

KASHMIR:
THE VIEW FROM SRINAGAR

21 November 2002



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KASHMIR: THE VIEW FROM SRINAGAR

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Recent state elections in Jammu and Kashmir, and the loss of power by the National Conference party that has dominated politics there since independence, have created a spark of hope that political tensions in the Kashmir Valley could de-escalate. It was a badly flawed election in 1987 that helped fuel a long running militant insurrection and general uprising, and tens of thousands have died in subsequent violence. Violence has been further amplified by historical strategic tensions between India and Pakistan over Jammu and Kashmir, and Kashmiri hopes for a political voice have often unfortunately become caught up in this broader international rivalry.¹

For the first time since independence, a non-National Conference leader is in power. Equally historic, it is the first time that the state's leadership is different than the ruling party in New Delhi – a very welcome sign of political liberalisation. While the state elections have been seen as a window of opportunity for peace in Kashmir, it is also clear that they only represent a first step in unravelling the long cycle of violence. Indeed, if the Indian government chooses to act as if the elections alone were sufficient to address a myriad of Kashmiri grievances, it will only be a matter of time before violence again escalates – just as it did in the run-up to the ballot itself. Indeed, violence has continued unabated after the elections and the formation of the new government in Srinagar.

Pakistan's support for cross border infiltration by militants has directly contributed to the ongoing

conflict in the region. But some of the violence in Srinagar and the rest of the valley and the abiding Kashmiri disaffection with New Delhi are the product of India's own actions. Indian security forces have often practised draconian means in their efforts to combat Kashmiri militants and separatists and have relied heavily on militia groups that have acted violently and extra-legally. Human rights abuses abound as a plethora of anti-terrorism legislation is used to crush Kashmiri dissent and political aspirations. Many Kashmiris also rightly bemoan the general lack of economic and educational opportunities in the valley and a steadily creeping rot of corruption in local institutions.

India would be wise to view the election results less as an embrace of India by Kashmiris than a rejection of New Delhi's use of military force and disrespect for human rights as well as a desire for peace and economic security. The voter turnout in the valley – virtually non-existent in Srinagar – reflected Kashmiri scepticism that elections translate into meaningful political, social and economic change. It is up to Kashmir's New Chief Minister, Mufti Mohammad Sayeed to prove them wrong.

The new Kashmir government has vowed to meet the grievances of Kashmiris by restoring peace, restraining the security forces, preventing human rights abuses, and reviving an economy devastated by war. However, Chief Minister Mufti Sayeed is less inclined to hold unconditional talks, as he had earlier pledged with Kashmiri militants and separatist parties, preferring to leave that task with New Delhi. In the absence of political reconciliation and accommodation within Kashmir and the beginnings of a serious political dialogue between India and Pakistan, hopes for an early end to this long running conflict will remain just that.

¹ This report focuses on the Kashmir problem from the perspective of the (overwhelmingly Muslim) people of Srinagar and the Kashmir Valley. Forthcoming ICG reports will address the issue from the perspectives of Islamabad and New Delhi.

RECOMMENDATIONS

To the government of India

1. Ratify the First Optional Protocol to the International Covenant on Civil and Political Rights and the Convention Against Torture.
2. Subject the Prevention of Terrorism Act and all other anti-terror laws to annual parliamentary review, define the specific criminal acts governed by the measure, and bring charges against individuals through the Act using the same criminal procedure and courts as in all other crimes.
3. Investigate fully and impartially all reports of extra judicial killing, disappearance, custodial death, torture and rape by security and paramilitary forces; prosecute those responsible, including military personnel, in civilian courts, and publish both investigations and court proceedings.
4. Disband the Special Task Force, the *Ikhwan al-Muslimoon* militia and other unofficial paramilitary groups and end the practice of giving their members *de facto* immunity.
5. Require security forces to provide information on all detainees to family and legal counsel from the time of detention.
6. Open Kashmir, including the Line of Control (LOC), to international observation, including access to political prisoners.
7. Open elections in Kashmir to official international observers.
8. In the wake of the recent elections, facilitate discussions between representatives of ethnic, religious and political parties of Jammu, Kashmir and Ladakh.

9. Impartially investigate allegations of corruption within the state government and punish offenders.
10. Facilitate the return of Kashmiri Pandits to the valley by offering appropriate economic incentives and security guarantees, while providing broader economic assistance to the valley to revitalise local industries and support the growth of the private sector.

To the government of Pakistan

11. Follow up fully and firmly on commitments to prevent incursions across the Line of Control by militants and permanently end all support for militant groups in Pakistan and Kashmir.
12. Defuse tensions with India and facilitate a dialogue between Kashmiris on both sides of the LOC.

To the governments of the United States, the United Kingdom, the People's Republic of China, the Russian Federation, the European Union and the United Nations

13. Urge both India and Pakistan to engage in a dialogue on all outstanding disputes including Kashmir and encourage the withdrawal of troops from positions along the LOC with a view to a gradual demilitarisation of the entire pre-1947 state.
14. Urge both India and Pakistan to open the Line of Control to civilian traffic and trade.
15. Pressure Pakistan to end its support for militant groups.
16. Pressure India to end extra judicial killings, custodial deaths, disappearances, torture and rape perpetrated or tolerated by its security forces.

Islamabad/Brussels, 21 November 2002

KASHMIR: THE VIEW FROM SRINAGAR

I. INTRODUCTION

This report describes the impact of continuing conflict on the residents of Srinagar, Kashmir's capital and major urban centre, while outlining the history of the Kashmir dispute – as it has evolved within the Kashmir Valley and among its largely Muslim population.² The situation in Kashmir continues to be the primary strategic and political bone of contention between India and Pakistan and central to one of the world's most dangerous flashpoints. Further ICG reports over coming months will address the problem from a number of different perspectives – including the view from both New Delhi and Islamabad – and ultimately suggest an approach to a comprehensive political resolution. An earlier ICG examined some issues relating to Pakistan's involvement in the conflict and urged the government in Islamabad to end support for militants in Kashmir.

The views of both the Indian and Pakistani governments toward the situation in Kashmir (summarised in subsection B below) are well enough known. What are less known are the views of Kashmiri Muslims themselves. This report examines how Kashmiri Muslims in Srinagar perceive the conflict and how they see the Indian security forces

and the militants. Special attention is paid to Kashmiri views on the prospects for peace as well as the potential for new initiatives after state elections in which the National Conference political party was ousted from power in Indian-controlled Kashmir for the first time since independence.

The Kashmir dispute takes its name from the valley situated between the Karakoram and Pir Panjal ranges of the Himalayas. This valley constituted a major swathe of the former British Indian princely state known as Jammu and Kashmir and lies at the heart of the bilateral dispute that has sharply split India and Pakistan since both countries became independent in August 1947. Kashmir has twice thrust India and Pakistan into wars and threatened to do so again on numerous other occasions.

The Kashmir Valley is the most populous of the three provinces in the modern Indian state of Jammu and Kashmir, the other two provinces being Jammu and Ladakh. Srinagar, the main city in the valley has a population estimated at between 750,000 and one million, or about a third of the population of the valley. Predominately Sunni Muslim, the valley has an estimated minority community made up of less than 5 per cent of Hindus, Sikhs and a very small number of Christians. Jammu, by comparison, is roughly split between Hindus and Muslims, with Hindus in a majority. Ladakh shares cultural, linguistic and ethnic affinities with Tibet, its neighbour to the east, and its population is divided between Buddhists and Shia Muslims, with Buddhists in a slight majority. Since 1990, many ethnic Kashmiri Hindus, or Pandits, who made up an estimated 2-3 per cent of the valley's population, have been driven out of the region by violence and have settled elsewhere, with sizeable numbers relocating to both Jammu and New Delhi. A

² This report is the product of extensive field research in Srinagar during the summer of 2002 that involved more than 80 interviews with people from all walks of life. Due to security concerns, those interviewed remain anonymous. The report focuses almost exclusively on the views of those living in the Kashmir Valley and particularly Srinagar. Future reports will address in much more detail the views of the Pakistani and Indian government as well as the population of Jammu and Kashmir outside of the valley and also of the population of Azad Kashmir. An earlier ICG report, *Kashmir: Confrontation and Miscalculation*, 11 July 2002, addressed the issue of Pakistani support for the militants in more detail and urged Islamabad to cease all backing for cross-border militants.

significant number of Kashmiri Muslims have also left and settled outside Kashmir.³

Jammu and Kashmir is the only majority Muslim state in the Indian union, and that distinction has made the Indian government all the more determined to hold on to the territory as integral to the country's multi-cultural identity. Yet politics in Kashmir have remained highly turbulent, and there was significant opposition to Indian rule among Kashmiri Muslims even before independence. Since 1989, this opposition has led to an armed insurgency, the increasing militarisation of the state, widespread abuses of human rights and an estimated 30,000-100,000 deaths.⁴

Srinagar Kashmiris live in a state of insecurity and hopelessness. Before the October 2002 state elections, they felt ignored by the ruling National Conference party and operated in fear of India's security forces. Although many sympathise with the basic platform of the All Parties Hurriyat Conference (APHC), a broad anti-Indian coalition party, no individual, party or organisation adequately represents them.

Many individuals, while believing Kashmiri militants are justified to fight what they view as India's oppressive rule, are simply exhausted and traumatised by the thirteen years of armed conflict. Further, while there is public scepticism toward Pakistan's motives in Kashmir, there is also broad opposition to Indian policies. Srinagar Kashmiris generally believe that they have been denied the right to self-determination through a plebiscite conferred upon them by India, Pakistan and the United Nations. Although it is unclear what the exact options or outcome of such an exercise would be, they feel that

the realisation of that right is necessary for the permanent resolution of the Kashmir conflict.

While the outcome of the 2002 state elections has offered a glimmer of hope for new dialogue and the potential for meaningful change in the region, the challenges are immense. Aside from constant physical insecurity and an economy devastated by conflict, Kashmir's traditional culture of tolerance has given way to a gun culture that has delegitimised social and familial authorities while empowering the violent and politically corrupt.

A. HISTORICAL CONTEXT

The Kashmir Valley was historically the seat of independent kingdoms. The Mughal Emperor Akbar conquered it in 1586, and the area fell under British control by 1847.⁵ The British sold the valley to Gulab Singh, a Hindu ruler of Jammu, in 1847 through the Treaty of Amritsar, which established the modern political unit of Jammu and Kashmir.⁶ However, the ethnic Dogra dynasty of Gulab Singh faced significant opposition in the Kashmir Valley, primarily from the majority Muslim population.

Muslim opposition became politically organised with the establishment of the All Jammu and Kashmir Muslim Conference political party in October 1932.⁷ The Muslim Conference party maintained that Dogra policies discriminated against Kashmiri Muslims, particularly in denying them educational and employment opportunities. The leadership of the Muslim Conference came from two distinct strains: representatives of Srinagar's traditional Muslim elite and young people who had returned to the valley after pursuing higher education abroad. Prominent among those drawn from the elite was Yusuf Shah, a member of a well-respected family of Muslim preachers. Among the students, Sheikh Abdullah rose to prominence and,

³ According to the 1981 census, the population of the valley was 3 million, Jammu's population was close to 2.7 million and Ladakh had a population of 134,000. Victoria Schofield, Victoria Schofield, *Kashmir in Conflict* (London, 2000), p. xv. The 1991 census could not be held because of the unsettled security situation.

⁴ The Indian government officially estimates 30,000 deaths in the last twelve years. Kashmiris, including the All Parties Hurriyat Conference, estimate between 80,000 and 100,000 deaths, primarily civilian. Most observers estimate the total to be roughly 60,000 deaths, again mostly civilians. No authoritative statistical account is available because of continuing insecurity in the state and the Indian government practice of frequently banning foreign journalists and non-governmental organisations, including Amnesty International.

⁵ On the medieval history of Kashmir, including the history of successive foreign rulers, see G. M. D. Sufi, *Kashmir* (Lahore, 1949).

⁶ On the Treaty of Amritsar and the sale of Kashmir to Gulab Singh for 500,000 pounds, see Alistair Lamb, *Kashmir A Disputed Legacy 1846-1990* (Hertingfordbury, 1991) p. 8. See also Sufi, *Kashmir*, op. cit., pp. 763-777.

⁷ On early 20th century political mobilisation in Kashmir see U. K. Zutshi, *Emergence of Political Awakening in Kashmir* (New Delhi, 1986) and Ravinderjit Kaur, *Political Awakening in Kashmir* (New Delhi, 1996).

by the mid-1930s, emerged as the dominant political personality in Kashmir.

Soon after its creation, the Muslim Conference under Sheikh Abdullah petitioned the Dogra ruler, Hari Singh, to form a more representative government.⁸ Abdullah, keen to both nationalise and secularise the opposition, also changed the name of the party in 1939 to the All Jammu and Kashmir National Conference, usually referred to simply as the National Conference party. The renaming led to a clear split in the opposition, with the traditional elite and its supporters breaking away and reforming under the earlier Muslim Conference banner. During this period, Abdullah moved steadily closer to the Indian National Congress and its leader, Jawaharlal Nehru.⁹ In parallel, the Muslim Conference formed close ties with Mohammed Ali Jinnah's Muslim League – the political party advocating the creation of Pakistan.

As the British began planning for the end of colonial rule over India in the mid-1940s, it was declared that the authority to decide whether princely states like Jammu and Kashmir would adhere to India or Pakistan would be vested in the princes. Not surprisingly, this sparked intense political manoeuvring in Jammu and Kashmir where many Muslims still contested the legitimacy of rule by Hari Singh – an ethnic Dogra¹⁰ and Hindu. In 1946, Sheikh Abdullah's National Conference launched a movement to oust Hari Singh called the Quit Kashmir movement.¹¹ Abdullah was arrested. Further, many leaders of the rival Muslim Conference, which generally favoured accession to Pakistan but did not officially support the Quit Kashmir movement, were also jailed.

Hari Singh equivocated about the political future of Jammu and Kashmir. Indeed, the day designated for the transfer of power from the British to the new dominions of India and Pakistan, 15 August 1947, actually passed without Singh clearly declaring his

intentions.¹² Instead, he offered agreements to both newly independent states designed to maintain the status quo. While Pakistan accepted this offer, India did not respond, setting the table for escalating tensions and the long running dispute over Kashmir's proper status.

Much is disputed about the events that followed, and many of the legal and moral arguments underlying Indian and Pakistani claims regarding Kashmir flow from differing interpretations of the historical events. Jammu and Kashmir remained independent until 26 or 27 October 1947. On one of those dates, Hari Singh acceded Jammu and Kashmir to India.¹³ However, there was no small measure of duress in his decision, given that he wanted Indian military support against ethnic Pashtun tribesmen who had invaded from the borderlands of the newly created Pakistani state.

In June 1947, Lord Mountbatten, the last British Viceroy, had advised Jammu and Kashmir to enter into a "standstill" agreement with India and Pakistan, also cautioning Singh to "consult the will of the people and do what the majority thought best".¹⁴ When Mountbatten agreed to have Jammu and Kashmir join India and concurred that Indian troops should be dispatched to its defence, he also noted:

Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the state's accession should be settled by a reference to the people.

