

Uprising and Repression in Kashmir, 2016

This report is based on a team visit to Kashmir in October 2016. The team consisted of V. Suresh, Kavita Srivastava, Ramdas Rao and Pragnya Joshi, all PUCL members. (Jean Drèze, also a PUCL member, joined for one day and contributed to the report). The report has been prepared by the team members in their individual capacity, for internal discussion within PUCL, and is not to be considered as an official report of the PUCL. The Report was prepared by Ramdas Rao as lead author with comments and responses from others. Not all members agree with every statement made in the report, but this represents our best effort to achieve a consensus on the main points.

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Introduction

Over the last several decades, the Kashmir valley, under the Indian State's administration, has been witness to several massive human rights violations committed by state and non-state actors alike, as well as massive people's protests and uprisings over the demand for freedom, or what is popularly known as *Azaadi*. Since the extra-judicial killing of Hizbul Mujahideen Commander Burhan Wani on 8 July 2016 by Indian armed forces, the Kashmir valley has entered a heightened phase of a war-like conflict, which is still raging on. This grave human rights crisis prompted a visit to Kashmir in late October 2016 by a team of human rights activists from *People's Union of Civil Liberties* (PUCL).

Although documentation and fact-finding investigations on human rights violations in Kashmir have become a regular phenomenon since the late 1980s, the current tide of offensive launched by the Indian armed forces with the full support of both central and state governments as well as the distorted portrayal of the events unfolding in Kashmir by media houses in India have shocked the conscience of many citizens in India regarding the total apathy of the Indian political establishment coupled with a firm resolve to suppress all forms of protest and dissent by deploying lethal solutions. What has also concerned many human rights activists and citizens is that even the apex judiciary of the country has failed to hold the army accountable for its atrocities against the civilian population. Several times the Supreme Court has decided to let the army have impunity for its actions (as, for example, in the Pathribal encounter case). More recently, it refused to check the use of lethal pellet guns in Kashmir.

What is undeniable is that a grave crisis is brewing in Kashmir, one from which neither the state apparatus nor the people in Kashmir are ready to turn their backs on. The crisis has reached a point of no return due to the intransigent attitude of the Government establishment, both political and military, which seems determined to take its battle for supremacy in Kashmir to the finish, no matter at what cost to the civilian population. In such a climate, it is important to understand how and why the violence by the army and people's resistance has reached such heights in Kashmir. Even the mainstream media has been forced to deal with many harrowing stories from Kashmir, the latest instance being the ordeal of Farooq Ahmad Dar, strapped to the bonnet of an army jeep in order to use him a human shield by the army as he was paraded through the streets for hours, a notorious incident that has been received with outrage and condemnation as well as praise from certain quarters. What is also significant is that such news events are breaking all over social media daily, which explains why the internet was cut off in the valley during the recent agitation. It is in this context of understanding and making sense of the seemingly hopeless

situation that a fact-finding team from PUCL was constituted to investigate what is happening to people in Kashmir.

An all-India team of the PUCL visited the Kashmir valley after the 100th day of people's protests against the extra-judicial killing of Burhan Wani on 8 July 2016 and the heavy government clampdown since then. The team was led by V Suresh, General Secretary of the PUCL, and consisted of Kavita Srivastava (National Secretary), Ramdas Rao and Pragnya Joshi (National Council Members); PUCL member Jean Drèze joined the team for one day, on 18th October. Also accompanying the team were two independent observers: Parul Abrol (independent writer and journalist) and advocate Mustafa. The team stayed in the valley between 14th and 22nd October, with a maximum of members staying between 17th and 22nd October 2016. The team visited and met the injured and families of the deceased in Batamaloo and Idgah areas of Srinagar, Batingu and Veesu in Anantnag district, Churhant in Kulgam district, Khrew in Pulwama, and in Shopian.

During the visit the team members had lengthy interactions with families of a few people booked under Public Security Act (PSA), families of the deceased who had lost their lives in firing or other use of force by the Indian armed forces, survivors of violence, doctors of SMHS hospital, some of the injured people, either admitted in the hospital or outside, human rights workers of the Jammu and Kashmir Coalition of Civil Society (JKCCS), along with independent activists, including RTI activists, academics and student leaders. The team also met the office bearers and senior lawyers of the thousand-member strong Jammu & Kashmir Bar, several press and electronic media professionals, young entrepreneurs and big businessmen, retired bureaucrats and government personnel, Anganwadi workers and daily wage earners, and a few Kashmiri Pandit families and individuals in the valley, as also several ordinary people including young protestors and college students. The team visited the police station of Pampore and the office of the IG Police, Kashmir. The team members were not allowed to meet with Syed Shah Gilani, the *Hurriyat* leader under house arrest, by the police guarding his house nor by the Inspector General of Police whose permission was formally sought. An attempt to get an appointment with the Chief Minister of J & K, Mehbooba Mufti did not fructify as she was mostly in Jammu during the period of the visit. This fact-finding report presents our findings of the situation in Kashmir during the period 8 July 2016 to 22 October 2016. We have given our impressions of the visit and attempted to arrive at an understanding of the violence that wracked the Kashmir valley during this period, and its roots in the presence and role of the army as well as the unresolved issue of self-determination that underlies the present crisis.

Chapter 1 describes in detail the outbreak of violence in the valley following the alleged encounter killing of Burhan Wani, the response of the Indian armed forces and the state administration, and the severe impact on the civilian population. Chapter 2 focuses on the nature and design of the Indian military operations in Kashmir and the strategies that the Indian armed forces have deployed to deal with the civilian unrest. Chapter 3 provides a

perspective on Kashmir as a political and human rights issue, rather than a law and order problem. Chapter 4 presents the demands/recommendations of the team to resolve the Kashmir issue so that peace returns to the valley.

We have provided two appendices to this report: Appendix A presents a perspective on occupation under International Law in the Context of Kashmir; Appendix B presents narratives of several incidents of grave human rights violations in several areas the team visited by providing testimonies of victims as well as interviews of human rights observers in the valley.

CHAPTER 1

(The names of the victims have been changed in most cases.)

CURRENT SITUATION IN KASHMIR (Post July 8)

I. Encounter killing of Burhan Wani and its aftermath

Burhan Wani was a militant from rural South Kashmir, who within a short period had risen to head the Hizbul Mujahideen. According to various accounts from different people the team met, Wani was an articulate social and political activist who used the social media more than the gun, reaching out to the weaker sections, releasing videos and talking about attacks by the army on protesters and even on Pandits. He asserted that Kashmiris can run the insurgency on their own, and they don't need Pakistan's support. He became a folk hero facing up to the might of the Indian army, who took militancy to a new height, a familiar figure bringing hope to a dispirited population. It is said that he did not have a record of killing anyone.

Wani's death on July 8, 2016 in an encounter killing by the Indian armed forces in Kokernag in South Kashmir caused a huge turmoil in the civilian population. Then came total shut down of the valley, called by the *Hurriyat*, which continued for the next 3 months. The deep anger of the people took the form of massive protests, leading to clashes with the Indian armed forces, and regular stone pelting, especially after the Friday prayers, not only by students, but everyone, young and old, in towns and villages. In a way, stone is the weapon of the last resort, a mark of a besieged people's resistance to occupation (much as in Palestine). Stone throwing was reported to be widespread following Burhan Wani's death, across the Valley, especially in the southern districts.

II. Response of the Indian armed Forces

The fierce civilian reaction to Burhan Wani's death was entirely unforeseen, for the Indian armed forces. In the first 2 days after his death, 12 people were killed in the firing by the Indian armed forces. The months following his death (i.e., up to October when we visited the valley) saw a new spate of killings by the Indian armed forces firing upon civilians who came out on the streets in villages and towns all over the valley to stage protests. According to figures maintained by the JKCCS, from July 8 until Oct. 2016, more than 100 people died due to firing by the Indian armed forces who used pellet guns, tear gas, and shelling in firing upon the protesters; 1000 people received pellet injuries in the eye, and hundreds of persons were blinded in at least one eye, and many school-going children are facing blindness. Most of the firing, according to people, was unprovoked and targeted. The use of pellets as a means to curb protests was looked upon by the people as an instrument of blinding and maiming the young. Most pellet injuries have happened not in protest sites, but inside narrow lanes, shopfronts, and even inside houses. The scale of the pellet injuries

was staggering and the emotional and physical trauma caused by pellet injuries both on those injured as also their families, immense. The PUCL team learnt that using pellet guns was a new strategy adopted by the Indian armed forces this time.

In Sayyadpur, Srinagar, Junaid, a 12- year old, (whose family we visited) was shot by pellets while he was inside his house, and succumbed to his injuries. The doctors said he'd suffered multiple contusions. 4 people with pellet injuries didn't receive help because of the sheer magnitude of the cases coming to the hospital. 4664 sustained bullet injuries; over 100 have been maimed, 12344 have been admitted in hospitals. The total number of injured persons is around 15000. 8000 have been arrested, many under the Public Safety Act.

Pellet Injuries: The PUCL team visited Ward no. 8, SMHS Hospital in Srinagar, and spoke to a few youth who had received pellet injuries. 1. Feisal (18) studying in a *madarsa* in Trehegaon, Kupwara, was returning home when he saw a procession on the road. There was pellet firing on the crowd, and he was hit, with pellet injuries all over the body. One eye was injured, and he is getting free treatment in the hospital which also served free food, which he found to be of good quality. But no compensation has been given by the government. 2. Rasool (30) from Traal, an agriculturist, was walking past a building from where there was pellet firing. He was caught in a burst of pellet fire. He realized that he'd been hit only when blood started oozing out of his eyes. He fell down and people put him in an ambulance and brought him to SMHS. One eye was injured, partial vision (faint, only recognizing light). He told us that the doctors are good, but no MLA or minister had visited the hospital or even talked about the issue. 3. Wasim studying in 9th std. in Noor bagh, downtown Srinagar, was going on a scooter to catch fish at Goripura. Near his house, the CRPF did pellet firing at a procession, even though there was no stone pelting. The pellets hit him on his neck, chest, on the right foot and leg, and on one eye. He fell down. He was operated on the eye in the hospital the previous day and is recuperating. One of the doctors told us about a 4-year old admitted to the hospital with a pellet injury who was saying: 'I didn't get this during Dewali, why is this happening to me? I'll ask Burhan uncle to take care of the government.'

Medical crisis: Three doctors in SMHS Hospital, which is a referral hospital for ophthalmological cases, shared with us their experiences of 'the war-like situation' they faced on receiving a flood of pellet injury cases immediately after Burhan Wani's killing in July:

In 2010 too, 105 patients were admitted, 5% of them being for pellet injuries. But it has been peaking massively since this July, with 850 eye injuries, around 95% of which were from pellets, the rest from tear gas, pepper gas etc. It really started on 10th July, with 23 admissions. This is a huge number, compared to 2 to 3 emergencies we get daily. Even as I started operating, the number of admissions kept increasing. There were 56 waiting outside. We just couldn't manage, so we moved into Trauma

theatres and managed, but the number kept increasing, and so we converted trolleys into operating tables and resorted to basic microscopes and other primitive equipment. There were 2 of us doing surgery. An Operation theatre is a place with serious sterilization issues. But now you had lots of people bringing in their boys inside the operation theatre shouting slogans about azaadi. Operating under such conditions was very stressful. We were dealing with a population of young patients under 18 unaccompanied by their parents. How do you get consent? There were also other issues—surveillance by Indian army personnel etc. Moreover, to escape profiling by the police, patients coming in often had a wrong name and address (some entered their name as Burhan Wani), so we had to make an exhaustive survey of cases, giving each case a distinct file no. This is traumatic for the doctors as well. I went outside the surgery section to take a break, and I saw a youth with pellet injury die in front of my eyes—and I couldn't take it anymore and just broke down. But I recovered quickly, and continued till 5 pm, just the two of us. We converted our main theatre (ill equipped for the purpose) opposite Ward 7 and kept on operating till after midnight, 12.30 am. There were still patients getting admitted, but urgent issues of sterilization kept cropping up which affected the quality of surgery. After Friday, the numbers would shoot up.

We got assistance from other sources: 3 doctors came from AIIMS to assist us, for a one-day flying visit. They met the CM, held a press conference and called it 'a war-like situation', which was not to the liking of the government. But there was no follow up to the visit, and no change in the state government's handling of the issue. Dr. Natarajan from Bombay, working for *Borderless World Foundation* came, with some supporting staff—but not on the government's initiative. He has been making frequent visits since then.

I live near the airport, and I too have faced tear gas. My 3-year old daughter was once exposed to a burst of pepper gas, and now vomits every now and then. In 2010, they used it inside this hospital.

Indian armed forces often targeted the youth, mostly in the age group 8-25, many of whom were mere bystanders during protests. 80% of people injured by pellets are under 30. Junaid's family member expressed his opinion that pellets won't be used in India but here in Kashmir are used liberally, with an intent to kill.

Attacks on hospitals and medical facilities: The Indian armed forces have also staged attacks on hospitals, ambulances, and have often prevented medical assistance from reaching the injured. Doctors at the SMHS hospital told us that the next day after Burhan Wani's killing, the CRPF entered the hospital and fired tear gas shells there. There were huge processions in the hospital premises when bodies of people who had died of pellet injuries would be taken out. Then the police would enter the hospital, sometimes seize the bodies from the hospital, and take them away, perform autopsies unilaterally, and hand over the bodies to

the families for burial. There were some cases with autopsy issues, but not that many. An ATM security guard was shot dead with 350+ pellet injuries, but no autopsy was done. The Director of Health Services said that 100 ambulances had been attacked. Ambulance drivers have been shot at for taking pellet victims to the hospital.

The doctors also told us that many NGOs (such as *Social Reforms Organization (SRO)*, *Albani Trust*, *Dawat-e-Islami*, and many others) who'd put up booths outside the hospital to render assistance to the patients were shut down by the Indian armed forces, and they were asked to leave the premises, otherwise their equipment would be confiscated. These NGOs provided free medicines and ambulance services to the injured and routine patients and free food and tea for the past three months. Ambulance drivers of these NGOs were arrested while many ambulances were seized on the pretext that they were running without registration documents. In its intent to punish the youth involved in the protests, the government seemed to go out of its way to ensure that medical help didn't reach the pellet victims.

Clearly, attacks on hospitals, medical personnel, medical facilities, and ambulances, are a flagrant violation of international humanitarian law governing conflict zones under which medical facilities are exempt from the rules of engagement.

Organized atrocities: Indian armed forces in Kashmir have often resorted to organized atrocities upon the entire population as reprisals for staging militant protests. For the villagers, who have repeatedly faced such organized violence, it is a form of collective punishment of the entire population meant to 'teach them a lesson'. The following extended accounts of two crackdowns, one in Khrew village, Pulwama district, and another in Batingu, both in rural south Kashmir, which our team visited in October, are illustrative.

On 17 August, 2016 a contingent of 50 Rajputana Rifles staged a crackdown after 10.30 pm (a night raid) on Khrew village. Since Burhan Wani's death, there had been continuous protests in the area. According to the police (who registered the residents' complaint against the army), earlier in the day, some boys outside the village had thrown stones at some army personnel on patrolling duty who were shooting pictures with a video camera. Later, at night, the army came. On entering the village, the army first disconnected the electricity plunging the village into darkness; then they marched in with flash lights and search lights. Using bulldozers to break down gates and compound walls, they went into people's houses, broke television sets and doors and window panes, and dragged away 40 men, including Shabir (aged 30 years), a respected lecturer in the area who was doing his Ph.D. after completing his M. Phil, (there were also 6 other teachers in the group) to a bus stop outside the village and physically assaulted them continuously. Shabir died as a result of sustained beatings. They assaulted the women who were trying to protect their men folk in their homes. People reported that the army personnel were carrying huge lathis embedded with nails. The army kept saying, you people are all protesters, trouble makers, terrorists; this is what you get. Each of them was being beaten up by 15-20 soldiers with

bamboo sticks and hammers. Shabir's leg had four holes bleeding profusely, and his waist was also bleeding due to lathi blows and internally as well. He was gasping for his breath, and kept saying he couldn't breathe, but they didn't believe him. Only after Shabir succumbed to his injuries did the beatings stop. There was a senior army officer who was supervising the whole operation. When the youths told him that they were innocent, he told them that he believed them but the army wants to teach them a lesson-- 'if we don't hit you now, you'll do stone pelting.' They took Shabir to the hospital but he died on the way. The army later came and offered compensation, but the villagers refused. Our team also received reports of sexual violence and rape from the women in the village.

The whole crackdown operation on the village (which was called "Operation Destruction" in the Kashmiri media) lasted from 10.30 pm till 2 am. According to a village elder Waheed (*name changed*), the army came suddenly, entered houses and ransacked them. This was different from a regular crackdown, where they first make the announcement, asking all men to come out, and then go inside and search and ransack the houses. Waheed was beaten so badly that his knees were broken, and he was bedridden for a month. He tried telling them that he was the sarpanch and he wished them well, but they kept beating him.

In another crackdown in Batingu by a platoon of Special Operations Group (SOG) on 10 Sept. in the afternoon, Yavir Mushtaq, a 12-year-old boy, who was fleeing the scene, was seized by 2 soldiers, very near his house, and while one soldier held him, the other shot the boy in the stomach and threw him on the road. Yavir's sister, who had witnessed the shooting, rushed up to rescue him, but the Indian armed forces stopped her. She spoke to her brother and asked him if he wanted water. He said no, and pointed to the wound on his waist. He became unconscious, and Rafiya cried out for help. Others came to her aid, and took the injured boy to the Anantnag hospital, the main hospital in south Kashmir. On the way, their car was attacked again and again by the forces. In the hospital, the doctors took X-ray and took Yavir to the operation theatre (Yavir was still breathing). 5-10 minutes later, the Doctors came out and he was declared dead. Doctors said if he'd been brought in 10 minutes earlier, he could have been saved—death was due to severe blood loss. The medical report stated that death was due to pellet injuries, which was contrary to facts. No post-mortem was done. The boy who had picked up Yavir to take him to the hospital was taken away to the police station and charged under Public Safety Act (PSA).

Yavir's *jenaaza* (funeral procession), which was attended by 10000 people, took place in the afternoon. When the residents of the town were making arrangements for a peaceful protest, they told the DySP and urged him to clear the space. The family was told that there was no need for the funeral procession, and that the police would take care of the burial. The DySP threatened to kill 12 more, and that he'd received orders to do so. When they were carrying the body, suddenly heavy shelling started, and 100 persons were injured. 3 elderly women were sent to recover the body, but they weren't allowed to. 3 people carrying the body were later arrested. Later, these women and 2 elderly men lifted the body

after being beaten up, and took it to the burial ground. The funeral procession in the evening was stopped 3 times, amidst heavy pellet firing. According to Yavir's family members, the intention of the forces was to get hold of the dead body, disfigure his face, with a view to terrorising the entire village. At 6 pm, when they were burying the body, pellet firing started again. Earlier in the afternoon, a school building was burnt down; some transformers also were burnt. The SOG operation was in retaliation against regular stone pelting in the area over 2 months in response to a call by the Hurriyat for daily protest marches up to Rajputana Rifles (RR) HQ.

The FFT was informed that crackdowns, attacks on funeral processions, night raids, ransacking houses and property in 'search and destroy' missions, and organized torture have become the *modus operandi* for Indian armed forces to suppress protests in Kashmir since July 8. In district areas of south Kashmir, such as Fatehpora, Bandipora, Budgam, there have been hundreds of cases of vandalization of property by the army, scores of power transformers have been destroyed on streets during the firing, and food crops and apple orchards burnt down. Paddy fields have been set on fire in Kanilvan and Khudwani. Facing widespread unrest in south Kashmir, it appears that the Indian armed forces seem to have decided to target the very livelihood of the rural population.

