In Search of Vanished Blood

Ashok Agrwaal
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Vanished Blood

The writ of Habeas Corpus in

Ashok Agrwaal

South Asia Forum for Human Rights
Kathmandu
SAFHR Paper Series 17

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Published by
South Asia Forum for Human Rights
3/23 Shree Durbar Tole, Patan Dhoka, Lalitpur
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This publication acknowledges the support of ICCO, Netherlands. It is brought out as part of the course material for the Seventh South Asian Peace Studies Orientation Course.
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ACKNOWLEDGMENTS

The research on which this monograph is based was funded by the South Asia Forum for Human Rights (SAFHR). The issues addressed by the research evolved out of several years of involvement of a group of people, including the author. The seminal work done by some of the members of this informal group on these issues over the last three decades was a vital input in this process. The most prominent among these was the work of Tapan Bose and the Committee for Information on Kashmir and, Ram Narayan Kumar and the Committee for Information and Initiative on Punjab. Priya Jain joined the project almost immediately after it started and stuck it out, despite many difficulties, till the very last. She was responsible for the countless reams of paper that we accumulated, organising them into files, reading and summarising the contents of these files and, maintaining the database that we devised to store the information. In addition, she travelled with me to Kashmir on several occasions, going into the field, interviewing families, etc.

The work in Kashmir was crucially dependant upon friends and colleagues stationed there. We could not have even made a beginning without the help of Shahwar Gauhar, a prominent member of the Srinagar High Court Bar. Shahwar continued to be a valuable member of our team in Kashmir till the very end, despite the enormous constraints imposed by his professional and personal responsibilities. Equally important was the role played by members of the Law Ring, a group of dynamic law students when we started the research, and who continued to closely associate with the work after they graduated. The Law Ring, were involved with everything that we did in Kashmir and, some of them – Rifat and Shafat – even spent several months each in Delhi, working from my office. At least one member of the Law Ring was almost always with us during our field visits, translating the voices of the families we met and, later, transcribing the recordings. All of them are practicing advocates in Kashmir. In addition, many lawyers, civil society actors, media practitioners and others from all walks of life in Kashmir helped us in our myriad tasks, in innumerable ways. Our research could not have been completed without their invaluable cooperation and assistance. Even as I must leave them unnamed, my gratitude and appreciation of their efforts remains undiminished.

Shortcomings of the research, as also the responsibility for the authorship of this monograph are entirely mine.

Ashok Agrwaal
New Delhi, 15 September 2008
FOREWORD

"(The Habeas Corpus Acts) declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty."

Albert Venn Dicey

We started the Law Ring\(^1\) as a voluntary support organization for documentation and human rights awareness in the year 2000, as students of the Law Faculty, Kashmir University. After some time we felt that there is a strong need for thorough, professional documentation on human rights issues in Jammu & Kashmir, for effective advocacy and campaigning.

Custodial killing, enforced disappearances and other human rights violations are regularly reported in Kashmir. However detailed documentation, examining the manner in which the justice system had dealt with the huge number of habeas corpus petitions filed before the High Court did not exist. Even till 2-3 years ago, two days in a week were reserved for habeas corpus cases.

The important thing about the project was our involvement as equal partners from the very beginning. Ashok Agrwaal, under whose leadership the research was conducted, Tapan Bose, the Secretary General of SAFHR and Priya Jain, who worked full time with Ashok in Delhi, were always encouraging. We participated in every aspect of the research, and were included in the decision making processes at all stages. It was a great learning experience for us to work with Priya and Ashok. They displayed utmost care and thoroughness in even small matters. Our experience in the field was also an eye opener. It was not easy to travel the length and breadth of the valley in the prevailing situation.

We hope that the supporters of the human rights movement in Kashmir

\(^1\) Law Ring is now called Centre For Law & Development, Srinagar (CLD)
and victims groups will find the details and information a valuable input to the human rights discourse. The research brings out the gross failure on the part of the higher judiciary to uphold the writ of habeas corpus, which has been celebrated as the most efficient safeguard of the liberty of the subjects. We hope further research will be done to highlight the challenges and institutional failures which render this important writ ineffective in other places as well.

We believe the monograph will be helpful for human rights organizations, independent researchers, and others, including those concerned with helping the families of victim to rebuild their lives, since the paper highlights some of the deeper ramifications of the massive failure of justice in Kashmir. We believe that this effort will help in strengthening local civil society initiatives for the right to truth, justice and reparation to the victims of human rights violations.

We convey our sincere thanks to the members of the High Court Bar Association, Srinagar for their help, and for facilitating our meetings with survivor families. Our thanks also to Mr. Shahwar Gowhar, a senior colleague, for his guidance and support at all stages. We acknowledge the support and encouragement of Mr. Tapan K. Bose at all times.

Last but not least, our thanks and appreciation is due to the survivor families for receiving us warmly. Talking to us was not easy since it forced them to revisit the trauma they had undergone and, unfortunately, it was not within our capacities to provide them any concrete reassurance or help.

Shafat N. Ahmad

On Behalf of himself and Sajad A. Geelani, Fasihun-Nisa-Qadri, Subaya Yasmeen, Fozia Nazir, M. Asrar Wani, Rifat Nazir, Musbat, Khalid Nazir, Imtiyaz Ahmad and Intikhab Alam. Advocates
Part 1
Introduction

The object of a constitution is to specify the terms of the sovereign’s right to rule, including the limits to the sovereign’s powers. A bill of rights (within the constitution) forms the core of the enforcement mechanism for the contract: counterpoising sovereign powers with the civil and political rights of citizens. The processes of enforcement of the terms of this contract, and their outcome, as phenomena, can be viewed as the sum and substance of the ‘rule of law’. The Latin maxim – *ubi jus ibi remedium* – must therefore find place in any bill of rights worth its name. Article 32 of the Constitution, forming part of the guaranteed fundamental rights, empowers any person aggrieved by a law (or an action) – on the ground that it violates his or her fundamental rights – to move the Supreme Court (under Article 32) or any of the High Courts (under Article 226) for an appropriate writ, order or direction quashing the law (or the action), on that ground. It goes without saying that in each case the courts are duty bound to also order such other reliefs as may be necessary in the facts and circumstances of the case.

Thus, under rule of law, power is legitimate only when it is invariably limited by rules that bind the wielders of power as much as they bind those upon whom it is wielded. The opposite of legitimate or finite power is impunity. Impunity knows no bounds and comes in countless forms. Almost any conduct can become imbued with impunity the moment the sovereign power refuses to be accountable, *de jure* or, *de facto*. All laws, including constitutional guarantees of rights, become deadwood in the face of the sovereign’s refusal to be accountable. Impunity

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2 Social contract theories treat sovereignty as a fait accompli, being content to adapt pre existing notions of sovereignty by incorporating in it a notion of reciprocal rights to the subjects.
3 Where there is a right (or, a wrong) there is a remedy.
4 Though the Constitution does not say so in so many words, it is a settled proposition that the powers of the High Courts under Article 226 of the Constitution are co-terminus with those of the Supreme Court under Article 32, with respect to the fundamental right guarantees.
5 In addition, Article 13 stipulates that all laws inconsistent with or in derogation of the fundamental rights guaranteed in the Constitution shall be void to the extent of such inconsistency.
prevails when the sovereign begins to brood, like Lady Macbeth, What need we fear who knows it, when none can call our powers to account.\textsuperscript{6}

In the context of this report, impunity is the lack of accountability for violation of rights by members of the police and other armed forces. Unpunished, the perpetrators are likely to be encouraged to act with impunity. Amnesty laws, which stop all prosecutions - and often times, investigations - of human rights violations are examples of de jure impunity.\textsuperscript{7} The failure of the State to try and punish violators of rights, even in the absence of such laws, is de facto impunity. Impunity is a violation of human rights as well as a direct threat to the rule of law, the necessary basis for a constitutional democracy.

As stated, India has a fairly comprehensive system for the protection of fundamental rights. Yet, deaths in custody/disappearance from custody are endemic, and have been so throughout its independent history. The reasons for this state of affairs are complex, and it would not be correct to assign the entire responsibility for it to any one factor, or pillar, of the nation-state. However, there can be no gainsaying that the defects in the approach of the judiciary have played a pivotal role in the failure of the guarantee of the right to life. This paper will seek to examine some of these shortcomings, using the aperture provided by one of the world’s best known legal remedies, the writ of habeas corpus; the sole remedy available in law in case of a violation of the right to life and liberty, guaranteed by Article 21 of the Constitution.\textsuperscript{8} In technical terms, therefore, this document may be called a report on the functioning of the constitutional and legal redress mechanism for the protection of the right to life, during the period of insurgency in Kashmir: 1990 to 2004. Though the study was based upon the court process, we did not rely solely upon the court records. The testimony of the survivor families is crucial to a proper delineation of an impunity landscape.

\textsuperscript{6} Shakespeare, Macbeth: Act 5, Scene 1

\textsuperscript{7} They have been the preferred method in Latin America and transitional polities in other parts of the world.

\textsuperscript{8} The Supreme Court and, the High Courts of India are empowered to issue this writ.
The theme of the essay, as distinct from its technical nomenclature, is to portray the impossibility of justice for the victims of impunity: particularly in Kashmir but the principle being applicable to such victims everywhere. Though the impossibility is portrayed through the failure of the constitutional mechanism for the protection of the guaranteed right to life, it is actually far more encompassing.

In Kashmir, the primary role of law seems to be the legitimising of force. In a second order facilitation, the systems of law and justice are used to create an aura of fair play and even handedness: making it seem as if, not only is the force used the minimum necessary but also that even the use of this force is regulated and subject to independent (and unbiased) checks and controls. The de jure abrogation of the right to life in Kashmir is rooted in the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA).9 The AFSPA enables the deployment of the armed forces of the Union, in aid of the civil power of a state government, in discharge of the obligation imposed on the Union, under Article 355 of the constitution, to protect the state against internal disturbance.10

Section 4 of this Act gives (a)ny commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces the authority to shoot to kill, if he is of the opinion that it is necessary to do so for the maintenance of public order.11 This extraordinary power to kill on the basis of subjective discretion, is coupled with a prohibition, in section 7, against prosecution of persons acting in exercise of powers conferred by the AFSPA without the prior sanction

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9 The original Act, passed in 1958, was applicable to the north-east region. Subsequently, similar laws were enacted for the Punjab (1983) and Jammu and Kashmir (1990). All three versions of the Act are almost identically similar, making it possible to use AFSPA as a generic term to discuss the law and its interpretation.

10 Article 355 of the Constitution reads as follows: " It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried out in accordance with the provisions of this Constitution."

11 In addition, they have the authority to arrest, to search and, to seize without a warrant and, the power to destroy any structure or place that they think is likely to be used by militants/ terrorists/ persons wanted for any offence.
of the central government. Given that the central government routinely rejects applications for permission to prosecute, even in cases where there is substantial evidence to support the allegations, the result is to make the AFSPA a code for impunity; complete in itself.

The theoretical position with respect to section 7 of the AFSPA is that the protection conferred by it does not extend to criminality or criminal acts. It is also the position that the provision does not act as a threshold bar on the registration of an FIR, investigation by the police or, even, the filing of a charge-sheet and initiation of the trial. However, in practice, the courts have never tested the AFSPA provision, the Supreme Court having shied away from actual application of its parameters. Therefore, section 7 is almost universally interpreted to grant immunity from prosecution of any kind, in the absence of the central government’s permission.

The constitutional validity of the AFSPA was challenged in what has become known as the NPMHR case (and the connected petitions that were decided along with it). Notwithstanding the legal arguments in which they were couched, the object of these petitions was to bring the widespread abuse of powers by the security forces deployed under the AFSPA to the attention of the Court. However, the Supreme Court

12 The prohibition, identically worded, is contained in section 6 of the AFSPA 1958 and, in section 7 of the J&K AFSPA.

13 To be more precise, the law has been laid down in cases under section 197 of the Indian Code of Criminal Procedure 1973 (CrPC 1973), which is virtually identical to section 7 of the AFSPA in form and substance.

14 Apart from the Sebastian Hongray case (AIR 1984 SC 571), there have been only two other cases before the Supreme Court in which there was a possibility of the court dealing with this provision in concrete terms. One was the case known as the Naga People’s Movement for Human Rights (NPMHR) V. Union of India (AIR 1998 SC 431), in which the constitutional validity of the AFSPA was debated, and upheld, and the second was in the case of Masooda Parveen V. Union of India & Others (AIR 2007 SC 1840)

15 In Rouf Shah’s case (discussed below) the army argued in writing that even a habeas corpus petition was not maintainable without the prior permission of the central government.

16 Naga People’s Movement for Human Rights (NPMHR) V. Union of India; AIR 1998 SC 431

17 Apart from the examples contained in the petitions, a report of an inquiry into many of the incidents of violation of rights was also placed before the Court. It was based upon an investigation by a Commission of Inquiry headed by a retired judge of the Guwahati High Court.
opened the substantive part of its judgement in the case with a statement that it was \textit{satisfied with the verbal assurance of the Attorney General of India that all allegations of infringement of rights by personnel of the armed forces have been inquired into and action has been taken against the persons found to be responsible for such infringements}. Therefore, the Court said, it was unnecessary for it to look at any specific instance of violation, or abuse, of powers under the AFSPA.

This stand was contrary to the established cannons of judicial review under Article 13 of the constitution, which say that not only the law but the exercise of the power vested in any person or authority under such law must satisfy the test of constitutionality. For, even where a law is valid action taken under it may offend a fundamental right and, in that event, though the statutory provision would be deemed valid, the action would be struck down as violating the fundamental rights. The Court also appeared oblivious to the settled position that in determining the impact of State action upon the fundamental constitutional guarantees, the object of the legislature is not relevant, and nor is the form of the action. The only thing that is relevant to be considered is the effect of the action upon the individual’s right. If the action affects the fundamental right, \textit{directly and inevitably}, then, this effect must be presumed to have been intended by the legislature.\footnote{Maneka Gandhi V. Union of India; AIR 1978 SC 597}

Thus, the allegations of widespread and systematic violation of rights by armed forces officers while acting in exercise of powers under the AFSPA 1958 were, by themselves, the major ground of challenge to the constitutional validity of the Act, and it was mandatory for the Supreme Court to test the constitutionality of the Act against the instances of actual violation. No part of the argument based on these instances could have been ignored, or cursorily dismissed by the Court, since they showed that the \textit{direct and inevitable effect} of the actions of the armed forces, acting under the AFSPA, was to violate the fundamental rights of the people.
An important corollary of this test of constitutionality is that a law cannot be validated by reading down its provisions, so as to make them consistent with the fundamental right guarantees. The Supreme Court’s position on this count, extant for over two decades prior to the decision in the AFSPA case, is that (t)he principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature. Yet this is precisely what the Court did, while upholding the validity of the AFSPA 1958. While one hesitates to impute design in such matters, particularly to a constitutional authority of such stature, the Court’s refusal to look into the actual cases of abuse of AFSPA powers facilitated its validation of the draconian powers conferred by the Act. For example, not finding anything that would justify the existence of an unfettered power to kill, under section 4 (a) of the Act, the Court declared that while acting under this provision, the armed forces shall only use the minimal force required for effective action. The Court would have found it extremely difficult to read down the provision in this manner had it gone into the actual cases of violation and abuse placed before it.

Nearly a decade later, the judgement of the Supreme Court in the case of Masooda Parveen is consistent with its views (and position) in the NPMHR case.19 In this case the claim before the Court was for only grant of compensation for causing the custodial death of Advocate Ghulam Mohi-ud-din Regoo (husband of Masooda Parveen), who was the sole breadwinner of the family.20 In other words, Masooda Parveen was not interested in the prosecution of those guilty of causing her husband's death. Thus, the provisions of the AFSPA were in issue only by implication.

Taking pains to impart a patina of compassion and reasonableness to its stand, the Court asserted that victory by force of arms ... is pyrrhic and

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19 Masooda Parveen V. Union of India & Others (AIR 2007 SC 1840)
20 It was the admitted case that Regoo was in army custody when he died. The army claimed that he was leading the way into a "hideout", when a booby trap bomb exploded. Established norms – both domestic and international – stipulate that the army could not seek to escape liability on this ground. Even assuming the army’s version to be correct, they could not have forced him to lead the way into the alleged hideout. Once he had pointed out the place where the arms were allegedly hidden, it was their job to secure the area and/or recover the hidden weaponry.
... leads to no permanent solution and that an effective redressal mechanism is crucial to winning the war against terrorism. It then declared that in an investigation of this kind based only on affidavits, with a hapless and destitute widow in utter despair on one side and the might of the State on the other, the search for the truth is decidedly unequal and the court must therefore tilt just a little in favour of the victims. Thereafter, the Court proceeded to deal with the case solely on the basis of material that was made available to it by the Army and by the State government, ignoring vital material (and information) furnished by Masooda Parveen in support of her version of the events. In a classic example of the Nelson eye, the Court held that—

... there is not an iota of evidence to support the petitioners' (sic) plea except for the statements that she has made in the present petition. It has already been observed at the very initial stage that the court must lean a little in favour of the victims on account of the adverse situation in which they stand placed, but the Court must find something to lean on. We find no evidence to suggest that the petitioners' case was worthy of belief. On the contrary we have the army and police record pertaining to the incident which clearly show that Regoo was indeed a militant and that the circumstances leading to his death were as per the circumstances put on record by the respondents.

Indubitably, no one can be indicted without basis; not even the armed forces of the Union in counter-insurgency mode. However, even assuming the Court was correct in its opinion about the lack of evidence to support Masooda's case, it could not have ignored so self evident a truth as that in cases of custodial killing the possibility of corroborative evidence is virtually non-existent. Nor could the Court have ignored

21 The material placed before the court by her showed that Regoo had been subjected to severe torture before his death.
22 In the Sebastian Hongray case and the Nilabati Behara case the Court overcame this handicap by adopting strategies appropriate to the situation. In the Hongray case the Court relied upon reports by the Civil administration and contradictions between the record and the affidavits filed by or on behalf of the Army. In the Nilabati Behara case the Court relied upon the inquiry conducted by the local District Judge. In the Masooda case, on the contrary, it refused to even look at any material except that produced by the army and the police.
the fact that Regoo died in military custody and that it is a settled position that the custodial authority is responsible for ensuring the safety of the person in custody, and becomes liable if it fails to discharge the responsibility. Finally, the Court could not have been unaware of the law, as laid down by itself, that a death (or a disappearance) in custody must be compensated, irrespective of the reasons proffered by the custodial agency in justification and defence.

In other words, the NPMHR and the Masooda Parveen decisions suggest that although we, as citizens, are entitled to the position that the courts are there to do justice when all other avenues for it fail (and, therefore, must be held to have a legitimate expectation\textsuperscript{23} that the courts will deliver justice), our grievance is not justiciable. Nor is it permissible to question why the notion of justice that the courts dispense is so deeply polluted by concepts of national security, integrity and, sovereignty.\textsuperscript{24} The individual is the subject of the nation-state and the individual is nothing without the community that the said nation-state represents. Thus, the Supreme Court says that the sacrifice of the individual (or many of them) at the altar of the nation is permissible. Of course the court does not posit the sentiment (and principle) in this manner.

The DK Basu decision of the Supreme Court, which addresses the issue of death in custody/ disappearance from custody in general terms, as something that pervades law enforcement in India, is sufficient to confirm us in the foregoing view.\textsuperscript{25} This judgement laid down binding and enforceable guidelines to prevent violation of the fundamental rights of the citizens of India by the law enforcement agencies. The Court declared that a failure to comply with the guidelines laid down by it would tantamount to contempt of court and, would be punishable as such.\textsuperscript{26}

\textsuperscript{23} The doctrine of legitimate expectation was developed by the superior courts in England in the post WW-II expansion of the rights regime; probably as part of the western world’s concerted effort to contain the virus of communism, which seemed poised to sweep the world at that time.

\textsuperscript{24} Where there is sovereignty there is sovereign immunity, even if the Supreme Court declares for the record that such concepts do not have applicability in matters of violation of human rights.

\textsuperscript{25} D.K. Basu V. The State of West Bengal and others; – AIR 1997 SC 3047

\textsuperscript{26} In An ironical, though typical, twist the DK Basu judgement was used by the J&K High Court to postpone hearing a habeas corpus petition for several years. (Nazir Malik and Shafi Shah (97/1))
However, invoking the myriad threats that the State faces – communal riots, political turmoil, student unrest, terrorist activities (and more) – the Court simultaneously asserted that freedom of an individual must yield to the security of the State.

On the one hand the Court said that *the cure cannot … be worse than the disease itself,* approvingly citing the decision in Miranda V. Arizona (384 US 436), where the American Supreme Court held that the argument of society’s need cannot be used to abridge the guaranteed rights of the individual. On the other hand, the Court declared that if it were to lay too much emphasis on protection of the fundamental rights and human rights criminals would go scot-free with the result that crime would go unpunished and, in the ultimate analysis, society would suffer. The Court called this concern genuine and called for a balanced approach … to meet the ends of justice. To strike this balance, the Court invoked two fairly old Latin maxims – Safety of the people is the supreme law and, Safety of the state is the supreme law.

Seemingly reasonable in a neutral context, reading these maxims into the guarantees of life and liberty, in the manner that it has done in the DK Basu decision, reveals a basic contradiction in the Court’s understanding and stance on the right to life. In a climate where impunity is the norm, and where it is routine to perpetrate flagrant violations of human rights on a mass scale, the Court must be deemed to be aware that its remarks are likely to be construed by the police, and other agencies engaged in internal security duties, as a continuing licence to carry out custodial killings and enforced disappearances, in the name of the People, and of the State. This monograph illustrates the point.

27 DK Basu V. State of West Bengal, supra
28 *Salus populi est supremae lex* and, *Salus republicae est suprema lex.*
29 The expression used by the Supreme Court upon reading the report of the CBI’s (Central Bureau of Investigation) investigation (ordered by it) into an allegation of thousands of enforced disappearances in Punjab; Paramjit Kaur V. State of Punjab and others, Writ Petition (Criminal) 497 of 1995 (with writ petition Crl. 447 of 1995), order dated 12 December 1996; reported as 1999 (2) SCC 141
Some Methodological Issues

For reasons of time and resource constraints, the study was restricted to the Kashmir valley. All except one of our cases are from between 1990 and 2000. We included one case from 2003, which we came across during the course of our field research, because it showed that the manner, and pattern of arrests, had not changed in the three years since 2000, despite claims of "improvement" by all concerned. However, orders and decisions by the High Court till September 2004 are included in our study.

The main thrust of the study is based on an examination of 88 petitions of alleged enforced disappearance, filed before the Srinagar Bench of the Jammu and Kashmir High Court. As a first step, we randomly gathered copies of 259 habeas corpus petitions filed before the Court, with the assistance of lawyer colleagues practicing in Srinagar. On sorting, 185 of them were discovered to pertain to detentions under the PSA and 74 petitions alleged an enforced disappearance. Thereafter, we randomly added another 11 petitions pertaining to enforced disappearances, which we came across during the course of our field work; totalling to 85 petitions in all. The only criterion for the inclusion of each of the 85 petitions was that they were habeas corpus petitions filed before the Srinagar Bench of the Jammu and Kashmir High Court. The numbers limit was imposed by time and resource constraints, and nothing else.

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30 In three cases, two petitions were filed for the arrested person, while in two cases each petition pertained to two arrested persons. Eliminating the duplication (where two petitions were filed for the same person), we are left with 85 petitions pertaining to 87 persons.

31 The Public Safety Act 1978, a law providing for preventive detention in J&K.

32 The fact that 70% of a random selection of petitions related to preventive detentions under the PSA was a bit of a surprise. Our impression, before the study began, was that the overwhelming majority of the habeas corpus petitions before the Srinagar bench of the High Court pertained to enforced disappearances. In view of the significance of the statistic uncovered (which was borne out by subsequent information gathering) we decided to split up the study and to focus on cases of disappearance, separating the PSA petitions for a subsequent study.
For purposes of comparison, we also included 11 cases in which no such petition was filed. Insert FN Thus, in all we looked at 98 cases of alleged enforced disappearance. These 11 cases include the case of one of two young men who were arrested at the same time but the family of one of them decided not to file a petition for fear that it might antagonize the army and lessen the chances of their son coming home alive. Thereafter 10 more such cases were also included in the study sample. These cases help to demonstrate that the filing of a petition made no difference at all to the final outcome in cases of enforced disappearance.

These 11 cases also include three cases of disappearances of Kashmiris from Nepal. These three Kashmiri businessmen were arrested by the Nepal police at the behest of the Indian authorities. The Nepal police informally acknowledged their arrest and said that the men were handed over to a team of police officers from India. Officially however, they denied the arrests. The Indian authorities took the stand that since the men were admittedly arrested by the Nepali police, they should be asked to account for them. Petitions before the Delhi High Court and the National Human Rights Commission at Delhi were to no avail. Since these were not habeas corpus petitions before the J&K High Court, we have treated these cases as belonging to the category where no petition was filed. Till date the families have not received any information of their whereabouts. These three cases illustrate that the impossibility of justice crosses the geographic boundaries of the state of Jammu and Kashmir. There seems to be no reason for the denial of redress to these families other than the fact that the persons arrested were Kashmiri.

**Documentation**

None of the court files that we had obtained were complete. In many cases we had just a copy of the petition and nothing else. It took nearly two years to obtain reasonably complete records of the petitions discussed in the report. In part this was because many of these cases were still pending when we first included them in our study sample but the main difficulties lay elsewhere. Each case file was assigned a unique number. Since the cases were spread out over a period of more than a
decade, for ease of identification each case was assigned a ‘year-serial number’ combination. For example, petitions filed in 1990 were numbered: 1990/0001 (or 90/1), 1990/0002, 1990/0003 and so on.\textsuperscript{34} Cases in which a petition was not filed were assigned a number based on the year in which the case was acquired into the database. Since these cases were all acquired in 2003 or 2004, they were numbered, 2003 (or 2004)/0001, 2003/0002, 2003/0003 and, so on.

To make sense of the thousands of pages of court records and other papers we prepared a chronology for each case. This gave us a date-wise record of all events in the case, starting from the date of arrest. Apart from containing the gist of all hearings in the case, the chronology recorded all file notes by the court staff, including remarks about service of notices, filing of replies, reasons for not listing the case on a pre-designated date, etc. It also incorporated correspondence relevant to the case: between the families and the authorities and, between the various authorities themselves. In addition, it included the gist of reports of investigation by the police, by the inquiry officer appointed by the Court, by the District administration, the State Human Rights Commission (SHRC), etc. It also listed the documents acquired in the case. Chronologies for pending cases were updated regularly, till September 2004, when we obtained the last batch of papers in the cases.

We also designed a database in which we entered the information that we wanted to analyse. The data was entered in three tables. The first table, called \textit{Personal Details}, contains information on the disappeared person and his background. The second, called \textit{Detention Details}, contains information relating to the arrest and detention. The third table, called \textit{Court Proceedings}, holds information about the case filed before the High Court. For the purposes of this monograph, these three tables have been amalgamated into two: one containing personal and detention details and the other, called \textit{Time Line}, an analysis of the court proceedings. The two tables are Appendix – 2 and Appendix – 3, respectively.

We developed a preliminary questionnaire for the field research, based

\textsuperscript{34} The year in which the person disappeared was not relevant for this purpose.
on formats used earlier. After a phase of testing and refining the instrument, it was used as a basis for conducting the interviews and obtaining information from the families. The interviews were carried out by small teams of two or three persons, including an interpreter. I was personally present for most of the visits/meetings. In most cases we visited the home (village or place of residence) of the families, though in 2 or 3 cases the family members visited us at our camp office in Srinagar. Cautious in the face of a general air of suspicion, we did not initially record the interviews. However, in June 2003 we tested the possibility with success. Thereafter, all interviews were recorded.35

Apart from being integral to the study, interviews with the families of the arrested/disappeared persons served two vital purposes. They enabled us to verify whether the person on whose behalf the petition had been filed was still missing or, had since been released.36 We also obtained copies of documents such as FIRs, representations to government authorities, petitions to the SHRC and the NHRC (National Human Rights Commission) and reports of the District Level Screening Committee (DLSC), which did not form part of the court record, or which were missing from the record, from the families.37 The two sources of information, the families and the court records acted as a check upon each other.38

35 Since we had completed only about a dozen interviews by then, most interviews are recorded.
36 As many as 17 of the 87 detainees on whose behalf petitions were filed before the Srinagar High Court had been released.
37 The DLSC is headed by the District Magistrate (now Deputy Commissioner) and, includes the SSP, the Tehsildar, the SHO of the local police station, and other district and sub-district level officers. It verifies the innocence of the disappeared person. The reports of the DLSC are the basis for the payment of ex-gratia relief and, grant of benefits under SRO-43 (a government order), to victims of militancy. Their reports usually contain an account of the circumstances of arrest and, often identify the unit responsible for the disappearance, on the basis of investigation carried out by the local authorities. Ironically, they never form part of the court records.
38 Statements made by the families were checked against the court records and other documents. Similarly, we frequently used the information supplied by the families to make sense of disjointed or incomplete court records.
Challenges

Our first difficulty was that we did not have complete addresses for the families we wished to visit.\textsuperscript{39} Tracing addresses was even more difficult in Srinagar than in the rural areas because of the unprecedented, and unplanned, expansion of the city after 1990; because of the exodus of people from smaller towns and villages to the city, fleeing in search of greater safety and security. Scores of new colonies and localities have sprung up all over Srinagar, with no clear system of house numbers. Many colonies had no numbering at all. Thus, finding an address was often a matter of reaching the general vicinity and, to keep on asking till one came across someone who knew the family we were seeking. Naturally, in the prevailing climate people are suspicious of anyone asking questions.\textsuperscript{40} Each visit took several hours. Having found the house and introduced ourselves to the families, we had to explain who we were and the purpose of our visit. Sometimes, the mere mention of our purpose was enough to upset family members. It took time to help soothe their emotions. Time was also consumed in partaking of the boundless Kashmiri hospitality that was pressed upon us in every home that we visited.

Another reason for the slow pace of work was the (wholly justified) Kashmiri tendency of bolting themselves inside their homes well before dark. I have frequently been told by people that when they step out of their homes in the morning, the whole family prays that they return home safely. Apart from the risk of arrest and detention during routine operations like security checks, combing sorties and crackdowns, their greatest fear is of becoming a victim of random retaliation in response to militant attacks on the security forces.

\textsuperscript{39} Apparently, the J&K High Court has very lax rules about providing addresses in the Memo of Parties that accompanies all petitions.

\textsuperscript{40} Kashmir is like a war zone, with soldiers, bunkers, check-posts and camps at every few meters. Violence, by both the militants and by the security forces, is an incidence of daily life. All Kashmiris are automatically suspect and treated as hostiles: particularly in the wake of a militant attack. This translates into a daily routine of harassment, intimidation and humiliation, which can only be experienced, not imagined.
Since, in general, the suspicion of the security forces is directed towards Kashmiris, "Indians" can move about in the valley with relative ease. However, everyone is vulnerable to the general violence that pervades the valley. We had fortuitous escapes from serious harm on several occasions, moving to (or away) from the scene of an incident just after (or before) it had occurred. The fact that most of us were lawyers was of considerable help in dealing with the security forces. On one occasion, when we were on a remote country road well after dark, we were stopped by armed militants. They commanded our vehicle and compelled us to drive them to a nearby place. On this occasion it was our Kashmiri colleagues who held the fort, engaging the militants in conversation and ensuring that they left us without further harassment.\textsuperscript{41}

\textsuperscript{41} My silence, except for minimal greetings, allowed the militants to assume that I too was a Kashmiri.
The single most striking feature of the *habeas corpus* proceedings is the powerlessness of the High Court. Everything else can be derived from this fact. From the point of time when the Court issued *notice* of the petition upon the respondents, it lost all control over the proceedings. The pace, the manner in which the case would proceed, and the outcome of the case was controlled entirely by the respondents: the central and the state governments. Nor did the Court display a significantly better control over its own establishment. The staff of the High Court have no fear of consequences for culpably slack and careless work. The subordinate judiciary, the District Judges (DJ) and the Chief Judicial Magistrates (CJM), who were appointed inquiry officers in most cases, were only marginally more responsive to the imperatives of their office.

It goes without saying that a helpless court is unlikely to be able to pass clear and decisive final orders, even in cases where the allegations, stand proved. In over 57 percent of the cases in which there was a clear finding against an identified security force/unit, the Court found itself unable to do anything other than order registration of an FIR,\(^\text{42}\) which ought to have been done in the first place, without the Court’s intervention.\(^\text{43}\) To fully appreciate the absurdity of this we must also factor in the number of years that it took the Court to pass such an order. In 10 cases the order to register an FIR took between five to twelve years.

What words does one use to describe a justice system in which the best order that the family of a disappeared person can expect – several years after the event – is a direction to the police to register an FIR? There can be no more damning indictment of the system than this. But the reality is even worse. We have records, and recorded testimony, to show that the registration of the FIR was seen by all concerned, the families, the police and, the judges as a mere formality, the completion of which would enable the *system* to wash its hands of the matter. The only expression of contrition that the system showed for its *mistakes* was in

\(^\text{42}\) Or, completion of investigation in the FIR already registered.
\(^\text{43}\) In the remaining 43 percent cases the Court did not even order the registration of an FIR.
its willingness to consider the grant of ex-gratia compensation to the families of the disappeared.\textsuperscript{44}

The Court was not completely oblivious of the fact that it was playing out a farce. For example, it is repeatedly seen that the Court did not pay attention to its earlier orders, acting – almost – as if on each date of hearing the entire matter was being dealt with afresh, ignoring all that was said and done in the past; as if the years of proceedings before that date never happened. It seems to me such forgetfulness is essential for retaining a modicum of sanity in the schizophrenic environs of the J&K justice system. Unscrupulous respondents and their lawyers took advantage of this amnesiac functioning, getting away with everything: from years of delay in filing replies to inveigling the Court to disposing of petitions (that had been pending for several years) in the absence of representation on behalf of the petitioners.

The Court’s lack of control over its establishment, or the courts and officers subordinate to it, resulted in the staff of the Court frequently not carrying out the directions issued to it by the judges, with no fear of consequences. For example, notices/summons were frequently not issued, despite directions. The result was years of delay in serving notices upon agencies who had a 'standing counsel' in the High Court. The performance of the subordinate judiciary, the DJs and the CJMs, who were appointed inquiry officers in most cases, was mixed. Despite working under harshly adverse conditions they sometimes conducted exemplary inquiries. However, in several cases the conclusions drawn in the inquiry reports were patently absurd, or careless. In none of the cases did the High Court catch the absurdity, or correct the carelessness.

The conduct of the other players in the farce is also reflective of their awareness of the true nature of the proceedings. In Manzoor Zargar’s case (90/6), the BSF took over five years to file their response to the petition. In as many as 17 cases the respondents took more than two years to file their replies.\textsuperscript{45} In 30 cases they took between one year and

\textsuperscript{44} This gesture is steeped in irony since the object of the scheme is to provide compensation to ‘Victims of Militant Violence’.

\textsuperscript{45} This includes the State government, which was a party in all the petitions.
two years to file their replies.\textsuperscript{46} Coupled with the fact that the accused unit of the armed forces did not file any reply at all in as many as 38 cases, the inference is clear.

The nature of their responses is equally revealing. In over 70 percent of the petitions in which the accused unit filed a response (41 cases out of 58), it was a bald denial of arrest. Of the remaining responses, in 10 cases they admitted the arrest but claimed that the person concerned had been, subsequently, released. In three cases (pertaining to four persons) they claimed that the arrested persons had escaped from their custody. In four cases it was stated that the arrested persons were held in legally recorded and, acknowledged, custody after their arrest.\textsuperscript{47}

The conduct of the security forces was even more scornful once the case had been sent to the Inquiry Judge. In a very large number of the 62 cases in which inquiries were ordered by the High Court, the accused unit did not participate in the inquiry proceedings.\textsuperscript{48} In several cases the Inquiry Judge recorded adverse remarks about the conduct of the accused unit, specifically attributing the delay in completing the inquiry to their tactics. In none of the inquiries did the security forces produce the records pertaining to the deployment of their troops, or those pertaining to the crackdowns that are a daily routine of life in Kashmir, or the records pertaining to the arrest/detention of people. Nor did they ever bring before the court any of the soldiers/officers responsible for the impugned actions. In Basharat Shah’s (91/12) case, the CRPF made the Commandant and the Deputy Commandant of the 53 Bn to retire rather

\textsuperscript{46} The accused units responded in 58 of the 85 petitions examined. This includes replies at any stage of the proceedings, whether orally or in writing, so long as the same were reduced to writing by the judge.

\textsuperscript{47} It is an established pattern for most arrests to be unacknowledged to begin with. Subsequently, for reasons that are not wholly clear (random chance?), the arrestees get classified into two categories: those who disappear; and those whose arrests are converted into acknowledged arrests.

\textsuperscript{48} We are unable to be more precise because of the manner in which the security forces conducted themselves. In many cases the accused unit appeared before the inquiry on a few occasions and, thereafter, absented themselves from the proceedings. In some cases, they limited their participation in the inquiry proceedings to filing a very basic reply or, some rudimentary (and incomplete) documentation. In some cases the participation went to the extent of cross-examining some of the witnesses produced by the petitioner.
than produce them before the Inquiry Officer appointed by the High Court.\(^49\)

That they did not file a reply before the High Court, or that they did not participate in the inquiry proceedings, did not mean that the security forces were not following the proceedings. In several cases the accused unit of the armed forces did not file a reply before the High Court or cooperate in the judicial inquiry ordered but chose to file objections to the inquiry report; which had held against them. Thus, the picture is one of watchful disregard for the court and its processes. Wherever the security forces felt that they needed to intervene, they did so.

This position becomes even clearer when the context is widened to include the response of the central government in cases where the state government requested it for grant of sanction to prosecute officers/ members of the central security forces (including the army), who had been charged with penal offences.\(^50\)

In four petitions the police are on record as having completed their investigation and finalised a charge sheet against the officers/ soldiers responsible for the arrest/ disappearance.\(^51\) In two of these cases we have no information except for the fact that the police had stated before the Court that their investigation was complete and the charge sheet ready for being filed before the competent court. In two other cases, the High Court involved itself in monitoring and, to some extent, supervising the state government in the process of obtaining sanction from the central government. In both these cases the central government rejected the request for grant of sanction to prosecute the officers concerned.

These two cases are not the only ones in which the central government has refused the request for sanction. It is our information that the

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\(^49\) This fact was mentioned by the inquiry officer in his report to the High Court.

\(^50\) Section 197 of the Indian CrPC 1973 is the generic provision with respect to the requirement to obtain sanction from the appropriate government in cases where public servants are sought to be prosecuted/ tried for offences under the IPC. Section 7 of the Jammu and Kashmir Armed Forces Special Powers Act (AFSPA) contains a similar provision.

\(^51\) An FIR or a complaint was stated to have been filed in 60 of the 85 five cases where petitions were filed.
central government has granted sanction to prosecute in only two of the hundreds of cases in which such sanction was sought. In other words, it is reasonable to infer that the central government was/ is not inclined to permit the courts to exercise jurisdiction and control over forces under its command. The conduct of the central security forces in the habeas corpus petitions examined in this report mirrors this attitude, and once this is factored in the conduct of these forces becomes explicable.

The palpable indifference of the process also led to consequences that would have been comical, but for the tragic setting. In as many as 17 of the 85 petitions the proceedings continued for several years after the arrestee had been released by the security forces. In one case, the arrestee was booked under the PSA, served out his period of detention, was released, and killed by the army in a fake encounter before the High Court and its minions reached his home. The abjectly poor father of Mohammad Yusuf Wahloo (91/8) told the Inquiry Judge that since his son was dead, he did not want to participate in the proceedings. However, when apprised of the facts the High Court chose to dispose of the case for want of instructions from the petitioner. The insensitivity of the Court to the plight of the people whom it is supposed to serve, in justice, seems to be encapsuled in this remark.

One can speculate that the surrender of its prerogatives by the Court was, at least, in part a result of the realisation of its complete helplessness. It also seems to us that it took time for the full extent of its irrelevance to hit the Court. With the passage of years the proceedings became increasingly formal, with the Court displaying less and less enthusiasm for playing out, or prolonging the farce. On the other hand, the security forces displayed an increasing mastery of the processes of justice. The result is clearly visible from the cases discussed. From 1999 onwards, the Court ordered an inquiry in very few cases, being content

52 These are the cases of Parveena Ahangar, whose son, Javed, was disappeared in 1990. Sanction to prosecute was recently granted by the central government in this case, after a 14 year struggle for justice. The other case pertains to the murder of prominent lawyer and human rights activist, Jalil Andrabi. In both cases, we are informed, the court seized of the matter has been unable to enforce the attendance of the accused officers.
to simply ask the police to register an FIR/ complete investigation in the FIR already lodged.\textsuperscript{53}

The facts we have examined and analysed inexorably reinforce the conclusion about the irrelevance of the habeas corpus proceedings to the meaning of sanctity of life and liberty under the Constitution of India. The Court went through the motions, without any faith in the effectiveness, or sanctity of its processes. The result was not just that the Court’s intervention did not save any lives; these processes had no impact whatsoever on the prevailing situation. It was as if the courts did not exist.

It is not easy to analyse a complete farce, particularly when the players of the farce act it out with a, seeming, air of unawareness of it.\textsuperscript{54} We found absurdity, capriciousness, culpable negligence, callous disregard and more. We found a court completely oblivious to its place and importance in the constitutional scheme of things; a court unwilling to acknowledge its linkages to the society in which it was situated. Yet, the Court functions: judges come and go in their siren equipped cars, shielded both by curtains on the car windows, and by the phalanx of security personnel who guard them. Perhaps guarded by the same personnel (or, at least, their brothers in arms) who disappear the people on whose behalf the judges heard habeas corpus petitions.

In this and the following two chapters, I shall analyse how the High Court of Jammu and Kashmir dispensed justice. The first two of these chapters are both called \textit{The Impossibility of Justice}, while the third one is called \textit{Brooding Omnipresence: Notional Powers and Actual Impotence}. The first stage of the analysis must necessarily be to establish the broad patterns of the court proceedings. The first two sections below, titled \textit{Absurdity At Large} and \textit{The Empty Cases}, illustrate the general case. The third section examines the cases in which the inquiry report returned a clear finding against the security forces. This section

\textsuperscript{53} In a way, this trend must be welcomed since this was the most likely order that the Court would have passed even after the inquiry.

\textsuperscript{54} In fact, given space constraints, and the limitations inherent in a structured presentation, it is impossible to do complete justice to our findings.
is divided into two parts: cases that have been disposed of or dismissed by the High Court and, cases that are still pending disposal by the Court.

In the next chapter (The Impossibility of Justice –II) we will first examine several smaller categories. The section titled Where Guilt Was Not Established enumerates the cases in which the inquiry returned a finding of not guilty; cases in which inquiries were ordered but not held; cases resulting in the High Court ordering inquiries which were still pending; and, the cases in which the inquiries were closed. The second section in this chapter covers cases where the inquiry was not ordered. As the High Court did not order an inquiry in over 27 percent of the cases this is a very important section, though (necessarily) deficient in material from court records. Since the collapse of the justice system cannot be attributed solely to the faults and failures of the courts, the third section of this chapter seeks to trace the impossibility of justice in the indefatigability of the Union of India’s resolve to shield its security forces from judicial scrutiny and prosecution by denying sanction. The fourth and last section looks at the cases that did not lead to the filing of petitions. In every real and palpable sense the outcome in these cases was/ is identical to those that went before the court. To reiterate, the filing of a writ of habeas corpus makes no difference to any instance of enforced disappearance and its outcome in Kashmir.

I. Absurdity At Large

While one may impose a structure upon the data in order to facilitate analysis the fact of the matter is that there is really no structure, no pattern: absurdity pervades everything and, in every way. The cases below have been selected to illustrate this contention.

The case of Waheed Ahmad Ahangar (90/4), a 14 year old boy, epitomises almost every aspect of the regime that Kashmiris live under. His arrest was witnessed by almost the entire locality since a very large force was deployed for it, with dozens of vehicles and scores of person-

55 The deficit has been made up by referring to information from the families.
nel. The BSF soldiers expressed incredulity at his extreme youth while arresting him. The police refused to register an FIR regarding his arrest, saying that there was a directive from the higher authorities against registering such complaints. The family being fairly prosperous and well connected met the Director General of Police (DGP), Mr. Saxena, who arranged for them to meet with him in custody. They met Waheed several times over the next six months. During this period he was subjected to severe torture and was in considerable pain. He was also constantly shifted from place to place. On 28 November 1990, two days before Waheed’s sister’s wedding, his family learnt that he was critically ill and in the intensive care ward of the army hospital at Badami Bagh. Though they got permission to meet him, a CID inspector intervened and pushed them out of the hospital. They have had no news of Waheed since then.

Waheed’s father also met Rajesh Pilot in Delhi, who was then minister in charge of Kashmir affairs in the central cabinet, as part of a delegation representing parents of disappeared persons in Kashmir. Justice Tarkunde, noted jurist and human rights activist was present during the meeting. Pilot was very rude and called them liars. He gave them a list of 60 names of people whose custody the government acknowledged. Waheed’s name was among those listed.

Failing to secure his release through other means, his father filed a habeas corpus petition before the High Court in November 1990. It took

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56 His father says that Waheed was very childlike and kept baby chicken as pets for a hobby. He suspects that his arrest may have been triggered by a quarrel with some neighbourhood boys a few days prior to his arrest.
57 They met him in PAPA–II, one of Kashmir’s most notorious interrogation centres, at Pantha chowk, inside the BSF establishment there, at the JDG, Shivpora, JIC and, several other places. Apart from DGP Saxena, they took the help of Jaswant Singh (SP, CIK, J&K police), an IB officer named Bansi Lal and, one Bashir Mirza of the 79 Bn BSF, who was a member of Waheed’s arresting party, for these meetings.
58 Outside the hospital they met a young Sikh boy who was known to them, who worked in the cantonment. Waheed’s father gave him Waheed’s photo and sent his watch and key ring and asked him to show them to Waheed, as a sign from his family. The Sikh boy reported that Waheed wept on seeing the items but could not send back any message as he was in no state to speak.
59 However, before the High Court the BSF claimed that they had, subsequently, released Waheed.
two years for the Court to order an inquiry and another two for the Court’s registry to communicate the order to the Inquiry Officer appointed for this purpose. The BSF admitted Waheed’s arrest before the inquiry and admitted he had been detained in PAPA-II. However, they claimed he was released after a 22 day detention since he had agreed to work for them. The release was claimed to have been effected through the PCR (Police Control Room) but they said there was no record of the release because, there was no system of making an entry in the PCR regarding the release of a suspect.

The Inquiry Judge refused to accept this unsubstantiated contention saying that without a record the ... purpose of (release in this manner becomes) ... an empty formality. On the basis of the eyewitness testimony led before him, his report held the 141 Bn BSF responsible for disappearing Waheed Ahangar.

In August 1997 the High Court directed the registration of an FIR, and asked the CJM Srinagar to monitor the investigation. By the end of 2003 the CJM had sent two reports to the High Court. The first, dated February 2003, claimed that he was vigorously monitoring the investigation. The second, dated October 2003, adverted to difficulties in procuring the presence of witnesses as they have retired. Thus, over 13 years after Waheed’s disappearance, the High Court was reduced to directing the central government’s counsel to ensure that assistance is rendered by the BSF authorities. This process is still going on. Waheed’s father is not interested in compensation, though he has been offered it several times.

Farooq Ahmad Bhat (91/11) was arrested in June 1991. Failing to get an FIR registered, in November 1991 his family filed a petition before the High Court. On 18 May 1992 the state government filed objections to the petition stating that Farooq Ahmad Bhat s/o Abdul Ahad r/o Hyderpora, Wazabagh, Srinagar had never been in custody, in any of

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60 Note the brazen boldness of such a statement in the circumstances of the case. Since his arrested stood admitted at the highest level, by a central minister, the BSF had perforce to exculpate themselves. Since, it did not matter what they said, as long as they said something, they decided to say that he had agreed to work for them.

61 Given that the report was submitted nearly six years after the Court’s order, clearly, the word vigour has acquired a very different meaning in Kashmir.
the Joint Interrogation Centres (JIC) in the State. However, it was stated, another person by the same name, one Farooq Ahmad Bhat s/o Abdul Ahad Bhat r/o Zaloora, Sopore, Baramulla, had been detained under a PSA order and was in jail in Jammu. The Court directed that this person should be produced before it.

Instead of complying with this order, on 25 September 1992 the state government filed an application admitting that on further investigation …Farooq Ahmed Bhat son of Abdul Ahad Bhat R/O: Hyder-pora, Budgam was arrested on 2.8.1992 in case FIR No.20/92 P/S CIK and sent to JIC Jammu on 3.8.92 for further investigation.62 The Court directed the state government to allow Farooq’s family to meet him. Instead, a few weeks later the state government filed another application ‘clarifying’ that after thorough verification it was found that the detenu in the present case was un-traced and is not with any of the Agencies of the State.63

It is not hard to imagine the plight of the family. The Judge who heard the case on that date was also vexed at this flip flop. He observed that the initial mention of the existence (in custody) of some other Farooq Bhat could not be interpreted as anything but an acknowledgement in a camouflage manner of the custody of the one indicated in this petition. To dispel the confusion, he asked the Additional Chief Secretary (Home), J&K to enquire into the matter and trace Farooq’s whereabouts from all the concerned agencies. As is usual, there was no response from the concerned official for over six months. Thereafter, in an abrupt turn, another Judge took a completely different view of the matter and, treating the above mentioned affidavit of SSP as the final word in the matter, disposed of the writ petition on the ground that it is clear that the detenu is not with the respondents.

