

# Jammu and Kashmir Human Rights Review – 2014

*A brief by:*

*Jammu Kashmir Coalition of Civil Society*

*The Bund, Amira Kadal, Srinagar 190001*

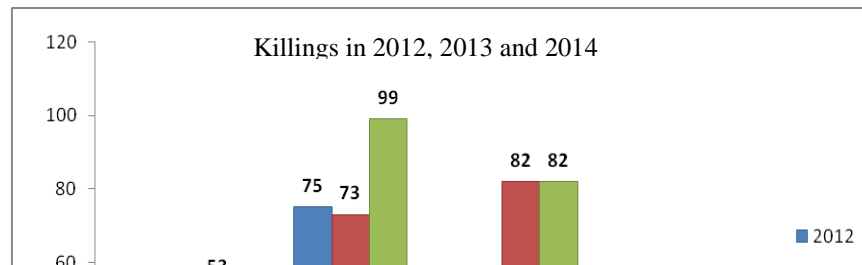
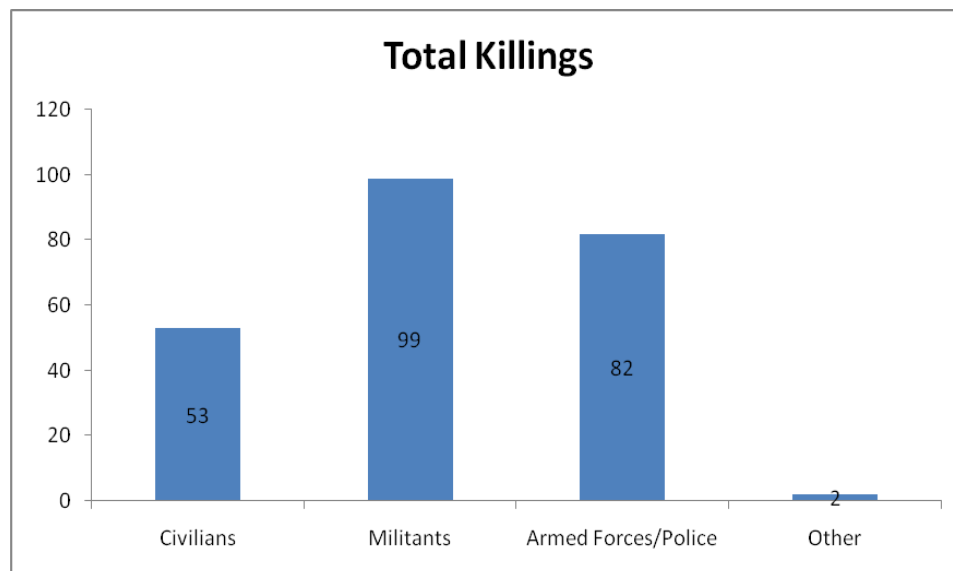
*Web: [www.jkccs.net](http://www.jkccs.net)*

*Email: [jkccs2000@gmail.com](mailto:jkccs2000@gmail.com)*

## **TOTAL KILLINGS:**

In comparison to previous years, 2014 had a slight increase in violence related incidents across Jammu and Kashmir. Incidents like Chattergam, in which two teenage boys were killed and equal number of boys critically injured, only re-established the fact that the patterns of violence remain unchanged. Another aspect of the killings was the assassinations of political workers by unidentified gunmen. However, those killings got eclipsed by a political blame game of pro-Indian political parties, as most of them occurred at the time of elections.

In 2014, the killing graph has gone upto 236 deaths in violent incidents in comparison with the year 2013 graph of 204 killings. Out of 236 persons, 53 were civilians, 82 armed forces and police personnel, 99 militants and two ex-armed forces personnel. Out of the 53 civilians killed, 17 have been killed by armed forces personnel, while 24 have been killed by unidentified gunmen. There have been killings of six civilians in the cross firing incidents between army and militants. During the border firing between Indian and Pakistani soldiers, five civilians were killed, while one person was killed in clashes between the workers of two pro-Indian political parties.



