

Shopian: War, Gender and Democracy in Kashmir

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The rape and murder of two women in Shopian earlier this year highlight how the state's attempt to secure Kashmir's territory often leads to bodily insecurity for Kashmiri women and men. While elections have been held in a fair manner, democratic rights are still unavailable to the citizens in Kashmir and the extraordinary violence of state institutions weighs heavily on the daily life of people. Does the union government have the courage to acknowledge its cumulative mistakes and make amends?

The rape and murder of two women in Shopian in May this year is a continuation of a two-decade-old legacy of sexual violence against Kashmiri Muslim women by those legally and morally bound to protect civilians. Shopian adds to allegations of rape in the Valley including, among others, Chhanpora and Pazipora (1990), Kunan Poshpora (1991), Chak Saidpora (1992), Haran (1992), Theno Budapathary Kangan (1994), Wavoosa (1997), Bihota (2001) and Handwara (2004). It also highlights the irony and enduring contradiction between the state's attempt to "secure" Kashmir's territory that has become synonymous with bodily insecurity for Kashmiri women – a contradiction that undermines democracy, institutional integrity and state legitimacy each day, every year.

Competing, Converging Patriarchies

The disingenuous attempt by the state administration led by the Chief Minister Omar Abdullah to subvert an impartial inquiry into the alleged rape and murder of Neelofar and Asiya and the subsequent destruction of vital evidence by state authorities reflects a deep and disturbing lack of public accountability in Kashmir. If the extraordinary delay in filing a first information report (FIR) reveals how the institution of the police – meant to enforce the rule of law – actually ends up subverting

the latter, Abdullah's statement reflects an unbecoming eagerness on the part of the highest executive authority in the state to paper over a grisly crime. Even as he patronisingly claimed Asiya and Neelofar as "sisters", the fact remains that both women were, essentially, citizens, whose alleged rape and murder demand an impartial probe by the state.

Shopian is a terrifying testament to the gendered contours of a war that is neither an all-male arena, nor restricted to spaces of combat between the military, enemy soldiers and/or alleged militants. It is a darker war characterised by the physical targeting of civilians and, more specifically, the sexual targeting of women by uniformed guardians of the state. For exactly this reason, Shopian and all other incidents of sexual violence preceding it, cannot be subsumed under the rubric of "violence against women"; nor must they be trivialised and depoliticised as "private"/non-political, "side-effects" of the crisis in Kashmir. The sexual targeting of women by state forces is a political act which should be subject to public scrutiny and accountability. As Asia Watch and Human Rights Watch note in their report on Kashmir, "Rape by state forces is not a privately-motivated form of ...abuse ...but an abuse of power that implicates public responsibility".¹

Official silence and/or denial may shield state authorities from public accountability for sexual violence in the Valley. It cannot, however, uphold state integrity, nor mask the paradox between state claims to "national security", in Kashmir and the struggle for bodily and sexual integrity which has become a daily challenge.² A Central Bureau of Investigation team, which exhumed the bodies declared that "a vital organ" of Neelofar was "missing" and that

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Asiya was not raped.³ Both claims add to public confusion and undermine the possibility of establishing the truth. A Kashmiri daily quoted an associate professor of forensic medicine at the All India Institute of Medical Science, New Delhi who said it was almost impossible to arrive at any conclusion on the rape and murder by taking samples from the bodies after four months.⁴

Shopian further demonstrates the competing, albeit converging, interests of rival patriarchies being played out over women's bodies in Kashmir. There are the predatory instincts of security forces targeting women physically and the paternal and patriarchal rhetoric of a chief minister who, for reasons of political expediency, seeks to cover up sexual abuse by security forces. There is also the rhetoric of separatist leaders who use the crime to shore up their own flagging political fortunes. Last, but certainly not the least, the existence of a state machinery, staffed primarily with men at its helm, attempting to ward off the gathering storm of public resentment across the Valley through the use of coercive force, bouts of undeclared curfew, killing of unarmed civilians, and the arbitrary detention of separatist leaders. All these competing interests shall, in the end, diffuse the individual tragedy and subjectivities of Asiya and Neelofar – women who paid a brutal and terrifying price for being women. Their rape and murder symbolises the horrific violence associated with an extraordinary security presence inimical to democracy; the stark and enduring incompatibility between “national security” on the one hand, and citizens physical and sexual integrity on the other. It underlines the political price of being female in a territory patrolled by the world's fourth largest army.

