

# TORTURE

Indian State's Instrument of Control in Indian Administered Jammu and Kashmir



A REPORT BY  
ASSOCIATION OF PARENTS OF DISAPPEARED PERSONS  
AND JAMMU KASHMIR COALITION OF CIVIL SOCIETY



## PROLOGUE

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I feel deeply honored to be given the opportunity to comment on this significant report on torture in the Indian administered Jammu and Kashmir region, published by Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS) after an exhaustive research and monitoring effort. Although it makes for painful reading, the report is an outstanding example of how human rights organizations of civil society should monitor, investigate and report on violations of internationally-recognized standards of how governments must behave toward all persons under their jurisdiction. It is particularly noteworthy that the report includes a very helpful historical analysis of the long and enduring conflict that is the backdrop to the severe attacks on human dignity that populate this study. That history does not excuse a single act of torture. Similarly, it is well established in international law that no state of emergency or counter-insurgency campaign can relieve the State from the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. At the same time, a fair and balanced historical account of the conflict helps the reader understand the recurrence of the acts of cruelty that are depicted here. More importantly, a serious study of the background to torture should guide the efforts of public policy initiatives to reduce the incidence of torture in the first instance, and then to abolish the practice in reality rather than in law alone.

Some inevitable conclusions about the context of torture are painfully familiar to those of us who have studied torture in other countries and in societies of vastly different legal cultures. Impunity for the acts of torture that are well documented, even by State agencies and courts, is undoubtedly the principal factor in the recurrence of the practice. It stands to reason that, if an interrogator or law enforcement officer is aware that acts of torture will not be investigated, he is more likely to engage in them as a quick and easy way to accomplish the “mission” entrusted to him: to obtain a confession and thus “solve” a crime, or to elicit intelligence that can lead to the capture (and renewed torture) of other suspects. Impunity for very serious crimes can be related to limited human resources or scarcity of material means to conduct serious investigations. But when impunity is the almost universal outcome of every first investigatory step, and when that outcome is repeated over hundreds of cases, no matter how well documented, then impunity is not a weakness of the State: it is the public policy of the State. And if impunity for torture is policy, the inevitable conclusion is that torture is policy as well.

The militarization of the response to insurgencies and civil unrest is another feature that characterizes other contexts where torture, disappearances and extra-judicial killings become widespread. Governments tell the international community that their armed forces are more professional than police and other law enforcement bodies, that they are better at obeying a unified command and maintaining discipline in their ranks. For those reasons, governments that make the fateful decision of militarizing their response to unrest usually claim that deploying the armed forces to fight alongside constabularies that are ill-trained and ill-equipped will bring the conflict under control and will also correct any “excesses” in the use of force. Experience shows that it almost never works that way. Soldiers are trained for combat, not for investigations. They are also trained to distinguish between legitimate military targets and unlawful civilian ones. But in a

conflict that includes part-time militants and also civilians who exercise legitimate and peaceful exercise of freedom of expression and assembly, the lines that separate legal use of force from grave violations of the law of armed conflict soon get blurred. In addition, the armed forces are usually not much better than the police in investigating and curbing illegal actions committed by their members. A misunderstood *esprit de corps* builds up as a conspiracy of silence that prevent the serious and impartial investigation of abuses by soldiers and officers, including those bearing the highest responsibilities for them. In that regard, militarization of a law-enforcement problem generally contributes to impunity, not to accountability. What is worse: militarization and the impunity that accompanies it tend to recreate the cycles of resentment and violence that perpetuate the conflict rather than bring it to a peaceful and democratic solution.

The inefficiency and weakness of State institutions that should provide balance to the excesses in the exercise of power is another feature that explains the seemingly endless cycle of torture and ill-treatment. Tolerance for torture – sometimes in explicit terms, as in statements quoted in this report – represent an abdication of the democratic authority and of fundamental duties of judges, prosecutors and members of institutions of control. In a democracy, the independence and impartiality of all State agents that provide checks and balances is a measure of the effectiveness of the rule of law. Judges, prosecutors, lawyers and ombudsman's offices should be the bulwark against abuse that protects citizens from torture and other abuses. When torture occurs, it becomes the ultimate test of that independence and impartiality.

