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Pathribal, A Case Of Judicial Impunity

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BAD JUDGEMENT

On the eve of the High Court Judgement, in *Nazira Begum vs. State of J&K*, the local media reported that the selection panel on appointment of Chief Vigilance Commissioner (SVC) and two Vigilance Commissioner (VCs) was marred by controversy. The differences occurred between the Chief Minister and opposition party president over the nomination of DG Police Kuldeep Khoda, as the first CVC. The ruling govt. has proposed Khoda's name, who was retiring on May 31, while as the opposition had disapproved his nomination on the plea that there are serious accusations against him (Khoda as then DIG) for his involvement in Bhandarwaha triple murder case. The opposition party leader hurriedly arranged a press conference and stated its opposition.

The petition that was filed before the Srinagar Bench of High Court was transferred to Jammu wing of High Court. The petition was not listed in the cause list. Through a journalist, we came to know the case has been dismissed by the Justice Hasnain Masoodi. The case was very high-profile. It was first ever case in J&K history where a sitting police chief has been accused of his involvement and culpability in a murder case. It was alleged that since he had the effective control on the non-state actors, therefore, could not escape the command responsibility of the SPOs, who have committed crimes during their engagements. The petition had already caused ripples amongst top police officers, who hold skeletons in their cupboards and have become law unto themselves.

The case was filed by the two widows of Bhandarwaha triple murder. The petition was filed after getting the permission from the Hon'ble Chief Justice to file it before the Srinagar wing of High Court; otherwise the Jammu wing had the territorial jurisdiction.

Since the first hearing, the petition was treated like a hot potato. The Hon'ble Judge stated in open court that since the matter is serious in nature so before issuing notices to the respondents including DG the assistance from the advocate general was required. On the next hearing, a Delhi based human rights lawyer Prashant Bhusan, on our request made a symbolic appearance, the advocate general chose not to appear on that date. The case was adjourned subsequently.

On next hearing, the advocate general appeared and volunteered to produce the controversial enquiry reports of crime branch conducted at the behest of NHRC. The enquiry report of ASP Shikha Goyal and final crime branch report, in which the case was closed, was never produced before the court. The crime branch report was pivotal in the case. In the meanwhile, the petition was transferred to Jammu on the plea of an accused for convenience. The accused also leveled allegations that the petition has been filed in Srinagar Wing with the vested interest to create a situation of unrest and lawlessness in Kashmir valley.

Legally speaking, since notices were not issued to the respondents', at the first instance the transfer petition could not have been entertained at all. Only after issuance of notice any respondent could have right to agitate such matter. The transfer petition was allowed on April 16 and unusually the case was listed after four days. The files, which normally take weeks to reach, were arranged within one day from Srinagar Bench to Jammu Bench of High Court. It was not possible for a *pro bone* lawyer to rush to Jammu. Finally on May 29, the judgement was delivered though petitioner had not argued the petition at Jammu or at Srinagar Court. Surprisingly the judgement started with the plea that the arguments were made at length. Even on the next day, there was a lead news in vernacular and national media that 'DG Police exonerated' by the High Court. It is not surprising when the petition was filed most of the newspapers choose not to cover the news.

In most of the high profile cases, it has become a routine that the cases are being transferred from Srinagar Bench even if it has territorial jurisdiction on it, to Jammu where cases are not defended in an organized and professional manner, thereby, only helping the state and perpetrators. Lawyers there, in a hostile atmosphere, cannot defend / plead cases like Soura Triple Murder Case 1999 or sex scandal 2008.

The Bhandarwaha triple murder case has raised lot of eyebrows in the Bar, in civil society and political circles, more so that without producing the enquiry report which was never placed before the court and notwithstanding the advocate general had agreed to present it, the case was dismissed. It is not only the court, but measures were adopted to influence the families, lawyers and everyone related with the case and were persuaded to withdraw the petition because post retirement assignments of the DG would be in jeopardy. It is a bad judgement. Judgement is the outcome of the unusual procedure, unbecoming of the High Court judge and overall it has further confounded the fears of the victim that there is an institutional injustice in J&K state.

PATHRIBAL: LAYERS OF IMPUNITY
RECENT JUDGMENT, A VICTORY OF IMPUNITY

By: Advocate Parvez Imroz

On 1 May 2012, the Supreme Court of India issued its final judgment in the case referred to as the *Pathribal case*. In the context of the killing of 36 Sikhs on 20 March 2000, personnel of the 7 Rashtriya Rifles (RR) were found by the Central Bureau of Investigation (CBI) to have killed five persons in a fake encounter on 25 March 2000. A chargesheet was produced before the Chief Judicial Magistrate-cum Special Magistrate, CBI (hereinafter called the "CJM") on 9 May 2006. The CJM granted an opportunity to the Indian Army to exercise the option of a court-martial. The Army stated that in light of Section 7 of the Armed Forces Jammu and Kashmir (Special Powers) Act, 1990 (hereinafter called "AFSPA") the chargesheet could not have been produced before the CJM without obtaining sanction for prosecution from the Central Government. The matter was litigated up to the Supreme Court and by the judgment of 1 May 2012, the Supreme Court has found that as per Section 7 of AFSPA, while a chargesheet may be presented before a court, no cognizance may be taken. Further, that the competent Army authorities has to exercise discretion on whether a court-martial is to be instituted *after* the filing of a chargesheet before a court. Section 7 of AFSPA states "no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act". The fundamental issue before the Supreme Court was relating to the point at which sanction needed to be sought i.e. before the filing of the chargesheet, or after the filing of a chargesheet but before cognizance by a court.

Fake encounters, along with various other human rights violations, have been a reality for the people of Jammu and Kashmir over the last twenty two years. In 2008, Supreme Court Justices Aftab Alam and G.S.Singhvi, it was reported in the media, made oral observations in court in relation to the practice of fake encounters for rewards in Jammu and Kashmir. With about 8000 persons disappeared, 70,000 persons killed, numerous cases of torture, rape and other human rights violations, Jammu and Kashmir has seen little in the form of justice over the last twenty two years.

Based on the above, the Supreme Court judgment in the *Pathribal case* was keenly awaited by activists, lawyers, and most importantly, families of victims of the conflict in Jammu and Kashmir. The 1 May 2012 judgment has unfortunately failed to address the legal issues within the reality of the ongoing conflict in Jammu and Kashmir, and has further strengthened the impunity that exists for human rights violations, particularly for security forces.

First, while the Supreme Court states in its judgment at Para 23 that "the question as to whether the sanction is required or not under a statute has to be considered at the time of taking cognizance of the offence...", it concludes, in Para 66 (i) by stating that cognizance may not be taken by a court without prior sanction. The effect of this conclusion might well be a complete negation of the qualifying portion of Section 7, AFSPA that limits the need for seeking sanction only "in respect of anything done or purported to be done in exercise of the powers conferred by this Act". This qualification can only be brought alive if a competent court were to be allowed to take cognizance of a case i.e. apply its judicial mind to the chargesheet and decide whether the qualification applies. Further, in Para 66 (iii), the Supreme Court states that "**facts of this case require** sanction of the Central Government to proceed with the criminal prosecution/trial" (emphasis added). Therefore, it appears that on one hand the Supreme Court has effectively barred a court from taking cognizance of a case, but through this judgment, the Supreme Court has itself appreciated the facts of the *Pathribal case* and found that sanction would be required to be sought. This seeming contradiction between the conclusions of the Supreme Court would require further clarification in the future, and perhaps is a pointer to the need to allow competent courts the opportunity to fully appreciate the specifics of a case before a request for sanction is necessitated.

Second, in Para 58, the Supreme Court, while addressing the issue of court-martials, states that Section 126 of the Army Act, 1950 (hereinafter "Army Act"), allows a criminal court to seek to prosecute an army personnel despite the Army also exercising the option of a court-martial. Section 126 of the Army Act provides the procedure to be followed when a criminal court is "of opinion" that proceedings shall be instituted before itself. For a criminal court to form such an "opinion", it would necessarily have to apply its judicial mind to material before it i.e. it would have to take cognizance of the matter before it.

Therefore, by denying the right of a court to take cognizance of a matter, and decide whether sanction for prosecution need be sought, the Supreme Court appears to have rendered the qualification in Section 7, AFSPA, meaningless, the power of the court under Section 126, Army Act, redundant, and further strengthened impunity in areas governed by AFSPA. While recognizing, in Para 55, that the process of sanction seeks to protect persons acting in good faith, the judgment of the Supreme Court effectively provides a blanket impunity to the security forces.

This impunity has to be understood within the context of Jammu and Kashmir, and the actions of the Central Government over the last twenty two years. The following information received through

responses to Right to Information (RTI) applications is striking. The Government of Jammu and Kashmir, on 23 February 2012, stated in writing that no sanction for prosecutions had ever been granted in Jammu and Kashmir between 1990 and 2011. Not a single case. The Ministry of Defence, on 18 April 2012, stated in writing that out of a total of forty four cases received for the purpose of grant of sanction, thirty five have been denied, and nine are under consideration. Further, that of these cases only **one** case was processed by the court-martial proceedings. Therefore, the reality of Jammu and Kashmir has been total and absolute impunity.