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62 The application asked that the petition filed on Farooq’s behalf should be dismissed, as he was not in custody at the point of time that the petition had been filed. It was stated that, it was only on 2 August 1992 the cause for filing the petition accrued to the petitioner.

63 The application was supported by an affidavit by the SP, CID (CIK) that stated that the admission of Farooq’s custody was an error due to the confusion arisen from the below noted two more persons of the same name, parentage and District which is awefully regretted (sic).
No attention was paid to the fact that various orders of the High Court asking for Farooq Bhat’s production in Court, and for an inquiry into the confusion of replies, had been ignored. Shocked at this sudden turn of events, Farooq’s family appealed against this order. The appeal was allowed and the case was sent back to the Single judge of the Court, in July 1994. But by this time Farooq’s family had exhausted its reservoir of hope, and of perseverance. They stopped pursuing the case.64

Failing to find any trace of Dr. Ghulam Hasan Sofi (94/5) after his arrest, on 21 July 1994 his family filed the first of two habeas corpus petitions before the High Court. It alleged that the ‘9 Para’, stationed at Aishmuqam, near Anantnag, was responsible for his abduction. The state government replied that as per information received from the army authorities Sofi was never arrested. In November 1994, the Officer Commanding Team 9 Para also filed a reply denying his arrest. On 2 July 1996 the High Court ordered the DJ, Anantnag to hold an inquiry and submit his report within four months.

Meanwhile, in March 1995, the family had filed a second petition, in which it was stated that Sofi was seen in the custody of the army, inside Aishmuqam camp, by one Mohammad Yusuf Sheikh r/o Amad Wagad, Tehsil Pahalgam.65 The army again denied his arrest. Once again, on 30 July 1996, the High Court directed the DJ, Anantnag to hold an inquiry into Sofi’s disappearance.

Both petitions continued on their parallel courses and, seemingly, no one made the connection between them. However, the DJ held only one inquiry and, his report only referred to the second petition.66 The family’s intention was not to file a second petition but to supplement the earlier petition, with the additional information learnt subsequently. However, this information was cast in the shape of a fresh petition and was, therefore, treated by the Court as such.

64 The file of this case is not traceable in the High Court after 28 June 1994. Therefore, we have no information about the current status of the case.
65 The family’s intention was not to file a second petition but to supplement the earlier petition, with the additional information learnt subsequently. However, this information was cast in the shape of a fresh petition and was, therefore, treated by the Court as such.
66 The report only referred to the High Court’s order for an inquiry in the second petition, though subsequent events made it clear that the District Judge intended it to serve for both the petitions.
did not cooperate with the inquiry, though it was represented by a counsel.\textsuperscript{67}

The High Court disposed of the second petition first, in August 1998.\textsuperscript{68} The Court’s order made no reference at all to the inquiry report submitted by the DJ, Anantnag, basing itself entirely on the reply filed by the army before the inquiry was ordered, denying Sofi’s arrest/custody. It held that \textit{in the face of these denials, the Court is not in a position to grant any effective relief.} Compounding the absurdity, at the same time the Court directed the DJ, Kupwara to hold \textit{an inquiry … into the matter (of Sofi’s disappearance)}.\textsuperscript{69}

Meanwhile, the Court continued to await the report of the inquiry ordered by it in the first petition. Finally, in March 2003, after a series of exchanges on the subject, the DJ, Anantnag apprised the High Court of the link between the two cases and informed it that the inquiry report with respect to Ghulam Hasan Sofi’s disappearance had been sent as far back as in January 1998. The clearing of this confusion did not result in a rectification of the earlier error of judgment. In April 2003 the Court dismissed the pending petition as being \textit{not maintainable} on the ground that it had already disposed of another petition in the same matter. Thus, despite filing two petitions, Dr. Sofi’s family suffered the indignity of the Court disposing of both petitions without applying its mind to either.

In April 1994 the Court directed the DM, Kupwara to inquiry into \textbf{Mohammad Ramzan Wani’s (91/2)} disappearance and report his findings within three months. In October 1994 the DM, Kupwara submitted an interim report, along with statements of witnesses and, assured that

\begin{itemize}
\item \textsuperscript{67} The inquiry report dated 31 December 1997 recorded that \textit{Despite several opportunities the respondents did not adduce any evidence in rebuttal. … There was no impediment for Rashtriya Rifles to come with clean hands before this court either in person or thorough counsel …. But since they did not choose to do so the inquiry has to be concluded with a prima facie finding that … Ghulam Hasan Sofi ….. was taken into custody by them and has not been so far released.}
\item \textsuperscript{68} It was disposed of in the absence of representation on behalf of the petitioner.
\item \textsuperscript{69} Besides the absurdity of ordering an inquiry in a matter in which the inquiry report had already been submitted, it made no sense at all to order an inquiry by a judge who sat over 120 km away from the scene of the incident.
\end{itemize}
the final report would be submitted shortly.\textsuperscript{70} Two years later, in December 1996, the Court’s registry noted that the inquiry report has been filed and tagged with the court file. In February 1997, the Court did not find the inquiry report on the file of the case and asked the registry to trace it. A court official issued a direction that letters should be written to both, the DM, Kupwara, and the DJ, Kupwara to obtain a copy of the missing report and its enclosures. The letter to the DJ, Kupwara was, presumably, for assistance in obtaining the requisite papers from the DM, Kupwara but somewhere along the line the court’s registry converted it into a demand that the DJ furnish the report of the inquiry that he had been ordered to conduct in this case. The DJ, Kupwara repeatedly wrote to the High Court stating that no such case was ever received by this court for conducting inquiry but the High Court’s registry ignored these responses and continued to ask him to furnish the report. Ultimately, the confusion was resolved and, in May 2002 the DM, Kupwara forwarded his inquiry report to the DJ, Kupwara, who sent it to the High Court.

The report held that it is established beyond doubt that Ramzan Wani was apprehended during a crackdown. However, in a complete travesty, the report refused to identify the units responsible for the arrest on the ground that the accused units had denied carrying out the crackdown in which he was alleged to have been arrested, and/ or his arrest. The DM had on record before him a report of the SP, Kupwara, stating that police investigation had established that the crackdown and arrest had been carried out by the 132 Bn and the 76 Bn BSF. Further, as stated in the report to the High Court, the DLSC, which is headed by the DM, had cleared Ramzan’s wife’s request for ex gratia compensation, as, the Committee’s investigation into his disappearance conclusively established that Mohammad Ramzan was arrested during a cordon and search operation on 4.9.90 and has not been seen since then.\textsuperscript{71}

Compounding the culpable bias of the Inquiry Officer, in August 2002, 11 years after the petition was filed, the High Court dismissed the peti-

\textsuperscript{70} Though the letter of the DM is to be found in the case file, the interim report is missing.

\textsuperscript{71} Clearly, the DM was unwilling to indict the BSF, though he was willing to compensate (a paltry rupees one lakh) Ramzan's wife for her loss.
tion with a cryptic order. No reasons were stated though, at the request of the lawyer for Ramzan’s family, the Court recorded liberty … to seek appropriate remedies before appropriate court.

Nineteen year old Nazir Ahmad Sofi (93/3) was arrested by a combined force of the BSF and the RR during a crackdown on 15 October 1993. According to a DD report of PS, Bijbehara recorded on the same date, one person was shot dead and four people, including Nazir, were arrested. The others were released but Nazir was disappeared. Eyewitnesses stated that Nazir was very badly beaten on the spot and many thought he was dead. But one of the other three arrested along with him said that Nazir was alive while they were in custody together.

Neither of the security forces involved filed a response to the petition before the High Court. The state government filed a reply asserting that Nazir had not been arrested or received in any JIC of the State government so far. In May 1995, the High Court ordered the DJ, Anantnag to inquire into Nazir’s disappearance. In March 2004 the DJ wrote to the High Court (in response to a reminder) to say that the file of the case had not been sent to him. In the intervening nine years the High Court had sent scores of reminders to the DJ, without any response. The case was still pending before the High Court, which continued to await the report of the inquiry ordered.

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72 Nazir was in the first year of his Bachelor of Science course at the University. He had no links with militancy. His family said that no one in their extended family had anything to do with militancy.

73 As per the DD (Daily Diary) report, the soldiers were attacked during the crackdown and one of their men was killed. In retaliation, they beat up people indiscriminately, raped and assaulted women and destroyed property. About 60 victims of assault and, one of rape were medically examined at the Anantnag hospital. Major Gill and Commandant Sharma were identified as the officers heading their respective units. An FIR (No. 86/93 u/s 302, 376 and 354 RPC) was also registered.

74 On the third day after Nazir’s arrest, the Major of the RR unit involved told his family that Nazir had been released and feigned surprise that he had not yet reached home. On being asked, the Major said that there were no witnesses to his release.

75 This was literally a stock reply in almost all cases.
According to Nazir’s family, the DJ was factually wrong. They stated that they had produced several eyewitnesses to Nazir’s arrest before the inquiry court and the inquiry proceedings had been concluded long before the DJ’s reply in March 2004 that he had not received the case file. In which case, there is no explanation for what happened to the inquiry report, which would, in the normal course, have been sent to the High Court. Nor is there any explanation for why the matter was not clarified by the DJ, Anantnag, in response to one of the many letters of reminder sent to him by the High Court.

Mohammad Yusuf Wani (94/3) was arrested in May 1993 when the house where he was staying temporarily, was raided. His family could not obtain any information about what had happened to him. Ultimately, they filed a petition before the High Court. The state government responded in September 1994 stating that Yusuf Wani was arrested on 24 August 1993, and remanded to judicial custody on the same date. The High Court failed to notice this reply, and ordered an inquiry into his disappearance in March 1995, by which time he had already been released after completing his period of detention under the PSA.

In Khizir Mohammad Bhat’s (95/2) case the army’s (2 Garhwal) stand was that they had released him into the custody of the Station House Officer (SHO) PS, Pattan, District Baramulla. The SHO confirmed this and claimed that he had personally put Khizir Bhat into a passing truck, for being dropped to his home. Though he did not note the vehicle number or the name of the driver, he had taken the precaution of gathering three persons to witness the alleged departure of Khizir Bhat from the police station. He had also taken care to note down the full particulars of all three witnesses. Accordingly, these persons testified in the SHO’s favour before the Inquiry Judge.

76 He was an electrician-fitter whose work frequently required him to stay away from home 2-3 days at a time.
77 In other words, he was kept in unacknowledged, illegal detention for three months. This case is unique because in none of the other cases in our study sample has the state government filed an accurate response within a reasonable time.
78 The petition was disposed of with this order and, to the best of our information, the inquiry was not held.
79 The witnesses were a shopkeeper, with a shop near the police station and two, alleged, passers by.
The inquiry report held that the arrest of Khizir Bhat by the 2 Garhwal was confirmed. It also held that he had, subsequently, been released by the army. The report concluded that Khizir Bhat was missing after he was sent in a truck by police Station Pattan. The report accepted the version of the then SHO, PS Pattan as being corroborated by independent witnesses. He, also, accepted as plausible (and true) the SHO’s explanation for his failure to note the vehicle number and held that the SHO has substantiated the same by deposing that during that period army as a matter of routine used to lift various persons for interrogation purposes and then used to leave them at different places. Per chance Khazir Mohd. was left in police station Pattan. Despite all this Khazir Mohd. Bhat was requested to stay in the police station, for the night but (he) insisted … On this he was asked to go. This way negligence is not imputable.80

Needless to say, the Inquiry Judge failed to notice the glaring contradictions in the SHO’s story and testimony. On the one hand he excused the SHO’s failure to note the vehicle number by claiming that in those days this was a matter of routine. On the other hand, he found nothing unusual in the very particular care that the SHO took to ensure that there were witnesses to Khizir’s departure from the police station and, to note down the addresses of these witnesses.81 In fact, this incongruity was brought into focus before the Inquiry Judge by a pointed question during cross-examination, to which the SHO stated that as a matter of routine Khazir Mohd. was helped and was left in a truck, least knowing that the person will disappear. The logical next question (by the complainant or the Inquiry Officer) should have been– why then, did you call for public persons to witness his departure from the police station and, why did you note down the names and addresses of the witnesses with such exactitude that several years later you had no difficulty in calling them as witnesses on your behalf in this inquiry?

80 Though helpless in the face of this testimony, Khizir’s father was disbelieving of the story of release saying that had he actually been released he would have come straight home.

81 As if the SHO had anticipated that he would be required to prove that Khizir Bhat had left his custody, safe and sound.
In a continuing parody, the state government filed objections to the inquiry report before the High Court, disputing the stand of the SHO, Pattan (and the consequent finding of the inquiry report), and putting forth a whole new case. The SSP, Baramulla filed an affidavit denying that Khizir Bhat had been released into the custody of the police of PS, Pattan. The Court was informed that the 2 Garhwal had filed a report with the police about Khizir’s arrest, alleging that they had seized a grenade from his house. On that basis the PS, Sopore registered an FIR against him. It was stated that during investigation in this FIR the police learnt that the army unit had found Khizir Bhat innocent and released him, without notice to the police; holding that the seized material had been left in his house by some unknown militant. Thereafter, the police closed their investigation as untraced. On this basis, it was prayed that the case be dismissed qua the state government.

Ignoring this complex (and ridiculous) web of lies, the High Court washed its hands of the matter by directing the police to register an FIR and investigate into Khizir’s disappearance. Needless to add, nothing further was done by the police, though a judicial officer had been directed to monitor this process.

The case of Alam Sher (95/9) is a story of extraordinary negligence by all concerned: the Army, the DM, Kupwara and, the High Court. The petition on his behalf was dismissed with the remark arrest not proved, on the basis of a mistake in the identity of the complainant. Two women, both named ‘Begum Jan’, complained that their kin had been arrested, and disappeared by the army. The name of the husbands of the two complainants (and their addresses) was completely different. Yet, neither the army authorities nor the DM, Kupwara, who was appointed by the High Court to inquire into Alam Sher’s disappearance, cared to distinguish between the complaints of these two different persons with the same name.

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82 The husband of the Begum Jan who had filed the petition before the High Court was called Mohammad Yaqoob Khan, alias Solen, resident of village Bhadurkote. The other lady’s husband was called Mohammad Siraj-ud-din resident of village Amrui.
The army did not participate in the inquiry ordered by the High Court. However, it wrote to the DM, Kupwara stating that *an independent court of inquiry of which the Sub Divisional Magistrate, Karnah, was a member had concluded that the allegations in the petition, filed by one Smt. Begum Jan regarding the wrongful arrest of three persons by the 7/8 Gurkha Rifles during May 1994 were baseless and deserved to be rejected*. In fact, the COI referred to by the army, pertained to a complaint by the other Begum Jan. The report of the COI containing the full identity particulars of the complainant and the disappeared persons, was attached with this letter. Had the DM, Kupwara merely taken the trouble to compare the names in it with the names of the concerned parties in his inquiry he would have instantly discovered the army’s error. Instead, he submitted a report to the High Court, saying that Alam Sher’s disappearance by the army was not proved.

In May 2003, seven and a half years after it was filed, the High Court disposed of the petition in terms of the inquiry report. There can be no doubt that the High Court, too, did not apply its mind to the facts while disposing of the petition.

The case of *Nazir Ahmad Malik and Mohammad Shafi Shah (97/1)* exposes the High Court’s discomfiture at the dichotomy it straddles. Nazir Malik and Shafi Shah were both picked up at the same time on 4 April 1997, from a doctor’s clinic in Karan Nagar, Srinagar. Three weeks later Nazir’s body was recovered from a ravine (*nallah*) in Uri. There is no information about what happened to Shafi Shah. Two days later, both families, who had met during their search for their sons, filed a contempt petition before the Srinagar High Court, invoking the decision of the Supreme Court in the DK Basu case, which lays down the guidelines to be followed by the

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83 The complaint investigated by the army’s COI pertained to the arrest/disappearance of three persons, namely Mohammad Sirajuddin, *Nambardar* of village Amrui and, Mohammad Iqbal and Riyaz Ahmed, both sons of the said Mohammad Sirajuddin.

84 Nor did the DM, Kupwara care to resolve significant discrepancies between the facts stated in the report to him by the SSP, Kupwara and the facts contained in Alam Sher’s mother’s statement before him.

85 This is one of the more than 20 petitions which were disposed of by the High Court in the absence of representation on behalf of the petitioner. It is to be presumed that had there been such representation the error would have been caught.
police while carrying out an arrest. The petition alleged that these guidelines had been violated by the police in the course of arrest, elimination/disappearance of Nazir Malik and Shafi Shah. The petition sought the prosecution of the respondents for the crime of murder and, for the violation of Articles 21 and 22 of the Constitution.\(^86\)

The DK Basu judgement had declared that the guidelines laid down therein were binding on the police throughout India, and a violation would amount to contempt of court. In other words the contempt petition was, in real terms, a substitute for a habeas corpus petition and, as the record of the proceedings in the case shows, the High Court was conscious of this fact. Yet, the fact that the proceedings were formally tied with the decision in the DK Basu case was made an excuse by the High Court to postpone the case for several years.

In October 1997, while noting that the respondents had still not filed any reply, the Court also noted that another petition has been filed before the Supreme Court regarding implementation of directions passed in the DK Basu case\(^87\) and declared it advisable to defer orders in the case before it till the Supreme Court gave further directions to the state governments in this regard. Though it was thereafter called for hearing from time to time on each occasion the case was adjourned for the same reason, with no effort being made by the Court to inform itself of the correct position. To the best of our information the case was still pending in September 2004.

The case of **Abdul Rashid Wani (97/8)** illustrates how procedures designed to check human rights violations by the security forces, get subverted.\(^88\) Abdul Rashid, a truck driver, was arrested on 7 July 1997 by the 2/8 Gurkha Regiment, headed by a Captain Yadav. His arrest was reported to his family by an eyewitness, one Farooq Bhat, a fellow driver,

\(^86\) In addition to the patent inconsistencies in the story put out by the police, the family was not informed of the arrests of their boys, as was necessary under the DK Basu guidelines. This was, by itself, sufficient to invoke the High Court’s jurisdiction, for a violation of these guidelines.

\(^87\) A factually incorrect statement.

\(^88\) Two factors were responsible in the main: first, the general climate of impunity prevailing in the valley and, second, the pre-existing directives to the police stations to refrain from registering complaints against the security forces.
who knew him. The police refused to register an FIR regarding his arrest saying that \textit{we don't register complaints against the security forces}. This refusal was a significant fact in view of subsequent events.

Before the High Court, both the army and the state government denied his arrest. Consequently, the High Court ordered an inquiry into Rashid’s disappearance. In April – May 1999, around the same time as the order of an inquiry by the High Court, the SDPO, M.R. Gunj, Srinagar (a DSP rank police officer), and the SSP, Srinagar, issued 'Clearance Certificates' to the 2/8 Gorkha Rifles. These certificates were filed before the High Court by the 2/8 Gorkha Rifles in support of their ‘innocence’ in the matter of Abdul Rashid’s arrest and disappearance. The first certificate affirmed that there was \textit{no outstanding case against 2/8 Gorkha Rifles and that no FIR was lodged or pending against them, from during their tenure in Srinagar, from April 1997 to Dec 1998}. The second certificate stated that \textit{no criminal case/ FIR stands registered against the 2/8 Gorkha Rifle ... during their stay at Rawalpora}.

The inquiry report dated February 2001 stated that the respondents did not produce any evidence, despite being given time and opportunity. Based on the testimony of Farooq, the eyewitness who was temporarily in army custody along with Abdul Rashid, the report held that Captain Yadav of the 2/8 Gorkha had arrested Abdul Rashid, and held the unit accountable for his disappearance.

Back before the High Court, the army challenged the testimony of the eyewitness. The High Court accepted the army’s objections, holding that the witnesses had repeated the name of Captain Yadav in a \textit{parrot like fashion}, without indicating their source of knowledge or the circumstances in which they came across his name. This view was patently incorrect, since Farooq Bhat was an eyewitness to Abdul Rashid’s arrest. The other witnesses had named him on the basis of their meetings with Captain Yadav, subsequent to Rashid’s arrest. The petition was disposed of with a direction to the PS Soura to register an FIR and investigate into Abdul Rashid’s disappearance.\footnote{The choice of police station was inexplicable as the incident took place under PS Parimpora, a considerable distance away.} The Court also dismissed the plea for compensation for Abdul
Rashid's disappearance by saying that there is little evidence to show that fundamental right of life of the subject has been taken by the officer. It, therefore, advised the family to try other remedies. Not only was the rejection of the inquiry report perverse, the High Court was completely misconceived in its refusal to consider grant of compensation under its Public Law jurisdiction.

Two months after his arrest by the STF, Kupwara, the family of Fayaz Ahmad Khan (97/11) filed a habeas corpus petition before the High Court. The state government took nine months to file a one line reply, denying Fayaz's arrest. Dissatisfied with this response, in November 1998 the Court asked the respondents to file a detailed counter affidavit giving a point by point response to the allegations against them. It also required that the Sub-Inspector, who had headed the police party that had allegedly arrested Fayaz, file a personal affidavit responding to the allegations against him. Instead, more than 15 months later, the State government informed the Court that they were not in a position to locate the person of the concerned Sub-Inspector.

The Court took exception to this statement, and asked the Superintendent of Police, STF, Kupwara to file an affidavit listing the names of the persons who were on the strength of the force on the relevant date at Kupwara. This order was never complied with. Instead, the SP, Task Force, Kupwara filed an affidavit in support of the objections filed earlier, reiterating that Fayaz was not lifted by Special Operation Group, Kupwara, till date as per records of this office. In view of this response, in May 2000, the Court ordered an inquiry into Fayaz's arrest and disappearance.

Fayaz's co-detainee, Shabir Ahmad, testified before the inquiry, confirming that Fayaz was arrested by the STF at his pointing out, and was kept along with him and two others in the STF headquarters at Aloochi Bagh. Later he and one Abdul Gani were taken to Kupwara, from where they were released on bail. The STF/ SOG did not produce any evidence in rebuttal though they were represented by counsel, who cross-

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90 The affidavit is typed entirely in capital letters, as if to emphasise its contents.
examined all the witnesses. The inquiry report declared that it has been clearly established that Fayaz … was arrested by S.O.G. personnel from his house. However, the Inquiry Judge relied upon a contradiction between the testimony of Fayaz’s father and brother, who had said that he was arrested by the SOG, Kupwara and, the testimony of the co-detainee, who said that he was arrested by the SOG, Srinagar, to hold that it could not be said that Fayaz was arrested by the SOG, Kupwara.

While disposing of the petition, the High Court converted this finding to hold that the fact of arrest could not be established in the inquiry. The Court directed the police to register an FIR and investigate saying that The State is under legal liability to take this enquiry to logical end.

The case of Farooq Ahmad Bhat (99/4) brings to light a special facet of the duplicitous functioning of the State and its minions in cases of enforced disappearance. Since most arrestees are kept in unacknowledged custody for considerable (though varying) lengths of time, police and other state government officials adopted the practice of issuing ‘interview slips’ on pieces of plain paper, whenever they wished to allow a meeting between the arrestee and his family. On the face of it, the issuance of such a document is proof of custody. However, the state government pleaded otherwise before the High Court. Nine years after Farooq Ahmad Bhat’s disappearance, his wife filed a petition in the High Court, in April 1999. As proof that the state government had acknowledged having custody of her husband, an ‘interview slip’ dated 21 December 1990 was annexed with the petition. This ‘slip’ was signed.

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91 The STF metamorphosed into the SOG sometime in 1999-2000.
92 For Fayaz’s family the Court’s order, utterly illogical though it was, was the “end” of the matter.
93 Many families told us that they obtained permission to meet their arrested relative from an officer of the security forces or the police. They showed us signed (and stamped) slips of paper on which such permission was granted. In some cases the families were successful in meeting the arrestee on the basis of this permission. (The case of Waheed Ahangar (90/4) is one such example.) However, in many of the cases they were refused a meeting despite the permission. [The case of Latief Khan (91/1)]
94 Explaining the delay, she stated that an earlier petition, filed by her father-in-law, had been dismissed for non-prosecution, without her knowledge. Further, that shortly after her husband’s disappearance she and her children had been thrown out of the family home by her husband’s family. The petition stated that notwithstanding the delay she had a right to know what became of her husband.
by Jaswant Singh IPS, Additional Deputy Inspector General Police, CID (CIK), and it requested Mr. AK Bhan, the SSP, CID (CIJ) to allow the parents of Farooq Ahmad Bhat, who was lodged in the JIC Jammu, to meet him.

In response BSF and the army filed replies denying Farooq’s arrest, and seeking the dismissal of the petition on grounds of delay. The state government’s first reply was a bland denial stating that Farooq had not been received by the JICs of Srinagar/ Jammu manned by the CID organisation, and prayed that the petition be dismissed. In August 2000 the state government filed another affidavit saying that the ‘interview slip’ filed along with the petition could not be treated as an admission of custody. Thereafter, during arguments in the case, the state government contended that Jaswant Singh, the officer who had issued the ‘interview slip’, had died. It was, therefore, not in a position to ascertain whether the Farooq Bhat was actually in the State’s custody at that time, or not.95 At this, the Court asked the state government to file the address of Mr AK Bhan, the then SSP, CID (CI-Jammu), to whom the ‘interview slip’, had been addressed, so as to enable it to ascertain the facts from him. The state government did not comply with the Court’s directions. Thereafter, in November 2000, without referring to its earlier order, the Court dismissed the petition.96

The reasoning given by the Court while dismissing the case brings out how warped arguments, based on distorted facts, lead to conclusions predisposed to injustice. Referring to the ‘interview slip’ produced by Farooq Bhat’s wife, the judgement states as follows: This letter, according to the respondents, might have been written without verifying the fact because its language suggests that its author was not sure about the detention. That is why he wrote, ‘one Farooq Ahmed Bhat’ instead of writing Farooq Ahmed Bhat which makes the difference. The Court further contended that (e)ven if this is ignored, the fact remains that ....

95 In this case, and in Latief Khan’s case, the state government argued that police officer in question, Jaswant Singh, had made it a habit of issuing ‘interview slips’ without verifying whether the person in question was actually in custody or not. As such, its existence could not be taken as proof that the State had custody of the person named in it.

96 The case was disposed of in the absence of representation on behalf of the petitioner.
the State/respondents has from the very beginning denied that Farooq Ahmed Bhat was ever arrested or detained in JIC, the genuineness of the interview slip becomes unlawful (sic) and no reliance can be placed on it. Further more, the petitioner had remained silent merely (sic) nine years before approaching this court. This only shows that she knew that her husband was not detained. In that view of the matter no relief can be granted because the arrest or detention of Farooq Ahmed Bhat is not even prima facie established. The petition is dismissed accordingly.

In Mohammad Rafiq Bhat’s (99/5) case, the BSF’s reply denying that 22 Bn BSF had lifted/arrested Mohammad Rafiq Bhat on 19 August 1992, determined the entire course of the proceedings in the case. Thereafter, the case proceeded on the assumption that it was only the 22 Bn BSF which was accused in his arrest. The assumption was misconceived. The petition did not assert that Rafiq was arrested by the 22 Bn. On the contrary, it was an admitted fact that three BSF Battalions – 22 Bn, 69 Bn and 110 Bn – had operational jurisdiction over the area from where Rafiq was arrested. The FIR lodged by Rafiq’s family named all three Battalions. It also named two officers, Inspector Jain and Commandant Sethi, as members of the arresting party. Before the inquiry, most of the witnesses on Rafiq’s behalf named 69 Bn as being responsible for his arrest.

Besides failing to take note of this crucial point, the Inquiry Judge also went astray while appraising the testimony of the witnesses. The eye witnesses on behalf of Rafiq Bhat were crystal clear on the fact that he was arrested by the BSF. However, they were not so clear about the post arrest events, and their account varied from that of Rafiq’s parents. The Inquiry Judge was exercised by these contradictions and decided to use them to become ambivalent about the identity of the battalion that had arrested Rafiq. His report de-

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97 One of the BSF witnesses admitted this fact before the Inquiry Judge.
98 Rafiq’s parents were not present when he was arrested.
99 The eyewitnesses were primarily testifying to the circumstances of the arrest while, Rafiq Bhat’s parents were testifying to the events after the arrest. Since the two sets of witnesses were testifying to two different sets of facts, their testimony with regard to other facts, even if contradictory, could not have been used to cast doubt upon the credibility of their testimony about facts of which they were the authoritative witnesses.
clared that there was no doubt that Rafiq Bhat has disappeared but held that *(p)arents as well as other witnesses of the applicant have not been able to prove as to which Battalion of BSF had arrested Rafiq Ahmad.*

The final nail in the coffin was however left to the High Court, which dismissed the case for non-prosecution, even as it was waiting for the respondents to file objections to the inquiry report. Though the respondents had not filed their objections, for which time had been granted to them, the Court assumed that the absence of representation on behalf of the petitioner on two consecutive dates was proof that the cause does not survive. An extract from the chronology of the case, illustrating the absurdity, is reproduced below:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.02.2003</td>
<td>Date of inquiry report.</td>
</tr>
<tr>
<td>20.05.2003</td>
<td>Court order: None for the respondents. Parties granted two weeks time to file objections.</td>
</tr>
<tr>
<td>08.07.2003</td>
<td>Court order: The respondents granted further time to file objections.</td>
</tr>
<tr>
<td>13.08.2003</td>
<td>Court order: None for the petitioner. A proxy appeared for the state government’s counsel. Adjourned to await the filing of objections by the respondents.</td>
</tr>
<tr>
<td>26.08.2003</td>
<td>Final Order: None for the parties. <em>(O)n the last occasion the case was adjourned because counsel for petitioner was not present.</em> It, therefore, dismissed the case for want of prosecution.</td>
</tr>
</tbody>
</table>

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100 Rafiq’s father had testified that two days after his arrest, 69 Bn BSF had admitted to arresting him.

101 In other words, the respondents had not filed objections and, no one appeared on their behalf.

102 A patently incorrect statement. The order on that date was *Await. Meanwhile if objections are filed same shall be taken on record.*
II. The Empty Cases

The cases discussed under this section are of those persons whose initial, unacknowledged arrest and detention was subsequently converted into detention under the PSA, or who were otherwise released.\(^{103}\) In all these cases, the families did not know the whereabouts of their kin after their arrest for a considerable time, ranging from a few weeks to about one year, during which period they filed these petitions.\(^{104}\) Here too, the cases illustrate the dysfunctionality of the court processes. They have also been selected with a view to show the propensity of the state government to lie to the High Court. In several cases the state government filed affidavits denying the custody of persons who were in detention in jail, under the PSA or otherwise, at the time that the affidavit was filed.\(^{105}\)

Farooq Ahmad Najar (92/4) was arrested in the beginning of April 1992. His family filed a petition within a few days of his arrest. Since the respondents failed to file objections despite being granted repeated opportunities to do so, in November 1992 the Court closed their right to file a reply and, directed the government advocate to produce the relevant records at the time of hearing. Since the state government failed to do this also, in August 1993 the Court ordered the respondents to produce Farooq Najar. Instead, in April 1994 the state government filed a reply denying his arrest or detention in any JIC of the state government. The BSF did not file any reply. Thereafter, the Court ordered an inquiry into his disappearance. In the meanwhile, at the end of 1992, Farooq had been released, and his family stopped following the case. After waiting for the inquiry report for nearly eight years, in December 2002 the Court was informed by the Inquiry Judge that as per his records no inquiry was pending before him. Without batting an eyelid at this response, the High Court re-ordered the inquiry. In March 2004 the case was still pending, awaiting the inquiry report.

\(^{103}\) In all, there are 17 cases of this kind in our database.

\(^{104}\) Many of them were severely tortured during detention.

\(^{105}\) This is not to suggest that the security forces spoke the truth in their replies and statements.
Mohammad Yusuf Wahloo’s (91/8) family filed a petition in December 1991, about five months after his arrest. Soon after they filed the petition they learnt that he was in jail, detained under the PSA. On learning of his whereabouts, the family stopped following the case.106 Nine months after the petition was filed, well into Yusuf’s detention under the PSA, the State government filed a reply to the petition, denying that he was in their custody. In a display of seeming efficiency, the reply mentioned that the only person approximating to that identity in the custody of the State at that time was one Hilal Ahmad Wahloo, whose father’s name and village of residence was stated to be same as for Mohammad Yusuf Wahloo.107

In July 1993 the Court’s order erroneously recorded that the petition was for the release of one Abdul Aziz Wahloo s/o Haji Zafar Wahloo, (Yusuf Wahloo’s father), who was actually the petitioner in the case. In August 1993 the state government filed yet another reply, asserting that Yusuf Wahloo had not been received in any of the JICs of the State government. In view of this denial the Court ordered an inquiry into his arrest. The inquiry report took eight years to write.

In the meanwhile, Yusuf Wahloo was released in 1995. A couple of years later, in 1997, he was killed by the army in an alleged encounter, while on a visit to a relative in a nearby village. The inquiry report placed the correct facts about his custody, and his ultimate fate, before the High Court, on the basis of a statement made by Yusuf’s father, who informed the Inquiry Judge that since his son was dead he did not wish to pursue that case before the High Court. Despite this, the Court dismissed the case in November 2003 on the ground that the counsel representing Yusuf’s father did not have any instructions from his client.

Two brothers, Parvez and Manzoor Shah (91/9) were arrested by the army during a crackdown on their locality in December 1990.108 They were released after about a month’s illegal detention. The petition be-

106 The maximum period of detention permitted under the PSA is two years. Yusuf spent over three years in jail. Thus, a good part of his detention was illegal and/ or unacknowledged.
107 Yusuf’s father told us that there was no person by the name of Hilal Wahloo in their village.
108 They were arrested along with 50 or 60 others. All except five persons, including Parvez and Manzoor, were released after two days.
fore the High Court was filed by a local *welfare committee*, acting on behalf of families of those who were arrested. Thus, the petition was actually filed a few days after the brothers were released, in February 1991.109

Till the end of the 1991, the respondents did not file a reply despite being granted numerous opportunities. At this, the Court ordered the state government to *produce* the two men before it. Since they were not produced, in January 1992 the Court ordered their *immediate release*. It also ordered the respondents to pay costs of five thousand rupees to the petitioner committee.110 In May 1992, the state government filed a reply, without a supporting affidavit, stating that Parvez and Manzoor *have not been received by the Counter Intelligence Agency so far*. The court ordered them to file a supporting affidavit. In August 1993 the Court commented that the affidavit filed by the state government was sketchy and said that it did not indicate *whether the Counter Intelligence Agency is the only source for verifying the particulars of persons arrested by various forces operating in the Valley. Nor has any method been indicated which is adopted after a person is taken into custody by a particular Force. As such, the affidavit, prima-facie, falls short of requirement.*

The Court directed the SP, CID (CIK) to file a detailed affidavit, and to produce the records of the relevant period. This was never done. The Court also noticed that the costs it had imposed upon the state government had not been paid. As a penalty for this *casualness* the court ordered that they should pay an additional rupees five thousand. It also directed the State’s treasury to deposit this amount with the Court by deducting it from the *account* of the Director General Police with the treasury. The Court’s registry was directed to ensure that this was done within two weeks. For nearly two years thereafter, the proceedings in the case continued in a routine fashion. In March 1995 the Court noticed that the registry had been sending its order, directing the State treasury to deposit rupees ten thousand from the account of the Director General Police, *to the wrong Treasury*. It ordered that this error

109 The family never attended the case in Court since they had already been released by the time it was filed.
110 The costs were never paid.
Mohammad Abdullah Bhat @ Tari (92/1) was arrested in September 1992. His brother, Abdul Haq, filed a habeas corpus petition on his behalf before the family learnt of his whereabouts. Once they were assured of his safety, they did not bother to follow up on the case. However, the petition remained pending before the High Court for several years. In April 1994, when Tari was still in detention under the PSA, the State government filed a reply stating that Abdul Haq not traced or indexed in the records of the concerned JIC as he was not arrested or detained by the State.

No one noticed the error in the statement: Abdul Haq is Tari’s brother and was the petitioner in the case filed on behalf of Tari. Tari was released in August 1994. In February 2003 the High Court disposed of the case with an order directing the DJ Pulwama to hold an inquiry into Tari’s disappearance. The absurdity lies in the fact that Tari is a very prominent citizen, both as the head of the Jamiat-e-Ahle Hadis, Jammu and Kashmir and, as the General Secretary of the Democratic Freedom Party, which is headed by Shabir Shah. His statements and activities, including the occasions when he is arrested (which happened several times during this nine year interregnum) are invariably reported in the press. As such, it makes no sense that the High Court continued to entertain a petition of habeas corpus on his behalf for over a decade, without making the connection.

Mohammad Aslam Mir (93/2) was arrested in September 1993 in a crackdown. His family filed a petition after waiting for three months in the hope that they would be able to secure his release without having to

See Yusuf Wahloo’s (91/8) case above for a similar error by the High Court, transposing the petitioner’s name for that of the detainee. While errors are always a possibility, despite all care, their frequency and the fact that they were not caught, is a frightening comment on the state of the judicial system.
move the Court. In April 1994 the state government filed a reply – unsupported by an affidavit – stating that Aslam Mir has not been received/arrested by any JIC of the State so far. At this point of time Aslam Mir was in custody, detained under the PSA, as well as in a TADA case. Based on this statement, the Court was inclined to dismiss the petition as infructuous but since the counsel for the petitioner was not available on that day it asked the government counsel to file an affidavit in support of the reply.\textsuperscript{112} The BSF also denied his arrest, nearly two years after the petition was filed. In February 1996 the Court ordered an inquiry into Aslam Mir’s disappearance.

Before the inquiry, the state government admitted that Aslam Mir had been received in MJIC Kot Balwal on 13.10.1993 and that he was released on bail on 24 December 1994. In its final order in February 2003, the High Court took no notice of the fact that in 1994, when Aslam Mir was still in jail, the state government had filed objections stating that he was not in their custody, supported by the affidavit of the Chief Secretary of the State. On the contrary, the Court dismissed the petition for want of prosecution.

**Qazi Khurshid Ahmad Malkar (94/4)** was arrested in June 1994. His family filed a petition soon after his arrest, at a stage when they feared that the security forces would disappear him. They lost interest after they felt reassured about Khurshid’s safety. After waiting for more than a year for the respondents to file their replies, in August 1995 the Court ordered that Khurshid should be produced before it. Instead, in September 1995 the counsel for the state government orally informed the Court that Khurshid had already been released.\textsuperscript{113} Having said this, they sought further time to file a reply. The reply, however, asserted that no such person had been received/booked by JICs of CIK Srinagar so far. Not satisfied with this reply, the Court directed the respondents to file a more detailed reply, stating whether they had ever arrested Khurshid and, whether he was in custody of any other agency of the State. This order was never complied with though the government counsel told the Court that the reply had been sent for signatures.

\textsuperscript{112} Note that the Court was prepared to dismiss a habeas corpus petition on the basis of a cursory denial of custody, unsupported by an affidavit.

\textsuperscript{113} The statement is recorded in the Court’s order sheet.
In October 1996, the Court ordered an inquiry into Khurshid’s disappearance, on the basis of the denial contained in the reply already filed.\(^{114}\) The inquiry report contained a complete recital of Khurshid’s dates of arrest (under various provisions) and places of detention, between 1994 and 1997. The final order of the High Court, passed in March 2003, noted these facts and, without going into the issue of the false reply filed by the state government in late 1995, dismissed the petition as **infructuous**; saying that as his two year detention period under PSA was over he must have, since been released.

III. Where ‘Guilt’ Was Established

A. Disposed of or Dismissed

The lineage of the writ of habeas corpus is frequently traced to the Magna Carta. In India the writ’s power has mainly been tested in cases of preventive detention. However, in the Sebastian Hongray case the Supreme Court was called upon to exercise its powers under this writ in a case of enforced disappearance.\(^{115}\) It was the first case of this kind before the Supreme Court.\(^{116}\) Despite its severe shortcomings there is no doubting the importance of this judgement. It established the nature of the inquiry to be conducted in a case of enforced disappearance. The Court held that an *ex parte* writ of habeas corpus should not be issued unless the urgency of the situation demanded it or, the issuing of a notice was likely to defeat justice. It held that the normal practice should be to serve a notice upon the respondents in order to elicit their response, and if the allegations in the petition are controverted, the Court must investigate the facts. If on investigation the Court is satisfied that allegations are correct the Court should issue a writ of habeas corpus. Failure on the part of the respondents to comply with the writ

\(^{114}\) For the next five years the Court continued to *await* the inquiry report. In July 2001, the Court’s registry noticed that the Inquiry Judge had written a year prior to that date to say that the inquiry report had been submitted as far back as in January 1997. It took another year and a half for the registry to obtain a copy of the said report.

\(^{115}\) Sebastian Hongray v. Union of India and others; AIR 1984 SC 571

\(^{116}\) This was not because of a lack of cases of enforced disappearance prior to the date of this case.
(i.e. produce the person in their custody) would render them liable to action for contempt of court, or worse.

Nearly a decade later the Nilabati Behara case conclusively settled the issue of grant of compensation as a measure of redress.\textsuperscript{117} After an extensive review of the development of this practice, starting from the Rudal Sah case, the Court declared that the State’s \textit{duty of care} to ensure that the citizen in its custody is not deprived of his right to life, \textit{is strict and admits of no exceptions}. It further held that the Supreme Court and the High Courts have a constitutional obligation to do \textit{complete justice}, which included grant of compensation.\textsuperscript{118} It was not permissible, it said, to relegate those aggrieved by a violation of their fundamental rights to the \textit{normal} civil law remedies.

The Court called such grant, a claim in public law for compensation for contravention of human rights and fundamental freedoms; the protection of which is guaranteed in the Constitution. It declared that such compensation \textit{is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right}.\textsuperscript{119} It held that such compensation is often the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers.

The Court went on to say that any other \textit{view …would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations be an incentive to extinguish life, if for

\begin{itemize}
\item \textsuperscript{117} Nilabati Behara V. State of Orissa; AIR 1993 SC 1960.
\item \textsuperscript{118} Making it clear that the powers of the High Courts were co-extensive with its own, the Court held that \textit{This Court and the High Courts, … have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers}
\item \textsuperscript{119} The Court said that \textit{this principle was justified since the defence of sovereign immunity was not available in cases of fundamental rights violations.}
\end{itemize}
the extreme contravention (violation of the right to life) the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under the private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law. The Court also referred to Article 9(5) of the International Covenant on Civil and Political Rights, 1966, to emphasise the correctness of its stand in this regard. The position laid down in the Nilabati Behara case has been consistently upheld since it was laid down, including in the internationally famous decision in the DK Basu case.

Notwithstanding these binding precedents, a Single Judge of the J&K High Court felt the need for clarification of the powers and duties of the High Court in such cases, and referred four questions to a Division Bench of the Court. The Division Bench declared the following: the Court has the power to appoint an officer to hold an inquiry into the disputed allegation of arrest, and to report back his/ her findings; it has a solemn duty to act promptly and to order an inquiry into the allegation of arrest; the Court should ensure that the inquiries are completed quickly; and, it was required to give careful consideration to the findings in the inquiry report before coming to an independent conclusion, and then,

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120 Article 9(5) says Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
121 DK Basu V. State of West Bengal; AIR 1997 SC 610.
122 The reference was made by a Single Judge hearing the habeas corpus petition filed on behalf of Basharat Shah (91/12) on 2 September 1992 and, the decision of the Division Bench on it was passed sometime in 1996-97. Four questions were referred to the Division Bench: 1) What is the scope of a habeas corpus petition and, what are the powers of the High Court with respect to appointment of a commissioner/ inquiry officer for ascertaining the facts of the case? 2) What is the value of documentary evidence which comes forth from such commissioners? 3. In case of a divergence in documentary evidence which set of documents should be relied upon? 4. In case of non-location of the corpus what relief can be granted by the HC?
must act promptly and decisively against those found guilty.\textsuperscript{123} While hearing such cases, it declared, it was essential for the Court to remember that its primary \textit{purpose} in a habeas corpus petition is to secure the liberty of the individual or, to ascertain that he/she had been arrested/detained in accordance with law. Thereafter, it is also the Court’s \textit{purpose} to ensure that the citizen who had approached the court got appropriate, proper and effective relief.\textsuperscript{124}

The Division Bench also held that the Court is \textit{not only the custodian of the rights and interests of the citizens but has its constitutional obligation to safeguard and protect them}. …\textit{whenever it is called upon to perform such a duty, the duty should not only be performed in fullest measure, citizen approaching the court must be assured as well that appropriate, proper and effective relief shall be granted to him. Not only that, where action against an erring state functionary is called for, and where punishment deserves to be meted out to a guilty culprit, this court does not hesitate in taking recourse even to extreme alternatives and comes down very heavily on those who violate and flouts (sic) the rights of citizens.}

Needless to say, the J&K High Court did not follow the law in even one of the cases examined by us. The meaninglessness of the proceedings already stands exposed above. To bring the preposterousness into sharper focus, we shall examine its orders in cases where the inquiries ordered by it returned a finding of guilt against the security forces.

Inquiries were ordered in 62 of the 85 petitions. In 36 of the 62 cases the inquiry report returned a finding against one or more unit of the armed forces, or the anti-terrorist wing of the J&K police, variously called the STF or the SOG.\textsuperscript{125} Eight of these cases were pending before

\textsuperscript{123} The normal course is to order the registration of a criminal case against such persons but it was not barred from acting against such persons on its own.

\textsuperscript{124} This statement must be presumed to echo the decision of the Supreme Court in the Nilabati Behara case, where it was held that the compensation ought to be awarded wherever there was a positive finding against an accused person or force.

\textsuperscript{125} STF = Special Task Force; SOG = Special Operations Group. Like the notorious Redline buses in Delhi, whose name was changed to Blueline in order to avoid the inevitable association of their gory record with the colour of blood, the STF was changed into the SOG after Farooq Abdullah became Chief Minister in 1996.
the High Court in April 2004. The orders passed by the Court in the remaining 28 petitions are illustrative of the malaise.

In as many as 16 of these cases the High Court disposed of the petition with a direction to the police to register an FIR or, to complete investigation in the FIR already filed. Four cases were dismissed for "non-prosecution". Three cases were dismissed/disposed of, without any direction because the inquiry report had failed to identify the force responsible for the disappearance, though the factum of enforced disappearance was affirmed. Two cases were dismissed/disposed of – again without any direction – because in these cases the central government had refused to grant sanction to prosecute the accused officers. One case was disposed of with a direction to hold a second inquiry. In three cases the court ordered compensation to be paid to the next of kin of the disappeared person.

The families of many of the disappeared are on record to say that they did not even ask for compensation. Had they wanted compensation, they would have applied to the state government directly. Notwithstanding this, the fact of the matter is that the High Court had the power to award compensation wherever it found that the right to life had been violated. In fact, the grant of compensation was mandatory in cases where the violation of a fundamental right had been established. Yet, the Court ordered compensation in only three cases. On the other hand, it specifically declined to consider grant of compensation in six cases.

126 FIR = First Information Report; literally, the first report of a cognizable (serious; rough equivalent of American 'felony') offence, lodged with the police under section 154 of the Indian Penal Code 1908.

127 In all three cases the failure to identify was a failure of justice since there was ample evidence on record to establish the identity of the force/unit involved in the disappearance.

128 These two cases are discussed in the next chapter.

129 In this case the Court accepted the objections of the security forces and, set aside the inquiry report.

130 Many families told us that they filed the petition before the High Court with an expectation of insaaf.

131 The state government has a scheme to give ex-gratia compensation to victims of terrorist violence, which includes cash payment of rupees one lakh and a government job to a member of the family of the deceased/disappeared person.
Eighteen year old school boy Mohammad Maqbool Bhat (90/3) was arrested by the CRPF along with a school friend, Naseer Dar, from a bus stop. His family and friends saw him in CRPF custody, when he was brought to the house for a search.\(^{132}\) Naseer was released after 16 days of unacknowledged detention but Maqbool Bhat was disappeared. The family lodged a report with the police. Their investigation confirmed that the CRPF had arrested him, as alleged. However, no other action was taken by the police. Naseer testified to Maqbool’s arrest before the inquiry ordered by the High Court, which held the CRPF responsible for his disappearance.\(^{133}\) On the basis of this finding, in October 1998 the High Court awarded Maqbool’s father rupees fifty thousand as compensation; without specifying the party liable to pay it.