The timing of the signing of the Instrument of Accession and whether Indian or Pakistani troops

⁸ On the activities of the Muslim Conference and later the National Conference, see G. H. Khan, *Freedom Movement in Kashmir* (New Delhi, 1980) pp. 231-397 and Sheikh Abdullah, *Flames of the Chinar* (New Delhi, 1993).

⁹ See Prem Nath Bazaz, *Inside Kashmir* (Mirpur, 1987) p. 322.

¹⁰ Dogras are one of a number of ethnic groups in Jammu and Kashmir. There are both Hindu and Muslim members of the group.

¹¹ On the Quit Kashmir movement see Schofield, *op.cit.*, pp. 24-25 and Lamb, *op.cit.*, pp. 94-96.

¹² On the events of 1947 and the accession controversy, see *ibid.*, pp. 121-145.

¹³ The actual date that Hari Singh signed the Instrument of Accession remains historically unclear and is at the heart of the controversy over the document's legal legitimacy. Those sympathising with India's claim to legal accession believe it was 26 October 1947, before Hari Singh fled the valley and India airlifted troops to Srinagar airport. Those sympathising with Pakistan's position believe Hari Singh signed the document on 27 October, after he had abdicated his throne by fleeing the valley.

¹⁴ Lamb, *op.cit.*, p. 110.

entered Jammu and Kashmir first are key to the competing claims.

The first Indo-Pakistan war over Kashmir began in October 1947 and lasted through December of 1948. Jawaharlal Nehru, India's first prime minister submitted the dispute to the United Nations as an issue of international peace on 31 December 1947,¹⁵ and on 20 January 1948, the Security Council passed Resolution 39 creating the United Nations Commission for India and Pakistan to investigate facts pertaining to the dispute and to mediate the conflict. Subsequently, on 21 April 1948, the UNSC passed Resolution 47 noting that both countries had agreed to determine the question of Jammu and Kashmir's accession through the "democratic method of a free and impartial plebiscite". This resolution further recommended the withdrawal of Pakistani and Indian armed forces from Jammu and Kashmir and described the logistics necessary for the cooperation of both countries with the UN commission in arranging a plebiscite as soon as possible.¹⁶

On 1 January 1949, the UN negotiated a cease-fire on India and Pakistan, and the United Nations Military Observer Group for India and Pakistan was created to monitor the cease-fire line, which later became commonly referred to as the Line of Control (LOC).¹⁷ The war had left several thousand dead, and Pakistan in control of roughly two-fifths of Kashmir, referred to by Pakistan as *Azad* (free) Kashmir. The Kashmir Valley fell on the Indian side of the Line of Control.

While the UN intervention was successful in ending the immediate conflict, it added to the "he said-she said" nature of the debate between India and Pakistan regarding Kashmir. It is also important to note that the potential plebiscite detailed by the UN framed the question over Kashmir as one of accession to either India or Pakistan – the option of independence that Hari Singh had earlier strived for was not listed. In calling for a plebiscite, the UN resolution also built on the instrument of accession Hari Singh had signed with India in October 1947 that made Jammu and

Kashmir's accession conditional upon some reference to the people of the state.¹⁸ A subsequent Security Council Resolution (122), passed on 24 January 1957, declared that elections in Jammu and Kashmir would not substitute for a plebiscite.

B. POINT AND COUNTER-POINT

While the tangle of claims and counter claims by India and Pakistan are built on a complex foundation of legality, history, contrasting perspectives, moral arguments and even propaganda, it is worth briefly sketching some of their most important elements. The two sides have very fundamental differences over what the dispute is even about: Pakistan sees it as essentially a territorial dispute while Indian regards it as a clash of ideologies between Pakistan's Islamic nationalism and its own secularism and democracy. What follows below is a snapshot of Indian and Pakistani official perspectives on some of the key facts in dispute regarding Kashmir: a more detailed account of the different views from New Delhi and Islamabad (and the history of attempts to resolve the Kashmir conflict) will be contained in forthcoming ICG reports.

□ *The 1947 Instrument of Accession*

India's view: India has legal rights to all of pre-1947 Jammu and Kashmir because of Hari Singh's October 1947 Instrument of Accession; military aggression by Pakistan and allied tribal forces were a provocation designed to overthrow a legally binding agreement by force.¹⁹ The National Conference, Kashmir's most popular political party and with a large Muslim membership, supported the decision to join India and helped combat advancing Pakistani forces. Pakistan has no standing with regard to Jammu and Kashmir and is illegally occupying Indian territory.

Pakistan's view: Hari Singh's accession to India was improper and illegal. It was in violation of his standstill agreement with Pakistan and illegitimate since he had abandoned his throne in the face of an

¹⁵ Nehru submitted the dispute under Article 35 of the UN Charter that sets out mechanisms to bring problems before the UN.

¹⁶ These Security Council resolutions were under Chapter 6 (the recommendatory, non-binding section) of the Charter.

¹⁷ The Line of Control is based on the 1972 Simla Agreement, which concluded the third India-Pakistan war.

¹⁸ Lamb, op.cit., pp. 136-139.

¹⁹ On Indian and Pakistani positions, see Schofield, op.cit., pp.70-72 and Robert G. Wirsing, *India, Pakistan, and the Kashmir Dispute* (New York, 1994) pp. 9-10.

indigenous, popular rebellion against his oppressive regime prior to acceding. Further, the Instrument of Accession, as noted in both the Mountbatten letter and subsequent UN resolutions, was dependent on an eventual plebiscite to confirm the will of the people – a necessary step that India has consistently resisted because they know they would lose such a popular referendum.

□ *The Plebiscite*

India's view: The 1948 UN-brokered truce between India and Pakistan did call for a plebiscite, but made it contingent upon Pakistan unconditionally withdrawing its forces from all of Jammu and Kashmir, including *Azad* Kashmir. After that withdrawal, India would draw its forces down to a bare minimum level needed to maintain basic law and order. Because a Pakistani withdrawal has not taken place, the basic UN conditions have not been met and the necessary security conditions for a plebiscite have not been established.

Pakistan's view: The UN has endorsed a plebiscite on numerous occasions, including in Security Council Resolutions passed in 1948, 1950 and 1957. Pakistan agreed with the UN to draw down its forces on its side of the Line of Control to 3,000-6,000 if India would enact a synchronised reduction to 12,000-18,000 troops to allow a plebiscite to move forward. India's failures to hold a plebiscite or engage in mutual troop reductions are in direct violation of still valid UN resolutions.

□ *The Simla Agreement and Internationalising Kashmir*

India's view: Resolution of issues between India and Pakistan – such as Kashmir, need to be settled on a strictly bilateral basis, and there is no need to “internationalise” the dispute through UN or other third party mediation or involvement. The Simla agreement thus makes the earlier UN Resolutions no longer relevant and precludes UN mediation on Kashmir.

Pakistan's view: The Simla Agreement does not preclude raising the Kashmir issue at the UN, and it by no means obviates earlier, and binding, UN Security Council Resolutions,

particularly regarding the plebiscite. Further, the Simla Agreement codified the central role that the UN should play in adjudicating the dispute – a crisis that would very much benefit from international mediation.

□ *Elections*

India's view: State and parliamentary elections have been held in Kashmir since 1951, as well as the rest of the country. Secession has never been an issue in these contests, and while there may have been some malpractice in a number of these ballots, official recourse has been available. This expression of will by the people of Kashmir is the only proper means to end the suffering in the region. The state can engage in a productive dialogue with the central government free of outside interference.

Pakistan's view: Elections are not a substitute for a plebiscite as both the British before independence and the UN after independence made clear. Moreover, the elections in Kashmir have often been blatantly manipulated by the Indian government as part of its broader pattern of oppression and intimidation of Kashmiris. International observers have been quite explicit in condemning Indian election abuses in Kashmir.

□ *Terrorism*

India's view: Pakistan's continued, and continuing, sponsorship of cross border militants operating in Kashmir – many of whom were trained by the Taliban and al-Qaeda with official Pakistani intelligence and military support – constitutes state sponsorship of terrorism. These terrorists have repeatedly targeted civilians, including through aircraft hijackings and the 13 December 2001 attack on the Indian parliament. The full weight of international military force and law enforcement should be brought down upon them.

Pakistan's view: India has used international revulsion at the 11 September 2001 terrorism in the U.S. to portray the situation in Kashmir as similar to U.S. operations in Afghanistan. Instead, it has been India's own heavy-handed rule of Kashmir – including the use of violent militia groups – that has fuelled the

insurgency. The indigenous nature of the freedom fighters is well known and is a direct product of brutal Indian military repression. Further, Pakistani President Pervez Musharraf has been a close ally in the international war on terrorism and has pledged to crack down on any cross border operations from Pakistan.

C. THE *TAHRIK* OR “MOVEMENT”: THIRTEEN YEARS OF MILITANCY

Most Srinagar Kashmiris perceive the Kashmir problem at its root to be one of self-determination — they have been denied the right to a plebiscite that India, Pakistan and the UN have all guaranteed them. Since the late 1980s, the Kashmir Valley has been racked by violence brought on by an armed anti-India uprising, a harsh crackdown by the Indian military, and militant counterattacks. Concerns of average Kashmiris have taken a decided back seat to the strategic interests of India, Pakistan and the broader international community. While the violence in Jammu and Kashmir can be attributed to a variety of causes, including the direct role Pakistan has played in providing material and logistical support to militants, the basic alienation that many Kashmir Muslims feel from New Delhi has been the driving force in the conflict.²⁰

Again, it is useful to trace the arc of the valley’s history to explain why this has been so. In September 1947 during the accession controversy, Sheikh Abdullah and other National Conference leaders who had been arrested during the Quit Kashmir movement were released from prison. Sheikh Abdullah eventually was installed in power after Hari Singh withdrew. However, it was not until late 1947 and early 1948 that Muslim Conference leaders who had been jailed at the same time were released by Abdullah and allowed to cross the ceasefire line into Pakistani-administered territory.²¹ In March 1948, Abdullah became prime minister of the state, with the bulk of his opposition having left Indian-administered Kashmir.²²

With the National Conference already in power, the first election for Jammu and Kashmir’s Constituent Assembly took place in 1951. Pakistan protested, arguing that elections would prejudice the outcome of any eventual plebiscite. What little opposition remained to the National Conference in Indian-administered Kashmir boycotted the election, and National Conference candidates won all available seats unopposed.²³ From their beginning, elections in Indian-administered Kashmir were marred by controversy and credible allegations that they were neither free nor fair.

India constitutionally enshrined Jammu and Kashmir’s accession in Article 370 of the constitution of 1950. In accordance with the Instrument of Accession signed by Hari Singh, the powers of the Indian Parliament in Jammu and Kashmir were limited to defence, external affairs and communications. All other authorities were vested in the state’s Constituent Assembly.²⁴ On 24 July 1952, in what is referred to as the Delhi Agreement, Indian Prime Minister Nehru and Sheikh Abdullah reached agreement on a series of points: the people of Jammu and Kashmir were to be considered Indian citizens; the Constituent Assembly would retain its special powers; non-Kashmiri Indian citizens would be denied property rights in Jammu and Kashmir; and the emergency powers of India’s President would be contingent upon approval by the Jammu and Kashmir government.²⁵

This rapprochement proved short-lived as Sheikh Abdullah was dismissed from his post on 8 August 1953 and placed under arrest for what the government labelled anti-India activities.²⁶ New Delhi replaced him with one of his National Conference colleagues, Bakshi Ghulam Muhammad. While Abdullah’s government had been known to be repressive, Bakshi’s was more so, and Jammu and Kashmir’s special constitutional status eroded significantly during his decade-long rule. Even Bakshi’s official title reflected this shift: he began his tenure as Prime Minister of Jammu and Kashmir and left as Chief Minister — the title of leaders in other Indian states.

²⁰ See Schofield, *op.cit.*, pp 99-196; Sumit Ganguly, *The Crisis in Kashmir* (Cambridge, 1997) and Robert Wirsing, *India, Pakistan and the Kashmir Dispute* (New York, 1994), pp. 113-185.

²¹ Lamb, *op. cit.*, pp. 129-130.

²² Schofield, *op.cit.*, pp. 73-76.

²³ *Ibid.*, p.79.

²⁴ Lamb, *op.cit.*, pp. 190-193. For the full text of Article 370, see Ganguly, *op.cit.* Appendix 2.

²⁵ Lamb, *op.cit.*, pp. 194-196.

²⁶ On Abdullah’s dismissal and Bakshi’s rule, see Schofield, *op.cit.*, pp.91-97.

A dispute involving the border of Jammu and Kashmir brought India and China to war in 1962.²⁷ India suffered major losses during this clash and appealed for Western military assistance. While the United States and Britain agreed to offer such assistance, they also pressed India into bilateral talks with Pakistan in an effort to resolve the Kashmir dispute. However, after six rounds of talks, India and Pakistan failed to reach an agreement.

On 5 August 1965, India and Pakistan lurched into an undeclared war over Kashmir. Pakistan infiltrated thousands of soldiers and irregular forces across the Line of Control in the misplaced hope that the Kashmiris would support its cause. The skirmishes expanded into an all out war in September after India attacked targets within Pakistan proper. A ceasefire came into effect on 23 September 1965 after the U.S. and Britain gave assurances to Pakistan that they would help resolve the issues underlying the conflict.²⁸ In January 1966, Indian and Pakistani delegations met in the Soviet Union at Tashkent. In the Tashkent Declaration, both countries renewed their commitment to solve disputes through peaceful means and returned to their pre-August 1965 military positions.

In 1971, India and Pakistan fought a third war, primarily over East Pakistan (thereafter, Bangladesh) in which Pakistan suffered a humiliating defeat. In June 1972, India and Pakistan agreed at Simla to restore peace and renamed the ceasefire line the Line of Control (LOC).²⁹ The Simla Agreement included a commitment to use bilateral rather than international means to resolve outstanding issues, a position that Pakistan would likely not have taken if it were not in such a weak military position.

In Kashmir, political dissent began to take violent forms as early as 1966. A group called the National Liberation Front, whose leaders would later form the Jammu and Kashmir Liberation Front, decided that decades of non-violent political struggle had proved fruitless and planned an armed uprising to be based from Pakistan-administered Kashmir. Their clash

with Indian military personnel in the valley in September 1966 marked the onset of decades of intermittent violence in the valley.³⁰

In 1965, Sheikh Abdullah again appeared on the Kashmir political scene. He struck an agreement with Indian Prime Minister Indira Gandhi, the Kashmir Accord, under which Jammu and Kashmir retained its special status through Article 370 but officially lost much of its autonomy. The Indian government was allowed to make laws banning the questioning of Indian sovereignty over Jammu and Kashmir or insult to India's flag, anthem or Constitution.³¹ For India, the question of Kashmiri self-determination was officially dead. After the Kashmir Accord, even lifetime supporters of Sheikh Abdullah in Srinagar abandoned him, believing him to have deeply betrayed Kashmiris.³²

Before his death in 1982, Sheikh Abdullah brought his son Farooq Abdullah, a British-educated physician, back from Britain and introduced him to Kashmiri politics. On 21 August 1981, Sheikh Abdullah appointed Farooq Abdullah the president of the National Conference in a traditional ceremony in Srinagar known as *dastar bandhi* or the donning of the turban.³³ Farooq Abdullah's first stint as Jammu and Kashmir's Chief Minister did not go smoothly, with many government officials in New Delhi questioning his loyalty to India. On 28 June 1984, India's governor in Jammu and Kashmir, Jagmohan Malhotra, sacked Farooq Abdullah and appointed Farooq Abdullah's brother-in-law as replacement. In Srinagar, Farooq Abdullah's dismissal was seen as an irrefutable demonstration of New Delhi's absolute and undemocratic control over Jammu and Kashmir.³⁴

Despite his protestations against his undemocratic dismissal and general denunciation of Indian policies in Kashmir, Farooq Abdullah re-entered politics by agreeing to a National Conference-Indian National Congress alliance proposed by Indian Prime Minister Rajiv Gandhi. Gandhi reappointed Farooq Abdullah as Jammu and Kashmir's Chief Minister in November 1986, and elections were scheduled for the following year. However, Farooq Abdullah –

²⁷ On the 1962 war and Indo-Pakistani talks see *ibid.*, pp. 99-103.

