

HUMAN RIGHTS REVIEW

Jammu and Kashmir – 2011

A brief by:

Jammu and Kashmir Coalition of Civil Society

The Bund, Amira Kadal, Srinagar 190001

Website: www.jkccs.net

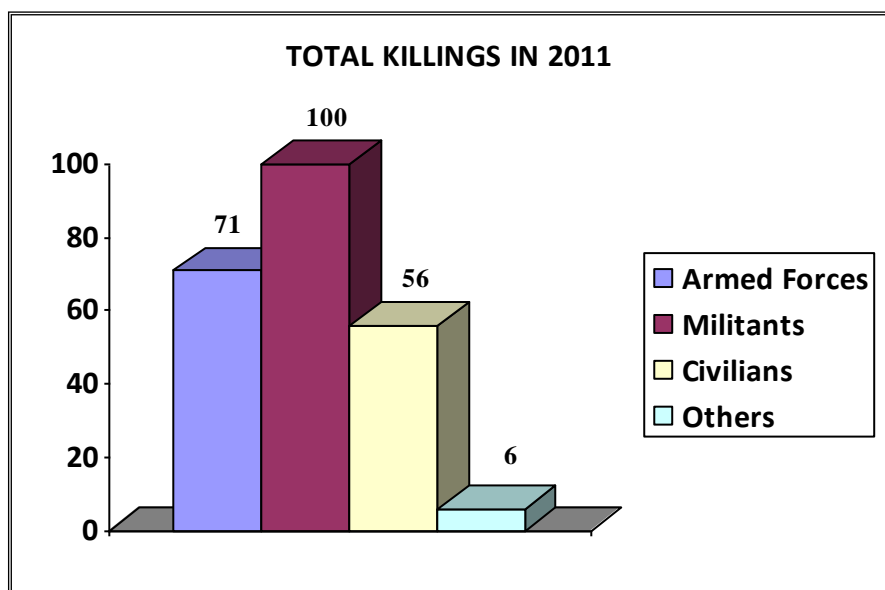
Email: p_imroz@yahoo.co.in

TOTAL KILLINGS

Year 2011 has just passed, and many have declared this year, a peaceful year in Jammu and Kashmir. Of course assertions of peace by various quarters are relative. Enforced silence cannot be construed as peace. Despite the hype of peace, people of Jammu and Kashmir have witnessed unabated violence, human rights abuses, denial of civil and political rights, absence of mechanisms of justice, heightened militarization and surveillance. The figures of violent incidents suggest that 2011 as usual has been the year of loss, victimization, mourning and pain for the people.

In 2011, a total of 233 people have lost their lives due to violent incidents in Jammu and Kashmir. Out of 233 persons, 56 were civilians, 100 were alleged militants, 71 armed forces personnel and 6 were unidentified persons and counter insurgent renegades.

Out of the total 56 civilians killed this year, 11 were students, amongst whom 7 were minors. Also amongst the civilians killed 6 were women.



UNMARKED GRAVES AND MASS GRAVES

This year has been very significant for those struggling against the human rights abuses in Jammu and Kashmir. It is for the first time a state institution like State Human Rights Commission (SHRC) endorsed the findings of Association of Parents of Disappeared Persons (APDP) and International People's Tribunal for Human Rights and Justice in Kashmir (IPTK) regarding the presence of unmarked graves and mass graves in north Kashmir, besides acknowledging the possibility of burial of some of the people subjected to enforced disappearances in these unmarked graves and mass graves.

So far APDP/IPTK has submitted the prima-facie evidence of 6217 unmarked graves and mass graves in 5 districts; Kupwara, Baramulla, Bandipora, Poonch and Rajouri. While as the SHRC has acknowledged existence of 2156 unmarked graves and mass graves in Kupwara, Baramulla and Bandipora. The SHRC inquiry in Poonch and Rajouri is not yet concluded.

ENFORCED DISAPPEARANCES

This year APDP submitted a list of 1417 cases of enforced disappearance to the Chief Minister of Jammu and Kashmir and urged the government to inquire into all the cases of enforced disappearances, but so far the government continues to be indifferent.

Enforced Disappearances is not an issue of the past. People have disappeared even in this year. At least 2 persons, Susheel Raina of Aishmuqam, Anantnag and Nisar Ahmad Bandy of Chechal, Banihal disappeared this year. The government as usual has failed to initiate any conclusive investigation into those who disappeared this year.