Detentions and PSA cases: The Indian armed forces regularly seize young stone pelters in protests and detain them under Public Safety Act and other security laws. The perception of Kashmiri youth about PSA cases is that 'after protest demonstrations, PSA "awards" are given liberally to boys.' According to JKCCS records, 8000 people, including 1000 in Srinagar, have been arrested, FIRs have been registered against 2300, more than 450 have been booked under PSA. Mir Shafaqat Hussein, leading High Court advocate (practicing since 1981), who has reportedly handled thousands of cases under PSA, gave us valuable information about stone pelting cases:

--Boys have been picked up, even completely apolitical people. There are 300 such cases. Two 16-year olds have been booked under PSA. In Traal, all the 12 members of a family have been arrested under PSA. Old men of 70-80 have been arrested and sent to jail. Further, the police threaten to file PSA cases against those who file complaints against the army. A sample of PSA cases he has handled:

--Sheikh(18 yrs): Resident of Batkadal, Nowshera, Srinagar. From 2013 till 2015, he underwent 8 surgical operations for pellet injuries. He was picked up for stone pelting in 2015 (twice) and 2016.

--Pervaiz (21 yrs.) Chunka of Nowshera. FIR mentions under 'Organization: Stone Pelter'

--Umar (73), Dangerapura, Sopore. FIR dated 10.6.16. Charge: 'Hardcore militant of *Jamat-e-Islami* and *Hurriyat*; stone pelting and instigating others; led violent mob.'

Mir Shafaqat Hussein observed: 'All these cases of stone pelting can be tried under normal law. Why try them under PSA? Obviously, the intent is to detain them indefinitely, so that they can be termed history sheeters. This can only end in pushing them to their eventually taking up arms.' Shafaqat Hussein made a special mention of the case of his client Sarfaraz Ahmad Sheikh (26), resident of Rangerhamam, Nowata, Srinagar. The PUCL team had earlier met Sarfaraz Sheikh's wife who had provided personal details about the family. He was booked under PSA again and again, was arrested on 12.10.16 for stone pelting (picked up ten days earlier and produced in court on 13.10.16). Charge: 'Wanted stone pelter of 2008, finally arrested on 12.10.16.' He was booked under PSA in 2013 on the stone pelting allegation in 2013. Mir Hussein challenged it at the pre-execution stage and before he was taken into preventive custody. He got a stay on 31.12.13. Shafaqat Sheikh was regularly appearing before the High Court since then. Hence it is a blatant lie for the police to allege that he was a wanted suspect. In fact, he was a regular businessman. In 2012, he had a pellet injury in the left eye, which was removed and replaced with an artificial eye. He was going for regular orthopedic and psychiatric consultations. Shafaqat Hussein filed a petition challenging the 'open FIRs' (i.e. with no mention of specific details of incidents) of those charged under stone pelting.

Shafaqat Hussein also disclosed that all the accused booked under section 302 PSA from Thana Nowata, Srinagar, Kupwara, and Budgam are being sent to Kathua jail, Jammu, housing 300 detenus; similarly, Udhama jail houses detenus from Baramulla and Sopore; Amphalla jail, Jammu, houses detenus from Pulwama, Anantnag and Kulgam. The objective seems to be to remove the prisoner from his family by housing him in a remote jail, causing maximum inconvenience and hardship to the accused and their families. Basheer Ahmad Bhat, a political activist and protester accused under PSA, is being kept in a cell housing hardened criminals.

However, in the case of atrocities by the Indian armed forces, Shafaqat Hussein disclosed to us how, in the few FIRs filed against them, the state machinery targets lawyers who come forward to take up such cases: Zahid Ali, a leading human rights lawyer, has been booked under PSA; earlier, the Bar President Qayoom had been booked and sent to jail for 2 years. Witnesses in the cases he has filed have been threatened that FIRs would be filed against them in order to make them fall in line. Even where atrocity cases are registered, the state government has stated that in 25 years it hasn't secured sanction for prosecution even in a single case whether from the Ministry of Defence in the case of the Army or from the Ministry of Home for paramilitary forces.

Khurram Parvez's arrest under PSA and incarceration: On 14 Sept. 2016, Khurram Parvez, prominent human rights activist in Kashmir, and Coordinator of *Jammu and Kashmir Coalition of Civil Society (JKCCS)*, was detained at New Delhi Airport and brought back to Kashmir in order to prevent him from attending the United Nation Human Rights Council (UNHRC) meeting in Geneva where he was scheduled to address U.N. human rights bodies

and foreign governments on the atrocities committed by the Indian armed forces during the 2016 Kashmir violence. The next day, in Srinagar, he was picked up from his home after midnight at 12.30 am without formal arrest and in violation of his rights to information and legal counsel, and sent to prison. The allegation, which was entirely unsubstantiated, was that on 15 Sept., Khurram Parvez had incited people to throw stones and march towards the Tourist Reception Centre in Srinagar. A day after he was released by the sessions court, he was detained a second time under PSA on 21 Sept. and sent to jail. After 76 days of incarceration in a Jammu jail, the J&K High Court quashed the detention order as illegal and ordered his immediate release. Yet, due to a minor clerical error in the order regarding a date, the police kept Khurram Parvez until a corrigendum was issued, but he was still kept in detention a day longer and taken to a detention center in Jammu and finally released on 30 Nov.

The prolonged ordeal of Khurram Parves's arrest, detention and harassment is of course directly linked to his activities in documenting human rights violations in J&K, especially with regard to cases of disappearances and unmarked graves. But, in the context of the current situation after July 8, his illegal detention is a continuation of the policy of the Indian state in Kashmir to suppress political dissent by using preventive detention laws, through repeat detention orders, "revolving door"¹ cases, stock FIRs, open FIRs² and so on. In Khurram's case, he was told when he was arrested that there was an 'open FIR' against him that he didn't know anything about. This practice has been going on for 26 years. Khurram's arrest was a signal, a warning to civil society not to raise their voice.

III. Response of the State administration: Curbs on the media

Since July 8, the state government has tightened its control of the civil society by imposing numerous curbs on the media. There have been bans on different newspapers, such as *Kashmir Times* and *Kashmir Reader*, blockade has been ordered on 5 Indian news channels for their reportage on Kashmiri resistance, while Pakistani news channels have been taken off the air. *Kashmir Reader* was banned in October, 2016 by invoking J&K Press Act, a colonial law which dates from Dogra times, making very vague allegations in the notification. *Kashmir Times*, like many other publications in the valley, has been blocked by DAVP from receiving advertisements since 2010. This is done with a view to ensure that the media falls in line. But newspapers continually try to cross the line, and challenge government rulings wherever possible. We were told by a senior journalist that the state government keeps dossiers on each newspaper consisting of editorials, headlines, pictures

¹ Cases where the government charges an accused under PSA and then the High Court strikes it down. The moment the order for release is signed or attempt is made to secure release of the detainee, another PSA is filed against the person/detainee ensuring s/he cannot be set free.

² Open FIRs are kept in police stations where the police put dates and add names whenever they like it.

etc. There have also been physical attacks on journalists, including being subjected to pellet firing while performing their professional responsibilities during the unrest. The team was informed that the house of a senior photo journalist Danish Ismail in Batmaloo, Srinagar, was damaged by Indian armed forces.

IV. Impact of Indian armed forces' attacks on the civilian population

Facing this sustained and organized violence from the Indian armed forces, the civilian population across the valley has felt besieged and extremely insecure, living precariously day after day under the ever-present shadow of curfews, pellet firings, crackdowns, and midnight raids. Two phrases that we came across when we talked to residents in rural South Kashmir eloquently sum up their reaction to army terror - 'Kayamat' (Doomsday) and 'Jalianwala Bagh.' On any particular day, things might be normal, say in crowded Lal Chowk or Idgah in Srinagar, but with the slightest incident, there might be total turmoil and violence. A common perception is - 'it's like a tinderbox, waiting to explode again and again.' The harassment and violence by the Indian armed forces is so relentless that everyone feels angry and frustrated. Nevertheless, during the period July-October, despite the large number of civilian killings at the hands of Indian armed forces, the FFT was told by the people they met that not a single army soldier was targeted and killed during the protests, though many suffered injuries in the stone pelting incidents. 3 police outposts were reportedly attacked by the youth, but there was not a single death—despite the police propaganda about firing in self-defence.

During the period July-October 2016, when normal life in the valley was paralyzed due to the curfew and total shutdown of the valley, the impact was especially felt by the working class—daily wage labourers, working women, small shop keepers, auto drivers and so on, whose mobility was curtailed and earnings were drastically affected. Yet it must be mentioned that there was no scarcity of food and essentials during this period, since the Kashmiri is used to storing food and other provisions during the long winter months. Also at work was the culture of offering food and money to those in urgent need, especially through *Baitulmaal*, a practice of raising money for those in need. Every mosque raises money through *zakat* (tax). During this hartal, the *Hurriyat* asked people to contribute to *baitulmaal* liberally.

All this harassment and frustration has led to the complete alienation of the entire population across the valley and a rupture with the Indian state, despite its protestations about secularism and democracy. An elderly man in Churhat village told us: 'In Kashmir, there's *Kashmiriyat* (standing for justice and love), in India, there's neither *insaniyat* (humanity) nor *jamooriyat* (democracy).' Another common perception: 'Pellet guns are normally used to kill wild animals; here it is used against us. Modi thinks we're wild animals.'

This feeling of rupture with the Indian state manifests itself in many forms. For one, there's a consistent refusal on the part of most Kashmiris to engage with the mechanisms of justice

delivery of the Indian state. In the perception of the residents in Khrew, 'there are no human rights in Kashmir.' Though members of the FF team repeatedly urged the residents of the affected areas visited to seek redressal of their wrongs, in most cases, they refused to file FIRs because it is completely futile since, in their experience, not one FIR has resulted in a conviction. However, there's also the fear that doing so will invite reprisals. Equally, there is deep scepticism about the effectiveness of Indian human rights groups to ensure justice to Kashmiri people. When we urged the residents of Khrew and other areas where serious human rights violations had taken place to seek action to secure justice. They asked: 'Where do you think has justice been delivered to us in Kashmir? Do you think Indian democracy can deliver justice to us?' One young woman in Srinagar remarked: 'The Indian Constitution that I've studied in college is a fraud, as I've learnt through experience.' Many people believe that only international bodies like the UNHRC can make the Indian state accountable to the Kashmiris, and its mechanisms of rule.

The rejection of the Indian state among the civilian population is also matched by a complete disillusionment with the Mehbooba government and the Kashmiri political establishment. Repeatedly the FFT was told that Mehbooba hasn't visited any of the victims of pellet injuries in the hospital, but she made a hurried helicopter visit under tight security to condole the death of one of the victims. After the visit, the family's house was reportedly burnt down by the indignant village residents for the family's letting Mehbooba take political advantage of their situation. The Mehbooba government also earned the opprobrium of the people by imposing a ban on prayers during *Id*—something unprecedented in the history of Kashmir.

Yet, in response to repression by the Indian armed forces, there is in Kashmir, beyond the anger and frustration felt by the population, an outward movement of resistance, the beginnings of a militant civil disobedience movement, with the ultimate objective of ending the Indian occupation and asserting their right to *azaadi* or self-determination. As one of the observers (Sanjay Tikkoo, the Pandit leader) told us, 'now, the youth and even children are prepared to come out and bare their chests and tell the army: "Kill us".' In the last decade or so, there has been a significant decline in armed militancy: according to the government's own admission, they number well below 500³. Recent reports cite an increase in militancy in the valley, the number going up to 300 according to state police officers.⁴ The villagers of south Kashmir we talked to during our visit told us that since their childhood, they've been witness to these repeated cycles of torture and violence by the Indian armed forces. This has only strengthened their resolve to fight for *azaadi*. What Kashmir is currently witnessing, since July 2016, is a shift from armed militancy (including cross-border) to mass-based militancy, variously labeled as 'indigenous/home grown/peasant uprising', originating

³ <http://www.hindustantimes.com/delhi-news/only-500-militants-active-in-kashmir/story-UhDDOLYT1VR8bgUwdta32M.html>

⁴ <http://kashmirreader.com/2017/04/23/militant-numbers-highest-decade/>

in South Kashmir. Burhan Wani's death was a turning point when a sizable number of young people from this area came out and identified themselves as militants but significantly however, differentiating themselves from Pakistani militants contrary to the view projected in the media. This is proving difficult for the army to take on. The new face of the resistance movement is the youth who are politically articulate, well informed about wider developments (including in India), thanks to the social media, which sees constant discussions about the Kashmiri identity, but also due to the high value placed on education. A significant proportion of the protesters comprises young educated women. Their purpose is to create conditions that show to the world that the Kashmir issue remains unresolved. It might be put down by brutal violence now, but will erupt again and again. This can only deepen further the feeling of alienation in Kashmir.

What are the features of this mass resistance movement in Kashmir? The most visible sign of this movement is the practice of what is called *sanghbazi*, in other words, stone pelting—regular, planned, and massive - by the youth following Friday prayers. It also takes the form of staging daily protests and marches and participating in funeral processions and *jenaaza* (during which women also attend) after the killing by the Indian armed forces of a local resident, all of which establish a sense of a collectivity, and a sense of solidarity. It invites further violence by the Indian armed forces (pellet firing, shelling, firing into the crowd etc.), which accelerates the resistance further.

In these youthful protests, the *Hurriyat* has only a marginal role to play, a symbolic one, as an organization which orchestrates the protest through its Calendar of *hartal*, which everybody follows, calling for total shutdown till 5 pm and daily marches and protests. Student groups told us that they endorse the *Hurriyat's* program but find it tepid and would like it to take the struggle much further. They, as also other groups, repeatedly asserted that it is not true to say that the protests are inspired by Pakistan, but arise from amongst the people themselves. In any case, according to a number of independent observers we spoke to in Kashmir, Pakistan doesn't have a consistent policy on Kashmir, and hence cannot always be relied upon for support. Nevertheless, internationally, Pakistan is the only state in the world the Kashmiris can count on to raise their issue in international forums. In protests, the Kashmiri youth take Pakistan's name only to provoke India.

Yet, beyond shouting pro-Pakistan slogans during the protests, there is a re-emergence of pro-Pakistan sentiment among the youth as well as a marked Islamization (increasing invocation of the Quran) of the resistance movement. A lot of infiltration of militants has also been happening, all highly trained and all well-educated. Support to the militants among the civilian population is also increasing, as witnessed in recent incidents where the local residents put themselves between the army and a militant targeted for capture. Following a call from the Kashmiri militants, there have been a number of cases of gun snatching from the police and the army, though not yet on a large scale, all of which points to a possible resurgence of armed militancy in the valley.

CHAPTER 2

Is KASHMIR UNDER MILITARY OCCUPATION?

A major controversy and debate exists as to whether Kashmir is under 'military occupation'. During the visit, the team repeatedly heard many Kashmiri voices using the term 'occupation' for describing the widespread presence of Indian armed forces throughout the valley. In contrast, others used terms like 'militarisation' and 'military domination'. The differences are not merely semantic, but highlight fundamental differences in the way we understand the conflict raging in Kashmir. Just as much as there will be strong reaction in mainland India to the articulation that Kashmir is an 'occupied' territory, there is a strong sentiment amongst many sections in the Kashmir valley, that Indian military is an "occupying force" and resentment that both media as also most human rights groups themselves are not willing to discuss or acknowledge this. We feel that this issue requires discussion and cannot be brushed aside as irrelevant or silenced using nationalistic jingoism. To enable a more informed discussion on this issue, we examine below the key features of international law regarding 'military occupation'.

'Occupation', in international jurisprudence, is a legal term signifying hostile military rule against the wishes of the people, denoting a split between the occupying force and the popular resistance to it [See Article 42 of the Hague Regulations⁵, Articles 2 and 47 of the Fourth Geneva Convention⁶ and Article 1, para 3 and 4 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International

5 Annex to the Convention (IV): Regulations Respecting the Laws and Customs of War on Land – Section III : Military authority over the territory of the hostile state – Regulations: Art. 42.

Art. 42. Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

(Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October, 1907.)

6 Geneva Convention (IV) : Relative to the Protection of Civilian Persons in time of War of 12 August, 1949:

ART. 2. - In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof. ...

ART. 47. - Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Armed Conflicts (Protocol I), 8 June 1977⁷]. (For a detailed description of the issue, see 'Occupation under International Law in the Context of Kashmir: A Note' in the Appendix)

Given the extent and scale of army atrocities on the civilian population in Kashmir, it is clear that the atrocities are not simply excesses consequent upon putting down civilian unrest but a systematic attempt to subjugate the entire civilian population by breaking their will to resist and ensuring that they submit to its force in daily life. In this sense, the Indian army functions as an occupying force in Kashmir, a *force majeure* that controls all aspects of civilian life in the valley, including education, health, and economic activity.

Two policy statements by the Indian security establishment serve as a template for the nature and design of Indian military occupation in Kashmir. In Dec. 2006, the Indian army released a document, *Doctrine for Sub Conventional Warfare*⁸, which says that "...the military operations should aim firstly, at 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....The endeavor should be to bring about a realization that fighting the government is a 'no win' situation and that their anti-government stance will only delay the return of peace and normalcy. Therefore, distancing from the terrorists is in their own interest and the only plausible course of action. However, the manifestation of such a realization can take from a couple of years to decades as attitudes take time to form and to change".

The bureaucratic language of the document should not obfuscate the brutal intent of euphemistic phrases such as 'neutralizing all hostile elements' and 'transforming will and attitudes', and 'no-win situation', denoting political ends that are to be achieved through encounters, custodial killings, staged crackdowns, torture and arbitrary detentions. Underlying this document is a dogged refusal to admit that the protests are a spontaneous uprising by the entire civil population, and not simply orchestrated by the separatists or Pakistan.

7 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,

Article 1 :- General Principles and Scope of Application

...

a. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 [Link] common to those Conventions.
b. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

⁸ Available here: - <http://indianstrategicknowledgeonline.com/web/doctrine%20sub%20conv%20w.pdf>

A more recent formulation of this approach emerges in a speech made by the current National Security Adviser Ajit Doval in 2010, in which he said: “Don’t overreact, don’t give in, don’t follow appeasement, it [the crisis] will pass off. It looks big in the midst of it, they cannot sustain it beyond a point and even if they do there is a price that they have to pay.” The Modi regime’s violent crackdown in the valley stems from this sense of complacency that the people will finally acquiesce in the collective punishment meted out to them and accept assimilation with India.⁹ Events since July 8 show that the Indian state is in a state of denial about the intensity of people’s anger and their desperate and single-minded resolve to fight their way out of repression. We were told by observers in Kashmir that people’s resistance to army occupation has become a civil disobedience, a mass-based militancy whose purpose is to create conditions (through staging daily stone pelting demonstrations and attacks on Indian armed forces and army installations—called *Sanghbazi*, which is an expression of the people’s rage at the structure of state violence) that show to the world that the Kashmir issue remains unresolved. They know that stone pelting won’t take them anywhere with the Indian authorities, yet they want to register their outrage as well as their frustration. It is a rural and youth uprising, backed by popular support, different from the armed uprising by militant organizations, with significant support from the Pakistan government, of the 1990’s against India. Collaterally, support to armed militants is also increasing.

The question arises: What are the structures put in place by the army that instrumentalize this occupation? They can be broadly termed as

- a. Structures of Oppression, and
- b. Structures of Control

These structures are unique to Kashmir, not to be found in mainland India. We can take them up one by one.

