Joint Interrogation Centre. The meeting never took place.

FIR no. 164/1996 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] and 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the

Khanyar Police Station<sup>197</sup>. The 7 August 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced.

The family of Mohammad Rafiq Bhat gave a statement to the IPTK on 27 February 2012.

The family of Mohammad Rafiq Bhat stated that they declined any ex-gratia government relief or compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Mohammad Rafiq Bhat filed a petition before the High Court of Jammu and Kashmir [HC 19/1999]<sup>198</sup>. The BSF denied that Mohammad Rafiq Bhat had been arrested. On 17 October 2000 the High Court ordered a judicial enquiry to be conducted. The judicial enquiry was conducted by the Additional Sessions Judge, Srinagar and was completed on 21 February 2003.

The IPTK does not have the entire documentation in the case. But, the following excerpt taken from a report entitled “In search of vanished blood: the writ of habeas corpus in Jammu and Kashmir: 1990-2004”<sup>199</sup> provides certain information:

“The BSF’s reply denying that 22 Bn BSF had lifted/ arrested Mohammad Rafiq Bhat on 19 August 1992, determined the entire course of the proceedings in the case. Thereafter, the case proceeded on the assumption that it was only the 22 Battalion BSF which was accused in his arrest. The assumption was misconceived. The petition did not assert that Rafiq was arrested by the 22 Battalion. On the contrary, it was an admitted fact that three BSF Battalions – 22 Battalion, 69 Battalion and 110 Battalion – had operational jurisdiction over the area from where Rafiq was arrested. The FIR lodged by Rafiq’s family named all three Battalions. It also named two officers, Inspector Jain and Commandant Sethi, as members of the arresting party. Before the inquiry, most of the witnesses on Rafiq’s behalf named 69 Battalion as being responsible for his arrest. Besides failing to take note of this crucial point, the Inquiry Judge also went astray while appraising the testimony of the witnesses.

The eye witnesses on behalf of Rafiq Bhat were crystal clear on the fact that he was arrested by the BSF. However, they were not so clear about the post arrest events, and their account varied from that of Rafiq’s parents. The Inquiry Judge was exercised by these contradictions and decided to use them to become ambivalent about the identity of the battalion that had arrested Rafiq. His report declared that there was no doubt that Rafiq Bhat has disappeared but held that (p)arents as well as other witnesses of the applicant have not been able to prove as to which Battalion of BSF had arrested Rafiq Ahmad.

The final nail in the coffin was however left to the High Court, which dismissed the case for non-prosecution, even as it was waiting for the respondents to file objections to the inquiry report. Though the respondents had not filed their objections, for which time had been granted to them, the Court assumed that the absence of representation on behalf of the petitioner on two consecutive dates was proof that the cause does not survive. An extract from the chronology of the case, illustrating the absurdity, is reproduced below:

<sup>197</sup> Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>198</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

<sup>199</sup> Ashok Aggarwal, October 2008, pp. 40-41



21.02.2003 Date of inquiry report.

20.05.2003 Court order: None for the respondents. Parties granted two weeks time to file objections.

08.07.2003 Court order: The respondents granted further time to file objections.

13.08.2003 Court order: None for the petitioner. A proxy appeared for the state government's counsel. Adjourned to await the filing of objections by the respondents.

26.08.2003 Final Order: None for the parties. (O)n the last occasion the case was adjourned because counsel for petitioner was not present. It, therefore, dismissed the case for want of prosecution."

The only document on record that may be analyzed is the 21 February 2003 judicial enquiry report. The enquiry heard six witnesses on behalf of Mohammad Rafiq Bhat, and three witnesses on behalf of the Union of India and the BSF.

The below is a summary of the relevant witness testimony on behalf of Mohammad Rafiq Bhat:

- Abdul Rehman Bhat, the father of the victim, stated that Mohammad Rafiq Bhat was abducted by the BSF on 19 August 1992 from "Miskeen-bagh, Srinagar". The witness, in search of Mohammad Rafiq Bhat, went to the BSF camps situated at Nowhatta, Naid-yar and Sheraz. For three days the arrest of Mohammad Rafiq Bhat was denied but on the third day, the 69<sup>th</sup> Battalion BSF told the witness that Mohammad Rafiq Bhat had been arrested by them, but the witness was then referred to the Papa-II Joint Interrogation Centre. At this location the witness was told that Mohammad Rafiq Bhat had been taken to "Gogo-land". At "Gogo-land" the witness was informed that Mohammad Rafiq Bhat had been taken to Shivpora. At Shivpora, the witness, his wife and sister saw the victim "waving his hand from a window of Shivpora camp". But, they were not allowed to enter and meet with him. They were told to get the permission to meet from "the officer". In Papa-II Joint Interrogation Centre they were not given the permission. The family of Mohammad Rafiq Bhat went to the Shivpora Camp on many occasions, they saw the victim, but they were not allowed to meet with him. Subsequently, the whereabouts of Mohammad Rafiq Bhat are not known. The witness testimony was not damaged on cross-examination.
- Raja, the mother of Mohammad Rafiq Bhat, stated that on 19 August 1992, Mohammad Rafiq Bhat had left towards her mother's house. As he reached her mother's house, the BSF conducted a raid and arrested him. Following his arrest, the witness lodged a report in the police station. Subsequently, the witness went to Papa-II Joint Interrogation Centre where they were told that they would be given a chance to meet with Mohammad Rafiq Bhat, but were not allowed to do so. Subsequently, at the BSF camp at Shivpora, the witness saw Mohammad Rafiq Bhat "from a small distance with her own eyes. Her son hinted by showing hand". The witness testimony was not damaged on cross-examination. The witness provided further details that Mohammad Rafiq Bhat had been arrested at "Miskeen-bagh". The witness also added that Mohammad Rafiq Bhat had sent a letter from the Central Jail, Jammu.
- Mumtaza, the aunt of Mohammad Rafiq Bhat, stated that Mohammad Rafiq Bhat was arrested from her house. Following his arrest, the witness states that "they went to Rainwari B.S.F head-quarter, who told them that it was

B.S.F.69 Battalion. Then they took a slip for meeting Rafiq Ahmed and went to Shivpora, Gupkar, Batwara, and from Papa-II they saw Mohammad Rafiq through window. Rafiq through window asked whether they have brought cigarettes for him, they replied in affirmative." The witness testimony was not damaged on cross-examination.

- Abdul Ahad Rather, testified that he saw the arrest of Mohammad Rafiq Bhat by the BSF in the month of August 1992. The witness testimony was not damaged on cross-examination.
- Habla, a close relative of Mohammad Rafiq Bhat, stated that Mohammad Rafiq Bhat "had come to her house" when he was arrested by the BSF. Further, she stated that she had seen the victim in Papa-II Joint Interrogation Centre and Mohammad Rafiq Bhat through the window asked for cigarettes. The witness testimony was not damaged on cross-examination.
- Ghulam Mohi-ud-Din Bhat, a neighbor of Mohammad Rafiq Bhat, stated that on 19 August 1992, Mohammad Rafiq Bhat had said that he was going to his grandfather's house at Nowpora and left. Subsequently, information was received that Mohammad Rafiq Bhat had been abducted by the 22, 69 and 110 Battalion's of BSF. In October 1992, the witness and the parents of Mohammad Rafiq Bhat saw him in the BSF camp at Shivpora through a window from a distance. The witness also stated that "they were not permitted to talk to him by B.S.F". The witness testimony was not damaged on cross-examination.

The below is a summary of the relevant witness testimony on behalf of the respondents:

- Ranjit Singh, stated that he was posted with the 22<sup>nd</sup> Battalion BSF, head office, in "hotel Mumta" in 1992. On 19 August 1992, their battalion did not go for any raid or cordon and no one was arrested. On cross-examination, the witness stated that in the Nowhatta area in those days the 69<sup>th</sup> and 110<sup>th</sup> Battalions [presumably of the BSF though not expressly mentioned] was also posted. In addition to other answers given during the cross-examination, the witness also stated that "during his posting with 22<sup>nd</sup> Battalion of BSF how many persons were arrested he cannot say. He remained posted there for about two years. No person was brought to the camp after arrest".
- A.K.Sethi, Inspector General, BSF, stated that in the year 1992 he was posted as the Commandant of the 22<sup>nd</sup> Battalion BSF. The witness denied that any operation took place on 19 August 1992. The witness denied that his battalion ever arrested Mohammad Rafiq Bhat. On cross-examination the witness stated that "he does not remember as to during his posting how many persons were picked up and handed over to the police. Record is maintained in the unit. On the perusal of which he can say Mohammad Rafiq was not arrested. Before coming to the court he did see the entire record, on the basis of which he states that Mohammad Rafiq Bhat was not arrested during those days".
- Omesh Chabder Sobidar, Sub-Inspector at the headquarters in 1992 stated that he used to maintain the records of any person arrested. The witness stated that "today he has come from Baramulla so could see the record." But, the witness stated that on 19 August 1992 no person was arrested. The witness testimony was not damaged on cross-examination.

The enquiry found contradictions in the testimonies of witnesses on behalf of Mohammad Rafiq Bhat. But, the enquiry found that "Disappearance is totally established".

Based on the enquiry report above, two comments may be made:

- There appears uncertainty on the issue of the FIR. While the mother of Mohammad Rafiq Bhat suggests that a report was filed with the police immediately after the arrest of Mohammad Rafiq Bhat, the FIR numbers referred to suggest it was filed in 1996.
- There exists a glaring contradiction in the sighting of Mohammad Rafiq Bhat. Two locations are referred to: Papa-II Joint Interrogation Centre and the BSF Camp at Shivpora. Unfortunately, the matter was not clarified in the enquiry report and the enquiry concluded, based on this contradiction mainly, that responsibility could therefore not be fixed. Admittedly, the specific names of the alleged perpetrators also do not find mention in the enquiry.

Therefore, while the enquiry correctly affirms the disappearance, the unit responsible, and the specific persons responsible, admittedly, cannot be conclusively fixed on the enquiry report alone.

No information exists on record on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. This was compounded by the manner in which the High Court appears to have dealt with the matter that only enabled the perpetrators of the crime of disappearance of victim, which was established, to evade justice.

Further, the absolute impunity in this case is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 81

### *Victim Details*

Bashir Ahmad Lone [Extra-Judicial Killing]  
Occupation: Orderly, Office of Deputy Commissioner [DC], Baramulla

### *Alleged Perpetrators*

1. Assistant Commandant Kaanjoo Singh, 193<sup>rd</sup> Battalion Border Security Force [BSF]

### *Case Information*

First Information Report [FIR] no. 253/1992 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>200</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police stated that the case had been chargesheeted.

The FIR states that Bashir Ahmad Lone was shot dead while performing his official duties on 30 September 1992.

<sup>200</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was awaited.

It is unclear whether the Ministry of Home Affairs received this case for grant of sanction. But, it is clear that there has been an inordinate delay in this case as 20 years have passed without sanction being granted and prosecution conducted. Further, the available documents do not suggest that even a court-martial was conducted in this case by the BSF.

## Case No. 82

### *Victim Details*

Charan Jeet Singh [Extra-Judicial Killing]  
Son of: Nanak Singh  
Resident of: Jammu

### *Alleged Perpetrators*

1. Lance Naik [Lance Corporal] A.A. Khan, Central Reserve Police Force [CRPF]
2. Constable S.T.Kurian, Central Reserve Police Force [CRPF]

### *Case Information*

Tata bus no. JKE 6076 and two bicycles were "burst" by the CRPF and Charan Jeet Singh died and others were injured.

First Information Report [FIR] no.102/1992 u/s 302 [Murder] was filed. Information on this FIR and case [though the details of the Police Station are not available] was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

By communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police, Headquarters, Srinagar that this FIR was scutinized in the police stations of the Srinagar District and no case with this FIR number was found where sanction for prosecution had been declined.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that the Ministry of Home Affairs declined sanction.

A case of 1992 still awaits justice as sanction for prosecution has been declined and the available documents do not suggest that even a court-martial was conducted in this case.

## Case No. 83

### *Victim Details*

Abdul Majid Mir [Extra-Judicial Killing]  
Brother of: Abdul Rashid Mir  
Resident of: Zanzana, Kowlapathi, Panzalla, Baramulla District

### *Alleged Perpetrators*

1. Naik [Corporal] A.A. Parma, 19 Maratha Light Infantry [MLI], Army

### *Case Information*

First Information Report [FIR] no. 45/1993 u/s 302 [Murder] was filed at the Panzalla Police Station<sup>201</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police states the case was closed by declaring the perpetrators as untraced. By further communication dated 9 July 2012 from the Jammu and Kashmir Police a status report was provided that states that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], was declined by the "Ministry of Home Affairs". This information was said to have been received vide a letter dated 11 November 2008 from the Ministry of Defence.

The FIR states that on 6 May 1993 there was a crackdown by the army in Zanzana, Kowlapathi, Panzalla. Abdul Majid Mir was shot in his chest by the army and he died.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that it was sent to the Ministry of Home Affairs on 9 March 2009 and sanction was awaited.

It is shocking that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir sixteen years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. Atleast after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1993 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents do not suggest that even a court-martial was conducted in this case by the army.

The Jammu and Kashmir has inexplicably closed the case by declaring the perpetrators as untraced despite sanction for prosecution still being awaited.

The reference to the Ministry of Home Affairs by both the Government of Jammu and Kashmir and the Jammu and Kashmir Police in the context of sanction for prosecution in a case which

<sup>201</sup>Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

clearly pertains to the Ministry of Defence shows the non-seriousness of the Government of Jammu and Kashmir and police.

Case No. **84**

### *Victim Details*

Constable Mohammad Ashraf, Kangan Police Station [Assault]

### *Alleged Perpetrators*

1. Captain Badshah Khan, 299<sup>th</sup> Field Regiment, Army

### *Case Information*

First Information Report [FIR] no. 35/1993 u/s 353 [Assault/Criminal force to deter public servant from discharging duty] Ranbir Penal Code, 1989 [RPC] was filed at the Kangan Police Station<sup>202</sup>. The 9 May 2012 communication from the Jammu and Kashmir Police states that on 30 May 1993 Constable Mohammad Ashraf reported at the Police Station to the effect that few army vehicles on the way from Sonamarg to Srinagar stopped at the Kangan market where he was performing patrolling/traffic duty along with Constable Manzoor Ahmad and Head Constable Wali Mohammad of Kangan Police Station. An army officer wearing a jacket came down from his vehicle, forcibly snatched the stick from him and started thrashing him in the market. The officer also threatened to shoot Constable Manzoor Ahmad. The 9 May 2012 communication further states that during the course of investigation, the identity of the army officer responsible for commission offence could not be established.

Finally, the case was closed by declaring the perpetrators as untraced. But, by communication dated 9 July 2012 from the Jammu and Kashmir Police it was stated that during investigations the crime was proved against the alleged perpetrator. But, this communication concludes by stating that the case was closed as untraced on 5 September 2007.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that the Ministry of Home Affairs declined sanction.

The Government of Jammu and Kashmir has mistakenly sent the case for sanction for prosecution to the Ministry of Home Affairs when the case clearly pertains to the Ministry of Defence.

It is unclear if the Ministry of Defence was ever approached for grant of sanction. Further, the available documents do not suggest that even a court-martial was conducted in this case.

Finally, the communications of the Jammu and Kashmir Police in response to the RTI application filed on the FIR are contradictory. On 9 May 2012 it is stated that the identity of the perpetrator could not be identified, whereas the 9 July 2012 communication clearly states that investigations confirmed the role of the alleged perpetrator.

<sup>202</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

Further, possibly due to the decline of sanction, the police closed the case by declaring the perpetrators as untraced which is patently incorrect as the alleged perpetrator was identified.

Case No. **85**

#### *Victim Details*

1. Abdul Rashid Dar [Extra-Judicial Killing]  
Age: 35  
Occupation: Carpenter  
Son of: Ghulam Mohammad Dar  
Resident of: Naidkadal, Daribal, Srinagar
2. Hajra [Extra-Judicial Killing]  
Age: 30  
Spouse: Abdul Rashid Dar  
Resident of: Naidkadal, Daribal, Srinagar
3. Hilal Ahmad [Extra-Judicial Killing]  
Age: 8  
Son of: Abdul Rashid Dar, Hajra  
Resident of: Naidkadal, Daribal, Srinagar

#### *Alleged Perpetrators*

1. Sub-Inspector [SI] Ajmer Singh, 60<sup>th</sup> Battalion Border Security Force [BSF], Nallamar road

#### *Case Information*

On 1 August 1993, BSF personnel, after seeing Hilal Ahmad outside his residence, fired upon him. As Abdul Rashid Dar and Hajra, his parents, came to his rescue, they were fired upon as well and they were killed. Hilal Ahmad succumbed to his wounds in the hospital. The killing was carried out by SI Ajmer Singh.

Following this there were protests in the area and they were fired upon by the police and the army. Ten persons were killed in the firing.

First Information Report [FIR] no.136/1993 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Khanyar Police Station<sup>203</sup>.

The family of the victims state that they did not pursue the case. But, they received Rs. 3,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] for two members of the family.

The family of the victims gave a statement to the IPTK on 27 February 2012.

Despite the passage of 19 years, no information exists on record on the status of investigations or prosecutions conducted by the Jammu and Kashmir Police. Further, the state of absolute impunity is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the

<sup>203</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. **86**

#### *Victim Details*

Sajjad Ahmad Dar [Abduction and Extra-Judicial Killing (Custodial Killing)]  
Age: 21  
Occupation: Driver  
Son of: Mohammad Sultan Dar  
Resident of: Pantherathan, Vethpora, Srinagar

#### *Alleged Perpetrators*

1. Sukhdev Singh, 6<sup>th</sup> Para unit, Army
2. Rajpaul Singh, 6<sup>th</sup> Para unit, Army

#### *Case Information*

On 14 August 1993, Sajjad Ahmad Dar was driving his truck from Leh to Srinagar. On reaching Drass Pul, he stopped his truck and he was confronted by the alleged perpetrators. He was beaten and abducted.

First Information Report [FIR] no.24/1993 was registered at the Panth Drass Police Station. During the search operations by the police, the dead body of the victim was found. Serious injuries were noted on the body. Sections 302 [Murder] and 34 [Common intention] Ranbir Penal Code, 1989 [RPC] were added to the FIR.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 328-30/1996] for compensation of Rs. 40,00,000.

Before the court, it was submitted that following investigations, the alleged perpetrators were found to be involved in the crime. But, a charge sheet could not be produced due to the non-cooperation of the army for two years. The High Court ordered Rs. 4,00,000 on 13 August 2003.

While the Jammu and Kashmir Police confirm the involvement of the alleged perpetrators in the crime, the army has appeared to once again ensure impunity for its forces.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. **87**

#### *Victim Details*

Abdul Rashid Shah [Abduction and Extra-Judicial Killing (Custodial Killing)]  
Age: 27  
Occupation: Tailor  
Son of: Ghulam Nabi Shah  
Resident of: Faqirwani, Qadeem, Eidgah, Baramulla

#### *Alleged Perpetrators*

1. Major Devinder Paul Singh, 15<sup>th</sup> Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam

### Case Information

On 27 August 1993, the army personnel headed by Major Devinder Paul Singh cordoned the whole Faqirwani area. During the search that followed, Abdul Rashid Shah was picked up. He was taken along by the army to all the houses in the area while the search operation was carried out. He was then released.

The next day Abdul Rashid Shah was once again taken along for search operations but he was not released and instead taken to the Filtration Plant Camp, Bagh-e-Islam. The family was informed that gun shots had been heard from the camp at 11:45 am on that day.

The body of Abdul Rashid Shah was handed over to the Baramulla Police Station.

Following the incident, the family of the victim states that the father of Abdul Rashid Shah was taken to the 15<sup>th</sup> Punjab Regiment Headquarters at Woshkooora road three / four times and made to give his thumb impression on certain documents.

The family of Abdul Rashid Shah received Rs. 1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Abdul Rashid Shah gave a statement to the IPTK on 30 December 2011.

First Information Report [FIR] no.239/1993 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>204</sup>. The communication dated 22 May 2012 by the Jammu and Kashmir Police stated that the case was under investigation.

The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction for prosecution was sought by letter dated 11 June 2002 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Finally, investigations need to be conducted on what documents the father of Abdul Rashid Shah provided his thumb impression.

Case No. **88**

### Victim Details

Mohammad Ashraf Najar [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 24

<sup>204</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police by communication dated 22 May 2012.

Occupation: Businessman  
Son of: Mohammad Akbar Najar [deceased]  
Resident of: Stadium Colony, Baramulla

### Alleged Perpetrators

1. Major D.P. Singh [Operational name: Tiger]<sup>205</sup>, 15<sup>th</sup> Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam

### Case Information

On 25 September 1993, during a crackdown at the Baramulla market, Mohammad Ashraf Najar was picked up by the 15<sup>th</sup> Punjab Regiment, Army headed by Major D.P.Singh. Mohammad Ashraf Najar was taken to the Filtration Plant Camp.

The family of Mohammad Ashraf Najar approached the personnel at the camp for the release of the victim but they were informed that there were serious allegations against the victim. The family states that these allegations – linking him to the militancy – were false.

Mohammad Ashraf Najar was released late on the night of 28 September 1993. Mohammad Ashraf Najar had been severely tortured, including having been forced to drink acid and succumbed to his injuries and his body was brought to Baramulla [having been taken to Srinagar for treatment] on 30 September 1993.

Four days after the death of Mohammad Ashraf Najar, his brother and father were picked up by Major D.P.Singh, severely beaten and asked to withdraw the First Information Report [FIR] that had been filed. The family of the victim refused to do so.

The family received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of the victim gave a statement to the IPTK on 30 December 2011.

FIR no.295/1993<sup>206</sup> u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>207</sup>.

The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6

<sup>205</sup> This alleged perpetrator appears to be the same as the alleged perpetrator listed in case no.87 and his full name would then be: Devinder Paul Singh.

<sup>206</sup> The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], and the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, on 6 September 2011, incorrectly state the FIR no. to be 259/1993.

<sup>207</sup> Information on this FIR was sought through RTI on 5 May 2012. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

September 2011 in relation to this case that sanction was sought on 28 March 1995 and was awaited.

A document from the Station House Officer [SHO], Baramulla Police Station states that the victim was not involved in any subversive activities.

Another letter from the police to the Deputy Commissioner, Baramulla, dated 7 December 1993, confirms that Mohammad Ashra Najar was picked up on 25 September 1993, released on 28 September 1993, and died on 29 September 1993. The letter also states that the victim was not involved in any militant activities.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1993 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Finally, the Jammu and Kashmir has inexplicably closed the case by declaring the perpetrators as untraced despite sanction for prosecution still being awaited.

## Case No. 89

### *Victim Details*

Mushtaq Ahmad Bhat [Abduction and Extra-Judicial Killing (Custodial Killing)]

Son of: Aziz Mohammad Bhat

Resident of: Honjala Tehsil, Kishtwar, Doda District

### *Alleged Perpetrators*

1. Captain T.K. Chopra, 15 PBOR [Accounts office], 10 Jammu and Kashmir Rifles, Army
2. Captain Pushpinder, 15 PBOR [Accounts office], 10 Jammu and Kashmir Rifles, Army

### *Case Information*

The victim was killed in custody on 3 November 1993.

First Information Report [FIR] no.181/1993 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Kishtwar Police Station<sup>208</sup>. The FIR filed by Abdul Rashid Bhat stated that an unidentified dead body was found with bullet injuries in the face and head, and torture marks, near Chermali, Pooncha, Kishtwar. The 24

<sup>208</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 24 November 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

November 2011 communication from the Jammu and Kashmir Police states that the investigation was with the Crime Branch.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the case was under consideration for the alleged perpetrators.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 1 April 2010 and was awaited for the alleged perpetrators.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, for over two years, the Ministry of Defence has failed to take a decision on whether to grant sanction for prosecution under AFSPA for the alleged perpetrators. The available documents do not suggest that even a court-martial was conducted in this case by the army.

## Case No. 90

### *Victim Details*

Reyaz Ahmad Bhat [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 21

Occupation: 2<sup>nd</sup> year Bachelor of Sciences student / Assistant at a private clinic for 29 days prior to being killed

Son of: Mohammad Rajab Bhat

Resident of: Iqbal Colony, Baramulla Town

### *Alleged Perpetrators*

1. Major D.P.Singh [Operational name: Tiger]<sup>209</sup>, 15 Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam

### *Case Information*

On 24 November 1993 at around 1:00 pm Reyaz Ahmad Bhat was picked up by Major D.P.Singh travelling in a jeep with some other soldiers. Reyaz Ahmad Bhat was then taken to the Filtration Plant Camp, Bagh-e-Islam.

On the following day, the father of Reyaz Ahmad Bhat went to the camp, police station and the office of the Deputy Commissioner [DC], Baramulla. This was because people in the area had heard cries of torture from the camp on the night of 24 November 1993.

On 25 November 1993, the head of the locality had met Major D.P.Singh who denied Reyaz Ahmad Bhat was with him.

Reyaz Ahmad Bhat was killed during torture and his clothes had been found at a stream close to the Filtration Plant Camp. The family states that the DC, Baramulla persuaded the army to hand over the body to the Baramulla Police Station. The family of Reyaz Ahmad

<sup>209</sup> This alleged perpetrator appears to be the same as the alleged perpetrator listed in case no.87 and his full name would then be: Devinder Paul Singh.

Bhat received the body on 26 November 1993. The body bore severe torture marks. The stomach of the victim had been opened, filled with grass, and then stitched back.

Four days after the killing of Reyaz Ahmad Bhat, Major D.P.Singh, an unidentified Colonel and others came to offer money to the family of the victim but this was refused.

The family received Rs. 1,00,000 in ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Reyaz Ahmad Bhat gave a statement to the IPTK on 30 December 2011.

First Information Report [FIR] no. 361/1993 u/s 302 [Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station<sup>210</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police stated that the case was under investigation.

A letter dated 24 June 1997 to the DC, Baramulla from the Senior Superintendent of Police [SSP], Baramulla, confirms that Reyaz Ahmad Bhat was not involved in any subversive activities. Previous to this communication, a letter dated 30 April 1997 from the SSP, Baramulla to the DC, Baramulla, refers to Reyaz Ahmad Bhat as “innocent” and strongly recommends that compassionate employment under SRO-43 [Statutory Rules and Orders] be provided to his family.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 11 September 1996 and was awaited.

By letter dated 8 December 1993 the District Magistrate, Baramulla informed the father of Reyaz Ahmad that a Court of Inquiry had been constituted by the 19<sup>th</sup> Infantry Division and he was to attend and provide his evidence between 4 and 10 December 1993.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took three years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that a court-martial was conducted in this case by the army.

There appears to be something seriously wrong in the manner in which sanctions for prosecution under AFSPA are sought. The Jammu and Kashmir Government states that sanction was sought after the conclusion of the investigations. The Ministry of Defence states they have not received the case. Jammu and Kashmir Police, nineteen years after the incident, claims investigations are ongoing.

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<sup>210</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

## Case No. 91

### *Victim Details*

Farooq Ahmad Bhat [Abduction, Torture and Enforced Disappearance]

Age: 25

Occupation: Chemist

Son of: Ghulam Mohammad Bhat

Resident of: Hamdani Mohalla, Saddar Bazaar, Bijbehara, Anantnag District

### *Alleged Perpetrators*

1. Major Alok Chakrabarti, Company Commander, 1 Rashtriya Rifles [RR], Army
2. Company Havaldar Major Omprakash, 1 Rashtriya Rifles [RR], Army
3. Sepoy Vinod Kumar, 1 Rashtriya Rifles [RR], Army

### *Case Information*

First Information Report [FIR] no.106/1993 u/s 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Bijbehara Police Station on 5 December 1993<sup>211</sup>. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed by declaring the perpetrators as untraced, and then reopened by the Crime Branch and the investigations were ongoing. A copy of the FIR was provided on 21 May 2012. The FIR states that on 1 December 1993 at 12:00 noon, Farooq Ahmad Bhat was at his medical shop along with Mubarak-ud-Din Shah, son of Mohammad Yousuf Shah, and Ahmad Wani, son of Aijaz Ahmad Wani. Personnel of 1 RR came and picked up Farooq Ahmad Bhat. The other two persons were beaten on the spot. On the intervening night of 1 and 2 December 1993 it came to be known that Farooq Ahmad Bhat had been beaten to death by sticks. The dead body of the victim was not found. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, it was confirmed that the investigations were still being carried out by Crime Branch, Srinagar.

Also, on record is a report filed by Major Alok Chakrabarti before the Bijbehara Police Station on 2 December 1993 that the army personnel of 1 RR were attacked and Farooq Ahmad Bhat, a militant who had been arrested on 1 December 1993 and was accompanying the army personnel, escaped.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration. Only the name of Major Alok Chakrabarti is mentioned. The date of the incident is listed as 5 December 1993. The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined for all three alleged perpetrators on 15 March 2012. The Ministry of Defence, in response to an RTI, stated on 10 January 2012 in relation to this case that sanction for prosecution under AFSPA was declined on 15 March 2012. Further, that: “allegation leveled is devoid of substance. Police have not brought out any credible evidence to

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<sup>211</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

prima facie prove that the individual died in military custody". The date of the incident is listed as 1 December 1993. Only the name of Major Alok Chakrabarti is mentioned.

A committee was constituted, in adherence to an order of the District Magistrate, Anantnag passed on 18 April 2001 that concluded that Farooq Ahmad Bhat could be presumed to be dead. Further, the committee, based on witness testimony and a report by the Senior Superintendent of Police [SSP], Anantnag that confirmed that the victim was not involved in militancy activity, found that the version of the father of Farooq Ahmad Bhat was accurate i.e. that Farooq Ahmad Bhat was abducted on 1 December 1993 by the personnel of 1 RR.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Ministry of Defence 19 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the available documents suggest that a court-martial was not conducted in this case by the army.

It is clear that the armed forces have facilitated the practice of illegal detentions and unrecorded arrests without following the standard operating procedure of handing over the arrested person to the police. This leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money.

The SSP, Anantnag and the District Magistrate, Anantnag both confirm that the victim was not a militant. Therefore, the arrest of the victim may be considered illegal and the burden is on the army to prove that Farooq Ahmad Bhat was not killed in custody. It also needs to be ascertained on what basis the Jammu and Kashmir Police concluded that Farooq Ahmad Bhat was killed as the body was not found and no evidence has been brought forward on record.

## Case No. 92

### Victim Details

1. Mohammad Iqbal [Abduction and Enforced Disappearance]  
Age: 22  
Occupation: 10<sup>th</sup> Standard student  
Son of: Alif Din Tass, Numani  
Resident of: Zamboor, Pattan, Uri, Baramulla District
2. Mohammad Ismaiel Tass [Abduction and Enforced Disappearance]  
Age: 24  
Son of: Alif Din Tass, Numani  
Resident of: Zamboor, Pattan, Uri, Baramulla District
3. Jalal-ud-Din Tass [Abduction and Enforced Disappearance]  
Age: 21  
Son of: Raj Mohammad Tass  
Resident of: Zamboor, Pattan, Uri, Baramulla District

### Alleged Perpetrators

1. Major Sharma, 9<sup>th</sup> Rajputana Rifles, Army, Camp Choolan
2. Personnel, 11 Grenadiers, Army, Camp Choolan

### Case Information

In the year 1994, Mohammad Iqbal was called to the Middle School, Zamboor Pattan, by the army where a small post of the 11 Grenadiers

was camped. His family sought his release on the following day and they were referred to the Choolan Camp. At the Choolan Camp they were beaten and the detention of Mohammad Iqbal was denied. For about one week, the family of Mohammad Iqbal went to find him and they were given the same treatment. After one week, his family went to the Choolan Police Post and then to the Uri Police Station and informed them of his abduction.

Following this, the 11 Grenadiers raided the house of the family of Mohammad Iqbal and threatened them of consequences for complaining to the police. These army raids continued for a period of time and the father of the victim was tortured as well.

In 1999, Mohammad Ismaiel Tass, brother of Mohammad Iqbal, and Jalal-ud-din Tass, cousin of Mohammad Iqbal, were picked up by the 9<sup>th</sup> Rajput Rifles. Their identify cards were first taken by Major Sharma and they were asked to come to the Choolan Camp and collect them. On reaching the camp, they were detained and released in the evening. On 28 December 1999, they disappeared. On that day, at around 4:00 am, two persons in plain clothes, accompanied by a few soldiers in uniform, came to their house and told them that they were required at the camp to collect their identity cards. They visited the Choolan Camp at 6:00 am. They were seen entering by witnesses. Following this, the family of the victims visited the Choolan Camp for two weeks and they were abused and beaten. During this time, they met Major Sharma who admitted that the victims had come to the camp, and collected their identify cards, but after that they left the camp. The family of the victims once again went to the Uri Police Station where a complaint was filed. Following this visit to the police station, once again the 9 Rajput personnel raided their house and threatened them and told them not to pursue the case.

Alif Din Tass, the father of Mohammad Iqbal and Mohammad Ismaiel Tass, was threatened and tortured when he sought the whereabouts of his sons who disappeared in 1994 and 1999. Due to the torture, in 1994, he left the village for one year. He was beaten and severely tortured. Water, mixed with *chilli* was put into his eyes. He was electrocuted. Petrol was poured into his anus.

A petition was filed before the High Court in 2011 seeking the filing of a First Information Report [FIR] and investigations. A joint response was filed by the Ministry of Defence, 11 Grenadiers and the 9 Rajput Rifles before the High Court. The incidents were denied. One of the arguments given was that specific dates were not provided in the petition for the abductions, thereby rendering the entire story unreliable. While admittedly a specific date was not provided for the 1994 abduction, the 1999 abduction does have a specific date.

Further, it was submitted in the joint response that on 11 June 1999 Jalal-ud-din Tass and Mohammad Ismaiel Tass informed the check post at Choolan that they were going downhill to get some medicines. Thereafter their whereabouts were not known till July 1999 when they were apprehended by the Delhi police at Mayapuri making suspicious calls to Pakistan [where their family members had gone]. They were handed over to their family on 4 September 1999. This version of events is rejected by the family of the victims. First, if the victims were arrested by the Delhi police, proof of the same should have been provided. Second, the family of the victim states that the two victims had never visited New Delhi, and not even Srinagar.

The petition remains pending in the High Court.

According to Alif Din Tass, the reason for not filing the case before the High Court earlier was the torture that he faced, threats and intimidation, and his poor economic condition.



## Case No. 93

### Victim Details

Mohammad Yunis Khan [Extra-Judicial Killing]  
Resident of: Mariyan, Kamalkote, Uri, Baramulla District

### Alleged Perpetrators

1. Havaldar Jagdesh, 5 Rajputana Rifles, Army
2. Havaldar Madan Singh, 5 Rajputana Rifles, Army
3. Naib Subedar Dalu Ram, 5 Rajputana Rifles, Army

### Case Information

On 18 January 1994 Mohammad Yunis Khan was killed.

First Information Report [FIR] no.80/1994 u/s 302 [Murder] was filed at the Uri Police Station<sup>212</sup>. By communication dated 22 May 2012 from the Jammu and Kashmir Police it was stated that the case was closed as by declaring the perpetrators as untraced. Further, that the FIR was misplaced.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined on 15 March 2010.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Ministry of Defence 16 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. No reasons are on record for the decline of sanction for prosecution.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Finally, the Jammu and Kashmir Police has inexplicably closed the case by declaring the perpetrators as untraced, presumably after the decline of sanction for prosecution, without agitating the matter.

## Case No. 94

### Victim Details

[Name withheld] [Torture and Sexual Assault]  
Spouse: [Name withheld]  
Resident of: Village Sipan, Anantnag District

### Alleged Perpetrators

1. Subedar Rattan Singh, Junior Commissioner Officer [JCO], 2 Rashtriya Rifles [2 RR], Army

2. Lance Naik [Lance Corporal] Pretam Singh, 2 Rashtriya Rifles [2 RR], Army
3. Lance Naik [Lance Corporal] Karan Singh, 2 Rashtriya Rifles [2 RR], Army

### Case Information

First Information Report [FIR] no.29/1994 u/s 307 [Attempt to murder], 354 [Assault/Criminal force to a woman with intent to outrage modesty], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station on 27 January 1994<sup>213</sup>.

By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that a chargesheet was submitted and casefile sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. A copy of the FIR was provided on 21 May 2012. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, in addition to re-stating the information already provided, it was stated that while sanction for prosecution had been sought, no response had been received.

The FIR states that on 26 January 1994 personnel of the 2 RR came to the Village Sipan. In the afternoon of 27 January 1994 the 2 RR personnel left but forgot one of their weapons at the village in front of the house of the victim. Three unidentified persons came and took the weapon. The husband of the victim asked them not to do so because it belonged to the army. The husband of the victim was taken away by the unidentified persons. Then five army persons of the 2 RR, including a Sikh returned, and tortured the victim in the house of Gul Sheikh, s/o Ramzan Sheikh. They inserted chillies in her vagina and she felt terrible pain. She was then taken to the Police Line Anantnag where she was medically examined and her statement recorded.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Defence on 8 September 2006 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 12 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1994 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

<sup>212</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

<sup>213</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. **95**

#### *Victim Details*

Mohammad Rafiq Shah [Tarray] [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 16

Occupation: Student, Regional Public School

Son of: Salima Shah and Mehraj-ud-Din Shah [Tarray]

Resident of: Khankah Sokhta, Nawa Kadal, Srinagar

#### *Alleged Perpetrators*

1. Commandant Subhash Chandra Sharma [Operational name: Peter]<sup>214</sup>, 7<sup>th</sup> Battalion Border Security Force [BSF]

#### *Case Information*

On 30 January 1994 Mohammad Rafiq Shah was arrested by the 7<sup>th</sup> Battalion BSF at the Nawa Kadal main market, Srinagar. The family of Mohammad Rafiq Shah filed a report at the Safakadal Police Station. Subsequently, Mohammad Rafiq Shah was brought to his residence on a raid with his head covered.

The mother of Mohammad Rafiq Shah met him at the Hariniwas Interrogation Centre on six occasions [17 February 1994, 24 February 1994, 28 February 1994, 2 March 1994, 2 April 1994, 22 October 1994]. The father of Mohammad Rafiq Shah met him at Tadoo Ground Army Garrison and at another BSF Camp based at Mamta Hotel, Dalgate, Srinagar. But, after October 1994 the family was not allowed any further meetings. On 17 November 1994 the victim's dead body was recovered from the Dal lake. Commanding Officer Sharma threatened the family if they pursued the case.

The family of the victim gave a statement to the IPTK on 26 February 2012.

The post-mortem report of 20 November 1994 for Mohammad Rafiq Shah states that ropes were tied all over his body. Further, fractures on the body were also noted. The conclusion was that the victim had been strangulated to death.

First Information Report [FIR] no.182/1994 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Ram Munshi Bagh Police Station on 21 December 1994<sup>215</sup>. The communication dated 2 June 2012 provided a final report from the Ram Munshi Bagh Police Station that states that investigations were carried out in which the father of the Mohammad Rafiq Shah stated that the victim had been lifted by BSF personnel from Nawakadal, but the brother of the Mohammad Rafiq Shah stated that the victim was being abducted by unknown gunmen from Lal Chowk. The "BSF Para 2" was contacted, no response was received, and therefore the case was closed on 26 August 2006.

<sup>214</sup> Subsequently killed on 16 April 1996 as reported by the BSF before the High Court.

<sup>215</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 a copy of the FIR was provided.

On 25 June 1999 the Safakadal Police Station confirmed that a report had been filed by the family of Mohammad Rafiq Shah after he had been picked up. Further, that the victim was not related to any militancy activities. A similar comment was also made by the police station in its letter of 8 May 2001. The Senior Superintendent of Police [SSP], Srinagar also confirmed the same in a letter dated 24 August 2001. But, it must be noted that the 8 May 2001 and 24 August 2001 letters refer to the dead body of Mohammad Rafiq Shah as having been found on 21 December 1994.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 432/1997] seeking compensation of Rs. 25,000,00, ex-gratia government relief, compassionate employment under SRO-43 [Statutory Rules and Orders] benefits, and conclusion of investigations in the case and prosecution of all persons responsible.

The Government of Jammu and Kashmir of Jammu and Kashmir, Divisional Commissioner, Kashmir, and Station House Officers's [SHO] of Police Station's Ram Munshi Bagh and Safakadal jointly responded to the petition. It was stated that on 14 January 1995, the mother of the victim informed the investigating officer in the case that her son had been abducted by a BSF Inspector named Chaman Lal alias Kalia.

The investigation was transferred to SHO Ram Bagh Police Station who closed the case as untraced on 26 August 1998 [though at another point this date is entered as 26 August 1996] based on the fact that Forensic Science Laboratory [FSL] Jammu revealed that the photograph of the dead body did not match with the photograph provided by the mother of Mohammad Rafiq Shah.

The photograph of the dead body was that of a minor whereas the one submitted by the mother of the victim was that of an adult.

The Union of India, the BSF and the Commandant of 7<sup>th</sup> Battalion, BSF responded jointly. It was stated that the unit of the answering respondent was inducted in the Kashmir valley in May 1994. Therefore, the arrest of Mohammad Rafiq Shah could not have been carried out by them. Further, it was also stated that Commanding Officer Sharma was now deceased.

On 19 July 2007, the petition was dismissed for want of prosecution<sup>216</sup>.

The family of Mohammad Rafiq Shah received the ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

FIR no.182/1994 was filed by the Jammu and Kashmir Police more than a month after the death of Mohammad Rafiq Shah, which the FIR itself notes to have been on 17 November 1994.

Strangely, the letters on record of 8 May 2001 and 24 August 2001 by the Jammu and Kashmir Police contradict the date of death of Mohammad Rafiq Shah by placing it on 21 December 1994.

The contradictions of the Jammu and Kashmir Police continue with regard to the date of closure of the case. Three separate dates are provided: 26 August 1998 and 26 August 1996 before the High Court, and 26 August 2006 in response to the RTI by communication dated 2 June 2012.

<sup>216</sup> Information on the petition numbers was sought through RTI on 16 February 2012. Information was received.

The non-seriousness of the Jammu and Kashmir Police can be further gauged by the fact that, according to the documentation provided with the 2 June 2012 communication, they were communicating with the “BSF Para 2” which did not appear to have any direct relationship with the case. Further, following non-cooperation from the “BSF Para 2”, a non-entity in the case, the Jammu and Kashmir Police chose to mechanically close investigations rather than aggressively seek the necessary cooperation for the conclusion of investigations.

The response of BSF before the High Court that Commanding Officer Sharma died on 16 April 1996 does not take away from the culpability of other personnel of the 7<sup>th</sup> Battalion BSF responsible for the abduction, torture and killing of Mohammad Rafiq Shah. It is unimaginable that Commanding Officer Sharma would have executed this crime alone.

## Case No. 96

### *Victim Details*

Two persons [Identity not ascertained] [Extra-Judicial Killing (Custodial Killing)]

### *Alleged Perpetrators*

1. Major Depankar Sahai, Army

### *Case Information*

As per information from the Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 22 March 1994 the victims were killed in custody. FIR no.61/1994 was filed. The case was under examination.

No information exists on the status of investigations or prosecutions in this case by the Jammu and Kashmir Police.

But, it is noteworthy that despite the passage of 18 years since the commission of the crime, the Ministry of Defence has yet to take a decision on the grant of sanction for prosecution under AFSPA which helps the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 97

### *Victim Details*

Riyaz Ahmad Gilkar [Abduction, Wrongful Confinement and Enforced Disappearance]

Age: 19

Occupation: Student, Government College Anantnag

Son of: Mohammad Subhan

Resident of: Dabruna, Anantnag District

### *Alleged Perpetrators*

1. Captain S.S.Chauhan, First Sector, 2 Rashtriya Rifles [RR], Army, Camp Khanbal

### *Case Information*

On 25 April 1994 there was a crackdown on two villages: Ashashajipora and Dabrunna. On that day people were gathered at Ashajipora and about five people, including Riyaz Ahmad Gilkar, were arrested and taken to the First sector, 2 RR, Camp Khanbal. The crackdown was led by Captain S.S.Chauhan, as per the information received by the family of the victim.

Subsequently, after a few days, four of the persons arrested were released. Over the following years, the family of Riyaz Ahmad Gilkar saw him at various camps. Subsequently, as well, the family of Riyaz Ahmad Gilkar received information on the victim's whereabouts but never met him.

The family of Riyaz Ahmad Gilkar filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491-A Criminal Procedure Code, 1989 (CrPC) no.78/1995]<sup>217</sup>. On 5 November 1996 the High Court referred the matter for a judicial enquiry.

The enquiry was conducted by the Sessions Judge, Anantnag. The enquiry report notes that on 30 November 1996, the Public Prosecutor caused his appearance and associated himself with the proceedings “for a pretty long period” and during this time the petitioner appeared as his own witness in the enquiry.

Further, on 1 February 1999 fresh notices were issued to the State of Jammu and Kashmir, Director General of Police [DGP], Jammu and Kashmir, Superintendent of Police [SP] of the Criminal Investigations Department [CID], SP, Anantnag and Commandant, 2 RR. As a result of these notices, the Standing Counsel for Union of India appeared, various adjournments for filing the statement of facts were sought but no submissions were made.

On 12 July 2002, no further time was provided. For the other respondents, the Public Prosecutor filed the statement of facts on 1 December 1999. Further, it is noted that initially the petitioner or his counsel appeared but afterwards they too remained absent.

The statement of facts filed on behalf of the State of Jammu and Kashmir and its functionaries denied the arrest of the victim by the State of Jammu and Kashmir and its functionaries. It was also submitted that First Information Report [FIR] 148/1994 and and FIR 149/1994 were registered by the RR at the Anantnag Police Station on 27 April 1994<sup>218</sup>.

The FIR's reveal that during the crackdown by the army on 25 April 1994 at Ashajipora, arms and ammunition were recovered from Manzoor Ahmad and Mohammad Iqbal. An encounter took place in which both these persons were killed. Daily Diary entry no.28 of the Anantnag Police Station on 25 April 1994 reveals that the army apprehended Manzoor Ahmad, Mohammad Shafi, Mohammad Iqbal and Riyaz Ahmad Gilkar during this search operation and some persons were killed during the encounter.

The petitioner, brother of Riyaz Ahmad Gilkar, testified before the enquiry on 9 September 1998 that Riyaz Ahmad Gilkar was abducted by the 2 RR from Ashajipora on 25 April 1994 and for 25 days his

<sup>217</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

<sup>218</sup> Information on the FIR's was sought through RTI on 2 July 2012. No information was provided.

whereabouts were not revealed. Subsequently, he saw Riyaz Ahmad Gilkar many times in Army Camp Khandoor, Khanbal and Aishmuqam. In the month of May 1996 Riyaz Ahmad Gilkar was shifted to Kot Balwal and on 12 June 1996 he was lodged in Rangreth Jail, Srinagar where he remained in contact with the petitioner though the officers said that the victim was not detained there.

The enquiry also considered the documents provided by the Public Prosecutor including the Daily Diary in which it is reflected that Head Constable Abdul Rashid on his return from the army crackdown along with his official colleagues provided information that the army had arrested Riyaz Ahmad Gilkar and others.

Based on the above the judicial enquiry concluded that Riyaz Ahmad Gilkar had been arrested by the 2 RR on 25 April 1994 and his whereabouts have not been conveyed to the petitioner.

Based on the above judicial enquiry report, the High Court on 20 July 2004, nine years after the petition was filed, found that a prima facie case was established against the 2 RR on the abduction of the victim. An order was given for an FIR to be registered by the Station House Officer [SHO], Anantnag Police Station.

No information exists on record on whether a FIR was actually registered following the High Court order.

The apparent lack of any action may also be a criticism of the High Court that should have remained seized of the matter instead of leaving it to the discretion of the Jammu and Kashmir Police.

Further, the Ministry of Defence seems to have cared very little about the High Court order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 98

### *Victim Details*

[Name withheld] [Abduction and Rape]  
Resident of: Qazigund, Anantnag District

### *Alleged Perpetrators*

1. Naik [Corporal] Harbhajan Singh, 1 Rashtriya Rifles [RR], Army, Camp Roads and Building Quarter, Qazigund
2. Rifleman Gurtej Singh / Ct. Gurmeet Singh, 1 Rashtriya Rifles [RR], Army, Camp Roads and Building Quarter, Qazigund<sup>219</sup>

### *Case Information*

On 15 May 1994 at about 9:00 pm the alleged perpetrators with guns entered the house of the victim and took the husband of the victim along to the Qazigund Hospital and directed him to call a staff nurse. He refused. They beat him and asked him to stay near a shop. On the next morning when he reached home, his wife, the victim, informed him that she was gang raped by the alleged perpetrators at 2:00 am.

<sup>219</sup> The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], refers to this alleged perpetrator as "RfH Gurtej Singh" whereas the Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] refers to him as "Ct. Gurmeet Singh".

First Information Report [FIR] no.69/1994 u/s 376 [Rape], 452 [House trespass after preparation for hurt/assault/wrongful restraint] Ranbir Penal Code, 1989 [RPC] was filed at Qazigund Police Station.<sup>220</sup> The communication of 1 March 2012 stated that the case had been sent for sanction for prosecution under AFSPA. In a separate communication of 9 July 2012, the police provided information that this case was sent to the Zonal Police Headquarters, Kashmir Zone on 20 July 2005 by Deputy Inspector General, South Kashmir Range vide letter number CRB/SKR/Accord/05/3715-16 for processing the sanction for prosecution under AFSPA. As of 12 May 2012 no response had been received.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it had been received and that: "Vide letter dated 12.3.2007 the State Govt J&K has been informed that both the accused were tried by SGCM [Summary General Court Martial] for an offence of rape and awarded the sentence to suffer rigorous imprisonment for 10 yrs and to be dismissed from service. Their retrial of the same offence will be in contravention to Article 20 (2) of COI [Constitution of India]".

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been sought and was awaited.

On 10 January 2012 a RTI was filed to the Ministry of Defence seeking information of court of inquiries and court-martials conducted by the army in Jammu and Kashmir between 1990 and 2011. The information provided does not list the instant case. But, on a separate RTI pertaining to sanction for prosecution under AFSPA, response dated 22 June 2012 provides information on this case.

It is unclear what followed the court-martial process and whether the alleged perpetrators actually served their sentence or appealed against the court-martial verdict in the higher courts.

Based on the available documents, it is shocking that the police took at least 11 years, from 1994 to 2005, to complete investigations and submit the documents for seeking sanction for prosecution under AFSPA.

Another sad fact that after applying for the prosecution sanction the Government of Jammu and Kashmir lost track of the case and until 9 July 2012 had no knowledge of the court-martial verdict in the case or that sanction for prosecution had been declined.

## Case No. 99

### *Victim Details*

Mohammad Ashraf Dar [Abduction, Torture and Enforced Disappearance]  
Son of: Ghulam Rasool Dar  
Resident of: Hadipora, Rafiabab, Baramulla District

### *Alleged Perpetrators*

1. Major Sehgal, 15<sup>th</sup> Punjab Regiment, Army, Camp Dangiawacha

<sup>220</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Information and a copy of the FIR was provided on 1 March 2012.

### Case Information

First Information Report [FIR] no.28/1994 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] was filed at the Panzalla Police Station<sup>221</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was chargesheeted and sanction for prosecution was awaited.

The FIR states that Zahoor Ahmad Teli, Fayaz Ahmad Wani and Mohammad Ashraf Dar, who were seeking donations for the construction of a mosque, were arrested in the presence of witnesses by the 15<sup>th</sup> Punjab Regiment, Army, Dangiawacha Camp on 22 May 1994. They were all beaten. Zahoor Ahmad Teli and Fayaz Ahmad Wani were released but Mohammad Ashraf Dar was taken to the Dangiawacha Camp, detained and severely beaten in custody. The father of Mohammad Ashraf Dar approached the camp and sought the release of the victim. The personnel at the camp denied the arrest of the victim. A person named Abdul Majid Malla, who was also in custody, was an eye-witness to the beating of Mohammad Ashraf Dar.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 25 June 2004 and was awaited.

It is noteworthy that it took the Jammu and Kashmir police and Government of Jammu and Kashmir took 10 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, it needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Atleast after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1994 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Case No. **100**

### Victim Details

Ghulam Rasool Bhat [Extra-Judicial Killing]  
Son of: Habib Bhat

<sup>221</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

Resident of: Wanpora, Gurez

### Alleged Perpetrators

1. Deputy Superintendent of Police [DSP] Mohinder Singh, 33<sup>rd</sup> Battalion Border Security Force [BSF], Camp Madder
2. Havaldar Kasturi Lal, 33<sup>rd</sup> Battalion Border Security Force [BSF], Camp Madder

### Case Information

First Information Report [FIR] no.101/1994 u/s 302 [Murder] was filed at the Bandipora Police Station on 3 August 1994<sup>222</sup>. By communication dated 9 July 2012 from the Jammu and Kashmir Police information was provided that this case was closed as not admitted. Further, a copy of the FIR and chargesheet were provided. The FIR states that at about 4:00 pm on 2 August 1994 a BSF party headed by a DSP stopped a bus and began checking it. The people in the bus were made to disembark. Ghulam Rasool Bhat was picked up and taken to Camp Madder and then to Sheikhpura where he was shot dead. Ghulam Rasool Bhat had also been tortured.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought for the alleged perpetrators from the Ministry of Home Affairs but was declined on 21 February 2008.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs 14 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. **101**

### Victim Details

Mushtaq Ahmad Wani [Abduction and Enforced Disappearance]  
Age: 26  
Occupation: 10<sup>th</sup> Standard student, Government Higher Secondary School, Hirri Trehgam [upto November 1993]  
Son of: Abdul Sattar Wani  
Resident of: Hayan, Kupwara District

### Alleged Perpetrators

1. Naib Subedar Laxman Singh, 3 Grenadiers, Army, Camp Zurhama
2. Post Commandant Nikhil Tiwari, 3 Grenadiers, Army, Camp Zurhama

### Case Information

On record is a letter dated 5 September 2009 from the Station House Officer [SHO], Trehgam Police Station, to the Deputy

<sup>222</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

Superintendent of Police [DSP], Police Headquarters, Kupwara that provides the following information on the instant case:

- Mushtaq Ahmad Wani was picked up by some soldiers travelling in an army vehicle on 24 August 1994 as he was waiting at the Hayan bus stop.
- On 25 August 1994 a missing report was filed by Mushtaq Ahmad Wani's father at the Trehgam Police Station vide Daily Dairy no.22.
- On 28 August 1994, Naib Subedar Laxman Singh filed a written report that on 27 August 1994 the 3 Grenadiers arrested Mushtaq Ahmad Wani and arms and ammunitions were recovered. Based on this report, First Information Report [FIR] no.126/1994 u/s 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Trehgam Police Station. On the same day another written report was filed by Naib Subedar Laxman Singh at the Kralpora Police Post that Mushtaq Ahmad Wani took the army troops to a hide-out on a hill near Zurhama and then managed to escape. The investigation in this FIR was ultimately closed by declaring the perpetrators as untraced on 2 September 1997.
- On 1 September 1994, Post Commandant Nikhil Tiwari, camped at Zurhama, filed a written report at the Trehgam Police Station that firing took place near the Zurhama post with militants, one of them being Mushtaq Ahmad Wani, on that day. FIR no.133/1994 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3/25 Arms Act was registered at the Trehgam Police Station. But, the inhabitants of the area stated that no such firing had taken place in the area on that day. Based on this information, the investigation was closed by declaring the perpetrators as untraced.
- The family of Mushtaq Ahmad Wani received Rs.1,00,000 ex-gratia government relief.

Information on the FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

The father of Mushtaq Ahmad Wani filed a petition before the High Court of Jammu and Kashmir [HC 1034/94]<sup>223</sup>.

On 21 October 1997 the Principal District and Sessions Judge, Kupwara was directed to monitor investigations in relation to the disappearance of Mushtaq Ahmad Wani. On 19 November 2001, the matter was returned to the High Court with a comment that as FIR no.126/1994 at the Trehgam Police Station was closed by declaring the perpetrators as untraced there was nothing left for the court to monitor. The High Court dismissed the petition on 5 February 2002.

On 9 July 2009, the District Level Coordination Committee, chaired by the District Magistrate, Kupwara, cleared the victim's case for compassionate employment under SRO-43 [Statutory Rules and Orders]

On 25 May 2009, the Criminal Investigations Department [CID], Jammu and Kashmir wrote a letter to the Deputy Commissioner [DC], Kupwara on this case and besides providing details on the case also stated that nothing adverse was reported against Mushtaq Ahmad Wani.

<sup>223</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

The record reveals that the Jammu and Kashmir Police appear to have mechanically followed the version of events produced by the army.

Further, the Principal District and Sessions Judge, Kupwara also appears to have abdicated any responsibility in the matter by considering the matter as closed following the filing of a final closure report by the Jammu and Kashmir Police in the case.

The closure of the case by the Jammu and Kashmir Police would, as per law, require a judicial scrutiny. This does not appear to have taken place.

Further, it is clear that the armed forces have facilitated the practice of illegal detentions and unrecorded arrests without following the standard operating procedure of handing over the arrested person to the police. This leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money. In this case, this illegal detention has led to the army making an unsubstantiated allegation that the victim "escaped". That there was absolute impunity for the crime of disappearance of the victim is apparent from the fact that the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 102

### *Victim Details*

Mohammad Amin Bhat [Extra-Judicial Killing]

Age: 22

Occupation: Surrendered militant

Son of: Abdul Rahim Bhat<sup>224</sup>

Resident of: Bhat Mohalla, Sangri Colony, Baramulla

### *Alleged Perpetrators*

1. Subedar Gurnam Singh [Operational name: Tiger], 15<sup>th</sup> Punjab Regiment, Army, Baramulla Camp

### *Case Information*

On 5 September 1994, Mohammad Amin Bhat was at his uncle, Mohammad Maqbool Bhat's house which was also in the Sangri Colony area. At about 4:30 am the army cordoned the entire area. They entered into the residence of Mohammad Maqbool Bhat and abducted Mohammad Amin Bhat. Then, at about 5:30 am gunshots were heard by the family of Mohammad Amin Bhat. Mohammad Amin Bhat had been arrested along with other people, including some of his relatives. They had been taken to the Kari Chamb hilltop, about 500 metres away from the residence of the victim. Some of the persons arrested along with Mohammad Amin Bhat confirmed that he had been shot dead.

The family of Mohammad Amin Bhat states that Subedar Gurnam Singh was responsible for the killing. The family of the victim believes that the reason for the killing of the victim was that Subedar Gurnam Singh had been given Rs. 10,000 by the family of a girl who

<sup>224</sup> The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 that the name of the father of the victim was Abdul Ahad Bhat. The family states that this is incorrect information.

the victim was involved with, to carry out the killing. This information was transmitted to the family by another person who had heard this from Subedar Gurnam Singh.

The family of the victim gave a statement to the IPTK on 29 December 2011.

First Information Report [FIR] no.229/1994 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station on 5 September 1994<sup>225</sup>. The 22 May 2012 Jammu and Kashmir Police communication stated that the case was under investigation.

The family of Mohammad Amin Bhat did not receive any compensation despite applying to the Deputy Commissioner [DC], Baramulla for ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]. The family believes it is because the army gave an adverse report against them.

On 12 October 1995 the Senior Superintendent of Police, Baramulla informed the DC, Baramulla, that the victim was not involved in any subversive activities for the last two years ever since he had surrendered [the victim was a militant earlier].

The family of Mohammad Amin Bhat also has a note dated 17 June 1991 from a Lieutenant Colonel of the army which informs the said Mohammad Amin Bhat to appear on that date and surrender. The family of the victim maintains that this proves that the victim had indeed surrendered.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought on 11 September 1996 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir two years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Despite a murder case against the army being filed and sanction for prosecution under AFSPA being sought, the Jammu and Kashmir Government has been callous in not processing any compensation for the family of the victim.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end. Further, the available documents do not suggest that even a court-martial was conducted in this case by the army.

Finally, if, as the family of Mohammad Amin Bhat believes, the victim's killing was a result of personal animosity, the conduct of the Ministry of Defence suggests that even crimes committed by armed forces personnel outside their official duty continue to be shielded by AFSPA.

The shielding of Subedar Gurnam Singh in such cases of personal motivations behind crimes is another example of the institutional support to perpetrators.

<sup>225</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by a Jammu and Kashmir Police communication dated 22 May 2012.

## Case No. 103

### *Victim Details*

Nazir Ahmad Sheikh [Abduction, Wrongful Confinement and Torture]

Age: 35

Son of: Abdul Jabar Sheikh [deceased]

Resident of: Yahma, Mawar, Handwara, Kupwara District

### *Alleged Perpetrators*

1. Major Multani Veer Singh, 14<sup>th</sup> Dogra Regiment, Headquarters, Army, Langate

### *Case Information*

On 31 October 1994, Nazir Ahmad Sheikh was picked up on his way to the market by army personnel belonging to the 14<sup>th</sup> Dogra Regiment. He was accused of being a militant and taken to the camp situated at Qalamabad, Mawar and severely tortured.

After eight days, he was taken to the 14<sup>th</sup> Dogra Headquarters at Langate. There he was severely tortured for another ten days. Nazir Ahmad Sheikh was taken to the army headquarters at Baramulla for two days and from there to the Badami Bagh Cantonment for ten days for treatment. Nazir Ahmad Sheikh was asked to leave the Badami Bagh Cantonment. As a result of the torture Nazir Ahmad Sheikh lost both his legs, from the knees down, and four fingers of his left hand.

Nazir Ahmad Sheikh states that the torture was conducted mostly by the Major Multani Veer Singh, who was also responsible for picking him up.

First Information Report [FIR] no. 54/1995 u/s 325 Ranbir Penal Code, 1989 [RPC] was filed at Handwara Police Station on 11 April 1995<sup>226</sup>. The FIR does not name Major Multani Veer Singh but does refer to the 14<sup>th</sup> Dogra Regiment, Camp Langate, as being responsible for his arrest and torture.

The State Human Rights Commission [SHRC] was approached on 31 March 2003 and the final decision was issued on 23 June 2003. The SHRC received a report from the Inspector General of Police [IGP], Kashmir. This report confirmed the torture but stated that this was done by "unknown Army personnel". This report also stated that Nazir Ahmad Sheikh was picked up on 31 October 1994. The SHRC also noted that the investigation was ultimately closed by declaring the perpetrators as untraced as the investigations were unable to identify the persons responsible for the torture of Nazir Ahmad Sheikh. Based on this information, the SHRC recommended Rs.2,25,000 compensation and recommended the Government of Jammu and Kashmir to consider Nazir Ahmad Sheikh for employment for disabled and handicapped persons.

Nazir Ahmad Sheikh filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 640/2003] for the implementation of the SHRC recommendations minus Rs.75,000 which had already been received and an additional Rs.1,00,000 for the non-payment of ex-gratia government relief due<sup>227</sup>. The Deputy

<sup>226</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>227</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

Commissioner [DC], Kupwara sought that the petition be dismissed as the SHRC recommendations were not mandatory as Rs.75,000 as due had already been paid. On 12 November 2008, the final order was passed. The High Court stated that while Rs.2,25,000 was on the “lower side”, it must be paid to the victim [Rs.75,000 had already been paid by the time of this order].

Nazir Ahmad Sheikh has received Rs. 2,25,000 but has not received any employment.

Subsequently, another petition was filed before the High Court [OWP 976/2011] for the completion of the investigations against the alleged perpetrator and for compensation of Rs.50,00,000<sup>228</sup>. Notice was issued on 9 August 2011. Superintendent of Police [SP], Handwara responded to the petition on 14 October 2011 and stated that the case was closed by declaring the perpetrators as untraced, as the perpetrators of the crime could not be ascertained.

The Ministry of Defence and the Commanding Officer of the 14<sup>th</sup> Dogra Regiment submitted joint objections. It was stated that no officer by the name “Major Multani Veer Singh” was ever posted in the 14<sup>th</sup> Dogra Regiment during the relevant time. The unit itself was present. Further, that the allegation were baseless.

The petition remains pending.

Nazir Ahmad Sheikh gave a statement to the IPTK on 2 January 2012.

The FIR specifically indicts the 14<sup>th</sup> Dogra regiment for the abduction and torture of Nazir Ahmad Sheikh. But, before the SHRC the police submitted that the complaint filed was against “unknown army personnel”.

This misrepresentation of the police before the SHRC, when considered along with the final closure of the case, and the bailing out of the 14<sup>th</sup> Dogra Regiment and the alleged perpetrator, suggests that the police was involved in a cover up to protect the army. This requires to be investigated and action needs to be taken against the police officials involved in the investigations of the case and the then IGP, Kashmir, who misrepresented the facts before the SHRC.

## Case No. **104**

### *Victim Details*

Abdul Rashid Pachoo [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Son of: Aziz Pachoo  
Resident of: Kamla Trigam, Banihal, Ramban District

### *Alleged Perpetrators*

1. Major Nagori, 17 Rashtriya Rifles [RR], Army
2. Junior Commissioned Officer [JCO] Hukum Singh, 17 Rashtriya Rifles [RR], Army

### *Case Information*

The family of Abdul Rashid Pachoo states that on 27 November 1994, he was picked up by a team led by Major Nagori and JCO

<sup>228</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

Hukum Singh. He was beaten for the whole day and then at 4:00 pm he was taken out and shot dead.

First Information Report [FIR] no.93/1994 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Banihal Police Station on 28 November 1994<sup>229</sup>. The communication of 9 May 2012 stated that on 1 April 1997 the chargesheet was produced in the court of Judicial Magistrate 1<sup>st</sup> Class, Banihal against Subedar Hukum Singh.

On 13 May 1997 the case was transferred to the Additional Sessions Court, Ramban.

It was further transferred to the Army court on 5 September 1997 as per the record of the Public Prosecutor, Sessions Court, Ramban. The further disposal of the case was still awaited from the Army court.

The post-mortem report confirmed that the victim had died due to a bullet injury.

According to the family of Abdul Rashid Pachoo, the transfer of the case from the civil court to the Army court is not in their knowledge. Also, because of the threats from the army the family has stopped pursuing the case.

On 10 January 2012 a RTI was filed to the Ministry of Defence seeking information of court of inquiries and court-martials conducted by the army in Jammu and Kashmir between 1990 and 2011. The information provided does not list the instant case.

## Case No. **105**

### *Victim Details*

Bilal Ahmad [Extra-Judicial Killing]  
Son of: Ghulam Mustafa [deceased], Kulsoom  
Resident of: Mohalla Masjid, Baderwah, Doda District

### *Alleged Perpetrators*

1. Deputy Commandant B.R. Singh, 120<sup>th</sup> Battalion Central Reserve Police Force [CRPF]
2. Sub-Inspector [SI] Bhagwan Das, 120<sup>th</sup> Battalion Central Reserve Police Force [CRPF]
3. Head Constable Raghbir Singh, 120<sup>th</sup> Battalion Central Reserve Police Force [CRPF]
4. Head Constable Isher Dass, 120<sup>th</sup> Battalion Central Reserve Police Force [CRPF]
5. Captain [Assistant Commandant] Brij Bhushan, 120<sup>th</sup> Battalion Central Reserve Police Force [CRPF]
6. Lance Naik [Lance Corporal] Kuldeep Singh, 120<sup>th</sup> Battalion Central Reserve Police Force [CRPF]

### *Case Information*

In December 1994, Bilal Ahmad was shot dead by SI Bhagwan Das and cash/jewellery worth Rs.72,000 were taken from his house.

The family of Bilal Ahmad approached the State Human Rights Commission [SHRC] on 4 June 2008 and a final decision was delivered on 1 January 2009 and benefits under SRO-199 [Statutory

<sup>229</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR and chargesheet produced in the case were provided by the Jammu and Kashmir Police by communication dated 9 May 2012.



Rules and Orders] were recommended. The SHRC indicted SI Bhagwan Das.

The SHRC relied essentially on a report of the Additional District Magistrate, Doda dated 26 August 2008 that in turn relied on a report of the Senior Superintendent of Police [SSP], Doda dated 22 August 2008, which stated that the alleged perpetrators entered the house of the victim, dragged him out, and then SI Bhagwan Das placed him against a wall and shot him. It was also stated that a chargesheet u/s 302 [Murder], 452 [House trespass after preparation for hurt/assault/wrongful restraint], 382 [Theft after preparation for causing death, hurt or restraint], 148 [Rioting armed with deadly weapon], 149 [Liability for other members of unlawful assembly] Ranbir Penal Code, 1989 [RPC] was produced before the court on 12 November 2007. It is unclear which of the alleged perpetrators were indicted in the charge sheet.

While the SHRC rightly indicted SI Bhagwan Das, it is unfortunate that it did not do the same for the other alleged perpetrators who were clearly a part of the operation. By virtue of Section 34 [Common intention] Ranbir Penal Code, 1989 [RPC] all the alleged perpetrators would be implicated in the crime as they were closely involved in the operation.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK also sought information on 10 January 2012 on all cases of sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 106

### *Victim Details*

Khazir Mohammad Akhoon [Abduction and Extra-Judicial Killing]  
Occupation: Driver  
Son of: Lala Akhoon  
Resident of: Wethpora, Srinagar

### *Alleged Perpetrators*

1. 2<sup>nd</sup> Lieutenant N. Vidya Sagar, 125<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army

### *Case Information*

On 14/15 December 1994 Khazir Mohammad Akhoon was arrested and his bullet ridden dead body was found on 15 December 1994. Khazir Mohammad Akhoon had been dragged out of his house.

After half an hour, his brother and his family heard gun shots from a nearby newly constructed school building. As it was during the night, no one went out to check. They waited for the morning. In the morning they saw that in the building there was blood and clothes at various places. The family believes there was some personal animosity behind the abduction.

First Information Report [FIR] no. 384/1994 u/s 364 [Kidnapping / Abducting to murder], 354 [Assault / Criminal force to a woman with intent to outrage modesty], 457, 307 [Attempt to murder], 427 [Mischievous causing damage of Rs.50 and upwards], 302 [Murder]

Ranbir Penal Code, 1989 [RPC] was filed at the Sadder Police Station, Srinagar on 15 December 1994<sup>230</sup>.

The 21 December 2011 communication of the Jammu and Kashmir Police stated that the case was registered on 15 December 94 on a written report lodged by Abdul Rashid Akhoon, son of Lal Akhoon, resident of Wethpora, Srinagar, that personnel of the 125<sup>th</sup> Bn JAKLI during the night of 14/15 December 1994 picked up the victim and on 15 December 1994 his bullet ridden dead body was found near the premises of a nearby school. Investigation was closed as chargesheeted and sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction for prosecution was sought on 5 December 1995 and was awaited. In this document the unit involved is listed as "125 (TA)".

The available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end. If received, the Ministry of Defence has taken sixteen years to process the grant or decline of sanction.

Further, the available documents do not suggest that a court-martial was conducted in this case by the army. If, as the family of Khazir Mohammad Akhoon believes, the victim's killing was a result of personal animosity, the conduct of the Ministry of Defence suggests that even crimes committed by armed forces personnel outside their official duty continue to be shielded by AFSPA.

## Case No. 107

### *Victim Details*

1. Muktha Sheikh [Abduction, Torture and Extra-Judicial Killing]  
Age: 45  
Occupation: Tea stall owner  
Son of: Abdul Samad Sheikh  
Resident of: Sheikh Mohalla, Barnate, Uri, Baramulla District
2. Sultan Sheikh [Abduction, Torture and Extra-Judicial Killing]  
Son of: Subhan Sheikh  
Resident of: Sheikh Mohalla, Barnate, Uri, Baramulla District

### *Alleged Perpetrators*

1. Captain Athal Prashad, 5 Rajputana Rifles, Army, Camp Kralchak, Barnate

### *Case Information*

On 31 December 1994 at about 8:30 pm, the Captain Prashad and other personnel from the 5<sup>th</sup> Rajput Rifles came to the houses of the victims. Muktha Sheikh and Sultan Sheikh were taken to show the army personnel the way.

On not being released till the following morning, the families of Muktha Sheikh and Sultan Sheikh went to the Barnate Camp and

<sup>230</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by a Jammu and Kashmir Police communication dated 21 December 2011.

were informed by a Havaldar Jagandhar that the victims had been taken to the Rampur Brigade Headquarters and would be released soon.

That same morning at about 5:45 am they family of Mukhta Sheikh had heard two gunshots. At about 3:00 pm the army camp informed the Lambardar [Numberdar, de facto revenue authority in the village] Mohammad Mir Sood that the dead body of Mukhta Sheikh was at Kralchak, Barnate. The body of the victim had two bullet wounds and the body carried visible torture marks. The body of Sultan Sheikh was found 15 days later at Razarwani forests. His body had no bullet wounds but bore torture marks.

The family of Mukhta Sheikh approached the police to file a FIR which was subsequently filed as First Information Report no.34/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] at the Boniyar Police Station on 21 May 1995<sup>231</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case had been closed by declaring the perpetrators as untraced.

Both families of the victims received Rs. 1,00,000 ex-gratia government relief but are yet to receive compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

The family of the victim gave a statement to the IPTK on 20 February 2012.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the case had been received in September 2006 was under consideration.

A letter from the Senior Superintendent of Police Baramulla, dated 12 March 2009 confirms that Mukhta Sheikh was not involved in any subversive activities. Further, a letter from the Sub-District Police Office, Uri, dated 5 March 2009, confirms that Mukhta Sheikh was killed by the army and that the case had been sent for the grant of sanction for prosecution under AFSPA.

This is yet another example of the Jammu and Kashmir Police choosing to close the case by declaring the perpetrators as untraced and thereby showing absolute insensitivity for the process of prosecution and justice. Also, based on the information on record the conduct of the Jammu and Kashmir Police has been irresponsible as they themselves did not file the FIR but only did so after the persuasion of the family, five months after the incident.

Also, noteworthy is that it took the police and Government of Jammu and Kashmir 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

## Case No. 108

### *Victim Details*

Abdul Rashid Lone [Assault]  
Occupation: Presiding officer, Court of Munsif, Bandipora

### *Alleged Perpetrators*

1. Major Dharamandra Singh, 10 Bihar Regiment, Army

<sup>231</sup> Information on this FIR was sought through RTI on 7 October 2011. By letter dated 22 May 2012, a copy of the FIR was provided.

### *Case Information*

First Information Report [FIR] no.81/1994 u/s 384, 353 [Assault / Criminal force to deter public servant from discharging duty] Ranbir Penal Code, 1989 [RPC] was filed at the Sumbal Police Station<sup>232</sup>. The 9 May 2012 communication from the Jammu and Kashmir Police stated that this case was sent to District Police Office, Baramulla for accord of sanction vide the then Sub-District Police Office Bandipora's letter no.C-5/95-4784-85 dated 18 December 1995.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 23 September 1999 was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took five years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the army. It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1994 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

## Case No. 109

### *Victim Details*

Mohammad Ismil Khan [Extra-Judicial Killing]  
Son of: Inayatullah Khan  
Resident of: Kawder Sheeri, Baramulla District

### *Alleged Perpetrators*

1. Major Sunil Jadhv, 3 Rashtriya Rifles [RR], Army

### *Case Information*

First Information Report [FIR] no.59/1994 u/s 302 [Murder] was filed at Sheeri Police Station. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Communication dated 22 May 2012 from

<sup>232</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police an unclear copy of the FIR was provided.

the Jammu and Kashmir Police states that the case was not admitted. Further, that the copy of FIR was misplaced.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought on 27 March 2001 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took seven years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the army.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

At least after the 2009 affidavit by the Ministry of Defence which does not mention this case, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

Finally, the Jammu and Kashmir Police has inexplicably closed the case as not admitted despite sanction for prosecution still being awaited.

## Case No. **110**

### *Victim Details*

1. Sheikh Mohammad Yasir [Torture and Extra-Judicial Killing]  
Age: 19  
Son of: Sheikh Mohammad Anwar  
Resident of: Magharmal Bagh, Srinagar
2. Mohammad Yousuf Bhat [Torture and Extra-Judicial Killing]  
Age: 38  
Brother of: Ghulam Nabi Bhat  
Resident of: Danderkhah, Batmaloo, Srinagar

### *Alleged Perpetrators*

1. Sikh Officer, 2 Grenadiers, Army, Camp Malasia, Batmaloo
2. Personnel of the 81<sup>st</sup>, 84<sup>th</sup>, and 15<sup>th</sup> Battalions of the Border Security Force [BSF]

### *Case Information*

On 20 January 1995 at 11:00 am the 2 Grenadiers, and the 81<sup>st</sup>, 84<sup>th</sup>, and 15<sup>th</sup> Battalions of the BSF cordoned Batmaloo, Magharmal Bagh, Aluchi Bagh and other adjoining areas. Subsequently, Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were taken to a make shift interrogation centre in the Middle School Building,

Lachmanpora. Both were killed and their bodies were handed over by the Ram Munshi Bagh Police Station on 21 January 1995.

The family of Sheikh Mohammad Yasir saw the dead bodies of both victims. The bodies bore torture and gunshot marks. An eye-witness, Farooq Ahmed Bhat, son of Mukahhad Shaban Bhat, confirmed to the family of Mohammad Yousuf Bhat that both victims had been tortured. Alleged perpetrator no.1 is identified by the family of Mohammad Yousuf Bhat.

The family of the Sheikh Mohammad Yasir gave a statement to the IPTK on 2 December 2011, and the family of Mohammad Yousuf Bhat gave a statement to the IPTK on 26 February 2012.

No First Information Report [FIR] was registered. A petition was moved to the Judicial Magistrate, Srinagar who directed on 25 January 1995 that a FIR be filed. Then the FIR was registered: FIR no.21/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] at the Shergari Police Station<sup>233</sup>. The Jammu and Kashmir Police provided information that the case was treated as closed.

Applications by the families of the victims were filed before the District Magistrate, Srinagar for compensation on 7 February 1995.

The families of the victims filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 56/1995. An amended writ petition was allowed to be filed vide order dated 14 September 1998] seeking completion of the investigations on the FIR filed, filing of a chargesheet, and compensation of Rs. 50,00,000. The petition was dismissed for want of prosecution on 7 May 1999 but restored subsequently.

The Ministry of Defence stated that before a cordon could be put in place, there was firing by militants.

Subsequently, a cordon was put in place. Then there was heavy firing from the houses of Sheikh Mohammad Yasir and Mohammad Yousuf Bhat who were then killed. The Ministry of Defence appears to suggest that Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were militants. The Government of Jammu and Kashmir and the police authorities stated that during investigations it was found that search and cordon operations were conducted on 20 January 1995 and that five persons were killed in cross-firing with militants. During this cross firing Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were killed. The Government of Jammu and Kashmir and police authorities also stated that Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were killed by gunshot wounds during the cross firing and not by torture as alleged by the victim's family.

There is a contradiction therefore in the stand taken by the Government of Jammu and Kashmir and police authorities, on one hand, and the Ministry of Defence on the other, as the Ministry of Defence appears to state that the two victims were militants.

The High Court, in its final decision of 28 July 2003, held that Sheikh Mohammad Yasir and Mohammad Yousuf Bhat could not be said to have been directly involved in the firing. As they were innocent, the High Court ordered compensation of Rs.4,00,000 for the death of Sheikh Mohammad Yasir, based on his age, and Rs.3,00,000 for the death of Mohammad Yousuf Bhat<sup>234</sup>.

<sup>233</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. A copy of the FIR was provided on 2 June 2012 from the Jammu and Kashmir Police.

<sup>234</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

A Letter Patent Appeal [LPA] [no. 65/2004] was filed by the Government of Jammu and Kashmir and others against the order of compensation<sup>235</sup>.

The State Human Rights Commission [SHRC] was also approached and issued a final decision on 29 July 2003 and recommended compensation to be paid.

Also on record is a 18 May 1999 order by the Chief Judicial Magistrate [CJM] which states that the police have finished investigation but it is faulty and re-investigation is to be done.

Further, a letter of the Senior Superintendent of Police [SSP], Srinagar, dated 13 February 2004 to the Deputy Commissioner states that following the CJM order, on 2 June 1999 re-investigation was done. But, the letter states the army is not cooperating and investigation is ongoing.

Also on record is another letter, dated 20 May 2002 from the SSP to the Inspector General of Police [IGP], Kashmir which states that the army unit has moved, but that the case is made out and that investigations are ongoing.

The family of Mohammad Yousuf Bhat received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The Jammu and Kashmir Police appears to have sought to shield the armed forces in the extra-judicial killing of two persons.

From not filing a FIR without judicial intervention, to carrying out faulty investigations, this case is an indictment of the police and the manner in which it seeks to shield alleged perpetrators of crimes in Jammu and Kashmir.

Further, it needs to be ascertained whether the investigations have finally been completed against the armed forces or whether they have in fact been closed.

The approach of the Jammu and Kashmir Police has been compounded by the manner in which the High Court has limited itself to compensation and has not sought to monitor the investigations in this case. This has clearly resulted in a denial of justice.

Available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Similarly, with regard to the BSF, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

<sup>235</sup> Information on the petition number was sought through RTI on 16 February 2012. No information was provided.

## Case No. 111

### *Victim Details*

Tariq Ahmad Mir [Abduction and Extra-Judicial Killing]  
Age: 18  
Occupation: 9<sup>th</sup> Standard student  
Son of: Sonallah Mir  
Resident of: Potu Mohalla, Sadunara, Bandipora District

### *Alleged Perpetrators*

1. Ayoub Wagay [also referred to as Ayoub Khan], son of Samad Wagay, Government backed militant [Ikhwan]
2. Fayaz Ahmad Dar [Operational name: Jambu], son of Rehman Dar, Government backed militant [Ikhwan]
3. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo, Government backed militant [Ikhwan]

### *Case Information*

On 17 May 1995 at about 5:00 pm, Tariq Ahmad Mir was playing in his school compound when Ayoub Wagay, Fayaz Ahmad Dar and Ghulam Mohammad Margoo, all Ikhwan, came and told him that they had to take him with them. Tariq Ahmad Mir was taken to Veer Khan, Sadarkote and shot dead. When Ghulam Mohammad Margoo was contacted by the family of Tariq Ahmad Mir he denied the arrest of Tariq Ahmad Mir.

The body of Tariq Ahmad Mir was found the following morning. The family states that Tariq Ahmad Mir was not involved in any subversive activity.

No First Information Report [FIR] was filed due to fear.

The family of Tariq Ahmad Mir has received Rs.1,00,000 ex-gratia government relief.

The family of Tariq Ahmad Mir gave a statement to the IPTK on 9 February 2012.

This case serves as an example of the manner in which fear faced by families results in absolute impunity for perpetrators of crimes.

The responsibility for this impunity necessarily is with the Jammu and Kashmir Police, which does not ensure the necessary space or protection for families to pursue justice.

## Case No. 112

### *Victim Details*

Mohammad Yaseen Dar [Abduction and Extra-Judicial Killing]  
Occupation: Chemist, Anantnag  
Son of: Mohammad Rajab Dar  
Resident of: Brakpora, Anantnag District

### *Alleged Perpetrators*

1. Major Anil Kumar, 2 Rashtriya Rifles [RR], Army, Camped at Khundroo
2. Major Khushwa, 2 Rashtriya Rifles [RR], Army, Camped at Khundroo

3. Mohammad Amin Bhat, Superintendent of Police [SP], Anantnag in June 1995 [reportedly died subsequently], Jammu and Kashmir Police

#### *Case Information*

The family of Mohammad Yaseen Dar states that on 12 June 1995 the victim was sitting in the compound of his house. Mohammad Yaseen Dar was unwell. Personnel of the 2 RR camped at Khundroo came to the house of Mohammad Yaseen Dar and abducted him to their camp.

The family of Mohammad Yaseen Dar visited the camp but the personnel of the 2 RR denied that the victim had been arrested. They then went to the Anantnag Police Station and filed a complaint, but it was not recorded by the police. After 14 days the family was informed that a person had been shot at Bulbagh, Achabal. The family of Mohammad Yaseen Dar states that the person shot was Mohammad Yaseen Dar and the army had shot him claiming to have killed a militant and then kept some ammunition on him.

The family of Mohammad Yaseen Dar faced constant threat from the army to withdraw the case. Further, on one occasion, about 14 army vehicles took the family to the office of the then SP, Anantnag, Mohammad Amin Bhat where they were told by the SP that they could forgive the guilty officers and take money. The family of Mohammad Yaseen Dar states that they took Rs.50,000 from the army but received no relief under law.

The family of Mohammad Yaseen Dar gave a statement to the IPTK on 19 April 2012.

First Information Report [FIR] no.213/1995 u/s 302 [Murder], 344 [Wrongful confinement for ten or more days] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station on 26 June 1995 and places the date of abduction as 12 June 1995<sup>236</sup>.

By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed as chargesheeted but that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined in relation to Major Anil Kumar and "Major Kashroo" of 2 RR. A copy of the FIR was provided on 21 May 2012.

By letter dated 9 July 2012, a copy of the decline of sanction for prosecution was provided. The decline of sanction, dated 25 February 2009, from the Ministry of Defence to the Jammu and Kashmir Home Department, states that the allegations against the alleged perpetrators are false. Further, that the deceased was a militant and in possession of arms and was killed in a legitimate encounter. The filing of the FIR after a gap of 14 days "itself indicated an act of hindsight". The allegation of torture was said to be contrary to the medical report that stated that the individual died due to a bullet injury.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined in February 2009.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought and was awaited.

<sup>236</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

The Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution, stated in relation to this case that sanction was declined on 25 February 2009. Further, that: "the deceased was a militant in possession of arms and killed in a legitimate encounter".

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence 14 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The available documents suggest that a court-martial was not conducted in this case by the army.

Further, the defects in investigation that the Ministry of Defence raises could be attributed to the faulty investigations carried out by the Jammu and Kashmir Police that may have been influenced by Mohammad Amin Bhat, SP, Anantnag who the family of the victim state was involved in the cover up of the case.

The family of the victim also states that they did try to file a complaint immediately after the abduction of the victim but the police refused to file a FIR.

## Case No. **113**

#### *Victim Details*

Saja [Extra-Judicial Killing]  
Resident of: Village Guard, Tral, Pulwama District

#### *Alleged Perpetrators*

1. Company Commander [Assistant Commandant] Jai Singh [Operational name: Jameel Khan], 151<sup>st</sup> Battalion Border Security Force [BSF], Camp Tral

#### *Case Information*

First Information Report [FIR] no.46/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station<sup>237</sup>. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that on 28 August 1995 one Gaffar Sheikh, son of Wahab Sheikh, Lambardar [Numberdar, de facto revenue authority in the village] lodged a written report in Tral Police Station that on the same date troops of 151<sup>st</sup> Battalion BSF, Tral Camp, conducted a search operation in the village Shikargarh and during the search of one Ghulam Rasool Wani, Company Commander Jai Singh was questioned by Saja, the wife of the house owner on why he was visiting daily as there were no militants in the house and no one in the family was a militant. The officer got angry and shot her dead. It was alleged that the search was a pretext to harass the two daughters of the victim. A chargesheet was produced in court against him on 6 May 2002.

By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the FIR and some investigation records were provided.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act,

<sup>237</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs for the alleged perpetrator on 7 January 2002 and it was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir seven years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Further, it appears that the Ministry of Home Affairs has taken ten years to decide on the issue of sanction for prosecution.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. **114**

### *Victim Details*

Mohammad Saleem Zargar [Abduction and Enforced Disappearance]  
Age: 43  
Occupation: Contractor  
Son of: Ghulam Mohammad Zargar  
Resident of: Akramabad, Doda

### *Alleged Perpetrators*

1. Major Bakar Singh, 10 Rashtriya Rifles [RR], Army
2. Major Rajesh, 10 Rashtriya Rifles [RR], Army
3. Havaldar Jagdish, 10 Rashtriya Rifles [RR], Army

### *Case Information*

The residence of Mohammad Saleem Zargar was very close to the 10 RR Camp. As one of the relatives of Mohammad Saleem Zargar was a militant, their residence was under continuous surveillance. As Mohammad Saleem Zargar was a contractor, the personnel of the 10 RR would often demand building material free of cost from him.

On 14 September 1995, when Mohammad Saleem Zargar was asked to provide material free of cost, he refused. At 8:15 pm that night, RR personnel wearing masks and led by a person named "Bakar", an Officer of the camp, entered into the residence of Mohammad Saleem Zargar, broke the household goods, windows and then abducted Mohammad Saleem Zargar. As this was happening, the Mohammad Saleem Zargar's sister caught hold of one of the masked persons and identified him as Jagdish from the 10 RR. The soldiers informed the family of Mohammad Saleem Zargar that he was needed to accompany them to Bhagwah to show them the way. The victim has disappeared since.

The names of the alleged perpetrators, according to the family, vary on different accounts. In the petition filed in the High Court of Jammu and Kashmir, reference is made to an officer named "Bakar" and a person from the 10 RR "Jagdish". In a separate, unsigned, statement given to the IPTK, reference is made to Major Bakar Singh, Major Rajesh and Havaldar Jagdish. In the rejoinder to the

State Human Rights Commission [SHRC], also appended to the petition before the High Court, reference is made to: Major Rajesh, Prabakar and Havaldar Jagdish.

First Information Report [FIR] no.114/1995 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Doda Police Station<sup>238</sup>. By communication dated 15 June 2012 from the Jammu and Kashmir Police it was confirmed that the case was closed by declaring the perpetrators as untraced. Also, on record is a letter sent from the Senior Superintendent of Police [SSP], Doda to the Inspector General of Police [IGP], Jammu that confirms the version of the family of Mohammad Saleem Zargar and states that the case was closed by declaring the perpetrators as untraced on 16 June 1996.

The SHRC took suo moto cognizance of this case on 5 February 2007. A report was called for from the police, and it was submitted by the IGP, Jammu [who forwarded a report of SSP, Bhaderwah], dated 24 February 2007. This report stated that the disappearance did indeed take place but that the case was closed by declaring the perpetrators as untraced. The SHRC recommended, on 4 June 2008, that Rs.1,00,000 ex-gratia government relief be provided.

The family of Mohammad Saleem Zargar filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 654/2010] seeking compassionate employment under SRO-43 [Statutory Rules and Orders] and that the recommendations of the SHRC be implemented. Further, additional compensation of Rs.20,00,000 was sought.

Finally, that the FIR be re-investigated, as it had been closed by declaring the perpetrators as untraced. Civil Miscellaneous Petition [CMP] no.1070/2010 was disposed on 27 December 2010 with a direction that the respondents may consider the case of the petitioner for release of amount in question as required by the SHRC. The petition appears to remain pending.

Despite the passage of 17 years and the confirmation of the disappearance of the victim, the Jammu and Kashmir Police chose to close the case by declaring the perpetrators as untraced. No explanations are on record on why the names of the alleged perpetrators provided by the family of the victim were not considered or investigated. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **115**

### *Victim Details*

Ayaz Ahmad Wani [Abduction, Torture, Wrongful Confinement and Extra-Judicial Killing (Custodial Killing)]  
Occupation: Owner of forest lease firm Gani Joo Assan Joo  
Son of: Abdul Rashid Wani  
Resident of: Bankoot, Banihal

### *Alleged Perpetrators*

1. Deputy Superintendent of Police [DSP] Sonaullah Naik [then Station House Officer (SHO), Ramban Police Station], Jammu and Kashmir Police

<sup>238</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012.

2. Additional Superintendent of Police [ASP] Shafkat Ali Watali, Ramban, Jammu and Kashmir Police
3. Muhammad Ashraf Malik Special Police Officer [SPO], Jammu and Kashmir Police
4. Muhammad Rafiq, Special Police Officer [SPO], Jammu and Kashmir Police
5. Nazir Ahmad Wani, Civilian

#### Case Information

On 3 November 1995, Ayaz Ahmad Wani was picked up by SHO Sonaullah Naik, on the orders of ASP Shafkat Ali Watali. He was taken to Ramban Police Station and tortured for four days by Inspector Sonaullah Naik, ASP Shafkat Ali Watali and others. Ayaz Ahmad Wani died on 10 November 1995 at the Government Medical College Hospital, Jammu. All the above named alleged perpetrators were implicated in the custodial killing<sup>239</sup>.

First Information Report [FIR] no.65/1998 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Ramban Police Station<sup>240</sup>. By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that the case was subject to a Revision Petition filed in the Jammu High Court and that the Case Diary file had been called. At the same time, an enclosure within this RTI response, from the Chief Prosecuting Officer, Ramban, dated 26 May 2012 states that the case was sub-judice before the Sessions Judge, Ramban. Further, information was also provided to the effect that this case was investigated by the Crime Branch, Jammu, and then a chargesheet was produced before the Additional Sessions Judge, Ramban on 26 June 2007.

It is noteworthy that it took the Jammu and Kashmir Police 12 years to file a chargesheet in this case. But, no information exists on the present status of prosecution and it appears that the delay in investigations may have assisted the alleged perpetrators in evading justice. Further, as per publicly available information, alleged perpetrator Shafkat Ali Watali received the Director General of Police's Commendation Medal for 2003.

## Case No. 116

#### Victim Details

Abdul Hamid Dar [Abduction, Torture and Enforced Disappearance]  
 Age: 30  
 Occupation: Tailor  
 Son of: Ghulam Mohammad Dar  
 Resident of: Pehliharan, Gulistan, Sheeri, Baramulla District

#### Alleged Perpetrators

1. Captain Satish S. Kakray, 28 Rashtriya Rifles [RR], Army, Camp Sheeri
2. Lance Naik [Lance Corporal] Danpath Singh, 28 Rashtriya Rifles [RR], Army, Camp Sheeri

#### Case Information

On 29 December 1995, Abdul Hamid Dar was picked up at about 7:30 pm by army personnel of the 28 RR led by Captain Kakray from

<sup>239</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2007/Apr/30/custodial-killing-accused-shifted-to-jammu-12.asp>, 30 April 2007.

<sup>240</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012.

his residence. On the following day, the family of Abdul Hamid Dar went to the Sheeri Camp where the army personnel denied his custody.

Subsequently, on visiting the Boniyar Camp, the army personnel admitted that the victim had been arrested and allowed the family of the victim to meet with him. On 8 January 1996, the family of the victim met with him. Subsequently, after one week, the family states that Abdul Hamid Dar was brought to the Sheeri Police Station and the Station House Officer [SHO] was told to take the victim. Seeing the critical state of Abdul Hamid Dar, the SHO refused. Abdul Hamid Dar has disappeared since.

The family of Abdul Hamid Dar gave a statement to the IPTK on 20 February 2012.

First Information Report [FIR] no.36/1996 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Sheeri Police Station<sup>241</sup>. The communication dated 22 May 2012 also stated that the case had been closed as chargesheeted.

A petition was filed in the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.107/1996]<sup>242</sup>.

The Government of Jammu and Kashmir sought dismissal of the petition based on a report dated 6 June 1997 from the Criminal Investigations Department [CID] that stated that the victim was untraced from the Joint Interrogation Centres [JIC] manned by the CID in Srinagar and Jammu.

On 22 July 1997 an enquiry was directed to be conducted by the District and Sessions Judge, Baramulla.

The family of the victim has received no relief/compensation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in September 2006 and was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 incorrectly refers to the victim as Abdul Majid Agoo and places his disappearance on 11 June 1990.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 10 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Further, the conduct of the then SHO of the Sheeri Police Station is highly irresponsible as he should have taken custody of the victim in whatever state he was in and should have initiated immediate action against the culpable army personnel.