The *Pathribal* case was an opportunity for the Supreme Court to earn the respect of the people of

...AND NOW JUDICIAL IMPUNITY: JKCCS

May 2: JK Coalition of Civil Society (JKCCS) termed the recent Supreme Court judgement on infamous Pathribal fake encounter as disappointing and deplorable. JKCCS assailed the SC judgement by calling it "judicial impunity" to the forces operating in the J&K state.

In the background of the SC judgement, JKCCS issued a press statement complete text of which follows:

Fake encounters, along with various other human rights violations, have been a reality for the people of Jammu and Kashmir over the last twenty two years. In 2008, according to media reports, Supreme Court Justices Aftab Alam and G.S. Singhvi made observations in court in relation to the practice of fake encounters for rewards in Jammu and Kashmir. With about 8000 persons disappeared, 70,000 persons killed, numerous cases of torture, rape and other human rights violations, Jammu and Kashmir has seen institutional denial of justice.

The Supreme Court judgment in the *Pathribal case* was keenly awaited by the people of Jammu and Kashmir. The Supreme Court judgment states that cognizance may not be taken by a court without prior sanction. This would suggest that crimes like fake encounters, rape, custodial deaths, enforced disappearances would continue to be subject to seeking prior sanctions under AFSPA from the Government of India.

SC PATHRIBAL VERDICT SETBACK TO JUSTICE IN JK: AMNESTY

May 02: Terming Supreme Court verdict on Pathribal fake encounter killings as major setback to justice in Kashmir, international human rights watchdog Amnesty International has said that it has reinforced the special powers of forces operating in Kashmir, which sidestep the civilian courts.

"The SC ruling is a major setback - not only for victims in this case but for other victims unlawfully killed by army or paramilitary forces in Jammu and Kashmir," said Ramesh Gopalakrishnan, Amnesty International's India Researcher.

While deciding the army special leave petition in Pathribal fake encounter killing case, the

Jammu and Kashmir, particularly in light of earlier criticized judgments of the Supreme Court in Jammu and Kashmir human rights related matters. But, the judgment further emboldens the security forces, which may result in further irresponsible actions by the security forces and strengthen a process that has appeared to never favour the victims of human rights violations, but only the accused.

The fall out of this judgment on the people of Jammu and Kashmir would unfortunately be a continued disappointment with the institution of the Judiciary, and a recognition that further impunity for human rights violations awaits.

(The write up also appeared in Tehalka, one of the prominent news magazines)

This impunity has to be understood within the context of unabated human rights abuses in Jammu and Kashmir over the last twenty two years.

On 23rd February 2012, the Government of Jammu and Kashmir, in response to a RTI application on AFSPA sanctions, stated that no sanction for prosecutions had ever been granted in Jammu and Kashmir since 1990 till date.

On 18th April 2012, the Ministry of Defence, in response to a RTI application, stated that out of a total of forty four cases received for the purpose of grant of sanction from the Jammu and Kashmir Government, thirty five have been denied, and nine are under consideration. Further, that of these cases only **one** case was processed by the army court-martial. Therefore, the reality of Jammu and Kashmir has been an absolute impunity.

The *Pathribal* case was an opportunity for the Supreme Court to earn the confidence of the people of Jammu and Kashmir, particularly in light of the history of the Supreme Court vis-à-vis Jammu and Kashmir related matters adjudicated by it. Unfortunately the judgment further emboldens the armed forces, which may result in further human rights violations by the armed forces and strengthen a process that has appeared to always favour the perpetrators.

The fall out of this judgment on the people of Jammu and Kashmir would be a reaffirmation of their suspicion and distrust of the Indian state institutions.

Supreme Court had yesterday asked Army authorities to decide whether its personnel accused of fake encounter killings in Jammu and Kashmir should be tried by court-martial proceedings or by regular criminal courts.

"Special powers that allow India's armed forces suspected of involvement in extra-judicial killings to sidestep the civilian courts have been reinforced in this disappointing court ruling over the notorious killings of five Kashmiri civilians 12 years ago" Gopalakrishnan said.

He said the ruling should have taken into account the evidence provided by the CBI. "By giving

the first option to the army for a court martial, this ruling reinforces immunity from prosecution in other cases of alleged extra-judicial killings in Jammu and Kashmir. Instead of upholding the universal and constitutional right to life, the Supreme Court chose to rely on emergency laws which provide excessive powers, as well as impunity to the army," he said.

**HC DISMISSAL: NOT AN END TO THE STRUGGLE FOR JUSTICE: APDP
APDP COMMITS TO TAKE THE BHADERWAH TRIPLE MURDER CASE TO THE SUPREME COURT**

May 29: Justice Masoodi [an additional Judge] of the Jammu Bench, Jammu and Kashmir High Court, who also heard the matter when before the Srinagar Bench, dismissed the petition filed by the families of three persons abducted and killed in Bhaderwah on 3 January 1996. The Director General of Police, Kuldeep Khoda was implicated in the case by a Crime Branch progress report that came to light through the media on 13 August 2011. The families of the deceased filed a petition before the Srinagar Bench of the High Court in September 2011. A transfer petition was filed by Mohammad Ashraf, the person alleged to have been responsible for carrying out the killings, which was accepted on 16 April 2012.

The families of the victims of the killings had waited 16 years for justice. May 29 decision by Justice Masoodi is a further disappointment to the families who have watched with increasing frustration the proceedings before the High Court. Following the filing of the petition, at every step, the families have witnessed a judicial process that they may well perceive as being against the interests of justice. First, Justice Masoodi chose to invite the Advocate General to "assist" the bench instead of issuing notices, observing that this was a sensitive case. Second, rather than provide assistance, the Advocate General did not initially appear before the Bench and then subsequently despite agreeing to submit the complete Crime Branch record in the case, did not do so for 8 months. Third, the Chief Justice of the High Court admitted a transfer petition filed by Mohammad Ashraf, despite him not yet being a party to the proceedings. Further, on 16 April 2012 the Acting Chief Justice of the High Court accepted the transfer petition, despite the Chief Justice having earlier allowed the petition to be heard in Srinagar, and despite the petitioners strongly objecting to the transfer of the case to Jammu. Fourth, the matter,

ONLY 1 ARMY MAN PROSECUTED IN 22 YRS IN JK

MOD RECEIVED 44 CASES FOR PROSECUTION SANCTIONS FROM 1990 TO 2011

May 4: In what can be seen as the fallout of controversial Armed Forces Special Powers Act (AFSPA), only one army man has been prosecuted in Jammu and Kashmir during past 22 years by Ministry of Defence (MoD), which received 44 cases for sanction for prosecution from 1990 to 2011.

The MoD, however, has not disclosed the identity of the trooper. It even claimed that J&K government has been intimated about the proceedings.

"The families of the victims must have their day in court. Indian authorities must restore public confidence in the rule of law and ensure justice for the victims of the Pathribal killings", Amnesty said.

It demanded that impunity for human rights violations by army and paramilitary forces under special powers legislation must stop.

listed as part-heard, was taken up within 4 days thereby effectively precluding the petitioners counsel from appearing in the matter in Jammu. Fifth, the matter was adjourned to 25 May 2012 but was not taken up. But, we are informed, that on 25 May 2012 the Advocate General filed written objections to the petition and submitted the records that the High Court had sought 8 months earlier. The petitioners, nor their counsel, were informed or provided the documents. Sixth, and most remarkably, the petition was dismissed this morning [a judgment issued by Justice Masoodi but read out by Justice Virender Singh], without providing the petitioners or their counsel an opportunity to be heard.

The above summary of the proceedings is a damning indictment of the state of justice in Jammu and Kashmir. The families of the victims who sought to litigate the matter in Srinagar [based on the fact that they were unable to find any legal assistance in Jammu] were completely disregarded when the petition was transferred to Jammu. Further, the dismissal of the petition this morning, particularly the speed at which it was executed and the lack of opportunity afforded to the petitioners to present arguments, further emphasizes to the families that their struggle for justice may never end.

The dismissal of the petition based on the objections filed by the Advocate General on behalf of the State Government. The Omar Abdullah Government shamelessly continues to perpetuate their policy of indifference towards the vital human rights issues of the people of Jammu and Kashmir thereby shielding accused from accountability.

The disappointing role of the Government and the Judiciary has cemented the commitment of APDP to take the case to all available forums. APDP will in the coming days file an appeal in the Supreme Court.

In response to RTI query filed by JK Coalition of Civil Society, MoD said it has initiated inquiries and court martial and a trooper has been held responsible for the offence, which was not detailed out.

"Army has convicted the trooper and awarded punishment. He has been dismissed from services and given 10 years rigorous imprisonment in civil jail," reads the MoD reply.

It, however, said details of the case cannot be provided as the case file has already been returned to J&K government.

MoD reply did not mention about the offence committed by the army man nor did it say where he was posted and when the incident took place.

The MoD further said that it received 44 cases for sanction for prosecution under AFSPA since 1990 to 2011.

"The details of armed forces personnel and unit cannot be given under RTI Act Para 8 (1) (J) and 8 (1) (a)," it said.

prosecution for sanction under AFSPA for 31 cases from ministry of defense and 19 cases from ministry of home affairs.

However, it had not disclosed in how many cases the prosecution was sanctioned.