For the worldwide struggle against torture, this report will constitute a landmark. It is to be hoped that it will be an example to other civil society organizations in India and in other countries, as a model for dispassionate and precise language, even when discussing tremendously tragic suffering. It is also remarkable that the report describes its methodology in strenuous detail, which very evidently increases the credibility of its findings. Interviews and analysis of official documents, specifics about how and where the interviews were conducted, statistical analysis of the trends that the 432 cases demonstrate, acknowledgment of the difficulty of access to places and of the pervasive fear that prevented many victims from volunteering to talk to interviewers: all of these features point to an intent to be thorough and comprehensive, while also suggesting how much larger is the unseen lower part of the iceberg. Impressive as well are the fact that the research took place over a ten-year period, that it involved examination of other reports going back much longer, and that it consisted of efforts by many contributors among university students, volunteers and staff of non-governmental organizations. That such a collective effort results in a rigorous and persuasive report is a tribute to the coordination and supervision skills of those who guided the endeavor.

The report will be enormously helpful in drawing attention in the international community to the need to express concern about India's human rights record. The ability of inter-governmental monitoring mechanisms to affect events on the ground in India has been sorely insufficient. A variety of reasons account for that failure but, more importantly, fit is a weak response that has continued for a very long time as well. When I became the UN Special Rapporteur on Torture, in late 2010, there were many countries that had pledged to cooperate with the Special Procedures set up by the UN Human Rights Council but that were unwilling to invite special rapporteurs and working groups to conduct fact-finding missions. The list of non-cooperating countries included many that had issued "standing invitations" but then refused to put dates on such missions (or invited only those mechanisms that they were particularly interested in). Unfortunately, the list has continued to grow. Sadly, in 2010

my predecessors had been seeking an invitation from India for the preceding 25 years. Needless to say, I reiterated that request every year of my own tenure, at times meeting in Geneva with India's head of mission to seek a favorable response. To no avail: my two consecutive terms ended in late 2016 and India never invited me. I assume that my successor has continued to insist, but what I do know is that a country mission to India by the UN Special Rapporteur on Torture has not yet happened.

With or without the benefit of an on-site visit, the Special Procedures are asked to receive complaints from the public and to make inquiries with the States on those allegations that are found to be *prima facie* credible and relevant to the mandate. My Rapporteurship acted on an average of 200 such "communications" each year from virtually all States members of the United Nations. During my mandate we issued each year an equal number of "Observations reports" as appendices to my annual reports to the Human Rights Council. Those observations reports are essentially the views of the Rapporteur as to whether a violation has been conclusively established, as well as an opportunity to make recommendations on how to address the problem. It should be mentioned that the number of such interventions could be much higher but for the very limited staff and material resources allocated to each mandate (an allocation that was lower and lower each year of my two terms). As a result, it is possible that we did not act on many complaints from India, or from other countries, simply for lack of time and resources. Nevertheless, the observations during my term regarding India do offer a picture, if not of the overall human rights situation, at least of the attitude of India's authorities towards expressions of concern from the United Nations. There were 31 Observations Reports on India between 2010 and 2016, on issues ranging from torture and sexual violence, to pending legislation about torture in Parliament, to forced or non-consensual sterilization in rural areas. 13 of those inquiries submitted to the Indian government received no response at all; in two other cases the only response was to say that more details on places and dates were needed in order to respond (though names of towns or villages and police stations had been submitted). There were five replies that amounted only to an acknowledgment of receipt or that did not address the substance of the allegations in any way. In three cases the Government said that investigations were pending but never submitted further information. And in eight cases, the replies flatly denied the allegations without explaining what investigation had been conducted to support the government's conclusion.

The June 2018 report by the UN Office of the High Commissioner for Human Rights (OHCHR) on the human rights situation in Jammu & Kashmir urged India and Pakistan to allow human rights monitors access to both sides of Jammu & Kashmir. If allowed, such access would show the commitment of both India and Pakistan to address human rights concerns in Jammu & Kashmir.

