

# Kashmir: Resistance or Agitational Terrorism?

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The central government insists that militancy is on the wane in Jammu and Kashmir. Yet the security forces in the state have been tightening their grip on the lives of common people in recent months. So much so that they even deny them the right to carry out legitimate protests and brand such activities as non-violent terrorism.

The decision of the Jammu and Kashmir government to invoke Section 121 (Waging War) of the Indian Penal Code against 15 to 18-year-olds who have allegedly hurled stones at the security forces heralds a new determination on the part of the authorities to silence the third generation of Kashmiri dissenters (16 February 2010, *Indian Express*). Scores of young men had earlier been picked up and booked under Jammu and Kashmir's Public Security Act for two years (16 March 2010, *The Hindu*). But the decision to charge them with treason takes this a notch higher since crimes under Section 121 can even invite the death penalty. There is something incongruous about this. For one, there is the issue of proportionality. The protestors, who like to use sling shots like those used by Palestinian youth, were met by security forces armed with AK 47s and INSAS rifles, along with tear gas shells and water cannons. Not to mention extraordinary powers under the Armed Forces (Special Powers) Act, 1990 (AFSPA). For another, there was no distinction made between the juveniles and the adults among them. And last, there was no attempt to explain what compelled young men to throw stones at the security forces.

The Jammu and Kashmir chief minister said, as an easy way out, that these young men were paid by "forces" who would be soon exposed (16 February 2010, *Greater Kashmir*). Perhaps. But he would still need to explain why there is anger in the state if elections and a decline in militancy have diminished the appeal of separatists or even turned the tide against the demand for self-determination. Why would young men risk their lives to throw stones, even if they get money for it? In the make-believe world occupied by the rulers, cocooned by layers of security and fed a daily diet of intelligence briefings, the reality of the public mood, the people's frustration with the shenanigans of the Indian

military, and their seething anger are somehow not taken seriously. Or perhaps they are, and that is the reason the rulers have stepped up attacks on unarmed protestors. They are in no mood to brook dissent from a populace they consider they have re-established their authority over. If we look back on happenings over the last few months, it becomes clear how the stage was being set for a clampdown in Kashmir.

## Prime Minister's Perspective

A statement made by the prime minister provides a glimpse of the official perspective. Speaking to directors general of police (DGPs) and inspectors general of police (IGPs) on 15 September 2009 on Jammu and Kashmir, he warned, "Secessionist and militant groups within the state are once again attempting to make common cause with outside elements and have embarked on a series of protest movements...We must not, and I repeat, we must not, allow such a situation to develop. It is imperative that these disruptive efforts are contained, controlled and effectively checked." If protests and agitations provoke such a reaction from the ruling United Progressive Alliance (UPA), what did the prime minister really mean when he said on 15 August 2009 that "our citizens have the right to express their dissent and anger?" Are Kashmiris not citizens of this country? It is a different matter that Kashmiris may resent being described as citizens, but does the prime minister also feel so? Do they or do they not have a right to express their anger against crimes committed by security personnel?

Sure enough, 46 days after the prime minister's exhortation to contain, control and check protests, on 31 October 2009, the senior Indian army officer in the Unified Command for Jammu and Kashmir, General Officer Commanding-in-Chief of the Northern Command Lt General B S Jaswal, declared that the issue in Kashmir was "agitational terrorism", not militancy. In a way, the lieutenant general was upping the ante, equating non-violent resistance with "terrorism", and thereby underlining the need for suppressing all forms of protests. The Indian media and intelligentsia, by and large, remained mute witness to this

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outrageous characterisation of protests as terrorism. So much so that in January this year, a senior officer of the Central Reserve Police Force (CRPF) reinforced the attempt to militarise everyday politics by describing protests and stone throwing in Kashmir as “gunless terrorism”. Once again, nobody objected.

The prime minister is not the only one complaining. In the summer of 2008, the people of Kashmir took to the streets to protest against the environmentally unwise transfer of forest land to the Shri Amarnath Shrine Board, an instance of the Indian state molycoddling communalists in the largely Hindu areas of Jammu while using brute force to suppress the agitation in Kashmir.

### Shopian Case

On 10 July 2009, the Shopian twin rape and murder case prompted Home Minister P Chidambaram to say in an interview to Barkha Dutt of NDTV that “such incidents (referring to alleged rape and murder of 22-year-old Neelofer and 17-year-old Asiya in Shopian on 29 May 2009) do happen in

other parts of the country as well, in Kashmir, people draw conclusions too early.” We need not dwell on the remark, which suggested that he was rather innocent of the nature of heinous crime and its implications in a “disturbed” area where security forces enjoy impunity. What matters is the conclusions the people of Kashmir were drawing when the administration went out of its way, as it has been doing for 20 years, to help suppress evidence of a heinous crime in which officers of the Indian security forces and/or the state police were involved.