Referring to the prosecution of a lone army man, Khurram Parvez of Coalition of Civil Societies said on one hand MoD has denied sanction in all the prosecution cases and on other side, there is absolute lack of transparency in the court martial cases conducted by army under AFSPA.

"In such cases, the troopers always get impunity and are reinstated back into their services".

'129 ARMY MEN FOUND GUILTY IN RIGHT VIOLATION CASES'

May 6: As many as 129 army personnel, including three dozen officers, were found guilty of human rights violations mostly in Jammu and Kashmir and Northeast in the last two decades, defence sources have said.

Following the establishment of human rights cell in 1993, the army has received more than 1,500 allegations of rights violations against its men but most of these have been found false and baseless, they said.

"Of the 1,532 allegations of rights violations, investigations revealed that 1,508 were false. Out of the 995 complaints in Jammu and Kashmir, 961 were false while only 29 out of the 485 complaints from Northeast were found correct," the sources said.

The sources said 59 personnel, including some officers, were punished in Jammu and Kashmir in the nine cases of rights violations.

"Similarly, 70 personnel were punished in Northeast after their guilt was established," the sources said.

Army has awarded compensation in 34 cases in which the complaints were found to be genuine. While compensation was paid in 15 cases in Jammu and Kashmir, 19 victims of rights violations were compensated in Northeast, they said.

"35 cases were denied prosecutions while 9 were under considerations," MoD reply further reads.

Government of India's sanction is mandatory for prosecution of members of armed forces posted in Jammu and Kashmir under Section 7 of the AFSPA, which was promulgated in 1991 at the time of eruption of militancy.

Earlier, J&K government had stated it had sought sanction for prosecution of troopers under AFSPA in 50 cases. The government had applied for

Citing the 2001 case, Parvez said, "In 2001, Captain Tewatiya was held guilty by army court for committing rape of mother-daughter duo in Banihal. He was sentenced to seven years prison and was terminated from the services".

He said the accused Captain approached the civil court, which turned down the verdict of army court and ordered his reinstatement.

"Army never opposed the verdict and did not approach the higher court," Parvez said.

DEFENCE MINISTRY TRASHES JK POLICE REPORTS

- Denies prosecution sanction under AFSPA citing faulty investigations
 - Questions veracity of witness accounts
- Says conclusions drawn under pressure from militant sympathizers to malign Army's image

May 13: Ministry of Defence has received 24 cases from the State government in last five years seeking prosecution under Armed Forces Special Powers Act (AFSPA), but it has cited "faulty" police investigations for denying sanctions in most of the cases.

Spelling out the reasons, the MoD has said J&K police has doctored the statements, drawing conclusions under pressure from militant sympathizers. The ministry has also pointed to inconsistencies in witness statements.

It has raised questions on police investigations going to the extent of alleging that the cops were involved in custodial deaths of individuals for which the army men have been incriminated by state authorities.

The Ministry has ridiculed police procedures, stating that it has cited "lack of evidence" in some cases to conclude that a particular army man was involved in crime. But the army has not mentioned whether they have carried out a parallel inquiry to counter the police investigations.

The reasons for not allowing action against the erring troopers have been given in reply to a RTI application filed by the Coalition of Civil Society. The RTI plea sought information in respect of 24 cases forwarded by the state home department seeking sanction under AFSPA from 2007 to 2011.

According to Ministry of Defence, five cases are under examination while the requests for 19 cases have been rejected "as it was found that no prima

facie case was made out against the accused army personnel”.

CASES:

Sanction was denied in the case of Major Arora who was booked by police under FIR No 08/97 for committing rape. The MoD said there were a number of inconsistencies in the statement of witnesses.

“The allegation was lodged by the wife of a dreaded Hizbul Mujahideen militant. The lady was forced to lodge false allegations,” the MoD reply reads.

In case of Major R S Athreye and Captain Awasthi, who were booked for torture leading to death under FIR NO 30 of 2000, the MoD said the sanction was denied as the FIR and the statement of witnesses contradict each other.

“The unilateral conclusions reached by police appeared to have been made under pressure from terrorists and sympathizers to blame and malign the image of army.”

In the case of Captain Gorpala Singh, who was also indicted in torture leading to death by police under FIR no 01/94, the army said it denied sanction because the individual was released after questioning.

“The FIR was lodged after 20 months from the date of operation. The individuals named in the complaint were never borne on the strength of the unit.”

In another case involving torture to death, Major Vikash and Captain Raju were incriminated under FIR no. 73 of 2002, but the ministry alleged that the victim died in police custody.

“The individual was apprehended in a bona fide military operation and handed over to police. The individual expired after four days in police custody. Army involvement was not established in killing of the individual.”

In a similar case involving Captain Piyara Singh Toor under FIR no 127/03, the MoD said the sanction was denied since the individual was handed over to police station Poonch on August 24, 2003 in medically fit condition with in the laid down limit of 24 hours and individual died on September 22, 2003. “That is one month after his handing over to police,” reads the MoD reply.

SAILAN MASSACRE SURVIVORS THREATENED TO DISCONTINUE LEGAL RECOURSE

WROTE SHRC ASKS FOR SECURITY COVER

May 20: Infamous Sailan massacre 1998 survivors, who have filed a petition in JK High Court, Srinagar for re-investigation into the bloodbath, are facing persistent intimidations and threats from the agencies, who carried out the gory act. State Human Rights Commission (SHRC) in its investigation has already identified and indicted 9 Para troopers and Special Police Officers for carrying the bloodbath and had directed the state to conduct further investigation into the incident. However, the Govt. has chosen to ignore the SHRC recommendations, hitherto, no action taken report has been submitted.

Major GK Batila too was held responsible for death in custody under FIR number 20/2000. “The allegations are baseless and framed with mala fide intention to tarnish the image of the army,” the ministry claimed.

In a fake encounter case involving Major Raghwan who was booked under FIR no/2000, the Defence Ministry said the post mortem report of the body reflected no injuries except the scratch on right wrist.

The ministry further added that the successive reinvestigation of the case by police has recorded “doctored statements of the witnesses to falsely implicate the officer and Junior Commissioned Officer”.

Major Aman alias Mushtaq Ahmad also stands involved in the death of an individual under custody under FIR 30 of 2000. The MoD claimed that his involvement is not even prima facie established. “Hence the sanction was denied.”

Major Ganpati was indicted for staging fake encounter by police under FIR 80/97. The MoD sanction was denied “since there was contradiction in the investigation in the case by the police twice with a gap of 8-9 years”.

Subedar Surinder was indicted by police in a similar crime under FIR 64/2003. “The individual killed was a militant from whom arms and ammunition were recovered. No reliable and tangible evidence has been referred to in the investigation report,” the ministry claims.

The police also indicted Major S Bhattacharya unde FIR no 160/2001 for enacting the encounter. “The individual killed was a militant from whom arms and ammo were recovered.”

On May 4, Rising Kashmir reported that only one army man has been prosecuted in Jammu and Kashmir during the past 22 years while the Ministry of Defence had received 44 cases for sanction for prosecution under AFSPA from 1990 to 2011.

Earlier, J&K government had stated it had sought sanction for prosecution of troopers under AFSPA in 50 cases. The government had applied for prosecution for sanction under AFSPA for 31 cases from Ministry of Defence and 19 cases from Ministry of Home Affairs.

Two of the survivors Mohammad Latief Sheikh and Abdul Ahad moved to Srinagar to report the perennial harassments and intimidations they are facing at the hands of agencies found guilty in the massacre by the SHRC. The survivors said, the threats were delivered to discourage and intimidate them to discontinue the legal recourse. The duo talked at length with media to acquaint them about the role of army and SPOs in orchestrating the massacre and threats they are now facing after filing the petition in September 2011 before the High Court. In the backdrop of the series of serious threats, the survivors

have moved an application to the SHRC asking for security cover.

"We have been compelled to ask for security cover. The perpetrators who killed our relatives were unnerved after we filed a petition in the High Court.. The threats were delivered through our neighbours and friends. The only aim of the perpetrators is to coerce us not to pursue the case, which we can't afford as we want justice. Neither we can forgive the perpetrators nor can we forget the brutal killings of our 19 family members including women and children. We are resolved to continue with the legal proceedings and won't allow the culprits to roam free", Latief Sheikh and Abdul Ahad affirmed to *The Information Missive*.

Both the petitioners are adamant to continue with the legal fight and they identified the people who delivered threats to them as, Maqsood Khan then SPO, one of the accused in the case, presently posted at CID office Surankote, Mohammad Akbar Malik then SPO, presently a Head Constable with SOG wing of police in Surankote, Mohammad Rafiq Gojjar alias Pathan, presently working in District Police lines Poonch and Mohammad Younis alias Tiger then SPO, presently working with Army at Draba Camp in Surankote.

"The accused are enough powerful, as they are holding important positions in army and police to execute the threats they had passed on to us through their extensions," the duo further avowed.

"We had mistaken by not eliminating them. Now we will book them in militancy. We are enough capable of framing them and no one can spare them if they carry on with the case" Latief quoted one of the perpetrator as saying this to his neighbours.