Both the State government and the CRPF appealed against this order, contesting their liability to pay the compensation. The High Court allowed this bickering to go on for four years. The state government argued that it was not liable to pay any part of the compensation since Maqbool had been arrested and, disappeared by the CRPF. It asserted that the CRPF force is working in the State in order to aid and assist the civil administration in a legal manner. The CRPF personnel are not allowed and cannot be allowed to take law in their hands and commit illegal acts and kill innocent public and in case they do so, they are themselves responsible or their their (sic) employer which is Central Government, who can alone be held responsible vicariously for their acts … The CRPF organization is the central sponsored force in the J&K State and perform their duties at the dictation of the Union Ministry. … In case the responsibility for payment of compensation is fixed upon the State government that will become licence for the CRPF for doing illegal acts as they would be answerable before none and State government will have to pay for the CRPF personnel’s illegal acts and whole State will suffer. Ultimately, the High Court held the state government liable to pay the compensation ordered.\(^{134}\)

132 Nothing incriminating was recovered.
133 Since the CRPF objected to the finding of the first inquiry, the High Court ordered a second inquiry, which also held the CRPF guilty of disappearing Maqbool Bhat.
134 Maqbool’s father was persuaded by his lawyer to accept this compensation on the assurance that they would appeal against the order, challenging the Court’s failure to order action against the guilty parties. However, he died in July 2003, before this could be done.
In Manzoor Zargar’s (90/6) case the inquiry report holding the BSF guilty of disappearing him was primarily based upon the testimony of a co-detainee. The inquiry report states that this witness had withstood extensive cross-examination by LC (Learned Counsel) for the respondents. After receipt of the inquiry report, in May 2000 the High Court recorded that it is agreed on both sides that Manzoor Ahmad Zargar is dead. Only relief prayed for is compensation. The Zargar family lawyer completed his arguments on 7 November 2000. For the next one year the case was repeatedly adjourned for hearing the arguments on behalf of the respondents. Ignoring this fact, on 30 October 2001 a different judge expressed displeasure at the absence of Manzoor’s counsel, saying that Manzoor’s family appears not interested and, disposed of the writ petition saying that question of compensation is …left open depending on … if anyone comes forth to pursue the matter thereto as also the facts and circumstances which may emerge on record and on investigation of the case.

In Malik Nissar Ahmad Shah’s (91/4) case, despite holding that the inquiry established the prima facie … involvement of 53 Bn in his arrest and subsequent disappearance, the Court declined the request for grant of compensation on the ground that the matter involves proof on evidence which can be taken by filing petition in proper forum …seek(ing) compensation.

In Syed Shariefuddin’s (91/6) case the inquiry report holding 141 Bn BSF responsible was based upon the testimony of a co-detainee. Though the High Court accepted the inquiry report findings it disposed of the case with a direction to the police to register an FIR.

In Basharat Shah’s (91/12) case the respondents (including the state government) argued that compensation was not payable to his aged parents since their prayer in the habeas corpus petition was only for the production of Basharat before the Court. They also, argued that the grant of compensation was permissible only once the guilt of the accused had been established before the criminal court.

135 Ten years after his disappearance all other quests seemed futile and, his family was exhausted. Thus, they agreed to limit their prayers to the grant of compensation.
136 The order was passed in the absence of the petitioner or her counsel.
137 The case is discussed more fully below.
The role of the High Court in Sajad Bazaz’s case (92/2) and Nazir Gojar’s case (93/4) has been discussed in detail in the next chapter. The only point to be made here is that the refusal of the central government to grant sanction to prosecute the accused officers does not constitute an impediment to grant of compensation. Yet the High Court failed to consider the issue while dismissing these two cases.

In Riyaz Ahmad Khan’s case (92/5), apart from eyewitness statements, there was contemporary police record to establish that he had been arrested and disappeared by the 5 Guards. The High Court accepted the inquiry report without reservations but disposed of the case with a direction to the police to register a case, saying that *In the inquiry report, the guilt has not been fixed on any individual/ officer of the unit.*

Bashir Ahmad Lone’s (94/2) case typifies how the Court processes and the respondents together sap the stamina of the families, forcing them to give up on their quest for justice. The subsequent remarks of the Court, critical of the failure of the petitioner to pursue the case, appear in poor taste. In this case, there was no doubt at all that Bashir had been arrested by an army patrol. The controversy – raised by the army (4 Grenadiers) after the inquiry report had been sent to the High Court – centred around the identity of the unit to which his abductors belonged. The 4 Grenadiers produced some document that purported to show that it was posted outside Kashmir at the time of Bashir’s arrest. Thus, at worst, the witnesses before the inquiry were mistaken about the identity of the unit that arrested Bashir. Without questioning the failure of the 4 Grenadiers to state this fact in their reply several years earlier, the Court merely accepted the objection and ordered a fresh inquiry. Four years later, based upon a report from the judge conducting the second inquiry that the inquiry proceedings were being held up because Bashir’s family had not been appearing before him, the Court disposed of the

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138 This would not have been a necessity even in civil proceedings, leave alone in writ proceedings.

139 The point was not taken in the reply filed by the 4 Grenadiers before the inquiry was ordered. The unit also kept away from the inquiry ordered by the High Court, despite being summoned repeatedly.

140 See the discussion on this issue in the next chapter.
petition as, *it seemed that the petitioner was not interested in pursuing the matter any more.* Thus, notwithstanding their culpable failure to cooperate with the judicial process, the army was able to ensure justice for themselves. However, there was none for Bashir and his family.

The police registered a case regarding *Riyaz Ahmad Gilkar’s (95/4)* arrest immediately after the event but did not carry out any investigation in it. The Inquiry Judge relied upon the police report of the incident to confirm that a crackdown had taken place, and that Riyaz was one of the four people arrested by the army (2 RR) on that date. Ten years after the incident, the Court disposed of the petition by merely ordering the registration of an FIR, with not even a word of censure to the police for not having investigated the report lodged immediately after the incident.

In addition to exposing the High Court’s lack of decisiveness, the case of *Ghulam Hassan Baba (95/5)* also illustrates the routine negligence of all proceedings. Over eight years after the petition was filed, in August 2003, the High Court disposed of the petition, holding that *As Inquiry Officer has prima facie made out the involvement of an officer of the forces and regular investigation would be required to ascertain facts …it is accordingly directed that FIR be filed in the Police Station Aishmuqam. The investigating officer will … complete the investigation without delay.* Perhaps the Court was intimidated by the ‘objections’ to the inquiry report filed by the army, which argued that *(i)t has become a compulsion by the people instigated by terrorist (sic) to take up cases against the security forces.*

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141 Bashir’s poverty stricken family told us that they had lost all hopes of justice and, their ability to pursue the case was completely exhausted.
142 This order was passed in the absence of representation on behalf of Riyaz Gilkar.
143 For several years the Court registry kept sending reminders to the DJ, Budgam to complete the inquiry, though it was pending before the DJ, Anantnag. Bettering the High Court, when the inquiry was *nearly concluded*, the incumbent Inquiry Judge discovered that his predecessor had failed to issue notice to the ‘9 Para’, the accused army unit. Thus, the inquiry was commenced *de novo* three years after it was ordered.
144 They argued that since the witnesses were all related to Ghulam Hassan Baba their testimony was biased and, could not be relied upon. This was also argued by the army in the Sebastian Hongray case.
The case of 22 year old Fayaz Ahmad Bhat (95/6) is rare for the high level endorsement of the fact of his arrest that it received. Perhaps for this reason, the army filed an affidavit accepting his arrest. The reply claimed, on the one hand, that 250 feet of safety fuze (sic) and six sleeping bags, … a handgrenade and, … Amn AK – 21 rounds were recovered from him. Simultaneously, it claimed that upon interrogation Fayaz was found innocent and released as white on the next day, in the presence of witnesses. Since the army’s witnesses denied that Fayaz had been released in their presence, asserting that their signatures on the Release Certificate produced by the Army had been obtained by fraud, the inquiry report held the 1/4 Gorkha Rifles responsible for his disappearance.

Back before the High Court, the 1/4 Gorkha Rifles filed objections asking for a fresh inquiry on the ground that the Inquiry Judge had failed to examine a police constable, Qasim Din, Belt No. 363-T, who was also witness to Fayaz’s release. It was also alleged that they were not given sufficient opportunity to produce witnesses. Having succeeded in persuading the Court to order a fresh inquiry the army did not participate in the proceedings, despite numerous opportunities offered to them. The second inquiry affirmed the finding of the first inquiry. Eight years and two inquiries later the High Court disposed of the case, directing the police to register an FIR and to investigate the matter of Fayaz's disappearance.

In Mushtaq Chacha's (95/8) case the counsel for the state government, and the BSF, argued that they are not liable to pay any compensation for violation of fundamental rights guaranteed under article 21 and 22 of the Constitution. The remedy … is under General Law in tort for damages in criminal law. The writ jurisdiction of the court cannot be a substitute forum.

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145 At his family’s behest the DM, Anantnag contacted Brigadier Bhupinder Singh, head of the 33 Mountain Brigade, who assured him that Fayaz would be released after following the due process of law. Failing to secure Fayaz’s release, the DM reported his conversation with Brigadier Singh to his superiors, and to the Advisor to the Governor, requesting their intervention.

146 It was argued that though it was not able to provide the name of the constable to the Inquiry Judge it was his duty to trace out the constable and record his testimony, since he had been informed of his existence.

147 The inquiry report records that the army was allowed four adjournments for this purpose.

148 As per the second inquiry report.

149 The case is discussed more fully in chapter 5 below.
The Court’s order in Sheikh Gowhar Ayub’s (95/10), case was confusing, to say the least. Despite several opportunities, the army did not file objections to the inquiry report, which had positively identified 7 Jat as the unit responsible for disappearing Gauhar Ayub. Finally, the Court directed the CJM, Srinagar to monitor the investigation of the case and see to it that the report of the enquiry conducted by the enquiry officer is lodged with the concerned police station. The Court also granted the army the option to file objections to inquiry report before the CJM. It is not clear whether the Court ordered a fresh inquiry (and, if so, for what reason) or, whether it had directed the CJM to monitor the police investigation into the case. Gauhar Ayub’s family told us that this order was uniformly interpreted by the police (and the family’s lawyer) to mean that a fresh inquiry had been ordered.

The case of Ghulam Mohammad Ahangar (96/4) illustrates the injustice of disposing of a habeas corpus petition in the absence of the petitioner, or her counsel. By the time the inquiry was ordered by the High Court, Ghulam Ahangar’s wife had remarried.150 For this reason the Inquiry Judge faced some difficulty in serving notice of the inquiry upon her, which he communicated to the High Court. Ultimately though, the inquiry was concluded, the report holding that Ghulam Ahangar had been disappeared from the custody of the 30 Bn BSF. (Not only did we find the report in the Court’s file of the case, we also read a file noting by the registry stating that the inquiry report had been received and, tagged with the file of the case.) However, ignoring the report, and the file noting, the High Court allowed itself to be misled by an erroneous submission by the counsel for the respondents (the security forces) that the inquiry proceeding could not be completed on account of the petitioner’s failure to assist it and, disposed of the case with the remark that LC for the respondent submitted at the bar that … the petitioner has not been produced before the Ld. Sessions Judge. Obviously it could not be possible for the Ld. Sessions Judge to make any head-way in the inquiry. So much so, none appears for the petitioner, has also opted for an oblivion (sic).”151

150 In this case, a good part of the delay was on the petitioner’s account.
151 In a show of fairness, the order also stated that in case the Ld. Sessions Judge concludes the inquiry and the inquiry report calls for any further action, in such eventuality it shall be placed before the court and dismissal of the petition shall not work as an impediment for further proceedings. Needless to add, the remark was also consigned to the oblivion of the case.
The cases of Javaid Ahmad Bhat (96/5) and Tariq Ahmad Rather (96/6) illustrate the capriciousness of the justice processes. Both boys were disappeared in the same incident and, the inquiry report was common to both. In detailed objections to the inquiry report, which held against them, the army contended that the testimony of Altaf Hafiz, co-detainee, and hence, eyewitness to their arrest, should have been rejected as he was an interested party. The High Court rejected these objections. Tariq’s petition was disposed of with a direction to the police to register a case against the accused persons and, investigate the matter within three months. No further action was taken pursuant to this order. In Javaid’s case the Court directed the Additional Chief Secretary (Home) to get a case registered and, investigated by the concerned police station. Ironically, though Javed Bhat’s case was disposed of in the absence of a representative on his behalf, the FIR resulted in a charge sheet being filed before the competent Magistrate who, in accordance with section 549 of the State’s Penal Code, and section 125 of the Army Act, offered the CO of the accused officer the option to choose the forum for trying the accused – whether via a court martial or by the ordinary criminal court. According to Javaid’s father, no reply had been received from the army till July 2003.152

In Shabir Hussain Bhat’s (96/7) case the High Court had ordered the registration of an FIR while the petition was pending, and asked the CJM, Srinagar to monitor the investigations. The petition was disposed of on the basis of a submission by the police that the investigation had been completed and the charge sheet against the accused was ready for filing before the court. On this basis, the Court declared that there was nothing further for it to do in the petition.153

In Mohammad Akbar Rather's (97/3) case, the inquiry report held that he was arrested by the 8 Bn Raj Rifles Camp Palhalan … headed by Major S.S. Sinah (sic) … code name … (Liakat Ali Khan). The wit-

152 The charge sheet covered the disappearance of both Javed and Tariq.
153 The order notes that counsel for petitioner stated that he wants to file legal proceedings for recovery of compensation against UOI and the state government. The Court, therefore disposed of the petition with the remark that the petitioner is left to pursue the said remedy (for compensation) if available to him under law.
nesses ... have ... stated that the (sic) saw ... Akbar Rather in the Camp ... in the evening on 8th November 1996 ... his whereabouts are not known since then. Despite this clear finding, the High Court termed Akbar Rather’s disappearance a disputed question, and disposed it of with the standard direction to the police to register a case and investigate it.\textsuperscript{154}

The inquiry report in Abdul Khaliq Pir’s (97/5) case relied upon eyewitness testimony and a police report to hold that he was arrested by the 50 Bn CRPF. The High Court took note of the report but disposed of the case with a direction to the police to expedite the investigation in the case already registered. The Court rejected the plea for grant of compensation holding that there is no evidence ... to arrive at a decision for payment of compensation ... the petitioner is at liberty to move before the appropriate court for that purpose.\textsuperscript{155}

The 20 Grenadiers participated fully in the inquiry into Mohammad Shahban Khan’s (97/6) disappearance. The Inquiry Judge disbelieved their case and, based on the evidence led before him, held that he had been arrested by the 20 Grenadiers and, had not been heard of since. On receipt of the inquiry report, the High Court ordered service of notice upon the respondents. According to the case record, the case was listed before the Court for the first time, after service of the notices upon the respondents, on 5 February 2002. On that date, the counsel for the petitioner was absent, though he had been present on earlier dates. They Court did not bother to even ask the counsel for the respondents whether they would be filing objections to the inquiry report. Instead, disparaging the absence of the petitioner’s counsel, the Court dismissed the case with the remark that (i)t seems that the petitioner is not interested to pursue this matter. Disproving the observation, Shahban Khan’s family filed a fresh petition, seeking action and compensation.\textsuperscript{156}

\textsuperscript{154} The order was passed in the absence of representation on behalf of the petitioner.

\textsuperscript{155} The order was passed in the absence of representation on behalf of the petitioner.

\textsuperscript{156} This petition was still pending when we last heard from the family.
Nisar Ahmad Wani (98/1) was arrested by a combined force of the 20 Grenadiers and the 35 RR, in the course of a crackdown in his locality.\textsuperscript{157} None of the respondents participated in the inquiry proceedings, despite repeated service of notices upon them. On the basis of eyewitness testimony the inquiry report held that Nisar Wani was \textit{picked up by the RR on 30 March 1997 during a crackdown in Batamaloo.}\textsuperscript{158} Though the inquiry report held the RR responsible, it was the 20 Grenadiers that filed \textit{objections} to it. The objections argued that \textit{as Batamaloo is located on the National Highway, where a plethora of security forces operate, the identity of the forces involved cannot be ascertained on the basis of these statements.} (i.e. The witness testimony before the Inquiry Judge.) The High Court sidestepped a decision on whether or not to accept the objections filed by the 20 Grenadiers, holding that the facts of the case needed to be verified \textit{in the course of investigation}. Further, it remarked that the \textit{objections notwithstanding, the disappearance of Nissar Ahmed Wani is a matter of concern. The petitioner must know how and in what circumstances the boy has disappeared…. Who authorizes such search or crackdown by the Army … because ordinarily the Army does not on its own conduct such searches and such operations as the law exists (sic). These are all questions which have to be investigated by the police after registering a regular case.}

The Court declined to consider grant of compensation, saying that \textit{compensation has been awarded in only those cases where police excesses were proved either by custodial death or otherwise. (This) .. is a case where the facts are disputed and required to be investigated after registering a case. So, no compensation … when the very basis of the fact finding enquiry is challenged.} The Court directed the SSP, Srinagar to register a case and get it investigated by a senior officer within six months. However, nearly four years later the police had only managed

\begin{footnotesize}
\begin{enumerate}
\item[157] The local police, including the SHO of PS Batamaloo, were present. However, in its reply the state government merely denied all knowledge of the incident.
\item[158] The confusion about the identity of the accused unit arose because the 20 Grenadiers were based in the camp that is commonly known as the ‘Bemina Boat Colony RR Camp’. The 20 Grenadiers was one of several units stationed in this camp, at that time.
\end{enumerate}
\end{footnotesize}
to confirm that Nisar Wani was arrested during a crackdown. The 20 Grenadiers remained completely uncooperative, despite the intervention of the IGP Kashmir.

B. Still Pending Disposal

There were 14 cases still pending before the High Court at the end of our last field visit. Of these, in eight cases an inquiry had returned a finding holding the security forces responsible for the enforced disappearance. Three of these, the cases of Waheed Ahangar (90/4), Mohammad Afzal Shah (97/12) and Ashiq Hussain Malik (97/9), have been discussed in other sections/chapters. The remaining cases are briefly discussed below.

All the three persons to whose houses Javed Iqbal Kemu (97/4), resident of district Doda, was taken after his arrest from Srinagar, deposed before the inquiry ordered by the High Court.159 All of them confirmed that Javed Kemu accompanied the raiding party, in its custody. Thus, though the 20 Grenadiers denied his arrest the inquiry report dated September 2001 held that Javed ... has disappeared in the custody of security forces and most probably in the custody of respondent No.5 Unit 20 R.R, Bemina, Srinagar.160 This conclusion ... has been arrived at in view of the evidence on record. The time between then and April 2004 was consumed in getting the respondents to file their objections to the inquiry report.161

Scores of villagers accompanied Bashir Ahmad Bhat (97/7), resident of Kuligam, Lolab, district Kupwara, when he was arrested from his house and taken to the army camp at Kuligam (Panzgam). Before the inquiry, the CO of the 12 MLI (Maratha Light Infantry) argued that there was no question of arresting Bashir as he was a surrendered militant, working for the army as a source.162 The Inquiry Judge preferred to accept the

159 The information in this case is based solely on the Court record.
160 The mention of 20 RR was probably a typographical error arising from the confusion mentioned in FN 159 above.
161 By that date the state government had still not filed its objections.
162 He claimed that there was documentary proof of these assertions but since he had been shifted from Panzgam in August 1999, he no longer had access to the records. The Inquiry Judge issued several notices to the army authorities to produce the relevant records but they did not do so.
testimony of the village Chowkidar, and of the village Headman, that Bashir had been arrested by the 12 MLI, and had disappeared thereafter; which testimony, he stated in his report, was given despite threats and intimidation by the army. Immediately after reading the inquiry report, in October 2003, the Court ordered the SSP, Kupwara to file a status report about the investigation in the FIR regarding Bashir's arrest. 163 The case was pending in April 2004, waiting for the respondents to file objections to the inquiry report.

Ghulam Qadir Pandith's (98/4) family learnt of his arrest the day after it had taken place. Two days after his arrest Ghulam Qadir was brought home for a search. 164 Nothing was found during the search. Qadir's arrest and torture by the 13 Garhwal was confirmed by the SHO of the local police station in a report to his superiors. 165

In its reply to the petition filed on behalf of Ghulam Qadir the army claimed that two police constables from PS Bandipora were witness to his escape from their custody during an arms recovery trip. The Inquiry Judge went to some pains to ascertain the truth. Despite the army's reluctance to summon these two constables he insisted, and summoned them as court witnesses. One of them, Abdul Majid, testified before the inquiry and categorically stated that neither he nor his colleague were witness to Ghulam Qadir’s alleged escape. He stated that they were made to wait about two kilometres from the search area, while the soldiers went into the forest with a civilian. After some time they heard the sound of firing. Shortly thereafter the soldiers returned without the civilian, claiming that he had escaped. The inquiry report stated that Ghulam Qadir had disappeared from army custody. 166

163 The report was not filed till April 2004. However, in July 1998 the SSP, Kupwara had informed the Additional DGP, CID that the 12 MLI had denied Bashir's arrest and, therefore the case regarding his disappearance had been closed as untraced.
164 He was in a bad shape, unable to walk by himself.
165 Based on police investigations, it stated that Ghulam Qadir had been killed in custody.
166 The Report was sent to the High Court in July 2003. The case was still pending before the High Court in February 2004 as the army had not filed their objections to it.
Manzoor Ahmad Ganai (98/7) was arrested by the 34 Bn BSF on 5 April 1995. A year later, in a report to the SSP of Srinagar, the local police reported they had found an independent eyewitness who confirmed Manzoor’s arrest but could not identify the force/unit responsible. In response to the petition filed on his behalf, the Commandant of 34 Bn BSF denied Manzoor’s arrest. Based upon the eye witness testimony and other evidence the inquiry report dated April 2002 held that Manzoor had been arrested by the 34 Bn BSF and has not been seen since.

The BSF filed detailed objections to the inquiry report. Annexure ‘G’ to the objections was a Confidential list of 24 names of persons handed over or released by the 34 Bn BSF during the first week of April 1995, when Manzoor was arrested. The BSF claimed that the list was a complete record of all arrests by them and, as such, the witnesses who had deposed against them in the inquiry were lying. As further proof of their ‘clean’ record, the BSF also annexed copies of Clearance Certificates issued to the 34 battalion by the police, before it left the valley. Lastly, the BSF levelled accusations against the Inquiry Judge, calling him biased, prejudiced and ..(actuated by) .. writional (sic) considerations.

Based on the findings in the inquiry report, in February 2003 Manzoor’s family requested the Court to grant them interim compensation. The Court asked the respondents for their stand on this request but nothing happened thereafter. In November 2003 the Court again asked the respondents to declare their stand on the issue of compensation. In January 2004 Manzoor’s family filed a formal request, by way of an application, for grant of compensation. The extremely straitened finan-

167 Manzoor, a bus conductor was pulled out of his bus at one of the busiest crossings in Srinagar, bundled into a BSF vehicle and driven away. The driver of the bus chased the BSF vehicle for some distance but then lost track of it.
168 The family’s complaint was registered DD No. 4, PS Rajbagh, dated 6 April 1995. Later, on the orders of the High Court, the police registered an FIR against the 34 Bn BSF.
169 See the case of Abdul Rashid Wani (97/8) for similar certificates produced by the Army.
170 The High Court took umbrage at these remarks, calling them contumacious. After an initial show of truculence, the BSF withdrew these remarks and submitted an unconditional apology.
cial status of the family was pleaded as an additional ground. The case was still pending in March 2004.

**Mushtaq Ahmad Dar (99/9)** was arrested from his house on 13 April 1997 by the 20 Grenadiers. Initially, the officers at the 20 Grenadiers camp admitted that Mushtaq Dar was in their custody and assured that he would be released soon. However, after some time the Army started denying his detention. In response to the petition filed on his behalf the 20 Grenadiers denied that they had carried out any operation as alleged, and denied that Mushtaq was arrested or tortured. The State government denied his arrest and stated that he had not been received in any JIC manned by the CID of the State. The 20 Grenadiers participated intermittently in the inquiry proceedings. Based on the eyewitness testimony produced on behalf of Mushtaq Dar, the Inquiry Judge held that he had been lifted by the 20 Grenadiers. The petition was still pending in December 2003.

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171 He was beaten in the presence of his family and, interrogated in one of the rooms of the house while the family members were locked in another room. Thereafter, he was taken away.

172 In a completely unnecessary foray, the inquiry report also declared that the names of the personnel responsible could not be ascertained.

173 In objections to the inquiry report the 20 Grenadiers reiterated their reply to the petition.
The army asserted that Home Department of J&K notification No. 90 dated 2.4.1990, issued in exercise of powers under section 39 of the J&K CrPC, read with provisions of "Public Act, Samvat, 1983" (1927 AD), vested a BSF officer, not below the rank of sub inspector and, a commissioned officer or a non commissioned officer of the army in command of his soldiers, with the powers of a police officer, while aiding the civil authorities in the maintenance of law and order and internal security. The notification stated that these powers shall be exercisable in the area of jurisdiction of the competent authority who has called upon the services of Border Security Force or the Army for aid of civil power. Interestingly, despite searching high and low, we were not able to find any law known as the "Public Act, Samvat, 1983", on the statute book of the State of Jammu and Kashmir.

Section 7 of the J&K AFSPA stipulates that 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 the exercise of the powers conferred by this Act. However, it is universally interpreted to exclude petitions for a writ of habeas corpus from its purview.

I. Where ‘Guilt’ Was Not Established

A. Inquiry Verdict of 'Not Guilty'

There are five cases in this category, of which the cases of Khizir Bhat (95/2) and Alam Sher (95/9) have been discussed above. The remaining cases are discussed below.

In response to the petition filed on behalf of 25 year old Abdul Rouf Shah (90/2), a patwari (Land Records Officer), and his elder brother, a secondary school teacher, the army asserted that its officers and soldiers were protected by provisions of both, the J&K CrPC and the J&K AFSPA. The Court was asked to appreciate that under the AFSPA the Army enjoyed the power of pre-emptive arrest. Invoking section 7 of the J&K AFSPA, the army claimed that the High Court did not have any power or jurisdiction to entertain even a habeas corpus petition against it, without ascertaining whether Rouf’s family had obtained the government’s permission to institute it. It demanded that in case Rouf’s family was not able to show that they had obtained the prior sanction of the central government before filing the habeas corpus petition on

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his behalf, it should be dismissed: being against the spirit of the ibid section of the said (Act).\textsuperscript{176}

While admitting Rouf's arrest the reply claimed he was released two days after his arrest as he had promised to help the army get information about anti national elements. The reply admitted that his brother was kept as security for Rouf's return but when it became clear that he had fled, his brother was released. The inquiry report, dated November 1992, makes clear the discomfiture of the inquiry officer.\textsuperscript{177} Despite considerable material on record, establishing gross illegalities by the army and rendering their story of release highly suspect, the inquiry officer felt compelled to couch his conclusion in ambiguity.\textsuperscript{178} Without stating so, his report conveyed the impression that Rouf's family accepts that he was released by the army.\textsuperscript{179}

Even while denying complicity in his disappearance, the army stated that it had ordered a Court of Inquiry (COI) into his disappearance. The High Court waited for over eight years for the outcome of the COI before suddenly dismissing the petition, in August 2001, on the ground that the inquiry report had not found the army responsible for his disappearance.\textsuperscript{180}

\textbf{Latief Khan (91/1)} was an ex-serviceman. He had joined the army at the age of 16, retiring after serving for more than 20 years. He was arrested from his house on 14 July 1990 by men from the 46 Bn CRPF, led by Assistant Commandant, Pandey and, the local police led by the DSP, Uri, SM Sahai. Latief's cousin, Bashir Khan, and an 80 old employee Abdul Samad Saraf, were also arrested along with him. Four days later

\textsuperscript{176} The reply ended by submitting that Rouf's father had lodged the petition to malign and defame the defence forces in order to conceal true facts about his son having gone underground or crossed over to Pakistan.

\textsuperscript{177} This inquiry was held by the DM, Kupwara.

\textsuperscript{178} Among other facts, he ignored the implication of an anonymous letter, received about a year after Rouf's disappearance, stating that Rouf's body had been thrown into the Jhelum by the police. The DM notes in his report that he forwarded the letter to the SP, Kupwara for necessary action.

\textsuperscript{179} What the family had said was that the Army had told them about five days after his arrest that Rouf had escaped.

\textsuperscript{180} The order was passed in absence of representation on behalf of Rouf Shah.
the body of Bashir was washed up along the banks of the Jhelum.\footnote{According to Umer Khan, Latief’s brother, in those days about 10 to 15 bodies used to float down the river every day.} Abdul Saraf was released after 17 days.\footnote{After his release Abdul Saraf narrated that Bashir Khan had died in his arms as a result of brutal torture of. Latief was kept separate but Abdul Samad heard his voice.} Latief’s family chased every rumour about his whereabouts. On many occasions, they were issued interview slips by the police and, other state government officials, allowing a meeting with Latief, on the basis of information that he was being held in a particular place. However, he could never be traced.\footnote{See the case of Farooq Bhat (99/4) above for a brief discussion about interview slips.}

The CRPF did not file any response to the petition on behalf of Latief. Two years after the petition was filed the state government filed a reply denying Latief’s arrest and/or custody.\footnote{In the reply, the Additional Chief Secretary, Jammu and Kashmir, Mehmood-ur-Rehman, stated on oath that orders (permission slips) allowing meetings with detainees in custody were passed in routine without ascertaining whether the accused was in custody or not.} According to the Inquiry Judge Latief’s family could not establish their case despite being given number of opportunities to adduce evidence. In view of this, the inquiry report, which took nine years to write, stated that the allegations levelled in the petition are not established. Latief’s family’s version of the inquiry proceedings was completely different. His brother stated that in response to summons he had appeared before the Inquiry Judge in December 2002, on which date the judge was on leave. He was told by the staff that he would be summoned again but never received a summons after that.\footnote{See the cases of Ayub Bhat (94/1) and Abdul Ahad Malik (97/14) for similar discrepancy between the version of the inquiry reports and of the families.} The petition was dismissed by the High Court on the basis of the inquiry report, in the absence of a representative on behalf of Latief.

In Abdul Hamid Dar’s (96/2) case the army (28 RR) admitted his arrest but claimed that after he was found to be white (he) was handed over to the police station Gantmulla, along with several others.\footnote{Hamid Dar was arrested from his village along with several others, who were all released. His father, wife and, a friend from the village saw him in custody about 10 days after his arrest. His face was swollen and almost unrecognisable and, they thought he was dead and, his body had been propped up by the soldiers. However, they were assured he was alive and would recover in a few days.} The consta-
ble who had, allegedly, ‘received’ Hamid’s custody testified before the Inquiry Judge that the army had handed over four persons but, in addition, forcibly took his signature on Hamid Dar’s release certificate. The inquiry report disbelieved the police version. It held that the constable should have immediately complained about the army’s duplicity to his senior officers. In the face of his failure to do so it concluded that Abdul Hamid was handed over by the 28 RR to the PS, Sheeri and that he disappeared thereafter.

The SP, Baramulla filed objections to the inquiry report, citing the testimony before the Inquiry Judge that categorically established that Hamid Dar was seriously injured (or worse) in the custody of the 28 RR, camp Sheeri; and that he was taken back by the army while the other detainees were released. The High Court held that it was a disputed fact whether Hamid Dar was released with proper receipt. Noting that the police investigation in the FIR pertaining to Hamid’s disappearance was still pending it directed the SSP, Baramulla to appoint an investigating officer, not below the rank of a DSP, to complete the inquiry within four months, and file the final report before the CJM of the district. Needless to say, nothing was done.

B. Where Inquiry Was Ordered But Not Held

Of the four cases in this category, two have been discussed above. The other two are briefly discussed below.

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187 Hamid’s co-detainees testified that he was subjected to severe torture in custody, being beaten continuously for three days by a Naik called Dhanpat, till he lost consciousness. They also testified that he was not handed over to the police, as claimed.

188 A surrendered militant, Hamid had spent over two and a half years in jail, as a PSA detainee. Upon his release he cut off all links with militancy and, also refused to work for the army and the ikhwainis. His family believes that he was arrested for this reason. Hamid’s father was subjected to intense pressure to persuade him to withdraw the petition, subjected to frequent illegal arrests and, offered rupees one lakh.

189 Apart from being atrocious English the language that the Court’s orders are couched in is indicative of its mindset.

190 See cases of Nazir Sofi (93/3) and Yusuf Wani (94/3)
Twenty one year old Abdul Hamid Beig (90/5) was arrested by the CRPF, and the BSF, posted at the bunker at Dal Gate, Srinagar on 2 December 1990. Since the family could not discover his whereabouts, 10 days later, a petition was filed on his behalf. Shortly after the petition was filed, Abdul Hamid was released. He was subjected to severe torture during his detention and, has been permanently incapacitated as a result of it. Hamid’s family lost interest in the petition once he was released. However, in February 2004 the High Court was still waiting for the report of inquiry ordered by it into Hamid’s Beig’s disappearance, in August 1993.

Mohammad Amin Bhat (95/7) was arrested in May 1995 during a crackdown on his village. Since his family could not learn of his whereabouts, in August 1995 they filed a petition before the High Court. 191 Meanwhile, his unacknowledged detention was legalised and Amin Bhat was booked in a case under the TADA, and the Arms Act. An order of preventive detention under the PSA was also passed against him. He remained in jail till October 1996 when he was bailed out by the Court, in the TADA case against him.

The State government’s reply, filed in January 1996, when Amin Bhat was still in jail, stated that as per report of all JIC’s of CIK Srinagar no such person stands arrested/ Booked and, prayed that the petition be dismissed. 192 In June 1996 the Court ordered the DJ, Budgam to inquire into Amin Bhat’s disappearance. For five and a half years thereafter the Court continued to await the inquiry report. Numerous orders were passed, directing that reminders to be sent to the Inquiry Judge to expedite the inquiry. 193 Finally, in December 2001 the Inquiry Judge wrote back to say that no inquiry was pending before him. In April 2002, the Court took note of this communication and, in view of the fact that no one had appeared on behalf of the petitioner for several years the disposed of

191 The petition was filed through someone they knew, who worked there. They never went to the Court themselves.
192 The statement was technically correct, as he was never held in a JIC run by the CIK. It illustrates the meaninglessness of such responses.
193 In July 1998, the Court asked for an explanation from its staff when it learnt that reminders had not been sent despite orders to do so.
the case with the remark _nothing remains to be done in this case by this court_.194

C. Where Inquiry Was ‘Closed’

In as many as 13 cases the inquiry proceedings were prematurely terminated. Nine of these cases were withdrawn by the petitioners. The remaining four were closed by the Inquiry Judge. The reasons for withdrawing the case varied from release of the detainee, to grant of ex-gratia relief (and relief under SRO 43) by the state government, to the fact that the detainee had been killed since his release. In as many as five of the nine cases withdrawn by the petitioners, the detainees have disappeared.195 Three of the four persons whose cases were closed by the Inquiry Judge are still living; one has disappeared. Be that as it may, the proceedings in all the cases are consistent in exposing the impossibility of justice in Kashmir.

The cases of Mohammad Yusuf Wahloo (91/8), Mohammad Aslam Mir (93/2), and Qazi Khurshid Ahmad Malkar (94/4) have been discussed above. The remaining cases are discussed below.

Six weeks after notice was issued on Mohammad Ayub Dar’s (91/5) petition the state government was directed to file a reply _within two weeks_. However, the only response was an oral statement, eight months later, that _the detenue is not traceable with the respondents_. The Court directed the state government to file an affidavit in support of this oral statement within two weeks. This direction was never obeyed. In February 1995 the Court ordered an inquiry into Ayub Dar’s disappearance. During the course of the inquiry the state government corrected itself and, informed the inquiry court that Ayub Dar was confined in Tihar jail, Delhi. Needless to add, once Ayub Dar’s family had learnt of his

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194 According to his family, Amin Bhat was forced to resume arms because of extreme harassment by the STF. He was killed in an encounter in January 2002, five years after his release.

195 Two of the remaining four were killed after their release. The remaining two were still alive when we visited their homes.
whereabouts (from other sources) they stopped pursuing the case before the Court. 196

Two weeks after Syed Amjad Ali Byhaqi's (92/3) arrest, during a crackdown by the Garhwal Regiment in November 1992, his family filed a petition in the High Court. Since both the army and the state government denied his arrest/custody the High Court ordered an inquiry into his disappearance. In the meanwhile Byhaqi had been released, after some months of illegal custody. The case remained pending before the High Court for nearly nine years. 197

Eighteen year old Mohammad Ayub Bhat (94/1), a carpet weaver, was arrested on 25 June 1992 by the 10 Garhwal during a crackdown on his locality. Four other boys were also arrested, all of whom were released after three days. 198 The army did not file any response to the petition filed on Ayub’s behalf. The State government too denied his arrest and stated that Ayub was un-traced in the police records of CIK as on 20.x.95. The inquiry ordered by the Court into his disappearance remained pending till October 2003. In the meanwhile, due to their deteriorating financial situation, the family applied to the state government for relief. Once they had received the benefits applied for, they felt unjustified in pursuing the case any further, and informed the Inquiry Judge accordingly. 199 On the basis of their statement, the inquiry proceedings were closed. The High Court also disposed of the petition in terms of the report.

196 Since Ayub Dar was charged with involvement in a high profile case in Delhi, it is impossible that the state government did not become aware of his arrest immediately after the event. Yet it took the state government five years to ascertain his whereabouts. The High Court took another five years after that to dispose of the petition.

197 After our visit to his home, he instructed his lawyer to appear in court on the next date of hearing and withdraw the case.

198 After their release, the boys reported that they were all tortured during interrogation. Ayub was subjected to more severe torture than the others. After sometime, he was separated from them and taken away to an unknown place.

199 The family received ex-gratia compensation of rupees one lakh, plus a job for Ayub's younger brother, under SRO 43.
The 'gesture' of the family in withdrawing the petition is a poignant pointer to the reality of justice in Kashmir. The average Kashmiri has no hope whatsoever of redress, except for the ex-gratia compensation and a job for a family member, which are both contingent upon the DLSC certifying that the disappeared person had no connection with militancy.

Four months after Manzoor Ahmad Wani’s (94/7) arrest his father filed a petition before the High Court. The petition pleaded that though Manzoor was being held in the BSF camp at Rajpora the officials there had denied his custody. It prayed that Manzoor be shifted to the JIC at Sonwar, or to a police lock up, under a proper order of remand from the competent court. A couple of months after the petition was filed the BSF (unofficially) acknowledged Manzoor’s custody and allowed his family to meet him. After this the family stopped pursuing the case before the High Court. Manzoor’s illegal detention was converted into detention under the PSA. He was released from jail after the period of detention was over, in November 1995.

Meanwhile, the State government filed a reply in December 1995. The reply, asserted that no such person stands arrested with the State. The BSF did not file any reply. Since his custody was disputed the Court ordered the CJM, Budgam to conduct an inquiry. The inquiry report, dated July 1996, contained the correct facts regarding Manzoor, based on statements by Manzoor and his father. However, this report never reached the High Court’s case file and the Court continued to send reminders to the CJM, Budgam asking him to expedite the inquiry. Finally, in response to a telephonic request from the Court’s registrar, in March 2003 the CJM sent a copy of the report to the High Court. Without inquiring into the reasons why the report took nearly seven years to

200 He was a militant. He and four others were cornered by the security forces on 3 June 1994. Manzoor and two of the others, surrendered. The two who did not surrender were killed in the ensuing encounter.

201 This is one of the rare cases – albeit an empty one – in which the inquiry was completed within the time allotted to it.

202 Missing inquiry reports are a fairly frequent occurrence. See other cases, including one where a bizarre exchange of letters between the High Court and the office of the Inquiry Judge continued for several years for this reason.
reach it, the Court dismissed the writ petition for non-prosecution, as the petitioner has not come to prosecute this petition.203

By the time he died, 23 year old Ghulam Mustafa Khan (96/1) had become a dreaded militant. He started his career of militancy by challenging soldiers who made lewd remarks and comments about the local women. This resulted in continuous harassment of his family, particularly his mother and sisters. On one occasion Mustafa Khan was threatened and, arrested. He was held at the RR camp nearby. Fearing for his life the family filed a petition in the High Court. At the same time they raised rupees one lakh fifty thousand to pay off his captors. Mustafa was thus released. After his release the family forgot about the petition, which continued in the High Court; carrying on till it was dismissed, a year after Mustafa’s death.204

Farooq Ahmad Shalla’s (96/3) case is connected to the cases of Javaid Ahmad Bhat (96/5) and, Tariq Ahmad Rather (96/6), which have been discussed above. All three were part of a group of 27 boys arrested by the 22 RR, from the Machil Sector, district Kupwara, on 26 June 1995, while trying to cross over into the POK.205 The arrest was reported in the press, and over the television and the radio, stating the numbers arrested. Thereafter, 11 of these boys were disappeared: Farooq, Javed and Tariq among them. The official version of arrest was changed accordingly. The facts about the entire incident were revealed by one Altaf Hafiz, one of the 27 boys who were arrested on that day.206

Meanwhile, on hearing the radio report the families thought that it pertained to their children and rushed to Kupwara. At PS, Kupwara, they were shown a list of 16 boys stated to having been arrested by the army. Altaf’s name was listed as an arrestee but Farooq, Javed and Tariq did

203 Either the Judge barely registered the contents of the report or, equally likely, he did not care.
204 Mustafa Khan was a legend. Over 100,000 people gathered at his village for his funeral ceremonies.
205 The story behind their attempted cross-over reveals some of the sordid underbelly of militancy in Kashmir. Farooq and Javed helped in the family’s carpet weaving business while Tariq worked as a bus conductor.
206 That the security forces are willing to release co-detainees is more proof of the extraordinary levels of impunity that prevail in Kashmir.
not figure in it. Javed and Tariq’s fathers lodged a report regarding them at the police station, saying that their sons were also part of the group of boys who were arrested and, therefore, their names should have been on that list. Farooq’s father filed a report with the PS Soura. 207

The army did not file any reply to the petition on behalf of Farooq. The inquiry in his case was never completed as, disheartened by the pace of the proceedings, his family stopped attending them. Based on a report about the ‘non-cooperation’ of Farooq’s family, the petition was dismissed by the Court for non-prosecution.

Abdul Ahad Malik (97/14) was arrested during the night of 24 May 1997 by 8 Rajputana Rifles from his aunt’s house. Many of the soldiers had cloth masks on their face but Abdul Ahad’s brother recognized some of them, including their leader, Major Malik, since they were from the Camp at Kriri, near their village. The next morning Major Malik denied Abdul Ahad’s custody. For the next 10 days he was seen inside the camp by villagers whose houses were near it. Thereafter he disappeared.

Before the High Court, the army denied his arrest. The state government’s reply acknowledged that a report regarding Abdul Ahad’s arrest had been filed with the police but said that the army had refused to cooperate with the police investigation, and consequently, the case was closed as untraced. 208 The inquiry report sent in January 2003 stated that Abdul Ahad’s wife had turned up before this court and submitted an application in writing to the effect that since she is not aware … as to which branch of the army had arrested her husband, she is not in a position to adduce any evidence for establishment of facts or to depose

207 There was a history in Farooq’s case. He had been arrested as a 13 year old for possession of a single cartridge, which he had picked up from the street. He was severely tortured in custody. Farooq had still not recovered fully from this trauma when he was press-ganged into joining the group of young recruits into the movement. Farooq’s father attributes his release from the earlier incarceration solely to the kindness of Mr. Wajahat Habibullah, then Divisional Commissioner of Kashmir.

208 The reply stated that Major Malik and his unit had since been transferred to Delhi and, the Additional Director General (Discipline and Vigilance) at the Army Headquarters in Delhi had not responded to the SSP, Baramulla’s request to for access to the officer.
her statement. She has further expressed that she is not interested to represent the enquiry or the writ petition … (and) has prayed to drop the proceedings.\textsuperscript{209}

The statement in the inquiry report was at direct variance with the reply filed by the state government wherein it was stated that as per the report lodged by the family with the police, and the subsequent investigation by the police, Abdul Ahad was arrested by Major Malik of the 8 Raj Rifle. The family also contradicted the inquiry report. They said that they were summoned only once by the Inquiry Judge, in October 2002. On that date the case was adjourned without any proceedings and they were not summoned again. The family categorically stated that there were several witnesses to Abdul Ahad’s arrest, and all of them were willing to testify. As such there was no question of withdrawing from the proceedings.\textsuperscript{210} The High Court disposed of the petition, following the inquiry report. It is evident that the Court did not peruse the file before doing so. Nor did it care to hear the family before disposing of the case.

Bashir Ahmad Wani (98/3) and Bashir Ahmad Bhat (98/8) were both arrested by the SHO, PS Pampore, one Gindral, in November 1997. In the petition filed on behalf of Bashir Bhat, the standing counsel for the state government filed a reply stating that Bashir Bhat and Bashir Wani were called to the SOG, Lethpora camp, through PS Pampore, on 23 November 1997 and, were released on the same day in front of two witnesses from the locality. It was stated that these persons had witnessed the bonds, allegedly also signed by the two Bashirs, at the time of their, alleged, release. The reply said that the statements of the witnesses were also recorded by the Judicial Magistrate, Pampore.\textsuperscript{211} Finally, the reply alleged that it was likely that unknown to their families the two men may have joined the militants or crossed over to POK or

\begin{itemize}
\item \textsuperscript{209} We did not find any such document in the record of the inquiry proceedings.
\item \textsuperscript{210} See an identical contradiction between the inquiry report and the family’s version in the case of Latief Khan (91/1), which also pertained to the DJ, Baramulla, for the same period (i.e. 2002).
\item \textsuperscript{211} The reply said nothing about why these statements were recorded. The families of the two Bashirs informed us that these two supposed, witnesses were, in fact, touts for SHO, Gindral.
\end{itemize}
fled to Nepal and the "forces" are being "unnecessarily" blamed for their disappearance.\textsuperscript{212}

In response to the petition filed on his behalf, the counsel for the state government orally stated that \textit{Bashir Wani was released from custody on 23 November 1997 and, was no longer in the custody of the State and its officials}. The Single Judge hearing this petition dismissed the case on the basis of this statement. Bashir Wani’s family appealed against the dismissal, and a Division Bench of the Court accepted the appeal, set aside the impugned order, and sent the case back to the Single Judge for further hearing.

Meanwhile, the two families had filed complaints before the SHRC. By the time (in August 2001) the High Court ordered an inquiry into Bashir Wani’s disappearance the SHRC had already recommended that a case be registered regarding their disappearance and that compensation of rupees one lakh each be paid to the next of kin of the two families. Since the state government did not comply with this recommendation, the families filed a writ petition before the High Court for its enforcement. The High Court endorsed the decision of the SHRC in February 2002, and directed the State government to implement it.\textsuperscript{213}

By then the proceedings in the inquiry ordered by the High Court had commenced. Bashir Wani’s family produced an eyewitness to the detention and torture of both Bashir Wani and Bashir Bhat. On learning of this testimony the SHO, Gindral, arrested the witness and tortured him; as a punishment for daring to speak against him in court.\textsuperscript{214} Frightened by this, the families of two Bashirs decided to withdraw the habeas corpus petitions filed by them. Thus, despite there being eyewitness testi-

\textsuperscript{212} According to Bashir Bhat’s family, apart from all other reasons for disbelieving the State’s version of events, it was impossible for Bashir to have joined the militants or, otherwise fled home because of a severe physical handicap, which allowed him to walk, only with difficulty. The unlikelihood of Bashir Wani fleeing was established by the fact that he was due to be married a few days after the date of his arrest.

\textsuperscript{213} Under the Protection of Human Rights Act 1993, and the J&K Protection of Human Rights Act 1997, the NHRC and, the various SHRCs established in the States are recommendatory bodies, unlike the High Court, whose orders are binding and, enforceable.

\textsuperscript{214} The witness was released after nearly six weeks of illegal detention.
mony on record that contradicted the stand of the police, the families of the two Bashirs told the Inquiry Judge that they did not want to pursue the case any further. The report submitted by the Inquiry Judge to the High Court makes it obvious that he thought their decision to withdraw the case was in their best interests.

**Abdul Majid Guroo (99/2)** was arrested from his house by the STF on 22 December 1998. His friend Mohammad Ashraf Pir, a shopkeeper from Sopore, who was visiting him at that time, was also arrested. Failing to secure his release Majid’s family filed a habeas corpus petition on his behalf. In response to this petition the SSP, Baramulla filed a reply stating that the matter of his arrest by the police had been enquired into, and investigation was underway in the FIR registered thereafter. The High Court ordered an independent inquiry into Abdul Majid’s disappearance. The inquiry report stated that the petitioners filed an application praying that the proceedings be dropped. In view of this fact the inquiry was closed. The case was disposed of by the High Court on the basis of this report.

D. Where Inquiry Was ‘Pending’

There are four cases in this category. Three cases, Farooq Ahmad Najar (92/4), Dr. Ghulam Hasan Sofi (94/5), and Bashir Ahmad Lone (94/2), have been discussed above. The fourth case falls in this category as well as the next one.

**Ghulam Qadir Sheikh (2000/172)** was arrested from his house on 8 March 2000 by the 14 Rajput, based at Panzgam, Kupwara. The 14 Rajput denied his arrest. Two petitions were filed in this case, both on the same day. One was filed by Ghulam Qadir’s wife and the other by his mother. The arrest was denied in reply to both petitions. We will first discuss the petition filed by his wife.

