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(IPTK)*

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**MILITARIZATION WITH IMPUNITY:  
A Brief on Rape and Murder in Shopian, Kashmir**

*<http://www.kashmirprocess.org/shopian>*

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**1. Context:**

On May 29, 2009, as has been variously attested, Asiya Jan and Neelofar Jan were subjected to rape, reportedly by more than one perpetrator, and murdered. Ms. Asiya Jan and Mrs. Neelofar Jan were Muslim residents of Shopian town, in Shopian district, Kashmir, and 17 and 22 years of age, respectively.

On July 08, 2009,<sup>1</sup> the public inquiry commission headed by Justice (Retired) Muzaffar Jan, appointed by Jammu and Kashmir Chief Minister Omar Abdullah on June 01, 2009 to inquire into the events,<sup>2</sup> submitted its report, subsequently made public on July 10.<sup>3</sup>

On July 12, it was reported that the Commission's findings had been doctored by the police who were partners to Justice Jan in his investigations, even as the police themselves were being investigated for their involvement in the rape and murder of Asiya Jan and Neelofar Jan (see below). Justice (Retired) Muzaffar Jan distanced himself from the 'findings' in the annexure of the report.<sup>4</sup> The police subsequently denied Justice Jan's allegations.<sup>5</sup>

What does it signify when the findings of a judicial inquiry commission set up by the ruling government of Jammu and Kashmir are vitiated? The declaration by Justice (Retired) Muzaffar Jan raised critical questions regarding the involvement of state institutions, including government and security forces, in destabilizing the investigations. It also raised questions regarding what the 'truth' of the matter was, who were in the know, and what was being shielded.

The investigations in Shopian, as noted through this brief, failed to focus on the identification and prosecution of perpetrators or on addressing structural realities of militarization that foster and perpetuate injustices. The investigations concentrated instead on locating 'collaborators' and manufacturing scapegoats to subdue public outcry. 'Control' rather than 'justice' organized the focus of the state apparatus, including all processes related to civic, criminal, and judicial matters.

The events in Shopian of May-July 2009 are contextualized within a continuum of past violences and violations by the Indian military and paramilitary, and reciprocal relations between heightened militarization and social and gendered violence in Indian-administered Kashmir. The population of Shopian district numbers 2,00,000-2,50,000. [Note: The population of Kashmir was recorded at approximately 69,00,000 in 2008, with Muslims constituting approximately 95 percent of the population.<sup>6</sup> Across Jammu and Kashmir, which includes Ladakh, approximately 67 percent of the population was of Muslim descent.]<sup>7</sup> Shopian town is home to approximately 60,000-70,000 residents.<sup>8</sup> The military and paramilitary are hyper-present in and outside the town. At its limits are the police and paramilitary Central Reserve Police Force (CRPF) camps. Beyond, the locality is surrounded by the Rashtriya Rifles (military) and various camps of the CRPF, in Gagaran, Batpora, Balpora and on Mughal Road. The Rashtriya Rifles stage flag marches and the CRPF regularly patrols the area. Since May 29, 2009, the CRPF established another camp near the site of the incidents, close to the police residential quarters, across the Rambhi-Ara *nullah* (a tributary of a stream) beyond the edge of Shopian town. Approximately 3,000 police and personnel of the Special Operations Group (SOG) monitor the area. Further, about 20,000+ security forces personnel are deployed across Shopian district.<sup>9</sup>

Beginning May 30, 2009, throughout June, until July 16, 2009, for forty-seven consecutive days, protests continued in Shopian town, led by the Majlis-e-Mushawarat and other groups, seeking justice, joined, in solidarity, by others across Kashmir. Daily life remained interrupted, economic

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and social life overrun. Through non-violent means, civil society continued to dissent the horrific events that transpired, the relationship of these events to military and paramilitary forces, the actions and impassivity of security forces and institutions, and those of the state. Civil society members reiterated that civil disobedience was the sole mechanism available to them via which to seek justice.<sup>10</sup>

On June 13, 2009, at the behest of various civil society members in Kashmir, Dr. Angana Chatterji, Advocate Parvez Imroz, and Mr. Zahir-Ud-Din of the International People's Tribunal on Human Rights and Justice in Kashmir (IPTK) travelled to Shopian, approximately 55 kilometres from Srinagar, the official summer capital of Jammu and Kashmir, to inquire into the event. We met with family members and various local community members in the home of Asiya Jan and Neelofar Jan. As well, we met with members and office bearers of the Shopian Bar Association. We travelled through the town, to the area where the bodies were recovered, and to the newly formed graves that now hold Asiya Jan and Neelofar Jan. Our visit to and from Shopian was monitored by security forces. On July 01, 2009, Mr. Gautam Navlakha of IPTK also visited Shopian.

On June 21, 2009, IPTK contacted the Criminal Investigation Department (CID), requesting a meeting between Dr. Chatterji, Mr. Zahir-Ud-Din, and Mr. Khurram Parvez of the People's Tribunal and the CID, to seek clarification on the events and circumstances leading to the death of Asiya Jan and Neelofar Jan. The CID investigates specialized crimes requiring technical expertise. We were informed that either the Inspector General of Police, in-charge of the CID, Mr. Farooq Ahmad, or Mr. Ashok Bhan, the Director General of Police, CID, would meet with us on the following day. After numerous telephone communiqués expressing their desire and intent to meet, the CID eventually declined to do so.

Note: This brief offers a preliminary understanding of complex issues and questions that require further and detailed study. The brief is authored by IPTK conveners, legal counsel, and liaison, with assistance from staff and interns. In writing this, we met with, and consulted, family members of the victims and local community members in Shopian, and a range of lawyers, journalists, academics, activists, and others. As well, legal experts and independent medical personnel, and those on international protocol, were consulted. We extend our gratitude to all the above, while withholding the names of most that spoke or worked with us, for fear that such listing may compromise their safety and place them at risk of reprisal. In the interest of space and manoeuvrability, only a partial bibliography has been included in this brief, see endnotes. Sources used in writing this note, including maps, certain photographs and video documentation taken in Shopian, and archival material, are available on the IPTK website, see Uniform Resource Locator (URL): <http://www.kashmirprocess.org/shopian>.

**2. Event:**

On May 29, 2009, at approximately 4.30 pm, Asiya Jan and Neelofar Jan left their home in Shopian town and travelled together to the apple orchard, recently purchased by their family, for upkeep work and regular inspection, as routinely undertaken by women in an area with numerous plantations. The orchard is located in Nagabal village, approximately 2.5 kilometres from Shopian town. To travel there required that they pass by the limits of Shopian town, in the west-southwest direction, and go across the Rambhi-Ara nullah. The depth of the water in the Rambhi-Ara nullah is, per local community members, *'between ankle-deep and knee-high'*, with various dry and waterless areas. At the limits of the town, before the short and narrow iron bridge over

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the Rambi-Ara nullah, on either side of the Zoura Road, are located a CRPF camp (on the right when facing the bridge from the limits of Shopian town) and a police camp (on the left), facing south. Prior to the police and CRPF camps, is a bus stand. After the bridge on the nullah, on its left, when facing the bridge from Shopian, facing southwest, is the orchard. After the bridge on the nullah, on its right, when facing the bridge from Shopian, the police residential headquarters are under construction. Further down, when facing the bridge from Shopian, to the right of the police residential headquarters site is the Bolapora Rashtriya Rifles camp, facing northwest. And, when facing the bridge from Shopian, to the right of the CRPF camp, about 1.5 kilometres away, is the Ziyarat Sharief Aarhama (pilgrimage site).<sup>11</sup>

Neelofar Jan was married to Shakeel Ahmad Ahanger, who operates a small business in Central Market, in Shopian town. Shakeel Ahmad is also Asiya Jan's brother. In his testimony to us, Shakeel Ahmad stated that on May 29, 2009, he had eaten lunch with his wife and sister and proceeded to work around 3.30 pm. He returned home at approximately 7.30 pm. His wife and sister, Asiya Jan and Neelofar Jan, had not returned from the orchard. Per the family's understanding, Neelofar Jan was two-three months pregnant. Shakeel Ahmad stated, *'It was Friday, the day of prayer. They had gone to complete some work. There was a lot of work to be done in the orchard... They did not have mobile phones'*.<sup>12</sup> A friend of the family added, *'There are stories of ghosts in the area, so people do not go there [to the orchards] on Fridays, but there was work...'*<sup>13</sup> Shakeel Ahmad asked Aaqib Ahmad, his younger brother, to go and accompany them back, assuming they were on their way home. Aaqib Ahmad went as far as the bus stand, not seeing Asiya Jan and Neelofar Jan, he returned to inform his brother. Shakeel Ahmad then proceeded to the orchard on his neighbours' motorcycle to look for Asiya Jan and Neelofar Jan. He was unable to locate either of them. Ghulam Qadir Sheikh and his family, whose home is located near the Ahanger's orchard, informed Shakeel Ahmad that both Asiya Jan and Neelofar Jan had travelled to the orchard. Ghulam Qadir Sheikh's wife had seen and spoken with them earlier that day. The neighbour also stated that Asiya Jan and Neelofar Jan had left to return home, as daylight was beginning to fade.

Following this, between then and approximately 10.30 pm, Shakeel Ahmad, with his two brothers, nephew, and friend, Showkat Ahmad, searched for Asiya Jan and Neelofar Jan in the orchard and surrounding area, over the bridge and under where foot traffic passed, and through the shortcuts in town leading to his home. In-between, Shakeel Ahmad stated, *'I ran out of oil on the bike and called my friend, refuelled the bike, and we searched again'*.<sup>14</sup> Shakeel Ahmad also stated that a group of migratory Gujjar (tribal, here, prevalently identified as Muslims) workers had set up temporary shelter in tents near the police camp. He spoke with Gujjar community members in two settlements, and *'asked [at] the Gujjar bastis [here, makeshift dwellings] whether they had seen Neelofar and Asiya, and they said no'*.<sup>15</sup>

At approximately 10.30+ pm, Shakeel Ahmad arrived at the Shopian Police Station to report Asiya Jan and Neelofar Jan missing. They met with Munshi (clerk) Riyaz Ahmad, who recorded the oral statement. Shakeel Ahmad left the police station to continue looking. The constable then telephoned Shakeel Ahmad, communicating that the police would assist him in mounting a search. Ahmad returned to the police station.

Following which, that evening Shakeel Ahmad, his family members, and Showkat Ahmad were accompanied in their search by approximately eight policemen in a police vehicle, Tata 407 (a light commercial vehicle manufactured by Tata Motors Limited, India), supervised by Constable Mohammad Yasin. The group, under directions from the police, first proceeded to the orchard.

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The group traversed the area from the orchard to Shopian town, using searchlights and handheld torches/flashlights. They also searched in the nullah around the bridge. The area where the search was undertaken falls between the police and the CRPF camps and police residential buildings and Rashtriya Rifles, and is considered a 'Red Zone' (high security zone).<sup>16</sup> After daylight hours, people are disallowed from moving around in its vicinity, and searchlights are turned on in the CRPF camp, directed out. While the search was ongoing approximately from after 11.00 pm until 2.30 am, reportedly, the CRPF camp's searchlights were switched on.

During the search process, Constable Yasin received various calls and spoke on his mobile phone, including to someone in a senior position, addressing him as 'Sir'. At 2.30 am on May 30, 2009, Yasin determined to suspend the search. Constable Yasin stated that Shakeel Ahmad should not worry, 'it was not the water', and that the police would contact him early in the morning on May 30, and resume the search. This was corroborated by Sub-Inspector Gazi Abdul Kareem. Prior to that, Constable Yasin had spoken on the phone to someone, again addressing the caller as 'Sir'.<sup>17</sup>

Shakeel Ahmad testified that, through the night, he awaited the morning, and the resumption of the search. He stood vigil at home, waiting, he said, 'where the morning light appears first'. He waited for the police to call. He did not hear from them.<sup>18</sup>

Prior to 6 am on May 30, 2009, Shakeel Ahmad, with family and friends, proceeded to the police station. At the police station they were made to wait without any further communication. As the news of the disappearances circulated, townspeople too, gathered outside the police station. After waiting for a while, Shakeel Ahmad, and those accompanying him, proceeded to the nullah to resume their search for Asiya Jan and Neelofar Jan.