²⁸ On the 1965 war and Tashkent Declaration, see *ibid.*, pp. 106-113. For the full text of the 10 January 1966 Tashkent Agreement, see Ganguly, *op.cit.* Appendix 3.

²⁹ Text of the 2 July 1972 Simla Agreement, *ibid.*, Appendix 4.

³⁰ Schofield, *op.cit.*, pp.113-116.

³¹ *Ibid.*, pp.121-126.

³² ICG interviews, August, September 1999 and June, July 2002.

³³ Schofield, *op.cit.*, pp. 127-129.

³⁴ ICG interviews, July 2002. Schofield, *op.cit.*, pp. 129-135.

much like his father – lost considerable credibility for accepting an arrangement that Kashmiri Muslims saw as politically expedient.³⁵ Unfortunately, the stage was set for both rising militancy and violence.

1. A Flawed Election and a Violent Backlash

In September 1986, a coalition of political parties began to organise as the Muslim United Front in preparation for the planned elections.³⁶ The main player in the coalition was the Jamaat-i-Islami Kashmir, as well as a number of other Islamic parties. The Muslim United Front advocated a resolution of all outstanding issues between India and Pakistan according to the Simla Agreement, and embraced the notion of pan-Islamic unity as a political goal. They also rejected interference from New Delhi in the political affairs of Jammu and Kashmir. The Muslim United Front held discussions with other opposition parties, including the People's League, a party under the leadership of veteran politician Abdul Gani Lone. The Muslim United Front's ranks soon swelled with young activists disturbed by what they saw as deteriorating circumstances and increasing Indian oppression.³⁷

Before the elections on 23 March 1987, many Muslim United Front leaders and workers were arrested. Voter turnout was reported to be nearly 75 per cent – the highest ever in Jammu and Kashmir. Even Srinagar Kashmiris who traditionally boycotted elections decided to participate and vote for Muslim United Front candidates to protest against National Conference rule.³⁸ Thus, when official results were announced, Kashmiris were shocked: the National Conference-Indian National Congress alliance was declared to have won by an overwhelming majority, amid widespread and credible charges of vote rigging. Most independent observers believed that the Muslim United Front would have gained roughly one-third of the assembly seats, but instead, it captured only four of 76.³⁹

Many young Muslim United Front activists decided that reform through peaceful political methods was impossible, and violence in the valley quickly took an upturn in the election's wake. Many militants

involved in the continuing armed anti-India struggle in the valley are embittered activists who opposed the National Conference in the 1987 election.

The Jammu and Kashmir Liberation Front was at the forefront of the armed uprising that gathered momentum after the 1987 elections. Militants attacked Farooq Abdullah's motorcade in May 1987.⁴⁰ Violence increased throughout 1987 and 1988, and 1989 marked the first year of the mass uprising now referred to as the *Tahrik* (literally, "the movement"). The 8 December 1989 kidnapping of Rubaiya Sayeed, the daughter of Mufti Mohammad Sayeed, a Muslim United Front member and the first Muslim Indian Home Minister, by the Jammu and Kashmir Liberation Front, marked the beginning of the *Tahrik*.⁴¹ The kidnappers demanded the release of five militants, and on 13 December 1989, Rubaiya Sayeed was released after the incarcerated militants were freed and received by jubilant crowds.

By 1989, a number of significant militant groups were operating in the valley, all tied to political parties. The most prominent included the Jammu and Kashmir Hizbul Mujahidin (linked to Jamaat-i-Islami Kashmir), Al Baraq (linked to Abdul Gani Lone's People's Conference), Al Omar (linked to Maulvi Farooq's Awami Action Committee), and Al Fateh (linked to Shabir Shah's People's League).⁴² 1989 was also the first year that a series of *hartals*, or civil strikes and curfews, disrupted life in Srinagar.⁴³

The *Tahrik* has three distinct phases. The early years were marked by an explosion of militant groups, increasing violence, mass anti-India demonstrations and a prevalent belief that the end of Indian control in the valley was near.⁴⁴ India responded with a heavy hand. Jagmohan Malhotra was reappointed Jammu and Kashmir's Governor in January 1990, and the state became increasingly militarised.⁴⁵ Jagmohan attempted to quell the uprising through force, and government troops went so far as to fire on unarmed demonstrators. Foreign media were soon banned from the valley. Srinagar was placed under a curfew, and the Central Reserve Police

³⁵ Ibid., pp. 135-136.

³⁶ Ibid., pp. 136-138. See also Ganguly, op.cit., pp. 96-100.

³⁷ ICG interviews, July 2002.

³⁸ ICG interviews, June-August 2002.

³⁹ *Willing Suspension of Disbelief – Parliamentary Elections in Jammu and Kashmir* (New Delhi, 7 June 1996) p. 7.

⁴⁰ Schofield, op.cit., p. 139.

⁴¹ Ibid., pp. 145-147.

⁴² Ibid., p. 145. Ganguly, op.cit. Appendix 5.

⁴³ Ibid., p. 127. See also "1300 hartals in 12 years!" *Greater Kashmir*, 30 June 2002.

⁴⁴ ICG interviews, September 1999. Schofield, op.cit., pp. 143-154.

⁴⁵ Ibid.

Force, a federal paramilitary unit, reinforced the Indian military already present in the valley amid the use of increasingly abusive tactics. Not surprisingly, alienation in the valley increased.

After five months as governor, Jagmohan was removed for mishandling the situation and replaced by Girish Saxena.⁴⁶ While Saxena had an intelligence background and continued to use force where he deemed it appropriate, he also embraced more subtle tactics. Saxena relied more heavily on the Border Security Forces, military forces whose mandate mostly involves border control, to combat the uprising.

Indian lawmakers passed legislation that allowed the armed forces to use almost any means necessary to quell the insurgency. The July 1990 Armed Forces (Jammu and Kashmir) Special Powers Act gave any member of the armed forces wide authority to use lethal force – for example, if the law prohibiting the assembly of five or more people was being broken. The Act also prevented prosecution of anyone purporting to have exercised this authority unless approved by the Central Government.⁴⁷ The 1987 Terrorist and Disruptive Activities (Prevention) Act and the 1978 Jammu and Kashmir Public Safety Act were also widely used to detain people for extended periods without formal charges or to prosecute them for activities as minor as voicing anti-Indian sentiments.⁴⁸ By 1990, human rights organisations had begun documenting widespread abuses by military personnel that included extra judicial killings, torture, arson, arbitrary arrest and detention without trial.⁴⁹ The military's emphasis on reprisals appeared designed to dissuade civilian non-combatants from supporting or assisting the militants.⁵⁰

Saxena improved the Indian military's intelligence gathering and counter-insurgency operations, and by 1992 the military had begun to successfully exploit as informants captured anti-India militants who were unable to withstand the torture used in

interrogations.⁵¹ This period marked the end of the first phase of the *Tahrik*.

By 1993, mass demonstrations had largely ended, and vocal civilian support for militancy waned as locals became disenchanted with a cycle of violence that seemed incapable of ending Indian occupation and only increased their suffering.⁵² Abuses by militants, including extortion and violent attacks on rivals, also undercut their support.⁵³ Informants penetrated many militant groups, and their activities in densely populated urban areas like Srinagar decreased.

In February 1993, over 30 anti-India political parties formed a coalition, the All Parties Hurriyat Conference (APHC), reflecting a wide spectrum of views united by anti-India and pro self-determination themes.⁵⁴ While some parties like the Jamaat-i-Islami Kashmir advocated accession to Pakistan, others like the Jammu and Kashmir Liberation Front advocated independence. Umar Farooq, a descendant of Yusuf Shah, the founder of the Muslim Conference, chaired the APHC. The coalition was led by Syed Ali Shah Geelani of Jamaat-i-Islami Kashmir, Yasin Malik of the Jammu and Kashmir Liberation Front and Abdul Gani Lone of the People's Conference. Formation of the APHC provided a coherent political voice to the armed uprising in the valley for the first time, marking a new phase of the *Tahrik*.

In 1993, India coordinated the activities of its regular military and paramilitary forces active in the valley under the Unified Command, a centralised body designed to streamline military operations.⁵⁵ The security forces launched an effort to improve their image in Kashmir through public relations and social service activities. While such steps have been well received in some rural communities, they have found little support in Srinagar, where they are dismissed as propaganda. The Unified Command also increased reliance on intelligence and former militant informers.

The third phase of the *Tahrik* began in early 1995 with the Indian military's systematic use of irregular,

⁴⁶ Ibid., pp.154-160.

⁴⁷ Sir William Goodhart (et al), *Human Rights in Kashmir* (Geneva, International Commission of Jurists, 1995) pp. 46-47.

⁴⁸ Ibid., pp. 44-46; James A. Goldston, *Kashmir Under Siege* (New York, Human Rights Watch, 1991) pp. 108-127.

⁴⁹ Goldston, op.cit.

⁵⁰ Schofield, op.cit., pp. 155-158.

⁵¹ Ibid., pp. 158-163.

⁵² ICG interviews, September 1999.

⁵³ See Patricia Gossman, *The Human Rights Crisis in Kashmir* (New York, Human Rights Watch, 1993) pp.147-173.

⁵⁴ "Hurriyat" means freedom. Schofield, op.cit., pp. 159-160.

⁵⁵ Ibid., pp.198-201.

state-sponsored militias in counter-insurgency operations.⁵⁶ These militias are mostly drawn from former anti-India militant organisations such as Ikhwan al-Muslimeen and its splinter Ikhwan al-Muslimoon. The latter is led by Kuka Parray, a former militant now turned pro-India politician. The activities of these militias include intelligence gathering and the assassination of pro-Pakistani political and militant activists, primarily those of Jamaat-i-Islami Kashmir and Jammu and Kashmir Hizbul Mujahidin.

By using militias in this way, Indian security forces have been able to maintain a certain level of plausible deniability. The militias have been implicated in a number of attacks, including assassinations of human rights activists, journalists and physicians, as well as cases of intimidation, abduction and extortion.⁵⁷

By 1993, Jammu and Kashmir Hizbul Mujahidin, a pro-Pakistani faction, had become the dominant armed group operating in the valley. In May 1994, Yasin Malik, the leader of the Jammu and Kashmir Liberation Front – a group advocating independence – renounced violence as a means of anti-India struggle.⁵⁸ Consequently, pro-Pakistani Islamic extremists assumed control of the armed movement, a reality that Pakistan sought to exploit by increasing material support for these groups. By the mid-1990s, militant activity became increasingly coordinated and organised under the umbrella of the United Jihad Council, a group based in Pakistani-administered Kashmir and led by Syed Salahuddin of Jammu and Kashmir Hizbul Mujahidin. Other prominent organisations in the United Jihad Council include Lashkar-e-Tayaba, Jaish-e-Mohammed and Harkat-ul-Ansar (later named Harkat-ul-Mujahidin).

All these organisations had significant numbers of non-Kashmiris in their ranks, including growing numbers of *mujahedin* who had fought in the U.S.-led anti-Soviet struggle in Afghanistan with Pakistani backing.⁵⁹ Strategically, the militants refined their methods to target military and

paramilitary personnel more successfully, with less loss of civilian life. Militants also decreased their activities in population centres and increasingly led dramatic attacks on major military installations, as opposed to military bunkers located in residential neighbourhoods.⁶⁰ As a result, life in Srinagar began to return to a welcome sense of normalcy as people could go outdoors, stay out after dark and work or attend school more regularly.⁶¹ However, increased Pakistani support for the militant groups only raised the strategic stakes for both India and Pakistan.

Even more disturbingly, the bilateral Indo-Pakistani conflict over Kashmir assumed a nuclear dimension after both countries tested nuclear devices in May 1998.⁶² Between May and July 1999, India and Pakistan fought a high-intensity border clash at Kargil after Pakistani troops and Pakistan-backed militants occupied positions on the Indian side of the LOC.⁶³ Fighting ended only after intensive U.S. mediation and pressure on Pakistan. In October 1999, General Musharraf took power by a coup that isolated Pakistan internationally.

Bilateral Indo-Pakistani talks at Agra, India, followed the Kargil episode in July 2001.⁶⁴ They were meant to bolster relations but broke up over disagreements on Kashmir and without a joint statement from Prime Minister Vajpayee and President Musharraf. The 11 September 2001 terror attacks in the United States pushed Washington to once again embrace its traditional regional ally, Pakistan, after years of strained relations.⁶⁵ India, obviously wary of a renewed U.S.–Pakistan strategic partnership after its own relationship with Washington had been on the upswing, quickly accused Pakistan of being a state sponsor of terrorism, particularly in Kashmir.

Blaming Pakistani-sponsored militants for the 13 December 2001 attack on its Parliament, India withdrew its high commissioner from Islamabad, moved troops into forward positions along the LOC and demanded that Pakistan stop militant incursions across the LOC into Indian-controlled territory or

⁵⁶ Patricia Gossman, *India's Secret Army in Kashmir* (New York, Human Rights Watch, 1996) pp. 15-26; Schofield, op.cit., pp. 198-200.

⁵⁷ Ibid. ICG interviews June, July 2002. See also Gossman, *Behind the Kashmir Conflict*. op.cit.

⁵⁸ Schofield, op.cit., pp. 174-176.

⁵⁹ Foreign militants are primarily from Pakistani-Administered Kashmir, Pakistan, and Afghanistan although Chechens and Sudanese and other Arabs have reportedly been involved. ICG interviews, September, October 1999.

⁶⁰ Gossman, *Behind the Kashmir Conflict*. op.cit.

⁶¹ Personal observation and interviews in 1996, 1999, and 2002. Schofield, op.cit., pp.196-199.

⁶² Sumit Ganguly, *Conflict Unending* (New York, 2001), pp. 101-113.

⁶³ ICG Asia Report N°35, *Kashmir: Confrontation and Miscalculation*, 11 July 2002, pp. 1-2.

⁶⁴ Ganguly, *Conflict Unending*, op.cit., pp. 135-138.

