

# **SHOPIAN: Manufacturing a Suitable Story**

*A Case Watch*

**Independent Women's Initiative for Justice**

**Shopian 2009**

## **CONTENTS**

Statement on IWIJ | **1**

Case watch of a cover up | **2**

Note on Asiya | **6**

Photographs | **7**

Site plan | **9**

Note on Majlis | **10**

Time line | **11**

Patterns in human rights violation, patterns of impunity | **18**

Why the Hush Up | **21**

**The Independent Women's Initiative for Justice** is a group of women comprising lawyers, law researchers, a medical doctor, a journalist and women's rights activists. The IWIJ started to conduct a case watch in the double rape and murder of Shopian on the intervening night of 29 May, 2009. Concerned at the manner in which the investigations were proceeding even three months after the incident, the team decided to visit Shopian and Srinagar on the 28th and 29th of August this year. They met members of the bereaved family, the Majlis-e-Mushawarrat, a Shopian based consultative committee, the Shopian Bar Association, visited the location where the bodies of the women were found, the hospital where the post mortems were conducted and the school where Asiya Jan, the school girl who was the younger of the two women found dead in unnatural circumstances, had studied. They also met doctors who conducted the first and second post mortems, police and administrative officials, the High Court Bar Association and the CM. They attended a High Court sitting of the Shopian case on the 29th of August 2009. They have continued to do a case watch of the Shopian investigations since then.

The following is the interim report of the IWIJ. It is based on the case watch and our visit in late August and is prepared by

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## CASE WATCH OF A COVER UP

### Shopian:

In the afternoon of 29 May, 2009, two young women left home for their orchard. Neelofar and Asiya were sisters-in-law. Neelofar had married Asiya's brother Shakeel, and had an infant son. Asiya a school-going teenager aspired to become an engineer. In the evening Shakeel learnt that Neelofar and Asiya had not returned home. These are trying times in Kashmir, and there is much cause for concern when people do not return home before dark. Shakeel began his search with friends and family. As night set in, Shakeel sought the help of the police and together they scoured the countryside.

The way to the orchard is crowded with the security forces - the District Police Lines, an army outpost and a CRPF camp, with night lights. The Rambi Ara Nallah that runs through is clearly visible to the lookouts in the CRPF camp, under the glare of the search lights. Before the Justice Jan Commission, the night guards, stated they had seen the search party, but conveniently noticed nothing for the rest of the night, and had no explanation for the mysterious appearance of the bodies.

The police called off the search at 2.30 a.m. promising to restart at the crack of dawn. Around 5.30 a.m. Shakeel resumed the search. An hour later the local police joined and almost immediately the SHO Shafeeq Ahmed pointed out the spot where Neelofar's body was found. Neelofar's body was found at a shallow spot which is located about 100 mtrs upstream from Zavora bridge over the Rambi Ara Nallah. It was observed by Justice Jan in the First Spot Inspection that the depth of the stream around the spot would be 2 -2.5 feet, with reasonably fast flowing water, but certainly not strong current to drown an adult girl. It is pertinent to note that this exact spot had been thoroughly searched by the family and police till 2:30a.m.

Asiya's body was found further downstream, 11/2 km from the army camp. The exact spot is 11/2 km down stream from Zavora bridge. The dead body was found at an elevated dry spot in the stream

Those who helped retrieve the bodies of the two women saw enough to suspect that this was a case of rape and murder. The photographs taken of the bodies as they were recovered from the *Nallah* showed visible signs of injuries and wounds.

When the bodies reached the hospital, there were two post-mortems performed on them to determine the cause of death and any antecedent injuries. It was put out by the police that the deaths were caused by drowning although the first post mortem report itself had negated drowning as the cause of death of the two women.

Whenever a crime occurs, what leads the investigator to the accused are a series of material, forensic, scientific, medical, circumstantial and ocular evidence. The diligent collection and professional analysis of these pieces of evidence enable the whodunit to be solved. Similarly the mystery surrounding the killing of 2 young women in Shopian could have been unraveled by piecing together the clues. However at every stage those responsible for unmasking the culprit/s, have systematically and deliberately destroyed, tampered, diluted, the evidence and thus misdirected and obfuscated the investigation. The truth of this damning statement is borne out by the facts enumerated below:

- The spots from where the bodies of Neelofar and Asiya were recovered were not preserved or cordoned off by SHO Shafeeq Ahmed and SI Gazi Abdul Kareem and no instructions to that effect were given by the S.P. Javed Mattoo. Evidence relating to vehicle tyre marks, footprints was not gathered, these could have provided a vital trail leading to the accused. The spots were not cordoned off. No instructions were given by the S.P or SHO to photograph the bodies. No detailed or accurate

site plan of the spot was prepared. For instance the motorable approach road into the Rambhara Nallah is conveniently not marked. Again relevant details such as the depth, width of the stream and the speed of the current were left out. Neither the S.P. Javed Mattoo nor the Dy. S.P. went to the spot to supervise the investigation.

- The S.P., Dy S.P. and SHO all three admitted before the Jan Commission that contrary to the settled position of the law they did not issue instructions for registration of the F.I.R.
- Clothes of the deceased women were not seized nor was any material collected from the spots where the bodies were found. The S.P also admitted that the visible injury of a large size on the head of Asiya was not measured.

The town rose as one to challenge what they saw as an attempt to cover up a crime. Shopian shut down for 48 days. The government had to set up a Commission of Inquiry, an SIT and the High Court had to interest itself in the matter before the town resumed a semblance of the everyday. Majlis-e-Mashawarat, comprising of the elders of Shopian led the demand for justice to the victims, their families and for the assurance of safety to all women of Shopian. The valley joined the call for justice.

6 months later, the CBI reportedly claims that what happened that night was a case of drowning. No one is to blame.

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In late August, a team of six women - the IWIJ, went to Shopian and Srinagar to do a case watch into the death of the two women. By then, the fudging of material evidence and the non-seriousness of the police investigation in finding out who was responsible was plain, and the High Court too had been castigating them. IWIJ visited the site, met the family, relatives, the school, the police including the DGP Khoda, the CID – DIG Mir and DG Rajendra Kumar, the doctors, the Chief Minister the witnesses, members of the Majlis and Shopian Bar Association. IWIJ has been maintaining a case watch since then.