1. Structures of Oppression

As pointed out in the previous section, since Burhan Wani’s killing on July 8, the army has been brutally and systematically carrying out violence on a massive scale, affecting all sections of the population, irrespective of age, gender, community and location. As we observed during our visit, the indiscriminate use of pellet guns and pepper gas is massive and shows a deliberate intent to maim and kill, carrying out murderous attacks on all sections of the population—children, women, youth and the old, students and peasants,

⁹ <http://www.hindustantimes.com/analysis/narendra-modi-is-implementing-the-doval-doctrine-in-kashmir/story-kGxkz2WDo8bax2R4uKmZIP.html>

everyone being a legitimate target for the army--as a means of delivering collective punishment, designed to shock and awe (the telling images of *Qayamat* and Jallianwala Bagh convey this feeling). (The Jammu and Kashmir Bar Association has filed cases about the use of pepper gas by the army before SHRC and the courts, but the cases were thrown out by the courts.)^{10 11}

This organized violence, which especially targets youth, goes back to the 1980's. Yasin Malik, Shakeel Bakshi, Javed Mir and others (then youngsters not belonging to any political group), who were involved in stone pelting, were caught and brutally tortured, and hence they took up the gun, and became leaders of the Kashmir resistance movement. The youth nowadays are aware that the same fate awaits them, and are acting radically. However, this radicalization doesn't bother the state, which is used to this language. The state condemns it publicly, but it has invested in this radical violence by provoking it. In fact, police are reported to be extorting money from those whom they suspect or accuse of pelting stones¹². On the contrary, the Indian state has put in place a system of incentivising impunity in the form of monetary rewards and 'gallantry awards' as well as out of turn promotions, supposedly for the killing of 'militants', but really to protect and reward individuals implicated in serious human rights violations. The latest instance of this policy is the award given to Major Gogoi for tying up a Kashmiri civilian to his jeep and taking him across many villages.¹³

The other face of this organized repression is the use of *The Jammu and Kashmir Public Safety Act (PSA)*, a preventive detention law in force since 1978 that provides for administrative detention in police and army custody without charge or trial, often for prolonged periods of time. Arbitrary and wide ranging in their application, preventive detention laws have been used since the 1950s when Sheikh Abdullah was detained for several years by the central government under Nehru. (Sheikh Abdullah was dismissed as a Prime Minister on 8 August, 1953, and was arrested on conspiracy charges and imprisoned for 11 years.) The system of administrative detention, which Justices D. Desai and P. Bhagwati in *Jaya Mala v Home Secretary, Government of J&K*, AIR 1982 SC 1297 described as 'a lawless law,' has been used in Jammu and Kashmir to circumvent the regular criminal justice system, which prescribes due procedures and rules of evidence which are likely to lead to the quashing of the detention order. Since July 8, 2016, 400-500 people have reportedly been detained under PSA and, overall, 5000 have been arrested. According to the Amnesty Report, *A Lawless Law*, the number of persons in administrative detention in

¹⁰ <http://www.hindustantimes.com/india-news/j-k-hc-refuses-to-ban-pellet-guns-justifies-force-used-in-volatile-situations/story-LFBGxQncTOTaQT4wjfmZsM.html>

¹¹ Judgment of Jammu and Kashmir High Court – Srinagar Bench - <https://indiankanoon.org/doc/129842272/>

¹² <http://www.firstpost.com/india/extortion-a-major-cause-for-youth-alienation-in-kashmir-rears-its-ugly-head-again-2971996.html>

¹³ <https://scroll.in/latest/827609/jammu-and-kashmir-police-tops-gallantry-medal-list-with-32-of-100-awards>

the last 2 decades has been estimated to be anywhere between 8000 and 20000. This number is reported to be 14 times higher than the national average; conversely, the rates of conviction under detention laws in Jammu and Kashmir are many times lower than elsewhere because of the manifest failure of the state to substantiate the allegations made. A typical example is the detention order passed against Imitiaz Ahmad Sheikh, a businessman selling ready-made garments (see the section on the incidents earlier in this report). The charge sheet reads as under:

Charges: Prime miscreant; disturbing order; threw stones and instigated others; ended normal life in 2010 when he came in contact with LeT cadre, and joined LeT, became collaborator, transported illegal weapons at the instance of LeT; at present implementing secessionist programme; instigating boys to throw stones; an influential ant-national element; confining people against their will.

The charges are unsubstantiated and so unspecific (no details of names, date, time and place) that are quite likely to be quashed under normal criminal law. In fact, the real intent of the PSA is to secure detention of individuals such as political activists, including journalists, human rights activists and lawyers, and keep them 'out of circulation' in and out of prison for prolonged periods of time. Post-July 8 unrest, the PSA has been especially used against youth engaged in protest and stone pelting, many of whom are juveniles under 18, and even children, who are taken into police and army custody, and lodged with adult prisoners, in total violation of Art. 37(c) of the UN Convention on the Rights of the Child, Articles 10(2)(b) & 10(3) of the International Covenant on Civil and Political Rights, Rules 13.4 and 26.3 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and Rule 8(d) of the UN Standard Minimum Rules for the Treatment of Prisoners¹⁴. In fact, most of these boys are detained not for involvement in armed violence but after being labelled as 'anti-national' solely because they support the cause of Kashmiri

¹⁴ **Convention on the Rights of the Child**

Article 37 - States Parties shall ensure that: ...(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

International Covenant on Civil and Political Rights Article 10

2 (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Azaadi. Advocate Mir Shafaqaat told us: 'All these cases of stone pelting can be tried under normal law. Why try them under PSA? Obviously, the intent is to detain them indefinitely, so that they can be termed history sheeters. This can only result in pushing them to taking up arms.' This happened in the case of Imtiaz Ahmad Sheikh mentioned above, who had been arrested once earlier in 2010 during an incident of stone pelting when he was in school. He was rearrested on Sept 2016 under PSA without any provocation so that he could now be termed a 'history sheeteer.' (One of the boys in Srinagar we spoke to told us: 'In so many houses here and especially in rural areas, PSA "awards" are given liberally to boys.') Even when the High Court orders the release of the detainees, the individual is re-detained under fresh criminal charges, on new grounds in order to ensure their continued detention. Repeat detention orders, revolving door cases, and stock FIRs--these features mark the implementation of what the UN Special Rapporteur on torture and other forms of punishment has rightly called an 'informal criminal justice system in which detainees are denied rights that they would normally have in the ordinary judicial system.' The PSA also provides for impunity from prosecution for officials operating under it.

The PSA, similar to other preventive detention laws elsewhere, provides for two safeguard mechanisms:

1. A Screening Committee made up of government officials, the police, and army and intelligence officials whose deliberations are not open to scrutiny; and
2. An Advisory Board, headed by a sitting or former judge of the High Court, that examines the case only in the initial stage of detention, and its decision is not open to appeal.

We were told that the dossier about PSA suspects is prepared by IB and other central armed forces and the Screening Committee merely okays it. Mir Shafaqat Hussain, who has taken up a large number of PSA cases in J &K, has said: 'The Advisory Board is an eyewash. Out of 100 cases, maybe in one or two cases, they may recommend revocation of the detention order.' While similar charges are made elsewhere in India regarding the low number of cases of preventive detention orders revoked by Advisory Boards, what makes use of PSA in Kashmir stand apart, is the sheer scale of people detained.

It has been reported that the detainees under PSA have been subjected to extensive human rights violations, such as incommunicado detention, torture and other forms of violent methods to obtain confessions and other evidence, especially when the detainees are taken out of jail to interrogation centres for 'unofficial interrogation.' The International Centre of Red Cross during its visits to detention centres found systematic prisoner abuse. Further, according to advocate Mir Shafaqat, the PSA detainees are often lodged in the Jammu region, making it very difficult and expensive for families to visit them. This is in violation of High Court orders that they should be held close to their place of residence.

Omnipresence of Indian armed forces is another structure of violence that marks military occupation in Kashmir. During our visit, we observed camps at the entrance of most towns and villages. There are 671 camps run by CRPF, RR, and J&K Police. From these camps, the Indian armed forces conduct daily cordon and search operations (called 'Area Domination exercises'), impose curfews without prior warning, and undertake surveillance and regulation of movements of the local population in neighborhoods, questioning residents and intimidating them physically. The army camps function as a structure of surveillance and control, placing curbs on and intruding into every aspect of civilian life—mobility, social interaction, religious assembly, trade and agriculture, education, health and medical care, and so on. As brought out in the Report of International People's Tribunal on Human Rights and Justice in Kashmir (IPTK), *Militarization with Impunity: A Brief on Rape and Murder in Shopian, Kashmir* (2009), women and children across Kashmir have been subjected to physical and sexualized violence in these forced encounters with the Indian armed forces. Due to this prolonged 'militarization with impunity', a fear, mixed with detestation, and mistrust of the military is deeply embedded in the psyche of the people.

Militarization: The structures of systematic violence described above need to be seen against the background of the continuing state of militarization of the Kashmir valley. Kashmir has been recognized as one of the world's most militarized regions in the world. Up to 750,000 Indian military and paramilitary are stationed in Kashmir, and It has been estimated that “the Indian troops-to-Kashmiri people ratio is the largest soldiers-to-civilians ratio in the world”, working out (roughly) to one for every 7 civilians. Presence of militants is the official reason given for this militarization, but by the government's own estimates, the number of active militants is presently below 500. Militarization is characterized by a system of extrajudicial killings, enforced disappearances, custodial torture, and disproportionate use of physical force on civilians. It is justified as 'an internal matter' necessary in dealing with 'anti-national elements' in Kashmir, including civilian resistance which is portrayed as terrorism. There is a complete absence of protocols regarding accountability of armed forces as well as treatment of unarmed militancy and civil disobedience.

A host of security legislations, including AFSPA 1958, J&K PSA 1978, Disturbed Areas Act 1976, and so on, provide a structure of impunity to the Indian armed forces and protect them against prosecution. Section 197 of J&K Cr.PC of Svt1989 (1933 AD) also protects public servants those who have allegedly committed offences while undertaking official duty. The state government doesn't have the authority to proceed against armed and paramilitary forces, without permission from the central government. Even when the state government declares its intent to prosecute army personnel and approaches the central government, the Home Ministry routinely withholds consent. Victims of violence by the Indian armed forces have repeatedly approached the police and courts for redress, but the

police often disregard complaints, refuse to file FIRs and undertake investigations, and even threaten them with another PSA case. The International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir [IPTK] brought out a landmark report in 2012, entitled *Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir*, which portrayed what it called 'an entrenched culture of impunity in Kashmir.' The report noted an overwhelming reluctance to investigate or prosecute armed forces for human rights violations or bring the perpetrators to justice. According to the report, the judiciary has allowed itself to be subservient to the power and will of the executive. What results is total impunity for the army—military, political, and moral impunity, often with tacit support from sections of Indian public opinion, including the Indian media—an army brigadier is reported to have said in private conversation: 'The Indian armed forces act on the assumption that they have 4 wings: the Army, the Navy, the Air force, and the Media'. The Indian state has learnt the lessons from Kashmir and is adept at using the media to demonize its targets.

2. Structures of control

The structures of violence mentioned above also function as structures of control in subjugating the civilian population. In addition, the Indian army has established certain structures that control governance in the state, one that may be called a new style of governance in place of democracy. To begin with, the Indian army has over the years usurped all decision-making powers from the state government, the local administration, and the judiciary. As pointed out earlier, law and order in the state is entirely under army control, bypassing the civilian administration. Thus, decisions of the Joint Command Committee, comprising officials of the state government, which is supposed to decide PSA cases, are overruled by the army, which is the final arbiter in framing cases against civilians, and prosecuting them. In case of army atrocities, the Home Ministry routinely rejects requests from state government and the J & K police seeking sanction for prosecution of army personnel, and the military (i.e., the IB, and other intelligence agencies) and the central government (i.e., the Home Ministry) decide which judicial orders are to be respected and which ignored.

In addition to these established structures of army control, a new interface has been put in place between the army and the political establishment. One prominent observer in Kashmir we interviewed commented:

Since 1989, the entire project of militarization has been directed towards establishing a new structure of governance. This involves the army working with the Kashmiri political establishment in profiling the entire Kashmir people in a manipulative and intimidating way. A new instrument has been fashioned for this

purpose: for example, a suspect is identified by the military, tortured, and then a politician (either from the right or the left) is brought in to stage a protest, expressing sympathy for the victim, reaping political dividends and winning some political space. The security establishment props up such political groups.

The contemptuous rejection of Mehbooba's government since July 2016 shows that people in Kashmir have begun to understand this structurally, as the structural aspect of this new instrument of governance. They see that every decision is taken with a view to controlling the population--through both the ballot and the bullet.

Apart from propping up local political parties, other structures of control used by the Indian security establishment that have been well documented include using Kashmiri surrendered militants to act as Ikhwanis against Kashmiri militants and Kashmiri population, and communalizing strategies used to change demography to accentuate the Muslim-Hindu divide in the region.¹⁵

Viewed from the perspective of international law, in its military occupation of Kashmir, India has flouted many of its international legal and human rights obligations. To begin with, the system of administrative detention of J&K PSA and the manner in which it has been deployed in Kashmir runs counter to the recommendation of the UN Group on Arbitrary Detention made in 2003 that 'administrative detention is not used to repress peaceful demonstrations, the dissemination of information, or the exercise of opinion and expression.' Similarly, the UN Committee against Torture (CAT) has held that giving immunity to Indian armed forces to use force and detaining persons indefinitely without charge constitute a violation of the ICCPR and its Protocols. The International Committee of Red Cross, as pointed out earlier, in its visit to detention centres, found that there was systematic abuse and that the government of India condoned torture. This is expressly prohibited under Article 7 of Convention against Torture. Though it has been a signatory since 1997, the Indian government has not yet ratified the Convention Against Torture.

¹⁵ This issue of demographic change recently came to the fore in the uproar in the Valley over the BJP's attempt to abrogate Article 35A of the Constitution which bars Indian citizens from owning property, settling in Kashmir and taking employment in the state. There have been longstanding fears among Kashmiri leaders that in establishing colonies exclusively for Kashmiri Pandits and ex-servicemen in Kashmir, the central government aims to alter the demographics of the Kashmir region. This is a sensitive issue because it bears on the contentious subjects of land and the identity, enmeshed with the political conflict over the state. These fears have been heightened by senior BJP leaders like Tarun Vijay and Subramanian Swamy who had called for undoing the "cleansing" of the state of Kashmiri Pandits by "sending one million ex-servicemen and families into the Kashmir Valley for re-settlement". (See: <http://www.tehelka.com/2016/07/why-sainik-pandit-colonies-spark-concern-in-kashmir/> and <http://www.epw.in/journal/2017/39/commentary/failing-kashmiris-their-article-faith.html>)

More seriously, the Indian army's record of extra-judicial killings and other forms of violence against the civilian population comes under the ambit of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968), to which India is a signatory since 1991. Crimes against humanity include illegal and long detentions, perpetration of torture in detention camps and interrogation centres, extra-judicial execution, custodial brutality and deaths, enforced disappearances and unknown and mass graves. Further, though India does not term its militarization project as 'armed rule', in conditions prevailing in Kashmir, its military occupation would be characterized as being under 'the authority of the hostile army' and would come under the ambit of under Article 42 of the Hague Convention (1907), which defines modalities of war and war crimes.

India does not recognize itself to be at war in Kashmir, which it considers an integral part of the Indian dominion. It justifies its militarization as an 'internal matter,' necessary in dealing with 'anti-national elements' as well as civilian resistance, which is portrayed as terrorism. In fact, militarization in Kashmir follows the logic of what Giorgio Agamben terms 'the state of exception' whereby the state is able to transcend the rule of law in the name of a common good, i.e., 'preserving the integrity of the Indian station'. Following the logic of the state of exception, the Indian state has authorized an unusual extension of power that becomes a new paradigm of government. It enables the military (a state unto itself, so to speak) to exercise sovereign power over its subjects abandoning them to 'bare life', not covered by any legal or civil rights. All the functions entrusted to the civilian authority for maintaining law and order have seamlessly passed to the military which exercises exclusive executive power. This state of exception is not to be confused with the state of emergency where certain basic rights are temporarily suspended, but rather an ambiguous zone where a legally constituted space, namely a host of preventive detention and other criminal legislation, allows for the rule of law to be indefinitely suspended, for a certain category of people, here the civilian population of Kashmir, who refuse to be integrated with the political system of the Indian state. For Agamben, Guantanamo Bay exemplifies the modern state of exception.

CHAPTER 3

THE KASHMIR ISSUE IS A POLITICAL AND HUMAN RIGHTS ISSUE, NOT A LAW AND ORDER PROBLEM

Indian civil society groups have been visiting the Kashmir valley since the unrest began in the 1990's (and even earlier), and have diligently brought out glaring human rights violations and abuse of law; reported on the atrocities committed by the army on the civilian population; commented on the mood of a growing alienation of the people following army repression; and have called for remediation and redress of popular grievances.

Yet, when our team visited the valley in Sept-Oct, we were struck by the wide spread anger, and hostility, especially among youth, directed at Indian civil society for what they perceived as indifference towards the sufferings of the Kashmiri people. Most of the people we talked to felt that the Indian media was presenting a jaundiced view of Kashmir. Instead of focusing on army atrocities as well as the depth of popular alienation in the valley, the media, especially TV channels, presented the issue as a straight fight between the Indian army and Pakistan-sponsored terrorists attempting to take over Kashmir. There was a common feeling amongst many the team talked to that the Indian media by and large was failing to act independently and was actually acting like a stooge of the army and the central government. Consequently, their reportage was not only spreading wrong information of what was happening in the valley but also contributing to spreading poison about Kashmir amongst the larger Indian population.

Equally, many (though not all) of the people we spoke to were sceptical, if not dismissive, of visiting Indian human rights teams that met Kashmiri people and noted their grievances, but seemed unable or unwilling to take up their cause in India and bring about a change in the policy of oppression by the Indian state. They cited the repeated failure of interlocutors from India, including political parties, to bring about a change in the situation. Human rights groups, including the PUCL, have repeatedly urged the victims and their families to file charges against atrocities and seek prosecution of the perpetrators and have offered legal assistance, but most victims were dismissive of the suggestion to file complaints or seek reparation or compensation, saying it was futile to seek justice in Indian courts. ('Who do we file an FIR against—against all of India?' was a scornful comment made to a visiting HR team.) The Kashmiri perception of civil rights groups from India is summed up by Parvez Imroz, the founder of JKCCS and one of the most prominent human rights defenders in Kashmir, when he spoke to us during our visit:

You need to address the sources and causes of the Kashmir crisis, which human rights groups from India don't do. It is more than a human rights violation. They don't take a position on the political issue.

Yet, he also noted and highlighted the vital role of Indian civil society in addressing the Kashmir crisis:

The time has come for Indian civil society to take the lead, despite facing attacks from RSS. Indian human rights activists matter the most to us, since they are conscientious objectors who have the audacity to speak the truth about Kashmir.

There's a recognition here that only Indian civil society can help the people of Kashmir, not any other country.

The Kashmiri negative perceptions of Indian civil society are a response to the dominant discourses on Kashmir prevailing in India. Most Kashmiris frequently accuse Indians of seeing the Kashmir issue entirely through the lens of Pakistan, projected as a sponsor of terrorism. Many Kashmiris asked: "Why should we be held responsible for Pakistan's terror policy?" They insist that Kashmiri militants are not instigated by Pakistan and it's the oppressive violence of the army that is driving Kashmiri youth to take to violent struggle; and that it's an entirely people's struggle. This refusal to be identified with Pakistan's agenda shows that many sections of the Kashmiris are able to keep their political interests apart from that of Pakistan, even while considering the latter as a useful ally.

The dominant discourse on Kashmir in Indian media, which shows mainstream India's disconnect with Kashmiri reality, is derived from and fixated on Kashmir being an integral part of India and with the issue of integration with India. In the debates on Kashmir in the Indian media, any consideration of the political aspects of the problem is usually deflected by harping on the threat of Pakistan's terrorism or is set aside by suggesting that the question has been solved by virtue of instrument of accession signed by the Dogra King, J&K Constitution, Article 370 of Indian Constitution, and elections since 1947 with the full participation of Kashmiri population. In recent years, it is impossible to even initiate an intellectual discussion about the various contested aspects of the Kashmir issue ranging from the issue of accession to the demands of Kashmiri youth for azaadi, without such discussions being labelled as seditious, anti-national, unpatriotic and supporters of extremism or terrorism. The contours of the debate are set around words like 'most dangerous zone', 'nuclear flashpoint', 'imbroglio', 'Islamization', 'jihad', 'communal violence', 'infrastructure growth and development' and seldom on issues raised by many Kashmiris during discussions with them in the Valley. This discourse deflects Indian public opinion away from the Kashmiri discourse of demanding a political resolution of the Kashmir conflict, and legitimises the doctrine of the Indian security establishment that sees civilian resistance as terrorist activity that needs to be put down in order that Kashmir is fully integrated into the Indian national identity and territory. A much more damaging

consequence of the largely one-sided media coverage is the disinformation which has spread widely amongst Indian civil society about the actual issues underlying the Kashmir conflict and tending to reduce the issue to a simplistic notion of national security of India being affected by Pakistan meddling in the Kashmir issue to keep the region in perpetual unrest.