⁶⁵ ICG Report, *Kashmir*, op. cit., p.11.

face a new war.⁶⁶ Pakistan responded with rhetorical pledges to end militant incursions and by making some moves to control Islamic militant groups operating out of Pakistani-controlled territory.⁶⁷

The attacks of 14 May 2002 on a bus and the residential quarters of a military base in Jammu revived the threat of a renewed Indo-Pakistani conflict.⁶⁸ India again blamed Pakistani-sponsored militants and expelled Pakistan's high commissioner on 18 May 2002, severing the only high-level direct line of communication between the two nations. Analysts believed the war threat to be very credible. India refused to talk to Pakistan until violence in Jammu and Kashmir ended, and troops were again moved into forward positions, threatening war unless Pakistan stopped incursions into Indian territory.

The danger of war remained extremely high into June when Western mediating efforts, in particular by U.S. Deputy Secretary of State Richard Armitage facilitated an easing of tensions.⁶⁹ While the United States has played an increasingly active role in informally mediating the Kashmir dispute, violence in the run-up to the assembly elections in Jammu and Kashmir during September and October 2002 made clear the continuing fragility of the situation.⁷⁰

II. INSECURITY AND UNCERTAINTY: DAILY LIFE IN THE VALLEY

Those living in Srinagar continue to face a daunting array of political, social, economic and security challenges – all of which have combined to help maintain a steady environment of crisis. For most residents, basic physical and psychological insecurity continues to be the most pressing concern.⁷¹ Mothers fear that the children they send off to school will not return and people going about their ordinary daily lives are unsure if they will be arrested, injured or even killed by government security agencies or militants.⁷² This deep sense of insecurity can be directly traced to the thousands of disappearances, arrests and torture cases, and tens of thousands of deaths that have occurred over thirteen years with little accountability.⁷³ Virtually everyone in Srinagar knows someone who has been killed, arrested or tortured, and almost no one has been unaffected by the state of physical insecurity.⁷⁴

Most people in Srinagar see their situation as hopeless. Many believe that they have tried every means, both non-violent and violent, in order to obtain some concessions from India on Kashmir's political future, but only succeeded in increasing their own suffering.⁷⁵ Decades of peaceful protest and over a decade of armed protest have only ravaged the society and killed tens of thousands. While some of the older generation have maintained their faith, especially in the promise of Pakistan, many of the youth have become increasingly isolated and disaffected.⁷⁶ Some still believe in individual Kashmiri leaders and hope for U.S. or UN intervention but most have come to believe that after so much sacrifice, the world, and even their own leadership, is indifferent to their problems.⁷⁷ One more optimistic shopkeeper hoped aloud: "something has to happen — all those thousands of deaths can't be in vain".⁷⁸

While the October 2002 assembly elections that saw the National Conference party lose 29 of its 57 seats

⁶⁶ See Hasan Zaidi, "Pervez Musharraf: In a Pincer", *India Today*, 7 January 2002.

⁶⁷ See "Full Text of Gen Musharraf's Address" in *The Nation* (Lahore), 13 January 2002.

⁶⁸ The gunmen killed seven passengers on a bus and 24 members of military families on an Indian military base. Sadanand Dhume and Murray Hiebert, "India-Pakistan—Running out of Patience", *Far Eastern Economic Review*, 30 May 2002.

⁶⁹ Glenn Kessler, "A Defining Moment in Islamabad; U.S.-Brokered 'Yes' Pulled India, Pakistan From Brink of War", *The Washington Post*, 22 June 2002.

⁷⁰ "17 Killed in New Violence in Kashmir", *The Washington Post*, 27 August 2002.

⁷¹ ICG interviews June 2002.

⁷² ICG interviews July 2002.

⁷³ Gossman, *Behind the Kashmir Conflict*, op.cit.

⁷⁴ ICG interviews June, July 2002.

⁷⁵ ICG interviews June, July 2002.

⁷⁶ ICG interviews July 2002.

⁷⁷ ICG interviews June, July 2002.

⁷⁸ ICG interview June 2002.

(discussed in more detail below) suggest a useful potential window for change, it is clear that there is little reservoir of goodwill or hope in Srinagar. Over the last thirteen years, Jammu and Kashmir's capital city has been marked by an almost smothering sense of despondence. People see their social problems growing, their economic situation deteriorating, their personal security at steady risk and their political problems as insoluble. There is a marked lack of confidence in all authorities and a general belief that the present situation, although currently relatively calm, will give way to renewed violence.⁷⁹

A. VIEWING THEIR PLACE IN THE WORLD

Increasingly, people in Srinagar view India less as a secular, democratic nation than as an anti-Muslim, Hindu country.⁸⁰ Many Kashmiris see themselves as mistreated and discriminated against by a fundamentally foreign power. Many, especially those who sympathised with Pakistan's founders, have believed that since 1947.⁸¹ This dynamic has only been exacerbated by the rise of Hindu nationalism in India in the last two decades. The view of the government as more of a Hindu than secular force has been reinforced by recent events like the religious violence in Gujarat in 2002, in which at least 1,000 Muslims were killed by mobs reportedly in complicity with the state government.⁸²

Many Kashmiris perceive the Indian government as an enemy – anti-Muslim and anti-Kashmiri, encouraging corruption and discouraging any pro-Kashmiri activism.⁸³ As one Kashmiri argued, "If India had been more positive toward Muslims, and especially Kashmiris, there might have been a way for us to live in India, but now there is none".⁸⁴

Over the course of the *Tahrik*, most Kashmiris have become convinced that New Delhi will not compromise over Kashmir. Early in the *Tahrik* many thought that a few killings and public demonstrations would be enough to force a change

from New Delhi, or as a Kashmiri put it, "In 1990, we thought we would be celebrating *Eid* [a religious festival] in Pakistan". Kashmiris now realise that India's commitment to hold its ground in Kashmir runs deep.⁸⁵

Even among the large numbers of residents of Srinagar who have traditionally viewed Pakistan more favourably than India, there is considerable divergence of opinion. A likely smaller subsection of this group is in strong ideological agreement with the founders of Pakistan and considers that country as Kashmiris' hope and only viable future. A second, probably larger, subsection regards Pakistan simply as an ally of Kashmiris against their common enemy, India. While not ideologically committed to Pakistan's Islamic nationalism, many express their animosity for India by supporting Pakistan.⁸⁶

Attitudes toward Pakistan have also eroded as the *Tahrik* has ground on, with the generally positive perception dimming somewhat in Srinagar. While a significant number, especially among the religiously inclined and educated, remain ideologically committed to Pakistan, others, especially among the young, have come to distrust its intentions as well as India's. Some in this camp argue that Pakistan, despite its pronouncements of undying commitment to the Kashmiri cause, has not done enough to help and has been unwilling to sacrifice its own well being for that of Kashmiris.

Among the examples often cited in this regard is Pakistan's withdrawal at Kargil in July 1999, a battle that is seen by such locals as a successful Pakistani-supported incursion of regular soldiers and militants across the LOC into Indian-administered Kashmir that failed only because Pakistan retreated under U.S. pressure.⁸⁷ Others suggest that while Pakistan badly wants Kashmir, it remains indifferent to Kashmiris. This group sees support of armed activity in Kashmir as meeting Pakistan's strategic ends but as offered without consideration for the trauma, injury and destruction suffered by Kashmiris as a result.⁸⁸ Islamabad's refusal to acknowledge an independent Kashmir as a political option is also resented in some quarters.

⁷⁹ ICG interviews July 2002.

⁸⁰ ICG interviews, June-July 2002.

⁸¹ ICG interviews June 2002.

⁸² Smita Narula, "WE HAVE NO ORDERS TO SAVE YOU": *State Participation and Complicity in Communal Violence in Gujarat* (Human Rights Watch, April 2002); 'Maaro! Kaapo! Baalo!' *State, Society, and Communalism in Gujarat* (Delhi, May 2002).

⁸³ ICG interviews, June, July 2002.

⁸⁴ ICG interview, July 2002.

⁸⁵ ICG interviews September 1999, June 2002.

⁸⁶ ICG interviews September, October 1999 and June, July 2002.

⁸⁷ Ganguly, *Conflict Unending*, op. cit., pp. 114-133.

⁸⁸ ICG interviews June-July 2002.

People consider Pakistan directly represented in Kashmir by political figures like Syed Ali Shah Geelani, an affiliate of Jamaat-i-Islami Kashmir and a senior member of the APHC. Some militant groups such as the Jammu and Kashmir Hizbul Mujahidin are also pro-Pakistani.

B. THE FACE OF INDIAN SECURITY FORCES

Indian security forces remain a formidable presence on Srinagar's streets. People view their power as absolute and their agents as legally unaccountable.⁸⁹ The security forces are assisted by three major local organisations. First, the Jammu and Kashmir Armed Police, a division of the Jammu and Kashmir Police, act in coordination with the military. While they are generally not trusted, they are viewed as less dangerous than the military or paramilitary groups.⁹⁰

The two other local organisations assisting the military and most mistrusted and feared by the population of Srinagar are the Special Task Force, an official counter-insurgency organisation comprised of former militants turned Indian collaborators; and the Ikhwan-ul-Muslimoon, a group of "renegades" that operates as an irregular paramilitary under the protection and direction of regular security forces.⁹¹

The Special Task Force has a local reputation for brutality, and the Ikhwan has been able to harass, rob and commit violence against the population – especially those against whom its members have personal vendettas – with impunity. Locals who accuse them of being traitorous opportunists often view the former militants assisting Indian security forces with contempt.⁹² While the Indian government denies that it supports "renegades", it has clearly played a role in organising the militias, arming their members and directing their activities as part of its "rehabilitation" program.⁹³

Many militia members wear civilian clothes but live in military camps, are fully armed and harass people in full view of uniformed military personnel. There

are any number of reports of abusive militia members taking refuge on military bases after fleeing angry locals. If arrested, most militia members are released through the intervention of military personnel. The government pays them monthly salaries, and they are widely suspected of profiting from prostitution rings, the smuggling of illegal timber and drug sales.

India is also directly represented in Kashmir by its regular security forces, including the Central Reserve Police Force, the Border Security Force, Indo-Tibetan Border Police and the Rashtriya Rifles (Army units trained in counterinsurgency).⁹⁴ Security personnel regularly set up roadblocks, search private and public vehicles, detain pedestrians and check identities.⁹⁵ Civilians grudgingly accept these checks as part of their daily lives but perceive them as harassment designed to demonstrate the soldiers' control and break the public's will to resist.⁹⁶ Were it not for the practical necessity of supporting a family says a Srinagar resident, "I would take up the gun, just to fight this humiliation and have some dignity".⁹⁷

Periodically, security personnel also conduct house-to-house searches and crackdowns. Cordoning operations, in which a locality is sealed off and all males are paraded before masked informants while houses are searched and identities checked, are used by the military to arrest militants. The security agencies often verbally and physically abuse civilians, who have little choice but to submit.⁹⁸

Most civilians remain both fearful and convinced that the military acts indiscriminately, often fabricating accounts to justify the killing of innocent civilians and using arrests and disappearances as tactics to extort money or information from relatives.⁹⁹ But even in such a dysfunctional environment, people have learned to cope as the military presence has become a fact of daily life. As a Kashmiri social

⁸⁹ ICG interviews June, July 2002. See also Amnesty International, *Torture and Deaths in Custody* (New York., 1995), pp. 46-55; Goodhart, op.cit., pp. 43-52.

⁹⁰ ICG interviews June 2002.

⁹¹ Gossman, *Behind the Kashmir Conflict*, op.cit.; Gossman, *India's Secret Army in Kashmir* op.cit., pp. 2-5, 15-26.

⁹² ICG interviews June, July, August 2002.

⁹³ Gossman, *Behind the Kashmir Conflict*, op.cit.; Gossman, *India's Secret Army in Kashmir*, op.cit., pp. 15-26.

⁹⁴ Ganguly, *Conflict Unending*, op.cit., p.1. Gossman, *India's Secret Army in Kashmir*, op.cit., p.11.

⁹⁵ Interviews and personal observation, 1996, 1999, 2002.

⁹⁶ ICG interviews, June 2002.

⁹⁷ ICG interview July 2002.

⁹⁸ Ibid. Gossman, *India's Secret Army in Kashmir*. op.cit., pp. 26-27. Also see Amnesty International, *Torture and Deaths in Custody* (New York., 1995), pp. 50-55. Goodhart, op.cit., pp. 48-49.

⁹⁹ ICG interviews June, July 2002. On disappearances, torture, and extra judicial killings, see Gossman, *Behind the Kashmir Conflict*, op.cit.

activist described, “people are still scared of the military, but not like they used to be”.¹⁰⁰

Many also believe – rightly or wrongly – that India has at times manufactured political incidents to serve its own ends, even to the point of accusing it of killing Hindus to justify its actions.¹⁰¹ While conspiracy theories are often rife in such settings, it is notable that many in Srinagar have gone so far as to believe that the security forces were responsible for the killings of 28 Hindus at Qasim Nagar, Jammu on 13 July 2002 and of nine *yatris*, or Hindu pilgrims to the Amarnath cave in southern Kashmir, at Nunwan, Anantnag on 6 August 2002.¹⁰²

Many Kashmiris believe that Indian security forces sponsored the killings in order to substantiate their claims that the Kashmir problem is one of Pakistani-sponsored terrorism, to defame militants and to intensify international pressure against Pakistan.¹⁰³ The Indian government has squarely blamed Pakistani-sponsored Islamic militants for these deaths, and the accused militants have denied responsibility.¹⁰⁴ Both the APHC and the United Jihad Council condemned the attacks.¹⁰⁵ While the truth is difficult to ascertain in such a closed environment, the strikingly different perspectives on the violence are in themselves telling.

C. A LEGAL FRAMEWORK ALLOWING ABUSE

India's presence in the valley is also acutely felt through the web of laws designed to curb militancy. Indian anti-terror legislation gives broad powers to security personnel while virtually absolving them of any legal responsibility for their actions, which has

facilitated widespread abuse of combatants and non-combatants alike.¹⁰⁶ Both the 1990 Armed Forces (Jammu and Kashmir) Special Powers Act and the general Special Powers Act remain in effect and are still used. Although the Terrorist and Disruptive Activities Prevention Act lapsed in 1995, people are still detained under its provisions in cases where the authorities argue crimes were committed before it was repealed.¹⁰⁷ All these laws have been used both to prosecute anyone believed to sympathise with militancy and as a broader tool to depress political activity.¹⁰⁸ According to the Home Minister of Jammu and Kashmir, more than 10,000 people have been detained and released on bail in Jammu and Kashmir since the start of militancy.¹⁰⁹

In October 2001, after the terrorist attacks in the United States, the Indian cabinet approved a new anti-terrorism measure, the Prevention of Terrorism Act, which became law in March 2002.¹¹⁰ It renews the basic provisions of the Terrorist and Disruptive Activities Prevention Act, under which less than 1 per cent of detainees were convicted despite low burdens of proof and procedures favouring the prosecution¹¹¹ but is more severe. It allows for indefinite detention of suspects without formal charges or trial on non-specific charges and gives authorities wide powers to arrest, detain and interrogate while expanding the definitions of punishable crimes and prescribing severe punishments, including the death penalty, for a broader range of criminal acts.¹¹² Such controversial

¹⁰⁰ ICG interview June 2002.