The duo is now finding it difficult to stay in their native village Sailan and feels fully vulnerable to the threats. "We are deeply disturbed after these threats. We are seriously concerned about our family members and relatives. The harsh memories of past are still haunting us. A day before the massacre 1998, the perpetrators had publicly announced to wipe out our families to avenge the killing of Zakir Hussain (an informer and SPO). Zakir was killed by Imtiyaz Ahmad, a militant, our relative. This time too they are well capable of repeating the same," the duo said.

ON INTERNATIONAL WEEK OF THE DISAPPEARED

STRUGGLE FOR JUSTICE VERSUS THE NON-SERIOUS AND INSENSITIVE GOVERNMENT

May 28: In connection with the International Week of the Disappeared (27th May to 2nd June) Association of Parents of Disappeared Persons (APDP) started the commemoration with a special meeting of prayers and reflections 28th May 2012 at the APDP office at Amira Kadal, Srinagar. This special meeting was to reflect about the ongoing struggle, achievements, failures, response of the Indian state and the response of the International Community.

In the meeting it was decided that APDP would urge the religious leadership of Jammu and

According to the duo survivors, the failure of the state and its institutions has only helped and emboldened the perpetrators that's why they are threatening them freely. "The state has not taken seriously the recommendations put forth by the SHRC after its on spot investigation of the massacre. If the state had paid some heed to the SHRC recommendations and had acted accordingly they (perpetrators) won't be on our throats again," Abdul Ahad complained with fear quite palpable on his face.

He further stated, "Now we moved an application to the SHRC asking it to provide us security cover. The SHRC should look into its own investigation of the massacre and the onus lies on it to act swiftly. Equally, the other state institutions including judiciary are duty bound to intervene and ensure our security and safety."

Worthwhile to mention here, the SHRC in its final report dated 21-10-1998 had recommended that Home Department should issue directions to SP Poonch to identify the 3 SPOs associates of Zakir SPO slain attached with 9 Para of Balfayaz army camp and bring them in the net if investigation of the case registered regarding occurrence together with the father of Zakir. Regarding the allegations, the SHRC has recommended that Unified Command is under obligation to take stock of the occurrence where the army personnel of army picket didn't react when occurrence took place barely 200 meter away from their picket that too around midnight, the uniform persons were seen moving with torch lights when no civilian move in the night. In addition to it, the SHRC has recommended that the victims be awarded cash compensation on the similar lines as they may have paid to survivors of Wandhama massacre Ganderbal.

The survivors Abdul Ahad S/o Hussain Mohammad Sheikh, Mohammad Shabir S/o Ahmad Din and Masood Ahmad Sheikh S/o Lassa Sheikh S/o Sailan filed a petition no 1572/11 in J&K High Court in September 2011 for re-investigation by constituting a special investigation team or Central Bureau of Investigation (CBI) or another authority and also for implementing recommendations made by SHRC in latter and spirit. The massacre qualified as high profile as it involves top police and army officials including the then SSP Poonch, now posted as DIG Jammu.

Kashmir to hold special prayers for the disappeared persons and their families on Friday, 1st June 2012. APDP would also hold workshops for psychological rehabilitation and capacity building training of the family members of the disappeared.

Further, to reaffirm its commitment, to hold the government accountable, it was decided that in this week a petition related to cases of disappearances from Baramulla district would be submitted to State Human Rights Commission (SHRC). Also another petition regarding FIRs pertaining to unmarked

graves in Kupwara, Baramulla and Bandipora would be submitted to SHRC.

Finally APDP also reflected on orders issued today by SHRC in two matters relating to 3844 unknown, unmarked and mass graves in Poonch and Rajouri districts, and graves relating to the "Al Faran" kidnappings of 1995. In both cases, on the last date of hearing, notices had been issued for reports to be submitted by certain departments of the Government of Jammu and Kashmir and police authorities. No reports have been submitted till today.

The SHRC, in its order relating to the graves in Poonch and Rajouri, stated that the proceedings were in a state of status quo and had not progressed an inch as the Government and police authorities had not submitted the reports ordered. The SHRC found this to reflect an insensitive and non-serious approach to the "burning" issue of unknown, unmarked and mass graves in Jammu and Kashmir.

INDIA MUST DELIVER ON ITS REPEATED COMMITMENTS TO THE HUMAN RIGHTS COUNCIL

On 24 May 2012, India's human rights record came under renewed international scrutiny during its second Universal Periodic Review (UPR) at the UN Human Rights Council. The recommendations made to India by the reviewing states, many of which reflect concerns raised previously by the organization.

Pertinent to mention here, United Nations on Human Rights Consultations Universal Periodic Review (UPR) is a process conducted by the UN Human Rights Council, involving a review of the human rights record of 192 UN Member States once every four years. 48 states are reviewed each year during three UPR sessions dedicated to 16 states each.

It is disappointed, however, that despite India's assertion that it sees the UPR mechanism as one of "constructive engagement," the government did not immediately accept any of the recommendations made, some of which were put forward in 2008 during India's first UPR.

During the review, India received no less than 17 recommendations to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Having signed the CAT 15 years ago, India should now ratify without further delay both the CAT and its Optional Protocol. India stated, as it did during its first review in 2008, that it is in the process of ratifying the CAT, and attributed the delay to the

APDP believes the non-responsiveness of the Government and police authorities in the "Al Faran" case reflects the insensitivity and non-seriousness which is perpetual. Despite statements by the Government of Jammu and Kashmir, and recent submissions of the Union of India during the Universal Periodic Review of the United Nations Human Rights Council and also India's commitment on enforced disappearance by signing the International Convention for the Protection of All Persons from Enforced and Involuntary Disappearances in 2006, the ground reality is as stated in today's SHRC order: insensitivity and non-seriousness.

This continued and perpetual insensitivity and non-seriousness, as the International Week of the Disappeared depicts India's priority on human rights issues of the people of Jammu and Kashmir.

drafting of the domestic Prevention of Torture Bill, which has been pending before Parliament since May 2010.

The Prevention of Torture Bill falls short of the requirements of the CAT in several respects, as previously detailed by Amnesty International, for example with regard to the definition of torture and the inclusion of a statute of limitations.

During the review, India asserted that its existing laws provide adequate protection against torture. However, this assertion is strongly contested by human rights groups in Kashmir.

Human rights watchdogs urge India to act on recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed five years ago. India should also accept the recommendations that it sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, establish an official moratorium on the use of the death penalty, or abolish the death penalty. No executions have been carried out in India since 2004, but recent rejections of several mercy petitions of prisoners currently on death row have increased fears that executions may resume. This would constitute a major setback to the country's alignment with the global trend away from the use of the death penalty.

Local and international rights groups welcomes the recommendations made that India repeal or review the Armed Forces Special Powers Act 1958 (AFSPA), as also recommended by a government-appointed panel six years ago following widespread demands in north-eastern states and Jammu and Kashmir.

During the UPR, the Indian delegation failed to adequately address impunity under the AFSPA, which grants security forces in specified areas of armed insurgency powers to shoot to killing situations where they are not

necessarily at imminent risk. The Indian Supreme Court recently ruled that security personnel could not invoke the AFSPA to avoid prosecutions for alleged human rights violations.

However, under the AFSPA, prosecutions cannot take place without approval by India's federal government. The Indian delegation did not respond to an advance question from Norway on whether India would consider repeal of the Jammu and Kashmir Public Safety Act, 1978 (PSA), under which hundreds of persons suspected of involvement in protests, political leaders and activists remain in detention without charge or trial in Jammu and Kashmir. Amendments made to the PSA in 2012 have still not brought detention practices in Jammu and Kashmir fully into line with India's human rights obligations under international law.

Rights groups, therefore, reiterates that the Government of India to ensure that the Jammu and Kashmir authorities repeal the PSA, end the practice of administrative detention in the state, and free all detainees unless they are charged with a recognizable offence under the state's ordinary criminal law.

In September 2011, India issued a standing invitation to the UN Special Procedures, and its facilitation of recent visits by the Special Rapporteurs on human rights defenders, and extrajudicial, summary or arbitrary executions, is welcome. As recommended during the UPR, rights groups urges

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India without further delay, to address the backlog of outstanding mission requests from other Special Procedures, and in particular to facilitate visits by the Special Rapporteur on torture, whose request to visit has been pending since 1993, and the Working Group on Arbitrary Detention. Several states called on India

to implement the recommendations of the Special Rapporteur on human rights defenders following her visit in January 2011 and to ensure that human rights defenders are able to carry out their legitimate and peaceful activities without fear of harassment and intimidation.

Human rights watchdogs calls on India to demonstrate its "constructive engagement" to the UPR at the Human Rights Council's 21st Session in September, and act swiftly to give effect to these recommendations.

It is worthwhile to incorporate here the Previous Conclusions and/or recommendations made by various countries to the state of Indian in 2008.

In the course of interactive dialogue the following recommendations were made:

1. Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, and Sweden) and its optional Protocol (United Kingdom);
2. Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);
3. Continue energizing existing mechanisms to enhance the addressing of human rights (Ghana);
4. Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals (Ghana);
5. Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);
6. Consider signature and ratification of Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);

7. Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);
8. Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius)
9. Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);
10. Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria);
11. Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);
12. Ratify the Convention on Enforced Disappearances (Nigeria);

13. Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);
14. Extend standing invitation to special procedures (Latvia, Switzerland);
15. Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);
16. Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);
17. Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia);
18. Continue efforts to allow for a harmonious life in a multi-religious, multi-cultural, multi-ethnic, and multi-lingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).

