



Impunity to Military Personal in Kashmir Valley, a Heart Touching Debate Since 1989

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Abstract

By conservative estimates, the two and a half decades conflict in Jammu and Kashmir has seen more than 70,000 dead and more than 8,000 disappearances. The spectacle of death, destruction, gender violence and disappearances witnessed over and over again in Kashmir is the result of culture of impunity that has flourished in the aftermath of year's conflict and militarisation. In the face of these human violations, failure in justice system in the state judiciary and military tribunal further add to this culture of impunity. The reign of impunity constitutes a form of violence and a "structural element of everyday reality". Impunity accorded to the armed forces has been a norm in Kashmir valley rather than an exception. Impunity represents a challenge in Kashmir valley not only in cases of recent violations of the right to life, but also of those committed in the past in respect of which effective investigations and prosecutions still have not been conducted. Complaints were widely raised that the wheels of justice, when they turn, do so too slowly. Legal proceedings drift for years, while alleged perpetrators remain large in the community, often on bail. The fight against impunity in Kashmir valley is faced with lot of challenges at various stages of accountability process. During the stage of reporting a crime, it is often heard that local police authority refuses to register a first information report (FIR) against the military personal, including those related to rapes or searching for captive persons, and those persons who are attempting to register a case are often subjected to threatening treatment or to the fact that their complaints are not given serious consideration. The existence of judiciary holds the promise of accountability and justice, but facade of redress, pattern of cover-up and denials are pervasive and common throughout the legal system at both state and central levels. Indian occupied Kashmir is one of the most highly militarized areas in the world since the last two and a half decade. The history of armed violence, disappearances, murders, illegal killings, rapes and human sufferings has touched every nook and cranny of the Kashmir valley. The absolute number of people killed, maimed and tortured will probably never be known till now and no one has been held accountable for these crimes. National security laws like the Armed Forces Special Powers Act (AFSPA), is in operation in Kashmir valley since 1989, assures impunity or free reign to defence personal accused of those violations. The present paper highlighted the violations and abuses which the Indian military has committed and have been found accountable and the free reign provided to them in the valley by the central Government.

Keywords: Impunity, human rights violations.

Introduction

India took authoritative control over Kashmir since her independence from British in 1947. Formally the Indian control in Jammu and Kashmir was confined to three broad areas of security, foreign affairs and communication, but since the last two and a half decades insurgency, her control has crossed every limit that was mentioned in the constitution. The consistent violation of Kashmir autonomy and freedom by different government authorities remained synonymous, like unusual curbs on civil rights and liberties, freedom of speech and other basic human rights¹.

Geographically the Kashmir valley is smallest as compared to other Indian states, but the most heavily populated region of the state with a population of approximately 4 million people as per 2011 census. By 1990, the beginning of insurgency in Kashmir valley, roughly there were 150,000 soldiers operating in the

valley, seventeen for each square mile and one soldier for every twenty seven civilians. According to two different estimates there were 44% of the total Indian army operating in Kashmir valley, with one soldier for every ten civilians. In reality, there are no official figures regarding the exact number of military deployed in Kashmir.

Law and Governance in Jammu and Kashmir

Since the last two and a half decade, Indian occupied Kashmir is subjected to few legislative provisions, namely the Jammu and Kashmir Armed Forces Special Power's Act (AFSPA) and the Disturbed areas Act (DAA). It is (AFSPA) nothing but, simply a replica of Rowlett Act (1919) practiced by British government in India, when India was one her colony. It grants special power to central government as well as the state governor to declare an area 'disturbed' and for such purpose no constitutional prerequisites are required. If any area is declared disturbed under

it (AFSPA), military and the local police have enormous and unlimited powers to carry out the operation, search homes, arrest civilians without warrant, destroy and damage property in order to maintain law and public order. It is exempted from judicial review; even civilizations can't challenge it or their detention under it. Victims of this brutal Act (AFSPA) find it extremely difficult to file a case (FIR) against perpetrators in the police office. The police on their side show helplessness to register a case against the accused and saying that they are under pressure and were instructed by 'higher authorities' not to do. If any case has been filed and registered against the military, lack of cooperation shown by military prevents the police to make a thorough investigation. If any military personal is convicted and found involved in of human rights violation, military authorities transfer the case from civil to military courts, where they expect some sort of leniency, because military trails are not held in public and lack accountability. Military have their own network of detention and interrogation centres, such centres are beyond the reach of public and law, and holding detainees in these centres with no time bound and any registration at all. This thing prevents people from seeking any information regarding detainees and from taking recourse to the writ of habeas corpus meant to protect citizens from institutional abuse. The Jammu and Kashmir courts have a huge number of pending habeas corpus petitions, as per state court bar association, there are 60,000 habeas corpus petitions pending which are filed by people since 1989².