With the coming of Modi, the history of Kashmir is now being framed by Hindu communal nationalism in terms of the killings of Pandits, the beef issue, and the Pandit-Muslim divide in Kashmir region. This polarizing communal narrative from India is trying to supplant an indigenous Kashmiri narrative of a people's long-standing struggle against oppression, a secular and pluralist struggle for independence waged by Hindus and Muslims alike, from 1930 onwards (some would even say, going back to 400 years of Kashmiri resistance to foreign rule in Kashmir), to the uprising in 1946 during the much-hated Dogra rule (resulting in a massacre of close to half a million to one million Muslims in Jammu), to the massive killings of human rights defenders (Hindus as well as Muslims) in the 1990s, and so on. This indigenous narrative is deeply embedded in the consciousness of the people that finds its expression in funeral marches, martyrs graveyards serving as revered memorial sites (such as the one at Khwaja Bazaar, Srinagar), memorial days (e.g., July 13 as Martyrs Day), chants, protest songs and associated activities (e.g., rap music, *ragda de* ('Kick out India'), dancing, sloganeering, wall graffiti etc.)—all these sites, sounds, chants, calendar days, and so on, capture and keep alive the memory and history of a people's struggle for independence.

Seen thus, Kashmir is not a law and order problem or a dispute between India and Pakistan but a political issue of respecting and recognising the historic aspirations of the people for self-governance and freedom, and their distinct political and cultural identity, which finds its expression in the widespread sentiment for *azaadi* alongwith the notion of 'kashmiriyat'..

It is not the purpose of this fact-finding report to propose a final solution to the Kashmir issue. Nevertheless, we can point out certain parameters within which such a process needs to take shape. To begin with, the Indian state has to recognize that the Kashmir issue can only be resolved through a political process of dialogue, a process that is people-centric, and not state-centric, involving all sections of Kashmiri civil society, such as student and labour unions, social and political movements, women's groups, and so on. While there have been reportedly 170 attempts at dialogue in Kashmir since 1952, they have been stymied by the Indian government's intransigent refusal to accept the fact that it is finally accountable to the people of Kashmir, and to enter into a meaningful engagement with the Kashmir's aspiration for self-governance.

For this engagement to commence, there are certain minimum yet important essential pre-conditions (non-negotiables, as it were) that have to be met:

1. Removal of Indian armed forces from civilian areas in order for civic normalcy to be restored

2. The complete abolition of a militarized system of rule in its entire panoply of the structures of oppression and the structures of control that we described above
3. Removing the prevailing state of impunity for the Indian armed forces and sanctioning prosecution for past and present atrocities and making them fully accountable to the rule of law, and
4. A comprehensive investigation by an independent commission into a range of human rights violations perpetrated by the Indian armed forces in the valley, such as extrajudicial executions, enforced disappearances, incidents of large-scale violence, including sexual violence, perpetrated on the civilian population, followed by prosecution of the guilty and restitution/reparation to the victims.

As we discovered during our visit, while there are several and competing narratives of self-governance among the people of Kashmir, there is a broad consensus in cessation of hostilities and violence, seeking peace and freedom, restoring democratic processes of choice and participation, and initiating a meaningful dialogue. From our limited engagement with Kashmir's civil society (political leaders, human rights activists, student unions, lawyers, and journalists), we came across at least 3 proposed solutions to the Kashmir issue that deserve serious consideration. We list them below:

A. The Hurriyat's 5-point proposal

The Hurriyat has issued a 5-point formula (in 2010?) for dialogue:

1. India should withdraw from its position that Kashmir is an integral part of India.
2. Complete demilitarization.
3. Release of political prisoners.
4. AFSPA/PSA should end.
5. Meaningful dialogue with Pakistan, including the Hurriyat.

B. Pandit leader Sanjay Tikkoo's proposal

In his meeting with us in October, 2017, Sanjay Tikkoo, businessman and leader, Kashmir Pandit Sagharsh Samiti, offered the following tentative proposal for a permanent solution:

1. Withdrawal of Indian forces from Indian-held Kashmir and of Pakistan forces from Pakistan-held Kashmir.
2. An interim period when officials from India and Pakistan will jointly administer the territory.

3. Elections to decide about the future of Kashmir (under UN supervision?)

C. JKCCS's proposal for a peaceful resolution of the Kashmir issue

In Feb. 2010, the JKCCS brought out an observational report, based on exhaustive data, entitled Peace and Processes of Violence, on the killings, disappearances, suicides etc. in J&K from 2002 to 2009. This report recommended a series of immediate measures to enable the people of Jammu and Kashmir to exercise their democratic right of self-determination in an environment free from fear, and to restore peace in the valley, thereby leading to a resolution of the long-pending Kashmir problem. The salient points of the recommendations are given below:

1. An immediate end to the hostilities against the people of Kashmir.
2. During the process of resolution, human rights must be protected, promoted, and respected, in the assessment of the people.
3. The resolution process needs to acknowledge the inalienable civil and political rights, including the right to life, of the people of J&K.
4. The Indian government must desist from holding hostage the right to life and security of the people.
5. The Indian government must put a complete end to its belligerent policies towards people, including the constriction of public dissent.
6. International conscience, represented by various institutions like the UN, EU, OIC and other humanitarian organizations, must intervene for effective lobbying and persuade the Indian state to commit itself to protect civil and political rights of J&K people today.

These proposals (and others) originate from different *loci*, and represent different political positions, but underlying them is a common recognition and insistence that self-determination is the only way to achieve a permanent solution and restore peace in the valley. The Indian government must allow the Kashmiri people to make their own choice about their future, and work with them towards a solution that respects their identity and aspirations, and reflects Kashmir's ethos and interests.

From the perspective of international law, the International Commission of Jurists visited Kashmir and in 1995 brought out a report *Human Rights in Kashmir*¹⁶, which went into the question of self-determination that lies at the heart of the human rights problem in Kashmir. The contours of the right of self-determination are often misunderstood and simply equated with independence. According to the Commission, the right of self-determination can be exercised in a number of ways, which may include (i) full

¹⁶ <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1995/01/India-human-righst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf>

independence, (ii) an association of a greater or a lesser degree with another State, or (III) integration into another State. As for secession, the report finds that it is not at present a generally accepted principle of international law, as India has argued in response to the ICCPR Covenants. Nevertheless, after a careful reading of the UN Resolutions, especially the 1970 Declaration of Self-determination and the 2 Covenants, ICCPR and ICESCR, the report determines that the principle of self-determination does apply to Jammu and Kashmir. The report argues that J&K acquired the right of self-determination by virtue of being an independent entity at the time of partition (1947), a right quite distinct from the right of secession from an established independent State. The ICJ's position provides a legal confirmation of the Kashmiri people's reiteration that their original right to govern themselves has been enshrined and guaranteed in international conventions and resolutions (which India is a party to) which India has repeatedly flouted. Subsequent events, such as the enactment of Article 370 in 1950, the Constituent Assembly (1951), the Simla Agreement (1972), the Kashmir Accord (1975), and periodical elections since then do not constitute, in the ICJ's opinion, a final abandonment of the right by the people of Kashmir. This is understandable since, as legal commentators like A.G.Noorani have pointed out, these developments initiated by the Indian government have steadily denuded whatever autonomy Kashmir had exercised at the time of partition. As for Article 370 of the Indian constitution, which is regarded by progressive sections of Indian public opinion as crucial to restoring Kashmir's autonomy, Gulzari Lal Nanda, the then Union Home Minister himself frankly admitted in the Lok Sabha in 1964: 'What happens is that only the shell is there. Article 370, whether you keep it or not, has been completely emptied of its content. Nothing has been left.'

Regarding the modalities of implementation, the ICJ report recommends that the different units of J&K (Kashmir, Jammu, and Ladakh) be allowed to exercise the right of self-determination separately, through a negotiated settlement ratified in a referendum. As the report argues, the heterogeneity of the State would make it very difficult to contemplate independence for the State as a whole within its 1947 boundaries. Arguably, both the Hindus of Jammu, fearing oppression by Kashmir, and the Buddhists of Ladakh, squeezed between Muslims to the west and Chinese-occupied Tibet to the east, would wish to remain under Indian protection. The referendum would include the choice of complete independence, or restoration of internal autonomy within the Indian dominion, or accession with either India or Pakistan. In the final analysis, it is the people of Jammu and Kashmir and Ladakh, from their respective regional locations, who will have to be the final arbiters about their future.

As the distinguished jurist Richard Falk has observed, self-determination of peoples is a concept "variable in content, resistant to generalisation, dependent on context and intensely contested". The principle can mean anything from autonomy to self-governance to secession. For the Kashmiri people, self-determination is bound up with ending the occupation of their land by the Indian army and the Indian state, and with their right to

make their own choice about their future without military involvement or state interference of either country. But for the Indians, the debate on whether Kashmiris have a Right of Self-determination is never clear, as there are always exceptions that qualify, or even negate, this principle: for the Indian nation state, it is combating Pakistan's cross-border terrorism; for right wingers, it is brainwashed and terrorist muslims driving away Hindu Pundits; for many centrists, it has to do with too much centre, too little federalism, and lack of development and industry; for many leftists, it has entirely to do with draconian laws and militarization.

Where does the Indian human rights discourse stand in this debate? K. Balagopal, the well-known Indian civil liberties activist, once remarked that in any human rights meeting on the North East or Kashmir, Indian civil libertarians invariably invoke the Indian constitution and its violations by the Indian state, in contrast to the activists from the 2 regions who invoke the ICCPR and ICESR. In other words, the engagement of Indian civil society with the Kashmir issue has at best been an engagement within the human rights norms developed at the national level. This limitation has meant that while Indian human rights groups such as the PUCL have been deeply critical of the abuses of human rights committed by the Indian armed forces in Kashmir, there is, as the ICJ Report remarks, 'an almost universal refusal to contemplate the possibility that Kashmiris may have a right to self-determination and should be allowed to exercise it.' For this reason, though it is recognised under international human rights law, and ratified by the Indian state and hence part of national law, the right of self-determination has not been the subject of debate or discussion within Indian civil society. This could be due to the fact that this right does not find explicit mention within the Indian constitutional framework. More importantly, it could be argued that Indian human rights discourse is premised on the nationalist idea of India as a unique secular and inclusive democracy, accommodating diversities of religion and community. However, this narrative of Indian exceptionalism has always had, as Pankaj Mishra points out, its exclusionary aspect, of which Kashmir is a prime example. Thus, while human rights groups have consistently supported universal, inalienable rights for refugees (Tibetans, Bangladeshis, Sri Lankan Tamils, Rohingya Muslims, etc.) and even the rights of LGBTQ people within the country and many others considered illegal by Indian penal statutes, they tend to draw a line when it comes to the applicability of an international human rights principle like self-determination to Kashmir.

A major objection to exercising the right of self-determination posed by Indian civil libertarians, especially in the context of Kashmir and the North East, is this: since it is an issue to be decided by the people voting as a whole, what will be the status of those within the unit of self-determination who did not vote for independence? Will the minorities within the unit be sacrificed at the altar of majority opinion? There are no straight answers to such questions – whether this is a permanent solution or will there be successive demands in future, will this right protect rights of minorities in Kashmir tomorrow, will it be a democratic and tolerant society, etc. (When the question of possible successive self-

determinations in independent Kashmir was put to Parvez Imroz in a Bangalore conference, he conceded that there might be such demands in independent Kashmir, and they would have to be accepted as legitimate political demands.) These are questions for the Kashmiris to raise and debate among themselves, not for us to pre-judge them and pose the questions as criteria for pre-exercising their right of self-determination.

An answer to those who question about the status of minorities in a post-independent state is offered by 3 Articles in the ICCPR, which clearly specify that international human rights law does not confer the freedom to ethnically cleanse, torture or otherwise violate the rights of those minorities who may not have voted for independence. This understanding flows from a reading of three closely related articles of the ICCPR which limit the right to self-determination:

- Under Article 2, each signatory state will undertake to ensure to all individuals within its territory the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Under Article 18, everyone shall have the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice, and freedom to manifest his religion or belief in worship, observance, practice and teaching.
- Under Article 27, in those States in which ethnic, religious or linguistic minorities exist, persons from such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The articles in the ICCPR are further supplemented by the Declaration on Minority rights, which in Article 1 notes that States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities and encourage conditions for the promotion of that identity, and shall adopt appropriate legislative and other measures to achieve those ends.

Thus, it should be clearly understood that self-determination is not a free standing right that is invariably equal to independence. In the context of independence, autonomy, or any other via-media, this is a right which is bound by the obligations of international human rights law, including the obligation not to disappear opponents, obligation not to torture, and the obligation to positively respect the rights of minorities. In the context of independence, it will be incumbent on the international community to ensure that a Constitution is drafted which limits the power of the state by a Bill of Rights which guarantees the protection of minority rights.

Conclusion: What this fact finding mission has revealed in no uncertain terms is the need to revisit the boundaries and contours of Indian human rights jurisprudence. Unless and until the Indian human rights community is prepared to engage more deeply with international human rights law, it might very well be unable to grasp the real nature of what is at stake in Kashmir.

The evidence that we have collected shows that there is a deep and abiding resentment at the brutality of the Indian state. What emerges from the evidence is that underlying the pattern of human rights abuses, including mass disappearances, sexual violence by para state entities, killings, and mass torture is a root cause which has to be understood.

The root cause is the cry for *azadi* which takes the legal form of the right to govern themselves by themselves – irrespective of whether it is called self-autonomy, self-governance or self-determination. If self-determination is the key issue, it's important for Indian civil society to understand its contours and its modalities and to at least begin discussions on the subject so as to better understand the issue being raised by most Kashmiris.

CHAPTER 4

DEMANDS/RECOMMENDATIONS

Introduction: Considering the utter failure of Indian judicial and executive institutions to put an end to the pervasive and continuing human rights violations taking place all across Kashmir valley, it is the opinion of most Kashmiris that it is pointless to approach these institutions for redress and reparation. According to them, the Indian State simply cannot and will not deliver justice. Despite such overwhelming expression we nevertheless feel that the Indian civil society can and needs to make an intervention in the current situation, by prevailing upon existing institutions tasked with monitoring enforcement of the law to undertake investigations of abuses by its agencies in Kashmir and prevent further atrocities. At the same time, Indian civil society should also heed the opinion of Kashmiri civil society and people, and undertake to actively engage with international institutions for impartial investigation and judicial scrutiny of the record of the Indian state in Kashmir. While the demand for judicial scrutiny by outside institutions will undoubtedly provoke a huge reaction in India, it is a fact that given the long history of lack of accountability and failure to obtain justice through existing judicial and human rights institutions in India, many Kashmiris have been demanding access to and intervention of the UN Human Rights bodies and judicial institutions. It needs to be added that even though India is not a signatory to ICC, it is being accused of committing crimes against humanity in Kashmir, a situation in which only some organization from outside can conduct a fair and impartial investigation. Indian civil society should also support the demand for accountability and the ending of impunity enjoyed by state players and security agencies. Lastly, civil society should directly reach out to the Indian people in order to demand that the Indian state should restore democratic processes in the valley and establish a meaningful dialogue with the Kashmiri people.

Based on this understanding, our team proposes 2 sets of demands or recommendations: A. Interim Demands to deal with human rights violations in Kashmir, and B. Democratic Demands for restoration of democratic processes and resolution of the long-pending Kashmir problem.

A. Interim Demands

1. The Indian State Executive

- 1) Release of all prisoners detained under various preventive detention laws.
- 2) Withdrawal of Indian armed and paramilitary forces from civilian areas.
- 3) Prosecution of perpetrators of atrocities by Indian armed forces on the civilian population.

- 4) An immediate ban on the use of pellet guns and tear/pepper gas by Indian armed forces during civilian protests.
- 5) Repeal of PSA/AFSPA.
- 6) Subjection of armed forces to civilian courts forthwith.

2. National Human Rights Commission

- 1) Undertake comprehensive investigations of killings, enforced disappearances, sexual violence, including rape, and unlawful detention of people under preventive detention laws and other grave human rights violations.
- 2) Approach the courts to launch criminal prosecution against the perpetrators of violence in Kashmir.
- 3) Award compensation and reparation to the victims of violence.

B. Democratic Demands for restoration of democratic processes and resolution of the long-pending Kashmir problem.

1. Indian Civil Society

- 1) Build up consensus among Indian people to the effect that there is an urgent need to restore a democratic process of allowing Kashmiri people to freely discuss and achieve their democratic aspirations.
- 2) Have a sustained dialogue with mass organizations, including trade unions and social movements in India (Dalits, adivasis, religious and other minorities, communal harmony organizations) to sensitise them about the realities of militarisation and human rights violations in Kashmir as also about different discussions amongst various sections of Kashmiri society relating to diverse subjects like azaadi, self determination, occupation, Art 370, Art 35A and so on.
- 3) Launch a mass campaign against the denial of democracy in Kashmir by reaching out to people through public events and through the media.
- 4) Approach international institutions like the Human Rights Council, the International Court of Justice, Criminal Court, and other international commissions of human rights inquiry for undertaking an impartial investigation and judicial scrutiny of the record of the Indian state in Kashmir, and to aid and give full cooperation to their efforts at investigation.
- 5) Accept the role for PUCL and other Civil Society organizations to engage meaningfully with people in Jammu province as well as with all minority communities in the state of Jammu and Kashmir on the subject of the people's Right of Self-determination.

2. The Indian Media

- 1) Fair and impartial reporting of all stakeholder' s (state as well as non-state players, individuals and groups) voices, opinions and positions, in the Valley reflecting all shades of opinions on the Kashmir issue, to be presented to the national audience
- 2) Assert the primacy of the independence of the media to report freely and independently on all views on the Kashmir conflict, including views of pro-azaadi groups or those advocating autonomy, independence or self-determination and without pre-censorship imposed by state and security agencies. The media professionals and institutions need to be vigilant to oppose any attack or effort to stifle or silence opinions or views about excesses committed by the state as well as non-state parties, since condoning such a violation of the freedom of speech and expression further erodes the institutional responsibility of media organizations to Indian as well as the international community in the end.
- 3) Fair and impartial reporting on allegations of human rights violations by armed forces on Kashmir's population.
- 4) Impartial and dignified reporting of victims of human rights violations committed by non-state players from Jammu and Kashmir alike.
- 5) Fair and impartial probe and independent investigation into violations as highlighted/ reported by Indian human rights groups as well as Kashmiri civil and political society activists.
- 6) Solidarity and condemnation of any attack, or ban on Kashmiri journalists and print and/or electronic media by either state or non-state players.

3. The Indian Judiciary

- 1) The Constitutional Courts, having *constitutional powers* to take cognizance of fundamental rights violations, require to urgently intervene to check excesses committed by the Indian armed forces in Kashmir to ensure the supremacy of the Rule of Law.
- 2) The judicial institutions need to re-examine their role of not interfering when the State Human Rights Commission of Jammu and Kashmir has given findings on existence of unmarked and mass graves and called for DNA testing; has issued show-cause notices to army personnel for use of pellet guns and pepper gas in lethal capacity; or, has condemned army personnel for their role in allegations of mass rape. The silence of the Constitutional Courts in the face of such grave human rights violations has come as a shock to all those who believe in the institutions of Justice in India. Therefore the judicial institutions need to re-examine their role immediately, otherwise, they risk the complete loss of faith and legitimacy from people.

3) Despite the Constitutional Court's repeated guidelines in *Naga Peoples Movement of Human Rights v Union of India*, *Extra-Judicial Victims Family Association, Manipur v Union of India & Ors. And People's Union for Civil Liberties & Anr. V State of Maharashtra & Anr. on Extra-Judicial Killings or Fake Encounters*, the armed forces have always behaved with impunity and with contempt, and will continue to make a mockery of all such guidelines. If Constitutional Courts do not intervene to break the existing impunity for the armed forces of the country, the Fundamental Rights guarantees of the Constitution for the people, including, among others, the right of redressal from civilian courts in India, would remain, and continue to remain mere homilies on paper leading to loss of confidence amongst people about the fairness of the judicial process and the possibilities of obtaining justice.

4. The Indian State Executive

1) Recognise that the problem of Kashmir is a political problem which requires political solution acceptable to all sections of Kashmir society, and not a law and order problem.

2) Acknowledging that a lasting solution can be found only if there is an unconditional and sincere process of dialogue and discussion initiated with all stakeholders in Kashmir irrespective of their stated position on azaadi, independence or Self-determination.