PSA MUST GO: AMNESTY

'AMENDMENTS WON'T SERVE ANY PURPOSE'

May 3: In its fresh report on human rights situation in Jammu and Kashmir, global rights watchdog the Amnesty International (AI) has observed that mere amendments to the controversial Public Safety Act (PSA) by the state government are not enough and instead the law should be scrapped.

AI has observed that hundreds of persons suspected of involvement in protests, including separatist leaders and activists, continue to remain in detention without charge for trial, and youth below 18-years of age are unlawfully detained in police stations and other detention centers run by state authorities.

The fresh observations by the international body follow the visit of its two-member team to the Kashmir valley last month to assess the human rights situation on the ground. During their 12-day stay in the Valley the team comprising Saptarshi Mandal and Sahana Basavapatna visited different districts.

"Amnesty International reiterates its call on the authorities in Jammu and Kashmir (J&K) to end the persistent practice of administrative detentions in the state, and repeal the Public Safety Act, 1978," the AI has observed in its fresh report on J&K situation.

Last year, Amnesty International, for the first time in 20 years, released a report, 'Lawless Law, Detentions under the Jammu and Kashmir Public Safety Act' on detentions in JK under the PSA terming it a "lawless law." The AI called for immediate abolition of the system of "administrative detentions." "Hundreds of people are detained under the PSA in JK, and instead of charging and trying persons suspected of committing offences in a fair trial in a court of law, the J&K authorities continue to circumvent the rule of law by resorting to the PSA," Amnesty had said in its voluminous report.

It said Jammu and Kashmir authorities were using PSA detentions as a "revolving door" to keep people they cannot or would not convict through proper legal channels locked up and "out of circulation."

Following mounting pressure on it, State Government decided to amend the Act. Last March state legislature passed amendments to the PSA, first time since its implementation in 1978, reducing detention period under the law from one year to three months in case of public disorder and from two years to six months in cases involving security of the state. However, in both the situations there is provision for revision and the detention period can be extended to one year and two years respectively.

Another amendment provides that a detainee under PSA would be communicated in his/her own language about grounds of detention and all the formalities for slapping PSA on an accused shall be completed within six weeks instead of eight weeks as was given under the existing provisions of the Act. Besides, chairman of Public Safety Advisory Board can be appointed for two terms only. Another amendment includes that a youth (local/foreign) below the age of 18 years shouldn't be detained under the PSA.

Today's report mentions a legal team, deputed by the AI to review progress since its March 2011 report on detentions under the PSA, has found "no evidence" that an amendment to the PSA will bring J&K detention practices fully in line with India's human rights obligations under international law," the AI has observed. "Amnesty International delegates noted an apparent drop in the number of 16 and 17 year olds being detained, since a welcome new provision in the amendment that persons under 18 can no longer be detained under the PSA.

However they continue to be unlawfully detained in police stations and other detention centers run by state authorities."

The report adds young person above 18 years of age, in particular those perceived as having separatist views, continue to be harassed by the state police with threats of detention under the PSA, and with charges of attempted murder.

"Some former detainees and families of those still detained told the Amnesty International delegates that the revised PSA does not inspire much confidence, since authorities are able to continue their

TRIAL OF TWO KASHMIRI STUDENTS ARRESTED IN UP FROM ATS, UP TO JK POLICE CUSTODY

Two Kashmiri students perusing religious education from Madrassa - Jamiatul Falah, Azamgarh Uttar Pradesh (UP) who were arrested on May 24 by Anti Terrorist Squad (ATS) for unknown reasons finally landed in JK Police custody on May 31. Their families are clueless for what reasons the duo is now handed over to JK police. However, police claimed one of the arrestees Wasim as a militant affiliated with Lasker-e-Toiyeeba (LET). The charge vehemently denied by his family.

The arrests had triggered panic among Kashmiri student fraternity studying in different parts of India particularly in UP. Muslim politicians from Uttar Pradesh including those of the ruling Samajwadi Party (SP) have approached Chief Minister Akhilesh Singh Yadav's office to get the duo released.

A prominent Indian civil rights group filed a petition with National Human Rights Commission (NHRC) seeking inquiry into the arrest and disappearance of the two Kashmiri boys. Demonstrations were held at Azamgarh to protest the arrest of two Kashmiri students of a reputed Madrassa - Jamiatul Falah.

The duo cousins Sajjad Ahmad Bhat and Wasim Ahmad Bhat aged 20, students of Jamiat-ul-Falah were allegedly picked by UP police on May 24. The family of the duo hailing from Tarzoo area of Sopore told media that the boys were pursuing religious education in UP and are not either politically or militantly involved.

Now both of them were taken into custody of JK Police.

"Both boys were kept in custody at SP office. When I asked the officials there to release them I was told to leave for home and have faith in Allah," Ghulam Rasool father of Wasim said.

The Sopore police, however, said the boys weren't handed over to them by the UP police but were re-arrested at Railway station Jammu. The police claim Wasim was wanted by the police because of his alleged involvement in an attack in Sopore.

"Wasim is affiliated with Hizbul Mujahideen and has been involved in an attack on police in Sopore town on January 7, 2012 in which one policeman was injured and a civilian killed," said SP

practice of revolving door detentions after the detention period, or after the judiciary has set aside his detention order."

It has urged upon Chief Minister Omar Abdullah to "ensure" that all detainees are released or charged with a "recognizable criminal offence" and tried fairly in a court of law, safeguards must be introduced to ensure that those detained are charged promptly, have access to their families, legal counsel and medical examinations, and are held in recognized detention facilities pending trial.

Sopore to media. Police also said Wasim was also associated with LET in past as well.

"He was associated with LET 6 years before for which he was detained for one year in 2006," police said.

Nevertheless, the family claimed that Wasim was never associated with militancy ever in his life. "He was detained for 13 months in 2006 under false charges along with three other youths, when they were studying in a local madrassa.

"Sajjad was not well for the past few days. He had left along with his cousin Wasim for home on May 23. We were hoping that they will return shortly. But we were shocked to learn that they have been detained by UP police," Ghulam Rasool Bhat said.

"The duo are innocent and are not remotely connected with any subversive activity," he added.

Sajjad Ahmed Bhat was student of Arabi Awwal (first year of 5-year Arabic course) and Wasim Ahmed Bhat was studying in the second year of the same course.

Director of Jamiat-ul-Falah, Azamgarh Maulana Tahir Madni said the two students of their institution, Sajjad and Wasim, were arrested from Aligarh.

"They boarded a train from here on May 23 and on next morning ATS of UP police picked up them at Aligarh Railway Station without citing any reason," they said.

"Neither we have been informed about detentions nor have they been presented in the court. This is a serious case of human rights violation," he said.

Madni said the "illegal" arrests have triggered panic among Kashmiri students in the northern state.

"We have also filed complaint of abduction for illegal detention of the students," Madni added.

Samajwadi Party leader Dr Tasleem Rahmani this afternoon sent an email to UP CM's office informing his about the incident. Dr Rahmani also called OSD of the CM urging him to take notice of the issue and place it before the CM.

Rahmani said this all is a conspiracy to make innocents criminals. "Young chief minister should take notice of it and do justice. UP ATS comes under

UP Government. He should immediately stop cruelty on innocents as this is affecting the image of the govt. and CM," said Dr Rahmani.

While Muslim politicians in UP, perhaps for the first time, have raised hue and cry over the detentions, JK Government seems to be unaware of the arrests of its citizens.

The UP police denied of having arrested two Kashmiri students.

"I have no information about such arrests. Even I contacted ATS, they were unaware," SSP Aligarh Piyush Mordia told this newspaper.

"It is better you talk to ATS directly," he added.

On May 31, demonstrations were held at Azamgarh to protest the arrest and continued detention of the students. The protests were led by Maulana Tahir Madani, director of the Madrassa, hundreds of students, joined by locals gathered at Maulana Muhammad Ali Jauhar Park in Bilariyaganj area, holding placards with slogans seeking release of the Kashmiri students. They were shouting slogans against the police and the government.

A petition was filed with National Human Rights Commission (NHRC) seeking inquiry into the disappearance of the two Kashmiri boys.

Association for Protection of Civil Rights (APCR) filed the petition with NHRC seeking investigation into the incident and protection of the boys. In its complaint with NHRC, the eminent civil rights group has urged the constitutional body to

SHOPIAN DOUBLE RAPE AND MURDER COMMEMORATES

May 30: The second anniversary of Shopian double rape and murder incident was commemorated throughout valley with people observing one day strike. However, in Shopian where the incident took place people observed two day strike on May 29 and 30 to mark the occasion.

Reports said, townfolk in Shopian gathered in large numbers at the Jamai Masjid, rejecting a major inquiry report, and pledged to fight on in a case apparently wrapped up by the Central Bureau of Investigation (CBI) as 'death-by-drowning' in a stream barely ankle-deep at the time of the incident.

In the main local mosque, Shopian's Majlis-e-Mashawaraat (Consultative Council) that had spearheaded a marathon 47-day strike after the tragedy three years ago, organized a seminar swearing "We Will Not Forget Our Daughters," were speakers trashed the CBI report as a tissue of lies.

