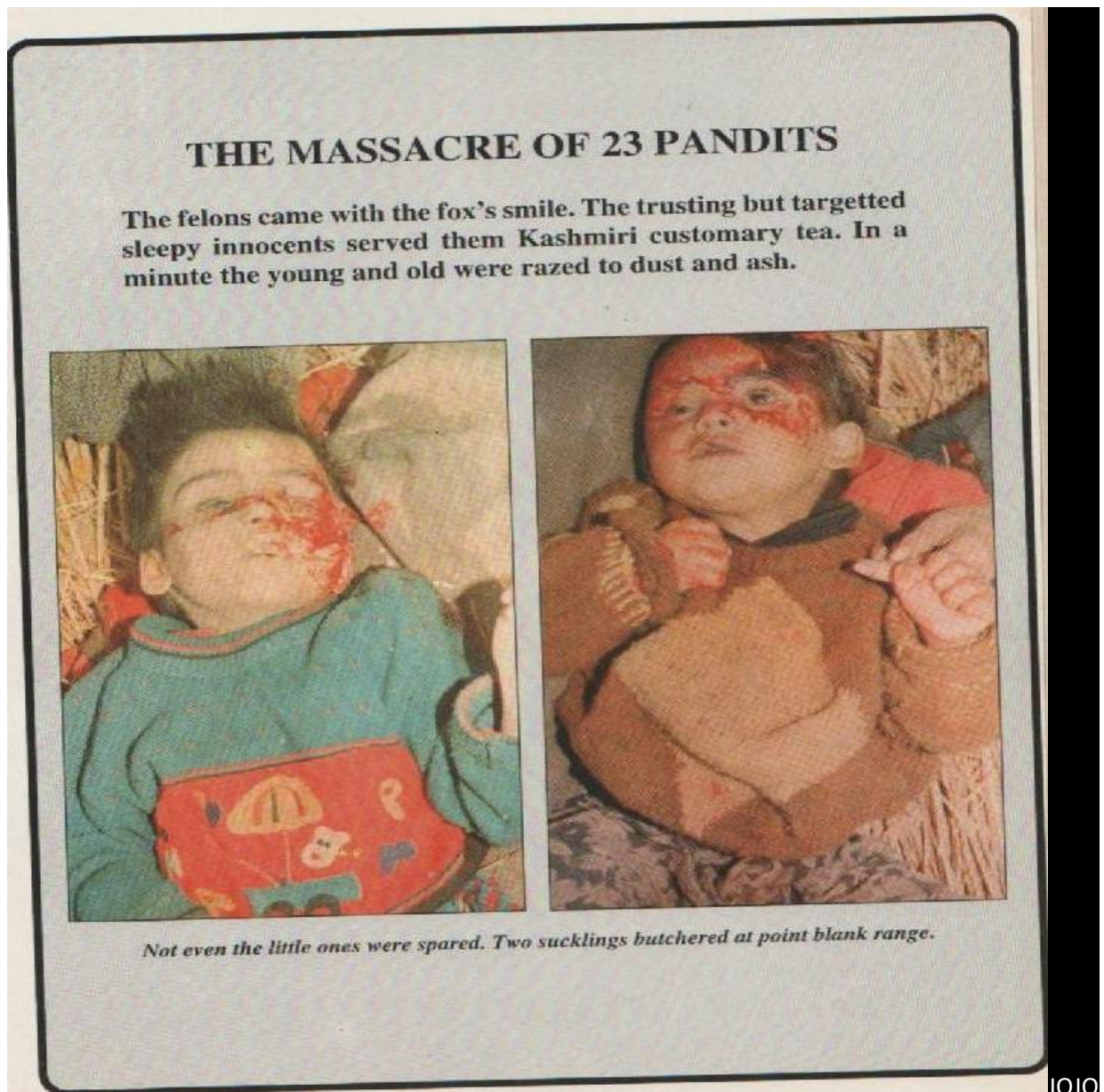


# Human Rights Violations in Kashmir



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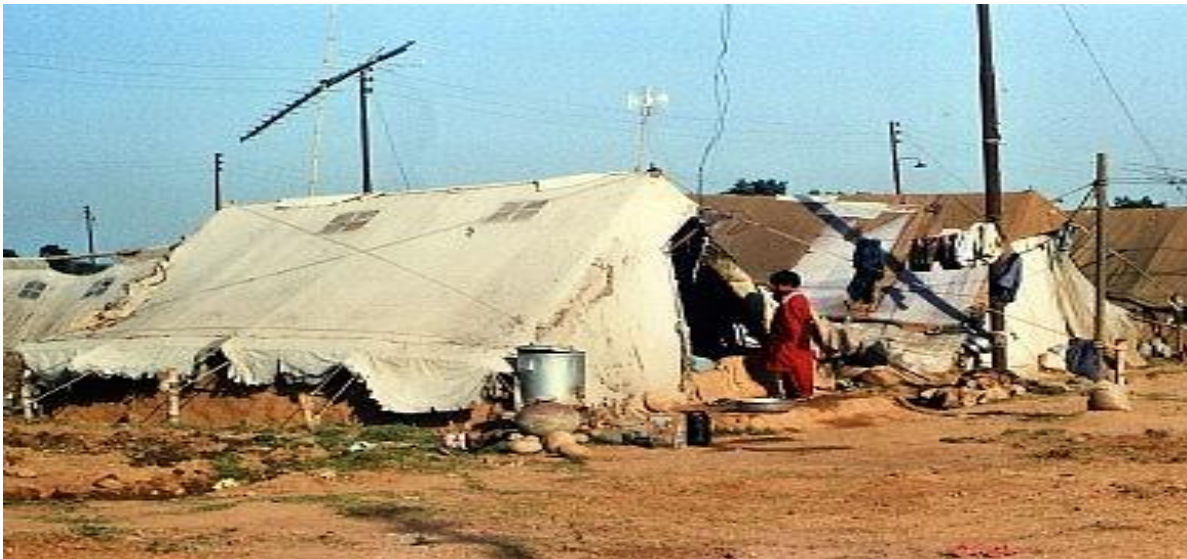
**The Kashmir Valley is in grip of terrorist trauma engineered by Pakistan.**