3) Decriminalizing speech and expression and allowing for democratic processes for the people of Kashmir to express their views, including dissenting views.

4) To help generate a sense of confidence and detente that there is a sincere attempt to finding middle ground to start discussions, the government should immediately halt the policy of arresting youngsters under the dreaded J&K PSA or AFSPA and also release all young people arrested under PSA without any specific criminal charges against them or who have been arrested on suspicion and for preventive purposes.

5) Responding to political demands of the people of Kashmir, politically, democratically, justly, and fairly, in accordance with Constitutional mandates as also International Human Rights Law and Humanitarian Law, in current and all future conflicts in Kashmir, and by moving away from the current security syndrome.

APPENDIX A

Occupation under International Law in the Context of Kashmir: A Note for an Informed Discussion

Preface: An issue which always raises hackles in India when discussing Kashmir, is about whether it is at all appropriate or correct to use the term “occupation” to describe Indian armed forces in Kashmir. By and large, a major section of Indian civil society implicitly accepts Jammu and Kashmir as being an integral part of India and therefore there is no question about there being “Occupation” by the Indian armed forces in Kashmir. In sharp contrast, we found during our trip that the widespread opinion amongst most sections of Kashmir society largely describes Kashmir as “Our land” which has been forcibly taken away from them and which is occupied by Indian armed forces. The sharp cleavage of opinions apart, we feel that it is important to understand the scope of the international human rights law explanation on “occupation”. We present the following overview to facilitate better understanding and to initiate a more thorough discussion within the larger human rights community.

According to The Hague Regulations 1899 and 1907, an Occupation is considered to have occurred in the context of a war when authority over a territory of the enemy or another State/High Contracting Party (viz. a nation-state) has been established by a hostile army having a direct control with a command structure. The proliferation of several types of Occupation forced international law and international state practice to take notice, and hence 1949 Geneva Conventions IV as well as 1977 Additional Protocol I to 1949 Geneva Convention IV broadened the Law of Occupation to cover those Occupations as well those which did not originate because of a war, those that did not meet with military resistance, or even those where the control of the territory is done through indigenous governments. Such enlargement of the scope of the Law of Occupation happened through legal instruments, orders of Military Tribunals, and advisory opinions of International Court of Justice following unique type of Occupations by German forces over Czechoslovakia in 1939 and Denmark in 1940.

There have also been cases where before a new indigenous authority has been able fully to consolidate its position or get its statehood recognised, the territory has been invaded by a neighbour. As the Occupation is of a territory not recognized as a sovereign nation at the time, definitions provided in Hague Regulations alone were inadequate to address the same. The situation becomes even more complex with lengthy periods of Occupation when Occupying forces attempt to legalize their authority through treaty, agreement, etc. Several questions about the applicability of the Law of Occupation arise as to the rights of people within such Occupied territory. The applicability of the law of Occupation becomes even more complicated in cases where forces were invited or were seem to have been invited under duress. At stake here is a complex balancing act of

ensuring responsibility and accountability of the Occupying force and the rights of people within the Occupied territory. Situations like Indonesia's invasion of East Timor on 7 December, 1975 or Moroccan intervention in Western Sahara or Israeli occupation of Gaza and West Bank prompted changes in International law, and found expression in Geneva Conventions as well as in the Additional Protocol to Geneva Convention IV.

Based on the opinions of international community on the applicability of Law of Occupation as expressed in UN General Assembly Resolutions and advisory opinions issued by International Court of Justice in the cases of Western Sahara, Israel and East Timor, it can be argued that the term 'alien occupation' used in the 1977 Additional Protocol I to 1949 Geneva Conventions IV covers cases in which a High Contracting Party occupies territories of a State which is not a High Contracting Party, or territories with a controversial international status, and to establish that the population of such territory is fighting against the occupant in the exercise of their Right of Self-determination.

Many instances of internal conflicts are in fact disguised international armed conflicts since nations rarely declare war formally or accept terminology such as Occupation. However, the purport of the law of Occupation is to make the Occupying force accountable to international humanitarian law and not to go into the legality of the Occupation. As clarified in Article 4 of the 1977 Additional Protocol I to the 1949 Geneva Conventions IV, the legal status of the parties as well as of the territory in dispute does not get affected by the application of the said Convention or the Protocols. And, with longer periods under Occupation, the applicability of Geneva Conventions and Hague Regulations becomes even more unclear. Nonetheless, this has some political and legal implications by making the Occupying forces accountable and responsible, as far as the people within these territories are concerned who are seeking their rights, including their rights to freedom and independence and to choose their own future governance.

It is important therefore to highlight that underlying the declaration by Kashmiris that the Indian Government's presence in Kashmir is an Occupation is the argument that the Indian State has exercised an unconsented control over the Kashmir Territory on which it has no sovereign title. *(See chapter 3 of this report on the right to self-determination in the context of Kashmir.)* It is within this framework that this section attempts to understand both the position of international law on the subject as well as the factual matrix within which these statements are made by Kashmiris.

We must remember that at the time of signing of the Instrument of Accession by the former Dogra ruler of Jammu and Kashmir in 1947, the territory of Jammu and Kashmir was an independent princely state. The Instrument of Accession finds its origin in the Government of India Act, 1935, which enabled, afforded, and acknowledged the right of the rulers of the princely states to choose their dominion status, but, made no mention of the rights of people residing in such princely states. Later, Indian Independence Act, 1947 also accepted the right for a territory to accede to either Dominion. However, by that time there had been a considerable change in state practices as well as in international law, so that a people's Right of Self-determination had come to be accepted as a customary principle of international law. It is for this reason that the then Governor-General of India Lord Mountbatten, in a letter accepting the accession, indicated that the said accession would be settled by a reference to the people. The fundamental human rights argument since then has been that Kashmiris have been denied exercise of their right of self-determination as they have not been allowed to give their consent on the matter of sovereignty; hence, legitimacy of Indian rule over Kashmir is contested by the people of Kashmir. It is pertinent to mention that the people so identified here include people from both Indian-Occupied Kashmir as well as Pakistan-Occupied Kashmir.

The articulation and assertion that in Kashmir, the state rule is that of an Occupying force comes from many quarters. What the fact finding team has been able to delve into is the extent of this undeclared and non-recognized Indian Occupation and its impact on peoples' lives and rights, which has prompted Kashmiris to declare categorically that such a rule is not a rule of law, but that of an Occupying force. The contours of the Occupation of Kashmir by India are characterized by its brutal militarization of civilian life as much as by enactment of draconian laws, by both Indian law and policy makers and collaborator politicians from Jammu and Kashmir. Such laws, policies, and brutal actions of the military are, on the one hand, given legal sanction by the judicial arm of the Indian state on the one hand, and moral sanction by means of a manufacturing of consent obediently carried out by Indian media, on the other. In recent years the issue has become so clouded with emotional sentiments that rational discussion on this subject is virtually impossible in India. Equally, and in contrast, when speaking to people, especially politically articulate youngsters in the Kashmir Valley, it is difficult not to notice their intense resentment to the widespread militarisation of the Valley with ubiquitous armed checkpoints at very short intervals and armed patrolling severely restricting free movement of local people. This issue requires more open discussion across India and to begin with, a willingness to listen to the experiences of Kashmiris and empathise with their situation to start the process of building bridges with Kashmiri civil society.

APPENDIX B

NARRATIVES OF INCIDENTS

I The unrest in South Kashmir: Narratives of incidents in 1.Khrew; 2. Batingu 3. Churhat 4. Vessu 5. Batmaloo, Srinagar 6. Eidgah, Srinagar 7. Medical emergency in SMHS hospital (Pellet injury cases)

Khrew village, near Pampora: Crackdown by the army and the killing of Shabir Wali (Mangoo?)

Personal and Family details of Shabir Wali: Shabir Wali (30 years old), a lecturer in Amar Singh College, Jawahar Nagar, Srinagar. Wife Nuwaib, Sister Marratwali; his uncle Imtiaz Ali, marketing inspector, Horticulture Department; father Mohammed Mongoo Wali is a small farmer and farm worker; Shabir's mother died 25 years ago. Zahoor (26 yrs), brother of Shabir, worked as a driver.

On 17 Aug. 2016, late at night, a contingent of 50 Rashtriya Rifles regiment staged a crackdown in Shar-e-Shali area in Khrew village of about 1000 residents. According to the residents, this was different from a regular crackdown, where the Indian armed forces make the announcement, asking all men to come out, and then go inside and search and destroy the houses. Here, the soldiers first disconnected the electricity, plunging the village into darkness, demolished the gates of houses with the help of JCBs, and then marched in with flash lights and search lights, raided scores of houses and shops indiscriminately, breaking open locks, ransacking household belongings and breaking TVs and window panes. The entire crackdown operation lasted from 10.30 pm to 2.15 am.

As part of the operation, they seized about 40 youths, dragged them away to the bus stop chowk outside the village, and assaulted them systematically, each of the youths being beaten up by 15-20 soldiers with hammers and lathis embedded with nails, accusing them of having spread the news about the imminent raid as well as taking part in stone pelting. To quote one of the youths: 'on that night, we were four of us, and they came drunk. They beat us up as if we're not human beings.' (The announcement about the raid, it seems, was made not in this part of the village but in the next quarter, Sher-e-Ali B). While the youths were being taken away, the women in the household were wailing in protest and trying to protect the youth. But they were flung aside and some of the women were allegedly sexually assaulted. Mudassir, one of the youths who was being beaten (his arms have been fractured) while he was taken away, reported that his mother covered him while he had fallen to the floor, and the soldiers beat her severely.

Among the youths facing the ferocious assault was Shabir Wali (30 years old), a lecturer who was doing Ph.D. at a university in Gwalior, studying for the NET examination, and working as

a lecturer in Amar Singh College, Jawahar Nagar, Srinagar. He was pleading with the army—'I've done nothing wrong, but the jawans were saying, you people are all protesters, trouble makers; this is what you get. Shabir was struck with lathi blows on his waist and his thighs, which had 4 gaping wounds bleeding profusely. He was bleeding internally as well. All the while he kept saying that he was only studying in his room, and had done nothing wrong. According to one of his friends who was also being assaulted, Shabir was perhaps targeted because he was educated and conversant in English. Shabir kept saying he felt suffocated and couldn't breathe, but they didn't believe him till he finally succumbed to his injuries. He was taken to Pampore hospital near the village where he was pronounced dead. The army later came and offered compensation to Shabir's family, but they rejected it. It is reported that the army has also ordered a Court of Inquiry into the killing, but nobody expects anything to come of it.

Early on the morning of 18 Aug., the outraged residents of the village went to the Pampore police station and insisted on filing an FIR about Shabir's death. The police have filed a case under section 364 against C.O., Rashtriya Rifles, which states: 'Shabir was abducted at gunpoint, inflicted injuries, and died later due to injuries, causing death without any reason or legal case; trespassed into his and other houses. Also abducted were Fayaz Ahmad Wali, Gulzar Ahmad Mir, Abid Sheikh; attempted to murder others who are admitted in different hospitals.'

The team met Shabir's grieving family and spoke to Shabir's sister Marrat Wali and his uncle Imtiaz Ali. Shabir was married to Nuwaib, and his father Mohammed Mongoo Wali is a small farmer and farm worker; Shabir's mother died 25 years ago. Imtiaz Wali is a marketing inspector in the Horticulture Department, Srinagar. Among those injured in the assault was Zahoor (26 yrs), brother of Shabir, working as a driver. He has been taken to AIIMS, Delhi for surgery and treatment. Both his arms have been fractured, and a plate has been inserted into his arm. Zahoor, presumably, was spared from further violence because he was too young.

Another victim of the assault was the village elder who was beaten so badly that his knee was broken and he now uses a walking stick. He was bedridden for a month. He told the members of the team that the soldiers ransacked his house and his vehicle. He tried telling them that he wished them well, but they kept beating him.

How the residents view the incident: Later, our fact-finding team went around the village and spoke to a large number of residents who related their experiences and views of the incident. For them, the brutal army crackdown was like *Kayamat*, Doomsday. 'Even the dogs were silent.' They simply couldn't comprehend why the village was targeted by the army. After all, several villages in this area had taken part in processions and protests. There were

militants in this area earlier who had encounters with the army. But now there is no militancy. On the morning of the operation, there were rumours about the army's coming, but the residents remained in the village because they hadn't taken part in stone pelting protests. But the army beat up the residents even though someone else did it. During the crackdown, the army raided houses and picked up people randomly. For the villagers, it was not a security operation, but 'Operation Destruction,' (as the local media termed it). Such is their sense of fear is that many are absconding and are sleeping in other people's houses outside the village. After they lodged their FIR with the police, the army stated in a counter FIR that they were stone pelters. Now, many of the residents are afraid that they will be booked under PSA.

The residents were unanimous in their detestation and fear of the army. In their opinion, the Indian government was using its military might to silence the people of Kashmir. As one of the women in the village put it: 'We only know this fact--Hindustan is doing this to us. What did Shabir do? He was only a student, not a stone pelter. He was worth 10 stone pelters. Why was he murdered? The army is the scum of the earth.'

One of the youths who was assaulted by the army told us that among the soldiers there was a senior army officer who was reportedly supervising the whole operation. When the youths told him that they were innocent, he said he knew that they were innocent but the army wanted to teach them a lesson; if we don't hit you now, you'll continue to do stone pelting. Hence the residents view this operation as a collective punishment. To quote one of them, 'We don't have any problems with Indians, only with the Indian government and Indian "democracy", which means for us that if one person does something, someone else gets punished for it.' Since childhood, the youths have been witness to these repeated cycles of torture and violence. But, according to them, that had only strengthened their resolve to be *azaadi*.

Equally, many of the villagers we spoke to, especially the younger people, are scornful of Indian civil society and its ability to bring about any change. To quote one of the youths: 'There's no human rights in Kashmir, so who listens to human rights groups from India? What can they do? Leave us alone. Instead, human rights activists should take our case to the UN.' They also told us that immediately after the event, the Indian media came to the village to speak to the people, after which they announced on TV that the situation in the village was quite tense and disturbed and that the people of the village were very angry. After this, the media people (Zee TV's Sudhir was also there) boarded the army jeep and went back—which, the villagers told us, is proof enough of how the Indian media functions as an adjunct of the army.

According to a reporter we met, one day prior to the Khrew incident, another village, Ganderbal, was similarly raided and scores of houses were ransacked. The objective was the same: to create a feeling of terror, 'Kayamat' (Doomsday), among the people. Soibugh in

Budgam was another village that came under army attack. Paddy fields have been set on fire in Kanilvan and Khudwani.

--Shabir in Khrew was a well-known figure in the area, and could have been tortured to death as a lesson. It was reported that he'd made a speech earlier.

Pampore Police Station: Testimonies of 2 Police Officers

Manzur (designation not clear): There was stone pelting in the village during the day and at night. The people seized a military jeep, patrolling the area, having 4 soldiers, and threw stones and urinated on it. The stone pelting was intense, but the army showed forbearance and didn't take action. However, according to the residents, on 17 Aug., some boys outside the village had thrown stones at some army personnel on patrolling duty who were shooting pictures with a video camera. Later, at night, the army came. According to the police, the nature of injuries (on his legs, buttocks) were not sufficient to cause Shabir's death, which was due to heart failure. Shabir's wife is pregnant. More than 10 people from the village have been admitted to hospitals for bone injuries.

Shabir Ahmad, SHO: We routinely investigate crimes against women and others. In this case, we immediately filed an FIR (Complainant: Shabir's father) at 4.40 am on 18th under sections 156, 364, 302, 307, 309, 447, 472 of the RPC. No charge sheet has been filed since the Post Mortem report is not yet ready. S.I. Waseem Gul of PS Khrew Chowki is doing the investigation. In trying cases against the army, the investigating officer will conduct the case without looking at the identity of the accused. In this case, we've identified the commander of the RR as the primary accused, irrespective of who under his command carried out the assault. We are going to file a strong charge sheet. We take action on humanitarian grounds, not political grounds. This incident happened on 17-18 Aug, and we filed the FIR on 18th itself. Shabir and 3 others were brought here, Shabir was in a very bad condition, near death. We didn't declare him dead because the responsibility would be upon us in the Police Station, and we would have been subject to attack. Overall, the situation here is very bad, except in the jurisdiction of our PS. The police also filed a counter case under sections 177, 148, 427, 336 of the RPC on the basis of a complaint by Maj. Adjutant Ajit Kumar about stone pelting. The army camp is half a kilometre from the village.

There is a disproportionate use of force in the Kashmir valley. The police face tremendous difficulties. Stone pelting goes back to 1930s, but it has intensified only recently. It is a directionless protest, even the separatists are not involved. Stone pelting is the work of dogs and beasts. There are 4-5, up to 8, cases against stone pelters in our Police Station. Recently, near Pulwama, in the village of Kandizal, a sarpanch was killed by the militants.

Violence by the Indian armed forces: CRPF use pellets. J&K Police is working with CRPF on border security. Pellets are being extensively used by the police, but they are not handled properly by them.

--3 killings in Batmaloo, Srinagar: This high profile case went up to the Supreme Court, after the family sought investigation and exhumation of the body the second time. The allegation was that he was killed by the DySP. The Supreme Court ordered autopsy. (Incomplete)

--Investigation of Shabir's death is going on. In the case of the army, it takes a long time. When we file FIRs against the army, we have to get the consent of the Home Ministry, which is sitting on 162 such FIRs sent from Kashmir. Not a single application for prosecution has been sanctioned by the Ministry.

--The solution to the Kashmir problem is to restore Kashmir to the pre-1953 position. But stone pelting is no solution. Not a single maulvi from any madrasa is asking for Azaadi. The demand for azaadi comes from the educated class. We feel safe in India, a country of 20 crore Muslims. Why should we want Azaadi? The separatists are not interested in people's welfare, they are only fomenting this illegal movement of azaadi.

BATINGU: Killing of Yavir Mushtaq on 10 Sept.

Personal and Family Details: Yavir Mushtaq age? Brother Mherajuddin, Father Mushtaq, both farmers and farm workers; Mother Nargis, sister Seema, 2 brothers, Dawood 23 and Nasreen.

Background: Since July 8, the Hurriyat had called for daily protest marches in Batingu to RR HQ with the Azaadi banners prominently on display. The police would fire tear gas shells at the protesters, and the protesters would respond with regular stone pelting, and, and then everybody would go away. In an effort to quell the protests, the Indian armed forces were staging crackdowns in different areas of Batingu.

On 10 Sept. 2016, a huge force of (estimated by the residents to be about 6000) of the CRPF and SOG police were engaged in a crackdown in Gowhar village (?), and were busy raiding houses. One of the residents told our team that the police came into the area with a list of 85 suspects to arrest them. They showed the list to the residents and demanded that they trace the suspects. There was a people's barricade (mostly of tree branches) to stop the police from crossing over into the area. The barricade was finally cleared by a bulldozer (JCB) and at 11.45 am, the Indian armed forces moved in, breaking window panes, and ransacking vehicles outside houses and household belongings. One of the residents Mherajuddin heard the forces moving in and asked Yavir, who was playing carrom outside the house, to quickly move in. Then Mherajuddin went inside and hid in the house with his

family members. During the raid by the Indian armed forces, vehicles parked in Mherajuddin's front yard were attacked and damaged. Some electric transformers in the neighborhood were burnt down.

In the meanwhile, Yavir along with other boys fled the area into a nearby farm. Some stones were reportedly thrown at the forces. After things quietened down a bit, Yavir with his friend started returning to his house. Two policemen, who were hiding in the compound of a house nearby, grabbed Yavir as he walked past the compound, and as one of them held the boy, the other shot him point blank (firing into his stomach) and flung him on the road. Yavir's sister Rafiya Wani, neighbor or sister, saw this and rushed towards Yavir, but the forces assaulted her and tried to stop her. She spoke to her brother and asked him if he wanted water. He said no, and pointed to the wound on his waist. He became unconscious, and Rafiya cried out for help. In the meanwhile, Mherajuddin heard somebody shouting that a boy had been shot, and when he came and lifted the body, he found it was Yavir. Yavir's mother who had reached the scene was beaten up. Mherajuddin lifted Yavir's body and put it in a neighbor's car and started taking it to Anantnag hospital, the main hospital in south Kashmir. On the way, the car and its occupants came under fire by the SOG with a view to preventing the injured Yavir from being taken to the hospital. The boy who had found Yavir lying on the road and had alerted others was later taken to the police station and charged under PSA.