<sup>241</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>242</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

Case No. **117**

*Victim Details*

Ghulam Qadir alias Kanni [Abduction]

*Alleged Perpetrators*

1. Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, Government backed militant [Ikhwan]
2. Parvez Ahmad Querishi [Operational name: Shahbaz], son of Aftab Ahmad, Government backed militant [Ikhwan]
3. Ashraf Ali Beig, son of Ghulam Rubani, Government backed militant [Ikhwan]
4. Ghulam Hamdum Beigh, son of Ghulam Rubani, Government backed militant [Ikhwan]
5. Mohammad Amin Sheikh [Operational name: Manzoor], son of Habibullah, Government backed militant [Ikhwan]
6. Major Avtar Singh, 103<sup>rd</sup> Battalion Territorial Army

*Case Information*

First Information Report [FIR] no.115/1996 u/s 364 [Kidnapping/Abducting to murder], 109 [Abetment], 120-B [Criminal Conspiracy] was filed at the Shergari Police Station<sup>243</sup>. The FIR states that on 18 February 1996, Ghulam Qadir was picked up from his home by Ikhwan. An extortion demand of Rs.1,50,000 was made. The persons accused were Shahbaz [Rajkashi], Ashraf Ali and Hamdani.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case was closed as chargesheeted against the alleged perpetrators but was pending production as Major Avtar Singh had not been apprehended.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

The Jammu and Kashmir Police position that the case against the alleged perpetrators was not proceeding because Major Avtar Singh could not be arrested is an indictment of the Jammu and Kashmir Police who do not appear to have sought to use any of their coercive powers to arrest Major Avtar Singh.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end with regard to Major Avtar Singh.

<sup>243</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity.

Case No. **118**

*Victim Details*

1. Ali Mohammad Dar [Abduction, Wrongful Confinement and Enforced Disappearance]  
Age: 25  
Occupation: Farmer  
Son of: Abdul Ahad Dar  
Resident of: Batpora, Magam, Handwara, Kupwara District
2. Ghulam Mohiuddin Dar [Abduction, Wrongful Confinement and Torture]  
Son of: Aziz Dar  
Resident of: Batpora, Magam, Handwara, Kupwara District

*Alleged Perpetrators*

1. Major Shetty<sup>244</sup>, 24 Rashtriya Rifles [RR], Army, Camped at ITI Handwara

*Case Information*

At about 8:00 pm on 3 March 1996, Ali Mohammad Dar and his brother, Mohammad Sultan Dar, were outside their house when army personnel, including Major Shetty came and demanded that Ali Mohammad Dar accompany them.

On the same evening, Ghulam Mohiuddin Dar was also picked up by the same army personnel.

On the following day the family of Ali Mohammad Dar enquired at the Waripora army post who denied that any arrest had taken place.

The family enquired at the 24 RR Camp, ITI Handwara. The Commanding Officer of the Camp informed them that the two victims were lodged in the camp and had been taken to the forest for an operation and would be released after the operation.

There was no news of the two victims for a week after which information was received that Ghulam Mohiuddin Dar was at a hospital in Handwara. Ghulam Mohiuddin Dar informed the family of Ali Mohammad Dar that for the first night they were severely tortured on an allegation of having links with militants which the victims denied.

On 4 March 1996 they were taken to the Batpora jungle. In the jungle there was firing and Ghulam Mohiuddin was able to escape. He had no further information on Ali Mohammad Dar who has disappeared since.

<sup>244</sup> The family of Ali Mohammad Dar gave a statement to the IPTK on 15 February 2012 where the alleged perpetrator is referred to as "Major Chetty".



Based on available information a FIR was filed and a petition was filed before the High Court.

The family of Ali Mohammad Dar received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The State Human Rights Commission [SHRC] was approached and issued its final decision on 9 September 2009.

The family of Ali Mohammad Dar before the SHRC stated that they had no information on the identity of the armed men who took the victim but stated that they were from the Magam army camp. Ghulam Mohiuddin Dar referred to the 24 RR from Batapora Camp and his story matched the allegations of the family of Ali Mohammad Dar. The additional detail that he provided before the SHRC was that during the patrol Ali Mohammad Dar was made to walk in front of the patrol party.

The Director General of Police [DGP], Jammu and Kashmir, endorsed a report of the Inspector General of Police [IGP], Kashmir which stated that the two victims were taken by the army during a crackdown on 3 March 1996. They were taken to a nearby forest where there was cross firing with militants. Ghulam Mohiuddin Dar managed to escape but there is no information on what happened to Ali Mohammad Dar. The police stated that they had received information that Ali Mohammad Dar was not involved in any subversive activities.

The SHRC in its final decision accepted that Ali Mohammad Dar was innocent with no links to militant activities, and presumed that he died in the forest during the patrol. The SHRC recommended that relief/compensation be provided to the family of Ali Mohammad Dar.

It is unfortunate that the SHRC did not condemn the actions of the army who appear to have used innocent civilians as human shields during an operation. Further, no inquiry appears to have been made on any torture during the incident.

There also exists no information on record on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police despite a clear indictment from the SHRC and the police accepting that the victim was in the custody of the army. The burden must lie on the army to prove that Ali Mohammad Dar was not killed in their custody.

The Ministry of Defence seems to have cared very little about the SHRC order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 119

### *Victim Details*

Imtiyaz Ahmed Wani [Abduction and Enforced Disappearance]

Age: 22

Occupation: Gardener, Forest Department

Son of: Gulla Wani

Resident of: Ikhrajpora, Rajbagh, Srinagar

### *Alleged Perpetrators*

1. Major Avtar Singh, 103<sup>rd</sup> Battalion Territorial Army

2. Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, Government backed militant [Ikhwan]

### *Case Information*

On the intervening night of 15 and 16 May 1996 at about 9:45 pm security personnel and Ikhwan raided the house and picked up Imtiyaz Ahmed Wani. The army had cordoned off the house as well. The abductors were camped at a house of one Doctor Dudha.

The father of Imtiyaz Ahmed Wani gave Rs. 40,000 to one Muma Bhat of Shadipora for his son's release but never received any help from him [though an unsigned, unaddressed letter on record suggests that the sum of money given may have been Rs. 25,000]. Imtiyaz Ahmed Wani has disappeared since.

The family of Imtiyaz Ahmed Wani is not willing to accept compensation or relief and demand that their son be returned to them.

The family of Imtiyaz Ahmed Wani gave a statement to the IPTK on 2 March 2012.

First Information Report [FIR] no.4/1997 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Rajbagh Police Station<sup>245</sup>.

The Case Diary states that during investigations Mohammad Ashraf Khan implicated Major Avtar Singh in the commission of the crime.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case was concluded as chargesheeted against the alleged perpetrators. Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought on 17 September 1998 and was awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to the custodial death of Imtiyaz Ahmed Wani in May 1996 that the case is under consideration. But, here the FIR number is listed as "139/96 Baramulla". In relation to "4/97 P/S Srinagar" it is stated that the case was not received.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

In addition to the discrepancies in the 2009 affidavit of the Ministry of Defence, it is noteworthy that it has taken the Ministry of Defence

<sup>245</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the Case Diary was provided.

at least 11 years [from the time sanction was sought on 17 September 1998 to the 2009 affidavit] to take a decision on whether to grant sanction for prosecution. This has allowed the alleged perpetrators to evade justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity.

## Case No. **120**

### *Victim Details*

Ashiq Hussain Mir [Abduction and Extra-Judicial Killing]  
Son of: Haji Ghulam Ahmad Mir  
Resident of: Mohalla Khaja Sahib, Baramulla

### *Alleged Perpetrators*

1. Sanjay Sharma, 141<sup>st</sup> Battalion Border Security Force [BSF]
2. Inspector J.S.Bhan, 141<sup>st</sup> Battalion Border Security Force [BSF]
3. Sub-Inspector [SI] Toran Biswas, 141<sup>st</sup> Battalion Border Security Force [BSF]
4. Lance Naik [Lance Corporal] K.P.Gopa, 141<sup>st</sup> Battalion Border Security Force [BSF]

### *Case Information*

On 19 August 1996, Ashiq Hussain Mir was picked up and his dead body was later recovered from the river Jhelum.

First Information Report [FIR] no.227/1996 u/s 302 [Murder], 54 Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station. Another FIR was filed by the BSF, FIR no. 218/1997 at the Baramulla Police Station. Subsequently, this FIR was closed as not admitted<sup>246</sup>.

The family of Ashiq Hussain Mir filed a petition before the High Court of Jammu and Kashmir [HCP 673/1996]<sup>247</sup>.

Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] for the alleged perpetrators was sought on investigations in FIR no. 227/1996 on 1 October 1999 by the Jammu and Kashmir Home Department from the Ministry of Home Affairs. A response was provided [the date is unclear] wherein it was stated that as soon as the chargesheet is filed, the BSF would request the case be tried by the General Security Force Court.

The Ministry of Home Affairs provides no explanation for why sanction prosecution was effectively declined. While the BSF could try the alleged perpetrators by the General Security Force Court, it was incumbent on the Ministry of Home Affairs to provide a

<sup>246</sup> Information on the FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>247</sup> Information on the petition number was sought through RTI on 16 February 2012. No information was provided.

reasoned decision in response to a request for sanction for prosecution under AFSPA.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Therefore, it would appear that in addition to not allowing the criminal court to try the alleged perpetrators, no Court-Martial may have been conducted by the BSF. Therefore, this would appear to be a case of absolute impunity for the alleged perpetrators.

## Case No. **121**

### *Victim Details*

Abdul Aziz Bhat [Torture, Abduction and Extra-Judicial Killing]  
Son of: Ali Mohammad Bhat  
Resident of: Pahlou Brain, Nishat, Srinagar

### *Alleged Perpetrators*

1. Brigadier Surjit Singh, 167<sup>th</sup> Field Regiment, Army, Harwan
2. Major H.P.Singh, 167<sup>th</sup> Field Regiment, Army, Harwan

### *Case Information*

On the intervening night of 26 and 27 December 1996, Abdul Aziz Bhat was tortured in his residence, and then abducted by personnel of the Gardwal Regiment [but in a written application filed by the wife of the victim, reference is made to the 167<sup>th</sup> Infantry Battalion as being culpable for the abduction and killing of her husband]. During the torture of Abdul Aziz Bhat at his residence, his wife was locked in another room with her minor child. The wife of the victim was unable to raise any alarm. The dead body of Abdul Aziz Bhat was received on the following day.

First Information Report [FIR] no.140/1996<sup>248</sup> u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Nishat Police Station on a written complaint of one Lieutenant Anil Verma, Adjutant, 167<sup>th</sup> Field Regiment, Army to the effect that Major H.P Singh along with troops of the said unit conducted a operation at Pahlou area on 26 December 1996 at 11:30 pm. During the search one person namely Abdul Aziz Bhat was interrogated on the spot. Further, it was alleged that Abdul Aziz Bhat had agreed to make a disclosure of a hideout and during this he took a rifle and started firing following which he was shot dead. The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was closed by declaring the perpetrators as untraced but a final report was not submitted. An investigation document states that there was no cooperation from the 167<sup>th</sup> Field Regiment. Further, the arms impounded by the army were never handed over to the Jammu and Kashmir Police investigations.

<sup>248</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and other documents related to the investigation were provided.

FIR No.8/1997 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC]<sup>249</sup> was filed at the Nishat Police Station on the written application of the wife of Abdul Aziz Bhat and on the orders of the Chief Judicial Magistrate [CJM], Srinagar. The application sought that a proper murder case be registered against Major H.P.Singh, Company Commander, 167<sup>th</sup> Infantry Battalion and against the Commanding Officer of same Battalion, Brigadier Surjit Singh, as they had killed Abdul Aziz Bhat by severe torture in custody as he was arrested by them. The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was closed as not admitted but a final report was not submitted.

The family of the victim approached the State Human Rights Commission [SHRC] on 14 July 1998 and a final decision was delivered on 17 June 2008 and Rs.2,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

The SHRC arrived at its decision by considering reports from the police and testimony of witnesses.

The SHRC received the report from Crime Branch Headquarters, Srinagar dated 21 December 2002 which provided basic information on FIR no.140/1996 and the written complaint made by the wife of Abdul Aziz Bhat. Further, a reference is made by the SHRC to submissions by the Crime Branch and the police [it is unclear whether these submissions were a part of the 21 December 2002 letter] that supported the version of events that Abdul Aziz Bhat started firing while taking the armed forces to a hideout.

The testimony of witnesses Ghulam Ahmad Bhat and Mohammad Ramzan Bhat were also considered by the SHRC. The witnesses deposed that Abdul Aziz Bhat was picked up during the night on 26 and 27 December 1996 and was tortured to death in custody following which his dead body was given to them through the Nishat Police Station. The witnesses have stated that during the period the people remained indoors and would not come out during night or in late hours because of a perception of threat.

The report of the Additional Director General of Police [ADGP] dated 18 September 1998 submitted before the SHRC considered the contents of FIR 140/1996 and concluded that the proper procedures before the disclosure were not followed and stated that the FIR was an attempt to cover up the custodial killing.

Based on the above, the SHRC found that the case in favour of the family of Abdul Aziz Bhat was made out. Further that the other version of events was “highly unrealistic and devoid of logic”. As the wife of Abdul Aziz Bhat had made a clear statement and the ADGP also concluded that this was a case of custodial killing, the SHRC indictment appears sound. But, it must be mentioned that the testimony of the witnesses Ghulam Ahmad Bhat and Mohammad Ramzan Bhat do not provide much detail to the incident. Particularly, it is unclear on what basis they testified to the abduction.

No information exists on what basis the Jammu and Kashmir Police closed the investigations in this case or on what basis the case was held to be not admitted. The final reports would, by law, have to be judicially scrutinized and this was not done in this case.

Further, the Jammu and Kashmir Police is also indicted by the fact that they only filed a FIR with the victim family’s version of events after the intervention of a court.

<sup>249</sup> Information on this FIR was sought through RTI on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and other investigation documents were provided.

The Ministry of Defence seems to have cared very little about the SHRC order, Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 122

### *Victim Details*

1. [Name withheld] [Assault, Abduction, Destruction of Property and Enforced Disappearance]  
Son of: [Name withheld]  
Resident of: Manzgam, Reshipora, Dooru, Anantnag District
2. [Name withheld] [Assault and Rape]  
Age: 16  
Daughter of: Victim no.1  
Resident of: Manzgam, Reshipora, Dooru, Anantnag District
3. [Name withheld] [Assault and Rape]  
Daughter of: Victim no.1  
Resident of: Manzgam, Reshipora, Dooru, Anantnag District

### *Alleged Perpetrators*

1. Major Arora, 5 Rashtriya Rifles [RR], Army, Camped at Batpora, Manzgam, Hakoora, Anantnag District

### *Case Information*

On 2 January 1997 at about 8:00 pm, Major Arora and other personnel of the 5 RR entered the residence of victim no.1 and alleged that he had gone to visit his son-in-law, Khursheed Ahmad Reshi, a Hizbul Mujahideen militant. Victim no.1 and his elder daughter, victim no.3 denied the allegation. Major Arora slapped victim no.3, shut the lights of the house, assaulted the victims and abducted victim no.1. Victim no.2 was raped by Major Arora. Victim no.3 was kept in a separate room and raped by the other personnel of the 5RR. After one and a half hours, the personnel of 5 RR left the house along with 50 sheep belonging to the victims and burnt the house to the ground. Victims 2 and 3 left the house and spent the night in a bathroom on the banks of the stream. Victim no.1 has disappeared since.

The family of victim no.1 gave a statement to the IPTK on 19 April 2012.

First Information Report [FIR] no.8/1997 u/s 376 [Rape] was filed at the Anantnag Police Station on 5 January 1997<sup>250</sup>. By communication dated 14 May 2012 from the Jammu and Kashmir Police information was provided that the case was chargesheeted but sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided that sanction for prosecution under AFSPA had been declined for “Maj Arora of 5 RR

<sup>250</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police on 21 May 2012

(JAT)". A copy of the 21 April 2010 decline of sanction letter was provided. This letter, from the Ministry of Defence to the Jammu and Kashmir Home Department, states that there is no prima facie evidence of the involvement of any personnel of the 5 RR in the case. It was considered pertinent that the husband of victim no.3 was "Khurshid Ahmed", a "dreadful Hizbul Mujahideen militant" during the period of the incident. Victim no.3 was forced to lodge a false allegation against the alleged perpetrator and his unit by "anti national elements/vested interest" to "malign the image of the security forces".

Further, there were found to be several inconsistencies in the statements of witnesses. None of the neighbors of victim no.1 or any of the villagers have any knowledge of an army patrol having come to the village. This was considered unlikely. Further, the letter states that the FIR notes that on the night of 3 January 1997, after the army apprehended victim no.1, the "two complainants took refuge with a neighbour out of fear". On being questioned about the identity of the neighbour, the complainants stated that they took refuge in a public bathroom nearby and not in a neighbour's house. Further, it was considered incomprehensible that the complainants did not raise any alarm immediately after the alleged incident, but waited for 40 hours to do so. It was also considered pertinent that the statements of witnesses had been recorded after four years and six months.

A letter dated 12 March 2004 from the Senior Superintendent of Police [SSP], Anantnag, to the Deputy Commissioner [DC], Anantnag, states that victim no.3 had moved an application requesting for a copy of the FIR in the case and a report in the matter in relation to the abduction of her father on 5 January 1997.

Subsequently, a report was received from Station House Officer [SHO], Anantnag Police Station that the victim was abducted by the armed forces as a suspect with the plea that militants were visiting the house of the victim. The husband of victim no.3, Khurshed Ahmad Reshi, was found to have been associated with the Hizbul Mujahideen, but later surrendered, and had a second marriage. The report also states that the army personnel "misbehaved" with victims 2 and 3.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined on 21 April 2010.

The Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined on 21 April 2007. Further, that: "there were a number of inconsistencies in the statements of witnesses. The allegation was lodged by the wife of a dreaded Hizbul Mujahideen militant. The lady was forced to lodge a false allegation by ANE's [anti-national elements]".

According to the family of Ghulam Mohammad Shah, the matter was also considered by the State Human Rights Commission [SHRC] which recommended that appropriate punishment be given to Major Arora. Further, Rs.5,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The family of victim no.1 state that they have received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders]. The son of victim no.3, is pursuing the matter as the adopted son of victim no.1.

Based on the available record it appears that the investigation into this case by the Jammu and Kashmir Police is not comprehensive at all. Apparently, the police is only investigating the allegation of rape whereas based on the family testimony there were atleast four crimes on that day with the family of victim no.1: the rape of victim no.2, rape of victim no.3, enforced disappearance of victim no.1, assault on the victims and the destruction of property i.e. house of victim no.1. The 12 March 2004 letter from the Senior Superintendent of Police [SSP], Anantnag specifically notes the abduction of victim no.1. The FIR notes the abduction of victim no.1 and the rape of victim no.3.

The family has also received Rs.1,00,000 ex-gratia government relief which must have been for the abduction and enforced disappearance of victim no.1. It needs to be investigated why the Jammu and Kashmir Police ignored the other crimes.

The denial of sanction of 21 April 2010 is an example of the institutional denial of these multiple crimes. The claim made by the Ministry of Defence that the crime did not take place by stating that victim no.3 was married to a Hizbul Mujahideen militant and is perceived to be anti-national and liable to be untruthful is no defence and is not grounded in logic or the law.

Further, the inconsistencies referred to by the Ministry of Defence are weak, devoid of any understanding of a context and misrepresentations.

First, the issue of the delayed FIR is answered in the FIR itself wherein it is noted that victims 2 and 3 had been threatened by the army to not report the crimes, and that they were apprehensive of reporting the crimes due to continued disappearance victim no.1.

Second, the Ministry of Defence has declined sanction based presumably on the casefile of investigations submitted by the Government of Jammu and Kashmir.

The casefile is not with the IPTK and therefore the other assertions of the Ministry of Defence on contradictions in witness statements cannot be appropriately analyzed here. But, the Ministry of Defence has wrongly used the alleged contradictions between the FIR and the subsequent statements of the witnesses. The FIR is a document recorded by the police and cannot be used to contradict a duly recorded statement by a witness.

Finally, the available documents do not suggest that even a court-martial was conducted in this case by the army.

## Case No. 123

### Victim Details

1. Sikandar Ganai [Extra-Judicial Killing]
2. Mohammad Ramzan [Extra-Judicial Killing]  
Occupation: Employee, Stone crusher, Humhama  
Son of: N.K [full name unavailable]  
Resident of: Bangal
3. Mushtaq Ahmad Hajam [Extra-Judicial Killing]  
Son of: Mohammad Subhan Hajam,  
Resident of: Sumbal, Sonawari, Bandipora District
4. Mohammad Assan Lone [Extra-Judicial Killing]  
Son of: Ghulam Qadir Lone  
Resident of: Chewrajpora, Pulwama District
5. Mohammad Afzal Malik [Extra-Judicial Killing]  
Son of: Ghulam Mohiuddin/Mohammad Malik

Resident of: Budgam

#### *Alleged Perpetrators*

1. Major Avtar Singh, 103<sup>rd</sup> Battalion Territorial Army
2. Havaladar Balbir Singh, 103<sup>rd</sup> Battalion Territorial Army
3. Dr. Sumon Singh, 103<sup>rd</sup> Battalion Territorial Army

#### *Case Information*

First Information Report [FIR] no.29/1997 u/s 302 [Murder], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Saddar Police Station<sup>251</sup>.

By communication dated 21 December 2011 from the Jammu and Kashmir Police information was provided that a case was registered on 20 January 1997 that five persons were apprehended and later on their dead bodies were recovered from Pampore. Prima facie offences were established during investigation against Major Avtar Singh.

The casefile was submitted to the Jammu and Kashmir Home Department to seek sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

By further communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police [DSP], Headquarters, Srinagar that sanction for prosecution under AFSPA was still awaited in the case.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case stands registered against Major Avtar Singh and “two other Army personnel”.

The case was chargesheeted and sanction for prosecution under AFSPA was sought on 13 October 1998 and was still awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this FIR number that sanction was awaited for the prosecution of the alleged perpetrators. But, the case details refer to this as being related to the killing of “Jalil Ahmad Indrabi”.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh’s residence.

In addition to the discrepancies in the Government of Jammu and Kashmir document of 6 September 2011, it is noteworthy that

<sup>251</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

Ministry of Defence has delayed taking a decision on whether to grant sanction for prosecution. This has allowed the alleged perpetrators to evade justice.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1997 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity.

## Case No. **124**

#### *Victim Details*

Abdul Khaliq Wani [Extra-Judicial Killing]  
Son of: Habibullah Wani  
Resident of: Tulmullah, Ganderbal District

#### *Alleged Perpetrators*

1. Major Joginder Mohan Yadav [Yadoo<sup>252</sup>], 13 Rashtriya Rifles [RR] / 3 Kumaon Regiment, Army

#### *Case Information*

Abdul Khaliq Wani was picked up by army personnel on 16 February 1997 for questioning during which he received injuries and later died in the hospital on the same day.

First Information Report [FIR] no.39/1997 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Ganderbal Police Station<sup>253</sup>. The communication dated 9 May 2012 by the Jammu and Kashmir Police reveals that on 16 February 1997 army personnel of 3 Kumaon cordoned off the Tulmullah village and started a door-to-door search.

During the search operation some locals were lifted for questioning / interrogation. During this process Abdul Khaliq Wani got injured and was shifted to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura, Srinagar for treatment where he succumbed to injuries. Accordingly, proceedings under Section 174 [Police to enquire and report on suicides etc.] Criminal Procedure Code, 1989 (CrPC) were initiated.

<sup>252</sup> The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], spells the last name of the alleged perpetrator as “Yadoo”.

<sup>253</sup> Information on this FIR was sought through RTI on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

The 18 February 1997 medical opinion opined the cause of the death to be due to head injury. On receipt of the medical opinion, FIR no. 39/1997 was registered and investigation was taken up. During the course of investigation all legal procedural formalities were conducted and case was established against the alleged perpetrator. The case diary file was submitted to the Deputy Inspector General, Central Kashmir Range, Srinagar vide District Police Office Ganderbal's letter no.CRB/Sanc/12017-18 dated 9 October 2011 for further submission for acquiring sanction for prosecution under AFSPA against Major Joginder. Accord of sanction was still awaited. By further communication dated 9 July 2012 from the Jammu and Kashmir Police it was stated that the case was lying with the "home deptt."

Further, a report of the investigations was provided that confirms the above details and notes that Abdul Khaliq Wani received head injuries.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that the case had been received in December 2006 and was under consideration.

This case does not find mention in the list of cases furnished by the Government of Jammu and Kashmir in response to a RTI on sanctions for prosecutions under AFSPA on 6 September 2011. Also, the communication of the Jammu and Kashmir Police of 9 May 2012 states that this case was sent to the Deputy Inspector General, Central Kashmir Range, Srinagar on 9 October 2011 for seeking sanction for prosecution under AFSPA.

Further, by letter dated 9 July 2012 information was provided that the case was still with the Home Department. But, surprisingly, the Ministry of Defence seems to have received the case in December 2006.

It needs to be clarified how and from whom the Ministry of Defence received this case. Also, based on the information provided by the Jammu and Kashmir Police, it needs to be investigated why the Government of Jammu and Kashmir and the police took 14 years to process the case for sanction for prosecution under AFSPA.

## Case No. **125**

### *Victim Details*

Muzamil Ahmad Chasoo [Abduction and Enforced Disappearance]  
Age: 16  
Occupation: Working in a pharmaceutical agency and a 9<sup>th</sup> Standard student  
Son of: Mohammad Shafi Chasoo, Afroza  
Resident of: Dabtal Syed, Hamidpora, Nawa Bazar, Srinagar

### *Alleged Perpetrators*

1. Commandant, 9<sup>th</sup> Battalion Border Security Force [BSF], Camped at Mamta Hotel

### *Case Information*

Muzamil Ahmad Chasoo was picked up by the Commandant of the 9<sup>th</sup> Battalion BSF a year prior to the incident but was then released as there was no allegation against him.

Three days before the incident there was a raid and the BSF personnel asked for Muzamil Ahmad Chasoo. On 26 February 1997,

Muzamil Ahmad Chasoo was outside with a domestic help when he was picked up and has disappeared since. A few days after his disappearance, the BSF personnel raided his house and asked for him. The family of Muzamil Ahmad Chasoo believes this was only done to mask their involvement in his abduction.

The family of Muzamil Ahmad Chasoo gave a statement to the IPTK on 9 March 2012.

A First Information Report [FIR] was filed on 2 March 1997.

The family of Muzamil Ahmad Chasoo filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.6/2001]<sup>254</sup>. The Union of India, BSF and the Commandant, 9<sup>th</sup> Battalion BSF denied the arrest of the victim. On 16 April 2002 the matter was referred for a judicial enquiry. The judicial enquiry conducted by the Additional Sessions Judge, Srinagar, was concluded on 28 November 2002. Based on the testimony adduced by the respondents and the disparity on dates between the petitioners witness Reyaz Ahmed and the petitioners version of events, the enquiry could not conclude that the 9<sup>th</sup> Battalion BSF had abducted Muzamil Ahmad Chasoo, but confirmed that Muzamil Ahmad Chasoo had disappeared. Based on the enquiry report, the High Court disposed off the petition on 27 January 2004 with the observation that "petitioner is free to take recourse to appropriate legal remedies, if in possession of better particulars and legally sustainable information/facts touching the disappearance of" Muzamil Ahmad Chasoo.

A complaint was filed by the father of Muzamil Ahmad Chasoo on 25 May 1998 to the National Human Rights Commission [NHRC] and notice was issued to the Ministry of Home Affairs. There are two documents on record: one dated 16 August 2000 which closes the case based on a response from the Ministry of Home Affairs. The second dated 18 August 2000, stamped as 21 August 2000, forwards the status of the case to the Muzamil Ahmad Chasoo's family. The 16 August 2000 order closed the case based on the response from the Ministry of Home Affairs that they were not responsible for the abduction of "Jehangir", the nickname of Muzamil Ahmad Chasoo.

After confirming the disappearance of Muzamil Ahmad Chasoo, the High Court should have continued to monitor the investigations on the FIR. But, instead the High Court chose to shift the burden of seeking justice back on the victim's family. Similarly, the NHRC, based it would seem entirely on the representations of the Ministry of Home Affairs, dismissed the case. The approach of both the High Court and the NHRC clearly resulted in a denial of justice as it appears no investigations or prosecutions have taken place.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. **126**

### *Victim Details*

Mohammad Shafi Shah [Abduction and Enforced Disappearance]  
Occupation: 2<sup>nd</sup> year Bachelor of Sciences [BSC] student

<sup>254</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Son of: Ali Mohammad Shah  
Resident of: Mirnag, Hyhama, Kupwara District

#### *Alleged Perpetrators*

1. Deputy Superintendent of Police [DSP] Ghansham, Special Operations Group [SOG], Jammu and Kashmir Police

#### *Case Information*

On 4 April 1997, Mohammad Shafi Shah was picked up by SOG personnel, led by DSP Ghansham, from Karan Nagar, Srinagar. Mohammad Shafi Shah has disappeared since.

The brother of Mohammad Shafi Shah, filed a complaint before the State Human Rights Commission [SHRC] on 6 March 2007. The final decision was given by the SHRC on 15 July 2009.

The SHRC sought a report from the Director General of Police [DGP], Jammu and Kashmir, which stated that some “unidentified gunmen” had kidnapped Mohammad Shafi Shah from his rented accommodation. Further, that nothing adverse had been found against him. Two witnesses were produced before the SHRC: Peerzada Mohammed Jaffar and Ali Mohammad Shah, the father of the victim.

Peerzada Mohammed Jaffar stated that “the Task Force party from Karan Nagar Police Station” abducted Mohammad Shafi Shah along with eight others. Further, he also stated that “the locals” of the area were saying that the party was headed by one “Dy.SP Ghansham”. The father of the victim stated that he heard about the abduction of his son by the “Task Force”. Further, that he heard that Mohammad Shafi Shah had been taken to the SOG Camp, Cargo, for questioning. Further, that “thereafter he visited Cargo office where he was allowed to meet his son”.

The SHRC stated that the factum of disappearance of Mohammad Shafi Shah was confirmed in the police report along with the fact that Mohammad Shafi Shah was not involved in any militancy related activities.

The SHRC recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

Despite the passage of 15 years, and the SHRC decision confirming the disappearance based on a police report, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. It needs to be ascertained whether even a FIR was filed.

Case No. **127**

#### *Victim Details*

Mehrajuddin Dar [Abduction and Enforced Disappearance]

Age: 27

Occupation: Shopkeeper / Released militant

Son of: Abdul Razak Dar

Resident of: Tengpora bypass, Batamaloo, Srinagar

#### *Alleged Perpetrators*

1. Commandant [Commanding Officer] S.K.Malik, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
2. Major Vishu Jeet Singh / Major Vishwajeet Singh, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
3. Naib Subedar Nazahar Mohammad, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar

#### *Case Information*

On the intervening night of 20 and 21 April 1997 the family of Mehrajuddin Dar states that army personnel of the 20 Grenadiers accompanied by Major Vishwajit Singh and Naib Subedar Nazahar Mohammad raided and ransacked their house. They took Mehrajuddin Dar in another room and started questioning him for about one hour. The family of Mehrajuddin Dar states that he was later taken in an army vehicle. They state that Mehrajuddin Dar was a militant in the early 1990's but after his arrest and detention of about three years he was released and started to live the life of a common man.

The next day, the family went to the Batamaloo Police Station and lodged a report but for two years the family was not given the copy of the police report. Only after two years were they given a copy after they used some influence. The family states that they also went to the 20 Grenadiers Camp but the army did not allow them inside the camp. The family states that they were beaten by the army since they were making rounds of the camp. The family talked to Commanding Officer S.K.Malik but he denied that the victim had been arrested. The family states that the army took Rs.15,000 and promised that the victim would be released but to no avail. The army initially acknowledged that Mehrajuddin Dar had been picked up by them but later retracted their statement.

The family of Mehrajuddin Dar also states that one Sajad Ahmad, resident of Zainadhar Mohalla, Habbakadal, took about Rs. 6,00,000 from the family on different occasions on the promise of assisting in the release of Mehrajuddin Dar. Further, Sajad Ahmad also falsified documents from jail authorities and army units to convince the family that he knew the whereabouts of the victim.

The family of Mehrajuddin Dar gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no. 3/2001 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Batmaloo Police Station on 5 January 2001<sup>255</sup>.

The family of Mehrajuddin Dar filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.13/1999]<sup>256</sup>.

On 7 November 2000 the High Court ordered that a FIR be registered and investigations carried out. Based on this, the above referred FIR no.3/2001 was lodged.

The FIR states that the contention of the family of the victim was that Mehrajuddin Dar was picked up on the intervening night of 19 and 20 April 1997. This leads to a slight discrepancy with the recent statement given by the family of Mehrajuddin Dar. As per the FIR, the 20 Grenadiers denied the charges before the High Court and denied that any search operation had even taken place.

The following information, based on a report entitled “In search of vanished blood: the writ of habeas corpus in Jammu and Kashmir: 1990-2004” may be considered<sup>257</sup>:

“In their reply to this petition, the 20 Grenadiers denied Mehrajuddin's arrest and, denied that they had carried out any

<sup>255</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>256</sup> Information on the petition number was sought through RTI on 2 July 2012. No information was provided.

<sup>257</sup> Ashok Aggarwal, October 2008, pp.87-88.

operation in his locality on the date of his alleged arrest. In November 2000 the Court disposed of the petition with a direction to the police to register a case regarding Mehrajuddin's disappearance and, to file a report regarding the progress in the investigation after six months. This order was not complied with".

Further, the report states that Major Vishwajit Singh was awarded the 'Ati Vishisht Sewa' medal by the Government of India in 1998.

Also of interest is a letter dated 9 February 2007 from the family of Mehrajuddin Dar to the Station House Officer [SHO], Batamaloo Police Station where reference is made to the raiding party and in addition to Major Vishwajit Singh and Naib Subedar Nazahar Mohammad, reference is made to: "Kuladi, Kalla and Captain Anil Malik". But, in the recent statement given to the IPTK these names are not mentioned.

Of further interest, and indicting the 20 Grenadiers, is a letter dated 20 March 2003 from the Senior Superintendent of Police [SSP], Srinagar to the District Magistrate, Srinagar that states that a report from the SHO, Batamaloo Police Station confirms that the 20 Grenadiers were involved in the arrest of Mehrajuddin Dar. Further, that the 20 Grenadiers were not cooperating with the investigations.

The family of Mehrajuddin Dar also approached the State Human Rights Commission [SHRC].

The family of Mehrajuddin Dar has not received any relief/compensation.

The Jammu and Kashmir Police took four years to file a FIR in this case, and that too only after the intervention of the High Court. Further, no information exists on record on the state of investigations or prosecutions over the last 11 years following the filing of the FIR. The apparent lack of any action may also be a criticism of the High Court that should have remained seized of the matter instead of leaving it to the discretion of the Jammu and Kashmir Police.

Further, the Ministry of Defence seems to have cared very little about the High Court order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **128**

### *Victim Details*

Abdul Ahad Malik [Abduction and Enforced Disappearance]  
Age: 50  
Occupation: Employee in Public Health and Engineering Department  
Son of: Asadullah Malik  
Resident of: Doolipur, Kreeri, Pattan, Baramulla District

### *Alleged Perpetrators*

1. Major Samir Singh [Operational name: Major Malik], 8 Rajputana Rifles, Army, Camp Kreeri

### *Case Information*

On 24 May 1997, at about 9.30 pm, the army cordoned off Abdul Ahad Malik's house. But Abdul Ahad Malik was at his aunt's residence in Wagoora.

At Abdul Ahad Malik's actual house at Doolipur, his son, Abdul Hussain Malik, was awakened and the whole family was asked about Abdul Ahad Malik's whereabouts. The family stated that the aunt's residence at Wagoora was also cordoned off. The aunt's family at Wagoora was also interrogated.

The victim's other son, Altaf, and brother, Abdul Rehman, were picked up from their house and taken to Wagoora in search of Abdul Ahad Malik.

Abdul Ahad Malik was picked up from his aunt's residence at Wagoora and taken in an army vehicle. The family states that they never saw Abdul Ahad Malik again. Neither was his dead body handed over to them.

The family of Abdul Ahad Malik states that FIR no. 4/1997 was filed at the Kreeri Police on 22 June 1997. They also state that they went to many army camps to ask about Abdul Ahad Malik but they were not given any information.

The family states that they were threatened by the army, and fearing repercussions, they stopped pursuing the case. The family of Abdul Ahad Malik also states that the original FIR filed named Major Samir Singh but this was subsequently changed under pressure.

The family of Abdul Ahad Malik gave a statement to the IPTK on 6 March 2012.

Contradicting the position of the family, a letter dated 28 August 2000 from the Senior Superintendent of Police [SSP], Baramulla, to the Assistant Commissioner, Baramulla, states that information was received by the Kreeri Police Station on 20 June 1997 and an entry was made in the Daily Diary of the Police Station. Following investigations, FIR no.6/1998 u/s 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] was filed at the Pattan Police Station. The investigation was closed by declaring the perpetrators as untraced on 8 April 1999. This letter also states that Abdul Ahad Malik was not involved in any subversive activities. To add to the confusion on the issue of the FIR, a letter dated 6 September 2003, from the SSP, Baramulla, to the Deputy Commissioner [DC], Baramulla refers to the filed FIR no. as 6/1997 u/s 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] at the Pattan Police Station.

Information on the FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

On 22 March 2002 the District Magistrate, Baramulla, on the basis of an enquiry conducted, stated that Abdul Ahad Malik was lifted by the army in May 1997 "and got killed by terrorists". Further, Abdul Ahad Malik was presumed dead. No explanation is provided on how it could be concluded that the victim had been killed by "terrorists". The annexed enquiry report states that the army lifted Abdul Ahad Malik on the intervening night of 24 and 25 May 1997. The enquiry report also refers to a report received from the 29 Grenadiers [the text on this portion is unclear] which confirms that Abdul Ahad Malik was picked up on the intervening night of 24 and 25 May 1997 and since then his whereabouts are unknown. The enquiry, then makes a similar leap and presumes his killing by terrorists.

The family of Abdul Ahad Malik also approached the National Human Rights Commission [NHRC]. The matter was placed before the NHRC on 9 June 2000. On the same date the NHRC closed the case. The NHRC, in its order, states that the family of Abdul Ahad Malik had claimed that he was apprehended by the "8<sup>th</sup> Gorakha



Regiment” and since then was not traceable. A report was sought from the Defence Secretary, Union of India. This report stated that there was no such unit in the army, and that Abdul Ahad Malik was not apprehended by the army. Further, that there existed no report regarding Abdul Ahad Malik in the police station.

Based on this the NHRC closed the case. Once again, there appears to be a contradiction from the family with regard to the unit of the army involved. But, clearly, the representation of the Defence Secretary, Union of India, that no police record of the incident exists, is also patently false.

The family of Abdul Ahad Malik received Rs. 1,00,000 ex-gratia government relief compassionate employment under SRO-43 [Statutory Rules and Orders].

On record is an affidavit by the wife of Abdul Ahad Malik and his daughter that states that the Abdul Ahad Malik was apprehended from his own residence on the intervening night of 24 and 25 May 1997 by the “9 GR”. This information, particularly the unit of the army involved contradicts with the statement given by the family to the IPTK.

No information exists on what basis the Jammu and Kashmir Police closed the investigations in this case declaring the perpetrators as untraced.

This closure report would, by law, have to be judicially scrutinized. Whether this was actually done would need to be ascertained.

The impunity for the perpetrators of the crime has been compounded by the manner in which the NHRC closed its enquiry based on patently false representations.

The Ministry of Defence seems to have cared very little about the possible involvement of the army in a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 129

### *Victim Details*

Ghulam Nabi Malik [Abduction and Extra-Judicial Killing]

Age: 38

Occupation: Shopkeeper

Son of: Abdul Ahad Malik

Resident of: Shahpora, Ganderbal District

### *Alleged Perpetrators*

1. Major Parera, 3 Kumaon Rifles, Army
2. Irshad Ahmad Sofi, Civilian
3. Mohammad Yaseen Sofi, Civilian
4. Constable Abdul Rashid Sofi, Acting Munshi, Ganderbal Police Station, Jammu and Kashmir Police
5. Mohammad Sultan Mir [Operational name: Sula Buchpuri], Government backed militant [Ikhwan]
6. Khati, spouse of Mohammad Yaseen Sofi, Civilian

### *Case Information*

On 19 June 1997 the family states that there was a fight between the families of Ghulam Nabi Malik and Mohammad Yaseen Sofi. His brother, Abdul Rashid Sofi, was acting Munshi in the Ganderbal

Police Station. The family states that Mohammad Yaseen Sofi threatened Ghulam Nabi Malik victim that he would get him killed.

On the same evening at about 10.30 pm, the family of Ghulam Nabi Malik states that the army and police raided the house and ransacked the house and damaged Ghulam Nabi Malik’s shop.

On 21 June 1997, some gunmen in police and army uniform barged into Ghulam Nabi Malik’s house. Once the gunmen entered the house, they were identified by the members of the family since they lived close to their house. They were identified as Abdul Rashid Sofi, Irshad Ahmed Sofi, Mohammad Yaseen Sofi and Khati. The army was also present with the police, according to the family members of Ghulam Nabi Malik. Ghulam Nabi Malik was then taken away along with his money, Rs. 65,000. The reason for the abduction was that Irshad Ahmed Sofi, Mohammad Yaseen Sofi and Khati had purchased items from the shop of the victim to the tune of Rs.30,000 and refused to pay. The family of the victim also implicates Mohammad Sultan Mir in the abduction.

On the next day, 22 June 1997, the family went to Ganderbal Police Station and the army camp of 3 Kumaon situated near the police station. The camp was headed by Major Parera. The family states that they also went to Special Operations Group [SOG] of the Jammu and Kashmir Police camp located at the power-house but none of these agencies acknowledged his arrest.

The family states that they had identified the alleged perpetrators in the case but despite their repeated attempts the police did not cooperate. The police did not file any FIR and did not take any action.

The family kept searching for Ghulam Nabi Malik for about two months. The family states that they were given a clue by the SOG personnel to check the water canal, above the police station in Tengpora village. The family of Ghulam Nabi Malik requested the ex-engineer of the power plant to stop the water flow in the canal so that they could see the dead body but he initially refused. On 16 August 1997 there was a mechanical fault in the pump and the water stopped and soon the family started to search the canal and after this search they found the body of Ghulam Nabi Malik. The dead body was lying under the water but once the family took the body out, they called police to the spot. The family then states that they took pictures of the body and the body did not bear any bullet injuries but the body bore torture marks. The family states that the face had been burnt, legs bore cut marks by a knife and various other marks were on the body. The family later took the body to the Ganderbal Hospital where an autopsy was conducted.

The family of Ghulam Nabi Malik received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Ghulam Nabi Malik gave a statement to the IPTK on 22 February 2012.

First Information Report [FIR] no.173/1997 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder], 109 [Abetment] was filed at the Ganderbal Police Station<sup>258</sup>.

The family of Ghulam Nabi Malik filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP)

<sup>258</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

1157/1997]<sup>259</sup>. It was also alleged before the High Court that Showkat Hussain, at one point the Station House Officer [SHO], Ganderbal Police Station, was screening the alleged perpetrators as he was related to them. During the proceedings the court was informed that SHO Showkat Hussain was replaced in the investigations of the case.

On 14 October 1998 the High Court disposed off the petition, directed that investigations be expedited, and stated that there was no further reason to be seized of the petition as SHO Showkat Hussain had been replaced in the investigative team.

The matter was also litigated before the High Court by the alleged perpetrators [Cr.Rev.No. 48/2004, Bail Appl no. 48/2005 and Petition no. 36/2004 filed under Section 561-A. A Final decision was delivered on 25.5.2007]<sup>260</sup>. The facts recounted by the High Court in this decision state that Khatri was also implicated in the abduction of Ghulam Nabi Malik. Further, that Mohammad Sultan Mir took Rs. 10,000 for the release of Ghulam Nabi Malik but did not act on his promise to assist.

The decision also states that the Crime Branch investigations concluded that the abduction had been carried out and also implicated Major Parera, 3 Kumaon Rifles. Major Parera was said to have assisted in the crime on the promise of receiving a Pashmina shawl worth Rs. 60,000. A charge sheet was lodged before the City Magistrate, Srinagar, on 27 October 2003 against: Major Parera, Mohammad Sultan Mir, Mohammad Yaseen Sofi, Irshad Ahmad Sofi and Abdul Rashid Sofi. By the decision of the High Court, Mohammad Yaseen Sofi and Irshad Ahmad Sofi were granted interim bail.

The record suggests that Major Parera challenged this order in the Supreme Court [his petition related to quashing of a FIR and an order of the lower court].

The Supreme Court on 11 July 2007 stayed the proceedings with regard to the accused Major Parera.

On 28 July 2009 the High Court granted interim bail to Abdul Rashid Sofi.

The family of the Ghulam Nabi Malik approached the National Human Rights Commission [NHRC] on 1 March 1999.

The role of the Jammu and Kashmir Police may be criticized in this case as it appears that a FIR was filed only after the killing of the victim.

Further, while it appears judicial proceedings are under way, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Parera.

## Case No. 130

### *Victim Details*

Three civilians [Extra-Judicial Killing (Fake encounter)]

<sup>259</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

<sup>260</sup> Information on the petition numbers was sought through RTI on 16 February 2012. Information was provided.

### *Alleged Perpetrators*

1. Major Ganpati, 28 Rashtriya Rifles [RR], Army

### *Case Information*

The victims were killed on 16 July 1997 in an alleged fake encounter.

First Information Report no.80/1997 was filed<sup>261</sup>.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in September 2008 and was under consideration.

The Ministry of Defence, in response to a RTI on 10 January 2012 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction had been denied on 23 September 2010. Further, that: "there is a contradiction in the investigation carried out in the case by the police twice with a gap of 8-9 years."

The Ministry of Defence while declining sanction did not provide the details of the contradictions in the police investigations. Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

## Case No. 131

### *Victim Details*

Abdul Ahad Mir [Extra-Judicial Killing (Custodial Killing)]  
Son of: Assadullah Mir  
Resident of: Sanoor, Kalipora, Beerwah, Budgam District

### *Alleged Perpetrators*

1. Mushtaq Ahmed Paul, CAT [Informer for the Army], Camp Dharmuna
2. Major Nayar [Operational name: Sunder Ram Wakate], 20 Grenadiers, Army, Camp Russu

### *Case Information*

First Information Report [FIR] no.314/1997 u/s 302 [Murder] was filed at the Beerwah Police Station<sup>262</sup>. The 21 December 2011 communication from the Jammu and Kashmir Police states that on 12 September 1997, the guard of Village Sanoor, Kalipora, Ghulam Rasool Ganaie reported to the Beerwah Police Station with a written application to the effect that on 10 September 1997 army personnel

<sup>261</sup> Information on this FIR and case [although no details of the Police Station were available] was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By letter dated 9 July 2012, information was provided by the Jammu and Kashmir Police in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police, Headquarters, Srinagar that this FIR was scutinized in the police stations of the Srinagar District and no case involving the alleged perpetrator was found.

<sup>262</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

along with their informer, Mushtaq Ahmed Paul of Dharmuna Camp arrested one Abdul Ahad Mir and on the next day the army called his father and the Lambardar [Numberdar, de facto revenue authority in the village] of the village and handed over the victim in a critical condition. Abdul Ahad Mir died. He was a released militant and was now silent.

The case was closed as chargesheeted and the case file was sent to the Government to seek sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Defence on 22 May 2001 for Major Nayar and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir four years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Further, no information exists on what proceedings, if any, were conducted against Mushtaq Ahmad Paul.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 132

### *Victim Details*

1. [Name withheld] [Assault and Rape]  
Resident of: Razwen village, Budgam District
2. [Name withheld] [Assault]  
Resident of: Razwen village, Budgam District

### *Alleged Perpetrators*

1. Major Nayar, 20 Grenadiers, Army, Beerwah, Budgam

### *Case Information*

On 12 September 1997 the victims were beaten in their house by personnel of the 20 Grenadiers, camped at Beerwah, Budgam. Reportedly, victim no.1 was raped as well<sup>263</sup>.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the FIR number was "312/97 Budgam" and that the victims were beaten up during a

<sup>263</sup> JKCCS, *State of Human Rights in Jammu and Kashmir, 1990-2005*, 2005, p.289.

search in their house in September 1997<sup>264</sup>. The document does not have any reference to rape. The Ministry of Defence refers to Major Nayar as an accused in this case and the status for granting the sanction for prosecution under AFSPA as under consideration.

After acquiring the copy of the FIR number 312/1997 of the Budgam Police Station it appears that the FIR does not pertain to this case and has been wrongly mentioned by the Ministry of Defence in their 2009 affidavit.

## Case No. 133

### *Victim Details*

1. Abdul Aziz [Abduction and Enforced Disappearance]  
Son of: Sher Mohammad  
Resident of: Kotdhara, Rajouri District
2. Abdul Aziz [Abduction and Enforced Disappearance]  
Son of: Mohammad Hussain  
Resident of: Kotdhara, Rajouri District
3. Mohammad Yousuf [Abduction and Enforced Disappearance]  
Son of: Raj Mohammad  
Resident of: Kotdhara, Rajouri District

### *Alleged Perpetrators*

1. Commandant [Commanding Officer] Mann Singh, 18<sup>th</sup> Dogra Regiment, Army

### *Case Information*

In October 1997, Abdul Aziz, Abdul Aziz and Mohammad Yousuf were picked up from their houses and have disappeared since. It was reported in the media that the family believes that the Commanding Officer Mann Singh was responsible for the crime as the three victims used to work for him by getting him heroin across the border. The killing of the victims may have been to ensure that the heroin operation was not revealed<sup>265</sup>.

The family of the victims approached the State Human Rights Commission [SHRC] and a final decision was given on 22 July 2008.

The SHRC received a report from the Senior Superintendent of Police [SSP], Rajouri, dated 28 May 2008 that confirmed the abduction and killing of the victims by the 18<sup>th</sup> Dogra Regiment, while not specifically naming Commanding Officer Mann Singh. The report stated that it was believed that the bodies of the victims were buried at Peer Badaser, near Kacha post. This place was dug up on 19 June 2007, but the bodies were not found. Based on the above, the SHRC indicted the 18<sup>th</sup> Dogra Regiment and recommended Rs.5,00,000 each for the disappearance of the victims, and a registration of a case of kidnapping and murder against the concerned army personnel of the 18<sup>th</sup> Dogra Regiment.

No information exists on whether any investigations or prosecutions were carried out by the Jammu and Kashmir Police for a case that is 15 years old. Further, despite an indictment of the army by the

<sup>264</sup> Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. On 27 December 2011 a response was received and a copy of the FIR was provided.

<sup>265</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2007/Jun/21/3-rajouri-men-killed-in-fake-gunfights-51.asp>, 21 June 2007.

SHRC, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 134

### *Victim Details*

Balbir Singh [Extra-Judicial Killing]  
Tailor  
Son of: Gulab Singh  
Resident of: Mehjoor Nagar, Srinagar

### *Alleged Perpetrators*

1. Major Avtar Singh, 103<sup>rd</sup> Battalion Territorial Army

### *Case Information*

First Information Report [FIR] no.5/1997 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Rajbagh Police Station<sup>266</sup>.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case was closed as chargesheeted and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought on 22 October 1998 and was awaited. But, the available documents on cases sent or received for sanction for prosecution under AFSPA do not refer to this case.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

Despite the Jammu and Kashmir Police stating that sanction for prosecution under AFSPA was sought on 22 October 1998, the available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

<sup>266</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity.

## Case No. 135

### *Victim Details*

Mohammad Shaban Sofi [Abduction and Enforced Disappearance]  
Age: 38  
Son of: Amber Sofi  
Resident of Sofigund, Tral, Pulwama District

### *Alleged Perpetrators*

1. Major Parkash, Mahar Regiment, Army, Camp Satwara

### *Case Information*

First Information Report [FIR] no.111/2002 u/s 364 [Kidnapping / Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station<sup>267</sup>.

The FIR refers to the disappearance of Mohammad Shaban Sofi and implicates Major Parkash. The FIR states that the victim was taken to the army camp on 1 February 1998 and has disappeared since. This appears to contradict with the other information on the FIR that suggests that the date of the incident was 4 September 1998.

Despite the passage of 10 years, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

Further, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Parkash.

## Case No. 136

### *Victim Details*

Altaf Ahmed Dar [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 30  
Occupation: Horse cart owner (Tonga driver)  
Son of: Ghulam Muhammad Dar  
Resident of: Aarampora, Qamarwari, Srinagar

### *Alleged Perpetrators*

1. Haq, Station House Officer [SHO], Parimpora Police Station, Jammu and Kashmir Police

### *Case Information*

On 25 June 1998, the family of Altaf Ahmed Dar states that at about 11:45 pm, a group of Special Operations Group [SOG] of the Jammu and Kashmir Police personnel headed by SHO Haq raided the victim's house. After barging into the house, they asked Altaf

<sup>267</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Ahmed Dar about his old friend Mushtaq Ahmed, who was a militant. Altaf Ahmed Dar told them that he had no information about him nor was he associated with him. Then he was locked inside a room and tortured. The family members were kept in a locked room. The family of Altaf Ahmed Dar states that he was crying and was pleading his innocence. Altaf Ahmed Dar was tortured for about 45 minutes after which he stopped crying. SHO Haq took him away. On the same night, the family went to the Qamarwari Police Post and reported the matter but they refused to file the report.

The next morning, at about 10:00 am, the family along with the neighbors staged a protest outside the Police Station. A person told the family later that Altaf Ahmed Dar was hospitalized at Sher-e-Kashmir Institute of Medical Science [SKIMS]. Then the family rushed to the hospital where Altaf Ahmed Dar was in the intensive care unit on a ventilator. On 28 June 1998, the doctors declared him dead. He had died due to the torture, his family states. The dead body was later taken to the Police Control Room, Srinagar. Then an autopsy was conducted. On the same day at about 4:00 pm the body was handed over to the family.

The family of Altaf Ahmed Dar approached the State Human Rights Commission [SHRC] alleging the torture and killing of Altaf Ahmed Dar by SHO Haq. The SHRC issued its final decision on 25 September 2001. The SHRC received a report from the Inspector General of Police [IGP], Kashmir that stated that Altaf Ahmed Dar had been arrested in relation to another case.

Subsequently, during interrogation, it was confirmed that Altaf Ahmed Dar had been involved in this other case. When Altaf Ahmed Dar was being taken in a vehicle, he jumped out and sustained injuries. The family of Altaf Ahmed Dar denied this version of events.

The SHRC heard the evidence of witnesses that testified to the arrest of Altaf Ahmed Dar and that he had no links with any militants. The SHRC confirmed the torture and death of Altaf Ahmed Dar by the police and recommended ex-gratia government relief of Rs.1,00,000.

First Information Report [FIR] no.139/1998 u/s 302 [Murder], 307 [Attempt to murder], 423 Ranbir Penal Code, 1989 [RPC] and 3/25 Explosive Substances Act at the Parimpora Police Station, was the FIR under which Altaf Ahmed Dar was arrested. FIR no.190/1998 u/s 224, 511 Ranbir Penal Code, 1989 [RPC] at Parimpora Police Station was filed against Altaf Ahmed Dar for affiliation with militancy and escaping from the custody of the police after his implication under FIR no.139/1998. This incident of the escape from the police is dated 27 June 1998.

Despite the registration of these FIR's and the position taken by the Inspector General of Police [IGP], Kashmir before the SHRC, three other letters from police authorities are on record.

First, a letter from the Qamarwari Police Post dated 27 July 2008 which states that Altaf Ahmed Dar was arrested by unknown armed forces on 28 June 1998 and was injured during the investigations. This letter confirms that Altaf Ahmed Dar was not involved in any militancy activities.

The second letter is from the Senior Superintendent of Police [SSP], Criminal Investigations Department [CID], Special Branch, Kashmir which also confirms that Altaf Ahmed Dar was not involved in any militancy activities. Third, a letter dated 31 January 2009 addressed to the SHO, Parimpora Police Station also confirms that Altaf Ahmed Dar was not involved in any militancy related activities. This

letter is from the In-Charge of a police post, but the specific police post is unclear from the letter.

But, continuing with the contradictory positions of the police authorities, a letter dated 17 June 2008 from the IGP, CID, Jammu and Kashmir, Srinagar to the Deputy Commissioner [DC], Srinagar, states that Altaf Ahmed Dar was found involved in subversive activities following investigations in FIR no.139/1998 and a chargesheet was produced in court against five persons [presumably including Altaf Ahmed Dar]. FIR No.190/1998 was closed by declaring the perpetrators as untraced following the death of Altaf Ahmed Dar. Information on both FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police the copies of the FIR's were provided.

On the non-implementation of the SHRC recommendations, the family of Altaf Ahmed Dar approached the High Court of Jammu and Kashmir to seek the ex-gratia government relief recommended and compassionate employment under SRO-43 [Statutory Rules and Orders].

On 27 April 2006, the High Court observed that the Government of Jammu and Kashmir consider granting the ex-gratia government relief due to the victim's family. On the issue of compassionate employment under SRO-43 [Statutory Rules and Orders], the High Court stated that the victim's family may present its claim before the Government of Jammu and Kashmir.

No ex-gratia government relief or compassionate employment under SRO-43 [Statutory Rules and Orders] have been received by the family of Altaf Ahmed Dar.

The family of Altaf Ahmed Dar gave a statement to the IPTK on 2 March 2012.

Strangely, the SHRC has failed to fix the responsibility of the crime on SHO Haq despite the family of the victim testifying against him and the SHRC confirming the involvement of the police in the crime.

Further, the SHRC should have made recommendations for a separate and independent investigations process particularly as SHO Haq was also of the Jammu and Kashmir Police. The SHRC, as in other cases, should have also recommended for the filing of a correct FIR and investigations against police officials of the Parimpora Police Station responsible for the filing of the false FIR's.

The SHRC should also have recommended action against the IGP, Kashmir for the false representations made before the SHRC.

Finally, the High Court order on relief and compensation was weak and has resulted in the family of the victim still awaiting relief and compensation.

## Case No. **137**

### *Victim Details*

1. Younis Khan [Enforced Disappearance]  
Son of: Mohammad Lateef Khan  
Resident of: Uri, Baramulla District
2. Hameed Khan [Enforced Disappearance]  
Son of: Mohammad Lateef Khan  
Resident of: Uri, Baramulla District
3. Mohammad Lateef Khan [Torture]  
Resident of: Uri, Baramulla District

### *Alleged Perpetrators*

1. Subedar Harindran / Harvinder Singh / Harendran Singh, 28 Madras Army / 28 Rashtriya Rifles [RR], Army<sup>268</sup>
2. Havaladar Rajan, 28 Madras Army / 28 Rashtriya Rifles [RR], Army

### *Case Information*

On 5 August 1998, Mohammad Lateef Khan was tortured, and his sons, Younis Khan and Hameed Khan, were disappeared in custody.

First Information Report [FIR] no. 83/1998 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] was filed at the Uri Police Station<sup>269</sup>. By communication dated 22 May 2012 from the Jammu and Kashmir Police information was provided that the case was under investigation and that the FIR was misplaced.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that that it was under consideration

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 22 May 2009 and was awaited.

The Ministry of Defence, in response to an RTI on on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that it was under examination.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

It also needs to be investigated how the FIR was misplaced in this case by the Jammu and Kashmir Police. The investigations would need to ascertain whether this is a case of negligence or an attempt to cover up the matter.

Further, the Ministry of Defence, despite the passage of three years, is further delaying the processes of justice by not taking a decision on the issue of sanction for prosecution under AFSPA.

Finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **138**

### *Victim Details*

Mohi-ud-Din Amin Wani [Abduction and Extra-Judicial Killing (Custodial Killing)]  
Son of: Ghulam Ahmad Wani  
Resident of: Preng, Ganderbal District

<sup>268</sup> The documents from the Government of Jammu and Kashmir and the Ministry of Defence contain different information on the name of alleged perpetrator no.1 and the unit of the alleged perpetrators. All available information has therefore been listed.

<sup>269</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

### *Alleged Perpetrators*

1. Major P.K.Singh [Lieutenant Colonel as of 2009], 197<sup>th</sup> Field Regiment, Army
2. Major Abhay Tiwari [Retired as per information provided in 2009], 197<sup>th</sup> Field Regiment, Army

### *Case Information*

On 19 August 1998 Mohi-ud-Din Amin Wani was killed in custody.

First Information Report [FIR] no. 40/1999 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kangan Police Station<sup>270</sup>. The 9 May 2012 communication from the Jammu and Kashmir Police states that on 19 August 1998 the 197<sup>th</sup> Field Regiment approached the Kangan Police Station with an application stating therein that the health condition of Mohi-ud-din Wani, apprehended during search operations, had deteriorated.

The army doctors advised them to shift the said person to the Sub-District Hospital, Kangan for further treatment. The doctors declared him brought dead.

The inquest proceedings were ordered / initiated u/s 176 [Inquiry by Magistrates into cause of death] Criminal Procedure Code, 1989 [CrPC]. To this effect FIR no. 40/1999 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was registered at the Kangan Police Station against the 197<sup>th</sup> Field Regiment.

The investigations were taken up and then transferred to the Crime Branch, Srinagar for further investigations.

The investigation of the case stands closed as chargesheeted against the 197<sup>th</sup> Field Regiment and the case file has been submitted for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was under consideration.

It is noteworthy that a 13 year old case remains pending with the Ministry of Defence which is apparently helping the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **139**

### *Victim Details*

1. Qadir Lone [Abduction and Enforced Disappearance]  
Residents of: Warnoo Lolab, Kupwara District
2. Rahem Lone [Abduction and enforced disappearance]  
Resident of: Warnoo Lolab, Kupwara District

### *Alleged Perpetrators*

1. Lieutenant Deepak Mohania, 9 Rajputana Rifles

<sup>270</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided.

## Case Information

On 20 August 1998 the victims were picked up and have since disappeared.

First Information Report [FIR] no. 99/1998 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] was filed at the Uri Police Station<sup>271</sup>.

Based on the 22 May 2012 communication received from the Jammu and Kashmir Police the case has been closed by declaring the perpetrators as untraced. According to this communication, the police was unable to find the copy of the FIR in the records.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it had been received but sanction had been declined. This contradicts the claim of the Jammu and Kashmir Police that the case was closed as untraced.

The Government of Jammu and Kashmir, in response to a request for information under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions, stated on 6 September 2011 in relation to this case that sanction had been sought.

The police investigations into the enforced disappearance of these two persons which led to seeking sanction for prosecution under AFSPA against Lieutenant Mohania was disregarded by the Ministry of Defence and sanction was declined.

Surprisingly, this decline of sanction led to the police disregarding its own investigations and hence closing the case by declaring the perpetrators as untraced.

More shocking is that following the closure of the case the police has probably misplaced the documents pertaining to the case.

## Case No. 140

### Victim Details

Nissar Ahmad Dar [Extra-Judicial Killing]

Age: 19

Occupation: Daily wager with the Power Development Department

Son of: Mohammad Akbar Dar

Resident: Ratharpora, Dadsara, Tral, Pulwama District

### Alleged Perpetrators

1. Subedar U.S. Thappa, 31 Counter Intelligence Unit [CIU], Army
2. Havaladar Harminder Singh / Harjinder Singh, 31 Counter Intelligence Unit [CIU], Army
3. Havaladar J.M. Khand / G.M. Khan<sup>272</sup>, 31 Counter Intelligence Unit [CIU], Army

4. Sepoy Surinder Singh, 31 Counter Intelligence Unit [CIU], Army

## Case Information

On 5 December 1998 at about 3:00 pm, Nissar Ahmad Dar left his office at Awantipora with his brother-in-law Ghulam Rasool Bhat and headed towards his house. Ghulam Rasool Bhat was riding the scooter and Nissar Ahmad Dar was seated behind him. The scooter was being followed by a gypsy vehicle and at some point they were fired upon from the gypsy. While Ghulam Rasool Bhat managed to escape, Nissar Ahmad Dar was unable to. The gypsy stopped, and the personnel in the gypsy shot at Nissar Ahmad Dar once again. Witnesses on the scene stated that the person who fired at the victim was uniformed.

Ghulam Rasool Bhat was a surrendered militant. This assertion of the family is confirmed by a 14 July 2000 communication to the District Magistrate, Pulwama, from the Additional District Magistrate, Pulwama which stated that Ghulam Rasool Bhat was a militant but presently worked in the electric department.

Following the investigations, the family was given to understand that personnel of the CIU were responsible for the killing. Another brother-in-law of Nissar Ahmad Dar, Ghulam Hassan Bhat pursued the case with the police. But, in April 2000 he was shot dead by persons in army uniform at his residence.

The family of Nissar Ahmad Dar gave a statement to the IPTK on 6 February 2012.

First Information Report [FIR] no.154/1998 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Awantipora Police Station on 5 December 1998<sup>273</sup>. The communication of 15 May 2012 stated that the case was registered on 5 December 1998 acting upon reliable information that one Nissar Ahmad Dar s/o Mohammad Akbar r/o Dadsara was shot dead by unknown gunmen and his dead body was lying on the spot. During the course of the investigations the case was closed as chargesheeted against the alleged perpetrators and they were arrested. But, sanction was denied by the Ministry of Home Affairs on 8 April 2010. The case was still under investigation.

The family filed an application at the SHRC but do not know the present status. The family of Nissar Ahmad Dar received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

A letter to the Superintendent of Police [SP], Pulwama, from the SP, Awantipora, dated 14 May 1999 states that Nissar Ahmad Dar nor any member of his family was found to be involved in any subversive activities. The letter also confirms that the firing was from a white colored gypsy vehicle and that evidence reveals that the persons who fired were from the CIU. A letter from the SP, Pulwama, to the Deputy Commissioner, Pulwama dated 7 June 1999 reiterates and confirms the above findings.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990

<sup>271</sup> Information on this FIR was sought through RTI on 7 October 2011. On 22 May 2012 a response was received and information was provided.

<sup>272</sup> The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] refers to this persons as "JM Khand", whereas the Government of Jammu and Kashmir, in

response to an RTI on sanctions for prosecutions under AFSPA, on 6 September 2011 refers to him as "G.M.Khan".

<sup>273</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Information was provided by a communication dated 15 May 2012 from the Jammu and Kashmir Police.

[AFSPA], stated in relation to this case that it was received in May 2007 and was under consideration.

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction was declined on 8 April 2010. Further, in this communication the Ministry of Defence states that “the case was registered after four years of the incident. Accusation was based on suspicion as there are contradictory statements by the witnesses”. The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

In the instant case, the Jammu and Kashmir Police stated on 15 May 2012 that sanction was declined by the Ministry of Home Affairs, while in fact sanction was declined by the Ministry of Defence as the case pertains to their jurisdiction. Further, the assertion of the Ministry of Defence that the case was registered four years after the incident is patently false as FIR no.154/1998 was filed on 5 December 1998, the very day of the incident. While declining the sanction the argument raised by the Ministry of Defence that the accusation was based on suspicion and that there are contradictory statements by witnesses is unsubstantiated.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

## Case No. **141**

### *Victim Details*

Gulzar Ahmad Bhat [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing]

Occupation: Mason

Son of: Ghulam Rasool Bhat, Fata

Resident of: Rangardhar Mohalla, Sadarkote Balla, Bandipora District

### *Alleged Perpetrators*

1. Major Vishal Sharma, 18 Grenadiers, Army, Chak Hajin Camp
2. Rashid Billa, Government backed militant [Ikhwan] and Commander, Ikhwan
3. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo Government backed militant [Ikhwan]

### *Case Information*

In January 1999, the army had come on numerous occasions to take Gulzar Ahmad Bhat for questioning or work at the camp. They were, according to the family of Gulzar Ahmad Bhat, sent by the Ikhwan.

On 22 January 1999, Rashid Billa came to Gulzar Ahmad Bhat's house and asked for money to ensure that he would not be harassed again. The family gave him Rs. 50,000. The reason for the harassment of Gulzar Ahmad Bhat, according to his family, was that he was being accused of tearing the election posters of Kuka Parrey, a well-known Ikhwan.

On 2 February 1999 at about 4:00 pm, Major Vishal Sharma, Rashid Billa and Ghulam Mohammad Margoo came to the residence of Gulzar Ahmad Bhat and abducted him.

Gulzar Ahmad Bhat was taken to the Chak Hajin Camp. His father went to the camp where he was asked to pay money for the release of Gulzar Ahmad Bhat.

On the following morning, 3 February 1999, the father of Gulzar Ahmad Bhat was informed that his son had died in a blast at the Dodwan forest at 5:00 am during a raid of a dump site which had been identified by the army.

On 4 December 1999 the family received some pieces of the body of Gulzar Ahmad Bhat.

The father of Gulzar Ahmad Bhat states that he heard the cries of torture of the victim during the night of 2 and 3 February 1999. From information that the family received later, a Doctor from Hajin went to the Chak Hajin Camp at 4:00 am on 3 February 1999 and confirmed that Gulzar Ahmad Bhat had died due to suffocation caused by torture when a cloth had been stuffed into his mouth.

The family of Gulzar Ahmad Bhat gave a statement to the IPTK on 9 February 2012.

First Information Report [FIR] no.18/1999 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Sumbal Police Station<sup>274</sup>.

The family of Gulzar Ahmad Bhat was harassed by the army and Ikhwan to withdraw the case. The family subsequently did not follow up on the case.

The family of Gulzar Ahmad Bhat received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]. The document dated 14 December 2002 from the Deputy Commissioner [DC], Baramulla awarding the SRO-43 benefits confirms, based on a report from the Superintendent of Police [SP], Ganderbal, that Gulzar Ahmad Bhat was not involved in any subversive activity.

Despite the passage of 13 years, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

This case serves as an example of the manner in which fear faced by families results in absolute impunity for perpetrators of crimes.

The responsibility for this impunity necessarily is with the Jammu and Kashmir Police which does not ensure the necessary space or protection for families to pursue justice.

Further, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Vishal Sharma.

<sup>274</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.



*Victim Details*

1. [Name withheld] [Abduction, Wrongful Confinement, Torture and Rape]  
Spouse: [Name withheld]  
Resident of: Village Daree, Doda district
2. [Name withheld] [Abduction, Wrongful Confinement, Torture and Rape]  
Age: 20  
Daughter of: Victim no.1  
Resident of: Village Daree, Doda district
3. [Name withheld] [Abduction, Wrongful Confinement, Torture and Rape]  
Age: 25  
Daughter-in-law of: Victim no.1  
r/o Village Daree, Doda district
4. [Name withheld] [Abduction, Wrongful Confinement, Torture and Rape]  
Age: 23  
Daughter-in-law of: Victim no.1  
Resident of: Village Daree, Doda district

*Alleged Perpetrators*

1. Chiranjeet Sharma, In-Charge, Army, Camp Mangeta
2. Army Captain, In-Charge, Camp Goha
3. Rana, Intelligence Officer
4. Commandant [Commanding Officer], 322 Air Defence Artillery [ADA], Army
5. Milkha Singh, Junior Commissioned Officer [JCO], 322 Air Defence Artillery [ADA], Army

*Case Information*

An unsigned affidavit with the IPTK by victim no.1 states that the victims were informed on 15 March 1999 by Madhu Lal that Chiranjeet Sharma had asked to them to meet him at Madhu Lal's house. They preferred not to as the men of the family were not present. They were promised that Madhu Lal's family would be present. They went unwillingly, and under the threat of being mistreated if they refused.

On reaching Madhu Lal's house, they found no family members, but a contingent of army officers with soldiers, including Chiranjeet Sharma, an Army Captain who was In-Charge of Camp Goha, an Intelligence Officer Rana and JCO Milkha Singh.

As soon they reached the house, they were taken inside and raped at gun point by the Army Captain who was In-Charge of Camp Goha, the Intelligence Officer Rana and JCO Milkha Singh. The Commanding Officer, 322 ADA then came, tortured the victims and then raped victim no.2.

In the evening they were taken to the Goha Camp and held confined till 19 March 1999. They were raped and tortured.

On 19 March 1999, victims 3 and 4 were released but victims 1 and 2 were taken by Rana and the Commanding Officer, 322 ADA to Doda where a fake certificate that no rape had taken place was issued by Dr. Pushpa. They were then handed over to the Doda Police Station.

No information exists on the status of this case and whether any investigations were conducted.

*Victim Details*

Mehraj-ud-Din [Abduction and Enforced Disappearance]  
Son of: Karim-ud-Din  
Resident of: Malan, Pehlipora, Baramulla District

*Alleged Perpetrators*

1. Major D.K.Sharma, 29 Rashtriya Rifles [RR], Army

*Case Information*

Mehraj-ud-Din was picked up along with Mir Alam and Bashir Ahmad by Major D.K.Sharma on 20 August 1999. While the others were released, Mehraj-ud-Din has disappeared since.

First Information Report [FIR] no.73/1999 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Boniyar Police Station<sup>275</sup>. The communication dated 22 May 2012 from the Jammu and Kashmir Police states that the case was under investigation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the Government of Jammu and Kashmir was informed vide letter dated 15 December 2008 that no officer named Major D.K.Sharma was posted to the 29 RR during the relevant time. The victim here is referred to as Farooq Ahmed.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the delay apparently continues as the case remains under investigation.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

*Victim Details*

Mohammad Sarwar Khan [Abduction and Extra-Judicial Killing (Custodial Killing)]  
Son of: Ali Asgar Khan  
Resident of: Qasba Haveli, Poonch District

*Alleged Perpetrators*

1. Subedar Surjeet Singh, CHM 1 Rashtriya Rifles [RR] / 3<sup>rd</sup> Sikh Battalion, Army

<sup>275</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

### Case Information

On 13 September 1999, Mohammad Sarwar Khan was picked up by Subedar Surjeet Singh, killed in custody and then buried.

First Information Report [FIR] no.91/1999 u/s 2/3 E & Imco was registered at the Poonch Police Station<sup>276</sup>.

As per the Senior Superintendent of Police [SSP], Poonch, investigations established that Mohammad Sarwar Khan was a border crosser and was killed in an encounter at "Rangwar Dhok Sawaian" on 1 November 1999. The case was closed by declaring the perpetrators as untraced.

FIR no.133/2000 u/s 320 [Grievous hurt], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was registered at the Poonch Police Station<sup>277</sup>.

As per the SSP, Poonch, the complainant could not produce any witnesses to support the case and identify the culprits. The case was closed by declaring the perpetrators as untraced on 10 October 2001.

The family of the Mohammad Sarwar Khan approached the State Human Rights Commission [SHRC] on 5 September 2007 and the final decision was issued on 22 December 2008.

SSP, Poonch submitted that Mohammad Sarwar Khan was a border crosser and source of the army and died in an encounter at "Ranawar Dhok Sawajian".

Further, that the body of Mohammad Sarwar Khan was buried there. Further, ex-gratia government relief had been paid to the family of Mohammad Sarwar Khan.

The SHRC final decision recommended that ex-gratia government relief be awarded to the family of the victim.

In addition to the submissions of the SSP, Poonch, the SHRC considered the medical report of the Sub-District Hospital, Mandi. The report stated that the body of Mohammad Sarwar Khan was exhumed from the cave of the Rangwara grave-yard on 28 July 2000.

Based on the above medical report, the SHRC concluded that the fact that the body of Mohammad Sarwar Khan was exhumed from the "vicinity of Sub-District Hospital Mandi" suggests that the submissions of Station House Officer [SHO], Poonch that the victim had died on the border during cross-firing is contradicted.

This reasoning of the SHRC is unclear as the SSP Poonch also suggested that the encounter had taken place at "Ranawar Dhok Sawajian" or "Rangwar Dhok Sawaian". Further, the SHRC decision itself, while considering relief considered the possibility that Mohammad Sarwar Khan may have been killed in an encounter.

Further, the SHRC decision does not indict Subedar Surjeet Singh, though it could be argued that the decision does raise doubts as to the legality of the death of Mohammad Sarwar Khan.

Finally, while the submissions of SSP, Poonch before the SHRC state that the victim had received ex-gratia government relief, on record are a 25 May 2009 document where the Jammu and Kashmir Home Department sanctioned relief for the family of Mohammad

Sarwar Khan, and a letter dated 24 June 2009 letter from the Deputy Commissioner [DC], Poonch stating the same.

Further, as per information available, as on 6 September 2011 the ex-gratia government relief was yet to be received by the family of Mohammad Sarwar Khan.

No information exists on what basis the Jammu and Kashmir Police closed the case by declaring the perpetrators as untraced except that the complaint could not identify the perpetrators.

The responsibility of investigations is with the Jammu and Kashmir Police and not with the complainant.

Further, the closure report would, by law, have to be judicially scrutinized. Whether this was actually done would need to be ascertained.

Finally, considering that the victim was said to have been working with the army when he was killed, the burden to explain the circumstances of his death would be on the army.

The Ministry of Defence seems to have cared very little about the SHRC order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 145

### Victim Details

Abdul Hamid Naik [Abduction and Enforced Disappearance]

Occupation: School Head Master

Son of: Ghulam Mohammad Naik

Resident of: Khari, Banihal, Doda District

### Alleged Perpetrators

1. Subedar Kuldeep Singh, 20 Rashtriya Rifles [RR], Army, Kerewa
2. Naik [Corporal] Dinesh Singh Rana, 20 Rashtriya Rifles [RR], Army, Kerewa

### Case Information

On the intervening night of 6 and 7 October 1999 at 11:00 pm, Abdul Hamid Naik was picked up and has disappeared since. The abduction of Abdul Hamid Naik was witnessed by his son and daughter: Mudassar Nazar and Parveen Akhtar.

Initially the Banihal Police Station refused to file a First Information Report [FIR], but it was subsequently filed as 164/1999 u/s 343 [Wrongful confinement for three or more days], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] on 23 November 1999<sup>278</sup>.

By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that the case was still under investigation.

Further, that the previous Station House Officer of the police station had conducted an identification parade of 15 army officials of the RR

<sup>276</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

<sup>277</sup> Information on this FIR was sought through RTI on 2 July 2012. No information was provided.

<sup>278</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012.

before the Magistrate. Abdul Hamid Naik's son on one of the identification parades was able to identify the alleged perpetrators.

The family of Abdul Hamid Naik filed a petition before the Jammu bench of the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 63/2000] for the release of the victim.

This petition was disposed off on 6 May 2000 based on the respondents submissions that Abdul Hamid Naik was not in their custody. Another petition was filed by the wife of Abdul Hamid Naik before the High Court [OWP 851/2000]<sup>279</sup>.

It is noteworthy that despite the passage of 13 years the Jammu and Kashmir Police, after initially refusing to file the FIR, has yet to complete investigations.

The apathy of the Jammu and Kashmir Police has unfortunately been compounded by the manner in which the High Court disposed off a petition by the family of Abdul Hamid Naik based on a blanket denial by the respondents before it, which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 146

### *Victim Details*

[Name withheld] [Rape]  
Spouse: [Name withheld]  
Resident of: Nopora, Killer Dhaji, Rafiabad / Sopore, Baramulla District

### *Alleged Perpetrators*

1. Major Aman Yadav, 28 Rashtriya Rifles [RR], Army, Camp Shalkote village, Rafiabad

### *Case Information*

From 24 November 1999 to 15 December 1999 the husband of the victim was outside the State to procure goods towards his work, leaving behind the victim, two children and a domestic help.

On his return, he found that Major Yadav and personnel of the 28 RR Camped at Shalkote village, Rafiabad had forcibly entered into his residence during the day time on 5 December 1999. They had searched the house and stolen gold amounting to Rs. 35,000, electric goods worth Rs. 25,000, a power drilling machine worth Rs. 13,500, materials along with tool box worth Rs. 8,000 and other domestic items to the extent of Rs. 5,000 and cash of Rs. 15,000. The victim and others in the house had raised an alarm. The victim was then physically assaulted, stripped naked and raped. The RR personnel and Major Yadav sternly warned the victim and house-help of dire consequences in case the theft was reported. Major Yadav and the 28 RR personnel were accompanied by a masked Government backed militant [Ikhwan].

<sup>279</sup> Information on the petition numbers was sought through RTI on 16 February 2012. No information was provided. Information on OWP 63/2000 was again sought on 2 July 2012. No information was provided.

Following this incident and due to fear, the victim, her husband and the rest of the family were forced to abandon the house and seek shelter elsewhere.

First Information Report [FIR] no.1/2000 u/s 380, 354 [Assault/Criminal force to a woman with intent to outrage modesty], 376 [Rape] Ranbir Penal Code, 1989 [RPC] was filed at the Panzala Police Station on 4 January 2000<sup>280</sup>.

The communication dated 22 May 2012 further stated that the case was closed by declaring the perpetrators as untraced.

A noting on the FIR reveals that the case was closed as untraced on 19 August 2011.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in January 2009 and under consideration.

But, the Ministry of Defence, in response to an RTI on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction had been declined on 23 September 2010. Further, that: "the allegation is baseless and framed with mala fide intention to put the army on defensive."

The Ministry of Defence does not clarify which parts of the allegations are baseless. It is unclear whether the factum of the rape of the victim is also challenged by the Ministry of Defence.

The assertion by the Ministry of Defence that the allegations were framed with mala fide intention is a sweeping comment on the investigations with no proof and suggests that the army is at loggerheads with the Jammu and Kashmir Police which results in delay or denial of justice.

The Ministry of Defence official documents on sanctions also show the lack of seriousness as the 10 January 2012 document places the incident on 5 March 2000 and refers to this as a case of torture leading to death.

Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Surprisingly, the decline of sanction led to the police disregarding its own investigations and hence closing the case by declaring the perpetrators as untraced.

## Case No. 147

### *Victim Details*

Abdul Rashid Bhat<sup>281</sup> [Extra-Judicial Killing (Fake encounter)]

<sup>280</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012, a copy of the FIR was provided.

<sup>281</sup> The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], and the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on

Son of: Ghulam Mohammad Bhat, Raja  
Resident of: Hanjoora, Chadoora, Budgam District

#### *Alleged Perpetrators*

1. Major Raghwan R. Singh, Commanding Officer, 5 Kumaon Regiment, Army, Camp Nagam
2. An unnamed Junior Commissioned Officer [JCO], Army

#### *Case Information*

On 14 January 2000 at 10:00 pm Abdul Rashid Bhat was killed in a fake encounter. In the FIR Abdul Rashid Bhat was claimed to be an Afghan national and a member of the Laskar-e-Toiba with a code name "Jehangir".

On the day of the incident Abdul Rashid Bhat had gone out to purchase a cow. He was arrested by the personnel of the Radar Camp and then handed over to the Nagam Camp. His body was handed over to the police and buried. Subsequently, it was exhumed. The body was identified by the mother of the victim, Raja, and Ghulam Rasool Bhat.

First Information Report [FIR] no.8/2000 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Chadoora Police Station on 15 January 2000. Information on this FIR was sought through RTI on 7 October 2011. Information was provided on 27 December 2011. It was stated that on 15 January 2000 Army 5 "Kumar" unit Nagam C/O APO 56 APO reported at Chadoora Police Station with a written application to the effect that one foreign militant had been killed in an encounter.

FIR no. 8/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was registered and investigation taken up. The deceased was identified as Abdul Rashid Bhat, son of Ghulam Mohammad Bhat, resident of Hanjura, Budgam, who was an innocent person and Section 302 [Murder] Ranbir Penal Code, 1989 [RPC] was added to the case. The case was closed as chargesheeted and sanction for prosecution under AFSPA sought.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in October 2008 and was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was awaited.

The Ministry of Defence, in response to a RTI on sanctions for prosecution, stated on 10 January 2012 in relation to this case that sanction was declined on 29 November 2011. Further, the Ministry of Defence communication claims that "post-mortem report of the dead body reflected no injuries except a scratch on right wrist. The successive re-investigation of the case by police have recorded doctored statements of the witnesses much after the event to falsely implicate the office and Junior Commissioned Officer".

The family of the victim approached the SHRC and were granted relief.

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sanctions for prosecutions under AFSPA, on 6 September 2011, wrongly refer to the victim as Ghulam Rasool Bhat or a variation of the same.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir eight years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

This case is another example of how the armed forces have carried out fake encounters and killed people unlawfully for rewards and other benefits.

Also noteworthy is the manner in which the Abdul Rashid Bhat after being killed in a fake encounter was claimed as a foreign militant and buried in an unmarked grave.

The Ministry of Defence position on the post-mortem report is untenable as the army itself claimed in the FIR that the victim was killed in an encounter.

This contradiction in of itself raises serious doubts on the position of the Ministry of Defence and the decline of sanction.

The claim of the Ministry of Defence that the Jammu and Kashmir Police recorded doctored statements long after the events to falsely implicate the army is not substantiated. While making such sweeping statements the Ministry of Defence has not only provided impunity to the alleged perpetrators but also expressed their unwillingness and hostility towards any police investigation.

## Case No. **148**

#### *Victim Details*

Mohammad Shafi Khan [Torture and Extra-Judicial Killing]  
Brother of: Shamsuddin Khan  
Resident of: Mirwayan, Hayhama, Kupwara District

#### *Alleged Perpetrators*

1. Major Hardeep Johar, 8 JAT Regiment, Army
2. Lieutenant Kehar Singh, 8 JAT Regiment, Army

#### *Case Information*

On 27 January 2000 during the night Mohammad Shafi Khan was tortured during an army raid at his residence. The alleged perpetrators barged into the residence of the victim, Mohammad Shafi Khan, and interrogated him. After some time, Mohammad Shafi Khan's brother Shamsuddin Khan was asked to collect the victim. The victim had died due to severe torture.

First Information Report [FIR] no.17/2000 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kupwara Police Station on 27 January 2000<sup>282</sup>. The communication of 13 January 2012 by the police informs that the investigations in the case had been closed as chargesheeted and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought. Subsequently, sanction for prosecution had been declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction had been declined vide order dated February, 2009.

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<sup>282</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. On 13 January 2012, a copy of the FIR was provided.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been declined.

By communication dated 9 July 2012, the Jammu and Kashmir Police provided a copy of the decline of sanction letter dated 23 February 2009. This letter states that the allegations were false and that both officers implicated were not present at the site of the incident. Lieutenant Kehar Singh was on leave, while Major Hardeep Johar was manning the Payarpura Post.

No proof that Lieutenant Kehar Singh was actually on leave is provided. Further, the details of when and where he proceeded for his leave is not provided. Similarly, no proof that Major Hardeep Johar was present at this post during the time of the incident is provided. No alibi witnesses appear to have been examined.

Further, the Jammu and Kashmir Police investigations do not appear to have been contradicted in detail by the Ministry of Defence.

Further, the Jammu and Kashmir Government has not clarified what course it has taken after the sanction for prosecution was declined.

## Case No. 149

### *Victim Details*

Habibullah Shah [Abduction and Enforced Disappearance]  
Age: 35  
Occupation: Employee in Public Health and Engineering department  
Son of: Mohammad Ismail Shah [deceased]  
Spouse: Hanifa  
Resident of: Janbazzpora, Baramulla District

### *Alleged Perpetrators*

1. Captain Rahul, 29 Rashtriya Rifles [RR], Army, Camp Stadium, Baramulla

### *Case Information*

On 28 January 2000 at 11:30 pm army personnel knocked at the door of Habibullah Shah. Prior to this, he had been beaten by army personnel. Habibullah Shah answered the door and informed the family that it was the army. Habibullah Shah was taken away and has disappeared since.

The family of Habibullah Shah searched for him until 2008/2009, and in this period received information of him being at various locations. A Border Security Forces [BSF] soldier, Babu Ram, used to tell the family that the victim was at the 29 RR Stadium Camp and that he would be released.

Habibullah Shah used to repair the pump of Captain Rahul. On one occasion the victim refused to go and Captain Rahul told him that he would tie him to a tyre and drag him there.

This previous tension leads the family of the victim to believe that Captain Rahul was behind the abduction and disappearance of the victim.

The family of the victim also states that there was a family/neighborhood feud against the victim due to his success. This may have also been behind the disappearance of Habibullah Shah.

The family of the victim gave a statement to the IPTK on 30 December 2011.

First Information Report [FIR] no. 19/2000 was filed at the Baramulla Police Station<sup>283</sup>.

The family of Habibullah Shah received ex-gratia government relief of Rs.1,00,000 in 2008 from the Deputy Commissioner, Baramulla. The family also applied for compassionate employment under SRO-43 [Statutory Rules and Orders] benefits which are yet to be received.

An enquiry report by the Additional District Magistrate, Baramulla considered a report received from the Senior Superintendent of Police [SSP], Baramulla that found that the abduction was carried out by unknown, masked gunmen wearing an army dress.

Further, Habibullah Shah was found to have not been involved in any subversive activities.

But, the final conclusion was that the perpetrators were “unknown militants” thereby disregarding the SSP’s report relating to the gunmen wearing army dress.

In the instant case, it appears the family testimonial on the role of Captain Rahul was not considered by the enquiry officer or by the police investigations.

The report of the SSP even after confirming that the perpetrators were wearing army dress did not feel the need to inquire from Captain Rahul or other army personnel deployed in the area.

## Case No. 150

### *Victim Details*

Shamim Ahmad Bhat [Torture and Extra-Judicial Killing]  
Occupation: Government employee  
Son of: Ghulam Mohammad Bhat  
Resident of: Hadipora, Handwara

### *Alleged Perpetrators*

1. Major G.K. Bhatila, 30 Rashtriya Rifles [RR], Army, Camp Ghanoh

### *Case Information*

On 20 February 2000, Shamim Ahmad Bhat was tortured in his own house. The family members of Shamim Ahmad Bhat were put in another room. The victim was tortured for two hours. The victim died on 28 February 2000<sup>284</sup>.

<sup>283</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>284</sup> The Ministry of Defence, on 10 January 2012, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI], on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], in relation to this case appears to place this incident on 29 February 2000.

First Information Report [FIR] no.20/2000 was filed at the Handwara Police Station<sup>285</sup>.

The communication of 10 December 2011 stated that a chargesheet had been filed in this case and sanction for prosecution under AFSPA was sought and awaited.

By further communication dated 9 July 2012 in response to the RTI, it was stated that sanction for prosecution under AFSPA was sought in this case on 30 November 2010.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it had been received on 3 July 2007 and was under consideration.

The Ministry of Defence, in response to a RTI on 10 January 2012 on sanctions for prosecution, stated in relation to this case that sanction had been denied. Further, that: "the allegation is baseless and framed with malafide intention to tarnish image of the army".

This case does not find mention in the list of cases furnished by the Government of Jammu and Kashmir in response to a RTI on sanctions for prosecutions under AFSPA on 6 September 2011. Also, the communication of the Jammu and Kashmir Police of 9 July 2012 states that this case was sent on 30 November 2010 for seeking sanction for prosecution under AFSPA. But, surprisingly, the Ministry of Defence seems to have received the case on 3 July 2007. It needs to be clarified how and from whom the Ministry of Defence received this case.

Also, based on the information provided by the Jammu and Kashmir Police, it needs to be investigated why the Government of Jammu and Kashmir and the police took 10 years to process the case for sanction for prosecution under AFSPA.

The Ministry of Defence does not clarify which parts of the allegations are baseless. It is unclear whether the factum of the death of Shamim Ahmad Bhat is also challenged by the Ministry of Defence.

The assertion by the Ministry of Defence that the allegations were framed with mala fide intention is a sweeping comment on the investigations with no proof and suggests that the army is at loggerheads with the Jammu and Kashmir Police which results in delay or denial of justice.

## Case No. 151

### *Victim Details*

Mohammad Yasin Bhat [Abduction, Torture and Enforced Disappearance]

Son of: Ghulam Mohammad Bhat, Sara Begum

Resident of: Malik Sahab, Nowhatta, Srinagar

### *Alleged Perpetrators*

1. Tanvir Jeelani, Sub-District Police Officer [SDPO], Nowhatta Police Station, Jammu and Kashmir Police

2. Naik [Corporal] Tara Datt G/C, Army, Badami Bagh Cantonment Area
3. Lance Naik [Lance Corporal] Ghan Shyam, Army, Badami Bagh Cantonment Area
4. Cdo. Dalbir Singh, Army, Badami Bagh Cantonment Area
5. Sanjay Kumar, Army, Badami Bagh Cantonment Area
6. Lance Naik [Lance Corporal] Bikram Singh, Army, Badami Bagh Cantonment Area
7. B.B. Teing, Army, Badami Bagh Cantonment Area

### *Case Information*

On 2 March 2000 at around 8:00 pm, Mohammad Yasin Bhat was walking back along with his father after performing evening prayers from the mosque when some unknown uniformed men grabbed him and took him away.

Later that night, they came back at around 11:00 pm along with Mohammad Yasin Bhat to his residence. They locked the rest of the family into one room and all of the family members including women were slapped and beaten up. Meanwhile, during this time, they kept Mohammad Yasin Bhat in another room where he was tortured for around two hours after which they left with him.

The uniformed men consisted of a group of Government backed militants [Ikhwan], army, personnel of the 63<sup>rd</sup> Battalion Border Security Force [BSF] along with SDPO Tanvir Geelani of the Nowhatta Police Station who was sitting in his vehicle during the entire time covering the other forces in the house of Mohammad Yasin Bhat. However, while the armed forces personnel were in the house of Mohammad Yasin Bhat, a slip of paper fell from the pocket of one of the men. Later on, the brother of Mohammad Yasin Bhat checked the slip of paper and it was actually a duty slip of the Badami Bagh Cantonment Area which consisted of names of the officers on duty and included the names and ranks of alleged perpetrators 2 to 7. Unfortunately, the slip of paper was taken away by SDPO Tanvir Geelani on the next day when the brother produced the slip in order to ascertain the identity of men who had abducted Mohammad Yasin Bhat. The family of Mohammad Yasin Bhat could not find him despite searching for him.

The family of Mohammad Yasin Bhat tried to file a FIR in the Nowhatta Police Station but they refused to lodge the same as they had mentioned SDPO Tanvir Geelani as one of the perpetrators. However, the officials at the Police Station lodged the FIR after six months and named uniformed unidentified gunmen as the perpetrators in place of the name of SDPO Tanvir Geelani.

The family of Mohammad Yasin Bhat gave statements to the IPTK on 29 November 2011 and 27 February 2012.

First Information Report [FIR] no.98/2000 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Nowhatta Police Station and states that unidentified gunmen abducted the victim<sup>286</sup>.

The State Human Rights Commission [SHRC] was approached by the family of Mohammad Yasin Bhat. Inspector General of Police [IGP], Kashmir wrote a letter to the SHRC on 21 December 2000 that the army/BSF/CRPF headquarters denied the arrest of Mohammad Yasin Bhat. On 29 August 2002 the SHRC, stating that it had not received a response from the army's General Commanding Officer, 15 Corps, and as the matter pertains to the armed forces,

<sup>285</sup> Information on this FIR was sought through RTI on 5 May 2012. By communication dated 10 December 2011 a copy of the FIR was provided.

<sup>286</sup> Information on this FIR was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

stated that the matter be submitted to the National Human Rights Commission [NHRC].

Before the NHRC, the Ministry of Defence denied any arrest having been made. The family of Mohammad Yasin Bhat does not have any information on the final status of the case at the NHRC.

The Brigadier General Staff, 15 Corps, Headquarters, wrote a letter to the father of the victim on 18 May 2001 that Mohammad Yasin Bhat had never been arrested by them.

In around 2008 the IGP, Kashmir reopened the case and the Station House Officer [SHO] at the Nowhatta Police Station called the family to record their statement. The name of SDPO Tanvir Jeelani was once again mentioned and the SHO refused to record the statement.

From refusing to file a correct FIR to delaying the investigations over 12 years, the Jammu and Kashmir Police appear to have assisted in a cover up to shield personnel of the police and the armed forces.

No information exists on the current status of investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Finally, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Thereby, it appears that complete impunity has been facilitated for the alleged perpetrators of the crime.