Hopefully, a serious debate among the Indian public about this report will prompt the national authorities to take the matter of torture seriously and establish effective controls, and to act as a more responsible global citizen and cooperate with the human rights machinery of the United Nations. I am under no illusion that an independent report by non-governmental organizations can put an end to torture, in India or elsewhere. But I am convinced that a report, when it is as rigorous, evidence-based and persuasive as this one is, constitutes a building block towards public awareness of the tragedy of torture. It can also spearhead democratic debate about measures of public policy needed to re-establish the rule of law in this extremely sensitive area. In that sense, the report and the debate that it will produce will be an enormous contribution to the struggle to abolish torture in practice, in India and everywhere, in our lifetime.

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## Executive Summary

***Torture: Indian State's Instrument of Control in Indian administered Jammu and Kashmir*** is the first report, which focuses on torture, perpetrated systematically and indiscriminately by the Indian State since 1947, and intensified further since the armed struggle for self-determination began in the late 1980s. Torture is the most under-reported human rights violation perpetrated by the State, carried out with complete impunity for the perpetrators, and without a single prosecution ever having taken place.

The Indian State's response to the armed conflict in Kashmir shows the characteristics of classic counter-insurgency warfare, where military strategies are both 'population-centric' and 'enemy-centric'.<sup>1,2,3</sup> The disproportionate presence of Indian armed forces and Police in Jammu and Kashmir (between 650,000 – 750,000)<sup>4</sup> is mainly to exercise control over the population. The widespread human rights violations, including use of indiscriminate torture, is a tactic employed to break people's will. This is reflected in the Indian Army's Doctrine on Sub-Conventional Operations, which says, "The endeavour should be to bring about a realization that fighting a government is a 'no win' situation and that their anti-government stance will only delay the process of restoration of peace and normalcy."<sup>5</sup>

After the killing of militant commander Burhan Wani in July 2016, the present period has witnessed unprecedented cycles of State violence. In the last two years, Kashmiris have witnessed gross violations of human rights in the form of extra-judicial executions, injuries, illegal detentions, torture, sexual violence, disappearances, arson and vandalism of civilian properties, restriction on congregational and religious activities, media gags, and ban on communication and internet services.

Unlike other forms of heinous human rights abuses like extra-judicial killings, enforced disappearances or indiscriminate and excessive force exemplified by the use of pellet shotguns, torture is a state crime that often remains hidden even from the media, unless the victim dies as a result of his/her injuries. As many deaths due to torture-related injuries are not immediate but may occur after years or even decades, accurate figures of such fatalities and morbidity are extremely hard to estimate.

This report builds on the body of human rights documentation on torture in Kashmir through an examination of 432 case studies of torture, focussing on the trends and patterns, targets, perpetrators, contexts and impact of torture in Kashmir. Moving between the present and the past what emerges is a vast archive of narratives of forms of torture perpetrated by various arms of the state forces. Through the cases, torture emerges as one of the ways of retaliation by the State against the Kashmiri 'other', seen as a challenge to its very legitimacy. But it also emerges as part of routine, intrinsic to the very existence of the Indian State in Kashmir.

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<sup>1</sup>Indian Army. *Doctrine on Sub-Conventional Operations*. 2006. Simla: Headquarters, Army Training Command. <http://indianstrategicknowledgeonline.com/web/doctrine%20sub%20conv%20w.pdf>

<sup>2</sup>Van Wagenen M J. *An Analysis of the Indian Government's Counterinsurgency Campaign in Jammu and Kashmir*. 2004. (Thesis submitted to Army Command and General Staff College, Fort Leavenworth, Kansas) <https://apps.dtic.mil/dtic/tr/fulltext/u2/a428962.pdf>

<sup>3</sup>Hodermarsky D G. *Lessons from India's Counterinsurgency Campaign in Jammu and Kashmir*. 2013. (Monograph submitted to Army Command and General Staff College, Fort Leavenworth, Kansas) <https://apps.dtic.mil/dtic/tr/fulltext/u2/a606326.pdf>

<sup>4</sup>JKCCS. *Structures of Violence*. 2015; Page 14.

<https://jkccs.files.wordpress.com/2017/05/structures-of-violence-e28093-main-report.pdf>

<sup>5</sup>Indian Army. *Doctrine on Sub-Conventional Operations*. 2006. Simla:Headquarters, Army Training Command.