As Shakeel Ahmad and those accompanying him reached the area, immediately after, the Station House Officer (SHO), Shafeeq Ahmad, arrived at the nullah. He was followed by a police search party and a medical van. The SHO's vehicle stopped at the iron bridge on the Rambhi-Ara nullah, and he instructed those searching to look in a particular spot for a dead body.

The body was identified by Shakeel Ahmad to be that of Neelofar Jan. Shakeel Ahmad and other eyewitness accounts testify that Neelofar Jan's body was laid, face down, the head resting on a stone in the nullah. Her eyes were open and hands outstretched. The *phiran* (also *phyaran*, long cloak or robe worn over women's trousers) had been lifted to reveal the upper part of her body, and her clothes had been torn. Scratch marks were imprinted on her neck, arms, and buttocks. There were scuffmarks on her face and chest, neck and wrists. The *dupatta* (scarf) she had been wearing the day before had been removed from her head. The gold jewellery worn by Neelofar Jan had not been removed, indicating that they had not been apprehended by assailants intending to burglarize.

At the moment Shakeel Ahmad identified Neelofar Jan's body, he recalls an engulfing fear that Asiya Jan had faced harm. As Shakeel Ahmad returned home, shortly after, Asiya Jan's dead body was located by Mohammad Ashraf, Imtiyaz Ahmad, Farooq Ahmad, Jahengir Ahmad, and others.

Asiya Jan's body was found placed on two boulders on the eastern bank of the Rambhi-Ara nullah, right of the CRPF camp, close to the Ziyarat. Asiya Jan's body had a fracture on the forehead, of approximately three inches long, two inches wide, and one centimetre deep, where she had presumably been struck. Her body lay face down. Her clothes were torn and blood stained. Those

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who found her body stated that her clothes were dry. Blood had discharged from her nose, both sclera (outer layer of the eyeball) were bluish, and foam covered the area around the mouth.

The bodies of Neelofar Jan and Asiya Jan were placed approximately 1.5 kilometres apart from each other. Their bodies were found at the edge of the town, not far away from it. Neelofar Jan's body was found placed in-between the police camp and the orchard, on the Rambi-Ara nullah, at the very spot where the search party had been active the night of May 29-30, until 2.30 am. When facing the bridge from Shopian town, it was placed on its left side. Both bodies were found within the ambit of the searchlights of the CRPF camp in a high security Red Zone, regularly monitored and patrolled by security personnel. It is unlikely that those who may have carried the bodies could have done so without attracting notice of security forces personnel. The placement of the bodies in the Rambi-Ara nullah would have required either their carriage to the spot by heavy vehicle(s), given the stony ground in the nullah, or by two or more persons physically carrying each body, or on an animal, such as a horse.

As well, on the morning of May 30, the Gujjar community had left, their shelter disbanded, leading to a speculation that, witness to some aspect of the events, they were forced to relocate. The presence of the Gujjar settlements was later confirmed as well by Constable Yasin. No investigations were commenced on May 30, or shortly after, to inquire into this matter.

Local community members questioned what happened during the night of May 29-30, after the search party stopped its work at approximately 2.30 am. The community surmised that the bodies of Neelofar Jan and Asiya Jan must have been placed/found between 2.30 am on the night of May 30 and when the SHO, Shafeeq Ahmad, appeared at the nullah the next morning to meet Shakeel Ahmad.

***3. Obstruction of Justice - Security and Medical Apparatus:***

On May 30, 2009, following their identification, the bodies of Asiya Jan and Neelofar Jan were taken by the police and community members to the District Hospital in Shopian. At the hospital, Shakeel Ahmad encountered the Superintendent of Police (SP), Javed Iqbal Mattoo, who stated: '*Aap himmat mat haron, aise kisse hote rahte hain*' [*Do not lose heart, such incidents keep taking place*]. The post-mortem was conducted by Dr. Nazia, Dr. Bilal Ahmad Dalal, and Dr. Bilques. The SP proceeded to the post-mortem room. Even as family members of Asiya Jan and Neelofar Jan waited to hear about the post-mortem, the SP left the hospital premises via another exit without speaking with them.<sup>19</sup>

Later, the doctors from the District Hospital stated that Asiya Jan and Neelofar Jan had died due to drowning. It is noteworthy that the water level in the nullah is shallow, which would render death by drowning of two adults in full possession of their faculties less than likely. The statement made by the doctors contradicted evidence witnessed by those recovering the bodies, in that the bodies did not display signs of drowning, including that the bodies had not retained water, and blood and foam secreted from the mouth, were visible. The reported presence of sand in hair and the wetness of clothing may likely have resulted from the placement of the bodies in the nullah. It was, as later discovered in the medical report, also stated by Dr. Bilal Ahmad Dalal that '*the nails were clean of any dust, clay or any other substance*',<sup>20</sup> indicating an absence of struggle in a sandy, shallow stream preceding death, and suggesting the placement of bodies in the water following death. As well, the placement and appearance of the clothes, blood, and foam on the bodies indicated the perpetration of probable physical and sexualized violence.

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The statement made by the hospital led to protests amid the crowd that had gathered. Some pelted stones. People converged, taking to the streets, women and men, children, demanding justice, stating security forces to be involved in the desecration and death of Asiya Jan and Neelofar Jan, chanting against the impunity of militarization, for 'Azaadi' (freedom).<sup>21</sup>

Family members took the bodies of Asiya Jan and Neelofar Jan in a procession from the local hospital to the office of the Deputy Commissioner (DC) of Shopian, Mohammad Ramzan Thokar. The DC arrived at 2.30 pm, and, in response to public demand, summoned a team of physicians, Dr. Mohammad Maqbool, Dr. Ghulam Qadir Sofi, and Dr. Nighat Shaheen, a woman gynaecologist, from nearby Pulwama district to conduct a second post-mortem at the District Hospital in Shopian. These doctors were deputized by the Chief Medical Officer of Pulwama. Dr. Shaheen, in her capacity as a gynaecological specialist, was asked to conduct a gynaecological examination to determine sexual assault. She was not asked to conduct an autopsy. Prior to delivering her report to the public, she had been requested by family members to place her hand on the Qur'an (also Koran, primary religious text of Islam). The statement was delivered in the presence of the SP, the Deputy Superintendent of Police (DSP), and other security personnel. In delivering her statement, Dr. Shaheen was tearful, reportedly stating: '*Yeh janwaro ka kaam hain. Gang rape hua hai*' [*This is the work of animals. Gang rape has been committed*].<sup>22</sup>

At that time, Dr. Shaheen did not establish to the public the evidence on which she premised her conclusions especially as the victims were dead, unable to testify. 'Gang rape', rape perpetrated by more than one person, rape by multiple perpetrators, mass rape, is usually ascertained via more than the examination of the genitalia and internal genitalia of the survivor/victim. It requires the collection of evidence for forensic-deoxyribonucleic acid (DNA) analysis, and the collection of bodily fluids, including for the presence of multiple spermatozoa, and various primary and secondary trace materials/evidence, and the examination and documentation of markings and mark patterns that establish abuse on multiple parts of the body by different perpetrators.<sup>23</sup>

Immediately following the statement, Shakeel Ahmad, and others accompanying him, heard the SP order: '*Shelling kar do*' [*commence tear gas shelling*], in preemptive strike on the crowd outside. The bodies were taken to Shakeel Ahmad's home in preparation for burial rites. The women who performed the ritual bath and other rites on the bodies confirmed what in their estimation were the appearance and presence of markers of sexualized violence. On May 30, 2009, the bodies of Neelofar Jan and Asiya Jan were interred at the community graveyard in Shopian town. At the time the bodies were taken for burial, based on the evidence and Dr. Shaheen's statement, the family and community had concluded that first 'gang rape', then murder, had taken place, leading to the death of Asiya Jan and Neelofar Jan.<sup>24</sup>

Following Dr. Shaheen's statement regarding 'gang rape', on May 30, 2009, officials of the Special Task Force and CRPF as well as the SP visited Shakeel Ahmad's home for undisclosed reasons. The SP was reportedly irate and threatened family members. He is reported to have stated: '*Main kissi ko chdunga nahin. Sabko maar dunga*' [*I will not spare anyone. I will kill everyone*].<sup>25</sup>

Non-violent protests and civic demands for justice grew in Shopian town and were met with military force. Security personnel, including CRPF, it has been reported, stoned homes and businesses, causing damage. In response, some members of civil society engaged in intermittent stone pelting. Security forces responded with armed violence.<sup>26</sup>

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On May 31, 2009, a team of nine doctors from Shopian and Pulwama deliberated on the findings of the first and second post-mortem, in the process of preparing a report for the Forensic Science Laboratory (FSL, Crime Branch, Police). The formal report and public statement did not refer to the presence of violence. A copy was handed over to the Block Medical Officer, Divisional Commissioner, DC, and SP. The SP refrained from commenting on the report, stating that the final report would be issued by the FSL regarding the cause of death. Locally, contemptible rumours were circulated, reportedly by security personnel, about the moral character of Asiya Jan and Neelofar Jan, revisioning rape as 'sexual encounter', and legitimating the abuse of those, such as sex workers, characterized as 'immoral'.<sup>27</sup>

**4. Obstruction of Justice - State Apparatus, Police Inaction, Witness and Forensic Statements:**

On May 31, 2009, Chief Minister Omar Abdullah stated that the death of Asiya Jan and Neelofar Jan was '*a case of drowning*'. The Chief Minister did not order the state police to register FIRs with regard to either the reported sexualized violence or murder. He prematurely stated that, based on *prima facie* evidence, '*the initial findings do not suggest either rape or murder, but now we want to get it cleared beyond doubt*'.<sup>28</sup>

On June 01, 2009, Chief Minister Abdullah appointed a public inquiry commission headed by Justice (Retired) Muzaffar Jan.<sup>29</sup> Public inquiry commissions, invested with only recommendatory powers, are appointed to investigate extraordinary matters. It is surmised that the appointment of a judicial commission on the Shopian event was consequent to the intensity of public opinion following the initial mismanagement of the criminal investigations by concerned authorities, and their likely involvement in the matter.

The Jan Commission was to carry out investigations within the timeframe of one month, and the notification announcing its mandate stated that: '*The Commission shall ascertain whether there has been any foul play in their death [of Asiya Jan and Neelofar Jan] and if so, identify the person/persons responsible; The Commission will perform all other functions necessary for holding of inquiry and submit its report to the Government within a period of one month from the date of issuance of the notification; The Commission of Inquiry will also ascertain whether there was any failure on the part of any department in the government in the conduct of an investigation or handling of the post-incident situation; The Inquiry Commission, appointed in exercise of powers conferred by Section 3 of the J&K Commission of Inquiry Act, shall recommend action as deemed necessary against the person/persons involved/responsible and suggest action as may be necessary to ensure non-repetition of such incidents; The government has further directed that the provisions of Sub-section 2, 3, 4, 5, and 6 of Section 5 of [the] Commissions of Inquiry Act [Act No. 60 Of 1952] shall be applicable to the [Jan] Commission*'.<sup>30</sup>

On June 01, 2009, the report of the FSL was readied. FSL personnel have since commented that, subjected to pressure from senior police officials, the release of the report had been delayed by five days. The first report of the FSL confirmed rape, while remaining 'inconclusive' with regard to the cause of death.<sup>31</sup>

On June 01, 2009, in cognizance of his mishandling of the investigation, DC Thokar was reassigned as Additional Commissioner of Kashmir.

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On June 04, 2009, Chief Minister Abdullah amended his statement, declaring that '*something has happened there*'.