**In fact, it is a low cost proxy war declared by Pakistan against India to grab Kashmir. The grimmest fallout of this atrocious Pak operation is the total exodus of the Hindu minority from Kashmir Valley. It has threatened the unity of India and the very survival of Kashmiri Hindu minority. They have been uprooted from Kashmir Valley. The future is bleak and their existence is in danger. The following census figures speak volumes:**



<b>Year</b>	<b>Muslims</b>	<b>Hindus</b>	<b>Others</b>
1941	83%	15%	2%
1981	92%	5%	3%
1991	97%	0.1 %	2.9%

**At present over 300,000 of them (about 78,000 families) are either residing in temporary relief camps at Jammu, Delhi, Chandigarh or Amritsar or have made their own arrangements in various parts of India. This figure of over 300,000 excludes over 10000 Muslims, who also have been forced by the denial of free expression and circumstances to leave the Valley of Kashmir to seek refuge in India.**



**LIVING CONDITIONS OF KASHMIRI HINDU REFUGEES IN CAMPS**

## **PREFACE**

We hold no brief for any one violating human rights anywhere. All we submit is that the small and helpless community of Kashmiri Pandits, along with Kashmiris of other communities suffering for their belief in secularism, nationalism and democracy, are the worst victims of human rights violations in Kashmir. They continue to suffer the aftermath of this tragedy, living a miserable life in townships of tattered tents, and other camps, in Jammu and other parts of the country. But nobody hears their anguished cry while the terrorists, their supporters in the state and Pakistan have succeeded in generating worldwide awareness about the hardship faced by some Muslims in Kashmir for harboring and helping terrorists. Organizations like the Amnesty International and Asia Watch while raising howls about the difficulties of Kashmiri Muslims make no more than passing references to the inhuman brutality with which the Muslim terrorists in the state massacred large numbers of Kashmiri Hindus and indulged in rape, arson and plunder forcing them to flee their homes of hundreds of years. The latest incident is the shooting down of a hundred year old Kashmiri Pandit in Wanpora in the first week of June, 1993. All this is sought to be hidden behind the smoke screen of "human rights violations by the security forces" and basic questions are clouded in a desperate attempt to keep the world in dark about the actual happenings in the name of insurgency against the Center.

It is therefore essential to make a proper assessment of violations of, whose human rights in Jammu and Kashmir. While doing so, facts must be treated as sacred and not twisted for dramatic effect to serve sectarian political ends. Unfortunately, the assessments made by some of the Human Rights organizations are faulted in their very fundamentals because such assessments have been based on avowedly partisan evidence. Most of the evidence has been collected in Pakistan-occupied part of the Jammu and Kashmir State and from other sources close to the terrorists. Some of these "watch dog" groups make little attempt to conceal the fact that they are functioning as apologists for Muslim terrorists operating in the State at the behest of Pakistan.

Nothing else can explain their studied indifference to the plight of more than three lakh Hindus whose "rights", such as they were in a regime which was already Islamic except in name, were trampled under the jack-boots of the Pakistan-aided marauders in collaboration with local Muslim fundamentalist and secessionist elements. The magnitude of misdeeds of the terrorists have been of such proportions that Asia Watch found it difficult to completely conceal them and had grudgingly to concede that they were guilty of excesses in the name of violent opposition. It is a tragedy that even after the Asia Watch report was made public certain people in this country fell prey to the Pakistani and terrorist disinformation and have developed a mind-set totally indifferent to the plight of Kashmiri Hindus

who have been reduced to beggary in their own country for their patriotism, tolerance and secular ideals. The flood of publicity mounted by the mentors submerged the sad tale of their suffering, so much so that when the specter of "demographic change" was recently raised, nobody asked: Has demographic change not already been brought about in the state? Has it not been made a totally Muslim Kashmir now with the elimination of the Pandits?

### **Design To Break Up India**

Terrorism is a violation of human rights, whatever its political objectives. Terrorism in Jammu and Kashmir motivated by ideological commitments to a Muslim crusade is a greater violation of human rights. The Universal Declaration of Human Rights, it must not be forgotten, was adopted by the world community precisely to save mankind from the scourge of crusades; the Second World War was a war of crusades.

There is an imperative necessity for a bold and unconventional endeavor to identify the content and contours of violence which has ravaged Jammu and Kashmir State and describe the perspectives in which the infringements of human rights deserve to be assessed. Any enquiry and assessment restricted to parameters predetermined by political considerations and social motivations and preconceived notions of the nature of the violence and strife in the state, is bound to be self-defeating. Human judgments which are presumed to be universal, as the Universal Declaration of Human Rights, underline generally accepted norms and standards of human behavior and not such norms and standards which are arbitrarily devised. There is always a danger in shifting parameters and judgments in respect of human rights because shifting parameters and judgments are incompatible with and destructive of the universality of such rights.

