

# Everyday violence, institutional denial and struggles for justice in Kashmir

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*Abstract:* In the summer of 2009, the apparent murder and rape of two young women in the small town of Shopian sparked a year of popular protest in heavily militarised Kashmir Valley expressing outrage at the everyday forms of violence that accompany Indian occupation in the contested region. Here, the authors analyse the case by drawing on ethnographic field research conducted via research visits in 2009–2010, to show how the state has exercised occupational authority through practices of denial and cover-up that are built into the legal systems that claim to protect the rights and interests of Kashmiris. They demonstrate how various local actors have worked to establish alternative forums to challenge state violence and the institutionalised denial of justice, illuminating the ways in which they have sought justice in this context of intense militarisation, characterised by routine state violence through legal and criminal justice processes. The event, and the responses to it, reshaped the interplay between legal authority, social protest and political power under conditions of occupation, with implications for future formations of popular resistance against Indian rule in Kashmir.

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*'The law is on our side – but how they go about the law is a different matter.'*

Retired schoolteacher Mohammad Shafi Khan, vice president of Shopian's Majlis-e-Mushawarat

In December 2009, India's primary investigative body, the Central Bureau of Investigation (CBI), submitted a highly anticipated report to the high court of Jammu and Kashmir in the region's capital city of Srinagar. The document revealed the results of the bureau's inquiry into the mysterious deaths of two young sisters-in-law in the Kashmiri town of Shopian. For over six months, family and local community members had been convinced that the women, whose battered bodies were found in a shallow riverbed in a highly militarised area on the town's periphery, had been raped and murdered. The case had rocked Kashmir Valley throughout the summer, as people had come on to the streets in mass protests, expressing their anger at the state's mishandling of the case – mismanagement that was largely perceived to be an indication of the complicity of state agents, locally termed 'men in uniform', in the perpetration of the crime itself. Representing the final word of the state on the matter, the report's conclusion – that the women had died of drowning – set off fresh rounds of protest. As the CBI presented its findings to the court amidst this charged atmosphere, the Majlis-e-Mushawarat, a Shopian-based community organisation established to pursue justice in the case, reversed its position of cautious cooperation with state agencies by staging a dramatic demonstration outside the courthouse. Setting light to the report before the media and sympathetic crowds, they raised chants and slogans denouncing the investigation and demanding justice for the victims.

The Shopian case presents one of many opportunities for tracking the complex interplay between legal authority, social protest and political power under conditions of occupation in contested Kashmir. On the one hand, it reveals how state power functions in the region, not only through the heavy militarisation that routinely exposes residents to violence, but also through the legal system that promises, but systematically denies, possibilities of accountability and redress. On the other hand, it makes visible ways in which groups struggle to engage with the formal legal system and work to establish alternative forums for the pursuit of justice in their efforts to challenge state violence and institutionalised denial. As the Majlis and other community actors formulated and reformulated responses to the Shopian case over the course of a year, they engaged with broader questions about how to articulate, define and demand justice under occupation.

Its claim to Kashmir, contested since the time of independence from British colonial rule and partition, for over sixty years, has meant that India has identified Kashmir as a site of emergency and exception, justifying militarised governance in the region as necessary for securing the nation against cross-border infiltration and maintaining law and order among the civilian population.

Although India does not define the situation in Kashmir as a dispute or military rule, it nonetheless maintains a massive apparatus there of over half a million military, paramilitary and Central Reserve Police Force (CRPF) personnel in addition to the ever-expanding ranks of the Jammu and Kashmir Police (JKP).<sup>1</sup> The ratio of troops to civilians makes the region the most militarised place in the world, producing a landscape saturated by state security. Throughout Kashmir, armed security agents, including police officers in full riot gear as well as soldiers equipped with machine guns and automatic weapons, line the roadsides of towns and villages, manning checkpoints, guarding strategic buildings and positions and surveying their surroundings from makeshift bunkers fortified with bricks, sandbags and concertina wire. These forces are housed in sprawling camps, some as large as cities, in rented hotels, abandoned homes and appropriated orchards, as well as public institutions such as stadiums, parks and schools.<sup>2</sup> Situated deep within everyday life, these sites constantly expose residents to the stark and pervasive reality of state violence in every aspect of their lives.<sup>3</sup>

In Kashmir Valley, as in other sites of occupation, law is central to the project of establishing, enacting and maintaining occupational authority and militarised governance through extraordinary legal measures and everyday jurisprudential practices alike.<sup>4</sup> The legal conditions of militarisation are established through security-related special emergency legislation, most notably the Disturbed Areas Act, the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA), which grant security force personnel unrestricted power to carry out their operations. For over two decades, these acts have legitimised routine violence in the valley by identifying civilian populations as threats to national security and authorising the use of excessive force against them, enabling widespread patterns of human rights abuses.<sup>5</sup> Through AFSPA, all security forces, even non-commissioned officers, are granted the right to shoot to kill based on the mere suspicion that it is necessary to do so in order to 'maintain the public order'. The act also ensures immunity from prosecution by establishing that no legal proceeding can be brought against any member of the armed forces without the permission of the central government – a provision that, in practice, leaves victims with no legal mechanisms for seeking justice.<sup>6</sup>

By allowing state security forces to exert power outside of legal accountability and without regard to local concerns, the emergency legislation creates a culture of impunity within the everyday legal system.<sup>7</sup> Although the continued existence of juridical institutions holds out the promise of accountability and redress, routine patterns of cover-up and denial, pervasive throughout the legal system, deny justice and extend military control while maintaining the facade of law.<sup>8</sup> Local actors must confront and negotiate the everyday necessities of engaging with state institutions for the maintenance of order and administration of justice, even as they reject India's occupational authority in the region and hold political aspirations for Kashmir's independence.<sup>9</sup> Nevertheless, the state's reliance on law as a central component of occupation provides opportunities for local contestation and resistance, as actors attempt to force the state to uphold

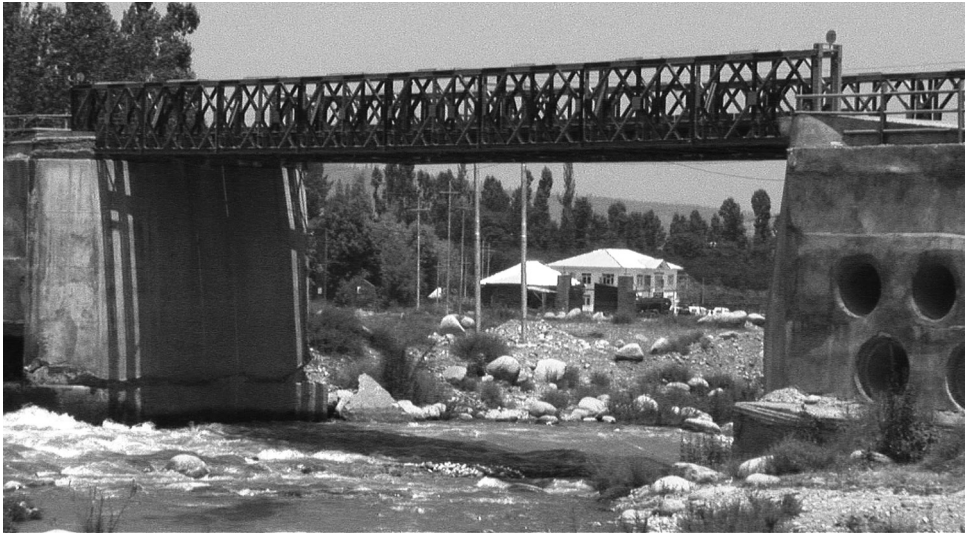
the values to which it purports to adhere or attempt to shame the state by publicly exposing its contradictions.<sup>10</sup>

The Shopian case provides a window onto these dynamics of justice under militarisation and occupation. Based on the authors' ethnographic field research, conducted via a series of research visits in 2009–2010, this article explores how a range of Kashmiri social actors have negotiated the challenges of engaging with the law in the context of routine state violence and legal impunity – from the initial discovery of the bodies to the various local political responses, including those of the local and high court bar associations, and the emergence of the community-based Majlis-e-Mushawarat organisation in relation to what were perceived as state processes of cover-up. We then consider how these actors repositioned themselves as the state continually and repeatedly denied popular claims for justice and, finally, having concluded that justice through legal institutions was impossible under conditions of occupation, came together to seek ways to develop alternative jurisdictional venues and strategies through which to stake their legal and political claims. In conclusion, we consider the significance of the transformation of the Majlis, the everyday violence of occupation and the contemporary significance of Shopian for social protest in Kashmir.