On June 05, 2009, the Jammu and Kashmir High Court Bar Association filed a Public Interest Litigation (PIL) [OWP NO. 515/09], seeking the registration of a first information report (FIR) of the Shopian incident. The offences in Shopian, as determined by the Bar Association, were committed under Sections 302 (code on murder), 363 (code on kidnapping), 366 (code on kidnapping, abducting with intent), and 376 (code on rape) of the Ranbir Penal Code (special penal code operational in Jammu and Kashmir).<sup>32</sup>

Until June 07, 2009, the police failed to file an FIR, when, subject to local resistance and calculated pressure from a politically concerned New Delhi, an FIR [No 112/2009] was lodged at the Police Station, Shopian, under Section 376 (rape) of the Ranbir Penal Code.

On June 08, 2009, a Special Investigative Team (SIT) was constituted by Kuldeep Khoda, the Director General of Police (DGP).

On June 10, 2009, police added charges under Section 302 of the Ranbir Penal Code to the FIR [No 112/2009], regarding the murder of Asiya Jan and Neelofar Jan by undetermined killers. The FIR regarding the murders was filed prior to a public announcement on the part of investigating agencies confirming the murders. The only statement of record to that effect was released on June 09, 2009, by the Jammu and Kashmir High Court Bar Association, following its independent investigation.

The delay in filing the FIRs on rape and murder is noteworthy. It is within the 'reasonable' purview of the procedures of law and order that an SHO should be held responsible for negligence if an FIR is not filed within twenty-four hours of an incident, a DSP should be held responsible for negligence if an FIR is not filed within forty-eight hours, and an SP should be held responsible for negligence if an FIR is not filed within seventy-two hours.

It is also noteworthy that, while the police failed to register an FIR until eight days after the event of the alleged rape, possible collective rape, and murder of Asiya Jan and Neelofar Jan, an FIR against members of the public charging them with stone pelting was recorded promptly.

On June 10, 2009, in cognizance of his mishandling of the investigation, SP Mattoo was transferred from Shopian and reassigned in-charge of Ramban district.

On June 12, 2009, a second FSL report confirmed the presence of multiple spermatozoa establishing the 'gang rapes' of Asiya Jan and Neelofar Jan.<sup>33</sup>

Physicians who had conducted the post-mortem of the bodies as well testified before the Justice Jan Commission, reportedly attesting to the 'gang rapes', and stating that the deaths had not been caused due to drowning or suicide.

On June 12, 2009, Javed Iqbal Mattoo, former SP of Shopian, testified to the Jan Commission, admitting to negligence in the discharge of his duties. He stated receiving a telephone communication from the SHO on May 30, 2009, at approximately, reportedly, 5.00 am, regarding the disappearances of Asiya Jan and Neelofar Jan, and, soon thereafter, another call regarding the recovery of Neelofar Jan's body. He failed to respond, or dispatch other guards on his behalf, and

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instead focused on continuing his regimen of physical exercise at his residence. He, as well, failed to collect evidence or file an FIR with regard to sexualized violence, despite signs of visible abuse on the bodies of the victims and the medical testimony.

On June 13, 2009, at the graveyard in Shopian where Asiya Jan and Neelofar Jan were laid to rest, community members repeated to us, *'We want their names, the names of those who raped and murdered. We are tired of the lies, it has been twenty years of lies'*.<sup>34</sup>

On June 14, 2009, Dr. Fareeda Noor, Head, Department of Forensic Medicine, Government Medical College, Srinagar, testified as an expert witness before the Jan Commission, stating: *'The cause of death in no way is drowning as proved by the lung floating tests that were conducted. The presence of spermatozoa on the two bodies is another fact that denies drowning as the cause of death. Since the water in the Rambi-Ara stream is running, how spermatozoa can remain on a body when it is in water for 4 to 5 hours? In Asiya's case the cause of death is a forceful strike with a sharp edged weapon. Usually the thickness of the scalp is 3 to 8 millimetres while the grave injury on her forehead was 2.5 centimetres deep which proves the attack by a sharp weapon with force'*.<sup>35</sup>

This invalidated the earlier statement made by examining physicians, diagnosing Asiya Jan's death from 'neurogenic shock'. As well, it was stated that samples of spleen, heart, and brain from Neelofar Jan had not been collected and preserved in a timely and proper manner, in order to establish a conclusive cause of her death.

At the hearing, it was also established that the Legal Cell of the FSL had instigated the delay in the release of the first report of the FSL. Javed Iqbal Hafiz, Head, Legal Cell, FSL, stated that the FSL was under 'external pressure'. Meanwhile, after considerable delay, an investigative team of 40 police officers, formed by DGP, Kuldeep Khoda, collected further evidence, including four stones and sand from the crime scene, and recovered a folded blanket. It was announced that police personnel with 'scratch marks' would be investigated, while no public announcements were made regarding assessments and anomalies in the movement of police and CRPF personnel to and from the police and CRPF camps on May 29-30, 2009, as available from camp rosters.

Documentation regarding the criminal investigations and the medical and forensic processes with regard to rape and murder were not made available to the family of Asiya Jan and Neelofar Jan. Given the various lapses in due process, integrity, and judgment connected to the investigation of their rape and murder, and the nature of the case, it remained imperative that the family be apprised of all new developments in a timely manner. It also remained unclear whether the integrity of the process of evidence collection was maintained, as crucial in instances of rape, mass rape, and murder.

To ensure such integrity would require an inquiry into the processes via which complete examinations of the bodies were conducted to determine if all collection of relevant evidence for possible sexual violence and murder were undertaken in sterile conditions, and the appropriate placement and packaging of items gathered during evidence collection, including drying, labelling, and sealing. The above also pertains to the collection of victims clothing and underwear and foreign material dislodged from clothing, foreign materials on bodies, including blood, dried secretions, loose hairs, fingernail scrapings and/or cuttings, fibres, soil/debris, vegetation, matted hair cuttings, and substances dislodged from the mouth using dental floss, and swabs of suspected saliva, semen, and other materials. As well, the collection of oral swabs and smears, body/skin

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swabs, and blood and saliva samples, or buccal swab, hair evidence, including head and pubic hair samples and combings, and vaginal/cervical swabs and smears, anal/perianal swabs and smears is necessary for DNA analysis, and the ability to establish, in instances of likely double rape as in the case of Asiya Jan and Neelofar Jan, the possible presence of bodily fluids from one victim inside another. The timely collection of forensic evidence, documentation, skeletal and dental x-rays, colour photographs, including of irregular pigmentation, and colposcopic video images, requires that the examination take place within a time bound frame, attentive to the rate of physiological change following death, given weather and other conditions. Criminal investigations as well require timely collection of evidence from the crime scene(s). In addition, given the contention over death by drowning in this instance, the forensic investigations, in their public account, should have detailed whether the bodies had involuntarily inhaled a certain volume of water, visible in the lungs and other parts of the body, and if water logging of skin had taken place, along with determinations based on the position of arms and legs at the onset of rigor mortis, and the retention of soil matter on body parts and clothing.<sup>36</sup>

On June 18, 2009, it was reported that two persons, alleged eyewitnesses to the events of May 29, had recorded their testimony with the Chief Judicial Magistrate (CJM). The depositions were held in-camera, shortly following the Shopian Bar Association's allegation that the Special Investigating Team had intimidated the two witnesses into altering their statements.<sup>37</sup> The witnesses were Ghulam Mohiuddin Lone, a local resident, and Abdul Rashid Pampuri, a customer to his shop. They had previously recorded their testimony with the Shopian Bar Association,<sup>38</sup> stating that, on May 29, 2009, between 7.30-8.15 pm, they saw a police van (blue with red line), Tata 407, parked at the end of the bridge on the Rambh-Ara nullah. The location where the Tata 407 was seen on May 29, was the spot used, until recently, by the SOG to set up a checkpost for purportedly bureaucratic purposes, but reportedly used for intimidating local residents, and extortion.<sup>39</sup>

Lone and Pampuri heard more than one woman's voice scream:<sup>40</sup> *'Mauji Bacaho. Bhai bachao'* [*Save me. Brother save me*].<sup>41</sup> They witnessed two persons in police uniform, faces covered with black cloth, who instructed that they run away, stating: *'Jo kuch dekha aur suna bhool jayo...'* [*Forget whatever you have seen and heard*].<sup>42</sup> After walking away for some distance they turned back and saw the van driving towards Shopian town, in the direction of the police camp and the CRPF camp. Lone and Pampuri stated that these police personnel were perhaps from Kashmir, as they appeared to speak in Urdu, accented with a Kashmiri dialect.<sup>43</sup> From the above, it appears that, between 7.30-8.15 pm, when the witnesses saw the Tata 407 on the bridge, the women in the van, perhaps Asiya Jan and Neelofar Jan, were alive.

On June 20, 2009, rumours were circulated in Shopian that local people too were involved in the rape and murder of Asiya Jan and Neelofar Jan, reportedly by security personnel, with the intent of rupturing solidarities around the event among townspeople.<sup>44</sup>

On June 21, 2009, the Interim Report of the Jan Commission called for administrative action against former SP Mattoo, DSP Rohit Baskotra, SHO Ahmad, Sub-Inspector Gazi Abdul Karim, and Hafiz of FSL for reported negligence and destruction of physical evidence. Former DC, Mohammad Ramzan Thokar, was censured for his management of the public protests that ensued. The Jan Commission's interim report noted the failure to file FIRs in a timely manner and the loss of critical forensic evidence and recommended action against the doctors who conducted both the autopsies, citing their work as 'incompetent and highly unprofessional'. However, the Jan Commission's report, and the inquiry of the Special Investigation Team, did not identify the

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perpetrator(s).<sup>45</sup>

The DGP, Kuldeep Khoda, asked Farooq Ahmad, the Inspector General of Police, in-charge of the CID, to conduct an investigation into the lapses noted in the interim report.<sup>46</sup>

As well, following the interim report, Chief Minister Abdullah altered the mandate of the Jan Commission merging its charge into a joint inquiry with the Special Investigating Team of the police, focusing on the '*identification of the culprits, punishment, and recommendation for remedial measures to prevent recurrence of such incidents and role of government agencies*'. The enjoining of an independent commission's inquiry with that of the investigating team of police, who were implicated in the events, posed various questions regarding the integrity and independence of the process.

On June 25, 2009, per the observations of the Jan Commission, Dr. Shaheen, gynaecological expert on the second post-mortem team, along with Dr. Ahmad Dalal of the first post-mortem, were placed under suspension by the Commissioner cum Secretary, Department of Health, Jammu and Kashmir.<sup>47</sup>

Civil society and political leaders stated Dr. Shaheen's suspension to be politically motivated for not obfuscating the occurrence of 'gang rapes'. The Specialist Doctors Association of Kashmir (SDAK) stated its intent to strike if the suspensions were not revoked.<sup>48</sup> As of July 16, 2009, the last public reportage on the matter, disciplinary action against the two doctors was being carried forward.

On July 04, 2009, the Jammu and Kashmir High Court ordered the exhumation of the bodies of Asiya Jan and Neelofar Jan for another post-mortem and procuring DNA evidence. The court also ordered that the Gujjar community present in Shopian on the night of May 29, 2009, be located in order that they may testify. As well, the Jammu and Kashmir High Court issued directions for interrogating suspended police officers and witnesses, and, as necessary, the administration of narco analysis.<sup>49</sup>

We note that narco analysis is controversial and considered a form of torture, as it requires the administration of drugs that force the subject into submission without their consent. Its practise has been banned in several countries.<sup>50</sup> The Court also ordered that police and paramilitary forces personnel stationed in Shopian might not leave without explicit permission of the Special Investigating Team.<sup>51</sup>

On July 05, 2009, the Jammu and Kashmir High Court ordered that the investigation be supervised by Farooq Ahmad, the Inspector General of Police, in-charge of the CID, and Rouful Hassan, Deputy Inspector-General. It also required that the Special Investigative Team submit a weekly progress report to the court.<sup>52</sup>

The circumstances in which the bodies of Neelofar Jan and Asiya Jan were found, their placement, and the actions of the security forces personnel during the search process, the failure to follow due procedure, obfuscation of evidence and medical findings, and their uncooperative, combative stance in general, and reported intimidation of witnesses, amalgamated the inference among family members, civil society, and experts that security forces, or those under their protection, were involved in the rape and murder.