The drowning theory that the CBI is floating does not hold water, for the following reasons:

Neelofar's body was found *in the very place where the police and family had looked for them the last thing the previous night*. That is, it was not there at 2.30 a.m., but was found at about 6 o'clock. And no one admitting to having seen it happen despite the high security in the area. Where were the women till then? In hiding? Why? Guard Commander B.B. Kumar and Pradeep Kumar admitted before the Justice Jan Commission that they had instructions to report any suspicious movement in the Nallah during the intervening night of 29-30<sup>th</sup> May, 2009, but had noticed no suspicious movement of vehicles in the nallah from 2:00a.m. – 4:00a.m. There has been no report or "leak" of the CBI, further questioning these 2 night guards.

- The only test performed on both the bodies was the lung flotation test, performed by Dr. Bilal during the first postmortem on 30<sup>th</sup> May, 2009, which negated the possibility of death by drowning. When IWIJ met the CB-CID, at their insistence, a post-mortem report was flaunted before us, which did not bear the endorsement that drowning had been conclusively ruled out. Why did the police and Shopian administration announce drowning as the cause of death despite medical evidence to the contrary? Why were senior officers trying to convince us of drowning even after three months through an uncertified post mortem report? The drowning theory however continues to resurface and the CBI leaks are once again trying to resuscitate it.
- " All the officers of the department stood by the theory of death by drowning with full knowledge,

and belief that no one in the recent or past history of Shopian has died due to drowning in River Rambhara”

- All witnesses who may testify to a cause of death other than drowning have been systematically compromised. Significantly witnesses who did not support the drowning theory have reportedly under sustained interrogation from the CBI changed their stance.

Since medical evidence stood in the way of the drowning theory the Doctors who had conducted the post mortem have been victimized and discredited.

- Dr. Bilal who conducted the first postmortem and established through the lung floatation test that the 2 women did not die of drowning has since been placed under suspension and his report made suspect. The IWIJ team met Dr. Bilal and he reiterated the finding noted in the first postmortem report.
- Dr. Nighat Shaheen Chiloo was called in to conduct a second post mortem and gynecological examination of the 2 deceased women in the face of strong public protest to wash away the deaths as a case of drowning. In her deposition before the Jan Commission she has described the injuries on the frontal region of the skull of Asiya, which she stated could not have been caused by a fall in the river.
- Dr. Nighat in her testimony before the Jan Commission stated that she took swab/vaginal samples in the presence of Dr. Gh. Qadir Sofi, Dy. CMO Pulwama and Dr. Mohd. Maqbool Mir, District Health Officer Pulwama. Members of the IWIJ team met Dr. Nighat 3 months after the incident and she described in detail how she had prepared the vaginal swabs at the hospital in Shopian and sealed and had them sent to the forensic laboratory. These swabs which could have provided evidence of sexual violence after almost all other pieces of evidence had been destroyed have since been mired in controversy. First news paper reports claimed that the samples sent did not belong to the deceased women. Dr. Nighat has since been placed under suspension and repeatedly examined by the Special Investigation Team and the CBI.
- Upon being examined by the CBI Dr. Nighat is reported to have “confessed” that she had prepared the slides from her own vaginal swab! With this “confession” leaked to the Press and all and any evidence of rape and murder rendered suspect, the next day i.e. September 28<sup>th</sup> 2009, the CBI proceeded to exhume the bodies of the 2 women from their graves in Shopian. Within hours of the exhumation the team of Doctors from Delhi accompanying the CBI is reported to have claimed that the hymen of Asiya was “intact”.
- The IWIJ has been informed by forensic and scientific experts that since the hymen is a thin membrane, a soft tissue, it cannot be found intact upon exhumation 4 months after the burial of the body.
- In contrast to the investigation by the local police that was marked by negligence and dereliction, the Shopian Bar Association had during the course of its independent fact finding found 2 public witnesses viz. Abdul Rashid and Ghulam Mohi-ud- Din. On 29<sup>th</sup> May, 2009 around 7:30 -8:00 p.m., these 2 men just after crossing the Zavora bridge on Rambhara Nallah, saw a blue colour 407 police truck with khaki tarpal on the left side of the road, in which 2 girls were shouting ‘Mouji Mouji’. The eight uniformed men guarding the front and rear of the truck abused, threatened and forced these two witnesses to flee from the spot.
- Although the Shopian Bar Association did not participate in the Jan Commission Enquiry, apprehensive of the police, they had ensured that the 2 public witnesses first depose before the

Jan Commission. Both the public witness narrated the above facts in their testimony before the Jan Commission. These 2 witnesses were thereafter kept in police custody for over a month and their statements under Section 164 R.P.C. recorded after a lapse of time.

- Members of IWIJ also met with Ghulam Mohi-u-Din Lone in August and he repeated the statement that implicates the men in uniform. The CBI too summoned the 2 public witnesses for examination and after sustained interrogation, it is reported that both the public witnesses have denied their earlier statements and claimed that they had made the earlier statement under the influence of the Shopian District Bar Association. The CBI has in a procedure alien to law recorded a second statement of the witnesses under section 164R.P.C., statements that suit the CBI leaks of framing Shopian as a case of drowning and no rape or murder. The two public witnesses are petty shopkeepers. How much heroism is it fair to expect of them?
- 7 members of the Shopian District Bar Association too have been detained for questioning by the CBI. These lawyers have refused to backtrack from their findings and there are reports that the CBI is indulging in personal blackmail to exert pressure on them.
- Through all this, the 4 policemen arrested after the High Court's intervention, were held in a non-prison setting till they were released on bail, and there is no evidence that they have been interrogated. Interestingly the CBI has in its wisdom not summoned any of the 4 police officers who had been suspended viz. S..P Javed Matoo, Dy. S.P.Rohit Baskotra, SHO Shafeeq Ahmed and SI Ghazi Abdul Kareem who were in charge of the investigation of the crime and had been suspended. All the 4 police personnel had admitted before the Jan Commission that they had committed grave dereliction of duty and allowed important evidence to be lost and destroyed in the initial stages of investigation.
- In the meanwhile the CBI has examined almost every member of the deceased's family a dozen times and scrutinized their bank accounts and tax papers. Shakeel the husband of deceased Nelofer and brother of deceased Asiya has been questioned twelve times by the CBI.
- Anyone visiting the site is struck by the proximity to the security camps all round. They can also see the shallowness of the stream. And they would have to doubt that the women could have gone there to drown, for which, of course there is not even a sliver of a motive. To construct the theory of drowning the CBI's probe will have to answer why the 2 women of Shopian went to drown themselves in a shallow nallah at that hour of the night. And of course where were the 2 women between the time they were seen leaving the orchard early in the evening till the bodies were found at 6-6:30 am on 30<sup>th</sup> May, 2009. No one knows where the women were the whole night, when the family and the police were searching for them.
- The CBI investigation report to be submitted on December 14, 2009 will have to tie up all these loose ends and provide credible answers to support the death by drowning theory being advanced by Press 'leaks' and reports.