¹⁰¹ ICG interviews, July-August 2002.

¹⁰² “Toll in militants' attack rises to 28”, *Press Trust of India Limited*, 15 July 2002 and Rama Lakshmi, “Gunmen Kill 9 Hindus in Kashmir”, *The Washington Post*, 7 August 2002.

¹⁰³ ICG interviews, July-August 2002.

¹⁰⁴ “Terrorist involved in Qasim Nagar attack arrested”, *Press Trust of India Limited*, 3 August 2002, and “Pakistan-based group denies responsibility for Kashmir civilian killings”, *BBC Monitoring*, 15 July 2002.

¹⁰⁵ Shujaat Bukhari, “Separatists condemn Jammu massacre”, *The Hindu*, 15 July 2002; “Muttahid Jihad Council condemns Jammu attack”, *Press Trust of India Limited*, 15 July 2002; “Hurriyat demands probe into Nunwan carnage”, *Press Trust of India Limited*, 6 August 2002; and “Kashmiri fighters blame killing of Hindu pilgrims on India”, *Agence France-Presse*, 6 August 2002.

¹⁰⁶ See Amnesty International, *Torture and Deaths in Custody* (New York, 1995), pp. 46-55; Goodhart, *op.cit.*, pp. 43-52.

¹⁰⁷ Gossman, *Behind the Kashmir Conflict*, *op.cit.*, *Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury* (New Delhi, South Asia Human Rights Documentation Centre, November 2001) pp. 31-38.

¹⁰⁸ Gossman, *Behind the Kashmir Conflict*, *op.cit.*; “India: The Use of the Public Security Act in Jammu and Kashmir”, *Amnesty International Public Statement*, 18 June 2001.

¹⁰⁹ “161 Detained in Kashmir under India's new anti-terrorism measures”, *Agence France-Presse*, 17 July 2002.

¹¹⁰ *Ibid.*

¹¹¹ See *Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury* (New Delhi: South Asia Human Rights Documentation Centre, November 2001) pp. 31-38.

¹¹² *Ibid.*, pp. 38-148. Many aspects of the law facilitate its abuse. Some are particularly noteworthy. POTA applies to all of India and not only to strife-torn areas [1(6)]. Review of its provisions, irrespective of its practical application and effects, can only occur after three years of entry into force [1(6)]. It broadens the definition of terrorist activity to

legislation would have been difficult to pass if it were not for the heated international and domestic political climate that followed the 11 September attacks.

One of the Indian government's major defences to critics of the Prevention of Terrorism Act is to compare it to Britain's Prevention of Terrorism Act and the USA Patriot Act of 2001.¹¹³ A number of points are worth making in that regard. The British Prevention of Terrorism Act is explicitly an emergency measure subject to Parliament's annual review that permits detention for up to 48 hours and up to five days with permission of the Secretary of State. It is subject to the review of the European Court of Human Rights and the UN Human Rights Committee. India's Prevention of Terrorism Act is not liable to any such external review, and it is a general measure subject to parliamentary reconsideration only after three years. It also permits detention up to 90 days, and to 180 days with the approval of a Special Court.

Although the USA Patriot Act expanded federal intelligence gathering and broadened the definition of

include ill-defined acts like "voluntarily...aiding or promoting in any manner" any association declared by the government to be unlawful [3(1)(b)] and makes such crimes punishable by death [3(2)(a)]. It limits judicial discretion in sentencing by imposing mandatory minimum sentences upon conviction [3(2)(b)]. It authorises the state or central government to seize any "proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act" [6(2)]. It facilitates harassment of the media by requiring all public and private institutions to furnish any information "where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act" [14(1)] and makes the failure to do so an imprisonable offence [14(2)]. It reverses the presumption of innocence by requiring organisations declared terrorist by the government to convince the government otherwise or face prosecution [18,19]. It permits the convening of "Special Courts" to adjudicate cases arising under the Act in irregular places, facilitating secret, unmonitored prosecutions [24]. It permits trials in the absence of both the accused and counsel [29(5)]. It allows the Special Court to hold in camera proceedings in secret locations without disclosure of witnesses' identities [30]. It prevents any legal proceeding against any authority vested with any powers under the Act for anything done "in good faith ...or purported to be done in pursuance of this Act" [57]. *The Prevention of Terrorism Act, 2002* (enacted 28 March 2002).

¹¹³ See *Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury* (New Delhi: South Asia Human Rights Documentation Centre, November 2001) pp. 25-31.

criminal offences to include knowingly or negligently concealing someone who engaged or was about to engage in a federal terror offence, it does not substantively alter the criminal process for terror suspects or safeguard the executive from judicial review. The U.S. law only allows preventive detention after a lawful arrest based on probable cause of criminal conduct. A judge or grand jury must confirm such an indictment. It does not substantively alter basic criminal procedure, including the presumption of innocence, the right to an open and speedy trial and the right to confront witnesses. While rights to free speech and association may be affected by the criminalisation of fundraising for and contribution to groups involved in terrorist activities, the media and other private or public agencies do not risk prosecution if they fail to hand over information to investigators believed to be relevant to terror cases.

By contrast, India's Prevention of Terrorism Act significantly alters the criminal procedure for terror suspects and eliminates the presumption of innocence, the right to an open and speedy trial and the right to confront witnesses. It also criminalises any public or private agency's refusal to furnish information that an investigating officer believes to be "useful for, or relevant to, the purposes of this Act".¹¹⁴

The detention, under the Prevention of Terrorism Act, of four individuals accused of involvement in the 13 December 2001 attack on the Indian Parliament has underscored some shortcomings of the Prevention of Terrorism Act and the government's reluctance to meet fairly minimal standards.¹¹⁵ For example, the Prevention of Terrorism Act requires a memo to be filed detailing the date and times of custody.¹¹⁶ At least one defendant, Abdul Rehman Geelani, was reportedly detained for at least a day before his arrest was recorded, during which time he was held incommunicado in an unauthorised place of detention and allegedly subjected to physical and verbal abuse.

The Prevention of Terrorism Act also requires that detainees be brought before a magistrate within 48

¹¹⁴ Ibid.

¹¹⁵ "India: Open letter to Law Minister about the trial of Abdul Rehman Geelani and three others", *Amnesty International Media Advisory*, 8 July 2002.

¹¹⁶ Ibid.

hours of any confession and that any claims of torture – potentially affecting the admissibility of evidence – be reported. Geelani was given no such opportunities, and the court also rejected his objections to having tapped phone calls admitted as evidence.¹¹⁷ Since law enforcement apparently did not follow the proper procedures, such evidence should likely not have been admissible. In an exercise of legal contortionism, however, the court ruled that although the evidence would not have been admissible under the Prevention of Terrorism Act, the calls were made before the Act was law and were thus admissible.

Between October 2001 and mid-July 2002, 161 people were detained under the Prevention of Terrorism Act in Jammu and Kashmir.¹¹⁸ This included the case of two high profile members of the APHC, Yasin Malik of the Jammu and Kashmir Liberation Front and Syed Ali Shah Geelani of Jamaat-i-Islami Kashmir. Malik was arrested on 25 March 2002 in what authorities stated was an attempt to end *hawala* funding (a system of anonymous money transfer where cash given in one country is collected in another) used to support terror activities in Jammu and Kashmir.¹¹⁹ Malik was released on medical grounds after posting bail on 20 July 2002 and immediately rearrested under the Special Powers Act.¹²⁰

Geelani was arrested on 9 June 2002, also for *hawala* dealings. The police claimed to have recovered large amounts of cash in his possession.¹²¹ A week later it was announced that he was arrested under the Special Powers Act instead, with the primary charge being that he was a member of Jamaat-i-Islami Kashmir – although this political party has contested state elections in years past.¹²² To protest these arrests, a civil strike was called, and generally observed, in the

valley.¹²³ In Srinagar, the arrests were seen as driven largely by political motivation and an urge to make the fall 2002 elections in Jammu and Kashmir appear more legitimate by eliminating the two most hard-line opponents of elections within the APHC.

In Srinagar, civilians are concerned that the body of anti-terror legislation will be used to prosecute them for pro-militant or anti-India sympathies, whether real or imagined. They also feel increasing vulnerability to accusations from anonymous informants seeking to implicate them in any illegal or unacceptable transaction, speech or activity. Informants could do so for their own reasons, including wholly unrelated personal or business disputes. Such commonplace activities as using banks, carrying large sums of money and donating to charitable causes have now taken on the potential to expose Kashmiris to charges under the Prevention of Terrorism Act that they are funding militancy.¹²⁴

D. THE MILITANTS

Militant organisations have targeted civilians, the Indian security forces and pro-India politicians.¹²⁵ Many of these groups continue to operate out of Pakistani-administered Kashmir under the umbrella United Jihad Council.¹²⁶ While the initial years of the *Tahrik* witnessed a rapid growth in militant organisations operating in Kashmir, the success of Indian counterinsurgency efforts in the mid-1990s has reduced their number although those remaining are increasingly organised, disciplined and coordinated.

Initially, the major divide between militant organisations ran between the secular and religious nationalist parties. Secular parties, most prominently the Jammu and Kashmir Liberation Front, have since renounced violence as a legitimate means of struggle.¹²⁷ Now the major divide between the militant organisations can most accurately be drawn between those considered of local origin (mainly composed of residents of Indian-administered

¹¹⁷ See “HC admits tapped phone conversation as evidence”, *The Times of India*, 13 July 2002.

¹¹⁸ “161 Detained in Kashmir under India’s new anti-terrorism measures”, Agence France-Presse, 17 July 2002.

¹¹⁹ See “A Report on Yasin Malik’s arrest under POTO: Bad application of a draconian law”, *Committee for Initiative on Kashmir*, 17 April 2002.

¹²⁰ “Malik walks to freedom only to be arrested again under PSA”, *Press Trust of India Limited*, 20 July 2002.

¹²¹ Shujaat Bukhari, “Geelani, son-in-law arrested under POTA”, *The Hindu*, 10 June 2002.

¹²² M. Saleem Pandit, “Geelani held under PSA, not POTA”, *The Times of India*, 18 June 2002.

¹²³ Personal observation. “Strike over top separatist’s arrest disrupts life in Kashmir”, Agence France-Presse, 11 June 2002.

¹²⁴ ICG interviews June 2002.

¹²⁵ Gossman, *India’s Secret Army in Kashmir*, op.cit., pp. 39-46.

¹²⁶ Schofield, op.cit., pp. 200-201.

¹²⁷ *Ibid.*, p. 174.

Kashmir) and those considered to be foreign (drawing their support from Pakistani-administered Kashmir, Pakistan, Afghanistan or elsewhere). While local organisations were supported by the APHC, its leaders no longer associate with militant organisations.

Jammu and Kashmir Hizbul Mujahidin is the most active and prominent of local organisations after emerging as the dominant militant organisation in the state during the second phase of the *Tahrik*. Jammu and Kashmir Hizbul Mujahidin is considered pro-Pakistan and is also linked to Jamaat-i-Islami Kashmir. Syed Salahuddin, who also heads the United Jihad Council, is the group's supreme commander. Prior to the *Tahrik*, Syed Salahuddin was a prominent Jamaat-i-Islami Kashmir youth activist. He contested the 1987 election as a Muslim United Front candidate from the Amirakadal area of Srinagar.¹²⁸

Foreign organisations, all pro-Pakistan in their orientation, gained prominence during the third phase of the *Tahrik*. The most notable include the Lashkar-e-Tayaba and the Harkat-ul-Mujahidin.¹²⁹ India places most of the blame for the violence in Jammu and Kashmir on these organisations, although many Kashmiris feel the Indian claims that violence is solely driven by foreign provocation gloss over the legitimate problems driving discontent in the valley.¹³⁰

The Harkat-ul-Mujahidin was originally known as the Harkat-ul-Ansar but changed its name after being declared a terrorist organisation by the United States in May 1997.¹³¹ India blamed Lashkar-e-Tayaba and a second, smaller, pro-Pakistan militant group active in Jammu and Kashmir, the Jaish-e-Mohammad, for the 13 December 2001 attack on its Parliament.¹³² To defuse international pressure President Musharraf responded by banning both groups, a measure announced in his speech on 12 January 2002. Although the Pakistani government

has repeatedly claimed to have cracked down on Islamic militants, its actions have largely remained cosmetic responses to U.S. and Western European pressure.¹³³ Indeed, there is little to suggest that Pakistan has altered its fundamental strategy of support for cross-border militancy.¹³⁴

Srinagar Kashmiris view the foreign militants as better and braver fighters than the Kashmiris.¹³⁵ People refer to both the local and foreign anti-India militants as *asli mujahidin* (true mujahidin) in contrast to the pro-Indian militia forces of the Ikhwan. Local attitudes toward the militants commingle respect and fear. For example, locals pray at their funerals and protest when militants die in the custody of security or militia forces.¹³⁶ However, non-combatants no longer support the militants as actively as earlier in the *Tahrik*. As one Kashmiri put it, "People aren't excited by the militants the way they used to be".¹³⁷ However, Srinagar Kashmiris do see the militants mostly as anti-Indian and fighting against those responsible for their oppression, including the Indian security forces and their allied paramilitaries.¹³⁸

At the same time, people in Srinagar also fear the militants.¹³⁹ First, they fear becoming collateral damage in strikes directed at security forces, or being caught up in counter-insurgency activity. Secondly, people fear being forced to assist militants or being caught helping them. Residents often cite the example of encountering militants while driving a private or commercial vehicle and being asked to take them to a particular destination, often just after sunset. In such instances, the fear is of being stopped and arrested by the military as collaborators or being caught in a crossfire. Thirdly, the violence has deeply hurt the region's economy, and people are concerned about economic losses resulting from militant activity. People also fear damage to their property and goods resulting from militant attacks on security

¹²⁸ ICG interview with former Muslim United Front activist July 2002.

¹²⁹ Schofield, op.cit., pp. 200-201.

¹³⁰ "Terrorist involved in Qasim Nagar attack arrested", *Press Trust of India Limited*, 3 August 2002 and "Pakistan-based group denies responsibility for Kashmir civilian killings", *BBC Monitoring*, 15 July 2002. Also ICG interviews June 2002.

¹³¹ Schofield, op.cit., pp. 200-201.

¹³² See Hasan Zaidi, "Pervez Musharraf: In a Pincer", *India Today*, 7 January 2002.

¹³³ Text of Gen Musharraf's Address in *The Nation* (Lahore), 13 January 2002.

¹³⁴ ICG Asia Report N°40, *Pakistan: Transition to Democracy?*, 3 October 2002, p.32

¹³⁵ ICG interviews, June 2002.

¹³⁶ ICG interview July 2002.

¹³⁷ ICG interview June 2002.

¹³⁸ ICG interview June 2002.

¹³⁹ ICG interviews June, July 2002.

force installations as well as the reprisal attacks on civilians that often follow.¹⁴⁰

In short, the population in Srinagar has clear and deep-rooted animosity toward Indian security forces and their proxies and see the militants as the only parties capable of inflicting damage on their foes. However, they are also increasingly ambivalent toward the anti-India militants, largely because they are frustrated with the high human cost of the violence and no longer believe that armed struggle can force India to compromise on Kashmir's political future.