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**5. Systemic Impediments to Rule of Law - Commission of Inquiry 'Findings':**

*'For twenty years, we have been shown commissions, so many of them. They are not independent. They are not for bringing justice. They are for show.'* (Trade union organizer, Shopian, June 2009)<sup>53</sup>

On July 08, 2009,<sup>54</sup> the Muzaffar Jan Commission submitted its extensive findings to the government, made public on July 10, 2009.<sup>55</sup>

Through the report, the following emerged:<sup>56</sup> 1. That the bodies of Asiya Jan and Neelofar Jan must have been placed in two locations in the Rambi-Ara nullah between 2.30 am and 6 am on May 30, 2009; 2. That civilians likely could/would not enter a Red Zone to depose of the bodies; 3. That two witnesses maintained that they reportedly saw a police vehicle, (Tata) 407, and personnel on the bridge on the Rambi-Ara nullah at around 8 pm on May 29, 2009; 4. That security personnel suppressed and destroyed evidence, and from this, it may be implied that suppression and destruction of evidence attested to culpability; 5. That the number of errors executed by police personnel permits an informed assumption that the errors were deliberately deployed with the intent to disobey the police manual and rules in use regarding cognizable offences; 6. That examining physicians, as Dr. Bilal Ahmad Dalal, attempted to deny that rape had been committed.

On July 10, there was public outcry across Kashmir due to the incompetent and deficient content of the report.<sup>57</sup>

On July 12, Justice (Retired) Muzaffar Jan distanced himself from the narrative established in the annexure of the report. Newspaper reportage stated that *'Justice Jan said that the controversial sections were part of a separate report prepared by the police investigation team working with him, which had somehow got mixed with his own report'*.<sup>58</sup> Muzaffar Jan as well stated that he had submitted a 100-page report, *'but the investigating team headed by SP Haseeb Mughal messed-up my report and annexed his own 300 pages to my original draft'*.<sup>59</sup> Police denied Justice Jan's allegations, stating that the Commission had, in fact, examined the annexure prior to including the same in the Commission's [alleged] final report.<sup>60</sup>

The admission by Justice (Retired) Muzaffar Jan raised critical questions regarding the involvement of government institutions and security forces in destabilizing the investigations. It also raised questions regarding what the 'truth' of the matter was, who were in the know, and what was being shielded. As well, we note that while Justice Jan stated that segments of the report were authored/included without his knowledge, it appears from the way that the report is cross-referenced that the Commission perhaps did have knowledge of the full contents of the report. As well, we note that it would be inappropriate to contend that the various issues and unanswered questions around the investigation centre on the 'mismanagement' of the report.

Justice (Retired) Muzaffar Jan also claimed that his version of the report did not carry any allegations against the character and family of Asiya Jan and Neelofar Jan. It stands to reason that such allegations, as documented in the report (see below), and other charges in the annexure, if not authored by Justice Jan may only assumedly have been ordered by very senior security/other officials at the state level. Therefore, the supposition that only junior police officers were involved in the destabilizing of the investigations is rendered unstable, pointing to obstruction of justice at high levels of institutional authority.

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The report, *that was made public as the Justice (Retired) Muzaffar Jan Commission's findings*, remained inconclusive, failing to offer a coherent narrative of the events and actions of those it had undertaken to investigate. The Commission's [alleged] report attested to the deliberate concealment of evidence and knowledge of the crimes committed, the obstruction of justice, and conspiracy to obstruct justice, undertaken by the security forces in the case of rape, reported gang rape, and murder of Asiya Jan and Neelofar Jan in Shopian.<sup>61</sup>

The mandate, that the Justice (Retired) Muzaffar Jan Commission *'shall recommend action as deemed necessary against the person/persons involved/responsible and suggest action as may be necessary to ensure non-repetition of such incidents'*, was not actualized.

The Commission's [alleged] report inadequately noted, *'Although conclusive evidence to identify the culprit, has not been furnished before the Commission because of unfortunate obstructions caused by certain dissenting political parties in the working of the Commission, yet there is material on the file to hold, that the involvement of some agency of J&K police, in the present incident, cannot be completely ruled out'*.<sup>62</sup> The report, however, did not comment on the possible role of the CRPF in the matter.

The Commission's [alleged] report, as written, functioned to dishearten Kashmir civil society. The Commission's [alleged] report emphasized the procedural conduct of the police in their handling of the investigation and did not focus on the actual crimes that were committed. The Commission's [alleged] report noted, and identified, officers that had acted to subvert the investigative process and falsified testimony. However, the report did not comment or question whether the officers acted individually, which remained unlikely given the structure and context of their actions. If officers had not acted in their individual capacity, the Commission did not seek to investigate the chain of command via which instructions were delivered to them to subvert the investigative process and falsify statements. The Commission also did not raise questions regarding the conduct of the state institutions, including the state government and security apparatus, their actions, and the perceptions that were made public, during the process of the investigation. The Commission's [alleged] report failed to establish the cause of death for Asiya Jan and Neelofar Jan. The Commission's [alleged] report did not corroborate the gang rape of Asiya Jan and Neelofar Jan.<sup>63</sup>

The Commission's [alleged] report noted the deliberate and methodical violations and irregularities committed by the police after the bodies were found, stating, *'It seems that from the moment the dead bodies were found, the plan of the police including the investigating team was not to follow the mandatory requirement of preserving the evidence to obstruct identification of the culprits'*.<sup>64</sup>

The Commission's [alleged] report noted that, per the statement of SHO Shafeeq Ahmad it was, in fact, the understanding of the police that Asiya Jan and Neelofar Jan had first been raped and that their murder had been committed in order to conceal the rape, even as the actions of the police were contrary to such understanding. Per the Commission's [alleged] report, the testimony of the police illuminated that, had the police taken *'all preventive measures to preserve evidence, [the] culprits would have been identified'*.<sup>65</sup>

Per the Commission's [alleged] report, Sub-inspector Kareem and other testifying officers failed to explain why procedures of evidence collection were not followed, and that, following

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discovery, why the bodies of Asiya Jan and Neelofar Jan were covered over in clothing in ways that may have destroyed evidence, and why the area where the bodies were found was not cordoned off to preserve the integrity of evidence as mandatory in a criminal investigation. Heavy vehicles, such as tractor trolleys or jeeps operating in the area, or horses, were not inspected for blood and other evidence, as reportedly testified by DSP Baskotra, to determine how the bodies of Asiya Jan and Neelofar Jan had reached the different locations in the Rambi-Ara nullah where they were found. Per the report, testifying officers failed to explain why security personnel had repeatedly offered false testimony and misled the family and public during the course of the investigation.<sup>66</sup>

The Commission's [alleged] report failed to establish a consistent timeframe for the death of Asiya Jan and Neelofar Jan. The Commission's [alleged] report failed to establish a consistent timeframe for police action with respect to the discovery of the bodies of Asiya Jan and Neelofar Jan. Per the testimony of police officers, the dead bodies were placed at the site (from where they were later recovered) between 2.30 am and 5.30-6 am on May 30, 2009.

In a few instances, the report noted that, per security personnel testimony, on May 30, 2009, the search resumed at 5.15 am, and the timing of recovery of the bodies was recorded at 6.30 am for Neelofar Jan and 7 am for Asiya Jan. However, the testimony of Sub-inspector Kareem's testimony, as produced in the Commission's [alleged] report, noted that Neelofar Jan's dead body was recovered at 5.30 am on May 30, 2009. The report stated that, *'SI Gazi Abdul Kareem admits that the dead body of Neelofar was recovered at 5.30 AM from the river Rambi Ara Nallah and her clothes were not torn'*. Further, SP Mattoo, per the report, *'in his statement has admitted that on 30.05.2009 around 5.00 am he was informed by the SHO that two girls are missing, since the previous night, and after some time the SHO again rang up to inform that the dead body of lady Neelofar, has been found in the Nallah. After 50 to 60 minutes SHO again rang up and inform that another dead body, of Asiya has also been recovered from Arhama from river Rambi Ara Nallah... The SP admits that he did not take any precautions to save the evidence that might have been present at both the spots where dead bodies of Neelofar and Asiya were recovered around 6.00 AM in the morning of 30th May 2009'*. The report also noted that, *'Pradeep Kumar, Constable 14th Battalion, C-Company, CRPF located at Batapora, Shopian has stated that during the intervening night of 29th/30th May, 2009, he was on guard duty from 4.00 am to 6.00 am in the post, which is located on the bank of river Rambi Ara Nallah'*. The witness stated that he had a search light *'which illuminate[s] the river upto 200 mtrs [metres] during the night'*, and that *'from 4.00 am to 6.00 am, he did not notice any suspicious vehicular movement in the Rambi Ara Nallah river'*.<sup>67</sup>

From all consultations, evidence indicated the plausible involvement of security forces, likely from within the police, SOG, and/or CRPF. The military and paramilitary are, as recorded earlier, hyper-present in and outside Shopian town. It is peculiar that this would be selected as a site for rape and murder by persons not connected to, or under the protection of, the security forces. The topography of the area and certain evidence pointed to the possible involvement of either police or paramilitary personnel. During our interviews, local communities and institutions repeatedly stated that the police harboured *'both killers and witnesses in their own home'*.<sup>68</sup>

Through the conduct of inquiry into the mismanagement of the criminal investigations, the police were selectively implicated while the actions of CRPF personnel were not placed under diligent scrutiny. The police, reportedly 81,370 strong in Kashmir, it must be noted, are understood as staffed largely by 'local' [read: Muslim] personnel, while the CRPF is understood as an 'Indian'

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force. In recent times, the CRPF has been trained to function increasingly in corresponding capacity to the military. Its increased authority and use of force have been well documented. Per a Government of India announcement in mid-July 2009, there are reportedly 75,000 CRPF personnel currently stationed in Kashmir. The Indian state recently proposed to withdraw approximately five paramilitary battalions (5,000 personnel) in August 2009. The Ministry of Home Affairs in New Delhi maintained that the CRPF were deployed in the 1990s to combat militancy in Kashmir, and that with the abatement of militancy, the Kashmir police will replace certain CRPF cadre. Analysts state that the events in Shopian and the violent response of the security forces, including the CRPF, escalated civilian sentiments against their presence, concern for which led New Delhi to announce a reduction in the size of CRPF presence in Kashmir.

The Commission's [alleged] report did not corroborate the purported gang rape of Asiya Jan and Neelofar Jan. The Commission's [alleged] report did not discuss the possibility of collective rape or custodial rape (in unlawful detainment). Collective rape is often used to describe rape perpetrated in conflict areas on non-dominant groups by agents of state institutions, where the perpetration of rape is linked to systemic issues of human rights violations and crimes against humanity that fuel cycles of violence. The Commission's [alleged] report did not discuss the uneven relations between security forces and civilians in which rape could have taken place.

We note here that the International Criminal Court (ICC) explicitly identifies rape as prosecutable as a crime against humanity and a war crime.<sup>69</sup> The European Court on Human Rights (ECHR) and the Inter-American Commission on Human Rights (IACHR) too have recognized rape as a form of torture.<sup>70</sup> The statutes of International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for former Yugoslavia (ICTY) as well signify rape as a possible crime against humanity.<sup>71</sup> In a milestone judgment, the ICTR understood rape as amounting to a form of genocide, holding that while an accused may not be held guilty for individually engaging in the act of rape of women, the individual may commit the crime of rape by setting in motion, assisting, and/or supporting multiple acts constitutive of 'rape'. The ICTR interpreted rape '*as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive*',<sup>72</sup> therefore enabling the interpretation of the crime of rape beyond restrictively and mechanically defined/ordered 'acts' inscribed on 'body parts'. The Commission's [alleged] report did not address any of the above issues.