It will be a travesty of human history to ignore the crucial factor of terrorist violence in Kashmir which must ultimately determine the context in which the violation of human rights has taken place. The boundaries of state action to contain terrorism must be viewed in the broad context of the United Nations Charter, the International Covenants and the resolutions of the General Assembly and the Security Council on terrorism. An enquiry into human rights violations in Jammu and Kashmir cannot be confined to narrowly local and narrowly dated frames of reference.

The terrorist violence unleashed in Jammu and Kashmir by various terrorist organizations and the state of Pakistan, is by itself a violation of human rights. The Muslim crusade which seeks to exterminate the religious and ethnic minorities in Jammu and Kashmir and establish the primacy of Islam in the government and the society of the state, contravenes the principle of the due process of law which is the basis of the Universal Declaration of Human Rights. Political terrorism, whatever

its Ideology and objectives, is a crime against International Law, a crime against humanity, a crime against the law of war and a crime against the Universal

### **Declaration of Human Rights.**

Terrorist violence in Jammu and Kashmir has several dimensions which have a direct bearing on human rights in the state.

In the first place, terrorism in Jammu and Kashmir is a process of political violence which has specified political commitments aimed to separate Jammu and Kashmir State from India and secure its annexation to Pakistan. It is the culmination of the Muslim struggle in pre-partition India for the homeland of Pakistan, which claimed Jammu and Kashmir on account of the Muslim majority character of its population. It is a religious crusade to complete the partition of India which it is claimed is 'incomplete' so long as Jammu and Kashmir is not merged with Pakistan. It must clearly be understood that this terrorist violence is not aimed at effecting any change in the existing political system, economic organization or social relationships. It is neither an expression of political dissent, nor is it apolitical movement aimed to replace the existing sets of political instruments in the state. It has an international content as it is aimed at cutting off a part of the Indian nation and secures its annexation to the state of Pakistan.

The Muslims in Kashmir are the ruling elite of the state. They dominate its entire economic organization and enjoy communal precedence in all social forums. Islam is virtually the official religion of the state. Whereas the Muslims constitute a little more than half the population of the State, they possess three-fourths share in legislative bodies, administrative organizations and all the local Government Institutions. In the Kashmir province, the Hindus have no elected representation In the State Legislature, nor do they have any elected representation in the local bodies. They constitute less than five per cent of the administrative services of the State and have less than one percent share in the higher cadres of the state administration. Muslims monopolize 94 per cent of the state services In Kashmir. The Hindus of Kashmir province have absolutely no share In the decision making clusters of the state Government, which have always been constituted by the Muslims of the Kashmir Province. More than 90 per cent of the admissions to professional, technical and other educational Institutions are reserved for Muslims in one form or the other purely on communal basis. The Hindus, Sikhs and other minorities share a bare 8 per cent of the educational facilities that the State provides.

The Muslims own and control the entire economic and Industrial structure of the Kashmir Province. They own 96 per cent of the agricultural land, orchards and other urban landed estates. They enjoy a monopoly over the entire industrial

organization, trade, commerce, financial resources and exports of the province of Kashmir. They have complete monopoly in trading in fruits, carpets, shawls, wood-work, woolens, silk etc. The Hindus in Kashmir have never been allowed to have any share in the tourist industry, the transport organization, concessionary contracts for the construction of the State property, roads and buildings and the licenses for Imports and exports which the state Government has been lavishly distributing among the Muslims.

Evidently, terrorist violence in the State is not local in content or outlook. Its objectives have transnational implications and its aim is the separation of Jammu and Kashmir State from India and, as a consequence, open the way for the disintegration of the Indian Union.

### **Violation of Human Rights**

The political content of the terrorist violence has a direct effect on human rights as it involves militants' strategies which cannot but infringe the principles which form the basis of human rights. These strategies include:

1. Liquidation of the Indian support structures in the state, involving elimination of the people of all communities including Muslims who constitute such support structures;
2. Suppression of all political dissent and opposition by fear,
3. Oppression and mental torture of people who do not support terrorism;
4. Liquidation of civil population which extends help to security forces in their operations against terrorists;
5. Communalization of the society aimed to suppress opinion opposed to the secession of the state;
6. Conduct of military operations by the terrorists against the security forces of the state in violation of the laws of war.

The second major dimension of terrorism in Jammu and Kashmir is the terrorists' aim to exterminate Hindu population in the Kashmir valley because Hindus do not accept the secession of the state from India and its annexation to Pakistan nor do they accept to be governed by the authority which derives its sanction from the law and precedent of Islam. The Hindus have always supported accession of the state to India. They have, undeniably, formed the most powerful support base for India in Kashmir. Hindus in the valley rose unitedly against the invasion of the state in 1947, and fought shoulder to shoulder with the Indian soldiers against the infiltrators from Pakistan in 1965. They were always in the forefront of the struggle against secessionism, communalism, fundamentalism and the various movements for annexation of the state to Pakistan.

In the present turmoil the strategies used in the terrorist operations against the Hindus in Kashmir include:

1. The extermination of Hindus;
2. Subjection of Hindus to brutal torture to instill fear among them in order to achieve their submission to the terrorists and their exodus from Kashmir;
3. Flushing out such Hindus who refuse to submit to the terrorist dictates, by force, fear of death, fear of conversion and criminal assault on their women;
4. Destruction of the residential houses of the Hindus. Who migrate and the appropriation of their business establishments to ensure that they do not return;
5. Attachment of their landed property;
6. Destruction of the social base of the Hindus by desecration and destruction of their places of worship, shrines and temples;
7. Appropriation of the property of the Hindu shrines and its attachment to the Muslim religious endowments;
8. Declaration of a religious crusade against the Hindus.