Yavir's dead body was returned after half an hour. (To avoid attack by the Indian armed forces, the ambulance carrying the body came back through the bye-pass road.) Doctors said if Yavir had been brought in 10 minutes earlier, he could have been saved—death was due to blood loss. The medical report stated that death was due to pellet injuries, which was contrary to facts. In the hospital, they took X-ray and took the body to the operation theatre (Yavir was still breathing). 5-10 minutes later, the body was brought out and he was declared dead. No post-mortem was done. A school was burnt later in the afternoon. The police story is that he was caught in the incident and died. After the death, no government official came to make inquiries or offer compensation. No FIR has been filed by the family because of fears that they might be arrested. However, when the team spoke to the family, they were prepared to ask for exhumation of the body to find out the cause of the death.

The *jenaaza* (funeral procession) of Yavir, which was attended by 10000 people, took place in the afternoon. When the family members were making arrangements for a peaceful procession, they told the DySP and asked him to clear the area for the procession. He refused permission and told the family that there was no need for the funeral procession, and that the police would take care of the burial. He threatened to kill 12 more people, and that he'd received orders to do so.

The funeral procession in the evening was stopped 3 times, amidst heavy shelling. The residents the team spoke to alleged that the intention of the forces was to get hold of the dead body, disfigure the face, with a view to terrorising the entire village. When the family

members and others were carrying the body, suddenly shelling started, and 100 persons were injured. 3 elderly women were sent to recover the body that had fallen to the ground, but they weren't allowed to by the Indian armed forces. 3 people carrying the body were later arrested. Later, a few women and 2 elderly men lifted the body despite being beaten up, and brought the body to the burial ground at 4 pm. At 6 pm, when they were burying the body, shelling started again.

Aftermath of the crackdown on Sept 10:

No.1 RR forces come into the village every day, search their mobiles, delete images, and still harass them about stone pelting on that day. The village youth can't walk to Khanabal for fear of being taken away by the police. Boys are afraid of the Indian armed forces and sleep in other people's houses.

Post-script: On the school wall, next to an official slogan, '*Peace, Nonviolence and Development*', some slogans were scrawled: '*Azaadi se Khushi, Shanti aur Aman*' (From freedom, get peace and development'); '*Don't give bullets, but freedom to children*'; an official slogan, '*Bacchon ko patthar nahin, taalim do*' ('Give education, not bullets, to children') was defaced thus: '*Bacchon ko patthar do*'.

VESSU (New Colony) Qazigund PS: Killing of Bassid Mohiuddin on 3 Sept 2016

Personal and Family details: Bassid Mohiuddin 19-20 years, student of BFA, 1st year, Father Ghulam Mohiuddin, owns an apple orchard, Cousin Sarnavaz Ahangar; uncle Sartaj

Testimony of a family member: Our team spoke to a member of Bassid's family who gave us the following account of the incident:

There had been stone pelting earlier in the day, but it was peaceful and normal at 5.45-6 pm when Sartaj (Bassid's uncle), Bassid and his friend were emerging from the apple orchard. DySP Khalid (who was notorious for his cruelty) and SHO Nazeer A. Telli (?) saw them as they turned the corner, caught hold of Bassid and shot him with a pellet gun, and when he was still alive, the 2 policemen lifted the injured Bassid and flung him into a canal (approx 20 feet deep) 200 meters away. I and my friends who were following Sartaj and others rushed forward, and the police started shelling towards us. CRPF personnel who had witnessed the shooting asked a crowd that had gathered to take out Bassid's body. Then the ambulance came and took Bassid to the hospital where he was declared dead. When Bassid's father came to know about the death, he fell unconscious. When the news of Bassid's death spread, there was stone pelting in the town. Then they took the body to the Eidgah and finally to his house. There might have been around 1 lakh people at the mosque, and *janaaza* was done 4 times. During such occasions of *janaaza*, women also attend.

Subsequently, we went to the police station and the SP, but they refused to register the complaint. We then went to SJM but we were told to go back to PS and try to register the complaint. When we told the SJM that the police had again refused, the CJM asked SP, Kulgam, to investigate. Normally, we don't go to the police with complaints because nothing happens, but in this case, the firing was unprovoked and we had to go.

Why did the police kill him? After shooting him with a pellet gun, they could have taken him to the PS and beaten him up. Surinder Kumar SP stated that the boy, on seeing the police, must have tried to run away and slipped his foot and fallen into the canal by accident. But he had no explanation about the pellet injuries.

Please supply details of legal case filed against the police.

CHURHAT village, Kulgam district:

Killing of boy Shaukat and 2 women, Shaukat's mother Sayeeda Bano (?) and Nilofer on July 22-23

Personal and family details: Shaukat age?; Mother Sayeeda Bano (?); Brother Nissar Ahmad 27 yrs, father Ghulam Hassan; NoorJehan, Shaukat's sister (?); Nilofer 27 yrs, husband Fayaz Ahmad, age 32 years, children Amil 15, Tajli 12-13, Nihat 12, Akib 8 (?), Jasir 7.

Background: About a kilometer from Churhat, an approach bridge to the village was barricaded with wires and stones to prevent the entry of Indian armed forces into the village. An army contingent (Gorkha?) approaching from that side was furious and seized some boys nearby and beat them up. The women nearby tried to rescue the children. The first van from this contingent had to beat a retreat. After getting a message from this contingent, another contingent approached Churhat from the Qazigund side through a short cut, and coming into the village, resorted to stone pelting with canisters from their armoured carriers, so the boys in the village retaliated. Finally, the forces came out of their carriers and marched down the village, damaging houses, and resorting to indiscriminate firing on people. 'They turned the place into Jalianwala Bagh.'

Testimonies of some residents of the village: Shaukat and his friends were playing cricket on the village ground when they heard that the army was coming from Qazigund to seize and take away the boys. 2 vehicles from Ujiru (?) camp came, beat up the boys, and terrorised them. Then, as they seized and bundled 3 boys into the van and were carrying them away, stone pelting started, and the army responded by firing. 13 persons were injured in the firing lasting from 4.30 to 6 pm. It was targeted firing. Shaukat's mother went out to fetch her son from the cricket ground when both mother and son were shot, and both died on the spot. Anyone who went to pick up the bodies got fired at and was injured, including NoorJehan, Shaukat's sister, who got a bullet injury on her palm. Two boys, including Shaukat, were fired upon, one died and one was injured. Nilofer (27 yrs) (w/o Fayaz Ahmad), who was also shot in the firing, was being taken to Qazigund, and she died

on the way. Nilofer's son Akib was also shot in the abdomen, but survived after an operation lasting 10 hours. The boy didn't realize he'd been shot, but only when blood started coming out of a wound did he realize he'd been injured. Junaid Ahmad lost one eye. Others injured: Basit Ahmad Bhat, Junaid, Noor Jehan, Mohd Abbas. Basit was shot at on the left elbow and chest, one bullet pierced his body, and others grazed his skin. 'It's a miracle he survived. He got a new life.' We gave the complaint on 18.10.16(?), but we haven't had the time or resources to go to the Police Station and collect the FIR which we've filed. No compensation has been paid. All the 3 bodies had a joint funeral which was attended by lakhs of mourners.

The army has filed counter FIRs against the civilians (including the victims of firing) alleging that the soldiers' weapons had been snatched.

In the aftermath of the crackdown on July 22, the army staged another assault on the village 15 days later, and damaged 9 more houses, including one of an army officer, again assaulting women and children, and destroying household articles.

The team met a young lawyer dealing with 250 detention cases related with sedition. He told us that he had approached Qurram Parvez about taking legal action, but the local people were reluctant to file the complaint.

Reactions of the residents to the incident: Our team spoke to a large number of the village residents, who were predominantly poor, working as labourers, van drivers, street vendors and so on. In the aftermath of the army crackdown, they appeared desperate and helpless. Some sample reactions:

--We're too poor to do anything—the son of the dead mother is a van driver, but in this shutdown, there's no business. Our life is hard.

--Daughter of Nilofer: Having lost my mother, I don't want to live in this house. The army can come and kill us.

--'Pellet guns are meant for wild animals and birds, here it's being used against us. Modi thinks we're wild animals.'

--Fayaz Ahmad (husband of Nilofer, age 32 years): God is taking care of my children. I have no other family.

--An elderly man: 'In Kashmir there's *Kashmiriyat* (standing for justice and love), in India, there's neither *insaniyat* (humanity) nor *jamooriyat* (democracy).'

Their only succour during this period was *Baitulmaal*, the traditional Islamic practice of raising money for those in need. Every mosque raises money through *zakat* (tax). During this hartal, Hurriyat asked people to contribute to *Baitulmaal* liberally.

They told us that they were drawing Rations regularly. Every member of the family gets 5 kg, subject to a maximum of 35 kg.

Pellet Firing in Batmaloo, Srinagar on Aug. 15: Deaths of Yasir, Shabir, and Elan

Personal and family details: Yasir (15+) s/o Abdul Salaam, carpenter; mother Shamim, sister Saima (20) studying in BA final yr. No details of Shabir and Elan available

Yasir, Shabir and Elan died, one injured. (No info available on Shabir and Elan)

Testimonies of some friends of Yasir:

Curfew was lifted at 5.30 pm. Yasir, I and a few of our friends had stepped out and were nearing Baqa Masjid, near Mughal Darbar restaurant when we saw boys shouting. There was no stone pelting. We wanted to turn back and were crossing the street when pellet firing from the police started. Yasir faced 'target firing'—1 round, and then the police ran away. Yasir was placed on an ambulance belonging to an NGO situated nearby, but the ambulance was not allowed by the Indian armed forces to proceed further, so it had to change direction and reached SMHS hospital. Yasir had lost a lot of blood due to the delay. He died despite attempts to revive him. Half an hour later, his body was brought home. At 7.30 pm, *janaaza* was organized, the police had to be persuaded to allow the procession to proceed towards the grave yard at Sheikh Dawood Rehmatollah in Zanjapora. 1000-1500 residents of Batmaloo went to the grave yard, but many of the relatives from outside Batmaloo were not allowed into the grave yard. In Dantirkha (?), there is a special martyrs' graveyard where martyrs from all families, and faiths are buried.

--Brother of Shabir: I know the cop who did the firing, he belongs to our own PS.

--Death was registered; death certificate will come later. We refused to file for PM or FIR because it is futile. We refused JKCCS's offer to file cases. Not one FIR has resulted in an investigation. 2 lakh boys are missing in Kashmir; no FIRs have been filed.

--There is total curfew every Friday, we are not allowed to read namaaz during curfew, even on days of *jumma*, on roads, on the pretext that this will lead to protests.

--Boys are beaten up. The police come at night on raids.

Killing of JUNAID AHMAD AKHOON, Sayyadpur, Eidgah, Srinagar on 7 July/Aug (?)

Personal and family details of Junaid: 12 years old, was studying in 7th std. in New Convent, father Ghulam Ahmad, mother Taslima, 2 sisters Iqra Gul (15) and Uzma Gul (14)

Background: It is a family of Pashmina weavers. Junaid and his mother had come to the gate of the house to leave Junaid's mami who was accompanied by Junaid's mother. A warning

cry came as the army approached their lane. Junaid suddenly fell on his mother's shoulders. His mother thought he was scared, but as her hand moved she could feel the blood on his left side.

Testimony of a family member: 3 of us were playing with the baby after 11.30 am. Then we were going upstairs to bathe when Junaid, after finishing his *namaaz*, returned to the house. I heard the sound of pellet firing. Junaid had fallen down just at the compound gate as he was closing it. One of us rushed upto him and held him on the right side, and she couldn't see that his left side was entirely covered with pellets (no. 12, hard, heavy, lead). We lifted him and took him past the army sentry outside who didn't stop us. But when we reached the camp, the army fired power shells at us. How could we take Junaid past them? Finally, we took him to SKM hospital at 2.45 pm. Junaid was critically injured on the head but was still breathing and briefly came to his senses. The doctors kept saying he'd be all right, but didn't attend to him. He should have been operated within 2 hours. But they finally operated on him at 10.30 pm when Junaid was only 3% alive. At 9.30 pm, they said he was 75% alright. We came to know later that the IGP had called the hospital and directed them to give false assurances to us that he'd recover. The operation was a farce. They'd administered blood and glucose but it was just to fool us, for we could see that the liquids were not going into the body but spilling out from the tubes (We were shown a video of Junaid's stretcher drenched with the liquids). At 10.30 pm, we asked the doctor to hand over the body. At 11-11-30 pm, I talked to the doctor outside the operation theatre, and he told us that the boy would fully recover the next day. The doctor violated medical ethics by giving false assurances to us. It was finally at 2.30 am that we were told about his death. The IGP called them again and ordered them to hand over the body only at 9.30 am the next day.

When has justice been delivered to us in Kashmir? Do you think Indian democracy can deliver justice to us? The Indian constitution is a fraud, this is what I've learnt, having studied the document in our textbook, and through hard experience.

Father of Junaid: The police station has filed FIR under section 304, though I've asked him to convert it to 302.

Case of Imtiaz Ahmad Sheikh, Srinagr: Detention under PSA

Police FIR details:

--Detention under section 8, J & K Public Safety Act. Date of FIR 27.8.2016. Jammu Court Bilawal. Lawyer ShafkaatHussein. Imtiaz is his real name, but the police have added many bogus aliases in their FIR.

--Charges: Prime miscreant; disturbing order; threw stones and instigated others; ended normal life in 2010 when he came in contact with LeT cadre, and joined LeT, became collaborator, transported illegal weapons at the instance of LeT; at present, implementing secessionist programme; instigating boys to throw stones; an influential anti-national element; confining people against their will.... (incomplete)

Testimony of Rubeena, mother: Imtiaz is a businessman selling ready-made garments. He'd taken a loan for Rs. 3.50 lakh from J&K Bank on 6.11.14, and was repaying the loan regularly (weekly and monthly) for 1 year till 18.6.2016, and had repaid Rs. 280000. To avoid default, I recently paid in another instalment.

--At 8.30 pm after dinner on that day, he stepped out of the house and was seized by plainclothes men and sent to police custody. He had been arrested once earlier in 2010 when he was in school. There was an incident of stone pelting in which 144 people died. He was in jail for 5-6 months.

--Besides Imtiaz, I have a daughter (19 yrs) who has studied up to 10th and a son Imran (25 yrs) who is an auto driver (wife Rifat).

Boys' observation: When there is a martyr's death, all of us come out. In so many houses here and especially in rural areas, PSA 'awards' are given liberally to boys.

Pellet injury cases in SMHS Hospital, Ward no. 8, Srinagar

The PUCL team visited SMHS Hospital, Ward no. 8, Srinagar to find out about pellet injury cases in the hospital. Currently, there are only 3 cases of youth with pellet injuries who have come for subsequent treatments. We met them and spoke to their families and friends. *(names changed)*

--Rasool (18) currently studying in a madarsa in Trehegaon, Kupwara, studied in a regular school till 8th. He was returning from the madarsa when he saw a procession on the road. There was a burst of pellet firing on the crowd, and he too was hit, sustaining pellet injuries all over the body. One eye was injured, and currently he is getting free treatment (also free food, of good quality). No compensation has been given.

--Feisal (30), Traal. s/o Ghulam Hassan. Has a Diploma in MMPH. Owns some land having an apple orchard, and growing rice, doing horticulture. Unmarried. Brother Mohd Ashraf. On 8 Oct., Javed was walking past a building from where there was pellet firing. He was caught in a burst of pellet fire. He realized that he'd been hit only when blood started oozing out of his eyes. He fell down and people put him in an ambulance and brought him to SMHS. One eye injured, partial vision (faint, only recognizing light). Doctors are good. No MLA or minister has visited the hospital or even talked about the issue.

--Wasim studying in 9th std. in Shahan Mohalla Mission School, s/o Thakur, Noorbagh, downtown area. On 11.10, I was going on a scootie to catch fish at Goripura. Near my house, CRPF did pellet firing at a procession, there was no stone pelting. The pellets hit me, on my neck, chest, on the right foot and leg, and on one eye. I fell down. I was operated on the eye yesterday. I have 3 sisters and 2 brothers.

Interviews with 3 doctors in SMHS Hospital, Srinagar on Pellet cases

Subsequently, The PUCL team met 3 doctors in SMHS Hospital, Srinagar, who spoke to us about the crisis situation in the hospital when they started receiving scores of pellet injury due to police firing on protesters post July 8. They also shared with the team their tumultuous feelings in coping with such a public tragedy.

(names changed)

Dr. Omar (31 yrs): Ours is a referral hospital, so we get a majority of cases. In 2010 too, 105 patients were admitted, 5% of them being for pellet injuries. But it has been peaking massively since this July, with 850 eye injuries, around 95% of which were from pellets, the rest from tear gas, pepper gas etc.

It started on 10th July, with 23 admissions. This is a huge number, compared to 2/3 emergencies we get daily. I wasn't there during the morning admissions. Next morning, when I reached the Ophthalmology department, there were 5/6 backlog cases needing surgery. So I started operating, when suddenly the number of admissions kept increasing. There were 56 waiting outside. We just couldn't manage, so we moved into the Trauma theatre of the hospital and managed the operations, but the number kept increasing, and so we converted trolleys into operating tables and resorted to basic microscopes and other primitive equipment. There were only 2 of us doing surgery. An Operation theatre is a place with serious sterilization issues. But now lots of people were bringing in their boys inside the operation theatre shouting slogans about azaadi. Operating under such conditions was very stressful. We were dealing with a population of young patients under 18 unaccompanied by their parents. How do you get their consent for the operation? There were also other issues—relentless surveillance by Indian armed forces. I went outside the surgery section to take a break, and I saw a youth with pellet injury die in front of my eyes—it was then that I couldn't take it anymore and just broke down. But I recovered quickly, and continued the operations till 5 pm, just the two of us. We converted our main theatre (ill equipped for the purpose) opposite Ward 7 and kept on operating till 12.30 am. There were still patients getting admitted, but urgent issues of sterilization kept cropping up which affected the quality of surgery. After Friday, the numbers could shoot up.

We got assistance from other sources: 3 doctors came from AIIMS, for a one-day flying visit. They met the CM, held a press conference and called it 'a war-like situation', which was not to the liking of the government. But there was no follow up to the visit, and no change in the state government's handling of the issue. Dr. Natarajan from Bombay, working for

Borderless World Foundation came, with some supporting staff--but not on the government's initiative. He has been making frequent visits since then.

Dr. Waheed: Health is in a no-man's land. In a crisis (e.g., floods), hospitals are abandoned by the government. When the BJP Health Minister came amid heavy security, he was shouted down by protesters. He fled the scene.

The day after Burhan Wani's killing, the CRPF entered the hospital and fired tear gas shells here. There were huge processions when bodies would be taken out. The police would sometimes seize the bodies and take them away, perform an autopsy and hand over the bodies to the families to take away. There were some cases with autopsy issues, but not that many. An ATM security guard was shot dead with 350+ pellet injuries, but no autopsy was done. Junaid was admitted in SKIMS hospital, and the doctors said he'd suffered multiple contusions. The Director of Health Services said that 100 ambulances had been attacked. An ambulance driver from Kangan Hospital was shot.

--Many NGOs who'd put up booths outside our hospital to render assistance to the patients were shut down, and they were asked to leave the premises, otherwise their equipment would be confiscated.

--To escape profiling, patients coming in often gave a fictitious name and address (some entered their name as Burhan Wani), so we had to make an exhaustive survey of cases, giving each case a distinct file no.

--A 4-year old admitted to the hospital with a pellet injury was saying: 'I didn't get this during Dewali, why is this happening to me? I'll ask Burhan uncle to take care of the government.'

--One woman was hit with pellet injuries inside her house.

--I live near the airport, and I too have faced tear gas. My 3-year old daughter was once exposed to a burst of pepper gas, and now vomits every now and then. In 2010, they used it inside this hospital.

--My Indian doctor friends have blocked my page on Facebook. They refuse to read my posts depicting the reality of Kashmir—they just don't want it.