## **ENFORCED DISAPPEARANCES:**

Due to the intense campaign and advocacy work of Association of Parents of Disappeared Persons (APDP) the numbers of enforced disappearances taking place have come down but the same cannot be construed as end of the phenomenon. The recording of three cases of disappearances this year serves as a pointer that the phenomenon is still continuing. All the three disappeared persons were civilians having no militant or political affiliation. Also, on the disappearance of 8,000 people so far no measures were taken by the government. It appears the government wants to continue its policy of impunity for enforced disappearances in Jammu and Kashmir. As of now, the government has sought to obfuscate the truth on disappearances, including by giving contradictory statements. The claim of the governments that 'missing had gone for arms training' has no basis and has repeatedly been refuted by the relatives of *desaparecidos*, who witnessed disappearance of their dear ones by state forces.

This year's first case of enforced disappearance was of Mushtaq Ahmad Changa of Arampora, Haider Colony, Sopore. Changa was arrested by a Special Operations Group (SOG) contingent on the intervening night of January 29/30, 2014 in presence of his family members. Changa's whereabouts were not disclosed to his family after his arrest. For months together Changa's family struggled hard to know his fate but in vain. Now the family has moved to the court to locate Changa.

Kifayat Ahmad Khan, son of Mohammad Sadiq Khan of Rampora village of Uri had gone to New Delhi with his truck on October 18 and since then nothing has been heard of him. According to his family, Kifayat went on October 22 from Delhi to Azadpur Mandi but did not return.

The disappearance of Sumo driver, Shabir Ahmad Rather of Nishat in September this year forced his family members and relatives to register protest at Press Enclave at Srinagar. Shabir had gone to Jammu in his vehicle JK01T/1112 to ferry passengers, however, he did not return.

The government as usual has failed to initiate any investigations into those who disappeared this year.

## **ARRESTS:**

This year as well, there was no respite for Kashmiri youth, majority being students, from police harassment and illegality. As the elections were approaching, the degree of surveillance drastically increased. Officially, police state that 590 boys were arrested from different parts of the valley for conduct of 'smooth' elections. However, Hurriyat Conference states that over 1000 boys were arrested in the backdrop of elections. Many of the boys were taken out of their homes during nocturnal raids. The frequency of the raids created widespread panic in those areas forcing youth to go in hiding. The repeated detention of the boys has consequently affected their education and future. Some of the cases surfaced where youth (involved in protests or stone pelting) were coerced and intimidated to work as extensions of state agencies. Besides arrests the police had threatened young activists to not indulge in poll boycott campaign threatening arrest.

There was also massive crackdown on groups campaigning for Kashmir's right of self-determination. The dissenting leaders were either put under house detention or jailed without any charge on the pretext of conducting 'smooth' polling in the valley and to maintain 'law and order'. The wide-scale surveillance and arrests, the government's general hostility to dissent, has led to widespread human rights violations. Any signs of perceived dissent in the valley are suppressed, frequently preemptively and often brutally.

The arbitrary use of the Jammu and Kashmir Public Safety Act (PSA) which has invited frequent criticism from Kashmir civil society and Amnesty International continues to be a state tool to curb dissent. For example this year Zubir Ahmed Turray, a resident of Bonabazar, in Shopian was arrested on charges of stone-pelting in April and was slapped with PSA and shifted to a jail in Jammu division. District Magistrate in order vide number 01/DM/PSA/2014 slapped PSA on Turray and sent him to district jail Udhampur.

Another case was of Shakeel Ahmad Bhat of Malik Angan, Fateh Kadal, who was dubbed as 'Rage Boy' by foreign media outlets and 'Islamic Rage Boy' by rightwing bloggers. After booking him under the PSA, he was sent to Udhampur jail.

### **PELLET INJURIES:**

As many as eight cases of pellet injuries were reported this year. The use of pellets to deal with the protesters mostly youth has invited wide-scale criticism from the medical fraternity and human rights groups. Scores of youth suffered critical injuries in pellet usage by state forces. Most of the survivors of pellet injury suffered eye injuries, and many lost their vision permanently while some face amputations. In majority of the severe cases of pellet injuries, the families are struggling to bear the expenses to treat injury, as it is a huge financial cost as expensive medication is required for treatment.

A study by the Sher-e-Kashmir Institute of Medical Sciences (SKIMS) at Srinagar, out in public through an RTI, re-confirmed the assertions of the general masses and civil society that the use of pellets is lethal. The report confirmed the death of six persons of pellet injuries between June 2010 and September 2010. Five persons, according to it, have also lost their eyesight following pellet injuries.

In the month of March, Farooq Ahmad Malla, 22 of Chak-i-Hakbara, Sonawari, was hit by pellets fired by security forces in both his eyes, and he lost his sight. Farooq's parents spent huge amount on his treatment, however, he is yet to recover his eyesight. Besides Farooq, three other boys were

injured in pellet firing in March. While the three are showing signs of recovery and have begun to regain sight, Farooq remains badly affected.