While the Central Bureau of Investigation (CBI) claimed the two women died of drowning, Justice Muzzaffar Jan (retired) in his final enquiry commission report submitted on 10 July 2009 rejected this outright.<sup>1</sup>

All the officers of the (police) department stood by the theory of death by drowning with full knowledge and belief that no one in the recent, or past history of Shopian has died due to drowning in River Rambhara. The official statement of drowning does not convey the mindset of indifference, but depicts an active, intelligent and conscious

effort to divert attention of the public from the actual and factual cause of death (Jan Enquiry Commission Report 2, p 97).

He pointed out that at the spot where Neelofer’s body was found, the river was only 60-75 cm deep. And Asiya’s body was found a kilometre and a half away where the river was no more than 30-45 cm deep. While the water was “fast flowing”, he said, the current was not strong enough “to drown an adult girl of 17 or 22 years old”.

The chief minister dismissed the incident as one of drowning on the very day the two bodies were found. Only to say later that he had been wrongly briefed. For a full eight days after the women’s bodies were discovered, no first information report (FIR) was registered, without which investigations could not take place. Thus ample opportunity was provided to anyone who wanted to destroy evidence. But FIRs were promptly filed against people who held street protests. As a local daily, *Rising Kashmir*, pointed out, the law says a station house officer (SHO) can be held responsible if an FIR is not filed in



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24 hours, a deputy superintendent of police (DySP) if one is not filed in 48 hours, and a superintendent of police (SP) if the delay is for 72 hours. But an eight-day delay was impossible without the connivance of the police. It then took the elected government in the state 47 days to get rid of the senior police officers who had misled the chief minister and delayed filing an FIR.

With the CBI choosing to dismiss the charge of rape and murder without even summoning the four arrested police officers to depose before it, and pinning the blame on a team of six doctors, five lawyers and two civilians, more confusion and controversy were generated, probably ensuring that the guilty would never be found.

So how mistaken are the people of Kashmir in believing that it is futile to expect justice at the hands of the Indian state? Consider that it took a request from the chief minister to the union home minister to see a Border Security Force (BSF) constable handed over to the police for shooting dead 16-year-old Zahid Farooq Shah near Srinagar on 5 February 2010. The BSF insisted that constable Lakhvinder Kumar had acted on his own but later recanted when Zahid's family maintained that his senior officer was culpable. Earlier, Wamiq Bashir was killed when a teargas shell hit him while 16-year-old Inayatullah Khan died after being beaten by security forces. In the light of all this, what is it that inspired a general to characterise popular protests as "agitational terrorism"?

## 2006 Sex Scam

Recall the sex scam in 2006 and how the CBI, after an initial flurry, put a lid on its investigation. A minor girl was pushed into prostitution and senior officials belonging to the security and civil administration, and politicians, local and central, were implicated. Some of them were accused and arrested. They filed special leave petitions (SLPs) in the Supreme Court where one of their main pleas was that they had "served" in the counter-terror or counter-insurgency administration, in one way or another, and that this had to be kept in mind while considering their bail applications. To lend credibility to their case, senior officials of the security

forces told embedded reporters that the case was actually a game plan of the militants to malign the security forces. What was the proof of this? According to them, Sabina, around whom the scandal revolved, had, since the case hit the headlines, become an admirer of Dukhtaran-e-Millat. This story appeared in a supposedly progressive newspaper. One wonders who was maligning whom when the rape of a minor demanded that the word of the victim be given precedence over everything else, which incidentally is what the law says. Indeed, the law also states that where people in authority are accused of rape, they have to produce evidence to show that they were innocent. It is worth reading what Justice Bashir Ahmad of the Jammu and Kashmir High Court, who passed a landmark judgment in the 2006 sex case, told *Conveyor* magazine (December 2009, Vol 1, No 7).

He was asked why "at a recent seminar in the University of Kashmir, you were quoted as saying 'For its own survival, the government hushed up the sex scandal.'" He answered, "Perhaps the words used have not been reflected correctly. I said it involved people in and outside government who wanted the matter to be hushed up for their survival. It is my clear impression about the matter."

So what happened? The accused were granted bail. The Indian Administrative Service (IAS) and the Indian Police Service (IPS) officers among them were reinstated and now occupy top posts. Politicians among the accused stood for elections; some lost and some won. Would it be wrong to conclude that the security apparatus, which rules the roost in the disturbed area, will go to any length to protect its own?