As for accidental drowning, of two women, in such shallows, in a nallah where no one in recent or living memory has ever drowned – we would need to be more than merely credulous to believe that possible!

While available evidence has been manipulated and distorted, crucial material, circumstantial, ocular and forensic evidence was deliberately never collected and allowed to be destroyed, lest the tell tale signs point an accusing finger.

## **A Violent End to Everyday Dreams, Everyday Aspirations**

**Asiya Jan**, the younger of the two women who went missing on the evening of 29 May in Shopian and found dead the next morning, was a school student of class XI in the Greenlands Public School. She was a brilliant student who was desperately keen to become an engineer and though the family had a modest income she was being educated in the best possible way by her brother, Shakeel Ahmed Ahangar, to fulfil her desire. Among the most poignant moments for the team was to be shown her school identity cards right from the time she was in class one, as her sisters and friends wept at the loss of young Asiya, at the threshold of life.

We visited her school on our second day in Shopian. From her close class mates in school, one of whom we had met the first evening we were in Shopian and who had requested us to come to see her school and meet her friends there, it was clear that she was very popular. She had a reputation for studying hard but also being extremely generous with her time in order to help others who were struggling with their school work. One of her friends wept as she recounted how even on the very day she went missing Asiya had stayed back in school to help her with her maths work. Another friend recounted an incident during a lunch break when Asiya continued with her studies instead of eating; her friend said jokingly to Asiya that she would waste away if she did not eat. Asiya's response was "To kyahua. Mere rehne se koi inquilab to nahi aane wala". Her friends now wept inconsolably as they said to us, Dekhiyena, Asiya ka naamab Kashmir mein inquilab ban gaya hai.'

No wonder then that large numbers of school students, particularly the girls, were out participating in the demonstrations in Shopian in the months of June and July demanding justice for the two dead women.

'Normal' everyday dreams, everyday aspirations, made impossible by the situation in Kashmir: That is the tragic reality of being a young woman in Kashmir today.





CRPF camp overlooking the Rambiara nallah where bodies were found and murder site

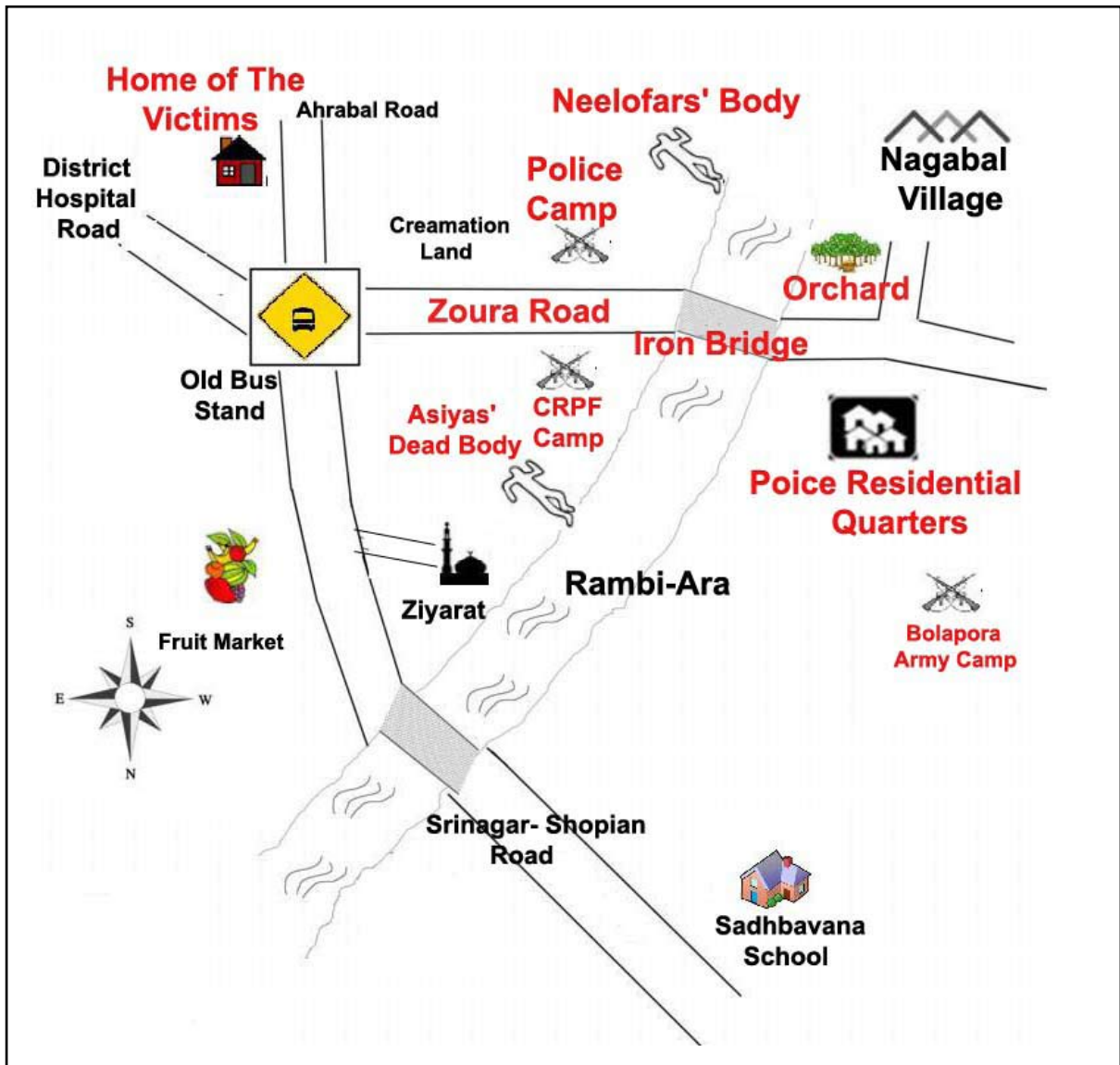




IWIJ team talking to Ghulam Mohiuddin Lone



## SITE PLAN



## **An Extraordinary 'Agitation' for Justice**

The **Majlis-e Mashawarat**, the consultative committee of Shopian came into being a few days after spontaneous protests broke out in the town, its neighbourhood and the entire valley of Kashmir. The protests were directed against the manner in which the investigations into the rape and murder of Neelofer Jan and Asiya Jan took place on 29<sup>th</sup> may 2009 and continued to unfold through the first week after that day. Comprising a group of elders who met regularly to keep track of events, worked to ensure that the protests were peaceful over 47 days when the town shut town, and everyone was out sitting in a hartal to demand justice for the two women. It was a critical role, since all the main political leaders of J&K outside of the National Conference and the PDP were either under house arrest or in jail. Passions in the valley, as well as the town of Shopian, were inflamed at the flagrant and sustained attempts by the police and the administration, both at the level of the state and the centre, was to hide the truth and shield the guilty.