Violent Rule of Law Enforcers

Many commentators have argued that much has changed in the Valley since the 1990s. In some respects this is a valid claim. The perpetual war clouds hovering over Kashmir have receded somewhat, levels of military-militant encounters and civilian deaths have declined, and the 2008 assembly elections are generally regarded as fair. Yet, India's extraordinary military presence, that is the single greatest source of Kashmiri resentment and anger and at

such great odds with its claims to democracy in the Valley, remains firmly in place. The legislative and judicial basis of militarily-backed repression⁵ including the denial of civil liberties, official disregard for the writ of habeas corpus and impunity for violations committed by security forces also remain unchecked and unchanged. The lack of public accountability and judicial transparency, and the state's attempts to disrupt and/or subvert the course of justice that underpins Kashmir's veneer of “normality” in the Valley are highlighted in a recent report by the Yale Law School.⁶ Kashmiri civilians continue to die violent and gruesome deaths on streets, in military interrogation centres and in prisons, while illegal detentions, disappearances, custodial deaths and arbitrary killings continue.

There is widespread misuse of the Public Safety Act (PSA) against civilians. Law and Finance Minister Abdul Rahim rather admitted that the PSA has been misused. At least 261 persons were detained by the state under PSA in 2008. In most cases the court quashed the detention orders but the discharged were rearrested after making some modifications in the reasons for their detention. This was done to avoid conflict with a Supreme Court ruling that declared unconstitutional the re-arrest of a person on similar grounds.⁷ The use of illegal detention against civilians by state authorities is mentioned in a recent open letter to Chief Minister Omar Abdullah by Human Rights Watch, New York.⁸

During the 2008 assembly elections Kashmir's separatist leaders had been subjected to the longest spells ever of house arrest, and subsequently, after the tragedies in Boma and Shopian. Legal experts termed the detentions illegal and unconstitutional.⁹ According to the State Human Rights Commission's (SHRC) 2007-08 report, there were 39 cases of custodial deaths and 91 cases of disappearance.¹⁰ In June 2009, Basharat Ahmad, 16 year old son of Muhammad Maqbool of Chakpath, Larkipora was summoned by troops of the 36 Rashtriya Rifles (RR) battalion to their camp, after which he went missing. The army admitted he was called to the camp but claimed he was released in the afternoon. “The army officials first told us to wait for a couple of days and yesterday they again requested us to wait for few

hours. I pleaded with them to tell us the truth,” said Muhammad Maqbool.¹¹ Mush-taq Ahmed Mir, a 14-year-old class nine student of Dooru, Kupwara, was picked up by the 6 RR from outside his house on 5 April 2009 and killed in custody. The case was admitted in court for hearing. In a statement, the SHRC termed the boy's death “a gross violation of human rights”.¹² In May 2009, Manzoor Ahmed Beigh of Alochi Bagh, Srinagar, died while in custody of the Special Operations Group (SOG) of the Kashmir police. The spate of recent killings in the Valley has made citizens fear a return of the mid-1990s “reign of terror” by the SOG.¹³ After an investigation, the police indicted troops from 18 RR for the arbitrary killing of Fayaz Ahmed Mir, a tailor from Kupwara. In a letter to the Deputy Commissioner Kupwara, the district Superintendent of Police verified that Fayaz was killed by troops of the army's 18 RR unit on 1 February 2009 at Zab Khurhama. The letter goes on to state that “neither Fayaz nor any of his close relatives were involved in any kind of subversive activity and there is no criminal case registered against him with the Kupwara police”. It should be added that Fayaz's wife and his four children continue to live in a shabby two room hut.¹⁴