Instead, the Commission's [alleged] report stated that, '*Although wide publicity was given that the girls have been gang raped, but during the enquiry no evidence of gang rape was found by the team of medical experts*'. It further cited Dr. Bilal Ahmad Dalal's testimony, '*There were no marks of violence around her private parts and no other injury was seen on her body*'. It also cited Dr. Shaheen's testimony, that '*the morphology of the private parts do not suggest that a gang rape has been committed*'.<sup>73</sup>

The Commission's [alleged] report found no mention of the second FSL report confirming the presence of multiple spermatozoa on June 12, 2009, establishing the 'gang rapes' of Asiya Jan and Neelofar Jan.<sup>74</sup> Nor did the report discuss questioning Dr. Shaheen with respect to her public disclosure regarding 'gang' rape on May 30, 2009,<sup>75</sup> and the conclusions she put forward.

Even as the family had noted that Neelofar Jan was two-three months pregnant, the Commission's [alleged] report stated that, '*It was also reported in the press that Neelofar was pregnant, but on post-mortem examination of Dr. Bilal [Ahmad Dalal] he found that Neelofar was not pregnant*'.<sup>76</sup>

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The Commission's [alleged] report included libellous and unsubstantiated statements about the character of Asiya Jan, Neelofar Jan, and Shakeel Ahmad. The report manipulated the distinctions in class status between Neelofar Jan and Shakeel Ahmad to speculate about the involvement of Neelofar Jan's brother, as well as Shakeel Ahmad, in the rape and murder of Asiya Jan and Neelofar Jan.<sup>77</sup>

In the section entitled, 'Finding of Commission', it was stated, without substantiation, that, *'In April/May, 2007, Neelofar eloped with Shakeel Ahmad Ahangar [sic] against the wishes of her family. It will be in place to mention here that Neelofar Jan belong to a "Peer" family which is treated in the society with the degree of respect and honour for their upper class status, whereas the Shakeel Ahmad Ahangar belongs to a "Khaar" family which is included in the other Backward classes of the society. This marriage had given birth to a serious hatred of Peer family towards Ahangar family of Bongam Shopian. The brother of Neelofar, Zeerak Shah has never visited and never spoken to his sister after she eloped from Tukroo. In the backdrop of these activities it is required that sustained questioning/interrogation of Zeerak Shah his associates and relatives be carried out so as to work out the possibility of their involvement in rape and murder of Neelofar and Asiya Jan.'*<sup>78</sup> The report also mentions that Sub-inspector Kareem testified asking Shakeel Ahmad if police should investigate anyone with enmity toward him, and that Shakeel Ahmad had responded in the negative.

Parallel to the above, Shakeel Ahmad, the Commission's [alleged] report stated, again without substantiation, *'was also looking after the education and expenses of his two sisters Roomi Jan and Asiya Jan. After few days he was blessed with a male child thereby adding additional load to his family expenses. In Oct, 2008 he purchased an orchard (1-Kanal, 16-Marla [Khasra No. 158, Khewat No. 630]) in Nagbal-Dehgam for about 5.30 lacs [sic] [5,00,000 rupees]. He also owns a Maruti car and maintains a good living standard. Further it is learnt that he does not carry a good reputation among the society and is being known for his immoral activities... The examination of witnesses have suggested that Neelofar Jan, Roomi Jan (other sister of Shakeel, who was a frequent visitors to the orchard along with Neelofar) and Asiya Jan were frequently visiting the orchard... The purpose of their regular and frequent visit to the orchard could not be established so far. It is quiet [sic] possible that during these frequent visits to the orchard in last six/seven months, they (but more particularly Neelofar Jan) might have developed some relation with other persons. Shakeel Ahmed Ahanger, not a good charactered person, known for his ill deeds and have accumulated huge property beyond his known source of income. He has come to know about this relation which could have led to the planning and execution of this incident'.* Given that the Commission's [alleged] report did not record processes via which such allegations were verified, the above evidences character defamation and further obfuscation of the criminal investigation.<sup>79</sup>

On July 15, 2009, Chief Justice Barin Ghosh of the Jammu and Kashmir High Court and Justice Mohammad Yaqoob Mir ordered the arrest of four police officers, Javed Iqbal Mattoo, former SP, Rohit Baskotra, DSP, Shafeeq Ahmad, SHO, and Sub-inspector Gazi Abdul Kareem, for the destruction of evidence.<sup>80</sup> It was also ordered that only the Jammu and Kashmir High Court would consider bail applications in the matter.<sup>81</sup> The High Court ordered the collection of their blood samples for DNA profiling, and prescribed that the contentious, unprincipled method of narco analysis be utilized. The High Court observed that DNA profiles of the arrested officers be matched *'with the DNA profile of the semen samples collected from the deceased ladies'*. The High Court further stated that the case would commence for hearing on July 23, 2009.

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Chief Justice Barin Ghosh stated that *'we will go to the bottom of this matter and bring the culprits to justice'*. Further, Justice Ghosh stated that, *'The entire nation is with you. You have been peaceful. It is because of you that the case has progressed to this level'*, asking the people of Shopian to rescind their call to non-violent civil disobedience.<sup>82</sup>

No plans or provisions regarding next steps or how justice, in fact, would be delivered, and what that would constitute in the immediate and long-term, were articulated.

On July 16, 2009, Shopian called off its strike.<sup>83</sup> The four arrested were sent to an undisclosed location for a ten-day interrogation in custody.<sup>84</sup>

On July 17, 2009, former SP Javed Iqbal Mattoo and DSP Rohit Baskotra, two of the four police officers arrested on July 15, 2009 moved the Supreme Court of India *'seeking stay of the Jammu and Kashmir High Court order'*. Chief Justice K. G. Balakrishnan of the Supreme Court of India scheduled a hearing on the matter for July 20, 2009.<sup>85</sup>

**6. State of Exception and Security Forces:**

During the course of the criminal investigation and the Jan Commission's conduct of inquiry the family of Asiya Jan and Neelofar Jan -- Shakeel Ahmad, his other sister, Roomi Jan, Neelofar Jan's father -- were mistreated -- as noted above, denied access to information, threatened, and defamed. Women, men, and children in Shopian and elsewhere deliberated these and other issues concerning the Shopian events, finding them dispiriting and unnerving, furthering the mistrust toward the Indian military and paramilitary apparatus deeply embedded in Kashmir's psyche.

The events in Shopian must be assessed within a larger context where incalculable gendered and sexualized violence has been perpetrated by the military and paramilitary in Kashmir during the course of the last two decades. Over the years, the state forces have constructed army, CRPF, and/or police camps at the entrance of most large settlements, i.e., towns and villages, in Kashmir. These camps are often constructed on forcibly acquired lands, which also lead to economic and literal displacement of local peoples. There are approximately 671 security camps in Kashmir stretched over approximately 90,000 acres of farmland and 1,500 buildings.<sup>86</sup> The structure of the camps maintained by security forces, and their placement, which necessitate forced encounters between local women and the armed forces on a routine basis, have facilitated the perpetration of gendered violence. In a Red Zone, as in Shopian, with the profuse presence of soldiers, women are made extremely vulnerable.<sup>87</sup>

Across Kashmir, women and children, and others, have been victimized and subjected to horrific forms of physical and sexualized violence by the security forces, including rape, gang and collective rape, perpetrated on women. For example, in 1991, between 23 and 100 women, including minors and the elderly, including those pregnant and those with disabilities, were allegedly raped by the 4<sup>th</sup> Rajputana Rifles Unit in Kunan Poshpora, Kupwara district.<sup>88</sup> Notwithstanding testimonies, witnesses, and concerted campaigns on the part of human rights organizations, such as Amnesty International and Human Rights Watch, the armed forces have denied all the instances and allegations of rape. In 1994, in Budpathery, a small village in Kangan, approximately 50 kilometres from Srinagar, members of a Gujjar Community reported gang rapes of five women by security forces personnel.<sup>89</sup> In 1997, Wavoosa village near Srinagar,

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seven women were reportedly raped during a routine cordon and search operation.<sup>90</sup> Per state records, between 1990-2007, 458 cases seeking sanction of prosecution were filed. Of these, 46 pertained to armed forces personnel, and include on charges of rape.<sup>91</sup> ('Sanction of prosecution' refers to formal permission granted by a state or central government to authorize prosecution against a public servant for alleged crimes committed while discharging duty. Section 197 of the Code of Criminal Procedure of 1973 provides protection against prosecution for public servants who have allegedly committed offences undertaking official duty.)

Male youth, and men refusing to facilitate the indenturement of women to sexual servitude, have been sodomized in remote areas.<sup>92</sup> Other categories of victimization include women whose male partners are missing, labelled 'half-widows'.<sup>93</sup> Women and children, and others, have been subjected to physical and psychological torture and trauma, and related social and physical displacements. Security personnel have searched, initiated unsolicited physical contact, detained, leered, teased, passed lewd remarks, psychologically degraded, propositioned, extorted, physically harassed, molested, and assaulted girls/minors and women in the course of everyday life. Where villages are encircled by security camps, and family members are surveilled and their movements regulated, they have been unable to leave to report the matter. In certain instances, women who do not observe the *hijab* (here, refers to the scarf worn by Muslim women to cover their hair) or *burkha* (burqa, also burkha, a head-to-ankle outer garment used as a cloak) have been compelled to use the same to create a barrier to the unsolicited and undesirable advance of soldiers.<sup>94</sup> The obfuscation of such acts, and the failure to prosecute perpetrators, has incentivized the state forces to act with impunity.

In instances where those victimized have sought access to institutions of law and justice, they have not been treated with respect and non-violence by law enforcement agencies. In countless instances, complaints have been disregarded by the police, false FIRs filed, and requests to file FIRs have been met with disrespect, even force.<sup>95</sup>

Ethical, transparent, and independent assessments of the above have not been undertaken and provisions and procedures that ensure the safety and security of the survivors/victims and witnesses, and requisite reparations and rehabilitation, have not been instituted. These and other circumstances have made in-depth inquiries into the extent and scope of such violations impossible to conduct.

The makeup of this violence has been prolonged and systemic, layered with the formerly violent resistances on the part of groups engaged in militancy, and instances of outside intervention. The state does not accept responsibility that sustained militarization has induced cycles of violence for which the state is as well responsible. The 'hyper-masculinization' of the armed forces, and the celebration of militarization and its concomitant violence, has created multiple contexts wherein its members have perpetrated gendered and sexualized violences on the civilian population of Kashmir. The prevailing conditions of armed conflict continue to impact the psychological health of the Indian armed forces in Kashmir, and determine the actions of its personnel. Bearing evidence to the problematic psychosocial conditions within the armed forces, in January 29, 2009, Colonel D. K. Kachari stated that 34 soldiers had committed suicide in Kashmir in 2008, along with one instance of fratricidal killing. In 2005, 44 cases of suicide and 10 cases of fratricide had been reported in the army.<sup>96</sup>

The use of gendered and sexualized violence, including the use of rape, as acts of power, as techniques in torture, and as weapons of war have a long and complex history, across colonialism

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and in postcoloniality. A large body of literature has analyzed the deployment of sexualized violence on women of the 'other' as vindication by members of a dominant culture. Through targeting the individual, sexualized violence targets the political and cultural identity of the subjugated group. In Kashmir, gendered and sexualized violence has been deployed by soldiers of the Indian armed forces on Muslim women as a tactic in militant nationalism, as Hindu 'patriotic' bodies/soldiers become weapons that entrust terror.<sup>97</sup> In patriarchal contexts, rape is enacted to punish the woman, whose body is signified as 'property', as a deliverance of 'justice' on the part of the soldier 'protecting' the nation. Further, if men/security personnel who are Muslim (already portrayed as 'violent others' in Indian national imaginary) enact crimes, they are understood as emblematic of Muslim society and culture, as 'local' issues. The institutionalized issues surrounding such acts are ignored. Crimes by Muslim men are marked in ways that make Muslim male violence representative of the culture.<sup>98</sup> If Hindu security personnel perpetrate crimes, they are assessed as individual acts and anomalies. As the dominant group, they are not burdened with representation beyond the self. If, however, Muslim women are victimized, it is noted as the victimization of individuals whose ethnic and religious identity remains unnamed. The vast distinctions in power that organize relations and exchanges between a Hindu dominant Indian state (which is as well a globally emergent military and economic power) that governs Muslim prevalent Kashmir, remained unmarked. Through religionizing the issue, we (citizens, allies, military strategists, international community) are asked to note fictive equivalencies in power and impact between 'Hindu India' and 'Muslim Kashmir'.

