

# REPORT: KUNAN POSHPORA

## By A FACT FINDING CPA DELEGATION

### 19 JUNE, 2013

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#### **KUNAN - POSHPORA**

The Centre for Policy Analysis, New Delhi, a think tank has since 2009 been involved with the people of Kashmir in the search of a peaceful and just solution. Over the years, several groups of civil society activists and experts have visited Kashmir for round table dialogues with the Kashmir intellectuals, politicians and activists. Several groups of Kashmir, including women and youth, have come for similar round tables in New Delhi.

CPA-led Civil Society teams have also had a closer look at some of the events and incidents which continue to agitate the valley. One such incident is the alleged gang rape of women in the twin villages of Kunan-Poshpora in Kupwara district about 120 km outside Srinagar.

CPA facilitated a team of senior civil society activists to visit Kunan-Poshpora between June 14-16, 2013 to assess the progress of the justice process and the grievances of the village more than 22 years after the incident.

The team consisted of:

MsSeema Mustafa, Director, Centre for Policy Analysis, journalist.

MsSehbaFarooqui, Asst. Secretary, All India Democratic Women's Association

Mr Mohammad Salim, former Member of Parliament of the CPI-M

MrBhalchandraKango, Secretary, Communist party of India, Maharashtra

Mr E N Rammohan, Former Director General, Border Security Force

Mr Harsh Mander, former IAS, Convener, Aman Biradri, and Human Rights activist

Dr John Dayal, Member, National Integration Council, Journalist and Human Rights activist

The team travelled to the villages from Kupwara along a single lane road that had been ravaged in the winter rains. At various stretches along the river, the road was just a stretch of rubble and pebbles as we entered the village set amidst walnut trees with a mountain range all but encircling the hamlets. The twin villages Kunan-Poshpora are home to about a thousand people. There are few, if any, civic facilities. A board announced a medical centre, but no medical or paramedical staff ever comes there. All institutional facilities are either at Kupwara, or in the state capital Srinagar, and so it has been for ever, villagers say. The CPA team interviewed around 35 men and 35 women of the village, ranging in age from 18 to 70 years. They were farmers, students and unemployed youth. Among them were the two Sarpanches, or Panchayat heads, of Kunan and Poshpora.

## **Background:**

The Kunan-Poshpora villages came into the news in February 1991 when some soldiers were reportedly killed in a militant ambush. The village before that had never had a problem with the military. That would change in the intervening night of February 23-24, 1991. An unspecified number of soldiers of the 4th Rajputana Rifles cordoned off the entire village in the name of conducting a “search operation”. All the men were asked to come out of their homes, and were taken away to another location for interrogation. Once the men were taken away, soldiers went inside every house, raped and abused women through the night. The victims of this mass rape ranged in age from 13 to 80 years. Their numbers remained a matter of conjecture as only 53 or more married women filed FIRs or police complaints and got themselves medically examined. The unmarried girls, also said to number more than 40, did not. It was much too shameful for them and would seriously impact on their future.

The men, young and old, were tortured to make them disclose the whereabouts of the militants involved in the ambush against the army. Third degree torture included the infamous “roller treatment” on their body and limbs, which has left some of them permanently afflicted, and electric shocks on their scalp and genitals. No report was filed for the initial two days by the traumatized villagers out of fear, and stigma.

District Magistrate, S.M Yasin, visited the village two days after the incident to investigate. According to his report, “the armed forces behaved like violent beasts.” He identified the soldiers as members of 4th Rajputana Rifles and said they rampaged through the village from 11:00 pm on February 23 until 9:00 am the next morning.

On March 17, a fact-finding delegation headed by Chief Justice Mufti Bahauddin Farooqi interviewed fifty-three women who had made allegations of rape and tried to determine why a police investigation into the incident had never taken place. Farooqi reportedly stated that he "had never seen a case in which normal investigative procedures were ignored as they were in this one."

The then Divisional Commissioner, Wajahat Habibullah led a team comprising of a colonel from Army HQ, a commandant of the Border Security Force, the Deputy Commissioner of Kupwara district and the Superintendent of Police, Kupwara. After recording statements from 41 women, he concluded that there was sufficient cause for a more detailed enquiry and suggested as much in his report to the Governor. However his recommendations were deleted in the report published by the state government.

On April 7, 1991; the New York Times reported the Kunan-Poshpora rape incident under the headline, “India Moves against Kashmir Rebels.”