### **Pakistan Factor**

The third and the most crucial aspect of terrorism in the State is the participation of Pakistan in the terrorist violence. Pakistan has a history of sponsoring terrorist violence in its neighboring countries including India. It is openly committed to the export of Islamic revolution to non-Muslim states and militarization of pan-Islamic fundamentalism in South Asia. Pakistan has always used Islam as an ideological instrument for its territorial expansion. It has claimed Kashmir in the name of the Muslim nation and the unity of the Muslims Ummah. Pakistan is at present a conventional, organized and international base for the militarization of pan-Islamic fundamentalism and Muslim terrorism in Asia. There is enough proof of the complicity of Pakistan in the terrorist activity in Jammu and Kashmir, which cannot be disregarded.

The induction of terrorism in Jammu and Kashmir by Pakistan is its third attempt to cut off Jammu and Kashmir from India and annex it to its territories. In October 1947, Pakistan sent thousands of armed forces and irregular commandos into the State to annex it. Were it not for the heroic resistance of the state troops led by the Chief of the Army Staff of the State, Brigadier Rajender Singh, who resisted the advance of invading forces till the State acceded to India and the Indian troops joined the battle, the story of the State would have been different. About thirty thousand Hindus and Sikhs were slaughtered by the invading hordes in the territories of the State overrun by them. Hundreds of thousands of them were uprooted and displaced. That story is still untold. In 1965, Pakistan inducted thousands of its trained commandos in the garb of local Muslims into the State to unleash a Muslim rebellion against India. The infiltrators spread all over the valley, penetrated into Srinagar. But due to the lack of support from local Muslim

population and prompt military action taken by Government of India, the infiltrators sneaked back to Pakistan after war broke out between the two countries. The present terrorist violence in Jammu and Kashmir is the third attempt by Pakistan to break up India and annex Jammu and Kashmir. This time the technique of military intervention is different; the flanks of terrorist organizations are recruited from the local Muslim population and after being trained and armed in Pakistan are reinducted into the State, to carry on the Islamic crusade, Jihad, against India. Large numbers of armed commandos consisting of personnel of the army and intelligence services of Pakistan, and the various troop formations raised in the occupied territories of so-called Azad Kashmir have also been inducted into the State to help the terrorist elements.

The consolidation of the pan-Islamic fundamentalism and its militarization in South Asia has been effectively used by Pakistan to export Islamic revolution' to Jammu and Kashmir. Once the Jihad or the Islamic crusade for the liberation of the State triumphs, Jammu and Kashmir will as a part of the fundamental unity of the Muslims, join the Muslim nation of Pakistan. That is the reason why Pakistan projected Jammu and Kashmir Liberation Front in the first phase of terrorism in Kashmir, ostensibly to create an impression that the Muslims have launched an armed struggle in the State to liberate it from India. The truth is that Jammu and Kashmir Liberation Front was sponsored by Pakistan to impart a more militant direction to demand for plebiscite in the State. It received arms and funds from intelligence agencies of Pakistan and always acted under the instructions of the intelligence services of that country. Once the terrorist violence in the state spread, Pakistan inducted the more powerful terrorist flanks into the state, like the Hizbul Mujahidin, the militant outfit of Jamaat-i-Islami, Al Badar, exclusively entrusted with the task of liquidating the Hindus, and the other terrorist organizations like Al Umar, Allah Tigers, Janbaz Force, Hizb Ullah and several other terrorist groups all committed to the accession of the state to Pakistan.

### **Mass Massacres**

The terrorist violence in Kashmir has involved mass massacre of the people of the State, destruction of their property and genocide of Hindus and their exodus from Kashmir. The death and destruction of innocent people, genocide of minorities and conduct of a war of attrition in violation of the laws of war are crimes against humanity and international law, besides being violation of human rights. The terrorist violence in Jammu and Kashmir, on a well designed pattern, has led to several consequences which are inextricably interlinked with the violation of human rights. The pattern in which terrorism has manifested itself in Jammu and Kashmir has several aspects, some of which are characteristically original to the political violence unleashed by the various terrorist organizations and Pakistan in Jammu and Kashmir. These aspects are:



- (a) Mass massacre;
- (b) Genocide of Hindus and
- (c) Atrocities committed by terrorists.

It is generally presumed that mass massacre involves a hundred or more political killings. Mass murder is not a precise term. It is arbitrarily defined here as something approaching "a hundred or more political deaths". In Jammu and Kashmir terrorism has involved the liquidation of thousands of people, including the Hindus, the Muslims, the security personnel and the strategic staff of the State government and other administrative bodies. A computation of the data on the terrorist killings from the local newspapers published from Srinagar and other townships in Kashmir reveals that the number of the people, other than Hindus, killed by the terrorists, runs into several thousand.

The main targets of terrorist violence in Kashmir, have been

1. The Hindus;
2. the Muslims opposed to secession, the Muslims accused by terrorists of acting as "agents of India" and "informers" and those alleged to have spied for the security forces of the state;
3. Hindu employees of the State government, the Hindu employees of the government of India posted in the State, Hindu technical staff of Government of India installations of communications, police, radio and television, Hindu technical staff of the industrial corporations and the Hindu personnel of the security organizations of the state as well as the personnel of the Central paramilitary forces deployed in the State.