It must be noted that the appointment of the Jan Commission did not allay large-scale public protests as calls for *bandhs* (strikes) as civil disobedience spread through Shopian, expanding and collectivizing in Srinagar, and across Kashmir. It must be noted that such commissions of inquiry, whether led by retired or presiding justices, may be vested only with recommendatory powers. In numerous instances where institutions of state have been culpable in the crimes and actions being investigated, such commissions have largely proven inefficient and ineffectual in rendering culpable parties accountable.

The reports and/or findings of various Commissions of Inquiry that have been instituted to inquire into instances of gross violations of human rights, law, and social justice have often not been rendered into the public domain, and that these commissions have not been ordered to complete their charge. Since 2002, reportedly 56 inquiries have been commissioned. From available information, between 2000-2007, only three statutory inquiries have been commissioned and other inquiries instituted have been magisterial and administrative probes.<sup>99</sup> Based on ethical assessments of gross violations of human rights, law, and social justice, relevant statutory inquiries have not been ordered, as appropriate, to investigate crimes. Various agencies, including military and paramilitary institutions, have not been required to cooperate with instituted commissions in order that they carry out their investigations, nor have the recommendations of commissions be enacted.

The determination of the mandate and transparent functioning of appointed commissions has often been controversial as, for example, the Pandian Commission, whose mandate did not include the Chittasingpora event,<sup>100</sup> even as it was appointed immediately after. In Chittasingpora, on March 20, 2000, 35 Sikh community members were killed. Days after the event, five persons were killed by security forces in Panchalhtan, alleged to be *Lashkar-e-Toiba* functionaries involved in the perpetration of the Chittasingpora killings. (*Lashkar-e-Toiba* -- Islamist militant organization, founded in Afghanistan, was banned as a terrorist organization by Australia, India, Pakistan, Russia, United Kingdom, and United States). The same day, five

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villagers in Panchalhtan were disappeared. Their families alleged that those killed by the security forces were actually the missing villagers.<sup>101</sup> DNA evidence sent to Calcutta/Kolkata and Hyderabad were contaminated.<sup>102</sup> Further, the findings of the Justice Kuchay Commission, convened to look into the matter, were not made public.<sup>103</sup>

While state appointed commissions may find members and institutions of security forces culpable, neither the commission, nor the state government of Kashmir, have jurisdictional or prosecutorial authority over the military and paramilitary forces operational in the state. While it is imperative that individual armed forces personnel that perpetrate violence be held accountable, militarization, and the authority and exception granted the armed forces and its personnel, must be understood as structurally and tacitly causal to the cruelties committed by them. And, while the state government might seek to prosecute police personnel, its authority does not extend to the armed and paramilitary forces, and the government itself has been challenged by armed forces, as has been evidenced in Kashmir. For example, on February 26, 2009, Chief Minister Abdullah had stated that the draconian Armed Forces Special Powers Act, 1958, (AFSPA), and the Disturbed Areas Act, 1976, used with sadistic effect on the civilian population (see later), should be revoked. Sources within the armed forces declared such intent to be 'regressive', declaring that '*any move to revoke AFSPA [by the chief minister] in Jammu and Kashmir would be detrimental to the security of the Valley and would provide a boost to the terrorists*'.<sup>104</sup> It must be noted that, earlier, in March 2007, three government committees on demilitarization resolved that the 'low intensity war continues', placing in limbo troop reduction and the repealment of the Armed Forces Special Powers Act, 1958, and the Disturbed Areas Act, 1976.

The state of exception/exemption accorded to, and expected by, security forces leads to the creation of 'intent' and agency in the perpetration of violence. In the 'sex scandal case' of March 2006, as it is referred to, police located video documentation of an operation involving sexual slavery in Srinagar, resulting in mass protests within civil society. Investigations into the matter showed that the operation had included 43 girls/young women, including two minors.<sup>105</sup> Fifteen persons were arrested -- all personnel in the security apparatus, police corps, or government. When accused security personnel were arrested, a Special Leave Petition was filed in the Supreme Court of India by thirteen of the fifteen personnel, arguing that these personnel had previously served in counter-terror and counter-insurgency operations and that such service must bear on the case at hand and serve to neutralize the judiciary's decision. Such operational rationale asks that violence perpetrated by the security apparatus be overlooked in lieu of other services rendered in the suppression of people. Such reasoning is admissible *only if* the task of security personnel is the suppression of civil society of Kashmir. Such logic would culminate in rewarding security personnel for acts of violence, and reveal the fluid boundaries between legality and illegality in contexts of militarization.

It must be noted that there are approximately 32,000 'counter-terrorism' personnel in Kashmir,<sup>106</sup> and that counter-terrorism and counter-insurgency operations have sanctioned unmitigated violence on the civilian population of Kashmir. Counter-terrorism operations in Kashmir have used unprincipled methods, as uncovered following the Mumbai terror attacks of November 2008. For example counter-terrorism operations have used, often through coercion, former militants to outreach to suspected militants. In so doing, counter-terrorism operations have required former militants use fraudulent and unlawful measures such as the purchase of Subscriber Identity Module (SIM) cards for mobile phones using identification cards of deceased persons, and without ensuring that the former militants are protected.<sup>107</sup>

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The state of exception/exemption is practised through the enactment of security related legislation that remains in contravention of international humanitarian laws and norms. Kashmir has witnessed a massive deployment of security forces under the Armed Forces Special Powers Act, 1958, enacted in Jammu and Kashmir in 1990, which grants immunity to the security forces, and other laws that guarantee such exception, as the Jammu and Kashmir Public Safety Act of 1978, the Disturbed Areas Act, 1976, enacted in Jammu and Kashmir in 1992, the Enemy Agent Ordinance, 1948, The Egress and Internal Movement (control) Ordinance, 1948, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Suppression and Sabotage Act, 1965, and others, including criminal proceedings using the Prevention of Terrorism Act, 2002, and the Terrorist and Disruptive Activities (Prevention) Act, 1985, 1987.<sup>108</sup>

As well, as noted by Human Rights Watch (2006: 28): *'army and paramilitary forces deployed in the state by the federal government are protected by the immunity provisions of the Criminal Procedure Code of 1973 that apply to the rest of India'*.<sup>109</sup>

While the safety and security of citizens must remain of paramount concern, the problematic parameters and consequences of various national security laws named above are used to proscribe political dissent and deny freedom of expression, freedom of speech, and freedom of assembly, and deny the democratic right to peaceful mobilization and dissent. These laws, in the name of retributive justice, have been/may be used to perpetrate state violence, subvert due process of law, undermine civil liberties, and freedom of the press, eroding rule of law, permitting torture and sexualized violence on those in state custody, criminalizing innocent persons, and, in effect, undermining the safety and security of citizens.

Local realities reflect the use of these laws by the military and paramilitary to control the general population with impunity. These laws authorize soldiers to search, question, raid houses, and detain without charge-sheets. Curfews remain undeclared, permitting security forces to operate without evidencing cause, and enabling repression of civil society without prior warning. These laws blur distinctions between 'military' and 'paramilitary', as evidenced by the enhanced training and authority invested in the CRPF in Kashmir. It is noteworthy that the paramilitary CRPF's slogan is in sync with that of Hindu supremacist and nationalist organizations: *CRPF Sada Ajay; Bharat Mata Ki Jay* (CRPF Always Victorious; Hail/Victory to Bharat Mata [Mother India]).<sup>110</sup> Security legislation in Kashmir authorizes security forces to encounter and injure and/or shoot and kill on uncorroborated suspicion. Such functioning in Kashmir, as has been stated by various experts and bodies, has generated structures wherein greater repression on the part of forces is recognized as 'merit' and duly rewarded. It must be also be noted that, in the past, while security personnel committing grievous crimes have prevalently not been held accountable, yet, at times, personnel have been singled out selectively, to serve a political purpose, to diffuse civil society anger and frustration at the conduct of forces.

***7. Civil Society Dissent and the Events in Perspective:***

The events related to the rape and murder of Asiya Jan and Neelofar Jan in Shopian in May-June 2009 further debilitated the social, political, and psychological conditions that pervade private, public, and everyday life in Kashmir. Amid the surveillance, tight security, and disquiet that encapsulated local residents, tourist and Hindu pilgrimage routes remained open.

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Between May 30, 2009 and July 13, 2009, approximately 854-897 civilians were injured, and 1 person, Nisar Ahmad, died,<sup>111</sup> as security forces responded with armed violence to civil society dissent in twenty encounters.<sup>112</sup> In the process, 61 security personnel were injured. As well, security forces shot and killed four civilians protesting the reported harassment of a woman by policemen in Baramulla town in Kashmir.<sup>113</sup>

Civil society protests, as Amnesty International stated on June 10, 2009, '*are about the ongoing failure of the Indian government to bring members of the security forces to justice for serious human rights violations. Until the Indian government provides accountability for the conduct of the armed forces in Kashmir, it will continue to face discontent from the residents*'.<sup>114</sup>

May-June 2009 followed August-September 2008, when Kashmir witnessed an uprising, as millions of people, in non-violent protest, demanded 'Azaadi'. Between June-August 2008, widespread peaceful protests dissented Hindu nationalist demands for control of pilgrimage land linked to the Amarnath temple, and their campaigns and blockades. Around June 23, 2008, the Amarnath issue intensified with the inflammatory proposal to transfer 800 kanals (100 acres) of land to the Shrine Board, which was later revoked on July 01, 2008. The proposal, with the intent to further religionize the Kashmir conflict, had been supported by the Hindu nationalist Bharatiya Janata Party and Hindu militant Shiv Sena. No sanctions were issued against them. Kashmiri leaders explained that their position against Hindu nationalist demands was not in opposition to Hindu pilgrims, and continued to extend hospitality to the worshippers/travellers.<sup>115</sup> In three districts of Hindu dominated Jammu, Hindu supremacists targeted Muslims by imposing economic blockades. The Indian state responded with armed violence to those in Kashmir, while permitting Hindu nationalists to riot in Jammu. In Kashmir, reminiscent of early 1990s, curfews accompanied by shoot-at-sight orders were imposed, resulting in more than 60 deaths, 2,000 civilians injured (with approximately 600 injured by bullets), as doctors, ambulances, hospitals, and journalists were targeted by Indian security forces.<sup>116</sup> During the span of 2008, reportedly 151 civilians were killed.<sup>117</sup>

The conflict in Jammu and Kashmir has been ongoing since October 1947. The period between 1947-1987 witnessed people's struggle for the right of self-determination through non-violent militant action. The people's armed resistance began in 1988. The armed struggle of the 1990s abated between 2004-2007, giving away to non-violent resistance. In the continuing conflict, the daunting presence of military and paramilitary forces, increased and sophisticated surveillance, merge with pervasive and immense suffering and anger of people in villages, towns, and cities across Kashmir. Parallel to the presence of approximately 6,67,000 troops and commitment to nuclearization,<sup>118</sup> official figures state that there are about 700-800 militants in Kashmir and that demilitarization is underway.<sup>119</sup>

Since 1989, Kashmir's militarization has resulted in crimes against humanity and the fabrication of a culture of grief through extrajudicial or 'fake encounter' executions, custodial brutality and deaths (70,000+ between 1990-2005), enforced disappearances (as many as 8,000+), unknown, unmarked, and mass graves, landmines used as weapons, and bodily disablement by the military, with 60,000+ tortured, 100,000 orphaned, and a very high rate of people with suicidal behaviour. In Kashmir, lawyers have reportedly filed 15,000 petitions since 1990, inquiring, largely unsuccessfully, into the location and health of detainees and the charges that have been filed against them. Civilians have experienced the condoning of extensive surveillance, the practice of illegal and long detentions by the legal system, the perpetration of torture in detention camps and interrogation centres, such as the one within the SOG camp in Haft Chinar in Srinagar and

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another in Humhama, in Budgam district.<sup>120</sup> It has been acknowledged by international human rights organizations that the use of torture by military and paramilitary forces is widespread in Kashmir.<sup>121</sup> As well, the Government of India is yet to ratify the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (entered into force in 1987), although it has been a signatory since October 1997. Hundreds of thousands have been displaced, including approximately 2,50,000 Kashmiri Pandits of Hindu descent.<sup>122</sup> Further, international organizations and institutions, that have access to other places, have not been allowed to visit Kashmir. The inability of international institutions to work with local civil society institutions in Kashmir and the denial of passports to human rights defenders and journalists has been crucial to maintaining disconnection and isolation.<sup>123</sup>

The events in Shopian and the broader structural and sustained context of militarization portray the reach of the security apparatus in Kashmir under what is *not* termed 'military rule'. Article 42 of the Hague Convention (1907, international articulation on modalities of war and war crimes)<sup>124</sup> which characterizes conditions of 'occupation', may be used in referring to the sanction and jurisdiction of the military and paramilitary, as Kashmir remains '*under the authority of the hostile army*' whose reach and '*authority has been established and can be exercised*'.