The Majlis did everything possible to ensure that the protests focussed on a single agenda: justice for the two women and steer clear of everything else. That has remained their focus through the six and a half months since the assault and murder of the two women. They have monitored the investigations, attended every single hearing of the case in the High Court in Srinagar, and co-operated with the investigative agencies, including the CBI which has an extremely poor record in investigating cases in J&K, despite a growing sense of frustration at the way the investigations have been proceeding. The CBI's blatant attempts to complete the systematic cover up begun by the police the moment women's bodies were found has been received with outrage. The sense of betrayal at the complete failure of institutions in J&K to provide justice has been compounded by the recent leak that the CBIs has allegedly given a clean chit to the four police officers who had been arrested in June. The policemen were arrested following their indictment by the Justice Muzzafar Jan Commission's for wilful acts of omission and commission in investigating the case in the very first stage, leading to the destruction of vital evidence that could have nailed the culprits.

Today the hope that justice will be done in Shopian has not only been destroyed it has been replaced by outrage at the working of the criminal investigative agencies and the complete institutional failure in J&K. The Majlis and the bereaved families of Shopian are apprehensive that these investigations will not uncover the truth and have disassociated themselves from the CBI. There is also great cynicism for the press and civil society in India which has done little to ensure justice for Shopian.

The Majlis and the people of Shopian are still resolute in their challenge to impunity for sexual violence against women.

**TIME-LINE****SHOPIAN CASE OF RAPE AND MURDER****MAY –DECEMBER 2009****MAY – JUNE 2009**

29 <sup>th</sup> May, 2009	Nilofer and Asiya go missing. Search carried on by family and police party till 2.30 a.m
30 <sup>th</sup> May, 2009	Bodies found near the RambiArahNallah between 6.30-8 a.m. <b>Nilofer's body found exactly at the spot searched till mid-night.</b>
31 <sup>st</sup> May, 2009	SIT set up under DSP.
1 <sup>st</sup> June, 2009	CM says prima facie case of drowning. Announces judicial probe by retired Justice Jan.
4 <sup>th</sup> June, 2009	Indefinite <b>strike by residents of Shopian – 47 day begins.</b>
5 <sup>th</sup> June, 2009	Writ petition filed by HC Bar Association. Court orders detailed report to be submitted by 29 <sup>th</sup> June 09
7 <sup>th</sup> June, 2009	FIR under section 376 RPC registered after a forensic report confirmed rape and murder. Police spokesman said, Inquest proceeding and the interim medical report from the Medical team received indicates prima facie a case under section 376/RPC. Medical opinion into the cause of death is still awaited”.
8 <sup>th</sup> June, 2009	Fresh SIT set up under SP
10 <sup>th</sup> June, 2009	SP Shopian Javed Mattoo transferred.
15 <sup>th</sup> June, 2009	Majlis e Mushwarat set up.
17 <sup>th</sup> June, 2009	PM promises action against Shopian culprits
18 <sup>th</sup> June, 2009	<b>SIT records statement of 2 eyewitnesses before CJM.</b> The eyewitnesses said that they heard screams of women for help from a police vehicle parked on the bridge.
21 <sup>st</sup> June, 2009	Interim report of J. Jan given to Chief Minister: Based on the investigations of the doctors, JCI confirmed Asiya and Nilofer were raped and killed.

22 <sup>nd</sup> June, 2009	Javed Mattoo SP and Rohit Baskotra and 2 policemen suspended on recommendation of JCI.
25 <sup>th</sup> June, 2009	Two doctors who confirmed it was rape and murder are suspended – Dr.Nighat Shaheen and Dr.Bilal on grounds of negligence during autopsy.
27 <sup>th</sup> June, 2009	Fresh FSL report on the blood found in vehicle.
29 <sup>th</sup> June, 2009	SIT questions 3 Bakerwalas and driver of the police vehicle. Their statements not recorded before the magistrate's
30 <sup>th</sup> June, 2009	JCI term extended by 10 days.

## JULY 2009

1 <sup>st</sup> July, 2009	High Court directs SIT to present case diaries and forensic reports prepared by J&K Forensic Science laboratory.
3 <sup>rd</sup> July, 2009	HC orders interrogation of suspended policemen and 2 witnesses and narco analysis.
8 <sup>th</sup> July, 2009	Shopian Bar Association says the SIT has detained the two eyewitnesses.
9 <sup>th</sup> July, 2009	<b>Justice Jan Commission presents final report recommends the prosecution of indicted four police officers must be implemented within two months and the report made public</b>
12 <sup>th</sup> July, 2009	Justice Jan denies passing derogatory remarks against the family and women.
15 <sup>th</sup> July, 2009	HC directs arrest of the 4 suspended police officials and blood samples to be taken. Police Officials arrested
16 <sup>th</sup> July, 2009	Majlis calls off 47 day strike and asks for the release of Maulvi Bilal and Abdul Hai Lone booked under Public Safety Act (PSA)
17 <sup>th</sup> July, 2009	Two arrested officers move Supreme Court for bail
20 <sup>th</sup> July, 2009	SC stays narco analysis.
22 <sup>nd</sup> July, 2009	Chidambaram to Lok Sabha – unlikely para military involved in Shopian.

23 <sup>rd</sup> July, 2009	HC adjourns hearing. <b>CJ says either the arrested policemen are involved or know the guilty.</b>
24 <sup>th</sup> July, 2009	SC declines bail, asks them to move sessions court.
25 <sup>th</sup> July, 2009	4 arrested police officers apply for bail in Sessions court in Shopian
30 <sup>th</sup> July, 2009	SIT takes blood samples of 47 police and SOG personnel.