After much furore in the press the army initiated an investigation led by a Press Council of India committee led by BG Verghese and K Vikram Rao had visited Valley after the incident and gave a “clean chit to the soldiers”.

A police investigation ordered into the incident was never carried out because the Assistant Superintendent Dilbaugh Singh assigned to the case was transferred before he could start.

Fifteen or more of the women had to undergo hysterectomies following complications because of infection after the sexual violence on them.

Money was distributed to the victims by government official mere recently, not by cheque or to their bank accounts, but by cash. They were told it was for medical expenses. This was done apparently so that the government did not have to acknowledge that mass gang rapes had taken place.

In October 2011, the State Human Rights Commission gave directions for reopening the case after hearing pleas from the victims from the village. It recommended the formation of a special investigation team, monetary compensation of around Rs. 2,00,000lakh to victims and prosecution of the head prosecutor who had ordered the case closed.

A PIL was filed seeking reopening of the case. The Jammu and Kashmir High Court recently disposed of the petition as a lower court was considering another application, but gave leave to the victims to approach the High Court again if they wished later. On June 18, 2013, the Judicial Magistrate Kupwara J. A. Geelani, while dismissing the conclusions made by the police in the recently filed closure report in the case of Kunan Poshpora mass rape of February 23-24, 1991 returned the case file to the police, asking for “further investigation to unravel the identity of those who happen to be perpetrators”.

A section of the media, taking a cue from the security forces and the state government, has for two decades sought to project the Kunan Poshpora crime as a conspiracy by militant groups to stigmatize the Indian armed forces. The state government, despite many of its officials and judge calling for further investigations, has remained in a state of denial over the years, with successive political parties in power ignoring the pleas of the people. No chief minister has ever visited the twin villages.

### **CPA team’s experience and findings:**

It is difficult to accept the argument that the Kunan-Poshpora incident is a case of a mass conspiracy involving militants and the entire population of the twin villages.

We found that both men and women vividly remembered the violence and torture as if it had taken place just a day before. Both women and men broke down when narrating their trauma, the women crying inconsolably before the women members of the CPA team. Team members were struck by the intensity of their anguish.

It is clear that there has been no closure, specially for the women. Their wounds remain fresh. Many of them continue to suffer various ailments consequent to the violence. It is surprising that no one in authority has noted that more than a dozen of the women of just these two villages have had hysterectomies performed within a short period of their ordeal. This must be the only villages in the India with such a large incidence of this surgical procedure. This cannot be faked, nor can be part of any conspiracy.

The psychological trauma is even more than the physical one. Almost every woman we spoke to carries emotional scars and psychological stress which requires expert and sympathetic medical attention as soon as possible. While some of the women are now in their Sixties,

many of them are still not 40, and have many years ahead of them. They need to be healed in body and mind.

The women face an additional and aggravated social crisis. While we have no information of post-1991 incidence of divorce of such women by their husbands, their narratives hint at considerable tension within the families, and in their society. There is evidence of them being ostracised. For the young women, the situation is far more grim. The unmarried rape victims were quietly married off to relatives or in distant villages as no one was willing to wed them in the area.

The two villages continue to suffer this ostracisation and the stigma. Young men repeatedly told us how they had to change schools and colleges because they were taunted by teachers, classmates and others as coming from “that village where your mothers and sisters were raped by the soldiers.” Even today, such taunts face people of Kunan and Poshpora when they go to Kupwara or beyond and are asked where they come from. Many young men and women have given up their studies entirely, while a few brave ones now study in institutions far away.

There is hardly any employment for the youth, other than as labour or working in their family farms, which are small holdings of paddy fields in the shadow of the surrounding mountains.

The village seems to have been ignored by officialdom. There is little to show by way of development. A room with a board of a health centre remains closed, with no medical personnel coming to work in the village.

Other than the cash once distributed almost clandestinely by a State Minister, people say there has been no government compensation paid either to the women victims of gang rape, or the men who were tortured.

The mandate of the CPA team was not to probe the actual incident -- which must be done by both civil and military investigating agencies -- but to assess the status and condition of the people 22 years after the incident. The team therefore did not seek to speak with civil and military authorities.