### **Crime and cover-up in Shopian**

Outside Shopian, a small town in Kashmir Valley known for its apple orchards and walnut groves, a stream runs through a wide rocky expanse of riverbed that constitutes the town's periphery. Diversions over the decades have reduced the flow of this once substantial river; during repeated visits by the authors, waters flowed no more than ankle or at most knee deep beneath the well-trafficked Zavora bridge connecting Shopian town centre with the next village (see Figure 1). This particular part of the riverbed is also a highly militarised zone, within direct sight of numerous security camps that reflect the variety of state forces in the region. On the Shopian side of the river, two camps flank the road leading to the bridge: a JKP compound stretching along the northern riverbank and a CRPF camp in a barricaded sports arena appropriated by the state. On the opposite side of the river lies the new residential headquarters of the JKP and, beyond it, just out of sight, a camp of Rashtriya Rifles, the special paramilitary regiment of the Indian Army that operates exclusively in Jammu and Kashmir. Also located in the vicinity is a camp belonging to the Special Operations Group of renegade militants, notorious in the area, who are uniformed, but not answerable to the local superintendent of police.

On the morning of 30 May 2009, the bodies of two sisters-in-law, Neelofar Jan and Asiya Jan, aged 22 and 17 respectively, were found in this highly militarised portion of the riverbed. The women had gone missing the previous evening while they were returning home from their family orchard, one of many small enclosed agricultural plots sheltered by trees and forest foliage along the riverbank. It was by no means uncommon for women from the town to spend



**Figure 1.** Looking out across the Rambi Ara river towards Zavora bridge from the location where Neelofar Jan's body was discovered. Just beyond the bridge stands the residential headquarters of the JKP, one of several state security encampments in this heavily militarised zone

*Source: Photo Bruce Hoffman*

afternoons tending to their gardens and then to walk home down a pathway running along the riverbed to Zavora bridge, where they would take the main road back into Shopian past the security camps. Shakeel Ahmad Ahangar, husband of Neelofar and brother of Asiya, talked about the discovery of the bodies and the state's initial handling of the incident in an interview at his home in Shopian two weeks later. His representation of events as presented here is corroborated by newspaper articles published at the time as well as by independent reports issued by civil society organisations investigating the case.<sup>11</sup>

On the afternoon of Friday 29 May, Neelofar and Asiya left their homes around 3.30 pm to walk together to the small family orchard on the outskirts of town. When they did not return home by 7.30 pm, Shakeel and his brother Aqib became concerned and they went together on a motorbike to look for them, searching all of the roads leading from the garden plot. Their orchard neighbours told them that they had seen the women working and had invited them for tea, but that the women had declined, saying that they were ready to return home. Having checked and re-checked all conceivable routes and shortcuts, Shakeel and Aqib, now joined by their elder brother Manzoor Ahmed and his son, began searching the riverbed with their flashlights and car headlights, but did not see any trace of the women. At that point, they went to the police station and 'orally filed an FIR' (a First Information Report), the written document that police in Kashmir and throughout India are required to produce when they initially learn that an offence has been committed in order to set the criminal justice process in motion. Joined by five to eight constables, they continued searching



the area around the orchard until well after 2 am. Shakeel recalled, 'All along the senior police constable was constantly on the phone. We did not understand with whom he was in touch and for what purpose. We did not understand what it was about.' By now, up to a dozen people were searching with flashlights, moving and scanning back and forth across the area. Shakeel continued:

He was turning away and talking on the phone. We had no idea. Eventually he left his phone and came close to us. We were at last at the place where we finally found Neelofar's dead body later on.

*But you couldn't see the dead body at that time?*

The dead body was not there at that moment. The senior constable said that it is a police case and their responsibility, and that they would find them on their own. He reassured us that they would not have drowned in the river and not to worry. They said we should return, and they took us back to the police station ... Once we reached near the gate they said that we should go home and come back in the morning when the light emerges.

Shakeel and his family paced the house until early dawn, then returned to the police station in the morning, as the officers had instructed, to resume the search. He and his brother waited at the station house gate for thirty minutes, but the officers would not come out to meet them, so they finally decided to keep searching on their own. Five minutes after they began checking the river, the station house officer pulled up with his people in a police vehicle. Shakeel shook hands with him on the bridge and then turned to walk away. At that moment, the officer's driver pointed with his finger into the distance at Neelofar's body lying in the riverbed. 'The station house officer and his driver showed me the dead body from the distance from on top of the bridge down there', he said.

We were in a strange state. We were howling and reached the dead body. Her frock was torn and her top was lifted above her chest. She had deliberately been kept in a sleeping posture. We went on howling.

In a flash I saw a police photographer on the bridge. In another moment I saw the ambulance from the hospital appear. It would normally take twenty minutes for an ambulance to appear. The station house officer actually had a cameraman along, and the ambulance had been arranged earlier.

*Even before they knew about the dead body?*

Yes, while we were all still searching. The police knew everything beforehand. The police knew all, and it is actually their deed.

Shakeel returned home while the others kept searching for Asiya, finally finding her body about 1.5km further down the riverbed. 'Both were on dry surface',

Shakeel said. 'Neelofar was also on dry surface but her feet had been kept in the water a bit.'

The women's bodies were transported to their family home. The police wanted to conduct a post-mortem examination, and Shakeel agreed for local people to transport the bodies from the house to Shopian's district hospital. When he arrived at the hospital, he saw the police superintendent along with a doctor, Nazir Hassan. The superintendent approached Shakeel and said, '*aisey qissey hote rehtey hain, aap fikr mat baro*' (such things keep happening, don't you worry). Hearing this statement, the assembled crowd became angry at the police official's perceived indifference. As the situation became volatile, the superintendent went inside the post-mortem examination room with Dr Hassan, never to return. Realising that they had left the premises, the crowd pressured the district magistrate to summon a new medical team from the nearby district of Pulwama to conduct the examination, including Dr Ghulam Qadir Sofi and a female doctor, Nighat Shaheen. When these doctors emerged from the examination room, the crowd placed a Qur'an in Dr Shaheen's hands and said, tell us the truth:

When the lady doctor emerged, she said it is gang rape. Dr Nighat, she was crying and howling. She said she was being pressured but she did not succumb to it. While she was saying this, the superintendent started shelling teargas shells. He started shelling and cane-charging right inside the hospital.

As tensions escalated at the hospital, Shakeel took the bodies home for burial.

In the days following the event, the JKP and the CRPF cracked down on the family and the town. 'Two days later we were going to dress the burial site', Shakeel said. 'The superintendent stopped us and said "*maro inko*" [beat them]. He said he has come to kill us all. He started thrashing my father-in-law, saying, "I will not thrash you, I will drag you on the ground and tear all your clothes off. You are an elderly person."' The CRPF occupied the graveyard and refused to allow the family entrance to perform prayers for the dead. Meanwhile, public anger increased and clashes broke out across the town, as the superintendent directed the police to smash windows and conduct cane-charges against protesters. The anger was not limited to Shopian; the case and its cover-up inflamed the valley and proved to be a continual topic of agitation, discussion and protest throughout the months to come.

### **Responding to Shopian**

Perceived as the result of the everyday exposure of civilians to armed security forces and of a military and legal system rife with impunity, the events of Shopian acquired special significance for Kashmiris by providing a focal point for their longstanding frustration and outrage over militarisation and

occupation. The state's response to the case was understood as a tangible example of the nature of Indian occupation and the worth of Kashmiri lives, becoming a symbol of the legal and judicial systems. If the state revealed itself as unwilling or unable to conduct an impartial investigation and hold its agents accountable for wrongdoing in such a clear case of malfeasance, then how could the public expect it to provide justice in any instance?

*Political leadership and popular protest: the politics of resistance in Srinagar*

In cosmopolitan Srinagar, massive protests erupted in the days following the Shopian tragedy. Kashmiris publicly demonstrated their outrage at what was widely interpreted as an attempt to cover up the involvement of 'men in uniform' in the perpetration of the crime. To manage this response, the longstanding senior separatist leader Syed Ali Shah Geelani called for extended strikes and peaceful protests 'against the atrocities committed by the troopers in Shopian', situating the events in broader frameworks of occupation and political resistance: 'It is a war tactic to suppress the voice of people but we will never succumb to any sort of oppression. We will continue to struggle for the right to self determination.'<sup>12</sup> Other prominent separatist leaders similarly framed their responses to the Shopian case in terms of specific political demands for troop withdrawal and the revocation of the AFSPA. For example, moderate leader Mirwaiz Umar Farooq, while calling for massive protests and electrical black-outs, said: 'The unbridled power enjoyed by the troopers is cause of such incidents. It is high time to revoke the draconian laws like AFSPA and others. The gory incident should be probed immediately and independently. Culprits should be booked for their crimes.'<sup>13</sup> The authorities immediately placed most separatist leaders in custody or under house arrest to prevent them from leading processions to Shopian.