The Hindus of Kashmir, among them mainly the Kashmiri Pandits, have been killed in large numbers irrespective of their age, profession and political commitments. The killing of Muslims has been specifically selective and except for a few doubtful cases most of the Muslims killed have been those who have been opposed to secession and who did not support Pakistan's claim to Jammu and Kashmir State. More notable of the Muslims who have been assassinated by terrorists include Maulana Masoodi, a veteran freedom fighter and a close associate of Sheikh Mohammad Abdullah; Maulvi Farooq, Mirwaiz of Kashmir; Mir Mustafa, a former member of state Legislature; Pir Hissam-ud-Din Bandey and Abdul Jabbar, former ministers of the State government; Abdul Sattar, Ranjoor, General Secretary of the Communist Party of India in the State; Mohd. Shaban, Editor, Al Safa, an Urdu daily; Prof. Mushir-ul-Haq, Vice-Chancellor of Kashmir University; and Mohd. Din Bandey, the Muslim Gujjar who reportedly gave the first information about the ingress of infiltrators from Pakistan in 1965. Among the many other Muslims killed by the terrorists are former members of the State Legislature, National Conference and Indian National Congress activists, and officers of the State police.

Terrorism has taken a very heavy toll of the personnel of the security organizations of the State. Barring variations in official account of the security personnel killed and the account given by the local press as well as the figures made public by the terrorists themselves, a fairly large numbers of the personnel of the Para-military forces and the Indian army have been killed in the hit and run guerrilla attacks mounted on them by terrorists. The attacks have involved sudden assaults on Para-military pickets in civil areas, ambush of army and Para-military convoys, mine blasts, rocket and bomb blasts on police stations and other security installations.

### **Genocide of Hindus**

Genocide is the destruction in whole or in part of a national, ethnic, racial or religious group. The United Nations General Assembly approved a resolution on 11th December, 1946, declaring genocide a crime under International Law. A convention on the Prevention and Punishment of Genocide adopted by the General Assembly came into effect on 12th January, 1951. The Convention proclaims genocide as a crime against International Law. The Convention lists destruction of an ethnic, racial or religious group as genocide. Specifically, genocide includes:

1. Killing members of a community or a group because of their affiliations;
2. Causing bodily or mental harm to the members of a community or a group;
3. Deliberately inflicting conditions on the community or the group to bring about its physical destruction;
4. Imposing measures to prevent births in the community or the group;
5. Forcibly transferring children from one group to another.

The terrorist organizations in the State and those operating from Pakistan have unleashed an organized campaign to exterminate the Hindus in Kashmir. Besides the obligation to prosecute a religious war against them, terrorists have sought to achieve several tactical advantages in eliminating Hindus. Hindus used to form a vital and powerful base for India in Kashmir. They have fought the secessionist movements in the State with their bare teeth. They alone have resisted the onslaught of the pan-Islamic fundamentalism as well as the Islamization of the Government and the society in the State. They have always been instrumental in keeping the feedback channels of Government of India open and maintaining a regular and uninterrupted flow of information to its agencies.

The mass attack on the Hindus began in January, 1990, and by the onset of August, 1990 more than eight hundred of them had been murdered in cold blood. Most of the victims were innocent people who lived in poverty and persecution under the Muslim dominated constitutional organization of the State. Among those killed,

were people from all sections of the society, lawyers, political activists, media men, intellectuals, shopkeepers, errand boys and men of small means.



### **Innocent victims of Pakistan's Terrorism**

The terrorist killings have been accompanied by torture unheard of in the annals of human history, which tantamount to grave crimes against all law and against humanity. In sheer disregard of the norms of political behavior, generally recognized by civilized nations and now embodied in several international Covenants, the charter of Human Rights Declaration and resolutions of the United Nations General Assembly, the terrorists have inflicted grievous hurt, injury and death / torture on hundreds of Hindus and other dissenters. Torture deaths have been brought about by inhuman practices described below:

1. Strangulation by using steel wires;
2. Hanging;
3. Impaling;
4. Branding with red hot irons,
5. Burning alive;
6. Lynching;
7. Draining of blood in contrived terrorist underground hospitals;

8. Gouging of eyes before assassination;
9. Slicing;
10. Dismemberment of body;
11. Breaking of limbs;
12. Drowning alive;
13. Dragging to death;
14. Slaughter.

Brij Nath Shah was kidnapped on 27th April, 1990 from his home at Sadhu Ganga, Kupwara in Kashmir. Two days later his body was found hanging by a tree. His lips had been stitched.

Sham Lal of Chiragam in Anantnag, Kashmir was kidnapped in May 1990. The hands and the feet of the unfortunate man were chopped off and his skull battered. Sham Lal's dead body was stuffed in a sack and left on the threshold of his house, wherefrom it was recovered by his brother.

Pran Nath of Uttarsu in Anantnag District was kidnapped on 27th May, 1990. His body was found impaled; his chest and feet nailed.

Three officials of the Life Insurance Corporation of India were kidnapped in Srinagar. They were subjected to torture and then confined in an abandoned Kashmiri Hindu migrant house. The house was set ablaze. Two of the officials were burnt alive while the third official escaped with more than 50 percent burns.

One Bhushan Lal of Ompura in Badgam, Kashmir was kidnapped on 27th April 1990. He was tortured and then strangulated to death. His body was found the next day.

Girja, a school teacher at Bandipora, was kidnapped from the house of a Muslim colleague. The unfortunate woman, after being gangraped, was sliced on a mechanical saw.

Scores of the bodies of Hindus were recovered from River Jhelum. Most of them were drowned.

Brij Nath Koul of Hermani of Shopian, an employee of the Agricultural Department and his wife were tied to a speeding vehicle. Their mangled bodies were recovered ten kilometers away from their home.

The dead bodies of several Kashmiri Hindus were salvaged from various places in Kashmir. Their heads had been severed off.

Several dead bodies of Kashmiri Hindus were recovered, which had been branded by hot irons before death. Several bodies were found with eyes gouged out.