## Case No. 152

### *Victim Details*

Identity not ascertained [Extra-Judicial Killing (Custodial Killing)]

### *Alleged Perpetrators*

1. Major Aman Yadav [Operational name: Mushtaq Ahmad], 28 Rashtriya Rifles [RR], Army

### *Case Information*

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on the intervening night of 4 and 5 March 2000 there was a death in custody.

First Information Report [FIR] no.30/2000 was filed.

Sanction for prosecution under AFSPA was declined on 15 March 2011. Further, it was stated that that: "involvement of Major Aman Yadav is not even prima facie established. The officer was not involved in the incident and the same has been established by the police investigation, incident report, seizure memo, FIR lodged by 28 Rashtriya Rifles and statement of Captain Chhatwal".

The Jammu and Kashmir Police investigations in the case are not with the IPTK and therefore the decline of sanction for prosecution under AFSPA cannot be appropriately analyzed. But, it does appear

contradictory that the Ministry of Defence relies on the police investigations to decline sanction when presumably the Jammu and Kashmir Police only sent the case to the Ministry of Defence after ascertaining that the crime was committed by the alleged perpetrator.

Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 10 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 153

### *Victim Details*

Ashiq Rasool Bhat [Abduction, Torture and Extra-Judicial Killing (Fake Encounter)]

Age: 22

Occupation: 1<sup>st</sup> year Bachelor of Sciences [BSC] student at Islamia College, Hawal [recently admitted] / Was also working with a cement factory at Laar Ganderbal

Son of: Gulzar Ahmad Bhat

Resident of: Yarmukam, Manigam, Ganderbal

### *Alleged Perpetrators*

1. Commandant [Commanding Officer], 19 Rashtriya Rifles [RR], Army, Camp Manigam, Ganderbal

### *Case Information*

The family of Ashiq Rasool Bhat states that on 13 March 2000, Ashiq Rasool Bhat left his residence for his college at Hawal, Srinagar to submit the application for his admission in the BSC 1<sup>st</sup> year programme. Then he went to the cement factory at Laar Ganderbal to collect his wages from his employer.

The family of Ashiq Rasool Bhat states that he had quit working in the factory after the declaration of his 12<sup>th</sup> Standard results. After collecting his remaining wages of Rs. 1400 he left for his native village Manigam but the family states that he never came home.

The family states that he had been picked up between Laar and Manigam. The family states that they kept searching for him everywhere, with all their neighbors and relatives but they could not find his whereabouts.

After three days, the family of Ashiq Rasool Bhat went to the Ganderbal Police Station and informed the police about his disappearance. The police gave them a receipt for the application that the family had filed but the family states that they lost the receipt.

After 10 days, on 23 March 2000, the family states that they received a clue from village Waliwar. The locals of that village said that persons working with the army were talking about the killing of a "master" with militants. Then the family went to the Ganderbal Police station to cross check the information given by the locals and asked the police about recent killings in the area. The police showed the brother of Ashiq Rasool Bhat three photographs of the persons killed and one of the photographs was found to be Ashiq Rasool Bhat.

The family states that on 25 March 2000, they exhumed the body of Ashiq Rasool Bhat from a graveyard near Ganderbal Police station,

at Dobipora, Ganderbal. The family then took the body and buried it in their native village graveyard.

The family states that Ashiq Rasool Bhat had bullet injuries on the left side of his chest and also bore visible torture marks on the forehead which were the marks of the gunbutt. The police confirmed that he had been killed in the staged battle at Waliwar by the 19 RR camped at Manigam.

The family states that it was the alleged perpetrator who killed the victim. The family states that the locals of the village have given a written declaration about the innocence of Ashiq Rasool Bhat. An autopsy was not conducted.

Following the death of Ashiq Rasool Bhat, the family states that the alleged perpetrator visited their house on numerous occasions. He expressed regret on the killings and offered relief to the family, which they refused.

Three persons were killed and identified as militants: Barab Khan, from Karachi, Hafiz Khan and Zaffer Iqbal Querishi, also from Pakistan. One of them was later identified as Ashiq Rasool Bhat.

The family of Ashiq Rasool Bhat gave a statement to the IPTK on 22 February 2012.

First Information Report [FIR] no.63/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession/manufacture / sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Ganderbal Police Station by the army<sup>287</sup>.

The family of Ashiq Rasool Bhat filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 180/2003] seeking completion of investigations. The petition states that the FIR, filed by the army, stated that an encounter took place on 14 March 2000 in Village Chantwahama where three foreign militants were killed: Larab Khan, Hafiz Khan and Zafar Iqbal Qureshi. The petition states that the person named as Zafar Iqbal Qureshi was in fact Ashiq Rasool Bhat.

In response to the petition filed, the Union of India, Director General of Police, Jammu and Kashmir, Senior Superintendent of Police [SSP], Ganderbal and Station House Officer [SHO], Ganderbal Police Station, contended that while indeed Ashiq Rasool Bhat was a local, he was also a militant and was killed during a “fierce fight” with the army.

A letter from the Superintendent of Police [SP], Ganderbal to the District Magistrate, Srinagar on 24 March 2000 refers to the FIR filed, the contention of the family of Ashiq Rasool Bhat and requests for necessary orders for the exhumation of the body of Zafar Iqbal Khan – who is believed by his family to be the victim. There is a discrepancy on the last name of this person as the family of Ashiq Rasool Bhat refers to him as Zafar Iqbal Qureshi. The body of Ashiq Rasool Bhat was exhumed based on the order of the District Magistrate, Srinagar on 24 March 2000.

The mother of Ashiq Rasool Bhat, Mugli, had filed another petition [OWP 208/2003] with regard to the disappearance of another son in 1989. Both these petitions were clubbed together but then dismissed on 21 October 2005 for want of prosecution.

<sup>287</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

A restoration application was filed and the petitions were restituted as 191/2006.

OWP 180/2003 was disposed on 25 May 2009. The stand of the SHO, Ganderbal Police Station was that the case was closed following investigations that revealed that three militants had been killed. The family of Ashiq Rasool Bhat contended that this closure report had to be filed before a Magistrate for approval. Without taking a position on this issue, but stating that the respondents must follow the law, the petition was disposed off by the High Court<sup>288</sup>.

The family of Ashiq Rasool Bhat states that a case is ongoing at the Ganderbal Court. The family of Ashiq Rasool Bhat filed an application before the Judicial Magistrate 1<sup>st</sup> Class, Ganderbal seeking a re-investigation on the FIR filed. The police authorities submitted that Ashiq Rasool Bhat was a militant and that a closure report in the case was going to be filed before the court. On 27 July 2010 the court ordered that the closure report be filed within one month.

The family of Ashiq Rasool Bhat has received no relief/compensation.

It would appear that the Jammu and Kashmir Police has continued to stick to its version of events of the victim being a militant killed in a legitimate encounter. But, despite the passage of twelve years and at least until 2010, based on information available, the police has failed to allow a court to scrutinize its findings.

This delay has effectively allowed the perpetrators of the crime to evade justice. This has been further compounded by the manner in which the High Court did not assert itself and monitor investigations to enquire if the victim was killed under legal circumstances.

Finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 154

### *Victim Details*

Mohammad Maqbool Dar [Abduction, Torture and Extra-Judicial Killing]

Age: 25

Occupation: Farmer/ “Reddah wallah” [Cart man]

Son of: Mohammad Ramzan Dar<sup>289</sup>

Resident of: Batapora, Magam, Handwara, Kupwara District

### *Alleged Perpetrators*

1. Major R.S. Athreye / R.S. Athar Anand<sup>290</sup>, 24 Rashtriya Rifles [RR], Army, Camp Magam

<sup>288</sup> Information on the petition number OWP 180/2003 was sought through RTI on 16 February 2012. No information was provided. Information on OWP 208/2003 was sought through RTI on 2 July 2012. Information was provided.

<sup>289</sup> The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 in relation to this case mistakenly refers to the father of the victim as: “Samad Dar”.

<sup>290</sup> The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under AFSPA, on 6 September 2011 in relation to this case refers to this person as “RS Athar Anand”, whereas the Ministry of



2. Captain R. Awasthi, 24 Rashtriya Rifles [RR], Army, Camp Magam

#### *Case Information*

On 13 March 2000 [the family of the victim is unsure of the actual date], at about 10:00 am, the various cart men were called to the army camp at Magam. Mohammad Maqbool Dar was identified in a line up at the camp, a *Pheran* [Kashmiri winter wear] was placed over him, and while the others were allowed to leave by about 12:00 noon, he was not. The villagers then went to the army camp and requested that Mohammad Maqbool Dar be released, but he was not released.

Subsequently, when the relatives of the Mohammad Maqbool Dar went to the camp they were informed that he had fled.

Later on, at the intervention of a politician, Mushtaq Lone, the body of Mohammad Maqbool Dar was received at the Watayin Camp. Mohammad Maqbool Dar was still alive but in a very critical condition. His body bore burn marks and was severely tortured.

Mohammad Maqbool Dar was taken to the Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura, Srinagar, where he succumbed to his injuries on 1 April 2000.

For about two years following the death of Mohammad Maqbool Dar his family faced harassment from army officials in relation to the case being pursued.

First Information Report [FIR] no. 30/2000 u/s 343 [Wrongful confinement for three or more days], 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Handwara Police Station on 18 March 2000 for the disappearance of the victim<sup>291</sup>. By communication dated 10 December 2011 from the Jammu and Kashmir Police it was stated that the case was closed by declaring the perpetrators as untraced on 3 June 2010. A copy of the closure report states that the army officials did not provide statements before the police and that the case was being forwarded to the Home Ministry for prosecution sanction under AFSPA. Further, that the case was closed as untraced as nothing finally happened in the case. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided and it was stated that a final report in the case was filed on 1 March 2012.

The family of Mohammad Maqbool Dar received Rs.1,00,000 ex-gratia government relief and have not received compassionate employment under SRO-43 [Statutory Rules and Orders]. At the time of the incident, the next of kin of the victim, his son, was a minor. As the son is no longer a minor, the family is hopeful of him receiving compassionate employment.

The family of the victim gave a statement to the IPTK on 15 February 2012.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined vide order dated 26 February 2009.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been declined.

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Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA refers to him as: "RS Athreye".

<sup>291</sup> Information on this FIR was sought through RTI on 7 October 2011.

Further, the Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution under AFSPA, while confirming the decline of the sanction states that: "the FIR and the statement of witnesses stand in contradiction. The unilateral conclusions reached by the police appeared to have been made under pressure from terrorists and sympathizers to blame and malign the image of the army".

The police investigations into the extra-judicial killing of Mohammad Maqbool Dar which led to seeking sanction for prosecution under AFSPA has been questioned by the Ministry of Defence on grounds of there being contradictions on record and claiming it to be a result of pressure from terrorists and sympathizers for maligning the image of the army. No details on the contradictions are provided. The non-cooperation of the army with the police investigations may have led to discrepancies for which the army should also share the blame. It appears that the army deliberately chose not to assist the investigations and later used this in its favour. The assertion by the Ministry of Defence that the police has failed to conduct a fair investigation because of pressure suggests that the army is at loggerheads with the Jammu and Kashmir Police which results in delay or denial of justice.

Strangely, the police after finalizing the investigations against the alleged perpetrators closed the case due to the non-cooperation of the army without seeking any judicial assistance and only filed a report before the court in March 2012.

The evidence against the army was strengthened by the support of Mushtaq Lone, the then Minister of State for Home Affairs, who helped in getting the body of Mohammad Maqbool Dar from the Watayin army camp. Mushtaq Lone was assassinated on 11 September 2002. It needs to be ascertained whether the police took a statement from Mushtaq Lone which would have been crucial evidence in this case.

## Case No. **155**

#### *Victim Details*

1. Zahoor Ahmad Dalal [Abduction and Extra-Judicial Killing (Fake Encounter)]  
Son of: Abdul Gaffar Dalal  
Resident of: Moominabad, Anantnag District
2. Bashir Ahmad Bhat [Abduction and Extra-Judicial Killing (Fake Encounter)]  
Son of: Abdul Aziz Bhat  
Resident of: Halan, Anantnag District
3. Mohammad Yousuf Malik [Abduction and Extra-Judicial Killing (Fake Encounter)]  
Son of: Abdul Kabir Malik  
Resident of: Halan, Anantnag District
4. Juma Khan [Abduction and Extra-Judicial Killing (Fake Encounter)]  
Age: 55  
Son of: Fakir Khan  
Resident of: Brari Angan, Anantnag District
5. Juma Khan [Abduction and Extra-Judicial Killing (Fake Encounter)]  
Age: 53  
Son of: Amir Ullah Khan  
Resident of: Brari Angan, Anantnag District

### *Alleged Perpetrators*

1. Colonel Ajay Saxena, 7 Rashtriya Rifles [RR], Army [subsequently Major General]
2. Major Brajendra Pratap Singh, 7 Rashtriya Rifles [RR], Army [subsequently Lieutenant Colonel]
3. Major Sourabh Sharma, 7 Rashtriya Rifles [RR], Army
4. Major Amit Saxena, 7 Rashtriya Rifles [RR], Army
5. Subedar Idrees Khan, 7 Rashtriya Rifles [RR], Army
6. Assistant Sub-Inspector [ASI] Bashir Ahmad, Jammu and Kashmir Police
7. Farooq Khan, Senior Superintendent of Police [SSP] [presently Deputy Inspector General, DIG], Jammu and Kashmir Police
8. Deputy Superintendent of Police [DSP] Abdul Rehman, Jammu and Kashmir Police

### *Case Information*

On 25 March 2000 the victims were killed in Pathribal, Anantnag District. It was claimed that the five persons killed were militants and responsible for the killings in Chittisinghpura on 20 March 2000.

First Information Report [FIR] no.15/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession/manufacture/sale of prohibited arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Achchabal Police Station. The Central Bureau of Investigation [CBI] conducted investigations in the case and filed a chargesheet in the court of the Chief Judicial Magistrate [CJM] / Special Magistrate, CBI on 9 May 2006 alleging that the killings were in reality a fake encounter. Colonel Ajay Saxena, Major Brajendra Pratap Singh, Major Sourabh Sharma, Major Amit Saxena and Subedar Idrees Khan were implicated in the chargesheet.

On 24 May 2006 the army officers filed an application before the CJM court stating that no prosecution could take place before obtaining sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] and therefore the chargesheet filed should be returned to the CBI. The CJM did not accept this position vide order dated 24 August 2006.

The Sessions Court, Srinagar, confirmed this position vide order dated 30 November 2006. These orders were further affirmed by the High Court on 10 July 2007. On 1 May 2012, the Supreme Court issued its final judgment in the case.

The fundamental issue before the Supreme Court was relating to the point at which sanction for prosecution under AFSPA needs to be sought i.e. before the filing of the chargesheet, or after the filing of a chargesheet but before cognizance by a court. The Supreme Court found that as per Section 7 of AFSPA, while a chargesheet may be presented before a court, no cognizance may be taken.

Further, that the competent army authorities had to exercise discretion on whether a Court-Martial is to be instituted *after* the filing of a chargesheet before a court.

The Army was given eight weeks time to decide whether to hold a Court-Martial in the case. On 29 June 2012, the Army stated that a Court-Martial would be held.

First, while the Supreme Court states in its judgment at Para 23 that “the question as to whether the sanction is required or not under a statute has to be considered at the time of taking cognizance of the offence...”, it concludes, in Para 66 (i) by stating that cognizance may not be taken by a court without prior sanction. The effect of this

conclusion might well be a complete negation of the qualifying portion of Section 7, AFSPA that limits the need for seeking sanction only “in respect of anything done or purported to be done in exercise of the powers conferred by this Act”. This qualification can only be brought alive if a competent court were to be allowed to take cognizance of a case i.e. apply its judicial mind to the chargesheet and decide whether the qualification applies. Further, in Para 66 (iii), the Supreme Court states that “*facts of this case require* sanction of the Central Government to proceed with the criminal prosecution/trial” (emphasis added). Therefore, it appears that on one hand the Supreme Court has effectively barred a court from taking cognizance of a case, but through this judgment, the Supreme Court has itself appreciated the facts of the instant case and found that sanction would be required to be sought. This seeming contradiction between the conclusions of the Supreme Court would require further clarification in the future, and perhaps is a pointer to the need to allow competent courts the opportunity to fully appreciate the specifics of a case before a request for sanction is necessitated.

Second, in Para 58, the Supreme Court, while addressing the issue of Court-Martials, states that Section 126 of the Army Act, 1950, allows a criminal court to seek to prosecute an army personnel despite the Army also exercising the option of a Court-Martial. Section 126 of the Army Act provides the procedure to be followed when a criminal court is “of opinion” that proceedings shall be instituted before itself. For a criminal court to form such an “opinion”, it would necessarily have to apply its judicial mind to material before it i.e. it would have to take cognizance of the matter before it.

Therefore, by denying the right of a court to take cognizance of a matter, and decide whether sanction for prosecution need be sought, the Supreme Court appears to have rendered the qualification in Section 7, AFSPA, meaningless, the power of the court under Section 126, Army Act, 1950 redundant, and further strengthened impunity in areas governed by AFSPA. While recognizing, in Para 55, that the process of sanction seeks to protect persons acting in good faith, the judgment of the Supreme Court effectively provides a blanket impunity to the armed forces.

Despite this case receiving media attention, as per publicly available information, alleged perpetrator Farooq Khan was awarded the Police Medal for Gallantry in 2003, Director General of Police’s Commendation Medal for 2006, Sher-e-Kashmir Medal for Meritorious Service in 2012 and the Presidents Police Medal for Distinguished Service in 2012. He had earlier been awarded the Police Medal for Gallantry in 1998.

## Case No. **156**

### *Victim Details*

Khawaja Habibullah Wagay [Extra-Judicial Killing]

Age: 60

Occupation: Inspector, Fire and Emergency Department

Son of: Haji Abdul Ahad Wagay

Resident of: Sadunara, Bandipora District

### *Alleged Perpetrators*

1. Zahoor Ahmad Wagay, son of Sonallah Wagay, Government backed militant [Ikhwan]
2. Ghulam Hassan Wagay, son of Mohammad Wagay [reportedly killed subsequently by militants], Government backed militant [Ikhwan]
3. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo Government backed militant [Ikhwan]

### Case Information

On 2 April 2000, Khwaja Habibullah Wagay left for work along with Abdul Majeed Wagay, his cousin.

On the way, at Veer Khan, Sadarkote, they were stopped by Zahoor Ahmad Wagay, Ghulam Hassan Wagay and Ghulam Mohammad Margoo. Khwaja Habibullah Wagay was accused of being an active member of the Jamaat-e-Islamia and was shot dead. Abdul Majeed Wagay was witness to the killing. The alleged perpetrators were working with the army.

The family of Khwaja Habibullah Wagay has received no relief or compensation.

First Information Report [FIR] no.37/2000 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Sumbal Police Station<sup>292</sup>.

The family of Khwaja Habibullah Wagay gave a statement to the IPTK on 9 February 2012.

Despite the passage of 12 years, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

It therefore appears that absolute impunity has been ensured for the perpetrators of this crime.

## Case No. 157

### Victim Details

Tariq Ahmad Sheikh [Abduction, Torture and Extra-Judicial Killing (Fake encounter)]

Age: 22

Son of: Abdul Aziz Sheikh [deceased], Fazi Bano

Spouse: Fahmeeda

Resident of: Peht Zanigam, Beerwah, Budgam District

### Alleged Perpetrators

1. Birendra Kumar Jha, 108<sup>th</sup> Battalion Border Security Force [BSF] [presently 11<sup>th</sup> Battalion BSF]
2. Head Constable Ramesh Lal, 140<sup>th</sup> Battalion Border Security Force [BSF]
3. Captain [Assistant Commandant] Madan Lal<sup>293</sup>, 4<sup>th</sup> Battalion Border Security Force [BSF]

### Case Information

As per the family of Tariq Ahmad Sheikh, on 17 April 2000, at about 6:00 am, the victim was picked up from his residence by the BSF forces that came in three or four cars.

On that day one of the villagers at the scene was given a phone number of the BSF Camp, Rawalpora, Srinagar by the BSF Inspector

heading the party. The number was given in case Tariq Ahmad Sheikh did not return. But, when the number was called, the BSF camp denied arresting Tariq Ahmad Sheikh.

Tariq Ahmad Sheikh was taken to the Sanatnagar Camp, Srinagar.

On 22 April 2000 the family of Tariq Ahmad Sheikh heard that his dead body was at the Chadoora Police Station. The body was then handed over to the Beerwah Police Station. The body had bullet injuries and it seemed he had been tortured.

First Information Report [FIR] no. 168/2000 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Beerwah Police Station on 25 July 2000 under the directions of the Chief Judicial Magistrate [CJM], Budgam<sup>294</sup>.

Further, the Jammu and Kashmir Police provided information that on 25 July 2000 the mother of the victim produced a written application that was endorsed by the CJM, Magam to the effect that on 17 April 2000 her son was picked up by the BSF and on 22 April 2000 she came to know that her son was dead and the body was with the Chadoora Police Station. She stated that her son was a released militant who had remained under detention for 10 months and was now silent as well as attending the army camp regularly. The case was chargesheeted before the Judicial Magistrate 1<sup>st</sup> Class, Magam on 18 November 2009 against BSF personnel "BK Jahde", "HC Ramesh Lal" and "Ct. Mohan Lal" wherefrom the same will be referred to BSF court for further prosecution as per directions of the Home Department.

Also, on record, is FIR no.56/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 filed at Chadoora Police Station by the BSF that makes reference to the death of a militant on the intervening night of 21 and 22 April 2000. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

The State Human Rights Commission [SHRC] issued its final decision on 18 June 2003 and recommended ex-gratia government relief of Rs.2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders]. The family of Tariq Ahmad Sheikh filed a petition before the High Court of Jammu and Kashmir against the non-implementation of the SHRC recommendations.

The BSF conducted a trial under the General Security Force Court at which the father-in-law and the wife of the victim testified. The final findings of the enquiry are unknown. On 29 February 2012 information was sought through RTI to the BSF on the trial. By letter dated 20 March 2012, the IPTK was informed that the BSF was exempted from providing this information.

The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was declined on 30 September 2008. While reference is made to the "BSF Camp Santnagar", no specific mention of is made of the accused involved in the case.

<sup>292</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>293</sup> The names of the alleged perpetrators are as per the records in the General Security Force Court trial of the BSF.

<sup>294</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided on 27 December 2011 by the Jammu and Kashmir Police.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs eight years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Even the FIR by the family of the victim was only filed after the intervention of the CJM, Budgam.

Further, the false FIR no.56/2000 filed in this case by the army reveals the practice of the armed forces carrying out fake encounters possibly for rewards, awards and promotions.

The manner in which the Jammu and Kashmir Police mechanically filed the FIR on behalf of the BSF, but not when it came to the family of the victim, needs to be investigated.

Further, while it appears a BSF trial was instituted, there has been a complete lack of transparency by the BSF on the trial, particularly with the family of the victim.

## Case No. **158**

### *Victim Details*

Aijaz Ahmad Bazaz [Abduction, Torture and Extra-Judicial Killing]  
Age: 19  
Occupation: Student  
Son of: Mohammad Shafi Bazaz  
Resident of: Manderbagh, Gowkadal, Srinagar

### *Alleged Perpetrators*

1. Imtiyaz, Station House Officer [SHO], Jammu and Kashmir Police
2. Davinder Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Humhama Camp, Budgam District
3. Bunty Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Humhama Camp, Budgam District
4. Munawar Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Humhama Camp, Budgam District

### *Case Information*

On 15 June 2000 Aijaz Ahmad Bazaz went to meet his relatives at Bemina, Srinagar.

On 17 June 2000, the family of Aijaz Ahmad Bazaz heard that he had been picked up by the SOG of the Jammu and Kashmir Police, Humhama camp.

The family members went to the SOG, Humhama Camp and met SHO Imtiyaz and Davinder Singh. Both of them accepted that Aijaz Ahmad Bazaz was with them and that a meeting would be arranged if Rs. 40,000 was provided to them.

On 22 June 2000 the Kral Khud Police Station informed the family of Aijaz Ahmad Bazaz that his dead body was with them. He was shown to have been killed in an encounter at the Bemina bye-pass, Srinagar.

The family of the victim did not file any report in the police station nor did they seek any relief. The family believes that Aijaz Ahmad Bazaz died due to torture.

It is unclear whether the police itself filed a FIR in the case.

The family of Aijaz Ahmad Bazaz gave a statement to the IPTK on 28 February 2012.

## Case No. **159**

### *Victim Details*

Mohammad Rafiq [Abduction and Extra-Judicial Killing]  
Son of: Atta Mohammad Gujjar  
Resident of: Sathra Mohalla, Chowana, Mandi, Poonch District

### *Alleged Perpetrators*

1. S.M.Romesh Chand, 8<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
2. Subedar Balraj, 8<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
3. Commandant [Commanding Officer], 8<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
4. Mohammad Sharif, son of Atta Mohammad, resident of Sathra, Mandi, 8<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
5. Muneer Hussain, son of Atta Mohammad, resident of Jandrola, Mandi, 8<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
6. Muneer Hussain, son of Habib, resident of Jandrola, 8<sup>th</sup> Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi

### *Case Information*

On 7 October 2000 around 15/16 personnel of the 8<sup>th</sup> Battalion JAKLI camped at Saklot Block, Mandi picked up Mohammad Rafiq.

On 9 October 2000 the dead body of Mohammad Rafiq was found a short distance from the residence of the victim.

First Information Report [FIR] no.56/2000 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Mandi Police Station<sup>295</sup>.

The family of Mohammad Rafiq approached the State Human Rights Commission [SHRC] on 3 May 2007 and a final decision was delivered on 19 September 2011.

The SHRC recommended that the investigations in the case be duly conducted and that compensatory relief on compassionate grounds be provided to the family of Mohammad Rafiq.

The SHRC first considered the reports of the Station House Officer [SHO], Mandi Police Station, filed on 2 June 2009 and 18 April 2010, that confirmed that as per investigations the kidnapping/abduction of Mohammad Rafiq was made out. But, the 8<sup>th</sup> Battalion JAKLI was not cooperating with the investigations and the perpetrators of the crime had not been identified nor made available to the investigating team of the police.

The SHRC also considered the report of Director General of Police [DGP], Jammu and Kashmir dated 12 July 2008, which stated that during investigations it was found that on 7 October 2000 Mohammad Rafiq was kidnapped by the search party of the 8<sup>th</sup>

<sup>295</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

Battalion JAKLI and on 9 October 2000 the dead body of Mohammad Rafiq was found at the Sathra top, 300 yards away from the house of Mohammad Rafiq.

The investigation of the case which was earlier closed by declaring the perpetrators as untraced was reportedly ordered to be reopened on the basis of the Forensic Science Laboratory report, and the investigations were under progress.

In response, the family of Mohammad Rafiq filed a rejoinder where the names of the alleged perpetrators were listed and it sought that action be taken against them.

The SHRC also considered the affidavits of Munir Hussain, Mohammad Latief, Mohammad Hanief, Shah Hussain, Aftab Hussain and Mohammad Afzal, and found that they supported the family of Mohammad Rafiq's allegations.

Based on the above, the SHRC, while not naming any of the alleged perpetrators, found that the case of the family of Mohammad Rafiq was made out and indicted the 8<sup>th</sup> Battalion JAKLI.

Further, it was noted that there was no adverse report against the family of Mohammad Rafiq.

Despite the passage of 12 years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

The Ministry of Defence seems to have cared very little about the SHRC order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **160**

### *Victim Details*

Mohammad Urfan Umer [Extra-Judicial Killing]  
Occupation: 10<sup>th</sup> Standard student  
Son of: Umer-ud-Din  
Resident of: Khaned Morha Soni Funara, Ramnagar, Udhampur District

### *Alleged Perpetrators*

1. Manzoor Ahmad, Special Police Officer [SPO], Jammu and Kashmir
2. Urash Paul, Special Police Officer [SPO], Jammu and Kashmir

### *Case Information*

On 5 November 2000, the armed forces along with the Jammu and Kashmir Police were carrying out a combing operation entered the house of Umer-ud-Din and enquired after militants. Umer-ud-Din expressed his inability to assist and then the alleged perpetrators abducted Mohammad Urfan Umer, his son, for interrogation and then shot him dead.

The family of the victim approached the State Human Rights Commission [SHRC] on 13 March 2005 and a final decision was issued on 6 May 2008.

Senior Superintendent of Police [SSP], Udhampur submitted a report, based on an enquiry conducted by the Sub-District Police Officer [SDPO], Ramnagar.

This enquiry concluded that the victim was a guide/informer of militants and had died during an encounter. In response, the family of the victim submitted proof that the victim was a 10<sup>th</sup> Standard student.

Further, statements were submitted on behalf of persons from the village that confirmed that the victim was innocent.

The SHRC in its final decision found in favour of the victim and stated that the enquiry by the SDPO, Ramnagar was "one sided" and an attempt to cover up the deeds of the police, particularly the alleged perpetrators.

The SHRC recommended that the Government conduct an enquiry, recommended compensation of Rs.2,00,000, and compassionate employment under SRO-43 [Statutory Rules and Orders].

Despite the decision of the SHRC, it is unclear whether any action was at all taken following the recommendations.

Further, this case illustrates the manner in which the Jammu and Kashmir Police favour the perpetrators of crimes over the victims involved.

## Case No. **161**

### *Victim Details*

Mehrajuddin Khanday [Extra-Judicial Killing (Custodial Killing)]  
Age: 21  
Occupation: Student  
Son of: Ghulam Nabi Khanday  
Resident of: Dethoo, Shangus, Anantnag District

### *Alleged Perpetrators*

1. Major A.K. Morea, 7 Rashtriya Rifles [RR], Army, Camp Chakidaspora

### *Case Information*

In November 2000, Mehrajuddin Khanday along with a person named Hilal Ahmad Teeli were summoned to the Chakidaspora Camp where they were tortured. A pistol was recovered from Hilal Ahmad Teeli. Mehrajuddin Khanday, found to have no links to militants, was released.

On 1 January 2001, Mehrajuddin Khanday was called once again to the Chakidaspora Camp by a "Major S.K.Mour" [in the petition filed before the High Court of Jammu and Kashmir, this camp is referred to as the "Chhati Singhpora" camp. In the petition the date of the incident is listed as 30 December 2000.

Further, in the status report filed by Station House Officer [SHO], Mattan Police Station, before the High Court it is stated that during investigations, witnesses, including the father of Mehrajuddin Khanday, referred to the date of the incident as 28.12.2000]. Mehrajuddin Khanday went to the camp along with his cousin, Ghulam Nabi Khanday who was working with the BSF, at about 11:00 am. The Major asked Ghulam Nabi Khanday to run an errand. On his return, Mehrajuddin Khanday was no longer at the camp. Ghulam Nabi Khanday was informed that he had been released.

On the following day, relatives of Mehrajuddin Khanday approached the Major to enquire about him. The Major informed them that Mehrajuddin Khanday had been released on the previous day and asked them to search for him elsewhere, including in the forests. On 5 January 2001 the family of Mehrajuddin Khanday filed a report at the Mattan Police Station.

On 12 January 2001 the body of Mehrajuddin Khanday was found in the Hutmura forest. According to the family of Mehrajuddin Khanday the body had numerous injury marks. No autopsy report was ever provided to the family.

Following the death of the victim, the family has received various threats from the army. The army personnel have also attempted to have the family sign a declaration that accepts that the army had no role in the killing of Mehrajuddin Khanday. The family resisted these threats.

The family of Mehrajuddin Khanday received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Mehrajuddin Khanday gave a statement to the IPTK on 2 February 2012.

First Information Report [FIR] no. 18/2001 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture/sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Anantnag Police Station on 12 January 2001 that an unidentified body was found in Hutmura forest with bullet injuries<sup>296</sup>. By communication dated 14 May 2012 from the Jammu and Kashmir Police information was provided that the case was chargesheeted but sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] against Major A.K. Morea was declined. A copy of the FIR was provided on 21 May 2012. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the 23 February 2009 decline of sanction for prosecution under AFSPA was provided.

This letter from the Ministry of Defence to the Jammu and Kashmir Home Department, states that the allegations against the alleged perpetrator are “totally false”. The letter states that the “killing of Jehangir Maulvi was a result of information given by Meraj-ud-Din Khanday”. “His visit to the Company post would have been observed by the subversive elements of village and could have misconstrued the visit otherwise”. The victim was sent back home on 30 December 2000 at 1:00 pm. “Terrorists and Over Ground Workers have made a desperate attempt to malign the officers and tarnish the image of the Army”.

On 26 May 2001, the Senior Superintendent of Police [SSP], Anantnag wrote a letter to the Deputy Commissioner [DC], Anantnag. While stating that investigations were ongoing, the letter states that the killing was by unknown militants, but also that the Mehrajuddin Khanday was not affiliated with any banned outfit.

The family of Mehrajuddin Khanday filed a petition was filed before the High Court [Original Writ Petition (OWP) 54/2001] seeking a judicially monitored speedy investigation. The army accepted that Mehrajuddin Khanday was called to a post referred to as “Chak Ishar Dass” on 30 December 2000 but was subsequently released. Further, it was also accepted that Mehrajuddin Khanday was arrested on 10

November 2000 based on “information from intelligence agencies” but was released on the same day.

On 7 October 2003, the High Court was informed that the investigation in the case was complete and sanction for prosecution under AFSPA was being awaited before the submission of the chargesheet before the court. Based on this, the High Court sought information on the progress of sanction for prosecution under AFSPA.

On two further occasions, 21 February 2004 and 11 June 2004, the High Court continued to seek information on the situation of the sanction for prosecution sought under AFSPA. But, on 26 July 2004, with no developments on the issue of sanction for prosecution under AFSPA, the High Court dismissed the petition as being infructuous as investigations being completed<sup>297</sup>.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined vide order dated 23 February 2009.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined on 23 February 2009.

The Ministry of Defence, in response to a RTI on 10 January 2012 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined on 23 February 2009. Further, that: “officer not involved in killing. Attempt made by terrorists and sympathizers to malign the officer and tarnish the image of Army”.

There are certain discrepancies in the date of the event and the name of the alleged perpetrator.

While the Ministry of Defence and Government of Jammu and Kashmir sanction for prosecution under AFSPA documents refer to the alleged perpetrator as Major A.K. Morea, the family of the victim and the High Court documents refer to him as S.K. Mour or formulations of the same.

Further, the 2009 Ministry of Defence affidavit refers to the date of the event as 11 November 2000, whereas the 10 January 2012 Ministry of Defence document refers to the date as 30 December 2000. The family of the victim in the High Court petition place the incident on 30 December 2000 but it appears during investigations this may have been placed on 28 November 2000. Finally, there is also a discrepancy on the name of the Camp between the High Court petition and the statement given to the IPTK. But, these discrepancies appear minor particularly as there appears to be no dispute that Mehrajuddin Khanday was in the custody of the alleged perpetrator. The point of contention is only on whether or not he was released and role of the alleged perpetrator in his extra-judicial killing.

The Ministry of Defence decline of sanction of 23 February 2009 is a very important document which on the one hand acknowledges the responsibility of detaining Mehrajuddin Khanday and also gives an indication that he may have helped in giving information for the killing of Jehangir Moulvi.

<sup>296</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

<sup>297</sup> Information on the petition numbers was sought through RTI on 16 February 2012. Information was provided.

The document also states that in this case terrorists and over ground workers have made an attempt to malign and tarnish the image of the army. In light of the fact that family members of Mehrajuddin Khanday hardly know the real name of Major A.K.Morea as they refer to him as S.K. Morea it is hard to imagine who the army is blaming for framing the said Major in this case which led to the maligning of the image of the army. It is the investigations of the Jammu and Kashmir Police that led to the framing of a case against Major A.K.Morea.

It needs to be ascertained whether the army by claiming that this case is an attempt by terrorists and sympathizers to malign the army is blaming the investigation and the Jammu and Kashmir Police for being sympathetic to terrorists. The approach of the army to shield the alleged perpetrator is amply demonstrated by the available documents that do not suggest that even a court-martial was conducted in this case by the army.

On the alleged release of Mehrajuddin Khanday the armed forces have facilitated the practice of illegal detentions and unrecorded "release" of victims which leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money.

The letter dated 26 May 2001 from the SSP, Anantnag is an example of the routine practice of the Jammu and Kashmir Police carelessly attributing blame to militants without any substantive evidence. The later investigations of the police itself clearly establish that this letter was a mistake by a senior officer in the Jammu and Kashmir Police.

Finally, the High Court while cognizant of the need for a judicially monitored investigation, initially monitored the issue of the outstanding sanction for prosecution under AFSPA. But, inexplicably after a few hearings the High Court absolved itself of any responsibility with regard to the sanction process and dismissed the petition.

## Case No. 162

### *Victim Details*

Khaleel Ahmad Choudhary [Wrongful Restraint and Attempt to Murder]  
Occupation: Munsif / Judicial Magistrate 1<sup>st</sup> Class, Tangmarg

### *Alleged Perpetrators*

[Perpetrators unknown]

### *Case Information*

On 30 January 2001, Khaleel Ahmad Choudhary was driving in his vehicle when he was stopped near the Kunzer market by an army patrol.

His vehicle was searched. Khaleel Ahmad Choudhary showed his High Court of Jammu and Kashmir issued identity card to the army patrol.

The army personnel threw his identity card and said that they had seen enough of the courts. They said that the courts were nothing before the army. Khaleel Ahmad Choudhary protested on the behavior of the army personnel and told them that they could only limit themselves to a search and that their behavior was contemptuous to the judiciary. On this, an army personnel cocked his gun with the intention to fire at Khaleel Ahmad Choudhary.

First Information Report [FIR] no.13/2001 was filed at the Kunzer Police Station u/s 307 [Attempt to murder], 341 [Wrongfully restraining person] Ranbir Penal Code, 1989 [RPC] on 30 January 2001<sup>298</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was under investigation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

## Case No. 163

### *Victim Details*

Ghulam Hassan Kumar [Abduction and Torture]  
Occupation: Guard  
Brother of: Mohammad Hanif Kumar  
Resident of: Jodi Nambal, Baramulla District

### *Alleged Perpetrators*

1. Major Yadav Singh, 28 Rashtriya Rifles [RR], Army, Camp Snalkote

### *Case Information*

First Information Report no.12/2001 u/s 307 [Attempt to murder], 343 [Wrongful confinement for three or more days], 326 [Grievous hurt by dangerous weapons/means] Ranbir Penal Code, 1989 [RPC] was filed at the Panzalla Police Station<sup>299</sup>. The 22 May 2012 communication of the Jammu and Kashmir Police states that the case was under investigation.

The FIR states that Ghulam Hassan Kumar was tortured by Major Yadav Singh and other army personnel. On 8 February 2001, Ghulam Hassan Kumar, working as a guard at a Sikh family's house, was taken by the personnel of the 28 RR and then tortured. Kerosene was sprinkled on his body and his neck was tied.

He was released on 12 February 2001. On 20 February 2001 his condition deteriorated.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

It needs to be ascertained whether the Jammu and Kashmir Government completed investigations and has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

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<sup>298</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>299</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 2001 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 164

### *Victim Details*

Identity not ascertained [Extra-Judicial Killing]

### *Alleged Perpetrators*

1. Harvinder Singh, Army

### *Case Information*

As per information from the Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 16 February 2001 there was a killing by shooting. FIR no.15/2001 was filed. The case was under examination.

No information exists on the status of investigations or prosecutions in this case by the Jammu and Kashmir Police.

But, it is noteworthy that despite the passage of 11 years since the commission of the crime, the Ministry of Defence has yet to take a decision on the grant of sanction for prosecution under AFSPA which helps the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 165

### *Victim Details*

Aashiq Hussain Akhoo [Abduction and Extra-Judicial Killing (Fake encounter)]

Age: 18

Occupation: Contractor, Kashmir Motor Drivers Association

Son of: Mohammad Yusuf Akhoo

Resident of: Ratharpora, Noorpora, Tral, Pulwama District [present address], Previously resident of Pinglish, Tral, Pulwama District

### *Alleged Perpetrators*

1. Hans Raj Parihar, Deputy Superintendent of Police [DSP], Jammu and Kashmir Police
2. Inspector Narendra Singh Peshar, Jammu and Kashmir Armed Police [JKAP]
3. Constable Tariq Ahmad Chadro [operational name: Mushtaq], Special Operations Group [SOG], Jammu and Kashmir Police
4. Constable Fareed Khan, 1<sup>st</sup> Battalion, Indian Reserve Police [IRP]

5. Inspector Manjit Singh, 124<sup>th</sup> Battalion Border Security Force [BSF], D Company, Tral, Pulwama

### *Case Information*

On 28 March 2001 the Aashiq Hussain Akhoo left for Tral, to the bank, to withdraw money as his family had purchased land in Bijbehara and the payment had to be made. After withdrawing money he headed towards Bijbehara.

On the way Aashiq Hussain Akhoo was picked up by DSP Parihar and the Rs. 48,000 he had withdrawn was taken away. On 1 April 2001 at about 4:30 am, the family of the Aashiq Hussain Akhoo heard two gunshots and subsequently the police was informed about the body of Aashiq Hussain Akhoo, which was taken to the Tral Police Station. The family of Aashiq Hussain Akhoo states that his body had clear torture marks.

The family of Aashiq Hussain Akhoo gave a statement to the IPTK on 16 February 2012.

First Information Report [FIR] no.25/2001 u/s 307 [Attempt to murder] and 7 [Prohibition of acquisition / possession / manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Tral Police Station on 1 April 2001<sup>300</sup>. The 124<sup>th</sup> Battalion BSF in this FIR stated that the victim was killed in cross-fire between militants and armed forces. The BSF also showed a recovery of arms from the victim. The Superintendent of Police [SP], Awantipora, in a letter dated 11 July 2001 accepts this version of events that the victim was a militant and a chargesheet was produced in court against the deceased person on 19 June 2001. Further, the communication dated 15 May 2012 from the Jammu and Kashmir Police states that that there was an encounter between militants and security forces in Pinglish, Haffoo Nallah, during the night of 31 March 2001 and 1 April 2001 where a Hizbul Mujahideen militant Aashiq Hussain Shah, son of Mohammad Yousuf, resident of Pinglish got killed and huge quantity of arms and ammunition were recovered. Chargesheet was filed on 19 June 2001.

The mother of Aashiq Hussain Akhoo filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 164/2001]. Alleged perpetrators 2 to 5 were made parties to the petition.

The motive of the killing of the victim was believed to be money that the victim was carrying. The petition sought the completion of investigations, sanction to prosecute the alleged perpetrators, presentation of findings of inquiry if conducted, and compensation.

The Government of Jammu and Kashmir and police authorities responded before the High Court and stated that there were no employees by the names as listed for alleged perpetrators 2 to 4 with the Government of Jammu and Kashmir. Further, that the victim was, as per the FIR, an active militant, and compensation could therefore not be granted. Further, that no separate inquiry had been conducted. The Union of India and Inspector Singh submitted before the High Court and denied all knowledge of the killing of the victim.

<sup>300</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 15 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. By further communication dated 9 July 2012, some investigation records were provided.



On 26 September 2001, the High Court ordered that the victim's family be provided the necessary security, based on apprehensions to their safety as submitted by them before the High Court.

On 11 January 2004, the petition was dismissed in default of appearance.

The State Human Rights Commission [SHRC] was also approached by the family of Aashiq Hussain Akhoo.

The SHRC on 17 April 2001 directed the respondents to indicate whether ex-gratia government relief had been made and directed that exhumation and post-mortem should be done.

The final decision was given on 13 March 2002. Before the SHRC was a letter from the SP, Awantipora which confirmed the version of events as per the FIR and stated that a chargesheet was produced in court against the deceased person on 19 June 2001. Station House Officer [SHO], Tral Police Station also submitted a letter dated 19 May 2001 which concluded similarly. The SHRC then allowed the family of Aashiq Hussain Akhoo to produce witnesses.

Based on the witness testimonials, the SHRC concluded that Aashiq Hussain Akhoo was not a militant and had no connection to any militant organization. Rs.1,00,00 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits were recommended.

The family of the victim received no relief/compensation despite a letter dated 17 March 2003 from the Deputy Commissioner, Pulwama stating that Rs.1,00,000 ex-gratia government relief was to be granted.

The faulty, and possibly prejudicial, investigations by the Jammu and Kashmir Police are highlighted by the SHRC decision which bases itself on witness testimonials to find that Aashiq Hussain Akhoo was not a militant.

This conclusion of the SHRC raises serious questions on the investigations of the Jammu and Kashmir Police who appear to have conveniently accepted the version of the BSF rather than carry out fair investigations that might implicate fellow police personnel. Fair investigations would have included enquiries at the bank on details of money withdrawn by Aashiq Hussain Akhoo, and the subsequent trail of the money could have helped ascertain circumstances surrounding the killing of Aashiq Hussain Akhoo.

Of particular significance in the case of alleged perpetrator Hans Raj Parihar is that he was implicated in another case prior to this one, referred to in this report, and yet he received, as per publicly available information, the Director General of Police's Commendation Medal for 2001.

## Case No. 166

### *Victim Details*

1. Mohammad Sultan Allaie [Extra-Judicial Killing]  
Occupation: Farmer  
Son of: Abdul Aaziz Allaie  
Spouse: Khati Begum  
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
2. Ghulam Hasan Allaie [Extra-Judicial Killing]  
Son of: Karim Allaie, Haja

Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District

3. Haja [Injuries]  
Mother of: Ghulam Hasan Allaie  
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
4. Meema [Injuries]  
Age: 25  
Spouse: Abdul Rashid Allaie  
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
5. Naseer Ahmad [Injuries]  
Age: 8 months  
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
6. Other members of Village Waripora [Injuries]

### *Alleged Perpetrators*

1. Captain Rajesh Sharma, 29 Rashtriya Rifles [RR], Army, Camp Yadipora, Palhalan, Pattan
2. 19 personnel, 29 Rashtriya Rifles [RR], Army, Camp Yadipora, Palhalan, Pattan

### *Case Information*

On 13 April 2001 the personnel of 29 RR patrolled the Waripora village. Later in the night at 11:30 pm they attacked the village. The firing continued till the morning of 14 April 2001 at about 6:00 am. Mohammad Sultan Allaie was killed as he got up from his bed and tried to go to the next room where other members of his family were. He cried out and that was when Ghulam Hasan Allaie, nephew and neighbor of Mohammad Sultan Allaie, came out to see what was happening. As he looked outside, he was shot dead. His sister-in-law, Meema, mother, Haja, and nephew, Naseer Ahmad family suffered injuries.

In the morning all the male villagers were taken out naked and beaten. Subsequently there were wide protests, joined by other adjacent villages as well.

There was also an incident of rape during the events the details of which are not available with the IPTK.

A person who witnessed the events has informed the IPTK, under a condition of confidentiality of his identity, that he heard a conversation during the incident where a person named "Rampal Singh" told another named "Rajesh Sharma" not to shoot that much.

The family of Ghulam Hasan Allaie gave a statement to the IPTK on 12 December 2011.

FIR no.39/2001 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kreeri Police Station<sup>301</sup>. By communication dated 22 May 2012 from the Jammu and Kashmir Police, and specifically the Deputy Superintendent of Police, District Police Headquarters, Baramulla, information was provided that the case was closed by declaring the perpetrators as untraced. It was further stated that the FIR was misplaced.

A case was filed on behalf of both families before the State Human Rights Commission [SHRC].

<sup>301</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

Deputy Commissioner, Baramulla intervened on behalf of Mohammad Sultan Allaie's family and they received Rs.1,00,000 ex-gratia government relief.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that sanction was declined for Captain Rajesh Sharma vide order dated 25 March 2009. Further, this document provides some incorrect/incomplete details of the incident as it states that this incident involved the abduction and death in military custody of a "Mohd Sultan and Hassan Allaie" on 14 April 2001.

The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction for Captain Rajesh Sharma and 19 other Officers of the 29 RR was declined on 25 March 2009.

This case is an example of indiscriminate collective punishment and a systematic attack meted out to the villagers in which the Jammu and Kashmir Police investigations apparently limited itself to the extra-judicial killings of two persons only. It is not clear why the police in their investigations have not charged the army unit for the other crimes committed at the village.

The decline of sanction for prosecution in a case like this is indicative of the fact that there is institutional support for such operations that are effectively collective punishments.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Further, this was a fit case for the Jammu and Kashmir Police to stand by its investigations and agitate the decline of sanction for prosecution. Instead, they chose to mechanically close the case by declaring the perpetrators as untraced.

It needs to be investigated how the FIR was misplaced, presumably at both the District Police Headquarters and the Kreeri Police Station, in this case by the Jammu and Kashmir Police. The investigations would need to ascertain whether this is a case of negligence or an attempt to cover up the matter.

## Case No. **167**

### *Victim Details*

Ghulam Rasool Lone [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Son of: Abdul Gani Lone  
Resident of: Souch, Kulgam District

### *Alleged Perpetrators*

1. Nisar Ahmad Dar, resident of Khudwani [presently in Territorial Army], Government backed militant [Ikhwan]
2. Muhammad Ashraf Wani [Operational name: Asif], resident of Bugam [presently in Territorial Army], Government backed militant [Ikhwan]
3. Shakeel Ahmad, [Operational name: Tiger], resident of Poniwah, Kulgam [presently in Territorial Army], Government backed militant [Ikhwan]

### *Case Information*

On 14 April 2001, Ghulam Rasool Lone was on his way to his uncle's residence. He was tortured to death and later buried in the compound of the Kulgam Camp.

First Information Report [FIR] no. 96/2001 was filed at the Kulgam Police Station u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC]<sup>302</sup>. By communication dated 10 July 2012 from the Jammu and Kashmir Police, information was provided that the case was submitted to Crime Branch, Kashmir, for investigations vide order no.1254/2008 from the Police Headquarters on 10 April 2008.

The State Human Rights Commission [SHRC] issued its final decision on 4 October 2007 recommending payment of Rs.2,00,000 ex-gratia government relief and that the investigations should be handled by the Crime Branch. On 30 June 2009, when the SHRC was once again seized of the matter, it was noted that a direction had been issued by the Director General of Police [DGP] for a Crime Branch investigation on 4 April 2008, about six months after the initial decision of the SHRC.

As reported in the media, on 21 April 2009, an application was moved by the Crime Branch, Kashmir before the Chief Judicial Magistrate [CJM], Kulgam for issuance of warrants under section 25 of the Police Act for the alleged perpetrators. The CJM, Kulgam directed the Commanding Officer of the 162<sup>nd</sup> Jammu and Kashmir Light Infantry [JAKLI], Wazir Camp posted at Qazigund to hand over the troops accused in the murder of Ghulam Rasool Lone during custodial interrogation. The prosecution had submitted before the court that the concerned Commanding Officer was not cooperating with the investigation of the case against the accused and was stressing on interrogating the accused in the army camp only. The prosecution stated that when the FIR was lodged against the accused, they were part of the Ikhwan, so they could not be interrogated by the army<sup>303</sup>.

Based on the latest communication received through the Jammu and Kashmir Right to Information Act, 2009 [RTI] from the Jammu and Kashmir Police, it appears that investigations in the case remain pending with the Crime Branch, 11 years after the FIR was filed and four years since the Crime Branch investigations began. Nothing substantive with regard to prosecution of the alleged perpetrators has emerged.

## Case No. **168**

### *Victim Details*

1. Mohammad Arshad [Abduction and Extra-Judicial Killing]  
Age: 25  
Son of: Jamal Din  
Resident of: Hari Buddha, Mandi, Poonch District
2. Munshi Khan [Abduction and Extra-Judicial Killing]  
Son of: Wazir Mohamad  
Resident of: Hari Buddha, Mandi, Poonch District

### *Alleged Perpetrators*

1. Captain Kunal Bakshi, 17 Rashtriya Rifles [RR], Army
2. Subedar Kalayan Singh, 17 Rashtriya Rifles [RR], Army

<sup>302</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012.

<sup>303</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Apr/22/cjm-directs-army-to-hand-over-ta-men-41.asp>, 21 April 2009.

3. Subedar Paandurung, 17 Rashtriya Rifles [RR], Army
4. Havaladar Maani Dutta, 17 Rashtriya Rifles [RR], Army

#### Case Information

On 29 April 2001, Mohammad Arshad, Munshi Khan, Mohammad Rashid, Mohammad Asian, and Hakim Din were taken to the forest by the alleged perpetrators. Mohammad Arshad and Munshi Khan were killed, whereas the others managed to escape.

First Information Report [FIR] no.21/2001 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Mandi Police Station. The case was chargesheeted against the alleged perpetrators u/s 364 [Kidnapping / Abducting to murder] and 302 [Murder] Ranbir Penal Code, 1989 [RPC], and on 25 January 2004 it was transferred to the army Court-Martial.

The State Human Rights Commission [SHRC] was approached and on 6 June 2008 a final decision was given.

The report of the Director General of Police [DGP], Jammu and Kashmir dated 17 December 2007 was considered, which confirmed the abduction, killing and the role of the alleged perpetrators.

The SHRC recommended Rs.1,50,000 ex-gratia government relief to the next of kins of the victims.

Despite an indictment by the SHRC of the alleged perpetrators, and information that the case was sent for an army Court-Martial, the available documents relating to court-martials of RR personnel in Jammu and Kashmir do not refer to this case.

Therefore, it appears that absolute impunity has been ensured for the alleged perpetrators.

## Case No. 169

#### Victim Details

Mehraj-ud- Din Dar [Assault]  
Resident of: Rawalpora, Srinagar

#### Alleged Perpetrators

1. Deputy Inspector General [DIG] A.K. Malik, 194<sup>th</sup> Battalion Border Security Force [BSF]
2. Ghulam Mohammed Mir [Operational name: Muma Kanna], Government backed militant [Ikhwan]

#### Case Information

First Information Report [FIR] no.42/2001 u/s 307 [Attempt to murder], 109 [Abetment] Ranbir Penal Code, 1989 [RPC] was filed at the Magam Police Station<sup>304</sup>. The communication of 21 December 2011 stated that on 10 May 2001 Mehraj-ud- Din Dar and other journalists reported to the Magam Police Station that on that day they went to the Magam Chowk to cover the firing incident which took place there on 9 May 2001. In the meanwhile, DIG A.K.Malik and his personnel snatched their cameras and beat them ruthlessly. They fled from there. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the chargesheet filed on 3 June 2004 against Ghulam Mohammad Mir was provided.

<sup>304</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided.

The chargesheet states that on 9 May 2001 Mehraj-ud- Din Dar and others had gone to do reportage. DIG A.K.Malik instructed his personnel to beat Mehraj-ud- Din Dar and the others and open fire on them, but no one was injured.

While Ghulam Mohammad Mir is mentioned as an accused in the chargesheet, no details are provided on his role.

Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought for DIG A.K.Malik.

No information exists on the presence status of prosecution against Ghulam Mohammad Mir.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK also sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 170

#### Victim Details

1. Abdul Ghani Bhat [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 35  
Occupation: Farmer  
Son of: Fateh Bhat  
Resident of: Monghama, Tral, Pulwama District
2. Ishrat Amin Bhat [Injuries]  
Age: 26  
Daughter of: Mohammad Amin Bhat  
Resident of: Monghama, Tral, Pulwama District
3. Bilal Ahmad Reshi [Injuries]  
Age: 28  
Son of: Ghulam Nabi Reshi  
Resident of: Tral bus stand, Pulwama District

#### Alleged Perpetrators

1. Sub-Inspector [SI] Bawani Singh / Bhagwan Singh, 124<sup>th</sup> Battalion Border Security Force [BSF], Camp Batagund Dambal, Tral
2. Constable Ram Naresh, E Company, 124<sup>th</sup> Battalion / attached to the 173<sup>rd</sup> Battalion, Border Security Force [BSF], Camp Batagund Dambal, Tral

#### Case Information

On 9 July 2001 at around 4:00 pm Abdul Ghani Bhat was working on his fields along with other persons. BSF personnel from the Batagund Dambal Camp attacked the farmers and beat them severely. Abdul Ghani Bhat managed to escape to his house. The BSF personnel next arrived at his house and abducted Abdul Ghani Bhat. When the family of Abdul Ghani Bhat approached the camp the BSF personnel denied the abduction.

The same night the BSF personnel returned with Abdul Ghani Bhat to his residence for search operations. Following the operation Abdul Ghani Bhat was once again taken back to the camp.

The family approached the police station and subsequently the FIR was filed.

On 11 July 2001 the body of Abdul Ghani Bhat was found at Chachkote, Awantipora. The dead body bore visible torture marks. The Station House Officer [SHO] of the Tral the Police Station had earlier attributed the abduction to a Sikh officer of the BSF.

The BSF personnel exerted great pressure on the family of Abdul Ghani Bhat to withdraw the case.

The family of Abdul Ghani Bhat was given Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

On 11 July 2001, the villagers conducted a protest march against the abduction and killing of Abdul Ghani Bhat. As the protestors were moving towards Awantipora, they were fired upon by the BSF personnel of the Batagund Dambal Camp. The firing was done by Constable Ram Naresh. Ishrat Amin Bhat and Bilal Ahmad Reshi were injured in this shooting. Both are permanently handicapped. Ishrat Amin Bhat was shot in her arm and Bilal Ahmad Reshi on his hand.

The BSF personnel exerted great pressure on both families due to which they signed declarations accepting that the BSF had no role in the incident.

Additionally, the father of Bilal Ahmad Reshi, in his statement to the police did not attribute the firing to the BSF.

The family of Ishrat Amin Bhat accepted Rs.7000 from a Major of the BSF. The Major told the father of the victim that not all officers were good and that if he refused to compromise he could be taken to the Camp, forced to hold a gun, have a picture taken and be labeled a militant. The family of Bilal Ahmad Reshi received Rs.70,000 in compensation from the Government of Jammu and Kashmir. The family of Ishrat Amin Bhat received Rs.60,000 in compensation from the Government of Jammu and Kashmir.

The family of Ishrat Amin Bhat and Bilal Ahmad Reshi gave statements to the IPTK on 6 February 2012.

First Information Report [FIR] no. 66/2001 u/s 302 [Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station in relation to the killing of Abdul Ghani Bhat<sup>305</sup>. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was registered on 10 July 2001 upon the written report of a village guard Monghama, Tral namely Ali Mohammad Bhat and pertains to illegal confinement and death of Abdul Gani Bhat, son of Fateh Bhat, resident of Monghama, by Sub-Inspector Bawani Singh of the 124<sup>th</sup> Battalion BSF during custody. Investigation was closed as chargesheeted and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought but subsequently denied. Based on this letter the police claims that investigations are ongoing.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs for the "BSF Camp 124 Battalion

Batagund, Tral" but it was declined on 8 April 2008. The name of Sub-Inspector Bawani Singh is not mentioned in this document.

Also on record is that the 124<sup>th</sup> Battalion BSF confirmed in a certificate issued on 16 July 2001 that Abdul Ghani Bhat had no connection to any militant activities.

By further communication from the Jammu and Kashmir Police dated 9 July 2012, a copy of the FIR was provided.

Further, a copy of the decline of sanction letter was provided. The decline of sanction refers to SI Bhagwan Singh and states that sanction was sought on 20 July 2007. This letter places the alleged incident on 24 July 2001. The entire incident and the role of the BSF is denied. It is stated that the Judicial Magistrate, Tral opined that the FIR in this case is baseless as on 9 July 2001 the victim was not apprehended by the BSF. Further, a letter of the Inspector General of Police [IGP], Kashmir is referred to which states that sufficient evidence was not found against Bhagwan Singh and he was implicated only on the grounds that at the relevant time he was Company Commander of the Batagund Company of the BSF.

First, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs seven years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Second, contrary to other documents on record, the Ministry of Home Affairs has denied the allegations by referring to the seemingly wrong date of 24 July 2001.

Finally, the investigations of the Jammu and Kashmir Police, particularly the opinion of the IGP, Kashmir, would need to be scrutinized and verified whether the perpetrators of the crime have evaded justice due to deliberately faulty investigations.

FIR no.101/2001 u/s 307 [Attempt to murder] and 7 [Prohibition of acquisition / possession / manufacture/sale of prohibited arms / ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Awantipora Police Station in relation to the second incident<sup>306</sup>. By communication dated 19 May 2012 from the Jammu and Kashmir Police the information that was provided states that the case pertains to firing at Nowdal upon a peaceful procession which was on its way to Awantipora from Tral on 11 July 2001 by Constable Ram Naresh without any provocation resulting in bullet injuries to Ishrat Amin Bhat and Bilal Ahmad Reshi. Offences were proved, and chargesheeted before the court on 24 January 2008 after seeking government sanction for prosecution under AFSPA.

But, contradicting what the police appear to suggest [that sanction may have been granted] the Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined by the Ministry of Home Affairs on 11 July 2007.

Further, on record is that a trial by the Security Force Court was conducted in 2009. The results of the Security Force Court proceedings are not known. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the FIR was provided.

<sup>305</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

<sup>306</sup> Information on this FIR was sought through RTI on 7 October 2011.

Once again, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

## Case No. 171

### *Victim Details*

Manzoor Ahmad [Abduction and Enforced Disappearance]  
Son of: Bhakti

### *Alleged Perpetrators*

1. Major Bhattacharya, 28 Rashtriya Rifles [RR], Army

### *Case Information*

On 22 December 2001, Manzoor Ahmad was picked up from Tragpora, Baramulla District, by Major Bhattacharya and has disappeared since. The 28 RR denied the abduction of Manzoor Ahmad.

A petition was filed before the High Court of Jammu and Kashmir [HCP 56/2006]. As the respondents to the petition did not make any submissions, on 8 August 2006 a judicial enquiry was ordered by the High Court. The Principal District Judge, Baramulla was appointed as the enquiry officer<sup>307</sup>.

Despite the passage of 11 years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. It needs to be ascertained whether even a FIR was filed.

Further, the status of the High Court petition filed needs to be ascertained. Further, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Bhattacharya.

## Case No. 172

### *Victim Details*

Abdul Gani Ganai [Torture and Extra-Judicial Killing]  
Occupation: Government employee  
Spouse: Zooni  
Resident: Kralpora, Kupwara District

### *Alleged Perpetrators*

1. Major S. Bhattacharya, 42 Rashtriya Rifles [RR], Army, Camp Kralpora

<sup>307</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

### *Case Information*

On 22 December 2001 at about 10:30 pm, Major S. Bhattacharya entered the residence of Abdul Gani Ganai and tortured him. The victim died as a result of the torture. During the torture, the wife of the victim and his children were kept in a separate room.

First Information Report [FIR] no.160/2001 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station<sup>308</sup>. The communication dated 6 January 2012 also states that the investigations in this case had been closed as chargesheeted, sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] which was declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was received in September 2008 and was under consideration.

The Ministry of Defence, in response to an RTI on sanctions for prosecution under AFSPA stated on 10 January 2012 in relation to this case that sanction had been declined. Further, that: "the individual killed was a militant from whom arms and ammunition were recovered. The operation was conducted based on the specific information provided by i/c [In-charge] police post, Kralpora. All the witnesses examined by the police are family members or close relatives of the individual killed."

By communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the 2 February 2011 decline of sanction letter was provided.

This letter states that sanction was sought from the Government of Jammu and Kashmir vide letter dated 20 June 2007.

Sanction was declined as the witnesses were close relatives, family members of the deceased or over-ground workers of militant organizations. Mention is also made of witness Tahir Ahmed Malik who is stated to have deposed to the innocence of the victim and that he did not accompany the army during the operation. This witness was said to have been in judicial custody and therefore unreliable as a witness.

Further, it was stated that information relating to the investigation of FIR no.158/2001 was suppressed. The firing between the victim and the army was not reflected in investigations on FIR no.160/2001.

The allegation against the alleged perpetrator is of the death of the victim due to torture and not of an encounter.

The response of the Ministry of Defence that Abdul Gani Ganai was a militant does not address the issue of torture at all and is misleading.

Even assuming the position of the Ministry of Defence that Abdul Gani Ganai was a militant, Major Bhattacharya would still be guilty of the crime of torture.

Also, the Ministry of Defence has used an inexcusable argument ungrounded in the law that the witnesses examined by the Jammu and Kashmir Police are family members or close relatives of Abdul Gani Ganai.

<sup>308</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 6 January 2012 a copy of the FIR was provided.

Similarly, the other reasons given for decline for sanction appear baseless.

Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took at least six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

## Case No. 173

### *Victim Details*

1. Abdul Ahad Bhat [Extra-Judicial Killing]  
Age: 52  
Occupation: Head Clerk, Animal Husbandry department  
Son of: Ghulam Qadir Bhat  
Resident of: Kanispora, Baramulla District, Previously resident of Khanpora, Baramulla District
2. Naseer Ahmad Bhat [Injury]  
Son of: Abdul Ahad Bhat  
Resident of: Kanispora, Baramulla District, Previously resident of Khanpora, Baramulla District

### *Alleged Perpetrators*

1. Major P.S. Patil, Second in Command, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm

### *Case Information*

On the intervening night of 12 and 13 February 2002, army personnel led by Major Patil launched a search operation in Khanpora, Baramulla at around 1:30 am. Major Patil and his personnel forced their way into the house of Abdul Ahad Bhat and shot him dead. His son, Naseer Ahmad Bhat was also injured during the shooting. Following the firing the army left, but then returned for the body of Abdul Ahad Bhat, which was resisted by the family of Abdul Ahad Bhat.

First Information Report [FIR] no.12/2002 u/s 302 [Murder], 307 [Attempt to murder], 452 [House trespass after preparation for hurt/assault/wrongful restraint] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station on 13 February 2002<sup>309</sup>. The communication of 22 May 2012 from the Jammu and Kashmir Police stated that the case was closed by declaring the perpetrators as untraced.

A counter FIR was filed by the army, FIR no.13/2002 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 at the Baramulla Police Station<sup>310</sup>.

After around a month of the killing of Abdul Ahad Bhat, an army mediator approached the family and offered Rs. 5,00,000 and jobs for two family members in exchange for not pursuing the case. The family refused.

<sup>309</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by communication from the Jammu and Kashmir Police dated 22 May 2012

<sup>310</sup> Information on this FIR was sought through RTI on 5 May 2012. No information was provided.

After around one year, one of the sons of Abdul Ahad Bhat was blindfolded and taken to the 10 JAKLI Rifles headquarters in Baramulla where he was offered money in exchange for diluting the contents of the FIR. The brother of Abdul Ahad Bhat did not accept the deal.

The family of Abdul Ahad Bhat gave a statement to the IPTK on 29 December 2011.

The family of Abdul Ahad Bhat filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 445/2002]<sup>311</sup>. The petitioner stated that witnesses had recorded their statements before the police and the Assistant Commissioner, Baramulla. The petition was filed seeking the completion of the Assistant Commissioners inquiry and the police investigations. Further, a direction was sought to the Home Ministry for sanction to be provided. Major Patil was made a party to the petition. The High Court dismissed the petition on 21 August 2004 after the investigation, based on the FIR, categorized the occurrence as “untraced”. The High Court said that the petitioner was at liberty to move the Magistrate for a re-investigation.

Two status reports filed before the High Court by the Jammu and Kashmir Police authorities are available and may be considered. The first was submitted vide cover letter 25 June 2003 and the second vide cover letter 7 October 2003.

In the 25 June 2003 status report it is stated that the witnesses before the police testified that unidentified masked gunmen wearing army uniforms were responsible for the killings. It was further testified that Major Patil came to the residence of the victim half an hour after the incident. The witnesses stated that Major Patil was named in the FIR based on “mere suspicion”. The report concludes by stating that investigations are ongoing and the perpetrators are yet to be identified.

The status report of 7 October 2003 confirms the details in the earlier status report. But, on this occasion does not state that the witnesses referred to the unidentified gunmen in army uniforms as wearing masks. Further, this report states that Abdul Ahad Bhat was not involved in any subversive activities.

The Union of India and Major Patil stated before the High Court that Major Patil on hearing some exchange of fire had taken place at the Khanpora village, went to the site with police officials. Major Patil only reached the site at about 4:00 am on 13 February 2002. He was accompanied by Aziz Khan, Deputy Superintendent of Police [DSP], Headquarters, Baramulla and the Station House Officer [SHO], Baramulla Police Station.

But, a contradictory position is taken in this response when it is stated that “the allegations against Army personnel breaking open the door, abusing Abdul Ahad Bhat and then killing him are totally false, fabricated and baseless. Shri Abdul Ahad Bhat sustaining gun shot wound and succumbing to the injury was totally un-intentional, inadvertent and purely as a result of judgmental error caused due to the suspicious actions taken by Abdul Ahad Bhat and also by firing on cordon party at the same time.” This position contradicts the earlier position that Major Patil arrived at the site *after* the firing. It is also stated that a Court of Inquiry had been instituted by the army.

Also in record is a letter dated 9 March 2002 from the Inspector General of Police, Kashmir referring to a report by the Senior Superintendent of Police [SSP], Baramulla. This letter is addressed to

<sup>311</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

the State Human Right Commission [SHRC]. The petitioner before the SHRC responded on 3 June 2002.

The family of Abdul Ahad Bhat states that the SHRC concluded by stating that as the family had already received compensation nothing further could be done. The family had received Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

An inquiry into the incident was conducted by Assistant Commissioner, Baramulla. Statements of witnesses were recorded.

Politicians, such as Mr. Saifuddin Soz, of the Congress party, informed the National Human Rights Commission [NHRC] about the incident. The NHRC took cognizance of the case and issued relevant notices. The final status of proceedings is unknown.

The High Court erroneously dismissed the petition based purely on the decision of the Jammu and Kashmir Police to close the case as untraced.

Over last two decades in Jammu and Kashmir hundred of similar cases have been prejudicially closed as untraced by the police, only to be reopened by the High Court.

Rather than taking action itself, the High Court shifted the responsibility to the lower judiciary.

The non-seriousness of the Jammu and Kashmir Police and the enquiry conducted by the Assistant Commissioner, Baramulla has effectively resulted in Major Patil, and other perpetrators involved in the crime, evading justice.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], no sanction for prosecution appears to have been sought in this case.

Similarly, official documents from the Ministry of Defence do not mention this case in the list of court-martials conducted in Jammu and Kashmir.

Finally, the contradictory positions of the Union of India and Major Patil before the High Court emphasize the need for thorough investigations in this case.

## Case No. **174**

### *Victim Details*

[Name withheld] [Rape]

Age: 17

Daughter of: [Name withheld]

Resident of: Pahalgam, Anantnag District

### *Alleged Perpetrators*

1. Havaladar Nathula, 58<sup>th</sup> Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
2. Havaladar Krishnan Kumar, 58<sup>th</sup> Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
3. Constable R.C. Marmoo, 58<sup>th</sup> Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam

### *Case Information*

On 18 April 2002 at about 11:00 am the victim was gang raped by Havaladar Nathula, Havaladar Krishnan Kumar, and Constable R.C. Marmoo of the 58<sup>th</sup> Battalion BSF.

The alleged perpetrators, part of a BSF patrol of 20 to 25 persons, came to the residence of the victim and asked everyone to come out. Then, the alleged perpetrators took the victim back inside the residence for a search. The victim was raped and she lost consciousness.

First Information Report [FIR] no.10/2002 u/s 452 [House trespass after preparation for hurt/assault/wrongful restraint], 376 [Rape], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Pahalgam Police Station on 18 April 2002.

The FIR states that the victim was raped by personnel of the 58<sup>th</sup> Battalion of the BSF. Information on this FIR was sought through RTI on 7 October 2011. By communication dated 19 May 2012, from the Jammu and Kashmir Police, information was provided that the case was chargesheeted against the alleged perpetrators and was before the Chief Judicial Magistrate, Anantnag u/s 450, 376 [Rape], 34 [Common intention] Ranbir Penal Code, 1989 [RPC].

On 21 May 2012 a copy of the FIR and chargesheet were provided. Despite the Jammu and Kashmir Police stating that a chargesheet was filed in this case no substantive progress appears to have taken place.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], no sanction for prosecution appears to have been sought in this case.

## Case No. **175**

### *Victim Details*

1. Khadam Hussain [Abduction and Extra-Judicial Killing]  
Spouse: Gulzar Bi  
Resident of: Village Dehri Debsi, Mendhar, Poonch District
2. Mohammad Rashid [Extra-Judicial Killing]  
Spouse: Sakeena Bi  
Resident of: Village Dehri Debsi, Mendhar, Poonch District
3. Mohammad Riyaz [Extra-Judicial Killing]  
Spouse: Shamim Akhter  
Resident of: Village Dehri Debsi, Mendhar, Poonch District

### *Alleged Perpetrators*

1. Captain Naresh, NCA 7<sup>th</sup> JAT Regiment, Army
2. Lance Naik [Lance Corporal] Pardeep Kumar, NCA 7<sup>th</sup> JAT Regiment, Army
3. Lance Naik [Lance Corporal] Roshan Kumar, NCA 7<sup>th</sup> JAT Regiment, Army
4. Sepoy Master Veer, NCA 7<sup>th</sup> JAT Regiment, Army
5. Sepoy Rajinder Kumar, NCA 7<sup>th</sup> JAT Regiment, Army
6. Havaladar Ram Niwas, NCA 7<sup>th</sup> JAT Regiment, Army
7. Havaladar Prithvi, NCA 7<sup>th</sup> JAT Regiment, Army

### Case Information

On the intervening night of 28 and 29 June 2002, Khadam Hussain was abducted by personnel of the NCA 7<sup>th</sup> JAT Regiment, Army.

Subsequently, Mohammad Rashid and Mohammad Riyaz, who sought to get Khadam Hussain released, were also killed along with Khadam Hussain.

First Information Report [FIR] no.77/2002 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed.

The case was chargesheeted against the alleged perpetrators but no information exists on whether the case was transferred to the army Court-Martial process or the District and Sessions Judge, Poonch.

The State Human Rights Commission [SHRC] was approached by the families of the victims, and based on a report of the Senior Superintendent of Police [SSP], Poonch dated 28 January 2008, which confirmed the abduction, killing and the role of the alleged perpetrators, the SHRC recommended Rs.2,00,000 ex-gratia government relief for the next of kin of each of the victims.

No information exists on the present status of the prosecution of the alleged perpetrators.

But, the available documents do not suggest that a Court-Martial was conducted in this case by the army.

## Case No. 176

### Victim Details

1. Constable Mohammad Yousaf, No.1845/A, Jammu and Kashmir Police [Assault and Wrongful Confinement]
2. Constable Ghulam Ahmed, No.1519/A, Jammu and Kashmir Police [Assault and Wrongful Confinement]

### Alleged Perpetrators

1. Deputy Superintendent of Police [DSP], Surinder Singh, 104<sup>th</sup> Battalion Border Security Force [BSF], Camp Iqbalabad

### Case Information

First Information Report [FIR] no.421/2002 u/s 392 [Robbery], 332 [Causing hurt to deter public servant from duty], 341 [Wrongfully restraining person] and 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station<sup>312</sup>.

The 9 July 2012 communication from the Jammu and Kashmir Police states this case had been closed as chargesheeted.

The victims were on duty at Payabuk on 27 August 2002. DSP Surinder Singh came there along with other personnel of the 104<sup>th</sup> Battallion BSF. The victims were beaten, and obstructed from doing their official duty. Constable Ghulam Ahmed's uniform was torn and both of their weapons were taken away. They were taken in a BSF vehicle to the Iqbalabad Camp and detained.

<sup>312</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. An incomplete copy of the chargesheet was provided.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs on 29 August 2008 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the BSF.

## Case No. 177

### Victim Details

Mohammad Hanief Bhat [also known as Bisati] [Abduction, Wrongful Confinement and Torture]

Age: 47

Occupation: Owner of a phone booth

Son of: G.R. Bhat [deceased]

Resident of: 47, Sumkach Bal, Rainawari, Khanyar, Srinagar

### Alleged Perpetrators

1. Major Vikram, 2 Rashtriya Rifles [RR], Army, Camp Zainakote

### Case Information

On 29 August 2002, Mohammad Hanief Bhat was picked up by the personnel of the 2 RR, Army, to show them the Zoonimar route.

He was first taken to Sharifabad Camp, Srinagar, for a month, and then to Kuligam Camp, Kupwara in the custody of 18 RR, Army At that point the victim was in the custody of personnel of the 18 RR. The victim was detained in Kupwara for 2-3 days. He was once again shifted to Sharifabad and then taken to Cargo Interrogation Centre, Shergari, Srinagar where he was tortured brutally.

Mohammad Hanief Bhat believes the reason for his detention to be a trip he made to Pakistan in 2000.

Mohammad Hanief Bhat was booked under Prevention of Terrorism Act, 2002 [POTA] for six months. After being bailed out he was booked under the Public Safety Act, 1978 [PSA]. The chargesheet in the POTA case is yet to be produced in the court. Recently, the victim was called back by personnel at Cargo Interrogation Centre but in consideration of his age and condition he was not detained.

Mohammad Hanief Bhat states that following the first PSA order, it was evident that a second PSA order would be place upon him but the High Court quashed it.

Mohammad Hanief Bhat gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no.90/2002 u/s 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the



Khanyar Police Station<sup>313</sup>. The 21 December 2011 communication of the Jammu and Kashmir Police stated that the case was closed as not admitted on 19 May 2010. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the case diary was provided which states that a case was made out under sections 342 [Wrongfully confining person] and 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC]. But, subsequently sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined for Major Vikram on 1 June 2009.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution, stated on 6 September 2011 in relation to this case that sanction for Major Vikram was declined on 1 June 2009.

The intolerance of the Jammu and Kashmir State towards bail orders by subsequent detentions under PSA is evidenced in this case.

Even after the quashing of the PSA detention of Mohammad Hanief Bhat which confirmed the illegality and harassment of the victim, the Jammu and Kashmir Police did not agitate the decline of sanction but chose to mechanically close the case.

## Case No. **178**

### *Victim Details*

Mohammad Ashraf Malik [Abduction, Torture and Extra-Judicial Killing]

Age: 25

Occupation: Daily wager in the State Forest Department

Son of: Mohammad Khazil Malik

Spouse: Atiqa Bano

Resident of: Malik Mohalla, Kupwara Town

### *Alleged Perpetrators*

1. Major Chauhan, 41 Rashtriya Rifles [RR], Army

### *Case Information*

On 16 May 2003, Major Chauhan and Special Operations Group [SOG] personnel of the Jammu and Kashmir Police searched the residence of Mohammad Ashraf Malik and asked that the victim present himself before them at the Town Hall Kupwara. Mohammad Ashraf Malik presented himself before Major Chauhan.

He was then allowed to attend Friday prayers on the condition that he would return once again to Major Chauhan. Mohammad Ashraf Malik was detained along with four other persons. While the four persons were released on the same day, the victim was not.

The family of Mohammad Ashraf Malik made continuous enquiries on the whereabouts of the victim.

On the intervening night of 19 and 20 May 2003 a blast was heard. On 20 May 2003, the family of Mohammad Ashraf Malik was

<sup>313</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 a copy of the FIR was provided.

informed by the Senior Superintendent of Police [SSP], Kupwara that the victim had died in an Improvised Explosive Device [IED] blast on the previous night. One kilogram of the victim's flesh was handed over to the family. The family of Mohammad Ashraf Malik believes that he was tortured and that the IED blast was a cover up.

First Information Report no.91/2003 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kupwara Police Station on 20 May 2003 at 7:30 am for the disappearance of the victim from 16 May 2003<sup>314</sup>.

The Government of Jammu and Kashmir ordered an enquiry on 21 May 2003 to be conducted in the case by the Additional Deputy Commissioner, Kupwara within 15 days.

A petition was filed in the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 698/2003]<sup>315</sup> for the conducting of investigations and filing of a chargesheet against Major Chauhan, and for compensation. On 10 June 2004 the petition was dismissed as withdrawn.

The filing of FIR no. 91/2003 by the family of Mohammad Ashraf Malik for his abduction does not appear to have been investigated. The subsequent death of Mohammad Ashraf Malik provides credence to the FIR and his abduction.

Ideally, the army claiming the killing of Mohammad Ashraf Malik in an IED blast after the FIR was filed, should have led the Jammu and Kashmir Police to interrogate the accused army personnel.

Apparently, based on the available government documents, this case neither concluded in a manner where sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought and neither did the army by itself carry out a court-martial against accused army personnel. Instead of the police carrying out its own investigations, the then Chief Minister of Jammu, Mufti Mohammad Syed, ordered an enquiry which never culminated into anything substantive against the accused.

It is required to be investigated what transpired in the Jammu and Kashmir Police investigations with regard to the FIR's filed in the concerned police station and also the enquiry report by the Additional Deputy Commissioner, Kupwara. The non-completion of investigations and enquiry in this gruesome crime only adds to the cover up and impunity.

## Case No. **179**

### *Victim Details*

Baldev Singh and his family [Assault, Abduction and Wrongful Confinement]

Resident of: Singhbagh, Baramulla District

### *Alleged Perpetrators*

1. Major Rakesh, 46 Rashtriya Rifles [RR], Army, Posted at M.E.S. Inspection Bungalow

### *Case Information*

Baldev Singh was wrongfully confined and beaten up in his own house, as were his wife and son, by Major Rakesh on 18 August 2003 due to a dispute on the parking of vehicles in an area.

<sup>314</sup> Information on this FIR was sought through Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided

<sup>315</sup> Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

Baldev Singh and his family were then dragged to the army camp where they were illegally confined. With the intervention of other locals they were set free.

First Information Report [FIR] no.179/2003 was filed at the Baramulla Police Station u/s 452 [House trespass after preparation for hurt/assault/wrongful restraint], 354 [Assault/Criminal force to a woman with intent to outrage modesty], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] on 18 August 2003<sup>316</sup>. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was under investigation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration. The victim of the incident is referred to as Amar Deep Singh.

The Ministry of Defence, despite the passage of six years since the commission of the crime, is further delaying the processes of justice by not taking a decision on the issue of sanction for prosecution under AFSPA.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 180

### *Victim Details*

Tasveer Hussain, Special Police Officer [SPO], Jammu and Kashmir Police [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Custodial Killing)]

Son of: Hassan-ud-Din

Resident of: Baghyar Dara, Haveli, Poonch District

### *Alleged Perpetrators*

1. Captain Piyara Singh Toor, Army<sup>317</sup>

### *Case Information*

Tasveer Hussain was picked up on 23 August 2003 and was confined and tortured. Tasveer Hussain subsequently died as a result of this torture. It is alleged by the family of Tasveer Hussain, as reported in the media, that the army wanted him to work as a source for the army but he refused<sup>318</sup>. This could have been the cause of his death.

First Information Report [FIR] no.127/2003 u/s 34 [Common intention], 109 [Abetment], 341 [Wrongfully restraining person], 342 [Wrongfully confining person], 323 [Punishment for voluntarily

<sup>316</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

<sup>317</sup> The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 10 January 2012 referred to the alleged perpetrator by this name. Alternatively referred to as "Tanveer Singh Randawa Capt. Toor" or "Taranveer Singh Randawa Capt. Toor" of the LU Department, Poonch Branch, in the State Human Rights Commission [SHRC] documents.

<sup>318</sup> The Tribune, <http://www.tribuneindia.com/2011/20110719/j&k.htm#top>, 19 July 2011.

causing hurt] Ranbir Penal Code, 1989 [RPC] was filed at the Poonch Police Station on 9 September 2003<sup>319</sup>. By communication dated 15 June 2012 from the Jammu and Kashmir Police it was stated that this case was under investigation with the Crime Branch, Jammu.

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that sanction for prosecution was declined on 29 November 2011. Further, that: "the individual was handed over to police station Poonch on 24 August 2003 in medically fit condition within the laid down limit of 24 hours and individual died on 22 September 2003 i.e. one month after his handing over to police".

The State Human Rights Commission [SHRC] issued a final decision in the matter on 10 November 2008.

The report of the Senior Superintendent of Police [SSP], Poonch dated 11 August 2008 was considered, which stated that Tasveer Hussain was apprehended by the 2<sup>nd</sup> Jammu and Kashmir Light Infantry [JAKLI], Army, for questioning and then released.

Further, he was once again brought to the Poonch Police Station for questioning and once again released.

Finally, he was arrested by the alleged perpetrator, beaten and he died on 22 September 2003.

The SHRC, based on this report, indicted the alleged perpetrator and recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

Further, a letter from the Inspector General of Police [IGP], Crime Headquarters, Srinagar, to the Director General of Police [DGP], Jammu and Kashmir, on 14 September 2009 states that the case was closed as chargesheeted against four accused persons and sanction for prosecution had been sought. This letter also indicated that the matter remained seized with the SHRC.

Documents on record suggest that the Government of Jammu and Kashmir sanctioned the ex-gratia government relief on 25 May 2009. But, as per information available, as of 6 September 2011, the ex-gratia government relief was yet to be paid.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence eight years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further it is clear that the Ministry of Defence concedes that the victim was in the custody of the army. Under these circumstances, the mere handing over the victim to a police station would not absolve the army of culpability. The burden is on the army to prove that the victim did not die to the treatment meted out to him during custody.

The Ministry of Defence seems to have cared very little about the SHRC order or the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents

<sup>319</sup> Information on this FIR was sought through RTI on 5 May 2012.

do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **181**

### *Victim Details*

1. Umar Mukhtiar Rather [Extra-Judicial Killing]  
Son of: Mukhtiar Ahmad Rather  
Resident of: Hillar, Kokernag, Anantnag District
2. Dawood Ahmad Wani [Extra-Judicial Killing]  
Son of: Abdul Aziz Wani  
Resident of: Hillar, Kokernag, Anantnag District
3. Constable Zahoor Ahmad Bhat [Extra-Judicial Killing]  
Son of: Anbar Bhat  
Resident of: Hillar, Kokernag, Anantnag District
4. Rouf Ahmad Sheikh [Assault]  
Son of: Ghulam Qadir Sheikh  
Resident of: Hillar, Kokernag, Anantnag District
5. Mohammad Shafi Parray [Assault]  
Son of: Ghulam Hassan Parray  
Resident of: Hillar, Kokernag, Anantnag District
6. Abdul Salam Sheikh [Assault]  
Son of: Mohammad Anwar Sheikh  
Resident of: Hillar, Kokernag, Anantnag District
7. Bilal Ahmad Bhat [Assault]  
Son of: Abdul Rehman Bhat  
Resident of: Soaf Shalli, Kokernag, Anantnag District

### *Alleged Perpetrators*

1. Head Constable Arun Kumar, 10<sup>th</sup> Battalion Indo-Tibetan Border Police [ITBP]
2. Head Constable Rajesh Kumar, 10<sup>th</sup> Battalion Indo-Tibetan Border Police [ITBP]

### *Case Information*

On 30 August 2003, at 9:30 am Umar Mukhtiar Rather, Dawood Ahmad Wani and Constable Zahoor Ahmad Bhat were injured in the firing by Head Constable Arun Kumar and Head Constable Rajesh Kumar of the 10<sup>th</sup> Battalion of ITBP while they were patrolling on the Hillar bridge.

Umar Mukhtiar Rather and Dawood Ahmad Wani were travelling in a school bus which was stopped by the 10<sup>th</sup> Battalion ITBP. Head Constable Arun Kumar and Head Constable Rajesh Kumar opened fire and Umar Mukhtiar Rather, Dawood Ahmad Wani and Constable Zahoor Ahmad Bhat were injured. They were taken to the Anantnag District Hospital.

During this incident, the personnel of the 10<sup>th</sup> Battalion ITBP proceeded to beat other people. Rouf Ahmad Sheikh, Mohammad Shafi Parray, Abdul Salam Sheikh and Bilal Ahmad Bhat were injured by this beating. The 10<sup>th</sup> Battalion ITBP was infamous for harassing people in the area.

First Information Report [FIR] no.105/2003 u/s 307 [Attempt to murder], 341 [Wrongfully restraining person] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture /sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Kokernag Police Station on

30 August 2003<sup>320</sup>. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed as accidental, and the case file was submitted to, and remains with, the Superintendent of Police [SP], State Human Rights Commission [SHRC], Srinagar and that the victims have approached the SHRC for compensation. By further communication dated 21 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. The copy of the closure report was not provided.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs and it was declined on 20 November 2006. The incident is described as "Civil passenger bus in which two boys and one police person died". It therefore appears that Umar Mukhtiar Rather, Dawood Ahmad Wani and Constable Zahoor Ahmad Bhat were killed in the firing by Head Constable Arun Kumar and Head Constable Rajesh Kumar, the information for which was not provided by the Jammu and Kashmir Police to the IPTK.

The Jammu and Kashmir has inexplicably closed the case as accidental presumably following the decline of sanction for prosecution under AFSPA instead of further agitating the matter.

## Case No. **182**

### *Victim Details*

1. Maqsood Ahmad Reshi [Injury]  
Son of: Mohammad Akbar Reshi, Sakoona  
Resident of: Daffpora, Budgam District
2. Zahoor Ahmad Lone [Extra-Judicial Killing]  
Son of: Ghulam Mohammad Lone, Azinab  
Resident of: Daffpora, Budgam District

### *Alleged Perpetrators*

1. Commandant [Commanding Officer] Ganpathy, 35 Rashtriya Rifles [RR], Army, Budgam

### *Case Information*

On 4 October 2003, Maqsood Ahmad Reshi and Zahoor Ahmad Lone, both minors, were used as human shields in an operation conducted by Commanding Officer Ganpathy. Maqsood Ahmad Reshi was injured while Zahoor Ahmad Lone died.

Suits were filed before the District Judge, Budgam in both cases for compensation. The Government of Jammu and Kashmir in its response in Zahoor Ahmad Lone's suit states that: First Information Report [FIR] no. 281/2003 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed following the killing of three civilians, including Zahoor Ahmad Lone, during cross-fire with militants. This was closed on 6 December 2003. This was when the militants were hiding in Mohammad Maqbool Dar's, son of Anwar Dar, house. The

<sup>320</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

Commanding Officer, 35 RR, Budgam and the Defence Secretary contended in both suits that the victims voluntarily accompanied the search party, as required by law.

In a statement to the court, Commanding Officer Ganpathy accepts that he carried out the operation along with some volunteers who were not forced to be a part of the search. During the operation, a civilian was shot during cross-firing with militants.

Further, another civilian sustained injuries. Commanding Officer Ganpathy states that he does not know whether the civilian who was killed, or the civilian who was injured, were the volunteers who accompanied the search party.

No information exists on what basis the Jammu and Kashmir Police closed the case. This closure report would, by law, have to be judicially scrutinized. Whether this was actually done would need to be ascertained. There appears to be no dispute that the victims were in the custody of the army and the alleged perpetrator. Therefore, the burden lies on Commanding Officer Ganpathy to explain the circumstances of the injuries to Maqsood Ahmad Reshi and the killing of Zahoor Ahmad Lone.

It also needs to be investigated how the two victims were taken along in a search operation. The details of the incident would strongly suggest that they were used as human shields.

But, absolute impunity has been ensured in this case which is evidenced by available documents that do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 183

### *Victim Details*

Faiz Akbar Khan [Extra-Judicial Killing]  
Son of: Sayeed Mohammad Khan  
Resident of: Dhundak, Surankote, Poonch District

### *Alleged Perpetrators*

1. Ajaib Urangh, 15<sup>th</sup> Assam Regiment, Army

### *Case Information*

On 15 February 2004, at around noon, the victim was killed by a patrol of soldiers of the 15<sup>th</sup> Assam Regiment at his residence.

First Information Report [FIR] no.18/2004 u/s 302 [Murder] and 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Surankote Police Station by the family of the victim.

Following the non-investigation of the above FIR, the family of the victim approached the SHRC on 5 September 2007 and a final decision was issued on 16 June 2008.

The Inspector General of Police [IGP], Jammu submitted a report that stated that the commission of the crime had been proved against the alleged perpetrator and a charge sheet had been filed in court on 25 May 2004.

The SHRC recommended ex-gratia government relief of Rs.1,00,000 to the family of the victim and compassionate employment under SRO-43 [Statutory Rules and Orders].

While the Jammu and Kashmir Police state that a charge sheet had been filed against the alleged perpetrator, the official documents from the Ministry of Defence documents on sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] do not list this case.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Therefore, it appears that absolute impunity has been ensured for the alleged perpetrator.

## Case No. 184

### *Victim Details*

Ghulam Mohammad Mir [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]  
Age: 35  
Occupation: Shopkeeper  
Son of: Khair Mir  
Resident of: Narasthan, Tral, Pulwama District

### *Alleged Perpetrators*

1. Major Sumit Rastogi, 42 Rashtriya Rifles [RR], Army, Camp Newgoali

### *Case Information*

On 21 February 2004 there was a crackdown in the area. Ghulam Mohammad Mir and his cousin, also named Ghulam Mohammad Mir, were asked to come to army camp by Major Rastogi.

On the next day, they went to the camp. The victim entered the camp. The cousin of the victim waited outside till 6:00 pm and then he was asked to come the next day.

On the following day, 23 February 2004 it came to be known that the victim had been killed in custody.

First Information Report [FIR] no.9/2004 u/s 302 [Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station<sup>321</sup>. The communication dated 15 May 2012 from the Jammu and Kashmir Police stated that on 23 February 2004 one Ghulam Mohammad Mir, son of Mohammad Ramzan, resident of Narasthan, Tral lodged a written report in the Tral Police Station to the effect that Major Rastogi and other personnel of 42 RR illegally confined his cousin Ghulam Mohammad Mir, son of Khair Mir, resident of Narasthan, Tral and tortured him severely, and was admitted in Sub-District Hospital, Tral where he succumbed to injuries.

The case was closed as chargesheeted against the alleged perpetrator and was sent for sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] but was declined by the Ministry of Home Affairs. The case was under investigation.

<sup>321</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police by communication dated 15 May 2012.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was received in October 2008 and was under consideration. The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction was declined on 19 August 2010.

Further, the Ministry of Defence communication contests that “there is conflict between the post-mortem report by four doctors and their subsequent statements given to the investigating officer after five months”. Also on record is the decline of sanction letter dated 19 August 2010 that was provided by the Jammu and Kashmir Police on 9 July 2012 with regard to Major Sumit Rastogi. This letter states that the 23 February 2004 post-mortem report noted that there were no external or internal injuries on Ghulam Mohammad Mir and that he had died due to “massive myocardial infarction”. The witnesses examined by the police did not testify to seeing any torture.

In the instant case, the Jammu and Kashmir Police stated on 15 May 2012 that sanction was declined by the Ministry of Home Affairs, while in fact sanction was declined by the Ministry of Defence as the case pertains to their jurisdiction.

The Ministry of Defence, in its affidavit before the High Court in 2009 places this incident on 23 February 2004 and refers to it as being a case of custodial death.

But, in the 10 January 2012 response to a RTI, the Ministry of Defence places the incident on 21 February 2004 and refers to it as being a case of killing by shooting.

With regard to the decline of sanction by the Ministry of Defence, the question arises whether the Ministry of Defence by contesting the post-mortem report and the subsequent Doctor’s statements is questioning the cause of the death of the victim or is also in denial of the custody of the victim and the circumstances surrounding his death.

The issue of custody of the victim by the concerned army personnel cannot be refuted by the Doctor’s statements and the post-mortem report.

In fact, the decline of sanction letter of 19 August 2010 appears to accept custody. Based on this position of the Ministry of Defence, the army has the burden to both explain the custody and the death of Ghulam Mohammad Mir which took place inside the army camp.