Consider another incident. The killing of two youths on 21 February 2009 at Bomai (Sopore) brought protestors out on to the streets. But for them, no official action would have been taken. Army spokesperson Uma Maheshwari claimed that army soldiers had not been present on the scene but "some persons wearing army uniforms opened fire on the people. We have no association with them." The same day, the commander of 22 Rashtriya Rifles (RR), Col Sanjeev, said that "while jawans were searching the vehicle, two

militants wearing *pheran* [a long loose fitting gown worn to protect from the cold] refused to alight from the vehicle. When troopers asked them to raise their hands, they opened fire, killing two persons" (23 February 2009, *The Economic Times*). The army stuck to this version and said it had fired 20 rounds, although double the number of shells was found. Protests by the people forced the state government to institute an enquiry, which presented its report relatively quickly. A senior officer of the RR Kilo Force who appeared before the enquiry officer claimed that the militants had opened fire on the troops with a pistol. But the enquiry officer pointed out that not a single pistol cartridge had been recovered from the spot. He also mentioned that the troops did not follow the standard operating procedure (SOP) during the incident, that they had opened fire on civilians, and that the bullet wounds were above chest level, which showed intent to kill (27 February 2009, *Greater Kashmir*). The villagers were then assured that the 22 RR camp would be "relocated" within 12 days. However, the army's response put paid to such hopes. Referring to relocation of the camp, a senior officer belonging to the Northern Command said on 6 March that the divisional commissioner (DC) had "no domain over security issues and cannot dictate to us what to do" (7 March 2009, *Greater Kashmir*). The army also declined to go by the investigation carried out by the civilian administration and refused to move against those allegedly responsible, claiming that it had to complete its own independent investigation.

## Relocation of Camp

In the stand-off between the state government and the army, the chief minister had to persuade New Delhi to intervene. As for the assurance given to the inhabitants of Bomai about relocating the security force camp, it became clear that the authority to do so rested with New Delhi. And finally, when New Delhi gave its consent to shift the RR camp, it was moved just 2 km away. The fact of the matter is that in Jammu and Kashmir the presence of security forces amid habitations is an issue that affects all civilians. The forces occupy, according to Mehbooba Mufti, 28 lakh

kanals (3.5 lakh acres) of land (8 September 2009, *Greater Kashmir*), serving the people as a constant reminder that they live at the mercy of a hostile military, which enjoys impunity.

Significantly, Bomai has police and CRPF camps in addition to four army camps. In other words, there is surfeit of camps in the area and one less would not have made it any less secure. But the RR camp was relocated only 2 km away, demonstrating that the Indian state was not willing to whittle down its security grip on Kashmir. Why does the centre need 6,27,000 troops, empowered by the AFSPA, to fight 600 militants when militancy has, according to it, come down drastically?<sup>2</sup> If they are not there to control the civilian population, then why are they crowding the densely populated valley and occupying cultivable land?

### No Investigations

Contrary to official propaganda, misdeeds committed by the security forces are rarely investigated. Just the process of getting an FIR registered is onerous. Way back in 1992, the authorities ordered that FIRs should not be registered against the security forces. When lawyers brought this before the Jammu and Kashmir High Court, the order was withdrawn.<sup>3</sup> However, on the ground, registering an FIR has always been a difficult proposition. Without an FIR, no investigations are carried out. Even when it comes to the few incidents where FIRs are registered and investigations are carried out, the process gets bogged down in endless rounds of investigations and reviews before sanction is obtained for prosecution. Consider an affidavit filed by the state government before the Jammu and Kashmir High Court. In *Ghulam Nabi Magray vs Union of India and others* (swp No 1842/03), the principal secretary, home department, was directed to furnish a list of cases pending with the state government between 1990 and 2007 awaiting sanction for prosecution by the central government. The list submitted, said the deputy registrar of the high court in a letter dated 22 December 2008, “would show that during this period 458 cases were received by the government. In four cases, the Union of India rejected sanction of prosecution.

The list, further, shows that 122 cases have been referred to DGP/IG Crime and Railways for clarification but till date reply of DGP is awaited.” In 18 years, just 458 cases reached the stage of sanction in a place where no less than 70,000 people got killed, where at least 60,000 suffered torture in 63 Guantanamo-type torture centres in the valley alone and where 8,000 were allegedly victims of enforced disappearance.

Incidentally, cases which are sent to New Delhi for sanction must first pass the condition that the victim or victims were in no way engaged or involved in “anti-national” or “subversive” activities. Only after this is the evidence evaluated. In other words, the 458 cases must have passed the various filters that the “disturbed” area has in force to protect the Indian state’s counter-insurgency “assets”. But even in such cases the record is pathetic. Though it is a mockery of good sense to let heinous crimes go unpunished, little headway is made unless there are public protests. Not that all protests result in justice. But even this is sought to be controlled by a state that already maintains a stranglehold on the lives of ordinary people.

