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India: Arbitrary and unlawful detentions in Jammu and Kashmir must end

Amnesty International India urges authorities in Jammu and Kashmir (J&K) to end the practice of arbitrary and unlawful detentions by the state police, particularly of Kashmiri boys and men allegedly involved in incidents of stone-pelting.

Over the past year, Amnesty International India has received numerous reports of detentions in J&K that, although initially carried out in conformity with the law, subsequently violate the right to liberty.

Interviews conducted by Amnesty International India with lawyers, public prosecutors, other public officials, detainees' families, and members of civil society in J&K have revealed cases of arbitrary and unlawful detentions, including the unauthorized detention of persons in defiance of court orders for their release on bail and repeated arrests and detention of persons by the police for similar or identical criminal offences, seemingly in order to extend their detention.

These practices accompany the continued use and abuse of the Jammu and Kashmir Public Safety Act, 1978 (PSA), which authorises the detention of persons without charge or trial for up to two years while denying the possibility of judicial review and other safeguards for those in detention required under international human rights law.

The PSA also violates the principle of legality by defining offences so broadly as to allow security officials to detain individuals on extremely vague grounds, including for exercising their rights to peaceful assembly and freedom of expression.

Like other systems of administrative detention, detentions under the PSA are notorious for facilitating other human rights violations, including incommunicado and illegal detention and torture and other forms of ill-treatment.

As the cases below illustrate, police abuse even the already abusive PSA as well as violate the rights of persons detained on criminal grounds.

Detentions in defiance of release orders

On 8 March 2013, the J&K police arrested a 16 year-old boy named Sajad Mir in Srinagar under the PSA for 'stone-pelting' and 'disruption of peace'. The police immediately took him to Kotbalwal Jail, Jammu, 300 kilometres away from his home, without informing his family.

In late April 2013, the J&K High Court revoked the detention order against Mir. However, the J&K police re-arrested him under the Ranbir Penal Code (RPC) for allegedly being involved in "rioting armed with deadly weapons", attempt to murder, endangering the life or personal safety of others, and assaulting a public official.

Two days later, on 4 May, a trial court ordered that Mir be released on bail after his family agreed to provide surety. But the police did not release him. Instead, Mir was detained at various police stations in Srinagar for more than a month.

The police did not inform either Mir or his family about the reasons for his continued detention, and he was not brought before a judicial authority, rendering his detention arbitrary under international human rights law and illegal under Indian law on multiple counts. On 30 May, he was taken to the Srinagar Central Jail. He was finally released on bail on 13 June, 39 days after his bail was granted.¹

In an interview with Amnesty International India, Sajad Mir's brother Ghulam Mohammad Mir said that a policeman had told him, "Don't go to the courts or the media. Even if (Mir) is released, we will just arrest him again and again."

Similarly, 18 year-old Faisal Qayoom Bhat was arrested on 7 March 2013 on various criminal charges, including rioting and attempt to murder, in connection with a stone-pelting incident. On 19 March, a trial court granted him bail and his family agreed to provide surety. However the police continued to keep Bhat in police custody at the Soura Police Station in Srinagar until 3 April, when he was finally released.

Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which binds India as a state party, provides for the right to liberty, which includes freedom from arbitrary deprivation of liberty. The Human Rights Committee, the UN expert body that oversees the implementation of the ICCPR, has said that when there is a judicial determination that there are no grounds for continued detention, any further detention amounts to an arbitrary deprivation of liberty.

Article 21 of the Constitution of India also says that "No person shall be deprived of his life or personal liberty except according to procedure established by law", and the Supreme Court of India has ruled that such a procedure must be just, fair and reasonable. The continued detention of Sajad Mir and Faisal Qayoom Bhat after a judicial authority ordered their release constitutes an arbitrary deprivation of liberty under both Indian and international law.

Revolving Door Detentions

In 2011, Amnesty International documented the use of 'revolving door detentions' – where individuals are released from detention only to be immediately re-arrested and detained again – using the PSA. Amnesty International has received reports that police also use criminal law to repeatedly arrest and detain people in a similar manner.

When an individual is released on bail, police in certain cases immediately re-arrest the person in a different criminal case on the same or similar grounds. In some cases received by Amnesty International, individuals have been re-arrested after being granted bail by a court three or more times consecutively, without once being released from custody.

Reports of harassment by police during the course of investigation are also common.

Amnesty International India urges authorities to:

- Repeal the PSA and end the system of administrative detention in J&K, charging those suspected of committing criminal acts with recognizably criminal offences and trying them in a court of law with all safeguards for fair trial provided;
- Carry out prompt, thorough, impartial and independent investigations into the arbitrary and unlawful detentions of Sajad Mir and Faisal Bhat, and prosecute any police officers, including those with command responsibility, suspected of offences involving violations of their human rights violations in fair proceedings;
- Provide reparation to Sajad Mir and Faisal Bhat for their arbitrary and unlawful detention;

¹ Authorities also treated Sajad Mir as an adult under the law despite the fact that he is 16, namely a minor under Indian law, and held him in detention with adults. In doing so, they violated the Jammu and Kashmir Juvenile Justice Act and the Convention on the Rights of the Child, to which India is a state party.

- Ensure that if Sajad Mir is tried, this is done under the provisions of the J&K Juvenile Justice Act and provided the safeguards guaranteed to children under the Convention on the Rights of the Child;
- End the practice of keeping individuals in detention in defiance of judicial orders for their release;
- Ensure that overseeing authorities regularly monitor the detentions and investigations of cases in an independent, impartial and thorough manner as required by Indian and international standards.

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