## Case No. **185**

### *Victim Details*

1. Bushan Lal [Extra-Judicial Killing (Fake Encounter)]  
Son of: Madan Lal  
Resident of: Nangocheck, Jammu
2. Satpual [Extra-Judicial Killing (Fake Encounter)]  
Son of: Moli Raj  
Resident of: Chatta, Jammu
3. Ram Lal [Extra-Judicial Killing (Fake Encounter)]  
Son of: Babu Lal  
Resident of: Lalyal, Jammu
4. Ashok Kumar [Extra-Judicial Killing (Fake Encounter)]  
Resident of: Kishan Nagar, Pathankote, Jammu

### *Alleged Perpetrators*

1. Major Vijay Char, 18 Rashtriya Rifles [RR], Army

### *Case Information*

On 20 April 2004 Subedar N.K.Baswas of the 18 RR Camp lodged a written report in Lalpora Police Station to the effect that on 20 April 2004 the said unit received specific information about the movement of terrorists in the general area of Markul. Two officers and other personnel of the 18 RR laid an ambush in the general area of Markul Dever. There was cross fire. Two terrorists were killed.

In this connection, First Information Report [FIR] no. 21/2004 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Lalpora Police Station.

In June 2004 some persons of Waliwar, Ganderbal approached the District Magistrate, Kupwara for the disinternment of the dead bodies. This was ordered to be done on 22 June 2004.

On 23 June 2004 the bodies were exhumed and handed over to the applicants: Noor Mohammad Shah, son of Mohammad Yousuf, resident of Waliwar, Ganderbal and Syed Mustafa, son of Pir Mohammad Ayoub Shah, resident of Waliwar, Ganderbal who took the bodies to their native village Waliwar, Ganderbal and buried them in their ancestral graveyard.

On 2 October 2005 the father of Bushan Lal filed a written report in the Lalpora Police Station that the victims were taken as labourers to Lolab, Kupwara. Later, he learnt that the victims had been killed and buried at Lalpora.

FIR no.69/2005 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Lalpora Police Station. Investigation was taken up. The Investigating Officer recorded statements.

In order to ascertain the veracity of both FIR’s, as the exhumed bodies were beyond recognition, DNA testing was to be done. The District Magistrate, Srinagar was approached to facilitate the exhumation. Ultimately, a team reached Srinagar on 25 July 2006 and proceeded to Ganderbal. The locals protested the exhumation on religious grounds. The exhumation could not be done.

Correspondence was also made to the 18 RR to furnish the nominal roll of the ambush party who were deputed to Markul Dever on 20 April 2004. But they did not cooperate.

Information on both FIR’s was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 6 January 2012 from the Jammu and Kashmir Police, copies of the FIR’s were provided and information was provided that investigations were ongoing.

A crucial factor in this case, was the role of Captain Sumit Kohli, who was going to speak out regarding the fake encounter of the victim and was subsequently found dead. It appears an anonymous letter was sent to the family of the victims about the fake encounter.

This was mentioned in the FIR filed as well. The family of the victims believe this letter was sent by Captain Kohli.

The family of the victims filed a petition before the High Court of Jammu and Kashmir.

Despite the passage of eight years, the status of investigations of the Jammu and Kashmir Police is unclear.

Further, it appears quite likely that no investigations would have been carried out in relation to the letter of Captain Kohli. By not carrying out a comprehensive and speedy investigation, the Jammu and Kashmir Police have clearly allowed the perpetrators of the crime to avoid justice.

The Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 186

### *Victim Details*

Mohammad Bashir Bhat [Extra-Judicial Killing]  
Occupation: Sub-Inspector, Jammu and Kashmir Police  
Resident of: Mastandra, Surankote

### *Alleged Perpetrators*

1. Deputy Superintendent of Police [DSP] P.N.Shan, Special Operations Group [SOG] Jammu and Kashmir Police, Surankote
2. Ashiq Hussein, Special Police Officer [SPO], Jammu and Kashmir Police
3. Muhammad Bashir [Unit not ascertained]

### *Case Information*

In April 2004, Mohammad Bashir Bhat objected to the shifting of a polling booth during Parliamentary elections in Surankote by the SOG party headed by DSP P.N.Shan. The victim was threatened and subsequently killed on 6 August 2004 by the alleged perpetrators<sup>322</sup>.

First Information Report [FIR] no.127/2004 u/s 302 [Murder], 120-B [Criminal Conspiracy] and the Arms Act, 1959 was filed at the Surankote Police Station on 7 August 2004.

The FIR states that Pakistan sponsored terrorists at the behest of the Inter-Services Intelligence [ISI] stormed into the house of Mohammad Bashir Bhat at 3:00 pm and killed him<sup>323</sup>. The 15 June 2012 communication from the Jammu and Kashmir Police states that that this case was transferred to Crime Branch, Jammu vide order no.3792/2004 dated 20 November 2004. Crime Branch, Jammu filed a chargesheet in this case in the court on 18 May 2005.

The family of Mohammad Bashir Bhat also approached the State Human Rights Commission [SHRC].

Despite the filing of a chargesheet in 2005, no information exists on the present status of the prosecution.

<sup>322</sup> Public Commission on Human Rights, *The Informative Missive*, October 2004, p.11.

<sup>323</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

## Case No. 187

### *Victim Details*

Irshad Amin Khan [Enforced Disappearance]  
Son of: Mohammad Amin Khan  
Resident of: Housing Coloney, Bagh-i-Mehtab, Srinagar

### *Alleged Perpetrators*

1. Colonel G.P.S. Gill, Para Punjab, Personal Advisor [PA] to General Officer Commanding [GOC] of 15 Corps, Lieutenant General Nirbhay Sharma, Army Headquarters, Srinagar

### *Case Information*

Irshad Amin Khan was called by Colonel G.P.S. Gill and the victim went and met him on 17 December 2004. The victim was kept under custody and has disappeared since. The family of the victim states that the victim was working at that time with the Intelligence Bureau [IB].

The family of the victim approached the State Human Rights Commission [SHRC] on 20 February 2008 and a final decision was issued on 5 April 2012. The Director General of Police [DGP], Jammu and Kashmir submitted a report that stated that the victim was an ex-militant who at the time of his disappearance was working with the IB.

Further, that he had been reportedly summoned by the alleged perpetrator on 17 December 2004 and has disappeared since. In its final decision, the SHRC found that "There is nothing on record to show that said Irshad Amin Khan may not have been killed after he was called and taken into custody by Col. G.P.S. Gill of 15 Corps at Headquarters Srinagar on 17.12.2004 as he has not reached home for last more than seven years". The SHRC stated that, based on rules of evidence, since the victim had not been seen for seven years, it was for the party alleging him to be alive to prove the same.

Therefore, the SHRC found it proved that the victim was taken into custody by the alleged perpetrator and placed the onus on the alleged perpetrator to prove that the victim had not been killed.

The SHRC recommended ex-gratia government relief of Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

While the SHRC placed the onus on the alleged perpetrator to prove that the victim had not been killed in his custody, it is uncertain if any action was taken.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 188

### *Victim Details*

1. Ishfaq Ahmad Bhat [Enforced Disappearance]  
Age: 24  
Son of: Ghulam Hassan Bhat  
Resident of: Watapora, Bandipora District
2. Bashir Ahmad Lone [Enforced Disappearance]

- Age: 20  
 Son of: Ghulam Mohammad Lone  
 Resident of: Shaharkote, Handwara, Kupwara District
3. Bashir Ahmad Mir [Enforced Disappearance]  
 Age: 22  
 Son of: Ghulam Hassan Mir  
 Resident of: Panjwa, Handwara, Kupwara District
4. Farooq Ahmad Sheikh [Enforced Disappearance]  
 Son of: Abdul Ahad Sheikh  
 Resident of: Kulipora, Bandipora District
- And 7 others [Enforced Disappearance]

#### *Alleged Perpetrators*

1. Brigadier Kataria, 68<sup>th</sup> Mountain Brigade, Army, Trehgam
2. Inspector Mamchand Dogra, Assistant Central Intelligence Officer, Intelligence Bureau [IB], Ministry of Home Affairs [MHA], Chowkibal

#### *Case Information*

The families of the victims state that a total of 12 persons [including the victims listed above] came across the border and surrendered before officials of the State. Subsequently, 11 of these persons have disappeared.

A petition was filed before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.9/2006] by the family members of Ishfaq Ahmad Bhat, Bashir Ahmad Mir and Bashir Ahmad Lone. In this petition it is stated that the 12 victims surrendered before Brigadier Kataria. The victims had identity cards with them that were sealed and signed by Brigadier Kataria. Following their surrender, they began working with Inspector Dogra and Brigadier Kataria in their work to eradicate militancy. The victims had been made to surrender by Abdul Majid Lone [one of the 12 persons who had surrendered], who at the time of the filing of the petition was booked under the Public Safety Act [PSA], 1978 and was at the Kot Balwal jail.

Further, it was stated that the families of Ishfaq Ahmad Bhat, Bashir Ahmad Mir and Bashir Ahmad Lone used to see the victims from May 2004 to November 2004 at Chowkibal Radi and Budnambal at the houses of Abdul Rashid Khan and Nazir Ahmad Lone.

From December 2004, the victims disappeared, including Abdul Majid Lone, and their whereabouts were not known.

Despite being approached, Station House Officer [SHO], Handwara took no action. This petition was subsequently dismissed as withdrawn on 11 July 2006.

Subsequent to the above petition, another petition was filed before the High Court [HCP 13/2007], once again by the family members of Ishfaq Ahmad Bhat, Bashir Ahmad Mir and Bashir Ahmad Lone. The petition, similar to the earlier petition, has certain additions/differences, as follows:

- The victims surrendered before Inspector Dogra, and not Brigadier Kataria as stated earlier. They were subsequently handed over to Brigadier Kataria but were utilized by both alleged perpetrators.
- A certificate is annexed to the petition, signed by an official of the IB and dated 11 July 2004. No name is provided, but it certifies that Bashir Ahmad Lone was working with the IB. It further states that the certificate is valid upto 15 July 2004. The

family of the victims maintain that this was signed by Inspector Dogra.

- Abdul Majid Lone was imprisoned under the PSA in November-December 2006.

Objections were filed to the above petition by Brigadier Kataria, Inspector Dogra and the Union of India. The allegations, including the arrest of the victims or the question of them remaining in custody, are denied.

Further, it is stated that Abdul Majid Lone surrendered before the army on 12 February 2006 and was handed over to the police on the next day. His whereabouts are not known to the alleged perpetrators or the Union of India.

On 3 July 2007, the High Court ordered that a judicial enquiry be conducted in the matter. The judicial enquiry was conducted by the Principal District and Sessions Judge, Kupwara. A preliminary order was passed by the judicial enquiry on 29 August 2012.

Brigadier Kataria made the following written submissions before the judicial enquiry, relevant portions of which are reproduced below:

- A news item was provided in the petition filed in 2006 where the following names were mentioned, in addition to the victims listed above, as having surrendered: Abdul Rashid Khan, Nazir Ahmad Beg, Farooq Ahmad Sheikh and Farooq Ahmad Shah [these names have not been added to the list of victims above as they have not been independently verified].
- The earlier petition in 2006 was not withdrawn with permission to file a fresh petition.
- There are glaring contradictions between the two petitions and in the evidence led in support of the case of the family of the victims.
- The seven witnesses led by the family of the victims are contradictory and in any case do not implicate Brigadier Kataria.

Inspector Dogra and the Union of India made the following two written submissions before the enquiry, relevant portions of which are reproduced below:

#### A. Affidavit dated 15 March 2010

- In the petition of 2006 it was stated that the victims had surrendered before Brigadier Kataria.
- A letter was addressed by "Zoono Begum", mother of Ishfaq Ahmad Bhat to the Minister of State, Jammu and Kashmir Home Department, which stated that the surrender had taken place before the army and that the victim remained attached with the 6 Rashtriya Rifles [RR] at Vilgam, Kupwara District.
- The certificate issued on 11 July 2004 only confirms that "Bashir Ahmed Lone" was associated with the IB for five days. Further, other details in the certificate indicate that the person was not under any duress or detention.

#### B. Written submissions of 10 September 2011

- There are contradictions between the 2006 and 2007 petitions, particularly as in 2006 the families of the victims had claimed that the surrender had taken place before Brigadier Kataria.
- The certificate issued on 11 July 2004 confirms that there was no surrender and the services of the person mentioned in the certificate were merely being made use of for that duration.
- The testimony of the seven witnesses in favour of the families of the victims do not prove that the alleged surrender ever took place. Further, "the petitioners are admittedly trained militants" and their disappearance cannot be attributed to the IB.

Two specific comments may be made before considering the preliminary report of the judicial enquiry:

- The letter from the mother of Ishfaq Ahmad Bhat does raise some doubt on the version of events as put forward by the families of the victims. This is compounded by a clear contradiction between the 2006 and 2007 petitions on who the victims surrendered before. But, it could be justifiably argued that clear, consistent specificity may be too much to expect from the families of the victims when dealing with the circumstances as seen in the instant case – a surrender and then meetings over a period of time, the victims perhaps working with not just two agencies but many more. The onus is on the Jammu and Kashmir Police to carry out thorough and fair investigations.
- The explanation provided by the Union of India and Inspector Dogra to the 11 July 2004 certificate does not appear convincing. If the certificate is accepted, it does lend credence to the version of events put forward by the family of the victims to the extent that at least one of the victims was admittedly working with the IB. Further explanations would need to be provided by the IB based on this one certificate alone.

The enquiry concluded by first finding certain contradictions with the prosecution witnesses. Contrary to the position taken in the High Court petition, two witnesses testified before the enquiry that the surrender of the victims took place in December 2004 or around that period. Finally, the enquiry notes that further evidence is to be heard before a final finding may be made. Crucially, the evidence of Abdul Rashid Khan [in whose house the victims were seen] was required, along with the records of surrender of the victims.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Despite the passage of eight years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. It needs to be ascertained whether a FIR was even filed in this case.

The Ministry of Defence seems to have cared very little about the High Court proceedings or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. **189**

### *Victim Details*

Mukhtar Ahmad Ganai [Abduction, Wrongful Confinement and Torture]

Age: 32 [25 at the time of the incident]

Occupation: Transport business

Son of: Muhammad Maqbool Ganai [deceased]

Resident of: Sadrakote, Balla, Sumbal, Bandipora District

### *Alleged Perpetrators*

1. Farooq Ahmad Padder, Station House Officer [SHO], Jammu and Kashmir Police
2. Personnel of the Special Operations Group [SOG], Jammu and Kashmir Police, Safapora Camp

### *Case Information*

On 14 October 2005, at night, personnel of the SOG raided the house of Mukhtar Ahmad Ganai. SHO Farooq Ahmad Padder was present. The SOG personnel were drunk. Mukhtar Ahmad Ganai was taken to the Manasbal Army Camp on the charge of having assisted militants. He was tortured by SHO Farooq Ahmad Padder and an army person. Mukhtar Ahmad Ganai was electrocuted and parts of his body were burnt.

Following the night of torture, Mukhtar Ahmad Ganai admitted to assisting militants and stated that he had a gun. Mukhtar Ahmad Ganai confessed hoping to be allowed to meet with his family. The Commanding Officer then released Mukhtar Ahmad Ganai, who had thus far been hung upside down, and facilitated his release.

In addition to the torture, the SOG personnel stole Rs.1040 from Mukhtar Ahmad Ganai. Following his release, Mukhtar Ahmad Ganai was hospitalized for three and a half months and spent around Rs. 2,00,000.

The family of Mukhtar Ahmad Ganai gave a statement to the IPTK on 9 February 2012.

A First Information Report [FIR] was filed at the Sumbal Police Station on 15 October 2005.

Mukhtar Ahmad Ganai received no relief or compensation. Further, no information exists on the investigations and prosecution, if conducted, against the alleged perpetrators.

## Case No. **190**

### *Victim Details*

Qazi Mohammad Yousuf [Abduction and Extra-Judicial Killing]

Age: 28

Son of: Nazira Begum, Gul Mohammad Qazi

Resident of: New Theed, Harwan, Srinagar

### *Alleged Perpetrators*

1. Superintendent of Police [SP], Srinagar Anand Jain, Jammu and Kashmir Police [presently Senior Superintendent of Police (SSP), Baramulla]
2. Officer R.P. Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Harwan

### *Case Information*

On 7 February 2005, Qazi Mohammad Yousuf along with Riyaz Ahmad Shah and Mohammad Abbas Wani, was picked up by the SOG Harwan and specifically Officer R.P.Singh.

A false First Information Report [FIR] no. 24/2005 u/s 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Kothibagh Police Station against them wherein it was stated that grenades were recovered and Qazi Mohammad Yousuf admitted to being affiliated to the Lashkar-e-Taiba<sup>324</sup>. Submissions by the police authorities before the High Court place this incident on

<sup>324</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. On 2 June 2012, a copy of the FIR was provided by the Jammu and Kashmir Police.



14 February 2005. Qazi Mohammad Yousuf was released on bail, on a court order. SP Anand Jain, who was behind the filing of the false FIR, warned the family of Qazi Mohammad Yousuf that Qazi Mohammad Yousuf would be killed. A chargesheet was produced before the court on this FIR on 22 November 2006 before the Forest Magistrate, Srinagar.

On 21 March 2005, Qazi Mohammad Yousuf was again arrested in relation to FIR no.65/2004 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 at the Harwan Police Station<sup>325</sup>. Once again Qazi Mohammad Yousuf was released on bail, on a court order.

On 29 October 2005, while Qazi Mohammad Yousuf was on his way to meet his sister, he was abducted by the SOG and killed at the Harwan camp and his body was thrown in a paddy field in Chittarhama. His valuables, including his mobile phone and cash, were stolen from him.

FIR no 61/2005 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959, was filed at the Zakoora Police Station by the police on 30 October 2005<sup>326</sup>.

This FIR states that Qazi Mohammad Yousuf was killed by militants. The FIR was closed by declaring the perpetrators as untraced on 7 April 2006 and reopened in February 2007. Further, the Jammu and Kashmir Police provided information that this case was closed by declaring the perpetrators as untraced on 30 January 2011.

The police refused to file a FIR on behalf of the family of Qazi Mohammad Yousuf with their version of the events.

The family of Qazi Mohammad Yousuf believes that the victim was killed by SP Anand Jain, along with the SOG for non-payment of Rs.3,00,000.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 568/2007] for the filing of an FIR<sup>327</sup>. The petition remains pending.

The family of Qazi Mohammad Yousuf also approached the State Human Rights Commission [SHRC] and on 29 May 2008 the final decision was given.

The SHRC stated that the claim of the police was contradictory; on one hand claiming Qazi Mohammad Yousuf had links to militants, and on the other attributing his death to unknown gunmen because of his links to the armed forces.

The SHRC concluded that this was a custodial death and recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

<sup>325</sup> Information on this FIR was sought through RTI on 5 May 2012. On 2 June 2012, a copy of the FIR was provided by the Jammu and Kashmir Police.

<sup>326</sup> Information on this FIR was sought through RTI on 5 May 2012. On 2 June 2012, a copy of the FIR was provided by the Jammu and Kashmir Police.

<sup>327</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

Following an application filed before the SHRC, one police officer Ishfaq Aalam of Police Station Harwan started to visit the family of Qazi Mohammad Yousuf and asked the victims brother in law to visit the police station. Ishfaq Aalam told the brother in law of the victim that the police would provide a good report to the SHRC if the family of Qazi Mohammad Yousuf withdrew the High Court case. The family of Qazi Mohammad Yousuf refused.

The family of Qazi Mohammad Yousuf gave a statement to the IPTK on 2 December 2012.

SP Anand Jain and Officer R.P.Singh have not been implicated clearly by the SHRC despite the family of the victim testifying against SP Anand Jain.

Strangely, the SHRC confirms the custodial death of Qazi Mohammad Yousuf and reprimands the police for wrongly attributing blame for the crime to unidentified gunmen but has failed to fix the responsibility of the crime either on alleged perpetrators or any other person.

Further, the SHRC while indicting the police investigations should have made recommendations for a separate and independent investigations process particularly as the alleged perpetrators were also of the Jammu and Kashmir Police.

The SHRC, as in other cases, should have also recommended for the filing of a correct FIR and investigations against police officials of the Zakoora Police Station responsible for the filing of the false FIR. The delayed proceedings in the High Court have only resulted in diluting the evidence and perhaps any chance of a successful prosecution.

The faulty and delayed investigations in the case have also cleared the way for SP Anand Jain to be promoted to the level of SSP. Further, as per publicly available information, he was awarded the Director General of Police's Commendation Medal for 2004, Sher-e-Kashmir Medal for Gallantry in 2004 and 2005 and the Police Medal for Gallantry in 2006.

Based on the SHRC decision, this case exemplifies how the police through their investigations shields perpetrators of crimes and shifts the burden onto "unknown gunmen".

## Case No. 191

### *Victim Details*

1. Sahbir Ahmad Shah [Extra-Judicial Killing]  
Age: 21  
Occupation: 12<sup>th</sup> Standard student  
Son of: Mohammad Akbar Shah  
Resident of: Shah Mohalla, Palhalan, Pattan, Baramulla District
2. Aijaz Ahmad Dar [Extra-Judicial Killing]  
Age: 18  
Occupation: 12<sup>th</sup> Standard student  
Son of: Ghulam Mohamamd Dar  
Resident of: Palhalan Pattan, Baramulla District

### *Alleged Perpetrators*

1. Commandant [Commanding Officer] Major Lamba, 29 Rashtriya Rifles [RR], Army, Camp Wussan, Pattan

## Case Information

On 12 November 2005, Sahbir Ahmad Shah and Aijaz Ahmad Dar were used as human shields in an encounter between personnel of the 29 RR and militants. They were taken forcibly from the High School, Palhallan where the villagers were gathered by the army during a search operation in the village.

They were ordered to accompany the army for the search of Mohammad Sultan Ganai's house in Palhallan village. The army had information regarding militants at that house. The army searched the house thrice, and on the third occasion, Major Lamba entered the house with both the victims. As soon as they reached the first floor some bullet shots were fired inside the house and the troops in the courtyard started indiscriminate firing at the house.

Sahbir Ahmad Shah was killed on the spot. Aijaz Ahmad Dar was wounded along with Major Lamba. They were rushed to a Srinagar hospital but only Major Lamba was taken inside while Aijaz Ahmad Dar was left outside. Aijaz Ahmad Dar subsequently died. The family of the victims went to the Pattan Police Station but found that the army had already filed a FIR stating that the two victims were killed in cross-firing.

The army approached the families with documents – which would suggest non-involvement of the army – to sign. Further an offer of Rs.6,00,000 for each family was made. The documents stated the non-involvement of the army and that the victims had been missing for a few days before the incident. The families of the victims made changes to the documents effectively implicating the army in the killings. They were allegedly signed by the families and the Village Committee and then taken to the 29 RR at Wusun Pattan Camp. The army was upset and subsequently raided the houses of the families of the victims on grounds of harboring militants. Aijaz Ahmad Dar's brother, Riyaz Ahmad, who ran a shop, had also been harassed by the army.

The family of Sahbir Ahmad Shah gave a statement to the IPTK on 15 December 2011.

The army filed First Information Report [FIR] no.200/2005 at the Pattan Police Station. FIR no. 7/2005 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was also filed at the Pattan Police Station. Information on these FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

The families of the victim intended to file a petition before the High Court of Jammu and Kashmir but did not do so due to fear.

Also, on record is a letter from the Senior Superintendent of Police, Baramulla to the District Magistrate, Baramulla stating that the victim was not involved in subversive activities, but the letter refers to "cross-firing".

No information exists on whether any investigations or prosecutions were carried out in this case.

Available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never investigated and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 192

### Victim Details

1. [Name withheld] [Wrongful Confinement and Sexual Assault]  
Daughter of: Victim no.2  
Resident of: Budawab, Tulel, Gurez, Bandipora District
2. [Name withheld] [Wrongful Confinement and Sexual Assault]  
Spouse: [Name withheld]  
Resident of: Budawab, Tulel, Gurez, Bandipora District
3. [Name withheld] [Wrongful Confinement and Sexual Assault]  
Daughter of: Victim no.2  
Resident of: Budawab, Tulel, Gurez, Bandipora District
4. [Name withheld] [Wrongful Confinement and Sexual Assault]  
Daughter of: Victim no.2  
Resident of: Budawab, Tulel, Gurez, Bandipora District

### Alleged Perpetrators

1. Colonel Rajan Jamwal, Commanding Officer, 20<sup>th</sup> Punjab Infantry, Army
2. Subedar Major Harbans Singh, 20<sup>th</sup> Punjab Infantry, Army

### Case Information

Victim no.1 filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 353/2007]<sup>328</sup>. The petition states that in 2005 the army began a social welfare scheme in the concerned area for the civilians under the name and title of "Sadhbhavna Operation". Colonel Rajan Jamwal encouraged people in the village to form a committee in this regard. Victim no.2 was persuaded to be a part of this committee. In November 2005, due to severe weather conditions, victim no. 2 ceased to visit the office of Colonel Rajan Jamwal in relation to her work on the constituted committee. At this point, Colonel Rajan Jamwal sent his soldiers to the house of victim no. 2 and informed her that she was required to attend the office. When victim no. 2 met with Colonel Rajan Jamwal, she was informed that she would need to attend the office every afternoon, failing which her family would be implicated in a case related to subversive activities. On this occasion, and on subsequent occasions when victim no. 2 would visit the office of Colonel Rajan Jamwal, she was molested. Further, Colonel Rajan Jamwal kept a close watch on the victims and their family, and he did not allow any of them leave the village. This was to ensure that they could not seek any help for their situation.

The exploitation of victim no. 2 continued until May 2006. In June 2006, Colonel Rajan Jamwal asked victim no. 2 to arrange some girls for the entertainment of army officers. She was threatened with dire consequences if she failed to do so. At this point, victim no. 2 stopped attending the office of Colonel Rajan Jamwal and instead informed the elder heads of the village of the exploitation she had been facing. The village heads approached Colonel Rajan Jamwal and told him that they would discuss the issue with his commander. At this, Colonel Rajan Jamwal beat victim no.2 in front of the village heads. Colonel Rajan Jamwal threatened victim no. 2 and told her to withdraw her allegations. The village heads also sought to persuade

<sup>328</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 August 2012. No information was provided.

victim no. 2 to soften her stand against Colonel Rajan Jamwal. But, she was also advised to contact the Sub-District Magistrate, Gurez.

The Sub-District Magistrate then contacted the Army Brigade Headquarters who assured him that action would be taken and apologies would be made. But, this did not subsequently happen.

In July 2006, when the male members of the family of the victims were not present, Colonel Rajan Jamwal sent his soldiers to the residence of the victims where all the victims were molested. Victim no. 3 recognised Subedar Major Harbans Singh on this occasion. The victims were saved on this occasion by the police. They were kept in a police post for three days. But, even the police were unable to take any action against the army. Even an FIR could not be filed.

On political intervention they were able to return to their residence. But, they were effectively confined to their residence. Subsequently, Colonel Rajan Jamwal ordered that victim no. 1 be brought to his office. As a result of the threats against victim no. 1, she left her studies and joined a religious seminary at Sopore. Further, this led to the filing of the petition for protection, action against Colonel Rajan Jamwal and compensation.

On 17 May 2007, the High Court ordered the Divisional Commissioner, Kashmir and Inspector General of Police [IGP], Kashmir Range to provide protection to victim no.1 and her family. In July 2007, Colonel Rajan Jamwal filed objections before the High Court. It was stated that the father of the petitioner, victim no. 1, worked in the Defence Labour Procurement Department and had a number of grievances with army, and had filed frivolous writ petitions in the past. It was also stated that in one of the petitions filed, he had wrongly added the names of two others persons as petitioners. These persons had subsequently stated that they had been falsely included in the petition. On record is an affidavit from a person named Ali Lone who states in the affidavit, without naming the father of victim no.1, that he has never had any dispute with the army. Further, that an unknown person had approached the High Court against the army and had fraudulently taken Ali Lone's name. A similar affidavit by Abdul Hamid Khan is also on record. Other affidavits are on record against the father of victim no.1 on issues of land, and in support of the army.

It was also pointed out that no FIR had been filed in the case, and in fact victim no.2 was not even a party to the petition, suggesting therefore that the petition was a frivolous one and defamatory in nature.

Further, it was stated that victim no.1 left for Sopore in 2004, which was before Colonel Rajan Jamwal came to his posting in Gurez. Therefore, the suggestion that victim no.1 had to go to Sopore because of Colonel Rajan Jamwal was incorrect. The allegations in the petition were therefore denied. On 2 April 2012, the petition was dismissed for non-prosecution.

It is shocking that a case such as this one does not appear to have been investigated by the Jammu and Kashmir Police.

The above information alone would warrant the Jammu and Kashmir Police to carry out immediate investigations. But, despite the passage of seven years, and a petition being filed in the High Court, no investigations appear to have been conducted.

Further, the Ministry of Defence seems to have cared very little about the High Court proceedings, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 193

### *Victim Details*

1. Aamir Akbar Hajam [Extra-Judicial Killing]  
Age: 9  
Son of: Mohammad Akbar Hajam  
Resident of: Doodhipoora, Handwara, Kupwara District
2. Ghulam Hassan Bhat [Extra-Judicial Killing]  
Age: 18  
Son of: Ghulam Rasool Bhat [deceased]  
Resident of: Doodhipoora, Handwara, Kupwara District
3. Shakir Hassan Wani [Extra-Judicial Killing]  
Age: 10  
Occupation: 3<sup>rd</sup> Standard student  
Son of: Ghulam Hassan Wani  
Resident of: Doodhipoora, Handwara, Kupwara District
4. Abdul Samad Mir [Extra-Judicial Killing]  
Age: 18  
Son of: Mohammad Ahsan Mir  
Resident of: Doodhipoora, Handwara, Kupwara District

### *Alleged Perpetrators*

1. Captain Rambo/Aijaz Khan [both operational names], 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri

### *Case Information*

On 22 February 2006 at about 1:00 pm, a 33 RR patrol party came from the Sheep Camp and the Doodhipora, Wadder Camp towards the village. The patrol party was headed by Captain Rambo. The patrol went towards Abdul Samad Mir's house. Abdul Samad Mir fled from his house towards the nearby ground and the party chased after him and fired upon him. He died on the spot. The children who were playing on the ground started to run as well towards a nearby stream. While the elder children were able to cross the stream, the younger children were unable to do so. Shakir Hassan Wani and Aamir Akbar Hajam were unable to cross the stream and Ghulam Hassan Bhat picked them up in his arms and was trying to take them across the stream when Captain Rambo opened fire on them. Shakir Hassan Wani and Ghulam Hassan Bhat died on the spot. Aamir Akbar Hajam was injured and taken to the Handwara Hospital. On the way to the hospital he told people that the other two boys had been killed by the army. He succumbed to his injuries.

The police came at around 3:00 pm. Until then the army had cordoned off the area and had not allowed the villagers close to the bodies. Captain Rambo attempted to put a pouch with grenades on the body of Abdul Samad Mir but the police prevented this.

Following the filing of a case, the army attempted to persuade the families of the victims to withdraw the case on numerous occasions. During the investigation of the case, the Investigating Officer Khazir Mohammad took blank, signed [by signature or by thumb print] statements from the fathers of three victims [all except from the father of Abdul Samad Mir]. Subsequently, the families drafted an application raising this issue and showed it to the Investigating Officer and threatened to file it. On this, the blank statements were returned by the Investigating Officer.

The family of Shakir Hassan Wani gave a statement to the IPTK on 15 February 2012.

First Information Report [FIR] no.20/2006 was filed at the Handwara Police Station on 23 February 2006<sup>329</sup>. The families of the victims gave their statements to the police during the investigation.

The families of the victims testified before the Government appointed enquiry, which was conducted by Judge Naqshbandi, District Judge. The families of the victims state that the army did not cooperate with the enquiry. Further, the enquiry was never concluded.

The families of the victims received Rs.1,00,000 ex-gratia relief each and compassionate employment under SRO-43 [Statutory Rules and Orders].

The families of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 912/2012]. A status report was submitted by the Jammu and Kashmir Police in September 2012 that confirmed that the alleged perpetrator was on duty at the concerned location on the date of occurrence of the event in question.

Further, that the investigations had been stalled by the non-cooperation of the army. The Ministry of Defence and the alleged perpetrator submitted their joint response in September 2012. The response confirmed that an operation did take place on that day based on information relating to the presence of militants. The militants escaped along with “Abdul Samad Mir @ Rahil” an established over-ground worker. The civilians were killed due to the indiscriminate firing by the “terrorists” or in cross-firing. Two soldiers also sustained injuries. Abdul Samad Mir’s body was found “with puch and war like stores”. FIR no. 18/2006 was filed at the Handwara Police Station by the army. An army Court of Inquiry exonerated the army of any liability in the incident. The petition remains pending.

It is noteworthy that despite the passage of six years, no investigations or prosecutions appear to have been conducted or concluded by the Jammu and Kashmir Police.

The response of the Ministry of Defence and the alleged perpetrator appears convenient, unclear and highly unreliable. For example, the names of soldiers injured are nowhere on record.

Further, the response before the High Court alternates between blaming the “terrorists” for the death of the civilians and cross-firing. Therefore, an extra-judicial killing of four persons, including two minors, has been completely covered up and ignored.

## Case No. 194

### *Victim Details*

Identity not ascertained [Crime not ascertained]

### *Alleged Perpetrators*

1. Gunner [Gnr] Bali Ram, Army
2. Gunner [Gnr] Ganishyam, Army

### *Case Information*

As per information from the Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to

<sup>329</sup>Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 30 May 2006 there was a death due to negligence. First Information [FIR] no. 139/2006 was filed. The case was under examination.

No information exists on the status of investigations or prosecutions in this case by the Jammu and Kashmir Police. But, it is noteworthy that despite the passage of six years since the commission of the crime, the Ministry of Defence has yet to take a decision on the grant of sanction for prosecution under AFSPA which helps the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

This case is an example of the manner in which the State shields itself by withholding information – in this case the names and details of the victims and incomplete FIR details [the name of the police station is not provided]. Without this information, it is difficult to independently analyze the case.

## Case No. 195

### *Victim Details*

1. Mushtaq Ahmad Zarger [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Fake Encounter)]  
Son of: Mehad Joo  
Resident of: Sangla, Surankote, Poonch District
2. Mohammad Rashid Chopan [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Fake Encounter)]  
Son of: Ghulam Mohammad  
Resident of: Bafliaz, Surankote, Poonch District

### *Alleged Perpetrators*

1. Colonel Dharmender Gupta, Deputy Brigade Commander, 6-Sector, Rashtriya Rifles [RR], Army, Potha, Surankote
2. Colonel P.S.Gothra, Commanding Officer, 25 Rashtriya Rifles [RR], Army, Draba, Surankote
3. Officer, Liason Agency, 82<sup>nd</sup> Battalion Border Security Force [BSF], Surankote

### *Case Information*

Abdul Rashid Zarger, the uncle of Mushtaq Ahmad Zarger, had filed complaints to various quarters, including the Chief Justice of the High Court of Jammu and Kashmir, against Colonel Dharmender Gupta, for implicating him in a false case and for harassment and intimidation.

The Chief Justice of the High Court thereafter ordered an enquiry by the Principal District and Sessions Judge, Poonch District. Mushtaq Ahmad Zarger was to appear as a witness before this enquiry on 22 August 2006, but before that was called by Colonel P.S.Gothra, Commanding Officer, 25 RR and an Officer of the Liason Agency, 82<sup>nd</sup> Battalion BSF to the Draba camp.

Mushtaq Ahmad Zarger was threatened and told that if he testified he would face dire consequences. Further, he was offered Rs.40,000 to not testify but he refused. His evidence was then fixed for 14 October 2006. Threats were also received by Abdul Rashid Zarger, who was

provided security by a 5 May 2006 order issued by the District and Sessions Judge, Poonch District.

Also, on record is a petition from Abdul Rashid Zarger, addressed to the State Human Rights Commission [SHRC], that alleged threats and torture by Colonel Dharmender Gupta.

On 1 September 2006, Mushtaq Ahmad Zarger and Mohammad Rashid Chopan, were leaving Pakherpora after they had attended a marriage ceremony. While boarding a bus at the Pakherpora bus stand both of them were picked up by Colonel Dharmender Gupta, tortured for five days, and killed in a fake encounter at Akal Rajpora, Pulwama.

The police filed First Information Report [FIR] no.146/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959, at the Rajpora Police Station based on sources that claimed that two militants had been killed in cross-firing with armed forces and arms and ammunitions were recovered.

The family of the victims filed a petition before the High Court [Original Writ Petition (OWP) 759/2006] seeking the registration of a FIR, investigations and prosecutions<sup>330</sup>. An application was also moved seeking the investigations to be conducted by the Central Bureau of Investigations [CBI].

On 5 December 2006, the Government of Jammu and Kashmir and police authorities responded to the petition. It was stated that during the course of investigations of FIR no.146/2006 it was proved that the victims were militants who were killed in retaliatory action by the 82<sup>nd</sup> Battalion BSF. The investigations were ongoing. Further, it was stated that they were intimidated by the Surankote Police Station that Mushtaq Ahmad Zarger was the “upper ground worker” of the Hizbul Mujahideen. FIR no.7/2000 u/s 212, 120 [Concealing a design to commit an offence] Ranbir Penal Code, 1989 [RPC] was registered against him, presumably at Surankote Police Station, and presented before the court on 21 February 2000. He was also detained for two years at Central Jail, Jammu under the Public Safety Act, 1978 [PSA]. He was also involved in FIR no.14/2006 u/s 307 [Attempt to murder], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] at Surankote Police Station. Mohammad Rashid Chopan was said to be a close associate of Mushtaq Ahmad Zarger, and informed him of armed forces movements.

The Commandant, 82<sup>nd</sup> Battalion BSF responded to the petition and provided similar arguments that the victims were militants. Further, it was also stated that Mushtaq Ahmad Zarger had been arrested in FIR no. 6/2002 in May 2002 and was lodged at the Surankote Police Station. Colonel Dharmender Gupta submitted that Abdul Rashid Zarger was contacted by him as he had been in touch with two terrorists who were killed in an encounter on 22 February 2006.

Further, that Mushtaq Ahmad Zarger was never a prosecution witness before the enquiry set up. In fact, he was a defence witness. He was never threatened. The other submissions made by Colonel Dharmender Gupta are similar to the ones made by the other respondents.

On 24 August 2012, the Principal District and Sessions Judge, Poonch District submitted to the High Court that the enquiry had been stayed pending the result of the matter before the SHRC. The High Court petition remains pending.

<sup>330</sup> Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Information on FIR’s 146/2006, 7/2000 and 14/2006 was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that FIR no.7/2000 was chargesheeted, whereas the case in relation to FIR no.14/2006 was closed by declaring the perpetrators as untraced.

According to the family of the victims, the judicial enquiry conducted on the orders of the Chief Justice of the High Court has not been completed to date. This is confirmed by the 24 August 2012 submission by the Principal District and Sessions Judge, Poonch District. No copy of the enquiry report is on record.

Further, the Ministry of Defence has yet to file objections to the High Court petition despite the passage of six years.

The delay in the conclusion of the proceedings in the judicial enquiry and the High Court petition effectively ensures continued impunity to the alleged perpetrators.

## Case No. 196

### *Victim Details*

Identity not ascertained [Extra-Judicial Killing]

### *Alleged Perpetrators*

1. Colonel Joneja, 49 Rashtriya Rifles [RR], Army

### *Case Information*

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 17 December 2006 there was a killing by shooting.

First Information Report [FIR] no.131/2006 was filed.

Sanction for prosecution was declined on 8 March 2011. Further, it was stated that: “no officer by the name of Colonel Joneja was ever borne on the strength of 49 Rashtriya Rifles. Therefore, question of involvement of Colonel Joneja in the case does not arise”.

The Jammu and Police investigations in the case are not with the IPTK and therefore the decline of sanction for prosecution under AFSPA cannot be appropriately analyzed. No proof is provided by the Ministry of Defence for its reason for decline of sanction for prosecution.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir five years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 197

### *Victim Details*

Showkat Ali Mughal [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Son of: Haji Mohammad Lateef Mughal  
Resident of: Chaprian, Rajouri District

### *Alleged Perpetrators*

1. Showkat Ali Malik, Station House Officer [SHO], Rajouri Police Station, Jammu and Kashmir Police
2. Gyan Singh, Investigating Officer, Rajouri Police Station, Jammu and Kashmir Police
3. Constable Mohammad Razak, Jammu and Kashmir Police
4. Tasaduk Hussain, Jammu and Kashmir Police

### *Case Information*

Showkat Ali Mughal was killed in custody by the alleged perpetrators. Showkat Ali Mughal was arrested from his house on 13 February 2007 in connection with some theft and during torture he collapsed and was taken to the District Hospital Rajouri where he was declared dead.

An enquiry was conducted by K.K.Sharma, Additional District Magistrate, Rajouri. It was concluded that Showkat Ali Mughal had died due to a cardiac arrest attributed to fear and exposure to severe cold.

The family of Showkat Ali Mughal approached the State Human Rights Commission [SHRC] on 19 February 2007 and a final decision was delivered on 9 July 2008. Rs.2,00,000 ex-gratia government relief was recommended.

The SHRC arrived at its decision by considering reports from the police.

The SHRC first considered the report of the Deputy Inspector General of Police [DIG], Rajouri / Poonch Range which based its conclusions on the report of the Additional District Magistrate, Rajouri.

Also considered was the enquiry report by the Inspector General of Police [IGP], Jammu Zone that reported that the person in custody was confronted with evidence gathered by the police and he must have been frightened of the consequences which caused his cardiac arrest resulting in death. It further also stated that death is not attributed to torture.

The report of the Additional District Magistrate, Rajouri refers to the testimony of the following witnesses: Sakeena, mother of the victim, Mohammad Rashid, Abdul Khaliq, Khadam Hussain and Mohammad Saleem. These witnesses categorically stated before the enquiry officer as to how Showkat Ali Mughal was arrested by the police and how they approached them for his release and in what manner they were avoided till they learnt about his death in custody. Further, that they made an effort to take him to hospital where he was declared dead. The medical report also suggested death by heart attack by fear/fright or sudden exposure to severe cold.

The SHRC concluded that the statement of witnesses before the enquiry officer constituted credible evidence and the medical report also suggested that Showkat Ali Mughal had died in the police custody. Emphasis was placed on the fact that the death had taken place in custody.

The report of the Additional District Magistrate, Rajouri was strongly criticized. Further, the SHRC stated that Showkat Ali Mughal was a "hale and hearty person". The alleged perpetrators were found liable for the death of Showkat Ali Mughal.

It is noteworthy that despite the passage of five years, and the SHRC order, no investigations or prosecutions appear to have conducted or

concluded by the Jammu and Kashmir Police. This has effectively helped the perpetrators of the crime evade justice.

Case No. **198**

### *Victim Details*

1. Reyaz Ahmad Bhat [Abduction and Extra-Judicial Killing]  
Son of: Mohammad Ismail Bhat, Saleema  
Resident of: Shamishwari, Kalashpora, Srinagar
2. Manzoor Ahmad Shergojri [Wagay] [Abduction and Extra-Judicial Killing]  
Age: 15/16  
Son of: Ghulam Qadir  
Spouse: Mugli  
Resident of: Naina Batpora, Pulwama district
3. Sartaj Ahmad Ganai [Abduction and Extra-Judicial Killing]  
Son of: Ghulam Qadir  
Resident of: Tikipora, Shopian district
4. Identity not ascertained [Abduction and Extra-Judicial Killing]

### *Alleged Perpetrators*

1. Hilal Ahmad Sheikh, resident of Madina Colony, Bemina, Civilian
2. Ajaz Ahmad, brother of Hilal Ahmad Sheikh, Civilian
3. Showkat Ahmad Mir, brother in law of Hilal Ahmad Sheikh, Inspector in the Vigilance Department
4. Tariq, Duty Officer, S.R.Gunj Police Station, Jammu and Kashmir Police
5. Ghulam Rasool, Station House Officer [SHO], S. R. Gunj Police Station, Jammu and Kashmir Police
6. Commandant, 47 Rashtriya Rifles [RR], Army
7. Mohammad Younis, Special Operations Group [SOG], Jammu and Kashmir Police, Gungbaug
8. Qamar-ud-Din, Station House Officer [SHO], Kupwara Police Station, Jammu and Kashmir Police

### *Case Information*

The four victims were killed. Armed forces claimed to have killed four militants on 29 April 2007.

The family of Reyaz Ahmad Bhat state that he went missing on 25 April 2007. His sister, Sabia, was married to Hilal Ahmad Sheikh. Sabia was at her parent's residence on that day. Hilal Ahmad Sheikh came to the house along with his brother Ajaz Ahmad. There was a fight in which Reyaz Ahmad Bhat intervened. Reyaz Ahmad Bhat left the house along with Hilal Ahmad Sheikh and Ajaz Ahmad and has disappeared since. A few minutes later, the police arrived and the brother of Reyaz Ahmad Bhat, Javed Ahmad Bhat was taken to the S.R.Gunj Police Station.

Subsequently, the father of the victim and two others were also arrested and brought to the police station. All of them were beaten at the police station. At this point, Showkat Ahmad Mir, an Inspector in the Vigilance Department and brother in law of Hilal Ahmad Sheikh was present in the police station. Tariq, the Duty Officer at the police station was the person administering the beatings. On the fifth day of the arrest, Javed Ahmad Bhat heard Ghulam Rasool, SHO, S.R.Gunj Police Station, tell someone on the phone that "Reyaz" had been "hit" in Nowgam. Javed Ahmad Bhat was finally released on 1 May 2007. By this time, the others had been released as well.

On 2 May 2007, Javed Ahmad Bhat received an anonymous phone call informing him that his brother had been killed at Kandi, Kupwara. A similar phone call was received on the following day as well. Javed Ahmad Bhat went to the SHO, S.R.Gunj Police Station to file an FIR but the SHO, Ghulam Rasool, refused to do so.

On 9 November 2007, Javed Ahmad Bhat visited the Kupwara Police Station where he was shown photographs of the 29 April 2007 encounter. While he was not certain, he seemed to recognize the picture of his brother. The body of Reyaz Ahmad Bhat was not exhumed as much time had already passed.

The family of Manzoor Ahmad Shergojri states that he went missing on 7 September 2006 when he had gone to collect sand from the Jhelum river. Subsequently, they received information that Manzoor Ahmad Shergojri had been buried at Sangalnar, Kandi, Kupwara District. A missing persons report was filed at the Lassipora Police Post.

According to media reports, the family of Sartaj Ahmad Ganai revealed to the media that he had gone missing from his house one month before his killing, regarding which the family had filed a missing report in the Shopian Police Station.

The body of Manzoor Ahmad Shergojri was exhumed and identified, and determined to be a local citizen. The body of Sartaj Ahmad Ganai was exhumed, and was identified as a local militant. An affidavit on record from the family of Sartaj Ahmad Ganai accepts that he was a militant.

The family of Manzoor Ahmad Shergojri gave a statement to the IPTK on 16 February 2012. The family of Reyaz Ahmad Bhat gave a statement to the IPTK on 28 February 2012.

First Information Report [FIR] no.101/2007 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed by the army at Kupwara Police Station on 29 April 2007<sup>331</sup>.

A petition was filed by the family of Reyaz Ahmad Bhat before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 842/2008] for compensation and investigations<sup>332</sup>. Mohammad Younis, SOG, Gungbaug and Qamar-ud-Din, SHO, Police Station Kupwara are held responsible in the petition for the actual killing of the victims along with Hilal Ahmad Sheikh and Ajaz Ahmad. Further, the petition refers to a statement by Senior Superintendent of Police [SSP], Neeraj Kumar where he admits that the two bodies exhumed were local persons. While the FIR filed refers to the victims as foreign militants, in the reply affidavit by Respondents 1 and 2 [Union of India and Commandant, 47 RR] it is stated that three of the four persons were Indian citizens. Further, this affidavit states that an operation was carried out on 29 April 2007 based on information from a source of SSP, Kupwara. The petition remains pending.

The family of Manzoor Ahmad Shergojri approached the State Human Rights Commission [SHRC]. The SHRC relied on the report of the Director General of Police [DGP], Jammu and Kashmir dated 25 February 2008 that confirmed that Manzoor Ahmad Shergojri had gone missing on 7 September 2006, but stated that the victim was a member of the Lashkar-e-Taiba and had been killed in an encounter

<sup>331</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>332</sup> Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

on 29 April 2007 with the army and SOG, along with three other militants. Arms and ammunition were recovered. No relief was therefore granted by the SHRC.

The families of Manzoor Ahmad Shergojri and Reyaz Ahmad Bhat received no relief or compensation.

The contradiction between the FIR, which states that all four victims were foreign militants, and the submissions before the High Court which concede that three of the victims were locals, raise serious doubts on the entire encounter carried out by the army.

Further, despite the passage of five years, it appears that no investigations or prosecutions have been carried out by the Jammu and Kashmir Police. Finally, the state of impunity is clear as the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 199

### *Victim Details*

Mohammad Abdullah Bhat [Crime not ascertained]  
Resident of: Soura, Srinagar

### *Alleged Perpetrators*

1. Inspector K.K.Verma, Border Security Force [BSF]  
Headquarters, Srinagar

### *Case Information*

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was declined on 21 January 2007.

Information on this case was sought through RTI on 7 October 2011. No information was provided. The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

IPTK tried to contact the family of Mohammad Abdullah Bhat but was unable to do so.

This case is an example of the manner in which the State shields itself by withholding information – in this case the full residential details of the victim and First Information Report [FIR] details. Without this information, it is difficult to independently analyze the case.

## Case No. 200

### *Victim Details*

1. Mansoor Ali Kumar [Extra-Judicial Killing]  
Age: 17  
Occupation: 10<sup>th</sup> standard student  
Son of: Ali Mohammad Kumar

- Resident of: Khanpora, Baramulla District
2. Danish Gojri [Injuries]  
Age: 11/12  
Occupation: 4<sup>th</sup> standard student  
Son of: Abdul Rehman Gojri  
Resident of: Khanpora, Baramulla District

#### *Alleged Perpetrators*

1. Personal Security Officers [PSO's] of Jammu and Kashmir Police accompanying Mushtaq Ahmad Mir, Member, Congress party

#### *Case Information*

On 22 November 2008 at about 11:15 am, Mansoor Ali Kumar and others playing cricket at the Government Middle School for Girls, Khanpora were asked to leave the premises. As Mansoor Ali Kumar was walking outside the school premises, he was shot dead. The family of Mansoor Ali Kumar believes that the victim was shot at by the PSO's accompanying the election campaign rally of the contesting Congress candidate Mushtaq Ahmad Mir. Another boy, Danish Gojri was injured in this firing. The family of Mansoor Ali Kumar states that the area was peaceful and there was no stone pelting taking place.

On the same day of the incident, the family states that, Mushtaq Ahmad Mir appeared on the local news channel and denied any role in the incident. Five to six days later, the family states that Mushtaq Ahmad Mir sent a mediator to the family and asked them to forget about the incident and that two jobs would be provided to the family. But, no jobs were subsequently given. A year later, the same mediator asked the father of Mansoor Ali Kumar to accompany him and meet Mushtaq Ahmad Mir. The father of Mansoor Ali Kumar refused.

The family of Mansoor Ali Kumar gave a statement to the IPTK on 29 December 2011.

First Information Report [FIR] no.206/2008 u/s 332 [Causing hurt to deter public servant from duty], 336 [Act endangering human life/personal safety], 341 [Wrongfully restraining person], 427 [Mischievous causing damage of Rs.50 and upwards] Ranbir Penal Code, 1989 [RPC] was filed at the Bandipora Police Station<sup>333</sup>. The family also filed a written report but it was not added to the FIR. The communication of 9 May 2012 by the Jammu and Kashmir Police stated that the case was presently sub-judice. By communication dated 9 July 2012 information was provided that the case had been chargesheeted. Further, a copy of the FIR was provided and documents were received that suggest that three persons were chargesheeted in this case.

The family received Rs.1,00,000 ex-gratia government relief from the Deputy Commissioner, Baramulla.

The State Human Rights Commission [SHRC] took suo moto cognizance of the case and recommended compassionate employment under SRO-43 [Statutory Rules and Orders] to the family, as ex-gratia government relief had already been received by Mansoor Ali Kumar. The final decision of the SHRC was on 3 May 2011. A report of the Director General of Police [DGP], Jammu and Kashmir before the SHRC states that the firing was a result of stone

<sup>333</sup> Information on this FIR was sought through through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police by communication dated 9 May 2012.

pelting caused by a violent mob. But, the SHRC considered the 18 December 2008 report of the Additional District Development Commissioner, Baramulla and found that the firing was unprovoked by unidentified armed forces. It is also of interest to note that on a separate complaint filed on 19 May 2009, a final decision was given by the SHRC on 19 November 2009. In this complaint the SHRC received a report from the Deputy Commissioner [DC], Baramulla dated 2 September 2009 which stated that SRO-43 benefits would not be accrued by the dependents of the victim based on the income level of the family, the fact that dependency on the victim was not proved, and that it was a "non-subversion/civil commotion case". The matter was thereby disposed off.

The family of Mansoor Ali Kumar state that they have yet to receive compassionate employment.

The 18 December 2008 report of the Additional District Development Commissioner, Baramulla, after interviewing witnesses and Mushtaq Ahmad Mir, found that the firing was unprovoked. But, it failed to specifically implicate the PSO's escorting Mushtaq Ahmad Mir. Mushtaq Ahmad Mir confirmed that he was travelling in a gypsy vehicle. Further, two witnesses confirmed that the firing had been from the personnel travelling in the gypsy vehicle. But, the enquiry chose to implicate "security forces (in khaki)" without confirming that they were travelling in the gypsy vehicle. But, crucially, the enquiry also stated that "the cloud of doubt against Mushtaq Ahmad Mir and his security personnel could not be cleared in this enquiry..."

The decision of the SHRC on 19 November 2009 denying SRO-43 benefits based on the DC, Baramulla submission that non-subversion/civil commotion cases could not be granted compassionate employment is erroneous. Both the SHRC and the DC, Baramulla have ignored the fact that a crime of extra-judicial killing was perpetrated. Extra-judicial killings under International law or the local laws are clearly a despicable human rights abuse and the classification of these extra-judicial killings into civil commotion or militancy related incidents does not change the nature of the crime perpetrated. Also this classification of extra-judicial killings into militancy related and non-militancy related amounts to be discriminatory, which is in violation of Article 14 of Indian Constitution and also the Jammu and Kashmir Constitution.

Despite the enquiry report of the Additional District Development Commissioner, Baramulla confirming that an extra-judicial killing took place, no FIR on the killing of Mansoor Ali Kumar was filed. Further, the Jammu and Kashmir Police continued to falsely represent the facts of the case before the SHRC. The conduct of the Government of Jammu and Kashmir in this case helps in understanding the practice of appointing enquiries after human rights abuses and the non-implementation of the enquiry reports.

## Case No. **201**

#### *Victim Details*

1. Muzaffar Mushtaq Ganaie [Extra-Judicial Killing]  
Age: 18  
Occupation: 1<sup>st</sup> year college student  
Son of: Mushtaq Ahmad Ganaie  
Resident of: Koil, Pulwama District
2. Muhammad Ayub Kumar [Extra-Judicial Killing]  
Son of: Ghulam Muhammad Kumar  
Resident of: Koil, Pulwama District
3. Zeeshan Ali Bhat [Extra-Judicial Killing]  
Son of: Ali Muhammad Bhat



Resident of: Koil, Pulwama District

#### *Alleged Perpetrators*

1. Deputy Commandant, 78<sup>th</sup> Battalion Central Reserve Police Force [CRPF]
2. Deputy Commandant's Personal Security Officers [PSO], 78<sup>th</sup> Battalion Central Reserve Police Force [CRPF]

#### *Case Information*

On 13 December 2008 a procession against the then ongoing Jammu and Kashmir State Legislative Assembly elections was taking place in the area. Muzaffar Mushtaq Ganaie, a student preparing for his exams, was not a part of the protest. A group of CRPF personnel came to the village and without any provocation fired upon the crowd. Muzaffar Mushtaq Ganaie, standing on the side, was targeted and was critically injured and rushed to the Pulwama hospital and then to the Shri Maharaja Hari Singh Hospital [SMHS], Srinagar. On the way to Srinagar, the ambulance carrying the victim was stopped by the CRPF at Kakpora for about one hour. The victim succumbed to his injuries on the way to the hospital. Muhammad Ayub Kumar and Zeeshan Ali Bhat were injured in the firing as well.

A First Information Report [FIR] was filed at the Pulwama Police Station. The Government of Jammu and Kashmir ordered an enquiry with Khursheed Ahmad Ganai appointed as the enquiry officer. The family of Muzaffar Mushtaq Ganaie testified before the enquiry. According to media sources, on 21 February 2009, Deputy Commandant of the 78<sup>th</sup> Battalion CRPF and his PSO's were found guilty of "misconduct" for visiting the area without informing the police<sup>334</sup>.

It is unclear why the information regarding the enquiry report shared with the media did not carry the names of the perpetrators of the crime. Further, the finding of "misconduct" for a crime of murder is clearly misplaced.

Information was sought on 12 January 2012 through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on all the enquiries ordered by the Government of Jammu and Kashmir from 1990 to 2011 in Jammu and Kashmir. No information on this case was provided. In the instant case the lack of transparency and accountability is a worrying factor for the deliverance of justice. Further, it needs to be examined whether the enquiry report resulted into investigations and prosecutions.

The family of Muzaffar Mushtaq Ganaie was offered Rs.1,00,000 ex-gratia government relief but they refused.

The family of Muzaffar Mushtaq Ganaie gave a statement to the IPTK on 16 February 2012.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK also sought information on 10 January 2012 on all cases of sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. **202**

#### *Victim Details*

1. Mohammad Amin Tantray [Extra-Judicial Killing]  
Son of: Mohammad Shaban  
Resident of: Bomai, Sopore, Bararmulla District
2. Javaid Ahmad Dar [Extra-Judicial Killing]  
Age: 24  
Son of: Mohammad Ismail Dar  
Resident of: Muslim Peer, Sopore, Bararmulla District
3. Nazir Ahmad Khwaja [Injury]  
Son of: Abdul Ghaffar  
Resident of: Bomai, Sopore, Bararmulla District

#### *Alleged Perpetrators*

1. Sepoy Kamilesh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder Post camp]
2. Sepoy Amar Singh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]
3. Sepoy Pritam, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]
4. Sepoy Harvinder Singh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]

#### *Case Information*

On 21 February 2009 at 5:45 pm, Mohammad Amin Tantray and Javaid Ahmad Dar were killed in army firing at Bomai, Sopore. The incident occurred when an army convoy of 22 RR was passing through the area near Bomai. Nazir Ahmad Khwaja was injured in the firing but survived.

The family of Mohammad Amin Tantray states that on 21 February 2009, Mohammad Amin Tantray and Nazir Ahmad Khwaja went to the market for a walk.

Meanwhile, an army vehicle of the 22 RR camped at Bomai came and opened indiscriminate fire. One bullet hit the throat of Mohammad Amin Tantray and the other bullet hit Nazir Ahmad Khwaja on the arm and near his chest. There was no justification for the firing.

The family of Mohammad Amin Tantray has been greatly affected by the incident. Further, to obtain information regarding the proceedings in the matter they have had to run from office to office with no result.

The family of Javaid Ahmad Dar states that on 21 February 2009 Javaid Ahmad Dar had gone to the shrine in Tujjar Sharief, Sopore. On his way back, at Bomai the personnel of the 22 RR fired on pedestrians without any provocation. Javaid Ahmad Dar was not taken to the hospital immediately due to which he lost a lot of blood and subsequently died. The personnel responsible for the killing had come from the post referred to as the "Rajinder Post".

The family of Mohammad Amin Tantray gave a statement to the IPTK on 24 December 2011. The family of Javaid Ahmad Dar gave an undated, unsigned statement to the IPTK.

<sup>334</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Feb/22/crpf-officer-psos-indicted-for-koil-killing-40.asp>, 21 February 2009.

First Information Report [FIR] no.73/2009 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station<sup>335</sup>.

The State Human Rights Commission [SHRC] after taking suo-moto cognizance of the case found on 4 January 2010 that the victims were innocent, relief and benefits where eligibility was satisfied had been provided, and recommended that the investigation be brought to its logical conclusion.

The Government of Jammu and Kashmir ordered an enquiry by the Deputy Commissioner [DC], Baramulla, Baseer Ahmed Khan. This was completed but the report does not appear to have been made public. The report allegedly indicts the army for the killing of Mohammad Amin Tantray and Javid Ahmad Dar<sup>336</sup>. It has also been reported that an army Court of Inquiry indicted two soldiers and a Junior Commissioned Officer [JCO]<sup>337</sup>.

The Ministry of Defence, in response to a RTI on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 in relation to this case that it was under examination. The names of the alleged perpetrators were referred to as well.

It is noteworthy that despite the passage of three years, the Ministry of Defence is yet to take a decision on the issue of grant of sanction for prosecution under AFSPA.

This delay, despite the SHRC, Jammu and Kashmir Police and reportedly a Government enquiry confirming the extra-judicial killings, only allows the perpetrators of the crime to evade justice.

Despite a Court of Inquiry reportedly finding army personnel guilty, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

## Case No. 203

### *Victim Details*

Ghulam Mohi-ud-Din Malik [Extra-Judicial Killing]

Age: 38

Occupation: Carpenter

Son of: Muhammad Akbar Malik.

Resident of: Khaigam, Pakharpora, Pulwama District

### *Alleged Perpetrators*

1. Assistant Commandant S.P. Chaturvedi, 181<sup>st</sup> Battalion Central Reserve Police Force [CRPF]
2. Constable Abhilagh Singh, 181<sup>st</sup> Battalion Central Reserve Police Force [CRPF]
3. Constable Samiullah Pandit, 181<sup>st</sup> Battalion Central Reserve Police Force [CRPF]

<sup>335</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Information on the status of the case and investigations was sought through RTI on 27 April 2012. No information was provided.

<sup>336</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Feb/13/probes-fail-to-nail-culprits-45.asp>, 13 February 2012. Information on the report was sought through RTI on 27 April 2012. No information was provided.

<sup>337</sup> Kashmir Observer, [http://www.kashmirobservers.net/index.php?view=article&catid=15%3Aatop-news&id=1127%3AArmy-holds-3-soldiers-guilty-of-lapses&tmpl=component&print=1&layout=default&page=&option=com\\_content](http://www.kashmirobservers.net/index.php?view=article&catid=15%3Aatop-news&id=1127%3AArmy-holds-3-soldiers-guilty-of-lapses&tmpl=component&print=1&layout=default&page=&option=com_content).

4. Manzoor Bhat, 181<sup>st</sup> Battalion Central Reserve Police Force [CRPF]

### *Case Information*

On the evening of 18 March 2009 at around 7:20 pm, personnel of the 181<sup>st</sup> Battalion CRPF went into Ghulam Mohi-ud-Din Malik's house and searched the rooms.

They went to the roof of the house. They then targeted Ghulam Mohi-ud-Din Malik and shot him dead without any provocation. The police said that the killing was targeted as the troopers had fired at least 19 bullets into the chest of Ghulam Mohi-ud-Din Malik<sup>338</sup>.

The official position of the CRPF was that a CRPF patrol had gone to the village on specific information about the presence of militants. The patrol was fired upon by militants and they returned the fire<sup>339</sup>.

The Government of Jammu and Kashmir ordered an inquiry into the killing of Ghulam Mohi-ud-Din Malik which was completed<sup>340</sup>. It was reported that a Court of Inquiry was constituted into the killing by the CRPF<sup>341</sup>.

The alleged perpetrators listed above are reported to have been responsible for the killing<sup>342</sup>.

FIR no. 22/2009 u/s 302 [Murder], 452 [House trespass after preparation for hurt/assault/wrongful restraint] Ranbir Penal Code, 1989 [RPC] was filed at Rajpora Police Station on 18 March 2009<sup>343</sup>.

The 25 July 2012 communication from the Jammu and Kashmir Police states that the investigation of the case is complete but pending as the CRPF personnel were yet to be arrested.

It is noteworthy that despite the passage of three years, the prosecution of the alleged perpetrators has stalled as they are yet to be arrested. The Jammu and Kashmir Police appears to have failed to use the coercive powers at its disposal to effect the arrest and ensure that the perpetrators of the crime are brought before the court.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

<sup>338</sup> My Kashmir, <http://www.mykashmir.in/news200309.html>, 20 March 2009.

<sup>339</sup> The Tribune, <http://www.tribuneindia.com/2009/20090320/j&k.htm#1>, 20 March 2009.

<sup>340</sup> Rising Kashmir, <http://www.risingkashmir.in/news/of-promises-probes-and-kashmir-puzzle-13658.aspx>, 5 August 2011.

<sup>341</sup> Express India, <http://www.expressindia.com/latest-news/JK-govt-orders-magisterial-enquiry-into-recent-civilian-killing/436949/>, 20 March 2009.

<sup>342</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Mar/29/crpf-troopers-killed-khaigam-carpenter-46.asp>, 29 March 2009, Kashmir Awareness, <http://www.kashmirawareness.org/Article/View/789/200-days-abdullah-regime-lives-lost-one-every-8th-day>, 20 July 2009.

<sup>343</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 25 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

## Case No. 204

### *Victim Details*

Wamiq Farooq [Extra-Judicial Killing]  
Age: 12  
Occupation: 7<sup>th</sup> standard student  
Son of: Farooq Ahmad Wani  
Resident of: Channa Mohalla, Rainawari, Srinagar

### *Alleged Perpetrators*

1. Assistant Sub-Inspector [ASI] Abdul Khaliq, Jammu and Kashmir Police
2. Constable Mohammad Rafiq, Jammu and Kashmir Police
3. Nazir Ahmad, Driver, Jammu and Kashmir Police
4. Nissar Ahmad, Selection Grade Constable, Jammu and Kashmir Police
5. Mohammad Akram, Special Police Officer [SPO], Jammu and Kashmir Police

### *Case Information*

The family of Wamiq Farooq states that he was killed by the alleged perpetrators by a tear gas shell on 31 January 2010 near the mosque adjacent to the Gani Memorial Sports Stadium, Rajouri Kadal, Srinagar at about 4:30 pm. On the day of the incident, Wamiq Farooq had gone to play cricket at the Gani Memorial Sports Stadium. The ground was wet and therefore Wamiq Farooq was playing carom when one of the alleged perpetrators got out of the police vehicle and fired a tear gas shell from a distance of about 30 feet directly at the head of the victim.

First Information Report [FIR] no.12/2010 u/s 148 [Rioting armed with deadly weapon], 149 [Liability for other members of unlawful assembly], 307 [Attempt to murder], 332 [Causing hurt to deter public servant from duty], 336 [Act endangering human life/personal safety], 353 [Assault/Criminal force to deter public servant from discharging duty], 427 [Mischief causing damage of Rs.50 and upwards] Ranbir Penal Code, 1989 [RPC] was filed at Nowhatta Police Station. The FIR stated that on 31 January 2010 at about 4:45 pm there was an unruly mob armed with sticks, stones and other similar objects and these objects were used to attack the police party, including the alleged perpetrators listed above near the Islamia School area. During these events, an unknown boy was hit by a tear gas shell at Dompura Gani Stadium<sup>344</sup>.

The father of the victim filed an application before the Chief Judicial Magistrate [CJM], Srinagar, for the registration of an FIR. A letter from the Senior Superintendent of Police [SSP], Srinagar, dated 19 February 2010, to the Chief Prosecuting Officer, Sadler Court, Srinagar, on the application of the father of Wamiq Farooq, states that the investigation was ongoing but that preliminary findings point towards the action of the police as having been done in self-defence.

The CJM, considered the above submissions, and witnesses on behalf of the father of Wamiq Farooq, who stated that Wamiq's death was a cold blooded murder. On 5 February 2011, the CJM ordered that a Special Investigating Team be set up to investigate the matter. This order of the CJM, Srinagar was challenged by the Government of Jammu and Kashmir before the Principal District and Sessions

Judge, Srinagar on the ground that the CJM had no power to set up a Special Investigating Team. On 2 May 2011, the Principal District and Sessions Judge, Srinagar, confirmed the order of the CJM and stated that the Special Investigating Team would be at liberty to file a fresh FIR as well.

The above orders were challenged in the High Court of Jammu and Kashmir [561-A petition no. 64/2011]. On 9 August 2011 the petition was dismissed. The order of the High Court was challenged before the Supreme Court [SLP (Crl.) no.2245/2012]. The matter remains pending before the Supreme Court.

The conduct of the police is questionable in this case as it has filed a FIR against the protestors and the deceased but has ignored its responsibility with regard to the investigation of the extra-judicial killing. The 2 May 2011 order of the Principal District and Sessions Judge, Srinagar, confirmed by the High Court on 9 August 2011, should have specifically ordered the filing of a FIR for the killing of Wamiq Farooq based on the prima facie evidence.

This case was one of the triggers of the 2010 uprisings.

## Case No. 205

### *Victim Details*

1. Mohammad Shafi Lone, [Abduction and Extra-Judicial Killing (Fake encounter)]  
Age: 19  
Son of: Abdul Rashid Lone  
Resident of: Nadihal, Rafiabad, Baramulla District
2. Shahzad Ahmad Khan, [Abduction and Extra-Judicial Killing (Fake encounter)]  
Age: 27  
Son of: Ghulam Mohammad  
Resident of: Nadihal, Rafiabad, Baramulla District
3. Riyaz Ahmad Lone, [Abduction and Extra-Judicial Killing (Fake encounter)]  
Age: 20  
Son of: Mohammad Yousif Lone  
Resident of: Nadihal, Rafiabad, Baramulla District

### *Alleged Perpetrators*

1. Colonel D.K. Pathania, Commanding Officer, 4 Rajputana Rifles, Army
2. Major Maurya, 4 Rajputana Rifles, Army
3. Major Upinder, 4 Rajputana Rifles, Army
4. Subedar Satbir Singh, 4 Rajputana Rifles, Army
5. Havaldar Bir Singh, 4 Rajputana Rifles, Army
6. Sepoy Chandra Bhan, 4 Rajputana Rifles, Army
7. Sepoy Nagendra Singh, 4 Rajputana Rifles, Army
8. Sepoy Narendra Singh, 4 Rajputana Rifles, Army
9. Abbas Hussain Shah, 161<sup>st</sup> Battalion Territorial Army
10. Bashir Ahmad Lone, Army informer
11. Abdul Hamid Bhat, Army informer

### *Case Information*

On the intervening night of 29 and 30 April 2010, Mohammad Shafi Lone, Shahzad Ahmad Khan and Riyaz Ahmad Lone were abducted and then killed by the alleged perpetrators at Sonapindi, Kalaroo, Kupwara.

The armed forces claimed that three foreign militants from Pakistan had been killed in a legitimate encounter. Contrary to the version of

<sup>344</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By letter dated 2 June 2012 a copy of the FIR was provided.

the army, it has been claimed that the victims were recruited to work as laborers for the army to move arms and ammunition near the Line of Control.

The Government of Jammu and Kashmir ordered a magisterial probe into the matter on 27 May 2010<sup>345</sup>.

Missing reports were filed in the Daily Diary of Police Station Panzalla in the matter on 10 May 2010.

First Information Report [FIR] no.23/2010 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at Panzalla Police Station on 20 May 2010<sup>346</sup>. The army filed FIR no.67/2010 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959<sup>347</sup> regarding an encounter having taken place in this case.

The dead bodies of the victims were exhumed on 28 May 2010.

It was reported that the State Human Rights Commission [SHRC] passed a decision in the matter. The army instituted a Court of Inquiry.

A letter on record dated 29 May 2010 from the Superintendent of Police [SP], Sopore to the Deputy Inspector General [DIG], Baramulla, states that investigations revealed the role of Bashir Ahmad Lone, Abdul Hamid Bhat and Abbass Hussain Shah in the crime. Bashir Ahmad Lone and Abdul Hamid Bhat were arrested on 26 May 2010, and Abbass Hussain Shah, of the 161<sup>st</sup> Battalion Territorial Army, was arrested on 27 May 2010.

A chargesheet was filed before the Chief Judicial Magistrate [CJM], Sopore. On 15 July 2010 Abbas Hussain Shah, Bashir Ahmad Lone and Abdul Hamid Bhat were sent to judicial lockup, and the other alleged perpetrators were ordered to present themselves and face the trial before the court. A revision petition was filed against this order before the District and Sessions Judge, Baramulla. The petition was dismissed on 13 December 2010.

The High Court was approached. The issue being litigated was the right of the accused to be tried by an army Court-Martial, and the procedural irregularities in the decision of the CJM, Sopore.

On 4 July 2012 the High Court set aside the lower court orders paving the way for an army Court-Martial.

This case was one of the triggers of the 2010 uprisings.

## Case No. 206

### *Victim Details*

1. Ishtiyahq Ahmad Khanday [Extra-Judicial Killing]  
Age: 16  
Son of: Ghulam Ahmad Khanday  
Resident of: S.K.Colony, Anantnag

<sup>345</sup> IPTK, Fake Encounters and State Terror in Kashmir: A Brief, IPTK, 6 June 2010.

<sup>346</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

<sup>347</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

2. Imtiaz Ahmad Itoo [Extra-Judicial Killing]  
Age: 17  
Son of: Abdul Ahad Itoo  
Resident of: Watergam, Dialgam, Anantnag District
3. Sujat-ul-Islam Bhat (Baba) [Extra-Judicial Killing]  
Age: 22  
Son of: Muhammad Ashraf Baba [deceased]  
Resident of: Anchidora, Azadpora, Anantnag District

### *Alleged Perpetrators*

1. Ayoub Rather, Station House Officer [SHO], Jammu and Kashmir Police
2. Rouf, Station House Officer [SHO], Mattan Police Station, Jammu and Kashmir Police
3. Constable Nissar Ahmed Lone, Saddar Police Station, Jammu and Kashmir Police
4. Constable Sartaj Ahmed, Jammu and Kashmir Police
5. Sub-Inspector [SI] Feroz Ahmad, Jammu and Kashmir Police
6. Sub-Inspector [SI] Farooq Ahmad, Jammu and Kashmir Police

### *Case Information*

On 29 June 2010 at about 4:00 pm there was stone pelting taking place at least 1.5 km from the place of the incident. Following his lunch, Sujat-ul-Islam left to offer prayers and meet his teacher. On the way, he was caught by the police and shot. This was during an operation of the police and CRPF. At the same time, Ishtiyahq Ahmad Khanday and Imtiaz Ahmad Itoo had also received bullet wounds. SHO Ayoub Rather, SHO Rouf and Constable Nissar Ahmad Lone were responsible for the shooting of the victims. All three victims died. In addition to the death of the three victims, eight other persons were injured during this incident.

The family of Imtiaz Ahmad Itoo and Sujat-ul-Islam gave statements to the IPTK on 13 May 2012. The family of Ishtiyahq Ahmad Khanday and Sujat-ul-Islam gave statements [second statement from the family of Sujat-ul-Islam] to the IPTK on 20 May 2012.

First Information Report [FIR] 261/2010 was filed at Anantnag Police Station<sup>348</sup>.

In response to a statement by the Government of Jammu and Kashmir on 5 March 2012 that over the last three years, 444 FIR's had been filed against the armed forces and the police, information was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on these cases. On 19 May 2012 information was provided that the case had been chargesheeted.

Further, information was provided that the FIR had been filed u/s 141 [Unlawful assembly], 307 [Attempt to murder], 332 [Causing hurt to deter public servant from duty], 149 [Liability for other members of unlawful assembly] Ranbir Penal Code, 1989 [RPC] and 27(1) [Punishment for using arms without licence in contravention of section 5] Arms Act, 1959.

A death certificate from the Medical Superintendent, Mirza Mohammad Afzal Beg Memorial Hospital, Anantnag, dated 21 January 2011, confirms that Ishtiyahq Ahmad Khanday was brought dead as a case of bullet injury on 29 June 2010.

<sup>348</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided.

As reported in the media, the magisterial inquiry was conducted and SI Feroz Ahmed, SI Farooq Ahmed, Constable Nissar Ahmed and Constable Sartaj Ahmed were indicted<sup>349</sup>. A Special Investigating Team [SIT] was constituted in this case<sup>350</sup>. On 29 March 2011, the Principal District and Sessions Judge, Anantnag framed murder charges against Constable Nissar Ahmad Lone, and directed the Inspector General of Police [IGP], Kashmir to carry out further investigations within a month. Subsequently, Constable Nissar Ahmad Lone was also granted bail<sup>351</sup>.

The family of Ishtiyahq Ahmad Khanday also stated that they had received Rs.5,00,000 from the Government of India.

The Government of Jammu and Kashmir instituted a Commission of Inquiry vide SRO [Statutory Rules and Orders] no.283/2010 dated 29 July 2010 to enquire into 17 cases of extra-judicial executions in 2010, including the instant case.

The Commission was headed by Justice [Retired] Syed Bashir-ud-Din and Justice [Retired] Y.P.Nargotra as member.

The Central Reserve Police Force [CRPF] by filing Original Writ Petition (OWP) 38/2011 in the High Court of Jammu and Kashmir contested the jurisdiction of the Government of Jammu and Kashmir in conducting investigations and prosecution under the provisions of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. The High Court issued a stay order restraining the Commission from finalizing its report.

Despite this being a case of three persons being killed, the FIR was not filed u/s 302 [Murder] of the Ranbir Penal Code, 1989 [RPC] an action which remains unexplained by the police thus far.

The staying of the Commission of Inquiry in the instant case serves as an example of the impediments placed on processes of justice in Jammu and Kashmir. While enquiries in Jammu and Kashmir have routinely proved ineffectual, the stay order strengthens impunity.

## Case No. **207**

### *Victim Details*

Faizan Ahmad Buhroo [Extra-Judicial Killing]  
Age: 13  
Occupation: 7<sup>th</sup> standard student  
Son of: Rafiq Ahmad Buhroo  
Resident of: Jalal Sahib, Old town, Baramulla

### *Alleged Perpetrators*

1. Tanveer Ahmad [Operational name: Kaka Mir], Special Operations Group [SOG], Jammu and Kashmir Police

### *Case Information*

On 17 July 2010 at around 3:30 pm, while there was curfew in the area, Faizan Ahmad Buhroo left his residence and went out with

<sup>349</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2011/Mar/31/govt-takes-disciplinary-action-against-ssp-50.asp>, 31 March 2011.

<sup>350</sup> Kashmir Life, [http://kashmirlife.net/index.php?option=com\\_content&view=article&catid=16%3Aspecial-report&id=780%3Awitnessing-murder&Itemid=158](http://kashmirlife.net/index.php?option=com_content&view=article&catid=16%3Aspecial-report&id=780%3Awitnessing-murder&Itemid=158).

<sup>351</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2011/Sep/27/accused-cops-granted-bail-77.asp>, 27 September 2011.

other children. According to eye-witnesses Tanveer Ahmad and other SOG personnel chased the children. Faizan Ahmad Buhroo ran over the Azadgunj bridge. He was caught at the centre of the bridge. Tanveer Ahmad hit him on his head with his gun butt and Faizan Ahmad Buhroo became unconscious. Faizan Ahmad Buhroo was then thrown into the river. Because other youth had also jumped into the river, the police also fired tear gas shells into the river.

The body of Faizan Ahmad Buhroo was recovered from the river subsequently on 19 July 2010. The family of Faizan Ahmad Buhroo states that prior to the incident Tanveer Ahmad had harmed the victim.

In June 2009, during the agitations, he shot Faizan Ahmad Buhroo in his leg. Further, a few days before the incident he threw a stone at Faizan Ahmad Buhroo and hurt his eye. The family also states that an eye-witness to the killing of Faizan Ahmad Buhroo gave a statement to the police. The eye-witness was then harassed as his brothers were picked up on false charges and tortured.

When Faizan Ahmad Buhroo's body was recovered on 19 July 2010 there were protests. A boy named Fayaz Ahmad Khanday was killed during the firing to disperse the protestors.

The family of Faizan Ahmad Buhroo gave a statement to the IPTK on 30 December 2011.

First Information Report no.132/2010 was filed at the Baramulla Police Station on 19 July 2010<sup>352</sup>.

The family of Faizan Ahmad Buhroo did not pursue the case out of fear. They state that Tanveer Ahmad apologized for what he had done and his father put up posters in the area regarding the same. A copy of the poster is with the IPTK. Apparently, Tanveer Ahmad has not refuted the authenticity of the poster. The family received Rs.5,00,000 as compensation from the Deputy Commissioner, Baramulla.

The Government of Jammu and Kashmir instituted a Commission of Inquiry vide SRO no.283/2010 dated 29 July 2010 to enquire into 17 cases of extra-judicial executions in 2010, including the instant case.

The Commission was headed by Justice [Retired] Syed Bashir-ud-Din and Justice [Retired] Y.P.Nargotra as member.

The Central Reserve Police Force [CRPF] by filing Original Writ Petition (OWP) no.38/2011 in the High Court of Jammu and Kashmir contested the jurisdiction of the Government of Jammu and Kashmir in conducting investigations and prosecution under the provisions of Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The High Court issued a stay order restraining the Commission from finalizing its report.

The conduct of the CRPF in approaching the High Court against the functioning of the Commission of Inquiry has subverted the mechanisms of investigation. Particularly as in the instant case the alleged perpetrator did not belong to the CRPF.

Further, the Jammu and Kashmir Police by its own investigation without waiting for the report of the Commission of Inquiry should have proceeded to finalise the investigation and file a chargesheet in court.

<sup>352</sup> Information on this FIR was sought through Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

## Case No. 208

### *Victim Details*

Mehraj-ud-Din Lone [Extra-Judicial Killing]

Age: 22

Occupation: Vegetable seller

Son of: Muhammad Maqbool Lone

Resident of: Barthana, Qamarwari, Parimpora, Srinagar

### *Alleged Perpetrators*

1. Sabzar Ahmad, Qamarwari Police Post, Jammu and Kashmir Police

### *Case Information*

The family of Mehraj-ud-Din Lone states that on 3 August 2010 the victim went outside the house at about 9:00 am. It was a day of a public strike. Mehraj-ud-Din Lone was walking just outside the house.

In the meanwhile, Central Reserve Police Force [CRPF] and police personnel started chasing locals away from both sides of the road where the Mehraj-ud-Din Lone was walking. From the main road, Sabzar Ahmad of the Jammu and Kashmir Police came along with his personnel. Mehraj-ud-Din Lone was standing outside and he was shot in the chest.

After shooting the victim Sabzar Ahmad ran away from the locality and the CRPF cordoned off the area. When the locals tried to carry Mehraj-ud-Din Lone to the hospital, they were not allowed to do so. Mehraj-ud-Din Lone died on the spot.

The family of Mehraj-ud-Din Lone states that they did not file a case as there was no one in the family in a position to do so. Rs.5,00,000 was given to the family – 80,000 to the father and mother of the victim and the rest to the victim's wife and son.

The family of the victim gave a statement to the IPTK on 2 March 2012.

IPTK sought information through the Jammu and Kashmir Right to Information Act, 2009 [RTI] about all the cases filed against the Jammu and Kashmir Police and personnel of the armed forces between the period of 2009 and 2011. Based on the responses received so far there appears no mention of this case.

## Case No. 209

### *Victim Details*

Umar Qayoom Bhat [Abduction, Torture and Extra-Judicial Killing]

Age: 17

Son of: Fareeda Bhat, Abdul Qayoom Bhat

Resident of: Soura, Srinagar

### *Alleged Perpetrators*

1. Inspector Abdul Majeed Malik, Station House Officer [SHO] Soura Police Station, Jammu and Kashmir Police
2. Sub-Inspector [SI] Zahoor Ahmad, Jammu and Kashmir Police

### *Case Information*

On 20 August 2010 there were protests taking place in the Soura area. Umar Qayoom Bhat along with two other boys, Amir Bashir and Irshad Ahmad, was picked up by the personnel of the Central Reserve Police Force [CRPF] and the Jammu and Kashmir Police, including the alleged perpetrators. Umar Qayoom Bhat was beaten in custody.

On the following day, the victim was granted bail. Umar Qayoom Bhat stated that he had been beaten in custody and he was given electric shocks. Umar Qayoom Bhat was admitted in Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura on 23 August 2010 and was declared dead on 25 August 2010.

The family of Umar Qayoom Bhat approached the Chief Judicial Magistrate [CJM], Srinagar for the registration of a First Information Report [FIR]. The family of the victim stated to the IPTK that the police refused to file an FIR in the matter and insisted that an FIR would only be filed if the CRPF were implicated, and not the police.

The Soura Police Station submitted a report before the CJM, Srinagar. It was accepted that Umar Qayoom Bhat had been arrested on 20 August 2010 by SHO Abdul Majeed Malik. It was stated that Umar Qayoom Bhat and others had been forcing people to shut their shops because of which they had been arrested. Umar Qayoom Bhat was granted bail on the next day and he was in good health.

In a letter dated 13 December 2010, from Mehraj-ud-Din Kakroo, Deputy Commissioner, Srinagar to the Jammu and Kashmir Home Department, it is noted that the next of kin of Umar Qayoom Bhat had sought ex-gratia government relief of Rs. 5,00,000 that was sanctioned by the Government of Jammu and Kashmir for persons killed in civil disturbance in Jammu and Kashmir since 11 June 2010.

The next of kin of Umar Qayoom Bhat were said to have agreed to withdraw the case if provided the relief. The letter recommends that the relief be provided.

The family of Umar Qayoom Bhat gave a statement to the IPTK on 30 November 2011.

From torturing Umar Qayoom Bhat to avoiding the filing of a FIR, the conduct of the Jammu and Kashmir Police is an indicator of the lawlessness which drives the actions of the police, and which is in a big way responsible for strengthening the culture of impunity.

The conduct of Mehraj-ud-Din Kakroo, Deputy Commissioner, Srinagar is against the principles of justice as he seems to be interested in persuading the family to withdraw the case against the sanction of Rs.5,00,000.

The Deputy Commissioner, Srinagar, who is also the District Magistrate is bound by law to protect the rights of the people and also uphold the law. But, this letter apparently is in contravention to his designated responsibility where he is seen prioritizing the hushing up of the case rather than helping the processes of justice to prosecute the guilty officers for the heinous crime.

Further, by terming the death of Umar Qayoom Bhat as a killing during a civil disturbance, this letter contradicts the stated position of the Jammu and Kashmir Police in this case where they have deposed that Umar Qayoom Bhat was rightfully arrested and released by due process of law in good health.

## Case No. 210

### Victim Details

1. Umar Sheikh Suleiman [Extra-Judicial Killing]  
Age: 15  
Son of: Mohammad Suleiman Sheikh [deceased]  
Resident of: Narji, Potukhah, Sopore, Baramulla District
2. Mohammad Rafiq Hajam [Injuries]  
Age: 19  
Son of: Ghulam Mohammad  
Resident of: Potukhah, Sopore, Baramulla District
3. Mohammad Ashiq Ahangar [Injuries]  
Age: 24  
Son of: Abdul Rahim  
Resident of: Potukhah, Sopore, Baramulla District
4. Nika [Injuries]  
Son of: Ghulam Mohammad Malik  
Resident of: Potukhah, Sopore, Baramulla District

### Alleged Perpetrators

1. Major Rawat [Operational name: Rasheed Khan], 52 Rashtriya Rifles [RR], Army, Camp Choor, Potukhah

### Case Information

On 16 September 2010 at 7:00 pm personnel of the 52 RR opened fire on a group of protestors protesting against the thrashing of people on that day by the Major Rawat. Major Rawat led the personnel that opened the firing, which resulted in injuring Umar Sheikh Suleiman, Mohammad Rafiq Hajam, Mohammad Ashiq Ahangar and Nika. Umar Sheikh Suliaman succumbed to bullet injuries on 1 October 2010.

First Information Report [FIR] no. 488/2010 was filed at the Sopore Police Station<sup>353</sup>. Following the filing of the case, the family of the victim has been harassed by Major Rawat.

The family of Umar Sheikh Suleiman received Rs.5,00,000 from the Deputy Commissioner, Baramulla.

The family of Umar Sheikh Suleiman gave a statement to the IPTK on 15 December 2011.

It remains unclear whether the Jammu and Kashmir Police investigations have been concluded. Apparently, based on the available government documents, this case neither concluded in a manner where sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought and neither did the army by itself carry out a court-martial against accused army personnel.

Further, in response to a statement by the Government of Jammu and Kashmir on 5 March 2012 that over the last three years, 444 FIR's had been filed against the security forces and the police, a RTI was filed seeking information on these cases.

On 19 May 2012 while information was provided on nine FIR's filed in Sopore Police Station against the armed forces and the Jammu and Kashmir Police, FIR no.488/2010 does not find a mention.

<sup>353</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

## Case No. 211

### Victim Details

Mohammad Ashraf Lone [Abduction, Torture and Extra-Judicial Killing]  
Age: 30  
Occupation: Imam, Village Mosque  
Son of: Ghulam Rasool Lone  
Resident of: Chethpoora, Rohama, Rafiabad, Baramulla District

### Alleged Perpetrators

1. Gazanfar Ali [Operational name: Chulbul Pandey], Station House Officer [SHO], Sopore Police Station, Jammu and Kashmir Police
2. Abdul Ahad Sheikh [Operational name: Chottu], Special Operations Group [SOG], Jammu and Kashmir Police, Sopore
3. Mohammad Shafi, Special Operations Group [SOG], Jammu and Kashmir Police, Sopore

### Case Information

On 24 April 2011, Mohammad Ashraf Lone was shot dead by unknown gunmen in Kreeri, Baramulla district.

Mohammad Ashraf Lone was abducted from Sopore town where he had gone to make an appointment with a doctor for his daughter. According to eye-witnesses in Sopore market, he was caught by three persons and was bundled into a Sumo vehicle.

The family of Mohammad Ashraf Lone states that he was taken to the Ningli stream at Chooru, Sopore where he was tortured and beaten. An old person passing by stopped and asked why he was being tortured. He was informed that Mohammad Ashraf Lone was a militant and that an ammunition dump had been recovered from him.

Subsequently, Mohammad Ashraf Lone was taken to Kreeri, Baramulla District. He was taken towards Hael village and shot dead.

The family of Mohammad Ashraf Lone states that in the month of December 2010 the victim was called to the Sopore Police Station by SHO Gazanfar Ali. Mohammad Ashraf Lone was asked to work as an informer but he refused. He was then told to quit his job in *Darul-uloom*. To save his life, he left the *Darul-uloom*. Even prior to this visit Mohammad Ashraf Lone had been harassed by SHO Gazanfar Ali.

Mohammad Ashraf Lone was also friends with Abdul Ahad Sheikh and Mohammad Shafi. When Mohammad Ashraf Lone was taken to the police station to meet with SHO Gazanfar Ali, Abdul Ahad Sheikh was the one who took him there.

Following Mohammad Ashraf Lone's refusal to be an informer, he disassociated himself from Abdul Ahad Sheikh.

The family of Mohammad Ashraf Lone believes that Abdul Ahad Sheikh and Mohammad Shafi were also behind the killing of the victim.

Around a month after the death of Mohammad Ashraf Lone, Abdul Ahad Sheikh called Shameema, the wife of the victim, and told her that she need not to repent over the victim's death, that he was a liar and this was the reason for his killing. He also told Shameema to meet him at Sopore, which she refused by stating that he would kill

her too. Abdul Ahad Sheik also called the Mohammad Ashraf Lone's cousin, Yasir Arafat, to meet with him but Yasir Arafat's family did not allow him to do so.

First Information Report [FIR] no. 24/2011 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Kreeeri Police Station<sup>354</sup>.

No information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

## Case No. 212

### *Victim Details*

Rashida Bano [Death by harassment]  
Age: 24  
Daughter of: Abdul Rafiq Rather  
Resident of: Bhalessa, Doda District

### *Alleged Perpetrators*

1. Assistant Sub-Inspector [ASI] Mumtaz Hussain, In-charge Police Post Pul Doda, Jammu and Kashmir Police

### *Case Information*

On 29 May 2011, Rashida Bano jumped into a river after she was harassed by ASI Mumtaz Hussain while she was talking to a male classmate.

First Information Report [FIR] no. 123/2011 u/s 306 Ranbir Penal Code, 1989 [RPC] was filed at the Doda Police Station<sup>355</sup>.

The 15 June 2012 communication from the Jammu and Kashmir Police states that the case was chargesheeted and under trial.

The SHRC took cognizance of the matter<sup>356</sup>.

## Case No. 213

### *Victim Details*

Junaid Ahmad Khuroo [Extra-Judicial Killing]  
Age: 20  
Occupation: 10<sup>th</sup> Standard student and worked in a clinic  
Son of: Abdul Qayoom Khuroo  
Resident of: Kralteng Sopore, Baramulla District

### *Alleged Perpetrators*

1. Gazanfar Ali [Operational name: Chulbul Pandey], Station House Officer [SHO], Sopore Police Station

<sup>354</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.

<sup>355</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided.

<sup>356</sup> Rising Kashmir, <http://m.risingkashmir.com/news/shrc-seeks-report-from-police-over-students-suicide-10634.aspx>, 2 June 2011.

2. Sub-Inspector [SI] Badloo Ram, 179<sup>th</sup> Battalion Central Reserve Police Force [CRPF]

### *Case Information*

On 24 June 2011, SHO Gazanfar Ali questioned Junaid Khuroo on his role during the 2010 protests. Junaid Khuroo confirmed he had taken part in the agitation. Junaid Khuroo was released after five hours of questioning.

On 29 June 2011, Junaid Khuroo left for his school to collect the roll number slip for the exam. On his way, Junaid Khuroo was seen by a shopkeeper named Bilal Ahmad at Iqbal Market, Sopore. Subsequently, at about 10:45 am there was firing at the Gul Abad locality of Arampora, Sopore. Junaid Khuroo was found dead and at 1:00 pm his father identified his body at the police station.

Police claimed that Junaid Khuroo was chased by personnel of the 179<sup>th</sup> Battalion CRPF, led by Sub-Inspector Badloo Ram, after Junaid Khuroo had fired on their bunker. Police said Junaid Khuroo took refuge in a local mosque where he shot himself dead with a pistol he was carrying with him. The father of Junaid Khuroo denies this claim and states that Junaid Khuroo must have been tortured to death by Gazanfar Ali and then his body would have been placed at the mosque.

The family of Junaid Khuroo gave a statement to the IPTK on 8 March 2012.

First Information Report [FIR] no.178/2011 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Sopore Police Station on 29 June 2001. This FIR was filed by the police and has their version of events<sup>357</sup>.

The family of Junaid Khuroo filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 981/2011] seeking investigations into the killing of Junaid Khuroo. A compliance report of 18 October 2011 states that the police have accepted the version of the deceased being a militant and shooting himself and a final report is to be filed in the court. A status report, of 14 September 2011 confirms the same details but also adds that a pistol magazine was also recovered from the site. The case remains pending in the High Court.

The family of Junaid Khuroo also approached the State Human Rights Commission [SHRC]. On 29 November 2011 the Director General of Police [DGP], Jammu and Kashmir stated that the investigation was ongoing, but it had been learnt from reliable sources that Junaid Khuroo was a militant, had fired upon the CRPF bunker, and had then committed suicide.

On 13 June 2012, the Deputy Commissioner, Baramulla took a similar position before the SHRC. The matter remains pending.

An application through the Jammu and Kashmir Right to Information Act, 2009 [RTI] with specific questions on this case was filed on 31 March 2012. By communication dated 5 June 2012 from the Jammu and Kashmir Police the following information was provided:

<sup>357</sup> Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided.



- The investigation in the case was ongoing. This information contradicts the earlier position that the investigations in the case were closed.
- The operation conducted on the date of the event was not a joint operation between the CRPF and the police.
- During the firing that took place on the day of the incident which led to Junaid Khuroo being chased, no property was damaged.
- The following arms and ammunition were seized from "Tameer Ahmad Khuroo @ Junaid": Pistol Chinese 1, P.Magz 1, live cartridge pistol 1, empty cartridge pistol 3.
- Further details on the incident itself were provided which were a repetition of the earlier stated position of the police.
- Statements of locals and CRPF personnel during investigation were not provided "from a security point of view" and section 9 of the RTI Act [a section which would not be relevant in the instant case as it relates to copyright infringement] was referred to.