The UN Istanbul Protocol<sup>6</sup> (2004) sets out the many forms of torture and other cruel, inhuman and degrading treatment to which people may be subjected and which cause physical and psychological suffering. Many reports, including this research, show that the vast majority of these have been applied in Jammu and Kashmir. Apart from verbal abuse, the other forms of torture that we have come across during this research include stripping the detainees naked (or down to bare minimum), beatings with wooden sticks, iron rods or leather belts, roller treatment whereby a heavy wooden log or an iron rod is rolled over the legs of the detainee, with extra weight applied to it by forces personnel who sit on the opposite sides of this rod, water-boarding, electrocution, hanging from the ceiling, dunking detainees' head in water (which is sometimes mixed with chilli powder), burning of the body with iron rods, heaters or cigarette butts, solitary confinement, sleep deprivation, sexualized torture including rape and sodomy, among others. The following figure lists the number of times these and other methods came to be used in the 432 cases studied for this report.

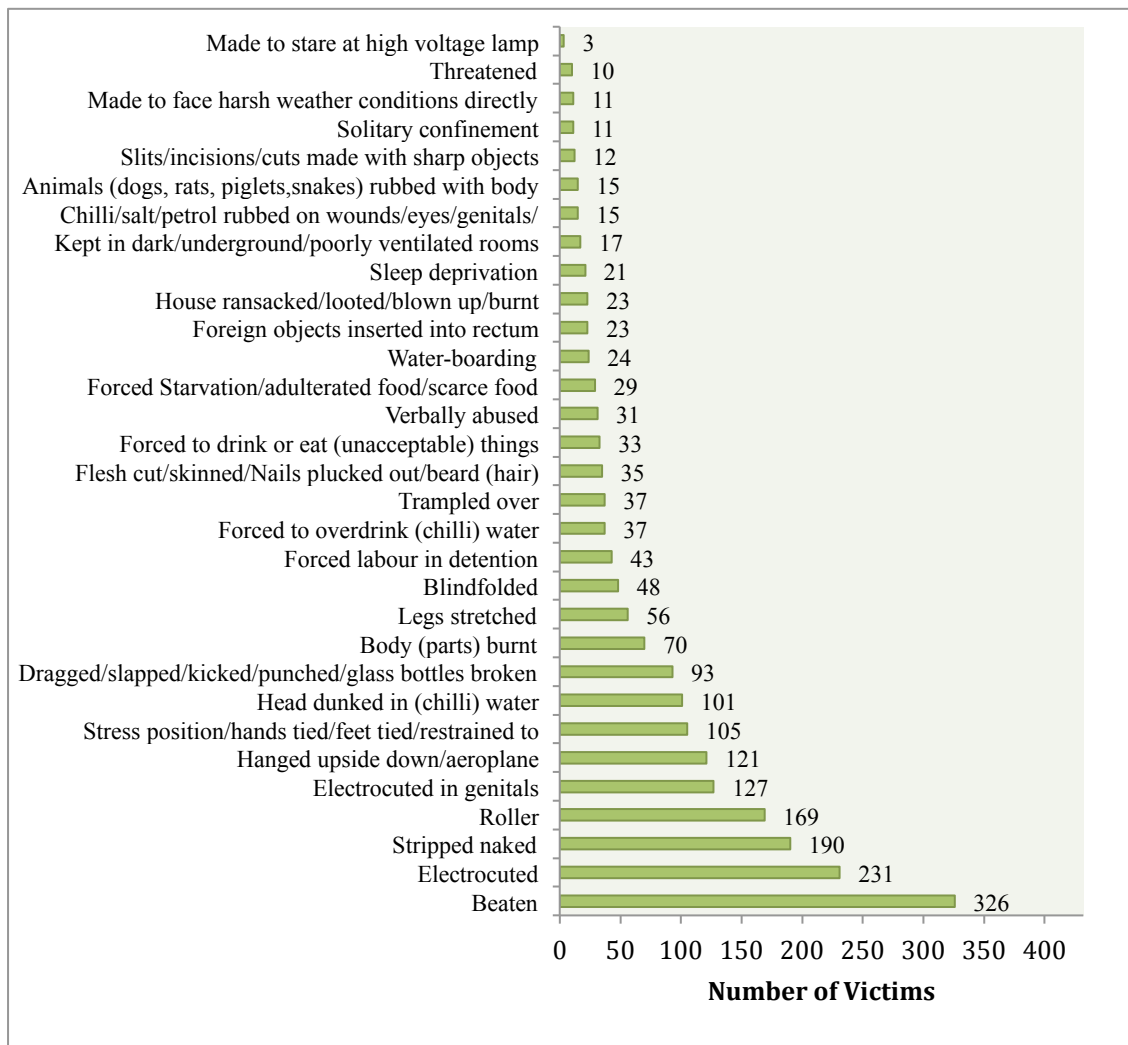


Figure: Number of people subjected to different forms of torture or other cruel, inhuman or degrading treatment

Out of the 432 victims, 222 (51.4%) suffered some form of health complications after being tortured. Out of these 222, 209 (94.1%) people suffered health issues with long-

<sup>6</sup>Office of the United Nations High Commissioner for Human Rights. *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. 2004. <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

term ramifications, and among them, 49 (23.4%) suffered acute ailments e.g. cardiac problems, nephrological issues, complete or partial loss of eyesight or hearing ability, amputations, sexual impotency, etc. and many of these people have been on regular (or irregular) medication ever since they were tortured. Documented studies of the early 1990s have previously noted that torture has resulted in people developing Rhabdomyolysis and consequent acute renal failure.<sup>7,8</sup>

Survivors of torture have battled with psychological issues long after their physical wounds were healed. Of the 432 victims, 44 suffered from some form of psychological difficulty after being subjected to torture. According to an extensive study published by *Medecins Sans Frontieres* in 2015, 19% of Kashmiri population suffers from Post-Traumatic Stress Disorder.