E. EDUCATION, ECONOMIC OPPORTUNITY AND CORRUPTION

In addition to their longstanding concerns about political representation, the residents of Srinagar have also traditionally been very concerned with educational and economic opportunities.¹⁴¹ Indeed, many tensions in the pre-1947 period stemmed from feeling that Kashmiri Muslims were discriminated against in both admission to academic institutions and access to state employment. Since 1947, the problem has evolved into a situation where there are simply very few educational and professional opportunities in the valley, and political favouritism and nepotism badly distort the admissions and hiring processes. Not surprisingly, those politically opposed to the authorities face the severest discrimination.

The economy in the valley has traditionally been heavily dependent on both tourism and handicrafts, both of which have been devastated because of the long cycle of violence.¹⁴² Recent years of drought have also caused severe economic problems in rural areas and increased the cost of foodstuffs in the cities.¹⁴³ Most people's economic conditions have deteriorated, and both workplaces and schools have been interrupted by frequent civil strikes and curfews, leaving most institutions functioning but weak. These conditions have also fed a steady

exodus from the region, with families of means sending their children outside the valley, particularly for higher education, or entire families relocating in search of a more stable business climate and economic opportunities. A local businessman noted, "It's been fourteen years. How long can people last? We have a consumer economy. Now, the same few locals walk by our stores where thousands of outsiders used to walk by".¹⁴⁴

It is difficult for even the well educated to find public or private sector jobs or to establish businesses. Before 1989, only well-educated professionals seeking further training or better professional opportunities would leave Srinagar. Now, the perception is that practically everyone who has the means to leave should and will.¹⁴⁵ A secondary school student at one of the most prestigious private schools in Srinagar described his situation as one where he is just "trying to get through twelfth grade so that I can leave this place. There is nothing for me here, no education; no opportunities".

Compounding this problem, since 2001 visa restrictions have been tightened, making it harder for Kashmiri Muslims to move abroad for study or employment. Many young people in the valley have grown up at a time where passing exams achieved by pointing a gun at an examiner.¹⁴⁶ Many academics and teachers have left the valley. Classes and exams are constantly interrupted. Cheating is rampant, and academic standards have generally fallen. Graduates and professionals are unqualified products of a system that has broken down and is only beginning to recuperate. Among the youth who remain, drug abuse, clinical depression and prostitution are not uncommon.¹⁴⁷

A small minority continue to profit from the *Tahrik*, largely through illicit means. Armed extortion remains a steady source of income in the valley, and a small cadre of individuals continue to accept money from either the Indian or Pakistani governments – and in some cases from both – for their military or political support.¹⁴⁸ A major source of income in Srinagar is government employment

¹⁴⁰ On reprisal killings, see Gossman, *India's Secret Army in Kashmir*, op.cit., pp.27-31.

¹⁴¹ ICG interviews September, October 1999 and June 2002. See also U. K. Zutshi, *Emergence of Political Awakening in Kashmir* (New Delhi, 1986) and Ravinderjit Kaur, *Political Awakening in Kashmir* (New Delhi, 1996).

¹⁴² ICG interviews July, August 2002.

¹⁴³ Masood Hussain, "J&K crop losses put at Rs. 345Cr", *The Economic Times*, 10 July 2002.

¹⁴⁴ ICG interview June 2002.

¹⁴⁵ ICG interview June 2002.

¹⁴⁶ ICG interview July 2002.

¹⁴⁷ ICG interviews with social scientist studying the effects of conflict and physician dealing with psychiatric issues, July 2002.

¹⁴⁸ ICG interviews June 2002.

and the corruption related to it. At the same time, people find the government's policies that have been designed to rebuild the economy totally unhelpful.¹⁴⁹

Corruption continues to be widespread, and officials at all levels within the Jammu and Kashmir government regularly use their positions to extort petty bribes. Professionals (like engineers, contractors, bank employees) are known to siphon money from government projects. Official corruption is so widespread that it has lost much of the social stigma that was once attached to it. Many locals see it as a cynical mechanism by which the government attempts to buy loyalty or make Kashmiris' economically dependent on India and incapable of demanding political rights.

A great deal of corruption can also be traced directly back through political parties, politicians and militants tied to both India and Pakistan. This corruption is more specifically related to the *Tahrir* and also viewed as a mechanism through which both governments attempt to sway the loyalty of Kashmiris. Although some government efforts have been made to tackle corruption, these are perceived as largely public relations exercises since corruption cases are seldom prosecuted. The Indian government has also used anti-terrorist legislation, more specifically the Prevention of Terrorism Act, to cut off funding flowing from Pakistan in *hawala* cases.

A British group, Market and Opinion Research International (MORI), conducted a poll of 850 people in Jammu and Kashmir in March 2002 in anticipation of the fall 2002 elections.¹⁵⁰ In and around Srinagar, the interviewers were met with suspicion since people believed the Indian government had sponsored the poll to identify militant sympathisers. Opinions diverged between the regions of Jammu and Kashmir, with responses from the valley more

starkly anti-India.¹⁵¹ Statewide, the vast majority opposed an Indo-Pakistan effort to find a permanent solution to the situation in Kashmir, instead believing the correct way to bring peace to the region would be through free and fair elections to elect the people's representatives (86 per cent), economic development to provide more job opportunities and reduce poverty (93 per cent), direct consultation between the Indian government and the people of Kashmir (86 per cent) and stopping the infiltration of militants across the LOC (88 per cent).

While the vast majority of respondents in Jammu and Leh (the largest city in Ladakh) believed peace was possible through democratic elections, only a bare majority (52 per cent) around Srinagar agreed. Moreover, there was a statewide consensus (65 per cent) that democratic elections were not possible while violence continued.¹⁵²

A vast majority opposed the state being divided on ethnic or religious lines (92 per cent) and favoured a forum through which people from both sides of the LOC could discuss common interests (91 per cent). A majority (80 per cent) believed the safe return of Kashmiri Pandits to their homes would help bring peace. A majority (55 per cent) favoured India and Pakistan granting the areas of the state under their control as much autonomy as possible so the people of the state could govern their own affairs. While majorities in Srinagar and Leh favoured autonomy, a majority in Jammu was opposed. Statewide, an estimated 61 per cent of respondents said they would be politically and economically better off as Indian citizens and only 6 per cent as Pakistani citizens, but 33 per cent responded that they did not know. Independence was not presented as an option. Both Pakistan and the APHC rejected the polling as partial and unrepresentative.

People in Srinagar have become increasingly cynical about their own existence and their future. They feel that their traditional values have been destroyed over the last thirteen years and that the gun has introduced

¹⁴⁹ ICG interviews July 2002.

¹⁵⁰ Joanna Slater, "What the Pollsters Found in Kashmir", *The Wall Street Journal*, 14 August 2002. The polling was commissioned by Lord Avebury, former head of the British Parliament's human rights committee, and was designed to gauge public opinion in Jammu and Kashmir leading up to the fall 2002 elections. MORI contracted an Indian group, Facts Worldwide, to conduct the fieldwork. Polling took place in the major city of each province (Jammu, Srinagar, and Leh) and their vicinity and involved twenty-minute interviews in respondents' homes. The Srinagar supervisor of the fieldwork chose to remain anonymous for fear of repercussions from the government or militants.

¹⁵¹ For example, where 27 per cent responded statewide that Indian security forces were responsible for widespread human rights abuses, none of those responses came from Jammu or Leh. That figure rose to 64 per cent in the Kashmir valley alone. 96 per cent of respondents in Jammu thought human rights abuses by militants were widespread, while only 2 per cent of respondents in Srinagar thought the same. *Ibid.*

¹⁵² "Kashmiris Reject War In Favour Of Democratic Means: MORI publishes results of major new survey", *MORI*, 31 May 2002.

a new set of values.¹⁵³ There are many manifestations of this phenomenon. First, behavioural norms have changed drastically.¹⁵⁴ Where respect for elders was the norm, now it is not uncommon for the young to disobey and abuse their elders. Where it was commonplace for people, especially elders, to correct or criticise others, people are careful about what they say to whom, even if not on politics, for fear of reprisal. Everyone believes everyone else untrustworthy. People are extremely wary of the increasing number of local informants used by Indian security forces in their counterinsurgency operations.

The valley's rising number of orphans also highlights some of these social concerns. Organisations operating orphanages estimate that there are over 30,000 orphans in Kashmir, some 15,000 of who need immediate assistance.¹⁵⁵ Before the *Tahrik*, these same organisations had estimated that there were no more than 500 orphaned children in need of assistance in the valley. Now, a typical orphanage in Srinagar receives requests of assistance for five to seven new orphans every month. Similarly, there are thousands of widows and rape and torture victims. The effects of the trauma are manifest in increasing cases of clinical depression, suicide, drug abuse and domestic violence.¹⁵⁶ Individual and organisational efforts to cope with such problems do exist, but they are too few for the magnitude of the problem.

While the number and size of orphanages in Srinagar has dramatically increased during the *Tahrik*, and many people want to support them and related educational institutions, they have to be extremely careful about how.¹⁵⁷ First, there is the problem of corruption. Fearing that money will be improperly used, most donate consumer goods, like foods (giving in kind is also a more traditional form of charity). According to the administrator of a well-established orphanage, a potential donor interrogated him for two days before he contributed.¹⁵⁸ This caution is understandable, and there is little legal recourse for people whose support is misused. Secondly, there is the danger of being linked to

activities or people that are or might be declared illegal or anti-state. For example, those who give to orphanages may be helping support children whose parents or other family members were alleged militants or supporters of militancy. By giving to such a charity, a third party risks being implicated by the security forces in anti-state activities.

¹⁵³ ICG interviews June, July 2002.

¹⁵⁴ ICG interviews June, July 2002 including with social scientist studying effects of conflict.

¹⁵⁵ ICG interviews July 2002.

¹⁵⁶ ICG interviews with social scientist studying the effects of conflict and physician dealing with psychiatric problems July 2002.

¹⁵⁷ ICG interviews July 2002.

¹⁵⁸ ICG interview June 2002.

III. THE POLITICAL SCENE

A. THE PRE-ELECTION POLITICAL LANDSCAPE

During the *Tahrik*, authority in Kashmir has been bifurcated between civil and military organisations. Until the recent elections, the National Conference party dominated the local political landscape in a situation that seemed in danger of remaining permanently moribund. Since 1996, Farooq Abdullah of the National Conference served as Chief Minister.

However, the loss of public faith in the National Conference offered major impetus for the *Tahrik* itself, and while the party maintained power until the recent elections, it did so only at the cost of further undermining its local credibility. The National Conference has very limited support among the residents of Srinagar.¹⁵⁹ It has maintained some following among the more impoverished sections of the city, largely because the lower classes suffered disproportionately during the *Tahrik*, but it has been unable to expand its base.¹⁶⁰

Thus, India's domestic political ally and its partner in anti-insurgency efforts stands totally discredited. Indeed, while the National Conference's periodic demands for greater Kashmiri autonomy within India's constitution were given some credence before the *Tahrik*, such statements are now treated by the public as little more than rhetorical efforts to extract financial or other advantages from New Delhi.¹⁶¹ For many, the party's consistent opportunism has left it seemingly hollow and lacking any real ideological commitment while also sparking broad local resentment amid charges that it is involved in official corruption and is at least partially responsible for the oppressive local security arrangements.¹⁶²

In Srinagar, people have come over the last decade to view the National Conference and the activities of its leaders as increasingly irrelevant. For example, when Omar Abdullah, Chief Minister Farooq Abdullah's son, was appointed president of the National Conference on 23 June 2002, the traditional

ceremony was sparsely attended – locals even joked that residents of Jammu had to be bussed in to avoid an embarrassingly low turnout.¹⁶³ The event was also marred by a grenade attack, despite heavy security.¹⁶⁴

The National Conference has largely hewed to New Delhi's line, assigning responsibility for the violence in Kashmir to Pakistani-sponsored cross-border terrorism. It has supported both effective military action to prevent infiltration across the LOC and increased counterinsurgency efforts.

Two broad categories of parties have traditionally been opposed to the National Conference, those willing to work within the Indian constitution and those that are not. The most prominent among those that recognize India's rule include the People's Democratic Party (PDP) of Muslim United Front leader Mufti Mohammad Sayeed, and the Jammu and Kashmir Congress. Mufti Mohammad Sayeed had been a Congress minister in the 1970s, leader of the Congress in the 1980s and a cabinet minister in V. P. Singh's government when the *Tahrik* began in 1989.¹⁶⁵ During the *Tahrik*, Sayeed founded the PDP, of which he is the leader and his daughter Mehbooba is vice-president. Mir Qasim, a former National Conference official, formed the Congress out of the National Conference in 1965. He became Jammu and Kashmir's Chief Minister in 1971 and a cabinet minister in Indira Gandhi's national administration in 1975.¹⁶⁶ Neither party has any perceptible public support in Srinagar.¹⁶⁷

The PDP and the Congress argued for participation in state elections, and maintained that the National Conference and its policies were at the root of many of the region's problems. Stressing that the National Conference has alienated the population, they suggested that transparent and fair elections would bring a more representative government into power and the conflict in Kashmir under control.¹⁶⁸ While there was also talk of a "Third Front" comprised of

¹⁵⁹ ICG interviews September, October 1999 and June, July 2002. See also Goodhart op.cit., p.35.

¹⁶⁰ ICG interview with social scientist studying the effects of conflict in Kashmir, July 2002.

¹⁶¹ ICG interviews June-July 2002.

¹⁶² ICG interviews June-July 2002.

¹⁶³ ICG interviews late June 2002.

¹⁶⁴ See M. Saleem Pandit, "Omar anointed National Conference President", *The Times of India*, 24 June 2002.

¹⁶⁵ Schofield, op. cit., pp. 121-126, 132 and 145-147.

¹⁶⁶ Schofield, op.cit., pp. 121-126.

¹⁶⁷ ICG interviews, June-July 2002. The virtually non-existent voter turnout in Srinagar in the recent election is further suggestive of the degree of voter support for the parties.