A month later in April, a youth of Palhalan area of Baramulla district in North Kashmir received critical injuries in pellet firing by police and was shifted to SKIMS for treatment. Sajad Ahmad Malla of Palhallan received pellets in the chest.

In the same month, a 16-year-old boy Mumin Bilal son of Bilal Ahmad Kanu was injured on April 30 outside his home when forces 'fired indiscriminately' in the area. Mumin was grievously injured in pellet firing by state forces in Maharaj Gunj, Srinagar and remained in intensive care for a long time. According to doctors treating Mumin he had undergone 'unexplained shock.' Mumin's hands were injured by pellets leading to amputation of two of his fingers at Bone and Joints Hospital, Barzulla, on April 30.

On May 21, two persons were injured in pellet gun firing at Nowhatta, Srinagar. The incident occurred during clashes between protestors and paramilitary forces. The injured were identified as 55-year old Mohammad Sidiq of Nowhatta and 18-year old Faizan Rasool of Bohrikadal. One eye of Sidiq, a street vendor, was damaged. He received pellets on other parts of the body also. Faizan also got pellet injuries on his body.

#### **CUSTODIAL KILLINGS:**

As in the case of enforced disappearances there have been serious allegations of custodial killings in the past and this year as well three custodial deaths were reported. The circumstances in which the persons died require investigation. The families, who accused state forces of killing their relatives in custody, asked for an impartial probe to be conducted on fast track basis.

A prisoner, arrested on the charges of drug peddling five years ago, died at a Srinagar hospital. Mushtaq Ahmad Gilkar, 40, a resident of Kolipora locality of Khanyar was lodged in Srinagar Central Jail and fell ill. He was booked under the Narcotic Drugs and Psychotropic Substances Act in 2009. The relatives of Mushtaq who termed the death as custodial killing demanded an impartial enquiry into his killing.

In another case, on April 4, family members of Muneer Ahmad Manhas, a soldier from Territorial Army, and a resident of Kamalkote, Uri who according to police was found dead in police station Ram Munshibagh on April 3 have accused the police of killing Muneer while he was in their 'illegal' custody. In Muneer's death, State Human Rights Commission (SHRC) took *suo-moto* cognizance and directed Jammu and Kashmir Police and army to submit a factual report regarding the death of Territorial Army (TA) trooper in police custody.

Another allegation of custodial killing was leveled by the family of Mudasir Sofi, son of Abdul Gani Sofi of Sofi Mohalla, Palhallan, who had told his family that he was going to Gulmarg for a picnic with his friends. Police claimed that Mudasir was a militant who had killed himself with an assault rifle, snatched from a policeman in the preceding days of the incident. However, Mudasir's family rejected the police claim and accused state forces of killing him after taking him in custody. Also the house owner around whose house a siege was laid by SOG, Police and Central Reserve Police Force (CRPF) personnel, accused the state forces of killing the victim in a fake encounter.

Pertinently, in May, the National Human Rights Commission (NHRC) asked the Jammu and Kashmir government to maintain videographic records of medical procedures conducted in cases of deaths in custody and encounters.

In a letter to the Chief Minister, Omar Abdullah, the NHRC Chairman, Justice (Retd.) K.G. Balakrishnan wrote that postmortem examination is a “vital piece of evidence to find out whether a death was a result of human rights violation.”

“The Commission has been receiving reports of custodial deaths and deaths in police action and whenever such reports are received, an enquiry is initiated,” reads the letter (DO-No.1/743/2014/FC), dated March 19.

### **TORTURE:**

Torture remained the least reported human rights violation in Jammu and Kashmir this year as well. It continues to remain a state policy to infuse fear among the masses particularly the dissidents. The deep fear dissuades the survivors to come out and protest against the torture. It is that fear which forces the survivors to choose silence over agitating the matter before courts. Only few cases of torture came to fore where the detainees spoke out about custodial torture.

In May, a student was hospitalized after he was allegedly tortured by army in Sopore town of North Kashmir’s Baramulla district. Mudasir Hassan Reshi, a final year student of Degree College Sopore was summoned to the camp by Major Abishek of 22 RR and was subjected to physical torture.