## AUGUST 2009

2 <sup>nd</sup> August, 2009	Kashmiri Pandits from Jammu take part in sit in with Shopian residents
6 <sup>th</sup> August, 2009	Sessions court rejects bail of 4 arrested officers.
10 <sup>th</sup> August, 2009	Jan Commission report tabled in Assembly
11 <sup>th</sup> August, 2009	<b>Vaginal swabs given by SIT to forensic lab do not belong to the victim. They have been tampered.</b> (A report in Hindu)
13 <sup>th</sup> August, 2009	SIT raids district hospital Pulwama and seizes records.
15 <sup>th</sup> August, 2009	CM apologises to people of Shopian for initial mishandling of case.
17 <sup>th</sup> August, 2009	J&K govt seeks court's permission to hand over case to CBI. Two of the arrested police officers challenge order of the Shopian session's court rejecting bail
19 <sup>th</sup> August, 2009	<b>HC says upto govt to handover case to CBI or not. But court will monitor</b> . CJ says :Based on the evidences which were available, the court felt that the puzzle could be cracked," ... there is a conspiracy to shield someone.
26 <sup>th</sup> August ,2009	On Shakeel's involvement Justice Ghosh (CJ) observed: "as soon as the fudging of vaginal swab came to light it immediately came to our mind that it cannot be done by the husband of Neelofer. It is not that easy."
28 <sup>th</sup> August, 2009	SIT announces a cash award of 20 lakhs for clues and evidence. CM tells Independent Women's Initiative for Justice that the guilty will not be spared.
29 <sup>th</sup> August, 2009	IWIJ holds press conference <b>DIG Mir 's copy of postmortem report has no mention of floatation test, whereas the copy of the Shopian hospital has.</b>

**SEPTEMBER 2009**

8 <sup>th</sup> September, 2009	Addressing a public meeting at KarewaZawoora, one km from Shopian, Chief Minister, Omar Abdullah, said that he would rest only when the culprits of double rape and murder in Shopian were brought to justice. "I would recommend hanging of the murderers till death."
9 <sup>th</sup> September, 2009	<b>Jammu and Kashmir government handed over the Shopian double rape and murder case to the Central Bureau of Investigation for further probe.</b>  The president of Majlis-e-Mushawarat, Muhammad Shafi Khan, said : "We want criminals to be named, no matter which agency investigates the case; however, people had some reservations for CBI investigating the case for various reasons."
11 <sup>th</sup> September, 2009	High Court today granted bail to four police officers SP Javed Iqbal Mattoo, Dy. SP Rohit Baskotra, SHO Shafeeq Ahmad and SI Gazi Abdul Karim who were allegedly involved in destruction of evidence in Shopian rape and murder case.
12 <sup>th</sup> September, 2009	Majlis-I-Mushwarat, called for a Kashmir bandh today against what is called the failure of the government and the investigating agencies to identify and arrest the culprits behind the double rape and murder
16 <sup>th</sup> September, 2009	Majlis-e-Mushawarat Shopian (MMS) demanded that the proposed "military cantonment" should not be set up at Kareeva-Manloo in the district
17 <sup>th</sup> September, 2009	A 12-member team of Central Bureau of Investigation formally started investigations by holding discussions here with the Special Investigation Team of J&K Police. The team headed by deputy inspector general SK Gulcha
25 <sup>th</sup> September, 2009	The CBI gets the consent of Shakeel Ahmad Ahangar, the brother of Asiya and the husband of Neelofer, to exhume the bodies of the victims. The CBI recorded the consent of Ahanger and his father-in-law Moulvi Abdul Hai before the Judicial Magistrate, Shopian
27 <sup>th</sup> September, 2009	<b>Dr Nighat Chilloo who conducted the second round of post-mortem examinations told the CBI that she had not prepared the swabs as she was "confused" by the massive demonstrations.</b> She admitted that the 'samples' she had prepared were from surgical gloves found in her department at the government hospital in Pulwama, neighbouring Shopian district, the next day. ( Hindustan Times)



28 <sup>th</sup> September, 2009	<b>CBI exhumes the body of Asiya and Neelofer.</b> The doctors conducted a fresh postmortem and took samples from the bodies. The preliminary report <b>by the team of doctors from All India Institute of Medical Sciences (AIIMS) New Delhi says that the 17 year old girl, Asiya's hymen was intact.</b>
30 <sup>th</sup> September, 2009	<b>The Jammu and Kashmir High Court imposes a ban on the reporting of the investigation in the case. The Central Bureau of Investigation (CBI), which is investigating the case, should not reveal anything to the press</b>

## OCTOBER 2009

1 <sup>st</sup> October, 2009	Government orders inquiry into two teams of doctors who conducted the post-mortem on the bodies. She told the CBI that she had sent faked vaginal swab slides for forensic examination on the then chief medical officer and deputy medical officer's instructions.
5 <sup>th</sup> October, 2009	<b>CBI says it is investigating whether the FIR filed by the Jammu and Kashmir police was right or wrong. "Our immediate task is to focus, to prove, whether the FIR was right or wrong.</b>
13 <sup>th</sup> October, 2009	CBI submits its report on the exhumation of bodies to the HC and seeks more time to complete the investigation. HC directed the CBI to complete investigations and file challan in the case by December 14. The chief Justice said, the CBI would have to demonstrate to the High Court the entire process of exhumation and postmortem of the bodies. "We don't want to put our nose in the investigation before it is completed. But you will have to demonstrate the process to us in order to satisfy the court after you file the challan."

**NOVEMBER – DECEMBER, 2009**

7 <sup>th</sup> November, 2009	National Conference President, Farooq Abdullah terms Shopian tragedy as a blot on the government's face and asks CBI not to prolong investigations into the Incident.
9 <sup>th</sup> November, 2009	High Court directs Shopian district Judge to entertain the application by Ahmad Ahangar, brother and husband of the victims, seeking a copy of witnesses' statements to the CBI
15 <sup>th</sup> November, 2009	<b>Majlis rejects any kind of dialogue with India given the fact that CBI, which is probing the Shopian incident, has 'ditched' them. "We had extended cooperation to CBI to identify the perpetrators of Shopian twin rape and murder case. They disassociated themselves from the CBI investigations.</b>
16 <sup>th</sup> November, 2009	<p>The Shopian District Bar Association condemned the role of CBI and alleged that they had 'purchased' the witnesses in the bid to "bury" the crime for good.</p> <p>The news agency PBI, claiming possession of relevant court documents, said that the papers indicated that the two witnesses GhulamMohiuddin Lone and Abdul RasheedPampori, had changed their statement in their deposition before the CBI on October 27, saying that they had been "coerced by the people."</p> <p>The doctor who conducted the post-mortem, Dr Nighat of the victims tells investigators that she submitted her own vaginal swab samples instead of one of the victim's. The investigating agency has now taken DNA samples of Chiloo and her husband Dr Imtiyaz Mir. ( Hindustan Times)</p>
19 <sup>th</sup> November, 2009	CBI questioned four lawyers, including public prosecutor Mushtaq Ahmed Gattoo, in connection with unrest in Shopian. The lawyers were summoned by the CBI for recording their statements during which all the four, including Gattoo, were questioned for allegedly influencing some of the witnesses to make statements before the Jan Commission and the court in Shopian. (The Hindu)
20 <sup>th</sup> November, 2009	Residents of Shopian staged a demonstration in the town against the CBI to protest against what they called the CBI's attempts to hush up the alleged rape and murder of two women.