Kashmiris responded to such calls through strikes and street protests in Srinagar and other parts of the valley. Strikes (*hartals*), the dominant form of political action throughout the decades of conflict, involve the complete shut-down of shops, schools, businesses, offices and banks, thereby registering the widespread alienation and disaffection of the people from the state.<sup>14</sup> During periods of heightened tension, state security forces typically match calls for strikes by expanding troop presence in the streets and imposing undeclared curfews to prevent or counter protest demonstrations. After the events in Shopian, shops were shuttered in Srinagar for eight consecutive days and then intermittently throughout the summer, as people suspended their everyday lives and livelihoods and came out on to the streets to voice their anger in mass rallies and processions. Amidst the intensified police and military presence in the city, these peaceful protests rapidly escalated into street clashes and stone throwing, as young men, their identities obscured by bandanas tied across their faces, hurled bricks and rocks at security force personnel, who responded with canes, tear gas shots and bullets fired into the air.



The protests generated their own momentum. On 4 June, a 22-year-old boy died after being critically injured by a tear gas canister, leading to fresh rounds of protests. Yasin Malik, chairman of the prominent organisation Jammu and Kashmir Liberation Front, led a peaceful protest in the central business district of Lal Chowk after Friday afternoon prayers. Asiya Andrabi, head of the women's organisation Dukhtran-e-Millat, led a women's procession from Jamia Masjid, the central mosque in the heart of the old city. As the crowd gathered, Andrabi launched the procession with a fiery speech, amplified throughout the old city through the mosque loudspeaker and accentuated by the vocalisations of women's wailing: 'Indian troops are attacking the chastity of women to break the resolve of people to continue their freedom struggle', she cried out. 'We want to make them clear that people will carry forward their struggle till the goal is achieved.' Stone throwers clashed with security forces amidst clouds of tear gas in the narrow streets surrounding the mosque, as Andrabi, chanting slogans and carrying her trademark dagger, led the women through the city towards the martyrs' graveyard at Eidgah.<sup>15</sup>

Issuing a statement from an undisclosed location in custody on 7 June, Geelani called on people to hold a mass procession to Shopian on the following day. He also issued a 'resistance schedule' – a week-long calendar outlining a succession of peaceful protests by students, lawyers, government employees and merchants at their respective places of study and work.<sup>16</sup> Police and CRPF effectively prevented the Shopian march by blocking streets and entry points across the city with checkpoints, barricades and spirals of concertina wire, but the protests continued throughout the rest of the week according to Geelani's programme.<sup>17</sup> On 10 June, women throughout Kashmir Valley staged demonstrations to show their solidarity with the victims of Shopian. In Srinagar, female students gathered together to stage sit-ins and light candles in the courtyards of Kashmir University. Many of their signs placed this particular instance of state-sponsored sexual violence into a larger political framework with slogans such as, 'The biggest democracy in the world, the biggest shame' and 'Who will come forward to save our honour and chastity'. One sign proclaiming 'We want justice' featured a drawing of a blindfolded woman holding the scales of justice, while another placard reading 'Hang the killers of chastity' depicted a noose wrapped around the AFSPA.

Tensions were palpable throughout the city during this period, as people carefully tracked the state's use of force against protesters to gauge how the situation might unfold, hour by hour and day by day. Updates on clashes in various neighbourhoods of the city, including numbers of injuries, were rapidly circulated via mobile phone calls and text messages. Each instance of state force against protesters in Srinagar or other towns in the valley prompted public anger as well as apprehension, with the heavy realisation that the situation was continuing to escalate. Many discussions about the protests ended up dealing with issues such as the politics of resistance, the nature of the people's movement and the possibility of acquiring justice from the state. Some people

expressed concern that what was in essence a criminal investigation was becoming conflated with political aspirations and that separatist leaders were channelling the public outcry in order to serve their own agendas. This perspective was expressed in an editorial in a local paper that called for people to focus on justice for the victims' family rather than larger political goals:

by talking in terms of absolute political demands we will neither get justice for the Shopian victims nor will leave any scope for future protest. If we press for demands that this government can never fulfil, we will be left with only two choices; either continue with the strikes indefinitely or concede defeat.<sup>18</sup>

Such a position reflected a pragmatic separation of political movements for self-determination from struggles for justice under the law.

For others, however, legal justice was perceived as impossible under conditions of occupation: how was one to hold the state accountable for violence when the state was the very body that determined accountability? One female university student expressed this succinctly in her justification for public demonstrations:

How can you expect justice in any state that operates militarily? India regards this entire region as a hostile entity, and it uses this to justify an undefined and undeclared war. When people think that the state does not deliver justice, then how can you expect it to be maintained?

For many, street protests – ranging from processions and candlelit vigils to rallies and stone throwing – emerged as the only viable means for achieving justice in the context of state occupation, routinised violence and institutionalised impunity. An NGO worker in his mid-twenties explained how street protests operate as a mode of empowerment and recognition:

It is about conveying the message and making them listen to you. When you are coming on to the streets then your voice is heard. You are making a difference ... In this Shopian case, it is definitely the people who forced the government to investigate the case. There are so many rape cases and nothing done. Now action will be taken – it feels like the protests will be successful. These are small steps leading to a bigger thing.

Another civil society worker in his thirties contextualised the stone throwing carried out by youth by arguing that he became upset when people used the term 'non-violent protests': 'All protests are non-violent, unless the state restricts the space for free speech and demonstration. Then, the public push to re-establish that space.' For such actors, people's street protests provided an alternative means of claiming and establishing authority and pressuring the state

through public performance and claim-making in a space outside of the state's institutional control.

*The bar associations: between law and politics*

The intense public outrage in the capital and throughout Kashmir Valley forced the state administration to issue a response. Two days after the discovery of the women's bodies, Chief Minister Omar Abdullah gave a press conference announcing the formation of a judicial inquiry led by retired High Court Justice Muzaffar Jan. As journalists posed direct questions that channelled popular anger, Abdullah, clearly adopting a defensive posture, explained that his administration had initially attempted to work through standard criminal investigation procedures to find out the cause of the deaths. However, 'since our probe could not be acceptable to anyone given the scheme of things prevailing in the valley', he said, 'we decided to order a judicial probe into the matter'.<sup>19</sup> The Jan Commission was allotted one month to determine whether crimes had occurred and, if so, to identify and recommend action against the responsible parties. The commission was also charged with ascertaining any failure on the part of state agencies in their conduct of the investigation or their handling of the situation. Even as he announced the commission, the chief minister emphatically countered popular interpretations of the case: 'The initial findings do not suggest either rape or murder', he said, 'but now we want to get it cleared beyond doubt.' In a statement that soon proved to be ill advised, he said that the case *prima facie* appeared to be 'a case of drowning'.<sup>20</sup>

The administration's decision to pursue the case through judicial inquiry rather than criminal investigation procedures prompted further public outcry. Kashmiri lawyers in particular dismissed the selection of the retired judge as a political appointment and accused the chief minister of formulating the outcome of the inquiry before it had even begun. The High Court Bar Association's general secretary highlighted the fact that the Shopian police had failed to file a formal FIR: 'The inquiry is an eyewash [*sic*] as there is no basic groundwork in the shape of a full police investigation, which can come only after registering an FIR, and the chief minister himself gave a clean chit to those involved.'<sup>21</sup> Noting that the case was being pursued legally as simply a case of disappearance and accidental death, the association filed a Public Interest Litigation (PIL) in the high court to register FIRs for rape and murder.<sup>22</sup> After receiving the results of the Forensic Sciences Laboratory report, the police finally registered an FIR for rape on 7 June and for murder on 10 June, more than a week after the crimes had occurred. While the case was transferred to a Special Investigation Team (SIT) of the Shopian Police, the Shopian Bar Association and High Court Bar Association themselves launched independent fact-finding committees to look into the case and present their findings to local and high courts, respectively. These non-official investigations ran parallel to state investigations and, in essence, shadowed the state, drawing on established procedures of criminal law in terms of

the collection of statements from relatives and relevant parties and the consideration of evidence from the site where the bodies were found.