In April, a police Head Constable allegedly detained a 26 years old youth Farhad Fayaz Bhat in police station Bomai, Sopore illegally for three consecutive days and tortured him physically and mentally. The said police constable has been attached while according to the victim, the Head Constable committed the crime to take a LCD TV from him.

A month later there were serious allegations of torture and persistent harassment by army of a driver namely, Mohammad Afsar Khan, son of Mohammad Muzaffar, resident of Binner, Sherwaniabad, Baramulla. Afsar alleged that for the one year, 46 RR F-Company Captain Balihan aka Major Saleem aka Gabar Singh was after him to act as his informer. Afsar’s refusal infuriated the army and he was tortured in their custody.

In August, residents of Harden Siver in Lolab of district Kupwara area were planning migration following torture of six men allegedly by Army’s 18 RR. The tortured has been identified as 11<sup>th</sup> standard student Javid Ahmad Sheikh, son of Shareen, Bashir Ahmad Malla, 27, son of Abdul Rehman, Mushtaq Ahmad Malla son of Abdul Rashid, Muhammad Ashiq Malla, 35, son of Abdul Rashid, Nazir Ahmad Malla, 37, son of Habibullah, 37, Shahwali Moughal, 45, son of Mir Wali - all labourers by profession.

There were also serious allegations from the people of Pulwama area where state forces badly beat people with gun butts during nocturnal raids. The incident was officially confirmed by Senior Superintendent of Police (SSP) Pulwama, Tajinder Singh.

### **KILLINGS OF POLITICAL WORKERS:**

As the assembly elections and the parliament elections were the major political developments this year, workers associated with different pro-Indian political organizations remained soft target of unidentified gunmen. In the attacks, 10 political activists were killed. One out of the 10 political activists was killed in group clashes, two died when a police Rakshak (armored vehicle) hit them during a group clashes at Warsun. One political activist and six *Sarpanches* were killed by unidentified gunmen. In Sopore area, two Sarpanchs were killed within one week by unidentified gunmen.

Four of the killed political activists were associated with National Conference. However, government chose not to investigate these killings. But the question remains on who was benefitted by the killing and why these killings were taken lightly by the people in authority. The pro-Indian political parties resorted to blame game only.

JKCCS strongly demands independent and credible probe into all the killings including these 10 killings. Otherwise, the trend will continue and people will continue to die in the same fashion with perpetrators getting away with ease.

### **KILLINGS DUE TO UNEXPLODED SHELLS:**

Explosions continued to consume lives this year. There has been no proper mechanism in place to avert the killings and injuries. Majority of those who lost their lives in the explosions were children who thought the abandoned explosives were toys. This year three persons fell prey to these explosives including two minors who died while playing while a toddler sustained multiple injuries.

### **IMPUNITY:**

In the case of *Pathribal*, the Indian army chose *not* to carry out a court-martial, despite accepting that there was a fake encounter. Essentially, impunity has been the norm, and convictions such as in the *Machil* case, the exception. Considering that the Indian army made public their position on *Pathribal* in January 2014, and is presently contesting *Kunan Poshpora*, the *Machil* conviction is no beginning. The Indian army court-martial verdict in Machil fake encounter 2010, yet to be confirmed, is not a beginning or a water-shed moment for Jammu and Kashmir, but an illustrative case of the manner in which political considerations and interests of the Indian army overrule larger principles of justice and accountability. This is apparent when the larger context of human rights violations, court-martials, and the specifics of the *Macchil* court-martial are considered.

It is understood the *Macchil* conviction is a political decision. The conviction was reportedly done in September, but was only made public just before the elections in Jammu and Kashmir. Further, the conviction is now to be confirmed by the Northern Army Commander. Besides, the fact that to begin with a court-martial was held, and not a trial in a civilian court, it is clear that the court-martial system is conscious of and guided by larger political interests. The court-martial process is rare, arbitrary, opaque, and not a commitment to justice or an effort to ensure accountability.

This is also the context in which the court of inquiry indictment in Chattergam must be viewed. In addition, newspaper reports suggest that there is some uncertainty on the exact status of even the Chattergam case. The lack of any transparency by the armed forces ensures that impunity is always maintained.

## **HARASSMENT OUTSIDE JAMMU AND KASHMIR:**

The onslaught on Kashmiris remained a norm in different parts of India. Mostly students are at the receiving end. The number of Kashmiris going to different parts of India for education has increased over the years, and so have the cases of harassment and attacks on them. They are being treated as suspects and discriminated not only by the government institutions but even by general public. The level of insecurity has doubled among the Kashmiri diaspora after the rise of right wing ideology and ultra-nationalist fervor.