The information provided raises questions. First, the position that investigations are ongoing contradicts with the position taken in the High Court that a final report in the case was to be filed. The fact that no property was damaged during the firing on the day of the incident raises questions on the police version of events. It would appear unlikely that no property was damaged. It is also most unfortunate that the statements recorded during investigations are not being provided from a security point of view. These statements could assist in correctly evaluating the case.

Finally, of interest is the medical report of the Medical Officer, Sub-District Hospital Sopore which states that Junaid Khuroo was shot on the "Left side Parietal region". The family of Junaid Khuroo states that he was right-handed. If Junaid Khuroo was right-handed it is highly unlikely that he would have shot himself on the left side of his head. This strongly suggests that the police version of events is wrong and Junaid Khuroo did not commit suicide.

## Case No. **214**

### *Victim Details*

Nazim Rashid Shalla [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Custodial Killing)]  
 Age: 28  
 Son of: Abdur Rashid Shalla [retired police officer]  
 Resident of: Alamdar Mohalla, Sopore, Baramulla District

### *Alleged Perpetrators*

1. Head Constable Janak Raj, Jammu and Kashmir Police
2. Senior Grade Constable Nissar Ahmad Malik, Jammu and Kashmir Police
3. Senior Grade Constable Mohammad Abass Palla, Jammu and Kashmir Police
4. Deputy Superintendent of Police [DSP] Ashiq Hussain Tak, Special Operations Group [SOG], Jammu and Kashmir Police
5. Superintendent of Police [SP] Altaf Ahmad Khan, Jammu and Kashmir Police

### *Case Information*

On 31 July 2011, Nazim Rashid Shalla died in police custody in Sopore, due to torture, following being picked up by a joint group of the SOG and the army.

On 30 July 2011, at about 2:30 pm, a joint party of SOG and army came to the Nazim Rashid Shalla's shop and asked him to accompany them. The army personnel were headed by a Major from the Industrial Estate Camp, Sopore. Subsequently, two hours after Nazim Rashid Shalla had been taken, his father received a phone call from the same Major who informed him that Nazim Rashid Shalla had been found innocent and that the SOG, Sopore took him for further questioning. At 8:00 pm, the father of Nazim Rashid Shalla received a call from the SOG, Sopore, who asked him to talk to Nazim Rashid Shalla. Nazim Rashid Shalla told his father to get certain SIM cards and cell phones from his shop to the SOG Camp at the Town Hall, Sopore. The SOG informed the father of the victim that if he wanted his son alive he would do as he was told. On reaching the agreed location the SOG snatched the cell phones from the father of Nazim Rashid Shalla at the gate and asked him to return home.

At about 9:30 pm the father of the victim received another phone call. Nazim Rashid Shalla told his father that he had been badly tortured and needed medication. The father of Nazim Rashid Shalla went to SOG Camp at about 10:00 pm and managed to enter into the Town Hall Camp. He saw Nazim Rashid Shalla on the floor in the DSP's official chamber. Some SOG personnel were beating him and he was almost in an unconscious state. The father of Nazim Rashid Shalla was then thrown out of the camp. Subsequently, on the next day, the father of Nazim Rashid Shalla heard that the victim had died.

First Information Report [FIR] No. 202 /2011 u/s 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station. A Special Investigating Team was constituted for the investigations. Head Constable Janak Raj, Senior Grade Constable Nissar Ahmad Malik and Senior Grade Constable Mohammad Abass Palla have been arrested. DSP Ashiq Hussain Tak was attached in the case and SP Altaf Ahmad Khan was transferred.

The Government of Jammu and Kashmir appointed a Commission headed by the Deputy Commissioner [DC], Baramulla to enquire into the killing of Nazim Rashid Shalla.

It appears that Nazim Rashid Shalla had been arrested in relation to FIR no. 9/2011 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 filed at the Tarzoo Police Station. The FIR relates to the killing of a person named Mohammad Ashra Dar, son of Ghulam Mohammad Dar.

On 26 January 2012, DSP Ashiq Hussain Tak and SP Altaf Ahmad Khan were awarded gallantry awards. Further, alleged perpetrator Altaf Ahmad Khan has been awarded the Director General of Police's Commendation Medal for 2010, and more recently a Presidents Police Award for Gallantry on 15 August 2012.

Information on both FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further, another RTI was filed with specific questions on the case on 4 August 2011. A copy of FIR no.9/2011 was provided. Further, information was provided by communication dated 3 February 2012 from the Jammu and Kashmir Police. Information was as follows [relevant portions are provided below]:

- Nazim Rashid Shalla was arrested by DSP Operations Sopore on 30 July 2011 at about 2:30 pm and was questioned by the DSP.
- Nazim Rashid Shalla was detained in Police Component, Sopore
- The “home people” of Nazim Rashid Shalla were informed
- Nazim Rashid Shalla was found dead on 31 July 2011 at about 7:00 am
- The Block Medical Officer, Sopore declared Nazim Rashid Shalla dead
- Nazim Rashid Shalla had complained of shoulder pain and also when he was asked for medical treatment he replied that he had already taken medicine which had been prescribed by Dr. Sushil Razdan, Neurologist.
- The post-mortem was conducted by Dr. Zubair and Dr. Shakeel of Sub-District Hospital, Sopore. Mohammad Ahsan Mir, Sub-District Magistrate, Sopore was present.
- Head Constable Janak Raj, Senior Grade Constable Nissar Ahmad Malik and Senior Grade Constable Mohammad Abass Palla had been chargesheeted in FIR no.202/2011.

While three of the alleged perpetrators have been made subject to a court process, no action appears to have been taken by the Jammu and Kashmir Police against DSP Ashiq Hussain Tak and SP Altaf Ahmad Khan. This requires to be investigated. On the contrary, these two alleged perpetrators recently received gallantry awards, a shameful indictment of the processes of justice in Jammu and Kashmir.

## LIST OF ALLEGED PERPETRATORS IN THE REPORT

Total number of alleged perpetrators: 500

### **I. ARMY [235]**

#### **A. Rashtriya Rifles [96]**

1. Captain Atul Sharma [Operational name: Sameer], 22 Rashtriya Rifles, In-charge, Camp Delina
2. Captain Chouhan, 23 Rashtriya Rifles , Camp Ukhral Tehsil, Pogal, Banihal
3. Captain G. Rathee, Adjutant, 7 Para, Rashtriya Rifles
4. Captain Gurjeet Singh Sandal, 29 Rashtriya Rifles, Camp Chekseri, Nipora, Pattan, Baramulla District
5. Captain Kunal Bakshi, 17 Rashtriya Rifles
6. Captain R. Awasthi, 24 Rashtriya Rifles , Camp Magam
7. Captain Rahul, 29 Rashtriya Rifles , Camp Stadium, Baramulla
8. Captain Rajesh Sharma, 29 Rashtriya Rifles , Camp Yadipora, Palhalan, Pattan
9. Captain Raju / Captain Rajee, 19 Rashtriya Rifles , Badami Bagh Cantonment, Srinagar
10. Captain Rambo/ Aijaz Khan [both operational names], 33 Rashtriya Rifles , Camp Doodhipora, Tikri
11. Captain Ravinder Singh Tewatia, Commander, C-Company, 12 Rashtriya Rifles , Camp Upper Gund, Banihal
12. Captain S.S. Chauhan, 2 Rashtriya Rifles, Camp Khanbal
13. Captain Satish S. Kakray, 28 Rashtriya Rifles, Camp Sheeri
14. CHM Mohammad Aslam, 22 Rashtriya Rifles, Camp Heewan, Baramulla
15. Colonel Ajay Saxena, 7 Rashtriya Rifles [subsequently Major General]
16. Colonel Dharmender Gupta, Dy Brigade Commander, 6-Sector, Rashtriya Rifles , Camp Potha, Surankote
17. Colonel Joneja, 49 Rashtriya Rifles
18. Colonel P.S. Gothra, Commanding Officer, 25 Rashtriya Rifles , Camp Draba, Surankote
19. Colonel Rajbeer Singh, 7 Para, Rashtriya Rifles
20. Commandant [Commanding Officer] K. K. Sharma, 1 Rashtriya Rifles, Camp Aishmuqam
21. Commandant [Commanding Officer], 19 Rashtriya Rifles, Camp Manigam, Ganderbal
22. Commandant [Commanding Officer], 47 Rashtriya Rifles
23. Commandant [Commanding Officer], Ganpathy, 35 Rashtriya Rifles, Camp Budgam
24. Company Havaldar Major Omprakash, 1 Rashtriya Rifles
25. Constable Vinod Kumar, 5 Rashtriya Rifles, Doderhama Camp, Ganderbal
26. Havaldar Balakrishna Sohan, 7 Para, Rashtriya Rifles
27. Havaldar Jagdish, 10 Rashtriya Rifles
28. Havaldar Maani Dutta, 17 Rashtriya Rifles
29. Havaldar Rajan, 28 Madras Army / 28 Rashtriya Rifles
30. Junior Commissioned Officer [JCO] Hukum Singh, 17 Rashtriya Rifles
31. Lance Naik Danpath Singh, 28 Rashtriya Rifles, Camp Sheeri
32. Lance Naik Karan Singh, 2 Rashtriya Rifles
33. Lance Naik Pretam Singh, 2 Rashtriya Rifles
34. Lance Naik Vikram Singh, 5 Rashtriya Rifles, Camp Doderhama, Ganderbal
35. Major A.K. Morea, 7 Rashtriya Rifles, Camp Chakidaspora
36. Major Achariya, 22 Rashtriya Rifles, Camp Heewan, Baramulla
37. Major Alok Chakrabarti, Company Commander, 1 Rashtriya Rifles
38. Major Aman Yadav [Operational name: Mushtaq Ahmad], 28 Rashtriya Rifles
39. Major Aman Yadav, 28 Rashtriya Rifles , Camp Shalkote village, Rafiabad
40. Major Amit Saxena, 7 Rashtriya Rifles
41. Major Anil Kumar, 2 Rashtriya Rifles, Camp Khundroo
42. Major Arora, 5 Rashtriya Rifles, Camp Batpora, Manzagam, Hakoora, Anantnag District
43. Major Bakar Singh, 10 Rashtriya Rifles
44. Major Bhattacharya, 28 Rashtriya Rifles
45. Major Bhim Singh, 34 Rashtriya Rifles Camp Beerwah
46. Major Brajendra Pratap Singh, 7 Rashtriya Rifles [subsequently Lt Colonel]
47. Major Chauhan, 41 Rashtriya Rifles
48. Major Chinapa, 22 Rashtriya Rifles , Camp Heewan, Baramulla
49. Major D.K.Sharma, 29 Rashtriya Rifles
50. Major G.K. Bhatila, 30 Rashtriya Rifles, Camp Ghanoh
51. Major Ganpati, 28 Rashtriya Rifles
52. Major Jagtar Singh, 1 Rashtriya Rifles, Camp Aishmuqam
53. Major Jatindara, 29 Rashtriya Rifles, Camp Odoora, Sheeri, Baramulla, and headquartered at Uplana, Singhpora, Baramulla
54. Major Joginder Mohan Yadav [Yadoo], 13 Rashtriya Rifles / 3 Kumaon Regiment
55. Major Khushwa, 2 Rashtriya Rifles, Camp Khundroo
56. Major Kishore Malhotra, 35 Rashtriya Rifles
57. Major Lamba, 29 Rashtriya Rifles, Camp Wussan, Pattan
58. Major Nagori, 17 Rashtriya Rifles
59. Major R.S. Athreye / R.S. Athar Anand, 24 Rashtriya Rifles, Camp Magam

60. Major Rajesh, 10 Rashtriya Rifles
61. Major Rajinder Singh [Operational name: Rajiv], 22 Rashtriya Rifles, Camp Bomai, Sopore, Baramulla District
62. Major Rakesh, 46 Rashtriya Rifles
63. Major Rawat [Operational name: Rasheed Khan], 52 Rashtriya Rifles, Camp Choorra, Potukhah
64. Major S. Bhattacharya, 42 Rashtriya Rifles, Camp Kralpora
65. Major S. Sehgal, Adjutant, 5 Rashtriya Rifles, Camp Doderhama, Ganderbal
66. Major S.S. Grewal, Adjutant, 34 Rashtriya Rifles, Camp Beerwah
67. Major Samlok Dass, 23 Rashtriya Rifles, Camp Ukhral Tehsil, Pogal, Banihal
68. Major Shetty, 24 Rashtriya Rifles, Camp ITI Handwara
69. Major Sourabh Sharma, 7 Rashtriya Rifles
70. Major Sumit Rastogi, 42 Rashtriya Rifles, Camp Newgoali
71. Major Sunil Jadhv, 3 Rashtriya Rifles
72. Major Vijay Char, 18 Rashtriya Rifles
73. Major Vikash Lakhera, 19 Rashtriya Rifles, Badami Bagh Cantonment, Srinagar
74. Major Vikram, 2 Rashtriya Rifles, Camp Zainakote
75. Major Yadav Singh, 28 Rashtriya Rifles, Snalkote Camp
76. Naik Balbir Singh, 7 Para, Rashtriya Rifles
77. Naik Dinesh Singh Rana, 20 Rashtriya Rifles, Camp Kerewa
78. Naik Manoj Singh, 23 Rashtriya Rifles, Camp Ukhral Tehsil, Pogal, Banihal
79. Naik Harbhajan Singh, 1 Rashtriya Rifles, Camp Roads & Building Qtr, Qazigund
80. Rifleman Gurtej Singh / Ct. Gurmeet Singh, 1 Rashtriya Rifles, Camp Roads & Building Qtr, Qazigund
81. Rifleman Mukesh Singh, 36 Rashtriya Rifles, GARH RIF, Camp Larkipur, Anantnag
82. Sepoy Amar Singh, 22 Rashtriya Rifles, Camp Bomai [referred to as Rajinder Post]
83. Sepoy Harvinder Singh, 22 Rashtriya Rifles, Camp Bomai [referred to as Rajinder Post]
84. Sepoy Kamilesh, 22 Rashtriya Rifles, Camp Bomai [referred to as Rajinder Post]
85. Sepoy Mohinder Singh, 23 Rashtriya Rifles, Camp Ukhral Tehsil, Pogal, Banihal
86. Sepoy Pritam, 22 Rashtriya Rifles, Camp Bomai [referred to as Rajinder Post]
87. Sepoy Sandeep Singh, 23 Rashtriya Rifles, Camp Ukhral Tehsil, Pogal, Banihal
88. Sepoy Vinod Kumar, 1 Rashtriya Rifles
89. Subedar Harindran / Harvinder Singh / Harendran Singh, 28 Madras Army / 28 Rashtriya Rifles
90. Subedar Idrees Khan, 7 Rashtriya Rifles
91. Subedar Kalayan Singh, 17 Rashtriya Rifles
92. Subedar Kuldeep Singh, 20 Rashtriya Rifles, Camp Kerewa
93. Subedar Paandurung, 17 Rashtriya Rifles
94. Subedar Rampaul, 23 Rashtriya Rifles, Camp Ukhral Tehsil, Pogal, Banihal
95. Subedar Rattan Singh, 2 Rashtriya Rifles
96. Subedar Surjeet Singh, CHM, 1 Rashtriya Rifles / 3<sup>rd</sup> Sikh Battalion

## **B. Other [139]**

1. 2<sup>nd</sup> Lieutenant N. Vidya Sagar, 125<sup>th</sup> Bn Jammu & Kashmir Light Infantry
2. Abbas Hussain Shah, 161<sup>st</sup> Bn Territorial Army
3. Abdul Hamid Bhat, Army informer
4. Ajaib Urangh, 15<sup>th</sup> Assam Regiment
5. An unnamed Junior Commissioned Officer [JCO], Army
6. Army Captain, In-Charge, Camp Goha
7. B.B. Teing, Army, Badami Bagh Cantonment Area
8. Bashir Ahmad Lone, Army informer
9. Brigadier Kataria, 68<sup>th</sup> Mountain Brigade, Trehgam
10. Brigadier Surjit Singh, 167<sup>th</sup> Field Regiment, Harwan
11. Brigadier V. K. Sharma, Dogra Regiment, Camp Chitarnar, Bandipora District
12. Captain Athal Prashad, 5 Rajputana Rifles, Camp Kralchak, Barnate
13. Captain Badshah Khan, 299<sup>th</sup> Field Regiment
14. Captain Gorpala Singh, 17 Bn Jammu & Kashmir Light Infantry
15. Captain Mohit, 8<sup>th</sup> Bn Jammu & Kashmir Light Infantry, Camp Shahpur, Haveli, Poonch
16. Captain Naresh, NCA 7<sup>th</sup> JAT Regiment
17. Captain Piyara Singh Toor
18. Captain Pushpinder, 15 PBOR [Accounts office], 10 Jammu & Kashmir Rifles
19. Captain Sharma, 22<sup>nd</sup> Battalion Grenadiers
20. Captain T.K. Chopra, 15 PBOR [Accounts office], 10 Jammu & Kashmir Rifles
21. Captain Vineet, 5<sup>th</sup> Sikh Light Infantry
22. Captain Yadav, 2/8 Gorkha Rifl
23. Cdo. Dalbir Singh, Badami Bagh Cantonment Area
24. Chiranjeet Sharma, In-Charge, Army, Camp Mangeta
25. Colonel D.K. Pathania, Commanding Officer, 4 Rajputana Rifles
26. Colonel G.P.S. Gill, Para Punjab, Personal Advisor [PA] to General Officer Commanding, 15 Corps, Srinagar, Lt General Nirbhay Sharma

27. Colonel Gulshan Raj, 2 Field Ordnance Depot
28. Colonel P. K. Saniyal, Commanding Officer, 12 Maratha Light Infantry, Camp Mirgund, Kuligam, Lolab, Kupwara District
29. Colonel Rajan Jamwal, Commanding Officer, 20<sup>th</sup> Punjab Infantry
30. Commandant [Commanding Officer] Mann Singh, 18<sup>th</sup> Dogra Regiment
31. Commandant [Commanding Officer] R. K. Singh, 9 Para-Commandos, Camp Srigufwara, Anantnag
32. Commandant [Commanding Officer] S. K. Malik, 20 Grenadiers, Camp Boat Colony, Bemina, Srinagar
33. Commandant [Commanding Officer] S. Raman Thakur [also referred as "Thakar"], 2<sup>nd</sup> Battalion Garhwal Rifles / 121<sup>st</sup> Battalion Garhwal Rifles / 121<sup>st</sup> Battalion Territorial Army [all three units are referred to in the documentation], Sharifabad Camp
34. Commandant [Commanding Officer], 322 Air Defence Artillery
35. Commandant [Commanding Officer], 8<sup>th</sup> Bn Jammu & Kashmir Light Infantry, Camp Saklot Block, Mandi
36. Commandant Sharma [Commanding Officer], Nachlana, Headquarters
37. D. N. Gupta, 5<sup>th</sup> Sikh Light Infantry
38. Dr. Sumon Singh, 103<sup>rd</sup> Bn Territorial Army
39. Gunner Bali Ram
40. Gunner Ganishyam
41. Harvinder Singh, Army
42. Havaldar Balbir Singh, 103<sup>rd</sup> Bn Territorial Army
43. Havaldar Bir Singh, 4 Rajputana Rifles
44. Havaldar Hamanta Bordoloi, 119<sup>th</sup> Infantry Bn [Territorial Army], Assam Regiment, Camp Soitang
45. Havaldar Harminder Singh / Harjinder Singh, 31 Counter Intelligence Unit
46. Havaldar J.M. Khan / G.M. Khan, 31 Counter Intelligence Unit
47. Havaldar Jagdesh, 5 Rajputana Rifles
48. Havaldar Madan Singh, 5 Rajputana Rifles
49. Havaldar Naba Ch. Sinha, 119<sup>th</sup> Infantry Bn [Territorial Army], Assam Regiment, Camp Soitang
50. Havaldar Prithvi, NCA 7<sup>th</sup> JAT Regiment
51. Havaldar Ram Niwas, NCA 7<sup>th</sup> JAT Regiment
52. Javaid Ahmad Reshi, Army informer
53. Lance Naik Bikram Singh, Badami Bagh Cantonment
54. Lance Naik Ghan Shyam, Army, Badami Bagh Cantonment Area
55. Lance Naik Pardeep Kumar, NCA 7<sup>th</sup> JAT Regiment
56. Lance Naik Romesh Singh, 119<sup>th</sup> Infantry Bn [Territorial Army], Assam Regiment, Camp Soitang
57. Lance Naik Roshan Kumar, NCA 7<sup>th</sup> JAT Regiment
58. Lieutenant Deepak Mohania, 9 Rajputana Rifles
59. Lieutenant Kehar Singh, 8 JAT Regiment
60. Lieutenant Verma, 119<sup>th</sup> Infantry Bn [Territorial Army], Assam Regiment, Camp Soitang
61. Lt Colonel M.M. Singh, 17 Jammu & Kashmir Rifles
62. Major A. K. Abbot, 4<sup>th</sup> Sikh Regiment
63. Major Abhay Tiwari, 197<sup>th</sup> Field Regiment, [Retired as per information provided in 2009]
64. Major Agarwal, 14 Rajputana Rifles, Camp Panzgam, Kupwara
65. Major Ashok Kumar, 17 Jammu & Kashmir Light Infantry, Camp Watergam
66. Major Avtar Singh, 103<sup>rd</sup> Battalion Territorial Army
67. Major Depankar Sahai
68. Major Devinder Paul Singh [Operational name: Tiger], 15 Punjab Regiment, Camp Filtration Plant, Bagh-e-Islam
69. Major Dharamandra Singh, 10 Bihar Regiment
70. Major G.L. Yadav, 2 Field Ordnance Depot
71. Major General Verma
72. Major Goora, 9 Para, Camp Bafliaz
73. Major Guraljit Singh, 17 Jammu & Kashmir Light Infantry In-charge, Camp Chatoosa
74. Major H.P. Singh, 167<sup>th</sup> Field Regiment, Harwan
75. Major Hardeep Johar, 8 JAT Regiment
76. Major K. Bhattachariya, 59<sup>th</sup> Field Regiment, Camp Batapora, Tangmarg
77. Major Maurya, 4 Rajputana Rifles
78. Major Multani Veer Singh, 14<sup>th</sup> Dogra, Headquarters, Langate
79. Major Nayar [Operational name: Sunder Ram Wakate], 20 Grenadiers, Camp Russu
80. Major Nayar, 20 Grenadiers, Beerwah, Budgam
81. Major P.K. Singh, 197<sup>th</sup> Field Regiment [Lt Colonel as of 2009]
82. Major P.S. Patil, Second in Command, 10 Jammu & Kashmir Light Infantry, Camp Dairy Farm
83. Major Parera, 3 Kumaon Rifles
84. Major Parkash, Mahar Regiment, Camp Satwara
85. Major R. D. Singh, Dogra Regiment, Camp Chitarnar, Bandipora District
86. Major R. P. Singh, Dogra Regiment, Camp Chitarnar, Bandipora District
87. Major Raghwan R. Singh, Commanding Officer, 5 Kumaon, Camp Nagam
88. Major Ranjan Mahahan, 5<sup>th</sup> Sikh Light Infantry
89. Major S. A. Bakali [reportedly dead], 12 Maratha Light Infantry Camp Mirgund, Kuligam, Lolab, Kupwara District
90. Major S. S. Sinha [Operational name: Liyakat Ali Khan], 8 Rajputana Rifles, Camp Palhalan, Pattan, Baramulla District
91. Major Samir Singh [Operational name: Major Malik], 8 Rajputana Rifles, Camp Kreeri
92. Major Sehgal, 15<sup>th</sup> Punjab Regiment, Camp Dangiwachha

93. Major Sharma, 9<sup>th</sup> Rajputana Rifles, Camp Choolan
94. Major Srivastava, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Camp Soitang
95. Major Thapa, 3<sup>rd</sup> Sikh Regiment, Camp Boniyar
96. Major Upinder, 4 Rajputana Rifles
97. Major V. P. Yadav, 2/8 Gorkha Rifles, Camp Chogul, Handwara, Kupwara
98. Major Vishal Sharma, 18 Grenadiers, Camp Chak Hajin
99. Major Vishu Jeet Singh / Major Vishwajeet Singh, 20 Grenadiers, Camp Boat Colony, Bemina, Srinagar
100. Major Yadav Prashad, 197<sup>th</sup> Battalion [Territorial Army], Camp Zakoora / Ganderbal
101. Milkha Singh, Junior Commissioned Officer [JCO], 322 Air Defence Artillery
102. Mohammad Sharif, son of Atta Mohammad, resident of Sathra, Mandi, 8<sup>th</sup> Battalion Jammu & Kashmir Light Infantry, Camp Saklot Block, Mandi
103. Mohammad Yousuf Akhoon, Army informer
104. Muneer Hussain, son of Atta Mohammad, resident of Jandrola, Mandi, 8<sup>th</sup> Battalion Jammu & Kashmir Light Infantry, Camp Saklot Block, Mandi
105. Muneer Hussain, son of Habib, resident of Jandrola, 8<sup>th</sup> Battalion Jammu & Kashmir Light Infantry, Camp Saklot Block, Mandi
106. Mushtaq Ahmad Ganaie, Informer, 22<sup>nd</sup> Battalion, Grenadiers
107. Mushtaq Ahmed Paul, CAT [Informer for the Army], Camp Dharmuna
108. Naib Subedar Dalu Ram, 5 Rajputana Rifles
109. Naib Subedar Laxman Singh, 3 Grenadiers, Camp Zurhama
110. Naib Subedar Nazahar Mohammad, 20 Grenadiers, Camp Boat Colony, Bemina, Srinagar
111. Naik Tara Datt G/C, Badami Bagh Cantonment Area
112. Naik A.A. Parma, 19 Maratha Light Infantry
113. Post Commandant Nikhil Tiwari, 3 Grenadiers, Camp Zurhama
114. Rajpaul Singh, 6<sup>th</sup> Para
115. S.M.Romesh Chand, 8<sup>th</sup> Battalion Jammu & Kashmir Light Infantry, Camp Saklot Block, Mandi
116. Sanjay Kumar, Badami Bagh Cantonment Area
117. Sepoy Ashok Choudary, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Camp Soitang
118. Sepoy Bijoy Sinha, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Soitang Camp
119. Sepoy Chandra Bhan, 4 Rajputana Rifles, Army
120. Sepoy David Lalthanmawia, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
121. Sepoy Master Veer, NCA 7<sup>th</sup> JAT Regiment
122. Sepoy Nagendra Singh, 4 Rajputana Rifles
123. Sepoy Narendra Singh, 4 Rajputana Rifles
124. Sepoy Rajinder Kumar, NCA 7<sup>th</sup> JAT Regiment
125. Sepoy S.U. Borbhuiya, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Camp Soitang
126. Sepoy Surinder Singh, 31 Counter Intelligence Unit, Army
127. Sepoy Zakir Hussain, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Camp Soitang
128. Sikh Officer, 2 Grenadiers, Army, Camp Malasia, Batamaloo
129. Subedar Balraj, 8<sup>th</sup> Battalion Jammu & Kashmir Light Infantry, Camp Saklot Block, Mandi / Shahpur Camp, Haveli, Poonch
130. Subedar Charan Dass Singh, 17 Jammu & Kashmir Light Infantry
131. Subedar Gurmail Singh, 4<sup>th</sup> Sikh Regiment
132. Subedar Gurnam Singh [Operational name: Tiger], 15<sup>th</sup> Punjab, Camp Baramulla
133. Subedar Major Harbans Singh, 20<sup>th</sup> Punjab
134. Subedar Satbir Singh, 4 Rajputana Rifles
135. Subedar Surinder Sinha, 119<sup>th</sup> Infantry Battalion [Territorial Army], Assam Regiment, Camp Soitang
136. Subedar U.S. Thappa, 31 Counter Intelligence Unit
137. Sukhdev Singh, 6<sup>th</sup> Para
138. V. K. Mishra, MT Unit, Army
139. V. R. Godekar, 59<sup>th</sup> Field Regiment, Camp Batapora, Tangmarg

## **II. PARAMILITARY [123]**

### **A. Border Security Force [BSF] [70]**

1. Additional Director General K.K. Verma, In-charge Fair View Guest House / Papa-II Interrogation Centre, BSF Srinagar
2. Assistant Commandant J. N. Singh, 163<sup>rd</sup> Battalion BSF, Camp Kant Bagh, Baramulla District
3. Assistant Commandant Jai Singh [Operational name: Jameel Khan], 151<sup>st</sup> Battalion BSF, Camp Tral
4. Assistant Commandant Kaanjoo Singh, 193<sup>rd</sup> Battalion BSF
5. Azad Ahmad Mir, son of Mohammad Sultan Mir, [Operational name: Asgar], Informer
6. Birendra Kumar Jha, 108<sup>th</sup> Battalion BSF [presently 11<sup>th</sup> Battalion BSF]
7. Captain [Assistant Commandant] Madan Lal, 4<sup>th</sup> Battalion BSF
8. Commandant Dinesh Kotwal, 41<sup>st</sup> Battalion BSF, Camp Karan Nagar
9. Commandant G. S. Shekawat, 4<sup>th</sup> Battalion BSF
10. Commandant K.C.Sharma, 75<sup>th</sup> Battalion BSF
11. Commandant Kripal Singh, BSF, Camp Zangam
12. Commandant Randeer Kumar Birdi, 68<sup>th</sup> Battalion BSF
13. Commandant Sethi, 69<sup>th</sup> Battalion BSF

14. Commandant Sharma, 24<sup>th</sup> Battalion BSF, Camp Wodoora, Sopore
15. Commandant Subhash Chandra Sharma [Operational name: Peter], 7<sup>th</sup> Battalion BSF
16. Commandant, 9<sup>th</sup> Battalion BSF, Camp Mamta Hotel
17. Constable Bhoop Singh, 74<sup>th</sup> Battalion BSF
18. Constable Gorakhnath Gwali, 88<sup>th</sup> Battalion BSF, Camp Iqbal Market, Sopore, Baramulla District
19. Constable H. B. Jayrama, 74<sup>th</sup> Battalion BSF
20. Constable Kulwant Singh, 74<sup>th</sup> Battalion BSF
21. Constable Labhour Singh, 107<sup>th</sup> Battalion BSF, Camp Hawal
22. Constable Lakhwinder Kumar, 68<sup>th</sup> Battalion BSF
23. Constable Prem Singh, 74<sup>th</sup> Battalion BSF
24. Constable R.C. Marmoo, 58<sup>th</sup> Battalion BSF, Camp Dahwauth, Pahalgam
25. Constable Ram Naresh, E Company, 124<sup>th</sup> Battalion / attached to 173<sup>rd</sup> Battalion BSF, Camp Batagund Dambal, Tral
26. Constable Ravi Kumar, 74<sup>th</sup> Battalion BSF
27. Constable Satisan T.R., 74<sup>th</sup> Battalion BSF
28. Constable Shiv Murtiappa, 74<sup>th</sup> Battalion BSF
29. Deputy Commandant D.S. Rathore, 30<sup>th</sup> Battalion BSF
30. Deputy Commandant J. K. Rodala, 74<sup>th</sup> Battalion BSF
31. Deputy Commandant M. C. Halder, 163<sup>rd</sup> Battalion BSF, Camp Kant Bagh, Baramulla
32. Deputy Commandant Rowhat, 75<sup>th</sup> Battalion BSF
33. Deputy Commandant Sanyal Singh, 4<sup>th</sup> Battalion BSF
34. Deputy Commandant Sardar Rai Singh, 41<sup>st</sup> Battalion BSF, Camp Karan Nagar
35. Deputy Inspector General [DIG] A.K. Malik, 194<sup>th</sup> Battalion BSF
36. Deputy Superintendent of Police Mohinder Singh, 33<sup>rd</sup> Battalion BSF, Camp Madder
37. Deputy Superintendent of Police Surinder Singh, 104<sup>th</sup> Battalion BSF, Camp Iqbalabad
38. Guard Commander N.K. Raina, 107<sup>th</sup> Battalion BSF, Camp Hawal
39. Havaldar Kasturi Lal, 33<sup>rd</sup> Battalion BSF, Camp Madder
40. Havaldar Krishnan Kumar, 58<sup>th</sup> Battalion BSF, Camp Dahwauth, Pahalgam
41. Havaldar Nathula, 58<sup>th</sup> Battalion BSF, Camp Dahwauth, Pahalgam
42. Head Constable Kartar Chand Raina, 30<sup>th</sup> Battalion BSF
43. Head Constable Ramesh Lal, 140<sup>th</sup> Battalion BSF
44. Head Constable Shoni Lal, 30<sup>th</sup> Battalion BSF
45. Inspector B.D. Gupta, 66<sup>th</sup> Battalion BSF, Camped at Trehgam
46. Inspector J.S. Bhan, 141<sup>st</sup> Battalion BSF
47. Inspector Jain, 69<sup>th</sup> Battalion BSF
48. Inspector K.K. Verma, BSF Headquarters, Srinagar
49. Inspector Manjit Singh, 124<sup>th</sup> Battalion BSF, D Company, Tral, Pulwama
50. Inspector Prem Nath Dogra, 102<sup>nd</sup> Battalion BSF
51. Inspector Raas Behari Dutta, Duty Sectional Officer, Fair View Guest House / Papa-II Interrogation Centre, BSF, Srinagar
52. Kuldeep Singh, 69<sup>th</sup> Battalion BSF, Camp Naydyar
53. Lance Naik K. Singh, 74<sup>th</sup> Battalion BSF
54. Lance Naik K.P.Gopa, 141<sup>st</sup> Battalion BSF
55. Major [Deputy Commandant] Chawan, 102<sup>nd</sup> Battalion, BSF
56. Major [Deputy Commandant] Chuhan, 141<sup>st</sup> Battalion BSF, Camp Batamaloo bus stand
57. Naik Khairul Hussain, 74<sup>th</sup> Battalion BSF
58. Naik Nand Kishore, 74<sup>th</sup> Battalion BSF
59. Officer, Liason Agency, 82<sup>nd</sup> Battalion BSF, Surankote
60. R. S. Khoswa, Head, General Staff, 41<sup>st</sup> Battalion BSF, Camp Karan Nagar
61. Sanjay Sharma, 141<sup>st</sup> Battalion BSF
62. Sub-Inspector Ajmer Singh, 60<sup>th</sup> Battalion BSF, Nallamar road
63. Sub-Inspector B.I. Singh or B. K. Singh [reportedly deceased], 107<sup>th</sup> Battalion, BSF
64. Sub-Inspector Bawani Singh / Bhagwan Singh, 124<sup>th</sup> Battalion BSF, Camp Batagund Dambal, Tral
65. Sub-Inspector Hanuman Singh, 66<sup>th</sup> Battalion BSF, Camped at Trehgam
66. Sub-Inspector Malhar Singh, 74<sup>th</sup> Battalion BSF
67. Sub-Inspector Toran Biswas, 141<sup>st</sup> Battalion BSF
68. Sub-Inspector Vinod Kumar, 30<sup>th</sup> Battalion BSF, Camp Near Neelam Cinema, Srinagar
69. Suraj Singh / Surjit Singh [Operational name: Jagjit Singh], 66<sup>th</sup> Battalion BSF, Trehgam
70. Vinod Kumar, BSF

**B. Central Reserve Police Force [CRPF] [34]**

1. Additional Director General [ADG] K.K.Verma, In-charge Hariniwas Interrogation Centre, Srinagar, CRPF
2. Assistant Commandant Pandey, 46<sup>th</sup> Battalion CRPF
3. Assistant Commandant S.P. Chaturvedi, 181<sup>st</sup> Battalion, CRPF
4. Assistant Sub-Inspector [ASI] Ram Chandre [Operational name: Chaha], 50<sup>th</sup> Battalion CRPF, Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
5. Captain [Assistant Commandant] Brij Bhushan, 120<sup>th</sup> Battalion CRPF
6. Commandant Kripal Singh, 50<sup>th</sup> Battalion, CRPF, Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District

7. Commandant, 46<sup>th</sup> Battalion CRPF, Camp Matches Factory, Baramulla
8. Constable Abhilagh Singh, 181<sup>st</sup> Battalion CRPF
9. Constable Anil Ramachari, 179<sup>th</sup> Battalion CRPF, Camp Chinkipora
10. Constable G. Ram Naik Lal, 2<sup>nd</sup> Battalion CRPF, D Company
11. Constable Gabbar Singh, 50<sup>th</sup> Battalion, CRPF, Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
12. Constable P.C. Hundique, CRPF
13. Constable S.T. Kurian, CRPF
14. Constable S.V. Limbekar [Operational name: Venkati], CRPF
15. Constable Samiullah Pandit, 181<sup>st</sup> Battalion CRPF
16. Constable Shyam Kumar, CRPF
17. Deputy Commandant B.R. Singh, 120<sup>th</sup> Battalion CRPF
18. Deputy Commandant, 78<sup>th</sup> Battalion CRPF
19. Deputy Commandant's Personal Security Officers [PSO], 78<sup>th</sup> Battalion CRPF
20. Deputy Inspector General [DIG] Jaswant Singh, CRPF
21. Deputy Superintendent of Police [DSP] Lakha Singh, 50<sup>th</sup> Battalion, CRPF, Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
22. Deputy Superintendent of Police [DSP] Manmohan Sharma [Operational name: Moni Singh], 50<sup>th</sup> Battalion, CRPF, Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
23. Deputy Superintendent of Police [DSP] Negi [also referred to as "Nagee" or "Naygi"], 50<sup>th</sup> Battalion CRPF, Camp Wannagam, Bandipora
24. Head Constable Isher Dass, 120<sup>th</sup> Battalion CRPF
25. Head Constable Raghbir Singh, 120<sup>th</sup> Battalion CRPF
26. Inspector Sudershan Sood [also referred to before the State Human Rights Commission (SHRC) as Sudershan Kumar], 90<sup>th</sup> Battalion CRPF
27. Kripal Singh, 50<sup>th</sup> Battalion CRPF, Camp Zangam, Pattan
28. Lance Naik A.A.Khan, CRPF
29. Lance Naik Kuldeep Singh, 120<sup>th</sup> Battalion CRPF
30. Manzoor Bhat, 181<sup>st</sup> Battalion CRPF
31. Sub-Inspector Badloo Ram, 179<sup>th</sup> Battalion CRPF
32. Sub-Inspector Bhagwan Das, 120<sup>th</sup> Battalion CRPF
33. Sub-Inspector Devi Dutt, 53<sup>rd</sup> Battalion CRPF
34. Sub-Inspector R.P. Roy, Commander, CRPF

### **C. Other [19]**

1. 2<sup>nd</sup> In-command [2 I/C] R.S. Raina, 10<sup>th</sup> Battalion ITBP, Camp Verinag
2. Captain [Assistant Commandant] Dinesh Sharma, National Security Guard [Subsequently promoted as Major (Deputy Commandant)]
3. Captain [Assistant Commandant] S.C. Katoch, National Security Guard [Subsequently promoted as (Deputy Commandant)]
4. Commandant Inder Singh Negi, 10<sup>th</sup> Battalion ITBP, Camp Verinag
5. Constable Fareed Khan, 1<sup>st</sup> Battalion IRP
6. Doctor P.S. Gunjijal, Medical officer [also spelt on occasion as "P.S. Gungial", "Ganjal"], 10<sup>th</sup> Battalion ITBP, Camp Verinag
7. Head Constable Ajit Kumar, 10<sup>th</sup> Battalion ITBP, Camp Verinag
8. Head Constable Arun Kumar, 10<sup>th</sup> Battalion ITBP
9. Head Constable Hukum Singh, 10<sup>th</sup> Battalion ITBP, Camp Verinag
10. Head Constable Rajesh Kumar, 10<sup>th</sup> Battalion ITBP
11. Inspector Mamchand Dogra, Assistant Central Intelligence Officer, Intelligence Bureau [IB], Ministry of Home Affairs [MHA], Chowkibal
12. Inspector Rajinder Singh [also spelt on occasion as "Ragender Singh"], 10<sup>th</sup> Battalion ITBP, Camp Verinag
13. Junior Commissioned Officer [JCO] Mishra, 10<sup>th</sup> Battalion ITBP, Camp Verinag
14. Junior Commissioned Officer [JCO] R.S. Chauhan [also spelt on occasion as "R.S.Chowan"], 10<sup>th</sup> Battalion ITBP, Camp Verinag
15. Major [Deputy Commandant] S. N. Gupta, National Security Guards [NSG]
16. Rana, Intelligence Officer
17. Sub-Inspector Pratap Singh [reportedly dead], 10<sup>th</sup> Battalion ITBP, Camp Verinag
18. Sub-Inspector Ram Pratap, 10<sup>th</sup> Battalion ITBP, Camp Verinag
19. Sunil Joshi [INT Wing], 10<sup>th</sup> Battalion ITBP, Camp Verinag

### **III. JAMMU AND KASHMIR POLICE [111]**

1. Abdul Ahad Sheikh [Operational name: Chottu], Special Operations Group, Sopore
2. Abdul Rashid Khan [Operational name: Rashid Billa], Station House Officer, Soura Police Station [later promoted as Sub-Divisional Police Officer, Soura]
3. Abdul Sattar, associate of SPO Mohammad Ashraf
4. Additional Superintendent of Police Sevak Singh, Poonch
5. Additional Superintendent of Police Shafkat Ali Watali, Ramban
6. Ashiq Hussein, Special Police Officer
7. Assistant Sub-Inspector Abdul Khaliq
8. Assistant Sub-Inspector Ashok Kumar, Special Operations Group



9. Assistant Sub-Inspector Bashir Ahmad
10. Assistant Sub-Inspector Farooq Ahmad Gudoo, In-charge Special Operations Group, Sumbal Camp
11. Assistant Sub-Inspector Mohammad Rafiq Chachoo
12. Assistant Sub-Inspector Mumtaz Hussain, In-charge Police Post Pul Doda
13. Ayoub Rather, Station House Officer
14. Bansi Lal, Personal Security Officer of DSP Bahadur Ram Kaith
15. Bharat Bhushan, Special Police Officer
16. Bunt Singh, Special Operations Group, Humhama Camp, Budgam District
17. Constable Abdul Rashid Sofi, Acting Munshi, Ganderbal Police Station
18. Constable Abdul Rashid Trali [reportedly deceased], Special Operations Group
19. Constable Ajaz-ud-Din Sheikh
20. Constable Bashir Ahmad, Pampore Police Station
21. Constable Ghulam Nabi
22. Constable Haleema, Handwara Police Station,
23. Constable Jarnail Singh, Special Operations Group, Magam
24. Constable Mohammad Ashraf
25. Constable Mohammad Rafiq
26. Constable Mohammad Razak
27. Constable Mushtaq Ahmad Lone
28. Constable Nissar Ahmed Lone, Saddar Police Station
29. Constable Parveena, Handwara Police Station [currently working in Criminal Investigations Department]
30. Constable Riyaz Ahmad, Pampore Police Station
31. Constable Sartaj Ahmed
32. Constable Tariq Ahmad Chadro [operational name: Mushtaq], Special Operations Group
33. Constable Zakir Hussain Khan,
34. Davinder Singh, Special Operations Group [SOG] Humhama Camp, Budgam District
35. Dy Inspector General [DIG], Kuldeep Khoda, Udhampur-Doda Range [as of 31 May 2012 ex-Director General of Police [DGP], Jammu and Kashmir]
36. Dy Superintendent of Police Abdul Rehman,
37. Dy Superintendent of Police Ashiq Hussain Tak, Special Operations Group
38. Dy Superintendent of Police Bahadur Ram Kaith, Special Operations Group
39. Dy Superintendent of Police Ghansham, Special Operations Group
40. Dy Superintendent of Police P.N.Shan, Special Operations Group
41. Dy Superintendent of Police S.M. Sahai, Uri [presently Inspector General of Police, Kashmir]
42. Dy Superintendent of Police Sonallah Naik [then Station House Officer, Ramban Police Station]
43. Fareed [reportedly killed]
44. Farooq Ahmad Padder, Source for Senior Superintendent of Police Hans Raj Parihar
45. Farooq Ahmad Padder, Station House Officer
46. Farooq Khan, Senior Superintendent of Police [presently Dy Inspector General]
47. Gazanfar Ali [Operational name: Chulbul Pandey], Station House Officer, Sopore Police Station
48. Ghulam Rasool, Station House Officer, S. R. Gunj Police Station
49. Gyan Singh, Investigating Officer, Rajouri Police Station
50. Haq, Station House Officer, Parimpora Police Station
51. Head Constable Janak Raj
52. Head Constable Krishan Kumar, Special Operations Group
53. Head Constable Ratan Chand, Jammu & Kashmir Armed Police
54. Imtiyaz, Station House Officer [SHO],
55. In-charge, Special Operations Group, Magam, Beerwah, Budgam District, Camp Outside Beerwah Police Station
56. Inspector Abdul Majeed Malik, Station House Officer, Soura Police Station,
57. Inspector Khursheed Ahmed Wani, Special Operations Group, Cargo Camp, Shergari
58. Inspector Narendra Singh Peshar, Jammu & Kashmir Armed Police
59. Inspector Pritam Singh, Head of Special Operations Group, Lethpora Camp
60. J.P. Singh, Superintendent of Police Poonch [presently Dy Inspector General, Jammu Range]
61. Mansoor Ahmad, Munshi at Pampore Police Station,
62. Manzoor Ahmad Malik, Special Operations Group, Camp Sumbal
63. Manzoor Ahmad, Special Police Officer
64. Maqsood Ahmad Khan, Havaldar Grade, Surankote Police Station
65. Mohammad Akbar Malik, Havaldar Grade, Surankote Police Station
66. Mohammad Akram, Special Police Officer
67. Mohammad Amin Bhat, Superintendent of Police Anantnag in June 1995 [reportedly died subsequently]
68. Mohammad Ashraf, Special Police Officer and Village Defence Committee Commander
69. Mohammad Rafiq Gujjar [Operational name: Pathan], Surankote, Special Police Officer, Police line Poonch,
70. Mohammad Shafi, Special Operations Group, Sopore
71. Mohammad Younis [Operational name: Tiger], Special Police Officer, Surankote Police Station
72. Mohammad Younis, Special Operations Group, Gungbaug
73. Muhammad Ashraf Malik, Special Police Officer
74. Muhammad Rafiq, Special Police Officer

75. Munawar Singh, Special Operations Group, Humhama Camp, Budgam District
76. Nazir Ahmad, Driver
77. Nissar Ahmad, Selection Grade Constable
78. Officer R.P Singh, Special Operations Group, Harwan
79. Personal Security Officers accompanying Mushtaq Ahmad Mir, Member, Congress party
80. Qamar-ud-Din, Station House Officer Kupwara Police Station
81. Rouf, Station House Officer, Mattan Police Station
82. S. M. Jingral [also referred to as S.M. Jindral or Gindral on occasion], Station House Officer, Pampore Police Station
83. Sabzar Ahmad, Qamarwari Police Post
84. Sanjay Kumar [Operational name: Mohammad Saleem], Special Police Officer
85. Selection Grade Constable Chaman Lal, Special Operations Group
86. Selection Grade Constable Gansham, Special Operations Group, Lethpora Camp
87. Selection Grade Constable Mohammad Shafi Mufti
88. Senior Grade Constable Mohammad Abass Palla
89. Senior Grade Constable Nissar Ahmad Malik
90. Senior Superintendent of Police Hans Raj Parihar, Ganderbal,
91. Shailender Singh [Operational name: Razaq], Special Police Officer
92. Showkat Ali Malik, Station House Officer, Rajouri Police Station
93. Sub-Inspector Abdul Rashid, Pampore Police Station
94. Sub-Inspector Ashiq Hussain, Pampore Police Station
95. Sub-Inspector Farooq Ahmad
96. Sub-Inspector Feroz Ahmad
97. Sub-Inspector Manzoor Ahmad, Pampore Police Station
98. Sub-Inspector Mohammad Amin, Special Operations Group, Lethpora Camp, Awantipora, Pulwama District
99. Sub-Inspector Zahoor Ahmad
100. Superintendent of Police Altaf Ahmad Khan
101. Superintendent of Police Anand Jain, Srinagar [presently Senior Superintendent of Police (SSP), Baramulla]
102. Superintendent of Police Criminal Investigation Department/Counter Insurgency Kashmir [CID/CIK], Srinagar
103. Tanveer Ahmad [Operational name: Kaka Mir], Special Operations Group
104. Tanvir Jeelani, Sub-District Police Officer, Nowhatta Police Station
105. Tariq Ahmad Guroo, Special Police Officer [Deceased]
106. Tariq Hussain, associate of SPO Mohammad Ashraf
107. Tariq, Duty Officer, S.R.Gunj Police Station
108. Tasaduk Hussain
109. Urash Paul, Special Police Officer
110. Waris Shah, In-Charge, Special Operations Group, Pakharpora Camp
111. Zaheer Abass Choudhary, Special Operations Group, Camp Sumbal

#### **IV. GOVERNMENT BACKED MILITANTS / ASSOCIATES [31]**

1. Ajaz Ahmad, brother of Hilal Ahmad Sheikh, Civilian
2. Ashraf Ali Beig, son of Ghulam Rubani, Government backed militant [Ikhwan]
3. Ayoub Wagay [also referred to as Ayoub Khan], son of Samad Wagay, Government backed militant [Ikhwan]
4. Aziz Rather, Government backed militant [Ikhwan]
5. Constable Mohammad Yousuf, resident of Sachan Ang [Unit not ascertained]
6. Fayaz Ahmad Dar [Operational name: Jambu], son of Rehman Dar, Government backed militant [Ikhwan]
7. Ghulam Hamdum Beigh, son of Ghulam Rubani, Government backed militant [Ikhwan]
8. Ghulam Hassan Wagay, son of Mohammad Wagay [reportedly killed subsequently by militants], Government backed militant [Ikhwan]
9. Ghulam Mohammad Kaloo [Operational names: Ghulam Mohammad Sheikh / Mama Ikhwani], Government backed militant [Ikhwan]
10. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo, Government backed militant [Ikhwan]
11. Ghulam Mohammed Mir [Operational name: Muma Kanna], Government backed militant [Ikhwan]
12. Hilal Ahmad alias Sahaba, Civilian
13. Hilal Ahmad Sheikh, resident of Madina Colony, Bemina, Civilian
14. Irshad Ahmad Sofi, Civilian
15. Khati, spouse of Mohammad Yaseen Sofi, Civilian
16. Manzoor Ahmad Mir, Government backed militant [Ikhwan]
17. Mohammad Amin Sheikh [Operational name: Manzoor], son of Habibullah, Government backed militant [Ikhwan]
18. Mohammad Ashraf Khan [Operational names: Umar / Bhai Jan], son of Habibullah Khan, Government backed militant [Ikhwan]
19. Mohammad Sultan Mir [Operational name: Sula Buchpuri], Government backed militant [Ikhwan]
20. Mohammad Yaseen Sofi, Civilian
21. Mohammad Yousuf Mir, Government backed militant [Ikhwan]
22. Muhammad Ashraf Wani [Operational name: Asif], resident of Budgam [presently in Territorial Army], Government backed militant [Ikhwan]
23. Muhammad Bashir [Unit not ascertained]
24. Nazir Ahmad Wani, Civilian
25. Nisar Ahmad Dar, resident of Khudwani [presently in Territorial Army], Government backed militant [Ikhwan]

26. Parvez Ahmad Querishi [Operational name: Shahbaz], son of Aftab Ahmad, Government backed militant [Ikhwan]
27. Rashid Billa, Government backed militant [Ikhwan] and Commander, Ikhwan
28. Shakeel Ahmad, [Operational name: Tiger], resident of Poniwah, Kulgam [presently in Territorial Army], Government backed militant [Ikhwan]
29. Showkat Ahmad Mir, brother in law of Hilal Ahmad Sheikh, Inspector, Vigilance Department
30. Sikandar Ganai, Government backed militant [Ikhwan]
31. Zahoor Ahmad Wagay, son of Sonauallah Wagay, Government backed militant [Ikhwan]

## **CONCLUSION**

The cases discussed in this report clearly illustrate the deep and pervasive impunity for the armed forces and the police in Jammu and Kashmir.

The focus has been on specific alleged perpetrators, through the analysis of documents on record, corroborated and substantiated by information from the victims and/or their families. The documents have been essentially official State documents, and the purpose of this exercise is to understand the allegations against the perpetrators made not just by the victims and their families, but also by the State itself. Most importantly, by focusing on particular narratives that emerged from information available with the IPTK, it was hoped that not only would specific liability be fixed, but patterns might emerge that engender a greater understanding of the nature of human rights violations in Jammu and Kashmir. While the report draws conclusions from a collection of 214 cases, the IPTK is mindful of the numerous undocumented cases in Jammu and Kashmir.

For the 63 cases in Chapter I, and some of the cases in Chapter II, it is clear that the documents on record strongly indict a number of alleged perpetrators. Strikingly, the documents in possession of the State itself indict the armed forces and police by providing reasonable, strong and convincing evidence on the role of the alleged perpetrators in specific crimes. But, it is important to note that the IPTK does not believe that the entirety of the crime, including the role of alleged perpetrators, is captured in any of the cases analyzed. Drawing from principles of command responsibility<sup>358</sup> and joint criminal enterprise<sup>359</sup> under international criminal law, it is clear that only further non-partisan investigations would bring to light the entirety of criminality and culpability for each of the crimes analyzed in this report.

It is astonishing that despite available documents that indict the alleged perpetrators, the response of the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Indian State has been woefully inadequate. From no sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] granted for the armed forces, to limited prosecutions of the Jammu and Kashmir Police and civilian associates of the armed forces, the Indian State and its functionaries appear to have played a direct role in the commission of crimes and subsequent cover ups.

Through this report, the IPTK invites attention to various themes, patterns and points of interest that must be considered in the ongoing struggle against human rights violations and impunity in Jammu and Kashmir.

### **Widespread, Systematic and Systemic Criminality**

The list of alleged perpetrators, their ranks, units and area of operations strongly suggests that the crimes listed within this report occurred across Jammu and Kashmir, across the various armed forces and police, and at various levels of the hierarchy of each of these armed forces and police.

The Indian State narrative of human rights violations as being mere aberrations is not substantiated on consideration of the cases discussed in this report. Crimes in Jammu and Kashmir have not been committed despite the Indian State but because of it. The structures of the Indian State, including the Government of Jammu and Kashmir, must be accused of not just standing by while human rights violations have taken place, but they carry a far higher culpability. They must be accused of willfully putting in place structures specifically meant to carry out these crimes.

Some statistics reveal a horrifying picture. Out of 214 cases emerges a list of 500 individual perpetrators, which include 235 army personnel, 123 paramilitary personnel, 111 Jammu and Kashmir Police personnel and 31 Government backed militants/associates. The designations of some of these alleged perpetrators points to a deep institutional involvement of the Indian State in crimes in Jammu and Kashmir. Among the alleged perpetrators are two Major Generals and three Brigadiers of the Indian Army besides nine Colonels, three Lieutenant Colonels, 78 Majors and 25 Captains. Add to this, 37 senior officials of the federal Paramilitary forces, a recently retired Director General of the Jammu and Kashmir Police and a present Inspector General of the Jammu and Kashmir Police.

While areas such as Baramulla District, Kupwara District and Srinagar receive more focused attention in this report [for reasons attributable more to the IPTK and less to the all pervading criminality], the cases are from all over Jammu and Kashmir. The official designations of the alleged perpetrators and the geographical extent of the crimes committed against the people of Jammu and Kashmir indicate a decisive will of the Indian State, carried out by its functionaries as part of a larger intended design.

Beyond the numbers and the consistency of the armed forces in committing human rights violations, the recurrence of crimes by specific personnel of the armed forces points to an institutional intent to commit institutional violations. An example would be cases relating to Senior Superintendent of Police [SSP] Hans Raj Parihar. Between 1997 and 2006, Parihar was implicated in crimes against Fayaz Ahmad Beigh in 1997 [Case No.32], Aashiq Hussain Akhoun in 2001 [Case No.165] and Abdul Rehman Padder in 2006 [Case No.58]. The impunity that SSP Parihar enjoyed allowed him to continue the atrocities and he was finally charge sheeted only for the crime committed in 2006 and is presently in jail.

The role of the Indian State is also clearly evidenced by various incentives put in place that directly lead to human rights violations. The system of cash incentives, awards and out of turn promotions for “anti-militancy operations” has been found to directly contribute to the commission of crimes. While the Indian Government has not provided any information through the Right to Information [RTI] applications filed by the IPTK, the Government of Jammu and Kashmir confirmed the practice of out of turn promotions and awards for such operations.

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<sup>358</sup> See generally, Article 28, International Criminal Court Statute; *Prosecutor v. Delalic et al.*, Judgment, ICTY, Appeals Chamber, 20 February 2001, paras 186-199.

<sup>359</sup> See generally, *Prosecutor v. Tadic*, Judgment, ICTY, Appeals Chamber, 15 July 1999, paras 188-229.

Some of the cases in this report highlight this practice and its impact. Abdul Rehman Padder's case [Case No.58] is a confirmation of the role of cash incentives in the commission of crimes. Superintendent of Police [SP] Altaf Ahmad Khan, implicated in a rape and custodial killing case [Cases: 57 and 214], has received awards during his career in the Jammu and Kashmir Police. To argue that such violations were aberrations, and had no connection with the incentives, amounts to propagating a simplistic understanding of the violence in Jammu and Kashmir. The Indian State cannot insist on viewing its systems and individual personnel in isolation of each other.

The human rights violations do not extend only to the civilians of Jammu and Kashmir. Cases such as that of Bashir Ahmad Bhat [Case No.25], Abdul Aziz/ Abdul Aziz/ Mohammad Yousuf [Case No.133], Mohammad Sarwar Khan [Case No.144] and Ishfaq Ahmad Bhat and others [Case No.188] are examples of the manner in which the armed forces used informal networks and persons for their own benefit [including for illegal business dealings], only to subsequently kill/disappear the same persons.

Atrocities have also been perpetrated on non-state combatants [militants]. While this report does not refer to any cases of active militants being subjects of human rights violations, a larger picture emerges clearly about the manner in which the narrative of militancy has been used to discredit allegations of other human rights violations against civilians. The documents that form the basis of this report illustrate a consistent focus on establishing that the victims were not involved in militancy. Although there is a technical reason for this, as government relief is often dependent on this being established, this narrative is clearly one that would find no basis in human rights law.

To begin with, the Indian State appears to presume the entire population to be militant or linked to militancy. Further, the social, political and crucially the legal discourse appears to have reached a point where a victim can only be considered a true and genuine victim of human rights violations if he/she has had no link whatsoever to militancy. Therefore, a person who voluntarily or under duress provided any assistance to a militant would not be considered a genuine victim when faced with violations against his own person. While not explicit, the narrative is essentially that a person having any links with militancy would be fair game for the armed forces. Militancy and any connection to militancy must have no bearing when examining criminality through the law. Essentially, a militant or a person connected to militancy does not lose the protection of human rights law. Unfortunately, the evolved narrative in Jammu and Kashmir is quite the opposite.

### **Obfuscating First Information Report's [FIR]**

Within an ongoing debate in Jammu and Kashmir [and India] on the illegality of laws such as the Public Safety Act, 1978 [PSA] and AFSPA, it is in fact the irrelevance of the laws that is perhaps most striking. In numerous cases discussed in this report, the issues faced by victims and their families are less about draconian laws that suspend rights than it is about the fact that basic rights guaranteed under other regular laws are not followed.

An unfortunate theme runs through the cases in this report of genuine and heartfelt protest and resistance leading to a tokenistic State response. Police often file FIRs only after an intervention of a senior authority or judicial body, or under pressure from mass protests. In cases such as Abdul Rashid Lone [Case No.7], Gowhar Amin Bahadur / Javaid Ahmad Bakshi [Case No.14] and Sheikh Mohammad Yasir / Mohammad Yousuf Bhat [Case No.110], a FIR was filed only after the intervention of a court. Often, as in the Abdul Aziz Bhat case [Case No.121] or the Javaid Ahmad Magray case [Case No.52], it's a struggle for space, as the family of the victim seeks to have its narrative of the incident brought forward, even as the predominant State narrative [in the form of a FIR by the armed forces] asserts itself. Therefore, FIRs that should be filed as a matter of course and as a matter of right become the site of struggle and resistance. Beyond just exhausting the families of the victims, the reluctance of the police to file a FIR has serious consequences for investigations that ought to begin as soon as the crime is brought to the attention of the police. Instead, evidence is often ignored by the police and left open to manipulation and corruption. Cases such as Mohammad Shafi Dar [Case No.1], where it took the Jammu and Kashmir Police 18 years to file a FIR, sum up the callous role of the police. In the case of Mohammad Maqbool Bhat [Case No.4] despite a High Court order of 12 November 1996 it appears that no FIR was filed. Further, in the case of Fayaz Ahmad Shalla / Bashir Ahmad Shalla [Case No.2], the police took nearly two and a half years to file a FIR despite the High Court ruling to that effect. While the investigation was closed by declaring the perpetrators as untraced in 2001, no closure report was filed before the appropriate judicial authority until 2007 when the investigation was reopened.

The non-seriousness of the police at the FIR stage is perhaps best displayed by examples from the report where the police have misplaced the FIR itself. In the case of Mohammad Sultan Allaie and others [Case No.166], Mohammad Ismil Khan [Case No.109] and Younis Khan and others [Case No.137], the police in response to RTI applications, claim that copies of the FIRs were misplaced.

### **The Police, Investigations and the Lower Judiciary in Sync**

The non-seriousness, or worse, the direct connivance of the police in shielding perpetrators, seen most obviously in cases implicating fellow police officials, is compounded by the manner in which the armed forces, through illegality and distraction, seek to lead the investigations to the most comfortable conclusion: the closure report.

The story of the escape or release of a victim is perhaps the most perverse as it seeks to play on the very hopes of the families of the victims. The armed forces appear to create false stories of release and escape to distract from their culpability in the crimes. In the Mushtaq Ahmad Chacha [Case No.23] and Fayaz Ahmad Beigh [Case No.32] cases it was claimed that the victims escaped during heavy firing. In the Mushtaq Ahmad Wani case [Case No.101] the escape was alleged to have taken place after the victim led them to a hideout on a hill. The story around the escape of a victim is on occasion used to attribute the blame for his death elsewhere. In the Mohammad Azad Khan case [Case No.18], it was claimed that the victim, while trying to escape, jumped into a river and drowned.

Similar to the unsubstantiated stories of escape are those of release. But, while cases such as Sheikh Hamza [Case No.79] do not contain anything more than a mere assertion of release, other cases are more elaborate such as the Bashir Ahmad Bhat / Bashir Ahmad Wani case [Case

No.33] where the assertion of release is supported by “witnesses” to the release. In the Ashiq Hussain Ganai case [Case No.13], the family of the victim were themselves forced to serve as “witnesses” to the release of the victim.

Stories of escape and release, while serving to ensure impunity, also inadvertently expose criminality. In the context of Jammu and Kashmir where sanction for prosecution under AFSPA has never been granted, police personnel have not been convicted, and fair and transparent investigations do not exist, an assertion of release or escape when disproved serves to immediately and often spectacularly, raise doubts on the alleged perpetrators of the crimes. One of the most striking examples is perhaps the Mushtaq Ahmad Chacha case [Case No.23] where the trail of documents on record, combined with the disproved theory of escape, draws immediate attention to the culpability of the armed forces. But, considering the lack of critical attention given to these crimes, it is clear that in general the intended impunity is safeguarded.

In addition to such attempts to cover up the truth about crimes, the investigations are perhaps most affected by the blatant use of force to intimidate families of victims and ensure that justice is avoided. In cases such as Abdul Rashid Shah [Case No.87] and Mushtaq Ahmad Hajam [Case No.5], the families of victims were forced to sign/provide their thumbprint on documents that could be used by the armed forces to later escape culpability. This practice is but a small part of the larger efforts by the armed forces to pressurize and intimidate families to not pursue their cases of human rights violations. Almost all the families of the victims approached by the IPTK narrated stories of indirect/direct attempts, including offers of money or other benefits to families by the armed forces to intimidate or dissuade them from pursuing their cases.

Such challenges to investigations notwithstanding, it is clear that the greatest obstacle to justice in Jammu and Kashmir is quite simply a complete lack of will to carry out fair and thorough investigations. In cases where FIRs are filed, through the intervention of courts, influential authorities, in response to protests or otherwise, fair and thorough investigations are almost never carried out. The Jammu and Kashmir Police and the Government of Jammu and Kashmir may seem to hold the greatest responsibility for this failure. But, so widespread and systematic is this lack of institutional will to investigate human rights violations that it may be comfortably argued that the Government of Jammu and Kashmir is merely a part of a larger institutional design, plan and system, run directly by the Indian State that seeks to condone and further perpetuate human rights violations. The proceedings in the High Court of Jammu and Kashmir, the various judicial enquiries conducted, magisterial and Commissions of Inquiry, police reports before the State Human Rights Commission [SHRC] and other organs, amply display that the Indian State, aided by its functionaries in Jammu and Kashmir, is actively cognizant of, and criminally intends the commissions and omissions of offences.

The culpability extends beyond the Jammu and Kashmir Police to the judiciary as a whole. In numerous instances the police merely choose to close investigations under the obviously untrue pretext that perpetrators could not be traced despite the families of victims positively identifying perpetrators and the police itself acknowledging the same. The lower judiciary then mechanically appears to quickly find agreement with these baseless closure reports. In fact, the reality might well be that the lower judiciary does not even bother to consider or sign off on the closure report. Further enquiries would need to be made on the number of closure reports filed by the police on which the lower judiciary applied its mind and passed orders.

The High Court while holding judicial enquiries and ordering the filing of FIRs does not appear to be mindful of the processes of justice in Jammu and Kashmir. Any reading of the legal history of human rights violations in Jammu and Kashmir would draw one to a simple, unequivocal conclusion: the system is designed to allow perpetrators of crimes to escape justice. Despite this situation, the High Court rarely insists on being seized of investigations or in penalizing the police for delayed and faulty investigations. An apt example would be the case of Manzoor Ahmad Dar [Case No.50] where the High Court, while taking some action, appeared to have faith in the ability of the police to track down Major Kishore Malhotra of the 34 Rashtriya Rifles [RR]. This despite the clear record that over a period of five years Major Kishore Malhotra was not going to co-operate and subject himself to a meaningful interrogation. There are instances when the High Court appears to have acted in extremely irregular ways, such as in the case of Malik Nissar Ahmad Shah [Case No.3] where it dismissed a petition without even waiting for the conclusion of a judicial enquiry that it had ordered in the first place. In the case of Fayaz Ahmad Beigh [Case No.32] the issue of compensation was handled in a less than clear manner. While the SHRC recommended Rs. 5,00,000, the High Court stated that the appropriate amount would be Rs. 2,00,000. Further, orders of the High Court are rarely respected and this results in the families of the victims being forced to file contempt petitions, as in the Mohammad Ashraf Koka case [Case No.48].

The judicial enquiries ordered by the High Court serve as invaluable resources for analysis of human rights violations. In a situation where the armed forces are rarely subjected to a trial, the judicial enquiry is the closest to a trial on a specific case. Witnesses are heard and examined. Documents are considered as evidence. A final finding is made. While the judicial enquiries do suffer from certain infirmities, as detailed in the report, they have formed an important part of the record of criminality in Jammu and Kashmir.

But, it is noteworthy that the Union of India rarely plays a pro-active role in these proceedings, for example in cases such as Ghulam Hassan Baba [Case No.17] and Malik Nissar Ahmad Shah [Case No.3], and, unfortunately, the judicial enquiry officers rarely use their powers to ensure participation. The scant respect of the armed forces for the judiciary is evidenced perhaps most sharply in this report in the case of Khaleel Ahmad Choudhary [Case No.162], a Munsif / Judicial Magistrate 1<sup>st</sup> Class, Tangmarg. On 30 January 2001, Khaleel Ahmad Choudhary was driving in his vehicle when he was stopped near the Kunzer market by an army patrol. His vehicle was searched. Choudhary showed the army patrol his identity card issued by High Court of Jammu and Kashmir. The army personnel threw his identity card away saying they had seen enough of the courts. They said that the courts were nothing before the army. Choudhary protested against the behavior of the army personnel and told them that they could only limit themselves to a search and that their behavior was contemptuous of the judiciary. On this, an army personnel cocked his gun with the intention to fire at Choudhary.

Another pattern in the lower judiciary that greatly arrests any possibility of justice is when—albeit only in few cases—a chargesheet is filed, the lower judiciary for no explicable reasons “splits” the case i.e. severs the trial of an army or paramilitary personnel from a police or civilian person. In the cases of Reyaz Ahmad Wani [Case No.19], Manzoor Ahmad Mir [Case No.54] and a case of double rape [Case No.42] this splitting of the trial has taken place. In the Manzoor Ahmad Mir case, while a trial continues against the co-accused involved, sanction was

declined under AFSPA in the same case of the army personnel. The Ministry of Defence [MOD] stated, in addition to the denial of the crime, that the allegation was motivated by vested interests to malign the image of the armed forces. In the case of Reyaz Ahmad Wani, while the co-accused of the army personnel was convicted for murder, there appears to have been no action against the main accused, the army personnel, as the documents of sanction for prosecution under AFSPA do not refer to his case at all. This practice takes away from the fundamental purpose of a joint trial for the accused involved in the commission of a crime. A joint trial ensures that culpability of an accused is not seen in isolation from his co-accused. This not only ensures more practical considerations of saving time and less burden on witnesses, but also ensures that the final judgment will appropriately and accurately chalk out the role of each co-accused along with their combined culpability. It also significantly reduces the possibility of establishing crimes by using the co-accused as approver witnesses. The splitting of trials in Jammu and Kashmir amounts to a symbolism of indicting some persons but effectively shielding others.

A strong criticism may also be leveled against the investigative and judicial system when it comes to cases of rape and sexual assault. While this report does not have a sizeable number of such cases to analyze, a few examples such as Case No.122 and Case No.57 illustrate how the Jammu and Kashmir Police and other government institutions have used inaccurate language that could have an effect on any prosecution carried out. While the police in Case No.122 refer to misbehavior instead of rape, in Case No.57 the SHRC in its final decision insists on not using the word “rape” and instead refer to it as the “worst type of human rights violations”.

Therefore, while there is no doubt that draconian legislations like AFSPA play their role, the fulcrum of impunity in Jammu and Kashmir rests with the police, the State and the judiciary.

### **Politics of Compensation**

The cases in this report clearly evidence the priorities of the systems of justice in Jammu and Kashmir: monetary relief over justice. The most troubling consequence of this appears to have been the impression given to victims and/or their families that they have to choose between prosecutions of the perpetrators of crimes or accept monetary relief. This is compounded by the delayed and ineffectual investigations that victims and/or their families are well aware of.

Within this context, the role of the executive is striking. In the case of Umar Qayoom Bhat [Case No.209], a letter dated 13 December 2010, from Mehraj-ud-Din Kakroo, Deputy Commissioner, Srinagar to the Jammu and Kashmir Home Department noted that the next of kin of Umar Qayoom Bhat had sought ex-gratia government relief of Rs.5,00,000 that was sanctioned by the Government of Jammu and Kashmir for persons killed in civil disturbance since 11 June 2010 and that the next of kin of Umar Qayoom Bhat had agreed to withdraw the case if provided the relief. The letter recommends that the relief be provided. The conduct of Mehraj-ud-Din Kakroo, Deputy Commissioner, Srinagar is against the principles of justice, as he seems to be interested in persuading the family to withdraw the case against the sanction of Rs. 5,00,000. Similarly, in the Mushtaq Ahmad Chacha case [Case No.23], the Deputy Commissioner, Srinagar also sought to persuade the family of the victim not to pursue a legal case.

### **The Supreme Court Angle**

The Supreme Court does not escape responsibility for the crimes in Jammu and Kashmir either. As already referred to in the introduction and this report, the *Pathribal* fake encounter case [Case No.155] is one of the most recent examples of the manner in which the apex Indian court has failed the people of Jammu and Kashmir.

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

This pro-active approach of the Supreme Court when contrasted with its record with regard to human rights related matters in Jammu and Kashmir raises serious questions on the manner in which these violations in Jammu and Kashmir—from 1989 to date—are viewed in New Delhi. The approximately 8000 persons subject to enforced and involuntary disappearances<sup>360</sup>, tens of thousands of deaths<sup>361</sup> during the conflict [with around 120 persons killed<sup>362</sup> during the 2010 protests alone], disclosures of more than 6000 unknown, unmarked, and mass graves<sup>363</sup>, rape, widespread torture and numerous other human rights violations should surely have merited similar pro-active cognizance from the Supreme Court.

### **Denial of Sanction for Prosecution under AFSPA as a Shield of Impunity**

The necessity to seek sanction for prosecution under AFSPA, and the complete denial of this sanction, has ensured absolute impunity for the armed forces, and has been upheld even by the Supreme Court most recently in the infamous *Pathribal* fake encounter case [Case No.155]. Not only do provisions of AFSPA provide the armed forces criminal powers, it also provides them with the confidence to act on these powers, as this law has so far effectively removed crimes committed by the armed forces from the realm of adjudication and trial.

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<sup>360</sup> Public Commission on Human Rights, *State of human rights in Jammu and Kashmir, 1990-2005*, 2005, p.96; IPTK, *Buried evidence, Unknown, Unmarked and Mass graves in Indian-Administered Kashmir, A preliminary report*, 2009, p.10; APDP, *Half widow, Half wife?, Responding to gendered violence in Kashmir*, 2011, p.2.

<sup>361</sup> Public Commission on Human Rights, *State of human rights in Jammu and Kashmir, 1990-2005*, 2005, p.vi; IPTK, *Buried evidence, Unknown, Unmarked and Mass graves in Indian-Administered Kashmir, A preliminary report*, 2009, p.10; APDP, *Half widow, Half wife?, Responding to gendered violence in Kashmir*, 2011, p.2.

<sup>362</sup> Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Oct/11/no-proposal-to-regularize-nyks-volunteers-govt-39.asp>, 11 October 2012.

<sup>363</sup> Kashmir Reader, <http://kashmirreader.com/kreadernew/07042012-ND-government-has-no-record-of-unidentified-burials-1177.aspx>, 4 July 2012.

The fact that not a single request for sanction for prosecution under AFSPA has been granted in 22 years strongly suggests an institutional intent to allow for the commission of crimes and protection of perpetrators.

The impunity derived from AFSPA runs deeper when one considers the other ways in which it has been used in Jammu and Kashmir. In numerous cases the Government of Jammu and Kashmir have sought no sanction for prosecution under AFSPA in the first place, which is a strong indictment in itself. On other occasions, while the police have concluded investigations, the matter has been completely ignored and the request for sanction has been delayed for years or possibly not sent at all. For example, in the case of Mohammad Ramzan Rather [Case No.76.], the police state that sanction had been sought against an army personnel, but the MOD claims to have never received the request. In the case of Abdul Rashid Lone [Case No.7.], as of 2001, it appears that the investigations were completed but the request for prosecution sanction was only sought in 2007, six years later. In the case of Ashiq Hussain Ganai [Case No.13], despite the conclusion of investigations by the Jammu and Kashmir Police on 7 August 1993, the State Government sat on the file for two years before forwarding the case to the MOD.

The cross-purposes at which the various parties work is apparent. In the case of Abdul Majid Mir [Case No.83], the record and status of the sanction process is rendered uncertain by the varying positions of the parties. The Jammu and Kashmir Police states that sanction to prosecute an army personnel was declined in 2008. In 2009, the MOD claims to have never received the case. Meanwhile, in 2011 the Government of Jammu and Kashmir claims to have sent this case to the “Ministry of Home Affairs” [MHA] in 2009 and that sanction was still awaited.

In cases such as that of victims Constable Mohammad Ashraf [Case No.84] and Abdul Rashid Lone [Case No.108], dealing with relatively minor offences, while sanction appears to have been sought, in numerous other more serious cases it was not even deemed fit to be sought. Further, the Government of Jammu and Kashmir and the police do not seem to consider it their responsibility to follow up on the sanction process. Despite carrying out investigations and implicating armed forces personnel in the commission of a crime, the denial of sanction is not agitated in court. For example, in the case of Mohammad Ayoub [Case No.72], despite sanction being declined in 2008, on 21 December 2011, the police feigned ignorance of the decline of sanction. Therefore, the question of agitating it would not even come up.

### **Court-Martials: Prejudiced and Opaque**

The failure of the civil systems of investigation and prosecution to account for human rights violations by the armed forces is closely matched by a court-martial system that lacks transparency and appears highly prejudiced in favour of accused armed forces personnel.

To begin with, the MOD and the MHA, as already stated in this report, have provided very little information in response to RTI applications on court-martials. This lack of transparency continues in specific cases such as Tariq Ahmad Sheikh [Case No.157] where the Border Security Force [BSF] refused to provide any information on the court-martial, even to the family of the victim.

In cases where information is provided on court-martials, such as in the case of Mushtaq Ahmad Hajam [Case No.5] it is apparent why there is little trust or respect for the court-martial system. In this case a Court of Inquiry was conducted and concluded without hearing the testimony of even a single civilian witness. The reconstituted Court of Inquiry chose to only note the evidence of one civilian witness.

### **Beyond Reasonable Doubt?**

To conclude, this report, based largely on official State documents, strongly suggests that in case after case, evidence exists that a crime took place and a specific perpetrator is to blame. The perpetrators have been assisted by a system where impunity exists from the commission of the crime to the ultimate cover up.

While the IPTK, based on information before it, cannot conclusively pronounce on the guilt of any alleged perpetrator, it is clear that enough evidence exists to warrant further action. But, no institutional or political will exists to take the evidence to its natural conclusion i.e. a trial where the crime and the guilt of a perpetrator can be proven beyond reasonable doubt.

The Indian State stands indicted.



## **RECOMMENDATIONS**

Based on its findings in this report IPTK/APDP recommend that:

1. The Government of India and the Government of Jammu and Kashmir adhere to the principles of fair investigations and trials, and not persecute innocent persons. Specifically, the Government of India and the Government of Jammu and Kashmir have failed to adhere to the following principles laid down in the International Covenant on Civil and Political Rights [ICCPR]:
  - a. The inherent right to life and its protection under law under Article 6(1)
  - b. The right not to be subjected to torture, cruel, degrading or inhuman treatment or punishment under Article 7
  - c. The right not to be subjected to arbitrary arrest or detention, and all consequent rights following arrest or detention, as laid down under Article 9 and Article 14
2. The Government of India and the Government of Jammu and Kashmir adhere to its domestic and international obligations and punish all perpetrators of human rights violations in Jammu and Kashmir.
3. The Government of India and Government of Jammu and Kashmir must allow free access to Jammu and Kashmir for the following persons/groups:
  - a. Working group on Arbitrary Detention
  - b. Working group on Enforced or Involuntary Disappearances
  - c. Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions.
  - d. Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association
  - e. Special Rapporteur on the promotion and protection of Right to Freedom of Opinion and Expression
  - f. Special Rapporteur on the situation of Human Rights Defenders.
  - g. Special Rapporteur on the Independence of Judges and Lawyers
  - h. Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination
  - i. Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
4. The Government of India and the Government of Jammu and Kashmir must revoke and withdraw security related legislation that is in contravention of international humanitarian laws and norms, such as the Armed Forces Jammu and Kashmir [Special Powers] Act, 1990 [AFSPA], Jammu and Kashmir Disturbed Areas Act, 1992 and the Public Safety Act, 1978 [PSA].
5. The Government of India must ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it has been a signatory since October 1997. The Government of Jammu and Kashmir must institute a comprehensive ban on practices of torture as defined by international law and humanitarian ethics. The Government of India and Government of Jammu and Kashmir must legislate on crimes of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
6. The Government of India must ratify the International Convention for the Protection of All Persons from Enforced Disappearance, to which it has been a signatory since February 2007. The Government of India and Government of Jammu and Kashmir must legislate on crimes of Enforced Disappearance.
7. The international community and international organizations, including the United Nations, must prevail upon the Government of India to recognize the conflict in Jammu and Kashmir, from 1989 to the present, as having elements of both an international and non-international armed conflict.
8. The Government of India and the Government of Jammu and Kashmir while adhering to the international standards of crimes of Genocide, Crimes against Humanity and War Crimes, must legislate on these crimes.
9. A credible, independent and transparent international body must be constituted to analyze this report, consider its import, and question the past, present and continuing role of the Indian State in Jammu and Kashmir.



# ANNEXURES

# Annexure 1

## The Gazette of India

EXTRAORDINARY

PART II-Section 1

PUBLISHED BY AUTHORITY

NEW DELHI, TUESDAY, SEPTEMBER 11, 1990/ BHADRA 20, 1912

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 11th September, 1990/Bhadra 20, 1912 (Saka)

The following Act of Parliament received the assent of the President on the 10th September 1990, and is hereby published for general information:

### THE ARMED FORCES (JAMMU AND KASHMIR)

### SPECIAL POWERS ACT, 1990

### No. 21 OF 1990

[10th September, 1990.]

An Act to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the State of Jammu and Kashmir.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:

**1. Short title, extent and commencement.** (1) This Act may be called the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 5th day of July, 1990.

**2. Definitions.** In this Act, unless the context otherwise requires,-

(a) "armed forces" means the military forces and the air forces operating as land forces and includes any other armed forces of the Union so operating

(b) "disturbed area" means an area which is for the time being declared by notification under section 3 to be a disturbed area;

(c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950, or the Army Act, 1950, shall have the meanings respectively assigned to them in those Acts.

**3. Power to declare areas to be disturbed areas.** If, in relation to the State of Jammu and Kashmir, the Governor of that State or the Central Government, is of opinion that the whole or any part of the State is in such a disturbed and dangerous condition that the use of armed forces in aid of the civil power is necessary to prevent—

(a) activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;

(b) activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India,

the Governor of the State or the Central Government, may, by notification in the Official Gazette, declare the whole or any part of the State to be a disturbed area.

*Explanation:* - In this section, "terrorist act" has the same meaning as in Explanation to article 248 of the Constitution of India as applicable to the State of Jammu and Kashmir.

**4. Special powers of the armed forces.** Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, -

(a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any persons who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search, without warrant, any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary, and seize any such property, arms, ammunition or explosive substances;

(e) stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person who is a proclaimed offender, or any persons who has committed a non-cognizable offence, or against whom a reasonable suspicion exists that he has committed or is about to commit a non-cognizable offence, or any person who is carrying any arms, ammunition or explosive substance believed to be unlawfully held by him, and may, for that purpose, use such force as may be necessary to effect such stoppage, search or seizure, as the case may be.

**5. Power of search to include powers to break open locks, etc.**

Every person making a search under this Act shall have the power to break open the lock of any door, almirah, safe, box, cupboard, drawer, package or other thing, if the key thereof is withheld.

**6. Arrested persons and seized property to be made over to the police.**

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

**7. Protection of persons acting in good faith under this Act.**

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

**8. Repeal and saving.**

(1) The Armed Forces (Jammu and Kashmir) Special Powers Ordinance, 1993, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

V.S. RAMA DEVI,  
Secy. to the Govt. of India

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Annexure 2



Government of Jammu & Kashmir.  
Home Department.  
Civil Secretariat: Srinagar/Jammu.

Advocate Parvez Imroz,  
The Bund, Amira Kadal,  
Srinagar Kashmir.

No: Home/RTI/39/2011. *ub3*

Dated *06*-09-2011.

Subject: **Information under J&K RTI Act, 2009 by Advocate Parvez Imroz, R/o. Amira Kadal Srinagar.**

Kindly refer to your RTI application dated 05.08.2011. In this context, I am directed to enclose the requisite reply pertaining to this Department for further necessary action at your end.

*Hsg*  
*efg*

Deputy Secretary to Government  
Home Department.

Encls: *4 leaves.*

**Statement showing the Name and the Address of the Victim, Agency of the Police Station, Offence under which sanction has been sought by the State Home Department from the MHA/MOD under AFSPA and the latest status of each case.**

S.No	Name (s) of victim with address	Name(s) of the accused/Agency	FIR No./Police Station	which sought MHA/MOD	Sanction from	Status
01	Abdul Rashid Shah R/o. Faujiwani Baramulla	Major Devinder Paul singh of 15 <sup>th</sup> Punjab	339/93/PS Baramulla	under section 7 of the AFSPA MOD vide letter dt.11.06.2003		Awaited
02	Khuzair Mohiurraz Akhron B/o. An. Rahim R/o. Saditar srinagar.	2711 N.Vidya Sagar and others of 125 (TA)	384/94 U/S 302 PS Sadar Srinagar.	under section 7 of the AFSPA MOD vide letter dt.05.12.1995		do-
03	Mushtaq Ahmad Hajam S/o Moh'mmad Sultan R/o Malik Santh Srinagar	Ct. Ram Naik Lal No.841770264 2 <sup>nd</sup> Bri. CRPF	63/90 U/S 302 PS Nowhatta Sgr.	under section 7 of the AFSPA MHA vide letter dt.14.09.2000		Denied
04	Asliq Hussain S/O Haji Wali Ja Gole R/o Dangiwaicha Bla.	Major Ashok and Major Gurpal Singh 17 Jk.11 Camp Watergan Army	18/95 U/S 302 PS Panzalla	under section 7 of the AFSPA MHA		Not recommended
05	Mohammad Amir Bhat S/o Abdul Ahad Bhat R/o Sangri Colony Baramulla.	Subidar Gurnam Singh JC No.180826 of 15 Punjab Army	220/94 U/S 302 PS Baramulla	under section 7 of the AFSPA MOD vide letter dt.11.09.1996		Awaited
06	Reyaz Ahmad Bhat S/o Abdul Ahad Bhat R/o Iqbal Colony Baramulla	D.P. Singh of 15 Punjab Army	561/93 U/S 302 PS Bla	under section 7 of the AFSPA MOD vide letter dt.11.09.1996		do-
07	Mr. Abdul Rasool Lone Presiding Officer Court of Munsif Baddipora	Dharamendra Singh of 10 Bihar Regiment	81/94 U/S 186 PS Sunbal	under section 7 of the AFSPA MOD vide letter dt.23.09.1999		do-
08	Bashir Ahmad Lone Orderly Dy. Commissioners office Baramulla	Kanjoo Singh Asst. Comd of 193 BSF	253/92 U/S 302 PS Bla.	under section 7 of the AFSPA MHA		Recommended
09	Moad Ashraf Constable No.30/S	Captian Badshah Khan of 299 Field Regiment Army	55/93 U/S 333 PS Kangan	Under Section 161 Cr.PC MHA		Declined
10	Mohammad Ashraf Najar B/o Nazir Ahmad Nagar R/o Stadium colony Baramulla	Major D.P Singh of 15 Punjab Regiment Army	259/93 U/S 302 PS Baramulla	under section 7 of the AFSPA MOD vide letter dt.28.03.1995		Awaited
11	Tata Bus No.JKE 6076 and two Bycles bursted by CRPF and resulted death of Charan Jeet Singh S/o Nanak Singh R/o Jammu and other persons were injured	01: A.A.Khan LNK.No.81069/1988 02: S. Karim C.No.850778060 and others Army	102/92 U/S 302	under section 7 of the AFSPA MHA vide letter dated.05-05-2008		Declined
12	Mohammad Ashraf Jar S/o Gh. Rasool Dar R/o. Hadipora Baramulla	Major Sehgal of 15 Punjab	28/94 U/S 302,301 RPC PS Panzalla	under section 7 of the AFSPA MOD vide letter dt.25-06-2004		Awaited

13	Mohammad Asmil Khan S/o Annullah Khan R/o Kawder Sherri Baramulla	Major Sumit Jaisw of 3 <sup>rd</sup> RR	59/94 U/S 302 PS Sheeri Bla	U/S 197 CRPC MOD vide letter dt. 27-03-2007	-do-
14	Abdul Reshid's Brother R/o Channani	Nayak A.A.Parna No.27643 5 19 MLJ C/o 56 APO Army	45/93 U/S 302 PS Panzulla R/Sheeri Bla	under section 7 of the AFSPA MHA vide letter dt.09-03-2009	Recomm ended
15	Gh. Mohammad Lone R/o Singhpora Baramulla	Command 46 Bn CRPF	21/90 U/S 302 PS Baramulla	under section 7 of the AFSPA MHA vide letter dt.25-09-2009	Declined
16	Sajad Ahmad Bazar R/o Hazimbal Srinagar	D.S.Rathore Dy. Co. 30 <sup>th</sup> Bn BSF	44/92 U/S 302 PS Nigeen	under section 7 of the AFSPA MOD vide letter dt. 24-01-2003	Awaited
17	Mohammad Nanief Bhat @ Dast. R/o Khanwar Sgr	Major Vikram w/ 2 <sup>nd</sup> RR Camp Zainakot Army	90/2002 U/S 342 PS Khanyar	under section 7 of the AFSPA MOD vide letter dt.01-06-2009	Declined
18	Mohammad Sultan Alai S/o Aziz. Ghulam Hassan Alai S/o Karim Alai R/o Waripora Jammu	Capt. Rajesh Sharma alongwith 19 other officers of 39 RR Army	49/2001 U/S 302 PS Kiccri	under section 7 of the AFSPA MOD vide letter dt.25-03-2009	-do-
19	Mehraj-ud-din Kharday S/o Gh. Naba Kharday R/o Deethu Nagar diin Anantnag	Major A.K.Moore Army	18/2001 U/S 302 PS Anantnag	under section 7 of the AFSPA MOD vide letter dt.23-02-2009	-do-
20	Gi. Mohammad Yousaf 1845/A and Gi. Ahmed No.1519/A	Sarinder Singh Dy. S <sup>g</sup> 104 Bn. BSF	42/02 U/S 332 RPC Anantnag.	under section 7 of the AFSPA MHA vide letter dt.29-08-2008	Recomm ended
21	Ainooza @ Atn D/o Gh Mohammad Shah U/o Hakooz Manzgam Anantnag	Major Arora of 5 <sup>th</sup> RR Army	8/97 U/S 376 PS Anantnag	U/S 197 CRPC MOD vide letter dt.21-04-2010	Declined
22	Mst. Kiran D/o Mohammad Amir Bhat R/o Monhara and Bilal Ahmad Reshi S/o Gv. Naba Reshi R/o Ind Puzer	Ran. Naresh CI.No.95008067 E Coy 124 Bn BSF	10/2001 U/S 307 PS Awantipora	U/S 197 CRPC MHA vide Letter dt 11-07-2007	-do-
23	Mushtaq Ahmad S/o Aziz Mejid, Bhat R/o Narijala Kishtwar	Capt. Chopra and Capt. Pushpinder of 1010 JAK R.IIes Army	181/93 U/S 304 PS Kishtwar	Under Section 7 of AFSPA Shri R.Jainwal, Col. GS (HR) Pw, DGS HQ, 16 Corps C/o 56 APO vide letter dt.1-04-2010	Awaited
24	Sona-ullah Malik S/o Gv. Qadir Malik R/o Zaidhewer, Sheeri Baramulla	Maj.Chatterpa, Maj.Achariya and CEM Mahamud Aslam of 28 RR Army	42/95 U/S 302 PS Sheeri	U/S 7 of AFSPA MOD vide letter dt.13-03-2009	Declined
25	Ab.Rashid Malik S/o. Ab.Khalik Malik R/o Trehgam Kupwara	Inspector B.D. Gupta and SI Nanamma Singh of 66 <sup>th</sup> Bn BSF.	35/92 U/S 302 PS Trehgam	U/S 7 of AFSPA MHA vide letter dt.20-06-2007	-do-
26	Civil Passenger Bus in which Two, boys and one Police person d.ed	1. IIC. Arun Kumar No.870154161 2. IIC Rakesh Kumar No.87012678 011102	105/2003 U/S 307 PS Kokernag	U/S 7 of AFSPA MHA vide letter dt.20-11-2006	-do-



	Amirul Lachoo R/o S/O Mustafa Gaur R/o Ashraf Kazi Mir Bakr Kazi Sachi	Kaldeep Singh of 69 Bn. BSF	75/91 U/S 302 PS Rajawari	U/S 7 of AFSPA MHA vide letter dt.29- 08-2008	Recomm ended
28	Farooq Ahmad Bhat S/O Mohammad Syedhan Bhat R/o Subedar Qazir Bijbehara Anantnag	Maj. Aleek Chakri Barti (Coy. Commander) 1st RR CTIM Omprakash No.287285/M Ist. RR. And Sepoy Vinod Kumar No.248059F 1st RR Army	106/93 U/S 302 PS Bijbehara	U/S 7 of AFSPA MOD vide letter dt.11- 03-2010	Declined
29	Mohammad Abdulla Bhat R/o Saun Sgr.	K.K. Verma Inspect. Of BSF HQRS Sgr.		U/S 7 of AFSPA Information Division C/O 56 APO New Delhi vide letter dt.21-01-2007	-do-
30	Nissar Ahmad S/O Mohammad Akbar R/o Dadsara	Subedar U.S. Thappa No.86529-F JC Hav. Harminder Singa No.3379330 Hav. G.M.Khan No.2981038 A and Sgt. Surinder Singh No.3184382 in intelligence unit (311) Army	154/98 U/S 302 PS Awantipora	U/S 7 of AFSPA MOD vide letter dt.8-04- 2010	-do-
31	Gh. Rasool Bhat S/O Gh.Mohammad. Mst. Raja R/o Hanpora	Commanding Officer 05 Kamao Army Unit Camp Nagant	08/2000 U/S 302 PS Chadoora	under section 7 of the AFSPA MOD vide letter dt. 23-05-2009	Awaited
32	Ab. Ghari Bhat S/O Fateh Bhat R/o Monghana Tral	BSF Camp 124 Bn. Batagund Tral	66/2001 U/S 302 PS Tral	U/S 7 of AFSPA MHA vide letter dt.08- 04-2008	Declined
33	Altaf Ahmad Shah R/o. Pethzanigan Beerwah	Maj. Vikas and Capt Rajee of 19 RR Camp Beerwah Army	73/2002 U/S 302 PS Beerwah	U/S 7 of AFSPA MOD vide letter dt.08- 02-2010	-do-
34	Taq Ahmad Shiek S/O Abdul Aziz Shiek R/o Zanigan Beerwah	BSF Camp Santangar	168/2000 U/S 302 PS Beerwah	U/S 7 of AFSPA MHA vide letter dt.30- 09-2008	-do-
35	Qadir Lone and Rahim Lone R/o Warnoo Lolah Kupwara	Lt. Deepak of 9 Rajput Army	99/98 U/S 365 PS Uri	U/S 7 of AFSPA MOD vide letter dt.29- 11-2008	Recomm ended
36	Mst. Saja R/o. Village Gued Tral	Jai Singh @ Jaikeel Khan coy. Commander of 151 Ist Bn BSF	46/95 U/S 302 PS Tral	Under Section 7 of MHA vide letter dt. 07.01.2002	-do-
37	Gh. Rasool Bhat S/O Habib R/o Wansora Gulicz	Mohinder Singh (Dy.SP) and Kaur Lal (Hav) of 33 Bn. BSF	101/94 U/S 302 PS Bandipora	U/S 7 of AFSPA MHA vide letter dt.21- 03-2008	Declined
38	A.S. Hamid Dar R/o Pehharen Sheeri	Capt. Satish S Kekrey and LNK Dhanpal of 28 RR Army	36/96 U/S 348 PS Sheeri	U/S 7 of AFSPA MOD vide letter dt.21- 01-2010	-do-
39	Mohd. Yasen Dar S/O Mohammad Rujah Dar R/o. Brakpora Anantnag	Maj. Anil Kumar and Maj. Khushwa of 2nd RR Army	713/95 U/S 341 PS Anantnag	U/S 7 of AFSPA MOD vide letter dt.25- 02-2009	Recomm ended
40	Yousif and Hamid Sons of Mohd lateef Khan R/o Dh	Sub. Harinder Av JC No.168528L and Hav Rajee K.V.No. 2686700 of 28 RR Army	83/98d U/S 365 PS Uri Baramulla	U/S 7 of AFSPA MOD vide letter dt.27- 03-2009	Awaited

41	Mst. Hasina W/o Ab. Rashid Mir R/o Qazigund	N.K. Harban Singh No.4460443X Cr Guzzet Singh No. 15383L of 1st RR, 3&B quarter Qazigund Army	69/94 U/S 375 PS Qazigund	U/S 161 CRPC MOD vide letter dt.23.01.2006	-do-
42	Mst. Noori W/o Rasai wagay R/o Village Sipan Anantnag	1.Rattan Singh Sub. JCO No.185182-1 2.Pretam Singh I.K No.406671-C 3.Karan Singh I.K No. 317086R of 2 <sup>nd</sup> RR	29/94 U/S 307 P/S Anantnag	under section 7 of the AFSPA MOD vide letter dt. 08-09-2006	-do-
43	Mohammad Yunis Khan R/o Mariyan Kamal kote Uri	Hav. Jagdesh No. 2877433. Hav. Madan Singh No.2869790 and Naib Subedar Dalu Ram of 5 <sup>th</sup> Raj Rifles Army	80/94 U/S 302 PS Uri	U/S 7 of AFSPA MOD vide letter dt.15-03-2010	Declined
44	Mushaq Ahmad Paul R/O Sancoi Kalipora Beerwah Budgam	Majr Nayal @Sunder Ram Wakar 26 Grenadier Camp Jammu Army	31/4/97 U/S 302 PS Beerwah	U/S 197 Crpe MOD vide letter dt. 22.5.2001	Approved
45	Jalil Ahmad Indrabi	Maj. Athar Singh 2.Hav dar Balbi Singh and 3.Dr.Simon Singh Of 103 TA BN	29/97 U/S 302 PS Saldar	U/S 7 of AFSPA Joint Director CBI CGO Complex Block No.3 New Delhi vide letter dt. 15.7.2003	-do-
46	Mohd Iqbal Shah his brother	M.C Helder Dy.Comdt and J.N Singh Asst.Comdt. Of 163 BN BSS	88/99 U/S 346 PS Baramulla	U/S 197 CRPC MHA vide letter dt.09.08.2006	Declined
47	Mohd Maqbool Dar S/O Samad Dar R/O Batapora Handwara	Maj.R.S Athar Avard and Capt.R.Awasathi of 24 RR Army	30/2000 U/S 343 PS Handwara	U/S 7 of AFSPA MOD vide letter dt.26.2.2010	-do-
48	Sheikh Hamza S/O Sonaalish R/O Watergam	Capt.Gurpla Singh and Subadar Charan Dass Singh of 17 JK Rifles Army	01/94 U/S 302 PS Sopore	U/S 7 AFSPA MOD vide letter dt.15.01.2010	-do-
49	Mohd Saafi Khan R/O Mirwayan Haythama Kupwara	Maj. Hardeep Jawahar and Lt.Kheer Singh of 8 Jat Regiment Army	17/2000 U/S 564 PS Kupwara	U/S 7 AFSPA MOD vide letter dt.23.02.2009	-do-
50	Ab. Rashid Lone R/O Thindna Kreen	Kripal Singh 50 BN CRPF	228/97 U/S 346 PS Baramulla	U/S 7 MHA vide letter dt.24.11.2007	Recommended

Annexure 3

**No. 23(03)/2012-D(AG)**  
Government of India  
Ministry of Defence,  
Room No. 105, B Wing, Sena Bhawan,  
New Delhi, the 10 January, 2012

To ✓  
Shri Gautam Nayalkar,  
A-5, Greater Kailash,  
New Delhi-110048

**Sub: Request for information under Right to Information Act, 2005-  
Regarding**

Please refer to your letter dated 22.12.2011 for providing information in respect of 24 cases seeking sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1950.