In Kashmir torture has been used by Indian armed forces and police without any distinction of political affiliation, gender or age. An inordinate 301 out of 432 torture victims were civilians, 119 were militants, 5 ex-militants (essentially civilians at the time of being tortured) and 2 from the Jammu & Kashmir Police. (Affiliations were unverified in 5 cases). The civilians include political activists, human rights activists, journalists and students. Of the 432, 27 were minors when tortured. Professionals like doctors, paramedics and journalists have also been regularly targeted and assaulted since the early 1990s.

A lack of faith in institutions prevents victims from seeking justice or redressal for the torture. Of the 432 cases studied, only 27 had gone to the State Human Rights Commission (SHRC). 20 of these complainants obtained recommendations in their favour. It is pertinent to mention here that in 2017, the Jammu and Kashmir government turned down almost 75% of the recommendations made by the SHRC, accepting only 7 of the 44 compensation and ex-gratia relief recommendations made by it<sup>9</sup>. Even in the recommendations of SHRC, which government implements, only the monetary relief part of the recommendation is accepted, while as there is no instance available where on SHRC recommendations punitive action was taken against the culpable officials. The Jammu and Kashmir government informed the State Legislative Assembly in 2018 that out of the 229 recommendations made by the panel since 2009, only 58 were accepted by the government<sup>10</sup>.

The use of torture in Kashmir can be traced back to a longer history of authoritarian state practices and the repression of political struggle opposing Indian control in the region, and this precedes the onset of armed insurgency in the late 1980s. Apart from the humiliating practices of collective ill-treatment, more 'orthodox' torture techniques such as blind-folding, beatings, stress positions, burning with clothing iron and stuffing hot potatoes into the mouth were routinely used as a mode of 'interrogation' and coercing 'confessions' about anti-India, 'Pro-Pakistan' and other anti-establishment political activities, as well as punishing political dissent from the earliest days of the Emergency Administration in Kashmir since 1947.

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<sup>7</sup> Malik G H et. al. Acute renal failure following physical torture. *Nephron*. 1993;63 (4):434-7

<https://www.ncbi.nlm.nih.gov/pubmed/8459879>

<sup>8</sup> Malik G H et. al. Further observations on acute renal failure following physical torture. *Nephrol Dial Transplant*. 1995;10 (2):198-202.