In March, 67 students were beaten and expelled from a Meerut University and later booked under sedition charges for supporting the Pakistan cricket team. The pressure from Kashmir civil society groups forced the Meerut government to drop the sedition charges. The incident had unnerved the students to the extent that they were unwilling to return to the college. The incident got extensive media coverage and invited condemnation from different quarters but nothing effective was done against the hooligans, who had made the lives of Kashmiri students difficult. Pertinently, these Kashmiri students were studying under the Prime Minister's Special Scholarship scheme for Kashmiri students announced in the backdrop of the 2010 mass agitation.

In June, a 22 year old Kashmiri student of a reputed private institute in Ghaziabad was beaten up by a group of senior students when he screamed after suffering an electric shock in the hostel's washroom.

In the month of September, Kashmiri students pursuing various courses in Swami Parmanand College of Engineering and Technology in Mohali held a protest demonstration at Srinagar against college authorities demanding their migration from Punjab to Kashmir. The students accused the College authorities of harassing Kashmiri students in the college premises with the support of some outsiders. As many as 200 students returned to the valley due to fear. The students have strongly denied the allegations that cheering for Pakistan cricket team had lead to the scuffle in college. In August more than 12 Kashmiri students were injured when they were beaten up by some student groups at the college. The fight broke out when the students were watching a cricket match between Sri Lanka and Pakistan.

Recently in December, at least eight Kashmiri students were injured, one of them critically, after a group of persons attacked them at Global Research Institution of Management and Technology in Nachroon district, Yumna Nagar, Haryana. All the injured students were hospitalized. The attackers used sharp-edged weapons to cause injuries to the students.

## **SEXUAL VIOLENCE:**

This year there have been some cases reported in the media about the rapes and molestations perpetrated by armed forces and police personnel.

On 22<sup>nd</sup> March 2014 an army personnel, Shamsheer Singh was arrested in Rajouri for raping a woman. On 16<sup>th</sup> June a police constable Mustafa Cheechi was arrested in Kangan from abducting and raping a 15 year old girl. On 5<sup>th</sup> August an inspector from JK Police, Aijaz Ahmed was arrested for attempting to rape a 13 year old girl in Deesu, Kokernag area.

On 11<sup>th</sup> June in Bemina area of Srinagar people protested against the camp of Sashastra Seema Bal (SSB) who were involved in eve teasing girls from that area. After the protest, a soldier from SSB was later arrested.

On 5<sup>th</sup> August, Nirmal Kumar of 12<sup>th</sup> battalion of JK Armed Police and a resident of Kathua, Jammu was roughed up by people at Gojwara area. The policeman was caught molesting a girl in the bus. The policeman, after being roughed up by people, was stripped. Later the Police swung into action and arrested the cop.

## **KUNAN POSHPORA MASS RAPE AND TORTURE CASE**

23 years after the commission of the mass rape and torture in Kunan and Poshpora (Kupwara District), and 1 year and 6 months after the Kupwara court June 2013 order for further investigations, the conduct of the State parties continues to be as expected: the Indian State [army and government] continues to deny criminality, and seeks to defame the victims. The Government of Jammu and Kashmir and the Jammu and Kashmir Police [in this case investigating officers], shamelessly defend the perpetrators of crime. The extent to which the Government of Jammu and Kashmir is willing to go to defend the army is brought out by the absurd and contradictory stands taken by the government counsel on the issue of compensation before the High Court. While initially stating that compensation would be paid to the survivors, the Government of Jammu and Kashmir has now approached the Supreme Court seeking reversal of the High Court directions on payment of compensation. Meanwhile, the investigations by the police have been extremely slow and the survivors are before the High Court seeking court-monitored investigations.

The struggle of the Kunan Poshpora survivors is not about compensation, but about justice and accountability. In the court hearings thus far, Jammu and Kashmir Government has tried to malign the survivors by creating an impression that the survivors were after money, which is ultimately only done to strengthen the cover up. The judicial struggle by the survivors has so far helped in exposing the contradictions of the Jammu and Kashmir Government, and also, helped in displaying how the structures of impunity operate. The struggle is surely exposing the absence of any mechanisms of justice in Jammu and Kashmir which is what the Indian State otherwise proclaims internationally.