The most dastardly and inhuman acts of terrorism were those committed in the hospitals where the Hindus brought in for treatment were either allowed to die for want of treatment or brutally murdered by the doctors and others who collaborated with the terrorists. A number of cases have been reported where injured Hindus were allowed to bleed to death.

Scores of cases have been reported where kidnapped Hindus were drained of their blood and their lives were terminated.

Among the dead in Kashmir, the state Government is yet to disclose the identity of about four hundred dead bodies, recovered by the police and disposed of at its will. The State government is keen to cover the anti-Hindu character of the terrorist violence and has tried to play down the massacre of Hindus. But the fact remains that most of those killed and still unidentified are Hindus. A survey of the migrant population reveals that there are several hundred Kashmiri Pandits, who are missing and are presumed dead.

The worst sacrilege to which the Hindus have been subjected, and the process continues still, is that the kith and kin of the Hindus killed in Kashmir, were not allowed to carry the dead bodies to Jammu for cremation according to Hindu rites. Evidently, the cremation of Hindus in Kashmir could not be carried out according to Hindu rites because the terrorists forbade Hindus to accompany the dead to perform their last rites. The Hindus' dead bodies were actually disposed of by the State police on their own and in total disregard to the injury and hurt the cremation of the dead bodies by the state police, caused to the religious feelings of the bereaved Hindu families.

### **Exodus in Panic**

The rising terror which consumed hundreds of innocent Hindus, the deliberate indifference of the state apparatus infested by pro-Pakistan agents and infiltrators and the failure of Government of India to take effective and firm measures against the terrorists as well as their harbourers, particularly in the ranks of the administrative organization of the state, compelled the Hindus to flee for their lives to Jammu and beyond. By July- September, 1990 more than two lakhs of Hindus had evacuated from their homes leaving their property, land, trade and business behind them. After the exodus, all the Hindu property has been looted and thousands of Hindu houses burnt down. Several Hindu shrines have also been burnt down or destroyed by explosives.

Terrorism is a negation of life, and violation of the norms of human behavior recognized by all civilized people of the world. All value-based violence, which contravenes generally accepted norms of social order, human behavior and right to life and equality of all men, is retrogressive. Judgments which are based upon preferences which violate life, equality of all men and freedom, do not have any revolutionary content. The political violence motivated by ideological commitments whatever their value- content is necessarily retrogressive. There is no freedom which impinges upon freedom, no equality which upholds inequality. There is no life which portends death. Political terrorism even if it is for a religious

crusade is as heinous a crime as any other crime against humanity. All political terrorism is organized crime.

Terrorist violence cannot be justified on the ground of its political and ideological motivations or value-basis. International conventions and treaties, even those pertaining to human rights, do not recognize terrorist violence as legitimate political action, arising out of any ideological or political commitments or any value basis. Commitment to separation of Jammu and Kashmir from India to further the cause of Islam and in the name of Muslim unity and brotherhood, to ensure the Muslims in the state the right to decide the future disposition of the state as envisaged by the United Nations Resolutions; commitments to "complete the partition of India" by the accession of the state to Pakistan or commitments to liberate the Muslim majority state of Jammu and Kashmir from India or commitment to establish a Muslim State of Jammu and Kashmir based upon religious precept and precedence cannot legitimize and validate terrorism in Kashmir.

### **International Law and Terrorism**

There is a growing corpus of Municipal as well as International Law and precedent to deal with politically motivated terrorism. The civil jurisprudence and International law generally identify political terrorism as a crime, more serious than traditional civil and international crime. Murder of innocent people, torture deaths, kidnappings, abduction and rape of women are heinous crimes which do not come within the traditional definitions of crime. Many countries have extended their penal codes to most terrorist offenses. Legislation has also been undertaken to provide for special police powers and special judicial procedures to deal with terrorist crime. New special anti-terrorist organizations have been created within police departments and other international security organizations. In many states military participation in police functions has increased. Special military units for possible use in anti-terrorist operations have been created in a number of countries. All these measures have been necessary to combat terrorism and safeguard the lives of law-abiding citizens and innocent people and save states from being broken up by sponsored terrorism. Nations with long democratic traditions including the United States of America, one of the foremost super-states supporting human rights, have always demanded the adoption of severely stringent measures against political terrorism.

It is relevant to note that the United State of America proposed a set of highly stringent rules to deal with terrorism in the draft of an International Convention submitted by the United States Government to the ad-hoc committee of the United Nations on International Terrorism in 1973. Understandably, most of the Muslim States disapproved of the draft convention.

## **United Nations on Terrorism**

The United Nations lists killings, kidnappings, torture and abduction as a crime. According to resolutions of the General Assembly of the United Nations on measures to prevent terrorism, the Nations General Assembly:

1. Unequivocally condemns as criminal all acts, methods and practices of terrorism wherever and by whoever committed including those who jeopardize the friendly relations between states.
2. Deeply deplores the loss of innocent human lives which results from such acts of terrorism.
3. Further deplores the pernicious impact of acts of international terrorism on relations and cooperation among states including cooperation for development.
4. Appeals to all states that have not yet done so to consider becoming party to the existing international conventions relating to various aspects of international terrorism.
5. Invites all states to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem of international terrorism such as the harmonization of domestic legislation with existing international conventions, the fulfillment of assumed international obligations, and the prevention of the preparation and organization in their respective territories of acts directed against the states.
6. Calls upon all states to fulfill their obligations under International Law to refrain from organizing, instigating, assisting or participating in terrorist acts in other states, or acquiescing in activities within their territory directed towards the commission of such acts.
7. Urges all states not to allow in any circumstances to obstruct the application of appropriate law enforcement measures, provided for in the relevant conventions to which they are party, to persons who commit acts of international terrorism covered by those conventions.
8. Further urges all states to cooperate with one another more closely, especially through the exchange of relevant information concerning the prevention and combating of terrorism, apprehension and prosecution or extradition of the perpetrators of such acts, or the incorporation into appropriate bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists.