The Shopian Bar Association passed a resolution calling into question the impartiality of the Jan Commission at the time of its formation, demanding that the Shopian case be investigated by an impartial international agency such as Amnesty International or the United Nations. On 13 June, the High Court Bar Association led a valley-wide day of protest among lawyers against the state's handling of the case and led a procession throughout Srinagar joined by lawyers who were boycotting the courts. Amidst placards calling for prosecution and punishment, senior advocate Zaffar Shah delivered an address to the crowd:

The administration has started using war crimes to suppress the freedom movement. The men in uniform claim that they are working to protect our lives, but they are attacking our honour and dignity instead ... There is no need to create a special court for this case, but the case should come to an ordinary court so that the ordinary public has access to the trial.

The bar associations also worked together to organise a protest march from Shopian's court complex to its central mosque, followed by a sit-in. There, Mian Qayoom, the High Court Bar Association's president, vowed to the people of Shopian that they would continue the fight for justice in the streets as well as the courts: 'We will fight the case in the high court until justice is delivered. We will continue the agitation until the people involved in the rape and murder of Asiya and Neelofar are exposed and punished.'

The Shopian Bar Association also maintained a stance of cooperation with state agencies combined with public exposure of their mishandling of the case. On the one hand, the association aided police investigations, resulting in the identification of two local eye-witnesses willing to testify that they had heard what sounded like women crying for help from inside a guarded police vehicle parked near Zavora bridge on the night of the victims' disappearances. The Shopian Bar Association entrusted the witnesses to the SIT on 15 June. On the other hand, the organisation also placed public pressure on state agencies. When investigating officials failed to promptly produce the witnesses for the formal recording of their statements, the association grew concerned that they were being pressured to change their statements and publicly expressed its frustration with state institutions for their handling of the matter.<sup>23</sup> The SIT finally produced the witnesses to the chief judicial magistrate on 18 June.

On 21 June, the Jan Commission issued its interim report to Chief Minister Omar Abdullah confirming, on the basis of forensic and autopsy reports, that the women had been raped and subsequently killed.<sup>24</sup> The report identified four officers responsible for destruction of evidence and criminal failure, including the superintendent of police. Although the officers were suspended, lawyers expressed frustration that the SIT and the Jan Commission were not interrogating

them, given the commission's finding that the officers 'had not investigated the case properly and contributed to the destruction, dissipation and suppression of evidence in the case'. One newspaper editorial echoed this concern: '[T]his is a half-hearted, half-measure, more attuned towards protecting the officers than punishing the guilty. If government is sincere, what stops it from initiating a criminal proceeding against the police officers accused of destroying the crucial evidence?'<sup>25</sup> After receiving a ten-day extension to complete its inquiry, the Jan Commission issued its final report recommending prosecution of the officers. The High Court Bar Association filed a PIL in the high court seeking their arrest and prosecution, resulting in the arrest of the four officers on 15 July for their involvement in the destruction of evidence.

The Jan Commission report focused primarily on the procedural conduct of the police in their handling of the investigation, shifting attention away from the question of who perpetrated the crime to the question of how the crime was covered up. The criminal investigation generally ground to a halt after the arrest of the officers, who were released on bail less than a month later. Public pressure also dwindled. On 17 August, the Jammu and Kashmir government sought permission from the central government to hand the case over to the Delhi-based CBI. The High Court Bar Association filed an application before the high court opposing the transfer of the case, arguing that local crimes had to be investigated by local police – in this case, the police station in Shopian – and that the CBI, as a central agency, lacked jurisdiction to launch a criminal investigation in the state of Jammu and Kashmir.<sup>26</sup> Nevertheless, at the same time that the high court considered this application, the state government transferred the case to the CBI, which took over on 9 September.

### *Protests and community organisation in Shopian*

Shopian's residents began an indefinite strike on 30 May, a strike that would continue for forty-seven consecutive days until the arrest of the officers involved in the cover-up. Throughout the entire period of protest, Shopian was dominated by complete shutdowns and massive demonstrations. Every afternoon, thousands of people marched peacefully through the streets of the town, gathering in the early evening at the Jamia Masjid, the historic mosque located in the town centre. They raised slogans expressing their calls for both justice by – and freedom from – the Indian state. '*Asiya*', the crowd chanted, '*tere khon se inqalab aayega*' (your blood will start a revolution). Local residents halted all traffic into the town via formidable roadblocks made of hefty river rocks, scattered piles of pebbles and stones and thick wooden logs. Groups of men, some of them young and impassioned, others elderly and resigned, manned the roadblocks to stop cars, question the drivers and passengers and force them to turn their vehicles around. Inside the town there were other roadblocks constructed by school-age boys – 12 years old and younger – who fanned the flames of small trash piles in the middle of the roads, as they stopped cars that attempted to pass, laughing



and waving sticks as they playfully interrogated the passengers. The streets inside the town were littered with battered barricades covered in graffiti slogans and the debris resulting from days, then weeks, of clashes between street protesters and security forces.

Amidst this atmosphere of anger, distrust and suspicion, local community members gathered to form the Majlis-e-Mushawarat. Exemplifying an emerging form of local community organisation in Kashmir, the Majlis carefully focused its attention on the single objective of legal justice for the families of the victims separate from broader political aspirations. Formally ratified on 13 June, with the approval of hundreds of district residents at the Jamia Masjid, the Majlis includes, among its office bearers, a core group of approximately twenty respected male elders who had been meeting informally to keep track of events, including President Abdul Rashid Dalal, a retired government official, and Vice President and Spokesman Mohammad Shafi Khan, a retired school teacher. In addition to the executive committee, the 155 members of the body include representatives of different sections of society, from merchants and fruit growers to lawyers and religious scholars. As the Majlis came into existence, it announced that the shutdown would continue indefinitely until the offenders responsible for the crimes had been arrested and punished. The Majlis worked to maintain an intermediary stance between the people and the state by monitoring state inquiries and investigations, attending every hearing in the high court of Srinagar and cooperating with investigative agencies, despite its growing sense of frustration with the way the case was progressing. It also took responsibility for maintaining local order by channelling community discontent against the state in non-violent ways (see Figure 2).

As the Majlis' members would later recount, their political neutrality and ability to bring stability to Shopian allowed them to claim an unprecedented position of influence throughout the valley. They called for public action and people responded, strengthening their authority to speak on behalf of the victims and the people of Shopian. In late June, the Majlis broadened the spectrum of protests to a valley-wide programme over the course of the forthcoming week, urging people to raise slogans seeking justice from mosques for ten minutes after evening prayers.<sup>27</sup> Exerting an influence rarely seen outside of political parties, they asked different regions of the valley to observe peaceful protests through shutdowns and sit-ins at the local mosques with the goal of seeking punishment for the accused. The regions responded throughout the week, followed by the entire state on Friday after prayers.

On 16 July, the Majlis called off the strike after six full weeks following the high court order to arrest the four police officials accused of involvement in the destruction of evidence. The chief justice commended the Shopian people for their 'resilience and peaceful agitation', saying to the Majlis: 'The entire nation is with you. You have been peaceful. It is because of you that the case has progressed to this level.' Local news articles also celebrated the Shopian movement with headlines such as 'Resolute Shopian sets example'.<sup>28</sup> Even after calling off



**Figure 2.** In the days following the discovery of the women's bodies, the Majlis-e-Mushawarat emerged to bring order to the town of Shopian and to pressure local and state agencies to pursue justice in the case. Here, Vice President Mohammad Shafi Khan, a retired schoolteacher, speaks outside the local mosque during a period of intense protest  
*Source: Photo Dilnaz Boga*

the strikes, the Majlis continued its efforts to seek justice through alternative means of protest. On the final day of the strikes, several dozen members of the organisation congregated together on a thick cotton rug spread along the roadside at the entrance to the mosque, surrounded by black banners proclaiming in Urdu statements of anguish and resolve. 'Protests continue', one of the Majlis members explained. 'This is the sit-in. Please see that is what we are doing.' The vice president pointed towards the black flags that were tied to the windshields and antennas of every passing vehicle:

You see black flags are everywhere. This symbolises our grief, the sorrow we have suffered, and at the same time this is a symbol, the black flags you see here. A symbol of what? That we are crying for justice, crying for justice. This is a symbol for that.

He emphasised, 'We have faith with the judicial system of India and the judiciary of India. This case is a litmus test for them to make truth prevail. This is what we say. This is our perception.' The cautious efforts of the Majlis to appeal for state justice required the careful maintenance of community discontent. As a female member of the victims' family expressed it, following the release on bail of the four officers charged with tampering with the evidence, 'They provide such facilities to the accused, it burns our hearts. A thief should be treated like a thief, and a murderer should be treated like a murderer.'