The Indian military and paramilitary forces have been prevalently aligned with Hindu majoritarian interests vis-à-vis Kashmir. These interests are intricately linked to the contested and unified agendas of the Indian state. While regulated by those of Hindus descent, selectively accompanied by assimilated persons from religious 'minority' groups, the Indian military and paramilitary have subsumed Muslims, Sikhs, Dalits (erstwhile 'untouchable' groups) ... -- largely subaltern political-cultural constituencies -- successfully into its ideological imperative. Assimilation and acquiescence are offered India's 'others' via which to create a 'collaborator class' that ratifies its loyalty to the nation. This tactic has proven valuable to the military governance of Kashmir.

The Government of India denies the egregious human rights violations committed by India's military and paramilitary forces in Kashmir, and the volatile political situation that ensues. The Indian state continually justifies its violence and refuses to take seriously the implications of civil society dissent in Kashmir. In the present, the Indian state, and certain media institutions, irresponsibly link Kashmir civil society to a discourse of 'terror' and 'terrorist',<sup>125</sup> even as civil society dissent is, in almost its entirety, principled and non-violent, and locally conceptualized. The facts and figures supplied by the state testify to this even as its discourse, and practise, of continued use of disproportionate political and physical force on civilians in Kashmir, evidences otherwise.

In matters of national security, India undermines its self-interest by failing to acknowledge the reality and reasons behind Kashmir civil society's political and ideological disassociation from groups across border zones in/of Pakistan and Afghanistan that perpetrate acts of violence as a mechanism toward political resolution. Kashmir civil society dissent will not dissipate if India were to completely suppress cross-border terrorism. It is important to note that, were India to be successful in eliminating 'cross-border terrorism', neither India's persistent use of violence, nor Kashmir civil society's dissent to it, would abate. Contemporary Kashmir civil society dissent is local and rooted in the particular history of betrayal that organized India as a nation-state, forcibly inclusive of Kashmir.<sup>126</sup> It is imperative to acknowledge that India's ongoing violence in Kashmir is calculated to brutalize and demoralize Kashmiris toward their disciplining, assimilation, and submission.<sup>127</sup> In so doing, India is, in the long-term, undermining its own self-defined goals as a

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nation, as peoples, that must adhere to international law and international standards of human rights.

A will to peace in Kashmir requires an attested commitment to justice, palpably absent in the exchanges undertaken by the Government of India and its attendant institutions with Kashmir civil society. The premise and structure of impunity connected to militarization, and corresponding human rights abuses, bear witness to the absence of accountability inherent to the dominion of Kashmir by the Indian state, and a refusal to take seriously the imperative of addressing these issues as the only way forward to a just peace. The international community continues to engage India in trade, commerce, military, nuclear, and cultural relations, without insisting on answerability for the violations committed by its government and military and paramilitary forces.

In Shopian, Shakeel Ahmad grieves the death of Asiya Jan and Neelofar Jan with his son, Suzzaine Shakeel, 2-years of age. *'He does not stop crying. He keeps asking for his mother. I do not know what to tell him. I do not know what to tell myself. Each night is a nightmare as life goes on ...'*<sup>128</sup>

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1 *Kashmir Observer* (2009) 'Shopian Probe: Jan Commission Draws a Blank' (July 09).

2 *The Hindustan Times* (2009) 'Violent protests in Kashmir over death of women, probe ordered' (June 01); *Kashmir Images* (2009) 'Justice (Retd) Muzaffar Jan to probe Shopian deaths' (June 01).

3 Parvaiz, Athar (2009) 'Shopian Inquiry: Jan commission report released', *Kashmir Times* (July 10); Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11). Also see Jan Commission (2009) 'One Man Enquiry Commission, of Justice Muzaffar Jan (Retd)', *Greater Kashmir* (July 11).

4 Gilani, Ifikhar (2009) 'Report on Kashmiri girls rape, murder was forged', *Daily Times* (July 14); Mir, Ishfaq (2009) 'Shopian Probe: Jan Comn blames Police for cover up', *Rising Kashmir* (July 12); *Press Trust of India* (2009) 'Commission's purpose of Shopian inquiry defeated: Justice Jan', *The Hindustan Times* (12 July).

5 Wani, Riyaz (2009) 'Not all of Shopian report mine: probe judge', *Indian Express* (July 13).

6 See Census Commission projected J&K population to be 11.4 million in 2008, see Office of the Registrar General and Census Commissioner, India (2001) *Projected Total Population by sex as on Projected Total Population by sex as on 1st March-2001-2026 India, States and Union Territories*; *British Broadcasting Corporation* (2003) 'The Future of Kashmir?' (June) -- date noted in Sathasivam, Kanishkan (2005) *Uneasy Neighbours: India Pakistan and US Foreign Policy*, Burlington, Ashgate, p. 45.

7 See Office of the *Registrar General and Census Commissioner, India* (2001) *Census 2001: State-wise Population by Religion*.

8 Naqvi, Saeed (2009) 'Alienation in Kashmir', *Daily Times* (July 12).

9 Population and other figures have been assembled from census and other archival material, newspaper reportage, communication with journalists and other IPTK sources, and personal communication with civil society leaders, undertaken by Angana Chatterji, Parvez Imroz, Zahir-Ud-Din, Gautam Navlakha, Mihir Desai, Khurram Parvez (2007-2009); also *Kashmir Observer* (2009) 'Shopian Under Siege On Victims' Chaharum' (June 02).

10 Personal communication with civil society leaders, community members, and family members of Neelofar Jan and Asiya Jan, in Shopian, and others elsewhere, undertaken by Angana Chatterji, Parvez Imroz, Zahir-Ud-Din, Gautam Navlakha, Khurram Parvez. Henceforth cited as 'Personal communication (June and July 2009)'.

11 This entire section includes personal communication (June and July 2009) with Shakeel Ahmad and family members of Asiya Jan and Neelofar Jan, including members of the search party, and civil society leaders in Shopian, and lawyers and journalists, and others elsewhere. Also, see Jammu and Kashmir High Court Bar Association (2009) *Preliminary Report of Fact Finding Mission on Shopian Tragedy* (June 07), and newspaper reportage documented at <http://www.kashmirprocess.org/shopian>.

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12 Personal communication undertaken with civil society leaders, community members, and family members of Neelofar Jan and Asiya Jan, in Shopian, and others elsewhere, by Angana Chatterji, Parvez Imroz, Zahir-Ud-Din (June 2009). Henceforth cited as 'Personal communication (June 2009)'.

13 Personal communication (June 2009).

14 Personal communication (June 2009).

15 Personal communication (June 2009).

16 Jaleel, Muzamil (2009) 'Shopian double rape-murder: probe begins to question police, security men', *Indian Express* (June 13).

17 Personal communication (June 2009).

18 Personal communication (June 2009).

19 Eyewitness testimony, personal communication (June and July 2009).

20 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).

21 Personal communication (June 2009).

22 Mir, Ishfaq (2009) 'Doc says women gang-raped: Locals', *Rising Kashmir* (May 31); Eyewitness testimony, personal communication (June and July 2009).

23 See also United Nations Economic and Social Council (1991) *Section IV, Model autopsy protocol, UN Manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions*, Document ST/CSDHA/12; United States Department of Justice, Office on Violence Against Women (2004) *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents*, Document NCJ 206554.

24 Eyewitness testimony, personal communication (June and July 2009).

25 Eyewitness testimony, personal communication (June and July 2009).

26 Eyewitness testimony, personal communication (June 2009); Hameed, Showkat (2009) 'Violent Protests Rock Shopian', *Greater Kashmir* (May 30) - 'Police and CRPF swung into action and baton charged the protesters firing repeated teargas canisters to disperse them', 'While the protesters pelted stones on the government buildings, police retaliated by lobbing teargas shells and firing several rounds in air', 'While the protests refused to subside, authorities clamped curfew in the district'; also *Hindustan Times* (2009) 'Death of two women sparks violent protests in Kashmir' (May 30); and Mir, Ishfaq (2009) 'Double murder, rape in Shopian', *Rising Kashmir* (May 31).

27 Personal communication (June 2009).

28 For analysis, see Bukhari, Parvaiz (2009) 'Omar jumps the gun on Shopian', *India Today* (June 12).

29 *The Hindustan Times* (2009) 'Violent protests in Kashmir over death of women, probe ordered' (June 01); *Kashmir Images* (2009) 'Justice (Retd) Muzaffar Jan to probe Shopian deaths' (June 01).

30 As published in local newspapers; also see Government of Jammu and Kashmir (2009) 'Govt appoints Commission of Inquiry to probe death of Neelofar, Asiya in Shopian incident' (June 01).

31 Mir, Ishfaq (2009) 'Shopian Probe: Jan Comn rules out drowning', *Rising Kashmir* (June 14).

32 See Jammu and Kashmir High Court Bar Association (2009) *Preliminary Report of Fact Finding Mission on Shopian Tragedy* (June 07); for Ranbir Penal Code, see Jammu and Kashmir Government (1971) '*Ranbir Penal Code*' (XII of 1989 [Act XII of 1932]), pp. 762-961.

33 Mir, Ishfaq (2009) 'Shopian Probe: FSL report confirms gang rape', *Rising Kashmir* (June 12).

34 Personal communication (June 2009).

35 Mir, Ishfaq (2009) 'Shopian Probe: Jan Comn rules out drowning', *Rising Kashmir* (June 14).

36 See also United Nations Economic and Social Council (1991) *Section IV, Model autopsy protocol, UN Manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions*, Document ST/CSDHA/12; United States Department of Justice, Office on Violence Against Women (2004) *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents*, Document NCJ 206554.

37 *Kashmir Observer* (2009) '2 Eyewitnesses Depose In Shopian Rape/Murder Case' (June 18).

38 Dar, Shabir/Shabir Ali (2009) 'Shopian probe: CJM records crucial witnesses', *Rising Kashmir* (June 18).

39 Rakesh, Kumar (2009) 'HC: Exhume bodies of Shopian rape victims', *The Tribune* (July 04); *Kashmir Observer* (2009) '2 Eyewitnesses Depose In Shopian Rape/Murder Case' (June 18); also Personal communication (June and July 2009).