21 <sup>st</sup> November, 2009	<p><b>Shopian Bar association said, “We have decided to file suit against the Sessions court for allowing the re-examination of the witnesses under section 164 R.P.C.</b>the secretary of the Shopian Bar, SM Iqbal, said. The Shopian Bar Association contends that statements recorded under section 164 of the R.P.C. can't be re-recorded.</p> <p><b>The CBI has concluded its investigation with the finding that the two women died of drowning. It has also concluded through scientific evidence that the two were neither raped nor murdered.</b> Through Bone Marrow tests and other examinations, the doctors established that the bodies had absorbed river water. “Each river has its own water characteristics, and in the case of these two women, the chemicals contained in the water of Ramibar River were found in their bodies,” said an official on condition of anonymity, as he is not authorised to speak to the media. (Hindustan Times) .</p>
22 <sup>nd</sup> November, 2009	CBI grills the victims' family and members of the Shopian town's Majlis – e – Mushawarat on 'separatist links'. The secretary of the majlis, Abdul HameedDeva, was summoned by the CBI to the office of the deputy commissioner in Shopian today.
6 <sup>th</sup> December, 2009	<p><b>According to reports by NDTV, CBI has completed its probe into the Shopian rape and murder case and will submit its report on December 14. NDTV added that the CBI investigations have concluded that Asiya and Neelofer were not raped and murdered but they were drowned.</b> Shakeel Ahmad reacted to the news and said, “We had no expectations from these investigating agencies since these are being controlled by the government but we wanted to give them a chance to do justice with us and they have miserably failed in that. Whatever be the findings of CBI our struggle for justice will continue since it is based on truth.”</p>

## **PATTERNS IN HUMAN RIGHTS VIOLATION, PATTERNS OF IMPUNITY**

The Shopian rapes and murders epitomise the wrongs and injustices perpetrated on the people living in a militarised society. The incident not only manifests the extent of fear psychosis, denial of security and democratic rights to the people, it also demonstrates the abject refusal of those at the helm of affairs to bring the culprits of gross violation of human rights to book. Shopian is not a case in isolation. It is a leaf out of history of human rights abuse and absolute impunity that men in uniform enjoy. The latter have been accused in thousands of cases for torture, humiliation, encounters, disappearances, molestations, sexual assaults and other forms of harassment. Jammu and Kashmir has a long list of rape victims, none of whom has received justice, of missing men whose families wait for them year after year spending their lives in absolute penury and uncertainty, of killed men, orphaned children and widowed wives. Shopian rapes and murders fit into this ugly tapestry of brutalities and violations by men in uniform and a culture of impunity.

The last two decades in Kashmir and other militarised areas of J&K are marked by not just brutalities by security forces but also the unlimited protection these personnel get. Despite massive allegations, with serious evidence pointing out to the same in many of the cases against the security forces, very few cases were ever investigated. In a negligible number of cases, prosecution takes place. In none of them has justice been delivered. In some cases where government has ordered inquiries mostly under judicial magistrates, or where security forces order their own court of inquiries, the findings and punishments are not made public, leaving victims to believe that such abuse is committed with impunity. The security forces are just not held accountable, and in many instances cases are not even registered against them. Even when cases are registered, the legal sanction required, as per provisions of laws like Armed Forces Special Powers Act, is never accorded. In the case of police, the laws are easily abused to give them that extra protection. In the last 20 years, it is only in a very miniscule number of cases that such sanction was accorded. However, till date no culprits in uniform have been convicted or punished. The culprits get full protection overtly or covertly and all-out efforts are made to hide facts, and even tamper with evidence.

In the much publicised case of custodial disappearance and killing in 1996 of human rights activist and lawyer Jalil Andrabi, the accused Major Avtar Singh has comfortably escaped to Canada, even after the official go ahead was given for his prosecution. The army has completely denied any knowledge of the whereabouts of the accused and government has made no efforts to bring him back for trial. In the infamous Panchalthan fake encounter killings close on the heels of the Chattisinghpura massacre, following protests and Justice Pandian Commission indicting the security forces, prosecution was again sanctioned but the army has never co-operated in the court case. Its personnel have failed to even appear before court.

In cases of rapes, justice or any sign of it becomes totally elusive in the face of sweeping judgmental remarks by the officials. As it is, only a fragment of rape case complaints have been registered against the security forces. According to the statistics available with the Jammu and Kashmir police, there are not more than 10 such cases; this is a highly unacceptable figure given the number of cases that have been publicised.

Contrast this number with a 1994 United Nations publication which says that “during 1992 alone, 882 women were reportedly gang-raped by Indian security forces in Jammu and Kashmir”. A report by 1994 Human Rights Watch/Asia and Physicians for Human Rights titled ‘The Human Rights Crisis in Kashmir:

A Pattern of Impunity' says, "The incidence of rape is also high. Women are often raped in the course of house searches by the security forces, and in retaliation for militant attacks on government patrols." The 1994 report also cites rapes by militants. Human Rights Watch has also documented the use of rape as a means of targeting women whom the security forces accuse of being militant sympathizers. The report also gives a detailed account of how in raping them, the forces attempt to punish and humiliate an entire community.

The graph of rapes in Kashmir compared to other rights abuses is very low, but it is so because most of these are not reported. The victims do not come forward in most of the cases because of the social stigma. Besides, most of the 'rapes' occur in remote areas which have little access to media or the human rights groups.

Allegation of rapes began to emerge in Kashmir with the outbreak of anti-India insurgency in 1989. The Kunanposhpora rape controversy in 1991 is one of the most infamous cases in Kashmir, not only in terms of the numbers of women gang raped, but also in terms of both the stigma attached to the entire village, 18 years on, and the denial to even officially acknowledge that something like this has happened. On the night of February 22-23, 1991, over 30 women and children were gang-raped by soldiers of the 5th Rajputana rifles. No marriage has taken place in Konanposhpara since then. Many victims have been deserted by their families. The experiences of Konanposhpora's women have been repeated over and over. Women are molested routinely by the para-military forces during searches. Those who worked as teachers in schools at some distance away had to give up their jobs because of humiliation." Fifteen years after the incident the victims 'still wait for justice'. To their dismay the only investigation panel in this case by the Press Council of India, a one man show by journalist B.G. Verghese, gave a clean chit to the accused troopers and accused the women of fabricating the story.