¹⁶⁸ "Opposition takes lead in launching campaign", *Kashmir Times*, 24 August 2002.

former militants that would contest the fall 2002 elections, no such party materialised.¹⁶⁹

The most prominent among the opposition groups and figures that reject India's rule in Jammu and Kashmir include members of the umbrella APHC and Shabir Shah of the Jammu and Kashmir Democratic Freedom Party. Shah entered politics in 1968 at the age of fourteen when he was arrested for publicly demanding the Kashmiris' right to self-determination.¹⁷⁰ Almost 20 years in prison earned him a Nelson Mandela-like image among Kashmiris.¹⁷¹ Shah joined the APHC but was expelled by its executive council in July 1996 for public non-conformity with council policies. In May 1998 he formed the Jammu and Kashmir Democratic Freedom Party, a non-violent party that seeks to secure the right of self-determination for the pre-1947 state of Jammu and Kashmir.¹⁷² While Shah had gained sympathy and support in the *Tahrik*, his public standing has waned in recent years.¹⁷³

Although the APHC consists of a number of ideologically dissimilar parties (the widest split being the pro-Pakistan views of the Jamaat-i-Islami Kashmir and the pro-independence stance of the Jammu and Kashmir Liberation Front), the coalition functions publicly as a united body. Some organisations and leaders within it have significant support, particularly the Jamaat-i-Islami Kashmir, represented by Syed Ali Shah Geelani, the Awami Action Committee led by Mir Waiz Umar Farooq and the Jammu and Kashmir Liberation Front, led by Yasin Malik.¹⁷⁴

The Jamaat-i-Islami Kashmir is an Islamic, pro-Pakistan organisation that has participated in past elections, including those held in 1972, when it won seats in the state assembly. It also participated in elections as part of the Muslim United Front in 1987.¹⁷⁵ Geelani was among the most outspoken pro-Muslim United Front voices before the 1987 elections and a popular figure among many of the young political activists who later became

militants.¹⁷⁶ He served as APHC chairman after Umar Farooq and remains among its most prominent and hard-line figures.¹⁷⁷

Umar Farooq's father, Maulvi Farooq founded the Awami Action Committee in 1964.¹⁷⁸ Inheritor of his family's traditional role as Mir Waiz, preacher and caretaker of Srinagar's Jamia Masjid (central mosque), Maulvi Farooq contested elections before the *Tahrik*. His assassination on 21 May 1990 resulted in widespread protests in Srinagar. Umar Farooq inherited his father's mantle, taking over the Awami National Committee and heading the Jamia Masjid. Umar, the first chair of the APHC, is still active within the organisation where he is viewed as a moderate.¹⁷⁹

The Jammu and Kashmir Liberation Front grew out of the political activism of the National Liberation Front in the early 1970s and has always been considered a secular nationalist, pro-independence organisation.¹⁸⁰ At the forefront of the *Tahrik*, the Jammu and Kashmir Liberation Front was responsible for much of the violence that occurred in the late 1980s.¹⁸¹ Yasin Malik was among the prominent activists of the Jammu and Kashmir Liberation Front in the late 1980s and among the first to receive military training. Under Malik, the Jammu and Kashmir Liberation Front renounced violence in May 1994, although he remains among the most hard-line of the APHC leaders.¹⁸²

Both Shabir Shah and the APHC have opposed elections as illegitimate attempts by New Delhi to circumvent Kashmiris' right to self-determination as contained in the UNSC resolutions. Despite efforts to persuade them, both Shah and the APHC ultimately refused to participate in the fall 2002 elections.¹⁸³ However, the APHC did appear to flirt significantly with the notion.

¹⁶⁹ "Third Front launched in Kashmir", *Press Trust of India Limited*, 20 August 2002.

¹⁷⁰ Schofield, op.cit., p. 136.

¹⁷¹ ICG interviews September 1999.

¹⁷² Schofield, op.cit., pp. 202-204.

¹⁷³ ICG interviews June 2002.

¹⁷⁴ ICG interviews June-July 2002.

¹⁷⁵ Schofield, op.cit., pp. 121-122, 136-138.

¹⁷⁶ ICG interview with former Muslim United Front activists, June 2002.

¹⁷⁷ Schofield, op.cit., pp. 202-205.

¹⁷⁸ Ibid., pp. 121-122.

¹⁷⁹ Ibid., pp. 159-160.

¹⁸⁰ Ibid., pp. 115-116.

¹⁸¹ Ibid., pp. 138-140.

¹⁸² Ibid., p. 174.

¹⁸³ "Shah rules out participation in Jammu and Kashmir polls", *Press Trust of India Limited*, 18 August 2002 and "Hurriyat objects to Advani's statement", *Kashmir Times*, 20 August 2002.

Much suspicion surrounds the assassination of Abdul Gani Lone, a veteran Kashmiri politician and prominent APHC leader. Lone was considered a pro-independence moderate, more flexible on election participation than other APHC leaders. He was shot dead by two masked gunmen on 21 May 2002 during a public ceremony commemorating the 1990 killing of Maulvi Farooq.¹⁸⁴ Security forces blamed the pro-Pakistan Lashkar-e-Tayaba and claimed militants were trying to keep the APHC from competing in elections. Lashkar-e-Tayaba denied responsibility and blamed the Indian government.¹⁸⁵

Two days of civil strikes were observed in the valley in protest of Lone's killing.¹⁸⁶ Many people in Srinagar suggested that Farooq Abdullah might be behind the killing as part of an effort to deter any meaningful challenger in the 2002 assembly elections and to support the official position that Pakistan is using terrorists to derail the legitimate democratic election.¹⁸⁷ The facts of Lone's killing remain unclear.

In August 2002, Former Indian Law Minister Ram Jethmalani's Kashmir Committee worked to encourage the participation of the APHC and Shabir Shah in the fall 2002 elections.¹⁸⁸ Although his invitation to discussions was well received, Jethmalani was unable to convince any APHC leaders or Shah. His proposals to make elections more legitimate in Jammu and Kashmir, including the imposition of governor's rule and the postponement of the vote, were all rejected by New Delhi. The APHC insisted that a UN-administered plebiscite was the only way to deal with the political strife in Kashmir, a position that generates wide sympathy in the valley. However, people in Srinagar do not believe that a plebiscite will occur because they do not think that India will compromise on Kashmir in the foreseeable future.¹⁸⁹

¹⁸⁴ Luke Harding, "Moderate separatist shot dead in Kashmir", *The Guardian*, 22 May 2002.

¹⁸⁵ "LeT rejects allegation of killing Lone", *Press Trust of India Limited*, 13 June 2002.

¹⁸⁶ "Life returns to normal in Kashmir after four days of strike", *Press Trust of India Limited*, 25 May 2002.

¹⁸⁷ ICG interviews June 2002.

¹⁸⁸ See "Kashmir Committee plans go haywire", *Kashmir Times*, 20 August 2002.

¹⁸⁹ ICG interviews July 2002.

B. A BALLOT SURPRISE

With the APHC and Shah boycotting the elections, the ballot still moved forward amid violence and intimidation in the run-up among the political and military players jockeying for position. More than 800 people were killed ahead of election day. Some judged the elections fair, but not entirely free, because of widespread concerns about violence and the ballot. Even participating parties had expressed their concern about the APHC boycott. "This election would have yielded best results with the participation of some top Hurriyat leaders and taken on a different meaning [since the] Hurriyat does represent the alienated section of the Kashmiris", said PDP Vice President Mehbooba Mufti, "So whom will they talk to? To Farooq Abdullah and Mehbooba Mufti who are already in mainstream politics and are not challenging anything?"¹⁹⁰

The results came as nothing short of a bombshell to a region that had long grown accustomed to elections manipulated to ensure the status quo. While no party gained a clear majority in the new assembly, the National Convention suffered a dramatic setback, losing 29 of its 57 seats and its long hold on power.¹⁹¹ Underscoring the depth of the party's reversal, the National Conference President, Omar Abdullah, lost his seat to a People's Democratic Party candidate.

Both the PDP and Congress parties made significant inroads. The PDP, which did not even exist during the last assembly election, picked up a very respectable sixteen seats. Congress leapt from seven seats to twenty, of which fifteen were from Jammu. On 2 November 2002, PDP's Mufti Mohammad Sayeed took over as Prime Minister, heading a PDP-Congress coalition government. For the first time since independence, a non-National Convention leader is in power. Equally historic, it is the first time that the state's leadership is different than the ruling party in New Delhi – a very welcome sign of political liberalisation that gives some hope that political leadership in Indian-administered Kashmir need not simply be a hand puppet of New Delhi.¹⁹²

¹⁹⁰ Rasheeda Bhagat, "Kashmir needs a pro-people not pro-Delhi government", *Business Line, The Hindu*, 8 September 2002.

¹⁹¹ There are 87 seats in the new assembly.

¹⁹² India's ruling Bharatiya Janata Party (BJP), and National Conference ally, did not take any seats.

While it is clear that the assembly elections are no panacea for all the ills of Kashmir, they do represent an important step forward. Alienated and apathetic, sandwiched between the security agencies and the militants who had called for a boycott, Srinagar Kashmiris mostly stayed away from the polling booths. Although voter turnout was also low in the other parts of the valley, voters did take part in fairly respectable numbers in some rural areas. They were motivated by the desire to oust the National Front government and partly to support the PDP agenda that included releasing political prisoners, restraining the security forces and disbanding the Special Operations Group, repealing laws such as the Prevention of Terrorism Act and embarking upon an unconditional dialogue with the Kashmiri militants and separatist parties.¹⁹³

Turnout was officially estimated in the mid-40 per cent range, a relatively impressive figure given the boycotts and levels of violence in the region although it was far higher in Jammu and Ladakh than in the valley. Further, while the APHC and a number of other parties boycotted the election, there were increasing signs that some militants have become interested in a more mainstream political process – as long as this process is not manipulated by New Delhi as in the past. “These elections or a new government do not change anything for our freedom movement”, said APHC chairman Abdul Ghani Bhat, but he also acknowledged that the people “have elected those who have sympathised with their aspirations for political freedom”.¹⁹⁴ Most importantly, the ballot suggested that something can change at a time when many in Srinagar were giving up hope.

However, with the election results come increasing expectations and potential pitfalls. While Pakistan’s criticism of the Kashmir assembly elections as non-representative rings hollow given its own recent track record on most matters relating to the democratic process, the APHC’s rejection of the polls underscores the need for the new Kashmir government to implement its electoral pledges to

restrain the security forces and begin an unconditional dialogue with Kashmiri militants as well as separatist parties. PDP Vice President Mehbooba Mufti said:

Militants are a part of the people. If we want to get the people out of the clutches of violence, we have to address the problems of the Kashmiri militants. They have not taken up the gun for the fun of it. We have to solve their problems.¹⁹⁵

The People’s Democratic Party and Congress coalition government has vowed to restore “peace with honour” through a 31-point Common Minimum Program. It includes pledges to assimilate and relocate Special Operations Group personnel into the regular police force; to refrain from implementing the Prevention of Terrorism Act in the state; to release detainees who have not been charged or who have served their prison terms; to investigate cases of custodial killings; and to rehabilitate militants who have renounced violence. The Kashmir government has also said it would eradicate corruption and promote development. If half these pledges were translated into action, they would help ease general tensions.¹⁹⁶

The Common Minimum Program, however, has many and grave shortcomings. It does not even mention an issue central to Kashmiri dissatisfaction: political representation. After forming the coalition government, and perhaps to mollify its Congress partners, the PDP distanced itself from its platform plank of unconditional talks with separatists and militants, leaving it to New Delhi to open such talks. “We are interested in showing immediate results, yet the task ahead of us is so complex and our journey is so arduous that we realise the need to proceed with deliberate speed and (a) realistic approach”, said Chief Minister Sayeed.¹⁹⁷

Yet the widely divergent perceptions of political representation – interpreted by Kashmiri militants and separatists as self-determination and by moderate parties and groups as autonomy within the Indian

¹⁹³ “By killing one militant”, the Special Operations Group has “created hundreds”, says PDP Vice President Mehbooba Mufti. Interview with PDP leader Mehbooba Mufti, “We won’t compromise on our agenda”, *rediff.com*, 21 October 2002. <http://www.rediff.com/election/2002/oct/21inter.htm>.

¹⁹⁴ “Election loss prompts Kashmir leader’s resignation”, *Guardian Unlimited*, 11 October 2002. <http://www.guardian.co.uk/kashmir/Story/0,2763,810062,00.html>.

¹⁹⁵ Nissar Ahmad, “A Dissonant Duet”, *Frontline*, Vol. 19, N°22, 26 October-8 November 2002. <http://www.flonnet.com/fl1922/stories/20021108007000900.htm>.

¹⁹⁶ Text of Common Minimum Program in *Kashmir Times* (Jammu), 28 October 2002.

¹⁹⁷ Sheikh Mushtaq, “New Kashmir Chief Says Committed to Peace”, Reuters News, 3 November 2002

Union – have contributed in no small measure to the bloody impasse in Kashmir. While these two views might not be reconcilable, a dialogue between Kashmiris would be a first step toward reducing the alienation of those who have chosen to stay outside the political process.

However, if the new Kashmir government continues to backtrack on its electoral promises or the Indian government reverts to heavy handed tactics, including a reliance on often ruthless and unaccountable paramilitary groups to pursue militants, and generally treats Kashmiris as second class citizens, the elections will be seen only as yet another opportunity lost.

Resolution of the conflict requires at a minimum efforts that inspire popular confidence in and acceptance of the political process and its ability to deliver representative governance.¹⁹⁸ The legal system must be one that addresses civilian grievances. Civil and military authorities must be accountable to the local population and not to a distant administration that does not necessarily understand or share its concerns. Political reconciliation will equally require dialogue between the new Kashmir government and excluded political actors, particularly the Kashmiri separatists and militants.

IV. CONCLUSION

The situation in Kashmir, as experienced by the residents of Srinagar, remains incredibly difficult. Kashmiris in the valley believe that the only solution lies in the implementation of the UN resolutions, particularly those calling for a mutual withdrawal of Indian and Pakistani forces from the disputed territory and implementation of a plebiscite – something both India and Pakistan have been loath to do. While a plebiscite could bring a sustainable peace to the region, it does not appear a practical or likely prospect. Indeed, it may be that the ultimate solution to the tensions between India and Pakistan on Kashmir will involve a negotiated solution, based expressly or implicitly on a *de jure* division around the Line of Control.¹⁹⁹

To ease tensions in the valley, India must take measures to build confidence among Kashmiris in its good intentions and willingness to deal with them in a fair, transparent and cooperative manner. This process must start with accountability, particularly for those security forces operating in the region. India should begin by making its security forces in Kashmir accountable for all alleged killings, incidents of torture, rape and other human rights abuses. All allegations of abuse should be fully and impartially investigated. The findings of such investigations should be made public. If the evidence warrants, responsible security personnel should be tried through civilian courts, and the judicial proceedings should also be made public. India must demonstrate a commitment to the rule of law even in times of civil unrest. Everyone should be accountable before the law, including military personnel and pro-India politicians.

Opening up the valley more freely to international journalists and non-governmental personnel will help speed this process, and likely bring increased economic development. As the old saying goes, sunlight often serves as the best disinfectant. Greater international activity in the valley will also help convince residents that they are not merely being shunted aside and that their voices have a legitimate outlet in political and public debate. Further, such outside verification would go a long way either to

¹⁹⁸ Reflecting Kashmiri scepticism that the change will make a difference to their lives, a Srinagar businessman says, “Neither Abdullahs nor Muftis can change (the) situation in Kashmir. Only God can save us”. Sanjeev Miglani, “Kashmir Coalition to Free Some Detainees”, Reuters News, 27 October 2002.

¹⁹⁹ ICG does not at this stage take a position on what ultimate solution is most desirable and achievable. We will address this in a later report, after fully reviewing Indian and Pakistani positions and previous efforts to settle the conflict.

prove or disprove the Indian argument that militancy is driven largely by cross border incursions and terrorists.