The Security Council adopted a resolution on 18th December, 1985 urging upon all the States to undertake appropriate measures to bring to an end hostage taking, abduction and other forms of terrorism. In the operative part of the Resolution, the Security Council

1. condemned unequivocally all acts of hostage-taking and abduction;
2. called for the immediate safe release of all hostages and abducted persons wherever and by whoever they are being held;

3. affirmed the obligation of all States in whose territory hostages or abducted persons are held, urgently to take all appropriate measures to secure their safe release and to prevent the commission of acts of hostage-taking and abduction in future;

4. urged the further development of international cooperation among States in devising and adopting effective measures which are in accordance with the rules of international law to facilitate the prevention, prosecution and punishment of all acts of hostage-taking and abducting as manifestation of international terrorism.

A number of other resolutions and conventions of the United Nations General Assembly and the Security Council, the Adhoc Committee on International Terrorism, various reports of the Secretary General of the United Nations and the Covenants of various inter-state organizations on political and international terrorism, have urged the members of the international community to undertake stringent and effective legal and administrative measures to combat terrorism. The recommendations envisage the institution of fresh political instruments and modified penal procedures to check terrorism. The Council of Europe produced a Convention on terrorism in 1977, which stipulated that amnesty available to political offenses should not apply to terrorist violence associated with all forms of terrorist acts, assassinations, bomb outrages, rocket attacks and killings by other explosive devices, kidnapping, taking of hostages, hijacking and such other offenses.

### **Human Rights**

In the Charter of the United Nations, the peoples constituting the United Nations express their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and nations large and small. In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights as a common standard of achievement for all people and all nations. In 1966, it adopted the United Nations Covenant of Human Rights.

The Universal Declaration of Human Rights stipulates, in several sets of its articles, the inalienable rights of all members of human family. These inalienable rights are grouped around six main principles- Equality of man; Freedom of thought; expression and faith; Due process of law; Freedom of peaceful assembly and association; Representative basis of state power, and Right to a share in the social and economic organization of the state.

The equality of man is fundamental to the Declaration of Human Rights. The Declaration affirms that human rights are universal and applicable without any discrimination. If all human beings, professing different faiths, are born free with equal dignity and rights, no religious, social or political injunction can impose a reservation on the equality of man and discrimination against any people of the



world. The equality of man transcends all religious precepts and precedent, social sanction, all ideological commitments and political limitations.

All human beings, the Declaration proclaims, are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. All people are entitled to all rights and freedoms envisaged by the Declaration, without any distinction of any kind, such as race, color, sex, language, religion, political or other status. Every human being has right to life, liberty and security of person. No one shall be subjected to torture or cruel inhuman or degrading treatment or punishment. All people are equal before law and are entitled without any discrimination to equal protection of law.

### **Due Process of Law**

Due process of law is the basis of the Declaration of Human Rights. Due process embodies seven principles which are basic to all rights. These principles are redressal against the state, no less against the private citizen; freedom from arbitrary arrest; fair trial; presumption of innocence till proved guilty; protection against ex-post facto penalty; respect for privacy and freedom of movement.

The Declaration of Human Rights envisages the freedom of thought, freedom of conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association. The Universal Declaration of Human Rights proclaims that the will of the people shall be the basis of the authority of the Government which shall be expressed in periodic elections conducted on the basis of universal adult franchise.

The Declaration of Human Rights embraces freedom from want no less than freedom from fear, and envisages for all people right to social security, the right to work, right to free choice of employment, right to just and favorable conditions of work, right to rest and leisure, right to adequate standard of living and right to education.

The Universal Declaration of Human Rights and the United Nations Covenants adopted by the General Assembly in December, 1966, underline themes which involve universal recognition of human rights and not mere juridical protection. The rights envisaged by the Declaration as well as the Covenants are universal in content and therefore, the obligation of their protection is not limited to the authority of the State, but extends to all social and political instruments as well as international organizations. The Declaration and Covenants signify the recognition of a juridical political organization of the world community in which the equality and dignity of man is acknowledged and as a consequence, it is accepted that man has a fundamental right to free movement in search of truth and the attainment of moral good and justice besides the right to a dignified life.

The Universal Declaration of Human Rights is not a partial guarantee and it does not envisage protection for a specific community or a section of the people of the

world. The safeguards for human rights are universal and are available to all people of the world irrespective of their nationality, the regime by which they are governed and the religion and the race to which they belong. The Universal Declaration of Human Rights does not envisage protection of the rights of any single community in the world and insulate it against the infringement of the human rights. It does not provide protection only to the Muslims in Jammu and Kashmir against violation of their rights; it extends protection to all the communities in the state, more so, the Hindus and other minorities, who are more exposed to religious, political and economic dominance of the Muslim majority of the State. Genocide, forced mass exodus of minorities from their homes, and torture are grave violation of human rights. The Universal Declaration of Human Rights protects the Muslims in Jammu and Kashmir against the infringement of their rights, but it also envisages protection for Hindus and other ethnic and religious minorities in the State against extermination, religious persecution and slavery because they refuse to submit to precedents of a Muslim State. The Declaration is a guarantee against all ideological aggrandizement including precedence claimed by the Muslims in a Muslim State.