The Jammu and Kashmir public safety act (PSA) is the same brutal and draconian law as armed forces special powers act (AFSPA) used by both central and state government to detain a person without trial for a period of two years. The Jammu and Kashmir public safety act (PSA) violates international human rights law and standards by detaining persons without trial, as totally violates the possibility of judicial review and other safeguard measures for the victims of detention. It also violates the basic human rights by allowing security forces to arrest persons on vague ground, such as when people exercising their right to express and peaceful assembly. In 2011, the international human rights watch dog and amnesty international, declared the Jammu and Kashmir public safety act (PSA) lawless law and inhuman law as Indian authorities are misusing it to detain

civilians for no time bound without any judicial scrutiny³. For the last few years the state of Jammu and Kashmir have experienced a huge number of detention, without any trial under this brutal law and the number of administrative detainees in Jammu and Kashmir is 14 times higher than that of national average. A total of 1127 people were reported detained in Jammu and Kashmir during the term and tenure of national conference under the leadership of under Omar Abdullah since 2009, 997 in Kashmir and 130 from Jammu region⁴.

Table-1
Number of persons held detained under administrative detention in j and k from 1990- 2013 as per national crime records bureau (NCRB) and greater Kashmir newspaper (GK)

Year	NCRB	GK
1990	00	942
1991	00	1070
1992	00	976
1993	00	1112
1994	00	2118
1995	799	1819
1996	1022	1560
1997	725	414
1998	303	460
1999	269	441
2000	497	503
2001	416	318
2002	444	504
2003	397	401
2004	451	510
2005	377	402
2006	369	920
2007	275	00
2008	266	00
2009	00	211
2010	00	455
2011	00	355
2012	00	159
2013	00	52

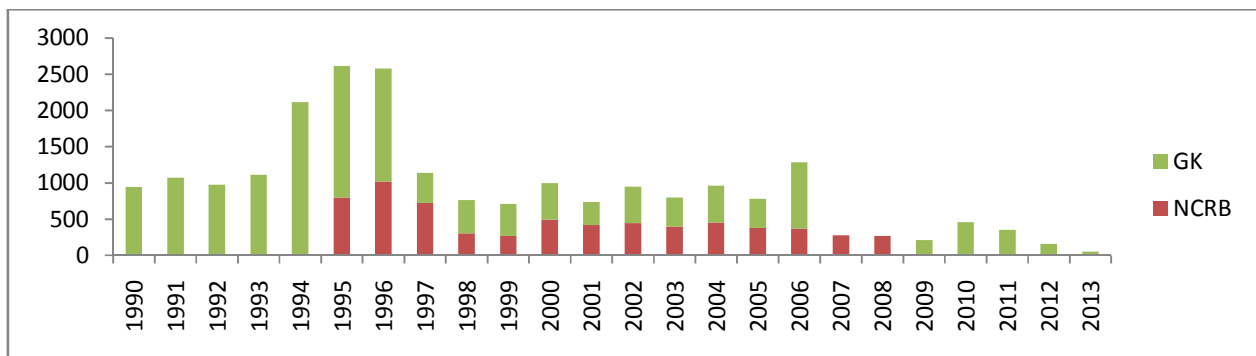


Figure-1
Total no detainees under Public Safety Act (PSA)

Inhuman behaviour from army in Jammu and Kashmir

Why Kashmir people have no faith in Indian security personal? Why they hate India as well as her security forces. Why they want to be autonomous. The simple answer to all these questions is animal like behaviour shown by Indian army towards Kashmiri people particularly women folk. This is not my talk; it is the talk as well as the proof provided by media as well as different international organizations. As per the reports Human rights watch, human rights abuses have been a part of campaign by the Indian military personal against Kashmiri civilians, particularly since 1990 and this abuse is manifested in the following ways like disappearances, beating, and fake encounters of civilians in the name of terrorist insurgency, rape, and molestation of Muslim women.