2. Case files of the 24 cases are not available in D(AG)MsD. The available information is as under:-

24 cases seeking sanction for prosecution under Armed Forces Special Powers Act have been received from Jammu and Kashmir Home Department during the last five years (from 2007 upto 15.12.2011). Of these 5 cases are under examination (Annexure-A). In remaining 19 cases, the requests for prosecution sanction were rejected as it was found on examination that no prima facie case was made out against the accused army personnel (Annexure-B).

4. In case, you are not satisfied with the above reply, you may appeal to following Appellate Authority under the provisions of RTI Act.

Shri Naveen Kumar, Director(AG) and Appellate Authority, Room No. 102, Ministry of Defence, Sena Bhawan, New Delhi, (Tel. No. 2301 4036)

*S. Karimkar*  
(S. Karimkar)  
Under Secretary (AG-I) & CPIO  
Tel. No. 22301 8602

Copy to:-  
ADG/AF & CPIO,  
RTI Cell, D-1 Wing, Gate No. 5, B1Q  
of MsD (Army), Sena Bhawan, New  
Delhi -

Alongwith copy of application dated 22.12.2011. It is requested that information in respect of para-2 may be provided to the applicant directly under Section 6(1) of RTI Act, 2005.

**ANNEXURE-A**

**LIST OF PROSECUTION SANCTION CASES UNDER EXAMINATION**

Ser No.	Prosecution Sanction against	Allegation	Date of incident	Status
(a)	(b)	(c)	(d)	(e)
1.	Major Depankar Sahai (FIR No. 61/94)	Killing of two individuals in custody	22.03.1994	Under examination
2.	Sepoy Kamilesh, Sepoy Amar Singh, Sepoy Pritam & Sepoy Harvinder Singh (FIR No. 73/2009)	Killing of two individuals and one injured.	21.02.2009	Under examination
3.	Gnr Bali Ram and Gnr Ganishyam (FIR No. 139/2006)	Death due to negligence	30.05.2006	Under examination
4.	Subedar Harendran Singh and Havildar Rajan (FIR No. 83/98)	Killing	05.08.1998	Under examination
5.	Harvinder Singh (FIR No. 15/2001)	Killing by shooting	16.02.2001	Under examination

**Appendix**

**CASES DENIED**

**LIST OF PROSECUTION SANCTION CASES BY CENTRAL GOVERNMENT (J&K)**

Ser No	Prosecution Sanction Against	Allegation	Date of incident	Status	Reason
(a)	(b)	(c)	(d)	(e)	(f)
1.	Maj Arora FIR No 08/97	Rape	03 Jan 97	Sanction Denied on 21 Apr 07	There were a number of inconsistencies in the statements of witnesses. The allegation was lodged by the wife of a dreaded HM militant. The lady was forced to lodge a false allegation by ANEs.
2.	Capt Atul Sharma FIR No 224/2003	Individual missing	07 Sep 03	Sanction Denied on 23 Feb 09	Allegation motivated by vested interest to malign the image of Security Forces. Neither any operation was carried by any unit in the area nor any person was arrested as alleged.
3.	Maj AK Morea FIR No 18/2001	Death in custody	30 Dec 00	Sanction Denied on 23 Feb 09	Officer not involved in killing. Attempt made by terrorists and sympathizers to malign the officer and tarnish the image of Army.
4.	Maj Anil Kumar and Maj Khushwa FIR No 213/95	Death in custody	26 Jun 95	Sanction Denied on 25 Feb 09	The deceased was a militant in possession of arms and killed in a legitimate encounter.
5.	Maj RS Athreya and Capt Awasthi FIR No 30/2000	Torture leading to death	13 Mar 00	Sanction Denied on 26 Feb 09	The FIR and the statement of witnesses stand in contradiction. The unilateral conclusions reached by the police appeared to have been made under pressure from terrorists and sympathizers to blame and malign the image of Army.
6.	Capt Gorpala Singh FIR No 01/94	-do-	07 Jul 92	Sanction Denied on 15 Jan 10	Individual was released after questioning. The FIR was lodged after 20 months from the date of operation. The individuals named in the complaint were never borne on the strength of the unit.

(a)	(b)	(c)	(d)	(e)	(f)
7	Maj Vikash Lakhera & Capt Raju FIR No 73/2002	Torture leading to death	28 Feb 02	Sanction Denied on 08 Feb 10	Individual was apprehended in a bonafide military operation and handed over to Police. The individual expired after four days in Police custody. Army involvement not established in killing of the individual.
8	Maj Alok Chakrabarty FIR No 106/93	-do-	01 Dec 93	Sanction Denied on 15 Mar 10	Allegation leveled is devoid of substance. Police have not brought out any credible evidence to prima facie prove that the individual died in military custody.
9	Sub US Thappa & Hav Harinder FIR No 154/98	Killing by shooting	05 Dec 98	Sanction Denied on 08 Apr 10	The case was registered after four years of the incident. Accusation was based on suspicion as there are contradictory statements by the witnesses.
10	Maj Rastogi FIR No 09/2004	-do-	21 Feb 04	Sanction Denied on 19 Aug 10	There is conflict between the postmortem report by four doctors and their subsequent statements given to the investigating officer after five months.
11	Maj Aman Yadav FIR No 01/2000	Torture leading to death	05 Mar 00	Sanction Denied on 23 Sep 10	The allegation is baseless and framed with malaofid intension to put the Army on defensive.
12	Maj Ganpati FIR No 80/87	Fake encounter	16 Jul 97	Sanction Denied on 23 Sep 10	There is a contradiction in the investigation carried out in the case by the police twice with a gap of 8-9 years.
13	Sub Surendra Sinha FIR No 64/2003	Fake encounter	01 May 03	Sanction Denied on 03 Jan 11	The indl killed was a militant from whom arms & ammunition was recovered. No reliable and tangible evidence has been referred to in the investigation report.
14	Maj S Bhattacharya FIR No 160/2001	-do-	22 Dec 01	Sanction Denied on 02 Feb 11	The individual killed was a militant from whom arms and ammunition were recovered. The operation was conducted based on the specific information provided by i/c Police Post, Karalpora. All the witnesses examined by the Police are family members or close relatives of the individual killed.

(a)	(b)	(c)	(d)	(e)	(f)
15	Maj Aman Yadav (Mustaq Ahmd) FIR No 30/2000	Death in custody	4/5 Mar 00	Sanction Denied on 15 Mar 11	Involvement of Maj Aman Yadav is not even prima facie established. The officer was not involved in the incident and the same has been established by the Police investigation, incident report, seizure memo, FIR lodged by 28 Rashtriya Rifles and statement of Capt Chhatwal.
16	Col Joneja FIR No 131/2006	Killing by shooting	17 Dec 06	Sanction Denied on 08 Mar 11	No officer by the name of Col Joneja was ever borne on the strength of 49 Rashtriya Rifles. Therefore, question of involvement of Col Joneja in the case does not arise.
17	Maj GK Batila FIR No 20/2000	Torture leading to death	29 Feb 00	Sanction Denied on 23 May 11	The allegation is baseless and framed with malaofid intension to tarnish image of the Army.
18	Maj Raghwan FIR No 08/2000	Death in custody	14 Jan 00	Sanction Denied on 29 Nov 11	Post mortem report of the dead body reflected no injuries except a scratch on right wrist. The successive re-investigation of the case by Police have recorded doctored statements of the witnesses much after the event to falsely implicate the officer and Junior Commissioned Officer.
19	Capt Piyara Singh Toor FIR No 127/03	Torture leading to death	23 Aug 03	Sanction Denied on 29 Nov 11	The individual was handed over to Police Station Poonch on 24 Aug 2003 in medically fit condition with in the laid down limit of 24 hours and individual died on 22 Sep 2003 i.e one month after his handing over to Police.

Annexure 4

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**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR**

**SWP No 1842 of 2003**

In the case of :

Ghulam Nabi Magray  
S/o Muhammed Ismail Magray  
Saitang (Lasjan), The Girandogra  
Dist Budgam

Petitioner

Versus

1. Union of India through  
Secretary Ministry of Defence  
New Delhi
2. State of J&K through  
Principal Secretary, Home Dept.  
Civil Secretariat, Srinagar
3. Major Vastava, 119 Bn ASSAM Regiment  
BB Cantt, Srinagar, C/O 56 APO
4. Lieutenant Verma, 119 Bn ASSAM Regiment  
BB Cantt, Srinagar, C/O 56 APO
5. Subedar Surinder Singh, 119 Bn ASSAM  
Regiment BB Cantt, Srinagar,  
C/O 56 APO

Respondents

In the matter of **AFFIDAVIT FILED IN COMPLIANCE OF THE  
ORDER DATED 22 DECEMBER 2008 AND  
DATED 02 FEBRUARY 2009**

May it please your Lordships,

I, Ajay Tirkey S/o Late Shri Cyril Tirkey aged around 45 years, Joint Secretary, Ministry of Defence, Government of India, do solemnly affirm and state on oath as under: -

1. That the Hon'ble Court by Order dated 22 December 2008 has directed the deponent herein to examine the cases pending Prosecution Sanction with the Ministry of Defence/Government of India and inform the present status of the cases, causes of delay in disposal of such cases and the time which is likely to take to finalise these cases. Further, the deponent herein was also directed to submit views regarding grant of prosecution sanction.
2. That pursuant to the ibid Orders of the Hon'ble Court, the list containing 458 cases of prosecution sanction from 1990 to 2007 filed by the State Home Dept was handed over to the Additional Solicitor General on 03 February 2009.

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3. That the examination of the list submitted by the State Home Dept would reveal that out of the 458 cases only 46 cases pertain to Armed Forces personnel for which references have been made to the Ministry of Defence for sanction. As per the records of Ministry of Defence/Army HQrs, out of the 46 cases listed against Ministry of Defence/Army HQrs, only 19 cases for prosecution sanction have been received by the Ministry of Defence/Army HQrs. The list of 46 cases indicating the present status of 19 cases stated above is at Annexure 'A'.

4. As per records, the remaining 27 cases have not been received in the Ministry of Defence. If the relevant records are made available by the State Government of Jammu & Kashmir, the same shall be considered and disposed of on their merits expeditiously.

5. It is also submitted that Ministry of Defence has received another 16 cases from the State Government of Jammu & Kashmir which are not included in the list provided by the Additional Advocate General of Jammu & Kashmir. The details of these cases along with the present status of each of them may be seen in the Statement at Annexure-'B'. It is stated that even the case of the petitioner in the present Writ Petition is in this list and was not included in the list provided by the State Government.

6. That as regards the procedure followed for progressing the case, it is humbly submitted that on receipt of the case file from State Home Dept for Prosecution Sanction, the same is forwarded to the Service Headquarters for their verification and comments. That on receipt of comments from the Service HQrs, the case is considered on its merit as to whether prima-facie commission of the offence is proved and also whether the same has been committed in bonafide discharge of official duties cast upon the service personnel in the disturbed Area. A decision is accordingly taken by the Ministry of Defence whether or not to accord prosecution sanction.

7. That as regards the cause of delay, it is humbly submitted that the details provided by the State Home Dept itself stand testimony to the fact that there has been undue delay, in some cases 14 to 15 years, for the Police authorities to conclude the investigation and seek sanction for prosecution. When the documents are received at Ministry of Defence for prosecution sanction, records pertaining to the incident are not complete and it is time consuming to trace out the details for proper application of mind. By the time such requests are received from the State Government, the individual and Units involved in the alleged incidents are moved/posted out long back making the process of identifying the individuals and records cumbersome and time consuming.

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8. That another aspect for the delay is that the Case Diary (CD) file contains major inaccuracies and certain details, at times are not even legible being handwritten on poor quality papers. Further, in certain cases the record of earlier police investigation resulting in filing of Final Report is not made available for examination of the previous statements of the witnesses.

9. That as regards the likely time frame by which such a decision can be taken by the Ministry of Defence, it is stated that in these cases, allegations leveled necessitate holding of detailed Court of Inquiry by Army to fix culpability or otherwise in each case. Since cases are generally of very old vintage, marshalling of evidence in any given case requires enormous efforts and time depending upon availability of witnesses and documents held with various civil agencies. Notwithstanding the above, prompt actions are taken to expedite the processing of these cases.

10. That it is humbly submitted that the period for processing can be considerably shortened if the Police authorities are able to conclude their investigations much faster, within a period of one to two years. The same will also assist in administration of justice as the facts and details are fresh in the memory of the witnesses.


11. That having personally examined the whole issue as directed by the Hon'ble Court, it is most respectfully submitted that in none of the cases there had been any intentional delay in processing the cases received from the State Home Dept for prosecution sanction and utmost sincere and diligent efforts have been made at all levels in the Ministry of Defence to expedite the processing of the case.

Dated: 05<sup>th</sup> June, 2009

  
(Deponent)  
( श्री आर. वि. जय शर्मा )  
Joint Secy./Joint Secretary,  
रक्षा मंत्रालय, नई दिल्ली  
Ministry of Defence, New Delhi  
दूरभाष/Tele.....

Verification

Verified that the submissions made hereinabove are true and correct to the best of my knowledge and belief derived from the official records.

  
(Deponent)  
( श्री आर. वि. जय शर्मा )  
Joint Secy./ Joint Secretary,  
रक्षा मंत्रालय, नई दिल्ली  
Ministry of Defence, New Delhi  
दूरभाष/Tele.....

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Annexure 'A'

**DETAILS OF 46 PROSECUTION SANCTION CASES MENTIONED IN THE LIST OF J&K GOVT WHICH ARE STATED TO HAVE BEEN REFERRED TO UNION OF INDIA**

S. No	FIR/P/S	RECEIVED ON	RANK, NAME AND UNIT	ALLEGATION	STATUS
1990, 1991, 1992 & 1993-NII					
1994					
1.	299/93 P/S Baramulla	Not received in MOD			
1995					
2.	18/93 P/S Panzalla	Not received in MOD			
1996					
3.	17/91 P/S Shergarhi	Not received in MOD			
4.	361/93 P/S Baramulla	Not received in MOD			
5.	102/91 P/S RM Bagh	Not received in MOD			
6.	81/94 P/S Sumbal	Not received in MOD			
7.	229/86 P/S Baramulla	Not received in MOD			
1997 NII					
1998					
8.	28/94 P/S Panzalla	Not received in MOD			
1999					
9.	210/99 Baramulla	Not received in MOD			
10.	45/93 P/S Panzalla	Not received in MOD			
11.	59/94 P/S Shree	Not received in MOD			
12.	127/91 P/S Anantnag	Not received in MOD			
2000					
13.	258/90 P/S Sopore	Not received in MOD			
2001					
14.	312/97 Budgam	12/2/06	Maj Nayar, 20 GRENADIERS	Beating up Miss Dilshada Akhtar and Mr Waheed in their house while carrying out search in Sep 1997.	The case is under consideration in Army HQs/Ministry of Defence.

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S. No	FIR/PS	RECEIVED ON	RANK, NAME AND UNIT	ALLEGATION	STATUS
15.	4/97 P/S Srinagar	Not received in MOD			
16.	95/98 Uri	04/2006	Lt Deepak Mohania, 9 RAJPUT	Custodial missing of two civs named Quadir Lone and Rahim Lone on 20 Aug 1998.	Government sanction for prosecution declined vide order dated 29.11.2008.
17.	69/94 Quazigund	02/2006	Nk Harbhajan Singh and Rfn Gurtej Singh 1 RR	Rape of Mrs Hassina Akhtar w/o Shri Abdul Rashid Mir on night 15/16 May 94	Vide letter dated 12.3.2007 the State Government of J&K has been informed that both the accused were tried by SGCM for an offence of rape and awarded the sentence to suffer rigorous imprisonment for 10 years and to be dismissed from service. Their retrial for the same offence will be in contravention to article 20(2) of the Constitution of India.
18.	80/94 Baramulla	01/2007	The case is against 5 RR. No particular individual named in FIR.	Custodial death of Mohd Younis Khan r/o kamal Kote on 18 Jan 94.	The case is under consideration in Army HQrs/Ministry of Defence.
19.	17/2000 Kupwara	11/2006	Maj Hardeep Johar and Lt Kenar Singh B JAT	Torture and death of Mr Mohd Shafi Khan while carrying out cordon and search in Jan 2000	Government sanction for prosecution declined vide order dated February, 2009.
20.	338/97 P/S Baramulla	Not received in MOD			
21.	30/2000 Handwara	12/2006	Maj Athreye and Capt R Awasthi, 24 RR	Disappearance of Mohammad Maqbool Dar on 13 Mar 2000	Government sanction for prosecution declined vide order dated 26.2.2009.
22.	38/97 Ganderbal	12/2006	Maj Joginder Mchan Yadoo, 13 RR	Mr Abdul Khaliq was picked up by Army pers for information he suffered multiple injuries later died in hospital on 16 Feb 97.	The case is under consideration in Army HQrs/Ministry of Defence.
23.	81/91 P/S CIK	Not received in MOD			
24.	29/94 P/S Anantnag	Not received in MOD			
25.	20/2000 Handwara	03/2007	Maj GK Batla, 30 RR	Abduction and torturing of Shamim Ah Bhat on 20 Feb 2000	The case is under consideration in Army HQrs/Ministry of Defence.

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S. No	FIR/PS	RECEIVED ON	RANK, NAME AND UNIT	ALLEGATION	STATUS
26.	23/95 Baramulla	03/2007	Sic 1 Harvinder Singh and Hav Rajan, 28 RR	Custodial disappearance of Younis and Hamid and torturing of Mohd Lateef Khan	The case is under consideration in Army HQrs/Ministry of Defence.
27.	20/96 P/S Saddar	Not received in MOD.			
28.	29/97 P/S Saddar	Not received in MOD.			
29.	54/99 P/S Kargil	Not received in MOD.			
30.	20/2000 P/S Sopore	Not received in MOD.			
2002					
31.	213/95 Anantnag	07/2007	Maj Anil Kumar and Maj Khushwa, 2 RR	Death of Mohd Yaseen Dar on 20 Jun 95	Government sanction for prosecution declined vide letter dated February, 2009.
32.	36/96 Sheeri	09/2006	Capt Satish S Kekrey and Lt/Nk Danpath Singh, 28 RR	Disappearance of Abdul Majid Agoo on 11 Jun 90	The case is under consideration in Army HQrs/Ministry of Defence.
33.	12/01 P/S Panzalla	Not received in MOD.			
2003					
34.	08/97 Anantnag	12/2006	Maj Anora, 5 RR	Rape of Mrs Afroza on 03 Jan 97	The case is under consideration in Army HQrs/MOD.
35.	101/2001 P/S Awantipora	Not received in MOD.			
36.	73/98 Bonyar	03/2007	Maj DK Sharma, 29 RR	Custodial disappearance of Farooq Ahmed	State Government of Jammu & Kashmir has been informed vide letter dated 15.12.2008 that no officer named Maj D.K. Sharma was posted to 29 RR Battalion during the relevant time.
2004					
37.	18/2001 Anantnag	06/2007	Maj AK Morca, 7 RR	Killing of Meeraj-ud-din on 1 Nov 2000	Government sanction for prosecution declined vide order dated 23.2.2009.
38.	39/2001 Kraeri	02/2006	Capt Rajesh Sharma, 29 RR	Abduction and death in Mil custody of Mr Mohd Sultan and Hassan Allai on 14 Apr 2001	Government sanction for prosecution declined vide order dated 25.3.2009.
39.	90/2002 Khanyar	11/2006	Major Vikram, 2 RR Camp	Illegal detention and beating up of Mr Mohd Hanief Bhatt on 29 Aug 2002.	Government sanction for prosecution declined vide order dated 01.06.2009
40.	13/01 p/s Kunzer	Not received in MOD.			

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S. No	FIR/PS	RECEIVED ON	RANK, NAME AND UNIT	ALLEGATION	STATUS
<b>2005</b>					
41.	40/99 Kangan	02/2006	Maj (Now Lt Col) PK Singh and Maj (Retd) Abhay Tward, 197 FD Regt	Custodial death of Mr Mohd Amin Wani on 19 Aug 1998	The case is under consideration in Army HQrs/Ministry of Defence.
42.	55/91 P/S Nishat	02/2006	Col Gulshan Rai, Maj GL Yadav, 2 FOD	Custodial death of Mr Mohd Ayoub, an employees in 2 FOD, Srinagar on 21.8.91.	Government sanction for prosecution declined vide order dated 29.9.2008.
43.	179/2003 Baramulla	02/2006	Maj Rakesh, 46 RR	Wrongful confinement and beating up Mr Amar Deep Singh in his House on 18 Aug 03	The case is under consideration in Army HQrs/Ministry of Defence.
44.	42/98 P/S Sheeri	Not received in MOD.			
<b>2006</b>					
45.	42/01 P/S Magam	Not received in MOD			
46.	75/91 P/S Rainawari	Not received in MOD			
<b>2007-Nil</b>					

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Annexure 'B'

**LIST OF 16 PROSECUTION SANCTION CASES RECEIVED IN MOD BUT NOT MENTIONED IN J&K STATE HOME DEPT LIST**

S/N o	FIR/PS	RECD	RANK, NAME AND UNIT	ALLEGATION	STATUS
1	181/93 Kishtwar	12/2005	Capt TK Chopra, Capt Pushpinder and 15 PBOR, 10 JAK Rif	Custodial death of Mr Mushtaq Ahmed r/o Honjala Kishtwar on 03 Nov 93	The case is under consideration in Army HQrs/Ministry of Defence.
2	106/93 Bijbehara	09/2008	Maj Allok Chakarbarati, 1 RR	Custodial death of Mr Farooq Ahmed Bhat 05 Dec 1993	The case is under consideration in Army HQrs/Ministry of Defence.
3	01/94 Sopore	07/2008	Capt Gorpala Singh, 17 JAK RIF	Arrest of Sheikh Hamja on 07 Jul 1999	The case is under consideration in Army HQrs/Ministry of Defence.
4	76/94 Uri	12/2006	Maj AK Abbot, 4 SIKH	Death of Mohd Azad Khan by firing on 10 Jul 94. He was a militant taken into custody, but managed to jumped in Jhelum river while being escorted and killed by firing.	The case is under consideration in Army HQrs/Ministry of Defence.
5	42/95	11/2005	Maj Cinappa, 28 RR	Killing of Sonaulah Malik on 13 May 95	Government sanction for prosecution declined vide letter dated 12.3.2009.
6	34/95 Boniyar	09/2008	Capt Athal Prashad, 5 RAJPUT	Killing of Mukhta Sheikh and Sulla Sheikh on 31 Dec 94	The case is under consideration in Army HQrs/Ministry of Defence.
7	139/96 Baramulla	06/2007	Maj Avtar Singh, 103 TAC	Custodial death of Mr Imtiyaz Ahmed Wani in May 1996.	The case is under consideration in Army HQrs/Ministry of Defence.
8	80/97	09/2008	Maj Ganapati, 28 RR	Killed of three civilians on 16 Jul 1997	The case is under consideration in Army HQrs/Ministry of Defence.
9	154/98 Awantipura	05/2007	Sub US Thapa, Hav Harjinder Singh, Hav JM Khand and Sep Surrender, 31 CIU	Fire upon Nissar Ah Dar on 05 Dec 1998	The case is under consideration in Army HQrs/Ministry of Defence.

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S/N	FIR/PS	RECD	RANK, NAME AND UNIT	ALLEGATION	STATUS
10	08/2000 Chadoora	10/2008	Maj Raghwan R Singh, 5 KUMAON	Death of Ghula Rasool Bhatand Mal Raja on 15 Jan 2000	The case is under consideration in Army HQrs/Ministry of Defence.
11	01/2000 Panzalla	01/2009	Maj Aman Yadav, 28 RR	Rape of Mrs Mehmooda w/o Nazir Ahmed Abassi on 05 Dec 1999	The case is under consideration in Army HQrs/Ministry of Defence.
12	180/2001 Trehgam	09/2008	Maj Bhattachariya, 42 RR	Death of Abdul Geni Ganal on 22 Dec 2001	The case is under consideration in Army HQrs/Ministry of Defence.
13	73/2002 Beerwah	09/2008	Maj Vikash Lakhara and Capt Raju, 19 RR	Death of Altaf Ahmed Sheikh on 26 Feb 2002	The case is under consideration in Army HQrs/Ministry of Defence.
14	224/2003 Baramulla	06/2007	Capt Atul Sharma, 22 RR	Disappearance of Manzoor Ahmad Mir on Sep 2003	Government sanction for prosecution declined vide letter dated February, 2009.
15	64/2003 Nowgam	08/2007	Sub Surendra Sinha, Hav Hemanta Bordoloi, Hav Naba CH Sinha, NK L Ramesh Singh, Sep SU Borbhula, Sep David Lalthanmawia and Sep Bijoy Sinha, 119 Inf Bn TA(ASSAM)	Death of Javed Ahmed Magrey on 01 May 2003	The case is under consideration in Army HQrs/Ministry of Defence.
16	09/2004 Tral	10/2008	Maj Rastogi, 42 RR	Custodial death of Ghulam Mohd Mir on 23 Feb 2004	The case is under consideration in Army HQrs/Ministry of Defence.

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Annexure 5

**DIRECTORATE GENERAL, CRPF, CGO COMPLEX, LODHI ROAD,  
NEW DELHI-110003**

**(Ministry of Home Affairs)**

No. M-V-47/ 2012-Adm. I/RTI

Dated, the February, 2012

To.

*Sri* Gautam Navlakha,  
A-5, Greater Kailash-1,  
New Delhi-110048.

Subject:- **INFORMATION UNDER RTI ACT-2005**

This is with reference to your application dated 10/1/12 received in this Directorate on 14/02/2012 through MHA letter No. I-45020/9/2011-Pers-II dated- 10/2/2012 vide which you have sought certain information regarding providing of case files and details of sanction sought by the Government of Jammu and Kashmir for prosecutions under the AFSPA under RTI Act – 2005.

2. After careful consideration of your application on the subject, it is intimated that as per Section- 24 (1) of Right to Information Act, 2005, Central Police Forces as listed in the Second Schedule of the Act, have been given qualified exemption from the Act in so far as the allegations of other than those connected with Human Right Violations and Corruption are concerned. From the facts of the case mentioned in your application cited above, there appears to be no violations of Human Rights as well as facts of the case do not attract ingredients to constitute the allegations of corruption. Moreover, information sought are general in nature. Hence, this department is not liable to provide the information sought by you.

3. The Appellate Authority for Directorate General under RTI Act, 2005 is IGP (Adm), Directorate General, CRPF, CGO Complex, Lodhi Road, New Delhi-110003 and an appeal can be preferred to the Appellate authority within 30 days from the receipt of the letter.

*S.R. Panthi*  
( S.R.Panthi)

**DIGP (Adm) & CPIO, Dte**

No. M-V-47/ 2012-Adm. I/RTI

Dated, the February, 2012

Copy to :

Shri Neeraj Kansal, Director (Personnel) & CPIO, MHA, Police-II Division, North Block, New Delhi with reference to their letter quoted ibid for information please.

*S.R. Panthi*  
( S.R.Panthi)

**DIGP (Adm) & CPIO, Dte**

Annexure 6

speed post

No. 4/SSB/RTI/GEN/VC/12(1) **279**  
Government of India  
Ministry of Home Affairs  
Directorate General,  
Sashastra Seema Bal,  
East Block, R.K Puram,  
New Delhi - 110 066

Dated. the 13.04.2012

To  
Shri Gautam Navlakha  
A-5, Greater Kailash-I,  
New Delhi- 110 048

**Subject: 1st Appeal under Section 19(1) of the Right to Information, 2005.**

Sir,


Please refer to your appeal dated nil regarding non-receipt of information sought vide your RTI application dated 10.01.2012.

2. In this context, it is intimated that, your RTI application dated 10.01.2012 forwarded by Sh. Neeraj Kansal, Director & CPIO, MHA vide OM No.1/4520/9/2011-Pers-II dated 10.02.2012 has not been received by this office. Further, under Section-24 of the RTI Act, SSB is exempted under the provisions of the RTI Act, except on allegation pertaining to corruption and human rights violation.

4. In case, you intend to prefer a second appeal on the above decision, you may do so to the Central Information Commission on the following address within the time limit prescribed under Section-19 of the Right to information Act :-

The Central Information Commission,  
Room No.305, 2nd Floor,  
'B' Wing, August Kranti Bhawan,  
Bhikaji Cama Place,  
New Delhi - 110066

Yours faithfully,

  
(Somesh Goyal)  
Inspector General (Pers) & Appellate Authority



Annexure 7

**By Regd post with AD**

No. 4/1/PS-CLO/BSF/2011/823-24  
Government of India  
Ministry of Home Affairs  
Directorate General Border Security Force  
(Law Branch)

Block No. 10, 2<sup>nd</sup> Floor,  
IGO Complex, Lodhi Road,  
New Delhi - 110003

Dated 07 Sep' 2012

To :

Sh Gautam Navlakha,  
A-5, Greater Kallash-I  
New Delhi - 110048

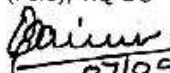
Subject : **INFORMATION UNDER THE RTI ACT-2005**

Please refer to your application dated 10.01.2012 received on 05.09.2012.

2. In this regard, it is to inform you that in terms of Section-24 of the RTI Act-2005, Border Security Force, being a Security Organization, as listed in the Second Schedule of the Act, has been exempted from the operation of this Act.

3. In view of the above, we express our inability to furnish the required information as the Information sought by you does not fall within the ambit of Section 24 of the said Act.

4. Appeal against this lie with Inspector General (Pers), HQ DG BSF, New Delhi.

  
09/09/12  
( K J S BAINS )  
Chief Law Officer  
CPIO, Law Branch

**Copy to:-**

Director(Pers) : With reference to your letter No. 1.45020/  
MHA (Pers-II) 6/2012-Pers-II dated 30.08.2012 with request to return the postal order bearing No. 03F340573 for Rs. 10/- to the applicant. Your letter No.1-45020/9/2011-Pers-II dated 10.02.12 not received by this office.

Annexure 8

**REGISTERED**

Mahanideshalaya Assam Rifles  
Directorate General Assam Rifles  
Shillong-793011

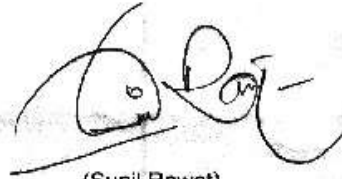
VIII.11011/70(262)PRO/2012/ 389

12 Sep 2012

✓ Shri Guatam Navlakha  
A-5, Greater Kailash I,  
New Delhi - 110048

**RIGHT TO INFORMATION ACT - 2005**

1. Refer to your application dated 10 Jan 2012 recd from MHA on 03 Sep 2012.
2. It is to inform you that the Assam Rifles is exempt from forwarding information sought by you under RTI as per Section 24 and schedule II of the Act.
3. The Appellate authority of this organization is Additional Director General, Assam Rifles, Headquarter Directorate General Assam Rifles, Laitkor, Shillong - 793010.



(Sunil Rawat)  
Lt Col  
Central Public Information Officer

**Copy to :-**

Neeraj Kansal  
Director (Personel) & CPIO  
Police - II Division  
Ministry of Home Affairs  
North Block  
New Delhi - 01

For information please.

Annexure 9

No. III-13014/RTIA/2/2012-Admn- 1135  
Directorate General, ITB Police  
MHA/Govt. of India  
Block-2, CGO Complex, Lodhi Road

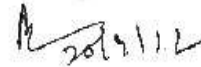
New Delhi-110003  
Dated: 21.9.12

✓ To  
Shri Gautam Navlakha,  
A-5, Greater Kailash-I,  
New Delhi-110048

Please refer your application dated 10.1.2012 requesting therein MHA to provide the case files and details of sanctions sought by the Govt of J&K - for prosecutions under the Armed Forces (J&K) Special Powers Act - from the MHA alongwith other relevant information for period 1990-2011.

2. On the basis of available records, it is apprised that no case received for sanction to prosecute under Armed Forces Special Powers Act, in respect of ITBP personnel, during said period in J&K.


Yours faithfully,



(Ashok Kumar)  
DIG(Admn)/CPIO

**Copy to:**

1. Shri Neeraj, Kansal, Director (Pers) & CPIO, MHA North Block, New Delhi w.r.t. his U.O. No. 1.45020/6/2012-Pers-II dated 30.8.2012.
2. DIG(Pers), Dte. Gen., ITBP.



(Ashok Kumar)  
DIG(Admn)/CPIO

Annexure 10



Government of Jammu and Kashmir  
Home Department  
Civil Secretariat: Srinagar/Jammu

**Shri Khurram Parvez,  
R/o. House No.1, Gupkar Road,  
Srinagar-190001.**

No: Home/RTI/15/2012/1213

Dated 23-02-2012


**Subject:- Information under J&K Right to Information Act, 2009  
regarding prosecution sanctioned under AFSPA.**

Kindly refer to your RTI application dated 12-01-2012. In this context, I am directed to convey that no sanction for prosecution has been intimated by the Ministry of Home Affairs (MHA) and Ministry of Defence (MOD) to the State Government from 1990-2011 under the (Jammu & Kashmir) Armed Forces Special Powers Act.

H3a  
2/2

**Additional Secretary to Government  
Home Department**

Annexure 11

Tele : 2668	<b>REGISTERED BY POST</b>
22009/RTI/Edn/PC/182	Mukhyalaya Uttar Kaman Headquarters Northern Command PIN - 908545 C/O 56 APO
✓ Shri Gautam Navikha A-5 Greater Kailash New Delhi - 110 048	28 Mar 2012
<b>RIGHT TO INFORMATION ACT, 2005</b> <b>SANCTION FOR PROSECUTION UNDER AFSPA : J&amp;K</b> <b>SHRI GAUTAM NAVLAKSHA</b>	
1. Please Reference your application No Nil dated 10 Jan 2012 recd from Integrated HQ of MoD (Army)/RTI Cell vide their letter No A/810027/RTI/88941(Tfr) dt 21 Feb 2012 and received by this HQ on 25 Feb 2012.	
2. The information sought vide your application mentioned above is forwarded herewith as per the details given below:-	
(a) Details of Court Martial (less SCM).	
(b) Quantum of punishment awarded.	
(c) Charged framed.	
(d) Details of incident in the form of brief of case.	
3. Details are given as per the following appendixes attached to this letter.	
(a) Appendix 'A' - Court Martial's in RR Bns (JCOs/OR).	
(b) Appendix 'B' - Court Martial's in RR Bns (Oftrs).	
4. Balance information as asked for, is not held with this office.	
5. If you are not satisfied with the above, you may prefer an appeal to the first Appellate Authority, as under, within 30 days:-	
Brig Adm/Appellate Authority HQ Northern Command PIN-908545 c/o 56 APO	
 (Harish Garg) Col Public Information Officer	
<b>Enclose</b> : As above.	
<b>Copy to</b> :-	

**Appx A**

**DETAILS OF CASES PERTAINING TO RR BNs : JCQ/OR**

<b>Ser No</b>	<b>Unit/Fmn</b>	<b>Year</b>	<b>Particulars of Indls</b>	<b>Court Martial under AA</b>	<b>Brief of case</b>	<b>Punishment</b>
1.	4 RR / CIF (D) / 18 Corps	2001	No 15468102F Sowar Ram Niwas	SGCM AA Sec 69	Committing a civil offence, that is to say, murder.	To suffer death by being hanged by the neck until he be dead.
2.	6 RR / 4 Sect RR / CIF (D) / 16 Corps	2002	No 2598525K Sep K Dhillagar	SGCM AA Sec 69	Committing a civil offence, that is to say, murder.	(a) To suffer imprisonment for life. (b) To be dismissed from service.
3.	HQ 4 Sect RR / CIF (D) / 16 Corps	2002	No 6381841K Nk Dakshina Murthy	SGCM AA Sec 69	Committing a civil offence, that is to say, murder.	(a) To be reduced to the ranks. (b) To suffer rigorous imprisonment for life years. (c) To be dismissed from the service.
4.	20 RR / 6 Sect RR / CIF (R) / 18 Corps	2003	No 14413081N Sep Mahendra Palidar	SGCM AA Sec 69	Committing a civil offence, that is to say murder.	(a) To suffer rigorous imprisonment for ten years (b) To be dismissed from service.
5.	34 RR / 12 Sect RR / CIF (V) / 15 Corps	2003	No 14424606M Gnr Lokesh Gautam	SGCM AA Sect 69	Committing a civil offence, that is to say, murder.	(a) To suffer imprisonment for life. (b) To be dismissed from the service
6.	6 RR / 7 Sect RR / CIF (K) / 15 Corps	2004	No 3400964L Sep Harmeet Singh	SGCM AA Sec 40 (a) AA Sec 63 AA Sec 69	(a) Using criminal force to his superior officer. (b) An Act prejudicial to good order and military discipline. (c) Committing a civil offence, that is to say, causing hurt to a person by doing an act so rashly or negligently as to endanger human life or personal safety of others.	(a) To suffer rigorous imprisonment for three years (b) To be dismissed from the service.

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<b>Ser No</b>	<b>Unit/Fmn</b>	<b>Year</b>	<b>Particulars of Indls</b>	<b>Court Martial under AA</b>	<b>Brief of case</b>	<b>Punishment</b>
7.	23 RR / CIF (D) / 16 Corps	2004	No 2985069 Hav Mahendra Pratap Singh	SCM AA Sec 69	Committing a civil offence, that is to say, causing death by a rash or negligent act not amounting to culpable homicide.	Summary Court Martial
8.	42 RR / 1 Sect RR / CIF (V) / 15 Corps	2004	No 14811778Y Sep Bhupendra das	SGCM AA Sec 69	Committing a civil offence that is to say, murder.	(a) To suffer imprisonment for life. (b) To be dismissed from the service.
9.	35 RR / 12 Sect RR / CIF (V) / 15 Corps	2004	No 1493580N Sapper Jog nder Pal	SGCM AA Sec 69	Committing a civil offence, that is to say murder.	(a) To suffer imprisonment for life (b) To be dismissed from service.
10.	30 RR / 7 Sect RR / CIF (K) / 15 Corps	2004	No 14426701X Sep Hariom Sharma	SGCM AA Sec 36 (d) AA Sec 69	(a) Leaving his plouquet without orders from his superior officer. (b) Committing a civil offence, that is to say, house trespass in order to the committing of an offence punishable with imprisonment. (c) Committing a civil offence, that is to say, using criminal force to a woman with intent to outrage her modesty.	(a) To suffer rigorous imprisonment for three months.  (Not Guilty' of third charge but 'Guilty' of first and second charges).
11.	1 RR / 1 Sect RR / CIF (U) / 15 Corps	2005	No 4573791M Sep Ravindra Singh Bhandari	SGCM AA Sec 69	Committing a civil offence that is to say, murder.	(a) To suffer imprisonment for life. (b) To be dismissed from service.
12.	28 RR / 5 Sect RR / CIF (K) / 15 Corps	2005	JC-5792DF Nk/Sub Cm Prakash	SGCM	Committing a civil offence, that is to say, causing death by a rash or negligent act not amounting to culpable homicide.	(a) To forfeit one year service for the purpose of pension (b) To be severely reprimanded.

Ser No	Unit/Fmn	Year	Particulars of Indls	Court Martial under AA	Brief of case	Punishment
13.	36 RR / 2 Sect RR / CIF (V) / 15 Corps	2005	No 14427083K Rin Goving Singh	SGCM AA Sec 38 (1) AA Sec 52 (a) AA Sec 44	(a) Deserting the service (b) Committing theft of property belonging to the government. (c) Making at the time of enrolment a willfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled.	(a) To suffer rigorous imprisonment for three years. (b) To be dismissed from the service.
14.	34 RR / 12 Sect RR / CIF (V) / 15 Corps	2005	No 3191229F Sep Rohtash Singh	SGCM AA Sec 52 (a) AA Sec 54 (b) AA Sec 39 (a)	(a) Committing theft of property belonging of the government. (b) Losing by Neglect Arm. Magazines and Amn the properties of the government issued to him for his use. (c) Absenting himself without leave.	(a) To suffer rigorous imprisonment for two years. (b) To be dismissed from service.
15.	26 RR / 9 Sect RR / CIF (D) / 16 Corps	2005	No 14926552X Sep Ajith Kumar PS	SGCM AA Sec 69	Committing a civil offence, that is to say, murder.	(a) To suffer imprisonment for life. (b) To be dismissed from the service.
16.	15 RR 5 Sect RR / CIF (K) / 15 Corps	2006	No 1475727W Nk/Cik Balwan Singh	SGCM AA Sec 52 (f) AA Sec 39 (b)	(a) Such an offence as is mentioned in clause (f) of section 52 of the AA with intent to defraud.	(a) To be reduced to the ranks. (b) To suffer rigorous imprisonment for eight months. (c) To be dismissed from the service.

Ser No	Unit/Fmn	Year	Particulars of Indls	Court Martial under AA	Brief of case	Punishment
17.	14 Sect RR Sig Coy / CIF (R) / 16 Corps	2007	JC-370444A Sub AK Chakraborty	SGCM AA Sec 69	Committing a civil offence, that is to say voluntarily causing grievous hurt	To be reprimanded and to forfeit pay and allowances for a period of one month.
18.	48 RR / 13 Sect RR / CIF (R) / 16 Corps	2007	No 4078587P Rfn Sita Ram	SGCM AA Sec 36(d) AA Sec 69	(a) Leaving his post without orders from his superior officer. (b) Committing a civil offence, that is to say, house breaking	(a) To suffer rigorous imprisonment for three months. (b) To forfeit three years of service for the purpose of pension. (c) To be dismissed from the service.
19.	38 RR att to 43 RR / 13 Sect RR / CIF (R) / 16 Corps	2007	No 15774807W Nk/Cik Ravi Kumar Pala	SGCM AA Sec 69	Committing a civil offence, that is to say, murder.	To suffer death by being hanged by neck until he be dead.
20.	56 RR / 28 Inf Div / 15 Corps	2007	No 2792414H L/Nk Bhosale Prashant Narayan	SGCM AA Sec 69	Committing a civil offence, that is to say, attempt to murder.	(a) To suffer rigorous imprisonment for seven years. (b) To be dismissed from the service.
21.	55 RR / 70 Inf Bde / CIF (V) / 15 Corps	2007	No 1089102Y L/Nk Updesh Kumar	SGCM AA Sec 69	Committing a civil offence, that is to say, murder.	(a) To be reduced to the ranks. (b) To suffer imprisonment for life. (c) To be dismissed from service.
22.	3 RR / 1 Sect RR / CIF (V) / 15 Corps	2008	No 15338632A Sapper Bhchitar Singh	SGCM AA Sec 34(c)	In the presence of the enemy misbehaving in such manner as to show cowardice.	(a) To suffer rigorous imprisonment for three months. (b) Adhered to their earlier sentence

Ser No	Unit/Fmn	Year	Particulars of Indls	Court Martial under AA	Brief of case	Punishment
23.	43 RR / 13 Sect RR / CIF (R) / 16 Corps	2009	No 6948747X Sep/SHGD Sudheer Kindo	SGCM AA Sec 38 (1) AA Sec 52 (a)	Committing theft of property belonging to a person subject to military law	(a) Dismissal from service and RI for 3 years.
24.	39 RR / 6 Sect RR / CIF (R) / 16 Corps	2009	JC-329270W Sub/DPMT Ramvir Singh	SGCM AA Sec 52 (a)	Committing theft of property belonging to the government	(a) To forfeit five years of past service for the purpose of pensions. (b) To be severely reprimanded.
25.	40 RR BN / 8 SECT RR / CIF (R) / 16 CORPS	2009	No 4004843K SEP Mukesh Kumar	SGCM AA SEC 69	Committing a civil offence, that is to say, using criminal force to a woman, with intent to outrage her modesty.	(a) To suffer rigorous imprisonment for two years. (b) To be dismissed from the service.

**Appx B**

**DETAILS OF CASES PERTAINING TO RR BNs : OFF**

Ser No	Unit/Fmn	Year	Particulars of Indls	Court Martial under AA	Brief of case	Punishment
1.	5089 Coy ASc (Comp) att with 10 RR/HQ 16 Corps	2003	IC-50430A Maj Sanjay Ahlawat	SGCM AA Sec 52 (f) AA Sec 63	Misappropriation of FOL	'To Forfeit Two Yrs Ser Purpose of Promotion' 'To Forfeit Two Yrs Past Ser Purpose of Pension' 'To be Severely Reprimand
2.	30 RR/15 Corps	2005	IC_54208X Maj Rehman Hussain	GCM AA Sec 69 AA Sec 63	On night intervening 06 and 07 Nov 2004, committed rape on Srimati Alsha Begam, wife of Shri Abdul Rashid Dar, a civilian	'To be Dismissed from Ser
3.	10 RR/CIF (V)/16 Corps	2010	IC-61133M Maj VK Rawat	SGCM AA Sec 69	Death of Riaz Ahmed Bro Rhata (Deesa) in cross firing.	'Not Guilty
4.	59RR/15 Sect RR/16 Corps	2011	IC-63359W Maj Dhan Singh	AA Sec 39 (b) AA Sec 63	Offr was OSL from 23 Feb 09 to 23 Mar 09.	'To be Dismissed from Serv



Annexure 12

Tele No : 233 35086


35262/Misc/RTI/CM/JAG

18 Jun 2012

NYAYA MAHADHIVAKTA VIBHAG  
JUDGE ADVOCATE GENERAL'S DEPARTMENT

INFORMATION UNDER RTI ACT-2005 RELATING TO  
RR-APPLICATION OF SHRI GAUTAM NAVLAKHA  
RECEIVED THROUGH THE MINISTRY  
OF HOME AFFAIRS

1. Ref your SN No A/50095/RE-ORG/RR/SD-5 dt 22 May 2011.
2. Reqd info on the above subject based on inputs available in this office, is fwd herewith as per appx att to this latter. However, HQ Northern Command may also be consulted to supplement these inputs, as the details of RR cases are dealt with, and, held there.

  
(Manoj AR)  
Lt Col  
AJAG (CM)

Shri Gautam Navlakha,  
A-5, Greater Kallash-1  
New Delhi-110048

Copy to :-

DV Dte  
GS/DS-5

## Appendix 'A'

Ser No	Year	Particulars of the accused	Charges	Punishment
1.	1999	IC-47358K Capt Rahul Roy of 5 RR Bn att to 6 RR Bn	AA Sec 41(2)	To be cashiered
2.	1999	JC-192567H Sub Gurpade Ashok Banduji of 17 RR Bn att to 8 RR Bn	AA Sec 39 (b)	(a) To forfeit 02 years past service for the purpose of pension (b) To be Severely Reprimanded
3.	1999	JC-224505Y Sub Umed Singh of 6 RR Bn att with 24 RR Bn (Bihar)	AA Sec 69/ 304A RPC	(a) To take rank and precedence as if his appointment to the rank of Sub bore date the 1 <sup>st</sup> of Dec 1998. (b) To forfeit two years past Service for the purpose of pension. (c) To be severely reprimanded
4.	2000	No 3182055L Sep (LNK) Vinod Balon of 5 RR Bn	AA Sec 69/302 RPC	'Not Guilty'
5.	2000	No 2689792F Sep Rajendra Singh godara of 12 RR Bn	AA Sec 69/302 RPC	(a) To Suffer imprisonment for life. (b) To be dismissed from service.
6.	2000	IC-52603L Capt Ravinder Singh Tewatia of 12 RR Bn	AA Sec 69/376(I) RPC	(a) To be cashiered. (b) To suffer rigorous imprisonment for seven years.
7.	2000	No 3383902M NK Parminder Singh of 6 RR Bn	AA Sec 69/302 RPC	(a) To be reduced to the ranks. (b) To suffer imprisonment for life and (c) To be dismissed from the service
8.	2000	No 2588966P NK DR Sri Raman of 8 RR Bn	AA Sec 69/302 RPC	(a) To be reduced to the ranks. (b) To suffer imprisonment for life and (c) To be dismissed from the service
9.	2000	No 4366279F Sep Zoramthangas of 35 RR Bn	AA Sec 36(d) AA Sec 69/302 RPC	(a) To suffer RI for Three years. (b) To be dismissed from the service
10.	2001	JC-438033H Sub M Venkatesan of 8 RR Bn	AA Sec 63	(a) To take rank and precedence on if his appointment as Sub bore date the 1 <sup>st</sup> day of October 2000 (b) To be severely Reprimanded
11.	2001	No 15469102F Swr Ram Niwas of 4 RR Bn	AA Sec 69/302 RPC	To suffer death by being hanged by the neck until he be dead.

2

Ser No	Year	Particulars of the accused	Charges	Punishment
12.	2001	JC-211240F Sub Dhan Singh of 26 RR & JC-558471F Nb Sub Anirudh Singh of 4 RR Bn att to 4016 Fd Ambulance	AA Sec 52(a) &(e)	(a) To forfeit six yrs past service for the purpose of pension (b) To be severely reprimanded
13.	2002	No2598525K Sep(LNK) K Dhalagar of 8 RR Bn	AA Sec 69/302 RPC	(a) To Suffer imprisonment for life. (b) To be dismissed from service.
14.	2002	No6381841K NK Dakshina Murthy at HQ 4 Sector RR Bn att with 5089 Coy ASC (Composite)	AA Sec 69/302 RPC	(a) To be reduced to the ranks. (b) To suffer rigorous imprisonment for five years. (c) To be dismissed from the service
15.	2003	JC-261311N Sub Shivram Singh, Bhadoriya (Accused No 1) and No 2786542K Hav Patil Bandu Raosaheb (Accused No 2) both of 41 RR (MLI)	AA Sec 69/376(2) (g) RPC	<b>Accused No 1</b> (a) To suffer rigorous imprisonment for ten ears (b) To be dismissed from the service <b>Accused No 2</b> (a) To be reduced to the ranks. (a) To suffer rigorous imprisonment for ten ears and (c) To be dismissed from the service
16.	2003	No 1442606M Gnr Lakesh Gautam of 34 RR Bn (JAT)	AA Sec 69/302 RPC	(a) To suffer imprisonment for life and (b) To be dismissed from the service
17.	2003	<b>Accused No 1</b> JC-641781L Nb Sub AK Mitra of HQ 4 Sect RR att to 10 RR Bn <b>Accused No 2</b> No 6380973L NK Mahendra Singh of HQ 11 Sect RR att to 10 RR Bn	AA Sec 52(f) read with Sec 34 RPC AA Sec 63 read with Sec 34 RPC AA Sec 63 read with Sec 34 RPC AA Sec 52(f) read with Sec 34 RPC AA Sec 63 AA Sec 63 AA Sec 52(f) AA Sec 52(f)	(a) -To forfeit six yrs past service for the purpose of pension (b) To be severely reprimanded  -do-

Ser No	Year	Particulars of the accused	Charges	Punishment
18.	2004	No 14413081N Sep Mahendra Patidar of 20 RR Bn	AA Sec 69/302 RPC	(a) To forfeit ten yrs past service for the purpose of pension (b) To the severely reprimanded
19.	2004	No 1493580N Spr Joginder Pal of 35 RR Bn (Assam)	AA Sec 69/302 RPC	(a) To suffer imprisonment for life and (b) To be dismissed from the service
20.	2004	No 3400964I Sep Harneet Singh of 6 RR Bn	AA Sec 40(a) AA Sec 63 AA Sec 69/337 RPC	(a) To suffer rigorous imprisonment for three years, And (b) To be dismissed from the service
21.	2004	JC-26326N Nb Sub Jagtar Singh of 30 RR	AA Sec 69/304A RPC	(a) To forfeit one year past service for the purpose of pension (b) To the severely reprimanded
22.	2004	No 14426201X Sep Hariom Sharma of 30 RR Bn att to 21 RR Bn (Guards)	AA Sec 36(D) AA Sec 69/Sec 451 AA Sec 69/354	(a) To suffer rigorous imprisonment for three months
23.	2004	No 14811779Y Sep/MT Bhupendra Das of 42 RR Bn (ASSAM)	AA Sec 69	(a) To suffer imprisonment for life and (b) To be dismissed from the service
24.	2005	JC-579207F Nb Sub Om Prakash of 28 RR Bn Now att to 28 RR Bn	AA Sec 304A	(a) To forfeit one year past service for the purpose of pension (b) To the severely reprimanded
25.	2005	14427083K Bn Govind Singh of 36 RR Bn (Garh Rif)	AA Sec 38(1) AA Sec 52 (a) AA Sec 44 (1)	(a) To suffer rigorous imprisonment for three years, And (b) To be dismissed from the service
26.	2005	JC-54208W Maj Rehman Hussain of 30 RR Bn att to HQ 7 Sector	AA Sec 69/376 (1) AA Sec 69/354 AA Sec 69/352 AA Sec 63	(a) To be dismissed from the service
27.	2005	14926552X Sep(LNK) Ajit Kumar PS of 26 RR Bn (Kumaon)	AA Sec 69/302	(a) To suffer imprisonment for life and (b) To be dismissed from the service

Ser No	Year	Particulars of the accused	Charges	Punishment
28.	2005	3188138M Sep Hema Ram of 5 RR Bn att to 5271 ASC Bn (MT)	AA Sec 69/161 of RPC 1989	(a) Suffer rigorous imprisonment for three months
29.	2005	14806861K Sep LNK Kumar Maya Prasad of 21 RR Bn att to 5271 ASC Bn (MT)	AA Sec 69/161 of RPC 1989	(a) Suffer rigorous imprisonment for three months
30.	2005	984350N Hav Tilak Raj of 40 RR Bn (Dogra)	AA Sec 69/302 AA Sec 69/307	(a) To be reduced to the ranks. (b) To suffer imprisonment for life and (c) To be dismissed from the service
31.	2005	3191229F Sep Rohtas Singh of 34 RR Bn (JAT)	AA Sec 52(a) AA Sec 54 (b) AA Sec 69/307	(a) To suffer rigorous imprisonment for two years and (b) To be dismissed from the service
32.	2005	4573791M Sep Pavindra Kumar Ehandari of 1 RR Bn (Mahar)	AA Sec 69/302	(a) To suffer imprisonment for life (b) To be dismissed from the service
33.	2005	IC-49003X Maj Arvid Rishi of 43 RR (Raj Rif)	AA Sec 69/302	'Not Guilty'
34.	2006	1089102Y L/DFR Updesh Kumar of 55 RR Bn (Grenadiers)	AA Sec 69/302	(a) To be reduced to the ranks. (b) To suffer imprisonment for life and (c) To be dismissed from the service
35.	2007	2792414H Sep Bhosale Prashant Narayan of 56 RR Bn (Marathali)	AA Sec 69/307	(a) To suffer imprisonment for 7 years (b) To be dismissed from the service
36.	2007	14435246F Gur/Opr Suresh Chandra Behera of 28 RR Bn att to 126 Inf Bn	AA Sec 69/302	(a) To suffer death by being hanged by neck until he be dead
37.	2007	3184739A NK Jagu Ram Gora of 34 RR (JAT) att to 12 Bn the Jammu and Kashmir Rifles	AA Sec 69/302	(a) To suffer imprisonment for 2 years (b) To be dismissed from the service (c) To be reduced to the ranks.
38.	2007	JC-26601X Sub Jaibir Singh of 28 RR Bn att to 2 Field Ord Depot	AA Sec 34(I) AA Sec 63	(a) To suffer imprisonment for 1 years (b) To be dismissed from the service
39.	2007	JC-267827M Nb Sub Harbhajan Singh of 28 RR Bn att to 2 Field Ord Depot	AA Sec 34(C) AA Sec 63	(a) To forfeiture of 3 years past service for the purpose of pension (b) To be Severely Reprimanded

Ser No	Year	Particulars of the accused	Charges	Punishment
40.	2007	4078587P Rfn Sita Ram of 48 RR (Garh Rif)	AA Sec 36(d) AA Sec 69/459	(a) To suffer rigorous imprisonment for 3 months (a) To forfeit three years of service for the purpose of pension
41.	2007	15774807W NK/Clk Ravi Kumar Pola of 38 RR Bn (Madras) att to 43 RR Bn (Raj Rif)	AA Sec 69/302	(a) To suffer death by being hanged by neck until he be dead
42.	2007	JC-370444A Sub AK Chakrabarty of 14 Sector RR Sig Coy	AA Sec 69/326	(a) To be reprimanded and to forfeit pay and allow for a pay of one month
43.	2008	15338632A Spr Bachitar Singh of 3 RR Bn	AA Sec 34(C) AA Sec 326	(a) To suffer rigorous imprisonment for three months
44.	2008	15336312M Spr Dalbir Singh of 3 RR Bn	AA Sec 34(C)	(a) To suffer imprisonment for 6 months (b) To be dismissed from the service
45.	2008	IC-61570M Maj Maharana Prasad Lingraj of 45 RR Bn (JAT) att with Arty Centre, Nasik Road Camp.	AA Sec 38 (f)	(a) To be cashiered (b) To suffer imprisonment for 3 months
46.	2008	4084712K Rfn Mukesh Singh of 36 RR (Garh Rif)	AA Sec 69/307	'Not Guilty'
47.	2009	2698846Y Gdr Deshraj Meena of 29 RR (Grenadiers)	AA Sec 34(d)	(a) To suffer imprisonment for 3 years and 6 months (b) To be dismissed from the service
48.	2009	JC-329270W Sub Ramvir Singh of 39 RR (Grenadiers)	AA Sec 52(a)	(a) To forfeit 05 years of past service for the purpose of pension, and (b) To be Severely Reprimanded
49.	2009	4004843K Sep Makresh Kumar of 40 RR Bn (Dogra)	AA Sec 69/456 AA Sec 69/354 AA Sec 69/354	(a) To suffer imprisonment for 2 years and (b) To be dismissed from the service
50.	2009	6948747X Sep Sudheer Kando of 43 RR Bn (Garh Rif)	AA Sec 38(l) AA Sec 52(a)	(a) To suffer imprisonment for 3 years (b) To be dismissed from the service (c) To forfeit Rs 59,000/- from all arrears of pay and allowances and other public money due to him at the time of dismissal

Ser No	Year	Particulars of the accused	Charges	Punishment
51.	2011	IC-63359W Maj Dhan Singh of 59 RR (Assam) att with HQ 15 Sec RR	AA Sec 39(b) AA Sec 63	(a) To be dismissed from the service
52.	2011	9111491K Rfn Kuldeep Raj of 63 RR (Bihar) att with 60 RR (Naga)	AA Sec 69/302 AA Sec 69/326 AA Sec 38(l)	(a) To suffer imprisonment for life, and (b) To be dismissed from the service
53.	2011	SL-4232W Lt Col Gurdev Sing of 50 RR Bn att to 73 Armd Regt	AA Sec 63 AA Sec 69/25(3)(i) of the Arms Act 1959	(a) To be severely reprimanded, and (b) Fine of Rs. 500/-

Annexure 13

28

Tele : 011-23019585

RTI Cell, ADG AE  
G-6, D-1 Wing  
Sena Bhawan, Gate No 4  
IHQ of MoD (Army)  
New Delhi-110 011


A/810027/RTI/9399

18 Apr 2012

Shri Gautam Navlakha  
A-6, Greater Kailash  
New Delhi - 110 048

**RIGHT TO INFORMATION ACT 2005**

1. Reference your application dated 16 Feb 12, received at this office on 16 Mar 12 vide MoD/D (AG) Note No 23 (16)/2012-D (AG) dated 15 Mar 12.
2. Information as available with this Headquarters and permissible under RTI Act 2005 is given in succeeding para.
3. An extract of AG/DV-1 Note No 17732/RTI/9399/AG/DV-1 (P) dated 03 Apr 12 vide which information pertaining to your queries has been provided, is enclosed herewith.
4. The address of First Appellate Authority of this HQ is Provost Marshal & Appellate Authority, Integrated HQ of MoD (Army), Room No 421-A, 'B' Wing, Sena Bhawan, New Delhi-110011.



(Rajesh Raghav)  
Lt Col  
GSO-1 (RTI)  
for CPIO of Indian Army

**Enclosures** : One page only.

E:/rt act /Responses/Slu/

INFORMATION PROVIDED UNDER RTI ACT 06

17732/RTI/9399/AG/DV-1(P)

03 Apr 2012

**INTEGRATED HEADQUARTERS OF MOD (ARMY)**  
**ADDL DTE GEN DISCIPLINE & VIGILANCE**  
**AG/DV-1(P)**

Sl No.	Details	No. of cases	Remarks
(a)	Total No of cases recd for sanction for prosecutions under AFSPA-1990 of J&K, since 1990-2011.	44	Details of Armed forces personnel and unit cannot be given under RTI Act Para 8(1)(j) & 8(1)(a)
(b)	Total No. of cases denied by the Central Government.	35	All case files have already been returned to State Govt by MoD.
(c)	No. of cases under process in Ministry of Defence/ Integrated Headquartere of MoD (Army)	09	
(d)	Enquiries and court - martial conducted by the Army and the result of these proceedings and punishment, if any, ordered.	01	(a) Army has convicted and punishment awarded Dismissal from Service & 10 years Rigorous Imprisonment in civil jail.  (b) Detail of case cannot be provided, since the case file has already been returned to State Govt by MoD.

A-57

INFORMATION PROVIDED UNDER RTI ACT 06

लेखक: Col  
 (कनिष्ठ वर) आर टी आई  
 (कनिष्ठ वर) एम  
 सहायक वर मांत्रालय (सेना)  
 MoD (Army)

Tele : 011-23019585  
ASCON : 35675

RTI Cell, ADG AE  
G-6, D-1 Wing  
Sena Bhawan, Gate No-4  
IHQ of MoD (Army)  
New Delhi -110011

A/810027/9399/RTI-1952 (Appeal)

22 Jun 2012

✓ Shri Gautam Navlakha  
A-5, Greater Kallash-1  
New Delhi - 110 048

**APPEAL UNDER RIGHT TO INFORMATION ACT - 2005**  
**SHRI GAUTAM NAVLAKHA**

1. Refer Speaking Order of the Appellate Authority issued vide their letter No A/87008/AG/PM/RTI-1952 dt 20 Jun 2012.
2. An extract of Para 2 of AG/DV-1 Note No 17732/RTI/9399/AG/DV-1(P) dt 04 Jun 2012 is enclosed as directed by the Appellate Authority.



Enclosure As above.

**Copy to :-**

AG PM Office

- For info wrt your letter mentioned at para 1 above.

(R. Hageraj)  
Maj  
GSO 1(Appeal)  
for DDG RTI

04 Jun 2012

**INTEGRATED HEADQUARTERS OF MOD (ARMY)**  
**ADDL DTE GEN DISCIPLINE & VIGILANCE**  
**AG/DV-1**

2. Reply is fwd herewith as under:-


(a) Statistical data pertaining to the queries has already been made available to the applicant. The details sought by him with regards to names, designation and unit of the personnel against whom prosecution sanction was sought cannot be provided under the following provisions :-

- (i) **RTI Act Sec 8(j)** – For the cases in which prosecution sanction has been denied by the Central Government.
- (ii) **RTI Act Sec 8 (h)** – For the cases which are still under investigation at various stages.

(b) The details of one case, in which prosecution sanction was denied by the Central Government but the Army punished the accused persons are as under :-

Rank & Name	Unit	Offence	Date of Punishment	Punishment
Naik Harbhajan Singh Rifleman Gurtej	1 Rashtriya Rifles	Rape of a civil women	11 Aug 1995	Dismissal from service & Rigorous Imprisonment for 10 Years.

(c) The contention of the applicant that "the public has a right to know the names and details of Army personnel accused of committing crime" is wrong as only in one case the individuals were found guilty and were punished. In all other cases they have been found non-guilty and hence their details cannot be disclosed under Sec 8 (j) of RTI Act, 2005.

  
 श्री एस एच-1 (अपेक्षित) (अपेक्षित) (अपेक्षित) (अपेक्षित) (अपेक्षित)  
 GSO-1 (Appointed) (Appointed) (Appointed) (Appointed) (Appointed)  
 एडीएम (अपेक्षित) (अपेक्षित) (अपेक्षित) (अपेक्षित) (अपेक्षित)  
 HQ of MOD (Army)



135

**DIRECTORATE GENERAL, C.R.P.F. CGO COMPLEX, LODHI ROAD,  
NEW DELHI- 110003**  
(Ministry of Home Affairs)

No. M-V-47/ 2012-Adm. I/RTI Dated, the February, 2012

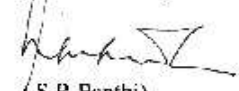
To,  
Shri Gautam Navlakha,  
A-5, Greater-Kailash-1,  
New Delhi-110048.

Subject- **INFORMATION UNDER RTI ACT-2005**

This is with reference to your application dated 10/1/12 received in this Directorate on 02/02/2012 through MHA O.M. No. A-12011/ 1/2011-pers-III dated - 31/1/2012 vide which you have sought certain information regarding details of incidents alleged found/enquiries and court-martials /FIR/quantum of punishment ordered/Charges framed against the accused under RTI Act - 2005.

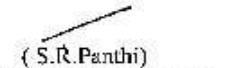
2. After careful consideration of your application on the subject, it is intimated that as per Section- 24 (1) of Right to Information Act, 2005, Central Police Forces as listed in the Second Schedule of the Act, have been given qualified exemption from the Act in so far as the allegations of other than those connected with Human Right Violations and Corruption are concerned. From the facts of the case mentioned in your application cited above, there appears to be no violations of Human Rights as well as facts of the case do not attract ingredients to constitute the allegations of corruption. Moreover, information sought are general in nature. Hence, this department is not liable to provide the information sought by you.

3. The Appellate Authority for Directorate General under RTI Act, 2005 is IGP (Adm), Directorate General, CRPF, CGO Complex, Lodhi Road, New Delhi- 110003 and an appeal can be preferred to the Appellate authority within 30 days from the receipt of the letter.

  
 ( S.R.Panthi )  
**DIGP (Adm) & CPIO, Dte**

No. M-V-47/ 2012-Adm. I/RTI Dated, the February, 2012

Copy to :  
Shri Neeraj Kansal, Director (Personnel) & CPIO, MHA, Police-II  
Division, North Block, New Delhi with reference to their letter quoted ibid for  
information please.

  
 ( S.R.Panthi )  
**DIGP (Adm) & CPIO, Dte**

Speed Post  
RTI Matter


**Directorate General, ITB Police, MHA/Govt. of India, Block-2, CGO Complex, Lodhi Road, New Delhi-110003.**

No. III-13014/RTIA/2/2012/Admn- 143

Dated: 14.2.2012

Please refer your application dated 10.1.2012 received at Directorate General, ITBP on 01.2.2012 through Ministry of Home Affairs, Govt. of India seeking thereunder information regarding Enquiries, accused persons, charges, FIR etc..

2. With reference to your above mentioned application, it is intimated that the requisite information does not fall in the category of information that can be supplied by ITBP under Right to Information Act, 2005. Therefore, the requisite information is not being supplied.
3. The appellate Authority in this regard is IG(Admn), Directorate General, ITB Police, Block-2, CGO Complex, Lodhi Road, New Delhi.

  
DIG(Admn) & CPIO

Shri Gautam Navlakha,  
A-5, Greater Kailash-I,  
New Delhi-110048.

**Copy (for information) to:**

Shri Neeraj Kansal, Director(Pers) & CPIO, MHA, North Block, New Delhi  
w.r.t. O.M. No. A-12011/1/2012/Pers-III dated 31.1.2012.

  
DIG(Admn) & CPIO

Annexure 16

**SPEED POST**

महाविदेशालय  
केन्द्रीय औद्योगिक सुरक्षा बल  
(गृह मंत्रालय)

13 सीजीओ परिसर  
लोधी रोड, नई दिल्ली - 03  
दिनांक 16 फरवरी 2012

पत्र सं. 42065/आरटीआई-943/प्रचा/2011- 499


To  
Shri Gautam Navlakha  
H.No. A-5, Greater Kailash-I  
New Delhi-110048

**Sub: Information under the Right to Information Act: Reg.**

Please refer to your representation dated 10.01.2012, received at this Dte. on 01-02-2012, vide which you have sought information under RTI Act-2005.

02. We regret that the information sought by you, cannot be provided under RTI Act-2005 as section 24 read with second schedule of the Act exempts CISF from providing information except for the cases of corruption & human rights violation. The information sought by you does not fall precisely within the ambit of the two categories mentioned above.

03. If you are not satisfied with the reply, you may prefer an appeal before the first Appellate Authority (i.e. Shri H. V. Chaturvedi, IG/Adm, CISF, 13 CGO Complex Lodhi Road, New Delhi ) under section 19 (1) of the RTI Act 2005 within thirty days from the receipt of this reply.

  
(जयदीप प्रसाद)  
उप महानिरीक्षक/प्रचालन एवं सीपीआईओ

Copy to :

Shri Neeraj Kansal : For information wert Mha letter No. A-12011/1  
Director (Pers) & CPIO /2012/Pers-III dated 31st Jan 2012.  
Pers-III, North Block, MHA  
New Delhi.

Special Post

No. 4/SSB/RTI/GEN/VC/12(1) 17 2-93  
Government of India  
Ministry of Home Affairs  
Directorate General,  
Sashastra Seema Bal,  
East Block, R.K. Puram,  
New Delhi - 110 066

Dated, the 22-2-12-

To  
Shri Gautam Navlakha  
A-5, Greater Kailash-I,  
New Delhi- 110 048

Subject: Application under Right to Information, 2005.

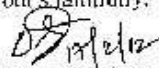
Sir,

Please refer to MHA OM No. A-12011/1/2012/Pers-II regarding transfer of your RTI application dated 10/01/2012

2. In this context, it is intimated that under Section-24 of the RTI Act, SSB is exempted under the provisions of the RTI Act, except on allegation pertaining to corruption and human rights violation. The information sought by the applicant is not specific on the allegations of corruption and human rights violation.

3. In case, you intend to prefer an appeal, you may do so to the following Appellate Authority:

Sh Somesh Goyal, IPS  
Inspector General (Pers) / 1st Appellate Authority  
Sashastra Seema Bal  
East Block-V, R.K. Puram,  
New Delhi- 110 066.

Your's faithfully,  
  
Dy. Inspector General (Pers) & CPIO

Copy forwarded to Sh Neeraj Kansal, Director (Pers) & CPIO,  
Ministry of Home Affairs, Police-II Divn., North Block, New Delhi w.r.to MHA  
OM No.A-12011/1/2012/Pers-II for information please.

Dy. Inspector General (Pers) & CPIO

Annexure 18

**By Regd post with AD**

No. 1/4/CLO/BSF/2012/367-71  
Government of India,  
Ministry of Home Affairs,  
Directorate General Border Security Force  
( Law Branch)

Block No. 10, 2<sup>nd</sup> Floor,  
CGO Complex, Lochi Road,  
New Delhi-110003  
Dated, the 24 Feb 2012

To,

Sh Goutam Navlakha,  
A-5 Greater Kailash-1,  
New Delhi - 110 048

Sub:- **INFORMATION UNDER RTI ACT**


Sir,

Please refer to your RTI application dated 10 Jan 2012 (marked by 10 Jan 2012) received on 13 Feb 2012.

2. In this regard, it is to inform you that in terms of Section- 24 of the RTI Act-2005, Border Security Force, being a Security Organization, as listed in the Second Schedule of the Act, has been exempted from the operation of this Act.

3. In view of the above, we express our inability to furnish the required information, as the information sought by you does not fall within the ambit of Section 24 of the said Act.

4. Appeal against this lie with Joint Secretary (Police-II), MHA, North Block, New Delhi.

  
*K J S Bains*  
24/02/12  
( K J S BAINS )  
Chief Law Officer/DIG  
---CPIO, Law Branch

Copy to:-

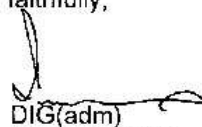
1. Director (Pers) & CPIO Ministry of Home Affairs, (Police-II Division), North Block, New Delhi	: With reference to your letter No. A-12011/1/2012/Pers-II dated 31 Jan 2012 with request to return the postal order bearing No. 03F 340655 for Rs. 10/- to the applicant.
2. Pers Dto, HQ DG BSF, New Delhi	: With reference to your UO No. DIG(Pers)/R11/BSF/2012/47-49 dated 09 Feb 2012.

Annexure 19

POLICE	HEADQUARTERS	J&K SRINAGAR
		No: PHQ/RTI-23/2012/ 605-06.
		Dated: Sept. 24, 2012
<p>The Chief Information Commissioner,          J&amp;K State Information Commission,          Srinagar.</p>		
<p>Sir,</p>		
<p>In response to your office order dated 28.08.2012, the information sought by Shri Khurram Parvez is submitted as under:-</p>		
1	Copy of Government Circular/s (SROs, if any) based on which Jammu and Kashmir Government awards and promotions to the personnel of Jammu and Kashmir Police for anti-militancy operations from 1989 to 2012	Copies enclosed
2	How many personnel of Jammu and Kashmir Police have been conferred with awards and promotions for killing local Jammu and Kashmir militants from 1989 to 2012?	<p>In reply to point No. 2, 3, 4, and 5, it may be mentioned here that during the period in question 2228 police officials of various ranks have been granted out of turn promotions for their consistent exceptional/ outstanding performance. During the same period 560 police officer/officials have been awarded gallantry medals for the gallant acts exhibited by them during the period of their duties. However, the information sought by the applicant regarding the promotions/ awards granted for killing and arresting local/foreign militants cannot be segregated and thus cannot be provided.</p>
3	How many personnel of Jammu and Kashmir Police have been conferred with awards and promotions for arresting local Jammu and Kashmir militants from 1989 to 2012?	
4	How many personnel of Jammu and Kashmir Police have been conferred with awards and promotions for killing foreign militants from 1989 to 2012?	
5	How many personnel of Jammu and Kashmir Police who have been conferred with awards and promotions for arresting foreign militants from 1989 to 2012?	

6	List of personnel of Jammu and Kashmir Police who have been conferred with awards and promotions for arresting/killing local/foreign militants since 1989 to 2012. The list should include names of the personnel, parentage, address, designation and any identification number.	This information can not be shared as same, if disclosed, shall endanger lives of the officials and their un-protected families under section 8(1)(f) of J&K RTI Act 2009.
7	List of the local/foreign militants for whose killings/arrests these awards/promotions were conferred from 1989 to 2012. The list should include name, parentage, address, place of killing, FIR Nos. and place of burials etc.	The information sought by the applicant can not be provided to the applicant as the dissemination of the same has potential to lead to incitement of offences, thereby creating un-rest and law & order problem in the society, which is against the larger interests of the State under section 8(1)(a) of J&K RTI Act 2009.

Yours faithfully,



DIG(adm)

1<sup>st</sup>. Appellate Authority, PHQ,  
J&K, Srinagar

Encl: 09 lvs.

Copy to:-

✓ Shir Khurram Parvez R/O H.No. 1, Gupkar Road, Srinagar.

**GOVERNMENT OF JAMMU AND KASHMIR**  
**HOME DEPARTMENT**  
**JAMMU**

Subject: Procedure for out of turn promotion in Police Department.

Reference: General Administration Department's U. O. No. GDC-159/CM/99 Dated 15-12-1999.

Government Order No. Home-3 (P) of 2000  
 Dated: 06-01-2000.

Sanction is accorded to the adoption of the following procedure and norms for out of turn promotion in the Police Department in respect of very exceptionally deserving cases on objective basis:

- i) Normally, exceptional/outstanding performance would be rewarded with awards, medals or even advance increments;
- ii) Out of turn promotion would be considered only for consistently exceptional performance on the anti-militancy front and for this purpose dossier/citation would be prepared carefully and cross checked before putting final stamp of authenticity by the Director general of Police;
- iii) The recommendations of the Director General of Police along with the dossier/citation, APR resume and vigilance clearance, the extent of deviation from the seniority rule, etc. would be placed before the Home Department Selection Committee for consideration/recommendation;
- iv) The recommendations of the Selection Committee would be placed with prior approval of the Minister of State, Home Department before the Chief Minister through Chief Secretary in coordination for his approval to out of turn promotion in relaxation of rules.
- v) With approval of Hon'ble Chief Minister conveyed through General Administration Department (Coordination) orders would be issued by the Home Department.

By order of the Government of Jammu and Kashmir:

~~(Yedullah)~~

Addl. Secretary to Govt.  
Home Department

No. Home.PB-I/1/2000

Dated: 06-01-2000.

Copy to:

1. Director General of Police J&K, Jammu; with the request to find out the position in Punjab and North Eastern States so that the matter is reviewed accordingly.



Government of Jammu and Kashmir  
Home Department

\*\*

Subject: Procedure for out of turn promotion in the Police Department.

Government Order No. Home-554 (P) of 2007  
D a t e : 29 - 11 - 2007

In partial modification of Government Order No. Home-3 (P) of 2000 dated 06.01.2000, it is hereby ordered that:-

- i) The Director General of Police shall be the competent authority for grant of out-of-turn promotion upto the rank of Inspector on the recommendations of Police Establishment Board;
- ii) the out-of-turn promotion from Inspector to the rank of Deputy Superintendent of Police shall be granted with the approval of Chief Minister on the recommendations of the Selection Committee;
- iii) for grant of out-of-turn promotions upto the rank of Inspector, the recommendations of the concerned Range DIG along with dossiers/citation, APR resume, vigilance clearance and the extent of deviation in the seniority list, shall be placed before the Police Establishment Board for consideration and recommendation;
- iv) for grant of out-of-turn promotion from Inspector to the rank of Deputy Superintendent of Police, the recommendations of DGP along with dossiers/citation, APR resume, vigilance clearance, and the extent of deviation in the seniority list, shall be placed before the Home Department, Selection Committee headed by Chief Secretary (with Director General of Police & Home Secretary as members) for consideration and recommendation. Promotion orders shall be issued by the Home department; and
- v) the out-of-turn promotions shall be granted judiciously so as to ensure that this incentive is extended only to the genuine and deserving members of the Police force.

By order of the Government of Jammu and Kashmir.

(G.N. Balanda)

Under Secretary to Government

Dated: 29 - 11 - 2007

No: Home/PB-1/03/Td/2006

Copy to the:-

Director General of Police, PHQ, J&K, Jammu with reference to his letter No. GB/M-27/2007/33161 dated 24.8.2007  
Principal Secretary to Hon'ble Chief Minister.  
General Manager, Govt. Press, Jammu for publication in the Govt. gazette.  
PS to Financial Commissioner, (Home)  
PA to Spl. Secy. (GH) Home  
Govt. Order file (w.3.s.c.)/Stock file.

Handwritten notes and signatures in the left margin, including "K. B. S. D. 40" and "29/11/07".

**STATUTES AND RULES RELATING TO THE PRESIDENT'S POLICE  
MEDAL AND THE POLICE MEDAL**

The following is a reprint of Notification Nos. 3-Pres and 4-Pres, dated 1<sup>st</sup> March, 1951 as amended upto the 21<sup>st</sup> January, 2011.

**PRESIDENT'S SECRETARIAT**

**NOTIFICATION**

New Delhi, the 1<sup>st</sup> March, 1951

**No. 3-Pres-** The President is pleased to institute the following awards to be conferred on members of Police Forces, Central Police/Security Organizations throughout the Indian Union in consideration of the meritorious service or gallantry and outstanding devotion to duty to be designated 'President's Police Medal' and 'Police Medal' respectively and to make ordain and establish the following statutes governing them which shall be deemed to have effect from the twenty sixth day of January in the year one thousand nine hundred and fifty.

**PRESIDENT'S POLICE MEDAL:**

**Firstly:** The award shall be in the form of a medal and styled and designated the PRESIDENT'S POLICE MEDAL and (hereinafter referred to as the Medal).

\* **Secondly:** The Medal shall be circular in shape, made of silver gold gilt, one and three eighth inches in diameter, and shall have embossed on the obverse the design of a heraldic Star in the Centre and shall have engraved on the upper edge, the words " राष्ट्रपति का पुलिस पदक" and the words "President's Police Medal - INDIA inscribed on the lower edge thereof. Hindi and English inscription shall be separated by a small Star appearing on either side. On the reverse, it shall have embossed the State Emblem in the centre and words "वीरता के लिए" or "विशिष्ट सेवा के लिए" and the words " For Gallantry" or " For Distinguished Service" on the upper and lower edge respectively. The words "सत्यमेव जयते" shall be embossed below the State Emblem. The State Emblem and the writings around it, shall be encircled by a wreath. On the rim, the name of the person to whom the

**Thirdly:** The Medal shall only be awarded to those who have either performed acts of exceptional courage and skill or exhibited conspicuous devotion to duty as members of police forces and Central Police/Security Organizations within the territory of India.

**Fourthly:** The names of those to whom this medal may be awarded may be published in the Gazette of India and a Register of such names may be kept in the Ministry of Home Affairs by such person as the President may direct.

**Fifthly:** Each Medal shall be suspended from the left breast and the riband, of an inch and three eighths in width, shall, in the case of distinguished service, be half blue and half silver white, and in the case of awards for acts of exceptional courage and gallantry the riband will be half blue and half silver white, the two colours being separated by a vertical red line 1/8" in width.

**Sixthly:** Any act of gallantry which is worthy of recognition by the award of PRESIDENT'S POLICE MEDAL but is performed by one upon which the Decoration has already been conferred, may be recorded by a Bar attached to the riband by which the medal is suspended. For every such additional act an additional Bar may be added and for each Bar awarded a small silver rose with gold gilt shall be added to the riband when worn alone.

**Seventhly:** It shall be competent for the President to cancel and annul the award to any person of the above Decoration and that there upon his name in the Register shall be erased. It shall, however, be competent for the President to restore any Decoration, which may have been so forfeited. Every person to whom the said decoration is awarded shall, before receiving the same, enter into an agreement, to return the medal if his name is erased as aforesaid. Notice of cancellation or restoration in every case shall be published in the Gazette of India.

**Eighthly:** It shall be competent for the President to make rules to carry out the purpose of these statutes.

#### **POLICE MEDAL:**

**Firstly:** The award shall be in the form of a medal and styled and designated the POLICE MEDAL (hereinafter referred to as the MEDAL).

**\*Secondly :** The Medal shall be circular in shape made of bronze, one and three eighths inches in diameter and shall have embossed on the obverse the State Emblem in the Centre and the words "सत्यमेव जयते" inscribed thereunder. The words "पुलिस पदक" and "Police Medal" shall appear on the upper edge and lower edge respectively.

: 3 :

Hindi and English inscriptions shall be separated by a small Star appearing on either side. On the reverse, it shall have embossed the words "भारतीय पुलिस" and the "Indian Police" on the upper and lower sides respectively. These inscriptions shall be separated by two parallel horizontal straight lines wherein the words "वीरता के लिए" and "For Gallantry" or "सराहनीय सेवा के लिए" and "For Meritorious Service" shall be inscribed. This will be semi-circled by wreaths on either side of these lines. On the rim the name of the person to whom the medal has been awarded, shall be inscribed".

**Thirdly:** The Medal shall be awarded to only those members of a recognized police force or Central Police Security Organization within the territory of India, who have performed service of conspicuous merit and gallantry.

**Fourthly:** The names of those to whom this medal may be awarded may be published in the Gazette of India and a Register of such names shall be kept in the Ministry of Home Affairs by such a person as the President may direct.

**Fifthly:** Each medal shall be suspended from the left breast, and the riband of an inch and three eighth in width shall be dark blue with a narrow silver stripe on the either side and a rison stripe in the centre, and in the case of awards for acts of conspicuous gallantry each of the blue portions of the riband shall contain a silver line down the middle.

**Sixthly:** Any distinguished conduct or act of gallantry which is worthy of recognition by the award of the POLICE MEDAL but is performed by one upon whom the decoration has already been conferred may be recorded by a Bar attached to the riband by which the medal is suspended. For every such additional act an additional Bar may be added and for each Bar awarded a small silver rose shall be added to the riband when worn alone.

**Seventhly:** It shall be competent for the President to cancel and annul the award to any person of the above medal and that thereupon his name in the Register shall be erased. It shall, however, be competent for the President to restore any Medal which may have been so forfeited. Every person to whom the said decoration is awarded shall before receiving the same, enter into an agreement to return the medal if his name is erased as aforesaid. Notice of cancellation or restoration in every case shall be published in the Gazette of India.

**Eighthly:** It shall be competent for the President to make rules to carry out the purpose of these statutes.

Sd/-xx  
Shavax A. Lal  
Secretary

\* Substituted vide President's Sectt. Notification No. 88-Pres/98 dated the 20<sup>th</sup> July, 1998.

: 4 :  
**PRESIDENT'S SECRETARIAT**

**NOTIFICATION**

*New Delhi, the 1<sup>st</sup> March, 1951.*

**No. 4-Pres-**In accordance with the Statute 'eighthly' of the statutes relating to the award of the President's Police Medal and the Police Medal, the following rules governing them are notified.

**PRESIDENT'S POLICE MEDAL**

1. Recommendations for award on the ground of conspicuous gallantry shall be made as soon as possible after the occasion of which the conspicuous gallantry was shown and in special circumstances recommendations for awards on other grounds may be made at any time for an immediate award.
2. All the recommendations shall state the name and rank of the person recommended, the name of the Police Force, or the Unit of the Central Police/Security Organizations of which he is or was a Member and particulars of the gallantry of service for which the grant of the medal is recommended.
3. The number of medals awarded for Distinguished Service in any **one year shall not exceed 178.** % There will be no limit on the number of medals to be awarded for gallantry in any one year.
4. The medal shall be awarded:
  - (i) ~~For conspicuous gallantry in saving life and property, or in preventing crime or arresting criminals, the risks incurred being estimated with due regard to the obligations and duties of the officer concerned.~~
  - (ii) A special distinguished record in police service or in the Central Police/Security Organizations.
  - (iii) Success in organizing Police Service or the Units of Central Police/Security Organization or in maintaining their organizations under special difficulties.
  - (iv) Special Service in dealing with serious or wide spread out breaks of crime or public disorder.
  - (v) Prolonged service, but only when distinguished by very exceptional ability and merit.

*% Fixed at 45 in 1951 and thereafter re-fixed at 75, 125, 140 in 1971, 1994, 2006 respectively. Substituted vide President Sect.'s Notification No. 2-Pres/2011 dated 21<sup>st</sup> January, 2011 and Refixed the number as 178.*

5. When awarded for gallantry the medal shall carry a monetary allowance at the rates and subject to the conditions set forth below. The charges thereof shall be borne by the revenues of the State/Union Territories concerned in respect of recipients belonging to the State/Union Territories and by the respective Central Police/Security Organizations in respect of Officers belonging to these organizations.

- (a) Where an officer, who has already been awarded either the King's Police and Fire Service Medal or that Medal and a Bar, or Bar thereto for gallantry, is subsequently awarded the President's Police Medal for a further act of gallantry, he shall be paid a monetary allowance attached to the latter Medal in addition to the original allowance and not the full allowance attached to the Medal itself. Where an officer who has already been awarded the Indian Police Medal for Gallantry is subsequently awarded the President's Police Medal for a further act of gallantry, he shall be paid the full allowance attached to the latter Medal in addition to the original allowance.
- (b) The allowance shall be granted from the date of the act for which the award is given and unless, it is forfeited for misconduct, shall continue until death.
- (c) Where a recipient is in receipt of the allowance at the time of his death, it shall be continued for life or till re-marriage of his widow (the first married wife having the preferences), in the case of posthumous award of the Medal or a Bar, the allowance shall be paid, from the date of the act for which the award is made, to the widow (the first married wife having preference) for her life or till re-marriage.
- (d) When the award is made posthumously to a bachelor the monetary allowance shall be paid to his father or mother and in case the posthumous awardee is widower, the allowance shall be paid to his sons below 18 years or unmarried daughter, as the case may be.
- (e) All the recipients of this gallantry award shall be entitled to the monetary allowance on the uniform rate, irrespective of their ranks. The rate of Monetary Allowance \*\* for the Medal as also for the Bar to the Medal shall be \*\*\* as may be fixed by the Central Govt. from time to time.

**\*\* Refined at Rs. 200/- P.M. with effect from 1.8.1997 vide President Sectt. Notification No. 101-Pres/98 dated 18.8.1998 and enhanced to Rs. 750/- with effect from 6.12.1999 vide MHA letter No. 11026/10/98-PMA dated 6.12.1999 and further enhanced to Rs. 1500/- with effect from 5.9.2008 vide MHA letter No. 11026/4/2008 - PMA dated 5<sup>th</sup> September, 2008 respectively.**

**\*\*\* Substituted vide President Sectt. Notification No. 101-Pres/98 dated 18.8.98.**

6. The Medal is liable to be forfeited when the holder is guilty of disloyalty, cowardice in action or such conduct as in the opinion of the President, brings the force into disrepute.

7. *Recommendations for the announcement of awards for distinguished service on the 26<sup>th</sup> January ( Republic Day ) and the 15<sup>th</sup> August ( Independence Day ) should be forwarded so as to reach the Secretary to the Government of India, Ministry of Home Affairs, not later than the 26<sup>th</sup> October, and the 15<sup>th</sup> May, respectively each year.*

#### POLICE MEDAL

1. Recommendations for awards on the ground of conspicuous gallantry shall be made as soon as possible after the occasion of which the conspicuous gallantry was shown and in special circumstances recommendations for awards on other grounds may be made at any time for an immediate award.

2. Each recommendations shall state the name and rank of the person recommended, the name of the Police Force or the Unit of the Central Police/Security Organizations of which he is or was a Member and particulars of the action or service for which the grant of the medal is recommended.

3. The number of medals awarded for meritorious service in any one year shall not exceed 1315. @ There will be no limit on the number of medals to be awarded for gallantry in any one year.

4. The Medal will be awarded:

(i) For conspicuous gallantry. Awards for gallantry will be made as soon as possible after the event occasioning the grant.

(ii) For valuable services characterized by resource and devotion to duty including prolonged service or ability and merit.

5. (a) When awarded for gallantry the medal as also the Bar to the Medal shall, subject to the conditions set forth for President's Police Medal for Gallantry, carry a monetary allowance # on a uniform rate as may be fixed by the Central Govt. from time to time irrespective of the rank of the recipient. # The charges thereof, shall be borne by the revenues of the State/Union Territories concerned in respect of recipients belonging to the State/Union Territories and by the concerned Central Police/Security Organizations in respect of the recipient belonging to these organizations.

@ Fixed' at 175 in 1951 and thereafter re-fixed at 200, 275, 400, 475, 500, 650, 740, 860, 1035 in 1963, 1966, 1971, 1979, 1984, 1988, 1990, 2000, 2006 respectively. Amended vide President's Sectt. Notification No. 2-Pres/2011 dated 21<sup>st</sup> January, 2011 with effect from the 21.1.2011 and refixed the number as 1315.

: 7 :

(b) Where an officer who has already been awarded either the Indian Police Medal or that Medal and Bar or Bars thereto for gallantry is subsequently awarded the Police Medal for a further act of gallantry, he shall be paid a monetary allowance attached to the latter Medal in addition to the original allowance and not the full allowance attached to the Medal itself. Where an officer who has already been awarded the King's Police and Fire Services Medal for Gallantry is subsequently awarded the Police Medal for a further act of gallantry he shall be paid the full allowance attached to the latter Medal in addition to the original allowance.

6. The Medal for gallantry shall be worn next to and immediately after the PRESIDENT'S POLICE AND FIRE SERVICE MEDAL/President's Police Medal for Distinguished Service.

7. The award of the Medal will not be a Bar to the subsequent award of the PRESIDENT'S POLICE MEDAL.

8. The Medal is liable to be forfeited when the holder is guilty of disloyalty, cowardice in action or such conduct as in the opinion of the President brings the force into disrepute.