--I don't watch TV, it's crap. I've been speaking to the media, but what impact does it have?

Interviews with:

--Parvez Imroz & Irfan Mehraji, JKCCS

- Aslam Laigoo, ex-bureaucrat
- Shujat Bukhari, editor, *Greater Kashmir*
- Student union leaders, Srinagar
- Aijaz Hussain, AP reporter in Kashmir's
- Pandit family in Anantnag
- Sanjay Tikkoo, Pandit leader
- Doctors in SMHS hospital
- Mir Shafaqat Hussain, High Court advocate
- Parvez Bukhari, editor *Kashmir Reader*
- JKLF activist
- Parvez Matta, JKCCS

Interview with Parvez Imroz, JKCCS (17.10.16)

In the early 1970's, PUCL took a lot of interest in the Kashmir issue, doing commendable reporting on Kashmir (by Tarkunde, Kannabiran and so on). But things changed in 1989, when Kuldeep Nayar started CFD as an offshoot of PUCL.

When I filed a petition in the High Court jointly with Amnesty, PUCL Delhi protested for my not consulting the national office, so I decided to withdraw from PUCL.

Key issues:

--Detentions: Boys have been picked up, even completely apolitical people. There are 300 cases.

--Impunity: Why is the army using so disproportionately? There is complete impunity for the army—military, political, and moral impunity. Indian media is providing moral justification for this. In their eyes, every Kashmiri is a suspect.

--My advice to the team is that PUCL should interact with civil society in Kashmir. You need to address the sources and causes of the Kashmir crisis, which HR groups don't do. It is more than a HR violation. They don't take a position on the political issue. Is PUCL going to take a position on this?

--The time has come for Indian civil society to take the lead, despite facing attacks from RSS. Indian civil society matters the most to us, since they are conscientious objectors who have the audacity to speak the truth about Kashmir.

Ground realities in Kashmir (Parvez Imroz and Irfaan Mehraji, member JKCCS)

--The cost of militarization in Kashmir: How much is the Indian government spending on the army operations here? 5000 soldiers have been killed. What is the cost to Indian people? Kashmir at what cost? Rs 10000 crore has been spent by India to keep Kashmir in its control. What is the cost to the Indian people?

--It is an army of occupation. Lives are being snuffed out, there is total control by the army (7 lakh for a total population of 1.2 crore.) How long can people's political rights be suppressed?

--The latest phase of Kashmir is that protests are becoming more militant, more violent. 'Sanghbari' (stone pelting): The militancy of 1990s is giving way to people becoming more

and more militant, which is assuming the dimension of an uprising. In this uprising, rural Kashmir has also erupted because the young militants (like Burhan Wani) come from this area. This is difficult for the army to take. Support to armed militants is also increasing.

--Kashmir can't be neutralised like Nagaland or Punjab. The congress had managed to cunningly contain Kashmir, but BJP has come out with guns blazing.

--Pakistan has no role in the current youthful protests. In fact, Pakistan doesn't have a policy on Kashmir. The Kashmiri youth take Pakistan's name only to provoke India. Why should Kashmiris be held responsible for Pakistan's policy (e.g., terrorism)?

--Kashmir's current preoccupation is self-determination, which is about denial of democratic rights. A large constituency is for *Azaadi*, an equally large constituency is for Pakistan (accepting it with all its flaws). It's been an entirely people's struggle. Hurriyat has only a marginal role, a symbolic one, an organization which plans curfews and shut downs which students obey. Students endorse Hurriyat but find it tepid and would like it to take the struggle forward. After Burhan Wani's killing, Hurriyat relaxed the shut down on 21st July for the first 3 days. Next, 12 people were killed in the firing by the Indian armed forces. Then came total shut down of the valley, which continues.

Irfan Mehraji, member JKCCS:

--Burhan Wani: He became a hero overnight because of his audacity in social media, releasing videos and talking about attacks by the army on protesters and even on pandits. Legends grew around him. He took militancy to a new level. There was a Rs. 10 lakh bounty on his head, but nobody betrayed him. His job as a mujahideen was only to recruit militants, he had no record of killing anybody. He was articulate, and that endeared him to people. He said, 'The Indian army has guns, we need to respond to them with guns.' He represents a lone hero facing up to the might of the Indian state. He asserted that we Kashmiris can run the insurgency on our own, we don't need Pakistan's support. These young militants snatched arms from the police and trained themselves in the jungles of Traal. Isaac (nicknamed Isaac Newton) was a close comrade of Wani who was encountered just before Wani.

--Trafficking of girls from Northeast and West Bengal to Kashmir for purposes of marriage, possibly because of the precipitous decline of female sex ratio.

--There are cases of PIL filed against the army, but the judiciary here is quite corrupt.

--The J&K police functions as a force between the central forces and the police, helping the armed forces in providing logistics of an army operation. Sometimes, they protect the local populace from the worst depredations by the army. J&K can be quite brutal, as in carrying pellet firings and violence in police custody, but doesn't go to such lengths as the army.

--Ikhwanis are on the decline since the state doesn't need armed militias, it uses collaborators.

--There were 40-50000 militants in the 1990s, now they're far fewer. Cross-border militancy is also on the decline whereas young people's militancy has arisen in full measure. Now it's a mass-based militancy whose purpose is to create conditions (e.g., carrying out attacks on army installations) that show to the world that the Kashmir issue remains unresolved.

--Local people here don't believe that Pakistan carried out the attack on Uri, that it was in fact orchestrated by the Indian army. The people here feel that it was done to deflect attention from Kashmir.

--Extensive land grabbing by the army

Killings, including pellet firings since July. We've done a study of killings since July, (at least 100, maybe 103-4 to date). (We need to do a field study, though.) 5 people have drowned, they were either pushed by the Indian armed forces or they jumped to escape. One person got entangled in barbed wire while riding a scooter. More than 500 people have been shot at by pellets, 100 have died under pellets, other deaths from firearms, teargas, and pepper gas etc. Junaid, a 12- year old, was shot by pellets while he was inside his house. His family member told us that pellets won't be used in India but here are used liberally, with an intent to kill. His funeral procession was fired upon. 80% of people injured by pellets are under 30. More than 800 people have damaged eyes due to pellet injuries. JKCCS has interviewed 30 victims. Most pellet injuries have happened not in protest sites, but inside narrow lanes, shopfronts, and even inside houses. 4 people with pellet injuries didn't receive help because

of the sheer magnitude of the cases coming to the hospital. In Tengpora case, the Supreme Court ordered exhumation of the body.

Aslam Laigoo, retired bureaucrat

Burhan Wani became an instant hero because he was an inveterate Facebooker. He had Rs 50 lakh on his head, and double promotion was promised for his killer. Mehbooba turned him into a hero because she as Home Minister let him be encountered. Tariq, her party member, resigned in protest against her alliance with BJP. Burhan Wani was planning a game of cricket with 2 of his friends in the evening when he was arrested. She was reportedly contacted by the Indian armed forces, and she okayed the encounter ('Do what you have to do.')

--Kashmiri Muslims are mostly Shias where Kargil Muslims are Sunnis. But Kashmir never saw a conflict between Shias and Sunnis.

--Law and order is managed almost entirely by Indian armed forces. The Dossier about PSA suspects is prepared by IB and other central armed forces and the state government merely okays it. 400-500 have been detained under PSA and overall 5000 have been arrested.

--Trade and development have come to a complete standstill.

--Hurriyat call for strike: At first, people weren't so enthusiastic about supporting the Hurriyat call but now the people have decided to support the call in a spirit of 'Do or Die', having been pushed to the wall. After 4 pm every day, the Indian armed forces withdraw when the hartal ends, due to the fear of the people.

--Mehbooba hasn't visited any of the victims of pellet injuries in the hospital. She made a hurried helicopter visit under tight security to condole the death of one of the victims. After the visit, the family's house was burnt down by the people for letting Mehbooba take political advantage.

--In 1990's, JKLF's armed rebellion began an agitation with the full support of all people. JKLF fought for an independent Kashmir, which was foiled by the Centre's political machinations in the 1980s.

Interview with Shujat Bukhari, editor *Greater Kashmir*

--60 houses were burnt in a remote village in Kishtwar, Jammu. Mufti has gone there now to visit the village.

--We don't expect much from the current state government/Central government, despite our initial hopes about Modi, who had got elected on a huge mandate. But he has not moved an inch on Kashmir, despite promising 8 times about following up on Kashmir. Nothing he's done is remotely similar to Vajpayee's unprecedented engagement. Seems he's carrying RSS's agenda and won't make a move.

Hence it is imperative that Indian civil society do something: to make people in India aware of the current situation. The narratives parroted in the war room are the reality in India. The Hindu middle class has become even more Hindu. Kashmir has not failed India; India has failed Kashmir. Yes, we Kashmiris must reach out to Indians, and initiate a dialogue. I've

been going to India several times to build up awareness. One of the notions about Kashmir is that India has given everything to Kashmir whereas the reverse is true. Americans also didn't know much about Iraq till the body bags started coming.

--Which earlier government has imposed a ban on prayers during Id? This is unprecedented. 12000 people have been injured, 200 of whom have received pellet injuries, a score have been blinded and received severe injuries. An all-party delegation comes here and calls for talks while putting the Kashmiri leaders in jail. 3 police outposts were attacked, but there was not a single death—despite the police propaganda about firing in self-defence.

--Closure of these cases is a must. So is the appointment of a Judicial Commission to go into these cases. There's not a single FIR filed against the Indian armed forces despite their atrocities. Open FIRs are kept in police stations where the police put dates and add names whenever they like it. In Khurram's case, he was told that there was an FIR against him that he didn't know anything about. This practice has been going on for 26 years. Khurram's arrest was a signal, a warning to civil society not to raise their voice. J&K Press Act, which dates from Dogra times, a colonial law, was used to ban *Kashmir Reader*, using very vague language.

The present Kashmir government wants complete integration of Kashmir into India, which is an absolute non-negotiable. They don't want to recognize Kashmir as a political issue, nor even have talks with Pakistan, given the current situation, with UP elections around the corner.

--Duval Doctrine: 3 mindsets—Kashmiri mindset, Indian mindset, and Pakistani mindset—have to be correlated, by mainstreaming one (i.e., Kashmiri) for the sake of this strategic balance.

--Uri attack: Uri is a laboratory for all countries, India, Pakistan, China and others. So, it's difficult to say what really happened, who did what. The level of trust is so low that all explanations are simultaneously in currency.

--The Indian thinking is that Kashmir has to be held at any cost for its strategic importance, irrespective of whether it's Congress or BJP. But India is paying an immense political cost—95% of Kashmiris don't identify themselves as Indian, despite taking part in elections. It's a political volcano that India is sitting on. Kashmiris are feeling highly insecure—their cultural, religious identities are being violated through policy moves like Sainik colony, Pandit colony etc. By making false promises and integrating the state with India, India has completely broken faith with the people here. On the issue of Kashmir, there's no difference between Congress and BJP, Manmohan Singh and Modi. Congress is using a mask but is carrying out the same project. Manmohan Singh felt so insecure with BJP and his own party (with the rise of Rahul Gandhi) that he abandoned his own 4-point formula.

--Control of media: There have been bans on different newspapers, such as *Kashmir Times* and *Kashmir Reader*, raids on printing presses. Our newspaper has been blocked by DAVP from 2010. I was told that your newspaper is preaching secession. We continually try to cross lines, wittingly or unwittingly. One photo journalist has lost his eye. Local TV channels have been banned since 2010, but have now been restored.

--Pandit issue: Since 1990, 290 Pandits have been killed, according to official figures. Only 1600 Pandit families are currently residing in Kashmir, but they have identified themselves with the people here, unlike Pandits residing in India, who have refused to empathise with Kashmiris, Sanjay Tikkoo, the Pandit leader, has issued a strong statement condemning pellet killings as well as Khurram's arrest. But Pandits living here also face some genuine problems. Generally, Kashmiri Muslims have no problems with Pandits. There was no forcible takeover of Pandit property, except in the early 1990's. The extent of violence against the pandits is small compared to the level of violence against the population of Kashmir as a whole (1 lakh Kashmiris have been killed in the violence since 1990). There's a competition of narratives regarding pandits around issues like (militant attacks, the governor's role in orchestrating violence etc.).

Interviews with Student union leaders, Srinagar

--Student unions are banned but we try to work as volunteers. I've studied in India, and it was easy for unions to register complaints. But in the last 2 decades, we haven't been able to launch stories of HR interest.

--Stone pelting: Because of police harassment, Burhan left home and became a militant. This is the story of every student who faces police harassment, midnight raids, ban on Facebook posts, etc. Mudassir has been charged with sedition. Stone is the weapon of our last resort. Everyone, not only students, throws stones. Students manage to collect stones, bricks, even bottles. Protests are completely managed, which lead to clashes and stone pelting. It has been happening almost every Friday after prayers, from 2008 onwards, in cities and towns (e.g., Shopian, Baramulla).

--Hurriyat's role: Everybody is following the Hurriyat calendar—shutdown till 5 pm, marches, protests—this has become the norm after Buhan's death. Geelani has directed it. He emails every Thursday to newspapers. It changes every week, and since Burhan's death, it has been going on for 102 days, so far. Hurriyat is leading the protest movement, and Mirwaiz and Mallick following. It is a communication system that subverts state policies (Suresh, Kavita).

--Yesterday, 5 rifles were snatched from the police. Nearly 160-170 guns have been snatched so far. HM Commander Zakir (25-27 yrs), who has replaced Burhan), has issued a call for snatching guns/rifles from people. Joining militancy was easy in the 1990's, but now it's very dangerous—hence the glamorous value of Burhan's joining militancy.

--The police harassment and violence is so relentless that everyone feels angry and frustrated. Police collect a lot of money by arresting stone pelters and release them for a price (up to Rs 50000). Thus the police have an incentive in stone pelting to continue.

--When the all-party delegation visited here, the protesters said there was no question of anyone talking to the Indian team, except for the team to talk to the separatists. Since 1952, there have been 170 attempts at establishing a dialogue. The Hurriyat has issued a 5-point formula (in 2010?) for dialogue:

1. India should withdraw from its position that Kashmir is an integral part of India.
2. Compete demilitarization.

3. Release of political prisoners.

4. AFSPA/PSA should end.

5. Meaningful dialogue with Pakistan, including Hurriyat.

--Why the youth is so well informed and articulate issues: easy accessibility to internet, and high value placed on education. Constant discussions at home and among friends.

--Today, it was a normal day at Lal Chowk, very crowded. But with the slightest incident, there will be total turmoil. Till today, only 2 policemen have been killed. There have been no killings of army soldiers. There are mass protests every day. A lot of children are picked up by the police. There have been a lot of civilian killings. A lot of infiltration of militants has been happening, all highly trained and all well educated.

--We have a culture of storing food for the winter.

--The Uri incident could have been an accident, a petrol depot catching fire.

--Nearly 2000 have been disabled by pellet firing and tear gas shells- causing loss of limb.

--A lot of policemen have come out on TV and declared that they're leaving service.

Interview with Aijaz Hussain, AP reporter (9419003014)

--Stone throwing is a very old phenomenon, of local people's resistance to occupation, dating back to the Mughal period.

--The modus operandi for Indian armed forces: They cordon the village, zoom in on a house/houses sheltering a militant, which would be countered by villagers coming out, including women, to protect the militant, who in the process would get killed, followed by stone pelting.

--It was a developing scenario of a massive eruption/uprising, which could be triggered by anything. The trigger finally came in the form of Burhan's encounter. It is a peasant uprising, different from the armed uprising of the 1990's against India, backed by popular support. In 2008, it was urban militancy; in 2009, it was Shopian double rape; in 2010 massive protests about 'Quit Kashmir'; 2013, protests following the secret execution of Afzal Guru, which the government curbed massively; in 2014, the floods and the state's response to it; in 2016, Burhan's killing.

--2014—the great floods, Anantnag-Srinagar devastated, when ordinary Kashmiris were trapped in the waters and were left to die, while choppers were coming to rescue tourists. People then started resisting rescue operations, chasing away choppers. There was a massive anger and desperation. It was seen as a cheap stunt, and the Modi government lost an opportunity to retain trust. Post-2014, all trust in India vanished. As for aid and rescue, it came only from local efforts. The 2014 floods were a watershed in the history of India-Pakistan relations. Post 2014, this anger was brimming—lost livelihoods, homes and businesses. Only those who were insured got compensation. (*See the JKCCS report on floods*)

--In Jammu, Maharaja Patiala's forces, brought in by Dogra Singh massacred Muslims involved in an uprising (figures vary from 20000 to 200000). Close to half a million to one

million Muslims migrated from Jammu to Pakistan-administered Kashmir. Militants in the 1990s came from these migrant families.

--2015: New developments, such as the beef issue, colonies of soldiers (models of Israeli settlements), changing demographics (Pandit colonies) each of these developments would cause spontaneous protests which might die after a few days. New unwritten rules of engagement emerged between the protests and the Indian armed forces (military, para military, and the police)—the forces would not raid homes randomly, there was a measured use of force, proportionate to the level of protest, which would be navigated by protesters (protests after Friday prayers, confined to a few hot spots).

--These unwritten rules of engagement were thrown to the wind following the Burhan execution. Now, anybody in olive/khaki became a legitimate target.

--Post July: In the first 2 days, 30 people died. It was a cataclysmic event, entirely unforeseen, for the Indian armed forces. Unlike earlier militants, Burhan was more of a political, social activist—approachable, reaching out to weaker sections (orphanages), using the social media more than the gun, and arousing love and admiration, a folk hero, a Robin Hood figure, becoming a legend after death. He lived in South Kashmir, a familiar figure bringing hope. He was eliminated in Kokernag, Bumdora. Eyewitnesses say his friend Sartaj came out first and was shot dead, a civilian was asked by the Indian armed forces to go and collect the gun from Sartaj, and then Burhan came out and was shot dead, followed by Burhan's second friend who was also shot dead. Before the action, the officials had put out a story of Mehbooba planning to visit an orchard in the area. This story was used to lull the people. That's why the people were angry and burnt down 4 houses which sheltered Burhan, whose residents were suspected to have lured him into visiting them.

--One day prior to the Khrew incident, another village, Ganderbal, was raided and scores of houses were ransacked. The objective was to create a feeling of terror, 'Kayamat' (Doomsday), among the people. Soibugh in Budgam was another village that came under army attack. Paddy fields have been set on fire in Kanilvan and Khudwani.

--Shabir in Khrew was a well-known figure in the area, and could have been tortured to death as a lesson. It was reported that he'd made a speech earlier.

--Even a one and half year old child rubs his leg ('rasala') in a gesture of saying 'ragda de'. A favorite slogan intoned by a 2-year old: 'Pellet bullet nai bhai na!'

--3 books on Kashmir resistance: 1. *'Danger in Kashmir: Joseph ?* 2. *Alex von Thulm ?* 3. *Suvir Kaul*

Interview with Pandit family in Anantnag

Shantha Gulati: We have no fears about being the only family in this town. One of my sons Shammi is a pujari in a temple. My relatives have migrated to Jammu, Delhi, and other places. Pandits used to be 10% of the population here. My grandson goes to school, my daughter finishing engineering in Bombay recently. My husband died. My 2 sons, Shammi and Rakesh, run a business.

I went to Jammu recently with family and my daughter-in-law stayed back alone and without any fears.

When my son Rakesh got married, we arranged a big *razwan* (feast, a 7-course meal with 35 or 52 dishes), with many meat dishes (except *rogan josh*, which is a Muslim dish). Generally, we prepare fewer meat dishes on special occasions. My daughter's wedding will be completely vegetarian, my son's wedding will be vegetarian, with a few meat dishes.

Shammi, son: We don't see any reason to be afraid of living here, despite being the only family. This is my *matrubhoomi*. All our relatives have migrated to different parts of India. Srinagar has a lot of Pandits (there are 1650 families throughout Kashmir).

Pandit colony in Anantnag: 6000 Pandits came here during 2010-16, during Manmohan Singh's time, and were given jobs in order to be absorbed here. The colony consisted of temporary sheds, more like bachelor's accommodation. An employment package for teachers, engineers, and in government departments was offered on the condition that they won't seek a transfer. There were a few incidents of gun snatching from the police. A few Pandits were also attacked; one temple was reportedly attacked, but it was a baseless report. But post-Burhan's killing, all these employees felt very insecure, and have gone back. This is due to the insecurity felt by a minority. There were 2 Pandit massacres in the 1990s, and 30 people were killed in Ganderbal, with only one survivor.