With the advent of heavy militarization in the Kashmir valley since 1989, women have often been the targets and survivors of violence like sexual abuses. Within the south Asian context and due to the universal taboos around sexual violence, women often do not report such crimes, even to receive crucial medical care. Thus the actual extent of sexual violence is unknown in Kashmir valley. However certain notable events that have gained the huge publicity in media otherwise, nobody would believe that women in Kashmir are facing sexual violence. For example, in 1991, more than forty women from the age of 13 to 80 years old were brutally raped at point blank spot by 4th Rajputana rifles in a small village named kunan poshpora of district kupwara. On subsequent enquires it was stated that allegations against security is simply a 'massive hoax'. In 2009, bodies of two girls' nilofar and asiya of shopian district were found in a shallow stream after a whole night search by the family and the village community. The post-mortem reports even declared that both girls had been raped and murdered but central bureau of investigation reported no rape and murder has been committed by the security personal. That is why this paper is talking about the impunity or free reign which security personal are enjoying in Kashmir and even after getting full evidence and proof of their involvement but no one in never ever put behind the bars till date⁵.

Sukhmani Singh an Indian journalist, who visited Kashmir valley in 1990, described his own experience, while talking with some poor and helpless women who were raped by army personal in a rural village named pazipora. In the 1998, Sailan massacre, 19 civilians, including 11 children and five women (one of them was pregnant), were shot to death a point blank range in their homes in Sailan village Poonch district. Their bodies were thereafter cut in to pieces to be disposed of. In official records, these killings were reported as collateral damage during an encounter, despite overwhelming evidence to the contrary. In the 2000, pathribal fake encounter, Indian army killed five men claiming that the victims were terrorists responsible for the mass killings of Sikhs in chittisinghpura, during the course of investigation, DNA samples of the victims

had been tampered with. The central bureau of investigation told the supreme court of India that the pathribal killings by the army were cold blooded murders and the accused officials deserve to be meted out exemplary punishment. Despite these findings, the Indian army closed the file and stating that the "evidence did not establish a prima facie case against any of the accused" and chose not to conduct a court martial.

A human rights activists group, international people's tribunal on human rights and justice in Indian occupied Kashmir (IPTK), along with Srinagar-based association of disappeared persons (APDP), claimed that hundreds of army and police officers involved in gross human rights abuses have not been prosecuted in Jammu and Kashmir and have been declared as innocents by Indian authorities. It was also stated that three brigadiers of Indian army, nine colonels, three lieutenant colonels, 78 majors, 25 captains and 37 senior officials of federal paramilitary were perpetrators of various illegal activities and human rights abuse in the state. While releasing this report titled 'alleged perpetrators stories of impunity in Jammu and Kashmir' international peoples tribunal on human rights and justice in Indian administered Kashmir (IPTK) investigators said at a news conference that the government agencies had not shown any tendency to hold a fair and transparent enquiry⁶.

Table-2
Shows the victimised villages where rapes committed by Indian army personal

Year	Village/town
1990	Pazipora, sopore
1991	Kunan poshpora
1992	Chak Saidpora, Haran, Gurihakhar
1994	Theno Budapathary Kangan
1997	Wavoosa in Srinagar
2004	Handwara
2009	Shopian

Deaths resulting from excessive use of force

In a study conducted on human rights violations in Kashmir with special reference to violations committed by Indian paramilitary forces. The researcher prepared a questionnaire and distributed it among post graduate students, government employees, social activists, media personals and the local business man in Kashmir region. Five districts of Kashmir were chosen for the study like as Srinagar, Baramulla, Pulwama, Anantnag and Budgam. The findings of the study reported that out of 216 respondants included in the study 2.77% are of the opinion that militants were behind the chittisinghpura massacre in the year 2000, while as 73.14% of the respondants believed that the army was behind it, 13.88% Of the respondants remain silent about it and only 11.02% of the respondants did not know about who actually did that massacre and it was found that 86.11% of the total respondants believed that Indian armed forces are mostly involved in human rights violations while as

only 13.88% of the respondents believed that armed forces are involved at sometimes⁷.