India should ratify the First Optional Protocol to the International Covenant on Civil and Political Rights and all articles of the Convention Against Torture. The Prevention of Terrorism Act should also be submitted to annual legislative review to ensure that it is properly applied, meets its stated objectives, and does not result in widespread abuse as the Terrorist and Disruptive Activities (Prevention) Act did. Security personnel should be liable to prosecution in civilian courts. The Prevention of Terrorism Act should, moreover, be revised to bring the criminal procedure in line with that for all other offences. Prevention of Terrorism Act suspects should be tried in civilian courts to reduce the likelihood of abuse and to increase public confidence in the legal process.

Information on detainees should be provided to family members and legal counsel at the time of detention. The whereabouts of detainees should not be concealed, nor should information regarding detainees be used to extort money from relatives. Such measures will reduce cases of disappearance and build public confidence in the security forces. India should also ensure that allegations of corruption in the state government are fully and impartially investigated. Corrupt politicians, officers, employees, and bureaucrats should be held legally accountable for their actions to build public confidence in the state and central governments.

Paramilitary organisations, including the Special Task Force and Ikhwan ul-Muslimoon, who are allegedly responsible for widespread abuses and particularly hated by the civilian population, should be disbanded. India should work toward reducing its overall forces in Kashmir, moving those that remain outside urban areas to reduce the feeling among Kashmiris of foreign occupation.

India should facilitate meetings and discussions between political, religious, ethnic and civil society leaders from Jammu, Kashmir and Ladakh and encourage them to work toward a common vision for the future of the state. The recent election results present an ideal opportunity to move such a process forward in the general spirit of reconciliation. Political parties in Jammu and Ladakh are increasingly calling for the division of the state on ethnic or religious lines, but popular sentiment in

Kashmir is opposed. Kashmiri Muslims tend to look at the problem with an historical perspective as an unresolved issue of Partition that affects the pre-1947 state of Jammu and Kashmir as a whole. An approach that encompasses the entire territory would facilitate harmony between and within the regions of the state.

India should accept the involvement of international bodies, including the relevant UN agencies, in assisting Kashmiri leaders to address the present problems of the state and develop a vision for the future. It should allow international observers to monitor more closely the Line of Control, thereby reducing the potential for a future Indo-Pakistan conflict. It should further allow international observers access to political detainees and interrogation facilities to prevent human rights abuses.

India should also encourage the return of Kashmiri Pandits to their homes in the valley. Some have continued to live in their own homes in Srinagar through the *Tahrik*. Kashmiri Muslim neighbours have protected the property of most who left. No significant sub-population or party in Kashmir opposes the return of Pandits, although many are doubtful this will happen. It would, however, facilitate healing and peace in Kashmir, and at a minimum, the government should devise incentive packages to make a return to the valley economically viable for Pandit families.

The Indian government should also implement economic plans to encourage the native industries of Kashmir, including handicrafts, and agricultural self-sustenance. This would alleviate economic hardship in the valley. The Indian government should also encourage private industry in the state by building appropriate infrastructure, particularly for sectors with a demonstrated capacity, such as information technology.

Pakistan must cease any support for militants in Kashmir and do much more to prevent any cross-border incursions. The international community should continue to press Pakistan firmly to fulfil its commitment to crackdown genuinely and permanently on extremists, including those operating in *Azad* Kashmir. Too often, Pakistan's military and intelligence agencies have made clear that they are more interested in provoking India than in actually improving the well-being of the residents of the valley. The government of Pakistan must also take

measures to assure India and the international community in its ability and willingness to work toward a peaceful resolution of the Kashmir conflict. Indian and Pakistani draw-downs of troops on their international border, as recently announced individually, will be a welcome step in de-escalating tensions.²⁰⁰

The U.S. government has amply demonstrated its capacity to engage, in a constructive manner, in the dispute over Kashmir. The U.S. should use its considerable diplomatic leverage to urge both India and Pakistan to begin a dialogue on their outstanding disputes, including Kashmir. This dialogue should work toward an interim withdrawal of troops from positions along the LOC to de-escalate military tensions and prevent border skirmishes. The U.S. should encourage the two sides to work toward a gradual demilitarisation of the entire state.

The wider international community should create a climate that encourages peacebuilding between India and Pakistan. Specifically, the United States, the United Kingdom, the People's Republic of China, the Russian Federation, the European Union and the United Nations Security Council should pressure India and Pakistan to open up the Line of Control to civilian and commercial traffic under international supervision. Kashmiris still view both sides of the LOC as a part of their state. An open border would reunite separated families and create a more conducive environment for a peaceful resolution of the conflict. The international community should categorically condemn both Pakistan's support for militancy and India's human rights abuses in Kashmir.

Although demilitarisation of the state is a distant goal, even small steps toward it would inspire some confidence among the Kashmiri Muslim population that a peaceful, political resolution to the Kashmir problem is possible and create an environment where democratic political exercises like elections or a plebiscite would be more meaningful. Kashmiris who believe in an UN-guaranteed right to self-determination want that right to be vindicated, especially after what they perceive to be decades of oppression. While it is unclear what the outcome of a plebiscite would be or what a plebiscite would mean after 55 years of political strife and thirteen years of armed conflict, the call for a plebiscite appears to be more a moral claim than a practical one.

Islamabad/Brussels, 21 November 2002

²⁰⁰ Girja Shankar Kaura, "CCS Okays Troop Withdrawal", *The Tribune* (Chandigarh), 17 October 2002; Faraz Hashmi, "Pakistan to Withdraw Troops Soon", *Dawn* (Karachi), 18 October 2002.

APPENDIX A

MAP OF KASHMIR



Courtesy of The General Libraries, The University of Texas at Austin

APPENDIX B

GLOSSARY OF NAMES, ACROYMNS AND USEFUL TERMS

| | | | |
|---|---|---------------------|--|
| Abdullah (Farooq) | Son of Sheikh Abdullah and chief minister of Jammu and Kashmir. | | chairman and prominent APHC leader. Leader of the AAC. |
| Abdullah (Omar) | Son of Farooq Abdullah and president of the National Conference. | Geelani | Syed Ali Shah Geelani; APHC leader and Jamaat-i-Islami Kashmir affiliate. |
| Abdullah (Sheikh) | Most prominent politician in modern Kashmiri history and founder of the National Conference. | Hartal | civil strike |
| APHC | The All Parties Hurriyat (Freedom) Conference; a coalition of political parties opposed to Indian rule in Kashmir formed in 1993. | Hawala | system of anonymous money transfer where cash given in one country is collected in another. |
| AAC Awami Action Committee, formed in 1964 by Maulvi Farooq, currently headed by his son, Mir Waiz Umar Farooq. | | HuM | Harkat-ul-Mujahidin; anti-India, pro-Pakistan foreign militant group active in Jammu and Kashmir. Formerly known as Harkat-ul-Ansar. |
| Bakshi (Ghulam Mohd.) | Second post-Partition prime minister of Jammu and Kashmir. | IAK | Indian-administered Kashmir. |
| BSF | Border Security Force; Indian security force active in Jammu and Kashmir. | Ikhwan ul-Muslimoon | Irregular counter-insurgency militia comprised of 'surrendered' militants. |
| CRPF | Central Reserve Police Force; Indian security force active in Jammu and Kashmir. | INC | Indian National Congress; premier Indian political party since the 1940s. Led by Jawaharlal Nehru at the time of Partition. |
| Congress | A state political party aligned with the Indian National Congress and founded by Mir Qasim in 1965. | ITBP | Indo-Tibetan Border Police; Indian security force in Jammu and Kashmir. |
| Dastar bandhi | 'the donning of the turban;' traditional honorary ceremony | Jammu | One of three provinces comprising the modern, Indian-administered state of Jammu and Kashmir. Its capital and major city is Jammu. |
| Farooq (Maulvi) | Former Mir Waiz and prominent politician. Founder of the AAC. Assassinated in 1991. | JeM | Jaish-e-Mohammed; anti-India, pro-Pakistan foreign militant group active in Jammu and Kashmir. |
| Farooq (Umar) | Mir Waiz of Jamia Masjid, Srinagar and son of Maulvi Farooq. First APHC | JIK | Jamaat-i-Islami Kashmir; Islamic, anti-India, pro-Pakistani political organisation affiliated with APHC. |
| | | JKAP | Jammu and Kashmir Armed Police |
| | | JKDFP | Jammu and Kashmir Democratic Freedom Party; founded by Shabir Shah in 1998. |
| | | JKHM | Jammu and Kashmir Hizbul Mujahidin; anti-India, pro-Pakistan militant group active in Jammu and Kashmir comprised |

| | | | |
|---------------------|--|-------------------|--|
| | primarily of local militants. Led by Syed Salahuddin. | | Daughter of Muslim United Front Sayeed and vice-president of the PDP. |
| JKLF | Jammu and Kashmir Liberation Front; anti-India, pro-independence party in the APHC. Led by Yasin Malik. | NC | The All Jammu and Kashmir National Conference; the ruling political party in Jammu and Kashmir, founded by Sheikh Abdullah in 1939. |
| Kashmir | One of three provinces comprising the modern, Indian-administered state of Jammu and Kashmir. Its capital and major city is Srinagar. | Parray (Kuka) | Anti-India militant turned pro-India militant, turned pro-India politician. Leader of the Ikhwan ul-Muslimoon. |
| KSG | Kashmir Study Group; U.S.-based non-governmental initiative working to find practical solutions to the Kashmir conflict that are satisfactory to India, Pakistan, and the Kashmiris. | PAK | Pakistan-administered Kashmir. |
| Ladakh | One of three provinces comprising the modern, Indian-administered state of Jammu and Kashmir. Its major city is Leh. | Pandit | Ethnic Kashmiri Hindu. |
| Leh | Ladakh's major city. | PDP | People's Democratic Party; an opposition political party participating in elections. Founded by Muslim United Front Saeed, a former Congress politician and Indian Home Minister, during the <i>Tahrik</i> . |
| LeT | Lashkar-e-Tayaba; anti-India, pro-Pakistan foreign militant group active in Jammu and Kashmir. | POTA | Prevention of Terrorism Act. |
| LOC | Line of Control. De facto border between Indian and Pakistani-administered territory. | POTO | Prevention of Terrorism Ordinance; precursor to POTA. |
| Lone (Abdul Gani) | Veteran politician and APHC leader assassinated in May 2002. | PSA | Jammu and Kashmir Public Safety Act (1978); law widely used to detain political people in Jammu and Kashmir. |
| Malik (Yasin) | Leader of the Jammu and Kashmir Liberation Front. | RR | Rashtriya Rifles; special counter-insurgency units of the Indian Army. Indian security force active in Jammu and Kashmir. |
| Malhotra (Jagmohan) | Indian governor of Kashmir in 1990. Responsible for militarisation of the state. | Salahuddin (Syed) | Leader of Jammu and Kashmir Hizbul Mujahidin and the UJC. |
| MC | The All Jammu and Kashmir Muslim Conference. Founded in 1931 as the major political party in Kashmir opposed to the ruling Dogra monarchy. Many of its leaders crossed into Pakistani territory after Partition. | Saxena (Girish) | Indian governor of Jammu and Kashmir after Jagmohan. Responsible for intelligence focus in anti-insurgency efforts. |
| MUF | Muslim United Front. Coalition of parties opposed to National Conference in 1987 election. | Sayeed (Mufti) | Leader of the PDP. Former Congress leader and Indian Home Minister. |
| Mufti (Mehbooba) | | Shah (Shabir) | Pro-independence, anti-India politician formerly affiliated with the APHC. Known as the Mandela of Kashmir due to his long political incarceration. |
| | | Shah (Yusuf) | |

Leader of the Muslim Conference.
Crossed the cease-fire line into Pakistan
after Partition.

Singh (Hari)

Pre-Partition ethnic Dogra monarch of
Jammu and Kashmir.

Srinagar Capital of Kashmir.

STF Special Task Force. Counter-insurgency
group comprised of “surrendered”
militants.

TADA Terrorist and Disruptive Activities
(Prevention) Act (1987); law widely used
to detain people in Jammu and Kashmir
without charge or formal judicial
proceeding. Officially lapsed in 1995.

Tahrik “Movement”; term used in Kashmir to
describe the political and militant anti-
India movement since 1989.

UC Unified Command. Central body
coordinating Indian security forces
operating in Kashmir. Formed in 1993.

UJC United Jihad Council. PAK-based
umbrella of militant groups active in
Jammu and Kashmir. Led by Syed
Salahuddin.

UNCIP United Nations Commission for India
and Pakistan

UNMOGIP

United Nations Monitoring Group for
India and Pakistan

UNSC United Nations Security Council

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 80 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York and Paris and a media liaison office in London. The organisation currently operates eleven

field offices (in Amman, Belgrade, Bogotá, Islamabad, Jakarta, Nairobi, Osh, Pristina, Sarajevo, Sierra Leone and Skopje) with analysts working in nearly 30 crisis-affected countries and territories across four continents.

In *Africa*, those countries include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, the Republic of China (Taiwan), Turkey, the United Kingdom and the United States.

Foundation and private sector donors include The Atlantic Philanthropies, Carnegie Corporation of New York, Ford Foundation, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, The Henry Luce Foundation, Inc., John D. & Catherine T. MacArthur Foundation, The John Merck Fund, Charles Stewart Mott Foundation, Open Society Institute, Ploughshares Fund, The Ruben & Elisabeth Rausing Trust, the Sasakawa Peace Foundation and the United States Institute of Peace.

November 2002

APPENDIX D

ICG REPORTS AND BRIEFING PAPERS*

AFRICA

ALGERIA**

The Algerian Crisis: Not Over Yet, Africa Report N°24, 20 October 2000 (also available in French)

The Civil Concord: A Peace Initiative Wasted, Africa Report N°31, 9 July 2001 (also available in French)

Algeria's Economy: A Vicious Circle of Oil and Violence, Africa Report N°36, 26 October 2001 (also available in French)

BURUNDI

The Mandela Effect: Evaluation and Perspectives of the Peace Process in Burundi, Africa Report N°21, 18 April 2000 (also available in French)

Unblocking Burundi's Peace Process: Political Parties, Political Prisoners, and Freedom of the Press, Africa Briefing, 22 June 2000

Burundi: The Issues at Stake. Political Parties, Freedom of the Press and Political Prisoners, Africa Report N°23, 12 July 2000 (also available in French)

Burundi Peace Process: Tough Challenges Ahead, Africa Briefing, 27 August 2000

Burundi: Neither War, nor Peace, Africa Report N°25, 1 December 2000 (also available in French)

Burundi: Breaking the Deadlock, The Urgent Need for a New Negotiating Framework, Africa Report N°29, 14 May 2001 (also available in French)

Burundi: 100 Days to put the Peace Process back on Track, Africa Report N°33, 14 August 2001 (also available in French)

Burundi: After Six Months of Transition: Continuing the War or Winning the Peace, Africa Report N°46, 24 May 2002 (also available in French)

The Burundi Rebellion and the Ceasefire Negotiations, Africa Briefing, 6 August 2002

DEMOCRATIC REPUBLIC OF CONGO

Scramble for the Congo: Anatomy of an Ugly War, Africa Report N°26, 20 December 2000 (also available in French)

From Kabila to Kabila: Prospects for Peace in the Congo, Africa Report N°27, 16 March 2001

Disarmament in the Congo: Investing in Conflict Prevention, Africa Briefing, 12 June 2001

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