When the incident happened, the village men complained to the officials but no action was taken. According to the Asia Watch Report, officials claimed that no formal complaint was lodged. A local magistrate was called for investigation but authorities in Delhi vehemently denied the incident without even verifying with local officials. A police investigation never commenced. Then, three months after the incident, an Army official requested the Press Council of India to probe the allegations only after the forces were pressurised by media criticism. The one man Commission, that spent only a few hours in the village, found the charges 'baseless' based on gaps in statements and medical examination of 32 women that was conducted three weeks later. The then Divisional Commissioner Wajahat Habibullah questioned the manner in which allegations had been dismissed even before the investigations had been carried: "While the veracity of the complaint is highly doubtful, it still needs to be determined why such a complaint was made at all..." he pointed out while calling for a thorough inquiry in the incident which never happened.

In May 1990, Mubina Gani, a bride being taken along with her bridegroom and baratis after the marriage was solemnised, was raped in south Kashmir by BSF. Her aunt accompanying the marriage party was raped too. One man was killed and several wounded. A government inquiry held the BSF men guilty but the latter were never prosecuted. However, a BSF Staff court of inquiry that held the men guilty, "suspended seven men." Normally, a person convicted for rape could get upto ten years in prison if the normal Indian legal procedures are followed,

A magisterial inquiry was also ordered in the rapes of five women in Anantnag in December 1991 but the report was never submitted. Even medical examination reports are never made public.

Security forces allegedly raped an old lady who was mentally ill in a house at Barbar Shah in Srinagar on January 5, 1991. Perturbed over the incident, locals lodged an FIR with concerned police station.

Medical reports confirmed that she had been raped. She died in 1998 with her FIR awaiting action from the state government.

In Shopian rapes of 1992, 9 women including an 11 year old were raped. Their medical tests were positive. The SSP who headed the investigation said two of the victims were wives of militants. The report concluded: "charges are baseless, complaints and evidence is unreliable." The accusations were dismissed as efforts by militants to make false charges and discredit security forces.

In November 2004, when a mother-daughter duo were allegedly raped by an army Major in Handwara-BadarPayein, the case ended in simply an internal army enquiry which held the Major "guilty of misconduct". While these words were misleading, the post mortem reports in the case were never really made public. The government inquiries are either not made public or never followed up with the security forces. The courts of inquiry by the security agencies, even if they hold their own men guilty, never punish them adequately. The maximum punishment given is suspension, or simply the remark of 'severe displeasure' gets recorded.

The 1993 Human Rights Watch Report says, "Indian government authorities have rarely investigated charges of rape by security forces in Kashmir. To our knowledge, the prosecution of two soldiers for the rape of a Canadian tourist in October 1990 is the only case of criminal prosecution which the Indian government has made public. The soldiers were sentenced to prison terms, but as of April 1993, the soldiers remained in barracks and the case was on appeal." It further adds, "While the government has claimed that inquiries have been ordered into reports of rape and action taken against the guilty, the Indian authorities have not made public any prosecutions or punishments of security personnel in any of these cases. In some cases, the investigations fail to follow through with procedures that would provide critical evidence for any prosecution. Although there is no evidence that rape is sanctioned as a matter of government policy in Kashmir, by failing to prosecute and punish those responsible, or make known any action taken against security forces charged with rape, Indian authorities have signaled that the practice of rape is tolerated, if not condoned. Indeed, in responding to reports by the press and human rights groups about incidents of rape, government officials unfailingly attempt to dismiss the testimony of the women by accusing them of being militant sympathisers."

In cases of human rights abuse, particularly in cases of rapes, there is not only the systematic refusal by the government to ensure justice or introduce an element of accountability among the forces, every effort is made to 'cover up'. Equally shocking is the logic forwarded by the top officers in security forces who justify what they deem as 'caution' in a bid to "avoid demoralising the forces." This creates a general impression that the top officers want to keep the morale of the security personnel upbeat only to perpetrate atrocities on the innocent civilians. That the police can be quick to crack down on culprits such as the Asrar murder case this summer and the Tabinda Gani rape and murder case two years ago is testimony to their investigative skills. What is significant is that in both the cases, the culprits were civilians. The men in uniform guilty of an equivalent crime, which should be considered a more heinous crime, are not taken to task in the same manner.

## WHY THE HUSH UP?

In a bizarre turn in the investigations of the double rape and murder case of two young women in Shopian, Kashmir, it is believed that selected leaks to the press by the CBI, which is now conducting the investigations, first rape was ruled out and now it appears the murders too. Events have been shocking since October when the bodies were exhumed. The public is being fed with stories that have no basis – that the two women drowned in water that is not even ankle deep. And that in the case of the younger, high school going girl Asiya Jan, no rape has taken place as the hymen was ‘intact’.

The bodies of the two women were buried after a controversial beginning to the criminal investigations at the end of May 2009, following a great deal of public agitation in Shopian against the police and district administration, and with two sets of doctors having conducted the medico-legal requirements, one overseen by the DC. In October, more than four months after the burial, the CBI exhumed the bodies, and almost miraculously, the bodies were found to be in such a wonderful state of preservation that one of them was capable of revealing the state of the hymen. This amazing ‘fact’ was immediately flashed to the rest of the nation, waiting with bated breath for the CBI's revelation, a revelation that restored the honour of the Indian state and its security forces: no rape, therefore no needle of suspicion or indictment of the security forces, and therefore the security forces vindicated. Having made that announcement, it was time for everyone to go back to their respective ‘strategies’ on Kashmir: home Minister Chidambaram to announcing talks on Kashmir; Chief Minister Omar Abdullah to restoring ‘normalcy’ in Kashmir; the army to its plans for building the Mughal road going past Shopian, for which thousands of acres of land had to be taken over; and the national media to reporting something other than atrocity stories: the heroic resistance of a young Kashmiri girl, successfully fighting off a bunch of militant hoodlums.