Use of illegal brutal force from army is a routine in Kashmir. Insecurity is the slogan there. Thousands of innocent people lost their lives in the name of terrorists. In the eyes of Indian govt the murder of a person in Kashmir is just like death of an ant and nothing else. A living example is the killing of five men who falsely reported by police and army the persons who actually did the mass massacre of thirty six Sikhs in chittisinghpura in 2000 and later on they all were killed in a fake encounter. Forensic tests showed that all the five persons were local villagers who were innocent of it. In May 2003, Javid Ahmad Margay, a 17 year old boy, was abducted and killed by Indian army one night near his home in Srinagar, even the investigation proved that margay had been abducted and killed by the army and the officer who had been responsible had never been arrested or compelled to testify his allegation rose against him. Instead of it they reply totally contradictory saying the unit was out of station at that time⁸. In February, 2006 another case in Handwara Indian army have opened fire at a group playing cricket, suspecting that a militant was hiding among them, and killed four boys, including a eight year old boy, even the army had admitted that the extra-ordinary powers as granted to them to shoot have led to mistakes⁸.

At least 100 deaths were caused due to the excessive use of force against demonstrators in Jammu and Kashmir in 2010⁹. National human rights commission(NHRC), reported 2560 deaths occurred during encounters with police between 1993 and 2008, out of this number 1224 cases were regarded by the national human rights commission (NHRC) as a result of fake encounters. The police and the Indian have been accused of those of fake encounters. On 30 April 2010, in the Machil sector of Kupwara district of Jammu and Kashmir, where three young individuals were killed by army, alleged to be terrorists, the individuals were later on identified as civilians who went missing from their villages Nadihal in Baramulla and had allegedly been exchanged for money to some members of the army so they could be killed in a fake encounter for which awards were offered. The outcomes of the criminal case launched against the security officers involved are still pending¹⁰.

Killings and disappearances in Jammu and Kashmir

The last two and a half decades conflict in Kashmir has witnessed that a lot of people are not only killed, but many more among them are being disappeared from the eyes of their kith and kin and had been put behind the bars which are totally unknown. Truly speaking the main agents behind these killings and enforced disappearances is the Indian army.

Concerns have been expressed by the special reporter on unmarked graves found in Jammu and Kashmir containing

bodies of victims of extrajudicial execution from 1990 to 2009 period. The special reporter was informed that a total of 2700 unmarked graves containing over 2943 bodies have been discovered some of these graves containing more than one body. While the government expressed its intension of conduct investigations into unmarked graves, this has not yet been done. The special reporter was presented with several cases of enforced disappearances in Jammu and Kashmir, and the difficulties to seek accountability and redress in those cases⁸. The government has estimated that 4,000 people have gone missing, and claimed in exchanges with the special reporter that a large portion of those allegedly missing crossed the border to join armed groups in Pakistan. Other sources have estimated the number to be 5,000-10,000. India have signed but not yet ratified the international convention for protection of all persons.

Moreover, there is still no information about the fate of thousands of individuals 'disappeared' by Indian security forces; did they really exist in the world? Do the hope of their relatives that they will come back to their home sooner and later one day is just wasting of time⁸. The insurgency has snatched son from their parents, brother from their sisters, it has the ruined whole Kashmir society. The disappeared victims arrested by police or armed forces or parlimentry forces included boys and men of all ages and professions, including businessman, lawyer's labourers and many teachers. Almost all of them appear to be ordinary citizens picked up at random without any connection to the armed struggle.

Conclusions

The last 24 years of conflict in Jammu and Kashmir, impunity of prosecution from serious crimes has been a common thing for army. Impunity occurs when the state consistency fails in her responsibility to bring all those criminals to justice who violates the basic human rights, instead of shielding them by getting their favour in one way or the other. Impunity creates a sort of flexible atmosphere in which violators believe that they can get away with the most serious crimes at any time. I will quote an example of a Kashmir victimized man whose son was 'disappeared' told human rights watch that police warned him if he failed to pay cash or inform authorities not only his son would be killed but he himself would be taken in to jungle, killed and identified as a terrorist.

There is no chance of peace and normal life in Kashmir unless and until this impunity as well the practitioners of impunity should be removed from Kashmir. There should be a complete withdraw of the armed forces special power act, 1958 (AFSPA) and the Jammu and Kashmir public safety act, 1978 (JKPSC) from the state

Impunity not only affects the victims and their families but it has developed a sort of doubt among people towards every

person in authority. It has lead to division in society that will take a long time to heal.

It is absurd that the world's largest democracy, with a well developed legal system and internationally recognised judiciary, has laws on its books that prevent members of its security forces from being prosecuted for human rights violations, it time for the Indian government to repeal these laws and recommit itself to justice for victims of all abuses, whoever the perpetrator may be.

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