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215 The arresting party was accompanied by Nazir Ahmed Dar @ Kundru and Fateh Mohammad Gazi. Both persons were SPOs, attached to the STF at Kralhar.
216 He was released after one week.
217 The family informed us that they could not pursue the petition due to severe financial constraints.
218 For the first few days after his arrest his family saw Ghulam Qadir almost everyday at the Army camp. Thereafter he was moved to some other place and, was never seen again.
219 Two petitions were filed in this case, both on the same day. One was filed by Ghulam Qadir’s wife and the other by his mother. The arrest was denied in reply to both petitions. We will first discuss the petition filed by his wife.
conducted any operation in Ghulam Qadir’s village on the date of his alleged arrest. It was also claimed that the family had no idea who had arrested Ghulam Qadir and, the accusation against the 14 Rajput was malafide, with the intention of maligning the image of the unit and of the army.220

The High Court disposed of the petition on the basis of this reply. While doing so it directed the SSP Kupwara to ensure that the concerned SHO should complete the investigation in the complaint already lodged by the family within four months. Since the police failed to complete the investigation within the time stipulated by the High Court Ghulam Qadir’s family filed a contempt petition against the SSP Kupwara, alleging non-compliance with the Court’s direction in this regard. In response, in a detailed report on its investigation, the police stated that during a crackdown on 9 March 2000 the 14 Rajput took some documents and photos from the house of Ghulam Qadir, leading the people of the locality to think that he had been arrested.221 However, the army had denied his arrest. Further, the records of the 1/4 GR did not show their involvement in this crackdown or in the arrest of Ghulam Qadir. It was also stated that the persons who had arrested Ghulam Qadir could not be identified as they were masked and wearing army type clothing, which is also used by the militants to conceal their identity. Thus, it was stated that the SHO, PS, Trehgam, found he was unable to fix the liability for Ghulam Qadir’s disappearance on the 14 RR (Rajput Regiment) and, the police had closed the case as untraced.

The final order of the Court in the contempt petition is an example of the propensity to shift the blame/ responsibility for a lapse on to the most hapless of the parties before it. The SSP, Kupwara, who was the

220 In a complaint before the SHRC, Ghulam Qadir’s brother had stated that the 4 GR, under the 14 Rajput had arrested Ghulam Qadir. The 14 Rajput reply before the High Court denied that the 4 GR was under the 14 Rajput in any manner. It stated that 14 Rajput was one of the six units based in the Panzgam Garrison, all of whom had a separate chain of command. Further, that the Garrison commander exercised command over the units stationed there only for the purposes of the Garrison’s security. He did not exercise any operational control over the units stationed there. (See the section in the next chapter re the ‘Problem of Identification’ for more on this issue.)

221 A patently absurd statement.
alleged contemnor, filed an affidavit stating that the Court’s order (directing him to complete the investigation within four months) was not served upon him. Since the order in question stated that this petition is disposed of with the direction to the SSP Kupwara to … it is patent that a letter should have been issued to the SSP, Kupwara from the Court’s registry, informing him of the order. However, this was not done. Instead of pulling up, or calling for an explanation from, the Court’s staff the Judge thought it fit to say the order has not been communicated to him by the registry because there was no such direction from the court to that effect, obviously it was incumbent upon the petitioner to bring the judgement to the notice of the SSP. Moreso (sic), the S.S.P. was not a party to the writ petition. …Contempt petition is dismissed.

The second petition followed a parallel trajectory for some time but then the Court (presided over by the same judge who had disposed of the other petition) directed an inquiry into Ghulam Qadir’s disappearance. In February 2004 the Court extended the time for completion of the inquiry till July 2004.

II. Where Inquiry Was Not Ordered

No inquiry was ordered in 23 cases (over 27%), with as many as 13 of these being dismissed by the Court. Of the remaining, five were disposed of, one was withdrawn, two were pending and, in one case we could not ascertain the facts. Six cases from this category, Farooq Ahmad Bhat (91/11), Nazir Ahmad Malik and Mohammad Shafi Shah (97/1), Mohammad Shafi Dar (97/10), Bashir Ahmad Bhat (98/8), Farooq Ahmad Bhat (99/4), and Ghulam Qadir Sheikh (2000/172) have been discussed elsewhere in this paper. The remaining cases are discussed below.

Unlike in the cases discussed above, most of the cases discussed here lasted in court for relatively short periods. Patently, the less time a case remains pending before the Court the less scope for errors and absurdities. In such cases, I have used the opportunity presented by the paucity of court records to discuss other aspects of the impossibility of justice in Kashmir, drawing upon the stories of arrest and the personal circumstances of the arrested/ disappeared for this purpose. However,
there are also a few exceptions to this rule. Some cases lasted a decade or more before being disposed of/dismissed. The first case discussed below, from 1990, was still pending in June 2004.

**Gauhar Amin Bahadur (90/1)** was a militant belonging to JKLF. Initially he was kept in unacknowledged detention. Subsequently, he was booked under TADA and, also, detained under the PSA. He was released in 1992, after completion of his detention period under the PSA.223 After his release Gauhar married and settled down, starting a business in ready made garments.

A petition was filed by his mother at a point of time when his whereabouts were not known.224 At the inception, the Court asked the state government to disclose the law and authority justifying the arrests, within 10 days. Since the state government did not file a response, a month later the court ordered the detainees to be produced in court. They were not produced. Another month later the government lawyer explained the non-compliance of the order for production of the detainees by stating that he was not present in court when the order was passed.225

Thereafter, the state government filed objections but they pertained to a detainee who was not concerned with this case.226 The Court, again, ordered that the detainees be produced before it, within one week. Since this order was also not complied with the Court sent a communication to the Chief Secretary/Law Secretary, J&K for implementation of its order. Two months later, since this order was also not complied with, the Court sent a copy of its order to the Additional Chief Secretary (Home),

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222 He was a close associate of Hamid Sheikh, Ishfaq Majid Wani, Iqbal Gundroo and other notables of the JKLF.
223 His father used his contacts to persuade the Governor to release Gauhar Amin in 1992. After his release, his family lost interest in the petition. Thus, this is also one of the 'empty' cases.
224 The petition was filed on behalf of Gauhar Amin and nine others, arrested on different dates in 1989 and 1990, alleging that the detainees had been tortured in custody and had been denied medical treatment. It sought information about their whereabouts, their production in court and, various other reliefs.
225 The government lawyer was absent but he had sent a proxy to represent him and, the Court’s order was passed in the proxy’s presence.
226 On it being pointed out to him, the AAG accepted his mistake.
to take necessary steps. Yet another month later, without complying with the direction to produce the detainees, the State government filed a reply, ‘justifying’ the detention of three of the 10 detainees for whom the petition had been moved.

Not satisfied with this paltry response the Court continued to issue letters and directions to the state government, asking for implementation of its orders. A little over a year after the petition was filed two detainees were produced in court.227 However, the Court was still not informed of the offence for which they were arrested. Nor were the records produced. Finally, 14 months after it was ordered to do so, the state government filed a response regarding some of the detainees in their custody.228 Thereafter, the case went into a limbo because of an appeal (Letters Patent Appeal) filed by the state government against some of the orders passed by the Single Judge in the habeas corpus petition.229 The petition was still pending in December 2003, over thirteen years after it was filed.230

Zafarullah Beig (91/7), a gazetted state government employee, was arrested by the army from his office, in August 1991. A petition was filed on his behalf within a few days of his arrest. It was claimed therein that Beig was arrested because he had complained against the CO of the 6/8 Unit, Bandi, Colonel WJB Sturgeon.231 Beig was released 27 days after his arrest.232 The petition, however, remained pending because Beig

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227 Some of the others had been released, while the custody of some was denied.
228 The reply challenged the locus standi of Gauhar Amin’s mother to file a petition on behalf of all the detainees.
229 The Division Bench hearing the appeal stayed the impugned orders, pending disposal of the appeal.
230 Gauhar Amin was re-arrested on 8 April 1993, from his wife’s parents’ house, during a crackdown. After being identified as a former militant, he was taken away by 108 Bn of BSF along with one other person. Both were killed on the same day. The BSF claimed that he was killed in cross firing.
231 The complaint alleged that Colonel Sturgeon was terrorizing villagers and extorting money from them by implicating them in false cases. Copies of the complaint were sent to various authorities, including the Army Chief and the Prime Minister of India.
232 Admitting his arrest, the army replied alleging that Beig was working as a guide for the militants, active in inciting local people against the army, recruiting people for being sent for training as militants, collecting money in support of militancy and, getting army informers killed. The army’s reply also stated that an inquiry had found the charges laid by Beig against Colonel Sturgeon, baseless.
sought compensation for his illegal detention for 27 days by the army. The army took 10 years to explain the delay in handing over Beig to the police. Ultimately, they filed a reply stating that Beig was arrested in an area close to the border, and he could not be transported to the police station at Uri because of heavy shelling from across the border. The High Court accepted the explanation of the army and disposed of the case in 2001, dismissing Beig’s claim for compensation.\(^{233}\) This reply said nothing more than what had been stated by the army in its original reply, filed several years earlier.

**Hamidullah Mir (97/2)** was arrested on 4 September 1994 by the security forces and held in illegal detention for over a year. In December 1995 an order under the PSA was passed against him, detaining him for two years. In February 1997, his father filed a petition in the High Court on the assumption that the period of detention had expired in December 1996 and that despite this he had not been released.\(^{234}\) Thus, the petition erroneously argued that Hamidullah was being held in custody despite the expiry of his period of detention. No reply was filed to the petition till November 2000, when the petition was disposed of on the ground that it had been pending for longer than the maximum period of detention permissible under the PSA.\(^{235}\)

Twenty three year old **Manzoor Ahmad Dar (98/2)** and 20 year old **Bilal Ahmed Sheikh (2003/9)**, neighbours and friends, were arrested together on 30 March 1997 by the 20 Grenadiers.\(^{236}\) They were picked up at the Tengpora by-pass crossing, near a picket manned by the 179 Bn BSF. Their arrest was witnessed by Manzoor’s father and aunt, who were also

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\(^{233}\) This is an exceptional case for the apparent fearlessness of the detainee, and the fact that the army has allowed him to get away with it for so long. Not only did Beig challenge his illegal detention by the army, he forced them to explain why they took more than the maximum permissible time of twenty four hours to hand him over to the police. While this petition was pending, Beig was again arrested in August 1995. A second petition was filed, which was withdrawn after he was released.

\(^{234}\) In fact, the detention period was to expire in December 1997.

\(^{235}\) The counsel for the petitioner did not appear during the hearings of the case; probably because Hamidullah Mir’s family lost interest in the case once he was released.

\(^{236}\) They were walking home together after finishing the day’s work.
They reached the spot of arrest just as the army vehicles were driving off with the two boys.\footnote{237}

After all efforts to trace the whereabouts of Manzoor and Bilal had failed, Manzoor’s family filed a petition on his behalf. Bilal’s father chose not to file a petition as he feared that it would jeopardize the chances of his son being released by the army. Neither the state government nor the army filed a reply. However, in a letter to the IGP (CID), Lt. Colonel Narendra Singh, General Staff Officer 1 (Human Rights Violation), writing on behalf of the GOC 15 Corps, stated that \textit{Manzoor… and Bilal … have not been apprehended by the army.}

In February 1999, the petition was dismissed for \textit{non prosecution} because the petitioner’s counsel was absent on one date.\footnote{238} It took nine months for the petition to be restored to hearing. Nothing happened in the case even thereafter and in November 2000, the Court disposed of the petition with the remark that \textit{The case amounts to one of missing person and a report should have been lodged in the police station concerned. In case whereabouts are still unknown petitioners are advised to approach the police station and get a regular case registered and investigation held into the disappearance.}\footnote{239}

Manzoor’s family had also filed a petition before the SHRC, which held an inquiry into his disappearance. The eye witnesses to Manzoor’s arrest deposed before this inquiry. However, since the army denied his arrest the SHRC was powerless to proceed further in the case.\footnote{240} The Chairperson of the SHRC offered to arrange for compensation but Manzoor’s father rejected this offer. The police too expressed their helplessness in initiating action against 20 Grenadiers without evidence.

\footnote{237} The arrest of these two boys is connected with the arrest of Nisar Wani (98/1), who was arrested during a crackdown in Batamaloo. Manzoor’s father was informed by the BSF picket on the spot that Manzoor and Bilal were arrested by the 20 Grenadiers, on their way back after the crackdown.

\footnote{238} For several months prior to that date there had been no progress in the case because of the failure of the respondents to file replies.

\footnote{239} The order was passed by Justice OP Sharma, who seemed to have a preference for such orders. He passed a virtually identical order in another petition in our records.

\footnote{240} The armed forces of the Union have been kept outside the purview of the NHRC and the SHRCs.
Abdul Aziz Tantray (99/1) was arrested late in the night of 10 June 1998 by a combined force of 21 RR and the CRPF, aided by the local BSF, 145 Bn, from Ahrabal, Nishat, Srinagar. His wife’s attempts to lodge a report regarding his arrest were rebuffed by the police. Of the three forces involved in his arrest, the petition filed on his behalf only made the 145 Bn BSF a party. In its reply, this unit denied Abdul Aziz’s arrest. The state government did not file any reply but an oral submission was made on behalf of the DGP that Abdul Aziz had not been arrested by the police. In November 2000 the High Court disposed of the petition with a direction that the complaint regarding Abdul Aziz’s arrest, pending with the PS, Nishat be investigated.

Abdul Aziz’s wife searched everywhere for him. One day she spotted him at the Watain camp of the 21 RR, in Handwara. However, they did not allow her to meet him. About 10 months after his arrest she and her brother received letters from him. The letters said that he was in a very precarious condition and pleaded with them to do something to get him released. The letters also stated that he was being detained in the camp of the 21 RR at Watain, Handwara.

Mushtaq Ahmad Khan (99/3) was arrested from his house around midnight on 13 April 1997 by the 20 Grenadiers stationed at the Bemina Boat Colony. Soldiers broke open the door of the house and, after ascertaining the identity of all the men present, pounced upon Mushtaq Khan and his wife. The faces of the soldiers were masked with black cloth. Mushtaq and his wife were beaten and given elec-

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241 He was a militant, initially with the JKLF, later with the Hizbul Mujahiddin (HM). Growing increasingly disenchanted, two years before his arrest he quit militancy to take care of his wife and six children. Though belonging to Handwara, they lived in Srinagar, changing houses frequently, to avoid detection. They had shifted to a new house a week before his arrest.

242 The SHO refused to register the report saying that she should lodge it in their native place, since Abdul Aziz had been arrested by the 21 RR stationed at Handwara.

243 The failure to make the 21 RR a respondent party to the petition is inexplicable. Perhaps it was done out of ignorance or, on the advice of the lawyer.
tric shocks. Thereafter, Mushtaq was taken away. Apart from the family, his arrest was witnessed by the neighbours, who had gathered at the commotion.

Initially, the officers at the 20 Grenadiers camp admitted Mushtaq’s arrest and promised that he would be released. Subsequently, they denied his arrest. Through some middlemen the family met Naib Subedar Nazar Mohammad of the 20 Grenadiers, who assured them that he could arrange for Mushtaq’s release. The family paid him rupees ten thousand for this. However, neither Mushtaq was released nor the money returned.244

Failing to secure his release, the family filed a petition on Mushtaq’s behalf. The army did not file a reply to the petition though they were repeatedly granted time to do so, over a period of about 20 months. The state government’s reply stated that Mushtaq had not been received in any JIC manned by the CID, and asked that the petition be dismissed in the interests of justice. In November 2000 the High Court disposed of the petition with a direction to the SSP Srinagar to register a case, complete the investigation within six months and to prosecute those if found involved in such illegal action (sic).

Abdul Rashid Ganai (99/6) was arrested from his house on 6 January 1999 by a combined force of the 131 Bn, BSF and the STF. The SHO Handwara, Mohammad Yousuf Banda accompanied the arresting party. Abdul Rashid was a militant who had surrendered a few months prior to this arrest, in October 1998. He was bailed out after about three weeks in custody.245 At the time of his release, the 21 RR also issued him an identification certificate declaring his status as a surrendered militant and as a source for the army.246

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244 Nazar Mohammad’s name as a tout also came up in other interviews with families whose kin had been disappeared by the 20 Grenadiers.
245 Upon his surrender, he was booked in two cases under the Indian Arms Act.
246 According to his family and friends, Abdul Rashid’s arrest was engineered by the SHO, who had sworn to revenge himself upon him for the death of his (SHO’s) nephew, a policeman, who was killed in an encounter. After his arrest, SHO Yusuf Banda put out the story that Abdul Rashid had run away from home to rejoin the militants.
Failing to secure Abdul Rashid’s release, his wife filed a petition on his behalf. In response to the petition before the High Court the state government’s initial response stated that he had been released and was no longer in custody.\textsuperscript{247} The BSF also filed an affidavit denying Abdul Rashid’s arrest. On the basis of these denials, the High Court disposed the writ petition, with a direction to the SHO Handwara who, according to the family, had taken part in Abdul Rashid’s illegal arrest, to investigate his disappearance.\textsuperscript{248}

Some months before the High Court petition, Abdul Rashid’s wife had also filed a complaint before the SHRC. In response to the SHRC’s queries the police repeated their allegation, saying that Abdul Rashid had rejoined the militants. The SHRC dismissed the case on the basis of this response. Abdul Rashid’s mother challenged this allegation. Reopening the case the SHRC ordered a fresh inquiry in the matter, which ruled out the possibility that Abdul Rashid had rejoined militancy.\textsuperscript{259} Accepting this report, the SHRC recommended that Abdul Rashid’s family be granted ex-gratia compensation of rupees one lakh.\textsuperscript{250}

Sixteen year old \textbf{Mohammad Qasim Khoja (99/7)} was arrested by the CRPF, accompanied by some STF policemen in civilian clothes, in November 1997.\textsuperscript{251} After about one year of illegal detention, during which he was subjected to severe torture, an order under the PSA was passed against him, detaining him for a further period of two years. At the end of one year of his PSA detention, the PSA review board quashed his detention. However, he was not released.

\textsuperscript{247} This pertained to his previous arrest, at the time of his surrender.
\textsuperscript{248} No doubt the Court was not aware of the macabre irony of its order.
\textsuperscript{249} The earlier reply to the SHRC was submitted on the basis of information provided by SHO, Yusuf Banda. Subsequently, the SHRC ordered the DIG, Baramulla to conduct a fresh inquiry. The DIG’s report contradicted the earlier report.
\textsuperscript{250} This case makes it clear that though the scheme for ex-gratia relief is titled as being for ‘victims of terrorist violence’, the victims of state terrorism are considered eligible for relief under it, even if they, admittedly, have a link with militancy/ non-state terrorism.
\textsuperscript{251} According to Qasim Khoja, he joined the militants at the age of 15, enticed by the romance of azadi and of militancy. Since he was too young to take up arms so, they used him to deliver messages for them.
Aggrieved by the government’s failure to release him, his family filed a petition on his behalf. In July 2000, nearly one year later, the state government had still not filed any response to this petition. At this, the Court directed the state government and, the Superintendent Udhampur Jail, Qasim’s last known place of detention, to produce him in Court. This, too, was not done. Instead, in October 2000, the counsel for the state government stated that he had been released on bail. Qasim Khoja’s lawyer did not have any information to the contrary and so accepted this statement at its face value. At this, the Court disposed of the petition. However, this statement was not correct and Qasim Khoja was actually released only in December 2001, more than two years after his detention was quashed by the PSA review board.252

Qasim Khoja stated that about one and a half years after his arrest the then SP, Kupwara gave a press release in an English paper that four militants had been killed in an encounter. Qasim was named as one of those killed. Each of them was given a fancy title. Qasim was called the launching chief of his outfit. The others were, similarly called, a district commander, the J&K chief and, the launching chief of the HM. Of the four persons named only one had actually been killed. Qasim said that he never discovered the identities of the persons whose bodies were touted as being his and those of the other two killed with him. Qasim claimed that it was only after he showed a copy of the newspaper carrying this report to a judge in Udhampur that he was released.

**Mehrajuddin Dar (99/19),** a former militant, was arrested from his house on 20 April 1997, by the 20 Grenadiers. The arresting unit was headed by Major Vishwajit Singh.253 Mehrajuddin was tortured in the presence of his wife and child and then, taken away. In their attempts to secure his release, Mehrajuddin’s family paid one Nazar Mohammad of the 20 Grenadiers rupees ten thousand for Mehrajuddin’s release. However, neither Mehrajuddin was released nor the money returned.254

252 Qasim gave us a copy of the certificate issued to him by the local SHO upon his release. The certificate mentioned the date of his release.

253 This officer has been named in more than one case. He was awarded the ‘Ati Vishisht Sewa’ medal by the Government of India in 1998.

254 See the case of Mushtaq Khan (99/3) above, for mention of Nazar Mohammad in identical circumstances. The two families did not know each other.
Failing to secure his release by other means, the family filed a petition before the High Court in 1999. In their reply to this petition, the 20 Grenadiers denied Mehrajuddin’s arrest and, denied that they had carried out any operation in his locality on the date of his alleged arrest. In November 2000 the Court disposed of the petition with a direction to the police to register a case regarding Mehrajuddin’s disappearance and, to file a report regarding the progress in the investigation after six months. This order was not complied with.

In **Mushtaq Ahmad Shagoo’s (2000/169)** case the High Court seems to have been in a tearing hurry to dispose of the petition. It was disposed of within three months of issuance of the notice. The Court did not even wait for the state government to file a reply. It took on record a copy of a letter from the IG, Police to the state government’s lawyer, which stated that Mushtaq Shagoo was called to the police station for questioning and subsequently released in the presence of a relative and one other witness, on the same day. Based on this letter, in the absence of the counsel for the petitioner, the Court dismissed the petition in February 2000.255

In **Mohammad Yasin Bhat’s (2000/171)** case, as in many others, the court proceedings give a distinct impression of the judges acting as if they believe that the situation in the State is "normal" and, that the police and the security forces routinely say the whole, unvarnished truth before the Court. The petition before the High Court had a very short life. One year after it was filed both the respondents – the Director General Police and the army – submitted one set of objections.256 The one page objections stated that Yasin was untraced by the JIC’s (sic) of Srinagar / Jammu manned by the CID organisation. However, it added, as per the report of the SSP Srinagar the subject has been lifted by the (sic) unknown uniformed gunmen on 02.03.2000 from his residence and till date could not be traced out. A case … stands registered … under FIR No. 98/2000 … (and) efforts are on to trace … (him) and the persons responsible for this criminal act.

255 We could not trace the address of this family. Therefore, we could not confirm whether Mushtaq Shagoo was actually released, or not.

256 This is highly unusual. We have not come across any other case where this was done as the controlling authorities (the governments) are different for the two agencies.
On 27 March 2001, in the absence of the petitioner’s lawyer, the High Court disposed of the petition on the basis of the objections filed, with the direction that the investigation be expedited and the Registrar General of the High Court be informed about its result, at the earliest. Needless to add, the police did nothing to investigate the case.

Yasin’s family also wrote to the Colonel of the Human Rights Wing, Kilo Force, at Sharifabad, to Lieutenant Colonel B.S. Bansal of Badami Bagh and, to the PRO of the Badami Bagh cantonment. None of them responded to their appeals. However, responding to an article about Yasin’s disappearance in the Greater Kashmir, Brigadier (Staff) Ranbir Chabra, HQ 15 Corps, wrote to the family saying that the army had investigated the incident and, asserted that Yasin had not been arrested by them.

His family also filed a complaint before the SHRC. The CRPF and, the army denied picking up Yasin. Then, the SHRC sent the case to the NHRC. They received a copy of a notice dated 3 October 2002 from the NHRC asking the Defence Secretary, Ministry of Defence, New Delhi, to file a response within four weeks. They heard nothing further thereafter.

In Mushtaq Ahmad Wani’s (2000/173) case the 29 RR denied Mushtaq’s arrest, claiming that 'F Company' of the 29 RR, which was accused of having effected his arrest from Baramulla town, was stationed in Waddipora, Pattan and, not in Baramulla. The reply also denied that Mushtaq had been arrested by any other unit of the 29 RR. In September 2001, the state government filed its usual reply, stating that Mushtaq had not been arrested or received by any state government agency.

The petition was disposed of in September 2001, within one year of its filing, on the basis of these replies. The Court did not order an inquiry. Nor did it find it necessary to ensure the presence of a representative on behalf of the petitioner. However, in a show of fairness, the final order of the Court stated that in case petitioner/detenue is in possession of any

257 Waddipora is just a few kilometers away from Baramulla.
258 He had become a militant as a young boy, and remained with the Al-Jehad till 1992, when he surrendered before the Rajputana Rifles. He was booked under the PSA, and remained in detention for about two and a half years. After his release in 1995 he set up a tailoring shop in Baramulla. In 1997 he was married.
material /document/ evidence/ information/ proof regarding any custodial dis-appearance of Mushtaq Ahmad Wani, the concerned individual shall be at liberty to pursue his remedy under law there to.

The story does not end here. Three months later, in December 2001, the IG Police, Kashmir filed a reply to a query from the SHRC (before which also Mushtaq’s family had filed a complaint) stating that during verification … (conducted by the concerned police station, it was revealed that) On 19-8-2000259 troops of 29 RR picked (Mushtaq Wani) up. He was brought for search of his house at Peth Seer by concerned but nothing was recovered from his house. His brother Mohammad Maqbool Wani was also lifted by said Army, who was later on released after three days. Since the SHRC has no jurisdiction over the army, nothing came of this petition.

Seventeen year old Abid Hussain Dar (2000/174) was arrested while crossing over into Indian Kashmir, in the Mandial Sector-I, Chindial, Kathua (Jammu region), along with two other persons.260 The news of their arrest was published in two daily newspapers on 26 July 2000.261 The Police Headquarters Bulletin dated 25 July 2000 also stated that three militants were arrested on 24 July from village Mandial with arms and ammunition. However, after this there was no further news about him. Seemingly he had disappeared though the CIK (Border section) confirmed Abid’s arrest, on the basis of the report in the Police Bulletin.

Unable to trace Abid’s whereabouts his family filed a petition on his behalf.262 In response to the petition, the 15 JKLI filed a reply denying

259 The date was, probably, an error. Both, the petition before the High Court and, an application by Mushtaq Wani’s wife to the SHRC state the date of arrest to be 9 August 2000.

260 As a 12 year old, in 1996, Abid came under the influence of an older boy, who took him along with him across the LOC. Abid wrote to his parents after reaching Lahore, where he had joined a hostel and, was studying to finish his High School.

261 The daily Aftab reported that one Abdul Hussain of Narwara, Srinagar and two others were arrested by the 15 JKLI on 24 July 2000. According to Abid’s family Abdul Hussain was none other than their son, Abid, whose name had been misprinted. The report in Greater Kashmir merely reported the arrest of three suspected militants without naming them and, without mentioning the date of their arrest.

262 They also filed a complaint before the SHRC.
they had arrested Abid Husain Dar. The reply stated that the 15 JKLI has never been deployed in Kathua Sector or Jammu & Kashmir State since its raising. On 24 Jul 2000 the unit of the answering respondent no.2 (JKLI) was at Bathinda Mil (sic) station. The state government’s reply stated that it had no information beyond the fact that Abid had gone across to POK in October 1996, along with an unknown Gujjar boy. In February 2002 the High Court dismissed the petition, on the basis of the replies filed, and on the ground that the newspaper cutting relied upon to assert Abid’s arrest did not reflect his name.

Ali Mohammad Dar (2000/175) was arrested on 7 March 1998 from his house by the soldiers of the 23 RR, camp Waripora. A cousin who lived in the neighbouring house was arrested at the same time. The next morning, Major Shetty at the camp accepted that Ali Mohammed and his cousin had been arrested but stated that they had already been released and would return home shortly. Returning home, the family discovered that his cousin had indeed returned home but there was no sign of Ali Mohammed. After some days the army officers denied that they had ever taken him into custody.

In response to the petition filed on behalf of Ali Mohammed, Major P.D. Kumar of the 30 RR filed a reply stating that no civilian was arrested by the Unit of the answering respondents 1 and 2 on 7-3-1998. The state government’s reply stated that Ali Mohammed had not been arrested by any JIC of Srinagar/Jammu, manned by the CID. The reply also stated that as per the SDPO, Handwara there was no report from village Waripora, of Ali Mohammed’s arrest by the 23 RR. On the basis of these replies, the High Court dismissed the petition without ordering any inquiry. The Court observed that in view of the replies filed no direction for production of Ali Mohammed Dar can be issued to the respondents … However, the petitioner is at liberty to seek redressal by filing appropriate proceedings.

263 The family twice filed a report with the PS Handwara, but the police just made pretence of registering their complaint. The third time they openly refused to register their complaint. The SHO told them they must produce Ali Mohammed’s body before a FIR could be registered.
264 It was absurd for the reply to be filed by the 30 RR, when the allegations were against the 23 RR. However, no one questioned this anomaly.
Narrating the events after their arrest, Ali Mohammad's cousin, Ghulam Mohiuddin Dar said: After our arrest the soldiers took us to the nearby ITI, where they have their camp. We were tortured all night. The officer, Shetty, pierced our nails with needles and accused us of knowing militant hideouts. Very early morning on the next day we were taken out into the jungle. Ali Mohammad was taken ahead by an officer in his jeep. I heard the sound of firing but I could not see anything. I noticed that the soldiers with me were focused on the sound of the firing. So I took the opportunity to slip away. Fearing for my safety, I stayed away from home for a whole month. When I finally came home, I was summoned to the army camp. The officer, Shetty, told me that the army had released me as I was innocent. Since then, I have been taken into custody twice by the army and, questioned as to whether militants come to my house. They, also, ask me if I have seen Ali Mohammad but I have not seen him since that day. Neither I nor Ali Mohammad had ever been arrested by the security forces before this incident.

Shabir Ahmad Ghasi (2000/179) was arrested from his house on 22 January 2000 by the 6 RR, accompanied by the STF. Despite searching everywhere his family could not find any trace of Shabir. They therefore filed a petition on behalf of Shabir, seeking his production before the Court.265 Later, they learnt that he had been detained in the RR camp at Taratpora and that he had been killed, along with his co-detainee, Abdul Hamid Badiyari. It was reported that their bodies were buried in the village (Taratpora, Kupwara) graveyard. The family filed an application before the High Court, seeking directions for the exhumation of the bodies and, for tests to determine their identity.

The reply by the army denied Shabir’s arrest, and stated that the 2 RR had never been stationed at Taratpora. It asserted that the facts about the Battalion’s involvement were incorrect and that, perhaps, some other security force was involved in his arrest. The application for exhumation of the bodies and for DNA testing was opposed.

The State government did not file a reply. However, it produced a letter from the SSP Srinagar to the Deputy IGP, stating that the matter was

265 Perhaps in an inadvertent error, the petition mentions the accused unit as the 2 RR.
inquired into by SP City (North) and that the bodies buried in Taratpora was not of the Ghasi or Badiyari. However, the letter confirmed that investigations had revealed that Badiyari was arrested from his house by the 6 RR, camp Hafrada-Taratpora. Taking note only of the denial contained in the letter, the Court noted that in view of the contents of this letter, the petition was rendered un-workable and infructuous. It therefore rejected both, the habeas corpus petition and the application for exhumation and DNA testing of the bodies buried at Taratpora, and dismissed the petition. While doing so, it granted the petitioner liberty to file proper proceedings for seeking proper relief.\(^{266}\)

**Abdul Hamid Badiyari\(^{267}\) (2000/180) was arrested by the 6 RR, on 21 January 2000, from the Ghantaghar Auto Stand at Lal Chowk, Srinagar, in the presence of his father and, Shabir Ghasi’s brother.\(^{268}\) On learning of his arrest from her father-in-law Badiyari’s wife rushed to his auto stand and, after enquiring from his colleagues, lodged a report regarding his arrest with the PS Maisuma.

After a futile search for Badiyari’s whereabouts, his family filed a petition on his behalf praying for his release, if alive, and also for exhumation of the bodies buried in Taratpora, for determining their identity through DNA testing.\(^{269}\) The 6 RR’s reply denied the arrest of Badiyari and Ghasi, stating that *Srinagar was not within the area of operation of the unit and that counter insurgency operations outside the area of responsibility are executed on explicit orders of "higher headquarters".*\(^{270}\)

In a similar order, as in Shabir Ghasi’s case, the High Court rejected the plea for exhuming the bodies, relying upon the report of the SSP Kupwara, which stated that the bodies buried in Taratpora were not of Shabir

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\(^{266}\) The family appealed against this order but we do not have information with respect to proceedings in the appeal.

\(^{267}\) He was a former militant, who had received training in Pakistan.

\(^{268}\) Badiyari’s father and Shabir Ghasi’s brother had been arrested earlier and, were brought along by the RR, at the time of the arrest. Badiyari’s father was released after his arrest.

\(^{269}\) Evidently, by the time Badiyari’s family filed their petition they had learnt of the bodies buried in Taratpora.

\(^{270}\) Note that there was no clarification on whether such orders had been issued for the arrest of Ghasi and Badiyari.
Ghasi and Hamid Badiyari and, holding that the petition was *rendered unworkable and infructuous*, dismissed it.\(^{271}\)

During one of her trips to search for her husband, Badiyari's wife met a Hawaldar (Head Constable) from PS Vilgam, Kupwara, whom she had met earlier also. Saying that he would have lost his job if he had told her the truth at that time, he told her that the 6 RR held Badiyari and Ghasi for about 10 days in the Taratpora camp and, thereafter, they were killed. Since no one came to claim their bodies the villagers buried them outside the police station.\(^{272}\)

### III. The ‘Sanction’ Cases

The operations of the security forces in Kashmir (except the police) are governed by the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA). Section 7 of the Act makes it mandatory that before any proceedings are launched against any member of the *armed forces* covered by the Act, the central government must sanction the prosecution. For this purpose, the central government is required to examine all the material, and evidence gathered by the police during its investigations.

The police completed their investigation and prepared a charge sheet in four of the 85 petitions discussed in this report. These were the cases of Basharat Shah, Shabir Bhat, Sajad Bazaz, and Nazir Gojar. In two of these cases, those of Basharat Shah and Shabir Bhat, we have no information other than the fact that the charge sheets were *ready*. In the other two cases the High Court, willy nilly, got involved in the process of obtaining *sanction* from the central government, which is the appropriate government under the AFSPA, for prosecution of the accused officers of the armed forces. The central government rejected the request for grant of sanction to prosecute in both these cases. An account of the proceedings in these two cases is given below.

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\(^{271}\) This order, too, was appealed against.

\(^{272}\) A woman of extraordinary good looks, Badiyari’s wife had attempted suicide twice. She told us *Many people want to marry me but I don’t want to marry again as I am afraid for my children*. However, she ultimately did remarry in late 2004.
Twenty two year old Sajad Ahmad Bazaz (92/2) was arrested from his home on 12 February 1992, by 30 Bn BSF. The arresting party was led by Deputy Commandant DS Rathore, accompanied by a ‘Cat’, code named Asgar.\(^{273}\) Sajad ran a small shop selling daily use items, cigarettes, etc, and had no connection with militancy. His arrest was the fall out of an altercation he had with the ‘Cat’, Asgar, who owed him over rupees one thousand and had refused to pay.

The habeas corpus petition filed by Sajad Bazaz’s family was disposed of in September 1992, within six months of its filing, with a direction to the respondents to release Sajad, forthwith.\(^{274}\) Sajad was not released and, his father filed a ‘contempt’ petition against the respondents in mid-September 1992. The farce of this case was played out in this petition. This petition was dismissed in July 2004.

The police completed their investigation in the case in September 1993, finding a prima facie case against Deputy Commandant DS Rathore of the 30 Bn BSF and, the ‘Cat’, Asgar. Accordingly, a charge sheet was prepared against these two persons. Since the ‘contempt’ case was pending before the High Court, the police reported this fact to it. They also informed the Court that further action in the prosecution of the two accused was possible only after sanction had been obtained from the central government. To this end, the police stated, the state government had been requested to apply for the requisite sanction.

In January 1994, the state government wrote to the central government for sanction to prosecute Deputy Commandant DS Rathore. Under pressure from the High Court the police also continued to search for the whereabouts of Sajad Bazaz. In November 1996 the police informed the Court that their investigations revealed that DS Rathore and Asgar had conspired to kill Sajad and dispose of his body. Based on this finding, the police prepared a supplementary charge sheet against the two accused, adding the charge of murder.

\(^{273}\) ‘Cat’ is a euphemism for an informer, a mukhbir who is attached to a unit (or an officer) of the security forces. These people are often former militants but not always.

\(^{274}\) Since the respondents did not file a response to the petition despite being afforded several opportunities, the High Court deemed his continued incarceration illegal and, directed his release.
The sequence of events in the Court proceedings, including the stand of the respondents, both state and central, over the years is sufficient, without further comment, to once again confirm the impossibility of justice in Kashmir.

- On 3 December 1992 the IG, BSF, Kashmir Frontier said that *Troops in my command had not been connected with apprehension, detention or custody of Sajad Bazaz.*

- On 17 February 1993 the Additional Chief Secretary (Home) J&K filed an affidavit denying that Sajad had been arrested by the state agencies or that he was in their custody. The affidavit added that *many youths had crossed the border for training and families had been pressurised by militants to allege that they had been picked up by State.*

- On 22 September 1993 the IG, BSF filed another affidavit, denying that Sajad had been apprehended by the BSF.

- Over the next four years the proceedings continued a purposeless course. In October 1993 the Court ordered a judicial inquiry into Sajad Bazaz’s disappearance. The inquiry report dated July 1994, confirmed that Sajad Bazaz had been arrested by the 30 Bn BSF. The BSF did not participate in the inquiry proceedings.

- In October 1994 the Court posed the following two questions:
  1. Why had *sanction* not been accorded for the prosecution of the accused, despite the lapse of one year from the date of preparation of the charge sheet/ request by the police to the state government for obtaining *sanction*?
  2. What had happened to the detenue? Whether he was still alive, or not?

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275 The object of ordering such an inquiry, when the police had already prepared a charge sheet, was not very clear. In the specific circumstances obtaining in Kashmir, such an inquiry was merely a means of delaying the course of events. It was patent that all concerned that the High Court should focus on the task of obtaining *sanction* to prosecute the accused officer rather than in unnecessary displacement activity.
In November 1994, the Court asked the counsel for the BSF to furnish the whereabouts of Deputy Commandant DS Rathore. This order was passed in response to the statement by the police that they were not in a position to arrest DS Rathore as the BSF were not cooperating. This order was not complied with.

In September 1995, during the course of a hearing, the state government’s counsel informed the Court that the police had done their job by investigating the crime and preparing a charge sheet against the accused persons. He claimed that it was not the duty of the police to search out the whereabouts of the disappeared person.276

For the next one year the Court continued to monitor this aspect of the police investigations. The police reported failure in their attempts to interrogate Deputy Commandant DS Rathore, on account of non cooperation by the BSF. They also reported failure in their attempts to arrest/interrogate Asgar, the ‘Cat’, despite sending a team of officers to Bihar and other places in India where he might, reportedly, be found. Sometime towards the end of 1996 the counsel for the BSF orally informed the Court that the central government had refused sanction to prosecute Deputy Commandant DS Rathore. However, he did not produce a copy of the order of refusal.

In April 1997 the Court expressed exasperation at the interminable delays in the case. It pointed out that sanction was not required to arrest an officer who had committed an offence and questioned why the Investigating Officer (IO) of the case, who was of the rank of a gazetted officer in the State Police, had not arrested the accused officer of the BSF. The IO was asked to file an affidavit stating his reasons for not arresting the accused.

In May 1997 a ‘Law Officer’ of the BSF appeared before the Court and informed it that Deputy Commandant DS Rathore was to face a Court Martial for the offences alleged to have been

276 The Court over ruled this submission and directed the police to search for Sajad’s whereabouts.
committed by him. Counsel for the petitioner protested that it would be illegal to permit such a Court Martial to proceed. The Court, however, ignored the threat that the proposed Court Martial posed to the proceedings for obtaining sanction, and directed the police to seek custody of the accused officer from the BSF.277

In July-August 1997 the petitioner filed an application before the Court complaining of harassment by the BSF, who were trying to force him to testify before the GSFC (General Security Forces Court)278 and, to produce his other witnesses and evidence before the said GSFC. The application prayed that the Court stay the GSFC, pending the decision in the proceedings before the High Court. Instead of granting this request the Court directed the petitioner to cooperate with the BSF, even as it directed the BSF to file a reply to the petitioner’s application. As subsequent events show, this display of prevarication by the High Court rang the fini for all possibility of obtaining sanction to prosecute the accused BSF officer.

In September 1997 the BSF filed its reply, arguing that the GSFC proceedings were not parallel proceedings (as argued by the petitioner). The BSF claimed that the bar against parallel proceedings could have been invoked only if at that time a civil court had been conducting proceedings in the case.279 They also, submitted that on the basis of the High Court’s direction of August 1997 all the civil witnesses had deposed before the GSFC. Lastly, the reply submitted that the proceedings under the BSF rules were impartial and that they had already been concluded.

277 The direction was meaningless since the police had already made it very clear to the Court that they were not in a position to compel the BSF to hand over custody of DS Rathore to them. Ironically, in July 1997 the BSF offered to produce DS Rathore before the police but on that date the police was not represented before the Court.

278 The BSF’s equivalent of a Court Martial.

279 An absurdly technical and hair splitting argument, which ought to have been rejected outright.
For the next two years the Court continued to pursue the issue of sanction though it ought to have known that there was no possibility, in law, of sanction being granted once the GSFC trial had been concluded. All it needed to do was to read the BSF Act.

In April 1999 the counsel for the central government informed the Court that the central government had refused sanction to prosecute DS Rathore. The counsel for the state government had no clue despite the fact that a fax dated 16 December 1996 from the central government to the state government had specifically communicated this refusal. The state government did not produce this fax before the High Court despite being instructed to do so, several times. Ultimately, the counsel for the BSF produced a copy of this order in December 1999.

In July 1999 the Union of India and the BSF submitted a statement of facts to the Court. Referring to the disciplinary action/trial against DS Rathore by the GSFC, it was stated that the GSFC had found him not guilty of all the charges laid against him by the police in the charge sheet, including the charge of murder. It was argued that in view of this fact DS Rathore could not be tried again for the same offences, or on the same facts. Section 75 of the BSF Act, which specifically bars a subsequent trial, was cited. Finally, it was argued that the proceedings before the GSFC were valid and lawful.

In August 2000 the BSF (in response to the petitioner's application praying that the refusal of sanction by the central government be quashed) filed an affidavit stating that DS Rathore had already been tried for murder and a second trial was prohibited under the BSF Act.

In October 2000 the DIG, BSF submitted before the Court that the finding of the GSFC, which held DS Rathore not guilty of offences u/s 302, 344, 364 RPC read with section 46 of the BSF Act, was confirmed u/s 107 of the BSF Act on 15 September 1997.

Under pressure from Sajad Bazaz’s father the Court tried to find a way around the impasse by asking the state government to ex-
amine whether a fresh request for sanction could be made, since the charge of murder had been added to the charge sheet after the first request was made in January 1994. The state government jumped to acquiesce and made a fresh request for grant of sanction to prosecute DS Rathore in August 2001, citing the addition of the charge of murder upon him as the reason for this renewed request.

Meanwhile the High Court failed to decide the petitioner’s application that the GSFC proceedings, which were undertaken while the writ petition was pending before the Court, be quashed and declared non est. In May 2002 the central government again rejected the renewed request for grant of sanction to prosecute DS Rathore, again citing the bar to a second trial contained in section 75 of the BSF Act and stating that he had already been tried by the court martial for the offence of murder.

The Contempt petition was finally disposed of, as infructuous, in July 2004, when the Court was informed that a charge sheet had been filed against the second accused, Azad Mir alias Asghar.

Fourteen year old Nazir Ahmad Gojar (93/4) was arrested on 26 January 1992 by soldiers of 5 Dogra Regiment, led by Major R.P. Singh and Major R.D. Singh. Two neighbours, Majid and Mohammad Ayub Gojar, who were also picked up at the same time, were released about five months later but Nazir was disappeared.

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280 The remark sidestepped the real issues. The Court, itself, acknowledged this fact in an order dated 13.6.01, where it is said that, the matter is not as simple as is sought to be made out by the state government's (oral) stand that it has no objection if Central Government is approached for fresh sanction. Before that can be done it is necessary to answer the question whether DS Rathore can be tried again, having already faced trial by a GSFC for the same offences. It is also important to clarify on the legality of the GSFC as it is contended that such a procedure could have been adopted only after the charge sheet was produced in court and the option was offered to the Commandant of the accused by the court. None of these issues was actually addressed and the matter was allowed to slide further.

281 This is something that was well within the Court’s powers.

282 Majid died shortly after his release, allegedly because of the torture suffered by him in custody.
Since the respondents did not file a reply to the petition for more than a year, the Court closed their right to file a reply. Thereafter, in November 1994, the High Court ordered an inquiry into Nazir’s disappearance. The army initially participated in the inquiry proceedings but later stopped attending the hearings. Based upon the testimony of Nazir’s co-detainee, and eye-witness testimony regarding his arrest, in May 1996 the Inquiry Judge held that there was no doubt that Nazir had been arrested by the 5 Dogra, and must be presumed to have been killed in custody.

Under pressure from the High Court the police registered an FIR, completed its investigations and prepared a charge sheet against the CO of the 5 Dogra and, the two officers who led the arrest party: Major R.P. Singh and Major R.D. Singh. However, the police expressed an inability to arrest the accused officers. In mid 1997 the SHO, Bandipora informed the High Court that attempts to persuade 5 Dogra to produce the three accused officers had failed. He also stated that the 5 Dogra had been transferred out of the Bandipora area, and their current place of posting was not known. In September 1998, in response to queries from the High Court, the SSP, Baramulla stated that steps to arrest the three accused officers could only be initiated after grant of sanction by the central government.

In October 1998, the High Court disposed of the case on the basis of the police report that the concerned department of the state government had been requested to obtain the sanction necessary to prosecute the three army officers. In March 1999 Nazir’s family had the case reopened by filing an application, alleging that the state government had failed to comply with the Court’s directions. In May 2000 the state government finally wrote to the central government (Ministry of Home Affairs) for sanction to prosecute the accused officers. In October 2000 the central government’s lawyers informed the Court that the state government had wrongly addressed its request for sanction to the Union Home Ministry rather than to the Defence Ministry; hence the delay. In April 2002 the central government passed an order rejecting the request for sanction, citing reasons. A copy of this order was supplied to the petitioner in October 2002, and with that the case was disposed of once again. On both occasions, while disposing of the petition, the High Court failed to pass orders on the petitioner’s prayer for grant of interim compensation.
The reasons for which sanction was refused by the central government in this case, are reproduced below.

1. That out of four witnesses before the District and Sessions Judge, Baramulla only one, Mohammad Yousuf Gujjar, has named Major RD Singh and Major RP Singh, and so prosecution case is not convincing.283

2. That there are contradictions in the statement of the two witnesses about the arrest and release. Ayub Khan deposed that his brothers were released the same evening but Mohammad Yousuf Gujjar said that he and his brother were released after a month from Jammu jail.284

3. No witnesses blamed Colonel (now Brigadier) VK Sharma. He was named being the C.O of unit and on presumption of involvement, otherwise there was no evidence against him.285

4. The Army officers denied on oath the arrest of individuals on 26 January 1992 or any other day and that they were not present in the unit during that period. In fact Major RD Singh was on annual leave for thirty days from 7 January 1992 to 5 February 1992 and Major RP Singh on casual leave of fourteen days from 22 January 1992 to 4 February 1992.286

5. It is on record that the Numberdar/ Sarpanch of Malangam village certified on 25 February.2000 (witnessed by four prominent residents of the village) that the personnel of Dogra Regiment had not harassed or ill treated any person of the village. Nor was any man/ woman killed.

283 It is settled law that reliable testimony of even one witness is sufficient to secure a conviction.
284 This has no bearing on the issue of Nazir Gojar’s arrest and disappearance.
285 The concept of Command Responsibility is too well settled to permit such quibbling.
286 This was a matter for trial; not a ground for refusing trial
6. With regard to observation made by the Supreme Court in the Naga People’s Movement for Human Rights v UOI {AIR 1998 SC 431 (Para 52)}, grant of sanction to prosecute of the Army officers is not justified based on available records and nor would it be in public interest. The prosecution of officers will undermine the morale, discipline, confidence and motivation of troops deployed in the sector. Hence sanction under section 7 of the above Act is declined.

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(Ajay Prasad – Additional Secretary)
IV. Where A Petition Was Not Filed

Of the 11 cases in this category, one has been discussed above, along with the case of Manzoor Dar (98/2). The remaining cases are discussed below. As in the previous section, many of the narratives here highlight the everyday, non-legal aspects of the panoptic regime of injustice and impunity that has been thrust upon Kashmiris; a regime within which the impossibility of justice is an unavailing stipulation in all circumstances.

The cases of 18 year old Ejaz Ahmad Sheikh (2003/2) and 19 year old Firdous Ahmad Khan (2003/3) are connected by more than just the fact that they were probably together when they disappeared.287 The narratives in these two cases suggest the real possibility that these boys left home to join the militants. However, given the absolute uncertainty that pervades everything in Kashmir, it is equally likely that they were picked up by the security forces and disappeared so efficiently that their families could get no clue whatsoever to their whereabouts. Ejaz Sheikh was an apprentice in an automobile repair workshop. Arrested three times before his disappearance for just a day or two, he was under constant pressure to become an informer (mukhabir).288 On 20 August 1999 he left home, ostensibly to go to work with his neighbour Firdous Ahmad Khan who worked in the same workshop. Both boys disappeared.

According to Ejaz’s father, the neighbourhood where they lived used to be a hotbed of militancy.289 Later, most of the militants and their supporters who survived the onslaught of the security forces started working for the security forces as informers. After he grew up, Ejaz was fre-

287 We visited this family because we learnt that the STF had arrested Ejaz’s two younger brothers, one of them a little boy of about 12 years, just a couple of days before. However, they had been released by the time of our visit.

288 Twice his father secured Ejaz’s release with the help of one of the informers living in their locality. A few days before he disappeared some soldiers led by a Captain Sharma from the BSF broke down the door of their house at 4 a.m., asking for Ejaz. This time his father took the help of the SP of their area to get him released.

