

## Custodial Deaths in Kashmir and Jammu: Police no better than Army

Contributed by Editor  
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As reports of custodial deaths started coming out, one after the other, five in total, a wave of shock and anger, rarely witnessed before, spread throughout Kashmir valley. Similar protests followed in Jammu region when incidents of custodial deaths took place in Rajouri and Phallain Mandal in Jammu district, though both were unrelated to militant activity. This exhibits why people in Jammu cannot remain indifferent to the killing of innocent civilians in other regions of the state. At a time when progress in the Indo-Pak dialogue had raised expectations that normalcy and peace were round the corner, and the Prime Minister had declared at the second round table conference in Srinagar that there would be zero level of tolerance of Human Rights violation, these tragic happenings caught people by surprise.

However, unlike earlier occasions, the protests were not a monopoly of separatist parties. All mainstream parties—National Conference, People's Democratic Party and the Congress—condemned these incidents equally. The state assembly remained exercised over the issue for days. The principal opposition, National Conference, forcefully raised it. Congress Chief Minister promptly announced a series of measures to deal with the situation. Seven police officers, including an SSP and a DSP, who were prima facie involved into the killings in Ganderbal area, were arrested. Experts from Chandigarh's Forensic Laboratory were called to conduct DNA tests. A High Court Judge has been entrusted with the enquiry.

Similar action has been taken against five police officers in Rajouri and four in Jammu. Chief Minister has also promised to hold enquiry into all cases of custodial disappearance since 1990. One hopes that these enquires do not meet the fate of earlier such probes. There is welcome realization on the part of pro-India parties as also the government that killing of innocents was not only against the principal of humanity but also against the national interest. I am reminded of the reaction in early days of militancy when our reports on Human Rights violations faced storm of protest from ultra nationalists for what they call our "anti-national" work. The improvement in the role of security forces and overall situation within the state and international opinion, to which our work had contributed, vindicated our stand. However, some pertinent lessons need to be drawn from the current situation. Lest we should be taken off guard and instead of ad hoc and piecemeal measures, some institutional arrangements have to be strengthened to avoid recurrence of such incidents. First, to measure the performance of police and security force officials by the number of militants they kill is a very crude method for measuring their performance and for rewarding them. For it is a direct incentive for killing (even innocents). Next, while in the rest of the country it is mandatory for Deputy Commissioner and Superintendent of Police of every district to report to the National Human Rights Commission any incident of custodial death within 24 hrs, J & K is exempt from this rule under Article 370 of the Indian Constitution. This is clearly a misuse of the Article, which is not meant to provide protection to culprits of Human Rights violations. State Govt. should urgently consider, with the cooperation of the opposition, to get this practice extended to J&K. Likewise, there is a need for strengthening the State Human Right Commission, which has been described as a "toothless tiger". The state government should take a serious note of its recently released report for 2005-06 that exposes the utter helplessness of the Commission. Its autonomy and powers, as provided in the SHRC Act 1997, should be fully restored and prompt action should be taken on its recommendations, including on custodial deaths. At present, its reports are not being regularly presented before the state assembly, as required by law, and are often sent to Deputy Commissioners for further inquiry. It has no investigative machinery of its own. The services of an IGP that were placed at the disposal of the Commission's first term were later withdrawn. How causally the state government takes the issue of missing persons would be obvious from the fact that while the in charge Minister, Muzaffar Hussain Beig, admitted in the budget session of the state assembly in July 2003 that the number of the disappeared persons in the state was 3931. In the year 2006, senior Congress Minister Pandit Mangat Ram told the BBC that the number of such persons was only 108. The non-official estimates put the figure much higher.

Finally, the role of the state police has also to be considered in the context of debate on the demilitarisation of the state. Apart from the Pakistan president General Pervez Musharraf who mooted the idea as a part of his four-point proposal for solution of Kashmir problem, many parties of the state have also endorsed it. The duties of the army, it is proposed, should be gradually taken over by the state police. It is argued that this step would also provide employment to the people of the state. However, the recent cases of custodial deaths are all attributed to the state police officers. There is no ground to presume that the police are more disciplined than the army. In fact, the Ministry of Defence has organized regular lectures for the army officers on the value of Human Rights. A similar course in Human Rights needs to be introduced in the training of the police personnel. Otherwise, the replacing Indian army by the state police might prove to be a remedy worse than the disease. The state government has already announced its decision to double the strength of the police. This decision, along with the proposal to restore pre-1953 autonomy of the state, will result in an "autonomous police state" without the checks and balances of the federal institutions like the Supreme Court and National Human Rights Commission—hazard on its own. India owes it not only to the people of J&K state but also to the rest of the world to ensure strict observance of Human Rights. Only recently India was elected a member of the UN Human Rights Council with a record majority. This year it signed an International Covenant against custodial deaths on February 2. Its international honour and prestige would suffer an irreparable loss if it cannot observe Human Rights within its own country. If Human Rights cannot be ensured in a part of the country, they cannot be in rest of the country. Let public opinion leaders in the country and the state apply their minds to learn appropriate lessons from the recent incidents so that they do not recur.