### **Alternative venues for justice and redress**

As presented above, the Shopian case elicited a spectrum of responses from social actors who were, in their various ways, pulled between their claims for legal justice and their demands for political autonomy and self-determination. These tensions played out through the logic of cooperation, cooptation and withdrawal, as differently positioned groups weighed their options and determined their strategies in terms of cooperating with state legal processes or challenging the state from alternative jurisdictional spaces. Below, we explore how these options and strategies developed over time, as the state's repeated denials of claims for justice transformed the groups and their modes of response. While this was, to be sure, a gradual process, the defining moment came in December 2009, with the release of the CBI report, a forceful legal and epistemological reproach to widespread Kashmiri understandings of the events at Shopian. Against such a challenge, community actors from across the Kashmiri social spectrum gathered at a forum dedicated to addressing institutional denial of justice in the case to develop a shared response to the institutionalised injustice and to consider alternative responses. Concluding that justice through legal institutions is impossible in conditions of occupation, the groups explored alternative venues for justice and redress and considered strategic possibilities for using state law to expose the nature of occupation in Kashmir to a global audience.

#### *The CBI report: discrediting evidence, experts, witnesses and the people*

After the Jan Commission released its report and the Majlis called off its strikes, popular protests and street demonstrations declined in intensity. Shopian was not forgotten, however, as the public cautiously tracked the progress of the CBI inquiry through the agency's strategically placed leaks in the Indian media throughout the autumn. In December 2009, protests flared again when the CBI announced that it had completed its investigation and concluded that the two women had not been raped and murdered, but rather had drowned. The report's findings – formally submitted to the high court amidst the dramatic protest described in the introduction to this article and subsequently revealed to the public through a press conference at Srinagar's fortress-like Humhama police station – focused on discrediting the existing body of medical, forensic and legal knowledge about the case and criminalising individuals who had advocated on behalf of the victims' family. In this way, the CBI report and presentation drew on the authority of the central government to coercively deny any alternative popular understandings of the nature of the violence against the two female victims – and any public efforts to make claims against the state.

First, the CBI sought to discredit existing medical and forensic evidence, especially the evidence relating to rape. Dr Nighat Shaheen, the female doctor who had performed the second post-mortem and gynaecological examination on the bodies in Shopian, stated in her deposition before the Jan Commission that she

had taken vaginal samples from the women's bodies in the presence of two other doctors, prepared them at the Shopian hospital, sealed them and had them sent to the forensic laboratory. She was suspended on 25 June on the grounds of negligence during the autopsy, then repeatedly questioned by the SIT and the CBI. In late August, a prominent Indian newspaper claimed that the samples did not belong to the deceased women, suggesting that the evidence had been tampered with.<sup>29</sup> Subsequent media reports in the autumn claimed that Dr Shaheen had confessed to the CBI, first, that she had prepared the vaginal swab samples from surgical gloves used to examine other women in the district hospital in Pulwama the following day; and, second, that she had prepared the slides from her own vaginal swabs, a revelation that captured public attention and effectively destroyed all of the accumulated medical and forensic evidence of rape.<sup>30</sup> In October, the CBI, with permission from Shakeel and Neelofar's father, exhumed the bodies for re-examination by a team of doctors from Delhi. Within hours, this team reported that Asiya's hymen was intact, which, they concluded, ruled out the possibility of rape.<sup>31</sup>

Second, the CBI sought to discredit the eye-witness accounts that placed the women in a police truck on the bridge on the night of their disappearance. The Press Bureau of India (PBI) reported on 16 November that the two eye-witnesses identified by the Shopian Bar Association, when questioned by the CBI, had denied their earlier statements, claiming in their depositions that they had been 'coerced by the people'.<sup>32</sup> The CBI recorded second statements from the witnesses, prompting the Shopian Bar Association to file a suit against the Sessions Court for allowing such re-examination.

Third, the CBI sought to punish and intimidate the family members, medical experts and local lawyers who had been struggling for justice in the case. Although it did not summon any of the four police officers who had been suspended, arrested and later released on bail, it did conduct confrontational interviews with Shakeel a dozen times, asking pointed questions about his associations with the separatist leader Geelani and the High Court Bar Association's president Mian Qayoom, and scrutinising the family's bank accounts and tax papers. Upon submitting its report to the high court, the CBI issued charge sheets against a wide range of people from Shopian for conspiracy against the state, including six lawyers, five doctors and two locals, one of them a brother of one of the victims.<sup>33</sup>

The CBI report represented the state's final word on the Shopian case. Rather than exploring the question of what had happened to the women, the CBI findings focused almost exclusively on the goals of dismissing the accumulated body of forensic and eye-witness evidence, discrediting the existing body of knowledge about the crimes and how they had occurred and on criminalising community members who had been making claims against the state in their pursuit of justice. Framing its findings in the highly technical language of medical and legal expertise, the CBI report effectively invoked the authority of the state to produce seemingly irrefutable and incontrovertible knowledge about



the two women's bodies.<sup>34</sup> In the CBI's visual presentation of their findings to reporters at the Humhama press conference, the single slide showing the low water level of the stream – a detail about the case that figured prominently in public knowledge and rejections of the drowning theory – was rushed over and treated as inconsequential.<sup>35</sup> Nevertheless, as Shopian's Majlis rejected the findings by publicly burning the report, it also began the process of contesting the CBI's scientific evidence by producing a scientist from within the state's own forensic laboratory, accusing the state of incompetence and eventually producing its own detailed rebuttal to the CBI's forensic analysis and conclusion.

*Civil society responses: exposing the contradictions of the state*

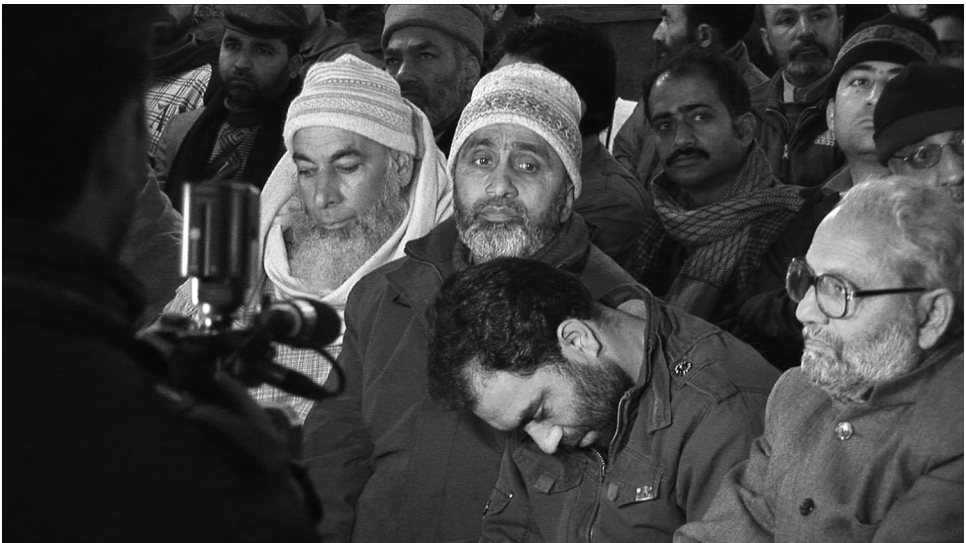
As the CBI findings effectively closed the door on the possibilities for legal justice in the Shopian case, civil society groups were forced to reconsider their positions and strategies in relation to the state, including whether to cooperate with state institutions that are themselves responsible for acts of violence or whether to pursue alternative strategies for the deliberation and pursuit of justice. Since the occurrence of the crime, the Majlis had been working with a series of state investigative agencies, even as it had consistently expressed scepticism in its public statements about the possibilities for justice through the state legal systems and criminal justice processes. The demonstration outside the high court complex in Srinagar marked a turning point in its relationship with the state. Just as the state sought to legitimise its authority to speak about the crime through its highly ritualised presentation of the CBI report in the formal chambers of law, the Majlis claimed a different sort of authority by publicly and dramatically burning the report, thereby signalling its rejection not only of the report, but also the promise of the state to deliver justice to the people. By positioning its protest not inside the hall of justice, but just outside its doors, the Majlis was communicating to the state and the public its claim to an alternative space for speaking about the case, based on a source of authority deriving not from the state, but rather from the community itself.<sup>36</sup>

The day prior to the CBI's submission of its report in the high court, the Majlis joined with the Jammu and Kashmir Coalition of Civil Society (JKCCS), one of the leading civil society organisations based in Srinagar, to convene a public day-long forum entitled 'Shopian: Institutionalised Denial of Justice' in the conference room of a prestigious hotel in the city centre. Standing in front of a banner reading, 'Justice delayed is justice denied', the moderator announced the objective of the forum:

In this case, Shopian case, we exhausted all the remedies, all the options that were available to us. We cooperated with the Jan Commission against the wishes of the people of Jammu and Kashmir. We cooperated with the police. We even cooperated with the CBI. Nothing has come out. But today we shall be discussing the future course of action.