That is the reality of J&K: two women dead, no credible explanation for the deaths or for the mysterious appearance of the bodies at a spot which had been thoroughly searched just a couple of hours ago, and was in full view of two vigilance towers of the security personnel. A trail of cover up was set in motion by the police immediately after, which included a refusal to file an FIR and begin investigations. The government appointed enquiry commission, the Justice Jan Commission which was appointed within a week of the incident because of the pressure by the people in Shopian had ruled out drowning as the cause of death, concluding too that the bodies ‘must have been brought there by some agency’ since no single individual could have executed such an act in a high security zone. The Commission could not however find out who was responsible for the rapes and murders since the police had not collected any evidence from the site, a misdemeanour that they could not explain to the Commission.

The popular upsurge had forced the government to act on the double rape and murders so they set up a Special Investigating Team. The High Court Bar Association in Srinagar had moved the High Court which took on the responsibility of monitoring the investigations of the SIT. The SIT then periodically submitted reports in a sealed cover directly to the Bench to maintain the confidentiality and integrity of the investigations. Yet the case remained in a limbo until there were revelations of the crucial forensic evidence being switched, as they did not belong to the dead women at all! At some point in the course of the investigations, four police officers in charge of the first investigations in the case were arrested, but could or did not provide any leads that took the case forward. At the same time the J&K government, especially the top police authorities, began to lobby for the case being transferred to the CBI on the specious plea that a ‘whole generation’ of police officers in J&K did not have the skills required for normal investigations as they had been so busy ‘fighting militancy’ that they had no time for anything else. The political leadership of the J&K government seemed to be desperate to hand over the investigations to the CBI so that they could get out of the sticky waters. Nothing in J&K can move

anyway without being 'overseen' by the national security agencies of the government at Delhi. Delhi over Srinagar at all times and justice is dispensable.

Did justice in Shopian become a casualty to the proposed dialogue that was being designed in New Delhi for a long time? Shopian would have looked a messy affair if talks were to begin and so the business had to be finished first. Back channel diplomacy had been on for a long time with Shopian proving to be a bottleneck. When delay and inaction in investigations by the SIT could not calm down the anger of the public outrage over the incident and an agitation started by the local people of Shopian could not be demonised enough by branding it 'separatist' in nature, the CBI was brought in to cover up the initial cover-up, just in time for a political initiative to be announced. Union Home Minister P. Chidambaram, who in the initial days of protests over Shopian had ticked off chief minister Omar Abdullah for his government's non-performance over the matter simply omitted the incident or the ongoing unabated cycle of violations while talking about 'quiet diplomacy'. As far as human rights abuse goes, the 'quiet diplomacy' is probably a euphemism for 'silence', which everybody is expected to maintain for the sake of a dialogue. The prime minister during his recent visit to Kashmir was still more discreet even as he held out an offer of talks for all willing groups. No need was felt to talk about, even as matter of lip sympathy, confidence building measures on the ground like arresting the continuum of human rights abuse. No wonder Shopian case had to be quickly swept under the carpet, not solved, before the spade-work for this initiative for peace, without elements of justice or democracy, could begin.

It doesn't take a Sherlock Holmes to realise that while New Delhi is keen for whatever reasons to start a political initiative, the security agencies are totally unwilling to compromise on their authority in Jammu and Kashmir, either in terms of reduction of troops or scaling down the gross violation of human rights abuse. This is not only a reflection of the complete disconnect between the political leadership and the security agencies but rather a comment on how when it comes to Kashmir, the security agencies have an upper hand. In no way can any political initiative interfere with the rule and might of the security forces. That is apparently how New Delhi functions where a home ministry proposal for shifting some battalions of Rashtriya Rifles from Jammu and Kashmir to the Maoist infested areas of the country has been shot down by the defence ministry. For quite sometime now a proposal for amending the Armed Forces Special Powers Act (AFSPA) that gives unlimited powers to the security forces without making them accountable, but the final draft despite approval of the political leadership in New Delhi is just not getting the nod. Who really runs the show when it comes to Kashmir? Just two days after the home minister talked of 'quiet diplomacy' and prime minister waved the green flag for a dialogue, the GOC Northern Command, addressing a press conference in Jammu, warned of Talibans and 'agitational terrorism', equating the two and defining all organised forms of protest in Kashmir as the handiwork of terrorists. A week after the 'historic' visit of the prime minister, the Services team of the defence forces backed out at the last moment and never showed up for the Ranji Trophy match this time being hosted in Srinagar. Following criticism and disciplinary action by the BCCI, did the defence officials begin citing 'security concerns' as the reason for not turning. While the prime minister and the home minister talk about 'normalcy,' decreasing violence levels and diminishing militancy (which is also substantiated by statistics doled out by security agencies themselves), the security forces continue to exercise their authority by clinging on to the false and exaggerated notion of 'security concerns'. The message is loud and clear: Everybody is free to talk about Self Rule, Autonomy but the Indian state, with all its undemocratic elements of repression, killings, custodial deaths, disappearances and rapes is actually unquestionable. Some 'quiet diplomacy'!

But the CBI report itself is being kept in cold storage till a suitable moment when it can be revealed: the apple harvest would have been moved out of the valley, the darbar move from Srinagar to Jammu completed and the snows set in, and the valley closed for the winter. No protests will be possible,



whatever the CBI ultimately says on Shopian. And time enough too to have put sufficient pressure on the two witnesses who gave evidence of cries of women heard from a vehicle often used by security agencies on the evening they went missing so that they turned hostile.

Even as everybody braces for talks and try to hammer out a political future for Jammu and Kashmir, there is not a whisper one can hear of the unresolved Shopian case, or for that matter any other case of human rights abuse. Justice has not been delivered in a single case till date. Suddenly, all those cases of abuse, point blank killings of unarmed protestors on the streets, crackdowns, arbitrary arrests and custodial deaths or torture, which are going on even as groundwork begins enthusiastically for talks, vanished for everybody. Forget revocation of draconian laws like AFSPA, demands for demilitarisation or at-least thinning of troops, or even setting up an independent commission for investigating cases of human rights violations in the past twenty years, there isn't even a furore at the political level over the unjustified ban on pre-paid mobile phones, again necessitated by so-called 'security concerns'. Shopian which boiled for months, only recently, and continues to spark outrage amongst the people of Kashmir, not only for the shocking rapes and killings but also the vehement denial for justice despite one of the most well organised and peaceful agitations ever in Kashmir.

So what do we have now? Two women sacrificed at the altar of national security. No matter that the guilty are unlikely to ever be found. Even the facts of what happened to the two women before their bodies appeared in a nullah no one had drowned in till now will ever be known. It is not just that two women were buried, exhumed and buried again, justice itself is well and truly buried in graves all across the state—in Shopian for certain.

***They make it a desolation and call it peace***

*AghaShahid Ali, Kashmiri poet*