40 Dar, Shabir/Shabir Ali (2009) 'Shopian probe: CJM records crucial witnesses', *Rising Kashmir* (June 18) ; also Personal communication (June and July 2009).

41 Personal communication (June and July 2009).

42 Personal communication (June and July 2009).

43 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).

44 Personal communication (June 2009).

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- 
- 45 Rediff (2009) 'Shopian case: Four policemen suspended' (June 22).
- 46 Press Trust of India (2009) 'Shopian rape, murder: SP among five suspended', *The Economic Times* (June 22).
- 47 Jahangir, Majid (2009) 'Shopian: 2 doctors suspended', *Indian Express* (June 26).
- 48 *Kashmir Observer* (2009) 'Shopian Whistleblowers Suspension; Doctors Threaten Stir' (June 26).
- 49 Press Trust of India (2009) 'Exhume bodies of J&K rape victims: HC', *Deccan Chronicle* (July 04).
- 50 Press Trust of India (2009) 'Law commission may recommend ban on narco analysis test', *The Times of India* (May 27).
- 51 *Deccan Chronicle* (2009) 'Victim's bodies to be exhumed' (July 05).
- 52 Bukhari, Shujaat (2009) 'High Court orders fresh autopsy on Shopian women', *The Hindu* (July 05).
- 53 Personal communication (June 2009).
- 54 *Kashmir Observer* (2009) 'Shopian Probe: Jan Commission Draws a Blank' (July 09).
- 55 Parvaiz, Athar (2009) 'Shopian Inquiry: Jan commission report released', *Kashmir Times* (July 10); Also see Jan Commission (2009) 'One Man Enquiry Commission, of Justice Muzaffar Jan (Retd)', *Greater Kashmir* (July 11).
- 56 For report, see Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11). All quotations from the report have been reproduced *ad verbatim*. For terms of reference for the Jan Commission report, see *Kashmir Observer* (2009) 'Govt Admits Police Hand In Shopian Rape, Murder' (July 10).
- 57 Personal communication (June and July 2009).
- 58 Wani, Riyaz (2009) 'Not all of Shopian report mine: probe judge', *Indian Express* (July 13); Gilani, Ifikhar (2009) 'Report on Kashmiri girls rape, murder was forged', *Daily Times* (July 14); Mir, Ishfaq (2009) 'Shopian Probe: Jan Comn blames Police for cover up', *Rising Kashmir* (July 12); Press Trust of India (2009) 'Commission's purpose of Shopian inquiry defeated: Justice Jan', *The Hindustan Times* (12 July).
- 59 Pandit, M. Saleem (2009) 'Cops fudged Shopian report, says judge', *The Times of India* (July 13).
- 60 Wani, Riyaz (2009) 'Not all of Shopian report mine: probe judge', *Indian Express* (July 13).
- 61 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 62 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 63 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 64 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 65 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 66 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 67 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 68 Personal communication (June and July 2009).
- 69 ICC -- Rome Statute, Rape as Crime Against Humanity, and War Crime -- *Rome Statute of the International Criminal Court* (1999) Part 2: Jurisdiction, Admissibility and Applicable Law, also Article 7, Article 8; also The Universal Declaration of Human Rights, 1948, Article 2; The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979; UN Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993; Platform for Action from the UN Fourth World Conference on Declaration on the Elimination of Violence against Women, 1993, Article 1, Article 4(c).
- 70 See *Suheyyla Aydin v. Turkey*, 25660/94, Council of Europe: European Court of Human Rights, May 24, 2005. *Raquel Marti de Mejia v. Perù*, Case 10.970, Inter-American Commission on Human Rights (IACHR), March 01, 1996; also Weissbrodt, David and Connie de la Vega (2007) *International Human Rights Law: An Introduction*, Philadelphia, University of Pennsylvania Press, p. 55.
- 71 See *Statute of the International Criminal Tribunal for Rwanda* (1994) Article 3: Crimes Against Humanity, p. 51; also ICTY Statute, Article 5; ICTR Statute, Article 3.
- 72 *The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), September 02, 1998. Para. 484; also see *The New York Times* (1998) When Rape Becomes Genocide (September 05).
- 73 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 74 Mir, Ishfaq (2009) 'Shopian probe: FSL report confirms gang rape', *Rising Kashmir* (June 12).
- 75 Mir, Ishfaq (2009) 'Doc says women gang-raped: Locals', *Rising Kashmir* (May 31).
- 76 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 77 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 78 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).
- 79 Justice Muzaffar Jan Enquiry Commission (2009) 'Jan Enquiry Commission Report', *Greater Kashmir* (July 11).

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- 
- 80 *Kashmir Observer* (2009) 'High Court Cracks Whip, Shopian Cops Arrested' (July 15).
- 81 *Kashmir Observer* (2009) 'High Court Cracks Whip, Shopian Cops Arrested' (July 15).
- 82 Ganai, Naseer A. (2009) "'Culprits Have Left Clues'", *Greater Kashmir* (July 15).
- 83 *Press Trust of India* (2009) 'Strike in Shopian ends', *The Hindu* (July 16).
- 84 *Indian Express* (2009) 'Shopian case: 4 suspended cops to be quizzed' (July 10).
- 85 *Press Trust of India* (2009) 'Shopian case: SC to hear plea of police officers on Monday', *The Times of India* (July 17).
- 86 Parvaiz, Athar (2009) 'Conflict threatens wildlife in Kashmir', *OneWorld South Asia* (February 06); figures have been assembled from other archival material and International People's Tribunal on Human Rights and Justice in Kashmir [IPTK] sources.
- 87 Learned through personal communication (June and July 2009).
- 88 Human Rights Watch (1991) *Abdication of responsibility: The Commonwealth and Human Rights*, New York, Human Rights Watch, p. 14.
- 89 Anonymous (1995) *Blood in the Valley: Kashmir - Behind the Propaganda Curtain*, Bombay, Lokshahi Hakk Sanghatana.
- 90 Coomaraswamy, Radhika (2001) 'Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)', Commission on Human Rights, United Nations document E/CN.4/2001/73.
- 91 Paul, Rashid (2009) '458 HR cases against troops under judicial scrutiny', *Rising Kashmir* (January 19); Court documents made available to IPTK.
- 92 Personal communication, IPTK (2008-2009).
- 93 Hussain, Altaf (2007) 'The plight of Kashmir's "half-widows"', *British Broadcasting Corporation* (December 04).
- 94 Personal communication, IPTK (2008-2009).
- 95 Personal communication, IPTK (2008-2009).
- 96 Bukhari, Shujaat (2009) 'Yoga, counselling to relieve stress among J&K troops', *The Hindu* (January 30).
- 97 See Banerjee, Sikata (2005) *Make Me a Man! Masculinity, Hinduism, and Nationalism in India*, Albany, State University of New York Press; Chatterji, Angana, P. (2009) *Violent Gods: Hindu Nationalism in India's Present; Narratives from Orissa*, Gurgaon, Three Essays Collective, pp. 48, 191.
- 98 See Said, Edward, W. (1981) *Covering Islam*, New York, Vintage Books.
- 99 The International People's Tribunal on Human Rights and Justice in Kashmir (2009) 'Kashmir Tribunal Memorandum to CM Omar Abdullah' (February 11); also see Hashmi, Syed Junaid (2009) 'Who has the mandate to penalise guilty men in uniform?', *Kashmir Times* (April 19).
- 100 See Human Rights Watch (2006) *"Everyone Lives in Fear" Patterns of Impunity in Jammu and Kashmir*, Section III, 'Legal Causes of Abuses and Impunity', Sub-section, 'Preventing arrest: Section 45 of the Criminal Procedure Code', New York, Human Rights Watch, pp. 51-52; also Bearak, Barry (2000) 'A Kashmiri Mystery', *The New York Times* (December 31).
- 101 See Human Rights Watch (2006) pp. 52-53.
- 102 *The Statesman* (2002) 'Dastardly cover-up' (March 22).
- 103 Human Rights Watch (2006: 55).
- 104 See *Asian News International* (2009) 'Govt. can revoke AFSPA, says Abdullah', *Oneindia* (February 26); also *The Times of India* (2009) 'Army opposes Omar's plans to revoke AFSPA' (February 26).
- 105 *The Hindustan Times* (2006) 'Supreme Court stays chargesheeting of Srinagar sex scandal accused' (August 18).
- 106 Swami, Praveen (2009) 'Kashmir: CRPF pullout could stumble over police shortages', *The Hindu* (July 03).
- 107 Hussain, Aijaz (2008) 'Mumbai suspect said to be police officer: Arrest stirs up tension in Indian Kashmir', *Washington Times* (December 07).
- 108 Public Commission on Human Rights (2006) *State of Human Rights in Jammu and Kashmir*, Srinagar, Coalition of Civil Society.
- 109 See Human Rights Watch (2006).
- 110 Central Reserve Police Force (2009) Welcome Message on the CRPF Website.
- 111 Ahmad, Mukhtar (2009) 'Shopian deaths: I will dig out the truth, says CM', *Rediff* (June 04).
- 112 See IPTK's compilation of civilian injuries in news reportage on website.
- 113 Reuters (2009) 'Govt withdraws troops from troubled Baramulla', *Yahoo! News* (July 01).
- 114 See Amnesty International (2009) 'One killed, 150 injured as protests continue in Jammu & Kashmir following rape and murder of two young women', Press statement (June 10).
- 115 Rashid, Afsaana (2008) 'Muslims Reach Out to Hindus During This Year's Amarnath Yatra in Kashmir', *The Women's International Perspective* (September 08).
- 116 Chatterji, Angana (2008) Letter of Appeal to the UN Re. Cases of Security Forces Killing and Injuring Civilians in Kashmir (September 11); Navlakha, Gautam (2008) 'India in Kashmir: Winning a battle only to lose the war?', *Economic and Political Weekly* (November 08).
- 117 Research undertaken by Jammu Kashmir Coalition of Civil Society (2008).

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118 Navlakha, Gautam (2008).

119 IANS (2009) 'Kashmir on alert amid fears of militant incursion: Police Chief', *Thaindian News* (March 25).

120 Personal communication, IPTK (2008-2009).

121 See Asia Watch (A Division of Human Rights Watch) and Physicians for Human Rights (1993) *The Human Rights Crisis in Kashmir: A Pattern of Impunity*, New York, Human Rights Watch, p. 85.

122 Raina, Muzaffar (2008) 'Pandits in poll to get home', *The Telegraph* (November 20).

123 Public Commission on Human Rights (2006) *State of Human Rights in Jammu and Kashmir*, Srinagar, Coalition of Civil Society; Association of Parents of Disappeared Persons (2008) *Facts Under Ground: A fact-finding mission on nameless graves & mass graves in Uri area*, Srinagar, Coalition of Civil Society; Chatterji, Angana (2008) 'Disquiet Ghosts: Mass Graves in Indian Kashmir', *The Daily Etala'at* (July 09).

124 Laws and Customs of War on Land (Hague IV) (1907) Article 42.

125 Note: In Kashmir, local resistance groups distinguish themselves as 'militants' and/or 'freedom fighters' contrary to the statist naming of 'terrorist'. Post 2001, as Robert Wirsing states, '*the Kashmiri freedom struggle was being increasingly conflated with....terrorism*', see Wirsing, Robert G. (2003) *Kashmir in the Shadow Rivalries in a Nuclear Age*, New York, M. E. Sharpe, p. 118. For an elaboration on discourses of 'terror', see Asad, Talal (2007) *On Suicide Bombing*, New York, Columbia University Press; Derrida, Jacques (2003) 'Deconstructing Terrorism – Derrida', in Giovanna Borradori, *Philosophy In A Time Of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, Chicago, The University of Chicago Press, pp. 137-72.

126 See Rai, Mridu (2004) *Hindu Rulers, Muslim Subjects: Islam, Rights, and the History of Kashmir*, Delhi, Permanent Black.

127 Foucault, Michel (1979) *Discipline and Punish: The Birth of the Prison*, New York, Pantheon Press.

128 Personal communication (June 2009).