Successive governments have given contradictory statements about the total number of people 'missing' in Jammu and Kashmir. In 2002, the National Conference government said 3184 persons are 'missing', then in 2005 Peoples' Democratic Party led government claimed 3931 persons were 'missing' and in 2009 the present National Conference led government divulged that 3429 persons are missing in Jammu and Kashmir since 1989. In this context APDP on 7th October 2011, applied for information under Jammu and Kashmir Right to Information Act 2009 from the State Home Department for providing all the lists of 'missing persons' as claimed by various governments. More than 2 months have passed the state government has failed to provide any information regarding the contradictory figures of 'missing persons' divulged by various governments on the floor of Jammu and Kashmir Legislative Assembly.

CUSTODIAL KILLINGS

The year 2011 has not been free of custodial killings and fake encounters. 7 persons were allegedly killed in custody. In all the cases of custodial killings, the government has failed to either prosecute or conduct an impartial conclusive investigation. Whether it was the killing of Ashok Kumar, a mentally challenged person who was killed in a fake encounter in Surankote, Poonch or the killing of Nazim Rashid of Sopore who succumbed to custodial torture or the custodial death of ruling National Conference party worker, Mohammad Yousuf, who died after he was handed over by the Chief Minister to the Crime Branch officials, the practice of impunity is consistent. No credible investigations have been carried out, thus creating space for cover ups, which otherwise also is the norm in Jammu and Kashmir.

JKCCS on 4th August 2011, had filed an RTI application for seeking information regarding the investigations being conducted in the killing of Nazim Rashid of Sopore, but so far the Jammu and Kashmir Police has failed to provide the information.

PROBES AND INQUIRIES

In 2011, the government has ordered 8 different probes on various human rights abuses. So far no probe has yet yielded any results, which is nothing unprecedented as even in the past probes have been announced by the government to neutralize the public pressure. From 2003 to 2011, different governments have appointed 151 probes but justice remains elusive.

It appears the basic objective of the government to appoint probes is not to convict perpetrators but to only deflate the public anger. If perpetrators would have been punished as a result of meaningful and effective probes in the past, it would have helped in creating deterrence for the recurrence of these crimes. We urge the government to ensure that investigations and probe should not be politically motivated, but aimed at holding the perpetrators accountable.

KILLINGS OF POLITICAL WORKERS

Killings of civilian political workers continue to be an unabated phenomenon. In the year 2011, we have recorded killings of 8 civilian political workers. 4 out of the 8 political workers killed belong to ruling National Conference party, 2 were from Indian National Congress, while as 1 belonged to Peoples' Democratic Party and Moulvi Showkat Ahmed Ahmed Shah of Jamiat Ahle-Hadith. Killings of civilian political workers at the hands of state or non-state actors, is completely unacceptable. Killing of civilian political workers only creates a culture of intolerance and chokes dissent. It is therefore, JKCCS has been urging all the combatant forces – Indian military forces and the members of United Jihad Council to refrain from killing any civilian political workers.

Somehow government was very quick in probing the death of Molvi Showkat Ahmed Shah, which is a welcome step, but investigations into the killing of 7 other civilian political workers have not yielded any results so far.

JKCCS demands an impartial and independent investigation into all the killings of civilian political workers. Impartial investigations would help bringing the perpetrators to justice and also act as a deterrent.

SUICIDES AND FRATRICIDES BY ARMED FORCES PERSONNEL

Suicides and fratricides by the personnel of the Indian armed forces, continues to exist as an issue in the year 2011. This year 15 armed forces personnel committed suicides in Jammu and Kashmir due to unknown reasons and another 9 were killed in fratricidal incidents of violence.

TORTURE/HARASSMENTS/ILLEGAL DETENTIONS

The paranoia of government regarding the summer uprising of 2010, was very evident this year in the actions taken by the government. Even in 2011, when there was no apparent street uprising, hundreds of boys were detained on the pretext of being stone pelters. These young boys are subjected to torture, intimidation and harassment. In many police stations boys are illegally being detained; sometimes for few hours and sometimes for few days. Some boys are regularly being called to police stations on one

pretext or the other. There is complete disregard towards the juvenility of the boys being detained. This year many minors were arrested on charges of stone pelting.

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

RAPES AND MOLESTATIONS

State Human Rights Commission (SHRC) passed a judgment on the Kunan Poshpora mass rape case of 1991, demanding re-opening of the case and also filing a case against the then Director Prosecutions. It is for the first time a government institution has acknowledged this mass rape incident. It took state 20 years to acknowledge the crime and it isn't clear how long government will take to convict perpetrators.

This year in Kulgam area of south Kashmir, there was an allegation of rape, where a woman alleged that she was raped for 2 days. The way police conducted investigations into this case and also kept the family literally under house arrest, raised more suspicion against the government.