The town vented anger at the government for shielding the culprits, and their representatives said that they would take the case to the rest of India, and overseas, to ensure that justice was done.

COPS BEAT CRICKETERS, OPEN FIRE IN KASHMIR UNIVERSITY

'BALL LANDED IN VC'S OFFICE, THEY RESPONDED WITH BULLETS'

May 14: Police resorted to aerial firing and reportedly thrashed cricket-playing youth on Kashmir

investigate the matter immediately and initiate an enquiry to protect the life of Kashmiri boys.

"We request you to kindly investigate the matter immediately and initiate an enquiry to protect the boys from the danger of life, so that the fundamental rights of the victims and their parents are upheld. This is clearly a violation of human rights and civil rights of citizens. Parents and relatives of the victims are wondering about the way police has arrested their sons in Aligarh. Uttar Pradesh Police and ATS have completely violated and ignored the directions of Supreme Court of India as provided under the case of DK Basu v/s State of West Bengal, 1997," APCR said in the petition.

"This is our humble request to you to please take immediate action in the matter and protect the human rights of those young boys who are victimized by police in a very unjust manner," the petition says.

Neither their family nor the Madrassa have been informed about the detention/arrest. The boys haven't been produced in any court either.

Muslim leaders had sent a memorandum to P Chidambaram, Union Home Minister and Wajahat Habibullah, Chairman, National Commission for Minorities telling them that the Muslim community is alarmed at "the resumed serial, at random and unending saga of arrests of Muslim youth from various parts of the country on apparently no tangible charges, two more such recent incidents are agitating the community."

Earlier the Hurriyat Conference (G) called for a general strike on May 29 but delayed it for a day on the request of Pundit community in view of the Hindu festival Mela Kherbawani.

Public transport remained off the roads, while shops and business establishments remained closed in main commercial centers.

Students stayed away from schools and functioning in government offices were affected, and police and paramilitary forces had been deployed in sensitive areas.

Sisters-in-law Asiya Jan and Neelofar were found dead in the Rambiaranallah of Shopian on the morning of May 29, 2009, close to police and forces camps.

Locals said that the young women had been criminally assaulted and murdered by forces personnel.

The incident had triggered off massive and prolonged protests across the valley during which several youth were killed in forces and police firing, and led to a 47-day shutdown in the Shopian town itself.

University campus Srinagar, creating panic and triggering protests.

Eyewitnesses told media that police fired in air and beat cricketers and umpires in the ground after the cricket ball landed in the lawns of Vice-Chancellor's secretariat during a match of Kashmir Premier League (KPL). Ironically, the tournament is being organized by Army in collaboration with State Government with an aim to involve youth in 'constructive activities.'

"The ball landed in the VC office's front lawn unintentionally. Policemen abused us furiously as if we had hurled a grenade," said a cricketer Tanveer Ahmad of Soura.

"It just started from a small thing. When we went to fetch the ball, policemen abused us and we just let it go. But they continued to abuse and we just retorted back. They went to an extreme: coming into the ground, beating players and umpires; and then firing," witnesses said.

Danish, a BCCI-recognized cricket umpire, said policemen beat them and resorted to firing over a small thing.

He said after the small argument, an organizing member was sent inside the secretariat to apologize for the trespass. "Even if we did wrong but why did they (cops) beat the organizing member inside the secretariat who had gone to apologize. They are blood thirsty," said another cricketer, Arif Dar.

"The team manager Aslam Bhat was beaten severely," Arif said.

Cricketers shouted slogans against police and sought action against the cops who 'fired horizontally on the youth.'

"They are murderers and enemies of peace," shouted a cricketer.

Later youth also raised pro-freedom slogans.

"When Army is organizing tournaments for us, police is trying to kill us. They (policemen) should feel ashamed," they said.

NHRC SHOTS NOTICE TO CENTRE, JK GOVT

May 12: National Human Rights Commission (NHRC) has issued show-cause notice to Centre and J&K Government over the killing of a youth in Boniyar area of Uri by Central Industrial Security Force (CISF) personnel in January this year.

Altaf Ahmad Sood, 22, was shot dead by CISF men when people were protesting against shortage of electricity in the area.

The Commission, which took cognizance of the killing on the complaint of Imtiyaz Ahmed Khan, President, Manavadhikar (Emergency Helpline Association) and Ravi Nitesh, has asked for a report from Director General CISF and Senior Superintendent of Police Baramulla over the matter.

The killing had evoked strong demonstrations in Uri area prompting the state government to order an inquiry and register a case against CISF men.

The youth held bullet cartridges in their hands and shouted: "Down with JK Police."

"They did not listen to us. Even I was beaten before we could say anything. They just went berserk and fired horizontally," Danish said showing bruises on his left arm.

Danish said policemen also intimidated them not to play the Army-organized tournament. "With every punch and kick they repeated: play, play the game of Army you rascals..." he said.

When Superintendent of Police, Hazratbal, Abdul Qayoom reached the place, protestors intensified sloganeering. A cricketer told SP that police were playing with the sentiments of youth. "Your policemen opened fire over a small thing," the SP was told.

In a statement, Defence spokesman Col. J.S. Brar said the Kashmir Premier League is being organised by the Army in concert with the Department of Sports and Youth Affairs. "There was some misunderstanding in the match at Kashmir University and the issue has been resolved amicably," he said.

An official communiqué said the involved cop has been suspended.

"Taking note of an incident at University with regard to a scuffle, constable Mehraj Din has been put under suspension. An FIR has been lodged in this regard in police station Nigeen," the statement said.

A Kashmir University communiqué said the matter was resolved following the constitution of an inquiry committee and immediate suspension of the police official suspected to be involved in the act. "During this whole episode no student of the University of Kashmir participated in the scuffle neither was any student injured in the act. However, few KUG personnel suffered injuries in the scuffle," the statement said.

Sood, according to locals, was not part of the protest demonstration against power shortage and was passing through the area when he was shot dead.

Later police charge-sheeted five CISF men before Judicial Magistrate Boniyar, who committed the same to Principal District and Sessions Judge Baramulla.

But the accused were not charged under section 302 RPC (murder). As per the charge-sheet, one of the personnel has been charged under section 304 RPC, the remaining four have been charged under section 308 RPC.

Chief Minister Omar Abdullah had termed the killing as murder.

"I have no doubts that Altaf was murdered," the CM had said.

The CM had also accused CISF of using excessive force, which was "unwarranted and inexcusable."

Omar had even said government will spare no effort in ensuring exemplary punishment to the

CISF personnel responsible for the killing.

1996 BEMINA ENFORCED DISAPPEARANCE

HC DIRECTS GOVT TO DEPOSIT RS 10 LAKHS COMPENSATION

May 08: Acting in a contempt petition filed by an aged mother, whose son was subjected to enforced disappearance in 1996 by the Army, High Court has directed Defence Ministry to deposit Rs. 10 lakh compensation amount with Registry within eight weeks.

While holding 20 Grenadiers of Army responsible for the enforced disappearance of Mushtaq Ahmad Dar of Bemina, High court in its landmark decision dated March 2011 had directed Union Defence Secretary to pay Rs 10 lakh as compensation to Azizi Begum, the 63 year old mother of Mushtaq Ahmad.

However, as the Defence Ministry failed to comply with HC orders and did not pay the compensation amount, Azizi Begum in December 2011 approached High Court with a contempt petition through her lawyers Mir Shafqat Hussain and Mir Urfi, Defense Ministry and JK police authorities.

According to his family, Mushtaq Ahmad Dar of Boat colony Bemina was taken into custody by 20 Grenadiers in April 1997 and was not seen thereafter.

"The petitioner filed the petition under HCP No 77/99 in 1999, which was disposed off in favour of the petitioner mother by this Honorable court on March 25, 2011, whereby the respondents were directed to proceed with the investigation of the case with regard to disappearance of the detenu and to pay Rs 10 lacs to the petitioner as compensation", the petitioner counsel Mir Shafqat Hussain submitted before the court.

"The said order was served upon the respondents but they have failed to comply the same and their non-compliance is deliberate and intentional. Therefore, we are compelled to approach this court with the contempt petition. As such, contempt proceedings may be initiated against the contemnor respondents", the counsel added.

While acting on the said contempt petition, Single bench of Justice Ghulam Hasnain Masoodi last week in his orders directed the Defence Secretary (respondent No.3) to deposit the compensation

amount with HC registry."Respondent No.3 shall deposit the cash amount with the Registry within eight weeks so that the amount is dealt with thereafter in accordance with the decision in LPA, as may be passed in the LPA titled Union of India versus Mst Azizi", Justice Masoodi observed in his orders.

While explaining the non-compliance of HC orders as alleged in the petition, Standing counsel Union of India Karnail Singh Wazir had argued that Union of India has already challenged the orders (payment of compensation) by filing a Leave petition Application before the HC.

Earlier, while disposing off a habeas corpus petition filed by Azizi Begum, mother of Mushtaq, former Chief Justice of High Court Justice F.M. Ibrahim Kalifulla in his landmark judgment dated March 25, 2011 had observed that Article 21 of the Constitution had been violated in this case.