The forum marked a new moment in the case, one in which various community actors that had been positioning themselves in various ways in relation to the state (including street protesters, members of the bar associations, Shopian's Majlis and established civil society groups) came together to develop a common response. Here, the Majlis was positioned in a central role, facing the critical challenge of explaining its decision to cooperate with state agencies to a Srinagar-based crowd that had long maintained a fierce opposition to the notion on the grounds that justice is impossible from state institutions under conditions of occupation and that the very acknowledgement of state authority in such matters simply legitimises the legal and political status quo in Kashmir (see Figure 3). Majlis members spoke publicly about why they had decided to cooperate with state investigative agencies, how they had lost faith in state institutions for delivering justice and what kind of path they envisaged in moving forward in their struggle. Vice president and spokesman Mohammad Shafi Khan explained that, from the perspective of the local committee, cooperation with state agencies did not mean cooptation:



**Figure 3.** The Shopian forum in Srinagar brought together a diverse spectrum of actors to discuss a common response to the state's institutional denial of justice in the case, including civil society leaders, youth activists, members of the bar associations and the Majlis. Seated at the centre of the crowd, Shakeel Ahmed, husband and brother of the victims, displayed grief and anger through his hanging head and slouched shoulders, a distinctive posture that had itself come to symbolise the entire community's struggle

*Source:* Photo Bruce Hoffman

We in Shopian, from our platform there, said that we are not concerned with this, that, whichever agency is going to investigate the case. It is the duty of the state to have the case investigated and to apprehend the culprits. Our one demand is identification of the culprits ... We didn't have any experience to assess the role of CBI in this matter. We had, let me tell you frankly, we thought we had no alternative at that time other than cooperation with CBI. It was under tremendous pressure, much to the dislike of the people of Shopian and to the dislike of the people of Srinagar, that we decided to cooperate with the CBI. But now I think even that on our part perhaps was not in the interest of things.

As the forum progressed, civil society members worked to frame the Majlis' decision to pursue its case through cooperation with state agencies in terms of its strategic benefit in establishing a record of institutional denial of justice at all levels – legislative, executive and judicial – and thereby building the foundation for legal and moral appeals for intervention to the international community. In response to arguments concerning the futility of working through the state judiciary under conditions of occupation, Parvez Imroz, chairman of the JKCCS and a leading human rights lawyer in Srinagar, pointed out, 'You have to approach the institutions to expose them'. The international community, he said, will expect to see that local communities making claims of systemic human rights abuses have gone through the formal channels of jurisprudence. They will ask:

Have you approached the State Human Rights Commission? Have you approached the Indian judiciary? The state judiciary? Have you approached the Supreme Court of India? ... What is important for Kashmir, and for any resistance struggle, is delegitimising the state. You know, morally isolating the state. You have to expose the contradictions of the state. You cannot approach the international organisations or governments outside without them asking you, have you gone through the proper channels?

High Court Bar Association president Mian Qayoom echoed this invocation of the possibility of international intervention, emphasising that under such conditions, 'the only course of action open to you would be that there should be a public trial, a public trial in which you should bring the people of repute, and those people of repute must report the evidence of the people who know about the crime'. In their final resolution, forum participants noted that 'justice could not be expected from a system that perpetuates the crime' and issued a call for 'an independent probe by an autonomous international body [to] be constituted for the Shopian crime and the following cover-ups'.<sup>37</sup>

At a subsequent consultative meeting of civil society and local community members entitled 'Shopian: birth of a response', held in Shopian on 10 January 2010, the Majlis redirected their search for justice away from the state by asking the International People's Tribunal (IPT) on human rights and justice in Kashmir to investigate the case and identify the individuals and agencies involved in the

crime and the cover-up through a team of neutral international experts.<sup>38</sup> (The IPT is an existing programme coordinated by JKCCS and other prominent civil society activists based in Kashmir, India and the US to examine, document and raise awareness about patterns of militarisation and state violence in Kashmir.) Five months later, Majlis members reported that the IPT had repeatedly written to Chief Minister Abdullah requesting access to the evidentiary materials as well as the personnel of army, paramilitary and police camps in the area, without response. In the absence of meaningful state adjudication of the case, Shopian continues to signify to the people of Kashmir the power of the state to exercise its occupational authority through a legal system that promises accountability and redress, but instead delivers impunity, injustice and violence. However, it has also come to signify the power of the people to stand up to the state and reveal its contradictions and to advance their claims through alternative jurisdictional venues by exposing the facade of the law.

### **Conclusion: such things keep happening**

In this article, we have explicated developments in the Shopian tragedy over time in order to demonstrate how the state has exercised its occupational authority through practices of denial and cover-up that are built into the very legal institutions that claim to protect the rights and interests of the people. Our analysis has also explored ways in which diverse social actors have located themselves in relation to state legal institutions as they make claims for justice under conditions of occupation in Kashmir. Although, in the end, there was no justice in the case of Shopian – indeed, it is remembered by Kashmiris as a stark illustration of the violence of occupation and of state impunity – groups have been able to shape its symbolism through their willingness to cautiously cooperate with the law or through their resistance to the case. In the process, groups were also transformed by their activities, in particular Shopian's Majlis-e-Mushawarat. At first identifying itself as a community-based organisation pursuing justice on behalf of the local family of the victims, the Majlis has gradually redefined and reoriented itself as a broad-based civil society organisation leading a sustained moral struggle in response to the normalised violence routinely inflicted through militarisation and occupation. Along the way, the Majlis has increasingly found itself pushed to the centre of public debates about practices of social protest, political power and the law.

On the anniversary of Asiya and Neelofar's deaths, the Majlis held a demonstration to reiterate its continuing struggle for justice in the case.<sup>39</sup> It announced the plan to create a memorial to the women, 'a symbolic protest, an everyday protest', as one of the Majlis executive committee members described it in an interview two weeks later, 'in the shape of a memory ... raised in the memory of Asiya and Neelofar and dedicated to all such womenfolk who have been victims of such instances in twenty-five years'. A temporary wall stands at the site where the memorial will be constructed at the base of the cemetery hill where the women's bodies are buried, close to the family home, their shared gravesite now

overgrown with tangled grasses and weeds. Designed as a ‘wall of memory’, the temporary memorial literally situates Shopian within a larger map of cases of sexual violence across the state of Jammu and Kashmir, thereby expressing the Majlis’ continuing commitment to the pursuit of justice, not only in the Shopian case, but in all such cases in the past and future (see Figure 4). One Majlis member described the organisation’s new role in the community:

Our stand is that we will fight in a democratic manner ... until justice is delivered. And then it will be over ... then the Majlis will be no more, then we will disband. Still there are no traces of justice right now. Do you feel justice somewhere? I am not feeling it ... until then, Majlis will continue its work as a civil society [organisation]. In the first instance, we were having only this case, because Majlis was created for this case only. But during its travel, its journey, so many things have been joined with this ... the contours have been a little bit changed. So we are now talking about all such cases, all such incidents. If justice in this case would have been delivered, I’m quite sure there should have been no more role of Majlis, because it particularly was created for this only.



**Figure 4.** Designed by the Majlis, the memorial wall established at the victims’ burial site links the Shopian case to other instances of sexual violence that have occurred with impunity under conditions of militarisation in Kashmir. Installed on the first anniversary of the women’s deaths, the wall of memory presents a model of a permanent memorial designed to provide an ‘expression of our commitment that we shall never forget our daughters, sisters & mothers whose honour was violated and lives snatched by the cruel hands of tyranny in Jammu and Kashmir’. The two women are buried side by side on the overlooking hillside

Source: Photo Bruce Hoffman

The Majlis aspires to meet with family and community members from other localities who have themselves experienced sexual violence, to share their stories of suffering, to document the failures of the state legal and judicial systems in their cases and to articulate patterns of institutionalised denial of justice across the period of the conflict. New cases, as they occur, will be added to the memorial wall.