### **Recommendations:**

The CPA Team makes the following recommendations after its interaction with the people of Kunan-Poshpora;

1. The government must make a serious and urgent effort to ensure Truth and Reconciliation / Closure in these twin villages to help the people feel they have been given justice, and enable them to move on with their lives.
2. Towards this, the government must follow the instructions of the State Human Rights Commission and reopen the criminal investigations into the incidents of 23 and 24 February 1991 and the FIR 10/ 1991 registered in police station Treggan.
3. It will be necessary to have an empowered Special Investigating Team set up, which must be supervised by the High Court of Jammu and Kashmir to ensure non-interference.

4. The civil and military authorities must no longer remain in a state of denial but must vigorously pursue the course of justice which in turn will enhance their own credibility.
5. Those found guilty must be traced and punished. The case cannot be closed as being “untraced”, a practice hitherto followed by the Directorate of Prosecution before the courts.
6. The government must also prosecute those found responsible for the cover up of the incident in the last two decades.
7. Proper and adequate compensation must be paid to all victims, women and men. Government can follow the example of the Government of Punjab which paid compensation to the next of kin of the youth who were killed in the mass-murders and cremation cases during the militancy in the state.
8. Urgent and adequate arrangements must be made for proper physical and psychological treatment of all victims.
9. The village must get all benefits under the Panchayati raj and efforts must be made to improve connectivity, sanitation and health schemes.
10. Comprehensive schemes must be devised for the uplift of the youth of the village. Ensuring opportunities for study, professional education and entrepreneurship.

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### **Postscript:**

Two days after the return of the team from Kashmir, a local court ordered a reopening of the Kunan-Poshpora case. The following is the Press Release issued by local support group:

Press Statement  
18 June 2013

### **KUNAN POSHPORA MASS RAPE CASE RE-OPENED**

On 18<sup>th</sup> June 2013, the Judicial Magistrate Kupwara J. A. Geelani, while dismissing the conclusions made by the police in the recently filed closure report in the case of Kunan Poshpora mass rape of 23-24 February 1991 returned the case file to the police, asking for “further investigation to unravel the identity of those who happen to be perpetrators”.

As the demand by us and the survivors was for the re-investigation by Special Investigation Team (SIT), headed by an officer of Senior Superintendent of Police (SSP) rank, the court while mentioning the lack of authority in ordering SIT, asked the further investigation to be conducted by an officer not below the rank of SSP and within a time bound period of 3 months.

On 10 June 2013, a protest petition was filed by Adv. Parvez Imroz on behalf of the survivors of Kunan Poshpora mass rape against the closure report of the Jammu and Kashmir Police, before the Judicial Magistrate, Kupwara. On 13 June 2013, the Chief Prosecuting Officer [CPO] filed objections, and today, oral arguments were made before the Magistrate.

The protest petition argued that the police investigations were incomplete and clearly malafide as despite having the information on file regarding the involvement of 125 personnel of 4<sup>th</sup> Rajputana Rifles, the police had not questioned them and neither was an

identification parade conducted. The Judicial Magistrate Kupwara while acknowledging the submissions made by us has mentioned in the judgment that, “Until date the investigating agency has not unveiled the identity of the culprits despite having a clear cut nominal role of 125 suspects”

The response of the State, through the CPO AashiqHussain was unsurprisingly bad in law, and deeply disrespectful of the victims of Kunan Poshpora. First, they argued that there was no right of filing a protest petition, a position unmindful of the law. Second, the State argued that the protest petition was being filed to allow other victims to get cash compensation, and that the victims appeared to have woken up after 22 years and the protest petition was barred by laches. While rejecting the submissions of the CPO, the Judicial Magistrate, Kupwara upheld the right to file the protest petition and further observed that, “The instant final report ought to have been forwarded to the Magistrate way back on 12<sup>th</sup> October 1991.”

After 22 years of cover-ups and delay, the State conveniently blocked the High Court PIL and now was shamelessly attempting to block the victims’ remedies before the Judicial Magistrate. Instead of taking the responsibility for delay and denial of justice, the State has chosen to malign the victims and choke any remedies for the survivors of Kunan Poshpora.

Today’s order is an achievement of the struggle of the Kunan Poshpora people along with those who supported their demand for justice. This will surely inspire many more victims of the recent past to wake up and fight for justice in their cases.

We reiterate our commitment that we will continue the struggle till justice is done. Now the Government should comply with the orders of the court and give up their reluctance of punishing the guilty.

Representatives of the support group for Justice for KunanPoshpورا

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