The decision of Justice Ibrahim was based on a judicial inquiry report into the incident, which was submitted to the High Court on July 18, 2000. The judicial inquiry concluded that "Mushtaq Ahmad Dar was lifted by 20 Grenadiers of the Army camped at Boatman Colony Bemina on 13 April 1997 and thereafter disappeared."

Subsequently, the report was considered by the High Court on October 28, 2003 and the findings noted.

In the final judgment delivered by Justice Kalifullah in March 2011, the Army unit was held responsible for the disappearance of Mushtaq in custody. "This is a case of total disappearance of the detenu, who was taken into custody by the personnel of 20 Grenadiers. This court views this as a fit case where award of compensation as a public law remedy under Article 226 to the aggrieved person, namely the petitioner, is fit and appropriate as well as in the interest of justice."

While awarding the compensation, the court had observed that it could be reasonably held that a compensation of Rs. 10 lac, to be payable by the respondents would meet the ends of justice.

MILITARIZATION

➤ GOVT TO VACATE PDC BUILDINGS OCCUPIED BY FORCES

May 14: State government has initiated process to get all the building owned by Jammu and Kashmir Power Development Corporation (JKPDC) illegally occupied by the police and other forces at various district headquarters, official sources said.

They said the process has been initiated after the matter was brought into the notice of the Chief Minister by the JKPDC management. The Corporation is reportedly having over a dozen of buildings occupied by various force personnel in different places.

"On the instruction of the Chief Minister Omar Abdullah General Administrative Department has constituted a high level committee to initiate the process to get the building vacated. The Committee will be headed by Principal Secretary to Government Home Department and will comprise of Principal Secretary to Government PDD as its member and Managing Director JKSPDC as member - secretary. The member from the department or security agencies with whom the matter may be pending will be the special invitee to the committee," they added.

"The Committee will also sort out the allied issues related to the vacation of such accommodation and furnish a report to PDD within one month", sources said.

➤ CRPF OCCUPY 46 HOTELS, GUEST HOUSES IN CITY

'NO PLAN TO VACATE'

May 15: With the Jammu and Kashmir government making efforts to minimize the foot prints of security forces in the valley, especially in Srinagar, there are still 46 hotels and guest houses under the occupation of Central Reserve Police Force (CRPF) in different parts of the capital city.

This is despite the fact that the state has been facing acute shortage of accommodation in view of heavy tourist rush for the past two years.

In 1990 when hundreds of thousands of paramilitary forces were deployed in Kashmir to fight militancy, there was massive shortage of space to house them. So they occupied places they could find easy that included hotels, guest houses, cinema halls and residential houses of migrants.

Data available with police reveals that in early '90s Border Security Force (BSF) occupied 79

LANDMINE EXPLOSIONS

➤ SOLDIER LOST FOOT IN LAND MINE EXPLOSION

May 16: A soldier got seriously injured in a mine blast near the Line of Control (LoC) in Poonch district of Jammu and Kashmir. Naik Shakeel-ur-Rehman, who was part of a patrol party, stepped on an anti-personnel mine resulting in a powerful blast in Makhiyardhar forward area, a senior army official said.

hotels and guest houses in the city. In recent years, 33 of them were vacated and 46 are still under the occupation of CRPF which replaced BSF in 2005.

Most of the occupied hotels, police said, are prime places and before the eruption of militancy these places were being used by tourists. "Some of them were favorite boarding destinations for tourists," a senior police officer said.

Police added that some of the hotels were vacated by the security forces during the coalition regime led by Mufti Muhammad Syeed. "Since then no other hotel was vacated by security forces," he said. "Other than hotels, security forces vacated two cinema halls and there was also partial withdrawal of security forces from Indoor Stadium."

Most of the hotels, according to police, are used by CRPF as battalion and company headquarters in different parts of Srinagar. Public Relations Officer CRPF, Sudhir Kumar did not divulge the number of hotels occupied by their men in different parts of Srinagar.

However, he said that they are paying the rent. "The owners of the hotels are being paid rent at regular intervals by government," the PRO said adding there was no plan to vacate any hotel in Srinagar in near future.

Police records also mention that in other prime hotels and guest houses of Srinagar, accommodation has been provided to more than 3000 Durbar move employees. The prime hotels and guest houses where accommodation has been provided to move employees are Hotel Lala Rukh and Hotel Heemal, tourist huts at Cheshmashahi and Parimahal.

A police officer said that Riyaz Guest House Bishambar Nagar, Kashmir Hill Town, Hotel Alexander, Hotel Khyber have also been provided to move employees.

Pertinently, the state government Monday initiated the process to get all the buildings owned by Jammu and Kashmir Power Development Corporation (JKPDC) ad occupied by the police and other forces at various district headquarters vacated.

A high level committee has been constituted in this regard to get the buildings vacated. The Committee will be headed by Principal Secretary to Government Home Department and will comprise Principal Secretary to Government PDD and Managing Director JKSPDC as its members.

In the blast, Rehman's left foot was blown up, he said, adding that the soldier was airlifted to military hospital at Northern Command in Udhampur for treatment. The anti-personnel mine had drifted due to melting of snow and was deposited near the patrol track in Mukhiyardhar area, the official said.

➤ STUDENT INJURED IN LANDMINE EXPLOSION

May 17: A student sustained injuries in a landmine explosion in Keran area in this frontier district of Kupwara, locals said.

They said a class 12th student Kabir Ahmad Lone son of Bashir Lone of Keran stepped on the mine when he had gone to collect Litchi (Guchi) from the nearby forest.

He was rushed to the District Hospital Kupwara from where he was referred to Bone and Joint Hospital Barzulla.

➤ **STRAY SHELL KILLS 8-YR-OLD BOY IN KUPWARA**

May 6: An eight-year-old boy was killed Sunday when a hand grenade which he had found in a field exploded in Kupwara district of north Kashmir.

Tariq Ahmad Shah was killed on the spot when the grenade exploded in his hands at Shirhama in Kalamabad area of Kupwara district, police said.

Preliminary investigations have revealed that Shah found the grenade in the fields near his house and started playing with it when the explosion took place, police said. They said the grenade is believed to have been left there during two encounters that took place in May 2008.

➤ **12-YEAR-OLD BOY KILLED IN GRENADE ATTACK IN KISHTWAR**

May 8: A 12-year-old boy, the son of a Special Police Officer, was killed when suspected militants lobbed a grenade at their house in a remote village of Kishtwar district in Jammu and Kashmir.

Police sources in Kishtwar said militants lobbed the grenade at the house of Shadi Lal, a Special Police Officer (SPO). Lal's house is in the Dachhan area, 250 km north-east of Jammu. The explosion killed his 12-year-old son Inderjit and injured three other inmates.

"Shadi Lal is posted as the bodyguard of a local Bharatiya Janata Party (BJP) leader in Dachhan," said a police source adding that Shadi Lal had taken part in a number of anti-militancy operations in the area and "this seems to be a revenge attack".

Security forces comprising police and army have launched search operations to catch the militants involved in the attack.

➤ **ARMY DEMINING 8 CAMPS**

May 17: The Army said it was demining outer perimeter of eight of its camps in north Kashmir as the threat of suicide attacks by militants has subsided over the years.

"There are some camps in the area (north Kashmir) which were mined during the days of Fidayeen (suicide squads of militants). Since situation is improving, we have decided to remove these mines," General Officer Commanding of Srinagar-

Pertinently, Keran area located on the bank of Kishanganga river is the last mountainous village of Kupwara district on the Line of Control (LoC). So far two villagers have died and 12 others have lost their limbs to concealed lethal mines laid across the village boundary during operation Parakaram in 2002.

BRIEFS

based 15 Corps Lt Gen Syed Ata Hasnain told reporters in Vilgam.

The perimeters of eight camps, including Vilgam Rashtriya Rifles camp and Panjwa Camp, mostly located around north Kashmir were mined to prevent the militants from sneaking into these camps. Most of these camps, circumvented with barbed wires, do not have boundary walls prompting army to plant mines around the camp.

"This is the first step towards making sure that these camps are safe for withdrawal, if tomorrow we get a chance to remove troops from these camps," Lt General Hasnain said.

➤ **EIDGAH GATHERING FOILED**

May 21: Jammu and Kashmir state government foiled Eidgah march called by Hurriyat Conference (M) on the death anniversaries of the Mirwaiz Mohammad Farooq and Peoples Conference founder Abdul Gani lone.

All the separatist leadership including Hurriyat Conference (M) chairman Mirwaiz Umar Farooq and Syed Ali Shah Geelani were placed under house arrest at their respective residences.

Shops, business establishments, educational institutions and public transport were off from the roads as separatists called for strike to commemorate the death anniversaries of senior Hurriyat leaders Mirwaiz Moulana Muhammad Farooq and Abdul Gani Lone.

The state government had deployed large contingent of police and CRPF in old city to prevent the Hurriyat Conference (M) to hold a public meeting at Eidgah. The police put almost all the separatist leadership under house arrest.

➤ **SECTION 144 IMPOSED IN SRINAGAR**

May 21: The Jammu and Kashmir government promulgated prohibitory orders in Srinagar for a period of two months.

"The District Magistrate has imposed section 144 Cr PC to prevent any kind of breach of peace and tranquility in the Srinagar district," an official spokesman told media.