Fear and social stigma makes it difficult for the victims to report the rape or molestation cases. One such case, by coincidence came into the notice of JKCCS in north Kashmir this year where the rape victim did not want to report her victimization. In the month of February a woman (identity withheld) from north Kashmir was allegedly raped in police custody in front of her husband. The husband was kept under detention as a hostage so that his wife would not report her case. The woman did not want to file complaint as she had no hope of getting justice and also was worried that by filing the case she would endanger her husband's life.

IMPUNITY

Government of India has been claiming that despite the imposition of AFSPA, mechanisms of justice are functional and deliver whenever anyone is found indulging in human rights abuses, but facts provided by the state institutions this year contradict the claim of the Indian state.

In a reply to an application under Right to Information Act by JKCCS, the State Home Department of the Jammu and Kashmir government on 6th September 2011 claimed that from 1989 to 2011, they have applied for sanctions for prosecution from Ministry of Defence and Ministry of Home Affairs under section 7 of AFSPA in 50 cases only. Out of these 50 cases, 31 pertain to Ministry of Defence and 19 others have been sent to Ministry of Home Affairs.

Within these 50 cases stated to be applied by the State Home Department for sanctions under AFSPA, sanction for prosecution is awaited in 16 cases and declined in 26 cases. The State Home Department claimed sanction for prosecution has been recommended in 8 cases. A deeper study of these 8 cases where the State Home Department says that the status is "recommended", it appears that the information given is incorrect as the cases according to Defence Ministry are still in the category of "under consideration" or sanction has been declined.

Above facts reveal that the provision of sanctions for prosecution under AFSPA is a fig leaf and the truth is that there is 100% impunity for the soldiers operating in Jammu and Kashmir.

In the context where in Jammu and Kashmir we have more than 8000 cases of enforced disappearances, thousands of cases of custodial killings and fake encounters, thousands of cases of rape and molestation and thousands of cases of torture etc; applying for sanctions for prosecution in only 50 cases speaks volumes about the seriousness shown by the State Government so far for protecting the human rights of people of Jammu and Kashmir.

This year there have been voices raised by politicians regarding the revocation of AFSPA, which is also aimed at generating an impression that human rights violations will end by the revocation of AFSPA. The fact is that Jammu and Kashmir Police has been an equal partner in crimes committed on the people. The Jammu and Kashmir Police personnel also have been responsible for a huge number of human rights abuses.

The armed Village Defence Committees (VDCs), Special Police Officials (SPOs), and the counter insurgent government sponsored militias like *Ikhwān* have also been responsible for perpetrating heinous crimes. Which law allows the creation of these groups? Which law encourages them to perpetrate human rights abuses? Which law sanctions their impunity? It is the law of lawlessness.

Revocation of AFSPA from some areas would not help in ending the human rights abuses as the sense of immunity in the soldiers is not derived from laws but from the political culture of impunity, for which State Government and the Government of India are largely responsible.

The government should help the processes of justice and help prosecute officials accused of human rights abuses. The mechanisms of justice which have been forced to not function by the government should be empowered to punish the guilty, which would be a meaningful confidence building measure for the people of Jammu and Kashmir.

We urge the Government of India to end the culture of impunity and not just AFSPA from Jammu and Kashmir.

KILLINGS DUE TO UNEXPLODED SHELLS AND LANDMINES

This year 8 persons have lost their lives in explosions, which were caused due to unexploded shells used during counter insurgency operations and 1 out of 8 deaths was reported due to landmine explosion.

ROLE OF INSTITUTIONS OF JUSTICE

State Human Rights Commission (SHRC) has tried to assert its existence by passing some very significant judgments this year. Prominent amongst the cases where SHRC passed the judgements was the case of unmarked graves and mass graves in north Kashmir, Kunan Poshpora mass rape case and the plight of prisoners languishing in various jails across Jammu and Kashmir. Besides these judgments SHRC has been actively helping in the cases to provide ex-gratia relief.

Judiciary in Jammu and Kashmir continues to show an abysmal performance and has failed to live up to the expectations of the victims. Amongst the people of Jammu and Kashmir disillusionment regarding judiciary is at its lowest, as it has failed in holding perpetrators accountable. Notwithstanding the powers to protect life and liberty of citizens, judiciary has disappointed people of Jammu and Kashmir. Judicial activism for protecting the civil and political rights and seeking accountability from the state actors is very apparent in India, but it seems to be completely absent in the Jammu and Kashmir judiciary.