289 He works as a ward boy in one of Srinagar’s oldest public hospitals
quently pressured to join these informers but he was never tempted. He told his father that he did not want to become a militant or a *mukhbir*.\(^{290}\) The security forces used to also harass the family.

After searching for him everywhere Ejaz’s father filed a report at PS Rajbagh. He and the family of Firdous Khan also inserted an advertisement in the paper, seeking information from the public at large about their boys.\(^{291}\) He said that the security forces had raided their house at least 30 times since Ejaz’s disappearance, often taking him (Ejaz’s father) into custody. Each time they would question him about Ejaz’s whereabouts. Once, when he was still searching for Ejaz’s whereabouts, the policemen at the STF, Cargo complex interrogation centre detained him for several days. He was tortured by DSP, Ghansham and his men, who said that he was lying, and that Ejaz had not disappeared.\(^{292}\) Ejaz’s father suspected that the repeated raids were the result of lies fed to the security forces by the STF and BSF *mukhbirs* who surround their home.\(^{293}\) He wondered why the security forces did not raid his house at the time when they thought Ejaz was in it, instead of harassing them and torturing them.

Unable to bear the harassment, Ejaz’s father once complained to the SHRC. He said that *their procedures are such that they cannot do very much*.\(^{294}\) A few days before our visit, the security forces arrested Ejaz’s two younger brothers. Frantic, Ejaz’s father again complained to the SHRC. They gave him a date of hearing in his complaint after one month. Ejaz’s father told them that there would be no point left in his complaint after a month but the SHRC did not have any *free* dates before that. On this occasion, Ejaz’s father succeeded in getting his sons released after a few days of detention.\(^{295}\) He withdrew his complaint to the SHRC after

\(^{290}\) He just wanted to learn his trade properly and, do his work.

\(^{291}\) He also met the then State Home Minister, Mushtaq Lone, for help but to no avail.

\(^{292}\) Ejaz’s father asked them to put a 24 hour watch on his house and, catch Ejaz if he came home.

\(^{293}\) According to him, these informers would regularly lie to the security forces that Ejaz had been home for a meal, or for the night.

\(^{294}\) Justice Kuchai (then Chairperson of the SHRC), personally spoke to the DIG, Srinagar and, asked him to ensure that Ejaz’s family was not harassed. But the raids continued.

\(^{295}\) The boys told him they were interrogated about Ejaz’s whereabouts.
their release, as his job and his family responsibilities leave him with very little time to pursue futile litigation.

Firdous Khan's life ran on a somewhat parallel track. At the age of 14 he had been arrested by the BSF during a crackdown. He was subjected to intense torture and one arm was permanently damaged. Later, he was booked under the PSA and jailed for two years. After his release, Firdous used to go into a panic every time he was near the BSF. His family acknowledges that everyone thinks Firdous ran away to became a militant. But they say that he had no problems. Nor did he have a fight with the security forces or anyone else. So, there was no reason for him to have become a militant.

Since his disappearance along with Ejaz Sheikh, his family has been constantly harassed by the security forces, who raid their house repeatedly. His brother, Shabir, was taken into custody, and asked to produce Firdous. Another brother, Javed, who is a police constable, was subjected to a departmental inquiry on the ground that his brother was a militant. Firdous's father, who is a permanent class-IV employee of the state government, is frequently beaten up. In 2001 a new battalion of the BSF came from Rajbagh and asked for photos but by then they had no photos left. They (the BSF) told the family that Firdous had been killed near the border but Ejaz was alive.

His mother said, our family has no connection with militancy. We don't know if he became a militant. Some say he is alive, others say he is dead. We have no money and no contacts, so we did not file a case. Nor have we made an application for compensation.

The story of Imtiaz Ahmad Wani (2003/4) raises echoes from other narratives that we heard during our travels in the Kashmir valley. The lack of a body, or knowledge of what has happened to him, can have

296 On another occasion, the 34 Bn BSF searched their house and took away every photograph of Firdous that they found. Now the family does not have any photograph of him.

297 Firdous's mother said that they did not tell us where his body was or anything else and we were afraid to ask for details.
serious, unforeseeable consequences. Imtiaz’s sister claimed to have seen him in magazine photos and TV programs. She appeared to us to be a sensible, hard headed young woman, who single handedly took care of her aged parents.

Imtiaz was an orderly (peon) in the office of the Chief Conservator of Forests. On the night of 15 – 16 May 1996, the family was at home. It was raining heavily. Imtiaz was busy with his hobby of repairing electrical appliances. Some BSF soldiers, accompanied by mukhbirs, came to the house and took him away. The next day the family learnt that he had been taken to the BSF camp at Gogji Bagh. Although they were unable to meet him there, they saw him at a distance on several occasions. The BSF repeatedly promised to release Imtiaz but after two weeks he was moved from there and never seen again.

However, his family claims they had seen his picture several times. The first time they saw him in a photograph published in India Today. He was wearing a sweater, standing in a line for casting his vote, in Pahalgam. After seeing this picture they went to Pahalgam and searched for him but could not find him. Since 2001 they claim to have seen him several times on TV, during various rallies. In 2002 they saw his face in a TV programme on Kashmir Doordarshan, at about three or four p.m. in the afternoon, during an interview with a minister from Gujarat. He was one of three boys standing behind the minister. They also claim to have seen him in another program in 2003, during the Assembly elections. He was standing near Omar Abdullah during a political rally.

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298 Riyaz Gilkar’s brother (95/4) claimed he saw Riyaz in several military camps, over a period of many years. He admitted that his insistence that it was Riyaz that he saw seemed unhinged behaviour to most persons. However, he insisted that he had actually seen Riyaz on each of the occasions. Our conversation with him, spread over several hours, left us most impressed with his demeanour, which was serious, responsible and earthily healthy.

399 They did not know the name of the minister but described him as thin faced, clean shaven, with white hair and wore glasses.

300 Imtiaz’s sister agreed that these sightings did not make sense. Each time, she said, we asked ourselves - how can it be Imtiaz? But on none of these occasions did they have any doubt. She said that they did not go to the TV station to make inquiries because it would have been of no use.
Imtiaz’s sister earns about rupees 20 to 30 per day making Pashmina thread. This is necessary because the only other income of the family is her father’s tiny pension. They did not file a case in the High Court but did file a complaint with the SHRC. *Only dates are given there,* she said. Once, Justice Parray, the then Chairperson, offered to arrange for compensation but they rejected the offer. *We don’t want compensation for Imtiaz; we just want him back,* she said.

**Mohammad Akbar Sheikh (2003/5),** a daily wage labourer, left home on 19 April 1990 and never returned. About eight or nine months later, his family was told by neighbours and friends, that according to newspaper reports, and the news on television, he had been arrested at the border. However, they could not get any information of his whereabouts.301 In July 2001 Akbar’s family was stunned to see a photograph in a newspaper called Chattan, published from Srinagar, which showed Akbar in custody.302 The caption did not mention the location where the persons shown in the photograph were being held. However, it was stated that they had been held in detention for ten years. Shortly after the photograph was published they also received a letter from him, stating that he was being detained by the BSF in a camp in Palampur (Himachal Pradesh). The family went to Palampur and made inquiries from the shawl sellers nearby. They were told that 3 or 4 Kashmiris were detained in the camp there. The shawl sellers named the Kashmiris who were in custody. On hearing the names Abdul Rashid (brother) thought that one of them may be Akbar Sheikh but he was not allowed into the camp.

After his return from Palampur the family went to the Chattan office. The newspaper told them that they did not have any information other than what had been published. They stated that they information published had been released by the security forces. In 2002 the family filed a case in court. They had also lodged a FIR. Abdul Rashid, Akbar Sheikh’s brother, said that his father stopped going to attend the case hearings.

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301 Around the same time, the security forces had raided their house and, searched it.
302 Chattan dated 19 – 29 July 2001; Vol.17 No.26. The photograph shows a few men standing under guard in an open field or ground.
saying that he is just a labourer and that he is afraid of being assaulted for making allegations against the security forces.\textsuperscript{303}

The family said that their home has been raided countless number of times (at least 60-70 times) but nothing has ever been recovered. The first raid happened the day after Akbar disappeared. However, the search party did not say anything about Akbar having been arrested. Akbar Sheikh’s disappearance has unbalanced his mother.

**Bashir Ahmad Sofi (2003/6)** spent most of the year travelling outside Kashmir, selling shawls. While in Kashmir he made utensils of copper and other metals. On the night of 16-17 July 2003 the BSF and the STF raided Bashir’s house.\textsuperscript{304} The house was searched and the family members locked in a room. Neighbours reported seeing Bashir being taken away. A picket of the local police, and the keepers of *Naqshband Sahab*,\textsuperscript{305} also witnessed his arrest. However, the police picket did not file a report even when personnel of the local police station came to them making inquiries about Bashir's whereabouts. Despite extensive efforts to trace him, Bashir was never seen again.

The family met every imaginable authority: bureaucrats and politicians. They even submitted a representation to the Chief Minister, Mufti Mohammad Sayeed, in the presence of the entire cabinet and his daughter, Mehbooba Mufti, on 13 July, the day of the martyrs. They met Ali Mohammad Sagar of the NC and, the secretary of PDP, Mr Karra and, Maulvi Omar Farooq. Everyone promised to help but did not do anything. They met with all the police officers – from the SP of the area, the IGP, Mr. Rajendra, to the DGP. They also met the Divisional Commissioner, Kashmir, Gopal Sharma, who told them that he had tried to get information about Bashir over the phone from the army, the BSF, and the police but none of them had cooperated.

\textsuperscript{303} The family did not have any papers pertaining to the case. Nor did they have any reference that might have enabled us to trace the records in the High Court. As such, we have treated this as a case where a petition was not filed.

\textsuperscript{304} The family recognized the BSF uniform since there was a BSF bunker near their house.

\textsuperscript{305} A major shrine.
The SP (North), Mr Jhalla, sent them in his jeep, with a constable, to Bandipora, Ganderbal, Beerwah and the Srinagar military camps. They could not go inside the camps but the constable made inquiries. Everywhere the soldiers denied Bashir’s custody. Ever since his disappearance the police and BSF make inquiries from them. A BSF officer, a Sikh with three stars on his epaulets had visited them several times since Bashir was arrested. He told them that the BSF is searching for Bashir.

About one and a half months after Bashir’s arrest a man was released from the STF detention centre in the old Air Cargo complex. He sent the family a message that Bashir was in detention there. A couple of people from Bashir's mohalla (locality) went to meet him. They showed him four photographs, from which he recognized Bashir. They also held a dharna (a sit in protest) against his arrest. The entire mohalla, and people from nearby areas, participated in it. Bashir's family did not file a petition before the High Court. They said that they did not have witnesses willing to testify. Nor do they have the money to litigate. We are nanwais. There is no point in going to court.

Ali Mohammad War (2003/7) was in the carpet business. One day he left for work and never returned. Soon afterwards, on 7 August 2000, the family lodged an FIR at PS Pattan. They also filed a complaint before the SHRC. About 11 months later the family learnt that Ali Mohammad’s body had been fished out by the personnel of PS Nishat Bagh from the Dal Lake, three months after his disappearance. It was in a gunny bag and bore signs of violence.

Mohammad Syed Tambakoo (2003/8) was a hawker selling electrical goods outside a Gurdwara in Lal Chowk, Srinagar. His wife was pregnant and was expecting their first child. On 24 May 1992, Syed Tambakoo had gone to watch a cricket match at the Polo Ground in Srinagar. According to witnesses, he was lifted by the BSF from there.

The family searched for him everywhere, meeting those in authority, like Shafi Bhat of the National Conference and General Zaki. They also

306 This is another pattern that is repeated. The family of Ashiq Hussain Malik (97/9) had an identical story to tell.
307 Traditional Kashmiri bakers
filed a report at the PS, Maisuma the same day. At the Hari Niwas detention centre, on seeing his photograph, the soldiers on duty acknowledged his presence and told the family to bring fresh clothes and toiletries the next day. However when they went there the next day, his custody was denied.

Mohammad Shafi Rah (2004/1) had been in the leather goods business for several years and lived in Kathmandu, Nepal. After he had established himself there his family sent his 26 year old younger brother Mushtaq Ahmad Rah (2004/1) to join him. In August 2000 the family received a phone call from Nepal, informing them of the arrest of both brothers. Since many Kashmiris were arrested in Nepal that year, the arrests were widely covered by the Nepal media. Most of those arrested were eventually released. The others were handed over to the Indian police and intelligence agencies. An extensive search in both Nepal and India and appeals to numerous people in authority yielded no information. The arrests were denied by the Indian authorities.

Shafi’s older brother, Mohammad Yasin, immediately left for Nepal. He learnt that the Nepal police, accompanied by Indian police in plain clothes, came when Mushtaq was in the workshop. Shafi had gone to visit a friend, Farooq Ahmad Wani. The police first arrested Shafi, brought him back to the workshop and then arrested Mushtaq. The Indian Embassy in Kathmandu denied all knowledge of Shafi and

308 Shafi Rah was a member of the Al-Jihad in the early 1990’s. However, when infighting broke out among the militant groups and the family home was attacked and destroyed in 1994, his family persuaded Shafi to give up militancy and settle down. He moved to Nepal and settled down in business.

309 According to newspaper reports, 27 Kashmiri men were arrested by the Nepali police within a space of a few months. These arrests were said to be a joint operation with Indian police and intelligence authorities. All but three were released. Apart from the Rah brothers, the third Kashmiri who has been disappeared from Nepal is Ghulam Mohammad Sofi (2004/2).

310 Prior to Shafi and Mushtaq’s arrest the Rah home in Srinagar used to be raided regularly by the security forces, asking about Shafi’s whereabouts; but no one was ever arrested. Shafi’s father was arrested in a raid in July 2000, and kept in the old, Air Cargo, Aluchibagh detention centre for several days. Shafi and Mushtaq were arrested in Nepal about a month after this incident.

311 Shafi was arrested from Farooq Wani’s house. The police also arrested Farooq Wani, one Shakil Ahmad, and one other person. Farooq and Shakil, who were both married to Nepali women, were released after two or three days.
Mushtaq’s whereabouts and threw Yasin out of the Embassy compound when he tried to insist for information.

The Nepal police told Yasin to go away, saying that the police from Delhi had taken them away. Some sympathetic police men told him that an SP and a DSP of the Indian police had come to coordinate the arrests. Yasin also met some of those who had been arrested and released. All of them were scared. They had been warned by the local police to keep their mouths shut or they would be arrested again. Of the six people who were not released the custody of three was admitted, and it was revealed that they were held in a jail on the Bihar – Nepal border. But the arrest of Shafi and Mushtaq Rah, and of one Ghulam Sofi was not acknowledged.

Yasin was unable to persuade any lawyer in Nepal to take up the case that he wanted to file against the Nepal police, asking that they disclose the whereabouts of his brothers. He was told that the police vehicle in which they were taken away was from Patna. So, he returned to India via Patna, where he hired a lawyer to accompany him to the jail, to search for his brothers. The jail authorities detained Yasin.\(^{312}\) During interrogation Yasin was accused of being a spy. He was released after three days and, came to Delhi. He made enquiries from the Delhi police about Shafi and Mushtaq. There he met a CID police man from Jaisalmer, who told him that his brothers were being held in Jodhpur.\(^{313}\)

The Rah family requested human rights activists in Delhi for help. Their inquiries seemed to confirm that both the Rah brothers were indeed in Jodhpur. With the help of friends the family telephonically hired two lawyers in Jodhpur. They were asked to go to the jail and check if Shafi and Mushtaq were being detained there. After checking with the jail authorities they called back to congratulate the family, saying that there were two Kashmiri boys in the jail. At Jodhpur, the jail authorities told the Rah family that they needed proper documentation from Srinagar to establish their identity as Indians before an interview could be allowed.\(^{314}\)

\(^{312}\) The lawyer left, promising to try and secure his release as soon as possible.
\(^{313}\) Both places are situated in Rajasthan
\(^{314}\) The identification papers carried by the Rah patriarch were not accepted. They asked for an affidavit attested by the court of the DJ, Srinagar, to establish their place of residence.
They returned to Jodhpur two months later with the necessary documentation but the jail authorities then said that they were under instructions to refuse all requests for a meeting.\textsuperscript{315}

In Delhi the family filed a petition in the High Court but the case was rejected by the Court, saying that they could not act on the basis of information contained in the newspapers. Their lawyer also wrote letters to the IB (Intelligence Bureau), the NHRC and the government but got no reply. Letters to the Prime Minister, through Yusuf Tarigami, MLA J&K Legislative Assembly, and another to the Principal Secretary (Home), Government of India also went unanswered.\textsuperscript{316} After the arrests the raids on the Rah house have stopped completely.

**Ghulam Mohammad Sofi (2004/2)** and his nephew, Wazir, were arrested by a joint force of the Nepali and Indian police on 16 August 2000.\textsuperscript{317} The Nepali friends with whom Ghulam Mohammad was dining that night were also arrested.\textsuperscript{318} Wazir was released after about 10 days. An extensive search and numerous appeals by Ghulam Sofi’s family in both countries yielded no result. His arrest was denied by the Indian authorities.

According to the family, Wazir’s release was fortuitous. One night a drunk was brought into his cell. He asked the drunk to phone his brother upon his release. The drunk kept his promise and phoned, telling the family that Wazir was at PS, Singh Durbar. Wazir’s brother rushed to the police station and demanded to meet with his brother and uncle. Wazir heard his raised voice and called out in Kashmiri. After some parleys Sub Inspector Rupak Gurung (who also spoke with his superi-

\textsuperscript{315} The CID questioned them several times in Jodhpur. They were threatened with arrest. Frightened, the family left Jodhpur.

\textsuperscript{316} They also lodged an FIR at PS Mehrajgunj, in Srinagar, and met many authorities and ministers. They also filed a complaint with the SHRC.

\textsuperscript{317} The police party was headed by one Birendra Shrestha and, SI Rupak Gurung, both of whom were from Nepali intelligence. They were accompanied by five or six others, probably from India. Birendra Shrestha was a frequent visitor to the Sofi shops. Over a cup of tea he would seek their cooperation in identifying people from pictures that he showed them.

\textsuperscript{318} He had lived in Kathmandu for 28 years. His older brother had been there even longer. They owned several shops in the city, selling Kashmiri handicrafts.
ors over the phone) prepared a release document in Nepali, which Wazir’s brother signed. On asking about their uncle Gurung said forget about him if you want to live here.\(^\text{319}\)

The family met everyone imaginable, in Nepal and India: the DIG Police and the IG Police in Nepal, the Union Home Minister, LK Advani in Delhi, Mangatram Sharma, the deputy Chief Minister, in Srinagar, the president of the Congress party, Sonia Gandhi, Omar Abdullah and, many others. They also met people from the ICRC.\(^\text{320}\) Once the ICRC informed them that the men arrested from Nepal were to be shifted to Tihar jail, Delhi but Ghulam Sofi was not among them.

The Sofi family says that the Nepali intelligence officer, Birendra Shrestha, knows everything about the case. It was his job to catch and arrest people and hand them over to the Indian authorities. They say that we are not even claiming that our uncle is innocent. Let the court decide. But even if he is guilty, we are entitled to meet him. We should be told of his whereabouts so that we are released from agony of not knowing and, from our endless search for him. After all, even the killers of Indira Gandhi and Rajiv Gandhi were tried and punished. What is it, so bad, that my uncle did that he is not, even, shown to us?

\(^{319}\) After nine days of detention Wazir, his uncle, and one Habibullah Malik were taken somewhere in a vehicle. They were not allowed to see where they were going. After some time, Wazir was dropped back at the PS Singh Durbar but his uncle was taken away.

\(^{320}\) International Committee for the Red Cross
Brooding Omnipresence: Notional Powers and Actual Impotence

The powers vested in the Supreme Court: to do justice, to protect the fundamental rights, of people in general and citizens in particular, are sweeping. Under Article 32 any person whose fundamental rights (including the right to life) have been violated can move the Supreme Court directly, and as a matter of right, for an appropriate writ. Similarly, Article 226 of the Constitution empowers the High Courts of the country to issue writs. Thus, the remedy is symbiotically linked with the guarantees of life and personal liberty under Article 21 of the Constitution.321

The crux of the guarantee of the right to life, which forms part of Article 21, is contained in the expression except according to procedure established by law. By the time of the insurgency in Kashmir, the judicial interpretation of this expression had evolved from a narrow, pedantic view in the AK Gopalan322 case to the position articulated in the Maneka Gandhi case.323 This case also overturned the notion that the Fundamental Rights under the Constitution were contained in separate, watertight compartments. Thus, in order to satisfy itself about the constitutional validity of a law (or order) that was impugned as violating a citizen’s fundamental rights, the Court would not only examine the direct impact of that law (or order) upon the specific right (corresponding to a particular Article of the Fundamental Rights Chapter) whose violation

321 Article 21 states- "No person shall be deprived of his life or personal liberty except according to procedure established by law."
322 AK Gopalan V. The State of Madras (AIR 1950 SC 27), in which the Court held that the word law, as used in Article 21 meant State-made law and, was not an equivalent of law in the abstract or general sense embodying the principles of natural justice.
323 Maneka Gandhi V. Union of India (AIR 1978 SC 597), In a series of judgements starting from the early 1970s, the Supreme Court transformed the meaning of the expression procedure established by law in Article 21 to mean procedure that is just, fair and proper; in accord with the objects underlying the establishment of the Indian republic and, not just procedure prescribed by the parliament. Thus, for a law to be valid it had to also pass the test of being in consonance with the basic structure of the Constitution. The whole of the chapter of the Constitution containing the Fundamental Rights guaranteed under it, was held to be part of this basic structure.
was complained about; it would also examine the indirect impact of the law (or order) upon the fundamental rights of the complainant, taken in their totality.\textsuperscript{324} The Court declared that if the inevitable consequence of the operation of the impugned law (or order) was the violation of the fundamental rights, such law (or order) would be declared unconstitutional and struck down.\textsuperscript{325}

Based upon what it called the \textit{brooding omnipresence} of Article 14 in the Constitution, the Supreme Court derived a doctrine of the courts’ obligation to do justice in exercise of its \textit{public law} jurisdiction, as distinct from the remedies available to aggrieved persons under normal legal processes, called \textit{private law} remedies. The Nilabati Behara\textsuperscript{326} decision and the DK Basu\textsuperscript{327} decision, two cases that have become part of the global human rights jurisprudence, emerged out of this process. In the Nilabati Behara case the Court declared that the wide powers given to it by Article 32 impose upon it a corresponding constitutional obligation to forge such new tools \textit{for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution}. It said that it was no longer enough to relegate those aggrieved by a violation of their fundamental rights to the \textit{normal} civil law remedies. Further, making it clear that the powers of the High Courts were co-extensive with its own, the Court held that \textit{This Court and the High Courts, ... have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers.}\textsuperscript{328}

\textsuperscript{324} Article 13 stipulates that all laws inconsistent with or in derogation of the fundamental rights guaranteed in the Constitution shall be void to the extent of such inconsistency.

\textsuperscript{325} The Court relied upon Article 14 of the Constitution to develop this view: \textit{The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.}

\textsuperscript{326} Nilabati Behera V. State of Orissa and others; AIR 1993 SC 1960.

\textsuperscript{327} AIR 1997 SC 3047.

\textsuperscript{328} It added that the State \textit{has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings.}
A few years later, in the DK Basu decision, it laid down binding and enforceable guidelines to prevent violation of the fundamental rights of the citizens of India by the law enforcement agencies. The Court declared that a failure to comply with the guidelines laid down by it would tantamount to contempt of court and, would be punishable as such.329

Apart from the larger position enunciated above, the specific case of enforced disappearances at the hands of the security forces operating under the AFSPA is also fully covered by the decision of the Supreme Court in the Sebastian Hongray case, which pertained to the enforced disappearance of two people from a village in Ukhrul district of Manipur.330 Despite its severe shortcomings, there is no gainsaying that this decision established the nature of the inquiry to be conducted in a case of enforced disappearance. The Court declared that in a petition for a writ of habeas corpus The normal practice is that …the Court would direct a notice to be served upon the respondents with a view to affording (them an opportunity) to file evidence in reply. If the facts alleged in the petition are controverted …the Court would proceed to investigate (them) to determine whether there is substance in the petition.331 … If on investigation of facts, the Court … is satisfied that the respondent was responsible for unauthorised and illegal detention of the person or persons in respect of whom the writ is sought, (it) would issue a writ of habeas corpus which would make it obligatory for the respondents to file a return.332

Thus, by the time the insurgency started in Kashmir, it was an established proposition that under Article 32 of the Constitution the court had an obligation to act in defence of the guaranteed rights of the citizens. Further, it was also settled law that in such cases, the court’s powers were of the widest amplitude and, were not hamstrung by rules

329 The experience of lawyers who filed contempt petitions, instead of petitions for a writ of habeas corpus, shows that in Kashmir this additional, remedy created by the Supreme Court was as bereft of substance as the original writ. See case of Nazir Malik and Shafi Shah (97/1) above.
330 Sebastian Hongray v. Union of India and others; AIR 1984 SC 571
331 By the date of this judgement it was also a settled position that when acting under Article 32, or Article 226, the Supreme Court and the High Courts had the power to delegate the inquiry to some other person or agency, which would report its findings to the court.
332 Consequences would flow if the detaining authority failed to produce the person concerned, in compliance with the court’s order, or provided sufficient explanation for its failure to do so.
and procedure. In fact, the Supreme Court had held that it was free to fashion the remedy to suit the need.333

Given such a plenitude of powers, it should have been possible for the Jammu and Kashmir High Court to make its presence felt and, to provide at least a modicum of protection and relief to those complaining of a violation of the right to life of their kin. However, as we have seen, the High Court’s failure in Kashmir was absolute. Leave alone a display of its enormous powers in exercise of its writ jurisdiction, the Court failed to display even the far lesser powers that an ordinary civil court routinely exercises. In this section we shall examine the functioning of the High Court from the perspective of a list of attributes of a court, derived from the Code of Civil Procedure 1908.334

In order to be recognised as a court, a body constituted as one must have the following attributes or powers:

- The power to summon, including the power to summon witnesses.335
- The power to order discovery (of documents, evidence, etc) including, the power to ensure the filing of proper replies/responses by the parties and, the power to impose a penalty for disobedience of its orders (costs, forfeiture of the right to file a reply or, of the right to lead evidence, contempt of court, etc).
- The power to hold an inquiry itself or to appoint some other person or authority to do so.336
- The power to pass judgement and decree, including the power to enforce its judgements and decrees – by way of execution or contempt proceedings, including the power to attach property, imprison, etc.

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333 Bandhua Mukti Morcha v. Union of India; AIR 1984 SC 802
334 The J&K Civil Procedure Code is based upon an earlier version of the Indian code. Since there are no significant differences between the two from the perspective of this paper, I have used the Indian code as a point of reference.
335 A connected aspect, namely the problem of identification of the accused unit, will also be discussed since, before it can summon the Court must be able to identify who (or what) to summon.
336 A civil court has the power to appoint commissioners to record evidence on its behalf and to, even, give reports on issues in contention between the parties.
I. The Power to Summon

Since it must invariably summon the other party (or parties) to a dispute, it is reasonable to assume that a court would devise a quick and efficient method for ensuring their presence before it. The High Court fails this test in the cases examined by us. This failure must be deemed culpable since the respondents were invariably the state and the central government and their constitutive elements such as the Army, the BSF, the CRPF, the police, etc. Service of notice upon these respondents ought to have been no problem at all, happening almost instantaneously.337 Nevertheless, it took as much as 22 months to serve notice/summon the respondents in one case. And, this case was not an exception. In as many 13 cases it took more than one year to serve the respondents. In 28 cases it took three months or more to serve notices upon the respondents. That this delay in effecting service was completely unnecessary is proved by the fact that in six cases service of notices was effected on the same day as it was ordered; in 25 cases service was effected in one month or less, from the date on which it was ordered. A couple of examples to illustrate the point are given below.

There were three respondents to the petition filed on behalf of Farooq Ahmad Shalla (96/3).338 On 31 October 1996 the Court ordered notice of the petition to be served upon the respondents. Ten months later, on 30 August 1997, the process server (the official whose job it is to serve court notices and orders) reported that after carrying out an extensive search for the 22 RR he had discovered that they were currently stationed in Anantnag district. Despite this information being available on record, on 20 January 1998 the Court ordered the petitioner to file fresh particulars of the 22 RR.339 Ultimately, on 27 March 1998, the Court

337 Both the central and the state governments maintain a sizable permanent establishment in the High Court. In addition, various departments and agencies of the two governments often appoint ‘standing counsel’ of their own, to act as their permanent representative before the court.

338 UOI through the Ministry of Defence (MOD), New Delhi; State of J&K through, the Additional Chief Secretary (Home); CO Rashtriya Rifles 22 Bn, through RS Raina.

339 The absurdity of the Court demanding fresh or better particulars of the respondents in a habeas corpus petition, where the petitioners often know nothing about the agency that has effected the arrest, is patent.
directed that notice of the petition be served on the 22 RR through the standing counsel for the central government; something that could have been done in the first place.\footnote{Another aspect of the farce was the fact that in two connected cases, service on the 22 RR was completed within a few months and, they filed a reply within weeks thereafter.} Time taken to serve all the respondents: 21 months.

Two of the four respondents to the petition filed on behalf of **Bashir Ahmad Bhat (97/7)** were served within two months. However, 10 months after the petition was filed the respondent nos. 3 and 4, Commandant 12 MLI (Maratha Light Infantry), c/o 56, APO (Army Post Office) and, the Union of India, through the Secretary, Defence, New Delhi had not been served. By way of explanation, a court official noted that notices had been sent to the **wrong address**.\footnote{The respondent no. 3 was to be served c/o 56 APO and, the respondent no. 4 was the Union of India, through the Secretary, MOD, whose address one would expect was well known to the Court’s registry.} Three weeks later the file noting states that fresh notices, as ordered, could not be issued **due to non availability of copies**.\footnote{In such cases it is the practice of the Court to issue notice to the petitioner or his counsel, asking them to provide copies of the petition. Months can be wasted in this exercise whereas there is no dearth of photocopiers in the High Court.} Once copies of the petition were received from the petitioner, the registry chose to re-serve them on the state government respondents, who had been served more than a year earlier. Ultimately, the registry decided to serve notice of the petition on the unserved respondents through the standing counsel for the Union of India. Total time taken to complete service upon the respondents: 20 months.

II. A Connected Issue: The Problem of Identification

In normal cases it is reasonable to assume that a petitioner will take steps to ensure that a complete address is furnished to the Court. However, in cases of enforced disappearance, the identity (and address) of the arresting party is often concealed as a matter of policy and special measures are required to ensure accurate identification of the arresting unit. Despite this the existing process casts the onus of identifying the offending agency
of the security forces and/ or the actual unit involved, entirely upon the petitioner. No agency of the State is required (or asked) to assist in this or to take responsibility for ascertaining the facts despite the knowledge that the central security forces rotate the units that are posted in Kashmir every two years or so.343 This anomaly is rendered even more absurd by the fact that the place of posting of the units of the armed forces is always treated as secret, on grounds of military security.

Further, it is absurd to expect that a member of the arrestee’s family, or the general public, would be able to decipher the maze of security agencies and units and identify the particular unit responsible for the arrest.344 The difficulties of identification were compounded by the fact that the security forces in Kashmir operate among an overwhelmingly rural and semi-literate population. The problems with identification are similar in the case of the para-military troops stationed in the valley, although their set up – battalions and companies – is relatively simpler. In the case of both kinds of security forces, our research shows a conscious design to conceal identities and to avoid judicial scrutiny. Thus, in as many as 34 cases there was a problem about the identity of the arresting unit.

Irrespective of the difficulties that the security forces created however, it was entirely within the realms of authority and capability of the High Court to demand that the security forces cooperate in devising a system for identifying the force/ unit/ officers/ soldiers involved in cases of illegal arrest and detention. For example, the security forces in Kashmir function under a *Unified Command* for operational purposes. There is no reason why it could not have been treated as unified for habeas corpus purposes, also. This could have been done without compromising security considerations. By pinning responsibility on the superior/ commanding officers, such a measure would have acted as a disincentive to conceal the identity of the actual culprits. Instead, a lax and

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343 Thus, it was almost invariably the case that the unit against whom the allegation of enforced disappearance was made had been transferred out of Kashmir by the time the Court got around to serving notices upon it.

344 The Indian Army is divided into regiments, battalions and companies but this is not the only categorisation. Divisions, Independent Brigades and, other formations abound. Further, the Army has a system of attaching battalions from various regiments to larger formations. To top it all, unit identities are usually abbreviated.
indifferent High Court allowed the security forces to get away with every shenanigan and subterfuge.\textsuperscript{345}

The \textit{problem} varied from complete lack of information about the identity of the arresting unit to slight confusion about specifics. Not so ironically, considering the chaotic and inefficient level at which the system functions, the identity of the arresting unit was fixed with a fair degree of certainty by virtue of subsequent events in some cases where there was very little information initially. On the other hand, in several cases where there was only a very slight doubt (if at all) about the identity of the arresting unit, the case floundered on the ground that the identity of the arresting unit could not be ascertained with certainty.

The resultant delay in service of notices was the least of the problems posed by the difficulty in identifying the arresting unit. This difficulty went to the root of the litigation, rendering years of perseverance by survivor families meaningless and, destroying what little faith they might have retained in the system’s capacity to deliver justice. To illustrate the point, four examples are given below. A fifth case is discussed to illustrate a possible, meaningful approach to the problem.

In Abdul Rashid Sheikh’s (91/3) case the identity of the arresting unit could not be ascertained at the time of arrest. However, three others arrested along with him were released by the 24 Bn BSF after varying periods of illegal custody. The Inquiry Judge recorded this fact as a finding in his report. Yet, on the basis of clever cross examination of these co-detainees, the counsel for the BSF was able to persuade the Inquiry Judge to hold that even the identity of the security force (i.e. whether it was the BSF, CRPF, army or the RR) could not be fixed with any certainty.\textsuperscript{346}

\textsuperscript{345} The most that can be said by way of exculpating the Court is to explain the confusion and the delays in the initial cases, in the immediate aftermath of the insurgency – when the problem of enforced disappearances surfaced in the State – as arising out of inexperience. Where the Court has not cared to resolve the problem, even after 15 years, one can not be faulted for thinking that the failure to address this problem is part of a policy of indifference.

\textsuperscript{346} The culpable indifference of the system can be inferred from the fact that even as the state government was pleading before the Inquiry Judge that it was not in a position to identify the arresting unit, the DLSC Baramulla, after perusing the reports submitted by the SSP, the local SHO, and the local Tehsildar, came to the conclusion that Abdul Rashid was \textit{lifted by BSF 24 Bn on 25.11.90, and was killed later on and is not alive}.
The High Court unquestioningly accepted the findings in the inquiry report and disposed of the petition in September 2003, leaving it open for the police to proceed against the guilty parties as and when their identity was established. This order was passed in the absence of the counsel for petitioner, which must be presumed to have contributed in the failure of the Court to notice the flaw in the inquiry report.  

Abdul Gani Najar (94/6) was arrested from his village home during a crackdown by the army. After the crackdown, the villagers lodged a report about the arrests with the police though they were not able to identify the unit (or units) involved. The others arrested along with Abdul Gani were released after a period of illegal detention from the ‘Match Factory’ JIC in Baramulla. Despite having this information, the police declared that they could not identify the arresting unit of the army.

Since the family had no clue to the identity of the unit/s responsible, the petition filed on Abdul Gani’s behalf, named the Army Headquarters as respondent no. 4. The army did not enter an appearance before the High Court. In his report the Inquiry Judge recorded that respondent no. 4 could not be served because no address was provided for it. Based upon the eyewitness testimony, the inquiry report concluded that Abdul Gani had been abducted by the army during a crackdown on his village but said that the unit involved could not be identified by either the villagers or the police.

In April 2003, the High Court mechanically accepted this report and, relying upon the absence of a representative on behalf of the petitioner, dismissed the petition for non-prosecution nearly nine years after it was

347 Even in the absence of the petitioner, had the Court applied its mind to the facts of the case, it would have caught the flaw in the reasoning of the Inquiry Judge and held that the identity of the arresting unit stood established on the basis of the evidence led before the inquiry.

348 It was a major operation involving a very large number of troops and, covering a vast area comprising six villages.

349 Patently, that an address was not provided for the Army Headquarters cannot be made an excuse for not causing notices to be served upon them.

350 The Inquiry Judge specifically asked the police to help him identify the accused unit but they expressed helplessness.
filed.\textsuperscript{351} The High Court must be faulted on at least two counts. First, it ought to have acted on the premise that the unit in charge of the JIC from where the others were released should be held responsible. Second, given that there was no doubt that the arrest was made by the army, even though the unit could not be identified, it could have insisted on pinning responsibility on the Army Headquarters, which was a respondent or, even, on the headquarters of the army’s operations in Kashmir.

**Mohammad Shafi Dar (97/10)** was stated to have been arrested from his house in Srinagar by the JKLI (J&K Light Infantry), accompanied by personnel from the STF. The GOC (General Officer in Command) Northern Command and, the commander of the JKLI were both, respondents in the petition filed on his behalf. However, the old address of the JKLI was provided in the petition.\textsuperscript{352} The army filed two replies. The first reply was filed by Colonel A Malik of the 20 Grenadiers, which was not a respondent in the petition, denying that his unit had anything to do with Shafi Dar’s arrest.\textsuperscript{353} The second reply was filed by Colonel RK Singh, Commandant JKLI Regimental Centre. It merely stated that since the JKLI had permanently shifted from the Haft Chinar in December 1992, there was no unit of the JKLI at that site on 5-6 September 1997 when Shafi Dar was arrested.

Accepting this plea, the High Court held that it was not in a position to resolve this disputed question (i.e. of the identity of the arresting unit) and disposed of the case with the remark that *the petitioner may lodge a report with the police station from the jurisdiction of which his son disappeared*. The absurdity is obvious. Merely because the petitioner had made the error of stating the old address of the accused unit it could not be inferred that his identification of the unit was also erroneous.

\textsuperscript{351} Though the inquiry report was sent to the High Court in May 1997, it continued to await it till December 2002, when the Inquiry Court sent it a copy.

\textsuperscript{352} The camp at the old address – Haft Chinar – had since been taken over by the 20 Grenadiers.

\textsuperscript{353} The only reason for the 20 Grenadiers to file a reply seems to be the fact that the petition mentioned the JKLI’s address as Haft Chinar.
Fayaz Ahmad Khan (98/5) was arrested from his home in Srinagar by soldiers of the 197 Field Regiment, led by an officer whose name the family understood to be Major Yadav Prasad. In their reply to the petition filed on behalf of Fayaz, Colonel A Deb of the 197 Field Regiment denied Fayaz’s arrest/detention saying that he was a causal source for the army and he was picked up from his home as per plan. Further, according to the army, the nomenclature of both, respondent no. 2 (Commandant, Romo Bn, Zakoora) and respondent no. 3 (Major Yadav Prasad CO, 197-Bn, Army Camp, Nuner Kangan) was incorrect. They stated that there was no unit called Romo Bn, Zokoora in the army and, there was no officer named Yadav Prasad in the 197 Field Regiment. However, the army did not inform the Court of the correct names for the said respondents.

Claiming to base himself on the eyewitness testimony of the neighbours who saw Fayaz being arrested, in a shocking display of ineptitude and incompetence, the Inquiry Judge attributed his arrest to a Major Parshad Yadov of the 197 Bn. The army filed objections to the inquiry report before the High Court complaining that they had not been served notice of the inquiry and could, therefore, not defend the allegations made against them. They also, argued that there was no officer named Major Yadav Prashad in the 197 Field Regiment. Instead of seeking clarification for the confusions generated by the faulty inquiry report, the High Court found it easier to accept the army’s objections to it and, holding that a non-existing entity could not have been served notice of the inquiry, disposed of the case with an order for a fresh inquiry into Fayaz Khan’s disappearance.

The case of Mohammad Afzal Shah (97/12) is the only case in our database where the Inquiry Judge correctly applied the principles governing the protection of the fundamental right to life to hold the State

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354 Some witnesses had called him Major Yadav, while some had called him Major Parshad. One of the witnesses stated that he knew the Major as he had been posted at Khanmoh, prior to being shifted to Zakoora. This witness had called him Major Yadav.

355 Factually incorrect since the army’s counsel had entered appearance on its behalf before Inquiry Judge, at the initial stage of the proceedings.

356 This was still pending when we last heard from the family, in June 2004.
Afzal Shah was arrested from his house in Srinagar. The family was not certain about the identity of the actual unit responsible for his arrest. Therefore, the petition on his behalf named the GOC North, Brig Gen (Staff) 15 Corps, the Chairman Unified Command Armed Forces, and the BSF, as respondents, apart from officials of the state government.

The army respondents kept away from the proceedings, though the BSF filed a brief reply denying their involvement in his arrest. The state government also filed a brief reply denying custody, after costs were imposed upon it for not responding to the petition within the time permitted. Before the inquiry ordered into Afzal’s disappearance, eyewitness testimony amply established his arrest by the uniformed security forces. However, the inquiry could not clarify the identity of the force involved since the witnesses could only say that some persons in army uniform arrested Afzal and took him away. Therefore, the inquiry report held that the BSF and the police, both of whom had pickets near Afzal’s house, must be held responsible for his disappearance and should be asked to account for his whereabouts.

357 The costs were never paid.
358 The BSF personnel posted near their house told the family that the arrest was made by the 9 RR, accompanied by some Ikhwainis. This seemed to be confirmed by the fact that the day after his arrest, the 9 RR raided Afzal’s wife’s parental home. Two months later the 9 RR arrested Afzal’s militant brother during a crackdown and, shot him dead. The killing was reported in the press and the radio as an encounter. Thereafter, the RR raided Afzal’s family home, destroyed all the household goods and partially demolished the house. However, since the family had no evidence to connect Afzal’s arrest with the 9RR, the petition did not name this unit in the petition.
359 In objections to the inquiry report the BSF reiterated that its units were not responsible for Afzal Shah’s arrest. It was stated that the BSF uniform of that period was very distinct from the army uniform and therefore, it was impossible to mistake one for the other. Covering all bases, the objections also suggested that Afzal’s disappearance may not be attributable to any of the security forces since, very often, militants disguise themselves by wearing army uniforms.
III. The Power To Compel

Without the filing of proper replies, production of relevant documents and records and ensuring that the parties, generally, disclose all facts material to the lis, it is impossible to do justice. The cases discussed in this monograph make it clear that neither the High Court nor its delegates, the judges and officers appointed by it to hold inquiries into the disappearances, had any coercive power in this regard. The Court could not even ensure that the respondents paid the fine or cost imposed by it upon them for failing to obey its orders in such matters.

Technically speaking, a court is entitled to proceed *ex parte* if a party does not file its reply within the time permitted to it. But the filing of replies is crucial in a *habeas corpus* petition. Both, the state government and its agencies and, the central security forces have permanent representatives before the High Court. Despite all this paraphernalia and support, the respondents took their own time to file replies. The maximum time taken by a respondent to file a reply was five years and one month. In 33 petitions (out of the 85 examined), the accused agency/unit of the security forces, took six months or more to file their response. In as many as 38 cases the accused agency/unit did not file any reply at all. In many cases the record of the proceedings makes it clear that the Court was reduced to, virtually, begging for replies to be filed. The following cases illustrate the abject failure of the Court to enforce its orders.

After service of notice of the petition on behalf of Abdul Rouf Shah (90/2), the state government’s counsel was granted 10 days time to file a reply showing *law and authority* for Rouf’s arrest. Eight months later, the Court granted *one week, further, to the GA (government advocate), to file objections*. Since the reply was still not filed, two weeks later the Court ordered fresh notice to the Additional Chief Secretary (Home), with a copy of the petition. This, too, had no effect. A month later, the Court again ordered notice to the Additional Chief Secretary (Home), with a request

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360 Even the state government, did not file replies in 18 cases.
361 Most of these cases in this category are from the early years. In the later years the Court displayed far less persistence and the farce became much more cut and dried.
that he look into the matter personally. Another three months later, the
government counsel submitted that he had not been able to get any
information from the respondents despite his best efforts and asked for
one week more to file objections, and to show authority. While criticising
the state authorities for being so negligent and callous about the fate of
the citizens, the Court granted a last opportunity to file a reply. However,
no response was filed by the state government or by the Additional Chief
Secretary who had been asked to personally look into the matter.

Fourteen months after notice was issued on the petition, the Court held
that since the allegations in the petition were not rebutted they must be
presumed to be correct. It asked the SP, Kupwara to register a case,
conduct an investigation and report its progress to the court. The SP
Kupwara did not comply with this order. Thereupon, the Additional
Chief Secretary (Home) and the Corps Commander (15 Corps) were
directed to produce Rouf before the Court within three weeks and, to
show authority for the arrest. Rouf Shah was not produced before the
Court. The army finally filed its response 19 months after it was asked
to do so, and after the Court had ordered an inquiry into Rouf’s disap-
ppearance. The state government never filed a reply.

In Waheed Ahmad Ahangar’s (90/4) case, the Court first granted the
respondents 10 days time to file objections. Four months later the Court
said last opportunity of two weeks granted for filing objections. Two
months later it again granted two weeks for filing objections, imposing
a cost of rupees two hundred for non-compliance of its earlier order.
Shortly thereafter objections were filed but without a supporting affida-
vit. Nearly three months later the affidavit had still not been filed and
the Court again granted two weeks for this purpose. Another two months
later the Court granted a last and final opportunity of one week to file a
counter affidavit. Seven months later, the order sheet recorded that the
state government had filed an affidavit before the registry but it is not
on record. In all the state government took two years to file a two line,

362 Failing which, it directed that the detainee be produced before the Assistant
Registrar of the High Court. Neither part of the order was complied with.
363 There is nothing on record to show that the costs were paid.
364 A reply without a supporting affidavit has no probative value and, is treated
as no reply at all.
365 A fairly common occurrence, from what we have seen of the Court proceedings.
bald denial of custody. The accused force, the BSF, never filed a response before the High Court.

In Ashiq Hussain Malik’s (97/9) case the Court granted the respondents four weeks to file their replies. Two months later, this order was repeated. The Court also recorded that copies of the petition had been supplied to the counsel for the army respondents. More than two months later, the Court directed the petitioner’s counsel to again provide a copy of the petition to the counsel for the respondents and granted a further 10 days time to file a reply. One month later, the Court granted two weeks last opportunity to the state government respondents to file a reply. Yet another month later, the state government’s counsel produced a reply during the course of the hearing, stating that Ashiq Hussain had been released. On this basis, without giving the petitioner’s counsel an opportunity to rebut this statement, the Court dismissed the petition in September 1998, one year after it was filed.

After the hiatus induced by the erroneous dismissal of the petition, the saga resumed where it had left off but with a new twist. Now, the Court recorded that the notice of the petition could not be served upon the respondent no. 4, Commander, 20 Grenadiers, Camp Zainakoot for lack of sufficient particulars (an euphemism for ‘incomplete address’). In a parody of errors, the Court’s registry issued notice to the petitioner to supply better particulars of respondent no. 3, instead of respondent no. 4. It took another six weeks for the Registry to discover this error and to issue fresh notices upon the respondent no. 4. Another two months later, the notice for the said respondent was returned by the army with the remark that the officer concerned had been transferred. Amazingly, on

366 Copies had already been supplied to all the respondents, several months earlier. This fact is relevant since, in a second round of service the Court’s registry claimed it could not serve one of the army respondents, for want of better particulars.

367 The State government’s reply was erroneous. The release mentioned therein pertained to an earlier arrest, several years prior to this. Because of this hasty dismissal, Ashiq Hussain’s family was forced to file a review petition. It took 14 months for this order to be reversed and the case to be restored to hearing.

368 The respondent no. 4 had been served, the first time around, as noted by the Court’s registry on 13 March 1998.

369 It is very likely that this officer deliberately got the first set of Court notices returned because he was aware of his impending transfer.
receipt of this report, instead of asking the army to furnish the new address of the said respondent, the Court’s registry once again directed the petitioner to file fresh particulars for the respondent no. 4.370

No reply was forthcoming on behalf of the army for the next, nearly five months, despite repeated opportunities being granted by the Court. Thereupon, the Court directed the personal appearance of the army respondents. Twenty days later, the army filed its reply.371 Shortly after the army filed its reply the Court’s registry received back the notices issued upon these two officers with the remark that they could not be served for want of better particulars. Thus, on the one hand a reply was filed by the army, on behalf of these two officers and, on the other the army refused to accept the Court’s notice in their name, demanding better particulars. The Court’s registry, promptly issued notice to the petitioner for a third time to file fresh particulars with respect to these respondents.