Meanwhile, life in the town of Shopian has returned to the routines that are considered normal under the conditions of occupation and militarisation in Kashmir. Steady lines of cars, trucks and military transport vehicles move slowly along the road connecting Shopian to the national highway and, by extension, to Srinagar. In the central business district, local residents on foot purposefully navigate the hilly, steeply inclined streets lined with stalls and shops, weaving in and out of traffic as they go about their daily business in the marketplace, conducting financial transactions at the Jammu and Kashmir bank, purchasing computers for their small businesses, making arrangements for summer weddings and buying vegetables from carts for the family's evening meal. Small groups of schoolgirls in blue and white uniforms hold hands and gossip as they walk home from classes along the roadside, their movements watched by armed CRPF and JKP personnel stationed on the street corners. Shakeel's shop, a small ready-made furniture store that he owns with his brother, is open for business, next door to the Shopian police station and down the block from Shopian district hospital. Jamia Masjid remains the vibrant heart of the town, the front entrance once claimed through daily speeches and sit-ins now under reconstruction, dug out and lined with piles of chipped asphalt and gravel. Only a few signs and black banners still hang on the exterior walls of the mosque. In the shadow of the Zavora bridge, villagers bathe and wash their vehicles in the Rambi Ara river, which continues to flow quietly through their lives.

In one sense, the Majlis has failed to achieve its objective of justice for the family of the victims. But, in another sense, the Majlis has succeeded in exposing and documenting the ways in which the law as practised in Kashmir works to protect and promote state claims of occupational authority rather than administer justice to the people. It has succeeded in demonstrating the possibility of using this strategic approach as the basis for projecting appeals for accountability and redress, not to the occupying state, but rather to the international community. And it has succeeded in displaying the potential power of a different sort of claim for justice, one based on the legal and jurisdictional authority of the people rather than the sovereign state. 'The law is on our side', the Majlis spokesman said in an interview in Shopian in July 2010, 'but how they go about the law is a different matter'. In a context where the state legal system is itself a mechanism of occupation, the lasting impact of the Majlis has not been in securing justice in the case, but rather in demonstrating the power of the people to expose state claims of moral authority, while also claiming their own space of jurisdictional possibility outside of the domain of state law. As the president explained:



The issue is a moral one. We have shown that we have the courage to stand up. If you show the people this, then on a moral basis, on a human basis, they will believe in it. They will believe that there has to be resistance.

## References

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1. Police, military and paramilitary forces include the Indian Army, Border Security Force, JKP, CRPF, Indian Reserves Police Force, Indo-Tibetan Border Police and the Rashtriya Rifles as well as vigilante structures such as the Special Operations Group (SOG) of the police, the reformed militant militia run by the Rashtriya Rifles, and the armed civilians associated with the Village Defence Committees.
2. According to figures compiled by the International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir, 'there are approximately 671 security camps in Kashmir stretched over approximately 90,000 acres of farmland and 1,500 buildings'. See *Militarisation with Impunity: a brief on rape and murder in Shopian, Kashmir* (Srinagar, 2009), available at: <http://kashmirprocess.org/reports/shopian/>.
3. For a vivid account of how militarisation pervades everyday life in Kashmir, see Sanjay Kak's documentary film *Jashn-e-azadi (How we celebrate freedom)* (New York, Indiepix, 2007); and Basharat Peer's memoir *Curfewed Nights: one Kashmiri journalist's frontline account of life, love, and war in his homeland* (New York, Scribner, 2010).
4. In this way, Kashmir provides an opportunity to analyse the workings of lawfare under conditions of occupation. Lawfare (described by John L. Comaroff and Jean Comaroff as 'the resort to legal instruments, to the violence inherent in the law, for political ends') entails both the use of law as a means of controlling state populations as well as the use of law as a 'weapon of the weak, turning state authority back on itself by claiming legal spaces and commissioning formal courts to make claims for resources, recognition, voice, integrity, and sovereignty'. See 'Reflections on the anthropology of law, governance, and sovereignty in a brave neo world', in J. Eckert, F. von Benda Beckman and K. von Benda Beckman (eds), *Rules of Law and Laws of Ruling: on the governance of law* (Farnham, Ashgate, 2009), pp. 36-7.
5. Indian counter-insurgency policies and practices in Kashmir Valley have followed classic patterns of dirty warfare, as civilian populations are identified as threats to national security and subjected to brutality, excessive force and other forms of systematic abuse and violation. Such routine violence has included extrajudicial killings, catch and kill campaigns, fake encounter deaths and disappearances; torture in the numerous military camps and interrogation centres that sprawl across the valley; rape, harassment, molestation and sexual assault; raids and forcible search and seizure; use of civilians for forced labour and as human shields for gun battles in rural areas; and destruction of crops and homes through arson. See Human Rights Watch, *Everyone Lives in Fear: patterns of impunity in J&K* (2006), available at: <http://www.hrw.org/en/node/11179/section/1>.
6. On the AFSPA sanction clause, the Public Commission on Human Rights (PCHR) and the People's Union for Democratic Rights (PUDR) state in a joint report that, 'it is believed that more than 300 cases were sent to the Indian government by the state in which police

investigation had resulted in indictment of the armed forces personnel. Whatever be the exact number of such cases the point is that in not a single case has the sanction been given so far.' See PCHR and PDHR, *Missing in Action: report on the judiciary, justice and army impunity in Kashmir* (2007).

- 7 For more on how emergency legislation translates into pervasive control over everyday life in Kashmir, see Haley Duschinski, 'Reproducing regimes of impunity: fake encounters and the informalization of violence in Kashmir Valley', *Cultural Studies* (Vol. 24, no. 1, 2010), pp. 110–32; and Duschinski, 'Destiny effects: militarization, state power, and punitive containment in Kashmir Valley', *Anthropological Quarterly* (Vol. 82, no. 3, 2009), pp. 691–718.
- 8 See Ashok Agrwaal, *In Search of Vanished Blood* (Kathmandu, Nepal, South Asia Forum for Human Rights, 2008), available at: <http://works.bepress.com/ashokagrwaal/19>. Agrwaal shows how the Jammu and Kashmir High Court handled cases of enforced disappearance of Kashmiris from custody during 1990–2004 in order to illuminate how the high court's everyday workings, in the context of overwhelming state power, function to maintain and enforce state impunity. Analysing a sample of ninety-six cases in which petitions for a writ of habeas corpus were advanced, Agrwaal and his research team find that filing 'makes no difference to any instance of enforced disappearance and its outcome in Kashmir' (p. 23). See also the report published by the Allard K. Lowenstein International Human Rights Clinic of Yale Law School entitled *The Myth of Normalcy: impunity and the judiciary in Kashmir* (April 2009) on the lack of legal remedies for human rights violations. See also Human Rights Watch, *Everyone Lives in Fear*, op. cit.
- 9 This same tension plays out during elections in Kashmir. For example, turnout was unexpectedly high during the most recent round of state assembly elections in November and December 2008. Indian officials, authorities and media commentators generally interpreted the high turnout as evidence of widespread popular acceptance and endorsement of Indian administration in the region, but Kashmiris explained it in terms of their recognition of the practical need for everyday governance – a system in place to administer the basic necessities of everyday life. Gautam Navlakha writes that, 'the state government has the power to build roads, schools, health centres, create jobs, stop land transfers to non-state subjects, etc. In short, it provides material succour to a population which has suffered immensely for over two decades. Thus, people were wise enough to realise that assembly polls may help them but they do not amount to disowning the right of self-determination. The point is that elections to state legislatures, in general, and the Jammu and Kashmir Assembly, in particular, offer a narrow range of prospects and relate more to issues of employment, education, health, etc. People participate out of hope for immediate relief more than any other reason.' See G. Navlakha, 'Jammu and Kashmir elections: a shift in equations', *Economic and Political Weekly* (Vol. 44, no. 3, 17–23 January 2009), available at: <http://epw.in/uploads/articles/13080.pdf>.
- 10 For more on how marginalised groups can leverage legal ideals to their own advantage, see Bruce Hoffman, 'Minding the gap: legal ideals and strategic action in state legislative hearings', *Law & Social Inquiry* (Vol. 33, 2008), pp. 89–126; and Katherine Beckett and Bruce Hoffman, 'Challenging medicine: law, resistance, and the cultural politics of childbirth', *Law & Society Review* (Vol. 39, 2005), pp. 125–70.
- 11 See Independent Women's Initiative for Justice, *Shopian: manufacturing a suitable story* (Delhi, 2009), available at: <http://www.kashmirtimes.com/shopian-report.pdf>; and International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir, *Militarisation with Impunity*, op. cit. See also Harsh Mander, 'Torment in Shopian', *Hindu* (2 August 2009), available at: <http://blogs.thehindu.com/delhi/?p=27164>.
- 12 'Separatists condemn Shopian incident', *Rising Kashmir* (1 April 2009), available at: [http://www.risingkashmir.com/index.php?option=com\\_content&task=view&id=13430](http://www.risingkashmir.com/index.php?option=com_content&task=view&id=13430).
- 13 Ibid.
- 14 Throughout the summer, Kashmiris discussed and debated the effectiveness and relevance of hartals as the dominant form of protest action in the region, with some writers expressing frustration at the ways in which strikes disrupt everyday life. See, for example, Mohammed