Nasir's wife (?): The exodus happened in 1990 Jan. Jagmohan was a major factor but a lot of pandits left in a state of fear. This locality had a majority of Pandits. A lot of Muslims were also killed. Muslims and Hindus alike were hanged, out of suspicions of being informers. It is a political issue, and they are trying to give it a religious coloring. I went recently to Delhi and stayed with a pandit family for 3 weeks.

Interview with Sanjay Tikkoo, businessman and leader, Kashmir Pandit Saqharsh Samiti (kpss.kashmir@gmail.com)

As of 1 Dec 1989, the population of Pandits in the valley was 3.24 lakh, comprising 75,257 families. 59,000 families are registered as migrants, living in Jammu, Delhi, Jaipur, Bangalore and other places. The rest are unregistered, presumed living abroad. Jammu has a township Jagti for 5000 families, the rest are scattered in other cities of the state. 808 families from 212 towns in the valley left in 1989-1990; none of them came back. 1765 employees under the new package came to transit camps set up in Vessu, Mattan, Pulwama, Shekpora (Budgam), Shieil (Baramulla), Nathasou (Kupwara).

There are 637 documented killings of KPs, (290 according to state administration, but the actual number is closer to or more than 800 in the period: 537 killings between March 1989-Nov 1989, 395 killings between 1 June and 30 June 1990). The report that Jagmohan organized buses for the exodus is baseless. The bulk of the exodus took place between 15.3.90 and 15.5.1990. 60000 families left and 17000 families stayed behind. Even after the exodus, there were a number of killings of Pandits.

Why did we not leave? We don't have any answer, we just decided to stay.

I blame the Centre for mishandling the situation right from 1947 onwards. Why didn't they arrange a plebiscite then? It'd have been in favour of India. But Congress had other priorities. When the Interlocutors team came in 2010, I told Dileep Padgaonkar to listen to the stone pelters. They complained to the team about lack of amenities and health and education. They also told the team that we also want to be good citizens, and that's why we are resorting to agitation. That's why we are also raising slogans in favour of Pakistan, the only friends we have who have raised this issue in international forums.

The dialogue of interlocutors also brought into the picture the peace community in the valley (Muslims and Hindus). But the government didn't do anything about the peace process that was proposed by the community. People saw it as a betrayal. Now people see Modi and Amit Shah as murderers. He has initiated a crafty political process, involving all ex-insurgents, mainstream political parties, and civil society groups in Kashmir. Duval is now actively playing behind the scenes. There have been 3 meetings since last week. They've been asked to draft a plan to restore normalcy. I told Modi when he came here recently that he is only willing to talk to people who have taken up arms, and ignoring others.

The National Conference has always played a negative role, and has never inculcated Kashmiris with the spirit of nationalism. The integration between Jammu and Kashmir is really an integration between the Gandhi family and the Abdullah family. We Pandits have been labelled as agents, Jan Sanghis, by NC. NC arrogated to itself the role of being the only true nationalists in the valley. This feeling about PK influenced thinking of other Kashmiris.

The Central government is currently being run by 4—Modi, Amit Shah, Duval (who has lived in Pakistan for a long time), and Arun Jaitley. Duval wants to destroy Pakistan, an impossible dream.

During 1990-96 (?), 10 lakh people would have been killed in the war with the militants. The period 2003-08 was a relaxed period, tourism picked up, there were no sentiments of Azaadi among the youth. But the way the Amarnath issue was handled in 2008 turned the Kashmir issue into a Hindu-Muslim issue. It has given a fillip to the youthful agitationists in this period.

In 2010, 144 people were killed. We told the Omar Abdullah government that people wanted peace, but the government ignored our pleas. 2010 gave an opportunity to the youth to raise their voices against the Indian political establishment.

Burhan: The youth were waiting for a spark which came in the form of Burhan. It could have happened earlier, e.g, during the floods. I don't see Burhan as an icon but as a spark that lit the fuse. Since July, the situation has improved a little, but the sentiments of the youth have remained. India may lose Kashmir if this situation is allowed to continue. After 2010, youth and even children are prepared to bare their chests and tell the army: Kill us. Since 2010, there have been attacks on army camps by the youth (e.g., Kulgam). The resistance movement has become indigenous because of mishandling from central government .

The role of the army: When there is a mob of 50000, what do you expect the army to do? The army can only fire, unlike the police and the Indian armed forces who use pellets. The army functions under orders from the Commanding Officer, and are normally only at the

borders, doing their job. The rest are Indian armed forces (upto 14 lakh), including Rajputana Rifles, a regiment raised for counter insurgency operations, and BSF, Sappers etc. There is a 3-tier security system, consisting of the army, CRPF, and local police, at the National Highway (which was blocked by the protesters for 2 months from Pampore to Kozigund) set up to restore the National Highway to the people.

Why are people doing this? Since 2010, most army bunkers have been withdrawn from the civilian areas, and mobs didn't attack Indian armed forces stationed outside (RR camps on the roadside) and bunkers (but not CRPF, which continue), because it was considered normal. But once the insurgency started, they were restored.

The army can only think of a military solution; it has its own interests to protect. The army has taken over political administration. AFSPA is being held on to, and there is huge corruption in the army. Kashmiri forests are being plundered. Equally, separatists and militants have huge properties.

The shutdown in the valley: Businessmen are orchestrating the resistance, using victim families as a ploy. Wholesale businessmen are still earning their profits by cash transactions with retailers. There's no shortage of essential commodities (milk, vegetables, rations). But transporters have been affected. Petrol is available. It is the large section of ordinary people (daily wage earners etc.) who have been badly hit.

The Pandit minority: I blame the Indian state, Indian democracy, and Indian Constitution for not protecting the minority in Kashmir, just as they failed other minorities (Gujarat, Punjab). My identity is an ancient one (dating back to 5000 years), linked not with the Ganges, but with the Chenab. Any political solution has to give my rights, political, social, and cultural. We want a permanent settlement of the Kashmir issue; we know it won't be entirely on our terms.

There's a common feeling of disaffection among Balti and Rajouri Muslims with Kashmiri Muslims in the valley.

Resistance here talks about ending the Indian occupation, but what about POK occupation and Balochistan? POK people are not happy with the Pakistan government. Again, Punjabis dominate the government. POK people will be more happy with the Kashmiri people here. As for Gilgit and Baltistan, which should have been a part of India, they can become part of a new Indian state, a multicultural state in the same way it was earlier.

Sainik Colonies

When it was first established for ex-servicemen in Jammu, nobody raised their voice, but everybody is now shouting about Sainik colonies. BJP is using sainik colonies as a political ploy.

--I am not for India, they have failed me, I am not for Kashmiris, who have made me a refugee. BJP has used the Pandit community for its own political ends. The Pandit community in India sees me, as a member of the Pandits who have stayed back here, as a traitor. In a survey done by us, when questioned as to why they chose to remain in Kashmir, the Pandits said: At a time when the separatists were preparing a suspect list of collaborators, our Kashmiri Muslim neighbours confided to us about who was on their list,

and so we chose to leave. During their migration out of the valley, (say from Kandihar to Jammu, a distance of 200 kms,) not a single Pandit was attacked on the way to Jawahar tunnel. Of course, it's equally likely that the Kashmiris really wanted us to leave.

The arrest of Khurram: Khurram made repeated visits to Pakistan where he met leaders of Azaad Kashmir. Khurram gave interviews to *Al Jazeera* 6 times. The revival of the Kashmiri movement is entirely due to Khurram because his reports on Kashmir are being used by different groups for their own purposes.

A Proposal for the resolution of Kashmir issue:

1. Withdrawal of Indian forces from Indian held Kashmir and of Pakistan forces from Pakistan held Kashmir.
2. An interim period when officials from India and Pakistan will jointly administer the territory.
3. Elections to decide about the future of Kashmir (under UN supervision?)

On Khurram's arrest: Parvez Matta, JKCCS

In 2015, Khurram organized a campaign for banning land mines, and prepared a petition pledging not to use land mines, which was co-signed by a militant organization. His second visit to Pakistan was in his capacity as a member of *Asian Federation against Involuntary Disappearances*, and he met Pakistan's Director of this association.

PSA cases in High Court: Interview with MIR SHAFQAAT HUSSEIN, High Court advocate (practicing since 1981)

--*Tehelka* article on defence cases tried by Mir Shafaqat

--It's good Khurram is in jail since he'll be able to talk to the detenus and politicize them.

--Since 1953, all governments have been corrupt and dishonest. We're ashamed to see such representatives as Mehbooba.

--It's good Arnab Goswami has kept our issue alive with his rantings.

--110% of people want self-determination, they are not satisfied with *bijlee, pani, sadak* etc.

--They've sent old men of 70-80 to jail.

--You are all good people from India, but there's no outcome.

--Modi has destroyed the statesmanship of Vajpayee.

--It's a tough challenge for India. Now, they may control it, but it will rise in a new way. This is because the current detenus are educated beyond the school level. Once they're released, it will lend a new spirit that will be difficult to subdue.

--Amnesty came in 2006 and this intervention helped to amend PSA to prevent children being charged under PSA.

PSA CASES HANDLED

--I got 20000 people out of jail since 1990.

--All the accused booked under section 302 PSA from Thana Nowata, Srinagar, Kupwara, and Budgam are being sent to Kathua jail, housing 300 detenus; similarly, Udhama jail houses detenus from Baramulla and Sopore; Amphalla jail, Jammu, houses detenus from Pulwama, Anantnag and Kulgam. The objective seems to be to remove the prisoner from his family by housing him in a remote jail, causing maximum inconvenience and hardship to the accused and their families. Basheer Ahmad Bhat, a leading protester accused under PSA, is being kept in a cell housing hardened criminals.

--Nazir Ahmad Shah (30), wife Shabnam (26) from Shopian. The court ordered the SP that since his wife was pregnant, and not being able to meet her husband in Kathua jail, Nazir be transferred from Kathua jail to Srinagar. A K Roy's judgment held that undertrial detenus be kept close to their place of residence. But this judgment doesn't normally apply to PSA cases.

--Sarfraz Ahmad Sheikh (26), resident of Rangerhamam, Nowata, Srinagar. He has been sent to remote Kathua jail. He was booked under PSA again and again, was arrested on 12.10.16 for stone pelting (picked up ten days earlier and produced in court on 13.10.16). Charge: 'Wanted stone pelter of 2008, finally arrested on 12.10.16.' He was booked under PSA in 2013 on the stone pelting allegation in 2013. We challenged it at the pre-execution stage and before he was taken into preventive custody. I got a stay on 31.12.13. He was regularly appearing before the High Court since then. Hence it is a blatant lie to allege that he was a wanted suspect. In fact, he was a regular businessman. In 2012, he had a pellet injury in the left eye, which was removed and replaced with an artificial eye. He was going for regular orthopedic and psychiatric consultations. We filed a petition challenging the 'open FIRs' (i.e. with no mention of specific details of incidents) of those charged under stone pelting.

--The cases of Fidayeens: The army regularly brings fidayeens to the Interrogation Centres in Kargaul, and then sends them back into the field on staged 'terrorist operations' i.e., manufactured incidents. The fidayeens know this but are helpless to prevent it. I have been fighting cases of fidayeens (foreign militants from Pakistan), and due to inconsistencies in the FIRs, I have secured exoneration in a number of their cases.

Some Stone Pelting cases:

--Roman Ahmad Roshunqar (18 yrs): Resident of Batkadal, Nowshera, Srinagar. From 2013 till 2015, he has undergone 8 surgical operations for pellet injuries. He was picked for stone pelting in 2015 (twice) and 2016.

--Saheel Zahoor Chunka (21 yrs. s/o Zahoor Ahmad Chunka of Nowshera) FIR mentions under 'Organization: Stone Pelter'

--Mohd Subhan Wani (73), Dangerapura, Sopore. FIR dated 10.6.16. Charge: 'Hardcore militant of Jamat e Islami and Hurriyat; stone pelting and instigating others; led violent mob.'

--All these cases of stone pelting can be tried under normal law. Why try them under PSA? Obviously, the intent is to detain them indefinitely, so that they can be termed history sheeters. This can only result them in their taking up arms.

--Witnesses in the cases we have filed have been threatened that FIRs would be filed against them to make them fall in line.

--382 Habeas Corpus cases have been filed in High Court.

--13000 have been injured in pellet firing since July 2016.

--In 2008, 62 people were killed by the Indian armed forces, but no FIRs were filed, and SHRC couldn't take the issue forward.

--In 2010, Yasin Mallick filed a petition about 122 killings, but police didn't file responses, except in the case of a boy who was trampled to death, which the police dismissed as a case of stampede.

--The process of filing FIR is a huge and difficult one to access. The state machinery turns on lawyers who are willing to take up such cases: e.g., Zahid Ali, a leading HR lawyer, has been booked under PSA; earlier, the Bar President Qayoom had been booked and sent to jail for 2 years. 12 government employees have been sacked for engaging in protests. The Employees' JAC Wani has condemned it as illegal and threatened to go on agitation. The government is putting all sections of society, even lawyers and government employees, under surveillance.

--The government is talking about the importance of education, yet it keeps assaulting/killing students on a large scale. So, the youth are saying, our education can wait, we'll take the agitation to its logical conclusion.

--Two 16-year olds have been booked under PSA. Their uncle had been abducted by the army and killed. His mutilated body turned up 3 years later and was identified solely by a silver tooth in his mouth. But the Forensics dept made a farcical mess of the investigation and the case has been closed.

--In Traal, all the 12 members of a family have been arrested under PSA.

--Ambulance drivers have been shot at for taking pellet victims to the hospital.

--Amir Nazir, studying MBA in Brijbeher, was killed while watching a procession across the river.

Interview with Parvez Bukhari, editor *Kashmir Reader*

--*Kashmir Reader* was closed down by the government because we don't use the language of law and order in reporting news. They found our editorials problematic. One editorial "Speak Justice" on Modi's rhetoric about Kashmir must have particularly riled them. They apparently have a dossier on us consisting of headlines, pictures etc. In the last three and a half months, we've received emails from the army demanding explanations for our coverage, and we've duly sent responses in each case, but they didn't respond further.

In 2010, cutting down ads was resorted to in order to bring newspapers in line (many empanelled to DAVP, hugely dependant on government advertisements). They don't enter into arguments with us. They expect us to engage with the administration at a personal level—currying favour, toeing their line etc. When we wrote to them protesting against the stoppage of ads, they resumed the ads, but with just a few. In most newspapers, there's always someone who works closely with the government .

This August, on a particular day, we got a big size advertisement(¼ of the page) for the front page. The intention was to move our front news of the day to a back page. It couldn't have been from a private agency. We decided that we wouldn't take the ad for that day. This they didn't like. We have consciously adopted a straight forward style of dealing with news presentation.

On Oct. 2, we got an official order by post shutting down the newspaper. No specific charges. We responded to it. Kashmir Guild of Newspapers responded to it. The Editors' Guild (from Delhi?) responded with a mild statement asking the government to heed the plea of the newspaper.

The entire Kashmiri people are being profiled. Even earlier, it was never peaceful. It was always violent, manipulative, and intimidating. Every decision is taken with a view to controlling the population: both the ballot and the bullet.

It's been a point of no return for many years. 2008 marked a watershed—when the people openly came out and identified themselves as militants, differentiating themselves from the militants projected by the media.

1989: The entire effort at militarization was directed towards establishing a new structure of governance. There was a new interface between the military and the civilian. Profiling was resorted to, deploying a new instrument: for example, a suspect would be identified by the military, tortured, and then a politician (either from the right or the left) would be brought in to stage a protest, expressing sympathy for the victim, reap political dividends and win some political space. The security establishment would prop up such political groups.

People in Kashmir began to understand this structurally, the structural aspect of this new instrument of governance. Amarnath was a trigger, Malsal (?) killings in 2010, where 3 people were killed, resulting in huge protests became a trigger, the killing of Burhan Wani in 2016 became a trigger and so on. The protests of 2008 and 2010 were urban, meant to convey to people outside that this was a new phase of people's struggles. The Indian mainstream also came recognized this fact.

What was people's reaction to the killing of Burhan Wani? They expressed their rage with the structure of state violence, hence the attack on police stations, e.g., in Pulwama where a police station was razed to the ground, and staged other such attacks.

Interlocutors' Report: The Interlocutors' group didn't project the demand of autonomy, and confined itself to asking for reviews of existing laws, e.g., AFSPA. Even this limited recommendation was nipped in the bud.

All this shows that nothing happens on the ground. Where do people go? So, the Kashmiri decibelizes his voice. People find multiple ways to express this voice.

People are very angry at PDP whom they voted for in South Kashmir. The deep changes happening in India, the rise of violent right wing—the Kashmiri reads this very well, and then PDP goes and forms an alliance with it. The enormous injury this alliance subjected the population to, the hypocritical justification for it produced intense anger. People call PDP the B-Team of BJP.

'There's nothing we can do about India raping Kashmir; we can only make it convenient for the people'—this reported statement of Najeem Akhtar shows the nature of the political establishment created by the Indian intelligence. This deception of an alliance has thoroughly exposed them. The middle ground of manipulative politics is gone; the velvet glove is gone; the iron fist is apparent.

Uri attacks: Why would Pakistan have been so foolish as to venture to carry out attacks through JaishM, a militant outfit that is a creation of the Indian intelligence? Uri happened when the Kashmiri voice really began to be heard on its own whereas earlier it was entirely India vs. Pakistan.

Voluntarism during the floods: There's an entrenched culture of voluntarism here at work. This was targeted by the state.

--Pro-Pakistan sentiment was strongest in 1990, now there's a resurgence.

--When you visit the border between India and Pakistan, you see how brutal the division of LoC between the 2 regions of Kashmir was.

--Islamization of the movement: Even in 1931, when Sheikh Abdullah launched the movement along secular, socialist lines, his mobilization speeches always started with invoking the Quran. It was a new generation seeking education through Quran. But Quran was used by him to mobilize the people in a mechanical, routine way. This was no different from the use of Hindu terminology and symbolism by Gandhi which was accepted as legitimate by everyone, except Jinnah and Tagore. It was Tagore who prophetically warned that this would lead to the fracturing of India. It was a violent method of popular mobilization.

Here in Kashmir the increasing invocation of the Quran shows the complete failure of secular politics. The face of the Indian state is Hindu, so is the Indian military.

Social media: The reason for the overwhelming presence of social media has to do with the issue of Kashmiri identity which was always debated about. This brought about a sharp articulation.

The Way Forward: Conversations about post-occupation haven't started yet. Sheikh Abdullah's 'Naya Kashmir' coming out in the early 1940's is still clearest articulation of a vision about the future of Kashmir.

Interview with JKLF supporter

The accession with India took place under special circumstances. The government of India made it a conditional deal. The 1953 action was suicidal for the people of Kashmir. Kashmir, because of its geographical location and cultural history, had a very inclusive history. Hence despite our Muslim faith, Kashmir was deeply suspicious of Pakistan's designs. In 1947, 95% of people here were with Sheikh Abdullah. But 1953 played havoc, with the Indian government arresting Sheikh Abdullah and bringing in G.M. Shah, his lieutenant, who turned out to be a mole. Then Pakistan entered the picture and we embraced Pakistan on the principle, 'Enemy of our enemy is our friend.' India entered into water agreements with Pakistan about Indus without consulting us. In 1964, popular mobilization started about Hazratbal, but it was also expressing concern about political uncertainty. JKLF was started in 1964, but it was dormant (working underground from Pakistan), and morphed into a major movement in 1989. It was not an agitation, but a movement in spirit. Agitations come and go but a movement comes from the subconscious and can't be eradicated. In 1947, the Maharaja's army was totally annihilated and yet Pandits in Kashmir were perfectly protected. Now, things have changed with communalization being brought in by the BJP through the issues of beef, challenge to 377, Sainik Colonies, pandit colonies etc. But this is a passing phase—there is a strong bond between pandits and Muslims which, since it's in the subconscious of the Kashmiris, will never go.