9. Recommendations for the announcement of awards for meritorious service on the 26<sup>th</sup> January ( Republic Day ) and the 15<sup>th</sup> August ( Independence Day ) should be forwarded so as to reach the Secretary to the Government of India, Ministry of Home Affairs, not later than the 26<sup>th</sup> October, and the 15<sup>th</sup> May, respectively each year.

Sd/-  
(SHAVAX A.LAL)  
SECRETARY

# *Revised at Rs. 120/- p.m with effect from 1.8.1997 vide President Sectt. Notification No. 101-Pers/98 dated 18.8.1998 and enhanced to Rs. 450/-p.m. with effect from 6.12.1999 vide MHA letter No. 11026/10/98-PMA dated 6.12.1999 and further enhanced to Rs. 900/- p.m. with effect from 5<sup>th</sup> September, 2008 vide MHA letter No. 11026/04/2008 -PMA dated 5.9.2008 respectively.*

## Substituted vide President Sectt. Notification No. 101-Pers/98 dated 18/8/98.



POLICE HEADQUARTERS J&K SRINAGAR

Before the 1<sup>st</sup>. Appellate Authority under RTI Act 2009.

This order will dispose of the appeal preferred by Shri Khurram Parvez, Gupkar Road, Srinagar, seeking information under RTI Act 2009.

Whereas, the appellant preferred an application before PIO PHQ, seeking information under RTI Act 2009 regarding providing of detailed information about the personnel of J&K Police who have been conferred with the awards and promotions for arresting/killing of local/foreign militants since 1989 till date;

Whereas, the PIO PHQ, disposed off the application with the observations that the information cannot be supplied due to the reasons that it falls under section 8(1)(a) and (f) of RTI Act. 2009;

Whereas, the appellant preferred an application before the undersigned challenging the PIO PHQ, above quoted order;

Whereas, the appeal was disposed off by the undersigned vide order endorsement No. PHQ/RTI-23/2012/453-54 dated 21.07.2012 with the observations that the PIO PHQ has rightly withheld the information as it falls under section 8(1)(a) and (f) of J&K RTI Act 2009;

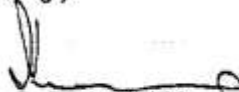
Whereas, the appellant, not satisfied with the said order issued by the undersigned, filed 2<sup>nd</sup> appeal before the Chief Information Commissioner, J&K;

Whereas, on the directions of Chief Information Commissioner conveyed vide his office order dated 28.08.2012 (copy enclosed), partial information was provided to the appellant and it was observed that the names of foreign/local militants could not be provided as the dissemination of the same has potential to lead to incitement of offences thereby creating un-rest and law & order problem in the society, which is against the larger interests of the State under section 8(1)(a) of J&K RTI Act 2009;

Whereas, the Chief Information Commissioner vide its order dated 25.09.2012, after hearing the case, has observed that the names and other particulars of such type of militants are already in public domain by issuing press conferences and registration of FIRs and has ordered for disclosure of names and also other particulars (if available in the Police records);

Whereas, in pursuance to these directions the case was examined by the undersigned afresh and it was observed that the names/particulars of such militants could not be provided as there is every apprehension that such information, if disclosed in public, would hit the sentiments of the general people and ~~may~~ create un-rest and law & order problem which is against the larger interest of the State in view of section 8(1)(a) of J&K RTI Act 2009.

The appeal is, therefore, disposed off accordingly.

  
(R. P. Resutra) IPS  
DIG(Adm)  
1<sup>st</sup>. Appellate Authority, PHQ,  
J&K, Srinagar.

No: PHQ/RTI-23/2012/706-07

Dated: Oct. 25, 2012

Copy for information and  
n/action to the:-

- 1- PIO PHQ, J&K, Srinagar.
- 2- Shri Khurram Parvez, R/O H.No. 1, Gupkar Road, Srinagar.

## Annexure 21

### List of 157 enquiries conducted in Jammu and Kashmir between 1 January 2003 and 1 March 2012

YEAR 2003				
S. No	NATURE OF CRIME	ACCUSED AGENCY	NAME OF VICTIM	PROBE ORDERED BY
1.	Custodial Killing	Army and SOG	Shabir Ahmad Pir S/O Ghulam Nabi Pir R/o Shirhama, Handwara	<b>ON 17<sup>th</sup> Feb 2003:</b> The govt. has appointed Additional District Magistrate Kupwara to probe the incident and submit findings within one-month time.
2.	Enforced Disappearance	police later handed over them to Indian Police	Mushtaq Ahmad Rah and Mohammad Shafi Rah	<b>Mar 12 March 2003:</b> The Minister of State for Home, Abdul Rehman Veeri ordered a probe in to custodial disappearances of two brothers from Nepal.
3.	Sopore Incident on Eid day 7 <sup>th</sup> December 2002	Army (Army Major)	Blasting a house and later ordered firing on the procession by the major of army in which a 70-year-old man was killed.	An Enquiry was ordered by the govt. and Additional Deputy Commissioner, Baramulla has been appointed as inquiry officer.
4.	Massacre of 24 Kashmiri pundits at the hands of unidentified gunmen at Nadimarg, Shopian on 24 <sup>th</sup> of March 2003.	Unidentified gunmen	Kashmiri pandits	<b>March 24:</b> Chief Minter Mufti Mohammad Syed order a probe into security lapses.
5.	Custodial Killing Report submitted	Army	Shabir Ahmad Pir son of Ghulam Mohammad resident of Shirhama. Handwara	<b>April 17:</b> State government has appointed Additional District Magistrate Kupwara to probe the killing and submit report within one month.
6.	Student Shot Dead on 1 <sup>st</sup> May 2003 Report submitted	Security Forces	Javaid Ahmad Wagay S/o Ghulam Nabi Wagay R/o Soitag - Lasjan Javaid	<b>May 2:</b> Finance and Parliamentary Affairs Minister, Muzaffar Ahmad Beigh (PDP) during a press conference ordered an inquiry into Javiad's killing.
7.	Custodial Killing	Security Forces	Ghulam Ahmad Bhat S/o Haji Asadullah R/o Parigam, Pulwama	<b>May 10:</b> Pulwama District Magistrates appoint the Additional District Magistrate (Assistant Commissioner, Revenue and General) as inquiry officer.
8.	Custodial Killed 21 <sup>st</sup> May 2003	Army	Mohammad Ashraf Malik R/o Malik Mohalla-Kupwara	<b>May 22:</b> Chief Minister, Mufti Mohammad Syed ordered a magisterial probe into the killing. The Additional Deputy Commissioner Kupwara will conduct the enquiry and submit its report within 15 days.
9.	Sweeper beaten and disappeared for few hours	Police	Bashir Ahmad Sweeper of SMHS Hospital	<b>June 10:</b> The principal Govt. Medical College ordered an inquiry into the incident. The enquiry committee would be headed by Prof. Ashiq Hussain Naqshbandi.
10.	Father son duo shot dead June 16 <sup>th</sup> 2003	Security forces	Abdul Qayoom Shah (50) S/o Peer Mohammad Shah R/o Wagal, Kreeri	<b>June 16-2003:</b> The state government ordered a magisterial enquiry into the incident. Sub Division Magistrate has been appointed as inquiry officer and was asked to submit the inquiry report within

			Baramulla and his son Masood (11)	15days.
11.	<b>Youth killed by RR personnel 24<sup>th</sup> June 2003</b>	RR 30	Mushtaq Ahmad War R/o Waripora, Kupwara	<b>June 24:</b> DC - Kupwara ordered a magisterial probe into the killing of Mushtaq in remote Waripora village dist Kupwara. On the intervention of DC Kupwara police filed FIR in this matter.
12.	<b>Use of forces against</b> protesting villagers against contaminated water supply at Tahab - Pulwama by the police-15-July - 2003	Police	Villagers of Tahab-Pulwama	<b>July 15-07-2003:</b> Additional Deputy Commissioner has been appointed as enquiry officer and was asked to submit his report within 7 days
13.	<b>Custodial Killing</b>	Police of Qamarwari police station	Mushtaq Ahmad Qamarwari-Srinagar	<b>July 19-2003:</b> Govt. ordered probe
14.	<b>Custodial Killing</b>	Rashtriya Rifles 46	Altaf Ahmad Dar of Jalseeri Baramulla	<b>July 19-2003:</b> Govt. ordered probe
15.	<b>Custodial Killing</b>	SOG-Humhama	Bashir Ahmad Sheikh of Budgam	<b>July 19-2003:</b> Govt. ordered probe
16.	<b>Custodial Killing</b>	Rashtriya Rifles	Ghulam Mohammad Bhat Of Khansahab Mohalla, Budgam	<b>July 31:</b> An enquiry has been order by the govt. and DC Baramulla has been appointed as enquiry officers. He was asked to submit its finding within 15 days.
17.	<b>Mysterious death</b>	Not Known	Abdul Rashid Sheikh Of Manzgam, Kulgam South Kashmir	<b>Aug 4-2003:</b> Minister for Agriculture and Cooperative asked the DC and SSP Anantnag to conduct an enquiry into the death. Abdul Rashid on 26 <sup>th</sup> July left his home for the duty, which he was performing in Sheep Husbandry Department. And for 10 days his relatives had no clue about his whereabouts and on 4 <sup>th</sup> August his death body was fished out form Sangam river.
18.	<b>Manhandling</b>	Thanamandi Police	Journalist Shafiq Mir working for Indian Express	<b>Sep 19-2003:</b> The DIG Rajouri ordered an enquiry into the incident and Dy SP Tahir Bhat has been appointed as an enquiry officer.
19.	<b>Indiscriminate firing upon civilians Aug 30, 2003</b>	ITBP	Injuries to 4 civilians	<b>Sep 11-2003:</b> The District Development Commissioner Islamabad has ordered an enquiry into the firing incident at Hillarhama and the Additional Development Commissioner has been appointed as Enquiry Officer and is directed to submit report upto 21 <sup>st</sup> September 2003.
20.	<b>Custodial Killing of a one day old bridegroom</b>	Rashtriya Rifles 22	Tahir Ahmad Maqdoomi (a day old bridegroom)	<b>Sep 19-2003:</b> Government ordered enquiry into alleged atrocities and has appointed Tehsildar Tral as enquiry officer. S/o Hassan Maqdoomi Of Tujjar Sharief, Sopore, Baramulla He was arrested by the troops of Bomia Camp on the intervening night of 12-13 September and was killed on 14-09-2003
21.	<b>Atrocities (in mid September)</b>	Army camped at Youngwani	Residents of Tral	<b>On 20 September-2003:</b> Government ordered enquiry and has appointed Tehsildar Tral and enquiry officer.
22.	<b>Student Killed on 10<sup>th</sup> Oct 2003</b>	Troops	Reyaz Ahmad Dar S/o R/o Haider Bhaigh Pattan	<b>On 10 Oct 2003:</b> Divisional Commissioner Kashmir ordered a magisterial probe and the Additional Deputy Commissioner Baramulla has been appointed to probe the killing and submit the findings within 15 days.
23.	<b>Blast in Kishtwar Court on 22 Oct 2003.</b>	Not Known	A policeman died and at least eight persons received	<b>On Oct 23-2003:</b> Chief Justice ordered an enquiry and the Sessions judge Bharderwah ND Wani has been appointed

			injuries.	as enquiry officer.
24.	<b>Custodial killing on 21<sup>st</sup> Oct 2003</b>	58 BN Border Security Forces (BSF)	Mohammad Khatana R/o Lahnan Dejan, Pahalgam	<b>Oct 22-2003:</b> The Govt. ordered inquiry and appointed Additional Deputy Commissioner Anantnag, Latief-ul-Zaman as inquiry officer. And has been asked to submit its finding within week's time.
25.	<b>Custodial Killing Arrested on 21<sup>st</sup> Oct 2003</b>	Allegedly security forces in civvies	Ghulam Hyder Bhat, 21, Shopkeeper by profession <b>R/o Sopore</b>	<b>Nov 7-2003:</b> Government appointed Deputy Commissioner, Baramulla Deeraj Gupta and set up a 5 member medical team to conduct the autopsy and even take samples for DNA.
26.	<b>Girl's Killing</b> <i>Intervening night of Nov 30 and Dec 1-2003</i>	Security Forces	Naseema Akthar D/o Abdul Aziz Bhat R/o Zungalpora, Kulgam	<b>Dec 3-2003:</b> District Magistrate, Anantnag A.H. Samoon has ordered magisterial probe into the killing and Additional District Magistrate, Anantnag A.A. Latief-ul-Zamaan has been appointed as Inquiry officer and has been instructed to submit his finding within 40 days time to the District Magistrate.
27.	<b>Custodial Killing on Nov 25<sup>th</sup> 2003</b>	7 Rashtriya Rifles	Mohammad Yaqoob Khan, 27 S/o Mohammad Yousuf Khan R/o Achabal district Anantnag	Later on Deputy Commissioner Samoon ordered an enquiry into the killing and appointed Additional Deputy Commissioner Ramzan Thokar to probe the incident.
28.	<b>Unprovoked firing at mob</b> <i>protesting against arrest of Numberdar at Rikiban in Darhalon, Rajouri 2nd Dec 2003.</i>	Troops	Six persons received bullet injuries one of them critically.	<b>Dec 3:</b> Deputy Inspector General (DIG) Rajouri-Poonch range SM Sahai ordered Magisterial probe in to the circumstance lead to firing upon the protestors.
29.	<b>Custodial Killing on 23<sup>rd</sup> at Budgam</b>	53 Rashtriya Rifles	Gul Hajam S/o Khuda Baksh R/o Bari Pathri, Charari-Sharief – Budgam district.	<b>Dec 22:</b> District Commissioner Budgam ordered a probe into the incident. Additional Deputy Commissioner Budgam has been appointed as inquiry officer and has been directed to submit the finding within month's time.
30.	<b>Excesses</b>	Border Security Forces	Residents of Serchan Pahalgam	<b>Dec 24:</b> The district Magistrate Islamabad has appointed Tehsildar Agrarian Pahalgam as enquiry officer to probe the excesses
31.	<b>Youth Shot dead</b>	Special Operation Group (SOG)	Manzoor Ahmad Malik (a shopkeeper by profession) S/o Abdur Rashid R/o Shopian town	<b>Jan 6:</b> Locals alleged that without any provocation he was killed by the SOG while shutting the shutter of his shop. However, the official claimed his killing in cross firing between militants and security forces. <b>Jan 9:</b> Govt. ordered an inquiry into the killing of Malik and has asked Deputy Commissioner, Pulwama to submit its report within two weeks time. <b>Again on 19 Feb,</b> An enquiry has been ordered by the Minister of State for Home A.R. Veeri in Legislative Assembly while replying to a question.
32.	<b>Youth killing</b>	Renegades	Sheer Din S/o Mama Din	<b>Details:</b> Sheer Din was kidnapped by pro-government militants led by Nazir Ahmad Ganie on 18 Jan and on 19 <sup>th</sup> January he was killed near Surigam jungle in Lolab. <b>Jan 20:</b> The deputy commissioner Kupwara directed the additional commissioner to investigate into killing.
33.	<b>Shot Dead</b>	Unidentified militants	Mohammad Amin Bhat DIG police	<b>Feb 2: Killed at Barzulla-Srinagar by unknown militants.</b> <b>Feb 3:</b> Director General Police J&K, constituted a Special Investigation Team to probe the killing of DIG.

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	NATURE OF CRIME	ACCUSED AGENCY	NAME OF VICTIM	PROBE ORDERED BY
34.	Five civilian used a human shield	Army	1. Farooq Ahmad Qureshi s/o Mohammad Shafi 2. Ghulam Jeelani s/o Fakir Ullah 3. Mohd Saki Chauhan s/o Md. Qasim 4. Mohammad Aslam Mir s/o Mohammad Yousuf and 5. Yaqoob Wani s/o Abdul Rehman.	<b>Feb 8: Five civilians were first taken forcibly by the army and subsequently used them as human shield.</b> IG Police Kashmir Zone said, police take all the complaints and conduct a fair enquiry. The army also assured an enquiry. <b>And on Feb 19:</b> In the legislative assembly the Chief Minister, Mufti Mohd Syed ordered an enquiry into the killings. District Magistrate Deeraj Gupta has been appointed as an enquiry officer. <b>July 7:</b> After two months of Chatti Bandi Bandipora incident, the enquiry officer District Magistrate Baramulla notified that any person or persons of the area having any information about the incident and are interested to depose / divulge facts may appear before him at his office from July 9 to July 17 2004. The interested persons are free to meet the DC during office hours. Any documentary evidence relevant to the incident can also be produced. It is noteworthy to relate here that on Feb 8, 2004, five persons were allegedly taken away by the troops and subsequently used them as human shield. It was after huge public pressure and out cry that the state govt. has appointed the DC Baramulla to probe the incident.
35.	Unprovoked firing on civilians killing a 16-year-old boy and injured four civilians.	Police	Mushtaq Ahmad Wani of Bandipora	<b>Incident occurred on 26<sup>th</sup> Feb 2004.</b> <b>Feb 27:</b> Director general of police will probe into the incident said CM in Legislative Assembly.
36.	Civilian injured	Army	Nisar Ahmad Bhat	<b>R/o</b> Ushkara, Baramulla <b>May 7:</b> Army orders probe and has claimed to have started an enquiry into the incident. However according to the details available with them reveals that Bhat was injured in cross firing.
37.	Alleged Excesses by security forces at Choon village in the central Kashmir of Budgam	Security Forces	Villagers of Choon village in the central Kashmir of Budgam	<b>May 7:</b> Minister for Revenue, Relief and Rehabilitation, Hakim Mohammad Yaseen directed Deputy Commissioner Budgam Khawaja Bashir Ahmad to investigate the matter and to submit the report within 15 days time.
38.	Killing of a teacher by troops vehicle	Security Forces	Master Ghulam Hassan Bhat	<b>S/o</b> Ghulam Qadir <b>R/o</b> Khrewan, Malapora Army ordered a court enquiry in to the incident and assured action against jawan if found guilty.
39.	Civilians killed	Police stationed at Utrosoo police camp	Abdul Rashid Khan	<b>R/o</b> Brari Angan, Anantnag <b>May 11:</b> Chief Minister Mufti Mohammad Sayeed has taken a serious note of the incident of misconduct of police personnel at Brari Angan. In his instructions to the concerned authorities, the Chief Minister ordered filing of an FIR against the erring policemen under the relevant sections of Cr P C. Consequently, Anantnag police has taken the officials into custody. The Chief Minister has asked the Director General of Police to simultaneously initiate disciplinary action against the

				erring officials and award severe punishment to them in accordance with relevant rules on the subject.
40.	<b>Lathi (cane) charge</b>	Police	Police atrocities on Akhnoor border migrants, who were marching towards Civil Secretariat to meet the Chief Minister.	<b>May 25:</b> Deputy Chief Minister Mangat Ram Sharma announced that Divisional Commissioner Jammu will conduct the inquiry of the incident and submits its report within 15 days.
41.	<b>Student's killing in indiscriminate firing</b>	BSF – camped at Kulgam	Mohammad Shafi	<b>June 5:</b> Chief Minister, Mufti Mohammad Sayeed ordered an enquiry into the killing of a student allegedly at the hands of Border Security Forces at Neelu, Kulgam. The minister also issued immediate orders to the Inspector General of Police (IGP) to visit the place to take stock of the situation. He also issued transfer of the BSF camp from the village.
42.	Two persons including a woman were killed when unknown persons allegedly hurled a grenade inside the residential house of Abdul Fateh Bhat at Rarem, Tangmarg in north Kashmir.	Unidentified persons	Abdul Fateh Bhat, a pathwari (revenue collector) and Asha Bano were killed and Shabir Ahmad injured.	<b>June 14:</b> Government has appointed Deputy Superintendent of Police to enquire into the killing of one retired <i>pathwari</i> (revenue official) Abdul Fathe Bhat and his relative Aasia of Rream, Tangmarg.
43.	Killed after kidnapping	Unidentified gunmen	Mushtaq Ahmad Wani S/o Mohammad Yousuf Wani, R/o Herpora-Zachaldara, Handwara of Kupwara	<b>June 22:</b> Deputy Commissioner (DC) Kupwara Abdul Majid Khanday today asked the Sub Divisional Magistrate (SDM) Handwara to hold enquiry into the killing of a soldier who was killed in mysterious circumstances some days back. The SDM has been asked to present the report of the killing within 15 days.
44.	On August 19, a powerful Explosion went off when Deputy Chief Minister addressing a gathering at Kapran in Anantnag district	Not Known	4 persons were killed and 38 injured	<b>July 19:</b> The state government has ordered a high level probe into the incident and appointed Additional Director General of Police (ADG) Crime and Investigating Department (CID) Dr. Ashok Bhan as inquiry officer. However, no time frame has been fixed for completion of probe and submission of the report.
45.	Fake encounter	Army	1. Ghulam Mohammad Naik (23)  2. Abdul Rasheed Kutay (30)	<b>R/O Briel, Qazigund</b> The state government has ordered a magisterial enquiry into the incident. They were picked up on July 6 – 2004 RR from Dhaneve camp and on July 23 their dead bodies were recovered. <b>23<sup>rd</sup> July:</b> <i>Versions</i> Locals allege the deceased were arrested and killed in fake encounter. Army says they were militants. However, denying the local version, the army claimed the deceased as militants.
46.	Unprovoked firing	Troops of 1 Para based at Imam Sahib Wuyan, Wadur	Ghulam Hassan Chopan –(35) mentally sick. He was fathering two children.	<b>Killed on August 8.</b> <b>R/o Manihal, Shopian</b>  <i>Versions:</i> The army claimed that he was killed in cross fire, which the people denied vehemently. People alleged that there was no incident of violence or encounter in the area. Only gunshots fired were of army.

				On August 10, Deputy Commissioner Pulwama has appointed SDM Shopian to probe the incident
47.	Kashmiri killed in fake encounter and labeled as Pakistani militant.	BSF		On September 8 – 2003 the shockwaves across the BSF establishment were sent and its <i>Director General Ajai Raj Sharma has ordered a court of enquiry against Commandant Narendra Singh</i> after shutting him out of Jammu and Kashmir to Mizoram, quoted the BSF sources. As per the allegations by constable Subhash Rathore of 42 BN headed by Singh, a Kashmiri youth was gunned down by the commandant and labeled him as a Pakistani militant. This incident took place on 6 July 2003. The media when contacted the BSF Chief acknowledged recipient of Rathore's complaint against Singh and a court of enquiry was ordered on July 6 on that basis.
48.	Custodial Killing	Army camped at Desi Hara, Doda	Riaz Ahmad S/o Mohammad Amin R/o Bhata, Doda	* Locals alleged that he was killed on 26 <sup>th</sup> June by the army in their custody. On 28 <sup>th</sup> June 2004 District Magistrate Doda to probe the killing ordered an enquiry vide order no. 1110 – 1112.
49.	Unprovoked killings of two cousins	55 RR	Rizwan-ul-Haq, 17 and Muzaffer Ahmad Ganie, 30, r/o Mul Dangerpora 15 km away from Shopian area of Pulwama district	<b>Sep 10:</b> Locals alleged that the army killed Rizwan in an ambush when he was on his way to a local Mosque for pre-dawn prayers. However, Muzaffer was killed by the troops when they opened fire on a demonstration against the killing of Rizwan. Army claimed the killing of duo in crossfire between militants and troops. <b>Sep 11:</b> Kashmir's Divisional Commissioner Khursheed Ahmad Ganie said it is doubtless that army killed them but the question arises in what circumstances. The DC appointed SHO concerned to investigate the incident and submit its report within week's time. The DC further said a Magisterial probe would be conducted if needed.
50.	Manhandling	Police	Mohammad Amin War  And  Rafiq Maqbool	<b>Sep 25:</b> Two photojournalists were allegedly beaten up by state police when they were covering the protest of separatists' at Raj Bagh in Srinagar. The Director General of Police Gopal Sharma directed the Deputy Inspector of Police (Kashmir) to probe the allegations.
51.	Torture	Police workers in Banihal (sep 11)	Advocate Saleem Raja and others 15 workers.	<b>OCT 5:</b> The Jammu and Kashmir High Court, judge anti-corruption Jammu ordered an enquiry into the incident leading to the arrest and torture of advocate Saleem Raja and others in Banihal on Sep 11-2004. Judge V.K Jhanji while issuing directions observed that the enquiry should be made to complete within a month.



52.	Gang Rape	Jawans	Woman	<p><b>Jammu, oct 29:</b> Army on 29<sup>th</sup> Oct said that a detailed enquiry would be conducted in the alleged gang rape of a woman by some jawans.</p> <p>An official handout said that the army will conduct a detailed enquiry into the incident and the severe possible punishment will be meted out to the individuals if found to be guilty. In the handout issued from PRO Defence Udampur office, the army has denounced the gang rape of a woman in Srinagar hotel as a criminal act of the most horrendous nature.</p>
53.	Gang Rape	Rashtriya Rifles Soldiers	Woman	<p><b>Nov 6:</b> The Deputy Commissioner Islamabad has ordered probe into the gang rape of a woman by Rashtriya Rifles soldier on 4<sup>th</sup> nov, 2004 in Sonabara Mattan.</p> <p>The reports said troops were forcing family and the victim to retract from their statement. The SHO concerned and Additional SP Islamabad took up the matter with senior civil and police officials at a meeting attended by MLA Shangas Muhammad Hussain Kudapuri and Nizam-ud-Din MLA Shangas took up the matter with the army unit concerned. The DC confirmed that he has ordered the probe. "I have asked the ADC to probe Nov 4<sup>th</sup> incident.</p>
54.	Mother-daughter Rape	Rashtriya Rifles	10-year-old girl (Shabnam Rashid) and her mother (Aashia Begum, 29) wife of Abdur Rashid Dar, at Bader Payeen village of Handwara on 6 <sup>th</sup> Nov 2004.	<p>* <b>Nov 6:</b> The government has appointed Sharafat Ali Khan ADC as an enquiry officer who has been advised to conduct magisterial probe in to these allegations and ordered him to report the real facts of the case to government through DC, Kupwara within 10 days.</p> <p>* <b>Nov 8:</b> Army has ordered a probe into the alleged rape of the mother and her daughter. Maj Gen Balharra of Kilo Force appointed Colonel Nandal as a enquiry officer and sought the services of a Dy SP, from local administration to assist the enquiry officer and ensure transparency and impartiality in the investigation.</p>
55.	Fake encounter	CRPF & SOG	Tazeem-ul-Haq R/o Kulangam, Handwara	<p><b>Nov 27:</b> Tazeem locals alleged was killed in a fake encounter along with three others in Nishat area of Srinagar district. However, govt. claimed him as a militant and was killed in an ambush laid by security forces.</p> <p><b>Nov 29:</b> The District Development Commissioner Kupwara Abdul Majid Khanday asked Sub Divisional Magistrate Handwara to inquire whether Tazeem was a militant or not and inquire about his college and other activities.</p>

56.	Indiscriminate firing	35 Rashtriya Rifles	Farooq Ahmad Wani S/o Abdul Maid Wani R/o Chatroo, Budgam  And  Ghulam Hassan Mughloo S/o Ghulam Ahmad Mughloo R/o Chatroo, Budgam	<b>Nov 29:</b> Troops allegedly killed two civilians and wounded one when opened fire indiscriminately during a search and cordon operation in Dangerpora Budgam. <b>Nov 30:</b> The Minister of State for Home Abdul Rehman Veeri ordered a magisterial probe into the killings of the duo allegedly by 35 Rashtriya Rifles at village Chitroo Dangerpora in Budgam.
57.	An incident of human shield (villager used to unearth the landmine.)	Rashtriya Rifles	<b>Name of victim:</b> Waza Mohammad  <b>Son of:</b> Mohammad Ali  <b>Resident of:</b> Raipora, Palhalan, district Baramulla.  <b>Date if incident:</b> 13 <sup>th</sup> December 2004	<b>Dec 13: Locals' (including eyewitnesses) alleged:</b> The Rashtriya Rifles (RR) personnel coerced Waza Mohammad (while he was returning from his work) to dig out the mine planted near roadside. Soon he fiddled with the mine ( <i>planted by militants to target the security forces</i> ) under the RR pressure; the landmine went off caused grievous injuries to him. He was immediately rushed to the hospital and after couple of days he breathed his last. His killing evoked widespread protest in the area for two consecutive, which forced the police and the army to probe the incident. On the other hand spokesman of Kilo Force, RR claimed that army was nowhere near the spot when the incident occurred. <b>To probe the killing the Army and police have initiated separate inquiries into the killing.</b>
58.	Rape of 60 year-old	A trooper of 3 RR	<b>Name:</b> Haqeeem Jan-60- <b>Wife of :</b> Mohammad Sidiq Shah <b>R/o:</b> Sallar, Anantnag	<b>Dec 20:</b> Jawans of 3 RR were accused of committing rape of a woman aged 60. Jan w/o Mohammad Sidiq alleged that the personnel of 3 RR forced their entry into her mud house and raped her. And to hush up the incident victim's family also accused the RR soldiers of bribing them. However, the PRO 15 crops denied the rape allegation. "The medical report conducted on the woman says no rape has taken place, said the PRO Batra to the reporters. The PRO 15 Crops Lt Col. V K Batra said that the army has launched joint investigation with the police to ascertain whether there is any case of misbehavior.
<b>YEAR 2005</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>
59.	Kidnapping and subsequent killing	Unknown scooter borne marked men	Abdul Aziz Ganie S/o Abdi Ganie R/o Samboora, Pulwama	On the intervening night of December 17 and 18 - 2004 Abdul Aziz was kidnapped by two unknown scooter borne men and on 3 <sup>rd</sup> January 2005 his dead body was recovered. The District Magistrate, Pulwama has order a magisterial inquiry and has appointed Assistant Commissioner Revenue as inquiry officer. The inquiry officer has to submit his finding within 15 days time.

60.	Kidnapping	Special Operation Group (SOG) personnel	Nasir Ahmad Mir – a shopkeeper by profession	<p>Special Operation Group (SOG) allegedly kidnapped one Nasir Ahmad on direction of bank manager – Budgam Co-operative Bank. However, Nazir managed his freedom from the clutches of SOG. The manager as per CNS gave the SOG men a bundle of calendars, ten diaries and promised to pay an amount of 20, 000 for the kidnapping. It has been reported that Nazir's brother owed some money to the manager who with the help of one Nazir <i>Ikhwani</i> (renegade) employed SOG men for kidnapping. Police arrested the bank manager for question however, his conduit is at large.</p> <p><b>JAN 14:</b> When the kidnapping was brought into the notice of IGP, Javaid Makdoomi he ordered a probe and appointed SP, SOG Abdul Razak as enquiry officer.</p>
61.	Custodial Killing	Special Operation Group	Abdul Gani Dar - 50	<p><b>Jan 20:</b> Fifty-year-old Abdul Gani Dar was allegedly tortured to death by the personnel of Special Operation Group (SOG) at Magam after arrested him from Jammu on 18<sup>th</sup> January 2005. The state government has ordered a magisterial enquiry into the incident. Additional deputy commissioner Budgam Mohammad Maqbool Wani would conduct the probe. Police station Magam has also registered a case in connection with the death in custody of Dar.</p>
62.	Two Killed in Fake Encounter	Troops of 17 JAKLI	<p>1. Mukhteyar Ahmad Bhat (named as Mashooq Ahmad Chopan by troops) a baker by profession S/o Abdul Gani Bhat R/o Band Padaw, Zainpora</p> <p style="text-align: center;"><b>And</b></p> <p>2. Mohammad Rafiq Ganie S/o Abdul Gani Ganie R/o Aahgam, Kulgam</p>	<p><b>Feb 16-05:</b> Mukhteyar Ahmad Bhat (named as Mashooq Ahmad Chopan by troops) a baker by profession and Mohammad Rafiq Ganie were allegedly killed by the troops of 17 JAKLI in fake encounter. However, the PRO 17 JAKLI claimed that the troops have laid multiple ambushes on morning of Feb 26, and noted two persons moving in suspicious way. On calling, the militants fired upon triggered an encounter, which results into the killing of the duo. The deceased were identified as Mashooq Ahmad and Iqbal Harkat-ul-Mujahideen cadres by the troops. The families of the deceased contested the troops claim and alleged the duo was killed in staged encounter.</p> <p><b>March 3-05:</b> Deputy Commissioner Pulwama Leteef-u-Zaman after public pressure ordered a magisterial probe into the killings. The enquiry committee will work under Sub Divisional Magistrate Shopian. At the initial stage, the committee will get the samples for the DNA test and will hand over the bodies to their heirs for their burial in their ancestral graveyard. The district development commissioner has further directed that the chief medical officer, SDPO and the superintendent sub district hospital should get involved into the process of collecting DNA samples. The DNA samples will be sent to forensic laboratory Hyderabad, the commissioner added.</p>

63.	A Govt. gunman terrorize residents	Waheed Ganie son of Mohammad Ganie working with army is harassing them. Two weeks ago Waheed cut off the main water pipe feeding the village. Besides, he blocked the road leading to the Mosque and doesn't allow anybody to offer prayers.	Residents of Motebug, Kalaraaos Kupwara	<b>March 14:</b> Residents of Motebug Kalaraaos alleged a government-patronized gunman Waheed Ganie son of Mohammad Ganie working with army is harassing them. Two weeks ago Waheed cut off the main water pipe feeding the village. Besides, he blocked the road leading to the Mosque and doesn't allow anybody to offer prayers. The renegade according to the locals made their lives hell. If anybody dare to objects, he threatens him of serious consequences. DC Kupwara ordered a probe and deputed Naib Tehsildar to investigate the matter. Meanwhile, SSP Sunil Dutt told media persons that police are investigating the matter.
64.	Blasphemy of holy Quran	Troops	<b>March 8:</b> Blasphemy of Holy Quran and other religious scriptures by the troops during search and cordon operation at Kokernag, Anantnag in south Kashmir.	<b>Mar 16-2005:</b> Deputy Commissioner Anantnag has orders a magisterial probe to be conducted by Assistant Commissioner Anantnag.
65.	April 06-2005: Fidayeen attack on the highly fortified Tourist Reception Centre (TRC) situated at Srinagar by two militants on April 6-05 to derail the Srinagar-Muzaffarabad bus service scheduled to be flag off by the Prime Minister of India Mr. Manmohan Singh on April 7-2005. In the attack both the attackers were killed besides injuring few civilians.	Militants	<b>April 6-2005:</b> Fidayeen (suicidal) attack on Tourist Reception Centre (TRC) by two militants.	<b>April 6:</b> Police said it was militant attack to disrupt the Srinagar-Muzaffarabad bus. The couple of militant groups claimed the responsibility of the attack. However, in political circles the attack sparked off controversy, which rocked the State's Legislative Assembly. <b>April 11-05:</b> Panthers Party supremo Mr. Bhim Singh one of the partners of the ruling coalition government blamed the ruling regime and demanded an enquiry into the incident. The opposition party National Conference also demands an enquiry into the incident. <b>April 12-2005:</b> The Chief Minister, Mufti Mohammad Sayeed made a statement that a through enquiry would be conducted into the incident. He said the aspect of security lapse would also be looked into and anyone found guilty would be punished according to the law. The state government has appointed the State Vigilance Commissioner Mr. RV Raju as the investigation officer and was asked to submit its report within two months time.

66.	24-year old Forestry Science Graduate used as human shield by the troops during a search operation in Goffable, Trehgam, Kupwara	Troops 1-11 Gorkha Rifles	24-year-old, Ghulam Mohi-ud-Din	<p><b>May 6-05:</b> He along with other two youth of the area were allegedly taken from assembled crowd during a cordon and search operation by the troops. During the operation he was killed. Ismail Wani, one of the three men accompanying the combatant troops said, “ Troops made us enter the houses first and they would follow later. Searches of most of the houses yielded nothing. As we moved inside Ghulam Ahmed Wani’s house, Mohi-ud-Din who stepped first, being dark inside noticed some movement and turned back. No-sooner he came out, army fired volley of bullet on him killing him on spot.” In a pool of blood, the body of <b>Mohi-ud-Din</b> remained at the spot till 8 am in the morning and only after the intervention of SSP police, it was taken to Police Station Trehgam.</p> <p><b>TROOPS VERSION:</b> Commander Trehgam Brigade RN Singh who was supervising the operation told sources, “ the boy was fired upon by the militants who were hiding in the house. He was killed on the spot.”</p> <p><b>May 7-05:</b> Deputy Commissioner (DC) Kupwara Abdul Hamid Wani’s intervention that directed the Police to register a case and ordered an inquiry into the incident that pacified the protestors. Talking to the media persons, DC said, “It is really an unfortunate incident. I have ordered an magisterial inquiry headed by <b>ACR Kupwara</b></p>
67.	Police fired upon a mob killing a minor girl	State Police	Aasiya, 7, d/o Ali Mohammad Dar	<p><b>May 9-05:</b> Revenue Minister Hakeem Yaseen while paying visit to Budgam ordered an inquiry into the incident. The Additional Deputy Commissioner was appointed as enquiry officer and has been directed to submit its report within fifteen days. However, police claimed that the Station House Officer has been attached and the action against the guilty will be taken after the enquiry committee submits its report.</p>
68.	Fake Encounter of a student	Army	<p>Shakoor Ahmad Deva (Student-cum-shopkeeper)</p> <p><b>Son of:</b> Rafiq Ahmad Deva <b>R/o</b> Shopian, Pulwama</p>	<p><b>June 4:</b> The Deputy Commissioner Pulwama Latief-uz-Zaman ordered a probe into the killing after visiting the area. The investigating committee was asked to submit its report of investigation in a month’s time. The DC said, people are accusing the troops of murdering the boy whose bullet-ridden body according to the doctors’ of sub-district hospital bore torture marks.</p>

69.	Youth died in custody (police said suicide family alleged custodial killing)	Khanyar Police	Zahoor Ahmad Wani (accused in rape-and-murder case) <b>R/o:</b> Shakhsaz mohalla, Hazratbal – Srinagar	<p><b>June 9:</b> The district administration ordered an enquiry into the alleged suicide of a rape-and-murder accused in Khanyar police station. The district administration while ordering the probe constituted a committee to look into the case. The enquiry committee, headed by the magistrate, includes members from forensic laboratory and the health officials.</p> <p>It is worthwhile to mention here that police claimed that the dead body of Zahoor Ahmad Wani was found from the bathroom on June 9-05. The body was taken out in presence of senior police officers and higher authorities were informed about the alleged suicide. The body of the deceased was later sent for the postmortem.</p> <p>Zahoor Ahmad was arrested along with two other youth by the police in connection of rape-and-murder case of a college girl. Later the dead body of the girl namely, Shazia was recovered from Jehlum river in Sumbal area. The other two accused were shifted to Central Jail- Srinagar.</p>
70.	Killing of three family members of a recently surrendered militant	Border Security Forces (BSF)		<p><b>June 11:</b> Followed by massive protests the State Government ordered a magisterial probe into the killing of three family members of a surrendered militant at Gool allegedly by the personnel of BSF. The enquiry was ordered by Deputy Commissioner Udampur and constituted the Additional Commissioner Revenue to enquire into the incident. It is worthwhile to mention here that the Border Security Forces personnel were accused of killing the family members of the militant Ashiq who surrendered along with his other comrade Farooq recently before security forces. The duo was the cadres of militant organization known as Harkat-ul-Jehadi-Islamia.</p> <p>To look into the matter the BSF also appointed a commandant as the recording officer to conduct its enquiry by the Inspector General BSF Mr. B.D. Sharma. Meanwhile, police said that it had found that five persons were witness to the incident and their statements will be recorded before the judicial officer. “The statement will be recorded in the court to get them authenticated”, said Ramban SP Garib Dass.</p> <p>The BSF claimed to have placed under house arrest its constable Kapil Dev (the main accused), acting on preliminary report into the killing.</p>

71.	The school going students killed.	Rashtriya Rifles	The deceased kids were identified as, Bilal Ahmad Shiekh, 15, son of Abdul Khaliq Sheikh of Gasigund 2. Wasim Ahmad Wani, son of Sultan Wani of Bangargund and Shabir Ahmad Shah son of Ghulam Ahmad Shah of Gasigund.	<p><b>July 24:</b> The Chief Minister, Mufti Mohammad Sayed on 24 July 2005, ordered a customary probe in to the killing of three school going kids allegedly killed at the hands of 6 Rashtriya Rifles at Vilgam in Kupwara district of north Kashmir about 98 Km away from the Srinagar city. . The incident happen when a marriage ceremony about which the troops manning the area were initially informed going on.</p> <p>It is pertinent to mention here whenever there were marriages or any other function in any far flung or remote areas in the valley people (villagers) have to sought permission form the troops manning the area.</p> <p>Meanwhile, the CM asked the security agencies to avoid such occurrences in future at any cost.</p> <p>The deceased kids were identified as, Bilal Ahmad Shiekh, 15, son of Abdul Khaliq Sheikh of Gasigund 2. Wasim Ahmad Wani, son of Sultan Wani of Bangargund and Shabir Ahmad Shah son of Ghulam Ahmad Shah of Gasigund.</p> <p>The survived boy identified as Manzoor Ahmad Shah, 16, son of Ghulam Mohammad Shah who was detained by the troops after the incident.</p> <p><b>The army version:</b> “We have laid an ambush in the area on the night of 23<sup>rd</sup> July 05. The deceased boys were asked by their elders not to stray in the jungles, as moving in the is not less than a danger and inadvertently they got caught into an ambush while returning”, said defence spokesman of the army</p> <p>He further claimed, “ The 4 boys were challenged to stop but they choose to ran away who made forces to fire upon them on suspicion. Even the army apologizes for the incident.</p>
72.	Custodial Killing	Police	Mushtaq Ahmad S/o Ghulam Qadir R/o Babor village Doda	<p><b>August 28-05:</b> Mushtaq Ahmad was arrested by police on 26<sup>th</sup> August on charges of theft and subsequently tortured him to death. Accusing the police of killing Mushtaq Ahmad in custody the family alleged that he has an innocent civilian and only last year he married. Mustaq’s killing triggered massive protest in the area.</p> <p>However, police claimed that on 28<sup>th</sup> of August they had informed the deceased family that he had slit his abdomen in custody. In serious conditions while shifting him to the Jammu Medical College he succumbed to his injuries police further claimed.</p> <p>District Magistrate Doda ordered an enquiry into the killing after a delegation of the area met him.</p>

73.	Fake encounter of four labourers in Lolab Valley	Army	<p>1. Bhushan Kumar of Mangu Chak,</p> <p>2. Satpal of Chatha,</p> <p>3. Ram Lal of Lalyal</p> <p style="text-align: center;"><i>and</i></p> <p>4. Ashok Kumar from a village near Pathnakot.</p>	<p>These boys were working as porters with Army and were allegedly killed by the troops in a fake encounter on April 20 – 2004 in Kashmir just to get gallantry awards. <b><u>A soldier from the same unit revealed the story in an anonymous letter written to the victims’ parents.</u></b> August 29-2005: Army Commander Northern Command Lt General Hari Prasad today said, "detailed investigation of incident would be carried out to take it to logical conclusion." Interacting with the media persons at Usman Officers Institute here, Lt Gen Prasad said that acting on an anonymous complaint, detailed enquiry has been initiated into the incident and the army men if found guilty would be dealt under law." He assured speedy inquiry into the alleged fake killing of four Jammu based labourers at Lolab Valley. He added that the officers whose involvement has been alleged will soon be shifted to other places and a detailed investigation would be carried to take it to logical conclusion. Army Commander Northern Command, however, said that an encounter had taken place in the area specified in the anonymous complaint in the period mentioned in it and two militants were also killed in that encounter on June 2004. "The weapons recovered from the militants and the details of encounter was handed over to local police," Lt Gen Prasad said, adding that some people from a nearby village claimed the bodies which were exhumed then and were handed over to them for burrial. "The issue has hit the national headlines in media and I came to know about the incident from a anonymous complaint which was handed over to me by the officer of Jammu Divisional Head Quarter," Lt General Hari Prasad said. "Soon after I received the complaint, a detailed investigation has been ordered to probe the incident," he added.</p>
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74.	Troops of 9 RR fired indiscriminately upon youth killing one.	9 Rashtriya Rifles	Tariq Ahmad Pala, 25, S/o Abdul Rashid R/o Bhan Ashmuji, Kulgam- Anantnag district	<p>On September 24-05, at around 8 PM the troopers of 9 Rashtriya Rifles (RR) allegedly fired indiscriminately at Tariq Ahmad Pala, 25, son of Abdul Rashid and his two friends Sabzar Ahmad Shah and Showkat Ahmad Shah, sons of Abdul Majid Shah, when they were walking through a path in the village carrying carpets on shoulders.</p> <p>While Tariq Ahmad succumbed to wounds at hospital, Sabzar and Showkat were saved miraculously. The troops arrested Sabzar Ahmad after killing Tariq Ahmad. The people said that soldiers didn't warn the trio before firing a volley of fire at them.</p> <p><b>Police version:</b> However, the SHO of Kulgam police station, quoting the officers of 9 RR said the ambush party had asked the trio to stop but when they didn't heed to the call, soldiers fired at them.</p> <p><b>Probe ordered:</b> The additional deputy commissioner of Islamabad has ordered a judicial probe into the incident.</p> <p><b>Army version:</b> Army says the civilian was mistaken for a militant and shot during an ambush.</p>
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75.	Atrocities	Special police Officers (SPOs) and Village Defence Committee (VDC) members	Inhabitants of Dachan – Doda	<p>Srinagar, Oct 6: The Minister for Power, Muhammad Sharif Niaz on 6<sup>th</sup> October directed Deputy Commissioner Doda and Senior Superintendent of Police Doda to enquire into the alleged atrocities by Special Police Officers and members of Village Defence Committees (VDCs), a statement issued by personal section of the minister said. The minister has directed the administration to shift the accused SPOs and VDC men.</p> <p>The minister issued orders after a deputation of people from Dachan met him on Thursday and complained that SPOs and VDC members have terrorized the residents and forced members of a particular community to migrate to Kishtwar, the statement said. The deputation told the minister that members of only a particular community were harassed.</p> <p>Among the deputation were government employees of the region who are posted in Srinagar and Jammu. They conveyed to the minister their concern about the safety of their families.</p> <p>The deputation, the statement said, told the minister that an employee of education department, Rustam Ali, has been detained by the SPOs on fictitious grounds. They demanded posting of an SHO to the area to that the unbridled SPOs and VDC members are reined in.</p> <p>The SPOs and VDC men in Jammu region, particularly in Muslim-dominated districts of Doda, Poonch and Rajouri, have been following a “design” to bring about demographic changes by terrorizing the population that migration is the only way to escape their tyranny.</p> <p>The VDCs were formed to counter the militants but they have become a source of communal tensions, petty crimes, and personal vendetta. Nourished by the state government and Army and other security agencies, some of the worst human rights abuses have been committed by VDCs and most of these brutalities have gone unreported.</p>
76.	Custodial Killing	Rashtriya Rifles (RR)	Sajad Ahmed Badru Son of Gul Muhammad R/o Doru, Ananatnag	<p><b>Brief detail of the incident:</b>  <b>October 28-05:</b> Sajad Ahmed Badru son of Gul Muhammad and Manzoor Ahmed Ganai son of Ghulam Rasool Ganai in different raids on October 27 night in Dooru. They were taken into a camp and tortured for the whole night.</p>
77.	Assassination of Education Minister	Unidentified Gunmen– However, police accused militants for killing minister	Dr. Ghulam Nabi Lone Minister of State for Education	<p><b>November 20-2005:</b> The State Government has asked Division Commissioner Kashmir to enquire into the circumstances that led to the assassination of the Education Minister and point out failure, if any in the security that enabled attackers to penetrate through the cordon at High Security Tulsi Bagh area where his official residence was.</p>

78.	Excesses, looting	Troops	The houses, which were looted, belonged to Noor Muhammad Misgar, Ghulam Ahmad Waghay, Ghulam Muhammad Sarwal, Abdul Gani Misgar, Muhammad Ayub Thug, Gul Muhammad and Muhammad Rafiq Misgar.	<b>On December 20</b> , The Deputy Commissioner Baseer Ahmad Khan according to the KNS directed the tehsildar to visit the area and assess the damage. The tehsildar Altaf Ahmad later told KNS that 18 residential houses were damaged in the encounter and 150 people were affected. The DC constituted an inquiry committee to probe the allegations.
79.	Killing	Unidentified Gunmen	Ghulam Mohammad Seh <b>R/o</b> Shangus, Anantnag district	<b>December 29-05</b> : The state government in legislative council has ordered an inquiry into the killing and appointed Assistant Commissioner Revenue Anantnag as Inquiry Officer. The Inquiry officer was asked to submit its report in 20 days.
<b>YEAR 2006</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>
80.	Custodial Killing	3 Rashtriya Rifles	Mushtaq Ahmad Ganie S/o Abdul Ahad Ganie R/o Magam Adaich Serigufwara	<b>January 13- 2006</b> : Chief Minister, Ghulam Nabi Azad directed Director General of Police not only to register FIR but also initiate an enquiry into the matter. Deputy Commissioner Anantnag had ordered a time bound enquiry into the killing. <i>A local news agency KNS, quoting the spokesman of Army Colonial Batra, said that "the defence authorities have taken a serious notice of the accusations against the Army and has ordered a comprehensive inquiry into the matter".</i> The news agency further quoted him saying that "whosoever is found guilty, will be awarded severest punishment under Army law".
81.	Assault on Greater Kashmir – Srinagar Bureau	JKLF activist (Nana Ji faction)	Office ransacked valuable infrastructure destroyed – three employees injured	<b>Feb 9-2006</b> : Chief Minister Ghulam Nabi Azad order a high level inquiry into the attack on Greater Kashmir by the activist of JKLF (Nanaji Group) led by convener Javaid Ahmad Mir. The incident, the Chief Minister asked Director General of Police Gopal Sharma and other authorities concerned to take necessary action against the culprits involved in the attack. An FIR has been lodged against all those involved in the attack.

82.	Extra Judicial executions of 4 students	33 RR led by one Major Rambo (Army)	<p>1. Amir Akber, 6,</p> <p>2. Ghulam Hassan Bhat son of Ghulam Rasool, 18, (who had recently passed 12th class with 73% marks),</p> <p>3. Shakir Wani, 8, son of Ghulam Hassan Wani and</p> <p>4. Samad Mir, 18, son of Abdul Ahad Mir.</p> <p>(Extra Judicial Executions)</p>	<p><b>February 23-2006:</b> Srinagar: Chief Minister Ghulam Nabi Azad has ordered judicial inquiry into the Handwara incident. Seeking a thorough inquiry into the incident to ascertain the circumstances that led to the killing of four young boys, he expressed anguish and displeasure over the incident.</p> <p>The Chief Minister directed Divisional Commissioner, Kashmir Basharat Ahmed Dhar and Inspector General of Police, Kashmir K Rajendra to immediately rush to the area.</p> <p><b>September 22-2006:</b> Government has appointed District and Session Judge Sayed Tariq Naqashbandi as inquiry officer to inquire into the causes and circumstances that led to the event of firing at Doodhipora, Handwara on February 22 - 2006, resulting in the death of four children.</p>
83.	Wullar Tragedy	Navy Officials negligence	22 School children	May 30: CM Ghulam Nabi Azad ordered a time bound judicial inquiry by a sitting judge into the incident that led to the death of children in Wullar lake

84.	Suicide	Mysterious	<b>Army Official Second Lieutenant</b>	<p><b>Jammu/Bhopal, June 17:</b> Army has ordered a high-level inquiry into the cause and circumstances which led to the Army Service Corps (ASC) Lt Sushmita Chakraborty to allegedly commit suicide at Northern Command headquarters in Udhampur on June 15.</p> <p>Denying any harassment at the workplace, Command Brigadier (Nagrota) K K Chopra told the mediapersons last evening that it was a case of depression. He said a high-level inquiry has been ordered to find out the cause and circumstances, which led to the tragic incident.</p> <p>Sushmita Chakraborty, daughter of P B Chakraborty, was commissioned into the Indian Army in September 2005 and posted with 5071 ASC Battalion as platoon commander. She had allegedly committed suicide on June 15 afternoon in the guest room of officers mess by shooting herself from guard's gun, which was taken by her on the pretext of carrying out training for young officers course. Brigadier Chopra said it was also revealed that the lady officer was depressed due to low self-esteem. She was provided counselling by a qualified psychiatrist for 15 days and subsequently granted 30 days of annual leave. While on leave, she requested for further extension of leave by 30 days, which was granted. She had resumed the unit on June 1 and was accompanied by her mother.</p> <p>Senior army official also furnished the reports of senior psychiatrist Col. Vijay Pandey, who had examined her during her bouts of depression.</p> <p>"I favour an inquiry by an independent agency into the episode. She desired to go ahead in life. Why would such a lady kill herself?" Lt Sushmita's Jabalpur-based elder paternal uncle S K Chakraborty, who was at the local airport, told UNI.</p> <p>In the double-storeyed Chakraborty residence at 162/2A Saket Nagar, a cardiac patient fought the grim battle of coming to terms with the death of his only daughter.</p> <p>Priya Brata Chakraborty is employed as a master technician at BHEL and has about half-a-dozen years of service left. After he interacted with media for a while, the doors and windows of the Chakraborty abode were shut.</p>
85.	Misbehaving	CRPF	<b>Mobile Magistrate, Islamabad</b>	<p>Srinagar June 29-06: The Inspector General of CRPF has ordered inquiry into the allegations against the officer and eight personnel for allegedly misbehaving with the mobile magistrate in Islamabad on June 24.-2006.</p>
86.	An attempt to kill youth in fake encounter	BSF	Mudasir Ahmad Dar son of Nisar Ahmad Dar of Karimabad Pulwama	BSF ordered a country of enquiry into the incidents

87.	Ex-militant shot dead	SOG/ 4 Rashtriya Rifles	Anjeel Shah son of Muhammad Ashraf of Masri Parnu, 21 km from Bhaderwah	<p>District Development Commissioner (DDC) Doda Pawan ordered an inquiry which will be conducted by Additional District Magistrate (ADM) Doda, he said, adding that the focus of the enquiry will be the circumstances that led to the killing of the youth.</p> <p>It is interesting to note the circumstances leading to the killing of Anjeel Shah. Police on August 21 said, Anjeel was killed in an encounter that took place between militants and the operation party and in the ensuing gun battle one militant got killed.</p>
88.	Custodial Killing	Special Operation Group (SOG) stationed at Aloosa	Zahir Ahmad Sofi S/o of Habibullah R/o Brar village of Bandipora, Baramulla	<p><b>Sep 4-2006:</b> Deputy Commissioner Baramulla ordered a magisterial inquiry into the killing and appointed Assistant Commissioner Revenue as the investigating officer.</p> <p>According to a local news agency Current News Service (CNS), the SSP Baramulla said that the youth was arrested by the SOG on September 4, and died at 7 am on the next day in the camp. "A departmental inquiry has also been ordered, the CNS quoting him saying.</p>
89.	Two Family members killed	36 Rashtriya Rifles	Muhammad Ashraf Naikoo, 20, and his sister Misra Bano, 35, children of Hasim Ali	<b>Oct 4:</b> Deputy Commissioner Islamabad G A Peer told protesters that a magisterial probe would be held into the incident. He told them Kokernag police has already registered a case.
90.	Fake Encounter	Special Operation Group (SOG)	Ghulam Muhammad son of Muhammad Jamal  and  Reyaz Ahmad Gujri son of Akthar Hussain of Kralpura, Kashmir	The SSP Doda Manohar Singh "ordered an inquiry" into the killings
<b>YEAR 2007</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>

91.	Manhandling of Kashmiri Scholar outside Kashmir	Army	Shafkat Ahmed R/o Baramulla	<p><b>Jan 9:</b> Taking serious exception to Army personnel allegedly assaulting a Kashmiri scholar in the Dakshin Express, Railway minister Lalu Prasad ordered an inquiry into the incident by the Railway Board. "I am shocked to see the TV footage of a Kashmiri youth bearing bruises on his body and arms. It is an unfortunate event," Prasad told reporters.</p> <p>"I have asked the chairman of the Railway Board to get the matter inquired into," he said.</p> <p>Safqat Ahmed, a scholar and resident of Baramulla district in Jammu and Kashmir, filed an FIR with the Railway Police at Nizamuddin railway station in New Delhi yesterday alleging that he was mercilessly beaten up by army men when he boarded the Dakshin Express at Betul between Gwalior and Jhansi railway stations. "I boarded the bogie in which the army men were travelling and when I disclosed my identity, they called me a terrorist and started beating me," he alleged in the FIR. (PTI)</p>
92.	Fake Encounter	Army (55 RR)	Muhammad Yaqoob Mir, 25, son of Abdul Aziz Mir of Abi-Nowpora, Dalgate	<p><b>Jan 27:</b> Speaker Legislative Assembly (LA) Tara Chand today ordered probe into the alleged custodial murder of a laborer of Abi Nowpora in Khanyar constituency and directed the government to furnish the report in the ongoing session.</p>
93.	Fake Encounter / enforced disappearance	Special Operation Group (SOG)	Abdur Rehman Paddar, 35, son of Ghulam Rasool of Larnu Kokernag-Anantnag	<p><b>Jan 28:</b> Inspector General of Police (DIG) Kashmir Range, Farooq Ahmad, who has been directed to supervise the Special Investigation Team probing the case, told media on Jan 27 - 2007.</p> <p><b>Jan 29:</b> Chief minister Ghulam Nabi Azad admitted in the state legislative assembly that the policemen accused of murdering a carpenter from South Kashmir in a fake gunfight had planned the killing to please their bosses and to earn promotions. The CM ordered a departmental inquiry into the incident, one of the hundreds that have been ordered in the past in hundreds of cases of custodial murders.</p>
94.	Custodial killing	Special Operation Group	Chaudhary Mehar Din	<p><b>Sub-Divisional Magistrate (SDM) Bhaderwah had ordered a magisterial inquiry into the killing of Muhammad Ishaq Choudhary, 19. He was allegedly killed by STF in Kehn Dhar area of Bhallesa on November 24, 2006. Three months have passed since, but the investigation has not been initiated by the investigating officer concerned. Sources said he describes 'domestic problem' as reason behind the delay in the inquiry.</b></p>

95.	Custodial Killing	State Police	Showkat Ali s/o Ali Mohammad of Chaprian, Jawahar Nagar, Rajouri	Feb 15: Deputy Commissioner Parvez Malik has ordered a magisterial inquiry into the killing which will be conducted by Additional District Magistrate (Assistant Commissioner Revenue), Kewal Krishan Sharma. The ACR has been asked to submit his inquiry report within 21 days. SHO Rajouri Inspector Showkat Ahmed Malik and Havildar Gian Singh have been placed under suspension and a magisterial inquiry ordered into the custodial killing of Showkat Ali son of Mohd Latief, a resident of Chaprian, SSP Rajouri, Farooq Khan said
96.	Custodial Killing	State Police	Tarseem Lal – 18 Son of Khazan Chand R/o Mukwal, Jammu	<b>Enquiry ordered by:</b> <b>Feb 17:</b> Chief Minister Ghulam Nabi Azad Saturday ordered a magisterial enquiry into the alleged custodial killing of Tarseem Lal son of Khazan Chand of Makwal. In a statement here, Finance Commissioner Home department, B.R.Kundal said that the report of magisterial enquiry will be submitted to the government within a week's time. "Anyone, if found guilty will be punished strictly and action will be taken against the guilty. No one will be allowed to influence the enquiry process," Kundal said. Sources said that Additional Deputy Commissioner, Jammu will conduct the enquiry into the alleged custodial killing.
97.	Killings	State Police	Farooq Ahmed Wani and Shakoor Ahmed Dar	<b>Deputy Commissioner Pulwama ordered a probe into the killings and appointed Muhammad Rajab Bhat, Assistant Commissioner Revenue as the inquiry officer and asked him to submit the inquiry report within a month.</b>
98.	Fake Encounter of three and killing of a woman who witnessed the encounter followed by violent clashed in which an infant was killed	Army	Irshad Ahmed Bajad, a contractor s/o Lal Din  Other two were not Identified	<b>District Development Commissioner Asfanday Khan ordered a magisterial probe into the incident and appointed Additional Deputy Commissioner as the enquiry officer.</b>
99.	Shot Dead	Central Reserve Police Force (CRPF)	Abdul Qayoom Lone  S/o: Haji Abdul Samad Lone  R/o: Watlab Sopore, Baramulla	<b>Aug 26:</b> Chairman of Jammu and Kashmir Handicrafts Corporation and MLA Haji Abdul Rashid visited the residence of the deceased and directed Sopore's Sub-Divisional Magistrate to probe the incident, an official spokesman said.
100.	Fake Encounter	Army	Muhammad Ramzan Shah	<b>Sep 11-07:</b> Deputy Commissioner Baramulla ordered a probe into the incident. DC Baramulla Bashir Ahmed Khan told media that he has asked SDM Sopore to conduct a probe.
101.	Shot Dead	SOG	Zahoor Ahmad Mir son of late Ghulam Hassan Mir R/o Magam, Hanwara	<b>Dec 15 – 2007:</b> Enquiry ordered The government has ordered an enquiry into the incident. "We have ordered a magisterial enquiry into the incident," the Deputy Commissioner, Budgam, Farooq Ahmad Renu told Greater Kashmir.



102	Shot Dead	SOG	Ghulam Muhammad Lone son of Mukth Lone	Dec The government on December 15, 2007, ordered a magisterial probe that will look into the incidents of torching of houses. The district administration ordered a magisterial inquiry and entrusted additional deputy Commissioner Kupwara to probe the incidents within a month. Deputy Commissioner Kupwara Afsandiyar Khan told Greater Kashmir that he has ordered inquiry into the incident. "I am issuing formal orders tomorrow (Sunday) to ADC to hold time bound probe within one month," he said. At a high level meet convened by DDC Kupwara, it was decided that joint patrolling will be conducted by locals, police and army during the night.
<b>YEAR 2008</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>
103	Killing	Police	Sidra youth Jammu Name not ascertained	<b>March 9-2008:</b> Chief Minister Ghulam Nabi Azad has ordered judicial inquiry. The CM assured them that the enquiry would be completed within 14 days and stringent action taken against any police official found guilty.
104	Custodial killing	SOG	Latif Ahmad <b>Son of Ghulam Mustafa</b>	<b>On June 6, 2008:</b> District magistrate Doda, Khurshid Ahmad Bhat, said a magisterial inquiry has been ordered and ADC Doda, Farooq Ahmad Khan, has been appointed as inquiry officer and asked to submit the report.
105	Beating	Central Reserve Police Force (CRPF)	Sheikh Sajad Ahmad (A lawyer by profession)	<b>The Chief Judicial magistrate directed the SHO Maisuma to launch an investigation against CRPF personnel for beating up a lawyer on August 13-2008 in Lal-Chowk.</b> <b>On Sept 14,2008</b> Police ordered an inquiry into the beating up of a lawyer by the Central Reserve Police Force (CRPF) at Amira Kadal Srinagar. A police press note issued said, police ordered an inquiry after a complaint that a lawyer Sheikh Sajad Ahmad was beaten up in Amira Kadal area. However, it did not mention who would conduct the inquiry.

106	Desecration of shrine	CRPF		<p><b>On Sep 15,08</b> authorities ordered probe into the desecration of Peer Dastageer Sahib (RA) shrine and registering of FIR against CRPF</p> <p>Deputy Commissioner Srinagar Mehraj Ahmad Kakroo told media that additional district development commissioner; Srinagar Muhammad Nabob Zargar will probe the incident.</p> <p>“We have asked Zargar to complete the investigations within 15 days. He will be assisted by Tehsildar Srinagar so that investigation is completed on time”.</p> <p>Kakroo said that if CRPF personnel were found guilty of desecration during the investigations, they would be brought to book and action taken against them.</p> <p>An FIR bearing No 114/08 FIR under sections 295 and 427 (desecration and damage of shrine) was registered in Police Station Shergadi. After the probe order and registering of FIR against CRPF</p>
107	<b>Killing</b>	<b>CRPF</b>	Sajjad Ahmad Ganai	<p><b>On Sept 16, 08</b> The Deputy Commissioner, Shopian ordered inquiry into the circumstances leading to death of Sajjad Ahmad Ganai on September 12. The enquiry will be conducted by Additional Deputy Commissioner Shopian, M.Y. Zargar within 15 days, officials said.</p>
108	Killings and injuries	A Personal Security Officer (PSO) of a Congress candidate and CRPF men	The deceased were identified as Tanvir Ahmad Sheikh son of Ghulam Mohiudin Sheikh of Ganai Hamam, Baramulla and Mansoor Ahmad Kumar (15) son of Ali Mohammad Kumar of Khanapora, Baramulla. Some of injured were identified as Muhammad Rafiq Najar, Rafiq Ahmad Bhat, Bilal Ahmad Gojri, Ishfaq Ahmad Kumar, Riyaz Ahmad Malla, Nasreena, Mudasir Ahmad Sheikh, Tanveer Ahmad, and Abdur Rashid Ahangar.	<p><b>On Nov 22,08</b> Deputy Commissioner Baramulla Baseer Ahmad Khan ordered magisterial inquiry into the firing incidents in which two teenage boys were killed and seven injured in north Kashmir’s Baramulla township when a Personal Security Officer (PSO) of a Congress candidate and CRPF men opened fired at people protesting against the elections process in the State.</p> <p>“We have ordered inquiry into the incident. Additional DC Baramulla has been appointed as inquiry officer and directed to submit a detailed report of the firing within a week,” Khan told media.</p>
109	Rape of teenager and molestation of her mother	36 Rashtriya Rifles	Daughter of one Muhammad Abdul Khatana of Kokernag	<p><b>On Dec 4, 08</b> The additional deputy commissioner, Islamabad, Bashir Ahmed Khan said that administration has ordered a magisterial probe into the incident in which a 13-yr old girl daughter of Muhammad Abdul Khatana, Imam of the local Masjid of Kokernag, was gang raped by troopers of 33 Rashtriya Rifles on Dec 3.” We have asked the tehsildar to investigate the matter and submit his report within three days,” he said.</p>

110	Killing	Police and CRPF men	Muzaffar Mushtaq S/o Mushtaq Ahmad Ganai	<p><b>On Dec 14:</b> The Jammu and Kashmir Government ordered an inquiry into the incident of violence at Koil, in the Pulwama district, on the polling day on 13th December.</p> <p>According to official Spokesman, Principal Secretary Home, Khursheed Ahmed Ganai, will conduct the inquiry into the incident of violence at the Koil village, which resulted in the death of one person and injuries to some others. The inquiry shall be completed within ten days and report submitted to the Government by 26th December 2008, the spokesman said.</p> <p>Divisional commissioner Masud Samoon on Dec 13 said that the government has ordered magisterial inquiry into the killing of Muzaffar.</p> <p>“We have ordered a magisterial inquiry into the killing. Deputy Commissioner Pulwama has been ordered to submit a detailed report within 15 days,” Samoon said.</p>
<b>YEAR 2009</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>
111	Killing	Army	Abdur Rashid Reshi,40  S/O: Late. Abdul Ahad Reshi  R/O: Veer Saran,Pahalgam	Army ordered a high level inquiry into the incident.
112	Beating and ransacking houses	CRPF		<b>On Jan 16-09:</b> Government ordered inquiry into the incident. An official spokesman said that SSP, Srinagar will be the Inquiry Officer, who has been asked to locate the erring officials of the CRPF Company and submit his report within three days. He said the CRPF Company involved in the incident has been moved out of the downtown area.
113	Beating and harassing	Troopers of army's 8/GR posted in Karnah	Sumo driver Safeer Ahmad War of Batpora and his two passengers, then barging into a police post in Teetwal and harassing the officials on duty	<b>On Jan 16-09:</b> The SSP sent an investigation team headed by DSP Shabir Ahmad and ordered an inquiry into the incident. Police sources said the cases have been registered under the FIR NOs 2/2009 and 3/2009.
114	Killing	18 RR personnel	Fayaz Ahmad Mir,25 (Tailor)	<b>On Feb 2-09:</b> SSP Kupwara, Uttam Chand told media that a gazetted level police officer has been appointed as investigating officer and he will conduct the probe into the killing of the civilian.

115	<b>Beating and harassing</b>	Paramilitary CRPF troopers		<p><b>On Feb 10-09:</b> State government has ordered probe into incident and asked Deputy Inspector General of Police, Kashmir to hold an inquiry into the incident.</p> <p>The senior superintendent of police, Syed Afadul Mujtaba, said an inquiry had been ordered into the incident. DIG Central, Muneer Khan, will conduct inquiry into the matter and give his report within a few days.</p>
116	<b>Killings</b>	22 Rashtriya Rifles	<p>1. Muhammad Amin Tantray son of Muhammad Shaban of Bomai</p> <p>2. Javid Ahmad Dar son of Muhammad Ismail of Muslim Peer, Sopore.</p>	<p><b>On Feb 21-09:</b> The chief minister ordered magisterial inquiry into the incident with instructions that the Inquiry Officer will submit report within 15 days. He assured that exemplary punishment will be given to those found guilty.</p> <p>Feb 21: Deputy Commissioner Baramulla, Baseer Khan said probe has been ordered into the incident. "Sub District Magistrate has been appointed inquiry officer to probe the incident. He would submit the report within a week," he said.</p>
117	<b>Killing</b>	Paramilitary CRPF troopers of 181 battalion	<p>Ghulam Mohiudin Malik (Carpenter)</p> <p>S/o Mohammad Akbar Malik</p> <p>R/o Khaigam, Pakherpora, Pulwama</p>	<p><b>Mar 19-09:</b> The government ordered a probe into the killing of Ghulam Mohiudin. The deputy commissioner of Pulwama, Ishtiyaq Ahmad Ashai, said the additional deputy commissioner of Pulwama, Aadil Rashid Naqash, had been asked to probe the killing and submit his report within 10 days.</p>
118	<b>Beating</b>	Assistant Sub Inspector of Police, Chadoora Police Station Bashir Ahmad	<p>Nazir Ahmad Ganai (Senior activist of Jammu Kashmir Right to Information Movement (JKRTI),</p> <p>R/o Chadoora</p>	<p><b>On April 1-09:</b> Chief Minister Omar Abdullah ordered an inquiry into the incident</p>
119	<b>Killing (Human shield)</b>	Troopers and Ikhwanis	<p>Shams-ud-Din (Retired police constable)</p> <p>R/o: Kandi Nutnusa, Kupwara.</p>	<p><b>Apr 20-09:</b> Police ordered a probe to look into the allegations about the retired police constable, being used as a human shield by troopers and Ikhwanis. "We have ordered inquiry to look into the allegations," the senior superintendent of police Kupwara, Uttam Chand, told media.</p> <p>➤ The Deputy Commissioner, Kupwara, Showkat Ahmed said that police had taken the suo motto cognizance. "They (police) will probe the matter</p>

120	<b>Custodial Killing</b>	Army	Mohammad Sadiq (chairman of Water Shed committee)  S/o Mohammad Khaliq R/o Mangota village in Doda.	<b>May 8-09:</b> The government ordered a magisterial probe into alleged custodial killing of Mohammad Sadiq by army in Marmat area of Doda district. DC Doda Sharief-ud-Din ordered a magisterial probe to ascertain the fact. Additional Deputy Commissioner Doda Ram Rattan Sharma has been directed to conduct a detailed probe into the incident. “We received a written complaint from the locals and after accusation, I have appointed Additional Deputy Commission as an inquiry officer to probe the killing.” DC Doda Sharief-ud-Din said.
121	<b>Killing</b>	Troopers of 26-Rashtriya Rifles and Militants	Amina,17 D/o Muhammad Ibrahim R/o Kishtwar	<b>May 13-09:</b> State Government ordered a probe into the killing of Amina. Divisional Commissioner, Jammu, Pawan Kotwal, directed the deputy Commissioner to conduct a magisterial probe into the incident and submit the report to the government.
122	<b>Custodial Killing</b>	Special Operations Group of police	Manzoor Ahmad Beigh, 40 S/o Late. Abdul Ahad Beigh R/o Aluchi Bagh, Srinagar.	<b>May 18-09:</b> Deputy Commissioner ordered inquiry into the killing. The Additional Commissioner, Srinagar, M.Y.Zargar has been appointed as Inquiry Officer and has been asked to submit report within a week. <b>Police has launched inquest proceedings under section 174 CrPC.</b>
123	<b>Rape</b>	Troops	Aasiya, 17 D/o Abdul Gani Ahangar R/o Bungam, Shopian  Neelofar (24) w/o Shakeel Ahmad R/o Bungam, Shopian	JUSTICE JAN COMMISSION <b>May 31-09:</b> The Government formed a special investigation team to investigate the alleged rape and murder of two women in Shopian.Divisional Commissioner Masood Samoon said that the investigation would be carried under the supervision of Deputy Superintendent of police. <b>June 1-09:</b> Government appointed one man commission Justice Muzaffar Jan, who heads the one-man judicial commission set by Chief Minister Omar Abdullah to probe into the alleged rape and murder of two women in Shopian. Justice Jan is assisted by his three-member team of investigating officers, which include Chief Prosecuting Officer Abdul Majeed, Law Secretary Mukhtar Ahmad Wani and SSP Haseeb Mughal. <b>June 8-09:</b> Director general of police, Kuldeep Khoda ordered constitution of a 3-member special investigation team for expeditious investigation of case FIR No 112/09 under section 376 RPC registered in police station Shopian,regarding alleged rape and murder of two women in Shopian. The team would comprise Shah-Din Malik, SP Incharge commandant IRP 5 <sup>th</sup> battalion as Incharge, Mushtaq Ahmad Shah, deputy superintendent of police,Awantipora and Najeeb Hussain Nahvi senior prosecuting officer of Crime Branch Kashmir as its members.

124	<b>Killing</b>	Paramilitary troopers	<p>Muhammad Saleem Wani S/o Abdur Rashid Wani R/o Syed Karim Sahib, Baramulla</p> <p>Tariq Ahmad Malik S/o Saifudin Malik R/o Drangbal</p> <p>Fayaz Ahmed Gojri R/o Baramulla</p> <p>Amir Rashid Mir S/o Abdul Rashid Mir R/Tawheed Gunj area</p>	<p><b>June 29-09:</b>The district magistrate of north Kashmir Baramulla ordered a time-bound magisterial inquiry by the additional district magistrate, Muhammad Ashraf Shanthoo, into the killing of youth in police and CRPF firing. The inquiry officer has been asked to investigate whether the use of force by the police/CRPF, which led to the killing of youth, was proportionate considering the “nature and composition of protests.”</p> <p>The inquiry officer has been asked to submit his report in 10 days. The senior superintendent of police will appoint a gazetted officer to assist the inquiry.</p>
125	<b>Firing incident</b>	Police constables	Yasir Reshi (PDP leader)	<p><b>August 11-09:</b> Taking a serious note of the attack on the political activist by police, the director-general of police, Kuldeep Khoda ordered a departmental enquiry into the incident and the DSP, Bandipora, Harmeet Singh, has been appointed the investigating officer.</p>
126	<b>Custodial Killing</b>	Police	Noor Hussain,65 S/o Feroz Din R/o Rathal Choudhary Nar village, about 9 km from Rajouri town	<p><b>Sept 13-09:</b> District Magistrate ordered a magisterial probe into the incident.</p>
127	<b>Shopian Rape case</b>	Troops	<p>Aasiya, 17 D/o Abdul Gani Ahangar R/o Bungam, Shopian</p> <p>Neelofar (24) w/o Shakeel Ahmad R/o Bungam, Shopian</p>	<p><b>Sept 30-09: The Govt ordered inquiry against two teams of doctors, who conducted separate autopsies on bodies of Shopian twin rape and murder victim on May 30-09.</b></p>

128	Killing	Troops	Sajad Ahmad Ganai (student) S/o Ghulam Mohi-ud-din Ganai R/o Ganaiepora, Kralgund Handwara.	<p><b>Oct 25-09:</b> The administration and the army ordered separate inquiries into the killing of Sajad Ahmad. The deputy commissioner, Kupwara, Showkat Ahmad Mir, ordered a magisterial inquiry into the killing of Sajad. "I have asked my additional deputy commissioner to conduct the inquiry and submit a report within a month," Mir said, adding ex-gratia would be paid to the family soon.</p> <p>The deputy inspector-general of Police, Baramulla, Abdul Qayoom Manhas, however, said, "We cannot register a murder case until the FIR lodged by the army and the family is investigated."</p> <p>The army ordered an inquiry into the killing but denied arrest, torture and custodial killing of Sajad. "Sajad was mentally challenged and tried to snatch the weapon of a soldier and attacked him with an axe. He was killed in a scuffle. We did not kill him with any intention," the army spokesman said, adding "our trooper too was injured in the firing and he has been shifted to a hospital".</p>
129	Thrashing locals and ransacking houses	Troopers of 34-Rashtriya Rifles	Residents of Kangripora, Pakherpora and Zanigam	<p><b>Dec 10-09:</b> District administration ordered a magisterial inquiry into the incident. District Magistrate Budgam, Muhammad Rafi said a magisterial inquiry had been called into the incident by the order of government. He said Additional District Magistrate Budgam, Muhammad Aslam Qadri had been appointed as inquiry officer. The authorities said the inquiry officer had also started the work. "The inquiry has to be completed within three days," Rafi said. "We again took stock of three villages on Thursday (Dec 10)."</p>
130	Killing	Unidentified Gunmen	Muhammad Iqbal Dar (NC worker) R/o: Dogripora, Awantipora Pulwama.	<p><b>Dec 20-09:</b> The minister for Rural Development, Law and Parliament Affairs, Ali Muhammad Sagar ordered a probe in the killing. Deputy Commissioner, Pulwama has been asked to investigate the killing of Mohammad Iqbal Dar. The DC has been asked to submit the report within the shortest possible time.</p>
<b>YEAR 2010</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>
131	Deliberate firing	DSP Safdar	Amaan Farooq (GK lens man)	<p><b>Jan 7-10:</b> Inspector General of Police, Kashmir, Farooq Ahmad said police has ordered an inquiry into the shooting incident. "DIG would conduct the inquiry," he said.</p>
132	Killing	Indian Reserve Police (IRP)	Manzoor Ahmad Sofi R/o Parihaspora, Pattan	<p><b>Jan 22-10:</b> IGP Kashmir Farooq Ahmad has ordered an inquiry into the incident. Deputy Commissioner Baramulla, Lateef-ul-Zaman Deva said an inquiry has been ordered. "Police has been directed to file a case against the IRP men. ADC will conduct the inquiry into the incident. Those IRP men who crossed the limit and fired indiscriminately on the civilians will be taken to task," he added.</p>

133	Killing	Troopers of 44 Rashtriya Rifles (RR) and Special Operation Group (SOG)	Mushtaq Ahmad Mir, 32 S/o Ghulam Muhammad Mir R/o Kalampora-Shadimarg	<b>Jan 25-10:</b> Police started a probe into the death of Mushtaq Ahmad. Inspector General of Police, Farooq Ahmad said, "The enquiry has been already ordered into the incident and Senior Superintendent of Police (SSP) Pulwama is supervising it."
134	Killing	Police	Wamiq Farooq, 15 S/o Farooq Ahmad Wani R/o Chana Mohalla, Rainawari	<b>Feb 1-10:</b> Inspector General of Police-Kashmir Range-ordered a probe  <b>May 11:</b> The CJM ordered a magisterial inquiry by the Small Causes Judge into the contradictory reports by police and witnesses in the killing of Wamiq Farooq.
135	Killing	BSF men	Zahid Farooq Sheikh, 16 (He had recently passed his 10 <sup>th</sup> class examination) S/o Farooq Ahmad Sheikh R/o Sheikh Mohalla Brein, Nishat	<b>Feb 5-10:</b> Government instituted a high level inquiry into the killing of Zahid. The inquiry team will be headed by Divisional Commissioner Kashmir, Naseema Lankar.
136	Firing incident	Paramilitary CRPF troopers	Funeral procession at Redwani, Kulgam	<b>Feb 16-2010:</b> Deputy Commissioner Kulgam, Manzoor Ahmed, ordered a magisterial probe
137	Killings in fake encounter	Army	1. Riyaz Ahmad S/o Mohammad Yusuf Lone  2. Shehzad Ahmad S/o Ghulam Mohammad Khan  3. Mohammad Shafi S/o Abdul Rashid Lone  All residents of Nadihal, Rafiabad	<b>May 27-10:</b> J&K government ordered a magisterial probe into the killing of three youth from Nadihal, Rafiabad in an alleged fake encounter near Line of Control in Machil sector on April 30. Chief Minister Omar Abdullah said the government has ordered a magisterial probe into the killing of three youth in Machil sector. <b>May 30-10:</b> After police indicted Army Major and his team of 4 Rajput Rifles in the killing of three Nadihal youth, Army ordered a high level inquiry into the incident. The evidences presented in "factual report" clearly suggest murder of three innocent youth in a fake encounter.
138	Killing	Police	Tufail Ahmad Mattoo	
139	Killing	Police and CRPF men	Javaid Ahmad Malla, 19 R/o Palpora, Noorbagh	<b>June 20-2010:</b> Chief Minister Omar Abdullah directed the Divisional Commissioner, Kashmir to probe the killing of Javed.
140	Killings	Commandant 177 battalion CRPF	1. Shakeel Ahmad Ganai, 24 R/o Lalad, Sopore  2. Firdous Ahmad Kakroo R/o Niglee, Sopore	<b>June 26:</b> J&K government ordered one man judicial probe into the killing of two youth. The state government has appointed Justice (retired) Syed Bashir-ud-Din, chairperson, J&K State Human Rights Commission to conduct an enquiry into the incident.  The Commission, according to the spokesman, shall enquire into the causes of death of Shakeel Ahmad Ganai and Firdous Ahmad Khan. The Judicial Commission shall also determine the persons responsible for the said deaths and fix responsibility for use of excessive force, "if any."



141	Killings	Police party and a contingent of CRPF led by senior police officials of Islamabad	<p>1. Ishtiyaq Ahmed, 15, a class 10 student S/O Ahmadullah Khanday R/o S.K.Colony</p> <p>2. Imtiyaz Ahmed Itoo, 17 S/o Abdul Ahad Itoo R/o Watergam, Dialgam</p> <p>3. Shujat-ul-Islam, 17, a class 12 student S/o Late Muhammad Ashraf Baba R/o Anchidora</p>	<b>June 30:</b> The district administration has ordered a Magisterial Inquiry into the killing of three youth by police. “We can’t say who fired on the youth. The district administration has ordered a Magisterial Inquiry into the incident which will be headed by Additional District Magistrate, Ghulam Muhammad Dar,” said Deputy Commissioner Islamabad, Jaipal Singh.
142	Custodial killing		Tariq Ahmad Dar R/o Fidarpora, Rafiabad Baramulla	<b>July 25:</b> The Jammu and Kashmir government ordered a magisterial inquiry into the incident.
143	Killings			July 29: The Commission of Inquiry constituted by the State Government to probe the killings of 17 civilians by police and troopers in various parts of the Valley since June 11 has assured a fair and transparent investigation. Justice Bashir-ud-Din, who heads the Judicial Commission, said fresh probes will be initiated into the killings. “The Commission will thoroughly probe the cases to ascertain the causes and circumstances leading to the killings identify the accused persons and fix responsibility for use of excessive force, if any. We assure meaningful, transparent and fair probe,” Justice Bashir-ud-Din told Greater Kashmir.
144	Fake encounter	4 Para of the Army	Manzoor Ahmad Magray, 22, a student <b>R/o:</b> Chogal Handwara town, Kupwara	The government has ordered a probe into the incident and additional Deputy Commissioner Kupwara has been asked to submit the probe report within 15-days. A murder case has been registered against the unit which carried out the operation.
<b>YEAR 2011</b>				
	<b>NATURE OF CRIME</b>	<b>ACCUSED AGENCY</b>	<b>NAME OF VICTIM</b>	<b>PROBE ORDERED BY</b>
145	Killings		Noor Muhammad, 14, Bismah Maqbool, 8 Muskaan, Children of Mohammad Maqbool Bhat R/oMaloora, Srinagar	<b>Feb 17-2011:</b> An inquiry has been ordered by the Jammu & Kashmir government
146	Suicide	Police	Rashida Bano D/o: Abdul Rafiq Rather R/o: Bhalessa	<b>June 1-2011:</b> Deputy Commissioner, Doda, Farooq Ahmed ordered a magisterial probe into the incident and appointed Tehsildar, Doda as enquiry officer.

147	<b>Kulgam Rape</b>	Army	Ruqaya Bano, a 32-year-old woman R/O: Gujjarpatti Manzpora in Kulgam	<b>July 23:</b> The army has ordered an inquiry into the alleged involvement of its men. <b>July 21:</b> Police has registered FIR No 66/2011 under section 376 at Police Station Damhaal Hanjipora
148	<b>Custodial Killing</b>	Police	Nazim Rashid, 26, son of retired police officer Abdur Rashid Shalla of Alamdar Mohalla, Sopore	<b>July 31:</b> Government has appointed a Commission headed by Deputy Commissioner Baramulla to probe the matter.  3 cops suspended and Dy. SP Operations Sopore has been attached.
149	<b>Fake Encounter</b>	Army and Police	Not yet ascertained	August 9-2011: District administration ordered Magisterial Probe into Surankot fake encounter. Assistant Commissioner Revenue (ACR) Poonch Tilak Raj Sharma has been appointed as enquiry officer and he has been directed to submit the report within three days to Deputy Commissioner Poonch Ajit Kumar Sahu
150	<b>Prompted to Suicide</b>	Police	Rashida Bano D/o: Abdul Rafiq Rather R/o: Bhalessa	June 1-2011: Deputy Commissioner, Doda, Farooq Ahmed ordered a magisterial probe into the incident and appointed Tehsildar, Doda as enquiry officer.
151	<b>Kulgam Rape</b>	Army	Ruqaya Bano, a 32-year-old woman R/O: Gujjarpatti Manzpora in Kulgam	Govt. appointed 7 member Special Investigation Team (SIT) to probe the alleged abduction and rape of a Kulgam woman. , <b>July 23:</b> The army has ordered an inquiry into the alleged involvement of its men. <b>July 21:</b> Police has registered FIR No 66/2011 under section 376 at Police Station Damhaal Hanjipora
152	<b>Custodial Killing</b>	Police	Nazim Rashid, 26, son of retired police officer Abdur Rashid Shalla of Alamdar Mohalla, Sopore	<b>July 31:</b> Government has appointed a Commission headed by Deputy Commissioner Baramulla to probe the matter.
153	<b>Fake Encounter</b>	Army and Police	Not yet ascertained	August 9-2011: District administration ordered Magisterial Probe into Surankot fake encounter. Assistant Commissioner Revenue (ACR) Poonch Tilak Raj Sharma has been appointed as enquiry officer and he has been directed to submit the report within three days to Deputy Commissioner Poonch Ajit Kumar Sahu
154	<b>Custodial Killing</b>	Police (crime branch)	Muhammad Yousuf Shah alias Haji Yousuf of Islamabad (Anantnag)	<b>Nov 18-2011:</b> Jammu and Kashmir government appointed a recently retired Supreme Court judge – Justice (Rtd) HS Bedi – as one man Commission of Inquiry (Under Section 3 of the Jammu & Kashmir Commission of Enquiry Act 1962) to probe the mysterious death of a National Conference (NC) activist Muhammad Yousuf Shah. The One-Man Commission has been asked to submit the report within 6 weeks.
155	<b>Assassination bid</b>	Unknown Gunmen	Ali Mohammad Sagar (law and parliamentary affairs minister)	<b>Dec 12-2011:</b> Chief Minister Omar Abdullah ordered a thorough investigation into the attack on Law Minister Ali Muhammad Sagar at his home in Srinagar. “The Chief Minister wants a comprehensive report and how it happened and what were the loopholes,” said a senior official quoting Abdullah’s instructions to Minister of State for Home Nasir Aslam Wani and Director General of Police Kuldeep Khoda.

YEAR 2012				
156	<b>Killing (Youth Shot Dead)</b>	Central Industrial Security Force (CISF) personnel	Altaf Ahmad Sood Of Boniyar, Uri	Jan 2-2012: The state government ordered a Magisterial Inquiry into the incident and appointed Additional Deputy Commissioner Baramulla, Manzoor Ahmad Qadri as inquiry officer. Pertinently ADC is supposed to submit the report within 15 days
157	<b>Killing (Youth Shot Dead)</b>	32 Rashtriya Rifles	<i>Ashiq Hussain Rather S/o: Nohammad Akbar Rather of Rafiqabad, Baramulla</i>	Feb 11-2012: Minister of State for Home Nasir Aslam Wani. Said the sub-divisional magistrate will conduct a probe into the death of Ashiq Hussain and submit his report within one month. Army has also ordered a probe into the incident. General Officer Commanding of Army's 15 Corps Lt General S A Hasnain visited the area and assured that a transparent and fair probe will be conducted into the incident.

Annexure 22

Government of Jammu and Kashmir  
Department of Law, Justice and Parliamentary Affairs,

To,

Shri Khurram Parvez,  
R/O House No. 1, Gupkar Road,  
Srinagar Kashmir.

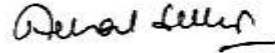
NO:-LD (Ser) 2011/RTI/41

Dated: - 16-12-2012

Subject: - Request for information under J&K Right to Information Act, 2009.

Sir,

Kindly refer your application dated 12-1-2012 addressed to Public Information Officer, Home Department and same was transfer to this Department. In this connection, it is being informed to you that after considering your application, it has being found that information sought by you pertaining to this Department for details of Commissions of Inquiry constituted under Commission of Inquiry Act, 1962 from 1-1-1990 till date attached herewith as annexure "A".



Public Information Office,  
Department of Law Justice and Parliamentary Affairs,

S.no.	SRO No. and Date	Incident	Commission of Enquiry consisting of	Department which issued notification
1	14 of 1993 dated 30-01-1993	Incidents of January 6 1993 in Sopore town District Baramulla which resulted in loss of life	Justice Amarjit choudhry sitting judge of the Punjab and Haryana High Court	Law
2	14 of 1995 dated 30-01-1995	Causes other than natural calamity which lead to stranding of vehicles and passangers on National Highway on 15/16 Jan. 1995	Shri Iqbal Krishan Kotwal Retired Judge of High court of J&K	Home
3	204 of 1995 dated 21-08-1995	Death of persons due to bomb explosion at Purani Mandi jammu on 20-07-1995	Shri HN Mishra , retired District and Sessions Judge	Law
4	325 of 1995 dated 12-12-1995	Assault on Dr. Farooq Abdullah at Rajouri	Shri Udhey Bir Singh, retired District and Sessions Judge	Home
5	454 of 1996 dated 26-11-1996	Assault on Dr. Bharat Bhushan	Justice KK Gupta , retired Judge of High Court	H&ME Department
6	122 of 1998 dated 15-04-1998	Death of Mst. Bakhti at Bandipora	Shri Khalik-ul-Zaman, District and sessions Judge	Law

7. Vide SRO 241, dated 10.08.1998, Shri Sain Dass, Research Officer in the Law Department (District & Session Judge) was appointed as Inquiry Officer to ascertain the causes of the incident which took place in the Civil Secretariat premises on 06.08.1998 and the circumstances which led to the entry of Police personnel in the Civil Secretariat premises incidence of brick batting/ stone pelting and alleged use of force by them. Subsequently, vide SRO 253 dated 20.08.1998, Justice A.Q Parray (Former Judge of the J&K High Court) was appointed in the Commission in place of Shri Sain Dass. The Commission submitted its report on 07.02.2002.
8. Vide SRO 146, dated 26-04-1999, a two Member Commission of Inquiry comprising Justice A.Q Parray (Former Judge of the J&K High Court) as Chairman and Mr. Pavittar Singh, Retired District & Sessions Judge as Member was constituted. Subsequently, Mr. Pavittar Singh was replaced by S. Mohinder Singh as Member, vide SRO-340, dated 13-08-1999. The mandate of the Commission was to inquire into the issue of Permanent Resident Certificate in contravention of the J&K Grant of Permanent Resident Certificates Procedure Act, 1963. The Commission submitted its report (Interim report) in 2003.
9. Vide SRO 04, dated 1<sup>st</sup> Feb, 2000, a one Man Commission of Inquiry comprising of Justice K.K. Gupta, a Retired Judge of High Court of J&K was constituted. The mandate of the Commission was to inquire into the allegations arising out of Scheme to seek finance from Private Financial Institutions for development of Housing Colony at Sidhra Jammu. The Commission submitted its report to the Government on January, 31<sup>st</sup> 2002.
14. Vide SRO 99, dated 17<sup>th</sup> April 2000, a Commission comprising Justice S.R Pandian, Retired Judge of Supreme Court was constituted to enquire into the causes and circumstances leading to the event of firing at Brakpora/Bulbul Nowgam (Anantnag) on 3<sup>rd</sup> of April, 2000. The Commission submitted its report in 2000.
14. Vide SRO 63, dated 19-02-2001, read with SRO 79, dated 02-03-2001, Justice O.P Sharma was appointed as the One Man Commission of Enquiry to enquire into the causes and circumstances which led to event of firing on a procession of inhabitants of Haigam (Sopore), District Baramulla on 15<sup>th</sup> February 2001 and at Maisuma, Srinagar, on 17<sup>th</sup> February 2001. The Commission submitted its report on 15.01.2002.
15. Vide SRO 106, dated 15<sup>th</sup> March 2002, Justice G.A Kuchhal, retired Judge, J&K High Court was appointed as the One Man

WMI  
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taken

Commission of Inquiry to enquire as to whether the samples of those killed in village Pathribal, District Anantnag in March, 2000, which were sent for DNA test to Kolkata were fake/spurious. The Commission submitted its report on 16.12.2002. Vide Government Order No. 2936-LD(A) of 2002 dated 27-12-2002, Shri Suresh Kumar Sharma CJM Jammu was appointed as Inquiry Officer to enquire in to the causes and circumstances leading to gruesome murder of retired Deputy Superintendent of Police, Pritam Singh, his wife and daughter by Kala Kachcha gang dacoits on intervening night of 2<sup>nd</sup> and 3<sup>rd</sup> December, 2002. The inquiry Officer submitted his report but he had recorded that there was no material to suggest the cause, circumstances that lead to the gruesome murder. The case was accordingly closed.

WMI

Vide Government Order No. 1973-LD(A) of 2006 dated 08-06-2006, Shri Tariq Ahmad Naqashbandi was appointed to conduct Judicial Enquiry in the causes and circumstances leading to the death of 22 students/ staff of the Burning Carlie School, Handwara in the Wular Lake while ferrying in the boat on 30<sup>th</sup> May, 2006. The Inquiry Officer submitted his report identifying the culprits whose negligence lead to the said incident and also made his recommendations and remedial measures.

WMI

Vide SRO 123 dated 2<sup>nd</sup> April, 2007, Hon'ble Mr. Justice (retired) M. L. Koul was appointed as Commission of Inquiry to enquire into the causes, circumstances and conspiracy, if any, which led to the death of some persons in alleged custodial killings/fake encounters. The Commission submitted its report on 30-12-2008. As the report does not reveal anything substantial done by the Commission, it was ordered that the Commission shall cease to exist w.e.f. 31-12-2006 in terms of the section 8 of the J&K Commission of Inquiry Act, 1962.

WMI  
10

Vide Government Order No. 3010-LD(A) of 2008 dated 22-09-2008, the Additional District and Sessions Judge, Jammu was appointed as Inquiry Officer to enquire into the causes circumstances that lead to the death of one Shri Muzib Bakh S/o Shri Sain Din R/o Bante on intervening night of 7<sup>th</sup> and 8<sup>th</sup> March, 2008. The Inquiry Officer submitted the report on 25-03-2009, in which it was stated that there was nothing to suspect that the death has been caused by any human agency including Police Naka Party of the area. It was recommended that the case may be closed.