The Court took nine months to take notice of the army’s reply.372 On noticing that the reply denied the existence of two of the army respondents named in the petition, the Court ordered the army to file an affidavit specifically regarding the non existence of concerned officers in 20 Grenadier at relevant time while posted at District Budgam. Four weeks time was granted to it for this purpose.373

370 How the petitioner was expected to trace the then current posting of the said officer, no one knows.
371 This reply was filed in September 2000, though it was dated August 1999. In other words, even as the game of effecting service of notices upon the army was being played out, the reply had been sitting ready for over a year.
372 The reply denied that Ashiq Hussain had been arrested by the 20 Grenadiers. It also, denied the existence of two of the officers named as respondents in the petition, Camp Officer Raj Pal and Commander A. A. Malik.
373 A pointless order. The army’s reply already stated that these two officers had never been part of the 20 Grenadiers. In adhering to the form, the Court over looked the actual ‘error’ that the army had committed with regard to the name of the Camp Commander, A. Malik, by misreading his name as Ab. A. Malik (there was some overwriting in the petition/summons) and, thereupon denying his existence. The malafides of the 20 Grenadiers are seen from the fact that around the same time as they denied his existence in Ashiq Hussain’s petition, the same officer, whose correct designation and name was Lt. Colonel A. Malik, filed replies under his signatures in other cases in which the 20 Grenadiers was an accused. In Ashiq Hussain’s case however, the unit took care to ensure that this officer did not file any reply/affidavit.
Meanwhile, the state government had, once again, filed a reply describing the story of Ashiq Hussain’s earlier arrest and release. It took the Court another two months after this to order an inquiry into Ashiq Hussain’s disappearance. Total time taken since the petition was filed: nearly four years. The inquiry took a year to complete. The army did not cooperate and, the Inquiry Judge attributed the delay in completing the inquiry entirely to this account. Based on the testimony of the co-detainee and other eyewitnesses, the inquiry report held that Ashiq Hussain had been arrested by the 20 Grenadiers and that his whereabouts were since not known. Thereafter, the Court granted time to the parties to file objections to the inquiry report. The Army filed their objections within three months but the state government had not filed its objections till February 2004, 17 months later. In March 2004, six and a half years after it had been filed, the case was still pending.

IV. The Power to Order Inquiries

In the context of the overall abysmal showing, the inquiries appear as the silver lining to the habeas corpus proceedings. Most of the inquiry officers were judicial officers of the rank of a District and Sessions judge. In a few cases the High Court ordered the administrative service officers, such as the District Magistrate (later renamed the Deputy Commissioner), to conduct the inquiries.

The main thing for which one could fault the inquiry officers is the inordinately long time that they took to complete the inquiries. In two cases the inquiry took more than nine years to complete. In 52 of the 62 cases where an inquiry was ordered, it took more than one year to

374 Fortunately, this time the Court was not taken in by the reply and, asked the counsel for the state government to file a relevant reply.

375 District level judicial officers lead relatively un-protected lives, compared to the High Court judges, who are insulated from the reality of life in Kashmir by their status as constitutional functionaries. On the other hand, the District level judges work under severe pressure, risking their lives and the lives of their families on a daily basis. These pressures are reflected in many of the inquiry proceedings and must be factored in, while judging their performance as Inquiry Officers.

376 In one of these two cases, the inquiry is still pending after nine years and five months.
complete. Many inquiry reports specifically record the non-coopera-
tion of the respondent security forces as the main reason for the delay in completing the inquiry. However, this was not the only reason. Though the Inquiry Judges were careful to exclude their own responsibility while explaining the delays, the statements of the survivor families make it clear that the course of proceedings in the courts of the inquiry officers suffered from many of the same defects as the proceedings in the habeas corpus petitions before the High Court.\textsuperscript{377} There were also several inquiries where the judges bungled very badly, some examples of which have been seen above.

Of the three cases discussed in this section, the first is an example of an excellent inquiry. The second case illustrates how an inquiry should not be conducted. The third inquiry is a mixed bag. On the one hand it is, perhaps, the most thorough inquiry among the cases examined by us. Because of this, the inquiry report reads like a dissection of the design of impunity in Kashmir. On the other, the Inquiry Judge succumbed to the temptation of overlooking the systemic culpabilities exposed by his inquiry, being content to scapegoat two officers of the state government, the DM Srinagar and the SP (CID (CIK), on the basis of a gross misapplication of the principle of \textit{command responsibility}.\textsuperscript{378}

In response to the petition filed on behalf of \textbf{Basharat Shah (91/12)}, both the state government and the CRPF denied his arrest. However, the CRPF admitted the arrest of the four others arrested along with him.\textsuperscript{379} Three of Basharat’s co-detainees testified before the inquiry ordered by the High Court into his disappear-

\begin{itemize}
\item \textsuperscript{377} Sometimes the complainant is absent, sometimes the respondent. Sometimes the judge is busy and, sometimes he is on leave. Sometimes there is a strike and, sometimes nobody feels like working.
\item \textsuperscript{378} The High Court’s final order in this case proves that it is familiar with the concept of \textit{public law} remedies, and the imperatives of such remedies. Thus, the fact that it did not apply the principles of its \textit{public law} jurisdiction in other cases must be deemed to be a matter of active choice.
\item \textsuperscript{379} The CRPF showed the arrest of these four persons on the date on which they were transferred to police custody. By that date Basharat had been killed.
\end{itemize}
They identified him from his photograph, which was shown to them in open court. All three were cross-examined by the then Deputy Commandant of 50 Bn CRPF, Mr. ML Mina. Despite being repeatedly ordered to do so, the CRPF refused to produce the then Commandant and the Deputy Commandant of the 50 Bn. They also refused to produce the officers of the patrol party, which had arrested Basharat and the others. Initially, their excuse was that the erstwhile commandant and his deputy had been posted *somewhere out of the Battalion*. Later, they claimed that *the whereabouts of the then Commandant/ Deputy Commandant are not known to the present officers*. Finally, towards the end of the inquiry, the CRPF informed the Inquiry Judge that *the then Commandant and Deputy Commandant of 50 Bn who were posted at Sopore at that time, have proceeded on retirement/ are in the process of proceeding on retirement*. In another letter, the CRPF stated that higher ups had been informed of the order to produce the two officials before him, while reiterating that *Sh. K.S. Pandey and Kewal Krishan, the then Commandant/ Dy. Comdt., respectively have already been retired from CRPF service*.

Nor did the CRPF cooperate in any other manner. They declined to produce the *Deployment/ Movement Register of their troops for the month of October 1990*, arguing that *no such ... registers are maintained by the Battalion*. However, in support of their contention that they did not arrest Basharat, they filed a copy of a letter, addressed to the Additional DIG, CID/ CIK, Srinagar, under cover of which they had sent Basharat’s co-detainees to *JIC Srinagar, for further interrogation and necessary action on 21.10.1990*. The letter named the co-detainees but made no mention of Basharat. The stand of the CRPF was that *50 Battalion personnel have not undertaken any patrolling/ operation in area Sopore-Warpora road or any locality nearby on 12-10-1990 and that they have not picked up on the said date or on any other day the person named Syed Basharat Ahmad Shah*.

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380 Two inquiries were ordered by the High Court, one by the DM, Baramulla and the other by the CJM, Sopore. The CRPF did not participate in the inquiry by the CJM Sopore. The account given here is from the other inquiry.
The inquiry report, commenting upon the conduct of the CRPF, said that
it clearly indicates that they have applied dilly-dally tactics and did not cooperate with me for finalisation of the findings. It held that,
nevertheless, there was sufficient material on record to conclude that Syed Basharat Ahmad Shah ... was picked up by CRPF 50th Bn on 12th October, 1990 along with four other persons mentioned above is established, though his whereabouts are not known at the moment and should be known to the said battalion itself.381

The case of Farooq Ahmad Khan (95/3) illustrates the failure of the Inquiry Judge to draw a correct inference from the facts and the evidence produced before him. In early 1995, Farooq Khan’s family filed a petition in the High Court with high hopes of justice. The 10 Bihar Regiment filed a reply denying that they had carried out any operation in Farooq’s village on the date of his arrest.382 The State government filed a reply stating that since the allegations in the petition are only against the Central Government security forces, the State respondents were not liable and were, therefore, entitled to be relieved of the burden of defending the case.383

381 Back before the High Court, the police stated that they had completed the investigation and, prepared a charge sheet against the officers accused of disappearing him. In April 1997, six years after it was filed, the Court disposed of the petition with a direction to the police to file the charge sheet before the court of competent jurisdiction. The Court held that the other reliefs (compensation) would be looked into after the trial. Basharat’s family appealed against this decision. It took another three years for this appeal to be decided. Relying upon the Supreme Court’s decision in the DK Basu case, the Division Bench that heard the appeal rejected the vehement objections of the respondents and directed them to pay Basharat’s aged parents rupees one lakh fifty thousand as compensation. Neither the Court records nor Basharat’s parents had information about the fate of the criminal prosecution that it had ordered to be launched against the guilty officials.

382 The petition stated that Farooq was arrested from his native village. However, he was actually arrested from his wife’s home village, where he had shifted after his marriage. His family was not aware of the error in the petition. This error enabled the 10 Bihar Regiment to truthfully deny the allegation that Farooq had been arrested from his native village on 1 December 1992. Not so truthfully, the reply also denied Farooq’s arrest.

383 Around the same time, another lawyer for the State government also filed objections stating that On the basis of information received ... Farooq ... has not been arrested by any JICs of the state and is no longer in the custody of respondents/State. The petition therefore deserves to be dismissed.
Four witnesses deposed on behalf of Farooq in the inquiry. Since he was arrested from his friend’s house, his wife and father-in-law, though living in the same village, were not eyewitnesses to his arrest. For the same reason, his brother and brother-in-law were also not eyewitnesses to his arrest. The counsel for the respondents used this factual situation to elicit a response from all four witnesses to the effect that they were not aware of the identity of the unit that had arrested Farooq.

Neither the lawyer on behalf of Farooq nor the Inquiry Judge had the presence of mind to ask the witnesses appropriate questions that would have elicited an answer that they had attributed the arrest/custody to the 10 Bihar on the basis of the two searches carried out by that unit in Farooq’s native village, in the presence of his brother and brother-in-law, and that Farooq was present in the village, in the custody of 10 Bihar, on both occasions. As a consequence, the inquiry report dated 22 January 2003 declared that the force/unit that had arrested Farooq could not be identified even as it acknowledged that He was brought (to his village) under custody on 10.12.92. … He was in injured condition and was not in a position to stand on his legs. … Since (then), he was not seen by any one. The High Court did nothing to improve the situation.

Twenty five year old Mushtaq Ahmad Chacha (95/8) was arrested by the soldiers posted at the BSF bunker/post opposite his house on 9 July 1995. Neighbours who saw the arrest informed his family about it. The family immediately went to the BSF post. In their presence, Mushtaq was brought out of the bunker and put into an armoured vehicle and taken away. The BSF told them that Mushtaq was being taken to the

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384 A patent absurdity since if it was established that he was brought to his village in custody, all that was needed was to ask the identity of the unit in whose custody he was.

385 Observing that there is hardly any scope for pursuing the matter any further, it disposed of the case with the remark that investigation needed to be carried out and concluded in the report that had been lodged with the police at the time of Farooq’s arrest. The petitioner is at liberty to seek remedy under the law if he has any better material or information on the disappearance.

386 The incident actually took place on 8 July 1995 but Mushtaq’s father told us that the BSF claimed Mushtaq was arrested on 9 July 1995. For this reason, he said, they too adopted the later date as the date of Mushtaq’s arrest.

387 The friend was released.
Karan Nagar BSF camp and they should go there if they wanted to meet him. The next day, at the Karan Nagar camp, the BSF admitted that Mushtaq was in their custody and, showed him to his parents from a distance. They were told to go to PAPA-II on 15 July, for a *mulaqat* (meeting) with Mushtaq. In the meanwhile, they were permitted to leave food and clothes for him.

On 15 July, the personnel at PAPA-II fobbed off Mushtaq’s parents saying that he had been taken on a mission. Later, they were told that while being taken for *arms recovery* in the Kani Mazar (Srinagar) area, the group was attacked by militants and, taking advantage of the cross firing, Mushtaq had escaped. Over the next few weeks, his mother went several times to PAPA–II but was not able to meet him.388 All other attempts to gain access to him, through senior officials of the state government, also failed though she says that she and her husband saw him at the Karan Nagar BSF camp in October 1995, a few days before they filed a habeas corpus petition before the High Court.

In their response to the petition the state government stated that *The subject Mushtaq Ahmad Chacha ... was arrested in case FIR No. 4/95 P/S CIK Srinagar on 12-7-95 ... The subject escaped from custody on 15-7-95. A case has been registered in P/S Baghyas Srinagar vide FIR no. 92/95 ... in this regard. This stand of the state government was contradicted by the fact that on 27 September 1995, more than two months after his alleged escape, it had passed an order detaining Mushtaq under the PSA for one year. The High Court declared that it was highly regrettable to place on record that the respondent/ State has filed palpably false affidavit regarding the arrest and escape of Mushtaq Chacha and asked the State government to show cause Why action should not be taken against it for having committed perjury, by filing a false affidavit before the court.*

By way of explanation, Karnail Singh, ASP, CIK, Srinagar informed the Court that after his arrest Mushtaq was *remanded* to BSF custody by

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388 The family lodged a missing report at the local police station but the police took no action to trace his whereabouts.
the police, as usual for a period of fifteen days. Simultaneously, according to the police, they set in motion the process for booking Mushtaq under the PSA, not knowing that he had escaped in the meanwhile. As a result, it was stated, the PSA warrant remained unexecuted. Faced with this gross contradiction, the High Court ordered an inquiry into Mushtaq’s disappearance.

In a herculean effort, the Inquiry Judge examined numerous witnesses, including several BSF personnel, in an attempt to unravel the truth. The 40 page long inquiry report discusses the respective stands of the parties and, the testimony of the witnesses, in extenso, exposing the modus operandi of the police and the security forces. The testimony of the BSF witnesses about the operation during which Mushtaq is said to have escaped only served to bring out the contradictions in the BSF’s story. Contradictions also emerged between the respective stands of the police and the BSF. The police asserted that Mushtaq was arrested on 12 July 1995, on which date they registered an FIR against him, at the behest of the BSF. Contradicting the record of the police, the BSF asserted that Mushtaq was taken to Police Station CIK on 10th July 95 where FIR 4/95 dt.10-7-95 was lodged and the said Mushtaq … was brought back to TAC Headquarter 41 Bn. B.S.F. This contradiction was neither inquired

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389 Remand has a clear meaning is law. It is ‘taken’ by the police or other investigating agency and ‘given’ by a court, presided over by a judicial officer. However, Mushtaq was never produced before any court. In a perversion of meaning, the term was used to mean an informal arrangement between the police and the BSF whereby the two agencies shared the illegal custody of Mushtaq.

390 The explanation ended on a personal note by stating that the request for the PSA warrant had been made by his predecessor in office and that he had taken charge as ASP, CIK several months after the incident.

391 While all this was going on, a militant called Jajwaza (who was later killed), resident of a neighbouring locality, told Mushtaq’s family that he had been in custody of the BSF at the same time as Mushtaq, and that Mushtaq had died as a result of the torture inflicted upon him by the BSF personnel.

392 The case had become something of a cause celebre and, the Srinagar Bar Association made special efforts to prosecute it.

393 Thus, based on their respective stands, the BSF asserted that Mushtaq was remanded to their custody from 10 July to 25 July 1995, while the police claimed his remand was from 13 July to 27 July 1995. When viewed in the context of the family’s statement that Mushtaq was actually arrested on 8 July, though the BSF showed his arrest as having been made on 9 July 1995, it is obvious that no sanctity can be accorded to any assertion by the police/state government, or the security forces.
The facts that emerged from the testimony of the BSF witnesses made it seem as if Mushtaq’s escape was part of the BSF operation:

- Raj Kumar (rank not stated) asserted that Mushtaq was bound with a rope and fetters, tied on the other side with the belt of Nirmal Singh.
- SI (Sub Inspector) Nirmal Singh, while admitting that Generally they tie both hands of the person when they take him for conducting a raid, said that only one of Mushtaq’s hands was tied. Contradicting Raj Kumar, he asserted that he was holding the other end of the rope in his hand and, it was not tied to his belt. He also asserted that Mushtaq was unmasked during the raid.
- Constable P Selvaraj, however, said that they always mask the ”Cat” during a raid.
- Some BSF witnesses said that the firing (under cover of which Mushtaq was alleged to have escaped) took place on the main road, while others denied this and said it happened in the lane off that road.
- Senior BSF officials claimed that the filing of the FIR regarding Mushtaq’s escape was delayed for several days because they were searching for him but none of their witnesses supported this stand. Deputy Commandant Raj Singh said that he was not ordered to search for Mushtaq after the abortive raid.
- Most of the BSF witnesses denied that a report was lodged with the police and denied giving a statement to the police.

The testimony of the police and the State government witnesses was equally revealing of the state of affairs:

- The then Additional SP, CIK, AS Bali testified that Mushtaq remained in BSF custody throughout while admitting that, in law, custody of the accused is to be taken before the Magistrate.
- The DM, Srinagar, who had signed the PSA warrant on 27 September 1995 ordering Mushtaq’s detention, admitted that he had

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The State has the power to designate any place as a police lock up or a jail, by notifying it as such.
signed the detention order on the assumption that the police dossier submitted to him was based on facts. He stated that no-one brought to my notice that Mushtaq had escaped.

The witnesses on behalf of Mushtaq testified to his arrest by the BSF. His parents stated that they had met him in the BSF camp at Karan Nagar in October 1995, i.e. after the date on which the BSF claimed he had escaped from their custody. Witnesses who either resided or worked in the area where the encounter – in which Mushtaq allegedly escaped – supposedly took place, testified that there was no incident of firing or encounter in that area on the date in question. They asserted that they would have come to know if such an incident had taken place.

The inquiry report disbelieved the stand of the BSF, holding that the version of B.S.F. seems to be a fabricated one. However, it castigated the police, for its conduct in utter violation of the law and held the SP, CID (CIK) mainly responsible for the custodial disappearance of Mushtaq. It also held the BSF responsible for Mushtaq’s disappearance, finding their failure to take action against the officers responsible for Mushtaq’s alleged escape a suspicious circumstance. It also criticised the DM, Srinagar for acting mechanically and for not caring to ascertain whether Mushtaq was living at the time of passing of detention order or not.

Back before the High Court, both the BSF and the police assailed the inquiry report. The BSF’s objections, on the one hand, challenged the statement by Mushtaq’s parents that they had met him in the Karan Nagar camp in October 1995. On the other, using the PSA warrant issued by the State government in September 1995 for a basis, they attempted to argue that it appears that Mushtaq ... was apprehended after his escape from BSF and was lodged in Police Station C.I.K, Srinagar.395

395 He was not impressed by the BSF claim that a Departmental Staff Court of Inquiry had not found anybody blame-worthy in the escape.

396 This argument held no water as the PSA warrant clearly stated that Mushtaq was being held in the Addl. lock-up fair view, which was completely under BSF control.
The focus of the state government’s objections was on pointing out the circumstances that shifted the blame on the BSF. They insisted that it was only because of the failure of the BSF to inform them about Mushtaq’s escape that they committed the blunder of issuing a PSA warrant against Mushtaq after he had escaped from the custody of the BSF. They also emphasised the testimony which showed that Mushtaq had remained in the BSF custody throughout, from the moment of his arrest till his alleged escape. Lastly, they relied upon the testimony of Mushtaq’s parents to imply that the BSF was lying and that the Inquiry Judge had erred in failing to appreciate this fact.397

The High Court termed the stands of the BSF and the Police self destructive to reveal custodial disappearance of Mushtaq Ahmad Chacha … Their conduct and actions have violated law … The attempt on the part of State Police and the BSF to cover up or hush the matter is writ large on record. The only conclusion to be drawn is that the Mushtaq Ahmad Chacha has disappeared while in physical custody of the respondent No. 3 [SP, CIK (CIK)], the main and chief culprit in the matter. Conduct of the respondents is blame worthy and they cannot escape the responsibility for custodial disappearance of the subject.

On the issue of compensation to Mushtaq’s family for the wrong done, the counsel for the State government and the BSF argued that they are not liable to pay any compensation for violation of fundamental rights guaranteed under article 21 and 22 of the Constitution. The remedy … is under General Law in tort for damages in criminal law. The writ jurisdiction of the court cannot be a substitute forum ….398

Quoting from various judgements of the Supreme Court, the Court held that The case at hand is one of such cases where compensation … has to be given under the public law jurisdiction for wrong of custodial disappearance in breach of public duty by the Central or State Government … having failed to protect the fundamental right of Mushtaq Ahmad Chacha a … subject of the State and citizen of the (sic) India. The Court also relied upon several judgements to arrive at a just quan-
tum of compensation and directed that rupees one lakh fifty thousand be paid to Mushtaq’s family by the respondents, within three months from that date. The Court left it to the two governments concerned whether to recover this amount … or part thereof from the officers or personnel actually responsible for wrong done and in particular respondent no. 3. Lastly, the Court directed that a criminal case be registered at the concerned P/S, in case the … disappearance of Mushtaq … is not covered by the FIRs lodged with the Police Station(s). The investigation shall be taken to its logical conclusion … completed as far as possible within a period of four months.399

V. The Power to Pass Judgement and Decree

In terms of classical habeas corpus jurisprudence, as laid down by the Sebastian Hongray case, in every case where the inquiry held the security forces responsible for the arrest, the very least that the Court was required to do was to issue Rule.400 The failure of the security forces to produce the body, after such further hearing as necessary, should then have resulted in initiation of proceedings for civil contempt. This should have been followed by appropriate punishment and/or fine, etc. The Srinagar Bench of the Jammu and Kashmir High Court did not follow this procedure in even one case. Undoubtedly the fact that the Supreme Court, itself, did not follow the procedure that it laid down in its judgement in the Hongray case, choosing not to punish the guilty officers of the army, without ascribing any reasons for showing such favour, must be treated as a factor in the subsequent failure of the J&K High Court to enforce the law.401

Most of the Court’s failures have already been discussed above. To conclude, I will briefly discuss one more aspect of the final orders of the High Court, namely its propensity to dispose of cases (which in-
cludes dismissing them) in the absence of the petitioners and/or their representative. As many as 29 cases were disposed of by the Court in this manner. There can be no gainsaying that the Court’s failure on this count was, on the face of it, a grave miscarriage of justice.

For the Court to dismiss a habeas corpus petition where the inquiry report returned a finding of guilt against an identified unit of the security forces can never be justified. Even otherwise, it ought to have been a rule of prudence that the Court should not dismiss a petition for habeas corpus on the ground of absence of the petitioner’s counsel, except after verifying the reasons for such absence. 402

It is also pertinent to recall that the High Court spent up to two years in ensuring service upon the respondents, and the case records show that the Court granted time repeatedly to the respondents for everything, from filing of replies to addressing final arguments in the cases. On the other hand, it displayed a marked intolerance for, even, the occasional absence of the counsel for petitioner. In several cases the petition was dismissed, or disposed of without any substantial order, on the ground of non-prosecution or, with the remark that the petitioner did not seem to be interested in pursuing the case.

To be fair, the outcome in these cases varied, and it may be that in some cases the absence of representation on behalf of the petitioner did not materially (or adversely) affect the decision. However, as we have seen in the cases discussed above, in many cases one can make a direct correlation between the absence of the petitioner’s representative and the incorrect final order passed by the Court. Be that as it may, there can be no justification for such conduct, irrespective of the outcome. As the High Court well knew, most of these cases had reverted to it after several years before the inquiry court. During this interregnum, in many cases the family had lost touch with the lawyer who had filed the petition before the High Court since they had to engage a different lawyer to conduct the case before the inquiry court.

402 Even in cases where the petitioner has been absent, consistently, over a long period of time the court ought to have gone into the reasons for such absence; to ensure that the withdrawal from the prosecution of the case is not on account of undue pressure.
Since all the cases in this category have already been discussed above, I will merely mention them here, with a one line reiteration of the consequences of such disposal.

In **Abdul Rouf Shah’s (90/2)** case, the Court abruptly dismissed the petition after waiting for over eight years for the report of the COI which the army had supposedly been holding to ascertain Rouf’s disappearance.

In **Manzoor Zargar’s (90/6)** case, the Court wrongly attributed *lack of interest* to his family, while dismissing the petition. The case was actually fixed for hearing the respondents’ arguments on the question of compensation.

In **Latief Khan’s (91/1)** case, the inquiry report, on the basis of which the Court dismissed the petition, wrongly stated (as per his family) that they could not establish his disappearance despite being given several opportunities.

In **Abdul Rashid Sheikh’s (91/3)** case the inquiry report had wrongly concluded that the identity of the arresting unit of the BSF could not be fixed. The error might have been pointed out had there been representation on his behalf.

**Mohammad Ayub Dar (91/5)** had been released by the time the petition was disposed of by the High Court.

Had **Syed Shariefuddin’s (91/6)** wife been represented, she might have raised the issue of compensation, given the clear cut finding against the BSF in the inquiry.

**Parvez and Manzoor Shah (91/9)** were released after one month of illegal detention.

**Aslam Mir (93/2)** had been released by the time the Court disposed of the petition

**Bashir Ahmad Lone’s (94/2)** family had become completely disheartened by the time their petition was dismissed by the Court.
As in Abdul Rashid’s (91/3) case, Abdul Gani Najar’s (94/6) case shows the error of the Inquiry Judge in concluding that the accused unit remained unidentified. It is reasonable to assume that this error would have been pointed out had the petitioner been represented.

It is equally reasonable to assume that had Dr. Ghulam Hasan Sofi’s (94/5) family been represented, it would not have allowed the High Court to ignore the inquiry report while disposing of their petition.

In Riyaz Gilkar's (95/4) case, the High Court ordered the registration of an FIR 10 years after his disappearance when there existed a contemporaneous police report of his arrest.

Ghulam Hassan Baba's (95/5) case was disposed of with a direction to the police to register an FIR and to investigate it expeditiously.

Mohammad Amin Bhat (95/7) had been released by the time the High Court came to dispose of the petition on his behalf.

Alam Sher's (95/9) case is a classic example of why a habeas corpus petition should not be disposed of in the absence of representation on behalf of the petitioner.

Once again, Ghulam Mohammad Ahangar's (96/4) case is proof, if any was needed, of the culpability of disposal in the absence of the petitioner.

The order in Javed Bhat's (96/5) case was similar to many others that were passed in the presence of representation for the petitioner, i.e. registration of an FIR. Ironically, in this case the police actually investigated the case and prepared a charge sheet.

In Hamidullah Mir's (97/2) case, the Court assumed that he would have been released since the maximum period of detention permitted under the PSA had expired.

In Mohammad Akbar Rather's (97/3) case, the High Court termed his enforced disappearance a disputed question though the inquiry had clearly identified the officer (and the unit) responsible.
In Abdul Khaliq Pir's (97/5) case, the Court rejected the plea for compensation (made in writing).

In Shahban Khan's (97/6) case, the Court wrongly jumped to the conclusion that a chance absence of representation on behalf of the petitioner was evidence of his lack of interest.

Manzoor Ahmed Dar's (98/2) case was dismissed twice in the absence of representation on his behalf. The first time the family had it restored by filing an appeal.

In Farooq Ahmad Bhat's (99/4) case, the Court suddenly changed tack, ignoring its own previous order, while dismissing the petition.

As in Abdul Rashid’s (91/3) case, Abdul Gani Najar’s (94/6) case, and Shahban Khan's (97/6), in a blatant display of its pro-state bias, the Court wrongly concluded that Mohammad Rafiq Bhat’s (99/5) family was not interested in pursuing the matter.

Once again, the dismissal of Mushtaq Shagoo's (2000/169) petition was a blatant display of pro-state bias.

Mohammad Yasin Bhat's (2000/171) case and Mushtaq Wani's (2000/173) case illustrate the Court's growing penchant for unquestioned acceptance of the State's word.
End Note

We have tried to portray the face of impunity through documented record. For all the callous indifference that it shows, it does not fully convey the agony of the survivors: the families of those who disappeared. It is hard to describe the experience of interacting with the families. Their emotions are something that we wanted to record; yet were not wholly comfortable with. Whenever we came across a father or a mother or a brother or a sister or a son or a daughter whose emotions were too intense I recall being moved to tears and, then, pulling down my emotional shutters. However, while we had the luxury of closing the window and moving on, when the pain of raw wounds became too much to bear, the families of the disappeared, who needed such space and ability, had nothing. When one thinks of it, the thought of being the mother of a disappeared son is unbearable. 403

But interacting with those who have suffered a disappearance can change one for ever. One is forced to participate in their emotional maelstrom: the intensity of their anguish, the sense of complete helplessness, the rage at it all. Many of those we met were visibly unbalanced: unable to regain a rational perspective on life. But at the end of our field work we marvelled that so many of them still retained their sanity.

The tragedy we have tried to document touches every one in Kashmir. Each person’s story is unique, yet typifying the state of things. The "remedy", the writ of habeas corpus, is a complete failure in Kashmir. It did not protect the right to life. Nor did it punish those who violated it. What then was the purpose of these proceedings? They merely perpetrate and perpetuate the myth of justice and, the myth of a functioning judiciary. In a very large number of cases the identity of the unit was duly established through the inquiry ordered by the Court. The Inquiry Judge invariably proceeded on eye witness testimony and returned his

403 The questionnaire for recording the interview with the families contained a section for noting the impact of the disappearance on the families. We never became wholly comfortable with this section. On the one hand, the rigour of the documentation required that we record only what was stated by the families. On the other, it was acutely awkward to ask someone who was hurting so patently to spell out their pain.
findings based upon the preponderance of possibilities that arose, on the basis of evidence led before him. Yet, in not one case did the Court succeed in bringing the criminals to book.

If the judicial remedy is a failure, the constitutional guarantee of the right to life is suspect; since it subsists entirely at the mercy of the executive. We are, then, faced with a conundrum: an executive that abides by the rule of law does not violate the rights of the people. In such States, the judiciary is not called upon to protect the rights of the people, except occasionally. Where the executive does not respect these rights, it becomes necessary for the judiciary to intervene and to restore the balance of rights. In such States, however, more often than not, the judicial remedy is ineffective.

Though the solution to the problem posed largely lies outside the realm of judicial practice, it is obvious that there is much that ails the commitment of the Indian judicial system to upholding the rights to life and, the rule of law. It is patent that developing the necessary political resolve to rid India of this lawless impunity will be a painful and a long drawn out process. One can only hope that our justice system will support this struggle in letter and spirit, dispensing justice upon offenders without fear or favour. To quote Montesquieu—

*Law should be like death, which spares no one.*
Part 2
Lahu Ka Suragh

KaheeN naheeN hai, kaheeN bhi naheeN lahoo ka suragh
Nah dast-o naakhun-e qaatil nah aasteeN peh nishaaN
Nah surkhi-e lab-e khanjar nah rang-e nok-e sinaaN
Nah khaak par koi dhabbha nah baam par koi daagh
KaheeN naheeN hai, kaheeN bhi naheeN lahoo ka suragh
Nah sarf-e khidmat-e shaahaaN keh khoonbahaaN daytay
Nah deeN ki nazr keh baiaana-e jazaa daytay
Nah razm gaah mayN barsa keh mu'tabar hota
Kisi 'alam peh raqam ho kay mushtahar hota
Pukaarta raha, bay asra, yateem lahoo
Kisi ko behr-e samaa'at nah waqt tha nah damaagh

Nah mudda'ee, nah shahaadat, hisaab paak huwa
Yeh khoon-e khaak nasheenaaN tha rizq-e khaak huwa.

Faiz Ahmad Faiz

---

404 An excellent translation is given on the next page.
In Search of Vanished Blood

There is no sign of blood, not anywhere.
I’ve searched everywhere.
The executioner’s hands are clean, his nails transparent.
The sleeves of each assassin are spotless.
No sign of blood: no trace of red,
not on the edge of the knife, none on the point of the sword.
The ground is without stains, the ceiling white.

This blood which has disappeared without leaving a trace
isn’t part of written history: who will guide me to it?
It wasn’t spilled in service of emperors -
    it earned no honour, had no wish granted.
It wasn’t offered in rituals of sacrifice -
    no cup of absolution holds it in a temple.
It wasn’t shed in any battle -
    no one calligraphed it on banners of victory.

But, unheard, it still kept crying out to be heard.
no one had the time to listen , no one the desire.
It kept crying out, this orphan blood,
but there was no witness. No case filed.
From the beginning this blood was nourished only by dust.
Then it turned to ashes, left no trace, became food for dust

Faiz Ahmad Faiz\textsuperscript{405}

\textsuperscript{405} Translated by Agha Shahid Ali.
### Appendix – 2

**Table: Personal and Detention Details**

*Note:* Information tabulated states circumstances at time of the arrest connected with the petition filed before the High Court (where such a petition was filed), except in cases of those persons who were released subsequent to the filing of the petition. For those who were subsequently killed, in another incident, some of the information – in parenthesis – pertains to their (changed) circumstances at the time they were killed. For those who are still alive, the information in parenthesis pertains to their (changed) situation on the date they were interviewed (2003-2004)

<table>
<thead>
<tr>
<th>S. No</th>
<th>Name &amp; Address</th>
<th>Age</th>
<th>Education &amp; Occupation</th>
<th>Marital Status</th>
<th>Children</th>
<th>Arrested/ Disappeared Dt. &amp; Place</th>
<th>Circumstance of Arrest</th>
<th>FIR/DD Date</th>
<th>Released/ Killed/ Disappeared</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990/ 0001</td>
<td>Gowhar Amin, s/o Mohd. Amin, r/o Sidiqabad, Lachmanpora, Magarmal Bagh, Srinagar</td>
<td>25</td>
<td>Matric; Shopkeeper</td>
<td>Single</td>
<td>(1)</td>
<td>07.05.90</td>
<td>[Targeted]</td>
<td>Not filed</td>
<td>Released/ Killed</td>
<td>Petn. filed by mother on behalf of 10 people including Gauhar. Released in '92. Killed on 8.4.93.</td>
</tr>
<tr>
<td>1990/ 0002</td>
<td>Abdul Rouf Shah; s/o Ghulam Quadir Shah, r/o Chak Drugmulla, Kupwara</td>
<td>25</td>
<td>MA in Arabic &amp; English; Patwari</td>
<td>Single</td>
<td>NA</td>
<td>21.05.90</td>
<td>[Home-Targeted]</td>
<td>FIR dt. 20.8.91, u/s 364, 365 RPC</td>
<td>Disappeared</td>
<td>6 Rajput Reg. – 68 Mountain Brigade. (Not a resp. through UOI through MOD is resp.2)</td>
</tr>
<tr>
<td>1990/ 0003</td>
<td>Mohd Maqbool Bhat; s/o Habibullah Bhat, r/o Gangbough, Batmaloo, Srinagar</td>
<td>18</td>
<td>Student – 12th class</td>
<td>Single</td>
<td>NA</td>
<td>21.07.90</td>
<td>[Street-Random]</td>
<td>DD dt. 29.10.90, FIR dt. 21.7.92 u/s 365/264 (3647) RPC</td>
<td>Disappeared (Tortured)</td>
<td>CRPF (resp. 4)</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>RRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1990/0004</td>
<td>Waheed Ahmed Ahangar; s/o Mohd Maqbool Ahangar, Lal Bazar, Botshah Mohalla, Bakshibagh, Srinagar</td>
<td>14</td>
<td>Student - 8th class</td>
<td>Single</td>
<td>NA</td>
<td>26.05.90 [Home-Targeted]</td>
<td>FIR dt. 1.5.98, u/s 364 RPC</td>
<td>Disappeared (Tortured)</td>
<td>BSF 141 Bn</td>
<td>Family met him in custody several times; arranged by DGP, IB officer and others. Was subjected to severe torture.</td>
</tr>
<tr>
<td>1990/0006</td>
<td>Manzoor Ahmad Zarger; s/o Mohd. Sidiq Zarger; r/o Mohalla Akhoon Sahib, Gojwara, Srinagar</td>
<td>22</td>
<td>9th pass; Daily wager with Dept of city drainage and papier mache artisan</td>
<td>Single</td>
<td>NA</td>
<td>15.07.90 [Street-Identified by CAT(?)]</td>
<td>FIR 50/99 dt. 10.6.99</td>
<td>Disappeared (Tortured)</td>
<td>BSF (resp. 5)</td>
<td>Co-detainee reported Manzoor was severely tortured. Father died 2 months after disappearance.</td>
</tr>
<tr>
<td>1991/0001</td>
<td>Latief Khan; s/o Yakub Khan; r/o Chandanwari, block Boniyar, Uri; Baramulla</td>
<td>45</td>
<td>4th pass; Fruit business and shop owner</td>
<td>Married</td>
<td>10</td>
<td>14.07.90 [Home-Targeted]</td>
<td>FIR dt. 16.7.90</td>
<td>Disappeared</td>
<td>CRPF 46 Bn and local police (CRPF resp. 6)</td>
<td>An ex-serviceman, retired after 24 years in the army.</td>
</tr>
<tr>
<td>1991/0007</td>
<td>Mohd Ramzan Wani; s/o</td>
<td>25</td>
<td>Non-literate;</td>
<td>Married</td>
<td>5</td>
<td>04 (05) 09.90</td>
<td>DD dt. 26.7.92;</td>
<td>Disappeared</td>
<td>BSF 132 &amp; 76 Bn</td>
<td>Infant son beaten up. House</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>FIR/DD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>0002</td>
<td>Lassa Wani (Gh Rasool); r/o Mohalla Asthan, Tikkipora village, Lolab, Kupwara</td>
<td>Tailor, with his own shop.</td>
<td>Married</td>
<td>2</td>
<td>[Crackdown- Home-Targeted]</td>
<td></td>
<td>Converted to FIR u/s 365 RPC</td>
<td>(Tortured)</td>
<td>(76 Bn BSF resp. 2)</td>
<td>and shop looted/destroyed. Wife lives alone with small children.</td>
</tr>
<tr>
<td>1991/0003</td>
<td>Abdul Rashid Sheikh; s/o Abdul Khaliq Sheikh; r/o Kirpal Gard, Singhpora (Matipora?), Pattan, Baramulla</td>
<td>25</td>
<td>9th class; Carpet business</td>
<td>Married</td>
<td>2</td>
<td>25.11.90 [Home-Retalitatory crackdown]</td>
<td>DD dt. 1.2.95</td>
<td>Disappeared</td>
<td>BSF 24 Bn (resp. 5)</td>
<td>Firing on BSF from village. All villagers fled as retaliation was certain. Rashid one of few who stayed back as mother was ill (cancer). Arrested.</td>
</tr>
<tr>
<td>1991/0004</td>
<td>Malik Nissar Ahmad Shah; s/o Ghulam Rasool Shah; r/o Verinagh, Anantnag</td>
<td>38</td>
<td>Matric; Watchmaker &amp; proprietor of watch shop</td>
<td>Married</td>
<td>1</td>
<td>20.07.90 [Home-Targeted]</td>
<td>FIR dt. 22.11.90 u/s 451, 365 RPC (Filed by wife)</td>
<td>Disappeared</td>
<td>CRPF 53 Bn Verinag, CRPF 19 Bn 'C', SICOP, Bijbehara. (resp. 3)</td>
<td>CRPF admitted arrest and custody before Gen Zaki, who was visiting Verinag, about two years after arrest. Family searched every where, visiting all major jails in India.</td>
</tr>
<tr>
<td>1991/0005</td>
<td>Mohd Ayub Dar; s/o Haji Abdul Ahad Dar; r/o Rawalpora, Budgam</td>
<td>(25)</td>
<td>Not known; Family (construction) business</td>
<td>Single</td>
<td>NA</td>
<td>05.05.91 [Delhi-Regular arrest]</td>
<td>Not filed</td>
<td>Released</td>
<td>Delhi police (Not a resp.)</td>
<td>Arrested in a TADA case in Delhi. Sentenced. Released in Nov 2002 on bail.</td>
</tr>
<tr>
<td>S. No. &amp; Name</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Address &amp; Status</td>
<td>Remarks</td>
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<tr>
<td>1. Parvez Maqbool Shah</td>
<td>25</td>
<td>Non-literate, Accountant</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>2. Manzoor Ahmad Shah</td>
<td>22</td>
<td>Corp.</td>
<td>Mathan By Pass, Wholesale cloth merchant</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>4. Zafarullah Beig</td>
<td>54</td>
<td>Govt. Treasurer, Accountant</td>
<td>Batamaloo, Baramulla</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>5. Shams-ud-din Shah</td>
<td>25</td>
<td>Not known</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>8. Shams-ud-din Shah</td>
<td>25</td>
<td>Not known</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>9. Ahmmad Beig</td>
<td>30</td>
<td>BA Arabic, Govt. Treasurer</td>
<td>Uri, Teh. Uri,</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>10. Parvez Maqbool Shah</td>
<td>25</td>
<td>Non-literate, Accountant</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>11. Mohd Yousof Wadoodi</td>
<td>30</td>
<td>BA Arabic, Govt. Treasurer</td>
<td>Zara Batamaloo, Srinagar</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>12. Zafarullah Beig</td>
<td>54</td>
<td>Govt. Treasurer, Accountant</td>
<td>Batamaloo, Baramulla</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>13. Shams-ud-din Shah</td>
<td>25</td>
<td>Not known</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>16. Shams-ud-din Shah</td>
<td>25</td>
<td>Not known</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>17. Ahmmad Beig</td>
<td>30</td>
<td>BA Arabic, Govt. Treasurer</td>
<td>Uri, Teh. Uri,</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>18. Parvez Maqbool Shah</td>
<td>25</td>
<td>Non-literate, Accountant</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>19. Mohd Yousof Wadoodi</td>
<td>30</td>
<td>BA Arabic, Govt. Treasurer</td>
<td>Zara Batamaloo, Srinagar</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>20. Zafarullah Beig</td>
<td>54</td>
<td>Govt. Treasurer, Accountant</td>
<td>Batamaloo, Baramulla</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<td>21. Shams-ud-din Shah</td>
<td>25</td>
<td>Not known</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<td>24. Shams-ud-din Shah</td>
<td>25</td>
<td>Not known</td>
<td>Mathan By Pass, J&amp;K Public Sector</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<tr>
<td>25. Ahmmad Beig</td>
<td>30</td>
<td>BA Arabic, Govt. Treasurer</td>
<td>Uri, Teh. Uri,</td>
<td>Arrested by nearby army unit which carried out a crackdown on their locality after being fired upon from that direction. Released after a month.</td>
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<td>Name</td>
<td>Education &amp; Occupation</td>
<td>Circumstance of Arrest</td>
<td>Detaining Unit</td>
<td>Released/Killed/Disappeared</td>
<td>Remarks</td>
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<tr>
<td>1991/ Farooq Ahmad Bhat; s/o 18</td>
<td>10th class student; Also helped in his father's shop.</td>
<td>BSF 102 Bn</td>
<td>Disappeared</td>
<td></td>
<td>Was tending his shop inside the colony when arrested during a retaliatory crackdown after a grenade attack on the BSF on the main road.</td>
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<tr>
<td>1991/ 0011 Abdul Ahad Bhat; r/o student; Also [Shop-Retaliatory (res p. 3) colony) when arrested during</td>
<td></td>
<td>CRPF 50 Bn</td>
<td>Disappeared</td>
<td></td>
<td>Co-detainees reported Bhatlarat was tortured to death.</td>
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<tr>
<td>1991/ Syed Basharat Ahmed Shah; s/o 26</td>
<td>Doing PhD</td>
<td>CRPF 50 Bn</td>
<td>Disappeared</td>
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<tr>
<td>1992/ 0002 Ghulam Ahmad Bazaz; r/o Shop keeper</td>
<td>Shopkeeper</td>
<td></td>
<td>Disappeared</td>
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<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>RRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1992/ 0004</td>
<td>Farooq Ahmad Najar; s/o Abdul Razak Najar; r/o Safa Kadal, Srinagar</td>
<td>(30)</td>
<td>Non-literate; Shop keeper</td>
<td>Single</td>
<td>NA</td>
<td>02.04.92 [Street-Targeted]</td>
<td>Not filed</td>
<td>Released</td>
<td>BSF</td>
<td>Surrendered militant. Has spent time in jail under PSA. Subjected to repeated arrests around 15 August, every year.</td>
</tr>
<tr>
<td>1992/ 0005</td>
<td>Riyaz Ahmad Khan; s/o Wali Mohd.; r/o Danger Mohalla, Peth Seer, Tehsil - Sopore; Baramulla</td>
<td>17</td>
<td>11th class student</td>
<td>Single</td>
<td>NA</td>
<td>21.01.92 [Home-Crackdown]</td>
<td>DD dt. 22.1.92 FIR dt. 23.3.99 uls 302, 342, 201 RPC</td>
<td>Disappeared</td>
<td>5 Guards (not party, though Chief of Army Staff and UOI (Home) are resp. 3 &amp; 4)</td>
<td>CO of 5 Guards rebuked family saying - you have sent him to Pakistan and are falsely accusing us.</td>
</tr>
<tr>
<td>1993/ 0002</td>
<td>Mohd. Aslam Mir; s/o Jali Mir; r/o Bemina; City &amp; Distt. Srinagar</td>
<td>(22)</td>
<td>Car mechanic</td>
<td>Single</td>
<td>NA</td>
<td>27.08.93 [Crackdown-Targeted]</td>
<td>Not known</td>
<td>Released (Tortured)</td>
<td>10 Garhwala as per family but not made resp. (BSF resp. 6)</td>
<td>Was 12 years old at time of arrest. Unable to work because of torture.</td>
</tr>
<tr>
<td>1993/</td>
<td>Nazir Ahmad Sofi; s/o</td>
<td>19</td>
<td>BSc 1st year</td>
<td>Single</td>
<td>NA</td>
<td>15.10.93</td>
<td>FIR dt</td>
<td>Disappeared</td>
<td>BSF &amp; RR 1,</td>
<td>Had gone to the market in</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name</td>
<td>Education</td>
<td>Occupation</td>
<td>Address</td>
<td>Remarks</td>
<td>Released/Killed/Disappeared</td>
<td>Arrested/Disappeared</td>
<td>FIR/DD</td>
<td>Dt. &amp; Place</td>
<td>Circumstance</td>
</tr>
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<tr>
<td>0001</td>
<td>Abdul Rehman Bhat</td>
<td>14 Non-literate</td>
<td>Carpet weaver</td>
<td>Mohalla Kandozab, PHE Dept.</td>
<td>planting since 1993, arrested in connection with family business</td>
<td>Released</td>
<td>Disappeared</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>0002</td>
<td>Ghulam Mohd Lone</td>
<td>18 Non-literate</td>
<td>Employee of goatherd</td>
<td>Street- (resp. 5)</td>
<td>reported arrested in connection with family business</td>
<td>Released</td>
<td>Disappeared</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>0003</td>
<td>Ghulam Qadir Sofi</td>
<td>14 Non-literate</td>
<td>Student</td>
<td>Mohalla Kandozab, PHE Dept.</td>
<td>planting since 1993, arrested in connection with family business</td>
<td>Released</td>
<td>Disappeared</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>0004</td>
<td>Isril Khan Gojar</td>
<td>14 Non-literate</td>
<td>Goatherd</td>
<td>Village- 5 Dogra Regiment</td>
<td>reported arrested in connection with family business</td>
<td>Released</td>
<td>Disappeared</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>0005</td>
<td>Mohd Ayoub Bhat</td>
<td>18 Non-literate</td>
<td>Carpet weaver</td>
<td>Mohalla- (resp. 5)</td>
<td>reported arrested in connection with family business</td>
<td>Released</td>
<td>Disappeared</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<tr>
<td>S. No.</td>
<td>Name</td>
<td>Education</td>
<td>Occupation</td>
<td>Age</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/Disappeared</td>
<td>DL &amp; Piece</td>
<td>Circumstance of Arrest</td>
<td>Remarks</td>
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</tr>
<tr>
<td>1994/1</td>
<td>Abdul Rehman</td>
<td>Graduates</td>
<td>Fitter</td>
<td>31</td>
<td>Single</td>
<td>1</td>
<td>23.05.93</td>
<td>Electrical</td>
<td>Kupwara</td>
<td>Arrested when house where he was lodging temporarily was raided. Security forces (Only State &amp; its agencies are resp.) was arrested. Details not known. Released</td>
</tr>
<tr>
<td>1994/2</td>
<td>Qazi Khurshid Ahmad</td>
<td>Matric</td>
<td>Contractor</td>
<td>29</td>
<td>Single</td>
<td>2</td>
<td>05.06.94</td>
<td>Fitter</td>
<td>Panzgam</td>
<td>Surrendered militant. He was 19 at time of arrest &amp; unacknowledged</td>
</tr>
<tr>
<td>1994/3</td>
<td>Mufti Mohd. Israil</td>
<td>Mufti</td>
<td>Shop owner</td>
<td>45</td>
<td>Single</td>
<td>4</td>
<td>02.07.94</td>
<td>Shop owner</td>
<td>Sherkot, Shopian</td>
<td>Details not known.</td>
</tr>
<tr>
<td>1994/4</td>
<td>Ghulam Hassan Sofi</td>
<td>RMP</td>
<td>Shop owner</td>
<td>45</td>
<td>Single</td>
<td>4</td>
<td>02.07.94</td>
<td>R&amp;AW</td>
<td>Sherkot, Shopian</td>
<td>Details not known.</td>
</tr>
<tr>
<td>1994/5</td>
<td>Ghulam Hassan Sofi</td>
<td>RMP</td>
<td>Shop owner</td>
<td>45</td>
<td>Single</td>
<td>4</td>
<td>02.07.94</td>
<td>R&amp;AW</td>
<td>Sherkot, Shopian</td>
<td>Details not known.</td>
</tr>
</tbody>
</table>