<https://www.ncbi.nlm.nih.gov/pubmed/7753452>

<sup>9</sup>Bhat R. Govt turned down 75% of recommendations of SHRC in 2017. *Rising Kashmir*. 2017 December.

<http://www.risingkashmir.com/news/govt-turned-down-75-of-recommendations-of-shrc-in-2017>

<sup>10</sup>Maqbool U. Now, SHRC can't entertain complaints older than a year. *Greater Kashmir*. 2018 December.

<https://www.greaterkashmir.com/news/front-page/now-shrc-can-t-entertain-complaints-older-than-a-year/304701.html>

The massive fraud and rigging of elections in 1987 is widely seen by commentators as the proximate cause that led several prominent political figures to take up arms against Indian control over Jammu and Kashmir. Decades of repression of all forms of democratic opposition to Kashmir's accession to India, such as constitutional negotiations, peaceful mass protests and electoral politics had preceded the armed rebellion.

In September 1990, the Armed Forces (Jammu and Kashmir) Special Powers Ordinance was legalised as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA), which gave the Indian armed forces sweeping powers of arrest of civilians, and even to use lethal force on 'unlawful assemblies' on law and order grounds. Human rights groups have stated that while in 1990, 36,000 armed forces including regular army personnel and police were deployed to counter the estimated 300 active militants, by 1991 their numbers had risen to 200,000 while the number of militant groups had also proliferated and militant numbers were estimated to be in thousands.<sup>11,12</sup> By May 1990, a new specialised counter-insurgency force, called the Rashtriya Rifles, with troops drawn from existing Army Regiments was created specifically to deal with the insurgency in Kashmir.<sup>13</sup>

The Cordon and Search Operations (CASOs) had, by 1990, been established as a widely dreaded and commonplace event where a large number of atrocities, ranging from mass sexual violence and torture, and illegal arrests leading to eventual disappearances, or custodial and extra-judicial killings took place. In 1991, a human rights fact-finding delegation from India, comprising of different groups like Andhra Pradesh Civil Liberties Committee (APCLC), Committee for Protection of Democratic Rights (CPDR), Lok Shahi Hakk Sanghatana (LHS), Organisation for Protection of Democratic Rights (OPDR), noted that "most of the people who are tortured and killed in custody are young men picked up by the army or paramilitary forces during "crackdown" operations in villages or other areas to identify suspected militants."<sup>14</sup>

The mid-1990s also saw the emergence of State controlled 'pro-government militants', colloquially referred to as *naabid* or *Ikhwan*, consisting of armed groups which had begun operating as clandestine counter-insurgents on behalf of the Indian army. They operated with absolute impunity, openly engaging in criminal acts and terrorising neighbourhoods. The year 1994 saw the establishment of the Special Task Force (STF, later re-named 'Special Operations Group') as a specialist 'elite' and 'frontline' counter-insurgency wing of the police. The STF soon became notorious for its 'excesses' including routine use of torture and reprisals.

Human Rights Watch (1993) and Amnesty International (1995) have drawn a direct correlation between the extremely high custodial death and extra-judicial killing figures

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<sup>11</sup>Physicians for Human Rights & Asia Watch (A division of Human Rights Watch). *The Crackdown In Kashmir: Torture of Detainees and Assaults on the Medical Community. 1993*; Page 12.

<https://www.hrw.org/sites/default/files/reports/INDIA932.PDF>

<sup>12</sup>Andhra Pradesh Civil Liberties Committee (APCLC), Committee for Protection of Democratic Rights (CPDR), Lok Shahi Hakk Sanghatana (LHS), Organisation for Protection of Democratic Rights (OPDR). *Undeclared War on Kashmir. 1991*; Page 10.

<sup>13</sup>People's Union for Civil Liberties (PUCL), Citizens for Democracy, Radical Humanist Association, Manav Ekta Abhiyan. *Report on the Kashmir Situation. 1990*.

<sup>14</sup>Andhra Pradesh Civil Liberties Committee (APCLC), Committee for Protection of Democratic Rights (CPDR), Lok Shahi Hakk Sanghatana (LHS), Organisation for Protection of Democratic Rights (OPDR). *Undeclared War on Kashmir. 1991*; Page 14-16.