Earlier in April, this year, an explosion was carried out on the morning of 7 April 2014 by RR and 160 Territorial Army, of the Hiri camp who stated to the Kunan Poshpora villagers that it was a very old mine that had to be exploded. Further, they declared that arms and ammunition were recovered from near the blast site. The recovery was done with no independent or local witnesses. For three days, prior to 5 April, there was unusual movement of the same army personnel at this location. The intention behind the explosion was amply clear that it was carried out to deter the Kunan Poshpora survivors from pursuing the matter, which has brought attentions to the mass rape and torture case.

## **PROBES AND INQUIRIES:**

It has become a norm for the government to order a probe to deflate the agitation triggered by human rights violations. These probes are more to pacify the protesters than to indict the perpetrators. The track record of these probes only suggests that ordering probes has become an effective instrument in the hands of the governments to tackle the public anger. The same victims, who were assured action against the guilty by the government in so-called time bond enquiry at the time of the incident, have to suffer and face harassment from the perpetrators and state. The fate of these probes remains a state



secret. In few cases, where probes were completed and outcome was made public nothing substantial has been achieved. Justice remains elusive.

This year seven probes were ordered by the government, out of which six are magisterial or administrative probes while as one is a Commission of Inquiry and only in one case i.e. November Chattergam killings the army publicly admitted the killings by its forces and reportedly indicted nine soldiers. The government enquiry also indicts the army. However, the expeditious indictment of the forces by state enquiry and army was believed to be done keeping in mind the assembly elections. It re-confirms that the basic objective of the government to appoint probes is not to convict perpetrators. If perpetrators would have been punished as a result of meaningful and effective probes in the past, it would have helped in creating deterrence for the recurrence of these crimes. Investigations and probes should not be politically motivated, but aimed at holding the perpetrators accountable.

### **SUICIDE AND FRATRICIDES:**

As per the data shared by the Government of India in Rajya Sabha in July this year, 597 armed forces personnel lost their lives to suicide in the last five years. Suicides and fratricidal killings remained a serious concern for army and paramilitary establishments in Jammu and Kashmir. This year recorded 18 suicides of military and paramilitary forces and two incidents of fratricides in which seven personnel were killed.

### **FLOODS:**

In September 2014, devastating floods occurred in Jammu and Kashmir. The official death toll in the floods was 284, with 45 deaths reported in Srinagar, nine in Kulgam, eight in Anantnag, six in Budgam, four in Pulwama, four in Bandipora while two each in Ganderbal, Shopian and Kupwara districts. 159 bodies were recovered from flood-hit areas in Jammu division, while 44 others, were washed away in a bus at Rajouri and presumed dead. The initial official assessment of damage, stated that the floods had affected over 15,00,000 families in 5,794 villages across the state. It stated that around 3,44,607 structures had been damaged, including over two lakh in Srinagar alone. 90,000 heads of cattle perished. Crop loss was reported in 6.52 lakh hectares of land besides huge losses to the public and private infrastructure, including roads, bridges, schools and hospitals. The Chief Minister appealed the Central Government for a package of Rupees 5,500 crores, after receiving detailed departmental estimates of the losses.

The Jammu and Kashmir floods were clearly a man-made natural disaster, caused in part due to the militarized nature of Jammu and Kashmir and militarized governance. This was perhaps best symbolized by the manner in which rescue operations by the army were widely condemned in Jammu and Kashmir for being discriminatory against the local population.

### **STATE HUMAN RIGHTS COMMISSION:**

Notwithstanding, the State Human Rights Commission (SHRC) is a recommendatory body. The recommendations made by SHRC for the prosecution of the perpetrators have not been complied with, however, only in many cases the part of recommendations for the *ex gratia* relief has been provided.

The finding of mass graves and calling for reopening of Kunan Poshpora mass rape in 2011 by SHRC enhanced its credibility. However, the subsequent retirement of the Chairman Justice Bashir-ud-Din

followed by the retirements of all the remaining members, Javaid Kawoosa, Rafiq Fida and Amlak Singh and the non replacement of new members from last 6 months has ensured complete dysfunction of SHRC. It appears the engagement of civil society groups with SHRC for highlighting the human rights abuses has frustrated the government and therefore since last 3 years there has been no Chairperson and also they allowed all the members to retire without appointing any new members.

No fresh matters are being filed in the SHRC and it's unlikely that the appointments for the Commission would be made within reasonable time. Pertinently, this is for the first time since the establishment of the SHRC that it would be without a member.