Under the order, there would be restrictions on assembly of five or more persons within the territorial limits of the Srinagar district, he said.

OFFICIAL STATEMENTS

➤ **2600 KASHMIRIS CROSSED LOC IN 20 YRS 200 OF THEM ARE ACTIVE MILITANTS AND REST ARE NOT CONSIDERED THREAT'**

May 2: At least 2600 Kashmiris crossed the Line of Control (LoC) in past 20 years to receive arms training and 200 of them are presently active militants and are associated with different militant outfits while the rest have married and are no longer considered as threat, senior police officials said.

Quoting from the figures collected by them, police officials involved in counter insurgency operations in Kashmir said a total of 2600 Kashmiri crossed LoC in past 20 years for receiving arms training.

"200 of them are at present active militants and are associated with different militant outfits. Approximately 86 of them are affiliated with Hizbul Mujahideen while 100 others were working with Lashkar-e-Toiba in Pakistan administered Kashmir (PaK). The remaining are associated with smaller militant groups," they said.

They said the remaining 2400 persons have married and passed the age, where they can be regarded as threat.

"All of them are in their 40s. They have families and are engaged in various professions in

➤ **DIP IN MILITANCY IN KASHMIR: DGP**

May 31: There has been a significant drop in militancy in Jammu and Kashmir, said the state's Director General of Police (DGP) Kuldeep Khoda said.

Interacting with mediapersons, Khoda said the efforts of the government and the security forces should not be undermined, as they had taken all possible steps to combat militancy.

"If you look at the incidents of militancy, there was a time when the number of incidents was in thousands. Last year, the number of incidents was 195. This year in the first five months, the number of incidents has been just 45. And if the same pace

Pakistan. Hardly anybody among them would be lured by any ideology to pick up the gun," said the police officials adding they have gathered information regarding active militants present in PaK through their sources.

➤ **MUFTI AND JAGMOHAN ORDERED MASSACRES IN J&K IN THE 90S: CM**

May 14: Levelling serious charges against former chief minister Mufti Muhammad Sayeed and former governor Jagmohan, Jammu and Kashmir Chief Minister Omar Abdullah accused Mufti of ordering massacres in Kashmir in early 1990s and Jagmohan of executing them.

"Mufti used power against the people of Kashmir as the then Union home minister through his nominated and trusted man Jagmohan, who was the then governor of the state. People have not forgotten the massacre let loose on civilians at Gaokadal, Islamia College and other places by Jagmohan under the orders of the then home minister Mufti Mohammad Sayeed," Omar said.

"Ask George Fernandes, who is fortunately alive, how Mufti manipulated bringing in Jagmohan as the governor of Jammu and Kashmir to pave the way for him (Mufti) to become the chief minister of Jammu and Kashmir," he added.

continues then we are hopeful that the number of incidents would be below 100, in which many incidents are not considered of serious nature," he said.

Khoda informed that most of the top-level militant commanders were killed by the armed forces.

"The number of militants is less than 200 in the state, in which around 30 are in Jammu region and around 170 would be in Kashmir. Many top-level militant commanders have been neutralised. Many are still left, mainly the foot soldiers, they will also be dealt," he explained.

DATE	TROOPERS	MILITANTS	CIVILIANS	OTHER
May 01	-	-	-	-
May 02	-	-	-	-
May 03	1	-	-	-
May 04	-	-	-	-
May 05	-	2	-	-
May 06	-	-	1	-
May 07	-	-	-	-
May 08	-	-	1	-
May 09	-	-	-	-
May 10	-	5	-	-
May 11	-	1	-	-
May 12	-	-	-	-
May 13	-	-	-	-
May 14	-	-	-	-

May 15	-	-	-	-
May 16	-	-	-	-
May 17	-	-	-	-
May 18	-	-	-	-
May 19	-	-	1	-
May 20	-	-	-	-
May 21	-	-	-	-
May 22	-	-	-	-
May 23	-	-	-	-
May 24	-	-	-	-
May 25	-	-	-	-
May 26	-	1	-	-
May 27	-	-	-	-
May 28	-	-	-	-
May 29	-	-	-	-
May 30	-	-	-	-
May 31	-	-	-	-
TOTAL	1	9	3	0
		IN TOTO	13 KILLINGS	

CHRONOLOGY OF MAY

May 1: No incident of violence reported from any part of the state.

May 2: No incident of violence reported from any part of the state.

May 3: A soldier of Territorial Army identified as Noor Hussain was killed in an encounter with militants in Palmar area of Kishtiwari in Jammu province.

May 4: Suspected militants decamped with two rifles from a police picket guarding a minority village in Shopian district of south Kashmir. Police said militants attacked the security picket at Padgucchi village in Shopian district this afternoon and decamped with SLR rifles from the picket.

May 5: Police said two militants of Lashker-e-Tayyiba (LET) were killed in a gunfight at Malpora area of Pattan area in north Kashmir. Police identified the deceased militants as Muhammad Ibrahim Janwari of Sopore and Nisar Ahmed of Palpora.

May 6: An eight-year-old boy was killed when a hand grenade which he had found in a field exploded in Kupwara district of north Kashmir.

May 7: No incident of violence reported from any part of the state.

May 8: Inderjit s/o: Shadi Lal died when a grenade tossed by suspected militants exploded in Kishtiwari area of Jammu provision.

May 9: No incident of violence reported from any part of the state.

May 10: Army claimed that they have killed five militants in an encounter while foiling an infiltration bid in Uri Sector of north Kashmir's Baramulla district. According to Army, this was the first infiltration bid that has been foiled this year. The identity of the deceased militants were not established.

May 11: Body of sixth militant was found in Uri army claimed. Police said they were not successful in identifying the bodies however said that the bodies of the dead militants would be buried in Zamoor Pattan. Police added samples were collected for DNA examination.

May 12: No incident of violence reported from any part of the state.

May 13: Two persons including a soldier were injured in separate incidents of firing at Rajouri and Jammu districts. Under mysterious circumstances, Sepoy Deepak Gora was injured by a bullet fired from his weapon at an Army unit in Sunderbani belt of Rajouri, they said. The injured soldier was hospitalized and a case in the matter registered. In another case, one Omkar Singh in a fit of anger fired a bullet at his 40-year-old son Lakhwinder injuring him at Tope Sherkhani area of Jammu city, police said.

May 14: Three civilians were injured in a grenade explosion at Sangam on Srinagar-Jammu highway in this south Kashmir district. The injured were identified as Manzoor Ahmad Mir of Litter, Javed Ahmad Kumar of Wachi and Muhammad Ashraf Shah of Panzgam.

May 15: No incident of violence reported from any part of the state.

May 16: A soldier got seriously injured in a mine blast near the Line of Control (LoC) in Poonch district of Jammu and Kashmir. Naik Shakeel-ur-Rehman, who was part of a patrol party, stepped on an anti-personnel mine resulting in a powerful blast in Makhiyardhar forward area, a senior army official said. In the blast, Rehman's left foot was blown up, he said, adding that the soldier was airlifted to military hospital at Northern Command in Udhampur for treatment. The anti-personnel mine had drifted due to melting of snow and was deposited near the patrol track in Mukhiyardhar area, the official said.

May 17: A cop was injured when unknown gunmen fired at a police party in north Kashmir's Sangrama town. The injured cop was identified as Ghulam Mohammad. In another incident, a student sustained injuries in a landmine explosion in Keran area in this frontier district. The injured boy was identified as Kabir Ahmad Lone son of Bashir Lone of Keran.

May 18: No incident of violence reported from any part of the state.

May 19: Two separate grenade explosions triggered by suspected militant in Sopore and Batamaloo has left ten persons injured. A hand grenade was hurled at police station main gate in Sopore injured six civilians and four policemen. In the second incident, militants threw a grenade at a police picket in the busy Batamaloo area near the Civil Secretariat. The grenade missed its intended target and exploded on the roadside. No causality was reported. Meanwhile, Sajad Ahmad Darzi s/o Ali Mohammad Darzi of Babateng, Pattan succumbed to his injuries he had received on August 13-2010 during mass agitation.

May 20: No incident of violence reported from any part of the state.

May 21: No incident of violence reported from any part of the state.

May 22: Suspected militants lobbed a hand grenade towards a CRPF picket at Sopore in North Kashmir's Baramulla district. Police sources said militants lobbed a hand grenade towards CRPF picket near SBI branch at Sopore Chowk. "The grenade exploded with a big bang, without causing injuries or damage to property," they said.

May 23: No incident of violence reported from any part of the state.

May 24: No incident of violence reported from any part of the state.

May 25: No incident of violence reported from any part of the state.

May 26: A top Hizbul Mujahideen militant was killed in a gunbattle with troopers in Jammu and Kashmir's Ramban district, police said. The deceased had been identified as Ghulam Qadir alias Tohid-ul-Islam.

May 27: No incident of violence reported from any part of the state.

May 28: No incident of violence reported from any part of the state.

May 29: No incident of violence reported from any part of the state.

May 30: At least seven paramilitary CRPF men were wounded when some suspected militants opened fire on them in old city in Srinagar.

May 31: A BSF trooper was injured critically with a bullet fired reportedly from across the border by Pakistan Rangers on International Border (IB) in Samba district.

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