Substantive Democracy Needed

Claims to “normalcy” in the Valley ignore Kashmiris' subjective experience of almost two decades of unrelenting repression against civilians that exemplify India's appalling record of governance in Kashmir. The success of democracy cannot be assessed merely in terms of its formal dimensions, namely, the holding of regular and fair elections at the local, state and national level. Rather, it is the availability and protection of democracy's substantive provisions that validate and authenticate its success. More specifically, the success of democracy at the local level is based on the fundamental provisions of a democratic state, namely, the supremacy of civil authority, implementation of the rule of law, the protection of citizens' right to speech and assembly, and the freedom of citizens from violence, harassment and unlawful detention. It is precisely on these very counts that democracy in the Valley falls well short of those attributes that, in principle, affirm its

legitimacy. Neither assembly elections nor Pakistan's receding role in Kashmir can mask the Valley's deepening reservoir of collective anger, misery and deep despair in 2009, which is qualitatively little different from the agony and anguish of the 1990s. As Sameer Bhat wrote:

We are in the middle of this cruel completeness. The motif is flickering at such a rapid pace that it is near impossible to fathom what is happening to us. Still coming to terms with the rape and murder tale coming out of South Kashmir and its elaborate, planned, devilish cover-up, bullets flew thick and fast in North Kashmir. In a matter of less than 40 hours, four boys were sent to their graves. Prematurely. Suddenly. Coldly. Kashmir has stopped keeping a count of its injured. That is a mere footnote in our pursuit of justice. Still hours later, the scene shifted again to South Kashmir. A kid, sixteen, is summoned to a nearby army camp. Youngest in his home, Basharat went hopping to the 36 RR fortress, never to be seen again. Parents, like anywhere else in the world, furious and restless, started making frenetic noises. Neighbours joined in...People, alive

and laughing minutes back, suddenly become bodies.¹⁵

The Valley's residents are critically aware and politically mature citizens – vividly manifest on 18 August 2008 when a million Kashmiris took part in an extraordinary, peaceful, demonstration against the status quo. India must accord to Kashmiris justice, dignity, security, and the possibility of a different future than the one they currently live in. This can only happen if New Delhi has the courage to acknowledge its own terrible mistakes in Kashmir, make law and order a function and responsibility of the police rather than the military, revoke repressive legislation, restore civil liberties, ensure institutional integrity, restore the integrity of the military by confining it to its legitimate role of external defence, and engage in an inclusive dialogue with the Kashmiri people, and meaningful diplomacy with Pakistan. This may appear a tall order but is the minimum which is required in order to halt a people's tragedy.

NOTES

- 1 *Rape in Kashmir: A Crime of War*, New York: Asia Watch and Human Rights Watch (1993).
- 2 Zalewski, Marysia (1995): "Well, What's the Feminist Perspective on Bosnia?", *International Affairs* 71 (2):339-356, 348.
- 3 *Rising Kashmir*, 3 September 2009.
- 4 *Greater Kashmir*, 30 September 2009.
- 5 Among others, such legislation includes the Armed Forces Special Powers Act, the Disturbed Areas Act and the Public Safety Act.
- 6 *The Myth of Normalcy: Impunity and the Judiciary in Kashmir*: Allard K Lowenstein International Human Rights Clinic, Yale Law School (April 2009).
- 7 "PSA Has Been Abused: Law Minister", *Rising Kashmir*, 30 January 2009.
- 8 Human Rights Watch letter to the Chief Minister of Jammu and Kashmir dated 9 February 2009. <http://www.sacw.net/article637.html>. Viewed 6 July 2009.
- 9 "2009: Longest Ever House Arrest Spells", *Rising Kashmir*, 5 July 2009.
- 10 *Conveyor*, Vol 1, No 2, July 2009.
- 11 *Greater Kashmir*, 3 July 2009.
- 12 *Greater Kashmir*, 2 May 2009.
- 13 "Manzoor's Custodial Killing Brings Back SOG Terror in Kashmir", *The Kashmir Times*, online edition, 31 May 2009.
- 14 "Inquiry Report Indicts Army for Murdering Kupwara's Fayaz Tailor", *Rising Kashmir*, 8 July 2009.
- 15 Sameer Bhat "A Terrible Thirst Flooding Kashmir", *Rising Kashmir*, 5 July 2009.