**Remarks:**
- Arrested: When house where he was lodging temporarily was raided. Security forces (Only State & its agencies are resp.) was arrested.
- Converted to detention under PSA after some months.
- Released: Details not known.
- Released (Tortured): Details not known.
- Released (Tortured): Details not known.
- Released (Tortured): Details not known.
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name &amp; Address</th>
<th>Age</th>
<th>Education &amp; Occupation</th>
<th>Marital Status</th>
<th>Children</th>
<th>Arrested/ Disappeared Dt. &amp; Place</th>
<th>FIR/DD Date</th>
<th>Released/ Killed/ Disappeared</th>
<th>Detaining Unit</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994/0006</td>
<td>Abdul Gani Najar; s/o Lassi Najar (Gh Rasool Najar); r/o Fidarpora, PS Panzla, PO Dangiwacha (Rafiabad), Tehsil - Sopore, Baramulla</td>
<td>22</td>
<td>Non-literate; Carpenter</td>
<td>Married</td>
<td>2</td>
<td>21.11.90 [Home- Crackdown]</td>
<td>DD dt. 22.11.90</td>
<td>Disappeared (Tortured)</td>
<td>Army from Baramulla. (resp. 4 – Army Hqs.)</td>
<td>Severely ill, unable to move, when arrested. Thrown down from FF room. Sister traumatised by his disappearance, died of a heart attack within 6 months.</td>
</tr>
<tr>
<td>1994/0007</td>
<td>Manzoor Ahmad Wani; s/o Ghulam Mohd (Ahmad?) Wani; r/o Pakhaqpora, Bon mohalla, Tehsil - Chadoora, Budgam</td>
<td>(38)</td>
<td>11th class; Shopkeeper</td>
<td>(Married)</td>
<td>(4)</td>
<td>03.06.94 [Surrendered during encounter]</td>
<td>Not filed</td>
<td>Released</td>
<td>BSF (not a party)</td>
<td>Surrendered militant. Wwass kept in illegal detention for 6 months, and then held under PSA for 1 year.</td>
</tr>
<tr>
<td>1995/0002</td>
<td>Khizir Mohd Bhat; s/o Abdul Samad Bhat r/o Ali Bagh, Tehsil - Sopore, Baramulla</td>
<td>32</td>
<td>9th pass; Shopkeeper &amp; carpet weaver</td>
<td>Married</td>
<td>6</td>
<td>29.10.94 [Village Crackdown]</td>
<td>Not known</td>
<td>Disappeared (Tortured)</td>
<td>Garhwal Rifles, 2 Bn (resp. 3)</td>
<td>Army denied custody till released co-detainees informed family of his place of detention. Family saw him in custody. Had been severely tortured.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>RRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1995/0003</td>
<td>Farooq Ahmad Khan; s/o Ghulam Ahmad Khan; r/o Lawayapora, Tehsil - Bandipora, Baramulla</td>
<td>32</td>
<td>Not known; Narwai (Kashmiri baker)</td>
<td>Married</td>
<td>2</td>
<td>01.12.92 [Village-Targeted]</td>
<td>DD7 FIR dt. 1.12.92</td>
<td>Disappeared (Tortured)</td>
<td>10 Bihar (Wrongly written as 'Behara' in petn.) (resps. 6 &amp; 7)</td>
<td>The pleadings of this case illustrate the inadequacy of the adversarial format of litigation in habeas corpus matters.</td>
</tr>
<tr>
<td>1995/0004</td>
<td>Riyaz Ahmad Gilkar; s/o Mohd. Subhan; r/o Dabruna, Anantnag</td>
<td>22</td>
<td>Student- BSc 2nd year; Part time mechanic</td>
<td>Single</td>
<td>NA</td>
<td>25.04.94 [Village-Crackdown]</td>
<td>DD dt. 25.4.94</td>
<td>Disappeared</td>
<td>2 RR (resp. 5)</td>
<td>Brother says Riaz is still alive. Claims he has seen him in several army camps over the years.</td>
</tr>
<tr>
<td>1995/0005</td>
<td>Ghulam Hassan Baba; s/o Abdul Ahad Baba; r/o Amad - Wagad, Tehsil - Pahalgam, Anantnag</td>
<td>34</td>
<td>Non-literate; Farmer</td>
<td>Married</td>
<td>7</td>
<td>07.07.94 [Street-Targeted]</td>
<td>FIR dt. 8.7.94,</td>
<td>Disappeared</td>
<td>9 PARA (resp. 2)</td>
<td>Abjectly poor family. Ex-gratia and SRO benefits given.</td>
</tr>
<tr>
<td>1995/0006</td>
<td>Fayaz Ahmad Bhat; s/o Abdul Rehman Bhat; r/o Kilamgund; Tehsil - Kulgam; Distt. Anantnag</td>
<td>22</td>
<td>5th pass; Tailor</td>
<td>Single</td>
<td>NA</td>
<td>18.12.93 [Home-Crackdown]</td>
<td>DD dt 19.12.93; FIR, dt. 17.3.95 u/s 302 RPC</td>
<td>Disappeared</td>
<td>33 Mountain Brig and 39 Div. Not a party though UOI (Home) is resp. 4</td>
<td>Resembled a militant of nearby village whom the army was seeking. Brigadier personally assured DM he would be released.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Education &amp; Occupation</td>
<td>Age</td>
<td>Martial Status</td>
<td>Detained At</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>Circumstance of Arrest</td>
<td>Remarks</td>
<td></td>
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</tr>
<tr>
<td>0001</td>
<td>Mohd Amin Bhat</td>
<td>(27)</td>
<td>Not known; Auto driver</td>
<td>Single</td>
<td>May 1995/ [Village- Crackdown]</td>
<td>Jat Regiment</td>
<td>(Not a party since arrest was transferred to JIC run by BSF)</td>
<td>Released/ Killed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0002</td>
<td>Lassi Bhat</td>
<td>7th pass.</td>
<td>25</td>
<td>Single</td>
<td>08.07.95</td>
<td>Missing report</td>
<td>BSF 41 Bn (resp. 4 &amp; 5)</td>
<td>BSF claimed he had escaped from their custody.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0003</td>
<td>Mushtaq Ahmad Chacha</td>
<td>19 Student</td>
<td>19</td>
<td>Single</td>
<td>04.08.95</td>
<td>Disappeared</td>
<td>DD dt. 6.5.95</td>
<td>Disappeared Case of gross negligence by army/judicial judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0004</td>
<td>Yaqoob alias Solen</td>
<td>Not known</td>
<td>19</td>
<td>Not known</td>
<td>11.10.94</td>
<td>Disappeared</td>
<td>DD dt. 12.9.95</td>
<td>Disappeared</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Remarks**
- Picked up because the CO of the army patrol did not like his beard/dress. (Another case-96/4)
- First arrested on return from POK in 92. Became inactive on release. Arrested again during crackdown. Left home in July 95. Returned and arrested in Sept 95. Left home in July 01. Killed in encounter (genuine) on 6.1.02
- Arrested again during Chadoora, Budgam transferred to JIC crackdown. (Petn. pertains to this arrest.) Released in Sept '96. Left home in July '01. Killed in encounter (genuine) on 6.1.02
- BSF claimed he had escaped from their custody.
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name &amp; Address</th>
<th>Age</th>
<th>Education &amp; Occupation</th>
<th>Marital Status</th>
<th>Children</th>
<th>Arrested/Disappeared Dt. &amp; Place</th>
<th>Circumstance of Arrest</th>
<th>Released/Killed/Disappeared</th>
<th>Detaining Unit</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996/0001</td>
<td>Ghulam Mustafa Khan; s/o Abdul Razak; R/o Goigam, Tehsil - Pattan, Baramulla</td>
<td>23</td>
<td>Student (when arrested); Later- militant.</td>
<td>Single</td>
<td>NA</td>
<td>24.02.96 [Home-Targeted]</td>
<td></td>
<td>Not filed</td>
<td>Released/Killed</td>
<td>RR 34 Bn (resp. 3)</td>
</tr>
<tr>
<td>1996/0002</td>
<td>Abdul Hamid Dar; s/o Ghulam Mohd. Dar, r/o Puliharan, Gulistan, Baramulla</td>
<td>26</td>
<td>4th pass; Tailor</td>
<td>Married</td>
<td>3</td>
<td>29.12.95 [Home-Targeted]</td>
<td></td>
<td>DD dt. 1.4.96. FIR dt. 10.5.96 u/s 346 RPC</td>
<td>Disappeared (Tortured)</td>
<td>RR 28 Bn (resp. 4)</td>
</tr>
<tr>
<td>1996/0003</td>
<td>Farooq Ahmad Shalla; s/o Ghulam Ahmed Shalla, r/o 17 Upper Soura, near Soura petrol pump, Srinagar</td>
<td>18</td>
<td>Student - 9th class; Also helped in family carpet business</td>
<td>Single</td>
<td>NA</td>
<td>26.06.95 [Border-Targeted]</td>
<td></td>
<td>Details not known.</td>
<td>Disappeared</td>
<td>RR 22 Bn (resp. 3)</td>
</tr>
<tr>
<td>1996/0004</td>
<td>Ghulam Mohd Ahangar; s/o All Mohd Ahangar; r/o Yek Bug, Budgam</td>
<td>23</td>
<td>Mill worker/ Carpenter</td>
<td>Married</td>
<td>1</td>
<td>10.06.92 [Street-Random–Retaliatory crackdown]</td>
<td></td>
<td>FIR dt. 28.4.97 u/s 302, 201 RPC</td>
<td>Disappeared (Tortured)</td>
<td>BSF 30 Bn (resp. 4)</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>FIR/DD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1996/ 0005</td>
<td>Javaid Ahmad Bhat; s/o Bashir Ahmed Bhat; r/o H. No. 160, New Colony, Soura, Srinagar</td>
<td>17</td>
<td>Student- 10th pass; Also, carpet dealer/business</td>
<td>Single</td>
<td>NA</td>
<td>26.06.95 [Border- Targeted]</td>
<td>Details not known</td>
<td>Disappeared</td>
<td>RR 22 Bn (resp. 3)</td>
<td>Related to 96/3 and 96/6. Family has an army list (stamped and signed) of detainees, which contains Javaid's name.</td>
</tr>
<tr>
<td>1996/ 0006</td>
<td>Tariq Ahmad Rather; s/o Ghulam Nabi Rather; r/o H. No 167, New Colony, Soura, Srinagar</td>
<td>14</td>
<td>5th pass; Bus conductor</td>
<td>Single</td>
<td>NA</td>
<td>26.06.95 [Border- Targeted]</td>
<td>DD dt. 5.12.95 FIR u/s 361, 302 RPC</td>
<td>Disappeared</td>
<td>RR 22 Bn (resp. 3)</td>
<td>Related to 96/3 and 96/5. Family has an army list (stamped and signed) of detainees, which contains Tariq's name.</td>
</tr>
<tr>
<td>1996/ 0007</td>
<td>Shabir Hussain Bhat; s/o Ghulam Mohd. Bhat; r/o Patlipora, Sajadabad, Chattebal, Srinagar</td>
<td>19</td>
<td>5th pass; Carpet weaver</td>
<td>Single</td>
<td>NA</td>
<td>26.04.96 [Street-Random-Crackdown]</td>
<td>FIR dt. 27.4.96 u/s 364, 342, 464, 302 RPC</td>
<td>Disappeared</td>
<td>Garhwal Rifles (not known if made a party)</td>
<td>Mother abducted by militants, who accused her of being an informer. Family said he developed links with the militants to counter this threat.</td>
</tr>
<tr>
<td>1997/ 0001</td>
<td>1. Nazir Ahmad Malik; s/o (late) Abdul Gani Malik; r/o Bragam, Tehsil- Dooru, Ananthag; 2. Mohd Shafi Shah; s/o Ali Mohd Shah r/o Meernag (Hyhama), Kupwara</td>
<td>1.34</td>
<td>1. BA, teacher 2. Student BSc 1st year</td>
<td>Married</td>
<td>(1)</td>
<td>04.04.97 (2 arrestees) [Street- Targeted/ Random]</td>
<td>Details not known</td>
<td>1. Body found in the Jhelum, Uri 2. Disappeared</td>
<td>SOG-STF, Srinagar (resp. 3 to 9)</td>
<td>Greater Kashmir &amp; TOI reported Nazir as &quot;military advisor&quot; of JUM. From facts it seems that one of the arrests (several persons were arrested) was targeted while others were arrested randomly.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place Circumstance of Arrest</td>
<td>RRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1997/ 0002</td>
<td>Hamid Ullah Mir; s/o Sonaullah Mir; r/o Chanapora, Tehsil - Chadoora, Budgam</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>-</td>
<td>04.09.94 [Not known]</td>
<td>Not filed</td>
<td>Not known</td>
<td>Security forces (Not made party. Only State &amp; agencies are resp.)</td>
<td>Address not traced. As per petn. unacknowledged arrest converted to detention under PSA. Petn. filed under mistake of fact re date of release.</td>
</tr>
<tr>
<td>1997/ 0003</td>
<td>Mohd. Akbar Rather; s/o Mohd Subhan Rather; r/o Tantra y Mohalla, Palhalan, Tehsil - Pattan, Baramulla</td>
<td>24</td>
<td>Graduate; Teacher</td>
<td>Maried</td>
<td>1</td>
<td>28.11.96 [Home -Targeted]</td>
<td>DD dt. 14.12.96</td>
<td>Disappeared (Tortured)</td>
<td>RR 8 Bn (resp. 3)</td>
<td>Family said army was looking for a neighbour with the same name but different surname (member of Jamiat I' Islami), when they arrested Akbar Rather.</td>
</tr>
<tr>
<td>1997/ 0004</td>
<td>Javed Iqbal Kemu; s/o Abdul Hafiz Kemu; r/o Haripora, Tehsil - Bhaderwah, Doda</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>not known</td>
<td>02.12.96 [Street]</td>
<td>Not filed</td>
<td>Disappeared</td>
<td>20 RR [Not a party, but 20 Grenadiers, RR(camp) Bemina, Srinagar is resp. 5]</td>
<td>Custody proved by evidence of those whose houses were raided, with Kemu accompanying the raiding party.</td>
</tr>
<tr>
<td>1997/ 0005</td>
<td>Abdul Khaliq Pir, s/o Mohd Syed Peer; r/o Haerpura, Guroora, Tehsil- Bandipora, Baramulla</td>
<td>35</td>
<td>8th pass; Imam &amp; teacher in a private school.</td>
<td>Married</td>
<td>3</td>
<td>03.09.90 [Home-Targeted /Random]</td>
<td>FIR dt. 5.4.92 and dt. 26.3.02 u/s 346 RPC</td>
<td>Disappeared (Tortured)</td>
<td>CRPF 50 Bn (resp. 6 &amp; 7)</td>
<td>Brother-in-law a militant. Picked up from in-laws home, probably as a hostage. Wife had just had a baby. Sister Naseema died of trauma</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>FIRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1997/0006</td>
<td>Mohd Shabhan Khan; s/o Mohi-ud-din Khan; s/o Pattanpora, Naslapora (Nasrulla Pora?), Budgam</td>
<td>45</td>
<td>Matric, with Islamic education; Sand seller and part time Imam</td>
<td>Married</td>
<td>7</td>
<td>Details not known</td>
<td>16.04.97</td>
<td>Disappeared</td>
<td>20 Grenadiers (resp. 3)</td>
<td>Shahban Khan and his son Yehya were both arrested and disappeared. Yehya was a militant and had spent 2 years in jail under PSA.</td>
</tr>
<tr>
<td>1997/0007</td>
<td>Bashir Ahmad Bhat; s/o Nabir Bhat (Gh Nab Bhat) r/o VPO Kuligam, Lohal, Kupwara</td>
<td>26</td>
<td>9th pass; Family business of rice husking. Also owned land</td>
<td>Married</td>
<td>3</td>
<td>Details not known</td>
<td>25.11.95</td>
<td>Disappeared</td>
<td>12 MLI - Mirgund, Kuligam. (resp. 3)</td>
<td>(Two pets.) Surrendered militant. Code name &quot;Lal Budha&quot;. Army claimed he was working for them. Traumatised by disappearance, mother died in 1997 of a heart attack.</td>
</tr>
<tr>
<td>1997/0008</td>
<td>Abdul Rashid Wani; s/o Abdul Samad Wani; r/o 87, Gousia Colony, Bemina, Srinagar</td>
<td>35</td>
<td>Non-literate; Truck driver</td>
<td>Married</td>
<td>3</td>
<td>Details not known</td>
<td>07.07.97</td>
<td>Disappeared</td>
<td>2/8 Gorkha Rifles (resp. 5)</td>
<td>Police refused to register case. Army produced Clearance Certificate given by police as proof of its &quot;innocence&quot;.</td>
</tr>
<tr>
<td>1997/0009</td>
<td>Ashiq Hussain Malik; s/o Mohd Subhan Malik; r/o Peer Bagh, Hyderpora, Srinagar</td>
<td>16</td>
<td>Student - 12th class.</td>
<td>Single</td>
<td>NA</td>
<td>Details not known. Dt. 24.5.97</td>
<td>23.05.97</td>
<td>Disappeared (Tortured)</td>
<td>20 Grenadiers (resp. 3 &amp; 4)</td>
<td>Had spent 18 months in jail under PSA as a 13 year old; grenade found in his room. Family said guns and grenades as freely available as vegetables then. This arrest attributed to a CAT with whom Ashiq Hussain had quarrelled.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>RRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1997/ 0010</td>
<td>Mohd Shafi Dar; s/o Abdul Gani Dar; r/o Rambagh, Srinagar</td>
<td>Not known</td>
<td>School boy</td>
<td>Single</td>
<td>NA</td>
<td>05.09.97 [Not known]</td>
<td>Not filed</td>
<td>Don't know</td>
<td>JKL I &amp; STF (JKLI is resp. 5, STF is resp. 3)</td>
<td>There was some doubt as to whether we had met the right family.</td>
</tr>
<tr>
<td>1997/ 0011</td>
<td>Fayaz Ahmad Khan; s/o Abdul Aziz Khan; r/o Haka Bazar, Hawal, Srinagar</td>
<td>25</td>
<td>9th pass; Mason &amp; shawl seller</td>
<td>Single</td>
<td>NA</td>
<td>02.08.97 [Home-Targeted]</td>
<td>FIR dt. 3.8.97</td>
<td>Disappeared</td>
<td>STF (resp. 5 &amp; 6)</td>
<td>IO expressed doubt about identity of accused police unit. HC misread this to mean that factum of arrest was not established.</td>
</tr>
<tr>
<td>1997/ 0012</td>
<td>Mohd Afzal Shah; s/o Ghulam Nabi Shah; r/o Daepora, Thanna Shopian, Tehsil Kulgam, Anantnag</td>
<td>37</td>
<td>Graduate; Imam of Rindan Shah Masjid, Srinagar</td>
<td>Married</td>
<td>3</td>
<td>26.04.97 [Home-Targeted]</td>
<td>Details not known. Dt. 27.4.97</td>
<td>Disappeared</td>
<td>BSF / STF [9 RR as per BSF personnel at Dalgate] (BSF is resp. 8)</td>
<td>Brother was a militant. Afzal probably arrested as a hostage. Brother arrested and killed 2 weeks after Afzal’s arrest. Sister died of heart attack induced by trauma.</td>
</tr>
<tr>
<td>1997/ 0014</td>
<td>Abdul Ahad Malik; s/o Assadullah Malik; r/o Dolipora, Baramulla</td>
<td>40</td>
<td>Non-literate; Employed in PHE Dept, Tangmarg</td>
<td>Married</td>
<td>2</td>
<td>24.05.97 [Home-Targeted]</td>
<td>DD dt. 22.6.97 u/s 365 RPC</td>
<td>Disappeared</td>
<td>8 Rajputana Rifles (resp. 2)</td>
<td>Large group of villagers assaulted when they sought an explanation for Abdul Ahad’s arrest.</td>
</tr>
<tr>
<td>S. No.</td>
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<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>FIR/ DD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
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<tr>
<td>1998/ 0001</td>
<td>Nisar Ahmad Wani; s/o Ghulam Ahmad Wani; r/o New Colony, Batamaloo, Srinagar</td>
<td>17</td>
<td>8th pass; Tailor</td>
<td>Single</td>
<td>NA</td>
<td>30.03.97 (Home-Crackdown-Random)</td>
<td>DD dt. 30.3.97, FIR dt. 13.4.97, FIR dt. 5.1.01 u/s 364 RPC.</td>
<td>Disappeared (Tortured)</td>
<td>20 Grenadiers and 35 RR (resp. 4 &amp; 5)</td>
<td>One of 15 known cases of disappearance between 29 Mar. and 23 May '97 by 20 Grenadiers. (Based on letters by police to army) reported here.</td>
</tr>
<tr>
<td>1998/ 0002</td>
<td>Manzoor Ahmad Dar; s/o Ghulam Nabi Dar; r/o Gangbug, Tengpora, Srinagar</td>
<td>23</td>
<td>7th pass; Automobile mechanic</td>
<td>Single</td>
<td>NA</td>
<td>30.03.97 (Street-Random)</td>
<td>DD dt. 17.4.97.</td>
<td>Disappeared</td>
<td>20 Grenadiers (resp. 4)</td>
<td>Arrested along with Bilal Sheikh (2003/9) One of 5 cases of disappearance by 20 Grenadiers in Mar - May '97.</td>
</tr>
<tr>
<td>1998/ 0003</td>
<td>Bashir Ahmad Wani; s/o Ghulam Nabi Wani; r/o Mandakpal, Tehsil - Pampore, Pulwama</td>
<td>24</td>
<td>Not known; Stone carver</td>
<td>Single</td>
<td>NA</td>
<td>18.11.97 (Targeted-Produced at PS on SHO's orders)</td>
<td>Not known</td>
<td>Disappeared (Tortured)</td>
<td>PSPampore (resp. 4 to 6)</td>
<td>State govt. said he had fled across the border. Family denied. Was due to be married in a few days. Linked to 98/8.</td>
</tr>
<tr>
<td>1998/ 0004</td>
<td>Ghulam Qadir Pandith; s/o Abdul Rahim Pandith; r/o Bijeham, Tehsil - Uri, Baramulla</td>
<td>38</td>
<td>5th pass; Vegetable seller/labourer</td>
<td>Married</td>
<td>7</td>
<td>22.05.98 (Street-Retaliatory crackdown)</td>
<td>DD dt. 3.6.98.</td>
<td>Disappeared (Tortured)</td>
<td>13 Garhwal Reg. (resp. 5)</td>
<td>Worked as a guide in border areas. Army said he was a militant of Al Umar. Police report confirmed torture.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place Circumstance of Arrest</td>
<td>RRDD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>1998/ 0005</td>
<td>Fayaz Ahmad Khan; s/o Haji Abdul Rahman Khan, r/o Pantha Chowk, Srinagar</td>
<td>25</td>
<td>Not known; Truck driver</td>
<td>Single</td>
<td>NA</td>
<td>25.11.97 [Home-Targeted]</td>
<td>Not filed</td>
<td>Disappeared</td>
<td>197 Field Reg. (resp. 3)</td>
<td>Army claimed he was a “casual source” and had not been arrested.</td>
</tr>
<tr>
<td>1998/ 0007</td>
<td>Manzoor Ahmad Ganai; s/o Mohd Shabir Ganai; r/o Methan, Lal Nagar, Chadoora, Tehel-Chadoora, Budgam</td>
<td>23</td>
<td>Non-literate; Mini-bus conductor; before that tailor</td>
<td>Single</td>
<td>NA</td>
<td>05.04.95 [Street- Crackdown]</td>
<td>DD dt. 6.4.95</td>
<td>Disappeared</td>
<td>BSF 34 Bn., Rajbagh, Srinagar (resp. 2)</td>
<td>Arrested in broad daylight, in full public view. Mother died of heart attack in 1996. Sister developed heart disease.</td>
</tr>
<tr>
<td>1998/ 0008</td>
<td>Bashir Ahmad Bhat, s/o Fateh Ahmad Bhat, r/o Mandakpal; Tehsil - Pampore, Pulwama</td>
<td>23</td>
<td>Non-literate; Stone carver</td>
<td>Single</td>
<td>NA</td>
<td>24.11.97 [Targeted-Produced at PS on SHO’s orders]</td>
<td>Not filed</td>
<td>Disappeared (Tortured)</td>
<td>PS, Pampore (resp. 6 &amp; 7)</td>
<td>State govt. said he had fled across the border. Family denied this allegation as he was seriously disabled, and walked with difficulty. Linked to 98/3.</td>
</tr>
<tr>
<td>1999/ 0001</td>
<td>Abdul Aziz Tantray; s/o Abdul Rahim Tantray; r/o Sher Bagh, Tehsil - Pattan, Baramulla</td>
<td>32</td>
<td>Primary school; Carpet weaver</td>
<td>Married</td>
<td>6</td>
<td>10.06.98 [Home-Targeted]</td>
<td>Details not known</td>
<td>Disappeared (Tortured)</td>
<td>BSF 145 Bn (resp. 3) [21 RR &amp; CRPF also, as per family]</td>
<td>Gave up militancy, tried to live in hiding. Caught through informer.</td>
</tr>
<tr>
<td>1999/ 0002</td>
<td>Abdul Majid Guroo; s/o Ghulam Mohd Guroo; r/o 131 Naseem Bagh, Seer</td>
<td>36</td>
<td>9th pass; Owned a saw mill</td>
<td>Married</td>
<td>5</td>
<td>22.12.98 [Home-Targeted-</td>
<td></td>
<td>Missing report dt: 22.12.98FIR dt: 6.3.99 u/s</td>
<td>Disappeared (Tortured)</td>
<td>Police (Baramulla) and 2 SPO’s. (resps. 3 to 5)</td>
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<td>FIR/DD Date</td>
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<td>Detaining Unit</td>
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<td></td>
<td>Road; Tehsil - Sopore, Baramulla</td>
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<td></td>
<td>Retaliatory]</td>
<td>365, 344 RPC.</td>
<td></td>
<td></td>
<td>they had bought. Severe financial constraints forced them to drop the habeas corpus proceedings.</td>
</tr>
<tr>
<td>1999/ 0003</td>
<td>Mushtaq Ahmad Khan, s/o Mohd Sultan Khan, r/o Tengpora, Batamaloo, Srinagar</td>
<td>25</td>
<td>Not known; Casual employee</td>
<td>Married</td>
<td>4</td>
<td>13.04.97 [Home-Targeted]</td>
<td>FIR dt. 17.4.97</td>
<td>Disappeared (Tortured)</td>
<td>20 Grenadiers, (resps. 3 to 5)</td>
<td>One of the cases in which one Subedar Nazar Mohd. (20 Grenadiers) is alleged to have taken money for securing the release of the detainee.</td>
</tr>
<tr>
<td>1999/ 0004</td>
<td>Farooq Ahmad Bhat; s/o Mohd Jabbar Bhat; r/o Nowgam, Natipora (Nowgam, Banapora, near Jamia Masjid), Budgam</td>
<td>29</td>
<td>Non-literate; Daily wage labourer; tailoring in spare time.</td>
<td>Married</td>
<td>2</td>
<td>24.05.90 [Street-Random]</td>
<td>Details not known</td>
<td>Disappeared</td>
<td>BSF (resp. 5)</td>
<td>Allegedly arrested because he had a beard. (Another case 95/10) One of several 'interview slip' cases; eg., Waheed Ahangar (90/4) and Latief Khan (91/1).</td>
</tr>
<tr>
<td>1999/ 0005</td>
<td>Mohd Rafiq Bhat; s/o Abdul Rehman Bhat; r/o Qutubudinpora, Nowhatta, Srinagar</td>
<td>19</td>
<td>Not known; Carpet weaver</td>
<td>Single</td>
<td>NA</td>
<td>19.08.92 [Home-Crackdown-Random]</td>
<td>DD dt. 20.8.92 FIR dt. 14.11.96 u/s 302, 364, 201 RPC</td>
<td>Disappeared</td>
<td>BSF 69 Bn (resp. 5)</td>
<td>Another 'interview slip' case. Other cases: Waheed Ahangar (90/4), Latief Khan (91/1) and Farooq Bhat (99/4).</td>
</tr>
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<tr>
<td>1999/0006</td>
<td>Abdul Rashid Ganai; s/o 28</td>
<td>9th pass; Labourer</td>
<td>Married</td>
<td>4</td>
<td>05 (or 06).01.99</td>
<td>[Home-Targeted]</td>
<td>DD dt. 13.1.99, FIR dt. 11.7.01, u/s 364 RPC</td>
<td>Disappeared</td>
<td>BSF 131 Bn, STF (BSF is security forces. Local SHO said to have had personal enmity with Ganai. Allegedly responsible for his disappearance.</td>
<td></td>
</tr>
<tr>
<td>1999/0007</td>
<td>Mohd Qasim Khoja; s/o 23</td>
<td>7th pass; Tailor</td>
<td>Single</td>
<td>NA</td>
<td>17.10.97</td>
<td>[Home-Targeted]</td>
<td>Not filed</td>
<td>Released (Tortured)</td>
<td>STF Kupwara, BSF, CRPF (Only State and DGP are resps.)</td>
<td>Surrendered militant. Militants considered him too young to carry arms; worked as messenger. Subjected to severe torture for 1 year by security forces.</td>
</tr>
<tr>
<td>1999/0009</td>
<td>Mushtaq Ahmad Dar; s/o 25</td>
<td>Not known; Auto driver, with own auto</td>
<td>Single</td>
<td>NA</td>
<td>13.04.97</td>
<td>[Home-Targeted]</td>
<td>Details not known</td>
<td>Disappeared (Tortured)</td>
<td>20 Grenadiers (resp. 4)</td>
<td>Family paid Subedar Nazar Mohd. Rs. 20,000 for releasing Mushtaq (see also 99/3); which they demanded and got back since he did not keep his word.</td>
</tr>
<tr>
<td>1999/0019</td>
<td>Dar; s/o Abdul Razak Dar; r/o 28</td>
<td>5th pass; Shopkeeper</td>
<td>Married</td>
<td>2</td>
<td>20.04.97</td>
<td>[Home-Targeted]</td>
<td>FIR dt. 5.1.01 u/s 364 RPC</td>
<td>Disappeared (Tortured)</td>
<td>20 Grenadiers</td>
<td>Arrested in '92. After release in '94, gave up militancy. Family says he had an enmity with a neighbour who had threatened to get him killed.</td>
</tr>
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<td>S. No.</td>
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<td>Education &amp; Occupation</td>
<td>Age</td>
<td>Children</td>
<td>Marital Status</td>
<td>FIR/DD Date &amp; Place</td>
<td>Arrested/Disappeared</td>
<td>Remarks</td>
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<tr>
<td>0169</td>
<td>Mushtaq Ahmad Shagoo; s/o Not Not Not NA 02.11.00 Not filed Disappeared Unidentified</td>
<td>Not known</td>
<td>20</td>
<td>0</td>
<td>Not known</td>
<td>02.11.00 Channapora, Srinagar</td>
<td>Disappeared</td>
<td>Underfilled persons in police uniform (State &amp; police are resp.)</td>
<td></td>
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</tr>
<tr>
<td>0170</td>
<td>Haji Habib-ullah Shagoo; r/o known known known [Home- persons in police Channapora, Srinagar Targeted] uniform (State &amp; police are resps.)</td>
<td>Not known</td>
<td>20</td>
<td>0</td>
<td>Not known</td>
<td>03.02.00 DD dt.</td>
<td>Disappeared</td>
<td>Uniformed security forces (Police – resp. 1 &amp; 3, Army – resp. 2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0171</td>
<td>Ghulam Mohd Bhat; r/o Accounts [Street- FIR dt. 17.5.00 security forces was the outcome of a Malik Sahib, Nowhatta, clerk in a Targeted] u/s364 RPC (Police – resps.)</td>
<td>Not known</td>
<td>20</td>
<td>0</td>
<td>Not known</td>
<td>03.02.00 DD dt. 3.3.00</td>
<td>Disappeared</td>
<td>Uniformed security forces (Police – resp. 1 &amp; 3, Army – resp. 2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0172</td>
<td>(late) Abdul Subhan Sheikh; r/o literate; [Home- FIR dt. 9.8.00, (Tortured) Kralpora-gund (near Shawl Targeted] u/s 346 RPC 1 and resp. to speak with him. Looked as if he Kralpora), Kupwara business &amp; 3 in petn. 2) had been tortured. The CO owned land demanded, and was supplied, huge quantity of walnuts and almonds.</td>
<td>Not known</td>
<td>20</td>
<td>0</td>
<td>Not known</td>
<td>9.08.00 DD dt.</td>
<td>Disappeared</td>
<td>Uniformed security forces (Police – resp. 1 &amp; 3, Army – resp. 2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0173</td>
<td>Mohd Yaseen Bhat; s/o 26 Graduate; Single NA 02.03.00</td>
<td>Not known</td>
<td>20</td>
<td>0</td>
<td>Not known</td>
<td>03.02.00 DD dt. 3.3.00</td>
<td>Disappeared</td>
<td>Uniformed security forces (Police – resp. 1 &amp; 3, Army – resp. 2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0174</td>
<td>Mohd Sultan Wani; r/o Tailor [Street- FIR dt. 2.4.01, F Coy (resp. 6) Dangar Mohalla, Peth Seer, Targeted] u/s 346 RPC. in arranging his arrest</td>
<td>Not known</td>
<td>20</td>
<td>0</td>
<td>Not known</td>
<td>03.02.00 DD dt. 3.3.00</td>
<td>Disappeared</td>
<td>Uniformed security forces (Police – resp. 1 &amp; 3, Army – resp. 2)</td>
<td></td>
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</tr>
</tbody>
</table>

**Remarks:**
- Family believe his arrest was the outcome of a malicious complaint.
- Family saw him very day but not allowed to speak with him. Looked as if he had been tortured. The CO demanded, and was supplied, huge quantity of walnuts and almonds.
- Family filed on his behalf. Local politician involved in arranging his arrest.
- Family filed on his behalf. Local politician involved in arranging his arrest.
<table>
<thead>
<tr>
<th>S. No.</th>
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<th>Age</th>
<th>Education &amp; Occupation</th>
<th>Marital Status</th>
<th>Children</th>
<th>Arrested/ Disappeared</th>
<th>RRDD Date</th>
<th>Released/ Killed/ Disappeared</th>
<th>Detaining Unit</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000/ 0174</td>
<td>Abid Hussain Dar; s/o Abdul Razak Dar; r/o Narwara Idgah, Srinagar</td>
<td>(17)</td>
<td>Student - 8th class (when he left home in 1996)</td>
<td>Single</td>
<td>NA</td>
<td>24.07.00 [Border arrest]</td>
<td>In Oct.- Nov. '96. Details not known.</td>
<td>Disappeared</td>
<td>15 JKLI (resp. 2)</td>
<td>Crossed into Pakistan in '96 as a 13 year old. Was caught crossing back into India.</td>
</tr>
<tr>
<td>2000/ 0175</td>
<td>Ali Mohd. Dar; s/o Abdul Ahad Dar; r/o Village Batpora, Mohalla Banpora, Magam; Tehsil - Handwara, Kupwara</td>
<td>35</td>
<td>Non-literate; Farmer</td>
<td>Married</td>
<td>3</td>
<td>07.03.98 [Home-Targeted]</td>
<td>Not filed</td>
<td>Disappeared</td>
<td>23 RR (resp. 2)</td>
<td>Unofficially, army claimed he had escaped from their custody.</td>
</tr>
<tr>
<td>2000/ 0179</td>
<td>Shabir Ahmad Ghasi; s/o Ghulam Nabi Ghasi; r/o Boat Colony, Bemina, Srinagar</td>
<td>29</td>
<td>Non-literate; Fruit vendor</td>
<td>Married</td>
<td>2</td>
<td>22.01.00 [Home-Targeted]</td>
<td>DD dt. 3.7.00</td>
<td>Disappeared</td>
<td>2 RR &amp; STF [6 RR Hafrada, Taratpora – as per police report] (RR is resp. 4)</td>
<td>Connected with 2000/180</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>Circumstance of Arrest</td>
<td>FIR/DD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
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<tr>
<td>2000/ 0180</td>
<td>Abdul Hamid Badayari; s/o Ali Mohd; r/o Gowkadal, near Shalimlar Press, Srinagar</td>
<td>28</td>
<td>10th pass; Auto driver</td>
<td>Married</td>
<td>3</td>
<td>21.01.00</td>
<td>Street-Targeted</td>
<td>RR dt. 23.1.00</td>
<td>Disappeared</td>
<td>6 RR and STF (resp. 5 - RR)</td>
</tr>
<tr>
<td>2003/ 0002</td>
<td>Ejaz Ahmad Sheikh; s/o Abdul Hamid; r/o Ikhrajpora, Radio Colony, Jawahar Nagar, PS Rajbagh, Srinagar</td>
<td>14</td>
<td>6th pass; Apprentice painter</td>
<td>Single</td>
<td>NA</td>
<td>20.8.99</td>
<td>Street</td>
<td>Details not known.</td>
<td>Disappeared</td>
<td>Not known</td>
</tr>
<tr>
<td>2003/ 0003</td>
<td>Firdous Ahmad Khan; s/o Noor Mohd Khan; r/o Ikhrajpora, Radio Colony, Jawahar Nagar, PS Rajbagh, Srinagar</td>
<td>19</td>
<td>7th pass; Motor mechanic</td>
<td>Single</td>
<td>NA</td>
<td>20.8.99</td>
<td>Street</td>
<td>Details not known.</td>
<td>Disappeared</td>
<td>Not known</td>
</tr>
<tr>
<td>2003/ 0004</td>
<td>Imtiaz Ahmad Wani; s/o Ghulam Mohd @ Gul</td>
<td>22</td>
<td>9th pass; Employed</td>
<td>Nikah done</td>
<td>NA</td>
<td>15.5.96</td>
<td>Home-</td>
<td>Dt 16.5.96. Details</td>
<td>Disappeared</td>
<td>BSF &amp; Informers</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/Disappeared Dt. &amp; Place</td>
<td>Circumstance of Arrest</td>
<td>RRDD Date</td>
<td>Released/Killed/Disappeared</td>
<td>Detaining Unit</td>
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<tr>
<td>2003/ 0005</td>
<td>Mohd Akbar Sheikh; s/o Ghulam Nabi Sheikh; r/o Hatmulla, Drugmulla, Kupwara</td>
<td>20</td>
<td>8th pass; Daily wage labourer</td>
<td>Single</td>
<td>NA</td>
<td>19.4.90 (Left home on that day; never returned) [Street – Random]</td>
<td>Targeted]</td>
<td>not known.</td>
<td>Disappeared</td>
<td>Not known</td>
</tr>
<tr>
<td>2003/ 0006</td>
<td>Bashir Ahmad Sofi; s/o Abdul Ahad Sofi; r/o Mohalla Daribal, Naickadal, PS Khanyar, Srinagar</td>
<td>22</td>
<td>4th pass.; Shawl vendor in winter, utensil maker in summer</td>
<td>Single</td>
<td>NA</td>
<td>17.6.03 [Home-Targeted]</td>
<td>BSF &amp; Kashmir police</td>
<td>Disappeared</td>
<td>BSF &amp; Kashmir police</td>
<td>No petition. Family said they were too poor to cope with the expense.</td>
</tr>
<tr>
<td>2003/ 0007</td>
<td>Ali Mohd War; s/o Abdul Sattar War; r/o Nowlari (Khore), Tehsil - Pattan, Baramulla</td>
<td>36</td>
<td>Non-literate; Carpet business</td>
<td>Married</td>
<td>6</td>
<td>July-August 2000 [Street]</td>
<td>Not known</td>
<td>Disappeared</td>
<td>Not known</td>
<td>No petition. Had gone to Srinagar on business. Body recovered from Dal Lake several months later.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Name &amp; Address</td>
<td>Age</td>
<td>Education &amp; Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Arrested/ Disappeared Dt. &amp; Place</td>
<td>FIR/DD Date</td>
<td>Released/ Killed/ Disappeared</td>
<td>Detaining Unit</td>
<td>Remarks</td>
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<tr>
<td>2003/ 0008</td>
<td>Mohd Syed Tambakoo; s/o Mohd Abdullah Tambakoo; r/o Koker Bazar, Lal Chowk, Srinagar</td>
<td>24</td>
<td>10th pass; Hawker of electrical goods</td>
<td>Married</td>
<td>1</td>
<td>24.5.92 [Street]</td>
<td>Disappeared</td>
<td>Not Known</td>
<td>Arrested while watching a cricket match at Polo grounds, Srinagar. No petn. Wife has remarried.</td>
<td></td>
</tr>
<tr>
<td>2003/ 0009</td>
<td>Bilal Ahmed Sheikh; s/o Ali Mohd Sheikh; r/o Gangbough, Tengpora, Srinagar</td>
<td>20</td>
<td>12th pass; Salesman</td>
<td>Single</td>
<td>NA</td>
<td>30.03.97 Street-Random</td>
<td>Disappeared</td>
<td>20</td>
<td>Grenadiers</td>
<td>Arrested along with Manzoor Dar (98/2). Family did not file petn.. for fear of antagonising army.</td>
</tr>
<tr>
<td>2004/ 0001</td>
<td>1. Mohd Shafi Rah; 2. Mushtaq Ahmad Rah; Both s/o Abdul Ahad Rah; r/o Sheikh Mohalla, Mehrajgunj, Srinagar</td>
<td>32</td>
<td>1. Primary school; 2. 9th pass; Both had a leather goods business in Nepal</td>
<td>Single</td>
<td>2</td>
<td>27-28.08.00 [Home-Targeted]</td>
<td>Both Disappeared</td>
<td>Nepal police and Indian police in plain clothes.</td>
<td>Two brothers, lifted from Nepal. Petn. in Delhi High Court. Shafi had moved to Nepal after he quit militancy.</td>
<td></td>
</tr>
<tr>
<td>2004/ 0002</td>
<td>Ghulam Mohammad Sofi; s/o Mohd Sultan Sofi; r/o Sheikh Mohalla, Watel Kadal, Shah Kadal, Srinagar</td>
<td>45</td>
<td>Matric; Family business in Nepal.</td>
<td>Married</td>
<td>2</td>
<td>16.08.00 [Home-Targeted]</td>
<td>Disappeared</td>
<td>Nepal police and Indian police in plain clothes.</td>
<td>Lifted from Nepal where he had lived and worked for 28 years.</td>
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## Appendix – 3