WMI  
17

Vide Government Order No. 2724-LD(A) of 2008 dated 19-08-2008, the Additional District and Sessions Judge, Baramulla was appointed as Inquiry Officer to enquire into the causes circumstances that lead to the death of one Shri Farooq Ahmad Sheikh S/o Shri Ghulam Qadir Sheikh R/o Seeloo Sopore District Baramulla on 09-03-2008. The inquiry is still going on and recently the Inquiry Officer requested for extension in his

term of appointment and accordingly the term was extended for a period of three months.

✓18. Vide notification SRO 218 of 2008 dated 28-07-2008, Hon'ble Mr. Justice (retired) O. P. Sharma was appointed as Commission of Inquiry to enquire into the causes and circumstances which lead to the alleged suicide by Shri Kuldeep Kumar resident of Bishna. The appointment of the Commission is subjudice before the Hon'ble High Court. The Hon'ble Court has issued interim direction <sup>q.16</sup> to which the Commission could not finalize its report. The matter is being pursued in the court.

✓19. vide notification SRO 283 of 2010 dated 29-07-20, Commission of Inquiry was constituted consisting of Mr. Justice (retired) Syed Bashir-ud-Din, as Chairman and Mr. Justice (retired) Y.P. Nargotra as Member, to enquire into the events resulting in the death of 17 persons in Kashmir Division. The said Commission has yet to submit its report, its term has been extended by the Government up to 28.03.2011. However, Hon'ble High Court has issued interim direction, restraining the Commission from finalizing its report in OWP No. 36 of 2011. The case is being contested through Senior Law Officers of the State.

✓20. Vide SRO No. 160 dated 01.06.2009 Justice (Rtd) Muzaffar Jan Commission was constituted by the Home Department to enquire into the causes and circumstances which led to the death of Mst. Neelofar Jan W/o Shri Shakeel Ahmad Ahanger and Miss Asiya Jan D/o Shri Abdul Gani Ahanger R/o Bongam, Shopian on the intervening night of 29 and 30 of May, 2009 at Shopian. The Justice (Rtd) Muzaffar Jan commission had submitted its report. However, the case was subsequently handed over to C.B.I for investigation.

✓21, vide SRO 340 dated 18th Nov-2011 Hon'ble Mr. Justice H.S Bedi, Former Judge of Hon'ble Supreme Court <sup>commission</sup> has constituted by Law Deptt. to enquire into the cause + circumstances which lead to the death of Syed Mohd Yousuf S/o Syed Orzulam Ahmed R/o Wotlipora, Sijbehara Anantnaga Kashmir + the report is still pending.

✓22, vide SRO 255 dated 28-6-2010 Hon'ble Justice Bashir-ud-Din <sup>commission</sup> was constituted by Law Deptt to enquire into the cause + circumstance which

lead to the death in firing at Kankeshwara spots.  
✓23, vide SRO 283 dated 29-7-2010 Hon'ble Mr. Justice Syed Bashir-ud-Din <sup>commission</sup> was constituted by the Law Deptt. to enquire into death of seventeen persons in Kashmir Division.



GOVERNMENT OF JAMMU & KASHMIR  
GENERAL ADMINISTRATION DEPARTMENT

Subject: - Grant of relief to the persons affected by the law and order disturbances.  
Reference: - Administrative Council Decision No. 20 dated:28-6-1990.

ORDER No: 723-CR (GAD) OF 1990  
DATED: 10-7-1990

Notwithstanding anything contained in any order or rule or regulation on the subject, following ex-gratia relief shall be payable in respect of killed or Permanently/Partially disabled directly as a result of violence attributable to the breach of law and order or any other form of civil Commotion:-

**(A) MAGISTRATES AND POLICE PERSONNEL**

1.	For Death	.....	Rs 2.00 lakh*
1.	For Death (police Personnel)	.....	Rs 5.00 lakh*
1.	For Death (Ex Servicemen SPO)	.....	Rs 2.00 lakh*
2.	For Permanent disability	.....	Rs 0.75 lakh*
3.	For Partial disability	.....	Rs 0.10 lakh

**NOTE 1**

Ex-gratia relief shall be admissible in respect of only those who are killed or are disabled in or in consequence of due performance of official duties.

**NOTE 2**

Ex-gratia relief shall be sanctioned by the Director General of Police in respect of police personnel and by the Government in the Home Department in case of Magistrates.

\* (1) Ex-gratia relief shall also be payable to the NOK's of Police Personnel who get killed by militants while on leave / station permission of the same rates as are applicable to those killed during duty.

\* (2) Ex-gratia relief shall also be payable to the Police Personnel who become completely or partially disabled due to militancy related incidents, while on duty sanctioned at rate of the same analogy as is admissible to Police personnel in terms of Govt Order No. 723-GAD of 1990, dated 10-07-1990.

① vide G.O. No. 179-GAD of 1984, (para - 17 & 18) read with G.O. No. 7-2-GAD of 1990, (Personnel of Security Force including Police personnel) and Amendment vide G.O. No. 276-GAD of 1995, dt 05-08-1995 (Subj. to Police Department)

② vide G.O. No. 226-GAD of 2005, dt 17-04-2005 in continuation to G.O. No. 723-GAD of 1990, dt 10-07-1990 read with 723-GAD of 1990, dt 10-07-1990 and G.O. No. 161-GAD of 2008, dt 19-03-2008 (Spontaneous SPO (Village) Detention Committee members killed during operations and release of their Village)

③ vide G.O. No. 1234-GAD of 2005, dt 17-06-2005 (Police personnel who get killed while on leave)

④ vide G.O. No. 276-GAD of 1995, dt 13-07-1995 (Police personnel who get killed while on leave)

⑤ vide G.O. No. 606-GAD of 1989, dt 16-07-1989 (Personnel of Security Force of J&K killed in operations)

⑥ vide G.O. No. 1662-GAD of 1990, dt 19-12-1990, (Personnel of Security Force of J&K killed in operations)

⑦ vide G.O. No. 1812-GAD of 1990, dt 19-12-1990, (Personnel of Security Force of J&K killed in operations)

⑧ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990 (Militancy Personnel)

⑨ Amended vide G.O. No. 710-GAD of 1991, dt 28-07-1991, (Damage to immovable property)

⑩ Amended vide G.O. No. 339-GAD of 1992, dt 08-08-1992 (partial modification of G.O. No. 710-GAD of 1991)

⑪ vide G.O. No. 179-GAD of 1984, dt 10-07-1984, (Damage to immovable property)

⑫ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑬ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑭ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑮ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑯ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑰ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑱ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑲ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

⑳ vide G.O. No. 1077-GAD of 1990, dt 16-11-1990, (Militancy Personnel)

**(B) PERSONNEL OF PARAMILITARY FORCES**

1. For Death (Non-State)	.....	Rs. 2.00 lakh
1. For Death (State subject)	.....	Rs. 5.00 lakh *
2. For Permanent disability	.....	Rs. 0.75 lakh
3. For Partial disability	.....	Rs. 0.10 lakh

**NOTE 1**

Ex-gratis relief shall be admissible in respect of only those who are killed or are disabled in or in consequence of, due performance of official duties.

**NOTE 2**

Ex-gratis relief shall be sanctioned by the Government in the Home Department.

**NOTE 3**

Payment to the beneficiary shall be made through the Commandant of the local formation of the concerned para-military force.

**NOTE 4**

The procedure for grant and payment of ex-gratis relief shall, mutatis-mutandis, be the same as prescribed for grant of ex-gratis relief to other class Government servants in terms of Art.246-M (A) of the J&K Civil service Regulations as amended vide SRO NO.670 Dated: 01-06-1986.

\* Ex-gratis relief shall also be payable to the next of Kins of those Para Military Forces (PMF) personnel who got killed within territorial jurisdiction of the State of J&K in military related incidents while on leave / or Inter Reg or movement during leave of the same rate as are applicable to those killed during duty in terms of G.O No. /23-GAD of 1990, dt 10-07-1990 read with B.O. No. 179-GAD of 1994 dt 17-02-1994

**(C) GOVERNMENT EMPLOYEES OTHER THAN POLICE PERSONNEL**

1. For Death	.....	Rs. 1.00 lakh
2. For Permanent disability	.....	Rs. 0.75 lakh
3. For serious injury i.e. hospitalization for more than 24 hrs.	.....	Rs. 0.05 lakh
4. Injury (hospitalized on less than 24 hrs)	.....	Rs. 0.01 lakh
5. Minor injury (discharged after first aid)	.....	Rs. 500.00

**NOTE 1**

Ex-gratis relief shall be admissible in respect of only those who are killed or are disabled in or in consequence of, due performance of official duties.

\* Para 3 (C) (a) - P.S.G.M of 1984 (New - 17-8-1984 read with G.O.No. 712-GAD of 1985 (1984-85) Personnel of Security Forces including D/Pr on personnel and Amended vide G.O. No. 503-GAD of 1986 dt 03-08-1986 (J&K Police Personnel)  
 \* vide G.O. No. 1204-GAD of 2008 dt 17-05-2008 as continuation to G.O. No. 1202-GAD of 1991 dt 10-07-1990 read with 782-GAD of 2001 dt 14-11-2001 and G.O. No. 541-GAD of 2002 dt 27-4-2002 (Operational S/O / Village Guards, Convalescence and other services and delivery of mail)  
 \* vide G.O. No. 1204-GAD of 2007 dt 17-05-2007 as per letter with subject dated 01/06/2007  
 \* vide G.O. No. 1202-GAD of 2004 dt 14-07-2004 (Force personnel with 90% permanent disability while on leave)  
 \* vide G.O. No. 1205-GAD of 1996 dt 15-07-1996 (Amended) members of defence personnel of J&K (dead) in respect of  
 \* vide G.O. No. 1205-GAD of 1987 dt 17-07-1987 (as per order of order from Rs 243.50 in 75000)  
 \* vide G.O. No. 1205-GAD of 1988 dt 17-07-1988 (as per order of order from Rs 243.50 in 75000)  
 \* vide G.O. No. 1205-GAD of 2006 dt 22-12-2006 with subject modification of 1204-GAD of 1990 read with G.O. No. 470-GAD of 1987 dt 14-11-1987 (Power to sanction gratuity) vide G.O. No. 470-GAD of 1987 dt 14-11-1987 (Subject: Pension)  
 \* Amended vide G.O. No. 712-GAD of 1984 dt 04-07-1984 (Amendment to minutes on proposal)  
 \* Amended vide G.O. No. 503-GAD of 1986 dt 03-08-1986 (Amendment to minutes on proposal) dt 03-08-1986  
 \* vide G.O. No. 470 path (Amendment to minutes on proposal)  
 \* vide G.O. No. 1205-GAD of 1988 dt 17-07-1988 (Amendment to minutes on proposal)  
 \* vide G.O. No. 1205-GAD of 1987 dt 17-07-1987 (Amendment to minutes on proposal)  
 \* vide G.O. No. 1205-GAD of 1987 dt 17-07-1987 (Amendment to minutes on proposal)  
 \* vide G.O. No. 1205-GAD of 1987 dt 17-07-1987 (Amendment to minutes on proposal)  
 \* vide G.O. No. 1205-GAD of 1987 dt 17-07-1987 (Amendment to minutes on proposal)

- e) Ex-gratia relief shall henceforth be sanctioned by the Deputy Commissioner concerned in respect of the following persons, who suffer breach of law and order or any other form of civil commotion on the basis of Police and Hospital reports, without reference to District Level Screening-Coordination Committee constituted vide Government Order No. 514-GAD of 1963 dt 17-06-1963.

Government employees other than Police Personnel

- i) For serious injury i.e. hospitalization for more than 24 hours
- ii) Injury (hospitalization less than 24 hours)
- iii) Minor injury (discharge after first aid)

Persons other than Government Employees

- i) For serious injury i.e. hospitalization for more than 24 hours
- ii) Injury (hospitalization less than 24 hours)
- iii) Minor injury (discharge after first aid)

**(D) PERSONS OTHER THAN GOVERNMENT EMPLOYEES**

1 For Death (Civilian)	.....	Rs. 1.00 lakh
1 For Death (IB/LC)	.....	Rs. 1.00 lakh
1 For Death (Surrendered Militant)	.....	Rs. 1.00 lakh
1 For Death (Militant turned Informant)	.....	Rs. 1.00 lakh
2 For Permanent disability	.....	Rs. 0.75 lakh
3 For serious injury i.e. hospitalization for more than 24 hrs	.....	Rs. 0.05 lakh
4 Injury (hospitalization less than 24 hrs)	.....	Rs. 0.01 lakh
5 Minor injury (discharged after first aid)	.....	Rs. 500.00

**NOTE 1**

Ex-gratia relief shall be available in respect of persons who:-

- a) were not directly or indirectly involved in actual violence or instigation thereof
- b) were killed innocently

**NOTE 2**

Ex-gratia relief shall be sanctioned by the Government in the Home Department and the Disbursement shall be made in a per the procedure in vogue in the Revenue Dept. in terms of Govt. Order No. 121 (R.V) of 1918 dated 15-11-18.

- In case where direct and conclusive evidence of death of a person covered by the foregoing provisions is not forthcoming but he is reported to be missing or his dead body has not been identified, the ex-gratia relief as may be admissible will be sanctioned by the competent authority subject to the following:-

# vide G.O. No. 173-GAD of 1964 (C) dt 17-3-1964 (see also G.O. No. 113-GAD of 1962, dt 24-06-1962, dt 09-07-1961 read with 192-GAD of 1961, dt 1-07-1961 and G.O. No. 341-GAD of 1962 dt 27-06-1962 (Operational SPO - Village Officer, Civilian members killed during operations in District of West Bengal);

1) vide G.O. No. 1204-GAD of 2003 dt 17-02-2003 (See amended rule dt 18-02-2003 or later);

2) vide G.O. No. 142-GAD of 2004 dt 10-07-2004 (Police personnel who are killed while on duty);

3) vide G.O. No. 893-GAD of 1961 dt 17-05-1961 (Police personnel who are killed in operation);

4) vide G.O. No. 126-GAD of 1967 dt 27-01-1967 (Police personnel killed from Rs 50000 to 75000);

5) vide G.O. No. 1759-GAD of 1967 dt 18-12-1967 (Police while on duty) (Police personnel);

6) vide G.O. No. 1694-GAD of 1965 dt 13-12-1965 with postal modification dt 17-02-1966 (GAD 1965 read with G.O. No. 470-GAD of 1965 dt 04-07-1965 (Militant turned informant turned Informant));

7) vide G.O. No. 1373-GAD of 1960 dt 10-11-1960 (Missing Person);

8) Amended vide G.O. No. 792-GAD of 1961 dt 23-05-1961 (Damage to immovable property);

9) vide G.O. No. 478 part b (Damage to immovable property);

10) vide G.O. No. 116-GAD of 1965 dt 11-07-1965 (Damage to immovable property);

11) vide G.O. No. 1464-GAD of 1967 dt 17-12-1967 (International Relief Fund);

12) vide G.O. No. 1464-GAD of 1967 dt 17-12-1967 (International Relief Fund);

13) vide G.O. No. 270-GAD of 1967 dt 28-02-1967 (Civilian killed in the street);

14) vide G.O. No. 1200-GAD of 1967 dt 19-05-1967 (Surrendered Militant);

15) vide G.O. No. 622-GAD of 2005 dt 10-07-2005 (Militant turned Informant);

- a) a report of personal enquiry made by the District Magistrate of the concerned District about the circumstances in which the death of the concerned person can be reasonably presumed to have occurred;
- b) the recipient of the ex-gratia amount should furnish an indemnity bond as well as surety bond of the person Magistrate to the effect that the amount of ex-gratia relief shall be refunded in the event of any subsequent death which proved that the death had not in fact taken place. The form of indemnity bond and the surety bond shall be prescribed separately by the General Administration Department.

**(E) DAMAGE TO IMMOVABLE PROPERTY DUE TO BOMB BLAST OR OTHER KIND OF SABOTAGE**

- i) The amount of relief to be granted for damage to the immovable property by a bomb blast or any other kind of sabotage shall be equity to 50 percent of the loss as assessed by the Tehsildar of the area to be further verified by the Assistant Commissioner (R) in exercise of their best judgment or Rs. 1 lakh (Ekhsasana sikh) whichever is less.

This will not, however, affect the cases in which amounts exceeding Rs. 1.00 lakh may already have been dispensed.

- ii) The Divisional Commissioner concerned shall sanction the Ex-gratia relief for an assessed damage not exceeding Rs.1.00 lakh
- 4) Pending cases, if any, shall be decided accordingly
- iii) Modification/ amendment in the relevant provisions of the existing Statutory rules, if any, shall be carried out separately.

- ii) Ex-gratia relief for damage to immovable property due to bomb blast or any other kind of sabotage shall hence forth be sanctioned by the Dy. Commissioner concerned on the recommendations of the aforementioned District Level Screening-cum-Coordination Committee.

In Districts where District Level Screening-cum-Coordination Committees are not available, the Deputy Commissioner concerned may sanction ex-gratia relief after making such enquiries as he may deem fit.

Provided that a person aggrieved by an order of the Deputy Commissioner in regard to assessment of damage to immovable property may within thirty days of the date of order prefer an appeal to the Divisional Commissioner of the respective Division who after giving reasonable opportunity of being heard to the applicant shall within 30 days from the date of receipt of the appeal pass such orders as he may deem fit.

- iii) Ex-gratia relief to the extent of 50% loss subject to an upper ceiling of rupees one lakh shall be paid to the persons whose immovable property is damaged on International Border/Lines of Actual Control due to shelling firing from across the Border in accordance with Govt. Order No. 723-GR of 1990 dt. 10-07-1990 and Govt. Order No. 710-GAD of 1991 dt. 20-07-1991 and Govt. Order No. 478-GAD of 1993.

1. Vide G.O. No. 179-GAD of 1984 Dated: 11.2.1984. (Word added in G.O. No. 710-GAD of 1991 dt. 20-07-1991 (Paraphrase of 1990 dt. 10-07-1990) and G.O. No. 478-GAD of 1993 dt. 10-07-1993) (Paraphrase of 1991 dt. 20-07-1991) (Word added in G.O. No. 710-GAD of 1991 dt. 20-07-1991) (Word added in G.O. No. 478-GAD of 1993 dt. 10-07-1993)

2. Vide G.O. No. 688-GAD of 2002 dt. 17-06-2002 in continuation to G.O. No. 725-GAD of 1990, dt. 10-07-1990 and vide 782-GAD of 1997, dt. 11-07-1997 (Paraphrase of G.O. No. 1992 dt. 27-03-2002) (Paraphrase of G.O. No. 1992 dt. 27-03-2002) (Paraphrase of G.O. No. 1992 dt. 27-03-2002) (Paraphrase of G.O. No. 1992 dt. 27-03-2002) (Paraphrase of G.O. No. 1992 dt. 27-03-2002)

3. Vide G.O. No. 208-GAD of 2003, dt. 17-05-2003 (Police personnel who get injured in bomb blast)

4. Vide G.O. No. 234-GAD of 2004, dt. 10-07-2004 (Police personnel who get injured in bomb blast)

5. Vide G.O. No. 806-GAD of 1990 dt. 15-01-1991 (Police personnel who get injured in bomb blast)

6. Vide G.O. No. 123-GAD of 1990, dt. 27-01-1991 (Police personnel who get injured in bomb blast)

7. Vide G.O. No. 1888-GAD of 1996, dt. 19-12-1996 (Police personnel who get injured in bomb blast)

8. Vide G.O. No. 1888-GAD of 1996, dt. 19-12-1996 (Police personnel who get injured in bomb blast)

9. Vide G.O. No. 14-17-1988 (Police personnel who get injured in bomb blast)

10. Vide G.O. No. 123-GAD of 1990, dt. 11-11-1990 (Police personnel who get injured in bomb blast)

11. Vide G.O. No. 111-GAD of 1987, dt. 20-07-1987 (Police personnel who get injured in bomb blast)

12. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

13. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

14. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

15. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

16. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

17. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

18. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

19. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

20. Vide G.O. No. 478-GAD of 1993, dt. 10-07-1993 (Police personnel who get injured in bomb blast)

NO GAD(Adm) 11/80 Rev ER 1

Copy to the:-

1. All Ministerial Commissioners.
2. All Addl. Chief Secretaries/Ministerial Comptroller Authority.
3. All Commissioners/Secretaries to Government.
4. Director, General of Police.
5. Secretary to Governor.
6. Divisional Commissioner, Jammu and Kashmir.
7. All heads of Departments.
8. All Dy. Commissioners.
9. Director Information (General Manager, Chief, Press Secy).
10. Secretary, PSQA/M.C.
11. Private Secretaries to Ministers.
12. Pvt. Secy. to Chief Secretary.
13. PA to Commr / Secy. ASAD/Dy. Secy. GAD.
14. Blank file.

While O.D. No. 170-GAD of 1984 dated 17.7.1984 and sub. O.D. No. 717-GAD of 1983 dated 08-08-1983, (Purchase of Security Forces including Defence personnel) and Amendment vide O.D. No. 288-GAD of 1983 dated 03-08-1983 (Mag. & Police Personnel).

• vide O.D. No. 158-GAD of 2007, dt. 17-05-2007 in continuation to O.D. No. 123-GAD of 1983 dt. 13-07-1990 read with 158-GAD of 2007 dt. 17-05-2007 and O.D. No. 644-GAD of 2008 dt. 27-01-2008 (Operational SMO / Village Defence Committee members killed during operations, and defence of Hill Villages).

• (1) vide O.D. No. 1238-GAD of 2005, dt. 17-08-2005 (Police personnel who got killed while on leave).

• (2) vide O.D. No. 713-GAD of 2004, dt. 18-07-2004 (Police personnel who got completely/seriously disabled while on leave).

• vide O.D. No. 653-GAD of 1983, dt. 13.07.1983 (Members/Personnel of Reserve Component of ISM, 1983 dt. 08/12/83).

• vide O.D. No. 25-GAD of 1987, dt. 27.07.1987 (Employees of Dept. from No. 200000 to 70000).

• vide O.D. No. 1184-GAD of 1988, dt. 16.12.1988, (Police personnel who got killed during operations).

• vide O.D. No. 1538-GAD of 2007, dt. 17.07.2007 (Police personnel who got killed during operations).

• vide O.D. No. 1075-GAD of 1980, dt. 19-11-1980 (Missing Person).

• Amended vide O.D. No. 713-GAD of 1983, dt. 20-07-1983 (Damage to Inalienable property).

• vide O.D. No. 478-GAD of 1988, dt. 08.09.1988 (Damage to Inalienable property).

• vide O.D. No. 478 part B, dt. 08.09.1988 (Damage to Inalienable property).

• vide O.D. No. 478 part B, dt. 08.09.1988 (Damage to Inalienable property).

• vide O.D. No. 1508-GAD of 1980, dt. 21-07-1980 (International Service/Involvement).

• Amended vide O.D. No. 315-GAD of 1981, dt. 18-03-1981 (Leave taken in O.D. No. 458 of 1975).

• vide O.D. No. 975-GAD of 1987, dt. 24-05-1987 (Leave taken in O.D. No. 458 of 1975).

• vide O.D. No. 381-GAD of 1987, dt. 10-05-1987 (Unauthorized absence).

• vide O.D. No. 902-GAD of 2008, dt. 19-07-2008 (Unauthorized absence).

## Annexure 24

### GOVERNMENT OF JAMMU AND KASHMIR ADMINISTRATION DEPARTMENT.

#### Notification

#### Jammu – The 22<sup>nd</sup> February 1994

**SRO-43**—In exercise of the powers conferred by section 124 of the Constitution of Jammu and Kashmir, the Governor is pleased to make the following rules, namely :-

1. Short title and commencement. — (1) These rules may be called the Jammu and Kashmir (Compassionate Appointment) Rules, 1994.  
(2) These rules shall be deemed to have come into force from the 24th day of September, 1991.
2. Application of rules: - These rules shall apply to the compassionate appointment of a person who is a family member of: -
  - (i) a Government employee who dies in harness other than due to militancy related action ;
  - (ii) a Government employee who dies as a result of militancy related action\*[or due to enemy action on the line of Actual Control/International Border within the State of Jammu and Kashmir] and is not involved in militancy related activities;
  - iii) a civilian who dies as a result of militancy related action\*[ or due to enemy action on the line of Actual Control/International Border within the State of Jammu and Kashmir] not involved in militancy related activities and total income of the family from all sources does not exceed \*\*\*Rs. 5000/-per month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner;
  - (iv) \*\*[A member of the Armed Forces not above the rank of Junior Commissioned Officer or a member of Paramilitary Forces of equivalent rank who is a permanent resident of State and is killed while discharging the duties in connection with law and order in the State of Jammu and Kashmir or as a result of enemy action on the Line of Actual Control/\*[International Border]

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•Recast vide SRO-211 of 1995 dated 28-8-1995  
••Recast vide SRO-25 of 1995 dated 07.02.1995  
\*\*\*Recast vide SRO-39 of 2006, dated 03-02-2006

(2)

**Explanation:**---For purposes of these rules.

- (a) 'Armed Force' means Navy, Military, Air Force;  
(b) 'Para Military Force' means a force constituted under any law for the time being in force made by the Competent Legislature;  
(c) 'Permanent Resident' means the permanent resident of the State of Jammu and Kashmir as defined section 6 of the Constitution of Jammu and Kashmir;  
(d) 'Family Member' means spouse, son, daughter, adopted son, adopted daughter, sister or brother \*[xx] dependent on the deceased.

**3- Appointment under these rules**—“(1) \*\* [xx] Notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or post under the Government, an eligible family member of a person specified in rule 2 may be appointed against a vacancy in the lowest rank of non-gazetted service or Class-IV post having qualification as prescribed under the relevant Recruitment Rules.

Provided that the applicant is eligible and qualified for such post or acquires such eligibility and qualification within a period of one year from the date of death of the deceased person specified in rule 2:

Provided further that no application for compassionate appointment under these rules shall be entertained after the expiry of one year from the date of death of the deceased person.”

(2) Nothing in sub-rule (1) shall delegate from the powers of the Government in General Administration Department to appoint at its discretion a candidate to a higher post in the non-gazetted service if he/she is a family member of a deceased Government employee or a civilian killed in the militancy related action.

(3)\*\*\*[XXX]Notwithstanding the provisions of the rules contained herein for compassionate appointment, the family members of the civilians killed in militancy related action as specified in clause (iii) of rule 2 shall be entitled to a cash compensation in lieu of appointment in government service of an amount specified by the government which shall be payable in their favour in a manner to be notified by the government.

Provided that if any one among the family members of the deceased civilian fulfills the eligibility criteria prescribed under the aforesaid Rules for appointment into the government service or acquires such eligibility within one year from the date of death of the deceased person, then they shall have the option either to choose the government service or the cash compensation.

4-Appointment cases of death in harness:- Appointment under these rules in respect of a family member of a Government employee who dies in harness due a cause other than militancy related action shall be made by Head of the Department concerned: provided that:-

(i) Where no post is available in the office or subordinate offices of the Head of the Department, the proposal for appointment shall be submitted to the Administrative Department concerned and where there is no post available in the Administrative Department concerned also, the case shall be referred to the General Administration Department for appointment of the candidate in any other Department; or

(ii) Where any such appointment is to be made in relaxation of rules, such cases shall be submitted to the General Administration Department in coordination.

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\*[xx] Word “wholly” deleted vide SRO 211 of 1995 dated: - 28-8-1995

\*\* [xx] Recast vide SRO-201 of 2007 dt. 04.06.2007

\*\*\*[XXX] After sub-rule (2) of Rule 3, sub-rule 3 has been inserted vide SRO 199 dt. 04.07.2008.

( 3 )

**5. Appointment in other cases:—**(1) Appointment under these rules in respect of a member of the family of a Government employee or a civilian who has died as a result of militancy related action or in respect of a family member of the officer or armed force or Para-military force, shall be made by the [Deputy Commissioner concerned] in accordance with the procedure hereinafter prescribed.

(2) A family member of a civilian who dies as a result of militancy related action may apply for appointment against any suitable vacancy to the Deputy Commissioner of the District in which he or she resides. [Deputy Commissioner after making such enquires as may be necessary and on recommendations of the District Level Coordination-Cum-Screening Committee, may issue appointment orders for his or her adjustment against a vacancy in the District concerned in any Department under the Government in accordance with provisions of rule 3 hereinabove:

“\*\*\*\*\* Provided that in the case of a SPO engaged by the Police Department who dies as a result of militancy related action, a family member may apply for appointment against a vacancy to the Director General of Police who, after conducting such enquires as may be required, may issue an appointment order for his/her adjustment in the Police Department in accordance with the provisions of rule 3.”

“\*\*\* 2(a) A family member of Government employee who dies as a result of militancy related action may apply for appointment against any post to which he or she is entitled under these rules to the Deputy Commissioner of the District in which he or she resides. Deputy Commissioner shall after making such enquires as may be necessary, and, on clearance by the District Level Coordination-Cum-Screening Committee, forward the case of the applicant to the Head of the Government Department administering the services or cadre to which the deceased employee belonged. The Head of the Government Department may make the appointment in accordance with provisions of rule 3 and rule 4 of these rules. All pending cases shall be dealt with accordingly.”

(3)\*\*\*\* A family member of a deceased member of armed force or para-military force who is eligible for appointment under these rules may apply against for appointment against a suitable vacancy to the Deputy Commissioner concerned through the Commanding Officer of the Unit in which the deceased member of the armed force or Para-military force was last serving. The Deputy Commissioner after making such enquiries as may be necessary and on the recommendations of the District Level Coordination-Cum-Screening Committee, may issue appointment orders for his or her adjustment against a vacancy in the District concerned in any Department under the Government in accordance with provisions of rule 3 hereinabove.

**6. Grant of scholarship**—The Government may on the recommendations of the Competent Authority grant suitable scholarship up to the tune of Rs. 100/- per month to the family member of a deceased employee till such time as they pass matriculation examination. Such scholarship shall be sanctioned by the Government in the Education Department.

**7. Power to relax**—The Government may relax the lower or upper age limits or education/technical qualification, as the case may be, in deserving cases. All such cases shall be processed through General Administration Department in coordination.

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\*\*\*\* Recast vide SRO-88 of 1996 dt. 29.02.1996.

\* Recast vide SRO-211 of 1995 dt. 28.08.1995.

\*\* “Word” “Government employee” deleted vide SRO-39 of 2006 dt. 03.02.2006

\*\*\* After sub-rule (2) of rule 5, 2(a) has been inserted vide SRO-39 of 2006 dt. 03.02.2006.

\*\*\*\* In rule 5, the full stop (.) at the end of sub-rule 2 shall be substituted by colon ( : ) and proviso has been added vide SRO-302 of 2009 dated 01.10.2009



(4)

**8- Interpretation:**-If any question about the interpretation of these rules, the decision of the Government in General Administration Department shall be final.

**9- Repeal and saving.**—The Jammu and Kashmir Appointment on Compassionate Grounds Rules, 1991 are hereby repealed:-

Provided that such repeal shall not:-

- (a) affect the action taken, orders issued or appointments made under the rules so repealed; or
- (b) affect the revival of such cases as have been decided under the said rules but fall within the ambit of these rules ; or
- (c) affect the cases whether pending on the commencement of these rules or the cases where death of the person specified in rule 2 occurred due to militancy related action prior to the commencement of these rules and all such cases shall be dealt with in accordance with the provision of these rules.

By order of the Governor.

(Sd/)  
Secretary to Government  
General Administration Department.



Government of Jammu and Kashmir  
General Administration Department  
(Monitoring Section)  
Civil Secretariat,  
Srinagar/Jammu

Subject:- Procedure for payment of cash compensation in lieu of appointment in Government Service.

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GOVERNMENT ORDER NO:-893-GAD OF 2008  
D A T E D:- 04- 07 - 2008

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In pursuance of sub-rule(3) of Rule 3 notified vide SRO 199 dated 04.07.2008, following procedure is prescribed for cash compensation in lieu of appointment in the Government in respect of the beneficiary under SRO-43 of 1994 :-

- (i) A lump sum amount of Rs. 5.00 lacs would be payable to the beneficiary of the affected family through the Deputy Commissioner of the concerned District in lieu of appointment in the government service under the scheme in respect of the family member who dies in militancy related incidents. This amount shall be inclusive of the ex-gratia relief of Rs. 1.00 lac admissible to NOKs of the civilian killed in militancy related incidents as per the provisions of the Government order No:- 723-GR(GAD) of 1990 dt. 10.07.1990;
- (ii) The beneficiary shall be determined in terms of the provisions of the aforesaid Rules;
- (iii) The amount shall be deposited in the nearest branch of the Jammu and Kashmir Bank Ltd; in a Fixed Deposit Account for a period of three years in the name of the beneficiary;
- (iv) A Saving Bank Account shall also be opened in the name of the beneficiary in the said branch of the Jammu and Kashmir Bank. The amount of interest accrued on the above sum would be credited directly by the bank to the beneficiary's Saving Account on a monthly/quarterly basis as per the option of the beneficiary to ensure regular flow of minimum income for sustenance of the family having no other means;

- (v) The principal amount shall, at the end of the lock-in-period of three years, be transferred directly to the Saving Bank Account of the beneficiary.

By order of the Government of Jammu and Kashmir.

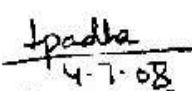
Sd/-

(Sufi Mohammad Yousuf)  
Special Secretary to Government  
General Administration Department  
Dated:-04.07.2008

No:-GAD/Mtg/III/63/2007

Copy to the:-

1. Advocate General, J&K, Srinagar
2. All Financial Commissioners.
3. Director General of Police J&K, Srinagar.
4. Principal Resident Commissioner, J&K Government, New Delhi.
5. All Principal Secretaries to Government
6. Principal Secretary to Hon'ble Chief Minister/Principal Secretary to H.E. the Governor.
7. Commissioner, Vigilance, J&K, Srinagar.
8. Chief Executive Officer, Economic Reconstruction Agency.
9. All Commissioner/Secretaries to Government.
10. Director General, IMPA, Jammu.
11. Chairman, J&K Special Tribunal.
12. Resident Commissioner, J&K Government, New Delhi.
13. Divisional Commissioner, Jammu/Kashmir.
14. Secretary to Chief Justice, J&K High Court, Jammu.
15. Registrar, General, J&K High Court, Srinagar/Jammu.
16. All Heads of Departments/Managing Directors/Chief Executive of State PSUs/ Autonomous Bodies.
17. Director Information, J&K Srinagar.
18. All Deputy Commissioners.
19. Director, Archives and Archeology & Museums
20. Secretary, J&K Legislative Assembly/Council.
21. Secretary, J&K Public Service Commission.
22. Secretary, Services Selection Board.
23. Principal Private Secretary to Chief Secretary.
24. Private Secretaries to all Hon'ble Cabinet Ministers/Hon'ble Ministers of State.
25. General Manager, Government Press, Jammu/Srinagar for Publication in the next issue of Government Gazetted.
26. Private Secretary to Commissioner/Secretary, GAD.
27. Incharge Website, GAD.
28. Government order file.
29. Monday Return file.

  
4-7-08  
Deputy Secretary to Government  
General Administration Department

## Annexure 25

### Information relating to 444 FIR's filed against the police and armed forces over the last three years in Jammu and Kashmir

A. Public Information Officer, Police Headquarters letter no: CIV/RTI/37/2012/841-42 dated: 19<sup>th</sup> May 2012

S. no.	Police Station	FIR No. with the section of Law	Nature of incident	Names of involved persons with their unit	Present Status of the case
1.	Budgam	198/2009 U/S 279, 337, 427 RPC	Road Accident	171 BN BSF	Challaned
2.	Budgam	269/2010 U/S 7/25 Arms Act	Recovery of arms and ammunition	21 RR	Challaned
3.	Budgam	293/2010 U/S 294 RPC	Eve Teasing	125 BN BSF	Challaned
4.	Budgam	484/2010 U/S 279, 337, 427 RPC	Road Accident	BSF	Challaned
5.	Beerwah	13/2009 U/S 341, 323 RPC	Wrongful confinement	34 RR	Not Admitted
6.	Beerwah	276/2009 U/S 354, 149, 452, 457, 380 RPC	Atrocities on villagers	34 RR	Under Investigation
7.	Ganderbal	95/2009 U/S 452, 354 RPC	House trespass and outrage of modesty	Head Constable Mohammad Shafi No. 921849	Challaned
8.	Ganderbal	141/2009 U/S 379 RPC 6 Forest Act	Timber Smuggling	1. Constable Mubashir Ahmad No. 152/Gbl 2. Constable Sajad Ahmad No. 188/Gbl	Challaned
9.	Ganderbal	40/2010 U/S 380, 454 RPC	Burglary	Constable Gulzar Ahmad Malik No. 398/Gbl	Challaned
10.	Ganderbal	109/2010 U/S 341, 323 RPC	Wrongful Restraintment	Constable Khursheed Ahmad No. 4065/S	Challaned
11.	Ganderbal	19/2011 U/S 498 RPC	Dowry	Constable Manzoor Ahmad No. 1009/S	Challaned
12.	Ganderbal	60/2011 U/S 341, 323 RPC	Restraintment	Constable Khursheed Ahmad No. 4065/S	Challaned
13.	Ganderbal	97/2011 U/S 379 RPC, 6 Forest Act	Timber Theft	Selection Grade Constable Abdul Hamid No. 684/DRPK	Challaned
14.	Ganderbal	154/2011 U/S 147, 341, 323 RPC	Riots	Constable Noor-ud-Din Ganie AHJ	Challaned
15.	Leh	99/2010 U/S 509 RPC	Uttered indecent words through phone	2 <sup>nd</sup> Ladakh Scouts	Challaned
16.	Leh	118/2010 U/S 279, 337, 304-A RPC	Road accident	13 Kumaon Hqrs, Batalik Kargil	Challaned
17.	Leh	42/2011 U/S 279, 337 RPC	Road accident	53 ASC BN 3 <sup>rd</sup>	Challaned
18.	Leh	84/2011 U/S 452, 148, 342 RPC	Criminal trespass in a hotel and intimidation	3 <sup>rd</sup> Infantry Division	Not Admitted
19.	Leh	196/2011 U/S 279, 304-A RPC	Road accident	4 <sup>th</sup> Sikh Regiment	Challaned
20.	Kargil	16/2010 U/S 377 RPC	Un-natural Offence	Hav. Om Prakash, 19 <sup>th</sup> Jat	Challaned
21.	Kargil	30/2011 U/S 376 RPC	Rape	Ghulam Hassan, JK Police	Challaned
22.	Kargil	32/2011 U/S 354, 452 RPC	Wrongful trespass and outrage of modesty	Mohammad Jaffar, JK Police	Challaned
23.	Kargil	50/2011 U/S 341, 323 RPC	Wrongful restraintment	Ghulam Mohammad, JK Police	Challaned

24.	Drass	07/2010 U/S 341, 323 RPC	Wrongful restraintment	JK Police	Closed as Challan
25.	Drass	03/2011 U/S 279, 304-A RPC	Road accident	Army ASC 502 BN	Transferred to Army court
26.	Drass	17/2011 U/S 279, 337, 338 RPC	Road accident	55 RCC Greef C/O 56/APO	Challaned
27.	Baramulla	330/2009 U/S 384, 341 RPC	Extortion	JK Police	Challaned
28.	Baramulla	65/2009 U/S 420, 468, 471 RPC	Fake testimonials	Fayaz Ahmad Mir	Under Investigation
29.	Baramulla	115/2011 U/S 295 RPC	Religious Sentiments	Ghulam Jeelani Bhat, IRP 11 <sup>th</sup> BN	Challaned
30.	Baramulla	107/2009 U/S 147, 148, 149, 332	Assault on police personnel	129 BN CRPF	Untraced
31.	Baramulla	145/2009 U/S 302, 166 RPC	Firing	92 BN CRPF	Under Investigation
32.	Baramulla	23/2010 U/S 279, 337 RPC	Road accident	53 BN CRPF	Not Admitted
33.	Baramulla	130/2010 U/S 307, 326 RPC	Firing	Unknown Security Force	Untraced
34.	Baramulla	104/2011 U/S 279, 337, 304-A RPC	Road accident	46 RR	Under Investigation
35.	Baramulla	113/2011 U/S 279, 337, 304-A RPC	Road accident	Becon 53 RR	Challaned
36.	Baramulla	131/2011 U/S 279, 337 RPC	Road accident	19 Inf Division Postal Unit	Not Admitted
37.	Baramulla	188/2011 U/S 279, 337 RPC	Road accident	46 RR	Under Investigation
38.	Baramulla	199/2011 U/S 279, 337 RPC	Road accident	307 Field Regiment	Under Investigation
39.	Baramulla	16/2010 U/S 332 RPC	Assault on duty sentry	13 JAK Rifles	Challaned
40.	Baramulla	06/2012 U/S 409 RPC	Misappropriation	Military Intelligence Base Camp	Challaned
41.	Baramulla	07/2012 U/S 306, 498-A RPC	Abetment to suicide	CFN HAWS Camp	Under Investigation
42.	Baramulla	193/2012 U/S 207, 148, 336 RPC	Firing	52 BN CRPF	Under Investigation
43.	Kupwara	108/2009 U/S 307 RPC	Attempt to murder	47 RR	Accidental
44.	Kupwara	188/2009 U/S 341, 354 RPC	Outraged the modesty of women	CRPF 98 BN	Not Admitted
45.	Kupwara	61/2010 U/S 364, 392 RPC	Extortion	1. Head Constable Mohammad Yousuf 2. Constable Farooq Ahmad	Under Investigation
46.	Kupwara	73/2010 U/S 379 RPC, 6 Forest Act	Theft	Head Constable Abdul Rehman	Not Admitted
47.	Kupwara	179/2010 U/S 420, 467, 468 RPC	Withdrawal of money frequently	Constable Shabir Ahmad	Under Investigation
48.	Lalpora	03/2009 U/S 302, 307 RPC	Unprovoked Firing	18 RR Camped at Kuligam	Under Investigation
49.	Lalpora	10/2011 U/S 223, 224 RPC	Escaping of accused from custody	1. Head Constable Abdul Gani No. 81/KP 2. Constable Ishtiyahq Ahmad No. 796/KP 3. Constable Mohammad Hussain No. 621/KP 4. SPO Masood Ahmad 113/SPO	Challaned
50.	Lalpora	44/2011 U/S 366 RPC	Kidnapping of a	Official of Territorial	Not

			woman	Army	Admitted
51.	Sumbal	151/2009 U/S 307 RPC 7/27 Arms Act	Firing	Constable Mushtaq Ahmad of IRP 10 <sup>th</sup> BN	Challaned
52.	Sumbal	167/2009 U/S 279, 304- A RPC	Road accident	Sanjay Khajoria Belt No. 15689081/F	Challaned
53.	Gurez	05/2010 U/S 302, 109 RPC	Murder over land dispute	Constable Munir Ahmad No. 167/Bpr	Challaned
54.	Sumbal	154/2011 U/S 279, 337 RPC	Road accident	Rakesh Kumar ASC 502 BN	Accidental
55.	Panzalla	23/2010 U/S 264, 302 RPC	Fake Encounter	4 <sup>th</sup> Rajput C/O 56 APO	Challaned
56.	Dangiwachha	72/2009 U/S 302 RPC	Killing	32 RR	Not Admitted
57.	Sopore	73/2009 U/S 307, 302 RPC	Killing	22 RR	Under Investigation
58.	Sopore	304/2010 U/S 307 RPC	Killing	Unknown CRPF	Under Investigation
59.	Sopore	306/2010 U/S 307 RPC	Killing	92 BN CRPF	Under Investigation
60.	Sopore	356/2010 U/S 307 RPC	Killing	Unknown CRPF	Under Investigation
61.	Sopore	413/2010 U/S 302 RPC	Killing	Unknown CRPF	Under Investigation
62.	Sopore	414/2010 U/S 302 RPC	Killing	Unknown CRPF	Under Investigation
63.	Sopore	476/2010 U/S 302 RPC	Killing	Unknown CRPF	Under Investigation
64.	Sopore	493/2010 U/S 307 RPC	Killing	Unknown CRPF	Under Investigation
65.	Sopore	202/2011 U/S 344, 302, 364 RPC	Custodial Killing	JK Police	Challaned
66.	Bijbehara	26/2010 U/S 279, 337 RPC	Road accident	42 RR	Challaned
67.	Bijbehara	268/2009 U/S 419 RPC	Cheating by personation	JK Police	Challaned
68.	Bijbehara	77/2011 U/S 307, 302 RPC 7/25 Arms Act	Unprovoked Firing	Abaji Kumar 42 RR	Challaned and transferred to Army Court
69.	Bijbehara	214/2009 U/S 354 RPC	Molestation	90 BN CRPF	Not Admitted
70.	Bijbehara	01/2011 U/S 366, 376 RPC	Kidnapping and Rape	Head Constable Nazir Ahmad No. 54/A , J&K Police	Challaned
71.	Bijbehara	65/2011 U/S 419 RPC	Cheating by personation	JKAP 14 <sup>th</sup> BN	Under Investigation
72.	Bijbehara	267/2011 U/S 171 RPC	Wearing grab or carrying token fraudulently	Sub Inspector Abdul Aziz of Telecommunication	Challaned
73.	Dooru	53/2009 U/S 364 RPC	Abduction	36 RR	Challaned
74.	Anantnag	261/2010 U/S 141, 307, 332, 149 RPC 27(1) Arms Act	Firing by Police on unruly mob	J&K Police	Challaned
75.	Anantnag	86/2012 U/S 279, 304-A RPC	Road accident	1 <sup>st</sup> RR	Challaned
76.	Pahalgam	82/2010 U/S 341, 323 RPC	Wrongful confinement	164 BN CRPF	Not Admitted
77.	Mattan	198/2010 U/S 279, 338 RPC	Road accident	3 RR	Accidental
78.	Mattan	59/2011 U/S 286, 304-A RPC	Blast	21 FAD	Under Investigation
79.	Kellar	168/2010 U/S 302, 307 RPC	Unprovoked Firing	53 RR	Not Admitted
80.	Rajpora	22/2009 U/S 452, 302	Unprovoked Firing	181 BN CRPF	Under

		RPC			Investigation
81.	Pampore	136/2009 U/S 341, 323 RPC	Wrongful restraintment	CRPF	Not Admitted
82.	Pampore	177/2010 U/S 302 RPC	Murder	Unknown Security Force	Under Investigation
83.	Tral	27/2009 U/S 354 RPC	Molestation	180 BN CRPF	Challaned
84.	Tral	49/2011 U/S 283, 341, 506 RPC	Blockade of road	CO 185 BN CRPF	Challaned
85.	Qazigund	103/2009 U/S 376 RPC	Rape	-	Not Admitted
86.	Qazigund	140/2009 U/S 341, 354	Molestation	1. Constable Paramjeet Singh 2. Constable Kanchara	Challaned
87.	D. H. Pora	110/2009 U/S 366, 109 RPC	Kidnapping	Azad Singh 2 RR	Challaned
88.	Kulgam	75/2010 U/S 7/25 Arms Act	Recovery of arms and ammunitions	Head Constable Ghulam Mohi-ud-Din of JK Police	Challaned
89.	Qazigund	18/2010 U/S 364 RPC	Custodial Disappearance	7 RR	Under Investigation
90.	Qazigund	233/2010 U/S 307, 341, 332, 342 RPC	Attempt to murder	9 PARA	Under Investigation
91.	Yaripora	07/2011 U/S 409, 420, 120-B RPC	Embezzlement	Head Constable Abdul Salam	Under Investigation
92.	Yaripora	10/2011 U/S 409, 380 RPC 30 PEPO	Theft of SLR	Constable Feroze Ahmad	Under Investigation
93.	Kulgam	259/2011 U/S 294 RPC	Eve teasing	Constable Nazim Ahad, J&K Police	Challaned
94.	Kulgam	271/2011 U/S 302 RPC	Firing	Sanjay Kumar, 18 BN	Challaned

**B. Public Information Officer, Police Headquarters Letter no: CIV/RTI/37/2012/922-23 dated: 02<sup>nd</sup> June 2012**

S. no.	Police Station	FIR No. with the section of Law	Nature of incident	Names of involved persons with their unit	Present Status of the case
95.	Soura	55/2009 U/S 294 RPC	Eve teasing	Constable Balwant Singh S/O K. S. Naigi R/O Utrakhand UP of 158 BN CRPF	Challaned
96.	Nigeen	25/2011 U/S 382 RPC	Robbery	1. ASI Manzoor Ahmad No. 1285 DSB 2. Constable Nissar Hussain No. 3604 DSB 3. Constable Fayaz Ahmad No. 1587 DSB 4. Constable Javid Ahmad No. 2944 DSB 5. Constable Ajmal Maqbool No. 3319 DSB All belonging to DSB Srinagar	Challaned
97.	Zadibal	34/2009 U/S 341 RPC	Obstruction	Unknown Security Forces	Untraced
98.	Zadibal	29/2012 U/S 147, 148, 336, 427, 354 452 RPC	Rioting	1. ASI Ali Mohammad No. 6858/NGO 2. Selection Grade	Challaned

				Constable Aftab Ali No. 25/PCR, J&K Police	
99.	Parimpora	66/2009 U/S 364 RPC	Disappearance of son of Mst. Azizi	20 Grenadiers	Under Investigation
100.	Nowgam	80/2011 U/S 336, 307 RPC	Firing that hit Oil Tanker	Constable Mohammad Sadiq No. 1007/S P/S Nowgam Srinagar	Under Investigation
101.	Nowhatta	25/2009 U/S 307, 148, 149, 353, 336, 332, 279, 338 RPC	Rash and Negligent driving	161 BN CRPF	Under Investigation
102.	Nowhatta	64/2009 U/S 354, 427, 323 RPC	Breaking of window panes and outrage of women	44 BN CRPF	Untraced
103.	Nowhatta	16/2011 U/S 364, 342 RPC	Disappearance	63 BN BSF	Under Investigation
104.	Rainawari	101/2009 U/S 363 RPC	Kidnapping	-	Not Admitted
105.	Rainawari	38/2010 U/S 294 RPC	Eve teasing	Constable Mushtaq Ahmad No. 1397/S	Challaned
106.	Safa Kadal	62/2009 U/S 336, 427, 341, 323 RPC	Stone Pelting	Unknown CRPF	Untraced
107.	Safa Kadal	80/2010 U/S 147, 148, 336, 332, 427, RPC	Stone Pelting	Unknown CRPF	Under Investigation
108.	Safa Kadal	83/2010 U/S 307, 147, 148, 149, 336, 382, 436/511, 427 RPC	Stone Pelting	Unknown CRPF	Under Investigation
109.	Safa Kadal	103/2010 U/S 307, 147, 148, 149, 336, 382, 436/511, 427 RPC	Stone Pelting	C/161 BN CRPF	Not Admitted
110.	Safa Kadal	114/2010 U/S 147, 148, 149, 188, 336, 427 RPC	Stone Pelting	Unknown CRPF	Under Investigation
111.	Safa Kadal	127/2010 U/S 307, 147, 148, 149, 336, 323, 341, 427 RPC	Stone Pelting	Constable Shabir Ahmad S/O Mohammad Sadiq R/O Noorbagh No. 645/KGM	Challaned
112.	M. R. Gunj	65/2009 U/S 366, 464, 474, 200, 109 RPC	Kidnapping	Constable Mohammad Shafi Dar No. 3428/S and other civilian	Challaned
113.	Rajbagh	06/2011 U/S 363, 376 RPC	Kidnapping	Constable Inder Kumar Ram R/O UP No. 075184846 CRPF 117 BN	Challaned
114.	Sadder	181/2010 U/S 307	Attempt to murder	Unknown CRPF	Under Investigation
115.	Sadder	206/2010 U/S 147, 148, 149, 341, 323 RPC	Rioting	E-29 BN CRPF	Under Investigation
116.	Sadder	236/2011 U/S 392, 341 RPC	Robbery	Unknown CRPF	Under Investigation
117.	Sadder	132/2011 U/S 341, 323, 427 RPC	Misc	Unknown CRPF	Untraced
118.	Sadder	09/2009 U/S 294 RPC	Eve teasing	JK Police	Challaned
119.	Kralkhud	02/2009 U/S 366, 451, 376, 109 RPC	Social Crime	JKAP 7 <sup>th</sup> BN	Challaned



120.	Nishat	101/2009 U/S 279, 337, 304 RPC	Road accident	75 BN CRPF	Under Investigation
121.	Ram Munshi Bagh	289/2009 U/S 279, 421 RPC	Road accident	3 <sup>rd</sup> BN CRPF	Challaned
122.	Ram Munshi Bagh	104/2009 U/S 279, 427 RPC	Road accident	Unit 979 AQ Workshop 103 Reg. C/O 56 APO	Challaned
123.	Kothibagh	67/2010 U/S 353 RPC	Assault	Army 25 RR C/O 56 APO	Not Admitted
124.	Nishat	04/2010 U/S 302, 201, 109 RPC	Firing	68 BN BSF	Challaned
125.	Nishat	18/2010 U/S 279, 427 RPC	Eve teasing	28 BN CRPF	Challaned
126.	Ram Munshi Bagh	08/2010 U/S 165, 167, 420 RPC	Cheating	J&K Traffic Police	Under Investigation
127.	Ram Munshi Bagh	20/2010 U/S 309 RPC	Attempt to suicide	144 BN CRPF	Challaned
128.	Ram Munshi Bagh	108/2010 U/S 294	Eve teasing	Constable Rajneet Kumar 78 BN CRPF	Challaned
129.	Kralkhud	43/2011 U/S 7/25 Arms Act, 109, 121-A RPC	Criminal Conspiracy	SOG Kulgam/SOG Baramulla	Case submitted to obtaining Government Sanction
130.	Nishat	48/2011 U/S 294 RPC	Eve teasing	Kuldeep Raj 4 <sup>th</sup> BN Security??	Under Investigation
131.	Ram Munshi Bagh	10/2011 U/S 289, 337, 304-A RPC	Road accident	Mohammad Assadullah No. 2573/S, J&K Police	Challaned
132.	Ram Munshi Bagh	17/2011 U/S 304-A RPC	Culpable Homicide by bullet shot	Constable Subhash Singh 68 BN BSF	Challaned
133.	Ram Munshi Bagh	36/2011 U/S 341, 294, 354 RPC	Eve teasing	Constable Biraj Bushan Singh 61 BN CRPF	Challaned
134.	Ram Munshi Bagh	97/2011 U/S 279, 337 RPC	Road accident	Nk. Ram Rattan No. 15398429, Army 11 Field B.B. Cantt.	Challaned

**C. Public Information Officer, Zonal Police Headquarters, Jammu letter no: RTI/PHQJ/2012/27/14996-97 dated: 8<sup>th</sup> June 2012**

S. no.	Police Station	FIR No. with the section of Law	Nature of incident	Names of involved persons with their unit	Present Status of the case
1 3 5.	Pacca Danga	139/2009 U/S 279, 337 RPC		Ashwani Prashad S/O Himmat Sarool No. 14822106/K, C/O 56 APO	Challaned
136	Pacca Danga	199/2009 U/S279, 337 RPC		Head Constable Parkash Chander Dubey S/O Rakesh Kumar R/O West Begal – 18/WEU C/O 56/APO	Challaned
137	Pacca Danga	79/2010 U/S 279, 337, 304-A RPC		Kundan Kumar Rao S/O Raghu Rao R/O Panchami Champuram No. 14850040 C/O 56 APO	Challaned
138	Pacca Danga	119/2011 U/S 325 RPC		Head Constable Rehmatullah No. 1272/J	Closed as Untraced
139	Bus Stand	56/2009 U/S 489-C RPC		Constable Davinder Sharma No. 771/J S/O Kamal Chand R/O Mast Garh, Jammu	Challaned
140	Bus Stand	66/2011 U/S 279, 337, 338 RPC		Nk. Bhoor Singh S/O Sakhat Singh A/P 12 GRD Dogra Poonch C/O 56 APO	Challaned
141	Peermitha	14/2009 U/S 379 RPC		Constable Shabir Ahmed No. 1319/J S/O Ghulam Hussain R/O Gonthal, Surankote, District Poonch A/P New Plot, Jammu	Challaned
142	Peermitha	24/2009 U/S 379 RPC		Constable Shabir Ahmed No. 1319/J S/O Ghulam Hussain R/O Gonthal, Surankote, District Poonch A/P New Plot, Jammu	Challaned
143	Peermitha	11/2009 U/S 379 RPC		Constable Shabir Ahmed No. 1319/J S/O Ghulam Hussain R/O Gonthal, Surankote, District Poonch A/P New Plot, Jammu	Challaned
144	Peermitha	22/2009 U/S 171 RPC		Head Constable Mohammad Iqbal S/O Gulla R/O Than Mandi, Rajouri No. 885719 IR 13 <sup>th</sup> BN	Challaned
145	Peermitha	25/2009 U/S 452, 323 RPC		Sukhdev Sharma S/O Chaman Lal R/O Bishnah (wireless operator) No. 2828/PW)	Challaned
146	Peermitha	39/2011 U/S 294 RPC		Constable Shah Nawaz S/O Bashir Ahmed R/O Lasjan, Srinagar No. 1196/BD	Challaned
147	Peermitha	56/2011 U/S 420 RPC		Constable Sajjad Ahmed Khan S/O Sanaullah Khan R/O Kupwara No. 485/IRP 11 <sup>th</sup> BN	-
148	Bakshi Nagar	16/2011 U/S 323, 324 RPC		1. Head Constable Ram Lal No. 50/J 2. Head Constable Balwant Singh No. 1226/J 3. Selection Grade Constable Doulat Ram No. 85/CID 4. Ex-Servicemen Padam Singh No. 112/J All of them from DPL,	Challaned

				Jammu	
149	Nowabad	117/2009 U/S 294 RPC		Selection Grade Constable Vipan Kumar No. 197/IRP 9 <sup>th</sup> BN S/O Dawarka Nath R/O Bari Brahmna, Jammu	Challaned
150	Nowabad	66/2009 U/S 364, 341, 34 RPC		Constable Haven Kumar No. 197/IRP 5 <sup>th</sup> BN S/O Sh. Ram Lal R/O Paloura	Challaned
151	Nowabad	123/2010 U/S 294 RPC		Constable Akbar No. 971232962 CRPF 38 <sup>th</sup> BN S/O Amir Ali R.O West Bengal	Challaned
152	Nowabad	139/2010 U/S 279, 337 RPC		Constable Jasbir Singh, CRPF 74 <sup>th</sup> BN Hqr. Kishtwar S/O Late. Sh. Amir Singh R/O Rohtak Haryana	Challaned
153	Nowabad	63/2011 U/S 294 RPC		Kamal Raj S/O Ram Ji R/O Thanda Paani, Rajouri, Sub. JAKLI C/O 56 APO, Kupwara	Challaned
154	Nowabad	77/2011 U/S 279 RPC		Constable Azab Singh No. 9109702 S/O Mukhtyar Singh A/P CRPF Group Centre Bantalab	Challaned
155	Satwari	01/2010 U/S 325, 506 RPC		Bipan Kumar S/O Punnu Ram R/O Gadigarh, Constable Telecommunication department	Challan produced on 31-03-2010
156	Satwari	49/2010 U/S 279, 337 RPC		Ajit Kumar S/O Minder Kumar R/O Upper Gadigarh, Army	Challan produced on 25-09-2010
157	Satwari	58/2010 U/S 279, 304-A RPC		Ram Kumar S/O Nandu Ram C/O Inspector, 193 BN BSF, R.S. Pora	Challan produced on 10-02-2011
158	Satwari	215/2011 U/S 307, 380 RPC, 3/25 Arms Act		Sub Inspector Vijay Kumar S/O Babu Ram R/O Raipur, Satwari – postred at district Udhampur	Under Investigation
159	Satwari	23/2009 U/S 279 RPC		Panjer Singh (driver), No. 14470836 C/O 56/APO, Army	Challan produced on 23-06-2009
160	Gangyal	86/2009 U/S 279, 304-A RPC		Pawan Kumar S/O Baldev Raj A/P JAK Rifles C/O 56/APO	Challan produced 25-08-2009
161	Gangyal	135/2009 U/S 451, 323 RPC		Balkar Singh S/O Parkash Singh R/O Kalu Chak, Army Sepoy	Challan produced on 20-03-2010
162	Gandhi Nagar	20/2009 U/S 379 RPC		Balkar Singh S/O Parkash Singh R/O Kalu Chak, Army Sepoy	Challan produced on 11-11-2009
163	Gandhi Nagar	24/2009 U/S 379 RPC		Balkar Singh S/O Parkash Singh R/O Kalu Chak, Army Sepoy	Challan produced on 11-11-2009
164	Gandhi Nagar	42/2009 U/S 379 RPC		Balkar Singh S/O Parkash Singh R/O Kalu Chak, Army Sepoy	Challan produced on 11-11-2009
165	Gandhi Nagar	129/2009 U/S 279, 337 RPC		Rakesh Kumar S/O Magray Ram R/O HP, driver CRPF 76 BN	Challan produced on 17-05-2010
166	Gandhi Nagar	247/2009 U/S 302, 34, 201, 120-B, 109 RPC, 3(25)(27) Arms Act		1. Manohar Singh, the then SSP Jammu 2. Inspector Sultan Mehmood Mirza No. 4436/NGO EXJ-956517, the then SHO	Challan produced on 24-10-2009

				<p>P/S Gandhi Nagar</p> <p>3. Sub Inspector Satnam Singh No. 436/NGO EXJ-705745</p> <p>4. Constable Raj Singh, then attached with FSL Jammu</p>	
167	Gandhi Nagar	275/2009 U/S 5(2) P.C. Act 161-A RPC		<p>1. Manohar Singh, the then SSP Jammu</p> <p>2. Inspector Sultan Mehmood Mirza No. 4436/NGO EXJ-956517, the then SHO P/S Gandhi Nagar</p> <p>3. Sub Inspector Satnam Singh No. 436/NGO EXJ-705745</p> <p>4. Constable Raj Singh, then attached with FSL Jammu</p>	Under Investigation
168	Gandhi Nagar	01/2010 U/S 279, 337 RPC		Havaldar Wable Popat No. 15363498-Driver, Army C/O 56/APO	Challan produced on 26-04-2010
169	Gandhi Nagar	10/2010 U/S 420, 467, 468, 471, 120-B RPC		Head Constable Rehmatullah No. 1272/J then posted at P/S Gandhi Nagar	Under Investigation
170	Gandhi Nagar	63/2010 U/S 341, 323, 325 RPC		Selection Grade Constable Randhir Singh of IRP 11 <sup>th</sup> BN	Challan produced on 15-12-2010
171	Gandhi Nagar	227/2010 U/S 279, 337, 338 RPC		Sepoy Rajesh Kumar S/O Sheaish Yadav No. 14838722, Army driver C/O 56/APO	Challan produced on 18-05-2011
172	Gandhi Nagar	45/2011 U/S 420 RPC		Sepoy Samuel Kumar Rai S/O Santu Rai A/P CRPF 38 BN	Challan produced on 18-05-2011
173	Gandhi Nagar	68/2011 U/S 409, 411 RPC		<p>1. Constable Suresh Kumar No. 2368/J DPL Jammu</p> <p>2. Head Constable Prempal Singh S/O Saran Singh C/O CRPF</p>	Challan produced on 23-07-2011
174	Gandhi Nagar	134/2011 U/S 279, 337 RPC		Constable Sajeev Kumar S/O Ronak Dass R/O Dablehar R.S. Pora No. 2186/J, JK Police	Challan produced on 29-10-2011
175	Gandhi Nagar	274/2011 U/S 279, 304-A RPC		Sepoy Udhay Kumar S/O Raj Mani, driver Air Force No. 783886-L	Challan produced on 30-12-2011
176	Bahu Fort	192/2009 U/S 458, 323 RPC		Kishori Lal S/O Mansa Ram R/O Bani, J&K Police	Challan produced on 28-10-2009
177	Bahu Fort	53/2011 U/S 223, 224 RPC		Ghulam Mohammad No. 2414/J, J&K Police	Challan produced
178	Bahu Fort	205/2011 457, 380 RPC		Mohammad Shafiq S/O Mohammad Aziz R/O Poonch No. 44/5 BN AP	Challan produced
179	Channi Himat	44/2009 U/S 382, 34 RPC		<p>1. Roshan Lal S/O Dharam Chand R/O Allah Bishnah</p> <p>2. Amrik Singh S/O Surinder Singh R/O Gho Manahsan</p> <p>Both J&amp;K Police personnel</p>	Challan produced
180	Channi Himat	118/2010 U/S 280, 201 RPC		Pawan Chand S/O Dharama Chand R/O Ghorata A/P Foll. DPL Jammu	Challan produced

181	Channi Himat	124/2010 U/S 353, 332, 382 RPC		Yog Raj S/O Dina Nath A/P 6 <sup>th</sup> BN CRPF G/C	Challan produced
182	Channi Himat	132/2010 U/S 451, 510 RPC		Head Constable Lal Din No. 77/IRP, 17 <sup>th</sup> BN	Challan produced
183	Channi Himat	159/2010 U/S 510 RPC		Head Constable Mohammad Shafi No. 148/4 Security	Challan produced
184	Bagh-e-Bahu	16/2011 U/S 279, 304-A RPC		Om Parkash S/O Isher Dass R/O Haryana, Army	Challan produced
185	Bagh-e-Bahu	44/2011 U/S 279, 337, 338 RPC		Ramnik Singh S/O Satnam Singh A/P 8 <sup>th</sup> BN, Channi	Challan produced
186	Akhnoor	224/2010 U/S 309 RPC		Constable Parshotam Lal No. 2564/J, S/O Kaka Ram R/O Koundewala, Tehsil Akhnoor	Challan produced
187	Domana	157/2008 U/S 353, 336, 147, 341 RPC		Sub Inspector Neelam Saini D/O Preetam Saini R/O Sarora tehsil, district Jammu	-
188	Domana	71/2012 U/S 307, 341, 323, 147 RPC		Constable Rakesh Kumar No. 407/IRP, 11 <sup>th</sup> BN, S/O Darshan Singh R/O Sarora, Jammu	Under Investigation
189	Kana Chak	90/2009 U/S 377 RPC		Selection Grade Constable Darshan Lal No. 3098/J S/O Chajju Ram R/O Kalyanpur	Challan produced
190	Kana Chak	151/2010 U/S 452, 423, 34 RPC		Selection Grade Constable Chaman Lal S/O Kaka Ram R/O Domi	Under Investigation
191	Nagrota	11/2010 U/S 279 RPC		Head Constable Mani Ram S/O Paras Ram R/O Samba	Challan produced
192	Nagrota	107/2009 U/S 341, 323, 447, 34 RPC		1. Head Constable Satpal No. 460/Sec 2. Selection Grade Constable Pawan Kumar No. 1277/Sec 3. Constable Manjeet Singh No. 1118/Sec	Challan produced
193	Nagrota	122/2010 U/S 341, 323 RPC		1. Constable Romesh CHander No. 221/GRP 2. SPO Taj Mohammad No. 253/SPO	Challan produced
194	Nagrota	101/2011 U/S 376 RPC		Constable Mohammad Aslam No. 2096/J	Challan produced
195	Nagrota	102/2011 U/S 341 RPC		Selection Grade Constable Abdul Rashid No. 357/J	Challan
196	Jajjar Kotli, Jammu	45/2011 U/S 279, 337, 304-A RPC		Constable Gurdeep Singh No. 350/RBN	Challan produced
197	Bishnah	50/2011 U/S 451/354 RPC		Constable Rimpay Kumar R/O Kanhal, CRPF	Challan produced
198	Bishnah	117/2011 U/S 341, 382, 323, 427 RPC, 4/25 Arms Act		Constable Harbhajan Singh R/O Samba, Army	Challan produced
199	Bishnah	118/2011 U/S 341, 382, 323, 427 RPC, 4/25 Arms Act		Constable Harbhajan Singh R/O Samba, Police	Challan produced
200	Bishnah	20/2010 U/S 409, 109, 353 RPC, 5(2) PC Arms Act		1. Constable Ajay Kumar 2. Manjeet Singh (P/W)	Under Investigation
201	Miran Sahib	42/2010 U/S 332, 323, 504, 427 RPC		Head Constable Jatinder Pal R/O Chohallah, J&K Police	Not admitted
202	Miran Sahib	77/2010 U/S 279, 337, 304-A RPC		Constable Uttamdeep Kumar, J&K Police	Under Investigation
203	Miran Sahib	91/2010 U/S 279, 304-A RPC		Constable Kulbir Singh R/O Nari, J&K Police	Challan produced
204	Miran Sahib	17/2011 U/S 379 RPC		Selection Grade Constable Ramesh Kumar R/O Tutray, J&K Police	Challan produced

205	R. S. Pora	76/2010 U/S 379 RPC		Constable Narinder Singh No. 1411/J, J&K Police	Challan produced
206	R. S. Pora	79/2010 U/S 379 RPC		Constable Narinder Singh No. 1411/J, J&K Police	Under Investigation
207	Arnia	05/2011 U/S 323, 34, 498-A RPC		Constable Dilbagh Singh R/O Kalyana, J&K Police	Challaned
208	Arnia	27/2011 U/S 336, 34 RPC, 3/25 Arms Act		Sub Inspector Gurnam Singh R/O Bhaleshwar, J&K Police	Challan produced
209	Arnia	31/2011 U/S 307, 451, 323, 147 RPC		Constable Swaran Singh R/O Sai Khurd, J&K Police	Challan produced
210	Vijaypur	33/2009 U/S 307 RPC 3/25 Arms Act		Anil Singh R/O Gurah Salathia Vijaypur	Challaned
211	Vijaypur	100/2009 U/S 18 EP Act		Mohammad Yousuf S/O Mohammad Rasheed R/O Samleri Samba	Challaned
212	Vijaypur	57/2010 5(1) Read (D), 5 (2) PCA Act 2006, 161 RPC		Inspector Chuni Lal, then posted in EPABX Exchange PHQ Srinagar	Challaned
213	Samba	72/2010 U/S 498-A, 323, 325, 34 RPC		1. Constable Lekh Raj 364/K. 2. L/Sg. Constable Madhu Bala No. 590/S 3. Pawan Kumar Constable of Punjab Police (Madhu Bala's husband)	Challaned
214	Samba	273/2011 U/S 498-A RPC		1. Constable Anchal Singh No. 670/IRP 9 <sup>th</sup> 2. Constable Rattan Singh No. 407 / IRP 7 <sup>TH</sup> Bn.	Challaned
215	Samba	320/2011 U/S 279, 304 –A RPC		Constable Ajay Paul Singh No. 406/S	Challaned
216	Malhar	12/2009 U/S 306, 109 RPC		1. SPO Mohammad Latief No. 288/SPO-K 2. SPO Gul Mohammad No 109/ SPO-K	Challaned
217	Malhar	35/2010 U/S 447-A RPC		Selection Grade Constable Mohammad Ashraf of 731/IRP 3 <sup>rd</sup> Bn.	Under Investigation
218	Hiranagar	63/2009 U/S 151, 147, 336, 148 RPC		Head Constable Omkar Nath of 109/ IRP 3 <sup>rd</sup> Bn	Under Investigation
219	Hiranagar	33/2011 U/S 298, 504, 506 RPC		Selection Grade Constable Ali Mohd of Distt. Jammu S/O Maun Din R/O Sapral Paien Tehsil Hiranagar	Under Investigation
220	Hiranagar	37/2011 U/S 223, 224 RPC		1. Constable Gulshan Kumar No. 425/K 2. SPO Raman Kumar No. 14/ SPO-K	Under Investigation
221	Hiranagar	82/2011 U/S 363, 511, 294 RPC		Constable Susheel Kumar No. 749/IRP 20 <sup>th</sup> Bn.	Challaned
222	Basholi	14/2009 U/S 342, 427, 323 RPC		Selection Grade Constable Zaqkir Hussain No. 347/K	Challaned
223	Basholi	64/2010 U/S 295, 297 RPC		Head Constable Abdul Gani No. 117/K PID No. EXJ- 795484	Challaned
224	Kathua	98/2010 U/S 354, 376 RPC		Constable Jameel Ahmed No. 212/K	Challaned
225	Kathua	221/2011 U/S 223, 224 RPC		Selection Grade Constable Jia Lal No. 528/K	Challaned
226	Rajbagh, Kathua	72/2011 U/S 407, 409, 411, 120-B RPC		1. Constable Bony Singh No. 103/JT 2. Constable Kuldeep Singh No. 82/JT	Challaned
227	Udhampur	140/2009 U/S 279, 337, 338 RPC		Constable Jagmail Singh No. 941441758 R/o Surat Garh, Distt. Mansar, Punjab. 137 <sup>th</sup>	Challaned On 09-03- 2012

				Bn. CRPF stationed at Jakhani, Udhampur	
228	Udhampur	164/2009 U/S 279 RPC		Sepoy Dvr. Ratul Panging No. 14833527-M, 5071/ASC C/O 56 APO	Challaned On 25-08-2009
229	Udhampur	212/2010 U/S 354 RPC		Head Constable Sham Lal S/O Beli Ram R/o Tirshi Udhampur, (DPL Udhampur)	Challaned On 12-10-2010
230	Udhampur	298/2010 U/S 279, 338 RPC		Selection Grade Constable Driver Ghulam No. 370/SK Mohd S/o Abdul Razaq R/o Burpura Pulwama Security Kashmir	Challaned 31-12-2010
231	Udhampur	09/2011 U/S 279, 337, 338 RPC		Major Kumar (LSK No. 64888961) S/o Jaiveer Singh R/o Badla Kathabar Distt. Meerut U.P 5271/ASC C/O 56 APO	Challaned On 08-02-2011
232	Udhampur	20/2011 U/S 279, 337, 338, 304-A RPC		Head Constable (Dvr) Fouja Singh No. 847/Sec S/o Makhhan Singh R/o Chattingh Pura, Tehsil and Distt. Anantnag Security Kashmir	Challaned 10-10-2011
233	Udhampur	54/2011 U/S 294 RPC		DVR. Constable Jehangir Ahmed No. 622/RSI DPL Udhampur	Challaned on 07-04-2011
234	Udhampur	125/2011 U/S 352, 458, 427 RPC		Constable Ajay Kumar @ Kala No. 711/U DPL Udhampur	Challaned on 07-06-2011
235	Udhampur	154/2011 U/S 279, 304-A		Swapan Kumar Hav. No. 14612927F S/O Hari Parshad Mt 3, Advance Army Durgapur Sec-15 Tantultala Colony W. Bengal. MT 3 Advance Base Workshop.	Challaned on 08-10-2011
236	Udhampur	158/2011 U/S 279, 338 RPC		DVR Tilak Raj S/o Hans Raj No. 13893022 5121?ASC Bn. Pathankot C/O 56 APO	Challaned on 16-09-2011
237	Udhampur	210/2011 U/S 279, 337, 338 RPC		DVR. Constable Kamal Kishore No. 2082/J, S/O Rameshwar Dutt R/O Dansal Jammu. Security Jammu.	Challaned on 13-10-2011
238	Udhampur	273/2011 U/S 387, 341, 506 RPC		Constable Jasbir Singh No. 869/U Presently attached With AHJ Srinagar	Challaned on 30-12-2011
239	Rehamble	21/2010 U/S 279, 337, 304-A		DVR/Constable Khurshid Ahmed No. 3989/S S/O Habib-ullah R/o Gardikhal Charsoo Tehsil Awantipur Anantnag Kashmir. Security Kashmir	Challaned on 23-03-2010
240	Rehamble	129/2010 U/S 279, 337 RPC		Head Constable Ghulam Mohammad No. 194/SEC IRP 4 <sup>th</sup> Channi Himat, Jammu	Challaned on 31-08-2010
241	Kud	71/2010 U/S 307/RPC		Constable Shabir Ahmed No. 1077/PL S/O Mohammad Sultan Bhagey R/o Malingpura Tehsil Awantipura Distt. Pulwama. DPL Pulwama	Challaned on 20-07-2011
242	Basantgarh	23/2011 U/S 452, 323, 325, 34 RPC		Constable Avtar Singh No. 883/U Constable Randhir	Challaned on 20-02-2012

				Singh No. 818/U (DPL Udhampur)	
243	Mahore	88/2009 U/S 302, 201, 34 RPC		Constable Mohammad Afzal of IRP 3 <sup>rd</sup> Bn S/O Wahab Din R/o Sarh Tehsil Mahore and others	Challaned
244	Mahore	45/2009 U/S 307, 452 RPC		Head Constable Ghulam Qadir S/o Ismail No. 92/RSI R/o Jamaslan Tehsil Mahore & others	Challaned
245	Mahore	152/2009 U/S 451, 147, 323, 343 RPC		Against army persons	Challaned
246	Mahore	43/2010 U/S 406, 212, 216 RPC		Constable Ghulam Qadir No. 796/RSI S/O Jamal Din R/o Lar Tehsil Mahore Constable Mohammad Iqbal No. 167 / RSI now 611/RSI & OTHERS	Challaned
247	Mahore	70/2010 U/S 447, 147, 336, 323 RPC		ASI Ghulam Mohammad No. 40 RSI @ Others	Challaned
248	Mahore	127/2010 U/S 212, 216, 382 RPC		Constable Ghulam Qadir S 796/RSI S/O Jamal Din R/o Lar Tehsil Mahore & others	Challaned
249	Mahore	41/2011 U/S 223, 224 RPC		1. SPO Jarnail Singh No. 67/SPO-Rsi S/o Tirth Ram R/o Dandkote 2. SPO Jagir Singh No. 23/SPO-RSI & Others	Challaned
250	Mahore	129/2011 U/S 376 (2) RPC		Roshan Din Malik No. 646/RSI S/O Ghulam Mohi-ud-Din R/O Bagga	Challaned
251	Mahore	09/2011 U/S 323, 353 RPC		Constable Mohan Singh S/O Inder Singh Thakur Rajput R/o Chinkah Tehsil & Dist. Reasi	Challaned
252	Arnas	17/2011 U/S 341, 323, 506 RPC		Head Constable Kamal Singh No. 95 /IRP 13 <sup>TH</sup> Bn S/o Shiv Ram Thakur R/o Chinkah Tehsil and District Reasi	Challaned
253	Arnas	02/2011 U/S 451, 323 RPC		Constable Lahar Singh S/o Soba Ram Caste Thakur R/o Chinkah Tehsil and District Reasi	Challaned
254	Reasi	91/2010 U/S 341, 323		Constable Lahar Singh S/O Soba Ram Thakur R/o Chinkah Tehsil and District Reasi	Challaned
255	Batote	95/2009 U/S 420, 467, 468, 471, 120-B, 34 RPC		1. Constable Dolat Ram No. 1758/CID (SB) 2. Constable Surinder Kumar No. 2554/J)	Challaned
256	Batote	08/2010 U/S 452, 354, 323 RPC		Constable Farooq Ahmad 116/Rbn.	Challaned
257	Batote	42/2011 U/S 367 RPC		Constable Kuldeep Singh No. 255/IRP 9 <sup>TH</sup> Bn	Challaned
258	Batote	15/2012 U/S 342, 323 RPC		Constable Surinder Singh No. 384/D	Challaned
259	Gool	10/2010 U/S 323, 325 RPC		SPO Rattan Singh No. 490/SPO	Challaned
260	Gool	60/2010 U/S 498-A, 109		Constable Mohammad Akthar No. 278/IRP 14 <sup>th</sup> Bn	Challaned
261	Gool	04/2011 U/S 336, 109 RPC		Constable Ajaz Ahmed No. 709/IRP 9 <sup>TH</sup> Bn	Challaned
262	Gool	21/2011 U/S 354, 34 RPC		SPO Yashpal Singh No. 283 /SPO	Challaned



263	Gool	36/2011 U/S 457, 354 RPC		Constable Talib Hussain No. 506/IRP 9 <sup>th</sup> Bn	Challaned
264	Ramban	120/2009 U/S 8/20 NDPS		Foll. Bashir Ahmed PID No. 045611/EXJ	Challaned
265	Ramban	23/2010 U/S 8/20 NDPS Act		Constable Viqar Ahmed No. 803/CID/SBK	Challaned
266	Ramban	48/2010 U/S 380 RPC		SPO Wazir Mohd No. 732/SPO	Challaned
267	Ramban	141/2010 U/S 354, 323, 506 RPC		Constable Bashir Ahmed No. 366/Rbn.	Challaned
268	Ramban	164/2010 U/S 294 RPC		Constable Irshad Ahmed No. 72/JKAP 9 <sup>th</sup> Bn.	Challaned
269	Ramban	186/2010 U/S 366, 376 RPC		Foll Farooq Ahmed No. 23/F	Challaned
270	Ramban	71/2011 U/S 302 RPC, 7/27 Act		SPO Abdul Gafoor No. 398/SPO	Challaned
271	Ramban	137/2011 U/S 353 RPC		Constable Javed Iqbal PID No.	Challaned
272	Banihal	41/2010 U/S 467, 468, 201, 409 RPC		ASI Maan Singh No. 35/Rbn. Sg JKP	Under Investigation
273	Banihal	102/2010 U/S 341, 323 RPC		Constable Mohammad Shahid No. 343/Rbn. Sg. Constable Manzoor Ahmed No. 757/IRP 4 <sup>th</sup> Bn.	Under Investigation
274	Banihal	114/2010 U/S 458, 323 RPC		SPO Hakim Din S/o Mohammad Iqbal Bohroo R/o Bohardar Neel	Under Investigation
275	Banihal	158/2010 U/S 468, 471, 466, 420 RPC		Rtd. SI Ghulam Mohammad Runyal	Under Investigation
276	Banihal	04/2011 U/S 279, 337, 304-A RPC		Constable Ashiq Hussain IRP 9 <sup>th</sup> Bn S/o Sheikh Abdul Hamid R/o Chareel, Banihal	Under Investigation
277	Banihal	17/2011 U/S 376 RPC		Constable Ali Mohammad of 16 Bn CRPF	Under Investigation
278	Banihal	75/2011 U/S 409 RPC, 25 A. Act		SPO Abdul Gafoor No. 398/ SPO	Under Investigation
279	Banihal	157/2011 U/S 302 RPC		Unknown persons of 17 RR Army	Under Investigation
280	Banihal	199/2011 U/S 38-f Ex- Act		SPO Abdul Latif S/o Ab. Aziz Darabu R/o Chanawah Tehsil Banihal	Under Investigation
281	Dhramkund	07/2011 U/S 457, 222, 380, 201		Foll Farooq Ahmed No. 23/F	Under Investigation
282	Kishtwar	266/2011 U/S 341, 323, 419 RPC		Inspector Vijay Bhagat	Not admitted
283	Kishtwar	276/2011 U/S 376 RPC		Inspector Vijay Bhagat	Not admitted
284	Kishtwar	18/2010 U/S 5 (2) PC Act. 161 RPC		Head Constable Angrez Singh No. 33 / GRP	Not admitted
285	Kishtwar	115/2009 U/S 420, 471 RPC		Constable Mohammad Amin No. 33/ GRP	Under investigation
286	Kishtwar	55/2010 U/S 332 RPC		Constable Anoop Kumar No. 295/Ktr.	Challaned
287	Kishtwar	153/2010 U/S 510 RPC		Constable Vijay Kumar No. 290/Ktr	Challaned
288	Kishtwar	181/2010 U/S 306 RPC		Constable Rakesh Kumar No. 560/Ktr.	Challaned
289	Kishtwar	73/2011 U/S 4/5 Sapphire Act		Constable Jeevan Singh No. 679/IRP-8 <sup>TH</sup> Bn	Under investigation
290	Kishtwar	220/2011 U/S 223, 224 RPC		Constable Imtiyaz Ahmed No. 257/Ktr.	Under investigation
291	Kishtwar	201/2009 U/S 420, 471 RPC		Foll. Mohammad Rafi S/o Noor Mohammad Gujjer	Not Admitted
292	Kishtwar	159/2009 U/S 366, 342, 376 RPC		SPO Ifroz Ahmed No. 642/SPO	Not Admitted
293	Kishtwar	53/2011 U/S 307, 34		SPO Mohammad Abass No.	Challaned

		RPC		435/SPO	
294	Atholi	19/2009		1. SPO Mohammad Akbar No. 611/SPO 2. SPO Noor Hussain No. 1288/SPO	Challaned
295	Atholi	15/2010 U/S 342 RPC		Inspector Farooq Ahmed Wani	Under investigation
296	Doda	137/2009 U/S 354 RPC		Constable Mushtaq Ahmed No. 714/D	Challaned
297	Doda	183/2009 U/S 336, 341, 323 RPC		Foll. Raj Kumar No. 133/F-Doda	Challaned
298	Doda	236/2009 U/S 510 RPC		Constable Chain Singh No. 594/D	Challaned
299	Doda	245/2009 U/S 510 RPC		Head Constable Manoj Singh No. 308/D	Challaned
300	Doda	296/2009 U/S 7/25 Arms Act		Head Constable Davinder Kumar No. 292/D	Challaned
301	Doda	297/2009 U/S 498-A, 494, 109 RPC		Head Constable Davinder Kumar No. 292/D	Challaned
302	Doda	31/2012 U/S 212, 216, 121, 121-A, 122, 123 RPC		Head Constable Davinder Kumar No. 292/D	Challaned
303	Doda	352/2010 U/S 409, 411 RPC, 7/25 Arms Act		Head Constable Davinder Kumar No. 292/D, Constable Satish Kumar	Challaned
304	Doda	14/2010 U/S 510 RPC		Constable Susheel Kumar No. 631/IRP 13 <sup>th</sup> Bn	Challaned
305	Doda	62/2010 U/S 458, 376, 34 RPC		Sg. Constable Lekh Raj No. 582/ D	Challaned
306	Doda	204/10 U/S 279, 337 RPC		Constable Tariq Hussain No 717/IRP	Challaned
307	Doda	208/2010 U/S 510 RPC		Head Constable Anchal Singh No. 981/D	Challaned
308	Doda	222/2010 U/S 510 RPC		Constable Kamal Kumar No. 315/D	Challaned
309	Doda	6/2011 U/S 341, 323 RPC		Constable Inder Kumar No. 647/D	Challaned
310	Doda	43/2011 U/S 377 RPC		Subedar Dilbagh Singh 10 RR Doda	Challaned
311	Doda	81/2011 U/S 510 RPC		ASI Subash Singh No. 234/D	Challaned
312	Doda	100/2011 U/S 341, 323, 342, 506, 511 RPC		Constable Taoqir Raza	Challaned
313	Doda	259/2011 U/S 8/21/22 NDPS Act.		Constable Mohammad Aslam	Challaned
314	Bhaderwah	53/2009 U/S 341, 323 RPC		ASI Hem Raj (died)	Challaned
315	Bhaderwah	71/2009 U/S 366, 109, 363 RPC		Constable Pankaj Kumar of 4 RR	Challaned
316	Bhaderwah	152/2009 U/S 279, 337 RPC		Constable Ashok Kumar No. 1011/D	Challaned
317	Bhaderwah	32/2010 U/S 302 RPC		Sepoy Gurjeet Singh of 8 RR	Challaned
318	Bhaderwah	53/2010 U/S 279 RPC		SPO Feroz-ud-din No. 255/SPO	Challaned
319	Bhaderwah	55/10 U/S 279, 337 RPC		Sepoy Tek Bhadur Thapa (Dvr. Army)	Challaned
320	Bhaderwah	80/2010 U/S 279, 337 RPC		Sg. Constable Kalyan Singh No. 793/D	Challaned
321	Bhaderwah	92/2010 U/S 307, 109, 353, 186, 147, 148 RPC		SPO Shanker Lal No. 1164/D	Challaned
322	Bhaderwah	141/2010 U/S 8/20 NDPS		Constable Taoqir Raza	Challaned
323	Bhaderwah	150/2010 U/S 223, 224 RPC		Constable Nissar Ahmed No. 640/D	Challaned
324	Bhaderwah	60/2010 U/S 5(2) PC		Head Constable Jamal Din	Challaned

		ACT, 161, 120 RPC		No. 69/D	
325	Bhaderwah	06/2011 U/S 420, 467, 468, 471 RPC		Head Constable Davinder Kumar No 292/ D	Challaned
326	Bhaderwah	18/2011 U/S 510 RPC		SPO Rakesh Kumar No. 1742/SPO	Challaned
327	Bhaderwah	36/2011 U/S 510 RPC		SPO Mukesh Kumar No. 1774/SPO	Challaned
328	Bhaderwah	65/2011 U/S 510/RPC		SPO Mukesh Kumar No. 1774/SPO	Challaned
329	Bhaderwah	85/2011 U/S 48-A Excise Act		SPO Narinder Kumar No. 1145/SPO	Challaned
330	Bhaderwah	129/2011 U/S 451, 147, 148, 149, 504, 232 RPC		Against 4 RR	Challaned
331	Bhaderwah	132/2011 U/S 353, 333 RPC		Kamal Kumar BSF 28 <sup>th</sup> Bn	Challaned
332	Bhaderwah	138/2011 U/S 279, 337 RPC		Selection Grade Constable Abdul Qayoom	Challaned
333	Bhaderwah	156/2011 U/S 498-A, 323 RPC		SPO Bipan Kumar	Challaned
334	Bhaderwah	41/2010 U/S 420 RPC		Head Constable Uttam Chand	Challaned
335	Gandoh	14/2009 U/S 420 RPC		Constable Mohammad Alyas	Challaned
336	Gandoh	51/2010 U/S 161 RPC, 5(2) PC Act		Head Constable Firdous Ahmad 366/D	Challaned
337	Gandoh	60/2010 U/S 307 RPC, 7/25 Arms Act		Head Constable Abdul Rashid	Challaned
338	Gandoh	61/2010 U/S 307 RPC, 7/25 Arms Act		Head Constable Lokesh Kumar and other 6 officials	Challaned
339	Gandoh	134/2009 U/S 427, 323 RPC		Constable Shah Din and others 02 officials	Challaned
340	Gandoh	66/2011 U/S 420 RPC		Constable Indraj Ali No. 1067/D	Challaned
341	Gandoh	42/2011 U/S 451, 54 RPC		Follower Sham Singh No. 90/F-Doda	Challaned
342	Gandoh	107/2009 U/S 420, 463, 468 RPC		Constable Ram Singh	Challaned
343	Assar	40/2010 U/S 223, 224, 304-A RPC		Constable Mohammad Khalid No. 626/D	Challaned
344	Mendhar	40/2009 U/S 457, 380 RPC		Constable Javed Ahmed No. 831/P	Challaned
345	Mendhar	41/2009 U/S 457, 380 RPC		Constable Javed Ahmed No. 831/P	Challaned
346	Mendhar	42/2009 U/S 457, 380 RPC		Constable Javed Ahmed No. 831/P	Cha;aned
347	Mendhar	78/2010 U/S 307 RPC		Sepoy Jatinder Kumar No. 6499070 of 898 BN. Territorial Army	Challaned
348	Mendhar	182/2010 U/S 302 RPC		1. Vivek Gupta (IPS), then posted as SDPO Mendhar 2. Constable Mohammad Saif No. 439/P 3. Constable Abdul Hamid No. 802/P 4. Rakesh Kumar 45/F 5. Mohammad Alyas No. 402/SPO-P	Untraced
349	Mendhar	221/2010 U/S 302 RPC		NCA 11 Kumaon	Untraced
350	Mendhar	40/2011 U/S 302 RPC		Sepoy Romesh Bahadur Shahi 2/5 GR Unit Balnoi	Challaned
351	Poonch	41/2011 U/S 353 RPC		Constable Maroof Ahmed S/O Taj Mohammad R/O Mendhar	Challaned
352	Poonch	10/2010 U/S 323, 382 RPC		Constable Iftikar Ali No. 931/P	Challaned

353	Poonch	130/2010 U/S 341, 323, 504, 336 RPC		Lady Constable Begum Jan No. 324/P	Challaned
354	Poonch	66/2010 U/S 279, 337 RPC		Constable Zia-ul-Haq No. 663/IR S/O Mohammad Ayub R/O Shindra	Challaned
355	Poonch	152/2010 U/S 341, 382, 506, 504 RPC		Constable Zia-ul-Haq No. 663/IR S/O Mohammad Ayub R/O Shindra	Challaned
356	Poonch	46/2011 U/S 2/3 ITP Act		Constable Abdul Rehman S/O Abdul Ashyam R/O Kargil (IRP)	Challaned
357	Poonch	138/2011 U/S 295, 166 RPC		Head Constable Nazir Ahmed, IRP 6 <sup>th</sup> BN	Challaned
358	Loran	01/2009 U/S 338 RPC		Constable Nazir Ahmed No. 177/P	Challaned
359	Loran	10/2009 U/S 353, 506 RPC		1. Selection Grade Constable Mumtaz Ahmed No. 504/P 2. Constable Mushtaq Ahmed No. 543/P 3. Constable Mohammad Azam No. 475/P	Challaned
360	Mandi	13/2011 U/S 510 RPC		Head Constable Ghulam Rasool No. 383/P	Challaned
361	Mandi	84/2011 U/S 323, 341, 336, 427, 382 RPC		Follower Zia-ul-Haq	Challaned
362	Surankote	04/2009 U/S 341, 323 RPC		Sepoy Manzoor Ahmed of 156 Territorial Army	Challaned
363	Surankote	90/2009 U/S 353, 332, 186 RPC		Constable Javid Iqbal No. 510/P	Challaned
364	Surankote	98/2009 U/S 498, 109 RPC		Constable Sajad Ahmed	Challaned
365	Surankote	135/2011 U/S 120, 302 RPC, 7/25 Arms Act		1. SPO Noor Hussain 2. Sepoy Abdul Majid of Territorial Army (BN??)	Challaned
366	Nowshera	92/2009 U/S 363 RPC		Ram Lal of Territorial Army posted at Army post no. 542 R/O Vhawa, Tehsil Shabad (Haryana)	Not Admitted
367	Nowshera	34/2010 U/S 363, 375, 109 RPC		Vikas Sharma of 13 JAKLI posted at Jhanger	Challaned
368	Rajouri	100/2009 U/S 307, 109 RPC		Sub Inspector Mohammad Sharief I/C PP Chingus	Not Admitted
369	Rajouri	218/2010 U/S 354 RPC		Davinder Singh (Army Jawan posted at HQR Palma)	Not Admitted
370	Manjkote	25/2011 U/S 406, 409 RPC, E.C. Act		1. Vinod Kumar No. IRLA40902449 2. Head Constable Dvr. Asit Dass No. 88006993 3. Head Constable Manzoor Hussain No. 90004692 4. Head Constable Rashpaul Singh No. 89007161 5. Constable Ram Niwas No. 02145439 All belonging to 76 <sup>th</sup> BN of BSF	Under Investigation



*Alleged Perpetrators – Stories of Impunity in Indian Occupied Jammu and Kashmir documents State violence and impunity in Indian Occupied Jammu and Kashmir from 1989 to 2012. This violence and impunity has resulted in, by some estimates, enforced and involuntary disappearances of at least 8,000 persons, besides more than 70,000 deaths, and disclosures of more than 6,000 unknown, unmarked mass graves as of 2012.*

*This report analyses official State documents and testimonies in specific cases. Furthermore, it turns the focus to specific alleged perpetrators of crimes by naming them and analyses their roles in Human Rights violations in Indian Occupied Jammu and Kashmir.*

*This report concludes that the Indian state, through its various functionaries, such as the Armed Forces and the Jammu and Kashmir Police, has intended to, and succeeded in, committing grave Human Rights violations in Indian Occupied Jammu and Kashmir.*

*Based on its finding in this report, IPTK/APDP, Tehreek-e-Kashmir UK and The Justice Foundation recommend that the international committee act expeditiously to recognise, highlight and question the Indian State on its direct role on Human Rights violations in Indian Occupied Jammu and Kashmir.*



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