On 14 July 2009, the vice chancellor of the University of Kashmir banned the student union saying that “there is no scope for political activity in the university campus”. The immediate reason was that the students had protested against the

Shopian rape and murder case. Thus his order meant that the students should remain mute when confronted with crimes against the people. Whereas student politics is now disallowed in Kashmir University, presumably because students will begin to ask uncomfortable questions and their search for answers may take them towards challenging the existing state of affairs, the vice-chancellor has no compunction in preaching surrender before the might of the military in the name of realism. Now it is alright for anyone to believe anything, but quite another thing to impose their ideas and opinions on others. Quite interestingly, in the University of Jammu, Rashtriya Swayamsevak Sangh (RSS) shakhas operate and the RSS chief and other communal potentates are allowed to hold public meetings.<sup>4</sup>

### Restrictions on Media

But then Kashmir is unique. The electronic media is not allowed to broadcast more than 15 minutes of news a day in the name of ensuring that they remain “responsible”, and have to furnish CDs of their daily news programme to the police and information department. In 2009, cable operators were affected for 12 hours in Jammu and 12 days in Kashmir. Media watcher Sevanti Ninan wrote that an adviser to the chief minister and owner of Take I cable tv had ordered operators to restrict news to 15 minutes a day (1 August 2009, *The Hindu*). The deputy commissioner of Srinagar told

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Ninan that these restrictions will remain “till they (cable operators) discover their proper professional role... They should not show activities of *hurriyet* (liberty) aimed at secession.” This is a throwback to the controlled media of totalitarian states where people were fed propaganda. Because truth scares the authorities, myths are manufactured. Therefore, we have a control of news flow, censorship of ideas and bans on political and academic debates in Jammu and Kashmir. In this “elected democracy”, where control, containment and checking of protests have become necessary, the people are reminded by each incident of crime how they remain enslaved. Is it a coincidence that a good effort to allow people who had crossed the line of control (I.O.C) and gone to the other side in the past 20 years to return home is called “surrender”? Yes, Kashmiris have to surrender to allow them the right to return home.

## NOTES

- 1 The CBI did not bother to interrogate Om Prakash, the executive engineer of the flood (planning and design) department, who had deposed before the Jan Commission. He told the judge, “I have been posted as executive engineer since September 2007. There have been no local reports of flooding of Rambiara Nallah during my tenure. Our department only monitors the discharge and flow of water. The measurements are taken on a daily basis under a specified procedure at Haripura and Nyaina...The gauge of water on 29 May at Haripura was .42 metres and the same day the gauge at Nayaina was .60 metres ... The gauge ... has not shown sudden increase during the three readings that we normally recorded during the month of May 2009” (Jan Enquiry Commission Report 2, pp 82-83). He also told the commission that the “highest gauge recorded on 24 May at Nyana (that is, downstream) was .90 metres at 5 pm”. On page 83 of Report 2, Justice Jan records that “police witnesses have also admitted that... they were privately convinced that no one can be drowned in the Rambi Ara river, much less the two unfortunate healthy and physically fit village girls.” Thus not just the experts but also the police themselves were sceptical about the story put out by their own department about death by drowning. The CBI is mute on this. Besides, the SHO of Shopian, says the Jan Commission, “admitted that if a weight of 30 to 40 kg was placed in a gunny bag and thrown into Rambiara Nallah from the Zavoora Nagbal bridge it will not cover a distance of one and half km, up to the spot from where the body of Asiya was found” (Jan Enquiry Commission Report 2, p 5). Thus contrary to CBI claims that the month of May in 2009 (as well as in 2008) recorded a higher discharge of water, evidence examined by the Jan Commission contradicts this. Equally interestingly, the CBI did not interrogate any of the police personnel, accused as well as others, who had testified before the Jan Commission.
- 2 The Union Ministry of Home Affairs said on 24 December 2009 that there was a 27% decline in militancy related incidents in Jammu and Kashmir in 2009 compared to 2008, that is, from 708 incidents in 2008 it had come down to less than 500 incidents in 2009. In the 20-year-long history of militancy in the state (measured by official statistics), this is quite impressive. Consider that in 1990 the figure was 3,500, and that it reached its peak in 1995 when 5,946 incidents were recorded. With much fanfare, the army announced that it had withdrawn two divisions, that is, 30,000 troops, of the 3,34,000 stationed in Jammu and Kashmir in the past two years. However, the Union Minister of Defence on 24 December 2009 made it known that he did not believe that “situation has turned normal. As long as militant camps are operating across the border we have to be on alert.” Thus goalposts keep shifting.
- 3 See “Missing in Action: A Report on the Judiciary, Justice and Army Impunity in Kashmir”, November 2007, People’s Union for Democratic Rights (Delhi) and Public Commission on Human Rights (Srinagar).
- 4 See “Student Activism: Then and Now” by Umar Sultan in *The Honour*, Vol 2, No 8, August 2009.