### Table: Time Line

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<tbody>
<tr>
<td>1990/ 0001</td>
<td>Pending</td>
<td>13 years 6 months</td>
<td>38</td>
<td>1 week</td>
<td>1 year 2 months</td>
<td>1 year 2 months</td>
<td>No Inquiry</td>
<td>NA</td>
<td>NA</td>
<td>LPA staying proceedings before the Single judge. Pending for over 10 years.</td>
</tr>
<tr>
<td>1990/ 0002</td>
<td>Dismissed</td>
<td>11 years</td>
<td>25</td>
<td>2 months</td>
<td>1 year 8 months</td>
<td>Not Filed</td>
<td>1 year 3 months</td>
<td>Obj. not filed</td>
<td>Yes. Statements of accused (army) recorded.</td>
<td>HC simultaneously issued notice to army and, asked SP, Kupwara to investigate and report. SP's report is based almost entirely on statement by army personnel. So, it is identical to the objs. filed by army before HC. What is the worth of such an investigation/report by the SP?</td>
</tr>
<tr>
<td>1990/ 0003</td>
<td>Disposed</td>
<td>12 years</td>
<td>22 + (Orders missing)</td>
<td>5 months</td>
<td>11 months</td>
<td>11 months</td>
<td>6 months; 1 year 6 months</td>
<td>1st Inquiry: 1 year 5 months; 2nd Inquiry: not known</td>
<td>1st inquiry report set aside because CRPF claimed it was not allowed to produce evidence to rebut the allegations against it. CRPF did not participate in 2nd inquiry, despite repeated requests by IO. Compensation ordered by HC, hotly contested by both state govt. and CRPF.</td>
<td></td>
</tr>
<tr>
<td>1990/ 0004</td>
<td>Pending</td>
<td>13 years 2 months</td>
<td>37</td>
<td>7 months</td>
<td>Obj. not filed</td>
<td>2 years</td>
<td>3 years</td>
<td>1 year 9 months</td>
<td>Yes. BSF filed &quot;brief&quot; statement of facts; no details. Also produced a witness and one document.</td>
<td>Objs. by State were said to have been filed but were not found on record. Similarly, state govt. said it had filed objs. to inquiry but not found on record.</td>
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<tr>
<td>1990/ 0005</td>
<td>Pending</td>
<td>13 years</td>
<td>19</td>
<td>2 months</td>
<td>Obj. not filed</td>
<td>1 year 6 months</td>
<td>Inquiry pending for 6 years 10 months.</td>
<td>Report pending</td>
<td>Not known. Inquiry pending.</td>
<td>Empty case. Obj. by the State were said to have been filed but were not found on record. Detainee released inquiry still pending; HC petn. still pending.</td>
</tr>
<tr>
<td>1990/ 0006</td>
<td>Disposed</td>
<td>10 years 10 months</td>
<td>76</td>
<td>1 month</td>
<td>Over 5 years</td>
<td>5 years</td>
<td>1 year 11 months</td>
<td>8 months</td>
<td>Yes. Statement of facts by BSF. Witnesses cross examined by BSF.</td>
<td>The case order sheet notes that accused unit filed obj. after 5 1/2 years, when the inquiry was ordered.</td>
</tr>
<tr>
<td>1991/ 0001</td>
<td>Dismissed</td>
<td>12 years 2 months</td>
<td>9+(Orders missing)</td>
<td>6 months</td>
<td>Obj. not filed</td>
<td>2 years</td>
<td>3 years 6 months +</td>
<td>Obj. not filed</td>
<td>No. Resps. appeared but did not participate in proceedings.</td>
<td>Petitioners contradicted the inquiry report, which stated that they had failed to prove arrest. They stated that they were never given an opportunity to lead evidence of arrest by the IO.</td>
</tr>
<tr>
<td>1991/ 0002</td>
<td>Dismissed</td>
<td>11 years 4 months</td>
<td>19</td>
<td>4 months</td>
<td>Obj. not filed</td>
<td>1 year 2 months</td>
<td>8 years 3 months</td>
<td>Obj. not filed</td>
<td>No. BSF did not appear.</td>
<td>DM, Kupwara appointed IO. Inquiry report sent to HC but not traceable in court's registry. In addition to request (to DM) for a duplicate copy, HC said DJ, Kupwara be asked to help obtain a copy from DM. Registry turned this into a demand that DJ send copy of report of inquiry entrusted to him. Resulting confusion took several years to resolve.</td>
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<tr>
<td>1991/0003</td>
<td>Disposed</td>
<td>12 years 3 months</td>
<td>29</td>
<td>5 weeks</td>
<td>_objs. not filed.</td>
<td>8 months</td>
<td>9 years</td>
<td>_objs. not filed</td>
<td>Yes. Statement of facts by BSF but no cross examination of witnesses; nor rebuttal evidence.</td>
<td>IO declared that identity of unit responsible for the disappearance could not be ascertained despite testimony on record that co-detainees were released by 24Bn BSF.</td>
</tr>
<tr>
<td>1991/0004</td>
<td>Disposed</td>
<td>12 years 2 months</td>
<td>19</td>
<td>2 months</td>
<td>_objs. not filed.</td>
<td>8 years 2 months</td>
<td>_objs. not filed</td>
<td>Yes. Counsel for UOI (CRPF) appeared but did not participate in proceedings.</td>
<td>The inquiry in this case (filed by mother) was completed in Oct. 2002 but it took HC 7 months to take note of it. (A separate petition was filed by the detainee’s wife in which the State did file obj. denying arrest by the police.)</td>
<td></td>
</tr>
<tr>
<td>1991/0005</td>
<td>Disposed</td>
<td>10 years</td>
<td>17</td>
<td>6 weeks</td>
<td>_objs. not filed.</td>
<td>1 year 7 months</td>
<td>_objs. not filed</td>
<td>Yes. Statement made admitting custody.</td>
<td>The GA made an oral statement denying arrest. Before inquiry it was revealed that detainee arrested in TADA case in Delhi; detained in Tihar jail. Inquiry report dated 12.8.96 not received by HC. Case disposed of in 2001 based on oral statement by GA.</td>
<td></td>
</tr>
<tr>
<td>1991/0006</td>
<td>Disposed</td>
<td>12 years 2 months</td>
<td>23</td>
<td>6 weeks</td>
<td>1 year 6 months</td>
<td>2 year 2 months</td>
<td>7 years 4 months</td>
<td>_objs. not filed</td>
<td>Yes. BSF cross examined witnesses, and produced own witnesses. But records not produced.</td>
<td>It took the HC registry 8 months to place obj. filed by BSF on the Court file.</td>
</tr>
<tr>
<td>1991/0007</td>
<td>Dismissed</td>
<td>9 years 5 months</td>
<td>77</td>
<td>2 months</td>
<td>_objs. not filed</td>
<td>No Inquiry</td>
<td>NA</td>
<td>NA</td>
<td>HC took 3 years and 10 months to declare that the State’s right to file obj. was closed.</td>
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<tr>
<td>1991/0008</td>
<td>Dismissed</td>
<td>12 years</td>
<td>13</td>
<td>7 weeks</td>
<td>1 year 8 months</td>
<td>1 year 8 months</td>
<td>8 years 8 months</td>
<td>Obj. not filed</td>
<td>No. Proceedings dropped as petitioner stated his son had been killed (subsequent to release) by the army.</td>
<td>Despite being informed of the facts, HC dismissed the case for want of instructions from the petitioner.</td>
</tr>
<tr>
<td>1991/0009</td>
<td>Disposed</td>
<td>4 years 3 months</td>
<td>22</td>
<td>3 weeks</td>
<td>Obj. not filed.</td>
<td>1 year 3 months</td>
<td>No Inquiry</td>
<td>NA</td>
<td>NA</td>
<td>Empty case. Objs. filed without affidavit; which was filed several months later. Court noticed the affidavit only in its final order, 3 years later.</td>
</tr>
<tr>
<td>1991/0011</td>
<td>Disposed</td>
<td>Not known</td>
<td>17 + (Orders missing)</td>
<td>1 month</td>
<td>Obj. not filed.</td>
<td>6 months</td>
<td>No Inquiry</td>
<td>NA</td>
<td>NA</td>
<td>The case was dismissed after 1 year and 9 months, but the order was quashed by a DB and sent back to Single judge. File pertaining to subsequent proceedings not traceable in HC. (Family had lost hope and given up on the case.)</td>
</tr>
<tr>
<td>1991/0012</td>
<td>Disposed</td>
<td>9 years 6 months</td>
<td>22 + (In habeas corpus petn)(Orders missing)</td>
<td>2 weeks</td>
<td>6 months +</td>
<td>6 months +</td>
<td>CJM inquiry: 2 months DM inquiry: 8 months +</td>
<td>2 months</td>
<td>No- 1st inquiry: Yes- 2nd inquiry: CRPF represented, cross examined witnesses but concerned officers not produced. Records not produced.</td>
<td>Single judge disposed of petn. after 6 years rejecting request for compensation. Took another 3 years + for family, in LPA, to reverse this order. 10 years after disappearance DB awarded Rs. 1.5 lakhs as compensation.</td>
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<tr>
<td>1992/0002</td>
<td>Dismissed</td>
<td>11 years 10 months</td>
<td>3 weeks</td>
<td>1 - 2 yr</td>
<td>1 year</td>
<td>10 months</td>
<td>Obj. not filed</td>
<td>No. Counsel for BSF present but did not participate in proceedings. Addl Chief Secy J&amp;K admitted arrest by BSF.</td>
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</tr>
<tr>
<td>1992/0003</td>
<td>Dismissed</td>
<td>8 years 7 months</td>
<td>8</td>
<td>1 month</td>
<td>Obj. not filed.</td>
<td>1 year 3 months</td>
<td>7 years 2 months (Inquiry dropped)</td>
<td>Obj. not filed</td>
<td>Not known. Empty case. Report not available.</td>
<td></td>
</tr>
<tr>
<td>1992/0004</td>
<td>Pending</td>
<td>12 years</td>
<td>8</td>
<td>not known</td>
<td>Obj. not filed.</td>
<td>2 years 6 months</td>
<td>Inquiry pending for 9 years 5 months, as on April '04</td>
<td>Inquiry pending</td>
<td>Not known. Empty case. Inquiry Pending</td>
<td></td>
</tr>
<tr>
<td>1992/0005</td>
<td>Disposed</td>
<td>6 years 7 months</td>
<td>2+(Orders missing)</td>
<td>Not Known</td>
<td>Obj. not filed.</td>
<td>Not filed.</td>
<td>2 years</td>
<td>Not Known</td>
<td>Yes. Resp. 3 (army) &amp; 4 (UOI) produced witness. Petitioner’s witnesses were cross examined.</td>
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**Remarks**
- HC refused to restrain BSF from holding parallel proceedings against accused officer (in which he was acquitted of all charges), despite fervent plea by petitioner. Thereafter, sanction to prosecute the accused was denied by the central govt. on the ground that the BSF Act prohibited fresh prosecution of an officer who had been tried (and acquitted) under the said Act.
- Arrester’s family stopped pursuing the case after his release. Case (and inquiry) remained pending till HC was apprised of the fact of release by the arrester’s counsel.
- Released. 8 years 2 months after inquiry was ordered, IO informed the HC that no inquiry was pending before him. Without enquiring into the matter HC merely re-ordered the inquiry, which was still pending in March ‘04.
- Based on inquiry report, HC ordered concerned PS to register an FIR. SSP asked to supervise investigation and ensure completion of investigation as quickly as possible. FIR registered. Nothing thereafter.
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<tbody>
<tr>
<td>1993/0002</td>
<td>Disposed</td>
<td>9 years 1 month</td>
<td>14 + (Orders missing)</td>
<td>1 month (approx)</td>
<td>1 year 3 months</td>
<td>1 year 11 months</td>
<td>3 year 7 months</td>
<td>Obs. not filed</td>
<td>Yes. Statement of facts filed by resps. 4 (SP CID CK) &amp; 6 (BSF). Petitioner did not appear. Empty case.</td>
<td>Released. State denied detainee in any JIC of State, though he was being held under PSA and in an FIR. IO sent report in Sept.'99 but not received by HC. Resent in Feb.'02.</td>
</tr>
<tr>
<td>1993/0003</td>
<td>Pending</td>
<td>10 years 3 months</td>
<td>5</td>
<td>2-3 months</td>
<td>Obj. not filed</td>
<td>1 year 5 months</td>
<td>NA. Inquiry ordered but not held</td>
<td>NA</td>
<td>NA</td>
<td>Inquiry was ordered in May '95 and numerous reminders were sent over the next years but in March '04 the IO replied to say that his office had never received the file in this case. (Rest of the order is illegible but in April '04 Court registers showed case as pending. Therefore, reasonable to assume that HC re-ordered the inquiry.)</td>
</tr>
<tr>
<td>1993/0004</td>
<td>Disposed</td>
<td>9 years 3 months</td>
<td>57</td>
<td>9 months</td>
<td>Obj. not filed</td>
<td>Not filed</td>
<td>1 year 8 months</td>
<td>1 year</td>
<td>No. Resps. 3 (army) &amp; 4 (UOI) remained absent.</td>
<td>Inquiry report identified the unit (and officers) responsible. Police completed investigations and filed charge sheet. For 5 years thereafter, the various state and central govt. departments dilly dallyed on the issue of sanction to prosecute the officers. Sanction refused in 2002.</td>
</tr>
<tr>
<td>1994/0001</td>
<td>Dismissed</td>
<td>10 years</td>
<td>18 + (Orders missing)</td>
<td>1 month</td>
<td>Obj. not filed</td>
<td>2 years</td>
<td>7 years 11 months</td>
<td>Obs. not filed</td>
<td>Not known. Inquiry dropped.</td>
<td>No specific accused named in petn., just security forces. Inquiry proceedings dropped on request of the family.</td>
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<tr>
<td>1994/0002</td>
<td>Disposed</td>
<td>7 years 6 months</td>
<td>24</td>
<td>1month +</td>
<td>2 months +</td>
<td>1 year 7 months</td>
<td>1st inquiries’ report; Pending for 2 years 10 months</td>
<td>1 year 3 months; NA</td>
<td>No - 1st inquiry: Resps. 3 (UOI), 4 (Corps command) &amp; 5 (4 Grenadiers) did not appear despite summons. 2nd inquiry: report pending. After deliberately not participating in the inquiry, army filed obj. to inquiry report claiming that accused unit was in Dehradun at time of arrest. Without castigating the army for its failure to present its case before the IO, the HC ordered a fresh inquiry.</td>
<td></td>
</tr>
<tr>
<td>1994/0003</td>
<td>Disposed</td>
<td>10 months</td>
<td>2 + + (Orders missing)</td>
<td>Not Known</td>
<td>5 months</td>
<td>[Objs. not found on record.]</td>
<td>Not Known</td>
<td>NA</td>
<td>Not known. Empty case. Released. Petn. disposed of with order of inquiry. No further information on record. State filed obj. admitting custody, but these were ignored by HC, which ordered an inquiry.</td>
<td></td>
</tr>
<tr>
<td>1994/0004</td>
<td>Disposed</td>
<td>8 years 7 months</td>
<td>13</td>
<td>1month</td>
<td>Objs. Not filed</td>
<td>1 year 2 months</td>
<td>3 - 4 months (Reached HC 6½ years later)</td>
<td>Objs. not filed</td>
<td>Yes. Empty case. Inquiry report sent to HC was not received. Took six years for the HC to obtain another copy.</td>
<td></td>
</tr>
<tr>
<td>1994/0005</td>
<td>1st petn.: dismissed; 2nd petn.: Disposed</td>
<td>1st petn.: 8 years 8 months; 2nd petn.: 3 years 5 months</td>
<td>1st petn.: 15 months; 2nd petn.: 11 months</td>
<td>1st petn.: 2 years; 2nd petn.: 7 months</td>
<td>1st petn.: 2 years; 2nd petn.: 3 months</td>
<td>2nd petn.: 1 year 6 months (1 inquiry held though HC ordered it in both petns.)</td>
<td>Objs. not filed in both petns.</td>
<td>No. Army – 9 PARA – did not participate. Two petns. filed. 2nd petn. disposed of before 1st petn. In 1st petn. obj. were dated 3.11.94, signed before the Oath Commissioner on 25.10.95, filed several months thereafter and, noticed by HC in order of 2.7.96. After reading the inquiry report, which indicted the accused army unit, HC ordered yet another inquiry by an IO based over 100 KM away.</td>
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<td>S. No.</td>
<td>Status</td>
<td>Remarks</td>
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<tr>
<td>1994/0006</td>
<td>Disposed</td>
<td>Inquery not received by HC. It took the HC over 5 years to obtain a 2nd copy of the report.</td>
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<tr>
<td>1994/0007</td>
<td>Disposed</td>
<td>Issued not available. Inquiry report was completed in 5 months but it took 7 years for it to be placed before the Court.</td>
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<tr>
<td>1995/0002</td>
<td>Disposed</td>
<td>Released. All orders not available. Inquiry report was not placed in the Court within 6 months.</td>
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<tr>
<td>1995/0003</td>
<td>Disposed</td>
<td>SHO, Pattan claimed that he had ‘pur’ Khizir Bhat in a passing truck that was going towards his home. However, Bhat never reached home. SHO produced 2 ‘witnesses’ in support of his contention. Father believed story but was helpless as ID accepted.</td>
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<th>Case Details</th>
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<tr>
<td>No.</td>
<td>Time Taken</td>
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<tr>
<td>1994/0006</td>
<td>8 years 7 months</td>
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<tr>
<td>1994/0007</td>
<td>8 years 6 months</td>
</tr>
<tr>
<td>1995/0002</td>
<td>8 years 2 months</td>
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<td>1995/0003</td>
<td>8 years 3 months</td>
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<tr>
<td>Obj. filed</td>
<td>Inquiry Report</td>
</tr>
<tr>
<td>1994/0006</td>
<td>1 year 1 month</td>
</tr>
<tr>
<td>1994/0007</td>
<td>1 year 2 months</td>
</tr>
<tr>
<td>1995/0002</td>
<td>2 years 3 months</td>
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<tr>
<td>1995/0003</td>
<td>3 years 8 months</td>
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<td>1 year 2 months</td>
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<td>1995/0002</td>
<td>2 years 3 months</td>
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<td>1995/0003</td>
<td>3 years 8 months</td>
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<td>1 year 2 months</td>
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<tr>
<td>1995/0002</td>
<td>2 years 3 months</td>
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<td>1995/0003</td>
<td>3 years 8 months</td>
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<tr>
<td>1995/0004</td>
<td>Disposed</td>
<td>9 years 1 month</td>
<td>17+(Orders missing)</td>
<td>2 months</td>
<td>4 months +</td>
<td>1 year 5 months</td>
<td>6 years</td>
<td>1 year</td>
<td>No. RR (resp. 5), did not participate.</td>
<td>All orders not available. 3 years after inquiry was ordered, and was nearly concluded, incumbent IO noted that his predecessor had not ensured service of notice upon resp. (army). Inquiry recommenced.</td>
</tr>
<tr>
<td>1995/0005</td>
<td>Disposed</td>
<td>8 years 1 month</td>
<td>13</td>
<td>3 months</td>
<td>3 months +</td>
<td>Not filed.</td>
<td>5 years 9 months</td>
<td>6 months +</td>
<td>No.</td>
<td>After the inquiry report was submitted (and the fact of it having been received noted in the file) the HC registry continued to send reminders to the IO. Compounding the error, for several months reminders were sent to the wrong IO. Ultimately, a court official noticed the error.</td>
</tr>
<tr>
<td>1995/0006</td>
<td>Disposed</td>
<td>7 years 9 months</td>
<td>21</td>
<td>3-4 months</td>
<td>1 year 7 months</td>
<td>Not filed</td>
<td>1 year 7 months + ; 2 years 8 months</td>
<td>1st inquiry: No; Obj. not filed; 2nd inquiry: 7 months +</td>
<td>1st inquiry: No 2nd inquiry: No. Counsel for UOI/army appeared on some dates but did not participate.</td>
<td></td>
</tr>
<tr>
<td>1995/0007</td>
<td>Disposed</td>
<td>6 years 8 months</td>
<td>7</td>
<td>4 months</td>
<td>5 months</td>
<td>5 months</td>
<td>Inquiry not held.</td>
<td>NA</td>
<td>Inquiry not held.</td>
<td>More than 5 years after inquiry was ordered, the IO wrote to say that no inquiry was pending before him. There is a noting by the HC registry in the file saying that a report had been received, though there is no report on record.</td>
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<tr>
<td>1995/0008</td>
<td>Disposed</td>
<td>6 years 7 months</td>
<td>20</td>
<td>2-3 months</td>
<td>Obj. not filed.</td>
<td>4 months +</td>
<td>3 years 5 months</td>
<td>6-9 months</td>
<td>Yes. BSF filed statement of facts, produced witnesses, cross examined petitioner's witnesses.</td>
<td>The inquiry exposed the BSF story of escape to be a lie. Compensation granted. Inquiry revealed systemic aspects of impunity regime in Kashmir but HC failed to act against them.</td>
</tr>
<tr>
<td>1995/0009</td>
<td>Dismissed</td>
<td>7 years 7 months</td>
<td>17</td>
<td>1 month +</td>
<td>Obj. not filed.</td>
<td>1 year 6 months</td>
<td>5 years 8 months</td>
<td>Obs. Not filed</td>
<td>Yes. Report filed by 128 Infantry Division.</td>
<td>Inquiry report wrongly exonerated army, based upon misinformation by army.</td>
</tr>
<tr>
<td>1995/0010</td>
<td>Disposed</td>
<td>1 year 11 months</td>
<td>19</td>
<td>4 months</td>
<td>9 months</td>
<td>9 months</td>
<td>4 months</td>
<td>Obs. not filed</td>
<td>No. Army officer appeared for resp. 4 (Jat Regiment), but then disassociated himself.</td>
<td>Inquiry report indicted accused unit. Army did not file obj. despite several opportunities. While disposing of the case with a direction for registration of FIR, HC allowed accused unit to file obj. before the CJM, who was to monitor the police investigation.</td>
</tr>
<tr>
<td>1996/0001</td>
<td>Dismissed</td>
<td>6 ½ years</td>
<td>6+</td>
<td>3-4 months (approx)</td>
<td>Obj. not filed.</td>
<td>9 months</td>
<td>5 years 7 months</td>
<td>Obs. not filed</td>
<td>No. Proceedings were dropped.</td>
<td>Killed in an encounter in July '01, several years after his release from initial arrest. Mustafa Khan's father appeared before IO to inform him of this fact.</td>
</tr>
<tr>
<td>1996/0002</td>
<td>Disposed</td>
<td>4 years 4 months</td>
<td>32</td>
<td>3 weeks</td>
<td>Obj. not filed.</td>
<td>1 year</td>
<td>2 years 2 months</td>
<td>1 year 1 month</td>
<td>Yes. 28 RR filed statement of facts and release certificate.</td>
<td>RR claimed he was released into police custody, relying upon signature of police on transfer of custody doc. Constable said signature obtained by fraud.</td>
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<tr>
<td>1996/0003</td>
<td>Disposed</td>
<td>4 years 9 months</td>
<td>11</td>
<td>1 year 7 months</td>
<td>Obj. not filed.</td>
<td>Not filed</td>
<td>Report not filed.</td>
<td>NA</td>
<td>Not known. HC disposed of the case on basis of interim report saying family was not cooperating.</td>
<td>(Related to 96/5 &amp; 96/6) Family devastated by Farooq’s disappearance. Gave up the case as they had no hope of justice.</td>
</tr>
<tr>
<td>1996/0004</td>
<td>Disposed</td>
<td>4 years 8 months</td>
<td>10</td>
<td>1 year 7 months</td>
<td>Obj. not filed.</td>
<td>Not filed</td>
<td>2 years 7 months</td>
<td>Obj. not filed</td>
<td>Yes. Obj. filed by resps. 2 (UOI) &amp; 4 (BSF). Witnesses examined.</td>
<td>Two weeks after the report was received by the registry, the HC disposed of the case on the erroneous assumption that petitioner was not cooperating with the inquiry.</td>
</tr>
<tr>
<td>1996/0005</td>
<td>Disposed</td>
<td>2 years 6 months</td>
<td>18</td>
<td>same day</td>
<td>Obj. not filed.</td>
<td>12 months</td>
<td>11 months</td>
<td>5 months</td>
<td>Yes. Resps. produced a witness and records.</td>
<td>Army representative said that the accused unit had been shifted out of the State. (Incorrect as in linked case (96/3) there was a report that around the same time) the said unit was in Anantnag.) Later army changed its stand. (Also linked to 96/6).</td>
</tr>
<tr>
<td>1996/0006</td>
<td>Disposed</td>
<td>2 years 10 months</td>
<td>19</td>
<td>same day</td>
<td>9 months</td>
<td>9 months</td>
<td>1 year 3 months</td>
<td>10 months</td>
<td>Yes. Resps. filed statement of facts &amp; list of detenues and produced a witness.</td>
<td>The obj. filed by the State pertainned to the wrong person. The accused unit filed obj. to the petn. in this case but in the linked cases (96/3 and 96/5) no obj. filed.</td>
</tr>
<tr>
<td>1996/0007</td>
<td>Disposed</td>
<td>5 years 5 months</td>
<td>2 + + (Orders missing)</td>
<td>Not Known</td>
<td>Not Known</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>Case disposed of on the basis of statement that Charge sheet was ready. Compensation not granted.</td>
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<tr>
<td>1997/0001</td>
<td>Pending</td>
<td>6 years 10 months</td>
<td>10 + (Orders missing)</td>
<td>same day</td>
<td>Obj. not filed</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Case kept pending to await SC decision in DK Basu case.</td>
<td></td>
</tr>
<tr>
<td>1997/0002</td>
<td>Disposed</td>
<td>3 years 9 months</td>
<td>7</td>
<td>1 year 4 months</td>
<td>Obj. not filed</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Case disposed of on ground that detainee must have been released on completion of detention period under PSA.</td>
<td></td>
</tr>
<tr>
<td>1997/0003</td>
<td>Disposed</td>
<td>3 years 8 months</td>
<td>31</td>
<td>1 month approx.</td>
<td>Obj. not filed</td>
<td>6 months+</td>
<td>1 year</td>
<td>8 months (State)</td>
<td>No. None for respondent 3 (8 Bn RR)</td>
<td></td>
</tr>
<tr>
<td>1997/0004</td>
<td>Pending</td>
<td>6 years 10 months</td>
<td>28</td>
<td>Same day</td>
<td>9 months</td>
<td>9 months</td>
<td>3 years 5 months</td>
<td>1 year 8 months (security forces)</td>
<td>No. Counsel appeared for resp. 3 to 5 (BSF, army, 20 Grenadiers) but did not participate.</td>
<td></td>
</tr>
<tr>
<td>1997/0005</td>
<td>Disposed</td>
<td>7 years</td>
<td>14 + (Orders missing)</td>
<td>1 year 7 months</td>
<td>2 years [filed 3 months after inquiry ordered]</td>
<td>2 years</td>
<td>3 years 10 months</td>
<td>Obj. not filed</td>
<td>Yes. Resps. 6 &amp; 7 (CRPF) filed statement of facts &amp; produced witnesses. Petitioner’s witnesses were cross-examined.</td>
<td></td>
</tr>
<tr>
<td>1997/0006</td>
<td>Dismissed</td>
<td>4 years 8 months</td>
<td>17</td>
<td>2 ½ months</td>
<td>4 months</td>
<td>11 months</td>
<td>3 years</td>
<td>Obj. not filed</td>
<td>Yes, 20 Grenadiers (resp. 3) produced witnesses.</td>
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Chance absence of counsel for petitioner on one date was enough for HC to conclude that the petitioner was not interested in the case and dismiss it.
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<tbody>
<tr>
<td>1997/ 0007</td>
<td>1st petn. pending; [2nd petn: Withdrawn]</td>
<td>6 years 7 months</td>
<td>20</td>
<td>1 year 8 months;</td>
<td>Obj.s. not filed (in either petn.)</td>
<td>2 years 3 months.</td>
<td>2 years 7 months.</td>
<td>Pending.</td>
<td>Yes. Obj.s. filed by resps. Also produced a witness. Records not produced.</td>
<td>Two petns. IO relied upon eyewitness testimony of prominent villagers who, his report stated, had testified despite threats and intimidation by the army. HC also asked the concerned SSP to file status report re investigation in FIR. Also pending in April '04.</td>
</tr>
<tr>
<td>1997/ 0008</td>
<td>Disposed</td>
<td>4 years 9 months</td>
<td>34</td>
<td>same day</td>
<td>6 months</td>
<td>2 months</td>
<td>1 year 11 months. (2nd inquiry pending)</td>
<td>1 year</td>
<td>Yes. Resps. cross-examined witnesses.</td>
<td>HC disbelieved inquiry report saying witnesses had repeated name of accused officer in a parrot like fashion. Ordered a 2nd inquiry. HC factually incorrect since IO had relied upon eyewitness testimony by co-detainee.</td>
</tr>
<tr>
<td>1997/ 0009</td>
<td>Pending</td>
<td>6 years 5 months</td>
<td>28</td>
<td>5 months</td>
<td>3 years 9 months</td>
<td>Not filed</td>
<td>1 year 1 month</td>
<td>4 months</td>
<td>No. Resps. 3 &amp; 4 (20 Grenadiers) did not participate.</td>
<td>State govt. created massive confusion and delay by mixing up facts pertaining to an earlier arrest (and release) under PSA with the current arrest.</td>
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<tr>
<td>1997/ 0010</td>
<td>Disposed</td>
<td>3 years</td>
<td>17</td>
<td>1 year 7 months</td>
<td>2 year 10 months</td>
<td>Not filed</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Several months delay in serving accused unit as HC registry did not issue notice. The unit knew of petn, but did not enter appearance till it was formally served. (Proved by fact that obj.s. were dated over 2 years prior to date of formal service of notice.) Even so they took nearly 2 years after service, to file reply.</td>
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<tr>
<td>1997/ 0011</td>
<td>Disposed</td>
<td>4 years 10 months</td>
<td>33</td>
<td>1 month</td>
<td>2 years 5 months</td>
<td>2 years 5 months</td>
<td>1 year 6 months</td>
<td>Obj. not filed</td>
<td>Yes. Obj. filed by resp. 4 (SP Ops., Kupwara); other resps. did not appear.</td>
<td></td>
</tr>
<tr>
<td>1997/ 0012</td>
<td>Pending</td>
<td>6 years 5 months</td>
<td>17</td>
<td>1 year 7 months</td>
<td>1 year 8 months</td>
<td>2 years 3 months</td>
<td>3 years 5 months</td>
<td>8 months</td>
<td>Yes. Resps. (BSF) produced witnesses.</td>
<td></td>
</tr>
<tr>
<td>1997/ 0014</td>
<td>Disposed</td>
<td>5 years 2 months</td>
<td>25</td>
<td>1 year 6 months</td>
<td>2 years 5 months + [date of filing not known]</td>
<td>Not filed</td>
<td>2 years 6 months</td>
<td>Obj. not filed</td>
<td>No. Respondent 2 (8 Rajputana Rifles) not represented. Inquiry closed.</td>
<td></td>
</tr>
<tr>
<td>1998/ 0001</td>
<td>Main petn. disposed; application pending</td>
<td>2 years 9 months for main petn. Application pending 2 years +</td>
<td>38</td>
<td>3 months</td>
<td>9 months</td>
<td>Not filed</td>
<td>1 year 3 months</td>
<td>6 months</td>
<td>No. Resps. did not appear despite several notices.</td>
<td></td>
</tr>
</tbody>
</table>

Police refused to file the affidavit of the accused Sub-Inspector, saying he was not traceable. Thereafter, SSP incharge failed to file affidavit as required by HC.

Correctly applying principles for fixing responsibility, IO held the picket (BSF + Police) posted near Mod. Afzal’s house responsible for his disappearance by unidentified members of the security forces.

Inquiry report said that proceedings were closed at the request of petitioner as she was not in a position to identify the army unit, nor able to adduce evidence to establish facts. State govt. reply before the HC and family (during interview) contradicted this stand.

The petn. was disposed of with a direction to the police to register case, complete investigation within 6 months. Since police failed to do so, family filed a CMP in March 2002, in an attempt to pressure the police to complete investigation. CMP was still pending in April 2004.
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</tr>
</thead>
<tbody>
<tr>
<td>1998/0002</td>
<td>Disposed</td>
<td>2 years 9 months</td>
<td>18</td>
<td>3 months</td>
<td>Obj. not filed.</td>
<td>Not filed</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Chance absence of petitioner's counsel on one date resulted in case being dismissed for non-prosecution after one year. Took 9 months for family to have it restored. Finally, the case was disposed of with the advice that petitioner should lodge an FIR.</td>
</tr>
<tr>
<td>1998/0003</td>
<td>Disposed</td>
<td>4 years 5 months</td>
<td>16</td>
<td>3 weeks</td>
<td>Obj. not filed.</td>
<td>5 months</td>
<td>Obj. not filed (case had been withdrawn)</td>
<td>Yes. Resps. represented. Accused SHO arrested and tortured eyewitness who testified. Frightened, family requested for dropping of inquiry proceedings/ HC ptn. (Meanwhile SHRC verdict had also come. (see next column.)</td>
<td>Petn. disposed of on basis of GA's statement (incorrect) that detainee had been released. Restored after family filed an LPA. Meanwhile family filed a ptn. before the SHRC, where disappearance was established and compensation was ordered. Thereafter habeas corpus ptn. withdrawn from HC.</td>
<td></td>
</tr>
<tr>
<td>1998/0004</td>
<td>Pending</td>
<td>5 years 8 months</td>
<td>15</td>
<td>3 months</td>
<td>3 months</td>
<td>8 months</td>
<td>Obj. not filed till April '04</td>
<td>Yes. All resps. represented. Witnesses cross examined. No rebuttal evidence produced by accused resps. 4 &amp; 5.</td>
<td>Army claimed detainee had escaped from custody and cited two policemen as witnesses. The policemen denied this, saying they saw nothing as they were stationed 1 KM away.</td>
<td></td>
</tr>
<tr>
<td>1998/0005</td>
<td>Disposed</td>
<td>4 years 2 months</td>
<td>31</td>
<td>3 months</td>
<td>State not a resp.</td>
<td>1 year 6 months</td>
<td>7 months</td>
<td>No Counsel for UOI appeared and then abstained from the proceedings. (Note: a second inquiry was ordered at the time of the ptn. being disposed of).</td>
<td>Confusion about identity of the accused unit. IO failed to get the army to clarify on correct nomenclature of the unit and, correct name of accused officer. Army opposed inquiry findings. Instead of ordering the army to clarify, HC ordered a fresh inquiry, saying a non-existent entity could not have been served.</td>
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<td>---------</td>
</tr>
<tr>
<td>1998/ 0007</td>
<td>Pending</td>
<td>5 years 7 months</td>
<td>33</td>
<td>Not known</td>
<td>4 months</td>
<td>1 year 5 months</td>
<td>2 years</td>
<td>5 months</td>
<td>Not known. Report not available.</td>
<td>Inquiry report held BSF responsible for disappearance. Family financially very afflicted. Asked HC to award compensation. Case pending for over 1 year (in March '04) for resps. stand on this issue..</td>
</tr>
<tr>
<td>1998/ 0008</td>
<td>Dismissed (as withdrawn)</td>
<td>4 years 5 month</td>
<td>12</td>
<td>3 weeks</td>
<td>Obj. not filed. [verbal statement taken on record]</td>
<td>Not filed</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Linked to 98/3. Both persons were disappeared by SHO, Pampore. In July 2002 petn. was withdrawn.</td>
</tr>
<tr>
<td>1999/ 0001</td>
<td>Disposed</td>
<td>1 year 10 months</td>
<td>8</td>
<td>2 ½ months</td>
<td>1 year 6 month</td>
<td>Not filed</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Of the three forces involved, the petn. only made the 145 Bn BSF a party. This unit denied the arrest.</td>
</tr>
<tr>
<td>1999/ 0002</td>
<td>Disposed</td>
<td>4 years</td>
<td>5</td>
<td>1 month</td>
<td>2 months</td>
<td>2 months</td>
<td>3 years 8 months</td>
<td>Obj. not filed</td>
<td>Yes. Counsel for resps. present. Petitioner asked for proceedings to be dropped in the inquiry.</td>
<td></td>
</tr>
<tr>
<td>1999/ 0003</td>
<td>Disposed</td>
<td>1 year 6 months</td>
<td>16</td>
<td>same day</td>
<td>Obj. not filed</td>
<td>11 months</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Copy of petn. provided to counsel for UOI 3 times. Each time he said he had not been supplied a copy.</td>
</tr>
<tr>
<td>1999/ 0004</td>
<td>Dismissed</td>
<td>1 year 7 months</td>
<td>17</td>
<td>same day</td>
<td>8 months</td>
<td>1 year 4 months</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Another case where the counsel for resps. repeatedly asked for and were provided copies of the petn.</td>
</tr>
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</tr>
<tr>
<td>1999/ 0005</td>
<td>Disposed</td>
<td>4 years 4 months</td>
<td>21</td>
<td>3 weeks</td>
<td>1 year 3 months</td>
<td>1 year 5 months</td>
<td>2 years 5 months</td>
<td>Obs. not filed</td>
<td>Yes. Witnesses produced by resps. 4 (UOI) &amp; 5 (BSF).</td>
<td>HC dismissed the case for non-prosecution even though it was listed for resp. to file objs. to inquiry report.</td>
</tr>
<tr>
<td>1999/ 0006</td>
<td>Disposed</td>
<td>1 year 5 months</td>
<td>14</td>
<td>same day</td>
<td>1 year 2 months</td>
<td>8 months</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>HC disposed of ptn. with order to local SHO – who was involved in the disappearance – to register a case and investigate. Ptn. filed before SHRC also. After inquiry it ordered compensation.</td>
</tr>
<tr>
<td>1999/ 0007</td>
<td>Disposed</td>
<td>1 year 1 month</td>
<td>16</td>
<td>2 months</td>
<td>Obj. not filed</td>
<td>Not filed</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>On the verbal submission of the GA that detainee had been released, case disposed of. However he was released about a year later.</td>
</tr>
<tr>
<td>1999/ 0009</td>
<td>Pending</td>
<td>4 years 8 months</td>
<td>27</td>
<td>6 weeks</td>
<td>3 months</td>
<td>7½ months</td>
<td>2 years 4 months</td>
<td>8½ months</td>
<td>No. Resps. 3 (UOI) &amp; 4 (20 Grenadiers) not represented.</td>
<td>FIR ordered. Case was pending for resp's. stand on grant of compensation to petitioner.</td>
</tr>
<tr>
<td>1999/ 0019</td>
<td>Disposed</td>
<td>1 year + 1 + + (Orders missing)</td>
<td>Not Known</td>
<td>Not known</td>
<td>Not known</td>
<td>NA</td>
<td>Not Known</td>
<td>NA</td>
<td>NA</td>
<td>Family paid one Nazar Mohammad (20 Grenadiers) Rs. 10,000 for Mehrjuddin's release. However, neither he was released nor the money returned. (Same facts in 99/3 &amp; 99/9)</td>
</tr>
<tr>
<td>2000/ 0169</td>
<td>Dismissed</td>
<td>3 months</td>
<td>3</td>
<td>1 month</td>
<td>3 months</td>
<td>3 months</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Ptn. dismissed based on the resp's. stand. without giving the petitioner an opportunity to verify/deny it.</td>
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</tr>
<tr>
<td>2000/ 0171</td>
<td>Disposed</td>
<td>1 year</td>
<td>9</td>
<td>6 months</td>
<td>Obj. not filed</td>
<td>1 year</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Petn. disposed of based on the resps. stand, with direction to police to expedite investigation and, Registrar General of the High Court be informed about its result, at the earliest. Police did nothing to investigate the case.</td>
</tr>
<tr>
<td>2000/ 0172</td>
<td>1st petn. dismissed; 2nd petn. pending</td>
<td>1st petn. -2 years; 2nd petn. - 3 years 5 months</td>
<td>1st petn. 9 2nd petn. 18</td>
<td>1st petn. 1 month 2nd petn. 6 weeks</td>
<td>1st petn. 2 months; 2nd petn. 11 months</td>
<td>1st petn. 1 year 8 months</td>
<td>1st petn. Inquiry not ordered 2nd petn. Pending 6 months</td>
<td>NA (Both petns.)</td>
<td>(In 1st petn.) Police report to HC stated that stated that the persons who had arrested Ghulam Qadir could not be identified as they were masked and wearing army type clothing, which is also used by the militants to conceal their identity.</td>
<td></td>
</tr>
<tr>
<td>2000/ 0173</td>
<td>Dismissed</td>
<td>11 months</td>
<td>2+ (Orders missing)</td>
<td>Not known</td>
<td>11 months</td>
<td>10½ months</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Before HC state govt. merely denied arrest/ custody. Before SHRC police filed report confirming that he was arrested by 29 RR. Since SHRC has no jurisdiction over the army, it did not proceed further in the matter.</td>
</tr>
<tr>
<td>2000/ 0174</td>
<td>Dismissed</td>
<td>1 year 3 months</td>
<td>15</td>
<td>2 weeks</td>
<td>8 months</td>
<td>8 ½ months</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>CIK (Border section) confirmed Abid’s arrest, on the basis of the report in the Police Bulletin dt. 25.7.00.</td>
</tr>
<tr>
<td>2000/ 0175</td>
<td>Dismissed</td>
<td>7 months</td>
<td>7</td>
<td>3 months</td>
<td>Obj. not filed</td>
<td>4 months</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>Treated as ‘Obj. not filed’ case since the accused unit was 23 RR but 30 RR filed obj. HC did not notice error; dismissed petn. based on 30RR denial.</td>
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</tr>
<tr>
<td>2000/0179</td>
<td>Pending/LPA</td>
<td>2 years + 2 (Orders missing)</td>
<td>Not known</td>
<td>1 year 9 months</td>
<td>Not filed</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>(Connected with 2000/180) HC rejected applications for exhumation of bodies and DNA verification of identity in both cases.</td>
<td></td>
</tr>
<tr>
<td>2000/0180</td>
<td>Not known</td>
<td>Not known</td>
<td>0 (Orders missing)</td>
<td>Not known</td>
<td>1 year 7 months</td>
<td>Not filed</td>
<td>Inquiry not ordered</td>
<td>NA</td>
<td>NA</td>
<td>(Connected with 2000/179) Informally, a policeman told Badiyari's wife that he and Shabir Ghazi had been killed by the 6RR and bodies had been buried by villagers in village graveyard.</td>
</tr>
<tr>
<td>2003/0002</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 20.8.1999 (Connected to 2003/3)</td>
</tr>
<tr>
<td>2003/0003</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 20.8.1999 (Connected to 2003/2)</td>
</tr>
<tr>
<td>2003/0004</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Na</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 15.5.96</td>
</tr>
<tr>
<td>2003/0005</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>Not known</td>
<td>NA</td>
<td>Not known</td>
<td>Not known</td>
<td>Family filed petn. before the HC but could not pursue it due to financial constraints. They did not have copies and had misplaced the lawyer's card. Therefore, we don't have any papers of the petn. Case treated as one in which petn. was not filed.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Status - Sept. '04</td>
<td>Time Taken</td>
<td>Accused Participation in Inquiry</td>
<td>Remarks</td>
<td></td>
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<tr>
<td>2003/0006</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 17.6.03</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2003/0007</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>Missing from July-August 2000</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2003/0008</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 24.5.92</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2003/0009</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 30.03.97 (Connected with 98/2)</td>
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<td></td>
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<tr>
<td>2004/0001</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 27/28.08.00</td>
<td></td>
<td></td>
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<tr>
<td>2004/0002</td>
<td>No case</td>
<td>NA</td>
<td>NA</td>
<td>Missing since 6.8.00</td>
<td></td>
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</tr>
</tbody>
</table>
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Abdul Hamid Badyari
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Abdul Hamid Dar
Abdul Khaliq Pir
Abdul Majid Guroo
Abdul Rashid Ganai
Abdul Rashid Sheikh
Abdul Rashid Wani
Abdul Rouf Shah
Abid Hussain Dar
Alam Sher
Ali Mohammad Dar
Ali Mohammad War
Ashiq Hussain Malik
Basharat Shah
Bashir Ahmad Bhat-I
Bashir Ahmad Lone
Bashir Ahmad Sofi
Bashir Ahmad Wani
Bilal Ahmed Sheikh
Dr. Ghulam Hasan Sofi
Ejaz Ahmad Sheikh
Farooq Ahmad Bhat-I
Farooq Ahmad Najar
Farooq Ahmad Shalla
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Fayaz Ahmad Bhat
Fayaz Ahmad Khan-I
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Firdous Ahmad Khan
Ghulam Hassan Baba
Ghulam Mohammad Sofi
Ghulam Mohammad Ahangar
Ghulam Mustafa Khan
Ghulam Qadir Pandith
Ghulam Qadir Sheikh
Hamidullah Mir
Intiaz Ahmad Wani
Javaid Ahmed Bhat
Javed Iqbal Kemu
Khizir Bhat
Latief Khan
Malik Nissar Ahmad Shah
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Manzoor Ahmad Wani
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Mohammad Qasim Khoja
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Mohammad Shafi Shah
Mohammad Shahban Khan
Mohammad Syed Tambahoo
Mohammad Yasin Bhat
Mohammad Yusuf Wahloo
Mohammad Yusuf Wani
Mohammad Akbar Sheikh
Mushtaq Ahmad Chacha
Mushtaq Ahmad Dar
Mushtaq Ahmad Khan
Mushtaq Ahmad Rah
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Shabir Ahmed Ghysi
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Syed Shariefuddin
Tariq Ahmed Rather
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# Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army Act</td>
<td>Army Act 1950, the statue governing the Indian army</td>
</tr>
<tr>
<td>Article 14</td>
<td>The equality provision of the Indian constitution, part of the Fundamental Rights, guaranteed to all persons</td>
</tr>
<tr>
<td>Article 19</td>
<td>The compendium of &quot;freedoms&quot; guaranteed to all citizens under the Indian constitution, including the freedom to speech and expression, association, movement, profession, etc</td>
</tr>
<tr>
<td>Article 21</td>
<td>The guarantee of the right to life and liberty under the Indian constitution</td>
</tr>
<tr>
<td>Article 22</td>
<td>Constitutional guarantees against arbitrary arrest and detention, also part of the &quot;fundamental rights&quot; guaranteed under the Indian constitution to all persons</td>
</tr>
<tr>
<td>Auto rickshaw</td>
<td>Three wheeler vehicle commonly used as a mode of public transport in India</td>
</tr>
<tr>
<td>CAT</td>
<td>Term used for those who act as informers of the security forces.</td>
</tr>
<tr>
<td>Chacha</td>
<td>Literally, father’s younger brother</td>
</tr>
<tr>
<td>Chowk</td>
<td>Square in a city, town or village</td>
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<tr>
<td>Chowki</td>
<td>Post (as in police chowki/post)</td>
</tr>
<tr>
<td>Chowkidar</td>
<td>Watch man</td>
</tr>
<tr>
<td>Crackdown</td>
<td>Slang for ‘Cordon and Search’ operations by the security forces.</td>
</tr>
<tr>
<td>Dargah</td>
<td>Mausoleum of a Sufi saint</td>
</tr>
<tr>
<td>De facto</td>
<td>In fact</td>
</tr>
<tr>
<td>De hors</td>
<td>Outside of; not within the scope of</td>
</tr>
<tr>
<td>De jure</td>
<td>In legal or, formal terms</td>
</tr>
<tr>
<td>Dera</td>
<td>Resting place</td>
</tr>
<tr>
<td>Dharna</td>
<td>Sit-in protest</td>
</tr>
<tr>
<td>Ex-gratia</td>
<td>Gratititious relief granted to overcome a disaster</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>Gau yatra</td>
<td>A Nepali festival</td>
</tr>
<tr>
<td>Gujar/ Gujjar/Gojar</td>
<td>A nomadic community</td>
</tr>
<tr>
<td>Habeas corpus</td>
<td>Writ issued by the higher courts of the land, seeking the physical production of the person detained illegally by any person, usually the law enforcement agencies</td>
</tr>
<tr>
<td>Ikhwaini</td>
<td>A term used by Kashmiris for a surrendered militant who works for the security forces</td>
</tr>
<tr>
<td>Imam</td>
<td>A person who guides; in Kashmir, generally the person who leads the prayers in a mosque.</td>
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<tr>
<td>Imamat/Imammat</td>
<td>Literally – to guide: e.g. a preacher who guides the Muslim Ummah.</td>
</tr>
<tr>
<td>In extenso</td>
<td>At full length</td>
</tr>
<tr>
<td>Jamait-e-Ahle Hadis</td>
<td>An association of Sunni Muslims who belong to the Ahle Hadis sect.</td>
</tr>
<tr>
<td>Jamait-e-Islami</td>
<td>Literally: Islamic association</td>
</tr>
<tr>
<td>Jawan</td>
<td>Soldier</td>
</tr>
<tr>
<td>Jhelum</td>
<td>The main river of the Kashmir valley. It flows through the entire valley, exiting at Baramulla</td>
</tr>
<tr>
<td>Kabariwallah</td>
<td>Collector of junk and used goods, for the purpose of recycling and sale</td>
</tr>
<tr>
<td>Kalaidar</td>
<td>A person who applies a tin polish on copper/bronze utensils.</td>
</tr>
<tr>
<td>Kanal</td>
<td>A measurement of land in length and breadth equivalent to 605 sq yards</td>
</tr>
<tr>
<td>Lakh</td>
<td>One hundred thousand</td>
</tr>
<tr>
<td>Locus standi</td>
<td>Latin: In the context of judicial proceedings, the right to prosecute a case before a court</td>
</tr>
<tr>
<td>Lok Sabha</td>
<td>Lower house of the parliament</td>
</tr>
<tr>
<td>Mohalla</td>
<td>A local area; usually consisting of residential houses</td>
</tr>
<tr>
<td>Mufti</td>
<td>Literally: a person trained in Islamic law, competent to issue fatwas. In Kashmir, also a surname or caste, e.g. Mufti Mohd. Sayeed, a former chief minister of J &amp; K.</td>
</tr>
<tr>
<td>Mukhbir</td>
<td>Informer</td>
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<tr>
<td>Mukhiya</td>
<td>Another expression for the village headman</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<td>----------------------</td>
<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>Mulaqat</td>
<td>Meeting</td>
</tr>
<tr>
<td>Nallah</td>
<td>A water channel or a ravine</td>
</tr>
<tr>
<td>Namaz</td>
<td>Prayer</td>
</tr>
<tr>
<td>Nanwai</td>
<td>Traditional Kashmiri baker</td>
</tr>
<tr>
<td>Nikah</td>
<td>The formal ceremony of a Muslim marriage</td>
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<tr>
<td>Numberdar/Nambardar</td>
<td>An officer at the village level who registers births and deaths for the purpose of record</td>
</tr>
<tr>
<td>Operation Eagle</td>
<td>An operation launched by the security forces in the early nineties, in which suspected militants were killed as a matter of policy</td>
</tr>
<tr>
<td>Patwari</td>
<td>A land records &amp; revenue officer</td>
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<tr>
<td>Rickshaw</td>
<td>A tri-cycle based public transport vehicle</td>
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<tr>
<td>Sarpanch</td>
<td>The head of a traditional village institution called the Panchayat</td>
</tr>
<tr>
<td>Section 302 RPC</td>
<td>Provision dealing with punishment for murder - Ranbir Penal Code</td>
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<tr>
<td>Section 364 RPC</td>
<td>Kidnapping or abducting in order to murder - Ranbir Penal Code</td>
</tr>
<tr>
<td>Section 365 RPC</td>
<td>Kidnapping or abducting with intent secretly and wrongfully to confine person - Ranbir Penal Code</td>
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<tr>
<td>SRO 43</td>
<td>An executive order providing government jobs on compassionate grounds to the next of kin of a victim of terrorist violence</td>
</tr>
<tr>
<td>Subedar</td>
<td>Literally, the ‘holder’ of a province (Suba) under a king or an emperor. Currently, a non-commissioned rank in the Indian military.</td>
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<tr>
<td>Tehsil</td>
<td>A demarcated area within a district or a sub district</td>
</tr>
<tr>
<td>Tehsildar</td>
<td>A revenue officer who heads a sub-district or Tehsil</td>
</tr>
</tbody>
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## List of Abbreviations and Usages

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ASP</td>
<td>Assistant Superintendent of Police</td>
</tr>
<tr>
<td>Bn</td>
<td>Battalion</td>
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<tr>
<td>BSF</td>
<td>Border Security Force</td>
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<tr>
<td>CID</td>
<td>Criminal Investigation Division (A branch of the State police establishment.)</td>
</tr>
<tr>
<td>CIK</td>
<td>Counter Intelligence (Kashmir) {As distinct from CIJ – Counter Intelligence (Jammu). Both wings are part of the State police establishment and primarily deal with anti terrorist operations.)</td>
</tr>
<tr>
<td>CJM</td>
<td>Chief Judicial Magistrate</td>
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<tr>
<td>CMP</td>
<td>Civil (Cr. – Criminal) Miscellaneous Petition (Any application in the main petition for orders of an interim nature.)</td>
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<tr>
<td>CO</td>
<td>Commanding Officer (A term used to describe an officer of any rank who is leading a group of soldiers.)</td>
</tr>
<tr>
<td>COI</td>
<td>Court of Inquiry</td>
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<tr>
<td>CRPF</td>
<td>Central Reserve Police Force</td>
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<tr>
<td>DB</td>
<td>Division Bench (Signifies a court comprising two or three judges, sitting together. A habeas corpus petition is usually heard by a single judge bench in the J&amp;K High Court.)</td>
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<tr>
<td>DGP</td>
<td>Director General of Police</td>
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<tr>
<td>DIG</td>
<td>Deputy Inspector General</td>
</tr>
<tr>
<td>DJ</td>
<td>District Judge (The head of the district judiciary.)</td>
</tr>
<tr>
<td>DSP</td>
<td>Deputy Superintendent of Police</td>
</tr>
<tr>
<td>FIR</td>
<td>First Information Report (Any information to the police regarding a cognizable (serious) offence. Lodged under section 154 of the Code of Criminal procedure</td>
</tr>
<tr>
<td>GA</td>
<td>Government Advocate (Signifies a lawyer acting on behalf of the state government.)</td>
</tr>
<tr>
<td>GOC</td>
<td>General Officer in Command</td>
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<tr>
<td>HC</td>
<td>High Court</td>
</tr>
<tr>
<td>HM</td>
<td>Hizbul Mujahiddin (A militant outfit.)</td>
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<tr>
<td>ICRC</td>
<td>International Committee for the Red Cross</td>
</tr>
<tr>
<td>IG</td>
<td>Inspector General</td>
</tr>
<tr>
<td>IGP</td>
<td>Inspector General of Police</td>
</tr>
<tr>
<td>JIC</td>
<td>Joint Interrogation Centre.</td>
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<tr>
<td>J&amp;K</td>
<td>Jammu and Kashmir</td>
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<tr>
<td>JKLF</td>
<td>Jammu and Kashmir Liberation Front (Formerly, a militant outfit.)</td>
</tr>
</tbody>
</table>
JKLI  Jammu and Kashmir Light Infantry (A unit of the regular Indian army.)

IO  Inquiry Officer (The person – usually a judicial officer, sometimes a civil service officer – appointed by the High Court to inquire into an alleged disappearance.)

LPA  Letters Patent Appeal (Basically an appeal against an order of a Single Judge of the High Court to a Division Bench of the same court.)

MLA  Member of the Legislative Assembly (A member of the State legislature.)

NC  National Conference (A political party of J&K.)

NHRC  National Human Rights Commission

Objs.  Objections

PAPA-II  One of the most famous interrogation centers in Kashmir located on Gupkar Road in Srinagar; formerly part of the Palace of the Maharaja of J&K

PDP  People Democratic Party (A political party of J&K.)

Petn.  Petition

POK  Pakistan Occupied Kashmir

PS  Police Station

PSA  Public Safety Act (A law permitting preventive detention, applicable only in the state of J&K)

RR  Rashtriya Rifles (A paramilitary force set up specifically for counter insurgency operations. Manned by retired soldiers and led (mostly) by serving army officers.)

SC  Supreme Court

SHO  Station House Officer (The officer in charge of a police station.)

SHRC  State Human Rights Commission

SOG  Special Operations Group (The STF (see below) was renamed the SOG after it became notorious for the indiscriminate brutality of its operations.)

SP  Superintendent of Police

SSP  Senior Superintendent of Police

STF  Special Task Force (A wing of the State police set up specifically for "anti-terrorist" operations.)

TADA  Terrorist and Disruptive Activities (Prevention) Act (The Act has since lapsed and is no longer on the statute books.)

UOI  Union of India