The Muslim terrorist crusade in Jammu and Kashmir is aimed to:

- a) Merge the state into the Muslim nation of Pakistan on the basis of its Muslim majority;
- b) Convert it into a Muslim State governed in accordance with the religious precepts of Islam; and
- c) Restrict human rights of all ethnic and religious minorities within the injunction of the Muslim State.

The crusade is a negation of human rights. All religious crusades which seek to establish religious precedence including the Muslim Jihad and the militarization of the pan-Islamic fundamentalism violate the Declaration of Human Rights. The rights envisaged by Declaration of Human Rights are irreconcilable to all political regimes which are based upon religious precept and precedent. Fundamental Rights, including human rights, conflict with restricted citizenship and all forms of religious protectorate.

The Declaration of Human Rights does not underline the guarantees against civil jurisdiction alone. The human rights are fundamental rights; they are also civil rights. The protection envisaged by human rights imposes a limitation on the arbitrary exercise of state power; it also imposes a limitation on the exercise of authority by all regimes including instruments of social control, private citizens, foreign states and international organizations. The terrorist organizations in the State, the Muslim crusade for a second partition of India and the state of Pakistan cannot escape the liability for the violation of human rights in the Jammu and Kashmir State.

The responsibility of violation of human rights in the Jammu and Kashmir state rests upon -

1. All the terrorist organizations in the State;
2. The Muslim organizations and the Para-military outfit which aid and support terrorism;
3. The political regime in the part of Jammu and Kashmir occupied by Pakistan; and
4. The State of Pakistan.

Political terrorism is condemned by the United Nations as a crime against the rights of man. Terrorist killings, kidnapping, torture, hostage-taking, abduction are listed as grave crimes against humanity. The General Assembly denounces all acts of terrorism which endanger or take innocent lives, jeopardize fundamental freedoms and impair the dignity of human beings.

### **Failure of the Indian State**

The Jammu and Kashmir Government and Government of India have failed to take adequate and necessary measures to suppress terrorism in the state. In spite of increasing terrorist violence during the fall of 1989, the State Government stubbornly refused to take any action against the growing terrorist menace. During 1989 sixteen hundred violent incidents including 351 bomb blasts took place in Kashmir province. During the first eighteen days of January 1990, 319 violent incidents, 21 armed attacks, 114 bomb blasts and 112 acts of arson and 12 outbreaks of mob violence took place in the state. The Government reaction to the terrorist violence is reflected by the fact that when Shabbier Ahmed Shah a militant leader was arrested in September 1989, the Deputy Commissioner refused to sign the warrant of detention; later on the Deputy Commissioner of District Anantnag to which Shah belonged also refused to sign the warrant. The treachery against the Human Rights did not end there. The Advocate General did not appear before the Court to represent the case, shifting his responsibility to the Additional Advocate General and the Government Counsel. They too refused to appear before the Court. The terrorist violence spread death, and hundreds of innocent Hindus were mowed down by the terrorist bullets but none of the high officials of the state Government was brought to book for having abetted the terrorist assault on human rights.

### **State's Inaction**

The State Government and the Government of India have an obligation under the Universal Declaration of Human Rights, the various international Covenants and the United Nations Resolutions, to deal firmly with terrorist violence. Neither the State Government which is vested with the powers to maintain law and order in the state in the Indian federal division of powers, nor the Union Government which assumed all powers of the administration to itself in consequence of promulgation of President's rule in the State, adopted any of the measures mentioned above to

deal firmly with the terrorist violence. Terrorist crime is still dealt with as an ordinary crime. Trial procedures have not been changed to meet the threat of crimes committed by the terrorist; no special anti-terrorist organizations have been instituted within the police department or within the security structures of the State. TADA is a farce. None of the existing penal laws and procedures has been amended to cover crimes committed outside the State and reach the training nests in Pakistan. No special organization has been established at the national level to coordinate national efforts against terrorists. Both the State Government and the Union Government have not opted for military participation in police functions nor have any special military units for possible use in dealing with the terrorists been constituted. No special powers except those provided to deal with the extraordinary situation of terrorist violence, have been vested with the security forces and no security organization has been empowered to take any pre-emptive action against terrorist violence, so much so that the police force is empowered to fire only when they are attacked, leaving the initiative of surprise with the terrorists. All this is being done in spite of the internationally recognized obligation to change the existing penal law and procedures to meet the terrorist threat

Thousands of innocent lives could have been saved, if the State and Union Government had taken adequate measures which the world community, the civilized nations have adopted to deal with the political terrorism.

The local newspapers are a testimony to the death and destruction of Hindus and other innocent civilians who have been victimized by the various terrorist flanks and who could be saved if powers were given to the security forces to take pre-emptive action. Thousands of innocent lives have been taken by the terrorists and thousands of Hindus have been uprooted from their homes. They are languishing in refugee camps in Jammu and other parts of India. Their right to life, their homes and their freedom is as sacrosanct as any other human right listed in the Universal Declaration of Human Rights.

### **APPEAL**

We appeal to all Human Rights Organizations.

We appeal to the conscience of the world to prevail upon India to:

- a) put an end to political terrorism in Jammu and Kashmir so that the extermination and death of Hindu minorities and other innocent people is stopped immediately and hundreds of thousands of Hindus refugees are able to return to their homeland in Kashmir, and
- b) Indict pan-Islamic fundamentalist organizations and terrorist's organizations in Jammu and Kashmir which are responsible for terrorist violence in Kashmir, and the State of Pakistan which has sponsored these organizations by providing training, arms and funds to the terrorists in Kashmir, for crimes against humanity and International Law and crimes against Human Rights.