- Aslam, 'Hartal is a peaceful means of resistance!', *Greater Kashmir* (12 June 2009), available at: <http://www.greaterkashmir.com/news/2009/Jun/12/hartal-is-a-peaceful-means-of-resistance-34.asp>; and Zulfikar Majid, 'Kashmir – the land of hartals', *Greater Kashmir* (8 June 2009), available at: <http://www.greaterkashmir.com/news/2009/Jun/8/kashmir-the-land-of-hartals-2.asp>. However, Anuradha Bhasin Jamwal explains that hartals are the only option available to an angry and alienated public when human rights abuses continue unabated, when the state fails to respond to victims in meaningful ways and when all other expressions of resistance are disallowed. See 'Hartal fever! How justified?', *Kashmir Times* (14 June 2009), available at: <http://www.kashmirtimes.com/archive/0906/090614/>.
- 15 'Asiya breaches cordon reaches Narwara', *Rising Kashmir* (14 July 2009), available at: [http://www.risingkashmir.com/index.php?option=com\\_content&task=view&id=13657&Itemid=1](http://www.risingkashmir.com/index.php?option=com_content&task=view&id=13657&Itemid=1).
  - 16 Arif Shafi Wani, 'No strike from Tuesday', *Greater Kashmir* (7 July 2009), available at: <http://www.greaterkashmir.com/news/2009/Jun/7/-no-strike-from-tuesday-59.asp>.
  - 17 Gowhar Bhat, 'Shopian march foiled', *Greater Kashmir* (9 June 2009), available at: <http://www.greaterkashmir.com/news/2009/Jun/9/shopian-march-foiled-61.asp>.
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  - 19 A. G. Noorani, 'A flawed inquiry', *Frontline* (Vol. 26, no. 17, 15–28 August 2009), available at: <http://www.flonnet.com/fl2617/stories/20090828261703500.htm>.
  - 20 Parvaiz Bukhari, 'Omar jumps the gun on Shopian', *India Today* (12 June 2009), available at: <http://indiatoday.intoday.in/site/Story/46041/Mail%20Today%20Stories/Omar+jumps+the+gun+on+Shopian.html>.
  - 21 Shujaat Bukhari, 'Fire in the valley', *Frontline* (Vol. 26, no. 13, 20 June–3 July 2009), available at: <http://www.flonnet.com/fl2613/stories/20090703261301700.htm>.
  - 22 Rashid Paul, 'HC seeks detailed govt response on June 29', *Rising Kashmir* (6 June 2009), available at: [http://www.risingkashmir.com/index.php?option=com\\_content&task=view&id=13579&Itemid=1](http://www.risingkashmir.com/index.php?option=com_content&task=view&id=13579&Itemid=1).
  - 23 'SIT detains key witnesses', *Rising Kashmir* (9 July 2009), available at: [http://www.risingkashmir.com/index.php?option=com\\_content&task=view&id=14708&Itemid=1](http://www.risingkashmir.com/index.php?option=com_content&task=view&id=14708&Itemid=1); see also 'Shopian probe goes awry', *Rising Kashmir* (21 November 2009), available at: [http://www.risingkashmir.com/index.php?option=com\\_content&task=view&id=18541&Itemid=55](http://www.risingkashmir.com/index.php?option=com_content&task=view&id=18541&Itemid=55).
  - 24 'Justice Jan commission of enquiry on the Shopian deaths', *Hindu* (11 July 2009), available at: <http://www.hinduonnet.com/nic/shopian/>.
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  - 30 Arun Joshi, 'Shopian victims' swab samples switched', *Hindustan Times* (27 September 2009), available at: <http://www.hindustantimes.com/News-Feed/jandk/Shopian-victims-swab-samples-switched/443032/Article1-458648.aspx>; and Joshi, 'Another twist to Shopian probe', *Hindustan Times* (16 November 2009), available at: <http://www.hindustantimes.com/Another-twist-to-Shopian-probe/Article1-476819.aspx>.

- 31 For a discussion of the CBI's treatment of this forensic evidence, see Parvaiz Bukhari, 'Exhume this investigation', *Tehelka* (Vol. 6, no. 40, 10 October 2009), available at: [http://www.tehelka.com/story\\_main42.asp?filename=Ne101009exhume\\_this.asp](http://www.tehelka.com/story_main42.asp?filename=Ne101009exhume_this.asp).
- 32 'Shopian: CBI completing "hush-up" process, says Majlis', Press Bureau of India (16 November 2009), available at: <http://www.pbinewsonline.com/pbionline/Detail.aspx?ID=7629>. The article also emphasises that the Majlis accused the CBI of covering up the case by 'harassing, pressurizing the witnesses' to change their testimony.
- 33 Shujaat Bukhari, 'CBI rules out rape, murder in Shopian case', *Hindu* (14 December 2009), available at: <http://beta.thehindu.com/news/national/article64907.ece>. The charge sheet names six doctors: Bilal Ahmad, Nazia, Nighat Shaheen, Ghulam Qadir Sofi, Mohammad Maqbool Mir and Ghulam Ahmad Paul; five Shopian lawyers: M. Y. Bhat (president of the Shopian Bar Association), Abdul Majid Mir, Mushtaq Ahmad, Altaf Mohammad and Sheikh Mubarak; and two civilians: Ali Mohammad Sheikh and Zahoor Ahmad Ahangar (brother of Shakeel).
- 34 On the use of forensic science as a rhetorical strategy in law, see Sheila Jasanoff, 'The eye of everyman: witnessing DNA in the Simpson trial', *Social Studies of Science* (Vol. 28, nos 5-6, October 1998), pp. 713-40.
- 35 See Anuradha Bhasin Jamwal, 'Shopian: CBI on a spree of manufacturing lies', *Countercurrents* (16 December 2009), available at: <http://www.countercurrents.org/jamwal161209.htm>.
- 36 See Ishfaq Tantry, 'Ahead of hearing, Majlis distrusts from CBI probe', *Rising Kashmir* (13 December 2009), available at: [http://www.risingkashmir.com/index.php?option=com\\_content&task=view&id=19072](http://www.risingkashmir.com/index.php?option=com_content&task=view&id=19072).
- 37 At the end of the forum, the participants issued the following four statements:  
 That the Shopian tragedy of May 30, 2009 is an outrage for all the people of Kashmir and not just the victims' families or people of the district along; that civil society in Kashmir has lost faith in all state institutions for delivering justice in the tragedy the case of rape and murder of Asiya Jan and Neelofar Jan. Justice cannot be expected from a system that perpetuates the crime; that an independent probe by an autonomous international body be constituted for the Shopian crime and the following cover-ups. It is an appeal to the international community. Kashmir civil society will continue to fight for justice in the Shopian case and expose all cover-ups during various investigations of it; that all state officials involved in the cover-ups, destruction of evidence, and dereliction of duty be made party to the case.
- The participants also made the following observations:  
 That the denial of justice in the Shopian case and numerous others in the past paints people of Kashmir as habitual protesters and takes away meaning from public demands of justice in a militarised and conflict setting; that cover-up attempts are aimed at protecting or projecting a particular image of a system that perpetuates Shopian like crimes at the cost of justice; that denial of justice in such cases is not just aimed at whitewashing a long record of state crimes in Kashmir but also demonises people demanding justice; that injustices in Kashmir are becoming more and more systemic in nature with the passage of time.
- 38 Shujaat Bukhari, 'Majlis calls for international tribunal probe in Shopian case', *Hindu* (10 January 2010), available at: <http://beta.thehindu.com/news/national/article78670.ece>.
- 39 Khalid Gul, 'Memorial for Asiya, Neelofar', *Greater Kashmir* (31 May 2010), available at: <http://www.greaterkashmir.com/news/2010/May/31/memorial-for-aasiya-neelofar-46.asp>.